

ILLINOIS POLLUTION CONTROL BOARD
May 23, 1991

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R90-14
(1-1-90 THROUGH 8-31-90)) (Identical in Substance Rules)

FINAL ORDER. ADOPTED RULE.

OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Sections 22.4(a) and 13.(c) of the Environmental Protection Act (Act), the Board effects amendments to the Underground Injection Control (UIC) regulations. Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois, and Section 13(c) governs adoption of the UIC program regulations. Both Sections 22.4(a) and 13(c) provide for quick adoption of regulations which are "identical in substance" to federal regulations. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR).

The federal UIC regulations are found at 40 CFR 144, 146, and 148. This rulemaking updates UIC rules to correspond with federal amendments during the period January 1 through August 31, 1990. The Federal Registers utilized are as follows:

55 Fed. Reg. 22520	June 1, 1990
55 Fed. Reg. 33693	August 17, 1990 (Corrections)
56 Fed. Reg. 3864	January 31, 1991 (Corrections)

The Board divides state UIC and RCRA program updates into their traditional parts, UIC in 35 Ill. Adm. Code 704, 730, and 738 and RCRA in 35 Ill. Adm. Code 703, 705, 720 through 726, and 728, with minimal overlap. The present UIC amendments are limited to 35 Ill. Adm. Code 738.Subpart B.

PUBLIC COMMENTS

The public comment period began upon publication of the Notice of Proposed Amendments in the Illinois Register, at 14 Ill. Reg. 18681, on November 26, 1990, and continued for 45 days from that date, until January 10, 1991. The Board subsequently delayed further action on this rulemaking because certain of the amendments depended on the contemporaneous or prior effectiveness of the amendments involved in R90-11. The Board invited public comment on this rulemaking during the public comment period and received three public comments and a list of Preliminary General Problems and Questions from the Joint Committee on Administrative Rules. The Board highlighted for comment several specific issues relating to this rulemaking in the detailed discussion that

follows.

Public Comment number 1 (PC #1), received December 14, 1990, is from the Department of Commerce and Community Affairs. It is DCCA's Impact Analysis. That analysis concludes that the adopted amendments will have no impact on small businesses, they will not impose new or change existing reporting requirements, and they will not require completion of any forms for submittal to the Agency.

Public Comment number 2 (PC #2), received January 9, 1991, is from the Secretary of State, Administrative Code Division. The Code Division found that the amendments met the codification requirements.

The Agency submitted Public Comment number 3 (PC #3), received January 11, 1991. The Agency made substantive comments on the proposed amendments. The Board will discuss the Agency comments in the appropriate places in the following discussion.

The Board received the Joint Committee's comments on December 13, 1990. The JCAR comments are substantive, so the Board will consider them in the following discussion.

As noted in the detailed discussion, the Board is not entirely clear on some of the public comments submitted. As noted in the following paragraph, the Board will delay filing the adopted rules with the Secretary of State for 30 days. Commenters may use this delay to submit further clarification if the Board has misapprehended their comments.

DELAYED FILING OF ADOPTED AMENDMENTS

After final adoption, the Board will delay filing the adopted amendments for 30 days from the date of the Final Opinion and accompanying Order. This delay is particularly to allow USEPA, the Agency, and the Attorney General to review the amendments in final form before they are filed. This delay is in accordance with the informally agreed procedures for identical in substance rulemakings embodied in "RCRA Pass-Through Rulemaking/- Authorization Revision and Review Process," the title of the agreement between the above entities and the Board, as amended May, 1987.

HISTORY OF RCRA, UST and UIC ADOPTION

The Illinois UIC (Underground Injection Control), RCRA (Resource Conservation and Recovery Act), 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 and UIC Permit Programs
- 703 RCRA Permit Program
- 704 UIC Permit Program
- 705 Procedures for Permit Issuance
- 709 Wastestream Authorizations
- 720 General
- 721 Identification and Listing
- 722 Generator Standards
- 723 Transporter Standards
- 724 Final TSD Standards
- 725 Interim Status TSD Standards
- 726 Specific Wastes and Management Facilities
- 728 USEPA Land Disposal Restrictions
- 729 Landfills: Prohibited Wastes
- 730 UIC Operating Requirements
- 731 Underground Storage Tanks
- 738 Hazardous Waste Injection Restrictions

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

History of RCRA and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA regulations. USEPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. USEPA granted final authorization of the Illinois RCRA "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). USEPA 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). USEPA 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). The entire listing of all RCRA 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)
- R90-10 114 PCB 927, August 30, 1990; 14 Ill. Reg. 16450, October 5, 1990, effective September 25, 1990. (Toxicity Characteristic Leachate Procedure)
- R90-11 April 11, 1991; filing pending. (4/1/90 through 6/30/90)
- R91-1 Proposal for Public Comment, March 28, 1991; 15 Ill. Reg. 5980, April 26, 1991. (7/1/90 through 12/31/90)

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 USEPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted USEPA 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)

Subsequently, upon the April 30, 1990 federal authorization of Illinois granting waste delistings, USEPA 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 (USX Corp, South Works)
- R90-19 Dismissed November 8, 1990. (Woodward Governor Co.)
- R90-23 (Keystone Steel & Wire Co.)

The Board has proposed amendments to the delisting procedures that would set forth the procedural requirements for waste delistings and allow use of the adjusted standard procedures of Part 106 for evaluating the petitions:

- R90-17 February 28, 1991; filing pending.

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 Presently pending. (Quantum Chemical Co.)
- AS91-1 Presently pending. (Keystone Steel & Wire Co.)
- AS91-3 Presently pending. (Peoria Disposal Co.)

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

- AS90-6 Presently pending. (Marathon Petroleum Co.)

Still other adjusted standard proceedings seek delayed closure of land disposal units (petitioners' names in parentheses):

- AS90-8 Presently pending. (Olin Corp.)
- AS91-4 Presently pending. (Amoco Oil Co.)

