

ILLINOIS POLLUTION CONTROL BOARD
October 20, 1994

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R94-17
(REGULATIONS 1-1-94 THROUGH) (Identical in Substance Rules)
6-30-94))

Adopted Rule. Final Order.

OPINION OF THE BOARD (by E. Dunham):

Pursuant to Section 22.4(a) of the Environmental Protection Act (Act), the Board adopts amendments to the RCRA hazardous waste (RCRA) regulations.

Section 22.4(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by U.S. EPA 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) 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 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 proposed these amendments by an opinion and order adopted August 11, 1994. Notices of proposed amendments appeared in the Illinois Register on September 2, 1994, at 18 Ill. Reg. 13173 (Part 720), 13184 (Part 721), 13242 (Part 725), 13257 (Part 728), 13295 (Part 724), 13310 (Part 739), and 13335 (Part 704).

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, 1994. The USEPA actions during this period are as follows:

Federal Action	Summary
59 Fed. Reg. 458, January 4, 1994	Determination not to regulate wastes from wood surface protection as listed hazardous wastes; update of SW-846 to include a new method; addition of four chemicals to listing of hazardous constituents

- 59 Fed. Reg. 8362,
February 18, 1994 Amendment of treatability study
exclusion from definition of solid waste
- 59 Fed. Reg. 10550,
March 4, 1994 Clarification of used oil regulations to
clarify that used oil mixed with crude
oil or natural gas liquids is exempted
from the used oil regulations; exemption
of crude oil mixed with small amounts of
used oil that is destined for insertion
into a refining process; exclusions for
certain activities from regulation as
used oil processing
- 59 Fed. Reg. 13891,
March 24, 1994 Amendment of handling codes for periodic
T/S/D facility reports
- 59 Fed. Reg. 28484,
June 2, 1994 Corrections to the wood surface
protection determination amendments
- 59 Fed. Reg. 29372,
June 7, 1994 Response to Supreme court remand in City
of Chicago v. Environmental Defense
Fund, Inc., -- U.S. --, 114 S. Ct. 1588,
128 L. Ed. 2d 302 (1994): U.S. EPA
granted an extension for facilities
managing waste-to-energy facility ash to
file a Part A permit application.
- 59 Fed. Reg. 29958,
June 10, 1994 Amendment of references to the
prescribed form for a letter of credit
Used for RCRA Subtitle C, underground
injection, and underground storage tanks
to indicate copyright
- 59 Fed. Reg. 31551,
June 20, 1994 Correction of hazardous waste listing
(P015), hazardous constituent listing,
and land disposal restrictions listing
for berlyllium to beryllium powder

The June 7, 1994 action did not result in federal regulatory amendments. Rather, it constituted a U.S. EPA determination that substantial confusion existed relating to the regulatory status of a waste, and it granted an extension of the time by which facilities managing the waste must file a Part A permit application. Although no Board action is required based on the June 7 federal action, we undertake an amendment discussed in greater detail below.

PUBLIC COMMENTS

The Board received public comment on this proposal for 45 days following its publication On September 2, 1994 in the

Illinois Register. During that period, the Board received the following comment:

PC 1 Secretary of State, Index Department, Administrative Code Division, by Connie Bradway (October 19, 1994)

By this public comment, the Secretary of State suggested a small number of Illinois Administrative Code format corrections. These are discussed below.

In addition to the public comment, the Board received a series of documents from the Joint Committee on Administrative Rules (JCAR) entitled "Identical First Notice Line Numbered Version". These include indications of corrections to format, grammar, punctuation, etc. Further, JCAR staff communicated with Board staff by telephone on these and additional questions and corrections. The corrections are discussed below.

The Board will delay filing the adopted rules with the Secretary of State for 30 days after adoption, particularly to allow U.S. EPA review and comment. The complete text of the adopted amendments appears in a separate order adopted this day.

During the pendency of the prior update docket, R94-7, the Board received a request from JCAR staff that the Board make certain minor corrections to the text of Part 739. We added those corrections to this docket. Those minor corrections involve Sections 739.152(b)(1)(B) and (b)(6)(H)(iii) and 739.171(a). The nature of the corrections is readily apparent on the face of the order, so the Board will discuss them no further.

