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MAR 26 2012

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROCEDURAL RULES FOR)
AUTHORIZATIONS UNDER P.A.97-220)
FOR CERTAIN LANDSCAPE WASTE)
AND COMPOST APPLICATIONS AND)
ON-FARM COMPOSTING FACILITIES:)
NEW 35 ILL. ADM. CODE 106.SUBPART I)

R12-11
(Rulemaking-Procedural)

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PC# 4

NOTICE

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via First Class Mail)

Mitchell Cohen
Chief Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271
(Via First Class Mail)

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division
Illinois Attorney General's Office
James R. Thompson Center
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
(Via First Class Mail)

Participants on the Service List
(Via First Class Mail)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Illinois EPA") Second First Notice Comments a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Kimberly A. Geving
Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

DATE: March 22, 2012

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Springfield, Illinois 62794-9276
(217)782-5544

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ILLINOIS EPA'S SECOND FIRST NOTICE COMMENTS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Kimberly A. Geving, and pursuant to 35 Ill. Adm. Code 102.108, respectfully submits these SECOND FIRST NOTICE COMMENTS in the above-captioned matter to the Illinois Pollution Control Board ("Board").

In its Second First Notice Opinion and Order, dated February 2, 2012, the Board specifically asked the Illinois EPA to comment on the proposed rules, including the proposed revisions for petition content and Illinois EPA response.

WHEREFORE, the Illinois EPA offers its comments on specific sections of the newly proposed Subpart I as well as some general comments on the overall proposal for the Board's consideration.

A. Specific Comments

1. In Section 106.900(b), the Illinois EPA believes that the citation to the Act should actually be "415 ILCS 21(q)(3)(A)" rather than "415 ILCS 21(q)." Subsection (3)(A) is the subsection that discusses the demonstration that the site's soil characteristics or crop needs require a higher rate.

2. In Section 106.904(a), the citation to “Section 106.910” should be changed to “Section 106.914.” Section 106.914 is the section that addresses the burden of proof.

3. Section 106.904(c) indicates contents of the petition should include “the measures for removal of noncompostable wastes from incoming loads.” The Illinois EPA contends that the acceptance of waste other than landscape waste, whether compostable or not, would be an activity that requires a permit under Section 21d of the Act, and the separation of non- landscape waste from landscape waste would be a method of waste treatment. The removal of waste that is not landscape waste should only be a contingency, such as dealing with fires or injuries, and not a routine operation. Landscape waste should always be inspected upon receipt to ensure that it does not contain materials that are not landscape waste. Therefore, Illinois EPA suggests substituting “a contingency plan that describes methods for dealing with emergency situations and methods for the removal of material that is not landscape waste from incoming loads, and a screening plan to ensure materials accepted do not contain materials other than landscape waste” in lieu of “the measures for removal of noncompostable wastes from incoming loads.”

4. In Section 106.906(a), the word “petitioners” should be changed to “petitioner’s.”

5. In Section 106.910(a), the Illinois EPA strongly encourages the Board to give the Illinois EPA 45 days to file a response to any petition. In the procedures for Adjusted Standards set forth in 35 Ill. Adm. Code 104.416(a) the Illinois EPA is given 45 days to respond. The Illinois EPA contends that the same time frame would be appropriate in this instance given that the Board has likened these procedures to the Adjusted Standard procedures and because a shorter period of time would not provide the Illinois EPA with enough time to adequately respond.

6. In Section 106.914, the opening sentence appears to be missing language. It currently reads “The burden of proof for is on the petitioner.” A qualifier after “for” appears to be missing. Additionally, although the burden of proof for allowing an increase in the amount of acreage where landscape waste can be applied above 2% is based upon the language in the Act, there is no correlation between the number of acres and the need to apply more landscape waste. The standard is “That the site’s soil characteristics or crop needs require a higher rate as specified in the petition.” This raises the question of whether “higher rate” means “agronomic application rate” or “increase in acreage.” For the Illinois EPA to provide appropriate comments on the petition, clarification is needed in this section.

It would seem that justification for an increase in acreage would need to be based on crop or soil needs (i.e., whether the acreage is farmed), as well as on setbacks normally associated with land application.

B. General Comments

The Illinois EPA suggests that the Board also consider, at a minimum, the following elements as part of its evaluation and approval of any petition under Subpart I:

1. To comply with Section 106.904, soil samples should be taken within the prior year, at least one sample should be collected for every 2 acres, samples should be taken in accordance with good agricultural practices, and the sample results should be submitted to the Board.

2. Agronomic rate is usually determined by nitrogen-phosphorous calculations, which is appropriate for fertilizer. However, the benefit of landscape waste composting is generally to increase the organic matter content of the soil, not to act as a fertilizer. Landscape waste actually provides very little nutritional value for crops. Nitrogen-phosphorous

calculations, by themselves, may demonstrate an inappropriately large agronomic rate. Using solely Nitrogen-phosphorous calculations, an appropriate rate can easily be in the hundreds of tons of landscape waste applied per acre. Therefore, Illinois EPA recommends that in addition to the expected Nitrogen-phosphorous calculations, each petition should include a demonstration showing that the increased organic content in the soil resulting from the addition of landscape waste will be beneficial to the crops being grown.

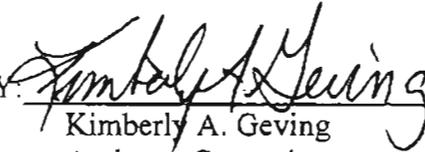
3. With regard to soil improvement, the application of landscape waste results in an increase in the organic matter content of soil. At some point in time, there will be diminishing benefits from continual application of this material. It would be appropriate that any sort of allowance would be of limited duration (such as 5 years), with appropriate soil testing to demonstrate that continuing the increased application rate is warranted.

4. When determining what acreage should be allowed for land application, the setbacks from wells, water pathways, residences, and property lines should be considered. The Illinois EPA would suggest using setbacks such as those normally associated with land application setbacks found in the Illinois EPA Bureau of Water's requirements in 35 Ill. Adm. Code 391, which are for land application of sludge for agronomic benefit.

5. When determining the land application rate, the following application procedures should be considered: 1) whether the landscape waste is incorporated; 2) if any landscape waste will be applied to frozen ground or during rainy conditions; and 3) maximum time before incorporation will occur. These considerations will address issues with runoff, odors, vectors, and dust.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

Dated: March 22, 2012

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Second First Notice Comments upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

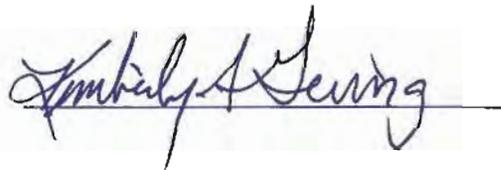
Clerk
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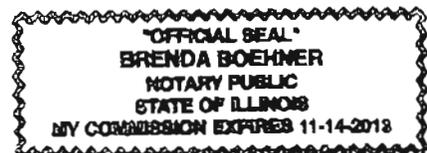
Participants on Service List

and mailing them (First Class Mail) from Springfield, Illinois on March 22, 2012 with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME
This 22nd day of March, 2012.

Brenda Boehmer, Notary Public



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