**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD** APR 12 2007



| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

## NOTICE OF FILING

**TO: SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Cabot Corporation's **Appearance of Eric E. Boyd, Appearance of Geoffrey B. Tichenor, Petition for Reissuance of Adjusted Standard, Motion to Stay Proceedings**, and **Motion for Relief from Filing Requirements.**

**DATED**: April 12, 2007

**CABOT CORPORATION**

By: _____
One of Its Attorneys

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

## SERVICE LIST

Illinois Pollution Control Board
Attention: Clerk
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

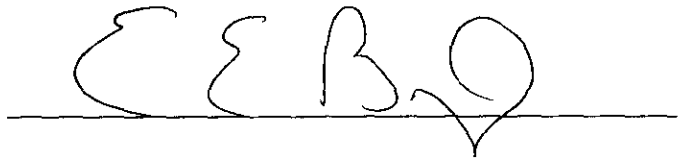
Illinois Environmental Protection Agency
Division of Legal Counsel
Attention: Bill Ingersoll
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62799-9276

## CERTIFICATE OF SERVICE

I, Eric E. Boyd, hereby certify that on April 12, 2007, I caused a copy of Cabot Corporation's **Appearance of Eric E. Boyd, Appearance of Geoffrey B. Tichenor, Petition for Reissuance of Adjusted Standard, Motion to Stay Proceedings**, and **Motion for Relief from Filing Requirements** to be served upon the parties listed below via First Class U.S. Mail:

Illinois Pollution Control Board
Attention: Clerk
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

Illinois Environmental Protection Agency
Division of Legal Counsel
Attention: Bill Ingersoll
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62799-9276



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

## APPEARANCE OF ERIC E. BOYD

I hereby file my appearance in this proceeding, on behalf of Cabot Corporation.

By: E E B
Eric E. Boyd

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

**DATED**: April 12, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

## APPEARANCE OF GEOFFREY B. TICHENOR

I hereby file my appearance in this proceeding, on behalf of Cabot Corporation.

By: _____
Geoffrey B. Tichenor

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

**DATED**: April 12, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

## PETITION FOR REISSUANCE OF ADJUSTED STANDARD

Cabot Corporation ("Cabot"), the Petitioner, through its attorneys, Seyfarth Shaw LLP, and pursuant to 35 Ill. Adm. Code, Part 738, Subpart C and 35 Ill. Adm. Code, Part 104, Subpart D, requests that the Illinois Pollution Control Board ("Board") reissue an adjusted standard from the requirements of 35 Ill. Adm. Code, Part 738, Subpart B (prohibiting the injection of certain restricted hazardous waste) for underground injection control ("UIC") Wells Nos. 2 and 3 located at its Tuscola, Illinois facility (the "Facility"). In support of this Petition, Cabot states as follows:

### I. BACKGROUND

***Facility and Process Description***

1. The Facility manufactures fumed metal oxides, including fumed silica ($SiO_2$). The manufactured products contain unique properties making them important additives in a diverse variety of products from paints and printing inks to pharmaceuticals and cosmetics.

2. The fumed metal oxide manufacturing process involves the hydrolysis of a blend of chlorosilanes, silicon tetrachloride, methyl trichlorosilane, trichlorosilane, and aluminum trichloride. The Facility also operates several other related operations where fumed metal oxides are treated to produce specific products.

***Nature of The Facility (35 Ill. Adm. Code § 104.406(d))***

3. The Facility is located approximately three miles west of Tuscola on Route 36 in Douglas County, Illinois. The Facility occupies approximately 92 acres of land.

4. In operation since 1958, the Facility currently employs approximately 160 people.

***Waste Identification and Characteristics (35 Ill. Adm. Code § 104.406(d))***

5. The Facility generates a number of waste streams, some of which are disposed of on-site in UIC wells. A portion of the waste that Cabot disposes in its UIC wells is restricted waste under the Resource Conservation and Recovery Act ("RCRA"). *See* 40 CFR Part 148, Subpart B *and* 35 Ill. Adm. Code Part 738, Subpart B.

6. Waste streams injected in the UIC wells include acidic waste water from air pollution control scrubbers, stack drains, fan drains, other equipment drains and washdown (D002); unsold by-product HCL (D002); surface water drainage, seepage, multi-source leachate from the leachate collection system, and groundwater and leachate purged from on-site monitoring wells (F039); and spent acetone from the QC laboratory (F003).

***The Facility's UIC Wells (35 Ill. Adm. Code § 104.406(d))***

7. Presently, Cabot injects hazardous waste into Wells Nos. 2 and 3 pursuant to an UIC permit from the Illinois Environmental Protection Agency ("IEPA"), effective October 18, 2001. In 1996, Cabot plugged and abandoned Well No. 1, into which Cabot previously injected restricted waste, in accordance with a closure plan approved by IEPA.

***Illinois' Hazardous Waste Injection Restrictions (35 Ill. Adm. Code §§ 104.406(a)-(b))***

8. The Board's regulations specifically prohibit the underground injection of certain restricted hazardous wastes. *See* 35 Ill. Adm. Code Part 738, Subpart B.

9. The Board's UIC regulations were adopted pursuant to the "identical-in-substance" rulemaking mechanism to implement an UIC program for Illinois. The prohibitions relating to spent solvents (F003), 35 Ill. Adm. Code § 738.110(a), and liquid corrosive wastes (D002), 35 Ill. Adm. Code § 738.116(c)(2), were adopted in R89-2. 14 Ill. Reg. 3089 (March 2, 1990), *effective* February 20, 1990. The prohibition relating to multi-source leachate (F039), 35 Ill. Adm. Code § 738.116(c)(1), was adopted in R90-14. 15 Ill. Reg. 11425 (August 9, 1991), *effective* July 24, 1991.

***Prior Federal and State Hazardous Waste Injection Approval***

10. Cabot previously received federal and state approval to inject hazardous waste into the Facility's UIC wells. U.S. EPA granted Cabot a "no-migration exemption" for Well No. 2 pursuant to 40 CFR Part 148, Subpart C on November 6, 1990. *See* 55 Fed. Reg. 49340 (November 27, 1990). Subsequently, on February 4, 1991, the U.S. EPA granted an exemption for Well No. 1. *See* 56 Fed. Reg. 5826 (February 13, 1991). The Board issued Cabot an Adjusted Standard from the requirements of 35 Ill. Adm. Code Part 738, Subpart B for Wells Nos. 1 and 2 on February 17, 1994. *See* the Board's February 17, 1994 Order in AS 92-8, a copy of which is attached as **Exhibit A** ("AS 92-8).

11. In November 1994, U.S. EPA modified the federal exemption to clarify that Cabot could dispose of leachate and purge water in its UIC wells. *See, e.g.*, 60 Fed. Reg. 58623 (November 28, 1995). U.S. EPA later authorized Cabot to inject restricted waste into Well No. 3. *See* 61 Fed. Reg. 4996 (February 9, 1996). On March 7, 1996, the Board granted both of these modifications to Cabot's Adjusted Standard. *See* the Board's March 7, 1996 Order in AS 96-3, a copy of which is attached as **Exhibit B** ("AS 96-3").

