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STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the matter of: )  
)  
) **R06-19**  
**Clean Construction or Demolition** )  
**Debris Fill Operations Under P.A. 94-272** ) **(Rulemaking- Land)**  
**(35 IL Adm. Code 1100)/Docket R2006-19** )

*Pct 11*

**Notice of Filing**

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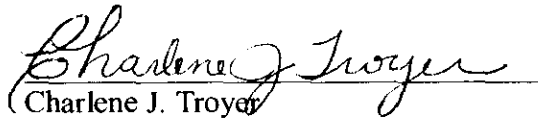
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Please take notice that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **LAND AND LAKES COMPANY'S RESPONSE TO COMMENTS FROM THE OFFICE OF THE ATTORNEY GENERAL**, a copy of which is herewith served upon you.

  
Charlene J. Troyer  
Land and Lakes Company  
123 N. Northwest HWY  
Park Ridge IL60068

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STATE OF ILLINOIS  
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**Public Comment**

Land and Lakes Company is submitting the following Public Comments in response to Public Comment No. 6, submitted by Vulcan Materials Inc. and Public Comment No. 9, submitted by the Office of the Attorney General of the State of Illinois.

**Comments in Response to Public Comment No. 6**

Land and Lakes Company supports Vulcan Materials Inc. proposal that the Illinois Environmental Protection Agency (IEPA) remand the proposed regulations and adequately define the term "uncontaminated". We believe this is needed to guide operators of clean fills and educate generators to properly identify and handle both their clean construction and demolition Debris (CCDD) and waste. A definition of the term "uncontaminated" and adherence to the definition would put to rest many of the concerns about soils in clean fill sites. However, the guidance sought by Vulcan and other clean fill operators might better be termed, "a maximum concentration level (MCL) in soil". This would be consistent with other regulations that allow specific maximum levels of naturally occurring and abundant environmental contaminant concentrations which are protective of human health and the environment (for example: Federal MCLs for Drinking Water).

**Comments in Response to Public Comment No. 9**

On June 8, 2006, the Office of the Attorney General (OAG) submitted numerous comments in regard to R06-19. Land and Lakes Company realizes the challenges that the OAG is having in prosecuting those who are taking advantage of "loopholes" in the Environmental Protection Act. However, some of the proposed solutions are not the answer to the problems at these sites. Modifications to the proposed regulations are needed; however, these changes should focus on defining uncontaminated and installing additional reasonable safeguards to prevent contaminated materials from entering the receiving sites.

A summary of the comments from OAG are written in bold below followed by rebuttal comments from Land and Lakes Company. Please note, omission of any direct comment does not confirm or deny Land and Lakes Company's support of the proposal or comment from OAG.

**Comment No. 1      Scope of the load Checking Program**

**A.      The OAG office recommends the use of X-Ray Fluorescence in screening incoming loads.**

Land and Lakes Company agrees that the proper use of X-Ray Fluorescence (XRF) in screening loads for heavy metals could be an added safeguard for protecting human health and the environment. However, the proposal from the OAG office does not suggest or request the IEPA to propose numeric values acceptable at clean fill sites. In other words, a definition of “uncontaminated soil” or “maximum contamination level for clean soil” needs to be established. The numeric limitations should be established with reference to natural levels present in the environment and the limitations of the equipment.

**B.      The OAG Office recommends training in the identification of ACM**

Land and Lakes Company agrees that site personnel should be trained in the identification of materials which might contain asbestos. However, we also believe that a generator certification process should be required by operators to avoid this material arriving at the site in the first place.

**C.      Calibration to Background Conditions**

The OAG office disagrees with the use of a background correction factor for PID and FID meters as proposed by the Illinois Association of Aggregate Producers (IAAP). One must take into account limitations of equipment when setting boundaries for that equipment. All metering devices, no matter how well calibrated, can vary slightly from baseline. . These instruments may pick up ink from a printer, perfume from a site clerk or freon from a window air conditioner. Once zeroed with filtered air, any reading seen on the meter when a sample is not present needs to be considered as background interference. All efforts should be made to identify and limit these interferences. However, loads being received while the interference is present should not be required to be rejected if they do not add to the background concentration. For example, if a PID is reading 2 mg/L with no truck load present and a truck load arrives on the scale and the meter remains at 2 mg/L, the load should pass the screening process. The instrument’s performance and variations from the zeroing process should be verified through a record keeping program.

