

ILLINOIS POLLUTION CONTROL BOARD
March 17, 1994

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

R93-16

Adopted Rule. Final Order.

OPINION OF THE BOARD (by E. Dunham):

Pursuant to Section 22.4(a) of the Environmental Protection Act (Act), the Board adopts amendments to the RCRA hazardous waste (RCRA) regulations. Because the volume of the amendments occupies over 200 pages, the complete text of the adopted amendments appears in a separate order adopted this day. In that order, revisions from the text of the amendments as proposed are specifically accentuated. Highlighting indicates the revisions from the proposal for public comment. Where the entire Section heading is highlighted, the Section was not included in the proposal for public comment. Highlighting within such a Section focuses on the actual amendments adopted.

Section 22.4(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by U.S. EPA to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. §§ 6921-6925) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, and, more recently, 279.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This rulemaking updates the Illinois RCRA Subtitle C rules to correspond with federal amendments made in the period from January 1 through June 30, 1993. The U.S. EPA actions during this period are as follows:

Federal Action	Summary
58 Fed. Reg. 8658 (Feb. 16, 1993)	Corrective Action Management Unit (CAMU) and Temporary Unit (TU) regulations applicable to RCRA Subtitle C corrective actions
58 Fed. Reg. 14317 (Mar. 17, 1993)	Amendments to land disposal restrictions for

Third Third wastes.

- 58 Fed. Reg. 26420 (May 3, 1993) Technical amendments to the used and waste oil management standards
- 58 Fed. Reg. 28506 (May 14, 1993) Renewal of case-by-case capacity variance from the land disposal restrictions for hazardous debris
- 58 Fed. Reg. 29860 (May 24, 1993) Land disposal restrictions for ignitable and corrosive wastes whose treatment standards were vacated
- 58 Fed. Reg. 33341 (June 17, 1993) Corrections to used and waste oil management standards

The Board dealt with the amendments of May 24, 1993 in the preceding docket, R93-4. As was discussed in that proceeding, U.S. EPA responded to the judicial remand in Chemical Waste Management v. EPA, 976 F.2d 2 (D.C. Cir. 1992), in those amendments. U.S. EPA stated in its preamble discussion that it acted promptly to avoid an absolute ban on land disposal of the wastes involved. The Board did not delay further action until this docket for that reason. Therefore, the present amendments do not include the federal actions of May 24, 1993, except as discussed below with regard to corrections to Section 703. Appendix A prompted by PC 1.

PUBLIC COMMENTS

The Board adopted a proposal for public comment on December 16, 1993. Notices of proposed amendments appeared in the Illinois Register on January 14, 1994, at 18 Ill. Reg. 337 (Part 720), 357 (Part 721), 377 (Part 725), 388 (Part 728), 406 (Part 702), 419 (Part 703), 439 (Part 724), and 455 (Part 739). The Board received public comment on this proposal for a period of 45 days following that date of publication. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow U.S. EPA review. The complete text of the proposed amendments follows the discussions of this opinion.

On November 30, 1993, the Board received a comment from U.S. EPA Region V on the text of R93-4, already adopted and filed with the Secretary of State. The Board will deal with the U.S. EPA comments in this docket, since it is now impossible to do so in

R93-4. The Board also received a copy of a letter from the Illinois Department of Commerce and Community Affairs (DCCA) to the Joint Committee on Administrative Rules (JCAR), which we have docketed as a public comment. We also received brief comments from U.S. EPA and the Secretary of State that indicated corrections to the proposed rule. The public comments received are docketed in this proceeding as follows:

- PC 1 U.S. EPA Region V, Waste Management Division (11-30-93, by Norman R. Niedergang, Associate Division Director for RCRA)
- PC 2 Illinois Department of Commerce and Community Affairs (1-26-94, by Linda D. Brand, Manager, Regulatory Flexibility Unit, to Vicki Thomas, Executive Director, Joint Committee on Administrative Rules)
- PC 3 U.S. EPA Region V, Waste Management Division (2-14-94, by Norman R. Niedergang, Associate Division Director for RCRA)
- PC 4 Office of the Secretary of State, Index Department, Administrative Code Division (3-1-94, by Connie Bradway)

PC 1 makes substantive comments on two Sections involved in R93-4. PC 2 states that DCCA has determined that the proposed rules will not significantly impact small businesses. PC 3 and PC 4 indicate a small number of corrections to the text of the amendments as proposed. The Board considers the comments in appropriate segments of the detailed discussions below.

In addition to the public comments received, the Board received communication from staff of JCAR. This communication, which came as a series of phone calls to Board staff, indicated problems with the base text used for the proposal for public comment. This prompted an extensive review of the base text, and a number of corrections to the text of the amendments as proposed has resulted. The Board discusses the details of these corrections below.

In addition to the problems with the base text, JCAR staff raised a fundamental issue relating to the scope of the Board's identical-in-substance rulemaking authority. JCAR essentially questioned whether the Board should use the Section 28.2 procedures for "federally-required" rules, rather than the Sections 7.2 and 22.4(a) procedures for identical-in-substance rules, whenever the Board deviates from the text of the federal regulations upon which our action is based. We discuss this issue separately below.

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

The Board appended three routine discussions at the end of this opinion. The first is a summary history of the Illinois RCRA Subtitle C and UIC programs. It lists all actions taken to adopt and maintain these programs since their inceptions. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all U.S. EPA program authorizations issued to date. The second is a discussion of how the Board codifies requirements that call for state determinations, such as for exemptions, exceptions, etc. The third discussion relates to our use of language in the codification of identical-in-substance rules. We intend these as reference aids for interested persons in the regulated community.

DISCUSSION

The five federal actions that underlie this proceeding each have a distinct impact on the Illinois RCRA Subtitle C regulations. This segment of the discussion briefly focuses on each by subject matter. The more detailed Section-by-Section discussions that follow indicate the specific details of the actions taken by the Board.

Corrective Action CAMU and TU Rules

The U.S. EPA action of February 16, 1993 instituted a set of specialized regulations applicable to RCRA Subtitle C corrective actions. Under the Hazardous and Solid Waste Amendments of 1984 (HSWA), Congress mandated corrective action at RCRA Subtitle C-regulated facilities. Section 3004(u) of RCRA, as amended under HSWA, requires U.S. EPA to address corrective action for all releases from regulated facilities in issuing permits. Under section 3008(h), U.S. EPA can issue an administrative order requiring corrective action at unpermitted interim status facilities. Finally, section 3004(v) authorizes U.S. EPA to require remediation of releases that have migrated beyond the boundary of a facility. The February 16 amendments implement a regulatory framework for implementing corrective actions. U.S. EPA intends to implement more comprehensive facilities standards rules at a future time.

In many respects, the February 16, 1993 CAMU and TU amendments represent a relaxation of existing treatment, storage, and disposal facility (T/S/D) standards. U.S. EPA intended this to give greater flexibility in implementing corrective action at a site and to avoid the impediments to corrective action posed by

those existing standards at RCRA Subtitle C and Superfund¹ sites. U.S. EPA implemented these limited segments with the stated hope of realizing the benefits they would confer on a more accelerated basis. However, U.S. EPA cautioned in the preamble discussion that its adoption of these CAMU and TU rules does not affect the existing closure regulations and requirements for RCRA Subtitle C-regulated T/S/Ds.

In general, the federal amendments added definitions for "CAMU" and "remediation waste", added CAMUs to the definitions of "facility" and "miscellaneous facility", and excluded CAMUs from the definitions of "disposal facility" and "landfill". The CAMU facility standards of subpart S of part 264 now apply to interim status T/S/Ds, which are otherwise exempted from the part 264 T/S/D standards. In the first of the two new sections that constitute new subpart S, the Regional Administrator is authorized to designate one or more CAMUs within a facility boundary to accommodate remedial waste, and management of such waste within the designated area does not constitute disposal of hazardous waste, and it is not subject to minimum technology standards. Otherwise, the releases, closure and post-closure care, and financial responsibility requirements of part 264 or 265 apply to the unit. That section imposes other management requirements on the CAMU. The second new section allows the Regional Administrator to designate one or more temporary units (TUs) within a facility for the temporary storage or treatment of remediation wastes. In designating a TU, the Regional Administrator is required to impose conditions on the management of wastes within the TU. The designation of a CAMU or TU is considered a facility permit modification.

