

ILLINOIS POLLUTION CONTROL BOARD

April 18, 2002

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R02-1
AMENDMENTS (January 1, 2001 through) (Identical-in-Substance
June 30, 2001)) Rulemaking - Land
)

RCRA SUBTITLE C UPDATE, USEPA) R02-12
AMENDMENTS (July 1, 2001 through) (Identical-in-Substance
December 31, 2001, January 22, 2002,) Rulemaking - Land
March 13, 2002, and April 9, 2002))

UIC UPDATE, USEPA AMENDMENTS) R02-17
(July 1, 2001 through December 31, 2001)) (Identical-in-Substance
) Rulemaking - Land
) (Consolidated)

Adopted Rule. Final Order.

OPINION OF THE BOARD (by S.T. Lawton, Jr.):

SUMMARY OF TODAY'S ACTION

The Board adopts amendments to the Illinois regulations that are "identical in substance" to cover rules adopted by the United States Environmental Protection Agency (USEPA) in two programs:

1. Hazardous waste regulations that the United States Environmental Protection Agency (USEPA) adopted to implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2000)) are adopted by the Board under Sections 7.2 and 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 22.4(a) (2000)). Today's RCRA Subtitle C amendments adopted by USEPA during the periods January 1, 2001 through June 30, 2001 and July 1, 2001 through December 31, 2001, and amendments that occurred on January 22, 2002, March 13, 2002, and April 9, 2002.
2. Underground injection control (UIC) regulations that USEPA adopted to implement Section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. § 300h (2000)) are adopted by the Board under Sections 7.2 and 13(c) of the Act (415 ILCS

5/7.2 and 13(c) (2000)). Today's UIC amendments cover rules adopted by USEPA during the period July 1, 2001 through December 31, 2001.

These adopted amendments accommodate the concerns of the major public commenters: USEPA, the Illinois Environmental Protection Agency (Agency), the Illinois Department of Nuclear Safety (DNS), and the Illinois Environmental Regulatory Group (IERG). The Board has expedited completion of this rulemaking as requested by the Illinois Environmental Protection Agency (Agency), and included federal amendments adopted January 22, 2002. These amendments cover corrective action management units (CAMUs). USEPA stated that it would implement CAMU rules in Illinois as federal rules by April 22, 2002, unless Illinois can commit to implement the amendments as State rules by that time. Board adoption of these rules today allows the Agency to implement the rules.

The Board particularly appreciates the detailed and thoughtful review DNS has given this rulemaking. Among other things, the USEPA rules raise issues of proper disposal of wastes which may be covered by federal and state laws and rules for environmental protection from hazardous waste as well as nuclear safety.

Where possible to do so, the Board made the technical changes suggested by the DNS. But many of the DNS comments questioned the substantive aspects of the USEPA rules on which the Board's identical-in-substance rules must be based. The Board shares the DNS's concerns about inconsistencies in the definition and handling of some types of waste, and its distaste for confusing or duplicative regulations.

However, the Board cannot today resolve many of these DNS-noted inconsistencies in this narrow rulemaking. To follow many of the DNS suggestions would lead the Board to adopt rules that are not "identical-in-substance" to USEPA rules, as this is defined under Section 7.2 of the Act (415 ILCS 5/7.2 (2000)). The Board can adopt rules more stringent than the federal RCRA rules, but cannot adopt rules less stringent. The Board can adopt rules more stringent only in a general rulemaking proceeding under Sections 22.4(b) and 27 of the Act (415 ILCS 5/22.4(b) and 27 (2000)).

It may be that USEPA is the entity in the best position to resolve any regulatory inconsistencies. In discussing the DNS concerns in this opinion and noting them in the rules, the Board joins the DNS and the Agency in encouraging USEPA to look again at its rules to consider addressing any inconsistencies in a federal rulemaking. Of course, after consultation and consideration of today's opinion and order, the DNS or the Agency may wish to initiate a Board rulemaking. If so, the Board will expedite handling of any such regulatory proposal.

This opinion supports an order that the Board also adopts today. The Board will immediately submit these amendments to the Office of the Secretary of State for filing and for publication in the *Illinois Register*. To allow for as early an effective date as possible, USEPA waived its 30-day post-adoption review.

**CONSOLIDATION OF DOCKETS R02-1, R02-12, AND R02-12 AND
ADDITION OF JANUARY 22, 2002 CAMU AMENDMENTS**

The Board consolidated its consideration of the R02-1 and R02-12 RCRA Subtitle C update dockets and the R02-17 UIC update docket in the interests of administrative economy. There is some overlap in the amendments involved in the R02-1 and R02-12 RCRA Subtitle C update dockets, and consolidation of those two dockets will allow the timely adoption of all the amendments involved without co-pendent amendments to any of the provisions involved. The R02-17 UIC update docket covers the same time period as the R02-12 RCRA Subtitle C update docket, and the only federal amendments to the UIC regulations involved in docket R02-17 occurred on November 20, 2001, as a segment of a larger federal rulemaking to amend the RCRA Subtitle C regulations that are involved in docket R02-12. Consolidation of these three dockets has expedited the amendment of all the regulations involved.

In addition to the consolidation described above, the Board is adopting rules based on three sets of federal amendments that lie outside the nominal timeframes of the dockets involved.

- 1) The Agency filed a request for expedited consideration of then as-yet unpublished federal amendments on January 9, 2002. PC 3. The federal amendments involved appeared in the January 22, 2002 issue of the *Federal Register* (at 67 Fed. Reg. 2961). For the reasons described more fully below (beginning on Page 29), the Board is granting the Agency's request and adding these later amendments to the R02-12 docket for consideration in this consolidated docket. The caption reflects this addition.
- 2) The Board is including federal amendments published in the March 13, 2002 issue of the *Federal Register* to this docket. In those amendments, USEPA is responding to the judicial vacatur in the case, Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). The Board included amendments in the January 24, 2002 proposal for public comment relating to this case in response to a request from the Illinois Environmental Regulatory Group (IERG). As is discussed later in this opinion (beginning below on page 27), expediting the March 13, 2002 federal amendments is preferable to adoption of the amendments proposed on January 24, 2002 in response to the IERG request.
- 3) The Board also included here the corrections adopted by USEPA on April 9, 2002 to the November 20, 2001 inorganic chemicals production waste rule. Those federal corrections were limited to the format and appearance of that rule, and did not affect its substance. Thus, no change was necessary to the text of the inorganic chemicals production waste rule that the Board proposed on January 24, 2002 based on the April 9, 2002 action.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

The following briefly summarizes the federal actions considered in this rulemaking.

Docket R02-1: January 1, 2001 through June 30, 2001, RCRA Subtitle C Amendments

USEPA amended the federal RCRA Subtitle regulations on six occasions during the period January 1, 2001 through June 30, 2001. Each is summarized below:

66 Fed. Reg. 3466 (Jan. 16, 2001)

By a direct final rule, USEPA approved the use of updated test procedures for determination of various contaminants in water and wastewater. USEPA amended 40 C.F.R. 136, which is incorporated by reference in 35 Ill. Adm. Code 720.111.

66 Fed. Reg. 24270 (May 14, 2001)

USEPA withdrew segments of the June 19, 1998 (63 Fed. Reg. 33821) hazardous waste combustor rule. The court in Chemical Manufacturers Assoc. v. EPA, 217 F.3d 861 (D.C. Cir. 2000) had vacated the Notice of Intent to Comply provisions of the hazardous waste combustor rule. USEPA withdrew the vacated provisions in response to that decision.

66 Fed. Reg. 26795 (May 15, 2001)

USEPA withdrew its January 16, 2001 (66 Fed. Reg. 3466) direct final rule that approved the use of updated test procedures for determination of various contaminants in water and wastewater.

66 Fed. Reg. 27218 (May 16, 2001)

USEPA adopted relaxed requirements for low-level radioactive waste that is mixed with hazardous waste (LLMW) and enhanced naturally occurring and accelerator-produced radioactive material (NARM). USEPA adopted a conditional exemption of certain LLMW from the hazardous waste regulations during storage and treatment, since these wastes are also subject to regulation under the Atomic Energy Act. USEPA also exempted LLMW and NARM from the RCRA manifest, transportation, and disposal requirements when certain conditions are met.

66 Fed. Reg. 27266 (May 16, 2001)

USEPA adopted the retention of the mixture rule and derived-from rule in the hazardous waste regulations. In retaining the rules, USEPA amended them in two regards to narrow their scopes. The first amendment is to exclude wastes listed solely for the characteristics of ignitability, corrosivity, and reactivity. The second amendment is the conditional exemption of mixed waste (waste that is hazardous waste and radioactive waste).

66 Fed. Reg. 34374 (June 28, 2001)

USEPA adopted technical amendments and corrections to various of its regulations, including the hazardous waste rules to update its own mailing addresses. This action was a follow-up action intended to complete amendments adopted by USEPA on August 2, 2000 (65 Fed. Reg. 47323).

**Docket R02-12: July 1, 2001 through December 31, 2001,
RCRA Subtitle C Amendments**

USEPA amended the federal RCRA Subtitle C regulations on five occasions during the period July 1, 2001 through December 31, 2001. Each is summarized below:

66 Fed. Reg. 35087 (July 3, 2001)

USEPA adopted a direct final rule that amended its September 30, 1999 hazardous waste combustor rule. The amendments affected a segment of the standards applicable to hazardous waste treatment, storage, and disposal facilities.

66 Fed. Reg. 35379 (July 5, 2001)

USEPA published two memoranda that outline the applicability of the hazardous waste regulations to spent catalyst wastes removed from dual purpose hydroprocessing reactors at petroleum refining facilities, and it invited public comment on the memoranda. The memoranda explain that the wastes fall within the description of listed hazardous wastes numbered K171 and K172.

66 Fed. Reg. 50332 (Oct. 3, 2001)

USEPA adopted a direct final rule that incorporated two clarifying revisions into the May 16, 2001 hazardous waste identification rule. The first revision replaces exemptions from the mixture rule previously inadvertently deleted. The second revision clarifies that mixtures including certain wastes (“Bevill” wastes¹) and listed hazardous wastes listed solely for the characteristic of ignitability, reactivity, or corrosivity (*i.e.*, wastes not listed for toxicity) are no longer hazardous once the characteristic for which the waste was listed has been removed.

66 Fed. Reg. 52361 (Oct. 15, 2001)

USEPA withdrew segments of its July 3, 2001 direct final rule that amended its September 30, 1999 hazardous waste combustor rule. Although the withdrawal affected only air segments of the hazardous waste combustor rule, the air segments are incorporated into the hazardous waste rules by reference in 35 Ill. Adm. Code 720.111.

¹ Section 3001(b)(3)(A)(i) through (b)(3)(A)(iii) of RCRA (42 U.S.C. §§ 6921(b)(3)(A)(i) through (b)(3)(A)(iii) (1994) are known as the “Bevill exemption.” The wastes exempted are known as “Bevill” wastes. *See* 60 Fed. Reg. 11089 (Mar. 1, 1995).

66 Fed. Reg. 58258 (Nov. 20, 2001)

USEPA adopted new hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing. With the new waste listings, USEPA adopted waste treatment standards and land disposal restrictions for the new wastes.

(See also later-included RCRA amendments described below.)

**Docket R02-17: July 1, 2001 through December 31, 2001,
UIC Amendments**

USEPA amended the federal UIC regulations on one occasion during the period July 1, 2001 through December 31, 2001. That action is summarized below:

66 Fed. Reg. 58258 (Nov. 20, 2001)

USEPA adopted new hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing. With the new waste listings, USEPA adopted waste treatment standards and land disposal restrictions for the new wastes. This included restrictions on the underground injection of these wastes.

Later RCRA Subtitle C (Hazardous Waste) Amendments Included

The Board engages in ongoing monitoring of federal actions. As of the date of this opinion and accompanying order, USEPA has undertaken amendments to the RCRA Subtitle C hazardous waste rules since January 1, 2002 that are of direct interest at this time. The Agency identified one set of amendments to the corrective action management unit (CAMU) rules on which it has requested immediate action. In another action, USEPA responds to a judicial decision in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000) on which IERG has requested action.

When the Board observes an action outside the nominal timeframe of a docket that would require expedited consideration in the pending docket, the Board will expedite consideration of those amendments. Federal actions that could warrant expedited consideration include those that directly affect the amendments involved in this docket, those for which compelling reasons would warrant consideration as soon as possible, and those for which the Board has received a request for expedited consideration. In the January 24, 2002 proposal for public comment, the Board advised, "If the Board identifies any additional federal actions that fulfill these criteria prior to final action on the present amendments, the Board may include those amendments in the present consolidated update docket R02-1, R02-12, and R02-17." The following amendments fulfill these criteria.

January 22, 2002 CAMU Amendments

The Agency requested that the Board consider a specific set of federal amendments on an expedited basis. That set of amendments is the following:

67 Fed. Reg. 2961 (Jan. 22, 2002)

USEPA adopted amendments to the corrective action management unit (CAMU) rules. These amendments significantly revise the requirements imposed on CAMU units and on the waste to be managed in a CAMU unit.

The Agency stated that it must notify USEPA within 60 days of the federal adoption of these amendments (by March 22, 2002), whether the State will be able to implement the rules within 90 days of their adoption (by April 22, 2002). If the State is unable to implement these amendments, USEPA will implement them. The Agency asserted that concurrent enforcement by USEPA and the Agency would be disruptive, and it wishes to avoid this situation. The Agency requested that the Board adopt the January 22, 2002 amendments as soon as possible.

March 13, 2002 Response to Association of Battery Recyclers Judicial Vacatur

The Board received a request from IERG on June 18, 2001 that the Board add language to the regulations reflecting the vacatur in the case of Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000) relating to the use of the TCPL on MGP waste.

USEPA later adopted a specific set of federal amendments in response to the decision. That set of federal amendments is the following:

67 Fed. Reg. 11251 (Mar. 13, 2002)

USEPA adopted amendments to respond to the April 22, 2000 vacatur in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). USEPA withdrew language that classified as solid waste those mineral processing wastes that exhibit a characteristic of hazardous waste and which are reclaimed. USEPA also added language that prohibits the use of the toxicity characteristic leaching procedure (TCLP) to determine whether manufactured gas plant (MGP) waste exhibits the characteristic of toxicity.

The Board has adopted these amendments. The Board has eliminated the proposed Board notes suggested by the IERG. This is discussed beginning on page 27 of this opinion.

April 9, 2002 Corrections to the November 20, 2001 Inorganic Chemicals Production Waste Rule

USEPA corrected the November 20, 2001 inorganic chemicals production waste rule on April 9, 2002. The Board is handling the corrections in this docket because the inorganic

chemicals production waste rule is involved in this proceeding. That set of federal amendments is the following:

67 Fed. Reg. 17119 (Apr. 9, 2002)

USEPA corrected the November 20, 2002 (66 Fed. Reg. 58258) inorganic chemicals production waste rule. The corrections were limited to the appearance and format of the November 20, 2001 amendments to the table to 40 C.F.R. 268.40 entitled, "Treatment Standards for Hazardous Wastes." There were no substantive amendments.

The Board has not amended the January 24, 2002 proposal for public comment, as the Board did not follow the initial federal format.

Other Federal Actions Having a Direct Impact on the Illinois RCRA Subtitle C and UIC Regulations

In addition to the amendments to the federal RCRA Subtitle C regulations, another set of federal amendments has an effect on the corresponding Illinois rules. Most notably, 35 Ill. Adm. Code 720.111 includes several incorporations of federal regulations by reference, and USEPA has amended 40 C.F.R. 136, which is included among the incorporated references. The set of federal amendments to 40 C.F.R. 136 is as follows:

66 Fed. Reg. 32774 (June 18, 2001)

USEPA adopted technical corrections to the test procedures for determination of mercury in water and wastewater. USEPA amended 40 C.F.R. 136, which is incorporated by reference in 35 Ill. Adm. Code 720.111.

RCRA Subtitle C (Hazardous Waste) and UIC Amendments on Which No Board Action Is Necessary

Among the listed federal RCRA Subtitle C and UIC amendments examined by the Board are four on which no Board action is necessary in the present consolidated update docket R02-1/R02-12/R02-17. Those actions were those of January 16, 2001, May 15, 2001, June 28, 2001, and July 5, 2001.

The amendments of January 16, 2001 were substantive direct final amendments; USEPA approved the use of updated test procedures for determination of various contaminants in water and wastewater. By the action of May 15, 2001, however, USEPA withdrew the direct final amendments of January 16 in response to significant adverse public comments.

In the action of June 28, 2001, USEPA amended several segments of its various regulations to update the address of the USEPA headquarters. Included were amendments to 40 C.F.R. 260.11(a)(11); 261, Appendix IX, tables 1 and 2; and 265.1080(f)(2)(viii)(H)(2). Thus, there is no counterpart in the Illinois regulations for these three particular segments of the federal regulations. The document referenced in 40 C.F.R. 260.11(a)(11) is available from

other sources that are listed in the Illinois regulations, obviating an added listing for the “OSW Methods Team.” The rules in 40 C.F.R. 261, Appendix IX, tables 1 and 2 and 265.1080(f)(2)(viii)(H)(2) pertain only to facilities outside Illinois.

Finally, the federal action of July 5, 2001 did not amend the federal hazardous waste regulations. Rather, USEPA published two interpretive memoranda relating to the application of its regulations to certain wastes and invited public comment on that interpretation. The interpretive memoranda do not warrant amendment of the Illinois hazardous waste regulations.

**Summary Listing of the Federal Actions Forming the Basis
of the Board’s Actions in These Consolidated Dockets**

Based on the foregoing, the federal actions that form the basis for Board action in this update docket are as follows, in chronological order:

66 Fed. Reg. 24270 (May 14, 2001)	Withdrawal of segments of the hazardous waste combustor rule.
66 Fed. Reg. 27218 (May 16, 2001)	Relaxed requirements for low-level radioactive waste that is mixed with hazardous waste (LLMW) and enhanced naturally occurring and accelerator-produced radioactive material (NARM).
66 Fed. Reg. 27266 (May 16, 2001)	Retention of the mixture rule and derived-from rule in the hazardous waste regulations, with amendments to narrow their scopes.
66 Fed. Reg. 32774 (June 18, 2001)	Technical corrections to the test procedures for determination of mercury in water and wastewater.
66 Fed. Reg. 35087 (July 3, 2001)	Amendment of the hazardous waste combustor rule.
66 Fed. Reg. 50332 (Oct. 3, 2001)	Clarifying revisions into the May 16, 2001 hazardous waste identification rule.
66 Fed. Reg. 52361 (Oct. 15, 2001)	Withdrawal of segments of the July 3, 2001 amendments to the hazardous waste combustor rule.
66 Fed. Reg. 58258 (Nov. 20, 2001)	Hazardous waste listings (K176, K177, and K178) for three wastes generated from inorganic chemical manufacturing, with land disposal restrictions.
67 Fed. Reg. 2961 (Jan. 22, 2002)	Amendments to the CAMU rules.
67 Fed. Reg. 11251 (Mar. 13, 2002)	Response to the judicial vacatur in the <u>Association of Battery Recyclers</u> case.
67 Fed. Reg. 17119 (Apr. 9, 2002)	Corrections to the November 20, 2001 inorganic chemical production waste rule.

PUBLIC COMMENTS

The Board adopted a proposal for public comment in this matter on January 24, 2002. Notices of Proposed Amendments appeared in the February 22, 2002 and March 1, 2002 issues of the *Illinois Register*. (See 26 Ill. Reg. 2384 (Part 726), 2268 (Part 720), 2257 (Part 703), 2301 (Part 721), 2352 (Part 724), 2403 (Part 728), and 2964 (Part 738)). The Board received public comments on the proposal for a period of 45 days following the March 1, 2002 publication in the *Illinois Register*. The comment period closed on April 15, 2002.

