

ILLINOIS POLLUTION CONTROL BOARD

November 20, 2014

IN THE MATTER OF: )  
RCRA SUBTITLE D (MUNICIPAL SOLID ) R15-8  
WASTE LANDFILL) UPDATE, USEPA ) (Identical-in-Substance  
AMENDMENTS (January 1, 2014 through ) Rulemaking - Land  
June 30, 2014) )

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

**SUMMARY OF TODAY'S ACTION**

This identical-in-substance rulemaking adopts updates to incorporations by reference in the Illinois Resource Conservation and Recovery Act (RCRA) Subtitle D Municipal Solid Waste Landfill (MSWLF) regulations. This proceeding also makes incorporation by reference-related corrections to the RCRA Subtitle D MSWLF regulations and corrects the format of citations to *Code of Federal Regulations* provisions and punctuation in affected segments of the text.

The United States Environmental Protection Agency (USEPA) did not amend its RCRA Subtitle D MSWLF regulations during the period of January 1, 2013 through June 30, 2013. Rather, the Board has determined that the amendments are needed to ensure that the Illinois regulations are identical-in-substance to the federal requirements from which the Board derived them. *See* 415 ILCS 5/7.2(b) (2012); RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013), slip op. at 2-4. The Board has further determined that correction of previously adopted identical-in-substance provisions is needed to ensure that the Illinois rules are identical-in-substance to the corresponding federal requirements. *See* 415 ILCS 5/7.2(b) (2012); RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013), slip op. at 4-5.

These adopted amendments update the version of federal regulations incorporated by reference to the latest version of the *Code of Federal Regulations*. The incorporations by reference in 35 Ill. Adm. Code 810.104 relate to the RCRA Subtitle D MSWLF regulations. This proposal would also make corrections to Appendix A to 35 Ill. Adm. Code 814 as adopted in RCRA Subtitle D Amendments (Amendments to 35 Ill. Adm. Code 810, 811, and 814), R93-10 (Sep. 15, 1993).

**Statutory Authorities**

Sections 7.2 and 22.40(a) of the Act (415 ILCS 5/7.2 and 22.40(a) (2012)) require the Board to adopt regulations that are “identical in substance” to MSWLF regulations adopted by the USEPA. These USEPA rules implement Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle D) (42 U.S.C. §§ 6941 *et seq.* (2012)). The federal RCRA Subtitle D MSWLF regulations are found at 40 C.F.R. 258. Section 22.40(a) also provides that Title VII of the Environmental Protection Act (Act) and Section 5 of the

Administrative Procedure Act (5 ILCS 100/5-35 and 5-40 (2012)) do not apply to the Board's adoption of identical-in-substance regulations.

The Board will immediately file the adopted amendments with the Office of the Secretary of State, at which time the amendments will become effective.

### **BOARD DETERMINATIONS ON NECESSARY AMENDMENTS**

The Board has determined that the present amendments are necessary for two reasons: (1) the updates to the incorporations by reference make the Illinois regulations identical-in-substance to the federal requirements upon which they are based; and (2) prompt correction of the error in the text ensures that the Illinois regulations are identical-in-substance to the corresponding federal requirements.

The Board has observed as follows in the past:

When USEPA relies on other federal rules for substantive requirements under RCRA, USEPA does not need to update the version of the rules as amendments occur. The version of the relied-on federal rule is not specified in the hazardous waste regulation, so that the requirements that apply are the latest version of that substantive rule. RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013), slip op. at 6 (footnote omitted).

Thus, the Board must periodically update the version of the federal regulations incorporated by reference in the Illinois regulations. *See id.* at 7.

The Board recently updated the incorporations by reference to federal regulations in 35 Ill. Adm. Code 720.111(b) in UIC Update, USEPA Amendments (January 1, 2013 through June 30, 2013), R14-1, RCRA Subtitle D (Municipal Solid Waste Landfill) Update, USEPA Amendments (January 1, 2013 through June 30, 2013), R14-2, RCRA Subtitle C Update, USEPA Amendments (January 1, 2013 through June 30, 2013), R14-3 (Feb. 6, 2014); RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013). Since those updates, the 2014 version of the *Code of Federal Regulations* will soon become available. Further, several federal requirements incorporated by reference have been revised. The Board determines that an update is needed at this time.

Further, where an error exists in the text, so that the Illinois text is different from the corresponding federal text or the meaning of a requirement is unclear, the Board should correct the error at the earliest convenient time. Where the error is egregious, the Board should correct the error as soon as possible. *See* RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013), slip op. at 5.

In the present instance, corrections of the error observed by the Board is needed. The error represents a potentially significant problem in the text of the affected provision. There is no way to tell the next time USEPA will amend corresponding 40 C.F.R. 258 that will prompt amendments to 35 Ill. Adm. Code 814, and there is no need to wait until USEPA amendments prompt substantive revisions to other segments of the Illinois hazardous waste rules.

Accordingly, the Board makes the needed correction at this time for the sake of administrative convenience and efficiency.

### **PUBLIC COMMENTS**

The Board adopted a proposal for public comment in this matter on August 21, 2014. Notices of Proposed Amendments appeared in the September 12, 2014 issue of the *Illinois Register*, at 38 Ill. Reg. 18608 (Part 810) and 18617 (Part 814). The Board received public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*, until October 27, 2014.

The Board received no public comments on the proposed amendments. The Board did receive a copy of the text of the amendments from the Joint Committee on Administrative Rules (JCAR) that indicated revisions that JCAR wanted the Board to make in the text. Table 5 below indicates the several revisions in the text that the Board has made based on the JCAR suggestions. Table 6 indicates the changes that the Board has declined to make, including a brief statement of the Board's reasons for declining to make each change.

The Board now proceeds to adopt the amendments. The Board will immediately file the adopted amendments with the Office of the Secretary of State, at which time they will become effective.

### **DISCUSSION**

The following discussion begins with a brief description of the updates to the incorporations by reference to the *Code of Federal Regulations*. The second segment is a brief description of the corrections that are necessary to various incorporations by reference. The second segment describes amendments that the Board cannot make in this proceeding and explains why the Board cannot do so. The third segment of discussion describes the miscellaneous amendments and corrections that do not directly relate to the incorporations by reference. Finally, this discussion ends with a description and explanation of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. The text of the amendments begins after the opinion segment of this opinion and order.

#### **Discussion of the Particular Actions in This Docket**

##### **Updates to Incorporations by Reference to the Code of Federal Regulations—Section 810.104**

The Board has centrally located the incorporations by reference for the RCRA Subtitle D regulations in 35 Ill. Adm. Code 810.104. The incorporations by reference for segments of Illinois landfill regulations that are not related to RCRA Subtitle D are also located in 35 Ill. Adm. Code 810.104. Some of the incorporations by reference serve both the RCRA Subtitle D regulations and the Illinois landfill requirements that are not directly derived from federal requirements.

