

ILLINOIS POLLUTION CONTROL BOARD  
January 9, 1986

IN THE MATTER OF: )  
 )  
RCRA UPDATE, USEPA REGULATIONS ) R85-22  
(4/24/84 THROUGH 6/30/85) )

FINAL ORDER. ADOPTED RULE.

OPINION OF THE BOARD (by J. Anderson):

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

On October 1, 1985, the Illinois Environmental Protection Agency (Agency) filed with the Board a rough draft of a proposal to update the RCRA regulations. The Agency's draft also included an update of the UIC regulations (35 Ill. Adm. Code 704); these will be addressed in Docket R85-23. The Agency's submittal is marked PC No. 1 in both dockets.

On October 10, 1985 the Board proposed to amend the RCRA rules. The proposal appeared on November 1, 1985 at 9 Ill. Reg. 16536. The public comment period specified by Section 102.103 expired on December 16, 1985. The Board received public comment as is detailed below. The Board modified the proposal in response to comments and, on December 20, 1985, adopted final rules.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA hazardous waste program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Neither Title VII of the Act nor Section 5 of the Administrative Procedure Act applies to rules adopted under Section 22.4(a). Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 265. Permitting procedures have been moved from 40 CFR 122 et seq. to 40 CFR 270 et seq. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments adopted April 24, 1984 through June 30, 1985. The Federal Registers utilized are as follows:

49 FR 19922	May 10, 1984	(Ex 9)
49 FR 20138	May 11, 1984	(Ex 10)
49 FR 21678	May 22, 1984	(Ex 22)
49 FR 23284	June 5, 1984	(Ex 11)
49 FR 37066	September 21, 1984	(Ex 12)

49 FR 44978	November 13, 1984	(Ex 13)
49 FR 45304	November 15, 1984	(Ex 23)
49 FR 46094	November 21, 1984	(Ex 14)
49 FR 47390	December 4, 1984	(Ex 15)
49 FR 49568	December 20, 1984	(Ex 16)
50 FR 614	January 4, 1985	(Ex 17)
50 FR 1978	January 14, 1985	(Ex 18)
50 FR 4513	January 31, 1985	(Ex 24)
50 FR 14216	April 11, 1985	(Ex 19)
50 FR 16044	April 23, 1985	(Ex 20)
50 FR 18370	April 30, 1985	(Ex 21)

Copies of each of these items are attached to the Agency's proposal as exhibits with the number indicated.

### HISTORY OF RCRA ADOPTION

The Illinois RCRA and UIC rules, together with more stringent state rules particularly applicable to hazardous waste, include the following:

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

Special procedures for RCRA cases are included in Parts 102, 103 and 104. This proposal involves additional procedures to be added to Part 106, and a new Part 726.

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

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

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

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

The UIC rules were adopted as follows:

R81-32, 47 PCB 93, 6 Ill. Reg. 12479.

The UIC rules were amended in R82-18, which is referenced above. Illinois received UIC authorization February 1, 1984.

The Phase II RCRA rules included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II rules have been adopted and amended, but authorization has not been received:

R82-19, 53 PCB 31, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.

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

R84-9, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985.

On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison et al. v. IPCB.)

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

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

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

R84-10, December 20, 1984, and January 10, 1985.

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

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

R83-28, December 20, 1984, and January 10, 1985, 9 Ill. Reg. 730.

#### PUBLIC COMMENT

The Board received the following comments during, and shortly after, the comment period:

PC 2 & 3	USEPA
PC 4	Illinois Power Co.
PC 5	IEPA

The Board also received codification comments from the Administrative Code Unit.

### RESPONSE TO COMMENTS

#### Section 106.401

Sections 720.130 et seq. provide for certain determinations which result in certain wastes or activities being excluded from regulation. Part 106 sets forth procedures to be followed when the Board is to make the determinations.

The Part 106 procedures are patterned after the RCRA variance procedures adopted in R84-10. The Board will receive the Agency's recommendation and conduct a public hearing on the petition and recommendation. The Part utilizes the adjusted standard provision recently added in Section 28.1 of the Act.

The petition must include the information specified - Section 720.130 et seq., "for the type of determination sought." (PC 5)

#### Section 106.402

The Board has added a requirement that the petitioner serve the Agency. This will trigger the Agency's duty to provide notice (PC 5).

#### Section 106.404

The Part 104 time limits are to be followed (PC 5).  
Section 106.405

40 CFR 260.33 allows 30 days public comment, while this Section allows 45 days, consistent with the RCRA variance procedures adopted in R84-10. (PC 5)

#### Section 106.406

The Agency's recommendation serves the function of a tentative decision in the procedures at 40 CFR 260.33. The hearing and comment is on the petition and recommendation. (PC 5)

#### Section 106.408

This Section uses a 35-day appeal time rather than the 30-day time specified in the federal regulations. The time to appeal to the Board is fixed by Section 40 of the Act, which the Board cannot modify by rule (PC 5).

