**Section 703.304 How a RAP May Be Modified, Reissued, or Terminated**

a) After a RAP is issued, how it may be modified, reissued, or terminated. In a RAP, the Agency must specify, either directly or by reference, procedures for any future modification, reissuance, or termination of the RAP. These procedures must provide adequate opportunities for public review and comment on any modification, reissuance, or termination that would significantly change the owner's or operator's management of its remediation waste, or that otherwise merits public review and comment. If the RAP has been incorporated into a traditional RCRA permit, as allowed pursuant to Section 703.301(b)(3), then the RAP will be modified according to the applicable requirements in Sections 703.260 through 703.283, reissued according to the applicable requirements in 35 Ill. Adm. Code 702.186 and Sections 703.270 through 703.273, or terminated according to the applicable requirements of 35 Ill. Adm. Code 702.186.

BOARD NOTE: Subsection (a) is derived from 40 CFR 270.170 (2005).

b) Reasons for which the Agency may choose to modify a final RAP.

1) The Agency may modify the owner's or operator's final RAP on its own initiative only if one or more of the following reasons listed in this Section exist. If one or more of these reasons do not exist, then the Agency must not modify a final RAP, except at the request of the owner or operator. Reasons for modification are the following:

A) The owner or operator made material and substantial alterations or additions to the activity that justify applying different conditions;

B) The Agency finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

C) The standards or regulations on which the RAP was based have changed because of new or amended statutes, standards, or regulations or by judicial decision after the RAP was issued;

D) If the RAP includes any schedules of compliance, the Agency may find reasons to modify the owner's or operator's compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which an owner or operator has little or no control and for which there is no reasonably available remedy;

E) The owner or operator is not in compliance with conditions of its RAP;

F) The owner or operator failed in the application or during the RAP issuance process to disclose fully all relevant facts, or an owner or operator misrepresented any relevant facts at the time;

G) The Agency has determined that the activity authorized by the owner's or operator's RAP endangers human health or the environment and can only be remedied by modifying the RAP; or

H) The owner or operator has notified the Agency (as required in the RAP and pursuant to 35 Ill. Adm. Code 702.152(c)) of a proposed transfer of a RAP.

2) Notwithstanding any other provision in this Section, when the Agency reviews a RAP for a land disposal facility pursuant to Section 703.304(f), it may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in 35 Ill. Adm. Code 702, 703, and 720 through 727.

3) The Agency must not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

BOARD NOTE: Subsection (b) is derived from 40 CFR 270.175 (2005).

c) Reasons for which the Agency may choose to revoke and reissue a final RAP.

1) The Agency may reissue a final RAP on its own initiative only if one or more reasons for reissuance exist. If one or more reasons do not exist, then the Agency must not modify or reissue a final RAP, except at the owner's or operator's request. Reasons for modification or reissuance are the same as the reasons listed for RAP modifications in subsections (b)(1)(E) through (b)(1)(H) of this Section if the Agency determines that reissuance of the RAP is appropriate.

2) The Agency must not reevaluate the suitability of the facility location at the time of RAP reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

BOARD NOTE: Subsection (c) is derived from 40 CFR 270.180 (2005).

d) Reasons for which the Agency may choose to terminate a final RAP, or deny a renewal application. The Agency may terminate a final RAP on its own initiative or deny a renewal application for the same reasons as those listed for RAP modifications in subsections (b)(1)(E) through (b)(1)(G) of this Section if the Agency determines that termination of the RAP or denial of the RAP renewal application is appropriate.

BOARD NOTE: Subsection (d) is derived from 40 CFR 270.185 (2005).

e) Administrative appeal of an Agency decision to approve or deny a modification, reissuance, or termination of a RAP .

1) Any commenter on the modification, reissuance, or termination, or any person that participated in any hearing on these actions, may appeal the Agency's decision to approve a modification, reissuance, or termination of a RAP, according to Section 703.303(f). Any person that did not file comments or did not participate in any public hearing on the modification, reissuance, or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

2) Any commenter on the modification, reissuance, or termination, or any person that participated in any hearing on these actions, may appeal the Agency's decision to deny a request for modification, reissuance, or termination to the Board. Any person that did not file comments or who did not participate in any public hearing on the modification, reissuance, or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

3) The procedure for appeals of RAPs is as follows:

A) The person appealing the decision must send a petition to the Board pursuant to 35 Ill. Adm. Code 101 and 105. The petition must briefly set forth the relevant facts, state the defect or fault that serves as the basis for the appeal, and explain the basis for the petitioner's legal standing to pursue the appeal.

B) The Board has 120 days after receiving the petition to act on it.

C) If the Board does not take action on the petition within 120 days after receiving it, the appeal must be considered denied.

BOARD NOTE: Corresponding 40 CFR 270.190(c)(2) and (c)(3) (2002) allow 60 days for administrative review, which is too short a time for the Board to publish the appropriate notices, conduct public hearings, and conduct its review. Rather, the Board has borrowed the 120 days allowed as adequate time for Board review of permit appeals provided in Section 40(a)(2) of the Act [415 ILCS 5/40(a)(2)].

4) This appeal is a prerequisite to seeking judicial review of the Agency action on the RAP.

BOARD NOTE: Subsection (e) is derived from 40 CFR 270.190 (2005). The corresponding federal provisions provide for informal appeal of an Agency RAP decision. There is no comparable informal procedure pursuant to Sections 39 and 40 of the Act [415 ILCS 5/39 and 40].

f) Expiration of a RAP. RAPs must be issued for a fixed term, not to exceed ten years, although they may be renewed upon approval by the Agency in fixed increments of no more than ten years. In addition, the Agency must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and the owner or operator or the Agency must follow the requirements for modifying the RAP as necessary to assure that the owner or operator continues to comply with currently applicable requirements in the Act and federal RCRA sections 3004 and 3005 (42 USC 6904 and 6905).

BOARD NOTE: Subsection (f) is derived from 40 CFR 270.195 (2005).

g) How an owner or operator may renew a RAP that is expiring. If an owner or operator wishes to renew an expiring RAP, the owner or operator must follow the process for application for and issuance of RAPs in this Subpart H.

BOARD NOTE: Subsection (g) is derived from 40 CFR 270.200 (2005).

h) What happens if the owner or operator has applied correctly for a RAP renewal but has not received approval by the time its old RAP expires. If the owner or operator has submitted a timely and complete application for a RAP renewal, but the Agency, through no fault of the owner or operator, has not issued a new RAP with an effective date on or before the expiration date of the previous RAP, the previous RAP conditions continue in force until the effective date of the new RAP or RAP denial.

BOARD NOTE: Subsection (h) is derived from 40 CFR 270.205 (2005).

(Source: Amended at 31 Ill. Reg. 487, effective December 20, 2006)