HISTORY OF RCRA SUBTITLE C, 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 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 U.S. EPA 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.

Revised Reference for Letter of Credit Form--Sections 704.240 & 724.251

U.S. EPA revised references to the required form for using a letter of credit to provide financial assurance under the RCRA Subtitle C, underground injection control, and underground storage tank (RCRA Subtitle I) programs. U.S. EPA added that the form is copyrighted material. The amendments appeared at 59 Fed. Reg. 29958, on June 10, 1994. U.S. EPA amended 40 CFR 144.70(d) (UIC) (corresponding with 35 Ill. Adm. Code 704.240), 264.151(d) and (k) (RCRA Subtitle C) (corresponding with 35 Ill. Adm. Code 724.251), and 280.99 (UST).

The Board followed the federal amendments without deviation. We included the UIC amendment in this docket for the sake of expedience, since the amendment is simple and straightforward and it is easier to deal with it together with the parallel RCRA Subtitle C amendment. Since Section 22.4(d)(3) expressly excludes financial assurance regulation by the Board in the UST area, no amendments were necessary to Part 731.

The Board invited comment on our approach to codification of these federal amendments and received none. We construe silence as acceptance of the chosen approach.

Decision Not to List Chlorophenolic Wood Surface Protection Wastes--Sections 720.111 & 720.Appendix H

U.S. EPA decided not to regulate certain wood surface protection wastes as listed hazardous wastes on January 4, 1994, at 59 Fed. Reg. 458. U.S. EPA simultaneously announced its intent to reassess its determination if use of chlorophenolics for wood surface preservation resumes in the future. There is presently no active pesticide registration for chlorophenolics in the United States, and registration is required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for production and use of any pesticide in this country.

Although it decided not to regulate the wastes as listed wastes, U.S. EPA amended "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) to add Method 4010, an immunoassay method for the presence of pentachlorophenol. Thus, U.S. EPA amended the reference to SW-846 at 40 CFR 260.11(a) (corresponding with 35 Ill. Adm. Code 720.111(b)) to include

Update IIA. U.S. EPA corrected the reference , at 59 Fed. Reg. 28484, on June 2, 1994, to indicate that Updates II and IIA to SW-846 are available from the Methods Information Communication Exchange (MICE) Service, rather than from the Government Printing Office.

On January 4, 1994, U.S. EPA also added four alkaline earth salts of chlorophenates to the list of hazardous constituents of 40 CFR 261. Appendix VIII (corresponding with 35 Ill. Adm. Code 721. Appendix H). Added were potassium pentachlorophenate, sodium pentachlorophenate, and the sodium and potassium salts of 2,3,4,6-Tetrachlorophenol. (U.S. EPA, in deciding to add these four compounds, decided not to similarly add two other related compounds: octachlorodibenzodioxin (OCDD) and octachlorodibenzo-furan (OCDF).)

The Board has followed the federal amendments without deviation. The Board invited comment on our approach to codification of these federal amendments and received none. We construe silence as acceptance of the chosen approach.

Response to City of Chicago remand/Extension of Permit Application Deadline for Facilities Managing Ash from Waste-to-Energy Facilities--Section 721.104

On June 7, 1994, at 59 Fed. Reg. 29372, U.S. EPA formally responded to the decision in Environmental Defense Fund, Inc. v. City of Chicago, -- U.S. --, 114 S. Ct. 1588, 128 L. Ed. 2d 302 (1994). In that case, the Court determined that section 3001(i) of RCRA (42 U.S.C. § 6921(i)) does not exempt ash from the incineration of non-hazardous municipal waste from regulation as a hazardous waste. Rather, the incinerator must use the appropriate methods to determine whether its waste exhibits a characteristic of hazardous waste. If the waste exhibits a characteristic, the generator must manage it as a hazardous waste.

