

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 16 2011

STATE OF ILLINOIS
Pollution Control Board

R12-9

(Rulemaking - Land)


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

ORIGINAL

NOTICE OF FILING

TO: SEE ATTACHED PROOF OF SERVICE

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Pre-Filed Questions of the Illinois Environmental Protection Agency submitted by the Illinois Association of Aggregate Producers and the Appearance of John Henriksen, copies of which are served upon you.

By: 
John Henriksen, Executive Director
Illinois Association of Aggregate Producers
1115 South Second Street
Springfield, IL 62704
217.241.1639

Date: September 15, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


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APPEARANCE

The undersigned hereby enters his appearance as attorney in the above-titled proceeding on behalf of the Illinois Association of Aggregate Producers.

By: 
John Henriksen, Executive Director
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PRE-FILED QUESTIONS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
SUBMITTED BY THE ILLINOIS ASSOCIATION OF AGGREGATE PRODUCERS

Questions for Stephen Nightingale:

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- Stephen Nightingale’s testimony, at pages 5 and 37, states that at a CCDD or uncontaminated soil operation where a cone of depression is maintained, a verification report and annual notifications must be submitted to the Agency. What are the requirements of this report and subsequent annual notifications?
- Stephen Nightingale’s testimony, at pages 6, 11 and 12, outlines the IEPA’s rationale for replacing the “commercial / industrial” standard in Section 100.103 with a new standard entitled “potentially impacted property.”
 - Please provide examples of properties the IEPA would not consider potentially impacted?
 - How does an owner or operator determine if a property is “potentially impacted”?
 - Would a property that has historically been agricultural be considered a potentially impacted property?
 - If “potentially impacted property” is not defined within the Illinois Environmental Protection Act, can it be added and enforced under the proposed Part 1100 rule in Title 35 of the Illinois Administrative Code?
- Section 1100.103 and pages 23-24 of Stephen Nightingale’s testimony mentions incidental amounts of rock, stone, sand, clay, and vegetation in uncontaminated soils. Is the IEPA interpretation that uncontaminated rock, stone, sand, and clay do not meet the definition of “uncontaminated soils”?
- Stephen Nightingale’s testimony, at page 26, states that CCDD and uncontaminated soil operations pose a threat to groundwater because they “are unlined allowing direct contact to groundwater”. However, naturally occurring low spots and other unregulated areas where fill is allowed to be placed do not have any IEPA oversight. Why is the concern for permitted or registered facilities greater than for unregistered facilities?

Questions for Stephen Nightingale:

- Stephen Nightingale’s testimony, at page 32, states that the IEPA chose, in proposed Section 1100.735, to require that monitoring be performed for all parameters which have a Class I groundwater standard in 35 Ill Adm. Code 620.410.
 - Are all of these parameters (including PCBs and radionuclides) required to be analyzed at all sites?
 - What data has the IEPA collected showing that these Class I parameters -- metals, radionuclides (such as radium-226, radium-228, tritium, and strontium-90), other inorganic parameters, volatile organic compounds, semi-volatile compounds, pesticides/herbicides and PCBs -- are found in CCDD fill?
 - What data has the IEPA collected that justifies monitoring for all parameters rather than for an “indicator list” based on potential contaminants of concern based on the fill material accepted at the facility?
 - Does IEPA know the estimated cost of analyzing for all of these parameters?
- **Referring to Section 1100.101 –**
 - Why is it acceptable, from an environmental protection standpoint, to use CCDD and uncontaminated soil as fill in a topographically low area without a permit if the topographically low area is not a former quarry, mine or other excavation (e.g., natural low area in a farm field)?
 - What steps are the IEPA taking to prevent these occurrences which violate other IEPA regulations?
- **Referring to Section 1100.101(b)(3) –**
 - Is there less environmental risk associated with CCDD and uncontaminated soil used as fill material in an excavation in accordance with IDOT specifications?
 - When using soil as fill per the IDOT exemption, does IDOT have to test the soil consistent with the new rules to demonstrate that the material is uncontaminated (to demonstrate that the material is truly CCDD or uncontaminated soil)?
 - Is IDOT material used as fill in a former quarry or mine required to be tested in accordance with the rules?

