

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 19 2013

STATE OF ILLINOIS  
Pollution Control Board

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

R 2012-009(B)  
(Rulemaking - Land)



ORIGINAL

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the Office of the Attorney General's Pre-Filed Questions Regarding The Necessity For Groundwater Monitoring, a copy of which is hereby served upon you.

Dated: April 19, 2013

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney  
General of the State of Illinois

BY:

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 Adm. Code 1100 )

**THE OFFICE OF THE ATTORNEY GENERAL'S PRE-FILED QUESTIONS  
REGARDING THE NECESSITY FOR GROUNDWATER MONITORING**

The Office of the Attorney General, on behalf of the People of the State of Illinois, ("People") hereby files its Pre-Filed Questions Regarding The Necessity For Groundwater Monitoring in this matter, as provided by the Illinois Pollution Control Board ("Board") Hearing Officer Order issued on April 8, 2013.

**A. General Questions**

1. In its February 2, 2012 Order, the Board found that "no evidence was provided to demonstrate that CCDD or uncontaminated soil fill sites were a source of groundwater contamination." February 2, 2012 Board First Notice Opinion and Order, p. 78.

**Q: What, if any, groundwater monitoring data exists to demonstrate that CCDD fill operations have not impacted groundwater at and around CCDD fill operations?**

2. In the Conclusion of the Board's February 2, 2012 First Notice Opinion and Order, it stated that "considering the potentially sizeable costs for groundwater monitoring, the Board finds that this record does not support groundwater monitoring at this time." February 2, 2012 First Notice Opinion and Order, p. 78.

In the Board's June 7, 2012 Second Notice Opinion and Order, it stated that "[t]he Board finds that the statutory directive to protect groundwater does not equate to requiring groundwater monitoring.<sup>1</sup> With strengthened soil certification and testing and recordkeeping, groundwater will be protected from contamination under the Board's rules." June 7, 2012 Second Notice Opinion and Order, p. 89.

In 1997, the General Assembly adopted a new definition for CCDD in §3.78 of the Act (*See*, P.A. 90-475), which essentially provided that to the extent provided by federal law, CCDD could be disposed of "below grade," at a CCDD fill site without being considered "waste."<sup>2</sup>

<sup>1</sup> Section 22.51(f)(1) of the Act. 415 ILCS 5/22.51(f)(1).

<sup>2</sup> The definition for CCDD was enacted in Section 3.76 of the Act, S.H.A. ch. 111½, ¶ 1003.76, by the General Assembly in P.A. 86-633, § 1, which became effective on September 1, 1989.

In 2005, the General Assembly enacted Section 22.51 of the Act,<sup>3</sup> which required that each incoming truckload of CCDD be screened with a photo ionization detector (“PID”) or equivalent device to detect the presence of volatile organic chemicals (“VOCs”). 415 ILCS 5/22.51(c). In 2006, the Board promulgated the Part 1100 CCDD Regulations, which included visual inspections and use of a PID or equivalent device to detect the presence of VOCs.<sup>4</sup>

**Q1: How do the Board’s recently promulgated CCDD Regulations,<sup>5</sup> including “strengthened soil certification and testing and recordkeeping,” protect groundwater at CCDD fill operations that accepted CCDD from 1997 to 2005, when there were neither any regulations in place (no requirements for any soil certifications, load checking and/or screening) nor the requirement for an Illinois EPA-issued permit?**

**Q2: How do the Board’s recently promulgated CCDD Regulations, including “strengthened soil certification and testing and recordkeeping,” protect groundwater at CCDD fill operations that accepted CCDD from 2005 to 2010, where the only constituents that could potentially be identified were VOCs?**

**Q3: How do the Board’s recently promulgated CCDD Regulations, including “strengthened soil certification and testing and recordkeeping,” protect groundwater at CCDD fill operations that knowingly or unknowingly took contaminated soils?**

**Q4: How do the Board’s recently promulgated CCDD Regulations, including “strengthened soil certification and testing and recordkeeping,” protect groundwater at CCDD fill operations that accept reclaimed asphalt – a source of polynuclear aromatic hydrocarbons (PNAs), which are a known carcinogen?**

## **B. Questions Concerning the Proposed Subpart G**

In the Board’s March 21, 2013 Order, it stated that “[a]s a basis for additional comments regarding groundwater monitoring and how such a program might be implemented, the Board provides the language for groundwater monitoring proposed by the IEPA below.” March 21, 2013 Board Order, p. 2. The following People’s questions are directed at the proposed Subpart G Regulations.

