

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER g: CERTIFICATIONS**

**PART 745
PRIOR CONDUCT CERTIFICATION**

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AUTHORITY: Implementing Sections 22.4(b) and 22.5 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985 ch. 111 1/2, pars. 1022.4(b), 1022.5 and 1027).

SOURCE: Adopted in R81-18 at 11 Ill. Reg. 17206, effective October 8, 1987.

SUBPART A: GENERAL PROVISIONS

Section 745.101 Scope and Applicability

- a) This Part establishes procedures for prior conduct certification for personnel of waste disposal sites.
- b) This Part requires the chief operator of certain waste disposal sites, pursuant to Subpart E, to obtain prior conduct certification. Otherwise, permits for operation of the site may be denied or revoked, and the owners or other named permittees, as well as the chief operator, are subject to an enforcement action for continued operation without a certified operator, pursuant to Subpart E.
- c) This Part also prohibits any person who has had prior conduct certification denied, cancelled or revoked, unless the person has a current valid prior conduct certification, from owning or operating a waste disposal site or serving as an officer or director of the owner or operator of a waste disposal site, or serving as an employee at a waste disposal site, pursuant to Subpart E.

Section 745.102 Definitions

- a) Unless otherwise stated or unless the context clearly indicates a different meaning, the definitions of terms used in this Part are the same as those found in the Environmental Protection Act (Ill. Rev. Stat. 1985 ch. 111 1/2, pars. 1001 et seq.) and at 35 Ill. Adm. Code 807.104.

- b) Notwithstanding subsection (a), the following terms are defined for purposes of this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1001 et seq.), as amended.

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

"Chief Operator" means the one natural person in responsible charge of a waste disposal site on a 24-hour basis. "Chief Operator" also means any person who may from time to time and in the regular course of business be designated by a waste disposal site's chief operator to assume the functions of chief operator during periods of vacation, accident, illness or the like.

"Natural person" means a human being. The term excludes "artificial persons," such as business or governmental entities.

"Owner" means the person who owns a waste disposal site or part of a waste disposal site, or who owns the land on which the site is located.

A person is in "responsible charge" if the person:

Is normally present at a waste disposal site;

Directs the day-to-day, overall operation at the site; and

Either is the owner or operator, or is employed by or under contract with the owner or operator to assure that the day-to-day operations at the site are carried out in compliance with 35 Ill. Adm. Code 724, 725, 730, 807 and other Board rules governing operations at waste disposal sites.

- c) As used in this Subpart, "waste disposal site" means a site for which a waste disposal permit is required by 35 Ill. Adm. Code: Subtitle G, including but not necessarily limited to:

- 1) RCRA disposal permit required by 35 Ill. Adm. Code 703;
- 2) UIC permit required by 35 Ill. Adm. Code 704; or
- 3) Waste disposal permit required by 35 Ill. Adm. Code 807.

SUBPART B: APPLICATION FOR CERTIFICATION

Section 745.121 Persons Who May Apply

Any natural person may apply for prior conduct certification pursuant to this Part.

Section 745.122 Application

An application for prior conduct certification shall include:

- a) The name and address of the applicant;
- b) Identification of each waste disposal site at any time owned or operated by the applicant, or at which the applicant served as chief operator, including:
 - 1) The name and address of each site; and
 - 2) A description of the nature of each site and the type of waste disposed there (e.g., hazardous waste, municipal waste); and
 - 3) A description of the length of and nature of involvement with each site;
- c) A copy of any final administrative or judicial determination, made after opportunity for an adversarial proceeding, that the applicant has:
 - 1) Violated federal, state or local laws, regulations or ordinances governing the operation of any waste disposal site;
 - 2) Been convicted in Illinois or another state of any crime which is a felony under Illinois law, or been convicted of a felony in a federal court;
 - 3) Shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any hazardous waste in any state;
- d) A description, including the name of the agency or court, title, docket number and status, of any administrative or judicial proceeding, which is still pending, which:
 - 1) Could result in a determination against the application of type described in subsection (c); or

- 2) Could result in a reversal of any administrative or judicial determination provided by the applicant in response to subsection (c);
- e) An affidavit attesting to the truth and completeness of the facts asserted in the application.

