ILLINOIS POLLUTION CONTROL BOARD
August 9, 2001

IN THE MATTER OF:	)	
	)	
UIC CORRECTIONS, USEPA	)	R01-30
AMENDMENTS (July 1, 1999, through	)	(Identical-in-Substance - Land)
June 30, 2000)	)	

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

SUMMARY OF TODAY'S ACTION

This opinion and order addresses certain rules recently adopted in the consolidated underground injection control (UIC) update dockets UIC Update, USEPA Amendments (July 1, 1999, through December 31, 1999) and UIC Update, USEPA Amendments (January 1, 2000, through June 30, 2000) (December 7, 2000), R00-11/R01-1 (consolidated). As is explained in detail below, the Board opened this docket to consider concerns raised by the United States Environmental Protection Agency (USEPA) since the rules' adoption. The Board's May 3, 2001 proposal was published in the May 25, 2001 issue of the *Illinois Register*, at 25 Ill. Reg. 6599. The only public comment received was filed on July 17, 2001 by the Illinois Environmental Protection Agency (Agency).

Today's opinion discusses all of the USEPA concerns in detail. In some instances, the Board adopts amendments to the rules. In others, we explain why we believe amendments are unnecessary or are contrary to state law.

PROCEDURAL HISTORY

The R00-11/R01-1 Proceeding

The Board adopted amendments to the Illinois UIC regulations in R00-11/R01-1 on December 7, 2000. Most of the amendments to the Illinois UIC regulations involved in that docket related to the first installment of significant new federal requirements applicable to Class V injection wells. The two types of Class V injection wells affected by the new regulations are large-capacity cesspools and automobile waste disposal wells.

Under Sections 7.2 and 13(c) of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13(c) (2000)), the Board proposes amendments to the Illinois regulations that are "identical in substance" to UIC regulations that USEPA adopted to implement Section 1421 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. § 300h (2000)). Sections 7.2 and 13(c) of the Act provide

for quick adoption of regulations that are identical in substance to federal regulations that USEPA adopts to implement Section 1421 of SDWA. Section 13(c) also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2000)) do not apply to the Board's adoption of identical-in-substance regulations. The federal UIC regulations are found at 40 C.F.R. 144 through 148.

The Board adopted a proposal for public comment in UIC Update, USEPA Amendments (July 1, 1999, through December 31, 1999) and UIC Update, USEPA Amendments (January 1, 2000, through June 30, 2000), (September 7, 2000) R00-11/R01-1 (consolidated). Notices of Proposed Amendments were duly published in the October 6, 2000 issue of the *Illinois Register*, at 24 Ill. Reg. 14528 (Part 738), 14535 (Part 702), 14550 (Part 704), and 14578 (Part 730). The Board received public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*. The public comment period ended on November 20, 2000.

The Board received only one comment during the 45-day public comment period following *Illinois Register* publication.[1] This comment, filed by the Agency, did not comment on the particulars of the rule proposal. Instead, the Agency expressed concern at the increased financial burden that implementing the rule amendments would cause. The Agency noted that it had advised USEPA that additional federal funding would be needed. USEPA did not comment on the proposed amendments during the public comment period. The Board adopted the Class V injection well regulations in December 2001 without receiving substantive comments from any source.

The USEPA Post-Adoption Letter

On March 16, 2001, the Board received a copy of a March 12, 2001 letter from David A. Ullrich, Acting Regional Administrator, USEPA Region V, addressed to James Ryan, Attorney General of the State of Illinois. In that letter, USEPA commended the State on being the first in USEPA Region V to adopt the Class V injection well rules. Additionally, USEPA submitted substantive comments on the text of the adopted Class V well rules. USEPA raised two areas of major concern over the rules, four areas of minor concern, and four general observations on the rules. USEPA requested that the Attorney General prepare and submit to USEPA within 45 days a supplemental statement on the basis for the rule in the specified areas of concern.

The Proposal for Public Comment

On May 3, 2001, the Board proposed amendments to the Illinois UIC rules in the present docket, R01-30, based on the USEPA letter. A Notice of Proposed Amendments appeared in the

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[1] In addition to the public comments received, the Board received from the Joint Committee on Administrative Rules (JCAR) on October 12, 2000, a series of four documents (one for each Part involved in this proceeding) entitled "Line Numbered Version." JCAR also submitted four additional documents, one for each Part, entitled "Suggested Revisions." The Board responded to all JCAR suggestions, as detailed in the opinion and order of December 7, 2000.

May 25, 2001 issue of the *Illinois Register*, at 25 Ill. Reg. 6599. The 45-day public comment period ended on July 9, 2001. The Board received one public comment (PC 1) on the proposal. That comment is as follows:

PC 1 The Agency: "Response of the Illinois Environmental Protection Agency Pursuant to Public Comment Period for Proposed Identical-in-Substance Rules," received July 17, 2001, from Susan J. Schroeder, Associate Counsel, Division of Legal Counsel (dated July 16, 2001).

The comment was accompanied by a motion for leave to file instanter, which the Board grants.

The Agency, in PC 1, offers suggestions on the proposed amendments. The Agency comments on the authorization by rule provision of Section 704.146, on the ability of the State to develop its own forms for reporting well information, and on references to Class IV injection wells that could imply that any of these prohibited wells might still be in existence. The Agency's comments are considered in greater detail in the appropriate segments of the discussion that follows below.

DISCUSSION

The Board opened this docket to address the federally-raised concerns over the Illinois Class V injection well requirements adopted in docket R00-11/R01-1. The Board outlines and discusses the areas of concern raised by USEPA and adopts amendments to the Class V injection rules for public comment in response to some, but not all, of USEPA's concerns.

The following discussion is topically arranged by area of concern raised by USEPA. It is separated into three major headings: Major Areas of USEPA Concern, Minor Areas of USEPA Concern, and USEPA General Observations. Under each major heading are topical subheadings for each segment of the discussion corresponding with each of the concerns raised by USEPA. Those discussion segments consider each of the federal concerns and discuss any amendments the Board is proposing based on those concerns. By our May 3, 2001 proposal for public comment, the Board expressly invited public comments on several aspects of the discussions and proposed amendments. The following discussions indicate the issues raised and any responses to the Board's invitations for comment.

Major Areas of USEPA Concern

Public Availability of Local Source Water Assessments—Section 704.286

USEPA commented on the final step for considering a source water assessment complete. By way of background, the "State drinking water source assessment and protection program" is a new approach to protecting drinking water sources, specified in section 1453 of the 1996 Amendments to the federal SDWA (42 USC 300j-13). Under the federal requirements, states must prepare and submit for USEPA approval a program that sets out how each state will conduct local assessments, including

the following: delineating the boundaries of areas providing source waters for public water systems; identifying significant potential sources of contaminants in such areas; and determining the susceptibility of public water systems in the delineated areas to the inventoried sources of contamination. The Board believes that the Illinois Groundwater Protection Act (415 ILCS 55) and the regulations at 35 Ill. Adm. Code 620 adopted pursuant to that law and Sections 14.1 through 14.6 and 17.1 through 17.4 of the Environmental Protection Act (415 ILCS 14.1-14.6 and 17.1-17.4) and the regulations at 35 Ill. Adm. Code 615 through 617 adopted under those provisions are major segments of the required Illinois program.

As adopted in the Section 704.286 definition of "complete local source water assessment for groundwater protection areas," that final step is listed as the development of a plan for making the assessments available to the public. USEPA stated as follows:

> This comment refers to the discussion of the four requirements that are needed to consider a source water assessment complete. This section correlates to the compliance dates listed at Section 704.287 which is contingent upon when a source water assessment is considered complete. In the Federal rule, the final step in considering an assessment complete is for the completed assessment to be made available to the public. The purpose of the public notice is to provide the regulated audience and the regulatory agencies with a set compliance date, which is a year after the assessment information is made known to the public, not to exceed the established deadlines. In the Illinois EPA rule amendment, the last of the four steps in considering an assessment complete is the development of a plan for making the completed assessments available to the public. For the purposes of implementing the Class V rule requirements, this language is inconsistent with the intent of the Federal rule. To be consistent, we suggest the following language for the final step: "The state makes the information available to the public. The mechanism for doing so will be in accordance with the state's own plan for making the completed assessments available to the public but under any circumstance must not exceed January 1, 2004 unless the state receives an extension to complete the assessments, in which case public notice must not exceed January 1, 2005.

Based on the USEPA expression of concern, the Board proposed amendments to the text of Section 704.286(b). As the rule is lengthy, the Board does not set out the regulatory language here, but instead refers the reader to the regulatory text in the order. The Board proposed revising the language of the fourth requirement of the definition of "complete local source water assessment for groundwater protection areas" in Section 611.286 to read, "the Agency must make the completed assessments available to the public," with an added footnote that references the Illinois source water assessment program. It is the Agency that performs the assessments under its "Illinois Source Water Assessment and Protection Program." The Board further proposed adding a Board note that refers to the Illinois assessment program by its name.

The Board invited public comment on the proposed amendments to the Section 704.286 definition of "complete local source water assessment for groundwater protection areas." Specifically, the Board requested comment on the following: 1) the shift from the language based directly on corresponding federal 40 C.F.R. 144.86, and 2) the addition of the Board note explaining that the Illinois Source Water Assessment and Protection Program is the State program intended to fulfill the federal requirements of Section 1453 of SDWA. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

Agency Determinations to Grant an Extended Compliance Deadline—Sections 704.287 and 704.288

USEPA commented that the shift in usage from "may" to "must" in certain segments of the Illinois regulations makes those provisions less stringent than their federal counterparts. Before describing the comment in detail, the Board will set out the rules involved.

