

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R24-12
AMENDMENTS (July 1, 2023 through)	(Identical-in-Substance Rulemaking – Land)
December 31, 2023)	

NOTICE

TO: Don A. Brown, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board an APPEARANCE and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENT IN RESPONSE TO THE BOARD’S JULY 11, 2024, OPINION AND ORDER, copies of which are herewith served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: September 23, 2024

1021 North Grand Avenue East
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APPEARANCE

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Nick M. San Diego
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PUBLIC COMMENT IN
RESPONSE TO THE BOARD’S JULY 11, 2024 OPINION AND ORDER**

NOW COMES the Illinois Environmental Protection Agency (“Agency”), by and through its attorneys and, pursuant to the Illinois Pollution Control Board’s (“Board”) Opinion and Order dated July 11, 2024, submits the following public comment for the Board’s consideration in the above-referenced proceeding.

In the Board’s proposed amendments to Illinois regulations that are “identical in substance” (“IIS”) to hazardous waste regulations adopted by the United States Environmental Protection Agency (“USEPA”) in the second half of 2023,¹ the Board deletes the words/phrases “minimum,” “at [a] minimum,” “but not limited to,” and “but [is/are] not limited to,” from several rule sections in 35 Ill. Adm. Code Parts 721, 722, 724, 725, and 726.² All of these words/phrases appear in the equivalent federal regulations.

In Attachment A to this public comment, the Agency lists the specific rule provisions where such deletions are proposed, as well as other regulations for discussion. The table is organized by Illinois Register page number, the Illinois regulation at issue, its equivalent federal

¹ See USEPA’s direct final action on a number of technical corrections that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations (88 Fed. Reg. 54086). With the exception of eight (8) specific amendments being withdrawn, all other amendments in the direct final rule went into effect on the effective date of December 7, 2023 (88 Fed. Reg. 84710).

² Notably, the IIS federal regulations adopted via direct final action did not include such amendments.

IIS regulation, and what is proposed to be amended (or not amended) by the Board, with brief Agency comments in the last column.

State authorization requires that Illinois' RCRA program be fully equivalent to, and no less stringent than, the federal RCRA program. In addition, State authorization requires States to have adequate enforcement authority. States must "provide adequate enforcement of compliance with the requirements of" RCRA Subtitle C. The requirements for inspection, enforcement, remedy, and penalty authorities are specified in 40 CFR Sections 271.15 and 271.16. As part of the state authorization revision application process, the Agency is also required to include a statement from the Office of the Illinois Attorney General ("OIAG") to certify that the program modification is equivalent to, more stringent than, or broader in scope than the Federal requirement.

At issue, then, are whether the proposed amendments would be viewed by USEPA as "less stringent" than the federal rules and whether the proposed amendments would still provide adequate enforcement of compliance with the requirements of RCRA Subtitle C. The Agency has not consulted with the OIAG on these proposed rules and therefore, at this time, the Agency cannot opine on whether these proposed amendments are "equivalent to," "more stringent than," or "broader in scope" than the federal rules.

The Agency thanks the Board for this opportunity to comment on the proposed amendments to the Illinois regulations identical-in-substance to USEPA's hazardous waste regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATED: September 23, 2024

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ATTACHMENT A

Illinois Register Volume 48, Issue 32 August 9, 2024 Pages 11381-12058	Title 35 of the Illinois Administrative Code (Ill. Adm. Code) Sections	Title 40 of the Code of Federal Regulations (CFR) Sections	Proposed Illinois Regulation Amendment	Comments, Including Potential Impacts to USEPA Authorization
11613	721.104(a)(17)(C)	261.4(a)(17)(iii)	Deletes “minimum” from “minimum integrity standards.”	
11615	721.104(a)(17)(D)(ii)	261.4(a)(17)(iv)(B)	Deletes “minimum” from “minimum standards.”	
11617	721.104(a)(20)(B)(ii)	261.4(a)(20)(ii)(B)	Deletes “at a minimum” related to building requirements.	
11617	721.104(a)(20)(B)(iv)	261.4(a)(20)(ii)(D)	Deletes “at a minimum” related to shipment records.	
11618	721.104(a)(20)(C)(ii) 721.104(a)(20)(C)(iii)	261.4(a)(20)(iii)(B) 261.4(a)(20)(iii)(C)	Deletes “at a minimum” in (C)(ii) but keeps “at a minimum” in (C)(iii).	One example of an inconsistency in terms of deletion. Why are the record requirements in (C)(iii) for shipments of excluded hazardous secondary materials received by the manufacturer different than any other kind of record requirement?

