

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

AUG 01 2013

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
 PROPOSED AMENDMENTS TO CLEAN) R-12-009
 CONSTRUCTION OR DEMOLITION) (Rulemaking – Land)
 DEBRIS (CCDD) FILL OPERATIONS:)
 PROPOSED AMENDMENTS TO)
 35 ILL. ADM. CODE 1100)



ORIGINAL

NOTICE OF FILING

pc#13

To: see attached service list

PLEASE TAKE NOTICE that on the 1st day of August, 2013, I filed with the Office of the Clerk of the Pollution Control Board the attached Post-Hearing Comments on behalf of Citizens Against Ruining the Environment.

By: *Keith Harley*
Keith Harley, Attorney for Citizens Against Ruining the Environment

Dated: August 1, 2013

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu

RECEIVED
CLERK'S OFFICE

AUG 01 2013

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, KEITH HARLEY, an attorney, hereby certify that true copies of Citizens Against Ruining the Environment's Post-Hearing Comments were delivered on August 1, 2013 to the following:

Mr. John T. Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

and that true copies of these documents were mailed by First Class Mail, by depositing the same in the U.S. Mail depository located at 211 West Wacker, Chicago, Illinois in an envelope with sufficient postage prepaid, on August 1, 2013 to the following:

Marie Tipsord
Hearing Officer
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

Kimberly A. Geving, Assistant Counsel
Mark Wright, Assistant Counsel
Stephanie Flowers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Stephen Sylvester, Assistant Attorney General
Matthew J. Dunn, Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Mitchell Cohen, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Doris McDonald
Chicago Department of Law
30 N. LaSalle St., Suite 900
Chicago, IL 60602

Steven Gobelman
Illinois Department of Transportation
2300 S. Dirksen Parkway
Room 302
Springfield, IL 62764

Greg Wilcox, Executive Director
Brian Lansu, Attorney
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

John Henrickson, Executive Director
Illinois Association of Aggregate Producers
1115 S. Second Street
Springfield, IL 62704

James Huff
Huff & Huff, Inc.
915 Harger Road, Suite 330
Oak Brook, IL 60523

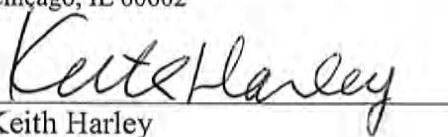
Dennis M. Wilt
Michelle A. Gale
Waste Management of Illinois
720 East Butterfield Road
Lombard, IL 60148

James M. Morphew
Sorling, Northrup, Hanna, Cullen & Cochrane, Ltd.
Suite 800 Illinois Building
608 East Adams, P.O. Box 5131
Springfield, IL 62705

Dennis G. Walsh
Gregory T. Smith
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1600
Chicago, IL 60606

Claire A. Manning
Brown, Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, IL 62705-2459

Tiffany Chappell
City of Chicago
Mayor's Office of Intergovernmental Affairs
121 N. LaSalle Street, Room 406
Chicago, IL 60602


Keith Harley

RECEIVED
CLERK'S OFFICE

AUG 01 2013

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO CLEAN)	R-12-009
CONSTRUCTION OR DEMOLITION)	(Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)	
PROPOSED AMENDMENTS TO)	
35 ILL. ADM. CODE 1100)	

pc#73

POST-HEARING COMMENTS
OF CITIZENS AGAINST RUINING THE ENVIRONMENT

Now comes Keith Harley of the Chicago Legal Clinic, Inc., on behalf of his client, Citizens Against Ruining the Environment, and respectfully submits the following comments. Citizens Against Ruining the Environment (“CARE”) is a Will County-based environmental organization comprised of members who live, work and recreate in Will County. CARE asserts it is necessary for this Board to adopt groundwater monitoring requirements for CCDD/USF facilities in order to act consistently with legislative mandate, the evidence in the record, and the well-being of Illinois residents who, like CARE members, rely on groundwater for their drinking water.

COMMENT ONE: REGULATIONS GOVERNING THE DISPOSAL OF CCDD MATERIAL AND CCDD FACILITIES ARE INSUFFICIENT TO PROTECT GROUNDWATER, AS EVIDENCED BY A CONSISTENT HISTORY OF VIOLATIONS.