At 40 C.F.R. 144.87(b)(2) and (e) and 144.88(b)(1)(i), (b)(1)(ii), and (b)(1)(v), the federal regulations allow the State the discretion to extend the deadline for compliance by up to one year if it determines that the most efficient option for compliance is connection to a sanitary sewer or the installation of a new treatment technology. The corresponding text of 35 Ill. Adm. Code 704.287(b)(2) and (e) and 704.288(b)(1)(A), (b)(1)(B), and (b)(1)(E) as adopted in docket R00-11/R01-1 essentially requires the Agency to grant the extension of the compliance deadline once it has made the determination that the connection to the sewer or the installation of the new technology is the most efficient option.[2] For example, 35 Ill. Adm. Code 704.287(b)(2) provides as follows:

> The Agency must extend the compliance deadline for specific motor vehicle waste disposal wells for up to one year if it determines that the most efficient compliance option for the well is connection to a sanitary sewer or installation of new treatment technology.
>
> BOARD NOTE: Any Agency determination of the most efficient compliance option is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40].

Corresponding 40 C.F.R. 144.87(b)(2), from which the Board derived the foregoing, states as follows:

> The UIC Program Director may extend the compliance deadline for specific motor vehicle waste disposal wells for up to one year if the most efficient compliance option for the well is connection to a sanitary sewer or installation of new treatment technology.

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[2] USEPA cited Sections 704.287(b)(2) and 704.288(b)(1)(A), (b)(1)(B), and (b)(1)(E). The Board noted a parallel segment of text in Section 704.287(e) that allowed the grant of an extension of the compliance deadline for up to one year, so we added that provision to this consideration.

Comparisons between 35 Ill. Adm. Code 704.287(e) and 704.288(b)(1)(A) and (b)(1)(E) and corresponding 40 C.F.R. 144.87(e) and 144.88(b)(1)(i) and (b)(1)(v) indicate similar shifts in the language.

USEPA stated in its letter as follows:

> This comment deals with the state's ability to extend compliance deadlines for an owner/operator if the State determines that the most efficient compliance option for the well is connection to a sanitary sewer or installation of a new treatment technology. The intent of the Federal rule was to give a regulatory agency the option to grant such an extension under very strict guidelines. Even with this very strict and specific provision, an extension is not the inherent right of any owner/operator or any regulatory agency. It is imperative that the state retain the right to grant less than a one year extension where warranted. For example, if a Class V well owner/operator has the ability to connect to sewer or install new treatment technology in less than a year and the well poses a significant enough threat to groundwater, then the state must have the authority to require less time accordingly in order to provide maximum protection or underground sources of drinking water under the law. In the State rule amendment, the Board substituted "may" for "shall" which compromises the state's ability to protect underground sources of drinking water to the fullest extent of the law. This makes the state rule less stringent than the Federal rule. We recommend that the state use "may" instead of "shall" where referenced for these circumstances. This is consistent with the intent of the Federal rule and is also consistent wit the state's own definition of "may" which is used when choice of a provision is optional. (Emphasis in the original.)

In response to the USEPA expression of concern, we note that the Board is limited in its ability to delegate decisionmaking authority to the Agency. Under the Act, the Board establishes the State environmental standards, and the Agency implements them. See 415 ILCS 5/4, 5 (2000).[3]

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[3] The Board has previously stated when adopting rules by the identical-in-substance procedure as follows:

> Under Illinois law, as held by the Illinois Supreme Court in Granite City Division of National Steel Co. v. PCB (April 15, 1993), 155 Ill. 2d 149, 172-74, 613 N.E.2d 719, 729-30, although the Agency may establish criteria by fixed procedures that apply to particular facilities based on site-specific factors, the authority to adopt regulatory standards of general applicability is reserved to the Board. Safe Drinking Water Act Update, USEPA Amendments (January 1 through June, 30, 1995) (October 17, 1996), R95-17, at page 4.

Thus, the Board must establish criteria for Agency determinations made in the course of establishing the standards. As stated by the Board in adopting the one-year deadline extension provision on which USEPA commented:

> While the Agency is given discretion to determine whether or not the most efficient compliance option is indeed connection to a sanitary sewer or the installation of new technology, the Board cannot vest in the Agency the additional discretion to determine whether or not to extend the deadline for compliance. UIC Update, USEPA Amendments (July 1, 1999, through December 31, 1999) and *In re* UIC Update, USEPA Amendments (January 1, 2000, through June 30, 2000) (December 7, 2000), R00-11/R01-1 (consolidated), slip op. at page 10

A federal provision that allows a discretionary determination by the State usually allows a permissible relaxation of the generally-applicable standard in the federal rule. To incorporate the federally-allowable flexibility into the Illinois regulations, the Board generally examines the federal rule to find the circumstances under which USEPA allows the relaxation of the generally-applicable rule. The Board then makes the determination that the Illinois regulations will allow flexibility from the general rule, and it establishes the federally-permissible circumstances as the preconditions to an Agency determination to allow the flexibility. The Board drafts the Illinois rule to allow the permissible relaxation of the generally-applicable standard upon a certain Agency determination. Consequently, the resulting Agency determination to allow the flexibility is in the nature of a permit determination or establishing criteria by fixed procedures, rather than in the nature of Agency rule adoption prohibited by the Act. The Board then further adds a note explaining that an Agency determination is subject to review under Section 40 of the Act as an Agency permit determination.

The 40 C.F.R. 144.87(b)(2) and (e) and 144.88(b)(1)(i) and (b)(1)(v) provisions that allow an extension of the compliance deadline for up to one year based on a determination of the most efficient compliance option are found in corresponding 35 Ill. Adm. Code 704.287(b)(2) and (e) and 704.288(b)(1)(A) and (b)(1)(B). In translating the federal rules into the Illinois system, the Board properly changed "UIC Program Director may extend" to "the Agency must extend." USEPA allows the State to grant the extension if the most efficient compliance alternative is connection to a sanitary sewer or the installation of a new treatment technology. The Board has made the decision whether the State of Illinois will allow the extension, leaving the Agency the discretion to determine whether or not the most efficient compliance alternative is connection to a sanitary sewer or the installation of a new treatment technology. The Board has further implicitly vested the Agency the discretion to determine the term of the extension of "up to one year."

Thus, where USEPA has provided that this State "may extend" the deadline for compliance, the Board has determined that the State will extend the deadline once the Agency has made the necessary preliminary findings. The Agency may further determine the term of the extension based on the need for the extension. This is consistent with and no less stringent than the federal requirements.

Nevertheless, the Board has revised the language of the deadline compliance extension provisions in response to the federal expression of concern. These are found in Sections 704.287(b)(2) and (e) and 704.288(b)(1)(A) and (b)(1)(B). As the rules are lengthy, the Board does not set out the regulatory language here, but instead refers the reader to the regulatory text in the order. We are explicitly limiting an Agency grant of an extension of the compliance deadline to those situations where the Agency further finds that it is necessary to implement the compliance option. This should remove the possible cause for USEPA concern that the rule requires the Agency to grant relief beyond the extent that the time is needed to connect to a sanitary sewer or install new technology.

Finally, one aspect of USEPA's concern over the extension provisions relates to possible adverse environmental effects of continued operation of the well. USEPA argued that the Agency must have the option to deny an extension of the compliance deadline if the "well poses significant enough threat to ground water." The Board believes that Illinois law would not only allow the Agency to deny an extension of the deadline under these circumstances, but it would require that the Agency deny an extension under circumstances of significant environmental impairment from the well. Section 39 of the Act, which is the authority under which the Agency would grant any extension of the compliance deadline, provides that the Agency must issue a permit "upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act of or regulations hereunder." 415 ILCS 5/39(a) (2000). "Water pollution" is prohibited by Section 12(a) of the Act (415 ILCS 5/12(a) (2000)) and the definition of "water pollution" in Section 3.55 of the Act (415 ILCS 5/3.55 (2000)) and "waters" in Section 3.56 of the Act (415 ILCS 5/3.56 (2000)) clearly includes degradation of groundwater. Thus, it is not necessary to give the Agency the discretion to deny an extension of the compliance deadline where a well threatens groundwater resources when the Act itself would require that the Agency deny the extension.

The Board invited public comment on the proposed amendments to the Sections 704.287(b)(2) and (e) and 704.288(b)(1)(A), (b)(1)(B), and (b)(1)(E). Specifically, the Board requested comment on the added language that further limits a grant on an extension to those situations where the Agency further finds that it is necessary to implement the compliance option. We also specifically requested comment on the fact that the Board has added a similar amendment to Section 704.288(b)(1)(B) based on its similarity to Sections 704.287(b)(2) and 704.288(b)(1)(i) and (b)(1)(v), even though USEPA did not suggest amendment of that provision. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

Minor Areas of USEPA Concern

Closure of Class IV Injection Wells—Section 704.102

The first area of minor concern to USEPA relates to Class IV injection wells, rather than Class V injection wells. A Class IV injection well is one used to dispose of hazardous waste or radioactive waste into a formation that contains an underground source of drinking water within a quarter-mile of the well bore.

USEPA noted in its March 12, 2001 letter that the existing text of Section 704.102 requires the elimination of Class IV injections wells over a six-month period and that the six-month period has long since expired. USEPA observed that any Class IV well that has come into existence since that time is illegal and should immediately be closed. USEPA suggested that the statement about closure of a Class IV well in Section 704.102 should be changed to state as follows: "Section 704.124 prohibits new and existing Class IV wells that inject hazardous waste directly into an underground source of drinking water."

In response to USEPA comment, the Board notes that the USEPA-cited segment of Section 704.102 was not one amended in docket R00-11. We further note that the existing language of Section 704.102 directly tracks that of corresponding 40 C.F.R. 144.1(g). Since USEPA had not amended this rule during the update period, the Board could not open the rule in R00-11/R01-1.

Nonetheless, the USEPA request that the Board clarify the rule has merit. Indeed, JCAR routinely requests that the Board substitute a date certain for such a text segment. The deadline for closure of a Class IV well appears to have been six months after March 3, 1984, the effective date of the Illinois UIC program, as defined in Section 702.110. This date is long past, and the Board has omitted it from the actual prohibition against the operation of a Class IV well, codified in Section 704.124(a). There is no reason to retain the "six months" language in Section 704.102.

