

ILLINOIS POLLUTION CONTROL BOARD  
June 20, 1996

IN THE MATTER OF: )  
 ) R95-20  
RCRA UPDATE, USEPA REGULATIONS ) (Identical in Substance Rules-  
(1-1-95 THROUGH 6-30-95, 7-7-95, ) RCRA Subtitle C)  
9-29-95, 11-13-95 & 6-6-96) )

Adopted Rule.            Final Order.

OPINION OF THE BOARD (by E. Dunham):

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

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

This opinion supports an order adopted on the same day. The Board will delay filing the adopted amendments with the Office of the Secretary of State for 30 days to allow time for USEPA to review them prior to filing. The amendments will become effective upon filing, and Notices of Adopted Amendments (or Rules, as appropriate) will appear in the Illinois Register.

**FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING**

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

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

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

**Deviations from Routine Docket Time-Frame for Federal Amendments**

In addition to these principal amendments that occurred during the normal docket update period, the Board has included four additional, later actions that are corrections or relaxations of prior amendments in the preceding RCRA Subtitle C update docket, R95-4/R95-6:

July 7, 1995, 60 Fed. Reg. 35452	Correction to the Subpart CC organic material emissions standards for tanks, containers and surface impoundments
September 29, 1995, 60 Fed. Reg. 50426	Stay of Subpart CC rules as they apply to tanks, containers, and surface impoundments that contain wastes generated in the manufacture of organic peroxides
November 13, 1995, 60 Fed. Reg. 56952	Stay of Subpart CC rules in their entirety until June 6, 1996
June 5, 1996, 61 Fed. Reg. 28508	Stay of Subpart CC rules in their entirety until October 6, 1996

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

Finally, the Board omitted from consideration two set of federal amendments that occurred during the time-frame of this docket. First, on **January 3, 1995**, USEPA corrected errors and clarified language in the universal treatment standards adopted on September 19, 1994 as the Phase II LDRs. The Board did not include those amendments in this docket because we dealt with them in docket R95-4/R95-6, when adopting the Phase II rules. Second, on **May 19, 1995**, USEPA stayed of the 40 CFR 264, subpart CC and 265, subpart CC (Subpart CC) regulations governing organic material emissions from tanks, containers, and surface impoundments. USEPA delayed the effective date by six months, until December 6, 1995. This delay was similarly included with the R95-4/R95-6 amendments, so there was no need for Board to take action at this time. Further, the subsequent federal stay granted on November 13, 1995 and extended on June 5, 1996 made that initial stay of May 19 obsolete.

### **Brief Summaries of the Federal Actions Considered in this Docket**

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

The federal amendments of **January 13, 1995** added Update II to the third edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", SW-846, by

updating the incorporations by reference. The Board included corresponding amendments in this docket.

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

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

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

There were two sets of ostensibly unrelated amendments on **April 4, 1995** which will have a related impact on the Illinois regulations. First, USEPA amended its methods for testing hazardous waste to clarify the temperature for pH measurements and add an additional analytical method. The Board will have to incorporate these amendments into the Illinois rules. Second, USEPA amended its guideline for testing under the Clean Water Act (40 CFR 136) to add clarifying notes and update analytical methods. Although this action does not directly affect the RCRA Subtitle C program, the Illinois RCRA/UIC regulations incorporate federal part 136 by reference at Section 720.111. Both sets of amendments have required the Board to update the incorporations by reference provisions to reflect the latest federal versions of the methods.

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

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

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

Finally, USEPA undertook three actions relating to the 40 CFR 264, subpart CC and 265, subpart CC regulations (Subpart CC rules) governing organic material emissions from tanks, containers, and surface impoundments. One action, on **July 7, 1995**, made corrections to the Subpart CC rules. Since both corrections relate to the Federal Register preamble discussion and not to the text of the regulations themselves, no amendments were necessary based on that action. On the other hand, Board action is required by two other actions relating to the Subpart CC rules that are outside the routine time-frame of this docket. Although both actions are within the nominal time-frame of the next RCRA Subtitle C update docket, R96-10, which covers the period of July 1 through December 31, 1995, the Board has decided to take action at this time and include both stays in this docket. Both are partial stays of the Subpart CC rules. First, on **September 29, 1995**, USEPA indefinitely stayed the Subpart CC regulations as they would apply to tanks, surface impoundments, and containers containing hazardous waste generated by an organic peroxide manufacturing process. Second, on **November 13, 1995** and again on **June 5, 1996**, USEPA further delayed the effective date of the Subpart CC rules by another six months, until October 6, 1996. Each stay required amendment of the base hazardous waste regulations.

### **PUBLIC COMMENTS**

The Board adopted a proposal for public comment in this matter on February 1, 1996. Notices of Proposed Amendments appeared in the Illinois Register on February 16, 1996, at 20 Ill. Reg. 2651 (Part 720), 2685 (Part 721), 2791 (Part 725), 2813 (Part 728), 2924 (Part 702), 2940 (Part 703), 2951 (Part 722), 2960 (Part 724), and 2980 (Part 726). A Notice or

Proposed Rules also appeared in that issue at 20 Ill. Reg. 3008 (Part 733). The Board received public comment on the proposal for a period of 45 days following the date of its publication in the Illinois Register. The Board will delay filing any adopted rules with the Secretary of State for 30 days after adoption, particularly to allow USEPA review. The complete text of the proposed amendments appears in a separate order adopted this day.

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

- PC 1 Vicki Thomas, Executive Director, Joint Committee on Administrative Rules (letter and attachments docketed August 22, 1995)
- PC 2 Vicki Thomas, Executive Director, Joint Committee on Administrative Rules (JCAR; text of 35 Ill. Adm. Code 728. Table T, as adopted in R95-4/R95-6, with corrections marked docketed August 25, 1995)
- PC 3 Ron Klint, TDI Batteries (letter docketed October 13, 1995)
- PC 4 Jeffrey C. Moore, General Counsel, Conversion Systems, Inc. (CSI; letter docketed November 6, 1995)
- PC 5 Mark Homer, Regulatory Affairs Counsel, Chemical Industry Council of Illinois (CICI; letter docketed November 29, 1995)

After adoption of the February 1, 1996 proposal for public comment, the Board received 14 additional public comments:

- PC 6 William R. Uffelman, Divisional Vice-President, Government Affairs, Midwest Region, Browning-Ferris Industries (BFI; letter docketed March 5, 1996)
- PC 7 Robert G. Hilton, Vice President-Sales & Marketing, Specialized Services, EnviroSource Treatment and Disposal Services, Inc. (CSI's parent company; letter docketed March 29, 1996)
- PC 8 Paul E. Guterman, John N. Moore, and Akin, Gump, Strauss, et al., Counsel for Horsehead Resource Development Co. (HRD; comments docketed April 2, 1996)
- PC 9 Kim Kelly, President, Rechargeable Battery Recycling Corp. (RBRC; comments and attachments docketed April 4, 1996)
- PC 10 C. Norman Englund, President & CEO, Portable Rechargeable Battery Assoc. (PRBA; comments docketed April 4, 1996)

- PC 11 Judy Dyer, Assistant Counsel, Division of Legal Counsel, Illinois EPA (Agency; comments docketed April 4, 1996)
- PC 12 Charles Dickhut, Chairman, Association of Waste Hazardous Materials Transporters (AWHMT; letter docketed March 28, 1996)
- PC 13 Bill S. Forcade and Jenner & Block, Counsel for CSI (letter docketed April 26, 1996)
- PC 14 Dan A. Rosenbaum and Jenner & Block, Counsel for CSI (letter and copy of final federal action on CSI delisting docketed April 26, 1996)
- PC 15 David E. Long, Environmental Manager, Northwestern Steel and Wire Co. (letter docketed April 30, 1996)
- PC 16 Richard T. Traub, Chief, State Programs and Authorization Section, USEPA Region V (letter and comments docketed May 13, 1996)
- PC 17 Paul E. Guterman, John N. Moore, and Akin, Gump, Strauss, et al., Counsel for HRD (comments docketed May 15, 1996)
- PC 18 William M. Guerry and Collier, Shannon, Rill & Scott, Counsel for the Steel Manufacturers Association (SMA; letter and attachments docketed May 16, 1996)
- PC 19 Paul E. Guterman, John N. Moore, and Akin, Gump, Strauss, et al., Counsel for HRD (letter and attached comments docketed June 4, 1996)

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

In PC 3, a member of the regulated community has requested expedited consideration of the universal waste rules, adopted by USEPA on May 19, 1995. The letter outlines the environmental and economic benefits of prompt adoption of what amounts to a relaxation of the hazardous waste regulations. The Board granted expedited consideration of these amendments by an order dated October 19, 1995. The universal waste rules are a major segment of the present action.

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

absence of a request that we act to adopt the rule. The Board has included the delisting with the present amendments in response to the request.

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

In PC 6, BFI expressed support for adoption of the federal universal waste rule. However, BFI requested clarification of the procedural and informational requirements for adding additional universal waste. The Board discusses the BFI request for clarification below. (See infra, pp. 28-31.)

In PC 7, EnviroSource submitted comments from CSI supporting the Board's adoption of the federally-granted CSI hazardous waste delisting as soon as possible. EnviroSource stated that the adoption would allow the management of the subject waste outside the RCRA Subtitle C regulatory system and allow reduced operating costs. EnviroSource also stated that the adoption would allow CSI to petition the Board for further identical-in-substance action if USEPA changes the scope of the delisting. EnviroSource is the parent company of CSI. EnviroSource stated that it had reviewed the proposed delisting and concluded that the proposed language correctly reflects USEPA's intent in granting the delisting. It urges adoption of the delisting without revision of the language as proposed.

In PC 8, HRD urged the Board not to adopt the proposed delisting for the CSI waste. HRD set forth a number of arguments against the delisting based in state and federal law and on resource conservation. CSI responded to the HRD comments by PC 13 and PC 14. HRD replied by PC 17 and requested oral argument before the Board. By PC 18, SMA responded to HRD's PC 8, supporting the CSI delisting and urging the Board to adopt it. HRD responded to SMA's comments by PC 19. The Board discusses HRD's and SMA's relative positions and their arguments and the SMA comments below. (See infra, pp. 19-21.) In PC 15, Northwestern Steel and Wire expressed support of the Board adopting the proposed CSI hazardous waste delisting. It stated that it supports the comments submitted in PC 13. The Northwestern Steel plant at Sterling has used the CSI Super Detox process since 1989 to stabilize its waste for disposal, and it is this waste that is the subject of the delisting. Northwestern Steel wants to reduce the costs associated with disposal of this stabilized waste by managing it outside the scope RCRA Subtitle C regulations, which the delisting would allow.

