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A P P E A R A N C E S

- Claire A. Manning, Chairman
- Cynthia I. Ervin, Attorney to the Chairman
- Amy Hoogasian, Attorney Assistant to the Chairman

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and

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On behalf of the IERG.

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P R O C E E D I N G S

(December 9, 1997; 10:00 a.m.)

HEARING OFFICER ERVIN: Good morning. My name is Cynthia Ervin. I am the Hearing Officer in this proceeding that is entitled, In the Matter of: Amendments of 35 Illinois Administrative Code 703, 720, 721, 724, 725, 728 and 733, Standards for Universal Waste Management.

Present today on Behalf of the Illinois Pollution Control Board is presiding Board Member in this rulemaking, Chairman Claire Manning. Also joining us is Amy Hoogasian, Claire Manning's Attorney Assistant in Chicago.

As background for this rulemaking, on October 17th, 1997, the Illinois Environmental Protection Agency filed this proposal for rulemaking to amend the Board's regulations concerning standards for universal waste management to include mercury-containing lamps as a category under universal waste. This rulemaking was in response to Public Act 90-502 which changed the designation of fluorescent and high intensity discharge lamps from hazardous waste to universal waste. The legislation also requires the Board to adopt the Agency's proposal within six months of receipt of the Agency's proposal.

1           On November 6th the Board accepted the proposal  
2 for hearing and due to the stringent time frames for  
3 adopting the Agency's proposal, sent this matter to  
4 first notice without comment on the Agency's  
5 proposal. The rule adopted for first notice was  
6 published in the Illinois Register on November 21st,  
7 1997.

8           The purpose of today's hearing is to allow the  
9 Agency to present its testimony in support of the  
10 proposal and to allow questioning of the Agency.  
11 Procedurally, this is how I would like to proceed.  
12 The Agency will provide a summary of the prefiled  
13 testimony. We will then mark each of the prefiled  
14 testimonies as an exhibit. After that there will be a  
15 period of questioning. I prefer that during the  
16 questioning period all persons with questions raise  
17 their hand and wait for me to acknowledge them. After  
18 being acknowledged, please state your name and the  
19 organization you represent, if any.

20           After this questioning period, there will be time  
21 for other testimony and statement. This hearing will  
22 be governed by the Board's procedural rules for  
23 regulatory proceedings. All information which is  
24 relevant and not repetitious or privileged will be  
25 submitted. All witnesses will be sworn and subject to

1 cross-questioning.

2 Are there any questions regarding these  
3 proceedings? Seeing none, I would ask the Chairman if  
4 she would like to make any additional comments before  
5 we proceed.

6 CHAIRMAN MANNING: I would just like to welcome  
7 you to what I hope is going to be a smooth  
8 rulemaking. Everything looks in order. We welcome  
9 your testimony and the record evidence. Thank you.

10 HEARING OFFICER ERVIN: At this time I would ask  
11 the Agency if they would like to make an opening  
12 statement.

13 MR. ORLINSKY: Yes, we would. Hearing Officer  
14 Ervin, Chairman Manning, Ms. Hoogasian, members of the  
15 audience, my name is Peter Orlinky. I am an attorney  
16 with the Illinois Environmental Protection Agency. To  
17 my left is Christopher Perzan, also an Illinois EPA  
18 attorney who is co-counsel in this proceedings.

19 The other EPA personnel who are present today and  
20 will be witnesses at this hearing are David Jansen,  
21 who is the Springfield Regional Manager for the Field  
22 Operations Section with the Bureau of Land; Todd  
23 Marvel, who is the Acting Assistant Field Operations  
24 Section Manager and the RCRA Coordinator of the Bureau  
25 of Land; Jerry Kuhn, who is the RCRA Permit Unit

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1 Manager of the Permit Section of the Bureau of Land.  
2 On May 11, 1995, the United States Environmental  
3 Protection Agency adopted the Universal Waste Rule  
4 which is now codified at 40 CFR 273. The purpose of  
5 the rule was to reduce the amount of hazardous waste  
6 in municipal solid wastestreams, to encourage  
7 recycling and the proper disposal of common hazardous  
8 wastes and to reduce the regulatory burden on  
9 businesses that generate the wastes. The rule  
10 included batteries, agricultural pesticides and  
11 mercury-containing thermostats. The U.S. EPA  
12 encouraged states to adopt the Universal Waste Rule  
13 and where appropriate to add additional universal  
14 wastes.

15 On June 20, 1996, the Illinois Pollution Control  
16 Board adopted the Universal Waste Rule in the  
17 proceeding designated as R95-20 and codified it at 35  
18 Illinois Administrative Code 733. The Board's opinion  
19 stated that, quote, the U.S. EPA stated in adopting  
20 the rules that it intends to expand their  
21 applicability to new waste in the future such as  
22 fluorescent light bulbs, unquote.

23 In fact, the U.S. EPA is currently considering the  
24 addition of fluorescent light bulbs to the rule.  
25 However, the final action of the U.S. EPA's proposal

1 is not expected in the near future.

2 On August 19, 1997, Governor Edgar signed Public  
3 Act 90-502. The pertinent part of that new law  
4 amended Section 22.23 (a) of the Illinois  
5 Environmental Protection Act by designating high  
6 intensity discharge lamps and fluorescent lamps as a  
7 category of universal waste. The proposal being  
8 considered today does not provide the Board with the  
9 opportunity to determine if mercury-containing lamps  
10 should be included in the Universal Waste Rule because  
11 the legislature has already made that determination.  
12 The Public Act 90-502 further required the Illinois  
13 EPA to propose implemented regulations to the Board  
14 within 60 days and for the Board to adopt such  
15 regulations within 180 days.

