

ILLINOIS POLLUTION CONTROL BOARD
May 19, 2026

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE SUBTITLE) R 26-17
K: RECYCLABLE, RECLAIMABLE, OR) (Rulemaking – Land)
REUSEABLE WASTES, CHAPTER I)
POLLUTION CONTROL BOARD, PART 1220)
MANAGEMENT OF USED EV BATTERIES)
)

HEARING OFFICER ORDER

On January 2, 2026, with the Illinois Environmental Protection Agency (IEPA) filed a rulemaking proposal for a new Part 1220 to the Board’s rules under Section 22.23f of the Act. On January 22, 2026, the Board accepted IEPA’s proposal for hearing and directed the hearing officer to schedule and proceed to hearing. The first hearing occurred on Thursday, March 19, 2026. On May 5, 2026, IEPA filed a Supplemental Response to the March 19, 2026 Hearing (IEPA Supp. Resp.) and Amended Proposed Part 1220 (Am. Proposed Pt. 1220).

The Board and its staff have reviewed the proposal and IEPA’s post-hearing Supplemental Response and Amended Proposed Part 1220 and submit with this order questions, included as Attachment A. The Board reiterates that pre-filed answers to the attached questions are due on May 26, 2026, by 9:00 a.m., consistent with the schedule previously established in this proceeding. Anyone may respond to the attached questions, as well as any other pre-filed questions in the record.

All filings in this proceeding will be available on the Board’s website at <https://pcb.illinois.gov> in the rulemaking docket R26-17. Unless the Board, hearing officer, Clerk, or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the Clerk's Office On-Line. 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.



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ATTACHMENT A
To Hearing Officer Order of May 19, 2026

Prefiled Questions

1. Please explain how IEPA interprets the relationship between “used EV battery” status under Part 1220 and batteries that remain in commerce for purposes of testing, repair, remanufacturing, repurposing, reuse or second-life deployment, or recycling or materials recovery, including whether IEPA treats these activities as distinct regulatory categories or as a single continuum of “in-commerce” handling.
 - a. If IEPA treats these activities as a continuum, please explain how the point at which a battery becomes a “used EV battery” subject to regulation is determined within that continuum and how regulatory obligations under Part 1220 attach at that point.
 - b. If IEPA treats these activities as distinct categories, please identify how each category is defined for purposes of applicability under Part 1220 and how regulatory obligations differ, if at all, among those categories.
2. Can a battery intended for reuse or second-life deployment still be considered a “used EV battery” while it is accumulated, transported, tested, or awaiting repurposing? If so, at what point does the exclusion for batteries “returned to reuse” or “returned to the economic mainstream” apply?
3. What criteria does IEPA intend to apply when determining whether a battery remains a product in commerce for reuse versus becoming a regulated “used EV battery” subject to Part 1220?
4. How will IEPA verify intent for reuse?
5. If a battery is temporarily stored for diagnostics, grading, repair, or repurposing before second-life deployment, at what point does Part 1220 become applicable?
6. Please explain whether batteries incorporated into active second-life or energy storage applications, including systems capable of charging or discharging electricity, are intended to remain subject to Part 1220.
 - a. Please explain whether Part 1220 is intended to apply differently to batteries that are actively charging or discharging as compared to batteries in storage, transport, staging, or evaluation status.

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

- b. Please comment on whether the rule should expressly address charging or discharging activities associated with repurposed or second-life battery systems.
7. If a battery that is initially designated for reuse is later determined to be unsuitable, fails during repurposing, or fails in second-life service, how would regulatory responsibility and jurisdiction be assigned under Part 1220?
8. If a battery incorporated into a second-life application later fails, causes a fire, releases contaminants, or otherwise causes environmental harm, how does IEPA anticipate regulatory responsibility, remediation obligations, and jurisdiction will be assigned?
9. In response to Question 3 (IEPA Supp. Resp.), IEPA states that a Board Note or specific cross-references to applicable hazardous waste rules could be added to Section 1220.110 to provide clarification. Please provide the Board Note language, including specific citations to the hazardous waste rules.
10. In the Illinois Environmental Protection Agency's Pre-Filed Answers to the Board's March 6, 2026 [sic] Hearing Officer Order (IEPA Answers), IEPA states, in response to Question 12, that "Part 1220 does not explicitly address when the hazardous waste rules become applicable to used EV batteries." Please explain whether IEPA intends to include a provision clarifying when hazardous waste regulations apply to used EV batteries under specific handling, storage, processing, failure, disposal, or end-of-life circumstances.
11. In response to Question 27 (IEPA Supp. Resp.), IEPA states that financial assurance under Part 1220 addresses only the cost of removal of used EV batteries at a storage facility. IEPA further indicates that an owner or operator may be required to demonstrate that "adequate financial resources" are available to remediate the site pursuant to the remediation objectives in 35 III. Adm. Code Part 742 under Sections 30 and 31 of the Environmental Protection Act (Act).
 - a. Please clarify whether, under the Act, an owner or operator may be required to demonstrate financial responsibility for remediation of a site in the event of a fire or explosion involving used EV batteries, separate and apart from the financial assurance requirements under Part 1220.
 - b. If so, provide citations to the specific statutory provisions authorizing such requirements.

