

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 POST-HEARING ANSWERS AND ADDENDA TO FIRST HEARING QUESTIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, 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: October 26, 2022

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

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POST-HEARING ANSWERS AND ADDENDA TO FIRST HEARING QUESTIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Today, the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) files this set of post-hearing answers to questions directed to Illinois EPA by the Illinois Pollution Control Board’s (“Board”) and the Illinois Attorney General’s Office, during the September 27, 2022, hearing. On September 26, 2022, the Illinois EPA provided written responses to the pre-filed questions submitted to the Board. The numbering sequence below references the Board's set of pre-filed questions along with follow-up questions during the hearing.

Section 820.102 Applicability

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."

Illinois EPA pre-filed response: Some landfills (permitted under 807 or 811-814) and some transfer stations (permitted under Part 807) have GCDD recycling operations at their facility. Such GCDD recycling operations are subject to and addressed in the landfill or transfer station permit. Subsection (b)(2) is intended to exclude those GCDD operations from having to obtain a redundant permit under Part 820.

Board follow-up: Asked by Mr. Rao, “I understand what the Agency’s rationale is to exempt facilities that are located on permitted landfills. I wanted to know whether it would be acceptable to the Agency if the rule is clarified to specifically identify facilities that are permitted to accept GCDD material at these landfill sites? Right now, the proposed language generally exempts GCDD facilities in permitted landfills, but should

those landfills be also specifically permitted to accept GCDD? If you could take a look at it and get back to us.” (See: September 27, 2022, Transcript, p. 22, line 19).

Illinois EPA response: Under the definition of “municipal waste,” the term “*means garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.*” (See: 415 ILCS 5/3.290). As such, facilities permitted under 35 Ill. Adm. Code Part 807, or Parts 811 through 814 are already permitted to handle municipal waste that includes construction or demolition debris. Section 22.38 of the Act was amended to bring previously permit-exempt facilities into compliance through this regulatory proposal and not to add permitting requirements onto currently permitted and regulated facilities operating under the proposed exclusion. (See generally: Amendments to 415 ILCS 5/22.38(b)(11-12)). The Agency welcomes further questions to clarify or articulate the proposed Section 820.102(b)(2).

Section 820.103 Definitions

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 revise it with the following language.

“Malodor” means any odor caused by one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics an 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.

Illinois EPA pre-filed response: The definition of “malodor” is partially based on the definitions of “malodor” in 35 Ill. Adm. Code 810.103 and “air pollution” in 415 ILCS 5/3.115. The intent is to allow a determination of malodor to be based simply on the odor being offensive to a reasonable person (e.g., offensive to neighbors) regardless of whether it may be injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life of property.

Attorney General’s Office follow-up: Asked by Ms. Avila, “the definition of malodor is based upon ... on a reasonable person, I’m just wondering if you could explain a little bit more what is meant by a ‘reasonable person.’” (See: September 27, 2022, Transcript, p. 38, line 13).

Illinois EPA hearing response: “Ultimately, this would be much like the rest of the operational standards that are intended to provide both the Agency and the facilities some flexibility when evaluating potential compliance issues on a site. This was developed in

context with some of our permitting staff as well as some of our field staff. We'd be happy to provide some additional feedback in post-hearing comment. I just wanted to make sure the perspectives that they inserted into this are adequately captured in a response." (See: September 27, 2022, Transcript, p. 38, line 19).

Illinois EPA follow-up response: As used in the proposed definition of "malodor", a reasonable person is an individual who is of average sensitivity to odors. This approach is intended to provide an objective test for evaluating odor concerns, similar to the reasonable person standard applied in other areas of the law. The Agency welcomes additional language from the Board and other interested stakeholders to the extent necessary to capture the intended concept more clearly.

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.

Illinois EPA pre-filed response: The Illinois EPA has developed these forms, copies of which are attached to these responses.

Illinois EPA Addendum: During the hearing, the Agency noted with respect to the Board's question 40 that the Agency intended to file as an attachment, Attachment A, the form indicated in Illinois EPA's response. Attachment A is included as an addendum to today's post-hearing answers.

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.

Illinois EPA pre-filed response: Subsection (c)(1) should be revised to reflect "180 days from beginning closure".

Board follow-up: Asked by Ms. Tipsord, "Is there a possibility that you could give us some examples that we might either be able to use when JCAR asks us, or include as a "such as" list in the rules?" (See: September 27, 2022, Transcript, p. 34, line 12).

Illinois EPA response: Illustrative examples of events that justify extending the closure timeline include, but are not limited to, a flood, tornado, or other natural disaster impacting the facility, an inability to remove accepted GCDD from the facility because of transportation issues beyond the owner or operator's control, or supply chain issues beyond the owner or operator's control that prevent the owner or operator from obtaining an outlet for collected GCDD.

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.

Illinois EPA pre-filed response: These requirements are already provided in the Act. The Illinois EPA views closure determinations as a permit modification subject to Section 39 of the Act. Section 39 sets forth the review deadline for permit submissions by providing approval by operation of law if the Agency does not take action within 90 days. This approval by operation of law also ensures the Illinois EPA takes action on unapprovable submissions. If the Illinois EPA determines a facility has not been closed in compliance with applicable requirements, it will disapprove the closure certification within 90 days to avoid approval by operation of law.

Board follow-up: Asked by Mr. Rao, "I wanted to know if it would be acceptable to the Agency if a cross reference to Section 39 of the Act is added under [820.306] to provide the reader of that – the Agency's decisions are made under Section 39?" (See: September 27, 2022, Transcript, p. 35, line 6).

Illinois EPA response: The Agency proposes the following revision to proposed Section 820.306(b):

- b) In accordance with Section 39(a) of the Act, ~~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:

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ John M. McDonough II

John M. McDonough II
Assistant Counsel
Division of Legal Counsel

DATED: October 26, 2022

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

ATTACHMENT A



1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Construction & Demolition Debris Recovery Facility Quarterly Report

Site Number: _____ County: _____

Site Name: _____

Facility Address: _____

City: _____ ZIP: _____

Site Contact: _____ Phone: _____ ext: _____

Quarter: _____

| Material | Amount in Tons |
|--|----------------|
| Amount of C&D Accepted | |
| Amount of C&D Remaining On-Site | |
| Wood On-Site Recovered for Use as Fuel | |
| Recyclable C&D Transported Offsite | |
| Non-recyclable C&D Transported Offsite | |

Percentage of recyclable construction and demolition debris on a 12-month rolling average: _____

Attach a list of the names and addresss of each (1) transporter used to transport accepted material offsite and (2) location to which C&D was sent.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent offense after conviction is a Class 3 felony. (415 ILCS 5/44(h))

 Site Owner/Operator Name

 Signature

 Date

This Agency is authorized to require this information under 415 ILCS 5/22.38(b)(6)(iii). Disclosure of this information is required under that section. Failure to do so may prevent this form from being processed and could result in your application being denied.

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| FACILITIES |) | |

CERTIFICATE OF SERVICE LIST

I, the undersigned, an attorney, affirm that I have served the attached POST-HEARING ANSWERS AND ADDENDA TO FIRST HEARING QUESTIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, 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 26, 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 11; 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: October 26, 2022

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