## II. PETITION FOR REISSUANCE

***Description of Proposed Adjusted Standard (Ill. Adm. Code § 104.406(f))***

13. Pursuant to 35 Ill. Adm. Code Section 738.120(e), Cabot seeks reissuance of the Adjusted Standard granted by the Board under AS 96-3 on March 7, 1996. Specifically, Cabot requests that the Board extend the Adjusted Standard through December 31, 2027.

***Level of Justification Necessary to Obtain An Exemption from the Waste Injection Prohibition (35 Ill. Adm. Code § 104.406(c))***

14. 35 Ill. Adm. Code Section 738.120(a)(1)(A) establishes the level of justification necessary to obtain a reissuance of an exemption from the prohibition on injection of prohibited wastes. Section 738.120(a)(1)(A) requires a demonstration that:

> Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years in either of the following ways:
>
> i) Vertically upward out of the injection zone; or
>
> ii) Laterally within the injection zone to a point of discharge or interface with an underground source of drinking water (USDW), as defined in 35 Ill. Adm. Code 730[.]

***Justification for Proposed Adjusted Standard and Supporting Documents (35 Ill. Adm. Code §§ 104.406(h),(k))***

15. To justify its Petition, Cabot relies solely upon the document entitled "2007 Petition for Renewal of Exemption from the Land Disposal Restrictions" filed with U.S. EPA ("U.S. EPA Petition") on March 8, 2006. A copy of the U.S. EPA Petition is attached as **Exhibit C**. The U.S. EPA Petition constitutes Cabot's proposal to extend the Facility's "no-migration exemption" from the federal hazardous waste injection regulations until December 31, 2027. The information contained in the U.S. EPA Petition satisfies all the requirements set forth in 35 Ill. Adm. Code Part 738, Subpart C to merit an adjusted standard under Illinois law. The following table cross-references the

relevant portions of the U.S. EPA Petition with each particular requirement of 35 Ill. Adm. Code Part 738, Subpart C:

| **Location in the Board's Regulations** | **Location in the U.S. EPA Petition** |
|---|---|
| Section 738.120(a)(1)(A) | Sections 2.0 *et seq.* and 3.0 *et seq.* |
| Section 738.120(a)(2) | Sections 1.3 and 4.0 *et seq.* |
| Section 738.120(b) | Section 2.3 and 3.0 *et seq.* |
| Section 738.120(d)(2) | Section 1.5.3 through 1.5.6 |
| Section 738.121(a)(1-3) | Sections 1.0 through 4.0 *et seq.* |
| Section 738.121(a)(4) | *See* Paragraph 16 below. |
| Section 738.121(a)(5) | Sections 1.0 through 4.0 *et seq.* |
| Section 738.121(a)(6) | Section 3.9 |
| Section 738.121(b) | Sections 2.3 through 2.5; 3.3 and 3.5 |
| Section 738.122(a)(1) | Sections 1.3, 1.5 |
| Section 738.122(a)(2) | Section 1.5 |
| Section 738.122(a)(3) | Sections 1.0 through 4.0 *et seq.* |

16. Cabot provided a quality assurance and control plan ("Plan") to U.S. EPA which addresses all aspects of the federal demonstration. As the Plan likewise addresses all aspects of the state demonstration, Cabot submits the Plan, a copy of which is attached as **Exhibit D**, for the Board's approval in satisfaction of 35 Ill. Adm. Code § 738.121(a)(4).

17. Cabot's U.S. EPA Petition makes the demonstration required by 35 Ill. Adm. Code Section 738.120(a)(1)(A).

***The Petition is Consistent With Federal Law (35 Ill. Adm. Code § 104.406(i))***

18. The Illinois state UIC program is identical-in-substance to the federal UIC

program. For that reason, the Illinois UIC program "is intended to be no more (or less) stringent than the federal program." (AS 96-3 at 6) (*quoting* AS 92-8 at 7).

19. Accordingly, if U.S. EPA grants Cabot an extension of its "no-migration exemption" under federal law, the Board should do the same.

20. Cabot requests that the Board, the IEPA and the U.S. EPA work together to minimize procedural redundancies in the reissuance process. Cabot has separately filed a "Motion to Stay Proceeding" requesting that the Board stay its decision on the Petition until U.S. EPA acts on Cabot's U.S. EPA Petition. *See* Cabot's Motion to Stay Proceedings, filed herewith.

***Inapplicable and Overly Burdensome Information***

21. Certain information discussed in 35 Ill. Adm. Code Part 104, Subpart D, including the information required by Section 104.406, Subparagraphs (e) and (g), is inapplicable and unduly burdensome. Cabot, therefore, has not submitted such information at this time. *See* 35 Ill. Adm. Code § 104.406 (providing the petitioner with the option of withholding inapplicable information). The Board did not find information Cabot omitted to be necessary in either AS 92-8 or AS 96-3. Should additional information assist the Board to reach a favorable resolution in this proceeding, however, Cabot will provide the additional requested information at a later date.

***Proposed Language for Reissuance of Adjusted Standard (35 Ill. Adm. Code § 104.406(f))***

22. Cabot proposes that the Board adopt the following language in its Order granting Cabot's Petition:

> Cabot Corporation is hereby granted a reissuance of the adjusted standard from the requirements of 35 Ill. Adm. Code Part 738, Subpart B, for the underground injection control Wells Nos. 2 and 3 at its Tuscola, Illinois

facility. This adjusted standard constitutes an exemption from the prohibitions of Subpart B such as to allow the underground injection disposal of wastes classified as acidic water (D002), by-product hydrochloric (D002), spent acetone (F003) and multi-source leachate (F039). This adjusted standard is subject to all conditions imposed by U.S. EPA pursuant to its grant of Cabot's "Petition for Renewal of Exemption from the Land Disposal Restrictions."

***No Hearing Requested (35 Ill. Adm. Code § 104.406(j))***

23. Cabot does not request a hearing in this proceeding.

***Certification of an Authorized Representative (35 Ill. Adm. Code § 738.122(a)(4))***

24. The certification of Carl Troike, the Facility's General Manager, is attached as **Exhibit E** and incorporated herein by reference.

## III. CONCLUSION

25. Cabot Corporation respectfully requests that the Board reissue the Adjusted Standard granted in AS 96-3 and extend its duration through December 31, 2027.

**DATED**: April 12, 2007

Respectfully submitted,

**CABOT CORPORATION**

By: _____
One of Its Attorneys

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

# EXHIBIT A

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1994

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| PETITION OF CABOT CORPORATION | ) | AS 92-8 |
| FOR AN ADJUSTED STANDARD FROM | ) | (Adjusted Standard) |
| 35 ILL. ADM. CODE 738.SUBPART B | ) | |

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

This matter is before the Board on an amended petition for adjusted standard filed by Cabot Corporation (Cabot) on September 25, 1992. Cabot requests that the Board grant an exemption from the underground injection control (UIC) disposal prohibitions in 35 Ill. Adm. Code 738.Subpart B for certain wastes disposed at Cabot's Tuscola facility. The United States Environmental Protection Agency (USEPA) has granted an exemption from the parallel federal UIC rules.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq.). The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois" (Act at Section 5(b)) and to "grant *** an adjusted standard for persons who can justify such an adjustment" (Act at Section 28.1(a)). More generally, the Board's responsibility in this matter is based on the system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties.