Amendments to Third Third Land Disposal Restrictions

U.S. EPA adopted the Third Third land disposal restrictions on June 1, 1990, at 55 Fed. Reg. 22520. It issued technical corrective amendments with regard to reactive cyanide- and sulfide-bearing wastes on March 6, 1992, at 57 Fed. Reg. 8086. (The Board adopted the Third Third regulations in docket R91-1, on August 8, 1991, and the corrections in R92-10, on January 21, 1993.) In issuing the technical corrections, U.S. EPA rendered the corrective amendments effective immediately. The amendments of March 17, 1993 suspended portions of the corrective language in 40 CFR 268.3(b) (D003 reactive cyanide wastewaters and nonwastewaters) and 268.42(a) Table 2 (D003 reactive sulfide wastewaters) until June 17, 1993. In the past, the Board has not amended our regulations to codify past federal effective dates.

¹ The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. §§ 9601 *et seq.*), also known as "Superfund".

Therefore, we note the federal action at this point, but we do not amend the regulations to codify the past date.

Corrective Amendments to the Used & Waste Oil Regulations

Section 3006(h) of RCRA, as added by the Superfund Amendments and Reauthorization Act of 1986 (SARA), authorized U.S. EPA to establish minimum standards for state programs to regulate used and waste oil. On May 20, 1992, at 57 Fed. Reg. 21524, U.S. EPA decided not to deem used oil as a listed hazardous waste, and it created a limited exception for drained, used oil-filters from hazardous waste regulation. On September 10, 1992, at 57 Fed. Reg. 41566, U.S. EPA adopted regulations that established standards for the management of used oil for recycling. (The Board adopted the used oil filter exception in docket R92-10 and the used oil recycling standards in docket R93-4, on September 23, 1993.) The base used-oil recycling requirements, established as new part 279, provided minimum standards for the management of used oil for recycling apart from the general T/S/D standards of parts 264 and 265. The regulations further provided for federal authorization of state programs to regulate used oil for recycling.

On May 3, 1993, at 58 Fed. Reg. 26420, and June 17, 1993, at 58 Fed. Reg. 33341, U.S. EPA adopted corrections to these used oil rules. U.S. EPA corrected errors as to the HSWA status of various of the requirements. U.S. EPA further made numerous technical corrections and amendments to the rules. The June 17 corrections essentially reversed the May 3 corrections with regard to four federal provisions. These are discussed in detail in the discussions of the Part 739 amendments below.

Renewal of Hazardous Debris Capacity Variance

On May 8, 1992, at 57 Fed. Reg. 20766 (May 15, 1992), U.S. EPA adopted a one-year case-by-case capacity variance from the land disposal restrictions for certain hazardous debris. At 58 Fed. Reg. 28506 (May 14, 1993), on May 8, 1993, it extended that variance until May 8, 1994. U.S. EPA stated that this will delay the applicability of the land disposal restrictions to the covered hazardous debris to the maximum extent allowed by federal statute, so no further extensions or variances may be granted. The detailed discussions below of the Part 728 amendments indicates the exact nature of the wastes covered.

SCOPE OF THE BOARD'S IDENTICAL-IN-SUBSTANCE MANDATE

Before considering the details of the substantive amendments involved in this proceeding, the Board will consider the question raised by JCAR staff. That question involved the scope of the Board's identical-in-substance mandate under which we adopted the RCRA Subtitle C regulations and through which we have adopted the

several amendments to those rules since that time.

Occasionally, the Board must adapt federal provisions to the Illinois regulatory scheme when adopting identical-in-substance rules based on the federal amendments. This is due to differences in federal and state structure and administrative law. For example, whereas there is only one federal environmental regulatory agency that establishes regulations; grants permits, variances, and exemptions; performs inspection and compliance oversight; and conducts administrative enforcement proceedings, in Illinois these functions are divided. As we have discussed several times in the past, the Board establishes regulations, grants variances and adjusted standards (the Illinois counterpart to a federal exemption), and hears administrative enforcement proceedings. The Agency grants permits and performs inspection and compliance oversight functions. Thus, the Board must often discern which type of function U.S. EPA intends by its regulation and appropriately draft a rule that vests that function in the proper state agency. Further, the Environmental Protection Act divides responsibilities between the Board and the Agency. Together with the Administrative Procedure Act and the courts, the Act imposes limitations on the exercise of discretion by the state agency charged with responsibility. The discussion of the CAMU and TU rules of Sections 724.652 and 724.653 below highlight the limitations imposed by the recent Granite City Steel decision.

In fact, it is in the context of the Section 724.653 temporary unit (TU) rule that the issue arises in this matter. As is more fully discussed below, by establishing the TU rule, U.S. EPA intended to facilitate corrective actions by granting a transient and flexible case-by-case exemption from certain of the T/S/D facility standards. If the site owner or operator could demonstrate that alternative requirements are "protective of human health and the environment", the Regional Administrator could grant a "permit or order" (58 Fed. Reg. 8674, Feb. 16, 1993) that allows operation of a TU. The problem with this is that under Illinois law either the Board must reserve the TU designation as a variance or adjusted standard proceeding or delegate it to the Agency as a permit decision. Due to the shortened time of obtaining a permit decision, as opposed to a variance or adjusted standard, the Board believed that rendering a TU designation as an Agency permit decision would more closely follow the federal intent. However, the federal "protective of human health and the environment" standard for issuance is not sufficient in light of Granite City Steel. This forced the Board to add to the federal language a clause which essentially reads "equally as protective . . . as the requirements of Part 724 or 725, if applied".

JCAR questioned this addition, asking whether it would have been more appropriate to adopt the federal language nearly

verbatim by identical-in-substance procedures, then follow up with a Section 28.2 rulemaking to adopt the added language. JCAR cited Section 7.2(a)(3) in support of its question (with emphasis on the underlined segment):

If a USEPA rule prescribes the contents of a State regulation without setting forth the regulation itself, which would be an integral part of any regulation required to be adopted as an "identical in substance" regulation as defined in this Section, the Board shall adopt a regulation as prescribed, to the extent possible consistent with other relevant USEPA regulations and existing State law. The Board may not use this subsection to adopt any regulation which is a required rule as that term is defined by Section 28.2 of this Act. . . .

In response to the JCAR query, the Board maintains that Sections 7.2 and 22.4(a) require us to adopt regulations, using identical-in-substance procedures, that often include language added to the original federal text. The TU rule is just one example of such a rule. Section 7.2(a)(3) itself requires this by mandating that where U.S. EPA "prescribes the contents of a State regulation without setting forth the regulation itself", the Board must adopt a regulation "as prescribed to the extent possible", consistent with the federal program and Illinois law. In the present instance, U.S. EPA set forth the TU regulation and the standard for TU designation, but the federal standard does not comport with Illinois law. Thus, U.S. EPA essentially set forth the content of the regulation without setting forth a segment necessary under Illinois law. Thus, by adding the language to lend definiteness required by Illinois law to the federal decisional standard, for the purposes of Agency permit decisions, the Board essentially specified a decision to be made by the Agency based upon the general division of functions within the Environmental Protection Act, as required by Section 7.2(a)(5).

