

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	
CLEAN CONSTRUCTION OR DEMOLITION)	R12-9
DEBRIS FILL OPERATIONS (CCDD):)	(Rulemaking – Land)
PROPOSED AMENDMENTS TO 35 Ill.)	
Adm. Code 1100))	

NOTICE OF FILING

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Attached Service List

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 Responses to First Notice Comments copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Mark Wight
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DATE: April 27, 2012

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES TO FIRST NOTICE COMMENTS

The Illinois Environmental Protection Agency ("Agency") respectfully submits its responses to First Notice comments submitted by other participants in the above-titled proceeding to the Illinois Pollution Control Board ("Board") in accordance with the Hearing Officer Order of March 14, 2012. First Notice comments were submitted to the Board on or about April 18, 2012.

GENERAL AND SPECIFIC RESPONSES TO COMMENTS

The Agency offers the following responses in reply to First Notice comments received by the Board. The absence of a response in this document to any matters raised in the First Notice comments or otherwise contained in the record should not be construed as acquiescence or agreement by the Agency for positions or revisions not otherwise expressly endorsed in this or previous Agency submittals.¹

1. Soil Certification Procedures – Due Diligence

¹ In this document, the Board's First Notice Opinion and Order is cited as "First Notice Opinion [Order] at ____." Exhibits are cited as "Exh. ____ at ____." The transcript of the September 26, 2011, hearing is cited as "TR 1 at ____"; the transcript of the October 25, 2011, hearing is cited as Tr. 2 at ____"; the transcript of the October 26, 2011, hearing is cited as Tr. 3 at ____"; the transcript of the March 13, 2012, hearing is cited as Tr. 4 at ____; and the transcript of the March 14, 2012, hearing is cited as Tr. 5 at _____. The Agency's Statement of Reasons is cited as "SOR at ____." The Agency's Pre-First Notice Comments are cited as "PC # 9 at ____." The Agency's First Notice Comments are cited as "Agency's First Notice Comments, PC # 39 at ____"; First Notice Comments of other participants are cited as PC # ____ at ____.

Several commenters have raised soil certification/due diligence issues. The Agency's proposal provided for soil certifications based on the personal knowledge of the source-site owner/operator and/or the judgment of licensed professional engineers ("P.E.") or licensed professional geologists ("P.G."). The source site owner operator could certify that a site is not a potentially impacted property ("PIP") (as the phrase is defined at proposed Section 1100.103) and the soil from the property is presumed to be "uncontaminated soil" (as the phrase is defined at proposed Section 1100.103). If a site is a PIP, the soil must be certified as uncontaminated soil by a P.E. or P.G. Except for a few limitations, the basis for the certification of compliance is left to the professional judgment of the P.E. or P.G. Pre-Filed Testimony of Stephen F. Nightingale, Exh. 1 at 10-12. However, Section 1100.205(a)(3) requires that any sampling and analysis of soil to determine the soil is uncontaminated must be in accordance with Subpart F. The Agency's approach was based on the statutory interim directives except that the definition of PIP was developed to better reflect the statutory purpose of identifying properties with a current or historic potential for contamination than the statutory interim method for identifying contaminated properties by using common property use descriptions such as commercial, industrial and residential. *Id.*; Pre-Filed Testimony of Richard P. Cobb, Exh. 26 at 6 – 7.

The disadvantage of this approach is that it is unlikely to achieve a consistently high level of effectiveness when used at thousands of construction/demolition sites to identify all contaminated soils for sampling and analysis. However, combined in a multi-barrier approach with the facility screening procedures (which have their own limitations) and the groundwater monitoring requirements, the Agency expects that groundwater contamination will be prevented or identified at a sufficiently early stage to prevent off-site impacts. The advantage of the Agency's proposal is that it provides flexibility for source-site owner/operators and P.E.s and

P.G.s to tailor their investigations, sampling and analysis to the circumstances at each property rather than prescribing a mandatory investigative procedure that must be conducted at each source-site property no matter the apparent circumstances.² Although the Agency's approach offers considerable flexibility, source-site owner/operators would not escape responsibility for contributions to the potential for groundwater contamination from fill sites. Most or all of the increased costs of groundwater protection to fill site owner/operators presumably would be reallocated to source-site owner/operators through tipping fees.