16 On October 17, 1997, the Illinois EPA proposed  
17 those implementing regulations to the Board. Those  
18 proposed regulations are the subject of today's  
19 hearing and the hearing to be held on December 15th in  
20 Chicago. Even before the legislative mandate, the  
21 Illinois EPA believed that used mercury-containing  
22 lamps which include fluorescent lamps and high  
23 intensity discharge lamps, should be designated as  
24 universal waste in order to encourage recycling of the  
25 lamps, thereby reducing the amount of mercury going



1 into landfills and being incinerated.

2 In September of 1996 the Illinois EPA applied to  
3 the U.S. EPA Region 5 for authorization of all  
4 provisions of the Universal Waste Rule. To date the  
5 Illinois EPA has not received a response from the U.S.  
6 EPA. The Illinois EPA believes that it is proper to  
7 include used mercury-containing lamps as universal  
8 waste for the following reasons:

9 1. As a result of the use of mercury in the  
10 production of fluorescent and high intensity discharge  
11 lamps, a relatively high percentage of lamps once  
12 spent exhibit the characteristic of toxicity as  
13 determined by the toxicity characteristic leaching  
14 procedure known as TCLP. Since toxicity is one of the  
15 characteristics of a hazardous waste, spent lamps are,  
16 therefore, hazardous wastes.

17 2. Fluorescent lamps and high intensity discharge  
18 lamps are used by a wide variety and type of  
19 facilities. Mercury-containing lamps are commonly  
20 found in most industrial and commercial facilities as  
21 well as office buildings and schools.

22 3. The lamps are used by a large number of  
23 facilities. The U.S. EPA has estimated that  
24 approximately 550,000,000 fluorescent lamps are added  
25 to the municipal wastestream each year on a national

1 level. Since Illinois is one of the more populous  
2 states it could be assumed that several million  
3 fluorescent lamps are disposed of in Illinois  
4 annually.

5 4. Since the lamps are characterized as hazardous  
6 waste, it is desirable to limit the amount of lamps  
7 being disposed in landfills or incinerated. One of  
8 the purposes of the Universal Waste Rule is to  
9 encourage recycling. Thus, the designation of used  
10 mercury-containing lamps as universal waste will  
11 decrease the amount of mercury in landfills and  
12 incinerators. Such a reduction will be protective of  
13 human health and the environment.

14 Where possible the proposed regulation was drafted  
15 to be parallel with the existing 35 Illinois  
16 Administrative Code 733. Thus, the proposed  
17 procedures for the management of used  
18 mercury-containing lamps are virtually identical to  
19 the procedures which the Board has previously adopted  
20 for the management of used batteries, pesticides, and  
21 mercury-containing thermostats.

22 On November 25, 1997, the Illinois EPA prefiled  
23 its testimony and relevant exhibits in this matter in  
24 accordance with Board Rule 35 Illinois Administrative  
25 Code 102.280 and the order of the Hearing Officer

1 dated November 12, 1997.

2 Testimony was prepared by David Jansen, Todd  
3 Marvel, and Jerry Kuhn. All of the witnesses are  
4 present here today and are prepared to summarize their  
5 testimony and answer questions.

6 Finally, I want to mention that the Illinois EPA  
7 has recently been contacted by Counsel for the  
8 Illinois Environmental Regulatory Group concerning the  
9 proposals contained in 35 Illinois Administrative Code  
10 733.113 (g) (5) and 733.133 (d) (5) and 733.151 (c).  
11 Those proposed sections prohibit handlers and  
12 transporters of universal waste from intentionally  
13 crushing or breaking universal waste  
14 mercury-containing lamps. The Environmental  
15 Regulatory Group apparently believes that such an  
16 absolute prohibition may not be appropriate in all  
17 circumstances.

18 Later today, depending on when the hearing is  
19 concluded, representatives of the Illinois EPA and the  
20 Illinois Environmental Regulatory Group will be  
21 meeting to discuss those concerns.

22 HEARING OFFICER ERVIN: Thank you. Mr. Orlinsky,  
23 are you ready to proceed with your witnesses?

24 MR. ORLINSKY: Yes, we are.

25 HEARING OFFICER ERVIN: All right. Would the

1 court reporter swear in the panel of witnesses,  
2 please.

3 (Whereupon the witnesses, David Jansen, Jerry  
4 Kuhn and Todd Marvel, were sworn by the  
5 Notary Public.)

6 D A V I D C. J A N S E N,  
7 having been first duly sworn by the Notary Public,  
8 saith as follows:

9 MR. JANSEN: My name is David Jansen. I am the  
10 Springfield Regional Manager for the Bureau of Land in  
11 the Field Operations Section. I want to summarize my  
12 testimony today.

13 The proposal before the Board does not change the  
14 existing definitions of universal waste, small and  
15 large quantity handlers, transporters, and destination  
16 facilities. It does not change existing Part 733  
17 Universal Waste requirements for small quantity and  
18 large quantity handlers and transporters of universal  
19 waste regarding disposal and treatment prohibitions,  
20 notification, accumulation time limits, employee  
21 training, responses to releases, off-site shipments,  
22 tracking of shipments and exports. It also does not  
23 change the destination facility requirements.

24 The proposal defines the applicability of the  
25 standards and provides for specific mercury-containing

1 lamp waste management labeling and marking standards  
2 for small quantity and large quantity handlers. Under  
3 the proposal transporters and small quantity and large  
4 quantity handlers will not be allowed to intentionally  
5 crush bulbs. The small quantity handlers do not need  
6 to nullify their activities or keep track of their  
7 shipments.