The history behind this is summarized in the Federal Register discussion of the extension. The Board repeats a few highlights here. In 1980, 40 CFR 261.4(b)(1) (corresponding with 35 Ill. Adm. Code 721.104(b)(1)) excluded municipal solid waste burned for energy recovery from regulation as hazardous waste if certain conditions are met. As part of the Hazardous and Solid Waste amendments of 1984 (HSWA), Congress codified a clarification of the exclusion at section 3001(i), which U.S. EPA codified in 1985, announcing that it interpreted the exclusion to not include the ash from burning the wastes. Later, in the late 80s, U.S. EPA took the position that the ash was exempted also. The Environmental Defense Fund filed two suits, one involving the City of Chicago, in the Northern District of Illinois, and another involving Wheelabrator Technologies, in the Southern District of New York, seeking enforcement of the 1985

interpretation. The Second Circuit ultimately ruled in favor of the exemption in Environmental Defense Fund, Inc. v. Wheelabrator Technologies, Inc., 931 F.2d 211 (2d Cir.), cert denied, 112 S. Ct. 453 (1991). The Seventh Circuit ultimately ruled that the ash was not included in the exemption in City of Chicago v. Environmental Defense Fund, Inc., 948 F.2d 345 (7th Cir. 1991). The Supreme Court affirmed the Seventh Circuit's decision, and the City of Chicago appealed to the Supreme Court. The Supreme Court's May 2, 1994 affirmance of the Seventh Circuit's decision resulted in the U.S. EPA action of June 7, 1994.

U.S. EPA determined that substantial confusion existed as to whether the ash was a hazardous waste, so, pursuant to 40 CFR 270.10(e)(2), it is allowing persons managing the ash until December 7, 1994 to file a Part A permit application. U.S. EPA will not require immediate RCRA § 3010 notification. This will allow those facilities that submit the application to continue managing the waste as they operate under interim status. However, the facilities must immediately comply with the appropriate hazardous waste management standards. From the perspective of the land disposal restrictions, U.S. EPA will consider the ash as a "newly-listed" waste. Land disposal restrictions will go into effect when U.S. EPA promulgates them-- in about six months.

The effect of the federal action varies from state to state, depending on the state's authorization status and whether it has a codified ash exemption. Illinois does not have a codified ash exemption, so the Supreme Court's decision went into effect in Illinois, as a matter of federal law, when handed down and no program revision is necessary to comply with the federal preemption requirements.

Nevertheless, although this federal action does not technically require any Board action, the Court's decision amounts to a change of law. Since the construction of the Illinois RCRA Subtitle C regulations depends so heavily on the federal interpretation of the statute and U.S. EPA rules, the decision is tantamount to the expiration of an exemption. Despite the fact that U.S. EPA has not amended its rules based on the remand, the Board undertook an amendment. To notify the regulated community of the change in law, the Board added an explanatory Board Note at the end of Section 721.104(b). This note explains that the Supreme Court has determined that the ash is not covered by the exclusion, and persons managing ash that meets the criteria for a characteristic waste, under Subpart C, must submit a Part A permit application by December 7, 1994.

The Board invited comment on its approach to the City of Chicago remand and U.S. EPA response and received none. We construe silence as acceptance of the chosen approach.

Expansion of Treatability Study Exclusion--Section 721.104

U.S. EPA expanded an existing exclusion from the definition of solid waste for varying amounts of hazardous waste used for treatability study. The amendments to 40 CFR 261.4(e)(2), (e)(3), and (f)(3) through (f)(5) (corresponding with 35 Ill. Adm. Code 721.104(e)(2), (e)(3), and (f)(3) through (f)(5)) occurred at 59 Fed. Reg. 8362, on February 18, 1994.

The amendments essentially changed the usage "soils, water or debris contaminated with hazardous waste" to "media contaminated with hazardous waste" and expanded the amounts of these materials that are exempted. Unaffected was the amount of hazardous waste itself that is exempted from regulation as hazardous waste. Thus, exempted for study are up to 10,000 kg (formerly 1,000 kg) of media contaminated with hazardous waste or up to 2,500 kg (formerly 250 kg) of media contaminated with acute hazardous waste. (The exemption remains for up to 1,000 kg of hazardous waste or up to 1 kg of acute hazardous waste.) Also, the generator or accumulator may ship in a single shipment up to 10,000 kg (formerly 1,000 kg) of media contaminated with hazardous waste or 2,500 kg (formerly 1 kg) of media contaminated with acute hazardous waste. (Unaffected was the shipment limit of 1,000 kg of hazardous waste or 1 kg of acute hazardous waste.)