Pre-Publication Comments

The Board received three public comments prior to the January 24, 2002 proposal for public comment. Those comments were the following:

- PC 1 Illinois Environmental Regulatory Group, June 14, 2001, by Karen L. Bernoteit, Attorney
- PC 2 Nascote Industries, Inc., September 28, 2001, by Jim Evilsizer, Environmental Engineer
- PC 3 Illinois Environmental Protection Agency, January 9, 2002, by Kyle Rominger, Assistant Counsel

The public comments received prior to the proposal request that the Board take specific actions. On June 18, 2001, the Board received a request from the Illinois Environmental Regulatory Group (IERG), docketed as public comment number 1, as described below, that the Board considers the decision of the federal court in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). IERG asserted that this decision vacated the federal May 26, 1998 (63 Fed. Reg. 28555) Phase IV land disposal restrictions (LDRs) to the extent that it requires application of the toxicity characteristic leaching procedure (TCLP) test to determine whether manufactured gas plant (MGP) waste is hazardous. In response to the IERG comment, the Board examines the USEPA response to the Association of Battery Recyclers decision in the discussion that begins on page 27 of this opinion.

In PC 2, Nascote Industries directed the Board's attention to the federal May 16, 2001 amendments to the hazardous waste identification rule (HWIR). Nascote requested expedited review of these amendments. The Board grants the request, since those amendments are a part of this docket. Discussion of the HWIR amendments appears in the segment of the following discussion that begins on page 14 below.

In PC 3, the Agency requested that the Board take prompt action on a set of USEPA amendments to the federal CAMU rules that appeared in the January 22, 2002 issue of the *Federal Register* (at 67 Fed. Reg. 2961). The Board granted this request, since it is within the

interest of the State that the Board adopt these amendments as soon as possible. This is in order to avoid the possible inconsistencies involved in USEPA itself implementing the amendments while the Agency simultaneously implements the different standards that now exist in the Illinois rules.

Post-Publication Comments

After the publication of the Notices of Proposed Amendments in the *Illinois Register*, the Board received additional comments, as follows:

- PC 4 USEPA, Region V, March 4, 2002, by Willie H. Harris, P.E., Chief, Program Management Branch
- PC 5 Illinois Environmental Protection Agency, March 29, 2002, by Susan J. Schroeder, Associate Counsel
- PC 6 Illinois Environmental Regulatory Group, March 27, 2002, by Karen L. Bernoteit, Attorney
- PC 7 Illinois Department of Nuclear Safety, April 4, 2002, by Thomas W. Ortziger, Director

In PC 4, USEPA, Region V noted that the Chemical Abstract Service (CAS) numbers were missing from the listing for hazardous waste number K178 that appeared in the January 24, 2002 proposal for public comment. The Board has corrected this omission, as indicated in the table that begins on page 66 of this opinion. USEPA had no comments on the substance of the proposal other than the comment relating to the CAS numbers. USEPA also waived its 30-day post adoption comment period in order to facilitate the soonest possible implementation of the January 22, 2002 CAMU rule amendments, as is discussed below beginning on page 29.

In PC 5, the Agency further expressed its appreciation that the Board included the federal amendments of January 22, 2002, to the CAMU rule in this docket. The Agency reported minor errors in the January 24, 2002 proposal for public comment and responded to the Board solicitations for comment that appeared in the January 24, 2002 opinion. The Agency noted a small number of omissions in the text of Table T to Part 728 and in Section 724.654(g). The Board has made the suggested corrections without discussion. The revisions appear in the table that begins on page 66 of this opinion. Finally, the Agency commented on the placement and content of the Board note proposed to respond to the federal judicial decision in the Association of Battery Recyclers case, and the Agency directed the Board's attention to the March 13, 2002 USEPA response to that decision. That is discussed beginning on page 27 of this opinion.

In PC 6, IERG stated that it agreed with the placement and content of the Board notes pertaining to the Association of Battery Recyclers decision in the January 24, 2002 proposal

for public comment. IERG did not reference the March 13, 2002 USEPA amendments prompted by the Association of Battery Recyclers decision. The Board considers the IERG comments in the discussion of the Association of Battery Recyclers decision beginning on page 27 of this opinion.

In PC 7, the Illinois DNS voiced its support for the elimination of duplicative regulation of nuclear materials. The DNS acknowledged that the January 24, 2002 amendments proposed by the Board are identical-in-substance to USEPA amendments, but still expressed concerns over the content of the USEPA rules. The DNS suggested a number of revisions to the May 16, 2001 mixed waste rule. The Board has incorporated the DNS suggestions to the extent allowed under Section 7.2 of the Act (415 ILCS 5/7.2 (2000)) in this rulemaking. The Board considers the DNS comments beginning on page 17 of this opinion.

DISCUSSION

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by a discussion of the amendments and actions undertaken in direct response to the federal actions involved in this proceeding. This first series of discussions is organized by federal subject matter, generally appearing in chronological order of the relevant *Federal Register* notices involved. Finally, this discussion closes with a description of the amendments and actions that are not directly derived from the federal actions.

General Revisions and Deviations from the Federal Text

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors that the Board sees in the text as the Board engages in these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the Illinois Administrative Code.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As of the date of this opinion, the most recent version of the *Code of Federal Regulations* available to the Board is the July 1, 2000 version. Thus, the Board has updated all citations to the 2000 version, adding references to later amendments using their appropriate *Federal Register* citation, where necessary.

The Board substituted “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, spelling, and cross-reference format throughout the opened text. The Board changed “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred was not necessarily a natural person, or to “he or she,” where a natural person was evident; changed “which” to “that” for restrictive relative clauses; substituted “must” for “shall”; capitalized the section headings and corrected their format where necessary; and corrected punctuation within sentences.

In addition, the federal rules have been edited to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may,” “must” is used when an action is required by the rule, without regard to whether the action is required of the subject of the sentence or not. “Shall” is no longer used, since it is not used in everyday language. Thus, where a federal rule uses “shall,” the Board substitutes “must.” This is a break from our former practice where “shall” was used when the subject of a sentence has a duty to do something. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either . . . or” denotes “one but not both.” “And” denotes “both.”

The Joint Committee on Administrative Rules (JCAR) has requested that the Board refer to the United States Environmental Protection Agency in the same manner throughout all of our bodies of regulations—*i.e.*, air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board has decided to refer to the United States Environmental Protection Agency as “USEPA.” The Board will continue this conversion in future rulemakings as additional sections become open to amendment. The Board will further convert “EPA” used in federal text to “USEPA,” where USEPA is clearly intended.

The Board has assembled tables to aid in the location of these alterations and to briefly outline their intended purpose. The tables set forth the miscellaneous deviations from the federal text and corrections to the pre-amended base text of the rules in detail. The tables are set forth and explained beginning at page 37 of this opinion. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

Discussion of Particular Federal Actions

Amendments to the Hazardous Waste Combustor Rule and Hazardous Waste NESHAP—Sections 703.280, 720.111, and 724.440

On May 14, 2001 (66 Fed. Reg. 24270), USEPA withdrew segments of its June 19, 1998 (63 Fed. Reg. 33783) hazardous waste combustor rule. USEPA undertook this action in response to the vacatur in Chemical Manufacturers Assoc. v. USEPA, 217 F.3d 861 (D.C. Cir. 2000). The court vacated certain standards applicable to baghouses and electrostatic

precipitators so that USEPA could solicit further public comments on them. The Board originally adopted the hazardous waste combustor rule in RCRA Update, USEPA Regulations (July 1, 1997 through Dec. 31, 1997), RCRA Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), UIC Update, USEPA Regulations (Jan. 1, 1998 through June 30, 1998), R98-21/R99-2/R99-7 (Dec. 17, 1998) (consolidated).

On July 3, 2001 (66 Fed. Reg. 35087), USEPA adopted a direct final rule that amended its September 30, 1999 (64 Fed. Reg. 52828) National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to cement kilns, lightweight aggregate kilns, and incinerators burning hazardous waste. USEPA explained that the amendments improve implementation of compliance, testing, and monitoring aspects of the rule. On October 15, 2001 (66 Fed. Reg. 52361), USEPA withdrew segments of the hazardous waste combustor NESHAP. The Board adopted the original September 30, 1999 hazardous waste combustor NESHAPs in RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through Dec. 31, 1999) (May 18, 2000), R00-13.

The Board amended the Illinois hazardous waste regulations to correspond with the May 14, 2001 federal amendments to the hazardous waste combustor rule and the July 3, 2001 and October 15, 2001 amendments to the hazardous waste combustor NESHAP. Many segments of the federal amendments related to 40 C.F.R. 63, which is the NESHAP part of the federal air pollution control regulations, which the Board has incorporated by reference in 35 Ill. Adm. Code 720.111 in the Illinois rules. Thus, the Board has updated that incorporation to include these amendments. These amendments have also resulted in limited changes in the language of Sections 703.280(j) and 724.440(b). Persons interested in the details of the federal amendments should consult the May 14, 2001, July 3, 2001 and October 15, 2001 and *Federal Register* notices.

The Board requests public comment on our incorporation of the May 14, 2001, July 3, 2001, and October 15, 2001 federal corrections.

Hazardous Waste Identification Rule: Mixtures and Derived-From Rule—Section 721.103, Part 726, Subpart N, and Appendix G to Part 728

On May 16, 2001 (66 Fed. Reg. 27218), USEPA amended the mixtures and derived-from rule of the hazardous waste identification rule (HWIR) as it relates to low-level mixed waste (LLMW) and technologically enhanced naturally occurring and/or accelerator-produced material (NARM) mixed with hazardous waste. USEPA stated that new Subpart N to 40 C.F.R. 266 will allow greater flexibility to facilities managing these waste materials. In essence, the new rules grant facilities that generate LLMW or NARM mixed with hazardous waste and which meet certain criteria relief from the generally-applicable hazardous waste management requirements. The relief is in the form of a storage and treatment conditional exemption or a transportation and disposal conditional exemption. On October 3, 2001 (66 Fed. Reg. 50332), USEPA adopted a direct final rule to restore text inadvertently deleted in this first set of May 16, 2001 amendments.

Also on May 16, 2001 (66 Fed. Reg. 27266), USEPA amended the mixtures and derived-from rule as it relates to mixtures of wastes listed solely for the criteria of ignitability, corrosivity, and/or reactivity.² Under the mixture rule, a mixture of waste with a listed hazardous waste is defined as hazardous waste. Under the derived-from rule, a waste generated from the treatment, storage, or disposal of a listed hazardous waste is defined as hazardous waste. Under the May 16, 2001 amendments to the mixture and derived-from rules, a mixture containing a listed hazardous waste or a material derived from a listed hazardous waste is no longer defined as hazardous waste if the resulting waste or mixture no longer exhibits the characteristic for which USEPA listed the waste.

The Board incorporated both sets of the May 16, 2001 HWIR rule amendments with minimal deviation from the federal text. These first set of amendments (66 Fed. Reg. 27266) required limited changes to the existing language of Sections 721.103 and Appendix G to Part 728. In place of 40 C.F.R. 261.3(a)(2)(iii), which USEPA removed and marked “reserved,” the Board has added explanatory language at corresponding 35 Ill. Adm. Code 721.103(a)(2)(C) to avoid renumbering subsections and losing structural parity with the corresponding federal regulations.

The second set of amendments (66 Fed. Reg. 27266) involved the addition of new Subpart N to Part 726, which is a significant body of new provisions. The addition of the Subpart N rules raised a small number of issues that required deviation from the federal text. The Board considers only the more significant of those issues in this discussion. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 37 of this opinion. Persons interested in the details of the federal amendments should consult the May 16, 2001 and October 3, 2001 *Federal Register* notices. The following discussion will consider only those aspects of the HWIR amendments that present codification issues.

The first set of issues confronting the Board relates to the style of the new federal LLMW and NARM rules. USEPA has continued its use of its “user-friendly” style with these rules. This style is highly colloquial, and it relies heavily on use of a question-and-answer format and the second person. Examples of this include the section headings, “What definitions apply to this subpart?” and “How could you lose the conditional exemption for your LLMW and what action must you take?” The Board has changed all such language to standard regulatory style in the non-personal third person. (For example, the Board changed the noted section headings to read “Definitions” and “Loss of a Storage and Treatment Conditional Exemption and Required Action.”) As the Board has discussed in past opinions, the Board

² This excludes waste listed for toxicity or acute toxicity. At this time the covered wastes appear limited to USEPA hazardous waste numbers F003, K044, K045, K047, P009, P042, P112, U001, U002, U008, U020, U031, U055, U056, U057, U092, U096, U110, U112, U113, U117, U124, U125, U154, U161, U186, U189, U213, and U239.

believes that the regulations are more clearly understood in the standard regulatory style, and that there is no need to oversimplify the language.

The second set of issues relates to differences between the federal and state regulatory systems and to the fact that the Board is tailoring a rule to fit a single State, enabling us to use more specific language. Various segments of the new Subpart N regulations depend on concurrent regulation of the radioactive material. The entities that generate LLMW and NARM are regulated by the federal Nuclear Regulatory Commission (NRC) and the Illinois DNS. In numerous locations where the Subpart N rules refer to “NRC Agreement States,” the Board has substituted “Illinois DNS.” The Board retained the many references to the “NRC” as references to the “federal NRC.” The Board further had to replace a number of references to state-equivalent nuclear regulations with references to various DNS rules. When the Board referred to the state statute relating to regulation of nuclear materials and nuclear facilities, the Board referred to the Radiation Protection Act of 1990 (420 ILCS 40 (2000)). When the Board had to refer to DNS rules generally, the Board used a reference to 32 Ill. Adm. Code: Chapter II, Subchapters b and d, which is the body of DNS regulations. Where more specific regulations were required, the Board referred to 32 Ill. Adm. Code 340 for DNS manifest requirements, to 32 Ill. Adm. Code 341 for DNS packaging and transportation requirements, and to 32 Ill. Adm. Code 606 for DNS low-level radioactive waste disposal facility requirements.

A third set of codification issues relates to differences in the federal and Illinois regulatory schemes wherein the environmental functions are divided between the Board and the Agency. Under the federal scheme there is a single regulatory agency that establishes the regulations, implements them, grants necessary permits, and grants relief from the regulations. That is USEPA. These functions are divided in Illinois. Under the Illinois regulatory scheme, the Board establishes the environmental standards for the State by regulation, and the Agency implements them by, *inter alia*, granting permits. If relief from the general regulations is warranted, it is the Board that makes that determination and allows deviation from the generally applicable statewide standards.³ Where flexibility is needed in implementing regulations, the Board establishes standards for Agency decision-making within the rules, so that the Agency can make any requisite determinations and itself establish the criteria needed to implement the federal rule within the Illinois regulatory framework. (*See Granite City Division of National Steel Co. v. PCB*, 155 Ill. 2d 149, 613 N.E.2d 719 (1993) (considering whether Board regulations were an unlawful delegation of rulemaking authority).) This vests the discretion in the Agency to make the requisite preliminary determinations, it does not allow the Agency the further discretion whether or not to implement the standard embodied in the rule. The Board must make decisions of the types delegated to it by the Act.

³ The Board may grant a variance, under Sections 35 through 38 of the Act (415 ILCS 5/35-38 (2000)); establish an adjusted standard, under Section 28.2 of the Act (415 ILCS 5/28.1 (2000)); or adopt a site-specific regulation, under Sections 22.4, 27, and 28 of the Act (415 ILCS 5/22.4, 27, and 28 (2000)).

Under the federal Subpart N regulations, there are two conditional exemptions applicable to the storage and treatment of the affected wastes and to their transportation and disposal. The regulations are structured so that provisions relating to each type are established separately in successive groups of rules. Both of the exemptions are conditional, and each may be lost and restored by specific actions. Under 40 C.F.R. 266.240(a) and 266.355(a) of the federal rules (corresponding with 35 Ill. Adm. Code 726.340(a) and 726.455(a)), the exemptions are automatically lost when the waste generator fails to comply with the conditions applicable to each type of exemption. This automatic loss of the exemptions presented the Board with no challenges in codification. Codification issues arise, however, relative to non-automatic termination of the exemptions, both of which require an exercise of State discretion.

Issues arise with regard to State termination of the conditional exemptions because the termination is at the discretion of the agency overseeing compliance with the regulations. There are two types of State termination. The first is termination for non-compliance, while the second appears more like a disallowance of restoration of the exemptions.

The federal rules, in 40 C.F.R. 266.240(b) and 266.355(b) (corresponding with 35 Ill. Adm. Code 726.340(b) and 726.455(b)) provide that “we may terminate your conditional exemption . . . for serious or repeated noncompliance with any requirement(s) of subpart N or this part.” The only context where permission to revoke an action allowed by rule or permit can be discontinued in Illinois is in the context of an enforcement action. There is no other mechanism by which either the Board or the Agency may terminate an allowed activity. Thus, the Board has codified the pertinent segments of the rules as follows: “The Board may, by an order issued in an enforcement proceeding against the generator, terminate the generator’s conditional exemption” This mechanism is a bit more cumbersome than the simple exercise of discretion allowed USEPA under the federal system, but it is the only mechanism for discretionary termination that the Board can presently envision as comporting with the Illinois statutory scheme for regulation.

The federal rules, in 40 C.F.R. 266.245(a) and 266.360(a) (corresponding with 35 Ill. Adm. Code 726.345(a) and 726.460(a)) provide for what appears automatic restoration of the two types of conditional exemptions. Under these provisions, the waste generator may reclaim the conditional exemptions when it has fulfilled certain conditions and sent a specific notice to the State. 40 C.F.R. 266.245(b) and 266.360(b) (corresponding with 35 Ill. Adm. Code 726.345(b) and 726.460(b)) provide that “we may terminate a reclaimed conditional exemption if we find that your claim is inappropriate based on factors” Since the generator is required to submit what is essentially an application to the State for review, the Board does not believe that this is an appropriate context to require an exercise of Board discretion. Rather, the Board believes that the determination to disallow reclamation of the exemption is more in the nature of a decision to issue a permit. Thus, the Board drafted the rule so that the Agency is to determine whether to terminate a reclaimed conditional exemption under Section 39 of the Act, subject to Board review under Section 40.

The Board requested public comment on our incorporation of the May 16, 2001 federal amendments and the federal October 3, 2001 corrections. The Board requested specific

comment on our selection of the various DNS regulations cited in the regulations. The Board also requested specific comment on our rendering of the discretionary termination of the conditional exemption as a Board decision made in the context of an enforcement action and the discretionary disallowance of a reclaimed conditional exemption as an Agency decision in the nature of a permit determination.

Responses to DNS Comments

The only comments received by the Board relating to the May 16, 2001 mixed waste rule were from the Illinois DNS. The Board has made a number of revisions to the text of the amendments in response to those comments. Those revisions are itemized in the table that begins on page 66 of this opinion. Some of the DNS comments, and the revisions made in response, warrant specific discussion here.

In PC 7, the Illinois DNS recommended a number of revisions to the January 24, 2002 proposal for public comment. The DNS acknowledged that the proposed amendments were identical-in-substance to the May 16, 2001 federal amendments, but DNS stated that the regulatory approach taken by USEPA “reflects a more complicated approach to that taken by [DNS].” PC 7 at pages 1-2.

Principally, DNS notes that there is a single significant difference between the USEPA mixed-waste rule and Illinois DNS regulations, and that difference pertains to NARM waste. USEPA designates “mixed waste” as waste that contains both RCRA hazardous waste and source, special nuclear, or byproduct material,⁴ which excludes NARM. The Illinois statutes relating to radioactive waste, principally section 3(l) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(l) (2000)) and Section 606.20(h) of the DNS regulations (32 Ill. Adm. Code 606.20(h) (2000)), define “mixed waste” as containing RCRA hazardous waste and low-level radioactive waste, as defined under Section 3(k) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(k) (2000)), Article II(k) of the Central Midwest Interstate Low-Level Radioactive Waste Compact Act (45 ILCS 140/1, Article II(k) (2000)), and Section 606.20(g) of the DNS regulations (32 Ill. Adm. Code 606.20(g) (2000)). The State definition essentially includes NARM. The DNS observed that NARM is regulated somewhat differently in various areas of the country, and concluded, “The Department does not have a basis to assert that the semantical differences in the regulation of mixed NARM waste in any way endanger the public health and safety.” PC 7 at pages 1-2.

