

ILLINOIS POLLUTION CONTROL BOARD
May 14, 1987

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R87-5
(10-1-86 THROUGH 12-31-86))

PROPOSAL FOR PUBLIC COMMENT

PROPOSED 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 proposing to amend the RCRA regulations. In accordance with the RCRA procedural rules (Section 102.202), the Board invites public comment for 45 days after publication of the proposal in the Illinois Register.

On March 19, 1987 the Board opened this docket for the purpose of updating the RCRA rules to agree with recent USEPA amendments.

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 October 1 through December 31, 1986. The Federal Registers utilized are as follows:

51 Fed. Reg. 35190	October 1, 1986
51 Fed. Reg. 37725	October 24, 1986
51 Fed. Reg. 40636	November 7, 1986

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.

HISTORY OF RCRA and UIC ADOPTION

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

702	RCRA and UIC Permit Programs
703	RCRA Permit Program
704	UIC Permit Program
705	Procedures for Permit Issuance
709	Wastestream Authorizations
720	General
721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management Facilities
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 rules has proceeded in several stages. The Phase I RCRA rules were adopted and amended as follows:

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

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

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

The UIC rules were adopted as follows:

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

The UIC rules were amended in R82-18, which is referenced above. The UIC rules 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 rules:

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).

The Phase II RCRA rules included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II rules 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 rules to correspond with USEPA amendments in several dockets. The period of the USEPA rules 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 Proposed March 19, 1987; 11 Ill. Reg. 7145, April 17, 1987. (7/1/86 -- 9/30/86)
- R87-5 This Docket. (10/1/86 -- 12/31/86)

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 rules:

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, which is listed above. Part 106 is proposed for amendment in R86-46, also 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 rules adopted October 23, 1986; 10 Ill. Reg. 19787, effective November 5, 1986.

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

DETAILED DISCUSSION

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

<u>51 FR</u>	<u>1986</u>	
35190	October 1	Waste minimization certification
37725	October 24	Listing of ethylenebisdithiocarbamic acid
40636	November 7	Land disposal restrictions

Almost all of the amendments result from the November 7 land disposal restrictions. Section 721.132 and two appendices are amended as a result of the October 24 listings. The waste minimization certification affects only the manifest form, which the Agency promulgates without a specific Board regulation.

Because the proposal would amend the still-pending R86-46, part of the verbatim amendments must await final adoption of R86-46. Therefore, the Proposed Order includes only a summary of the amendments to Parts 702 through 725. New Part 728 is set out in full.

Section 702.187

This Section is drawn from 40 CFR 270.42(o), which was added at 51 Fed. Reg. 40636. The amendments add a new type of "minor modification" of a RCRA permit which the Agency can grant without following the full Part 705 procedures. The Agency can so modify a permit to allow treatment of restricted wastes in accordance with Part 728 treatment standards or an adjusted standard approved by the Board. However, the minor modification route cannot be used to approve changes in processes or physical equipment.

Incorrect references in the USEPA rule to 40 CFR 268 have been corrected. In addition, 40 CFR 270.42(o)(4) has been reworded for clarity.

Section 703.183

This Section is subject to amendment in R86-46. This Section is drawn from 40 CFR 270.14(b)(21), which was added at 51 Fed. Reg. 40636. The applicant has to include copies of any extensions or adjusted standards from Part 728 with the permit application.

Section 703.241

This Section is drawn from 40 CFR 270.32(b)(1), which was amended at 51 Fed. Reg. 40636 to add references to Part 268.

Section 720.101 through 721.130

Several Sections have been amended to add references to new Part 728. Several of these Sections are subject to amendment in R86-46. These are drawn from 51 Fed. Reg. 40636.

40 CFR 260.1(b)(1) and (b)(4) have no counterparts in Section 720.101. The references at 51 Fed. Reg. 40636 to 40 CFR 261.7(a)(1)(ii) and (a)(2)(ii) appear to be incorrect. The Board has interpreted these as the equivalents of Section 721.107(a)(1) and (2).

Section 721.132

This Section is subject to amendment in R86-46. This Section is drawn from 40 CFR 261.32, which was amended at 51 Fed. Reg. 37725, to add listings K123 through K126. These are related to production of ethylenebisdithiocarbamic acid, a pesticide precursor.

Section 721, Appendices C and G

The incorporation by reference of the test methods has been updated to include testing for ethylenebisdithiocarbamic acid. The basis for listings K123 through K126 has been identified as the presence of ethylene thiourea.

Section 722.111

This, and all the following Sections, are drawn from 40 CFR 262.11(d), which was added at 51 Fed. Reg. 40636 to reference new 40 CFR 268. This has been reworded for clarity.