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 Presently pending. (Big River Zinc Corp.)

The Board has adopted special procedures in Parts 101, 102, and 104 for cases involving the RCRA regulations:

R84-10 62 PCB 87 & 349, December 20, 1984 & January 10, 1985; 9 Ill. Reg. 1383, February 1, 1985, 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.

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).) A decision on permanent rules is pending.

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 docket. USEPA 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. 17338, 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 USEPA 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 USEPA amendments 12/1/89 through 12/31/89)
- R90-14 This Docket; Proposal for Public Comment November 8, 1990; 14 Ill. Reg. 18681, November 26, 1990. (1/1/90 through 8/31/90)
- R91-4 Dismissed on February 28, 1991. (No USEPA amendments 9/1/90 through 12/31/90)

History of UST Rules Adoption

The Board adopted Underground Storage Tank (UST) rules in R86-1 and R86-28, which were also RCRA update Dockets. The Board updated the UST regulations to correspond with USEPA amendments in several dockets. USEPA has not yet authorized the Illinois

UST program. The entire listing of all UST rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- 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)
- R86-28 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)
- R88-27 98 PCB 413, April 27, 1989; 13 Ill. Reg. 9519, June 23, 1989, effective June 12, 1989. (9/23/88)
- R89-4 101 PCB 371, July 27, 1989; 13 Ill. Reg. 15010, September 22, 1989, effective September 12, 1989. (10/26/88)
- R89-10 109 PCB 229, March 1, 1990; 14 Ill. Reg. 153, January 5, 1990, effective April 10, 1990. (10/27/88 through 6/30/89)
- R89-19 110 PCB 465, April 26, 1990; 14 Ill. Reg. 9454, June 15, 1990, effective June 4, 1990. (UST Fund Legislative Mandate)
- R90-3 112 PCB 321, June 7, 1990; 14 Ill. Reg. 11964, July 20, 1990, effective July 10, 1990. (7/1/89 through 12/31/90)
- R90-12 February 28, 1991; 15 Ill. Reg. 6527, May 3, 1991, effective April 22, 1991. (1/1/90 through 6/30/90)
- R91-2 Proposal for Public Comment, February 28, 1991; 15 Ill. Reg. 6424, May 3, 1991. (7/1/90 through 12/31/90)

GENERAL DISCUSSION

The amendments are discussed in detail below. The following generally describes the USEPA actions encompassed by this rulemaking. The complete Federal Register Citations are given above. All dates are 1990.

- June 1 Additional restrictions on underground injection of First, Second and Third Third Wastes.

August 17 Corrections to June 1 restrictions on Third Third Wastes.

One June 1, 1990, USEPA promulgated the restrictions on land disposal of Third Third Scheduled Wastes. That rulemaking included restrictions under both the RCRA and UIC programs. On January 31, 1991, USEPA published a series of corrections to the Third Third prohibitions. The present Board rulemaking deals only with those portions of the federal proceedings that impact the Illinois UIC program. Docket R90-11 will deal with those portions impacting the Illinois RCRA program.

The federal rulemaking primarily completes the list of Third Third Wastes prohibited from underground injection (40 CFR 148.16, corresponding to 35 Ill. Adm. Code 738.116). It also adds First Third Wastes (40 CFR 148.14, corresponding to 35 Ill. Adm. Code 738.114) and Second Third Wastes (40 CFR 148.15, corresponding to 35 Ill. Adm. Code 738.115) and add an exception from the general prohibition against underground injection for certain characteristic wastes (40 CFR 148.1, corresponding to 35 Ill. Adm. Code 738.101). The present rulemaking adopts those recent federal amendments.

Deletion of Federal Effective Dates and Restructuring of Rules

Several of the new federal prohibitions on land disposal, like those upon which the Board has already passed in R89-2 and R89-11, include delayed effective dates that have already lapsed. The Board has deleted those past effective dates from the present amendments, as it has in the prior dockets, while retaining those not yet past. Additionally, in furthering this practice, the Board deleted the past effective dates already adopted in the prior proceedings. In so doing, the Board observed that retention of a regulatory structure completely parallel to that of the federal rules rendered Sections 738.114 through 738.116 somewhat convoluted and potentially confusing. The Board departed from the entirely parallel structure for the sake of greater clarity in its rules. Further, the Board amended the existing rules accordingly.

The federal rules are structured according to effective date within the First Third, Second Third, and Third Third categories. Within the several effective date groups are sub-listings of wastes from Sections 261.31, 261.32, and 261.33 (corresponding to 35 Ill. Adm. Code 721.131, 721.132, and 721.133, respectively). The Board prefers to list the prohibited wastes in groups corresponding to the sections in which the wastes are listed, retaining the First Third, Second Third, and Third Third categories. The Board feels this structure enhances the clarity of the prohibitions for those wastes to which a past effective date applies. This structure is not employed for those federal

paragraphs to which a future effective date applies. Those latter paragraphs appear as distinct subsections in the Board's adopted amendments.

The following table indicates the federal delayed effective dates for the affected paragraphs of the federal rules and the location of those prohibitions in the Board's adopted amendments (¹ denotes newly adopted federal paragraph, ² denotes renumbered federal paragraph, and * denotes past effective date by the earliest possible time of adoption of these amendments):

