

ILLINOIS POLLUTION CONTROL BOARD  
November 10, 2011

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO CLEAN ) R12-9  
CONSTRUCTION OR DEMOLITION ) (Rulemaking - Land)  
DEBRIS FILL OPERATIONS (CCDD): )  
PROPOSED AMENDMENTS TO 35 Ill. )  
Adm. Code 1100 )

**HEARING OFFICER ORDER**

On July 29, 2011, the Illinois Environmental Protection Agency (IEPA) filed a proposal pursuant to Section 22.51 of the Environmental Protection Act (Act) (415 ILCS 5/22.51 (2010)). Generally, the proposal will amend the Board's rules for Clean Construction or Demolition Debris Fill Operations to allow for use of uncontaminated clean construction or demolition debris (CCDD) and soil to be used as fill. Under Section 22.51 of the Act, the IEPA was required to present a proposal to the Board by July 30, 2011 and the Board must adopt the rule no later than one year after receipt of the IEPA's proposal.

On September 26, 2011, the Board held a hearing in Springfield and on October 25, 2011, a hearing was held in Chicago which continued on until October 26, 2011. At the close of hearings a deadline for pre-first-notice comments was established for December 2, 2011.

Pursuant to Section 28(a) of the Environmental Protection Act: "Any public hearing relating to the adoption, amendment, or repeal of Board regulations under this subsection shall be held before a qualified hearing officer, who shall be attended by at least one member of the Board, designated by the Chairman." Board Member Thomas Johnson presided over the two-day hearing in October.

Under P.A. 97-582, Board Member Johnson's previous term expired at the end of the day on October 25, 2011. Board Member Johnson received notification on Monday, October 24, 2011, that Member Johnson would be reappointed. However, on October 27, 2011, the Board Members and Executive Director received notification that appointments made on October 24, 2011, would take effect not on October 25, 2011, but on October 28, 2011.

Member Johnson was a Board Member on October 25, 2011, during the first day of the second R12-9 hearing. His re-appointment was not effective until October 28, 2011, so the hearing day on Wednesday October 26, 2011 was not presided over by a "member of the Board" in strict legal terms, but on October 26, 2011, the Board acted in a good faith belief that Johnson was a Board Member.

In order to ensure that statutory requirements have been met, and in an abundance of caution, the Board will hold an additional hearing after proceeding to first notice. The Board will consider the testimony at the hearing held on October 26, 2011, in developing a first notice.

The testimony and exhibits offered at that day of hearing were admitted under oath and were subject to cross-examination by participants. The Board routinely relies on sworn testimony in contested cases, where no Board Member attends the hearing. Therefore, the testimony and exhibits from October 26, 2011 are proper evidence that the Board can consider in proceeding to first notice.

The hearing to be held after first notice will revisit the Department of Commerce and Economic Opportunity (DCEO) non-response to the Board's August 4, 2011 request under Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b) (2010)). Section 27(b) of the Act requires the Board to request the DCEO to conduct an economic impact study on certain proposed rules prior to adoption of those rules. If DCEO chooses to conduct the economic impact study, DCEO has 30 to 45 days after such request to produce a study of the economic impact of the proposed rules. The Board must then make the economic impact study, or DCEO's explanation for not conducting the study, available to the public at least 20 days before a public hearing on the economic impact of the proposed rules. On October 26, 2011, testimony regarding DCEO's non-response was heard, so the post-first-notice hearing will provide for another opportunity to comment on DCEO's non-response.

A prehearing conference to set a hearing will be scheduled after the Board's adopts a first-notice opinion and order.

IT IS SO ORDERED.



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