ILLINOIS POLLUTION CONTROL BOARD
July 26, 1983

In the matter of:)
) R82-19
PHASE II RCRA RULES)

ADOPTED RULE. FINAL ORDER

OPINION OF THE BOARD (by D. Anderson):

On August 18, 1982 the Board opened this docket for the purpose of promulgation of Phase II RCRA regulations in response to the United States Environmental Protection Agency's (USEPA's) promulgation of interim final rules allowing permit applications for new and existing hazardous waste management (HWM) facilities (47 FR 32,369, July 26, 1982). These rules became effective on January 26, 1983. Section 22.4(a) of the Environmental Protection Act (Act) requires the Board to adopt within 180 days regulations or amendments thereto promulgated by USEPA pursuant to Sections 3001 through 3005 of the Resource Conservation and Recovery Act (RCRA).

The Board previously adopted regulations allowing Illinois to receive Phase I interim authorization (R81-22, Opinion and Order of February 4, 1982; 6 Ill. Reg. 4828). Authorization was received on May 17, 1982 (47 Fed. Reg. 21,043). The Phase I rules were amended to reflect amendments to the corresponding federal rules (R82-18, Order of January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983).

In a related action the Board adopted regulations to allow Illinois to receive authorization for an underground injection control (UIC) program (R81-32, Opinion and Order, May 13, 1982; 6 Ill. Reg. 12,479, October 15, 1982). Authorization for this program has not yet been received.

The Board made two separate regulatory proposals in order to comply with the mandate of Section 22.4(a). On March 18, 1983 the Board proposed to amend 35 Ill. Adm. Code 702 and 705, and to adopt 35 Ill. Adm. Code 703 and 704. On April 21, 1983 the Board proposed to amend Parts 700, 704, 720, 725 and 730. The proposal appeared at 7 Ill. Reg. 4520, April 5, 1983 and at 7 Ill. Reg. 6216, May 20, 1983.

The following table summarizes the status of the RCRA and UIC rules:

The Board acknowledges the contributions of Morton Dorothy, Administrative Assistant responsible for this rulemaking.

35 Ill. Adm. Code

700	Outline	To be amended
702	Permits	To be amended
703	RCRA Permits	Proposed
704	UIC Permits	To be amended
705	Procedures	To be amended
720	General	To be amended
721	Listings	Amend Appendix H
722	Generators	No change
723	Transporters	No change
724	Final TSD Standards	Proposed
725	Interim TSD Standards	To be amended
730	UIC Standards	To be amended

The Board adopted a Proposed Opinion with the March 18 proposal. The Proposed Opinion is withdrawn and replaced by this Opinion.

Pursuant to Section 22.4(a) of the Act this rulemaking is not subject to the usual procedures for rulemaking under the Act or Section 5 of the Administrative Procedure Act. The Board nevertheless published a first notice proposal in the Illinois Register and solicited comments. On May 19, 1983 the comment periods on the two portions of the proposal were consolidated. The comment periods ended on June 20, 1983. The Board received the following comments:

PC 1, 2 Secretary of State, Administrative Code Unit, (ISL), April 28, 1983; May 31, 1983

PC 3 Committee for the Advancement of Responsible Environmental Solutions (CARES), June 1, 1983

PC 4 Illinois Environmental Protection Agency, (IEPA), June 20, 1983

PC 5 U.S. Environmental Protection Agency, (USEPA), June 20, 1983

PC 6 Granite City Steel Division of National Steel Corporation, Interlake, Inc., Northwestern Steel and Wire Company, Republic Steel Corporation and United States Steel Corporation, (STL), June 20, 1983

PC 7 Illinois Power Company (IPC), June 20, 1983

PC 8 Secretary of State, Administrative Code Unit, July 8, 1983

The public comments will be referred to by the abbreviations indicated. In the case of CARES, the steel companies and Illinois Power, page numbers will be indicated. For example, (STL 13) will mean page 13 of the steel companies' comments. On the other hand, for IEPA and USEPA, paragraph numbers will be indicated. For example, (USEPA #13) will mean paragraph 13 in the USEPA's comments.

FEDERAL REGULATIONS

The proposal is current with federal regulations appearing in the Federal Register on or before October 29, 1982. The following amendments have been incorporated (IPC 11):

35 Ill. Adm. Code	47 Fed. Reg.
Part 702	4996
(November 23, 1981 through October 29, 1982)	15,306
	27,533
	32,369
	41,563
Part 703	32,369
(1982 CFR plus July 1 through October 29, 1982)	32,372
Part 705	
(No changes resulting from federal amendments)	
Part 724	27,520
(1982 CFR plus July 1 through October 29, 1982)	28,627
	30,446
	32,349
	46,277

The proposal to amend Parts 702, 704, 705, 725 and 730 brings them up to date with the corresponding federal rules as of October 29, 1982.

Overview of the RCRA Program

Part 703 contains the RCRA permit requirement. Together with Parts 702 and 705 it provides for applications, public participation and permit issuance. Generally, existing facilities obtained interim status by filing a Part A application. The Agency will call in Part B applications in order to initiate actual permit issuance. New facilities will be required to file both Part A and Part B of the application. Existing facilities may file voluntary Part B applications. The Agency will review permit applications against the operating standards of Part 724.

The Part 724 standards consist of two broad divisions:

1. Subparts A-H contain rules generally applicable to all HWM (hazardous waste management) facilities;

2. Subparts I-O modify and supplement these rules as applied to specific types of TSD (treatment, storage or disposal) unit.

The regulated TSD units fall into seven categories:

1. Containers (storage);

2. Tanks (storage and treatment);

3. Surface impoundments (storage and treatment);

4. Waste piles (storage);

5. Land treatment (also known as sludge application);

6. Landfills (disposal, including surface impoundments and waste piles used for disposal);

7. Incinerators (treatment).

Exemptions from Part 724

Among the exemptions are the following:

1. Underground injection [§724.101(d)];

2. Publicly owned treatment works [§724.101(e)];

3. Small quantities [§724.101(g)(1)];

4. Farmers [§724.101(g)(4)];

5. Totally enclosed treatment facilities, elementary neutralization units and indoor wastepiles [§724.101(g)(5) and (6); §724.290];

6. Addition of absorbent materials [§724.101(g)(10)];

Requirements Common to All HWM

The following requirements are common to all HWM facilities:

1. USEPA ID number (§724.111);

2. Security: surveillance, fence and signs (§724.114);

3. Personnel training program, job descriptions and titles (§724.116);

4. Located outside the 100 year flood plain [§724.118(b)];

5. Internal and external communications, fire extinguishers and water or foam (§724.132);

6. Aisle space for emergency equipment (§724.135);

7. Arrangements with local emergency units (§724.137);

8. Contingency plan describing the action of personnel in certain emergencies (§724.152);

9. A designated emergency coordinator (§724.155);

10. Manifest system (§724.171);

11. Operating record (§724.173);

12. Annual reports (§724.177);

13. Financial responsibility (§724.240).

Financial Requirements

There are three types of financial requirements:

1. Financial assurance for closure (§724.243);

2. Financial assurance for post-closure care (§724.245);

3. Liability for sudden and non-sudden accidental occurrences (§724.247).

Financial assurance for closure and post-closure care may be conveniently discussed together, since a single mechanism may be used (§724.246). All HWM operators must give closure assurance, but only operators of disposal units must give post-closure care assurance. Disposal units include landfills, and piles and impoundments when it appears that it will not be possible to remove all waste residues on closure (§724.240).

The closure rules begin with an estimate of closure cost "at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan" (§724.243). This must be revised by the operator annually and whenever a change in the closure plan increases the cost of closure. Note that closure could range from removal of a few barrels at a container storage area to closure of a hazardous waste landfill costing millions of dollars.

Facilities with disposal units must estimate the post-closure cost, which is, in current dollars, the annual post-closure cost estimate times the number of years post-closure care will be required (§724.444). It must be changed annually or when the post-closure plan is changed. Post-closure care involves, for example, maintenance of cover and continued groundwater monitoring.

The operator is required to give financial assurance in an amount equal to the closure cost estimate and, for disposal units, the post-closure cost estimate. This may be done through a combination of the following mechanisms:

1. A trust fund [§§724.243(a) and 724.245(a)];

2. Surety bond guaranteeing payment into trust fund [§§724.243(b) and 724.245(b)];

3. Surety bond guaranteeing performance or payment into trust fund [§§724.243(c) and 724.245(c)];

4. Letter of credit which will obligate a financial institution to fund a trust [§§724.243(d) and 724.245(d)];

5. Insurance obligating the insurer to pay closure or post-closure care costs at the direction of the Agency [§§724.243(e) and 724.245(e)];

6. Self-insurance by an operator or by its parent corporation which meets a financial test [§§724,243(f) and 724.245(f)].

The first four work together: the operator could set up a trust fund and pay part of the closure and post-closure cost into the trust. The rest of the financial assurance could be given by a combination of bonds and letters of credit payable to the trust. Part of the assurance could also be given with insurance, which does not involve a trust fund.

Section 724.247(a) requires the operator to maintain insurance for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of $2 million. Section 724.247(b) requires at least $3 million for non-sudden occurrences, with an annual aggregate of $6 million. Sections 724.247(c) and (d) allow the level of required liability to be adjusted up or down at the instance of the Agency or the operator. Section 724.247(f) allows self insurance under conditions similar to closure assurance.

Requirements Not Common to All HWM Facilities

Some requirements vary depending on the type of HWM facility. These include the following, which will be discussed at greater length below:

1. Inspections;

2. Waste Analysis;

3. Special requirements for ignitable, reactive or incompatible waste;

4. Design standards (other than groundwater protection);

5. Groundwater protection: liner design, leak detection and monitoring;

6. Closure and Post-closure;

7. Exemptions from groundwater protection and final cover requirements.

Inspection

The general inspection requirements require a written schedule for inspection of monitoring, emergency, operating and structural equipment and security devices [§724.115(b)]. The operator must follow the schedule and maintain a log [§§724.115(b) and (d)]. Specific schedules and types of inspection are specified for the various types of TSD unit.

Inspections include both routine operating inspections and inspections during construction or repair. "Inspections" are carried out by the operator, not the Agency. This is also sometimes referred to as "monitoring", to be distinguished from "groundwater monitoring", which is a separate topic. This use of the terms "inspection" and "monitoring" differs from the usual meaning in Board rules.

