

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820) R23-17
GENERAL CONSTRUCTION OR) (Rulemaking – Land)
DEMOLITION DEBRIS RECOVERY)
FACILITIES)

NOTICE

TO: ATTACHED CERTIFICATE OF SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board this PRE-FILED ANSWERS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
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DATED: September 26, 2022

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**PRE-FILED ANSWERS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

Today, the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) files its answers to the three sets of questions submitted to the Illinois Pollution Control Board (“Board”) on September 20, 2022. Per Board Order, (I) the Illinois Attorney General’s Office, (II) the Illinois Environmental Regulatory Group, and (III) the Board submitted questions to the Agency. In response, the Illinois EPA has organized the questions and answers into the following submittal:

I: Illinois EPA Responses to Illinois Attorney General’s Office Questions

1. Section 820.201(a)(2) appears to allow for facilities with existing permits to operate for one year following the promulgation of the proposed Part 820 Rules. How does the Illinois EPA plan to address inconsistencies between existing permits that have not been modified to conform to amended Section 22.38 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/22.38, within one year after the effective date of Part 820 (i.e., which requirements are GCDD recovery facilities expected to comply with—amended Section 22.38 of the Act or the existing permit)?

Illinois EPA response: To the extent that the amendments to Section 22.38 include provisions that are more stringent than any condition of a permit issued to a GCDD recovery facility, Section 22.38 is the controlling authority.

- 1a. Does the estimated number of affected facilities statewide take into account both new permit applications and applications to modify existing GCDD permits (i.e., could all GCDD recovery facilities apply for permits within six months)?

Illinois EPA response: The number of impacted facilities identified in the Illinois EPA's filings in this rulemaking reflects the existing universe of GCDD recovery facilities operating in the state. Fifty-two (52) of these facilities would be required to apply for a permit within 6 months pursuant to subsection 820.201(a)(1).

2. Should submission to the Illinois EPA of a dust control plan be required?

Illinois EPA response: Under the proposed rules, dust control is addressed in subsection 820.202(c)(1)(J), which requires devices for controlling dust to be shown on a facility map, and subsection 802.302(h), which requires owners and operators to prevent wind dispersal of particulate matter. The Illinois EPA will rely on the operational standard in 802.302(h) as the gauge for whether dust is being adequately controlled.

3. Is coverage under a general National Pollutant Discharge and Elimination System (NPDES) permit required for GCDD recovery facilities? If not, should GCDD recovery facilities be required to maintain and implement a stormwater pollution prevention plan?

Illinois EPA response: An NPDES permit would be required under Bureau of Water regulations for facilities that have a point source discharge. Surface water controls are addressed in subsections 820.202(c)(1)(L) (mapping of surface water control devices), 820.302(k) (surface water drainage), and 820.302(l) (run-on and run-off control). The Illinois EPA will rely on the performance standards in 820.302(k) and (l) as the gauge for whether stormwater and other surface water is being adequately controlled.

4. How does the Illinois EPA reconcile the language in Section 22.38(j) of the Act, 415 ILCS 5/22.38(j), with proposed Section 820.303(d)? Section 22.38(j) of the Act provides: "No person shall cause or allow the acceptance of any waste at a general construction or demolition debris recovery facility, other than general construction or demolition debris." The General Assembly did not provide any exceptions in Section 22.38(j) of the Act allowing unacceptable material to be present at a GCDD recovery facility. Section 820.303(d) appears to be at odds with the Act. To the extent you believe this is permissible, should GCDD recovery facilities be required to maintain records regarding the handling of all unacceptable materials?

Illinois EPA response: Section 22.38(j) prohibits accepting materials other than GCDD at a GCDD recovery facility. However, there may be occasions where other materials are commingled with GCDD and not discovered until after the GCDD is accepted, similar to landfills discovering in municipal solid waste materials they cannot accept for disposal (e.g., used tires, lead acid batteries, consumer electronics). The provisions in proposed 820.303(d) are intended to capture material that was comingled with GCDD and discovered after the fact. The Illinois EPA does not intend this provision to be a license to accept material other than GCDD; rather, procedures for handling materials that were subsequently identified through the application of onsite material evaluation protocols. Such protocols exist in the current permits issued to GCDD recovery facilities. The Illinois EPA would not oppose including recordkeeping requirements for these materials at GCDD

recovery facilities if the Board determines such records would be beneficial based on the information presented during these hearings.

