

ILLINOIS POLLUTION CONTROL BOARD
June 17, 2004

IN THE MATTER OF:)	
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RCRA SUBTITLE D UPDATE, USEPA)	R04-5
REGULATIONS (January 1, 2003 through)	(Identical-in-Substance
June 30, 2003))	Rulemaking - Land)
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)	
RCRA SUBTITLE D UPDATE, USEPA)	R04-15
REGULATIONS (July 1, 2003 through)	(Identical-in-Substance
December 31, 2003))	Rulemaking - Land)

Adopted Rule. Final Order.

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

This identical-in-substance rulemaking updates the Illinois municipal solid waste landfill (MSWLF) regulations to incorporate revisions to the federal regulations. The federal amendments that prompted this action were made by the United States Environmental Protection Agency (USEPA) during the two update periods of January 1, 2003 through June 30, 2003 and July 1, 2003 through December 31, 2003. This proceeding adopts amendments to 35 Ill. Adm. Code 810 and 811. The principal amendments relate to disposal of residential lead-based paint waste and location of new MSWLF units near airports. This adoption also makes a limited number of non-substantive corrections and stylistic revisions to segments of the text covered by the federal amendments.

As explained below, for reasons of administrative economy, the Board consolidated dockets R04-5 and R04-15 in the March 18, 2004 proposal for public comment. The caption reflects that consolidation.

Sections 7.2 and 22.40(a) of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 22.40(a) (2002)) require the Board to adopt amendments to the Illinois regulations that are “identical-in-substance” to MSWLF adopted by the United States Environmental Protection Agency (USEPA). These USEPA rules implement Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C §§ 6941-6949, (RCRA Subtitle D).

Sections 7.2 and 22.40(a) of the Act provides for quick adoption of regulations that are “identical-in-substance” to federal regulations that USEPA adopts to implement Sections 4004 and 4010 of RCRA, 42 U.S.C. §§ 6944 and 6949a (1996). Section 22.40(a) of the Act also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 & 5-40 (1996)) do not apply to the Board’s adoption of identical-in-substance regulations. The federal RCRA Subtitle C regulations are found at 40 C.F.R. 258.

CONSOLIDATION OF DOCKETS R04-5 AND R04-15

By the opinion and order for the March 18, 2004 proposal for public comment, the Board consolidated consideration of the R04-5 and R04-15 RCRA Subtitle D update dockets in the interests of administrative economy. The sets of amendments involved are relatively small in volume. The consolidation of those two dockets will expedite the amendment of all the regulations involved at a reduced cost to the State. The caption reflects this addition.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

USEPA amended the federal RCRA Subtitle D MSWLF regulations once during the nominal January 1, 2003 through June 30, 2003 period of docket R04-5. That single action is summarized as follows:

68 Fed. Reg. 36487 (June 18, 2003)

USEPA amended key definitions to allow disposal of residential lead-based paint waste that is not hazardous waste in a construction and demolition landfill that does not accept other household waste.

USEPA amended the federal RCRA Subtitle D MSWLF regulations once during the nominal July 1, 2003 through December 31, 2003 period of docket R04-15. That single action is summarized as follows:

68 Fed. Reg. 59333 (October 15, 2003)

USEPA amended the rules to add a note referencing the adoption of the Wendell H. Ford Aviation Investment Act (the Ford Act) prohibiting location of a new landfill within six miles of a certain public airports.

The Board amends the Illinois regulations to incorporate the substance of two sets of federal amendments relating to disposal of residential lead-based paint waste and location of new MSWLF units in the vicinity of public airports.

PUBLIC COMMENTS

The Board adopted a proposal for public comment in this matter on March 18, 2004. A notice of proposed amendments appeared in the April 2, 2004 issue of the *Illinois Register*, at 28 Ill. Reg. 5577 (Part 810) and 5594 (Part 811). The Board received public comments on this proposal for a period of 45 days following its publication in the *Illinois Register*, until May 17, 2004. The Board now adopts the amendments, making any necessary changes made evident through the public comments.

During the public comment period, the Board received the following documents:

Line Numbered Version from the Joint Committee on Administrative Rules (JCAR), received March 30, 2004 for each of Parts 810 and 811.

PC 1 E-mail to Erin Conley, Rules Coordinator, by Deborah Connelly, JCAR, dated March 28, 2004.

PC 2 Comments of the Illinois Environmental Protection Agency (Agency), by Mark Wight, Assistant Counsel, dated May 13, 2004.

In PC 1, JCAR pointed out that the March 18, 2004 proposal for public comment did not update various references to the Act to correspond with statutory amendments. Public Act 92-574 amended the Act effective June 26, 2002. Among the amendments was a renumbering of various definitions. The Board has incorporated changes in the adopted version of the amendments.

In PC 2, the Agency requests that the Board not adopt the federal amendments of June 18, 2003 relating to disposal of residential lead-based paint waste. Alternatively, the Agency requests that the Board add a note to the new definition of “construction and demolition landfill” to help avoid confusion that might be caused by this new federal definition. The Agency comments are considered in the following discussion.

After the conclusion of the public comment period, the Board received an additional comment:

PC 3 Comments of the Marion Ridge Landfill, by Claire A. Manning, Attorney, Posegate & Denes, P.C., dated June 2, 2004.

In PC 3, Marion Ridge Landfill addresses the Board note appended to Section 811.302(f), relating to the Ford Act. Accompanying PC 3 was a motion for leave to file *instanter*. Although it was filed after the close of the public comment period, the Board grants the motion to file *instanter* and accepts PC 3. The issues raised by the comments and the Board’s responses are discussed below in the segment of this opinion relating to that provision. The Board notes that PC 3 cites the Federal Aviation Administration (FAA) Advisory Circular number 150/5200-34, which USEPA cited in the note language it added to its regulations. No copy of this FAA document was attached to the comments. The Board hearing officer introduced a copy of the cited FAA Advisory Circular no. 150/5200-34 as Hearing Officer Exhibit 1 (H.O. Ex. 1) to complete the record.

DISCUSSION

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by a discussion of the amendments and actions undertaken in direct response to the federal actions involved in this proceeding. This first series of discussions is organized by federal subject matter, generally appearing in chronological order of the relevant *Federal Register* notices involved. Finally, this discussion closes with a description of the amendments and actions that are not directly derived from the federal actions.

Discussion of the Particular Federal Actions Involved in This Docket

Disposal of Residential Lead-Based Waste in Construction and Demolition Landfills-- Section 810.103

The USEPA Action. The USEPA action of June 18, 2003 (68 Fed. Reg. 36487) related to disposal of residential lead-based paint waste in construction and demolition landfills. USEPA added definitions to its regulations of “residential lead-based paint waste” and “construction and demolition landfill.” USEPA further amended the definition of MSWLF to exclude a construction and demolition (C & D) landfill.

Residential lead-based paint waste is defined as waste that contains lead-based paint that was generated in the course of abatement, rehabilitation, renovation, and remodeling activities in homes or other residential units. The term includes lead-based paint debris, chips, dust, and sludges.

A C & D landfill is defined as one that meets the 40 C.F.R. 257 general requirements for land disposal facilities or for disposal of conditionally exempt small quantity generator waste. A C & D landfill may not also receive hazardous waste or industrial solid waste. The federal definition states that a C & D landfill typically receives roadwork material, excavated material, demolition waste, construction and renovation waste, and site clearing waste.

The Board’s Proposal. The Board incorporated the June 18, 2003 federal amendments into the April 2, 2004 proposal for public comment without substantive deviation from the corresponding federal text. This included the addition of the two new definitions of “residential lead-based paint” and “C & D landfill” and the amendment of the existing definition of “MSWLF.” Persons wishing the details of the federal amendments that underlie the current actions were directed to the June 18, 2003 issue of the *Federal Register*. The deviations from the text of the federal amendments were restricted to those structural and stylistic changes needed to make the text comport with the *Illinois Register* format and the Board’s preferred style.

The Board requested public comment on the incorporation of the June 18, 2003 federal amendments into the Illinois landfill regulations. The Agency submitted PC 2, which significantly considered incorporation of the federal amendments. The Agency requested that the Board either decline to incorporate the federal amendments into the Illinois regulations, or append a cautionary Board note to the definition of “C & D landfill.” The Board alters the amendments in response to the Agency comments.

The Agency Comment. The Agency opposes adoption of the federal amendments of June 18, 2003. It stated in PC 2 that the regulatory structure contemplated by USEPA does not exist in the Illinois landfill regulations. The Agency maintains that addition of the definition of “C & D landfill” will “create legal conflicts with existing landfill provisions and unnecessary confusion” and may even “create legal inferences disruptive to the Agency’s administration of the non-hazardous landfill rules.” PC 2 at 1.

The Board's Analysis. The Board agrees that the federal and Illinois regulatory schemes for solid waste landfills are different. The distinctions made between the various types of facilities are not the same under the Illinois regulations as those made under the federal rules. Examination of the federal regulations shows that the June 18, 2003 amendments did not create a new set of regulatory standards for a new class of landfills.

USEPA' Regulatory Scheme. Prior to the June 18, 2003 federal amendments, disposal of residential lead-based paint waste was permissible only in a MSWLF facility. Residential lead-based paint waste fulfills the definition of "household waste" for which such disposal is required. 40 C.F.R. 258.1; *see* 40 C.F.R. 258.2 (definitions of "household waste" and "municipal solid waste landfill"). The object of the June 18, 2003 amendments was to facilitate removal of lead-based paint from residential units by allowing greater flexibility in disposal of the removal waste. 68 Fed. Reg. 36487, 36488-89 (June 18, 2003). USEPA wanted to allow disposal of the waste in a facility other than a MSWLF. To accomplish this purpose, USEPA created definitions of "residential lead-based paint waste" and "C & D landfill." USEPA then excluded from the definition of MSWLF those C & D landfills that receive residential lead-based paint waste, so long as the facility does not receive other household wastes. 68 Fed. Reg. 36487, 36495 (June 18, 2003).

Contrary to what is implied by the Agency's assertions in PC 2, the June 18, 2003 federal amendments did not alter the federal regulatory scheme and create a new class of land disposal facility standards. USEPA chose to define a new class of landfills to implement the residential lead-based paint waste exception. This allowed USEPA to distinguish residential lead-based paint waste from all other types of household waste. 68 Fed. Reg. at 36488. USEPA thus avoided exclusion of this material from the universe of what is considered household waste, which might have had hazardous waste implications. 68 Fed. Reg. at 36490; *see* 40 C.F.R. 261.4(b)(1) (2003) (excluding household waste from the definition of "hazardous waste"). Creation of this new class of landfills did not create a new set of landfill requirements.