Examples of operating inspection requirements include:

1. Tanks: Daily inspection of overfilling equipment, pressure and temperature guages and actual liquid level; weekly inspection for corrosion, wet spots and dead vegetation; complete inspection as scheduled by permit condition (§724.294).

2. Surface impoundments: Weekly inspection, and after storms, of overtopping controls, for sudden drops in level, for liquids in any leak detection system and for erosion. Structural integrity must be certified by an engineer if an impoundment has been out of service for more than six months [§724.326(b)].

3. Piles: Weekly inspections, and after storms, of run-on/run-off and wind dispersal controls, and for liquids in any leak detection system or leachate collection system [§724.354(b)].

4. Land treatment: Weekly inspections, and after storms, of run-on/run-off and wind dispersal controls and for liquids in any leak detection or leachate collection system [§724.403(b)].

5. Landfills: Weekly inspections, and after storms, of run-on/run-off and wind dispersal control systems, any leak detection system and leachate collection and removal system [§724.408].

6. Incinerators: Continuous monitoring of combustion temperature, waste feed rate, "indicator combustion gas velocity" and carbon monoxide; daily inspections for spills and leaks; weekly testing of alarms and emergency waste feed cutoff (§724.447).

During construction, liners must be inspected for uniformity, damage and imperfections. Soil-based liners must be inspected for lenses, root holes, etc. Synthetic liners must be inspected for tight joints and the absence of tears [§§724.326(a), 724.354(a) and 724.403(a)].

Waste Analysis

The operator must obtain a detailed physical and chemical analysis of any hazardous waste before he treats, stores or disposes of it [§724.113(a)]. This must be repeated as necessary to ensure that it is accurate and up to date [§724.113(a)(3)]. The facility permit requires a waste analysis plan specifying the types of tests, sampling methods and frequencies at which the initial analysis will be reviewed [§724.113(b)]. For off-site facilities, the waste analysis plan must also specify procedures used to inspect incoming loads to ensure that they match the identity of the waste on the manifest [§724.113(c)]. This does not necessarily require a chemical analysis of each load, unless the plan calls for such [§724.113(c)(2)].

The waste analysis rules depart from the norm only with respect to incinerators (§724.441). Permit applications require more detailed information on waste feed, including the heat value, viscosity and Appendix VIII hazardous constituents (35 Ill. Adm. Code 703.223 and 703.224).* Throughout operation the operator must conduct sufficient analyses to confirm that the waste feed is within the physical and chemical composition limits specified in the permit [§724.441(b)].

---

*Part 721, Appendix H references 40 CFR 261, Appendix VIII. The Board has adopted the actual text of this Appendix. Codification requirements forced the Board to change the name to Appendix H.

Ignitable and Reactive Waste

General requirements for ignitable, reactive and incompatible waste include the following:

1. Protection from sources of ignition, "No Smoking" signs and all smoking and flames confined to specifically designated locations;

2. Precautions for extreme heat or pressure, toxic gases and damage to structural integrity;

3. Documentation from literature search must be included with the permit application (§724.117).

Additional specific requirements for types of TSD unit include the following:

1. Tanks: Protection of construction material from wastes which are incompatible with construction materials [§724.292(a)]; washing between incompatible wastes (§724.299); exemption where wastes are treated so as to no longer be reactive or ignitable immediately after entry into tank [§724.298(a)(1)(A)]; buffer zone requirements [§724.298(b)]; exemption for tanks to be used for emergency storage, as for example a waste feed diversion from an incinerator [§724.298(a)(3)].

2. Impoundments: Authorization for treatment in impoundment immediately after placement and for emergency use (§724.329).

3. Piles: Separation from other wastes by berm or wall; cleaning of base between incompatible wastes (§724.357).

4. Land Treatment: Authorization if waste is immediately incorporated into the soil so it is no longer ignitable or reactive (§724.381).

5. Landfills: Ignitable wastes may be landfilled in containers if usual precautions are followed; reactive waste is prohibited unless it is treated in place so it is no longer reactive immediately after placement.

6. Incinerators: No special requirements.

Design and Operating Standards Other Than Groundwater Protection

The design standards center on different factors depending on the type of TSD unit. The design and operating rules closely related to groundwater protection are discussed in the sections which follow. The following are design and operating rules which are not closely related to groundwater protection:

1. Tanks: foundation shell strength, pressure control, corrosion, over-filling controls and freeboard (§724.291).

2. Surface impoundments (storage): freeboard and dike integrity to prevent massive failure without relying on liner systems [§724.321(d)].

3. Waste piles (storage): Wind dispersal controls [§724.351(f)].

4. Land treatment: the design is left pretty much open, but the operator must make a "treatment demonstration" showing that hazardous constituents can be "completely degraded, transformed or immobilized in the treatment zone" [§724.371(b)]. There are limitations on the growth of food chain crops and the rate of application of cadmium (§724.376).

5. Landfills: wind dispersal controls (§724.401).

6. Incinerators: Performance is evaluated by selected "principal organic hazardous constituents" (POHCs) (§724.442). Incinerator must achieve 99.99% destruction and removal of POHCs. Particulate standard is 180 mg/dscm (§724.443). Fugitive emissions must be controlled (§724.445).

Groundwater Protection Program

The "groundwater monitoring and response program" has three stages (§724.191):

1. Detection monitoring program;

2. Compliance monitoring program;

3. Corrective action program.

In the facility permit the Agency specifies which programs apply [§724.191(b)]. For a new facility this should be a detection monitoring program. If leaks are detected during operation, the permit should be amended to require a compliance monitoring and/or corrective action program, as will be discussed in greater detail below.

The general groundwater monitoring program, applicable to all three stages, includes the following, as specified in the facility permit:

1. A sufficient number of wells, at appropriate depths and locations, to represent background water quality and the water quality at the down-gradient "point of compliance" specified in the facility permit [§§724.195 and 724.197(a)];

2. Determination of groundwater surface elevation [§724.197(f)];

3. Establishment of background levels [§724.197(g)];

4. Sampling, analytical and statistical procedures [§724.197(d) and (h)].

Detection Monitoring Program

The first stage of the groundwater monitoring and response program is the "detection monitoring program" (§724.198). This applies to everybody subject to the groundwater monitoring requirements who is not in the compliance monitoring or corrective action programs (§724.191). Some existing facilities may initially be permitted with compliance monitoring or corrective action programs. The limitations on applicability of the groundwater protection rules are discussed below.

An operator subject to detection monitoring must monitor for "indicator parameters", specified in the facility permit, which will "provide a reliable indication of the presence of hazardous constituents in groundwater" [§724.198(a)]. The operator must determine groundwater quality at each monitoring well at least twice each year, and the groundwater flow rate and direction annually [§724.198(d) and (e)].

If the detection monitoring program reveals a "statistically significant increase" over background levels for the indicator parameters specified in the permit, the operator must:

1. Notify the Agency [§724.198(h) and (i)];

2. Undertake additional sampling to establish background levels for "Appendix VIII hazardous constituents" (see 40 CFR 261) [§724.198(h)(1) and (2)];

3. Within 90 days, submit a permit application for a compliance monitoring program [§724.198(h)(4)];

4. Within 180 days, submit an engineering feasibility study for a corrective action program [§724.198(h)(5)].

The operator has two options which do not delay the time limits for permit modification applications. To avoid the compliance monitoring and corrective action programs, the operator may:

1. Demonstrate that a source other than a regulated unit caused the increase [§724.198(i)]; or

2. Demonstrate an error in sampling, analysis or evaluation.

Compliance Monitoring Program

The "compliance monitoring program" involves a permit modification which establishes a "groundwater protection standard" in permits "when hazardous constituents have entered the groundwater from a regulated unit" (§§724.192 and 724.199). Establishment of the "groundwater protection standard" proceeds by four steps:

1. Specification of "hazardous constituents", from 40 CFR 261, Appendix VIII, which have been detected in the uppermost aquifer and which are reasonably expected to be in or derived from the unit, subject to a demonstration by the operator "that the constituent is not capable of posing a present or potential hazard to human health or the environment" (§724.193).

2. Specification in the permit of a "concentration limit" equal to (§724.194):

   A. The background level at the time the hazardous constituent is first specified in the permit;

   B. For certain constituents (7 metals, selenium and 6 pesticides), a limit specified by rule, unless the background is already over the limit; or

C. An alternate limit established by the Agency.

3. A "point of compliance" at the downgradient limit of the unit or "area" (§724.195). (This is specified in the detection monitoring program also.)

4. A "compliance period", extending from the time of establishment of the standard for a period of time equal to the active life of the facility (including time prior to permitting) plus the closure period, subject to extension if the operator is still in corrective action at the end (§724.196).

As an example of the "compliance period", consider a landfill opened in 1970 and closed in 1983, with hazardous constituents first detected in groundwater in 1985. The compliance period will be 1985 through 1998, subject to extension if the facility is still in corrective action in 1998. This is based on the assumptions: that hazardous constituents first crossed the liner when the unit was opened in 1970; that it took 15 years to reach groundwater; and, that the liner stopped leaking when the landfill was closed 13 years later. Thus a 13-year plume is moving into the groundwater, reaching groundwater between 1985 and 1998.

The "compliance monitoring program" is a permit modification which requires the operator to monitor groundwater to determine whether regulated units are in compliance with the groundwater protection standard [§724.199(a)]. If the operator determines that the groundwater protection standard is being exceeded at any regulated unit, he must notify the Agency and submit a permit modification application for a "corrective action program", subject to the possibility of showing a sampling error or other source of the increase, or asking for an alternative standard [§724.199(i) and (j)].

Corrective Action Program

The "corrective action program" is a permit modification which requires the operator to prevent hazardous constituents from exceeding the concentration limits specified in the permit "by removing the hazardous waste constituents or treating them in place" [§724.200(b) and (e)]. A groundwater monitoring program is established "to demonstrate the effectiveness of the corrective action program" [§724.200(d)]. Corrective action continues until the end of the compliance period, and beyond that until the groundwater protection standard has not been exceeded for three consecutive years [§724.200(f)].

Closure and Post-closure

The operator must close the facility so as to minimize the need for further maintenance and to minimize the escape of hazardous constituents (§724.211). A closure plan must be submitted with the permit application (§724.212). The operator must "treat, remove or dispose of" all hazardous wastes within 90 days after receiving the final volume of waste, and complete closure within 180 days (§724.213). When closure is complete, the operator's engineer certifies to the Agency that the closure plan has been executed (§724.215).

