**Section 728.104 Treatment Surface Impoundment Exemption**

a) Wastes that are otherwise prohibited from land disposal under this Part may be treated in a surface impoundment or series of impoundments provided that all of the following conditions are fulfilled:

1) Treatment of such wastes occurs in the impoundments;

2) The following conditions are met:

A) Sampling and Testing. For wastes with treatment standards in Subpart D or prohibition levels in Subpart C, the residues from treatment are analyzed, as specified in Section 728.107 or 728.132, to determine if they meet the applicable treatment standards or, where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under 35 Ill. Adm. Code 724.113 or 725.113, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

B) Removal. The following treatment residues (including any liquid waste) must be removed at least annually: residues that do not meet the treatment standards promulgated under Subpart D; residues that do not meet the prohibition levels established under Subpart C or imposed by federal statute (where no treatment standards have been established); residues that are from the treatment of wastes prohibited from land disposal under Subpart C (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes that are not delisted under 35 Ill. Adm. Code 720.122. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

C) Subsequent Management. Treatment residues must not be placed in any other surface impoundment for subsequent management.

D) Recordkeeping. Sampling, testing, and recordkeeping provisions of 35 Ill. Adm. Code 724.113 or 725.113 apply;

3) The impoundment meets the design requirements of 35 Ill. Adm. Code 724.321(c) or 725.321(a) even though the unit may not be new, expanded or a replacement, and must be in compliance with applicable groundwater monitoring requirements of Subpart F of 35 Ill. Adm. Code 724 or Subpart F of 35 Ill. Adm. Code 725, unless any of the following conditions is fulfilled:

A) The impoundment is exempted pursuant to 35 Ill. Adm. Code 724.321(d) or (e), or to 35 Ill. Adm. Code 725.321(c) or (d);

B) Upon application by the owner or operator, the Agency has by permit provided that the requirements of this Part do not apply on the basis that the surface impoundment fulfills all of the following conditions:

i) The impoundment has at least one liner, for which there is no evidence that such liner is leaking;

ii) The impoundment is located more than one-quarter mile from an underground source of drinking water; and

iii) The impoundment is in compliance with generally applicable groundwater monitoring requirements for facilities with permits; or

C) Upon application by the owner or operator, the Board has, pursuant to Subpart D of 35 Ill. Adm. Code 104, granted an adjusted standard from the requirements of this Part. The justification for such an adjusted standard must be a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time; and

4) The owner or operator submits to the Agency a written certification that the requirements of subsection (a)(3) have been met. The following certification is required:

I certify under penalty of law that the requirements of 35 Ill. Adm. Code 728.104(a)(3) have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

b) Evaporation of hazardous constituents as the principal means of treatment is not considered to be a treatment for purposes of an exemption under this Section.

(Source: Amended at 42 Ill. Reg. 24924, effective November 19, 2018)