

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
RCRA SUBTITLE D UPDATE, USEPA	)	R17-14
REGULATIONS (July 1, 2016 through	)	(Identical-in-Substance Rulemaking-
December 31 2016)	)	Land)
RCRA SUBTITLE C UPDATE, USEPA	)	R17-15
AMENDMENTS (July 1, 2016 through	)	(Identical-in-Substance Rulemaking-
December 31 2016)	)	Land)
RCRA SUBTITLE C UPDATE, USEPA	)	R18-12
AMENDMENTS (July 1, 2017 through	)	(Identical-in-Substance Rulemaking-
December 31 2017)	)	Land)
UIC UPDATE: MISCELLANEOUS NON-	)	R18-31
SUBSTANTIVE REVISIONS AND	)	(Identical-in-Substance Rulemaking-
CORRECTIONS TO 35 ILL. ADM. CODE	)	Land)
704, 705, 730, AND 738	)	(Consolidated)

**NOTICE OF FILING**

TO: See attached Certificate of Service.

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board ILLINOIS EPA'S ADDITIONAL COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Gabriel H. Neibergall  
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DATED: October 26, 2018

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UIC UPDATE: MISCELLANEOUS NON-SUBSTANTIVE REVISIONS AND CORRECTIONS TO 35 ILL. ADM. CODE 704, 705, 730, AND 738	)	R18-31 (Identical-in-Substance Rulemaking-Land) (Consolidated)

**ILLINOIS EPA'S ADDITIONAL COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA” or “Agency”), by and through its counsel, and pursuant to the Illinois Pollution Control Board (“Board”) Final Opinion and Order (“Opinion”) dated October 4, 2018, submits the following additional comments in the above captioned rulemaking.

**I. Supplemental Responses Regarding Additional Episodic Events**

Illinois EPA’s supplemental responses to the Board’s questions beginning at Opinion page 29 are set forth below.

1. Is a provisional variance the appropriate mechanism for the Agency to approve a request for an additional episodic event?

Agency Response: No. The standard for the Agency’s granting of a provisional variance is “that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement, would impose an arbitrary or unreasonable hardship.” 415 ILCS 5/35(b). A VSQG or a SQG seeking approval for an additional episodic event is not facing an arbitrary or unreasonable hardship. Additional episodic event approvals are sought for convenience, not out of necessity. They are “permission to

manage one additional planned or unplanned episodic event per year without impacting [a generator's] hazardous waste category." 81 Fed. Reg. 85732, 85786 (Nov. 28, 2016). If a generator does not obtain approval for an additional episodic event, the generator simply has to comply with the regulations applicable to another hazardous waste category. As noted in the Agency's previous comments, many generators voluntarily comply with another category's requirements out of an abundance of caution or for administrative convenience. Provisional variances should be preserved for situations where regulated parties face a true arbitrary or unreasonable hardship.

In addition to an incorrect standard, the Act's provisional variance provisions provide that the Agency "shall" grant a provisional variance whenever it finds the standard is met. In contrast to a mandatory grant, USEPA intends additional episodic events to be granted with discretion, and no more than once per year. The Generator Improvements Rule ("GIR") requires petitions for an additional episodic event to contain certain information, but the GIR does not set forth specific criteria for evaluating the petitions.<sup>1</sup> USEPA "recommends that the implementing agency base its decision on factors including the validity of the proposed episodic event, the generator's enforcement history and evidence of the generator's ability to responsibly manage the waste." *Id.* at 85787. The implementing agency would evaluate the information provided in the petition "and other site-specific information to determine whether the generator should be allowed to complete the episodic event under the alternative standards." *Id.* at 85786.

2. Is the Board correct that approval by rule would make 35 Ill. Adm. Code 722.333 less stringent than or inconsistent with corresponding 40 C.F.R. § 262.233?

Agency Response: The Agency does not believe approval by rule would be less stringent or inconsistent if the criteria for approval by rule were properly crafted. By providing specific criteria and narrowing the instances in which approval would be granted, an approval by rule would be less discretionary—and therefore arguably more stringent—than the federal rule.

3. Is there any alternative mechanism permissible under the Act by which the Agency could approve or deny requests for additional episodic events?

Agency Response: The Agency does not see the need to fit petitions for additional episodic events into an existing statutory mechanism for administrative approval. The Act directs the Board to adopt rules that are identical-in-substance to USEPA's RCRA Subtitle C rules. Adopting the text of 40 C.F.R. 262.232 would meet this directive. Furthermore, it would avoid confusion or potential conflict that could be caused by new or alternative language. If the Board believes the Agency should review the petitions as opposed to providing for approval by rule, the Agency recommends that the Board adopt the text of the federal rules.

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<sup>1</sup> The Board concludes on page 26 of its Opinion that the Agency recommended adding criteria for Agency approval of requests for additional episodic events. This recommendation was one part of a three-part recommendation made in the context of an approval-by-rule concept. It was not intended to be taken alone as a request for criteria for Agency review and approval.