8       The Agency estimates that if approximately  
9 23,000,000 bulbs are generated in Illinois on an  
10 annual basis for disposal, 1,375 pounds of mercury are  
11 being discarded annually. Reducing the amount of  
12 mercury going into landfills and incinerators, you  
13 will reduce the amount of mercury entering  
14 groundwater, surface water, the food chain and the air  
15 we breathe.

16       The Agency will attempt to reduce the number of  
17 mercury-containing lamps destined for disposal  
18 primarily through the education of generators in the  
19 requirements of the proposal and the promotion of lamp  
20 recycling. During its routine inspections of  
21 generators, transporters, treaters for the disposal of  
22 waste, the Agency will determine if they are in  
23 compliance with the landfills in an attempt to obtain  
24 their voluntary compliance. The sites not achieving  
25 voluntary compliance with the rules will be considered

1 for enforcement action following the procedures in  
2 Section 31 of the Act.

3 At this time no special efforts are planned to  
4 specifically target regulated generators of  
5 mercury-containing lamps for inspection, compliance,  
6 and enforcement action. Any complaints the Agency  
7 receives regarding the generation, transportation,  
8 storage treatment or disposal of mercury-containing  
9 lamps will be investigated and necessary follow-up  
10 action will be completed.

11 HEARING OFFICER ERVIN: Thank you.

12 MR. ORLINSKY: All right. Jerry.

13 J E R R Y K U H N,  
14 having been first duly sworn by the Notary Public,  
15 saith as follows:

16 MR. KUHN: My name is Jerry Kuhn. I am the  
17 Manager of the RCRA Unit within the Permit Section,  
18 Division of Land Pollution Control, Bureau of Land in  
19 the IEPA. My comments today will address the  
20 characteristic of spent mercury-containing lamps that  
21 render them hazardous wastes and discuss the reasons  
22 for prohibiting the intentional crushing or breaking  
23 of lamps.

24 Many commonly used lights contain small amounts of  
25 mercury. Such lights include fluorescent, high

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1 pressure sodium, mercury vapor and metal halide  
2 lights. Used mercury-containing lights may be a RCRA  
3 hazardous waste if the material exhibits the  
4 characteristic of toxicity. Toxicity is one of the  
5 four characteristics used to identify waste as  
6 hazardous, along with ignitability, corrosivity, and  
7 reactivity.

8       The Toxicity Characteristic Leaching Procedure,  
9 TCLP test, is used to define the toxicity of a waste.  
10 Mercury is a well-known toxin that primarily affects  
11 the central nervous system and kidneys. If, when  
12 using the TCLP, the extract from a representative  
13 sample of waste contains mercury at a concentration  
14 greater than or equal to the maximum contaminant  
15 concentration of 0.2 parts per million, the waste  
16 would be a hazardous waste. According to the U.S.  
17 EPA, past testing of used fluorescent lamps showed  
18 that a high percentage of the lamps tested exhibited  
19 the toxicity characteristic for mercury.

20       Generators of used mercury-containing lights are  
21 responsible for determining if their lighting wastes  
22 are hazardous. If the lighting wastes have not been  
23 tested to show that they are not hazardous, or if the  
24 generator doesn't have other supporting data such as  
25 manufacturer's information, then the generator should

1 assume the lights are hazardous and manage them as  
2 such.

3 Also, the proposed regulations prohibit the  
4 intentional crushing or breaking of used  
5 mercury-containing lamps by small and large quantity  
6 handlers and transporters. They do not prohibit  
7 destination facilities, however, from crushing or  
8 breaking the lamps. In the U.S. EPA report entitled,  
9 Mercury Emissions from the Disposal of Fluorescent  
10 Lamps, it was concluded that a large amount of the  
11 total mercury released to the environment would be as  
12 a result of breakage of the lamps during handling and  
13 transportation to the disposal and/or recycling  
14 facility.

15 Drum top crushing is a treatment technology  
16 providing volume reduction by crushing the lamps  
17 before transport. Estimates of the control efficiency  
18 provided by these devices vary from 0 percent to about  
19 90 percent for the more complex devices. Operational  
20 difficulties have also been reported with these  
21 devices, including leaks at the seal between the drum  
22 and the crusher, resulting in violations of the OSHA  
23 mercury standards. The report recommends that  
24 procedures be established to minimize emissions during  
25 transport and/or processing, i.e., crushing of used



1 mercury-containing lamps.

2       Therefore, the Agency believes that limiting the  
3 intentional crushing and breakage of lamps to the  
4 destination facility only is the most appropriate way  
5 to address this issue. Destination facilities are  
6 subject to full RCRA permitting requirements and all  
7 would be required to have the appropriate equipment,  
8 expertise, safety measures, and the ability to respond  
9 to and contain releases.

10       HEARING OFFICER ERVIN: Okay.

11                           T O D D M A R V E L,  
12 having been first duly sworn by the Notary Public,  
13 saith as follows:

14       MR. MARVEL: My name is Todd Marvel. I am the  
15 Resource Conservation and Recovery Act Coordinator and  
16 a U.S. EPA Liaison for the Bureau of Land. I was also  
17 recently named the Acting Assistant Manager of the  
18 Field of Operations Section for the Bureau of Land.  
19 My testimony covers federal rulemaking and RCRA  
20 authorization issues as they relate to the Universal  
21 Waste Rules specifically fluorescent lamps.

