

ILLINOIS POLLUTION CONTROL BOARD
January 19, 2023

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820) R 23-17
GENERAL CONSTRUCTION OR) (Rulemaking - Land)
DEMOLITION DEBRIS RECOVERY)
FACILITIES)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by C.M. Santos and M. Gibson):

On August 1, 2022, the Illinois Environmental Protection Agency (IEPA or Illinois EPA or Agency) proposed that the Board adopt a new Part 820 of its waste disposal regulations to establish rules for permitting, operating, and closing general construction or demolition debris (GCDD) recovery facilities.

Illinois EPA filed this proposal to comply with Public Act 102-310, which became effective on August 6, 2021. Among its provisions, Public Act 102-301 added a subsection (n) to Section 22.38 of the Environmental Protection Act (Act). Subsection (n) requires IEPA to propose rules to the Board for permitting GCDD recovery facilities that include specified provisions within one year of the effective date of Public Act 102-310. The Board must adopt those rules within one year after receiving the IEPA’s proposal.

After conducting two public hearings, receiving comments, and considering the entire record, the Board proposes rules for GCDD recovery facilities for first-notice publication. Publishing the proposed rules in the *Illinois Register* begins a public comment period of at least 45 days. *See* 5 ILCS 100/5-40(b) (2020). At page 58-59 of this opinion, the Board provides information on submitting a comment and specifically requests comment on two issues. The order includes the rule language with underlines showing additions and strikethroughs showing deletions that the Board made to IEPA’s original proposal.

GUIDE TO TODAY’S OPINION AND ORDER

The opinion begins with the procedural history of this rulemaking docket (page 2). It then summarizes the background for regulating GCDD recovery facilities (pages 2-3) and the process IEPA followed to develop its proposal (pages 3-4).

Next, the opinion briefly addresses general clarifications, and other non-substantive revisions to IEPA’s proposal that the Board proposes for first notice (page 4). The Board then provides a section-by-section summary, decides any issues disputed among the participants, and proposes rule language deciding those disputes (pages 4-57).

The Board then addresses the technical feasibility and economic reasonableness of its first-notice proposal (pages 57-58). The Board then provides information on filing first-notice comments and specifically seeks comment on two issues (page 58-59). After concluding to propose adding a new Part 820 to its waste disposal rules, the Board directs its Clerk to submit its proposal for first-notice publication in the *Illinois Register* (page 59). Following this order, the Board includes the proposed rules.

PROCEDURAL HISTORY

On August 1, 2022, IEPA filed its rulemaking proposal. Accompanying the proposal were documents including IEPA's Statement of Reason's (SR) and Technical Support Document (TSD) and its proposed Part 820 (Prop.). On August 11, 2022, the Board accepted the proposal for hearing.

Also on August 11, 2022, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of IEPA's proposal by September 26, 2022. *See* 415 ILCS 5/27(b) (2020). The Board did not receive a response to its request.

On September 6, 2022, IEPA pre-filed the testimony of James Jennings (IEPA Test.), Manager of the Materials Management and Compliance Section in IEPA's Bureau of Land.

On September 20, 2022, the Board received pre-filed questions for IEPA's witness from the Illinois Attorney General's Office (AG) (AG Questions) and from the Illinois Environmental Regulatory Group (IERG) (IERG Questions). Also on September 20, 2022, a Board hearing officer order submitted questions to IEPA's witness (Board Questions). On September 26, 2022, IEPA pre-filed answers to each of the three sets of pre-filed questions (IEPA Resps.1).

The Board held the first hearing as scheduled on September 27, 2022, and received the transcript (Tr.1) on October 4, 2022.

On October 26, 2022, IEPA filed responses to questions directed to it at the first hearing (IEPA Resps.2).

On November 9, 2022, the Board received pre-filed questions for IEPA from the National Waste and Recycling Association (NWRA) (NWRA Questions). On November 15, 2022, IEPA pre-filed answers to NWRA's pre-filed questions (IEPA Resps.3).

The Board held the second hearing as scheduled on November 16, 2022, and received the transcript (Tr.2) on November 21, 2022.

On November 29, 2022, a Board hearing officer order set the public comment period deadline as December 7, 2022. The Board received a post-hearing comment from the AG on December 7, 2022 (AG Comment).

BACKGROUND FOR REGULATING GCDD RECOVERY FACILITIES

On August 17, 1997, the Governor signed House Bill 1887 into law as Public Act 90-475, and it became effective that day. Among its provisions, Public Act 90-475 added Section 22.38 to the Act, which addresses facilities accepting exclusively GCDD for transfer, storage, or treatment. While Public Act 90-475 adopted standards for these facilities, it did not require them to obtain an operating permit from IEPA. P.A. 90-475, eff. Aug. 17, 1997; IEPA Test. at 2. Section 22.38(b)(11) required the owner or operator of a GCDD facility to submit specified information to IEPA at least 30 days before accepting GCDD there. IEPA Test. at 2.

On August 24, 2009, the Governor signed Senate Bill 125 into law as Public Act 96-611, and it became effective that day. Among its provisions, Public Act 96-611 amended Section 22.38 to require GCDD facilities to obtain a permit from IEPA before accepting GCDD or, if already operating, obtain a permit by August 24, 2009. P.A. 96-611, eff. Aug. 24, 2009; IEPA Test. at 2.

IEPA knows of 52 permitted GCDD recovery facilities. IEPA Test. at 2; SR at 5. Each is permitted under 35 Ill. Adm. Code 807, which addresses the development and operation of solid waste sites. TSD at 4-5; IEPA Test. at 2. Currently, no rules “specifically govern the operation of GCDD recovery facilities.” TSD at 5; IEPA Test. at 3. IEPA states that, because Part 807 establishes “relatively flexible standards for the operation of a solid waste facility,” it has been able to draft “site-specific permits for facilities not governed by other Board solid waste regulations.” TSD at 4.

Public Act 102-310, effective August 6, 2021, requires adopting rules specifically for GCDD recovery facilities. However, IEPA argues that Public Act 102-310 “did not comprehensively overhaul the operating standards of these facilities.” TSD at 4; IEPA Test. at 3.

DEVELOPING IEPA’S PROPOSAL

After Public Act 102-310 took effect, IEPA internally developed a rulemaking proposal. SR at 5. IEPA drafted its proposal “with the objective of maintaining as much of the existing operational standards as practicable.” TSD at 4; SR at 4; IEPA Test. at 3; *see* Tr.1 at 12-13. IEPA staff reviewed current GCDD recovery facility permits “to identify common characteristics that lend themselves well to a rulemaking. Those requirements were combined with additional requirements set forth in P.A. 102-310 to form the foundation of this proposal.” TSD at 4.

In March 2022, IEPA provided a draft proposal “to interested parties including GCDD recovery facilities, local governments and counties, as well as additional stakeholders.” SR at 5. IEPA reports that it received comments and questions about its draft proposal, in response to which it revised its proposal. *Id.*

IEPA states that “no published studies or research reports were used in developing the proposed regulations,” making Section 102.202(e) of the Board’s rulemaking requirements “inapplicable to this rulemaking proposal.” SR at 7, citing 35 Ill. Adm. Code 102.202(e), (k).

IEPA adds that “no other material is to be incorporated by reference within the proposed rule under Section 5-75 of the Illinois Administrative Procedure Act.” SR at 7, citing 5 ILCS 100/5-75 (2020).

GENERAL CLARIFICATIONS AND SIMPLIFICATIONS

The Board’ first-notice proposal revises IEPA’s original proposal in a number of ways intended to be non-substantive.

The Board revised the Table of Contents and the Subpart and Section headings to make them consistent with one another. *See* Prop. at 1, 2, 8, 18. Although IEPA designated the five subsections of proposed Section 820.301(f) as (i) through (v), the Board re-designated them as subsections (1) through (2) according to the Secretary of State’s requirements. Prop. at 9; *see* 1 Ill. Adm. Code 100.340(b)(2). IEPA proposed adopting definitions based on the Act, and the Board revised IEPA’s proposal to match italicized language with the statutory definitions. *See* Prop. at 2-4.

In a number of cases, the Board replaced “shall” with “must” as a plainer term that is more clearly mandatory. *E.g.*, Prop. at 6 (Permit Application), 9-12 (General Operating Standards). In other cases, the Board clarified language by replacing “shall” with “will.” *E.g.*, Prop. at 7 (Permit No Defense). Where IEPA used the parenthetical “(s)” to indicate either a singular or plural, the Board revised it to refer specifically to both the singular and plural of the term. *See, e.g.*, Prop. at 6, 8 (“agent or agents”). Where IEPA referred to a requirement “pursuant to” or “in accordance with” an authority, the Board simplified the reference. *E.g.*, Prop. at 7, 14. In provisions in which IEPA used the phrase “including, but not limited to” listed terms or items, the Board struck “but not limited to” as unnecessary. *E.g.*, Prop. at 15 (Recordkeeping Requirements). Where IEPA proposed cross-references to provisions “of this Section” or “of this Part,” the Board struck that phrase where it was not necessary. *E.g.*, Prop. at 13, 15. Where IEPA referred to alternatives with a backslash, the Board clarified the reference with “or.” Prop. at 14 (“transporter/hauler”).

The discussion above of these revisions is not intended to be exhaustive, and the Board proposed other clarifying and simplifying changes throughout its proposed Part 820. The Board also intends that each of these additional proposed revisions is non-substantive, and the Board does not specifically discuss them in this opinion.

SECTION-BY-SECTION SUMMARY OF PROPOSAL AND DISPUTED ISSUES

Some provisions of IEPA’s original proposal did not generate substantive comments or questions. For other provisions, the rulemaking process resolved questions and disputes. For these provisions that were not or are no longer disputed, the section-by-section summary below reviews the record. The Board attached the proposed rules to the first-notice opinion and order, which includes a number of non-substantive, technical changes the Board made to clarify the language proposed by IEPA.

Subpart A: General Provisions

IEPA’s proposed Subpart A “deals with the general provisions, applicability, and definitions.” SR at 4; Prop. at 2-5.

Section 820.101: Purpose

IEPA proposed this section providing in its entirety that “[t]he purpose of this Part is to establish the operating criteria and permitting process for general construction or demolition debris (“GCDD”) recovery facilities pursuant to Section 22.38 of the Act.” Prop. at 2.

The Board asked IEPA to “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.” Board Questions at 2. IEPA responded that it considers financial assurance “as one of the operating criteria for a GCDD recovery facility.” IEPA Resps.1 at 5. IEPA added that the corresponding section of other Board rules has not specifically listed financial assurance. *Id.*, citing 35 Ill. Adm. Code 811.101 (new landfills), 830.101 (compost facilities), 845.100 (coal combustion residuals), 848.101 (used and waste tires); *see* Tr.1 at 21. The Board concludes to not add a reference to financial assurance to proposed Section 820.101 and does not include it in its first-notice proposal.

Section 820.102: Applicability

Subsection (a). IEPA proposed that “[t]his Part applies to all GCDD recovery facilities subject to Section 22.38 of the Act.” Prop. at 2; *see* IEPA Test. at 3.

The Board asked IEPA to “comment on whether Part 820 applies to both existing and new GCDD recovery facilities.” Board Questions at 2. IEPA responded that the proposed Part 820 “is intended to apply to existing and new GCDD recovery facilities.” IEPA Resps.1 at 5; *see* Tr.1 at 21-22.

The Board also asked IEPA to comment on whether “all GCDD recovery facilities” means “all facilities that meet the definition of ‘GCDD recovery facility’.” Board Questions at 2. IEPA responded that the term intends to encompass “all facilities that meet the definition of ‘GCDD recovery facility’.” IEPA Resps.1 at 5

The Board also asked IEPA to comment on whether subsection (a) should be revised as follows to make it more consistent with proposed subsection (b)(1): “[t]his Part applies to any site or facility that meets the definition of all-GCDD recovery facility ~~facilities pursuant to~~ under Section 22.38 of the Act.” Board Questions at 2; *see* Tr.1 at 21. IEPA responded that it “has no objection to the proposed change,” (IEPA Resps.1 at 5), and the Board includes this revision in its first-notice proposal.

Subsection (b). IEPA proposed that Part 820 does not apply to specified facilities.

Subsection (b)(1). IEPA proposed that this Part does not apply to “[a]ny site or facility that does not meet the definition of a GCDD recovery facility, such as a facility that accepts material other than GCDD for treatment, storage, or disposal.” Prop. at 2.

Subsection (b)(2). IEPA proposed that this Part does not apply to “[a] GCDD recovery facility that is located at a facility permitted pursuant to 35 Ill. Adm. Code Part 807, or Parts 811 through 814, and regulated under that facility’s permit.” *Id.*

The Board asked IEPA to “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.” Board Questions at 2. The Board also asked IEPA to “comment on the intent of including the phrase ‘regulated under that facility’s permit.’” *Id.*

IEPA responded that some landfills permitted under Parts 807 or 811-814 and some transfer stations permitted under Part 807 have GCDD recycling operations at their facility. IEPA Resps.1 at 5. IEPA stated that these operations “are subject to and addressed in the landfill or transfer station permit.” *Id.* IEPA intends for this provision “to exclude those GCDD operations from having to obtain a redundant permit under Part 820.” *Id.*

At the first hearing, the Board asked IEPA whether it would be acceptable to clarify the rules “to specifically identify facilities that are permitted to accept GCDD material at these landfill sites.” Tr.1 at 22. The Board also questioned whether those landfills should be permitted specifically to accept GCDD. *Id.* at 22-23.

IEPA responded that the definition of “municipal waste” includes “construction or demolition debris”; therefore, facilities permitted under 35 Ill. Adm. Code Part 807, 811, and 814 are already permitted to handle municipal waste that includes GCDD. IEPA Resps.2 at 3. IEPA also notes that Section 22.38 of the Act was amended to bring previously permit-exempt facilities into compliance and not to add requirements onto already permitted and regulated facilities. The Board concludes to not add clarifying language to proposed Section 820.102(b)(2) and does not include that in its first-notice proposal.

Section 820.103: Definitions

In its preamble to this section, IEPA proposed 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 that applied to the same words or terms in the Act.” Prop. at 2.

The Board asked IEPA to comment on the following proposed revision of the preamble: “[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.” Board Questions at 2, citing 35 Ill. Adm. Code 810.103 (solid waste disposal). IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 6), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 23.

Act. IEPA proposed that this term “means the Environmental Protection Act [415 ILCS 5].” Prop. at 2.

Agency. IEPA proposed that this “*is the Environmental Protection Agency established by the Act. [415 ILCS 5/3.105].*” Prop. at 2.

Adjudicated Bankrupt. IEPA proposed that this term:

means the entry of any order for relief under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. 101, et. seq (“the Code”) pursuant to (a) a voluntary petition under Section 301(b) of the Code; (b) an involuntary petition under Section 303(h) of the Code; or (c) a conversion of a case under Chapter 11 to a case under Chapter 7 under Sections 348(a), 1112(a) and (b) of the Code. Prop. at 2.

The Board asked IEPA whether it based its proposed definition on the Illinois rules, federal rules, or any other similar authority. If so, the Board asked IEPA to identify it. If not, the Board asked IEPA to explain the source of its proposed definition. Board Questions at 2.

IEPA responded that it based the proposed definition on information it “has received from stakeholders over time in its administration of other programs with financial assurance obligations.” IEPA Resps.1 at 6. The proposed definition intends “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.” *Id.*; see Tr.1 at 23.

Applicant. IEPA proposed that the term “means the person applying to the Agency for a permit for a general construction or demolition debris recovery facility.” Prop. at 2.

The Board asked IEPA to comment on the following proposed revision of this definition: “‘Applicant’ means the person applying to the Agency for a ~~permit for a~~ general construction or demolition debris recovery facility permit under this Part. Board Questions at 2. IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 6), and the Board includes this revision in its first-notice proposal. See Tr.1 at 23-24.

Board. IEPA proposed that this “*is the Pollution Control Board established by the Act. [415 ILCS 5/3.130].*” Prop. at 3.

Clean Construction and Demolition Debris. IEPA proposed that this term:

means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. CCDD does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with

any clean construction or demolition debris or other waste. [415 ILCS 5/3.160(b)]. Prop. at 3.

Disposal. IEPA proposed that this term means “*the discharge, deposit, injection, dumping, spilling, leaking or placing of 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 or be emitted into the air or discharged into any waters, including ground waters.* [415 ILCS 5/3.185].” Prop. at 3.

The Board noted that IEPA’s proposed definition of “disposal” differs slightly from the statutory definition. Board Questions at 3. The Act refers 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)), and IEPA’s 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.” Board Questions at 3, citing Prop. at 3.

The Board asked IEPA to “comment on whether the definition should include the statutory language with italicization or whether it should include IEPA’s proposed language with adjusted italicization.” Board Questions at 3. IEPA responded that “[t]he difference is unintentional. The Illinois EPA supports mirroring the statutory text.” IEPA Resps.1 at 6; see Tr.1 at 24. The Board’s first notice proposal revises this definition to do so.

General Construction or Demolition Debris or GCDD. IEPA proposed that this term:

means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including nonhazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials. GCDD does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any GCDD or other waste. To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered CCDD and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with Section 3.160(b)(i) of the Act. [415 ILCS 5/3.160(a)]. Prop. at 3.

General Construction or Demolition Debris Recovery Facility or GCDD Recovery Facility. IEPA proposed that this term:

means a site or facility used to store or treat exclusively GCDD, including, but not limited to, sorting, separating, or transferring, for recycling, reclamation, or reuse. For purposes of this definition, “facility” means a site and all structures, equipment, and fixtures on a site used in connection with, or to facilitate, GCDD recovery operations. For purposes of this definition, treatment includes altering the physical nature of the GCDD, such as by size reduction, crushing, grinding, or homogenization, but does not include treatment designed to change the chemical nature of the general construction or demolition debris. [415 ILCS 5/3.160(a-1)].” Prop. at 3-4.

IERG asked IEPA to “clarify whether the definition of ‘GCDD recovery facility’ encompasses temporary or long-term storage at a manufacturing facility of GCDD material with the potential for future re-use, where the GCDD materials resulted from construction or demolition work at the manufacturing facility.” IERG Questions at 1. IEPA responded that Section 22.38 has historically “applied to recycling facilities that receive GCDD from off-site.” IEPA Resps.1 at 4. IEPA added that its proposed rules intend “to follow this historical approach and are not intended to apply to on-site generated materials.” *Id.*; see Tr.1 at 19-20.

Landscape Waste. IEPA proposed that this term “*means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.* [415 ILCS 5/3.270].” Prop. at 4.

Malodor. IEPA proposed that this term “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.” Prop. at 4.

