

APR 18 2013

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

April 18, 2013

IN THE MATTER OF:)
)
 PROPOSED AMENDMENTS TO CLEAN) R12-9(B)
 CONSTRUCTION OR DEMOLITION) (Rulemaking - Land)
 DEBRIS FILL OPERATIONS (CCDD):)
 PROPOSED AMENDMENTS TO 35 ILL.)
 ADM. CODE 1100)



ORIGINAL

HEARING OFFICER ORDER

On July 29, 2011, the Illinois Environmental Protection Agency (IEPA) filed a proposal pursuant to Sections 22.51 and 22.51a of the Environmental Protection Act (Act) (415 ILCS 5/22.51 and 22.51a (2010)). The proposal amended the Board's rules for Clean Construction or Demolition Debris Fill Operations to allow for use of uncontaminated clean construction or demolition debris (CCDD) and uncontaminated soil to be used as fill at quarries, mines and other excavations. The Board held four days of hearings in this matter and adopted the proposal with amendments suggested by participants at second notice. The Board adopted the final rule, making changes recommended by the Joint Committee on Administrative Rules (JCAR) and opened Subdocket B at JCAR's recommendation.

On September 21, 2012, a hearing officer order sought comment from any interested person on whether or not the Board should require groundwater monitoring at CCDD and uncontaminated soil fill facilities. The hearing officer allowed for comments to be filed until December 1, 2012. After reviewing the comments, on March 21, 2013, the Board ordered that an additional hearing be scheduled to allow for questions to be posed based on those comments.

On April 8, 2013, hearing was scheduled for May 20, 2013 and if necessary May 21, 2013. The hearing officer order established April 19, 2013, as the date by which questions, based on the comments received by December 1, 2012, must be prefiled for those hearings. The Board and staff have reviewed the comments and posed questions attached as Attachment A to this order.

The questions relate only to the issue of groundwater monitoring as Subdocket B will only address that issue. If participants have issues with the adopted rules, participants are free to file a new rulemaking to address those issues.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Marie E. Tipsord". The signature is written in a cursive, flowing style.

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ATTACHMENT A**R12-9(B)****PROPOSED AMENDMENTS TO
CLEAN CONSTRUCTION OR DEMOLITION DEBRIS (CCDD) FILL OPERATIONS:
PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 1100****Questions for Hearing May 20, 2013 and if necessary May-21, 2013****Costs of groundwater monitoring**

1. Regarding the Bluff City groundwater monitoring cost figures provided by IAAP, the Agency notes that additional information including “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.” PC 62 at 21. Would it be possible for IAAP to provide a breakdown of the groundwater monitoring costs at Bluff city, so that such costs may be compared with the monitoring costs submitted by IEPA and WMI?
2. The Agency’s estimated costs to design and install a monitoring system were less than \$0.52 per cubic yard over the 10-year life of a permit for 99% of the CCDD disposed of at fill sites in 2011. PC 62 at 22. In the situation where capital funding for design and installation is obtained through a loan, please estimate the cost per cubic yard per year, accounting for the interest rate on the loan.

Parameters to be monitored

3. Mr. Huff stated that monitoring cost burden could be eliminated by limiting “the groundwater monitoring to volatile organic compounds and dissolved RCRA metals.” PC 59 at 3.
 - a. Please comment on the prevalence of the other 35 Ill. Adm. Code 620 parameters in CCDD and uncontaminated soil.
 - b. Please comment on the cost of running an analysis of the VOCs and dissolved metals versus the entire suite of 35 Ill. Adm. Code 620 parameters, as proposed by the Agency.
 - c. Please comment on whether the applicable groundwater quality standards under 35 Ill. Adm. Code 620 for the RCRA metals are based on dissolved

concentrations. If not, please explain how compliance determinations can be made using dissolved metal concentrations.

4. What, if any, other changes should be made in consideration of adding groundwater monitoring?
5. If groundwater monitoring is required at CCDD/USF sites, should the front end screening requirements contained in the rules adopted August 23, 2012 to ensure no contaminated material is deposited into a CCDD/USF site be retained? If not, identify which requirements could be deleted or modified and explain why.

Whether or not groundwater monitoring should be self-implementing

6. Given the Agency's concern with the potential for groundwater contamination from "clean construction and demolition debris" and "uncontaminated soils", how can groundwater protection be guaranteed with a self-reporting system?

