

**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 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: August 17, 2018

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**ILLINOIS EPA'S 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”) Proposal for Public Comment (“Proposal”) dated May 24, 2018, submits the following comments in the above captioned rulemaking.

**I. Responses Regarding Incorporation of the Generator Improvements Rule (GIR)**

Illinois EPA’s responses to the Board’s questions beginning at Proposal page 29 are set forth below. For all questions omitted, Illinois EPA has no comment at this time.

3. Did the Board appropriately substitute 35 Ill. Adm. Code 733.113, 722.114, or 722.116 in the Illinois rules when updating remaining references to 40 C.F.R. 261.5 in the federal rules?

Agency Response: Yes.

5. Does appending a Board note to the definition of “acute hazardous waste” listing the USEPA hazardous waste numbers clarify the definition?

Agency Response: Yes. Please note that “F026” is listed twice in the Board note. *See* Proposal at 214. The final USEPA hazardous waste number listed should be F027.

6. Is it true that adding the federal definition of “C&D landfill” would conflict with the Illinois statutory definition or cause confusion?

Agency Response: Yes, confusion is likely given the unique regulation of construction and demolition debris in Illinois. Unlike federal law and other states, Illinois law has multiple types of construction debris (i.e., “general construction or demolition debris” and “clean construction or demolition debris”). Furthermore, Illinois does not have C&D landfills like other states. Landfilled construction or demolition debris is disposed of in municipal solid waste landfills. Illinois EPA permits Clean Construction or Demolition Debris (CCDD) fill sites at mines and quarries, and these are often mistakenly referred to as C&D landfills. However, CCDD used as fill at such sites is not considered a waste under the Act and the sites are not regulated as landfills. In addition to allowing CCDD to be used as fill at mines and quarries, CCDD may also be used in accordance with Section 3.160(b) of the Illinois Environmental Protection Act at any site without the site becoming regulated as a waste disposal facility. Therefore, adding a “C&D Landfill” citation would not only add to the already existing confusion over the regulation of construction or demolition debris in Illinois, but it could also result in hazardous waste exempted under proposed Section 722.113(f)(1)(A) being mistakenly taken to CCDD fills sites for disposal.

7. Does omitting the federal definition of “C&D landfill” in any way affect the scope of or conflict with USEPA’s intent or tend to cause confusion as to what is required?

Agency Response: No, in fact it reduces the chance of confusion as discussed in Illinois EPA’s response to No. 6, above.

8. Does changing “amounts in a calendar month” to “amounts of material in a calendar month” in any way affect the scope of or conflict with USEPA’s intent or tend to cause confusion as to what is required?

Agency Response: No, the definition refers to “residues” which could be interpreted as not being hazardous waste. Adding “of material” clarifies that everything generated by the clean-up of acute hazardous waste spills must be counted in the monthly total.

11. Does not specifying the 1977 and 1981 versions of NFPA 30, which allows use of the 1984, 1987, and 2003 in any way affect the scope of or conflict with USEPA’s intent or tend to cause confusion as to what is required?

Agency Response: No. However, in the reference in Section 720.111(a), a citation to 722.116 should be added to “Standard System for the Identification of the Hazards of Materials for Emergency Response”, since 722.116(b)(6)(B)(ii) refers to it. *See* Proposal at 245.

15. Is the Agency the appropriate entity to grant or deny an additional episodic event?

Agency Response: Yes.

16. Is an Agency determination to grant or deny an additional episodic event in the nature of a permit decision?

Agency Response: Additional episodic event approvals are not exactly akin to permit decisions. Approvals for additional episodic events will be sought by generators, who are not subject to permitting requirements. In addition, there are no promulgated criteria for evaluating petitions for an additional episodic event. In contrast, the Agency has the duty to approve a permit if the permit applicant demonstrates “that the facility, equipment, vehicle, vessel or aircraft will not cause a violation” of the Act or rules adopted under the Act. Finally, the effect of a denial of an additional episodic event is not the same as a permit denial. If an additional episodic event is not approved, the generator is not denied the ability to accumulate hazardous waste. Rather, the generator simply shifts its generator status and complies with the requirements applicable to that status (e.g., a VSQG becomes a SQG, or a SQG becomes a LQG). Many generators adhere to higher status requirements anyway out of an abundance of caution to not be out of compliance at any time, or just for administrative ease of not having to switch back and forth between categories.

Although the grant or denial of an additional episodic event is not akin to a permit decision, the Agency agrees that the intent of the federal rule is to allow petitioners to obtain approval easily and in a fairly short time-frame when approval is justified. As noted in the preamble to the federal rules, the USEPA does not believe that additional regulations are necessary to protect human health and the environment when quantity limits are exceeded due to an episodic event. The real concern with additional episodic events is that they be used only in legitimate circumstances. Therefore, to simplify and clarify when generators may treat an accumulation as an additional episodic event, the Agency recommends: (i) setting forth in the rules the criteria for approval of an additional episodic event; (ii) requiring the petitioner to clearly identify requests for additional episodic events on EPA Form 8700-12, and to provide the information necessary to demonstrate that the criteria for approval are met; and (iii) providing for approval by rule where the specified criteria are met. This process will ensure that additional episodic events are authorized only when the specified criteria are met. The Agency can flag the 8700-12 EPA forms that are identified as additional episodic event requests and follow-up to ensure the specified criteria were met and that the generator adhered to the applicable requirements. Because records of the request must be maintained by the generator, the Agency will also check compliance during routine site inspections. If there are instances where the criteria for an additional episodic event were not met, enforcement action can be taken against the generator (assuming the generator did not comply with the requirements applicable to the next higher generator category and therefore make episodic event approval unnecessary).