The incorporations by reference to the *Code of Federal Regulations* involve segments of Title 40, primarily provisions of 40 C.F.R. 258 (MSWLF requirements). The incorporations by reference also include provisions of 40 C.F.R. 3 (electronic reporting requirements) and a provision of 40 C.F.R. 141 (a federal drinking water requirement).

The 2014 edition of Title 40 of the *Code of Federal Regulations* is now available. For this reason, the Board has proposed revising all incorporations by reference to segments of the *Code* to the 2014 edition. As is considered in the below discussion of incorporation by reference to the *Code of Federal Regulations* segments cited in Appendix A to 35 Ill. Adm. Code 814, the Board believes that using the latest version of the *Code* makes the Illinois regulations have the same effect in Illinois as would the USEPA requirements if directly implemented in this State.

Table 1, below, itemizes the several incorporations by reference that the Board has updated.

### **Corrections to Incorporations by Reference—Appendix A to Part 814**

A recent examination of the relationships between segments of the Illinois landfill regulations and the USEPA requirements from which they are derived revealed errors in Appendix A to 35 Ill. Adm. Code 814. The Board has determined that there is a need for a number of corrections to the text. These corrections all relate to citations to *Code of Federal Regulations* provisions. All of the errors arose in the initial adoption of Appendix A. One series of corrections relates to the need for incorporation by reference to the cited provisions. The second series of corrections relates to the format of the citations in Appendix A. A third potential error is the inclusion of a citation to the 1992 version of the *Code of Federal Regulations*.

Table 2, below, identifies the several corrections made to Appendix A and the associated new incorporations by reference added by the Board. Brief discussion of the corrections follows.

**The Need for Incorporation by Reference.** Two of the preamble statements of Appendix A to 35 Ill. Adm. Code 814 state in significant part as follows:

An existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 shall comply with the following requirements of the federal Subtitle D standards under 40 CFR 258 (1992) . . . . Subsection (a) of Appendix A to 35 Ill. Adm. Code 814; *see* subsection (c) of Appendix A to 35 Ill. Adm. Code 814 (which begins with “A lateral expansion of an existing MSWLF unit”).

This statement requires compliance with the several listed federal provisions that follow each statement.

The Board adopted Appendix A in RCRA Subtitle D Amendments (Amendments to 35 Ill. Adm. Code 810, 811, and 814), R93-10 (Sep. 15, 1993). By imposing the federal requirements on regulated entities, the Board should have incorporated the federal provisions by reference as provided by the Administrative Procedure Act. *See* 5 ILCS 100/5-75 (2012).

The Board now corrects the error. The Board has added the parenthetical language, “each incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1),” offset by commas after the general citation to 40 C.F.R. 258 in each of the preamble statements. The Board has added the cited federal provisions to the list of documents incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1).

Landfill units in Illinois are still subject to the transitional requirements of Appendix A to 35 Ill. Adm. Code 814. Any landfill that was to continue operation was to have applied for a permit modification under the new landfill standards before September 18, 1992.<sup>1</sup> 35 Ill. Adm. Code 814.104(c); *see* 35 Ill. Adm. Code 814.501 (chemical and putrescible waste landfills required to comply with the new landfill standards before this date). All landfills were to have complied with the new landfill standards or close no later than October 9, 1993.<sup>2</sup> 35 Ill. Adm. Code 814.107(a); *see* 415 ILCS 5/21(d) (2012). Landfills that could not meet specified location requirements were to have closed by October 9, 1996, which the Agency could extend up to two years under limited circumstances. *See* 35 Ill. Adm. Code 814.302(f) and (g) and 814.402(f) and (g)).

The federal regulations require the owner or operator to conduct post-closure care of a MSWLF facility for 30 years after its closure. *See* 40 C.F.R. 258.61(a) (2013). This requirement is listed in the transitional requirements. *See* Appendix A to 35 Ill. Adm. Code 814. The MSWLF units governed by 35 Ill. Adm. Code 807 were to have closed by September 18, 1992.<sup>3</sup> *See* 35 Ill. Adm. Code 814.501(a). Thirty years after that date is September 18, 2022.

For the foregoing reasons, the transitional provisions of Appendix A to 35 Ill. Adm. Code 814 continue to apply to landfill facilities in Illinois. The number of pertinent facilities will begin to diminish, and there may be no more facilities to which Appendix A will apply in the next few years. The number of facilities to which the transitional provisions apply will not reduce to zero before 2022.

Correction of the transitional provisions by adding the incorporation by reference to the cited federal provisions is needed. The correction will clarify and specifically identify the federal transitional requirements that apply to the landfill facilities considered existing facilities

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<sup>1</sup> The date 48 months after the effective date of 35 Ill. Adm. Code 814.

<sup>2</sup> Small landfills were allowed to continue receiving waste on a limited basis until April 9, 1994. 35 Ill. Adm. Code 814.107(b). A landfill that the Agency determined was necessary to receive flood-related waste was allowed to continue operation until April 8, 1994. 35 Ill. Adm. Code 814.107(c).

<sup>3</sup> The effective date of 35 Ill. Adm. Code 814 was September 18 1990. *See* 14 Ill. Reg. 15850 (Sep. 28, 1992). This is earlier than the October 9, 1993 date when existing landfill facilities were to have ceased accepting waste or to have complied with the standards of 40 C.F.R. 258. *See* 40 C.F.R. 258.1(d)(4) (2013); *but see* 40 C.F.R. 258.1(e) (allowing later deadlines for specified small landfills and landfills designated by a state for accepting flood waste in specified states).

to which 35 Ill. Adm. Code 807 applied when the Board adopted the RCRA Subtitle D MSWLF standards.

**Version of the Federal Regulations Incorporated by Reference.** The Board routinely updates the version of the *Code of Federal Regulations* incorporated by reference at 35 Ill. Adm. Code 810.104 to the latest version. The Board believes that this ensures that the Illinois regulations remain identical-in-substance to the federal requirements.

For this reason, the Board has updated all existing incorporations by reference to *Code of Federal Regulations* provisions to the latest version for provisions with which active facilities must comply. The situation may be different for the transitional provisions in Appendix A to 35 Ill. Adm. Code 814.

The current text of Appendix A cites the 1992 version of the *Code of Federal Regulations*. That was the latest version of the *Code* available when the Board proposed the addition of Appendix A in docket R93-10. It may have been the latest version available when the Board adopted the R93-10 amendments.<sup>4</sup> Imposing later-adopted requirements on those existing facilities could involve retroactive application of those later-adopted requirements.

The Board examined the several federal provisions imposed on existing facilities in Appendix A and determined the amendments made to those provisions since July 1, 1992. The examination reveals that no federal amendments since 1992 to the USEPA rules listed in Appendix A to 35 Ill. Adm. Code 814 impose new requirements on regulated entities. In fact, all of the amendments either delayed effective dates for the federal requirements or instilled regulatory flexibility for landfill owners or operators. Table 3 at the end of the opinion segment of this opinion and order lists the various listed provisions and the federal amendments to those provisions since 1992.