## **Comment No. 2      Leachate Contingent Groundwater Sampling Requirements**

The OAG noted that there are no provisions for groundwater or leachate sampling for clean fill sites. Groundwater and leachate analysis were initially proposed by IEPA. This option was discussed in depth at meetings to develop the currently proposed regulations during the summer of 2005.

However, it was concluded during these meetings that if the sites were not accepting contaminated material, there is no threat to groundwater and thus no reason to implement a groundwater or leachate monitoring program.

The OAG presents a paper documenting regulations from neighboring states as justification for implementing a groundwater and leachate monitoring program. However, the references given appear to apply to waste disposal sites accepting materials that are outside the definition of clean construction and demolition debris contained in the Illinois Environmental Protection Act. The type of sites represented by the evidence presented by the OAG are currently defined in Illinois as Inert Landfills which are allowed to accept a plethora of demolition debris including wood, roofing material, cardboard, and wall board. All of these are excluded from the definition of **clean** construction and demolition debris in the Act. If a proposed clean fill site is accepting these materials, they are obviously in violation of the act and the IEPA and OAG should respond accordingly.

Requiring leachate and groundwater monitoring at unlined sites surrounded by bedrock is equivalent to “shutting the barn door after the horse got out”. In order to protect human health and the environment a proactive approach must be employed. We believe the OAG and IEPA should review the proposal to adopt the “two pronged” approach as presented by Vulcan Materials. The use of this methodology would ensure that generating sites are screened for their ability to negatively impact groundwater at the receiving site. In short, if a generating site is proven not to affect groundwater by meeting or exceeding the criteria for residential groundwater ingestion standards or is already being used as a residential property, there is no greater threat to human health and the environment when the material is deposited in a quarry. Subsequently, there would be no need to test leachate or groundwater at these sites.

## **Comment No. 3      “Other Materials”**

The IPCB asked the IEPA if there was any possibility that material other than CCDD would ever be disposed of in CCDD sites. The IEPA

correctly responded that the Act does not allow disposal of any waste into these facilities. Land and Lakes Company agrees the IPCB may not use the rulemaking to add “other materials”, however, the IPCB and IEPA should use this regulation to further define uncontaminated clean construction and demolition debris.

For example, if a site has undergone TACO (Tiered Approach to Corrective Action Objectives) remediation and is qualified for Residential Use by IEPA through a No Further Remediation (NFR) letter, are soils removed for construction or foundations considered “waste” or clean fill? It is illogical to state that soils removed from these areas are waste or special waste then let a contractor build residential units on the property with no institutional barriers or restrictions. Using the “two pronged system” proposed by Vulcan Materials, this type of generating site would be acceptable because it was shown through chemical testing not to be a threat to human health and the environment (it is safe for residential use). Alternatively, a site that received an NFR letter stating the site must be used for industrial purposes could not be accepted.

In addition, an official decision needs to be made and published concerning the condition of soils from the City of Chicago. It is common knowledge that much of the City of Chicago soils contain background PNA contamination that is higher than other areas of the state. However, precedence for using these soils for beneficial purposes has already been established by the IEPA’s use of the material from the Dan Ryan Construction site for cover material at the Lake Calumet Cluster Sites. This material has also been made available by the IEPA as fill material at other State Remediation Plan (SRP) sites in the city. Clean fill operators and generators should be able to use the same methodologies that allowed the IEPA to use this material for landfill cover and fill as an acceptance policy for material from other parts of the City.

**Comment No. 4 Signatories for Limited Liability Companies**

Land and Lakes Company has no comments for this proposal.