Further, the Section 28.2 "federally-required" rulemaking procedure is not designed for the RCRA program. It is appropriate where U.S. EPA has imposed a very broad mandate that the state adopt a program that accomplishes a certain result, but U.S. EPA does not specify the regulations to be included in the program with any specificity whatsoever. An example is the area of water quality and wastewater effluent regulation. Federal law very broadly requires the state to designate stream use designations and water quality standards and wastewater effluent limitations to maintain the use of those streams within the state. However, U.S. EPA nowhere sets forth any of the water quality designations or effluent limitations necessary to

accomplish this goal.² (See R90-1, Water Toxics.)

The Section 28.2 procedures would further result in additional delay and expense for the state, contrary to the intent of Section 7.2. Section 28.2 procedures require that the Board receive a proposal for public comment from the Agency together with a certification that the regulations are federally required. The Board must conduct public hearings on the proposal and submit the proposed rules for Second Notice review by JCAR prior to adoption. In the interim, the segments adopted by Section 7.2 procedures would become adopted as a fragmentary and potentially fatally deficient rule. (In this instance, the Board would adopt the TU rule with the "protective of human health and the environment" standard, and follow later under Section 28.2 with the Granite City Steel-required limiting language.)

Rather, the Board believes that Section 7.2(a)(3) contemplates that the Board will occasionally need to conform the content of federal regulations to the Illinois system before adopting them as identical-in-substance regulations. This subsection limits the Board to Section 28.2 procedures only where U.S. EPA broadly outlines a general duty and the state must derive the actual requirements. In such a context of a sweeping outline-type mandate, the Board's discretion is broader and the requirements for public hearings and prior JCAR review are constructive. In the context of the RCRA Subtitle C identical-in-substance program (and other, similar programs like RCRA Subtitle D, SDWA, Wastewater Pretreatment, the Definition of VOM, etc.), where U.S. EPA promulgates detailed regulations that set forth the entirety of the regulatory requirements, and the Board's discretion is very limited, the Board believes that a pre-adoption opportunity for public comment and a formal post-adoption review by JCAR are sufficient.³

² This provision was originally intended to provide for expedited consideration of rules proposed by the Agency certified as "federally-required" by U.S. EPA under the federal Clean Air Act. The Board has adopted regulations designated as federally-required under the Clean Air Act and Clean Water Act under this provision. However, a more recent amendment to the Act added Section 28.5 "fast-track" procedures, an even more expedited process now used for Clean Air Act proceedings.

³ We highlight our record of taking the initiative in introducing the issues in these proceedings to public discussion and of responding to every public comment received. Often our response has been to revise the text of the amendments prior to adoption. We also underscore the importance of receiving these public comments in these proceedings. This is especially true of the pre-adoption comments informally submitted by JCAR in the

Thus, the Board believes that conforming the text of federal requirements to the Illinois system is within the scope of our Sections 7.2 and 22.4(a) mandates. We believe that this is true even where, as here, the Board must embellish the wording of a federal requirement to achieve conformity. We believe that combined use of Sections 7.2 and 28.2 would violate that mandate and prove counter-productive.

DETAILED DISCUSSION

General Revisions

The Board will begin to change our method of referring to the United States Environmental Protection Agency in this present rulemaking. We have begun to refer to "U.S. EPA", which we believe is more conventional than "USEPA" and clearer than "EPA". Thus, since segments of the used oil regulations refer to both a "U.S. EPA identification number" and an "Illinois special waste identification number", we use these labels for distinction. We further have begun to refer to the "U.S. EPA hazardous waste number" for similar clarity. This changed usage occurs only in the Sections opened in this proceeding, and we will continue this conversion in future rulemakings as additional Sections otherwise become open to amendment. Therefore, the critical definitions in Sections 702.110 and 720.110 that use "EPA" or "USEPA" as part of the defined term, such as "EPA", "EPA hazardous waste number", and "EPA identification number", will retain the former designations in parallel to added references to "U.S. EPA". These amendments appear in the existing text of Sections 702.110, 720.110, 721.104, 721.105, 728.102, 739.110, and 739.152.

As mentioned earlier, the Board is making a number of corrections to the text of the amendments as proposed as we adopt them. These amendments are centrally outlined at the end of this detailed discussion. Where appropriate, however, the Board mentions significant substantive revisions in the Section-by-Section discussions that follow.

Classifications of Permit Modifications--Section 703.Appendix A

U.S. EPA amended 40 CFR 270.42 Appendix I, from which 35 Ill. Adm. Code 703.Appendix A derives, at 58 Fed. Reg. 8685 (Feb. 16, 1993), as part of the corrective action management unit (CAMU) and temporary unit (TU) rules. The amendments deem the approval of a CAMU a Class 3 permit modification and of a TU a Class 2 permit modification.

more recent proceedings. Pre-adoption corrections and clarifications are more rapidly and readily accomplished than those made after final adoption and filing with the Secretary of State.

The Board has incorporated the federal amendments without substantive deviation as N. We corrected a few omissions from the text of the pre-existing U.S. EPA base text and made two routine amendments. The Board has interpreted "*" and "(1)" in the federal rules as the same as "1" and added the "*" notation in its place to the entries for items B(1)(b), F(4)(b), G(1)(e), and G(5)(c). We moved the meaning of the "*" notation from after item A(5)(a) to the very end of the Appendix, but before the final Board Note. Since U.S. EPA applied the "1" notation to the Class 2 modification of item C(4), we deleted the federal "Class 1 modifications" limitation from the language. Further, we added the notes relating to a change in facility plans and 40 CFR 270.42 (35 Ill. Adm. Code 703.280(g)) that appear in the federal text to the ends of the B, G, and H entries. As to the routine amendments, we updated the Board Note at the end of the Section, to indicate the amended source, and we changed "+/-" to the scientific symbol "±", at item G.3. With prior word processing systems, the Board's ability to reproduce technical symbols was limited, so we made substitutions using common keyboard characters. However, our modern word processing equipment allows us to use these commonly understood technical symbols as they appear in the federal base text.

In PC 1, U.S. EPA comments that the Board omitted certain language in R93-4, which U.S. EPA added to 40 CFR 270.42, Appendix I, at 58 Fed. Reg. 29887 (May 24, 1993). U.S. EPA amended this provision by renumbering item B(1)(c) to B(1)(d), removing the second item B(1)(b) (U.S. EPA previously had two identical item B(1)(b) entries), and adding new language for item B(1)(c). The Board made the necessary changes relating to items B(1)(c) and B(1)(d) in corresponding Section 703.Appendix A in this proceeding. However, since the duplicate entry for item B(1)(b) never appeared in the Illinois regulations, no change was necessary to that item. The Board invited public comment on our approach to this Section and received none. We interpret silence as tacit acceptance of our chosen approach.

Definitions--Sections 702.110, 720.110, 728.102 & 739.100

Section 702.110 derives from 40 CFR 270.2, the definitions provision applicable to the permitting rules. U.S. EPA amended section 270.2 at 58 Fed. Reg. 8685 (Feb. 16, 1993), as part of the CAMU rules amendments. U.S. EPA added a definition of "corrective action management unit" and amended the definition of "disposal facility".

Section 720.110 is the general definitions provision for the entire RCRA Subtitle C regulatory program. It derives directly from 40 CFR 260.10, which U.S. EPA amended at 58 Fed. Reg. 8683 by adding a definitions of "corrective action management unit" and "remediation waste" and amending the definitions of "disposal

facility", "facility", "landfill", and "miscellaneous unit".

Section 728.102 includes the definitions specific to the land disposal restrictions. It derives from 40 CFR 268.2. U.S. EPA amended the section 268.2(c) definition of "land disposal" at 58 Fed. Reg. 8685.

The Board adopts the federal language of the new definitions of "CAMU" and "remediation waste" and the amended definitions of "disposal facility", "facility", "landfill", and "miscellaneous unit" in Sections 702.110, 720.110, and 728.102 with only minimal deviation from the federal text. The definitions of "CAMU" and "disposal facility" are identical in Sections 702.110 and 720.110. As amended, the definitions of "disposal unit" (in Sections 702.110 and 720.110), "land disposal" (in Section 728.102), "landfill" (in Section 720.110) and "miscellaneous unit" (in Section 720.110) now exclude CAMUs. The definition of "facility" (in Section 720.110) now expressly includes all contiguous property for which a permit is sought where corrective action is involved.

