

ILLINOIS POLLUTION CONTROL BOARD
February 1, 1996

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R95-20
(1-1-95 THROUGH 6-30-95,) (Identical in Substance Rules)
7-7-95, 9-29-95 & 11-13-95))

Proposal for Public Comment.

PROPOSED OPINION OF THE BOARD (by E. Dunham):

Pursuant to Section 13(c) and 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/13(c) & 22.4(a) (1994)], the Board proposes amendments to the RCRA Subtitle C hazardous waste (RCRA) regulations.

Section 22.4(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by USEPA to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. §§ 6921-6925) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35 & 5-40 (1994)] shall not apply. Section 13(c) similarly provides with respect to underground injection control regulations adopted by USEPA pursuant to Section 1421 of the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h). Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, and, more recently, 279.

This opinion supports an order adopted on the same day. The Board will cause the proposed amendments to be published in the Illinois Register and will hold the docket open for 45 days after the date of publication to receive public comments.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This rulemaking updates the Illinois RCRA Subtitle C rules to correspond with federal amendments made in the period from January 1 through June 30, 1995. The USEPA actions during this period are as follows:

<u>Federal Action</u>	<u>Summary</u>
Jan. 3, 1995,	Technical Corrections to Phase II LDRs

60 Fed. Reg. 242	
Jan. 13, 1995, 60 Fed. Reg. 3089	Update to testing and monitoring methods
Feb. 3, 1995, 60 Fed. Reg. 6666	Response to City of Chicago v. Environmental Defense Fund decision
Feb. 7, 1995, 60 Fed. Reg. 7366	Determination that additional regulation is necessary for cement kiln dust
Feb. 9, 1995, 60 Fed. Reg. 7824	New hazardous waste listings for six carbamate production wastes; addition of 58 commercial chemical product wastes; exemption of certain biological treatment sludges
Apr. 4, 1995, 60 Fed. Reg. 17001	Update to testing and monitoring methods
Apr. 4, 1995, 60 Fed. Reg. 17160	Update to CWA analytical methods
Apr. 17, 1995, 60 Fed. Reg. 19165	Corrections to carbamate waste listings
May 11, 1995, 60 Fed. Reg. 25492	Universal Waste Rule
May 12, 1995, 60 Fed. Reg. 25619	Correction to carbamate waste listings
May 19, 1995, 60 Fed. Reg. 26828	Postponement of effective date for tank, container, and surface impoundment air emissions rules
June 13, 1995, 60 Fed. Reg. 31114	Delisting of hazardous waste generated in Illinois by a Pennsylvania company
June 29, 1995, 60 Fed. Reg. 33912	Deletion of obsolete, redundant, and outdated RCRA rules

Deviations from Routine Docket Time-Frame for Federal Amendments

In addition to these principal amendments that occurred during the normal docket update period, the Board has included three additional, later actions that are corrections or

relaxations of prior amendments in the preceding RCRA Subtitle C update docket, R95-4/R95-6:

July 7, 1995, 60 Fed. Reg. 35452	Correction to the Subpart CC organic material emissions standards for tanks, containers and surface impoundments
September 29, 1995, 60 Fed. Reg. 50426	Stay of Subpart CC rules as they apply to tanks, containers, and surface impoundments that contain wastes generated in the manufacture of organic peroxides
November 13, 1995, 60 Fed. Reg. 56952	Stay of Subpart CC rules in their entirety until June 6, 1996

Further, the Board used this opportunity to include a number of corrective amendments to the existing regulations. These corrections are more fully described below. They are derived from comments by the Joint Committee on Administrative Rules (JCAR) and the Illinois EPA (Agency).

Finally, the Board omitted from consideration two set of federal amendments that occurred during the time-frame of this docket. First, on **January 3, 1995**, USEPA corrected errors and clarified language in the universal treatment standards adopted on September 19, 1994 as the Phase II LDRs. The Board did not include those amendments in this docket because we dealt with them in docket R95-4/R95-6, when adopting the Phase II rules. Second, on **May 19, 1995**, USEPA stayed of the 40 CFR 264, subpart CC and 265, subpart CC (Subpart CC) regulations governing organic material emissions from tanks, containers, and surface impoundments. USEPA delayed the effective date by six months, until December 6, 1995. This delay was similarly included with the R95-4/R95-6 amendments, so there was no need for Board to take action at this time. Further, the subsequent federal stay granted on November 13, 1995 made that initial stay of May 19 obsolete.

Brief Summaries of the Federal Actions Considered in this Docket

By way of brief elaboration, the Board will summarily describe the federal actions that occurred in the time-frame of this docket and our action on each matter.

The federal amendments of **January 13, 1995** added Update II to the third edition of "Test Methods for Evaluating Solid Waste,

Physical/Chemical Methods", SW-846, by updating the incorporations by reference. The Board included corresponding amendments in this docket.

On **February 3, 1995**, USEPA responded to public inquiries in the wake of the Supreme Court's decision in City of Chicago v. Environmental Defense Fund, Inc., 114 S. Ct. 1588 (1994), USEPA resolved an issue by interpreting that municipal solid waste incinerator ash becomes a hazardous waste when it leaves the combustion building after the combustion and air pollution control processes. This avoids designating the combustion building as a hazardous waste management facility. Although there were no regulatory amendments accompanying the interpretation, the Board has already noted the City of Chicago decision in a Board Note in our rules, so we amend the Note to include the recent federal interpretation.

On **February 7, 1995**, USEPA announced that it had studied cement kiln dust and determined that some further regulation of this material (which is RCRA Subtitle C-exempt) is desirable. However, USEPA noted that the costs of complete Subtitle C compliance would likely be prohibitive. USEPA stated that it plans to establish a special subset of regulations for this material at some future time. Since there are no regulatory amendments at this time, and since the federal determination does not yet carry any substantive effect, the Board does not need to react to this determination by amendment of the Illinois rules. This opinion will not further discuss this federal action.

By the amendments of **February 9, 1995**, USEPA established hazardous waste listings (K156 through K161) for six carbamate production wastes. It added 58 new chemicals to the list of commercial chemical products that become hazardous waste when discarded. USEPA also exempted biological treatment sludges from hazardous waste regulation, so long as the treated sludges do not exhibit a hazardous characteristic. On **April 17, 1995** and again on **May 12, 1995**, USEPA corrected the earlier carbamate amendments. The present docket includes amendments to the Illinois RCRA Subtitle C rules in response to these federal actions.

There were two sets of ostensibly unrelated amendments on **April 4, 1995** which will have a related impact on the Illinois regulations. First, USEPA amended its methods for testing hazardous waste to clarify the temperature for pH measurements and add an additional analytical method. The Board will have to incorporate these amendments into the Illinois rules. Second, USEPA amended its guideline for testing under the Clean Water Act

(40 CFR 136) to add clarifying notes and update analytical methods. Although this action does not directly affect the RCRA Subtitle C program, the Illinois RCRA/UIC regulations incorporate federal part 136 by reference at Section 720.111. Both sets of amendments have required the Board to update the incorporations by reference provisions to reflect the latest federal versions of the methods.

A major set of federal regulations arose on **May 11, 1995**, when USEPA established a new body of regulations to govern certain high-volume hazardous wastes that are being collected for recycling or disposal. Although USEPA plans to add wastes in the future (notably, fluorescent light bulbs), these streamlined rules (not unlike the used oil regulations) apply to batteries, pesticides, and thermostats at this time. This is the single most significant set of amendments within the update period, and the Board has received a request for expedited consideration of these amendments. The Board is establishing a new Part 733 in this proceeding to correspond with new federal 40 CFR 273.

By the amendments of **June 13, 1995**, USEPA delisted the treated residues of certain listed hazardous waste generated by Conversion Systems, Inc. (CSI) in Sterling, Illinois. As is explained below, CSI submitted a request that has prompted the Board to include corresponding amendments in this docket.

On **June 29, 1995**, USEPA deleted a vast number of rules that were obsolete, redundant, or outdated. USEPA amended three provisions in 40 CFR 261 and 266 of the RCRA Subtitle C (hazardous waste) rules as part of this effort. The Board has included amendments in this docket to correspond with this federal action.

