

Board Adopts First Notice Opinion and Order in Proposed Rulemaking for Amendments for Clean Construction or Demolition Debris Fill Operations Rules

The Illinois Pollution Control Board, on February 2, 2012, adopted a first notice opinion and order in a proposal to amend the Board's rules for Clean Construction or Demolition Debris and Uncontaminated Soil 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. On July 29, 2011, the Illinois Environmental Protection Agency (IEPA) filed the proposal with the Board, which was docketed as Proposed Amendments To Clean Construction Or Demolition Debris Fill Operations (CCDD): Proposed Amendments To 35 Ill. Adm. Code 1100, R12-9. The Board must adopt the rule no later than one year after receipt of the IEPA's proposal.

The IEPA proposal specified: 1) the use of CCDD and uncontaminated soil as fill material at CCDD fill operations; 2) the use of uncontaminated soil as fill material at uncontaminated soil fill operations; and 3) the maximum concentrations of contaminants that may be present in the uncontaminated soil component of construction or demolition debris.

The IEPA proposal also reflected changes necessitated by P.A. 97-0137(eff. July 14, 2011). The first change removes benzo(a)pyrene restriction at Section 3.160(c)(1) of the Act (415 ILCS 5/3/160(c)(1)(2010)). This change allows the Board to consider TACO background levels for all carcinogens and not just for the one carcinogen, benzo(a)pyrene. The second amendment allows Professional Geologists, as well as Professional Engineers to provide certifications under the interim soil certification requirements.

After reviewing the record in this proceeding and in consideration of the comments and testimony, the Board made several changes to IEPA's proposal. The Board found that no evidence was provided to demonstrate that CCDD or uncontaminated soil fill sites were a source of groundwater contamination. Also considering the potentially sizable costs for groundwater monitoring, the Board found that this record does not support groundwater monitoring at this time. The Board therefore proceeds to first notice without groundwater monitoring.

Because the Board has determined not to proceed with groundwater monitoring, the Board strengthens soil certification and soil testing requirements. The Board requires soil certification to be based upon source site evaluation conducted in accordance with ASTM standards. Further, the Board found that the proposed soil certification requirements must include analytical soil testing data to show compliance with the maximum allowable concentrations (MACs) when the soil is from a potentially impacted property (PIP). Additionally, soil fill operations would be required to submit annual operating reports similar to those required by CCDD operations, and the soil fill operation registration form is expanded to include the information required for CCDD permits.

Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period, during which anyone may file a public comment with the Board. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R12-9, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

Pollution Control Board

James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

In addition, public comments may be filed electronically through COOL at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained from the Clerk's office upon payment of reproduction fees as prescribed by Section 6 of the Freedom of Information Act [5 ILCS 140/6].

For more information contact Marie Tipsord at 312-814-4925 or email at tipsorm@ipcb.state.il.us.