The federal regulations designate a solid waste disposal facility that does not fulfill the classification requirements of 40 C.F.R. 257 as a prohibited "open dump." They provide that a facility that meets the requirements of Part 257 or 258 is not an open dump. 40 C.F.R. 257.1(a)(1) (2003); 40 C.F.R. 258.1(g); *see* 40 C.F.R. 257.2 (2003) (definition of "open dump"). The federal regulations contemplate three sets of solid waste disposal facility standards applicable to different kinds of facilities.¹ The provisions of 40 C.F.R. 257 and 258 set forth the federal standards applicable to permissible land disposal facilities. Compliance with any set of standards avoids the "open dump" designation.

The first set of federal landfill regulations is the basic land disposal facility standards of 40 C.F.R. 257.3 that apply to land disposal units to which more specific standards do not apply.²

¹ This does not include standards applicable to hazardous waste disposal facility standards under 40 C.F.R. 264 and 265.

² Additional regulations within this set apply to application of solid waste to land used to produce food crops. 40 C.F.R. 257.3-5 (2003).

See 40 C.F.R. 257.3 (2003). The generally applicable standards of section 257.3 are very general in nature.

The second, more comprehensive set of Part 257 land disposal facility standards applies to landfills that receive “conditionally exempt small quantity generator” (CESQG) waste. CESQG waste is hazardous waste that is generated in limited quantities. See Subpart B of 40 C.F.R. 257 (2003). It is not regulated under the hazardous waste standards, so long as the generator complies with certain basic requirements. See 40 C.F.R. 261.5 (2003).

The third, most comprehensive set of federal land disposal facility standards is the MSWLF rules. The MSWLF rules are codified as 40 C.F.R. 258. A MSWLF is defined as one that accepts “household waste.” 40 CFR 257.2 & 258.2 (2003). The MSWLF standards of 40 C.F.R. 258 are far more detailed than the general standards of Part 257.

The June 18, 2003 addition of a definition of “C & D landfill” to 40 C.F.R. 257.2 and 258.2 did not add a new class of regulatory standards. If the C & D landfill facility does not accept other household wastes, it avoids regulation under the standards that apply to a MSWLF. See 40 C.F.R. 257.2 & 258.2 (2003) (parallel definitions of “municipal solid waste landfill”). If the C & D landfill facility does not accept CESQG waste, it avoids the regulations applicable to facilities that receive this type of waste. A further condition is that the C & D landfill may not also receive hazardous waste or industrial waste. See 40 C.F.R. 257.2 & 258.2 (2003) (parallel definitions of “construction and demolition landfill”). The regulations that apply to a C & D landfill that fulfills these conditions are the general standards of 40 C.F.R. 257.3, the basic set of existing solid waste disposal rules.

The Illinois Regulatory Scheme. The Illinois landfill regulations also create distinct sets of solid waste disposal facility standards, but the distinctions made in the Illinois regulations are different from those made in the federal regulations.³ Under the Illinois regulations, there are six basic types of solid waste disposal facilities. Coal combustion electric generator waste landfills (Part 816) and steel and foundry waste landfills (Part 817) would not be eligible to accept residential lead-based paint waste. See 35 Ill. Adm. Code 816.510(f), 816.520, and 817.101 (2002) (restricting the types of wastes facilities may receive). Therefore, a facility that receives residential lead-based paint waste could potentially fall within one of four classes of facilities. A distinct set of requirements applies to each type of facility. The four types of facilities are the following:

- 1) Inert waste landfills (Subpart B of 35 Ill. Adm. Code 811),
- 2) Putrescible waste landfills (Subpart C of 35 Ill. Adm. Code 811),
- 3) Chemical waste landfills (Subpart C of 35 Ill. Adm. Code 811), and

³ This discussion does not consider the solid waste management facility standards (35 Ill. Adm. Code 807), hazardous waste treatment, storage, and disposal facility standards (35 Ill. Adm. Code 724 and 725), or compost management facility standards (35 Ill. Adm. Code 831).

4) Municipal solid waste landfills (35 Ill. Adm. Code 811).

The core Illinois solid waste disposal facility (landfill) requirements are those of Subpart A of 35 Ill. Adm. Code 811. *See* 35 Ill. Adm. Code 811.102-811.112 (2002). The Subpart A standards apply to all solid waste landfill units. *See* 35 Ill. Adm. Code 811.101(a), 816.500(a) & 817.101(a) (2002).

The inert waste landfill rules of Subpart B of 35 Ill. Adm. Code 811 apply to inert waste landfills (in addition to the core Subpart A requirements). These are the least rigorous set of landfill regulations under the Illinois scheme. The Board agrees with the Agency assertions (PC 2 at 4) that it is unlikely that residential lead-based paint waste would qualify as inert waste. The lead-based paint removal waste would likely include wood, which is susceptible to biologic decomposition. Further, residential lead-based paint waste would likely leach lead. Either biologic decomposition or formation of a contaminated leachate would disqualify the waste from disposal in an inert waste landfill. *See* 415 ILCS 5/3.160 (2002) (definition of “inert waste”).

Thus, there are only three types of landfill eligible to accept lead-based paint removal waste under the Illinois regulatory scheme: putrescible waste landfills, chemical waste landfills, or MSWLFs. Presently, without incorporation of the federal June 18, 2003 amendments into the Illinois regulations, disposal as household waste in a MSWLF would be required in Illinois. *See* 35 Ill. Adm. Code 811 (definitions of “household waste” and “MSWLF”). The point of the federal amendments is to allow the disposal of residential lead-based paint waste in a non-hazardous, non-MSWLF facility. *See* PC 2 at 2. The federal amendments, if incorporated into the Illinois regulations, would potentially allow disposal of residential lead-based paint waste in either of the other two types of non-MSWLF facilities in this State: a chemical waste landfill or a putrescible waste landfill.⁴

Consideration of Other Regulatory Options. The method chosen by USEPA to grant the exception is not the most suitable method for granting the exception in Illinois. As explained above, the method chosen by USEPA is based on the structure of the federal regulations. Defining a new category of landfill in the federal rules does not create a new class of landfill standards; it merely facilitates changing the regulatory class of the affected waste from one set of existing landfill requirements to another. Under the Illinois scheme, the applicability of substantive standards is determined by the categorization of the waste disposed of. Thus, adding a category of waste to Board rules without more can lead to confusion as feared by the Agency.

The Board believes that fulfillment of our identical-in-substance mandate requires adoption of a relaxation of federal regulations unless that relaxation is inconsistent with State regulations adopted pursuant to Section 27 of the Act. 415 ILCS 5/27 (2002). While the Agency raises legitimate concerns for a potential for confusion, the Board does not perceive any fundamental inconsistency between the incorporation of the federal exception for residential lead-based paint waste and the existing Illinois landfill regulations. Incorporation of an

⁴ In so stating, the Board does not intend to characterize the waste or authorize disposal in any particular type of landfill. The characterization of the waste and the exact type of landfill that can receive the waste is determined under the regulations of 35 Ill. Adm. Code 810 and 811.

exception for residential lead-based paint waste from the federally-derived MSWLF requirements does not relax otherwise-applicable Illinois standards that are more stringent than the federal standards of 40 C.F.R. 257.3 (or Subpart B of 40 C.F.R. 257 for CESQG waste). This conclusion is based on the fact that it is not necessary to use the federal designation of a “C & D landfill” to implement the exception. The federal use of the term “C & D landfill” is intended only to limit the defined universe of household waste in terms identical to those chosen by USEPA, and it is possible to draft the exception without use of the term “C & D landfill.”

The first alternative to the federal method for codifying the residential lead-based paint waste exception is to drop the definition of “C & D landfill” and the reference to this term from the language added to the definition of “MSWLF.” The effect is to exclude from the definition of “MSWLF” a facility that receives residential lead-based paint waste and no other household waste. This is the essence of the federal action. The advantages of this alternative is that it does not introduce the new type of landfill in this State, which is a major focus of the Agency’s criticisms of the amendments, and it avoids the references to CESQG waste to which the Agency also objects.

Another alternative method for incorporating the federal exception into the Illinois regulations might accomplish the same end with even less potential for confusion. One more direct method might be to add substantive provisions in Subpart C of 35 Ill. Adm. Code 811 and elsewhere, as appropriate, that provide for disposal of residential lead-based paint waste as chemical or putrescible waste. The problem with this alternative is that it is so significantly different from the federal amendments and from the present amendments as proposed, that the Board cannot now adopt an alternative without a new proposal or within the scope of our identical-in-substance mandate.

The appropriate method for instituting a rule that is not identical-in-substance to the federal regulations is by the general rulemaking procedure of Section 27 of the Act. 415 ILCS 5/27 (2002). For the Board to remove the residential lead-based paint exception from the Illinois rules, if the Board is to formally create a new category of landfill designated as a “C & D landfill” with a separate set of requirements, or if it is necessary to rephrase and restructure the federal exception, the Board must engage in general rulemaking do so. If the Agency desires such amendments, it may petition the Board to commence such a proceeding. In such a proceeding, the Board has greater latitude to exercise discretion than it has in the context of this identical-in-substance proceeding. Further, a general rulemaking proceeding confers the benefits of public hearing and greater opportunity for comment.

Having concluded that incorporation of the residential lead-based paint waste exception into the Illinois landfill rules is mandated, and that the Board cannot significantly alter the structure of the federal exception in the context of this proceeding, the Board addresses the Agency’s alternative suggestion. The Agency suggested that the Board should append a Board note to the definition of C & D landfill to clarify the CESQG waste disposal requirements. The Agency stated that the notes would be similar to those appended to 35 Ill. Adm. Code 721.105(f)(3)(E) and (g)(3)(E) in the hazardous waste regulations. The Agency suggested the following note, in terms very similar to those used in the hazardous waste rules:

BOARD NOTE: The Illinois non-hazardous waste landfill regulations, 35 Ill. Adm. Code 810 through 814, do not allow the disposal of hazardous waste in a landfill regulated under those rules. The Board specifically does not intend that this definition authorize any disposal of conditionally exempt small quantity generator waste in a landfill not specifically permitted to accept the particular hazardous waste.