22       On February 11 of 1993, the U.S. EPA proposed a  
23 Universal Waste Rule with new streamlined hazardous  
24 waste management regulations governing the collection  
25 and management of certain widely generated hazardous

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1 wastes known as universal wastes. That rule was  
2 finalized on May 11th of 1995 in a rule that was very  
3 similar to the proposed rule.

4 The U.S. EPA originally considered  
5 mercury-containing lamps for the proposed Universal  
6 Waste Rule. However, they took them out of the  
7 proposal due to the further need for investigation of  
8 the risk imposed by mercury-containing lamps.

9 On July 27th of 1994, the U.S. EPA published a  
10 proposed rule specifically addressing the potential  
11 regulation of fluorescent lamps. They presented two  
12 options for changing the regulations. One is a  
13 conditional exemption from regulation as a hazardous  
14 waste provided that they meet certain criteria. The  
15 other option was to add fluorescent lamps to the  
16 Universal Waste Rule.

17 To date, no further action has been taken on that  
18 rule or any other rule to specifically address the  
19 regulation of mercury-containing lamps. On June 30th  
20 of 1997 the U.S. EPA published a study entitled,  
21 Mercury Emissions from the Disposal of Fluorescent  
22 Lamps, Final Report. This report is discussed further  
23 in Mr. Kuhn's testimony.

24 During the Illinois Pollution Control Board's  
25 rules adoption process for the Universal Waste Rule,

1 they stated that they could not add a hazardous waste  
2 to the Universal Waste Rule until the U.S. EPA  
3 authorized the Illinois Universal Waste Rule  
4 regulations. In response to that final order the  
5 Agency submitted Authorization Revision Application  
6 Number 7 to the U.S. EPA which contained the Universal  
7 Waste Rule.

8 To date no action has been taken on that  
9 authorization package. However, the program -- the  
10 U.S. EPA programs staff have indicated that the  
11 package is complete and available for approval.  
12 However, there are certain enforcement related issues  
13 involving recent statutory revisions that have  
14 prevented that authorization package from being  
15 approved.

16 This rulemaking before the Board is submitted in  
17 response to Public Act 90-502. The Universal Waste  
18 Rule with mercury-containing lamps in the rule is less  
19 stringent than the federal RCRA regulations and could  
20 be considered inconsistent with the federal program.  
21 However, several states' frustration with the lack of  
22 regulatory action by the U.S. EPA has prompted the  
23 addition of mercury-containing lamps. The U.S. EPA  
24 has not and have stated that they will not take action  
25 against those states.

1           Currently, there are 14 states that have  
2 mercury-containing lamps as part of their Universal  
3 Waste Rule. I have listed six in my attachment to the  
4 testimony. Those are the ones that we have copies of  
5 regulations for and they are attached.

6           Under a document dated February 13th of 1997,  
7 authored by Mike Shapiro, Director of the Office of  
8 Solid Waste, a document entitled, Universal Waste Rule  
9 Questions and Answers Document, it specifically states  
10 that states can add hazardous waste to their Universal  
11 Waste Rule prior to authorization provided they meet  
12 the three criteria identified in the May 11th  
13 Universal Waste Rule.

14           The Agency believes that mercury-containing lamps  
15 do meet these criteria identified and we have notified  
16 the U.S. EPA of this action and provided them with a  
17 copy of the proposed rule.

18           HEARING OFFICER ERVIN: Thank you. Mr. Orlinsky,  
19 does this conclude your testimony?

20           MR. ORLINSKY: That concludes our testimony, yes.

21           HEARING OFFICER ERVIN: Would you like to, at this  
22 time, move for the Board to accept the testimony as if  
23 read?

24           MR. ORLINSKY: Yes, we would.

25           HEARING OFFICER ERVIN: Okay. If you wouldn't  
20

1 mind, we will do each gentleman's testimony  
2 separately.

3 MR. ORLINSKY: All right.

4 MR. PERZAN: First, I would like to offer the  
5 testimony of Mr. Jansen and enter it into the record  
6 as if read.

7 HEARING OFFICER ERVIN: Are there any objections  
8 to the admittance of this testimony? Seeing none, Mr.  
9 Jansen's testimony will be entered into evidence as  
10 Exhibit Number 1.

11 (Whereupon said document was duly marked for  
12 purposes of identification and entered into  
13 evidence as Hearing Exhibit 1 as of this date.)

14 MR. PERZAN: Would you like the exhibits?

15 HEARING OFFICER ERVIN: Yes, those as well.

16 MR. PERZAN: Mr. Jansen's exhibits consist of a  
17 copy of the Federal Register dated Wednesday, July 27,  
18 1994, entitled Hazardous Waste Management System,  
19 Modification of Hazardous Waste Program,  
20 Mercury-containing Lamps, and a report of the United  
21 States Environmental Protection Agency, Office of  
22 Solid Waste, entitled, Mercury Emissions from the  
23 Disposal of Fluorescent Lamps. That is dated June 30,  
24 1997.

25 HEARING OFFICER ERVIN: Are there any objections

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1 to the admittance of these documents? Seeing none,  
2 the Federal Register, dated July 27, 1994, will be  
3 entered into evidence as Exhibit Number 2. The U.S.  
4 EPA document entitled, Mercury Emissions from the  
5 Disposal of Fluorescent Lamps will be admitted into  
6 evidence as Exhibit Number 3.

7 (Whereupon said documents were duly marked for  
8 purposes of identification and entered into  
9 evidence as Hearing Exhibits Number 2 and 3 as of  
10 this date.)