5. Please explain what is meant by “all other materials at the facility”? Are there other non-GCDD materials that would be expected to be stored at GCDD recovery facilities? If so, how does the Illinois EPA reconcile the language in proposed Section 820.305(b) with Section 22.38(j) of the Act, as well as the proposed Section 820.103 definition of General Construction or Demolition Debris Recovery Facility, as one that is “used to store or treat exclusively GCDD”?

Illinois EPA response: “All other materials at the facility” is intended as a broad descriptor to cover any material other than GCDD that may be present, including materials identified in Section 820.303(d) that were subsequently discovered. The intent is to help ensure that all material at the site is removed at closure.

6. Please explain what is meant by “closure cannot be practically completed”?

Illinois EPA response: In drafting this language, the Illinois EPA sought to anticipate the potential need to accommodate occurrences that are beyond the control of owners or operators of GCDD recovery facilities and that would necessarily require additional time to complete closure. The circumstances under which closure cannot be practically completed within 180 days would be unique to an individual GCDD recovery facility.

- 6a. Under what circumstances would an owner or operator be able to demonstrate that closure could not be practically completed within 180 days of the last date on which GCDD was accepted?

Illinois EPA response: This determination would be unique to the specific circumstances surrounding an owner or operator’s demonstration submitted to the Illinois EPA.

7. Self-insurance does not appear to be permissible under Subpart D. Should it be explicitly stated that it is not an acceptable type of financial assurance?

Illinois EPA response: No, as the rules do not specifically exclude any other financial assurance mechanism.

8. How does this work for existing facilities that would be covered by a trust agreement for the first time while they are operating?

Illinois EPA response: To accommodate issues that may be presented by existing facilities, the Illinois EPA proposes amending Section 820.404(d) as follows:

d) Payments into the Trust

2) Pay-In Period

i) The pay-in period for a trust fund used as financial assurance in accordance with this Part is three years, and

ii) The pay-in period for any facility that has not accepted GCDD prior to establishing a trust fund as financial assurance in accordance with this Part, commences on the date any of the GCDD recover facilities covered by the trust agreement first receives GCDD.

iii) The pay-in period for any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism commences on the date the trust fund is established.

4) First Annual Payment

i) For any facility that has not accepted GCDD prior to establishing a trust fund as financial assurance in accordance with this Part, the owner or operator shall make the first annual payment before GCDD is received at a facility covered by the trust agreement. Before receiving GCDD at the facility covered by the trust agreement, the owner or operator shall submit to the Agency a receipt from the trustee for the first annual payment.

ii) For any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism, the owner or operator shall make the first annual payment immediately upon establishing the trust fund for use as financial assurance in accordance with this Part. The first payment must be made prior to submitting an original signed duplicate to the Agency in accordance with subsection (a) of this Section. The owner or operator shall submit to the Agency a receipt from the trustee for the first annual payment at the time the original signed duplicate is submitted to the Agency.

II: Illinois EPA Response to Illinois Environmental Regulatory Group's Question

1. Please clarify whether the definition of "GCDD recovery facility" encompasses temporary or long-term storage at a manufacturing facility of GCDD materials with the potential for future re-use, where the GCDD materials resulted from construction or demolition work at the manufacturing facility.

Illinois EPA response: Historically, Section 22.38 has been applied to recycling facilities that receive GCDD from off-site. The proposed rules are intended to follow this historical approach and are not intended to apply to on-site generated materials.

III: Illinois EPA Responses to Board Questions

Section 820.101: Purpose

1. Please comment on whether this statement of purpose should refer to establishing procedures for providing financial assurance in addition to referring to operating criteria and permitting processes.

Illinois EPA response: The Illinois EPA views financial assurance as one of the operating criteria for a GCDD recovery facility. In similar instances, the Board has not specifically identified financial assurance within the purpose section of those regulations. See 35 Ill. Adm. Code 811.101; 35 Ill. Adm. Code 830.101; 35 Ill. Adm. Code 845.100; and 35 Ill. Adm. Code 848.101.

