

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R20-8
AMENDMENTS (January 1, 2019 through)	(Identical-in-Substance Rulemaking
June 30, 2019) AND RCRA SUBTITLE D)	– Land)
CORRECTIONS)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R20-16
AMENDMENTS (July 1, 2019 through)	(Identical-in-Substance Rulemaking
December 31, 2019))	– Land)

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the APPEARANCE OF JOHN M. MCDONOUGH II, the APPEARANCE OF KYLE NASH DAVIS, and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSE TO THE ILLINOIS POLLUTION CONTROL BOARD’S QUESTIONS FROM THE MAY 21, 2020 OPINION AND ORDER, copies of which are herewith serves upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: July 14, 2020

1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

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December 31, 2019))	– Land)

APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II _____
John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: July 14, 2020

1021 North Grand Avenue East
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217/782-5544
john.mcdonough@illinois.gov

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APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Kyle Nash Davis
Kyle Nash Davis
Acting Deputy General Counsel
Division of Legal Counsel

DATED: July 14, 2020

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSE TO THE ILLINOIS POLLUTION CONTROL BOARD’S QUESTIONS FROM THE MAY 21, 2020 OPINION AND ORDER

The Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”) submits these answers for the above-titled matter to the Illinois Pollution Control Board (“Board”). The Board requested comments on its proposed amendments in its May 21, 2020 Opinion and Order. The Illinois EPA’s comments are as follows:

Requests for Comments on the Hazardous Waste Pharmaceuticals Rule

1. Is adding section 201(ff) of the Federal Food, Drug, and Cosmetic Act appropriate for the definition of “dietary supplements”?

Per the Federal Food, Drug, and Cosmetic Act, the term “dietary supplements” generally means food. [21 USCA § 321(ff)]. Illinois EPA does not believe this is the intended definition of the Board.

2. Is changing “authorized collector” to “collector” and citing 21 C.F.R. § 1300.01 for its definition appropriate for this term?

Yes.

3. Is citation to 21 C.F.R. §§ 1300 through 1317 appropriate for DEA regulations for controlled substances?

To the extent the Board is required to cite 21 C.F.R. §§ 1300 through 1317, the Illinois EPA agrees with the citation.

4. Is citation to 21 C.F.R. §§ 1308.11 through 1308.17 appropriate for the DEA lists of controlled substances?

In reviewing the Code of Federal Regulations, it would appear that the proper citation is 21 C.F.R. § 1308.11 through 1308.15, which list the 5 schedules of controlled substances in each enumerated section.

5. Should the Board make and reference to the statutory list of controlled substances in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 in a rule or a Board note?

Without knowing the specific language, Illinois EPA cannot provide a review of this question. However, if the Board decides to reference the list of controlled substances, the Board is already referencing 21 C.F.R. § 1308.11 through 1308.15 and it may be redundant to cite the Comprehensive Drug Abuse Prevention and Control Act of 1970 in addition to the Code of Federal Regulations.

17. Does USEPA conduct any RCRA-related inspections at facilities in Illinois?

Illinois EPA has stator and regulatory provisions providing for inspection for RCRA facilities. U.S. EPA would have independent authority to inspect and regulate RCRA facilities in Illinois. As such, this question would have to be addressed by U.S. EPA.

18. Is requiring access to records upon demand of a USEPA inspector necessary and appropriate?

Same as above, answer identical to question 17.

Requests for Comments on the Board-Initiated Revisions

1. Do the proposed amendments to 35 Ill. Adm. Code 722.116(e) clarify the rule for a small quantity generator accumulating waste from rejected loads?

Yes, in general, the Illinois EPA agrees.

2. Has the Board appropriately fulfilled the Agency's intent in modifying 35 Ill. Adm. Code 722.122 and 722.123(a) so that it is clear that the Agency is to receive annual reports from generators?

Yes, the Board has addressed the Illinois EPA's intent.

13. How many landfills continue to operate in Illinois (including post-closure care) that would be considered an “existing facility” as defined in 35 Ill. Adm. Code 810.103?

The Agency is currently conducting a survey of landfills throughout the state, however, that survey is unfinished at this time and was not designed to answer this particular question. Based upon the available incomplete information to date, and for purposes of this response only, Illinois EPA staff would posit that approximately 124 landfills are in operation or post-closure care. The approximated numbers may change as the survey continues to provide data to Illinois EPA staff.

14. How many landfills continue to operate in Illinois (including post-closure care) that would be considered an “existing MSWLF unit” as defined in 35 Ill. Adm. Code 810.103?

The Agency is currently conducting a survey of landfills throughout the state, however, that survey is unfinished at this time and was not designed to answer this particular question. Based upon the available incomplete information to date, and for purposes of this response only, Illinois EPA staff would posit that approximately 74 facilities identified so far may be considered existing MSWLFs. The approximated numbers may change as the survey continues to provide data to Illinois EPA staff.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: July 14, 2020

1021 N. Grand Ave. East
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(217) 782-5544

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the APPEARANCE OF JOHN M. MCDONOUGH II, the APPEARANCE OF KYLE NASH DAVIS, and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO THE ILLINOIS POLLUTION CONTROL BOARD'S QUESTIONS FROM THE MAY 21, 2020 OPINION AND ORDER upon the persons on the attached Service List.

My e-mail address is john.mcdonough@illinois.gov.

The number of pages in the e-mail transmission is 8.

The e-mail transmission took place before 5:00 pm on July 14, 2020.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: July 14, 2020

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