<u>Federal Paragraph</u>	<u>Effective Date</u>	<u>Found in Board Sections</u>
148.10(c)	* August 8, 1990	Does not appear
148.10(d)	* November 8, 1990	Does not appear
148.14(a)	*June 7, 1989	738.114(a)(1), (a)(2) & (a)(3)
148.14(b)	*June 8, 1989	738.114(a)(2) & (a)(3)
148.14(c)	*July 8, 1989	738.114(a)(1)
148.14(d) ¹	*August 8, 1990	738.114(a)(1), (a)(2) & (a)(3)
148.14(e) ²	*August 8, 1990	738.114(a)(2)
148.14(f) ¹	*November 8, 1990	738.114(a)(1), (a)(2) & (a)(3)
148.14(g) ²	June 7, 1991	738.114(b)
148.14(h) ²	June 8, 1991	738.114(c)(1) & (c)(2)
148.14(i) ¹	May 8, 1992	738.114(d)
148.14(j) ^{1,2}	No Date Recited	738.114(e)
148.15(a)	*June 7, 1989	738.115(a)(2)
148.15(b)	*June 8, 1989	738.115(a)(1), (a)(2) & (a)(3)
148.15(c)	*July 8, 1989	738.115(b)
148.15(d) ¹	*August 8, 1990	738.115(a)(2) & (a)(3)
148.15(e) ²	June 8, 1991	738.115(c)
148.15(f) ¹	*November 8, 1990	738.115(a)(2) & (a)(3)
148.15(g) ^{1,2}	No Date Recited	738.115(d)
148.16(a)	*June 7, 1989	738.116(a)(2)
148.16(b)	*June 8, 1989	738.116(a)(2) & (a)(3)
148.16(c) ¹	*July 8, 1989	738.116(a)(1), (a)(2), (a)(3) & (a)(4)
738.16(d) ¹	*August 8, 1990	738.116(b)
148.16(e) ¹	*November 8, 1990	738.116(a)(1), (a)(2), (a)(3) & (a)(4)
148.16(f) ¹	May 8, 1992	738.116(c)
148.16(g) ^{1,2}	No Date Recited	738.116(d)

Under this scheme of consolidating several waste listings, future effective dates appear as separate subsections, and the wastes with past effective dates that are listed in a single section of Part 721.Subpart D appear in alphanumerical order in a single subsection within the applicable Section of Part 738. For

example, all past-effective First Third wastes listed in Section 721.131 appear in Section 738.114(a)(1), all similar Section 721.132 wastes appear in Section 738.114(a)(2), all past-effective Second Third Section 721.133-listed wastes appear in Section 738.115(a)(3), etc.

The Agency's comments (PC #3) are primarily directed towards the consolidation of the waste listings. The Agency comments that the structure of Subpart B does not match that of 40 CFR 184, Subpart B. The Agency states that it is difficult to determine what waste numbers have been added or deleted. The Agency concedes that proposed 35 Ill. Adm. Code 738.Subpart B is identical in substance to 40 CFR 148, Subpart B, but the Agency would retain the federal structure and recitation of past-effective dates. The Agency states that it was unable to verify the proposed amendments to 35 Ill. Adm. Code 738.110 as deriving from the June 1 or August 17, 1990 Federal Registers. It questioned the listing of hazardous waste number F025 at proposed 35 Ill. Adm. Code 738.116(a)(1). The Agency further commented that it was unable to locate all the effective dates to the Third Third prohibited wastes.

Initially, the Board appreciates the Agency's comments, and the Board can understand that the revised structure can render a parallel reading of the respective state and federal prohibitions more difficult. However, the Board believes that this is an insufficient reason to retain the past-effective dates and somewhat convoluted structure their removal would bring about. Further, the Board amply discussed the nature of each proposed amendment in its Proposed Order of November 8, 1990. The object is to render the rules more useful to the regulated community, not more readily compared to the federal rules. As to the past federal effective dates, the regulated community can refer to the federal rules for those. The prohibitions do not become effective under Illinois law until after they are filed with the Secretary of State. Therefore, the past effective dates are irrelevant under Illinois law, and they can only serve to render the state regulations less readily understandable and more confusing to the regulated community. The Board will proceed to adopt the more streamlined structure without the past dates.

The detailed, Section-by-Section discussion that follows highlights the wastes added by the federal rulemaking in greater detail. It repeats the essence of the discussion contained in the Proposed Opinion of November 8, 1990. It further repeats the questions raised in that Opinion relating to the consolidation of waste listings. This will clearly guide the reader as to the source of each amendment and the nature of each revision to the federal structure. The Board hopes that reading this discussion will more fully address some of the Agency's general concerns. The discussion explicitly addresses the Agency's comments with regard to proposed 35 Ill. Adm. Code 738.110 and 738.116(a)(1).

It also directly addresses JCAR's comments on 35 Ill. Adm. Code 738.114(a)(2) and 738.116(a)(1)¹.

DETAILED DISCUSSION

SUBPART A: GENERAL

Section 738.101 Purpose Scope and Applicability

This Section derives from 40 CFR 148.1. USEPA amended section 148.1 by adding paragraph (d) at 55 Fed. Reg. 22683, June 1, 1990. The new provision allows the continued underground injection of wastes not otherwise prohibited under part 148 that are hazardous only because they exhibit a characteristic of hazardous waste listed in subpart C of part 261. This provision includes the requirements that injection occur at a Class I well, identified at 40 CFR 144.6(a), and the waste must not exhibit any prohibited characteristic of hazardous waste identified in part 261, subpart C at the point of injection.

The Board adopts the federal language with only the minimal revision necessary to incorporate this provision into the state rules. The state counterpart to 40 CFR 144.6(a) is 35 Ill. Adm. Code 730.106(a), and the counterpart to 40 CFR 261, subpart C is 35 Ill. Adm. Code 721.Subpart C. The Board substitutes these references. The Board also updates the Board Note to this Section to the July 1, 1990 edition of the Code of Federal Regulations.

SUBPART B: PROHIBITIONS ON INJECTION

Section 738.110 Waste Specific Prohibitions - Solvent Wastes

This Section derives from 40 CFR 148.10. USEPA amended this provision during the present update period by its corrections of January 31, 1991 to the June 1, 1990 promulgation of the Third Third waste restrictions. Further, the Board amends this Section to eliminate the past effective date of subsection (b).