Disposal facilities (landfills, and piles or impoundments from which waste cannot be removed at closure) must have a post-closure plan. Post-closure care continues for 30 years, with possible reduction or extension (§724.217). Monitoring and maintenance continues. Post-closure use must not disturb the integrity of the final cover [§724.217(c)]. A disposal facility must file a plat and put a notice in its chain of title (§724.219).

The details of closure are spelled out for the different types of TSD unit. The operator must cover a landfill so as to [§724.210(a)]:

1. Function with minimum maintenance;

2. Promote drainage and minimize cover erosion;

3. Accommodate subsidence; and

4. "Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present".

During the post-closure period the operator must (§724.210):

1. Maintain integrity of final cover;

2. Maintain and monitor any leak detection system;

3. Operate the leachate collection system;

4. Maintain and monitor groundwater monitoring system;

5. Prevent run-on/run-off damage;

6. Protect and maintain surveyed benchmarks.

For TSD units other than landfills the idea is to avoid the final cover and post-closure provisions. For example, for an impoundment, the operator is supposed to remove or decontaminate all "waste residues" on closure [§724.328(a)]. If this is not possible, it is closed like a landfill [§724.328(b)].

Groundwater Protection and Post-closure Care--Exemptions

For landfills, groundwater protection dominates the design and operating requirements. The same is true for piles and impoundments, because of their potential to become disposal units. However, treatment and storage units escape the more rigorous groundwater protection and post-closure care requirements:

1. Containers: A base with containment and collection system for spills and leaks; removal of all hazardous waste and contaminated containers on closure (§724.275 and §724.278).

2. Tanks: All must have inner liners and weekly inspections, with removal of all hazardous waste on closure (§724.297).

3. Land treatment: Operator must conduct "unsaturated zone monitoring", about 5 feet under the surface, for principal hazardous constituents (PHCs) (§724.278). Operator is generally exempt from groundwater monitoring and full closure requirements if no PHCs show up in the unsaturated zone.

4. Incinerators: Operator must remove hazardous waste on closure.

Landfill Groundwater Protection Design

The basic landfill design requires:

1. A liner "constructed of materials that prevent wastes from passing into the liner during the active life of the facility" [§724.401(a)].

2. A leachate collection and removal system [§724.401 (a)(2)].

3. Run-on controls designed for the peak of a 25-year storm [§724.401(a)].

4. Run-off controls to collect and control a 24-hour, 25-year storm [§724.401(d)(2)].

5. Groundwater monitoring (§724.190).

There are two ways around this. The first allows the exemption of the facility from the liner and leachate collection provisions if the operator demonstrates that alternative design and operating practices and location characteristics "will prevent the migration of any hazardous constituents to groundwater or surface water at any future time" [§724.401(b)].

The second way gets the operator around the groundwater monitoring provisions. The basic thrust of the regulatory program is to get everybody to design new landfills with a double liner and leak detection system as follows. These landfills must:

1. Be entirely above the seasonal high water table [§724.402(a)(1)];

2. Have two liners designed so as "to prevent the migration of liquids into or out of the space between the liners" [§702.402(a)(2)];

3. Have a leak detection system in the space between [§702.402(a)(3)];

4. Have a leachate collection and removal from above the top liner [§724.402(a)(4)], and have run-on/run-off controls [§724.401(d) and (e)], as with all landfills.

Surface Impoundment Groundwater Protection Design

Liner requirements for impoundments are similar to those for landfills: a liner with run-on/run-off controls, but no leachate collection. The impoundment must have a liner which will prevent migration of wastes into the liner during the active life [§724.321(a)]. On closure all "waste residues", including any contaminated liner, must be removed [§724.328(a)]. If not, the remaining wastes (not necessarily hazardous) must be dewatered and covered like a hazardous waste landfill [§724.328(a)(2)].

The operator can be exempted from the liner requirement on a showing that alternatives will prevent migration at any time in the future [§724.321(b)].

The operator can be exempted from the groundwater monitoring requirement by use of a double liner with leak detection system (§724.322).

Waste Pile Groundwater Protection Design

The basic design for a waste storage pile is a liner, a leachate collection system and run-on/run-off controls [§724.351(a)]. Liner design includes foundation requirements [§724.351(a)(1)(ii)]. Leachate may not be allowed to exceed one foot in depth inside the pile [§724.351(a)(2)]. Waste may be allowed to migrate into the liner [§724.351(a)(1)], but the liner would have to be removed on closure, or remaining wastes would have to be covered like a landfill (§724.358).

Piles which are inside a building and protected from precipitation are exempt if no free liquids are placed in the pile, and there is run-on protection and no reactions producing leachate (§724.350).

Piles may be exempted from the liner and leachate collection provisions if the operator demonstrates no migration at any time in the future [§724.351(b)].

Piles may also be exempted from groundwater monitoring if there is a double liner with leachate detection between and collection and removal from above the top liner (§724.352).

There is an exemption from groundwater protection unique to piles if the waste is periodically removed so the liner can be inspected. Such a pile must have a single liner and a leachate removal system (§724.353).

RESPONSE TO COMMENTS

PART 700

OUTLINE OF WASTE DISPOSAL REGULATIONS

§700.106 Effective Dates (STL 3, IPC 50, IEPA 29 & 40)

The Agency has indicated that it will request "final authorization" of the RCRA program rather than "Phase II interim authorization" (IEPA 29). §700.106(d) has been changed accordingly.

Part 724 will become effective when filed. However, by its own terms, Part 724 applies only to facilities which have RCRA permits or permits by rule (§724.103, IPC 50, IEPA 40). The Board does not intend that the Agency should review against Part 724 Chapter 7 facilities receiving hazardous waste exempt from the RCRA rules (IEPA 40).

The proposed effective date for Part 703 combined with the renumbering of §700.105 to Part 703 would cause existing facilities to lose interim status between the adoption date of the Phase II RCRA rules and authorization of the RCRA permit program. The Board will avoid this unintended result by making the interim status provisions of Part 703 effective immediately (IPC 50). The prohibitions Subpart, which repeats the statutory permit requirements and spells out specific inclusions and exclusions will also be made immediately effective. In the absence of the specific exclusions, the permit requirement of §21(f) of the Act could be held to apply to persons exempt from the federal permit requirement, such as generators storing waste for less than 90 days [§703.123(a)].

§700.501 Permits (STL 5, IPC 54)

TSD units will be required to have Chapter 7 permits only if they accept non-hazardous waste: in other words, possession of a RCRA permit does not exempt the unit from the Chapter 7 permit requirement for non-hazardous waste. Language has been added to make it clear that this is not intended as an expansion of the Chapter 7 permit requirement to include units which would fall under the on-site permit exemption (STL 5).

The Board has allowed the Agency to consolidate Chapter 7 and RCRA permit applications in order to save time and money for industry and the public (IPC 54).

PART 702

RCRA AND UIC PERMIT PROGRAMS

§702.101 Applicability (IEPA #25)

The words "Part A" have been deleted from §702.101(c)(1) (IEPA 25). Permit applicants will be required to use Agency forms for both Part A and B of the application whenever such forms become available.

§702.103 Confidentiality (USEPA #21)

The Board will reference the new trade secrets procedures in the process of final adoption in R81-30 in addition to the existing confidentiality procedures contained in 35 Ill. Adm. Code 101.107(c).

§702.106 Agency Criteria (IPC 47)

Paragraph (c) was intended as a finding by the Board that Agency criteria met the definition of "rule" in the Administrative Procedure Act. However, it appears that it is also subject to the interpretation that it is a Board regulation requiring the Agency to comply with the APA. As such the statutory authority would be questionable. The Board will therefore delete paragraph (c) (IPC 47).

§702.107 Permit Appeals (STL 5, IEPA #26)

This section provides that, unless otherwise provided, all actions taken by the Agency under the RCRA and UIC rules are to be construed as actions on a permit application or permit modification application. The procedures of Part 705 apply, and final actions are appealable to the Board. For example, in §724.132, the demonstration to the Agency that a particular type of safety equipment is not required is to be made by the operator at the time of the permit application, or by way of an application to modify the permit. Read alone this section could be interpreted to allow this demonstration informally to an Agency inspector, or after an enforcement action alleging violation of a permit condition based on it. These interpretations are contrary to the general thrust of the regulatory program.

Certain Agency actions, such as those involving the application of the proceeds of a bond or an insurance policy, would not necessarily involve modification of the permit. They would more properly be construed as actions on the bond or insurance contract. The Board has added a sentence recognizing that the Circuit Court should have jurisdiction over these matters, rather than the Board (STL 5). These

are, however, to be distinguished from permit modifications which raise or lower the amount of required financial assurance.

This section is not intended to prevent the Agency from filing enforcement actions as provided in §702.109 (IEPA #26).

Part 725 has been deleted from the list of Parts in which the Agency's actions are to be taken pursuant to Part 705 procedures. Although the Board intends the Agency's actions with respect to interim status to be in the nature of permit actions, and hence to be appealable to the Board, the detailed procedures of Part 705 are not applicable (IEPA #26).

§702.108 Variances (STL 7, IEPA #27)

If the language of a Board rule itself provides for either a delayed effective date, or sets a standard by which the Agency can review the permit applicant's proposed schedule to come into compliance with the rule, then the Agency may issue a permit with a schedule of compliance under Section 39(d) of the Act without prior approval by means of a variance order. Similarly, if a Board rule specifically provides that the Agency has discretion in its application, and sets a standard by which the Agency exercises its discretion, then the Agency may issue the permit after making the required determination. Otherwise, the applicant must obtain a variance in a separate action before the Board.

Section 702.108 applies only to persons with RCRA or UIC permits, or applying for such permits. Persons subject to the regulatory programs, but not required to have such permits, may apply for variances pursuant to the Board's general variance procedures.

Section 702.108(a) applies only to "applicants", meaning persons who have a permit application or modification application on file. The Agency will need to have on file a complete application or a permit file and a modification application in order to adequately prepare its recommendation.

Section 702.108(b) requires that the Agency recommendation be filed in advance of the variance hearing and that it contain a draft permit condition. The recommendation will serve the function of the draft permit in the Part 705 procedures.

The Board's variance procedures require that a hearing be held if any person objects within 21 days of the filing of the petition, and allow hearings at the Board's discretion. This is equivalent to the public participation at the Federal level.

Section 702.108(c) explains that the Board's action will be to order the Agency to issue or modify the permit pursuant to Part 705 procedures. The Agency will apply the Board's Order as a part of the law applicable to the facility. The Board will not itself issue or modify the permit.