By PC 9, RBRC commented in support of the adoption of the Universal Waste Rule. PRBA commented similarly in PC 10. RBRC explained that it administers the collection and recycling of rechargeable batteries. PRBA is an industry association of nickel-cadmium battery manufacturers. RBRC and PRBA stated that the present RCRA Subtitle C regulations, currently imposed on the recycling activities, create a substantial compliance burden which

acts as a disincentive to the recycling. They stated that on September 18, 1995 the Illinois EPA issued a letter indicating that it has adopted a temporary policy as to recycled batteries forbearing enforcement of the hazardous waste regulations in light of the federal Universal Waste Rule and the prospective Board adoption of that rule, thus allowing initial development of recycling programs in Illinois. RBRC and PRBA urged prompt adoption of the Rule to allow full, formal implementation of the programs in this state.

In PC 11, the Agency offered a number of comments on the text of the proposed amendments. The Agency suggested a small number of revisions and clarifications to the text. The Board discusses the details of those comments in the appropriate segments of this opinion, below. (See infra, pp. 31-33 & 48-52.)

In PC 12, AWHMT explained that it is an industry association of companies that transport waste hazardous materials by truck and rail. AWHMT raised a number of concerns over the interstate implementation of the Universal Waste Rule and requested Board clarification of some of these issues. The Board addresses the details of the AWHMT comments below. (See infra, pp. 28-31.)

By PC 16, USEPA submits its comments on the proposed amendments. USEPA submitted a small number of corrective amendments to the text. These corrections are outlined in the appropriate segments of the following discussions.

In addition to the several comments received, the Board received a motion for oral argument on May 28, 1996 from HRD. We received a response in opposition to oral argument on May 29, 1996 from CSI. The Board concluded that it was fully advised on the issues involved in the CSI delisting through the various public comments received and denied the motion by an order dated June 6, 1996.

### **EXPEDITED CONSIDERATION AND REASON FOR DELAY**

Prior to commencing work on the present amendments, the Board received requests to expedite this docket. As described above, the Board granted expedited consideration by orders dated October 19 and December 7, 1995. The October 19, 1995 order also set forth reasons for delay in this docket--i.e., "present and recent-past demands on Board resources and personnel, including those associated with completing the prior update, R95-4/R95-6". The Board again set forth reasons for delay in the proposed opinion of February 1, 1996. Although the proposal of these amendments is later than was originally anticipated on October 19, this proposal for public comment represents a significant effort on the part of the Board to act as promptly as possible, given the magnitude of the amendments included in this docket and competing priorities for the Board and its staff. Having now completed all the necessary work to complete this rulemaking occurs as rapidly as possible and having now voted to adopt

the amendments, the Board presently anticipates filing the adopted amendments with the Secretary of State 30 days later.

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

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

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

**DISCUSSION**

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

**General Revisions**

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

We will continue this conversion in future rulemakings as additional Sections otherwise become open to amendment.

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

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

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

Corrections to Base Pre-Amended Text\*

<u>Section</u>	<u>Correction</u>
702.110 "corrective action management unit", "date of approval . . ." & "Environmental Protection Agency"	Switched to "USEPA"
703.123(e), (f) & (g)	Changed subsection numbering
703.151 & 703.152	Reformatted Board Notes
720.110	Switched to "USEPA" in "corrective action management unit", "designated facility", "EPA hazardous waste number", "EPA identification number", "manifest document number" & "replacement unit"; move definitions of "USEPA", "representative sample" & "uppermost aquifer"; added

	definition of "USDOT"
720.111	Switched to "USEPA" under "APTI", "GPO" & "USEPA"; corrected end-of-quote punctuation of reference to SW-846
720.120(a)	Changed to "that"
720.103(a)(2)(D)	Removed "or" from subsections (i) through (iv); repunctuate (v) (JCAR requests); used possessive "wastes"
720.103(b)(1)(B) & (b)(11)	Switched to "USEPA"
721.103(e)(2)(C)	Deleted decimal from zinc entries (JCAR request); switched to "USEPA"; corrected subsection label format
721.103(f)(2), (f)(7)(A), (f)(7)(G), (f)(9)(A) & (f)(9)(C)	Switched to "USEPA"
721.105(f)(3)	Added "fulfills any of . . ." to preamble & "the facility is" to subsections; add reference to 40 CFR 271
721.105(f)(3)(C)	Switched to "USEPA"
721.105(g)(3)	Added "fulfills any of . . ." to preamble; "the facility is" to subsections & added reference to 40 CFR 271
721.105(g)(3)(C)	Switched to "USEPA"
721.105(g)(3)(E)	Used "that"
721.106(a)(3)	Switched to "USEPA"
721.130(b)(2)	Corrected "a" (JCAR request)
721.131(a) F023	Added closing parentheses (JCAR request)
721.132 K001	Changed to "or"
721.132 K066	Corrected punctuation of quotation

721.132 K149	Changed location of end punctuation (JCAR request)
721.App. H warfarin, warfarin salts, zinc phosphide & ziram	Removed end punctuation
721.App. H 721.App. I, Table B	Added "note:" Switched to "USEPA "
721.App. Z	Corrected first-row entries' parentheticals (prompted by JCAR request); added cross-references to column heading footnotes; added Board Note indicating source
722.111(d)	Added comma
724.101(f)	Switched to "USEPA "
724.101(g)(7) through (g)(10)	Added cross-reference to reserved federal provision & renumbered subsections to correspond with federal counterparts
724.980(a)	Switched to "USEPA "
725.980(a)	Switched to "USEPA "
726.180(a)	Used singular; changed to "that" in place of "who"; used "the batteries" in place of "them"
726.203(a)(1)(B), (a)(3), (b)(2), (c)(2)(A)(i), (c)(4)(A)(i) & (c)(8)(B)(i) & 726.204(a)(3)	Switched to "USEPA "
728.101(e)(3)	Switched to "USEPA "
728.Table T D033	Corrected CAS number (JCAR requested)
728.Table T F028	Switched to "USEPA "
728.Table T F037	Corrected wastewaters entry for xylenes (JCAR requested)

728.Table T F039	Switched to "USEPA "
728.Table T F039	Corrected CAS number for bis(2-chloro-isopropyl)ether (JCAR requested)
728.Table T K019	Corrected CAS number for bis(2-chloro-isopropyl)ether (JCAR requested)
728.Table T K051	Corrected CAS number for toluene (JCAR requested)
728.Table T P024	Corrected wastewaters entry (JCAR requested)
728.Table T U027	Corrected CAS number for bis(2-chloro-isopropyl)ether (JCAR requested)
728.Table T end note 7	Switched to "USEPA "
728.Table U Diphenylnitrosoamine	Added space (JCAR requested)
728.Table U end note 4	Switched to "USEPA "

\* Additional corrections appear in the discussion of revisions to the text of the proposed rules based on public comments, beginning below on page 48.

### **Updated Analytical Methods--Section 720.111**

USEPA amended 40 CFR 260.11(a) on January 13, 1995, at 60 Fed. Reg. 3089, and on April 4, 1995, at 60 Fed. Reg. 17001. Section 720.111 of the Illinois hazardous waste regulations corresponds with 40 CFR 260.11. Both sets of amendments related to updating the reference, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846).

Both sets of amendments added methods to SW-846. The January 13 amendments added Updates I, II, and IIA to the third edition in the reference to this document. Those amendments also revised the references to the updates to indicate that they are now available through the Government Printing Office, which means the deletion of the references to MICE and USEPA-OSW as sources of these documents. The April 4 federal amendments added Update IIB to the reference. In reviewing the January 13, 1995 Federal Register discussion of the methods included in the updates, the Board observed that Method 8290 is included in Update II. We therefore deleted the reference to USEPA as the source for this method.

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

The Board has incorporated the three sets of federal amendments into Section 720.111. We updated the reference to SW-846 to indicate the new updates and revised availability of those updates. The Board also updated the incorporation of 40 CFR 136 by adding the April 4 Federal Register citation. The Board invited public comment on the updated incorporations in Section 720.111 and received no comments.

### **Hazardous Waste Determinations--Sections 721.103, 721.104, 721.132, 721.133 & 721.134 through 721.139**

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

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

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

indicating the newer February 3 action by USEPA in further response to the Supreme Court's decision.

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

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

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

Deviations from the Federal Text of the CSI Delisting\*

<u>Deviation from Federal Text</u>	<u>Explanation</u>
Use of full name instead of "EAFD" for initial reference in preamble	Enhanced clarity
Added reference "municipal solid waste landfill" to Subtitle D references in preamble and paragraph 2.	Language convention used in Illinois nonhazardous waste landfill (Subtitle D) regulations

Offset parenthetical language of "as . . ." clauses with commas and in the preamble and paragraph 2.	Grammatical corrections
Changed "that" to "which" in preamble	Grammatical correction
Added incorporation language to reference to SW-846 in paragraph 1.	Administrative Procedure Act requirement
Changed "must" to "shall" in several locations in paragraphs 1.A., 1.C., 2., 4., and 5.	Board language convention for imperative actions
Changed "composites" to "composite samples" in paragraph 1.A.	Enhanced clarity
Changed "comprised" to "composed" in paragraph 1.A.	Grammatical correction
Added "above" and "below" to cross-references	Codification requirement
Added language to paragraph 1.B. outlining options for future expansion of the delisting	Expressly clarify the options available under Illinois law that do not exist in federal law
Substituted "approved facility" for "Sterling, Illinois facility and any new facility subsequently added" in paragraph 1.C.	Clarity and economy of language
Substituted "as hazardous waste" and cross reference to the pertinent regulations for a reference to RCRA Subtitle C in paragraph 2.	Correct reference in Illinois regulatory scheme
Substituted "this exclusion" for "the exclusion" in paragraph 2	Enhanced clarity
Added "in parts per million" to paragraph 3.	Enhanced clarity
Substituted language relating to advanced notice and approval of process changes in paragraph 4.	Enhanced clarity

Changed references to notification of USEPA to notification of the Agency (Illinois EPA), changed a reference to "sufficient basis to revoke" to "a violation of the Act and Board regulations", and altered the USEPA-specific references in the certifications in paragraph 5.

Comports with Illinois regulatory scheme

\* Additional deviations appear in the discussion of revisions to the text of the proposed rules based on public comments, beginning below on page 48.

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

Deviations from the Federal Text of the Carbamate Waste Rule\*

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

"selenium, tetrakis(dimethyldithio-carbamate)", "thiodiarb", "thiophanate-methyl" & "tirpate"

\* Additional deviations appear in the discussion of revisions to the text of the proposed rules based on public comments, beginning below on page 48.

The Board invited comment on our amendments to the exclusions from regulation as hazardous waste in Section 721.104 in response to the USEPA response to the City of Chicago decision. We received no comments relating to that decision.

