

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN)
CONSTRUCTION OR DEMOLITION) R 2012-009(B)
DEBRIS (CCDD) FILL OPERATIONS:) (Rulemaking - Land)
PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code 1100)

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 Post Hearing Comments, a copy of which is hereby served upon you.

Dated: August 1, 2013

Respectfully submitted,

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

BY:



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THE OFFICE OF THE ATTORNEY GENERAL'S POST HEARING COMMENTS

The Office of the Attorney General, on behalf of the People of the State of Illinois, ("People") hereby files its Post Hearing Comments in this matter, as provided by the Illinois Pollution Control Board ("Board") Hearing Officer Order issued on June 12, 2013.

I. The Attorney General is Obligated to Ensure Illinois Citizens' Right to a Healthy Environment.

The Attorney General is the chief legal officer of the State of Illinois and its departments and its agencies. Ill. Const. 1970, art. V, § 15; *Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 137 (1984). More pertinent in the current setting, the Attorney General has an obligation to represent the interests of the People, so as to ensure a healthful environment for all citizens of the State. Ill. Const. 1970, art. XI, § 2; *People v. NL Industries*, 152 Ill.2d 82, 103 (1992). The Attorney General's obligations include ensuring that waste and clean construction or demolition debris ("CCDD") are disposed of properly, *see* 415 ILCS 5/21 and 22.51 (2012), and that waters of the State of Illinois, including groundwater, are not threatened by water pollution. 415 ILCS 5/12(a) and (d) (2012).

II. Groundwater Monitoring is Necessary at Fill Operations.

As a preliminary matter, the Attorney General's Office concurs in the Illinois EPA's Post-Hearing Comments filed in this matter in accordance with the Hearing Officer Order issued June 12, 2013.

It is important to reiterate the importance of protecting the State's groundwater and the need to do so in this proceeding. The General Assembly's public policies in the Constitution, the Environmental Protection Act ("Act"), and the Groundwater Protection Act require it. Also, there have been several enforcement cases regarding CCDD facilities that demonstrate that the Part 1100 Regulations alone are inadequate to ensure the protection of Illinois groundwater. Further, the record to date demonstrates the presence of soils at fill sites above the health-based maximum allowable concentrations ("MACs") of chemical constituents, which threaten groundwater.

A. The General Assembly Requires that Illinois Groundwater be Restored, Protected and Enhanced.

The Illinois EPA was created by the Act and charged with carrying out its purposes, as set forth by the General Assembly. 415 ILCS 5/4 (2012). Part of the Illinois EPA's functions is to propose regulations. *Id.* Pursuant to its statutory authority and the General Assembly's mandate in Section 22.51 of the Act, the Illinois EPA set forth Subpart G in its initial proposal in this Rulemaking, which required, among other things, groundwater monitoring to ensure that State groundwater would not be degraded by filling operations.

The Attorney General's Office, on behalf of the People, has, from the inception of the stakeholder process with the Illinois EPA and also throughout this Rulemaking, advocated that the Part 1100 Regulations should conform with the General Assembly's public policy regarding the State's groundwater resources.

B. The Legal Framework for Protecting the State's Groundwater.

This Rulemaking is proceeding as required by Section 22.51 of the Act, which was amended by Public Act 096-1416 and became effective on July 30, 2010. Section 22.51(f)(1) contains the General Assembly's requirements for this Part 1100 Rulemaking:

(f)(1) ... *The rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to, the following: requirements regarding testing and certification of soil used as fill material, surface water runoff, liners or other protective barriers, monitoring (including, but not limited to, groundwater monitoring), corrective action, recordkeeping, reporting, closure and post-closure care, financial assurance, post-closure land use controls, location standards, and the modification of existing permits to conform to the requirements of this Act and Board rules. . . .*

(Emphasis added) 415 ILCS 5/22.51(f)(1) (2012).

To better understand what the General Assembly meant when it stated that “[t]he rules must include standards and procedures necessary to protect groundwater,” it is necessary to look back at the General Assembly’s prior enactments regarding groundwater. The public policy regarding the environment was first articulated in Article XI, Section 1, of the Illinois Constitution, IL. CONST. ART. XI, Sec. 1, which provides as follows:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Thereafter, the General Assembly provided for the implementation and enforcement of this Section of the Constitution by creating the Act, including Sections 2, 11, 12, and 22.51, 415 ILCS 5/2, 11, 12, and 22.51 (2012), as well as its enactment of the Illinois Groundwater Protection Act, 415 ILCS 55/1 *et seq.* (2012).

In Section 2(b) of the Act, the General Assembly set forth its purposes, which are “to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” 415 ILCS 5/2(b) (2012); *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill.2d 103, 107 (2007). Moreover, the Act requires liberal construction to effectuate its purposes. 415 ILCS 5/2(c); *State Oil Co. v. People*, 352 Ill. App. 3d 813, 820 (2nd Dist. 2004).

