

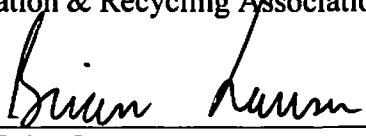
**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
PROPOSED AMENDMENTS TO CLEAN ) R 2012-009  
CONSTRUCTION OR DEMOLITION ) (Rulemaking – Land)  
DEBRIS (CCDD) FILL OPERATIONS: )  
PROPOSED AMENDMENTS TO 35 III. )  
Adm. Code 1100 )

**NOTICE OF FILING**

To: SEE ATTACHED SERVICE LIST

Please take notice that on the 7<sup>th</sup> day of October 2011, you were served with copies of the Pre-Filed Testimony of Gregory W. Wilcox on behalf of the Land Reclamation & Recycling Association.

By:   
\_\_\_\_\_  
Brian Lansu  
Land Reclamation & Recycling Association  
2250 Southwind Blvd.  
Bartlett, IL 60103

Date: October 7, 2011

**PROOF OF SERVICE**

I do hereby certify that a copy of the Pre-Filed Testimony of Gregory W. Wilcox on behalf of the Land Reclamation & Recycling Association were submitted via facsimile, email and FedEx overnight delivery on October 7, 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

and by first class mail, postage prepaid, on October 7, 2011, to the following:

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A handwritten signature in cursive script that reads "Brian Lansu". The signature is written in black ink and is positioned above a solid horizontal line.

Brian Lansu

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
IN THE MATTER OF: PROPOSED AMENDMENTS TO CLEAN CONSTRUCTION  
OR DEMOLITION DEBRIS (CCDD) FILL OPERATIONS  
PROPOSED AMENDMENTS TO 35 IAC 1100 R2012-009  
(Rulemaking – Land)**

On behalf of the Land Reclamation & Recycling Association, an interested party in this matter, I, Gregory Wilcox, P.E., submit this Pre-Filed Testimony, as outlined in the below, with regard to the proposed amendments to 35 Ill. Adm. Code Part 1100, for consideration and inclusion in the final rules, as applicable.

**QUALIFICATIONS TO PROVIDE TESTIMONY**

Gregory W. Wilcox, P.E.  
Owner  
Winston Engineering, LLC

Executive Director  
Land Reclamation & Recycling Association

**Education**

Purdue University - Bachelor of Science, Civil Engineering:  
Major in Environmental and Hydraulic Engineering  
Minor in Economics

**Professional Registrations - Illinois and Indiana**

**Selected Engineering, and Administrative Experience**

- Assisted Illinois Environmental Protection Agency (IEPA) and managed groundwater remediation for contaminated soil projects at Judith & Riviera Courts, Lockformer, and Ellsworth Industrial Park;
- Executive Director of the Land Reclamation & Recycling Association (LRRRA);
- Lead negotiator on LRRRA team with IEPA for the development of legislation and rules with regard to CCDD fill operations;
- Obtained first two CCDD permits issued in Illinois by the IEPA;
- Retained by several numerous CCDD fill operations to review procedures of operation and monitor environmental conditions;
- Retained by numerous contractors and CCDD fill operators to perform due diligence and execute form 663 with regard to the disposal of CCDD material.

**Professional Affiliations**

American Society of Civil Engineers

American Water Works Association

Water Environment Federation

Land Reclamation & Recycling Association (Executive Director)

**Awards**

Government Civil Engineer of the Year 1996, ASCE - Illinois Section

Water Environment Federation George Bradley Gascoigne Medal - 1996

Purdue University Honorary Chi Epsilon Award

**COMMENTS/TESTIMONY REGARDING PROPOSED AMENDMENTS TO CLEAN CONSTRUCTION OR DEMOLITION DEBRIS FILL OPERATIONS**

**Section 1100.605 – Maximum Allowable Concentrations for Chemical Constituents in Uncontaminated Soils**

The intent of the Illinois legislature in enacting Public Act 96-1416 (the “Act”) was to protect groundwater resources and the safety of human health within the state. The Act specifically states under section 5/3.160 (c)(1) that, in adopting rules for the maximum concentrations of contaminants that may be present in uncontaminated soils, the exposure to carcinogens shall not exceed an upper-bound limit of 1 in 1,000,000.

At the hearing before the Pollution Control Board on September 26, 2011 in Springfield, Leslie Morrow provided testimony regarding the proposed MAC tables recommended by the Illinois Environmental Protection Agency (“IEPA”). When asked if the IEPA developed standards for compounds that are more conservative than the 1 in 1,000,000 risk for contamination of groundwater, Mr. Morrow stated “to our knowledge, no MAC values for carcinogenic constituents are more protective than one in a million.” When asked if the IEPA considered what pathways are involved in calculating the 1 in 1,000,000 risk, Mr. Morrow testified that the agency considered five (5) TACO receptor pathways: the lowest objective from the TACO residential inhalation/ ingestion; construction worker inhalation/ ingestion; and the groundwater ingestion pathway.

