

ILLINOIS POLLUTION CONTROL BOARD

November 7, 2024

IN THE MATTER OF:

RCRA SUBTITLE C UPDATE, USEPA	)	R24-12
AMENDMENTS (July 1, 2023 through	)	(Identical-in-Substance Rulemaking - Land)
December 31, 2023)	)	

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by M. Gibson and J. Van Wie):

Today, the Board adopts amendments to the Illinois hazardous waste rules. The amendments include United States Environmental Protection Agency (USEPA) updates to Subtitle C of the Resource Conservation and Recovery Act (RCRA) adopted in the second half of 2023 and additional, limited non-substantive corrections identified by the Board.

This is an “identical in substance” rulemaking. Section 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(a) (2022)) requires the Board to adopt hazardous waste rules identical in substance to the USEPA’s RCRA (42 U.S.C. § 6901 et seq. (2022)) Subtitle C regulations. Section 22.4(a) requires the Board to use the IIS rulemaking procedure of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2022)). Section 22.4(a) also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2022)) do not apply to the Board’s adoption of IIS regulations.

The Board adopted a proposal for public comment on July 11, 2024. The Notices of Proposed Amendments appeared in the August 9, 2024 *Illinois Register*, as follows: Part 720 at 48 Ill. Reg 11559, Part 721 at 48 Ill. Reg 11596, Part 722 at 48 Ill. Reg 11776, Part 724 at 48 Ill. Reg 11839, Part 725 at 48 Ill. Reg 11868, and Part 726 at 48 Ill. Reg 11890. The 45-day public comment period ended September 23, 2024, the first business day following the deadline.

Today, the Board adopts the final amendments with corrections from the proposal for public comment.

**DISCUSSION**

In this opinion, the Board will not reiterate its discussion of the July 11, 2024 proposal for public comment. Please see RCRA SUBTITLE C UPDATE, USEPA AMENDMENTS July 1, 2023 through December 31, 2023) (Proposal for Public Comment), R24-12 (July 11, 2024).

The Board received one public comment from the Illinois Environmental Protection Agency (IEPA) addressing multiple issues with the proposed amendments. Not all IEPA requests appear in the final rules. The Board addresses IEPA's concerns below.

First, IEPA raises the issue of the Board deleting the phrases "but not limited to" and "but [is/are] not limited to" from several proposed rule sections. The IEPA argues that the phrases "appear in the equivalent federal regulations" and should not be removed. Section 7.2 of the Act does not require that the Board IIS rules mirror USEPA rule text but instead defines "identical in substance" as "State regulations which require the same actions with respect to protection of the environment, by the same group of affect persons, as would federal regulations if USEPA administered the subject program in Illinois." 415 ILCS 5/7/2 (a) (2022). Striking the above phrases from the Act removes obsolete, repetitive, unclear, or otherwise unnecessary language and does not alter the meaning of the proposed regulations. As such, the Board respectfully declines IEPA's request to keep "but not limited to" and "but [is/are] not limited to" in the Act.

Second, IEPA listed concerns and inconsistencies in the removal of the word "minimum" and phrase "at a minimum" throughout the amendments. The Board acknowledges IEPA's concerns and withdraws the proposed deletions of "minimum" and "at a minimum."

Third, IEPA notes that the proposed amendments incorrectly included one update withdrawn in the final action on December 7, 2023 (88 Fed. Reg. 84710). The Board acknowledges the error and withdraws the proposed change to Section 721.9333(h)(1).

Finally, IEPA noted that the substitution of "less" for "no greater" in Section 721.933(h)(1) creates a substantive change in the proposed amendments. The Board agrees and removes the proposed revision.

The Board received no other suggestions or comments on the amendatory language. Therefore, after carefully considering IEPA's public comment and with the abovementioned revisions, the Board proposes final adoption of the amendments that are "identical in substance" to USEPA's regulations per Section 7.2 of the Act.

### **ORDER**

The Board directs the Clerk to provide notice in the *Illinois Register* of the appended proposed amendments to the Illinois hazardous waste rules.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 7, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in dark ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board