11 MR. PERZAN: Mr. Kuhn's exhibit also consists  
12 solely of what has previously been entered as Exhibit  
13 Number 3, so we don't need to --

14 HEARING OFFICER ERVIN: No.

15 MR. PERZAN: Mr. Marvel also has Exhibit 2 and  
16 Exhibit 3 on his list. But he also has a copy of the  
17 rules for the State of Alabama, a copy of the rules  
18 for the State of Georgia, a copy of the rules for the  
19 State of Indiana, and a copy of the rules for the  
20 State of Montana.

21 HEARING OFFICER ERVIN: Mr. Perzan, before you  
22 enter those into the record, would you mind to move to  
23 enter Mr. Kuhn's testimony?

24 MR. PERZAN: Yes. Thank you. I would like to  
25 offer Mr. Kuhn's testimony into the record.

1 HEARING OFFICER ERVIN: Any objection to the  
2 admittance of this exhibit? Mr. Kuhn's testimony will  
3 be entered as Exhibit Number 4.

4 (Whereupon said document was duly marked for  
5 purposes of identification and entered into  
6 evidence as Hearing Exhibit 4 as of this date.)

7 MR. PERZAN: I guess I should enter Mr. Marvel's,  
8 as well.

9 HEARING OFFICER ERVIN: Yes.

10 MR. PERZAN: I would like to offer Mr. Marvel's  
11 testimony.

12 HEARING OFFICER ERVIN: Okay. Any objection to  
13 the admittance of this testimony? Seeing none, Mr.  
14 Marvel's testimony will be entered into evidence as  
15 Exhibit Number 5.

16 (Whereupon said document was duly marked for  
17 purposes of identification and entered into  
18 evidence as Hearing Exhibit 5 as of this date.)

19 HEARING OFFICER ERVIN: Would you like to move the  
20 states as a package?

21 MR. PERZAN: Yes, I think that would probably be  
22 the best way to do it. There are quite a few here. I  
23 would like to offer as a package the Universal Waste  
24 Rules, as they apply to fluorescent lamps, for  
25 Alabama, Georgia, Indiana, Montana, Oregon, and Utah.

23

1 HEARING OFFICER ERVIN: Any objection to the  
2 admittance of these documents?

3 CHAIRMAN MANNING: Let me just ask a question.  
4 Those are the current regulations, as best you know,  
5 in each of those states?

6 MR. PERZAN: Yes, as best we know. I think that  
7 Mr. Marvel has been in contact with each of these  
8 states in the course of our development of the  
9 regulations, and he requested these as part of that  
10 development. So this is what we -- as far as I know,  
11 these are the current and these are what we relied on  
12 when we were looking at other states.

13 CHAIRMAN MANNING: Thank you.

14 HEARING OFFICER ERVIN: Seeing no objection, the  
15 Universal Waste Rules for Alabama, Georgia, Indiana,  
16 Montana, Oregon, and Utah will be entered into  
17 evidence as Exhibit Number 6.

18 (Whereupon said document was duly marked for  
19 purposes of identification and entered into  
20 evidence as Hearing Exhibit 6 as of this date.)

21 HEARING OFFICER ERVIN: Okay.

22 MR. PERZAN: With Mr. Marvel's testimony we have  
23 one last exhibit. That is the document referenced by  
24 Mr. Marvel in his summary. It is a document dated  
25 February 13th, 1997, entitled, Universal Waste



1 Questions and Answers Document, authored by a Mike  
2 Shapiro, Office of Solid Waste, the United States  
3 Environmental Protection Agency.

4 HEARING OFFICER ERVIN: Any objection to the  
5 admittance of this document? Seeing none, the U.S.  
6 EPA document entitled, Universal Waste Questions and  
7 Answers Document will be admitted as Exhibit Number  
8 7.

9 (Whereupon said document was duly marked for  
10 purposes of identification and entered into  
11 evidence as Hearing Exhibit 7 as of this date.)

12 HEARING OFFICER ERVIN: We will now proceed with  
13 the questions for the Agency's witnesses. I think the  
14 Board has several questions for the Agency. We will  
15 do those first and then we will open it up for people  
16 who have questions.

17 First of all, the Agency's proposal only sought to  
18 amend Part 733 of the Board's regulations. In the  
19 Board's opinion order adopted for first notice, the  
20 Board proposed to amend not only Part 733 but various  
21 other parts that reference universal waste.

22 Does the Agency have any comment on the propriety  
23 of the Board's action?

24 MR. ORLINSKY: We have no problem with that.

25 HEARING OFFICER ERVIN: According to the Agency's  
25

1 proposal, the Agency is seeking to amend the Board's  
2 regulations designating mercury-containing lamps as a  
3 category of universal waste. However, Section 22.23  
4 of the Act only designated hazardous fluorescent and  
5 high intensity discharge lamps as a category of  
6 universal waste.

7 In light of this, can you comment on whether the  
8 proposed definition of mercury-containing lamps is  
9 consistent with the authorizing statutory provisions?

10 MR. KUHN: I believe the lights that I mentioned  
11 in my testimony would all be included under the HID  
12 category that you mentioned --

13 HEARING OFFICER ERVIN: Can you provide --

14 MR. KUHN: -- as mercury-containing lights.

15 HEARING OFFICER ERVIN: Are there other examples  
16 of mercury-containing lights other than fluorescent  
17 and high intensity discharge lamps that are covered by  
18 the proposed regulations?

19 MR. KUHN: Not that I can recall. I mean, I  
20 consider mercury vapor, metal halide and high pressure  
21 sodium as HID type lamps.

22 HEARING OFFICER ERVIN: My question really goes to  
23 just terminology, because the legislature does talk  
24 about hazardous fluorescent, high intensity discharge  
25 lamps, but the proposal deals with mercury-containing

1 lamps. So I didn't know if there was a conflict  
2 between those.

