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STATE OF ILLINOIS
Pollution Control Board

December 12, 2005

PC#2

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

Sand, gravel
and limestone
production

In the Matter of: Clean Construction or Demolition Debris Fill Operations under PA 94-272
(35 Ill. Adm. Code 1100) / Docket R2006-019

Dear Ms. Gunn:

The following comments are being submitted by Rockford Sand and Gravel. Rockford Sand and Gravel is a member of the Illinois Association of Aggregate Producers and has participated in the IAAP Clean Fill Work Group. Our comments are in addition to those submitted by the IAAP on behalf of its members. As a general comment, we recognize the extensive effort that the Agency has made to work with the regulated community to develop regulations within the time-frame contemplated by P.A. 94-272. The process of crafting regulations that can be applied in the real world was made particularly difficult because the act itself contains so many internal inconsistencies and ambiguities.

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Comment I

Section 1100.101(b)(3) of the proposed rules, following Section 22.51(b)(4)(B) of the Act, provides that Part 1100 does not apply to "*The use of CCDD as fill material in an excavation other than a current or former quarry or mine if [the] use complies with Illinois Department of Transportation specifications.*"

We recommend that the Agency use this rulemaking to clarify the meaning of Section 22.51(b)(4)(B) in two respects. First, it is unclear how or whether this exemption will apply to CCDD used as fill material (in an excavation other than a quarry or mine) if the CCDD is generated in a project undertaken by or on behalf of a governmental unit other than the Illinois Department of Transportation.

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Many highway and other similar civil construction projects are undertaken directly by villages, cities, townships, counties, airports, and other governmental units using their own personnel and equipment. In these cases, the governmental unit may or may not have adopted the IDOT specifications in a formal sense. They also may or may not conduct their CCDD fill practices in a manner that is substantially in conformity with the IDOT specifications. Under the proposed Section 1100.101(b)(3), it is unclear whether the exemption will apply to these activities and what steps the governmental unit needs to follow to ensure that its activities are exempt.

Many other civil construction projects are conducted for non-IDOT governmental units under contracts with private firms. In these cases, the governmental unit has an opportunity to state in its contracts that any off-site CCDD fill activities are to be conducted substantially in accordance with the IDOT specifications for off-site fill.

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We recommend that the proposed Section 1100.101(b)(3) be revised to provide that if a unit of government or a private firm acting under a contract with a unit of government uses CCDD as fill in an excavation other than a current or former quarry or mine and the use is in substantial compliance with the IDOT specifications, then that use is not subject to Part 1100. In this regard, we believe that the term “substantial compliance” will allow for minor variations in, for example, the type of form used to verify the property owner’s permission for the use of a site for the placement of fill.

Second, we recommend that the regulations include a Board Note that would identify the current IDOT specifications with which the use of CCDD would have to comply and include a statement clarifying that the exemption is based on the IDOT specifications in effect at the time that the fill activity occurs.

Comment II

Section 1100.103 includes a provision which states, “*Clean construction or demolition debris does not include uncontaminated soil generated during construction...provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.*” This language is taken directly from Section 3.160 of the Illinois Environmental Protection Act.

We recommend that this definition be revised to read as follows: “*Clean construction or demolition debris does not include uncontaminated soil generated during construction... provided the uncontaminated soil is not commingled with any clean construction or demolition debris other than uncontaminated soil or with any other waste.*”

I realize that the existing language of this definition is a direct quote from Section 3.160 of the Act. Nonetheless, the added language would clarify the definition by eliminating an obviously circular description.

We also recommend that the concept of “commingled” material be clarified. For example, it is not clear whether the acceptance of uncontaminated soil at a site which had accepted other CCDD prior to 2005 be subject to the regulations. It is also unclear whether the acceptance of uncontaminated soil at a site which also had accepted or was currently accepting CCDD used in compliance with IDOT specifications would be subject to the regulations.

We also agree with the recommendation of the IAAP that the Agency work with the regulated community to refine the definition of “uncontaminated soil.” In this regard, in addition to the uncertain meaning of the term “uncontaminated,” the term “soil” is not now being interpreted in a uniform manner. For example, some site owners in our area take the position that the term “soil” does not include earthen material that includes crushed rock or is predominantly gravel or sand. Because of the geology in our area, an excavation of natural material will frequently include limestone that is broken or crushed in the course of excavation or in preparation for transport. It does not make any practical sense to consider naturally occurring “bank run” sand and gravel or crushed limestone differently than topsoil. Nonetheless, in the absence of clarifying regulations, that is exactly the position that is now being taken.

Comment III

The first sentence of Section 1100.204(g) requires that the facility “*be designed, constructed, and maintained to minimize the level of equipment noise outside the site.*” This requirement imposes a responsibility on the operator that is more severe than the IPCB noise regulations. It is also virtually impossible for the operator to know with any confidence that its operation is in compliance with these regulations. We recommend that the first sentence of Section 1100.204(g) be deleted.

Comment IV

The regulations apply to the use of CCDD as fill in a current or former quarry or mine or other excavation. Recycled pavement (asphalt or concrete) is CCDD, and is frequently used for such purposes as road base material, a base material in parking lots, a subgrade material in highway embankments, and similar activities. In some cases the material is used directly as it is generated; in others it is stockpiled and used at a later date. Each such use would typically involve placing the recycled pavement in an area that had been excavated. Under the regulations and PA 94-272, if this activity constitutes the use of CCDD as "fill," this activity would be subject to interim authorization, permitting, and CCDD operating standards unless the recycled pavement is placed back within the same site as that from which it was generated.

Requiring that this use of recycled pavement material be regulated in the same manner as a CCDD disposal site will limit the recycling or reclamation of pavement material. We recommend that the definition of "Filled area" in Section 1100.103 be expanded to exclude the use of recycled pavement materials such as asphalt millings or crushed concrete as a subgrade or base in highway, parking lot, or utility construction if the use is in compliance with the specifications of the unit of government responsible for the improvement or, if the improvements are not constructed under contract with a governmental unit, if the use is in substantial compliance with the IDOT specifications.

Respectfully submitted,
Rockford Sand and Gravel

By: 

John Holmstrom
Vice President

Cc: Docket R2006-19 Service List
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