

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )

CLEAN CONSTRUCTION OR DEMOLITION )  
DEBRIS FILL OPERATIONS )  
(35 ILL. ADM. CODE PART 1100) )

R06-19  
(Rulemaking -Land)

RECEIVED  
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JUN 05 2006

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

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ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
CLEAN CONSTRUCTION OR DEMOLITION )  
DEBRIS FILL OPERATIONS UNDER P.A. )  
94-272 (35 ILL. ADM. CODE PART 1100) )  
)

R06-19  
Rulemaking

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Pollution Control Board

**COMMENTS OF THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and submits the following comments on the First Notice Proposal dated April 6, 2006 and as published in the Illinois Register on April 21, 2006 and on the comments of Rockford Sand and Gravel submitted in this matter on April 21, 2006.

**Comments on Board's First Notice Proposal**

The Illinois EPA supports the rules proposed by the Illinois Pollution Control Board ("Board") in its First Notice Proposal dated April 6, 2006 ("Board's Order") and requests that the Board proceed with adopting the rules. However, the Illinois EPA would like to request some non-substantive changes to the rules and to indicate some discrepancies between the Board Order and the published version in the Illinois Register. Since the Hearing Officer indicated that the Board Order language is the correct language, the Illinois EPA will simply indicate whether it prefers the language of the Board Order or the Illinois Register.

1. On page 10 of the Board's Order, in the table of contents, the title of Section 1100.307 reads "Proof of Property Ownership and Certification". The title of Section 1100.307 as published in the Illinois Register reads "Proof of Property Ownership and Certifications". The

Illinois EPA would request that “Certifications” be plural as has been published in the Illinois Register because more than one certification is required and therefore the plural form is more appropriate. Additionally, the title at Section 1100.307, both as published in the Board’s Order and the Illinois Register, contains the plural form, “Certifications”.

2. On page 11 of the Board’s Order, Section 1100.101(a) reads, “This Part applies to all CCDD fill operations that are required to be permitted . . .” and as published in the Illinois Register it reads, “This Part applies to all clear [sic] construction or demolition [sic] debris (CCDD) fill operations that are required to be permitted . . .”. The Illinois EPA requests that the Board style the paragraph introduction to 1100.101(a) as it has been published in the Illinois Register, apart from the spelling errors, because it is consistent with other regulations that establish the full name of the acronym in its first appearance in the text, even when the acronym is listed in the definition section.

3. On page 13 of the Board’s Order, in the last paragraph of the definition of CCDD, the Board has copied the statutory definition exactly stating within (ii) that, “*it is used in accordance with item (i) within 30 days . . .*”. As published in the Illinois Register the statutory language within (ii) has been changed to read, “*it is used in accordance with the first identical paragraph immediately above within 30 days . . .*”. The Illinois EPA requests that the statutory language be stated as in the Board Order because the Illinois EPA finds the language “item (i)” less confusing and more accurate than the language “the first identical paragraph immediately above”.

4. On page 14 of the Board’s Order, the Illinois EPA suggests that the definition of “owner” and “operator” be italicized to indicate statutory language. Public Act 94-725 effective June 1, 2006 amended Section 22.51 of the Illinois Environmental Protection Act [415 ILCS

5/22.51] to include the definition of “owner” and “operator” for purposes of a clean construction and demolition debris fill operation.

5. On page 15 of the Board’s Order, Section 1100.201(b) reads, “CCDD fill operations must not accept waste for use as fill.” As published in the Illinois Register, this Section goes on to include three more sentences to clarify that uncontaminated soil and other non-wastes may be accepted. The Illinois EPA requests that the language of Section 1100.201(b) be stated as in the Board’s Order because the additional sentences are unnecessary and confusing.

6. On page 26 of the Board’s Order, Section 1100.306(h) reads, “. . . operator will comply with Sections 1100.204(c) and (e). . .”, and in the Illinois Register it reads, “. . . operator will comply with Section 1100.204(c) and (e) . . .”. The Illinois EPA requests that the plural form of “Sections” be used because more than one section is referenced and the plural form is therefore appropriate.

