

ILLINOIS POLLUTION CONTROL BOARD  
April 11, 1991

IN THE MATTER OF: )  
 ) R90-11  
RCRA UPDATE, USEPA REGULATIONS ) (Identical in Substance Rules)  
(4-1-90 THROUGH 6-30-90) )

ADOPTED RULE. FINAL ORDER.

OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 7.2 and 22.4(a) of the Environmental Protection Act (Act), the Board is amending the RCRA hazardous waste regulations. The amendments involve 35 Ill. Adm. Code 703, 720, 721, 722, 724, 725, 726 and 728.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 22.4(a) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period April 1 through June 30, 1990. The Federal Registers utilized are as follows:

55 Fed. Reg. 18505	May 2, 1990
55 Fed. Reg. 18726	May 4, 1990
55 Fed. Reg. 19263	May 9, 1990
55 Fed. Reg. 22684	June 1, 1990
55 Fed. Reg. 23935	June 13, 1990
55 Fed. Reg. 25493	June 21, 1990
55 Fed. Reg. 26987	June 29, 1990

In addition, the Board has learned of an error in Section 726.136, which should have been repealed in R86-1, based on 50 Fed. Reg. 49204, November 29, 1985. This will be corrected in this Docket.

As is discussed below, the June 1, 1990, "third third" land disposal restrictions were the subject of a correction a 56 Fed. Reg. 3864, January 31, 1991.<sup>1</sup>

The Board normally batches USEPA actions into six month "batches" for adoption in a single docket. This docket deals

<sup>1</sup>The Federal Register is actually headed "Vol. 55", but this is clearly an error.

with only three months because the first three months of 1990 were adopted in R90-10, including the TCLP test.

#### PUBLIC COMMENT

The Board adopted a Proposed Opinion and Order on December 20, 1990. The Proposal appeared on February 15, 1991, at 15 Ill. Reg. 2066. The Board received the following public comment:

- PC 1 - 4            JCAR, February 22 through March 1, 1991
- PC 5                Administrative Code Division, February 14, 1991.
- PC 6                Chemical Waste Management (CWM), March 29, 1991.
- PC 7                Illinois Environmental Protection Agency (Agency), April 2, 1991.
- PC 8                Department of Commerce and Community Affairs, Small Business Assistance Bureau (DCCA), April 8, 1991.

The JCAR comments were received as eight separate letters received on four days. They were grouped into four public comments, based on the days received. It may be worth noting that these comments were not sent in a truly random order. Like the Code Division, JCAR addresses rulemakings in alphabetical order by the title of the Part. JCAR's comments mainly address editorial errors.

The Code Division reviewed the proposal for compliance with Administrative Code format requirements. DCCA determined that the rules had no impact on small business, since they were readopted federal requirements.

The Agency and CWM each noted several minor editorial errors with the Proposal. In addition, CWM asked the Board to make corrections appearing in the January 31, 1991, Federal Register in this Docket, rather than wait until the next update. That Register includes a list of more than 20 corrections, and a reprinting of most of the "third third" rules, but without showing the corrections. Because of the time limitations on this rulemaking, it is not possible to undertake a comprehensive review of the corrections in this Docket. However, as is discussed below, the Board has reviewed the editorial questions raised in the Proposed Opinion against the USEPA list of corrections, and, to the extent possible, made corrections consistent with USEPA's corrections. Comprehensive correction will have to await the normal update process.

The USEPA amendments include several site-specific delistings. As provided in 35 Ill. Adm. Code 720.122(d), the Board will not adopt site-specific delistings unless and until someone files a proposal showing why the delisting needs to be adopted as part of the Illinois program.

The Proposed Opinion included a large number of specific requests for comment, most of which was not answered. The Board assumes that the reading it proposed to these USEPA requirements is acceptable to the agencies, and that, where alternatives were suggested, any alternatives are acceptable.

#### EXTENSION OF TIME ORDERS

Section 7.2(b) of the Act requires that identical in substance rulemakings be completed within one year after the first USEPA action in the batch period. If the Board is unable to do so it must enter an "extension of time" Order.

#### REFORMATTING BASE TEXT

As is discussed in greater detail below, the Board adopted amendments to Parts 720 and 721 in R90-17. It is therefore necessary to reformat the base text of this Proposal to show the new base text adopted in R90-17.

#### HISTORY OF RCRA, UST and UIC ADOPTION

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

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

Special procedures for RCRA cases are included in Parts 102,

103, 104 and 106.

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

- R81-22      45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828, April 23, 1982.
- R82-18      51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

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

The UIC regulations were adopted as follows:

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

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

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

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

- R85-23      70 PCB 311, June 20, 1986; 10 Ill. Reg. 13274, August 8, 1986.
- R86-27      Dismissed at 77 PCB 234, April 16, 1987 (No USEPA amendments through 12/31/86).
- R87-29      January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988; (1/1/87 through 6/30/87).
- R88-2        June 16, 1988; 12 Ill. Reg. 13700, August 26, 1988. (7/1/87 through 12/31/87).
- R88-17      December 15, 1988; 13 Ill. Reg. 478, effective December 30, 1988. (1/1/88 through 6/30/88).
- R89-2        January 25, 1990; 14 Ill. Reg. 3059, effective February 20, 1990 (7/1/88 through 12/31/88).
- R89-11      May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5        Dismissed March 22, 1990 (12/1/89 through

12/31/89)

- R90-14 Proposed November 8, 1990 (1/1/90 through 6/30/90)  
 R91-4 Dismissed February 28, 1991 (No USEPA amendments  
 7/1/90 through 12/31/90)

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

- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999,  
 October 28, 1983.  
 R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200,  
 January 6, 1984.

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

The Board updated the RCRA regulations to correspond with USEPA amendments in several dockets. The period of the USEPA regulations covered by the update is indicated in parentheses:

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964,  
 effective July 24, 1985. (through 4/24/84)  
 R85-22 67 PCB 175, 479, December 20, 1985 and January 9,  
 1986; 10 Ill. Reg. 968, effective January 2, 1986.  
 (4/25/84 -- 6/30/85)  
 R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998,  
 August 22, 1986. (7/1/85 -- 1/31/86)  
 R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630,  
 December 12, 1986. (2/1/86 -- 3/31/86)  
 R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195,  
 March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987.  
 Correction at 77 PCB 235, April 16, 1987; 11 Ill.  
 Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)  
 R86-46 July 16, 1987; August 14, 1987; 11 Ill. Reg.  
 13435. (7/1/86 -- 9/30/86)  
 R87-5 October 15, 1987; 11 Ill. Reg. 19280, November  
 30, 1987. (10/1/86 -- 12/31/86)  
 R87-26 December 3, 1987; 12 Ill. Reg. 2450, January 29,

1988. (1/1/87 -- 6/30/87)
- R87-32 Correction to R86-1; September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987.
- R87-39 Adopted June 14, 1988; 12 Ill. Reg. 12999, August 12, 1988. (7/1/87 -- 12/31/87)
- R88-16 November 17, 1988; 13 Ill. Reg. 447, effective December 28, 1988 (1/1/88 -- 7/31/88)
- R89-1 September 13, October 18 and November 16, 1989; 13 Ill. Reg. 18278, effective November 13, 1989 (8/1/88 -- 12/31/88)
- R89-9 March 8, 1990; 14 Ill. Reg. 6225, effective April 16, 1990 (1/1/89 through 6/30/89)
- R90-2 July 3 and August 9, 1990; 14 Ill. Reg. 14401, effective August 22, 1990 (7/1/89 through 12/31/89)
- R90-10 August 30 and September 13, 1990; 14 Ill. Reg. 16450, effective September 25, 1990 (TCLP Test) (1/1/90 through 3/31/90)
- R90-11 This Docket (Third Third) (4/1/90 through 6/30/90)
- R91-1 Proposed March 28, 1991 (7/1/90 through 12/31/90)

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

The Underground Storage Tank rules were adopted in R86-1 and R86-28, which were RCRA update Dockets discussed above. They are currently being handled in their own Dockets:

- R88-27 April 27, 1989; 13 Ill. Reg. 9519, effective June 12, 1989 (Technical standards, September 23, 1989)
- R89-4 July 27, 1989; 13 Ill. Reg. 15010, effective September 12, 1989 (Financial assurance, October 26, 1989)
- R89-10 February 22, 1990; 14 Ill. Reg. 5797, effective April 10, 1990 (Initial update, through 6/30/89)
- R89-19 April 26, 1990; 14 Ill. Reg. 9454, effective June 4, 1990 (UST State Fund)
- R90-3 June 7, 1990; (7/1/89 - 12/31/89)

R90-12 Adopted February 28, 1991 (1/1/90 - 6/30/90)

R91-2 Proposed February 28, 1991 (7/1/90 - 12/31/90)

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

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

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by S.B. 1834.

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

R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986.

R87-30 June 30, 1988; 12 Ill. Reg. 12070, effective July 12, 1988.

The Board has recently modified the delisting procedures to require the use of adjusted standards in lieu of site-specific rulemakings:

R90-17 Adopted February 28, 1991; Modified April 8, 1991

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

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

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

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

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

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

R86-9 Emergency regulations adopted at 73 PCB 427,

October 23, 1986; 10 Ill. Reg. 19787, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed (CBE and IEPA v. IPCB et al., First District, January 26, 1987). Economic Impact hearings have recently been completed.

#### AGENCY OR BOARD ACTION?

The Board has almost always changed "Regional Administrator" to "Agency". However, in some situations "Regional Administrator" has been changed to "USEPA" or "Board". Section 7.2(a)(5) of the Act requires the Board to specify which decisions USEPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced "Regional Administrator" with "USEPA", so as to avoid specifying which office within USEPA is to make a decision.

The regulations will eventually require a RCRA permit for each HWM facility. However, many "existing units" are still in "interim status". Decisions involving interim status are often more ambiguous as to whether they are permit actions.

In a few instances in identical in substance rules decisions are not appropriate for Agency action pursuant to a permit application. Among the considerations in determining the general division of authority between the Agency and the Board are the following:

1. Is the person making the decision applying a Board regulation, or taking action contrary to ("waiving") a Board regulation? It generally takes some form of Board action to "waive" a Board regulation. For example, the Agency clearly has authority to apply a regulation which says "If A, do X; if not A, do Y". On the other hand, regulations which say "If not A, the state shall waive X" are more troubling.
2. Is there a clear standard for action such that the Board can give meaningful review to an Agency decision?
3. Is there a right to appeal? Agency actions are generally appealable to the Board.
4. Does this action concern a person who is required to



have a permit anyway? If so there is a pre-existing permit relationship which can easily be used as a context for Agency decision. If the action concerns a person who does not have a permit, it is more difficult to place the decision into a procedural context which would be within the Agency's jurisdiction.

5. Does the action result in exemption from the permit requirement itself? If so, Board action is generally required.
6. Does the decision amount to "determining, defining or implementing environmental control standards" within the meaning of Section 5(b) of the Act? If so, it must be made by the Board.

Once it is determined that a decision must be made by the Board, rather than the Agency, it is necessary to determine what procedural context is best suited for that decision. There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note that there are differences in the nomenclature for these decisions between the USEPA and Board regulations. These differences have caused past misunderstandings with USEPA.

