

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	
CLEAN CONSTRUCTION OR DEMOLITION)	R2012-009
FILL OPERATIONS)	(Rulemaking-Land)
(35 ILL. ADM. CODE 1100)	

NOTICE OF FILING

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Persons included on the attached

Please take notice that I have today filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Pre-filed First Notice Comments of the Illinois Transportation Coalition, a copy of which is served upon you.

HUFF & HUFF, INC.

By: 
 Senior Vice President

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JAMES E. HUFF, P.E., ON BEHALF OF THE ILLINOIS TRANSPORTATION COALITION
FIRST NOTICE COMMENTS ON THE PROPOSED CLEAN CONSTRUCTION
OR DEMOLITION DEBRIS FILL OPERATIONS

The Illinois Pollution Control Board (Board) has completed additional hearings on its First Notice opinion and order relating to Clean Construction or Demolition Debris (CCDD) fill operations. At the close of these additional hearings, the position of the Illinois Environmental Protection Agency with regard to the appropriate minimum soil pH used for establishing Maximum Allowable Concentrations (MACs) was unfortunately unknown. Doug Clay of the Agency requested that they would like additional time to further evaluate the pH data and testimony and promised to provide comments during the comment period.¹ Unfortunately, the Agency comments have not been submitted in time to respond in this submittal.

The record established in these proceedings allows the Board sufficient information to modify the First Notice proposed regulations. Particularly with respect to the due diligence required for *Potentially Impacted Properties* and the economic impact of the regulations as proposed in the First Notice.

There seems to remain two key issues that the Board needs to address:

1. The minimum soil pH used to establish MACs; and
2. The groundwater monitoring requirements to be imposed on the facilities accepting CCDD and uncontaminated soil.

The additional hearings provided extensive data on soil pH that will allow the Board with confidence to amend the proposed minimum soil pH, while protecting the groundwater.

The Board noted in its First Notice the absence of evidence that demonstrated CCDD or uncontaminated soil fill sites were a source of groundwater contamination.² While Mr. Sylvester of the Attorney General's office attempted to introduce data supporting that groundwater contamination has been found, his data totally lacked any foundation. He couldn't even tell the Board whether the well he provided data for had been properly developed nor could he provide a report describing the sampling protocol or a discussion of results. Mr. Sylvester promised to

¹ March 13, 2012 transcript, page 35-36.

² First Notice Opinion and Order, page 1.

provide additional information on this study, which has yet to be produced to the Board.³ The Agency spent considerable time at the March 13, 2012 hearing urging the Board to reconsider the groundwater monitoring requirement and also committed to providing all groundwater data in its possession as a result of enforcement actions against CCDD facilities in its possession.⁴ This information has also not yet been provided.

It seemed from a reading of the First Notice, the Board saw a trade-off between monitoring wells and the minimum pH used in the MAC establishment for metals, as interpreted from the following summary of Board Findings on Groundwater Monitoring:

The Board notes that the record does not include evidence to demonstrate that CCDD or uncontaminated soil sites are a source of groundwater contamination. Further, the record indicates that requiring groundwater monitoring would impose potentially sizeable costs that may have adverse impacts on the fill operation....

The Board's proposal strengthens the front-end screening process for soils and other provisions to help ensure that the soils, legally deposited in quarries, mines, and other excavations are uncontaminated.⁵

While the record is clear that no groundwater impacts have been found from these fill operations, including extensive data in the undersigned's testimony on a CCDD site in Kane County thoroughly tested,⁶ the Agency and Attorney General's Office are in support of groundwater monitoring at the fill operations. There are two costs associated with groundwater monitoring; 1) the capital and operating costs for monitoring, and 2) the unknown costs should some contaminant be found above the regulatory threshold. While the costs of the first item are significant, they are known and fill operations can make a business decision as to whether the costs incurred would justify continuing in the fill business. The second cost, however, is totally unknown and uncontrollable and clearly the largest concern to the industry. Not only would groundwater monitoring detect future fill operation impacts, but would also detect historic impacts. If impacts are found, remediation approaches would be to either start a pump and treat system that would literally go on indefinitely or attempt to secure a groundwater management zone for the area.

The Agency also proposed a non-degradation requirement for offsite contamination, which is particularly unsettling to the regulated community. Please note that "background" is much more stringent than the groundwater standards used to assess the need for completion of remediation in other Illinois programs. Thus, this industry would be faced with a more stringent remedial standard than LUST, RCRA, and voluntary (Site Remediation) programs. If a contaminant is going offsite above background, immediate remediation is required. As the Agency noted, they have their own interpretation of non-degradation and couldn't give "blanket answers" to questions regarding non-degradation.⁷ The Agency talked about going through an adjusted

³ March 13, 2012 transcript, page59-63.

⁴ March 13, 2012 transcript, page 44.

⁵ First Notice Opinion and Order, page 57.

⁶ Pre-filed Testimony of James E. Huff, October 2011, Exhibit 10, pages 4-7.

⁷ October 26, 2011 transcript, pages 35 and 36.

standard process⁸, for which there is a significant cost associated relative to the revenue generated from these operations.

