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Sent via email to
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Mr. Thomas Holbrook
Chairman, Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, IL 60601

Re: Illinois Pollution Control Board Rulemaking Case R12-9 (Land) for Clean Construction & Demolition Debris (CCDD) & Uncontaminated Soil Fill Operations

Dear Chairman Holbrook:

This letter is being submitted in response to the invitation for comments established by the Illinois Pollution Control Board at the request of the Joint Committee on Administrative Rules for Rulemaking Case R12-9 and scheduled to close on 12/01/12. At issue is the regulation of the dumping of Clean Construction and Demolition Debris, (herein CCDD) and uncontaminated soil into unlined quarries. The importance of these regulations cannot be underestimated. Hanging in the balance is the health, safety and welfare of citizens living in the vicinity of quarries. In Will County alone there are nearly 350,000 citizens (Pre-filed Testimony of Richard P. Cobb, at Attachment #1) who live within close proximity to CCDD sites. It is a travesty that those sites are currently allowed to accept CCDD without regulation.

In promulgating its Rules, the IPCB did not require the vital component of groundwater testing at CCDD and uncontaminated soil fill sites. In so doing, the IPCB essentially relied on three justifications: 1) "The record indicated that requiring groundwater monitoring would impose potentially sizeable costs that may have adverse impacts on the fill operation" OPINION AND ORDER OF THE BOARD R12-9 at p. 3; 2) "The record does not include evidence to demonstrate that CCDD or uncontaminated soil sites are a source of groundwater contamination." OPINION AND ORDER OF THE BOARD R12-9 at p.3; and 3) CCDD and uncontaminated soils are not classified as wastes. OPINION AND ORDER OF THE BOARD R12-9 at p.3.

However, there was testimony regarding the cost of groundwater monitoring, which is really incidental in comparison to the savings of dumping CCDD waste in an unlined quarry rather than

a landfill. Mr. John Hock, P.E. noted that the cost of sampling groundwater monitoring wells including the entire Class I list is a mere $2,996 per sample. Pre-filed Testimony of John Hock, P.E., at Attachment #2. As Mr. Liss from Waste Management pointed out, if a site has four monitoring wells and they are only required to test once a year the total cost of sampling is less than $12,000 per year. If the facility accepts 50,000 tons of soil per year the cost of monitoring is 16 cents per ton. Pre-filed Testimony of Kenneth Liss, at p.2 Mr. Metz, P.E. testified on behalf of City Water, Light and Power (CWLP) that, "Prior to passage of P.A. 96-1416, CWLP paid $100 to dispose of one tandem truckload (15 tons) of CCDD material at a local quarry. Under the interim rules in place after passage of P.A. 96-1416, CWLP believed its only option was to dispose of these materials in a landfill at a cost of $420 per tandem truckload." Pre-filed Testimony of Pat Metz, P.E at p.5. At 16 cents a ton groundwater monitoring would cost producers of waste an additional $2.40 per truckload, while they are saving $320 per truckload by being allowed to dump in unlined quarries. Clair A. Manning, a lobbyist for the Public Building commission of Chicago and former Chairman of the IPCB, inadvertently made our case for us. She testified that "For example, for the twenty currently planned PBC projects, PBC estimates that disposal at a permitted Subtitle D facility would cost approximately $20.6 million, while disposal at a CCDD facility would cost approximately $5.7 million." (Pre-filed testimony of Claire A. Manning at p. 49). With $15.1 million dollars in savings, one could hardly argue with a straight face that there aren't sufficient funds available to pay the meager groundwater testing fees.

Conversely, the cost of contamination is devastating. If discovered early, remediation of the contamination is possible. If not found early groundwater contamination could result in the complete loss of a groundwater source. Furthermore, there is the potential for catastrophic illness, and the loss of life that can never be remediated. Without groundwater monitoring, it is this tragic impact on human lives that will be our notice that the water has been contaminated. Human beings, in effect, will be relegated to the status of the canary in the mine. When one considers the possible impact on the health of Illinois residents the failure to provide for groundwater monitoring is completely unacceptable.

The second justification offered by the IPCB for not requiring groundwater monitoring is that the record lacks evidence that CCDD or uncontaminated soil sites are a source of groundwater contamination. While it may be true that there is no direct evidence of contamination it is also true that there was little evidence presented either way that actual contamination has or has not been caused by fill operations because data from these facilities is "virtually nonexistent." Pre-Filed Testimony of Mr. Cobb at pp. 12-13 (citing Testimony of Mr. Purseglove and Mr. Nightingale, Tr. 1 at 27, 41,52, 54) Furthermore, the Illinois Attorney General cited eleven (11) cases against owners/operators of facilities where regulations were not followed and non-CCDD waste was improperly dumped at CCDD sites. Pre-filed Testimony of Mr. Sylvester at pp. 26-28. As law enforcement, we know that for every violator caught hundreds escape detection. The specter of being caught by the groundwater testing will have a significant deterrent effect that will reduce the number of those willing to participate in the illegal dumping of contaminated waste.