⁴ Section 11(z) of the federal Atomic Energy Act of 1954 (42 U.S.C. § 2014(z) (1994)) defines source material as uranium, thorium, or any other material designated by the federal NRC to be source material. Section 11(aa) (42 U.S.C. § 2014(aa) (1994)) defines as special nuclear material plutonium, uranium enriched in U²³³ or U²³⁵, and any other material determined by the NRC, but not including source material. Section 11(e) (42 U.S.C. § 2014(e) (1994)) defines by-product material as any material made radioactive by exposure to radiation incident to producing or using special nuclear material and the tailing or wastes produced by extraction or concentration of uranium or thorium from ore.

The Illinois DNS observed that its own regulations and those of the federal NRC include “exempt concentrations, exempt quantities and exempt items” and exemptions from disposal requirements. PC 7 at page 2, citing 32 Ill. Adm. Code 330.30, 330.40 and 340.Subpart K. The DNS stated, “It is unclear how the Board’s proposed rules would affect materials that fall within the definition of ‘low-level radioactive waste’ but are also exempt from licensing requirements under the Department’s and NRC’s rules.” The DNS suggested that the Board could clarify this.

Before addressing the specific recommendations of the DNS, the Board addresses the fundamental basis for most of the DNS comments outlined above, namely the context of the USEPA rules. The Board cannot lawfully change the substance of the rules, as set forth by USEPA, in the context of this proceeding. As the DNS acknowledged, the proposed mixed waste rule amendments are intended to be identical-in-substance to the corresponding May 16, 2001 federal amendments. Under the mandate of Sections 7.2 and 22.4(a) of the Act (415 ILCS 5/7.2 and 22.4(a) (2000)), the Board must incorporate amendments that are identical-in-substance to the underlying federal amendments. To this end, the Board is constrained to adopt the literal language of the corresponding federal amendments with only minimal deviation. (415 ILCS 5/7.2(a) (2000).) The Board reviews the substance of the underlying federal regulations only to the extent that it is necessary to correctly incorporate the substance of the federal requirements into the Illinois regulations. Deviations from the substance of the federal requirements can only be proposed and adopted in a general rulemaking proceeding under Sections 22.4(b) and 27 of the Act (415 ILCS 5/22.4(b) and 27 (2000)). The Board cannot substantively deviate from USEPA regulatory action in the context of an identical-in-substance rulemaking proceeding.

USEPA stated that the May 16, 2001 amendments to the mixed waste rule were intended in part to reduce dual regulation of the affected wastes. (67 Fed. Reg. 27218, 27221 (May 16, 2001).) Thus, the conditional exemptions for mixed waste would apply where the waste meets the USEPA definitions and conditions, as codified in the Illinois hazardous waste regulations. In the instance of a storage and treatment conditional exemption, under the federally derived language, the wastes would include only low-level mixed waste that is regulated under a federal NRC or Illinois DNS license. (35 Ill. Adm. Code 726.325, as added in this proceeding.) The Illinois DNS is correct in its observation that the federally derived rule would exclude NARM waste, since the operative definition of “low-level mixed waste” is that of Section 726.310, and that this definition does not include NARM waste. This identical-in-substance definition conflicts with the other Illinois laws and regulations cited by the DNS that are more directly related to radioactive materials. Thus, NARM waste appears ineligible for this conditional exemption, and it must be concurrently regulated under NRC/DNS regulations and the hazardous waste rules. The situation is different for the transportation and disposal conditional exemption, since federally-derived Section 726.410 expressly includes NARM waste for that conditional exemption.

The Board agrees that this distinction between the definition of “mixed waste” for the purposes of the conditional storage and treatment exemption from hazardous waste regulation

conflicts with the definition of the same term under the nuclear safety rules. The Board agrees that the definition of “mixed waste” is central to the determination of what waste is eligible for the conditional exemption. The Board can further agree that undesirable confusion could result because this definition differs from the definition already assigned the term in the nuclear safety regulations. But, this is the definition that USEPA has chosen, and the Board regrets that the Board cannot change the definition in this proceeding. The only context in which the Board could consider such a substantive change to the definition would be in the context of a general rulemaking under Sections 22.4(b) and 27 of the Act (415 ILCS 5/22.4(b) and 27 (2000)).

With regard to the DNS concerns expressed relating to the exemptions in its own and federal NRC regulations, the Board agrees that clarification by USEPA is desirable. The storage and treatment conditional exemption of Section 726.325 is conditioned in significant part on the waste being “generated and managed by a person under a single federal NRC or Illinois DNS license.” (35 Ill. Adm. Code 726.325, as added in this proceeding.) The Board reads the “generated and managed” as indicating that the qualifying waste-related activity itself is subject to the regulations, and not in the general sense that the generator itself is somehow generally subject to NRC or DNS regulation. Similarly, the transportation and disposal conditional exemption of Sections 726.410 and 726.415 is conditioned on the generator manifesting and transporting the waste under NRC or DNS regulations (35 Ill. Adm. Code 726.415(c), as added in this proceeding) and the waste being disposed in a designated low-level radioactive waste disposal facility, that is regulated by the NRC or the DNS. (35 Ill. Adm. Code 726.410(d) and 726.435, as added in this proceeding.) Thus, the federally-derived conditional exemptions would appear to be inapplicable to wastes that qualify for some exemption under NRC and DNS regulations, but USEPA would best clarify this point.

The Illinois DNS suggested changes to the rules to make the federally-derived rules agree more closely with DNS regulations and Illinois laws relating to radioactive waste. The DNS further suggested other changes to make the federally-derived rules more internally consistent. The following discussions consider each of the DNS-recommended revisions and the Board’s response to each:

1. The Definition of “DNS” in Section 726.310

The DNS asserts that the definition does not recognize that the DNS is also responsible under the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20 (2000)) for regulating materials not regulated by the federal NRC. The DNS suggested that the Board change “under an agreement with the federal Nuclear Regulatory Commission” to read “in accordance with an agreement between the State and the federal Nuclear Regulatory Commission.” The Board has incorporated this suggestion. The DNS also recommended that the Board add the following language at the end of the definition: “and for regulating radioactive materials not licensed by the NRC in accordance with the Radiation Protection Act of 1990.” The Board has declined to add this language, since defining the scope of the DNS’s mission is not necessary, and references to materials that are not embraced by the conditional

exemptions might create confusion relating to the applicability of the exemptions to those other regulated materials. The Board has instead added a Board note explaining the fact that the DNS regulates materials under the Radiation Protection Act of 1990 that are not licensed by the federal NRC.

2. Inclusion of Addresses for Notices in the Definitions of “DNS” and “NRC” in Section 726.310

The DNS suggested that the Board should include the address of the federal NRC somewhere in the rules to facilitate submission of required notices under the rules. The Board has added the address of the NRC Region III in a Board note appended to the definition of “NRC” in Section 726.310. The Board used the address as set forth in the NRC regulations at 10 CFR 1.5 (2002). The Board has similarly added the main address of the DNS, as it appears on the DNS letterhead in PC 7 to the Board note appended to the definition of “DNS.”

3. The Definition of “Eligible NARM” in Section 726.310

The DNS asserts that the definition of “eligible naturally occurring or accelerator-produced radioactive material” (eligible NARM) does not recognize that disposal of this material might occur in another state. The DNS states that the only facility that accepts mixed NARM at present is in Utah. The DNS also highlights that the Board note attached to the definition should reference subchapter d of 32 Ill. Adm. Code Chapter II, Subchapter b. The Board has incorporated both DNS suggestions into the definition and its attached Board note, but the Board has added the word “equivalent” before the DNS-suggested “regulations of a licensing agency in another state.” The Board notes that the DNS-suggested definition excluded the words “low-level radioactive waste” that appear before “disposal facility” in the federally derived definition. The Board attributes this omission to inadvertence and does not interpret this a a suggestion for further revision.

4. The Definition of “low-level radioactive waste” in Section 726.310

The DNS highlights that the USEPA and Board definition differs from the definition of the same term under section 3(k) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(k) (2000)), Article II(k) of the Central Midwest Interstate Low-Level Radioactive Waste Compact Act (45 ILCS 140/1, Article II(k) (2000)), and 32 Ill. Adm. Code 606.20(g) (2000) of the DNS regulations. Those basically define low-level radioactive waste as radioactive waste that is not (1) high-level radioactive waste, (2) transuranic waste, (3) spent nuclear fuel, or (4) byproduct material, as such are defined in section 11 of the federal Atomic Energy Act of 1954 (42 U.S.C. 2014).

The Board acknowledges that this important definition is different in the USEPA-derived regulation than it appears in the rules cited by the DNS. However, for the reasons noted above in the discussion above relating to the scope of the Board’s identical-in-substance mandate, the Board cannot substantively alter the definition in this proceeding. The Board has

instead added a Board note explaining the fact that the definition of “low-level radioactive waste” differs from the definitions of this term under section 3(k) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(k) (2000)), Article II(k) of the Central Midwest Interstate Low-Level Radioactive Waste Compact Act (45 ILCS 140/1, Article II(k) (2000)), and 32 Ill. Adm. Code 606.20(g) (2000) of the DNS regulations.

5. The Definition of “mixed waste” in Section 726.310

The DNS highlights that this definition differs from the definition of the same term under section 3(l) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(k) (2000)) and 32 Ill. Adm. Code 606.20(h) (2000) of the DNS regulations. Those basically define mixed waste as a mixture of RCRA hazardous waste and low-level radioactive waste, as that is defined under the Illinois Low-Level Radioactive Waste Management Act.

The Board acknowledges that this important definition is different in the USEPA-derived regulation than it appears in the rules cited by the DNS. However, for the reasons noted above in the discussion above relating to the scope of the Board’s identical-in-substance mandate, the Board cannot substantively alter the definition in this proceeding. The Board has instead added a Board note explaining the fact that the definition of “mixed waste” differs from the definitions of this term under section 3(l) of the Illinois Low-Level Radioactive Waste Management Act (420 ILCS 20/3(l) (2000)) and 32 Ill. Adm. Code 606.20(h) (2000) of the DNS regulations.

6. The Definition of “NARM” in Section 726.310

The DNS highlights that the definition of “naturally occurring or accelerator-produced radioactive material” (NARM) should reference subchapter d of 32 Ill. Adm. Code Chapter II, Subchapter b. The Board has incorporated this DNS suggestion.

7. The Scope of the Storage and Treatment Conditional Exemption in Section 726.325

The DNS pointed out that under this provision only low-level radioactive waste is eligible for the storage and treatment conditional exemption, NARM waste is not. The DNS considers mixed waste to include NARM waste. The DNS suggested that the Board might want to eventually consider deeming NARM waste as eligible for the storage and treatment conditional exemption.

As discussed above, considering the inclusion of NARM for this conditional exemption is beyond the scope of the Board’s identical-in-substance mandate. The Board might one day consider the inclusion of NARM waste in a more appropriate context. The Board would welcome any DNS proposal in this area.

8. Notice to the NDS of Claiming a Storage and Treatment Conditional Exemption in Section 726.330

The DNS noted that the federally derived rule in the January 24, 2002 proposal for public comment was inconsistent as to when it required notice of various events to the DNS. The DNS requested that the rule require notice to the DNS of a claim of a storage and treatment conditional exemption.

The Board has added the DNS-requested language to require the notice to the DNS.

9. Notice to the DNS of Loss of a Storage and Treatment Conditional Exemption in Section 726.340

The DNS cited this as a second example where the January 24, 2002 proposal for public comment was inconsistent as to when it required notice to the DNS. The DNS requested that the rule require notice to the DNS of the loss a storage and treatment conditional exemption.

The Board has added the DNS-requested language to require the notice to the DNS.

10. An Applicability of a Transportation and Disposal Conditional Exemption to NARM Waste in Section 726.410

The DNS noted that the eligibility provision applicable to a transportation and disposal conditional exemption makes express reference to NARM waste. The DNS states that because it includes NARM as low-level radioactive waste, it does not use the separate concept of NARM waste.

As discussed above, considering elimination of the express reference to NARM waste is beyond the scope of the Board's identical-in-substance mandate. The Board might one day consider the inclusion of NARM waste in a more appropriate context. The Board would welcome any DNS proposal in this area.

11. Correct the Citation to "10 C.F.R. 71.5" in Section 726.425

The DNS noted that the Board improperly cited a federal regulation as 10 C.F.R. 1.5." This was corrected to "10 C.F.R. 71.5."

12. An Effectiveness of a Transportation and Disposal Conditional Exemption in Other States in Section 726.430

The DNS noted that, in the January 24, 2002 proposal for public comment, the effectiveness of a transportation and disposal conditional exemption was limited to where the waste was bound for a facility licensed by the federal NRC or by the Illinois DNS. The DNS

states, “There is no reason that the exemption should not be effective if the vehicle is destined for a facility duly licensed by a state agency in another state.” PC 7 at page 7.

The Board agrees, and the adopted language is changed to include the added language suggested by the DNS.

13. Disposal of Conditionally Exempt Wastes in Other States in Section 726.435

The DNS noted that in the January 24, 2002 proposal for public comment the the disposal of conditionally exempt waste was limited to a facility licensed by the federal NRC or by the Illinois DNS. The DNS states, “There is not to allow the waste to be disposed of at a facility duly licensed by a state agency in another state.” PC 7 at page 7. The DNS also highlights that the Board note attached to the definition should reference subchapter d of 32 Ill. Adm. Code Chapter II, Subchapter b.

The Board has incorporated both DNS suggestions, and the adopted language is changed to include the added language suggested by the DNS.

14. Notice to the DNS of Claim of a Transportation and Disposal Conditional Exemption in Section 726.445

The DNS cited this as a third example where the January 24, 2002 proposal for public comment was inconsistent as to when it required notice to the DNS. The DNS requested that the rule require notice to the DNS of a claim of a transportation and disposal conditional exemption.

The Board has added the DNS-requested language to require the notice to the DNS.

15. Notice to the DNS of the Loss of a Transportation and Disposal Conditional Exemption in Section 726.455

The DNS cited this as a fourth example where the January 24, 2002 proposal for public comment was inconsistent as to when it required notice to the DNS. The DNS requested that the rule require notice to the DNS of the loss of a transportation and disposal conditional exemption.

The Board has added the DNS-requested language to require the notice to the DNS.

16. Notice to the DNS of Reclaiming a Lost Transportation and Disposal Conditional Exemption in Section 726.455

The DNS cited this as a fifth example where the January 24, 2002 proposal for public comment was inconsistent as to when it required notice to the DNS. The DNS requested that

the rule require notice to the DNS of reclaiming a lost transportation and disposal conditional exemption.

The Board has added the DNS-requested language to require the notice to the DNS.

17. Uniform Use of the Phrase “Source, Byproduct, or Special Nuclear Material in Section 726.310

The DNS noted that the January 24, 2002 proposal for public comment variably used “byproduct, source, or special nuclear material” and “source, special nuclear, or byproduct material.” The DNS stated that it prefers the use of “source, byproduct, or special nuclear material,” as used under the federal Atomic Energy Act of 1954 (42 U.S.C. 2012 (2000)).

The Board has followed the DNS suggested language where the phrase appears in the Section 726.310 definitions of “low-level radioactive waste,” “mixed waste,” and “naturally occurring or accelerator-produced radioactive material.” In making this change, however, the Board maintained consistent with all other occurrences the word elsewhere in the hazardous waste regulations, and the Board hyphenated “by-product.” The Board further examined the text of all the rules involved in this proceeding and found an occurrence of the phrase “source, special nuclear, or by-product material,” which was changed to appear as “source, by-product, or special nuclear material,” as suggested by the DNS.

Update to the Clean Water Act Analytical Method Incorporated by Reference—Section 720.111

On June 18, 2001, (66 Fed. Reg. 32774), USEPA amended its “Guidelines Establishing Test Procedures for the Analysis of Pollutants” to make technical corrections to clarify the use of filed blanks for mercury testing under the federal Clean Water Act (33 U.S.C. 1251 *et seq.* (2000)). Specifically, USEPA revised Method 1631, Revision B, which USEPA has incorporated by reference in 40 C.F.R. 136.3. The Board has incorporated the methods of 40 C.F.R. 136 into the hazardous waste regulations by reference in Section 720.111(b).

The Board has incorporated the federal amendments into the Illinois hazardous waste regulations by updating the incorporation of 40 C.F.R. 136 by reference. This required the Board to update the version of 40 C.F.R. 136 incorporated by reference at 35 Ill. Adm. Code 720.111 by adding a reference to the June 18, 2001 *Federal Register* notice of adopted amendments at 66 Fed. Reg. 32774. Persons interested in the substance of the underlying federal action should refer to the notice that appeared in the June 18, 2001 issue of the *Federal Register*.

The Board requested public comment on the incorporation of the June 18, 2001 federal revisions to Method 1631, Revision B into the Illinois hazardous waste regulations. The Board received no comments on this aspect of the proposal for public comment.

Inorganic Chemical Manufacturing Wastes—Sections 721.104, 721.132, 721.App. G, 728.136, 728.Table T, and 738.118

On November 20, 2001 (66 Fed. Reg. 58258), USEPA listed three new wastes from inorganic chemical manufacturing processes as hazardous wastes. Two of the three new listed wastes (USEPA hazardous waste numbers K176 and K177) are wastes from the production of antimony oxide. The third waste (USEPA hazardous waste number K178) is from the production of ferric chloride from production of titanium dioxide using the ilmenite process. With the three new listed wastes are corresponding treatment standards and LDRs, including restrictions on underground injection of the wastes.

The Board incorporated the November 20, 2001 inorganic chemicals production wastes listings and LDRs with minimal deviation from the federal text. Persons interested in the details of the federal amendments should consult the November 8, 2000 *Federal Register* notice. The following discussion will consider only those aspects of the HWIR amendments that present codification issues. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 37 of this opinion.

The Board found it necessary to add a Board note to Section 721.104(b)(15)(A) to indicate the effective dates of the waste listings set forth. Section 721.104(b)(15)(A) lists various conditions that leachate or gas condensate must fulfill in order to be excluded from regulation as hazardous waste. Subsection (b)(15)(A)(i) provides that the waste meet one or more of the listed waste descriptions if it “had been generated after the effective date of the listing,” and subsection (b)(15)(A)(ii) provides that the wastes “were disposed of prior to the effective date of the listing.” Previously, the only wastes listed in subsection (b)(15)(A)(i) for exclusion were USEPA hazardous wastes numbered K169, K170, K171, and K172. The effective date of the listings for these wastes was parenthetically added to the end of subsection (b)(15)(A)(i) as January 19, 1999. In the November 20, 2001 amendments, USEPA added USEPA hazardous wastes numbered K174, K175, K176, K177, and K178 to the list of wastes eligible for exclusion. This has caused us to re-examine of the language of subsection (b)(15)(A)(i).

There are now multiple effective dates for various groups of the waste listings set forth in Section 721.104(b)(15)(A)(i). USPEA adopted the K169, K170, K171, and K172 waste listings on August 6, 1998 (63 Fed. Reg. 42110), with an effective date of February 8, 1999. USEPA adopted the K174 and K175 waste listings on November 8, 2000 (65 Fed. Reg. 67068), with an effective date of May 7, 2001. USEPA adopted the K176, K177, and K178 waste listings in the November 20, 2001 (66 Fed. Reg. 58258) amendments, with an effective date of May 20, 2002. The Board has chosen to tabulate the hazardous waste listing effective dates at subsection (b)(15)(A)(i) as follows:

- b) Solid wastes that are not hazardous wastes. The following solid wastes are not hazardous wastes:

* * *

- 15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed of, under certain circumstances:

A) The following conditions must be fulfilled:

- i) The solid wastes disposed of would meet one or more of the listing descriptions for the following USEPA hazardous waste numbers that is generated after the effective date listed for the waste:

USEPA Hazardous Waste Numbers	Listing Effective Date
K169, K170, K171, and K172	February 8, 1999
K174 and K175	May 7, 2001
K176, K177, and K178	May 20, 2002

- ii) The solid wastes described in subsection (b)(15)(A)(i) of this Section were disposed of prior to the effective date of the listing (as set forth in that subsection);

The Board requested specific comment on the incorporation of the federal effective dates for the waste listings into the Illinois regulations. The Board received no comments on the segments of the proposal for public comment relating to the federal November 20, 2001 inorganic chemical production waste rule.

