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POLLUTION CONTROL BOARD

NOTICE OF ADOPTED RULE

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

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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 in R23-17 at 47 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**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 under Section 22.38 of the Act.

**Section 820.102 Applicability**

- a) This Part applies to any site or facility that meets the definition of GCDD recovery facility under 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 under 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 the definition of the same words or terms in the Environmental Protection Act:

"Act" means the Environmental Protection Act [415 ILCS 5].

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"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") under

a voluntary petition under Section 301(b) of the Code;

an involuntary petition under Section 303(h) of the Code; or

a conversion of a Chapter 11 case to a Chapter 7 case under Sections 348(a) and 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 permit under this Part.

"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 if 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 so that such 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

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*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 if the uncontaminated soil is not commingled with any GCDD or other waste. To the extent allowed by federal law, uncontaminated concrete with protruding rebar is considered CCDD and is not 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 compliance 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 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 GCDD recovery facility that is in sufficient quantities and of such characteristics and duration 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 a direct or indirect interest in the GCDD recovery facility or the land on which a person operates and maintains a GCDD recovery facility. "Interest" includes a leasehold interest in the land. The "owner"

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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 to cause a malodor, gases, or other offensive conditions or that can provide food for birds and disease vectors.

"Recyclable GCDD" means GCDD *that is being reclaimed from the GCDD waste stream and*

*is rendered reusable and is reused or*

*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*

*recovered for use as fuel or that is otherwise incinerated or burned,*

*buried or used as fill material, including the use of any clean construction or demolition debris fraction of general construction or demolition debris as fill material under Section 3.160(b) of the Act or at a clean construction or demolition debris fill operation under Section 22.51 of the Act, or*

*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]

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"Run-off" means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of this 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 must comply with all applicable State and federal laws and regulations, including 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 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.

### 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 must submit to the Agency an application for a permit required by Section 22.38 of the Act. The application must contain the information required by this Part and Section 39(a) of the Act.
  - 1) *An owner or operator of a GCDD recovery facility 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, must 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)]

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- 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 apply to modify that permit no later than one 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, a person must not 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 must be made on Agency forms and be mailed or delivered to the address designated by the Agency in those forms.
- b) All permit applications must be signed by the owner, the operator, and the property owner if different than the GCDD recovery facility owner, or by their duly authorized agent or agents. Each application containing the signature of an authorized agent must be accompanied by an oath or affidavit attesting to each agent's authority to sign the application and must be notarized.
- c) Each application must demonstrate that the GCDD recovery facility and its operation will comply with the requirements of the Act and this Part and must contain:
  - 1) a facility map scaled to clearly show:
    - A) the facility property, all adjacent property, and all property within at least 1,000 meters of the boundary of the facility;
    - B) all surface waters within 1,000 meters of the boundary of the facility;
    - 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 within 1,000 meters of the boundary of the facility;

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- E) any wellhead protection areas under Section 1428 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300h-7) and any sole source aquifer designated by the United States Environmental Protection Agency under Section 1424(e) of the SDWA (42 U.S.C. 300h-3(e));
  - F) the 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;
  - 5) a closure cost estimate; and
  - 6) proof of financial assurance required under Subpart D.
- d) Completeness
- 1) An application is not considered to be filed until the Agency has received, at the designated address, all information, documents, and authorization, using Agency forms and providing the content required by this Part.

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- 2) If the Agency fails to notify the applicant within 45 days after receiving an application that the application is incomplete and of the reasons for that determination, the application will be considered 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 Section 40 of the Act.
- e) If the Agency fails to take final action on the application within 90 days after the filing of the application, the applicant may consider 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 after filing the application. The permit applicant's waiver should be submitted in writing to the Agency at the address identified in the permit application forms.
  - g) The Agency will send all notices of final action by registered or certified mail, return receipt requested. Final action is considered to have taken place on the date the notice is mailed.
  - h) Agency decisions regarding permit applications may be appealed to the Board under 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 will 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 facility without a permit.