Thus, the Board has revised the segment of Section 704.102 pertaining to Class IV injection wells as follows:

> ~~Existing Class IV wells that inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (Section 704.124).~~ Section 704.124 prohibits the construction, operation, or maintenance of a Class IV injection well.

In addition to the revision suggested by USEPA, the Board's review of the language of Section 704.102 leads us to conclude that we must make additional clarifying changes relating to Class V injection wells. Section 704.102 discusses Class V wells as though no existing requirements directly apply to them. Rather, this segment of the text refers to requirements that will be adopted at a future date. This directly parallels language in corresponding 40 C.F.R. 144.1(g) that USEPA did not alter in its December 7, 1999 Class V injection well rule.

The federal action of December 7, 1999, which underlay the docket R00-11/R01-1 amendments, established the first wave of regulations directly applicable to specified types of Class V wells. This means that Section 704.102 should be amended to direct attention to the Class V well requirements of Subpart I of Part 704, instead of merely referencing nonexistent future regulations. However, since USEPA has not completed the development of regulations for other types of Class V injection wells, the Board must retain unchanged the segment relating to unregulated Class V injection wells.

Thus, the Board has revised the segment of Section 704.102 pertaining to Class V injection wells as follows:

> Class V wells ~~will be inventoried and assessed, and regulatory action will be established at a later date~~ are regulated under Subpart I of this Part. ~~In the meantime, if~~ If remedial action appears necessary prior to the establishment of regulations directly applicable to a specific type of Class V injection well, an individual permit may be required (Subpart C of this Part) or the Agency must require remedial action or closure by order (Section 704.122(c)).

The Board invited public comment on the proposed amendments to the Section 704.102. Specifically, the Board requested comment on the elimination of the language that required the closure of all Class IV wells “over a period of six months” and its replacement with a reference to Section 704.124 as prohibiting the construction, operation, or maintenance of a Class IV injection well. We further specifically requested comments on the revisions relating to the staged implementation of Class V injection well regulations and their regulation under Subpart I of Part 704. The Agency commented on the language relating to the closure of Class IV wells. In PC 1, the Agency supports the approach taken by the Board of clearly stating that Class IV wells are prohibited. The Agency asserts, “It would be best if all portions of the regulations clearly state that Class IV wells are banned.”

Authorization of a Class V Well by Rule—Section 704.146

USEPA observed that Section 704.146(a) of the Illinois rules states that injection into a Class V injection well is authorized by rule, rather than that the well itself is authorized by rule. USEPA stated that this could cause confusion, since the well itself is “rule authorized” by virtue of its existence, without regard to whether injection occurs or not.

USEPA’s point is well taken.[4] The Board now makes the following amendment to the text of Section 704.146(a):

> ~~Injection into~~ A Class V ~~wells~~ well is authorized by rule, subject to the conditions set forth in Section 704.284.

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[4] Section 704.146(a) corresponds with 40 C.F.R. 144.24(a), which provides that it is the well itself and not injection into the well that is authorized by rule. The language of Illinois Section 704.146 that authorizes the injection by rule originally derived from a former federal provision, 40 C.F.R. 122.37(a)(4). That former federal provision set forth the permit-by-rule provision applicable to Class V injection wells until USEPA replaced it on December 3, 1993 (at 58 Fed. Reg. 63890, 63896) with the current provision, 40 C.F.R. 144.24(a). When the Board incorporated the federal amendments of December 3, 1994 into the Illinois regulations, in UIC Update, USEPA Regulations (6-1-93 through 12-31-93) (November 3, 1994), R94-5, the Board failed to make the shift in language from authorization of injection into a Class V well to authorization of the Class V well itself by rule.

The Board invited public comment on the proposed amendments to Section 704.146(a). Specifically, the Board requested comment on the elimination of the language authorizing injection into a Class V injection well by rule and the incorporation in its place of the current federal language of 40 C.F.R. 144.24(a), which authorizes the Class V injection well. The Agency disagreed with USEPA, and in PC 1, the Agency commented that the existing language was "sufficient without additions or corrections." The Agency asserted that authorization of the well, rather than the injection into the well, would subject wells to the regulations without regard to whether injection into the well has occurred. The Agency maintains that this is beyond the intended scope of the regulations.

Although the Board appreciates the Agency's position, we will follow the USEPA suggestion and make the federally suggested changes. The corresponding federal language at 40 C.F.R. 144.24(a) authorizes the well by rule, not the injection. Even if we were to accept that this language leads to unintended consequences, the Board cannot alter it in a way that has a substantive effect.

Reporting the Well Location—Section 704.283

USEPA notes that Section 704.283(a)(2)(C)(i) requires the reporting of the location of the well by one of two listed methods "according to the conventional practice in this State." USEPA states that the regulation should provide or reference the conventional practice in this State.

In response to the USEPA comment, the Board notes that the language of Section 704.283(a)(2)(C)(i) parallels that of 40 C.F.R. 144.83(a)(2)(iii)(A) from which it derives. The language that USEPA wants the Board to change is the same as it appears in the corresponding federal rule.

Nothwithstanding, the Board agrees that the rule would benefit from greater specificity. Among the conventions for projecting geographic locations are the Universal Transverse Mercator, the Lambert Conformal Conic, the U.S. Land Survey System, and standard latitude and longitude. We are aware that well drillers in Illinois generally use the U.S. Land Survey System. Thus, for the purpose of obtaining public comment on which convention or conventions the Board should require by rule, we proposed to amend Section 704.283(a)(2)(C)(i) by deleting the language allowing reporting using latitude and longitude and by requiring the reporting of location according to the first-listed method in Section 704.283, the U.S. Land Survey System, as follows:

> The location of each well or project given by Township, Range, Section, and Quarter-Section~~, or by latitude and longitude to the nearest second,~~ according to the ~~conventional practice in this State~~ U.S. Land Survey System;

The Board invited public comment on the proposed amendments to Section 704.283(a)(2)(C)(i). Specifically, the Board requested comment on our opting to require the reporting of well location, "according to the U.S. Land Survey System." The Board requested comment on whether we should replace this clause with a citation or reference to another such conventional practice

or practices and, if so, what are those conventional practices. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

Designation of "Other Sensitive Groundwater Areas"—Section 704.287

With regard to the "Board Note" discussions attached to Section 704.287(a) and (c), USEPA stated as follows:

> In the Board "BOARD NOTE" discussions, the Board implies that the State will not be designating Other Sensitive Ground Water Areas (OSGWAs). If this is the case and the State will be implementing the additional requirements Statewide, this should be stated and the language throughout the regulations that refers to designating OSGWAs can be dropped.

The OSGWA designation language cannot be dropped. Initially, the Board notes that our opinion of December 7, 2000, at pages 7 and 8, clearly states that the Board has interpreted "other sensitive groundwater area" to include a "regulated recharge area," as such is defined in Section 3.67 of the Act and these areas are designated pursuant to Sections 17.1 through 17.4 of the Act. The Board can see nothing in the text of the two explanatory Board notes that would imply that the State will not designate OSGWAs. Rather, the two Board notes cite Sections 17.1 through 17.4 of the Act under which regulated recharge areas are designated.

USEPA further observed with regard to these Board notes as follows:

> The end of each note states that there is no need to include provisions for the Rule going statewide if the State fails to delineate OSGWA because existing Codes protect groundwater and allow for the designation of sensitive areas. The state may need to incorporate the appropriate OSGWA language by reference.

If the State designates OSGWAs (including regulated recharge areas) by January 1, 2004, the additional requirements of Section 704.288 will not apply statewide in Illinois. On the other hand, if the State fails to make the required designations, the additional requirements will apply on a statewide basis. Adding the previously-omitted language from 40 C.F.R. 144.87(a) and (c) relating the effect of a State failure to timely make the federally-required designations would remove a cause for USEPA concern. The effect of doing so, though, would also instill a measure of uncertainty into the Illinois regulations; it would render the applicability of major segments of the rules subject to events that have not yet occurred.

The Board disfavors adding language that would create uncertainty in the regulations. We would prefer to limit the focus of the Illinois rules to the requirements that apply as a matter of State law. We see no reason to complicate matters by adding the effects of a State failure as a matter of federal law. Nevertheless, the Board has added the previously-omitted federal language to Section 704.287(a)

and (c) on the suggestion of USEPA. We have amended Section 704.287(a) and (c) and their associated Board notes as follows:

a) A person is subject to the requirements of Section 704.288 if the person owns or operates an existing motor vehicle well and that person is located in a ~~ground water~~ groundwater protection area or another sensitive ~~ground water~~ groundwater area. If the State fails to identify these areas within the federally-specified time frames, the additional requirements of Section 704.288 will apply to all existing motor vehicle waste disposal wells within this State.

BOARD NOTE: Corresponding 40 CFR 144.87(a) provides that the "new requirements" apply statewide if the state or the USEPA Region fails to identify sensitive groundwater areas. The Board has interpreted "new requirements" as synonymous with "additional requirements" elsewhere in this Subpart I. ~~Further, the Board has not included this statewide applicability provision because~~ Sections 14.1 through 14.6 and 17.1 through 17.4 of the Act [415 ILCS 5/14.1-14.6 and 17.1-17.4] and 35 Ill. Adm. Code 615 through 617 designate protected groundwater resources and allow the designation of other sensitive areas for protection. Further, the Illinois Groundwater Protection Act [415 ILCS 55], and the regulations adopted as 35 Ill. Adm. Code 620 under that statute, protect the quality of all groundwater resources in Illinois.

* * *

c) Other sensitive ~~ground water~~ groundwater areas. Existing motor vehicle waste disposal well owners and operators within other sensitive ~~ground water~~ groundwater areas have until January 1, 2007 to receive a permit or close the well. If the State fails to identify these additional sensitive groundwater areas by January 1, 2004, the additional requirements of Section 704.288 will apply to all motor vehicle waste disposal wells in the State effective January 1, 2007, unless they are subject to a different compliance date pursuant to subsection (b) of this Section. If USEPA has granted the State an extension of the time to delineate sensitive groundwater areas, the owner or operator of an existing motor vehicle waste disposal well within a sensitive ~~ground water~~ groundwater area has until January 1, 2008 to close the well or receive a permit, unless the owner or operator is subject to a different compliance date pursuant to subsection (b) of this Section. If the State has been granted an extension and fails to delineate sensitive areas by the extended date, an owner or operator has until January 1, 2008 to close the well or receive a permit, unless it is subject to a different compliance date pursuant to subsection (b) of this Section.