The Board does deviate slightly from the exact language of the federal amendments in some slight ways. We changed "Regional Administrator" in the definition of "CAMU" to "Agency", as is our customary practice. We added a Board Note to the definitions of "CAMU" to indicate that members of the regulated community must also obtain U.S. EPA approval of a CAMU until U.S. EPA authorizes the corresponding Illinois regulations. The CAMU rules are HSWA-derived, as is noted at new Section 724.652. Hence, the federal regulations took effect in Illinois on April 19, 1993. (See 40 CFR 271.1 Table 1, as amended at 58 Fed. Reg. 8685 (Feb. 16, 1993).) We also added a parenthetical to the definitions that refer to a "corrective action management unit" that indicates the abbreviation "CAMU". In the definition of "remediation waste" we use "that" as the preferred usage for a restrictive relative clause, reserving "which" for non-restrictive relative clauses, for restrictive relative clauses that begin with a preposition, and for subsequent restrictive relative clauses in the same sentences. In the Section 720.110 definition of "landfill", the Board adds "a salt bed formation", originally included by U.S. EPA at 52 Fed. Reg. 46963 (Dec. 10, 1987), but omitted by the Board until now. Similarly, in amending the definition of "facility", we add commas for clarity; these were included in the original by U.S. EPA, but previously omitted by the Board.

The definitions of Section 739.100 relate to the used oil management standards of Part 739. They derive from 40 CFR 279.1, which U.S. EPA amended at 58 Fed. Reg. 26425, as part of its corrective amendments. U.S. EPA corrected a misspelling of "if" to "is" in the definition of "used oil". The Board adopts the federal amendment without deviation. We invited public comment on our approach to the four definitions Sections and the only

input received was informal comment from JCAR. JCAR suggested that we should have a single definition for "Environmental Protection Agency", "EPA", and "U.S. EPA" JCAR also suggested that we correct all citations to the Illinois Compiled Statutes where we cite an entire statute, thus dropping the "et seq." usage. We accepted these suggestion and made changes accordingly. As to all other aspects of the proposal, we interpret silence as tacit acceptance of our chosen approach.

Exclusions from the Definition of Solid Waste--Section 721.104

Section 721.104 derives from 40 CFR 261.4, which U.S. EPA amended at 58 Fed. Reg. 26424 (May 3, 1993), as part of the used oil corrections. U.S. EPA deleted paragraphs (b)(13) and (b)(14), formerly reserved; renumbered paragraph (b)(15) to (b)(13); and added a new paragraph (b)(14). New federal paragraph (b)(14) now excludes used oil re-refining distillation bottoms that are used as feedstock in asphalt manufacture from the definition of solid waste. The Board adopts the federal language without change. We invited public comment on our approach to this Section and received none. We interpret silence as tacit acceptance of our chosen approach.

Qualified Small Quantity Generator Exclusion from Regulation--Section 721.105

U.S. EPA amended 40 CFR 261.5(j) as part of the used oil corrective amendments, at 58 Fed. Reg. 26424 (May 3, 1993). This corresponds with Section 721.105(j) of the Illinois regulations. Formerly, hazardous wastes from a small quantity generator that were mixed with used oil and destined for burning for energy recovery were subjected to subpart G of part 279 (35 Ill. Adm. Code 739.Subpart G). The corrective amendment of this paragraph subjects those mixed wastes to the whole of part 279 (Part 739). The Board adopts the federal amendment without change. We invited public comment on our amendment to this Section and received none. We interpret silence as tacit acceptance of our chosen approach.

Applicability of Treatment, Storage, and Disposal Facility (T/S/D) Standards--Section 724.101

Section 724.101 derives from 40 CFR 264.1, which U.S. EPA amended at 58 Fed. Reg. 26424 (May 3, 1993), as part of the used oil management amendments. U.S. EPA amended paragraph (g)(2) so that recycling facilities managing used oil that is a hazardous waste solely because it exhibits a characteristic of hazardous waste are not subjected to the T/S/D standards of federal part 264 (Illinois Part 724). U.S. EPA accomplished this by adding a reference to 40 CFR 261.6(a)(4) (corresponding with 35 Ill. Adm. Code 721.106(a)(4)) and to the alternative standards of federal part 279 (Illinois Part 739). The Board adopted the federal

amendments without revision.

However, in doing so, we note that the former Illinois subsection (f)(2) corresponded with federal paragraph (g)(2). This was because the Board never adopted a counterpart to federal subsection (f). We did so because federal subsection (f) outlined the applicability of the federal T/S/D standards in authorized states. Thus, this provision was not a necessary element of the Illinois program. In order to maintain linear structural parity with the federal regulation, the Board has now adopted "filler" language as subsection (f) that explains the scope of the corresponding federal provision, and we have renumbered former subsection (f) to subsection (g). We invited public comment on our amendments to Section 724.101 and received none. We interpret silence as tacit acceptance of our chosen approach.

Relationship of CAMU Rules with Interim Status and Permitted Facility T/S/D Requirements--Sections 724.103, 724.201 & 725.101

U.S. EPA amended 40 CFR 264.3 and 264.101(b) at 58 Fed. Reg. 8683 (Feb. 16, 1993) and 40 CFR 265.1(b) at 58 Fed. Reg. 8685, as part of the CAMU rules. The amendments essentially make the applicability of the corrective action provisions of part 264, subpart S (35 Ill. Adm. Code 724.Subpart S) applicable to interim status facilities and to corrective actions. The Board adopted the federal amendments without revision. We do this noting that U.S. EPA references subpart S in section 264.3 and sections 264.552 and 264.553 in section 265.101(b). This presents no problem at this time, since 40 CFR 264, subpart S includes only those two sections at this time, but if U.S. EPA intends further generally applicable additions to subpart S, this disparity might present problems. In addition to adopting the federal amendments, the Board has corrected the formerly improper and incomplete use of an "m" dash in Section 724.103 and restored the phrase "in accordance with this Section in Section 724.201(b)". We invited public comment on our approach to this Section and received none. We interpret silence as tacit acceptance of our chosen approach.

Relationship of Used Oil Rules with Interim Status and Permitted Facility T/S/D Requirements--Sections 724.101 & 725.101

U.S. EPA amended 40 CFR 264.1(g)(2) and 265.1(c)(6) at 58 Fed. Reg. 26424 (May 3, 1993) as part of the used oil corrections and technical amendments. In the original used oil regulations, U.S. EPA added an exclusion at 40 CFR 261.6(a)(4) from the applicability of parts 260 through 268 for certain used oil that is recycled. However, U.S. EPA did not reference this exclusion in the applicability statements of parts 264 and 265. It further did not expressly reference the applicable requirements of new part 279. The corrections add these references to both

applicability sections 264.1(g)(2) and 264(c)(6). The Board has adopted the federal language without revision. We invited public comment on our approach to this Section and received none. We interpret silence as tacit acceptance of our chosen approach.

CAMU and TU Requirements--Sections 724.652 and 724.653

U.S. EPA added 40 CFR 264, subpart S at 58 Fed. Reg. 8683-84 (Feb. 16, 1993). These two new sections, 264.552 and 264.553, set forth the basic requirements for corrective action management units (CAMUs) and temporary units (TUs), respectively. Section 264.552 sets forth the requirements for what can constitute a CAMU, the procedure for designation of a CAMU, the T/S/D standards that continue to apply to a CAMU, and the CAMU-specific groundwater monitoring and closure and post-closure care for a CAMU. Similarly, Section 724.553 sets forth the approval of alternative management requirements for a temporary unit.