3 MR. KUHN: They all contain mercury.

4 HEARING OFFICER ERVIN: They all contain mercury.  
5 So mercury-containing lamps is broader than  
6 fluorescent?

7 MR. KUHN: Yes.

8 HEARING OFFICER ERVIN: So it would encompass more  
9 than just fluorescent high intensity discharge lamps?

10 MR. KUHN: It would encompass those, yes.

11 HEARING OFFICER ERVIN: It would encompass more  
12 than, though?

13 MR. KUHN: More than?

14 HEARING OFFICER ERVIN: You can check into that  
15 and get back to us at the next hearing, but do you  
16 understand where --

17 MR. KUHN: I am not quite sure what your question  
18 is in terms of mercury-containing lamps.

19 HEARING OFFICER ERVIN: Well, the legislation that  
20 we are operating under only sought to designate  
21 hazardous fluorescent and high intensity discharge  
22 lamps as universal waste. But your proposal deals  
23 with mercury-containing lamps. If mercury-containing  
24 lamps is a broader term than --

25 MR. KUHN: Okay.

1 HEARING OFFICER ERVIN: Then we are exceeding  
2 our -- we are going beyond the statute.

3 MR. KUHN: Okay.

4 MR. JANSEN: In the definition of  
5 mercury-containing lamps in the proposal it says that  
6 mercury-containing lamps include but are not limited  
7 to fluorescent lamps and high intensity discharge  
8 lamps. So it is not meant to be all inclusive there.  
9 I mean, it is meant to be all inclusive of  
10 mercury-containing lamps.

11 HEARING OFFICER ERVIN: All right. In Section  
12 733.113 (d) and 733.133 (d), these sections deal with  
13 the handler managing the lamps in a manner which  
14 minimizes breakage. Does minimize breakage just mean  
15 you have to contain the lamps in the packaging to  
16 prevent the lamp fragments and residues as referred to  
17 above, or does that mean something else?

18 MR. JANSEN: I was looking at how our Agency  
19 stores lamps the other day, and our Agency is storing  
20 lamps in boxes that contained the original product  
21 lamps. If the boxes, for instance, are kept isolated  
22 from contact with other objects or people then I would  
23 expect that we could meet the standard for minimizing  
24 breakage of lamps.

25 But, obviously, in other situations, where there

1 is going to be more contact with the lamps and higher  
2 traffic, then there may have to be other more rigid  
3 containers provided to minimize the breakage of lamps  
4 during the storage process and during the  
5 transportation process also.

6 HEARING OFFICER ERVIN: In your proposal and as  
7 Mr. Orlinsky commented in his opening statement, the  
8 Agency states that the mercury-containing lamps should  
9 be designated as universal waste because it would  
10 encourage recycling. But I noticed in Mr. Jansen's  
11 testimony that there are currently no permitted waste  
12 mercury-containing lamp recycling facilities in  
13 Illinois.

14 Can someone comment on how the Universal Waste  
15 Rule will encourage recycling?

16 MR. MARVEL: Well, we would hope that with the  
17 larger amount of fluorescent lamps seeking to be  
18 recycled that recycling facilities would be interested  
19 in coming into the State through that rule or as a  
20 result of the implementation of that rule.

21 MR. KUHN: I would like to add, also, that we do  
22 have a preliminary application in-house for recycling  
23 facilities for mercury-containing lamps.

24 HEARING OFFICER ERVIN: In Illinois?

25 MR. KUHN: For Illinois, yes.

1 HEARING OFFICER ERVIN: Mr. Kuhn, in your prefiled  
2 testimony you make some statements concerning drum top  
3 crushing technology. Are you aware of anyone that  
4 currently uses that in Illinois?

5 MR. KUHN: Not specifically, no.

6 HEARING OFFICER ERVIN: There also is testimony in  
7 the prefiled testimony regarding the RCRA  
8 authorization revision application, and that has not  
9 been approved yet. I assume that that is still  
10 correct as of --

11 MR. MARVEL: Yes.

12 HEARING OFFICER ERVIN: Also, there was a  
13 statement that the U.S. EPA won't -- has stated that  
14 it wouldn't take action against states that have  
15 adopted the Universal Waste Rules similar to what has  
16 been proposed today. Is there any documentation of  
17 this, or how are you aware of this?

18 MR. MARVEL: Well, the documentation is -- what I  
19 have available is a questions and answers document  
20 that specifically states that the states can add  
21 fluorescent lamps to their Universal Waste Rule prior  
22 to authorization. I have been to two authorization  
23 conferences in the last year where it has been  
24 indicated by the U.S. EPA that no action is going to  
25 be taken against those states that have fluorescent

1 lamps, but they haven't -- but other than this  
2 document, there has been nothing in writing.

3 HEARING OFFICER ERVIN: Thank you. With regards  
4 to that particular document you only provide us with  
5 the -- just a part of the document, which was just  
6 questioned. Would the Agency be able to provide us  
7 with the entire document?

8 MR. MARVEL: Yes, I have the entire document with  
9 me.

10 HEARING OFFICER ERVIN: Thank you. Back to the  
11 intentional crushing and breaking of the  
12 mercury-containing waste, the provision that is in the  
13 proposal. Do any other states have a similar rule?

14 MR. JANSEN: Not in specific language that  
15 Illinois has. I believe several states have the  
16 language in that they prohibit the treatment of  
17 universal waste on site, and if you look at the  
18 crushing of bulbs as treatment that would be a  
19 prohibition.

