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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2022

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

HEARING OFFICER ORDER

On August 6, 2021, the Governor signed Senate Bill 1089 into law as Public Act 102-310. Among its provisions, Public Act 102-310 added Section 22.38(n) to the Environmental Protection Act (Act). Subsection (n) requires that, within one year of the effective date of P.A. 102-310, the Illinois Environmental Protection Agency (IEPA) must propose to the Board rules for permitting GCDD recovery facilities. Within one year after receiving the proposal from IEPA, the Board must adopt rules. 415 ILCS 5/22.38(n); P.A. 102-310. On August 1, 2022, IEPA proposed to the Board a new Part 820 of its waste disposal regulations to establish rules for permitting, operating, and closing general construction or demolition debris (GCDD) recovery facilities. On August 11, 2022, the Board accepted the proposal for hearing.

The hearing officers scheduled the first hearing on September 27, 2022, with a deadline of September 6, 2022, to file testimony. On September 6, 2022, IEPA filed the testimony of Mr. James Jennings. The hearing officer orders also directed participants to pre-file questions based on that testimony by September 20, 2022.

The Board and its staff have reviewed IEPA's proposal and submit questions listed in the attachment to this order. Although the questions are directed to IEPA, any participant may respond to the attached questions or submit a comment.

All filings in this proceeding will be available on the Board's website at pcb.illinois.gov under this docket number R 23-17. Unless the Board, hearing officer, Clerk or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the Clerk's Office On-Line (COOL). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.



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Attachment to Hearing Officer Order of September 20, 2022
R 23-17: Proposed 35 Ill. Adm. Code 820 GCDD Recovery Facilities

Section 820.101: Purpose

1. Please comment on whether this statement of purpose should refer to establishing procedures for providing financial assurance in addition to referring to operating criteria and permitting processes.

Section 820.102: Applicability

2. Please comment on whether “all” GCDD recovery facilities in subsection (a) means all facilities that meet the definition of “GCDD recovery facility.” If so, please comment on whether subsection (a) should be revised as follows to be consistent with subsection (b)(1). If not, please clarify the proposed intent.

a) This Part applies to any site or facility that meets the definition of all GCDD recovery facilities ~~pursuant to~~ under Section 22.38 of the Act.

3. Please comment on whether Part 820 applies to both existing and new GCDD recovery facilities.

4. In subsection (b)(2), please comment on the rationale for exempting GCDD facilities which are located at a facility permitted under 35 Ill. Adm. Code Part 807 or Parts 811 through 814. Also, please comment on the intent of including the phrase “regulated under that facility’s permit.”

Section 820.103: Definitions

5. For the preamble to this section, please comment on whether it would be clearer to state that, “[e]xcept as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part will be the same as the definition of the same words or terms in the Environmental Protection Act”?

See 35 Ill. Adm. Code 810.103 (solid waste disposal).

6. Is IEPA’s proposed definition of “adjudicated bankrupt” based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

7. Please comment on whether the following revision to the definition of “Applicant” is acceptable to the Agency:

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

8. IEPA's proposed definition of "disposal" differs slightly from the statutory definition. While the Act refers in part to "any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment" (415 ILCS 5/3.185 (2020)), the proposal refers to "any waste or hazardous waste into or on any land or water or into any well such that waste or hazardous waste or any constituent thereof may enter the environment" (Prop. at 3). Please comment on whether the definition should include the statutory language with italicization or whether it should include IEPA's proposed language with adjusted italicization.

9. Please clarify whether the definition of "Malodor" is based on the definition of the same term in 35 Ill Adm Code 810.103. If so, please comment on whether it would be acceptable to the Agency to revised it with the following language.

"Malodor" means an odor caused by one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics and duration as to be described as an offensive odor to a reasonable person and that may be injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life or property. [415 ILCS 5/3.115] (defining "air pollution")

If the definition is not based on Section 810.103, please explain the source of the proposed definition.

10. Is IEPA's proposed definition of "operator" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

11. Is IEPA's proposed definition of "owner" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

12. Is IEPA's proposed definition of "putrescible recyclable GCDD" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

13. Is IEPA's proposed definition of "run-off" in Section 820.103 based on a definition in the Illinois rules, federal rules, or any other similar authority? If so, please identify it. If not, please explain the source of the proposed definition.

Section 820.105: Severability

14. Please comment on whether it would clarify Section 820.105 by revising it as follows:

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, that adjudication must not affect the validity of this Part as a whole or of any portion not adjudged invalid.

See 35 Ill. Adm. Code 845.160 (coal combustion waste surface impoundment).