Whereas the CAMU provision sets forth general standards for management of the CAMU, the TU provision is somewhat more flexible; it allows the U.S. EPA Regional Administrator to establish "alternative requirements" applicable to the TU. The federal provision sets forth the standard for granting TU status: that the alternative standards "are protective of human health and the environment". It also lists a number of factors for consideration in granting (and extending) TU status. Adapting this provision to the Illinois regulatory scheme presents a challenge.

The Board must codify standards for Agency determination for the TU determination before the Agency can make them by way of permit decision. The Act authorizes the Agency to make all permit decisions, and it reserves in the Board the authority to make variance and adjusted standards determinations. The Agency must act pursuant to standards established by the Board, but it allows the Agency to employ those standards to derive permit limitations. See Granite City Division of National Steel Co. v. PCB (Apr. 15, 1993), 155 Ill. 2d 149, 613 N.E.2d 719. This would mean that in the absence of standards for Agency decisionmaking, the TU determination would be reserved to the Board as a variance or adjusted standard decision. However, infusing these procedures into TU determinations would lose the very quick flexibility U.S. EPA seems to intend in this provision.

It would appear that U.S. EPA intended the TU determination as a permit decision based on the parallel amendments to 40 CFR 270.42, Appendix I, discussed above, in which U.S. EPA designates this a Class 2 permit modification. However, the "protective of human health and the environment" standard is too nebulous. A couple of options are available, and the Board prefers the one that we have codified. On the one hand, we could reserve the determination to the Board, similar to the solid waste

determination and hazardous waste delisting decisions are reserved under 35 Ill. Adm. Code 720.Subpart C. As already mentioned, this could defeat part of the purpose behind the federal provision. On the other hand, the Board could devise a standard for permit issuance, thus, vesting the decision in the Agency. This is the preferred approach taken.

To add the necessary definiteness to the U.S. EPA standard for TU designation, we use the very standards of Parts 724 and 725 from which the alternative requirements are sought. We render the federal language thus (with deviations from the federal language underlined):

For temporary tanks and container storage areas used for treatment or storage of hazardous remediation wastes, during remedial activities required under Section 724.201 or RCRA section 3008(h), the Agency shall establish alternative requirements pursuant to this Section if it determines that a design, operating, or closure standard applicable to such units may be replaced by alternative requirements that is equally as protective of human health and the environment as would be the standards of this Part or of 35 Ill. Adm. Code 725, if applied.

We believe that if this is not what U.S. EPA actually intended, it is at least as stringent as the federal standard. The Board believes that the deviations from the federal base text are acceptable under the Act--especially in light of the federally-enumerated factors for Agency determination in Subsection (c).

We believe that by outlining standards for Agency determination pursuant to Section 39 of the Act, the Board has properly made this a permit decision charged to the Agency, rather than a variance or adjusted standard decision reserved to the Board. We believe this is especially true in light of the fact that the Agency's permit decision is subject to Board review under Section 40 of the Act. Thus, we believe that the Board has adequately addressed the requirements outlined by the supreme court in Granite City Steel.

Aside from the above-described additions to the federal text at Section 724.653(a) and (c), the Board has adopted the federal language of these Sections with minimal deviation. For enhanced clarity in the language, the Board added a subsection heading to Section 724.652(b); reworded the opening of Section 724.652(b)(2); added "factors" to Section 724.652(c); added or omitted punctuation from Sections 724.652(b)(1)(B), (c)(3), (c)(4), (e), (e)(2), and (e)(4)(B) and 724.653(e); used singular pronouns in Section 724.652(b)(1) and (c)(4); substituted "or" for "/" and "standards" for "criteria" at Section 724.652(d); substituted "groundwater" for "ground water" as Section

724.652(e)(3); added the definite article to segments of Sections 724.652(e)(4)(B) and (e)(4)(C) and 724.653(c); substituted "that" for "which" at Sections 724.652(e)(4)(C)(ii) and 724.653(c)(6); and reworded Section 724.653(d).

Since U.S. EPA promulgated the CAMU rules pursuant to HSWA, the federal rules are immediately effective in Illinois. After U.S. EPA has authorized the Illinois CAMU rules, the Illinois rules will become primary. Until then, compliance with the federal (and Illinois) rules is required of facilities in Illinois. For the convenience of the regulated community, the Board has added Board Notes to both Sections 724.652 and 724.653 to indicate the need to obtain federal authorization of a CAMU or TU. We invited comment on our approach to the CAMU rules, especially with regard to our rendering the TU determination an Agency permit decision subject to challenge before the Board. As already discussed, JCAR informally questioned the Board's authority to add to the federal language of the TU rule. We received no additional comments. We interpret silence as tacit acceptance of our chosen approach.

Treatment Standards for Ignitable and Corrosive Wastes--Section 728.109

On May 24, 1993, U.S. EPA amended 40 CFR 268.9, at 58 Fed. Reg. 29885, in response to the remand in Chemical Waste Management v. EPA, 976 F.2d 2 (D.C. Cir. 1992). As discussed above, the Board dealt with these amendments promptly, in docket R93-4. PC 1 highlights the omission of several words from the added federal language. We add the missing words without deviation from the federal text. We invited public comments on the restoration of the missing language and received none. We interpret silence as tacit acceptance of our chosen approach.

Renewal of Case-by-Case Capacity Variance for Hazardous Debris from the Land Disposal Restrictions--Section 728.135

U.S. EPA amended 40 CFR 268.35(e) at 58 Fed. Reg. 28510 (May 14, 1993). By these amendments, U.S. EPA extended for one year, from May 8, 1993 through May 8, 1994, the case-by-case capacity variance for certain hazardous debris originally granted at 57 Fed. Reg. 20766 (May 15, 1992) (involved in R92-10). In extending the variance, U.S. EPA added conditions. These include a "good-faith" requirement that the waste generator attempt to locate treatment capacity for the debris. U.S. EPA required the generators wishing to avail themselves of the variance to have filed a report by the later of August 12, 1993 or 90 days after generation of the waste. U.S. EPA also added a definition of debris.

In adapting the text of the federal amendments to Section 728.135, the Board made only minor modifications. We

repunctuated subsections (e)(1), (e)(2), and (e)(5)(B); added "those two" to subsection (e)(3); and added "or" to subsection (e)(5)(B)(vii) for clarity. As is our usual custom, the Board omitted the past effective date from subsection (e)(3).

On the other hand, the Board found it necessary to retain the federal August 12, 1993 due date, even though it is past and would have the appearance of retroactive application, because this is a HSWA-driven provision. The federal variance amendments became effective in Illinois on May 8, 1993. That means that, effective May 8, 1993, all Illinois facilities wishing to take advantage of the federal variance were to have submitted the necessary documentation by August 12. That means that even though the variance will not become effective until long after August 12, 1993, those wishing to use it must have made the appropriate federal submissions before that date. If the Board were to change this past date, it would render the Illinois regulations less stringent than the federal rules by allowing later submissions of documentation. We invited comments on our codification of the federal case-by-case variance extension, especially on our handling of the August 12, 1993 federal deadline. JCAR informally asked about our retention of the August 12, 1993 date while deleting the May 8, 1993 date. The explanation that, as a matter of federal law, some action was required by the facility owner or operator by the August date in order to qualify for the exemption seemed to satisfy JCAR's concerns. U.S. EPA forwarded a minor correction in PC 3. We interpret the lack of additional comments as to the merits of the chosen approach as tacit acceptance of that approach.