A variance is initiated by the operator filing a petition pursuant to Title IX of the Act and 35 Ill. Adm. Code 104. The Agency files a recommendation as to what action the Board should take. The Board may conduct a public hearing, and must do so if there is an objection to the variance.

Board variances are: temporary; based on arbitrary or unreasonable hardship; and, require a plan for eventual compliance with the general regulation. To the extent a USEPA decision involves these factors, a Board variance is an appropriate mechanism.

A variance is not an appropriate mechanism for a decision which is not based on arbitrary or unreasonable hardship, or which grants permanent relief without eventual compliance. To grant permanent relief, the Board needs to grant a site specific regulation or an adjusted standard pursuant to Sections 27 or 28.1 of the Act, and 35 Ill. Adm. Code 102 or 106.

#### DETAILED DISCUSSION

A Section-by-Section discussion of the amendments appears below. The federal actions involved in this rulemaking are

summarized as follows:

May 2, 1990	Listing of dimethylhydrazine wastes
May 4, 1990	Correction to listing criteria
May 9, 1990	Correction to liner requirements
June 1, 1990	Third third land disposal bans
June 13, 1990	Correction to first third
June 21, 1990	Process vents and equipment leaks
June 29, 1990	Corrections to TCLP test

The Board has already addressed the June 29 corrections in R90-10, which included the TCLP test. Also, the Board addressed the May 4 corrections to listing criteria in R90-17.

The rules have been edited to establish a uniform usage with respect to "shall," "must," "will," and "may." "Shall" is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "Will" is used when the Board obliges itself to do something. "May" is used when a provision is optional. Some of the USEPA rules appear to say something other than what was intended. Others do not read correctly when "Board" or "Agency" is substituted into the federal rule. The Board does not intend to make any substantive change in the rules by way of these edits.

#### SECTION-BY-SECTION DISCUSSION Part 703: RCRA Permits

This Part governs applications for RCRA permits. It is closely coordinated with the HWM facility standards in Part 724, below.

#### Section 703.183

This Section is drawn from 40 CFR 270.14(b), which was amended at 55 Fed. Reg. 25454. The amendments add cross references relating to the new Subparts AA and BB to Part 724, concerning process vents.

A hole has been left in the numbering at Section 703.183(r), which ought to correspond with 40 CFR 270.14(b)(18), which requires proof of coverage by additional State-required financial mechanisms. This is omitted from the State rules for two reasons. First, there are no additional mechanisms in Illinois.

Second, even if there were, the Board would amend 35 Ill. Adm. Code 724.240 et seq. to place them on par with the federal mechanisms, obviating any need for an equivalent to 40 CFR 270.14(b)(18), which is really a "USEPA-only" provision allowing the Regional Administrator to accept a State mechanism where USEPA is the permit-issuing authority. (See Section 7.2(a)(1) of the Act) (PC 7)

#### Section 703.210

This new Section is drawn from 40 CFR 270.24, which was added at 55 Fed. Reg. 25454. This Section sets out the Part B application requirements for process vents.

40 CFR 270.24(d)(2) has an incorrect cross reference to "§264.103(k)". The Board corrected this to the equivalent of §264.1033(k). The Board requested comment on this, but received no response.

Subsection (d)(3) references APTI 415, "or other engineering texts acceptable to the Regional Administrator". This relates to Section 724.935, discussed below. The Board has rendered this as "approved by the Agency", consistent with the discussion below.

#### Section 703.211

This new Section is drawn from 40 CFR 270.25, which was added at 55 Fed. Reg. 25454. This Section sets out the Part B application requirements for other types of vents.

40 CFR 270.25(d) provides that the Regional Administrator "may request further documentation before deciding if compliance has been demonstrated." There are several problems with this language. The Board has referenced 35 Ill. Adm. Code 705.122, and to provide that "the Agency shall request further documentation if necessary to demonstrate compliance".

Subsection (e)(3) has the same problems as Section 703.210(d)(3), discussed above.

#### Section 703.App. A

This Appendix is drawn from Appendix I to 40 CFR 270.42, which was amended at 55 Fed. Reg. 22719. This adds item B.1.b. to the list of types of permit modifications.

### Part 720: Incorporations by Reference

#### Section 720.111

This Section is drawn from 40 CFR 260.11, which was amended at 55 Fed. Reg. 25454. This adds incorporations of documents

related to process vent emissions in Parts 724 and 725, below. This Section is subject to amendment in R90-17, which is pending. The changes in that Docket were shown in the proposal, but were made prior to adoption of this Docket. The Board has therefore reformulated the rules to use R90-17 as the new base text. This consists of removing the underlining from the entry, under "NTIS", for "Petitions to Delist..." which was already added in R90-17.

Most of the new incorporations are ASTM Methods. The Board has placed these into numerical order, and will reference them by number in the text of the rules. The Board has moved the existing reference to ASTM D3828 into its proper place.

The ASTM standards are updated on a five year cycle. The final two digits indicates the edition of the standard. The Board has updated several of the ASTM standards to cite to the currently available method. The Board requested comment as to whether it might be essential to reference the older methods, but received no response. The updated methods are ASTM D93, D1946, D2388 and E168.

The USEPA amendment also references "APTI 415", which it says is available from NTIS. The document is not in fact available from NTIS. The Board has discovered that the document is available through the Air and Waste Management Association, to which the Board has cited.

The Board has also added references to 40 CFR 60 and 61, Subpart V, which are also air analysis methods cited by USEPA in the body of the process vent emission rules discussed below. At the State level these are incorporations by reference, which belong in this Section. The Board has cited to the 1990 Edition of the CFR for these methods, and updated all CFR citations to the 1990 Edition.

#### Part 721: Hazardous Waste Lists

##### Section 721.104

This Section is drawn from 40 CFR 261.4, which was amended at 55 Fed. Reg. 26986, June 29, 1990.

This amendment modifies Section 721.104(b)(10), the exclusion for petroleum contaminated media from UST corrective action, which was added in connection with the TCLP test in R90-10. As modified, the exclusion applies only to waste which fails the TCLP test because of the new parameters D018 through D043. In other words, UST waste which would have failed the former EP Toxics test remains a hazardous waste.

This really is a correction to the USEPA TCLP rulemaking,

and could have been addressed in R90-10, had the correction been noted in time. Because this correction was not made in R90-10, there will be a minor divergence between the State and USEPA definitions of hazardous waste until this rule is filed. However, because the TCLP test is HSWA-driven, the USEPA rules are immediately effective in Illinois. Therefore, any UST waste which would fail the EP toxics test is hazardous in Illinois under federal law, even though the State exclusion is broader.

#### Section 721.106

This Section is drawn from 40 CFR 261.6, which was amended at 55 Fed. Reg. 25493, which concerns process vents.

This Section includes the exclusion for recycling. Facilities which store hazardous waste prior to recycling are subject to the process vent rules in 35 Ill. Adm. Code 724 and 725.Subparts AA and BB, in addition to the basic facility requirements in Subparts A through L. In addition, at facilities otherwise subject to the RCRA permit requirement, the recycling process itself is subject to the new Subparts.

40 CFR 261.6(d) speaks of "facilities subject to RCRA permitting requirements". The Board has replaced this with a more specific reference to Part 703.

#### Section 721.111 (Not Amended)

This Section is drawn from 40 CFR 261.11, which was amended at 55 Fed. Reg. 18726. The Board adopted the USEPA amendment in R90-17. This Section has therefore been dropped from the Proposal.

#### Sections 721.120 through 721.123

These Sections are drawn from 40 CFR 261.20 through 261.23, which were amended at 55 Fed. Reg. 22684.

There are two basic methods of listing hazardous waste. Subpart C lists wastes by characteristic ("characteristic waste"). Subpart D lists waste by the name of the waste or process which produces the waste ("listed waste"). Under the existing rules, a listed waste is assigned the F, K, U or P number under which the waste is listed, even if the waste is also a characteristic waste. This has been changed so that such a waste will now have both an F, K, U or P listed number, plus a D characteristic number. Note that this will tend to result in double counting of wastes for statistical purposes.

These Sections have not been amended since 1982, and hence require much editing to bring them into compliance with more recent codification requirements.

Section 721.121 includes two references to ASTM Standards. The final two digits indicate the edition of the ASTM Standard. These are now specified in the incorporation by reference Section, which is cross-referenced. Deleting the dates from the substantive rules eases the task of periodically updating these references. Also, the citation to "ASTM D-3278" has been corrected to read "ASTM D-3228". The reference is incorrect in 40 CFR 260.11.

#### Section 721.124

This Section is drawn from 40 CFR 261.24, which was amended at 55 Fed. Reg. 22684 and 26986. This Section defines the "toxicity characteristic", which was the main topic of R90-10.

The amendment at 55 Fed. Reg. 22684 is the same as is discussed in connection with Section 721.120 et seq. (double counting of listed waste). The amendment at 55 Fed. Reg. 26986 corrects the listing of "heptachlor (and its epoxide)". The Board noted this error and corrected it in R90-10.

#### Section 721.131

This Section is drawn from 40 CFR 261.31, which was amended at 55 Fed. Reg. 22684. This adds listing F039 for leachate from the treatment, storage or disposal of mixed hazardous wastes. This is related to the double counting changes discussed in connection with Section 720.120 et seq.

#### Section 721.132

This Section is drawn from 40 CFR 261.32, which was amended at 55 Fed. Reg. 18505. This adds listings K107 through K110, various wastes from the production of 1,1-dimethylhydrazine.

K108 through K110 refer to "production of 1,1-dimethylhydrazine from carboxylic acid hydrazides". K107 refers to production from "hydrazines". The Board has corrected this apparent error in the USEPA text.

#### Section 721.133

This Section is drawn from 40 CFR 261.33, which was amended at 55 Fed. Reg. 22684. This adds to Section 721.133(c) a cross reference to subsection (f).

#### Section 721.Appendix C

This Section is drawn from 40 CFR 261, Appendix III, which was amended at 55 Fed. Reg. 18496. The Board has updated the incorporation by reference to include the analytical methods for

1,1-dimethylhydrazine.

#### Section 721.Appendix G

This Section is drawn from 40 CFR 261, Appendix VII, which was amended at 55 Fed. Reg. 18496 and 22684. The former adds 1,1-dimethylhydrazine as the constituent which caused USEPA to list K107 through K110. The latter adds the basis for listing the mixed waste leachates, F039. The reference to "40 CFR 268.43, Table CCW" has been replaced with "35 Ill. Adm. Code 728.Table B", the State equivalent of Table CCW.

#### Part 722: Generator Requirements

##### Section 722.111

This Section is drawn from 40 CFR 262.11, which was amended at 55 Fed. Reg. 22684.

This Section is the skeleton of the hazardous waste determination process, giving form to the definition in Part 721. Each person who generates a "solid waste" must determine if the waste is a hazardous waste. The person first checks for specific exclusions, and then for a listing in Subpart D of Part 721. Under the existing rules, the process stops if a listing is found. Under the amendments to subsection (c), however, the generator must now also check for characteristics, even if the waste is listed. This is consistent with the amendments to Section 721.120 et seq., discussed above.

##### Section 722.134

This Section is drawn from 40 CFR 262.34, which was amended at 55 Fed. Reg. 22684. Section 728.134(a)(4) has been amended to require generators storing wastes to perform analyses required under 35 Ill. Adm. Code 728.107.

