

ILLINOIS POLLUTION CONTROL BOARD
November 17, 1988

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R88-16
(1-1-88 THROUGH 7-31-88))

FINAL ORDER. ADOPTED RULE

OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 22.4(a) of the Environmental Protection Act (Act), the Board is amending the RCRA hazardous waste regulations.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 22.4(a) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. 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 RCRA regulations are found at 40 CFR 260 through 270, and 280. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period January 1 through July 31, 1988. The Federal Registers utilized are as follows:

53 Fed. Reg. 13383	April 22, 1988
53 Fed. Reg. 27162	July 19, 1988
53 Fed. Reg. 27164	July 19, 1988
53 Fed. Reg. 27289	July 19, 1988

In R86-46 the Board passed over revisions to the chemical listings which appeared at 51 Fed. Reg. 28298, August 6, 1986. The Board proposed these revisions in R87-39, but withdrew this portion of the proposal when it became apparent that the format of the April 22 corrections would prevent timely adoption of the remainder of R87-39. The Board has now adopted the August 6, 1986 revisions as corrected on April 22, 1988.

The Board opened this Docket with the intention of addressing USEPA amendments during the six-month period from January through June. The Board has expanded the scope to include July, 1988. This allows quicker adoption of the July 19 amendment which exempts treatability studies from the RCRA program. The Board departed from the usual biannual update practice in this

The Board appreciates the assistance of Morton Dorothy in drafting the Order and Opinion.

case because of the possible importance of the treatability exemption in achieving compliance with the landfill bans, and because of the relatively small amount of material in the January through June period.

S.B. 1834 amended the act to recognize the existing "batching" practice. As worded, S.B. 1834 prohibits the use of batches longer than six months. However, in that there were no amendments during January, 1988, the batch does not exceed six months. Section 7.2 of the Act, as adopted in S.B. 1834, codifies the Board's longstanding interpretation of its mandate to adopt "identical in substance" regulations. (See R85-23, cited below, and R86-44, December 3, 1987, pages 14 and 19.)

During this period the Federal Register also included a large number of delistings. As provided by Section 720.122, the Board will not adopt site-specific delistings unless and until someone proposes that the Board adopt the delisting and demonstrates why the delisting is necessary in Illinois.

PUBLIC COMMENT

The Board adopted a proposed Opinion and Order on September 8, 1988. The proposal appeared on September 30, 1988, at 12 Ill. Reg. 15327. The Board received the following public comment before and during the comment period:

- PC#1 IEPA Motion for Reconsideration, August 1, 1988 (filed in R87-39)
- PC#2 Administrative Code Unit codification comments, November 2, 1988
- PC#3 USEPA comments by David Ullrich and Gary Westefer, November 4, 1988
- PC#4 AMOCO Corporation, by Walter Roy Quanstrom, November 16, 1988

On July 22, 1988, the Illinois Environmental Protection Agency (IEPA or Agency) filed a motion to reconsider the Board's Opinion in R87-39. In that the motion did not directly address the text of the rules as adopted, and was not timely filed, the Board, on August 4, 1988, declined to address it in that Docket. The Agency's motion was made PC 1 in this Docket. As is discussed below, in that there is no definitive answer to the issues raised, and in that the issues do not directly relate to the text of the rules adopted in this Docket, the Board will again postpone decision on these issues.

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 70 PCB 311, June 20, 1986; 10 Ill. Reg. 13274, August 8, 1986.

R86-27 Dismissed at 77 PCB 234, April 16, 1987 (No USEPA amendments through 12/31/86).

R87-29 January 21, 1988; 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 Next 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 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)

R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 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. Correction at 77 PCB 235, 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 This Docket. (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 repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by S.B. 1834.

The Board has adopted USEPA delistings at the request of Amoco and Envirote:

R85-2 69 PCB 314, 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 at 73 PCB 427, 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.

GENERAL DISCUSSION

The amendments are discussed in detail below. The following is a general description of the USEPA actions encompassed by this rulemaking. The complete Federal Register citations are given above. All dates are 1988.

April 22	Corrections to chemical lists revisions
July 19	Corrections to small quantity rules
	Corrections to farmer rules
	Exemption for treatability studies.