Finally, undertook three actions relating to the 40 CFR 264, subpart CC and 265, subpart CC regulations (Subpart CC rules) governing organic material emissions from tanks, containers, and surface impoundments. One action, on **July 7, 1995**, made corrections to the Subpart CC rules. Since both corrections relate to the Federal Register preamble discussion and not to the text of the regulations themselves, no amendments were necessary based on that action. On the other hand, Board action is required by two other actions relating to the Subpart CC rules that are outside the routine time-frame of this docket. Although both actions are within the nominal time-frame of the next RCRA Subtitle C update docket, R96-10, which covers the period of July 1 through December 31, 1995, the Board has decided to take action at this time and include both stays in this docket. Both are partial stays of the Subpart CC rules. First, on **September 29**,

1995, USEPA indefinitely stayed the Subpart CC regulations as they would apply to tanks, surface impoundments, and containers containing hazardous waste generated by an organic peroxide manufacturing process. Second, on **November 13, 1995**, USEPA further delayed the effective date of the Subpart CC rules by another six months, until June 6, 1996. Both stays required amendment of the base hazardous waste regulations.

PUBLIC COMMENTS

The Board will receive public comment on this proposal for a period of 45 days following its publication in the Illinois Register. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow USEPA review. The complete text of the proposed amendments appears in a separate order adopted this day.

As of the time of proposing these amendments for public comment, the Board had already received five public comments on the rules:

- PC 1 Vicki Thomas, Executive Director, Joint Committee on Administrative Rules (letter and attachments dated August 22, 1995)
- PC 2 Vicki Thomas, Executive Director, Joint Committee on Administrative Rules (JCAR; text of 35 Ill. Adm. Code 728.Table T, as adopted in R95-4/R95-6, with corrections marked)
- PC 3 Ron Klint, TDI Batteries (letter)
- PC 4 Jeffrey C. Moore, General Counsel, Conversion Systems, Inc. (letter)
- PC 5 Mark Homer, Regulatory Affairs Counsel, Chemical Industry Council of Illinois (CICI; letter)

By PC 1 and PC 2, JCAR indicates a number of minor corrections to the base text of the Illinois RCRA Subtitle C regulations and as last amended in R95-4/R95-6. The Board has examined those corrections and acted on them where necessary, which is discussed below.

In PC 3, a member of the regulated community has requested expedited consideration of the universal waste rules, adopted by USEPA on May 19, 1995. The letter outlines the environmental and

economic benefits of prompt adoption of what amounts to a relaxation of the hazardous waste regulations. The Board granted expedited consideration of these amendments by an order dated October 19, 1995. The universal waste rules are a major segment of the present action.

By PC 4, a regulated entity requests that the Board adopt a federal hazardous waste delisting (of June 13, 1995) by identical-in-substance rulemaking. Although we possess the statutory authority to adopt such site-specific federal regulations using the identical-in-substance procedure, the Board does not unilaterally propose and adopt such rules in the absence of a request that we act to adopt the rule. The Board has included the delisting with the present amendments in response to the request.

In PC 5, an industry trade association requested expedited consideration of the federal stay (dated November 13, 1995) of major provisions of existing rules adopted in docket R95-4/R95-6. USEPA adopted the stay outside the nominal time-frame of this docket. The Board granted expedited consideration of the stay by an order dated December 7, 1995. As discussed above, this stay and another are both dealt with in the present action. (See infra, pp. 16-19.)

EXPEDITED CONSIDERATION AND REASON FOR DELAY

Prior to commencing work on the present amendments, the Board received requests to expedite this docket. As described above, the Board granted expedited consideration by orders dated October 19 and December 7, 1995. The October 19, 1995 order also set forth reasons for delay in this docket--i.e., "present and recent-past demands on Board resources and personnel, including those associated with completing the prior update, R95-4/R95-6".

Although the proposal of these amendments is later than was originally anticipated on October 19, this proposal for public comment represents a significant effort on the part of the Board to act as promptly as possible, given the magnitude of the amendments included in this docket and competing priorities for the Board and its staff. Assuming all the necessary work to complete this rulemaking occurs as rapidly as possible, the Board would anticipate adopting these amendments at a regularly-scheduled meeting in April, 1996, filing them with the Secretary of State 30 days later.

The Board will cause a copy of the above segment of this proposed opinion to be published in the Illinois Register, as required by Section 7.2(b) of the Act.

HISTORY OF RCRA SUBTITLE C, UST and UIC ADOPTION
AGENCY OR BOARD ACTION?
EDITORIAL CONVENTIONS

The Board appends three routine discussions at the end of this opinion. The first is a summary history of the Illinois RCRA Subtitle C and UIC programs. It lists all actions taken to adopt and maintain these programs since their inceptions. 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 to date. The second is a discussion of how the Board codifies requirements that call for state determinations, such as for exemptions, exceptions, etc. The third discussion relates to our use of language in the codification of identical-in-substance rules. We intend these as reference aids for interested persons in the regulated community.

DISCUSSION

The federal actions that underlie this proceeding require amendment of the Illinois RCRA Subtitle C regulations. This discussion briefly focuses on each by subject matter, indicating the specific details of the actions taken by the Board where pertinent.

General Revisions

The Board has engaged in an ongoing effort to change its method of referring to the United States Environmental Protection Agency in the hazardous waste and other regulations through the course of the last several update proceedings, R93-16, R94-7, R94-17, and R95-4/R95-6. Subsequent to the final opinion and order in the next preceding update, R95-4/R95-6 dated June 1, 1995, JCAR requested that the Board adopt the same usage throughout all of our bodies of regulations--i.e., air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board included the Agency in our discussion of whether "USEPA" or "U.S. EPA" would become the chosen form. The Agency's Bureau of Air pressed for unity in favor of the "USEPA"

usage. For this reason, the Board begins the process of reversing the prior unifying amendments in the provisions that are open in this docket. We will now refer to "USEPA". We will continue this conversion in future rulemakings as additional Sections otherwise become open to amendment.

The Board substituted "or" for "/" in most instances where this appeared in the federal base text, using "and" where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, and cross-reference format throughout the opened text. We also changed "who" to "that" and "he" to "it", where the person to which the regulation referred was not necessarily a natural person, or to "he or she", where a natural person was evident; changed "which" to "that" for restrictive relative clauses; substituted "shall" for "will"; capitalized the Section headings and corrected their format where necessary; and corrected punctuation within sentences.

Finally, some of the language structure of the federal base text (in the new amendments) is cumbersome or less than clear. The Board has attempted to correct some of the worst instances of this. We realize that the language of the hazardous waste regulations would still be clearer and more concise, but the Board cannot go further at this time and still maintain parity with the federal regulations. However, we invite interested members of the regulated community to submit suggestions relating to correcting deficiencies and errors and enhancing clarity of the rules.

For the sake of brevity, the following table sets forth the miscellaneous corrections to the pre-amended base text of the rules for persons needing to make the comparison in detail. Corrections made to the amendments incorporated in this docket are set forth in the topical discussions that follow.

Corrections to Base Pre-Amended Text

<u>Section</u>	<u>Correction</u>
702.110 "corrective action management unit", "date of approval . . ." & "Environmental Protection Agency"	Switch to "USEPA"
703.123(e), (f) & (g)	Subsection numbering
703.151 & 703.152	Reformat Board Notes

- 720.110 Switch to "USEPA" in "corrective action management unit", "designated facility", "EPA hazardous waste number", "EPA identification number", "manifest document number" & "replacement unit"; move definitions of "USEPA", "representative sample" & "uppermost aquifer"; add definition of "USDOT"
- 720.111 Switch to "USEPA" under "APTI", "GPO" & "USEPA"; correct end-of-quote punctuation of reference to SW-846
- 720.120(a) Change to "that"
- 720.103(a) (2) (D) Remove "or" from subsections (i) through (iv); repunctuate (v) (JCAR requests); use possessive "wastes'"
- 720.103(b) (1) (B) & (b) (11) Switch to "USEPA"
- 721.103(e) (2) (C) Delete decimal from zinc entries (JCAR request); switch to "USEPA"; correct subsection label format
- 721.103(f) (2), (f) (7) (A), (f) (7) (G), (f) (9) (A) & (f) (9) (C) Switch to "USEPA"
- 721.105(f) (3) Add "fulfills any of . . ." to preamble & "the facility is" to subsections; add reference to 40 CFR 271
- 721.105(f) (3) (C) Switch to "USEPA"
- 721.105(g) (3) Add "fulfills any of . . ." to preamble; "the facility is" to subsections & add reference to 40 CFR 271
- 721.105(g) (3) (C) Switch to "USEPA"