Questions for Leslie Morrow:

- Page 7 of Leslie Morrow’s testimony states that the IEPA “proposes a conservative approach of utilizing the lowest pH-dependent value from Appendix B, Table C for each ionizing organic constituent as the value to substitute for the pH-neutral, soil-to-groundwater value from Appendix B, Table A.”
 - Is this decision based upon the IEPA’s conclusion, stated on page 7 of Leslie Morrow’s testimony, that “pH conditions at fill operations are expected to be variable and unpredictable”?
 - What soil pH data has been gathered by the IEPA that supports the notion that pH conditions at these fill operations are expected to be variable and unpredictable?
 - Doesn’t monthly NPDES permit water discharge monitoring data on file with the IEPA, Bureau of Water, from these fill operations support the use of the pH-neutral, soil-to-groundwater value from Appendix B, Table A?
 - If the soil pH data actually gathered revealed that the soil at these facilities has neutral pH values, would the proposed maximum allowable concentrations (MAC) still use worst case pH values for ionizing compounds?
- **Referring to Section 1100.610 –**
 - There are acceptable ASTM averaging methods. Why does IEPA not allow for these methods, in Section 1100.610(d)?
 - The testing methods and procedures are currently not specified in the proposed rules. Does IEPA intend on issuing guidance on this or will this be left up to the discretion of the PE or PG?
 - What if parameter result is reported as “not detected” but the detection limit of analyses is above MAC (due to sample interference/dilution issues)?

Question for Douglas Clay:

- On page 2, Doug Clay mentions the use of “ecological receptor”. Will ecological receptors be taken into account when developing standards?

Questions for the Panel:

- In the July 6, 2006 opinion and order of the Board to add Part 1100, the following statement was made. “Because the People based their recommendations on other states’ regulations governing C&D rather than CCDD...the Board finds no basis for adding leachate testing, groundwater monitoring, or financial assurance requirements to the proposed rules.” What has changed that would constitute a need to implement groundwater monitoring at fill operations where load screening procedures are in place?
- With respect to soil removed from a site regulated under an Agency remediation program such as the Leaking Underground Storage Tank (LUST) Program or the Site Remediation Program (SRP), would there be any instance where the soil being removed (not as part of a cleanup or removal of contaminants) would not be analyzed? If the incident is closed and remediated, can the soils be certified without further analysis?
- There are significant inconsistencies with the certification process for LPC-662 and LPC-663 forms which result in some operators losing business for doing the right thing. For instance, if a LPC-662 form is completed and signed for a site known to have been used for commercial or industrial purposes, is the fill operation responsible for verifying whether or not the correct form has been completed? Is there any enforcement action that can be taken against the property owner in a case such as this?
- If a LPC-663 form is completed by a licensed professional engineer or geologist for a site where there is known contamination identified and present (based on analytical results) above the MAC for the soil, is the fill operation responsible for verifying whether or not the information is valid? Is there any enforcement action that IEPA will take against the licensed professional engineer or geologist in a case such as this?
- Page 26 of the IEPA Statement of Reasons provides that: “in the fill operation scenario, the relevant pH affecting constituent leachability is not the pH at the site where the soil was generated or the pH of the native soil in the vicinity of the fill operation...it is the pH of the soil being placed inside the fill area, which the IEPA believes will be variable and unpredictable. ...the IEPA proposes...the lowest pH-dependent values must be selected...to determine the MACs for those constituents”.
 - If the best indicator of potential groundwater contamination is through extraction analysis, to avoid confusion and misinterpretation, why doesn’t the IEPA remove the option to analyze soil using totals and comparing the data to the lowest pH-dependent value?
 - In addition, could the option to analyze results and compare against a multiplier of the soil component of the groundwater ingestion route value also be removed?

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Pollution Control BoardPROOF OF SERVICE

I, John Henriksen, certify that I have served the attached Pre-Filed Questions of the Illinois Environmental Protection Agency submitted by the Illinois Association of Aggregate Producers, the Appearance of John Henriksen and Notice of Filing by FedEx, overnight delivery, on September 15, 2011, to the following:

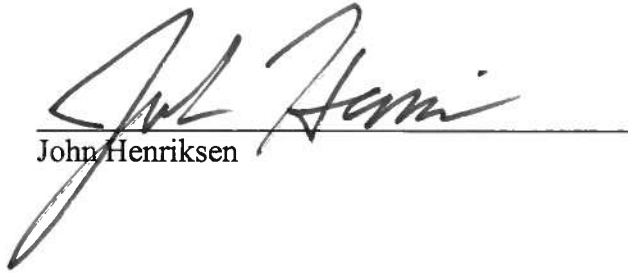
John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500 Chicago, IL 60601;

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and by first class mail, postage prepaid, on September 15, 2011, to the following:

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John Henriksen