Most of the Order concerns the revisions to the chemical listings. USEPA adopted a supposedly non-substantive revision of the chemical listings in August, 1986. The Board noted a large number of apparent substantive changes to the listings, and declined to adopt the revisions pending clarification from USEPA. The Board repropoed the revisions in R87-39 in anticipation of USEPA's clarification. This came in April, 1988, near the end of the public comment period in R87-39. The action took the form of revised lists, with no clues as to what the revisions were. The Board dropped the revisions from R87-39 since it looked like it would take far too long to translate the changes into Administrative Code format. The Board repropoed the revisions in this Docket.

The problems with the farmer exception came about with the rules on exports of hazardous waste which were adopted in R87-5. USEPA renumbered the farmer exception to make room for a Subpart addressing exports of hazardous waste, and then inadvertently repealed portions of the export rules with some minor changes to the farmer exception. The Board noted many of these problems, and corrected them in R87-5 and R87-39.

DETAILED DISCUSSION

Section 703.123

This Section is drawn from 40 CFR 270.1(c)(2), which was amended at 53 Fed. Reg. 27164, July 19, 1988, to correct a reference to the farmer exemption of Section 722.170.

Section 720.110

This Section was amended at 53 Fed. Reg. 27289, July 19, 1988, to add a definition of "treatability study".

Section 720.111

USEPA is actually using a new edition of ASTM Setaflash Closed Tester method for determining flashpoint. (PC#3) The Illinois APA requires the Board to update the reference in the rules. The Board has therefore updated this reference to the 1987 ASTM method.

Section 721.104

This Section was amended at 53 Fed. Reg. 27289, July 19, 1988 to add two new exclusions from the definition of "hazardous waste". Sections 721.104(e) and (f) exclude treatability study samples from the regulatory program.

Treatability study samples are generally limited to 1000 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste or 250 kg of soils, water or debris contaminated with acute hazardous waste. Section 721.104(e)(3) allows the Agency to increase this quantity by up to 500 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste or 250 kg of soils, water or debris contaminated with acute hazardous waste if there is a need to repeat or verify a treatability study.

There is a question as to whether the Board or Agency is the proper authority to approve increases in these amounts. While Section 5 of the Act requires the Board to "determine, define and implement the environmental control standards applicable in the State ...", Sections 4(g) and 39 require the Agency to administer permit systems established by the Act or Board regulations. If Board action were required, it could come by way of variance, provisional variance, rulemaking or adjusted standard. Board has decided that these are decisions that the Agency should make while applying Board rules in the context of the RCRA permit program. However, since the treatability studies are normally preliminary to an actual permit application, it is necessary to provide an appeal mechanism for Agency decisions. The Board has therefore added Section 721.104(e)(4) to allow appeal to the Board. Such appeals are allowed by Section 5(d) of the Act. The Board solicited comment on this Section, but received no response.

PC#4 suggests that the quantity limitations conflict with each other. The comment suggests that laboratories be allowed to store up to 1000 kg of non-acute hazardous waste for each process being evaluated for each wastestream, and that they be similarly limited to initiating studies on 250 kg per day for each process/wastestream.

The language in the proposal appears to be consistent with the federal regulations, and the federal rules are sufficiently clear. USEPA has addressed the issues raised by the comments in the preamble to these rules. See 53 Fed. Reg. 27294, July 19, 1988.

To understand the rules one has to recognize that there may be more than one generator, shipper and laboratory involved in a given fact situation. The limitations for each have an independent logical basis, and there is no reason why the numbers need to be the same for each. Any one of these limitations may be the decisive factor in a given situation.

Among other things, the laboratory limitations close possible loopholes which could be exploited to avoid the RCRA permit requirement. For example, suppose a laboratory offered 10 alternative processes to 100 generators. The generators could ship 1,000,000 kg for treatability studies. The laboratory's 1000 kg inventory cap makes certain that the amount in storage at any time is consistent with research, as opposed to commercial storage or disposal. The 250 kg/day studies initiated rate prevents the laboratory from combining samples into commercial sized lots for treatment. Loosening these caps, as suggested by the comment, would allow a vast increase in the total inventory and rate of operation at the laboratory. This is precisely what USEPA intends to prevent.

The Federal Register text has two probable incorrect references. In Section 261.4(e)(2)(vi) "paragraph (e)(v)(C)" should probably be "paragraph (e)(2)(v)(C)". In Section 261.4(e)(3) "(e)(2)(ii)(vi)" should probably be "(e)(2)(ii) through (vi)". Also, in Section 261.4(e)(3)(ii) "data" should probably be "date".

