

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: PC for R20-19 FW: 35 IAC 845.200(a)(1)-(4)
Date: Thursday, April 23, 2020 12:34:37 PM

Good afternoon, Mr. Clerk:

Please docket this forwarded email exchange with JCAR as a public comment in R20-19.

Thank you.

Richard R. McGill, Jr.
Illinois Pollution Control Board
Senior Attorney for Research & Writing
richard.mcgill@illinois.gov
(312) 814-6983

From: McGill, Richard
Sent: Thursday, April 23, 2020 12:32 PM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: RE: 35 IAC 845.200(a)(1)-(4)

Please do. Thank you.

Richard R. McGill, Jr.
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Senior Attorney for Research & Writing
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From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Thursday, April 23, 2020 11:34 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] RE: 35 IAC 845.200(a)(1)-(4)

We agree that “may” would be appropriate. May we make the change now?

From: McGill, Richard [<mailto:Richard.McGill@illinois.gov>]
Sent: Thursday, April 23, 2020 11:29 AM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: Re: 35 IAC 845.200(a)(1)-(4)

Good morning, Jonathan:

Thank you for the message. All good here at Fortress McGill. I hope you and yours are doing well, too.

I'll have to review the subsections you've cited but from the example you've provided, I agree with your reading. But I don't think the solution is substituting "shall" for "must." As "shall" means "has a duty to," it presents the same problem. Plus, "shall" is not plain English; it's legalese that nobody uses in everyday conversation.

My initial impression, on which I'll need to confer with the hearing officer, is that we should replace "must" with "may", meaning "is allowed to," which works with the "No person" construction of a prohibition. Alternatively, it could read "A person must not"

Please let me know your thoughts. I also owe you responses to your queries on Parts 203, 204, and 211. Thank you.

Best regards,

Richard

From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Thursday, April 23, 2020 10:49 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] RE: 35 IAC 845.200(a)(1)-(4)

Following up on Tuesday's message. Hope all is well.

Jonathan

From: Eastvold, Jonathan C.
Sent: Tuesday, April 21, 2020 1:42 PM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: 35 IAC 845.200(a)(1)-(4)

Richard –

In the subsections identified above, "must" is used in a way that seems not to reflect the intent of the rule.

For example:

“No person must construct, install, or modify a CCR surface impoundment or related treatment or mitigation facilities, under corrective action measures under Subpart F, without a construction permit issued by the Agency under this Part.

We read this as not requiring someone to build an impoundment without a permit, rather than forbidding someone from doing so. Is there any chance we could change “shall” to “must” in these instances?

Thanks!

Jonathan

Jonathan C. Eastvold, Ph.D.
Rules Analyst III

Illinois General Assembly
Joint Committee on Administrative Rules
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During the COVID-19 emergency, please call or text my mobile at 217-816-9481

JonathanE@ilga.gov

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