

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820)
GENERAL CONSTRUCTION OR) R 2023-017
DEMOLITION DEBRIS RECOVERY) (Rulemaking-Land)
FACILITIES.)

NOTICE OF FILING

TO: Persons on Attached Service List

PLEASE TAKE NOTICE THAT on the 20th day of September, 2022, I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, the Pre-Filed Questions for the Illinois Environmental Protection Agency submitted by the Illinois Attorney General's Office, a true and correct copy of which is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

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CERTIFICATE OF SERVICE

I, Audrey Avila, an Assistant Attorney General, caused to be served on this 20th day of September, 2022, a true and correct copy of the Notice of Filing and Pre-Filed Questions for the Illinois Environmental Protection Agency submitted by the Illinois Attorney General's Office, upon the persons listed on the Service List via electronic mail or electronic filing, as indicated.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED 35 ILL. ADM. CODE 820)
GENERAL CONSTRUCTION OR) R 23-17
DEMOLITION DEBRIS RECOVERY) (Rulemaking-Land)
FACILITIES.)

**PRE-FILED QUESTIONS FOR THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
SUBMITTED BY THE ILLINOIS ATTORNEY GENERAL'S OFFICE**

The Illinois Attorney General's Office hereby files its questions for the Illinois Environmental Protection Agency ("Illinois EPA") in the above-referenced matter, as provided by the Hearing Officer Order issued on August 15, 2022.

PRE-FILED QUESTIONS FOR JAMES JENNINGS ILLINOIS EPA

On August 1, 2022, the Illinois EPA filed a rulemaking proposal regarding a new Part 820 of the Illinois Pollution Control Board ("Board") Waste Pollution Regulations, 35 Ill. Adm. Code Part 820, to establish rules for permitting, operating, and closing general construction or demolition debris ("GCDD") recovery facilities. Below are the pre-filed questions from the Illinois Attorney General's Office in response to James Jennings of the Illinois EPA's September 6, 2022 pre-filed testimony.

1. Subpart B: Permit Applications: Section 820.201(a)(2):

An owner or operator of a GCDD recovery facility that, on the date this Part takes effect, has an existing permit issued under Section 22.38 of the Act, must submit an application to modify their permit no later than one (1) year after the effective date of this Part.

Q: Section 820.201(a)(2) appears to allow for facilities with existing permits to operate for one year following the promulgation of the proposed Part 820 Rules. How does the Illinois EPA plan to address inconsistencies between existing permits that have not been

modified to conform to amended Section 22.38 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/22.38, within one year after the effective date of Part 820 (i.e., which requirements are GCDD recovery facilities expected to comply with—amended Section 22.38 of the Act or the existing permit)?

Q: Does the estimated number of affected facilities statewide take into account both new permit applications and applications to modify existing GCDD permits (i.e., could all GCDD recovery facilities apply for permits within six months)?

2. Subpart C: Operational Standards: Section 820.302(h)

Dust Control. Wind dispersal of particulate matter must be prevented.

Q: Should submission to the Illinois EPA of a dust control plan be required?

3. Subpart C: Operational Standards: Section 820.302(k):

Surface Water Drainage. Measures to ensure surface water drainage is diverted from areas where GCDD or other materials are stored shall be implemented at the facility. Surface water drainage shall be controlled so adjacent properties are not adversely impacted.

Q: Is coverage under a general National Pollutant Discharge and Elimination System (NDPES) permit required for GCDD recovery facilities? If not, should GCDD recovery facilities be required to maintain and implement a stormwater pollution prevention plan?

4. Subpart C: Operational Standards: Section 820.303(d)

Unacceptable Materials. Any unacceptable materials discovered to be mixed with GCDD after it is accepted at the GCDD recovery facility shall be immediately removed from the GCDD and managed as follows. In no case shall the unacceptable material remain at the facility for more than 72 hours after receipt.

Q: How does the Illinois EPA reconcile the language in Section 22.38(j) of the Act, 415 ILCS 5/22.38(j), with proposed Section 820.303(d)? Section 22.38(j) of the Act provides: “No person shall cause or allow the acceptance of any waste at a general construction or

demolition debris recovery facility, other than general construction or demolition debris.” The General Assembly did not provide any exceptions in Section 22.38(j) of the Act allowing unacceptable material to be present at a GCDD recovery facility. Section 820.303(d) appears to be at odds with the Act. To the extent you believe this is permissible, should GCDD recovery facilities be required to maintain records regarding the handling of all unacceptable materials?

5. Subpart C: Operational Standards: Section 820.305(b)

During closure all GCDD and all other materials at the facility shall be removed to an appropriately permitted transfer, treatment, storage, or disposal facility.

Q: Please explain what is meant by “all other materials at the facility”? Are there other non-GCDD materials that would be expected to be stored at GCDD recovery facilities? If so, how does the Illinois EPA reconcile the language in proposed Section 820.305(b) with Section 22.38(j) of the Act, as well as the proposed Section 820.103 definition of General Construction or Demolition Debris Recovery Facility, as one that is “used to store or treat *exclusively* GCDD”?

6. Subpart C: Operational Standards: Section 820.305(c)(1)

Closure cannot be practically completed within 180 days of the last date on which GCDD was accepted; and...

Q: Please explain what is meant by “closure cannot be practically completed”?

Under what circumstances would an owner or operator be able to demonstrate that closure could not be practically completed within 180 days of the last date on which GCDD was accepted?

7. Subpart D: Financial Assurance: Section 820.401(c)

The owner or operator may use a trust fund, insurance, or a combination thereof as financial assurance for closure of a GCDD recovery facility

* * *

Q: Self-insurance does not appear to be permissible under Subpart D. Should it be explicitly stated that it is not an acceptable type of financial assurance?

8. Subpart D: Financial Assurance: Section 820.404(d)(4)

The owner or operator shall make the first annual payment before GCDD is received at a facility covered by the trust agreement. Before receiving GCDD at a facility covered by the trust agreement, the owner or operator shall submit to the Agency a receipt from the trustee for the first annual payment.

Q: How does this work for existing facilities that would be covered by a trust agreement for the first time while they are operating?

Respectfully submitted,

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by KWAME RAOUL,
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By: /s/ Audrey Avila

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