

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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 Testimony of Kenneth Liss Submitted by Waste Management of Illinois, Inc., a copy of which is herewith served upon you.

Dated: March 5, 2012

Respectfully submitted,

**WASTE MANAGEMENT OF
ILLINOIS, INC.**

By:  _____

Michelle A. Gale
Waste Management
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**PRE-FILED TESTIMONY OF KENNETH LISS
SUBMITTED BY WASTE MANAGEMENT OF ILLINOIS, INC.**

Waste Management of Illinois, Inc. (“Waste Management”) by and through its counsel, Dennis Wilt, hereby files the testimony of its expert, Kenneth Liss, in this matter, as required by the Hearing Officer Order issued on February 15, 2012.

A. Introduction and Background. My name is Kenneth W. Liss. I testified in this matter on October 25, 2011. A copy of my curriculum vitae was attached to the first Pre-Filed Testimony submitted by Waste Management on October 7, 2011. I am again appearing on behalf of Waste Management of Illinois, Inc.

B. Groundwater Monitoring. I believe that the Board should reconsider its position that groundwater monitoring should be not be required for CCDD and soil fill operations at this time for the reasons I previously testified to and for the reasons set forth below.

1. The Agency’s position that Public Act 96-1416 and the rules being promulgated hereunder will result in significant quantities of contaminated soil that would have previously been disposed of in regulated, lined landfills being disposed of in unlined CCDD and soil fill facilities (see page 24 of Mr. Nightingale’s pre-filed testimony and pages 52-54 of the transcript of his testimony) is unrefuted.

2. My earlier testimony (on page 3) that CCDD and other soil fill operations that will be accepting contaminated soils under Public Act 96-1416 and the rules being promulgated are located in areas without any natural protection of the underlying aquifer that are highly susceptible to groundwater contaminated is unrefuted. My testimony in this regard is consistent with the Agency’s Statement of Reasons on page 6.

3. The Board found that there is no evidence to demonstrate that CCDD or uncontaminated soil fill sites were a source of groundwater contamination. That is not surprising

since these facilities have not been required to perform any such monitoring in the past. James Huff, when questioned at the hearings held on October 25, 2011, indicated that he was not aware of any CCDD or soil fill sites that have installed groundwater monitoring (see page 20 of the October 25 transcript). I do not believe it is appropriate to eliminate groundwater monitoring protection recommended by the Agency because there is no supporting groundwater monitoring evidence when these sites have never installed groundwater monitoring.

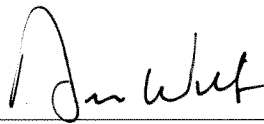
4. The Agency's rationale in support of groundwater monitoring that the front-end screening process will not keep 100% of contamination out of these fill operations (see page 6 of Statement of Reasons) should be persuasive support for groundwater monitoring, given the enforcement actions that have been before this Board, including *People v. Stark Excavating Inc.* Case No. PCB 09-65, *People v. 87th & Greenwood, LLC*, Case No. PCB 10-71, and *People v. Reliable Materials et al.*, Case No. PCB 2012-052 and the unrefuted evidence that these fill sites are highly susceptible to groundwater contamination if the screening process breaks down for any reason.

5. In Illinois, sanitary landfills are designed, permitted and constructed assuming a series of worst case scenarios. Given the geologic vulnerability of these soil fill sites, I believe the Board should take a similar approach here by considering the succession of likely failures in the process of evaluating, accepting and depositing these contaminated soils in CCDD facilities and quarries. Groundwater monitoring then becomes an essential protection based on the assumption that screening will not always prevent soils contaminated with levels above the maximum allowable concentrations to be disposed of in these facilities.

6. The Board also considered "the potentially sizeable costs for groundwater monitoring" in its finding that the record does not support groundwater monitoring. In the Board's Opinion and Order, it refers to Mr. Hock's testimony that one monitoring well may cost approximately \$3,000 per year for the groundwater monitoring test. If a particular facility has four groundwater monitoring wells, the total annual cost will be approximately \$12,000, based on Mr. Hock's testimony. If that same facility accepts 100,000 tons of tainted soils in a given year, the cost per ton of the groundwater monitoring would be eight cents. If it only accepts 50,000 tons, the cost per ton would be sixteen cents. This certainly is not too high a price to pay for environmental protection.

C. Alternative Protections. If the Board continues to disregard the Agency's recommendation that CCDD and soil fill sites be subject to groundwater monitoring requirements, I recommend that locational standards for these facilities be established to avoid contaminated materials being placed near or directly in the aquifer and/or that liners be required to provide protection. As the Agency has indicated, screening is important, but the Board should not assume that screening will be 100% effective given the nature of sampling and the high volumes of contaminated soil that will be disposed of.

Respectfully submitted,



Dennis Wilt
Attorney for Waste Management of Illinois, Inc.

Dated: March 5, 2012

PROOF OF SERVICE

I, Michelle A. Gale, certify that I have served the attached Notice of Filing and Pre-Filed Testimony of Kenneth Liss Submitted by Waste Management of Illinois, Inc., on March 5, 2012, to the following by the methods indicated:

By electronic mail:	
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