The Board also invited comment on our responses to the carbamate rules, to the definition of hazardous waste in Section 721.103 the listings of Subpart D listed wastes in Sections 721.132 and 721.133, to the listing of the bases for waste listing in Section 721.Appendix G, and to the hazardous constituents in Section 721.Appendix H. Again, we received no comment on these matters.

Finally, the Board invited comment on our codification of the federally-granted CSI hazardous waste delisting. In response, we received a series of public comments from three sources. As indicated above in brief (supra, pp. 6-10), the parent company of Conversion Systems, Inc. (CSI) submitted PC 7 in support of Board adoption of the delisting without revision. Horsehead Resource Development Company (HRD) submitted PC 8 in opposition to the delisting. CSI responded with PC 13 and PC 14. Northwestern Steel and Wire Co. submitted PC 15 to support the Board adopting the CSI delisting. In PC 17, HRD replied to CSI's PC 13, again opposing the adoption of the hazardous waste delisting. The Steel Manufacturers Association (SMA) commented in PC 18 in favor of the Board adopting the delisting. HRD responded to the SMA comments in PC 19.

After consideration of all the comments and the nature of our identical-in-substance mandate, the Board has determined that it will proceed to adopt the CSI delisting. Nothing in the arguments put forward by HRD convinces us that we should not do so.

In essence, HRD explains in PC 8 that K061, electric arc furnace dust, which is the subject of the CSI delisting, is a high volume waste. HRD is in the business of processing this waste by high temperature metals recovery (HTMR) to recover resources from the waste. HRD states that granting the delisting for chemically stabilized electric arc furnace dust (CSFEAD) would result in the disruption of the HTMR processing of the waste and that a high volume of the delisted CSFEAD would then be disposed in nonhazardous waste landfills. HRD asserts, without setting forth the precise statutory citations, that the disruption of the HTMR process and resulting added burden on landfill disposal resources would violate various Illinois and federal laws and policies. HRD challenges the Board's statutory authority to adopt the CSI delisting using the identical-in-substance procedure. It states that this procedure would allow the adoption without notice and comment, which it contends is without precedent. It further asserts that using the identical-in-substance procedure subverts the federally-authorized

Illinois hazardous waste delisting procedure and the adjusted standard procedure, which it contends is an abdication of the Board's responsibility to review the merits of the delisting. HRD challenges the merits of the CSI delisting. CSI's basic position in favor of adopting the delisting in PC 13 asserts that the Board is under a statutory mandate to adopt the federally-granted delisting using the identical-in-substance procedure. CSI further contends that the Board lacks the authority to review the merits of the delisting in the context of an identical-in-substance proceeding. Northwestern Steel and Wire state in PC 15 that it supports the CSI position put forward in PC 13. SMA explains in PC 18 that it is a national trade association representing 60 steel industry members, including Northwestern Steel & Wire, which generates the waste that CSI further treats to make CSFEAD. SMA strongly encourages the Board to adopt the CSI delisting, primarily addressing the merits of the delisting. HRD responds to the CSI comments in PC 17, essentially reasserting that the Board lacks the authority to adopt the delisting using the identical-in-substance procedure. HRD responds to the SMA comments in PC 19, making substantive arguments.

The Board has concluded after reviewing the comments that we have the statutory authority to adopt the CSI delisting. We now proceed to adopt the CSI hazardous waste delisting without substantive revision from the February 1, 1996 proposal for public comment for the reasons discussed below.

The Board had traditionally adopted hazardous waste delistings using the identical-in-substance procedure. As explained in the June 1, 1995 opinion and order in the prior consolidated update docket, R95-4/R95-6:

In response to petitions from Amoco Corporation (R85-2), Envirote Corporation (R87-30), and USX Corporation (R91-12), the Board added the federally-granted delistings to the tables.

On April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), U.S. EPA authorized Illinois to grant hazardous waste delistings. On February 28, 1991, in docket R90-17, the Board adopted procedures for granting the delistings using the statutorily-prescribed adjusted standard mechanism. Since gaining the authority and establishing the procedures, the Board has granted hazardous waste delistings by adjusted standards.

Nothing in the adoption of the adjusted standard procedure to accommodate federal authorization of this segment of the Illinois RCRA Subtitle C regulations was intended to supersede the identical-in-substance procedure. Rather, the adjusted standard procedure was intended to provide another necessary tool for use when the Board was required to conduct a substantive, de novo review of the merits of a delisting, which was the subject of the R90-17 procedural rulemaking. Since there would be no federally-granted delisting that would allow the use of the identical-in-substance procedure, the Board was required to use a process for such substantive review. Rather than being antagonistic towards the more recently-adopted

adjusted standard procedure, the identical-in-substance procedure is a complementary tool; each procedure is useful for its own particular purpose.

The purpose behind the identical-in-substance procedure of Sections 7.2 and 22.4(a) of the Act is to allow the Board to expeditiously adopt amendments that are necessary to maintain a federally-approvable RCRA Subtitle C program. While incorporating the elements necessary to assure that the Illinois program is no less stringent than and not inconsistent with the federal program, as required by federal law (see 42 U.S.C § 6926(b); 40 CFR 271.3 & 271.4), the purpose is also to assure that the Illinois RCRA Subtitle C program does not become inadvertently more stringent than the federal program. It is within the Board's discretion to accept a federal hazardous waste delisting using the identical-in-substance procedure or to require the petitioner to use the adjusted standard procedure to obtain delisting. Whether it is a federal decision to remove a category of listed hazardous waste or a decision to remove certain wastes from a category of listed hazardous waste, the result is the same: the federal action renders the Illinois regulations more stringent than the federal rules upon which they are based as to the affected wastes. In the interest of keeping the Illinois RCRA Subtitle C regulations from becoming more stringent than the federal rules, Section 22.4(a) has long been understood as requiring the Board to incorporate the farther-reaching federal action of effecting removal of an entire category of listed hazardous waste (see, e.g., R90-11, Apr. 11, 1991). Therefore, the Board has pursued the practice of allowing a person that has obtained a federal hazardous waste delisting to request that the Board remove a listed waste from a category, whether using the identical-in-substance procedure or the adjusted standard procedure.<sup>1</sup>

Having determined that the identical-in-substance procedure is a legitimate mechanism for adopting a federally-granted hazardous waste delisting, the Board notes that such procedure does not allow us to revisit the merits of the delisting. The theory behind the identical-in-substance procedure is that USEPA has reviewed all the merits of the actions that it has undertaken, so substantive Board review of those actions is not necessary. For these reasons, the Board does not further consider all the arguments put forward in favor of or opposition to the CSI delisting. If any person wishes to render the Illinois rules more stringent than the federal RCRA Subtitle C regulations in this regard, we observe that the appropriate context for such considerations is in a Sections 22.4(b) and 27 general rulemaking proceeding.

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

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<sup>1</sup> The Board notes, contrary to HRD's assertions, that the delisting of hazardous waste in Illinois does not remove the waste from regulation. Rather, the waste is regulated as "special waste", since it would fulfill the statutory definition of such a waste. (See Sections 3.15, 3.17, 3.27, 3.45, 21 & 22.01.)

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

USEPA granted further limited stays of the Subpart CC regulations on September 29, 1995, at 60 Fed. Reg. 33912, November 13, 1995, at 60 Fed. Reg. 56952, and June 5, 1996, at 61 Fed. Reg. 28508. As discussed above, USEPA indefinitely stayed the rules as to wastes from the manufacture of organic peroxides in the September action, for safety reasons. USEPA amended 40 CFR 264.1080, 264.1089, 265.1080, and 265.1090, which correspond with 35 Ill. Adm. Code 724.980, 724.989, 725.980, and 725.990, to effect this stay. USEPA then granted a second six-month stay of the effective date for the rules in their entirety in the November action, until June 6, 1996, and a further four-month stay in the June action, until October 6, 1996. This required amendment of 40 CFR 264.1080, 265.1080, and 265.1082 (corresponding with 35 Ill. Adm. Code 264.980, 265.980, and 265.982).

The Board has incorporated both stays into this docket in response to public comments and to avoid a situation where the Illinois regulations could be read as more stringent than the federal rules. In anticipation of these further stays, the Board added Board Notes to Sections 724.1080(a) and 725.1080(a) in the R95-4/R95-6 update to cite the earlier stay and to explain that we do not intend greater stringency. Therefore, to incorporate the federal stays, the Board has amended the effective date citations in these rules to reference October 6, 1996 and the November 13, 1995 and June 5, 1996 Federal Register citations to the stays at Sections 724.1080(a) and (b), 725.1080(a) and (b), and 725.982(a), to correspond with the federal revisions at 40 CFR 264.1080(b), 265.1080(b), and 265.1082(a). The Board has further added the new language for the organic peroxides stay at Sections 724.980(d), 724.989(i), 725.980(d), and 725.990(i), to correspond with the federal additions of 40 CFR 264.1080(d), 264.1089(i), 265.1080(d), and 265.1090(i). In incorporating the federal amendments, the Board notes an error in one of the new effective dates for the Subpart CC rules: USEPA used "October 6, 1995" in 40 CFR 265.1082(a)(1) (corresponding with 35 Ill. Adm. Code 725.980(a)(1)) instead of the intended "October 6, 1996". We corrected the error.

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

Deviations from the Federal Text of the Subpart CC Stays\*

<u>Section</u>	<u>Derived from</u>	<u>Deviation(s)</u>
724.980(a)	264.1080(a)	Altered effective date and Board Note previously added to federal base text

724.980(d)	264.1080(d)	Removed "administratively"; remove "a"; add comma
724.980(d)(3)	264.1080(d)(3)	Used "must"; removed comma from two-element series
724.990(i)(2)	264.1090(i)(2)	Added "pursuant to"; use "must"
724.990(i)(2)(A)	264.1090(i)(2)(i)	Used "must"; used commas in place of semicolons
724.990(i)(2)(b)	264.1090(i)(2)(ii)	Used "must"; used commas in place of semicolons; removed commas from two-element series; use singular "waste" and "this"; replaced "handled" with "managed"
724.990(i)(3)	264.1090(i)(3)	Used "or" in place of "and"; added "pursuant to" and "specified in"; used "were" to state condition contrary to fact; used "must"
724.990(i)(3)(A) & (B)	264.1090(i)(3)(i) & (ii)	Used singular "waste" and "this"; used "must"; used "would" to state condition contrary to fact
725.980(a)	265.1080(a)	Altered effective date and Board Note previously added to federal base text
725.980(d)	265.1080(d)	Removed "administratively"; removed "a"; add comma
725.980(d)(3)	265.1080(d)(3)	Used "must"; removed comma from two-element series
725.982(a)(1)	265.1080(a)(1)	Used "October 6, 1996" in place of "October 6, 1995"
725.990(i)(2)	265.1090(i)(2)	Added "pursuant to"; used "must"
725.990(i)(2)(A)	265.1090(i)(2)(i)	Used "must"; used commas in place of semicolons
725.990(i)(2)(b)	265.1090(i)(2)(ii)	Used "must"; used commas in place of semicolons; removed commas from two-

		element series; used singular "waste" and "this"; replaced "handled" with "managed"
725.990(i)(3)	265.1090(i)(3)	Used "or" in place of "and"; added "pursuant to" and "specified in"; used "were" to state condition contrary to fact; used "must"
725.990(i)(3)(A) & (B)	265.1090(i)(3)(i) & (ii)	Used singular "waste" and "this"; used "must"; used "would" to state condition contrary to fact

\* Additional deviations appear in the discussion of revisions to the text of the proposed rules based on public comments, beginning below on page 48.