§702.110 Definitions (USEPA #22-26)

The phrase "revoke and reissue, terminate or reissue" has been added to the definition of "draft permit". This language, found in 40 CFR 122.3, was deleted from the definition during the adoption of the UIC rules.

As is discussed in greater detail elsewhere, the Board intends to reserve to itself the authority to revoke permits. However, to the extent the Agency has authority to effectively terminate permits pursuant to permit modification, its action will take the form of a "draft permit" and will proceed according to Part 705 procedures.

The definition of "permit" will include RCRA permits by rule (USEPA #24).

The references to interim status have been deleted from the definition of "RCRA permit" in order to avoid any interpretation that actual permits or permits by rule are to be excluded from the definition (USEPA #25). A RCRA permit will be precisely that which is required by §21(f) of the Act.

§702.121 Who Applies (IPC 48)

USEPA has issued a regulatory interpretation memorandum concerning who must sign the permit application (45 Fed. Reg. 74489, November 10, 1980)(IPC 48). The Board would give such interpretation great weight in any dispute involving these questions.

§702.123 Information Requirements (USEPA #11)

40 CFR 122.4(d)(7) was amended to reduce the distance requirement for topographic maps from one mile to 1/4 mile (47 Fed. Reg. 15306)(USEPA #11). To preserve consistency of units throughout these regulations, the Board has converted this to the metric equivalent of 402 meters.

§702.126 Signatories (IPC 48)

USEPA has issued a statement of policy concerning who must sign applications and reports under the equivalent 40 CFR 122.6 (1982)(45 Fed. Reg. 52149, August 6, 1980) (IPC 48). The Board would give such interpretations great weight in any dispute involving these questions.

§702.148 Duty to Provide Information (IPC 49, USEPA #12)

The phrase "revoking and reissuing or terminating" has been added to the list of relevant information which the Agency can request of the permittee. This is taken from 40 CFR 122.7(h)(1982). As discussed elsewhere, the Agency's authority to terminate a permit on its own is limited. However, it will be allowed to request information to determine whether cause exists to file an enforcement action before the Board (IPC 49, USEPA #12).

§702.162 Schedules of Compliance (IEPA #7, 28, USEPA #13)

Schedules of compliance are to be placed in permits only if the underlying Board regulation allows for delayed compliance or if the applicant has obtained a variance from the Board regulation. §39(d) of the Act allows such compliance schedules, but does not specify whether they can be issued independent of a Board rule, variance or enforcement order. The overall structure of the Act provides for the Agency to issue permits, applying Board regulations, and sets up a general variance procedure to be followed by persons who wish to deviate from the letter of the regulations. The interpretation given makes the RCRA provisions consistent with the Act as a whole (IEPA #7, #28).

The variance proceeding is separate from the permit application or modification proceeding. The Board has no authority under the Act to issue permits; rather, this power is vested exclusively in the Agency (§39). Following the grant of the variance, the Part 705 permit procedures will be followed to actually modify or issue the permit. The Board's variance Order will be utilized by the Agency as a part of the law applicable to the facility. The Agency is encouraged to submit the Board's variance procedures with the application for RCRA authorization (35 Ill. Adm. Code 104) (USEPA #13).

§702.164 Recording and Reporting (USEPA #14)

The following sentence, taken from 40 CFR 122.11(c) (1982) has been added to §702.164(c): "Reporting shall be no less frequent than specified in the above regulations."

§702.183 Modification

Modification may be initiated either by the permittee, by filing an application to modify, or by the Agency, when it comes into possession of information from which it can determine that cause for modification exists. The causes for modification are set out in the following sections. Whether initiated by the Agency or the permittee, the modification proceeds by way of the Part 705 procedures.

The modification sections relate to grounds on which the Agency can initiate modification. They should not be construed as limiting the circumstances under which the permittee can request modification, or as a defense defining how far the permittee can stray from the letter of the permit conditions.

The Agency controls the specificity of the conditions of the permit it issues. To a certain extent the applicant can affect this process by being more or less specific in the application. If some detail of the site or method of operation is specified in the permit, then it is a violation of the permit condition to alter this detail. However, if the applicant wishes to adjust any detail in a permit, the Agency must review the modification against the rules. The modification rules should not be construed as barring such modification.

§702.184 Causes for Modification (USEPA #12)

Causes for modification include: "material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit" [§702.184(a)]. This standard comes into play when the Agency initiates a modification because of alteration without an application to modify, or whenever the permit is silent on some detail. If the permittee modifies without an application, the Agency would also have the option of filing an enforcement action. The question in such a case would be whether the modification was prohibited by the language of the permit, Board rules or State law.

To protect himself from an enforcement action for violation of permit conditions, the permittee should file an application to modify prior to any construction or modification. The permit should be modified so as to reflect what the permittee is actually doing without consideration of whether the modification is "substantial and material".

Causes for modification also include changes in the regulations on which the permit was based [§702.184(c)] and changes in compliance schedules [§702.184(d)].

Modification and revocation are not clearly distinguished in the federal regulations. Because the State authority is divided between the Board and Agency, greater care must be exercised in delineating the two. The causes for permit modification listed in §724.184(e) may cause the most difficulty because they would be used in situations in which an enforcement action would also be appropriate. These are discussed below.

As proposed, §703.184(f) contained a broad statement taken from 40 CFR 122.15(b)(1) to the effect that a permit could be modified if "causes exist for revocation under Sec. 702.186, and the Agency determines that modification is appropriate." This language has been dropped because it conflicts with §702.186, which provides that it is the Board which revokes permits.

Section 703.184(f) has been replaced with language taken from 40 CFR 122.15(b)(2), which was omitted from the proposal. This provides that the Agency may modify, or terminate and reissue, a permit upon notification of a proposed transfer. In this situation the Agency may insist on a new application and deal with the site as though no previous permit existed (USEPA #12).

§702.185 Facility Siting

A sentence has been added to Section 702.185 alerting the reader that certain modifications to the facility may require site location suitability approval by local government pursuant to §39.2 of the Act. Expansion beyond the boundary of a currently permitted "regional pollution control facility" would require such approval [§3(x) and 39(c) of the Act]. Note that the term "facility" has a different meaning in this portion of the Act: Expansion of a "TSD unit" within an "HWM facility", as these terms are used in the RCRA rules, could require such approval, since a "TSD unit" could itself meet the definition of a "regional pollution control facility".

§702.186 Revocation (USEPA #15)

This Section has been modified to state the conditions under which the Board will revoke permits rather than the conditions under which the Agency may request revocation (USEPA #15). These conditions will apply to citizen suits also.

As noted above, there are several types of permit modifications which are unique to the RCRA permit system [§702.184(e)]. These include: required modification of the closure plan; modification of the level of financial responsibility; modification to establish a groundwater detection monitoring, compliance monitoring or corrective action program; and, when a land treatment unit fails to achieve complete treatment under its current permit conditions. These types of permit modifications cause difficulty because they could arise in situations in which an enforcement action would also be appropriate.

Permit modification may resemble enforcement in many situations in the RCRA rules. First, it should be noted that "permit revocation" in the literal sense would rarely be the result of an enforcement action, especially in cases of extreme environmental damage. The most extreme result likely would be an order to cease operations, close the facility and undertake post-closure care. This would essentially be the equivalent of revocation of a Chapter 7 operating permit. The Board would order the permit system utilized during the post-closure care period, which could exceed 30 years, rather than supervising the facility through modifications to Board orders. The end result of the enforcement action would be a permit modification rather than revocation in the literal meaning.

In an enforcement action the burden of proof is on the Agency, while in a permit modification the burden is on the applicant. The original issuance of the permit shifts the burden of proof, and gives the applicant some reason to expect that if he constructs and operates in accordance with the permit he will suffer no ill effects. The Agency's ability to reopen the permit in a context where the burden is on the permittee is limited.

The major limitation on modification is that it cannot be used by the Agency as a substitute for an enforcement action to punish the permittee for past violations of the rules and permit conditions. For example, if the Agency determines during a modification that the permittee falsified information in the original application, it cannot deny the permit modification as a penalty. If the permittee provides true information which is sufficient for issuance, the Agency must issue a modified permit based on such information. However, the permit could be revoked by the Board as a penalty following an enforcement action.

Permit modification is forward-looking: the question is whether the facility will comply with the rules during the period of the requested permit. Permit denial as a result of modification should be based on a finding that

either the rules or the facility itself has changed so that the facility cannot comply with the rules.

Permit modifications do not become effective until after there has been the opportunity for an appeal and a hearing and review by the Board.

The groundwater protection modifications are initiated by a permit modification application which the permittee must file upon the happening of certain conditions, such as the entry of indicator parameters into groundwater. The Agency will modify the permit to establish compliance monitoring and corrective action programs. The Agency could also file an enforcement action and ask the Board to order compliance monitoring and corrective action. If the permittee files the modification application, the Agency may proceed either, or both, ways. If the permittee refuses or fails to file the application, the Agency's only option would be to file an enforcement action, alleging failure to file the application as well as groundwater pollution.

The financial responsibility rules allow the Agency to modify the permit on its own initiative to increase the amount of financial responsibility or liability insurance which must be maintained. Such modifications would not be effective until after the opportunity for a hearing and Board review by way of permit appeal. The rules contain adequate standards which the Agency must follow to determine the required level of coverage. Board review will prevent abuses of this mechanism such as arbitrary increases in the amount of assurance as a punitive measure rather than to reflect actual closure costs or liabilities.

PART 703

RCRA PERMIT PROGRAM

§703.100 Scope and Relation to Other Parts (STL 8, IEPA #31)

The Federal regulations use the term "solid waste" to mean "waste", including liquid waste (IEPA #31). This is defined in Part 721.

§703.101 Purpose (STL 9)

The purpose of Part 703 will be to provide for issuance of RCRA permits and to allow Illinois to receive "final authorization" (STL 9).

§703.120 Prohibitions in General (STL 9, IEPA #30)

This is a general introductory section outlining the Subpart and placing it in context. The rather simple permanent portions of the permit program have been separated from the interim status rules.

§703.121 RCRA Permits (STL 9)

Paragraph (a) repeats the portion of the statutory prohibition of §21(f)(1) of the Act which requires permits and compliance with permit conditions. The term "site", as used in the Act, has been changed to "HWM facility" in the regulation. The Act uses "site" and "facility" interchangeably, while "HWM facility" is a term of art in the RCRA rules [§3(dd) and §702.110]. The "HWM facility" includes all contiguous land and structures around one or more TSD units. There will be one permit for all the units, rather than separate permits for each unit.