Current regulations cannot ensure compliant methods of disposal of CCDD materials. CARE previously identified approximately 175 enforcement actions by IEPA since 2002 for violations of then-existing regulatory standards at CCDD disposal sites. CARE Public Comments, Nov. 30, 2012. Since the Part 1100 regulations have been in effect, the Illinois Attorney General has filed eleven (11) enforcement actions against CCDD disposal

owners/operators for violations of regulatory standards. Exhibit 59, Prefiled Testimony of People of the State of Illinois, pg. 26-28.

Moreover, CARE has identified four more administrative citations filed by Illinois EPA and one complaint filed by the Illinois Attorney General against facilities for allowing the open dumping of construction and demolition debris. First, on April 3, 2012, Illinois EPA filed an administrative citation against Funk Builders, Inc. alleging violations of, among others, Section 21(p)(7) of the Illinois Environmental Protection Act, 415 ILCS 5/21 (p)(7), for causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris: or clean construction or demolition debris. Admin. Citation, at 4, *IEPA v. Funk Builders, Inc.*, No. AC 12-38 (Apr. 3, 2012).

The citation alleged that a field inspector conducted an inspection of property owned by Funk Builders, Inc. and observed “an open dump consisting of, but not limited to, household waste, plastics, metal debris, and construction/demolition debris.” *Id.* at 10. On March 7, 2013, the parties filed a Stipulation of Settlement and Dismissal of Respondent’s Petition for Administrative Review, where Funk Builders agreed to pay \$1,500.00 for their violation and stated that the waste that was the subject of the administrative citation was removed and disposed of properly. Op. & Order at 1, *IEPA v. Funk Builders, Inc.*, No. AC 12-38.

Second, on September 14, 2012, Illinois EPA filed an administrative citation against Garrison Properties, Inc. & River City Roofing Company, Inc. alleging violations of, among others, Section 21(p)(7) of the Illinois Environmental Protection Act, 415 ILCS 5/21 (p)(7), for causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris: or clean construction or demolition debris. Admin. Citation, at

4, *IEPA v. Garrison Properties, Inc. & River City Roofing Company, Inc.*, No. AC 12-4 (Sept. 14, 2012).

The citation alleged that on Friday, August 5, 2011, a field inspector visited the property of River City Roofing Company and observed an active fire along with white smoke rising above the property. *Id.* at 12. The materials that were being burned were predominantly roofing tar paper and wood shakes, but the field inspector also observed remnants of small tree limbs, dozens of boards, a section of what appeared to be an interior wall, and other unrecognizable materials being burned on the property. *Id.*

The field inspector spoke with the owner of the site, who indicated that waste was routinely brought to River City when disposal at a landfill was not achievable during daily landfill hours. *Id.* He indicated that the waste was off-loaded on their property and disposed of at the landfill the next business day. *Id.* The field inspector concluded that “[t]he open dumping of waste . . . resulted in deposition of general or clean construction or demolition debris.” *Id.* at 14.

On March 12, 2013, the parties filed a Stipulation of Settlement and Dismissal of Respondent’s Petition for Administrative Review where Garrison Properties, Inc. & River City Roofing Company, Inc. agreed to pay \$1,500.00 for their violation and stated that the waste that was the subject of the administrative citation was removed and disposed of properly. Op. & Order at 1, *IEPA v. Garrison Properties, Inc. & River City Roofing Company, Inc.*, No. AC 12-4 (Mar. 21, 2013).

Third, on January 14, 2013, Illinois EPA filed an administrative citation against Industrial Demolition, Inc. alleging violations of, among others, Section 21(p)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/21(p)(1) (2010), for causing or allowing the open

dumping of waste in a manner resulting in litter. Admin. Citation at 2, *IEPA v. Industrial Demolition, Inc.*, No. AC 13-33 (Jan. 14, 2013).

The citation alleged that on November 28, 2012, a field inspector conducted a re-inspection of the Industrial Demolition, Inc. site. Admin. Citation at 10, *IEPA v. Industrial Demolition, Inc.*, No. AC 13-33 (Jan. 14, 2013). An initial inspection was conducted on March 23, 2010 after a complaint that railroad ties had been burned on the site. *Id.* During this inspection, the field inspector found “two significant piles of rotting railroad ties,” “a significant volume of scrap metal” and “[a] pile of demolition debris composed of broken concrete remains.” *Id.* at 11-12. A resolution has not yet been reached in this case.