The Board invited comment on our codification of the federal stays of the Subpart CC regulations. The two stays upon which the Board sought comment were the indefinite stay relating to organic peroxides manufacturing waste and the second six-month general stay of the rules. We received no comment on these matters.

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

USEPA adopted a major new body of alternative hazardous waste management regulations on May 11, 1995, at 60 Fed. Reg. 25492, as 40 CFR 273. These new regulations, called the "universal waste rule", modify the RCRA Subtitle C program to streamline the system as it applies to these widely-generated wastes. The wastes to which the alternative regulations currently apply are batteries, pesticides, and mercury-containing thermostats. USEPA stated in adopting the rules that it intends to expand their applicability to new wastes in the future, such as fluorescent light bulbs.

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

disincentive to such diversion or recovery efforts and a factor favoring their continued large-scale disposal in municipal solid waste landfills.

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

In addition to requirements imposed on handlers of universal waste, the universal waste rule includes requirements for universal waste transporters and destination facilities. The requirements and prohibitions imposed on a universal waste transporter are somewhat similar to those for handlers to a major extent. The transporter standards include general prohibition against diluting, treating, and disposing of universal waste, required compliance with USDOT standards, an accumulation time limit, release response requirements, and destination requirements. The management standards for destination facilities include requirements for receipt or diversion or rejection of consignments of universal waste. They also include recordkeeping requirements for receipts of waste.

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

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

The Board has incorporated the universal waste rule into the Illinois hazardous waste regulations with minimal, nonsubstantive deviation from the federal text. This incorporation

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

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

In the universal waste rule, the Board encountered two special instances of substitutions. The first is the notification requirements of Sections 733.112 (small quantity handlers of universal waste; derived from 40 CFR 273.12) and 733.132 (large quantity handlers of universal waste; derived from 40 CFR 273.32). Both appear parallel to RCRA section 3010 notification, since the handler must obtain a USEPA identification number. For this reason, the Board has retained the requirement of notifying USEPA while imposing the duty to also notify the Agency of the activity.<sup>2</sup>

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

Finally, in the 733.Subpart G and Section 720.123, the Board has substituted itself as the appropriate person to petition for inclusion of additional hazardous waste in regulation as universal waste. The preamble Federal Register discussion, at 60 Fed. Reg. 25537, indicates that USEPA intends that states may obtain federal authorization to grant additions to universal

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<sup>2</sup> The Board realizes that USEPA and the Agency work cooperatively in exchanges of information and in policing regulated entities. However, requiring notification to both entities gives the regulators and the regulated community an added measure of certainty that both sets of files are complete.

waste similar to state authorization to grant hazardous waste delistings.<sup>3</sup> In the February 1, 1996 proposed opinion, the Board stated its belief that we cannot effectively grant an addition to universal waste until the state received federal authorization of that aspect of our regulations, similar to hazardous waste delistings. Further, federal primacy provisions would make a federal grant of universal waste status ineffective in Illinois until also granted by the Board.<sup>4</sup> For these reasons, the Board has crafted the universal waste designation provisions so that it is clear that we will consider federally-granted designations using the identical-in-substance procedure and those not federally-granted using the general rulemaking procedure.

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

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

We have revised this note in final adoption in response to Agency comments, discussed below (infra p. 48).

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

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<sup>3</sup> An authorization granted the Board effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990).

<sup>4</sup> Section 3006 of RCRA (42 U.S.C. § 6926) provides that state regulations apply in an authorized state in lieu of the federal regulations. Section 3009 (42 U.S.C. § 6929) provides that states may establish regulations that are more stringent than the federal regulations. These provisions made it necessary for owners and operators to obtain relief at both the federal and state levels until Illinois obtains universal waste authorization from USEPA.

regulations, the Board felt that the enhanced public notice would prove beneficial. We discuss Agency comments on this point below (infra pp. 31-33).

As a final point, the Board notes that in amending 40 CFR 260.20 (corresponding with 35 Ill. Adm. Code 721.120), USEPA added a reference to the Part 273 universal waste regulations. When adopting the used oil regulations in September, 1992, USEPA did not amend this provision to reflect amendments to amend the used oil rules. The Board notes this possible error in the federal text, but we did not propose its correction. It is possible that USEPA does not intend petitions to amend the used oil rules under this provision. It is further possible that such an amendment would render the Illinois regulations less stringent than the federal regulations. Of course, the Board could add a reference to Part 739 if USEPA indicates that the lack of a corresponding reference at 40 CFR 260.20(a) is an oversight.

The Board invited comment on various aspects of our approach to the universal waste rule. The Board expressly invited comment on specified issues:

1. On the designation of the appropriate person to contact and whether notification of both USEPA and the Agency is necessary for activity notification, for receipt of a universal waste consignment containing hazardous waste, and for obtaining a universal waste designation.
2. On the burden of dual notification on less sophisticated members of the regulated community.
3. On whether the general rulemaking procedure or the adjusted standard procedure is the more appropriate means of granting universal waste designations to add additional waste to Part 733.
4. From USEPA, on whether a reference to rulemaking petitions to amend Part 739 should appear in Section 720.120.

#### Responses to Comments on the Universal Waste Rule

As briefly outlined above (infra, pp. 6-10), the Board received general comments on the universal waste rule from the Association of Waste Hazardous Materials Transporters (AWHMT), the Rechargeable Battery Recycling Corporation (RCRI), the Portable Rechargeable Battery Association (PRBA), and Browning-Ferris Industries (BFI). We further received comments from the Agency on the specific issues that we raised in the proposed opinion and order. We have already outlined the RCRI (PC 9) and PRBA (PC 10) comments above, at page 9. The following discussion focuses on the AWHMT (PC 12), Agency (PC 11), and BFI (PC 6) comments.

AWHMT explained (in PC 12) that it believes that the complexity of the Universal Waste Rule transportation requirements will frustrate environmentally sound collection and

proper recycling of the covered wastes. It raised a number of transportation-related concerns, such as increased traffic that AWHMT anticipates in the jurisdictions adopting the universal waste rule, because transporters "plan a route of travel that avoids states where universal waste rules are not effective." AWHMT also expressed concern over unresolved issues from the rules, such as what is the proper form of waste manifesting to comply with the disparities in waste status among the various state jurisdictions and what are the regulatory status of the waste and the transporter's responsibilities when waste is rejected at a facility because it does not fulfill the criteria for universal waste. AWHMT requested that the Board provide guidance and clarification as to how Illinois will address these concerns.

In response to AWHMT's comments, the Board makes some observations as we conclude that we are not presently in the position to give firm guidance and clarification as requested. We prefer to let the various state and federal rules speak for themselves. The Board has two basic reasons for not attempting to provide the requested guidance and clarification. One relates to the context of this proceeding, and the second relates to the relative functions of the Board and the Agency in the Illinois regulatory scheme.

First, relating to the context of this proceeding, the Board adopts the hazardous waste regulations to be identical-in-substance with the federal rules under the Illinois regulatory regime, as required by Section 22.4(a) of the Act. In adopting the rules under that mandate, the Board often tries to clarify our understanding of the federal regulations for the benefit of the Agency and the regulated community, where the federal regulations appear ambiguous in light of the stated intent of USEPA in adopting them. The Board would attempt such clarification at this point if we were aware of any ambiguities in the federal regulations that could be resolved based on the Federal Register discussion of the rules. However, AWHMT has not suggested specific passages of the regulations that ambiguously set forth USEPA's intent, and it has provided no recommendations as to what the Board can do to cure any defects in any specific passage. Rather, AWHMT directs our attention to problems that could arise from the federal regulatory scheme itself or from its implementation in our sister states. There is nothing the Board can do under our identical-in-substance mandate to alter either the substantive aspects of the federal regulations or to make regulations conform to those of our sister states (or to make those of our sister states conform to ours). The proper context for actions that address the substance of a regulation based on a federal action is in a general rulemaking filed pursuant to Sections 22.4(b) and 27 of the Act.

Second, relating to the structure of the Illinois regulatory scheme and the function of the Board in that scheme, the Board is limited in its role. The Board's first role is to consider and adopt the substantive regulations. Under certain instances of actual controversy, such as a permit appeal, an adjusted standard proceeding, or an enforcement action, the Board acts in a different role, as necessary, to interpret the rules to resolve the particular controversy at issue. It is the role of the Agency to implement the regulations through the issuance of permits and by engaging in site monitoring. In performing its duties, the Agency necessarily interprets the regulations as it sees fit, consistent with their clear language, the federal intent behind them, and any Illinois case law on point. Outside the context of an actual controversy, it is

inappropriate for the Board to determine the effect of issues raised by the federal regulations themselves. Such an action would go beyond adopting rules to implementing them, which, as stated, is the Agency's designated function.

Although the Board cannot perceive how we can clarify or explain the issues raised by AWHMT at this time, we make the following observations before we highlight various aspects of the regulations: (1) the regulations include only those requirements included in their express provisions, and (2) there is no obligation on the part of any person unless a requirement is expressly imposed by rule. The Board directs AWHMT's attention to the regulations themselves for clarification and explanation. As to management of universal waste, Part 733 is an alternative set of regulations to the general hazardous waste standards, as stated in Section 733.101(b). The rules provide at Section 733.118(c) that universal waste remains subject to the hazardous materials transportation (Haz-Mat) requirements of 49 CFR 172 and 173, but Section 733.152 states that management as hazardous waste under the Haz-Mat rules is not necessary because no manifest is required for shipment.