§703.125 Reapplications (IPC 37, USEPA #43)

This section requires reapplications to be submitted at least 180 days in advance of the expiration date of an existing permit (IPC 37). The Agency may give permission to file the application late, up to the actual expiration date (USEPA #43). If the application is timely, the old permit will continue in effect during the renewal proceedings; otherwise, the applicant will be required to cease operations during the pendency of the application (§§702.125 and 705.202).

§703.127 Federal Permits (USEPA #26)

RCRA permits issued by the United States Environmental Protection Agency prior to final authorization constitute RCRA permits within the meaning of §21(f) of the Act and §703.121 (USEPA #26).

§703.140 Purpose and Scope (STL 9, IPC 38)

The interim status rules have been separated from the rather simple permanent rules requiring actual permits. Although interim status is important now, eventually all facilities will have actual permits. The way the federal rules are organized it will be necessary to search through dozens of pages of intricate rules to find the simple rules applicable to the permitted facilities. The Board's reorganization will avoid this (IPC 38).

The commenters have indicated that the federal permit rules have themselves been recodified. The Board is not able to address the federal recodification within the time constraints for this rulemaking. The Board will address the advisability of reorganizing this Part in a later rulemaking.

§703.141 Permits by Rule (USEPA #23)

The Board believes that ocean disposal of hazardous waste will not be common in Illinois and that it is a matter which is better left to Federal regulation. §703.141 grants an Illinois RCRA permit by rule to persons who comply with certain Federal regulations, rather than the equivalent Illinois regulations. This should be easier for a person engaging in ocean disposal to follow, since he is likely to have only minimal contact with Illinois.

§703.150 Application by Existing HWM Facilities (STL 9, IPC 38, IEPA #1)

Section 703.150(b) allows the Agency to call in Part B applications which will result in actual permit issuance (IPS 38). The Board expects the Agency to establish a schedule based on such factors as its ability to review applications and the potential environmental hazard of various categories of facilities, and to pursue a vigorous program resulting in issuance, or denial, of actual permits.

The time for submission of a Part A application may be extended only by a variance granted by the Board (STL 9, IEPA #1, IPC 39). The Board has added language indicating that it will consider whether there has been "substantial confusion" caused by ambiguities in the regulations in deciding whether to extend the time for a Part A application (IPC 40).

§703.152 Amended Part A Application (USEPA #20)

An amended Part A will be required within 6 months after the effective date of any additional listings of hazardous wastes handled by the facility (USEPA #20).

§703.154 Prohibitions During Interim Status (STL 10, IPC 41)

Section 703.154(d), as proposed, prohibited the construction of a new TSD unit. This has been deleted from the proposal. The question of whether a new unit can be constructed will depend on a case-by-case determination pursuant to Section 703.155 (STL 10, IPC 41).

§703.157 Grounds for Termination of Interim Status (USEPA #41 and #42)

40 CFR 122.23(e)(2) apparently contains an erroneous reference to 40 CFR 122.22(a)(3), which corresponds to §703.150(c), concerning extension of the time for filing of Part A applications through a variance. USEPA has indicated that the correct reference is to 40 CFR 122.22(a)(5), which was dealt with in §703.159 in the draft. 40 CFR 122.22(a)(5) provides that interim status terminates if the owner or operator fails to file the Part B on time. This will be inserted into the text of §703.157 rather than §703.150 (USEPA #41 and #42). The termination of interim status following a variance will be provided for under the terms of the individual variance orders.

40 CFR 122.22(a)(5) provides that the termination is "under Part 124". It is not clear which procedures of Part 705 correspond to the federal reference. The Board has therefore provided that the Agency is to issue a draft notice of intent to deny when an interim status facility fails to file a Part B application.

§703.158 Permits for less than the Entire Facility (STL 10, IPC 42, IEPA #24, #32, USEPA #27)

In the July 26, 1982 amendments USEPA added a provision to 40 CFR 122.21(d)(4) which allows for partial facility permits with a continuation of interim status for units for which no permit has been issued or denied. The Board will follow this Federal amendment, although questioning the wisdom of partial facility permits. The Board encourages the Agency to incorporate into such partial facility permits a precise description of which units are subject to the permits and which units continue to operate under the interim status rules.

The Board has also dropped proposed §703.159 which would have set definite dates for Part B applications and termination of interim status. The Board will address this in a rulemaking pursuant to Section 22.4(b) of the Act unless rapid progress is made toward satisfying the legislative mandate that RCRA permits be issued (STL 10, IPC 42, IEPA #24, #32, USEPA #27). The provisions on termination of interim status are in §703.157.

§703.180 Applications in General (STL 10, IPC 43, IEPA #33)

This section is an introductory section which summarizes when the applications are required and what they contain. This is intended as an aid to the user and does not override the specific provisions. A summary of the types of applications is necessary since these rules have been reorganized from the federal.

The Agency asked that the second sentence of §703.180(a) be clarified to indicate that Part B applications may be filed voluntarily at any time. The section seems to be sufficiently clear on this point.

§703.182 Contents of Part B (IPC 44)

This section contains a "menu" for the Part B application. The corresponding 40 CFR 122.25 has been broken up and rearranged. The Agency has authority to make allowances on the information requirements (IPC 44).

§703.183 General Information (STL 11, IPC 44)

Section 703.183(t) corresponds to 40 CFR 122.25(a)(20). It has been reworded to state the Agency's authority under the Illinois Act to require such additional information "as may be necessary to determine whether a permit should be issued and what conditions to impose." This should be done by way of a letter to individual applicants (§705.123).

§703.184 Facility Location Information (STL 11, IPC 45, USEPA #18, #19)

Section 703.184(a) requests information to enable the Agency to determine whether §21(k) is applicable and, if so, whether its requirements have been satisfied. The Board has added language to specifically allow a demonstration that §21(k) is inapplicable, as, for example, in the case of a storage facility (STL 11).

The Board has added a specific reference to §21(k) for the convenience of the public. The alternative of having the Agency reject each application with a specific request for §21(k) information would be expensive and burdensome to the public (IPC 45).

USEPA has asked that §703.184(d)(3)(B) be amended to include a reference to Part 705, which is the equivalent of 40 CFR 124. The requested reference would limit facilities to which waste can be moved in the event of flood to those "eligible to receive hazardous waste in accordance with the regulations under" Part 705, as well as Parts 702, 703, 724 and 725. In the Illinois system Part 705 will include procedures only, with no provisions concerning the eligibility of the site (USEPA #18).

Facilities which are not in compliance with floodproofing requirements are required to have a compliance plan and a Board variance [§703.184(e)]. Board variance procedures in §702.108 will be adapted to be equivalent to USEPA compliance plan procedures (USEPA #19).

§703.205 Incinerators (STL 11, IPC 46)

Section 703.205(c)(7) has been modified from the federal language found at 40 CFR 122.25(b)(5)(G) to limit the Agency's power to request additional information in accordance with State law. This should take the form of an individual request under §705.122, rather than a modification to the application form without Board rulemaking (STL 11).

Section 703.205(d) allows the Agency to approve a permit application for an incinerator without a trial burn (IPC 46).

§703.221 Emergency Permits (STL 12, IPC 46, IEPA #14, USEPA #17)

The Agency can issue a temporary "emergency permit" to a facility with an effective permit to allow treatment, storage or disposal of hazardous waste for a non-permitted facility if the Agency finds "an imminent and substantial endangerment to human health or the environment". Note that these may be issued only to facilities which already have an actual permit.

Section 703.221(f) infers that the permit could be inconsistent with Board rules. This would be inconsistent with the general division of powers between the Board and Agency. The Board has specified that a variance or provisional variance is required for inconsistent emergency permits. Note that no variance would be required for a consistent permit.

Proposed §703.221(f) has been modified to limit the variance requirement to permits which would be inconsistent with Board rules other than procedural requirements. The emergency permit may be issued without following the Part 705 procedures.

The variance procedures will be adapted to be equivalent to the federal permit modification procedures (§702.108). The variance will not be a substitute for the emergency permit, but will be a precondition. The post-hoc notification procedures of §703.221(e) will be carried out by the Agency following the emergency permit issuance (USEPA #17).

PART 704

UIC PERMIT PROGRAM

The Board received no comments on Part 704.

PART 705

PROCEDURES FOR PERMIT ISSUANCE

§705.101 Scope and Applicability (STL 12)

The final sentence of §705.101(c) has been dropped. This was adopted with the UIC rules as an attempt to reconcile the Agency and Board hearing processes (STL 12). The Board held that hearings at the Agency level are non-adversary public participation hearings. The hearing before the Board will be an adjudicatory hearing. Appeal will be limited to issues which were properly raised at the Agency level (§705.212).

§705.122 Completeness (STL 12)

40 CFR 124.3(c) specifies definite time limitations for review of permit applications for completeness. These were omitted from the UIC rules because they are not necessarily required for State programs. However, experience has taught that definite time limitations for Agency actions are often necessary.

40 CFR 124.3(c) requires that USEPA notify the applicant "that the application is complete upon receiving this information" (STL 12). This seems to leave open the question of what USEPA is to do if the information is not sufficient. The Board has modified the Federal language to address this explicitly. The UIC rules required that this be done "promptly". The Board has changed this to specify that the time limitations of paragraph (b) apply, so that the Agency will have the same time to review the additional information as the original application. "Promptly" could leave open questions of interpretation.

§705.123 Incomplete Applications (STL 13)

40 CFR 124.4(d) provides that the permit may be denied and appropriate enforcement taken if the applicant fails or refuses to correct deficiencies. Section 705.123 allows the Agency to issue or deny the permit, while the Federal rule seems to limit the action to denial. This would seem to place the Agency in a box if the applicant refused to correct the deficiency and the Agency decided that the application was in fact complete: the Agency's only action would be denial, followed by an appeal and confession of error.

The Board has eliminated the references to enforcement under this Section. Any person who is operating without the necessary permits is subject to enforcement (§702.109).

§705.124 Site Visit (STL 13)

The Agency is to treat a failure or refusal to allow a site visit as an application deficiency.

§705.125 Effective Date (STL 13)

This Section of the UIC rules required public notice of complete applications. Such notice was required by the Act prior to S.B. 172. The Board will therefore drop the public notice requirements for applications from this Section and §705.161(a)(1). The public will receive a draft permit or notice of intent to deny, however.