Section 745.123 Duty to Supplement Pending Application

The applicant shall supplement any pending application for prior conduct certification within 30 days after any change of circumstances which renders, in any respect, the original application for prior conduct certification inaccurate or incomplete.

Section 745.124 Duty to Provide Supplemental Information

- a) Any person who holds prior conduct certification shall provide on an annual basis a supplemental information report to the Agency which identifies change in any of the information required by Section 745.122. A person who holds prior conduct certification shall additionally, upon Agency request, provide a supplemental information report which identifies change in any of the information required by Section 745.122 prior to the first anniversary of the submission of the previous report, so long as the person has not been required to submit more than three such reports during the previous one year period.
 - 1) The Agency can request supplemental information only if it has a sufficient reason.
 - 2) The Agency shall state the reason at the time it requests supplemental information.
 - 3) "Sufficient reason" includes information in the possession of the Agency which indicates that some of the information required in Section 745.122 has changed.
- b) The Agency shall provide notice to any individual certified pursuant to this Part who has failed to comply with the provisions of subsection (a). Such notice shall be mailed no less than 45 days after the due date of the annual report, or no less than 45 days after the request for supplemental information has been mailed.
- c) If a person certified pursuant to this Part fails to comply with the provisions of subsection (a) within 45 days after receipt of the notice of subsection (b), the Agency shall notify the person that prior conduct certification is cancelled effective upon receipt of the notice.

- d) Any person whose prior conduct certification has been cancelled pursuant to subsection (c) may reapply for certification at any time upon filing of an application pursuant to this Part.
- e) The Agency notices and requests of this Section shall be in writing and mailed to the person by registered or certified mail, return receipt requested.

Section 745.125 Application Form

The Agency shall prescribe the form in which all information required under this Subpart shall be submitted and may adopt such procedures as are necessary for carrying out its duties under this Part.

Section 745.126 Incomplete Applications

An application for prior conduct certification shall not be deemed filed until the Agency has received, at the designated address, all information and documents, in the form and with the content required by this Part and related Agency procedures. If the Agency fails to notify the applicant within 45 days after the receipt of an application that the application is incomplete, and of the reasons the application is considered to be incomplete, the application shall be deemed complete and deemed filed on the date received by the Agency. An applicant may deem the Agency's notification that the application is incomplete as a denial of prior conduct certification for purposes of review pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 105. A prior conduct certification which has been deemed to be denied pursuant to this Section shall not constitute denial of certification for the purposes of Section 745.201.

Section 745.127 Registered or Certified Mail

All prior conduct certification applications shall be mailed or delivered to the appropriate address designated by the Agency, and, if mailed, shall be sent by registered or certified mail, return receipt requested. Applications which are hand-delivered shall be delivered to and received for by a person designated by the Agency.

SUBPART C: AGENCY ACTION

Section 745.141 Standards for Denial

- a) The Agency shall deny prior conduct certification to any person who has:
 - 1) Been repeatedly found, after opportunity for an adversarial proceeding before any judicial or administrative body, to be in violation of any federal, state or local laws, regulations or

ordinances governing the operation of waste disposal sites in any state;

- 2) Been convicted in any state of a crime which would be a felony under Illinois law, or been convicted of a felony in federal court;
 - 3) Been judicially or administratively determined, after opportunity for an adversarial proceeding, to have shown gross carelessness or incompetence in the handling, storing, processing, transporting or disposing of any waste in any state;
 - 4) Practiced any fraud or deceit in obtaining or attempting to obtain prior conduct certification; or
 - 5) Failed to timely file a supplemental application pursuant to Section 745.123.
- b) Subsection (a) notwithstanding, the Agency may, in its discretion, grant prior conduct certification if mitigating factors exist such that certification should issue. Mitigating factors include:
- 1) The severity of the misconduct;
 - 2) How recently the misconduct took place;
 - 3) The degree of control exerted over waste disposal operations at a site by the applicant at the time misconduct described in subsection (a)(3) was committed.
- c) Pursuant to Section 39(a) of the Act, a person requesting certification has the burden of demonstrating that the person is entitled to the certification. Completion of the application form stating that none of the reasons for denial exist is a sufficient demonstration in the absence of information to the contrary.

