

ILLINOIS POLLUTION CONTROL BOARD  
October 6, 1988

IN THE MATTER OF: )  
 )  
UIC UPDATE, USEPA REGULATIONS ) R88-17  
(1-1-88 THROUGH 7-31-88) ) (R88-16)  
AND CORRECTION )

PROPOSAL FOR PUBLIC COMMENT

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

On September 8, 1988, the Board dismissed this Docket after determining that there were no amendments to the USEPA UIC rules during the period January 1 through June 30, 1988. However, on September 21, 1988 USI Division of Quantum Chemical Corporation (USI) and Cabot Corporation (Cabot) filed in R88-16 a motion requesting amendment of 35 Ill. Adm. Code 704. The Board construes this as a motion to reconsider the September 8 Order in this Docket, and, as such, grants it. To avoid confusion, a copy of this Opinion and Order will also be filed in R88-16. The September 8 dismissal Order is vacated, and the Board has proposed amendments to Part 704, as is discussed below.

Section 13 of the Act governs adoption of regulations establishing the UIC program in Illinois. Section 13(c) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 13(c) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. The federal UIC regulations are found at 40 CFR 144 and 146.

HISTORY OF RCRA and UIC ADOPTION

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

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

731            Underground Storage Tanks

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

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

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

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

Illinois received Phase I interim authorization on May 17, 1982 (47 Fed. Reg. 21043).

The UIC regulations were adopted as follows:

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

The UIC regulations were amended in R82-18, which is referenced above. The UIC regulations were also amended in R83-39:

R83-39      55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983.

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

R85-23      June 19, 1986; 10 Ill. Reg. 13274, August 8, 1986.

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

R87-29      January 21, 1987; 12 Ill. Reg. 6673, April 8, 1988; (1/1/87 through 6/30/87)

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

R88-17      This docket.

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

R82-19      53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.

R83-24      55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984.

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

The Board updated the RCRA regulations to correspond with USEPA

amendments in several dockets. The period of the USEPA regulations covered by the update is indicated in parentheses:

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985. (through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986. (4/25/84 -- 6/30/85)
- R86-1 July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)
- R86-19 October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 3/31/86)
- R86-28 February 5 and March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)
- R86-46 July 16, 1987; August 14, 1987; 11 Ill. Reg. 13435. (7/1/86 -- 9/30/86)
- R87-5 October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987. (10/1/86 -- 12/31/86)
- R87-26 December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988. (1/1/87 -- 6/30/87)
- R87-32 Correction to R86-1; September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987.
- R87-39 Adopted June 14, 1988; 12 Ill. Reg. 12999, August 12, 1988. (7/1/87 -- 12/31/87)
- R88-16 Current RCRA Docket. Proposed September 8, 1988 (1/1/88 -- 7/31/88)

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

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

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

This was effectively repealed by R85-22, which included adoption of USEPA's dioxin listings. The Board has adopted two USEPA delistings at the request of Amoco and Envirite:

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

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

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

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

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

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

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

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

The Board's action in adopting emergency regulations in R86-9 was reversed (CBE and IEPA v. IPCB et al., First District, January 26, 1987). Hearings on permanent rules are pending.

#### MOTION TO CONFORM

As noted above, there were no USEPA amendments to 40 CFR 144 or 146 during the current update period (1/1/88 through 6/30/88). The amendments proposed in this Docket address only the problems noted by USI and Cabot in their motion to conform 35 Ill. Adm. Code 704.143(d). In the past the Board has corrected the type of error alleged in the motion either with the current update Docket, or by opening a special Docket, as was the case in R87-32. The choice depends on whether the correction can be made in a reasonably prompt manner without delaying the update. Addressing a UIC correction in a RCRA update Docket, as requested by the motion, is a third possibility. However, the Board did not address this in the current RCRA update, R88-16, since the proposal had already been sent to the Illinois Register for publication. Adding this proposal to R88-16 would have caused at least a four week delay in R88-16. The quickest approach was to deem the motion one to reconsider dismissal of the instant UIC Docket.

