

In the Matter of:	)	
	)	
Clean Construction or Demolition Debris Fill	)	R06-19
Operations under PA 94-272	)	Rulemaking-Land
(35 Ill. Adm. Code 1100) / Docket R2006-019	)	

### Comments of Rockford Sand and Gravel

I am writing on behalf of Rockford Sand and Gravel to comment on the Proposed Rule adding a new Part 1100 to the Board's regulations. The regulations have been proposed in response to the legislative direction in PA 94-272 concerning clean construction or demolition debris ("CCDD"). Those in the regulated community most impacted by PA 94-272 and the proposed regulations include state agencies, municipalities and other governmental units engaged in highway construction, Brownfields developers, highway and underground contractors, and anyone else engaged in some aspect of the generation, transport, or disposal of "clean fill."

Rockford Sand and Gravel is a division of Rockford Blacktop Construction Co., of Loves Park, Illinois, and is engaged in the operation of limestone quarries and sand and gravel facilities in north central Illinois. Rockford Sand and Gravel operates several facilities which have interim authorization to accept CCDD under PA 94-272. Rockford Blacktop Construction Co. is engaged in the heavy/highway construction and asphalt paving business.

We have participated in the discussions which the agency has held with the IAAP and have had the opportunity to comment on earlier drafts of the regulations. To avoid duplication, I would like to limit my comments to two issues: the ambiguities created by the lack of a detailed statement of how the "IDOT Specifications" exemption will be applied, and the application of the IDOT exemption to governmental agencies other than the departments identified in the IDOT Specifications.

### **Section 1100.101(b)(3)**

Under Section 1100.101(b)(3) of the proposed regulations, 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* (emphasis added) if the use complies with Illinois Department of Transportation specifications. Most of the language of this exemption is taken directly from Section 22.51(b)(4) of PA 94-272. The Board Note to Section 1100.101(b)(3) identifies two specific sections of the IDOT specifications as those applicable to the use of CCDD as fill, Sections 107.22 and Section 202.03. Section 107.22 requires a pre-construction review of proposed fill/borrow sites by the IDOT engineer, including any necessary archeological, endangered species, or other studies. Section 202.03 deals with the disposal of unsuitable or surplus material. In addition to these two sections, at least two other sections of the IDOT Specifications deal with the procedures or practices which contractors are to use to determine whether surplus material is CCDD or is a waste; i.e., whether the material is contaminated or not. Those sections are Section 669 and Section 107.19. Section 669 deals with the contract specifications for the removal and proper

disposal of contaminated material where this activity is a part of the work contemplated under the contract; i.e., contamination is known or likely to exist. Section 107.19 deals with unexpected contamination encountered during other work.

### **“Uncontaminated”**

The Board Note to 1100.101(b)(3) does not refer to either section 669 or section 107.19. Nonetheless, from the perspective of the IDOT Specifications, it is not possible to be in compliance with the sections that deal with uncontaminated material unless the contractor also complies with the requirements for determining when contamination is present.

The term “uncontaminated,” as it is used in the proposed regulations, is not defined. The exemption for the use of fill in compliance with IDOT specifications is a statutory exemption, but it only covers “CCDD used as fill...” It does not apply to material generated in compliance with the IDOT Specifications that is not CCDD. Surplus material generated in the course of an IDOT construction project and transported off-site for use as fill in compliance with the IDOT Specifications is not necessarily “CCDD” unless it meets the definition of CCDD in the regulations and the Act. If the material is not uncontaminated, it would not be CCDD, it would be “waste,” and the exemption in Section 1100.101(b)(3) would not apply.

Section 669.08 of the IDOT Specifications provides that in the determination of whether material is contaminated, a PID or FID field reading of more than ten meter units above background indicates contamination. Contrast this with Section 1100.205 of the proposed regulations, the section dealing with the load checking requirements applicable to CCDD fill sites accepting regulated CCDD. Under the proposed load checking regulations, any reading on a PID or FID above background indicates that the load is contaminated and must be rejected. If the load checking standard means that loads exceeding the background level are “contaminated,” the regulated community will need to know if the load checking standard of “contamination” will be used to determine whether excess soil or other material from an IDOT project is CCDD (“uncontaminated”) or a waste? If so, then every load that purports to carry CCDD loads from IDOT jobs that have been found to be uncontaminated using the IDOT field screening standard will have to be inspected, because there is no IDOT exemption for using waste as fill.