Because no amendments since 1992 increase the regulatory burden on any entities, the Board can use the 2014 edition of the *Code of Federal Regulations* in the several incorporations by reference added for the purpose of the transitional provisions of Appendix A to 35 Ill. Adm. Code 814. Use of the latest version facilitates access to the documents involved. Use of the latest version also facilitates future updates to the incorporations by reference.

Should USEPA amend any of the provisions listed in Appendix A to 35 Ill. Adm. Code 814 in a way that increases the burden of compliance, the Board could decide to exclude those amendments. The Board does not wish to retroactively apply later-adopted requirements to any

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<sup>4</sup> The Government Printing Office updates Title 40 of the *Code* effective July 1 of each year. The GPO actually publishes the volumes a few weeks after July 1, as they are available. In recent years, segments of Title 40 have been available in an electronic format as soon as early August, while other segments do not become available late in October. In 1993, the only version of Title 40 available to the Board was in hard copy. Generally, the digital copies are available weeks before the hard copies. Thus, adoption of the R93-10 amendments in September 1993 likely occurred before the Board had access to the 1993 version of the *Code*.

entity unless USEPA has clearly indicated that those requirements should apply to the existing facility.

**Correction of Citations Format.** The format of several of the citations to the *Code of Federal Regulations* is incorrect. The Board has found two format features that need correction.

First, the Board generally does not include the date version of a cited *Code* provision in the text of substantive provisions that rely on that provision. The Board prefers to include the date only in the incorporation by reference. This facilitates future updates and avoids the potential for conflict between the version cited in the substantive provision that relies on the reference and the date used in the supporting incorporation by reference.

The Board has removed the parenthetical date from the references to 40 C.F.R. 258 in paragraphs (a) and (c) of Appendix A to 35 Ill. Adm. Code 814.

Second, there is an erroneous space between the section number and subsection designation in a few of the citations to federal provisions in Appendix A. The standard format omits that space. The Board has corrected the format of the *Code of Federal Regulations* citations by removing the spaces.

#### **Additional Corrections to Open Provision—Appendix A to Part 814**

When the Board opens any provision for amendment, the Board reviews the text to determine whether corrections are necessary. The corrections sought include corrections in spelling, grammar, or punctuation. The corrections may involve updating dated references to laws and regulations. The corrections may seek to accommodate changes in the Board's chosen style or the style and format sought by JCAR or the Office of the Secretary of State.

This proceeding includes several corrections to one of the open provisions, Appendix A to 35 Ill. Adm. Code 814. The Board found no additional corrections that are necessary to 35 Ill. Adm. Code 810.104. The Board does not describe the additional corrections in this discussion. Table 4, below, lists the several corrections.

#### **Requests for Comments**

The Board requested that the Agency and the regulated community carefully review the Board's updates and corrections related to incorporations by reference to the *Code of Federal Regulations*. The Board further requested public comments on the many additional corrections that the Board has included in this proceeding.

The Board specifically requested comments on the following aspects of the proposed amendments:

1. The updates of the existing incorporations by reference in 35 Ill. Adm. Code 810.104(a)(1).
2. The added incorporations by reference to the various federal provisions listed in Appendix A to 35 Ill. Adm. Code 814.

3. The removal of the 1992 version date from the references to the *Code of Federal Regulations* in Appendix A to 35 Ill. Adm. Code 814.
4. Use of the 2014 version of the *Code of Federal Regulations* incorporated by reference for the purposes of Appendix A to 35 Ill. Adm. Code 814.
5. Correction of the format of the *Code of Federal Regulations* in Appendix A to 35 Ill. Adm. Code 814.

The Board received no comments in response.

### **JCAR-Suggested Revisions to the Text**

The Board received a copy of the text of the proposed amendments from JCAR that indicated revisions which JCAR suggests. The JCAR-suggested revisions are all non-substantive changes. The Board has made a number of the JCAR-suggested revisions. Table 5 below indicates those revisions. The Board has declined to make a limited number of the JCAR-suggested revisions. Table 6 below lists the JCAR suggestions that the Board has declined to follow. There is no further discussion of most of the JCAR-suggested revisions than what appears in Table 5 or Table 6. What follows is limited consideration of three of the JCAR suggestions.

**Revised Cross-Reference Format.** The Secretary of State's codification rules allow two formats for citations to subparts, appendices, and tables in the *Illinois Administrative Code*. See 1 Ill. Adm. Code 100.370(a)(8) and (a)(9). The rules allow citation to "Appendix A to 35 Ill. Adm. Code 814" or to "35 Ill. Adm. Code 814.Appendix A." Similarly, the rules would allow citation to "Subpart A of 35 Ill. Adm. Code 814" or to "35 Ill. Adm. Code 814.Subpart A."

For the last several years, JCAR has preferred that the Board use the format "Appendix A to 35 Ill. Adm. Code 814," and the Board revised every appearance in the style of "35 Ill. Adm. Code 814.Appendix A" or "35 Ill. Adm. Code 814.Subpart A" to the formerly JCAR-preferred style, Appendix A to 35 Ill. Adm. Code 814" or "Subpart A of 35 Ill. Adm. Code 814." in existing rules to conform with JCAR's stylistic preference. See, e.g., RCRA Subtitle C Update, USEPA Amendments (January 1, 2004 through June 30, 2004 and October 25, 2004), R05-2 (Mar. 3, 2005); see also, e.g., UIC Corrections, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-5, RCRA Subtitle D Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-6, RCRA Subtitle C Update, USEPA Amendments (January 1, 2005 through June 30, 2005 and August 1, 2005), R06-7 (Jan, 5, 2006) (making the same stylistic changes for *Code of Federal Regulations* citations).

In recent months, JCAR has been requesting reversion to the format, "35 Ill. Adm. Code 814.Appendix A" and "35 Ill. Adm. Code 814.Subpart A." With this opinion and order, the Board will begin following JCAR's suggested format changes in this regard. The process of completing the requested cross-reference format changes will require making the JCAR-suggested changes in several rulemakings over a period of several years. The Board will not make a concerted effort to open provisions for the exclusive purpose of making the format changes. Rather, the Board will make the change as provisions in the Board's rules are opened

for needed amendments. Until the process of conversion is complete, the Board does not intend any difference in meaning between the two styles for cross-reference citations.

