

ILLINOIS POLLUTION CONTROL BOARD
August 11, 1994

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R94-5
(6-1-93 THROUGH 12-31-93)) (Identical in Substance Rules)

Proposal for Public Comment.

PROPOSED OPINION OF THE BOARD (by R.C. Flemal):

Pursuant to Sections 13(c) and 22.4(a) of the Environmental Protection Act (Act), the Board proposes amendments to the Underground Injection Control (UIC) regulations.

Both Sections 13(c) and 22.4(a) provide for quick adoption of regulations that are "identical in substance" to federal regulations and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. 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 UIC regulations are found at 40 CFR 144, 146, and 148. This rulemaking updates UIC rules to correspond with federal amendments made in the period from July 1 through December 31, 1993. The USEPA action during this period is as follows:

Federal Action	Summary
58 Fed. Reg. 63890 (Dec. 3, 1993)	Clarification of current requirements for wells authorized by rule, the rules for financial responsibility obligations of parties to a well transfer, the criteria for demonstrating mechanical integrity through annulus pressure monitoring records, and the authority of the UIC program director to require information on any well.

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 U.S. EPA review. The complete text of the proposed amendments appears in a separate order adopted this day.

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

The Board appended three routine discussions at the end of this opinion. The first is a summary history of the Illinois RCRA 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

In a single action dated December 3, 1993, U.S. EPA undertook four basic sets of clarifying amendments. Each basic set has a distinct impact on the Illinois UIC regulations. In addition to the amendments directly derived from the federal amendments involved, the Board is undertaking a number of "housekeeping" amendments to correct certain aspects of the base regulatory text. This discussion focuses on each by subject matter and the Illinois Section impacted.

Financial Responsibility--Sections 702.110, 704.142, 704.150 & 704.152

U.S. EPA amended the financial responsibility requirements at 58 Fed. Reg. 63895, on December 3, 1993 to clarify the financial responsibility requirements for the parties to a well transfer. It added definitions of "transferee" and "transferor" to 40 CFR 144.3 (corresponding with 35 Ill. Adm. Code 702.110). It amended 40 CFR 144.28(d) (corresponding with 35 Ill. Adm. Code 704.150(d)), by amending paragraphs (d)(1) and (d)(2); renumbering (f)(2) and (f)(3) to (f)(5) and (f)(6); and adding paragraphs (d)(5), (d)(6), and (f)(2) through (f)(4), so that a transferor of a Class I or Class III well must now maintain financial responsibility for the well until notified by U.S. EPA that the transferee has adequately demonstrated financial responsibility for the well or the well has been plugged and abandoned or converted in compliance with the regulations. U.S. EPA now requires, at 40 CFR 144.28(l) (corresponding with 35 Ill. Adm. Code 704.150(l)), that a notice of transfer submitted to the Agency include an agreed date certain by which the transferee will demonstrate financial responsibility for the injection well. This provision authorizes the transferee to inject until it has

failed to prove responsibility. 40 CFR 144.21(c)(7) (corresponding with 35 Ill. Adm. Code 704.142(g)) was added to require an immediate cessation of injection if the Agency notifies the owner or operator that the transferee has failed to adequately demonstrate financial assurance. 40 CFR 144.52(a)(7) (corresponding with 35 Ill. Adm. Code 704.189(a)) and 40 CFR 144.28(d)(1) (corresponding with 35 Ill. Adm. Code 704.150(d)(1)) now require an owner or operator and the transferee to each maintain financial responsibility for the well until the well is converted, plugged and abandoned, or the owner or operator receives notice from the Agency that the transferee has adequately demonstrated financial responsibility. The demonstration of financial responsibility was to have been made within a year of when U.S. EPA approved the Illinois program (see below) or when designated in the notice of transfer of operational control, if the transfer was later, under amended 40 CFR 144.28(d)(2) (corresponding with 35 Ill. Adm. Code 704.150(d)(2)).

U.S. EPA also simultaneously revised the financial assurance requirements, at 40 CFR 144.28(d)(5) and (d)(6) (corresponding with 35 Ill. Adm. Code 704.150(d)(5) and (d)(6)), to require notice to the Agency of any proceedings in bankruptcy involving the owner or operator. If the owner or operator has provided a financial statement for proving financial responsibility, it must immediately cease injection until it provides alternative financial responsibility. 40 CFR 144.21(c)(5) (corresponding with 35 Ill. Adm. Code 704.142(e)) was added to require an immediate cessation of injection if the owner or operator fails to provide alternative financial assurance upon commencement of bankruptcy proceedings.

