

ILLINOIS POLLUTION CONTROL BOARD
October 9, 1986

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R86-28
(4-1-86 THROUGH 6-30-86))

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 July 11, 1986 the Board opened this docket for the purpose of updating the RCRA rules to agree with recent USEPA amendments.

Section 22.4(a) of the Act provides for quick adoption of regulations which are "identical in substance" to federal regulations. Neither Title VII of the Act nor Section 5 of the Administrative Procedure Act applies to rules adopted under Section 22.4(a). Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA regulations are found at 40 CFR 260 through 270, and 280. This rulemaking updates Illinois' RCRA rules to correspond with federal amendments during the period April 1 through June 30, 1986. The Federal Registers utilized are as follows:

November 8, 1985	50 Fed. Reg. 46612
April 21, 1986	51 Fed. Reg. 13497
May 2, 1986	51 Fed. Reg. 16443
May 28, 1986	51 Fed. Reg. 19177
May 28, 1986	51 Fed. Reg. 19322

The November 8, 1985, Federal Register amended the Underground Storage Tank program. This was inadvertently omitted from R86-1.

There are two notable USEPA actions during this period which have not been included in this proposal. 51 Fed. Reg. 12148, April 9, 1986, includes delistings. As provided in Section 720.122, the Board will not adopt these unless and until a proposal is filed with a showing that the delistings need to be adopted as part of the Illinois program. 51 Fed. Reg. 19300, May

28, 1986, is USEPA's schedule for adopting land disposal restrictions. The Board will adopt USEPA's restrictions as they appear, but sees no need to adopt the schedule itself.

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

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

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:

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

R85-22 December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986.

R86-1 July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986.

R86-19 Proposed July 11, 1986; 10 Ill. Reg. 13500, August 15, 1986.

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 November 21, 1984, 61 PCB 247; 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 procedures to be followed in cases before it involving the RCRA rules:

R84-10 December 20, 1984 and January 10, 1985, 62 PCB 87, 349; 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.

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

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

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

The Board has opened two new dockets dealing with restrictions on landfilling liquid hazardous waste. R86-9 concerns implementation of Section 39(h) of the Act, while R86-11 concerns the relationship of the liquid hazardous waste ban to the USEPA liquid hazardous waste bans. (Orders of February 26, 1986, and June 11, 1986.)

DETAILED DISCUSSION

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

50 Fed. Reg. 46612	Notification requirements for UST
51 Fed. Reg. 13497	Correction to UST rules
51 Fed. Reg. 16443	Amendments to closure and financial assurance requirements
51 Fed. Reg. 19177	Correction to paint filter test
51 Fed. Reg. 19322	Changes to listing of spent pickle liquor

Almost all of the changes are to the closure and financial assurance rules of Parts 724 and 725.

Section 702.187

Section 702.187 is drawn in part from 40 CFR 270.42, which was amended at 51 Fed. Reg. 16443. When a facility is sold, the old operator has to continue to provide financial assurance until the new operator demonstrates compliance.

Section 703.155

This Section is drawn from 40 CFR 270.72. The rules for financial assurance upon sale of an interim status facility are basically the same as for a permitted facility

Section 703.183

This Section is drawn from 40 CFR 270.14(b), which was also amended at 51 Fed. Reg. 16443. Section 703.183(n), (o) and (p), have been amended to specify the financial assurance documentation required in the Part B permit application. For new facilities, financial assurance is keyed to initial receipt of waste, rather than the permit application.

Section 720.110

The definitions table has been amended to add or amend the definitions of "active life", "final closure", "hazardous waste management unit" and "partial closure". The definition of "small quantity generator" is proposed in R86-19. The Board will actually adopt this amendment in that Docket prior to final action on this proposal, so that this definition will not appear as underlined in the final adoption of R86-28.

Section 721.132

The definition of K062, spent pickle liquor, was modified at 51 Fed. Reg. 19322. Note that K117, K118 and K136 are proposed in R86-9. They will actually be adopted in that Docket.

Section 724.210

The closure and financial assurance requirements were extensively amended at 51 Fed. Reg. 16443. Most of the remaining amendments discussed in this Proposed Opinion are drawn from this Federal Register.

The amendments to Section 724.210 are minor editorial changes.