Although Section 733.161 includes requirements for management of waste that is rejected by the consignee or which was illegally shipped as universal waste, the Board does not see where the rules impose an additional burden on the transporter as a result of rejection or illegal shipment. Universal waste that is rejected and reconsigned is still universal waste; hazardous waste that is illegally shipped as universal waste remains hazardous waste. Despite the fact that Section 733.161(c) requires the consignee to contact the Agency (or USEPA) for further instructions for managing illegally shipped hazardous waste, the Board does not see that the regulations would impose any greater obligation on the transporter, qua transporter, than to deliver the waste to the designated consignee.<sup>5</sup> We remind AWHMT that it is the shipper that bears the burden of properly packaging, labelling, and documenting a consignment of waste under both the RCRA Subtitle C rules (see, e.g., 35 Ill. Adm. Code 722.111, 722.120, 722.130-722.133, 724.171(c), 725.171(c), 733.114, 733.118, 733.134 & 733.138; 49 CFR 172.200(a), 172.300(a), 172.400(a), 173.1(b) & 173.3a(a)). As the Board presently reads the regulations, the universal waste transporter becomes subject to those requirements only after it has itself acquired the status of a shipper (see 35 Ill. Adm. Code 733.153-733.155.) or otherwise assumed some duty under the regulations (see, e.g., 49 CFR 173.1(d)). We do not see that the rules make a transporter become a shipper in the event of a rejected shipment of universal waste or an illegal shipment of hazardous waste as universal waste.

In addition to a number of textual corrections, outlined below at pages 48-51, the Agency (PC 11) responded to substantive questions raised by the Board in the February 1, 1996 proposed opinion and order. The Agency commented that it wants the Board to revise the text of the proposed rules to require universal waste activity notification to the Agency only. The Agency stated that it would notify USEPA. It stated that it would forward USEPA

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<sup>5</sup> That is, of course, unless a hazardous materials incident triggers some other, non-RCRA Subtitle C requirements, such as 49 CFR 171.15 and 171.16 of the Haz-Mat requirements.

form EPA 8700-12 and indicate any additional information required under the universal waste rules. Upon return of the form to the Agency, the Agency committed to sending the necessary information to USEPA for assignment of a USEPA identification number. Based on the Agency's comments, the Board has removed all references to the USEPA and made all necessary ancillary changes in the universal waste notification requirements, at Sections 733.112 and 733.132(a)(1)-(a)(3) and Board Note. The Board did not receive comments on this issue from USEPA, and in light of the final action that we are taking, **the Board would appreciate USEPA comments during the 30-day post adoption comment period on whether notification of the Illinois EPA alone will satisfy the federal requirements.**

The Agency (PC 11) and BFI (PC 6) commented on the procedures for adding universal waste. The comments did not involve the identical-in-substance procedure for adding waste after USEPA has already designated it universal waste.<sup>6</sup> They related to the procedure for the Board to add universal waste on its own authority. The Board proposed the use of the general rulemaking procedure. BFI raised a few procedural questions as to the type of petition involved, whether the 200-signature requirement would apply, and the statutory authority for a "general rulemaking". In response, the Board's authority to adopt non-federally-derived RCRA Subtitle C regulations arise from Sections 22.4(b), 27, and 28 of the Act and the Administrative Procedure Act (APA). The petition requirements are provided by the Act; the APA; Sections 720.120, 720.123, 733.180(c), and 733.181 of the RCRA Subtitle C regulations; and Parts 101 and 102 of the Board's procedural rules.

The Agency's comments related to the actual choice of procedure for adding universal waste. The Agency stated that it would prefer that the Board select the adjusted standard procedure for adding universal waste. The Agency commented that pursuing an adjusted proceeding to conclusion requires "a lesser investment of resources". The Agency conceded that the adjusted standard procedure is not ideally suited to universal waste designation and would not result in the addition of any new universal waste to the text of the regulations, but stated that industry groups would "get the word out" as to added universal waste. Alternatively, the Agency suggested that the Board could develop a streamlined general rulemaking procedure, within the requirements of the APA, for adding universal waste.

The Board fully understands the Agency's concerns and agrees that an alternative to a full general rulemaking procedure might be easier to use, but we cannot now conceive what that alternative would entail. The Board also notes that our authority to adopt relief is constrained by the procedures set forth in the Act and the APA. For example, the Board could not waive the Act Section 28(a) two-hearing requirement if the universal waste rule would

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<sup>6</sup> The Board notes that HB 2747 would add Section 22.23a to the Act, which would require the Board to "seek authorization" by December 31, 1997 from USEPA to include "fluorescent and high intensity discharge lamps" as universal waste. If USEPA itself designates these lamps as universal waste prior to that time, Section 22.23a would require the Board to use the identical-in-substance procedure to adopt that designation for these items.

have state-wide applicability. On the other hand, as noted by the Agency, the Board could not amend Sections 720.110 and 733.106, among others, to add universal waste to the rules using the adjusted standard procedure.

The Board can presently see three alternative procedures for adding universal waste once Illinois is authorized by USEPA to add universal waste, and others may also exist:

1. Use the existing general rulemaking procedure;
2. Use the existing adjusted standard procedure; or
3. Use the adjusted standard procedure and some subsequent rulemaking action to codify any additions to the categories of universal waste.

In examining these options, the Board notes that only options one and three are presently fully developed. The Board notes that we agree with the Agency that codification of the additions is desirable. In choosing among these two options, we therefore elect to adopt option one: the general rulemaking process. We reiterate what we noted above (*supra* p. 25), however, that even in adopting the general rulemaking procedure, the Board will remain unable to engage in such review and designate additional universal waste until USEPA authorizes the Illinois universal waste program. This could take several months. In the interim, the Board would welcome an opportunity to reexamine the various procedural options for designating additional universal waste in the context of a regulatory proceeding, should any interested person commence a procedural rulemaking before us.

The Agency responded in PC 11 that USEPA intends to publish a policy statement that would allow a state to add universal waste before final federal authorization of the state's program. The Agency stated that it intends to apply for federal authorization of the Illinois program immediately upon adoption of the rules by the Board. The Agency requested that the Board either remain silent on our authority to designate universal waste prior to federal authorization or that we reword the Board Note to include the possibility of USEPA allowing pre-authorization additions to universal waste by the state. We agree with the Agency that change is necessary and choose to reword the Board Note as follows:

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

We prefer this option to that of deleting the Board Note altogether, since the Board does in fact lack all authority to add categories of universal waste until federally authorized to do so.

Deviations from the Federal Text of the Universal Waste Rule\*

<u>Section</u>	<u>Derived from</u>	<u>Deviation(s)</u>
703.123(h)	270.1(c)(2)(viii)	Used singular; added preamble exclusion to text; add "such a"; added commas for parentheticals
720.110 "battery" & "destination facility"	260.10 "battery" & "destination facility"	Used "that"
720.110 "pesticide"	260.10 "pesticide"	Added "fulfills one of the . . ." to preamble; added "it" to subsections; correct citations to FFDCa; expanded citations to FDA & FFDCa; added clarifying Board Note to cite probable source of federal exclusion; removed comma
720.110 "thermostat"	260.10 "thermostat"	Added "such a"; used singular
720.110 "universal waste"	260.10 "universal waste"	Used lower case; added commas for parentheticals
720.110 "universal waste handler"	260.10 "universal waste handler"	Added "either of the following" to preamble; added definite article; used impersonal "that"; deleted extra "or"; restructured subsections
720.120(a)	260.20(a)	Added commas to series; switched to disjunctive "or"
720.123	260.123 (new)	Changed section heading for clarity; added "the following" and subdivided subsections; used "Board"; added "that shows the following . . ."; added "to that set forth . . ."
721.105(c)	261.5(c)	Added "the following" to preamble; added "hazardous waste that" to subsections
721.105(f)(3)(F)	261.5(f)(3)(F)	Added "the facility is"
721.105(g)(3)(F)	261.5(g)(3)(F)	Added "the facility is"

721.109	261.9 (new)	Added commas to parenthetical phrases; moved "therefore" and removed comma
724.101(g)(11)	264.1(g)(11) (new)	Used singular; replaced use of gerund with restrictive relative clause; combined into a single sentence; added "following"; added commas for parenthetical clauses
725.101(c)(14)	265.1(c)(14) (new)	Used singular; replaced use of gerund with restrictive relative clause; combined into a single sentence; add "following"; added commas for parenthetical clauses
728.101(f)	268.1(f) (new)	Used singular; replaced use of gerund with restrictive relative clause; used "such a" in place of "persons who"; added "following"; added commas for parenthetical clauses
733.Subparts B & C headings	273, Subparts B & C headings	Removed redundant words "universal waste"
733.Subpart G heading	273, Subpart H heading	Removed self-reference to Part
733.101(a)	273.1(a)	Added commas to parentheticals
733.102(a)(2)	273.2(a)(2)	Used "that"
733.103(a)	273.3(a)	Replaced gerund with "that meet"
733.103(a)(1)	273.3(a)(1)	Removed "that are"
733.103(b)(1)	273.3(b)(1)	Added missing period
733.103(b)(2)	273.3(b)(2)	Combined into single statement
733.103(b)(4)	273.3(b)(4)	Added waste prequalification for hazardous waste status; removed redundant "if"
733.103(d)(1)	273.3(d)(1)	Removed "the person conducting the recall" from preamble and put into subsections
733.103(d)(1)(A) & (d)(2)	273.3(d)(1)(i) & (d)(2)	Moved parentheticals for readability

733.104(b)(2)	273.4(b)(2)	Added waste prequalification for hazardous waste status
733.105(b)	273.5(b)	Replaced personal "who" with "that"; used "shall"
733.106 "large quantity handler . . .", "on-site", "small quantity handler . . ." & "universal waste handler"	273.6 "large quantity handler . . .", "on-site", "small quantity handler . . ." & "universal waste handler"	Replaced personal pronouns with impersonal expressions
733.106 "destination facility"	273.6 "destination facility"	Removed comma separating subject and verb
733.106 "on-site"	273.6 "on-site"	Added comma to beginning of parenthetical
733.106 "pesticide"	273.6 "pesticide"	Removed comma from two-element series; added "fulfills one of the . . ." to preamble; added "it" to subsections; corrected citations to FFDCA; expanded citations to FDA & FFDCA; added clarifying Board Note to cite probable source of federal exclusion; removed comma
733.106 "thermostat"	273.6 "thermostat"	Added "such a"; used singular
733.106 "universal waste"	273.6 "universal waste"	Used lower case; added commas for parentheticals
733.106 "universal waste handler"	273.6 "universal waste handler"	Added "either of the following" to preamble; added definite article; used impersonal "that"; deleted extra "or"; added defined term to preamble to exclusions; restructured subsections
733.111	273.11	Moved "prohibited from . . ." into preamble; removed comma from two-element series
733.112	273.12	Added "its" to clarify breadth of obligation