**The Use of Em-Dashes.** JCAR consistently changes em-dashes in document titles to an en-dash separated by spaces. Thus, in today’s amendments, JCAR has suggested that the Board change the format of a title like “Financial Accounting Standard Board (FASB) Accounting Standards—Current Text” to “Financial Accounting Standard Board (FASB) Accounting Standards – Current Text.” See Table 6 below. The Board has consistently declined making the change on the basis that the spaces are not ordinarily use with an em-dash. *See, e.g., RCRA Subtitle C Update, USEPA Amendments (July 1, 2013 through December 31, 2013 and January 3, 2014), R14-13 (Apr. 17, 2014).*

One reference explains that spaces before and after the dash are permissible where needed to facilitate a line break in digital text. *See The Redbook: A Manual on Legal Style* (West Group 2002), ¶ 1.49, at p. 30. The Board believes that there is no need for spaces before and after the dash to facilitate line breaks. Thus, the Board continues to decline to make the change.

**Retaining Commas to Offset the Final Element of a Series.** The Board has consistently used a comma to offset the final element of a series. JCAR has suggested removal of the final comma. See Table 6 below. The Board notes that the added comma adds certainty in language, and legal writers recommend retaining the final comma for that purpose. *See, e.g., See The Redbook: A Manual on Legal Style* (West Group 2002), ¶ 1.3(a), at pp. 3-4; *see also The Chicago Manual of Style*, 14th ed. (The University of Chicago Press 1993), ¶ 5.57, at p. 173. For this reason, the Board continues to decline to remove the final comma of a series.

### **General Revisions and Deviations from the Federal Text**

The Board routinely includes the following paragraphs in the opinion segment for each identical-in-substance rulemaking. These paragraphs explain the Board’s approach to incorporating federal requirements into Illinois regulations. These paragraphs can explain the basis for many corrections to existing provisions even where new rules or amendments are not involved.

The Board routinely makes changes in federal language and makes corrections in identical-in-substance proceedings. The revisions described below do not occur in every proceeding. Nevertheless, the Board includes this discussion in this identical-in-substance RCRA Subtitle C rulemaking to outline the Board’s general approach to federal regulations in the context of an identical-in-substance proceeding.

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors found in the text in the course of these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the *Illinois Administrative Code*.

### **Whether a Regulatory Provision Involves Agency or Board Action**

Section 7.2(a)(5) of the Act requires the Board to specify those portions of the program over which USEPA will retain decision making authority. Based on the general division of functions within the Act and other Illinois statutes, the Board is also to specify which State agency is to make decisions.

In situations in which the Board has determined that USEPA will retain decision-making authority, the Board has replaced “Regional Administrator” with USEPA, so as to avoid specifying which office within USEPA is to make a decision.

In some identical-in-substance rules, certain decisions pertaining to a permit application are not appropriate for the Agency to consider. In determining the general division of authority between the Agency and the Board, the following factors should be considered:

1. Whether the entity making the decision is applying a Board regulation, or taking action contrary to, *i.e.*, “waiving,” a Board regulation. It generally takes some form of Board action to “waive” a Board regulation.
2. Whether there is a clear standard for action such that the Board can give meaningful review to an Agency decision.
3. Whether the action would result in exemption from the permit requirement itself. If so, Board action is generally required.
4. Whether the decision amounts to “determining, defining or implementing environmental control standards” within the meaning of Section 5(b) of the Act. If so, it must be made by the Board.

There are four common classes of Board decisions: variance, adjusted standard, site-specific rulemaking, and enforcement. The first three are methods by which a regulation can be temporarily postponed (variance) or adjusted to meet specific situations (adjusted standard or site-specific rulemaking). There often are differences in the nomenclature for these decisions between the USEPA and Board regulations.

### **Updating Citations to the Code of Federal Regulations**

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As discussed above, the most recent versions of the *Code of Federal Regulations* available to the Board are the July 1, 2014 edition for USEPA (Title 40) regulations.

As is explained above, the principal impetus for Board action in this proceeding is the need to update the incorporations by reference to the *Code of Federal Regulations*.

### **Stylistic Revisions to Federal Text**

The Board routinely revises the text of federal rules in certain ways to reflect the Board's preferred stylistic preferences in the text. The following bulleted list explains many of those routine changes:

- The Board routinely changes “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred is not necessarily a natural person. The Board uses “he or she” where it appears that the text refers to a natural person.
- The Board usually changes “which” to “that” for restrictive relative clauses. The Board always uses “which” preceded by a comma for all non-restrictive relative clauses. The Board uses “which” without a comma for a restrictive relative clause where another restrictive relative clause precedes the restrictive relative clause in the same sentence.
- The Board always substitutes “must” for “shall” for imperative statements. The Board no longer uses “shall” in any sense. The use of “shall” in ordinary language is waning, and “must,” unlike “shall,” has no non-imperative senses.
- The Board always substitutes “must” for “may” for provisions that allow administrative discretion, adding a statement that makes the contingency dependent on an administrative determination, and framing the administrative determination that the Board or Agency must make.
- The Board uses “may” only where the contingency of a provision is optional.
- The Board uses “will” when explaining future action that the Board is to take or action that USEPA has stated that it will take.
- The Board capitalizes the section headings as titles and changes all subpart and section headings that USEPA has stated as a question to an affirmative statement.
- The Board ordinarily changes specific requirements that USEPA has imposed in plural terms to more specific terms in singular.
- The Board ordinarily changes requirements that USEPA has imposed in the passive voice to requirements in active voice imposed on specific persons.
- The Board frequently adds the subject to individual requirements in serial listings of requirements that USEPA has drafted as sentence fragments.
- The Board routinely substitutes “or” for most instances where “/” appears in the federal base text, using “and” where more appropriate.

- Where USEPA creates an alternative plural case by adding a parenthetical “(s)” or “(es)” at the end of a noun, the Board generally uses only the plural, altering the rest of the language in the sentence
- The Board routinely subdivides run-on sentences into two or more shorter sentences that allow easier comprehension.
- The Board routinely corrects punctuation within sentences. Examples include adding a comma immediately before the conjunction before the final element of a series, removing unnecessary commas after the ending conjunction, changing the ending comma at the end of some provisions to a semicolon or a period, ensuring the consistency of the punctuation at the ends of coordinate provisions, etc.
- The Board routinely changes “and/or” to “or” (unless “and” is more appropriate in the context). The Board intends that “or” should mean “one or both,” and the Board will use the construction “either . . . or” where the preferred meaning is “one but not both.”
- The Board routinely changes references to the United States Environmental Protection Agency as “USEPA” or “USEPA Region 5,” as appropriate. JCAR has requested that the Board do so.

### **Historical Summaries of the RCRA Subtitle C and UIC Regulations**

While the Board formerly included a recitation of a historical summary of the Illinois RCRA Subtitle C and UIC regulations and programs in the opinion segment of every update to these regulations. The Board ended that practice in RCRA Subtitle C Update, USEPA Amendments (January 1, 2011 through June 30, 2011), R12-7 (Apr. 19, 2012). As a result, no historical summary appears as a segment of this opinion and order. Persons wishing to review the historical summary of the Illinois RCRA Subtitle C and UIC regulations and programs as it stood on July 21, 2014 must consult the Board’s website to do so.

