

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
CLEAN CONSTRUCTION OR) R06-19
DEMOLITION DEBRIS FILL)
OPERATIONS (35 ILL. ADM. CODE)
PART 1100)

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on June 5, 2006, we filed with the Illinois Pollution Control Board, Interested Party's, the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General, Motion of the Office of the Illinois Attorney General for Extension of Time In Which to File Comments, a true and correct copy of which are attached hereto and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY: 

Evan J. McGinley
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
312.814.3153

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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CLEAN CONSTRUCTION OR) R06-19
DEMOLITION DEBRIS FILL)
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**MOTION OF THE OFFICE OF THE ILLINOIS ATTORNEY GENERAL FOR
EXTENSION OF TIME IN WHICH TO FILE COMMENTS**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois (“OAG”), and, pursuant to Pollution Control Board (“Board”) Rule 101.522., 35 Ill. Adm. Code 101.522, requests that the Board’s Hearing Officer grant the OAG a three day extension, i.e., until June 8, 2006, in which to file its comments in the above-referenced rulemaking. In support thereof, the OAG states as follows:

INTRODUCTION

1. The Illinois Environmental Protection Agency (“Illinois EPA”) filed its rulemaking proposal in the above-referenced matter, i.e., R06-19, Proposed regulations governing Clean Construction and Demolition Debris (“CCDD”) Fill Operations (hereinafter referred to as the “Proposed Regulations”), on November 21, 2006.
2. On April 25, 2006, the Hearing Officer in this rulemaking issued an order setting a deadline of June 5, 2006, in which to file comments in this rulemaking proceeding.
3. As explained in more detail below, for good cause, the OAG seeks a two day extension – until June 8, 2006 – in which to file its comments regarding the Proposed Regulations.

ARGUMENT

4. Rule 101.522 of the Board's Procedural Rules, provides as follows:

The board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.
5. The OAG is an interested party to the instant proceedings. (Aff. of Evan J. McGinley In Support of the Office of the Attorney General's Motion for Extension of Time to File Comments in R06-19, ¶2 ["McGinley Aff."].)
6. It is the OAG's practice to assign an Assistant Attorney General to monitor all pending regulatory matters before the Board, as well as other related developments. (McGinley Aff., ¶2.)
7. The Assistant Attorney General who previously handled these matters for the OAG resigned, in order to pursue other opportunities. (McGinley Aff., ¶7.)
8. Another Assistant Attorney General was assigned to take over the OAG's monitoring of Board rulemakings. (McGinley Aff., ¶4.) In order to become fully versed in the issues which are related to this rulemaking, the newly-Assigned Assistant Attorney General first reviewed the entire record in the Board's proceedings related to the Proposed Regulations. (McGinley Aff., ¶5.) He then subsequently conferred with other Assistant Attorney Generals and staff in the OAG regarding the Office's enforcement experiences with CCDD sites. (McGinley Aff., ¶6.) Additionally, in order to become educated on the potential regulatory and enforcement issues that are implicated by the instant rulemaking, the newly-assigned Assistant Attorney General conducted a brief

search of academic and professional literature, as well as consulted with professional engineers regarding the scope and adequacy of the Proposed Regulations. (McGinley Aff., ¶6.)

9. While the OAG is routinely an interested party in rulemaking proceedings before the Board, it has specific interests in the present rulemaking which arise from its institutional experience having undertaken numerous enforcement actions involving CCDD fill operations and related sites, as well as from its experience responding to inquiries regarding such operations from the citizen and elected officials of this State. (McGinley Aff., ¶7.)

10. While the OAG is aware that the Board will be discussing this matter at its upcoming June 13, 2005 meeting, given the scope of the OAG's intended comments, as well as the OAG's representation of the interests of the citizens of the State of Illinois, it believes that it is in a position to offer comments regarding the Proposed Regulations that are unique to its role and experience as the chief law enforcement officer of the State of Illinois and which will serve to better inform the Board's members as they consider the Proposed Regulations. (McGinley Aff., ¶7.)