USEPA corrected the November 20, 2001 inorganic chemicals production waste rule on April 9, 2002 (67 Fed. Reg. 17119). The corrections were limited to the appearance and format of the November 20, 2001 amendments to the table to 40 C.F.R. 268.40 entitled, "Treatment Standards for Hazardous Wastes." The USEPA corrections are limited to the hazardous waste listings for K176, K177, and K178 wastes, and they were limited to the regulated hazardous constituent column headings and the alignment of and appearance of the names for the entries for 1,2,3,4,6,7,8-HpCDD and 1,2,3,4,6,7,8-HpCDF. The Board did not need to change the Illinois rules, since the January 24, 2002 proposal for public comment did not include the federal format errors.

The Association of Battery Recyclers Decision—Sections 721.102, 721.104, and 728.134(a)

On March 13, 2002, USEPA amended its rules in response to the federal court's decision in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). That decision vacated two segments of the federal May 26, 1998 (63 Fed. Reg. 28555) Phase

IV land disposal restrictions (LDR) rule.⁵ In response to the judicial decision, USEPA deleted language in the definition of solid waste that classified as solid waste certain characteristic mineral processing wastes that are reclaimed. USEPA also amended the rule to reflect the fact that use of the toxicity characteristic leaching procedure (TCLP) test is not allowed to determine whether manufactured gas plant (MGP) waste is hazardous.

In PC 1, IERG drew the Board's attention to the aspects of the Association of Battery Recyclers decision that related to use of the TCLP test on MGP waste. IERG acknowledged that USEPA had then not yet amended its regulations in response to the Association of Battery Recyclers decision, but it pointed out that USEPA is bound by the court's determination. IERG urged the Board to amend the Illinois regulations consistent with the court decision. IERG suggested that a statement appended to the rule to the effect that the Board considers a federal judicial decision binding as to derivative Illinois regulations.

In the January 24, 2002 proposal for public comment, the Board proposed to add a Board note relating the result of the Association of Battery Recyclers decision, but omitting the final sentence of the text submitted by IERG. At this time, to include the March 13, 2002 USEPA amendments, the Board deletes the proposed Board note and instead amends Section 261.24. The Board believes that this action fulfills IERG's request.

Another issue confronted the Association of Battery Recyclers court. That was whether USEPA properly defined "solid waste" as it relates to materials generated and reclaimed within the primary mineral processing industry. This issue did not relate to MGP. In the Phase IV LDR rule (63 Fed. Reg. 28555 (May 26, 1998)), USEPA added a conditional exclusion of MGP waste from the definition of solid waste at 40 C.F.R. 261.4(a)(17). USEPA provided in this subsection and in 40 C.F.R. 261.2(c)(3) that reclaimed mineral processing secondary materials are not solid waste if they meet certain conditions. Those conditions were the following: (1) the material must be legitimately recycled, (2) the material must not be accumulated speculatively, and (3) the material must be stored in tanks, containers, or buildings that meet certain requirements intended to prevent the escape of constituents into the environment.

The Association of Battery Recyclers court observed that the dividing line between what was waste and what was not waste was the manner of storage, not whether the material was "discarded material," as such is central to the definition of "solid waste" under RCRA. (See 42 U.S.C. 6903(27).) According to the court, USEPA erred when it included material destined for reuse within the ambit of what is considered "discarded material," which can constitute solid waste. (208 F.3d at 1053.) The court vacated the parenthetical reference in 40 C.F.R. 261.2(c)(3) that read "except as provided under 40 CFR 261.4(a)(17)" and ordered

⁵ The Board adopted the federal Phase IV LDRs in RCRA Update, USEPA Regulations (July 1, 1997 through December 31, 1997), R98-21 (Dec. 17, 1998), RCRA Update, USEPA Regulations (January 1, 1998 through June 30, 1998), R99-2 (Dec. 17, 1998), UIC Update, USEPA Regulations (January 1, 1998 through June 30, 1998), R99-7 (Dec. 17, 1998) (consolidated).

USEPA to define “solid waste” consistent with its opinion. (208 F.3d at 1060.) The basic effect of this decision is that reclaimed mineral processing secondary materials are not solid waste.

Although the Board received no request to respond to this aspect of the Association of Battery Recyclers decision, the Board added Board notes to the January 24, 2002 proposal for public comment that would have done so. Since that time, USEPA amended 40 C.F.R. 261.2(c)(3) and 261.4(a)(17) in response to the Association of Battery Recyclers decision. In adopting these amendments, the Board has dropped the Board notes included in the January 24, 2002 proposal for public comment and replaced them with amendments to Sections 721.102(c)(3) and 721.104(a)(17) to correspond with the federal amendments of March 13, 2002.

The Board requested comment on the notes added to the text of the rules in response to our review of the Association of Battery Recyclers decision. The Agency and IERG both submitted comments supporting the content and placement of the Board notes added to the proposal for public comment, and the Agency directed the Board’s attention to the federal action of March 13, 2002 to amend the regulations in response to the Association of Battery Recyclers decision. As is explained in the foregoing discussion, the Board has replaced the Board notes included in the proposal for public comment with the federal amendments of March 13, 2002.

Amendment of the CAMU Rules—Sections 720.110 and Subpart S to Part 724

On January 22, 2002 (67 Fed. Reg. 2961), USEPA adopted amendments to the corrective action management unit (CAMU) rules. USEPA stated that these amendments revised the CAMU rules in six ways: (1) they added a definition of waste that is distinct from remediation waste which is subject to the CAMU rules, (2) they establish more detailed minimum design standards for CAMUs in which waste will remain after closure, (3) they institute treatment standards for waste placed in a CAMU, (4) they require more detailed information for a CAMU application and require opportunity for public comment and participation in the approval process, (5) they incorporate new requirements for a CAMU used only for treatment or storage of waste, and (6) they “grandfather” existing CAMUs, allowing them to operate under the now-existing rule established by USEPA in 1993.

The Board incorporates the January 22, 2002 CAMU amendments with minimal deviation from the federal text. Persons interested in the details of the federal amendments should consult the January 22, 2002 *Federal Register* notice. The following discussion will consider only those aspects of the CAMU amendments that present codification issues. Many other, less significant deviations from the literal text of the federal rule are listed and described in the table that begins at page 37 of this opinion.

Issues arise relating to incorporating the federal CAMU rule amendments into the Illinois regulations. One issue arises relative to the structure of the rule. A series of issues

arise relative to allocation of decision-making responsibility under the rule in a way that comports with the statutory structure of the Illinois environmental regulatory system in Illinois. These issues are considered in this segment of this discussion.

First, the Board discusses the structural issue. Under the requirements for the structure of the Illinois Administrative Code, at 1 Ill. Adm. Code 100.340(b) and (d) (2000), the Board may divide regulations into subsections down to the fourth level. Segments of the federal regulations involved in the present amendments are divided to the fifth level. This has required the Board to move those segments of text so that they are divided only to the fourth indent level. Thus, the Board has codified 40 C.F.R. 264.552(e)(4)(i)(A)(1) and (e)(4)(i)(A)(2) as 35 Ill. Adm. Code 724.652(e)(4)(H)(i) and (e)(4)(H)(ii). The Board attaches a Board note reference explaining their movement at 35 Ill. Adm. Code 724.552(e)(4)(A)(i), which corresponds with where they appear in the federal text. The Board refers to them as principal hazardous constituents that the Agency must designate in an added topical heading for them at 35 Ill. Adm. Code 724.552(e)(4)(H), which is where they now appear.

The Board similarly dealt with 40 C.F.R. 264.552(e)(4)(v)(E)(1) through (e)(4)(v)(E)(5) in rendering them as 35 Ill. Adm. Code 724.652(e)(4)(I)(i) through (e)(4)(I)(v). Although the exact nature of the intent of subsections (e)(4)(v)(E)(1) through (e)(4)(v)(E)(5) is not made explicit at 40 C.F.R. 264.552(e)(4)(v)(E), the Board read them to be circumstances relating to long-term protection offered by the engineering design of the CAMU and related engineering controls. The Board added a reference to them as such at 35 Ill. Adm. Code 724.552(e)(4)(E)(v), which corresponds with where they appear in the federal text, and the Board added this description as a topical heading for them at 35 Ill. Adm. Code 724.552(e)(4)(H), which is where they appear.

The Board also added a Board note explaining the movement of text to 35 Ill. Adm. Code 724.552(e)(4)(E)(v). The Board did exactly the same things in moving 264.552(e)(6)(iv)(A)(1) through (e)(6)(iv)(A)(5) to 35 Ill. Adm. Code 724.552(e)(6)(F)(i) through (e)(6)(F)(v), except that it was clear from the federal text that these are intended by USEPA as final cover design and performance criteria.

A more complex set of issues arise relative to incorporating the regulatory decision-making provisions of the federal requirements into the State regulations. (See the discussion of the division of responsibility between the Board and the Agency at pages 14, 15 and 29 of this opinion.) The CAMU rule amendments charge a number of determinations to the “Regional Administrator” that have required more than superficial attention of the Board in adapting the amendments into the State regulations. While the Board substituted “Agency” for “Regional Administrator” where the federal rules clearly indicated standards for the exercise of discretion, there were instances where the standards are not so clear. The results of our examination of several appearances of “Regional Administrator” in these amendments are as follows:

1. Prohibition of placement of waste in a CAMU:

40 C.F.R. 264.552(a)(2): The Regional Administrator may prohibit the placement of waste in a CAMU if it receives information that the wastes were not managed in compliance with applicable LDRs, or applicable treatment, storage or disposal facility (T/S/D facility) unit design requirements, or that non-compliance with other USEPA regulations likely contributed to the release of the waste.

35 Ill. Adm. Code 724.652(a)(2): The Agency must prohibit the placement of waste if it receives information that the wastes were not managed in compliance with applicable LDRs; applicable treatment, storage or disposal facility (T/S/D facility) unit design requirements; or other applicable hazardous waste (Subtitle G) requirements, and that the non-compliance likely contributed to the release of the waste.

The Board wrote this rule so that the Agency makes the determination whether a facility complied with the specified rules or whether a release of waste likely resulted from non-compliance with applicable regulations because these are factual determinations in the nature of permit determinations. Thus, “may” is rendered as “must.” In the language of the federal provision, “likely contributed to the release of the waste” appears to refer only to “non-compliance with other applicable requirements,” although the preamble discussion of this provision (at 67 Fed. Reg. 2971-73) makes it clear that USEPA intended any described form of non-compliance. The Board has modified the wording so that the phrase relating to the likely cause of release clearly applies to all three cited forms of non-compliance.

Allowing the Agency to determine whether a release likely resulted from non-compliance may seem inconsistent with the earlier determination that the Board must determine whether a conditional exemption for mixed waste or NARM waste should terminate due to non-compliance (discussed above at page 16 of this opinion). However, the Board believes that requiring a Board finding of violation in the context of an enforcement decision before the Agency could deny a CAMU designation would be contrary to the federal intent that no generator benefit from its non-compliance by taking advantage of a CAMU designation. Further, an Agency determination whether the release likely resulted from non-compliance would be reviewable by the Board under Section 40 of the Act.

2. Designation of a regulated unit as a CAMU:

40 C.F.R. 264.552(b): The Regional Administrator may designate a regulated unit as a CAMU or incorporate it into a CAMU if specified conditions exist.

35 Ill. Adm. Code 724.652(a)(2): The Agency must designate a regulated unit as a CAMU or incorporate it into a CAMU if specified conditions exist.

The Board wrote this rule so that the Agency makes the determination whether specified conditions exist because this is a factual determination in the nature of a permit determination.

The exercise of discretion is in determining whether the conditions exist. There are no further standards given in the regulation that would support a further exercise of discretion to designate the unit as a CAMU or part of a CAMU. Thus, “may” is rendered as “must.”

3. Designation of design and operation requirements:

40 C.F.R. 264.552(e)(3)(i) and (e)(3)(ii): Specified minimum facility design and operation requirements apply to the CAMU unless the Regional Administrator has prescribed alternate requirements. The Regional Administrator may prescribe alternate design and operation requirements if it finds that alternate requirements will prevent migration of waste equally as effectively as the prescribed requirements.

35 Ill. Adm. Code 724.652(e)(3)(B): Specified minimum facility design and operation requirements apply to the CAMU unless the Agency has prescribed alternative requirements. The Agency must prescribe alternative design and operation requirements if it finds that alternative requirements will prevent migration of waste equally as effectively as the prescribed requirements.

The Board wrote this rule so that the Agency makes the determination whether specified conditions exist because this is a factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the alternative requirements are as effective in preventing migration. Thus, “may” is rendered as “must.” This determination of equivalency stands as its own standard for Agency decision-making, since it measures the effectiveness of the alternative standards against the prescribed standards. The Board further found it necessary to change “alternate” to “alternative,” since this is the grammatically correct usage. An Agency determination under this provision would be reviewable by the Board under Section 40 of the Act.

4. Designation of waste constituents:

40 C.F.R. 264.552(e)(4)(i)(A) through (e)(4)(i)(C): The Regional Administrator will designate as principal hazardous constituents those carcinogens and non-carcinogens that pose an ingestion or inhalation risk. The Regional Administrator will designate as principal hazardous constituents those constituents that pose a risk by potential migration to groundwater. The Regional Administrator may designate as principal hazardous constituents other constituents that it determines pose a risk.

35 Ill. Adm. Code 724.652(e)(4)(A)(i) through (e)(4)(A)(iii): The Agency must designate as principal hazardous constituents those carcinogens and non-carcinogens that pose an ingestion or inhalation risk. The Agency must designate as principal hazardous constituents those constituents that pose a risk by potential migration to groundwater. The Agency must designate as principal hazardous constituents other constituents that it determines pose a risk.

The Board shifted “will,” which is a statement of present intent when used to refer to USEPA, to “must,” since it appears that the first two types of constituents designations are mandatory. The Board shifted “may” to “must” with regard to the discretionary type of constituents designation because the exercise of discretion is in the determination that the constituents pose a risk. The Board wrote this rule so that the Agency makes the determinations to designate constituents because the determinations are all factual determinations.

Allowing the Agency to determine what constituents are carcinogens, what pose an ingestion or inhalation risk, and what pose a risk by migration to groundwater is potentially problematic, since the federal rule does not reference lists of such constituents established by regulation. Establishing a list of contaminants that are carcinogens, a list of contaminants that pose an ingestion or inhalation risk, and a list of contaminants that pose a risk by migration to groundwater is an activity arguably suited to the Board’s rulemaking procedure. However, to require that Agency CAMU designations await Board rulemaking could be environmentally counter-productive. Thus, the Board has charged the Agency to make the required determinations, since an Agency determination of the constituents would be reviewable by the Board under Section 40 of the Act.

5. Designation of an alternative leaching test:

40 C.F.R. 264.552(e)(4)(iv)(F): The Regional Administrator may specify a leaching test other than the TCLP to measure treatment effectiveness if it determines that the leaching test is appropriate for use and the alternative more accurately reflects conditions at the site that affect leaching.

35 Ill. Adm. Code 724.652(e)(4)(D)(vi): The Agency must specify a leaching test other than the TCLP to measure treatment effectiveness if it determines that the leaching test is appropriate for use and the alternative more accurately reflects conditions at the site that affect leaching.

The Board wrote this rule so that the Agency makes the determination whether an alternative test more accurately reflects leaching under site conditions because this is a factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the alternative test more accurately reflects leaching at the site. Thus, “may” is rendered as “must.” This determination of equivalency stands as its own standard for Agency decision-making, since the effectiveness of the alternative test is measured against the TCLP.

6. Adjustment of the treatment level or method:

40 C.F.R. 264.552(e)(4)(v): The Regional Administrator may adjust the treatment level or method determined under the rule based on consideration of listed factors. The adjusted treatment level or method must be protective of human health and the

environment. The listed factors include technical impracticability of the level or method determined under the rule, whether concentrations significantly above or below the site cleanup standards would result, public attitudes towards the treatment levels or methods at the site, short-term risks associated with the treatment method, and the long-term protection offered by the engineering design.

35 Ill. Adm. Code 724.652(e)(4)(E): The Board will grant an adjusted standard to adjust the treatment level or method determined under the rule if the owner or operator demonstrates that the adjusted level or method would be protective of human health and the environment based on consideration of listed factors. The listed factors are substantively identical to those listed in the corresponding federal rule.

The Board drafted this segment of the rule so that the Board must make the determination whether to adjust the treatment level or method because the adjustment of a regulatory standard is the type of function that the Act charges to the Board. This is especially true where factors to be considered include economic considerations and public opinions about the alternatives. The Board realizes that a formal determination using the adjusted standard procedure of Section 28.1 of the Act takes longer than an Agency determination in the nature of a permit decision, but the Board believes that allowing the Agency to adjust the treatment standards would constitute an unlawful delegation of our standard-setting authority.

7. Specification of a subset of principal hazardous constituents as analytical surrogates:

40 C.F.R. 264.552(e)(4)(vii): The Regional Administrator may specify a subset of principal hazardous constituents as analytical surrogates to determine whether treatment standards are met, based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

35 Ill. Adm. Code 724.652(e)(4)(G): The Agency must specify a subset of principal hazardous constituents as analytical surrogates to determine whether treatment standards are met if it determines that the subset is appropriate based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

The Board wrote this rule so that the Agency makes the determination of appropriate surrogate analytes because this is a technical factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the subset of analytes is appropriate based on consideration of the difficulty of treatment and analysis of constituents of similar properties. Thus, “may” is rendered as “must.”

8. Determination of applicable closure requirements:

40 C.F.R. 264.552(e)(6)(ii): The applicable closure requirements for a CAMU are those deemed appropriate and necessary by Regional Administrator for specified aspects of the facility.

35 Ill. Adm. Code 724.652(e)(6)(B): The applicable closure requirements for a CAMU are those deemed appropriate and necessary by the Agency for specified aspects of the facility.

The Board wrote this rule so that the Agency makes the determination of appropriate and necessary site closure requirements because this is a technical factual determination in the nature of a permit determination. The Agency already determines site closure requirements under various segments of the existing regulations.⁶

9. Modification of the cap requirements:

40 C.F.R. 264.552(e)(6)(iv)(B): The Regional Administrator may determine that modification of the prescribed cap requirements is necessary to facilitate treatment or performance of the CAMU.

35 Ill. Adm. Code 724.652(e)(6)(D)(ii): The Agency must modify the cap requirements from the prescribed requirements if it determines that the modification is necessary to facilitate treatment or performance of the CAMU.

The Board reworded this provision so that the Agency must apply cap requirements that deviate from those prescribed if it makes the determination that this is necessary. As reworded, it does not allow modification of the regulation itself. The Board wrote this rule so that the Agency makes the determination of necessity because this is a technical determination in the nature of a permit determination.

10. Approval of placement of CAMU-eligible waste in an off-site landfill:

40 C.F.R. 264.555(a) and (e)(3): The Regional Administrator may approve the placement of CAMU-eligible waste that does not meet the land disposal restrictions of Part 728 in an offsite hazardous waste landfill under specified conditions. The owner or operator may not place the waste in the landfill until the Regional Administrator notifies it that he does not object to the placement. The Regional Administrator may object to the placement of the waste within 30 days, and he may extend the review period for an additional 30 days due to public concerns or insufficient information.

⁶ See, e.g., Section 724.297 (for tank systems), 724.358 (for waste piles), and 724.410 (for landfills).

35 Ill. Adm. Code 724.655(a) and (e)(3): The Agency must approve the placement of CAMU-eligible waste that does not meet the land disposal restrictions of Part 728 in an offsite hazardous waste landfill if it determines that the placement meets specified conditions. The owner or operator may not place the waste in the landfill until the Agency notifies it that the Agency does not object to the placement. The Agency must object to the placement of the waste within 30 days, and the Agency must extend the review period for an additional 30 days if it determines that the extension is necessary due to public concerns or insufficient information.