### **Tables of Updated Incorporations by Reference and Corrections to and Clarifications of the Base Text**

The tables below list the updated incorporations by reference and the several corrections that the Board has included in this proceeding.

Table 1 Lists the updates to incorporations by reference to the *Code of Federal Regulations* that the Board has included in this docket.

Table 2 Lists the several incorporations by reference to *Code of Federal Regulations* provisions listed in Appendix A to 35 Ill. Adm. Code 814 that the Board has included.

- Table 3 Lists the amendments that USEPA has undertaken to the *Code of Federal Regulations* provisions listed in Appendix A to 35 Ill. Adm. Code 814. Table 3 indicates the *Code of Federal Regulations* provision involved, the date of and *Federal Register* citation to the amendments, the segments of text within the provision that were affected by the amendments, and a brief description of the amendments.
- Table 4 Lists the various additional corrections to open provisions that the Board has found necessary and included in this proceeding.
- Table 5 Lists the revisions made to the text of the amendments from that proposed and set forth in the Board's opinion and order of August 21, 2014.
- Table 6 Lists suggestions for revisions submitted to the Board by JCAR that the Board has declined to make.

**Table 1:  
Incorporations by Reference to the *Code of Federal Regulations*  
Updated to the 2014 Edition in 35 Ill. Adm. Code 810.104(b)**

Citation Updated
40 CFR 3.2
40 CFR 3.3
40 CFR 3.10
40 CFR 3.2000
40 CFR 141.40
Appendix I to 40 CFR 258
Appendix II to 40 CFR 258

**Table 2:  
Corrections to Citations in Appendix A and Associated  
Incorporations by Reference Added to 35 Ill. Adm. Code 81.104**

Section	Revision(s)
810.104(a)(1), 40 CFR 258.10(a), (b), and (c)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.

810.104(a)(1), 40 CFR 258.11(a)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.12(a)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.13	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.14	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.15	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.16(a)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.20	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.23	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.26	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.27	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.28	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.29(a) and (c)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.60(c)(2), (c)(3), (d), (f), (g), and (i)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.61(a), (c)(3), and (d)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.70(a)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.

810.104(a)(1), 40 CFR 258.71(a)(2)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.72(a)(1) and (a)(2)	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.73	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
810.104(a)(1), 40 CFR 258.74	Added the incorporation by reference formerly omitted for document referenced in Appendix A to 35 Ill. Adm. Code 814.
814.Appendix A, ¶ (a)	Removed the parenthetical date “(1992)”; added the parenthetical “each incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1)” offset by commas..
814.Appendix A, ¶ (a)(1)(A)	Removed the space to correct the format of “40 CFR 258.10 (a)” to 40 CFR 258.10(a).”
814.Appendix A, ¶ (a)(1)(B)	Removed the space to correct the format of “40 CFR 258.11 (a)” to 40 CFR 258.11(a).”
814.Appendix A, ¶ (a)(1)(D)	Removed the space to correct the format of “40 CFR 258.16 (a)” to 40 CFR 258.16(a).”
814.Appendix A, ¶ (a)(2)(F)	Removed the space to correct the format of “40 CFR 258.29 (a)” to 40 CFR 258.290(a).”
814.Appendix A, ¶ (a)(3)(A)	Removed the space to correct the format of “40 CFR 258.60 (c)(2)” to 40 CFR 258.60(c)(2).”
814.Appendix A, ¶ (a)(3)(B)	Removed the space to correct the format of “40 CFR 258.61 (a)” to 40 CFR 258.61(a).”
814.Appendix A, ¶ (c)	Removed the parenthetical date “(1992)”; added the parenthetical “each incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1)” offset by commas..
814.Appendix A, ¶ (c)(1)(A)	Removed the space to correct the format of “40 CFR 258.10 (a)” to 40 CFR 258.10(a).”
814.Appendix A, ¶ (c)(1)(B)	Removed the space to correct the format of “40 CFR 258.11 (a)” to 40 CFR 258.11(a).”
814.Appendix A, ¶ (c)(1)(C)	Removed the space to correct the format of “40 CFR 258.12 (a)” to 40 CFR 258.12(a).”

814.Appendix A, ¶ (c)(1)(G)	Removed the space to correct the format of “40 CFR 258.16 (a)” to 40 CFR 258.16(a).”
814.Appendix A, ¶ (c)(3)(B)	Removed the space to correct the format of “40 CFR 258.61 (a)” to 40 CFR 258.61(a).”
814.Appendix A, ¶ (c)(4)(B)	Removed the space to correct the format of “40 CFR 258.71 (a)(2)” to 40 CFR 258.71(a)(2).”
814.Appendix A, ¶ (c)(4)(C)	Removed the space to correct the format of “40 CFR 258.72 (a)(1)” to 40 CFR 258.72(a)(1).”

**Table 3:  
Amendments Since 1992 to Federal Provisions Listed in  
Appendix A to 35 Ill. Adm. Code 814**

Listed USEPA Rule	Date of Amendments	Subsection(s) Affected	Nature of Amendments
40 CFR 258.10(a), (b), and (c) (Airport safety)	October 15, 2003 (68 Fed. Reg. 59333)	Note Added	Added explanation of a new federal law that involves the Federal Aviation Administration in landfill siting near small airports.
40 CFR 258.23 (Control of explosive gases)	July 29, 1997 (62 Fed. Reg. 40708)	(e)	Alternative requirements to allow regulatory flexibility for small landfills.
40 CFR 258.28 (Liquids restrictions)	August 13, 2001 (66 Fed. Reg. 42441)	(a)(3)	Regulatory relief for a single facility outside Illinois.
40 CFR 258.28 (Liquids restrictions)	June 14, 2005 (70 Fed. Reg. 34538)	(c)(1)	Removing mandatory use of USEPA methods to provide regulatory flexibility, adding updated USEPA methods for use.
40 CFR 258.29(a) and (c) (Recordkeeping requirements)	October 13, 2005 (70 Fed. Reg. 59848)	(d)	Allowing use of electronic reporting.