Based upon the record before it and upon review of the factors involved in the consideration of adjusted standards, the Board finds that Cabot has demonstrated that grant of an adjusted standard in the instant matter is warranted. The adjusted standard accordingly will be granted.

## BACKGROUND

Cabot operates a inorganic chemical manufacturing facility (SIC Code 2819) located in Tuscola, Illinois. The facility occupies approximately 100 acres and employs 184 persons.

The facility manufactures silicon dioxide ($SiO_2$), marketed under the trademark Cab-O-Sil. The production process consists of the hydrolysis/oxidation of a chlorosilane feed stock to produce $SiO_2$ and hydrochloric acid (HCl).

EXHIBIT
A

Several hazardous waste streams are generated at the Tuscola facility. The majority are disposed of in one of two UIC wells (Well No. 1 and Well No. 2) located at the facility. The waste streams injected in the UIC wells include acidic waste water from air pollution control scrubbers, stack drains, fan drains, other equipment drains, and wash downs (D002), plus unsalable by-product HCl (also D002); spent acetone from the QC laboratory (F003); and surface water drainage, seepage, leachate, and groundwater (F039).

The two UIC wells are permitted by the Agency.

Wastes with hazardous waste numbers D002, F003, and F039 are explicitly prohibited[1] from underground injection unless an exemption has been granted. Cabot disposes of these wastes via underground injection based in the exemption granted under federal law.

The injection zone at the Cabot site includes the upper part of the Franconia Formation, all of the Potosi and Eminence Dolomites and the Gunter Sandstone, and the lower part of the Oneota Dolomite between the depths of 5,400 and 4,442 feet. The immediately overlying confining zone is the Shakopee Dolomite between 4,442 and 4,124 feet. The confining zone is separated from the lowermost source of underground drinking water at a depth of 2,750 feet by sequences of permeable and less permeable sedimentary rocks which provide additional protection from fluid migration into underground sources of drinking water. (55 Fed. Reg. 49340 (November 27, 1990).)

## PROCEDURAL HISTORY

Cabot has sought and obtained "no-migration exemptions" from USEPA pursuant to the exemption procedures found at 40 CFR 148.20 et seq. for the same wastes here at issue. Cabot's petition to USEPA was submitted in April 1989. On August 24, 1990 USEPA issued a notice to grant the exemptions published at 55 Fed. Reg. 34739. On November 6, 1990 USEPA granted the exemption for Well No. 2, published at 55 Fed. Reg. 49340 (November 27, 1990) and on February 4, 1991 USEPA granted the exemption for Well No. 1, published at 58 Fed. Reg. 5826 (February 13, 1991).

On August 3, 1992 Cabot filed a petition with the Board seeking to effectuate the exemption in State law. The Board

---

[1] The prohibition against waste F003 occurs at Section 738.110 of the Board's regulations and at the parallel 40 CFR 148.10 of USEPA regulations; the prohibitions against wastes D002 and F039 occur at Section 748.116 and 40 CFR 148.16, respectively.

initially docketed the petition as a site-specific rulemaking under docket R92-16. However, by orders of August 13, 1992 the Board closed docket R92-16 and redocketed the matter as the instant proceeding, AS 92-8. In redocketing this matter as an adjusted standard, the Board observed:

> ... neither the Board nor USEPA rule provides for regulatory action on a "no-migration exemption". USEPA has not taken regulatory action. Rather, it has published Federal Register notices of non-regulatory actions which appear to be similar to adjusted standards. The UIC actions are not rules, and will not appear in the CFR.
>
> Section 13(c) of the Act requires the Board to adopt rules which are "identical in substance" to federal regulations. In this case, there are no regulations.
>
> (In re: Petition of Cabot Corporation, R92-16, 135 PCB 471, August 13, 1992)

In its August 13, 1992 order opening Docket AS 92-8 the Board also directed Cabot to file certain additional information. On September 24, 1992 Cabot responded by filing the amended petition here before the Board.

On December 1, 1992 the Agency filed its response to Cabot's amended petition. The Agency response is accompanied by exhibits consisting of the Agency record of its participation before USEPA in response to Cabot's request for federal exemption.

The Agency argues first that Cabot's petition before the Board should be dismissed for lack of State authority to grant the requested exemption (see following). The Agency argues in the alternative that the adjusted standard be granted.

By order of November 4, 1993 the Board observed that it desired to move the instant matter to decision on the freshest record possible, and accordingly allowed Cabot and the Agency opportunity to bring any matters up-to-date. No additional filings have been made.

## ADJUSTED STANDARD PROCEDURE

The Act at Section 28.1 provides that a petitioner may request, and the Board may impose, an environmental standard that is: (a) applicable solely to the petitioner, and (b) different from the standard that would otherwise apply to the petitioner as the consequence of the operation of a rule of general applicability. Such a standard is called an adjusted standard.

The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act and within the Board's procedural rules at 35 Ill. Adm. Code Part 106.

The procedures via which an adjusted standard from the UIC prohibitions may be sought, and the level of justification required for a petitioner to qualify for a UIC adjusted standard, are set out at 35 Ill. Adm. Code 738.Subpart C. 738.Subpart C was adopted in Board docket R92-2, UIC UPDATE, January 25, 1990, effective February 20, 1990. The 738.Subpart C regulations are identical-in-substance to the federal UIC exemption procedures.

738.Subpart C has the following organization:

PART 738
HAZARDOUS WASTE INJECTION RESTRICTIONS
SUBPART C: PETITION STANDARDS AND PROCEDURES

Section
738.120 Petitions to Allow Injection of a Prohibited Waste
738.121 Required Information to Support Petitions
738.122 Submission, Review and Approval or Denial of Petitions
738.123 Review of Adjusted Standards
738.124 Termination of Adjusted Standards

Each of the Part 738 sections is identical-in-substance to the federal UIC exemption provisions, with the correspondence as follows:

| State Regulation | Federal Regulation |
|---|---|
| Section 738.120 | 40 CFR 148.20 (1988) |
| Section 738.121 | 40 CFR 148.21 (1988) |
| Section 738.122 | 40 CFR 148.22 (1988) |
| Section 738.123 | 40 CFR 148.23 (1988) |
| Section 738.124 | 40 CFR 148.24 (1988) |

## AUTHORITY

A threshold issue raised by the Agency is whether the Board has authority to grant exemptions from UIC land disposal prohibitions. The Agency contends that this authority, unless explicitly delegated to the State as part of a primacy delegation, is vested solely in the Administrator of USEPA. In the instant case the State has never sought primacy with respect to the provisions of Part 738, and accordingly the Agency contends that the State has never been given the authority to grant exemptions from land disposal prohibitions. On this basis, the Agency recommends that the Board dismiss the instant docket.