#### Part 724: Standards for Permitted HWM Facilities

##### Section 724.113

This Section is drawn from 40 CFR 264.13, which was amended at 55 Fed. Reg. 22684; and 55 Fed. Reg. 25454. This Section prescribes the general waste analysis requirements for TSD facilities.

The amendment at 55 Fed. Reg. 22684 adds to the comment following subsection (a)(2) a reference to the analytical requirements in 35 Ill. Adm. Code 728.107. The amendment at 55 Fed. Reg. 25454 adds to Section 724.113(b)(6) references to the process vent standards in Subparts AA and BB.

## Section 724.115

This Section is drawn from 40 CFR 264.15, which was amended at 55 Fed. Reg. 25454. This Section prescribes the general requirements for "inspection" of TSD units by the owner or operator. The amendments add references to the process vent standards below.

## Section 724.173

This Section is drawn from 40 CFR 264.73, which was amended at 55 Fed. Reg. 25454. This Section prescribes the contents of the HWM facility operating record. The amendments add the process vent rules as a possible source of data which must be recorded.

40 CFR 264.73(b)(6) requires the recording of data concerning monitoring and corrective action "when required by Subpart F and" certain other listed Sections. As worded, the USEPA rule could be construed as requiring the data to be recorded only if it is required under Subpart F and all of the listed Sections. When the Board adopted this Section, it replaced "and" with "or" to make it clear that Subpart F, or any one of the listed Sections could be the source of the requirement. The Board has retained this revision in the amendment.

## Section 724.177

This Section is drawn from 40 CFR 264.77, which was amended at 55 Fed. Reg. 25454. This Section is a broadside reference to additional reports required in Part 724. The process vent rules have been added as a possible source.

## Section 724.321

This Section is drawn from 40 CFR 264.221, which was amended at 55 Fed. Reg. 19262. This Section includes design and operating requirements for surface impoundments.

The USEPA amendments concern subsection (c), which requires a double liner and leachate collection and removal systems under new impoundments. The amendments require this design for waste received after issuance of the RCRA permit with respect to facilities which filed a Part B application after November 8, 1984.

The USEPA rule requires the Part B to have been filed with the Regional Administrator. The Board has required the Part B to have been filed with either USEPA or the Agency. The Board requested comment on this, but received no response.



The USEPA rule includes a typo, which the Board has fixed. 40 CFR 264.221(c) actually says "after insurance of the permit", rather than "issuance". In addition, subsection (e) contains a reference to the "EP toxicity characteristic", which was replaced with the "toxicity characteristic" in R90-10.

This Section has not been amended since 1986, and has several minor editorial problems which do not conform with current codification requirements, or with the Board's editorial formats. The most complex ones involve insertion of subsection headings for subsections (e)(2) and (e)(2)(A). Codification rules now prohibit empty levels of subdivision. The Board requested comment as to whether the headings adequately describe the contents, but received no response.

Sections 724.329, 724.356 and 724.381

These Sections are drawn from 40 CFR 264.229, 256 and 281, which were amended at 55 Fed. Reg. 22683. They deal with ignitable and reactive waste in surface impoundments, piles and land treatment units. The amendments add cross references to the land disposal bans of Part 728.

Section 724.401

This Section is drawn from 40 CFR 264.301, which was amended at 55 Fed. Reg. 19262. This Section deals with design and operating requirements for landfills. The amendment is similar to that discussed with respect to Section 724.321, above. The requirements of subsection (c) apply where the Part B application was received by the Agency or USEPA after November 8, 1984. The Board requested comment as to the wording of this provision, but received no response.

This Section was amended in R90-10 to remove the references to the EP Toxicity test.

Section 724.412

This Section is drawn from 40 CFR 264.312, which was amended at 55 Fed. Reg. 22683. It deals with placement of ignitable or reactive waste into a landfill. The amendment cross references Part 728, and is similar to the amendments to Section 724.329, above.

The existing language in 40 CFR 264.312(a) and 35 Ill. Adm. Code 724.412(a) include the phrase "unless the waste is treated, rendered or mixed before or immediately after placement in a landfill so that ..." This has been omitted from the amended language. However, this could represent an editorial error by USEPA, since the omitted language appears to govern conditions (a)(1) and (2). Alternatively, the new cross reference to Part

728 may be replacing the existing language. In the Proposal, the Board interpreted the omission as an editorial error, but requested comment. CWM has indicated that they believe USEPA intended to repeal not only the introductory language, but also subsections (a)(1) and (2). Waste which meets the standards of Part 728 will no longer be ignitable or reactive. Therefore, the old "treatment standard" for ignitable and reactive waste is no longer needed. (PC 6) Although this is plausible, the language has been retained in the 1990 CFR.

#### Section 724.416

This Section is drawn from 40 CFR 264.316, which was amended at 55 Fed. Reg. 22683. This Section deals with lab packs. The amendments add subsection (f), which cross references the lab pack limitations of Part 728, and authorizes the use of fiber drums for lab packs destined for incineration.

The existing Board Section has a subsection (f) which cross references the additional State limitations on labpacks in Part 729. This has been relettered to (g).

#### SUBPART AA: AIR EMISSIONS FROM PROCESS VENTS

USEPA has added two new Subparts, AA and BB, dealing with air emissions from process vents and equipment leaks in hazardous waste management (HWM) units.

These Subparts are essentially repeated in Part 725, which applies to interim status facilities, and which corresponds with 40 CFR 265. In the discussion below, the Board will attempt to highlight the differences between the Parts.

USEPA has assigned to these Subparts numbers beginning with 40 CFR 264.1030. These cannot be translated into State Section numbers according to the simple formula used in the rest of this Part. The Board has used numbers beginning with Section 724.930. However, this should correspond with 40 CFR 264.830 under the formula. This simple fix will break down if USEPA either adopted something with the numbers starting with 40 CFR 264.830, or if it adopted something with numbers beyond 264.1100. The Board has considered following alternative numbering schemes. The Board requested comment on this, but received no response.

USEPA assigns Section numbers with differing numbers of digits beyond the decimal point (or period), i.e. 264.1, 264.9, 264.11, 264.91, 264.111. The Board avoids this, since these numbers are confusing to people accustomed to dealing with numerical data. Such persons expect to find the Sections in numerical order, i.e.: 264.1, 264.11, 264.111, 264.9, 264.91. This confusion is avoided if Section numbers always have the same number of digits beyond the decimal point.

An alternative method of assigning numbers would be for the Board to violate the convention of using the same number of digits. In this Part, the Board could just assign "Section 724.1030" to 40 CFR 264.1030.

A second alternative would be to promote all of the Sections in the Part to four digits, following a formula analogous to that presently used. 40 CFR 264.1 would correspond with Section 724.1001, and 264.1030 with 724.1130. The problem with this is that it would involve a massive overhaul of Parts 724 and 725.

The main difference between Parts 724 and 725 is that, while the former is applied in the context of RCRA permit issuance under Part 703, the latter is self-implementing. However, Part 725 includes several decisions to be made by the Agency. The USEPA rules are vague as to the procedural context for these decisions. These issues will mainly be discussed in connection with Part 725 below.

These Subparts include many "shall, must, will and may" edits. Most of these are along the lines discussed in general above. Most involve using "shall" for an animate, and "must" for an inanimate subject. These edits will only be discussed in detail if there is some question as to USEPA's intent, or if the edit departs from the general rules.

#### Section 724.930

This new Section is drawn from 40 CFR 264.1030 which was added at 55 Fed. Reg. 25454. It states the applicability of Subpart AA, which deals with air emission standards from process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations which manage hazardous waste with organic concentrations of "at least" 10 ppmw.

Section 724.930(c) governs operators who already have RCRA permits. Conditions pursuant to these Subparts must be incorporated into the permit when it is reviewed or reissued. This subsection naturally has no counterpart in Part 725.

40 CFR 264.1030(c) requires RCRA permits to incorporate these requirements "when the permit is reissued under § 124.15 or reviewed under § 270.50." The Board has cited to 35 Ill. Adm. Code 705.201 and 702.161, which appear to be the equivalents. The Board requested comment on this, but received no response.

#### Section 724.931

This new Section is drawn from 40 CFR 264.1031 which was added at 55 Fed. Reg. 25454. It states definitions for this and

the following Subparts, and for Part 725. The Board has added definitions for the many abbreviations and acronyms used in the USEPA rules.

#### Section 724.932

This new Section is drawn from 40 CFR 264.1032 which was added at 55 Fed. Reg. 25454.

This Section includes the performance standard for process vents. The operator must either reduce total organic emissions from the facility to below 3 pounds/hour and 3.1 tons per year, or achieve 95 weight percent control of all affected process vents.

40 CFR 264.1032(c) provides that determinations of emissions "may be" based on engineering calculations or performance tests. The Board has rendered this as "must ... either", since the option is really as between two choices.

There is a minor difference in wording between Section 724.932(d) and 725.932(d), which is derived from the corresponding USEPA rules, and which may represent an editorial error. While the former refers to the "procedures in" Section 724.934(c), the latter refers to the "test methods" in the corresponding interim status Section. The Board requested comment on this, but received no response.

#### Section 724.933

This new Section is drawn from 40 CFR 264.1033 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1033(b) requires that control devices be designed and operated to recover organic vapors with an efficiency of 95 weight percent unless the total organic emission limits (3.1 tons per year) "can be" attained with a lower efficiency. As is discussed at several points below, "can be" seems to allow the operator to go to the lower efficiency without actually building and operating the equipment to meet the 3.1 ton standard. The Board therefore has replaced "can be" with "is".

There is a minor difference in wording between Sections 724.933(c) and 725.933(c), which may represent a typographical error by USEPA. While the former refers to the "flame zone", the latter refers to the "flame combustion zone". A similar difference occurs in subsection (f)(1), where "record of stream flow" appears as "record of vent stream flow" in Section 725.933(f)(1). A larger difference occurs later in the same subsection, in which "before the point at which the vent streams are combined" appears as "before being combined with other vent streams".

Another difference appears in Section 724.933(f)(2)(G), in which the phrase "such as a fixed-bed carbon adsorber" appears at a different location in Part 725.

A final difference is that Section 724.933(i), which allows the permitted facility to monitor alternative operational or process parameters, has no corresponding Part 725 equivalent, apparently because USEPA wants to allow this only for the permitted facilities. The subsequent subsections differ in labels, which causes several differences in cross references.

40 CFR 264.1033(i) provides that an alternative parameter "may be monitored if it can be demonstrated that another parameter will ensure" that the device is operated in conformance with the standards. There are two problems with this which the Board fixed in Section 724.933(i). First, the "can be" could be construed as allowing the operator to substitute parameters if he believes he "can demonstrate", without actually having made the demonstration. Second, the USEPA language doesn't require a linkage between the alternative which "can be" demonstrated, and the alternative to be monitored. I.e., the operator could demonstrate that Y was a good substitute for X, and then monitor Z. The Board has therefore rendered this as "if the operator demonstrates that the other parameter will ensure..."