Section 820.202: Permit Application

15. Proposed subsection (a) requires permit applications to be made on Agency forms. Please comment on whether the Agency has developed permit application forms for GCDD recovery facility. If so, submit the application forms into the record. If not, comment whether the Agency will be able to submit the application forms during the post-hearing comment period.

16. Please comment on whether a permit issued under Part 820 to GCDD recovery facility would have a specified duration or expiration date similar to the five-year term for landfill permits under 35 Ill Adm Code 813.108. If not, please comment on the rationale for allowing permits without periodic renewal for GCDD facilities.

17. In subsection (c)(1)(A), please comment on whether IEPA intends that the facility map show “the facility property, all adjacent property, and all property within at least 1000 meters of the boundary of the facility”?

18. In Section 820.202(c)(1)(A), please comment on whether IEPA intends that the facility map show “the facility property, all adjacent property, and all property within at least 1000 meters of the boundary of the facility”?

19. In Section 820.202(c)(1)(B), please comment on whether IEPA intends that the facility map show “all surface waters” within a specific proximity of the facility? If so, please comment with a proposed revision including that proximity.

20. In Section 820.202(c)(1)(D), please comment on whether IEPA intends that the facility map show “the limits of all 100-year floodplains” within a specific proximity of the facility? If so, please comment with a proposed revision including that proximity.

21. Please comment on whether it would clarify Section 820.202(d) by giving it a subheading and revising it as follows:

d) Completeness

- 1) An application ~~for permit~~ is not ~~considered~~ ~~deemed~~ filed until the Agency has received, at the designated address, all information, documents, and authorization, using Agency forms ~~prescribed by the Agency~~ and providing the content required by this Part.
- 2) If the Agency fails to notify the applicant, within 45 days after ~~receiving the receipt~~ of an application, that the application is incomplete, and of the reasons, the application ~~will~~ ~~shall~~ be ~~considered~~ ~~deemed~~ to have been filed on the date received by the Agency.

- 3) The Agency's notification that the application is incomplete is a denial of the permit for purposes of review ~~under pursuant to~~ Section 40 of the Act.

22. Please comment on whether Section 820.202(f) should require that a permit applicant waive its 90-day deadline for final action in writing. If so, please comment on whether a written waiver should be “on forms prescribed by the Agency and mailed or delivered to the address designated by the Agency.”

Section 820.204: Transfer of Permit

23. Please comment on whether it would clarify Section 802.204 to revise the organization and language as follows:

- (a) The Agency may transfer a permit to a new owner or operator only through a permit modification under this Part to identify the new permittee and incorporate other requirements necessary under the Act and this Part.
- (b) The existing owner and operator or their duly authorized agent or agents and the new owner and operator or their duly authorized agent or agents must sign the application for a permit modification.
- (c) The new owner or operator to whom the Agency transfers the permit must comply with all terms and conditions specified in the transferred permit.

Section 820.205: Agency Initiated Modification

24. Please comment on whether it would clarify subsection(b) by revising it as follows:

- (b) Modifications initiated by the Agency do not become effective until 45 days after the owner or operator receives it, unless the modification is stayed during the pendency of an appeal to the Board. The owner or operator may request that the Agency reconsider the modification or may file a petition for a Board hearing under this Part. All other time periods and procedures in this Part apply during the Agency’s reconsideration and during any appeal to the Board.

Section 820.301: Prohibitions

25. Please comment on whether it would clarify subsection (f) by revising it as follows:

- f) Operate a GCDD recovery facility:
 - 1) *Without the maintenance of documentation identifying the hauler, generator, place of origin of the debris or soil, the volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed, recycled, or treated.* [415 ILCS 5/21(w)]

- 2) In a manner that causes or allows:
 - A) noise outside the facility that violates 35 Ill. Adm Code 900 through 905 or Section 24 of the Act.
 - B) vector proliferation.
 - C) litter accumulation.
 - D) malodors outside the GCDD recovery facility.

Section 820.302: General Operating Standards

26. Subsection (d) requires the owner or operator to notify the Agency within the next operating day if the facility receives GCDD outside of permitted operating hours due to an emergency. Please comment with examples of what would constitute an emergency.

27. Subsection (d) also requires the Agency's approval to accept GCDD beyond the permitted hours if an emergency situation extends beyond one day. Please comment on what information would the Agency consider in approving a request under subsection (d). Would the approval include a time limit to accept GCDD beyond permitted operating hours?

28. Please comment on whether it would clarify subsection (d) by revising it as follows:

- d) Operating Hours.
 - 1) GCDD must be received at the GCDD recovery facility only during operating hours established by a permit issued under this Part.
 - 2) If a facility receives GCDD outside of permitted operating hours to respond to an emergency situation, then the facility operating records must maintain a written record of the date, time, and reason the facility received the GCDD. The owner or operator must also notify the Agency's Regional Office responsible for inspecting the facility on the next operating day within the facility's permitted operating hours.
 - 3) If the emergency situation requires receiving GCDD outside of permitted operating hours for more than one day, then the owner or operator of the GCDD recovery facility must obtain prior written approval from the Agency to extend emergency operating hours beyond the first day.