Section 820.102: Applicability

2. Please comment on whether "all" GCDD recovery facilities in subsection (a) means all facilities that meet the definition of "GCDD recovery facility." If so, please comment on whether subsection (a) should be revised as follows to be consistent with subsection (b)(1). If not, please clarify the proposed intent.

a) This Part applies to any site or facility that meets the definition of a GCDD recovery facility pursuant to under Section 22.38 of the Act.

Illinois EPA response: "All" GCDD recovery facilities in subsection (a) is intended to mean all facilities that meet the definition of "GCDD recovery facility". The Illinois EPA has no objection to the proposed change.

3. Please comment on whether Part 820 applies to both existing and new GCDD recovery facilities.

Illinois EPA response: Part 820 is intended to apply to existing and new GCDD recovery facilities.

4. In subsection (b)(2), please comment on the rationale for exempting GCDD facilities which are located at a facility permitted under 35 Ill. Adm. Code Part 807 or Parts 811 through 814. Also, please comment on the intent of including the phrase "regulated under that facility's permit."

Illinois EPA response: Some landfills (permitted under 807 or 811-814) and some transfer stations (permitted under Part 807) have GCDD recycling operations at their facility. Such GCDD recycling operations are subject to and addressed in the landfill or transfer station permit. Subsection (b)(2) is intended to exclude those GCDD operations from having to obtain a redundant permit under Part 820.

Section 820.103: Definitions

5. For the preamble to this section, please comment on whether it would be clearer to state that, "[e]xcept as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part will be the same as the definition of the same words or terms in the Environmental Protection Act"? See 35 Ill. Adm. Code 810.103 (solid waste disposal).

Illinois EPA response: No objection.

6. Is IEPA's proposed definition of "adjudicated bankrupt" based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Illinois EPA response: The definition of "adjudicated bankrupt" is derived from information the Illinois EPA has received from stakeholders over time in its administration of other programs with financial assurance obligations. As drafted, the text is intended to identify the specific types of bankruptcy actions that would trigger the Illinois EPA drawing on a financial assurance mechanism while avoiding confusion that a bankruptcy action under Chapter 11 of the United States Bankruptcy Code would necessitate Illinois EPA action.

7. Please comment on whether the following revision to the definition of "Applicant" is acceptable to the Agency:

"Applicant" means the person applying to the Agency for a permit for a general construction or demolition debris recovery facility permit under this Part.

Illinois EPA response: No objection.

8. IEPA's proposed definition of "disposal" differs slightly from the statutory definition. While the Act refers in part to "any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment" (415 ILCS 5/3.185 (2020)), the proposal refers to "any waste or hazardous waste into or on any land or water or into any well such that waste or hazardous waste or any constituent thereof may enter the environment" (Prop. at 3). Please comment on whether the definition should include the statutory language with italicization or whether it should include IEPA's proposed language with adjusted italicization.

Illinois EPA response: The difference is unintentional. The Illinois EPA supports mirroring the statutory text.

9. Please clarify whether the definition of "Malodor" is based on the definition of the same term in 35 Ill Adm Code 810.103. If so, please comment on whether it would be acceptable to the Agency to revised it with the following language.

"Malodor" means an odor caused by one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics and duration as to be described as an offensive odor to a reasonable person and that may be injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life or property. [415 ILCS 5/3.115] (defining "air pollution")

If the definition is not based on Section 810.103, please explain the source of the proposed definition.

Illinois EPA response: The definition of "malodor" is partially based on the definitions of "malodor" in 35 Ill. Adm. Code 810.103 and "air pollution" in 415 ILCS 5/3.115. The intent is to allow a determination of malodor to be based simply on the odor being offensive to a reasonable person (e.g., offensive to neighbors) regardless of whether it may be injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life of property.

10. Is IEPA's proposed definition of "operator" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Illinois EPA response: This definition is based on the definition of "operator" in Section 810.103.

11. Is IEPA's proposed definition of "owner" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Illinois EPA response: This definition is based on the definition of "owner" in Section 810.103.

12. Is IEPA's proposed definition of "putrescible recyclable GCDD" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Illinois EPA response: This definition is based on the definition of "putrescible waste" in Section 810.103.