Section 722, Appendix

This Section is subject to amendment in R86-46. 40 CFR 262, Appendix is the uniform hazardous waste manifest form. In Illinois, as provided by Section 722.120, the Agency promulgates manifest forms based on the USEPA form. The Agency will include the generator certification of waste minimization in the form without a specific Board rule.

Section 723.112

This Section has been amended to include references to Part 728.

Section 724.113

Sections 724.113(a)(1) and (b)(6) have been amended to include references to new Part 728. Section 724.113(b)(7) has been added to include analyses required by Section 728.104 for lagoons exempt from land disposal restrictions. 40 CFR 264.13 (a)(1) includes an apparent typographical error which the Board has corrected: "... this part of Part 268..." has been interpreted as "this Part or 35 Ill. Adm. Code 728."

Section 724.173

This Section is subject to amendment in R86-46. Section 724.173(b)(10) through (14) have been added. These require that various notices required under Part 728 be placed in the TSD facility's operating record.

40 CFR 264.73, and 265.73, contain what appears to be a consistent error. They make repeated reference to "the notice required by the generator" under various provisions of 40 CFR 268. However, these provisions require that the generator prepare a notice to send with the waste to the TSD facility. Accordingly, the Board has rendered these as "the notice required of the generator."

Section 725.113

This Section is subject to amendment in R86-46. This is the same as Section 724.113, only it applies to interim status facilities.

Section 725.173

This Section is subject to amendment in R86-46. This is the same as Section 724.173. The added Sections are numbered (b)(8) through (12).

Section 728.101

The following Sections are drawn from 40 CFR 268. They were added at 51 Fed. Reg. 40636, November 7, 1986. This is USEPA's land disposal ban.

40 CFR 268, Subpart B was adopted by USEPA at 51 Fed. Reg. 19305, May 28, 1986. Subpart B is the schedule USEPA intends to follow in promulgating its land disposal bans. The Board declined to adopt the schedule in R86-28.

Section 728.101 defines the purpose, scope and applicability of the USEPA land disposal bans. Subsection (d)(3) exempts CERCLA and RCRA corrective action wastes until November, 1988. The Board has defined "CERCLA" and "RCRA corrective action" below.

The Board has land disposal restrictions which were adopted in R81-25 and in R83-28. 35 Ill. Adm. Code 709, and Sections 22.6 and 39(h) of the Act, require wastestream authorizations, while 35 Ill. Adm. Code 729 includes standards under which halogenated solvents and liquids can be disposed. The Board has added subsection (d) to state the relationship to Parts 709 and 729. Parts 728 and 729 are cumulative: a waste must meet the requirements of both Parts before the Agency can issue a wastestream authorization.

Section 728.102

This Section includes specialized definitions. The Board has added definitions of "Agency," "Board," "CERCLA" and "USEPA," abbreviated names which are used in the text.

The Board has also defined "RCRA corrective action," a term which is used in Section 728.101(c)(3) and in other places in reference to the temporary exemption for clean-up waste. The definition references the Board's corrective action provisions in 35 Ill. Adm. Code 724 and 725 and the comparable USEPA rules. In addition, the definition includes wastes produced under RCRA corrective action pursuant to authorized RCRA programs in other States.

Section 728.103

This Section prohibits dilution as a substitute for treatment.

Section 728.104

This Section exempts treatment in surface impoundments from the land disposal ban. The operator has to demonstrate that treatment occurs in the lagoon, and has to analyze both the supernatant and sludge to show that they meet any treatment standards.

The lagoon exemption applies only to surface impoundments which have double liners, or which are exempted under one of three other provisions (Section 728.104(c)(1) - (3)). The first is one of the exemptions from the double liner requirement for new impoundments found in Sections 724.321 or 725.321. The second is for an unleaking, lined lagoon with groundwater monitoring which is located more than a quarter mile from an "underground source of drinking water." The third requires a demonstration of "no migration of any hazardous constituent into groundwater or surface water at any future time."

These exemptions raise questions as to whether Board or Agency action is required. With respect to the first, the determination will be made as provided in Part 724 or 725. Some of these are to be made by the Board, and others by the Agency. The Board has not proposed to disturb these provisions, which were last amended in R86-1.

With respect to the second, the Board has provided that the determination is to be made by the Agency by way of permit action (Section 728.104(c)(2)). The rule includes standards which the Agency can apply in the context of permit issuance, subject to review by the Board. As proposed, interim status facilities will have to make a Part B application to obtain this exemption.

The third exemption is the demonstration of no migration at any future time. This is similar to Section 724.321(e)(2)(B), with respect to lagoons in general, which is to be made by the Board. The Board will make this determination also.