BOARD NOTE: Corresponding 40 CFR 144.87(c) provides that the State has until January 1, 2004 to identify sensitive groundwater areas. It also provides that USEPA

> may extend that deadline for up to an additional year if the State is making reasonable progress towards identifying such areas and the State has applied for the extension by June 1, 2003. The Board has not included these provisions relating to deadlines for State action because they impose requirements on the State, rather than on regulated entities. Further, the corresponding federal rule provides that the "new requirements" apply statewide if the State or the USEPA Region fails to identify sensitive groundwater areas and that "the rule requirements" apply in the event of an extension granted by USEPA and the State fails to delineate sensitive areas. The Board has interpreted "new requirements" and "rule requirements" as synonymous with "additional requirements" as used elsewhere in this Subpart I. ~~Finally, the Board has not included this statewide applicability provision because~~ Sections 17.1 through 17.4 of the Act [415 ILCS 5/17.1-17.4], Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and 35 Ill. Adm. Code 615 through 620 protect groundwater resources and allow the designation of sensitive areas.

The Board invited public comment on the proposed amendments to Section 704.283(a)(2)(C)(i). Specifically, the Board requested comment on our refusal to remove the language relating to the designation of OSGWAs. This included our request to receive comment as to whether we are correct in interpreting the State designation of regulated recharge areas as satisfying the federal requirement that the State designate OSGWAs. The Board further requested comment on the proposed addition of the federal language to Section 704.287(a) and (c) relating to a State failure to timely designate OSGWAs and our proposed deletion from the Board notes associated with these provision relating to omission of the federal language. This was to help the Board to determine whether it should add some language that imposes the additional requirements with greater certainty, whether we should still omit the language, or whether we should adopt some alternative course as more acceptable. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

USEPA General Observations

Overlapping Authority to Regulate Various Classes of Injection Wells—Section 704.105

Citing Section 704.105(a)(4), USEPA stated as follows:

> The rule lists those types of injection activities that are covered by the UIC regulations. It appears that the Illinois EPA has regulatory authority to regulate the systems listed regardless of capacity. There may be some overlap with other state or county laws.

Section 704.105 defines the scope of the Illinois UIC regulations; they define the universe of wells to which the rules apply, including Class V injection wells. Section 704.105(a)(4) expressly includes within the scope of regulation "[a]ny septic tank, cesspool, or other well used by a multiple dwelling, community, or regional system for the injection of wastes" as regulated injection wells. This inclusion directly follows that of the corresponding federal provision of 40 C.F.R. 144.1(g)(1)(iv).

However, certain wells used exclusively for the disposal of sanitary waste are specifically excluded from the UIC regulations under Section 704.105(b)(2) and (b)(3) and corresponding 144.1(g)(2)(ii) and (g)(2)(iii). These are domestic cesspools and septic systems used by single-family residences and non-residential disposal systems that are used exclusively for sanitary waste and which have the capacity to serve fewer than 20 persons per day.

The Department of Public Health regulates private sewage systems under 77 Ill. Adm. Code 905 and 906 pursuant to the Private Sewage Disposal Licensing Act (225 ILCS 225). A "private sewage disposal system" is defined under that statute as a sewage handling or treatment system that receives domestic sewage from fewer than 15 people per day (225 ILCS 225/3(7) (2000)). It would appear that the Class V wells regulated are not also regulated under the Private Sewage Disposal Licensing Act, but it is impossible to completely rule out some concurrence in regulation; there may be some type of septic system that is subject to regulation under the UIC regulations as a Class V well while it is also regulated under the Private Sewage Disposal Licensing Act or some other law.

The existence of concurrent regulation of a Class V injection well by more than one State agency under multiple laws is not inherently problematic, so long as no inconsistencies arise. The Board's major concern in this proceeding is that the Board fulfill its mandate under Section 13(c) of the Act and adopt UIC regulations that are identical in substance to UIC rules adopted by USEPA pursuant to Section 1421 of SDWA (42 U.S.C. 300h). Thus, the Board must assure that we have incorporated the minimum federal standards applicable to Class V injection wells into the Illinois UIC regulations.

The Board is presently unaware of other laws or agencies that would concurrently regulate any type of Class V injection wells subject to the Class V injection rules. USEPA highlights no specific instances of overlap of regulations or inconsistencies in application of disparate regulations. Thus, no problem is apparent. If problems become apparent in the future, most likely through the implementation of the federal Class V injection well regulations, the Board can make reference to any concurrent regulations in an effort to alleviate any problems that might arise.

The Board proposed no amendments based on the USEPA concern over possible concurrent regulation of Class V injection wells by the Illinois UIC regulations and some other regulations. However, the Board requested public comment on the possible existence of concurrent regulation of Class V injection wells in Illinois. We further requested comment on the possible effects of any concurrent regulation of Class V wells. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

The Forms Used to Collect Well Inventory Information—Section 704.283

Section 704.283(a) mirrors federal regulations, at 40 C.F.R. 144.26, requiring the State to collect certain inventory information on Class V injection wells in the State. A Board note following

Section 704.283(a) states that the "information is requested on national form 'Inventory of Injection Wells,' OMB No. 2040-0042." This is directly derived from a note attached to 40 C.F.R. 144.26(a).

USEPA states, however, as follows:

> It is required that the state collect inventory information as specified at 40 C.F.R. §144.26. It is not required that the state use the OMB approved form to collect such information. The provision a stated in the rule adoption may not allow the state the flexibility needed to develop their own forms and request other information as may be necessary to meet state priorities. (Emphasis in the original.)

In response, the Board observes that the note to 40 C.F.R. 144.83(a) "requests," but does not require, the use of OMB form 2040-0042 for reporting on a Class V well. The Board-adopted language in Section 704.283(a) is nearly identical to that of 40 C.F.R. 144.83(a). Thus, the note to Section 704.283(a) requests the use of OMB form 2040-0042.

Section 13(c) of the Act mandates that the Board adopt UIC regulations that are identical in substance to the federal rules. If the Board is to adopt Illinois-specific UIC rules, it must do so under Section 13(d) of the Act, using the full notice and comment rulemaking procedure of Sections 27 and 28. In the context of the identical-in-substance procedure used to adopt the Class V well requirements in docket R00-11/R01-1, the Board was not free to specify or develop the use of an alternative form for use in Illinois in the context of an identical-in-substance proceeding.

The Board proposed no amendments based on the USEPA concern over the recommended use of OMB form 2040-0042 for reporting Class V injection wells. However, the Board requested public comment on the note attached to Section 704.283(a) that requests the use of OMB form 2040-0042 for reporting Class V injection wells. In PC 1, the Agency agrees with USEPA that the State should be free to develop alternative forms for reporting well inventory information. In response to the Agency comment, the Board has revised the language of the Board note to Section 704.283(a) to clarify that USEPA recommends the use of OMB form 2040-0042, but that the Agency is not required to use the federal form.

We have altered the Board note to Section 704.283(a) by adding language at the beginning that makes it clear that USEPA recommends the use of OMB 2040-0042 and at the end of the Board note that makes it clear that the Agency may require alternative forms for reporting the required information. We have considered and rejected the alternative of deleting the Board note and its recommendation of the OMB form, to avoid any implication that the well owner or operator could unilaterally choose an alternative format without the concurrence of the Agency.

The Forms Used to Collect Well Preclosure Information—Section 704.288

USEPA comments on the Board notes following Sections 704.288(a)(1)(B) and (b)(1)(G) are similar to its comments on the Board note requesting reporting Class V injection well information on

OMB form 2040-0042. These notes derived from similar requests at corresponding 40 C.F.R. 144.88(a)(1)(ii) and (a)(1)(vii).

USEPA observes as follows:

> The note states that this information is requested on the Federal form entitled "Preclosure Notification for Closure of Injection Wells". States are not required to use this form. The provision as stated is the rule adoption may not allow the state to flexibility needed to develop their own forms and request other information as may be necessary to meet state priorities.

As we stated with regard to OMB form 2040-0042 in the discussion immediately above, the Board was not free to specify or develop the use of an alternative form in the context of an identical-in-substance proceeding. The Board proposed no amendments based on the USEPA concern over the recommended use of the federal form entitled, "Preclosure Notification for Closure of Injection Wells," for reporting the closure of Class V injection wells. However, the Board requested comment on the notes attached to Section 704.288(a)(1)(B) and (b)(1)(G) that request the use of the form entitled "Preclosure Notification for Closure of Injection Wells" for reporting closure of Class V injection wells.

In PC 1, the Agency comments relating to Section 704.283(a) and the use of OMB form 2040-0042 (discussed immediately above) also related to the use of the federal form entitled "Preclosure Notification for Closure of Injection Wells." In response to this comment, the Board has made revisions to the Board notes to Section 704.288(a)(1)(B) and (b)(1)(G) similar to the revisions to the note to Section 704.283(a). We have added language at the beginning that makes it clear that USEPA recommends the use of the form entitled "Preclosure Notification for Closure of Injection Wells." At the end of the Board note, the Board has added language making it clear that the Agency may require alternative forms for reporting the required information. The Board has further deleted the language stating that the form was available from the Agency on request, since this statement seemed redundant in conjunction with a statement about Agency-specified forms.