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

- c. Please comment on Part 1220 could or should include a cross-reference to applicable provisions of the Act and 35 Ill. Adm. Code Part 742 addressing potential financial obligations for site remediation following a fire or explosion involving used EV batteries.
12. In response to Question 32 (IEPA Supp. Resp.) on battery tracking under Section 1220.510, IEPA, relying on USEPA’s Lithium-Ion Battery Recycling FAQ (USEPA FAQ), states that USEPA’s Universal Waste Regulations for batteries do not require use of a uniform hazardous waste manifest or shipment by a hazardous waste transporter.

However, the USEPA FAQ also states, “...Department of Transportation regulations for shipping lithium batteries do apply. EPA recommends that businesses consult their state solid and hazardous waste agencies for additional information on applicable universal waste regulations...”

- a. Please confirm whether the Agency agrees that transportation of used EV batteries under Part 1220 may also be subject to applicable U.S. Department of Transportation (USDOT) hazardous materials requirements.
 - b. Please comment on whether the proposed rules should include a cross-reference to any applicable USDOT regulations, like the ones listed in 35 Ill. Adm. Code 733.152 for universal waste transporters.
 - c. If so, please identify the specific USDOT regulatory provisions that would be appropriate to cite.
13. In response to Question 33 (IEPA Supp. Resp.) on battery tracking, IEPA states that rule is not intended to regulate transportation of used EV batteries but requires used EV battery sites to maintain a record of when and who is transporting the batteries they receive or remove from the site.
- a. Please clarify whether the owner or operator of the used EV battery storage site is expected to have all the information to be included in the receipt given to the transporter, including the make, model, and year of the vehicle from which the used EV battery was removed from.
 - b. What information must be supplied by the transporter?

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

- c. If transporters are not regulated under Part 1220, what is the regulatory purpose of providing the transporter with a copy of the receipt?
14. Who does IEPA anticipate will be responsible for tracking, compliance, and recordkeeping during battery transfer, testing, repurposing, and second-life deployment?
15. How will IEPA ensure that batteries incorporated into aggregated second-life storage systems remain traceable to their original source, chemistry, condition, and chain of custody?
16. Does IEPA intend to establish or rely upon any statewide electronic reporting, manifesting, registry, or tracking system for used EV battery flows beyond the site-level recordkeeping requirements in Part 1220?
17. What minimum data elements does IEPA expect to be necessary for effective tracking of used EV batteries across their lifecycle, including origin, chemistry, condition or state of health, and final disposition?
18. What electronic reporting, manifesting, or tracking systems does IEPA currently use or anticipate developing to manage increasing complexity and volume under this regulatory program?
19. How does IEPA intend for reported data under this rule to be verified, audited, or validated for accuracy and completeness?
20. In response to Question 25 (IEPA Supp. Resp.) on the labeling of battery chemistries, IEPA states there is not a federal standard for EV battery labeling, but there is a voluntary battery labeling guideline. Please submit a copy of the voluntary battery labeling guideline.
21. Please state whether IEPA intends to incorporate any environmental justice (EJ) considerations into Part 1220. If so, identify the nature of those considerations. If not, please explain the basis for excluding EJ considerations from the rulemaking.
 - a. Please explain how EJ considerations would be applied, if included, in IEPA's determinations under Part 1220, including applicable criteria, standards, or procedures.
 - b. Please explain how IEPA would address EJ-related impacts, including through implementation, inspection, or compliance activities under Part 1220, regardless of whether EJ considerations are expressly incorporated in the rule text.