This Section includes the first of a number of formulas. The Board has edited these in several ways to make them conform with Administrative Code Division requirements, and to make them generally easier to read, type and translate into other word processing systems. These edits include the elimination of unusual characters, and unnecessary subscripts and superscripts. Generally the Board has attempted to write these formulas as they would appear in many program statements or spreadsheet windows, so that they will be widely understood without explanation. Also, as is discussed above, the definitions of abbreviations and acronyms have been moved to the definitions Section.

"\*" has been used to indicate multiplication. The Board has defined a function, "SUM(X<sub>i</sub>)", avoiding the need for Greek letters, and subscripted or superscripted indices. The function "LOG(X)" is also defined as the base 10 logarithm.

40 CFR 264.1033(e)(2), in the definition of "H<sub>i</sub>", states that heats of combustion "may be" determined using ASTM D2382 if published values are not available. The Board has rendered this as "must be", since the operator really has no alternative if the published values are not available. The Board has also corrected a typographical error ("kcal/9mole" should be "kcal/gmole").

40 CFR 264.1033(f)(3) has an editorial error which the Board has corrected. "[P]aragraphs (1) and (2) of this section"

probably means "subsections (f)(1) and (2)."

40 CFR 264.1033(k)(1) has an apparent typo, which the Board has corrected. "[S]pecified as § 264.1034(b)" should probably be "specified at" the Section.

40 CFR 264.1033(k)(2) requires monitoring "at other times as requested by the Regional Administrator". The Board has rendered this as "as specified in the RCRA permit".

#### Section 724.934

This new Section is drawn from 40 CFR 264.1034 which was added at 55 Fed. Reg. 25454.

Formulas appear following Section 724.934(c)(1)(D). The parameters in the formulas have been changed to simple letters, avoiding the need for subscripts, and confusion as to whether two letters represent a single parameter, or the product of two. The numerical constant has been moved to the front, avoiding the need for braces to indicate that it is outside the summation. The constant has been replaced with a letter ("K"), with the value moved out of the formula to the definitions. The value ( $0.0416 \times 10^{-6}$ ) is equivalent to  $4.16 \times 10^{-8}$ , which has been written as "4.16 E -8", as it would appear in many programming languages and spreadsheets. The Board believes that this has passed into common usage so that no special definition is needed. The Board requested comment on this, but received no response.

The exponent in the value appears to be "-6" in the text from which the Board is working, but this is barely legible.

In the definitions of parameters in 40 CFR 264.1034(c)(1)(D), "Q" is measured by "Method 2", which the Board takes to be a reference to Method 2 in 40 CFR 60.

40 CFR 264.1034(c)(4) provides for the average of three runs for determining compliance. However, in the event a sample is lost, compliance "may, upon the Regional Administrator's approval" be determined based on two runs. The Board has left this as "may", since it appears that the operator has an option to repeat the third run. This provision also poses a question as to the mechanism by which the Agency would "approve" the two run option. Since this Section would apply to permitted facilities, the Board assumes that the approval would come either in the RCRA permit, or pursuant to procedures specified in the permit. In Section 724.934(c)(4), the Board has therefore left this as "approves". The Board requested comment on this, but received no response.

40 CFR 264.1034(d)(2) deals with documentation establishing that a wastestream has an organic concentration less than 10

ppmw. Subsection (iii) allows prior speciation analysis where it "can also be documented" that no process changes have occurred. In Section 724.1034(d)(2)(C), the Board has rendered this as "is documented", since the USEPA language is subject to the interpretation that the operator need actually document this only if challenged after the fact.

40 CFR 264.1034(f) references "Method 8240", which the Board takes to be a reference to that Method in SW 846.

#### Section 724.935

This new Section is drawn from 40 CFR 264.1035 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1035(b)(4)(iii) requires engineering calculations to be based on APTI 415 or "other engineering texts acceptable to the Regional Administrator". This poses two problems in Section 724.935(b)(4)(C). First, the USEPA language talks of "approvable" texts, with no indication as to how the operator would determine what is "approvable", other than to get them approved. The Board has therefore used the term "approved". Second, there is no procedure specified for approval. As the Board understands this Section, the calculations would be a part of the RCRA permit application, such that the approval would be subsidiary to the Agency's actions on the application. The Board has therefore left this as "approved by the Agency". The Board requested comment on this, but received no response.

Section 724.935(b)(4)(C) also provides that documentation by the manufacturer "may be used" to comply. The Board has left this as "may", since it appears to be a true option for the operator as to whether to use the manufacturer's calculations, or prepare its own.

40 CFR 264.1035(b)(4)(v) requires a statement certifying that the control device is designed to operate at better than 95% efficiency, unless the total organic emission rate (3.1 tons per year) "can be" attained by a less efficient control device. The USEPA language leaves open the possibility that an operator could install equipment which could theoretically reduce emissions to below the 3.1 tons, but fail to actually achieve that level. In Section 724.935(b)(4)(E) the Board has replaced "can be" with "are".

There is a difference in a cross reference in 40 CFR 264.1035(c)(5) and 265.1035(c)(5). While the former references "paragraph (4)", the latter references "(3)". This difference appears to be an error in the USEPA text for 40 CFR 265.1035(c)(5). The Board takes these references as being to subsection (c)(4).

The text of Sections 724.935(c)(6) and (7) differ from the corresponding texts in Part 725. While the former are stated in the singular, the latter are plural. This appears to be an editorial error in the USEPA text. The Board has followed the USEPA text, in that there appears to be no difference in meaning.

#### Section 724.936

This new Section is drawn from 40 CFR 264.1036 which was added at 55 Fed. Reg. 25454. It requires a semi-annual report. This Section has no counterpart in Part 725.

40 CFR 264.1036(a)(2) includes a long list with very little punctuation. The Board has broken this up into subsections to improve readability. However, it is not fully clear how the list is supposed to be broken up (another argument for breaking it up). The Board requested comment as to whether the arrangement adequately meets USEPA's intent, but received no response.

#### SUBPART BB: AIR EMISSIONS FROM EQUIPMENT LEAKS

#### Section 724.950

This new Section is drawn from 40 CFR 264.1050 which was added at 55 Fed. Reg. 25454. It states the applicability of Subpart BB, which establishes air emission standards for leaks from equipment which contacts hazardous waste with organic concentrations "at least" 10 percent by weight. It applies to units which are subject to the RCRA permit requirement, and to recycling units located on facilities with units which are subject to the permit requirement.

Section 724.950(c) governs operators who already have RCRA permits. Conditions pursuant to these Subparts must be incorporated into the permit when it is reviewed or reissued. This subsection naturally has no counterpart in Part 725.

#### Section 724.951

This new Section is drawn from 40 CFR 264.1051 which was added at 55 Fed. Reg. 25454.

#### Section 724.952

This new Section is drawn from 40 CFR 264.1052 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1052(e)(3) includes a reference to "paragraph (e)(2)". The corresponding Part 265 provision references "(a)(2)". The reference appears to be wrong in one Part or the other, but it is not clear which. The Board followed the USEPA



text. The Board requested comment on this, but received no response.

#### Section 724.953

This new Section is drawn from 40 CFR 264.1053 which was added at 55 Fed. Reg. 25454.

#### Section 724.954

This new Section is drawn from 40 CFR 264.1054 which was added at 55 Fed. Reg. 25454.

#### Section 724.955

This new Section is drawn from 40 CFR 264.1055 which was added at 55 Fed. Reg. 25454.

#### Section 724.956

This new Section is drawn from 40 CFR 264.1056 which was added at 55 Fed. Reg. 25454.

#### Section 724.957

This new Section is drawn from 40 CFR 264.1057 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1057 requires monthly leak inspection of valves in light liquid service. If no leak is detected, the operator is allowed to go to quarterly inspection, until a leak is detected. 40 CFR 264.1057(c)(1) expresses this by saying that the valve "may be monitored" quarterly, apparently giving the operator the option of monitoring either monthly or quarterly. However, the language is subject to the interpretation that the operator can elect to either monitor quarterly or not at all. The Board has therefore worded this as "must be monitored" quarterly. The option of continuing monthly monitoring does not need to be stated, since the operator always has the option of employing more extensive monitoring than required by the rules.

#### Section 724.958

This new Section is drawn from 40 CFR 264.1058 which was added at 55 Fed. Reg. 25454.

#### Section 724.959

This new Section is drawn from 40 CFR 264.1059 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1059 has several provisions to the effect that

delay of repair "will be allowed". This has been shortened to "is allowed" to avoid interpretations USEPA probably did not intend.

#### Section 724.960

This new Section is drawn from 40 CFR 264.1060 which was added at 55 Fed. Reg. 25454.

#### Section 724.961

This new Section is drawn from 40 CFR 264.1061 which was added at 55 Fed. Reg. 25454.

Section 724.961(d) differs from Section 725.961(d) as to the placement of "no longer" in the sentence. Since there appears to be no difference in meaning, the Board has followed the USEPA text in the respective Parts.

#### Section 724.962

This new Section is drawn from 40 CFR 264.1062 which was added at 55 Fed. Reg. 25454.

#### Section 724.963

This new Section is drawn from 40 CFR 264.1063 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1063(d)(3) allows use of prior analytical results on the same wastestream where it "can also be" documented that no process changes have occurred. The Board has rendered this as "is" documented, to make it clear that the operator must actually document this in advance.

40 CFR 264.1063(f) includes the following provision:

"When an ... operator and the Regional Administrator do not agree on whether a piece of equipment contains ... waste with organic concentrations at least 10 percent by weight, the procedures of paragraph (d)(1) or (d)(2) ... can be used to resolve the dispute"

There are several problems with this. First, as is discussed elsewhere, USEPA sometimes uses "test methods" instead of "procedures". Second, what does USEPA mean by "can be"? 40 CFR 264.1063(d) already said the operator had to determine the organic concentration this way. Moreover, dispute resolution is governed by 40 CFR 124 and 270, not 264. Although this entire provision appears to be redundant, the Board has left it in, but with "must be" substituted for "can be".

40 CFR 264.1063(h) provides that vapor pressures "may be" obtained from standard reference texts or determined by ASTM D-2879. In Section 724.963(h), the Board has rendered this as "must ... either", since the option is really as between two choices.

#### Section 724.964

This new Section is drawn from 40 CFR 264.1064 which was added at 55 Fed. Reg. 25454.

40 CFR 264.1064(c) specifies actions to be taken when leaks are specified by several Sections. The USEPA rule connects the list of Sections with an "and", making it subject to the interpretation that the leak must be detected under all of the Sections. The Board has rendered this as "or" to avoid this interpretation.

Section 724.964(f) deals with recordkeeping requirements for equipment other than that specifically regulated in this Subpart. 40 CFR 264.1064 differs from Section 265.1064(f) in that, while the Regional Administrator specifies "appropriate" requirements in the RCRA permit for the permitted facility, the operator records "information indicating proper operation and maintenance" in the operating record for the interim status facility. The Part 264 requirement lacks a standard by which the Agency determines what is "appropriate". The Board has borrowed the "information indicating proper operation and maintenance" standard from Part 265. However, in the context of Part 724, it will be a standard for Agency action, rather than a self-implementing rule. The Board requested comment on this, but received no response.

#### Section 724.965

This new Section is drawn from 40 CFR 264.1065 which was added at 55 Fed. Reg. 25454.

This Section, which sets reporting requirements, has no counterpart in Part 725.

