

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE

TO: ATTACHED CERTIFICATE OF SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board this PRE-FILED TESTMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY: JAMES JENNINGS, a copy of which is hereby 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: September 6, 2022

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

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**PRE-FILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY: JAMES JENNINGS**

I) INTRODUCTION:

My name is James Jennings. I received my undergraduate degree from the University of Cincinnati, B.M. 2006, and my Juris Doctor, from the University of Kentucky, College of Law, in 2009.

In October of 2013, I joined the Illinois Environmental Protection Agency (“Agency”) working within the Agency’s Division of Legal Counsel as Assistant Counsel. In that position, I was primarily responsible for providing legal advice related to land regulatory and enforcement matters. Currently, I am the Manager of the Materials Management and Compliance Section, within the Agency’s Bureau of Land. I have served in my current position since April 2016.

The Materials Management and Compliance Section is responsible for administering numerous reporting and compliance programs. This includes administering many of the Agency’s programs involving materials management, compliance oversight, financial assurance, and accounting requirements set forth in Illinois Pollution Control Board (“Board”) regulations. The Agency’s implementation of the Standards for General Construction or Demolition Debris (“GCDD”) recovery facilities, such as permitting, financial assurance, and regulatory compliance will be managed and supported by the Materials Management and Compliance Section.

II) BACKGROUND:

As part of the ordinary course of my responsibilities as Manager of the Management and Compliance Section, I participated in the drafting of the rules presented in the above captioned matter.

I also assisted in the preparation of the Illinois EPA's Technical Support Document filed in this matter.

And, as part of my preparation for my work in this rulemaking, I noted and reviewed the following regulatory history. 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.

Because the proposed rules reflect the existing state of permitting practices for GCDD recovery facilities, and to a great extent merely repeats provisions of Section 22.38 of the Act, it is not expected to have an adverse environmental, technical, or economic impacts.

III) ANALYSIS:

The Illinois EPA proposes, for the Board's consideration and approval, enactment of a new 35 Illinois Administrative Code Part 820. I provide below general details of the Illinois EPA's proposal.

Subpart A: General Provisions

Section 820.102 – Applicability

Section 820.102 identifies the entities regulated under this Part. These rules apply generally to owners and operators of GCDD recovery facilities, as defined in Section 820.103.

Section 820.103 – Definitions

Section 820.103 includes the definitions of relevant terms used in the proposed rules. The proposed definitions are for the most part taken from the Illinois Environmental Protection Act.

Subpart B: Permit Applications

Proposed Subpart B sets forth the procedural requirements for submitting a GCDD recovery facility permit applications, 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.

Section 820.201 – Scope and Applicability

Section 820.201 sets forth the generally applicable GCDD permit requirements. These include identifying the individuals that must obtain an operating permit and the date by which a permit required by the proposed rules must be obtained.

Section 820.202 – Permit Application

Section 820.202 sets forth the required contents for GCDD recovery facility permit applications. To obtain a permit, a GCDD recovery facility must submit a completed application to the Agency on the forms prescribed by the Agency. The application must 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 must include a demonstration that the GCDD recovery

facility and its operation will comply with the Act and the proposed rules and included, at a minimum:

- A facility map scaled to clearly show the facility property, waterways, structures, and other items specifically enumerated in the proposed rules;
- A legal description of the facility boundary;
- a certification of ownership of the property or a copy of the lease of the property;
- an estimate of the maximum total amount of GCDD that can be maintained at the facility at any single time; and
- a closure cost estimate and proof of financial assurance.

These requirements are consistent with existing Board rules that apply to GCDD recovery facilities and accordingly will not impose any undue burden on the regulated community. Section 820.202 also contains provisions detailing the timeframes for required Agency action. As with other permitting transactions, the Agency is required to act within 90 calendar days of receipt of a complete permit application. Agency decisions regarding permit applications may be appealed to the Board in accordance with Section 40 of the Act. These requirements are directly derived from the Act.

Section 820.204 – Transfer of Permit

Section 820.204 sets forth the process for transferring a permit to a new owner or operator. Under the proposed rules, a GCDD recovery facility permit may only be transferred upon a permit application to the Agency that is signed by the existing owner and operator, as well as the new owner and operator.

Section 820.205 – Agency Modification

Section 820.205 outlines the circumstances under which the Agency 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).

Subpart C: 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.