The Board is unable to agree with the Agency. The Administrator of USEPA has explicit authority to grant exemptions from the federal UIC law. But the law at issue here is State law. In State law the authority to grant exemptions is vested in the Board. This authority resides in the Board pursuant to regulations adopted under Sections 13(c) and 22.4(a) of the Act, which, among other matters, mandate that the Board adopt regulations implementing a State UIC program. The Agency has presented nothing in the Act, nor in any precedent, that in any way suggests invalidity of the State regulations absent USEPA's delegation of primacy.

Cabot has sought and received exemption under federal law from the Administrator of USEPA. To receive exemption under State law Cabot must, accordingly and as it now does, seek exemption from the Board.

The Board notes that in arriving at this conclusion regarding authority, it distinguishes the issue of authority from the issues of conflict and relative stringency that might arise from Cabot holding an exemption under federal law for the same activity prohibited under State law. The conflict/stringency issues go to the merits of Cabot's request for exemption from the State UIC regulations, to which the Board next turns.

## MERITS

The elements of justification required for an exemption under Board regulations are the same as those required for federal exemption. Cabot accordingly stands on its petition as presented to USEPA as demonstration of the merits of its petition before the Board.

The Agency observes that it actively participated in the USEPA review of Cabot's federal petition. (See, e.g., Exhibits 1-12 to Agency's Response.) The Agency observes that it was assisted in its review by the Illinois State Geological Survey and Illinois State Water Survey, and that it conducted an extensive technical review and submitted numerous comments to USEPA regarding the Cabot petition. The Agency further observes that, although it initially considered Cabot's federal petition to contain "deficiencies or inconsistencies" (Agency Response at ¶ 8), Cabot ultimately addressed and satisfied all of the Agency's concerns. The Agency accordingly concludes that it has no new comments to present to the Board in the instant proceeding. (Id. at ¶9.)

The demonstration that must be made to gain the "no-migration exemption" here requested is found at Section 738.120(a)(1)(A). A showing is required that:

Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

i) Vertically upward out of the injection zone; or

ii) Laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 35 Ill. Adm. Code 730.

In proposing to grant the exemptions requested by Cabot, USEPA summarized the elements that entered into its decision to move forward on Cabot's petition:

> The draft decision to approve Cabot's petition for continued injection was reached after a careful consideration of the factors involved in an environmentally protective injection operation. These factors include the type of waste injected, well construction, well operation, proof of mechanical integrity of the wells, properties of the injection and confining zones, including their ability to receive and confine the waste, a detailed search for any abandoned boreholes which may serve as a conduit for upward waste migration, and comprehensive modeling of the existing waste plume and further growth and movement of the plume, both vertically and laterally, for the next 10,000 years. (55 Fed. Reg. 34741 (August 24, 1990).)

In granting the federal exemption for injection into Well No. 2[1], USEPA found:

> USEPA personnel reviewed all data pertaining to the petition including but not limited to well construction, regional and local geology, seismic activity, penetrations of the confining zone, and the mathematical models submitted by Cabot to demonstrate that no migration from the injection zone would occur. The USEPA has determined that the geological setting at the site as well as the construction and operation of Well No. 2 are adequate to prevent fluid migration out of the injection zone within 10,000 years, as required under 40 CFR Part 148. (55 Fed. Reg. 49340 (November 27, 1990).)

USEPA has further found:

---

[1] USEPA's findings with regard to Well No. 1, which were presented at a later date, were substantively the same. See 58 Fed. Reg. 5826 (February 13, 1991).

As required by 40 CFR part 148, Cabot has demonstrated to a reasonable degree of certainty that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Cabot of specific restricted hazardous wastes including hydrochloric acid and wastewaters contaminated with hydrochloric acid which are hazardous because they are corrosive (i.e., pH is less than or equal to 2.0 hence its waste code of D002 under 40 CFR 261) a multisource leachate (Code F039) contaminated with small amounts of 1.1-dichloroethylene, 1.2-dichloroethylene, methylene chloride, phenol, tetrachloroethylene, and trichloroethylene from a closed waste storage impoundment and low concentrations of residual spent acetone (Code F003) rinsed from laboratory glassware cleaned with solvent into a Class I hazardous waste injection well specifically identified as Well No. 2 at the Tuscola facility. This decision constitutes a final USEPA action for which there is no administrative appeal. (55 Fed. Reg. 49340 (November 27, 1990) and 58 Fed. Reg. 5826 (February 13, 1991).)

The Board has also reviewed the justification provided by Cabot to USEPA, and finds that Cabot has made all the demonstrations required pursuant to the identical-in-substance regulations at 35 Ill. Adm. Code 738.Subpart C.

As an additional matter, the Board observes that programs, such as the State UIC program, that are intended to be identical-in-substance" with federal programs are, by their nature, intended to be no more (or less) stringent than the corresponding federal program. The Board finds that withholding the exemption that Cabot here seeks would cause a more stringent State law to apply to Cabot, in contradistinction to the stringency principle.

In sum, the Board finds that Cabot has demonstrated that grant of adjusted standard is warranted. The Board further finds that the conditions imposed by USEPA on tho similar federal exemption are necessary limitations on the grant of this adjusted standard. Accordingly, the adjusted standard will be granted subject to those conditions[1].

---

[1] The Board notes that the leachate concentration limits specified in today's order (condition 2) are the same as those specified in Cabot's federal exemption. These concentration limits are derived from health-based levels using a conservative "final to initial" concentration ratio of 0.003. USEPA notes that the concentration ratio of 0.003 provides 10 times the dilution sufficient to increase the pH of the waste from 0.5 to 2.0 and more than enough to reduce the concentration of all hazardous constituents to nonhazardous levels. (55 Fed. Reg.

ORDER

Cabot Corporation is hereby granted an adjusted standard from the requirements of 35 Ill. Adm. Code 738.Subpart B for the underground injection control Wells Nos. 1 and 2 at its Tuscola, Illinois, facility. This adjusted standard constitutes an exemption from the prohibitions of Subpart B such as to allow the underground injection disposal of wastes classified as acidic water (D002), by-product hydrochloric acid (D002), spent acetone (F003), and multi-source leachate (F039). The adjusted standard is subject to the following conditions:

(1) The monthly average injection rate must not exceed 400 gallons per minute.

(2) The concentrations of the constituents included in the injected leachate may not exceed the following values:

| | | |
|---|---|---|
| Acetone | 47,000 | mg/L |
| Tetrachloroethylene | 1.66 | mg/L |
| Methylene Chloride | 59.0 | mg/L |
| Trichloroethylene | 1.66 | mg/L |
| 1,2 Dichloroethylene | .33 | mg/L |
| 1,1 Dichloroethylene | 2.33 | mg/L |
| Phenol | 12,000 | mg/L |

(3) Injection must occur only into the Franconia, Potosi, and Eminence Dolomites and the Gunter Sandstone;

(4) The injection zone consists of the Franconia, Potosi, Eminence, and Oneota Dolomites and the Gunter Sandstone, found between 4,441 and 5,400 feet in Cabot's Well No. 1 and between 4,442 and 5,400 feet in Cabot's Well No. 2; and

(5) Cabot shall be in full compliance with all conditions of its permits and other conditions relating to the exemption found in 35 Ill. Adm. Code 738.123 and 738.124.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration".)