The Board asked IEPA to comment on “whether the definition of “malodor” is based on the definition of the same term in 35 Ill Adm Code 810.103.” Board Questions at 3. If so, the Board asked IEPA to comment on the following proposed revision:

"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]. *Id.*

NWRA also asked whether the definition of “malodor” should be identical throughout the Board’s regulations. NWRA Questions at 3.

IEPA responded that this definition is based on both the regulatory definition of “malodor” and the statutory definition of “air pollution.” IEPA Resps.1 at 7, citing 415 ILCS 5/3.115, 35 Ill. Adm. Code 810.103; IEPA Resps.3 at 3. IEPA intends to define this term so that the definition can be met “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 or property.” IEPA Resps.1 at 7; IEPA Resps.3 at 3.

At the first hearing, the AG asked IEPA to provide more explanation of the term “reasonable person.” Tr.1 at 38. IEPA responded it developed this definition with its permitting and field staff. It added that “this would be much like the rest of the operational standards that are intended to provide both the Agency and the facilities some flexibility when evaluating potential compliance issues on a site.” *Id.*

In its follow-up response, IEPA explained that, for the “malodor definition,” a reasonable person is an individual who is of average sensitivity to odors. IEPA Resps.2 at 4. The intent behind using a reasonable person standard is to have an objective test when evaluating odor concerns. *Id.*

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this definition. AG Comment at 2.

After reviewing the record on this definition, the Board accepts IEPA’s explanation and adopts IEPA’s proposed definition with the AG’s revision in its first-notice proposal.

Operator. IEPA proposed that this term “means the person responsible for the operation and maintenance of a GCDD recovery facility.” Prop. at 4.

The Board asked IEPA whether it based its proposed definition on the Illinois rules, federal rules, or any other similar authority. If so, the Board asked IEPA to identify it. Board Questions at 3. IEPA responded that its proposed definition “is based on the definition of ‘operator’ in Section 810.103.” IEPA Resps.1 at 7, citing 35 Ill. Adm. Code 810.103 (landfills); *see* Tr.1 at 24-25.

Owner. IEPA proposed that this term:

means a person who has an interest, directly or indirectly, in the GCDD recovery facility or who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a GCDD recovery facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a GCDD recovery facility. Prop. at 4.

The Board asked IEPA whether it based its proposed definition on the Illinois rules, federal rules, or any other similar authority. If so, the Board asked IEPA to identify it. Board Questions at 3. IEPA responded that its proposed definition “is based on the definition of ‘owner’ in Section 810.103.” IEPA Resps.1 at 7, citing 35 Ill. Adm. Code 810.103 (landfills); *see* Tr.1 at 25.

Person. IEPA proposed that this term “means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock*

company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315].” Prop. at 4.

Putrescible Recyclable GCDD. IEPA proposed that this term “means GCDD material containing organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or that can provide food for birds and vectors.” Prop. at 4.

The Board asked IEPA whether it based its proposed definition on the Illinois rules, federal rules, or any other similar authority. If so, the Board asked IEPA to identify it. Board Questions at 3. IEPA responded that its proposed definition “is based on the definition of ‘putrescible waste’ in Section 810.103.” IEPA Resps.1 at 7, citing 35 Ill. Adm. Code 810.103 (landfills); *see* Tr.1 at 25.

NWRA asked IEPA to provide a definition and examples of GCDD. NWRA Questions at 3. IEPA responded with the definition in the proposed rules. IEPA Resps.3 at 3-4, citing proposed 35 Ill. Adm. Code 820.103. IEPA also gave the following examples of putrescible recyclable GCDD: 1) wallboard containing gypsum; 2) wall fabric and coverings; and 3) shelf stable foods like pantry items. *Id.* at 4, citing proposed 35 Ill. Adm Code 820.303(b).

Recyclable GCDD. IEPA proposed that this term means:

GCDD that is being reclaimed from the GCDD waste stream and (i) is rendered reusable and is reused or (ii) would otherwise be disposed of or discarded but is collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products. “Recyclable GCDD” does not include GCDD that is (i) recovered for use as fuel or that is otherwise incinerated or burned, (ii) buried or used as fill material, including, but not limited to, the use of any clean construction or demolition debris fraction of general construction or demolition debris as fill material under subsection (b) of Section 3.160 of the Act or at a clean construction or demolition debris fill operation under Section 22.51 of the Act, or (iii) disposed of at a landfill. [415 ILCS 5/22.38(c)]. Prop. at 4.

Recycling, Reclamation, or Reuse. IEPA proposed that this term “means *a method, technique, or process designed to remove any contaminant from waste so as to render such waste reusable, or any process by which materials that would otherwise be disposed of or discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.* [415 ILCS 5/3.380].” Prop. at 4.

Run-off. IEPA proposed that this term “means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of such overland flow that infiltrates into the ground before it reaches the stream channel, and any precipitation that falls directly into a stream channel.” Prop. at 5.

The Board asked IEPA whether it based its proposed definition on the Illinois rules, federal rules, or any other similar authority. If so, the Board asked IEPA to identify it. Board

Questions at 3. IEPA responded that its proposed definition “is based on the definition of ‘run-off’ in Section 810.103.” IEPA Resps.1 at 7, citing 35 Ill. Adm. Code 810.103 (landfills); *see* Tr.1 at 25.

Special Waste. IEPA proposed that this term means “special waste as defined under Section 3.475 of the Act.” Prop. at 5.

Wood Recovered for Use as Fuel. IEPA proposed that that this term means:

wood that is recovered from the GCDD waste stream for use as fuel, as authorized by the applicable state or federal environmental regulatory authority, and supplied only to intermediate processing facilities for sizing, or to combustion facilities for use as fuel, that have obtained all necessary waste management and air permits for handling and combustion of the fuel. [415 ILCS 5/22.38(e)].
Prop. at 5.

Section 820.104: Compliance with Applicable Law

IEPA proposed this section providing in its entirety that “[a]ny person subject to this Part shall comply with all applicable State and federal laws and regulations, including but not limited to State and federal laws and regulations that govern the collection, transportation, and disposal of general construction or demolition debris.” Prop. at 5.

Section 820.105: Severability

IEPA proposed this section providing in its entirety that, “[i]f any Section, subsection, sentence, or clause of this Part is judged invalid, that adjudication shall not affect the validity of this Part as a whole or any Section, subsection, sentence, or clause of this Part not judged invalid.” Prop. at 5.

The Board asked IEPA to comment on the following proposed revision of this section: “[i]f 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.” Board Questions at 3-4, citing 35 Ill. Adm. Code 845.160 (coal combustion residuals). IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 8), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 26.

Subpart B: Permit Applications

In Subpart B, IEPA “proposes the permit application rules and requirements.” SR at 4; *see* IEPA Test. at 4. Proposed Subpart B includes “the procedural requirements for submitting a GCDD recovery facility permit application, the required content for such applications, the Illinois EPA’s review of received applications, and the process by which Illinois EPA may initiate a permit modification.” TSD at 4; *see* IEPA Test. at 4.

Section 820.201: Scope and Applicability

Subsection (a). IEPA proposed this subsection providing in its entirety that:

“[e]xcept as specifically exempted by Section 21(d) of the Act, any person that owns or operates a GCDD recovery facility shall submit to the Agency an application for a permit required by Section 22.38 of the Act. The applications shall contain the information required by this Part and Section 39(a) of the Act.” Prop. at 5; *see* IEPA Test. at 4.

In its post hearing comment, the AG proposed to change “the applications” to “the application” in the third line of this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (a)(1). IEPA proposed this subsection providing in its entirety that:

[a]n owner or operator that first received GCDD prior to August 24, 2009, and therefore was not required to obtain a permit until the enactment of P.A. 102-0310, shall submit to the Agency, no later than 6 months after the effective date of this Part, a permit application for a GCDD recovery facility. [415 ILCS 5/22.38(b)(11)]. Prop. at 5.

Subsection (a)(2). IEPA proposed this subsection providing in its entirety that “[a]n owner or operator of a GCDD recovery facility that, on the date this Part takes effect, has an existing permit issued under Section 22.38 of the Act, must submit an application to modify their permit no later than one (1) year after the effective date of this Part.” Prop. at 5.

The AG commented that this subsection appears to allow facilities with existing permits to operate for one year after the Board adopts rules. AG Questions at 1. The AG asked IEPA how it intends to address “existing permits that have not been modified to conform to amended Section 22.38 . . . within one year after the effective date of Part 820.” *Id.* at 1-2. The AG asked whether IEPA expects GCDD recovery facilities with these permits to comply with amended Section 22.38 of the Act or the existing permit. *Id.* at 2.

IEPA responded that it “doesn’t have the current regulatory authority to unilaterally modify a permit for a GCDD facility.” Tr.1 at 15. IEPA added that, “[t]o 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.” IEPA Resps.1 at 1. IEPA clarified that “any of these facilities that hold a permit that is less stringent than the existing provisions of either of these rules or the Act, would either need to come in and submit a permit application reflecting those changes, or they would maintain their permit during the one-year interim period.” Tr.1 at 15.

The AG also asked IEPA whether its estimated number of these facilities includes “both new permit applications and applications to modify existing GCDD permits.” AG Questions at 2; *see* SR at 5, IEPA Test. at 2. The AG questioned whether all GCDD recovery facilities could apply for permits within six months. *Id.*

IEPA responded that its estimate of 52 affected facilities statewide “reflects the existing universe of GCDD recovery facilities operating in the state.” IEPA Resps.1 at 2; *see* SR at 5; TSD at 3. IEPA added that each of these 52 facilities “would be required to apply for a permit within 6 months” under proposed Section 820.201(a)(1). *Id.*; *see* Tr.1 at 15.

Subsection (b). IEPA proposed this subsection providing in its entirety that. “[b]eginning one year after the effective date of rules adopted by the Board under this Part, no person shall own or operate a GCDD recovery facility without a permit issued by the Agency. [415 ILCS 5/22.38(1)].” Prop. at 6; *see* IEPA Test. at 4.

Section 820.202: Permit Application

IEPA states that its proposed permit application requirements “are consistent with existing Board rules that apply to GCDD recovery facilities and accordingly will not impose any undue burden on the regulated community.” IEPA Test. at 5.

The Board asked IEPA to comment on whether a permit issued to a GCDD recovery facility under Part 820 would have a specified duration or an expiration date similar to the five-year term for landfill permits under 35 Ill Adm Code 813.108. Board Questions at 4. If not, the Board asked IEPA to comment on its rationale for allowing permits without periodic renewal for GCDD facilities. *Id.* IEPA responded that it has issued GCDD recovery facility permits under 35 Ill. Adm. Code 807. IEPA stated that “[p]ermits issued under Part 807 do not have an expiration date” and that it does “not see a need to start limiting these permits to five-years terms.” IEPA Resps.1 at 8; *see* Tr.1 at 26.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[a]ll permit applications shall be made on forms prescribed by the Agency and shall be mailed or delivered to the address designated by the Agency.” Prop. at 6; *see* TSD at 4; IEPA Test. at 4.

The Board asked IEPA to comment on whether the Agency had developed permit application forms for GCDD recovery facility. Board Questions at 4. If so, the Board asked IEPA to submit the application forms into the record. *Id.* If not, the Board asked IEPA to comment on whether it will be able to submit the application forms during the post-hearing comment period. *Id.* IEPA responded that it “has not developed these forms, but contemplates doing so once the Board’s direction in this rulemaking is clear.” IEPA Resps.1 at 8. IEPA stated this it does not object to submitting draft forms once the Board has proposed rules. *Id.*; *see* Tr.1 at 26. The Board asks IEPA to submit the draft application forms during the first notice comment period.

Subsection (b). IEPA proposed this subsection providing in its entirety that:

[a]ll permit applications shall be signed by the owner, the operator, and the property owner if different than the facility owner, or by their duly authorized agent(s). Each application containing the signature of an authorized agent shall

be accompanied by an oath or affidavit attesting to each agent's authority to sign the application and shall be notarized. Prop. at 6; *see* IEPA Test. at 4.

IEPA states that this requirement “is consistent with existing permitting processes applicable to GCDD recovery facilities.” TSD at 4.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (c). IEPA proposed that “[e]ach application shall demonstrate that the facility and its operation will comply with the requirements of the Act and this Part, and shall contain, at a minimum,” elements specified in subsections (c)(1) through (c)(5). Prop. at 6-7; *see* IEPA Test. at 5.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (c)(1). IEPA proposed that an application must contain “a facility map scaled to clearly show” 13 elements. IEPA Test. at 5.

Subsection (c)(1)(A). IEPA proposed that the map must show “the facility boundary and all adjacent property, extending at least 1000 meters beyond the property of the facility.” Prop. at 6.; *see* IEPA Test. at 5.

The Board asked IEPA to “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.’” Board Questions at 4. IEPA responded that it intends for the facility map to “identify the facility property, all adjacent property, and all property within at least 1000 meters of the facility boundary.” IEPA Resps.1 at 8; *see* Tr.1 at 26-27. To clarify this requirement and reflect IEPA’s intent, the Board revises this subsection in its first-notice proposal.

Subsection (c)(1)(B). IEPA proposed that the map must show “all surface waters.” Prop. at 6.

The Board asked IEPA to “comment on whether IEPA intends that the facility map show ‘all surface waters’ within a specific proximity of the facility? Board Questions at 4. If so, the Board asked IEPA to comment with a proposed revision. *Id.* IEPA responded that it intends for the map to “show all surface water within 1000 meters of the boundary of the facility, consistent with the scale set forth in subsection (c)(1)(A).” IEPA Resps.1 at 9. To clarify this requirement and reflect IEPA’s intent, the Board revises this subsection in its first-notice proposal. *See* Tr.1 at 27.

Subsection (c)(1)(C). IEPA proposed that the map must show “all rivers designated for protection under the Wild and Scenic Rivers Act (16 U.S.C. 1271, *et seq.*)” Prop. at 6.

Subsection (c)(1)(D). IEPA proposed that the map must show “the limits of all 100-year floodplains.” Prop. at 6.

The Board asked IEPA to “comment on whether IEPA intends that the facility map show ‘the limits of all 100-year floodplains’ within a specific proximity of the facility? Board Questions at 4. If so, the Board asked IEPA to comment with a proposed revision. *Id.* IEPA responded that it intends for the map to 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).” IEPA Resps.1 at 9. To clarify this requirement and reflect IEPA’s intent, the Board revises this subsection in its first-notice proposal. *See* Tr.1 at 27.

Subsection (c)(1)(E). IEPA proposed that the map must show “any wellhead protection areas pursuant to section 1428 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f, and any sole source aquifer designated by the United States Environmental Protection Agency pursuant to Section 1424(e) of the SDWA.” Prop. at 6.

Subsection (c)(1)(F). IEPA proposed that the map must show “boundaries of all areas in which GCDD recovery operations will occur.” Prop. at 6.

Subsection (c)(1)(G). IEPA proposed that the map must show “all structures inside the facility boundary.” Prop. at 6.

Subsection (c)(1)(H). IEPA proposed that the map must show “all roads and other areas of travel in and around the facility.” Prop. at 6.

Subsection (c)(1)(I). IEPA proposed that the map must show “devices for controlling access to the facility.” Prop. at 6.

Subsection (c)(1)(J). EPA proposed that the map must show “devices for controlling litter and dust at the facility.” Prop. at 6.

Subsection (c)(1)(K). IEPA proposed that the map must show “fire protection equipment.” Prop. at 7.

Subsection (c)(1)(L). IEPA proposed that the map must show “devices for surface water control.” Prop. at 7.

Subsection (c)(1)(M). IEPA proposed that the map must show “utilities.” Prop. at 7.

Subsection (c)(2). IEPA proposed that an application must contain “a legal description of the facility boundary.” Prop. at 7; *see* IEPA Test. at 5.

Subsection (c)(3). IEPA proposed that an application must contain “a certificate of ownership of the property or a copy of the lease of the property.” Prop. at 7; *see* IEPA Test. at 5.

Subsection (c)(4). IEPA proposed that an application must contain “an estimate of the maximum total amount of GCDD that can be maintained at the facility at any single time.” Prop. at 7; *see* IEPA Test. at 7.

Subsection (c)(5). IEPA proposed that an application must contain “a closure cost estimate and proof of financial assurance required under Subpart D of the Part.” Prop. at 7; *see* IEPA Test. at 5.

Subsection (d). IEPA proposed this subsection providing in its entirety that

[a]n application for permit is not deemed filed until the Agency has received, at the designated address, all information, documents, and authorization, using forms prescribed by the Agency and providing the content required by this Part. If the Agency fails to notify the applicant, within 45 days after the receipt of an application, that the application is incomplete, and of the reasons, the application shall be deemed to have been filed on the date received by the Agency. The Agency's notification that the application is incomplete is a denial of the permit for purposes of review pursuant to Section 40 of the Act. Prop. at 7.

The Board asked IEPA to comment on the following proposed reorganization and revision of this section:

- 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. Board Questions at 4-5.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 9), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 27-28.

Subsection (e). IEPA proposed this subsection providing in its entirety that, “[i]f the Agency fails to take final action on the application within 90 days from the filing of the application, the applicant may deem the permit granted on the 91st day after the application was filed.” Prop. at 7; *see* IEPA Test. at 5.

Subsection (f). IEPA proposed this subsection providing in its entirety that “[a]ny applicant for a permit may waive the requirement that the Agency take final action within 90 days from the filing of the application.” Prop. at 7.

The Board asked IEPA to comment on whether subsection (f) “should require that a permit applicant waive its 90-day deadline for final action in writing.” Board Questions at 5. If so, the Board asked IEPA to 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.” *Id.*

IEPA responded that “[t]he permit applicant’s waiver should be submitted in writing to the Illinois EPA at the address identified in the permit application forms.” IEPA Resps.1 at 9; *see* Tr.1 at 28. The Board includes this revision in its first-notice proposal. However, based on its experience with waivers when reviewing other permits, IEPA states that “an Agency prescribed waiver form does not appear necessary.” IEPA Resps.1 at 9-10; *see* Tr.1 at 28.

Subsection (g). IEPA proposed this subsection providing in its entirety that “[t]he Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action is deemed to have taken place on the date that the notice is mailed.” Prop. at 7.

Subsection (h). IEPA proposed this subsection providing in its entirety that “Agency decisions regarding permit applications may be appealed to the Board in accordance with Section 40 of the Act.” Prop. at 7; *see* IEPA Test. at 5.