§705.128 Modification or Revocation of Permits (STL 13, USEPA #5)

Section 705.128(c) required the Agency to give public notice before it initiated permit modification. This will be deleted for the reasons noted in connection with §705.124 (STL 13).

Section 705.128(c)(2) contains a sentence to the effect that all draft permits prepared in the modification proceedings must be based on the administrative record of §705.144 (STL 13). This sentence is absent from 40 CFR 122.5(c)(2) and will be dropped. Note, however, that the sentence is true in that §705.141(d) says that all draft permits must be based on the §705.144 administrative record, and that §705.128(c)(1) says that modification must proceed by way of draft permit.

Under USEPA procedures permits may be revoked, terminated or revoked and reissued by way of draft permit or notice of intent to deny. As noted elsewhere, the Board has the authority to revoke permits. The Board will utilize the procedures of Title VIII of the Act and 35 Ill. Adm. Code 103, rather than the draft permit/notice of intent to deny mechanism. The Board's procedures for public participation are equivalent to the federal (USEPA #5).

As noted above, the Agency has authority to modify permits in certain situations which could be similar to revocation. The Board has therefore added a paragraph stating that, to the extent that it has such authority, the Agency must proceed by way of the Part 705 procedures. This Section is neutral as to the Agency's authority, but specifies a procedure to be followed in any case in which authority exists.

§705.161 When Public Notice Must be Given (STL 13)

The requirement of public notice of receipt of an application has been deleted for the reasons noted in connection with §705.125 (STL 13).

§705.162 Timing of Public Notice (USEPA #1)

RCRA permits will require 45 day periods, UIC permits 30 day periods (USEPA #1).

§705.163 Methods of Public Notice (USEPA #6, 7, 8, 16 and 44; IEPA #15)

The methods of notice differ slightly between RCRA and UIC permits (IEPA #6, 7 and 16). Section 705.163(c) has been split to reflect the different wording.

Notification in compliance with Board rules will constitute legal notice under State law (USEPA #44).

USEPA has asked for inclusion of specific notification requirements from 40 CFR 124.10(c)(1)(iii) and (ix). These have been added as §705.163(a)(3) and (5).

The Board has dropped the notification requirements for local officials insofar as the provisions on which this requirement was based have been dropped from the Act (IEPA #15, CARES 2).

§705.182 Public Hearings (USEPA #2, 3, 4, IEPA #16, 34)

The mandatory public hearing for RCRA permits has been dropped (IEPA #16; CARES 3). The statutory basis for this was repealed with S.B. 172 and replaced with the procedure for site approval by local government.

The public hearing rules for RCRA permits differ from the UIC rules at 40 CFR 124.12(a). The public hearing will be required whenever the Agency receives written opposition and a request for a hearing during the public comment period on a draft permit (USEPA #2, 3; IEPA #16, 34). The Agency will be expected to develop hearing procedures and submit them to USEPA (USEPA #4).

§705.184 (STL 13, IEPA #19)

The Board has dropped §705.184(f). The Agency decision periods do not apply to RCRA and UIC permits (STL 13, IEPA #19).

§705.210 Response to Comments (STL 14, USEPA #9, 10)

Section 705.210(b)(5) requires the Agency to respond to all significant comments "raised during the public comment period." This includes both written comments and comments made at a public hearing (USEPA #9).

Section 705.210(c) was omitted from the text published in the Illinois Register because of a typographical error. This provides that the response to comments must be available to the public (USEPA #10). Paragraphs (c) and (d) in published text were from §705.211 (STL 12).

§705.211 Administrative Record for Final Permits or Letters of Denial (STL 14)

This Section was omitted from the text published in the Illinois Register because of a typographical error, although paragraphs (c) and (d) were printed as part of §705.210 (STL 14).

Section 705.211(e) has been dropped. The Board must have the entire final administrative record in order to review any permit appeals.

PART 720
HAZARDOUS WASTE MANAGEMENT: GENERAL

The Board received only a positive comment on this Part (STL 14).

PART 721
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Because of its importance in Part 724, the Board has replaced the incorporation by reference with the actual text of 40 CFR 261, Appendix VIII, the list of hazardous constituents. The Appendices will be lettered A - H to conform with codification requirements. The Board has identified a number of problems with the Federal list. Obvious errors have been corrected; less obvious problems will be addressed in a future rulemaking.

PART 724
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

§724.101 Purpose, Scope and Applicability (STL 15, IEPA #22, USEPA #29)

Section 724.101(g)(1) is drawn from 40 CFR 264.1(g)(1). Facilities which manage only waste generated by small quantity generators are exempt from the Part 724 standards. The Board has added a comment noting that the generator may have to have a Chapter 7 permit and a Chapter 7 "supplemental permit" (Rule 210). In other words the RCRA exemption is not to be read as an exemption from the Chapter 7 permit program (STL 15, IEPA #22).

The language of the comment has been changed from that proposed to make it clear that the comment does not alter the scope of Chapter 7. This is just a comment to alert the reader to the other permit program.

40 CFR 264.4 provides that, notwithstanding any other provisions, enforcement actions may be brought pursuant to Section 7003 of the Resource Conservation and Recovery Act. The Board has proposed no State equivalent in Part 724 (USEPA #29). Enforcement actions may be brought by any person pursuant to Title VIII of the Environmental Protection Act and §700.109. The existence of a permit is a defense only to a charge of operation without a permit (§702.181).

§724.118 Location Standards (USEPA #40, IEPA #8, 17, 18)

Section 724.118(a) prohibits TSD units within 61 meters of a fault which has had displacement in Holocene time. 40 CFR 261, Appendix VI, which is incorporated by reference, says that there are no such faults in Illinois. The Board construes this as creating a presumption that there are no such faults in Illinois, so that the permit applicant need not prove the absence of such faults in the original application. However, the Agency, or opponents, of the permit could present evidence of the actual presence of such a fault, at which time the applicant would need to come forward with evidence.

Section 724.118(b) sets special requirements for facilities located within the 100 year floodplain. Section 703.184(f) requires schedules of compliance for facilities which do not meet §724.118(b). Section 702.108 will require concurrent variance petitions for such facilities (IEPA #8).

Facilities which are "new regional pollution control facilities" will require site location suitability approval from local government under §39.2 of the Act. Such facilities will be required to demonstrate to local government a determination by Illinois Department of Transportation that the site is outside the 100 year floodplain, or is floodproofed to meet Illinois Department of Transportation standards. Such a demonstration will not be taken as precluding an independent review by the Agency as to whether the site indeed meets §724.118(b) (IEPA #17, USEPA #40).

40 CFR 264.18 contains no reference to underlying geological conditions other than faults. The absence of detailed geological siting regulations should not be construed as precluding review of underlying aquifers and the permeability of intervening formations by the Agency, which must determine whether the facility would cause violation of §12(a) or 12(d) of the Act because of siting in areas which contain aquifers which are not adequately separated from the facility by formations of low permeability (IEPA #18). The Agency may request supplemental information addressing such issues if applications are inadequate to allow it to make a finding.

§724.132 Required Equipment (IPC 12)

This Section requires certain safety equipment, such as fire hydrants, "unless the owner or operator demonstrates to the Agency that none of the hazards posed by the waste handled at the facility could require a particular kind of equipment specified..." This Section contains an internal exception procedure which sets a standard which the Agency can apply to adjust the effect of a Board rule. The standard is sufficiently specific that the Board can review the Agency's action should an appeal result (IPC 12). No variance is needed before the Agency issues a permit pursuant to this exception provision.

§724.136 Special Handling for Ignitable or Reactive Waste (STL 15, IPC 16)

This Section of the proposal was drawn from the 40 CFR 264.36(1981). The Federal section was terminated at 46 Fed. Reg. 2849, January 12, 1981, effective July 13, 1981. It will be deleted from the proposal.

§724.171 Use of Manifest System (STL 15, IEPA #20)

The Federal rule has been modified to require that a copy of the manifest be sent to the Agency by the HWM facility. The Agency's computerized system will match the manifest to the generator's manifest and create any needed missing local reports (IEPA #20). The Board has added the pre-existing Chapter 9 manifest requirements to the RCRA rules, allowing it to exempt hazardous waste from duplicative regulation under this aspect of Chapter 9 (STL 15).

§724.172 Manifest Discrepancies (IPC 16)

40 CFR 264.72(a) contains two subparagraphs with a return to the main paragraph (a). This violates Illinois codification requirements. Furthermore, the "hanging paragraph" cannot be cited numerically. The Board has therefore renumbered paragraph (a) to conform with codification requirements. However, the renumbering has been modified from the proposed version to preserve the correspondence between 40 CFR 264.17(b) and §724.117(b) (IPC 16).

§724.175 Annual Report (IEPA #21, 35)

The Agency will promulgate annual report forms based on 40 CFR 264, Appendix II (IEPA #35).

§724.177 Additional Reports (IPC 17)

The proposed Section has been modified to make it follow 40 CFR 264.77. Paragraph (b) is reserved in the Federal rule. Current codification dogma prohibits the reservation of subparagraphs, so paragraph (b) will simply be skipped in the Board rule.

§724.190 Applicability (Groundwater Protection)(IPC 17, USEPA #30)

The Federal groundwater protection rules apply to disposal units which received hazardous waste after the effective date of 40 CFR 264, Subpart F. The date was January 26, 1983. The State equivalent will utilize this same date, rather than the future effective date of the Phase II amendments (USEPA #30).

The groundwater protection rules work through a series of permit modifications. Indicator parameters are specified in the detection monitoring program. When an increase over background is detected, the permittee files modification applications to establish compliance monitoring and corrective action programs. As noted above, these pose difficulties because the Agency could also file an enforcement action alleging actual or threatened groundwater pollution. The Board has determined to adopt rules providing for a permit modification system similar to the Federal rather than insisting on enforcement actions to establish remedial action. If the permittee files the necessary modification applications, the Agency may proceed to remedy the situation through permit modification. If the permittee refuses, the Agency should proceed with enforcement (IEPA #2).

Section 724.190(b)(3) and (4) exempt operators from the groundwater protection rules if the Agency makes certain findings in reviewing the facility permit application. This rule contains an internal exemption procedure which allows the Agency to modify the effect of the regulations without the necessity for a variance. The standards are adequate to allow Board review (IPC 17).

§724.192 Groundwater Protection Standard (IPC 18)

The Agency is to establish a "groundwater protection standard" in certain permits. Numerical limitations based on Board rules will be written as permit conditions. The use of the word "standard" to describe such permit conditions differs from the Board's usual usage of this term to describe numerical limitations set by Board rule, rather than permit limitations.