7. On page 29 of the Board’s Order, the opening paragraph of Section 1100.405 is italicized to show statutory language and in the Illinois Register this opening paragraph is not italicized. The Illinois EPA would request that the opening paragraph be italicized as in the Board’s Order to reflect the fact that this paragraph is statutory language from Section 39 of the Illinois Environmental Protection Act.

8. On page 30 of the Board’s Order, Section 1100.408(c) contains a reference to the Illinois Environmental Protection Act and styles the reference as “415 ILCS 5/30”. In the Illinois Register this reference is styled as “415 ILCS 5/Title VIII”. The Illinois EPA would request that the reference be styled as in the Illinois Register because the reference to Title VIII is more appropriate.

9. On page 30 of the Board's Order, Section 1100.410(b)(2) states, "Modifications initiated by the Agency must not become effective until after 45 days of receipt by the owner . . ." As published in the Illinois Register, it states, "Modifications initiated by the Agency will not become effective until 45 days after receipt by the owner . . ." The Illinois EPA requests that the language be styled as it was published in the Illinois Register because this language more accurately conveys the meaning of the sentence.

10. On page 31 of the Board's Order, at 1100.411(b) the Illinois EPA requests that the references to the Agency and the Board be capitalized as they were in the published version in the Illinois Register.

11. On page 31 of the Board's Order, at 1100.412(a) the Illinois EPA requests that there be a comma after "received" as was published in the Illinois Register. Also, at 1100.412(b)(1)(A) the Illinois EPA requests that the third comma in the sentence be after the word "to" so that it reads, ". . . closure of the facility, including, but not limited to, plans or diagrams . . ."

12. On page 32 of the Board's Order the language of Section 1100.412(c)(3) is different than as published in Illinois Register. The Illinois EPA requests that the language be styled as it was published in the Illinois Register because the sentence is easier to read.

#### Comments on Rockford Sand and Gravel Comments

Rockford Sand and Gravel ("RSG"), individually and through the Illinois Association of Aggregate Producers ("IAAP"), is one of the parties the Illinois EPA worked with in developing the proposed rules for Part 1100. The Illinois EPA appreciates the time and effort that Rockford Sand and Gravel and others have put into the development of Part 1100. They provided a great



deal of feedback to the Illinois EPA, and many of their comments and suggestions have been incorporated into the rules proposed by the Board. However, the latest comments by Rockford Sand and Gravel submitted in this proceeding as Public Comment #5 shows several misconceptions about the permitting exemption provided for persons using CCDD as fill material (in excavations other than quarries and mines) in accordance with IDOT specifications. The Illinois EPA would like to make several clarifications based on the comments submitted by Rockford Sand and Gravel. Please note that the absence of an Illinois EPA comment to a comment made by RSG should not be construed as Illinois EPA agreement with the RSG comment.

RSG notes in its comments that IDOT's Road and Bridge Construction Specifications contain two provisions dealing with how to determine whether material is considered contaminated for purposes of the IDOT Specifications; specifically Sections 107.19 and 669. PC #5 at 1-2. RSG believes these two Sections of IDOT's Specifications should be used to determine whether material is considered contaminated for the purposes of utilizing the statutory exemption provided for CCDD that is used as fill in accordance with IDOT Specifications at an excavation that is not a quarry or a mine. PC #5 at 2.

Pursuant to Section 3.160(b) of the Act, CCDD is by definition uncontaminated material. Since Part 1100 only applies to the use of CCDD (i.e., uncontaminated material), the determination of uncontaminated versus contaminated is made prior to the applicability of Part 1100. Therefore Section 669 and Section 107.19 of the IDOT Specifications are not applicable in Part 1100 as suggested in RSG comments. The Illinois EPA believes that the determination of whether material is considered contaminated for the purposes of Section 3.160(b) of the Act, as

well as for the purposes of Part 1100, should continue to be determined under the Act and not under IDOT Road and Bridge Construction Specifications.