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General, respectfully request that the Hearing Officer assigned to this matter grant this motion and agree to a three day extension of time, i.e., on or before the close of business on June 8, 2006, in which to its comments with the Board.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

By: 

EVAN J. MCGINLEY
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
312.814.3153

Dated: June 5, 2006

AFFIDAVIT OF EVAN J. MCGINLEY, IN SUPPORT OF THE OFFICE OF THE ATTORNEY GENERAL'S MOTION FOR EXTENSION OF TIME IN R06-19

I, EVAN J. MCGINLEY, being first duly sworn and on oath state as follows:

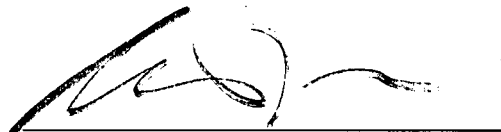
1. I am an Assistant Attorney General in the Office of the Illinois Attorney General ("OAG"), Environmental Bureau North, in Chicago.
2. The OAG is an interested party to many of the regulatory proceedings before the Pollution Control Board, including the instant regulatory proceedings, and routinely tracks all pending rulemakings and related developments before the Pollution Control Board ("Board"). Additionally, the OAG occasionally files comments with the Board regarding certain rulemakings and related matters which the office believes are of critical importance to the People of the State of Illinois. (*See, e.g.*, "Comments on the Illinois Pollution Control Board's Notice of Proposed Amendments by the Office of the Attorney General – State of Illinois" (March 5, 2003)).
3. The Assistant Attorney General assigned by the OAG to track such developments recently left the OAG.
4. I have now been assigned to handle the OAG's monitoring of all rulemakings pending before the Board.
5. In my newly-appointed capacity, I have recently reviewed the Board's filings and records of proceedings related to the Board's consideration of the proposed Clean Construction and Demolition Debris Fill ("CCDD") Operations regulations ("Proposed CCDD Regulations").
6. In addition to reviewing the entire record of the proceedings in this matter, I have also consulted with several OAG attorneys and staff, concerning the Office's history of enforcement proceedings against CCDD fill facilities and their respective operators. Finally, I have also reviewed academic and professional literature regarding environmental and regulatory issues associated with CCDD fill operations and have consulted with two engineers on this issue, as well. However, at present, I will be unable

to complete my drafting of these comments, prior to the June 5, 2006, deadline for filing comments on Proposed CCDD Regulations.

7. The OAG has a keen interest in the instant regulatory proceedings, because of its long history of enforcement actions taken against the owners and operators of CCDD operations. In this regard, the comments that the OAG intends to file with this Board regarding the Proposed Regulations are based on the OAG's experience gained through both its prosecution of the aforesaid enforcement actions, as well as through its experience responding to the environmental concerns of the citizens and elected officials of this State regarding CCDD operations throughout the State. It is the OAG's position that the Office's experience provides it with a unique perspective on the Proposed Regulations.

8. The OAG's interests in this regulatory development, as well as the interests of the citizens of this State will be prejudiced if the Board does not grant the OAG an additional two days in which to file comments with the Board.

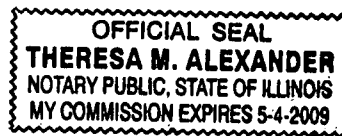
FURTHER AFFIANT SAYETH NOT:



Evan J. McGinley
Assistant Attorney General

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 5th DAY OF JUNE, 2006:


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CERTIFICATE OF SERVICE

I, Evan J. McGinley, an Assistant Attorney General, certify that on this 5th day of June, 2006, I caused to be served by First Class Mail, the foregoing MOTION OF THE OFFICE OF THE ILLINOIS ATTORNEY GENERAL FOR EXTENSION OF TIME IN WHICH TO FILE COMMENTS to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Evan J. McGinley