Parallel References to the Agency and USEPA—Sections 704.282 And 704.284

USEPA commented that some segments of the new Class V injection well regulations contain parallel references to the Agency and USEPA:

> The state rule amendment references USEPA in several places throughout the rule. In doing so, it appears that the state and the USEPA have joint authority to regulate those Class V wells covered by the new rule. This may create a logistical nightmare for the regulated audience as well as both the state and the USEPA. The positive outcome is that such language would facilitate any necessary Federal override actions as the

USEPA is currently assessing the current and future status of the Illinois 1422 UIC program.[5]

In adopting the Class V injection well requirements in docket R00-11/R01-1, the Board retained the parallel references to the Agency and USEPA because each of these provisions appeared to require compliance with the State UIC regulations and any further requirements imposed independently by USEPA. It appears from the USEPA comments that USEPA retains no authority to impose additional requirements on Class V injection wells in this State, so long as Illinois retains authorization from USEPA to administer the UIC program.

The Board accordingly proposed to revise the language of the Class V injection well requirements to remove the parallel references to USEPA and USEPA-imposed requirements from Sections 704.282(a)(2) and (d) and 704.284(b), (b)(1), and (b)(3). This also requires deletion of some C.F.R. references. In the interests of saving space, these simple deletions are not set forth here, but are contained in the order segment of this opinion and order. The Board requested public comment on this proposed removal. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

Board-Proposed Update of Citations to the Current *Code of Federal Regulations*

The Board is adopting one housekeeping amendment in this present docket. We have updated citations to the *Code of Federal Regulations (Code)* to the most recent edition. This is a detail that the Board routinely attends to in identical-in-substance update dockets.

The most recent edition of the *Code* is that of July 1, 2000. The Government Printing Office recently made that edition available. Where the existing text cites an earlier edition of the *Code* or cites an update to the *Code* published in the *Federal Register*, the present amendments update the citation to the 2000 edition and delete the citations, which are included in the more recent edition of the *Code*. The Board requested public comment on our proposed update of the version of the *Code* referenced in the text of the segments of the UIC regulations opened in this proceeding. The Board received no comments on these aspects of our proposal, so we adopt these segments without revision to the May 3, 2001 proposal for public comment.

General Housekeeping Amendment

The Board will use this opportunity to make a series of minor corrections to the text. We discovered a single error when reviewing the text of the rules for the present amendments. This single

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[5] USEPA gave citations to segments of three Sections in the rules that had the parallel references: Sections 704.282(a)(2) and (d); 704.283(a)(2)(C)(i); and 704.284(b), (b)(1), and (b)(3). The Board could not find parallel references in Section 704.283(a)(2)(C)(i), cited by USEPA. The rest of this discussion omits consideration of that provision and restricts attention to Sections 704.282(a)(2) and (d) and 704.284(b), (b)(1), and (b)(3).

error was repeated several times in the text. When adopting the original Class V injection well rules in UIC Update, USEPA Amendments (July 1, 1999, through December 31, 1999) and UIC Update, USEPA Amendments (January 1, 2000, through June 30, 2000) (December 7, 2000), R00-11/R01-1 (consolidated), the Board failed to convert 25 appearances of "ground water" from the federal text to the single word "groundwater" in the Illinois regulations. We correct this at this time. The correction of this oversight appears at Sections 703.284(b)(2) (twice); 703.287(a) (twice), (b), (b)(1) (four times), (b)(1)(A), and (b)(1)(B) (three times), (c) (three times), (e) (four times), (f) (twice), and (g); and 703.288(b)(1)(A) and (b)(1)(B).

Tabulation of Revisions to the Text of the Rules as Proposed

The table below lists the revisions made to the text of the amendments from that proposed and set forth in the Board's opinion and order of May 3, 2001. This table indicates the changes made, as well as the source that suggested each of the changes. Some of the entries in this table are discussed further in appropriate segments of the general discussion beginning at page 3 of this opinion.

Table:
Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
704.283(a) Board note	Agency	Added the introductory clause "in the corresponding . . ., USEPA states that"; added the sentence, "Although the form . . . for use in this State."
704.283 Board note	Board	Added the date "(2000)" to the *Code of Federal Regulations* reference
704.284(b)(3)(B)	Board	Removed an unnecessary closing parenthesis mark
704.286 "community water system"	Board	Moved a comma inside a closing quotation mark
704.286 "non-transient non-community water system"	Board	Moved a comma inside a closing quotation mark
704.286 "delineation"	Board	Moved a period inside a closing quotation mark
704.286 "other sensitive groundwater areas"	Board	Moved a period inside a closing quotation mark
704.287(a) Board note	Board	Capitalized the word "State"

704.288(a)(1)(B) Board note	Agency	Added the introductory clause "in the corresponding . . ., USEPA states that"; removed the parenthetical statement "available from the Agency on request"; added the sentence, "Although the form . . . for use in this State."
704.288(b)(1)(G) Board note	Agency	Added the introductory clause "in the corresponding . . ., USEPA states that"; removed the parenthetical statement "available from the Agency on request"; added the sentence, "Although the form . . . for use in this State."

HISTORY OF RCRA SUBTITLE C AND UIC ADOPTION ILLINOIS ENVIRONMENTAL PROTECTION AGENCY OR BOARD ACTION EDITORIAL CONVENTIONS

It has previously been the practice of the Board to include an historical discussion in its RCRA Subtitle C and UIC identical-in-substance rulemaking proposals. However, in the last RCRA Subtitle C update docket, RCRA Subtitle C Update, USEPA Amendments (July 1, 1999, through December 31, 1999) (May 18, 2000), R00-13, the Board indicated that it would cease this practice. Therefore, for a complete historical summary of the Board's RCRA Subtitle C and UIC rulemakings and programs, interested persons should refer back to the May 18, 2000 opinion and order in R00-13.

The historical summary contains all Board actions taken to adopt and maintain these programs since their inception and until May 18, 2000. It includes a listing of all site-specific rulemaking and adjusted standards proceedings filed that relate to these programs. It also lists all USEPA program authorizations issued during that time frame. As necessary the Board will continue to update the historical summary as a segment of the opinion in each RCRA Subtitle C and UIC update docket, but those opinions will not repeat the information contained in the opinion of May 18, 2000 in docket R00-13.

The following summarizes the history of the Illinois RCRA Subtitle C hazardous waste and UIC programs since May 18, 2000:

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the RCRA Subtitle C hazardous waste rules in the following docket since May 18, 2000:

R00-13 RCRA Subtitle C Update, USEPA Regulations (July 1, 1999, through December 31, 1999) (May 18, 2000), R00-13; published at 24 Ill. Reg.9443 (July 7, 2000), effective June 20, 2000.

R01-3 RCRA Subtitle C Update, USEPA Regulations (January 1, 2000, through June 30, 2000) (December 7, 2000), R01-3; published at 25 Ill. Reg. 1266 (January 26, 2001), effective January 11, 2001.

R01-23 RCRA Subtitle C Update, USEPA Regulations (July 1, 2000, through December 31, 2000), R00-13. (Consolidated with UIC update docket R01-21.)

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in the following dockets since May 18, 2000:

R00-11 UIC Update, USEPA Regulations (July 1, 1999, through December 31, 1999) (December 7, 2000), R00-11; published at 25 Ill. Reg. 18585 (December 22, 2001), effective December 7, 2001. (Consolidated with docket R01-1.)

R01-1 UIC Update, USEPA Regulations (January 1, 2000, through June 30, 2000) (December 7, 2000), R01-1; published at 25 Ill. Reg. 18585 (December 22, 2001), effective December 7, 2001. (Consolidated with docket R00-11.)

R01-21 UIC Update, USEPA Regulations (July 1, 2000, through December 31, 2000), R00-13. (Consolidated with RCRA Subtitle C update docket R01-23.)

R01-30 UIC Corrections, USEPA Amendments (July 1, 1999, through June 30, 2000), R01-30. This docket. (Corrections to the amendments made in consolidated docket R00-11/R01-1.)

The complete text of the adopted amendments follows:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 704
UIC PERMIT PROGRAM

SUBPART A: GENERAL PROVISIONS

Section
704.101 Content
704.102 Scope of the Permit or Rule Requirement
704.103 Identification of Aquifers
704.104 Exempted Aquifers
704.105 Specific Inclusions and Exclusions
704.106 Classification of Injection Wells

704.107 Definitions

SUBPART B: PROHIBITIONS

Section
704.121 Prohibition of Unauthorized Injection
704.122 Prohibition of Movement of Fluid into USDW
704.123 Identification of USDW and Exempted Aquifers
704.124 Prohibition of Class IV Wells

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section
704.141 Existing Class I and III Wells
704.142 Prohibitions on Injection into Wells Authorized by Rule
704.143 Expiration of Authorization
704.144 Requirements
704.145 Existing Class IV Wells
704.146 Class V Wells
704.147 Requiring a Permit
704.148 Inventory Requirements
704.149 Requiring other Information
704.150 Requirements for Class I and III Wells authorized by Rule
704.151 RCRA Interim Status for Class I Wells

SUBPART D: APPLICATION FOR PERMIT

Section
704.161 Application for Permit; Authorization by Permit
704.162 Area Permits
704.163 Emergency Permits
704.164 Signatories to Permit Applications

SUBPART E: PERMIT CONDITIONS

Section
704.181 Additional Conditions
704.182 Establishing UIC Permit Conditions
704.183 Construction Requirements
704.184 Corrective Action
704.185 Operation Requirements
704.186 Hazardous Waste Requirements
704.187 Monitoring and Reporting
704.188 Plugging and Abandonment
704.189 Financial Responsibility
704.190 Mechanical Integrity
704.191 Additional Conditions

704.192 Waiver of Requirements by Agency
704.193 Corrective Action
704.194 Maintenance and Submission of Records

SUBPART F: REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE

Section
704.201 Applicability
704.202 Authorization
704.203 Requirements

SUBPART G: FINANCIAL RESPONSIBILITY FOR CLASS I HAZARDOUS WASTE INJECTION WELLS

Section
704.210 Applicability
704.211 Definitions
704.212 Cost Estimate for Plugging and Abandonment
704.213 Financial Assurance for Plugging and Abandonment
704.214 Trust Fund
704.215 Surety Bond Guaranteeing Payment
704.216 Surety Bond Guaranteeing Performance
704.217 Letter of Credit
704.218 Plugging and Abandonment Insurance
704.219 Financial Test and Corporate Guarantee
704.220 Multiple Financial Mechanisms
704.221 Financial Mechanism for Multiple Facilities
704.222 Release of the Owner or Operator
704.230 Incapacity
704.240 Wording of the Instruments

SUBPART H: ISSUED PERMITS

Section
704.260 Transfer
704.261 Modification
704.262 Causes for Modification
704.263 Well Siting
704.264 Minor Modifications

SUBPART I: REQUIREMENTS FOR CLASS V INJECTION WELLS

Section
704.279 General
704.280 Definition of a Class V Injection Well
704.281 Examples of Class V Injection Wells

704.282 Protection of Underground Sources of Drinking Water
704.283 Notification of a Class V Injection Well
704.284 Permit Requirements
704.285 Applicability of the Additional Requirements
704.286 Definitions
704.287 Location in a Groundwater Protection Area or Another Sensitive Area
704.288 Additional Requirements
704.289 Closure of a Class V Injection Well

AUTHORITY: Implementing Sections 7.2, 13, and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 22.4, and 27].

