

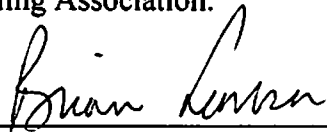
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: SEE ATTACHED SERVICE LIST

Please take notice that on the 5th day of March 2012, you were served with copies of the Comments in Response to Proposed Final Rules on behalf of the Land Reclamation & Recycling Association.

By: 

Brian Lansu
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

Date: March 5, 2012

PROOF OF SERVICE

I do hereby certify that a copy of the Comments in Response to Proposed Final Rules on behalf of the Land Reclamation & Recycling Associated were tendered via email on March 5, 2012, to the following:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500 Chicago, IL 60601

and by first class mail, postage prepaid, on March 5, 2012, to the following:

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

Claire A. Manning
Brown, Hay & Stephens LLP
700 First Mercantile Bank Building
205 South Fifth St, PO Box 2459
Springfield, IL 62794-9276

Kimberly A. Geving, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Mark Wright, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Stephanie Flowers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Dennis Wilt
Waste Management
720 East Butterfield Road
Lombard, IL 60148

Michele Gale
Waste Management
720 East Butterfield Road
Lombard, IL 60148

Mitchell Cohen, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Steven Gobelman, Geologic/Waste
Assessment Specialist
Illinois Department of Transportation
2300 S Dirksen Parkway
Springfield, IL 62764

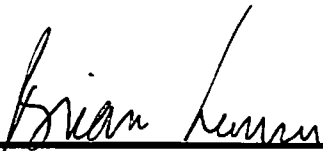
Tiffany Chappell
City of Chicago, Mayor's Office of
Intergovernmental Affairs
121 N. LaSalle Street City Hall
Room 406 Chicago, IL 60602

James Huff – Vice President
Huff & Huff, Inc
915 Harger Road, Suite 330
Oak Brook, IL 60523

Greg Wilcox – Executive Director
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

Brian Lansu, Attorney
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

John Henriksen, Executive Director
Illinois Association of Aggregate Producers
1115 S. 2nd. Street
Springfield, IL 62704



Brian Lansu

LRRRA Comments in Response to Proposed Final Rules

Inhalation/Ingestion Standard and Restricted Fill

In its proposed final rules, the Pollution Control Board (the "Board") appears to have agreed with Illinois Environmental Protection Agency (IEPA) that "Tier 1 objectives for soil migration to groundwater pathway is designed to protect against groundwater contamination" and has included these objectives in the MAC table. LRRRA concurs with this conclusion.

However, the IEPA has also taken the position that the ultimate use of a quarry or mine that has been filled and the type of cap necessary may vary from site to site. The IEPA has further stated that "requiring site-specific determination of MACs would involve the addition of a complex and costly regulatory structure for IEPA's review of site-specific MACs and make the implementation of the rules complicated for soil generators certifying LPGs/LPEs, and state and local inspectors". Based on the foregoing, the IEPA has recommended that typical TACO residential standards (with appropriate background tables) be included in the MAC. The Board appears to have agreed with this position and stated that they are adopting a uniform, statewide approach to MAC determination so as to ensure that "uncontaminated" soil, managed in accordance with Section 3.160, does not pose a threat to human health and safety, and the environment. In so doing, the Board stated that it cannot ignore the consideration of soil inhalation and ingestion pathways in determining MACs.

It is LRRRA's position that the proposed Ingestion and Inhalation standards will dramatically increase soil and CCDD disposal costs on both private and state construction projects, particularly in metro areas which typically have higher levels of PAH compounds. An increase in disposal costs will not only restrict the number of projects that can be completed out of a finite budget, but will also increase the likelihood that private construction sites will find other unregulated means for the disposal of soil which does not meet Ingestion and Inhalation standards.