**Comment No. 5 Notification Requirements**

Land and Lakes Company has no comments for this proposal.

**Comment No. 6 Fill Elevation**

The OAG is opposed to allowing operators to use CCDD to extend the elevation of the fill beyond the existing contours. It is Land and Lakes Company opinion that the IEPA shares this view as it is expressly not allowed by the Act. However, IEPA has acknowledged that the Act does

not address the use of clean soils to increase the elevation of the site in the Board Note of proposed section 1100.204. Land and Lakes Company believes use of clean soils to increase the elevation of the site beyond the elevation of the surrounding property should be made on an individual basis depending on the projected use of the reclaimed quarry property. Many of these sites already have plans to be used as retail centers or warehouses. Some of these future construction projects may require the property be elevated to construct these buildings. Prohibiting the use of soils to accomplish this destroys the purpose of the quarry filling which is to reclaim the land for beneficial use. The permitting process should be used to establish the validity of each individual quarries need to have additional elevation when the site closes.

**Comment No. 7      Lack of Financial Assurance**

The OAG believes that operators should set aside funds to for remediation should the need arise for each site to undergo remediation. Land and Lakes Company believes that if the IEPA takes steps to ensure that uncontaminated materials are not introduced to these sites by defining the term “uncontaminated”, remediation will never be required. The sites will remain clean.

It is not in the best interest of owners or operators to accept contaminated materials at these sites. The endeavors of the quarry owners to fill the quarries are based on beneficial reuse of the land. To limit end use of the property or render it useless is not in the best interest if the owners or operators. Therefore, it stands to reason, that owners and operators will do everything within their power to avoid accepting contaminated material into their sites.

Land and Lakes Company opposes the inclusion of a requirement for Financial Assurance. The requirement is unnecessary and redundant for quarry fill operations whose mining permits already require a financial assurance fund to insure the reclamation plan for the quarry is completed (62 Illinois Administrative Code 1800). To require a second fund is redundant.

**Comment No. 8      Items Prohibited From Inclusion in CCDD**

The OAG has proposed a list of items to be added to the regulations to expressly forbid acceptance of these materials at CCDD sites. All of the items on this list are clearly waste (hazardous, universal or special wastes) and are already banned by the Act. Land and Lakes Company supports the proposal of an exclusion list in the regulations. However, the list should include types of remediation sites and potential spill areas that could be contaminated rather than materials that are obviously wastes. These would include properties whose historic use would render the

property contaminated and subject to remediation. Excluded sites could consist of:

1. Properties which are limited to industrial or commercial uses after remediation;
2. Properties that are listed in the Leaking Underground Storage Tank Program or SRP program and not classified for Residential Use through a NFR letter;
3. Areas with in a specific geographic location i.e. Downtown Chicago;
4. Areas within close proximity to an above ground or underground storage tank;
5. Properties within close proximity to dry cleaning operations, gas stations or known generators of hazardous waste.

**Comment No. 9      Additional Certification Requirements**

The OAG suggests that generators of bulk materials provide a certification to the IEPA stating that the materials meet the definition of the Act. Land and Lakes Company supports this proposal. However, a certification procedure is meaningless if the generator does not have the ability to recognize his or her site as clean. Currently, all individuals that bring materials into our site are required to certify that the materials meet the definition of clean construction and demolition debris. In addition the generator must answer a series of questions to indicate possible contamination. Land and Lakes Company then searches the addresses within two databases available on line through US EPA and IEPA prior to approval for disposal at the clean fill. Land and Lakes Company processes approximately 300 of these certifications a year. Often, data indicating the site has a history of a leaking underground storage tank or was part of a State Remediation Plan is disclosed through this search, not the certification process.

It is our experience that most generators and hauling companies have very limited knowledge in regard to what is clean and what is contaminated. TACO regulations and No Further Remediation (NFR) Letters further complicate this determination. Many generators, haulers, and consultants have the mistaken idea that a site that obtains a NFR letter is “clean” because it requires “no further remediation”.