Once the Board determined groundwater monitoring was not justified (for reasons set forth in the Board's First Notice Opinion), it correctly concluded soil certification and screening procedures would need to consistently achieve a very high level of certainty in excluding contaminated soils from fill operations to eliminate any potential for groundwater contamination. It proposed a strengthening of the soil certification requirements based on ASTM procedures and appeared to be considering a strengthening of the fill operation screening requirements.³ The Agency and others have testified they do not agree the Board's enhanced certification procedures will achieve a significantly higher level of effectiveness than the procedures proposed by the Agency such that groundwater contamination from fill operations cannot occur. The Agency has attributed this at least in part to the conclusion that consistently effective use of ASTM due diligence procedures as a screening device by thousands of source-site owner/operators will depend on a level of familiarity with legal and environmental concepts, databases and so forth

² Of course, fill site owner/operators are free to require more than the procedures required by the Act or rules for acceptance of soils. The Agency always has recommended that source-site owner/operators communicate in advance with fill sites to determine the requirements for particular operations.

³ This is based on the Board's request for information about using x-ray fluorescence ("XRF") to screen soils for metals. The Agency also had investigated this possibility as part of the development of its proposal but concluded the XRF devices are not well suited for the purpose and are quite expensive. Pre-Filed Testimony of Douglas W. Clay, Exh. 33 at 6 – 8. The Agency will use XRF devices as inspection tools to determine if soil samples should be taken for analysis.

that most source-site owner/operators cannot be expected to have acquired. This is a significant consideration. The Illinois Association of Aggregate Producers has provided figures comparing the number of source site owner soil certifications with P.E./P.G. certifications accepted from 2010 through 2012 by four fill sites in northeastern Illinois, Prairie Materials, Hanson Material Service, Bluff City Materials, and Reliable Materials Lyons. Illinois Association of Aggregate Producers, First Notice Comments, P.C. # 34 at 2. Of the totals provided by facility and year, source site owner/operator certifications range from 53% to 84.5% of the total soil certifications accepted at these facilities. Moreover, the requirements for source-site owner/operators associated with the ASTM-based procedures will result in additional costs and delays for construction or demolition projects that are disincentives for the diligent application of the procedures necessary to achieve a consistently high level of effectiveness.

Several witnesses and commenters have confirmed the additional costs and delays associated with the Board's enhanced certification procedures and are now asking the Board to consider a variety of (1) revisions to the ASTM procedures themselves, (2) exceptions to the ASTM procedures, (3) alternative procedures, and (4) exclusions from the procedures for certain soils.⁴ Each of these, in its own way, will make the Board's enhanced procedures less comprehensive or effective and further reduce the likelihood of the consistent, highly effective outcome the Board hopes to achieve as an alternative to groundwater monitoring..

The Agency's position is that, with either the Agency's or the Board's proposed soil

⁴ Among others, the Metropolitan Water Reclamation District of Greater Chicago (PC # 28 at 2 – 3), the Illinois Department of Transportation (Pre-Filed Testimony of Steven Gobelman, Exh. 34 at 1 – 6), the City of Chicago (PC # 35 at 2 – 4), the Illinois Transportation Coalition (Pre-Filed Testimony of James E. Huff, P.E., Exh. 45 at 8 – 9), the Public Building Commission of Chicago (PC # 42 at 12 – 16), and the City of Springfield's City, Water Light and Power (Pre-Filed Testimony of Pat Metz, P.E., Exh. 43 at 4; Testimony of Mr. Metz, Tr. 4 at 82 – 93; Exh. 44) all have requested one or more changes that would in some way relax the Board's proposed enhanced soil certification requirements.