Section 820.203: Permit No Defense

IEPA proposed this section providing in its entirety that “[t]he issuance of a permit to, or possession of a permit by, an owner or operator shall not constitute a defense to a violation of the Act or any Board regulations, except for the prohibition against owning or operating a GCDD recovery without a permit.” Prop. at 7.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “GCDD recovery” in this section. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Section 820.204: Transfer of Permit

IEPA proposed this section providing in its entirety that:

[a] permit may be transferred to a new owner or operator only upon permit modification, pursuant to this Part, to identify the new permittee and incorporate

other requirements necessary under the Act and this Part. The application shall be signed by the existing owner and operator, or their duly authorized agent(s), and by the new owner and operator or their duly authorized agent(s). The new owner or operator to whom the permit is transferred shall comply with all terms and conditions specified in such permit. Prop. at 8; *see* IEPA Test. at 5.

The Board asked IEPA to comment on the following proposed reorganization and revision of this section:

- (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. Board Questions at 5.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 10), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 28.

In its post hearing comment, the AG proposed using the term “a GCDD recovery facility permit” instead of the term “a permit” in the first line of this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Section 820.205: Agency Initiated Modification

In this section, IEPA proposed circumstances in which it “may unilaterally modify an existing permit.” TSD at 4; *see* IEPA Test. at 6. IEPA argues that these “provisions are consistent with and modeled after similar provisions in other sector-specific solid waste regulations.” TSD at 5; IEPA Test. at 6, citing 35 Ill. Adm. Code 813.201(b) (landfills), 1100.410(b) (CCDD).

Subsection (a). IEPA proposed that it “may modify a permit” under four specified circumstances. Prop. at 8.

Subsection (a)(1). IEPA first proposed to allow modification in the event of discovering “a typographical, administrative, or calculation error.” Prop. at 8; *see* TSD at 4; IEPA Test. at 6.

Subsection (a)(2). IEPA also proposed to allow modification in the event of discovering “that a determination or condition was based upon false or misleading information.” Prop. at 8; *see* TSD at 4; IEPA Test. at 6.

Subsection (a)(3). IEPA proposed to allow modification in the event of “[a]n order of the Board issued in an action brought pursuant to Title VII [Regulations], IX [Variances and Time-Limited Water Quality Standards] or X [Permits] of the Act.” Prop. at 8; *see* TSD at 4; IEPA Test. at 6.

Subsection (a)(4). IEPA also proposed to allow modification in the event of “[p]romulgation of new statutes or regulations affecting the permit.” Prop. at 8; *see* TSD at 4; IEPA Test. at 6.

Subsection (b). IEPA proposed this subsection providing in its entirety that:

[m]odifications initiated by the Agency shall not become effective until 45 days after receipt by the operator, unless stayed during the pendency of an appeal to the Board. The operator may request the Agency reconsider the modification or may file a petition for hearing with the Board pursuant to this Part. All other time periods and procedures in this Part shall apply. Prop. at 8; *see* IEPA Test. at 6.

The Board asked IEPA to comment the following proposed revision of this subsection:

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. Board Questions at 5.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 10), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 28-29.

The Board further revises subsection (b) by removing the reference to IEPA reconsideration. The Board instead notes an applicant’s opportunity to join IEPA to request an extension of period to petition for hearing under Section 40(a)(1) of the Act. *See* Waste Mgmt. of Ill. v. PCB, 231 Ill. App. 3d 278, 300, 595 N.E.2d 1171, 1185 (4th Dist. 1992). The Board invites comment from IEPA and any other participant on this revision.

Subpart C: Operational Standards

As proposed by IEPA, Subpart C “addresses the operational standards for GCDD recovery facilities.” SR at 4; *see* IEPA Test. at 6. IEPA states that these proposed standards “are intended to be consistent with Section 22.38 of the Act, as amended by P.A. 102-310, and contemporary permitting norms for GCDD recovery facilities.” TSD at 5; IEPA Test. at 6.

Section 820.301: Prohibitions

IEPA’s proposed prohibitions “are consistent with the contents of permits for existing GCDD facilities and other waste management facilities that are designed to have all managed waste removed at closure, like landscape waste compost facilities.” IEPA Test. at 7; TSD at 5.

IEPA proposed this section providing that “no person shall” perform the actions specified in subsections (a) through (f). Prop. at 8-9.

Subsection (a). IEPA proposed this subsection providing in its entirety that no person shall, “[b]eginning one year after the effective date of this Part, own or operate a GCDD recovery facility without a permit issued by the Agency. [415 ILCS 5/22.38(l)].” Prop. at 8; see TSD at 5; IEPA Test. at 7.

Subsection (b). IEPA proposed this subsection providing in its entirety that no person shall “[c]ause or allow the acceptance of any waste at a GCDD recovery facility, other than GCDD. [415 ILCS 5/22.38(j)].” Prop. at 8; see TSD at 5; IEPA Test. at 7.

Subsection (c). IEPA proposed this subsection providing in its entirety that no person shall:

[c]ause or allow the deposit or other placement of any GCDD that is received at a GCDD recovery facility, including any CCDD fraction, into or on any land or water. However, any CCDD fraction may be used as fill or road construction material at a CCDD fill operation under Section 22.51 and any rules or regulations adopted thereunder if the CCDD is separated and managed separately from other GCDD and otherwise meets the requirements applicable to CCDD at a CCDD fill operation. [415 ILCS 5/22.38(k)]. Prop. at 8-9; see TSD at 5; IEPA Test. at 7.

Subsection (d). IEPA proposed this subsection providing in its entirety that no person shall “[c]ause or allow the storage or treatment of GCDD at a GCDD recovery facility in violation of the Act, this Part, any other regulations or standards adopted under the Act, or any condition of a permit issued under this Act. [415 ILCS 5/22.38(m)].” Prop. at 9; see TSD at 5; IEPA Test. at 7.

Subsection (e). IEPA proposed this subsection providing in its entirety that no person shall “[c]ause or allow, at any one time, the accumulation of GCDD at the GCDD recovery facility in an amount that exceeds the amount for which financial assurance is maintained in accordance with Subpart D. Prop. at 9; see TSD at 5; IEPA Test. at 7.

Subsection (f). IEPA proposed this subsection providing that no person shall “[o]perate a GCDD recovery facility” as described in prohibitions in subsections (1) through (5)¹. Prop. at 9.

¹ Although IEPA had proposed to designate these five subsections (i) through (v), the Board redesignates according to the Secretary of State’s requirements. See 1 Ill. Adm. Code 100.340(b)(2).

Subsection (f)(1). IEPA proposed that no person shall operate a GCDD recovery facility “[w]ithout 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)].” Prop. at 9; see TSD at 5; IEPA Test. at 7.

In its post hearing comment, the AG proposed adding “the weight or” before “volume” on the second line of this subsection to be consistent with 415 ILCS 5/21(w). AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (f)(2). IEPA proposed that no person shall operate a GCDD recovery facility “[i]n a manner that causes or allows noise outside the facility that violates 35 Ill. Adm Code 900 through 905 or Section 24 of the Act.” Prop. at 9; see TSD at 5; IEPA Test. at 7.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (f)(3). IEPA proposed that no person shall operate a GCDD recovery facility “[i]n a manner that causes or allows vector proliferation.” Prop. at 9; see TSD at 5; IEPA Test. at 7.

Subsection (f)(4). IEPA proposed that no person shall operate a GCDD recovery facility “[i]n a manner that causes or allows litter accumulation.” Prop. at 9; see TSD at 5; IEPA Test. at 7.

Subsection (f)(5). IEPA proposed that no person shall operate a GCDD recovery facility “[i]n a manner that causes or allows malodors outside the GCDD recovery facility.” Prop. at 9; see TSD at 5; IEPA Test. at 7.

The Board asked IEPA to comment on the following proposed revision of subsection (f):

- 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. Board Questions at 5-6.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 10-11), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 29.

Section 820.302: General Operating Standards

IEPA’s proposed operating standards “are intended to reflect the intersection of historic operational practices and recent changes to Section 22.38 of the Act.” TSD at 5; IEPA Test. at 7. Under these proposed standards, “as under the current regulatory framework, each GCDD recovery facility has flexibility in satisfying these operational requirements by submitting permit applications uniquely tailored to the individual characteristics of each site.” TSD at 5; IEPA Test. at 8.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” throughout this section. AG Comment at 2. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (a). With the heading “Compliance with Local Requirements,” IEPA proposed this subsection providing in its entirety that “GCDD *recovery facilities shall be subject to local zoning, ordinance, and land use requirements.* [415 ILCS 5/22.38(a)].” Prop. at 9; *see* TSD at 5; IEPA Test. at 7.

Subsection (b). With the heading “Location Standards,” IEPA proposed this subsection providing in its entirety that “GCDD *recovery facilities shall be located in accordance with local zoning requirements or, in the absence of local zoning requirements, shall be located so that no part of the facility boundary is closer than 1,320 feet from the nearest property zoned primarily for residential use.* [415 ILCS 5/22.38(a)].” Prop. at 9; *see* TSD at 5; IEPA Test. at 7.

Subsection (c). With the heading “Minimum Recycling Rate,” IEPA proposed this subsection providing in its entirety that “[t]he owner or operator of a GCDD recovery facility must *ensure that no less than 40% of the total GCDD received at the facility on a rolling 12-month average basis is recyclable GCDD.* [415 ILCS 5/22.38(b)(0.5)] For purposes of this subsection (c), GCDD shall be measured by weight.” Prop. at 9; *see* TSD at 5; IEPA Test. at 7.

Subsection (d). With the heading “Operating Hours,” IEPA proposed this subsection providing in its entirety that:

GCDD must be received at the GCDD recovery facility only during operating hours established by a permit issued in accordance with this Part. If a facility receives GCDD outside of permitted operating hours to respond to an emergency

situation, a written record of the date, time, and reason the facility received the GCDD shall be maintained in facility operating records and the Agency's Regional Office responsible for inspecting the facility shall be notified the next operating day, within the permitted operating hours. If the emergency situation requires receipt of GCDD outside of permitted operating hours for more than one day, the owner or operator of the GCDD recovery facility shall obtain prior approval from the Agency to extend emergency operating hours beyond the first day. Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

The Board asked IEPA to "comment with examples of what would constitute an emergency." Board Questions at 6. IEPA responded that this subsection intends "to capture emergency situations that take place at offsite locations and generate significant volumes of GCDD." IEPA Resps.1 at 11. IEPA cited examples including responding to "fires, floods, tornados, and other natural disasters." *Id.*; *see* Tr.1 at 29. The Board includes these examples in its first-notice proposal.

The Board asked IEPA to comment on the information it would consider when deciding whether to approve a request for extended emergency operating hours. Board Questions at 6. IEPA responded that it "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." IEPA Resps.1 at 11; *see* Tr.1 at 29-30. The Board includes these examples in its first-notice proposal.

The Board also asked IEPA whether the approval for more than one day would include a time limit for accepting GCDD beyond permitted operating hours? Board Questions at 6. IEPA responded that, if it approved an extension under this subsection, it "would include a time limit based on the unique circumstances of the emergency situation." *Id.*

Finally, the Board asked IEPA to comment on the following proposed revision of subsection (d):

- 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. Board Questions at 6.

IEPA responded that it has “[n]o objection.” IEPA Resps.1 at 11-12; *see* Tr.1 at 30. With the examples described above, the Board includes this revision in its first-notice proposal.

Subsection (e). With the heading “Equipment,” IEPA proposed this subsection providing in its entirety that “[e]quipment necessary to achieve and maintain compliance with this Part shall be maintained and available for use at the facility during all hours of operation.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

Subsection (f). With the heading “Utilities,” IEPA proposed this subsection providing in its entirety that “[a]ll utilities, including but not limited to electricity, heat, interior and exterior lighting, and communications equipment, necessary to operate in compliance with the requirements of this Part, shall be available at the facility at all times.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

Subsection (g). Under the heading “Maintenance,” IEPA proposed this subsection providing in its entirety that “[a]dequate shelter, sanitary facilities, and emergency communications for employees shall be maintained at the facility.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

In its post hearing comment, the AG proposed adding “at all times” to the end of this subsection to be consistent with 820.302(f). AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (h). Under the heading “Dust Control,” IEPA proposed this subsection providing in its entirety that “[w]ind dispersal of particulate matter must be prevented.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

Both the AG and the Board asked IEPA whether applicants should be required to submit a dust control plan. AG Questions at 2; Board Questions at 6. If so, the Board asked whether the rules should specify minimum requirements for them and asked IEPA to comment with proposed language for those requirements. Board Questions at 6.

IEPA responded that its proposed rules address dust control in Section 820.202(c)(1)(J), which requires a permit application to include a map showing devices for controlling dust. IEPA Resps.1 at 2; *see* Prop. at 6. IEPA added that its proposal also addresses dust control in Section 820.302(h), which requires owners and operators to prevent wind dispersal of particulate matter. IEPA Resps.1 at 2; *see* Prop. at 10.

IEPA states that it “sought to provide flexibility to allow facilities to determine the best means to minimize dust at their location rather than prescribe specific planning criteria.” IEPA

Resps.1 at 12. IEPA states that it “will rely on the operational standard in [proposed Section] 820.302(h) as the gauge for whether dust is being adequately controlled.” *Id.* at 12; *see* Tr.1 at 15-16. IEPA adds that, if an owner or operator failed to control dust and violated proposed Section 820.302(h), the facility would be subject to an enforcement action. IEPA Resps.1 at 12; *see* Tr.1 at 30. After considering the record, the Board finds that the provisions identified by IEPA adequately address dust control at GCDD facilities while providing site-specific flexibility to determine best means of dust control. As such, the Board will not require a dust control plan in proposed Section 820.302(h) of its first-notice proposal.

Subsection (i). Under the heading “Fire Protection,” IEPA proposed this subsection providing in its entirety that “[e]quipment necessary to respond to fires and provide emergency notifications to the nearest fire department shall be maintained at the facility.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

Subsection (j). Under the heading “Vehicle Safety Measures,” IEPA proposed this subsection providing in its entirety that:

[r]oads and traffic flow patterns adequate for the type and weight of traffic using the facility and onsite equipment shall be maintained at the facility. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of hauling vehicles. The facility shall utilize safety mechanisms to prevent vehicles from backing into fuel storage tanks, equipment, or other structures. Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

The Board asked IEPA to comment on the following proposed revision of this subsection:

- 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.
Board Questions at 7.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 12), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 30-31.

Subsection (k). Under the heading “Surface Water Drainage,” IEPA proposed this subsection providing in its entirety that “[m]easures to ensure surface water drainage is diverted

from areas where GCDD or other materials are stored shall be implemented at the facility. Surface water drainage shall be controlled so adjacent properties are not adversely impacted.” Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

The AG asked IEPA whether GCDD recovery facilities are required to obtain coverage under a general National Pollutant Discharge and Elimination System (NPDES) permit. AG Questions at 2. IEPA responded that facilities that have a point source discharge would require an NPDES permit. IEPA Resps.1 at 2; *see* Tr.1 at 16.

If not, the AG asked whether GCDD recovery facilities should be required to maintain and implement a stormwater pollution prevention plan. AG Questions at 2. IEPA responded that its proposal addresses surface water controls in Section 820.202(c)(1)(L), which requires a permit application to include a map showing devices for controlling surface water. IEPA Resps.1 at 2; *see* Prop. at 7. IEPA also cited proposed Sections 820.302(k), which addresses surface water drainage, and 820.302(l), which addresses run-on and run-off control. IEPA Resps.1 at 2; *see* Prop. at 10. IEPA states that it “will rely on the performance standards in [proposed Sections] 820.302(k) and (l) as the gauge for whether stormwater and other surface water is being adequately controlled.” IEPA Resps.1 at 2; *see* Tr.1 at 16. After considering the record, the Board agrees with IEPA and declines to require a stormwater pollution prevention plan in proposed Section 820.302(k) of its first-notice proposal.

Subsection (l). Under the heading “Run-on and Run-off Control,” IEPA proposed this subsection providing in its entirety that:

[t]he facility shall be operated in a manner that prevents exposure of any materials to run-on or run-off. Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the facility. Run-off from these areas shall not carry GCDD, CCDD, waste, or constituents thereof to soil, surface water, or groundwater. Prop. at 10; *see* TSD at 5; IEPA Test. at 7.

The Board asked IEPA to comment on whether “any materials” refers to only to GCDD. Board Questions at 7. If not, the Board asked IEPA to comment on what is included within “any materials.” *Id.* IEPA responded that it intends for this subsection “to apply to any material at the site, whether GCDD or non-GCDD.” IEPA Resps.1 at 12. IEPA adds that it proposed to address unacceptable materials in Section 820.303(d). *Id.*; *see* Prop. at 13-14; Tr.1 at 31.

The Board also asked IEPA to comment on the following proposed revision of this subsection:

- 1) Run-on and Run-off Control.
- 2) The owner or operator must operate the facility in a manner that prevents exposure of any materials to run-on or run-off.

- 3) Run-off from roadways and parking areas must be controlled using storm sewers or must be compatible with natural drainage for the facility.
- 4) Run-off from roadways and parking areas must not carry GCDD, CCDD, waste, or any of their constituents to soil, surface water, or groundwater. Board Questions at 7.

IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 12-13), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 31.

Subsection (m). Under the heading “Boundary Control,” IEPA proposed this subsection providing in its entirety that:

[a]ccess to the facility shall be restricted to prevent unauthorized entry. A permanent sign shall be posted at the entrance to the facility stating, at a minimum, the facility only accepts GCDD, the facility’s permit number, the facility’s hours of operation, the penalty for unauthorized trespassing and dumping, the name and telephone number of the appropriate emergency response agencies who shall be available to deal with emergencies and other problems, and the name, address, and telephone number of the facility’s operator. Prop. at 11; *see* TSD at 5; IEPA Test. at 7-8.

The Board asked IEPA to comment on the following proposed revision of this subsection:

- 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;
 - E) the penalty for unauthorized trespassing and dumping;
 - F) the name and telephone number of the appropriate emergency response agency or agencies to deal with emergencies and other problems; and

- G) the name, address, and telephone number of the facility's operator. Board Questions at 7-8.

IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 13), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 31

Subsection (n). Under the heading “Contingency Plan,” IEPA proposed that “[t]he owner or operator of a GCDD recovery facility shall establish and maintain a Contingency Plan” that meets the requirements of subsections (1) through (8). Prop. at 11; *see* TSD at 5; IEPA Test. at 7-8.

Subsection (n)(1). IEPA proposed to require a contingency plan that “minimizes the hazards to human health and the environment from fires and run-off of contaminants resulting from fire at the facility.” Prop. at 11.

Subsection (n)(2). IEPA proposed to require that the contingency plan “is carried out immediately whenever there is a fire.” Prop. at 11.