---

34743 (August 24, 1990) and Exh. 4 at 8-4.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17th day of February, 1994, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

# EXHIBIT B

ILLINOIS POLLUTION CONTROL BOARD
March 7, 1996

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| CABOT CORPORATION PETITION | ) | AS 96-3 |
| FOR AN ADJUSTED STANDARD FROM | ) | (Adjusted Standard-UIC) |
| 35 ILL. ADM. CODE PART 738, | ) | |
| SUBPART B | ) | |

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

This matter comes before the Board upon a Petition for Modification and Reissuance of Adjusted Standard filed by Cabot Corporation (Cabot). The purpose is to conform the exemption Cabot currently holds under Illinois underground injection control (UIC) law with exemptions granted to Cabot under federal UIC law.

The requested modifications consist of clarification that leachate and purge water may be disposed in Cabot's UIC wells, in conformity with a similar finding of the United States Environmental Protection Agency (USEPA) issued in November 1994; and that injection of restricted waste may take place in Cabot's new UIC Well #3, in conformity with a finding of USEPA issued in January 1996.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq.). The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois" (Act at Section 5(b)) and to "grant . . . an adjusted standard for persons who can justify such an adjustment" (Act at Section 28.1(a)). More generally, the Board's responsibility in this matter is based on the system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties.

The Act also provides that "the Agency shall participate in [adjusted standard] proceedings". (415 ILCS 28.1(d)(3).) On February 15, 1996 the Agency filed a recommendation that the instant requested adjusted standard be granted. The recommendation was accompanied by a motion to file instanter. The motion is hereby granted.

Based upon the record before it and upon review of the factors involved in the consideration of adjusted standards, the Board finds that Cabot has demonstrated that grant of an adjusted standard in the instant matter is warranted. The adjusted standard accordingly will be granted subject to conditions set out by USEPA on a similar federal exemption.

EXHIBIT

B

## PROCEDURAL HISTORY

Cabot has previously been granted an exemption from the general prohibition against underground injection of restricted waste. That exemption was initially granted by USEPA in 1990 upon petition from Cabot with support of the Agency[1], and subsequently issued by the Board in docket AS 92-8[2]. The exemption was then, as now, based on the "no-migration" provisions found under both federal and Illinois law.

In late 1994 Cabot sought clarification of its federal UIC exemption from USEPA such as to make explicit that certain leachate and purge water could be disposed in the UIC wells. On November 4, 1994 USEPA entered this clarification into Cabot's federal exemption. (Petition Exh. D.) Cabot did not at that time request that the Board also introduce the clarification into State law.

In August 1995 Cabot made a second request regarding its federal exemption, specifically requesting that the exemption allow disposal in a new UIC well, known as Well #3. This request was proposed to be granted by USEPA by publication on November 28, 1995 at 60 Fed. Reg. 58623 *et seq.* In addition, a public notice, pursuant to 40 CFR 124.10, was published in the local papers on December 5, 1995, and a public hearing was tentatively set for January 1996; USEPA subsequently canceled the hearing "due to lack of public interest in the decision" (Supp. Exh. at 3). The USEPA has now reissued the exemption[3], including exemption for Well #3, with an effective date of January 22, 1996.

Simultaneously with filing of its federal request regarding Well #3, Cabot filed the instant matter with the Board. The initial filing occurred on August 17, 1995; the petition was filed under the old docket number, AS 92-8. By order of September 7, 1995 the Board found that Cabot's petition was sufficiently different from the adjusted standard granted in AS 92-8 to require opening a new docket. The Board also found the petition insufficient and required that Cabot submit additional material to meet the requirements of Section 106.705 of the Board's procedural rules. (35 Ill. Adm. Code 106.705.)

Cabot filed an amended petition curing the insufficiency on October 19, 1995. Among the additions made to the peitition was requested language for the adjusted standard.

---

[1] See 55 Fed. Reg. 49340 (November 27, 1990) and 56 Fed. Reg. 5826 (February 13, 1991).

[2] In the Matter of: Petition of Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B, AS 92-8, February 17, 1994.

[3] USEPA's Notice of Reissuance is in the record of this matter as an attachment to Cabot's filing of January 23, 1996, and is identified as Supplemental Exhibit cited as "Supp. Exh.".

Cabot has waived hearing in this matter. No other person has requested a hearing, and accordingly none has been held.

Cabot has requested expedited consideration by the Board. By order of January 18, 1996 the Board granted this request consistent with the Board resources and the need to complete the record in this matter.

## NATURE OF THE FACILITY AND DISCHARGE

The facility at issue is located at Tuscola, Illinois. It occupies approximately 100 acres and is located three miles west of Tuscola on Route 36. Cabot employs 184 people at the facility which has been in operation since 1958. The facility is an inorganic chemical manufacturing plant which manufactures fumed silicon dioxide (or fumed silica, $SiO_2$) marketed under the registered trademark of Cab-O-Sil®. Silicon dioxide is used as an additive in many products.

The production process involves the hydrolysis/oxidation of a chlorosilane feedstock to produce $SiO_2$ and hydrochloric acid (HCl). (Pet. at 2.)[4] The chlorosilane feedstocks include silicon tetrachloride ($SiCl_4$), methyl trichlorosilane ($CH_3SiCl_2$), and trichlorosilane ($HSiCl_2$). (*Id.*) The central reaction in the manufacturing process is combination of silicon tetrachloride with oxygen and hydrogen to produce both fumed silica and hydrogen chloride vapor. (USEPA Notice of Intent to Reissue Exemption, 60 FR 58623, 58624.) Separation results in fumed silica, product hydrochloric acid, and wastewaters contaminated with hydrochloric acid; the latter requires disposal. Cabot usually injects this waste, along with rainwater runoff and seepage into its UIC wells. (60 FR 58624.)

Other hazardous waste streams are also generated at the facility, of which many are injected into its UIC wells. (Pet. at 2.) Those waste streams injected into the UICs include acidic wastewater from air pollution control scrubbers, stack drains, fan drains, other equipment drains and washdown (D002); surface water drainage, seepage, leachate, monitoring well purge water and groundwater (F039); spent acetone from the QC laboratory (F003); and unsalable by-product HCl (D002). (*Id.*)

The facility has three UIC wells which have been issued UIC permits from the Agency. Wells #1 and #2 have been used pursuant to the existing federal/state exemption to inject hazardous waste. UIC Well #3 has not been used to inject hazardous waste. However, Cabot intends to replace Well #1 with Well #3 once Well #3 is authorized; at that time Cabot will plug and abandon Well #1. (*Id.*)

---

[4] Cabot's August 17 petition will be cited as "Pet. at __"; the Agency's recommendation will be cited as "Agency at __".