Corrections to the Used Oil Regulations--Part 739

U.S. EPA adopted a multitude of mostly minor corrections and amendments to the used oil recycling regulations at 58 Fed. Reg. 26425-26 (May 3, 1993). U.S. EPA reversed those amendments with regard to four sections at 58 Fed. Reg. 33341 (June 17, 1993). The provisions involved included 40 CFR 279.1, 279.10 through 279.12, 279.21 through 279.23, 279.40, 279.42, 279.45, 279.51, 279.52, 279.54, 279.60, 279.62, 279.64, 279.70, and 279.72 through 279.74. These changes are summarized as follows:

279.1: corrected misspelling in definition of "used oil"

279.10(b)(2): added exclusion of a mixture of used oil and Subpart D listed waste from Part 279, where the mixture still exhibits the characteristic for which it was listed; added exclusion from Part 279 of the above mixtures that do not exhibit the characteristic but which are ignitable

279.10(c): added exclusion of used oil-containing or contaminated materials from which the used oil was drained from Part 279 unless the materials are burned for energy

recovery

- 279.10(e)(4): added exclusion from Part 279 of re-refining distillation bottoms that are used as feedstock in asphalt manufacture
- 279.10(i): added express cross-reference to TSCA requirements for marketers and burners of PCB-contaminated used oils
- 279.11: added express cross-reference to TSCA requirements for PCB-contaminated used oils
- 279.12(c)(3): added RCRA Subtitle C-regulated hazardous waste incinerators to list of facilities that can burn off-specification used oil
- 279.21(a): deleted outright prohibition against mixing used oil with hazardous waste in favor of regulation according to general applicability of Part 279
- 279.22: removed the exclusion of "de minimis"-used oil-contaminated wastewaters from Part 279
- 279.23: deleted reserved subsection and reformatting of section
- 279.40(a)(4): reworded exclusion from regulation for transportation of used oil from household do-it-yourselfers to a regulated facility
- 279.40(d)(4): removed nonsense phrase
- 279.42(a): changed a requirement for notification of activities into a requirement for renotification; U.S. EPA later rescinded the change
- 279.42(b)(1): changed reference to obtaining EPA notification form
- 279.43(b): broadened reference to duty to comply with U.S. DOT requirements
- 279.45: removed the exclusion of "de minimis"-used oil-contaminated wastewaters from Part 279; replaced reference to "generator" with "transporter"
- 279.45(d)(1)(iii): added allowance of equivalent secondary containment systems for containers of used oil at transfer stations
- 279.51(a): changed a requirement for notification of activities into a requirement for renotification; U.S. EPA later rescinded the change

279.52(b)(6)(viii)(C): corrected cross-reference

279.54: removed the exclusion of "de minimis"-used oil-contaminated wastewaters from Part 279; replaced reference to "generator" with "processors/re-refiners"

279.54(a): removed a restriction limiting processing to RCRA Subtitle C-regulated tanks, containers, or units

279.54(c)(1)(iii): added allowance of equivalent secondary containment systems for containers of used oil at processing and re-refining facilities

279.60(b)(1): corrected grammar

279.62(a)(1): added a requirement for renotification to a requirement for notification of activities; U.S. EPA later rescinded the change

279.64: removed the exclusion of "de minimis"-used oil-contaminated wastewaters from Part 279; replaced reference to "generator" with "burners"

279.72(a): removed exclusion from regulation for used oil burned for energy recovery that meets the fuel specifications provision (in which it is still excluded from regulation)

279.73(a): added a requirement for renotification to a requirement for notification of activities; U.S. EPA later rescinded the change

279.74(a): replaced reference to "generator" with "marketer"

The Board has primarily adopted the federal base text with minimal change. The most significant change from the federal text in the proposal for public comment was in the U.S. EPA notification requirements of 40 CFR 279.42(a) and 279.51(a). The Board retained the notification requirement for those who have not yet notified, which U.S. EPA had dropped in its amendments. In both provisions, U.S. EPA would have required those used oil transporters and used oil processors that have notified of their activities to renotify. U.S. EPA had dropped the requirement that those that have not notified must do so. We note that in section 279.62(a), relating to used oil burners, and section 279.73(a), relating to used oil marketers, U.S. EPA retained the initial notification requirement while adding a renotification requirement. We believed that U.S. EPA intended both the initial notification and renotification requirements to apply to used oil transporters and used oil processors, so we retained the initial notification requirements at Sections 739.142(a) and 739.151(a) in the proposal for public comment. The June 17, 1993 federal action reversed this action, restoring the original requirement

relating to notification by those who had not yet notified-- thereby dropping the renotification requirement. The adopted version of the amendments follows this federal lead.

Another, less significant modification is making the federal requirements more consistent by conforming all requirements to the singular case and adding articles in Sections 739.110(b), (c), and (i); 739.142(a); 739.143(b); 739.145; 739.151(a); 739.154; 739.162(a); 739.164; and 739.173(a) and (b). The Board added definite articles to Sections 739.142(b)(1)(B), 739.151(b)(1)(B), 739.152(b)(6)(I), 739.162(b)(2), and 739.173(b)(2). We also subdivided Section 739.152(b)(6)(H) and (b)(6)(I) for greater clarity, replaced a reference erroneously retained in R93-4 to the Regional Administrator with a reference to the Agency, and added "all other" in subsection (b)(6)(H)(iii). Finally, in Section 739.174(a), the Board used "used oil fuel marketer" for greater clarity.

The Board has further made a number of non-substantive stylistic changes in the text. As per our usual practice usage for affirmative requirements, we substituted "shall" for "must" in both the existing and added language of numerous Sections. We similarly used "that" instead of "who", except where the object was clearly a natural person. This meant opening Section 739.141 for the sole purpose of amending the Section heading. As explained above, the Board also rendered references to the federal agency as "U.S. EPA" for enhanced distinction from the Agency (also called EPA or IEPA by the regulated community). We similarly used "U.S. DOT" and U.S. Department of Transportation" in Section 739.143(b). Where we encountered "/" in the text of the federal amendments, we used "or" in Section 739.151(a).

Aside from the above non-substantive revisions, we have restored segments of text that appeared in the proposal for public comment in R93-4 that we erroneously dropped from the adopted rule. The segments of text restored all pertain to the need to obtain and the mechanics of obtaining a U.S. EPA identification number. The need to obtain such a number from U.S. EPA derives directly from Section 3010 of RCRA. (42 U.S.C. § 6930.) The restored segments of text are at Sections 739.124, 739.142, 739.143, 739.146, 739.151, 739.156 through 739.158, 739.162, 739.165, 739.171, 739.173, 739.174.

In the course of adapting the federal rules to the Illinois system in R93-4, the Board considered comments as to whether we should subject used oil transporters to the Illinois special waste transportation provisions. We concluded that we should and added the appropriate references to Illinois special waste identification numbers. In adding these references, we deleted nearly every reference to U.S. EPA identification numbers obtained through RCRA Section 3010 notification without discussion of the deletion. As with all other aspects of state-

administered RCRA Subtitle C regulation, U.S. EPA notification pursuant to Section 3010 is a necessary prerequisite to Subtitle C activities. Therefore, the Board believes that Section 3010 notification is required whenever U.S. EPA requires it, without regard to any ancillary state notifications. We now correct this error in assembling the text of the adopted rules.

In adding references to the Illinois special waste regulations, the Board categorically referred to the "Illinois special waste identification number". We intend to retain this usage, but we wish to explain its intended meaning more fully at this time. The Illinois EPA is authorized to grant permits to special waste haulers and T/S/D facilities. (Sections 21(d), 22.2(1), 22.10 & 22.11 of the Act; see 35 Ill. Adm. Code 807. Subpart B, 809.Subpart B & 812.101.) The Board is aware that the Agency and regulated community refer to the identification numbers issued to transporters as special waste hauler identification or license numbers. Those issued to T/S/D facilities are called "IEPA facility identification numbers", and those issued to generators are called "IEPA generator identification numbers". In using "Illinois special waste identification number", the Board intends each of these meanings, as appropriate in the context.