The Board wrote this rule so that the Agency makes the determination whether the owner or operator can place the waste in the landfill because it is a technical factual determination in the nature of a permit determination. The exercise of discretion is in determining whether the placement of the waste meets the specified conditions. Thus, “may” is rendered as “must.” An Agency determination of the constituents would be reviewable by the Board under Section 40 of the Act. As to extending the 30-day time for Agency decision on the placement of the waste, the 30-day extension results from an Agency determination that an extension is necessary due to public concerns or insufficient information.

11. Modification, reduction, or elimination of the notification requirements:

40 C.F.R. 264.555(d)(6): The Regional Administrator may modify, reduce, or eliminate the notification requirements for approval of placement of waste.

35 Ill. Adm. Code 724.655(d)(6): The Board will grant an adjusted standard that modifies, reduces, or eliminates the notification requirements for approval of placement of waste if the owner or operator demonstrates that this is possible.

The Board wrote this rule so that the determination on modification, reduction, or elimination of the notification requirements is a Board adjusted standard determination because the determination modifies regulatory standards. Granting relief from a rule is a Board function under the Act. This is especially true where the requirements involve notice to the Agency and to affected members of the public.

A final issue relative to codification of the federal CAMU amendments does not derive directly from the text of the federal rules involved in the USEPA amendments. Rather, it relates to the format used in the original federal rule. The Board observes that the existing text of Section 724.654 (as well as corresponding 40 C.F.R. 264.554, from which it derives) is in the question-and-answer format that the Board disfavors. The Board has used this opportunity to change this to the standard regulation format that the Board favors.

The Board requested public comment on our incorporation of the January 22, 2002 amendments to the CAMU rule. USEPA and the Agency commented on the inclusion. In PC 5, the Agency expressed its gratitude for the Board’s prompt action to facilitate early implementation of the amendments. The Agency suggested a single correction to the

amendments that was not related to the substance of the rules or the federally-derived aspects of the amendments. (That correction is indicated in the table that appears beginning at page 66 of this opinion.) In PC 4, USEPA stated that it was waiving the 30-day period of post-adoption review, in order to enable to the Board to promptly file these amendments for as early an effective date as possible.

Agency or Board Action

Section 7.2(a)(5) of the Act requires the Board to specify those portions of the program over which USEPA will retain decision making authority. Based on the general division of functions within the Act and other Illinois statutes, the Board is also to specify which State agency is to make decisions.

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

In some identical-in-substance rules, certain decisions pertaining to a permit application are not appropriate for the Agency to consider. In determining the general division of authority between the Agency and the Board, the following factors should be considered:

1. Whether the entity making the decision is applying a Board regulation, or taking action contrary to (“waiving”) a Board regulation. It generally takes some form of Board action to “waive” a Board regulation.
2. Whether there is a clear standard for action such that the Board can give meaningful review to an Agency decision.
3. Whether the action would result in exemption from the permit requirement itself. If so, Board action is generally required.
4. Whether the decision amounts to “determining, defining or implementing environmental control standards” within the meaning of Section 5(b) of the Act. If so, it must be made by the Board.

There are four common classes of Board decisions: variance, adjusted standard, site-specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site-specific rulemaking). There often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

**Tabulations of Deviations from the Federal text and
Corrections to and Clarifications of the Base Text**

Table 1 below list numerous corrections and amendments that are not based on current federal amendments. Table 1 (beginning immediately below) includes deviations made in this final order from the verbatim text of the federal amendments. Table 2 (beginning on page 60 after table 1 immediately below) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in this table are housekeeping amendments not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 12 of this opinion. Table 3 (beginning on page 66 below) is a listing of revisions made to the text of the amendments from that proposed and set forth in the Board’s opinion and order of January 24, 2002. Table 3 indicates the changes made, as well as the source that suggested each of the changes. Table 4 (beginning on page 74 below) indicates suggested revisions that the Board has not made in adopting these amendments. Each entry gives a brief explanation why the Board did not incorporate the suggested change. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 12 of this opinion.

**Table 1:
Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
721.102(a)(2)(C)	261.2(a)(2)(iii)	Used explanatory language in place of the word “reserved”
721.103(g)	261.3(g)	Added a subsection heading
721.103(g)(1)	261.3(g)(1)	Replaced commas with semicolons to separate elements of a series that contain commas (twice); added a comma before “as defined” to offset a parenthetical (three times)
721.103(g)(2)	261.3(g)(2)	Added “the following”
721.103(g)(2)(A)	261.3(g)(2)(i)	Added a comma before “as regulated” to offset a parenthetical
721.103(g)(2)(B)	261.3(g)(2)(ii)	Changed reference from “(c)(2)(I)” to “(e)(1)” to reflect the prior movement of 40 C.F.R. 261.3(c)(2) as 35 Ill. Adm. Code 721.103(e)
721.103(h)	261.3(h)	Added a subsection heading
721.103(h)(1)	261.3(h)(1)	Added “i.e., it is” for enhanced clarity
721.103(h)(2)	261.3(h)(2)	Added “the following”
721.104(b)(15)(A)(i)	261.4(b)(15)(i)(A)	Tabulated the hazardous waste listings and added the listing effective dates

721.104(b)(15)(B)	261.4(b)(15)(ii)	Changed “K169-K172” to “K169, K170, K171, or K172”; corrected “and” to “or” for what is actually a disjunctive series “K176, K177, or K178”
721.132 “K177”	261.32	Changed “disposed” to “disposed of”
724. table of contents	264 table of contents	Revised the headings for Sections 724.650 through 724.552 as indicated in the entries for each Section
724.440(b)(3)	264.340(b)(3)	Added language to refer to the incorporation of 40 C.F.R. 63.1206(b)(14) by reference
724.650 heading	264.550 heading	Deleted the parenthetical abbreviation “CAMU”
724.650(a)	264.550(a)	Changed to singular “a CAMU is”
724.650(b)	264.550(b)	Changed to singular “a CAMU that is . . . is”; replaced bracketed “effective date of final rule” with “April 22, 2002”; changed to singular “a grandfathered CAMU”; replaced a semicolon with a period; added the introductory prepositional phrase “within a grandfathered CAMU offset by a comma; added a comma to offset the parenthetical “as approved”
724.651 heading	264.551 heading	Deleted the parenthetical abbreviation “CAMUs”
724.651(a)	264.551(a)	Added quotation marks to the defined term “corrective action management unit”; added the conjunction “or” and the alternate defined abbreviation “CAMU” in quotation marks; changed “the facility” to “that facility”
724.652 heading	264.552 heading	Deleted the parenthetical abbreviation “CAMU”
724.652(a)	264.552(a)	Added quotation marks to the defined term “corrective action management unit”; added the conjunction “or” and the alternate defined abbreviation “CAMU” in quotation marks; changed “the facility” to “that facility”
724.652(a)(1)	264.552(a)(1)	Added quotation marks to the defined term “CAMU-eligible waste”
724.652(a)(1)(A)	264.552(a)(1)(i)	Changed to single word “groundwater”
724.652(a)(1)(B)	264.552(a)(1)(ii)	Changed to singular, lower-case “CAMU-eligible waste”; removed the quotation marks from the term “CAMU-eligible waste”
724.652(a)(1)(B)(i)	264.552(a)(1)(ii)(A)	Changed to singular “hazardous waste”; added a comma after “containers” to separate the final elements of a series

724.652(a)(1)(B)(i)	264.552(a)(1)(ii)(A)	Changed “the Regional Administrator exercises the discretion” to “the Agency makes the determination”
724.652(a)(2)	264.552(a)(2)	Changed “the Regional Administrator may” to “the Agency must”; deleted the parenthetical “as appropriate”; changed “Regional Administrator has or receives information” to “Agency determines”; changed “such wastes” to “the wastes”; changed “applicable unit design requirements of this part, or applicable unit design requirements of part 265” to “applicable unit design requirements of this Part or 35 Ill. Adm. Code 725”; removed “that non-compliance with” and replaced it with “and that the non-compliance” before “likely contributed”; changed “other applicable requirements of this chapter” with “other applicable requirements of this Subtitle G”
724.652(a)(3)	264.552(a)(3)	Changed to singular “a CAMU”
724.652(a)(3)(D)	264.552(a)(3)(iii)	Changed to singular “a CAMU”
724.652(a)(4)	264.552(a)(4)	Changed to singular “hazardous waste”
724.652(b)	264.552(b)	Added “establishing a CAMU” as a subsection heading
724.652(b)(1)	264.552(b)(1)	Changed “the Regional Administrator may . . . or may incorporate” to “the Agency must . . . or must incorporate”; removed an unnecessary comma after “CAMU”; added “it determines that the following is true of the regulated unit”
724.652(b)(1)(B)	264.552(b)(1)(ii)	Added a comma after “protective” to separate the final elements of a series
724.652(c)	264.552(c)	Changed “the Regional Administrator shall” to “the Agency must” (twice); changed “and/or” to “or”; changed “all other CAMUs” to singular “any other CAMU”; added “requirements”
724.652(c)(1)	264.552(c)(1)	Changed “shall” to “must”
724.652(c)(2)	264.552(c)(2)	Changed “shall” to “must”
724.652(c)(3)	264.552(c)(3)	Changed “shall” to “must”
724.652(c)(4)	264.552(c)(4)	Changed “shall” to “must”
724.652(c)(5)	264.552(c)(5)	Changed “shall” to “must”
724.652(c)(6)	264.552(c)(6)	Changed “shall” to “must”
724.652(c)(7)	264.552(c)(7)	Changed “shall” to “must”

724.652(d)	264.552(d)	Changed “owner/operator” to “owner or operator”; changed “shall” to “must”; changed “Regional Administrator” to “Agency”; added “the following”
724.652(d)(1)	264.552(d)(1)	Changed “and/or” to “or”
724.652(d)(2)	264.552(d)(2)	Changed “and/or” to “or”
724.652(d)(3)	264.552(d)(3)	Changed “and/or” to “or”
724.652(e)	264.552(e)	Changed “Regional Administrator shall” to “Agency must”; changed to singular “the CAMU”
724.652(e)(3)	264.552(e)(3)	Changed to singular “a CAMU”
724.652(e)(3)(A)	264.552(e)(3)(i)	Changed “Regional Administrator” to “Agency”; corrected “alternate” to “alternative”; changed to singular “a CAMU that consists” changed the defined term “composite liner” from italics and placed it in quotation marks
724.652(e)(3)(B)	264.552(e)(3)(ii)	Corrected “alternate” to “alternative”; changed “Regional Administrator may” to “Agency must”; changed to singular “a CAMU that consists” added “it determines that either of the following is true”
724.652(e)(3)(B)(i)	264.552(e)(3)(ii)(A)	Changed “Regional Administrator finds” to “Agency determines”; corrected “alternate” to “alternative”; changed to single word “groundwater”
724.652(e)(3)(B)(ii)	264.552(e)(3)(ii)(B)	Changed “Regional Administrator finds” to “Agency determines”
724.652(e)(4)	264.552(e)(4)	Changed “and/or” to “or”; changed “Regional Administrator” to “Agency”
724.652(e)(4)(A)	264.552(e)(4)(i)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(A)(i)	264.552(e)(4)(i)(A)	Changed “Regional Administrator will” to “Agency must”; added “those constituents specified in subsection (e)(4)(H) of this Section”; added the explanatory Board note
724.652(e)(4)(A)(ii)	264.552(e)(4)(i)(B)	Changed “Regional Administrator will” to “Agency must”; changed “Regional Administrator may” to “Agency must”; changed to single word “groundwater”
724.652(e)(4)(A)(iii)	264.552(e)(4)(i)(C)	Changed “Regional Administrator may” to “Agency must”; changed “Regional Administrator” to “Agency”

724.652(e)(4)(B)	264.552(e)(4)(ii)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(C)	264.552(e)(4)(iii)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(D)	264.552(e)(4)(iv)	Changed to singular “a CAMU”
724.652(e)(4)(D)(iv)	264.552(e)(4)(iv)(D)	Added a comma after “corrosivity” to separate the final elements of a series
724.652(e)(4)(D)(v)	264.552(e)(4)(iv)(E)	Changed “Regional Administrator” to “Agency”
724.652(e)(4)(D)(vi)	264.552(e)(4)(iv)(F)	Changed “Regional Administrator may” to “Agency must”; changed “Regional Administrator” to “Agency”
724.652(e)(4)(E)	264.552(e)(4)(v)	Changed “Regional Administrator may” to “Board will grant an adjusted standard pursuant to Section 28.1 of the Act to . . . if the owner or operator demonstrates that”; removed the period to combine the second sentence into the first as conditional language; changed “must” to “would”; added “based on consideration of the following” as a parenthetical offset by a comma
724.652(e)(4)(E)(iii)	264.552(e)(4)(v)(C)	Added a comma before “as applied” to offset a parenthetical
724.652(e)(4)(E)(v)	264.552(e)(4)(v)(E)	Added “under the circumstances set forth in subsection (e)(4)(H) of this Section”; corrected the reference to “subsection (e)(4)(I) of this Section”; added the explanatory Board note
724.652(e)(4)(G)	264.552(e)(4)(vii)	Changed to singular “a CAMU”; changed “Regional Administrator may” to “Agency must . . . if it determines that”; deleted the parenthetical “as appropriate”; removed the period to combine the second sentence into the first as conditional language; changed “will be” to “is appropriate”
724.652(e)(4)(H)	[264.552(e)(4)(iv)-(A)]	Created the subsection and added a subsection heading to locate moved text
724.652(e)(4)(H)(i)	264.552(e)(4)(iv)(A)(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; deleted the unnecessary comma after the word “Section”
724.652(e)(4)(H)(ii)	264.552(e)(4)(iv)(A)(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(4)(I)	[264.552(e)(4)(v)(E)]	Created the subsection and added a subsection heading to locate moved text

724.652(e)(4)(I)(i)	264.552(e)(4)(v)(E)-(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(ii)	264.552(e)(4)(v)(E)-(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(iii)	264.552(e)(4)(v)(E)-(3)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; changed “Regional Administrator” to “Board”; removed the unnecessary ending conjunction “or”
724.652(e)(4)(I)(iv)	264.552(e)(4)(v)(E)-(4)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(4)(I)(v)	264.552(e)(4)(v)(E)-(5)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements; changed “Regional Administrator” to “Board”; changed to singular “a laterally expanded CAMU”
724.652(e)(5)	264.552(e)(5)	Changed to single word “groundwater”
724.652(e)(5)(A)	264.552(e)(5)(i)	Changed to single word “groundwater”
724.652(e)(5)(B)	264.552(e)(5)(ii)	Changed to single word “groundwater”
724.652(e)(5)(C)	264.552(e)(5)(iii)	Changed “Regional Administrator” to “Agency”; changed to single word “groundwater”
724.652(e)(6)	264.552(e)(6)	Added “as follows” as a parenthetical offset by a comma
724.652(e)(6)(A)	264.552(e)(6)(i)	Changed “shall” to “must”; added “do the following”
724.652(e)(6)(B)	264.552(e)(6)(ii)	Changed to singular “a CAMU”; changed “shall” to “must”; changed “Regional Administrator” to “Agency”
724.652(e)(6)(C)	264.552(e)(6)(iii)	Changed to singular “a CAMU”; changed “Regional Administrator shall” to “Agency must”
724.652(e)(6)(D)	264.552(e)(6)(iv)	Changed to lower-case “requirements”
724.652(e)(6)(D)(i)	264.552(e)(6)(iv)(A)	Moved “with constituent concentrations . . . to the site” to follow “remain”; changed “the following performance criteria” to “the performance criteria listed in subsection (e)(6)(F) of this Section”; added the explanatory Board note

724.652(e)(6)(D)(ii)	264.552(e)(6)(iv)(B)	Changed “Regional Administrator may determine that modifications to paragraph . . . are needed” to “Agency must apply cap requirements that deviate from those prescribed in subsection . . . if it determines that the modifications are needed”
724.652(e)(6)(E)	264.552(e)(6)(v)	Changed “shall” to “must”
724.652(e)(6)(F)	[264.552(e)(6)(vi)-(E)]	Created the subsection and added a subsection heading to locate moved text
724.652(e)(6)(F)(i)	264.552(e)(6)(vi)(E)-(1)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(ii)	264.552(e)(6)(vi)(E)-(2)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(iii)	264.552(e)(6)(vi)(E)-(3)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(iv)	264.552(e)(6)(vi)(E)-(4)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(e)(6)(F)(v)	264.552(e)(6)(vi)(E)-(5)	Moved the text to comply with <i>Illinois Administrative Code</i> codification requirements
724.652(f)	264.552(f)	Changed to singular “a CAMU . . . is”; changed “and/or” to “or”; changed to singular “a CAMU” (twice); changed the ending punctuation to a colon
724.652(f)(1)	264.552(f)(1)	Changed “and/or” to “or”; changed to singular “a CAMU . . . is . . . and is”; changed to singular “operates”; added commas before and after “at Section 724.654(d)(1)(A) and (d)(1)(B), (d)(2), (e), (f), (j), and (k)” to offset it as a parenthetical; changed to singular “a CAMU”; removed the unnecessary comma after the word “piles”
724.652(f)(2)	264.552(f)(2)	Changed to singular “a CAMU . . . is”; changed to singular “does”; changed “and/or” to “or”
724.652(f)(2)(A)	264.552(f)(2)(i)	Added “the owner or operator” to complete the sentence; changed “Regional Administrator” to “Agency”; removed the unnecessary comma after the word “waste”
724.652(f)(2)(B)	264.552(f)(2)(ii)	Added “the CAMU” to complete the sentence; changed to singular “is”; changed to singular “a CAMU”
724.652(g)	264.552(g)	Changed to singular “a CAMU” (twice); changed “and/or” to “or”; changed to single word “groundwater”

724.652(h)	264.552(h)	Changed “Regional Administrator shall” to “Agency must”; changed “shall” to “must”
724.652(i)	264.552(i)	Changed “Regional Administrator shall” to “Agency must”; changed “additional requirements as necessary” to “those additional requirements that it determines are”
724.652(j)	264.552(j)	Changed “Regional Administrator” to “the Agency”; changed “clean-up” to “cleanup”
724.652(k)	264.552(k)	Changed “Regional Administrator’s” to “Agency’s”
724.654(a)(2)	264.554(a)(2)	Used explanatory language in place of the word “reserved”
724.655 heading	264.555 heading	Capitalized “Eligible Wastes in Permitted Hazardous Waste Landfills”
724.655(a)	264.555(a)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall” to “Agency must”; added “it determines that”; changed “conditions in . . . are met” to “following conditions”
724.655(a)(2)	264.555(a)(2)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place” to “Agency”
724.655(a)(2)(C)	264.555(a)(2)(iii)	Changed the reference to “Section 724.652(e)(4)(I)(ii)” to reflect the movement of the text
724.655(b)	264.555(b)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place” to “Agency”
724.655(c)	264.555(c)	Changed “Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall” to “Agency must”
724.655(e)(1)	264.555(e)(1)	Changed “and/or” to “or”; changed “Regional Administrator responsible for oversight of the landfill” to “Agency”
724.655(e)(2)	264.555(e)(2)	Changed “Regional Administrator” to “Agency”; changed “within 15 days of” to “within 15 days after”
724.655(e)(3)	264.555(e)(3)	Changed “Regional Administrator may” to “Agency must”; added “if it determines that the extension is necessary”

