

ILLINOIS POLLUTION CONTROL BOARD

January 19, 2017

IN THE MATTER OF:)
RCRA SUBTITLE D (MUNICIPAL SOLID) R17-5
WASTE LANDFILL) UPDATE, USEPA) (Identical-in-Substance Rulemaking -
REGULATIONS (January 1, 2016 through) Land)
June 30, 2016))

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The United States Environmental Protection Agency (USEPA) amended a single provision of the federal Resource Conservation and Recovery Act (RCRA) Subtitle D Municipal Solid Waste Landfill (MSWLF) regulations. Section 22.40(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.40(a) (2014)) requires the Board to likewise revise the Illinois MSWLF rules. In addition, Section 22.40(a) of the Act requires the Board to use the identical-in-substance procedure of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2014)).

Specifically, the Board amends the Illinois provision for research, development, and demonstration (RD&D) permits (35 Ill. Adm. Code 813.112) that is identical in substance to the USEPA action. The Board further includes minor corrections and an update in text of this provision.

The Board will file the adopted amendments with the Office of the Secretary of State and have them published in the *Illinois Register*.

The Board expects to file the adopted rules no later than the statutory due date of May 10, 2017.

SUMMARY OF PROPOSED AMENDMENTS

Federal Regulations Implemented

USEPA took one action that affected the federal MSWLF rules during the first half of 2016 and requires corresponding amendments to the Illinois MSWLF-derived rules.

May 10, 2016 (81 Fed. Reg. 28720)

USEPA revised the maximum term of an RD&D permit from 12 years to 21 years.

PUBLIC COMMENTS

The Board adopted a proposal for public comment in this matter on October 27, 2016. A notice of Proposed Amendment appeared in the November 14, 2016 issue of the *Illinois Register*, at 40 Ill. Reg. 15329.

The public comment period ended on December 29, 2016. The Board received no comments on the proposed amendment during the public comment period. Rather, the Board received a document entitled “JCAR’s First Notice Version for use in creating Second Notice Changes” for Part 813. The Board revised the text of the proposed amendments in response to the JCAR document. The Board added the document into the record of this proceeding.

The Board assembled an IIS Rulemaking Addendum to the Final Opinion and Order of the Board (IIS-RA (F)) that fully lists the revisions made by the Board in the course of this proceeding. The lists include differences between the text of the USEPA amendments and the Board’s language, amendments that did not derive from USEPA amendments, differences between the proposed and adopted amendments, and suggestions for changes not made by the Board in this rulemaking. The content of the IIS-RA(F) is explained towards the end of this opinion and order.

DISCUSSION

Federal Actions in This Rulemaking

The USEPA action requiring amendments to the Illinois regulations is summarized below.

May 10, 2016 (81 Fed. Reg. 28720)

USEPA revised the maximum term of an RD&D permit from 12 to 21 years. The duration of a single RD&D permit remains three years, but USEPA extended the limit on renewal of these permits.

The Present Board Action. The Board revised 35 Ill. Adm. Code 813.112(e)(1) to correspond with the USEPA amendment to corresponding 40 C.F.R. 258.4(e)(1). The Board did not substantively deviate from the federal text. The only revision was in format of the text.

Request for Comments. The Board requests comments on the incorporation of the May 10, 2016 USEPA extension of the maximum term for an RD&D permit from 12 to 21 years.

Revisions

In an identical-in-substance proceeding, the Board must adopt the verbatim text of federal regulations except for (1) changes needed for compliance with the Illinois Administrative Code; (2) technical changes that do not change the scope or meaning of the regulations; and (3) typographical and grammatical errors. In addition, the Board must not adopt USEPA rules that are not applicable to Illinois or “things which are outside the Board’s normal functions.” *See* 415 ILCS 5/7.2(a), (a)(1), (a)(2), and (a)(7) (2014). Thus, the Board will make only minor, non-substantive deviations from the federal text described below.

IIS Rulemaking Addendum

The IIS-RA (F) fully lists the differences between the text of the USEPA amendments and the Board’s language in this rulemaking. Entries in the tables briefly explain the differences.

The first table lists deviations from the text of federal rules. The second table lists corrections and clarifications to rules not prompted by USEPA amendments, but which the Board finds are needed. The third table lists the differences between the text of the amendments proposed on October 27, 2016 and the text of the amendments adopted today.

The Board included the IIS-RA (F) in the docket for this rulemaking, available on the Board's website. The Board directs interested persons to the IIS-RA (F) for information about deviations from the federal text and amendments not directly derived from current federal amendments.