721.105(g) (3) (E)	Use "that"
721.106(a) (3)	Switch to "USEPA"
721.130(b) (2)	Correct "a" (JCAR request)
721.131(a) F023	Add closing parentheses (JCAR request)
721.132 K001	Change to "or"
721.132 K066	Correct punctuation of quotation
721.132 K149	Change location of end punctuation (JCAR request)
721.App. H warfarin, warfarin salts, zinc phosphide & ziram	Remove end punctuation
721.App. H	Add "note:"
721.App. I, Table B	Switch to "USEPA"
721.App. Z	Correct first-row entries' parentheticals (prompted by JCAR request); add cross-references to column heading footnotes; add Board Note indicating source
722.111(d)	Add comma
724.101(f)	Switch to "USEPA"
724.101(g) (7) through (g) (10)	Add cross-reference to reserved federal provision & renumber subsections to correspond with federal counterparts
724.980(a)	Switch to "USEPA"
725.980(a)	Switch to "USEPA"
726.180(a)	Use singular, change to "that" in place of "who"; use "the batteries" in place of "them"

726.203(a)(1)(B), (a)(3), (b)(2), (c)(2)(A)(i), (c)(4)- (A)(i) & (c)(8)(B)(i) & 726.204(a)(3)	Switch to "USEPA"
728.101(e)(3)	Switch to "USEPA"
728.Table T D033	Correct CAS number (JCAR requested)
728.Table T F028	Switch to "USEPA"
728.Table T F037	Correct wastewaters entry for xylenes (JCAR requested)
728.Table T F039	Switch to "USEPA"
728.Table T F039	Correct CAS number for bis(2- chloroisopropyl)ether (JCAR requested)
728.Table T K019	Correct CAS number for bis(2- chloroisopropyl)ether (JCAR requested)
728.Table T K051	Correct CAS number for toluene (JCAR requested)
728.Table T P024	Correct wastewaters entry (JCAR requested)
728.Table T U027	Correct CAS number for bis(2- chloroisopropyl)ether (JCAR requested)
728.Table T end note 7	Switch to "USEPA"
728.Table U Diphenyl- nitrosoamine	Add space (JCAR requested)
728.Table U end note 4	Switch to "USEPA"

Updated Analytical Methods--Section 720.111

USEPA amended 40 CFR 260.11(a) on January 13, 1995, at 60 Fed. Reg. 3089, and on April 4, 1995, at 60 Fed. Reg. 17001.

Section 720.111 of the Illinois hazardous waste regulations corresponds with 40 CFR 260.11. Both sets of amendments related to updating the reference, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846). Both sets of amendments added methods to SW-846. The January 13 amendments added Updates I, II, and IIA to the third edition in the reference to this document. Those amendments also revised the references to the updates to indicate that they are now available through the Government Printing Office, which means the deletion of the references to MICE and USEPA-OSW as sources of these documents. The April 4 federal amendments added Update IIB to the reference. In reviewing the January 13, 1995 Federal Register discussion of the methods included in the updates, the Board observed that Method 8290 is included in Update II. We therefore deleted the reference to USEPA as the source for this method.

Although not directly related to the hazardous waste regulations, USEPA also amended the Clean Water Act programs analytical procedures of 40 CFR 136 on April 4, 1995, at 60 Fed. Reg. 17160. USEPA added clarifying footnotes; updated the methods in Tables IA, IB, IC, and ID; and corrected typographic errors in the text. The Board has incorporated 40 CFR 136 by reference in Section 720.111(b).

The Board has incorporated the three sets of federal amendments into Section 720.111. We updated the reference to SW-846 to indicate the new updates and revised availability of those updates. The Board also updated the incorporation of 40 CFR 136 by adding the April 4 Federal Register citation. **The Board invites public comment on the updated incorporations in Section 720.111.**

Hazardous Waste Determinations--Sections 721.103, 721.104, 721.132, 721.133 & 721.Appendices G through I

USEPA undertook three basic actions relating to identification of hazardous waste to which the Board responds in this docket. First, USEPA published its interpretation of the point at which municipal incinerator ash initially becomes subject to regulation as hazardous waste in light of a recent Supreme Court decision. Second, USEPA adopted and corrected regulations adding a number of hazardous waste listings and hazardous constituents listings. These primarily involve wastes generated in carbamate manufacturing processes. Finally, USEPA granted a hazardous waste delisting to a company for a waste generated in Illinois.

USEPA announced its interpretation of when municipal incinerator ash becomes subject to hazardous waste regulation on February 3, 1995. It took this action as a result of the Supreme Court's decision in City of Chicago v. Environmental Defense Fund, -- U.S. --, 114 S. Ct. 1588 (1994). Prior to that decision, USEPA had interpreted the exclusions of 40 CFR 261.4(b)(1)(ii) (corresponding with and Section 3001(i) of RCRA as excluding the combustion of municipal waste from hazardous waste regulation. (See 50 Fed. Reg. 28702, July 15, 1985.) At various times, USEPA took the position that the resulting ash itself was exempted. (See 59 Fed. Reg. 29372, June 7, 1994.) In City of Chicago, the Court determined that the resulting ash was subject to RCRA Subtitle C regulation if it exhibited a characteristic of hazardous waste. On February 3, 1995, USEPA stated that the Court's opinion left open the issue of the point at which the ash would become subject to Subtitle C regulation. USEPA interpreted that this point was when the ash actually leaves the combustion building for disposal. Prior to that point, USEPA does not consider the ash subject to regulation as hazardous waste.

In response to the federal action of June 7, 1994, relating to facility permitting, the Board added a Board Note to Section 721.104(b)(1)(B) indicating the Supreme Court decision and USEPA's June 7, 1994 action in response. The Board has added language to this Note indicating the newer February 3 action by USEPA in further response to the Supreme Court's decision.

USEPA added six wastes generated in the manufacture of carbamates (i.e., "carbamate wastes") to the lists of hazardous wastes 40 CFR 261 Subpart D ("Subpart D wastes") on February 9, 1995, at 60 Fed. Reg. 7824. USEPA further added 58 specific chemical substances to the list of commercial chemical products that are hazardous waste when discarded. This action entailed amendments to 40 CFR 261.3(a)(2)(iv)(F), (a)(2)(iv)(G), and (c)(2)(ii)(D) (all added); 261.32; 261.33(e) and (f); and 261, Appendices VII and VIII, which correspond with 35 Ill. Adm. Code 721.103(a)(2)(D)(vi), (a)(2)(D)(vii), and (e)(2)(D); 721.132; 721.133(e) and (f); and 721. Appendices G and H. USEPA later corrected errors in these amendments on April 17, at 60 Fed. Reg. 19165, and May 12, 1995, at 25619. The Board has made all the amendments necessary to incorporate the federal revisions. The Board made minor editorial changes in the federal text in a number of locations. The changes are limited to correction of punctuation, the capitalization of an abbreviated chemical name, and the correction of the format (i.e., spacing and hyphenation) and spelling of chemical names for the added constituents. We have not otherwise deviated from the federal carbamate rule

revisions. A table at the end of this segment of the discussion indicates the location of the changes.

USEPA granted Conversion Systems, Inc. (CSI) a hazardous waste delisting on June 13, 1995, at 60 Fed. Reg. 31107. The waste to which the delisting immediately applies is proprietarily-treated electric arc furnace dust (K061) generated at CSI's Sterling, Illinois operations. The federally-granted delisting includes a number of conditions pertaining to waste treatment, maximum leachable contaminant concentrations, testing, recordkeeping, and reporting. The delisting includes conditions relating to future expansion to other locations upon written amendment by USEPA.

The Board has incorporated the CSI delisting into Section 721.Appendix I, Table B, relating to delisted wastes from specific sources with a limited number of revisions to the language for the sake of clarity and to make it fit within Illinois administrative and statutory requirements. We list the revisions and our reasons in the following table:

Deviations from the Federal Text of the CSI Delisting

<u>Deviation from Federal Text</u>	<u>Explanation</u>
Use of full name instead of "EAFD" for initial reference in preamble	Enhanced clarity
Added reference "municipal solid waste landfill" to Subtitle D references in preamble and paragraph 2.	Language convention used in Illinois nonhazardous waste landfill (Subtitle D) regulations
Offset parenthetical language of "as . . ." clauses with commas and in the preamble and paragraph 2.	Grammatical corrections
Changed "that" to "which" in preamble	Grammatical correction
Added incorporation language to reference to SW-846 in paragraph 1.	Administrative Procedure Act requirement
Changed "must" to "shall" in several locations in paragraphs 1.A., 1.C., 2., 4.,	Board language convention for imperative actions

and 5.