SOURCE: Adopted in R81-32, at 47 PCB 95, at 6 Ill. Reg. 12479, effective March 3, 1984; amended in R82-19, at 7 Ill. Reg. 14402, effective March 3, 1984; amended in R83-39, at 55 PCB 319, at 7 Ill. Reg. 17338, effective December 19, 1983; amended in R85-23 at 10 Ill. Reg. 13290, effective July 29, 1986; amended in R87-29 at 12 Ill. Reg. 6687, effective March 28, 1988; amended in R88-2 at 12 Ill. Reg. 13700, effective August 16, 1988; amended in R88-17 at 13 Ill. Reg. 478, effective December 30, 1988; amended in R89-2 at 14 Ill. Reg. 3116, effective February 20, 1990; amended in R94-17 at 18 Ill. Reg. 17641, effective November 23, 1994; amended in R94-5 at 18 Ill. Reg. 18351, effective December 20, 1994; amended in R00-11/R01-1 at 24 Ill. Reg. 18612, effective December 7, 2000; amended in R01-30 at 25 Ill. Reg. ________, effective ________________________.

SUBPART A: GENERAL PROVISIONS

Section 704.102 Scope of the Permit or Rule Requirement

Although five classes of wells are set forth in Section 704.106, the UIC (Underground Injection Control) permit program described in 35 Ill. Adm. Code 702, 704, 705, and 730 regulates underground injection for only four classes of wells (see definition of "well injection," 35 Ill. Adm. Code 702.110). Class II wells (Section 704.106(b)) are not subject to the requirements found in 35 Ill. Adm. Code 702, 704, 705, and 730. The UIC permit program for Class II wells is regulated by the Illinois Department of Natural Resources, Office of Mines and Minerals, Oil and Gas Division, pursuant to the Illinois Oil and Gas Act [225 ILCS 725] (see 62 Ill. Adm. Code 240). All owners or operators of Class I, Class III, Class IV, or Class V injection wells must be authorized either by permit or rule. In carrying out the mandate of the SDWA, this Part provides that no injection must be authorized by permit or rule if it results in movement of fluid containing any contaminant into underground sources of drinking water (USDWs) (Section 704.122) if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR 142 or may adversely affect the health of persons~~.~~ (Section 704.122). ~~Existing Class IV wells that inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (Section 704.124).~~ Section 704.124 prohibits the construction, operation, or

maintenance of a Class IV injection well. Class V wells will be inventoried and assessed, and regulatory action will be established at a later date are regulated under Subpart I of this Part. In the meantime, if If remedial action appears necessary prior to the establishment of regulations directly applicable to a specific type of Class V injection well, an individual permit may be required (Subpart C of this Part) or the Agency must require remedial action or closure by order (Section 704.122(c)).

BOARD NOTE: Derived from 40 CFR 144.1(g) preamble (1999) (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

SUBPART C: AUTHORIZATION OF UNDERGROUND INJECTION BY RULE

Section 704.146 Class V Wells

a) Injection into A Class V wells well is authorized by rule, subject to the conditions set forth in Section 704.284.

b) Duration of well authorization by rule. Well authorization under this Section expires upon the effective date of a permit issued pursuant to any of Sections 704.147, 704.161, 704.162, or 704.163.

c) Prohibition of injection. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:

1) Upon the effective date of an applicable permit denial;

2) Upon a failure to submit a permit application in a timely manner pursuant to Section 704.147 or 704.161;

3) Upon a failure to submit inventory information in a timely manner pursuant to Section 704.148; or

4) Upon a failure to comply with a request for information in a timely manner pursuant to Section 704.149.

BOARD NOTE: Derived from 40 CFR 144.24 (1999), as amended at 64 Fed. Reg. 68566 (Dec. 7, 1999) (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

SUBPART I: REQUIREMENTS FOR CLASS V INJECTION WELLS

Section 704.282 Protection of Underground Sources of Drinking Water

This Subpart I requires that an owner or operator of a Class V injection well must not allow movement of fluid into USDWs that might cause endangerment, that the owner or operator must comply with the UIC requirements in this Part and 35 Ill. Adm. Code 702 and 730, that the owner or operator must comply with any other measures required by the State or USEPA to protect USDWs, and that the owner or operator must properly close its well when the owner or operator is through using it. The owner or operator also must submit basic information about its well, as described in Section 704.283.

a) Prohibition of fluid movement.

1) As described in Section 704.122(a), an owner's or operator's injection activity cannot allow the movement of fluid containing any contaminant into USDWs if the presence of that contaminant may cause a violation of the primary drinking water standards under 35 Ill. Adm. Code 611, may cause a violation of other health-based standards, or may otherwise adversely affect the health of persons. This prohibition applies to the owner's or operator's well construction, operation, maintenance, conversion, plugging, closure, or any other injection activity.

2) If the Agency ~~or USEPA~~ learns that an owner's or operator's injection activity may endanger USDWs, the Agency ~~or USEPA~~ may require the owner or operator to close its well, require the owner or operator to get a permit, or require other actions listed in Section 704.122(c), (d), or (e).

b) Closure requirements. An owner or operator must close the well in a manner that complies with the above prohibition of fluid movement. Also, the owner or operator must dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to its well in accordance with all applicable federal, State, and local regulations and requirements.

c) Other requirements in this Part and 35 Ill. Adm. Code 702 and 730. Beyond this Subpart, the owner and operator are subject to other UIC program requirements in this Part and 35 Ill. Adm. Code 702 and 730. While most of the relevant requirements are repeated or referenced in this Subpart for convenience, the owner or operator needs to read all of this Part and 35 Ill. Adm. Code 702 and 730 to understand the entire UIC program.

d) Other State ~~or USEPA~~ requirements. This Part and 35 Ill. Adm. Code 702 and 730 define minimum federally-derived UIC requirements. The Agency ~~and USEPA Region V have~~ has the flexibility to establish additional or more stringent requirements based on

the authorities in this Part and 35 Ill. Adm. Code 702 and 730~~ and 40 CFR 144 through 147~~, if such additional requirements are determined to be necessary to protect USDWs. The owner and operator must comply with any such additional requirements. The owner or operator should contact the Agency ~~or USEPA Region V~~ to learn more.

BOARD NOTE: Derived from 40 CFR 144.82~~, as added at 64 Fed. Reg. 68567 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

Section 704.283 Notification of a Class V Injection Well

The owner or operator of a Class V injection well needs to provide basic "inventory information" about its well to the Agency, if the owner or operator has not done so already. The owner or operator also needs to provide any additional information that the Agency requests in accordance with the provisions of the UIC regulations.

a) Inventory requirements. Unless the owner or operator knows it has already satisfied the inventory requirements in Section 704.128 that were in effect prior to the issuance of this Subpart I, the owner or operator must give the Agency certain information about itself and its injection operation.

BOARD NOTE: ~~This~~ In the corresponding note to 40 CFR 144.83(a), USEPA states that this information is requested on national form "Inventory of Injection Wells," OMB No. 2040-0042. Although the form OMB No. 2040-0042 is acceptable to USEPA, the Agency may develop alternative forms for use in this State.

1) The owner or operator of a new or existing Class V injection well must contact the Agency to determine what information it must submit and by when it must submit that information.

2) The following is the information that the owner or operator must submit:

A) No matter what type of Class V well is owned or operated, the owner or operator must submit at least the following information for each Class V well: facility name and location; name and address of a legal contact person for the facility; the ownership of the facility; the nature and type of the injection well or wells; and the operating status of the injection well or wells.

B) Illinois is designated a "Primacy State" by USEPA. Corresponding 40 CFR 144.83(a)(2)(ii) relates exclusively to "Direct Implementation"

states, so the Board has omitted it. This statement maintains structural consistency with the federal regulations.

C) The owner or operator must provide a list of all wells it owns or operates, along with the following information for each well. (A single description of wells at a single facility with substantially the same characteristics is acceptable.)

i) The location of each well or project given by Township, Range, Section, and Quarter-Section~~, or by latitude and longitude to the nearest second,~~ according to the ~~conventional practice in this State~~ U.S. Land Survey System;

ii) The date of completion of each well;

iii) The identification and depth of the underground formation(s) into which each well is injecting;

iv) The total depth of each well;

v) A construction narrative and schematic (both plan view and cross-sectional drawings);

vi) The nature of the injected fluids;

vii) The average and maximum injection pressure at the wellhead;

viii) The average and maximum injection rate; and

ix) The date of the last inspection.

3) The owner and operator is responsible for knowing about, understanding, and complying with these inventory requirements.

b) Illinois is designated a "Primacy State" by USEPA. Corresponding 40 CFR 144.83(b) relates exclusively to "Direct Implementation" states, so the Board has omitted it. This statement maintains structural consistency with the federal regulations.