Section 745.142 Final Action

- a) If the Agency denies any prior conduct certification under Section 745.141, it shall transmit to the applicant, within the time limits specified in this Part, a specific, detailed written statement as to the reasons why the prior conduct certification application was denied.
- b) The Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action shall take place on the date that such notice is mailed.

Section 745.143 Time Limits

If the Agency fails to take final action on the application for prior conduct certification within 90 days after its filing, the applicant may deem the prior conduct certification granted for one year beginning on the 91st day after the application was filed.

Section 745.144 Waiver of Time Limits

Any applicant for prior conduct certification may waive the requirement of the time within which the Agency must take final action on the application.

SUBPART D: APPEAL, REVOCATION AND TRANSFERABILITY

Section 745.161 Appeal of Certification Denial

If the Agency denies prior conduct certification under this Part, the applicant may appeal that action to the Board pursuant to Section 40 of the Act and 35 Ill. Adm. Code 105.

Section 745.162 Revocation

- a) Any person may file a complaint with the Board, pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103, seeking revocation of a prior conduct certification which has been granted by the Agency, or which was issued by reason of Agency failure to comply with the time limits of Section 745.143. Such action may be based upon grounds stated in Section 745.141(a).
- b) Before revoking a certification, the Board will consider the mitigating factors listed in Section 745.141(b).

Section 745.163 Duration and Transferability

- a) Except as otherwise provided in Section 745.124 or Section 745.143, a prior conduct certification made pursuant to this Part remains valid until revoked pursuant to Section 745.162.
- b) A prior conduct certification is not transferable.

SUBPART E: PROHIBITIONS

Section 745.180 Applicability of the Subpart

This Subpart does not apply to sites used solely for waste treatment or waste storage.

Section 745.181 Chief Operator Requirements

- a) The individual who is chief operator of a waste disposal site, as defined pursuant to Section 745.102(c), shall have prior conduct certification.
- b) The owner or other named permittee shall designate one or more chief operators for each waste disposal site.
 - 1) One certified chief operator may serve in that capacity for multiple waste disposal units located at one waste disposal site.
 - 2) One certified chief operator shall not serve in that capacity for units located at two or more waste disposal sites.
 - 3) A certified waste operator need not be present during all hours a site is operating, provided that the chief operator retains responsibility for site operations during the period of absence, and can be contacted by waste disposal site personnel during the absence.

Section 745.201 Prohibitions

- a) No person shall operate a waste disposal site unless the site chief operator has prior conduct certification.
- b) No site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification.
- c) No person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.
- d) No person shall serve as an officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.
- e) No person shall serve as an employee at a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

Section 745.202 Agency Denial of Waste Disposal Permit

The Agency shall deny any waste disposal permit to any owner or other named permit appliance, unless the applicant demonstrates that the applicant will not violate Section

745.201. Completion of the application form stating that the applicant intends to comply is a sufficient demonstration in the absence of information to the contrary.

Section 745.203 Revocation of Waste Disposal Permit

Any person may seek revocation of any waste disposal permit on the grounds that the waste disposal site is in violation of Section 745.201. Such action shall be initiated by filing a complaint with the Board pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103.

Section 745.204 Defense

It shall be a complete defense to an action brought pursuant to Section 745.203 that a replacement certified chief operator has been employed within 90 days after the date of termination of employment of a certified chief operator, or cancellation or revocation of the chief operator's prior conduct certification.

Section 745.205 Effective Date

The prohibitions of this Subpart shall become effective July 1, 1988.