The motion alleges that the UIC rules were adopted without the benefit of notice and comment procedures. This is false. As is detailed above, the Board has provided public notice and the opportunity for public comment at every stage of adoption and amendment of the UIC rules.

The motion alleges that 35 Ill. Adm. Code 704.143(d) is not identical in substance with the 1987 edition of 40 CFR 144.21(a). While the former contains a provision that authorizations by rule for Class I and III wells expire on February 2, 1989, regardless of whether a permit application is on file, the latter allows permits by rule to continue indefinitely while an application is pending. The Board agrees, although the problem is worse than

indicated in the motion.

35 Ill. Adm. Code 704.143 was adopted in R81-32. (Complete references to Opinions and Illinois Register versions for these Dockets are in the History above.) It was based on 40 CFR 122.37 (1981). At that time the UIC rules were a portion of USEPA's "consolidated" permit rules, which were very confusing and disorganized. 40 CFR 122.37(a)(1) (1981) provided that:

Injection into existing Class I ... and III wells may be authorized by rule for periods up to 5 years from the date of approval or promulgation of the UIC program. All such wells must be issued permits within the five year period.

40 CFR 122.37(a)(1)(i)(A) and (B) required that State rules specify that authorization to inject expire either upon the effective date of a UIC permit, or upon failure to file a timely permit application. 40 CFR 122.37(a)(1)(i)(C) (1981) required that State rules specify that authorization to inject expires:

Unless a complete permit application is pending, not later than five years after approval or promulgation of the UIC program.

40 CFR 122.37 was a USEPA rule which prescribed the contents of state rules without setting forth the text of the rule the state was to adopt. Section 13(c) of the Act required the Board to fashion a rule within the parameters of 40 CFR 122.37. The Board's authority to write rules in this situation was ratified by the adoption of P.A. 85-1048 (S.B. 1834) on July 14, 1988.

The Board responded to the USEPA directive by adopting 35 Ill. Adm. Code 704.141 and 704.143. Section 704.141 authorized injection into existing Class I and III wells, and Section 704.143 set forth the conditions under which authorization expired. Section 704.143 included the three conditions drawn from 40 CFR 122.37(a)(1)(i), as well as three other conditions drawn from other portions of the USEPA rules. The most important other condition was the five year limit on authorizations by rule drawn from 40 CFR 122.37(a)(1). This was placed in 35 Ill. Adm. Code 704.143(e), with the related provision of 40 CFR 122.37(a)(1)(i)(C), which is quoted above. As originally adopted, 35 Ill. Adm. Code 704.143(e) provided as follows:

The authorization ... shall expire ...:

- e) Two years after the date of approval by USEPA ... of the Illinois UIC program unless, at that time, there is a pending UIC permit application for the injection previously authorized by rules. Authorization by rule may continue during the pendency of the UIC permit application, except that any such authorization shall expire five years after the date of approval by USEPA of the Illinois UIC program.

40 CFR 122.37(a)(1)(i)(C) (1981) required states to set times up to five years for receipt of applications. The Board adopted a two year limit, reflecting the relatively small number of UIC wells requiring permits in Illinois. (The five year limit was to accommodate permitting of Class II

wells, which are far more numerous, and which are regulated in Illinois by the Department of Mines and Minerals.) No commenters objected to this implementation of the USEPA prescription.

Section 704.143 had a note citing 40 CFR 122.37(c) as its source. This was incorrect. The actual sources were several provisions in 40 CFR 122.37(a), and two other conditions found outside of Section 122.37.

35 Ill. Adm. Code 704.143 was amended in R82-19. At that time the error in the Board notes was found and corrected in part. However, the five year limit on authorizations by rule was inserted into Section 704.141, next to the language authorizing injection by rule. This provision then appeared at two locations in the Board rules, Section 704.141 and Section 704.143(e).

The State received UIC authorization on February 1, 1984.