Section 820.301 – Prohibitions

Section 820.301 sets for the general prohibitions applicable to 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.

Section 820.302 – General Operating Standards

Section 820.302 includes the proposed operating standards 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. 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.

Section 820.303 – Processing Program

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.

Section 820.304 – Recordkeeping Requirements

Section 820.304 sets forth the recordkeeping requirements applicable to GCDD recovery facilities. These include both daily practices designed to prevent accepting unacceptable materials, as described in Section 820.303, and quarterly reporting requirements. Each suite of

recordkeeping requirements was established by P.A. 102-310 and is directly mirrored in the proposal.

Section 820.305 – Closure

Section 820.305 establishes the closure requirements for GCDD recovery facilities. The proposed rules require GCDD recovery facilities to initiate closure within 30 days of receipt of the final load of GCDD. Closure may be accomplished only by removing all materials from the GCDD recovery facility. Closure must be completed within 180 days of initiation, unless the Agency grants an extension, following a demonstration that closure cannot be practically completed, and 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

Section 820.306 sets forth the procedural requirements for certification of closure of a GCDD recovery facility. In order to initiate the process for certifying the closure of a GCDD recovery facility, the owner or operator must submit documentation concerning the closure of the facility and an affidavit certifying closure was completed in compliance with the Act and this Part to the Agency. This submission must be made within 45 calendar days of completing closure activities. If the Agency determines that the GCDD recovery facility has been appropriately closed, it will notify the owner or operator in writing that the facility permit is terminated, and financial assurance is no longer required.

Subpart D: 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.

Section 820.401 – General Provisions

Section 820.401 includes the generally applicable provisions for financial assurance at GCDD recovery facilities. There are two approvable financial assurance mechanisms identified in Section 820.401: trust funds and insurance. An owner or operator of a GCDD recovery facility may use a combination of mechanisms to meet the financial assurance requirements for one site or may use a single mechanism to cover more than one site. Beginning one year after the effective date of Part 820, each GCDD recovery facility must maintain financial assurance equal to or greater than the current approved closure cost estimate. If the closure cost estimate increases or the value of the trust fund used as financial assurance decreases below the cost estimate, the owner or operator must secure additional financial assurance within 60 days.

Section 820.402 – Cost Estimate

Section 820.402 identifies the criteria for the closure cost estimate of a GCDD recovery facility. As in other solid waste regulations, the closure cost estimate is total cost for all activities necessary to complete closure of the GCDD recovery facility, if the facility had the maximum permitted amount of GCDD at the facility at the time of closure. Changes to the cost estimate may only be accomplished via a permit application submitted to and approved by the Agency.

Section 820.403 – Release of Financial Institution

Section 820.403 establishes the requirements for the Agency's release of a financial institution that issued a mechanism used as financial assurance for a GCDD recovery facility. As in other comparable solid waste regulations, the Agency must release a financial institution as soon as practicable after receiving a demonstration that either the owner or operator has submitted alternative approvable financial assurance, or the Agency has certified the GCDD recovery facility is closed.

Section 820.404 – Trust Fund

Section 820.404 establishes the criteria for use of a trust fund as financial assurance at a GCDD recovery facility. These requirements are derived from other comparable Board regulations related to trust funds used as financial assurance.

Section 820.405 – Insurance

Section 820.405 establishes the criteria for use of insurance as financial assurance at a GCDD recovery facility. These requirements are derived from other comparable Board regulations related to insurance policies used as financial assurance.

IV) CONCLUSION:

The above concludes my pre-filed testimony on behalf of the Illinois Environmental Protection Agency regarding the above captioned rulemaking. The Agency will supplement the testimony herein, as needed or requested, during hearing or in response to request or comments during these proceedings.

By: /s/ James Jennings
James Jennings
Manager
Materials Management and
Compliance Section
Bureau of Land

DATE: September 6, 2022

Illinois Environmental Protection Agency
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CERTIFICATE OF SERVICE LIST

I, the undersigned, an attorney, affirm that I have served the attached PRE-FILED TESTMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY: JAMES JENNINGS, on behalf of the Illinois EPA, upon the following person(s) by e-mailing it to the e-mail address(es) indicated below or, if no e-mails address is provided, by placing a true copy, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on September 6, 2022:

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I affirm that my e-mail address is john.mcdonough@illinois.gov; the number of pages in the e-mail transmission is 16; and the e-mail transmission took place today before 5:00 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: September 6, 2022

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