Finally, when asked if the IEPA considered the length of time of exposure to carcinogens in a quarry or mine used in the MAC determination, Mr. Morrow answered that they did not. A review of the IEPA's submission to the Board indicates that the agency also used the standard TACO practice of allowing background table values to be used for certain PNA compounds in lieu of the residential values listed. (See Transcript of Proceeding before the Illinois Pollution Control Board on September 26, 2011 at pages 80-81).

LRRA submits that these standards exceed the requirements as prescribed in Public Act 96-1416 as these MAC values greatly exceed the 1 in 1,000,000 cancer risk. The TACO standards for inhalation and ingestion for residential properties are calculated based on: (1) the concentration of the compound; (2) the exposure time by the user of the property; and (3) the pathway that could exist. Exposure time to the compounds varies between residential, industrial and construction property, which is why the TACO values for inhalation and ingestion vary between these three property types. LRRA submits that the residential ingestion and inhalation pathways are inapplicable to quarries and mines as this soil is buried deep within the ground. LRRA further submits that the applicable pathways that should be utilized to meet the intent of the legislation are: (1) the Inhalation and Ingestion pathway for construction workers; and (2) groundwater.

The IEPA has proposed MAC standards for Iron and Manganese which represent background concentrations for these compounds which are found only in certain areas of Illinois. LRRA submits that the proposed standards are arbitrary and do not represent a 1 in 1,000,000 risk to human health and the environment. LRRA further submits that these metals have water quality standards but no defined toxicity standard and should not be included in the MAC table until an actual toxicity standard is developed.

The IEPA has proposed using the lowest value listed in TACO Table C pH adjusted values for groundwater 1. In proposing this value, the agency is making an assumption that the pH of soil being disposed of will be either very acidic or very basic. LRRA submits that this conservative assumption is unnecessary and overly restrictive. Every professional engineer or geologist would require pH analysis of soil in order to determine the impact of metals on groundwater using the Totals Test Method. The soil pH is identified as part of the analysis that is submitted with a Form 663 and is verified by the owner of the CCDD operation. As an alternative to the pH value proposed by the IEPA, LRRA recommends that the MAC values for Inorganics listed in Section 742 Appendix B, Table G be as shown in that Table.

The IEPA has proposed using the inorganic Arsenic MAC value as shown in the Section 742 Appendix A, Table C background tables for certain areas of the state. LRRA submits this standard should be as listed in Section 742 Appendix B, Table C as this

represents the most stringent value to allow an upper bound lifetime risk of 1 in 1,000,000 for this carcinogen.

### **Sections 1100.103 and 1100.205 Definitions and Certification and Load Checking**

The Agency has proposed replacing the term “Industrial/ Commercial” which was used by the legislature in the Act with the term “Potentially Impacted Property (PIP)” for purposes of preparing IEPA Form 662. The agency stated in its pre-filed testimony to the Board that “the term industrial/commercial is closely identified with zoning designations and, as a result, has caused confusion among stakeholders.” At the September 26, 2011 hearing before the Board, the agency stated that the term “Industrial/Commercial” may be used as part the decision making process in determining if the property meets the definition of potentially impacted. (See Transcript of Proceeding before the Illinois Pollution Control Board on September 26, 2011 at pages 79-80).

LRRA submits that it was the intent of the legislature to clearly define a property as being potentially contaminated by using a term, “Industrial/Commercial”, that is commonly recognized throughout the state. We believe the legislature intended to exclude properties with low potential for contaminants from being subject to the expense of retaining a Professional Engineer or Geologist for review. LRRA members have not experienced the purported confusion over the term “Industrial/Commercial” as referenced by the IEPA. Permitted CCDD operations and clean fill only sites are still required to perform site screening which includes a review of the Environmental Data Base for the property and surrounding area and, if utilizing IEPA form 662, provide confirmation of the historical use of the property. LRRA believes that shifting the burden of making the judgment as to whether a property is “potentially impacted” to the site owner will create further confusion not eliminate any perceived existing confusion. Finally, LRRA submits that there is insufficient authority for the IEPA to advocate the removal of a term specifically adopted by the legislature. Therefore, LRRA submits that the proposed definition of “Potentially Impacted Property (PIP)” and its use in Section 1100.205 be omitted from the final rules.

### **Sections 1100.705-760**

The IEPA has proposed a groundwater monitoring program based on the premise that CCDD operations and clean soil only sites may, despite the screening safeguards currently in place, accept material that could negatively impact local groundwater. At the hearing before the Board on September 26, 2011, the agency acknowledged that the only data upon which it could rely in making its recommendation for groundwater monitoring was from a fill site in Lynwood, Illinois. Upon further questioning, the IEPA also acknowledged that this site accepted materials (general Construction Debris and other waste) that would not be acceptable at either CCDD operations or clean soil only sites

and that the acceptance of this additional material may have contributed to levels of contaminants shown in the data. (See Transcript of Proceeding before the Illinois Pollution Control Board on September 26, 2011 at pages 26-36).

LRRA submits that the IEPA's proposal for groundwater monitoring is not substantiated by data and is contrary to the Board's prior position on the issue.