13. Is IEPA's proposed definition of "run-off" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Illinois EPA response: This definition is based on the definition of "run-off" in Section 810.103.

Section 820.105: Severability

14. Please comment on whether it would clarify Section 820.105 by revising it as follows:

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, that adjudication must not affect the validity of this Part as a whole or of any portion not adjudged invalid.

See 35 Ill. Adm. Code 845.160 (coal combustion waste surface impoundment).

Illinois EPA response: No objection.

Section 820.202: Permit Application

15. Proposed subsection (a) requires permit applications to be made on Agency forms. Please comment on whether the Agency has developed permit application forms for GCDD recovery facility. If so, submit the application forms into the record. If not, comment whether the Agency will be able to submit the application forms during the post-hearing comment period.

Illinois EPA response: The Illinois EPA has not developed these forms, but contemplates doing so once the Board's direction in this rulemaking is clear. The Illinois EPA has no objection to submitting draft forms once the rules the Board will propose are known.

16. Please comment on whether a permit issued under Part 820 to GCDD recovery facility would have a specified duration or expiration date similar to the five-year term for landfill permits under 35 Ill Adm Code 813.108. If not, please comment on the rationale for allowing permits without periodic renewal for GCDD facilities.

Illinois EPA response: Historically, permits for GCDD recovery facilities have been issued under 35 Ill. Adm. Code Part 807. Permits issued under Part 807 do not have an expiration date. The Illinois EPA did not see a need to start limiting these permits to five-year terms.

17. In subsection (c)(1)(A), please comment on whether IEPA intends that the facility map show "the facility property, all adjacent property, and all property within at least 1000 meters of the boundary of the facility"?

Illinois EPA response: The Illinois EPA intends that the facility map identify the facility property, all adjacent property, and all property within at least 1000 meters of the facility boundary.

18. In Section 820.202(c)(1)(A), please comment on whether IEPA intends that the facility map show "the facility property, all adjacent property, and all property within at least 1000 meters of the boundary of the facility"?

Illinois EPA response: Please see previous response.

19. In Section 820.202(c)(1)(B), please comment on whether IEPA intends that the facility map show "all surface waters" within a specific proximity of the facility? If so, please comment with a proposed revision including that proximity.

Illinois EPA response: The Illinois EPA intends that the facility map show all surface waters within 1000 meters of the boundary of the facility, consistent with the scale set forth in subsection (c)(1)(A).

20. In Section 820.202(c)(1)(D), please comment on whether IEPA intends that the facility map show "the limits of all 100-year floodplains" within a specific proximity of the facility? If so, please comment with a proposed revision including that proximity.

Illinois EPA response: The Illinois EPA intends that the facility map show the limits of all 100-year floodplains within 1000 meters of the boundary of the facility, consistent with the scale set forth in subsection (c)(1)(A).

21. Please comment on whether it would clarify Section 820.202(d) by giving it a subheading and revising it as follows:

d) Completeness

- 1) An application for permit is not considered deemed filed until the Agency has received, at the designated address, all information, documents, and authorization, using Agency forms prescribed by the Agency and providing the content required by this Part.
- 2) If the Agency fails to notify the applicant, within 45 days after receiving the receipt of an application, that the application is incomplete, and of the reasons, the application will shall be considered deemed to have been filed on the date received by the Agency.
- 3) The Agency's notification that the application is incomplete is a denial of the permit for purposes of review under pursuant to Section 40 of the Act.

Illinois EPA response: No objection.

22. Please comment on whether Section 820.202(f) should require that a permit applicant waive its 90-day deadline for final action in writing. If so, please comment on whether a written waiver should be "on forms prescribed by the Agency and mailed or delivered to the address designated by the Agency."

Illinois EPA response: The permit applicant's waiver should be submitted in writing to the Illinois EPA at the address identified in the permit application forms. Based on the

Illinois EPA's experience with waivers for other permit reviews, an Agency prescribed waiver form does not appear necessary.