4. Is it true that USEPA intends that a generator not begin a planned additional episodic event until after receiving administrative approval?

Agency Response: The answer appears to be yes. USEPA states in the preamble to its rules that “[i]n the case of a planned second episodic event, a generator may not manage the hazardous waste from the event under the episodic generation conditions in subpart L until it has approval from the implementing agency for that second event.” 81 Fed. Reg. 85732, 85786 (Nov. 28, 2016).

5. Is it necessary and appropriate for the Board to add criteria for Agency approval of a request for an additional episodic event?

Agency Response: No. The Agency proposed the addition of criteria as part of the approval-by-rule concept, not as an independent request for the addition of criteria. If the Agency is to perform individual review and approvals, the Board’s identical-in-substance rule should retain the federal text.

6. Does adding the criteria for Agency approval make 35 Ill. Adm. Code 722.333 more or less stringent than or inconsistent with corresponding 40 C.F.R. § 262.233?

Agency Response: The criteria appear to be consistent with the USEPA’s preamble discussion of the rule. However, they are applied more narrowly than the federal rule. For example, under proposed 722.333(e)(4) approval would be granted only if the episodic event sought is legitimate and the generator is using the approval to “regularly” avoid another generator category. *See* Opinion at 744.

7. Are the six criteria added by the Board the appropriate criteria for Agency consideration?

Agency Response: As noted above, if the Agency is to review each petition the Board should retain the text of the federal rule.

8. Is there any criterion or criteria that the Board should add for Agency consideration?

Agency Response: *See* Supplemental Response No. 7, above.

## **II. Supplemental Responses Regarding the Definition of MSWLF**

Illinois EPA’s supplemental responses to the Board’s questions beginning at Opinion page 50 are set forth below. For all questions omitted, Illinois EPA has no comment at this time.

1. Did the Board appropriately adapt the federal definition of 40 C.F.R. § 258.2 into 35 Ill. Adm. Code 810.103?

Agency Response: In the proposed “MSWLF unit” definition’s (Opinion at 1936–1937) first sentence, the Agency recommends retaining the language beginning with “any pile of non-containerized accumulations” instead of replacing it with “waste pile”. This will retain the exclusion meant for transfer stations, storage facilities, and treatment facilities. In the proposed definition’s third sentence, the Agency recommends keeping “or operated”. Landfills in Illinois can be publicly owned and operated, privately owned and operated, or even publicly owned and privately operated. Regarding the proposed definition’s fifth sentence, the Agency recommends replacing “construction and demolition landfill” with “landfill”.

4. Does the explanation added to the appended Board note help avoid confusion over “construction and demolition landfill”?

Agency Response: Yes.

### III. Typographical Errors Discovered in the Proposed Amendments

1. Proposed Section 722.115(a)(6)(A) contains extraneous numbers: “~~262~~722.117(a)”.
2. Proposed Section 722.116(b)(2)(D) references “subsection (b)(2)(i)” instead of “725.271”.
3. Proposed Section 722.116(b)(8)(D)(i) contains redundant language.
4. Proposed Section 722.116(e) is confusing as written.
5. Proposed Section 722.117(a)(1)(F)(i): “[t]he LQG must ~~be~~ locate containers...”
6. Proposed Section 722.117(a)(3)(B) should read, in pertinent part: “subject to the 90-day accumulation limit in subsection (a), and Section 722.115 if the LQG manages the hazardous wastes ~~are being managed~~ in satellite accumulation areas...”
7. Proposed Section 722.117(a)(4)(B)(ii): [d]ocumentation that ~~the unit is emptied~~ the LQG empties the unit...”
8. Proposed Section 722.117(a)(7)(B): “[e]mployees must not work in unsupervised positions until they have ~~he or she has~~ completed...”
9. Proposed Section 722.117(a)(9) references “40 CFR 268”. Should it refer to 35 Ill. Adm. Code 728 instead?

10. Proposed Section 722.332(b)(4)(A)(ii), in the last sentence: “[t]he SQG must also maintain ~~both~~ of the following...”

11. Proposed Section 722.362 should read: “the LQG must ~~dot~~ the following...”

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Gabriel H. Neibergall  
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DATED: October 26, 2018

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, affirm that I have served the attached ILLINOIS EPA'S ADDITIONAL COMMENTS, on behalf of the Illinois EPA, upon the following person(s) by e-mailing it to the e-mail address(es) indicated below or, if no e-mail address is provided, by placing a true copy, in an envelope duly addressed and bearing proper first class postage, in the United States mail at Springfield, Illinois on October 26, 2018:

TO:

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I affirm that my e-mail address is [gabriel.neibergall@illinois.gov](mailto:gabriel.neibergall@illinois.gov); the number of pages in the e-mail transmission is 8; and the e-mail transmission took place today before 4:30 PM. If you prefer service by mail, please contact me and a copy will be mailed to you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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