

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R07-5
AMENDMENTS (March 5, 2005, September 8,)	(Identical-in-Substance
2005, January 1, 2006 through)	Rulemaking –Land)
June 30, 2006))	
)	
IN THE MATTER OF:)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R07-14
AMENDMENTS (July 1, 2006 through)	(Identical-in-Substance
December 31, 2006))	Rulemaking –Land)
)	(Consolidated)

NOTICE

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via Clerk’s Online-COOL)

Bill Richardson, Chief Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271
(Via First Class Mail)

Matt Dunn
Environmental Bureau Chief
Office of the Attorney General
100 W. Randolph, 12th Floor
Chicago, Illinois 60601
(Via First Class Mail)

Michael McCambridge
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via First Class Mail)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois EPA’s **COMMENTS**, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
Kimberly Geving
Assistant Counsel
Division of Legal Counsel

DATED: May 20, 2008
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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COMMENTS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through one of its attorneys, Kimberly Geving, and submits its COMMENTS in the above-captioned matter to the Illinois Pollution Control Board (“Board”).

The Illinois EPA submits the following comments in response to the above-captioned matter:

A. General Comments

1. On page 139 of the Board’s Proposed Rule (35 Ill. Adm. Code 721.131(a)), the word “mixture” is misspelled in the Board Note.
2. On pages 259-260 of the Board’s Proposed Rule, 35 Ill. Adm. Code 724.115(b)(5)(A) states that a member of the Performance Track Program must submit a Class 1 permit modification with prior Agency approval (which is actually a Class 1*) if it wishes to reduce the inspection frequency at its facility. However, paragraph O.1 in Appendix A of 35 Ill. Adm. Code 703 lists all permit modifications for Performance Track member facilities as Class 1, not Class 1*. It appears that paragraph O.1 in Part 703, Appendix A should be revised to indicate the permit modifications referenced at 35 Ill. Adm. Code 724.115(b)(5)(A) are Class 1* modifications.
3. On page 265 of the Board’s Proposed Rule, Section 724.152(b) has what appears to be an invalid link. The link in the Board Note to

<http://yosemite.epa.gov/oswer/Ceppoweb.nsf/content/serc-lepc-publications.htm> has either been moved or isn't a correct link.

B. Specific Comments in Response to Board's Requests:

On page 58 of the Board's Opinion for the Proposed Rule, the Board requested public comment on six specific issues.

1. The Board inquired whether it should "use the current USDOT definition of 'flammable gas' in place of adding the language of the obsolete 1980 definition of 'flammable compressed gas' as a segment of the definition of 'ignitable waste,' as was done by USEPA." The Agency believes that it is a good idea to update the definition to make it current with other regulations (such as USDOT's) as well as accounting for any advances in the science or testing methods that have been developed since 1980.
2. The Board asked for comment about how it should best incorporate the obsolete Bureau of Explosives methods into the Illinois Rules if it were to use the language of the 1980 definition of "flammable compressed gas" to define "ignitable waste." The Agency suggests not using the 1980 definition."
3. The Board inquired whether it should use the current USDOT definition of "oxidizer" in place of adding the language of the obsolete 1980 definition of "oxidizer" as a segment of the definition of "ignitable waste." The Agency does not believe the Board should use obsolete definitions. In 1990, USDOT replaced the former definition of the hazard class with a new definition at 49 CFR 173.127, which classifies an oxidizer as a Division 5.1 material (see 55 Fed. Reg. 52402, 53433 December 21, 1990)). The Board's proposed approach would prevent problems with USEPA's approach (i.e., using obsolete methods and regulations for the outmoded hazard class).
4. The Board inquired whether it should include the language of the obsolete 1980 USDOT definition of "organic peroxide" as a segment of the definition of "oxidizer" for the purposes of defining "ignitable waste." Again, the Agency does not believe the Board should use obsolete definitions. See answer to paragraph number three directly above.
5. The Board inquired whether it should change the spelling of "exceedence" to "exceedance." The Agency has no preference.
6. The Board requested comment on whether it correctly declined to make three corrections to Sections 725.505(a)(1) and Appendix F to correspond with USEPA's corrections to 40 CFR 265.405(a)(1) and also to appendix VI to 40 CFR 265. The Agency defers to the Board's opinion on this issue.

On page 60 of the Board's Opinion for the Proposed Rule, the Board requested public comment on the incorporation of the July 28, 2006 exclusion of CRTs from the definition of solid waste. Specifically, the Board asked if it necessary to add the Agency as a recipient of the notifications;

whether it is necessary to include the export notification requirements in the Illinois rule if USEPA is the entity that is to receive and process them; and if it would be better to cross-reference to the federal export notification requirements than to include them in the Illinois rule.

The Agency believes that it is important to have parallel notifications to the Agency and USEPA. If the Agency is not notified, it will not know the export activity that is going on and would, therefore, not be able to perform inspections. Although the federal government does its own inspections, the Agency feels it is critical that we also perform inspections.

This concludes the Agency's comments in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____

Kimberly Geving
Assistant Counsel
Division of Legal Counsel

DATED: May 20, 2008
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Bill Richardson, Chief Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matt Dunn
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Chicago, Illinois 60601

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

and mailing them (First Class Mail) from Springfield, Illinois on May 20, 2008, with sufficient postage affixed as indicated above.

SUBSCRIBED AND SWORN TO BEFORE ME
This 20th day of May, 2008.

Notary Public