

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
CLEAN CONSTRUCTION OR DEMOLITION)	
DEBRIS FILL OPERATIONS)	R06-19
(35 ILL. ADM. Code Part 1100))	(Rulemaking-Land)

PUBLIC COMMENT

Now comes the City of Chicago (“City”) by and through its attorney, Claire A. Manning, Brown, Hay & Stephens LLP, and offers the following public comment in this proceeding, for the Board’s consideration, prior to moving the rule as proposed by the Illinois Environmental Protection Agency (“Agency”) to First Notice.

The City first wishes to express its appreciation to the Agency for the open dialogue it has maintained throughout this rulemaking in a mutual effort to ensure that the implementing regulations for the new Clean Construction and Demolition Debris Fill Operations provisions of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/22.51 (effective July 19, 2005), work as intended. The City also wishes to thank the Illinois Pollution Control Board (“Board”) for the policy and technical review it has provided throughout this proceeding concerning the Agency’s proposed regulations.

The City’s focus in this rulemaking has been to ensure that the rules are promulgated in a way that the environment is protected, and that legitimate municipal construction and public works infrastructure projects proceed in a manner that do not require permitting as a CCDD fill operation for each excavation and fill. These concerns stem primarily from the legislature’s inclusion of the words “or other excavation” in Section 22.51(b)(1)(A) (“no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, *or*

other excavation, unless they have applied for an interim authorization from the Agency for the clean construction or demolition debris fill operation.” Emphasis added.) The City and others had urged the Agency to provide effective regulatory definition and workability to that broad statutory phraseology. Specifically, the City requested that the Agency more specifically define what would be considered a fill operation and what would not.

The changes the Agency has made to its rule proposal in the course of this proceeding alleviate the above-referenced concerns, to a large part. Particularly, the City appreciates and supports the change the Agency made to its proposed language in Section 1100.103, set forth in Errata Sheet Number 3, which was presented to the Board at the March 1, 2006 hearing:

“CCDD fill operation” means the use of CCDD as fill material in a current or former quarry, mine, or other excavation. For purposes of this Part, the term “other excavation” does not include holes, trenches, or other similar earth removal created as part of normal construction, removal or maintenance of a structure, utility, or transportation infrastructure.

The City urges the Board to adopt the Agency’s proposed language change as set forth above.

The City also supports the other changes the Agency has made to its original rule proposal and urges the Board to adopt the rule for First Notice with those changes. In particular, the changes set forth in the Agency’s Errata Sheet Number 5, filed with the Board on March 14, 2006, provide important clarification to otherwise confusing concepts. As the Board pointed out at hearing, certain language contained in the original versions of Sections 1100.201(b) and 1100.205 could prove difficult in its application. The Agency’s proposed changes in Errata Sheet Number 5 eliminates much of the problematic language and, in exchange, simply inserts the word “waste” – thus conceptually setting forth the appropriate legislative distinction between CCDD and waste.

Moreover, the Agency's Errata Sheet Number 5 provides an important clarification to the Act's language, found at Section 22.51(b)(4)(B), which sets forth an exemption for projects that comply with Illinois Department of Transportation ("IDOT") specifications. As originally proposed, the Agency's implementing rule for this statutory provision (Section 1100.101(b)(3)) appeared only to apply to IDOT projects. However, based upon dialogue with the City, IDOT and others, the Agency has clarified that provision, via a proposed Board Note, which would point the reader to the relevant sections of the IDOT specifications and which would, importantly, explain to the reader that the specifications are intended for use not only by IDOT, but might also be utilized (making the exception applicable) for projects undertaken by counties, municipalities or townships.

The City supports the above-referenced changes and looks forward to participating further in this rulemaking, as circumstances may require.

Respectfully submitted,

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On Behalf of the City of Chicago.

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PROOF OF SERVICE

The undersigned states that a true and correct copy of the foregoing PUBLIC COMMENT, was served on the individuals listed on the Board's Notice list, as reflected on the Board's website on March 17, 2006, below by mailing the same via the United States postal service, Springfield, Illinois on March 17, 2006:

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