#### **Section 820.204 Transfer of Permit**

- a) The Agency may transfer a GCDD recovery facility permit to a new owner or operator only through a permit modification under this Part that identifies the new permittee and incorporates other applicable requirements of 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.

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- c) The new owner or operator the permit is transferred to must comply with all terms and conditions specified in the transferred 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 under Title VII, IX, or X of the Act; or
  - 4) Promulgation of new statutes or regulations affecting the permit.
- b) A modification initiated by the Agency becomes effective 45 days after the owner or operator receives notice of the modification unless the modification is stayed during an appeal to the Board. The owner or operator may file a petition for 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.

SUBPART C: OPERATING STANDARDS

**Section 820.301 Prohibitions**

A person must not:

- 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(1)]*
- 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 35 Ill. Adm. Code 1100*

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*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 rules 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 must be maintained under Subpart D.
- 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 weight or volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed of, recycled, or treated. [415 ILCS 5/21(w)]*
  - 2) In a manner that causes or allows:
    - A) Noise outside the GCDD recovery facility that violates 35 Ill. Adm. Code 900 through 905 or Section 24 of the Act;
    - B) Vector proliferation;
    - C) Litter accumulation; or
    - D) Malodors outside the GCDD recovery facility.

**Section 820.302 General Operating Standards**

- a) Compliance with Local Requirements. *GCDD recovery facilities are subject to local zoning, ordinance, and land use requirements. [415 ILCS 5/22.38(a)]*
- b) Location Standards. *GCDD recovery facilities must be located in compliance with local zoning requirements or, in the absence of local zoning requirements, must be located so that no part of the GCCD recovery facility boundary is closer*

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*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 is measured by weight.
- d) **Operating Hours**
  - 1) GCDD may be received at the GCDD recovery facility only during operating hours established by a permit issued under this Part.
  - 2) If a GCCD recovery facility receives GCDD outside of permitted operating hours to respond to an emergency, then the GCCD recovery facility operating records must maintain a written record of the date, time, and reason the GCDD recovery facility received the GCDD. The owner or operator must also notify the Agency's Regional Office responsible for inspecting the GCDD recovery facility on the next operating day within the GCDD recovery facility's permitted operating hours.
  - 3) If the emergency 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 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 must be maintained and available for use at the facility during all hours of operation.
- f) **Utilities.** All utilities, including electricity, heat, interior and exterior lighting, and communications equipment, necessary to operate in compliance with the requirements of this Part, must be available at the facility at all times.
- g) **Maintenance.** Adequate shelter, sanitary facilities, and emergency communications for employees must be maintained at the GCDD recovery facility at all times.
- h) **Dust Control.** Wind dispersal of particulate matter must be prevented.

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- i) Fire Protection. Equipment necessary to respond to fires and provide emergency notifications to the nearest fire department must be maintained at the GCDD recovery facility.
- j) Vehicle Safety Measures
  - 1) The GCDD recovery facility must maintain roads and traffic flow patterns adequate for the type and weight of traffic using the facility and onsite equipment.
  - 2) The GCDD recovery facility must maintain sufficient area to minimize traffic congestion, provide for safe operation, and allow for queuing of hauling vehicles.
  - 3) The GCDD recovery facility must use 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 must be implemented at the facility. Surface water drainage must be controlled so adjacent properties are not adversely impacted.
- 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.
- m) Boundary Control
  - 1) Access to the GCDD recovery facility must be restricted to prevent unauthorized entry.

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- 2) The GCDD recovery facility must post at the entrance to the GCDD recovery facility stating, at a minimum:
  - A) that the GCDD recovery facility only accepts GCDD;
  - B) the GCDD recovery facility's permit number;
  - C) the GCDD recovery 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 GCDD recovery facility's operator.
  