Finally, extensions of time are available for treatability studies. An extension of time is available for up to an additional 5,000 kg (formerly 500 kg) of media contaminated with hazardous waste or 2,500 kg (formerly 1 kg) of media contaminated with acute hazardous waste. (The extension limits of 500 kg and 1 kg remain for hazardous waste and acute hazardous waste, respectively.) The amendments also allow up to an additional two years of study for bioremediation studies.

Burlington Environmental Inc. filed a rulemaking proposal on July 1, 1994, requesting that the Board adopt the expanded treatability studies exemption. The Board docketed that proceeding as R94-18. On July 18, Burlington requested that the Board adopt the expansion in R94-18 as an emergency amendment. The Board declined to adopt the amendments by emergency rulemaking on July 21, 1994. Rather, the Board requested comments on whether the proposed amendments in this docket, R94-17 addressed Burlington's concerns. The Board decided to expedite this matter to confer the benefits of the expanded exemption as soon as possible.

The Board followed the federal amendments without significant deviation. We made minor clarifying revisions to the federal base text of Section 720.104(e)(3)(A). The Board invited comment on its approach to codification of these federal amendments and received none. We construe silence as acceptance of the chosen approach.

Corrected Listings for Beryllium Powder--Sections 721.133, 721.Appendix H & 728.142

U.S. EPA amended 40 CFR 261.33(e) (corresponding with 35 Ill. Adm. Code 721.133(e)), 261, Appendix VIII (corresponding 35 Ill. Adm. Code 721.Appendix H), and 268.42 (corresponding 35 Ill. Adm. Code 728.Table D) at 59 Fed. Reg. 31551 (June 20, 1994). These amendments change all the entries for beryllium dust, in the P015 listing for hazardous waste, in the hazardous constituents table, and in the land disposal restrictions, to "beryllium powder". U.S. EPA designated this action a technical correction, of an April 22, 1988 action, at 53 Fed. Reg. 13383, so the correction was immediately effective without notice and comment.

The Board adopted the federal technical correction without deviation. These amendments were not proposed in the August 11, 1994 order because we accelerated these amendments to adopt the expanded exemption for treatability studies as soon as possible, as discussed above. We did not have the full listing of all federal actions that occurred during June, 1994 at that time.

Revised T/S/D Facility Reporting Codes--Sections 724.Appendix A & 725.Appendix A

U.S. EPA revised the codes used by hazardous waste treatment, storage, and disposal (T/S/D) facility reports in a set of technical amendments made on March 24, 1994, at 59 Fed. Reg. 13891. Amended were 40 CFR 264, Appendix I and 265, Appendix I (corresponding with 35 Ill. Adm. Code 724.Appendix A and 725.Appendix A). Both appendices, formerly only referenced in the Illinois RCRA Subtitle C regulations, are now formally incorporated by reference.

The Board followed the federal amendments without deviation by updating the existing incorporations by reference. The Board invited comment on its approach to codification of these federal amendments and received none. We construe silence as acceptance of the chosen approach.

Used Oil Mixed with Crude Oil or Natural Gas Liquids Exemptions--Sections 739.100, 739.110, 739.120, 739.141, 739.144, 739.146, 739.153 & 739.163

On March 4, 1994, at 59 Fed. Reg. 10550, U.S. EPA amended the used oil regulations, primarily to revise a number of exemptions and exclusions. U.S. EPA amended 40 CFR 279.1 (definitions of "petroleum refining facility" and "used oil transfer facility") (corresponding with 35 Ill. Adm. Code 739.100), 279.10(b)(2)(iii) and (g) (corresponding with 35 Ill. Adm. Code 739.110(b)(2)(C) and (g)), 279.20(b)(2) (corresponding with 35 Ill. Adm. Code 739.120(b)(2)), 279.41(c) (corresponding

with 35 Ill. Adm. Code 739.141(c)), 279.46(a)(5) and (b)(5) (corresponding with 35 Ill. Adm. Code 739.146(a)(5) and (b)(5)), 279.53(c) (corresponding with 35 Ill. Adm. Code 739.153(c)), and 279.63(c) (corresponding with 35 Ill. Adm. Code 739.163(c)).