724.655(e)(4)	264.555(e)(4)	Changed “Regional Administrator” to “Agency”; changed “owner/operator” to “owner or operator”; changed “he or she” to “it”
724.655(e)(5)	264.555(e)(5)	Changed “Regional Administrator” to “Agency”; changed “owner/operator” to “owner or operator”; changed “he or she” to “it”
724.655(e)(6)	264.555(e)(6)	Changed “As part of the permit process of paragraph (d) of this section, the Regional Administrator may modify, reduce, or eliminate” to “the Board will grant an adjusted standard under Section 28.1 of the Act that modifies, reduces, or eliminates”; added “if the owner or operator demonstrates that this is possible”
724.655(f)	264.555(f)	Changed a semicolon to a period and capitalized the word “off” to begin the resulting second sentence
726. table of contents	266 table of contents	Revised the headings for Sections 726.310 through 724.460 as indicated in the entries for each Section
726.310 heading	266.210 heading	Changed “What definitions apply to this subpart?” to “definitions”
726.310 preamble	266.210	Changed “this subpart uses the following special definitions” to “terms are defined as follows for the purposes of this Subpart N”
726.310 “CERCLA reportable quantity”	266.210	Added the definition (for the purposes of Section 726.340(a)(2))
726.310 “certified delivery”	266.210	Placed the defined term in quotation marks; deleted the unnecessary conjunction “or” from before “equivalent”; deleted the improper comma from before the restrictive relative clause “that provides . . .”
726.310 “director”	266.210	Placed the defined term in quotation marks; changed “refers to the definition” to “is as defined”
726.310 “DNS”	266.210	Added the definition (for the purposes of the entire Subpart)

726.310 “eligible naturally occurring or accelerator-produced radioactive material”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed “and/or” to “or”; changed “is” to “means”; used “naturally occurring or accelerator-produced radioactive material” in place of the acronym “NARM” and placed the acronym in parentheses; added the indefinite article “a” before “transportation”; changed to lower-case “transportation and disposal conditional exemption”; changed “NRC Agreement State equivalent” to “DNS”; added “the equivalent regulations of a licensing agency in another state” to allow exemption of waste bound for disposal in a facility regulated by another state; added the Board note citing DNS regulations
726.310 “exempted waste”	266.210	Placed the defined term in quotation marks; deleted the second appearance of “meets”; removed the comma that separated a two-element series; added “a waste that” before “meets” for a restrictive relative clause; added “which” before “complies” for a subsequent restrictive relative clause; deleted “described”
726.310 “hazardous waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed “any material which is defined in accordance with” to “hazardous waste as defined in”
726.310 “land disposal restriction treatment standards”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the abbreviated form “LDR treatment standards” as an alternative defined term”
726.310 “license”	266.210	Placed the defined term in quotation marks; changed “Nuclear Regulatory Commission” to “federal NRC”; changed “NRC Agreement State” to “the Illinois DNS” (twice); changed to singular “a user that manages”; “changed “NRC” to “the federal NRC”; removed an unnecessary comma after “NRC”; added the citation “42 USC 2014 et seq.” in parentheses; added “or the Radiation Protection Act of 1990 [420 ILCS 40]”

726.310 “low-level mixed waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “LLMW”; changed “source, special nuclear, or by-product material” to “source, by-product, and special nuclear material”; hyphenated “by-product” for consistency (twice)
726.310 “low-level radioactive waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed the standardized abbreviation to “LLRW”; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “LLW”; changed “which” to “that” for a restrictive relative clause; removed the unnecessary comma from after “byproduct material”; added a comma to offset the parenthetical “as defined . . .”; corrected the citation to “section 11(e)(2)” and added the <i>United States Code</i> citation in parentheses; added the definite article “the” before “NRC”; removed the quotation marks from the word “waste”
726.310 “mixed waste”	266.210	Used lower-case for the defined term and placed it in quotation marks; changed “source, special nuclear, or by-product material” to “source, by-product, and special nuclear material”; hyphenated “by-product” for consistency (twice); added the <i>United States Code</i> citation in parentheses

726.310 “naturally occurring or accelerator-produced radioactive material”	266.210	Used lower-case for the defined term and placed it in quotation marks; added the conjunction “or” and replaced parentheses with quotation marks for the alternative defined term “NARM”; changed to singular “a radioactive material”; added “fulfills one of the following conditions”; added “it is” to complete the sentence in the sub-paragraph (twice); changed “are” to “it is”; changed “source, special nuclear, or byproduct” to “a source, by-product, or special nuclear material”; hyphenated “by-product” for consistency (twice); removed the parentheses and offset the parenthetical “as defined by . . .” with commas; replaced “AEA” with “the federal Atomic Energy Act (42 USC 2014 et seq)”; placed the sentence “NARM is regulated by the States . . .” in a Board note; changed “State law” with “the Radiation Protection Act of 1990 [420 ILCS 40] and 32 Ill. Adm. Code: Chapter II, Subchapter b”; changed “DOE” to “federal Atomic Energy Act (42 USC 2014 et seq.)”
726.310 “NRC”	266.210	Placed the defined term in quotation marks; changed “U.S.” to “United States”
726.320 heading	266.220 heading	Changed “What does a storage and treatment conditional exemption do?” to capitalized “Storage and Treatment Conditional Exemption”
726.320	266.220	Deleted “your” from before “low-level”; changed “your” to “the”; changed “you meet” to “the generator meets”
726.325 heading	266.225 heading	Changed “What wastes are eligible for the storage and treatment conditional exemption?” to capitalized “Wastes Eligible for a Storage and Treatment Conditional Exemption for Low-Level Mixed Waste”

726.325	266.225	Added “as” before “defined”; changed “this” to “a storage and treatment”; changed “you” to “a person”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “a different person’s”; added “such mixed waste” to create an independent clause, adding a comma to offset the clause; changed “ineligible this exemption” to “ineligible for this exemption”
726.330 heading	266.230 heading	Changed “What conditions must you meet for your LLMW to qualify for and maintain a storage and treatment exemption?” to capitalized “Conditions to Qualify for and Maintain a Storage and Treatment Conditional Exemption”
726.330(a)	266.230(a)	Deleted “your” from before “LLMW”; changed “you” to “the generator”; changed “us” to “the Agency”; changed “you are” to “it is”; added “storage and treatment” before “conditional exemption”; added a comma after “exemption” to offset the introductory prepositional phrase; changed “your” to “the generator’s” (four times); added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; added “and the Illinois DNS” to provide for notice to the DNS; changed “code(s)” to “codes”; changed “unit(s)” to “units”; changed “you” to “the generator” (three times); changed “are” to “is”; changed “meet” to “meets”; changed “your” to “its”; dropped “in your State” after “rule”; changed “within 90 days of the effective date of this rule” to “before July 21, 2002”; changed “within 90 days of” to “within 90 days after”; added “whichever is later” as a parenthetical offset by a comma
726.330(b)	266.230(b)	Deleted “your” from before “LLMW”; added a comma after “LLMW” to offset the introductory prepositional phrase; changed “you” to “the generator”; added :do each of the following”
726.330(b)(1)	266.230(b)(1)	Changed “your” to “its” (twice)

726.330(b)(2)	266.230(b)(2)	Changed “your” to “its”; deleted unnecessary comma before “or” that separated a two-element series (twice)
726.330(b)(3)	266.230(b)(3)	Added “that the training” before “includes”
726.330(b)(4)	266.230(b)(4)	Changed “your” to “its”; changed “it” to “the waste”; added “this” before “Subpart N”
726.330(b)(5)	266.230(b)(5)	Changed “your” to “the generator’s”
726.335 heading	266.235 heading	Changed “What waste treatment does the storage and treatment conditional exemption allow?” to capitalized “Treatment Allowed by a Storage and Treatment Conditional Exemption”
726.335	266.235	Changed “you” to “the generator”; changed “your” to “its” (three times); added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”
726.340 heading	266.240 heading	Changed “How could you lost the conditional exemption for your LLMW and what action must you take?” to capitalized “Loss of a Storage and Treatment Conditional Exemption and Required Action”
726.340(a)	266.240(a)	Changed “your” to “a generator’s”; changed “you fail” to “the generator fails”; changed “your” to “the generator’s” (twice); changed “you” to “the generator”; changed “and/or” to “or”
726.340(a)(1)	266.240(a)(1)	Changed “you fail” to “a generator fails”; added a comma after “726.330” to offset the introductory parenthetical; changed “you” to “the generator”; changed “us and the NRC, or the oversight agency in the NRC Agreement State” to “the Agency, the Illinois DNS, and the NRC”; changed “your” to “the generator’s” (twice); changed “within 30 days of” to “within 30 days after”
726.340(a)(1)(A)	266.240(a)(1)(i)	Changed “condition(s)” to “conditions”; added “that” for a restrictive relative clause; changed “you” to “the generator”
726.340(a)(1)(C)	266.240(a)(1)(iii)	Changed “date(s)” to “dates”; changed “you” to “the generator”; changed “condition(s)” to “conditions”

726.340(a)(1)	266.240(a)(1)	Changed “you” to “the generator” (twice); changed “us” to “the Agency”; changed to singular “a failure . . . is”; added “may” before “include”; changed “your” to “its”
726.340(b)	266.240(b)	Changed “we” to “the Board”; added “by an order issued in an enforcement proceeding against the generator” as a parenthetical offset by commas; changed “your” to “the generator’s”; changed “you” to “the generator”; changed “your” to “its”
726.345 heading	266.245 heading	Changed “If you lose the storage and treatment conditional exemption for your LLMW, can the exemption be reclaimed?” to capitalized “Reclaiming a Lost Storage and Treatment Conditional Exemption”
726.345(a)	266.245(a)	Changed “you” to “a generator”; added “a lost” after “reclaim”; added “conditional” before “exemption”; changed “your” to “its”; added “the following conditions are fulfilled”
726.345(a)(1)	266.245(a)(1)	Changed “you again meet” to “the generator again meets”
726.345(a)(2)	266.245(a)(2)	Changed “you send” to “the generator sends”; changed “us” to “the Agency”; changed “you are” to “the generator is”; changed “your” to “its” (twice); changed “your” to “the generator’s”; added a comma after “notice” to offset the introductory prepositional phrase; changed “you” to “the generator”
726.345(a)(2)(B)	266.245(a)(2)(ii)	Changed “you have” to “the generator has”; changed “you” to “it”; changed “your” to “its”; changed “you gain meet” to “the generator again meets”; added “that” for a restrictive relative clause; changed “you specify” to “the generator specifies”
726.345(a)(2)(C)	266.245(a)(2)(iii)	Changed “you have” to “the generator has”; added “that” for a restrictive relative clause (twice); changed “you have” to “it has”
726.345(a)(2)(D)	266.245(a)(2)(iv)	Added “that” for a restrictive relative clause; changed “you want” to “the generator wants”; changed “us” to “the Agency”; changed “we review” to “it reviews”; changed “your” to “the generator’s”

726.345(b)	266.245(b)	Changed “we” to “the Agency” (twice); changed “we determine” to “it determines”; added “in writing, pursuant to Section 39 of the Act” as a parenthetical offset by commas; changed “your” to “the generator’s”; changed “you have” to “the generator has”; changed “you” to “the generator” (twice); added “any Agency determination . . . pursuant to Section 40 of the Act”
726.350 heading	266.250 heading	Changed “What records must you keep at your facility and for how long?” to capitalized “Recordkeeping for a Storage and Treatment Conditional Exemption”
726.350(a)	266.250(a)	Changed “your” to “the generator’s”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “you” to “the generator”
726.350(a)(1)	266.250(a)(1)	Changed “your” to “the generator’s”; changed “us” to “the Agency”; changed “failure(s)” to “failures”
726.350(a)(2)	266.250(a)(2)	Changed “your” to “the generator’s”; deleted the unnecessary comma after “inventories” that separated the two-element series
726.350(a)(3)	266.250(a)(3)	Changed “your” to “the generator’s”
726.350(a)(4)	266.250(a)(4)	Changed “your” to “the generator’s”; added a comma before “as specified” to offset a parenthetical
726.350(b)	266.250(b)	Changed “you” to “the generator”; changed “your” to “its”; changed “you claim” to “the generator claims”; added “federal” before “NRC” (twice); changed the parenthetical “or equivalent NRC Agreement State regulations” to “or under Illinois DNS regulations under 32 Ill. Adm. Code: Chapter II, Subchapter b”; changed “you” to “a generator”; changed the parenthetical “or equivalent NRC Agreement State regulations” to “or with Illinois DNS regulations under 32 Ill. Adm. Code: Chapter II, Subchapter b”
726.355 heading	266.255 heading	Changed “When is your LLMW no longer eligible for the storage and treatment conditional exemption?” to capitalized “Waste no Longer Eligible for a Storage and Treatment Conditional Exemption”

726.355(a)	266.255(a)	Changed “your” to “a generator’s”; changed “your” to “its”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “the generator’s”
726.355(b)	266.255(b)	Changed “your” to “a generator’s”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “a generator’s”
726.360 heading	266.260 heading	Changed “Do closure requirements apply to units that stored LLMW prior to the effective date of Subpart N?” to capitalized “Applicability of Closure Requirements to Storage Units”
726.360	266.260	Added the indefinite article “an” before “interim”; changed to singular “unit that has . . . stores”; changed “the effective date of this rule” to “April 22, 2002” (twice); added “which” for a subsequent restrictive relative clause Twice); “which” to “that” for a restrictive relative clause; changed to singular “a storage unit . . . that has . . . is”
726.405 heading	266.305 heading	Changed “What does the transportation and disposal conditional exemption do?” to capitalized “Transportation and Disposal Conditional Exemption”
726.405	266.305	Changed “this” to “a transportation and disposal”; changed “your” to “a generator’s”; changed “your” to “the generator’s”; changed “you meet” to “the generator meets”;
726.410 heading	266.310 heading	Changed “What wastes are eligible for the transportation and disposal conditional exemption?” to capitalized “Wastes Eligible for a Transportation and Disposal Conditional Exemption”
726.410 preamble	266.310 preamble	Added “one or both of the following”
726.410(a)	266.310(a)	Changed “and/or” to “or”
726.415 heading	266.315 heading	Changed “What are the conditions you must meet for your waste to qualify for and maintain the transportation and disposal conditional exemption?” to capitalized “Conditions to Qualify for and Maintain a Transportation and Disposal Conditional Exemption”

726.415 preamble	266.315 preamble	Changed “you” to “a generator”; changed “your” to “its”
726.415(a)	266.315(a)	Added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon
726.415(b)	266.315(b)	Changed “you are” to “the generator is”; added “federal” before “NRC” (twice); changed “NRC Agreement State” to “Illinois DNS” (twice); changed “your” to “its” (twice); changed “you” to “the generator”; added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon
726.415(c)	266.315(c)	Added a comma before “as described” to offset a parenthetical”; changed the ending punctuation from a period to a semicolon and added the conjunction “and”
726.415(d)	266.315(d)	Added a comma before “as described” to offset a parenthetical”
726.420 heading	266.320 heading	Changed “What treatment standards must your eligible waste meet?” to capitalized “Treatment Standards for Eligible Waste”
726.420	266.320	Changed “your” to “a generator’s”; added “applicable”; changed to the defined abbreviation “LDR”
726.425 heading	266.325 heading	Changed “Are you subject to the manifest and transportation condition in § 266.315(b)?” to capitalized “Treatment Standards for Eligible Waste”
726.425	266.325	Changed “you are” to “a generator is”; added “federal” before “NRC”; changed “NRC Agreement State” to “Illinois DNS”; changed “your” to “its”; changed “you” to “the generator”; added “federal NRC” (twice); changed the parenthetical “or NRC Agreement State equivalent regulations” to “and Illinois DNS manifest requirements under 32 Ill. Adm. Code 340”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 341”

726.430 heading	266.330 heading	Changed “When does the transportation and disposal exemption first take effect?” to capitalized “Effectiveness of a Transportation and Disposal Exemption”
726.430 preamble	266.330 preamble	Added “of” after “all”
726.430(a)	266.330(a)	Changed “your” to “the generator’s”; changed the ending punctuation from a period to a semicolon
726.430(b)	266.330(b)	Changed “you have” to “the generator has”; changed “you have” to “it has”; changed “us” to “the Agency”; added a comma before “as described” to offset a parenthetical; changed the ending punctuation from a period to a semicolon
726.430(c)	266.330(c)	Changed “you have” to “the generator has”; changed “your” to “its”; added “federal” before “NRC”; used lower-case “packaging and transportation”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and Illinois DNS manifest requirements under 32 Ill. Adm. Code 340”; changed “your” to “a generator’s”; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 341”
726.430(d)	266.330(d)	Changed “you have” to “the generator has”; changed “your” to “its”; added “the federal” before “NRC”; changed “NRC Agreement State” to “the Illinois DNS”; changed “the federal NRC or the Illinois DNS” to “the federal NRC, the Illinois DNS, or by a nuclear licensing agency in another state” to allow exemption of waste in a vehicle licensed by another state
726.435 heading	266.335 heading	Changed “Where must your exempted waste be disposed of?” to capitalized “Disposal of Exempted Waste”

726.435	266.335	Changed “your” to “a generator’s”; added “the federal” before “NRC”; changed “or an NRC Agreement State” to “the Illinois DNS under 35 Ill. Adm. Code: Subchapters b and d, or by a licensing agency in another state” to allow exemption of waste bound for disposal in a facility regulated by another state; changed the parenthetical “or NRC Agreement State equivalent regulations” to “and the Illinois DNS transportation requirements under 32 Ill. Adm. Code 606”
726.440 heading	266.340 heading	Changed “What type of container must be used for disposal of exempted waste?” to capitalized “Containers Used for Disposal of Exempted Waste”
726.440 preamble	266.340	Changed “disposed” to “disposed of”; corrected “on of the following” to “one of the following”
726.440(a)	266.340(a)	Removed the unnecessary ending conjunction “or”
726.440(c)	266.340(c)	Added a comma before “as defined” to offset the parenthetical; added and the Illinois DNS” to provide for notice to the DNS
726.445 heading	266.345 heading	Changed “Whom must you notify?” to “Notification”
726.445(a)	266.345(a)	Changed “you” to “a generator”; changed “us” to “the Agency”; added and the Illinois DNS” to provide for notice to the DNS; changed “you are” to “it is”; changed “your” to “the generator’s” (twice); changed “your” to “its” ; removed an unnecessary comma after “number” that separated a simple compound
726.445(b)	266.345(b)	Changed “you” to “a generator”; changed “your” to “its” (twice); changed “you” to “the generator”; changed “you have” to “it has”; changed “you have” to “it has”; added “information”
726.445(b)(1)	266.345(b)(1)	Changed “you have” to “the generator has”; changed the ending punctuation from a period to a semicolon
726.445(b)(2)	266.345(b)(2)	Changed the ending punctuation from a period to a semicolon

726.445(b)(3)	266.345(b)(3)	Changed “your” to “the generator’s”; changed the ending punctuation from a period to a semicolon
726.445(b)(4)	266.345(b)(4)	Changed the ending punctuation from a period to a semicolon
726.445(b)(5)	266.345(b)(5)	Changed the ending punctuation from a period to a semicolon
726.445(b)(6)	266.345(b)(6)	Changed the ending punctuation from a period to a semicolon and added the conjunction “and”
726.445(b)(7)	266.345(b)(7)	Changed “your” to “the generator’s”
726.450 heading	266.350 heading	Changed “What records must you keep at your facility?” to upper-case “Recordkeeping for a Transportation and Disposal Conditional Exemption”
726.450 preamble	266.350 preamble	Changed “your” to “a generator’s”; changed “NRC Agreement State” to “Illinois DNS”; changed “you” to “the generator”
726.450(a)	266.350(a)	Changed “you” to “the generator” (twice); changed “your” to “its”
726.450(b)	266.350(b)	Changed “you” to “the generator”
726.450(c)	266.350(c)	Changed “you” to “the generator”
726.450(d)	266.350(d)	Changed “you” to “the generator”
726.450(e)	266.350(e)	Changed “you are” to “the generator is”; added “federal” before “NRC”; changed “or NRC Agreement State equivalent” to “and Illinois DNS”; changed “your” to “its”; changed “you” to “the generator”; added “federal” before “10 CFR 20.2006”; changed “or NRC Agreement State equivalent regulations” to “and Illinois DNS requirements under 32 Ill. Adm. Code 340”
726.455 heading	266.355 heading	Changed “How could you lose the transportation and disposal conditional exemption for your waste and what actions must you take?” to upper-case “Loss of a Transportation and Disposal Conditional Exemption and Required Action”
726.455(a)	266.355(a)	Changed “you fail” to “the generator fails”