11619	721.104(a)(20)(G)	261.4(a)(20)(ii)(D)	Deletes “at a minimum” regarding inspection schedules.	
11621	721.104(a)(21)(C)	261.4(a)(21)(iii)	Deletes “at a minimum” relative to sampling and analysis records.	
11628	721.104(a)(24)(E)(iv)	261.4(a)(24)(v)(D)	Deletes “at a minimum” relative to shipment records.	
11629	721.104(a)(24)(F)(i)	261.4(a)(24)(vi)(A)	Keeps “at a minimum” relative to shipping records.	Another example of inconsistency in terms of deletion.
11667	721.104(j)(1)(E)	261.4(j)(1)(v)	Deletes “at a minimum” relative to shipment records.	
11670	721.106(a)(4)	261.6(a)(4)	Deletes “but is not limited to.”	Removing “but not limited to” may limit the meaning of the term to only oil that is refined, reclaimed, burned for energy, or reprocessed. It is possible that a situation may come up that involves used oil that is outside of these four listed categories.
11679	721.243(b)(1)	261.143(b)(1)	Deletes “at a minimum” re bond requirements.	
11683	721.243(d)(1)	261.143(d)(1)	Deletes “at a minimum” re insurer requirements.	

11685	721.243(d)(8)	261.143(d)(8)	Deletes “at a minimum” re policy automatic renewal requirements.	
11694	721.243(h)(2)	261.143(h)(2)	Deletes “at a minimum” re removal and decontamination plan for release from financial assurance obligations.	
11694	721.243(h)(2)(B)	261.143(h)(2)(B)	Deletes “but not limited to.”	By removing “but not limited to” the regulation is creating the only requirements for the “Removal and Decontamination Plan for Release from Financial Assurance Obligations.” Specifically, removal of “but not limited to” is creating the only requirements for the plan in regard to describing removal or decontamination of hazardous secondary material residues and contaminated containment systems. It is possible that additional procedures that are site-specific might be required.
11695	721.243(h)(2)(C)	261.143(h)(2)(C)	Deletes “but not limited to.”	By removing “but not limited to” the regulation is creating the only requirements for the “Removal and Decontamination Plan for Release from Financial Assurance Obligations.”

				Specifically, removal of “but not limited to” is creating the only requirements for the plan in regard to describing the activities necessary to protect human health and the environment. It is possible that additional activities procedures that are site-specific might be required.
11695	721.243(h)(2)(D)	261.143(h)(2)(D)	Deletes “at a minimum.”	
11697	721.247(a)(1)(B)	261.147(a)(1)(ii)	Deletes “at a minimum” re insurance policy insurer requirements.	
11700	721.247(b)(1)(B)	261.147(b)(1)(ii)	Deletes “at a minimum” re insurance policy insurer.	
11729	721.933(h)(1)	261.1033(h)(1)	Changes “no greater than 20 percent” to “less than 20 percent.”	<p>This is a potentially a substantive change as, under the existing state and federal regulations, 20 percent is a threshold percentage included in the calculus. At issue is whether USEPA will view this as more or less stringent than the federal regulations.</p> <p>There are no proposed changes to the federal equivalent at 261.1033(h)(1). Only 261.1033(n)(1)(i) was amended. See 88</p>