In the discussion of its January 31, 1991 corrections to Section 148.10, at 56 Fed. Reg. 3864, USEPA explained that it had established treatment standards for four newly-listed F002 and F005 spent solvent constituents. USEPA set forth the four

¹ The Board notes that the Agency directed its comments towards Section 738.116(b)(1), and JCAR directed its comments towards Sections 738.114(b)(2) and 738.116(b)(1). However, the subject matter referred to by both as Section 738.116(b)(1) has been redesignated as Section 738.116(a)(1), and the subject matter of Section 738.114(a)(2) has been moved to Section 738.114(a)(3).

newly-listed constituents at 55 Fed. Reg. 22690, 22694-95 & 22701 for F001 through F005 spent solvents (the subject of companion proceeding R90-11). The discussion states that the correction adds effective dates not included in the original promulgation. The given correction renumbers paragraph (c) as (e) and adds paragraphs (c) and (d). New paragraph (c) prohibits the injection of spent F002 and F002 solvent wastes containing the newly-listed constituents at off-site facilities effective August 8, 1990. New paragraph (e) prohibits the injection of those wastes at on-site facilities effective November 8, 1990.

The Board feels no need to amend Section 738.110 in response to the federal corrections. First, since both federal paragraphs (c) and (d) contain past effective dates, the Board would delete the dates for reasons enunciated elsewhere in this Opinion. Second, the parity of on-site and off-site restrictions results in a single restriction against injection of F002 and F005 wastes containing the newly-listed constituents at all facilities, as also discussed elsewhere. Finally, as discussed below, the Board is amending this Section so that subsection (a) would prohibit all F001 through F005 wastes. This would render redundant the added restriction against injection of certain F002 and F005 wastes. As the following discussion shows, the Board is attempting in this proceeding to eliminate such redundancies in its UIC rules.

The Board believes that Sections 738.110(a)(2) and (b) and a portion of Section 738.110(a)(1) are now redundant, so the Board deletes those provisions. As originally adopted, Section 738.110(a)(1) prohibited the underground injection of spent solvent wastes unless the wastes contained less than one percent of certain waste constituents listed in subsection (a)(2). Subsection (b) prohibits the injection of those spent solvent wastes containing less than one percent of these constituents effective August 8, 1990. Effectively, subsections (a)(1) and (b) now prohibit the injection of all Section 721.131 F001, F002, F003, F004, and F005 spent solvent wastes, regardless of the concentrations of subsection (a)(2) constituents, as of August 8, 1990. The Board believes that Section 738.110 should read simply, paraphrased as follows: underground injection of F001 through F005 spent solvent wastes is prohibited. Therefore, retaining the present structure is less straightforward than eliminating the caveat of subsection (a)(1) and subsections (a)(2) and (b). The Board further renumbers former subsection (c) to subsection (b) and updating the Board Note to refer to the 1990 edition of the Code of Federal Regulations.

The Board believes that the foregoing adequately addresses the Agency's stated concerns over this Section. It indicates the source of the only federal amendment occurring during the update period. It further clearly indicates the source of and reasons for each amendment made by the Board.

Section 738.112 Waste Specific Prohibitions - California List
Wastes

This Section derives from 40 CFR 148.12. USEPA did not amend this provision during the present update period. Rather, the Board amendments eliminate the past effective date of Section (b). This necessitates no further revision to the text of this Section, besides updating the Board Note to refer to the 1990 edition of the Code of Federal Regulations.

Section 738.114 Waste Specific Prohibitions - First Third
Wastes

This Section derives from 40 CFR 148.14. USEPA amended section 148.14 by adding paragraphs (d), (f), and (i); amending paragraph (j); and renumbering paragraphs (d), (e), (f), and (g) to (e), (g), (h), and (j) at 55 Fed. Reg. 22683, June 1, 1990. The new provision, paragraph (d), adds a prohibition against underground injection at off-site facilities of several wastes, effective August 8, 1990. New paragraph (f) prohibits the injection of those same wastes at on-site facilities, effective November 8, 1990. Added paragraph (i) includes prohibitions effective May 8, 1992. The amendment to renumbered paragraph (j) broaden the inapplicability of this section to include paragraphs (a) through (i).

The Board amendments are identical to the federal revisions, with structural changes focused on the deletion of past effective dates and consolidating waste listings for ease of use by the regulated community. Prior to this rulemaking, Board subsection (d) (USEPA renumbered corresponding 40 CFR 148.14(d) to paragraph (e) in the present federal amendments) had an effective date of August 8, 1990. Similarly, new federal paragraph (f) has an effective date of November 8, 1990. The Board eliminates both past dates. On the other hand, prior Board subsections (e) and (f) (whose counterparts USEPA renumbered to paragraphs (g) and (h) in the present federal amendments and which now correspond to subsections (b) and (c) in the Board amendments) still have future effective dates. Similarly, new federal paragraph (i) (corresponding to subsection (d) in the Board's rules) has a future effective date. The Board retains these as yet future effective dates.

Elimination of the immaterial past effective dates leaves the regulatory structure somewhat convoluted and potentially confusing to the regulated community. Underground injection of some 261.31-listed wastes is presently prohibited by 40 CFR 148.14(a), (c), (d), and (f); underground injection of some 261.32-listed wastes is presently prohibited by 40 CFR 148.14(a), (b), (d), and (f); and underground injection of some 261.33-listed wastes is presently prohibited by 40 CFR 148.14(b), (d),

and (f). Further, one form or mode of disposal of a waste is prohibited by one federal paragraph while either all other forms or modes of disposal are prohibited by another. For example, section 148.14(a) prohibits injection of F006 nonwastewaters, section 148.14(d) prohibits injection of F006 wastewaters at off-site facilities, and 148.14(f) prohibits injection of F006 wastewaters at on-site facilities. The Board would prefer a more cohesive structure that includes a single prohibition for all forms and modes of disposal of a waste in a single location. (For this example the Board adopts a single prohibition for F006 wastewaters and non wastewaters at subsection (a)(1), without reference to whether it is disposed on-site or off-site.) Further, the Board would prefer that a single subsection set forth all the listed wastes from each of the Sections 721.131, 721.132, and 721.133 lists. Therefore, the Board amendments deviate structurally from the federal regulations.

