

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN)
CONSTRUCTION OR DEMOLITION) R 2012-009
DEBRIS (CCDD) FILL OPERATIONS:) (Rulemaking - Land)
PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code 1100)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the Illinois Attorney General's Office's Post Hearing Public Comments, a copy of which is hereby served upon you.

Dated: December 2, 2011

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney
General of the State of Illinois

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**THE ILLINOIS ATTORNEY GENERAL'S OFFICE'S
POST HEARING PUBLIC COMMENTS**

The Illinois Attorney General's Office hereby files its Post Hearing Public Comments in this matter, as provided by the Hearing Officer Order issued on October 28, 2011.

I. BACKGROUND

On October 17, 2011, the Illinois Attorney General's Office filed with the Board its Pre-filed Questions Directed to the Illinois Environmental Protection Agency ("Illinois EPA"). On October 25 and 26, 2011, the Illinois Attorney General's Office posed its questions to the Illinois EPA on the record during the Pollution Control Board's Public Hearings.

II. STATUTORY AND REGULATORY FRAMEWORK

The Attorney General is the chief legal officer of the State of Illinois and the Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State. Ill. Const. 1970, art. V, § 15; *People v. NL Industries*, 152 Ill.2d 82, 103 (1992). The Illinois EPA was created by the Illinois Environmental Protection Act ("Act") and charged with carrying out its purposes. 415 ILCS 5/4 (2010). The Illinois Pollution Control Board ("Board") was also created by the Act and is required to determine, define and implement the environmental control standards applicable in the State of Illinois. 415 ILCS 5/5 (2010).

In 1993, the State of Illinois petitioned the United States Environmental Protection Agency ("U.S. EPA") to obtain an adequacy determination for the State's solid waste management program. Subsequently, on January 3, 1994, the U.S. EPA issued its Illinois: Final Determination of Adequacy of State Municipal Solid Waste Permit Program. 59 *Federal Register* 86, January 3, 1994.¹

¹ In its decision on adequacy of the State of Illinois' solid waste management program, the United States Environmental Protection Agency specifically found that:

Among the regulations adopted by the Board and impliedly determined to be adequate by the U.S. EPA were provisions governing the regulation of inert waste. *See* 35 Ill. Adm. Code Part 811, Subpart B & Subpart B of Part 812. Inert wastes include “only non-biodegradable and non-putrescible solid wastes; including, but not limited to, bricks, masonry, and concrete.” 35 Ill. Adm. Code 810.103. Similarly, the definition of clean construction or demolition debris (“CCDD”) means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. 415 ILCS 5/3.160 (2010). There are two differences in the definitions: 1) CCDD is not considered “waste” when used as fill “outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area,” unlike inert waste; and 2) CCDD includes asphalt, which is a source of polynuclear aromatic hydrocarbons (“PNAs”), which by operation of the Board Waste Disposal Regulations would classify CCDD as a “chemical waste.” *See* 35 Ill. Adm. Code 810.103.

In addition, inert waste landfills are required to collect and analyze leachate samples at least every 6 months and notification shall be provided to the Illinois EPA within 1 business day after the discovery of any leachate contamination. *See* 35 Ill. Adm. Code 811.206. Moreover, Section 811.206(d) of the inert waste landfill regulations provides, among other things, that a landfill that accepts only inert wastes becomes subject to regulation as a chemical or putrescible waste landfill (Subparts C of Parts 811 & 812) if the leachate becomes contaminated at any time. In accordance with §§811.206(d), 810.103, & 811.202(a), leachate is contaminated if it contains concentrations of constituents greater than the water supplies standards set forth at 35 Ill. Adm. Code 302.301, -.304, & -.305

Section 22.51 of the Act, was amended by Public Act 096-1416, which became effective on July 30, 2010. 415 ILCS 5/22.51. Section 22.51(f)(1), contains the General Assembly’s position on the Part 1100 Rulemaking:

(f)(1) ... The rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to, the following: *requirements regarding testing and certification of soil used as fill material, surface water runoff, liners or other protective barriers, monitoring (including, but not limited to, groundwater monitoring), corrective action, recordkeeping, reporting, closure and post-closure care, financial assurance, post-closure land*

The combination of the State’s existing permit program, the incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA enforcement created by Public Law 88-496, will ensure full compliance with all of the revised Federal Criteria. In its application, Illinois demonstrated that the State’s permit program adequately meets the *location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria* in the revised Federal Criteria.

In addition, Illinois demonstrated that the State’s MSWLF permit program has the authority to issue permits incorporating the requirements of the revised Federal Criteria for all MSWLFs in the State. The USPEA determined that Illinois’ permit program contains provisions for public participation, compliance monitoring, and enforcement. (*Emphasis added.*)

at 59 *Fed.Reg.* 86 (1/3/94).

use controls, location standards, and the modification of existing permits to conform to the requirements of this Act and Board rules. . . .

415 ILCS 5/22.51(f)(1) (2011) (*Emphasis added*).

III. COMMENTS

The Attorney General's Office respectfully requests that its comments and concerns, as set forth in its October 17, 2011 Pre-filed Questions Directed to the Illinois EPA and raised during the testimony on the record at the Board's October 25 and 26, 2011 Public Hearing, should be fully considered and addressed by the Board. The Attorney General's Office submits that the Board's consideration of the Proposed Part 1100 CCDD Regulations be guided by the following three over-arching principles.

First, that the Proposed Part 1100 CCDD Regulations must actually promote the purposes of the Act, as expressed in Section 2(b), which provides as follows:

to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them. 415 ILCS 5/2(b) (2010); *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill.2d 103, 107 (2007).

Second, that various classes of materials, which pose the same or similar risks to public health, safety and the environment are regulated in a consistent manner. Accordingly, the Attorney General's Office continues to emphasize that these Proposed Part 1100 CCDD Regulations should be at least as comprehensive and protective as the regulations previously adopted by the Board for the disposal of inert wastes.

Third, that the Part 1100 CCDD Regulations, which the Board ultimately adopts, are enforceable to assure that those persons who choose not to abide or comply with them, will be, in fact, held accountable for their actions.

Respectfully submitted,

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by LISA MADIGAN,
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CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 2nd day of December, 2011, the foregoing Post Hearing Public Comments and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER