

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
PROPOSED 35 ILL. ADM. CODE 820 ) R2022-\_\_\_\_  
GENERAL CONSTRUCTION OR ) (Rulemaking–Land)  
DEMOLITION DEBRIS RECOVERY )  
FACILITIES )

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**NOTICE**

TO: ATTACHED CERTIFICATE OF SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board this RULEMAKING PROPOSAL entitled “IN THE MATTER OF: PROPOSED 35 ILL. ADM. CODE 820 GENERAL CONSTRUCTION OR DEMOLITION DEBRIS RECOVERY FACILITIES,” APPEARANCES, PROPOSAL OF REGULATION, STATEMENT OF REASONS, PROPOSED ADDITION OF 35 ILL. ADM. CODE 820, and TECHNICAL SUPPORT DOCUMENT of the Illinois Environmental Protection Agency, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

DATED: August 1, 2022

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**APPEARANCE**

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ John M. McDonough II  
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**APPEARANCE**

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Nick San Diego  
Nick San Diego  
Deputy General Counsel  
Division of Legal Counsel

DATED: August 1, 2022

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**


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FACILITIES	)	

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL OF REGULATION**

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulation.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
 \_\_\_\_\_  
 John J. Kim  
 Director

DATED: August 1, 2022

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FACILITIES	)	

**STATEMENT OF REASONS**

**NOW COMES** the Illinois Environmental Protection Agency (“Illinois EPA”), by and through its counsel, and hereby submits its Statement of Reasons to the Illinois Pollution Control Board (“Board”) supporting the proposed regulations, pursuant to Sections 22.38(n), 27, and 28 of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/22.38(n), 27, and 28) and 35 Ill. Adm. Code 102.202. In accordance with Section 102.202(i), the Illinois EPA certifies that the proposal amends the most recent version of the rule as published on the Board’s website or as obtained from the Clerk.

**I. FACTS IN SUPPORT, PURPOSE, AND EFFECT**

**A. Background**

The Illinois EPA has been tasked by the Illinois General Assembly to provide oversight and implementation of the Act. Pursuant to Public Act 102–310, effective August 6, 2021, Sections 3.160, 3.330, 21, 22.15, 22.38, 22.44, 31.1, and 42 of the Act were amended by the 102<sup>nd</sup> General Assembly to further regulate general construction or demolition debris (“GCDD”) recovery facilities. (See: 415 ILCS 5/3.160, 3.330, 21, 22.15, 22.38, 22.44, 31.1, and 42).

On August 17, 1997, Public Act 90-475 was enacted into law adding Section 22.38 to the Act, which established criteria and definitions for facilities accepting GCDD. Between 2009 and

2012, Section 22.38 of the Act was amended six (6) times through Public Acts 96-235; 96-611; 96-1000; 97-230; 97-314; and 97-813. As a result of these initial amendments to the Section 22.38 of the Act, permit requirements were established for facilities accepting GCDD. Such facilities were required to obtain permits on or after August 24, 2009, the effective date of Public Act 96-611, before initial acceptance of GCDD at the facility. 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...*

(See: 415 ILCS 5/3.160(a)). Additionally, “*uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures and roads provided the uncontaminated soil is not comingled with any [GCDD] or other waste*” is not considered GCDD material. (See: Id.). Furthermore, GCDD is distinguishable from clean construction or demolition debris as defined pursuant to Sections 3.160(a) and 3.160(b) of the Act and regulated under 35 Ill. Adm Code 1100.

On August 6, 2021, the Governor signed into law Senate Bill 1089, enacted as Public Act 102-310, adding to the Act a new definition for GCDD recovery facilities and effectuating a rewrite through the recent seventh amendment to Section 22.38 of the Act. As described above, eight (8) Sections of the Act were amended or rewritten pursuant to the enactment of Public Act 102-310. In addition to the added definition of GCDD recovery facilities pursuant to 415 ILCS 5/3.160(a-1), the changes made to the Act established additional criteria for the operation and permitting of GCDD recovery facilities. Among those changes, Section 3.330 of the Act was amended to clarify



that a “pollution control facility” as defined under the Act does not include “*the portion of a site or facility regulated under Section 22.38.*” (See: 415 ILCS 5/3.330(a)(13)). Section 21 of the Act governing prohibited acts was amended to read that no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation of a GCDD recovery facility without a permit granted by Illinois EPA, however, “*no permit shall be required ... until one year after the effective date of the rules adopted by the Board under*” Section 22.38(n) of the Act. (See: 415 ILCS 5/21(d)(1)(ii)). Section 31.1 of the Act was amended to clarify and include the enforceability of administrative citations regarding violations of Section 22.38. (See: 415 ILCS 5/31.1(a), 31.1(b)). Additionally, Section 42 of the Act regarding civil penalties was amended to include Section 22.38. (See: 415 ILCS 5/42(4-5)).

Subsection 22.38(n) of the Act was added directing Illinois EPA to propose rules to the Board on or before August 6, 2022, to implement this mandate and establish rules for GCDD recovery facilities. The rules shall include:

*requirements for material receipt, handling, storage, and transfer; improvements to best management practices for identifying, testing for, and removing drywall containing gypsum; recordkeeping; reporting; limiting or prohibiting sulfur in wallboard used or disposed of at landfills; and requirements for the separation and separate management of any clean construction or demolition debris that will be transported to a clean construction or demolition debris fill operation.*

(See: 415 ILCS 5/22.38(n)). This regulatory submittal proposed by Illinois EPA seeks to conform with the Board’s procedural rules and statutory requirements of Public Act 102-310. Additionally required under Public Act 102-310, the Board is directed to adopt rules for the permitting of GCDD recovery facilities “*no later than one year after receipt of the Agency’s proposal.*” (See: 415 ILCS 5/22.38(n)).

**B. Purpose**

The purpose of this regulatory proposal is to establish rules for the permitting, operation, and closure standards for GCDD recovery facilities under a new 35 Ill. Adm. Code Part 820 and clarify the administrative criteria and operational requirements pursuant to the rewriting of Section 22.38 of the Act. The proposed rules were drafted with the objective of maintaining as much of the existing operational standards while conforming to the amendments made under Public Act 102-310.

The rulemaking proposal contains four (4) subparts. Under the proposed rules, Subpart A deals with the general provisions, applicability, and definitions detailed in Sections 820.101 through 820.105. Subpart B proposes the permit application rules and requirements in Sections 820.201 through 820.205. Subpart C of the proposed rules addresses the operational standards for GCDD recovery facilities in Sections 820.301 through 820.306. Subpart D proposes financial assurance requirements to ensure GCDD facilities are closed in accordance with Board regulations under Sections 820.401 through 820.405.

**C. Sources and Facilities Affected**

The proposed regulations are a statewide rulemaking affecting currently permitted facilities that receive GCDD as well as facilities that were previously exempt from permitting prior to Public Act 102-310.

The applicability of the proposed rules applies to all GCDD recovery facilities subject to Section 22.38 of the Act. The proposed rules would not be applicable to a GCDD recovery facility located at a facility permitted under other solid waste rules (35 Ill. Adm. Code Part 807 or Parts 811 through 814) and regulated under that permit. Additionally, the proposed rules would not

apply to a facility or location that does not meet the definition of a GCDD recovery facility. (See: Proposed 35 Ill. Adm. Code 820.102). Under the statutory and proposed definition,

*“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)]*

(See: Proposed 35 Ill. Adm. Code 820.103). The estimated number of affected facilities is 52 GCDD recovery facilities statewide.

**D. Regulatory Development and Outreach**

After passage of Public Act 102-310, Illinois EPA was tasked to develop the proposed rulemaking. After intra-agency development of the rule, Illinois EPA reached out to interested parties including GCDD recovery facilities, local governments and counties, as well as additional stakeholders with a draft of the proposed rulemaking in March 2022. Illinois EPA received several comments from interested parties regarding questions and comments about the draft of the proposed rulemaking throughout April 2022. As a result of the comments received, revisions to the draft were made and incorporated into the rulemaking proposal submitted today.

**II. DESCRIPTION AND LANGUAGE OF THE PROPOSED RULE**

The language of the proposed rule amendments is found within this regulatory submittal. In accordance with 35 Ill. Adm. Code 102.202(j), an electronic version of the proposed rule language in Microsoft Word for Windows will be filed with the Board separately.

### **III. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS**

#### **A. Technical Feasibility**

The proposed rules allow for the regulated community to comply with operational and permitting requirements which mirror current practices as well as the statutory amendments under Public Act 102-310. The proposed rules build on the regulatory framework that has been applied to GCDD recovery facilities since August 2009, when permitting requirements were added under Public Act 96-611. Further detail and description regarding the technical feasibility of the proposed rulemaking can be found in the attached Technical Support Document.

#### **B. Economic Reasonableness**

As proposed, the addition of proposed Part 820 can be implemented without a significant new economic burden to the regulated community. The procedures and process are similar in nature and effect without significant new costs associated with compliance. To the extent financial assurance requirements under Subpart D may necessitate absorbing new costs associated with compliance, those costs are consistent with other regulated industries in an effort to avoid obligating taxpayers with liability associated with facility closure costs. Further detail and description regarding the economic reasonableness can be found in the attached Technical Support Document.

### **IV. AGENCY WITNESSES AND SYNOPSIS OF TESTIMONY**

Currently, the Illinois EPA anticipates calling James Jennings, Section Manager of the Materials Management and Compliance Section, Bureau of Land, as a witness at hearing. Mr. Jennings will testify regarding the rulemaking proposed by Illinois EPA and will be available to answer questions. Any written testimony will be submitted prior to hearing in accordance with the Board's procedural rules.

If necessary, the Illinois EPA will have additional staff available to answer questions at hearing who participated in the development of this rulemaking, but who will not be submitting written testimony. The Illinois EPA respectfully requests that the Board allow oral testimony of Illinois EPA's witnesses in panel format rather than calling each individually. A panel format should streamline the hearing process and has proved to be beneficial in past rulemakings.

**V. STATEMENT REGARDING MATERIALS TO BE INCORPORATED BY REFERENCE**

In accordance with 35 Ill. Adm. Code 102.202(d), the Illinois EPA states that no other material is to be incorporated by reference within the proposed rule under Section 5-75 of the Illinois Administrative Procedures Act (See: 5 ILCS 100/5-75).

**VI. STATEMENT REGARDING PUBLISHED STUDIES OR RESEARCH REPORTS**

In accordance with 35 Ill. Adm. Code 102.202(e), the Illinois EPA states that no published studies or research reports were used in developing the proposed regulations. Therefore, pursuant to 35 Ill. Adm. Code 102.202(k), Section 102.202(e) is inapplicable to this rulemaking proposal.

**VII. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Illinois EPA respectfully requests that the Board adopt this proposal in its entirety.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DATED: August 1, 2022  
  
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P.O. Box 19276  
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By: /s/ John M. McDonough II  
John M. McDonough II  
Assistant Counsel  
Division of Legal Counsel

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER I: 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
820.205	Agency Modification

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	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 at

## **SUBPART A: GENERAL**

### **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 all GCDD recovery 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 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 that applied to the same words or terms in the 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”) 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.



*“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 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 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 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 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.

### **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 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.
  - (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, 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)]
  - (2) An 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.

- b) *Beginning 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)]*

**Section 820.202      Permit Application**

- a) All permit applications shall be made on forms prescribed by the Agency and shall be mailed or delivered to the address designated by the Agency.
- b) All 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.
- c) Each 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:
  - 1) a facility map scaled to clearly show:
    - A) the facility property and all adjacent property, extending at least 1000 meters beyond the boundary of the facility;
    - B) all surface waters;
    - 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;
    - E) 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;
    - 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) An 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.
  - e) If 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 91<sup>st</sup> 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 from the filing of the application.
  - g) The 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.
  - 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 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.

**Section 820.204      Transfer of Permit**

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.

**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 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.

**SUBPART C: OPERATIONAL STANDARDS**

**Section 820.301      Prohibitions**

No person 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:
  - i) *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)]*
  - ii) In 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.
  - iii) In a manner that causes or allows vector proliferation.
  - iv) In a manner that causes or allows litter accumulation.
  - v) 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 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 shall be measured by weight.

- d) **Operating Hours.** 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.
- e) **Equipment.** Equipment necessary to achieve and maintain compliance with this Part 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, shall be available at the facility at all times.
- g) **Maintenance.** Adequate shelter, sanitary facilities, and emergency communications for employees shall be maintained at the facility.
- 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 shall be maintained at the facility.
- j) **Vehicle Safety Measures.** 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. 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.
- k) **Surface Water Drainage.** Measures 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.
- l) **Run-on and Run-off Control.** The 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.



- m) Boundary Control. Access 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.
  
- n) Contingency Plan. The owner or operator of a GCDD recovery facility shall establish and maintain a Contingency Plan that:
  - 1) minimizes the hazards to human health and the environment from fires and run-off of contaminants resulting from fire at the facility;
  - 2) is carried out immediately whenever there is a fire;
  - 3) describes the actions facility personnel shall take in response to fires and run-off resulting from fires;
  - 4) minimizes the hazards to human health and the environment from vectors and other nuisance organisms that may breed or be present at the facility;
  - 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.
  - 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;
  - 7) 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; and
  - 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 facility in the event

that the primary emergency coordinator or another alternate emergency coordinator is unavailable.

The 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.

**Section 820.303 Processing Program**

- a) The 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.
  - 1) Each load inspection shall include, at a minimum:
    - A) Prior 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.
    - B) 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 facility shall be rejected. The driver of the rejected load shall be presented with a written notice that includes, at a minimum, the following:
    - A) The date of the attempted delivery;
    - B) That only GCDD is accepted at the facility;
    - C) The reasons for rejecting the load; and
    - D) A copy of the rejection notice shall be maintained in accordance with Section 820.304.
  - 3) If material other than GCDD is discovered to have been accepted at the facility, the material shall be removed in accordance with this Subpart.

- b) Prior 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.
  - 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 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 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.
  - 5) 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.
  
- d) Unacceptable Materials. Any 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.
  - 1) Landscape waste shall be transported to a facility permitted to accept landscape waste.

- 2) Lead-acid batteries shall be transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
- 3) Lithium-ion batteries shall be transported to a facility capable of handling such waste.
- 4) Special 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.
- 5) Asbestos and asbestos debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.
- 6) Used and waste tires shall be managed in accordance with Title XVI of the Act.
- 7) White good components shall be managed in accordance with Section 22.28 of the Act.
- 8) All other unacceptable materials shall be managed in accordance with 35 Ill. Adm. Code Subtitle G.

**Section 820.304 Recordkeeping Requirements**

- a) The 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)]
  - 1) Tagging 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)]
  - 2) Tagging 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)]
  - 3) Recordkeeping of rejected loads in accordance with Section 820.303(a)(1)(B).

- 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 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)].
  - 1) 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.
  
  - 2) Reports shall be maintained until certification of closure by the Agency in accordance with Section 820.305.
  
- d) The 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, but is not limited to, the following:
  - 1) Records required to be maintained by the facility under the Act and this Part;
  
  - 2) Any information submitted to the Agency pursuant to this Part, including, but not limited to, copies of all permits, permit applications, and reports;
  
  - 3) The 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); and
  
  - 4) Written procedures for load checking and load rejection notifications required under Section 820.303 of this Part.

**Section 820.305      Closure**

- a) No 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.
- b) During closure all GCDD and all other materials at the facility shall be removed to an appropriately permitted transfer, treatment, storage, or disposal facility.
- c) The 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 demonstrates that:
  - 1) closure cannot be practically completed within 180 days 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 of completing closure activities, the owner or operator of a GCDD recovery facility 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 facility has been closed in compliance with the Act and this Part.
- b) 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:
  - 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.
  - 3) The 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.

**SUBPART D: FINANCIAL ASSURANCE**

**Section 820.401      General Provisions**

- a) This 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.
  
- 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 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.
  - 2) Within 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.
  
- c) Mechanisms
  - 1) The owner or operator may use a trust fund, insurance, or a combination 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 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 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.
  
- 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 CGDD recovery facility.
- f) The following Agency actions may be appealed to the Board as a permit denial 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 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.
- b) The cost estimate shall include, at a minimum, all costs for all activities necessary to complete closure in accordance with Section 820.305.
- c) The 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.
- d) No 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.