First, the amendments to sections 279.1 and 279.10(g) (739.100 and 739.110(g)) expand an exemption for certain used oil mixtures from regulation. Now exempted from regulation are the transportation and storage of mixtures of small amounts (less than one percent) of used oil and crude oil that are inserted into a crude oil pipeline or petroleum refining process at a point before catalytic cracking or distillation. Expressly regulated, however, is all management of the used oil up to the point of insertion into the pipeline or refining process.

Second, the amendments to sections 279.1, 279.10(b)(2)(iii), and 279.20(b)(2) and 279.41(c) (739.100, 739.110(b)(2)(C), and 739.120(b)(2) and 739.141(c)) add two exemptions from the used oil processor and re-refiner requirements. The first added exemption is that a transporter that filters used oil from oil-bearing transformers and turbines and returns it for its original use is not regulated as a processor or re-refiner. The second is that certain generator activities are not subject to the used oil processor requirements. These activities include filtering, cleaning, or otherwise reconditioning before reuse by the generator; separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse; using oil mist collectors to remove oil from in-plant air for continued recirculation; draining or otherwise removing excess used oil from materials containing or otherwise contaminated; and filtering, separating, or otherwise reconditioning used oil before burning it in a space heater.

Third, U.S. EPA amended section 279.46(a)(5) and (b)(5) (739.146(a)(5) and (b)(5)) so that an intermediate rail transporter is no longer required to sign records for loads of used oil. Generally, a used oil transporter is required to sign for acceptance and delivery of used oil and maintain certain records. An intermediate rail transporter must still maintain the records, but needs no longer sign for acceptance or delivery.

Finally, the federal amendments to sections 279.10(b)(1)(ii), 279.53(c), and 279.63(c) (739.110(b)(1)(B), 739.153(c), and 739.163(c)) remove the price for the third edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) from the text of the rules. U.S. EPA noted that the price for that volume was \$319.00, rather than the \$110.00 formerly erroneously codified in the regulations.

The Board followed the federal amendments without significant deviation. We made minor clarifying revisions to the federal base text of Sections 739.110(g)(4), 739.120(b),

739.141(c), and 739.146(a)(5)(A) and (b)(5)(A).

The Board invited comment on its approach to codification of these federal amendments and received none. We construe silence as acceptance of the chosen approach.

Corrected References to SPCC Regulations--Sections 724.152, 724.156, 725.152, 725.156 & 739.152

40 CFR 264.52(b), 264.56(d)(2), 265.52(b), 265.56(d)(2), and 279.52(b)(2)(ii) and (b)(6)(iv)(B) (corresponding with 35 Ill. Adm. Code 724.52(b), 724.56(d)(2), 725.52(b), 725.56(d)(2), and 739.52(b)(2)(B) and (b)(6)(D)(ii)) include references to the federal Spill Prevention Control and Countermeasures (SPCC) Plan regulations at 40 CFR 1510. Formerly codified at federal part 1510, U.S. EPA redesignated those regulations as 40 CFR 300 on July 16, 1982, at 47 Fed. Reg. 31202. U.S. EPA never updated the references to the SPCC regulations contained in the hazardous waste rules. In fact, when U.S. EPA added part 279, on September 10, 1992, it used the invalid references to the SPCC rules.

Prompted by public inquiries regarding the intent of the regulations, the Board corrected all six references to the SPCC rules to correctly refer to 40 CFR 300. We undertook this action without regard to the fact that U.S. EPA has not moved to make this correction.

We invited public comment on these corrections and received none. We construe silence as acceptance of the chosen approach.

