


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO CLEAN)	R2012-009
CONSTRUCTION OR DEMOLITION)	(Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)	
PROPOSED AMENDMENTS TO 35 Ill.)	
Admin. Code 1100)	

NOTICE OF FILING

To: PLEASE SEE ATTACHED SERVICE LIST.

Please take notice that I have this day filed with the Office of the Clerk of the Illinois Pollution Control Board the Pre-First-Notice Comment of the City of Chicago, a copy of which is hereby served upon you.

By: 

Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

Dated: December 2, 2011

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PROPOSED AMENDMENTS TO CLEAN) R2012-009
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PRE-FIRST-NOTICE COMMENT OF THE CITY OF CHICAGO

Although the City of Chicago does not rely on groundwater, it recognizes that groundwater protection in Illinois is critical. The City appreciates that the Illinois Environmental Protection Agency has worked diligently to develop the proposed rules and that it strives to protect the environment, including groundwater, in accordance with the Act.

The proposed rules were developed, however, without reliance on relevant studies¹ or data from existing fill operations.² This is a cause for concern. The considerable, foreseeable costs of the proposed rules will be borne in large part by state and municipal taxpayers, as well as by private businesses. The rules should be tailored, therefore, to address genuine and foreseeable risks. The rules also should not create avoidable new problems that pose their own environmental harms. For example, the rules should not unnecessarily incentivize out-of-state disposal of clean material, especially in light of the fuel costs and emissions associated with same. They likewise should not incentivize landfilling material, if it can safely be deposited in a fill operation.

In order to investigate whether fill sites genuinely present a threat to groundwater, some rulemaking participants obtained and evaluated data from several locations. Their data suggest, at least preliminarily, that the proposed rules may be overly restrictive, not in the sense that groundwater protection is unnecessary, but rather, in the sense that the proposed rules may prevent fill operations from accepting material that poses no genuine risk to groundwater, in the first place.

¹ See Hearing Transcript (10/25/2011), p.173, ll.16-23.

² There is no basis to suspect that Lynwood is representative of fill operations.

The most prudent and effective way to tailor the rules to actual, as opposed to hypothetical, risks, would be to evaluate additional data from additional locations. If the data indicate that the proposed rules are necessary to protect groundwater and comply with the Act, then the proposed rules should be adopted. If not, then the proposed rules should be revised to prevent foreseeable, avoidable economic and environmental harms. If data confirm, for example, that the Agency's approach to pH for MACs is too conservative, then it may be advisable to use pH at each fill site as a basis for site-specific MACs.³

Respectfully submitted,



Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

Dated: December 2, 2011

³ Review of the language of 415 ILCS 5/3.160(c) reveals no limitation precluding site-specific standards.

PROOF OF SERVICE

I hereby certify that on this day, **December 2, 2011**, I have caused copies of the attached Pre-First Notice Comment of the City of Chicago to be served via **FedEx Overnight Delivery** to:

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

and by **first class mail, postage prepaid**, to:

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

Claire A. Manning
Brown, Hay & Stephens LLP
700 First Mercantile Bank Building
205 South Fifth St. PO Box 2459
Springfield, IL 62794-9276

Kimberly A. Geving, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Mark Wright, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Stephanie Flowers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO 19276
Springfield, IL 62794-9276

Dennis Wilt
Waste Management
720 East Butterfield Road
Lombard, IL 60148

Michele Gale
Waste Management
720 East Butterfield Road
Lombard, Il 60148

Mitchell Cohen, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Il 62702-1271

Steven Gobelman, Geologic/Waste
Assessment Specialist
Illinois Department of Transportation

Tiffany Chappell
City of Chicago, Mayor's Office of
Intergovernmental Affairs

2300 S. Dirksen Parkway
Springfield, IL 62794

121 N. LaSalle Street
City Hall, Room 406
Chicago, IL 60602

James Huff – Vice President
Huff & Huff, Inc.
915 Harger Road, Suite 330
Oak Brook, IL 60523

Greg Wilcox
Executive Director
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, Il 60103

Brian Lansu
Land Reclamation & Recycling
Association
2250 Southwind Blvd.
Bartlett, Il 60103

John Henriksen, Executive Director
Illinois Association of Aggregate Producers
1115 S. 2nd. Street
Springfield, Il 62704

James M. Morpew
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield
IL 62705

Dennis G. Walsh
Gregory T. Smith
20 North Wacker Drive
Suite 1660
Chicago
IL 60606-2903



Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

Dated: December 2, 2011