20 HEARING OFFICER ERVIN: Just for the record, in  
21 the proposal you comment on the technical feasibility  
22 and the economic reasonableness of this proposal. But  
23 in your prefiled testimony no one really comments on  
24 it.

25 Just for the record, can someone briefly summarize

1 a little bit about the economic aspects of this as  
2 well as the economic feasibility of it?

3 MR. ORLINSKY: Maybe if we could supply that at  
4 the next hearing.

5 HEARING OFFICER ERVIN: At the next hearing would  
6 be fine. Thank you.

7 CHAIRMAN MANNING: I just have a couple of  
8 questions. One for Mr. Jansen.

9 Your testimony indicates that you expect to engage  
10 in an educational campaign. I am sure that that is  
11 correct. IERG, obviously, will conduct its own in  
12 terms of businesses, obviously, that are used to being  
13 regulated.

14 I assume that you are going to have to do some  
15 work with school districts and local and state  
16 government. Could you expand a little bit beyond what  
17 you have in your testimony about what you expect to do  
18 in terms of educating people of these new  
19 requirements, number one?

20 And, number two, do you have, as part of the rule,  
21 sort of an obligation on your part to conduct this  
22 education? I didn't really see it. I know that you  
23 said that you will do it, but I don't see that there  
24 is an obligation in the rule itself that you will  
25 engage in this educational campaign.



1 MR. JANSEN: There is no obligation under the  
2 proposed rule for us to do that. Our Agency does have  
3 an office of pollution prevention that is actively  
4 engaged in trying to educate people in pollution  
5 prevention techniques, and I expect that they are  
6 going to play a large role in this.

7 One of things that we would like to do is to get  
8 out a fact sheet in layman's language that explains  
9 the proposal or the rules when they are adopted to the  
10 people so that they can understand them and be able to  
11 implement those without having an Agency expert  
12 hanging over their shoulder to try and help them do  
13 that.

14 So I expect that we are going to have to conduct  
15 some mass mailings, and we may even have to conduct  
16 some seminars across the State to do that. But there  
17 will be an effort to do that because that is better  
18 for us in the long-run.

19 CHAIRMAN MANNING: I am correct in assuming, am I  
20 not, that this will have an effect on local  
21 government, state government, hospitals, anybody that  
22 has a large quantity of fluorescent light bulbs?

23 MR. JANSEN: That's correct.

24 CHAIRMAN MANNING: I had a question, as well, for  
25 Mr. Marvel.

1 I am interested in your statement about the U.S.  
2 EPA has not officially acted on the authorization  
3 revision application due to various enforcement  
4 related issues applicable in Illinois. Do you care to  
5 comment briefly on those? On the record, perhaps  
6 not. This is a real obscure statement and if you  
7 could enlighten me just a little bit I would  
8 appreciate that.

9 MR. MARVEL: Sure. Well, we have never received  
10 official notification from the U.S. EPA on what the  
11 issues are, to my knowledge. And I have not received  
12 that notification or explanation, but from what I have  
13 heard there were three pieces of -- or three pieces of  
14 legislation, statutes, that they had issue with: The  
15 excel legislation, the audit privilege law, and our  
16 new Section 31 compliance and enforcement process. Of  
17 those three the primary concern seems to be Section  
18 31.

19 I am not involved in the negotiations on that  
20 issue, so I am not sure where we stand on that. But  
21 it seems that the other two have been resolved and the  
22 U.S. EPA does not have a large concern over those.  
23 But it is their opinion that Section 31 puts  
24 restrictions on our compliance and enforcement program  
25 that would restrict us being consistent with the

1 federal program.

2 CHAIRMAN MANNING: Does the Agency have a position  
3 statement from the U.S. EPA to this effect, a written  
4 position?

5 MR. MARVEL: Not to my knowledge, no.

6 CHAIRMAN MANNING: I mean, if it does we would  
7 like it in the record if it has anything to do with  
8 this rule.

9 MR. MARVEL: Okay. I will have to get back with  
10 you on that, because I am not aware of any official  
11 position statement on that. Then again, I am not  
12 involved in the discussions at this point.

13 CHAIRMAN MANNING: Thank you. That's all for  
14 now.

15 HEARING OFFICER ERVIN: Are there any other  
16 questions for the Agency's witnesses?

17 Yes, Ms. Rosen?

18 MS. ROSEN: Thank you. I am Whitney Rosen from  
19 the Illinois Environmental Regulatory Group. If I  
20 could just preface my questions with a real short  
21 statement.

22 HEARING OFFICER ERVIN: Let's swear you in.

23 MS. ROSEN: Do I have to be sworn for that? It is  
24 not really testimony. It is not even as elaborate as  
25 what Mr. Orlinsky said earlier.

1 HEARING OFFICER ERVIN: To be on the safe side,  
2 let's go ahead and swear you in.

3 MS. ROSEN: Okay. That's fine.

4 HEARING OFFICER ERVIN: If you are not going to  
5 testify, and you are just going to --

6 MS. ROSEN: I am not testifying. I am an  
7 attorney. I will be truthful in my comments.

8 HEARING OFFICER ERVIN: Okay.

9 MS. ROSEN: I am Whitney Rosen, Legal Counsel for  
10 the Illinois Environmental Regulatory Group. I just  
11 wanted to make a very short statement in agreement  
12 with what Mr. Orlinsky stated earlier that we have  
13 contacted the Agency about one aspect of the rule and  
14 we are going to be having discussions.

15 We will, more likely than not, be having someone  
16 testify at the next hearing to discuss the outcome of  
17 those discussions and also just to indicate our  
18 support for the proposal as a whole. We are very  
19 supportive of the concept. To that end, and I hope  
20 that was not too elaborate, I would like to ask a few  
21 question of the Agency. These are very short.