Under the Board's adopted amendments rules, subsection (a)(1) sets forth all the Section 721.131-listed prohibited wastes, subsection (a)(2) sets forth all the Section 721.132-listed prohibited wastes, and subsection (a)(3) sets forth all the Section 721.133-listed prohibited wastes with past effective dates. The Board eliminates distinctions as to on-site and off-site disposal because both modes are presently prohibited under the federal rules. However, the Board retains the separate listings by effective date for those wastes prohibited at a future time. Therefore, subsection (b) (corresponding to federal paragraph (g)) includes a single Section 721.132-listed waste for which a prohibition becomes effective on June 7, 1991; subsection (c) (corresponding to federal paragraph (f)) includes in two subsections Section 721.131- and 721.132-listed wastes prohibited effective June 8, 1991, and subsection (d) (corresponding to federal paragraph (i)) includes Section 721.132-listed wastes for which prohibitions become effective on May 8, 1992.

Where one prohibition was for the wastewater form of a waste, and another prohibition related to the nonwastewater form of the waste, the Board incorporates a single prohibition on the wastewater and nonwastewater forms. This is true for F006, K015, K022, and K061 wastes. Similarly, the prior rule prohibited injection of certain K101 and K102 wastes: "all wastewaters and less than one percent total arsenic nonwastewaters." The federal amendments, at paragraph (d) prohibit injection of the "high arsenic nonwastewaters." The Board interprets this as requiring a combined prohibition on all K101 and K102 wastewaters and nonwastewaters. The Board has retained the "wastewaters and nonwastewaters" language for clarity, although it is possible that USEPA intended all forms of the individual listed wastes and the Board could have also dropped the added language as superfluous.

For K021, K036, and K060 wastes, 40 CFR 148.14(a) prohibited injection of "nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not those generated in the course of treating wastewater forms of these wastes." New federal paragraph (d) includes prohibitions on K021 and K060 wastewaters, and existing paragraph (b) includes a prohibition for K036 wastewaters. As to the existing past August 17, 1988 disposal effective date noted in each of these prohibitions (the effective date of the federal First Third rule), the Board believes that retention of this date is no longer necessary: it is unlikely that any quantities of these wastes disposed prior to that date still reside in Illinois so they could still be injected. As to the limiting language, "generated by the process described in the waste listing description . . . , and not those generated in the course of treating wastewater forms of these wastes," the Board believes that this could potentially have the effect of excluding some forms of hazardous wastes from the prohibitions, such as wastes generated in the course of treating wastes generated by the described process or, as explicitly stated, those generated in the course of treating wastewater forms of the wastes. See 35 Ill. Adm. Code 721.103(c)(2); 55 Fed. Reg. 22537 (June 1, 1990). For these reasons, the Board will eliminate the "August 17, 1988" and retain the "generated by" language from these restrictions.

The situation is similar for K069 wastes. Section 738.114(a)(2) formerly prohibited "noncalcium sulfate K069 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not those generated in the course of treating wastewater forms of these wastes)." 40 CFR 148.14(d) would now add calcium sulfate nonwastewaters and all wastewaters. The Board will combine all three categories of K069 wastes into a single listing, retaining the "generated by" language for noncalcium sulfate nonwastewaters, but deleting the August 17, 1988 date. The Board will insert semicolons between each type of K069 waste intended to avoid confusion as to the effect of the final "and not" clause, which applies only to the third type of waste.

Finally, for K046 wastes, existing Section 738.114(a)(2) prohibits the underground injection of K046 nonexplosive nonwastewaters, and 40 CFR 148.14(d) now prohibits K046 reactive nonwastewaters and all wastewaters. "Reactive" is intended by USEPA in the sense meant by Section 721.123, see 55 Fed. Reg. 22593 (June 1, 1990) & 54 Fed. Reg. 25419-20 (June 14, 1989), which includes "explosive." See 35 Ill. Reg. 721.123. Therefore, the Board interprets the combination of "nonexplosive nonwastewaters" and "reactive nonwastewaters" as including all wastewater forms of the waste. The Board will scribe this listing as "wastewaters and nonwastewaters," intending it to include all wastewater and all nonwastewater forms of this waste.

The Board also makes a small number of editorial revisions to the federal base text and the prior text of the rule. The Board adds the word "underground" before "injection" wherever it appears, although USEPA omitted it from new 40 CFR 148.14(d). New 40 CFR 148.14(i) refers to "the wastes specified in 40 CFR 261.32 and 261.33 as EPA Hazardous Waste Numbers K011 . . . , K013 . . . , and K014" Only 40 CFR 261.32 (corresponding with 35 Ill. Adm. Code 721.132) specifies those wastes. The Board therefore does not add a reference to Section 721.133 (corresponding with 40 CFR 261.33).

This restructuring raises issues for which the Board sought public comment. The Board requested comment as to each of the revisions it has made in consolidating the waste listings and incorporating the federal prohibitions.

In the November 8, 1990 Proposed Opinion, the Board noted that it would render "The wastes" as plural at subsection (b)(2). The comment from the Joint Committee points out that at 35 Ill. Adm. Code 738.114(b)(2) the Board had left it in the singular form. However, the Board actually deleted former subsection (b)(2) in favor of incorporating the wastes listed into the newly-consolidated listing of subsection (a)(3). Newly-designated subsection (b) (formerly subsection (e)) does not include a subsection (b)(2). The Board erred in discussing the change to the plural form.

In addition to the changes in the format of the new prohibitions identical in substance to those adopted June 1, 1990 by USEPA, making the editorial revisions of the federal text, and making the structural changes described above, the Board further updates the Board Note to refer to the 1990 Code of Federal Regulations and makes one correction. In R89-11, at subsection (e), the Board adopted a June 7, 1991 prohibition on "K016 (at concentrations greater than one percent)." This should have appeared as "less than one percent," like it appeared in 40 CFR 148.14(e) (now paragraph (g)). The Board corrects this error. The Board invited comment on the editorial revisions it proposed to the federal language.