The Board made a small number of corrections to the federal text. In adapting the federal language to Section 704.142, the Board corrected the improper cross-reference to 40 CFR 144.28(d)(7) at 40 CFR 144.21(c)(5) to 35 Ill. Adm. Code 704.150(d)(6). We also added indefinite articles to subsections (a) through (e) and references to the appropriate statutory authority for the Agency or a court to order immediate cessation of injection at subsection (f) of that Section. We substituted "it" for "he" at Section 704.150(1)(3) for clarity.

Other corrections relate to adapting the Illinois regulations to accommodate the federal text. For example, there is a near linear correspondence in the structures of 40 CFR 144.28 and 35 Ill. Adm. Code 144.150. To enhance the relationship, the Board inserted nonsubstantive explanatory text at subsections (e), (g)(2), and (h)(2) to correspond with federal provisions that have not been made part of the Illinois rules. We added similar language at Section 704.142. **The Board invites comment on our approach to the financial responsibility amendments.**

Authorization by Rule--Sections 704.121, 704.141 through 704.144, 704.146 through 704.150 & 704.161

U.S. EPA amended the authorization by rule requirements at 58 Fed. Reg. 63895, on December 3, 1993 for the purposes of clarification. Minor clarifying amendments to 40 CFR 144.11 (corresponding with 35 Ill. Adm. Code 704.121) simplify the wording, and appear to refocus the authorization by rule to the well itself. Amendments to 40 CFR 144.17(a) (formerly the preamble; corresponding with 35 Ill. Adm. Code 704.141(a)) state the conditions under which authorization by rule occur: (1) the injection occurred within one year of federal authorization of the state's UIC program, or (2) the owner or operator properly inventoried the well. It also states the conditions for authorization, that the owner or operator manage the well in compliance with the UIC regulations. What was formerly designated subsection (a) in the federal rules (corresponding with 35 Ill. Adm. Code 704.143) is now subsection (b) as a result of renumbering the preamble language. Subsection (b) also received amendments that designate when authorization by rule terminates. Formerly, the criteria for termination were the grant of a permit, a permit denial, a failure to timely file a permit application, and a failure to comply with substantive requirements. Now, authorization by rule terminates when a permit is granted, plugging and abandonment, and well conversion. 40 CFR 144.21(c) (corresponding with 35 Ill. Adm. Code 704.142) was added. It recites conditions under which an owner or operator injecting into a well authorized by rule must terminate injection. These include a permit denial; a failure to timely submit a permit application, inventory information, financial assurance, or other information; or upon notification from the Agency that the well lacks integrity or that a transferee has not demonstrated financial assurance. As a result of the additions to this provision, subsections (b) and (c) were renumbered to subsections (d) and (e) (corresponding with 35 Ill. Adm. Code 704.141(b) and 704.144(e), respectively).

40 CFR 144.24 (corresponding with 35 Ill. Adm. Code 704.146) contains the authorization by rule provisions for Class V injection wells. U.S. EPA amended this section to include that authorization by rule expires upon a grant of permit and that an owner or operator is prohibited from injection upon a permit denial or a failure to timely submit a permit application, inventory information, or requested information.

40 CFR 144.25 (corresponding with 35 Ill. Adm. Code 704.147) recites when the Agency may demand a permit application. The amendments appear aimed at shifting the focus of authorization from the owner or operator to the well itself in subsections (a) and (c), and they shift from termination of authorization upon certain occurrences to prohibition against injection. The

amendments to 40 CFR 144.25 (corresponding with 35 Ill. Adm. Code 704.148, which relates to inventory requirements, make similar shifts at the preamble. At subsections (d) (amended) and (e) (added), U.S. EPA gives deadlines for submission of inventory information. The general deadline has shifted from one year from attaining authorization by rule to the date when U.S. EPA approved the state's UIC program (see discussion below), unless the well owner or operator had filed a permit application within one year of when the federal program became effective. The Agency needs not require inventory information of the owner or operator of a well that has RCRA interim status. For Class IV wells, the deadline given is 60 days of that effective date. For Class V wells, U.S. EPA now allows the owner or operator to resume injection 90 days after submitting the inventory required information, unless it receives a notification from the Agency that injection may not resume or that it may resume sooner. The owner or operator of a Class V well that started injection prior to one year after federal approval of the state program must submit the inventory information by May 2, 1995. If injection begins after May 2, 1994, the owner or operator must submit the inventory information before beginning injection.

