

ILLINOIS POLLUTION CONTROL BOARD

March 6, 2008

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R08-16
REGULATIONS (July 1, 2007 through) (Identical-in-Substance Rulemaking -
December 31, 2007)) Land)

Proposed Rule. Request for Public Comment.

ORDER OF THE BOARD (by G.T. Girard):

Sections 7.2 and 22.4(a) of the Environmental Protection Act (415 ILCS 5/7.2 and 22.4(a) (2006)) require the Board to adopt regulations that are “identical in substance” to hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA). These USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2005)). USEPA has codified the federal hazardous waste rules as 40 C.F.R. 260 through 266, 268, 270, 271, 273, and 279.

The Board reserved this docket for USEPA amendments during the period of July 1, 2007 through December 31, 2007. During that time period, USEPA amended its hazardous waste regulations one time, on July 18, 2007. The nature of the USEPA action was unusual, so that the Board is requesting comment before a determination is made that no action is necessary, and the Board dismisses this docket.

On July 18, 2007, USEPA amended a single provision of the hazardous waste rules and adopted new rules that pertain to the use of “chat” in federally funded highway projects. Chat is a granular material generated from the extraction and beneficiation of lead and zinc minerals. It is produced in the Tri-State Mining District of southwest Missouri, southeast Kansas, and northeast Oklahoma. It is primarily composed of a hard rock called “chert,” and it is useful in making asphalt-based road materials, Portland cement, and epoxy traction coatings.

The federal action of July 18, 2007 establishes standards for the environmentally sound use of this material. They add a new part 278 to the federal solid waste rules that establishes standards and conditions for use of chat in federally funded highway projects. The amendments do not refer to hazardous or solid waste regulations in any way that would affect the universes of hazardous or solid wastes or any requirements that might apply to them. The federal action of July 18, 2007 also adds a single incorporation by reference of a test method from SW-846, “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.” That method, Method 1312, is entitled “Synthetic Precipitation Leaching Procedure.” Method 1312 is a general procedure that could apply in a variety of contexts, but the only use for which USEPA has authorized it is for demonstrating compliance with part 278. New 40 C.F.R. 278 is very short, so the Board has reproduced its text in its entirety as follows:

§ 278.1 Definitions.

- (a) *Asphalt concrete*—a layer, or combination of layers, composed of a compacted mixture of an asphalt binder and mineral aggregate.
- (b) *Chat*—waste material that was formed in the course of milling operations employed to recover lead and zinc from metal-bearing ore minerals in the Tri-State Mining District of Southwest Missouri, Southeast Kansas and Northeast Oklahoma.
- (c) *Chip seal*—a material composed of aggregate placed on top of a layer of an asphalt or asphaltic liquid binder. The aggregate may be rolled into the binder.
- (d) *Cold mix asphalt*—refers to an asphalt and aggregate mixture composed of binders, soaps, or other chemicals which allow its use when cold
- (e) *Epoxy seal*—refers to the mixture of aggregate in epoxy binders. Epoxy seals are typically used as an anti-skid surface on bridge decking
- (f) *Federal or State response action*— State or Federal response action undertaken pursuant to applicable Federal or State environmental laws and with consideration of site-specific risk assessments.
- (g) *Flowable fill*—a cementitious slurry consisting of a mixture of fine aggregate or filler, water, and cementitious materials which is used primarily as a backfill in lieu of compacted earth.
- (h) *Granular road base*—road base typically constructed by spreading aggregates in thin layers of 150 mm (6 inches) to 200 mm (8 inches) and compacting each layer by rolling over it with heavy compaction equipment. The aggregate base layers serve a variety of purposes, including reducing the stress applied to the sub grade layer and providing drainage for the pavement structure. The granular sub base forms the lowest (bottom) layer of the pavement structure and acts as the principal foundation for the subsequent road profile.
- (i) *Hot Mix Asphalt*—a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass. Hot mix asphalt also includes hot mix asphalt sub bases and hot mix asphalt bases.
- (j) *Microsurfacing*—polymer-modified slurry seal.
- (k) *Portland cement concrete (PCC)*— pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) base or sub base.
- (l) *Pozzolanic*—a siliceous material which when combined with calcium hydroxide in the presence of moisture exhibits cementitious properties.
- (m) *Slurry seal*—refers to a material composed of emulsified asphalt, aggregate, and mineral fillers, such as Portland cement or lime which is applied as a thin coating on top of asphalt concrete or Portland cement concrete road surfaces.
- (n) *Stabilized base*—a non-asphaltic road base composed of aggregate mixed with a pozzolanic material which increases the bearing strength of the material.
- (o) *Transportation construction projects*—these activities relate to the construction of roads and highways and include bases, sub bases, road surfaces, bridges, abutments, shoulders, and embankments. They are not related to any residential use.
- (p) *Tri-State Mining District*—the lead-zinc mining areas of Ottawa County, Oklahoma, Cherokee County of southeast Kansas and Jasper, Newton, Lawrence, and Barry Counties of southwest Missouri.