17. Would an Agency determination to grant or deny an additional episodic event be appealable to the Board?

Agency Response: Not under the scenario proposed in Illinois EPA's response to No. 16, above.

18. Would an Agency determination to grant or deny an additional episodic event in any way implicate RCRA permit procedures or requirements?

Agency Response: No. Illinois EPA would request that the Board clarify these determinations are not RCRA permits.

19. Should the Board add a provision and institute a procedure like the Special Exception Permit in the hazardous waste rules?

Agency Response: No.

20. Does changing "all personnel involved in the operation must have immediate access (e.g. direct or unimpeded access) to an internal alarm or emergency communications device" to "all personnel involved in the operation must have immediate access (i.e., either directly or through direct, unimpeded visual or voice contact with another employee) to an internal alarm or emergency communication device" clarify the rules?

Agency Response: The change in wording does not provide any greater clarity, and may be less clear to some parties.

21. Does appending a reference to the on-line list of LEPCs SERC/IEMA with an Internet address clarify the rules?

Agency Response: No. Internet addresses may change over time, making the reference obsolete.

22. Does changing "7/24-hour emergency telephone numbers(s)" to "24/7 emergency telephone numbers" clarify the rules?

Agency Response: Yes, "24/7" is more consistent with common language usage.

## **II. Responses Regarding Board-driven Revisions**

Illinois EPA's responses to the Board's questions beginning at Proposal page 48 are set forth below. For all questions omitted, Illinois EPA has no comment at this time.

9. Can the Board delete 35 Ill. Adm. Code 703.150 in its entirety or other provisions in 35 Ill. Adm. Code 703 as obsolete without in any way affect[ing] the scope or applicability of the Illinois rules in a way that conflicts with the federal rules, makes the Illinois rules more or less stringent than corresponding federal rules, or tends to cause confusion as to what is required?

Agency Response: No. An operator of a VSQG under the proposed rules may move into a SQG or LQG status and qualify for the requirements of 703.150(a)(2).

14. What requirements apply to an existing BIF that newly becomes subject to the rules absent an Agency determination under 35 Ill. Adm. Code 703.208 or 703.232?

Agency Response: Compliance testing.

45. Is it possible that no Class IV injection well may continue to operate in Illinois, so that removal of 35 Ill. Adm. Code 704.145 in its entirety is possible?

Agency Response: Illinois EPA is not aware of any Class IV wells currently operating in Illinois.

46. Is it true that Class V injection wells continue to operate in Illinois authorized by rule, so that removal of 35 Ill. Adm. Code 704.146 in its entirety is not possible?

Agency Response: Yes. Class V wells continue to operate.

51. Do any motor vehicle waste disposal wells still operat[e] in Illinois?

Agency Response: Illinois EPA has no record of any such wells currently operating in Illinois.

58. Would leaving “small quantity generator” in the statutorily derived language in the definition of “MSWLF” in 35 Ill. Adm. Code 810.103 in any way conflict with the federal rules, make the Illinois rules more or less stringent than corresponding federal rules, or tend to cause confusion as to what is required?

Agency Response: Yes. As stated by the Board in the suggested revision to the definition of “Municipal solid waste landfill unit” at Proposal page 1930, continued use of “small quantity generator” in the definition would make the Illinois MSWLF rules less stringent than their federal counterpart, and would cause confusion as many generators move to common use of the updated terminology in the federal rules. [It should also be noted that the definition of “Municipal Solid Waste Landfill Unit” or “MSWLF unit” is at Section 3.285 of the Act; not 3.160 as stated in the proposed revision on page 1930]. Illinois EPA would prefer that the Board rules use the same terminology as federal rules, which is the intent of the Act by requiring identical-in-substance rules. If use of the updated federal terms becomes an issue, the statute can be updated to more closely mirror current federal terminology.

60. Do the corrections in the correspondence tables in Appendix B to 35 Ill. Adm. Code 811 more accurately show the correspondence between the Illinois and USEPA MSWLF rules?

Agency Response: Yes.

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

1. In proposed Section 703.186, subsection (b) refers to subsection “(a)(1)” instead of reworked subsection “(a)”.
2. In proposed Section 720.110, the definition of “Central accumulation area” contains typographical errors.
3. Proposed Section 722.111(g) states “USEPA hazardous waste numbers (USEPA hazardous waste numbers)” twice.
4. Proposed Section 723.120(a)(2) contains a typographical error (“fFor”).
5. Proposed Section 724.112(a) contains a typographical error (“is arranging has arranged”).
6. Proposed Section 725.982(d) appears to contain a typographical error (“long-cast compliance date”).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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DATED: August 17, 2018

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, affirm that I have served the attached ILLINOIS EPA'S 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 August 17, 2018:

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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 9; 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  
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