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APR 10 2007

STATE OF ILLINOIS Pollution Control Board

April 5, 2007

Michael McCambridge
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste 11-500
Chicago, IL 60601

R06-16/R06-17/R06-18: PC 3

R07-5/R07-14 PC 1

RE: Illinois EPA's ("Agency") Comments on R06-16, 17, and 18

Dear Mr. McCambridge:

On June 30, 2006, the Agency filed extensive comments in the consolidated identical-in-substance rulemaking under docket R06-16, 17, and 18. On December 20, 2006, the Board adopted the rules, and they were subsequently published in the Illinois Register on January 12, 2007. The Agency appreciates the Board's consideration of its comments filed on June 30, 2006 and acknowledges that the vast majority of the Agency's comments were incorporated into the rules. However, it appears that a handful of significant comments were not addressed. Because the comment period has expired, I was not certain of the appropriate procedure to follow to express our concerns, so I am putting them to you in the form of a letter.

The Agency is particularly concerned about the following seven items that we do not feel were addressed by the Board:

- 1. Section 702.120(b)(3) (our original comment #3 on R06-18) describes what an applicant must do if they are required to have a permit (including new applicants or permittees with expiring permits):
a. 35 Ill. Adm. Code 702.120(b)(3) requires new facilities or those with expiring permits to comply with the interim status requirements at 35 Ill. Adm. Code 703.153 - 703.157. It appears that the requirement to comply with the interim status standards may be more appropriate under Section 702.120(b)(2) since this section specifically refers to a facility with interim status that is applying for a permit.
b. 35 Ill. Adm. Code 702.120(b)(3) also requires these facilities to comply with Sections 702.120 through 702.124, 703.125, 703.126, 703.150, 703.151, 703.152, 703.186, and 703.188. These regulations are not specifically cited in the federal equivalent at 40 CFR 270.10(a)(3). Therefore, even if the equivalent federal regulation (40 CFR 270.10(a)(3)) is fundamentally flawed (because a new facility or one with an expiring permit would not follow the interim status requirements), the Illinois equivalent is not consistent with it.

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- c. As written, 35 Ill. Adm. Code 702.120(b)(3) leaves out a significant amount of critical information that needs to be provided in an application for a new or expiring permit. The Agency felt that Section 702.120(b)(3) should be revised to require the applicant to address the requirements in 35 Ill. Adm. Code 702 Subpart B: Permit Applications and 35 Ill. Adm. Code 703 Subpart D: Applications, not just portions of Parts 702 and 703.
2. **Section 703.350(c)(1), General Information** (our original comment #12 on R06-18): The Section does not include the following regulations: 703.160 (from CFR 270.1) and 702.104 & 703.110 (from 40 CFR 270.6). Please refer to the table we included in our original comments. In order to be consistent with the federal regulations, 35 Ill. Adm. Code 703.350(c)(1) should have been revised to include Section 703.160 (from 40 CFR 270.1) and Sections 702.104 and 703.110 (from 40 CFR 270.6).
  3. **Section 705.302(a)(4)(I)** (our original comment #30 on R06-18) indicates that all subsections of Section 705.144 (Administrative Record for Draft Permits or Notices of Intent to Deny) apply. The corresponding federal regulation at 40 CFR 124.204(d)(9) states, “All paragraphs (of 40 CFR 124.9) apply; however, in the context of RCRA standardized permits, the reference to draft permits is 40 CFR 124.204(c) instead of 124.6.” Therefore, this subsection of the State regulation is not identical in substance to the equivalent federal regulation and should have been revised accordingly. NOTE: This type of “exception statement” for a standardized permit is made in the preceding Section 705.302(a)(4)(H) (40 CFR 124.204(d)(8)).
  4. **Section 727.100(b)** (our original comment #41 on R06-18): States that a facility with interim status must comply with the requirements of 35 Ill. Adm. Code 725 instead of 727 . . . **except as provided in Subpart S of 35 Ill. Adm. Code 724**. This is consistent with the corresponding federal regulation at 40 CFR 267.2. However, it is unclear why a regulation directed at a facility with interim status (Section 727.100(b)) would refer to the Special Provisions for Cleanup (the regulations for CAMUs, temporary units, etc.) in Subpart S of Part 724 (or 40 CFR 264). Neither Subpart S of Part 724 nor Section 725.101 (Purpose, Scope, and Applicability) make any reference to an exception to the interim status standards in Subpart S of Part 724.
  5. **Section 727.170(f)(1), Biennial Report** (our original comment #46 on R06-18): This subsection states, “The report must cover facility activities during the previous calendar year and must include the following information:” This is consistent with the equivalent federal regulation at 40 CFR 267.75(a). Thus, as written, the Agency (and/or USEPA) would only receive information regarding facility activities for every other year.