40 CFR 258.60(c)(2) and (c)(3), (d), (f), (g), and (i) (closure criteria)	July 29, 1997 (62 Fed. Reg. 40708)	(b)(3)	Alternative requirements to allow regulatory flexibility for small landfills.
40 CFR 258.70(a) (Applicability of financial assurance requirements)	November 27, 1996 (61 Fed. Reg. 60328)	(c)	Added financial assurance mechanisms for use by municipalities.
40 CFR 258.74 (Financial assurance mechanisms)	October 1, 1993 (58 Fed. Reg. 51536)	(a)(5), (b)(1), (c)(1), and (d)(1)	Delayed effective date of financial assurance requirements. (General compliance date also delayed.)
40 CFR 258.74 (Financial assurance mechanisms)	August 7, 1995 (60 Fed. Reg. 40104)	(a)(3), (a)(4), (a)(6), (c)(3), and (d)(3)	Corrections of typographic errors in financial assurance provisions.
40 CFR 258.74 (Financial assurance mechanisms)	October 6, 1995 (60 Fed. Reg. 52337)	(a)(5), (b)(1), (c)(1), and (d)(1)	Delayed effective date for landfills in dry and remote areas.
40 CFR 258.74 (Financial assurance mechanisms)	November 27, 1996 (61 Fed. Reg. 60328)	(f), (g), and (k)	Added financial assurance mechanisms for use by municipalities.
40 CFR 258.74 (Financial assurance mechanisms)	April 10, 1998 (63 Fed. Reg. 17706)	(e), (g), and (k)	Added financial assurance mechanisms for use by corporations.

**Table 4:  
Additional Corrections Included in this Docket**

Section	Source	Revision(s)
810 table of contents	JCAR	Added a semicolon before “amended in R10-9” to offset the entry in the series.
810.104(a)(6)	JCAR	Added a comma after “Update IIIB.”
814 table of contents	JCAR	Changed “Appendix A” to “814.APPENDIX A”; removed the note re capitalization indicating statutory language.

814.Appendix A, ¶ (a)	Board	Changed “shall” to “must.”
814.Appendix A, ¶ (a)(1)	JCAR	Corrected “40 CFR 258.61” to “40 CFR 258.10.”
814.Appendix A, ¶ (a)(1)(C)	Board	Added the ending conjunction “and.”
814.Appendix A, ¶ (a)(1)(D)	Board	Changed the ending semicolon to a period.
814.Appendix A, ¶ (a)(2)(E)	Board	Added the ending conjunction “and.”
814.Appendix A, ¶ (a)(2)(F)	Board	Changed the ending semicolon to a period.
814.Appendix A, ¶ (a)(3)(A)	Board	Added a comma after “(g)” to offset the final element of the series; added the ending conjunction “and.”
814.Appendix A, ¶ (a)(3)(B)	Board	Added a comma after “(c)(3)” to offset the final element of the series; changed the ending semicolon to a period
814.Appendix A, ¶ (b)	Board	Added “of this Appendix A” after “subsection (a).”
814.Appendix A, ¶ (c)	Board	Changed “shall” to “must.”
814.Appendix A, ¶ (c)(1)(A)	Board	Added a comma after “(b)” to offset the final element of the series.
814.Appendix A, ¶ (c)(1)(F)	Board	Added the ending conjunction “and.”
814.Appendix A, ¶ (c)(1)(G)	Board	Changed the ending semicolon to a period.
814.Appendix A, ¶ (c)(2)(E)	Board	Added the ending conjunction “and.”
814.Appendix A, ¶ (c)(2)(F)	Board	Changed the ending semicolon to a period.
814.Appendix A, ¶ (c)(3)(A)	Board	Added a comma after “(g)” to offset the final element of the series; added the ending conjunction “and.”

814.Appendix A, ¶ (c)(3)(B)	Board	Added a comma after “(c)(3)” to offset the final element of the series; changed the ending semicolon to a period
814.Appendix A, ¶ (d)	Board	Corrected the designation of the second subsection (c) to subsection (d).
814.Appendix A, ¶ (d)	Board	Changed “shall” to “must”; changed “of this appendix” to “of this Appendix B”; added a comma after “(c)(3)” to offset the final element of the series; changed the ending semicolon to a period

Table 5:  
Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
810 table of contents	JCAR	Added a semicolon before “amended in R10-9” to offset the entry in the series.
810.104(a)(1), 40 CFR 10	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 11	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 12	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 13	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 14	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 15	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 16	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 20	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 23	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”

810.104(a)(1), 40 CFR 26	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 27	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 28	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 29	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 60	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 61	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 70	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 71	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 72	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 73	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(1), 40 CFR 74	JCAR	Changed “Appendix A to 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Appendix A.”
810.104(a)(6)	JCAR	Added a comma after “Update IIIB.”
814 table of contents	JCAR	Changed “Appendix A” to “814.APPENDIX A”; removed the note re capitalization indicating statutory language.
814.Appendix A, ¶ (a)(1)	JCAR	Corrected “40 CFR 258.61” to “40 CFR 258.10.”
814.Appendix A, ¶ (b)	JCAR	Reverted “Subpart F of 35 Ill. Adm. Code 814” to “35 Ill. Adm. Code 814.Subpart F.”
814.Appendix A, ¶ (d)	JCAR	Changed “shall” to “must.”

814.Appendix A, ¶ (d)(2)	JCAR	Reverted “Subpart F of 35 Ill. Adm. Code 807” to “35 Ill. Adm. Code 807.Subpart F.”
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Table 6  
Requested Revisions to the Text of the Proposed Amendments Not Made in Final Adoption

Section Affected	Source(s) of Request: Requested Revision(s)	Explanation
810.104(a)(1), 40 CFR 10	JCAR: Remove the comma from before “and (c).”	The Board prefers to offset the final element of a series using a comma. <i>See The Chicago Manual of Style</i> , 14th ed. (The University of Chicago Press 1993), ¶ 5.57, at p. 173; <i>The Redbook: A Manual on Legal Style</i> (West Group 2002), ¶ 1.3(a), at pp. 3-4.
810.104(a)(1), 40 CFR 60	JCAR: Remove the comma from before “and (i).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.
810.104(a)(1), 40 CFR 61	JCAR: Remove the comma from before “and (d).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.
810.104(a)(2)	JCAR: Change the em-dash in the document titles to an en-dash preceded and followed by spaces (twice).	The Board prefers the use of the em-dash, and there is no need for spaces before and after the dash to facilitate line breaks. <i>See The Redbook: A Manual on Legal Style</i> (West Group 2002), ¶ 1.49, at p. 30.
814.Appendix A, ¶ (b)(3)(A)	JCAR: Remove the comma from before “and (i).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.
814.Appendix A, ¶ (b)(3)(B)	JCAR: Remove the comma from before “and (d).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.

814.Appendix A, ¶ (c)(1)(A)	JCAR: Remove the comma from before “and (c).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.
814.Appendix A, ¶ (c)(3)(B)	JCAR: Remove the comma from before “and (d).”	The Board prefers to offset the final element of a series using a comma. See the entry for 810.104(a)(1), 40 CFR 10 above in this table 6.

