

ILLINOIS POLLUTION CONTROL BOARD  
September 20, 2012

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO SPECIAL ) R13-8  
WASTE HAULING PERMIT ) (Rulemaking - Land)  
REGULATIONS TO IMPLEMENT PUBLIC )  
ACT 97-1081: 35 ILL. ADM. CODE 809.204 )  
and 809.212 )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

The Board today proposes amendments to its solid waste and special waste hauling regulations for first-notice publication in the *Illinois Register* without commenting on their substantive merits. The Board proposes these amendments to implement a provision of Public Act 97-1081, effective August 24, 2012, which amends Section 22.2(l) of the Environmental Protection Act (Act) by extending the duration of special waste hauling permits from one year to three years. *See* 415 ILCS 5/22.2(l) (2010); Public Act 97-1081.

The Board proposes to amend 35 Ill. Adm. Code 809.212 (Duration of Special Waste Hauling Permits) to make it consistent with this statutory revision. The Board also proposes to amend 35 Ill. Adm. Code 809.204(a) (Applications for Special Waste Hauling Permit - Filing and Final Action by the Agency) to clarify that special waste hauling permit application fees are established by statute. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period. *See* 5 ILCS 100/5-40(b) (2010) (Illinois Administrative Procedure Act).

The Board will direct the hearing officer to schedule and conduct two public hearings on these proposed amendments. *See* 415 ILCS 5/28(a) (2010). The Board does not now intend to enlarge the scope of this proposal during the course of these hearings.

In this opinion, the Board first summarizes the relevant provisions of Section 22.2(l) of the Act and before addressing the filing of public comments. After a summary of its first-notice proposal, the Board reaches its conclusion and issues its order setting forth the proposed amendments for first-notice publication.

**STATUTORY AND REGULATORY BACKGROUND**

Prior to the enactment of Public Act 97-1081, Section 22.2(l) of the Act provided in pertinent part that

Beginning January 1, 1988, the Agency shall annually collect a \$250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of

\$20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. 415 ILCS 5/22.2(l) (2010); *see* Public Act 97-1081.

With the enactment of Public Act 97-1081, effective August 24, 2012, Section 22.2(l) now provides in pertinent part that

Beginning January 1, 1988, and prior to January 1, 2013, the Agency shall annually collect a \$250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of \$20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. Beginning January 1, 2013, the Agency shall issue 3-year Special Waste Hauling Permits instead of annual Special Waste Hauling Permits and shall collect a \$750 fee for each Special Waste Hauling Permit Application. In addition, beginning January 1, 2013, the Agency shall collect a fee of \$60 for each waste hauling vehicle identified in the permit application and for each vehicle that is added to the permit during the 3-year period. Public Act 97-1081 (Section 20).

Section 809.212(a) of the Board's special waste hauling permit regulations provides in its entirety that "[a]ll permits issued under this Part shall be issued for a period not to exceed one year and are renewable." 35 Ill. Adm. Code 809.212(a).

Section 809.204(a) addresses the filing of applications and provides in its entirety that "[a]n application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees." 35 Ill. Adm. Code 809.204(a).

### **SUMMARY OF BOARD PROPOSAL**

The Board notes that the extended permit duration and corresponding application fees have been enacted and will take effect on January 1, 2013, little more than three months from the date of this order. On that date, the Board's regulations would become inconsistent with the Act. Consequently, the Board today opens this rulemaking docket with a proposal for first-notice publication without commenting on its substantive merits. In doing so, the Board expects that it can adopt amended rules soon after revised statutory permit provisions take effect on January 1, 2013. The Board believes that this step will also reduce the risk of confusion that can result from inconsistency between the Act and the Board's regulations. The Board also recognizes the limited scope of these proposed amendments, which it does not now intend to enlarge in the course of this rulemaking.

Accordingly, and as reflected in its order below, the Board proposes to make Section 809.212(a) consistent with revised Section 22.2(l) of the Act as follows: "Prior to January 1, 2013, all permits issued under this Part will be issued for a period not to exceed one year and are renewable. Beginning January 1, 2013, all permits under this Part will be issued for a period

not to exceed three years and are renewable.” See Public Act 97-1081; 35 Ill. Adm. Code 809.212(a).

Also, in order to clarify that the “correct fees” for special waste hauling permit applications are established by the Act, the Board proposes to amend Section 809.204(a) as follows: “[a]n application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees pursuant to Section 22.2(l) of the Act [415 ILCS 5/22.2(l)].” See Public Act 97-1081; 35 Ill. Adm. Code 809.204(a).

### **FILING PUBLIC COMMENTS**

First-notice publication of these proposed amendments 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. See 5 ILCS 100/5-40(b) (2010).