- 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 a fire at the GCDD recovery facility;
    - B) is carried out immediately whenever there is a fire;
    - C) describes the actions GCDD recovery facility personnel must 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 GCDD recovery 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

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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 GCDD recovery 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 they will assume responsibility for coordinating emergency response measures at the GCDD recovery facility if 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 same 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**

- a) The owner or operator of a GCDD recovery facility must inspect every load of material transported to the GCDD recovery facility to ensure only GCDD is accepted at the GCDD recovery facility.
  - 1) Each load inspection must include:
    - A) Before acceptance, an inspection of each load using an elevated structure, a designated ground-level inspection area, or another acceptable method specified in a permit issued under this Part.

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- B) Maintaining 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 GCDD recovery facility must be rejected. The driver of the rejected load must be presented with a written notice that includes the following:
- A) The date of the attempted delivery;
  - B) A statement that only GCDD is accepted at the GCDD recovery facility;
  - C) The reasons for rejecting the load; and
  - D) A copy of the rejection notice must be maintained in compliance with Section 820.304.
- 3) If material other than GCDD is discovered to have been accepted at the GCDD recovery facility, the material must be removed in compliance with this Subpart.
- b) Before any mechanical sorting, separating, grinding, or other processing, all drywall and other wallboard containing gypsum or sulfur must be removed from the GCDD received to the extent practicable. The drywall and other wallboard containing gypsum or sulfur must 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

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- 1) Within 48 hours after receipt of the GCDD at the GCDD recovery facility, the owner or operator must sort the GCDD to separate the recyclable GCDD and wood being recovered for use as fuel from all other GCDD.
  - 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.
  - 3) All non-putrescible recyclable GCDD that is separated from other GCDD must be transported off-site within six months after receipt.
  - 4) All GCDD other than the separated recyclable GCDD and wood being recovered for use as fuel must be stored in containers meeting the requirements of subsection (b) and, within 72 hours after receipt, must be transported off-site for disposal.
  - 5) CCDD and uncontaminated soil that is separated from GCDD received at the GCDD recovery facility may be transported off-site for use complying 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 must be immediately separated from the GCDD and removed from the GCDD recovery facility within 72 hours after receipt. The separated unacceptable material must be managed as follows:
- 1) Landscape waste must be transported to a facility permitted to accept landscape waste.
  - 2) Lead-acid batteries must be transported either to a drop-off center handling the waste or to a lead-acid battery retailer.
  - 3) Lithium-ion batteries must be transported to a facility capable of handling the waste.
  - 4) Special wastes must be containerized separately and removed from the facility as soon as possible by an appropriately licensed special waste hauler. Special wastes must be transported to a GCDD recovery facility permitted to accept special waste.

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- 5) Asbestos and asbestos debris must be managed in compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.
- 6) Used and waste tires must be managed in compliance with Title XVI of the Act.
- 7) White good components must be managed in compliance with Section 22.28 of the Act.
- 8) All other unacceptable materials must be managed in compliance with 35 Ill. Adm. Code Subtitle G.
- 9) Documentation must be maintained reflecting each type of unacceptable material managed under subsections (d)(1) through (d)(8), including: the date the material was received, identified, and separated; the date the material was transported offsite; the amount of unacceptable material; the name of the transporter; the name of the generator; and the name of the offsite facility receiving the unacceptable material.

#### **Section 820.304 Recordkeeping Requirements**

- a) The owner or operator of a GCDD recovery facility must employ tagging and daily recordkeeping procedures to demonstrate compliance with the Act and this Part. [415 ILCS 5/22.38(b)(6)]
  - 1) Tagging and recordkeeping of material accepted at the GCDD recovery facility must identify the type, weight, source or place of origin, generator, and transporter or hauler of the material. [415 ILCS 5/21(w) and 22.38(b)(6)]
  - 2) Tagging and recordkeeping of material transported from the GCDD recovery 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) Procedures for recordkeeping of rejected loads must meet the requirements of Section 820.303(a)(1)(B).

