

ILLINOIS POLLUTION CONTROL BOARD
August 28, 2007

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO THE)	R07-17
BOARD'S PROCEDURAL RULES AND)	(Procedural and Land Rulemaking)
UNDERGROUND STORAGE TANK)	
REGULATIONS TO REFLECT P.A. 94-0274,)	
P.A. 94-0276, AND P.A. 94-0824 (35 ILL.)	
ADM. CODE 101.202, 732.103, 732.702,)	
734.115, 734.710))	

HEARING OFFICER ORDER

On April 19, 2007, the Board opened this rulemaking docket in order to make the Board's regulations consistent with recent amendments to the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2006)) enacted by Public Acts 94-0274, 94-0276, and 94-0874. First notice of the amendments to the procedural rules and underground storage tank (UST) regulations was published at 31 Ill. Reg. 6537, 6629, 6648 (May 4, 2007).

The Board held the first hearing in this proceeding on Wednesday, May 16, 2007, in Chicago and held the second hearing on Thursday, August 9, 2007, in Springfield.¹ On August 13, 2007, the Board received the transcript of the second hearing and made that transcript available electronically through its Clerk's Office On-Line (COOL). This order establishes September 25, 2007 as the closing date for the post-hearing comment period in this docket and requests comment on amending the procedural rules' definition of "pollution control facility" to reflect three Public Acts enacted since the Board opened this docket on April 19, 2007.

The Board's procedural rules provide that "[a]ny person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board." 35 Ill. Adm. Code 102.108(b). Since the Board opened this rulemaking docket, the General Assembly and the Governor have acted upon legislation that appears to require three additional amendments to Section 101.202 of the Board's procedural rules. Specifically, three recent Public Acts have added exceptions to the Act's definition of "pollution control facility." 415 ILCS 5/3.330 (2006); *see also* 35 Ill. Adm. Code 101.202.

First, on August 13, 2007, the Governor approved House Bill 937, which became Public Act 95-0131 (P.A. 95-0131). P.A. 95-0131 amends the Act's definition of "pollution control facility" (415 ILCS 5/3.330 (2006)) by providing that certain sites or facilities used for wood

¹ Hearings are not necessary with regard to the procedural rule component of the rulemaking pursuant to Section 26 of the Act (415 ILCS 5/26 (2006)) but are required for the UST amendments by Section 27 of the Act (415 ILCS 5/27 (2006)).

combustion facilities for energy recovery that accept and burn only wood material are not included in that definition. P.A. 95-0131 takes effect upon becoming law.

Second, on August 14, 2007, the Governor approved House Bill 3638, which became Public Act 95-0177 (P.A. 95-0177). P.A. 95-0177 also amends the Act's definition of "pollution control facility" (415 ILCS 5/3.330 (2006)) by providing that a site or facility temporarily holding in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, is not included in that definition, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided that such site or facility complies with certain federal requirements. P.A. 95-0177 takes effect on January 1, 2008. See 5 ILCS 75/1(a) (2006).

Third, on August 24, 2007, the Governor approved Senate Bill 126, which became Public Act 95-0408 (P.A. 95-0408). P.A. 95-0408 also amends the Act's definition of "pollution control facility" (415 ILCS 5/3.330 (2006)) by providing that a transfer station used exclusively for landscape waste where the waste is held no longer than 24 hours from the time it was received is not included in that definition. P.A. 95-0408 takes effect upon becoming law.

The Board invites comment on whether it should amend its procedural rules to reflect these three more recent legislative amendments to the Act's definition of "pollution control facility." Particularly in the absence of any comment opposing such amendments, the Board intends to include language based upon these three recent Public Acts in its second-notice opinion and order in this docket. The Board notes that P.A. 95-0177 does not take immediate effect and would reflect this delayed effective date if the Board included language based on that Public Act in a second notice opinion and order.

Specifically, the definition of "pollution control facility" at 35 Ill. Adm. Code 101.202, amended to include these recent statutory changes, would read as follows, with the language of those three recent changes indicated in this order by double underlining:

"Pollution control facility" means any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that its managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are: (i) located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and (ii) in compliance with all applicable zoning requirements [415 ILCS 5/3.330];

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000 as of January 1, 2000, and operated and located in accordance with Section 22.38 of the Act;

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products; ~~and~~

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station [415 ILCS 5/3.330];

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents; and

a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received.

Because the Governor approved the last of these three recent Public Acts more than 14 days after receipt of the hearing transcript in the Board's office, the deadline for submitting written comments on the Board's proposal is extended. *See* 35 Ill. Adm. Code 102.108(b). All public comments must be submitted no later than September 25, 2007. The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply and the Clerk must receive these comments at or before the close of business on September 25, 2007. However, public comments and other documents in this proceeding may be filed electronically through COOL from the Board's Web site at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Persons who intend to file a public comment in this proceeding must serve the comment on the hearing officer and all persons on the service list. Before filing a comment or any other document with the Clerk, please check for the most recent version of the service list with the Clerk's Office at (312) 814-3629 or with the hearing officer at (312) 814-6085 or at foxt@ipcb.state.il.us.

IT IS SO ORDERED.



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