

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1987

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R87-26
(1-1-87 THROUGH 6-30-87))

FINAL ORDER. ADOPTED RULES.

OPINION OF THE BOARD (by J. Anderson):

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

On August 20, 1987 the Board opened this docket for the purpose of updating the RCRA rules to agree with recent USEPA amendments. The Board proposed amendments on September 4, 1987. The proposal appeared on October 16, 1987, at 11 Ill. Reg. 16320. As is detailed below, Board has modified the rules in response to the public comment received.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(a) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 22.4(a) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270, and 280. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period January 1 through June 31, 1987. The Federal Registers utilized are as follows:

52 Fed. Reg. 8072	March 16, 1987
52 Fed. Reg. 8703	March 19, 1987
52 Fed. Reg. 11819	April 13, 1987
52 Fed. Reg. 21306	June 5, 1987
52 Fed. Reg. 23447	June 22, 1987

In R87-5, the Board addressed the corrections which appeared at 52 Fed. Reg. 21010, June 4, 1987. Also, in R86-46 the Board passed over revisions to the chemical listings which appeared at

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

51 Fed. Reg. 28298, August 6, 1986. Further corrections will appear in a later Docket when USEPA corrects the revisions.

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

The Board also notes that, by order this ame day, it is opening Docket No. R87-39 to initiate a RCRA update to cover USEPA regulations adopted on 7/1/87 through 12/31/87.

PUBLIC COMMENT

The proposal appeared on October 16, 1987, at 11 Ill. Reg. 16320. The Board received the following public comment:

- PC 1 United States Environmental Protection Agency, (USEPA), by William H. Miner and Gary Westefer, October 29, 1987
- PC 2 Illinois Environmental Protection Agency, (Agency or IEPA), by Phillip R. Van Ness, November 4, 1987

These comments correct minor typographical errors only. The also Board received codification comments from the Administrative Code Unit.

The Board received a "State Mandates Act Questionnaire" from the Joint Committee on Administrative Rules (JCAR). The Board declined to respond since the Questionnaire is based on Section 5 of the Administrative Procedure Act (APA), and Section 22.4(a) of the Act provides that Section 5 of the APA shall not apply to this rulemaking. The Board further noted that this rulemaking imposes mandates on units of local government only to the extent they may be involved in the generation, transportation, treatment, storage and disposal of hazardous waste, which are not normal governmental activities.

HISTORY OF RCRA and UIC ADOPTION

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

- 702 RCRA and UIC Permit Programs
- 703 RCRA Permit Program
- 704 UIC Permit Program
- 705 Procedures for Permit Issuance
- 709 Wastestream Authorizations
- 720 General

721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management Facilities
728	USEPA Land Disposal Restrictions
729	Landfills: Prohibited Wastes
730	UIC Operating Requirements
731	Underground Storage Tanks

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

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

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

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

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

The UIC regulations were adopted as follows:

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

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

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

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

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

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

R87-29 Proposed September 17, 1987 (1/1/87 through 6/30/87)

The Phase II RCRA regulations included adoption of Parts 703 and 724, which established the permit program and final TSD

standards. The Phase II regulations were adopted and amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DETAILED DISCUSSION

The USEPA amendments involved in this update are summarized as follows:

<u>52 FR</u>	<u>1987</u>	
8072	March 16	Update Test Methods reference
8703	March 19	Closure of impoundments
11819	April 13	Corrections to used oil rules
21306	June 5	Corrections to "solid waste"
23447	June 22	Corrective action programs

The June 22 rules allow a RCRA permit applicant to ask USEPA to put into the permit a schedule leading to a corrective action

program, instead of the program itself. The March 19 rules make the closure standards for interim status impoundments more like the Part 724 standards. These important changes are accomplished in a few pages. The rest is mainly housekeeping.

Section 702.104

This Section is drawn from 40 CFR 270.6, which was amended at 52 Fed. Reg. 8073. The amendments update the reference to "Test Methods for Evaluating Solid Waste." The Board will utilize the format which was recently adopted in R86-46 in Section 720.110.