Section 820.204: Transfer of Permit

23. Please comment on whether it would clarify Section 802.204 to revise the organization and language as follows:
- (a) The Agency may transfer a permit to a new owner or operator only through a permit modification under this Part to identify the new permittee and incorporate other requirements necessary under the Act and this Part.
 - (b) The existing owner and operator or their duly authorized agent or agents and the new owner and operator or their duly authorized agent or agents must sign the application for a permit modification.
 - (c) The new owner or operator to whom the Agency transfers the permit must comply with all terms and conditions specified in the transferred permit.

Illinois EPA response: No objection.

Section 820.205: Agency Initiated Modification

24. Please comment on whether it would clarify subsection(b) by revising it as follows:
- (b) Modifications initiated by the Agency do not become effective until 45 days after the owner or operator receives it, unless the modification is stayed during the pendency of an appeal to the Board. The owner or operator may request that the Agency reconsider the modification or may file a petition for a Board hearing under this Part. All other time periods and procedures in this Part apply during the Agency's reconsideration and during any appeal to the Board.

Illinois EPA response: No objection.

Section 820.301: Prohibitions

25. Please comment on whether it would clarify subsection (f) by revising it as follows:
- f) Operate a GCDD recovery facility:
 - 1) Without the maintenance of documentation identifying the hauler, generator, place of origin of the debris or soil, the volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed, recycled, or treated. [415 ILCS 5/21(w)]
 - 2) In a manner that causes or allows:

- A) noise outside the facility that violates 35 Ill. Adm Code 900 through 905 or Section 24 of the Act.
- B) vector proliferation.
- C) litter accumulation.
- D) malodors outside the GCDD recovery facility.

Illinois EPA response: No objection.

Section 820.302: General Operating Standards

26. Subsection (d) requires the owner or operator to notify the Agency within the next operating day if the facility receives GCDD outside of permitted operating hours due to an emergency. Please comment with examples of what would constitute an emergency.

Illinois EPA response: This subsection is intended to capture emergency situations that take place at offsite locations and generate significant volumes of GCDD. Illustrative examples include, but are not limited to, responses to fires, floods, tornados, and other natural disasters.

27. Subsection (d) also requires the Agency's approval to accept GCDD beyond the permitted hours if an emergency situation extends beyond one day. Please comment on what information would the Agency consider in approving a request under subsection (d). Would the approval include a time limit to accept GCDD beyond permitted operating hours?

Illinois EPA response: The Illinois EPA would consider, among other factors, the volume of GCDD during the emergency situation, the accessibility of haulers to transport the GCDD to the GCDD recovery facility, and the possibility of additional GCDD being generated during ongoing activities associated with addressing the emergency situation. An approval issued in accordance with this subsection would include a time limit based on the unique circumstances of the emergency situation.

28. Please comment on whether it would clarify subsection (d) by revising it as follows:

d) Operating Hours.

- 1) GCDD must be received at the GCDD recovery facility only during operating hours established by a permit issued under this Part.
- 2) If a facility receives GCDD outside of permitted operating hours to respond to an emergency situation, then the facility operating records must maintain a written record of the date, time, and reason the facility received the GCDD. The owner or operator must also notify the Agency's Regional

Office responsible for inspecting the facility on the next operating day within the facility's permitted operating hours.

- 3) If the emergency situation requires receiving GCDD outside of permitted operating hours for more than one day, then the owner or operator of the GCDD recovery facility must obtain prior written approval from the Agency to extend emergency operating hours beyond the first day.

Illinois EPA response: No objection.

29. Subsection (h) requires preventing wind dispersal of particulate matter. Please comment on whether a GCDD facility must have a dust control plan to comply with subsection (h). If so, should the rule specify minimum requirements for dust control plan? If so, please comment with proposed language on those requirements.

Illinois EPA response: The Illinois EPA sought to provide flexibility to allow facilities to determine the best means to minimize dust at their location rather than prescribe specific planning criteria. The effectiveness of those means will be evaluated against the performance standard of 820.302(h). Failure to implement effective steps to control dust, resulting in a violation of 820.302(h), would subject the facility to enforcement.

30. Please comment on whether it would clarify Section 820.302(j) by revising it as follows:

j) Vehicle Safety Measures.