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

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

733.132(g)	273.32(g)	Added explanatory Board Note
733.133(a) & (b)	273.33(a) & (b)	Used "shall"; added commas in parentheticals; removed comma from two-element series; used "or" in place of "and/or"; added "nonhazardous" parenthetical; added Board Note referencing sources of nonhazardous waste regulations
733.133(c)	273.33(c)	Used "shall"; added "follows each . . ."; added "it" to subsections; added subsection heading; used impersonal "that"; added "or"; used "or" in place of "and/or"; added "nonhazardous" parenthetical; added Board Note referencing sources of nonhazardous waste regulations
733.134	273.34	Used "and" in place of virgule; used "shall"; used "as follows"; corrected placement of quotation marks; used commas in parentheticals; added subsection heading; used "USDOT"; added "or"; removed commas from non-parenthetical language
733.135	273.35	Removed commas from non-parenthetical language; used "shall"; added "in any of the following ways"; moved "on-site"; used "that"; used past-tense "became" and "was"
733.136	273.36	Used "shall"
733.137	273.37	Used "shall"; used singular "waste"
733.138	273.38	Used "shall"; used "USDOT"; used impersonal "it" & "the originating handler"; added "perform either of . . ."; gave Agency as contact; added "nonhazardous" parenthetical; added Board Note referencing sources of nonhazardous waste regulations
733.139	273.39	Used "shall"
733.140	273.40	Used impersonal "that"; used "shall"; added semicolons in series; used "USEPA"

733.151	273.51	Moved "prohibited from . . ." to preamble
733.152	273.52	Used "USDOT"; added incorporation cross-references; removed reference to USEPA
733.153	273.53	Used "shall"
733.154	273.54	Used "shall"; used singular "waste"
733.155	273.55	Used "USDOT"; added incorporation cross-reference
733.156	273.56	Used "USEPA"; used "shall"; added "the following"
733.160	273.60	Replaced colon with period; used "shall"
733.161	273.61	Added comma & "a" in series, used impersonal "it" & "the shipper"; used "shall"; gave Agency as contact; added "nonhazardous" parenthetical; added Board Note referencing sources of nonhazardous waste regulations
733.162	273.62	Used "shall"
733.170	273.70	Used "as follows"
733.180	273.80	Used "as follows"; restructured to indicate both identical-in-substance and general rulemaking routes; gave the Board as the source of relief; added Board Note; subdivide subsection (c); used "the requested relief"
733.181	273.81	Deleted self-reference to Part from Section heading; added subsection headings; used "or" in place of "and/or"; used "USDOT"

\* Additional deviations appear in the discussion of revisions to the text of the proposed rules based on public comments, beginning below on page 48.

**Deletion of Obsolete, Redundant, and Outdated Rules--Sections 702.110, 703.150 through 703.152, 726.203 & 726.204**

USEPA engaged in a series of actions on June 29, 1995 prompted by a Presidential directive. On March 4, 1995, the President ordered all executive agencies to review their regulations and identify those that are obsolete or unduly burdensome. USEPA adopted amendments to its RCRA Subtitle C and Subtitle D programs on June 29, 1995, at 60 Fed. Reg. 33912, that delete obsolete, redundant, and outdated segments of those rules. A handful of amendments were prompted to the Illinois rules by those federal amendments. As an expedient way of outlining the federal amendments and the corresponding Board actions, the Board sets forth the following table indicating the federal deletions and corresponding Board actions:

Obsolete, Redundant, and Out-Dated Provisions Deleted

<u>40 CFR Provision</u>	<u>35 Ill. Adm. Code Provision</u>	<u>Federal Action; Board Comments</u>
261.31(a) footnote 1	721.131(a)	Removal of note re the administrative stay of F032, F034, and F035 listings; deleted by Board on October 21, 1993 in R93-4
266.103(c)(5)	726.203(c)(5)	Deletion of language relating to election to comply with alternative HC provision of 266.104(f); amendment made
266.104(f)	726.204(f)	Deletion of alternative HC limit; amendment made
267	(727)	Deletion of interim standards for new hazardous waste disposal facilities that expired on February 13, 1983; no amendment necessary because the Board never adopted the standards
270.2 "Phase I", "Phase II" & "interim authorization"	702.110	"Phase I" and "Phase II" definitions deleted, statutory reference updated; amendments made

270.10(e)(4)	703.150(d)	References to "Phase II" deleted; although the Board did not incorporate the references, so none directly required, but amendment made to removed language relating to federal authorization of Illinois (Phase II) program rules and Board Note updated to indicate federal amendment
270.10(f)(2)	703.151(b)	References to "Phase II" deleted; the Board did not incorporate the references, so none directly required, but Board Note updated to indicate federal amendment
270.10(g)(1)	703.152(a)	References to "Phase II" deleted; the Board did not incorporate the references, so none directly required, but Board Note updated to indicate federal amendment

#### REVISIONS TO THE TEXT OF THE PROPOSED AMENDMENTS

The Board has made a number of revisions to the text of the amendments that appeared in the February 1, 1996 proposed order of the Board. All of the revisions are minor in character, limited to corrections of usage, spelling, punctuation, and grammar. Most of these revisions were prompted by JCAR. Smaller numbers of changes were prompted by the Board's subsequent review of the text and by public comments: PC 11, from the Agency, and PC 16, from USEPA.. For the convenience of JCAR, the Agency, and the regulated community, the Board summarizes the revisions in tabular form below.

#### **Revisions Prompted by JCAR**

In addition to the public comments, the Board received from JCAR a set of documents, each pertaining to a particular Part involved in this proceeding and entitled "Identical First Notice Line Numbered Version". The text of these documents reflects the text of the regulations as re-typed by JCAR for publication in the Illinois Register. Unknown to the Board, JCAR undertook a series of revisions to the text as submitted by the Board for publication. These revisions are not JCAR recommendations; rather, JCAR actually made the changes on its own without consulting Board staff. The result is that a number of changes were made without the prior knowledge of the Board between February 1, when the Board voted to propose the amendments, and February 16, when the amendments appeared in the Illinois Register. Determining the exact location and nature of the JCAR-initiated revisions took significant effort on the part of Board staff. The Board would have preferred to accept a series of recommended changes from JCAR and incorporated the acceptable ones in this final

adoption. Most of the revisions are useful corrections that the Board now incorporates into the text of the amendments as adopted in the accompanying order. The Board will not accept a small number of the JCAR-incorporated changes. Two tables follow. The first table indicates the JCAR revisions that the Board has accepted, explicitly indicating which of the revisions are a variation of a JCAR suggestion. The second table indicates the JCAR revisions that the Board declines to make, briefly indicating the Board's reason for not wanting to incorporate each one declined.

JCAR Revisions to the Text of the Proposed Rules that the Board Has Accepted

<u>Section</u>	<u>Correction</u>
702.110 "CWA", "SDWA"	Commas added and deleted
702.110 "wastewater treatment unit"	Subsection repunctuated
702.110 "well"	Quotation mark added
703.123(g)	Changed end punctuation
703.123(h)	Removed redundant language: "is not subject to the requirements of this Part"
703.150(a)(2)	Added "or"
703.123(h)	Deleted "is not subject to the requirements of this Part" (as redundant in light of the preamble language)
703.152(a)(2)	Changed end punctuation
703.152(b)	Corrected "paragraph" to "subsection"
720.110 "destination facility"	Deleted comma after "accumulated"
720.110 "federal, state, and local approvals or permits necessary to begin physical construction"	Added commas after "state"
720.110 "industrial furnace"	Added period after "as generated"
720.110 "pesticide"	Added "by" after "determined"

720.110 "qualified groundwater scientist"	Deleted Illinois Revised Statutes reference
720.120(a)	Corrected "35 Ill. Adm. Code . . . 268 or 273" to "35 Ill. Adm. Code . . . 728 or 733"
720.123(b)	Divided further into two subsections, adding subsection heading; added "each of" before "the following" (variations on JCAR suggestions)
721.103(a)(2)(D)(vi)	Corrected subsection number; corrected "can not" to "cannot"; removed "is" after "or"
721.104(e)(2)(E)(iii) & 721.105(d)(2)	Deleted commas from ends
721.105(e)(1) & (e)(2)	Corrected "Sections" to "Section"
721.105(f)(2)	Corrected "subsections" to "subsection"
721.105(f)(3)(B) & (g)(3)(B)	Deleted "in" before "interim status"
721.106(a)(3)(A)(ii)	Changed end punctuation
721.109 Source Note	Added "effective"
721.132 "K066" listing	Removed Illinois Revised Statutes citation and corrected Illinois Compiled Statutes citation format
721.132 "K149" listing	Deleted end punctuation
721.133(a), (b) & (d)	Changed "subsections" to "subsection"
721.133(e) "P001", "P047", "P051", "P075" & "P108" listings	Removed "P" notations from CAS numbers and added footnote and Board Note to restore missing federal language relating to the number for the parent compounds (a variation on the JCAR suggestion to move the "P" notations); added end punctuation to second P001 listing

721.Appendix G "F005", "F039", "K036", "K052", "K064", "K065", "K066", "K088", "K090", "K091", "K117", "K118", "K123", "K124", "K125", "K126", "K132" & "K136" listings	Added end punctuation
721.Appendix G "K116" listing	Changed to lower case "tetrachloride"
721.Appendix H "Potassium hydroxymethyl-n-methyl-dithiocarbamate" listing	Corrected spelling of "hydroxy"
721.Appendix H "Toluenediamine" listing	Corrected spelling of "benzene"
721.Appendix I, Table B "CSI" delisting	Removed parentheses from references to conditions; added end punctuation where missing; removed "those" from before "metals" (variation of JCAR suggestion); corrected spelling of "data" & "compiled"; corrected "an" to "and" before "upon conveyance"; added end quotation mark where missing
721.Appendix Z	Corrected "characteristics" to "characteristic" (variation of JCAR suggestion)
722.110(g)	Removed subsection referring to repealed provision
722.111(d)	Moved "and"
724.980(d)(1)	Corrected spelling of "structural"
724.980(d)(2)	Added comma before "explaining"
724.980(d)(3)	Corrected spelling of "processes"
725.101(b), (c)(11)(C), (c)(12) & (c)(13)	Changed end punctuation
725.101(c)(14)(A)-(c)(14)(C)	Underlined text added by amendments (change made by JCAR but not included in the express listing)