40 CFR 144.27 (corresponding with 35 Ill. Adm. Code 704.149) was reorganized slightly, but U.S. EPA again shifted the focus at subsection (c) (formerly (b)) from termination of authorization by rule to a prohibition on injection upon certain failures of the owner or operator. 40 CFR 144.31(a) (corresponding with 35 Ill. Adm. Code 704.161(a)), pertaining to permit applications was substantially reworded, but the only substantive changes appear to be that an owner or operator injecting into a well authorized by rule must ultimately apply for a permit unless the authorization is for the life of the well and that authorization no longer terminates upon denial of a permit. 40 CFR 144.31(c)(2) (corresponding with 35 Ill. Adm. Code 704.161(b)(2)) was amended solely to show the renumbering of 40 CFR 144.21(b) to 144.21(d). Subsection (e)(10) (corresponding with subsection (e)(2)) of that section was added to require an owner or operator to submit a plugging or abandonment report.

The Board has followed the federal amendments, making only minor changes in the text for the sake of clarity and conformity with the Board's drafting style. Designation of actual dates in place of the federal "upon the effective date of . . ." and minor stylistic changes are discussed more fully in following segments of this discussion. We added "any of" to Sections 704.143(a), 704.146(b), and 704.149(c); "submitted" to subsection Section 704.143(b), "that is" to Section 704.147(a); "the owner or operator of" to Section 704.147(a); broke Section 704.147(b) into subsections; added "U.S. EPA" at Section 704.148(d)(2), where the effective date of the federal program was apparently intended; added "that it" at Section 704.148(e)(4); repunctuated Section 704.150(b)(3) for clarity; added "is submitted" to Section

704.150(f)(2)(A)(i); substituted "permit condition" for "by letter" at Section 704.150(f)(2)(B), since that is how the Agency must require compliance under the Act; and added "the applicant shall submit a" to Section 704.161(e)(2) to accommodate the changed structure of the Illinois regulations. **The Board invites public comment on its approach to the federal authorization by rule amendments.**

Mechanical Integrity Testing Requirements--Sections 704.181 & 730.108

U.S. EPA amended the mechanical integrity testing requirements. 40 CFR 144.51(p) (corresponding with 35 Ill. Adm. Code 704.181(g)) was removed, paragraph (o) (corresponding with subsection (g)) was redesignated as (p) (corresponding with subsection (g)), and new paragraphs (o) and (q) were added (corresponding with subsections (f) and (h)). New paragraph (o) allows the imposition of a permit condition that plugging and abandonment of a well will not allow the migration of fluids into or between underground sources of drinking water (USDWs), or the Agency can require revision of the plugging and abandonment plan or deny the permit. This provision explicitly states that termination of injection is not abandonment. New paragraph (q) requires the owner or operator to maintain and establish mechanical integrity on a schedule established by the Agency. If the Agency determines, based on information submitted by the owner or operator, that the well lacks integrity, it must send a notice to that effect to the owner or operator. The owner or operator must cease injection within 48 hours of receiving the notice from the Agency.

U.S. EPA also amended the substantive mechanical integrity testing requirements of Section 146.8 (corresponding with 35 Ill. Adm. Code 730.108) to set forth the procedure for monitoring the annulus pressure with greater specificity. Section 146.8(b)(1) (corresponding with 35 Ill. Adm. Code 730.108(b)(1)) now requires repeated testing of the tubing-annulus pressure, at sufficient frequency as to be representative, as determined by the Agency, at a pressure different from atmospheric pressure at the surface. New Section 146.8(f) (corresponding with 35 Ill. Adm. Code 730.108(f)) allows the Agency to require additional or alternative tests if the required testing does not sufficiently demonstrate that there is no movement of fluid into or between USDWs.