### **ORDER**

The Board directs the Clerk to promptly file the adopted amendments to the Illinois RCRA Subtitle D regulations at 35 Ill. Adm. Code 810 and 814 with the Office of the Secretary of State:

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

PART 810  
SOLID WASTE DISPOSAL: GENERAL PROVISIONS

Section	
810.101	Scope and Applicability
810.102	Severability
810.103	Definitions
810.104	Incorporations by Reference
810.105	Electronic Reporting

**AUTHORITY:** Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and 27].

**SOURCE:** Adopted in R88-7 at 14 Ill. Reg. 15838, effective September 18, 1990; amended in R93-10 at 18 Ill. Reg. 1268, effective January 13, 1994; amended in R90-26 at 18 Ill. Reg. 12457, effective August 1, 1994; amended in R95-9 at 19 Ill. Reg. 14427, effective September 29, 1995; amended in R96-1 at 20 Ill. Reg. 11985, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15825, effective November 25, 1997; amended in R04-5/R04-15 at 28 Ill. Reg. 9090, effective June 18, 2004; amended in R05-1 at 29 Ill. Reg. 5028, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 4130, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1425, effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16167, effective November 27, 2007; amended in R10-9 at 35 Ill. Reg. 10837, effective June 22, 2011; amended in R14-1/R14-2/R14-3 at 38 Ill. Reg. 7253, effective March 13, 2014; amended in R15-8 at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 810.104 Incorporations by Reference**

a) The Board incorporates the following material by reference:

1) Code of Federal Regulations:

40 CFR 3.2-~~(2013)~~ (2014) (How Does This Part Provide for Electronic Reporting?), referenced in Section 810.105.

40 CFR 3.3-~~(2013)~~ (2014) (What Definitions Are Applicable to This Part?), referenced in Section 810.105.

40 CFR 3.10-~~(2013)~~ (2014) (What Are the Requirements for Electronic Reporting to EPA?), referenced in Section 810.105.

40 CFR 3.2000-~~(2013)~~ (2014) (What Are the Requirements Authorized State, Tribe, and Local Programs' Reporting Systems Must Meet?), referenced in Section 810.105.

40 CFR 141.40-~~(2013)~~ (2014) (Monitoring Requirements for Unregulated Contaminants), referenced in 35 Ill. Adm. Code 811.319 and 817.415.

40 CFR 258.10(a), (b), and (c) (2014) (Airport Safety), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.11(a) (2014) (Floodplains), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.12(a) (2014) (Wetlands), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.13 (2014) (Fault Areas), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.14 (2014) (Seismic Impact Zones), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.15 (2014) (Unstable Areas), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.16(a) (2014) (Closure of Existing Municipal Solid Waste Landfill Units), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.20 (2014) (Procedures for Excluding the Receipt of Hazardous Waste), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.23 (2014) (Explosive Gases Control), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.26 (2014) (Run-on/Run-off Control Systems), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.27 (2014) (Surface Water Requirements), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.28 (2014) (Liquids Restrictions), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.29(a) and (c) (2014) (Recordkeeping Requirements), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.60(c)(2), (c)(3), (d), (f), (g), and (i) (2014) (Closure Criteria), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.61(a), (c)(3), and (d) (2014) (Post-Closure Care Requirements), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.70(a) (2014) ((Financial Assurance) Applicability and Effective Date), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.71(a)(2) (2014) (Financial Assurance for Closure), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.72(a)(1) and (a)(2) (2014) (Financial Assurance for Post-Closure Care), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.73 (2014) (Financial Assurance for Corrective Action), referenced in 35 Ill. Adm. Code 814.Appendix A.

40 CFR 258.74 (2014) (Allowable Mechanisms (for Financial Assurance)), referenced in 35 Ill. Adm. Code 814.Appendix A.

Appendix I to 40 CFR 258-(2013) (2014), referenced in 35 Ill. Adm. Code 811.319.

Appendix II to 40 CFR 258-(2013) (2014), referenced in 35 Ill. Adm. Code 811.319.

- 2) American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York NY 10036:

Financial Accounting Standard Board (FASB) Accounting Standards—Current Text, 2008 Edition, referenced in 35 Ill. Adm. Code 811.715.

American Institute of Certified Public Accountants (AICPA) Professional Standards—Statements on Auditing Standards, June 1, 2008 Edition, referenced in 35 Ill. Adm. Code 811.715.

- 3) ASTM. American Society for Testing and Materials, 1976 Race Street, Philadelphia PA 19103 215-299-5585:

Method D2234-76, “Test Method for Collection of Gross Samples of Coal,” approved 1976, referenced in 35 Ill. Adm. Code 817.103.

Method D3987-85, “Standard Test Method for Shake Extraction of Solid Waste with Water,” approved 1985, referenced in 35 Ill. Adm. Code 814.601, 814.701, 814.901, 814.902, and 817.103.

- 4) GASB. Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116:

Statement 18, Accounting for Municipal Solid Waste Landfill Closure and Post-Closure Care Costs, August 1993, referenced in 35 Ill. Adm. Code 811.716.

- 5) U.S. Army Corps of Engineers, Publication Department, 2803 52nd Ave., Hyattsville, MD 20781, 301-394-0081:

Engineering Manual 1110-2-1906 Appendix VII, Falling-Head Permeability Cylinder (1986), referenced in 35 Ill. Adm. Code 816.530.

- 6) U.S. Government Printing Office, Washington, DC 20402, Ph: 202-783-3238:

Method 9095B (Paint Filter Liquids Test) in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (Third Edition, Update IIIB, November 2004) (document number EPA-SW-846-03-03B or EPA-530-R-04-037), referenced in 35 Ill. Adm. Code 811.107.

- b) This incorporation includes no later amendments or editions.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

PART 814  
 STANDARDS FOR EXISTING LANDFILLS AND UNITS

SUBPART A: GENERAL REQUIREMENTS

Section	
814.101	Scope and Applicability
814.102	Compliance Date
814.103	Notification to Agency
814.104	Applications for Significant Modification of Permits
814.105	Effect of Timely Filing of Notification and Application for Significant Modification
814.106	Agency Action on Applications for Significant Modifications to Existing Permits
814.107	Compliance Dates for Existing MSWLF Units
814.108	Interim Permit Requirements for Existing MSWLF Units
814.109	Permit Requirements for Lateral Expansions at Existing MSWLF Units
814.110	Electronic Reporting

SUBPART B: STANDARDS FOR UNITS ACCEPTING INERT WASTE

Section	
814.201	Scope and Applicability
814.202	Applicable Standards

SUBPART C: STANDARDS FOR EXISTING UNITS ACCEPTING  
 CHEMICAL OR PUTRESCIBLE WASTES THAT MAY REMAIN OPEN FOR  
 MORE THAN SEVEN YEARS

Section	
814.301	Scope and Applicability
814.302	Applicable Standards

SUBPART D: STANDARDS FOR EXISTING UNITS ACCEPTING  
 CHEMICAL AND PUTRESCIBLE WASTES THAT MUST INITIATE  
 CLOSURE WITHIN SEVEN YEARS

Section	
814.401	Scope and Applicability
814.402	Applicable Standards

SUBPART E: STANDARDS FOR EXISTING UNITS ACCEPTING INERT  
 WASTE ONLY, OR ACCEPTING CHEMICAL AND PUTRESCIBLE  
 WASTES THAT MUST INITIATE CLOSURE WITHIN TWO YEARS