Based on all of the foregoing, LRRRA is opposed to the Board's finding that expanding Ingestion and Inhalation above residential standards for Clean Construction and Demolition Debris (CCDD) sites is impractical because it would unduly burden the IEPA. In support of this position, LRRRA submits that both the CCDD law and the proposed rules already include different standards based on specific parameters. Specifically, the law allows for two different types of registered soil acceptance facilities – permitted CCDD and registered "soil only" sites. While the differences between these two types of facilities may seem minor, the law requires that soil be classified as *either* CCDD or "clean soil" before the appropriate disposal location is determined. The distinction is further highlighted by the differences in the rules applicable to each type of facility. Further, the Board's proposed final rules include different MAC standards for CCDD facilities based on their geographical location. For instance, CCDD sites in non-metro areas would have different standards for uncontaminated soil than CCDD sites located in metro areas. As the Board states, "the

chemical's applicable background value in Table G or H must be established based on the location of the fill operation where the soil is placed" (emphasis added). Accordingly, the IEPA has been and will continue to be charged with the responsibility of enforcing different standards across the state based on facility type and location.

LRRRA submits that the IEPA has proven that it can effectively enforce different standards for soil disposal based on material type and site characteristics. LRRRA has long-recognized the potential for increased staff inspection costs associated with the enforcement of different standards and supported the provision in the CCDD law which provides funding to the IEPA to cover any such increased costs. LRRRA submits that the IEPA has done an exemplary job of juggling the complex responsibilities imposed on it by the CCDD law and is capable of, with the funding mechanism currently in place, enforcing additional industry standards.

LRRRA acknowledges that there are currently no requirements or restrictions on CCDD or soil only sites that would prevent human exposure to soil which exceeds Inhalation and Ingestion standards. However, LRRRA submits that such standards could easily be created, implemented and regulated by the IEPA. For example, permitted CCDD sites are already required to submit a closure plan to the IEPA as part of its permit process. Under this procedure, CCDD sites could apply to the IEPA to accept soil which meets Ingestion and Inhalation Construction Worker standards as long they modify their permit closure plan to include a "cap" of clean soil and a commitment to record deed restrictions similar to what is required in the SRP process. Any site which received application approval from the IEPA under these procedures would be reclassified as a "Restricted Fill" site.

LRRRA recommends that, at a minimum, the Board grant the IEPA the authority to develop standards and procedures whereby permitted CCDD sites can accept soil which meets Ingestion and Inhalation Construction Worker standards.

Composite Sampling

In its proposed final rules, the Board has chosen to eliminate both composite sampling and the averaging of sample data for CCDD soil analysis by a Professional Engineer or Geologist. LRRRA agrees with the elimination of sample data averaging. It believes that lab results indicating a high concentration of contaminant in one area of a project site should result in the disposal of that soil in a landfill and not be averaged with "clean soil" to allow for alternative disposal. This has been the practice of the CCDD sites and the professionals working under the current CCDD law and LRRRA endorses this concept.

However, LRRRA disagrees with the decision to eliminate composite sampling. This practice is currently allowed under TACO Section 742.225 for certain compounds in select situations. LRRRA submits that composite sampling has also been a useful tool in characterizing constituents within large quantities of soil in a cost-effective manner. Further, the Illinois EPA has used composite sampling procedures in many studies including the

TACO Background Soil Study "Concentrations of Polynuclear Aromatic Hydrocarbons and Inorganic Constituents in Ambient Surface Soils, Chicago, Illinois: 2001-02". Eliminating the use of composite sampling while at the same time implementing standards that were developed using that procedure is simply illogical.

Further, LRRRA submits that not allowing for composite sampling removes a valuable tool from the hands of the Professional Engineer and Geologist. Currently, many professionals that test soil will use composite samples as an indicator of potential contaminants. This allows for numerous areas to be sampled and tested for a wide range of groundwater ingestion exposure compounds in a cost-effective manner. Typically, the original samples are split before they are combined. If a soil contaminant is detected from the composited sample then the split samples are retested for just that contaminate in an effort to isolate the area that does not meet CCDD disposal standards. If there are no detects in the composite sample, the professional certifies the soil as uncontaminated. This practice, as a whole, drastically reduces testing costs while increasing the number of soil samples taken.

As a general rule, composite sampling also allows for more accurate waste characterization of soil than collecting fewer grab samples and performing a complete analysis on each sample. While the CCDD site operators would prefer to see more samples taken and composited, economics would prohibit individual testing of all the these samples.

Based on all of the foregoing, LRRRA requests that the Board, in its final rules, allow soil samples to be composited in accordance with TACO Section 742.225.