The Board's Adopted Amendments. The Board will add the USEPA amendments, but will address the Agency's concerns by using the first alternative outlined above. The Board will add the definition of "residential lead-based paint waste" and except facilities disposing of this material and no other household waste from the definition of "municipal solid waste landfill." This will make it unnecessary to add the Agency-requested Board note, since the amendments will include no reference to CESQG waste and the definition of C & D landfill is omitted. This will also mean dropping the reference to C & D landfill from the definition of MSWLF. The Board added a Board note explaining this difference between the state and federal definitions. The definition of "residential lead-base paint waste" remains unchanged from the proposed version.

The Board definition of "municipal solid waste landfill and accompanying Board note as adopted reads as follows:

"MUNICIPAL SOLID WASTE LANDFILL UNIT" OR "MSWLF UNIT" MEANS A CONTIGUOUS AREA OF LAND OR AN EXCAVATION THAT RECEIVES HOUSEHOLD WASTE, AND THAT IS NOT A LAND APPLICATION, SURFACE IMPOUNDMENT, INJECTION WELL, OR ANY PILE OF NONCONTAINERIZED ACCUMULATIONS OF SOLID, NONFLOWING WASTE THAT IS USED FOR TREATMENT OR STORAGE. A MSWLF UNIT MAY ALSO RECEIVE OTHER TYPES OF RCRA SUBTITLE D WASTES, SUCH AS COMMERCIAL SOLID WASTE, NONHAZARDOUS SLUDGE, SMALL QUANTITY GENERATOR WASTE AND INDUSTRIAL SOLID WASTE. SUCH A LANDFILL MAY BE PUBLICLY OR PRIVATELY OWNED OR OPERATED. A MSWLF UNIT MAY BE A NEW MSWLF UNIT, AN EXISTING MSWLF UNIT OR A LATERAL EXPANSION. A SANITARY LANDFILL IS SUBJECT TO REGULATION AS A MSWLF IF IT RECEIVES HOUSEHOLD WASTE. (Section ~~3-85~~-3.285 of the Act) But, a landfill that receives residential lead-based paint waste and which does not receive any other household waste is not a MSWLF unit.

BOARD NOTE: The final sentence of corresponding 40 C.F.R. 258.2 provides as follows: "A construction and demolition landfill that receives residential lead-based paint waste and which does not receive any other household waste is not a MSWLF Unit." A construction and demolition landfill is a type of landfill that does not exist in Illinois, so the Board omitted the reference to "construction and demolition landfill." A landfill in Illinois that receives residential lead-based paint waste and no other type of household waste would be permitted as a chemical waste landfill or a putrescible waste landfill under Subpart C of 35 Ill. Adm. Code 811, as appropriate.

The residential lead-based paint waste exception illustrates that problems can result from incorporation of substantive requirements into the rules through definitions. Definitions are

generally used to resolve the terms used in the substantive regulations. The Board prefers to limit the function of definitions in this way and to embody substantive requirements, including those pertaining to the applicability of the regulations, into substantive provisions. Sometimes, incorporating substantive requirements into a definition can result in a potential for ambiguity that necessitates extended explanation, as in the appended Board note here. Further, incorporating substantive requirements into definitions can have unintended substantive effects. The Board invites the Agency to submit a proposal for whatever amendments it believes are necessary to the rules to avoid ambiguity or unintended substantive effects.

Restrictions on the Location of a new MSWLF Unit in the Vicinity of a Public Airport-- Section 811.320

The USEPA action of October 15, 2003 (68 Fed. Reg. 59333) related to location of a new MSWLF unit in the vicinity of a public airport. USEPA added a note to its 40 C.F.R. 258.10 provision relating to location of a MSWLF in proximity to an airport. USEPA deliberately chose not to amend the language of its location restriction provisions. USEPA instead chose to append a note to its location restrictions that referenced the federal statutory change that instituted a new restriction.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (the Ford Act), Pub. L. 106–181, effective April 5, 2000, amended 49 U.S.C. 44718(d). This provision relates to location of a federally funded public airport in proximity to a municipal solid waste landfill (MSWLF). The amended provision now prohibits establishing a new MSWLF within six miles of a federally-funded public airport served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 or fewer passengers, unless the FAA determines at the request of the state that the location would have no adverse impact on aviation safety.

On July 11, 2002 (67 Fed. Reg. 45915), USEPA adopted a direct final rule that would have incorporated the federal statutory location restrictions into the rules as a new subsection (e) to 40 C.F.R. 258.10. However, USEPA withdrew this rule on October 8, 2003 (67 Fed. Reg. 62647) in response to several adverse public comments. In response to the comments, USEPA chose to add the note to 40 C.F.R. 258.10 referencing the federal legislation that imposes the additional location restrictions.

The Board incorporated the October 15, 2003 federal amendments without substantive deviation from the corresponding federal text. The deviations from the text of the federal amendments are restricted to those structural and stylistic changes needed to make the text comport with the *Illinois Register* format and the Board's preferred style. The table that begins on page 17 of this opinion itemizes the various revisions made in the federal text in adapting it into the State regulations. The only significant change in the text is correction of an apparent federal error in the citation. Examination of the text of 49 U.S.C. 44718 (copy appended to the end of this memo) discloses an apparent error in the text of the October 15, 2003 USEPA amendments. There is no pertinent USEPA refers to "49 U.S.C. 44718 note" in its added language in 40 C.F.R. 258.10. Rather, it is subsection (d) of 49 U.S.C. 44718 in the amended statute that sets forth the text of the location restriction. The Board will correct the reference "49

USC 44718 note” to “49 USC 44718(d)”. Persons interested in the details of the federal amendments should consult the October 15, 2003 *Federal Register* notice.

The Board requested public comment on the addition of the Board note to Section 811.302(f) relative to the federal statutory landfill location restrictions. The Board received two comments relating to the note. In PC 2, the Agency stated its support for addition of the note. In PC 3, Marion Ridge Landfill raises various issues relating to addition of the note. The comments of PC 3 prompt further examination of the added note.

In PC 3, Marion Ridge Landfill raised concerns over the note as it appeared in the proposal for public comment. Marion Ridge Landfill explained that it is a landfill in Williamson County that has received site location suitability approval under Section 39.2 of the Act (415 ILCS 5.39.2 (2002)). *See Concerned Citizens of Williamson County v. Bill Kibler Development Corp.*, PCB 96-60 (Feb. 15, 1996). Marion Ridge Landfill stated that it anticipates issuance of a development permit on or before July 24, 2004. PC 3 at 1. Marion Ridge Landfill is located within the prohibited setback zone described in the Ford Act, but it anticipates obtaining an exemption from the FAA to allow development and operation of the landfill within that zone. PC 3 at 2. Marion Ridge Landfill requests further clarification that the Board note relative to the Ford Act “is not intended to give the Agency any new authority or responsibility to regulate concerning the standards set forth in the Ford Act.” PC 3 at 3. Marion Ridge Landfill requested that the Board alter the note by changing its restructure and adding explanatory language.

Initially, Marion Ridge Landfill requested that the Board separate the added note language relating the existence of the Ford Act from the pre-existing note language relating the federal source of subsection (f). Marion Ridge Landfill stated that adding the information about the Ford Act “presents unnecessary confusion.” PC 3 at 3. Marion Ridge Landfill does not explain how confusion might arise through combining information as to the federal source of the provision with language noting the existence of an independent federal authority.

Marion Ridge Landfill next requested that the Board “provide clarification, in the rule itself, that, for purposes of application of the standards set forth in the Ford Act, the definition of ‘putrescible’ set forth in 35 Ill. Adm. Code 810.103 is not applicable.” PC 3 at 4. Marion Ridge Landfill noted that the definition of “putrescible waste” used by the FAA is different from the one that appears in Section 810.103 of the landfill rules. *Compare* 40 C.F.R. 257.3-8(e)(7) (2003) *with* 35 Ill. Adm. Code 810.103 (2002) (definitions of “putrescible waste”).⁵ Marion Ridge Landfill requested that the Board append a Board note to the Section 810.103 definition of “putrescible waste” stating that the FAA definition of “putrescible waste” controls with regard to airport location under the Ford Act. PC 3 at 4. Marion Ridge Landfill also suggested in PC 3 that the Board note appended to Section 811.302(f) include this explanation. Marion Ridge Landfill requested that two notes be appended to subsection (f) to appear as follows (Marion Ridge Landfill revisions underlined):

⁵ Marion Ridge Landfill cites FAA Aviation Circular 150/5200-34 (H.O. Ex. 1), Appendix I, as the source of this definition. The actual source from which the FAA drew this definition was 40 C.F.R. 257.3-8(e)(7). *See* FAA Aviation Circular 150/5200-34 (H.O. Ex. 1), Appendix I, ¶j.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.10 (2003), as amended at 68 Fed. Reg. 59333 (October 15, 2003).

SECOND BOARD NOTE: A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the federal Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act) (49 USC 44718(d)). Section 503 prohibits the “construction or establishment” of a new MSWLF after April 5, 2000 within six miles of certain smaller public airports absent federal approval. The FAA administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34, dated August 26, 2000. ~~For further information, please contact the FAA.~~ The terms defined therein, including the definition of “putrescible,” are the terms that apply to location standards under the Ford Act. This note is adopted solely for the convenience of the public and should not be considered as the promulgation of new location standards under the Illinois Environmental Protection Act.

The Board initially responds that multiple notes have not been appended to a single rule provision in the past. Rather than reducing the possibility for confusion, the Board believes that departing from this past practice could have an opposite effect. The Board believes that appending two notes to a single provision could cause confusion as to applicability and substantive effect. The Board will not split the Board note appended to subsection (f). The Board will, however, add a statement to the note explaining that the information that follows the subsection derivation material is drawn from the federal regulations. This statement serves to further distance the Board observation as to the material source from the federal observations on the independent location restriction of the Ford Act.

As to the issues relating to the two definitions of “putrescible waste,” the Board agrees that the federal and State definitions are “much different,” that the FAA definition is “key” to exception from the Ford Act location standards, and that “for the purposes of application of standards under the Ford Act, the FAA definition applies.” PC 3 at 4. The Board disagrees, however, that the existence of the two definitions could cause confusion. The FAA makes all determinations under the Ford Act, and the FAA would refer to the USEPA definition to resolve any issues. The Illinois definition of “putrescible waste” in Section 810.103 does not affect the operation of federal law, so the Board finds that there is no need to alter the Board note.