35 Ill. Adm. Code 704.143 was next amended in R85-23. At this time USEPA deconsolidated the permit rules, and moved the UIC provisions to Part 144. This introduced a lot of confusion. Also, the UIC rules on this point were changed from "prescription" rules to the current "pattern" format. However, the pattern was so similar to the rules the Board had adopted that no major changes in format were needed. In response to USEPA amendments, the Board modified the ban on Class IV wells and repealed the five year limit on authorizations by rule in the duplicated provision in Section 704.141. However, the Board failed to repeal it at the original location in Section 704.143. Instead, the Board replaced the provision keyed to approval of the Illinois program with the February 2, 1989 date. This is the error complained of in the motion.

In the Order and Illinois Register versions of R85-23, Section 704.143(e) was renumbered to Section 704.143(d). However, in the final, filed version paragraph label (d) was deleted, and paragraphs (c) and (d) combined. The version presented in the motion corresponds with the Board's Order, the Illinois Register version and the Agency's printed version of the subsection, but does not correspond with the official version of the Section. Therefore, it is necessary to reinsert the subsection label in this rulemaking.

The Board has below proposed to repeal the 1989 deadline for authorization by rule. The Board has also proposed to address the underlying cause of this error by inserting more specific references to the sources of the subsections in the CFR. Note that Section 704.143(c) is drawn from other Sections. This was added to afford a more complete statement of the conditions for termination of authorization by rule than provided in the CFR.

Section 704.143(d) includes a provision which required UIC applications for Class I and III wells operating under a permit by rule to be filed by February 2, 1986. 40 CFR 144.21(a)(3)(i)(A) now requires states to allow five years for receipt of applications for Class I and III wells. As discussed above, the Board originally adopted a two year time consistent with then-current regulations. The two years expired on February 2, 1986. Five years will not be up until February 2, 1989. USI and Cabot both met the 1986 application deadline, and have not mentioned this area of consistency with the USEPA rules.

In 1982 the Board adopted a deadline which was consistent with USEPA directives at the time of adoption. USEPA approved the UIC program in 1984, based in part on this deadline. The time for filing applications passed over 2 1/2 years ago, and this is the first time this possible consistency problem has come up. The Board has suggests that USEPA did not intend for Illinois to retroactively extend the application deadline out to the limit now required by federal law. Interested persons are invited to comment.

The Board usually repeals rules which have no prospective effect. However, at least two injectors have applications still pending which were keyed to this date. Therefore, the Board has proposed to retain the application deadline. However, the Board has proposed to cite to the 1981 CFR to clarify the source of this rule, since the federal rule has been repealed.

The Board has proposed to amend 35 Ill. Adm. Code 704.143 to achieve consistency with 40 CFR 144.21. The complete text follows. The Board will accept written public comment for a period of 45 days after the date of publication in the Illinois Register.

ORDER

The Board proposes to amend 35 Ill. Adm. Code 704 to read as follows:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER b: PERMITS

PART 704  
UIC PERMIT PROGRAM

SUBPART A: GENERAL PROVISIONS

Section	Content
704.101	Content
704.102	Scope of the Permit or Rule Requirement
704.103	Identification of Aquifers
704.104	Exempted Aquifers
704.105	Specific Inclusions and Exclusions
704.106	Classification of Injection Wells
704.107	Definitions

SUBPART B: PROHIBITIONS

Section	Content
704.121	Prohibition of Unauthorized Injection
704.122	Prohibition of Movement of Fluid into USDW
704.123	Identification of USDW and Exempted Aquifers
704.124	Prohibition of Class IV Wells

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section	Content
704.141	Existing Class I and III Wells
704.142	Existing Class IV Wells, not into USDW (Renumbered)
704.143	Expiration of Authorization
704.144	Requirements

- 704.145 Existing Class IV Wells
- 704.146 Class V Wells
- 704.147 Requiring a Permit
- 704.148 Inventory Requirements
- 704.149 Requiring other Information
- 704.150 Requirements for Class I and III Wells authorized by Rule
- 704.151 RCRA Interim Status for Class I Wells