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- 4) Procedures for recordkeeping of unacceptable materials transported to an offsite facility must meet the requirements of Section 820.303(d)(9).
  
- b) Records required under the Act and this Part must *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) must 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 must be maintained until certification of closure by the Agency complying with Section 820.305.
  
- d) Operating Record
  - 1) The owner or operator of a GCDD recovery facility must maintain an operating record at the GCDD recovery facility. Information maintained in the operating record must include the following:
    - A) Records required to be maintained by the GCDD recovery 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 plan and all plan revisions have been submitted to the local fire department under Section 820.302(n); and

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- D) Written procedures for load checking and load rejection notifications required under Section 820.303.
- 2) The owner or operator of a GCDD facility must make the operating record available for inspection and copying by the Agency and units of local government upon request during the GCDD recovery facility's normal business hours.

**Section 820.305 Closure**

- a) Within 30 days after the date the GCDD recovery facility receives the final load of GCDD, the owner or operator must begin closure activities and submit to the Agency a notice of closure.
- b) During closure, all GCDD and all other materials at the GCDD recovery facility must be removed to an appropriately permitted transfer, treatment, storage, or disposal facility.
- c) The owner or operator must complete closure activities for the GCDD recovery facility within 180 days after the beginning of 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 practicably completed within 180 days after the beginning of closure; 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 after completing closure activities, the owner or operator of a GCDD recovery facility must 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.

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- 2) An affidavit by the owner or operator certifying that the GCDD recovery facility has been closed in compliance with the Act and this Part.
- b) Under Section 39(a) of the Act, when the Agency determines, based on information received under subsection (a) and any Agency site inspection, that the GCDD recovery facility has been closed in compliance with the requirements of the Act and this Part, the Agency must 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.
- c) The owner or operator may consider the Agency action under this Section as a denial or grant of a permit with conditions for purposes of appeal under Section 40 of the Act.

### SUBPART D: FINANCIAL ASSURANCE

#### **Section 820.401 General Provisions**

- a) This Subpart states the procedures by which the owner or operator of a GCDD recovery facility must provide financial assurance for closure under Section 820.305.
- b) Amount
  - 1) Except as provided in subsection (b)(2), beginning one year after the effective date of this Part the owner or operator of a GCDD recovery facility must at all times maintain financial assurance in an amount equal to or greater than the current approved closure cost estimate calculated under Section 820.402.
  - 2) Within 60 days after the current approved closure cost estimate increases or the value of the trust fund established under Section 820.404 decreases, the owner or operator must increase the total amount of financial assurance to an amount that is equal to or greater than the current approved closure cost estimate calculated under Section 820.402.

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- c) Mechanisms
- 1) The owner or operator may use a trust fund, insurance, or a combination of both 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 must 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 must 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 must 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 must be sufficient to close all of the owner's or operator's GCDD recovery facilities in compliance 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 the financial assurance or order that proceeds from financial assurance be applied to the closure of the GCDD recovery facility.
- f) The following Agency actions may be appealed to the Board as a permit denial under 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.

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**Section 820.402 Closure Cost Estimate**

- a) A written estimate of the cost to complete closure under Section 820.305 for the maximum amount of GCDD that will be accumulated at the GCDD recovery facility at any time must be submitted to the Agency for approval as part of each permit application.
- b) The cost estimate must include all costs for all activities necessary to complete closure in compliance with Section 820.305.
- c) Before making or having made any change at the GCDD recovery 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.
- d) By January 1, 2024, and every January 1 after, the owner or operator of a GCDD recovery facility must certify to the Agency on Agency forms that the most recent approved cost estimate has not increased.

**Section 820.403 Release of Financial Institution**

The Agency must 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:
  - 1) completion of closure in compliance with Section 820.305; and
  - 2) Agency certification of closure of the GCDD recovery facility under Section 820.306(b).