The Board has adapted the mechanical integrity testing requirements without substantive change. **We invite public comment on our approach to the federal mechanical integrity testing requirements.**

Recordskeeping and Reporting Requirements--Section 704.194

U.S. EPA added new 40 CFR 144.17 (corresponding with 35 Ill. Adm. Code 704.194). This provision allows the Agency to require an owner or operator to establish and maintain records and make reports, in order to demonstrate compliance. The Board has reworded the federal language for consistency with the requirements of Illinois administrative law. The reworded provision requires the Agency to require the maintenance of such records and submission of such reports by permit condition as the Agency deems are necessary to demonstrate compliance with the Act and the Illinois regulations. **The Board invites public comments on our approach to this recordskeeping and reporting requirement.**

Deletion of Class V Well Inventory Requirement--Section 738.152

U.S. EPA deleted the 40 CFR 146.52 (corresponding with 35 Ill. Adm. Code 730.152) requirement for reporting the existence of a Class V injection well and for submitting inventory information for that well within a year of when U.S. EPA approved the state program (i.e., by March 3, 1983). The Board incorporated this repeal without deviation.

Plenary Corrections to the Permitting Rules and Related Provisions--Parts 700, 702, 703, 704, 705, and 730

The Board is using this opportunity to make several corrections related to the earliest adoption and implementation of the UIC and RCRA permitting rules. Some of these problems arose in the time since the Board initially adopted the regulations as a result of an intervening restructuring of the federal regulations. Others of the problems arose in the early adoption of these regulations, and the Board surmounted those by resort to a series of reference to events that would occur in the future--events that have long since occurred. The result is that the Board must correct references to federal regulations in several Board Notes and several recitations of effective dates in the rules.

The first set of corrective amendments relates to references to federal regulations. The Board initially based the RCRA Subtitle C and UIC permitting rules on the federal consolidated permit rules. Those federal rules set forth the federal permit requirements and procedures for all programs, air, water, and solid waste, in a single, central location: 40 CFR 122 through 124. The Board adopted a consolidated structure for the permit rules, with 35 Ill. Adm. Code 702 through 705 setting forth the permitting requirements for the RCRA Subtitle C and UIC programs. Parts 702, largely drawn on 40 CFR 122 and 705 set forth requirements applicable to both programs. Part 703 applied only

to RCRA permitting, and Part 704 applied only to UIC permitting. Part 700 was a set of general provisions applicable to both programs, but which also set forth the interplay with other regulations, such as non-hazardous solid waste (landfills, infectious waste, and special waste hauling) and water pollution control. As is the Board's custom, we added Board Note references to the federal rules from which we derived each Section of the UIC and RCRA permit rules.

U.S. EPA deconsolidated the permit rules on April 1, 1983, at 48 Fed. Reg. 14146. 40 CFR 122 and 123 now apply exclusively to Clean Water Act permits (NPDES and wastewater pretreatment). 40 CFR 144 sets forth the UIC permit requirements, and 40 CFR 270 sets forth the RCRA Subtitle C permit requirements. 40 CFR 124 still includes general procedural requirements for all programs.

After the deconsolidation of the federal permit rules, the Board began updating the Board Notes to reflect the changed source for each provision. We restricted the updates to Sections open for other amendments. Since that time, the Board Note references in several Sections have changed to reflect the new references. However, several Sections remain with references to now defunct federal provisions. For these reasons, we use this opportunity to change all remaining references in Parts 702, 703, and 704, without regard to whether those Sections would have included amendments based on the December 3, 1993 federal action that is the basis of this rulemaking. Further, we included Part 703, which pertains only to RCRA permitting at this time, rather than deferring this action to the next RCRA Subtitle C update, because of the convenience of performing this task at one time. It has been over 11 years since U.S. EPA deconsolidated the permit rules, and we cannot see any reason to delay this action for a simple preference for performing the update amendments incidental to other, federally-derived amendments. The difficulty of tracing the federal amendments only increases with the passage of time.