Section 703.185

This Section is drawn from 40 CFR 270.14(c), which was amended at 52 Fed. Reg. 23450. This Section specifies a portion of the RCRA permit application, the groundwater protection information. This correlates with Part 724, Subpart F, which governs releases from solid waste management units. An operator is required to establish a corrective action program if contaminants are detected in groundwater. The corrective action program is a type of permit condition, which is established pursuant to this portion of the application. To complete the application may require substantial time and effort in the design stage. The amendments allow the operator, with prior approval of the Agency, to file a RCRA permit application with a schedule for the submission of a corrective action plan instead of the plan itself. This would allow the Agency to issue the permit conditioned on the schedule, instead of waiting for implementation the plan before issuing the permit.

Section 720.111

This Section is drawn from 40 CFR 260.11, which was amended at 52 Fed. Reg. 8073 to update the reference to "Test Methods" discussed above. As was discussed in the R86-46 Opinion, the format and content differs from that of the USEPA rule in order to comply with APA requirements.

Section 721.103

This Section is drawn from 40 CFR 261.3, which was amended at 52 Fed. Reg. 11821. A cross reference has been corrected in Section 721.103(c)(2)(B)(ii).

The Board has also changed a reference to the Clean Water Act in Section 721.103(a)(2)(D). This functions to exclude regulated wastewater discharges from the definition of hazardous waste. The Board has deleted the references to the federal Act and replaced them with references to the derivative Illinois programs, the NPDES and pretreatment programs in 35 Ill. Adm.

Code 309 and 310. Part 310 was adopted in R86-44 on December 3, 1987.

The APA has been amended several times concerning the form of incorporations by reference. The APA imposes severe restrictions on the types and form of incorporations. The Board is concerned that this type of reference could be construed as an incorporation by reference, which would raise all sorts of problems. Since there is a clear equivalent Illinois reference, the Board will utilize it instead. This avoids the APA problems, since references to Illinois regulations and statutes are not incorporations by reference.

Section 721.106

This Section is drawn from 40 CFR 261.6, which was amended at 52 Fed. Reg. 11821 to correct a reference to hazardous waste number K067 found in the Board rule at Section 721.106(a)(3)(G).

The Board has added introductory lines to those subsections in which the USEPA rule moves to next level of subdivision without text. This is now prohibited by the Secretary of State's rules.

This Section was subject to amendment in the R87-5. Some of the changes shown in the proposal were actually made in that Docket. The striking and underlining have been revised to reflect the base text as adopted in R87-5.

Section 721.133

This Section is drawn from 40 CFR 261.33, which was amended at 52 Fed. Reg. 21306. The amendment changes the introductory material which defines what is meant by the listings of discarded commercial chemical products, etc. The listings themselves are unchanged. Note that in R86-46 the Board passed over amendments to this Section which USEPA adopted at 51 Fed. Reg. 28298, August 6, 1986. The Board will wait until USEPA corrects this action to adopt it at the State level. For this reason, the text of this Section will differ in form from that which will appear in the 1987 edition of the CFR.

Section 725.328

This Section is drawn from 40 CFR 265.228, which was amended at 52 Fed. Reg. 8706. The amendment changes the closure and post-closure care standards for interim status surface impoundments. The rule becomes basically the same as the Part 724 rule for permitted facilities. The operator either has to remove or decontaminate all wastes, residues, liner materials and subsoils, or close the unit as a landfill and provide post-closure care.

Section 726.120 et seq.

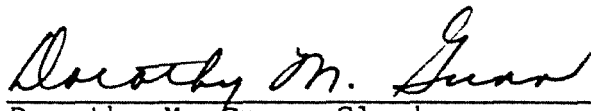
This and the subsequent Sections are drawn from 40 CFR 266, which was amended at 52 Fed. Reg. 21306. These amendments are technical corrections to the rules which the Board adopted in R85-22 and R86-1. The corrections will not be discussed in detail. In addition, the Board has corrected some problems which arose in its adoption of the rules. These will not be discussed in detail either.

Section 726.120 has been amended to delete part of the material on mixing wastes before recycling from Section 726.120(a)(2) and (3).

Section 726.131(a)(1), and several subsequent Sections, have been amended to remove specific references to the notification requirement of Section 3010 of the RCRA Act. Since these USEPA amendments could be construed as incorporations by reference, raising the problems discussed above, the notification is now required under the rules without any need for specific reference to the federal Act.

This Opinion supports the Board's Order of this same day. The Board will delay filing the rules until December 17, 1987, in order to allow time for final review and motions for reconsideration by the agencies involved in the authorization process.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 3rd day of December, 1987, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board