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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 02 2004

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:	)	
	)	R05-1
RCRA SUBTITLE D UPDATE, USEPA	)	(Identical-in-Substance
AMENDMENTS (July 1, 2004 through	)	Rulemaking-Land)
December 31, 2004	)	

PC#1

**NOTICE**

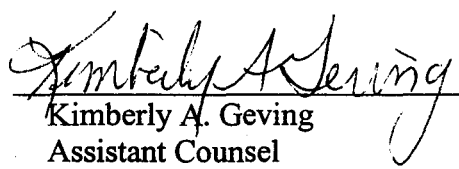
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601

Jonathon Furr, General Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Matt Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
James R. Thompson Center  
100 W. Randolph, 12<sup>th</sup> Floor  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Agency") Comments in the above-captioned matter, a copy of which is herewith served upon you.

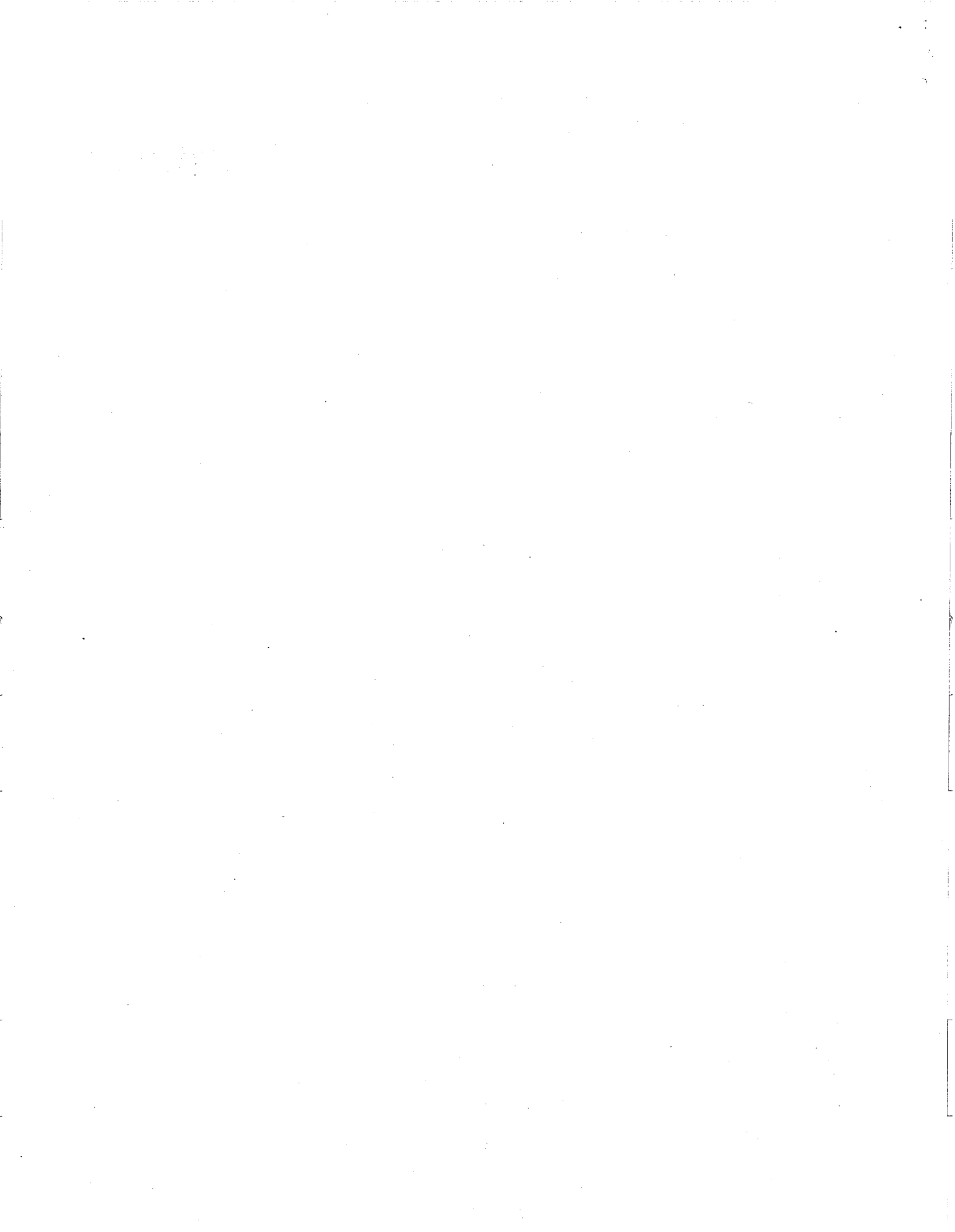
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Kimberly A. Geving  
Assistant Counsel  
Division of Legal Counsel

