

**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 Ill.	)	
Adm. Code 1100	)	

**NOTICE OF FILING**

To: SEE ATTACHED SERVICE LIST

Please take notice that on the 18<sup>th</sup> day of April 2012, you were served with copies of the Comments to First Notice on behalf of the Land Reclamation & Recycling Association.

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

Date: April 18, 2012

**Comments on First Notice on behalf of LRRRA**

**Inhalation/Ingestion Standard and Restricted Fill**

In its comments to the Pollution Control Board (the "Board") dated March 5, 2012, LRRRA recommended that the Board grant the Illinois Environmental Protection Agency ("IEPA") the authority to develop standards and procedures whereby permitted CCDD sites can accept soil which meets inhalation and ingestion construction worker standards.

On March 14, the Mayor of the Village of Lyons, IL, Mr. Christopher Getty testified before the Board regarding a specific experience his community encountered that reflects the arbitrary nature of the application of a residential inhalation and ingestion standard toward CCDD fill sites in urban areas. Mayor Getty testified that during a park renovation project there was soil excavated by the Village which did not meet residential inhalation and ingestion standards. An environmental consultant for the Village determined through testing analysis that the soil which failed inhalation and ingestion standards posed no threat to local groundwater and proposed removing the unsuitable soil from the park site and disposing of it in the adjacent Reliable Materials Lyons quarry. This proposal was rejected by the IEPA. Rather, the IEPA allowed the Village to construct a berm on the park site using the unsuitable material and cap it with three (3) feet of clean soil. According to the IEPA, this "engineered barrier" was sufficient to make the material harmless to humans. The berm was literally constructed on the edge of the Lyons quarry site. Mayor Getty asked the Board to consider a more reasoned solution to these types of real problems that face municipalities in urban areas on a regular basis.

In his testimony before the Board on March 14, Dr. William Roy, Senior Geochemist at the Illinois State Geological Survey and a professor at the University of Illinois, expressed concern regarding the applicability of a residential inhalation and ingestion standard to quarries that accept soil in urban areas. Dr. Roy suggested that the Board consider creating a category of CCDD facilities in urban locations that are reflective of the types of soils found in those areas and/or a category of facilities that are allowed to accept material which reflects the prevalent groundwater standard for that area. *See Transcript of March 14, 2012 Hearing at pgs. 28 and 29.*

LRRRA submits that the testimony of Mayor Getty and Dr. Roy support the concept presented in its March 5, 2012 filing that the Board allow the IEPA the flexibility to create a new category of CCDD fill site that reflects the environmental conditions and types of soil inherent to the area in which it is located.

The IEPA has stated during this rulemaking process that it would have difficulty monitoring CCDD sites with different standards and that it prefers a "one size fits all" approach to CCDD disposal. As LRRRA has previously stated, the CCDD law and the proposed rules already include different standards for facilities that accept uncontaminated soil based on specific parameters. Specifically, the law allows for two different types of registered soil acceptance facilities – permitted CCDD and registered "soil only" sites. Further, the Board's proposed final rules

include different MAC standards for CCDD facilities based on their geographical location. Accordingly, the IEPA has been and will continue to be charged with the responsibility of enforcing different standards across the state based on facility type and location.

Below is draft language that LRRRA is recommending that the Board adopt which would provide greater flexibility in the disposal of urban soil in commercial and industrial areas while protecting local groundwater and maintaining the primary intent of the legislature to pose no threat to human health and safety and the environment. This proposed amendment would allow CCDD site operators to apply to the IEPA for a change from the typical inhalation and ingestion MAC standards to a construction worker standard. A groundwater 1 standard would also remain in effect for all soil disposed of at the facility. The application would include a site closure plan which would require the installation of a cap of clean soil, or some other engineered barrier as determined by the Agency, to remove the inhalation and ingestion pathway. In addition, the applicant would be required to record deed restrictions regarding the final use of the property. The specific deed restriction would be determined by the type of cap approved by the Agency and in accordance with the analysis used under the Site Remediation Program process. To further ensure that the site is properly closed in accordance with the accepted plan, the operator would be required to post a bond sufficient to cover all proposed closure costs.

Section 1100.605 Maximum Allowable Concentrations for Chemical Constituents in Uncontaminated Soils

*c) Construction worker Ingestion and Inhalation concentrations from Ill. Adm. Code 742. Appendix B, Table B may be used as the maximum allowable concentrations of containments in permitted CCDD sites provided that: (1) the Agency has approved a closure plan for the site which shall include an engineered barrier of materials that will sufficiently eliminate the Inhalation and Ingestion exposure pathway; (3) deed restrictions for final use, as approved by the Agency, are recorded in the office of the County Recorder of Deeds where the site is located; and (3) a bond is posted by the site owner or operator to ensure compliance with the approved closure plan.*

d) For chemicals not listed on 35 Ill. Adm. Code 742. Appendix B, Table A, B, or C, the values may be obtained from the Agency by making a request for chemical-specific values.

e) Other provisions of 35 Ill. Adm. Code 742 (e.g., institutional controls, engineered barriers, exposure route exclusions, site-specific evaluations, local area background calculations) may not be used to exclude or otherwise alter exposure routes or exposure route values for the purpose of determining the maximum allowable concentrations under this Part unless otherwise approved by the Agency.

**PROOF OF SERVICE**

I do hereby certify that a copy of the Comments to First Notice on behalf of the Land Reclamation & Recycling Association were tendered via email on April 18, 2012, 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 April 18, 2012, to the following:

Marie Tipsord, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

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 Box 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  
2300 S Dirksen Parkway  
Springfield, IL 62764  
Matthew J. Dunn, Chief

Tiffany Chappell  
City of Chicago, Mayor's Office of  
Intergovernmental Affairs  
121 N. LaSalle Street City Hall  
Room 406 Chicago, IL 60602  
James Huff – Vice President  
Huff & Huff, Inc

Greg Wilcox – Executive Director  
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

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

Brian Lansu