Thus, relative to the references to federal regulations, the Board has now amended the text of the rules to correct references to 40 CFR 122 to the current references in 40 CFR 144 (UIC) and 270 (RCRA). Amended are text at Section 702.101(a)(3) and the Board Notes at Sections 702.101, 702.103, 702.124, 702.125, 702.140, 702.142 through 702.149, 702.151, 702.162 through 702.164, 703.126, 703.154, 703.156, 703.184, 703.200, 703.201, 703.205, 703.224, 703.242, 703.246, 704.102 through 704.105, 704.121, 704.123, 704.143, 704.146, 704.182 through 704.186, 704.190 through 704.193. We added a reference to the appropriate 40 CFR 270 provision at Sections 702.110 and 702.141, where there were formerly only references to 40 CFR 144. We added references to 40 CFR 270 at Section 703.158, 703.208, 703.210, 703.211, and 703.283, where there were formerly no references, and corrected the references at Sections 703.186, 703.206, 703.245, and

703.247. We corrected references to 40 CFR 144 at Sections 704.141, 704.144, 704.213, 704.261, and 704.263. We added references to 40 CFR 144 at Sections 704.142, where none appeared before. We repealed Section 702.102, rather than update the Board Note, since that Section no longer has a federal counterpart and it serves no useful function at this time. The Board repealed Section 703.244 because it duplicates Section 703.247 and virtually repealed 704.164 because it duplicates Section 702.163. We corrected a reference to 40 CFR 124 at Sections 705.121 and added them at Sections 705.127, 705.201 through 705.205, and 705.212. In addition to these corrections, and as a routine matter, we have corrected the Board Note format where necessary and have reference the 1993 Code of Federal Regulations for 40 CFR 144 and the 1992 Code for 40 CFR 270, since these are the latest versions available and in the Board's possession.

The second set of corrective amendments relates to effective date references in the text and in source notes. The federal RCRA statute and SDWA, the basis for the federal UIC program, both provide that federal law preempts all state regulations not approved by U.S. EPA. For this reason, in the initial adoption and amendments of the UIC and RCRA regulations, the Board adapted the effective dates in the text and the required source notes for each Parts 700, 702, 704, 705, 720 through 723 and 725. At Section 700.106 we stipulated that the provisions of the UIC and RCRA rules would become effective upon federal authorization of the applicable program, and that the state would not issue permits until the date that U.S. EPA granted that authority. For the effective dates of the regulations, in the main source note to each Part and in each Section source note the Board cross-referenced to Section 700.106 for the effective date. At the time the regulations and initial amendments occurred, no federal authorizations had occurred.

As is set forth in greater detail in the historical summary incorporated into this opinion, U.S. EPA granted Illinois interim authorization to administer the RCRA Subtitle C program effective May 17, 1982. It conferred final authorization effective January 31, 1986. The interim authorization allowed the implementation of the Illinois substantive generator, transporter, and interim status treatment, storage, and disposal (T/S/D) facility standards. The final authorization allowed the state to begin granting permits for T/S/D facilities. U.S. EPA granted authorization for the UIC program effective March 3, 1984. This allowed implementation of the Illinois substantive UIC regulations and the granting of permits by the state.

As for dealing with the corrections to the references to federal rules, discussed above, the Board chose to make the corrections to effective date references as we opened Sections for federal amendments. Similarly to the situation of the

references to the consolidated permit rules, it is now several years later, and there remain numerous effective date references to "effective as noted in Section 700.106" throughout the rules. Section 700.106 itself, in turn, only contains several references to "effective upon approval by the U.S. EPA", without setting forth actual dates. As noted, those dates are March 3, 1984 for UIC regulations and permitting, May 17, 1982 for the substantive RCRA regulations, and January 31, 1986 for RCRA permitting.

To avoid any further possibility of confusion, we are beginning the substitution of the actual dates in the appropriate places at this time. First, the Board has restructured Section 700.106 so that it now acts as a reference to federal authorizations and when the Parts involved in the initial adoption of the UIC and RCRA programs took effect. In the course of reviewing Part 700 for related and other corrections based on intervening events since its last amendment in December, 1983, we noted a number of problems with this Part. The Section source notes throughout refer to Section 700.106 for an effective date, and this Part refers to uncodified rules, of which there are no longer any. Various other provisions perform general, but unnecessary functions, such as outlining the structure of the Board's regulations, reciting savings clauses, and duplicating statements of applicability for other Parts. The only Section in this Part that serves any present function essential to the UIC and RCRA regulations, as explained below, is Section 700.106. For these reasons, it is easier to delete the provisions than to repair them, so the Board has repealed all of Part 700 but Section 700.106.