Finally, Marion Ridge Landfill expressed concern over the Board note appended to subsection (f) implicitly extending the authority of the Agency. The USEPA’s note simply directs attention to an independent federal landfill location restriction. The sparse language chosen by USEPA avoids interpretation of the Ford Act restriction. It clearly directs attention to the FAA for further information on the restriction. The changes requested by Marion Ridge Landfill would engage in interpretation by discussion of the restriction and would remove the statement directing attention to the FAA for further information. This would run counter to the purposes sought by Marion Ridge Landfill itself.

When USEPA added the note to 40 C.F.R. 258.10 on October 15, 2003, it did so as part of a deliberate decision to not incorporate the Ford Act provisions into the MSWLF regulations. As noted above, USEPA initially incorporated substantive rules relative to the Ford Act, but

withdrew them. The ultimate action was the adoption of the note that references the Ford Act requirements as independently administered by the FAA. In making this decision, USEPA stated as follows:

After reviewing the comments, [US]EPA has decided not to finalize the rule as proposed. Instead of adding a new subsection (e) to 40 CFR 258.10, [US]EPA is incorporating information about the Ford Act in a note following the criteria in 40 CFR 258.10. As a result, the specific limitations of the Ford Act are not being incorporated into the criteria for MSWLFs under RCRA and are not enforceable as part of EPA's MSWLF criteria. The note is for advisory purposes only.

Because section 503 of the Ford Act is directly applicable to any "person" constructing or establishing a MSWLF, it does not by its terms require implementation through regulation. The Ford Act does not amend Subtitle D of the Resource Conservation and Recovery Act (RCRA), which [US]EPA administers. Therefore, in light of the comments received, [US]EPA has reconsidered promulgating a regulation under RCRA that incorporates the Ford Act requirements. In addition, to the extent that section 503 of the Ford Act is to be interpreted, the Federal Aviation Administration, not [US]EPA, is the administering agency under the statute. The FAA has issued guidance interpreting section 503. See FAA AC No.150/5200-34. For further information, the public should contact the FAA.

68 Fed. Reg. 59333, 59334 (Oct. 15, 2003).

The language added to the Board note appended to Section 811.302(f) as proposed is nearly identical to the note added by USEPA to corresponding 40 C.F.R. 258.10. In the context of an identical-in-substance rulemaking proceeding, the Board is reluctant to change federal provisions in any way that could have a substantive effect. Examples of the instances in which the Board will change federal provisions are the following:

- 1) The Board will revise the federal language when there are clear errors in the text or the text is ambiguous or unclear on its face, but only to the extent necessary to effect the clear federal intent of the rule.
- 2) The Board will change the language of a newer federally derived requirement when it is necessary to preserve a more stringent State requirement that the Board originally derived in a general rulemaking proceeding under Section 27 of the Act (415 ILCS 5/27 (2002)) and the existing State provision is not inconsistent with the newer federally derived rules.
- 3) The Board will deviate from the federal text when it is necessary to render administration of federally derived requirements consistent with administration of existing State regulations.

With a single exception, none of these justifications for altering the federal text exist relative to the Marion Ridge Landfill requests to revise the federal note added to Section 811.302(f). There are no errors in the federal text, and the federal text is clear and unambiguous

on its face. No alteration of a new federally derived requirement is required to preserve a more stringent existing State requirement derived by a Section 27 rulemaking proceeding. There is no need to render administration of a federally derived requirement consistent with administration of an existing State regulation. In fact, the addition of a note to the Section 810.103 definition of “putrescible waste” and the suggested alternative explanatory language suggested by Marion Ridge Landfill might tend to cause more confusion than the simple explanation added by USEPA directing attention to the FAA for further information.

The sole suggestion from Marion Ridge Landfill that the Board is incorporating into the adopted amendments relates to a possible exception from the Ford Act requirements. The Board believes that adding a reference to federally approved exceptions to the Ford Act location restriction would add clarity to the description of the Ford Act requirements. The Ford Act language relating to exemption from the airport location restriction states as follows:

In general.--No person shall construct or establish a municipal solid waste landfill . . . that receives putrescible waste . . . within 6 miles of a public airport . . . unless the State aviation agency of the State in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this subsection and the Administrator determines that such exemption would have no adverse impact on aviation safety.

49 U.S.C. 44718(d)(1) (1994), as amended in Pub. L. 106-181, title V, Sec. 503(b), Apr. 5, 2000, 114 Stat. 133 (emphasis added).

The FAA determines whether to exempt a landfill from the location restriction. FAA Advisory Circular 150/5200-34 (H.O. Exhibit 1) is the FAA guidance that describes implementation of the restriction, including explanation of the exemption process. The Board note as proposed cited this guidance document. Adding a reference to the possibility of exemption from the restriction would enhance clarity. The Board believes, however, that the statement suggested by Marion Ridge Landfill, “absent federal approval,” is not as clear as stating, “unless the FAA allows an exemption.” The Board has added this statement to the Board note appended to Section 811.320(f).

In summary, as adopted after consideration of PC 3, the Board note attached to subsection (f) of Section 811.302 will read as follows (with strikeout and underlining indicating the amendments):

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.10-(1992) (2003), as amended at 68 Fed. Reg. 59333 (October 15, 2003). USEPA added the following information in a note appended to 40 CFR 258.10: A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the federal Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act) (49 USC 44718(d)). Section 503 prohibits the “construction or establishment” of a new MSWLF after April 5, 2000 within six miles of certain smaller public airports unless the FAA allows an exemption. The FAA administers the Ford Act and has issued guidance in

FAA Advisory Circular 150/5200-34, dated August 26, 2000. For further information, please contact the FAA.

General Revisions and Deviations from the Federal Text

In incorporating the federal rules into the Illinois system, some deviation from the federal text is unavoidable. This deviation arises primarily through differences between the federal and state regulatory structure and systems. Some deviation also arises through errors in and problems with the federal text itself. The Board conforms the federal text to the Illinois rules and regulatory scheme and corrects errors that we see in the text as we engage in these routine update rulemakings.

In addition to the amendments derived from federal amendments, the Board often finds it necessary to alter the text of various passages of the existing rules as provisions are opened for update in response to USEPA actions. This involves correcting deficiencies, clarifying provisions, and making other changes that are necessary to establish a clear set of rules that closely parallel the corresponding federal requirements within the codification scheme of the *Illinois Administrative Code*.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As of the date of this opinion, the most recent version of the *Code of Federal Regulations* available to the Board is the July 1, 2002 version. Thus, we have updated all citations to the 2002 version, adding references to later amendments using their appropriate *Federal Register* citation, where necessary.

The Board substituted “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further used this opportunity to make a number of corrections to punctuation, grammar, spelling, and cross-reference format throughout the opened text. We changed “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred was not necessarily a natural person, or to “he or she,” where a natural person was evident; changed “which” to “that” for restrictive relative clauses; substituted “must” for “shall”; capitalized the section headings and corrected their format where necessary; and corrected punctuation within sentences.

In addition, the federal rules have been edited to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may,” “must” is used when an action is required by the rule, without regard to whether the action is required of the subject of the sentence or not. “Shall” is no longer used, since it is not used in everyday language. Thus, where a federal rule uses “shall,” the Board substitutes “must.” This is a break from our former practice where “shall” was used when the subject of a sentence has a duty to do something. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either . . . or” denotes “one but not both.” “And” denotes “both.”

The Joint Committee on Administrative Rules (JCAR) has requested that the Board refer to the United States Environmental Protection Agency in the same manner throughout all of our

bodies of regulations—*i.e.*, air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board has decided to refer to the United States Environmental Protection Agency as “USEPA.” We will continue this conversion in future rulemakings as additional sections become open to amendment. We will further convert “EPA” used in federal text to “USEPA,” where USEPA is clearly intended.

The Board has assembled tables to aid in the location of these alterations and to briefly outline their intended purpose. The tables set forth the miscellaneous deviations from the federal text and corrections to the pre-amended base text of the rules in detail. The tables are set forth and explained immediately below this opinion. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

Discussion of Miscellaneous Housekeeping Amendments

The tables below list numerous corrections and amendments that are not based on current federal amendments. The first table (beginning immediately below) includes deviations made in this Proposal for Public Comment from the verbatim text of the federal amendments. The second table (beginning below at page 17) contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in this second table are not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion beginning at page 4 of this opinion. Table 3 (beginning on page 21 below) is a listing of revisions made to the text of the amendments from that proposed and set forth in the Board’s opinion and order of March 18, 2004. Table 3 indicates the changes made, as well as the source that suggested each of the changes. Table 4 (on page 23 below) indicates suggested revisions that the Board has not made in adopting these amendments. Each entry gives a brief explanation why the Board did not incorporate the suggested change.

**Table 1:
Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
810.103 “construction and demolition landfill”	258.2	Omitted the definition
810.103 “municipal solid waste landfill unit”	258.2	Added “but” offset with a comma before “a landfill”; removed “construction and demolition” from before “landfill”; added “which” before “does not receive” for a restrictive relative clause

810.103 “residential lead-based paint waste”	258.2	Placed the defined term in standard typeface and placed it in quotation marks; changed "which" to "that" for a restrictive relative clause; added a comma after "" to offset the final element of a series; added a comma after "renovation" to offset the final element of a series; changed "lead based" to hyphenated "lead-based"
811.302(f) Board note	258.10 note	Added “federal” before “Wendell H. Ford Aviation . . . Act”; deleted the <i>Public Laws</i> citation; corrected the reference “49 USC 44718 note” to “49 USC 44718(d)”; changed “new MSWLF’s” to singular “a new MSWLF”; added “unless . . . an exemption”; changed “Federal Aviation Administration (FAA)” to “FAA”

**Table2 :
Board Housekeeping Amendments**

Section	Source	Revision(s)
810 table of contents	Board	Removed the note “NOTE: Capitalization . . . language”
810.103 preamble	Board	Changed "shall be" to "will be"
810.103 “Act”	Board	Removed the unnecessary comma after "Act"
810.103 “admixtures”	Board	Added a comma after "bentonite" to offset the final element of a series
810.103 “Agency”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.08” to “Section 3.105”
810.103 “aquifer”	Board, JCAR	Changed the statutory language from capitalized to italic text; changed the statutory language from capitalized to italic text; removed the unnecessary ending period after “Act”
810.103 “bedrock”	Board	Added a comma after "alluvium" to offset the final element of a series
810.103 “beneficially usable waste”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “Board”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.04” to “Section 3.130”; removed the unnecessary ending period after “Act”
810.103 “borrow area”	Board	Added a comma after "alluvium" to offset the final element of a series
810.103 “coal combustion power generating facilities”	Board	Changed "which" to "that" for a restrictive relative clause