#### Section 720.110 "Manifest Document Number"

This definition has been corrected to fix inconsistent language previously adopted (PC 3).

Section 720.110 "SIC Code"

This definition has been added to define an abbreviation used in a later section. The Administrative Code Unit asked that "SIC Code" be defined. The Board has referenced the current edition of the "Standard Industrial Classification Manual" as provided by the Library of Congress.

Section 720.130 - 720.133

These sections are drawn from 40 CFR 260.30 - 260.33. The word "variance" has been excised since the determinations do not involve arbitrary or unreasonable hardship within the meaning of Title IX of the Act. The Board has substituted "determination." The titles inform the user of the contents of the Sections adequately without any attempt to introduce the exclusive meaning (PC 4).

Section 720.141

The Agency will issue a "memorandum of decision" which will be equivalent to a "final order" issued by USEPA pursuant to 40 CFR 260.41. The word "order" has been eliminated to avoid confusion with Board "Orders" referred to in the Act, for example in Section 41.

The Agency's memorandum of decision may be appealed to the Board within 35 days, longer than the 30 days allowed for appeal of a USEPA action in 40 CFR 260.41. The 35 days is mandated by Section 40 of the Act. (PC 1, 4).

Pursuant to Section 22.4(a), the Board has not specified any deadline for Agency action pursuant to this Section (PC 5).

Section 721.101

When the Board adopted this Section it split 40 CFR 261.1(b) into two portions. Section 721.101(b) deals with the possible expansion of the definition of hazardous waste to include wastes within the RCRA statutory definition, but not identified or listed in the regulations. Section 721.101(d) recites the Agency's inspection authority under the Act and the RCRA Act. The combination of these concepts, as phrased in 40 CFR 261.1(b) seems to allow expansion of the definition of hazardous waste to include anything the Agency believes to be hazardous. This would be clearly inconsistent with the Board's authority to list hazardous waste (Section 22.4 of the Act), to say the least.

The proposal picked-up minor changes to 40 CFR 260.1(b), and inadvertently restored earlier rejected language to the Section 721.101(b). The Board has corrected the language so as to incorporate the substance of the federal amendment without

confusing the inspection authority with the definition of hazardous waste. (PC 5)

Section 721.103

The striking and underlining have been corrected in paragraphs (c)(2)(A). (PC 5).

Section 721.106

The cross reference in paragraphs (a)(2)(B) has been corrected (PC 3).

Pursuant to Section 22.4(a) the Board has delayed regulation of used oil until future federal regulations are promulgated. (PC 5).

Section 721.131

The listing for F028 is in the conjunctive rather than the disjunctive, a probable error in the federal regulations. However, pursuant to Section 22.4(a), the Board has adopted the federal language.

Section 721.133

Typographical errors have been corrected in the introductory material in the note following paragraph (d). (PC 2 & 5).

Section 721, Appendix G

The headings for F020 - F023 were erroneously struck in the proposal (PC 4 & 5).

The listings for F001 - F005 were proposed for modification at 50 Fed. Reg. 18381. These amendments were not adopted through June 30, 1985. (PC 4).

Section 721, Appendix I

The existing material in this appendix was adopted with the Illinois dioxin listings pursuant to Section 22.4(d) of the Act (R84-34). Since the federal rules now list dioxins, the details have been repealed and the federal test methods adopted by reference.

The proposal included new material in Appendix I listing wastes excluded from specific sources. The Board has dropped these in the absence of any evidence that these delistings have any bearing on the Illinois program (Section 720.122).

Section 722.134

This was proposed as Appendix J to Part 721 (PC 4).

Section 724.443

The formula in paragraphs (a)(1) has been modified to remove a printer command character which was printed. As stated, the formula gives a result in percent (PC 4).

Paragraphs (a)(2) has been corrected to require a 99.9999% DRE for incinerators burning dioxin wastes (PC 4).

Section 725.101

Amendments to paragraphs (a) and (b) were inadvertantly omitted from the proposal and have been added (49 Fed. Reg. 46095). (PC 4).

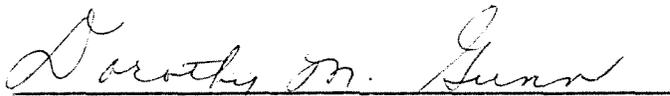
Section 726.101 et seq.

Several minor typographical errors have been corrected in these Sections (PC 2).

The Board adopted the amendments to 40 CFR 106, 703, 720, 721, 722, 724, 725 and 726 in a separate Order dated December 20, 1985. This Opinion supports that Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 9th day of January, 1986, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board