certification procedures, fill operations will have the potential to cause groundwater contamination. In either case, the Agency believes groundwater monitoring, soil certifications and soil screening together provide the multi-barrier protection necessary to compensate for the deficiencies of the proposed certification and screening procedures alone. Carving up the Board's enhanced certification procedures with a variety of amendments would increase the Agency's groundwater protection concerns and make monitoring an even greater necessity. The Agency requests that the Board restore the Agency's more flexible soil certification procedures to address the concerns of several of the commenters and restore the Agency's proposed groundwater monitoring requirements to accomplish the groundwater protection required by the Act.

2. Soil Sampling

At least two commenters continue to request that compositing of soil samples be allowed for demonstrating compliance with the MACs. City of Chicago, PC # 35 at 3; Illinois Transportation Coalition, PC # 37 at 4. As set forth in proposed Section 1100.610(d), the Agency opposes the use of compositing or averaging of samples to demonstrate compliance with the MACs. The reasons for this opposition were explained in considerable detail in the Agency's Pre-First Notice Comments, PC # 9 at 16 – 18, and as briefly summarized in the Pre-Filed Testimony of Dr. Thomas Hornshaw:

[S]ection 1100.610 at subsection 1100.610(d) prohibits soil sample compositing when demonstrating compliance with the maximum allowable concentration. TACO allows averaging and compositing in some cases. Because averaging and compositing are limited to specific pathways and not allowed for others, we either carry these limits into the CCDD rule or, for practicality and to remain protective, we disallow it. Some maximum allowable concentrations are based on construction worker objectives. No averaging or compositing is allowed in TACO for the construction worker. Soil averaging/compositing in a boring is allowed in TACO for migration to groundwater but soil being moved to a disposal site will lose its vertical relationships and the averaging is meaningless. A further

limiting factor is that compositing is never allowed for volatiles. Therefore, the Agency has determined that averaging and compositing are inappropriate when demonstrating compliance with the maximum allowable concentration.

Exh. 22 at 5. These considerations apply any time sampling and analysis are used to demonstrate compliance with the MACs.

The Agency understands that fill site owner/operators may require certification forms with analytical results attached even when the Part 1100 rules may not require sampling and analysis. For example, a source site owner/operator certifying under either the Agency's proposal or the Board's First Notice proposal that the source site is not a potentially impacted property would not be required by the rules to attach analytical results. However, if fill site owner/operators are relying on these analytical results for acceptance of soils, the Agency's concern is that the analytical results must reflect the limitations in TACO as well as standard practices for sampling and analysis. TACO values for the migration-to-groundwater and construction worker exposure routes must be compared to discrete, non-averaged results, so any analysis purporting to demonstrate compliance with MACs based on these values also should be performed consistent with these limitations. In addition, standard practices for sampling and analysis (*e.g.*, SW-846, ASTM standards) should be followed. For example, these practices would prohibit the compositing of samples for analysis of volatiles. For these reasons, the Agency believes Section 1100.205(a)(3) should apply in all circumstances related to soil certifications.

Related to the sample compositing issue, Dr. Fabián Fernández testified in support of Mr. Huff's request for compositing:

The other point I would like to testify or talk about as I mention in my testimony is these grab versus composite samples and any – and I'm talking from an agricultural background. Any person that goes out to a field to take a sample knows that collecting one sample with few composites will be more variable than

collecting fewer samples with more composites.