Fourth, on January 15, 2013, Illinois EPA filed an administrative citation against Colonial Brick Co., Inc. and Rodney Brown Trucking and Ready Mix alleging violations of, among others, Section 21(p)(7) of the the Illinois Environmental Protection Act, 415 ILCS 5/21 (p)(7), for causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris: or clean construction or demolition debris. Citation, at 4, *IEPA v. Colonial Brick Co. Inc. and Rodney N. Brown d/b/a Brown Trucking & Ready Mix*, No. AC 13-34 (Jan. 15, 2013).

The citation alleged that on December 12, 2012, a field inspector conducted an inspection of Rod Brown Trucking & Ready Mix as a follow up to an Administrative Citation Warning Notice (ACWN) sent to the owner and operator on August 2, 2012. *Id.* at 14. While on-site, the field inspector observed an “open dump consisting of, but not limited to, household waste, landscape waste, construction/demolition debris, automotive waste, plastics, metal, E-waste, and furniture.” *Id.* A resolution has not yet been reached in this case.

Finally, on June 6, 2012, the State of Illinois filed a Complaint against Kehrer Brothers Construction, Inc. alleging violations of, among others, Section 21 (p)(7)(i) of the Illinois Environmental Protection Act, 415 ILCS 5121 (p)(7)(i), for causing or allowing the open dumping of waste including general construction or demolition debris. Compl. at 1-8, *People of the State of Illinois v. Kehrer Brothers Construction, Inc.*, No. PCB 12-132 (June 6, 2012).

The Complaint alleged that on October 13, 2010, Illinois EPA inspected the Kehrer Brothers Construction's principal place of business and observed "two large piles of waste," which included "demolition debris, metal, wood and plastic pallets, treated lumber, wood crates, landscape waste, lawn furniture and plastics." *Id.* 1-2. The site was not permitted by the Illinois EPA as a sanitary landfill. *Id.*

On January 18, 2013, the parties filed a Stipulation and Proposal for Settlement and a Motion for Relief from Hearing Requirement where Kehrer Brothers Construction agreed to pay a civil penalty of \$6,000 and stated that the waste that was the subject of the administrative citation had been removed and disposed of properly. Op. & Order of the Bd., at 1-2, *People of the State of Illinois v. Kehrer Brothers Construction, Inc.*, No. PCB 12-132 (Mar. 21, 2013).

These five instances, in addition to the hundreds of violations previously identified by CARE and the Illinois Attorney General, illustrate that failure to comply with regulations is quite common in the CCDD disposal industry. Furthermore, even after the new requirements for soil certifications were enacted, the Illinois Attorney General filed two enforcement actions with the Board against USF facilities, alleging that the fill operations "fail[ed] to implement and document a load checking program, fail[ed] to obtain soil certifications, and fail[ed] to maintain records." Exhibit 59, Prefiled Testimony of People of the State of Illinois, pg. 4. This unrelenting, continuing history of non-compliance forms the context for the Illinois EPA, the

Illinois Attorney General, Will County, and CARE to assert the necessity of groundwater monitoring at CCDD and USF facilities.

While testimony by Bret Hall and John Quinn, two men employed by CCDD facilities, emphasized that upfront controls in place under Part 1100 regulations were sufficient to ensure compliance, this limited testimony cannot outweigh the continuing history of non-compliance in the CCDD industry in Illinois. 5/20/2013 TR-176, 179-180 (testimony of Bret Hall and John Quinn). Moreover, even if a CCDD facility is perfectly compliant, as Hall and Quinn contend is possible, the facility could nonetheless have an aggregation of contaminants in the CCDD material that accumulates and affects groundwater quality over time. Therefore, even if the CCDD industry miraculously and unexpectedly evolved into perfect compliance, groundwater monitoring would still be essential.

