

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1993

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R92-10
(1/1/92 - 6/30/92)) (Identical in Substance
) Rules)
)

Post-adoption Corrections.

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

The Board adopted a final opinion and order in this matter on January 21, 1993, which allowed 30 days for the filing of post-adoption comments, especially from the agencies involved in the authorization process. On March 3, 1993, the Board received a comment from USEPA. Pursuant to that comment, the Board will reconsider the January 21, 1993, opinion and order, which will be supplemented as set out below.

As was discussed in the opinion (at p. 3), the Board received this comment informally from USEPA by telephone prior to January 21, 1993. We are not specifically addressing those comments which merely confirm the informal comment as set forth in the prior opinion.

Three items in the comment confirm conclusions reached by the Board in the opinion. USEPA has confirmed that 40 CFR 261.4(b)(13) and (14) [721.104(b)(13) and (14)] are reserved subsections. (Opinion, p. 18.) USEPA has also agreed with the removal of the alternative calculation provision in 40 CFR 264.252 [724.352]. (Opinion, p. 38.) USEPA has also confirmed that the June 13, 1991, stay of certain wood preserving drip pad provisions was in existence as of the date of the proposal, but was terminated on December 24, 1992. As discussed in the final opinion, the Board acknowledged the termination of the USEPA stay, but extended the State stay through completion of R93-4, the next RCRA Update. (Opinion, p. 46.)

USEPA has also referred two of the Board's requests for comment to headquarters. The first concerns the possibility that the USEPA amendments (at 57 Fed. Reg. 3486, January 29, 1992) to 40 CFR 270.21(c) should have been directed to 270.21(d) [703.207(c) and (d)]. (Opinion, p. 11, 12.) The second request appeared in the October 16, 1992, proposed opinion at p. 50:

Existing 40 CFR 265.221(c) [725.321(c)] contains the alternative design and operating practices demonstration... This has apparently been repealed and replaced with new language which is unrelated to the alternative demonstration. The Board has proposed to repeal this language, but solicits comment as to whether this might be an editorial error by USEPA. On

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the one hand, it is possible that USEPA intended to instead replace subsection (b), which contains a notification requirement which may be in conflict with the new language in 40 CFR 265.19(d) [725.119(d)] above. On the other hand, it is possible that USEPA has determined that the alternative should be available for permitted units only. If USEPA intended to retain the language, it has failed to make amendments which would be necessary to accommodate the LDS rules.

The Board made no changes to the rules concerning these possible issues.

The final issue raised by the USEPA comment concerns Section 724.323(c) [264.223(c)]. As adopted by USEPA, this subsection violated Administrative Code Division format requirements in that it had a level of subdivision with no text. The Board therefore had to insert grouping text at the empty level. (Opinion, p. 31.) The text in the January 21, 1993, order read as follows:

- c) To make the leak or remediation determinations in subsections (b)(3), (4) and (5) above, the owner or operator shall:
 - 1) **Either:**
 - A) Assess the source of liquids and amounts of liquids by source;
 - B) Conduct a fingerprint, hazardous constituent or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
 - C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
 - 2) Document why such assessments are not needed.

USEPA has correctly pointed out that, as written, the "either" governs "A, B and C", rather than the "1 or 2". The Board will therefore modify the text to read as follows:¹

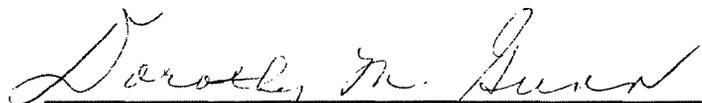
¹ The Board will also make the same modification to identically worded Sections 724.353, 724.404, 725.323, 725.359 and 725.403. (See pages 112, 123, 150, 155 and 161 of the Order)

- c) To make the leak or remediation determinations in subsections (b)(3), (4) and (5) above, the owner or operator shall **either**:
- 1) **Perform the following assessments:**
 - A) Assess the source of liquids and amounts of liquids by source;
 - B) Conduct a fingerprint, hazardous constituent or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
 - C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
 - 2) Document why such assessments are not needed.

This supplemental opinion and order supplements the Board's opinion and order of January 21, 1993. The Board will make the above changes to the text of the rules before they are filed with the Administrative Code Division and published in the Illinois Register.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above supplemental opinion and order was adopted on the 17th day of March, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board