Changed "composites" to "composite samples" in paragraph 1.A.

Enhanced clarity

Changed "comprised" to "composed" in paragraph 1.A.

Grammatical correction

Added "above" and "below" to cross-references

Codification requirement

Added language to paragraph 1.B. outlining options for future expansion of the delisting

Expressly clarify the options available under Illinois law that do not exist in federal law

Substituted "approved facility" for "Sterling, Illinois facility and any new facility subsequently added" in paragraph 1.C.

Clarity and economy of language

Substituted "as hazardous waste" and cross reference to the pertinent regulations for a reference to RCRA Subtitle C in paragraph 2.

Correct reference in Illinois regulatory scheme

Substituted "this exclusion" for "the exclusion" in paragraph 2

Enhanced clarity

Added "in parts per million" to paragraph 3.

Enhanced clarity

Substituted language relating to advanced notice and approval of process changes in paragraph 4.

Enhanced clarity

Changed references to notification of USEPA to notification of the Agency (Illinois EPA), changed a reference to "sufficient basis to revoke" to "a violation of the Act and Board regulations", and altered the

Comports with Illinois regulatory scheme

USEPA-specific references in the certifications in paragraph 5.

The Board lists its deviations from the text of the carbamate waste amendments in the following table for the convenience of those who must make a detailed comparison of the federal and state texts:

Deviations from the Federal Text of the Carbamate Waste Rule

<u>Section</u>	<u>Derived from</u>	<u>Deviation(s)</u>
721.103(a)(2)-(D)(vi) & (vii)	261.3(a)(2)-(iv)(F) & (G)	Use of colon; add commas for parentheticals
721.103(e)(2)-(D)	261.3(c)(2)-(ii)(D)	Use of colon; deletion of comma from two-element series; use of "USEPA"
721.133(e) P189, P191, P192, P185 & P202	261.33(e)	Correct format of chemical names
721.133(f) U409 & U378	261.33(f)	Correct format of chemical names
721.App. G K159 & K160	261.App. VII	Correct format of chemical abbreviated names
721.App. H	261.App. VIII	Correct format of chemical names in entries for "A2213", "aldicarb sulfone", "bendiocarb", "bendiocarb phenol", "benomyl", "bis(pentamethylene)thiuram", "carbosufan", "ferbam", "formetanate hydrochloride", "formparanate", "3-iodo-2-propynyl-n-butyl-carbamate", "physostigmine", "physostigmine salicylate", "selenium, tetrakis(dimethyldithiocarbamate)", "thiodiarb", "thiophanate-methyl" & "tirpate"

The Board invites comment on our amendments to the exclusions from regulation as hazardous waste in Section 721.104

in response to the USEPA response to the City of Chicago decision. We also invite comment on our responses to the carbamate rules, to the definition of hazardous waste in Section 721.103 the listings of Subpart D listed wastes in Sections 721.132 and 721.133, to the listing of the bases for waste listing in Section 721.Appendix G, and to the hazardous constituents in Section 721.Appendix H. Finally, the Board invites comment on our codification of the federally-granted CSI hazardous waste delisting.

Postponement of Subpart CC Organic Emissions Rules Effective Date--Sections 724.980, 724.989, 725.980, 725.982 & 725.990

USEPA adopted the 40 CFR 264, Subpart CC and 265, Subpart CC organic material emission regulations applicable to hazardous waste tanks, containers, and surface impoundments in December, 1994. It stayed the effective date of those rules by six months on May 19, 1995, at 60 Fed. Reg. 26828. As discussed above, the Board incorporated both the original adoption and that first six-month stay into the Illinois regulations in the prior update docket, R95-4/R95-6.

USEPA granted further limited stays of the Subpart CC regulations on September 29, 1995, at 60 Fed. Reg. 33912, and November 13, 1995, at 60 Fed. Reg. 56952. As discussed above, USEPA indefinitely stayed the rules as to wastes from the manufacture of organic peroxides in the September action, for safety reasons. USEPA amended 40 CFR 264.1080, 264.1089, 265.1080, and 265.1090, which correspond with 35 Ill. Adm. Code 724.980, 724.989, 725.980, and 725.990, to effect this stay. USEPA then granted a second six-month stay of the effective date for the rules in their entirety in the November action, until June 6, 1996. This required amendment of 40 CFR 264.1080, 265.1080, and 265.1082 (corresponding with 35 Ill. Adm. Code 264.980, 265.980, and 265.982).

The Board has incorporated both stays into this docket in response to public comments and to avoid a situation where the Illinois regulations could be read as more stringent than the federal rules. In anticipation of these further stays, the Board added Board Notes to Sections 724.1080(a) and 725.1080(a) in the R95-4/R95-6 update to cite the earlier stay and to explain that we do not intend greater stringency. Therefore, to incorporate the federal stays, the Board has amended the effective date citations in these rules to reference June 6, 1996 and the November 13, 1995 Federal Register citation to the stay at Sections 724.1080(a) and (b), 725.1080(a) and (b), and

725.982(a), to correspond with the federal revisions at 40 CFR 264.1080(b), 265.1080(b), and 265.1082(a). The Board has further added the new language for the organic peroxides stay at Sections 724.980(d), 724.989(i), 725.980(d), and 725.990(i), to correspond with the federal additions of 40 CFR 264.1080(d), 264.1089(i), 265.1080(d), and 265.1090(i).

The Board lists its deviations from the text of the Subpart CC stay amendments in the following table for the convenience of those who must make a detailed comparison of the federal and state texts:

Deviations from the Federal Text of the Subpart CC Stays

<u>Section</u>	<u>Derived from</u>	<u>Deviation(s)</u>
724.980(a)	264.1080(a)	Alter effective date and Board Note previously added to federal base text
724.980(d)	264.1080(d)	Remove "administratively"; remove "a"; add comma
724.980(d) (3)	264.1080(d) (3)	Use "must"; remove comma from two-element series
724.990(i) (2)	264.1090(i) (2)	Add "pursuant to"; use "must"
724.990(i) (2)- (A)	264.1090(i) (2)- (i)	Use "must"; use commas in place of semicolons
724.990(i) (2)- (b)	264.1090(i) (2)- (ii)	Use "must"; use commas in place of semicolons; remove commas from two-element series; use singular "waste" and "this"; replace "handled" with "managed"
724.990(i) (3)	264.1090(i) (3)	Use "or" in place of "and"; add "pursuant to" and "specified in"; use "were" to state condition contrary to fact; use "must"
724.990(i) (3)- (A) & (B)	264.1090(i) (3)- (i) & (ii)	Use singular "waste" and "this"; use "must"; use "would" to state condition contrary to fact

725.980 (a)	265.1080 (a)	Alter effective date and Board Note previously added to federal base text
725.980 (d)	265.1080 (d)	Remove "administratively"; remove "a"; add comma
725.980 (d) (3)	265.1080 (d) (3)	Use "must"; remove comma from two-element series
725.990 (i) (2)	265.1090 (i) (2)	Add "pursuant to"; use "must"
725.990 (i) (2) - (A)	265.1090 (i) (2) - (i)	Use "must"; use commas in place of semicolons
725.990 (i) (2) - (b)	265.1090 (i) (2) - (ii)	Use "must"; use commas in place of semicolons; remove commas from two-element series; use singular "waste" and "this"; replace "handled" with "managed"
725.990 (i) (3)	265.1090 (i) (3)	Use "or" in place of "and"; add "pursuant to" and "specified in"; use "were" to state condition contrary to fact; use "must"
725.990 (i) (3) - (A) & (B)	265.1090 (i) (3) - (i) & (ii)	Use singular "waste" and "this"; use "must"; use "would" to state condition contrary to fact

The Board invites comment on our codification of the federal stays of the Subpart CC regulations. The two stays upon which the Board seeks comment are the indefinite stay relating to organic peroxides manufacturing waste and the second six-month general stay of the rules.

Universal Waste Rules--Sections 703.123, 720.110, 720.120, 720.123, 721.105, 721.106, 721.109, 722.110, 722.111, 724.101, 725.101, 726.180, 728.101 & Part 733

USEPA adopted a major new body of alternative hazardous waste management regulations on May 11, 1995, at 60 Fed. Reg. 25492, as 40 CFR 273. These new regulations, called the "universal waste rule", modify the RCRA Subtitle C program to

streamline the system as it applies to these widely-generated wastes. The wastes to which the alternative regulations currently apply are batteries, pesticides, and mercury-containing thermostats. USEPA stated in adopting the rules that it intends to expand their applicability to new wastes in the future, such as fluorescent light bulbs.