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

22. Does IEPA intend the definitions and regulatory framework in Part 1220 to apply in a technology-neutral manner that would accommodate future EV battery chemistries and technologies beyond current lithium-ion and nickel-metal hydride designs? If so, please explain how such adaptability is reflected in the rule.
23. How does IEPA anticipate addressing regulatory applicability for emerging battery technologies such as solid-state, sodium-ion, or other chemistries that may not be explicitly referenced in the rule?
24. What evaluation has IEPA conducted regarding its current staffing, technical expertise, and enforcement capacity to administer this program as the volume of used EV batteries increases over time?
25. Was Part 1220 designed primarily based on current observed volumes of used EV battery, or does IEPA intend it to remain workable under substantially larger second-life and repurposing markets?
26. What estimates has IEPA developed regarding the number of regulated facilities, battery transactions, or storage volumes expected to fall under this rule over the next five years, and how did those estimates inform implementation planning?
27. How did IEPA evaluate whether Part 1220 will remain administratively and operationally workable under substantially increased numbers of regulated entities and battery flows?
28. Regarding response to Question 8 (IEPA Supp. Resp.), please explain whether separate density factors, threshold calculations, or storage assumptions are necessary for semi-trucks, mid-size trucks, or other heavy-duty EV batteries, and whether such factors will be finalized before the end of the post-hearing comment period.
29. In response to Question 10 (IEPA Supp. Resp.), IEPA states that for cost of financial instruments it “would likely require facilities subject to this Part to acquire estimates from hazardous material transportation companies to estimate the cost of removal.”
 - a. Has the Agency developed any estimated removal cost assumptions for purposes of financial assurance under Part 1220, and if not, what basis did IEPA use to determine financial assurance requirements without such estimates?

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

- b. Please provide estimated removal costs for facilities storing approximately 5,000, 10,000, and 25,000 kilograms of used EV batteries, including the assumptions used.
- 30. How does IEPA intend for regulated entities to determine compliance expectations in advance of enforcement action or individualized agency interpretation, particularly where definitions, exemptions, or operational scenarios may be unclear?
- 31. Please describe how IEPA intends to address implementation and interpretation of Part 1220 following adoption, including how the Agency will develop, communicate, and ensure consistency of any guidance or interpretive materials used to support implementation, inspection, and compliance.
- 32. In response to Question 13 (IEPA Supp. Resp.), IEPA recommends the addition of a new provision at Section 1255.205(i)(1).
 - a. Is a “registered design professional” a defined term?
 - b. If so, please provide any statutory or regulatory citation to that term.
 - c. Given the proposed renumbering of subsection (g), does the Agency agree that proposed subsection (i)(1) should instead be renumbered as subsection (j)?
 - d. In the Section 1220.205 preamble, should the requirements apply to “Owners and operators of any Used EV battery storage site must comply with the following requirements:”?
- 33. Please state whether IEPA supports revising Section 1220.115 to define “Used EV battery storage site” as any facility, site, or location at which one or more used EV batteries are received, accumulated, held, or stored, whether on a temporary or permanent basis, in place of the current definition of “Battery storage site.” If not, please explain IEPA’s rationale and how it ensures consistent implementation of Part 1220.
- 34. Section 22.23f(b)(3) of the Act provides that no person may operate a used EV battery storage site unless the person is an automotive parts recycler, as defined in Section 1-105.3 of the Illinois Vehicle Code, and licensed under Section 5-301 of the Illinois Vehicle Code.
 - a. Please explain whether IEPA intends to incorporate this statutory requirement expressly into Part 1220.