810.103 “construction and demolition landfill”	Board, Agency	Deleted the definition
810.103 “dead animal disposal site”	Board, JCAR	Corrected “Dead Animal Act” to singular “Dead Animal Disposal Act”; removed the commas that offset “225 ILCS 610” and placed the citation in brackets; removed the commas that offset “8 Ill. Adm. Code 90” and placed the citation in parentheses
810.103 “disposal”	Board, JCAR	Changed the statutory language from capitalized to italic text; changed "shall" to "will"; corrected “Section 3.08” to “Section 3.185”; removed the unnecessary ending period after “Act”
810.103 “documentation”	Board	Added a comma after "bonds" to offset the final element of a series
810.103 “existing facility”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “existing MSWLF unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; added an ending period after “Act”; corrected “Section 3.87” to “Section 3.285”; removed the unnecessary ending period after “Act”
810.103 “facility”	Board	Changed "shall be" to "will be"
810.103 “geotextiles”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “groundwater”	Board, JCAR	Changed the statutory language from capitalized to italic text
810.103 “household waste”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.89” to “Section 3.230”
810.103 “inert waste”	Board	Changed "shall" to "will"; added a comma after "masonry" to offset the final element of a series
810.103 “lateral expansion”	JCAR, Board	Changed the statutory language from capitalized to italic text; changed the comma after “1993” to a period using underline and strikeout; corrected “Section 3.88” to “Section 3.275”; changed “Of” to lower-case “of”
810.103 “lift”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “malodor”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.02” to “Section 3.115”
810.103 “municipal solid waste landfill unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “noncontainerized” to hyphenated “non-containerized”; corrected “nonflowing” to hyphenated “non-flowing”; corrected “nonhazardous” to hyphenated “non-hazardous”; corrected “Section 3.85” to “Section 3.285”; added “but” offset by a comma before “a landfill that receives”; removed “construction and demolition” from before “landfill”

810.103 “National Pollutant Discharge Elimination System”	JCAR, Board	Changed “U.S.C.” to “USC”; changed “Environmental Protection Act” to the defined short-form “Act”; added a comma after “Act” to offset the final element of a series; changed “and 35 Ill. Adm. Code 309.Subpart A and 310” to “Subpart A of 35 Ill. Adm. Code 309, and 35 Ill. Adm. Code 310”; removed the last sentence ““NPDES permit’ means . . . program,” which also appears as the next definition
810.103 “NPDES permit”	Board	Added the ending period
810.103 “new facility”	Board	Changed “shall be” to “will be”
810.103 “new MSWLF unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.86” to “Section 3.285”
810.103 “one hundred (100)-year flood plain”	Board, JCAR	Changed “one hundred (100) year” to hyphenated “one hundred-year”; changed "which" to "that" for a restrictive relative clause
810.103 “one hundred (100)-year, 24-hour precipitation event”	Board, JCAR	Changed “one hundred (100) year” to hyphenated “one hundred-year”; changed “24 hour” to hyphenated “24-hour” (twice)
810.103 “perched watertable”	JCAR	Removed the unnecessary space before the ending quotation mark
810.103 “person”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.26” to “Section 3.315”
810.103 “professional engineer”	Board, JCAR	Removed “Illinois ” from before the statutory title “Professional Engineering Practice Act of 1989”; removed the quotation marks from the statute name “Illinois Professional . . . of 1989”; changed “The” to lower-case “the”
810.103 “professional land surveyor”	JCAR	Corrected “Surveyors” to “Surveyor” to reflect text on file
810.103 “putrescible waste”	Board, JCAR	Changed "which" to "that" for a restrictive relative clause; corrected “definitions” to singular “definition”; changed "shall be" to "will be"
810.103 “publicly owned treatment works”	Board	Added a comma after "recycling" to offset the final element of a series; added a comma after "pipes" to offset the final element of a series; changed "which" to "that" for a restrictive relative clause
810.103 “Resource Conservation and Recovery Act”	Board, JCAR	Changed the statutory language from capitalized to italic text; added the conjunction “and” before “Recovery”; corrected “Section 3.90” to “Section 3.425”
810.103 “salvaging”	Board	Added a comma after "vectors" to offset the final element of a series
810.103 “scavenging”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “settlement”	Board	Added a comma after "soil" to offset the final element of a series

810.103 “shredding”	Board	Changed numeric "3 inch" to written, hyphenated "three-inch"
810.103 “significant modification”	Board	Added a comma after "occur" to offset the final element of a series; added a comma after "intermediate" to offset the final element of a series; added a comma after "efficiency" to offset the final element of a series; removed the unnecessary comma after "system" that separated a two-element series
810.103 “slag”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “sole source aquifer”	Board, JCAR	Removed the unnecessary comma after "1974"; changed “U.S.C.” to “USC”
810.103 “special waste”	Board, JCAR	Changed the statutory language from capitalized to italic text; added a comma after “pollution control waste” to offset the final element of a series; corrected “Section 3.45” to “Section 3.475”; removed the unnecessary ending period after “Act”
810.103 “twenty-five (25)-year, 24-hour precipitation event”	Board, JCAR	Changed “twenty five (25) year” to hyphenated “twenty-five-year”; changed “24 hour” to hyphenated “24-hour”
810.103 “uppermost aquifer”	Board	Changed "which" to "that" for a restrictive relative clause
810.103 “waste pile”	Board	Corrected “nonflowing” to hyphenated “non-flowing”; changed "shall" to "must"; added a comma after "records" to offset the final element of a series
810.103 “waste stabilization”	Board	Added a comma after "physical" to offset the final element of a series; changed "which" to "that" for a restrictive relative clause
810.103 “zone of attenuation”	JCAR	Changed “is” to “means”
811 table of contents, 811.112 heading	JCAR	Added missing heading
811.302(a)	Board	Changed "shall" to "must"
811.302(b)	Board, JCAR	Changed "shall" to "must"; changed “U.S.C.” to “USC”; added a comma before "unless" to offset a parenthetical
811.302(b)(3)	Board	Added a comma after "fractures" to offset the final element of a series
811.302(c)	Board	Changed "shall" to "must"; changed numeric "8" to written "eight"
811.302(d)	Board	Changed "no part . . . shall be located" to "no part . . . may be located"
811.302(e)	Board	Changed "shall not be located" to "may not be located"; added the parenthetical “(FAA)” to define the abbreviation

811.302(f)	Board, JCAR	Changed "shall" to "must"; removed “Federal Aviation Administration” and the parentheses from the defined abbreviation “FAA”; changed numeric "within 7 days of" to written "within seven days after"
811.302(f) Board note	Board	Changed "subsection (f)" to "subsection (f) of this Section"; Updated the citation to the <i>Code of Federal Regulations</i> to the most recent edition, including a <i>Federal Register</i> citation for later amendments

Table 3:
Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
810 table of contents	Board	Removed the note “NOTE: Capitalization . . . language”
810.103 “Agency”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.08” to “Section 3.105”; removed the unnecessary ending period after “Act”
810.103 “aquifer”	Board, JCAR	Changed the statutory language from capitalized to italic text; changed the statutory language from capitalized to italic text; removed the unnecessary ending period after “Act”
810.103 “Board”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.04” to “Section 3.130”; removed the unnecessary ending period after “Act”
810.103 “construction and demolition landfill”	Board, Agency	Deleted the definition
810.103 “dead animal disposal site”	JCAR	Corrected “Dead Animal Act” to singular “Dead Animal Disposal Act”
810.103 “disposal”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.08” to “Section 3.185”; removed the unnecessary ending period after “Act”
810.103 “existing MSWLF unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.87” to “Section 3.285”; removed the unnecessary ending period after “Act”
810.103 “groundwater”	Board, JCAR	Changed the statutory language from capitalized to italic text; removed the unnecessary ending period after “Act”
810.103 “household waste”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.89” to “Section 3.230”; removed the unnecessary ending period after “Act”

810.103 “lateral expansion”	JCAR, Board	Changed the statutory language from capitalized to italic text; changed the comma after “1993” to a period using underline and strikeout; corrected “Section 3.88” to “Section 3.275”; changed “Of” to lower-case “of”; removed the unnecessary ending period after “Act”
810.103 “malodor”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.02” to “Section 3.115”; removed the unnecessary ending period after “Act”
810.103 “municipal solid waste landfill unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “noncontainerized” to hyphenated “non-containerized”; corrected “nonflowing” to hyphenated “non-flowing”; corrected “nonhazardous” to hyphenated “non-hazardous”; corrected “Section 3.85” to “Section 3.285”; removed the unnecessary ending period after “Act”; added “but” offset by a comma before “a landfill that receives”; removed “construction and demolition” from before “landfill”
810.103 “National Pollutant Discharge Elimination System”	JCAR, Board	Changed “U.S.C.” to “USC”; removed the last sentence “‘NPDES permit’ means . . . program,” which also appears as the next definition
810.103 “new MSWLF unit”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.86” to “Section 3.285”; removed the unnecessary ending period after “Act”
810.103 “one hundred-year flood plain”	JCAR	Corrected “one hundred (100)-year” to “one hundred-year”
810.103 “one hundred-year, 24 hour precipitation event”	JCAR	Corrected “one hundred (100)-year” to “one hundred-year”
810.103 “perched watertable”	JCAR	Removed the unnecessary space before the ending quotation mark
810.103 “person”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.26” to “Section 3.315”; removed the unnecessary ending period after “Act”
810.103 “professional engineer”	JCAR	Removed “Illinois ” from before the statutory title “Professional Engineering Practice Act of 1989”
810.103 “professional land surveyor”	JCAR	Corrected “Surveyors” to “Surveyor” to reflect text on file
810.103 “putrescible waste”	JCAR	Corrected “definitions” to singular “definition”
810.103 “Resource Conservation and Recovery Act”	Board, JCAR	Changed the statutory language from capitalized to italic text; corrected “Section 3.90” to “Section 3.425”; removed the unnecessary ending period after “Act”
810.103 “sole source aquifer”	JCAR	Changed “U.S.C.” to “USC”