In recognition of some fundamental problems with the hazardous waste management system, USEPA devised the universal waste rule. Its goals are to encourage resource conservation while adequately protecting human health and the environment, to improve implementation of the Subtitle C regulations, and to encourage efforts to collect the unregulated universal waste and remove it from the municipal waste stream. Although generated in great quantities overall, universal waste is generally generated in small quantities below the threshold of regulatory concern by individual generators. Thus, they are lawfully disposed of in municipal trash in large aggregate quantities by these small generators. One problem with the existing RCRA Subtitle C hazardous waste management scheme is that an effort to divert or recover these materials from municipal trash at central locations would likely render the recovery efforts subject to the hazardous waste regulatory scheme, which may be a disincentive to such diversion or recovery efforts and a factor favoring their continued large-scale disposal in municipal solid waste landfills.

The universal waste rule divides the universe of those handling universal waste into two groups: large quantity handlers of universal waste (LQHUs) and small quantity handlers of universal waste (SQHUs). A person accumulating and storing 5,000 kilograms (11,000 pounds) or more of universal waste on-site is an LQHU; a person aggregating less than this amount is a SQHU. The major differences in impact of the rules on these entities is that LQHU must notify USEPA of its activity and maintain required records for its waste, and there are no similar requirements imposed on a SQHU. Both LQHUs and SQHUs are generally prohibited from diluting, treating, and disposing of universal waste, and imposed on both are general management requirements intended to protect human health and the environment, such as limitations on waste-related activities and off-site shipment and packaging and labelling, accumulation time limit, employee training, and release response requirements.

In addition to requirements imposed on handlers of universal waste, the universal waste rule includes requirements for universal waste transporters and destination facilities. The requirements and prohibitions imposed on a universal waste transporter are somewhat similar to those for handlers to a major

extent. The transporter standards include general prohibition against diluting, treating, and disposing of universal waste, required compliance with USDOT standards, an accumulation time limit, release response requirements, and destination requirements. The management standards for destination facilities include requirements for receipt or diversion or rejection of consignments of universal waste. They also include recordkeeping requirements for receipts of waste.

The universal waste rule has two additional sets of requirements for universal waste management. First, the regulations include requirements for importation of universal waste that subject handlers, transporters, and destination facilities to the universal waste rule when the shipment arrives in the United States. Second, the universal waste rule includes specific petition requirements for those interested in asking USEPA or an authorized state to include additional wastes as subject to universal waste regulation.

Finally, accompanying new 40 CFR 273 were amendments to other segments of the existing hazardous waste regulations necessary to implement the new rules. These include amendments to 40 CFR 260.1, to incorporate new definitions; amendment of 260.20(a) and the addition of 260.23, to accommodate petitions for rulemaking under the universal waste rule; and amendment of 40 CFR 261.5, 262.10, 262.11, 264.1, 265.1, 266.80, 268.1, and 270.1 and the addition of 261.9, to set forth the applicability and interplay of the universal waste rule and relevant segments of the generally-applicable hazardous waste management regulations.

The Board has incorporated the universal waste rule into the Illinois hazardous waste regulations with minimal, nonsubstantive deviation from the federal text. This incorporation adds Part 733 and Sections 720.123 and 721.109 to the rules and the amendment of Sections 703.123, 720.110, 720.120, 721.105, 721.106, 722.110, 722.111, 724.101, 725.101, 726.180, 728.101. The deviations from the federal language were primarily corrections to grammar and punctuation, were enhancements in clarity, or were necessary to integrate the universal waste rules to the Illinois regulatory structure. The Board summarizes the deviations in a table at the end of this segment of the discussion. The table is intended to aid those persons, such as JCAR or USEPA, that must compare the federal and state versions of the text.

One series of routine substitutions bears specific discussion. These are the substitutions of a state agency to perform functions where USEPA uses its own name in the rules.

Generally, the Board substitutes itself or the Agency for most functions USEPA cites for itself in the regulations. A routine discussion at the end of this opinion, entitled "Agency or Board Actions?" outlines the circumstances that dictate whether the Agency or the Board is used in substitution. An exception is the grant of an extension to the federal effective date for a land disposal restriction under 40 CFR 268.5, which is beyond a state's authority to grant. Another example is the granting of federal facility identification numbers under 40 CFR 262.12, 263.11, 264.11, or 265.11.

In the universal waste rule, the Board encountered two special instances of substitutions. The first is the notification requirements of Sections 733.112 (small quantity handlers of universal waste; derived from 40 CFR 273.12) and 733.132 (large quantity handlers of universal waste; derived from 40 CFR 273.32). Both appear parallel to RCRA section 3010 notification, since the handler must obtain a USEPA identification number. For this reason, the Board has retained the requirement of notifying USEPA while imposing the duty to also notify the Agency of the activity.¹

Second, Section 733.161(c) (derived from 40 CFR 273.61(c)) imposes a notification requirement on a destination facility if it receives a shipment containing hazardous waste. Since this is clearly an enforcement-related notification, the Board has required notification of the Agency alone.

Finally, in the 733.Subpart G and Section 720.123, the Board has substituted itself as the appropriate person to petition for inclusion of additional hazardous waste in regulation as universal waste. The preamble Federal Register discussion, at 60 Fed. Reg. 25537, indicates that USEPA intends that states may obtain federal authorization to grant additions to universal waste similar to state authorization to grant hazardous waste delistings.² In making this substitution, the Board realizes that we cannot effectively grant an addition to universal waste until the state received federal authorization of that aspect of our regulations, similar to hazardous waste delistings. Further,

¹ The Board realizes that USEPA and the Agency work cooperatively in exchanges of information and in policing regulated entities. However, requiring notification to both entities gives the regulators and the regulated community an added measure of certainty that both sets of files are complete.

² An authorization granted the Board effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990).

federal primacy provisions would make a federal grant of universal waste status ineffective in Illinois until also granted by the Board.³ For these reasons, the Board has crafted the universal waste designation provisions so that it is clear that we will consider federally-granted designations using the identical-in-substance procedure and those not federally-granted using the general rulemaking procedure.

The Board has added a Board Note at Section 733.180(a) explaining our authority to include additional hazardous waste as universal waste. Section 3009 of RCRA Subtitle C does not allow states to adopt regulations that are less stringent than the federal regulations. If the Board were to include additional waste before receiving federal authorization to do so, the Illinois hazardous waste regulations would violate this requirement. For these reasons, the added Board Note states as follows:

The Board cannot add a hazardous waste or category of hazardous waste to this Part by general rulemaking until USEPA authorizes the Illinois universal waste regulations. The Board may, however, add a waste or category of waste by identical-in-substance rulemaking.

In establishing the universal waste designation procedure, the Board realizes that an alternative procedure is available. Instead of general rulemaking, the Board could use the adjusted standard procedure of Section 28.1 of the Act and 35 Ill. Adm. Code 106 to grant universal waste designations, just like it is used for hazardous waste delistings, once USEPA has conferred this authority on the state. We opted for the general rulemaking procedure because it appears that universal waste designations are broader in effect than the delisting of a particular generator's hazardous waste. Since general rulemaking would result in incorporation of the designation into the regulations, the Board felt that the enhanced public notice would prove beneficial.

As a final point, the Board notes that in amending 40 CFR 260.20 (corresponding with 35 Ill. Adm. Code 721.120); USEPA

³ Section 3006 of RCRA (42 U.S.C. § 6926) provides that state regulations apply in an authorized state in lieu of the federal regulations. Section 3009 (42 U.S.C. § 6929) provides that states may establish regulations that are more stringent than the federal regulations. These provisions made it necessary for owners and operators to obtain relief at both the federal and state levels until Illinois obtains universal waste authorization from USEPA.

added a reference to the Part 273 universal waste regulations. When adopting the used oil regulations in September, 1992, USEPA did not amend this provision to reflect amendments to amend the used oil rules. The Board notes this possible error in the federal text, but we did not propose its correction. It is possible that USEPA does not intend petitions to amend the used oil rules under this provision. It is further possible that such an amendment would render the Illinois regulations less stringent than the federal regulations. Of course, the Board could add a reference to Part 739 if USEPA indicates that the lack of a corresponding reference at 40 CFR 260.20(a) is an oversight.