Evidence that groundwater was impacted by properly-run facilities

7. What are the specific concerns related to the potential for groundwater contamination associated with the deposition of CCDD and USF at quarries, both legally defined as "uncontaminated" and "clean" and not classified as wastes? Is it the potential contamination associated with the materials themselves? Is it the risk of non-CCDD/USF materials being deposited either accidentally or in violation of the law? Is there another concern?
8. Mr. Lansu, on behalf of the Land Reclamation & Recycling Association, provided comments to Subdocket B. PC 58. He provided groundwater monitoring data results from a large CCDD facility located in Lyons. These CCDD materials were deposited for a period of time that predates existing CCDD regulations and comes from a highly urbanized environment, yet no groundwater contamination was detected. Similar results were provided for a CCDD site in Kane County. So, while groundwater monitoring has not been widespread at CCDD facilities, where data are available, no contamination has been detected. Do these data results influence the participants' views on requiring monitoring at all CCDD and USF operations?
9. On page 18 of PC 62, the Agency asked that the Board be consistent with its requirement for groundwater monitoring in its adoption of R89-5, dated December 6, 1991. R-89-5 applies to specific activities located within setback zones and regulation recharge areas, including on-site landfilling & waste piling, and the storing and handling of such materials as pesticides, fertilizers, road oils, and de-icing agents. Does this recommendation suggest that the statutorily defined "clean construction and demolition debris" and "uncontaminated soils" have similar characteristics or the potential for groundwater contamination to those regulated in R89-5? If so, please explain.

Remediation

Remediation Objectives.

10. Mr. Huff states that the Agency's proposal does not include "recognition of risk assessment, receptors, or other concepts, in the CCDD Proposal, as presently available to LUST sites, Site Remediation Program sites, or hazardous waste sites under Part 742. Thus this [CCDD] industry would be faced with a more stringent remedial standard than LUST, RCRA, and voluntary (Site Remediation) programs." PC 59 at 3. Please comment on, including provisions for remediation at CCDD and fill sites.

11. Mr. Huff states that in order to address concerns regarding groundwater impacts from past practices "there would need to be a baseline (preexisting condition) monitoring period. The fill operators would only then be required to remediate if the groundwater quality changes in a statistically significant manner above the quality present after the first year from when the regulations go into effect. This would reduce the economic implications associated with groundwater compliance going forward." PC 59 at 4. Mr. Huff suggests the fill operators then should only be required to remediate if the groundwater quality were to change in a statistically significant manner. PC 59 at 4.
 - a. Please comment on ways to address other parameters without remediation that were found above groundwater quality standards but with no statistically significant change.
 - b. Please clarify whether establishing a "baseline" based on the existing groundwater quality at the fill site to account for groundwater impacts from the fill operations essentially "grandfathers" existing contamination.
 - c. If so, please comment whether grandfathering existing contamination at CCDD and uncontaminated fill sites would be consistent with provisions of the IGPA and the Act.
 - d. Under this scenario, would the CCDD or uncontaminated soil fill operation be subject to a nondegradation standard based on existing groundwater quality at the site? If so, please comment on whether being subject to a standard based on a statistically significant change would pose any compliance problems.

Remediation Costs.

12. Mr. Huff (PC 59) states, "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." PC 59 at 2. Please comment on the range of costs for remediation and establishing a groundwater management zone.

Other Issues Raised in Public Comments Pertaining to Groundwater Monitoring

Applicable Groundwater Quality Standards

13. Mr. Huff notes that the Agency originally proposed a non-degradation requirement for off-site contamination. Further, he states that the Board should eliminate any reference to the non-degradation requirement. PC 59 at 4. Please identify the specific provisions of the Agency's proposed rules that reference the non-degradation requirement. Also comment on whether Class I groundwater quality standards are appropriate for CCDD and uncontaminated soil fill operations as compliance standards.

Location Restriction

14. INPC urges "the Board to consider a groundwater monitoring requirement. Specifically, CCDD sites within Class III groundwater contribution areas or areas that potentially qualify as such should be required to monitor due to the distinct potential of, for example, acidic precipitation mobilizing contaminants and causing impact to these dedicated Nature Preserves which the INPC is statutorily charged with protecting." PC 49 at 1.
 - a. Please clarify whether INPC has information on the delineation of Class III groundwater contribution areas along with areas that potentially qualify as such. If so, please provide any maps or other information on Class III contribution areas.
 - b. Please comment on whether INPC has information on CCDD and uncontaminated soil fill operations located within the boundary of a Class III areas groundwater contribution areas, and those within a one-mile radius of a Nature Preserve. If so, please provide such information into the record.
 - c. Please comment on whether a location prohibition similar to the potable water well setback zone prohibition at Sections 1100.201 and 1100.500 would afford adequate protection from any potential threat of groundwater contamination to nature preserves, and Class III groundwater areas from CCDD and uncontaminated soil fill operations.
15. The Agency's proposal at Sections 1100.201 and 1100.500 prohibited the location of CCDD and uncontaminated soil fill operations inside a setback zone of a potable water supply well. This location prohibition was adopted by the Board. The Board asks the Agency to clarify whether the proposed prohibition applies only with respect to setback zones of existing potable water supply wells or does it apply in relation to setback zones of any new potable water supply wells. If the prohibition applies with respect to setback zone of a new potable water supply well, please clarify what actions must be taken by the fill operation if a potable water well is installed within 200 feet of a CCDD or USF operation. Note that the minimum setback zone requirements for location of new wells under Section 14.1 apply to only "community water supply wells".

Also, comment on whether similar protection should be afforded to regulated recharge areas, designated nature preserves, and Class III groundwater contribution areas referenced by INPC.