This research requires a substantial amount of time to review the databases in addition to managing the records for three years. Therefore, Land and Lakes Company disagrees that there would be no cost associated with this activity.

It is unclear whether or not the OAG intends IEPA to receive these certifications or if operating sites will receive them and keep them on file for inspection. It is also unclear whether or not the certifications will be reviewed for completeness and accuracy as well as confirming the material in question is clean construction or demolition debris. Additional staff will be required for either scenario.

In order for a certification program like this to work, the IEPA should provide a detailed definition of "uncontaminated" or a "maximum contamination level for soils" and a list of the type of sites that should be prohibited from disposing of material in clean fills. In addition, the general public, generators and consultants need to be further educated on the definition of clean fill. The certifications cannot merely be an un-reviewed form filed away somewhere. The content of the proposed certification should question the origins of the material and the history of the site as well as guide the generator to an accurate determination of uncontaminated clean fill. In addition, a mechanism to provide evidence that the site is clean needs to be developed.

### **Recommendations**

An enforceable and adequate means of qualifying clean fill generating sites needs to be developed. Vulcan Materials Inc. has proposed the adoption of a "two pronged" system similar to the one used by the Commonwealth of Pennsylvania. Land and Lakes Company supports this approach. Our recommended for the "two pronged" or, our preferred terminology, "two-tier" system is summarized below:

#### **Tier I Residential Sources, Small Generators and Non-Soil CCDD**

1. Residential properties and properties that have no history of an environmental release should be confirmed as such through mapping and database searches prior to being accepted as clean fill (due diligence). A responsible party, either the hauler or the generator, will complete a certification form.
2. Due to their inert nature materials such as concrete, used asphalt and rock will be accepted as CCDD when not mixed with soil, chemically treated, or painted. A responsible party, either the hauler or the generator, will complete a certification form.

## **Tier II            Bulk Generators and Former Remediation Sites**

1. Sites generating soil or mixed CCDD, which have experienced a spill or are in close proximity to a spill site, would be required to have analytical testing performed. All non-residential areas of the City of Chicago fall into this category.
2. The analysis should include a reasonable list of common potential contaminants. The results should be compared to a prescribed list of standards that are protective of human health and the environment. The most obvious data set are current TACO Residential Standards.

*Note: If the use of TACO residential remediation standards is not considered safe for use at all sites, alternative standards could be easily developed based on the analytical list coupled with lower concentration thresholds for these parameters proposed. Alternatively, IEPA could adopt the parameters and concentrations utilized by Pennsylvania (Residential Statewide Health Standards referred to in the Vulcan submittal as Tables FP-1a and 1b).*

3. Soils whose analytical results are less than the standards could be accepted as clean fill. Materials whose results exceed the standards would be rejected as clean fill.
4. A responsible party, either the hauler or the generator, will complete a certification form.

## Conclusions

The OAG has presented many comments concerning the proposed regulation of clean fill sites. However, it is more protective of human health and the environment to promote and enforce regulations aimed at preventing contaminated materials from entering the facilities. This is the philosophy of many owners and operators of clean fill sites. It should be noted that the majority of these sites have and will continue to operate above the compliance level currently required by Public Act 094-0725.

Using a tiered or two-pronged system to classify generating sites as clean fill will assist in preventing contaminated materials entering these sites. In addition, this system would increase involvement on the part of generators to insure they are properly disposing excavated materials.

Sincerely

  
Charlene J. Troyer  
Environmental Compliance Manager  
Land and Lakes Company

## Certificate of Service

The undersigned states that a true and correct copy of the foregoing PUBLIC COMMENT, was served on the individuals listed on the Board's Notice List as reflected on the Board's website on June 28, 2006, below by mailing the same via the United States Postal Service, Park Ridge Illinois on June 28, 2006.

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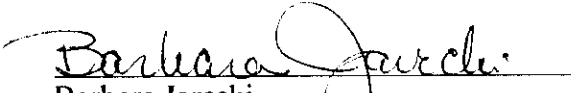
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