**Section 820.403 Release of Financial Institution**

The Agency 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 with Section 820.305 and (ii) Agency certification of closure of the GCDD recovery facility.

**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 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) The 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.
- d) Payments into the Trust
  - 1) The 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.
  - 2) The 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.
  - 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) 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 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.

- 5) Subsequent annual payments shall be made 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 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 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).
- e) The 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.
- f) 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.
- 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 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 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.
- 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 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.
  - 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 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. In the event the fund is inadequate to pay all claims after closure is completed, the Agency 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;

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 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)]
- c) The 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.
- d) Face amount:
  - 1) The 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.
  - 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, 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 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. 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, 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 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.
  - 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 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. In the event the face amount of the policy is inadequate to pay all claims, the Agency 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);
    - D) The owner or operator and related business entities (last priority).
- g) Cancellation:

- 1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 820.403.
  - 2) The 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.
- h) Each 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.

Technical Support Document for:

35 Ill. Adm. Code 820: Standards for General  
Construction or Demolition Debris Recovery Facilities

July 2022

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

List of Acronyms and Abbreviations used within:

<b>Act</b>	Illinois Environmental Protection Act (415 ILCS 5/1 et seq.)
<b>Board</b>	Illinois Pollution Control Board
<b>GCDD</b>	General Construction or Demolition Debris (415 ILCS 5/3.160(a))
<b>Illinois EPA</b>	Illinois Environmental Protection Agency
<b>Part 807</b>	35 Ill. Adm. Code 807



## **I. Executive Summary**

On August 6, 2021, Governor Pritzker signed Public Act (P.A.) 102-310 into law, amending Section 22.38 of the Illinois Environmental Protection Act to clarify the operating and permitting requirements applicable to general construction or demolition debris (GCDD) recovery facilities. This amendment involved establishing, among other things:

- A new operating permit requirement for all GCDD recovery facilities;
- Limitations on the acceptance and use of materials at GCDD facilities;
- A rolling 12-month minimum recycling rate of 40 percent for each GCDD facility; and
- Quarterly reporting requirements for all GCDD facilities.

The Public Act also required Illinois EPA to propose, and the Board to adopt, new rules establishing the standards for operating GCDD recovery facilities.

The purpose of this Technical Support Document is to inform the Board and the public of the Illinois EPA's proposed rule and will include a discussion of the technical feasibility and economic reasonableness of the proposal.

The proposed rules for 35 Ill. Adm. Code Part 820 address standards applicable to the permitting, operation, and closure of GCDD recovery facilities. The proposed rules are designed to be consistent with the manner in which many of these facilities are currently permitted and operated, to the extent workable in light of P.A. 102-310. The proposed rules also include some additional requirements, such as financial assurance, that are comparable to how other similar facilities are regulated in Illinois.

## **II. Introduction**

On August 17, 1997, P.A. 90-475 was signed into law creating operational standards for facilities that accepted exclusively GCDD for transfer, storage, or treatment. These requirements are set forth in Section 22.38 of the Act and, at the time, included sorting all accepted materials within 48 hours of receipt at the facility, deadlines for transporting accepted material offsite, limiting the volume of non-recyclable GCDD accepted at the facility, and additional operational obligations related to site control and recordkeeping. These facilities were not required to obtain an operating permit from the Illinois EPA. Rather, each site was required to submit a notification to the Illinois EPA reflecting the site's location and a description of the facility's operations at least 30 days prior to first accepting GCDD.

In the following two decades, Section 22.38 of the Act was amended seven times. See P.A. 96-235; P.A. 96-611; P.A. 96-1000; P.A. 97-230; P.A. 97-314; P.A. 97-813; P.A. 102-310. These amendments included the requirement that all GCDD recovery facilities obtain a permit from the Illinois EPA prior to accepting GCDD, or if already operating, by August 24, 2009. P.A. 96-611. The Illinois EPA is currently aware of 52 GCDD recovery facilities, each of which was permitted following the passage of P.A. 96-611. Each of these facilities is permitted in accordance with 35 Ill. Adm. Code Part 807, *et seq.*, which broadly governs the development and operation of solid

waste sites. Independent of this rulemaking, there are no Board regulations that specifically govern the operation of GCDD recovery facilities.