Testimony of Dr. Fernández, Tr. 4 at 110 -- 111; *see* Illinois Transportation Coalition, PC # 37 at 4. Dr. Fernández accurately states that the differences between discrete (individual) samples are more variable than the differences between composited (combined) samples. However, the nature of environmental contamination is rarely uniform. Contaminants are typically clustered in areas of leaks, spills, and other releases. There is no general homogeneity of the contaminants in the soil. As done in other environmental investigations, it is expected that PEs/PGs will bias sample locations to areas of soil staining, odors, stressed vegetation, and other indicators of environmental contamination. It is the goal of any environmental investigation to acknowledge the variation in environmental samples and to focus on the soils that are more highly contaminated and possibly a hazard to human health and the environment. For purposes of Part 1100, this can only be done by acquiring data for discrete samples and comparing the results to MACs.

3. Groundwater Monitoring Costs

As a result of the First Notice comments, there are three sources of information concerning groundwater monitoring system costs. Illinois Association of Aggregate Producers, First Notice Comments, PC # 34 at 2 – 3; Waste Management of Illinois, Inc., Supplemental Public Comment Regarding Groundwater Monitoring Costs, PC # 33a at 1 - Exh. A; Agency's First Notice Comments, P.C. # 39 at 23 – 27, Attachments 5 – 6. None of the sources contain complete information to facilitate comparisons, but useful information can be gleaned from what has been submitted.

The Agency acknowledged the information it provided does not include groundwater monitoring system design costs and system maintenance costs. However, based on actual well

installation examples and reimbursement rates from the Leaking Underground Storage Tank program, the Agency estimated bedrock drilling costs at \$100 per foot and unconsolidated material (“UM”) drilling costs at \$45 per foot. PC # 39, Attachment 5, notes 5, 10. Based on the experience of the Bureau of Land Permit Section staff, the Agency also estimated the average depths of monitoring wells at facilities located in bedrock geology at 150 feet and of wells at facilities located in UM at 30 feet. *Id.* at note 4. The Agency found that the costs of installation for a five-well system would be approximately \$75,000 for bedrock facilities and \$6750 for UM sites. PC # 39, Attachment 5.

Overall, the Agency concluded, based on its stated assumptions and limitations, that the estimated costs for installation of groundwater monitoring wells “for approximately 96% of the CCDD disposed of at CCDD fill sites [in 2011] (a total of 3,217,118 cubic yards) are less than \$0.10 per cubic yard [over the 10-year life of a permit].” Further, the estimated cost “for approximately 99% of the CCDD disposed of at fill sites (a total of 3,315,858 cubic yards) is less than \$0.50 [per cubic yard].” PC # 39 at 26. Even if design and maintenance costs multiplied the totals, the Agency contends the cost increases “[appear] to be within a quite reasonable range considering the protection to the State’s groundwater resource that monitoring would provide and especially when compared to the considerably higher costs of disposing of material at a landfill.”⁵ *Id.* at 27.

As a landfill owner/operator, Waste Management of Illinois, Inc. (“WMI”) certainly would have experience with monitoring well installation, presumably in a variety of geologic

⁵ Based on other information in the record, the Agency concluded tipping fees run from \$3.50 to 4.66 per cubic yard at fill operations and \$19.58 per cubic yard for landfills. PC 39 at 27 (citing to figures presented by Mr. Huff and Mr. Metz). Additional information presented in First Notice comments indicates Chicago area tipping fees of \$3.25 per ton for CCDD fill sites and \$20 to \$22 per ton at Subtitle D landfills. Public Building Commission of Chicago, Post-Hearing Comments, PC # 42 (as corrected).

conditions. The information provided by WMI is consistent with the information provided by the Agency. WMI's costs of monitoring well installation are based on six examples of four-well monitoring systems installed at locations in the Chicago area, central Illinois and southern Illinois. PC # 33a at Exhibit A. System design costs apparently are not included. Although it's not entirely clear, it appears at least the two higher-cost wells were installed in bedrock and at least the three lower-cost wells were installed in unconsolidated material. *Id.* The cost of well installation in UM ranges from \$42.50 to \$58.33 per foot (and possibly as high as \$65.42) plus mobilization charges of \$300 to \$1000 for total costs of \$5400 to \$8000 (or, possibly, \$8550). *Id.* The cost of well installation in bedrock ranges from \$81.50 (and possibly as low as \$65.42) to \$90 per foot plus mobilization charges of \$1200 to \$1250 for total costs of \$11,030 (or, possibly, \$8550) to \$12,000. *Id.* WMI concludes the increased costs per ton of groundwater monitoring for many tons of soil over many years would be "insignificant, being a few pennies per ton." *Id.* at 1.