- 1) The facility must maintain roads and traffic flow patterns adequate for the type and weight of traffic using the facility and onsite equipment.
- 2) The facility must maintain sufficient area to minimize traffic congestion, provide for safe operation, and allow for queuing of hauling vehicles.
- 3) The facility must use safety mechanisms to prevent vehicles from backing into fuel storage tanks, equipment, or other structures.

Illinois EPA response: No objection.

31. Subsection (1) specifies that a GCDD facility must be operated in a manner that prevents exposure of "any materials" to run-on or run-off. Please comment on whether the materials to which this requirement applies are only GCCD. If not, please comment on what is included within "any materials."

Illinois EPA response: This subsection is intended to apply to any material at the site, whether GCDD or non-GCDD. Unacceptable materials are addressed under 820.303(d).

32. Please comment on whether it would clarify subsection (1) by revising it as follows:

- l) Run-on and Run-off Control.
 - 1) The owner or operator must operate the facility in a manner that prevents exposure of any materials to run-on or run-off.
 - 2) Run-off from roadways and parking areas must be controlled using storm sewers or must be compatible with natural drainage for the facility.
 - 3) Run-off from roadways and parking areas must not carry GCDD, CCDD, waste, or any of their constituents to soil, surface water, or groundwater.

Illinois EPA response: No objection.

33. Please comment on whether it would clarify subsection(m) by revising it as follows:

- m) Boundary Control.
 - 1) Access to the facility must be restricted to prevent unauthorized entry.
 - 2) The facility must post at the entrance to the facility stating, at a minimum:
 - A) that the facility only accepts GCDD;
 - B) the facility's permit number;
 - C) the facility's hours of operation;
 - D) the penalty for unauthorized trespassing and dumping;
 - E) the name and telephone number of the appropriate emergency response agency or agencies to deal with emergencies and other problems; and
 - F) the name, address, and telephone number of the facility's operator.

Illinois EPA response: No objection.

34. Subsection (n) requires the owner or operator to develop and maintain a contingency plan. Please comment on whether the contingency plan must be updated periodically. If so, please comment on how often and under what conditions the plan should be updated?

Illinois EPA response: The owner or operator of a GCDD recovery facility should intermittently evaluate the terms of its contingency plan and update it to reflect any changes to the GCDD recovery facility. Consistent with other Board regulations for non-disposal facilities, the Illinois EPA did not propose a mandatory timeline for plan updates. See 35 Ill. Adm. Code 830.202; 35 Ill. Adm. Code 848.203.

35. Please comment on whether it would clarify Section 820.302(n) by revising it as follows:

n) Contingency Plan

- 1) The owner or operator of a GCDD recovery facility must establish and maintain a Contingency Plan that
 - A) minimizes the hazards to human health and the environment from fires and run-off of contaminants resulting from fire at the facility;
 - B) is carried out immediately whenever there is a fire;
 - C) describes the actions facility personnel shall take in response to fires and run-off resulting from fires;
 - D) minimizes the hazards to human health and the environment from vectors and other nuisance organisms that may breed or be present at the facility;
 - E) minimizes the hazards to human health and the environment from flooding in the event of a 100-year flood. The GCDD recovery facility must not restrict the flow of a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are taken to provide alternative storage capacity.
 - F) describes evacuation procedures including evacuation signals, primary evacuation routes, and alternate evacuation routes to be used when the primary routes could be blocked;
 - G) contains an up-to-date emergency equipment list that identifies all emergency equipment at the facility, such as fire-extinguishing systems, fire-suppression material, spill-control equipment, decontamination equipment, and communication and alarm systems, and describes the physical location and capabilities of each listed item; and
 - H) includes the name, address, and telephone number of an employee designated as the primary emergency coordinator responsible for coordinating emergency response measures at the GCDD recovery facility, as well as an up-to-date list of all alternate emergency coordinators, listed in the order in which they will assume responsibility for coordinating emergency response measures at the facility in event that the primary emergency coordinator or another alternate emergency coordinator is unavailable.

- 2) The owner or operator must submit a copy of the contingency plan, and all revisions to the plan, to the local fire department and keep a copy of the contingency plan on-site for review by the Agency. The owner or operator must keep in the operating record documentation demonstrating that the plan and all plan revisions have been submitted to the fire department.