### PART 725: STANDARDS FOR INTERIM STATUS HWM FACILITIES

#### Section 725.101

This Section is drawn from 40 CFR 265.1, which was amended at 55 Fed. Reg. 22683. This is the introduction to the interim status standards. The amendment adds the following to Section 265.1(e): "...and the 40 CFR part 268 standards are considered material conditions or requirements of the part 265 interim status standards."

Sections 725.101(c)(2) and (4) should correspond with 40 CFR 265.1(c)(2) and (4). The former is a "reserved" USEPA section number. The Code Division prohibits placing "reserved" in the hole. 40 CFR 265.1(c)(4) is a "USEPA-only" provision which exempts from federal regulation facilities which have interim status under an authorized state program. (Section 7.2(a)(1) of the Act) Holes have been left to preserve correspondence between the Board and USEPA numbering. (PC 7)

#### Section 725.113

This Section is drawn from 40 CFR 265.13, which was amended at 55 Fed. Reg. 22683 and 25454. The Section deals with waste analysis at the TSD Facility. The comment following Section 725.113 allows the TSD facility to arrange for the generator to supply part of the required information. The first amendment references limitations on this in Section 728.107. The second amendment adds to Section 725.113(b)(6) cross references to waste analysis requirements associated with process vents.

#### Section 725.115

This Section is drawn from 40 CFR 265.15, which was amended at 55 Fed. Reg. 25454. It deals with "inspection" requirements, meaning inspection of equipment by the operator. The amendment adds cross references to subsection (b)(4) relating to process vents, discussed below.

#### Section 725.173

This Section is drawn from 40 CFR 265.73, which was amended at 55 Fed. Reg. 25454. The Section specifies requirements for the operating record. The amendments add to subsections (b)(3) and (6) cross references to the new process vent rules, discussed below.

#### Section 725.177

This Section is drawn from 40 CFR 265.77, which was amended at 55 Fed. Reg. 25454. The Section deals with "additional reports". The amendment adds subsection (d), which cross references the reporting requirements dealing with process vents.

#### Sections 725.329 and 725.356

These Sections are drawn from 40 CFR 265.229 and 265.256, which were amended at 55 Fed. Reg. 22683. They deal with special requirements for ignitable and reactive waste at surface impoundments and piles. The amendments add references to the land disposal restrictions in Part 728.

#### Section 725.381

This Section is drawn from 40 CFR 265.281, which was amended at 55 Fed. Reg. 22683. It deals with ignitable and reactive waste in land treatment units. The amendment rewords the introductory language, and adds a reference to Part 728.

There are two apparent typos in the existing Board language, which were copied from the existing CFR. The reference to the definition of "ignitable" waste should be to 40 CFR 261.21, or 35 Ill. Adm. Code 721.121. Also, the reference to Section 264.17(b) should be to 265.17(b), or Section 725.117(b). The Board has corrected these typos.

#### Section 725.412

This Section is drawn from 40 CFR 265.312, which was amended at 55 Fed. Reg. 22683. This Section deals with ignitable and reactive waste in interim status landfills. The amendments add to subsections (a) and (b) references to Part 728.

As is discussed above in connection with Section 724.412, the Federal Register language appears to have dropped the governing language for subsections (a)(1) and (2), but is ambiguous as to whether the subsections are retained. Consistent with the interpretation of Section 724.412, the Board has retained the introduction and subsections. (PC 6)

#### Section 725.416

This Section is drawn from 40 CFR 265.316, which was amended at 55 Fed. Reg. 22683. This Section deals with lab packs. The amendments are the same as for Section 724.416, above. A new subsection (f) adds a reference to Part 728, and authorizes the use of fiber drums for lab packs destined for incineration. (One might ask why this is in the Subpart on Landfills, instead of Incinerators.)

There is an existing Section 725.416(f), which has been renumbered to (g). This references the additional limitations on lab packs adopted in 35 Ill. Adm. Code 729.

#### SUBPART AA: AIR EMISSIONS FROM PROCESS VENTS

The main difference between Parts 724 and 725 is that, while the former is applied in the context of RCRA permit issuance under Part 703, the latter is self-implementing. However, Part 725 includes several decisions to be made by the Agency. The USEPA rules are vague as to the procedural context for these decisions.

The Board has addressed the procedural ambiguity of the interim status decisions by adding a subsection to the

introduction to each new Subpart. These will specify that such Agency decisions must be made in writing, are in the nature of permit actions and may be appealed to the Board. The Board will back-reference these at each decision point in the rules. The Board requested comment on this, but received no response.

#### Section 725.930

This new Section is drawn from 40 CFR 265.1030 which was added at 55 Fed. Reg. 25454.

As is discussed in general above, the Board has added Section 725.930(c). Agency decisions pursuant to this Part must be made in writing, are in the nature of permit decisions pursuant to Section 39 of the Environmental Protection Act and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105. This subsection is back-referenced at the points in the body of the rules which require decisions by the Agency. The Board requested comment on this, but received no response.

#### Section 725.931

This new Section is drawn from 40 CFR 265.1031 which was added at 55 Fed. Reg. 25454.

#### Section 725.932

This new Section is drawn from 40 CFR 265.1032 which was added at 55 Fed. Reg. 25454.

This Section includes the basic standard for process vents: the operator must either keep total facility emissions below 3 lbs/hr and 3.1 tons per year, or achieve 95% control at each piece of equipment.

40 CFR 265.1032(c) includes the phrase "determinations ... may be based on engineering calculations or performance tests". In Section 725.932, the Board has rendered this as "must ... either", since the option is really as between two choices.

#### Section 725.933

This new Section is drawn from 40 CFR 265.1033 which was added at 55 Fed. Reg. 25454.

40 CFR 265.1033(e)(2), in the definition of "H<sub>i</sub>" USEPA provides that "heats of combustion may be determined using ASTM D 238.2 ... if published values are not available..." The Board has rendered this as "must be determined", since the intent appears to be that the operator would have no other alternative if published values are not available.

Section 725.933(k)(2) includes a monitoring condition which the Agency can modify using the permit procedures of Section 725.930(c).

#### Section 725.934

This new Section is drawn from 40 CFR 265.1034 which was added at 55 Fed. Reg. 25454.

40 CFR 265.1034(c)(1)(vi), reflected in Section 725.934(c)(1)(F), has an apparent typographical error. The first cross reference should be to the hourly emission rates "in paragraph (c)(1)(iv)", not "(c)(1)(v)" as stated in the USEPA rule. This would track the text in Part 264, and makes more sense in terms of the substance of the provision. The Board has corrected this apparent typographical error.

Section 725.934(c)(4) includes a provision allowing a decision which the Agency may make pursuant to the permit procedures of Section 725.930(c). It provides that compliance is based on the average of three runs, but, if one sample is lost, "compliance may, upon the Agency's approval be determined using the average of the other two runs". This has been left as "may", since the operator apparently has the option of repeating the lost run.

40 CFR 265.1034(d)(2) concerns using documentation to establish that the organic concentration of a wastestream is less than 10 ppmw. 40 CFR 265.1034(d)(2)(iii) allows a prior speciation analysis on the same wastestream "where it can also be documented" that no process change has occurred. This is subject to the interpretation that the operator need only document after the fact if challenged. The Board has therefore rendered this as "is documented" to make it clear that the operator is to document this in advance.

#### Section 725.935

This new Section is drawn from 40 CFR 265.1035 which was added at 55 Fed. Reg. 25454.

Section 725.935(b)(4)(C) and (e) include provisions allowing a decision which the Agency would make pursuant to the permit procedures of Section 725.930(c).

Section 725.935(b)(4)(C) deals with documentation to establish control device efficiency. Calculations must be based on APTI 415 or other engineering texts (approved by the Agency). Documentation provided by the manufacturer or vendor "may" be used. The Board has left this as "may", since it appears to be a true option for the operator.

40 CFR 265.1035(b)(4)(v) requires a statement that the alternative 3.1 ton per year total mass emission standards "can be attained" by a control device involving vapor recovery at an efficiency less than 95%. The Board has rendered this as "are attained" in Section 725.935(b)(4)(E). The USEPA language is subject to the interpretation that an operator could install equipment theoretically capable of attaining the 3.1 ton per year limit, certify that the limit "can be" met, and be in compliance even if the limit was not met.

40 CFR 265.1035(c)(4)(ii) has two apparent typos. The comparable provision in Part 264 requires the recording of the date, time and duration for a thermal vapor incinerator with an efficiency of "95 weight percent or greater, any period" when the temperature is more than 28 degrees below the design average. The underlined words are both absent. The Board has left "weight" out, in that this is a harmless typo which could not be misunderstood. However, since the omission of "any" obscures the meaning, the Board has inserted it at this, and several other points near here in the text.

40 CFR 265.1035(c)(5) includes a cross reference which appears to be in error. The reference to subsection "(c)(3)" should probably be to "(c)(4)", which would be in agreement with Part 264, and also would make more sense. The Board has corrected this apparent typo.

#### SUBPART BB: AIR EMISSIONS FROM EQUIPMENT LEAKS

##### Section 725.950

This new Section is drawn from 40 CFR 265.1050 which was added at 55 Fed. Reg. 25454.

As is discussed in general above, the Board has added Section 725.950(f), stating that Agency decisions pursuant to this Subpart must be made in writing, are in the nature of permit decisions pursuant to Section 39 of the Environmental Protection Act and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105. This subsection will be back-referenced in the body of the rules where these decisions appear.

##### Section 725.951

This new Section is drawn from 40 CFR 265.1051 which was added at 55 Fed. Reg. 25454.

##### Section 725.952

This new Section is drawn from 40 CFR 265.1052 which was added at 55 Fed. Reg. 25454.



Section 725.952(e)(3) includes a monitoring provision which includes a decision which the Agency may make pursuant to the permit procedures of Section 725.950(f).

#### Section 725.953

This new Section is drawn from 40 CFR 265.1053 which was added at 55 Fed. Reg. 25454.

Section 725.953(i)(2) includes a provision allowing a decision which the Agency may make pursuant to the permit procedures of Section 725.950(f).

#### Section 725.954

This new Section is drawn from 40 CFR 265.1054 which was added at 55 Fed. Reg. 25454.

#### Section 725.955

This new Section is drawn from 40 CFR 265.1055 which was added at 55 Fed. Reg. 25454.

#### Section 725.956

This new Section is drawn from 40 CFR 265.1056 which was added at 55 Fed. Reg. 25454.

#### Section 725.957

This new Section is drawn from 40 CFR 265.1057 which was added at 55 Fed. Reg. 25454.

Section 725.957(f)(3) includes a provision allowing a decision which the Agency would make pursuant to the permit procedures of Section 725.950(f).

#### Section 725.958

This new Section is drawn from 40 CFR 265.1058 which was added at 55 Fed. Reg. 25454.

#### Section 725.959

This new Section is drawn from 40 CFR 265.1059 which was added at 55 Fed. Reg. 25454.

#### Section 725.960

This new Section is drawn from 40 CFR 265.1060 which was added at 55 Fed. Reg. 25454.

## Section 725.961

This new Section is drawn from 40 CFR 265.1061 which was added at 55 Fed. Reg. 25454.