Second, multiple (usually two) references to Section 700.106 have been changed to May 17, 1982 at the main (Part) source notes to Parts 700 (three references), 702, 705, 720, 721, 722, 723, and 725. The references were changed to March 3, 1984 for the main source notes to Parts 704 and 730, even though this means that the second set of amendments to Part 704 is technically listed as effective at an earlier date, December 19, 1983. The Board has opened Sections 730.104 through 730.106, 730.132, and 730.151 for editorial amendments for the sake of changing their Section source notes.

Although these actions take care of the references to Section 700.106 throughout Parts 700, 702, 704, 705, and 730, it leaves those in Parts 720 through 723 and 725 intact. However, we cannot complete this task until the next RCRA update, since several of the references appear in substantive RCRA regulations. To the extent those references remain until then, we have updated Section 700.106, rather than repealing the Part in its entirety.

These corrections of the references to the federal regulations and the effective dates of the regulations and amendments has proven very tedious. In fact, these corrections

now constitute most of the amendments now involved in this docket. Nevertheless, the Board believes that we have already waited too long to accomplish this housekeeping matter, and we will put it off no longer. **We invite comment on our approach to these corrective amendments.**

Correction of UIC Program Approval Date--Sections 702.110, 704.141, 704.142, 704.148, 704.150 & 704.161

U.S. EPA approved the Illinois UIC program on February 1, 1984, at 49 Fed. Reg. 3991, effective March 3, 1984. The regulations previously referred to February 1, 1984 as the date of approval. Although technically true, that this was the date of the approval, the authorization was not effective on that date. This was potentially misleading, since several obligations flowed from that date. For this reason, the Board now corrects the effective date where it still appears, in Sections 702.110 ("date of approval of the Illinois UIC program"), 704.148 (end Board Note), and 704.161(b)(1)(C). Section 705.144(d) simply referred to the effective date of the permit requirements. We substitute the UIC effective date of March 3, 1984 and RCRA permitting effective date of January 31, 1986 at that provision.

The amendments of December 3, 1993 included references to the date of approval of the state program as a key date. These appeared at 40 CFR 144.21(a) (corresponding with 35 Ill. Adm. Code 704.141(a)(1)), 144.22(b)(8)(i) (corresponding with 35 Ill. Adm. Code 704.142(h)), 144.26(e)(2) (corresponding with 35 Ill. Adm. Code 704.148(d)(1)), and 144.28(d)(2) (corresponding with 35 Ill. Adm. Code 704.150(d)(2)). The Board made the similar substitution of the date in these provisions, substituting the actual date intended--even where the provision took the form "within one year after the date . . .". Where another date, such as "within 60 days of the effective date of this Section" appeared, at Section 704.145, the Board used the actual date based on computation from the effective date. **The Board invites public comment on our correction and substitution of these dates.**

Update of General Program Provisions--Sections 702.101 through 702.110

Subpart A of Part 702 includes many general provisions relating to the regulatory structure in Illinois. These include statements of purpose, scope, and applicability for the UIC and RCRA permitting rules, citation to the substantive regulations relating to each program, and procedural guidance on permit appeals and seeking adjusted standard, rulemaking, or variance relief from the Board. The review of the permitting rules for the sake of the above-described amendments indicated a need for corrective amendment of the provisions of this Subpart.