810.103 “special waste”	Board, JCAR	Changed the statutory language from capitalized to italic text; added a comma after “pollution control waste” to offset the final element of a series; corrected “Section 3.45” to “Section 3.475”; removed the unnecessary ending period after “Act”
810.103 “twenty-five (25)-year, 24-hour precipitation event”	JCAR	Corrected “twenty-five (25)-year” to “twenty-five-year”
810.103 “waste pile”	Board	Corrected “nonflowing” to hyphenated “non-flowing”
810.103 “zone of attenuation”	JCAR	Changed “is” to “means”
811 table of contents, 811.112 heading	JCAR	Added missing heading
811.302(b)	JCAR	Changed “U.S.C.” to “USC”
811.302(f)	JCAR	Changed “within seven days of” to “within seven days after”
811.302(f) Board note	JCAR, Marion Ridge Landfill	Added “USEPA added . . . 258.10:”; changed “U.S.C.” to “USC”; added “unless . . . an exemption”; changed “Federal Aviation Administration (FAA)” to “FAA”

Table 4
Requested Revisions to the Text of the Proposed Amendments Not Made in Final Adoption

Section Affected	Source(s) of Request: Requested Revision(s)	Explanation
810.103 “lateral expansion”	JCAR: Change the comma after 1993 to a period (no strikeout or underlining)	This was done, but using strikeout and underlining to reflect text on file
810.103 “National Pollutant Discharge Elimination System”	JCAR: Delete the last sentence that also appears as the following definition (no strikeout)	This was done, but using strikeout
810.103 “NPDES permit”	JCAR: Remove the underlining from the ending period	The underlining is necessary to indicate the addition to the text on file
810.103 “professional land surveyor”	JCAR: Remove the underlining from the definite article “the” before “Illinois . . . Act of 1989”	The underlining is necessary to indicate the addition to the text on file
810.103 “waste pile”	JCAR: Delete the hyphen from “non-containerized” (no strikeout)	The word “non-containerized” appears as hyphenated in the text on file

ORDER

The complete text of the proposed amendments follows:

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 810
 SOLID WASTE DISPOSAL: GENERAL PROVISIONS

Section	
810.101	Scope and Applicability
810.102	Severability
810.103	Definitions
810.104	Incorporations by Reference

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17, and 28.1 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1 and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15838, effective September 18, 1990; amended in R93-10 at 18 Ill. Reg. 1268, effective January 13, 1994; amended in R90-26 at 18 Ill. Reg. 12457, effective August 1, 1994; amended in R95-9 at 19 Ill. Reg. 14427, effective September 29, 1995; amended in R96-1 at 20 Ill. Reg. 11985, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15825, effective November 25, 1997; amended in R04-5/R04-15 at 28 Ill. Reg. _____, effective _____.

NOTE: ~~Capitalization indicates statutory language.~~

Section 810.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part ~~shall be~~ will be the same as that applied to the same words or terms in the Environmental Protection Act (Act) [415 ILCS 5]:

“Act” means the Environmental Protection Act, [415 ILCS 5].

“Admixtures” are chemicals added to earth materials to improve for a specific application the physical or chemical properties of the earth materials. Admixtures include, but are not limited to: lime, cement, bentonite, and sodium silicate.

~~“AGENCY” IS THE ENVIRONMENTAL PROTECTION AGENCY ESTABLISHED BY THE ENVIRONMENTAL PROTECTION ACT.~~ “Agency” is the Environmental Protection Agency established by the Environmental Protection Act. (Section ~~3-08-3.105~~ of the Act)

“Applicant” means the person submitting an application to the Agency for a permit for a solid waste disposal facility.

~~“AQUIFER” MEANS SATURATED (WITH GROUNDWATER) SOILS AND GEOLOGIC MATERIALS WHICH ARE SUFFICIENTLY PERMEABLE TO READILY YIELD ECONOMICALLY USEFUL QUANTITIES OF WATER TO WELLS, SPRINGS, OR STREAMS UNDER ORDINARY HYDRAULIC GRADIENTS.~~ “Aquifer” means saturated (with groundwater) soils and geologic materials which are sufficiently permeable to readily yield economically useful quantities of water to wells, springs, or streams under ordinary hydraulic gradients and whose boundaries can be identified and mapped from hydrogeologic data. (Section 3 of the Illinois Groundwater Protection Act [415 ILCS 55/3].)

“Bedrock” means the solid rock formation immediately underlying any loose superficial material such as soil, alluvium, or glacial drift.

“Beneficially usable waste” means any solid waste from the steel and foundry industries that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a leachate that contains constituents ~~that~~ which exceed the limits for this type of waste as specified at 35 Ill. Adm. Code 817.106.

~~“BOARD” IS THE POLLUTION CONTROL BOARD ESTABLISHED BY THE ACT.~~ “Board” is the Pollution Control Board established by the Act. (Section ~~3.04~~ 3.130 of the Act.)

“Borrow area” means an area from which earthen material is excavated for the purpose of constructing daily cover, final cover, a liner, a gas venting system, roadways, or berms.

“Chemical waste” means a non-putrescible solid whose characteristics are such that any contaminated leachate is expected to be formed through chemical or physical processes, rather than biological processes, and no gas is expected to be formed as a result.

“Coal combustion power generating facilities” means establishments ~~which~~ that generate electricity by combusting coal and which utilize a lime or limestone scrubber system.

“Contaminated leachate” means any leachate whose constituent violate the standards of 35 Ill. Adm. Code 811.202.

“Dead animal disposal site” means an on-the-farm disposal site at which the burial of dead animals is done in accordance with the Illinois Dead Animal

Disposal Act, [225 ILCS 610,] and regulations adopted pursuant thereto, (8 Ill. Adm. Code 90).

“Design Period” means that length of time determined by the sum of the operating life of the solid waste landfill facility plus the postclosure care period necessary to stabilize the waste in the units.

~~“DISPOSAL” MEANS THE DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILLING, LEAKING OR PLACING OF ANY SOLID WASTE INTO OR ON ANY LAND OR WATER OR INTO ANY WELL SUCH THAT SOLID WASTE OR ANY CONSTITUENT OF THE SOLID WASTE MAY ENTER THE ENVIRONMENT BY BEING EMITTED INTO THE AIR OR DISCHARGED INTO ANY WATERS, INCLUDING GROUNDWATER.~~

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water or into any well such that solid waste or any constituent of the solid waste may enter the environment by being emitted into the air or discharged into any waters, including groundwater.

(Section ~~3.08-3.185~~ of the Act.) If the solid waste is accumulated and not confined or contained to prevent its entry into the environment, or there is no certain plan for its disposal elsewhere, such accumulation ~~shall~~ will constitute disposal.

“Disturbed areas” means those areas within a facility that have been physically altered during waste disposal operations or during the construction of any part of the facility.

“Documentation” means items, in any tangible form, whether directly legible or legible with the aid of any machine or device, including but not limited to affidavits, certificates, deeds, leases, contracts or other binding agreements, licenses, permits, photographs, audio or video recordings, maps, geographic surveys, chemical and mathematical formulas or equations, mathematical and statistical calculations and assumptions, research papers, technical reports, technical designs and design drawings, stocks, bonds, and financial records, that are used to support facts or hypotheses.

“Earth liners” means structures constructed from naturally occurring soil material that has been compacted to achieve a low permeability.

“Existing facility” or “Existing unit” means a facility or unit ~~which~~ that is not defined in this Section as a new facility or a new unit.

~~“EXISTING MSWLF UNIT” MEANS ANY MUNICIPAL SOLID WASTE LANDFILL UNIT THAT HAS RECEIVED HOUSEHOLD WASTE BEFORE OCTOBER 9, 1993.~~ “Existing MSWLF unit” means any municipal solid waste landfill unit that has received household waste before October 9, 1993. (Section ~~3.87-3.285~~ of the Act)

“Facility” means a site and all equipment and fixtures on a site used to treat, store or dispose of solid or special wastes. A facility consists of an entire solid or special waste treatment, storage or disposal operation. All structures used in connection with or to facilitate the waste disposal operation ~~shall be~~ will be considered a part of the facility. A facility may include, but is not limited to, one or more solid waste disposal units, buildings, treatment systems, processing and storage operations, and monitoring stations.

“Field capacity” means that maximum moisture content of a waste, under field conditions of temperature and pressure, above which moisture is released by gravity drainage.

“Foundry sand” means pure sand or a mixture of sand and any additives necessary for use of the sand in the foundry process, but does not include such foundry process by-products as air pollution control dust or refractories.

“Gas collection system” means a system of wells, trenches, pipes and other related ancillary structures such as manholes, compressor housing, and monitoring installations that collects and transports the gas produced in a putrescible waste disposal unit to one or more gas processing points. The flow of gas through such a system may be produced by naturally occurring gas pressure gradients or may be aided by an induced draft generated by mechanical means.

“Gas condensate” means the liquid formed as a landfill gas is cooled or compressed.

“Gas venting system” means a system of wells, trenches, pipes and other related structures that vents the gas produced in a putrescible waste disposal unit to the atmosphere.

“Geomembranes” means manufactured membrane liners and barriers of low permeability used to control the migration of fluids or gases.

“Geotextiles” are permeable manufactured materials used for purposes ~~which that~~ include, but are not limited to, strengthening soil, providing a filter to prevent clogging of drains, and collecting and draining liquids and gases beneath the ground surface.

~~“GROUNDWATER” MEANS UNDERGROUND WATER WHICH OCCURS WITHIN THE SATURATED ZONE AND WITHIN GEOLOGIC MATERIALS WHERE THE FLUID PRESSURE IN THE PORE SPACE IS EQUAL TO OR GREATER THAN ATMOSPHERIC PRESSURE.~~ “Groundwater” means underground water which occurs within the saturated zone and within geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure. (Section 3 of the Illinois Groundwater Protection Act)

~~“HOUSEHOLD WASTE” MEANS ANY SOLID WASTE (INCLUDING GARBAGE, TRASH, AND SANITARY WASTE IN SEPTIC TANKS) DERIVED FROM HOUSEHOLDS (INCLUDING SINGLE AND MULTIPLE RESIDENCES, HOTELS AND MOTELS, BUNKHOUSES, RANGER STATIONS, CREW QUARTERS, CAMPGROUNDS, PICNIC GROUNDS, AND DAY USE RECREATION AREAS).~~ *“Household waste” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).* (Section ~~3.89-3.230~~ of the Act)

“Hydraulic barriers” means structures designed to prevent or control the seepage of water. Hydraulic barriers include, but are not limited to, cutoff walls, slurry walls, grout curtains and liners.

“Inert waste” means any solid waste that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a contaminated leachate, as determined in accordance with 35 Ill. Adm. Code 811.202(b). Such inert wastes ~~shall~~ will include only non-biodegradable and non-putrescible solid wastes. Inert wastes may include, but are not limited to, bricks, masonry, and concrete (cured for 60 days or more).

“Iron slag” means slag.