P.A. 102-310 significantly shifted the required regulatory framework for GCDD recovery facilities by requiring adoption of GCDD-specific rules. However, the text of the Public Act did not comprehensively overhaul the operating standards of these facilities. Accordingly, the proposed rules were drafted with the objective of maintaining as much of the existing operational standards as practicable. To that end, Illinois EPA staff reviewed the current permit for each existing GCDD recovery facility 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 for this proposal.

### **III. Proposed New Rules, Title 35 Ill. Adm. Code Part 820**

GCDD recovery facilities are currently permitted in accordance with 35 Ill. Adm. Code Part 807. The Part 807 regulations establish broad criteria for obtaining a development, operating, or experimental permit from the Illinois EPA and contain relatively flexible standards for the operation of a solid waste facility. This flexibility has historically been employed to enable the Illinois EPA and various sectors of the solid waste industry to craft site-specific permits for facilities not governed by other Board solid waste regulations. Over time, additional more specific regulations have been adopted which narrowed the population of facilities subject to Part 807. See 35 Ill. Adm. Code Part 811; 35 Ill. Adm. Code Part 830. The rules in this proposal will likewise provide more precise sector-specific regulations for GCDD recovery facilities.

#### **A. Permit Applications**

Proposed Subpart B sets forth 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 the Illinois EPA may initiate a permit modification. As with other Illinois EPA permitting transactions, GCDD recovery facility permit applications must be made on forms prescribed by the Illinois EPA and signed by the owner, the operator, and the property owner if different than the facility owner, or by any of the aforementioned individuals' duly authorized agents. This is consistent with existing permitting processes applicable to GCDD recovery facilities. Proposed Section 820.205 outlines the circumstances under which the Illinois EPA may unilaterally modify an existing permit. These criteria include:

- Discovery of a typographical, administrative, or calculation error;
- Discovery that a determination or condition waste based on false or misleading information;
- An order of the Board issued in an action brought pursuant to Title VII, IX, or X of the Act; or
- Promulgation of new statutes or regulations affecting the permit.

Illinois EPA-initiated modifications would not become effective until 45 calendar days after receipt by the operator, unless stayed during the pendency of an appeal to the Board. These permit modification provisions are consistent with and modeled after similar provision in other sector-specific solid waste regulations. (See: 35 Ill. Adm. Code 813.201(b); 35 Ill. Adm. Code 1100.410(b)).

## B. Operating Standards

Subpart C of the proposed rules addresses the operational standards for GCDD recovery facilities. As designed, these 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.

As under existing state law, the proposed rules prohibit the following activities:

- Owning or operating a GCDD recovery facility without a permit issued by the Illinois EPA;
- Causing or allowing acceptance of any waste at a GCDD recovery facility, other than GCDD;
- Causing or allowing the deposition or placement of any GCDD in land or water;
- Causing or allowing storage or treatment of GCDD in violation of the Act; and
- Operating a GCDD recovery facility without maintaining documentation reflecting the acceptance, transportation, and disposition of the accepted GCDD.

In addition, the proposed rules prohibit operating a GCDD recovery facility in a manner that causes or allows noise, vector proliferation, litter accumulation, malodors, and accumulation of GCDD that exceeds the volume for which financial assurance is maintained. These prohibitions are consistent with the content of permits for existing GCDD facilities and other waste management facilities that are designed to have all managed wastes removed at closure, like landscape waste compost facilities.

Subpart C also includes the proposed operating standards, processing program requirements, closure standards, and recordkeeping obligations for GCDD recovery facilities. As with the prohibitions, these standards are intended to reflect the intersection of historic operational practices and recent changes to Section 22.38 of the Act. For example, the proposed rules repeat statutory provisions such as every GCDD recovery facility being required to comply with local zoning requirements and locational standards, as well as achieve a minimum recycling rate of no less than 40 percent on a twelve-month rolling average. The proposal also includes requirements related to operating hours, equipment, utility availability, facility maintenance, dust control, fire protection, vehicle safety, surface water drainage, run-on and run-off control, boundary control, contingency planning, closure, and recordkeeping. Other than quarterly reporting, each of these elements is included in existing GCDD recovery facility permits. Under the proposed rules, 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. The quarterly reporting requirements were established by P.A. 102-310 and are directly mirrored in the proposal.

