

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: PC to docket in R17-14, etc.
Date: Wednesday, July 11, 2018 11:01:17 AM

Good morning, Mr. Clerk:

Please docket this email exchange as a public comment in R17-14, R17-15, R18-12, and R18-31 (consol.).

If you have any questions, please let me know. Thank you.

Richard R. McGill, Jr.
Illinois Pollution Control Board
Senior Attorney
312-814-6983
richard.mcgill@illinois.gov

From: McGill, Richard
Sent: Wednesday, July 11, 2018 10:58 AM
To: 'Eastvold, Jonathan C.' <JonathanE@ilga.gov>
Subject: RE: 35 IAC 702.123

Good morning, Jonathan:

Your question identifies an error that the Board will correct on final adoption. The corrected text appears below, after a brief explanation. In addition, to further aid understanding, you will find a historical explanation following the corrected text.

In a prior rulemaking (R16-7), USEPA commented (PC 4, PC7) that 702.123(e) failed to include the owner information requirement of 40 C.F.R. § 270.13(e). At that time, the Board committed to correcting the apparent omission in the future. This was an error; the Board should have instead directed USEPA's to the RCRA-specific requirement in 703.181(b).

To address USEPA's comment from R16-7, the Board proposed amending 702.123 in this pending rulemaking (see opinion at 32), but will now instead remove this erroneous correction on final adoption. And to avoid further confusion, the Board will also revise the corresponding Board Note to exclude citation of 40 C.F.R. § 144.31(e)(5). For final adoption then, the text should appear as follows (revisions in colored font and highlighted):

Section 702.123 Information Requirements

An applicant for a RCRA or UIC Class I, III, or V permit must provide the following information to the Agency, using the application form provided by the Agency (additional information required of applicants is set forth in Subpart D of 35 Ill. Adm. Code 703 (RCRA) and 35 Ill. Adm. Code 704.161 (UIC)). An applicant for a Class VI injection well permit must

Electronic Filing: Received, Clerk's Office 7/11/2018; P.C. #3

follow the criteria provided in 35 Ill. Adm. Code 730.182.

- a) The activities conducted by the applicant that require it to obtain a permit under RCRA or UIC.
- b) The name, mailing address, and location of the facility for which the application is submitted.
- c) Up to four SIC codes that best reflect the principal products or services provided by the facility.
- d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.
- e) **This subsection (e) corresponds with 40 CFR 144.31(e)(5) and 270.13(f), relating to facilities on Indian lands. The Board has replaced the corresponding federal text with this statement to maintain structural parity with the corresponding federal rules.**
- f) A listing of all permits or construction approvals received or applied for under any of the following programs:
 - 1) The hazardous waste management program under RCRA, this Part, and 35 Ill. Adm. Code 703;
 - 2) The UIC program under SDWA, this Part, and 35 Ill. Adm. Code 704;
 - 3) The National Pollutant Discharge Elimination System (NPDES) program under the federal CWA (33 USC 1251 et seq.) and 35 Ill. Adm. Code 309;
 - 4) The Prevention of Significant Deterioration (PSD) program under the federal Clean Air Act (42 USC 7401 et seq.);
 - 5) The nonattainment program under the federal Clean Air Act;
 - 6) The National Emission Standards for Hazardous Pollutants (NESHAPs) preconstruction approval under the federal Clean Air Act;
 - 7) Any ocean dumping permits under the federal Marine Protection Research and Sanctuaries Act (33 UCS 1401 et seq.);
 - 8) Any dredge or fill permits under Section 404 of CWA (33 USC 1344); and
 - 9) Any other relevant environmental permits, including any State-issued permits.
- g) A topographic map (or other map if a topographic map is unavailable) extending 1609 meters (one mile) beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well

Electronic Filing: Received, Clerk's Office 7/11/2018; P.C. #3

where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or which are otherwise known to the applicant within 402 meters (one-quarter mile) of the facility property boundary.

h) A brief description of the nature of the business.

BOARD NOTE: Derived from 40 CFR 144.31(e)(1) through (e)(4) and (e)(6) through (e)(8), 270.10(d), and 270.13(a) through (f) and (k) through (m) ~~(2017)~~ (2011).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Historical Explanation: USEPA adopted consolidated permit rules when adopting the initial RCRA rules. 48 Fed. Reg. 14146 (Apr. 1, 1983). Subpart A of 40 C.F.R. 122 contained the general rules applicable to all Clean Water Act, UIC, and RCRA programs. Subpart A supported permit application form 1, which required general information. The facility operator information was required by 40 C.F.R. § 122.4(d)(4) (1980). Subpart B of 40 C.F.R. 122 concerned only Part A RCRA permit applications. Subpart B required facility owner information. 40 C.F.R. § 122.24(b) (1980). Subpart C of 40 C.F.R. 122 concerned only UIC permit applications and had no requirement relating to owner or operator information.