Illinois EPA response: No objection.

Section 820.303: Processing Program

36. Please comment on whether it would clarify Section 820.303(a)(2)(B) to provide that notice of a rejected load must include "a statement that only GCDD is accepted at the facility."

Illinois EPA response: No objection.

37. Please comment on whether it would clarify Section 820.304(a)(3) by revising it to provide that "[p]rocedures for recordkeeping of rejected loads must meet the requirements of Section 820.303(a)(1)(B)."

Illinois EPA response: No objection.

38. Subsection (c)(5) specifies that CCDD and uncontaminated soil that is separated from GCDD received at the facility may be transported off-site for use in accordance with the Act and rules adopted under the Act. Please provide citations to specific sections of the Act and Board rules governing the use of CCDD and uncontaminated soil.

Illinois EPA response: The use of CCDD and uncontaminated soil is generally governed by 415 ILCS 5/3.160(b) and (c). Use as fill in a current or former quarry, mine, or other excavation is specifically governed by 22.51, 22.51a, and 35 Ill. Adm. Code 1100.

39. Please comment on whether it would clarify subsection (d) by revising it as follows:

- d) Unacceptable Materials. Any unacceptable materials discovered to be mixed with GCDD after it is accepted at the GCDD recovery facility ~~shall~~ must be immediately ~~removed~~ separated from the GCDD and ~~removed from the~~ managed as follows. In no case shall the unacceptable material remain at the facility within for more than 72 hours after receipt. The separated unacceptable material must be managed as follows:

Illinois EPA response: No objection.

Section 820.304: Recordkeeping Requirements

40. Subsection (b) requires the records required under the Act and Part 820 to be maintained in a form and format prescribed by the Agency. Subsection (c)(1) requires quarterly reports

to be submitted in a form and format prescribed by the Agency. Please comment on whether the Agency has developed recordkeeping and quarterly summary forms for GCDD facilities. If so, submit the forms into the record. If not, comment whether the Agency will be able to submit the forms during the post hearing comment period.

Illinois EPA response: The Illinois EPA has developed these forms, copies of which are attached to these responses.

41. Please comment on whether it would clarify subsection (d) by revising it as follows:

d) Operating Record

- 1) The owner or operator must maintain an operating record at the facility. Information maintained in the operating record must include the following:
 - A) Records required to be maintained by the facility under the Act and this Part;
 - B) Any information submitted to the Agency under this Part, including copies of all permits, permit applications, and reports;
 - C) The Contingency Plan for the GCDD recovery facility and documentation demonstrating that the facility has submitted the plan and all plan revisions to the local fire department under Section 820.302(n); and
 - D) Written procedures for load checking and load rejection notifications required under Section 820.303.
- 2) The owner or operator must make the operating record available for inspection and copying by the Agency and units of local government upon request during the facility's normal business hours.

Illinois EPA response: No objection.

Section 820.305: Closure

42. Subsection (c) requires the owner or operator to complete closure activities for the facility within 180 days of beginning closure. However, regarding the extension of the 180-day deadline, subsection (c)(1) refers to "180 days of the last date on which GCDD was accepted". Please comment on whether subsection (c)(1) must be revised to reflect "180 days of beginning closure" to be consistent with subsection (c). If not, comment on the proposed intent.

Illinois EPA response: Subsection (c)(1) should be revised to reflect "180 days from beginning closure".

Section 820.306: Certification of Closure and Termination of Permit

43. Subsection (b) specifies the procedures for certifying closure and terminating a permit. Please comment on whether this subsection should provide a deadline for the Agency to issue a closure determination. Also, please comment on whether it should require the Agency to notify the owner or operator if the Agency determines that that the GCDD recovery facility has not been closed in compliance with the requirements of the Act and Part 820.

Illinois EPA response: These requirements are already provided in the Act. The Illinois EPA views closure determinations as a permit modification subject to Section 39 of the Act. Section 39 sets forth the review deadline for permit submissions by providing approval by operation of law if the Agency does not take action within 90 days. This approval by operation of law also ensures the Illinois EPA takes action on unapprovable submissions. If the Illinois EPA determines a facility has not been closed in compliance with applicable requirements, it will disapprove the closure certification within 90 days to avoid approval by operation of law.

