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STATE OF ILLINOIS
Pollution Control Board

WILL COUNTY LAND USE DEPARTMENT

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Pct#6

October 25, 2011
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 W. Randolph
Chicago, IL 60601

ORIGINAL

Rulemaking Case R12-9 (Land)

Dear Hearing Officer Marie Tipsord:

This letter will serve as comments from the Will County Land Use Department, Resource Recovery Division in the matter of Rulemaking #R12-9 that concerns "Proposed Amendments to Clean Construction or Demolition Debris and Uncontaminated Soil Fill Operations". My understanding is the aforementioned Amendments were filed by the Illinois Environmental Protection Agency (IEPA) in late July 2011.

As the IEPA indicated in the document's "Statement of Reasons", C. Regulatory Development portion of their filing, Will County has provided input in the development of these rules. Will County has also been very active in the legislative process and is the first IEPA delegated County in Illinois to begin performing inspections of Clean Construction and Demolition Debris (CCDD) and Uncontaminated Soil Fill Operations. Will County was also the first County in Illinois to adopt an Ordinance to collect fees from CCDD sites and to use such funds for inspection and monitoring CCDD and Uncontaminated Soil Fill Operations on a regular basis. Will County has eleven (nine active sites) CCDD and/or Uncontaminated Soil Fill Operations, the most in the State of Illinois. The majority of Will County uses groundwater for its drinking water and other domestic uses. For these reasons, Will County has a keen interest in this Rulemaking process and ensuring that our residents and businesses are protected from any potential adverse affects from CCDD and Uncontaminated Soil Fill Operations.

Monitoring Water Discharge

Although significant progress has been gained in adopting regulations for the CCDD & Uncontaminated Soil Fill Operations through legislation, we feel there are regulations that are still needed and some portions of the Rulemaking that remain a concern. One area is the National Pollutant Discharge Elimination System (NPDES) or discharge of water from the facility. Although many sites also dewater and a "cone of depression" has been established, there is still a significant amount of water that is

discharged that has come in contact with fill at both the CCDD and Uncontaminated Soil Fill Operations. The NPDES monitoring program must monitor not only for the typical NPDES parameters, but for parameters that would be reflective of the material deposited at the site. For instance, if broken asphalt and/or related soil are accepted, then parameters should be used in sampling that would test to indicate if there is a presence of contaminants related to that material. The water discharged will most likely be the same water that represents what impact the operations have on the property, and then once discharged, the waters of the state, and possibly the groundwater. Please consider requiring the operator of the CCDD or Uncontaminated Soil Fill Operations to expand the list of parameters in their NPDES Permit to reflect parameters that would be found in the material accepted, and verify if they exceed regulated discharge limits. If an exceedance is found, the protocol that is written in the proposed rules for groundwater would be followed.

Notification of Zoning Approval

The rules proposed by the IEPA are not requiring the operator of CCDD and Uncontaminated Soil Fill Operations to provide proof of compliance of local Zoning regulations. In many other facilities the IEPA permits, the operator submitting the application must provide the IEPA with proof of Zoning approval or action, or a letter from the Zoning authority indicating the site meets local Zoning requirements. In other cases, the IEPA requires proof of Siting approval from the local jurisdiction and a Resolution or other formal approval document. Zoning approval notification should prevent operators from commencing or continuing CCDD or Uncontaminated Soil Fill Operations that are non-compliant with Zoning codes. The local government should have the ability to decide whether they want or need the facility being proposed and attach conditions as necessary prior to a permit application being submitted to the IEPA.

Financial Assurance

Although Closure and Post-Closure Care have been included in the rules proposed by the IEPA, Financial Assurance has been omitted. In other IEPA regulated sites, such as landfills, Financial Assurance is necessary due to the nature of the facility and the potential impact if the operator was no longer present or able to operate the site effectively. Financial Assurance would provide a financial tool to properly close the site should the operator be unable to perform closure activities (i.e. final cover, groundwater, NPDES monitoring, etc.).

Groundwater Monitoring

Groundwater monitoring should not be performed on just an annual basis as proposed in the rules. The groundwater monitoring program should initially (for at least one year) be performed quarterly, to be able to monitor the water through the seasonal fluctuations. If the CCDD or Uncontaminated Soil Fill Operator can prove that the groundwater is not being impacted, then the IEPA should be able to consider less frequent monitoring.

The "self implementing" method is not acceptable for the Groundwater Monitoring requirement. If the operator does not need to submit its groundwater data unless they deem it having an exceedance, what happens if it is determined the site does have an exceedance, and they decide not to report? That does not appear to be an effective way to keep the operator accountable. Also, would the IEPA inspector have the right to the groundwater data if the operators deems itself "compliant"?

Additionally, in cases near active dewatered quarries where unusual hydraulic gradients exist (or as a general comment), the definition of Compliance Boundary could be expanded or modified. Currently, {"Compliance Boundary" means a plane that surrounds a CCDD fill operation or uncontaminated fill

operation and extends vertically from the ground surface to the bottom of the uppermost aquifer. The distance between the compliance boundary and the edge of the fill operation can be no more than 100 feet or the distance between the property boundary and the edge of the fill operation, whichever is less). In cases where significant and unusual hydraulic gradients have been artificially created such as what occurs near a dewatered quarry, the compliance boundary should be at the property boundary or sufficiently far enough from the dewatered quarry that the hydraulic gradients would not significantly influence the effective placement of monitoring wells. The way the rules are currently written, monitoring wells could potentially be placed at very close spacing and still not adequately monitor the site because of the required 100 foot limit.

New Definition

We would like to add a definition for "Land Reclamation". In two Zoning matters we have already uncovered, the term Land Reclamation has been used. Apparently, this definition is very well known in the mining industry, however not in environmental enforcement (no IEPA definition exists). For the purposes of regulating the CCDD and Uncontaminated Soil Fill Operations, we would like to offer the following definition for Land Reclamation: Land Reclamation is the process of gaining land from a submerged or partially submerged area by draining, filling, or a combination of these procedures. These measures will make site conditions more suitable for human activity and promote a healthy environment. Land Reclamation, when applied to CCDD and Uncontaminated Soil Fill Operations, must meet current Zoning and other local, State and Federal regulations.

Require IEPA Permit/Fees for Uncontaminated Soil Fill Operations

Uncontaminated Soil Fill Operators should be required to do more than just register their site with the IEPA. These facilities should apply to the IEPA for a permit in the same way as the CCDD facilities. In "registering" the site does not have permit conditions to adhere to. In requiring an IEPA permit, the IEPA has another regulatory tool to use in enforcement and they would also be monitored similarly and regularly. The Uncontaminated Soil Fill Operations should also be subject to State and Local fees. The Uncontaminated Soil Fill Operators could have as much of an environmental impact as the CCDD facilities and should be treated similarly.

Thank you for the opportunity to provide comments.

Sincerely,



Dean Olson
Resource Recovery & Energy Director

CC: Will County Executive
Will County Board Legislative Committee