The similarity of Section 724.321(e)(2)(B) to Section 728.104(c)(3) raises another possible question of interpretation. As worded, these seem to be different, but similar determinations. The former demonstration, which would be made to the Board in a site-specific rulemaking, would allow construction of an unlined monofill surface impoundment. The latter, which would be made through an adjusted standard, would allow placement of specific wastes in any impoundment. This is the interpretation the Board gives the USEPA rules. An alternative interpretation is that these provisions are intended to be linked, so that the Section 728.104(c)(3) adjusted standard would be available only to the monofills exempted under Section 724.321(e)(2)(B). The Board solicits comment on this.

Section 728.104 has a number of editorial problems. First, 40 CFR 268.4 has a subsection (a), but no subsection (b). This

is not allowed under Illinois codification rules. Therefore, it is necessary to promote each level of subdivision in forming the Illinois rule, so that 40 CFR 268.4(a)(1) corresponds with 35 Ill. Adm. Code 728.104(a). This violates the simple correspondence rule which exists within virtually all of Parts 720 - 726, and complicates cross referencing this Section.

Second, the introductory language of 40 CFR 268.4(a)(3) seems to be missing an essential verb. The Board has repeated "must" to make it clear that the impoundment "must be in compliance with applicable groundwater monitoring requirements." The USEPA rule seems to say: "regardless that the unit may not ... be in compliance with applicable groundwater monitoring requirements," an unlikely, but grammatically correct, interpretation.

Third, the introductory language also repeats a reference to 40 CFR 264, where 265 is probably intended the second time. Fourth, 40 CFR 268.4(c)(1) needs a verb which the Board has supplied.

Section 728.105

Rather than adopt an equivalent to the text of 40 CFR 268.5, the Board has referenced the USEPA procedure for extensions of the effective date, and provided that any extensions granted by USEPA will be deemed extensions of any dates specified by Board rule. This appears to be what USEPA intended in the discussion at 51 Fed. Reg. 40618, although it would be helpful if USEPA had specified what Sections it was talking about and had been consistent within the the rules and discussion as to the names of the procedures. It is conceivable that there exists a class of site-specific extensions which USEPA intends the Board to grant, and that there may be other types of exemptions in 40 CFR 268 which USEPA intended to retain. The Board solicits comment on this.

The Board has concluded that USEPA intended that the States not adopt the procedures of 40 CFR 268.5 which allow extensions of compliance dates. USEPA is specific as to the need for national uniformity on extensions. The Board concludes that USEPA intended to preempt the States should they adopt a date which is subsequently extended. The Board has therefore provided that USEPA extensions will automatically preempt any derivative Board rule. The Board will adopt the extension when it updates the rules in the ordinary course of events. However, the extension will have already become automatically effective.

Section 728.106

This Section allows a site-specific exemption from the land disposal bans of Subpart C on a demonstration of "no migration of hazardous constituents ... for as long as the wastes remain hazardous." This is similar to the demonstration of Section

724.321(b), which must be made by the Board. The Board has proposed to utilize the adjusted standards procedures of Part 106, adopted in R86-46, as the mechanism for making this decision. This exemption will be dealt with as an adjustment of the treatment standard set in Subpart C.

40 CFR 268.6(b)(2) and (4) require USEPA to approve sampling and quality assurance plans for demonstrations. There are two ways to interpret these. First, this might mean that the sampling and quality assurance plans have to meet USEPA rules and guidance documents for the exemption to be granted. Second, this could mean that USEPA is to approve the specific plans prior to submission of the petition. The Board has construed this rule in the latter manner. Because the Board lacks a mechanism for giving informal approval, the Board has modified the procedure to provide specifically, in Section 728.106(a)(1), that the adjusted standards procedure is initiated by the filing of a petition for approval of the sampling and quality assurance plans. This should be done before the generator undertakes the sampling required for the demonstration in the main petition. The Agency will have the opportunity to review the plans and raise objections prior to approval. The main petition will be rejected if the generator does not follow the approved plans.

There is a basic question as to whether the above interpretation is correct. If USEPA intended the former interpretation, that the sampling and quality assurance plans just have to meet its rules or guidance documents, the rule will have to be made more specific. The Board solicits comment on this.

This exemption could be compared to the "economically reasonable and technically feasible" ("ERTF") demonstration to the Agency under the liquids and general hazardous waste bans in Illinois. The "no migration" standard of the USEPA rule does not fit into the ERTF showing; rather, they are independent exemptions. Note that under Section 728.101 the "no migration" exemption would apply only to the USEPA bans, and the ERTF showing would apply only to the Illinois Part 729 and statutory bans.