Most of the corrections are of a general nature, discussed below. Others relate to the passage of time. At Section 702.101(c)(2), the Board now refers to the substantive regulations of Parts 726, 728, 738, and 739, which we have more recently adopted. We repeal Section 702.102, since it essentially duplicates segments of Section 702.101, and change the heading of Section 702.101 accordingly. We correct Section 702.103 to indicate the reference to the current state federal confidentiality provisions, and we delete the reference to any requirements imposed by way of a permit application form. We expand Section 702.104, so that it now explains the purpose of its cross-reference. We add an explanatory discussion of identical-in-substance regulation and amend the pre-existing discussion so that it clearly refers to general rulemaking. We made clarifying changes to the Section 702.106 discussion of the Agency's adoption of implementing criteria. We amended Section 702.107 to clarify the extent of the Board's authority to review Agency determinations; in order to clarify that many Agency determinations are not within the scope of the Board's statutory authority to review Agency determinations. We added a discussion of adjusted standards to Section 702.108, which was not an option for relief at the time this Section was originally crafted. To Section 702.109, the Board has added language that explains the differences between a formal and an informal complaint and the distinction in Board activities upon receiving either. Finally, we added a definition of "Act" to Section 702.110 and consolidated the definition of "Environmental Protection Act", to correspond with the numerous citations to the Act throughout Parts 702 through 705; we change the date of approval from February 1, 1984 (when U.S. EPA published the approval) to March 3, 1984 (the date it became effective) in the definition of "date of approval by U.S. EPA of the Illinois UIC program"; and we add an explanation to the definition of "RCRA" that this refers only to the Subtitle C program, and does not include the Subtitle D (municipal solid waste landfill) and Subtitle I (underground storage tank) programs. **We invite comment on our approach to these corrective amendments.**

General Corrective Amendments--All Sections, As Necessary

As a routine matter, the Board has engaged in a number of general amendments to clean up text where necessary. This includes cleaning up the punctuation and grammar of the existing base text, as well as the text of the federal amendments, wherever necessary, to comport with the Board's current conventions of style, grammar, and punctuation, and to add clarity to the rules. Some of these amendments have been made incidental to the amendments noted above.

The amendments are minor, and do not warrant individual discussion. "Which" has been changed to "that" where it prefaces

a restrictive relative clause. Commas and semicolons were added as necessary to add clarity and to set off the last member of a series. Telephone numbers were formatted so the area code appears set off with a dash, rather than parentheses. Personal pronouns were replaced with "it", "its", and "their" to the maximum extent possible, unless a natural person was clearly intended. Where a person pronoun remained, the Board used the "he or she"/"his or her" construction to avoid gender-biased usage. We added articles, adjectives, and verbs; substituted prepositions and verbs; rearranged the positions of prepositional phrases within sentences; and performed many other grammatical revisions for clarity. **We invite comment on our approach to these corrective amendments.**

HISTORY OF RCRA SUBTITLE C, UST AND UIC ADOPTION

The Illinois UIC (Underground Injection Control), RCRA (Resource Conservation and Recovery Act) Subtitle C, and UST (Underground Storage Tank) 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 dealt with the Phase I RCRA Subtitle C regulations. U.S. EPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043 (May 17, 1982). The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. U.S. EPA granted final authorization of the Illinois RCRA Subtitle C "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). U.S. EPA 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). U.S. EPA 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). U.S. EPA 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)
- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)
- R83-24 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)
- 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. --, effective July 29, 1994. (7/1/93 through 12/31/93)
- R94-17 This docket. (1/1/94 through 6/30/94)

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).)

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 U.S. EPA's dioxin listings. Section 22.4(d) was repealed by P.A. 85-1048, effective January 1, 1989.

The Board has adopted U.S. EPA delistings at the request of Amoco and Envirite (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. (9/13/85)
- R87-30 90 PCB 665, June 30, 1988; 12 Ill. Reg. 12070, July 22, 1988, effective July 12, 1988. (11/14/86)
- R91-12 128 PCB 369, December 19, 1991; 16 Ill. Reg. 2155, effective January 27, 1992. (USX Corp.)

Subsequently, upon the April 30, 1990 federal authorization of Illinois granting waste delistings, U.S. EPA 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 Presently pending.

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. U.S. EPA 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 U.S. EPA 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 U.S. EPA 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 U.S. EPA amendments 9/1/90 through 12/31/90)
- R91-16 Dismissed at 128 PCB 229, December 6, 1991. (No U.S. EPA amendments 1/1/90 through 6/30/91)

- R92-4 Dismissed at 133 PCB 107, April 9, 1992. (No U.S. EPA 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 U.S. EPA amendments 1/1/93 through 6/30/93)
- R94-5 Present docket. (7/1/93 through 12/31/93)

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.

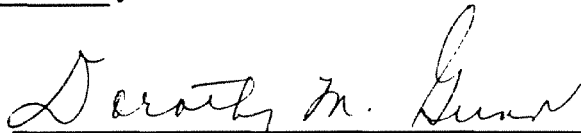
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note 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".

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 11th day of August, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board