COMMENT TWO: WITHOUT GROUNDWATER MONITORING AT CCDD/USF SITES, THE FIRST INDICATION OF GROUNDWATER CONTAMINATION WILL BE IN PUBLIC AND PRIVATE WELLS SUPPLYING POTABLE WATER TO ILLINOIS RESIDENTS

Evidence of longstanding and continuing violations of CCDD regulations must be viewed in light of the vulnerability of groundwater resources in areas adjacent to CCDD facilities. “Seventy-one percent of the population of Will County’s residents rely on groundwater for their drinking water.” 5/20/2013 TR-9 (testimony of Larry Walsh, Jr.). The shallow aquifer system upon which they rely is an extraordinary public resource essential to Will County now and in the future, but is also easily susceptible to contamination. *Id.* at 23 (testimony of Stuart Cravens). Contaminants can rapidly infiltrate the aquifer and, “in a matter of days or weeks . . . can travel tens to hundreds of feet.” *Id.* at 20.

Will County has “nine active permitted CCDD facilities within the county” which have the potential to contaminate this shallow aquifer and the groundwater that thousands of Will

County residents rely on. *Id.* at 9 (testimony of Larry Walsh, Sr). A map provided by Illinois EPA illustrates that both public and private wells are found in close proximity to CCDD fill operations. Statement of Reasons, IL EPA, Jul. 29, 2011, pg. 6.

Without groundwater monitoring, groundwater contamination will only be discovered once it has infiltrated public and private potable wells. This result is directly contrary to the General Assembly's mandate for this Board to promulgate standards and procedures necessary to protect groundwater. Groundwater monitoring is a prudent, precautionary method that fulfills the General Assembly's mandate. Groundwater monitoring will enable facility operators to detect and respond to releases before they affect potable groundwater resources. By enabling a quick response, potentially catastrophic costs to facility operators, public water suppliers and members of the public will be avoided. Complex and expensive remedial efforts will be avoided.

If groundwater monitoring confirms that releases are not happening from CCDD and USF facilities, this will provide critical, credible assurance to public water suppliers and private well owners that groundwater is not being impacted by these operations. Groundwater problems that do occur will not be unjustifiably attributed to facility operators. Groundwater monitoring will provide a present day baseline of groundwater conditions that will enable facility operators to evaluate impacts (or confirm the lack of impacts) over time. If groundwater monitoring at these facilities consistently reveal that no releases are detected over time, it will be possible for the Board to revisit this issue on a rulemaking Petition (which, under Illinois law, can be initiated by any person). As for today, in light of the General Assembly's mandate, the absence of evidence of the impacts of these disposal facilities on groundwater resources suggests the Board should err on the side of a precautionary regulatory strategy. Mandating groundwater monitoring is a

prudent regulatory approach that is consistent with legislative mandate, the absence of evidence about impacts over time, the rampant non-compliance within this industry, the vulnerability of potable groundwater resources and the potentially catastrophic consequences of an undetected release on Illinois residents.

COMMENT THREE: THE COST OF GROUNDWATER MONITORING IS SMALL COMPARED TO THE DETRIMENTAL IMPACT OF CONTAMINATED GROUNDWATER TO CITIZENS' HEALTH AND WELL-BEING.

Mandating groundwater monitoring is a prudent approach regardless of cost. Indeed, a strong argument can be made that the General Assembly's mandate for groundwater protection is unconditional and without regard to cost. Nonetheless, the cost of groundwater monitoring for CCDD facilities is reasonable, particularly when balanced against the detrimental impact of undetected, contaminated groundwater resources.

Cost estimates for groundwater monitoring conducted by Will County and IEPA range from \$0.06 to \$0.50 per cubic yard of CCDD disposed. Exhibit 55, Prefiled Testimony of Will County and Stuart Cravens, pg. 3; The Office of Attorney General's Public Comments Regarding the Necessity for Groundwater Monitoring, pg. 4, Dec. 3, 2012. CCDD facilities typically charge \$4.50-\$5.00 per cubic yard of CCDD material dumped at their facility. Exhibit 55, Prefiled testimony of Will County and Stuart Cravens, pg. 3. In light of these facts, Illinois EPA, the Illinois Attorney General, Will County, and CARE uniformly assert that the cost of monitoring is reasonable.