“Land application unit” means an area where wastes are agronomically spread over or disked into land or otherwise applied so as to become incorporated into the soil surface. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a land application unit is not a landfill; however, other Parts of 35 Ill. Adm. Code: Chapter I may apply, and may include the permitting requirements of 35 Ill. Adm. Code 309.

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

~~“LATERAL EXPANSION” MEANS A HORIZONTAL EXPANSION OF THE ACTUAL WASTE BOUNDARIES OF AN EXISTING MSWLF UNIT OCCURRING ON OR AFTER OCTOBER 9, 1993, A HORIZONTAL EXPANSION IS ANY AREA WHERE SOLID WASTE IS PLACED FOR THE FIRST TIME DIRECTLY UPON THE BOTTOM LINER OF THE UNIT, EXCLUDING SIDE SLOPES ON OR AFTER OCTOBER 9, 1993.~~ *“Lateral expansion” means a horizontal expansion of the actual waste boundaries of an existing MSWLF unit occurring on or after October 9, 1993. A horizontal*

expansion is any area where solid waste is placed for the first time directly upon the bottom liner of the unit, excluding side slopes on or after October 9, 1993.
(Section ~~3.88~~ 3.275 of the Act)

“Leachate” means liquid that has been or is in direct contact with a solid waste.

“Lift” means an accumulation of waste ~~which~~ that is compacted into a unit and over which cover is placed.

“Low risk waste” means any solid waste from the steel and foundry industries that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a leachate that contains constituents that exceed the limits for this type of waste as specified at 35 Ill. Adm. Code 817.106.

“Malodor” means an odor caused by ~~ONE OR MORE CONTAMINANT EMISSIONS INTO THE ATMOSPHERE FROM A FACILITY THAT IS IN SUFFICIENT QUANTITIES AND OF SUCH CHARACTERISTICS AND DURATION AS TO BE~~ one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics and duration as to be described as malodorous and which may be ~~INJURIOUS TO HUMAN, PLANT, OR ANIMAL LIFE, TO HEALTH, OR TO PROPERTY, OR MAY UNREASONABLY INTERFERE WITH THE ENJOYMENT OF LIFE OR PROPERTY.~~ injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life or property.
(Section ~~3.02~~ 3.115 of the Act (defining “air pollution”))

~~“MUNICIPAL SOLID WASTE LANDFILL UNIT” OR “MSWLF UNIT” MEANS A CONTIGUOUS AREA OF LAND OR AN EXCAVATION THAT RECEIVES HOUSEHOLD WASTE, AND THAT IS NOT A LAND APPLICATION, SURFACE IMPOUNDMENT, INJECTION WELL, OR ANY PILE OF NONCONTAINERIZED ACCUMULATIONS OF SOLID, NONFLOWING WASTE THAT IS USED FOR TREATMENT OR STORAGE. A MSWLF UNIT MAY ALSO RECEIVE OTHER TYPES OF RCRA SUBTITLE D WASTES, SUCH AS COMMERCIAL SOLID WASTE, NONHAZARDOUS SLUDGE, SMALL QUANTITY GENERATOR WASTE AND INDUSTRIAL SOLID WASTE. SUCH A LANDFILL MAY BE PUBLICLY OR PRIVATELY OWNED OR OPERATED. A MSWLF UNIT MAY BE A NEW MSWLF UNIT, AN EXISTING MSWLF UNIT OR A LATERAL EXPANSION. A SANITARY LANDFILL IS SUBJECT TO REGULATION AS A MSWLF IF IT RECEIVES HOUSEHOLD WASTE.~~
“Municipal solid waste landfill unit” or “MSWLF unit” means a contiguous area of land or an excavation that receives household waste, and that is not a land application, surface impoundment, injection well, or any pile of non-containerized accumulations of solid, non-flowing waste that is used for treatment or storage. A MSWLF unit may also receive other types of RCRA Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, small quantity

generator waste and industrial solid waste. Such a landfill may be publicly or privately owned or operated. a MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A sanitary landfill is subject to regulation as a MSWLF if it receives household waste. (Section ~~3.85-3.285~~ of the Act) But, a landfill that receives residential lead-based paint waste and which does not receive any other household waste is not a MSWLF unit.

BOARD NOTE: The final sentence of corresponding 40 C.F.R. 258.2 provides as follows: “A construction and demolition landfill that receives residential lead-based paint waste and which does not receive any other household waste is not a MSWLF Unit.” A construction and demolition landfill is a type of landfill that does not exist in Illinois, so the Board omitted the reference to “construction and demolition landfill.” A landfill in Illinois that receives residential lead-based paint waste and no other type of household waste would be permitted as a chemical waste landfill or a putrescible waste landfill under Subpart C of 35 Ill. Adm. Code 811, as appropriate.

“National Pollutant Discharge Elimination System” or “NPDES” means the program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under the Clean Water Act (33 U.S.C. USC 1251 et seq.), Section 12(f) of the Environmental Protection Act, and Subpart A of 35 Ill. Adm. Code 309. Subpart A, and 35 Ill. Adm. Code 310. “NPDES permit” means a permit issued under the NPDES program.

“NPDES permit” means a permit issued under the NPDES program.

“New facility” or “New unit” means a solid waste landfill facility or a unit at a facility, if one or more of the following conditions apply:

It is a landfill or unit exempt from permit requirements pursuant to Section 21(d) of the Act that has not yet accepted any waste as of September 18, 1990;

It is a landfill or unit not exempt from permit requirements pursuant to Section 21(d) of the Act that has no development or operating permit issued by the Agency pursuant to 35 Ill. Adm. Code 807 as of September 18, 1990; or

It is a landfill with a unit whose maximum design capacity or lateral extent is increased after September 18, 1990.

BOARD NOTE: A new unit located in an existing facility ~~shall be~~ will be considered a unit subject to 35 Ill. Adm. Code 814, which references applicable requirements of 35 Ill. Adm. Code 811.

~~“NEW MSWLF UNIT” MEANS ANY MUNICIPAL SOLID WASTE LANDFILL UNIT THAT HAS RECEIVED HOUSEHOLD WASTE ON OR AFTER OCTOBER 9, 1993 FOR THE FIRST TIME.~~ “New MSWLF unit” means any municipal solid waste landfill unit that has received household waste on or after October 9, 1993 for the first time. (Section ~~3.86~~3.285 of the Act)

~~“One hundred (100) year year flood plain”~~ means any land area ~~which~~that is subject to a one percent or greater chance of flooding in a given year from any source.

~~“One hundred (100) year year, 24 hour 24-hour precipitation event”~~ means a precipitation event of ~~24 hour~~24-hour duration with a probable recurrence interval of once in 100 years.

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a solid waste disposal facility.

“Perched watertable-” means an elevated watertable above a discontinuous saturated lens, resting on a low permeability (such as clay) layer within a high permeability (such as sand) formation.

“Permit area” means the entire horizontal and vertical region occupied by a permitted solid waste disposal facility.

~~“PERSON” IS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY, OR THEIR LEGAL REPRESENTATIVE, AGENT OR ASSIGNS.~~ “Person” is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent or assigns. (Section ~~3.26~~3.315 of the Act)

“Potentially usable waste” means any solid waste from the steel and foundry industries that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a leachate that contains constituents that exceed the limits for this type of waste as specified at 35 Ill. Adm. Code 817.106.

“Poz-O-Tec materials” means materials produced by a stabilization process patented by Conversion Systems, Inc. utilizing flue gas desulfurization (FGD)

sludges and ash produced by coal combustion power generation facilities as raw materials.

“Poz-O-Tec monofill” means a landfill in which solely Poz-O-Tec materials are placed for disposal.

“Professional engineer” means a person who has registered and obtained a seal pursuant to ~~“The Illinois the~~ Professional Engineering Practice Act of 1989” [225 ILCS 325].

“Professional land surveyor” means a person who has received a certificate of registration and a seal pursuant to the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].

“Putrescible waste” means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes ~~which that~~ do not meet the ~~definitions definition~~ of inert or chemical wastes ~~shall be will~~ be considered putrescible wastes.

“Publicly owned treatment works” or “POTW” means a treatment works that is owned by the State of Illinois or a unit of local government. This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastewater. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the unit of local government ~~which that~~ has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

“Recharge zone” means an area through which water can enter an aquifer.

“Residential lead-based paint waste” means waste containing lead-based paint that is generated as a result of activities such as abatement, rehabilitation, renovation, and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

~~“RESOURCE CONSERVATION AND RECOVERY ACT” or “RCRA” MEANS THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (P.L. 94-580 Codified as 42 USC. §§ 6901 et seq.) AS AMENDED.~~
“Resource Conservation and Recovery Act” or “RCRA” means the Resource

Conservation and Recovery Act of 1976 (P.L. 94-580 codified as 42 USC. §§ 6901 et seq.) as amended. (Section ~~3.90~~3.425 of the Act)

“Responsible charge,” when used to refer to a person, means that the person is normally present at a waste disposal site; directs the day-to-day overall operation at the site; and either is the owner or operator or is employed by or under contract with the owner or operator to assure that the day-to-day operations at the site are carried out in compliance with any Part of 35 Ill. Adm. Code: Chapter I governing operations at waste disposal sites.

“Runoff” means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of such overland flow that infiltrates into the ground before it reaches the stream channel, and any precipitation that falls directly into a stream channel.

“Salvaging” means the return of waste materials to use, under the supervision of the landfill operator, so long as the activity is confined to an area remote from the operating face of the landfill, it does not interfere with or otherwise delay the operations of the landfill, and it results in the removal of all materials for salvaging from the landfill site daily or separates them by type and stores them in a manner that does not create a nuisance, harbor vectors, or cause an unsightly appearance.

“Scavenging” means the removal of materials from a solid waste management facility or unit ~~which~~ that is not salvaging.

“Seismic Slope Safety Factor” means the ratio between the resisting forces or moments in a slope and the driving forces or moments that may cause a massive slope failure during an earthquake or other seismic event such as an explosion.

“Settlement” means subsidence caused by waste loading, changes in groundwater level, chemical changes within the soil, and adjacent operations involving excavation.

“Shredding” means the mechanical reduction in particle sizes of solid waste. Putrescible waste is considered shredded if 90 percent of the waste by dry weight passes a ~~3-inch~~ three-inch sieve.