## UIC ADJUSTED STANDARD PROCEDURE

The Illinois Environmental Protection Act at Section 28.1 (415 ILCS 5/28.1 (1994)) provides that a petitioner may request, and the Board may impose, an environmental standard that is different from the standard that would otherwise apply to the petitioner as the consequence of the operation of a rule of general applicability. Such a standard is called an adjusted standard. The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act and within the Board's procedural rules at 35 Ill. Adm. Code Part 106.

Cabot seeks an adjusted standard from the requirements set forth at 35 Ill. Adm. Code Part 738, Subpart B which prohibit the underground injection of certain restricted hazardous wastes. The procedures via which an adjusted standard from the UIC prohibitions may be sought, and the level of justification required for a petitioner to qualify for a UIC adjusted standard, are set out at 35 Ill. Adm. Code 738.Subpart C. 738.Subpart C has the following organization:

PART 738
HAZARDOUS WASTE INJECTION RESTRICTIONS
SUBPART C: PETITION STANDARDS AND PROCEDURES

| Section | |
|---|---|
| 738.120 | Petitions to Allow Injection of Prohibited Waste |
| 738.121 | Required Information to Support Petitions |
| 738.122 | Submission, Review and Approval or Denial of Petitions |
| 738.123 | Review of Adjusted Standards |
| 738.124 | Termination of Approved Petition |

Each of the Part 738 sections is identical-in-substance with the federal UIC exemption provisions, with the correspondence as follows:

| State Regulation | Federal Regulation |
|---|---|
| Section 738.120 | 40 CFR 148.20 (1988) |
| Section 738.121 | 40 CFR 148.21 (1988) |
| Section 738.122 | 40 CFR 148.22 (1988) |
| Section 738.123 | 40 CFR 148.23 (1988) |
| Section 738.124 | 40 CFR 148.24 (1988) |

Section 738.120(a) specifies:

> Any person seeking an exemption from a prohibition under Subpart B for the injection of a restricted hazardous waste into an injection well or wells shall submit

a petition for an adjusted standard to the Board, pursuant to 35 Ill. Adm. Code 106.Subpart G, demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous.

The demonstration that must be made to gain the "no-migration exemption" here requested is found at Section 738.120(a)(1)(A). A showing is required that:

> Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:
>
> i) Vertically upward out of the injection zone; or
>
> ii) Laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 35 Ill. Adm. Code 730.

## USEPA'S MODIFICATIONS OF EXEMPTION

Cabot's instant request is for two modifications of the existing State exemption. These are (1) that there be explicit identification that multi-source leachate from Cabot's leachate collection system or purged from on-site monitoring wells (purge water) is among the wastes for which underground injection may occur, and (2) that Well #3 be explicitly identified as a well within which underground injection may occur. Both modifications have already been granted by USEPA with respect to federal law.

The multi-source leachates at issue are classified as RCRA F039 wastes. The original USEPA exemption did specifically identify F039 waste as one of the wastes for which exemption was granted; so did the Board's February 1994 grant of adjusted standard. However, the content of Cabot's specific multi-source leachates did not correspond fully with the chemical constituents listed in the original federal exemption.

To rectify this situation, Cabot in August 1994 requested that USEPA modify the exemption. Cabot supplied USEPA with the full additional list of constituents. (Petition Exh. C.) On November 4, 1994 USEPA issued Cabot a modification of the exemption that added the new constituents in question to the list of exempted wastes for Wells #1 and #2. (Petition Exh. D.) USEPA found that Cabot's original no-migration demonstration remained valid even considering the disposal of the leachate and purge water. (*Id.*; Pet. at 4.)

Cabot's argument to USEPA regarding the use of Well #3 was made on the same basis as the original grant of exemption for Wells #1 and #2. That is, Cabot argued, and USEPA agreed, that use of Well #3 presented a no-migration hazard. In awarding the exemption for Well # 3, USEPA noted:

As required by 40 CFR part 148, Cabot has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the initiation of underground injection by Cabot of specific restricted hazardous wastes, including hydrochloric acid and wastewaters contaminated with hydrochloric acid which are hazardous because they are corrosive (Waste Code D002), a multi-source leachate (Waste Code F039) contaminated with small amounts of 1.1-dichloroethylene, 1.2-dichloroethylene, methylene chloride, phenol, tetrachloroethylene, and trichloroethylene from a closed waste storage impoundment, and low concentrations of residual, spent acetone (Waste Code F003) rinsed from laboratory glassware cleaned with solvent, into a Class I hazardous waste injection well, specifically identified as Well No. 3, at the Tuscola facility. This reissuance also incorporates conclusions based on geological data gathered during construction of that well and contained in the petition for reissuance dated August 16, 1995, into the Administrative Record of the decision to grant Cabot Corporation an exemption from the Land Disposal Restrictions. This decision constitutes a final USEPA action for which there is no administrative appeal. (Supp. Exh. at 3.)

## DISCUSSION AND CONCLUSION

In its granting the original UIC exemption to Cabot in AS 92-8, the Board placed weight both on the quality of USEPA's technical review and on the need to keep Illinois' identical-in-substance environmental programs in conformity with the corresponding federal programs. The Board today again gives weight to both of these considerations.

As regards the technical merits of the Cabot's request, the Board observes that awarding of any exemption for underground injection of wastes requires a substantial demonstration on the part of an applicant. These are detailed in the Board's order in AS 92-8, and will not be repeated in full here.

As regards the identical-in-substance nature of today's adjusted standard request, the Board observes, as it did in AS 92-8, that because the Illinois UIC program is identical-in-substance with the federal UIC program, it is intended to be no more (or less) stringent than the federal program. (AS 92-8 at p. 7.) The Board today finds, also as it did in AS 92-8 (*Id.*), that State denial of the exemption granted Cabot under federal law would cause a more stringent State law to apply to Cabot.

In sum, the Board finds that Cabot has demonstrated that grant of an adjusted standard is warranted. The Board has also reviewed the justification provided by Cabot to USEPA, and finds that Cabot has made all the demonstrations required pursuant to the identical-in-substance regulations at 35 Ill. Adm. Code 738.Subpart C.