BOARD NOTE: Derived from 40 CFR 144.83~~, as added at 64 Fed. Reg. 68567 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

Section 704.284 Permit Requirements

No permit is required for a Class V injection well, unless the owner or operator falls within an exception described in subsection (b) of this Section.

a) General authorization by rule. With certain exceptions listed in subsection (b) of this Section, an owner's or operator's Class V injection activity is "authorized by rule," meaning that the owner and operator has to comply with all the requirements of this Subpart and the rest of this Part and 35 Ill. Adm. Code 702 and 730, but the owner or operator does not need to get an individual permit. Well authorization expires once the owner or operator has properly closed its well, as described in Section 704.282(b).

b) Circumstances in which permits or other actions are required. If an owner or operator fits into one of the categories listed below, its Class V well is no longer authorized by rule. This means that the owner or operator has to either get a permit or close its injection well. The owner or operator can find out whether its well falls into one of these categories by contacting the Agency~~ or USEPA Region V~~. Subparts D and H of this Part tell an owner or operator how to apply for a permit and describe other aspects of the permitting process. Subpart C of 35 Ill. Adm. Code 702 and Subpart E of this Part outline some of the requirements that apply to the owner or operator if it gets a permit. An owner or operator must either obtain a permit or close its injection well if any of the following is true:

1) The owner or operator fails to comply with the prohibition against fluid movement in Section 704.122(a) and described in Section 704.282(a) (in which case, the owner or operator must get a permit, close its well, or comply with other conditions determined by the Agency~~ or USEPA Region V~~);

2) The Class V injection well is a large-capacity cesspool (in which case, the owner or operator must close its well as specified in the additional requirements set forth in Section 704.288) or the Class V injection well is a motor vehicle waste disposal well in a ~~ground water~~ groundwater protection area or a sensitive ~~ground water~~ groundwater area (in which case, the owner or operator must either close its well or get a permit as specified in the additional requirements set forth in Section 704.288). New motor vehicle waste disposal wells and new cesspools are prohibited;

BOARD NOTE: A new motor vehicle waste disposal well or a new cesspool is one for which construction had not commenced prior to April 5, 2000. See 40 CFR 144.84(a)(2)~~, as added at 40 CFR 68568 (December 7, 1999)~~ (2000).

3) The owner or operator is specifically required by the Agency ~~or USEPA Region V~~ to get a permit (in which case, the authorization by rule expires on the effective date of the permit issued, or the owner or operator is prohibited from injecting into its well upon the occurrence of either of the following:

A) The failure of the owner and operator to submit a permit application in a timely manner, as specified in a notice from the Agency; or

B) The effective date of a permit denial~~)~~;

4) The owner or operator has failed to submit inventory information to the Agency, as described in Section 704.283(a) (in which case, the owner and operator is prohibited from injecting into the well until it complies with the inventory requirements); or

5) Illinois is designated a "Primacy State" by USEPA. Corresponding 40 CFR 144.84(b)(5) relates exclusively to "Direct Implementation" states, so the Board has omitted it. This statement maintains structural consistency with the federal regulations.

BOARD NOTE: Derived from 40 CFR 144.84~~, as added at 64 Fed. Reg. 68568 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

Section 704.286 Definitions

"State drinking water source assessment and protection program" is a new approach to protecting drinking water sources, specified in section 1453 of the 1996 Amendments to the Safe Drinking Water Act (42 USC 300j-13).
BOARD NOTE: Under the federal requirements, states must prepare and submit for USEPA approval a program that sets out how each state will conduct local assessments, including the following: delineating the boundaries of areas providing source waters for public water systems; identifying significant potential sources of contaminants in such areas; and determining the susceptibility of public water systems in the delineated areas to the inventoried sources of contamination. The Illinois Groundwater Protection Act [415 ILCS 55] and the regulations at 35 Ill. Adm. Code 620 adopted pursuant to that law and Sections 14.1 through 14.6 and 17.1 through 17.4 of the Environmental Protection Act [415 ILCS 14.1-14.6 and 17.1-17.4] and the regulations at 35 Ill. Adm. Code 615 through 617 adopted under those provisions are major segments of the required Illinois program.

"Complete local source water assessment for groundwater protection areas." When USEPA has approved a state's drinking water source assessment and protection program, the state will begin to conduct local assessments for each public water system in that state. For the purposes of this Subpart, local assessments for community water systems and non-transient non-community systems are complete when the four following requirements are met:

> The State must delineate the boundaries of the assessment area for community and non-transient non-community water systems, as such are defined in 35 Ill. Adm. Code 611.101;
>
> The State must identify significant potential sources of contamination in these delineated areas;
>
> The State must determine the susceptibility of community and non-transient non-community water systems in the delineated area to such contaminants; and
>
> ~~The State will develop its own plan for making the completed assessments available to the public.~~
>
> The Agency must make the completed assessments available to the public. BOARD NOTE: The Agency administers the "Illinois Source Water Assessment and Protection Program," which is intended to comply with the federal source water assessment requirements of SDWA Section 1453 (42 USC 300j-13).

"Groundwater protection area" is a geographic area near or surrounding a community or non-transient non-community water system, as defined in 35 Ill. Adm. Code 611.101, that uses groundwater as a source of drinking water. For the purposes of this Subpart I, the Board considers a "setback zone," as defined in Section 3.61 of the Act [415 ILCS 5/3.61] and regulated pursuant to Sections 14.1 through 14.6 of the Act [415 ILCS 5/14.1-14.6], to be a "groundwater protection area," as intended by corresponding 40 CFR 144.86(c). (See 35 Ill. Adm. Code 615 and 616.) These areas receive priority for the protection of drinking water supplies and federal law requires the State to delineate and assess these areas under section 1453 of the federal Safe Drinking Water Act, 42 USC 300j-13. The additional requirements in Section 704.288 apply to an owner or operator if its Class V motor vehicle waste disposal well is in a groundwater protection area for either a community water system or a non-transient non-community water system.

BOARD NOTE: USEPA stated in corresponding 40 CFR 144.86(c) that in many states these areas will be the same as wellhead protection areas delineated as described in section 1428 of the federal SDWA, 42 USC 300h-7.

"Community water system,";, as defined in 35 Ill. Adm. Code 611.101, is a public water system that serves at least 15 service connections used by year-round residents or which regularly serves at least 25 year-round residents.

"Non-transient non-community water system,";, as defined in 35 Ill. Adm. Code 611.101, is a water system that is not a community water system and which regularly serves at least 25 of the same people over six months a year. These may include systems that provide water to schools, day care centers, government or military installations, manufacturers, hospitals or nursing homes, office buildings, and other facilities.

"Delineation.";: Once the State's drinking water source assessment and protection program is approved by USEPA, the State will begin delineating its local assessment areas. "Delineation" is the first step in the assessment process in which the boundaries of groundwater protection areas are identified.

"Other sensitive groundwater areas.";: The State may also identify other areas in the State in addition to groundwater protection areas that are critical to protecting underground sources of drinking water from contamination. For the purposes of this Subpart I, the Board considers a "regulated recharge area," as defined in Section 3.67 of the Act [415 ILCS 5/3.67] and regulated pursuant to Sections 17.1 through 17.4 of the Act [415 ILCS 5/17.1-17.4], to be an "other sensitive groundwater area," as intended by corresponding 40 CFR 144.86(g). (See 35 Ill. Adm. Code 615 through 617.) These other sensitive groundwater areas may include areas such as areas overlying sole-source aquifers; highly productive aquifers supplying private wells; continuous and highly productive aquifers at points distant from public water supply wells; areas where water supply aquifers are recharged; karst aquifers that discharge to surface reservoirs serving as public water supplies; vulnerable or sensitive hydrogeologic settings, such as glacial outwash deposits, eolian sands, and fractured volcanic rock; and areas of special concern selected based on a combination of factors, such as hydrogeologic sensitivity, depth to groundwater, significance as a drinking water source, and prevailing land-use practices.

BOARD NOTE: Derived from 40 CFR 144.86~~, as added at 64 Fed. Reg. 68569 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

Section 704.287 Location in a Groundwater Protection Area or Another Sensitive Area

a) A person is subject to the requirements of Section 704.288 if the person owns or operates an existing motor vehicle well and that person is located in a ~~ground water~~

groundwater protection area or another sensitive ~~ground water~~ groundwater area. If the State fails to identify these areas within the federally-specified time frames, the additional requirements of Section 704.288 will apply to all existing motor vehicle waste disposal wells within this State.

BOARD NOTE: Corresponding 40 CFR 144.87(a) provides that the "new requirements" apply statewide if the state or the USEPA Region fails to identify sensitive groundwater areas. The Board has interpreted "new requirements" as synonymous with "additional requirements" elsewhere in this Subpart I. ~~Further, the Board has not included this statewide applicability provision because~~ Sections 14.1 through 14.6 and 17.1 through 17.4 of the Act [415 ILCS 5/14.1-14.6 and 17.1-17.4] and 35 Ill. Adm. Code 615 through 617 designate protected groundwater resources and allow the designation of other sensitive areas for protection. Further, the Illinois Groundwater Protection Act [415 ILCS 55], and the regulations adopted as 35 Ill. Adm. Code 620 under that statute, protect the quality of all groundwater resources in Illinois.

b) ~~Ground water~~ Groundwater protection areas. Many segments of corresponding 40 CFR 144.87(b) set forth requirements applicable to the State only. Other requirements apply to the regulated community contingent on the regulatory status of the Illinois groundwater protection program. The Board codifies the requirements applicable to the State in this subsection (b) for the purpose of informing the regulated public and clarifying the requirements on the regulated community.

1) For the purpose of this Subpart, USEPA requires States to complete all local source water assessments for ~~ground water~~ groundwater protection areas by January 1, 2004. Once a local assessment for a ~~ground water~~ groundwater protection area is complete every existing motor vehicle waste disposal well owner in that ~~ground water~~ groundwater protection area has one year to close the well or receive a permit. If the State fails to complete all local assessments for ~~ground water~~ groundwater protection areas by January 1, 2004, the following may occur:

A) The new requirements in this Subpart I will apply to all existing motor vehicle waste disposal wells in the State and the owner and operator of a motor vehicle waste disposal well located outside of the areas of the completed area assessments for ~~ground water~~ groundwater protection areas must close their well or receive a permit by January 1, 2005.