Subsection (n)(3). IEPA proposed to require that the contingency plan “describes the actions facility personnel shall take in response to fires and run-off resulting from fires.” Prop. at 11.

Subsection (n)(4). IEPA proposed to require that the contingency plan “minimizes the hazards to human health and the environment from vectors and other nuisance organisms that may breed or be present at the facility.” Prop. at 11.

Subsection (n)(5). IEPA proposed to require that the contingency plan “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.” Prop. at 11.

Subsection (n)(6). IEPA proposed to require that the contingency plan “describes evacuation procedures, including, but not limited to, evacuation signals, primary evacuation routes, and alternate evacuation routes to be used when the primary routes could be blocked.” Prop. at 11.

Subsection (n)(7). IEPA proposed to require that the contingency plan “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, communication and alarm systems, and describes the physical location and capabilities of each listed item.” Prop. at 11.

Subsection (n)(8). IEPA proposed to require that the contingency plan:

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 the event that the primary emergency coordinator or another alternate emergency coordinator is unavailable. Prop. at 11-12.

In a final undesignated paragraph, IEPA proposed that:

[t]he owner or operator shall submit a copy of the contingency plan, and all revisions to the plan, to the local fire department and keep a copy of the same on-site for review by the Agency. The owner or operator shall keep in the operating record documentation demonstrating that the plan and all plan revisions have been submitted to the fire department. Prop. at 12.

The Board asked IEPA to comment on “whether the contingency plan must be updated periodically.” Board Questions at 8. IEPA responded that “[t]he 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.” IEPA Resps.1 at 13. IEPA added that it had not proposed a required deadline to update plans, which is consistent with other regulations for non-disposal facilities. *Id.*, citing 35 Ill. Adm. Code 830.202 (compost facilities), 848.203 (used and waste tires); *see* Tr.1 at 31-32.

The Board also asked IEPA to comment on the following proposed revision of this subsection:

- 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. Board Questions at 8-9.

IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 14-15), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 32.

Section 820.303: Processing Program

This proposed section “includes the required elements of the materials processing program, which each site owner or operator will employ to evaluate loads of material delivered to the GCDD recovery facility.” TSD at 6; IEPA Test. at 8.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator of a GCDD recovery facility shall inspect every load of material transported to the facility to ensure only GCDD is accepted at the facility. Prop. at 12; *see* TSD at 6; IEPA Test. at 8.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (a)(1). IEPA proposed that each load inspection must at a minimum include the elements in subsections (A) and (B). Prop. at 12.

Subsection (a)(1)(A). IEPA proposed that load inspection must include, “[p]rior to acceptance, inspection of each load utilizing an elevated structure, a designated ground level inspection area, or another acceptable method specified in a permit issued in accordance with this Part.” Prop. at 12; *see* IEPA Test. at 8.

Subsection (a)(1)(B). IEPA proposed that each load inspection must include “[m]aintenance of the documentation reflecting the results of each load inspection, including the date the load was received, the amount of GCDD, the name of the transporter, the name of the generator, the location of the site of origin of the material, whether the load was accepted or rejected, and the name of the facility inspector.” Prop. at 12; *see* IEPA Test. at 8.

Subsection (a)(2). IEPA proposed that “[l]oads of material other than GCDD delivered to the facility shall be rejected. The driver of the rejected load shall be presented with a written notice that includes, at a minimum,” the requirements of subsections (a) through (d). Prop. at 12; *see* TSD at 6.

Subsection (a)(2)(A). IEPA proposed to require that the notice must include “[t]he date of the attempted delivery.” Prop. at 12.

Subsection (a)(2)(B). IEPA proposed to require that the notice must include “[t]hat only GCDD is accepted at the facility.” Prop. at 12.

The Board asked IEPA to “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.’” Board Questions at 9. IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 15), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 32.

Subsection (a)(2)(C). IEPA proposed to require that the notice must include “[t]he reasons for rejecting the load.” Prop. at 12.

Subsection (a)(2)(D). IEPA proposed to require that “[a] copy of the rejection notice shall be maintained in accordance with Section 820.304 [Recordkeeping Requirements].” Prop. at 12.

Subsection (a)(3). IEPA proposed this subsection providing in its entirety that, “[i]f material other than GCDD is discovered to have been accepted at the facility, the material shall be removed in accordance with this Subpart.” Prop. at 12.

Subsection (b). IEPA proposed this subsection providing in its entirety that:

[p]rior to any mechanical sorting, separating, grinding, or other processing, all drywall and other wallboard containing gypsum or sulfur shall be removed from the GCDD received to the extent practicable. The drywall and other wallboard containing gypsum or sulfur shall be stored in closed, structurally sound, non-leaking containers that are in good condition (e.g., no severe rusting, apparent structural defects, or deterioration), prevent the infiltration of precipitation, and prevent releases during storage, handling, and transportation. Prop. at 13.

IEPA proposed this requirement to avoid crushing this material and mingling the resulting fines with other GCDD. TSD at 6. IEPA explains that “[t]hese fines can create odor issues, which was the basis for the inclusion of the requirement in P.A. 102.310.” TSD at 6; IEPA Test. at 8.

Subsection (b)(1). IEPA proposed this subsection providing in its entirety that, “[i]f being recycled, the drywall and other wallboard containing gypsum or sulfur must be transported off-site within 45 calendar days after receipt.” Prop. at 13.

Subsection (b)(2). IEPA proposed this subsection providing in its entirety that, “[i]f not being recycled, the drywall and other wallboard containing gypsum or sulfur must be transported off-site within 72 hours after receipt.” Prop. at 13.

Subsection (c). IEPA proposed this subsection under the heading “Acceptable Materials.” Prop. at 13; *see* TSD at 6; IEPA Test. at 8. IEPA argues that this listing of these materials “is derived from the text of Section 22.38 of the Act.” TSD at 6; IEPA Test. at 8.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (c)(1). IEPA proposed this subsection providing in its entirety that, *[w]ithin 48 hours after receipt of the GCDD at the facility, the owner or operator must sort the GCDD to separate the (i) recyclable GCDD and (ii) wood being recovered for use as fuel from all other GCDD. [415 ILCS 5/22.38(b)(1)].* Prop. at 13.

Subsection (c)(2). IEPA proposed this subsection providing in its entirety that *[a]ll putrescible recyclable GCDD and all wood recovered for use as fuel that is separated from other GCDD must be transported off-site within 45 calendar days after receipt. [415 ILCS 5/22.38(b)(4)].* Prop. at 13.

NWRA asked IEPA whether it will impose a weight or volume limit on the amount of putrescible recyclable GCDD that can be stored at a site during the 45 calendar-day period that this material can remain on site. NWRA Questions at 3. IEPA responded that it will not specify volumetric thresholds because Section 22.38 of the Act does not establish any volumetric limits in the amount of GCDD that may be stored at a GCDD facility. IEPA Resps.3 at 4.

Subsection (c)(3). IEPA proposed this subsection providing in its entirety that “[a]ll non-putrescible recyclable GCDD that is separated from other GCDD must be transported off-site within six calendar months after receipt. [415 ILCS 5/22.38(b)(5)].” Prop. at 13.

In its post hearing comment, the AG proposed italicizing this subsection, as it appears to be quoting 415 ILCS 5/22.38(b)(5). AG Comment at 2. The Board declines to include the AG’s revision in its first-notice proposal because IEPA’s proposed language is not an exact quote of the Act.

Subsection (c)(4). IEPA proposed this subsection providing in its entirety that “[a]ll GCDD other than the separated recyclable GCDD and wood being recovered for use as fuel shall be stored in containers meeting the requirements of subsection (b) of this Section and, within 72 hours after receipt, shall be transported off-site for disposal.” Prop. at 13.

Subsection (c)(5). IEPA proposed this subsection providing in its entirety 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.” Prop. at 13.

The Board asked IEPA to comment by providing citations to specific provisions of the Act and rules governing the use of CCDD and uncontaminated soil. Board Questions at 9. IEPA responded that “[t]he use of CCDD and uncontaminated soil is generally governed by 415 ILCS 5/3.160(b) and (c) [defining “CCDD” and “uncontaminated soil”].” IEPA Resps.1 at 15. IEPA added that “[u]se as fill in a current or former quarry, mine, or other excavation is specifically governed by [Sections] 22.51 [CCDD Fill Operations], 22.51a [Uncontaminated Soil Fill Operations], and 35 Ill. Adm. Code 1100 [CCDD Fill Operations and Uncontaminated Soil Fill Operations].” IEPA Resps.1 at 15; *see* Tr.1 at 32-33. The Board includes cites to these requirements as examples in its first-notice proposal.

Subsection (d). Under the heading “Unacceptable Materials,” IEPA proposed this subsection providing in its entirety that “[a]ny unacceptable materials discovered to be mixed with GCDD after it is accepted at the GCDD recovery facility shall be immediately removed from the GCDD and managed as follows. In no case shall the unacceptable material remain at the facility for more than 72 hours after receipt.” Prop. at 13. IEPA argues that these eight listed unacceptable materials in subsection (1) through (8) are “derived from comparable text in existing GCDD recovery facility permits.” TSD at 6; IEPA Test. at 8.

The Board asked IEPA to comment on the following proposed revision of this subsection:

- 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. Board Questions at 9.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 15), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 33.

The AG noted that Section 22.38(j) of the Act provides that “[n]o 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.” AG Questions at 2-3, citing 415 ILCS 5/22.38(j) (2020). The AG asserts that “[t]he 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.” AG Questions at 3. The AG asked IEPA to reconcile its proposed Section 820.303(d) with Section 22.38(j) of the Act. *Id.* If IEPA believes that it is permissible for unacceptable material to be present at a GCDD recovery facility, the AG asked whether those facilities should “be required to maintain records regarding the handling of all unacceptable materials.” *Id.*

IEPA’s response acknowledged that “Section 22.38(j) prohibits accepting materials other than GCDD at a GCDD recovery facility.” IEPA Resps.1 at 2. However, there may be other materials commingled with GGCD that a facility does not discover until after it accepts GCDD. *Id.* IEPA intends subsection (d) “to capture material that was commingled with GCDD.” *Id.* IEPA added that it “does not intend this provision to be a license to accept material other than GCDD.” It instead intends to establish procedures to handle unacceptable materials identified during on-site evaluation protocols. *Id.*; *see* Tr.1 at 16-17. IEPA stressed that “[s]uch protocols exist in the current permits issued to GCDD recovery facilities.” *Id.* Finally, IEPA stated that it “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.” *Id.* at 2-3.

In its post hearing comment, the AG again noted that Section 22.38(j) of the Act does not provide any statutory exceptions that authorize GCDD recovery facilities to accept any waste other than GCDD or to store any non-GCDD waste onsite. AG Comment at 3. If Section 820.303(d) does remain in the regulation, which the AG argues exceeds the General Assembly’s grant of authority, the AG proposes to require GCDD recovery facilities to dispose of non-GCDD waste within 24 hours of receipt at the GCDD recovery facility. *Id.* The AG also asks the Board to impose recordkeeping requirements for receipt of non-GCDD waste at GCDD recovery facilities. *Id.*

While Section 22.38(j) of the Act prohibits accepting materials other than GCDD at a GCDD recovery facility, as noted by IEPA, the Board recognizes that materials other than GCCD may be commingled with GGCD that a facility may not discover until after it accepts

GCDD. In this regard, the Board finds that the proposed “unacceptable material” requirement under Section 820.303(d) addresses the removal of materials other than GCDD consistent with Section 22.38(j) of the Act. Further, the Board finds that the proposed time limit of “within 72 hours of receipt” for removal of unacceptable materials provides a reasonable timeframe for an owner or operator to identify, separate, and dispose of other material commingled with GCCD. As such, the Board declines AG’s revision to reduce the time limit to within 24 hours after the receipt of the other material at the GCCDD facility.

Regarding the recordkeeping requirements for non-GCDD materials, the Board notes that record does not now include any proposed language for such a requirement. However, the Board believes that having records of how unacceptable materials are managed by a GCDD recovery facility under Section 820.303(d) would be beneficial because they ensure that unacceptable materials are being managed in compliance with the applicable regulatory requirements listed under Section 820.303(d). Further, the Board notes that the recordkeeping requirements for rejected load under Sections 820.303 and 820.304 provide a workable template for drafting recordkeeping requirements for unacceptable materials. Therefore, the Board proposes in its first notice proposal the following recordkeeping requirements for the management of unacceptable materials based on similar requirements proposed for rejected loads under Sections 820.303(a)(1)(B) and 820.304(a)(3):

Section 820.303 Processing Program

d)

- 9) Documentation must be maintained reflecting each type of unacceptable material managed under subsections (d)(1) through (d)(8), including: the date the material was received, identified, and separated; the date the material was transported offsite; the amount of unacceptable material; the name of the transporter; the name of the generator; and the name of the offsite facility receiving the unacceptable material.

Section 820.304 Recordkeeping Requirements

a)

- 4) Procedures for recordkeeping of unacceptable materials transported to an offsite facility must meet the requirements of Section 820.303(d)(9).

Below, the Board welcomes comments on the proposed language for recordkeeping requirements for receipt of unacceptable materials at GCDD recovery facilities.

In its post hearing comment, the AG also proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (d)(1). IEPA proposed this subsection providing in its entirety that “[l]andscape waste shall be transported to a facility permitted to accept landscape waste.” Prop. at 13.

Subsection (d)(2). IEPA proposed this subsection providing in its entirety that “[l]ead-acid batteries shall be transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.” Prop. at 14.

Subsection (d)(3). IEPA proposed this subsection providing in its entirety that “[l]ithium-ion batteries shall be transported to a facility capable of handling such waste.” Prop. at 14.

Subsection (d)(4). IEPA proposed this subsection providing in its entirety that “[s]pecial wastes shall be containerized separately and removed from the facility as soon as possible by an appropriately licensed special waste hauler. Special wastes shall be transported to a facility permitted to accept special waste.” Prop. at 14.

Subsection (d)(5). IEPA proposed this subsection providing in its entirety that “[a]sbestos and asbestos debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.” Prop. at 14.

Subsection (d)(6). IEPA proposed this subsection providing in its entirety that “[u]sed and waste tires shall be managed in accordance with Title XIV² of the Act [Used Tires].” Prop. at 14.

Subsection (d)(7). IEPA proposed this subsection providing in its entirety that “[w]hite good components shall be managed in accordance with Section 22.28 of the Act [White goods].” Prop. at 14.

Subsection (d)(8). IEPA proposed this subsection providing in its entirety that “[a]ll other unacceptable materials shall be managed in accordance with 35 Ill. Adm. Code Subtitle G [Waste Disposal].” Prop. at 14.

Section 820.304: Recordkeeping Requirements

Although IEPA acknowledges that quarterly reporting is not included in existing GCDD recovery facility permits, it argues that “[t]he quarterly reporting requirements were established by P.A. 102-310 and are directly mirrored in the proposal.” TSD at 5; *see* IEPA Prop. at 8-9.

The Board noted that proposed subsection (b) requires maintaining records and subsection (c) requires quarterly reports, both “in a form and format prescribed by the Agency.” Board Questions at 9. The Board asked IEPA to comment on whether it has developed these

² IEPA’s proposal cited Title XVI of the Act, which addresses petroleum underground storage tanks, and the Board revises this to refer to Title XIV, which addresses used tires.

forms. *Id.* If so, the Board asked IEPA to submit the forms into the record. *Id.* at 9-10. If not, the Board asked IEPA to comment whether it will be able to submit the forms during the post hearing comment period. *Id.* IEPA responded that it “has developed these forms.” IEPA Resps.1 at 15-16. In its follow-up response, IEPA stated that it included the forms as Attachment A. IEPA Resps.2 at 4.

NWRA asked IEPA if GCDD recovery facilities will be required to track incoming materials to demonstrate compliance with the 40% minimum recycling requirement under the proposed rules. NWRA Questions at 1. IEPA responded that it intended to capture compliance with the recordkeeping provisions of Section 22.28 of the Act and that Section 820.304 of the proposed rules mirrors Section 22.28. IEPA Resps.3 at 2.

NWRA also asked IEPA whether Section 820.304 will require GCDD recovery facilities to report the “type, weight, destination, transporter of material, and the owner and operator of the destination facility” for “1) recyclable GCDD; 2) GCDD that is not recyclable; 3) wood that is used for fuel; 4) clean construction or demolition debris; and 5) GCDD that is required for disposal at a permitted landfill.” NWRA Questions at 1-2. IEPA responded that it intended to blend effective existing practices and the amended portions of the Act; therefore, the proposed rules do not require this level of reporting. IEPA Resps.3 at 3.

Additionally, NWRA asked if GCDD recovery facilities can supplement the quarterly report form with a form that provides daily and monthly information on “1) the amount of C&D accepted; 2) amount of C&D remaining on-site; 3) wood on-site recovered for use as fuel; 4) recyclable C&D transported offsite; and “non-recyclable C&D transported offsite.” NWRA Questions at 2. NWRA further inquired whether the quarterly report form could be supplemented with a form that provides daily and monthly information to demonstrate compliance with deadlines to transport materials offsite. *Id.* at 2-3. IEPA responded that it decided to not include those reports with the form currently in use due to some stakeholders’ concern that required use of daily and monthly forms presented a significant operational hardship. IEPA Resps.3 at 3.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator shall employ tagging and daily recordkeeping procedures to, at a minimum, demonstrate compliance with the Act and this Part. [415 ILCS 5/22.38(b)(6)].” Prop. at 14; *see* IEPA Test. at 8.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” throughout this subsection. AG Comment at 2. The AG also proposed adding “of a GCDD recovery facility” after “the owner and operator” in the first line of this subsection. *Id.* at 3. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (a)(1). IEPA proposed this subsection providing in its entirety that “[t]agging and recordkeeping of material accepted at the facility must identify the type, weight, source/place of origin, generator, and transporter/hauler of the material. [415 ILCS 5/21(w) and 22.38(b)(6)].” Prop. at 14.

Subsection (a)(2). IEPA proposed this subsection providing in its entirety that “[t]agging and recordkeeping of material transported from the facility must identify the type, weight, destination, transporter of the material, and the owner and operator of the destination facility. [415 ILCS 5/21(w) and 22.38(b)(6)].” Prop. at 14.

Subsection (a)(3). IEPA proposed this subsection providing in its entirety that “[r]ecordkeeping of rejected loads in accordance with Section 820.303(a)(1)(B).” Prop. at 14.

The Board asked IEPA to comment on revising this subsection to provide that “[p]rocedures for recordkeeping of rejected loads must meet the requirements of Section 820.303(a)(1)(B).” Board Questions at 9. IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 15), and the Board includes this revision in its first-notice proposal. See Tr.1 at 32.