The Board invites comment on our approach to the universal waste rule. Specifically, the Board invites comment on designation of the appropriate person to contact and whether notification of both USEPA and the Agency is necessary for activity notification, for receipt of a universal waste consignment containing hazardous waste, and for obtaining a universal waste designation. The Board also requests specific comment on the burden of dual notification on less sophisticated members of the regulated community. We further specifically invite comment on whether the general rulemaking procedure or the adjusted standard procedure is the more appropriate means of granting universal waste designations to add additional waste to Part 733. Finally, the Board specifically requests comment from USEPA whether a reference to rulemaking petitions to amend Part 739 should appear in Section 720.120.

Deviations from the Federal Text of the Universal Waste Rule

<u>Section</u>	<u>Derived from</u>	<u>Deviation(s)</u>
703.123(h)	270.1(c)(2)-(viii)	Use singular; add preamble exclusion to text; add "such a"; add commas for parentheticals
720.110 "battery" & "destination facility"	260.10 "battery" & "destination facility"	Use "that"
720.110 "pesticide"	260.10 "pesticide"	Add "fulfills one of the . . ." to preamble; add "it" to subsections; correct citations to FFDCA; expand citations to FDA & FFDCA; add clarifying Board Note to cite probable

		source of federal exclusion; remove comma
720.110 "thermostats"	260.10 "thermostat"	Add "such a"; use singular
720.110 "universal waste"	260.10 "universal waste"	Use lower case; add commas for parentheticals
720.110 "universal waste handler"	260.10 "universal waste handler"	Add "either of the following" to preamble; add definite article; use impersonal "that"; delete extra "or"; restructure subsections
720.120(a)	260.20(a)	Add commas to series; switch to disjunctive "or"
720.123	260.123 (new)	Change section heading for clarity; add "the following" and subdivide subsections; use "Board"; add "that shows the following . . ."; add "to that set forth . . ."
721.105(c)	261.5(c)	Add "the following" to preamble; add "hazardous waste that" to subsections
721.105(f) (3) - (F)	261.5(f) (3) (F)	Add "the facility is"
721.105(g) (3) - (F)	261.5(g) (3) (F)	Add "the facility is"
721.109	261.9 (new)	Add commas to parenthetical phrases; move "therefore" and remove comma
724.101(g) (11)	264.1(g) (11) (new)	Use singular; replace use of gerund with restrictive relative clause; combine into a single sentence; add "following"; add commas for parenthetical clauses
725.101(c) (14)	265.1(c) (14) (new)	Use singular; replace use of gerund with restrictive relative clause; combine into a

		single sentence; add "following"; add commas for parenthetical clauses
728.101(f)	268.1(f) (new)	Use singular; replace use of gerund with restrictive relative clause; use "such a" in place of "persons who"; add "following"; add commas for parenthetical clauses
733.Subparts B & C headings	273, Subparts B & C headings	Remove redundant words "universal waste"
733.Subpart G heading	273, Subpart H heading	Remove self-reference to Part
733.101(a)	273.1(a)	Add commas to parentheticals
733.102(a) (2)	273.2(a) (2)	Use "that"
733.103(a)	273.3(a)	Replace gerund with "that meet"
733.103(a) (1)	273.3(a) (1)	Remove "that are"
733.103(b) (1)	273.3(b) (1)	Add missing period
733.103(b) (2)	273.3(b) (2)	Combine into single statement
733.103(b) (4)	273.3(b) (4)	Add waste prequalification for hazardous waste status; remove redundant "if"
733.103(d) (1)	273.3(d) (1)	Remove "the person conducting the recall" from preamble and put into subsections
733.103(d) (1) - (A) & (d) (2)	273.3(d) (1) (i) & (d) (2)	Move parentheticals for readability
733.104(b) (2)	273.4(b) (2)	Add waste prequalification for hazardous waste status
733.105(b)	273.5(b)	Replace personal "who" with "that"; use "shall"
733.106 "large quantity handler . . .",	273.6 "large quantity handler . . .",	Replace personal pronouns with impersonal expressions

"on-site", "small quantity handler . . ." & "universal waste handler"	"on-site", "small quantity handler . . ." & "universal waste handler"	
733.106 "des- tination facil- ity"	273.6 "destina- tion facility"	Remove comma separating subject and verb
733.106 "on- site"	273.6 "on-site"	Add comma to beginning of parenthetical
733.106 "pesti- cide"	273.6 "pesti- cide"	Remove comma from two-element series; add "fulfills one of the . . ." to preamble; add "it" to subsections; correct citations to FFDCa; expand citations to FDA & FFDCa; add clarifying Board Note to cite probable source of federal exclusion; remove comma
733.106 "ther- mostat"	273.6 "thermo- stat"	Add "such a"; use singular
733.106 "uni- versal waste"	273.6 "univer- sal waste"	Use lower case; add commas for parentheticals
733.106 "uni- versal waste handler"	273.6 "univer- sal waste handler"	Add "either of the following" to preamble; add definite article; use impersonal "that"; delete extra "or"; add defined term to preamble to exclusions; restructure subsections
733.111	273.11	Move "prohibited from . . ." into preamble, remove comma from two-element series
733.112	273.12	Add "its" to clarify breadth of obligation
733.113(a) & (a) (1)	273.13(a) & (a) (1)	Use "shall"
733.113(a) (2) 733.113(a) (3)	273.13(a) (2) 273.13(a) (3)	Add comma to parenthetical Use impersonal "that"; use "shall"

733.113(a)(3) & (a)(3)(A)	273.13(a)(3) & (a)(3)(i)	Use "or" in place of "and/or"
733.113(a)(3) - (B)	273.13(a)(3) - (ii)	Add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.113(b)	273.13(b)	Correct verb to singular
733.113(c) & (c)(1)	273.13(c)(1)	Use "shall"
733.113(c)(2)	273.13(c)(2)	Add "follows each . . ." to preamble, "it" to subsections
733.113(c)(3)	273.13(c)(3)	Add subsection heading; use impersonal "that"; use "shall"; add "or" at end of subsection; use "or" in place of "and/or"; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.114	273.14	Use "and" in place of slash in heading; use "shall", use "as follows" in preamble
733.114(a)	273.14(a)	correct use of commas; add missing quotation mark; correct placement of quotation marks
733.114(b)	273.14(b)	Add comma in series; add comma to parenthetical; add "as follows"; correct placement of quotation mark
733.114(c)	273.14(c)	Add comma in series; add commas to parenthetical; add "as follows"; add subsection heading; use "USDOT"; add "or"; correct placement of quotation mark
733.114(d)	273.14(d)	Correct use of commas; add missing quotation mark; correct placement of quotation marks

733.115 (a)	273.15 (a)	Delete comma from two-element series
733.115 (b)	273.15 (b)	Delete commas from non-parenthetical language; add "are"
733.115 (c)	273.15 (c)	Use impersonal "that"; use "shall"; add "in any of the following . . ."; move "on-site"; use "that"; use past-tense "became" and "was"
733.116	273.16	Use "shall"
733.117	273.17	Use "shall"; use singular, generic "waste"
733.118 (a) - (e)	273.18 (a) - (e)	Use "shall"; add comma to series; delete comma from two-element series; use "USDOT"
733.118 (f)	273.18 (f)	Delete comma from two-element series; use impersonal "it"; "originating handler"; add "shall perform either . . ."
733.118 (g)	273.18 (g)	Use "shall"; give Agency as contact
733.118 (h)	273.18 (h)	Add comma in series; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.120	273.20	Use impersonal "that"; use "shall"; use semicolons in series; use "USEPA"; add comma for parenthetical
733.131	273.31	Move "prohibited from" to preamble; add commas for parentheticals
733.132 (a)	273.32 (a)	Add subsection heading; use "shall"; add reference to "Region V"; add references to notification of Agency; use