DATE: August 31, 2004

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**THIS FILING SUBMITTED ON RECYCLED PAPER**



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IN THE MATTER OF: )  
)  
RCRA SUBTITLE D UPDATE, USEPA ) R05-1  
AMENDMENTS (July 1, 2004 through ) (Identical-in-Substance  
December 31, 2004 ) Rulemaking-Land  
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STATE OF ILLINOIS  
Pollution Control Board

**AGENCY'S COMMENTS**

The Illinois Environmental Protection Agency ("Agency") respectfully submits its comments in the above-titled matter to the Illinois Pollution Control Board ("Board") pursuant to 35 Ill. Adm. Code 102.108 and 102.610.

The Agency suggests incorporating the federal amendments at 40 CFR Part 258, Research, Development, and Demonstration Permits for Municipal Solid Waste Landfills ("RD&D permit"), into a new Subpart F at 35 Ill. Adm. Code 813. The Agency believes that the language is most suitable in a new Subpart because the intent of the federal regulations is limited in scope and promotes bioreactors and degradation at landfills by allowing either run-on, non-containerized liquids, and/or a more permeable final cover.

Additionally, the Agency believes that RD&D permits do not warrant a full adjusted standard hearing and thus do not logically fit into the experimental practice section of Part 813. By placing the federal amendments in 35 Ill. Adm. Code 813 Subpart F, the Agency would be responsible for administering the permits, eliminating the need for an adjusted standard hearing before the Board. Benefits of this process would include lowering overall costs for the applicant (i.e., applicants would not have to hire an attorney to handle an adjusted standard proceeding);;

require less time for permit processing; and require less resources from the Board. Furthermore, the Agency does not believe it was the intent of the federal amendments to require an adjusted standard even though the term "variance" is used. The Agency believes the term "variance" was simply intended to grant flexibility in the permitting process to allow for new technologies.

In light of the discussion above, the Agency suggests the following language for 35 Ill. Adm. Code 813, Subpart F:

**SUBPART F: ADDITIONAL PROCEDURES FOR RESEARCH,  
DEVELOPMENT AND DEMONSTRATION (RD&D) PERMITS**

**Section 813.601 Research, Development and Demonstration (RD&D) Permits**

- a) Except as provided in paragraph (f) of this section, the Agency may issue a research, development, and demonstration (RD&D) permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner:
- 1) The run-on control systems in 35 Ill. Adm. Code 811.103(b)(1) and (2); and
  - 2) The liquids restrictions in 35 Ill. Adm. Code 811.107(m).
- b) The Agency may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of 35 Ill. Adm. Code 811.314(b) and (c), provided the MSWLF unit owner/operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30-cm.
- c) Any permit issued under this section must include such terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:
- 1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph (e) of this section;

- 2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and non-hazardous wastes that the Agency deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;
  - 3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the Agency with respect to the operation of the facility;
  - 4) Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to Agency showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the Agency in the permit; and
  - 5) Require compliance with all applicable criteria in 35 Ill. Adm. Code 811 except as permitted under this section.
- d) The Agency may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the Agency determines that the overall goals of the project are not being attained, including protection of human health or the environment.
- e) Any permit issued under this section shall not exceed three years and each renewal of a permit may not exceed three years.
- 1) The total term for a permit for a project including renewals may not exceed twelve years; and
  - 2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and other any other requirements that the Agency determines necessary for permit renewal.
- f) Small MSWLF Units: An owner or operator of a MSWLF unit that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for an exemption from 35 Ill. Adm. Code 811.314(b) and (c), except in accordance with 35 Ill. Adm. Code 811.314(d).

BOARD NOTE: Section 813.601 is derived from 40 CFR 258.4 (2004), as added at 69 FR 13255 (Mar. 22, 2004).