General Revisions

The Board continued to change its method of referring to the United States Environmental Protection Agency in this present rulemaking. We began using this changed usage in update docket R93-16 and continued in R94-7. We now refer to "U.S. EPA", which we believe is a more conventional and clearly understood in the context of the Illinois regulations than either "USEPA" or "EPA". We further began to refer to the "U.S. EPA hazardous waste number" and "U.S. EPA document number" for similar clarity. This changed usage occurs only in the Sections opened in this proceeding, and we will continue this conversion in future rulemakings as additional Sections otherwise become open to amendment.

The Board also continued its move toward presentation of equations and expressions in standard scientific notation. Thus, in Section 721.Appendix H, we used the appropriate chemical notation. For example, we replaced "H3AsO4" with " H_3AsO_4 ", as formerly used for arsenic acid. We believe that any person sophisticated enough to understand the chemical equations will

more readily recognize them in the standard mathematical notation, as they appear in the federal original. In that Section we also corrected the chemical name in the entry for aldrin by adding a missing parentheses. The Board also substituted "or" for "/" in Section 720.104 (b)(7)(L) and (b)(7)(Q) and "and" for "/" in Section 720.104(b)(7) and (b)(7)(N).

The Board also used this opportunity to make a number of corrections to punctuation, grammar, and cross-reference format throughout the opened text. Where the cross-references within the text to other segments of the Illinois Administrative Code did not formerly comport with the standard format, the Board made the necessary changes. 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.

Public Comment-Based Corrections

As mentioned above, the Board received several suggestions from JCAR staff and the Secretary of State for corrections to the text of the amendments as proposed. The Board tabulates the suggested corrections and our resulting actions as follows (sources of suggested corrections are indicate with ¹ indicating JCAR, ² indicating the Secretary of State, and ³ indicating Board-initiated; * denotes Section not included in proposed rule):

Section ^{Source}	Board Action
704. Main Source Note ¹	Add "and 27" to ILCS citation
704.109 ³	Put "BOARD NOTE" in upper case
721.104(a)(6) ¹	Replace semicolon with period
721.104(b)(12) ¹	Retain comma (JCAR suggested deleting comma, but doing so changes sense of sentence)
721.104(d)(2) ¹	Delete added comma between subsection references
721.104(e)(3) ¹	Add colon at end

721.104(e) (3) (C) ^{1&2}	Renumber subsections (A) through (E) as (C) (i) through (C) (v)
721.104(e) (3) (B) ¹	Change "requests to" to "requests for"
721.104(e) (3) (C) ¹	Remove comma before "above"
721.104(e) (3) (G) ³	Remove comma at end
721.104(f) (5) ¹	Correct spelling of "receipt"
721.104(f) (9) (F) ³	Add "and" at end
721.104(f) (9) (G) ¹	Change semicolon to period
721.Appendix H (entries for calcium chromate, calcium cyanide, nickel carbonyl, nickel cyanide, nitrogen dioxide, osmium tetroxide, selenium sulfide, thallium (I) oxide, thiram, zinc cyanide, and zinc phosphide (both entries)) ^{1&3}	Delete struckout numbers and underlining from subscripted numbers
721.Appendix H (entry for vanadium pentoxide) ³	Indicate numbers in empirical formula as subscripted
725.Appendix A ¹	Change heading to "Recordkeeping Instructions"
728.142 (b) ¹	Correct ILCS citation format
728.Table D ¹	Remove overstruck "and/" from text
739.110 (g) (5) ¹	Remove duplicate "into"
739.153 ¹	Add Section source note

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 dockets 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. 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.

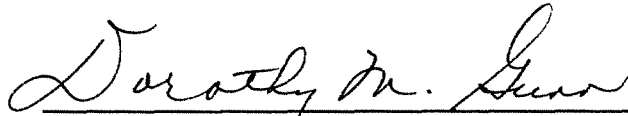
There are four common classes of Board decision: variance, adjusted standard, site specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site specific rulemaking). Note 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, do hereby certify that the above order was adopted by the Board on the 20th day of October, 1994, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board