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

- b. Please explain how IEPA intends to verify compliance with these licensing requirements for regulated storage facilities.
 - c. Please explain how IEPA intends to address facilities operating without the required automotive parts recycler licensure.
35. If Part 1220 adopts or relies on a definition of “electric vehicle” consistent with Illinois Department of Transportation (IDOT) classifications, please explain:
- a. Identify which categories of equipment IEPA includes within, or excludes from, Part 1220, including passenger cars; passenger SUVs; delivery trucks; semi-trucks; garbage trucks; buses; motorcycles; scooters; construction equipment (e.g., electric loaders, forklifts); agricultural equipment (e.g., electric utility tractors, mowers); lawn care & outdoor power tools (OPE) (e.g., push mowers, leaf blowers, trimmers); home appliances/building electrification equipment; and any other motorized or mobile equipment that uses lithium-ion or other advanced battery chemistries used for propulsion or mobility applications.
 - b. Describe IEPA’s evaluation of fire prevention, explosion risk, and environmental impacts associated with lithium-ion and other advanced batteries used in non-road or non-vehicle applications, and how those evaluations inform IEPA’s determination of the scope of Part 1220.
 - c. Describe the factors IEPA considered in determining the scope in subpart (a), including fire risk, explosion risk, environmental impacts, battery chemistry, form factor, and storage and handling conditions, and end-of-life pathways across the identified categories.
 - d. Clarify whether batteries associated with equipment or applications outside of IDOT’s classifications are intended to be included within, or excluded from, the scope of “used EV batteries” under Part 1220, and the basis for that such determination.
 - e. Whether IEPA considered addressing such batteries under Part 1220 or through coordination with other applicable environmental, hazardous waste, transportation, fire safety, or site remediation regulatory programs.
36. Please review the definitions in Section 1220.115, including “electric vehicle,” “Used EV battery,” and “Used EV Battery Storage Site,” and explain whether any revisions are

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

necessary to ensure the definitions are consistent, complete, and operable for purposes of implementing Part 1220. In particular, please address whether the definition of “Used EV battery” appropriately captures the intended scope of regulated batteries across the categories of vehicles and equipment addressed in this rulemaking.

37. Please review the proposed rule text and identify any instances in which defined terms or their abbreviations (e.g., electric vehicle and EV) are not used consistently after their initial definition or abbreviation, including any subsequent use of the full term in place of the abbreviation or any deviation from defined usage.

38. Question 18 (IEPA Supp. Resp.) asks IEPA if the rules allow the Agency to do a case-by-case analysis of the stability of battery piles if they are stacked too high. If so, under what provision of the rule will the Agency do that kind of case-by-case evaluation? *See* Tr. at 83-84. IEPA responds with a proposed amendment at Section 1220.205(j), which allows for inspection by the Agency or local fire departments, either upon the request of the facility or by request of the Agency or local fire department. Also, subsection (j)(1) requires the used EV battery storage site to modify its storage methods to comply with the local fire department’s needs for fire or explosion response.
 - a. Please comment on whether the rule should also allow the Agency to suggest any modifications based on its inspection of the used EV battery storage site.

 - b. If so, comment on whether the following changes are acceptable to the Agency (For purposes of this question, references to proposed subsection (j) assume adoption of the prior renumbering amendment, under which subsection (j) would become subsection (k)):
 - jk) Owner or operator of a U used EV battery storage sites must make the ~~used EV-battery~~ storage site available for inspection by the Agency or local fire departments, either upon the request of the facility or by request of the Agency or local fire department.
 - 1) Upon inspection, ~~by a local fire department,~~ it may determine if a facility is storing used EV batteries in a manner that allows emergency responders to safely respond to a fire or explosion incident. If a local fire department determines that the used EV battery storage site’s storage methods would not allow the local fire department to address a fire or explosion, the owner or operator of the used EV battery storage site shall must modify its the storage method~~s~~ to comply with the local fire departments needs for fire or explosion response.

 - 2) Upon inspection, I if the Agency determines that a used EV battery storage

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

site contains 5,000 kilograms or more of used EV batteries, the owner or operator must comply with the additional requirements applicable to used EV battery storage site with 5,000 kilograms or more of used EV batteries under this Part. This Agency determination the used EV battery storage site may be appealed to the Board as an Agency Final Decision under 35 Ill. Adm. Code 105.

39. In response to Question 34 (IEPA Supp. Resp.), IEPA proposes an additional provision at Section 1220.205(j)(2) and changes to Section 1220.615.
- a. Whether IEPA agrees that, consistent with subsection 1220.205(j)(1), the appeal language in proposed subsection (j)(2) should be tied to an Agency inspection.
 - b. If not, please explain IEPA’s rationale.
 - c. If so, please comment on whether IEPA finds the following revisions to subsection (j)(2), shown under Question 35, acceptable. (Note: subsection (j) would be renumbered as subsection (k), to reflect these changes).
 - d. Also, in Section 1220.615(c), please provide cross references to the specific provision in the proposed rules for each of the six Agency’s appealable decisions.
40. What considerations, if any, did IEPA take into account regarding protection of public health and the environment in developing the scope and requirements of Part 1220, including potential impacts associated with battery reuse, second-life applications, grid-support storage, recycling or materials recovery, and in-state economic development?
41. What outreach has IEPA conducted with automakers, battery recyclers, utilities, repurposing companies, local governments, and emergency responders during development of this proposal, and what key concerns or recommendations emerged through that process?
42. In response to Question 12 (IEPA Supp. Resp.), IEPA does not recommend incorporating NFPA 855 into the rules “due to the differences between an actively charging/discharging and used EV batteries that are not being actively used.” IEPA states that a new standard is being developed, NFPA 800, which “will likely be applicable.” In the Office of the State Fire Marshal’s (OSFM) public comment, they indicate that NFPA 800 will be finalized “later in 2026”. Does IEPA intend to propose incorporating NFPA 800 into the rules after it is finalized?