		"USEPA"; use impersonal "that" and "its"; add commas in parentheses
733.132 (g)	273.32 (g)	Add explanatory Board Note
733.133 (a) & (b)	273.33 (a) & (b)	Use "shall"; add commas in parentheses; remove comma from two-element series; use "or" in place of "and/or"; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.133 (c)	273.33 (c)	Use "shall"; add "follows each . . ."; add "it" to subsections; add subsection heading; use impersonal "that"; add "or"; use "or" in place of "and/or"; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.134	273.34	Use "and" in place of virgule; use "shall"; use "as follows"; correct placement of quotation marks; use commas in parentheses; add subsection heading; use "USDOT"; add "or"; remove commas from non-parenthetical language
733.135	273.35	Remove commas from non-parenthetical language; use "shall"; add "in any of the following ways"; move "on-site"; use "that"; sue past-tense "became" and "was"
733.136	273.36	Use "shall"
733.137	273.37	Use "shall"; use singular "waste"
733.138	273.38	Use "shall"; use "USDOT"; use impersonal "it" & "the originating handler"; add "perform"

		either of . . ."; give Agency as contact; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.139	273.39	Use "shall"
733.140	273.40	Use impersonal "that"; use "shall; add semicolons in series; use "USEPA"
733.151	273.51	Move "prohibited from . . ." to preamble
733.152	273.52	Use "USDOT"; add incorporation cross-references; remove reference to USEPA
733.153	273.53	Use "shall"
733.154	273.54	Use "shall"; use singular "waste"
733.155	273.55	Use "USDOT"; add incorporation cross-reference
733.156	273.56	Use "USEPA"; use "shall"; add "the following"
733.160	273.60	Replace colon with period; use "shall"
733.161	273.61	Add comma & "a" in series, use impersonal "it" & "the shipper"; use "shall"; give Agency as contact; add "nonhazardous" parenthetical; add Board Note referencing sources of nonhazardous waste regulations
733.162	273.62	Use "shall"
733.170	273.70	Use "as follows"
733.180	273.80	Use "as follows"; restructure to indicate both identical-in-substance and general rulemaking routes; give the Board as

the source of relief; add Board Note; subdivide subsection (c); use "the requested relief"

733.181	273.81	Delete self-reference to Part from Section heading; add subsection headings; use "or" in place of "and/or"; use "USDOT"
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Deletion of Obsolete, Redundant, and Outdated Rules--Sections 702.110, 703.150 through 703.152, 726.203 & 726.204

USEPA engaged in a series of actions on June 29, 1995 prompted by a Presidential directive. On March 4, 1995, the President ordered all executive agencies to review their regulations and identify those that are obsolete or unduly burdensome. USEPA adopted amendments to its RCRA Subtitle C and Subtitle D programs on June 29, 1995, at 60 Fed. Reg. 33912, that delete obsolete, redundant, and outdated segments of those rules.

A handful of amendments were prompted to the Illinois rules by those federal amendments. As an expedient way of outlining the federal amendments and the corresponding Board actions, the Board sets forth the following table indicating the federal deletions and corresponding Board actions:

Obsolete, Redundant, and Out-Dated Provisions Deleted

<u>40 CFR Provision</u>	<u>35 Ill. Adm. Code Provision</u>	<u>Federal Action; Board Comments</u>
261.31(a) footnote 1	721.131(a)	Removal of note re the administrative stay of F032, F034, and F035 listings; deleted by Board on October 21, 1993 in R93-4
266.103(c) (5)	726.203(c) (5)	Deletion of language relating to election to comply with alternative HC provision of 266.104(f); amendment made
266.104(f)	726.204(f)	Deletion of alternative HC limit; amendment made
267	(727)	Deletion of interim standards for new hazardous waste

		disposal facilities that expired on February 13, 1983; no amendment necessary because the Board never adopted the standards
270.2 "Phase I", "Phase II" & "interim authorization"	702.110	"Phase I" and "Phase II" definitions deleted, statutory reference updated; amendments made
270.10(e) (4)	703.150(d)	References to "Phase II" deleted; although the Board did not incorporate the references, so none directly required, but amendment made to remove language relating to federal authorization of Illinois (Phase II) program rules and Board Note updated to indicate federal amendment
270.10(f) (2)	703.151(b)	References to "Phase II" deleted; the Board did not incorporate the references, so none directly required, but Board Note updated to indicate federal amendment
270.10(g) (1)	703.152(a)	References to "Phase II" deleted; the Board did not incorporate the references, so none directly required, but Board Note updated to indicate federal amendment

HISTORY OF RCRA SUBTITLE C and UIC ADOPTION

The Illinois UIC (Underground Injection Control) and RCRA (Resource Conservation and Recovery Act) Subtitle C regulations, together with more stringent state regulations particularly applicable to hazardous waste, include the following Parts of Title 35 of the Illinois Administrative Code:

- 700 Outline of Waste Disposal Regulations
- 702 RCRA Subtitle C and UIC Permit Programs
- 703 RCRA Subtitle C Permit Program

- 704 UIC Permit Program
- 705 Procedures for Permit Issuance
- 709 Wastestream Authorizations
- 720 General
- 721 Identification and Listing
- 722 Generator Standards
- 723 Transporter Standards
- 724 Final TSD Standards
- 725 Interim Status TSD Standards
- 726 Specific Wastes and Management Facilities
- 728 USEPA Land Disposal Restrictions
- 729 Landfills: Prohibited Wastes
- 730 UIC Operating Requirements
- 731 Underground Storage Tanks
- 732 Petroleum Underground Storage Tanks
- 738 Hazardous Waste Injection Restrictions
- 739 Standards for the Management of Used Oil

Special provisions for RCRA Subtitle C cases are included in Parts 102, 103, 104 and 106 of the Board's procedural rules.

History of RCRA Subtitle C and State Hazardous Waste Rules Adoption

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA Subtitle C regulations. USEPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. USEPA granted final authorization of the Illinois RCRA Subtitle C "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). USEPA granted authorization to "Cluster I revisions" to the Illinois program and granted partial Hazardous and Solid Waste Amendments (HSWA) (Pub. L. 98-616, Nov. 8, 1984) authorization effective March 5, 1988, at 53 Fed. Reg. 126 (January 5, 1988). USEPA authorized certain subsequent amendments and granted further partial HSWA authorizations effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), and June 3, 1991, at 56 Fed. Reg. 13595 (April 3, 1991); and August 14, 1994, at 59 Fed. Reg. 30525 (June 14, 1994). USEPA codified its approvals of the Illinois program at 40 CFR 272.700 and 272.701 on November 13, 1989, at 54 Fed. Reg. 37649 (Sep. 12, 1989), and on March 31, 1992, at 57 Fed. Reg. 3731 (Jan. 31, 1992). The entire listing of all RCRA Subtitle C identical in substance rulemakings follows (with the

period of corresponding federal revisions indicated in parentheses):

- R81-22 45 PCB 317, September 16, 1981 & February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)
- R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R82-19⁴ 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)
- R83-24⁴ 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)
- R84-9 64 PCB 427 & 521, June 13 & 27, 1985; 9 Ill. Reg. 11964, August 2, 1985, effective July 8 & 24, 1985. (1/19/83 through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)

⁴ On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison Co. v. PCB, 127 Ill. App. 3d 446; 468 N.E.2d 1339 (3d Dist. 1984).)

- R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)
- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 & 12, 1987. (10/1/86 through 12/31/86)
- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)
- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)
- R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)
- R90-17 Delisting Procedures (See below)
- R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)

- R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)
- R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)
- R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg. 17636, effective November 6, 1992. (7/1/91 through 12/31/91)
- R92-10 138 PCB 549, January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)
- R93-4 -- PCB --, September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)
- R93-16 -- PCB --, March 17, 1994, Supplemental opinion and order on April 21, 1994. (1/1/93 through 6/30/93)
- R94-7 -- PCB --, June 23, 1994; 18 Ill. Reg. 12160, effective July 29, 1994. (7/1/93 through 12/31/93)
- R94-17 -- PCB --, October 20, 1994; 18 Ill. Reg. 17480, effective November 23, 1994. (1/1/94 through 6/30/94)
- R95-6 -- PCB --, June 1 & 15, 1995; 19 Ill. Reg. 9501, effective June 27, 1995. (Consolidated with R95-4, UIC Update.) (7/1/94 through 12/31/94)
- R95-20 Present docket. (1/1/95 through 6/30/95)
- R96-10 Next docket. (7/1/95 through 12/31/95)

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

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

This was repealed by R85-22, which included adoption of USEPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted USEPA delistings at the request of Amoco, Envirite, USX, and CSI (the date of the corresponding federal action is included in parentheses):

- R85-2 69 PCB 314, April 24, 1986; 10 Ill. Reg. 8112, May 16, 1986, effective May 2, 1986. (Amoco Corp.)
- R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (Envirite Corp.)
- R91-12 128 PCB 369, December 19, 1991; 16 Ill. Reg. 2155, effective January 27, 1992. (USX Corp.)
- R95-20 This docket. (CSI)

Subsequently, upon the April 30, 1990 federal authorization of Illinois granting waste delistings, USEPA transferred pending delisting petitions to the Board. The Board docketed these as site-specific rulemaking proceedings (the name of the petitioner waste generator appears in parentheses):

- R90-18 Dismissed at 123 PCB 65, June 6, 1991. (USX Corp., South Works)
- R90-19 Dismissed at 116 PCB 199, November 8, 1990. (Woodward Governor Co.)
- R90-23 Dismissed at 124 PCB 149, July 11, 1991. (Keystone Steel & Wire Co.)