The Board further finds that the conditions imposed by USEPA on the similar federal exemption are necessary limitations on the grant of this adjusted standard. Accordingly, the adjusted standard will be granted subject to those conditions. These include addition to the Board's February 1994 grant of adjusted standard language that reflects the USEPA modifications of November 4, 1994 regarding limits on F039 waste and of January 22, 1996 regarding use of Well #3.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

## ORDER

Cabot Corporation is hereby granted an adjusted standard from the requirements of 35 Ill. Adm. Code 738, Subpart B, for the underground injection control Wells #1, #2, and #3 at its Tuscola, Illinois, facility. This adjusted standard constitutes an exemption from the prohibitions of Subpart B such as to allow the underground injection disposal of wastes classified as acidic water (D002), by-product hydrochloric (D002), spent acetone (F003) and multi-source leachate (F039). This adjusted standard is subject to the following conditions:

a) The monthly average injection rate must not exceed 400 gallons per minute;

b) The concentrations of the constituents included in the injected leachate will not exceed the following values:

| | |
|---|---|
| Acetone | 47,000.00 mg/L |
| Tetrachloroethylene | 1.66 mg/L |
| Methylene chloride | 59.0 mg/L |
| Trichloroethylene | 1.66 mg/L |
| 1,2 Dichloroethylene | .33 mg/L |
| 1,1 Dichloroethylene | 2.33 mg/L |
| Phenol | 12,000.00 mg/L |
| 1,1 Dichloroethane | .33 mg/L |
| 1,2 Dichloroethane | 1.66 mg/L |
| Trans 1,2 Dichloroethane | 33.33 mg/L |
| Cis 1,2 Dichloroethane | 23.33 mg/L |
| 1,1,1 Trichloroethane | 66.66 mg/L |
| 1,1,2 Trichloroethane | 1.66 mg/L |
| Vinyl Chloride | .66 mg/L |
| Chloroethane | 3.33 mg/L |
| Chloroform | .33 mg/L |
| Ethylbenzene | 233.33 mg/L |
| Xylene (Total) | 3333.33 mg/L |

| | |
|---|---|
| Toluene | 333.33 mg/L |
| 1,1,1,2 Tetrachloroethane | .33 mg/L |
| 1,1,2,2 Tetrachloroethane | .33 mg/L |
| Cyanide (Total) | 66.66 mg/L |
| Barium | 666.66 mg/L |
| Cadmium | 1.66 mg/L |
| Chromium | 33.33 mg/L |

c) Direct injection shall occur only into the Franconia, Potosi, and Eminence Dolomites and the Gunter Sandstone;

d) The injection zone consists of the Franconia, Potosi, Eminence and Oneota Dolomites and the Gunter Sandstone, found between 4,421 and 5,400 feet in Cabot's Well #1, between 4,442 and 5,400 feet in Cabot's Well #2, and between 4,452 and 5,400 feet in Cabot's Well #3; and

e) Cabot must be in full compliance with all conditions of its permits and other conditions relating to the exemption found in 35 Ill. Adm. Code 738.123 and 738.124.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, 415 ILCS 5/41 (1994), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

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

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

# EXHIBIT C

See Separate Binders

# EXHIBIT D

See Separate Binder

# EXHIBIT E

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Admin. Code Part 738, Subpart B | ) | |

**CERTIFICATION OF PETITION FOR REISSUANCE OF ADJUSTED STANDARD**

I, Carl Troike (Name) Facility General Manager (Title)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Signature

April 11, 2007
Date

EXHIBIT
E

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

**MOTION TO STAY PROCEEDINGS ON CABOT CORPORATION'S PETITION FOR REISSUANCE OF ADJUSTED STANDARD**

Cabot Corporation ("Cabot"), through its attorneys, Seyfarth Shaw LLP, and pursuant to 35 Ill. Admin. Code §§ 101.500 and 100.514, moves to stay the Board's decision on Cabot's Petition for Reissuance of Adjusted Standard ("Petition"). In support of this motion, Cabot states:

1. On April 10, 2007, Cabot filed the Petition seeking reissuance of its adjusted standard from the Illinois state underground injection control ("UIC") regulations for Wells Nos. 2 and 3 at its Tuscola, Illinois facility ("Facility").

2. The Board previously granted Cabot an adjusted standard from the Illinois state UIC regulations on February 17, 1994 under Docket AS 92-8 (hereafter "Board's February 17, 1994 Order").

3. Subsequently, on March 7, 1996, the Board accepted Cabot's petition to modify and reissue the adjusted standard under Docket AS 96-3 (hereafter "Board's March 7, 1996 Order).

4. On March 8, 2006, Cabot filed its "2007 Petition for Renewal of Exemption from the Land Disposal Restrictions" with U.S. EPA ("U.S. EPA Petition"). The U.S. EPA Petition constitutes Cabot's effort to obtain reissuance of the Facility's "no-migration exemption" from the federal hazardous waste disposal injection regulations (set forth at 40 C.F.R. Part 148)

through December 31, 2027.

5. The U.S. EPA Petition demonstrates that the continued injection of waste into Wells Nos. 2 and 3 will be protective of human health and the environment for as long as the waste remains hazardous.

6. The Illinois state UIC regulations are identical-in-substance to their federal counterparts; thus, the justification for reissuance under the state and federal UIC regulations is the same.

7. In AS 92-8, the Board determined that denying the proposed adjusted standard where U.S. EPA had found that Cabot made all requisite demonstrations under the federal UIC regulations "would cause a more stringent State law to apply to Cabot, in contradistinction to the stringency principle." (Board's February 17, 1994 Order at 7).

8. Likewise, in AS 96-3, the Board found that "the State denial of the exemption granted Cabot under federal law would cause a more stringent law to apply to Cabot." (Board's March 7, 1996 Order at 6).

9. Consequently, staying the Board's decision on the Petition until U.S. EPA takes action on the U.S. EPA Petition will assist the Board in making the appropriate determination and ensure that the Board does not apply more stringent law to Cabot than is warranted under the circumstances.

10. The Board's consideration of Cabot's Petition is not a decision deadline proceeding requiring waiver of any decision deadline.

11. Based on its communication with U.S. EPA representatives, Cabot expects that U.S. EPA will review the U.S. EPA Petition and publish final notice of its determination in the Federal Register no later than September 30, 2007.

WHEREFORE, Cabot Corporation respectfully requests that the Board stay its consideration of the Petition for Reissuance of Adjusted Standard until U.S. EPA reaches a decision on Cabot's 2007 Petition for Renewal of Exemption from the Land Disposal Restrictions.

**DATED:** April 12, 2007

Respectfully submitted,

**CABOT CORPORATION**

By: _____
One of Its Attorneys

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | AS 07- 05 |
| PETITION OF CABOT CORPORATION | ) | (Adjusted Standard) |
| FOR AN ADJUSTED STANDARD FROM | ) | |
| 35 Ill. Adm. Code Part 738, Subpart B | ) | |

## MOTION FOR RELIEF FROM FILING REQUIREMENTS

Cabot Corporation ("Cabot"), through its attorneys, Seyfarth Shaw LLP, and pursuant to 35 Ill. Admin. Code § 101.500, moves for relief from the filing requirements of 35 Ill. Admin Code § 101.302(h). In support of this motion, Cabot states as follows:

1. On April 10, 2007, Cabot filed a Petition for Reissuance of Adjusted Standard ("Petition") from 35 Ill. Admin Code, Part 738, Subpart B for underground injection control ("UIC") Wells Nos. 2 and 3 at its Tuscola, Illinois facility ("Facility").

2. The Board previously granted Cabot an adjusted standard from the requirements of 35 Ill. Admin Code Part 738, Subpart B on February 17, 1994 under Docket AS 92-8.