“Significant Modification” means a modification to an approved permit issued by the Agency in accordance with Section 39 of the Act and 35 Ill. Adm. Code 813 that is required when one or more of the following changes (considered significant when that change is measured by one or more parameters whose values lie outside the expected operating range of values as specified in the permit) are planned, occur, or will occur:

An increase in the capacity of the waste disposal unit over the permitted capacity;

Any change in the placement of daily, intermediate, or final cover;

A decrease in performance, efficiency, or longevity of the liner system;

A decrease in efficiency or performance of the leachate collection system;

A change in configuration, performance, or efficiency of the leachate management system;

A change in the final disposition of treated effluent or in the quality of the discharge from the leachate treatment or pretreatment system;

Installation of a gas management system, or a decrease in the efficiency or performance of an existing gas management system;

A change in the performance or operation of the surface water control system;

A decrease in the quality or quantity of data from any environmental monitoring system;

A change in the applicable background concentrations or the maximum allowable predicted concentrations;

A change in the design or configuration of the regraded area after development or after final closure;

A change in the amount or type of postclosure financial assurance;

Any change in the permit boundary;

A change in the postclosure land use of the property;

A remedial action necessary to protect groundwater;

Transfer of the permit to a new operator;

Operating authorization is being sought to place into service a structure constructed pursuant to a construction quality assurance program; or

A change in any requirement set forth as a special condition in the permit.

“Slag” means the fused agglomerate ~~which~~that separates in the iron and steel production and floats on the surface of the molten metal.

“Sole source aquifer” means those aquifers designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974; (42 ~~U.S.C~~USC 300h-3).

“Solid Waste” means a waste that is defined in this Section as an inert waste, as a putrescible waste, as a chemical waste or as a special waste, and which is not also defined as a hazardous waste pursuant to 35 Ill. Adm. Code 721.

~~“SPECIAL WASTE” MEANS ANY INDUSTRIAL PROCESS WASTE, POLLUTION CONTROL WASTE OR HAZARDOUS WASTE, EXCEPT AS DETERMINED PURSUANT TO SECTION 22.9 OF THE ACT~~ *“Special waste” means any industrial process waste, pollution control waste, or hazardous waste, except as determined pursuant to Section 22.9 of the Act* and 35 Ill. Adm. Code 808. (Section ~~3.45-3.475~~ of the Act.)

“Static Safety Factor” means the ratio between resisting forces or moments in a slope and the driving forces or moments that may cause a massive slope failure.

“Steel slag” means slag.

“Surface impoundment” means a natural topographic depression, a man-made excavation, or a diked area into which flowing wastes, such as liquid wastes or wastes containing free liquids, are placed. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a surface impoundment is not a landfill. Other Parts of 35 Ill. Adm. Code: Chapter I may apply, including the permitting requirements of 35 Ill. Adm. Code 309.

“Twenty-five ~~(25) year-year, 24 hour~~24-hour precipitation event” means a precipitation event of ~~24 hour~~24-hour duration with a probable recurrence interval of once in 25 years.

“Uppermost aquifer” means the first geologic formation above or below the bottom elevation of a constructed liner or wastes, where no liner is present, ~~which~~that is an aquifer, and includes any lower aquifer that is hydraulically connected with this aquifer within the facility’s permit area.

“Unit” means a contiguous area used for solid waste disposal.

“Unit of local government” means a unit of local government, as defined by Article 7, Section 1 of the Illinois Constitution. A unit of local government may include, but is not limited to, a municipality, a county, or a sanitary district.

“Waste pile” means an area on which non-containerized masses of solid, ~~non-flowing~~non-flowing wastes are placed for disposal. For the purposes of this Part

and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. At a minimum, such demonstration ~~shall~~must include photographs, records, or other observable or discernable information, maintained on a yearly basis, that show that within the preceding year the waste has been removed for utilization or disposal elsewhere.

“Waste stabilization” means any chemical, physical, or thermal treatment of waste, either alone or in combination with biological processes, ~~which~~that results in a reduction of microorganisms, including viruses, and the potential for putrefaction.

“Working face” means any part of a landfill where waste is being disposed of.

“Zone of attenuation” ~~is~~means the three dimensional region formed by excluding the volume occupied by the waste placement from the smaller of the volumes resulting from vertical planes drawn to the bottom of the uppermost aquifer at the property boundary or 100 feet from the edge of one or more adjacent units.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 811
STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control
811.110	Closure and Written Closure Plan
811.111	Postclosure Maintenance
<u>811.112</u>	<u>Recordkeeping Requirements for MSWLF Units</u>

SUBPART B: INERT WASTE LANDFILLS

Section

811.201	Scope and Applicability
811.202	Determination of Contaminated Leachate
811.203	Design Period
811.204	Final Cover
811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal System
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management System
811.312	Landfill Gas Processing and Disposal System
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment
811.318	Design, Construction, and Operation of Groundwater Monitoring Systems
811.319	Groundwater Monitoring Programs
811.320	Groundwater Quality Standards
811.321	Waste Placement
811.322	Final Slope and Stabilization
811.323	Load Checking Program
811.324	Corrective Action Measures for MSWLF Units
811.325	Selection of remedy for MSWLF Units
811.326	Implementation of the corrective action program at MSWLF Units

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section	
811.401	Scope and Applicability
811.402	Notice to Generators and Transporters
811.403	Special Waste Manifests
811.404	Identification Record
811.405	Recordkeeping Requirements
811.406	Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section	
811.501	Scope and Applicability
811.502	Duties and Qualifications of Key Personnel
811.503	Inspection Activities
811.504	Sampling Requirements
811.505	Documentation
811.506	Foundations and Subbases
811.507	Compacted Earth Liners
811.508	Geomembranes
811.509	Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section	
811.700	Scope, Applicability and Definitions
811.701	Upgrading Financial Assurance
811.702	Release of Financial Institution
811.703	Application of Proceeds and Appeals
811.704	Closure and Postclosure Care Cost Estimates
811.705	Revision of Cost Estimate
811.706	Mechanisms for Financial Assurance
811.707	Use of Multiple Financial Mechanisms
811.708	Use of a Financial Mechanism for Multiple Sites
811.709	Trust Fund for Unrelated Sites
811.710	Trust Fund
811.711	Surety Bond Guaranteeing Payment
811.712	Surety Bond Guaranteeing Performance
811.713	Letter of Credit
811.714	Closure Insurance
811.715	Self-Insurance for Non-commercial Sites
811.716	Local Government Financial Test
811.717	Local Government Guarantee
811.718	Discounting
811.719	Corporate Financial Test
811.720	Corporate Guarantee
811.Appendix A	Financial Assurance Forms
Illustration A	Trust Agreement
Illustration B	Certificate of Acknowledgment
Illustration C	Forfeiture Bond
Illustration D	Performance Bond
Illustration E	Irrevocable Standby Letter of Credit
Illustration F	Certificate of Insurance for Closure and/or Postclosure Care
Illustration G	Operator's Bond Without Surety
Illustration H	Operator's Bond With Parent Surety
Illustration I	Letter from Chief Financial Officer

811.Appendix B Section-by-Section correlation between the Standards of the RCRA Subtitle D MSWLF regulations and the Board's nonhazardous waste landfill regulations.

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1, and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill. Reg. 12257, effective August 15, 1995; amended in R96-1 at 20 Ill. Reg. 12000, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg.15831, effective November 25, 1997; amended in R98-9 at 22 Ill. Reg.11491, effective June 23, 1998; amended in R99-1 at 23 Ill. Reg. 2794, effective February 17, 1999; amended in R98-29 at 23 Ill. Reg.6880, effective July 1, 1999; amended in R04-5/R04-15 at 28 Ill. Reg. _____, effective _____.

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section 811.302 Facility Location

- a) No part of a unit ~~shall~~ may be located within a setback zone established pursuant to Section 14.2 or 14.3 of the Act;
- b) No part of a unit ~~shall~~ may be located within the recharge zone or within 366 meters (1200 feet), vertically or horizontally, of a sole-source aquifer designated by the United States Environmental Protection Agency pursuant to Section 1424(e) of the Safe Drinking Water Act (42 ~~U.S.C.~~ USC 300f et seq.),₂ unless there is a stratum between the bottom of the waste disposal unit and the top of the aquifer that meets the following minimum requirements:
 - 1) The stratum has a minimum thickness of 15.2 meters (50 feet);
 - 2) The maximum hydraulic conductivity in both the horizontal and vertical directions is no greater than 1×10^{-7} centimeters per second, as determined by in situ borehole or equivalent tests;
 - 3) There is no indication of continuous sand or silt seams, faults, fractures,₂ or cracks within the stratum that may provide paths for migration; and
 - 4) Age dating of extracted water samples from both the aquifer and the stratum indicates that the time of travel for water percolating downward through the relatively impermeable stratum is no faster than 15.2 meters (50 feet) in 100 years.

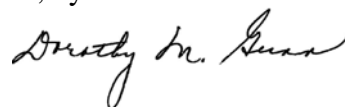
- c) A facility located within 152 meters (500 feet) of the right of way of a township or county road or state or interstate highway ~~shall~~must have its operations screened from view by a barrier of natural objects, fences, barricades, or plants no less than 2.44 meters (~~8~~eight feet) in height.
- d) No part of a unit ~~shall~~may be located closer than 152 meters (500 feet) from an occupied dwelling, school, or hospital that was occupied on the date when the operator first applied for a permit to develop the unit or the facility containing the unit, unless the owner of such dwelling, school, or hospital provides permission to the operator, in writing, for a closer distance.
- e) The facility ~~shall~~may not be located closer than 1525 meters (5000 feet) of any runway used by piston type aircraft or within 3050 meters (10,000 feet) of any runway used by turbojet aircraft unless the Federal Aviation Administration (FAA) provides the operator with written permission, including technical justification, for a closer distance.
- f) An owner or operator proposing to locate a new MSWLF unit within a five-mile radius of any airport runway used by turbojet or piston-type aircraft ~~shall~~must notify the affected airport and the ~~Federal Aviation Administration (FAA)~~ within ~~7~~seven days ~~of~~after filing a permit application with Agency in accordance with 35 Ill. Adm. Code 813 for developing a new landfill.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.10-(1992) (2003), as amended at 68 Fed. Reg. 59333 (October 15, 2003). USEPA added the following information in a note appended to 40 CFR 258.10: A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the federal Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act) (49 USC 44718(d)). Section 503 prohibits the "construction or establishment" of a new MSWLF after April 5, 2000 within six miles of certain smaller public airports unless the FAA allows an exemption. The FAA administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34, dated August 26, 2000. For further information, please contact the FAA.

(Source: Amended at 28 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 17, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board