The Board adopted the consolidated permit rules in one of the first waves of RCRA adoption. The Board codified the general provisions of 40 C.F.R. 122 in 35 Ill. Adm. Code 702, the RCRA-specific provisions in 35 Ill. Adm. Code 703, and the UIC-specific provisions in 35 Ill. Adm. Code 704. (The procedural provisions of 40 C.F.R. 124 became 35 Ill. Adm. Code 705.) The general information requirement of 40 C.F.R. § 122.4(d)(4) (1980) appeared in 35 Ill. Adm. Code 702.123(d). The RCRA-specific provision of 40 C.F.R. § 122.24(b) (1980) appeared in 35 Ill. Adm. Code 703.181(b).

USEPA deconsolidated the permit rules in 1983. 48 Fed. Reg. 14146 (Apr. 1, 1983). USEPA narrowed applicability of 40 C.F.R. 122 (1983) to NPDES permits, separating the UIC and RCRA permit requirements respectively into new 40 C.F.R. 144 and 270 (1983). The general requirement for facility operator information in 40 C.F.R. § 122.4(d)(4) (1980) became 40 C.F.R. §§ 144.31(e)(4) and 270.13(d) (1983). The RCRA-specific requirement for facility owner information in 40 C.F.R. § 122.24(b) (1980) became 40 C.F.R. § 270.13(e) (1983).

The Board did not deconsolidate the permit rules. Elements of the three Parts 702, 703, and 704, originally drafted to correspond with subparts A, B, and C of 40 C.F.R. 122 (1980), now correlated with 40 C.F.R. 144 and 270 (1983) as follows:

- 40 C.F.R. § 144.31(e)(4) corresponds with 35 Ill. Adm. Code 702.123(d)
- 40 C.F.R. § 270.13(d) corresponds with 35 Ill. Adm. Code 702.123(d)
- 40 C.F.R. § 270.13(e) corresponds with 35 Ill. Adm. Code 703.181(b)

In R84-9 (June 13, 1985), the Board added a requirement for owner information at 35 Ill. Adm. Code 702.123(e). The corresponding Board Note was also amended, attributing 35 Ill. Adm. Code 702.123 to 40 C.F.R. §§ 144.31(e), 270.10(d), and 270.13. The opinion did not explain the revisions.

Electronic Filing: Received, Clerk's Office 7/11/2018; P.C. #3

In R11-14 (Jan. 5, 2012), the Board replaced the owner information requirement at 35 Ill. Adm. Code 702.123(e) with an explanatory statement. On page 41 of its opinion, the Board explained that the UIC rule at 40 C.F.R. § 144.31(e) does not require owner information. Only the RCRA-specific rule at 40 C.F.R. § 270.13(e) requires owner information. The Board observed that the RCRA-specific rule is included in corresponding 35 Ill. Adm. Code 703.181(b).

Thank you for your inquiry, Jonathan. Please let me know if you have any other questions.

Best regards,

Richard

Richard R. McGill, Jr.
Illinois Pollution Control Board
Senior Attorney
312-814-6983
richard.mcgill@illinois.gov

From: Eastvold, Jonathan C. [<mailto:JonathanE@ilga.gov>]
Sent: Thursday, July 5, 2018 4:34 PM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] 35 IAC 702.123

Richard –

I've started the process of reviewing each of the exempt rulemakings, and have one question so far:

Does the following statement correctly characterize the change in 35 IAC 702.123?:

40 CFR 270.13(e) requires that RCRA applications include the name/address/phone number of the owner, not just the operator; the corresponding PCB provision in 35 IAC 702.123 does not. However, the owner contact information requirement does not appear in the UIC regulations at 40 CFR 144.31(e), to which PCB's change also would apply.

Hope your 4th was good.

Thanks again for everything.

Jonathan

Jonathan C. Eastvold, Ph.D.
Rules Analyst III
Joint Committee on Administrative Rules
Illinois General Assembly

700 Stratton Building

Electronic Filing: Received, Clerk's Office 7/11/2018; P.C. #3

Springfield, IL 62706

Tel.: 217-785-2254

JonathanE@ilga.gov

State of Illinois - CONFIDENTIALITY NOTICE: The information contained in this communication is confidential, may be attorney-client privileged or attorney work product, may constitute inside information or internal deliberative staff communication, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.