725.980(a)	Added "that are" before "subject to"; deleted "either" from before "725.Subpart"; changed "725.Subparts" to "725.Subpart"; deleted "the" from before "725.Subpart"; deleted "rules" from before "be enforceable"; changed "they become" to "it becomes" (variations on JCAR suggestions)
725.980(d)(2)	Added comma before "explaining"; corrected reference to "725.985"
725.980(d)(3)	Added comma before "explaining"; corrected reference to "725.985"
725.982(a) & (b)	Changed "725.Subparts I, J, and K" to "725.Subpart" (variation of JCAR suggestions)
725.982(b)(2)(B)	Restructured subsection, adding subsection heading (variation of JCAR suggestion)
725.982(b)(2)(C)	Corrected subsection indent level (variation of JCAR suggestion)
726.180(b)(1)	Changed end punctuation
726.203(c)(1)(B)(i), (c)(1)(B)(iii), (c)(1)(K)(ii), (c)(2)(B)(v), (c)(2)(B)(vi), (c)(4)(A)(vi), (c)(4)(B)(i), (c)(4)(D)(i) & (j)(1)(B)	Changed end punctuation, adding "and" where appropriate (variations of JCAR suggestions at (c)(2)(B)(vi) & (j)(1)(B))
726.203(c)(4)(D)	Changed "either" to "one"
726.203(c)(7)(A)	Deleted "either" (variation of JCAR suggestion)
728 Source Note	Added references to withdrawal of R90-11 amendments and adoption of R91-13 amendments
728.101(e)(3) & (e)(4)	Changed end punctuation

728.101(g)	Corrected reference to "415 ILCS 5/22.6 or 39(h)"
733.101(b)	Corrected references to "726, and 728"
733.102(a)(2)	Capitalized "726.Subpart G"
733.103(d)(1)(B)	Deleted comma before "or recovery"
733.106 "pesticide"	Added "by" before "regulation"; deleted by from before "in either"; changed "subsections of this section" to "paragraphs of this definition"; added "law"
733.113(a)(3), (a)(3)(A) & (c)(3)(B)	Corrected "exhibit" to "exhibits"
733.113(a)(3)(B) & (c)(3)(C) (Board Note)	Deleted "state" (variation of JCAR suggestion)
733.113(c)(2)(H)	Changed end punctuation
733.114(b)	Removed comma from before parenthetical
733.114(c)(2)	Changed end punctuation, added "and"
733.118(c)	Changed end punctuation
733.118(g)	Added closing parenthesis
733.118(h) (Board Note)	Deleted "state" (variation of JCAR suggestion)
733.131(a) & (b)	Deleted "from" from before "disposing" and "diluting"
733.132 Board Note	Added period within parentheses
733.133(a)(3), (a)(3)(A) & (c)(3)(B)	Corrected "exhibit" to "exhibits"
733.133(a)(3)(B) & (c)(3)(C) (Board Note)	Deleted "state" (variation of JCAR suggestion)
733.133(c)(2)(H)	Changed end punctuation

733.134(a)	Deleted "the" from before "any one"
733.134(c)(2)	Changed end punctuation, added "and" (variation of JCAR suggestion)
733.138(h) & (Board Note)	Deleted "state" (variation of JCAR suggestion)
733.140(b)	Corrected reference to "35 Ill. Adm. Code 722.Subpart E" (variation of JCAR suggestion)
733.150	Capitalized "Subpart"
733.151(a) & (b)	Deleted "from" from before "disposing" and "diluting"
733.161(c)	Deleted "a" from before "owner or operator"
733.161(d) (Board Note)	Deleted "state" (variation of JCAR suggestion)
733.181(a)	Corrected references to "35 Ill. Adm. Code 721.Subpart D" and "35 Ill. Adm. Code 721.Subpart C" (variation of JCAR suggestion)
733.181(f)	Changed end punctuation

JCAR Revisions to the Text of the Proposed Rules that the Board Has Declined to Accept

<u>Section</u>	<u>Correction; Explanation</u>
720.110 "federal, state, and local approvals or permits necessary to begin physical construction"	Capitalize "state"; Word intended in generic sense and not as limited to Illinois
721.104(f)(1)	Add "(f)" after subsection reference; Not necessary because the subsection referred to is clear on its face

721.Appendix I, Table B "CSI" delisting	Delete opening quotes from second and third paragraphs of certification language; Could lead to misunderstanding as to extent of required certification language
733.106 "FIFRA"	Change "136-136y" to "136 through 136y"; Use of dash character is standard short-form citation format
733.113(a)(1) & (c)(1)	Move "in a container" to immediately follow "contain"; The proposed construction was direct from the federal language, and the relocation does not add clarity
733.113(a)(1) & (b)(1)	Add "and" before "compatible"; "Compatible" is not the last element of the series
733.133(a)(1) & (c)(1)	Move "in a container" to immediately follow "contain"; The proposed construction was direct from the federal language, and the relocation does not add clarity
733.113(a)(3)(B) & (c)(3)(C); 733.118(h); 733.133(a)(3)(B) & (c)(3)(C); 733.138(h) & 733.161(d) (text of rules)	Capitalize "state"; Whether the State of Illinois or any state was intended by USEPA is unclear, so using the generic "state" is a better choice
733.133(c)(1)	Add "and" before "compatible"; "Compatible is not the last element of the series

### **Revisions Based on Board Review and Public Comments**

Aside from the textual revisions prompted by JCAR, the Board revised the text based on public comments from USEPA (PC 16) and the Agency (PC 11) and based on our subsequent review of the text. Where brief explanation is warranted, the Board has added footnotes to include those explanations. The Board notes that JCAR also submitted some of the USEPA and Agency-recommended revisions. Where this occurred, the center column indicates the source of the revision and adds "(& JCAR)".

Other Revisions to Text of Proposed Amendments

<u>Section</u>	<u>Source</u>	<u>Revision</u>
721.105(e)(1) & (e)(2)	Board	Added "one or more of the"
721.105(g)(3)(C) & (g)(3)(D)	Board	Used lower case "state"
720.110 "federal, state, and local approvals or permits necessary to begin physical construction"	Board	Added commas before "and local" and "or local"
720.110 "final closure"	Board	Placed in correct alphabetical order
720.110 "pesticide"	Agency	Correct spelling of "definiteness" in Board Note
721.111(b)	Board	Added incorporations of 49 CFR 171 and 173 for the purposes of Sections 733.152 & 733.155(b)
720.120(a)	Agency (& JCAR)	Corrected "35 Ill. Adm. Code . . . 268 or 273" to "35 Ill. Adm. Code . . . 728 or 733"
721.105(f)(3) & (g)(3)	Agency, Board	Corrected spelling of "conditions"; deleted commas from before "or ensure"; added commas before "or disposal facility"; Replaced "either of which, if located in the United States, is" with "provided that if the on-site or off-site facility is located in the United States, it fulfills any of the following conditions" (variations of Agency suggestions <sup>1</sup> )
721.105(f)(3)(B) & (g)(3)(B)	Agency (& JCAR)	Deleted "in" before "interim status"

721.131(a)	Board, Agency	Included the text of the amendments in the order (although described in the proposed opinion, <u>see infra</u> pp. 13 & 40, they were omitted from the proposed order); removed erroneous space from "2,4,5-tri-chlorophenol"
721.132 "K149" listing	Agency (& JCAR)	Deleted end punctuation
721.133(e) "U203" listing	USEPA	Corrected "P023" to "P203" for "aldicarb sulfone" entry
721.Appendix G "K131" listing	Board	Corrected "sulfte" to "sulfate"
721.Appendix Z	Agency (& JCAR)	Corrected "characteristics" to "characteristic"
722.111(d)	Agency (& JCAR)	Moved "and"
725.982(a)	Board	Changed "Owners or operators of facilities existing" to "An owner or operator of a facility in existence"
725.982(b)	Board	Changed "facilities" to "a facility"
726.180(a)	Board	Added comma before "or 705"
726.180(c)	Board & JCAR	Added subsection <sup>2</sup>
733.106 "generator"	Board	Corrected reference to "35 Ill. Adm. Code 721"
725.980(d)(2)	USEPA (& JCAR)	Corrected reference to "725.985"
725.980(d)(3)	USEPA	Corrected spelling of "processes"
733.101(b)	USEPA (& JCAR)	Corrected references to "35 Ill. Adm. Code . . . 726, and 728"

733.104 Section heading, including Table of Contents	Agency	Added "Mercury" <sup>3</sup>
733.106 "generator"	Board, Agency & USEPA	Corrected reference to "35 Ill. Adm. Code 721"
733.106 "pesticide"	Agency	Correct spelling of "definiteness" in Board Note
733.112 & 733.132(a)(1)	Agency	Removed "USEPA and"
733.118(g), 733.138(g) & 733.161(c) Board Notes	Agency	Corrected Agency address
733.132(a)(2) & (a)(3)	Agency	Changed "USEPA and the Agency" to "USEPA or the Agency"
733.132 Board Note	Agency	Deleted "ordering information for"; changed "RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810." to "Agency at 217-782-6761"
733.138(g)	USEPA	Corrected spelling of "Agency"
733.161(c)	Agency (& JCAR)	Deleted "a" from before "owner or operator"
733.180(a)(1) & (a)(2)	Board	Corrected references to "35 Ill. Adm. Code 101 and 102"
733.180(a) Board Note	Agency	Changed "USEPA authorizes the Illinois universal waste regulations" to "USEPA either authorizes the Illinois universal waste regulations or otherwise authorizes the Board to add new categories of universal waste"
733.181(a)	Agency	Corrected reference to "35 Ill. Adm. Code 720.110"

<sup>1</sup> The Board chose this wording over the Agency suggestion, "provided that such on-site or off-site facility, if located in the United States, meets the applicable condition of those following", for even greater clarity.

<sup>2</sup> The Board adapted this provision from 40 CFR 273.2(a)(2) (corresponding with 35 Ill. Adm. Code 733.102(a)(2)). The general pattern for the RCRA Subtitle C applicability statements is to clearly indicate the existence of other Subtitle C rules that potentially apply. For example, see 40 CFR 268.1(f) (corresponding with 35 Ill. Adm. Code 728.101(f) and 273.2(a)(2)). The Board added the converse of Section 733.102(a)(2) as new subsection 726.180(c) to enhance the clarity of the larger body of the RCRA Subtitle C regulations after JCAR inquired as to why such a similar statement was absent from this Section.

<sup>3</sup> USEPA adopted "Applicability--thermostats" in the table of contents (at 60 Fed. Reg. 25542, May 11, 1996) but gave the actual textual section heading as "Applicability--mercury thermostats" (at 60 Fed. Reg. 25543). The Board used the version without "mercury" because the Section 733.106 definition of "thermostat" defines such as containing mercury. The Board accepted the Agency's suggestion to add the word to the Section heading in order to enhance the facial clarity of the requirements.