Subsection (b). IEPA proposed this subsection providing in its entirety that “[r]ecords required under the Act and this Part *shall be maintained in a form and format prescribed by the Agency for a minimum of 3 years.* [415 ILCS 5/21(w) and 22.38(b)(6)].” Prop. at 15.

Subsection (c). IEPA proposed this subsection providing in its entirety that “[n]o later than every October 1, January 1, April 1, and July 1 the records required by subsection (a) of this Section *shall be summarized in quarterly reports submitted to the Agency in a form and format prescribed by the Agency.* [415 ILCS 5/22.38(b)(6)].” Prop. at 15; see IEPA Test. at 8.

In its post hearing comment, the AG proposed adding a comma after “July 1” on the first line of this subsection. AG Comment at 3. The Board includes the AG’s revision in its first-notice proposal.

Subsection (c)(1). IEPA proposed this subsection providing in its entirety that “[a] quarterly report summarizing the months of January, February, and March is due no later than July 1. A quarterly report summarizing the months of April, May, and June is due no later than October 1. A quarterly report summarizing the months of July, August, and September is due no later than January 1. A quarterly report summarizing the months of October, November, and December is due no later than April 1.” Prop. at 15.

Subsection (c)(2). IEPA proposed this subsection providing in its entirety that “[r]eports shall be maintained until certification of closure by the Agency in accordance with Section 820.305. Prop. at 15.

Subsection (d). IEPA proposed that “[t]he owner or operator must maintain an operating record at the facility. 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 normal business hours. Information maintained in the operating record must include” information listed in subsections (1) through (4). Prop. at 15.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” throughout this subsection. AG Comment at 2. The AG also proposed adding “of a GCDD recovery facility” after “the owner and operator” in the first and

second lines of this subsection. *Id.* at 3. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (d)(1). IEPA proposed that information in the operating record must include “[r]ecords required to be maintained by the facility under the Act and this Part.” Prop. at 15.

Subsection (d)(2). IEPA proposed that information in the operating records must include “[a]ny information submitted to the Agency pursuant to this Part, including, but not limited to, copies of all permits, permit applications, and reports.” Prop. at 15.

Subsection (d)(3). IEPA proposed that information in the operating record must include “[t]he Contingency Plan for the GCDD recovery facility and documentation demonstrating that the plan and all plan revisions have submitted to the local fire department, in accordance with Section 820.302(n).” Prop. at 15.

In its post hearing comment, the AG proposed changing “have submitted” to “have been submitted” on line two of this subsection. AG Comment at 3. The Board includes the AG’s revision in its first-notice proposal.

Subsection (d)(4). IEPA proposed that information in the operating record must include “[w]ritten procedures for load checking and load rejection notifications required under Section 820.303 of this Part.” Prop. at 15.

The Board asked IEPA to comment on the following proposed revision of subsection (d):

- 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. Board Questions at 10.

IEPA responded that it had “[n]o objection” (IEPA Resps.1 at 16), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 33.

Section 820.305: Closure

IEPA argues that these proposed standards “are intended to reflect the intersection of historic operational practices and recent changes to Section 22.38 of the Act.” TSD at 5.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” throughout this section. AG Comment at 2. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (a). IEPA proposed this subsection providing in its entirety that, “[n]o later than 30 days after the date on which the facility receives the final load of GCDD the owner or operator shall begin closure activities and submit to the Agency a notice of closure.” Prop. at 16; *see* IEPA Test. at 9.

Subsection (b). IEPA proposed this subsection providing in its entirety that, “[d]uring closure all GCDD and all other materials at the facility shall be removed to an appropriately permitted transfer, treatment, storage, or disposal facility.” Prop. at 16; *see* IEPA Test. at 9.

The AG asked IEPA to “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?” AG Questions at 3. If so, the AG asked IEPA to reconcile this proposed subsection with Section 22.38 of the Act and the proposed definition of a GCDD recovery facility as one “used to store or treat *exclusively* GCDD.” *Id.* (emphasis in original); *see* Prop. at 3-4 (proposing definition of “GCDD recovery facility”).

IEPA responded that “all other materials at the facility” intends to describe broadly “any material other than GCDD that may be present, including materials identified in Section 820.303(d) [Unacceptable Materials] that were subsequently discovered.” IEPA Resps.1 at 3. IEPA added that this proposed subsection intends “to help ensure that all material at the site is removed at closure.” *Id.*; *see* Tr.1 at 16-17.

Subsection (c). IEPA proposed that “[t]he owner or operator shall complete closure activities for the facility within 180 days of beginning closure unless the Agency grants an extension of the closure period. The Agency may grant an extension of the closure period if the owner or operator” satisfies the conditions in subsections (1) and (2). Prop. at 16; *see* IEPA Test. at 9.

Subsection (c)(1). IEPA proposed that it may extend the closure period if the owner or operator demonstrates that “closure cannot be practically completed within 180 days of the last date on which GCDD was accepted.” Prop. at 16.

The AG asked IEPA to “explain what is meant by ‘closure cannot be practically completed.’” AG Questions at 3. IEPA responded that this term is intended “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.” IEPA Resps.1 at 3. IEPA added that these occurrences “would be unique to an individual GCDD recovery facility.” *Id.*; see Tr.1 at 17.

The AG also asked IEPA “[u]nder 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?” *Id.* IEPA responded that each of these demonstrations “would be unique to the circumstances surrounding an owner or operator’s demonstration submitted to IEPA.” IEPA Resps.1 at 3; see Tr.1 at 18.

In its questions, the Board noted that 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.” The Board asked IEPA to comment on whether subsection (c)(1) should be revised to reflect “180 days of beginning closure” to be consistent with subsection (c). Board Questions at 10. IEPA responded that “[s]ubsection (c)(1) should be revised to reflect ‘180 days from beginning closure.’” IEPA Resps.1 at 16; see Tr.1 at 34.

At the hearing, the Board also asked if IEPA could provide examples of events justifying extending the closure timeline. See Tr.1 at 34. IEPA gave the following examples:

flood, tornado, or other natural disaster impacting the facility, and inability to remove accepted GCDD from the facility because of transportation issues beyond the owner or operator’s control, or supply chain issues beyond the owner or operator’s control that prevent the owner or operator from obtaining an outlet for collected GCDD. IEPA Resps.2 at 5.

Subsection (c)(2). IEPA proposed that it may extend the closure period if the owner or operator demonstrates that “the owner or operator has taken and will continue to take all necessary steps to prevent threats to human health and the environment from the unclosed facility.” Prop. at 16.

Section 820.306: Certification of Closure and Termination of Permit

Subsection (a). IEPA proposed that, “[w]ithin 45 calendar days of completing closure activities, the owner or operator of a GCDD recovery facility” shall submit to IEPA the information listed in subsections (1) and (2). Prop. at 16; see IEPA Test. at 9.

Subsection (a)(1). IEPA proposed that the owner or operator must submit “[d]ocumentation concerning the closure of the GCDD recovery facility that demonstrates compliance with the Act and this Part and the date closure was completed.” Prop. at 16.

Subsection (a)(2). IEPA proposed that the owner or operator must submit “[a]n affidavit by the owner or operator certifying that the facility has been closed in compliance with the Act and this Part.” Prop. at 16.

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” in this subsection. AG Comment at 2. The Board includes the AG’s revision in its first-notice proposal.

Subsection (b). IEPA proposed that, “[w]hen the Agency determines, pursuant to the information received under subsection (a) and any Agency site inspection, that the GCDD recovery facility has been closed in accordance with the requirements of the Act and this Part, the Agency shall notify the owner or operator in writing” of the information listed in subsections (1) through (3). Prop. at 16; *see* IEPA Test. at 9.

The Board asked IEPA to comment on whether subsection (b) should provide a deadline for the Agency to issue a closure determination. Board Questions at 10. The Board also asked IEPA to 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. *Id.*

IEPA responded that the Act provides the requirements. IEPA considers closure determinations as permit modifications subject to Section 39 of the Act. IEPA Resps.1 at 17, citing 415 ILCS 5/39 (2020). IEPA states that Section 39 establishes a deadline to review permit submissions “by providing approval by law if the Agency does not take action within 90 days.” IEPA Resps.1 at 17. “If IEPA 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.” *Id.*; *see* Tr.1 at 34-35.

At the hearing, the Board asked whether it would be acceptable to IEPA to include a cross reference to Section 39 of the Act under 820.306 to clarify that IEPA decisions are made under Section 39. *See* Tr.1 at 35. In its follow-up response, IEPA proposes the following revision to Section 820.306(b):

- b) In accordance with Section 39(a) of the Act, ~~w~~When the Agency determines, pursuant to the information received under subsection (a) and any Agency site inspection, that the GCDD recovery facility has been closed in accordance with the requirements of the Act and this Part, the Agency shall notify the owner or operator in writing that: IEPA Resps.2 at 5.

Subsection (b)(1). IEPA proposed that it must notify the owner or operator that “[t]he GCDD recovery facility permit is terminated.” Prop. at 16.

Subsection (b)(2). IEPA proposed that it must notify the owner or operator that “[t]he GCDD recovery facility is no longer required to maintain financial assurance for closure of the site.” Prop. at 16.

Subsection (b)(3). IEPA proposed that it must notify the owner or operator that “[t]he owner or operator may deem the Agency action pursuant to this Section as a denial or grant of a permit with conditions for purposes of appeal pursuant to Section 40 of the Act.” Prop. at 16.

In its post hearing comment, the AG proposed that subsection (b)(3) be revised to a new subsection (c). AG Comment at 3. The Board includes IEPA’s and the AG’s revision in its first-notice proposal.

Subpart D: Financial Assurance

As proposed by IEPA, Subpart D includes “financial assurance requirements to ensure GCDD facilities are closed in accordance with Board regulations.” SR at 4.

IEPA acknowledges that GCDD recovery facilities are not now required to maintain financial assurance, but it argues that the requirement is appropriate. TSD at 6. The requirement intends “to protect taxpayers from having to absorb the costs of facility closures by obligating facility owners and operators to maintain access to sufficient capital to close their facility in accordance with its permit.” TSD at 6; IEPA Test. at 10. IEPA states that “[t]he proposed standards mirror the financial assurance obligations set forth in other Board regulations.” TSD at 6; IEPA Test. at 10. IEPA argues that landscape waste composting and used tire storage sites operate similarly and must maintain financial assurance. *Id.*, citing 35 Ill. Adm. Code 830 (landscape waste compost facilities), 35 Ill. Adm. Code 848.Subpart D (used tire storage sites); IEPA Test. at 10. IEPA concludes that, based on similarities with these other categories of facilities “and the need to shield taxpayer resources from avoidable expenses, including financial assurance standards is necessary here.” TSD at 6.

Section 820.401: General Provisions

Subsection (a). IEPA proposed this subsection providing in its entirety that “[t]his Subpart sets forth the procedures by which the owner or operator of a GCDD recovery facility must provide financial assurance for closure in accordance with Section 820.305.” Prop. at 17.

Subsection (b). IEPA proposed this subsection under the heading “Amount.” Prop. at 17.

Subsection (b)(1). IEPA proposed this subsection providing in its entirety that, “[e]xcept as provided in subsection (b)(2) of this Section, beginning one year after the effective date of this Part the owner or operator of a GCDD recovery facility shall at all times maintain financial assurance in an amount equal to or greater than the current approved closure cost estimate calculated pursuant to Section 820.402.” Prop. at 17; *see* TSD at 6; IEPA Test. at 10.

Subsection (b)(2). IEPA proposed this subsection providing in its entirety that, “[w]ithin 60 days after the current approved closure cost estimate increases or the value of the trust fund established pursuant to Section 820.404 decreases, the owner or operator shall increase the total amount of financial assurance to an amount that is equal to or greater than the current approved closure cost estimate calculated pursuant to Section 820.402.” Prop. at 17; *see* IEPA Test. at 10.

Subsection (c). IEPA proposed this subsection under the heading “Mechanisms.” Prop. at 17.

Subsection (c)(1). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator may use a trust fund, insurance, or a combination thereof as financial assurance for closure of a GCDD recovery facility.” Prop. at 17; *see* IEPA Test. at 10.

The AG noted that “[s]elf-insurance does not appear to be permissible under Subpart D.” AG Questions at 4. The AG asked whether this subsection should explicitly state that self-insurance is not an acceptable type of financial assurance.” *Id.* IEPA responded that it should not, because its proposed rules “do not specifically exclude any other financial assurance mechanism.” IEPA Resps.1 at 3; *see* Tr.1 at 18.

Subsection (c)(2). IEPA proposed this subsection providing in its entirety that, “[i]f an owner or operator uses multiple financial assurance mechanisms, the combination of mechanisms shall provide financial assurance for an amount at least equal to the current approved closure cost estimate.” Prop. at 17; *see* IEPA Test. at 10.

Subsection (c)(3). IEPA proposed this subsection providing in its entirety that:

[a]n owner or operator may use a financial assurance mechanism to meet the requirements of this Subpart for more than one facility. Evidence of financial assurance submitted to the Agency shall include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency shall be sufficient to close all the owner or operator's GCDD recovery facilities in accordance with Section 820.305. Prop. at 17; *see* IEPA Test. at 10.

In its post hearing comment, the AG proposed adding “of” between “close all” and “the owner” in the last sentence of this subsection. AG Comment at 3. The AG also proposed changing “the owner” to the “owner’s” in the last sentence. *Id.* The Board includes the AG’s revisions in its first-notice proposal.

Subsection (d). IEPA proposed this subsection providing in its entirety that:

[t]he Agency may pursue legal action in any court of competent jurisdiction to enforce its rights under financial instruments used to provide the financial assurance required under this Subpart. The filing of an enforcement action before

the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise. Prop. at 17-18.

Subsection (e). IEPA proposed this subsection providing in its entirety that:

[a]s provided in Titles VIII [Enforcement] and IX [Variances and Time-Limited Water Quality Standards] of the Act and 35 Ill. Adm. Code 103 [Enforcement] and 104 [Regulatory Relief Mechanisms], the Board may order that an owner or operator modify their financial assurance or order that proceeds from financial assurance be applied to the closure of their CGDD recovery facility. Prop. at 18.

In its post hearing comment, the AG proposed changing “CGDD” to “GCDD” in the last line of this subsection. AG Comment at 4. The Board includes the AG’s revision in its first-notice proposal.

Subsection (f). IEPA proposed in subsections (1) through (3) to list Agency action that “may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105.” Prop. at 18.

Subsection (f)(1). As the first action that may be appealed, IEPA proposed “a refusal to accept financial assurance tendered by the owner or operator.” Prop. at 18.

Subsection (f)(2). As the second action that may be appealed, IEPA proposed “a refusal to release the owner or operator from the requirement to maintain financial assurance.” Prop. at 18.

Subsection (f)(3). As the third action that may be appealed, IEPA proposed “a refusal to release excess funds from a trust.” Prop. at 18.

Section 820.402: Closure Cost Estimate

In its post hearing comment, the AG proposed using the term “GCDD recovery facility” instead of the term “facility” throughout this section. AG Comment at 2. The Board includes the AG’s revisions in its first-notice proposal.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[a] written estimate of the cost to complete closure in accordance with Section 820.305 for the maximum amount of GCDD that will be accumulated at the facility at any time shall be submitted to the Agency for approval as part of each permit application.” Prop. at 18; *see* TSD at 6.

Subsection (b). IEPA proposed this subsection providing in its entirety that “[t]he cost estimate shall include, at a minimum, all costs for all activities necessary to complete closure in accordance with Section 820.305.” Prop. at 18; *see* IEPA Test. at 11.

Subsection (c). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator shall revise the cost estimate and submit the revised closure cost estimate as a permit

application to the Agency before making or having made at the facility any change that would increase the cost estimate. The Agency's issuance of the permit with the revised cost estimate constitutes approval of the cost estimate." Prop. at 18; *see* IEPA Test. at 11.

The Board asked IEPA to comment on the following proposed revision of this subsection:

- 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. Board Questions at 11.

IEPA responded that it has "[n]o objection" (IEPA Resps.1 at 17), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 35-36.

Subsection (d). IEPA proposed this subsection providing in its entirety that, "[n]o later than January 1, 2024, and every January 1 thereafter, the owner or operator of a GCDD recovery facility shall certify to the Agency on forms prescribed by the Agency that the most recent approved cost estimate has not increased." Prop. at 18; *see* TSD at 6.

The Board asked IEPA to "comment on how an owner of operator would comply with Section 820.402(d) if on January 1 it had a pending permit application including a revised cost estimate." Board Questions at 11. IEPA responded that "[a]n owner or operator would be responsible for maintaining the level of financial assurance required by its existing permit and would certify to that effect." IEPA Resps.1 at 17; *see* Tr.1 at 36.

Section 820.403: Release of Financial Institution

IEPA proposed that it "shall release a trustee, bank, or other financial institution as soon as practicable after the owner or operator makes a written request to the Agency for release and demonstrates" that one of the events listed in subsection (a) or (b) has occurred. Prop. at 18; *see* IEPA Test. at 11.

Subsection (a). IEPA proposed that it provide a release to a trustee, bank, or other financial institution when "the owner or operator has substituted alternate financial assurance that meets the requirements of this Subpart." Prop. at 19; *see* IEPA Test. at 11.

Subsection (b). IEPA proposed that it provide a release to a trustee, bank, or other financial institution when it "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." Prop. at 19; *see* IEPA Test. at 11.

The Board noted that, under subsection (b), IEPA must release a trustee, bank, or other financial institution if it has released the owner or operator from the requirements of this Subpart

following specified action. The Board asked IEPA to “comment on whether the Agency is required to issue a certification of closure under Section 820.306.” Board Questions at 11. If so, the Board asked IEPA to “comment on whether Section 820.306(b) should be revised to require the Agency to issue a certification of closure.

IEPA responded that its “notification of closure to the GCDD facility owner or operator in accordance with Section 820.306(b) constitutes the Illinois EPA’s certification of closure.” IEPA Resps.1 at 18. IEPA proposed the following revision of subsection (b);

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). *Id.*; *see* Tr.1 at 36.

The Board includes this revision in its first-notice proposal.

Section 820.404: Trust Fund

IEPA states that this section “establishes the criteria for use of a trust fund as financial assurance at a GCDD recovery facility. The requirements are derived from other comparable Bord regulations related to trust funds used as financial assurance.” IEPA Test. at 11.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[a]n owner or operator may satisfy the requirements of this Subpart by establishing a trust fund that conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.” Prop. at 19.

Subsection (b). IEPA proposed this subsection providing in its entirety that “[t]he trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.” Prop. at 19.