The Illinois Association of Aggregate Producers presented costs obtained from Mr. Wilcox for the design and installation of a groundwater monitoring system at Bluff City Materials. Illinois Association of Aggregate Producers ("IAAP") First Notice Comments, PC # 34 at 2 – 3. According to its website, Bluff City Materials, Inc. is a sand and gravel operation producing a variety of aggregate and recycled products for sale and accepting clean construction debris for its reclamation activities. The CCDD fill operations associated with Bluff City Materials include Gifford East, Raymond Street, Middle Street, 47 Acres/Southwind Business Park and Blue Heron Business Park. *See* Agency's First Notice Comments, Attachment 2 (showing the relationship among these facilities and the Bluff Spring Fen and Class III groundwater area).

The IAAP comment states the “costs to determine groundwater gradients – before filling, after filling and to establish testing and monitoring wells for this site as proposed by IEPA would be approximately \$350,000.” *Id.* at 3. Sampling and analysis costs under the Agency’s proposal for the six wells were estimated at \$20,000 to \$25,000 annually. *Id.* The costs for the wells and for the sampling and analysis are presented as lump sum totals and are not itemized or reduced to a cost per sample, cost per foot, or cost per cubic yard or ton, so it is difficult to make cost comparisons or generalizations for other facilities. However, a closer examination is useful.

The cost of sampling and analysis is estimated at \$20,000 to \$25,000 annually. Based on the Agency’s figures, the annual cost of sampling per site would be \$1000 and the sample analysis costs would be \$2000 per sample annually. Agency’s First Notice Comments, P.C. # 39 at Attachment 5. The Agency’s figures are based on the costs provided in the record by Mr. Hock, also representing the IAAP. Testimony of John Hock, P.E., Tr. 2 at 34. With six wells, the Agency’s estimate of the annual costs of sampling and analysis for the Bluff City system would be \$13,000, so the cost estimates provided by the IAAP for Bluff City are over 50% to nearly 100% higher than figures based on the earlier testimony for the IAAP.

The monitoring system is said to consist of six wells located around a “1000 acre sand and gravel mine.” *Id.* at 2. The purpose of installing the system was “to determine if there would be any impact to the groundwater flow for the Bluff Springs Fen” and “to determine upstream and downstream gradients and the modeling to determine groundwater flow rates.” *Id.* The depths of the monitoring wells and the drilling costs per foot are not provided, but using the Agency’s estimates of \$45/foot for drilling 30-foot wells in UM, the cost for installation of the six wells would be \$8100 leaving an additional \$341, 900 to be accounted for. Using WMI’s highest cost for installing wells in UM of \$65.42 per foot, the cost, including the mobilization fee

of \$700, would be \$12,376 leaving an additional \$337,624 to be accounted for. The higher WMI cost (\$65.42/ft.) of six 150-foot wells in UM would be \$59,578 (including mobilization) leaving \$290,422 to be accounted for. The higher Agency cost (\$100/ft.) for six 150-foot wells in bedrock would be \$90,000 leaving \$260,000 to be accounted for.