RSG suggests in its comments that the issue of whether material is CCDD or waste is determined by whether the material is contaminated or uncontaminated, which in turn would impact how and where the material can be disposed of. See, e.g., PC #5 at 1 (“whether surplus material is CCDD or is a waste; i.e., whether the material is contaminated or not”) and 2 (“whether excess soil or other material from an IDOT project is CCDD (‘uncontaminated’) or a waste?”). This analysis is improper. It is the use of the CCDD that determines whether it is considered a waste. As noted above, CCDD is by definition uncontaminated material. However, CCDD by definition is also a waste except under the certain situations listed at Sections 3.160(b)(i)-(iv) of the Act. See 415 ILCS 5/3.160. Part 1100 is regulating one of the activities in which CCDD is not considered a waste, specifically Section 3.160(b)(i) of the Act. CCDD that is not used in accordance with Sections 3.160(b)(i)-(iv) of the Act is by definition waste and must be appropriately managed. This is true regardless of whether the CCDD is considered contaminated or uncontaminated under IDOT Specifications.

A large part of RSG’s comments are focused on Part 1100’s impact on IDOT contractors. Please note that Part 1100 applies only to the owners and operators of CCDD fill operations. The owners and operators are the persons that must comply with the Part 1100 or meet the exemption for the use of CCDD in accordance with IDOT Specifications. If an IDOT contractor wants to ensure that the CCDD it hauls from an IDOT project can be accepted at a CCDD fill operation the contractor should not worry about whether the CCDD is or is not considered contaminated material under IDOT’s Specifications. Rather, the contractor should consider whether the CCDD can pass the fill operation’s screening process and therefore be accepted by

the facility. Likewise, if an IDOT contractor wants to ensure the CCDD it hauls from an IDOT project can be accepted at a facility meeting the exemption for facilities using CCDD in accordance with IDOT Specifications, it should ensure that the CCDD it hauls meets the facility owner's or operator's requirements. In both cases it is the owner or operator of the CCDD fill operation, not the contractor, which must ensure that only appropriate material is accepted for use as fill.

The Illinois EPA would also like to address the RSG comment at page three, the paragraph entitled, "Documentation". There is no need for separate documentation regarding IDOT material received at the fill operation as suggested by RSG. The requirements of Part 1100 are the same for all CCDD accepted a facility, regardless of its source.

The Illinois EPA would also like to address the RSG comment at page three, the paragraph entitled, "Elevations". RSG discusses IDOT Specifications applicable to material disposed of off-site. See PC # 5 at 3. Regardless of what IDOT Specifications allow, CCDD that is placed above the highest point immediately adjacent to the fill area prior to filling does not meet the criteria of Section 3.160(b)(i) of the Act and therefore is considered waste. Such CCDD must be appropriately managed in accordance with the Act's provisions and Board's rules applicable to waste. Please note that this does not prevent IDOT or any other entity from placing uncontaminated soil or other non-waste material above grade.

The Illinois EPA would also like to address the RSG comments under the paragraph entitled "Departments Covered". RSG would like the statutory exemption for using CCDD in accordance with IDOT Specifications to be available to additional government entities. The Illinois EPA would like to clarify that the IDOT Specifications applicable to the use of CCDD as fill can be found at Articles 107.22 and 202.03 of IDOT's Standard Specifications for Road and

Bridge Construction. Articles 107.22 and 202.03 refer to approval by an "Engineer". The capitalization of Engineer suggests that the term is not used generically but refers to a specific definition. The definition of Engineer is set forth in Article 101.16 of IDOT's Standard Specifications for Road and Bridge Construction and indicates that the Engineer can be only one of the following depending on whether the state, county, municipality, or IDOT is the awarding authority: the Director of IDOT, IDOT engineer, the County Superintendent of Highways, the county engineer, city engineer, or engineer employed by the municipality. Therefore, since approval of the Engineer is needed to be in compliance with IDOT Specifications, the population available to take advantage of the IDOT exemption is limited to IDOT, counties, municipalities, and townships.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Stephanie Flowers*

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STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON )

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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Illinois Pollution Control Board  
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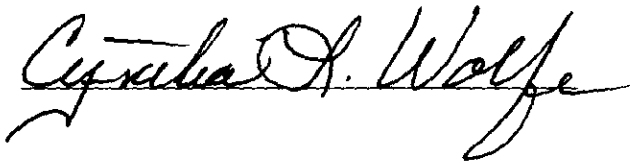
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**ATTACHED SERVICE LIST**

and mailing it by First Class Mail from Springfield, Illinois on June 2, 2006, with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME  
This 2<sup>nd</sup> day of June, 2006.

Brenda Boehner  
Notary Public





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