

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN)
CONSTRUCTION OR DEMOLITION) R12-009
DEBRIS (CCDD) FILL OPERATIONS:) (Rulemaking – Land)
PROPOSED AMENDMENTS TO 35 III.)
ADM. CODE 1100)

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OCT 17 2011
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the **Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by the Suburban Public Works Directors Association**, a copy of which is herewith served upon you.

Dated: October 17, 2011

Respectfully submitted,

SUBURBAN PUBLIC WORKS DIRECTORS ASSOCIATION

By: 

Dennis G. Walsh
KLEIN, THORPE & JENKINS, LTD.
20 N. Wacker Drive - Suite 1660
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2 ORIGINAL

PRE-FILED QUESTIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY SUBMITTED BY THE SUBURBAN PUBLIC WORKS DIRECTORS ASSOCIATION

The Suburban Public Works Directors Association (SPWDA) hereby files its questions of the Illinois Environmental Protection Agency (“IEPA”) in this matter, as required by the Hearing Officer’s Order issued on August 15, 2011.

The Suburban Public Works Directors Association is an active professional organization of 34 municipal public works departments located in south suburban Chicago, Illinois, who share a common goal of providing high quality public works services to the communities we serve. While SPWDA is mindful and supportive of IEPA’s efforts to exercise its authority in a fashion that protects groundwater quality and quantity, and we are concerned about the environment and understand the need to take steps to protect it, the proposed rules drafted by the IEPA pursuant to Public Act 96-1416 contains vague language, guidance and testing requirements which challenge our ability to comply with the Clean Construction and Demolition Debris requirements.

The proposed rules require that the source site owner or operator must provide a certification under the penalty of a felony that the soil was removed from a site that is not a “potentially impacted property” or hire and pay a Professional Engineer or Professional Geologist to take all the environmental tests necessary to certify that the soil is uncontaminated soil. The term “potentially impacted property” is defined under the proposed rules to mean

“property on which a historical or current use, or contaminant migration from a proximate site, increases the presence or potential presence of contamination at the source site.” Increase as a noun generally means to grow to be greater or larger. It could be a very, very slight increase or it could be a much larger increase. Potential is simply a possibility of something. Technically speaking then, any use of any property “increases” (however slight) the “potential” (or possibility) for the presence of “contamination” (even at very low levels) on that site. Simply put, that definition is devoid of any useful meaning and clarity and provides no helpful guidance upon which the public works community can rely. As such, we submit the following questions:

1. Does a prior use that minutely or slightly “increases” the “potential” presence of contamination make the source site fall into the definition of a “potentially impacted property?” Please provide some meaningful guidance as to how much of an “increase” the IEPA is concerned with as it relates to “increases the presence or potential presence of contamination at the source site.”

2. What does “potential” mean? How do you measure “potential”? Doesn’t any use of property increase the “potential” presence of contamination? What specific factors do you use to measure if there has been an increase in the “potential” for the presence of contamination? Are any of these factors weighed more heavily than others in making that determination? What are some examples of historical or current use that do not increase the presence or potential presence of contamination?

3. What specific factors are to be considered by the owner and/or operator of a source site in making a determination as to whether a past or current use of a property “increases” the “potential” presence of contamination? Are any of these factors weighed more

heavily than others in making that determination? Which specific factor or factors are most likely to “increase” the “potential” for contamination?

4. What is the meaning of “contamination” under the definition of “potentially impacted property?” Is it above cleanup objectives?

5. What specific due diligence steps should and/or must a source site owner and/or operator take to establish that the source site is or is not a “potentially impacted property?” If he/she takes those steps, are they still subject to the penalty of a felony if the IEPA is not in agreement with the analysis or a conclusion that the site is not a “potentially impacted property?” What due diligence steps can be taken to ensure a site source operator will not be subject to a felony?

6. How is the term “potentially impacted property” applied directly to a transportation right of way or easement?

7. Is a transportation right of way and/or easement in a residential area a “potentially impacted property?” Is a transportation right of way outside a residential area and in a commercial or industrial area always considered a “potentially impacted property” that requires the certification of a Professional Engineer or Geologist?

8. If a transportation right of way or other public works source site is outside of and not adjacent to or in close proximity to the boundaries of a site under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act or a site under an IEPA remediation program such as the Leaking Underground Storage Tank Program or Illinois Site Remediation Program, is that enough to certify that it is not a “potentially impacted area?” If not, what other steps must be taken to make that certification?

9. How do you determine if a site is a “proximate site” under the definition? What factors do you use to determine if a site is a “proximate site”?


10. What factors do you use to determine who is “responsible for the operation of” the site of origin of the CCDD or uncontaminated soil under the definition of source site operator?

11. Are contractors who are engaged in public works jobs throughout the bidding process “responsible for the operation of the source site?” Can these contractors be considered source site operators?

12. How many certification forms are needed for a public works project or source site? Does each load have to have a separate certification form? What testing requirements and address should be used on the certification for soils consolidated for stockpiling soils from different areas within the Village such as in the cases of water main breaks? Is the source site the area where the water main break occurred or where the soils are stockpiled and transported from? What would be considered a proximate site?

Respectfully submitted,

SUBURBAN PUBLIC WORKS DIRECTORS ASSOCIATION

By: 
Dale R. Schepers, 1st Vice President

Dated: October 14, 2011

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STATE OF ILLINOIS
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I, DENNIS G. WALSH, certify that I have served the attached **Notice of Filing and Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by the Suburban Public Works Directors Association**, by U.S. Mail, first class postage prepaid, on October 17, 2011, to the following:

John Therriault, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, IL 60601	Marie Tipsord, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph St., Suite 11-500 Chicago, IL 60601
Matthew J. Dunn, Chief 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
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