726.455(a)(1)	266.355(a)(1)	Changed “you fail” to “the generator fails”; changed “your” to “its” (twice); changed “you” to “the generator”; changed “us” to “the Agency”; changed “your” to “the generator’s”; added “the following”; added and the Illinois DNS” to provide for notice to the DNS; changed “within 30 days of” to “within 30 days after”
726.455(a)(1)(A)	266.355(a)(1)(i)	Changed “condition(s)” to “conditions”; changed “you” to “the generator”
726.455(a)(1)(C)	266.355(a)(1)(iii)	Changed “date(s)” to “dates”; changed “you” to “the generator”; changed “condition(s)” to “conditions”
726.455(a)(2)	266.355(a)(2)	Changed “you” to “the generator”; changed “us” to “the Agency”
726.455(b)	266.355(b)	Changed “we” to “the Board”; added “by an order issued in an enforcement proceeding against the generator”; changed “your” to “the generator’s”; changed “you” to “the generator”; changed “requirement(s)” to “requirements”
726.460 heading	266.360 heading	Changed “If you lose the transportation and disposal conditional exemption for a waste, can the exemption be reclaimed?” to upper-case “Reclaiming a Lost Transportation and Disposal Conditional Exemption”
726.460(a)	266.360(a)	Changed “you” to “a generator”; changed “the” to “a”; added “lost” before “transportation”; added “conditional” before “exemption”; changed “you have” to “the generator has”; changed “we have” to “the Agency has”; changed “your” to “the generator’s”; added “the following conditions are fulfilled”; added and the Illinois DNS” to provide for notice to the DNS; changed to plural “have”
726.460(a)(1)	266.360(a)(1)	Changed “you again meet” to “the generator again meets”
726.460(a)(2)	266.360(a)(2)	Changed “you send” to “the generator sends”; changed “us” to “the Agency”; changed “you are” to “the generator is”; changed “your” to “the generator’s”; added “ include all of the following”

726.460(a)(2)(A)	266.360(a)(2)(i)	Changed “explain” to “an explanation of”; changed the ending punctuation from a period to a semicolon
726.460(a)(2)(B)	266.360(a)(2)(ii)	Changed “certify” to “a certification”; changed “you” to “the generator”; changed “you meet” to “the generator meets”; changed “you specify” to “the generator specifies”; changed the ending punctuation from a period to a semicolon
726.460(a)(2)(C)	266.360(a)(2)(iii)	Changed “describe” to “a description of”; added “that” for a restrictive relative clause; changed “you have” to “the generator has” (twice); changed the ending punctuation from a period to a semicolon and added the conjunction “and”
726.460(a)(2)(D)	266.360(a)(2)(iv)	Deleted “include”; added “that” for a restrictive relative clause; changed “you want” to “the generator wants”; changed “us” to “the Agency”; changed “we review” to “the Agency reviews”; changed “your” to “the generator’s”
726.460(b)	266.360(b)	Changed “we” to “the Agency” (twice); changed “we determine” to “it determines”; added “in writing, pursuant to Section 39 of the Act” as a parenthetical offset by a comma”; changed “your” to “the generator’s”; added “the following”; changed “you have” to “the generator has” (twice); changed “you” to “the generator”; added “any Agency determination . . . pursuant to Section 40 of the Act”
728.134(d)	268.34(d)	Used explanatory language in place of the word “reserved”
728.136(a)	268.36(a)	Changed “EPA Hazardous Waste Numbers” to lower-case “USEPA hazardous waste numbers”
728.136(b)	268.36(b)	Added “any of the following is true with regard to the waste”
728. Table T “K178,” “1,2,3,4,6,7,8- HpCDD”	268.40 table	Corrected the CAS number from “35822-39-4” to “35822-46-9”
738.118(k)	148.18(k)	Changed “EPA Hazardous Waste Numbers” to lower-case “USEPA hazardous waste numbers”

Table 2:
Board Housekeeping Amendments

Section	Source	Revision(s)
203.280(e)(1)	Board	Changed “shall” to “must”
203.280(j)(1)	JCAR	Changed to lower-case “see”; added the year to the <i>Code of Federal Regulations</i> citation
720 source note	Board	Corrected the effective date of R01-3 to “January 11, 2001”
720.110 “boiler”	Board	Changed “shall” to “may”
720.111(b) “10 CFR 20.2006”	JCAR, Board	Added an incorporation of federal NRC requirements
720.111(b) “10 CFR 10, Appendix B”	Board	Updated the incorporation of federal NRC requirements to the most recent edition available
720.111(b) “10 CFR 71”	Board	Added an incorporation of federal NRC requirements
720.111(b) “40 CFR 51.100(ii)”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 51, Appendix W”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 52.741, Appendix B”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 60”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 61, Subpart V”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 63”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 136”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 142”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 220”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 232.2”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 260.20”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 264”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 268, Appendix IX”	Board	Updated the incorporation of USEPA requirements to the most recent edition available

720.111(b) “40 CFR 270.5”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 302.4, 302.5, and 302.6”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 761”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 107”	Board	Added the incorporation of U.S. Department of Transportation (USDOT) requirements
720.111(b) “40 CFR 171”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 172”	Board	Added the incorporation of USDOT requirements
720.111(b) “40 CFR 173”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 178”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 179”	Board	Added the incorporation of USDOT requirements
721 source note	JCAR	Corrected the effective date of R01-3 to “January 11, 2001”
721.102(c)(3)	IERG	Added Board note re the <u>Association of Battery Recyclers</u> decision
721.102(e)(1)	Board	Added a comma after “ash” to separate elements of a series
721.102(e)(1)(C)	Board	Added a space to correct “the materials”
721.103(a)(2)(C)	Board	Added an explanatory reference to replace the federally-withdrawn provision
721.103(a)(2)(D)(ii)	Board	Changed “and/or” to “or”
721.103(a)(2)(D)(vii)	JCAR	Removed the unnecessary comma after the word “provided”
721.103(e)(1)	JCAR	Added a comma after the word “ash” to separate the emlements of a series
721.104(a)(9)(C)(v)	Board	Changed “shall” to “must”
721.104(a)(12)(A)	Board	Hyphenated the word “by-products” for consistency
721.104(a)(17)(C)	Board	Corrected the cross-reference to “(a)(17)(D)”
721.104(a)(17)(D)	Board	Changed “shall” to “must”
721.104(a)(17)(D)(i)	Board	Changed “shall” to “must”
721.104(a)(17)(D)(iii)	Board	Corrected the cross-reference to “(a)(17)(D)”;
721.104(a)(17) Board note	Board	Added Board note re the <u>Association of Battery Recyclers</u> decision
721.104(a)(18)(B)	Board	Hyphenated the word “by-products” for consistency

721.104(b)(1)	Board	Changed “shall” to “must”
721.104(b)(15)(A)(i)	Board	Changed “Hazardous Waste Codes” to “the following USEPA hazardous waste numbers that is”; added “listed for the waste”
721.104(b)(15)(A)(ii)	Board	Corrected the cross-reference to “(b)(15)(A)(ii)””; added “as set forth in that subsection” as a parenthetical
721.104(b)(15)(B)	Board	Removed the past effective date “after February 13, 2001”
721.104(d)(2)	Board	Changed “shall” to “must”
721.104(e)(2)(A)	Board	Changed “wastestream” to “waste stream” for consistency
721.104(e)(3)(C)	Board	Changed “shall” to “must”
721.104(e)(3)(C)(ii)	JCAR	Changed “wastestream” to “waste stream” for consistency
721.104(e)(3)(C)(iv)	Board	Changed “shall” to “must”
721.124(a)	Board	Changed “U.S. EPA” to “USEPA”
721.124(a) Board note	Board	Added Board note explanation re the <u>Association of Battery Recyclers</u> decision
721.124(b)	Board	Changed “U.S. EPA Hazardous Waste Number” to “USEPA hazardous waste number”
721.124(b) table	Board	Changed “U.S. EPA” to “USEPA” in column 1 heading
721.132 “K174”	JCAR	Hyphenated “non-hazardous” for consistency
721.Appendix G “F020”	Board	Added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F022”	Board	Added a comma after the word “penta-” to separate the elements of a series
721.Appendix G “F023”	Board	Added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F027”	Board	Changed to plural “amines”; added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F020”	Board	Changed to plural “amines”; added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F020”	Board	Changed commas to semicolons to separate the elements of a series containing sub-series (eight times); added the conjunction “and” to separate the final elements of the sub-series (twice)
721.Appendix G “F034”	JCAR	Added a comma after the word “arsenic” to offset the final element of the series
721.Appendix G “F035”	Board	Added a comma after the word “chromium” to offset the final element of the series; removed the conjunction “and” for consistency

721.Appendix G "K001"	JCAR	Corrected the spelling of "creosote"
724.440(b) Board note	JCAR, Board	Replaced the brackets and paraphrasing of the quoted language with the exact text quoted
724.651(e)(4)(C)	JCAR	Corrected the reference to "this subsection (e)"
724.651(h)	Board	Changed "clean-up" to "cleanup" for consistency
724.651(c)	Board	Changed "shall" to "must"
724.651(c)(1)	Board	Changed "shall" to "must"
724.651(c)(2)	Board	Changed "shall" to "must"
724.651(c)(3)	Board	Changed "shall" to "must"
724.651(c)(4)	Board	Changed "shall" to "must"
724.651(c)(5)	Board	Changed "shall" to "must"
724.651(c)(6)	Board	Changed "shall" to "must"
724.651(c)(7)	Board	Changed "shall" to "must"
724.651(d)	Board	Changed "shall" to "must"
724.651(e)	Board	Changed "shall" to "must"
724.651(e)(4)(A)	Board	Changed "shall" to "must"
724.651(e)(4)(B)	Board	Changed "shall" to "must"
724.651(e)(4)(C)	Board	Changed "shall" to "must"
724.651(e)(4)(D)	Board	Changed "shall" to "must"
724.651(f)	Board	Changed "shall" to "must" (twice)
724.651 Board note	Board	Deleted the Board note explanation of dual regulation by the State and USEPA
724.654 preamble	Board	Deleted the explanatory preamble
724.654(a)	Board	Changed "what is a staging pile?" to "definition of a staging pile."
724.654(b)	Board	Changed "when may an owner or operator use a staging pile?" to "use of a staging pile."; changed "shall" to "must" (twice)
724.654(c)	Board	Changed "what information must an owner or operator provide to get a staging pile designated?" to "information that an owner or operator must submit to gain designation of a staging pile."; changed "shall" to "must"
724.654(d)	Board	Changed "what performance criteria must a staging pile satisfy?" to "performance criteria that a staging pile must satisfy."; changed "shall" to "must"
724.654(d)(1)(C)	Board	Changed "shall" to "must" (twice)
724.654(d)(2)	Board	Changed "shall" to "must"
724.654(e)	Board	Changed "may a staging pile receive ignitable or reactive remediation waste?" to "receipt of ignitable or reactive remediation waste."; changed "shall" to "must"

724.654(f)	Board	Changed “how does an owner or operator handle incompatible remediation wastes in a staging pile?” to “managing incompatible remediation wastes in a staging pile.”; changed “shall” to “must”
724.654(f)(1)	Board	Changed “shall” to “must”
724.654(f)(2)	Board	Changed “shall” to “must”
724.654(f)(3)	Board	Changed “shall” to “must”
724.654(g)	Board	Changed “are staging piles subject to land disposal restrictions (LDR) and federal minimum technological requirements (MTR)? no.” to “staging piles are subject to land disposal restrictions and federal minimum technological requirements.”
724.654(g)	Board	Changed “are staging piles subject to land disposal restrictions (LDR) and federal minimum technological requirements (MTR)? no.” to “staging piles are subject to land disposal restrictions and federal minimum technological requirements.”; changed “shall” to “must”
724.654(h)	Board	Changed “how long may an owner or operator operate a staging pile?” to “how long an owner or operator may operate a staging pile.”; changed “shall” to “must”
724.654(i)	Board	Changed “may an owner or operator receive an operating extension for a staging pile?” to “receiving an operating extension for a staging pile.”; changed “shall” to “must”
724.654(i)(1)	Board	Changed “shall” to “must”
724.654(i)(2)	Board	Changed “shall” to “must”
724.654(j)	Board	Changed “what is the closure requirement for a staging pile located in a previously contaminated area?” to “the closure requirement for a staging pile located in a previously contaminated area.”
724.654(j)(1)	Board	Changed “shall” to “must”
724.654(j)(2)	Board	Changed “shall” to “must”
724.654(j)(3)	Board	Changed “shall” to “must”
724.654(k)	Board	Changed “what is the closure requirement for a staging pile located in an uncontaminated area?” to “the closure requirement for a staging pile located in a previously uncontaminated area.”
724.654(k)(1)	Board	Changed “shall” to “must”
724.654(k)(2)	Board	Changed “shall” to “must”
724.654(l)	Board	Changed “how may an existing permit (for example, RAP), closure plan, or order be modified to allow an owner or operator to use a staging pile?” to “modifying an existing permit (e.g., a RAP), closure plan, or order to allow the use of a staging pile.”

724.654(l)(1)(A)	Board	Changed “shall” to “must”
724.654(l)(1)(B)	Board	Changed “shall” to “must”
724.654(l)(2)	Board	Changed “shall” to “must”
724.654(l)(3)	Board	Changed “shall” to “must”
724.654(l)(4)	Board	Changed “shall” to “must”
724.654(m)	Board	Changed “is information about the staging pile available to the public?” to “public availability of information about a staging pile.”; changed “shall” to “must”
728 table of contents	JCAR, Board	Amended the heading of Section 728.Appendix C to agree with amendments filed in consolidated docket R01-21/R01-23
728 source note	JCAR	Corrected the effective date of R01-3 to “January 11, 2001”
728.144(a) Board note	Board	Added Board note re the <u>Association of Battery Recyclers</u> decision
728.144(c)	Board	Removed the past effective date
728.149(a) table	Board	Changed “determined to contain” to “determined not to contain”
728.149(d)	JCAR	Capitalized “universal treatment standards,” added the word “entitled,” placed the capitalized word in quotation marks, and offset this with a comma to show this as the title of Table U
728.Appendix G, table 2 note 10	Board	Added a space before “U372”
728.Table T “D013”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”
728.Table T “F020, F021, F022, F023, F026”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F027”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F028”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F039”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”; added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K032”	JCAR, Board	Corrected “ χ -isomers ” to “ γ -isomers”
728.Table T “K043”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K099”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K175” (two entries)	Board	Corrected the CAS number for mercury to “7439-97-6”

728.Table T “U129”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”
728.Table T Board note	JCAR	Updated the <i>Code of Federal Regulations</i> reference to include the <i>Federal Register</i> citation to the November 20, 2001 amendments
728.Table U “ γ -BHC”	JCAR	Corrected “ χ -BHC ” to “ γ -BHC”
728.Table U “chlordanane”	Board	Corrected “ χ ” to “ γ ”
728.Table U “HxCDFs”	Board	Added the CAS number
728.Table U “PeCDDs”	Board	Added the CAS number
728.Table U “PeCDFs”	Board	Added the CAS number
728.Table U “TCDDs”	Board	Added the CAS number
728.Table U “TCDFs”	Board	Added the CAS number
738 table of contents	JCAR	Corrected the Section 738.124 heading

Table 3:
Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
720 source note	Board	Corrected the effective date of R01-3 to “January 11, 2001”
720.111(b) “10 CFR 20.2006”	JCAR, Board	Added an incorporation of federal NRC requirements
720.111(b) “10 CFR 10, Appendix B”	Board	Updated the incorporation of federal NRC requirements to the most recent edition available
720.111(b) “10 CFR 71”	Board	Added an incorporation of federal NRC requirements
720.111(b) “40 CFR 51.100(ii)”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 51, Appendix W”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 52.741, Appendix B”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 60”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 61, Subpart V”	Board	Updated the incorporation of USEPA requirements to the most recent edition available

720.111(b) “40 CFR 63”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 136”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 142”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 220”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 232.2”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 260.20”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 264”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 268, Appendix IX”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 270.5”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 302.4, 302.5, and 302.6”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 761”	Board	Updated the incorporation of USEPA requirements to the most recent edition available
720.111(b) “40 CFR 107”	Board	Added the incorporation of U.S. Department of Transportation (USDOT) requirements
720.111(b) “40 CFR 171”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 172”	Board	Added the incorporation of USDOT requirements
720.111(b) “40 CFR 173”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 178”	Board	Updated the incorporation of USDOT requirements to the most recent edition available
720.111(b) “40 CFR 179”	Board	Added the incorporation of USDOT requirements
721 source note	JCAR	Corrected the effective date of R01-3 to “January 11, 2001”
721.102(c)(3)	USEPA, Board	Added USEPA amendments of March 13, 2002; deleted the proposed Board note
721.103(a)(2)(D)	JCAR	Corrected the reference to “subsection (g) of this Section”
721.103(a)(2)(D)(ii)	Board	Changed “and/or” to “or”

721.103(a)(2)(D)(vii)	JCAR	Removed the unnecessary comma after the word “provided”
721.103(e)(1)	JCAR	Added a comma after the word “ash” to separate the elements of a series
721.103(g)(1)	JCAR	Removed the unnecessary comma after the word “waste”
721.103(g)(3)	Board	Corrected the reference to “this subsection (g)”
721.103(h)(3)	JCAR	Corrected the reference to “this subsection (h)”
721.104(a)(4)	Board, DNS	Changed “source, special nuclear, or by-product material” to “source, by-product, or special nuclear material”
721.104(a)(12)(A)	Board	Hyphenated the word “by-products” for consistency
721.104(a)(17)	USEPA	Added USEPA amendments of March 13, 2002
721.104(a)(17)(A)	USEPA	Added USEPA amendments of March 13, 2002
721.104(a)(17)(B)	USEPA	Added USEPA amendments of March 13, 2002
721.104(a)(17)(C)	USEPA, Board	Added USEPA amendments of March 13, 2002; changed “secondary” to “spent” for consistency
721.104(a)(17)(D)	USEPA, Board	Added USEPA amendments of March 13, 2002; changed “secondary” to “spent” for consistency
721.104(a)(17)(D)(i)	USEPA, Board	Changed “secondary” to “spent” for consistency
721.104(a)(17)(D)(ii)	USEPA, Board	Added USEPA amendments of March 13, 2002
721.104(a)(17)(E)	USEPA, Board	Added USEPA amendments of March 13, 2002
721.104(a)(17)(F)	USEPA, Board	Added USEPA amendments of March 13, 2002; removed the proposed Board note
721.104(a)(18)(B)	Board	Hyphenated the word “by-products” for consistency
721.104(e)(2)(A)	Board	Changed “wastestream” to “waste stream” for consistency
721.104(e)(3)(C)(ii)	JCAR	Changed “wastestream” to “waste stream” for consistency
721.124(a)	USEPA	Added USEPA amendments of March 13, 2002
721.124(a) Board note	Board	Removed the proposed language relating to the Association of Battery Recyclers decision
721.132 “K174”	JCAR	Hyphenated “non-hazardous” for consistency
721.132 “K177”	JCAR	Changed “disposed” to “disposed of”
721.Appendix G “F020”	Board	Added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F022”	Board	Added a comma after the word “penta-” to separate the elements of a series
721.Appendix G “F023”	Board	Added a comma after the word “amines” to separate the elements of a series