### **HISTORY OF RCRA SUBTITLE C and UIC ADOPTION**

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

700	Outline of Waste Disposal Regulations
702	RCRA Subtitle C and UIC Permit Programs
703	RCRA Subtitle C Permit Program
704	UIC Permit Program
705	Procedures for Permit Issuance
709	Wastestream Authorizations
720	General
721	Identification and Listing
722	Generator Standards
723	Transporter Standards
724	Final TSD Standards
725	Interim Status TSD Standards
726	Specific Wastes and Management Facilities
728	USEPA Land Disposal Restrictions
729	Landfills: Prohibited Wastes
730	UIC Operating Requirements

- 731 Underground Storage Tanks
- 732 Petroleum Underground Storage Tanks
- 738 Hazardous Waste Injection Restrictions
- 739 Standards for the Management of Used Oil

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

### **History of RCRA Subtitle C and State Hazardous Waste Rules Adoption**

The Board has adopted and amended the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules in several dockets. Dockets R81-22 and R82-18 dockets dealt with the Phase I RCRA Subtitle C regulations. USEPA granted Illinois Phase I authorization on May 17, 1982, at 47 Fed. Reg. 21043. The Board adopted RCRA Subtitle C Phase II regulations in Parts 703 and 724 in dockets R82-19 and R83-24. USEPA granted final authorization of the Illinois RCRA Subtitle C "base program" on January 31, 1986, at 51 Fed. Reg. 3778 (January 30, 1986). USEPA granted authorization to "Cluster I revisions" to the Illinois program and granted partial Hazardous and Solid Waste Amendments (HSWA) (Pub. L. 98-616, Nov. 8, 1984) authorization effective March 5, 1988, at 53 Fed. Reg. 126 (January 5, 1988). USEPA authorized certain subsequent amendments and granted further partial HSWA authorizations effective April 30, 1990, at 55 Fed. Reg. 7320 (March 1, 1990), and June 3, 1991, at 56 Fed. Reg. 13595 (April 3, 1991); August 14, 1994, at 59 Fed. Reg. 30525 (June 14, 1994); and May 14, 1996, at 61 Fed. Reg. 10684 (Mar. 15, 1996). USEPA codified its approvals of the Illinois program at 40 CFR 272.700 and 272.701 on November 13, 1989, at 54 Fed. Reg. 37649 (Sep. 12, 1989), and on March 31, 1992, at 57 Fed. Reg. 3731 (Jan. 31, 1992). The entire listing of all RCRA Subtitle C identical in substance rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R81-22            45 PCB 317, September 16, 1981 & February 4, 1982; 6 Ill. Reg. 4828, April 23, 1982, effective May 17, 1982. (5/19/80 through 10/1/81)
- R82-18            51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R82-19<sup>4</sup>        53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983, effective October 2, 1983. (11/23/81 through 10/29/82)

- R83-24<sup>7</sup> 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984, effective December 27, 1983. (Corrections to R82-19)
- R84-9 64 PCB 427 & 521, June 13 & 27, 1985; 9 Ill. Reg. 11964, August 2, 1985, effective July 8 & 24, 1985. (1/19/83 through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, January 17, 1986, effective January 2, 1986. (4/25/84 through 6/30/85)
- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986, effective August 12, 1986. (7/1/85 through 1/31/86)
- R86-19 73 PCB 467, October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986, effective December 2, 1986. (2/1/86 through 3/31/86)
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987, effective March 23, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987, effective April 21, 1987. (4/1/86 through 6/30/86)
- R86-46 79 PCB 676, July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987, effective August 4, 1987. (7/1/86 through 9/30/86)
- R87-5 82 PCB 391, October 15, 1987; 11 Ill. Reg. 19280, November 30, 1987, effective November 10 & 12, 1987. (10/1/86 through 12/31/86)
- R87-26 84 PCB 491, December 3, 1987; 12 Ill. Reg. 2450, January 29, 1988, effective January 15, 1988. (1/1/87 through 6/30/87)
- R87-32 Correction to R86-1; 81 PCB 163, September 4, 1987; 11 Ill. Reg. 16698, October 16, 1987, effective September 30, 1987.
- R87-39 90 PCB 267, June 16, 1988; 12 Ill. Reg. 12999, August 12, 1988, effective July 29, 1988. (7/1/87 through 12/31/87)
- R88-16 93 PCB 513, November 17, 1988; 13 Ill. Reg. 447, January 13, 1989, effective December 28, 1988. (1/1/88 through 7/31/88)

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<sup>7</sup> On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison Co. v. PCB, 127 Ill. App. 3d 446; 468 N.E.2d 1339 (3d Dist. 1984).)

- R89-1 103 PCB 179, September 13, 1989; 13 Ill. Reg. 18278, November 27, 1989, effective November 13, 1989. (8/1/88 through 12/31/88)
- R89-9 109 PCB 343, March 8, 1990; 14 Ill. Reg. 6225, April 27, 1990, effective April 16, 1990. (1/1/89 through 6/30/89)
- R90-2 113 PCB 131, July 3, 1990; 14 Ill. Reg. 14401, September 7, 1990, effective August 22, 1990. (7/1/89 through 12/31/89)
- R90-11 121 PCB 97, April 11, 1991; corrected at 122 PCB 305, May 23, 1991; corrected at 125 PCB 117, August 8, 1991; uncorrected at 125 PCB 435, August 22, 1991; 15 Ill. Reg. 9323, effective June 17, 1991. (Third Third Land Disposal Restrictions) (4/1/90 through 6/30/90)
- R90-17 Delisting Procedures (See below)
- R91-1 125 PCB 119, August 8, 1991; 15 Ill. Reg. 14446, effective September 30, 1991. (Wood Preserving Rules) (7/1/90 through 12/30/90)
- R91-13 132 PCB 263, April 9, 1992; 16 Ill. Reg. 9489, effective June 9, 1992. (Boilers and Industrial Furnaces (BIFs) Rules) (1/1/91 through 6/30/91)
- R91-26 129 PCB 235, January 9, 1992; 16 Ill. Reg. 2600, effective February 3, 1992. (Wood Preserving Rules Compliance Dates)
- R92-1 136 PCB 121, September 17, 1992; 16 Ill. Reg. 17636, effective November 6, 1992. (7/1/91 through 12/31/91)
- R92-10 138 PCB 549, January 21, 1993; 17 Ill. Reg. 5625, effective March 26, 1993. (Leak Detection Systems (LDS) Rules) (1/1/92 through 6/30/92)
- R93-4 -- PCB --, September 23, 1993; 17 Ill. Reg. 20545, effective November 22, 1993. (Used Oil Rules) (7/1/92 through 12/31/92)
- R93-16 -- PCB --, March 17, 1994, Supplemental opinion and order on April 21, 1994. (1/1/93 through 6/30/93)
- R94-7 -- PCB --, June 23, 1994; 18 Ill. Reg. 12160, effective July 29, 1994. (7/1/93 through 12/31/93)
- R94-17 -- PCB --, October 20, 1994; 18 Ill. Reg. 17480, effective November 23, 1994. (1/1/94 through 6/30/94)

- R95-6 -- PCB --, June 1 & 15, 1995; 19 Ill. Reg. 9501, effective June 27, 1995. (Consolidated with R95-4, UIC Update.) (7/1/94 through 12/31/94)
- R95-20 Present docket. (1/1/95 through 6/30/95)
- R96-10 Next docket. (7/1/95 through 12/31/95)

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

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

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

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

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

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

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

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

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

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

AS89-4        Dismissed at 105 PCB 269, November 15, 1989. (Safety-Kleen Corp.)

AS89-5        Dismissed at 113 PCB 111, July 3, 1990. (Safety-Kleen Corp.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History of UIC Rules Adoption

The Board has adopted and amended Underground Injection Control (UIC) regulations in several dockets to correspond with the federal regulations. One such docket, R82-18, was a RCRA Subtitle C docket. USEPA authorized the Illinois UIC program on March 3, 1984, at 49 Fed. Reg. 3991 (Feb. 1, 1984); codified that approval as 40 CFR 147, Subpart O, at 49 Fed. Reg. 20197 (May 11, 1984); and amended the authorization at 53 Fed. Reg. 43087 (Oct. 25, 1988). The entire listing of all UIC rulemakings follows (with the period of corresponding federal revisions indicated in parentheses):

- R81-32      47 PCB 93, May 13, 1982; 6 Ill. Reg. 12479, October 15, 1982, effective February 1, 1984. (7/7/81 through 11/23/81)
- R82-18      51 PCB 31, January 13, 1983; 7 Ill. Reg. 2518, March 4, 1983, effective May 17, 1982. (11/11/81 through 6/24/82)
- R83-39      55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983, effective December 19, 1983. (4/1/83)
- R85-23      70 PCB 311 & 71 PCB 108, June 20 & July 11, 1986; 10 Ill. Reg. 13274, August 8, 1986, effective July 28 & 29, 1986. (5/11/84 through 11/15/84)
- R86-27      Dismissed at 77 PCB 234, April 16, 1987. (No USEPA amendments through 12/31/86).
- R87-29      85 PCB 307, January 21, 1988; 12 Ill. Reg. 6673, April 8, 1988, effective March 28, 1988. (1/1/87 through 6/30/87)
- R88-2        90 PCB 679, June 30, 1988; 12 Ill. Reg. 13700, August 26, 1988, effective August 16, 1988. (7/1/87 through 12/31/87)
- R88-17      94 PCB 227, December 15, 1988; 13 Ill. Reg. 478, January 13, 1989, effective December 30, 1988. (1/1/88 through 6/30/88)
- R89-2        107 PCB 369, January 25, 1990; 14 Ill. Reg. 3059, March 2, 1990, effective February 20, 1990. (7/1/88 through 12/31/88)
- R89-11      111 PCB 489, May 24, 1990; 14 Ill. Reg. 11948, July 20, 1990, effective July 9, 1990. (1/1/89 through 11/30/89)
- R90-5        Dismissed at 109 PCB 627, March 22, 1990. (No USEPA amendments 12/1/89 through 12/31/89)
- R90-14      122 PCB 335, May 23, 1991; 15 Ill. Reg. 11425, effective July 24, 1991. (1/1/90 through 6/30/90)

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

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

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

AGENCY OR BOARD ACTION?

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

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

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

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

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

#### EDITORIAL CONVENTIONS

As a final note, the federal rules have been edited to establish a uniform usage throughout the Board's regulations. For example, with respect to "shall", "will", and "may" - "shall" is used when the subject of a sentence has to do something. "Must" is used when someone has to do something, but that someone is not the subject of the sentence. "Will" is used when the Board obliges itself to do something. "May" is used when choice of a provision is optional. "Or" is used rather than "and/or", and denotes "one or both". "Either"... "or" denotes "one but not both". "And" denotes "both".

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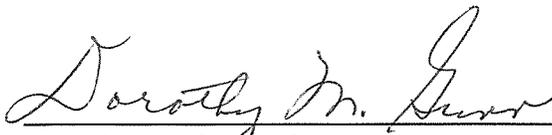
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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion was adopted on the 20<sup>th</sup> day of June, 1996, by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board