§724.193 Hazardous Constituents (IPC 18, IEPA #5, 9)

Hazardous constituents are chosen by the Agency from the list in Part 721, Appendix VIII (or H). Hazardous constituents specified in the permit are those which have been detected in groundwater in the uppermost aquifer underlying a regulated unit, which are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Agency excludes them under §724.193(b). The constituent is excluded if it is found that it is not capable of posing a substantial present or potential hazard to human health or the environment.

Specification therefore requires three determinations: whether the constituent has been detected in groundwater; whether it is derived from waste; and, whether it poses a hazard. The first two determinations are clearly the types of adjudications which the Agency can make in permit issuance or modification; the third is more like rulemaking (IPC 18).

Exclusion pursuant to paragraph (b) requires consideration of potential adverse effects on groundwater and hydraulically connected surface water quality. Nineteen specific factors are listed which must be considered before a constituent is excluded. The Board has added §724.193(d) to require that the Agency make written findings on each factor before excluding constituents. The specific findings will ensure that the Board can adequately review the Agency's determinations in any appeal.

Illinois power contends that, apart from the question of whether the rule specifies a reviewable standard for the Agency to apply, the determination is the equivalent of establishing an environmental control standard or regulation, a quasi-legislative function delegated to the Board (IPC 18). The Board recognizes that this is a troublesome issue. The determinations to be made are indeed similar to the determinations which would be made by the Board in establishing a standard. However, the Board's determination in a rulemaking to establish a list of hazardous constituents would center on the impact under the worst conditions in the State. The Agency's action, on the other hand, involves pruning from a list established by regulation. The Agency's action is based on conditions at a certain site involved in the permit application.

§724.194 Concentration Limits (IPC 20, IEPA #5, 9)

This section provides that the Agency will establish concentration limits in the permit for each hazardous constituent established under Section 724.193. Paragraph (a)

provides that the concentration limit is to be determined by one of three alternative rules. The concentration must not exceed: the background at the time the limit is specified; for certain constituents, levels specified by Board rule; or, an alternative number specified by the Agency after finding that the constituent will not pose a substantial present or potential hazard to human health or the environment so long as the alternate concentration limit is not exceeded. This determination is to be based on potential impact on groundwater and surface water. The Agency must consider a list of 19 factors similar to those in Section 724.193(b). The Board has added a paragraph (d), requiring specific written findings. This will allow for effective Board review of the application of these standards.

This system for establishment of numerical limitations in permits differs from the system for surface water discharges pursuant to NPDES permits (35 Ill. Adm. Code 309.141 et seq.). The Agency applies USEPA effluent limitations, Board effluent standards and Board water quality standards to arrive at the permit limitations. The Agency applies the most stringent number to the permit. In the RCRA system on the other hand the Board rules will supply a list of hazardous constituents, numerical limitations for 14 constituents and a set of rules by which the Agency arrives at the numerical limitation in the permit. For most constituents the Agency sets a number in the complete absence of a Board numerical standard, and the Agency can adjust the Board standard up or down.

Illinois Power again contends that, even though the standard for Agency action is specific and reviewable, that paragraph (a)(3) and (b) involve determinations by the Agency which are the equivalent of establishing an environmental control standard or regulation, a power delegated only to the Board. Apparently Illinois Power believes that the process of setting permit limitations, and part of the process of identifying hazardous constituents under the preceding section, must be routed through a variance, site specific rulemaking or some newly created adjudicatory process before the Board (IPC 20).

Before considering whether this Section involves an invalid delegation of rulemaking authority to the Agency, it is important to again discuss the procedural context in which the Agency specifies hazardous constituents and concentration limits in the permit (p. 11 et seq.). Most facility permits will be issued with "detection monitoring programs" which involve monitoring for "indicator parameters," rather than hazardous constituents.

If an indicator parameter shows a statistically significant increase over background, the permittee must presumptively monitor to establish a background level for all Appendix VIII (or H) hazardous constituents. A permit modification application must then be filed to establish a "compliance monitoring program". The hazardous constituents and groundwater protection standard are written into the permit at this point.

It should be first noted that the specification of constituents and the standard will always take place under emergency conditions, after groundwater has shown an increase in indicator parameter levels. To reserve this power to the Board would necessitate a significant delay in permit modification to establish compliance monitoring and corrective action. The variance procedure would not work because there is no Board standard to request a variance from, and the Agency would have to be the petitioner. The most workable method for Board action would be to require the Agency to propose a site-specific rulemaking to the Board. Such rulemakings commonly take two years to complete. This would be an unacceptable delay in an emergency situation.

An alternative would be for the Board to establish numerical limitations for the Appendix VIII (or H) hazardous constituents. However, this would necessitate substantive rulemaking pursuant to Section 22.4(b) of the Act. This could not be completed in time to meet the deadline for adoption of the RCRA permit program. Moreover, there may be difficulties in setting statewide standards which would infer acceptable limits for all of these constituents.

In the second place, the Board notes that the Agency's action is limited to setting limitations for constituents which are drawn from a list set by Board rule. This is a much more narrow authority than that exercised by the Board in a rulemaking to set standards.

Thirdly, the permittee will have to establish a background value for each hazardous constituent available for inclusion in the permit. The Agency will have this number as a starting point to establish the permit limitation. Determination of such background levels at a given site is a decision which is well within the Agency's permit authority. Paragraph (b) gives a formula whereby the Agency sets the permit limitation above or below the background so determined.

§724.197 General Groundwater Monitoring Requirements (IPC 21)

Section 724.197(h)(1)(A) specifies the use of "Cochran's Approximation to the Behren's-Fisher Student's t-test" to determine whether a statistically significant increase over background levels has occurred in a detection monitoring program. Paragraph (h)(2) allows the use of other statistical tests to be specified in the permit. To get an alternative test the applicant must demonstrate to the Agency that the alternative "provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit." This is an adequate standard to allow Board review should a permit appeal result. However, Illinois Power contends that this is the equivalent of establishing an environmental control standard, a power delegated to the Board alone (IPC 21).

A comparable provision is the averaging rule of 35 Ill. Adm. Code 304.104. This sets rules for determining whether violation of the numerical effluent standards set by Board rules has occurred.

The detection monitoring program on the other hand does not involve any standards. The permittee just monitors for indicator parameters. The standard is set after the statistically significant increase over background is observed. Detection monitoring includes monitoring for innocuous parameters such as total conductance. There is no violation of the permit conditions if the background is exceeded; it just triggers a permit modification and establishment of the standard. The Board therefore concludes that the specification of alternative statistical procedures is a valid exercise of a permitting function of the Agency.

§724.198 Detection Monitoring Program (STL 15, IPC 22, IEPA #2)

Section 724.198(i) allows the operator to demonstrate that a source other than a regulated unit caused the increase in indicator parameters over background levels, or that the increase resulted from an error in sampling, analysis or evaluation. The Federal rules are vague as to how this demonstration is to be made. The Board has provided that this is to be a permit modification proceeding which can be appealed to the Board separately from the permit modifications to establish compliance monitoring and corrective action programs. The idea is to afford the permittee the opportunity for a quick review of this to get a final decision before he has to file the applications for the compliance monitoring

and corrective action programs, which could involve large engineering fees. The alternative is Board review of the Agency decision after its action establishing compliance monitoring.

The Board has modified the federal rules in order to resolve an ambiguity which becomes important in the Illinois two-Agency system. The Board has authority to modify the Federal rules to make them fit the Illinois system, so long as the rules remain identical in substance (STL 15, IPC 22).

§724.200 Corrective Action Program (USEPA #31)

A typographical error has been corrected in the final line of §724.200(d).

§724.213 Closure; Time Allowed for Closure (STL 15, IPC 23)

40 CFR 264.113 requires that the operator must treat, remove or dispose of all hazardous waste within 90 days after receiving the final volume, unless the operator makes a specified showing. The operator must complete the closure plan within 180 days unless he makes a similar showing. This could be construed as a defense or as grounds for waiver which the operator can use if he fails to complete closure within the time limits specified. However, this interpretation would appear to allow the Agency to grant variances from Board rules, and would be inconsistent with the overall intent of the closure rules.

Under §724.212 the operator must file a closure plan with the original permit application. The Agency issues the permit with a closure plan, even though closure may not be expected for decades. The plan can be amended through permit modification. The intent of the Federal rule on time for closure is that the permit specify a certain time unless the operator elects to make the alternative showings. The operator would have to obtain a permit modification in anticipation of closure to obtain a longer time. The Federal rule is a prescription for writing permit conditions, not a defense or waiver provision. The Board has modified the Federal text to state this more clearly so as to avoid an interpretation which could be construed as a delegation of variance authority to the Agency.

As stated the 90 and 180 days are presumptive norms. The applicant need not make the showings to extend the time for closure if he wants a permit with the 90 and 180 day time limits. This type of rule saves the Agency and applicant time in the application process by requiring detailed information only in the unusual case where the applicant wants to depart from the norm.

§724.217 Post-closure Care and Use of Property (IPC 23, IEPA #6, 10)

As proposed §724.217(a)(2)(A) allowed the Agency to reduce the 30-year post-closure care period to a lesser period which it finds to be "sufficient to protect human health and the environment". Section 724.217(a)(2)(B) allowed extension beyond 30 years if necessary to so protect. Illinois Power contends that this is the equivalent to establishing an environmental control standard (IPC 23). The Board agrees, noting that the stated standard is not sufficiently specific to allow for Board review.

The Board has modified this Section to require site-specific rulemaking to alter the 30-year period in this manner. Even a two-year delay in rulemaking would not be significant with respect to the 30-year period established by the rule.

§724.240 Applicability (Financial Requirements) (IPC 24)

40 CFR 264.140(b) was amended at 47 Fed. Reg. 32357, July 26, 1982 (IPC 24). The post-closure care provisions apply not only to disposal facilities (landfills), but also to piles and surface impoundments if waste residues or contaminated materials are to be left in place at final closure.

§724.242 Cost Estimate for Closure (IPC 24)

40 CFR 264.142(a) was amended at 47 Fed. Reg. 32357 (July 26, 1982).

§724.243 Financial Assurance for Closure (STL 15, IPC 25, USEPA #37, IEPA #3, 4, 23)

Generally the Agency is allowed to make determinations concerning compliance with the closure assurance requirements. An example is the Agency's determination as to whether an operator or parent corporation meets a financial test to guarantee closure [§724.243(f)]. These are proper exercises of the Agency's authority to review permits (IPC 25).

