

Board Adopts Second Notice Opinion and Order in Proposed Rulemaking for Amendments for Clean Construction or Demolition Debris Fill Operations Rules

The Illinois Pollution Control Board, on June 7, 2012, adopted a second notice opinion and order to amend the Board's rules for Clean Construction or Demolition Debris and Uncontaminated Soil Fill Operations to allow for use of uncontaminated clean construction or demolition debris (CCDD) and uncontaminated soil to be used as fill at quarries, mines and other excavations. On July 29, 2011, the Illinois Environmental Protection Agency (IEPA) filed the proposal with the Board, which was docketed as Proposed Amendments To Clean Construction Or Demolition Debris Fill Operations (CCDD): Proposed Amendments To 35 Ill. Adm. Code 1100, R12-9. The Board must adopt the rule no later than one year after receipt of the IEPA's proposal.

After reviewing the record in this proceeding and in consideration of the comments and testimony, the Board made several changes to the first-notice proposal. The rule was changed to require pH testing of soils from all source sites and establishes soil Maximum Allowable Concentrations (MAC) based on a soil pH range of 6.25 to 9.0 for pH dependent chemical constituents. The rules prohibits fill operations from accepting soils with a pH below 6.25 or above 9.0 regardless of applicable MACs.

The Board declined to add exemptions or allowances for small unplanned projects and will not add a "grandfathering" clause to the rule for projects already in progress or that have been placed for bid. The Board remains unconvinced that site-specific Tiered Approach to Corrective Action Objectives (TACO) should be used in this rules.

The Board is also unconvinced that groundwater monitoring should be required for CCDD and uncontaminated soil fill operations. The Board found that the statutory directive to protect groundwater does not equate to requiring groundwater monitoring. With strengthened soil certification and testing and recordkeeping, groundwater will be protected from contamination under the Board's rules. While the Board may adopt rules based on policy reasons, in this instance the Board is furthering the policy of groundwater protection without requiring groundwater monitoring. Based on this record, the Board found that groundwater monitoring is not required and the Board will not restore groundwater monitoring to the rule.

The Board accepted comments from participants and will no longer require the use of ASTM standards for determining if a site is a potentially impacted property or if the soil is uncontaminated. Rather, the Board provides the ASTM and other methods as guidance to be used by the source site owner, or a licenses professional engineers or licensed professional geologists in evaluating the site. The Board is also requiring IEPA to add additional items to the certification forms to better document the evaluation process.

The Board held two hearings in this matter prior to first notice, which the Board adopted on February 2, 2012. The Board held an additional two days of hearing during first notice. The Board will submit its amended first-notice proposal for second notice review by the Joint Committee on Administrative Rules.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6].