Even at \$350,000, allocating the costs to the Gifford East facility that received almost 360,000 cubic yards of CCDD in 2011 would result in a cost of 10¢ per cubic yard over ten years at the same rate of acceptance. The Agency does not know all the facts concerning the Bluff City estimate, but given the figures provided above, it believes additional information on the specific fill operation monitored, the reasons for initiating monitoring at the Bluff Spring Fen, the nature of the geologic materials in which the wells are installed, the depths of the wells, the costs per foot for installation, the system design costs, any special circumstances at the site affecting costs, and other related costs necessary to reach the total of \$350,000 are needed before the Bluff City figures can be factored into any determination of the economic reasonableness of groundwater monitoring at fill sites.

4. Legislative Intent and Site-Specific MACs

The Public Building Commission of Chicago (“PBC”) has claimed repeatedly that the Agency’s proposal does not comply with the legislative intent of Sections 3.160, 22.51 and 22.51a of the Act because it does not allow consideration of site-specific circumstances to determine “risk-based” maximum allowable concentrations (“MAC”) of contaminants that could be present in soil accepted at fill operations. 415 ILCS 5/3.160, 22.51, 22.51a (2010) (as amended by P.A. 97-0137, eff. July 14, 2011). The PBC claims special knowledge of the legislative intent based on its thorough engagement “in the three-year legislative effort that led to the legislation which underlies this rulemaking.” Post-Hearing Comments of the Public Building

Commission of Chicago, PC # 42 (as corrected) at 1, 11; Testimony of Claire Manning, Tr. 5 at 7 - 11. However, Agency representatives participated in the same legislative discussions, and the Agency is fully aware of the evolution of the discussions. In fact, the Agency was the primary drafter of the language that was eventually enacted as P.A. 97-0137, as well as language in other bills and discussion drafts. The Agency's proposal in this rulemaking is consistent with the statutory provisions. The Agency does not agree that P.A. 97-0137 was intended to allow the use of TACO-style, site-specific evaluations and institutional controls to establish higher site-specific MACs, and it would not have supported the underlying legislation had such an approach been allowed.

Even if such an approach were allowed, it would not lead to the outcome the PBC claims to desire:

a workable, sensible definition of 'uncontaminated soil' (i.e., clean dirt) so that public contractors and public contracting entities would be able to readily ascertain what soil is appropriate for transfer to a permitted clean construction and demolition debris ("CCDD") facility.

PC # 42 at 1. Instead, it would lead to an unenforceable hodge-podge of MACs at each facility and allow elevated concentrations of contaminants that would threaten human health, safety and the environment if not controlled in perpetuity or until a demonstration was made that the higher concentrations had attenuated and were no longer a threat. If circumstances at fill sites changed, the MACs could continue to evolve along with the changed circumstances and would never really be settled at any particular facility. The regulatory structure that would be needed to administer this approach would be extensive and costly. The Agency's objections to this approach in principle and in practice are more fully set forth elsewhere in the record. SOR at 18 - 20; Agency's Pre-First Notice Comments, PC # 9 at 5 - 10.

In fact, it is the Agency's proposed Subpart F, as adopted by the Board for First Notice,

that satisfies the PBC's "readily ascertainable" requirement with its use of the bright-line, risk-based values from Tier 1 of the TACO rules to produce specified numeric concentrations suitable for use at all fill operations throughout the State. Moreover, the MACs based on the methodology proposed in Subpart F are in compliance with all statutory requirements. The first rule of statutory construction is to determine and give effect to the intent of the legislature.

Peoria Disposal Company v. Pollution Control Board, 385 Ill.App.3d 781, 793, 896 N.E.2d 460, 472, 324 Ill.Dec. 674, 686 (Ill. App. 3 Dist. 2008) (construing Section 39.2(e) of the Act). The plain language of the statute is the best indicator of legislative intent. *Id.* If the language is clear, courts must give effect to the plain and ordinary meaning of the language without reference to interpretive aids such as transcripts of debate. *Id.* Courts must not depart from the plain language by adding conditions or exceptions that were not expressed by the legislature. *Id.*