The Board proposed a simplified method for closure assurance as an effort to reduce the cost of compliance with these rules, especially for small business. The large corporations which commented have objected to the simplified method and raised questions as to statutory authority (STL 15, IPC 25, USEPA #37, IEPA #23). The Board will drop §724.243(j) from the proposal.

Paragraph (k) of the proposal will be changed to (j).

This deems certain actions of the Agency to be permit modifications which can be appealed to the Board (STL 15, IPC 25, IEPA #4):

1) Refusal to release funds from a closure trust;

2) An increase in, or a refusal to decrease the amount of, a bond, letter of credit or insurance;

3) Deeming a facility abandoned;

4) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

The Federal rules are vague as to which actions are appealable. In the Illinois two agency system this is critical. The Board has therefore added to the Federal rules to resolve the ambiguity in order to make the rules work in Illinois (STL 15, IPC 25).

Proposed items 1 and 3, refusal to release funds from a trust and deeming a facility abandoned, relate to the application of proceeds to a cleanup. These will arise in situations where there is a need for quick action. These actions will be construed as actions on the bond, trust agreement or insurance policy. The Agency will be free to exercise its rights under these contracts without necessarily modifying the permit. If, for example, an insurance company refuses to pay on the policy when it should under the conditions of the policy, the Agency should sue in the appropriate court. Items 1 and 3 will be deleted from the list of incidents of appeal (IEPA #3, 4).

Items 2 and 4 will be retained. Agency actions increasing the amount of assurance, refusing to decrease the amount of assurance or requiring an alternate form of assurance will have to proceed by way of permit modification with a possibility of appeal to the Board (IEPA #4).

The Agency has indicated that it will promulgate standardized forms for financial responsibility based on the Federal forms. The Board has modified the rules to allow the alternative use of forms (IEPA #36).

As proposed §724.243(h) required only that the operator of multiple facilities provide adequate assurance to close all of the facilities in Illinois. USEPA has indicated that Illinois must require sufficient assurance to close all facilities, even those located out of state (USEPA #38). Thus the failure to provide adequate assurance to close an out-of-state facility can be a basis for denial of a RCRA permit by the Agency.

§724.245 Financial Assurance for Post-closure Care (STL 16, USEPA #32, 28, IPC 27)

The introductory paragraph was modified at 47 Fed. Reg. 32357, July 26, 1982 (STL 16). Post-closure financial assurance is required of landfills, and piles and surface impoundments to the extent waste residues will remain after closure.

The Board has added paragraph (j), concerning appeal, for the same reasons as §724.243(j) (STL 16, IPC 27).

Section 724.245(h) has been modified to require post-closure assurance of all disposal facilities, whether located inside Illinois or not (USEPA #38).

A stray "final" has been deleted from §724.245(f)(11)(A) (USEPA #32). The text of §724.245 was derived from §724.243, which it repeats almost verbatim. The "final" appears in §724.243(f)(10)(A) and was not deleted in the corresponding place in §724.245. Hopefully all of these errors have been corrected.

§724.247 Liability Requirements (STL 16, IPC 28, USEPA #33, 34, IEPA #11)

40 CFR 264.147(c) provides for "variances" which reduce the level of required liability insurance. The owner or operator must demonstrate that the levels of financial responsibility required by the rule, $1 million for sudden and $3 million for nonsudden accidental occurrences, "are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility." Since this involves no question of hardship, the Board has replaced the term "variance" with "adjusted level of required liability insurance" to avoid confusion with hardship variances under Title IX of the Act (STL 16, USEPA #34).

The rule sets a standard which the Agency is to apply to determine the dollar amount of insurance required. The standard is sufficiently specific to allow Board review should an appeal be filed.

Illinois Power contends that, apart from the specificity of the standard, that the determination concerning the degree and duration of the risk amount to the establishment of an environmental control standard, a power delegated exclusively to the Board (IPC 28). The Board disagrees.

Determination of the degree and duration of risk is closely related to the Agency's technical review of permits. Note that §724.247(c) requires "technical and engineering

information" to justify an adjusted level. Under this section the Agency just goes one step further and assigns a dollar value to the risk.

Because the Board regulation sets a definite amount which is adjusted, it would be possible to require variances from the Board before an adjusted level is granted. However, these would be temporary variances requiring a compliance plan and a showing of hardship. The Federal rules clearly contemplate adjustment in the level on a potentially permanent basis regardless of hardship. Furthermore, the variance mechanism could not be used when the Agency seeks an upward adjustment. To require Board action would necessitate a cumbersome site-specific rulemaking, which hardly seems justified for something which is clearly within the scope of the Agency's permit review authority.

There is a question as to whether the Agency's action in allowing a reduced level of insurance amounts to a variance from the Board rule. The Board finds that it is not. The rule could be written with no numbers specified and a requirement that the Agency determine the degree and duration of risk for all facilities. This would still be well within the Agency's authority to review permits and set conditions. The numerical amounts are presumptive norms which reduce the amount of information which most applicants have to supply and reduce the Agency's workload in most cases: the applicant and Agency can accept the figures in the rule without a case-by-case determination (IEPA #11).

Sections 724.247(a)(1)(A) and (b)(1)(A) have been modified to allow the Agency to request a signed duplicate original of the insurance policy (USEPA #33).

§724.251 Wording of Instruments (IEPA #36, USEPA #35)

IEPA will promulgate forms based on the USEPA regulations (IEPA #36). USEPA has indicated that it will have to review these with the authorization application (USEPA #35).

§724.351 Design and Operating Requirements (Waste Piles) (IPC 29)

Section 724.351(g) provides that the Agency will specify all design and operating practices in the permit. This is within the Agency's permit review authority (IPC 29).

§724.371 Treatment Program (Sludge Application) (IPC 31, IEPA #37)

Section 724.371 provides that the Agency specifies details of the treatment program in the facility permit. This is within the Agency's permit review authority (IPC 31).

§724.378 Unsaturated Zone Monitoring (IPC 31, IEPA #12)

Section 724.371(b) requires the Agency to prune the Part 721, Appendix VIII (or H) list of hazardous constituents to arrive at a list of hazardous constituents which the treatment unit must degrade, transform or immobilize. Section 724.378(a) requires monitoring for these constituents, unless the Agency establishes "principal hazardous constituents" to be monitored in lieu of all constituents. This is within the Agency's permit review authority (IPC 31, IEPA #12).

§724.401 Design and Operating Requirements (Landfills) (IPC 32, IEPA #13)

Section 724.401(a) requires a liner and leachate collection and removal as the basic design for a landfill with groundwater monitoring. As proposed, paragraph (b) would allow the Agency to "exempt" such units from paragraph (a) on a finding that "alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous constituents into the groundwater or surface water at any future time." Illinois Power contends that this is the equivalent of setting an environmental control standard, a power reserved to the Board (IPC 32). The Board agrees, noting that the standard is too general to allow effective review in the context of a permit appeal.

The Board will require a variance and/or a site specific rulemaking for landfills which wish to deviate from the basic design and operating rules.

§724.440 Applicability (Incinerators) (IPC 34, USEPA #39)

A typographical error has been corrected in §724.440 (b)(1)(D) (USEPA #39).

Paragraph (c) allows the Agency to "exempt" the applicant from the incinerator operating rules, except for those requiring waste analysis and closure, upon a finding that the waste to be burned is listed because it is ignitable, reactive or corrosive (as opposed to toxic) and that it contains insignificant concentrations of hazardous constituents listed in Part 721, Appendix VIII (or H). The Agency can refuse the exemption if it finds that the waste will pose a threat to human health or the environment. (An apparent typographical error in the Federal standard has been corrected).

Illinois Power contends that the determination concerning human health or the environment is the equivalent of establishing an environmental control standard. However, the primary rule which the Agency is applying is a strictly technical determination as to whether the waste is not listed as a toxic and whether it contains only insignificant concentrations of hazardous constituents. The threat to health or environment is a subsequent determination which just brings the full Board rules back into effect.

This Subpart establishes two different regulatory programs, one for incinerators burning toxics, the other for incinerators burning non-toxic hazardous waste. The rules could be written as two Subparts, with the Agency to decide which Subpart applied to a given facility based on the properties of the waste to be burned. Instead, the rule is written in one Subpart, with "exemption" from most of the provisions for incinerators burning non-toxic waste. The decision as to which scheme to apply to a given incinerator is within the Agency's permit review authority.

§724.443 Performance Standards (IPC 35, IEPA #4)

Section 724.443(c) contains a formula for correction of particulate concentrations with respect to oxygen in the stack gas. This is mathematically equivalent to the formula in 40 CFR 264.343(c). Subscripts have been eliminated and the formula written in linear form to make it easier to type and store in automatic systems. The hanging paragraph has been renumbered in accordance with codification requirements (IPC 35).

Section 724.443(d) provides that the Agency may initiate permit modification to change the operating requirements in a permit if the incinerator fails to achieve 99.99% destruction removal efficiency of principal hazardous organic constituents. The Agency may also seek revocation of the permit in an enforcement action (IEPA #4).

Appendices to Part 724 (STL 16, IPC 35, USEPA #36)

The Appendices will be lettered A through E to conform with codification requirements. Appendix D will reference 40 CFR 264, Appendix IV (STL 16, USEPA #36). Illinois Power has requested actual incorporation by reference. However, this could be construed as elevating the Federal Appendices to the level of State rules. As such, they would enjoy a higher status, rendering the State program less than equivalent (IPC 35).

PART 725
INTERIM STATUS STANDARDS

The Board received only a positive comment on these amendments (STL 17).

PART 730
UIC OPERATING REQUIREMENTS

The Board received no comments on these amendments.

CONCLUSION

The Board will adopt Parts 703 and 724, and amend Parts 700, 702, 704, 705, 720, 721, 725 and 730, modified in response to comments. The adoption will be in a separate Order. This Opinion supports the Board's final Order of this date.

It is anticipated that actual filing of the rules will not occur for several weeks because of the time required to type the modified text, and because of review by the Secretary of State's office for codification approval. Because there is a possibility that the Board will have to modify the text before it is accepted for filing, the appeal period will not commence until the rules are actually filed.

Because of its length, the text of the rules will not appear in the Opinion volumes or be mailed out to the public. A copy will be placed in the file and be made available to the public for inspection and copying. However, this Opinion will appear in the Opinion volumes and will be mailed out.

Board Member Meyer dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 26th day of January, 1983 by a vote of 4-1.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board