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

43. OSFM recommends consideration of Factory Mutual Insurance Company's (FM's) "FM Loss Prevention Data Sheet 7-112, Lithium-Ion Battery Manufacturing and Storage." PC1 at 1.
 - a. Has IEPA reviewed this document?
 - b. Please comment on and explain whether this document should be incorporated by reference as recommended by the OSFM, or otherwise considered in developing the storage, fire prevention, or emergency response requirements under Part 1220.

44. Has IEPA reviewed FM's April 2026 revision of "Property Loss Prevention Data Sheet 5-33, Lithium-Ion Battery Energy Storage Systems"?
 - a. If so, please comment on and explain whether the Agency believes there is merit to considering FM Data Sheet 5-33 or other FM guidance in evaluating the adequacy of the proposed fire protection and battery storage standards under Part 1220.
 - b. If so, please also explain whether the Agency intends to propose incorporation by reference of FM Data Sheet 5-33 or any other FM guidance to Part 1220.

45. The Agency proposes to include height requirements for used EV battery storage racks at Section 1220.210(c)(7)(B). However, OSFM's public comment states "used EV batteries shall not be stored on racks" based on guidance from FM 7-112.
 - a. Does IEPA object to removing rack storage authorization for used EV batteries consistent with OSFM's recommendation?
 - b. If so, please explain IEPA's rationale for retaining the proposed rack storage provision.
 - c. If IEPA retains the proposed rack storage provision, has it considered additional fire protection measures, including rack-level suppression, detection systems, or compartmentalization, are necessary to address delayed fire propagation in rack storage configurations?
 - d. If not, does IEPA intend to revise Section 1220.210(c)(7)(B) to prohibit rack storage consistent with OSFM's recommendation?

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

46. For EV batteries stored in piles, how has IEPA addressed concerns regarding safety, thermal management, and scalability?
47. OSFM recommends adding language that considers the charge status of the stored batteries. PC1 at 2. The reasoning being that drained batteries limits “potential issues from having charged batteries that could contribute power/ignition and spark the beginning of a fire.”
- a. Has IEPA considered charge status as a factor in the proposed used EV battery storage standards?
 - b. If so, please explain how the proposed rules address this factor.
 - c. If not, explain the rationale for not considering the charge status in proposed rules.

48. OSFM recommends amending Section 1220.210(c)(3) as follows:

“Rooms where used EV batteries are stored shall contain a fire alarm system activated by an air-aspirating smoke detector system, installed in accordance with NFPA 72, National Fire Alarm and Signaling Code, or a radiant-energy detection system with occupant notification.

Does IEPA have any objection to including OSFM’s amendment? If so, please explain.

49. Please explain the fire prevention and emergency response framework IEPA evaluated for used EV battery storage under Part 1220, including the role of detection, suppression, containment, ventilation, storage configuration design, and emergency response access in addressing fire and thermal runaway risks.
50. In response to Question 51 (IEPA Answers), IEPA states that runoff capture is required and that disposal must comply with applicable Illinois regulations, including 35 Ill. Adm. Code Part 309.
- a. Please identify the specific provisions of Part 309 that IEPA believes apply to runoff generated from fire suppression, fire response, or battery-related incidents under Part 1220.
 - b. Please explain how runoff management requirements would apply to facilities that are not otherwise subject to NPDES permitting requirements.
 - c. Please explain whether IEPA considered including express runoff containment or runoff management requirements within Part 1220.

ATTACHMENT A
To Hearing Officer Order of May 19, 2026

51. Regarding the response to Question 14 (IEPA Supp. Resp.), does the Agency intend to make any examples, templates, or guidance regarding deflagration analysis available for review before the end of the post hearing comment period? If so, when and in what form?