Subsection (c). IEPA proposed this subsection providing in its entirety that:

[t]he trust agreement shall be irrevocable, shall be on forms prescribed by the Agency, shall be accompanied by a formal certification of acknowledgment on a form prescribed by the Agency, and shall contain provisions addressing, at a minimum, the establishment, management, and termination of the trust and a schedule listing, at a minimum, the GCDD recovery facilities covered by the trust, the current approved removal cost for each of those GCDD recovery facilities, and prohibitions against third party access to the trust funds other than as provided in the trust agreement. This shall be in the form prescribed by the Agency and shall 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. Prop. at 19.

The Board asked IEPA to submit forms required by this subsection. Board Questions at 11. If IEPA has not prepared them, the Board asked whether the forms could be submitted on or before the deadline or post-hearing comments. *Id.* IEPA responded that it “has not developed these forms, but contemplates doing so once the Board’s direction in this rulemaking is clear.” IEPA Resps.1 at 18. IEPA stated this it does not object to submitting these draft forms during the post-hearing comment period. *Id.*; *see* Tr.1 at 36-37. The Board asks IEPA to submit the draft forms during the first notice comment period.

The Board also asked IEPA to comment on the following proposed revisions to this subsection:

- 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. Board Questions at 11-12.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 18), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 37.

Subsection (d). IEPA proposed this subsection under the heading “Payments into the Trust.” Prop. at 19.

Subsection (d)(1). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator shall make a payment into the trust fund each year during the pay-in period. However, after expiration of the pay-in period, neither the owner nor the operator may use a pay-in period to fund the trust and shall instead make a lump sum payment to further fund the trust.” Prop. at 19.

Subsection (d)(2). IEPA proposed this subsection providing in its entirety that “[t]he pay-in period is three years and commences on the date any of the GCDD recovery facilities covered by the trust agreement first receives GCDD.” Prop. at 19.

Subsection (d)(3). IEPA proposed this subsection providing in its entirety that “[a]nnual payments are determined by subtracting the value of the trust fund from the current approved cost estimate for all facilities covered by the trust agreement and dividing the difference by the number of years remaining in the pay-in period.” Prop. at 19.

Subsection (d)(4). IEPA proposed this subsection providing in its entirety that “[t]he 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 a 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.” Prop. at 19-20.

The AG asked how this provision would “work for existing facilities that would be covered by a trust agreement for the first time while they are operating.” AG Questions at 4. IEPA responded by proposing to amend subsection (d)(2) and (d)(4) 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 recovery 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~~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. IEPA Resps.1 at 3-4; see Tr.1 at 18.

The Board includes these revisions in its first-notice proposal.

Subsection (d)(5). IEPA proposed this subsection providing in its entirety that “[s]ubsequent annual payments shall be made no later than 30 days after each anniversary of the first payment.” Prop. at 20.

Subsection (d)(6). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator may either accelerate payments into the trust fund or may deposit the full amount of the current approved removal cost estimate at the time the fund is established.” Prop. at 20.

Subsection (d)(7). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator shall maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsection (d)(3).” Prop. at 20.

Subsection (d)(8). IEPA proposed this subsection providing in its entirety that, “[i]f the owner or operator establishes a trust fund after having used one or more alternative mechanisms, the first payment shall be at least the amount the fund would contain if the trust fund were established initially and payments were made as provided in subsection (d)(3).” Prop. at 20.

Subsection (e). IEPA proposed this subsection providing in its entirety that:

[t]he trustee shall evaluate the trust fund annually as of the anniversary of the day the trust was created or on such other date as may be provided in the agreement. Within 30 days after the evaluation date each year, the trustee shall furnish the owner or operator and the Agency with a statement confirming the value of the trust fund within 30 days after the evaluation date. The failure of the owner or operator to object in writing to the trustee within 90 days after the statement has been furnished to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, barring the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement. Prop. at 20.

The Board asked IEPA to comment on the following proposed revision of this subsection:

- 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. Board Questions at 12.

IEPA responded that it has “[n]o objection” (IEPA Resps.1 at 18-19), and the Board includes this revision in its first-notice proposal. *See* Tr.1 at 37.

Subsection (f). IEPA proposed this subsection providing in its entirety that:

after the pay-in period is completed, whenever the cost estimate changes, the owner or operator shall compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator shall, within 60 days after the change in the cost estimate, either deposit an amount into the fund so that its value after this deposit at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this Subpart to cover the difference. Prop. at 20.

Subsection (g). IEPA proposed this subsection under the heading “Release of excess funds.” Prop. at 20.

Subsection (g)(1). IEPA proposed this subsection providing in its entirety that, “[i]f the value of the trust fund is greater than the total amount of the current approved closure cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current approved closure cost estimate. Prop. at 20.

Subsection (g)(2). IEPA proposed this subsection providing in its entirety that, “[i]f an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, he or she may submit a written request to the Agency for release of the amount in excess of the current approved closure cost estimate covered by the trust fund.” Prop. at 21.

Subsection (g)(3). IEPA proposed this subsection providing in its entirety that:

[a]s soon as practicable after receiving a request from the owner or operator for a release of funds pursuant to this subsection, but not more than 120 days following the Agency's receipt of the request, the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing to be in excess of the current approved closure cost estimate. Prop. at 21.

Subsection (h). IEPA proposed this subsection under the heading “Reimbursement for removal expenses.” Prop. at 21.

Subsection (h)(1). IEPA proposed this subsection providing in its entirety that, “[a]fter initiating closure, an owner or operator, or any other person authorized to perform closure, may request reimbursement for partial or final closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the costs of closure.” Prop. at 21.

Subsection (h)(2). IEPA proposed this subsection providing in its entirety that:

[a]s soon as practicable after receiving the itemized bills for partial or final closure activities, but no more than 120 days following the Agency's receipt of the itemized bills, the Agency shall determine whether the expenditures are in accordance with Section 820.305. If the Agency determines, based on the information available to it, that the remaining cost of closure will be less than the value of the trust fund, the Agency shall instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with Section 820.305. Prop. at 21.

Subsection (h)(3). IEPA proposed this subsection providing that:

[i]f the Agency determines, based on such information as is available to it, that the remaining cost of closure will be greater than the value of the trust fund, it shall withhold reimbursement of such amounts as it determines are necessary to preserve the trust corpus in order to accomplish closure until it determines that the owner or operator is no longer required to maintain financial assurance.” Prop. at 21-22.

If after closure is complete, the fund is inadequate to pay all claims, the IEPA proposed that it pay claims according to the sequential priorities in subsections (A) through (D). Prop. at 21.

Subsection (h)(3)(A). IEPA proposed as the first priority “[p]ersons with whom the Agency has contracted and authorized to perform closure activities.” Prop. at 21.

Subsection (h)(3)(B). As the second priority, IEPA proposed “[p]ersons who have completed closure activities authorized by the Agency.” Prop. at 21.

Subsection (h)(3)(C). As the third priority, IEPA proposed “[p]ersons who have completed work which furthered closure.” Prop. at 21.

Subsection (h)(3)(D). As the fourth priority, IEPA proposed “[t]he owner or operator and related business entities.” Prop. at 22.

Section 820.405: Insurance

IEPA states that this section “establishes the criteria for use of insurance as financial assurance at a GCDD recovery facility. The requirements are derived from other comparable Bord regulations related to insurance policies used as financial assurance.” IEPA Test. at 11.

Subsection (a). IEPA proposed this subsection providing in its entirety that “[a]n owner or operator may satisfy the requirements of this Subpart by obtaining insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of the insurance policy and the certificate of insurance.” Prop. at 22.

Subsection (b). IEPA proposed this subsection providing in its entirety that “[t]he insurer shall be *licensed to transact the business of insurance by the Department of Insurance*, pursuant to the Illinois Insurance Code [215 ILCS 5], *or at a minimum the insurer shall be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states.* [415 ILCS 5/21.1(a.5)].” Prop. at 22.

Subsection (c). IEPA proposed this subsection providing in its entirety that “[t]he policy shall be on forms filed with the Illinois Department of Insurance, pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.” Prop. at 22.

Subsection (d). IEPA proposed this subsection under the heading “Face amount.” Prop. at 22.

Subsection (d)(1). IEPA proposed this subsection providing in its entirety that:

[t]he insurance policy shall be issued for a face amount at least equal to the current closure cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments. Prop. at 22.

Subsection (d)(2). IEPA proposed this subsection providing in its entirety that, “[w]hen the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate, following written approval by the Agency.” Prop. at 22.

Subsection (d)(3). IEPA proposed this subsection providing in its entirety that:

[w]henver the current closure cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency. Prop. at 22.

Subsection (e). IEPA proposed this subsection providing that:

[t]he insurance policy shall guarantee that funds will be available to close the GCDD recovery facility in accordance with Section 820.305. The policy shall also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies. Prop. at 22.

IEPA proposed that “[t]he insurer will be liable” under one of the circumstances listed in subsections (1) through (5). Prop. at 22-23.

Subsection (e)(1). IEPA proposed that the insurer will be liable when “[t]he owner or operator abandons the GCDD recovery facility. Prop. at 23.

Subsection (e)(2). IEPA proposed that the insurer will be liable when “[t]he owner or operator is adjudicated bankrupt.” Prop. at 23.

Subsection (e)(3). IEPA proposed that the insurer will be liable when “[t]he Board, pursuant to Title VIII of the Act [Enforcement], or a court of competent jurisdiction orders the GCDD recovery facility closed.” Prop. at 23.

Subsection (e)(4). IEPA proposed that the insurer will be liable when “[t]he owner or operator notifies the Agency that it is initiating closure.” Prop. at 23.

Subsection (e)(5). IEPA proposed that the insurer will be liable when “[a]ny person initiates closure with approval of the Agency.” Prop. at 23.

Subsection (f). IEPA proposed this subsection under the heading “Reimbursement for closure expenses.” Prop. at 23.

Subsection (f)(1). IEPA proposed that, “[a]fter initiating closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency.” Prop. at 23.

Subsection (f)(2). IEPA proposed that, “[w]ithin 60 days after receiving bills for closure activities, the Agency shall determine whether the expenditures are for closure in accordance with Section 820.305. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures.” Prop. at 23.

Subsection (f)(3). IEPA proposed that, “[i]f the Agency determines based on such information as is available to it that the cost of closure will be greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance.” Prop. at 23.

IEPA also proposed that, “[i]n the event the face amount of the policy is inadequate to pay all claims,” it must pay claims according to the priorities in subsections (A) through (D). *Id.*

Subsection (f)(3)(A). IEPA proposed as the first priority “[p]ersons with whom the Agency has contracted to perform closure activities. Prop. at 23.

Subsection (f)(3)(B). IEPA proposed as the second priority “[p]ersons who have completed closure authorized by the Agency.” *Id.*

Subsection (f)(3)(C). IEPA proposed as the third priority “[p]ersons who have completed work which furthered the closure.” *Id.*

Subsection (f)(3)(D). As the fourth priority, IEPA proposed “[t]he owner or operator and related business entities.” *Id.*

Subsection (g). IEPA proposed this subsection under the heading “Cancellation.” Prop. at 23-24.

Subsection (g)(1). IEPA proposed this subsection providing in its entirety that “[t]he owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 820.403.” Prop. at 24.

Subsection (g)(2). IEPA proposed this subsection providing in its entirety that:

[t]he policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if on or before the date of expiration the premium due is paid. Prop. at 24.

Subsection (h). IEPA proposed this subsection providing in its entirety that “[e]ach policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably withheld.” Prop. at 24.

ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY

Affected Facilities

IEPA’s proposed Part 820 would apply “to all GCDD recovery facilities subject to Section 22.38 of the Act.” SR at 4. These include both existing and new GCDD recovery facilities. The proposed rules would apply statewide and affect “currently permitted facilities that receive GCDD as well as facilities that were previously exempt from permitting prior to Public Act 102-310.” SR at 4. IEPA estimates that there are 52 existing GCDD recovery facilities that the proposal would affect. *Id.* at 5; TSD at 3. IEPA adds that, since enactment of Public Act 96-611, each of these facilities has been permitted under 35 Ill. Adm. Code 807. TSD at 3

The proposed rules would not apply “to a GCDD recovery facility located at a facility permitted under other solid waste rules (35 Ill. Adm. Code 807 or Parts 811 through 814) and regulated under that permit.” SR at 4. The proposal also “would not apply to a facility or location that does not meet the definition of a GCDD recovery facility.” *Id.*, citing 415 ILCS 5/3.160(a-1); P.A. 102-310; *see* Prop. at 3-4.

Technical Feasibility

Implementation

IEPA argues that its proposal builds on rules that have applied to GCDD recovery facilities since 2009, when Public Act 96-611 added permitting requirements. SR at 6. IEPA suggests that the proposal is consistent with both current operating and permitting requirements “as well as the statutory amendments under Public Act 102-310.” *Id.*; *see* TSD at 7; IEPA Test. at 3.

IEPA argues that financial assurance requirements do not affect the technical feasibility of its proposal. It asserts that the proposed requirements are similar to existing Board rules. IEPA suggests that it appropriately minimizes threats to the environment and taxpayers’ resources. TSD at 7.

Board Conclusion

The record does not include testimony or comments disputing IEPA’s position. Based on its review of the record now before it, the Board concludes that its first-notice proposal implements Public Act 102-310 in a manner that is technically feasible.

Economic Reasonableness

Implementation

IEPA argues that its proposal is similar to current requirements, so it “can be implemented without a significant new economic burden on the regulated community.” SR at 6; TSD at 7. While IEPA acknowledges that financial assurance requirements may generate new compliance costs, “those costs are consistent with other regulated industries in an effort to avoid obligating taxpayers with liability associated with facility closure costs.” SR at 6; *see* TSD at 7.

Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2016)), the Board in a letter dated August 11, 2022, requested that DCEO conduct an economic impact study of IEPA’s proposed rules. The Board requested that DCEO determine by September 26, 2022, whether it would conduct such a study. The Board received no response to this request. No person at either hearing testified or commented on the Board’s request or the lack of a response to it from DCEO. Tr.1 at 41-42; Tr.2 at 7-8.

Board Conclusion

The record does not now include testimony or comments disputing IEPA’s position. Based on its review of the record now before it, the Board concludes that its first-notice proposal implements Public Act 102-310, including the financial assurance requirements, in a manner that is economically reasonable and will not have an adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b)(2) (2020).

FILING COMMENTS ON THE BOARD’S FIRST NOTICE PROPOSAL

First-notice publication of the Board’s proposal in the *Illinois Register* will start a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. 5 ILCS 100/5-40(b) (20120).

The Board welcomes comment on any part on its proposed amendments. In its order above, the Board specifically requested comment on the following issue:

- 1) Proposed language for recordkeeping requirements for receipt of unacceptable materials at GCDD recovery facilities.
- 2) Proposed revision to Section 820.205(b) regarding IEPA reconsideration and extended appeal periods under the Act.

Comments must be filed electronically through the Clerk’s Office On-Line (COOL) on the Board’s website (<https://pcb.illinois.gov>). The comment should indicate the docket number for this rulemaking, R23-17. Questions about filing comments can be directed to the Clerk’s Office at 312-814-3461. Public comments and all other filings with the Clerk must be served on

the hearing officer and on those persons on the Service List for this rulemaking. The current version of the Service List for R23-17 is available on COOL.

CONCLUSION

The Board proposes to revise its waste disposal rules by adopting a new Part 820 to comply with Public Act 102-320 and adopt standards for GCDD recovery facilities. The proposed rules appear below. Publishing the proposed rules in the *Illinois Register* will start a period of at least 45 days during which any person may file public comments with the Board's Clerk.

ORDER

The Board directs the Clerk to file the first-notice proposal with the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 19, 2023, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER 14: SOLID WASTE AND SPECIAL WASTE HAULING

PART 820
 STANDARDS FOR GENERAL CONSTRUCTION OR DEMOLITION DEBRIS RECOVERY
 FACILITIES

SUBPART A: GENERAL PROVISIONS

Section	
820.101	Purpose
820.102	Applicability
820.103	Definitions
820.104	Compliance with Applicable Law
820.105	Severability

SUBPART B: PERMIT APPLICATIONS

Section	
820.201	Scope and Applicability
820.202	Permit Application
820.203	Permit No Defense
820.204	Transfer of Permit
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SUBPART C: OPERATING STANDARDS

Section	
820.301	Prohibitions
820.302	General Operating Standards
820.303	Processing Program
820.304	Recordkeeping Requirements
820.305	Closure
820.306	Certification of Closure and Termination of Permit

SUBPART D: FINANCIAL ASSURANCE

Section	
820.401	General Provisions
820.402	<u>Closure</u> Cost Estimate
820.403	Release of Financial Institution
820.404	Trust Fund
820.405	Insurance

AUTHORITY: Implementing Section 22.38(n) and authorized by Section 27 of the Illinois Environmental Protection Act [415 ILCS 5/22.38(n) and 27].

SOURCE: Adopted in R23-17 at 47 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 820.101 Purpose

The purpose of this Part is to establish the operating criteria and permitting process for general construction or demolition debris ("GCDD") recovery facilities pursuant to Section 22.38 of the Act.

Section 820.102 Applicability

- a) This Part applies to any site or facility that meets the definition of all GCDD recovery facility under facilities subject to Section 22.38 of the Act.
- b) This Part does not apply to:
 - 1) Any site or facility that does not meet the definition of a GCDD recovery facility, such as a facility that accepts material other than GCDD for treatment, storage, or disposal;
 - 2) A GCDD recovery facility that is located at a facility permitted under pursuant to 35 Ill. Adm. Code Part 807, or Parts 811 through 814, and regulated under that facility's permit.

Section 820.103 Definitions

Except 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 that applied to the same words or terms in the Environmental Protection Act:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" is the *Environmental Protection Agency established by the Act*. [415 ILCS 5/3.105]

"Adjudicated bankrupt" means the entry of any order for relief under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. 101, et seq. ("the Code") under pursuant to (a) a voluntary petition under Section 301(b) of the Code; (b) an involuntary petition under Section 303(h) of the Code; or (c) a conversion of a case under Chapter 11 to a case under Chapter 7 under Sections 348(a), 1112(a) and (b) of the Code.