Because it proposes these amendments for first-notice publication without commenting on their substantive merits, the Board encourages the Agency and regulated entities to comment on these proposed amendments, particularly with regard to their technical feasibility and economic reasonableness. See 415 ILCS 5/27(a) (2010). The Board expects that any economic effects of this proposal stem from Public Act 97-1081 itself. However, the Board anticipates that regulated entities will realize savings from less frequent permit applications and that the Agency will realize administrative savings from a reduced number of applications for permit renewal. See, e.g., 10-Year Federally Enforceable State Operating Permits (FESOP): Amendments to 35 Ill. Adm. Code Part 201.162, R10-21, slip op. at 5-6 (Nov. 18, 2010) (extending duration of FESOP from five to ten years.)

Public comments should indicate the docket number for this rulemaking, R13-8, and must be filed with the Clerk of the Board at the following address:

Pollution Control Board  
Office of the Clerk  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601

Public comments may be filed electronically through the Board’s Clerk’s Office On-Line, or COOL, at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629.

Please note that all comments filed with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with the hearing officer or the Clerk’s Office to verify the most recent version of the Service List.

## CONCLUSION

As described above in this opinion, the Board proposes amendments to Part 809 of its solid waste and special waste hauling regulations without commenting on their substantive merits.

In its order below, the Board directs the Clerk to cause first-notice publication of the Board's proposal in the *Illinois Register*, which commences a 45-day public comment period under the Illinois Administrative Procedure Act. The Board encourages the Agency and regulated entities to comment on these proposed amendments, particularly with regard to their technical feasibility and economic reasonableness.

The Board directs the hearing officer to schedule and conduct hearings expeditiously.

## ORDER

The Board directs the Clerk to cause first-notice publication of the following proposed amendments to the Board's solid waste and special waste hauling regulations in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

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

PART 809  
 SPECIAL WASTE HAULING

SUBPART A: GENERAL PROVISIONS

Section	
809.101	Authority, Policy and Purposes
809.102	Severability
809.103	Definitions
809.104	Incorporations by Reference
809.105	Public Records

SUBPART B: SPECIAL WASTE HAULING PERMITS

Section	
809.201	Special Waste Hauling Permits-General
809.202	Applications for Special Waste Hauling Permit-Contents
809.203	Applications for Special Waste Hauling Permit-Signatures and Authorization
809.204	Applications for Special Waste Hauling Permit-Filing and Final Action by the Agency

- 809.205 Special Waste Hauling Permit Conditions
- 809.206 Special Waste Hauling Permit Revision
- 809.207 Transfer of Special Waste Hauling Permits
- 809.208 Special Waste Hauling Permit Revocation
- 809.209 Permit No Defense
- 809.210 General Exemption from Special Waste Hauling Permit Requirements
- 809.211 Exemptions for Special Waste Transporters
- 809.212 Duration of Special Waste Hauling Permits
- 809.213 Compliance with Federal Requirements

SUBPART C: DELIVERY AND ACCEPTANCE

Section

- 809.301 Requirements for Delivery of Special Waste to Transporters
- 809.302 Requirements for Acceptance of Special Waste from Transporters

SUBPART D: PERMIT AVAILABILITY AND SYMBOLS

Section

- 809.401 Permit Availability
- 809.402 Special Waste Symbols

SUBPART E: MANIFESTS, RECORDS AND REPORTING

Section

- 809.501 Manifests, Records, Access to Records, Reporting Requirements and Forms

SUBPART F: DURATION OF SPECIAL WASTE HAULER PERMITS AND TANK NUMBERS

Section

- 809.601 Duration of Special Waste Hauler Permits and Tank Numbers (Repealed)

SUBPART G: EMERGENCY CONTINGENCIES FOR SPILLS

Section

- 809.701 General Provision

SUBPART H: EFFECTIVE DATES

Section

- 809.801 Compliance Date
- 809.802 Exceptions (Repealed)

SUBPART I: HAZARDOUS (INFECTIOUS) HOSPITAL WASTE

Section

- 809.901 Definitions (Repealed)
- 809.902 Disposal Methods (Repealed)
- 809.903 Rendering Innocuous by Sterilization (Repealed)
- 809.904 Rendering Innocuous by Incineration (Repealed)
- 809.905 Recordkeeping Requirements for Generators (Repealed)
- 809.906 Defense to Enforcement Action (Repealed)