In correcting the federal notification requirements, we have made additional corrections to the Illinois special waste notification requirements. While it is correct that special waste haulers must notify the Agency pursuant to Part 809, this is not true of processors or re-refiners. We have replaced the reference "pursuant to 35 Ill. Adm. Code 809" with the address and telephone number of the Agency, Division of Land Pollution Control at Section 739.151(b)(2). Similarly, even where there was no such reference with regard to used oil burners and used oil fuel marketers, the Board has added the Agency address at Sections 739.162(c) and 739.173(c). The Board invited public comments on our approach to the used and waste oil regulations, especially with regard to the restoration of the U.S. EPA notification requirements, our handling of the Illinois special waste identification numbers, and our references to Agency special waste notification. The only comments we received were a listing of minor corrections by U.S. EPA in PC 3. We interpret silence as to the substance of our approach as tacit acceptance of that approach.

Revisions of Amendments as Originally Proposed

The differences between the proposed and adopted versions of the amendments are summarized in tabular form as follows (source of changes denoted by superscript, S = Secretary of State, J = JCAR, U = U.S. EPA, and B = Board):

Section/Location^{Source}

Change (Explanation)

702.110 "component" ^B	corrected misspelling in definition of "component"
702.110 "Environmental Protection Agency", "EPA" & "U.S. EPA" ^J	centralized definitions of "EPA" and "U.S. EPA" into single definition of "Environmental Protection Agency"
702.110 "Environmental Protection Act" ^J	corrected ILCS cite
702.110 Board Note (end) ^S	corrected volume number in Federal Register citation
703.App. A (F.1.c., F.4.a., F.4.b., G.1.e., G.5.c., G.5.d., H.5.c., H.5.d., I., J.6.c, J.6.d., L.3., L.4. & L.5.a.) ^B	corrected spacing after periods
703.App. A (F.2.) ^B	added heading not in federal original for clarity
720. Main Source Note ^J	added missing references and citations for prior amendments in R91-1, R91-13, and R92-1
720.110 "boiler", "closed portion", "corrosion expert", "existing hazardous waste management facility", "hazardous waste management unit", "inactive portion", "individual generation site", "Injection well", "landfill cell", "Leak-detection system", "new hazardous waste management facility", "new tank system", "on-site", "Partial closure", "point source", "qualified groundwater scientist" Board Note, "replacement unit", "thermal treatment", "totally enclosed treatment facility", "transport vehicle", "treatability study" & "underground injection" ^B	corrected spacing after period
720.110 "disposal facility" ^S	underlined new language not previously underlined
720.110 "on-site" ^B	improper capitalization cor-

720.110 "USEPA" ^J	rected definition consolidated into definition at "EPA"
721.103(a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(1)(E) & (f) ^B	references to Subparts within the Part corrected to standard format, to conform with R91-13 amendments
721.103(a)(2)(A), (a)(2)(D)(iv), (c)(2)(A), (c)(2)(B)(iii) & (d)(1) ^B	spacing corrected after periods
721.104(a), (a)(1)(B), (a)(2) Board Note, (b), (b)(7), (b)(11), (c), (d)(1), (e)(1), (e)(3), (f), (f)(3) & (f)(7) ^B	spacing corrected after periods
721.104(a)(10) ^B	spelling corrected
721.106(a)(3)(g) ^B	reference to Subpart within the Part corrected to standard format, to conform with R91-13 amendments
724. Table of Contents ^B	headings for Sections 724.119, 724.324 & 724.404 added and headings for Sections 724.322, 724.352, 724.353 & 724.402 amended to correspond to amendments in R92-10
724.101(f) ^S	underlined new language not previously underlined
724.101(g)(2)J	cross-references to above subsections and Part 739 corrected
724.Subpart F ^S	Subpart heading restored
724.351(a)(1), (a)(2), (c)(1)(A)(ii), (c)(2), (c)(3), (c)(3)(E) ^B	spacing after periods corrected
724.351(a)(2)(A)(ii)-(c)(1)(A)(i) ^B	missing text omitted in R93-4 restored
724.652 ^S	"Section" added to heading
724.652(a) ^B	spacing after period corrected

724.652(g) ^S	"of this chapter" reference deleted
724.653 ^S	"Section" added to heading
724.653(a) ^J	"Part" capitalized
725.101(c)(6) ^B	cross-references to above subsections and Part 739 corrected
725.243(i) ^B	subsection designation corrected
725.543(b)(1), (b)(2), (g) & (k) ^B	spacing corrected after periods
725.543(b)(3) & (b)(3)(A) ^B	misspellings corrected to correspond to amendments in R92-10
728. Table of Contents ^B	Sections 728.141, 728.142 & 728.146 headings format changed; Sections 728.Appendix I and 728.Table H added to correspond to amendments in R92-10
728.102 "debris", 728.107(a), (a)(1)(A), (a)(1)(B), (a)(2)(A)(i), (a)(2)(A)(ii), (a)(3)(A), (a)(3)(B), (b)(4)(A), (b)(4)(B), (d)(1)(B) & (d)(3); 728.109(a) & (d)(1)(B); 728.135(a)(1), (a)(2), (a)(3), (b), (c)(1)-(c)(4), (i) & (k); 728.136(a) through (e), (h) & (i); 728.140(a), (b) & (c); 728.141; 728.142(a), (a)(1) & (d); 728.145(a), (b), (c) & (d)(1); 728.150 & 728.Table F(a), (b), (c), A.1.c. & C.3. ^B	stylistic changes to conform text: "his" changed to "its", "must" changed to "shall", parentheses removed from plurals, "EPA" changed to "U.S. EPA", capitalization removed from "hazardous waste number", "-" and longer listings changed to "through", format of cross-references to tables, subsections and to Part 728 corrected, and spacing corrected after periods
728.107(a), (a)(1)(B), (a)(2)(A)(ii), (a)(3)(B), (a)(6)-(a)(10), (b), (b)(7), (c)(1) & (c)(4); 728.109(a) & (d)(1)(B); 728.135(k); 728.140(a); 728.142(a)(3), (b) & (d); 728.Table A (all generally); 728.Table B (all generally) & 728.Table D (all generally) ^B	restored amendments made in R91-13 later omitted from text; conformed format of later-added amendments to R91-13-amended listings (such as using "NA", footnote format, etc.); correct errors in later-added listings (such as cross-references to other tables); corrected federal citations

728.135(e) (5) (B) (i) ^{U,J}	"slage" corrected to "slag"
739.100 "used oil transporter", 739.152(b) (5) Board Note ^B	corrected spacing after periods
739.110(c) ^J	changed to follow federal text; period added
739.124 preamble & Board Note & 739.142(b) (2) ^S	corrected cross-reference format
739.140(d) (5) ^J	"Part" capitalized
739.142(a) , 739.151(a) , 739.162(a) & 739.173(a) ^U	later federal amendments added
739.142(b) (1) (A) & 739.151(b) (1) (A) ^B	phone number corrected
739.142(b) (2) ^B	Agency contact added parallel to Sections 739.151(b) (2) , 739.162(c) & 739.173(c)
739.151(b) (1) ^B	"who" changed to "that"
739.174(a) ^{U,J}	duplicate reference to "used oil" deleted

HISTORY OF RCRA Subtitle C, UST and UIC ADOPTION

The Illinois UIC (Underground Injection Control), RCRA (Resource Conservation and Recovery Act) Subtitle C, and UST (Underground Storage Tank) regulations, together with more stringent state regulations particularly applicable to hazardous waste, include the following Parts of Title 35 of the Illinois Administrative Code:

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

- 729 Landfills: Prohibited Wastes
- 730 UIC Operating Requirements
- 731 Underground Storage Tanks
- 738 Hazardous Waste Injection Restrictions

Special provisions for RCRA Subtitle C cases are included in Parts 102, 103, 104 and 106 of the Board's procedural rules.