Section 725.961(b)(2) includes a provision allowing a decision which the Agency would make pursuant to the permit procedures of Section 725.950(f).

## Section 725.962

This new Section is drawn from 40 CFR 265.1062 which was added at 55 Fed. Reg. 25454.

## Section 725.963

This new Section is drawn from 40 CFR 265.1063 which was added at 55 Fed. Reg. 25454.

40 CFR 265.1064(h) provides that vapor pressures "may be" obtained from standard references or determined from ASTM D-2879. the Board has rendered this as "must ... either", since the option is really as between two choices.

## Section 725.964

This new Section is drawn from 40 CFR 265.1064 which was added at 55 Fed. Reg. 25454.

## PART 726: SPECIFIC WASTES AND FACILITIES

The Board has learned of an error in Section 726.136. This Section was adopted in R85-22, based on 50 Fed. Reg. 667, January 4, 1985. This Section should have been repealed in R86-1, according to the instructions at 50 Fed. Reg. 49204, November 29, 1985. The Board has therefore repealed this Section.

The discussion in the Proposed Opinion and in the Illinois Register Notice was of repealing Section 726.136. However, the text of the Proposed Order and the Notice itself showed Section 726.132 as being repealed. This caused confusion in the JCAR comments. (PC 3) However, other commenters noted the error. (PC 6)

## PART 728: LAND DISPOSAL RESTRICTIONS

This Part was amended by the "third third" land disposal bans on June 1, 1990. This action completes the land disposal bans required by the 1984 HSWA amendments. Included is a nearly complete revision of the CCW and CCWE tables adopted with the first and second thirds (Tables A and B), new tables of treatment technologies (Tables C, D and E), and several new appendices (D

through H).

As was discussed in general above, the third third rules were the subject of a correction in the January 31, 1991, Federal Register. That Register is outside the scope of this update. However, as is discussed below, where the Board has identified problems in the USEPA text, the Board has consulted the correction for a possible resolution of the problems. The Board will address the complete corrections in the update Docket for January 1 through June 30, 1991. (PC 6)

#### Section 728.101

This Section is drawn from 40 CFR 268.1, which was amended at 55 Fed. Reg. 22683, June 1, 1990. It adds an exclusion for certain injection fluids in Section 728.101(c)(3). Note that the Parts of the June 1 Federal Register dealing primarily with injection are being handled in R90-14.

40 CFR 268.1(c)(3)(i) refers to a "hazardous injection well". Consistent with the usage adopted by the Board in the UIC rulemakings, the Board has changed this to "hazardous waste injection well".

The existing Board rule includes subsections (c)(1), (2) and (5); (c)(3) and (4) were repealed in R90-2, based on 54 Fed. Reg. 36970, September 6, 1989 (See R90-2 Opinion, page 28). However, the USEPA rule was not renumbered at that time. These subsections were also amended in R89-1 (Opinion, p. 30). The current instructions at 55 Fed. Reg. 22683 indicate that (c)(5) should be deleted, and a new (c)(3) added. This appears to be consistent with the Board's prior actions on this Section, and it is possible to make the indicated changes and arrive at a sensible result. The Board requested comment as to whether USEPA or the Board, or both, may have made an error in this Section, but received no response.

#### Section 728.102

This Section is drawn from 40 CFR 268.2, which was amended at 55 Fed. Reg. 22683. Definitions for the third third rules have been added.

USEPA has adopted new definitions, out of alphabetical order, and with subsection labels. The Board has placed these into alphabetical order, and dropped the labels, in accordance with Code Division requirements. Internal cross references have been replaced with references to the appropriate definition by name.

40 CFR 268.2(g) defines "inorganic solid debris" as:

nonfriable inorganic solids that are incapable of passing through a 9.5 mm standard sieve that require cutting, or crushing and grinding in mechanical sizing equipment prior to stabilization, limited to the following inorganic or metal materials:...

There are a number of problems with this language. For one thing, the second "that" clause, without a separating conjunction, appears to modify something in the first, instead of "solids". The Board has added "and" between the "thats", and some additional commas, so "inorganic solid debris" is defined as follows:

nonfriable inorganic solids that are incapable of passing through a 9.5 mm standard sieve, and that require cutting, or crushing and grinding, in mechanical sizing equipment prior to stabilization, limited to the following inorganic or metal materials:...

Existing 40 CFR 268.2 back-references the definitions in other Parts, including the large set in Section 260.10 (720.110). This has been removed. However, 40 CFR 260.10 continues to forward reference into Part 268. Such forward references are of questionable validity under the Illinois Administrative Code, which requires each Part to be self-contained. The Board has therefore retained the back references, but has moved them to the introductory paragraph.

#### Section 728.103

This Section is drawn from 40 CFR 268.3, which was amended at 55 Fed. Reg. 22683. The existing Section prohibits dilution as a substitute for treatment. This adds, in subsection (b), an exception for dilution in an NPDES or pretreatment plant.

The USEPA rule cites to Sections 307 and 402 of the Clean Water Act (CWA). The Board has cited to the derived State regulations in 35 Ill. Adm. Code 309 and 310.

Existing subsection (a) ends with a reference to the prohibition in Section 3004 of the RCRA Act. This is referenced into the Board rules by Section 728.139, which is with the prohibitions in Subpart C, which are referenced in the preceding clause. Citation either to Section 3004 or Section 728.139 is therefore unnecessary.

#### Section 728.105

This Section is drawn from 40 CFR 268.5, which was amended at 55 Fed. Reg. 23935, a correction to the September 6, 1989, Federal Register.

This Section deals with case-by-case extensions to the effective dates. In adopting this Section, the Board determined that the timelines of these extensions were so short that it would be unlikely that the Board could act on petitions before an extension granted by USEPA expired. Rather than set the regulation forth in full, the Board therefore incorporated the USEPA rule by reference, and provided that any extensions granted by USEPA would be deemed extensions of the derivative Board rule. The Board requested comment as to whether these extensions are the extensions now listed in Appendix VIII (or H), but received no response.

The Board has updated the incorporation by reference to include the correction.

#### Section 728.107

This Section is drawn from 40 CFR 268.7, which was amended at 55 Fed. Reg. 22683. The Section was also the subject of a correction at 55 Fed. Reg. 23935, which corrected instructions at 54 Fed. Reg. 36970, September 6, 1989, and which the Board adopted in R90-2. The Board apparently interpreted the instructions correctly in R90-2, so that no revision is now needed.

This Section concerns waste analysis and recordkeeping to show compliance with the land disposal bans. The amendments require the generator shipping restricted waste to notify the treatment or storage facility of the treatment standards for certain types of wastes, and of the treatability group of other types. Note that many of the treatment standards are defined by reference to the process which produced the waste, so that a subsequent handler without this information could not determine whether the waste met the regulatory requirements simply by analysis of the waste.

40 CFR 268.7(a)(1)(ii), and several other subsections, reference waste prohibited pursuant to "RCRA Section 3004(d)". As is discussed above, the Board has referenced the statutory prohibitions in Section 728.139. However, a simple cross reference to that Section will not suffice here, because the reference is to a specific subsection of Section 3004. The Board has therefore referenced "Section 3004(d) of the RCRA Act, referenced in Section 728.139".

The same subsections provide that the generator's notice must include the corresponding treatment standards for certain wastes. Standards for other wastes "may be referenced" by including the subcategory and treatability group. The USEPA appears to mean that, for the other wastes, the generator can either give the treatment standard or the subcategory and

treatability group. However, the language is also subject to the interpretation that the generator can elect to provide no information. To avoid this interpretation, the Board has reworded this so as to provide that the standards "must either be referenced as above, or by" the subcategory and treatability group.

40 CFR 268.7(a)(9) requires certain notifications to be kept for three years. This period is automatically extended during the course of "any unresolved enforcement action" or "as requested by the Agency". The former language may pose problems in that, if written into Board rules, it would be subject to the interpretation that the retention period would be extended only if an "enforcement action" under Title VIII of the Act were filed within the three-year period. Within the USEPA system initiation of an "enforcement action" may commence with a more preliminary step, such as notification that USEPA is investigating a possible violation. If so, the Board rule ought to reference the equivalent IEPA procedure. It is possible that the Agency notification pursuant to Section 31(d) of the Act ought to trigger record retention. The Board has made this reference. The Board requested comment on this, but received no response.

The USEPA rule also triggers additional record retention "as requested by the Agency". The USEPA rule does not specify any procedures for this request. The Board is not aware of any Agency procedures prior to the Section 31(d) notification. Since the Agency's authority to give such a notification is broad, the Board has not adopted any alternative. The Board requested comment on this, but received no response.

#### Section 728.108

This Section is drawn from 40 CFR 268.8, which was amended at 55 Fed. Reg. 22683 and at 55 Fed. Reg. 23935. The former added a final sentence stating that "As of May 8, 1990, this section is no longer in effect". The Board has therefore repealed the Section.

#### Section 728.109

This new Section is drawn from 40 CFR 268.9 which was added at 55 Fed. Reg. 22683. It sets forth special rules for wastes which exhibit a characteristic.

40 CFR 268.9(c) prohibits land disposal of waste which exhibits a hazardous characteristic, unless the waste complies with a treatment standard. This is worded as "no waste ... may be disposed". The Board has rendered this as "no waste ... shall be disposed", in keeping with its general policy of avoiding the use of "may" except to indicate an optional provision.

40 CFR 268.9(d) deals with waste which is no longer hazardous, i.e. waste which has been treated to remove the hazardous characteristics. The rule provides that for shipments to a "Subtitle D facility", the generator sends a notice to USEPA or the state, instead of to the receiving facility as would be required for waste which was still hazardous. The reference to "Subtitle D" is to Subtitle D of the RCRA Act, which deals with non-hazardous waste facilities. This reference would be vague and confusing in State rules. Within Illinois these facilities are regulated under 35 Ill. Adm. Code 807 or 810 through 815 (unless exempted under Section 21(d)(1)(i) of the Act). However, the generator could be shipping the waste out-of-state, in which case the notice would go the USEPA or the other state. The Board has rendered the reference as "a non-hazardous waste facility regulated under 35 Ill. Adm. Code 807 or 810 through 815, or exempted under Section 21(d)(1)(i) of the Act, or similarly regulated in other States". An alternative would be to require notice if the waste is shipped to a regulated facility other than a RCRA Subtitle C facility. The Board requested comment as to which formulation was preferable, but received no response.

If the waste is being shipped out-of-state, 40 CFR 268.9(d) requires the notice to go to "the appropriate EPA Regional Administrator (or his delegated representative) or State authorized to implement part 268 requirements". The Board has rendered this as: "to the Agency, or, for out-of-State shipments, to the appropriate USEPA Regional Administrator or state authorized, pursuant to 40 CFR 271, to implement 40 CFR 268 requirements."

The references to federal regulations are not incorporations by reference. Rather than requiring persons to comply with the cited Parts, the references serve to identify the authorization needed for the state to receive the notification.