721.Appendix G “F027”	Board	Changed to plural “amines”; added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F020”	Board	Changed to plural “amines”; added a comma after the word “amines” to separate the elements of a series
721.Appendix G “F020”	Board	Changed commas to semicolons to separate the elements of a series containing sub-series (eight times); added the conjunction “and” to separate the final elements of the sub-series (twice)
721.Appendix G “F034”	JCAR	Added a comma after the word “arsenic” to offset the final element of the series
721.Appendix G “F035”	Board	Added a comma after the word “chromium” to offset the final element of the series; removed the conjunction “and” for consistency
721.Appendix G “K001”	JCAR	Corrected the spelling of “creosote”
724 table of contents	JCAR, Board	Corrected the format of the Sections 724.651 and 724.652 headings amendments
724.440(b) Board note	JCAR, Board	Replaced the bracketed paraphrased language with the direct quoted language, “approach”; replaced the brackets and paraphrasing of the quoted language with the exact text quoted
724.651(e)(4)(C)	JCAR	Corrected the reference to “this subsection (e)”
724.651(h)	Board	Changed “clean-up” to “cleanup” for consistency
724.652	JCAR, Board	Corrected the format of the Section heading amendments
724.652(a)	JCAR	Changed to lower-case “section 3008(h)”
724.652(a)(1)(A)	JCAR	Changed to single word “groundwater”
724.652(a)(1)(B)	JCAR	Removed the quotation marks from the term “CAMU-eligible waste”
724.652(a)(2)	JCAR	Corrected the spelling of the word “Subtitle”; changed the ending colon to a period
724.652(e)(3)(B)(i)	Board	Changed to single word “groundwater”
724.652(e)(4)(A)(i) Board note	JCAR	Removed the periods from the abbreviation “CFR”
724.652(e)(4)(A)(ii)	Board	Changed to single word “groundwater”
724.652(e)(4)(E)(v)	Board	Corrected the reference to “subsection (e)(4)(I) of this Section”
724.652(e)(4)(E)(v) Board note	Board	Removed the periods from the abbreviation “CFR”
724.652(e)(4)(H)(i)	JCAR	Corrected the format of “10 ⁻³ ”
724.652(e)(4)(H)(i)	JCAR	Deleted the unnecessary comma after the word “Section”
724.652(e)(5)	JCAR	Changed to single word “groundwater”

724.652(e)(5)(A)	JCAR	Changed to single word “groundwater”
724.652(e)(5)(B)	JCAR	Changed to single word “groundwater”
724.652(e)(5)(C)	JCAR	Changed to single word “groundwater”
724.652(e)(6)(D)	JCAR	Changed to lower-case “requirements”
724.652(e)(6)(D)(i) Board note	JCAR	Removed the periods from the abbreviation “CFR”
724.652(f)	JCAR	Changed the ending punctuation to a colon
724.652(f)(1)	Board, JCAR	Changed “and/or” to “or”; changed to singular “operates”; removed the unnecessary comma after the word “piles”
724.652(f)(2)	JCAR	Changed to singular “does”
724.652(f)(2)(A)	JCAR	Removed the unnecessary comma after the word “waste”
724.652(g)	Board	Changed to single word “groundwater”
724.652(k)	JCAR	Added the definite article “the” before the word “Agency”; changed “clean-up” to “cleanup”
724.654(g)	Agency	Added the word “not” before the word “subject”
724.654(l)	JCAR	Changed “an RAP” to “a RAP”
724.655(a)(2)(B)	JCAR	Changed “§” to “Section”
724.655(e)(2)	JCAR	Changed “within 15 days of” to “within 15 days after”
724.655(f)	JCAR	Changed a semicolon to a period and capitalized the word “off” to begin the resulting second sentence
726 table of contents	JCAR	Capitalized the word “no” in the Section 726.355 heading
726.310 “DNS”	DNS	Changed “byproduct, source, or special nuclear material” to “source, by-product, and special nuclear material”; changed “under agreement with” to “in accordance with an agreement between the State and”; added a Board note
726.310 “DNS” Board note	DNS, Board	Added an explanation of the broader scope of materials regulated by the DNS; added the address for submitting notices to the DNS
726.310 “eligible naturally occurring or accelerator-produced radioactive material”	DNS	Changed “10 CFR 61 or DNS regulations” to “10 CFR 61, DNS regulations, or the equivalent regulations of a licensing agency in another state” to allow exemption of waste bound for disposal in a facility regulated by another state
726.310 “eligible naturally occurring or accelerator-produced radioactive material” Board note	DNS	Changed “32 Ill. Adm. Code: Chapter II, Subchapter b” to “32 Ill. Adm. Code: Chapter II, Subchapter b and d”

726.310 “low-level radioactive waste”	DNS, Board	Changed “source, special nuclear, or by-product material” to “source, by-product, and special nuclear material”; hyphenated “by-product” for consistency (twice)
726.310 “low-level radioactive waste” Board note	DNS, Board	Changed the standardized abbreviation to “LLRW”; added an explanation of the different scope of the definition given this term under Illinois nuclear safety statutes and DNS regulations.
726.310 “mixed waste”	DNS	Changed “source, special nuclear, or by-product material” to “source, by-product, and special nuclear material”; hyphenated “by-product” for consistency (twice)
726.310 “mixed waste” Board note	DNS, Board	Added an explanation of the different scope of the definition given this term under Illinois nuclear safety statutes and DNS regulations.
726.310 “NARM”	DNS	Changed “source, special nuclear, or by-product material” to “source, by-product, or special nuclear material”; hyphenated “by-product” for consistency (twice)
726.310 “NARM” Board note	DNS	Changed “32 Ill. Adm. Code: Chapter II, Subchapter b” to “32 Ill. Adm. Code: Chapter II, Subchapter b and d”
726.310 “NRC” Board note	DNS	Added the address given in 10 C.F.R. 1.5(b)(3) for submission of required notices to the NRC
726.320	JCAR	Corrected the reference to “Section 726.325”
726.325	JCAR	Changed “ineligible this exemption” to “ineligible for this exemption”
726.330(a)	JCAR, DNS, Board	Added a comma after “exemption” to offset the introductory prepositional phrase; added “and the Illinois DNS” to provide for notice to the DNS; changed “within 90 days of the effective date of this rule” to “before July 21, 2002”; changed “within 90 days of” to “within 90 days after”; added “whichever is later” as a parenthetical offset by a comma
726.330(b)	JCAR	Added a comma after “LLMW” to offset the introductory prepositional phrase
726.340(a)(1)	JCAR	Changed “within 30 days of” to “within 30 days after”
726.345(b)	JCAR	Added a comma before “pursuant to” to offset the parenthetical
726.350(a)(2)	JCAR	Deleted the unnecessary comma after “inventories” that separated the two-element series
726.355 heading	JCAR	Capitalized the word “no”
726.355(a)	JCAR	Capitalized the word “Sections”

726.360	JCAR	Changed “the effective date of this rule” to “April 22, 2002” (twice)
726.425	JCAR, DNS	Added the parenthetical language “incorporated by reference . . . offset by commas; corrected the reference to “10 CFR 71.5”
726.430(c)	JCAR	Added the parenthetical language “incorporated by reference . . . offset by commas; corrected to singular “has”
726.430(d)	DNS	Changed “the federal NRC or the Illinois DNS” to “the federal NRC, the Illinois DNS, or by a nuclear licensing agency in another state” to allow exemption of waste in a vehicle licensed by another state
726.435	DNS	Changed “by the federal NRC under 10 CFR 61 or by the Illinois DNS under 32 Ill. Adm. Code 606” to “the federal NRC under 10 CFR 61, the Illinois DNS under 35 Ill. Adm. Code: Subchapters b and d, or by a licensing agency in another state” to allow exemption of waste bound for disposal in a facility regulated by another state
726.440 preamble	JCAR	Changed “disposed” to “disposed of”; corrected “on of the following” to “one of the following”
726.440(b) Board note	JCAR	Capitalized the word “title”
726.440(c)	Board, JCAR	Hyphenated “high-integrity”; added a reference to “Appendix G to 40 CFR 20” as the source of the definition of the term; added language to incorporate this source by reference
726.445(a)	DNS	Added and the Illinois DNS” to provide for notice to the DNS
726.445(b)(3)	Board	Corrected “facilitys” to “possessive “facility’s”
726.450(e)	JCAR	Added the parenthetical language “incorporated by reference . . . offset by commas; corrected to singular “has”; corrected the reference to “subsections (a) through (d) of this Section”
726.455(a)(1)	DNS, JCAR	Added and the Illinois DNS” to provide for notice to the DNS; changed “within 30 days of” to “within 30 days after”
726.460(a)	DNS	Added and the Illinois DNS” to provide for notice to the DNS; changed to plural “have”
726.460(b)	JCAR	Added a comma before “pursuant to” to offset the parenthetical, added a comma after “but not limited to” to offset the parenthetical; capitalized the word “section”

728 table of contents	JCAR, Board	Corrected the heading of Section 728.136 to indicate the present amendments; amended the heading of Section 728.Appendix C to agree with amendments filed in consolidated docket R01-21/R01-23
728 source note	JCAR	Corrected the effective date of R01-3 to “January 11, 2001”
728.134 (a)	Board	Removed the Board note referring to the <u>Association of Battery Recyclers</u> decision due to the federal March 13, 2002 amendments
728.149(d)	JCAR	Capitalized “universal treatment standards,” added the word “entitled,” placed the capitalized word in quotation marks, and offset this with a comma to show this as the title of Table U
728.Table T “F020, F021, F022, F023, F026”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F027”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F028”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “F039”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K043”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K099”	Board	Added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs
728.Table T “K175” (two entries)	Board	Corrected the CAS number for mercury to “7439-97-6”
728.Table T “K176”	Agency, Board	Added underlining to show the listing as added; corrected the CAS number for mercury to “7439-97-6”
728.Table T “K177”	Board	Added underlining to show the listing as added
728.Table T “K178”	USEPA, Agency, Board	Added underlining to show the listing as added; added the CAS numbers for HxCDFs, PeCDDs, PeCDFs, TCDDs, and TCDFs; corrected the nonwastewaters entry for 1,2,3,4,6,7,8,9-OCDD to “0.005”; added the missing entry for “OCDF”; changed the nonwastewaters entry for thallium to “0.20 mg/L TCLP”
728.Table U “chlordanes”	Board	Corrected “χ” to “γ”
728.Table U “HxCDFs”	Board	Added the CAS number
728.Table U “PeCDDs”	Board	Added the CAS number

728.Table U “PeCDFs”	Board	Added the CAS number
728.Table U “TCDDs”	Board	Added the CAS number
728.Table U “TCDFs”	Board	Added the CAS number
738 table of contents	JCAR	Corrected the Section 738.124 heading

Table 4
Requested Revisions to the Text of the Proposed Amendments Not Made in
Final Adoption

Section Affected	Source(s) of Request: Requested Revision(s)	Explanation
721.102(c)(3)	JCAR: Change “C.F.R.” to “CFR” (twice)	The Board note containing the references was deleted on adoption.
721.103(g)(1)	JCAR: Delete semicolons separating members of a series.	The semicolons add clarity, since the elements of the series each contain a parenthetical offset by a comma.
721.104(a)(17)	JCAR: Change “C.F.R.” to “CFR” (twice)	The Board note containing the references was deleted on adoption.
721.124(a)	JCAR: Change “it applies” to “they apply.”	The Board note segment containing the language was deleted on adoption.
724.652(E)(5)(C)	JCAR: Change “form” to “from.”	This error appears only in the text retyped by JCAR for <i>Illinois Register</i> publication; it does not appear in the text submitted by the Board to the Office of Secretary of State for publication.
726.310 “DNS”	DNS: Include language in the definition that states that the DNS regulates materials not licensed by the federal NRC.	The Board has the alternative of including this explanation in a Board note appended to the definition.

726.310 “eligible naturally occurring or accelerator-produced radioactive material”	DNS: The DNS differs from USEPA in that it recognizes that mixed waste may include NARM. Change “low-level radioactive waste disposal facility” to “disposal facility,” and include a separate definition of “low-level radioactive waste disposal facility.”	The USEPA gives separate consideration to NARM and does not recognize mixed waste as including NARM. Altering the definition to conform with nuclear safety laws and regulations could change the scope of the defined term. The Board has added a Board note that explains the differing definitions.
726.310 “low-level radioactive waste”	DNS: This definition differs from the definition given the same term under nuclear safety laws and regulations.	The Board has the alternative of including this explanation in a Board note appended to the definition.
726.310 “mixed waste”	DNS: This definition differs from the definition given the same term under nuclear safety laws and regulations. The DNS differs from USEPA in that it recognizes that mixed waste may include NARM.	Altering the definition to conform with nuclear safety laws and regulations could change the scope of the defined term. The Board has added a Board note that explains the differing definitions.
726.325	DNS: The federally derived rule considers low-level mixed waste, but not NARM, as eligible for the storage and treatment conditional exemption. The DNS differs from USEPA in that it recognizes that low-level radioactive waste may include NARM.	Altering the definition to conform with nuclear safety laws and regulations could change the scope of the defined term. The Board has added a Board note that explains the differing definitions.

726.410	DNS: The federally derived rule expressly considers low-level mixed waste and NARM as eligible for the transportation and disposal conditional exemption. The DNS differs from USEPA in that it recognizes that low-level radioactive waste may include NARM.	Altering the definition to conform with nuclear safety laws and regulations could change the scope of the defined term. The Board has added a Board note that explains the differing definitions.
726.435	JCAR: Add the date to incorporate 10 C.F.R. 61 by reference.	This is a reference to federal regulation and licensing under this regulation, but no requirements from that regulation are incorporated.
728.Table T “D013,” “ γ -BHC”	JCAR: “Strike ‘ χ ’ in PCB version.”	The appropriate symbol is “ γ ” (gamma), not “ χ ” (chi), and it appears as overstruck in the text submitted by the Board to the Office of Secretary of State for publication; it appears as “chi” in the text retyped by JCAR for <i>Illinois Register</i> publication. Further, JCAR retyped “ γ ” from the amended text submitted to the Secretary of State for publication as “upsilon” (υ), which is what appeared in the <i>Illinois Register</i> .
728.Table T “D039,” “ γ -BHC”	JCAR: “Strike ‘ χ ’ in PCB version.”	See the above explanation set forth for 728.Table T “D013,” “ γ -BHC.”
728.Table T “K032,” “chlordane”	JCAR: “Strike ‘ χ ’ in PCB version.”	See the above explanation set forth for 728.Table T “D013,” “ γ -BHC.”

728.Table T “K178,” “1,2,3,4,6,7,8-HpCDD”	Agency: Change the CAS number to “35822-39-4.”	Although the CAS number for this chemical appears as “35822-39-4” in the federal amendments of November 20, 200, at 66 Fed. Reg. 58258, 58300, and the corrections of April 9, 2002, at 67 Fed. Reg. 17119, “35822-46-9” is the CAS number given this compound in the listings for F039 and K174 wastes in the table to 40 C.F.R. 268.40 and in the table to 40 C.F.R. 268.48(a). The Board has found “35822-46-9” in Web searches for this compound, and we believe that this is the correct CAS number.
728.Table T “U129,” “chlordan”	JCAR: “Strike ‘χ’ in PCB version.”	See the above explanation set forth for 728.Table T “D013,” “γ-BHC.”
728.Table U “γ-BHC”	JCAR: “Strike ‘χ’ in PCB version.”	See the above explanation set forth for 728.Table T “D013,” “γ-BHC.”
738 table of contents	JCAR: Change “waste-specific” to “waste specific” for consistency in the headings for Sections 738.117 and 738.118.	The hyphenated “waste-specific” is the appropriate and preferred usage. The Board’s choice for consistency has been to change the Section headings for Sections 738.110 through 738.116 to agree with this usage when they open for amendment. However, those Sections have not yet been opened for amendment. As these Sections open for amendment, the Board will hyphenate “waste-specific” in each of their Section headings.

HISTORY OF RCRA SUBTITLE C AND UIC ADOPTION
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY OR BOARD ACTION
EDITORIAL CONVENTIONS

It has previously been the practice of the Board to include an historical discussion in its RCRA Subtitle C and UIC identical-in-substance rulemaking proposals. However, in the last RCRA Subtitle C update docket, RCRA Subtitle C Update, USEPA Amendments (July 1, 1999 through Dec. 31, 1999), R00-13 (May 18, 2000), the Board indicated that it would cease this practice. Therefore, for a complete historical summary of the Board’s RCRA Subtitle C and UIC rulemakings and programs, interested persons should refer back to the May 18, 2000 opinion and order in R00-13.

The historical summary contains all Board actions taken to adopt and maintain these programs since their inception and until May 18, 2000. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all USEPA program authorizations issued during that time frame. As necessary the Board will continue to update the historical summary as a segment of the opinion in each RCRA Subtitle C and UIC update docket, but those opinions will not repeat the information contained in the opinion of May 18, 2000 in docket R00-13.

The following summarizes the history of the Illinois RCRA Subtitle C hazardous waste and UIC programs since May 18, 2000:

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the RCRA Subtitle C hazardous waste rules in the following docket since May 18, 2000:

- | | |
|--------|--|
| R00-13 | <u>RCRA Subtitle C Update, USEPA Regulations (July 1, 1999 through Dec. 31, 1999)</u> , R00-13 (May 18, 2000); published at 24 Ill. Reg. 9443 (July 7, 2000), effective June 20, 2000. |
| R01-3 | <u>RCRA Subtitle C Update, USEPA Regulations (Jan. 1, 2000 through June 30, 2000)</u> , R01-3 (Dec. 7, 2000); published at 25 Ill. Reg. 1266 (Jan. 26, 2001), effective January 11, 2001. |
| R01-23 | <u>RCRA Subtitle C Update, USEPA Regulations (July 1, 2000 through Dec. 31, 2000)</u> , R01-23 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. Consolidated with UIC update docket R01-21. |
| R02-1 | <u>RCRA Subtitle C Update, USEPA Regulations (Jan. 1, 2001 through June 30, 2001)</u> This docket. |
| R02-12 | <u>RCRA Subtitle C Update, USEPA Regulations (July 1, 2001 through Dec. 31, 2001)</u> This docket. |

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in the following dockets since May 18, 2000:

- | | |
|--------|---|
| R00-11 | <u>UIC Update, USEPA Regulations (July 1, 1999 through Dec. 31, 1999)</u> , R00-11 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (Dec. 22, 2001), effective Dec. 7, 2001. Consolidated with docket R01-1. |
|--------|---|

- R01-1 UIC Update, USEPA Regulations (Jan. 1, 2000 through June 30, 2000), R01-1 (Dec. 7, 2000); published at 25 Ill. Reg. 18585 (Dec. 22, 2001), effective Dec. 7, 2001. Consolidated with docket R00-11.
- R01-21 UIC Update, USEPA Regulations (July 1, 2000 through Dec. 31, 2000), R01-21 (May 17, 2001); published at 25 Ill. Reg. 9108 (July 20, 2001), effective July 9, 2001. Consolidated with UIC update docket R01-23.
- R02-17 UIC Update, USEPA Regulations (July 1, 2001 through Dec. 31, 2001)
This docket.

RCRA Solid Waste Determinations Under 35 Ill. Adm. Code 720.131

Under 35 Ill. Adm. Code 720.131 (derived from 40 C.F.R. 260.31) a member of the regulated community can petition the Board for a determination that certain materials that are accumulated speculatively, recycled, reclaimed, and/or reused are not solid waste. A determination that a material is not a solid waste obviates application of the RCRA Subtitle C hazardous waste regulations to that material. Petitions for a solid waste determination that have been filed with the Board since May 18, 2000 are the following:

- AS 01-7 Petition of Progressive Environmental Services, Inc. d/b/a Antifreeze Recycling for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 01-7 (January 10, 2002). Determination that reprocessed or recycled automotive antifreeze is not a solid waste granted.
- AS 02-2 Petition of World Recycling, Inc. d/b/a Planet Earth Antifreeze for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 02-2. Petition that reprocessed or recycled automotive antifreeze is not a solid waste filed February 2, 2002 and is currently pending.

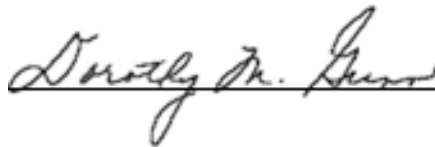
Other Relief from RCRA Subtitle C Requirements

The Board received other petitions since May 18, 2000 for relief from certain of the RCRA Subtitle C requirements:

- AS 00-14 Petition of Environmental Services, Inc. for an Adjusted Standard From 35 Ill. Adm. Code 702.126(d)(1), AS 00-14 (June 8, 2000). Petition for relief from the permit application owner and operator certification requirements dismissed for lack of proof of publication.
- AS 00-15 Petition of Environmental Services, Inc. for an Adjusted Standard From 35 Ill. Adm. Code 702.126(d)(1), AS 00-15 (February 1, 2001). Relief

granted from the permit application owner and operator certification requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion on April 18, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board