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

- R90-17 119 PCB 181, February 28, 1991; 15 Ill. Reg. 7934, effective May 9, 1991.

Waste generators have filed Part 106 adjusted standard petitions for solid waste determinations with the Board pursuant to Section 720.130 (generator name in parentheses):

- AS89-4 Dismissed at 105 PCB 269, November 15, 1989. (Safety-Kleen Corp.)
- AS89-5 Dismissed at 113 PCB 111, July 3, 1990. (Safety-Kleen Corp.)

AS90-7 Dismissed at 124 PCB 125, July 11, 1991. (Quantum Chemical Co.)

Waste generators have filed Part 106 adjusted standard petitions for hazardous waste delistings with the Board pursuant to Section 720.122 (generator name in parentheses):

AS91-1 Granted at 130 PCB 113, February 6, 1992, and modified at 133 PCB 189, April 23, 1992. (Keystone Steel & Wire Co.)

AS91-3 Granted at 139 PCB 121, February 4, 1993; opinion issued at 140 PCB --, March 11, 1993. (Peoria Disposal Co.)

AS93-7 Granted at -- PCB --, February 17, 1994. (Keystone Steel & Wire Co.)

AS94-10 Granted at -- PCB --, December 14, 1994. (Envirite Corporation.)

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

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

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

One Part 106 adjusted standard proceeding filed pursuant to 728.106 sought relief from a prohibition against land disposal (petitioner's name in parentheses):

AS90-6 Dismissed at 136 PCB 93, September 17, 1992. (Marathon Petroleum Co.)

Other adjusted standard proceedings sought relief from aspects of the land disposal unit closure and post-closure care requirements (petitioners' names in parentheses):

AS90-8 130 PCB 349, February 27, 1992. (Olin Corp.)

AS91-4 131 PCB 43, March 11, 1992. (Amoco Oil Co.)

One adjusted standard proceeding sought relief from a RCRA Subtitle C land disposal restriction (petitioner's name in parentheses):

AS90-6 136 PCB 6, September 17, 1992. (Marathon Petroleum Co.)

Still another adjusted standard proceeding relates to substantive treatment, storage, and disposal facility requirements of the RCRA Subtitle C regulations (petitioner's name and requirements involved in parentheses):

AS91-10 Dismissed at -- PCB --, May 19, 1994. (Cabot Corp.; secondary containment for tanks)

In another regulatory proceeding, the Board has considered granting temporary relief from the termination of an exclusion of a hazardous waste listing in the form of an emergency rule (Petitioner's name in parentheses):

R91-11 Dismissed at 125 PCB 295, August 8, 1991. (Big River Zinc Corp.)

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

R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 14, 1984, effective December 4, 1984.

R83-28 68 PCB 295, February 26, 1986; 10 Ill. Reg. 4875, March 21, 1986, effective March 7, 1986.

R86-9 Emergency regulations adopted at 73 PCB 427, October 23, 1986; 10 Ill. Reg. 19787, November 21, 1986, effective November 5, 1986.

The Board's action in adopting emergency regulations in R86-9 was reversed by the First District Court of Appeals. (Citizens for a Better Environment v. PCB, 152 Ill. App. 3d 105, 504 N.E.2d 166 (1st Dist. 1987).)

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA Subtitle C docket. USEPA authorized the Illinois UIC program on

March 3, 1984, at 49 Fed. Reg. 3991 (Feb. 1, 1984); codified that approval as 40 CFR 147, Subpart O, at 49 Fed. Reg. 20197 (May 11, 1984); and amended the authorization at 53 Fed. Reg. 43087 (Oct. 25, 1988). The entire listing of all UIC rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R81-32 47 PCB 93, May 13, 1982; 6 Ill. Reg. 12479, October 15, 1982, effective February 1, 1984. (7/7/81 through 11/23/81)
- R82-18 51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983, effective December 19, 1983. (4/1/83)
- R85-23 70 PCB 311 & 71 PCB 108, June 20 & July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 & 29, 1986. (5/11/84 through 11/15/84)
- R86-27 Dismissed at 77 PCB 234, April 16, 1987. (No USEPA amendments through 12/31/86).
- R87-29 85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87)
- R88-2 90 PCB 679, June 30, 1988; 12 Ill. Reg. 13700, August 26, 1988, effective August 16, 1988. (7/1/87 through 12/31/87)
- R88-17 94 PCB 227, December 15, 1988; 13 Ill. Reg. 478, January 13, 1989, effective December 30, 1988. (1/1/88 through 6/30/88)
- R89-2 107 PCB 369, January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11 111 PCB 489, May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5 Dismissed at 109 PCB 627, March 22, 1990. (No USEPA amendments 12/1/89 through 12/31/89)

- R90-14 122 PCB 335, May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991. (1/1/90 through 6/30/90)
- R91-4 Dismissed at 119 PCB 219, February 28, 1991. (No USEPA amendments 9/1/90 through 12/31/90)
- R91-16 Dismissed at 128 PCB 229, December 6, 1991. (No USEPA amendments 1/1/90 through 6/30/91)
- R92-4 Dismissed at 133 PCB 107, April 9, 1992. (No USEPA amendments 7/1/91 through 12/31/91)
- R92-13 139 PCB 361, February 4, 1993; 17 Ill. Reg. 6190, effective April 5, 1993. (1/1/92 through 6/30/92)
- R93-6 -- PCB --, August 5, 1993; 17 Ill. Reg. 15641, effective September 14, 1993. (7/1/92 through 12/31/92)
- R93-17 Dismissed at -- PCB --, September 23, 1993. (No USEPA amendments 1/1/93 through 6/30/93)
- R94-5 -- PCB --, November 3, 1994; 18 Ill. Reg. 18244, effective December 20, 1994. (7/1/93 through 12/31/93)
- R94-24 -- PCB --, October 6, 1994. (USEPA amendments 7/1/93 through 12/31/94 included in RCRA Subtitle C docket R94-17)
- R95-4 -- PCB --, June 1 & 15, 1995; 19 Ill. Reg. 9501, effective June 27, 1995. (Consolidated with R95-6, RCRA Subtitle C Update.) (7/1/94 through 12/31/94)
- R95-18 Dismissed-- PCB --, October 5, 1995. (No USEPA amendments 1/1/95 through 6/30/95)
- R96-8 Next docket. (7/1/95 through 12/31/95)

In one proceeding filed, the Board granted an adjusted standard from a UIC land disposal restriction, pursuant to the procedures outlined above with respect to the RCRA Subtitle C program (petitioner name in parentheses):

- AS92-8 Granted at -- PCB --, February 17, 1994. (Cabot Corp.; no migration exception)

AGENCY OR BOARD ACTION?

Section 7.2(a)(5) of the Act requires the Board to specify which decisions USEPA will retain. In addition, the Board is to specify which State agency is to make decisions, based on the general division of functions within the Act and other Illinois statutes.

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

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

1. Is the person making the decision applying a Board regulation, or taking action contrary to ("waiving") a Board regulation? It generally takes some form of Board action to "waive" a Board regulation.
2. Is there a clear standard for action such that the Board can give meaningful review to an Agency decision?
3. Does the action result in exemption from the permit requirement itself? If so, Board action is generally required.
4. Does the decision amount to "determining, defining or implementing environmental control standards" within the meaning of Section 5(b) of the Act. If so, it must be made by the Board.

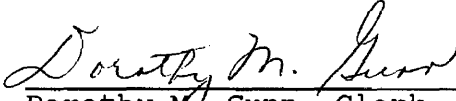
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note that there often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

EDITORIAL CONVENTIONS

As a final note, the federal rules have been edited to establish a uniform usage throughout the Board's regulations. For example, with respect to "shall", "will", and "may" - "shall"

is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "Will" is used when the Board obliges itself to do something. "May" is used when choice of a provision is optional. "Or" is used rather than "and/or", and denotes "one or both". "Either"... "or" denotes "one but not both". "And" denotes "both".

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion was adopted on the 12th day of February, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board