The USEPA rules include 40 CFR 268.10, 268.11 and 268.12. These serve to define the first, second and third third wastes, and set out USEPA's schedule for regulating them. The Board declined to adopt these, since they apply only to USEPA. However, as is discussed below, the USEPA rules make occasional reference to these. In the past the Board has simply omitted these references, since they appeared to be redundant. However, as is discussed below, there is a new rule which may really need these lists. It may be that USEPA will be adding new listings of hazardous waste, without immediately adopting land disposal restrictions for the new listing. If this is the case, these Sections may begin serving as a statement of scope for Part 268. If so, the Board may need to adopt them. The Board requested comment as to whether it ought to adopt equivalents of these Sections, and as to whether it ought to proceed by way of adopting the verbatim text, or by way of incorporation by reference. The Board received no response.

## Section 728.135

This new Section is drawn from 40 CFR 268.35 which was added at 55 Fed. Reg. 22683. This is the prohibition of the third third wastes.

This list includes delayed effective dates which will have passed before the Board adopts the rule. The Board has generally deleted these, so that the requirements will become effective as State rules as soon as they are filed. Those dates which are still in the future remain.

This Section is worded like its companions which the Board has previously adopted. The general form is "the following wastes (list) are prohibited from land disposal". Most of the lists are quite long. These are much more readable in the form: "the following wastes are prohibited from land disposal: (list)." The lists can then be broken into subsections. The Board has followed this format, as it did for the other thirds.

40 CFR 268.35(f) and (g) are temporary rules which applied between May 8 and November 8, 1990. The Board has omitted these, since they have no future effect.

40 CFR 268.35(h) has a prohibition worded as "may be disposed ... only if". The Board has rendered this as "shall be disposed", in keeping with its reservation of "may" to indicate an election. (In this case the election may be that the operator has the option of providing further treatment even of waste which meets the standard. However, this option is always open, and is adequately stated in the Board's "shall" wording.)

40 CFR 268.35(i) starts by saying "To determine whether a hazardous waste listed in section 268.10, 268.11, and 268.12 exceeds the applicable treatment standards..." As was discussed above, the Board rules include no equivalents of these Sections. However, in this Section, USEPA may be using them as a part of the statement of scope of part 268. On the other hand, the reference may simply be redundant. Following the latter interpretation, in 35 Ill. Adm. Code 728.135(i), the proposed to Board simply omit the references. The Board requested comment on this, but received no response.

There is also an apparent typo in 40 CFR 268.35(j), which would require correction if the language were placed into the Board rules. There are few, if any, overlapping entries in sections 268.10 through 268.12. Therefore, waste listed in all three sections appears to be the null set. The rule should read "listed in section 268.11, 268.12 or 268.13".

40 CFR 268.35(j) goes on to say that the initial generator



"must test a representative sample of the waste ... or the generator may use knowledge of the waste" to determine whether it exceeds the standards. The Board has rendered this as "shall either test ... or use knowledge", which better expresses the apparent intent of the USEPA rule.

#### Section 728.140

This Section is drawn from 40 CFR 268.40, which was amended at 55 Fed. Reg. 22683. This is the introductory Section for the treatment standards.

The treatment standards now include five large tables, which cannot be placed with the text of the Sections and meet Illinois codification requirements. These appear at the end of the Part as floating Tables. The following is the cross reference table:

<u>40 CFR</u>	<u>35 Ill. Adm. Code</u>
268.41, Table CCWE	728.Table A
268.42, Table 1	728.Table C
268.42, Table 2	728.Table D
268.42, Table 3	728.Table E
268.43, Table CCW	728.Table B

#### Section 728.141

This Section is drawn from 40 CFR 268.41, which was amended at 55 Fed. Reg. 22683. This Section sets treatment standards by concentration in the waste extract (CCWE). The numerical standards are located at the end of the Part in Table A. The amendments add an exception for certain wastes, and specify that compliance is determined based on grab samples.

#### Section 728.142

This Section is drawn from 40 CFR 268.42 which was amended at 55 Fed. Reg. 22683. It specifies technologies which must be used to treat certain wastes. This Section has been substantially overhauled, with three large new tables added. These appear at the end of the Part as Tables C through E.

40 CFR 268.42(a) ends with a reference which the Board takes to be "Table 1", equivalent to 728.Table C. The text is illegible in the Board's copy. The Board requested comment on this, but received no response.

#### Section 728.143

This Section is drawn from 40 CFR 268.43, which was amended at 55 Fed. Reg. 22683. This Section sets treatment standards by constituent concentrations in the waste itself (CCW). The

numerical standards appear in Table B at the end of the Part.

The main amendment appears to be the addition of Section 728.143(c), which adds an exception to the CCW standards for organic constituents which have been treated in incinerators where the TSD facility "has been unable to detect the constituents despite using its best good faith efforts as defined by applicable Agency guidance." There are a number of problems with this subsection.

This provision is intended to allow treaters and disposers to certify compliance with certain LDR's for incinerator (or fuel substitution unit) ash where they cannot detect the constituent in question, but have made "good faith efforts" to detect the constituent. (55 Fed. Reg. 22541, 22604 and 56 Fed. Reg. 3870, 3911). This was the subject of correction in the January 31, 1991, Federal Register. The Board has referred to the corrections in the following discussion.

40 CFR 268.43(c) is basically worded as follows: "...treatment and disposal facilities may demonstrate ... compliance ... provided the following conditions are satisfied ..." As worded, the rest of the rule is a set of preconditions which must be met before the operator is allowed to make the demonstration, as opposed to the method of showing compliance. However, this interpretation would leave no method for showing compliance. The Board has therefore reworded this Section so that it reads: "...may demonstrate compliance by satisfying the following conditions...."

The conditions are: the treatment standard was based on incineration; the organic constituents have been treated by incineration; and:

The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are developed, the treatment or disposal facility may demonstrate such good-faith efforts by achieving detection limits for the regulated organic constituents that do not exceed an order of magnitude of the treatment standard specified in this section.  
(40 CFR 268.43(c)(3))

A basic question is whether this Section is referring to the constituents in the waste feed, or in the incinerator ash. From the discussion in the Preamble and corrections, it is clear that the provision is referring to the ash.

The next question is the meaning of "detected the organic constituents at levels within an order of magnitude of the

treatment standard". The Board takes "order of magnitude" as meaning "within a factor of ten". But, does this mean one tenth of the standard, or ten times the standard? From the discussion in the Preamble and Correction, it is clear that USEPA means the latter. The Section is referring to concentrations of the constituent in the ash between the standard and 10 times the standard. The Board has therefore replaced "within an order of magnitude of" with "less than ten times" the standard.

Subsection (c) then goes on to provide: "The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts ... (which they) may demonstrate ... by achieving detection limits for the regulated organic constituents that do not exceed an order of magnitude of the treatment standard". (40 CFR 268.43(c)(3)) USEPA has improved the language by making it clear that it is the "detection limits" rather than levels in the waste which must be achieved. It is also now worded as a method of showing "good-faith efforts", rather than a precondition to such a showing. (56 Fed. Reg. 3911)

This provision also poses serious problems with incorporation by reference of future guidance documents. This is prohibited by the APA. The Board has therefore deleted these references. The Board requested comment as to whether there might be existing guidance documents which need to be incorporated, but received no response. If such guidance is published in the future, the agencies will need to provide it to the Board.

Section 728.143(c), as adopted, reads as below.

- c) Notwithstanding the prohibitions specified in subsection (a) and Table B, treatment and disposal facilities may demonstrate (and certify pursuant to Section 728.107(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in Table B, by satisfying the following conditions:
- 1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 35 Ill. Adm. Code 724.Subpart O or 35 Ill. Adm. Code 725.Subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;
  - 2) The treatment or disposal facility has used the methods referenced in subsection (c)(1) to treat the organic constituents; and

- 3) The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts as defined by applicable standards. Until such standards are developed, the treatment or disposal facility may demonstrate such good-faith efforts by achieving detection limits for the regulated for the regulated organic constituents which are less than ten times the treatment standard specified in this Section.

The floating Tables formerly appeared following the text of the rules, and before the Appendices. This reflected the historical adoption of Tables prior to Appendices. This is apparently causing problems in JCAR's data base, which automatically places the Appendices first. The Board has therefore moved the Tables down to follow the Appendices.

#### Section 728.App. D

USEPA has greatly assisted the Board by providing it with the following Appendices and Tables on computer disks. However, we note that substantial reformatting was required. Generally the chemical names have been transferred directly, but many of the numerical entries had to be retyped.

This Section is drawn from 40 CFR 268.App. IV which was amended at 55 Fed. Reg. 22683. This is a list of wastes which may be disposed in lab packs. As is discussed above in connection with Section 728.142, 35 Ill. Adm. Code 728.301 and 729.312 restrict the use of lab packs to "lab waste". The Board has added a cross reference to those provisions.

#### Section 728.App. E

This Section is drawn from 40 CFR 268.App. V which was amended at 55 Fed. Reg. 22683. This is a second list of wastes for which lab packs may be used. The Board has added a similar cross reference.

#### Section 728.App. F

This Section is drawn from 40 CFR 268.App. VI which was amended at 55 Fed. Reg. 22683. This Appendix includes a list of recommended technologies for removing the hazardous characteristics of characteristic wastes.

#### Section 728.App. G

This Section is drawn from 40 CFR 268.App. VII which was amended at 55 Fed. Reg. 22683. This Appendix includes a listing

of the effective dates of the land disposal restrictions for various wastes. These reflect the USEPA effective dates, rather than the dates the Board adopted these provisions.

The listing for F001 - F005 is ambiguous. Evidently all these wastes have a Nov. 8, 1986 effective date, except for the subcategories in the next two entries. The Board has worded this more explicitly.

#### Section 728.App. H

This Section is drawn from 40 CFR 268.App. VIII which was amended at 55 Fed. Reg. 22683. This is a table of "national capacity variances" for the UIC program. The main body of the UIC amendments is being addressed in R90-14. However, this is adopted in this Docket, since it is in Part 268, which is mainly RCRA.

#### Section 728.Table A

This is drawn from 40 CFR 268.41, Table CCWE, which was amended at 55 Fed. Reg. 22683, June 1, 1990. This involves a complete reformatting of the table, such that the Board has repealed the entire existing text, and replace it with a new text. As noted above, the new text is drawn from a USEPA disk. On the disk each table was separated into two documents, one consisting of the first three or four columns, and the second consisting of the last three columns. Re-merging such documents was more difficult than retyping. The first three or four columns were salvaged, but the last three, the CAS Number and standards, had to be retyped.

There are two apparent typos in the USEPA text. In the entry for F001 - F005, spent solvents, "1,1,2-Trichloro-1,2,2-tetrifluorethane" has been corrected to "1,1,2-Trichloro-1,2,2-trifluoroethane", consistent with the January 31, 1991 corrections.

Also, in the final footnotes, there is no character indicated for one of the footnotes. This footnote concerns the use of EP toxicity analysis for some of the parameters. It is the subject of major revision in the January 31 correction. This will have to be put over to the appropriate update Docket.

#### Section 728.Table B

This is drawn from 40 CFR 268.43, Table CCW, which was amended at 55 Fed. Reg. 22683, June 1, 1990. Again, this involves a complete reformatting of the Table.

The USEPA Table CCW has a large number of footnotes. These are for the most part illegible. However, the Board has been

able to get them from a print out of the last three columns of the tables from the USEPA disk.

Some of these footnotes are characters such as "@" and "\*". Others are superscripted numbers. The Board has replaced these with letters, which are a lot easier to type. This also avoids getting the numbers mixed in with the numerical standards.