3. Subsequently, on March 7, 1996, the Board accepted Cabot's petition to modify and reissue the adjusted standard under Docket AS 96-3.

4. In support of its Petition, Cabot wishes to rely solely upon the document entitled "2007 Petition for Renewal of Exemption from the Land Disposal Restrictions" it filed with U.S. EPA (the "U.S. EPA Petition") on March 8, 2006 and the Quality Assurance Quality Control Plan ("Plan") it filed with the U.S. EPA Petition. The U.S. EPA Petition seeks to extend the Facility's no-migration exemption from the federal hazardous waste disposal injection regulations (set forth at 40 C.F.R. Part 148) until December 31, 2027.

5. Through the U.S. EPA Petition, Cabot demonstrates that continued injection of

waste into Wells Nos. 2 and 3 will be protective of human health and the environment for as long as the waste remains hazardous.

6. The U.S. EPA Petition and the Plan, however, are voluminous and consist of five binders of information, much of which includes over-sized documents and color illustrations.

7. In AS 92-8 and AS 96-3, the Board granted Cabot leave to file one copy of the petition Cabot filed with U.S. EPA. *See* Board's August 13, 1992 Order in AS 92-8 (attached as **Exhibit A**) *and* Board's November 2, 1995 Order in AS 96-3 (attached **Exhibit B**).

8. Cabot submitted one copy of the U.S. EPA Petition and the Plan to the Board as **Exhibit C** and **Exhibit D** to its Petition.

9. In addition, Cabot provided one copy of the U.S. EPA Petition and the Plan to the Illinois Environmental Protection Agency, in accordance with 35 Ill. Admin. Code § 104.402.

10. For the above-stated reasons, Cabot seeks relief from the Board's requirement that all filings include a signed original and nine duplicate copies. *See* 35 Ill. Admin. Code § 101.302(h).

WHEREFORE, Cabot Corporation respectfully requests that the Board grant it leave to file one copy of the U.S. EPA Petition and Plan with the Board as **Exhibit C** and **Exhibit D** to its Petition, and relief from the requirement to file nine (9) duplicate copies of the U.S. EPA Petition and the Plan.

**DATED:** April 12, 2007

Respectfully submitted,

**CABOT CORPORATION**

By: _____
One of Its Attorneys

Eric E. Boyd (6194309)
Geoffrey B. Tichenor (6284135)
SEYFARTH SHAW LLP
131 South Dearborn Street
Chicago, Illinois 60603
Tel. (312) 460-5000
Fax: (312) 460-7000

# EXHIBIT A

ILLINOIS POLLUTION CONTROL BOARD
August 13, 1992

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| PETITION OF CABOT | ) | AS 92-8 |
| CORPORATION FOR AN ADJUSTED | ) | (Adjusted Standard) |
| STANDARD FROM 35 ILL. ADM. | ) | (Also see R92-16) |
| CODE 738.SUBPART B | ) | |

ORDER OF THE BOARD (by J. Anderson):

On August 3, 1992, Cabot Corporation (Cabot), requested a site-specific "no migration exemption" from the underground injection control (UIC) land disposal prohibitions in 35 Ill. Adm. Code 738.Subpart B. USEPA has granted an exemption from the federal UIC rules. Cabot asks that the Board either grant a State exemption by way of adopting a site-specific identical in substance rule pursuant to Section 13(c) of the Act, or, alternatively, by granting an adjusted standard pursuant to Section 28.1 of the Act. The Board initially docketed the petition as a regulatory petition, R92-16, which was dismissed this same day. For the reasons set forth in that dismissal order, this matter will proceed as an adjusted standard.

40 CFR 148 and 35 Ill. Adm. Code 738 prohibit the disposal of certain hazardous waste in UIC wells. 40 CFR 148.20 et seq. establishes a procedure for obtaining a "no migration exemption" from the prohibition on injection. The Board adopted identical in substance rules in R89-2. 35 Ill. Adm. Code 738.120 et seq. provides for the use of "adjusted standards" pursuant to Section 28.1 of the Act for granting "exemptions" at the State level.

This matter concerns two UIC wells owned by Cab-O-Sil Division, Cabot Corporation, located at Tuscola, in Douglas County. These are described as Wells No. 1 and 2.

USEPA proposed exemptions for these wells at 55 Fed. Reg. 34739, August 24, 1990. USEPA published a notice of exemption for Well No. 2 at 55 Fed. Reg. 49340, November 27, 1990, and for Well No. 1 at 56 Fed. Reg. 5826, February 13, 1991.

The Board accepts the petition as an adjusted standard petition, but asks for more information. Will Cabot clarify the USEPA exemption language, which appears to be ambiguous in at least three respects? First, although the discussion in the USEPA notice of proposed exemption identifies the wastestreams which may be injected pursuant to the exemptions, the exemptions themselves are not specific. Second, although the USEPA exemptions are conditioned on concentrations found in "Table 8-6 in the petition document", that Table is not reproduced in any of the material before the Board. Third, the exemption for Well No.



EXHIBIT
A

1 is specifically conditioned on testing which was to have been done in 1991, subject to approval by USEPA, Region V. Has this testing been done?

In addition, the petition generally references the voluminous petition filed with USEPA. The amended petition should specifically address the information requested in 35 Ill. Adm. Code 106.Subpart G and 738.Subpart B, the latter of which is nearly identical to the USEPA petition contents. The petitioner is granted leave to give summary responses, with references to the appropriate portions of the USEPA petition, only one copy of which needs to be filed with the Clerk.

Within 45 days after the date of this order, Cabot is directed to file an amended petition for adjusted standard, curing the above deficiencies, or this petition will be subject to dismissal. We note that the amended petition must be accompanied by the filing fee.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 13th day of August, 1992, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

# EXHIBIT B

ILLINOIS POLLUTION CONTROL BOARD
November 2, 1995

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| CABOT CORPORATION PETITION | ) | AS 96-3 |
| FOR AN ADJUSTED STANDARD FROM | ) | (Adjusted Standard - UIC) |
| 35 ILL. ADM. CODE 738.SUBPART B | ) | |

ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a Motion for Relief From Filing Requirements of 35 Ill. Adm. Code 106.708 and 101.106, filed by Cabot Corporation (Cabot) on October 19, 1995. Cabot desires to incorporate into the instant record materials from an earlier docket, AS 92-8. Pursuant to the Board's procedural rules at 35 Ill. Adm. Code 106.708 and 101.106, Cabot is required to file four copies of such materials.

The only document from the AS 92-8 proceeding upon which Cabot intends to rely is a document submitted to the United States Environmental Protection Agency (USEPA) requesting an exemption from the land disposal prohibition. This document consists of four binders of information. Cabot was only required to file one copy in the AS 92-8 proceeding.

In light of the length of the document in question, the Board will waive it's requirement that Cabot file four copies. However, the Board does require Cabot to file at least one copy of the USEPA petition.

The Board will not rule on Cabot's August 17, 1995 Motion for Stay until the petition is complete.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 2nd day of November, 1995, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

EXHIBIT

B