Section 728.107

The generator has to determine whether a waste is restricted. If he determines that he is managing a restricted waste, he has to attach various certifications to the manifest before shipping.

The introductory language to 40 CFR 268.7(a) appears to have a typographical error. The USEPA language reads as follows:

The generator shall test his waste or an extract developed using the test method described in Appendix I of this part, or using knowledge of the waste to determine if the waste is

restricted ...

This appears to say that the generator tests either an extract developed as described in Appendix I or developed using his knowledge of the waste. This is probably not what USEPA intended, since it would be very easy, using knowledge of a waste, to develop an extract which would meet the standards. The Board assumes that USEPA meant for the generator to either test the extract developed under Appendix I or to use his knowledge of the waste to determine if it is restricted. In other words, the generator doesn't have to test the waste if he knows the waste will fail the test. The Board has therefore edited the introductory language of 35 Ill. Adm. Code 728.107(a) to read as follows:

The generator shall test the generator's waste or an extract developed using the test method described in Appendix A or shall use knowledge of the waste to determine if the waste is restricted from land disposal under this Part.

40 CFR 268.7(b) appears to have a typographical error which has been corrected to read "... to assure that the treatment residue extracts meet ..." Equally plausible is the alternative correction: "... to assure that the treatment residue extract meets ..." The Board solicits comment as to which was intended.

Section 728.130

Subpart C contains the USEPA prohibitions on land disposal. Section 728.130 is the prohibition of solvent wastes. This is comparable to the 35 Ill. Adm. Code 729 rules on halogenated solvents which were adopted by the Board in R81-25.

40 CFR 268.30(b) contains an apparent typographical error which the Board has corrected. The USEPA rule includes a temporary rule which appears to apply only if three conditions are met. "Or" is probably intended, since some of the conditions are mutually exclusive.

Section 728.131

This is USEPA's restriction on land disposal of dioxin containing wastes.

Section 728.140

Subpart D includes treatment standards. Residuals from the treatment of restricted wastes can be land disposed if they meet a treatment standard. Treatment standards are either expressed as a concentration of constituents in the waste extract, or by specification of a treatment method.

Section 728.141

40 CFR 268, Appendix I specifies an extraction procedure for treatment residuals. A residual from treatment of a restricted waste may be land disposed if its extract meets these standards. The constituents for which standards are included are solvents and dioxin-related compounds.

It would be difficult to place the USEPA table in the Board rule and comply with codification requirements. The Board has therefore made the table a "Table," a type of Appendix, which will be referenced in the rule.

Section 728.142

This Section will specify certain treatment technologies, the residuals of which can be land disposed. No technologies are presently specified.

Subsection (b) allows the Agency to approve alternative treatment technologies if they "achieve a level of performance equivalent to that achieved by methods specified." This appears to be an objective standard which the Agency can apply in the context of permit issuance, subject to review by the Board. The Board solicits comment as to whether there is a need of a mechanism for persons who might not fall within the permit requirement, for example persons with interim status or exempt units.

Section 728.144

40 CFR 268.44 provides for "variances" from treatment standards where the petitioner demonstrates that "because the physical or chemical properties of the waste differ significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods." This differs from Section 728.142(b) in that the former is available even if the operator can use the specified treatment, while the latter does not require treatment to the specified level.

The Board's variance procedures are not appropriate for this determination. Board variances require a showing of individual hardship as well as a compliance plan, and grant only temporary relief. The Board has deleted the word "variance" to avoid confusion with the 35 Ill. Adm. Code 104 variance procedures.

This procedure is adjustment of an environmental control standard set by Board rule. The Board will utilize the Part 106 adjusted standards procedures adopted in R86-46 to grant these "variances."

Section 728.150

This Section prohibits storage of restricted wastes except incident to transportation or for accumulation of sufficient

quantities as necessary to facilitate proper recovery, treatment or disposal. There is a presumption that storage for over one year is not necessary.

Table A

This is the table of maximum concentrations of solvents and dioxins in the waste extract. Because of possible codification problems, it has been removed from Section 728.141 and made a separate table.

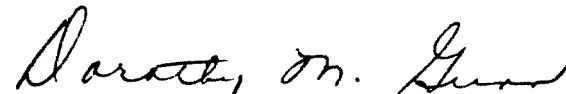
Appendices

The Board will incorporate the Appendices by reference instead of setting them out in full. Appendix A references the method for testing the waste extract. Appendix B references the treatment methods used to achieve the treatment standards.

This Proposed Opinion supports the Board's Proposed Order for public comment of this same day.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 14th day of May, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board