				Fed. Reg. 54086, 51403.
11732	721.933(l)(2)(A)	261.1033(l)(2)(i)	Deletes “but are not limited to.”	The removal of “but not limited to” is limiting the potential defects that could be noted to visible cracks, holes, or gaps in ductwork or piping or loose connections. It is possible visible defects exist other than those specified.
11744	721.983(d)(1)	261.1083(d)(1)	Deletes “but are not limited to.”	Removing “but not limited to” limits the potential leak interfaces to only those listed and does not allow for any other types of leak interfaces.
11750	721.984(c)(4)(A)	261.1084(c)(4)(i)	Deletes “but are not limited to.”	Removing “but are not limited to” limits the visible defects of fixed roof and closure devices to only the ones listed and does not allow for any other types of non-listed defects.
11754	721.984(e)(3)(A)	261.1084(e)(3)(i)	Deletes “but are not limited to.”	Removing “but are not limited to” limits the floating roof and closure device defects that could result in air pollutant emissions to only those listed and does not allow for any other types of non-listed defects.
11760	721.984(f)(3)(B)(i)	261.1084(f)(3)(ii)(A)	Deletes “but are not limited to.”	Removing “but are not limited to” limits the floating roof and closure device defects that could result in air pollutant emissions

				to only those listed and does not allow for any other types of non-listed defects.
11765	721.984(g)(3)(A)	261.1084(g)(3)(i)	Deletes “but are not limited to.”	Removing “but are not limited to” limits the floating roof and closure device defects that could result in air pollutant emissions to only those listed and does not allow for any other types of non-listed defects.
11789	722.111(d)	262.11(d)	Adds introductory text related to identifying hazardous characteristics for listed hazardous wastes when the characteristic is already addressed by the listing.	USEPA amended 262.11(d) to add this via its Direct Final Rule (88 Fed. Reg. 54086, 54109), but withdrew this amendment. See 88 Fed. Reg. 84710. At issue is whether USEPA would view this addition as a more or less stringent rule than the federal program. This qualifier will allow generators to use fewer waste codes (i.e., using just the listed codes instead of the characteristic codes).
11790	722.111(f)	262.11(f)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though acceptable records are those containing only the specified information listed.
11801	722.116(b)(5)	262.16(b)(5)	Deletes “but are not limited to.”	Removing “but are not limited to” allows

				the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11810	722.117(a)(1)(F)(ii)	262.17(a)(1)(vi)(B)	Deletes “but are not limited to.”	Removing “but not limited to” limits the sources of ignition or reaction of an ignitable or reactive waste to just the listed examples.
11812	722.117(a)(4)	262.17(a)(4)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11814	722.117(a)(5)(B)(ii)	262.17(a)(5)(ii)(B)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11815	722.117(a)(7)(A)(iii)	262.17(a)(7)(i)(C)	Deletes “at a minimum” re	

			design of training program.	
11821	722.117(c)(4)(D)(ii)	262.17(c)(4)(iv)(B)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11833	722.332(a)(4)(A)(ii)	262.232(b)(4)(i)(B)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11837	722.332(b)(4)(B)(ii)	262.232(a)(4)(ii)(B)	Deletes “but are not limited to.”	Removing “but are not limited to” allows the regulation to be read as though the only examples allowed for indication of the hazards of contents are those listed. Additional information regarding the hazards of contents may be applicable.
11855	724.101(j)(2)	264.1(j)(2)	Deletes “at a minimum” re analysis of representative	

			sample of the hazardous remediation wastes to be managed at a site.	
11861	724.115(b)(4)	264.15(b)(4)	Deletes “at a minimum” re inspection schedule.	
11862	724.115(d)	264.15(d)	Deletes “at a minimum” re inspection record requirements.	
11909	726.208(e)	266.108(e)	Keeps “at a minimum” related to record keeping requirements for small quantity on-site burner exemptions.	Another example of inconsistency in terms of deletion.
11937	726.610(c)(4)(F)	266.510(c)(4)(vi)		This appears to have a typographical error where the reference to “...728.103(c)(1) through (c) are met...” should be “...728.103(c)(1) through (6) are met...”

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December 31, 2023)	

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached APPEARANCE and COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the following:

See attached Service List

I affirm that my e-mail address is nick.m.sandiego@illinois.gov; the number of pages in the e-mail transmission is 16; and the e-mail transmission took place before 5:00 p.m. on September 23, 2024.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

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

DATED: September 23, 2024

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SERVICE LIST

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