

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN) R12-009
CONSTRUCTION OR DEMOLITION) (Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)
PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code 1100)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by Waste Management of Illinois, Inc., a copy of which is herewith served upon you.

Dated: September 15, 2011

Respectfully submitted,

**WASTE MANAGEMENT OF
ILLINOIS, INC.**

By: Michelle A. Gale
Michelle A. Gale
Waste Management
720 East Butterfield Road
Lombard, Illinois 60148
(630) 572-8800

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**PRE-FILED QUESTIONS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
SUBMITTED BY WASTE MANAGEMENT OF ILLINOIS, INC.**

Waste Management of Illinois, Inc. (“Waste Management”) by and through its counsel, Michelle Gale, hereby files its questions of the Illinois Environmental Protection Agency (“IEPA”) in this matter, as required by the Hearing Officer Order issued on August 15, 2011.

As a preliminary comment, Waste Management is of the view that the IEPA has done a commendable job drafting proposed rules pursuant to Public Act 96-1416. Waste Management has submitted the below questions and will further participate in this rulemaking because it believes that modest, but important, changes to the proposed rules will further protect public health, safety and the environment.

1. Given the IEPA’s admissions in its Statement of Reasons that it “cannot be sure that the front-end screening process will keep 100% of contamination out of the fill operations . . .” and that “currently permitted CCDD fill operations shows that both public and private wells are found in close proximity to CCDD fill operations . . .”, why is it appropriate that all of the requirements set forth in the IEPA’s proposed rules for uncontaminated soil fill operations are self-implementing, without any review and approval by the IEPA?

2. To the extent the IEPA lacks the resources to review and approve a permit application submitted by uncontaminated soil fill operations, isn’t it appropriate for the owner/operator to be required to submit its application with an application fee that would cover

the IEPA's costs and expenses, including the costs of using a third party engineering firm to review applications, if necessary?

3. There have been a number of enforcement actions taken against CCDD operators who have accepted solid waste, including *People v. Stark Excavating, Inc.*, Case No. PCB 09-65, and *People v. 87th and Greenwood, LLC*, Case No. PCB 10-71, which evidence the fact that pre-screening procedures often do not prevent non-conforming waste from being disposed of in these facilities. What is the IEPA's inspection plan with respect to CCDD fill operations and uncontaminated soil fill operations?

4. In the event a CCDD fill operation or uncontaminated soil fill operation takes waste materials, what is the required remediation action?

5. In the event a CCDD fill operation or uncontaminated soil fill operation takes waste materials, why isn't the corrective action subject to review and approval by the EPA?

6. Given the acknowledged importance by the IEPA of groundwater monitoring and the IEPA's initial rejection of most proposed groundwater monitoring plans submitted as part of landfill development permit applications, shouldn't the groundwater monitoring plans submitted under these rules be reviewed and approved by the IEPA?

7. Given the acknowledgement in Mr. Nightingale's Pre-Filed Testimony on page 24 of 41 that these fill operations are placing material directly in contact with groundwater, shouldn't the groundwater monitoring plan be subject to careful review and approval by the IEPA?

8. Why was the post-closure groundwater monitoring limited to as short a time as one year (or less, with IEPA approval under Section 1100.209)?

9. Is the IEPA confident that any contamination as a result of the acceptance of contaminated soil will be identified through the groundwater monitoring system within one year? If so, on what basis does it base its confidence?

10. Can the IEPA confirm that a generator, transporter and disposer of any hazardous materials under the proposed rules will not be excused from liability under RCRA?

11. What is the "statutory exception" for background referenced on page 6 of Leslie Morrow's Pre-Filed Testimony?

Respectfully submitted,



Michelle Gale
Attorney for Waste Management of Illinois, Inc.

Dated: September 15, 2011

PROOF OF SERVICE

I, Michelle A. Gale, certify that I have served the attached Notice of Filing and Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by Waste Management of Illinois, Inc., by U.S. Mail, first class postage prepaid, on September 15, 2011 to the following:

John Therriault, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, IL 60601	Marie Tipsord, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph St., Suite 11-500 Chicago, IL 60601
Matthew J. Dunn, Chief Environmental Enforcement Office of the Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602	Stephen Sylvester, Asst. Attorney General Environmental Enforcement Office of the Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602
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Michelle A. Gale