The claim that CCDD owners may choose to go out of business rather than absorb the costs of groundwater monitoring is overstated. Despite additional costs, "at least one of those nine Will County CCDD sites has agreed put in monitoring wells as a condition of its zoning permit." 5/20/2013 TR-12 (testimony of Pat McGuire). Moreover, the costs associated with

installing groundwater monitoring are meager compared to the potential liabilities a CCDD facility could face if the facility is found to have caused groundwater contamination that damaged a potable groundwater resource. Therefore, the costs of groundwater monitoring are not a basis for the Board to deny Illinois EPA, the Illinois Attorney General, Will County, and CARE's requests for regulations requiring groundwater monitoring at CCDD facilities.

COMMENT FOUR: SELF-IMPLEMENTATION OF MONITORING IS INSUFFICIENT; GROUNDWATER MONITORING PLANS AND GROUNDWATER MONITORING DATA SHOULD BE SUBMITTED TO ILLINOIS EPA.

The Illinois Attorney General, Will County, and CARE all agree that groundwater monitoring plans and data should be submitted to Illinois EPA to ensure that facilities are sufficiently monitoring groundwater. In Illinois EPA's proposed revision to Subpart G, a facility is not required to report groundwater monitoring data to Illinois EPA if no exceedance is found. Exhibit 63, Prefiled Testimony of Illinois Environmental Protection Agency, pg. 12. Such a reporting system leaves a giant loophole for CCDD facilities who are conducting insufficient monitoring or avoiding the consequences of a detected release: if they don't report to Illinois EPA, Illinois EPA assumes they are compliant, without any evidence that the facility is *actually* monitoring groundwater according to regulatory requirements. Self-monitoring also hides results from units of local government, public water suppliers and other members of the public who would not be able to access information using the Freedom of Information Act.

Because of the inaccessibility of information, for members of the public, a self-reporting system is essentially the same as having no groundwater monitoring at all. This issue must also be viewed in light of the unrelenting history of non-compliance in the CCDD disposal industry. The same facilities that do not properly comply with regulations regarding the disposal of CCDD materials are not likely to comply with Illinois EPA regulations to report exceedances. There is

an advantage for a scofflaw operator who avoids reporting by comparison to a compliant competitor. Consequently, as asserted by Will County, a “self-implementing system will create an immediate lack of trust by the public towards both the process and the CCDD/USF site owners/operators.” Exhibit 55, Pre-Filed Testimony of Will County and Stuart Cravens, pg. 4. If citizens using groundwater as their source of potable water cannot access records about CCDD facilities, these residents will have no way to verify whether the groundwater on which they depend is impacted. The Illinois Attorney General, Will County, and CARE all agree that the public must have access to groundwater monitoring data that is regularly submitted to Illinois EPA, providing a basis for regulators *and* the public to verify exceedances *and* compliance.

COMMENT FIVE: FRONT-END SCREENING SHOULD BE CONTINUED EVEN IF GROUNDWATER MONITORING IS IMPLEMENTED.

Even if the Board adopts groundwater monitoring requirements, Illinois EPA, the Illinois Attorney General, Will County, and CARE all agree that the Board should also continue front-end screening of materials disposed at CCDD facilities. As Senator Pat McGuire recognized at the hearings, “monitoring wells . . . will have a salutary effect on [CCDD disposal facility] operators so that they will ensure that the fill they are accepting is clean, since the wells will detect any contamination.” 5/20/2013 TR-12,13. Groundwater monitoring requirements will encourage CCDD facilities to ensure that they are only accepting clean materials because there is a detection system (groundwater monitoring) that will verify their degree of compliance. Groundwater monitoring, acting in combination with front-end screening, provides the best opportunity to protect citizens who use groundwater as their main source of drinking water.

CONCLUSION

CARE, in agreement with Illinois EPA, the Illinois Attorney General, and Will County, requests that the Board implement groundwater monitoring requirements for CCDD facilities. These groundwater monitoring requirements are essential to ensure the protection of groundwater resources on which Illinois residents depend. As such, requiring groundwater monitoring is necessary in order for this Board to act in accordance with the mandate of the General Assembly.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Keith Harley". The signature is written in black ink and is positioned above a horizontal line.

Keith Harley, Attorney for Citizens Against Ruining the Environment

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
(312) 726-2938
(312) 726-5206 (fax)
kharley@kentlaw.edu
5/20/2013 TR-12 (testimony of Pat McGuire)