Furthermore, actual evidence of contamination has never been a pre-requisite for implementing measures to protect groundwater. The mandate to protect the environment generally speaking is found at Article XI, Section 1 of the Illinois Constitution which states:

> The public policy of the Sate and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

In addition, the Illinois General Assembly has specifically addressed the importance of protecting groundwater through the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* as well as the Illinois Groundwater Protection Act 415 ILCS 55/1 *et seq.* At Sections 2(a) & (b) of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) the General Assembly specifically recognizes and acknowledges that waste is not always disposed of properly:

> (a)(vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;
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> (a)(vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for injury to public health and welfare and the environment.
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> (b) It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.

That Section 11 of the IEPA provides:

> Sec. 11. (a) The General Assembly finds:
> (1) that pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, depresses property values, and offends the senses;
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> ***(4) that it would be inappropriate and misleading for the State of Illinois to issue permits to contaminant sources subject to such federal law, as well as State law, which do not contain such terms and conditions as are required by federal law, or the issuance of which is contrary to federal law;

***(b) It is the purpose of this Title to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law; and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval to issue NPDES permits pursuant to the provisions of the Federal Water Pollution Control Act, as now or hereafter amended, and federal regulations pursuant thereto and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval of the State UIC program pursuant to the provisions of Part C of the Safe Drinking Water Act (P.L. 93-523), as amended, and federal regulations pursuant thereto.

Under the Groundwater Protection Act

Sec. 2. (a) The General Assembly finds that:

(i) a large portion of Illinois' citizens rely on groundwater for personal consumption, and industries use a significant amount of groundwater;

(ii) contamination of Illinois groundwater will adversely impact the health and welfare of its citizens and adversely impact the economic viability of the State;

(iii) contamination of Illinois' groundwater is occurring;

(iv) protection of groundwater is a necessity for future economic development in this State.

(b) Therefore, it is the policy of the State of Illinois to restore, protect, and enhance the groundwaters of the State, as a natural and public resource. The State recognizes the essential and pervasive role of groundwater in the social and economic well-being of the people of Illinois, and its vital importance to the general health, safety, and welfare. It is further recognized as consistent with this policy that the groundwater resources of the State be utilized for beneficial and legitimate purposes; **that waste and degradation of the resources be prevented;** and that the underground water resource be managed to allow for maximum benefit of the people of the State of Illinois. (Emphasis added.)

The legislation enacted by the Illinois General Assembly is clear. Groundwater is an essential resource the contamination of which must be prevented. By failing to require groundwater monitoring, the IPCB not only fails in its mission to prevent groundwater contamination, it also fails to provide the Illinois Environmental Protection Agency with the tools necessary to detect contamination early enough to prevent catastrophic damage and to establish the causation of the contamination.

Instead, the IPCB has opted to establish a structure of self-regulation based upon soil certification conducted prior to dumping. When as is the case here, there is a huge financial disincentive for generators of waste to detect and properly dispose of waste, contaminants will be improperly disposed. When that improper disposal is in an unlined quarry and directly on the natural aquifer there is nothing to prevent contamination and nothing to detect that contamination until the water migrates into a system that is the subject of mandatory monitoring such as a community or municipal well.

Recognizing the need for additional regulation, in 2010, the General Assembly amended Section 22.51 of the Environmental Protection Act. In the 2010 legislation the Illinois General Assembly required the Illinois EPA to propose and the IPCB to adopt regulations. Included in the mandate to adopt regulations was the requirement that:

> (f)(1) …The rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to, the following: requirements regarding testing and certification of soil used as fill material, surface water runoff, liners or other protective barriers, **monitoring** (including, but not limited to, groundwater monitoring), corrective action, recordkeeping, reporting, closure and post closure care, financial assurance, post-closure land use controls, location standards, and the modification of existing permits to conform to the requirements of this Act and Board rules…. (Emphasis added.)

Despite this clear message from the Illinois General Assembly, the Rules adopted by the IPCB assume that all testing procedures are perfect, that all operators and employees of sites are well-trained, that all owners/operators and users of CCDD sites have the best of intentions. This approach is dangerously naïve and places the citizens and the groundwater supply in peril and cannot be tolerated. If the IPCB fails to adopt Rules that provide for appropriate and necessary groundwater monitoring I will join with the Illinois Attorney General in challenging the validity of those Rules before the Illinois Appellate Court.

Jeopardizing the safety of the groundwater and thereby the health and welfare of the citizens of Illinois is completely unacceptable. As such I am urging the IPCB to adopt Rules that provide for groundwater monitoring.

Respectfully submitted,

James W. Glasgow
States Attorney of Will County

JWG/cj