SUBPART D: APPLICATION FOR PERMIT

- Section
- 704.161 Application for Permit; Authorization by Permit
- 704.162 Area Permits
- 704.163 Emergency Permits
- 704.164 Signatories to Permit Applications

SUBPART E: PERMIT CONDITIONS

- Section
- 704.181 Additional Conditions
- 704.182 Establishing UIC Permit Conditions
- 704.183 Construction Requirements
- 704.184 Corrective Action
- 704.185 Operation Requirements
- 704.186 Hazardous Waste Requirements
- 704.187 Monitoring and Reporting
- 704.188 Plugging and Abandonment
- 704.189 Financial Responsibility
- 704.190 Mechanical Integrity
- 704.191 Additional Conditions
- 704.192 Waiver of Requirements by Agency
- 704.193 Corrective Action

SUBPART F: REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE

- Section
- 704.201 Applicability
- 704.202 Authorization
- 704.203 Requirements

SUBPART G: FINANCIAL RESPONSIBILITY FOR CLASS I  
HAZARDOUS WASTE INJECTION WELLS

- Section
- 704.210 Applicability
- 704.211 Definitions
- 704.212 Cost Estimate for Plugging and Abandonment
- 704.213 Financial Assurance for Plugging and Abandonment
- 704.214 Trust Fund
- 704.215 Surety Bond Guaranteeing Payment
- 704.216 Surety Bond Guaranteeing Performance
- 704.217 Letter of Credit
- 704.218 Plugging and Abandonment Insurance
- 704.219 Financial Test and Corporate Guarantee
- 704.220 Multiple Financial Mechanisms
- 704.221 Financial Mechanism for Multiple Facilities
- 704.222 Release of the Owner or Operator
- 704.230 Incapacity



704.240 Wording of the Instruments

AUTHORITY: Implementing Sections 13 and 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1013, 1022.4 and 1027).

SOURCE: Adopted in R81-32, at 47 PCB 95, at 6 Ill. Reg. 12479, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-19, at 7 Ill. Reg. 14402, effective as noted in 35 Ill. Adm. Code 700.106; amended in R83-39, at 55 PCB 319, at 7 Ill. Reg. 17338, effective December 19, 1983; amended in R85-23 at 10 Ill. Reg. 13290, effective July 29, 1986; amended in R87-29 at 12 Ill. Reg. 6687, effective March 28, 1988; amended in R88-2 at 12 Ill. Reg. 13700, effective August 16, 1988; amended in R88-17 at 12 Ill. Reg. , effective

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section 704.143 Expiration of Authorization

The authorization provided in Section 704.141 shall expire upon the earliest of the following:

- a) Upon the effective date of the permit or permit denial, if a permit application has been filed in a timely manner as specified in Section 704.161(b)(1); or

(BOARD NOTE: Derived from 40 CFR 144.21(a)(1) (1987).)

- b) If a permit application has not been filed in a timely manner as specified in Section 704.161(b)(1); or

(BOARD NOTE: Derived from 40 CFR 144.21(a)(2) (1987).)

- c) If the person authorized by rule under Section 704.141 fails to comply with Section 704.144 or 704.148; or

(BOARD NOTE: Derived from 40 CFR 144.21(c) and 144.26 (1987).)

- d) February 2, 1986, unless, at that time, there is a pending UIC permit application for the injection previously authorized by rule. Authorization by rule may continue during the pendency of the UIC permit application, except that any such authorization shall expire on February 2, 1989.

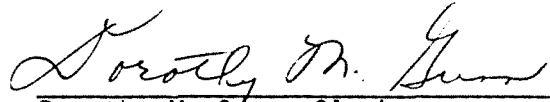
(BOARD NOTE: Derived from 40 CFR 122.37(a)(1)(i)(C) (1981).)

~~(Board Note: See 40 CFR 144.21(a).)~~

(Source: Amended at 12 Ill. Reg. , effective )

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above proposed Opinion and Order was adopted on the 6~~7~~ day of October, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board