For purposes of the questions set forth in this section, we point out that the definition of “inert” waste includes “only non-biodegradable and non-putrescible solid wastes; including, but not limited to, bricks, masonry, and concrete.” 35 Ill. Adm. Code 810.103. By comparison, the definition for CCDD “means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.” 415 ILCS 5/3.160 (2012). The main difference in the definitions is that

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<sup>3</sup> Section 22.51 of the Act was created by Public Act P.A. 94-272, § 10, which became effective on July 19, 2005.

<sup>4</sup> Adopted in R06-19 at 30 Ill. Reg. 14534, effective August 24, 2006.

<sup>5</sup> Part 1100 CCDD Regulations were amended in R12-9 at 36 Ill. Reg. 13892, effective August 27, 2012; *see also* Board’s August 23, 2012 Final Notice Opinion and Order, p. 1.

CCDD includes asphalt, which is a source of PNAs, which by operation of the Board Waste Disposal Regulations would classify CCDD as a “chemical waste,” rather than “inert waste.” See 35 Ill. Adm. Code 810.103.

3. Section 1100.740 Sampling Frequency – This Section provides for only annual groundwater testing at a minimum. However, the Board Inert Waste Regulations require semi-annual testing. As mentioned above, inert waste is potentially more benign because it does not contain asphalt, a source of PNAs, yet the regulations require that inert waste be tested at least twice a year.

**Q: Why do the proposed Part 1100 regulations limit the frequency of groundwater monitoring at CCDD facilities to once a year, when the Board’s inert waste landfill regulations require semi-annual testing for contaminants?**

4. Section 1100.745 Non-Compliance Response Program –

I) This Section provides for dates by which the owner or operator must do the following: (a) report exceedances of any Class I groundwater quality standard to the Agency (within 60 days after sample was collected), (b) retest the groundwater (within 60 days after date sample was collected) and submit a report with the sample results to the Agency (60 days after receiving the resampling data), (c) submit a corrective action program (within 120 days after date the resampling results were sent to the Agency), and implement the corrective action program (within 120 days after date the resampling results were sent to the Agency). Under the Board Inert Waste Regulations, an owner or operator must report any exceedance of a Class I groundwater quality standard within 1 business day (See 35 Ill. Adm. Code 811.206(d)).

**Q1: Why do the proposed Part 1100 regulations allow a CCDD owner/operator 60 days to report an exceedance when the Board Regulations require an inert waste landfill operator to report an exceedance within 1 business day?**

**Q2: Why do the proposed Part 1100 regulations allow a CCDD owner/operator 60 days to report an exceedance, when potentially each additional day more fill material could be disposed upon the contaminated soil or other waste?**

II) In addition, in Section 1100.745(c) there are no procedures or timeframes regarding any deficiencies that the Illinois EPA might identify in an owner’s/operator’s corrective action program; i.e. it assumes that the plan will be acceptable to the Agency.

**Q1: How will the proposed Part 1100 regulations insure that these Corrective Action Programs are sufficient to address the identified groundwater contamination?**

**Q2: Should the Corrective Action Programs be subject to review and approval by the Illinois EPA with appropriate time frames so that the approval process does not continue for an overly extended period of time, where groundwater contamination has been identified?**

5. Section 1100.750 Alternate Non-Compliance Response Program –Subsection (a) requires the owner or operator to notify the Agency of its intention to avail itself of this Section (within 60 days after date the Agency was notified in writing of an exceedance – 120 days after date sample was collected). Subsection (b) requires the owner/operator to submit a report to the Agency that demonstrates that a source other than the owner's/operator's fill operation was the source of the contamination within 180 days of the date on which the Agency was notified in writing (300 days after date sample was collected).

**Q1: Why do the proposed Part 1100 regulations allow a CCDD owner/operator 300 days to provide an alternate non-compliance plan, when the plan and the support for it may be deficient and then the owner/operator would be required to sample the groundwater again as required in Section 1100.745(b), thereby providing an additional 120 days to provide the Illinois EPA with the sampling results?**

**Q2: What incentive is there for any owner/operator to initiate the Section 1100.745(b) sampling without first attempting to provide the Illinois EPA with a Section 1100.750 alternate non-compliance program?**

6. Section 1100.760 Dewatering Fill Operations – This Section contemplates certain facilities dewatering their fill areas.

**Q: Why do not the proposed Part 1100 regulations require the CCDD fill operations or registered uncontaminated soil fill operations currently discharging from their facilities pursuant to an NPDES permit to modify those permits to sample the discharge for all of the constituents identified in Subpart F?**

Respectfully submitted,

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Pollution Control Board

**CERTIFICATE OF SERVICE**

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 19th day of April, 2013, the foregoing Office of the Attorney General's Pre-Filed Questions Regarding The Necessity For Groundwater Monitoring and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
STEPHEN J. SYLVESTER

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