29. Subsection (h) requires preventing wind dispersal of particulate matter. Please comment on whether a GCDD facility must have a dust control plan to comply with subsection (h). If so, should the rule specify minimum requirements for dust control plan? If so, please comment with proposed language on those requirements.

30. Please comment on whether it would clarify Section 820.302(j) by revising it as follows:

j) Vehicle Safety Measures.

- 1) The facility must maintain roads and traffic flow patterns adequate for the type and weight of traffic using the facility and onsite equipment.
- 2) The facility must maintain sufficient area to minimize traffic congestion, provide for safe operation, and allow for queuing of hauling vehicles.
- 3) The facility must use safety mechanisms to prevent vehicles from backing into fuel storage tanks, equipment, or other structures.

31. Subsection (l) specifies that a GCDD facility must be operated in a manner that prevents exposure of “any materials” to run-on or run-off. Please comment on whether the materials to which this requirement applies are only GCCD. If not, please comment on what is included within “any materials.”.

32. Please comment on whether it would clarify subsection (l) by revising it as follows:

l) Run-on and Run-off Control.

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

33. Please comment on whether it would clarify subsection(m) by revising it as follows:

m) Boundary Control.

- 1) Access to the facility must be restricted to prevent unauthorized entry.
- 2) The facility must post at the entrance to the facility stating, at a minimum:
 - A) that the facility only accepts GCDD;
 - B) the facility’s permit number;
 - C) the facility’s hours of operation;
 - D) the penalty for unauthorized trespassing and dumping;

- E) the name and telephone number of the appropriate emergency response agency or agencies to deal with emergencies and other problems; and
- F) the name, address, and telephone number of the facility's operator.

34. Subsection (n) requires the owner or operator to develop and maintain a contingency plan. Please comment on whether the contingency plan must be updated periodically. If so, please comment on how often and under what conditions the plan should be updated?

35. Please comment on whether it would clarify Section 820.302(n) by revising it as follows:

n) Contingency Plan

- 1) The owner or operator of a GCDD recovery facility must establish and maintain a Contingency Plan that:
 - A) minimizes the hazards to human health and the environment from fires and run-off of contaminants resulting from fire at the facility;
 - B) is carried out immediately whenever there is a fire;
 - C) describes the actions facility personnel shall take in response to fires and run-off resulting from fires;
 - D) minimizes the hazards to human health and the environment from vectors and other nuisance organisms that may breed or be present at the facility;
 - E) minimizes the hazards to human health and the environment from flooding in the event of a 100-year flood. The GCDD recovery facility must not restrict the flow of a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are taken to provide alternative storage capacity.
 - F) describes evacuation procedures including evacuation signals, primary evacuation routes, and alternate evacuation routes to be used when the primary routes could be blocked;
 - G) contains an up-to-date emergency equipment list that identifies all emergency equipment at the facility, such as fire-extinguishing systems, fire-suppression material, spill-control equipment, decontamination equipment, and communication and alarm systems, and describes the physical location and capabilities of each listed item; and

- H) includes the name, address, and telephone number of an employee designated as the primary emergency coordinator responsible for coordinating emergency response measures at the GCDD recovery facility, as well as an up-to-date list of all alternate emergency coordinators, listed in the order in which they will assume responsibility for coordinating emergency response measures at the facility in event that the primary emergency coordinator or another alternate emergency coordinator is unavailable.
- 2) The owner or operator must submit a copy of the contingency plan, and all revisions to the plan, to the local fire department and keep a copy of the contingency plan on-site for review by the Agency. The owner or operator must keep in the operating record documentation demonstrating that the plan and all plan revisions have been submitted to the fire department.

Section 820.303: Processing Program

36. Please comment on whether it would clarify Section 820.303(a)(2)(B) to provide that notice of a rejected load must include “a statement that only GCDD is accepted at the facility.”

37. Please comment on whether it would clarify Section 820.304(a)(3) by revising it to provide that “[p]rocedures for recordkeeping of rejected loads must meet the requirements of Section 820.303(a)(1)(B).”

38. Subsection (c)(5) specifies that CCDD and uncontaminated soil that is separated from GCDD received at the facility may be transported off-site for use in accordance with the Act and rules adopted under the Act. Please provide citations to specific sections of the Act and Board rules governing the use of CCDD and uncontaminated soil.