Section 820.402: Closure Cost Estimate

44. Please comment on whether it would clarify Section 820.402(c) by revising it as follows"
- c) Before making or having made any change at the facility that would increase the closure cost estimate, the owner or operator must revise the cost estimate and submit the revised closure cost estimate as a permit application to the Agency. The Agency's issuance of the permit with the revised cost estimate constitutes approval of the cost estimate.

Illinois EPA response: No objection

45. Please comment on how an owner or operator would comply with Section 820.402(d) if on January 1 it had a pending permit application including a revised cost estimate.

Illinois EPA response: An owner or operator would be responsible for maintaining the level of financial assurance required by its existing permit and would certify to that effect.

Section 820.403: Release of Financial Institution

46. Under subsection (b), the Agency must release a trustee, bank, or other financial institution if the "Agency has released the owner or operator from the requirements of this Subpart following (i) completion of closure in accordance with Section 820.305 and (ii) Agency certification of closure of the GCDD recovery facility." Please comment on whether the Agency is required to issue a certification of closure under Section 820.306. If so, comment on whether the Section 820.306(b) should be revised to require the Agency to issue a certification of closure.

Illinois EPA response: The Illinois EPA's notification to the GCDD facility owner or operator in accordance with Section 820.306(b) constitutes the Illinois EPA's certification of closure. The Illinois EPA proposes amending Section 820.403(b) as follows:

the Agency has released the owner or operator from the requirements of this Subpart following (i) completion of closure in accordance with Section 820.305 and (ii) Agency certification of closure of the GCDD recovery facility in accordance with Section 820.306(b).

Section 820.404: Trust Fund

47. Please submit the Agency forms required under subsection (c). If the forms are not ready for submission, comment on whether the forms could be submitted along with the posthearing comments.

Illinois EPA response: The Illinois EPA has not developed these forms, but contemplates doing so once the Board's direction in this rulemaking is clear. The Illinois EPA has no objection to submitting draft forms during the post-hearing comment period.

48. Please comment on whether it would clarify Section 820.404(c) by revising it as follows:

c) Trust Agreement

- 1) The trust agreement must be on forms prescribed by the Agency and must be accompanied by a formal certification of acknowledgment on a form prescribed by the Agency.
- 2) The trust agreement must be irrevocable and must, at a minimum, contain provisions addressing establishing, managing, and terminating the trust.
- 3) The trust agreement must include a schedule listing, at a minimum, the GCDD recovery facility or facilities covered by the trust and the current approved removal cost for each of those GCDD recovery facilities.
- 4) The trust agreement must prohibit third party access to the trust funds other than as provided in the trust agreement. This prohibition must be in the form prescribed by the Agency and must be updated within 60 days after a change in the amount of the current approved removal cost for any GCDD recovery facility covered by the trust.

Illinois EPA response: No objection.

49. Please comment on whether it would clarify Section 820.404(e) by revising it as follows:

e) Evaluation by Trustee

- 1) The trustee must evaluate the trust fund annually as of the anniversary of the day the trust was created or on another date provided in the agreement.
- 2) Within 30 days after the evaluation date each year, the trustee must furnish the owner or operator and the Agency with a statement confirming the value of the trust fund.
- 3) The failure of the owner or operator to object in writing to the trustee within 90 days after the trustee furnishes the statement to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, which bars the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.

Illinois EPA response: No objection.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II

John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: September 26, 2022

Illinois Environmental Protection Agency
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820) R23-17
GENERAL CONSTRUCTION OR) (Rulemaking – Land)
DEMOLITION DEBRIS RECOVERY)
FACILITIES)

CERTIFICATE OF SERVICE LIST

I, the undersigned, an attorney, affirm that I have served the attached PRE-FILED ANSWER OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, on behalf of the Illinois EPA, upon the following person(s) by e-mailing it to the e-mail address(es) indicated below or, if no e-mails address is provided, by placing a true copy, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on September 26, 2022:

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I affirm that my e-mail address is john.mcdonough@illinois.gov; the number of pages in the e-mail transmission is 23; and the e-mail transmission took place today before 5:00 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II
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DATED: September 26, 2022

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