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

"Board" is the Pollution Control Board established by the Act. [415 ILCS 5/3.130]

"Clean construction or demolition debris" or "CCDD" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. CCDD does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste. [415 ILCS 5/3.160(b)]

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such ~~that~~ waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. [415 ILCS 5/3.185]

"General construction or demolition debris" or "GCDD" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials. GCDD does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any GCDD or other waste. To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered CCDD and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with Section 3.160(b)(i) of the Act. [415 ILCS 5/3.160(a)]

"General construction or demolition debris recovery facility" or "GCDD recovery facility" means a site or facility used to store or treat exclusively GCDD, including, but not limited to, sorting, separating, or transferring, for recycling, reclamation, or reuse. For purposes of this definition, "facility" means a site and all structures, equipment, and fixtures on a site used in connection with, or to facilitate, GCDD recovery operations. For purposes of this definition, treatment

includes altering the physical nature of the GCDD, such as by size reduction, crushing, grinding, or homogenization, but does not include treatment designed to change the chemical nature of the general construction or demolition debris. [415 ILCS 5/3.160(a-1)]

"Landscape waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees. [415 ILCS 5/3.270]

"Malodor" means an odor caused by one or more contaminant emissions into the atmosphere from a GCDD recovery facility that is in sufficient quantities and of such characteristics and duration as to be described as an offensive odor to a reasonable person.

"Operator" means the person responsible for the operation and maintenance of a GCDD recovery facility.

"Owner" means a person who has an interest, directly or indirectly, in the GCDD recovery facility or who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a GCDD recovery facility. The "owner" is the "operator" if there is no other person who is operating and maintaining a GCDD recovery facility.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315]*

"Putrescible recyclable GCDD" means GCDD material containing organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or that can provide food for birds and vectors.

"Recyclable GCDD" means GCDD *that is being reclaimed from the GCDD waste stream and (i) is rendered reusable and is reused or (ii) would otherwise be disposed of or discarded but is collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products. "Recyclable GCDD" does not include GCDD that is (i) recovered for use as fuel or that is otherwise incinerated or burned, (ii) buried or used as fill material, including, but not limited to, the use of any clean construction or demolition debris fraction of general construction or demolition debris as fill material under subsection (b) of Section 3.160 of the Act or at a clean construction or demolition debris fill operation under Section 22.51 of the Act, or (iii) disposed of at a landfill. [415 ILCS 5/22.38(c)]*

"Recycling, reclamation, or reuse" means *a method, technique, or process designed to remove any contaminant from waste so as to render such waste*

reusable, or any process by which materials that would otherwise be disposed of or discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products. [415 ILCS 5/3.380]

"Run-off" means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of such overland flow that infiltrates into the ground before it reaches the stream channel, and any precipitation that falls directly into a stream channel.

"Special waste" means special waste as defined under Section 3.475 of the Act.

"Wood recovered for use as fuel" means *wood that is recovered from the GCDD waste stream for use as fuel, as authorized by the applicable state or federal environmental regulatory authority, and supplied only to intermediate processing facilities for sizing, or to combustion facilities for use as fuel, that have obtained all necessary waste management and air permits for handling and combustion of the fuel. [415 ILCS 5/22.38(e)]*

Section 820.104 Compliance with Applicable Law

Any person subject to this Part ~~must shall~~ comply with all applicable State and federal laws and regulations, including ~~but not limited to~~ State and federal laws and regulations that govern the collection, transportation, and disposal of general construction or demolition debris.

Section 820.105 Severability

~~If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, that adjudication must Section, subsection, sentence, or clause of this Part is judged invalid, that adjudication will shall not affect the validity of this Part as a whole or of any portion not adjudged any Section, subsection, sentence, or clause of this Part not judged invalid.~~

SUBPART B: PERMIT APPLICATIONS

Section 820.201 Scope and Applicability

- a) Except as specifically exempted by Section 21(d) of the Act, any person that owns or operates a GCDD recovery facility ~~must shall~~ submit to the Agency an application for a permit required by Section 22.38 of the Act. The application applications ~~must shall~~ contain the information required by this Part and Section 39(a) of the Act.
 - (1) *An owner or operator that first received GCDD prior to August 24, 2009, and therefore was not required to obtain a permit until the enactment of P.A. 102-0310, must shall submit to the Agency, ~~no later than~~ within 6 months after the effective date of this Part, a permit application for a GCDD recovery facility. [415 ILCS 5/22.38(b)(11)]*

- (2) An owner or operator of a GCDD recovery facility that, on the effective date of this Part ~~date this Part takes effect~~, has an existing permit issued under Section 22.38 of the Act, must submit an application to modify their permit ~~no later than~~ within one (1) year after the effective date of this Part.
- b) *Beginning one year after the effective date of rules adopted by the Board under this Part, a no-person must not shall own or operate a GCDD recovery facility without a permit issued by the Agency.* [415 ILCS 5/22.38(1)]

Section 820.202 Permit Application

- a) All permit applications must shall be made on Agency forms ~~prescribed by the Agency~~ and ~~shall~~ be mailed or delivered to the address designated by the Agency.
- b) All permit applications must shall be signed by the owner, the operator, and the property owner if different than the GCDD recovery facility owner, or by their duly authorized agent or agents agent(s). Each application containing the signature of an authorized agent must shall be accompanied by an oath or affidavit attesting to each agent's authority to sign the application and must shall be notarized.
- c) Each application must shall demonstrate that the GCDD recovery facility and its operation will comply with the requirements of the Act and this Part, and must shall contain, ~~at a minimum~~:
- 1) a facility map scaled to clearly show:
 - A) the facility property, ~~and~~ all adjacent property, and all property within extending at least 1000 meters of beyond the boundary of the facility;
 - B) all surface waters within 1000 meters of the boundary of the facility;
 - C) all rivers designated for protection under the Wild and Scenic Rivers Act (16 U.S.C. 1271, et seq.);
 - D) the limits of all 100-year floodplains within 1000 meters of the boundary of the facility;
 - E) any wellhead protection areas under pursuant to Section 1428 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f, and any sole source aquifer designated by the United States Environmental Protection Agency under pursuant to Section 1424(e) of the SDWA;

- F) boundaries of all areas in which GCDD recovery operations will occur;
- G) all structures inside the facility boundaries;
- H) all roads and other areas of travel in and around the facility;
- I) devices for controlling access to the facility;
- J) devices for controlling litter and dust at the facility;
- K) fire protection equipment;
- L) devices for surface water control; and
- M) utilities.

- 2) a legal description of the facility boundary;
- 3) a certification of ownership of the property or a copy of the lease of the property;
- 4) an estimate of the maximum total amount of GCDD that can be maintained at the facility at any single time; and
- 5) a closure cost estimate and proof of financial assurance required under Subpart D of this Part.

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.

- e) If the Agency fails to take final action on the application within 90 days from the filing of the application, the applicant may consider ~~deem~~ the permit granted on the 91st day after the application was filed.
- f) Any applicant for a permit may waive the requirement that the Agency take final action within 90 days after ~~from the~~ filing of the application. The permit applicant's waiver should be submitted in writing to the Agency at the address identified in the permit application forms.
- g) The Agency will ~~shall~~ send all notices of final action by registered or certified mail, return receipt requested. Final action is considered ~~deemed~~ to have taken place on the date ~~that~~ the notice is mailed.
- h) Agency decisions regarding permit applications may be appealed to the Board in accordance with Section 40 of the Act.

Section 820.203 Permit No Defense

The issuance of a permit to, or possession of a permit by, an owner or operator will ~~shall~~ not constitute a defense to a violation of the Act or any Board regulations, except for the prohibition against owning or operating a GCDD recovery facility without a permit.

Section 820.204 Transfer of Permit

- a) The Agency may transfer a GCDD recovery facility permit. ~~A permit may be transferred~~ to a new owner or operator only through a ~~upon~~ permit modification, under pursuant to this Part, to identify the new permittee and incorporate other requirements necessary under the Act and this Part.
- b) ~~The application must~~ shall be signed by the existing owner and operator, or their duly authorized agent or agents agent(s), and ~~by~~ the new owner and operator or their duly authorized agent or agents agent(s) must sign the application for a permit modification.
- c) The new owner or operator to whom the permit is transferred to must ~~shall~~ comply with all terms and conditions specified in the transferred ~~such~~ permit.

Section 820.205 Agency Initiated Modification

- a) The Agency may modify a permit under the following circumstances:
 - 1) Discovery of a typographical, administrative, or calculation error;
 - 2) Discovery that a determination or condition was based upon false or misleading information;

- 3) An order of the Board issued in an action brought pursuant to Title VII, IX or X of the Act; or
 - 4) Promulgation of new statutes or regulations affecting the permit.
- b) Modifications initiated by the Agency ~~do will shall~~ not become effective until 45 days after the owner or operator receives it, unless the modification is receipt by the operator, unless 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 Board hearing with the Board under pursuant to this Part or may seek to extend the period for petitioning for a hearing under Section 40(a)(1) of the Act. All other time periods and procedures in this Part ~~shall~~ apply.

SUBPART C: OPERATIONAL STANDARDS

Section 820.301 Prohibitions

A No person must not shall:

- a) *Beginning one year after the effective date of this Part, own or operate a GCDD recovery facility without a permit issued by the Agency. [415 ILCS 5/22.38(l)]*
- b) *Cause or allow the acceptance of any waste at a GCDD recovery facility, other than GCDD. [415 ILCS 5/22.38(j)]*
- c) *Cause or allow the deposit or other placement of any GCDD that is received at a GCDD recovery facility, including any CCDD fraction, into or on any land or water. However, any CCDD fraction may be used as fill or road construction material at a CCDD fill operation under Section 22.51 and any rules or regulations adopted thereunder if the CCDD is separated and managed separately from other GCDD and otherwise meets the requirements applicable to CCDD at a CCDD fill operation. [415 ILCS 5/22.38(k)]*
- d) *Cause or allow the storage or treatment of GCDD at a GCDD recovery facility in violation of the Act, this Part, any other regulations or standards adopted under the Act, or any condition of a permit issued under this Act. [415 ILCS 5/22.38(m)]*
- e) Cause or allow, at any one time, the accumulation of GCDD at the GCDD recovery facility in an amount that exceeds the amount for which financial assurance is maintained in accordance with Subpart D.
- 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 weight or 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)]

- 2ii) In a manner that causes or allows:
- A) Noise ~~noise~~ outside the GCDD recovery facility that violates 35 Ill. Adm. Code 900 through 905 or Section 24 of the Act.
 - B) Vector ~~3iii) In a manner that causes or allows vector~~ proliferation.
 - C) Litter ~~4iv) In a manner that causes or allows litter~~ accumulation.
 - D) Malodors ~~5v) In a manner that causes or allows malodors~~ outside the GCDD recovery facility.

Section 820.302 General Operating Standards

- a) Compliance with Local Requirements. *GCDD recovery facilities shall be subject to local zoning, ordinance, and land use requirements.* [415 ILCS 5/22.38(a)]
- b) Location Standards. *GCDD recovery facilities shall be located in accordance with local zoning requirements or, in the absence of local zoning requirements, shall be located so that no part of the GCDD recovery facility boundary is closer than 1,320 feet from the nearest property zoned primarily for residential use.* [415 ILCS 5/22.38(a)]
- c) Minimum Recycling Rate. The owner or operator of a GCDD recovery facility must *ensure that no less than 40% of the total GCDD received at the facility on a rolling 12-month average basis is recyclable GCDD.* [415 ILCS 5/22.38(b)(0.5)]
For purposes of this subsection (c), GCDD ~~is shall be~~ measured by weight.
- d) Operating Hours=
 - 1) GCDD must be received at the GCDD recovery facility only during operating hours established by a permit issued under ~~in accordance with~~ this Part.
 - 2) If a GCDD recovery facility receives GCDD outside of permitted operating hours to respond to an emergency situation, then the GCDD recovery facility operating records must maintain a written record of the date, time, and reason the GCDD recovery facility received the GCDD. The owner or operator must also notify the must shall be maintained in ~~facility operating records and the~~ Agency's Regional Office responsible

for inspecting the GCDD recovery facility on ~~must shall be notified~~ the next operating day within the GCDD recovery facility's, ~~within the~~ permitted operating hours.

- 3) ~~_____~~ If the emergency situation requires receiving receipt of GCDD outside of permitted operating hours for more than one day, then the owner or operator of the GCDD recovery facility must shall obtain prior approval from the Agency to extend emergency operating hours beyond the first day.
- e) Equipment. Equipment necessary to achieve and maintain compliance with this Part must shall be maintained and available for use at the facility during all hours of operation.
- f) Utilities. All utilities, including ~~but not limited to~~ electricity, heat, interior and exterior lighting, and communications equipment, necessary to operate in compliance with the requirements of this Part, must shall be available at the facility at all times.
- g) Maintenance. Adequate shelter, sanitary facilities, and emergency communications for employees must shall be maintained at the GCDD recovery facility at all times.
- h) Dust Control. Wind dispersal of particulate matter must be prevented.
- i) Fire Protection. Equipment necessary to respond to fires and provide emergency notifications to the nearest fire department must shall be maintained at the GCDD recovery facility.
- j) Vehicle Safety Measures-
- 1) ~~_____~~ The GCDD recovery facility must maintain roads Roads and traffic flow patterns adequate for the type and weight of traffic using the facility and onsite equipment ~~shall be maintained at the facility~~.
 - 2) ~~_____~~ The GCDD recovery facility must maintain sufficient Sufficient area must shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of hauling vehicles.
 - 3) ~~_____~~ The GCDD recovery facility must use shall utilize safety mechanisms to prevent vehicles from backing into fuel storage tanks, equipment, or other structures.
- k) Surface Water Drainage. Measures to ensure surface water drainage is diverted from areas where GCDD or other materials are stored must shall be implemented

at the facility. Surface water drainage ~~must~~ shall be controlled so adjacent properties are not adversely impacted.

l) Run-on and Run-off Control~~;~~

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

m) Boundary Control~~;~~

- 1) ~~_____~~ Access to the GCDD recovery facility ~~must~~ shall be restricted to prevent unauthorized entry.
- 2) ~~_____~~ The GCDD recovery facility must post ~~A permanent sign must shall be posted~~ at the entrance to the GCDD recovery facility stating, ~~at a minimum;~~
 - A) ~~_____~~ that the GCDD recovery facility only accepts GCDD;~~;~~
 - B) ~~_____~~ the GCDD recovery facility's permit number;~~;~~
 - C) ~~_____~~ the GCDD recovery 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 ~~who will shall be available~~ to deal with emergencies and other problems;~~;~~ and
 - F) ~~_____~~ the name, address, and telephone number of the GCDD recovery facility's operator.

n) Contingency Plan~~;~~

- 1) ~~_____~~ The owner or operator of a GCDD recovery facility ~~must~~ shall establish and maintain a Contingency Plan that:

- ~~A)1)~~ minimizes the hazards to human health and the environment from fires and run-off of contaminants resulting from fire at the GCDD recovery facility;
 - ~~B)2)~~ is carried out immediately whenever there is a fire;
 - ~~C)3)~~ describes the actions GCDD recovery facility personnel ~~must shall~~ take in response to fires and run-off resulting from fires;
 - ~~D)4)~~ minimizes the hazards to human health and the environment from vectors and other nuisance organisms that may breed or be present at the GCDD recovery facility;
 - ~~E)5)~~ 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)6)~~ describes evacuation procedures, including, ~~but not limited to,~~ evacuation signals, primary evacuation routes, and alternate evacuation routes to be used when the primary routes could be blocked;
 - ~~G)7)~~ contains an up-to-date emergency equipment list that identifies all emergency equipment at the GCDD recovery facility, such as fire-extinguishing systems, fire-suppression material, spill-control equipment, decontamination equipment, communication and alarm systems, and describes the physical location and capabilities of each listed item; and
 - ~~H)8)~~ 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 GCDD recovery facility ~~if in the event that~~ the primary emergency coordinator or another alternate emergency coordinator is unavailable.
- ~~2)9)~~ The owner or operator ~~must shall~~ submit a copy of the contingency plan, and all revisions to the plan, to the local fire department and keep a copy of the same on-site for review by the Agency. The owner or operator must shall keep in the operating record documentation demonstrating that the plan and all plan revisions have been submitted to the fire department.

Section 820.303 Processing Program

- a) The owner or operator of a GCDD recovery facility ~~must shall~~ inspect every load of material transported to the GCDD recovery facility to ensure only GCDD is accepted at the GCDD recovery facility.
- 1) Each load inspection ~~must shall~~ include, ~~at a minimum~~:
 - A) ~~Before~~ ~~Prior to~~ acceptance, inspection of each load ~~using~~ ~~utilizing~~ an elevated structure, a designated ground level inspection area, or another acceptable method specified in a permit issued in accordance with this Part.
 - B) ~~Maintaining~~ ~~Maintenance of the~~ documentation reflecting the results of each load inspection, including the date the load was received, the amount of GCDD, the name of the transporter, the name of the generator, the location of the site of origin of the material, whether the load was accepted or rejected, and the name of the facility inspector.
 - 2) Loads of material other than GCDD delivered to the GCDD recovery facility ~~must shall~~ be rejected. The driver of the rejected load ~~must shall~~ be presented with a written notice that includes, ~~at a minimum~~, the following:
 - A) The date of the attempted delivery;
 - B) ~~A statement that~~ ~~That~~ only GCDD is accepted at the GCDD recovery facility;
 - C) The reasons for rejecting the load; and
 - D) A copy of the rejection notice ~~must shall~~ be maintained in accordance with Section 820.304.
 - 3) If material other than GCDD is discovered to have been accepted at the GCDD recovery facility, the material ~~must shall~~ be removed in compliance ~~accordance~~ with this Subpart.
- b) ~~Before~~ ~~Prior to~~ any mechanical sorting, separating, grinding, or other processing, all drywall and other wallboard containing gypsum or sulfur ~~must shall~~ be removed from the GCDD received to the extent practicable. The drywall and other wallboard containing gypsum or sulfur ~~must shall~~ be stored in closed, structurally sound, non-leaking containers that are in good condition (e.g., no severe rusting, apparent structural defects, or deterioration), prevent the

infiltration of precipitation, and prevent releases during storage, handling, and transportation.