If the Board elects to re-instate the Agency's groundwater monitoring requirement, we would suggest the following considerations be made:

1. *Limit the groundwater monitoring to volatile organic compounds and dissolved RCRA metals.*

This would eliminate much of the monitoring cost burden while focusing on the contaminants of real concern from a groundwater perspective. Dissolved metals are critical to avoid false readings, such as Mr. Sylvester reported, which was obviously due to excessive sediment collected in the groundwater samples. To the extent metals migrate in the groundwater, they are in the dissolved form, as the particulate form is filtered out. Volatile organics are the most mobile contaminants and the most commonly found contaminants in groundwater. It would be appropriate to monitor for only these compounds.

2. *Eliminate any reference to non-degradation requirement and specifically allow the use of groundwater use restrictions as provided for in 35 Ill Adm Code 742.*

The CCDD proposed regulations have borrowed heavily from the TACO regulations, a very functional program. There is no reason that the fill operations could not be afforded the same ability to secure a groundwater use restriction. The Agency's primary reluctance with using TACO for landfills was the presence of solid waste that could not be characterized. As has been repeatedly stated in these proceedings, CCDD and uncontaminated soil are NOT wastes, and therefore allowing the same opportunity as other properties where impacts are discovered would go a long way to controlling costs while protecting the environment. In fact, there is no reason that these fill operations should not be allowed to enroll in the Illinois Site Remediation Program under this same argument, assuring these properties are treated like all other properties in Illinois.

There are alternatives to the above approach, but the above suggestions would seem the preferred approach, if groundwater monitoring is required in the final regulations. To the extent the quarries have been receiving CCDD and soil fill material for many years; groundwater monitoring will detect not only contaminants from on-going operations, but from past practices. Without some cost effective approach to address any impacts from past practices, each quarry runs the risk of addressing past concerns if it elects to continue to accept CCDD and uncontaminated soil fill. This is a major disincentive to continue to accept CCDD and uncontaminated soil. Thus, without some cost effective way to address groundwater impacts, such as what is proposed above, there would need to be a baseline monitoring period. The fill operators would only then be required to remediate if the groundwater quality changes in a statistically significant manner. This would reduce the economic implications associated with groundwater compliance going forward. The above approach would seem more protective of the groundwater in Illinois.

⁸ October 26, 2011 transcript, page 38.

While the above discusses the most significant issue remaining for the Board to decide, there are other issues briefly highlighted below:

Composite Sampling: While the Agency wants grab samples from Potentially Impacted Properties (PIPs), sampling is routinely required by the fill operations outside of PIPs. The undersigned's March 2012 testimony proposed a clarification allowing composite samples outside of PIPs as a cost effective approach. This is particularly important with respect to arsenic and also for providing more representative samples. Dr. Fernandez explained the increase in variability and loss of confidence that the sample is representative when only grab samples are collected.⁹

Minimum Soil pH for establishing MACs: The record supports a minimum soil pH range of 6.25 to 6.64 for MAC establishment, as proposed by the Illinois Transportation Coalition, as both conservative and supported by the parties in this proceeding, with the possible exception of the Agency. The Agency asked for additional time to analyze all of the data submitted. Dr. Roy's pre-filed testimony talked about the hysteresis of contaminants sorbed to soils, and the unsupported assumption that all the contaminants are available to leach off the soil.¹⁰ This assumption adds an additional significant level of conservancy to the proposed minimum soil pH range 6.25 to 6.64. Also, as discussed in the undersigned's pre-filed testimony, if there remains concern over acceptance of low pH material soil, routine testing of every source of CCDD or uncontaminated soil could be required prior to depositing in the facility, allowing the market to determine who most efficiently should be conducting these soil tests. Where low pH soil is encountered, as Dr. Roy noted, it would be an easy task to increase the soil pH by simply adding a small amount of limestone to a load to increase soil pH,¹¹ and we would encourage the Board to allow this to happen under these regulations.

Due Diligence Requirement: There seemed to be substantial agreement at the March hearings that the due diligence process proposed in the First Notice was excessive, and a number of alternatives were proposed that included recognition of what current practices are currently practiced in the transportation industry in Illinois. The record appears sufficient for the Board to modify this section accordingly.

We look forward to continue to work with the Board and other participants in these proceedings.

Dated: April 18, 2012

ILLINOIS TRANSPORTATION COALITION

By: 
James E. Huff, P.E.

⁹ March 13, 2012 transcript, pages 111-112.

¹⁰ Pre-filed testimony of Dr. William Roy, March 5, 2012, pages 7-13.

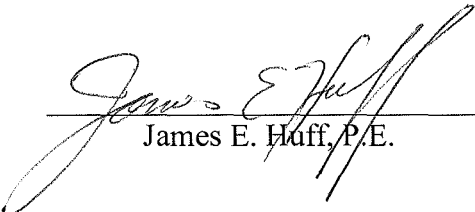
¹¹ Pre-filed testimony of Dr. William Roy, March 5, 2012, page 14.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 18th day of April, 2012, I have served electronically the attached Pre-Filed First Notice Comments of the Illinois Transportation Coalition and accompanying Attachments, and Notice of Filing upon the following person(s):

John Therriault, Clerk Pollution Control Board James R. Thompson Center 100 West Randolph Street - Suite 11-500 Chicago, IL 60601	
and by U.S. Mail, first class postage prepaid, to the following person(s):	
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James E. Huff, P.E.