Proposed Section 820.303 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. The proposal requires the owner or operator to check each load of GCDD delivered to the facility to determine its contents and maintain documentation reflecting that evaluation. This section also contains a roster of acceptable materials, which is derived from the text of Section 22.38 of the Act, and handling protocols for unacceptable materials that were inadvertently received at a GCDD recovery facility. The enumerated list of unacceptable materials is derived from comparable text in existing GCDD recovery facility permits. The proposal also includes standards for handling drywall and other wallboard containing gypsum or sulfur, to avoid such material being crushed and the resulting fines comingling with other GCDD, as required by Section 22.38 of the Act. These fines can create odor issues at landfills, which was the basis for the inclusion of this requirement in P.A. 102-310.

#### C. Financial Assurance

Subpart D sets forth the standards for financial assurance for GCDD recovery facilities. As in other Board regulations, the financial assurance requirements are intended 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. The proposed standards mirror the financial assurance obligations set forth in other Board regulations. As with many other solid waste facilities, the proposal would require GCDD recovery facilities to include a written estimate of the cost to complete closure of the facility in a permit application to the Illinois EPA, obtain a trust fund or insurance policy with a value that is no less than the cost estimate, and annually certify to the Illinois EPA that the cost estimate has not increased. Two other categories of sites have similar closure requirements: landscape waste compost facilities and used tire storage sites. As with landscape waste compost facilities and used tire storage sites, the cost estimate is the cost of removing the maximum volume of material that will be accumulated at any time. The GCDD recovery facility owner or operator is required to maintain adequate financial assurance until the facility is closed in accordance with Board regulations.

Board regulations do not currently require GCDD recovery facilities to maintain financial assurance. Nevertheless, doing so is appropriate. Although GCDD recovery facilities are operated in a manner that contemplates a modicum of material turnover over the course of time, that has not prevented the Board from requiring financial assurance in comparable circumstances. Indeed, landscape waste compost facilities and used tire storage sites operate similarly and are each required by Board regulations to maintain financial assurance. See 35 Ill. Adm. Code Part 830, Subpart F; 35 Ill. Adm. Code Part 848, Subpart D. Given the operational similarities and the need to shield taxpayer resources from avoidable expenses, including financial assurance standards is necessary here.

#### IV. Technical Feasibility and Economic Reasonableness

The proposed Title 35 Ill. Adm. Code EPA Part 820 rules are both technically feasible and economically reasonable.

Based upon the above review, the processes proposed for the regulated community to comply with operational and permitting requirements mirror current practices as well as the amendments to Section 22.38 of the Act. Thus, the proposed Part 820 rules are technically feasible as they reflect a regulatory framework that is similar to what has applied since August 2009. The additional requirement of financial assurance does not render the rules technically or economically unreasonable. The methodology applied is analogous to the framework that appears elsewhere in Board regulations and is designed to minimize the threats to (i) the environment from unfunded closures and (ii) taxpayer resources from having to absorb those costs.

In addition, as proposed, the new Part 820 rules can be implemented without a significant new economic burden to the regulated community. Again, the procedures and process are similar enough in nature and effect to not create significant new costs associated with compliance or recovery of costs. To the extent financial assurance necessitates absorbing new costs, it does so in a manner consistent with other regulated populations and in an effort to avoid obligating taxpayers with liability for facility remediations from closure.

The Illinois EPA submits this Technical Support Document in support of adoption of Title 35 Ill. Adm. Code Part 820, as proposed.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
PROPOSED 35 ILL. ADM. CODE 820	)	R2022-____
GENERAL CONSTRUCTION OR	)	(Rulemaking–Land)
DEMOLITION DEBRIS RECOVERY	)	
FACILITIES	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, affirm that I have served the attached RULEMAKING PROPOSAL, on behalf of the Illinois EPA, upon the following person(s) by e-mailing it to the e-mail address(es) indicated below or, if no e-mail address is provided, by placing a true copy, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on August 1, 2022:

TO:

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I affirm that my e-mail address is john.mcdonough@illinois.gov; the number of pages in the e-mail transmission is 46; and the e-mail transmission took place today before 5:00 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DATED: August 1, 2022

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