B) USEPA may grant a state an extension for up to one year from the January 1, 2004 deadline if the state is making reasonable progress toward completing the source water assessments for ~~ground water~~ groundwater protection areas. States must apply for the extension by June 1, 2003. If a state fails to complete the assessments for the

remaining ~~ground water~~ groundwater protection areas by the extended date, the rule requirements will apply to all motor vehicle waste disposal wells in the state, and owners and operators of motor vehicle waste disposal wells located outside of ~~ground water~~ groundwater protection areas with completed assessments must close their well or receive a permit by January 1, 2006.

2) The Agency must extend the compliance deadline for specific motor vehicle waste disposal wells for up to one year if it determines that the most efficient compliance option for the well is connection to a sanitary sewer or installation of new treatment technology and the extension is necessary to implement the compliance option.

BOARD NOTE: Any Agency determination of the most efficient compliance option is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40].

c) Other sensitive ~~ground water~~ groundwater areas. Existing motor vehicle waste disposal well owners and operators within other sensitive ~~ground water~~ groundwater areas have until January 1, 2007 to receive a permit or close the well. If the State fails to identify these additional sensitive groundwater areas by January 1, 2004, the additional requirements of Section 704.288 will apply to all motor vehicle waste disposal wells in the State effective January 1, 2007, unless they are subject to a different compliance date pursuant to subsection (b) of this Section. If USEPA has granted the State an extension of the time to delineate sensitive groundwater areas, the owner or operator of an existing motor vehicle waste disposal well within a sensitive ~~ground water~~ groundwater area has until January 1, 2008 to close the well or receive a permit, unless the owner or operator is subject to a different compliance date pursuant to subsection (b) of this Section. If the State has been granted an extension and fails to delineate sensitive areas by the extended date, an owner or operator has until January 1, 2008 to close the well or receive a permit, unless it is subject to a different compliance date pursuant to subsection (b) of this Section.

BOARD NOTE: Corresponding 40 CFR 144.87(c) provides that the State has until January 1, 2004 to identify sensitive groundwater areas. It also provides that USEPA may extend that deadline for up to an additional year if the State is making reasonable progress towards identifying such areas and the State has applied for the extension by June 1, 2003. The Board has not included these provisions relating to deadlines for State action because they impose requirements on the State, rather than on regulated entities. Further, the corresponding federal rule provides that the "new requirements" apply statewide if the State or the USEPA Region fails to identify sensitive groundwater areas and that "the rule requirements" apply in the event of an extension granted by USEPA and the State fails to delineate sensitive areas. The Board has interpreted "new

requirements" and "rule requirements" as synonymous with "additional requirements" as used elsewhere in this Subpart I. ~~Finally, the Board has not included this statewide applicability provision because~~ Sections 17.1 through 17.4 of the Act [415 ILCS 5/17.1-17.4], Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and 35 Ill. Adm. Code 615 through 620 protect groundwater resources and allow the designation of sensitive areas.

d) Finding out if a well is in a groundwater protection area or sensitive groundwater area. The Agency must make that listing available for public inspection and copying upon request. Any interested person may contact the Illinois Environmental Protection Agency, Bureau of Water, Division of Public Water Supplies at 1021 North Grand Ave. East, P.O. Box 19276, Springfield, Illinois 62794-9276 (217-785-8653) to obtain information on the listing or to determine if any Class V injection well is situated in a groundwater protection area or another sensitive groundwater area.

e) Changes in the status of the State drinking water source assessment and protection program. If the State assesses a ~~ground water~~ groundwater protection area for ~~ground water~~ groundwater supplying a new community water system or a new non-transient non-community water system after January 1, 2004, or if the State re-delineates the boundaries of a previously delineated ~~ground water~~ groundwater protection area to include an additional area, the additional regulations of Section 704.288 would apply to any motor vehicle waste disposal well in such an area. The additional regulations apply to the affected Class V injection well one year after the State completes the local assessment for the ~~ground water~~ groundwater protection area for the new drinking water system or the new re-delineated area. The Agency must extend this deadline for up to one year if it determines that the most efficient compliance option for the well is connection to a sanitary sewer or installation of new treatment technology and the extension is necessary to implement the compliance option.

BOARD NOTE: Any Agency determination of the most efficient compliance option is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40].

f) If the State elects not to delineate the additional sensitive ~~ground water~~ groundwater areas, the additional regulations of Section 704.288 apply to all Class V injection wells in the State, regardless of the location, on January 1, 2007, or January 1, 2008 if an extension has been granted as provided in subsection (c) of this Section, except for wells in ~~ground water~~ groundwater protection areas that are subject to different compliance deadlines explained in subsection (b) of this Section.

g) Application of requirements outside of groundwater protection areas and sensitive ~~ground water~~ groundwater areas. The Agency must apply the additional requirements in Section 704.288 to an owner or operator, even if the owner's or operator's well is not located in the areas listed in subsection (a) of this Section, if the Agency determines

that the application of those additional requirements is necessary to protect human health and the environment.

BOARD NOTE: Any Agency determination to apply the additional requirements of Section 704.288 is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40]. The Board has omitted certain segments of corresponding 40 CFR 144.87 that encouraged State actions, since those segments did not impose requirements on the regulated community.

BOARD NOTE: Derived from 40 CFR 144.87~~, as added at 64 Fed. Reg. 68569 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

Section 704.288 Additional Requirements

Additional requirements are as follows:

a) Additional Requirements for Large-Capacity Cesspools Statewide. See Section 704.285 to determine the applicability of these additional requirements.

1) If the cesspool is existing (operational or under construction by April 5, 2000):

A) The owner or operator must close the well by April 5, 2005.

B) The owner or operator must notify the Agency of its intent to close the well at least 30 days prior to closure.

BOARD NOTE: ~~This~~ In the corresponding note to 40 CFR 144.83(a), USEPA states that this information is requested on the federal form entitled "Preclosure Notification for Closure of Injection Wells~~,~~." ~~available from the Agency on request.~~ Although the form "Preclosure Notification for Closure of Injection Wells" is acceptable to USEPA, the Agency may develop alternative forms for use in this State.

2) If the cesspool is new or converted (construction not started before April 5, 2000) it is prohibited.

BOARD NOTE: Corresponding 40 CFR 144.88(b)(2) sets forth a federal effective date of April 5, 2000 for the prohibition.

b) Additional Requirements for Motor Vehicle Waste Disposal Wells. See Section 704.285 to determine the applicability of these additional requirements.

1) If the motor vehicle waste disposal well is existing (operational or under construction by April 5, 2000) the following applies:

A) If the well is in a ~~ground water~~ groundwater protection area, the owner or operator must close the well or obtain a permit within one year after the completion of the local source water assessment; the Agency must extend the closure deadline, but not the permit application deadline, for up to one year if it determines that the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology and the extension is necessary to implement the compliance option;

B) If the well is in an other sensitive groundwater area, the owner or operator must close the well or obtain a permit by January 1, 2007; the Agency may extend the closure deadline, but not the permit application deadline, for up to one year if it determines that the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology and the extension is necessary to implement the compliance option;

C) If the owner or operator plans to seek a waiver from the ban and apply for a permit by the date the owner or operator submits its permit application, the owner or operator must meet the maximum contaminant levels (MCLs) for drinking water, set forth in 35 Ill. Adm. Code 611, at the point of injection while the permit application is under review, if the owner or operator chooses to keep operating the well;

D) If the owner or operator receives a permit, the owner or operator must comply with all permit conditions by the dates specified in its permit, if the owner or operator chooses to keep operating the well, including requirements to meet MCLs and other health based standards at the point of injection, follow best management practices, and monitor the injectate and sludge quality;

E) If the State has not completed all of its local assessments by January 1, 2004 (or by the extended date if the State has obtained an extension, as described in Section 704.287), and the well is outside an area with a completed assessment, the owner or operator must close the well or obtain a permit by January 1, 2005, unless the State obtains an extension, as described in Section 704.287(b), in which case the deadline is January 1, 2006; the Agency must extend the closure deadline, but not the permit application deadline, for up to one year if it

determines that the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology and the extension is necessary to implement the compliance option;

F) If the State has not delineated other sensitive ~~ground water~~ groundwater areas by January 1, 2004, and the well is outside of an area with a completed assessment, the owner or operator must close the well or obtain a permit regardless of its location by January 1, 2007, unless the State obtains an extension as described in Section 704.287(c), in which case the deadline is January 2008; or

G) If the owner or operator plans to close its well, the owner or operator must notify the Agency of its intent to close the well (this includes closing the well prior to conversion) by at least 30 days prior to closure.

BOARD NOTE: ~~This~~ In the corresponding note to 40 CFR 144.83(a), USEPA states that this information is requested on the federal form entitled "Preclosure Notification for Closure of Injection Wells~~,~~." ~~available from the Agency on request.~~ Although the form "Preclosure Notification for Closure of Injection Wells" is acceptable to USEPA, the Agency may develop alternative forms for use in this State.

BOARD NOTE: Any Agency determination of the most efficient compliance option under subsection (b)(1)(A), (b)(1)(B), or (b)(1)(E) is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40].

2) If the motor vehicle waste disposal well is new or converted (construction not started before April 5, 2000) it is prohibited.

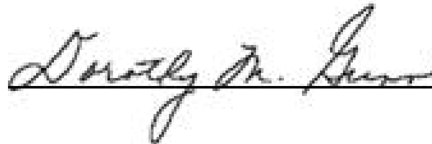
BOARD NOTE: Corresponding 40 CFR 144.88(b)(2) sets forth a federal effective date of April 5, 2000 for the prohibition.

BOARD NOTE: Derived from 40 CFR 144.88~~, as added at 64 Fed. Reg. 68570 (December 7, 1999)~~ (2000).

(Source: Amended at 25 Ill. Reg. ________, effective ______________________)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 9th day of August 2001 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board