Section 738.115 Waste Specific Prohibitions - Second Third Wastes

This Section derives from 40 CFR 148.15. USEPA amended section 148.15 by adding paragraphs (d) and (f); amending paragraph (g); and renumbering paragraphs (d) and (e) to (e) and (g) at 55 Fed. Reg. 22683, June 1, 1990. The new provision, paragraph (d), adds a prohibition against underground injection at off-site facilities of several wastes, effective August 8, 1990. New paragraph (f) prohibits the injection of those same wastes at on-site facilities, effective November 8, 1990. The

amendment to renumbered paragraph (g) broaden the inapplicability of this section to include paragraphs (a) through (f).

The Board amendments are identical to the federal revisions, with structural changes focused on the deletion of past effective dates and consolidating waste listings for ease of use by the regulated community, very similar to the revisions to Section 738.114. New federal paragraph (f) has an effective date of November 8, 1990. The Board eliminates this past date. On the other hand, prior Board subsection (d) (whose counterpart USEPA renumbered to paragraph (e) in the present federal amendments and which now corresponds to subsection (c) in the Board amendments) still has a future effective date. The Board retains this as yet future effective date.

As with Section 738.114, elimination of the immaterial past effective dates, in this and the R89-2 and R89-11 proceedings, leaves the regulatory structure somewhat convoluted and potentially confusing to the regulated community. Underground injection of 261.31-listed wastes is presently prohibited by 40 CFR 148.15(b); underground injection of some 261.32-listed wastes is presently prohibited by 40 CFR 148.15(a), (b), (d), and (f); and underground injection of some 261.33-listed wastes is presently prohibited by 40 CFR 148.15(b), (d), and (f). Further, one form or mode of disposal of a waste is prohibited by one federal paragraph while either all other forms or modes of disposal are prohibited by another. For example, section 148.15(b) prohibits injection of K029 nonwastewaters, section 148.15(d) prohibits injection of K029 wastewaters at off-site facilities, and 148.15(f) prohibits injection of K029 wastewaters at on-site facilities. As for Section 738.114, the Board would prefer a more cohesive structure that includes a single prohibition for all forms and modes of disposal of a waste in a single location. (For this example the Board adopts a single prohibition for K029 wastewaters and non wastewaters at subsection (a)(2), without reference to whether it is disposed on-site or off-site.) Further, the Board would prefer that a single subsection set forth all the listed wastes from each of the Sections 721.131, 721.132, and 721.133 lists. Therefore, the Board amendments deviate structurally from the federal regulations.

Under the Board's rules, subsection (a)(1) sets forth all the Section 721.131-listed prohibited wastes, subsection (a)(2) sets forth all the Section 721.132-listed prohibited wastes, and subsection (a)(3) sets forth all the Section 721.133-listed prohibited wastes with past effective dates. The Board eliminates distinctions as to on-site and off-site disposal because both modes are presently prohibited under the federal rules. However, the Board retains the separate listing by effective date for those wastes prohibited at a future time. Therefore, subsection (c) (corresponding to federal paragraph

(e)) includes a single Section 721.132-listed waste for which a prohibition becomes effective on June 8, 1991. The Board also retains a separate listing for the 721.131-listed wastes for which there is reference to a Part 728 treatment standard in subsection (b) (formerly subsection (c)), as it presently appears at 40 CFR 148.15(c).

Where one prohibition was for the wastewater form of a waste, and another prohibition related to the nonwastewater form of the waste, the Board incorporates a single prohibition on the wastewater and nonwastewater forms. This is true for K029, K095, and K096 wastes. The Board has retained the "wastewaters and nonwastewaters" language for clarity, although it is possible that USEPA intended all forms of the individual listed wastes and the Board could have also dropped the added language as superfluous.

For K025 wastes, 40 CFR 148.15(a) prohibited injection of "nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not those generated in the course of treating wastewater forms of these wastes." New federal paragraph (d) includes prohibitions on K025 wastewaters. As to the existing past August 17, 1988 disposal effective date noted in this prohibition (the effective date of the federal First Third rule), the Board believes that retention of this date is no longer necessary: it is unlikely that any quantities of these wastes disposed prior to that date still reside in Illinois so they could still be injected. As to the limiting language, "generated by the process described in the waste listing description . . . , and not those generated in the course of treating wastewater forms of these wastes," the Board believes that this could potentially have the effect of excluding some forms of hazardous wastes from the prohibitions, such as wastes generated in the course of treating wastes generated by the described process or, as explicitly stated, those generated in the course of treating wastewater forms of the wastes. See 35 Ill. Adm. Code 721.103(c)(2); 55 Fed. Reg. 22537 (June 1, 1990). For these reasons, the Board will eliminate the "August 17, 1988" and retain the "generated by" language from these restrictions.

This restructuring raised issues for which the Board sought public comment. The Board requested comment as to each of the revisions it made in consolidating the waste listings and incorporating the federal prohibitions.

In addition to the changes in the format of the new prohibitions identical in substance to those adopted June 1, 1990 by USEPA and making the structural changes described above, the Board further updates the Board Note to refer to the 1990 Code of Federal Regulations.