**SUBPART J: REQUIREMENTS FOR HAULERS PREVIOUSLY PERMITTED UNDER THE  
UNIFORM PROGRAM**

Section

- 809.910 Uniform State Hazardous Waste Transportation Registration and Permit Program (Repealed)
- 809.911 Application for a Uniform Permit (Repealed)
- 809.912 Application for Uniform Registration (Repealed)
- 809.913 Payment of Processing and Audit Fees (Repealed)
- 809.914 Payment of Apportioned Mile Fees (Repealed)
- 809.915 Submittal of Fees (Repealed)
- 809.916 Previously Permitted Transporters (Repealed)
- 809.917 Uniform Registration and Uniform Permit Conditions (Repealed)
- 809.918 Uniform Registration and Uniform Permit Revision (Repealed)
- 809.919 Transfer of Uniform Registration and Uniform Permits (Repealed)
- 809.920 Audits and Uniform Registration and Uniform Permit Revocation (Repealed)
- 809.921 Permit No Defense (Repealed)
- 809.1001 Transporters Previously Permitted Under Uniform Hazardous Waste Transportation Permit and Registration Program

809.APPENDIX A Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22.2 and 27] (see P.A. 90-219).

SOURCE: Adopted in R76-10, 33 PCB 131, at 3 Ill. Reg. 13, p. 155, effective March 31, 1979; emergency amendment in R76-10, 39 PCB 175, at 4 Ill. Reg. 34, p. 214, effective August 7, 1980, for a maximum of 150 days; emergency amendment in R80-19, 40 PCB 159, at 5 Ill. Reg. 270, effective January 1, 1981, for a maximum of 150 days; amended in R77-12(B), 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R80-19, 41 PCB 459, at 5 Ill. Reg. 6378, effective May 31, 1981; codified in R81-9, 53 PCB 269, at 7 Ill. Reg. 13640; effective September 30, 1983; recodified in R84-5, 58 PCB 267, from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; amended in R89-13A at 14 Ill. Reg. 14076, effective August 15, 1990; amended in R91-18 at 16 Ill. Reg. 130, effective January 1, 1992; amended in R95-11 at 20 Ill. Reg. 5635, effective March 27, 1996; amended in R98-29 at 23 Ill. Reg. 6842, effective July 1, 1999; amended in R00-18 at 24 Ill. Reg. 14747, effective September 25, 2000; amended in R06-20(A) at 34 Ill. Reg. 3317, effective February 25, 2010; amended in R06-20(B) at 34 Ill. Reg. 17398,

effective October 29, 2010; amended in R12-13 at 36 Ill. Reg. 12232, effective July 18, 2012; amended in R13-08, at 36 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: SPECIAL WASTE HAULING PERMITS

### **Section 809.204 Applications for Special Waste Hauling Permit-Filing and Final Action by the Agency**

- a) An application for special waste hauling permit is considered filed on the date the Agency receives a properly completed application on the form prescribed or provided by the Agency and with correct fees pursuant to Section 22.2(l) of the Act [415 ILCS 5/22.2(l)].
- b) If the Agency fails to take final action (which includes granting or denying the special waste hauling permit as requested, or by granting the special waste hauling permit with conditions) within 90 days after the date the completed application is filed, the applicant may deem the special waste hauling permit granted for a period of one calendar year commencing on the 91st day after the application was filed.
- c) The Agency will send all denials by U.S. Registered or Certified Mail, Return Receipt Requested. All other final Agency decisions may go by regular U.S. Mail or electronic mail. The Agency will be deemed to have taken final action on the date that the notice of final action is mailed or sent. Within 35 days after the Agency's final action, the applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.
- d) The Agency will require the application to be complete. If incomplete, the application will be returned, and the transporter will be required to resubmit a complete application. The application must be consistent with the provisions of the Act and Board regulations. The Agency may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application. If the application is complete and granting it will not violate the Act or Board regulations, the Agency will grant the permit.
- e) When an application is denied because it fails to comply with the Act or Board regulations, any fees submitted with the application will be non-refundable. Any subsequent re-filing of the application will be considered a new application for which an application fee must be included in accordance with Section 22.2 of the Act.
- f) When the Agency rejects an application because it is incomplete, any fees submitted will be non-refundable. The applicant can receive credit for the payment with a resubmitted application if the resubmittal is complete and returned to the Agency within 30 days after the initial date-stamped rejection.

(Source: Amended at 36 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 809.212 Duration of Special Waste Hauling Permits**

- a) Prior to January 1, 2013, all AH permits issued under this Part will be issued for a period not to exceed one year and are renewable. Beginning January 1, 2013, all permits under this Part will be issued for a period not to exceed three years and are renewable.
- b) Applications for renewal of a special waste hauling permit should be made prior to the expiration date of the permit on the application forms prescribed in Section 809.302.

(Source: Amended at 36 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2012, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board