Additionally, if material from an IDOT project is to be used as fill in a former quarry, the same issue will affect how the IDOT contractor operates. Under the IDOT specifications, material which does not generate a field PID reading of ten meter units above background will be considered to be “uncontaminated.” If it is to be used as fill in a former quarry, however, it will be considered to be “contaminated” unless it does not generate a PID reading above background at the fill site. So, the IDOT contractor will be required to check loads in the field using the “background” load checking standard and hope that the calibration of the testing device to background at the fill site the same as it is at the job site. If a load is rejected at a quarry fill site, will the contractor be allowed to take the load to a fill site that is not a quarry and rely on the IDOT exemption?

Because the IDOT exemption does not apply to current or former quarries or mines, the uncertainty involved in defining “uncontaminated” will primarily affect fill sites that are

established for specific projects. Permanent fill sites are likely to be current or former quarries. These permanent sites are required to inspect every load, whether it is from an IDOT project or not. Nonetheless, inspecting every load at “dedicated” project-specific fill sites for which the IDOT Specifications exemption is claimed will add to the cost of disposing of material from IDOT (and other) projects and will increase the costs of projects undertaken by IDOT and other Departments.

### **Documentation**

Even if the standard of contamination used in Section 669 of the IDOT Specifications is used to determine whether “IDOT material” is CCDD, the regulations still do not clearly delineate the responsibilities of the owner of the property where the material is used as fill. Is it the responsibility of the owner to determine whether a load from an IDOT project has been properly screened at the job-site? Is it the responsibility of the owner to document the areas of the fill site that are used for IDOT CCDD, to document the specific IDOT projects from which fill areas were generated, or to keep IDOT CCDD separate from areas that received CCDD from other projects? We recommend that the proposed regulations be modified to add a requirement that a generator who claims the IDOT Specification exemption provide the fill site operator with documentation sufficient to verify the eligibility of each load for the exemption.

### **Elevations**

The standard used to determine “contaminated” is not the only area in which there is a difference between the IDOT Specifications and the proposed regulations. Under the proposed regulations (and under Section 3.160 of the Act), if an operator accepts CCDD, but the material is placed at an elevation that is higher than the elevation of the area immediately adjacent to the fill area, the material is a “waste” unless it is stockpiled for re-use. Under the IDOT Specifications, however, material disposed of off-site must be placed at an elevation no higher than the elevation of the *adjacent roadway* (emphasis added) and not create an unsightly or objectionable appearance or detract from the natural topographic features. So, material from an IDOT project cannot be placed at an elevation equal to the adjacent fill area if that area is higher than the adjacent roadway, or it will not be in compliance with the IDOT Specifications and will not be covered by the exemption in 1100.101(b)(3).

### **Departments Covered**

The Board Note to Section 1100.101(b)(3) refers to the definition of “Department” in the IDOT Specifications. Under Section 101.14 of the IDOT Specifications (and under Section 101.44), the term “Department” refers to IDOT, a county, a city, a village, or a town. The Board Note, however, includes “townships,” which are not covered by the definition of Department in the IDOT Specifications.

We do not recommend that the exemption provided for in Section 1100.101(b)(3) be inapplicable to townships; we recommend that the exemption be broadened to cover other governmental entities as well. Entities such as the Toll Highway Authority, school districts, sanitary districts, the Capital Development Board, local building commissions, and other similar

entities should be able to rely on the same exemption if their contract incorporates the same requirements as the IDOT Specifications. Similarly, counties and municipalities engaged in projects which do not involve highway construction should be able to rely on this exemption if they incorporate the language of the IDOT Specifications in their contracts. Because this interpretation would only apply to excavations other than current or former quarries, it would not dramatically expand the availability of the exemption.

I believe that the Board has the discretion to include other governmental entities under the IDOT Specifications exemption. First, the statutory authority for the exemption is worded in terms of the "use" of the material as fill, not in terms of the identity of the government entity conducting the activity. Second, the proposed regulations already expand the exemption beyond the language of PA 94-272. Under the Act, the IDOT Specifications exemption applies to the requirement that a facility obtain Interim Authorization and, after September 2006, a permit from the Agency. The exemption mandated by PA 94-272 does not apply to the statutory load checking requirements that apply prior to September, and there is no direction in the Act to exempt IDOT CCDD used as fill in an excavation other than a current or former quarry or mine from the load checking requirements and other operational requirements. The proposal in the regulations to exempt IDOT CCDD from all of Part 1100 suggests that the Board has some discretion to make the exemption available on a broader basis than that specified in the Act.

Respectfully submitted,

Rockford Sand and Gravel, a division  
of Rockford Blacktop Construction Co.

By: \_\_\_\_\_

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