22 The first one I like to direct towards Mr. Kuhn.  
23 You indicated or you discussed this U.S. EPA report,  
24 that the mercury emissions from the disposal of  
25 fluorescent lamps, which I think we made Exhibit

36

1 Number 3. You talked about how there was discussion  
2 in the report about crushing.

3 Now, that report did not indicate that the U.S.  
4 EPA believed that the crushing of fluorescent lamps  
5 should be expressly prohibited; isn't that correct?

6 MR. KUHN: That's correct, although, if you look  
7 back in the U.S. EPA's original proposed lamp rule,  
8 they indicated in there that they were considering  
9 prohibition of crushing. So this is a carryover.

10 MS. ROSEN: Okay. This document came after that  
11 initial lamp rule?

12 MR. KUHN: Yes.

13 MS. ROSEN: So it would be -- you would conclude  
14 that they have concluded that the absolute prohibition  
15 is not necessary as long as procedures are  
16 established, as they indicated in the document, to  
17 ensure that mercury emissions are controlled; is that  
18 correct?

19 MR. KUHN: That was a question?

20 MS. ROSEN: Kind of.

21 MR. KUHN: What was the question?

22 MS. ROSEN: The question was since the lamp  
23 management rule, the proposal, came out prior to this  
24 more recent document, that is Exhibit Number 3, that  
25 you could possibly conclude from that that the U.S.

1 EPA has determined that a prohibition against crushing  
2 is not necessary.

3 MR. KUHN: I am not sure that I could conclude  
4 that. I think what they are saying is under certain  
5 circumstances, under controlled circumstances, even  
6 the best of devices have emissions, and that's what I  
7 gather from the report.

8 MS. ROSEN: Okay. The next question I have is  
9 directed -- I was going to direct it to Mr. Marvel but  
10 during the Board's questioning you answered it, I  
11 believe, Mr. Kuhn. It is having to do with the  
12 regulations that have been submitted as Exhibit Number  
13 6, the bulk package of six different state  
14 regulations.

15 You indicated, in response to questioning, that  
16 there was some -- you could possibly characterize  
17 crushing as treatment and as such some of these regs  
18 would prohibit crushing. Isn't it true that at least  
19 two of the states' regulations, Indiana and Montana,  
20 that are included in this that you have submitted for  
21 the record, expressly allow for intentional crushing?

22 MR. KUHN: I am not sure of the specific states  
23 but those are ones, yes. I understand there are some  
24 that do specifically allow crushing on site.

25 MS. ROSEN: Okay. Thank you. I don't have

1 anything further at this time.

2 HEARING OFFICER ERVIN: Any there any other  
3 questions for the Agency witnesses?

4 MR. HOMER: I am Mark Homer, the Legal Counsel for  
5 the Chemical Industry Council of Illinois. I just  
6 want to make a very quick statement that we concur  
7 with the Illinois Environmental Regulatory Group's  
8 concerns related to the crushing that has been  
9 discussed here, and we hope to be part of the  
10 discussions with the Agency, and if the concerns are  
11 not resolved we would indicate so in future  
12 proceedings before the Board. Thanks.

13 HEARING OFFICER ERVIN: Thank you. Any other  
14 questions for the Agency's witnesses? Seeing none, I  
15 would note that the second hearing for this proposal  
16 has been scheduled for Monday, December 15th, in  
17 Chicago at 10:00 in Room 9040, the James R. Thompson  
18 Center. I would like to remind the Agency that any  
19 issues which the Agency has agreed to address from  
20 this hearing as well as any exhibits that it will be  
21 filing should be admitted at the beginning of the next  
22 hearing.

23 The Board has requested an expedited transcript of  
24 this hearing, so we should receive this transcript  
25 either this coming Friday or next Monday. If anyone

1 would like a copy of the transcript from today's  
2 hearing, please speak to the court reporter directly.

3 To order a copy of the transcript from the Board,  
4 the cost is \$.75 cents per page. We also download a  
5 copy of the transcript from the Board's web site where  
6 we post the transcript on our web site approximately  
7 two working days after receipt of the transcript. The  
8 Board's web page is at <http://www.state.il.us>.

9 Are there any other matters that need to be  
10 addressed at this time? Are there any other matters  
11 that need to be addressed at this time?

12 MR. ORLINSKY: No.

13 HEARING OFFICER ERVIN: Seeing that there are no  
14 further matters, this matter is hereby adjourned.  
15 Thank you for your attendance and participation. We  
16 will see you in Chicago.

17 CHAIRMAN MANNING: Thank you.

18 (Exhibits 1, 4 and 5 attached to  
19 the transcript.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public in and for  
5 the County of Montgomery, State of Illinois, DO HEREBY  
6 CERTIFY that the foregoing 40 pages comprise a true,  
7 complete and correct transcript of the proceedings  
8 held on the 9th of December A.D., 1997, at the County  
9 Building, Second Floor, 200 South Ninth Street,  
10 Springfield, Illinois, In the Matter of: Amendments  
11 of 35 Illinois Administrative code 703, 720, 721, 724,  
12 725, 728, and 773 (Standards for Universal Waste  
13 Management), in proceedings held before the Honorable  
14 Cynthia I. Ervin, Hearing Officer, and recorded in  
15 machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my hand and  
17 affixed my Notarial Seal this 11th day of December  
18 A.D., 1997.

19

20

21 Notary Public and  
22 Certified Shorthand Reporter and  
Registered Professional Reporter

23 CSR License No. 084-003677  
My Commission Expires: 03-02-99

24

25