- 1) If being recycled, the drywall and other wallboard containing gypsum or sulfur must be transported off-site within 45 calendar days after receipt.
 - 2) If not being recycled, the drywall and other wallboard containing gypsum or sulfur must be transported off-site within 72 hours after receipt.
- c) Acceptable Materials
- 1) Within 48 hours after receipt of the GCDD at the GCDD recovery facility, the owner or operator must sort the GCDD to separate the (i) recyclable GCDD and (ii) wood being recovered for use as fuel from all other GCDD. [415 ILCS 5/22.38(b)(1)]
 - 2) All putrescible recyclable GCDD and all wood recovered for use as fuel that is separated from other GCDD must be transported off-site within 45 calendar days after receipt. [415 ILCS 5/22.38(b)(4)]
 - 3) All non-putrescible recyclable GCDD that is separated from other GCDD must be transported off-site within six calendar months after receipt. [415 ILCS 5/22.38(b)(5)]
 - 4) All GCDD other than the separated recyclable GCDD and wood being recovered for use as fuel ~~must shall~~ be stored in containers meeting the requirements of subsection (b) ~~of this Section~~ and, within 72 hours after receipt, ~~must shall~~ be transported off-site for disposal.
 - 5) CCDD and uncontaminated soil that is separated from GCDD received at the GCDD recovery facility may be transported off-site for use complying in accordance with the Act and rules adopted under the Act.
- d) Unacceptable Materials. Any unacceptable materials discovered to be mixed with GCDD after it is accepted at the GCDD recovery facility ~~must shall~~ be immediately ~~separated removed~~ from the GCDD and ~~removed from the GCDD recovery managed as follows. The~~ removed from the GCDD recovery managed as follows. ~~In no case shall the unacceptable material must be removed from remain at the facility within for more than~~ 72 hours after receipt. The separated unacceptable material must be managed as follows:
- 1) Landscape waste ~~must shall~~ be transported to a facility permitted to accept landscape waste.
 - 2) Lead-acid batteries ~~must shall~~ be transported either to a drop-off center handling ~~the such~~ waste, or to a lead-acid battery retailer.

- 3) Lithium-ion batteries must shall be transported to a facility capable of handling the such waste.
- 4) Special wastes must shall be containerized separately and removed from the facility as soon as possible by an appropriately licensed special waste hauler. Special wastes must shall be transported to a GCDD recovery facility permitted to accept special waste.
- 5) Asbestos and asbestos debris must shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.
- 6) Used and waste tires must shall be managed in accordance with Title XVI of the Act.
- 7) White good components must shall be managed in compliance accordance with Section 22.28 of the Act.
- 8) All other unacceptable materials must shall be managed in compliance accordance with 35 Ill. Adm. Code Subtitle G.
- 9) Documentation must be maintained reflecting each type of unacceptable material managed under subsections (d)(1) through (d)(8), including: the date the material was received, identified, and separated; the date the material was transported offsite; the amount of unacceptable material; the name of the transporter; the name of the generator; and the name of the offsite facility receiving the unacceptable material.

Section 820.304 Recordkeeping Requirements

- a) The owner or operator of a GCDD recovery facility must shall employ tagging and daily recordkeeping procedures to, ~~at a minimum,~~ demonstrate compliance with the Act and this Part. [415 ILCS 5/22.38(b)(6)]
 - 1) Tagging and recordkeeping of material accepted at the GCDD recovery facility must identify the type, weight, source or ~~place~~ of origin, generator, and transporter or ~~hauler~~ of the material. [415 ILCS 5/21(w) and 22.38(b)(6)]
 - 2) Tagging and recordkeeping of material transported from the GCDD recovery facility must identify the type, weight, destination, transporter of the material, and the owner and operator of the destination facility. [415 ILCS 5/21(w) and 22.38(b)(6)]

- 3) ~~Procedures for recordkeeping~~ Recordkeeping of rejected loads must meet the requirements of complying in accordance with Section 820.303(a)(1)(B).
- 4) Procedures for recordkeeping of unacceptable materials transported to an offsite facility must meet the requirements of Section 820.303(d)(9).
- b) Records required under the Act and this Part *shall be maintained in a form and format prescribed by the Agency for a minimum of 3 years.* [415 ILCS 5/21(w) and 22.38(b)(6)]
- c) ~~No later than~~ By every October 1, January 1, April 1, and July 1, the records required by subsection (a) ~~of this Section shall~~ must be summarized in quarterly reports submitted to the Agency in a form and format prescribed by the Agency. [415 ILCS 5/22.38(b)(6)].
- 1) A quarterly report summarizing the months of January, February, and March is due ~~no later than~~ by July 1. A quarterly report summarizing the months of April, May, and June is due ~~no later than~~ by October 1. A quarterly report summarizing the months of July, August, and September is due ~~no later than~~ by January 1. A quarterly report summarizing the months of October, November, and December is due ~~no later than~~ by April 1.
- 2) Reports ~~must~~ shall be maintained until certification of closure is issued by the Agency ~~complying in accordance~~ with Section 820.305.
- d) Operating Record
- 1) ~~The owner or operator of a GCDD recovery facility must maintain an operating record at the GCDD recovery facility. 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 normal business hours. Information maintained in the operating record must include, but is not limited to, the following:~~
- ~~A)1)~~ A)1) Records required to be maintained by the GCDD recovery facility under the Act and this Part;
- ~~B)2)~~ B)2) Any information submitted to the Agency under pursuant to this Part, including, ~~but not limited to,~~ copies of all permits, permit applications, and reports;
- ~~C)3)~~ C)3) The Contingency Plan for the GCDD recovery facility and documentation demonstrating that the plan and all plan revisions

have been submitted to the local fire department, in ~~accordance~~ compliance with Section 820.302(n); and

D)4) Written procedures for load checking and load rejection notifications required under Section 820.303 ~~of this Part.~~

2) The owner or operator of a GCDD facility must make the operating record available for inspection and copying by the Agency and units of local government upon request during the GCDD recovery facility's normal business hours.

Section 820.305 Closure

- a) Within ~~No later than~~ 30 days after the date ~~on which~~ the GCDD recovery facility receives the final load of GCDD the owner or operator must shall begin closure activities and submit to the Agency a notice of closure.
- b) During closure all GCDD and all other materials at the GCDD recovery facility must shall be removed to an appropriately permitted transfer, treatment, storage, or disposal facility.
- c) The owner or operator must shall complete closure activities for the GCDD recovery facility within 180 days of beginning closure unless the Agency grants an extension of the closure period. The Agency may grant an extension of the closure period if the owner or operator demonstrates that:
 - 1) closure cannot be practically completed within 180 days from beginning of closure ~~of the last date on which GCDD was accepted~~; and
 - 2) the owner or operator has taken and will continue to take all necessary steps to prevent threats to human health and the environment from the unclosed facility.

Section 820.306 Certification of Closure and Termination of Permit

- a) Within 45 calendar days after ~~of~~ completing closure activities, the owner or operator of a GCDD recovery facility must shall submit to the Agency:
 - 1) Documentation concerning the closure of the GCDD recovery facility that demonstrates compliance with the Act and this Part and the date closure was completed.
 - 2) An affidavit by the owner or operator certifying that the GCDD recovery facility has been closed in compliance with the Act and this Part.
- b) In accordance ~~compliance~~ with Section 39(a) of the Act, when ~~When~~ the Agency determines, based on ~~pursuant to~~ the information received under subsection (a)

and any Agency site inspection, that the GCDD recovery facility has been closed in ~~accordance~~ compliance with the requirements of the Act and this Part, the Agency ~~must shall~~ notify the owner or operator in writing that:

- 1) The GCDD recovery facility permit is terminated; and
 - 2) The GCDD recovery facility is no longer required to maintain financial assurance for closure of the site.
- ~~c)3)~~ The owner or operator may ~~consider deem~~ the Agency action ~~under pursuant to~~ this Section as a denial or grant of a permit with conditions for purposes of appeal ~~under pursuant to~~ Section 40 of the Act.

SUBPART D: FINANCIAL ASSURANCE

Section 820.401 General Provisions

- a) This Subpart ~~states sets forth~~ the procedures by which the owner or operator of a GCDD recovery facility must provide financial assurance for closure in ~~accordance~~ compliance with Section 820.305.
- b) Amount-
 - 1) Except as provided in subsection (b)(2) ~~of this Section~~, beginning one year after the effective date of this Part the owner or operator of a GCDD recovery facility ~~must shall~~ at all times maintain financial assurance in an amount equal to or greater than the current approved closure cost estimate calculated ~~under pursuant to~~ Section 820.402.
 - 2) Within 60 days after the current approved closure cost estimate increases or the value of the trust fund established ~~under pursuant to~~ Section 820.404 decreases, the owner or operator ~~must shall~~ increase the total amount of financial assurance to an amount that is equal to or greater than the current approved closure cost estimate calculated ~~under pursuant to~~ Section 820.402.
- c) Mechanisms
 - 1) The owner or operator may use a trust fund, insurance, or a combination of ~~them thereof~~ as financial assurance for closure of a GCDD recovery facility.
 - 2) If an owner or operator uses multiple financial assurance mechanisms, the combination of mechanisms ~~must shall~~ provide financial assurance for an amount at least equal to the current approved closure cost estimate.

- 3) An owner or operator may use a financial assurance mechanism to meet the requirements of this Subpart for more than one facility. Evidence of financial assurance submitted to the Agency ~~must shall~~ include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism ~~must shall be no~~ not be less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency ~~must shall~~ be sufficient to close all of the owner's, owner or operator's GCDD recovery facilities in ~~accordance~~ compliance with Section 820.305.
- d) The Agency may pursue legal action in any court of competent jurisdiction to enforce its rights under financial instruments used to provide the financial assurance required under this Subpart. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- e) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order that an owner or operator modify their financial assurance or order that proceeds from financial assurance be applied to the closure of their ~~GCDD~~ GCDD recovery facility.
- f) The following Agency actions may be appealed to the Board as a permit denial ~~under pursuant to~~ 35 Ill. Adm. Code 105:
 - 1) a refusal to accept financial assurance tendered by the owner or operator;
 - 2) a refusal to release the owner or operator from the requirement to maintain financial assurance; or
 - 3) a refusal to release excess funds from a trust.

Section 820.402 Closure Cost Estimate

- a) A written estimate of the cost to complete closure in ~~accordance~~ compliance with Section 820.305 for the maximum amount of GCDD that will be accumulated at the GCDD recovery facility at any time ~~must shall~~ be submitted to the Agency for approval as part of each permit application.
- b) The cost estimate ~~must shall~~ include, ~~at a minimum,~~ all costs for all activities necessary to complete closure in ~~accordance~~ compliance with Section 820.305.
- c) Before making or having made any change at the GCDD recovery facility that would increase the closure cost estimate, the ~~The~~ owner or operator ~~must shall~~ revise the cost estimate and submit the revised closure cost estimate as a permit application to the Agency ~~before making or having made at the facility any~~

~~change that would increase the cost estimate.~~ The Agency's issuance of the permit with the revised cost estimate constitutes approval of the cost estimate.

- d) ~~By No later than~~ January 1, 2024, and every January 1 ~~after thereafter~~, the owner or operator of a GCDD recovery facility ~~must shall~~ certify to the Agency on ~~Agency forms prescribed by the Agency~~ that the most recent approved cost estimate has not increased.

Section 820.403 Release of Financial Institution

The Agency ~~must shall~~ release a trustee, bank, or other financial institution as soon as practicable after the owner or operator makes a written request to the Agency for release and demonstrates that either one of the following events has occurred:

- a) the owner or operator has substituted alternate financial assurance that meets the requirements of this Subpart; or
- b) the Agency has released the owner or operator from the requirements of this Subpart following (i) completion of closure in ~~accordance compliance~~ with Section 820.305 and (ii) Agency certification of closure of the GCDD recovery facility in compliance with Section 820.306(b).

Section 820.404 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund that conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.
- b) The trustee ~~must shall~~ be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- c) Trust Agreement
 - 1) ~~The trust agreement must shall be irrevocable, must shall be on Agency forms prescribed by the Agency, and must shall be accompanied by a formal certification of acknowledgment on an Agency a form prescribed by the Agency;~~
 - 2) ~~The trust agreement must be irrevocable and must shall contain provisions addressing, at a minimum, establishing, managing, and terminating the establishment, management, and termination of the trust.~~
 - 3) ~~The trust agreement must include and 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, and prohibitions against~~ third party access to the trust funds other than as provided in the trust agreement. This ~~prohibition must shall~~ be in the Agency form prescribed by the Agency and ~~must shall~~ 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.

d) Payments into the Trust

1) The owner or operator ~~must shall~~ make a payment into the trust fund each year during the pay-in period. However, after expiration of the pay-in period, neither the owner nor the operator may use a pay-in period to fund the trust and ~~must shall~~ instead make a lump sum payment to further fund the trust.

2) Pay-in Period

A) ~~The pay-in period for a trust fund used as financial assurance in compliance with this Part is three years, and begins commences on the date any of the GCDD recovery facilities covered by the trust agreement first receives GCDD.~~

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

C) 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.

3) Annual payments are determined by subtracting the value of the trust fund from the current approved cost estimate for all facilities covered by the trust agreement and dividing the difference by the number of years remaining in the pay-in period.

4) First Annual Payment

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

- B) For any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism, the owner or operator must 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 compliance with subsection (a) of this Section. The owner or operator must 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.
- 5) Subsequent annual payments ~~must shall~~ be made within no later than 30 days after each anniversary of the first payment.
- 6) The owner or operator may either accelerate payments into the trust fund or may deposit the full amount of the current approved removal cost estimate at the time the fund is established.
- 7) The owner or operator ~~must shall~~ maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsection (d)(3).
- 8) If the owner or operator establishes a trust fund after having used one or more alternative mechanisms, the first payment ~~must shall~~ be at least the amount the fund would contain if the trust fund were established initially and payments were made as ~~provided~~ specified in subsection (d)(3).
- e) Evaluation by Trustee
- 1) The trustee ~~must shall~~ evaluate the trust fund annually as of the anniversary of the day the trust was created or on another a such other date ~~as may be provided~~ specified in the agreement.
- 2) Within 30 days after the evaluation date each year, the trustee ~~must shall~~ furnish the owner or operator and the Agency with a statement confirming the value of the trust fund ~~within 30 days after the evaluation.~~
- 3) The failure of the owner or operator to object in writing to the trustee within 90 days after the trustee furnishes the statement ~~has been furnished~~ to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, which bars ~~barring~~ the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.

- f) After the pay-in period is completed, whenever the cost estimate changes, the owner or operator ~~must shall~~ compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator ~~must shall~~, within 60 days after the change in the cost estimate, either deposit an amount into the fund so that its value after this deposit at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this Subpart to cover the difference.
- g) Release of excess funds:
- 1) If the value of the trust fund is greater than the total amount of the current approved closure cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current approved closure cost estimate.
 - 2) If an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, ~~he or she~~ the owner or operator may submit a written request to the Agency for release of the amount in excess of the current approved closure cost estimate covered by the trust fund.
 - 3) As soon as practicable after receiving a request from the owner or operator for a release of funds pursuant to this subsection, but ~~within not more than~~ 120 days following the Agency's receipt of the request, the Agency ~~must shall~~ instruct the trustee to release to the owner or operator the amount of ~~such~~ funds as the Agency specifies in writing to be in excess of the current approved closure cost estimate.
- h) Reimbursement for removal expenses:
- 1) After initiating closure, an owner or operator, or any other person authorized to perform closure, may request reimbursement for partial or final closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the costs of closure.
 - 2) As soon as practicable after receiving the itemized bills for partial or final closure activities, but ~~within no more than~~ 120 days following the Agency's receipt of the itemized bills, the Agency ~~must shall~~ determine whether the expenditures are in ~~accordance~~ compliance with Section 820.305. If the Agency determines, based on the information available to it, that the remaining cost of closure will be less than the value of the trust fund, the Agency ~~must shall~~ instruct the trustee to make reimbursement in ~~such~~ the amounts as the Agency specifies in writing as expenditures in ~~accordance~~ compliance with Section 820.305.

- 3) If the Agency determines, based on such information as is available to it, that the remaining cost of closure will be greater than the value of the trust fund, it ~~must shall~~ withhold reimbursement of such amounts as it determines are necessary to preserve the trust corpus in order to accomplish closure until it determines that the owner or operator is no longer required to maintain financial assurance. If ~~in the event~~ the fund is inadequate to pay all claims after closure is completed, the Agency must shall pay claims according to the following sequential priorities:
- A) Persons ~~with whom~~ the Agency has contracted and authorized to perform closure activities;
 - B) Persons who have completed closure activities authorized by the Agency;
 - C) Persons who have completed work which furthered closure; and
 - D) The owner or operator and related business entities.

Section 820.405 Insurance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of the insurance policy and the certificate of insurance.
- b) The insurer ~~must shall~~ be *licensed to transact the business of insurance by the Department of Insurance, according pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer shall be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states. [415 ILCS 5/21.1(a.5)]*
- c) The policy ~~must shall~~ be on forms filed with the Illinois Department of Insurance, under pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.
- d) Face amount:
 - 1) The insurance policy ~~must shall~~ be issued for a face amount at least equal to the current closure cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

- 2) Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate, following written approval by the Agency.
 - 3) Whenever the current closure cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, must shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.
- e) The insurance policy must shall guarantee that funds will be available to close the GCDD recovery facility in ~~accordance~~ compliance with Section 820.305. The policy must shall also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to ~~such~~ the party or parties as the Agency specifies. The insurer will be liable when:
- 1) The owner or operator abandons the GCDD recovery facility;
 - 2) The owner or operator is adjudicated bankrupt;
 - 3) The Board, ~~under pursuant to~~ Title VIII of the Act, or a court of competent jurisdiction orders the GCDD recovery facility closed;
 - 4) The owner or operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
- f) Reimbursement for closure expenses:
- 1) After initiating closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving bills for closure activities, the Agency must shall determine whether the expenditures are for closure in ~~accordance~~ compliance with Section 820.305. The Agency must shall direct the insurer to make reimbursement in the such amounts as the Agency specifies in writing as expenditures.
 - 3) If the Agency determines based on ~~such~~ information as is available to it that the cost of closure will be greater than the face amount of the policy, it must shall withhold reimbursement of such amounts as it considers necessary deems prudent until it determines that the owner or operator is

no longer required to maintain financial assurance. ~~If In the event~~ the face amount of the policy is inadequate to pay all claims, the Agency must ~~shall~~ pay claims according to the following priorities:

- A) Persons ~~with whom~~ the Agency has contracted to perform closure activities (first priority);
- B) Persons who have completed closure authorized by the Agency (second priority);
- C) Persons who have completed work which furthered the closure (third priority); and
- D) The owner or operator and related business entities (last priority).

g) Cancellation:

- 1) The owner or operator must ~~shall~~ maintain the policy in full force and effect until the Agency releases the insurer under ~~pursuant to~~ Section 820.403.
- 2) The policy must ~~shall provide~~ specify that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must ~~shall, at a minimum,~~ provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if on or before the date of expiration the premium due is paid.

h) Each policy must ~~shall~~ contain a provision allowing assignment of the policy to a successor owner or operator. ~~The~~ Such assignment may be conditional upon consent of the insurer, if ~~provided such~~ consent is not unreasonably withheld.