Section 738.116 Waste Specific Prohibitions - Third Third Wastes

This Section derives from 40 CFR 148.16. USEPA amended section 148.16 by adding paragraphs (c), (d), (e), and (f); amending paragraph (g); and renumbering paragraph (c) to (g) at 55 Fed. Reg. 22683, June 1, 1990. USEPA corrected paragraphs (c) and (f) at 55 Fed. Reg. 33694, August 17, 1990, and corrected paragraph (c) at 56 Fed. Reg. 3876, January 31, 1991. The new provision, paragraph (c), adds a prohibition against underground injection at off-site facilities of several wastes, effective August 8, 1990. New paragraph (e) prohibits the injection of those same wastes at on-site facilities, effective November 8, 1990. New paragraph (d) prohibits the injection of certain mixed radioactive and hazardous wastes, effective August 8, 1990. New paragraph (f) prohibits the injection of 40 CFR 261.22, 261.23, or 261.24 (corresponding with 35 Ill. Adm. Code 721.122, 721.123, and 721.124) characteristic wastes, effective May 8, 1992. The amendment to renumbered paragraph (g) broaden the inapplicability of this section to include paragraphs (a) through (f).

The Board amendments are identical to the federal revisions, with structural changes focused on the deletion of past effective dates and consolidating waste listings for ease of use by the regulated community, very similar to the revisions to Sections 738.114 and 738.115. New federal paragraph (d) has an effective date of August 8, 1990. New federal paragraph (e) has an effective date of November 8, 1990. The Board eliminates these past dates. On the other hand, new USEPA paragraph (f) corresponding to subsection (c) in the Board amendments) still has a future effective date. The Board retains this as yet future effective date.

Associated with the elimination of the past effective dates is the elimination of the caveat at the end of new 40 CFR 148.16(e). That paragraph, reciting a prohibition effective November 8, 1990, clarifies that this provision does not effect wastes prohibited under 40 CFR 148.12(b), for which the effective date is August 8, 1990. Since both are past effective dates are past, the Board eliminates the caveat entirely. However, the Board retains a similar caveat in part. New 40 CFR 148.16(f), effective May 8, 1992, states that its effective date does not apply to wastes prohibited by 40 CFR 148.12(b), effective August 8, 1990. The Board eliminates the August 8, 1990 date and renders this caveat as subsection (c)(3) as follows:

- 3) The effective date of subsections (c)(1) and (c)(2) do not apply to the wastes listed in Section 148.112(b) which are prohibited from underground injection.

As with Sections 738.114 and 738.115, elimination of the immaterial past effective dates, in this and the R89-2 and R89-11 proceedings, leaves the regulatory structure somewhat convoluted and potentially confusing to the regulated community. Underground injection of 261.31-listed wastes is presently prohibited by 40 CFR 148.16(c); underground injection of some 261.32-listed wastes is presently prohibited by 40 CFR 148.16(a), (b), (c), and (e); underground injection of some 261.33-listed wastes is presently prohibited by 40 CFR 148.16(b), (c), and (e); and underground injection of some 261.21- and 261.24-listed wastes is presently prohibited by 40 CFR 148.16(c). Further, one form or mode of disposal of a waste is prohibited by one federal paragraph while either all other forms or modes of disposal are prohibited by another. For example, section 148.16(b) prohibits injection of K005 and K007 nonwastewaters, section 148.16(c) prohibits injection of K005 and K007 wastewaters at off-site facilities, and 148.16(e) prohibits injection of K005 and K007 wastewaters at on-site facilities. As another example, section 148.16(a) prohibits injection of certain K100 nonwastewaters, and new section 148.16(c) simply prohibits injection of K100 wastes. As for Sections 738.114 and 738.115, the Board would prefer a more cohesive structure that includes a single prohibition for all forms and modes of disposal of a waste in a single location. (For these examples the Board adopts single prohibitions for K005 and K007 wastewaters and non wastewaters and K100 wastes at subsection (a)(2), without reference to whether it is disposed on-site or off-site.) Further, the Board would prefer that a single subsection set forth all the listed wastes from each of the Sections 721.131, 721.132, and 721.133 lists. Therefore, the Board amendments deviate structurally from the federal regulations.

Under the Board's rules, subsection (a)(1) sets forth all the Section 721.131-listed prohibited wastes, subsection (a)(2) sets forth all the Section 721.132-listed prohibited wastes, subsection (a)(3) sets forth all the Section 721.133-listed prohibited wastes, and subsection (a)(4) sets forth all the Section 721.121 and 721.124 characteristic prohibited wastes with past effective dates. The Board eliminates distinctions as to on-site and off-site disposal because both modes are presently prohibited under the federal rules. However, the Board retains the separate listing by effective date for those wastes prohibited at a future time. Therefore, subsection (c) (corresponding to federal paragraph (f)) includes the single Section 721.122, 721.123, and 721.124 characteristic wastes for which prohibitions become effective on May 8, 1992.

Where one prohibition was for the wastewater form of a waste, and another prohibition related to the nonwastewater form of the waste, the Board incorporates a single prohibition on the wastewater and nonwastewater forms. This is true for K005 and K007 wastes. The Board has retained the "wastewaters and

nonwastewaters" language for clarity, although it is possible that USEPA intended all forms of the individual listed wastes and the Board could have also dropped the added language as superfluous.

For K100 wastes, 40 CFR 148.16(a) prohibited injection of "nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not those generated in the course of treating wastewater forms of these wastes." New federal paragraph (c) includes a prohibition on K100. The Board believes that USEPA now intends a total prohibition on injection of this waste, so it incorporates a blanket prohibition at subsection (a)(2).

The Board needs not effect an amendment in response to the USEPA correction of January 31, 1991. USEPA stated that it had inadvertently included waste codes U087 and U139 in the Third Third promulgation. USEPA listed U087 in the Second Third final rule at 54 Fed. Reg. 26647, June 23, 1989. It dropped U139 from the hazardous waste listings at 53 Fed. Reg. 43881, October 31, 1988. Because USEPA lists U087 at 40 CFR 148.16(b)(2) and the Board now consolidates all the waste listings with past effective dates, and because the Board has not yet listed hazardous waste number U139, no amendment is necessary.

This restructuring raised issues for which the Board sought public comment. The Board requested comment as to each of the revisions it made in consolidating the waste listings and incorporating the federal prohibitions. JCAR and the Agency (PC #3) submitted comments on this matter. The Agency questioned listing hazardous waste number F025 together with F039 wastes at subsection (a)(1). JCAR requested Board comment as to where F025 appears in the Code of Federal Regulations or Federal Register. The Board simultaneously addresses both concerns.