Section 724.211

This Section has been amended mainly to add a reference to specific closure requirements to the general standard. In paragraph (c) the USEPA rule references the requirements of "this Subpart", but then cites Sections in other Subparts. The reference has been corrected to read "Part".

Section 724.212

This Section has been amended to greatly increase the specificity of the requirements concerning closure plans.

Section 724.213

This Section has been amended to be more specific as to modification of the time allowed to begin or to complete closure. The USEPA rule requires closure to begin within 90 days and to be completed within 180 days, unless certain conditions are met. When the Board adopted this Section in R83-19, it modified the language to make it clear that the Agency's decision was to be in the context of permit review, and that the time limits were presumptive norms to be applied in the absence of the required showing. These changes are consistent with the present amendments and will be retained.

Section 724.214

This Section has been modified to make the requirements concerning removal or decontamination more specific, and to reference the generator requirements of Part 722.

Section 724.215

This Section has been modified to make the requirements concerning certification of closure more specific. Certification from a professional engineer is required within 60 days after completion of closure of land disposal units, even if the rest of the facility remains open.

Section 724.216

This Section has been added. It requires the operator to submit a plat to the Agency and to local authorities prior to certification of closure. The USEPA rule requires submission "to the local zoning authority, or the authority with jurisdiction over local land use." In Illinois there may be no such authority in rural areas. The rule has been modified to require filing with "any" local authority, and to require the plat to be recorded with land titles.

Section 724.217

This Section has been modified to make the requirements concerning the post-closure care period more specific. In R83-19 the Board specified that rulemaking pursuant to Part 102 would be required to shorten or lengthen the 30-year period. Specific procedures for such site-specific RCRA determinations were adopted in R84-10. The amendments are consistent with these procedures.

Section 724.218

This Section has been modified to make more specific the requirements concerning the post-closure care plan. The plan no longer needs to be kept at the facility. The operator must apply for a permit modification at least 60 days prior to a planned change which affects the post-closure care plan, and within 60 days after an unexpected event. Post-closure care plans must be submitted within 90 days after either the Agency or the operator determines that a unit which does not have a contingent post-closure care plan will have to be closed as a landfill.

Section 724.219

This Section has been largely rewritten. Some of the material has been moved to new Section 724.216, or to amended Section 724.220. When it adopted this Section in R82-19, the Board specified the County Recorder and "any" local zoning

authority, for the reasons stated above. This has been followed in the present amendments.

The operator now has to submit information on the location of wastes on the facility each time a disposal unit is closed. Procedures have been specified for removal of notations on deeds in the event hazardous wastes are subsequently removed from a disposal unit.

Section 724.220

The former material has been moved to Sections 724.216 and 724.219. This Section now requires a certification from the operator and a professional engineer that post-closure care has been completed in accordance with the plan. The certification is required within 60 days after completion of post-closure care.

Section 724.241

A definition of "plugging and abandonment cost estimate" has been added. This is the cost estimate prepared pursuant to Section 704.212 for UIC wells injecting hazardous waste. This requirement was adopted in R85-23 on July 11, 1986.

Section 724.242

The requirements for closure cost estimates have been made more specific. Many of the changes are similar to the financial assurance rules adopted by the Board for non-hazardous waste facilities in R84-22. The cost estimate must be based on third-party costs, and cannot include salvage value. The operator can use actual costs instead of inflation factors in revising the cost estimate. The time for adjusting the cost estimate is now keyed to the anniversary date of the financial instruments, rather than the date of the first cost estimate.

Section 724.243

The requirements concerning financial assurance instruments for closure have been modified. The amendments generally concern application of financial assurance during partial closure, finality of orders and inclusion of UIC plugging and abandonment costs in financial tests.

Most of the RCRA financial assurance mechanisms require the operator to create a "standby trust" to receive the proceeds of the mechanism. In R84-22 the Board determined that such standby trusts are expensive and unnecessary under Illinois law. However, the Board has proposed to retain the standby trusts in this rulemaking, which is pursuant to Section 22.4(a) of the Act. The Board welcomes comments on whether Section 22.4(a) allows for the deletion of the standby trust in the RCRA financial assurance mechanisms.

The amendments to several provisions trigger application of financial assurance when USEPA issues a "final administrative order". (For example, see Section 724.243(b)(4), (c)(5) and (d)(8).) The Agency has no comparable power. The existing rules trigger application of financial assurance when the Board or a court orders closure. There is a question as to whether Illinois facilities are subject to administrative orders from USEPA, and, if so, whether such orders should trigger application of financial assurance required by Illinois rules. The Board has not included these amendments, but solicits comment.