(q) *Warm mix asphalt*—refers to a mixture of an asphalt binder with aggregate, paraffin or esterified wax, and mineral additives that allow its use at temperatures much lower than hot mix asphalt.

§ 278.2 Applicability.

These requirements apply to chat from the Tri-State Mining District used in transportation construction projects carried out, in whole or in part, using Federal funds.

§ 278.3 Criteria for use of chat in Federally funded transportation projects.

Chat can be used in transportation construction projects carried out, in whole or in part, using Federal funds if:

- (a) The chat is used in hot, warm or cold mix asphalt, in slurry seal, microsurfacing, or in epoxy seal; or
- (b) The chat is used in Portland cement concrete, granular road base, flowable fill, stabilized road base or chip seal if, on a case by case basis either:
 - (1) Synthetic Precipitation Leaching Procedure (SPLP) tests are conducted on the proposed material using EPA SW- 846 Method 1312, incorporated by reference in § 260.11 of this chapter, and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l; or
 - (2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l in surface water; or
- (c) The use of chat has been authorized pursuant to a State or Federal response action.

§ 278.4 Certification and recordkeeping requirements.

(a) *Certification*. For chat used under the jurisdiction of the U.S. Department of Interior, Bureau of Indian Affairs, the EPA certification below is not applicable.

In other jurisdictions, the acquirer shall:

- (1) Submit a signed, written certification to the environmental regulatory agency in the State where the chat is to be used within 30 days of the date of acquisition. The certification shall contain the following: (i) Location of origin of the chat; (ii) Amount of chat acquired; and (iii) Certification Statement: I certify under penalty of law that the chat used in this transportation project will meet EPA criteria found in § 278.3.
- (2) *Transfer*. If the chat is sold or otherwise transferred to another party, the acquirer shall provide a copy of the certification to the new owner of the chat. The new owner shall submit a certification according to paragraph (a)(1) of this section. The new certification supersedes all previous certifications.

(3) *Recordkeeping*. The acquirer of chat, and any other person that receives the chat, will maintain copies of all of the following for three years; a copy of the certification following transmittal to the State department(s) of the environment, and, as appropriate; any SPLP testing results; or any site-specific risk assessments.

For several reasons, the Board does not believe it necessary to include corresponding rules to the Illinois hazardous waste regulations. Initially, USEPA asserted the authority of section 6006 of RCRA (42 U.S.C. § 6966b, as added by § 6018 of Pub. L. 109-59 (Aug 10, 2005)). See 40 C.F.R. 278.2, as added at 72 Fed. Reg. 39331, 39343-44 (July 18, 2007). The Board's identical-in-substance mandate is limited to rules adopted by USEPA pursuant to sections 3001 through 3005 of RCRA (42U.S.C. §§ 6921-25 (2005)). See 415 ILCS 5/22.4(a) (2006). Second, the chat standards do not affect implementation of the hazardous waste regulations in any way. Third, the chat material originates outside Illinois, and it is unclear that it will be used in Illinois. See 415 ILCS 5/7.2(a)(1) (2006). Finally, these rules appear to be requirements that USEPA has developed to implement federal procurement requirements, and they do not apply outside that context.

The Board invites public comment on whether the provisions of new 40 C.F.R. 278, as adopted by USEPA at 72 Fed. Reg. 39331 (July 18, 2007), should be included in the Illinois hazardous waste regulations. Any comments received must conspicuously indicate the docket number, **R08-16**, and be received by the Board by April 7, 2008 to receive consideration. Any interested person may submit a comment by electronic means, as provided at the Board's website: www.ipcb.state.il.us, or by delivery of a paper copy addressed as follows:

Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, 11-500
Chicago, Illinois 60601

If the Board receives no comments that justify adopting corresponding rules, the Board will proceed to dismiss this reserved identical-in-substance proceeding and close this docket at the regularly scheduled Board meeting of April 17, 2008.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board