USEPA promulgated the Third Third waste restrictions on June 1, 1990. In the discussion, at 55 Fed. Reg. 22639 and 22647, USEPA stated that it had revised the listing for F025 wastes on December 11, 1989, at 54 Fed. Reg. 56988, effective June 11, 1990. USEPA was imposing a land disposal restriction for this newly-listed waste based on incineration, effective August 8, 1990. However, USEPA neglected to include the restriction in the June 1, 1990 rulemaking. Rather, USEPA published a correction on August 17, 1990, at 55 Fed. Reg. 33693, effective May 8, 1990, that included, at 40 CFR 148.16(c), the F025 August 8, 1990 off-site restriction as "newly listed waste F025," inadvertently omitted from the June 1 rules. See 55 Fed. Reg. 33694. Actually, the F025 listing was newly-incorporated in that rulemaking, see R90-2, 113 PCB 131 (July 3, 1990); 14 Ill. Reg. 14401 (Sept. 7, 1990), effective August 22, 1990. Thus, the intent of USEPA was to include all F025 wastes in the Third Third restrictions, and its status as "newly-listed" is irrelevant for

the Board's purposes. Further, the June 1, 1990 rules had already prohibited on-site injection of all "paragraph (c)" wastes, effective November 8, 1990, so after that date the federal rules prohibited injection of all F025 wastes.

In keeping with the Board's inclination to delete all superfluous dates and duplicative and confusing entries from the UIC rules, there is no reason to keep the designation "newly listed" or the past-effective dates. In light of this and the foregoing discussion, the Board cannot understand the Agency's observation as to F025 wastes. As mentioned, the federal rules now restrict injection of all F025 wastes. The prohibition for off-site became effective on August 8, 1990, and the on-site prohibition became effective on November 8, 1990. There are no other F025 wastes of which the Board is aware, and the Board cannot find any significance to a August 8, 1993 date in the federal rules. See 55 Fed. Reg. 22683 (June 1, 1990); 55 Fed. Reg. 33694 (Aug. 17, 1990); 56 Fed. Reg. 3876 (Jan. 31, 1991); see also 55 Fed. Reg. 22716 & 22719 (June 1, 1990) (40 CFR 261 App. VII & VIII: comprehensive listings of effective dates for land disposal restrictions and national capacity LDR variances). Therefore, the Board cannot provide the further clarification requested by the Agency.

The Board also made a small number of editorial revisions to the federal base text and the prior text of the rule. At subsection (a)(4), derived from part of 40 CFR 148.16(c), and subsections (c)(1) and (c)(2), derived from new federal paragraph (f), the Board renders the language as "wastes specified in . . ." for cohesiveness with the rest of the rules. At subsection (b), derived from 40 CFR 148.16(d), the Board renders "The wastes" now as plural. New 40 CFR 148.14(f) (rendered in pertinent part by the Board as 35 Ill. Adm. Code 738.116(a)(4)) refers to "the wastes identified in 40 CFR 261.21, 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D001, D004, D005, D006, D008, D009 . . . , D010, D011, D012, D013, D014, D015, D016, D017 . . ." 40 CFR 261.21 (corresponding to 35 Ill. Adm. Code 721.121) designates EPA Hazardous Waste Number D001. 40 CFR 261.24 (corresponding to 35 Ill. Adm. Code 721.121) designates EPA Hazardous Waste Numbers D004 through D017. 40 CFR 261.23 (corresponding to 35 Ill. Adm. Code 721.123) designates EPA Hazardous Waste Number D003, which is not listed in this paragraph. The Board therefore does not add a reference to Section 721.123 (corresponding with 40 CFR 261.23). The Board invited comment on the editorial revisions it made to the federal language.

In addition to the changes in the format of the new prohibitions identical in substance to those adopted June 1, 1990 by USEPA, the editorial revisions outlined, and making the structural changes described above, the Board further updates the Board Note to refer to the 1990 Code of Federal Regulations.

PART 728
LAND DISPOSAL RESTRICTIONS

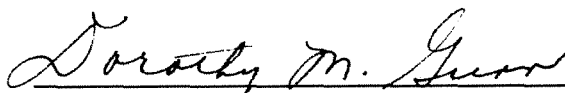
USEPA amended 40 CFR 268, corresponding to 35 Ill. Adm. Code 728, at 55 Fed. Reg. 728, June 1, 1990, by adding a new Appendix VIII. That table is a comprehensive listing of the national capacity land disposal restrictions variances granted by USEPA for underground injection of certain wastes. See 55 Fed. Reg. 22645-49 (June 1, 1990). This appendix, in the form of a table, lists the effective dates for the restrictions on underground injection by Hazardous Waste Number. This table merely restates the effective dates for the various paragraphs of 40 CFR 148, Subpart B (corresponding with 35 Ill. Adm. Code 738.Subpart B). As noted at the end of the appendix, "This table is provided for the convenience of the reader." The appendix does not effect any substantive requirement. It also lists the numerous past effective dates.

The Board did not adopt a counterpart to new 40 CFR 148, Appendix VIII. The appendix has no substantive or procedural effect. It merely restates in summary form the effective dates of various of the land disposal restrictions on underground injection. Those dates not yet past appear in 35 Ill. Adm. Code 728.Subpart B. As observed in the preceding discussions, the Board is in the habit of deleting past effective dates. Board adoption of this table would not add to the already voluminous underground injection control and land disposal regulations in any way.

The Board invited comment on its decision not to adopt a counterpart to 40 CFR 268, Appendix VIII. Specifically, for those commenters feeling that the Board should adopt such a counterpart, should that appear in Part 728 or 738? Should the Board delete the past effective dates if it did adopt a counterpart?

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion of the Board was adopted on the 23rd day of May, 1991, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board