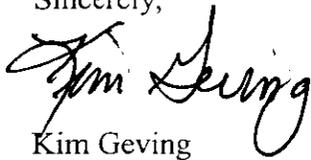
The federal regulations for other permitted facilities at 40 CFR 270.30(l)(9) and 264.75 require a **biennial** report. However, the State equivalents at 35 Ill. Adm. Code 703.246(c) and 724.175 require an **annual** report be provided. Therefore, in order to be consistent with the existing State regulations for other permitted facilities, and in order to receive information regarding facility activities for each year, the Agency feels that Section 727.170(f)(1) should have been reworded to specify that an annual report must be provided. Section 20.1 of the Environmental Protection Act (415 ILCS 5/20.1) requires the Agency to compile and make available an annual report regarding certain hazardous waste operations. If we are only receiving biennial reports from facilities, how do we effectively put together our annual reports? Additionally, the financial assurance requirements in Section 727.240(c) require annual updates to account for inflation. Again, how would the Agency check compliance with that requirement if a site only provides closure cost estimates biennially?

6. **Section 727.900(e)** (our original comment #56 on R06-18): subsection (e) contains the alternate secondary containment requirements for containment buildings. It states, “the Agency **must**, in writing, allow the use of alternatives to the requirements for secondary containment . . .” The equivalent federal regulation at 40 CFR 267.1104 states, “the Regional Administrator **may** waive the requirements for secondary containment . . .” Therefore, as written, the requirements in 727.900(e) are not consistent and are arguably less stringent than the equivalent federal regulations. Section 727.900(e) should have been revised to read, “Agency may waive the requirements for secondary containment . . .” in order to be consistent with the federal regulations.
7. **Section 727.900(h)(2)** (our original comment #59 on R06-18): subsection (h)(2) states, “The containment building also meets the requirements of Sections 727.290(f)(1), (f)(2)(A), and (f)(2)(B).” This is consistent with the equivalent federal regulation at 40 CFR 267.1107(b), which refers to 40 CFR 267.195(a), (b)(1) & (2). However, section 727.290(f)(2) (and the federal equivalent) states that in order to meet the requirements of (f)(1), **all** of the requirements of (f)(2) (i.e., subsections (f)(2)(A) thru (f)(2)(D)) must be met. The requirements in Section 727.900(h)(2) (and the federal equivalent) are not internally consistent, and appear to contradict themselves. It appears that 40 CFR 267.1107(b) and 35 Ill. Adm. Code 727.900(h)(2) reference the wrong subsections of the secondary containment regulations for tanks. We believe they should have been revised to reference 40 CFR 267.195(a) and (b) and 35 Ill. Adm. Code 727.290(f)(1) and (f)(2), respectively.

Additionally, the Agency again wishes to voice the general concern that the current format of Part 727 is extremely difficult to follow. It is not consistent with the format of the federal regulations at all, which makes it very difficult for both the Agency and the regulated community to follow. When this Part is reopened at some point in the future, the Illinois EPA would suggest that the Part be restructured to follow the format of the federal regulations.

If you have questions or comments regarding this letter or wish to discuss this further, please do not hesitate to contact me. Otherwise, I would appreciate you letting me know if there is anything we could be doing to fixing the items addressed above.

Sincerely,

A handwritten signature in black ink that reads "Kim Geving". The signature is written in a cursive style with a large, prominent "K" and "G".

Kim Geving  
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Division of Legal Counsel  
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Cc: Rob Watson  
Steve Nightingale