The USEPA rules provide that USEPA can withhold payments from a trust to the operator if it "has reason to believe" that the cost of closure will be significantly greater than the value of the trust. The Board has changed this to "determines". For example, see Section 724.243(a)(10). The question on review of such action would not be whether the Agency subjectively had a reason, but whether the cost indeed will be greater than the value of the trust. Similarly, in Section 724.243(i), the Agency is to release the operator unless it "determines" that closure has not been in accordance with the approved closure plan.

The USEPA rules allow operators to provide a single financial assurance package for all facilities nationwide. These provisions were deleted on adoption of Section 724.243(g) in R82-19. However, the rules do not specifically say how the Agency is to deal with multistate operators. The Board solicits comment on these provisions.

The existing rules generally provide that financial assurance forms are to be identical to USEPA forms, and reference Section 724.251, which in turn references the USEPA forms and requires the use of IEPA forms to be derived from the USEPA forms. It is simpler, and more accurate, to provide for each instrument that forms are to be "as specified in Section 724.251."

Section 724.244

The requirements for cost estimates for post-closure care have been modified in a manner similar to the closure cost estimates.

There appear to be two errors in the USEPA text. 40 CFR 264.144(a) references Sections 264.228 "and" 264.258 where "or" is obviously intended. Section 264.144(b) references Section 264.145(b)(1) and (2) where an internal reference is intended.

Section 724.245

The requirements for financial assurance instruments for post-closure care have been modified in a manner similar to Section 724.243.

Section 724.247

Paragraph (c) requires the operator to provide technical and engineering information as is "deemed necessary by the Agency to determine" a level of insurance other than the specified dollar amounts. The Board has proposed to modify this so it will contain an objective standard on which to judge the Agency's action. Information will be required as "necessary to determine."

Paragraph (d) requires the operator to provide information "within a reasonable time." The Board has proposed to modify this to read: "within a time specified by the Agency in the request, which shall not be less than 30 days."

Section 724.251

The financial assurance forms have been modified to allow inclusion of UIC plugging and abandonment cost estimates. The Board has updated the incorporation by reference to include these amendments, but will not adopt the actual language of the forms. Rather, the Agency will continue to promulgate forms in conformity with the federal requirements.

Section 725.210

The Part 725 closure and financial assurance rules apply to TSD facilities which do not have RCRA permits. They pose additional problems because of the ambiguity of the procedural context in which decisions are made.

Section 725.210 has been modified to specifically mention the post-closure care requirements applicable to certain waste piles and lagoons from which the operator intends to remove wastes at closure.

Section 725.211

The closure performance standard is similar to the standard for permitted facilities. It has also been modified to recite specific closure rules for various types of units. The USEPA rule references closure requirements of this "Part", when "Subpart" is obviously intended.

Section 725.212

The requirements for the closure plan have been revised. The operator no longer needs to keep the closure plan on site, but must have it available for inspections or mailed requests. The rule now specifies plans for the closure of each unit, and for final closure of the facility. There is now a procedure for approval of interim status closure plans. The USEPA rules include a requirement of a statement of reasons to the operator if a plan is not approved, or if a modified plan is approved.

Section 265.112(d)(1) requires submission of the closure plan 180 days prior to closure of the first disposal unit, "or final closure if it involves such a unit, whichever is earlier." This is not understandable, since final closure could never occur before closure of the first disposal unit. The Board has modified Section 725.212(d)(1) to reflect the language for permitted facilities from 40 CFR 264.112, which avoids this problem.

In Section 725.212(d)(3) the existing language requires the owner of an interim status facility to submit a closure plan no later than 15 days after a closure order from a court or the Board. The issuance of a compliance order under RCRA also triggers the requirement to file a closure plan. Is this consistent with the language noted above in connection with application of proceeds from financial assurance? (See Section 724.243(b)(4).)

Section 725.218

Existing Section 725.218(g) allows the Agency to reduce or extend the post-closure period for interim status facilities. Is this consistent with Section 724.217, which requires Board approval for similar actions at permitted facilities?