The Board has identified several apparent errors in Table CCW, which it has corrected. The Board has not conducted an exhaustive review of the Table. These are errors which were noted in the process of reformatting and editing the Table from the USEPA disks. The errors will be summarized in a table below. First, the Board will provide a general discussion of the errors.

The first type of error is in the chemical name. The name either has an obvious typo, ("chlorethane"), or is internally inconsistent ("trans-1,2-dichloroethane"). The Board has attempted to correct these, but emphasizes that they may hiding deeper errors. For example, the USEPA typist may have jumped from the middle of one name to the middle of the next entry.

The second type of error is when the chemical name does not agree with the CAS Number. These errors came to light because the Board employed automated tricks to fill in the CAS Number after many of the chemical names. However, it soon became apparent that the Table does not always use the same CAS Number for a given name. The Board has used the CAS Numbers given in 40 CFR 261, Appendix VIII, or at other points in this Table. Note, however, that these may again be masking deeper errors in the Table. It is possible that the USEPA typist has skipped from one entry to the CAS Number for the next entry. Another possibility is that the name is wrong, and the CAS number is right.

In the January 31, 1991, Federal Register, USEPA has corrected many of the errors noted in the Board's Proposed Opinion. These are indicated in the following table as "corrected by USEPA". Those which have not been corrected are indicated as "not corrected by USEPA". It is not possible to tell whether some errors were corrected, since they appear only on the word processor screen (i.e. "O" v. "0").

<u>FEDERAL REGISTER</u>	<u>CORRECTED</u>	<u>COMMENT</u>
F039 Acenaphtalene	Acenaphthalene	Typo in chemical name. Corrected by USEPA.

Endosulfan sulfate 1-31-07- 8	1031-07-8	Corrected CAS No., from P050 below. Corrected by USEPA. Note, however, that this number does not agree with Appendix VIII (115-29-7)
Hexachlorodi- benzo-furans	Hexachlorodi- benzofurans	Corrected chemical name. Not corrected by USEPA.
1,2,4,5,-Tetra- chlorobenzene	1,2,4,5-Tetra- chlorobenzene	Corrected chemical name. Not corrected by USEPA.
Tetrachlorodi- benzo-furans	Tetrachlorodi- benzofurans	Corrected chemical name. Not corrected by USEPA.
1,1,2-Trichloro- 1,2,2-trifluoro- ethane	1,1,2-Trichloro- 1,2,2-trifluoro- ethane	Corrected chemical name ("hard-hyphen" removed from before "-ethane".)
K005, K007 Cyanides and lead "(R)"		Footnote illegible in Federal Register. Subject of major revision in correction, Board will not correct in this Docket.
K018 Hexachloroethane		Deleted repeated entry. Corrected by USEPA.
K020 1,2-Dichloro- ethane, 106-93-4	107-06-2	Corrected CAS No. Not corrected by USEPA.
K028 trans-1,2-Di- chloroethane	trans-1,2-Di- chloroethene	Corrected chemical name. Not corrected by USEPA.
1,1,1-Trichlo- ethane	1,1,1-Trichloro- ethane	Corrected chemical name. Corrected by USEPA.
1,1,2- Trichlorethane	1,1,2-Trichloro- ethane	Corrected chemical name. Corrected by USEPA.
K030 Hexachlorobuta- diene 67-72-1	Hexachloroethane 67-72-1	Corrected second entry for "hexachlorobutadiene" to agree with CAS No. for hexachloroethane, per Appendix VIII. Corrected

		by USEPA.
K032 Hexachloropenta- diene	Hexachlorocyclo- pentadiene	Corrected name to agree with CAS Number. Not corrected by USEPA.
K049 Chrysene 2218-01-9	Chrysene 218-01-9	Corrected CAS Number to agree with Appendix VIII, other entries. Corrected by USEPA.
K051 Acenaphthene 208-96-8	Acenaphthene 83-32-9	Corrected CAS Number to agree with other entries. Not corrected by USEPA.
Benzo[a]pyrene 117-81-7	Benzo[a]pyrene 50-32-8	Corrected CAS Number to agree with App. VIII. Not corrected by USEPA.
Chrysene 2218-01-9	Chrysene 218-01-9	Corrected CAS No. to agree with other entries. Not corrected by USEPA.
K085 Aroclor 1016, 12674-1,2	Aroclor 1016, 12674-11-2	Corrected CAS No. to agree with other entries. Corrected by USEPA.
U003 Acetonitrile		Standard is "017" in text of Fed. Reg. and on USEPA disk. The Board renders this as "0.17" based on the preamble in the Fed Reg. at page 22624. Corrected by USEPA.
U051 Xylenes (Total)		Deleted CAS No. for lead. Other entries for "Xylenes" leave CAS No. blank. Corrected by USEPA.
Lead		No entry for nonwaste- water standard for lead. "NA" in USEPA correction.



U068	Dibromonethane	Dibromoethane	Corrected chemical name. Corrected by USEPA.
U157	3-Methoxychloro- anthrene	3-Methoxychol- anthrene	Corrected chemical name. Corrected by USEPA.
U172-U180	n-Nitroso...	N-Nitroso...	Corrected chemical names (5 total). Corrected by USEPA.

## Section 728. Table C

This Table is drawn from 40 CFR 268.42, Table 1, which was added at 55 Fed. Reg. 22683, June 1, 1990. It is the first of three tables which specify required treatment technologies. For certain types of hazardous waste, USEPA requires that certain treatment technologies be employed prior to land disposal. This is in contrast to the CCWE and CCW standards in Tables A and B, which the operator can meet with any technology.

Table C lists abbreviations for the treatment technologies, which are actually specified in Tables D and E, below.

In the definitions of "IMERC" and "INCIN", there are requirements that incinerators be in compliance with 40 CFR 264, Subpart O "and" 265, Subpart O. Facilities are regulated under one Part or the other, but not both. The Board has therefore replaced "and" with "or".

In the definition of "RMERC" there are requirements that facilities recovering mercury comply with certain air pollution regulations. There are two problems with these. First, the USEPA language is not sufficiently specific as to the federal requirements to meet Illinois APA requirements. Second, the rule needs to include specific references to the Illinois requirements meeting the federal specifications. Note however, that the generic federal language needs to be retained to address multi-state situations. For example, the rule needs to allow Illinois disposal of residuals from mercury recovery conducted in Indiana pursuant to proper Clean Air Act permit issued by USEPA or Indiana.

The first option is mercury recovery at a facility in compliance with a federal NESHAPS (National Emission Standard for Hazardous Air Pollutants). The appropriate NESHAP for mercury is at 40 CFR 61, Subpart E. This is currently incorporated by reference in 35 Ill. Adm. Code 231.150. However, this will be repealed shortly in R89-7(B).

The second option is for recovery at a facility subject to a BACT (Best Available Control Technology) or LAER (Lowest Achievable Emission Rate) imposed in a PSD (Prevention of Significant Deterioration) permit. The Board has cited to 35 Ill. Adm. Code 201 through 203 as Illinois equivalents.

The third option is a state permit which establishes emission limitations for mercury within the meaning of Section 302 of the Clean Air Act (as of June 1, 1990). The Board has again cited to 35 Ill. Adm. Code 201 through 203. The Board requested comment on whether these citations were correct, and requested a more specific federal citation, but received no response.

A final problem exists in the definition of "RTHERM". This involves thermal recovery of metals in certain types of "industrial furnaces" as defined in 40 CFR 260.10. The problem is that, while the USEPA rule identifies the acceptable types of furnaces by paragraph number, Board definitions cannot have subsection numbers under the APA. The Board has therefore replaced the paragraph numbers with the names of the types of furnaces discussed in the cited subsections. Note that this includes the catch-all paragraph (11), which, in the Board rule, allows the Agency to determine that additional furnaces meet the generic definition. The procedures for this are specified in Part 720.

#### Section 728.Table D

This Table is drawn from 40 CFR 268.42, Table 2, which was added at 55 Fed. Reg. 22683, June 1, 1990. It specifies technology-based treatment standards for certain hazardous wastes, using the treatment codes in Table C above.

The Board has made a minor change in the format of this Table. The column for the waste description has been moved to the right margin. This makes the table much easier to type and edit, since word wrap will work for the lengthy narratives in the last column.

The Board has corrected several typographical errors in this Table. Most of these are obvious errors in the chemical names, which have generally been corrected to agree with the names used in Section 721.133 (40 CFR 261.33). The corrections are summarized as follows:

<u>40 CFR 268.42,</u> <u>Table 2</u>	<u>35 IAC 728.Table</u> <u>D</u>	<u>COMMENT</u>
P028 Bensyl chloride	Benzyl chloride	Corrected chemical name. Corrected by USEPA.

P040 O,O-Diethyl O- pyrazinyl ...	O,O-Diethyl-O- pyrazinyl ...	Corrected chemical name
P093 N-Phenylthiourea	N-Phenylthiourea	Corrected chemical name. Not corrected by USEPA.
U096 a,a-Dimethyl benzyl ...	alpha,alpha-Di- methylbenzyl ...	Corrected chemical name. Not corrected by USEPA.
U097 Dimethylcarbomyl ...	Dimethylcarbamoyl ...	Corrected chemical name. Not corrected by USEPA.
U114 Ethylene bis-di- thiocarbamic ...	Ethylene-bis-di- thiocarbamic ...	Corrected chemical name. Not corrected by USEPA.
U119 Ethyl methane sulfonate	Ethyl methane- sulfonate	Corrected chemical name. Not corrected by USEPA.
U132 Hexachlorophenene	Hexachlorophene	Corrected chemical name. Not corrected by USEPA.
U134 Hydrogen Flouride	Hydrogen fluoride	Corrected chemical name. Not corrected by USEPA.
U135 CHRED, or INCIN	CHRED; or INCIN	Corrected punctuation. Corrected by USEPA.
U153 Methane thiol	Methanethiol	Corrected chemical name. Not corrected by USEPA.
U163 N-Methyl N'-Nitro N-Nitroso...	N-Methyl-N'- Nitro-N-Nitroso	Corrected chemical name. Not corrected by USEPA.
U168 1-Naphthlyamine	1-Naphthylamine	Corrected chemical name. Not corrected by USEPA.
U173 N-Nitroso-di-n- ethanolamine	N-Nitrosodiethan- olamine	Corrected chemical name. Not corrected by USEPA.

U240		
2,4-Dichlorophen-	2,4-Dichlorophen-	Corrected chemical name.
oxyacetic ...	oxyacetic acid	Not corrected by USEPA.
	...	

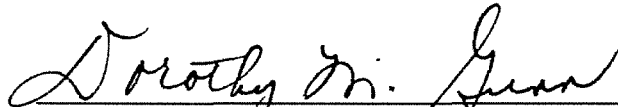
## Section 728. Table E

This Table is drawn from 40 CFR 268.42, Table 3, which was added at 55 Fed. Reg. 22683, June 1, 1990. It lists treatment standards for certain radioactive mixed wastes.

This Opinion supports the Board's Order of this same date. The Board will allow 30 days for post-adoption comment by the agencies involved in the authorization process before filing the adopted rules.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion was adopted on the 17<sup>th</sup> day of April, 1990, by a vote of 7-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board