39. Please comment on whether it would clarify subsection (d) by revising it as follows:

- d) Unacceptable Materials. Any unacceptable materials discovered to be mixed with GCDD after it is accepted at the GCDD recovery facility ~~shall~~ must be immediately removed separated from the GCDD and removed from the managed as follows. In no case shall the unacceptable material remain at the facility within for more than 72 hours after receipt. The separated unacceptable material must be managed as follows:

Section 820.304: Recordkeeping Requirements

40. Subsection (b) requires the records required under the Act and Part 820 to be maintained in a form and format prescribed by the Agency. Subsection (c)(1) requires quarterly reports to be submitted in a form and format prescribed by the Agency. Please comment on whether the Agency has developed recordkeeping and quarterly summary forms for GCDD facilities. If so,

submit the forms into the record. If not, comment whether the Agency will be able to submit the forms during the post hearing comment period.

41. Please comment on whether it would clarify subsection (d) by revising it as follows:

d) Operating Record

- 1) The owner or operator must maintain an operating record at the facility. Information maintained in the operating record must include the following:
 - A) Records required to be maintained by the facility under the Act and this Part;
 - B) Any information submitted to the Agency under this Part, including copies of all permits, permit applications, and reports;
 - C) The Contingency Plan for the GCDD recovery facility and documentation demonstrating that the facility has submitted the plan and all plan revisions to the local fire department under Section 820.302(n); and
 - D) Written procedures for load checking and load rejection notifications required under Section 820.303.
- 2) The owner or operator must make the operating record available for inspection and copying by the Agency and units of local government upon request during the facility's normal business hours.

Section 820.305: Closure

42. Subsection (c) requires the owner or operator to complete closure activities for the facility within 180 days of beginning closure. However, regarding the extension of the 180-day deadline, subsection (c)(1) refers to "180 days of the last date on which GCDD was accepted". Please comment on whether subsection (c)(1) must be revised to reflect "180 days of beginning closure" to be consistent with subsection (c). If not, comment on the proposed intent.

Section 820.306: Certification of Closure and Termination of Permit

43. Subsection (b) specifies the procedures for certifying closure and terminating a permit. Please comment on whether this subsection should provide a deadline for the Agency to issue a closure determination. Also, please comment on whether it should require the Agency to notify the owner or operator if the Agency determines that that the GCDD recovery facility has not been closed in compliance with the requirements of the Act and Part 820.

Section 820.402: Closure Cost Estimate

44. Please comment on whether it would clarify Section 820.402(c) be revising it as follows”
- c) Before making or having made any change at the facility that would increase the closure cost estimate, the owner or operator must revise the cost estimate and submit the revised closure cost estimate as a permit application to the Agency. The Agency’s issuance of the permit with the revised cost estimate constitutes approval of the cost estimate.
45. Please comment on how an owner or operator would comply with Section 820.402(d) if on January 1 it had a pending permit application including a revised cost estimate.

Section 820.403: Release of Financial Institution

46. Under subsection (b), the Agency must release a trustee, bank, or other financial institution if 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.” Please comment on whether the Agency is required to issue a certification of closure under Section 820.306. If so, comment on whether the Section 820.306(b) should be revised to require the Agency to issue a certification of closure.

Section 820.404: Trust Fund

47. Please submit the Agency forms required under subsection (c). If the forms are not ready for submission, comment on whether the forms could be submitted along with the posthearing comments.
48. Please comment on whether it would clarify Section 820.404(c) by revising it as follows:
- c) Trust Agreement
- 1) The trust agreement must be on forms prescribed by the Agency and must be accompanied by a formal certification of acknowledgment on a form prescribed by the Agency.
 - 2) The trust agreement must be irrevocable and must, at a minimum, contain provisions addressing establishing, managing, and terminating the trust.
 - 3) The trust agreement must include a schedule listing, at a minimum, the GCDD recovery facility or facilities covered by the trust and the current approved removal cost for each of those GCDD recovery facilities.
 - 4) The trust agreement must prohibit third party access to the trust funds other than as provided in the trust agreement. This prohibition must be in the form prescribed by the Agency and must be updated within 60 days after a change in the amount of the current approved removal cost for any

GCDD recovery facility covered by the trust.

49. Please comment on whether it would clarify Section 820.404(e) by revising it as flows:

e) Evaluation by Trustee

- 1) The trustee must evaluate the trust fund annually as of the anniversary of the day the trust was created or on another date provided in the agreement.
- 2) Within 30 days after the evaluation date each year, the trustee must furnish the owner or operator and the Agency with a statement confirming the value of the trust fund.
- 3) The failure of the owner or operator to object in writing to the trustee within 90 days after the trustee furnishes the statement to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, which bars the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.