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA Subtitle C regulations. U.S. EPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. U.S. EPA granted final authorization of the Illinois RCRA Subtitle C "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). U.S. EPA granted authorization to "Cluster I revisions" to the Illinois program and granted partial Hazardous and Solid Waste Amendments (HSWA) (Pub. L. 98-616, Nov. 8, 1984) authorization effective March 5, 1988, at 53 Fed. Reg. 126 (January 5, 1988). U.S. EPA authorized certain subsequent amendments and granted further partial HSWA authorizations effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), and June 3, 1991, at 56 Fed. Reg. 13595 (April 3, 1991). U.S. EPA codified its approvals of the Illinois program at 40 CFR 272.700 and 272.701 on November 13, 1989, at 54 Fed. Reg. 37649 (Sep. 12, 1989), and on March 31, 1992, at 57 Fed. Reg. 3731 (Jan. 31, 1992). The entire listing of all RCRA Subtitle C identical in substance rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R81-22 45 PCB 317, September 16, 1981 & February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)
- R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)
- R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)
- R84-9 64 PCB 427 & 521, June 13 & 27, 1985; 9 Ill. Reg.

- 11964, August 2, 1985, effective July 8 & 24, 1985. (1/19/83 through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)
- R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)
- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 & 12, 1987. (10/1/86 through 12/31/86)
- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)
- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225,

- April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)
- R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)
- R90-17 Delisting Procedures (See below)
- R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)
- R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)
- R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)
- R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg. 17636, effective November 6, 1992. (7/1/91 through 12/31/91)
- R92-10 138 PCB 549, January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)
- R93-4 September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)
- R93-16 This docket, Propoasl for public comment, December 17, 1993; Notices of Proposed Amendments, 18 Ill. Reg. 337 (Jan. 14, 1994).

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

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

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

This was repealed by R85-22, which included adoption of U.S. EPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted U.S. EPA delistings at the request of Amoco and Envirite (the date of the corresponding federal action is included in parentheses):

R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, May 16, 1986, effective May 2, 1986. (9/13/85)

R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (11/14/86)

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

Subsequently, upon the April 30, 1990 federal authorization of Illinois granting waste delistings, U.S. EPA transferred pending delisting petitions to the Board. The Board docketed these as site-specific rulemaking proceedings (the name of the petitioner waste generator appears in parentheses):

R90-18 Dismissed at 123 PCB 65, June 6, 1991. (USX Corp, South Works)

R90-19 Dismissed at 116 PCB 199, November 8, 1990. (Woodward Governor Co.)

R90-23 Dismissed at 124 PCB 149, July 11, 1991. (Keystone Steel & Wire Co.)

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

R90-17 119 PCB 181, February 28, 1991; 15 Ill. Reg. 7934, effective May 9, 1991.

Waste generators have filed Part 106 adjusted standards petitions for solid waste determinations with the Board pursuant to Section 720.130 (generator name in parentheses):

AS89-4 Dismissed at 105 PCB 269, November 15, 1989. (Safety-Kleen Corp.)

AS89-5 Dismissed at 113 PCB 111, July 3, 1990. (Safety-Kleen Corp.)

AS90-7 Dismissed at 124 PCB 125, July 11, 1991. (Quantum Chemical Co.)

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

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

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

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

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

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

The Board also adopted special procedures to be followed in certain determinations under Part 106. The Board adopted these Part 106 special procedures in R85-22 and amended them in R86-46, listed above.

One Part 106 adjusted standard proceeding filed pursuant to 728.106 sought relief from a prohibition against land disposal (petitioner's name in parentheses):

AS90-6 Dismissed at 136 PCB 93, September 17, 1992. (Marathon Petroleum Co.)

Other adjusted standard proceedings sought delayed closure of land disposal units (petitioners' names in parentheses):

AS90-8 130 PCB 349, February 27, 1992. (Olin Corp.)

AS91-4 131 PCB 43, March 11, 1992. (Amoco Oil Co.)

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

AS91-10 Presently pending. (Cabot Corp.)

In another regulatory proceeding, the Board has considered granting temporary relief from the termination of an exclusion of a hazardous waste listing in the form of an emergency rule (Petitioner's name in parentheses):

R91-11 Dismissed, August 8, 1991. (Big River Zinc Corp.)

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

- R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 14, 1984, effective December 4, 1984.
- R83-28 68 PCB 295, February 26, 1986; 10 Ill. Reg. 4875, March 21, 1986, effective March 7, 1986.
- R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, November 21, 1986, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed by the First District Court of Appeals. (Citizens for a Better Environment v. PCB, 152 Ill. App. 3d 105, 504 N.E.2d 166 (1st Dist. 1987).)

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA Subtitle C docket. U.S. EPA authorized the Illinois UIC program on February 1, 1984, at 49 Fed. Reg. 3991. The entire listing of all UIC rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R81-32 47 PCB 93, May 13, 1982; 6 Ill. Reg. 12479, October 15, 1982, effective February 1, 1984. (7/7/81 through 11/23/81)
- R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17328, December 20, 1983, effective December 19, 1983. (4/1/83)
- R85-23 70 PCB 311 & 71 PCB 108, June 20 & July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 & 29, 1986. (5/11/84 through 11/15/84)
- R86-27 Dismissed at 77 PCB 234, April 16, 1987. (No U.S. EPA amendments through 12/31/86).
- R87-29 85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87)

- R88-2 90 PCB 679, June 30, 1988; 12 Ill. Reg. 13700, August 26, 1988, effective August 16, 1988. (7/1/87 through 12/31/87)
- R88-17 94 PCB 227, December 15, 1988; 13 Ill. Reg. 478, January 13, 1989, effective December 30, 1988. (1/1/88 through 6/30/88)
- R89-2 107 PCB 369, January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11 111 PCB 489, May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5 Dismissed at 109 PCB 627, March 22, 1990. (No U.S. EPA amendments 12/1/89 through 12/31/89)
- R90-14 122 PCB 335, May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991. (1/1/90 through 6/30/90)
- R91-4 Dismissed at 119 PCB 219, February 28, 1991. (No U.S. EPA amendments 9/1/90 through 12/31/90)
- R91-16 Dismissed at 128 PCB 229, December 6, 1991. (No U.S. EPA amendments 1/1/90 through 6/30/91)
- R92-4 Dismissed at 133 PCB 107, April 9, 1992. (No U.S. EPA amendments 7/1/91 through 12/31/91)
- R92-13 February 4, 1993; 17 Ill. Reg. 6190, effective April 5, 1993. (1/1/92 through 6/30/92)
- R93-6 August 5, 1993; 17 Ill. Reg. 15641, effective September 14, 1993. (7/1/92 through 12/31/92)
- R93-17 Dismissed September 23, 1993. (No U.S. EPA amendments 1/1/93 through 6/30/93)

In one proceeding filed, a petitioner seeks an adjusted standard from a UIC land disposal restriction, pursuant to the procedures outlined above with respect to the RCRA Subtitle C program (petitioner name in parentheses):

- R92-8 Presently pending. (Cabot Corp.)

AGENCY OR BOARD ACTION?

Section 7.2(a)(5) of the Act requires the Board to specify which decisions U.S. EPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the

general division of functions within the Act and other Illinois statutes.

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

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

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

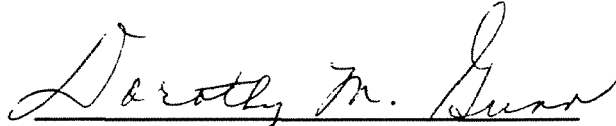
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note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

EDITORIAL CONVENTIONS

As a final note, the federal rules have been edited to establish a uniform usage throughout the Board's regulations. For example, with respect to "shall", "will", and "may" - "shall" is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "Will" is used when the Board obliges itself to do something. "May" is used when choice of a provision is optional. "Or" is used rather than "and/or", and denotes "one or both". "Either"... "or" denotes "one but not both". "And" denotes "both".

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion was adopted on the 17th day of March, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board