**Section 820.404 Trust Fund**

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- 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 must 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) Trust Agreement
  - 1) The trust agreement must be on Agency forms and must be accompanied by a formal certification of acknowledgment on an Agency form.
  - 2) The trust agreement must be irrevocable and must contain provisions addressing establishing, managing, and terminating the trust.
  - 3) The trust agreement must include a schedule listing 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 Agency form 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.
- d) Payments into the Trust
  - 1) The owner or operator must make a payment into the trust fund each year during the pay-in period. However, after the pay-in period expires, neither the owner nor the operator may use a pay-in period to fund the trust and must instead make a lump sum payment to further fund the trust.
  - 2) Pay-in Period
    - A) The pay-in period for a trust fund used as financial assurance under this Part is three years.
    - B) The pay-in period for any facility that has not accepted GCDD before establishing a trust fund as financial assurance under this Part starts on the date any of the GCDD recovery facilities covered

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by the trust agreement first receives GCDD.

- C) The pay-in period for any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism starts on the date the trust fund is established.
- 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) First Annual Payment
  - A) For any facility that has not accepted GCDD before establishing a trust fund as financial assurance under this Part, the owner or operator must 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 must submit to the Agency a receipt from the trustee for the first annual payment.
  - B) For any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism, the owner or operator must make the first annual payment immediately upon establishing the trust fund for use as financial assurance under this Part. The first payment must be made before submitting an original signed duplicate to the Agency under subsection (a). The owner or operator must submit to the Agency a receipt from the trustee for the first annual payment at the time the original signed duplicate is submitted to the Agency.
- 5) Subsequent annual payments must be made within 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 must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified

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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 must 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) 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 regarding matters disclosed in the statement.
- f) After the pay-in period is completed, whenever the cost estimate changes, the owner or operator must 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 must, 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 exceeding 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

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request to the Agency for release of the amount exceeding 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 under this subsection, but within 120 days following the Agency's receipt of the request, the Agency must instruct the trustee to release to the owner or operator the amount of funds the Agency specifies in writing as exceeding 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 within 120 days following the Agency's receipt of the itemized bills, the Agency must determine whether the expenditures are for closure activities under 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 must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures for closure activities under Section 820.305.
  - 3) If the Agency determines, based on such information available to it, that the remaining cost of closure will be greater than the value of the trust fund, it must withhold reimbursement of amounts it determines are necessary to preserve the trust corpus to accomplish closure until it determines that the owner or operator is no longer required to maintain financial assurance. If the fund is inadequate to pay all claims after closure is completed, the Agency must pay claims according to the following sequential priorities:
    - A) Persons the Agency has contracted and authorized to perform closure activities;
    - B) Persons who have completed closure activities authorized by the

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Agency;

- C) Persons who have completed work that 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 that 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 must be *licensed to transact the business of insurance by the Department of Insurance*, according to the Illinois Insurance Code [215 ILCS 5], *or at a minimum the insurer must 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 must be on forms filed with the Illinois Department of Insurance, under 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 must 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, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of

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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 must guarantee that funds will be available to close the GCDD recovery facility in compliance with Section 820.305. The policy must 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, under 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 the 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 must determine whether the expenditures are for closure in compliance with Section 820.305. The Agency must direct the insurer to make reimbursement in the amounts the Agency specifies in writing as expenditures.
  - 3) If the Agency determines based on information available to it that the cost of closure will be greater than the face amount of the policy, it must withhold reimbursement of such amounts as it considers necessary 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 must pay claims according to the

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following priorities:

- A) Persons 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 that furthered the closure (third priority);
- D) The owner or operator and related business entities (last priority).

g) Cancellation

- 1) The owner or operator must maintain the policy in full force and effect until the Agency releases the insurer under Section 820.403.
- 2) The policy must 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 must 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 must contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon the consent of the insurer if consent is not unreasonably withheld.