ORDER

The Board directs the Clerk to provide notice in the *Illinois Register* of the appended proposed amendments to the MSWLF rules at 35 Ill. Adm. Code 813.112.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 19, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board

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

PART 813
PROCEDURAL REQUIREMENTS FOR PERMITTED LANDFILLS

SUBPART A: GENERAL PROCEDURES

Section	
813.101	Scope and Applicability
813.102	Delivery of Permit Application
813.103	Agency Decision Deadlines
813.104	Standards for Issuance of a Permit
813.105	Standards for Denial of a Permit
813.106	Permit Appeals
813.107	Permit No Defense
813.108	Term of Permit
813.109	Transfer of Permits
813.110	Adjusted Standards to Engage in Experimental Practices
813.111	Agency Review of Contaminant Transport Models
813.112	Research, Development, and Demonstration Permits for MSWLFs
813.113	Electronic Reporting

SUBPART B: ADDITIONAL PROCEDURES FOR MODIFICATION AND
SIGNIFICANT MODIFICATION OF PERMITS

Section	
813.201	Initiation of a Modification or Significant Modification
813.202	Information Required for a Significant Modification of an Approved Permit
813.203	Specific Information Required for a Significant Modification to Obtain Operating Authorization
813.204	Procedures for a Significant Modification of an Approved Permit

SUBPART C: ADDITIONAL PROCEDURES FOR THE RENEWAL OF
PERMITS

Section	
813.301	Time of Filing
813.302	Effect of Timely Filing
813.303	Information Required for a Permit Renewal
813.304	Updated Groundwater Impact Assessment
813.305	Procedures for Permit Renewal

SUBPART D: ADDITIONAL PROCEDURES FOR INITIATION AND
TERMINATION OF TEMPORARY AND PERMANENT CLOSURE AND
POSTCLOSURE CARE

Section	
813.401	Agency Notification Requirements

- 813.402 Certification of Closure
813.403 Termination of the Permit

SUBPART E: CERTIFICATION AND REPORTS

- Section
813.501 Annual Certification
813.502 Groundwater Reports and Graphical Results of Monitoring Efforts
813.503 Information to be Retained at or near the Waste Disposal Facility
813.504 Annual Report

AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40, and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15814, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12409, effective July 19, 1993; expedited correction at 18 Ill. Reg. 7501, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12388, effective August 1, 1994; amended in R98-9 at 22 Ill. Reg. 11483, effective June 23, 1998; amended in R05-1 at 29 Ill. Reg. 5066, effective March 22, 2005; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1466, effective December 20, 2006; amended in R17-5 at 41 Ill. Reg. _____, effective _____.

NOTE: ~~Capitalization indicates statutory language.~~

SUBPART A: GENERAL PROCEDURES

Section 813.112 Research, Development, and Demonstration Permits for MSWLFs

- a) Except as provided in subsection (f) ~~of this Section~~, and subject to the limitations of subsections (c) through (e) ~~of this Section~~, the Agency must issue a research, development, and demonstration (RD&D) permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods that deviate from either or both of the following standards, provided the Agency has determined that the MSWLF unit has a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate on the liner and that the innovative and new methods will not cause contamination of groundwater or surface water:
- 1) The run-on control systems in 35 Ill. Adm. Code 811.103(b)(1) and (b)(2); and
 - 2) The liquids restrictions in 35 Ill. Adm. Code 811.107(m)(1).
- b) The Agency must issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that deviate from the final cover standards of 35 Ill. Adm. Code 811.314(b) and (c) provided the Agency has determined that the MSWLF unit owner or operator has

demonstrated that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water or cause leachate depth on the liner to exceed 30-cm.

- c) Any RD&D permit issued under this Section must include such terms and conditions as are at least as protective as the MSWLF standards of 35 Ill. Adm. Code 811.103(b)(1) and (b)(2), 811.107(m)(1), and 811.314(b) and (c) from which the deviation is granted to assure protection of human health and the environment. Such a permit must include the following conditions:
- 1) It must provide for the construction and operation of such facilities as are necessary, for not longer than three years, unless the permit is renewed as provided in subsection (e) ~~of this Section~~;
 - 2) It must provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and non-hazardous wastes that the Agency has deemed appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;
 - 3) It must include such requirements as are necessary to protect human health and the environment, including such requirements as are necessary for testing and providing information to the Agency with respect to the operation of the facility;
 - 4) It must require the owner or operator of a MSWLF unit permitted under this Section to submit an annual report to the Agency showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the Agency in the permit; and
 - 5) It must require compliance with all standards in 35 Ill. Adm. Code 811, except as permitted under this Section.
- d) The Agency may request in writing that the owner or operator immediately terminate all operations at the facility permitted under this Section or request that the owner or operator undertake other corrective measures at any time the Agency has reason to believe that the overall goals of the project are not being attained, including protection of human health or the environment. The Agency or any person may file an enforcement action pursuant to Section 41 of the Act [415 ILCS 5/41] for any violations of the Act [415 ILCS 5].
- e) No permit issued under this Section may exceed three years in duration, and no single renewal of a permit under this Section may exceed three years in duration.
- 1) The total term for a permit for a project including renewals may not exceed 21 ~~twelve~~-years; and

- 2) During permit renewal, the applicant must provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Agency determines are necessary for permit renewal.
- f) Small MSWLF units. An owner or operator of a MSWLF unit that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for an RD&D permit under this Section with regard to the standards of 35 Ill. Adm. Code 811.314(b) and (c), except in accordance with 35 Ill. Adm. Code 811.314(d).

BOARD NOTE: This Section is derived from 40 CFR 258.4 (2016)~~(2004)~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)