Section 725.240 (not amended)

USEPA amended paragraph (a) at 51 Fed. Reg. 16443, May 2, 1986. The first change was the reference to Section 725.250 instead of Section 725.251. This change has already been made in the Board rules. The second change is to make the Subpart apply to owners "or" operators, instead of "and". This is inconsistent with paragraph (b). The financial assurance requirements apply to both the owner and the operator, although action by one generally discharges the other. For these reasons, there is no need to modify existing Section 725.240.

Section 725.241

UIC cost estimate has been defined.

Section 725.242

The interim status closure cost estimate has been revised in a manner similar to Section 724.242. The USEPA rule includes a reference in paragraph (a) to Section 265.178, which does not exist. This appears to be the appropriate location for closure requirements for drum storage areas. However, none have been adopted for interim status facilities. Paragraph (b) includes a reference to Section 265.243(e)(3), which has been corrected to read (e)(5).

Section 725.243

The Board has proposed to adopt the text of the financial assurance requirements, repealing the incorporations by reference. Section 725.243 is very similar to Section 724.243.

The USEPA interim status rules reference 40 CFR 264.151, which includes the forms for financial assurance. Section 724.251 incorporates the USEPA forms by reference, and directs the Agency to promulgate forms based on the USEPA forms. As proposed, the Part 725 rules will reference the appropriate form in 40 CFR 264.151, and Section 724.251. Section 725.251 will be repealed in order to maintain better consistency with USEPA.

Section 265.143(d) includes transitional rules which gave interim status facilities 90 days to obtain closure insurance when the rules were adopted in 1981. Similarly, Section 265.143(e)(4) includes transitional rules granting extensions of time to compile financial data during 1981. These have been omitted from the proposal, although, of course, this does not change history.

Section 725.244

The cost estimate for post-closure care under interim status is similar to Section 724.244. In paragraph (b) a reference to Section 725.245(d)(5) has been corrected to Section 725.245(e)(5).

Section 725.245

The interim status post-closure financial assurance rules are similar to Section 724.245. The Board has set them out in full instead of incorporating them by reference. Section 265.145(c)(9), as amended, refers to "permit requirements". This has been changed to "interim status requirements".

Section 725.247

The Board has proposed to adopt the interim status liability insurance requirements in full instead of incorporating them by reference. These are similar to Section 724.247. Paragraph (b)(4) of the USEPA rules includes transitional provisions allowing operators time through November, 1983, to obtain liability insurance for nonsudden occurrences. Similarly, paragraph (f)(4) allowed additional time for submission of financial data for operators seeking to self-insure. These have been omitted since the dates have passed.

Paragraphs (c) and (d) allow for adjustment of the amounts of required liability insurance at the initiative of the operator or the Agency. The USEPA rules have been modified in a manner similar to the comparable provisions of Part 724.

The adjustments to the interim status insurance requirements require hearings whenever there is a significant degree of public interest, or at the Agency's discretion. The Board has worded this to more closely track the language of Section 705.182(a), which applies to permitted facilities.

Section 725.414

USEPA inadvertently omitted the USEPA paint filter test from the interim status liquids restriction as amended on July 15, 1985. The Board left the paint filter test in Section 725.414 as amended in R86-1. However, it is now necessary to reletter the subsections to conform with the federal lettering.

Section 731.101

The underground storage tank (UST) rules are drawn from 40 CFR 280. The Board adopted the UST rules in R86-1, effective August 12, 1986. Definitions of "owner" and "operator" were added at 50 Fed. Reg. 46613. These amendments should have been adopted with R86-1, but were inadvertently omitted.

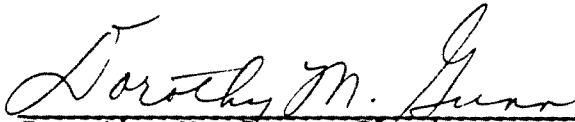
Section 731.103

Notification requirements were added at 51 Fed. Reg. 46612, and amended at 51 Fed. Reg. 13497. Notification was required by May, 8, 1986, which was before the effective date of the authorizing legislation (Section 22.4(e) of the Act), and before the Board adopted the UST program (effective August 12, 1986). The Board has dropped these dates to avoid a retroactive rule. Notification will be required by State law as of the effective date of these amendments; before that date, notification will be a federal requirement only. Since owners will already have been required to notify under federal law, there is no need for time after the rules become effective.

This Proposed Opinion supports the Board's proposal 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 9th day of October, 1986, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board