Revisions to other sections are also suggested as follows:

Section 810.103: Insertion of the following definition where applicable, “Research, development, and demonstration permit” or “RD&D permit” means a permit issued pursuant to 35 Ill. Adm. Code 813.601 and consistent with 40 CFR Part 258.4 (2004), as added at 69 FR 13255 (Mar. 22, 2004), that allows the testing of an innovative technology at a MSWLF Unit.”

Section 810.103: Add language to (b)(1) to read, “Runoff from undisturbed areas shall be diverted around disturbed areas unless the operator shows that it is impractical based on site-specific conditions, or unless a research, development and demonstration permit allowing run-on has been obtained, pursuant to 35 Ill. Adm. Code 813.601, and is in effect.”

Add language to (b)(2) to read, “Diversion facilities shall be designed to prevent runoff from the 25-year, 24-hour precipitation event from entering disturbed areas unless a research, development and demonstration permit allowing run-on has been obtained, pursuant to 35 Ill. Adm. Code 813.601, and is in effect.”

Add language at the end of Section 810.103 to read, “BOARD NOTE: The closing phrase in Subsections 811.103(b)(1) and (2), regarding research, development and demonstration permits, accommodates the provisions of 40 CFR 258.4, as added at 69 FR 13255 (Mar. 22, 2004).”

Section 811.107: Add language to (m)(1) to read, “Bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

- A) The waste is household waste other than septic waste; ~~or~~
- B) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, is designed with a composite liner and leachate collection system that complies with the requirements of Sections 811.306 through 811.309, or
- C) A research, development and demonstration permit has been obtained, pursuant to 35 Ill. Adm. Code 813.601, and is in effect.”

Add language at the end of Section 811.107 to read, “BOARD NOTE: Subsection 811.107(m) is derived from 40 CFR 258.28 (1992). Subsection 811.107(m)(1)(C) accommodates the research,

development and demonstration permit provisions of 40 CFR 258.4, as added at 69 FR 13255 (Mar. 22, 2004)."

Section 811.314: Add language to (a) to read, "The unit shall be covered by a final cover consisting of a low permeability layer overlain by a final protective layer constructed in accordance with the requirements of this Section, unless a research, development and demonstration permit, that allows the use of an innovative and new, final cover technology, has been obtained, pursuant to 35 Ill. Adm. Code 813.601, and is in effect."

Add language at the end of Section 811.314 to read, "BOARD NOTE: Subsection (a) has been amended to accommodate the research, development and demonstration permit provisions of 40 CFR 258.4, as added at 69 FR 13255 (Mar. 22, 2004). Subsection (b)(4) is derived from 40 CFR 258.60(a) (1996) Subsection (d) is derived from 40 CFR 258.60(b)(3), as added at 62 Fed. Reg. 40707 (July 29, 1997)"

Section 813.101: Add language to (a) to read, "This Subpart contains the procedures to be followed by all applicants and the Agency for applications for permits required pursuant to Section 21(d) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d)) and 35 Ill. Adm. Code 811, 812, 814 and 817. The procedures in this Part apply to applications to issue a permit to develop and operate a landfill, to modify a permit, to renew an expired permit, and to conduct an experimental practice, and to issue a research, development and demonstration permit."

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Stephanie Flowers  
Stephanie Flowers  
Assistant Counsel

By: Kimberly A. Geving  
Kimberly A. Geving  
Assistant Counsel

Date: August 31, 2004

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STATE OF ILLINOIS            )  
  )  
COUNTY OF SANGAMON        )

**PROOF OF SERVICE**

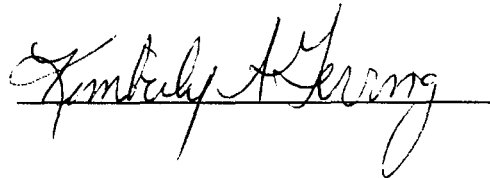
I, the undersigned, on oath state that I have served the attached Comments, upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
**(FIRST CLASS MAIL)**

Jonathon Furr, General Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271  
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Matt Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
James R. Thompson Center  
100 W. Randolph, 12<sup>th</sup> Floor  
Chicago, Illinois 60601  
**(FIRST CLASS MAIL)**

and mailing them from Springfield, Illinois on August 31, 2004 with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME

This 31<sup>st</sup> day of August, 2004.

  
Notary Public



**THIS FILING SUBMITTED ON RECYCLED PAPER**