Section 721.105

This Section was amended at 53 Fed. Reg. 27289, July 19, 1988, to correct

a reference to the small quantity exemptions in Section 722.134, and to add a note defining "full regulation"

Section 721.133

This Section was amended at 53 Fed. Reg. 13383, April 22, 1988, to correct the August 6, 1986 revisions to the chemical listings which appeared at 51 Fed. Reg. 28298. As noted above, the Board has proposed and withdrawn these revisions two times, awaiting corrections to the USEPA rules.

USEPA has noted a number of minor typographical errors in the proposal. (PC #3) The Board has generally corrected these to conform with USEPA's comments, and the federal rules.

Many of the federal names include a chemical formula. Some of these are salts of a metal and a molecular ion. The USEPA list uniformly encloses the anion in parentheses even when it is present in an equimolar ratio. For example, silver cyanide is written (in Appendix H) as Ag(CN) instead of AgCN. The parentheses are not necessary in the formula for the salt, which is what USEPA probably intends. The unnecessary use of parentheses opens the door to an argument that the listing is intended to cover only the neutral complex $\text{Ag}(\text{CN})^0$, which is probably not the case. The difference between the salt and the complex is that, while in the complex a certain silver atom is associated with a single cyanide, in the salt the cation and anion are simply present in an equimolar ratio, either dissociated, in a crystal structure or as a complex.

Section 721.App H

This Section was amended at 53 Fed. Reg. 13383, April 22, 1988, to correct the August 6, 1986 revisions to the chemical listings which appeared at 51 Fed. Reg. 28298.

The Board has corrected a few probable errors in the USEPA text of this Appendix.

The spelling of "2-acetylaminofluorene" has been corrected to agree with the entry for U005.

The long form of the name for aldrin has an extra "10".

The long form of benzidine has a "4¹" which should be "4'".

The long form of 1,2-dichloroethylene has a misspelled "chloro-".

The long form of melphalan has an "aminol" which has been changed to "amino" to agree with the entry for U150.

The long form of reserpine has a "smethyl" which has been changed to "methyl" to agree with the entry for U200.

Section 722.110

This Section was amended at 53 Fed. Reg. 27164, July 19, 1988, to correct references to the former exemption of Section 722.170. In addition, the Board has changed a reference to 40 CFR 266 to the corresponding Part 726, which has now been adopted as a Board rule.

Section 722.151

40 CFR 262.51 was amended at 53 Fed. Reg. 27164, July 19, 1988, to readopt the definitions for exports of hazardous waste, which USEPA inadvertently repealed through a number error. The Board corrected the main error in an earlier rulemaking. In this rulemaking, the Board has corrected a typographical error which occurred in the earlier rulemaking in one of the definitions.

Section 724.101

Section 724.101(f)(4) was amended at 53 Fed. Reg. 27164, July 19, 1988, to correct a reference to the former exemption of Section 722.170.

Section 724.App. I

The groundwater monitoring list was adopted in R87-39. In this Docket the Board has noted and corrected a few typographical errors.

Section 725.101

Section 725.101(c)(8) was amended at 53 Fed. Reg. 27164, July 19, 1988, to correct a reference to the former exemption of Section 722.170.

Part 728

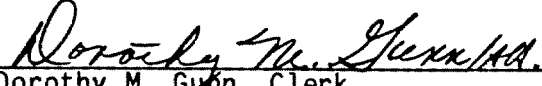
40 CFR 268 was amended at 53 Fed. Reg. 27164, July 19, 1988, to correct references to the former exemption of Section 722.170. The Board believes that it noted and made all of the corrections in R87-39, and has not made any revisions in this Docket.

PC 1 addresses the multi-state questions discussed in the R87-39 Opinion. The Board invited additional public comment on these questions, but received no additional comment. As was discussed in R87-39, a definitive answer will probably require a position from USEPA headquarters. The Board will return to this issue when, and if, it arises again.

This Opinion supports the Board's Order of this same day. The Board will withhold filing the rules until December 13, 1988, to allow time for motions for reconsideration by the agencies involved in the authorization process.

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 17 day of NOVEMBER, 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board