Section	
814.501	Scope and Applicability
814.502	Standards for Operation and Closure

SUBPART F: STANDARDS FOR EXISTING UNITS ACCEPTING ONLY  
LOW RISK WASTES FROM THE STEEL AND FOUNDRY INDUSTRIES  
THAT MAY REMAIN OPEN FOR MORE THAN SEVEN YEARS

Section	
814.601	Scope and Applicability
814.602	Applicable Standards

SUBPART G: STANDARDS FOR EXISTING UNITS ACCEPTING ONLY  
LOW RISK WASTES FROM THE STEEL OR FOUNDRY INDUSTRIES  
THAT MUST INITIATE CLOSURE WITHIN SEVEN YEARS

Section	
814.701	Scope and Applicability
814.702	Applicable Standards

SUBPART H: STANDARDS FOR EXISTING UNITS ACCEPTING ONLY  
POTENTIALLY USABLE STEEL OR FOUNDRY INDUSTRY WASTE, OR  
ACCEPTING ONLY LOW RISK STEEL OR FOUNDRY INDUSTRY  
WASTES THAT MUST INITIATE CLOSURE WITHIN TWO YEARS

Section	
814.801	Scope and Applicability
814.802	Standards for Operation and Closure

SUBPART I: STANDARDS FOR EXISTING UNITS ACCEPTING ONLY  
POTENTIALLY USABLE STEEL OR FOUNDRY INDUSTRY WASTE THAT  
PLAN TO STAY OPEN FOR MORE THAN TWO YEARS

Section	
814.901	Scope and Applicability
814.902	Standards for Operation and Closure

~~Appendix~~ 814.APPENDIX A Additional Requirements for Existing MSWLF Units and Lateral Expansions Operating Under Permits Issued Pursuant to 35 Ill. Adm. Code 807.

AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15850, effective September 18, 1990; amended in R93-10 at 18 Ill. Reg. 1284, effective January 13, 1994; emergency amendment in R94-13 at 18 Ill. Reg. 8488, effective May 12, 1994, for a maximum of 150 days; amended in R90-26 at 18 Ill. Reg. 12471, effective August 1, 1994; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1472, effective December 20, 2006; amended in R14-1/R14-2/R14-3 at 38 Ill. Reg. 7294, effective March 13, 2014; amended in R15-8 at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Capitalization indicates statutory language.

**Section 814.APPENDIX A Additional Requirements for Existing MSWLF Units and Lateral Expansions Operating Under Permits Issued Pursuant to 35 Ill. Adm. Code 807**

- a) An existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 ~~shall~~must comply with the following requirements of the federal Subtitle D standards under 40 CFR 258-(1992), each incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1), until the unit's permit is modified in accordance with Section 814.104:
- 1) Location restrictions:
    - A) 40 CFR ~~258.10 (a)~~ 258.10(a) and (c);
    - B) 40 CFR ~~258.11 (a)~~ 258.11(a);
    - C) 40 CFR 258.15; and
    - D) 40 CFR ~~258.16 (a)~~; 258.16(a).
  - 2) Operating standards:
    - A) 40 CFR 258.20;
    - B) 40 CFR 258.23;
    - C) 40 CFR 258.26;
    - D) 40 CFR 258.27;
    - E) 40 CFR 258.28; and
    - F) 40 CFR ~~258.29 (a)~~ 258.29(a) and (c);<sub>2</sub>
  - 3) Closure and postclosure care:
    - A) 40 CFR ~~258.60 (e)(2)~~ 258.60(c)(2) and (c)(3), (d), (f), (g)<sub>2</sub> and (i); and
    - B) 40 CFR ~~258.61 (a)~~ 258.61(a), (c)(3)<sub>2</sub> and (d);<sub>2</sub>
  - 4) Financial assurance requirements:
    - A) 40 CFR 258.70(a);
    - B) 40 CFR ~~258.71 (a)(2)~~ 258.71(a)(2);
    - C) 40 CFR 258.72(a)(1) and (a)(2);
    - D) 40 CFR 258.73; and

- E) 40 CFR 258.74.
- b) In addition to the requirements of subsection (a) of this Appendix A, all existing MSWLF units, including municipally owned and operated on-site facilities, shall comply with the financial assurance requirements specified at 35 Ill. Adm. Code 807.Subpart F.
- c) A lateral expansion at an existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 ~~shall~~must comply with the following requirements of the federal Subtitle D standards under 40 CFR 258-~~(1992)~~, each incorporated by reference in 35 Ill. Adm. Code 810.104(a)(1), until the unit's permit is modified in accordance with Section 814.104:
- 1) Location restrictions:
    - A) 40 CFR ~~258.10 (a)~~ 258.10(a), (b)<sub>2</sub> and (c);
    - B) 40 CFR ~~258.11 (a)~~ 258.11(a);
    - C) 40 CFR ~~258.12 (a)~~ 258.12(a);
    - D) 40 CFR 258.13;
    - E) 40 CFR 258.14;
    - F) 40 CFR 258.15; and
    - G) 40 CFR ~~258.16 (a)~~; 258.16(a).
  - 2) Operating standards:
    - A) 40 CFR 258.20;
    - B) 40 CFR 258.23;
    - C) 40 CFR 258.26;
    - D) 40 CFR 258.27;
    - E) 40 CFR 258.28; and
    - F) 40 CFR 258.29(a) and (c)<sub>2</sub>;
  - 3) Closure and postclosure care:
    - A) 40 CFR 258.60(c)(2) and (c)(3), (d), (f), (g)<sub>2</sub> and (i); and
    - B) 40 CFR ~~258.61 (a)~~ 258.61(a), (c)(3)<sub>2</sub> and (d)<sub>2</sub>;

- 4) Financial assurance requirements:
- A) 40 CFR 258.70(a);
  - B) 40 CFR ~~258.71(a)(2)~~ 258.71(a)(2);
  - C) 40 CFR ~~258.72(a)(1)~~ 258.72(a)(1) and (a)(2);
  - D) 40 CFR 258.73; and
  - E) 40 CFR 258.74.

ed) In addition to the requirements of subsection (b) of this ~~appendix~~ Appendix A, a lateral expansion at an existing MSWLF unit operating under a permit issued pursuant to 35 Ill. Adm. Code 807 ~~shall~~ must comply with the following requirements:

- 1) Flexible membrane liner requirements prescribed at 35 Ill. Adm. Code 811.306(d)(5)(A); and
- 2) All existing MSWLF units including municipally owned and operated and on-site facilities shall with the financial assurance requirements specified at 35 Ill. Adm. Code 807.Subpart F.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 20, 2014, by a vote of 4-0.




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John T. Therriault, Clerk  
Illinois Pollution Control Board