The statutory language governing the meaning of "uncontaminated soil" is found in Section 3.160 of the Act. 415 ILCS 5/3.160 (2010) (as amended by P.A. 97-0137, eff. July 14, 2011). The language is clear on its face. Section 3.160(c) defines uncontaminated soil as "soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment." (Emphasis added) This definition also is referenced in Sections 22.51(e)(4) and 22.51a(a)(1) of the Act. Section 3.160(c)(1) follows the definition by directing the Illinois EPA to propose and the Board to adopt "rules specifying the maximum concentrations of contaminants that may be present in uncontaminated soil for purposes of this Section." (Emphasis added) The plain language states clearly that the maximum allowable concentrations of contaminants in uncontaminated soil must not exceed concentrations posing a threat to human health, safety and the environment and that this determination must be based on the concentrations of contaminants in the soil itself. This standard is absolute and is not

conditioned on the presence of external controls and circumstances such as institutional controls, exposure route exclusion assessments, and so forth. The methodology for determining MACs in proposed Subpart F based on the TACO Tier 1 values satisfies this requirement.

Subsection (c)(1) then provides additional directives for establishing MACs for chemical constituents that are carcinogens:


For carcinogens, the maximum concentrations shall not allow exposure to exceed an excess upper-bound lifetime risk of 1 in 1,000,000; provided that if the most stringent remediation objective or applicable background concentration for a contaminant set forth in 35 Ill. Adm. Code 742 is greater than the concentration that would allow exposure at an excess upper-bound lifetime risk of 1 in 1,000,000, the Board may consider allowing that contaminant in concentrations up to its most stringent remediation objective or applicable background concentration set forth in 35 Ill. Adm. Code 742 in soil used as fill material in a current of former quarry, mine, or other excavation in accordance with Section 22.51 or 22.51a of this Act and rules adopted under those Sections. Any background concentration set forth in 35 Ill. Adm. Code 742 that is adopted as a maximum allowable concentration must be based upon the location of the quarry, mine, or other excavation where the soil is used as fill material.

415 ILCS 5/3.160(c)(1) (as amended by P.A. 97-0137). The maximum allowable concentrations of carcinogens in uncontaminated soils must not be so great as to allow exposures to exceed a lifetime cancer risk of one in one million. The TACO Tier 1 objectives generally are set at or below this restriction, so the MACs based on Tier 1 objectives once again are compliant with the statute. However, if exposures to “the most stringent remediation objective or applicable background concentration” set forth in 35 Ill. Adm. Code 742 (*i.e.*, TACO) for a carcinogen would exceed the specified cancer risk limit, the MAC may be based on that most stringent objective or background concentration as set forth in Part 742. The most stringent TACO remediation objectives are found in the Tier 1 residential and construction worker objectives on which the proposed MACs are based. If the background concentration is selected as the MAC, the applicable background value is the background of the fill operation. For applicable, location-

based background values set forth in TACO, the Agency selected the background concentration tables set forth at 35 Ill. Adm. Code 742.Appendix A, Tables G and H. A background value for any fill operation may be obtained from these tables. Once again, the proposed MACs are compliant with the statutory requirements. Other than this background provision, which is accounted for the proposed Subpart F, the Agency sees no language even suggesting site-specific MACs much less requiring them.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
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DATE: April 27, 2012

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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois Environmental Protection Agency's Responses to First Notice Comments, upon the persons to whom they are directed by placing copies of each in an envelope addressed to:

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(Attached Service List – **First Class Mail**)

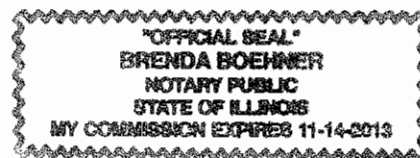
and sending or mailing them, as applicable, from Springfield, Illinois on April 27, 2012, with sufficient postage affixed as indicated above.

Mark Wight

SUBSCRIBED AND SWORN TO BEFORE ME

This 27 day of April, 2012.

Brenda Boehner
Notary Public



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