The General Assembly set forth its public policy regarding pollution of the State's waters, which includes groundwater, in Section 11 of the Act.

- b) It is the purpose of this Title *to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law; . . .*

(Emphasis added) 415 ILCS 5/11 (2012).

The General Assembly set forth its findings and public policy regarding the State's groundwater in Section 2 of the Illinois Groundwater Protection Act.

- (a) The General Assembly finds that:
 - (i) a large portion of Illinois' citizens rely on groundwater for personal consumption, and industries use a significant amount of groundwater;
 - (ii) *contamination of Illinois groundwater will adversely impact the health and welfare of its citizens and adversely impact the economic viability of the State;*
 - (iii) contamination of Illinois' groundwater is occurring;
 - (iv) *protection of groundwater is a necessity for future economic development in this State.*
- (b) Therefore, it is the *policy of the State of Illinois to restore, protect, and enhance the groundwaters of the State, as a natural and public resource.* The State recognizes the essential and pervasive role of groundwater in the social and economic well-being of the people of Illinois, and its vital importance to the general health, safety, and welfare. It is further recognized as consistent with this policy that the groundwater resources of the State be utilized for beneficial and legitimate purposes; *that waste and degradation of the resources be prevented; and that the underground water resource be managed to allow for maximum benefit of the people of the State of Illinois.*

(Emphasis added) 415 ILCS 55/2 (2012).

Finally, Section 12(a) of the Act prohibits persons causing or tending to cause water

pollution to waters of the State, including groundwater. 415 ILCS 5/12(a) (2012). The threshold for creating a Section 12(d) water pollution hazard is even lower. The Appellate Court has found that a Section 12(d) “water pollution hazard can be found although the actor does not yet threaten to cause pollution.” *Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill.App.3d 249, 258 (2nd Dist. 1976).

The General Assembly’s findings in Section 11 of the Act, Section 2 of the Illinois Groundwater Protection Act and the prohibitions found in Section 12 of the Act, lead to the conclusion that the use of CCDD as fill may, at a minimum, create a water pollution hazard. Furthermore, the plain language of Section 22.51 establishes that the General Assembly clearly determined that CCDD fill operations threaten to contaminate groundwater, since it ordered the Board specifically to “protect groundwater.” *See* 415 ILCS 5/22.51(f)(1) (2012).

Even with the foregoing Constitutional and Statutory framework, the Board has to this point relied on its adoption of a more conservative certification requirement (i.e. the MACs of contaminants) to ensure that all contaminated soils will be excluded from the fill operations and thereby protect groundwater. Certainly, the Board’s approach, while laudable as a first step in protecting groundwater, cannot be solely relied on to protect groundwater, where the record in this case demonstrates: 1) disposal of fill without any regulatory safeguards from 1997 to 2005, 2) screening of incoming loads with a photo ionization detector (“PID”) limited to detecting only the presence of volatile organic chemicals (“VOCs”) from 2005 to 2010, 3) numerous fill operator’s failing to comply with the Part 1100 regulations; and 4) the presence of soils at fill operation that exceed the MACs. Given the Act’s mandate that it be “liberally construed” to effectuate its purposes, coupled with the General Assembly’s mandate to protect, enhance and restore the State’s groundwater, the Board should require groundwater monitoring and corrective

action at fill operations.

C. There is Sufficient Information in the Record to Warrant Groundwater Monitoring at Fill Operations.

The first point for consideration in determining the need for groundwater monitoring at fill operations is the regulatory history of CCDD disposal from 1997 to 2010. In 1997, the General Assembly adopted a new definition for CCDD, which allowed that, to the extent provided by federal law, CCDD could be disposed of at a CCDD fill site, without the need for any soil certifications, load checking and/or screening. In 2005, the General Assembly enacted Section 22.51 of the Act, which required each incoming load of CCDD to be screened with a PID to detect only the presence of VOCs – not other contaminants, such as inorganic metals or polycyclic aromatic hydrocarbons (“PAHs” or “PNAs”). 415 ILCS 5/22.51(c).¹ The lack of procedures to fully identify contaminated materials at fill operations from 1997 to 2010 highlights the need for groundwater monitoring to detect groundwater contamination from fill material that did not receive the level of pre-disposal scrutiny currently required.

Notably, there is ample evidence of contamination at fill sites above the MACs. John Hock, Vice President of Civil Environmental Consultants, Inc., testified that he had collected samples at three CCDD fill operations and reviewed data from one additional site. Pre-Filed Testimony of John Hock, P.E., pp. 3-5. Mr. Hock reported finding seven detections of PNAs above the proposed MACs in 44 samples taken from 44 borings. *Id.* Further, in the fall of 2012, the Illinois EPA obtained soil samples at twelve fill operations, where surface samples from the active fill face were taken and analyzed for metals, semi-volatile organic compounds, and pH.

¹ 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. Final Rule was adopted in R06-19 at 30 Ill. Reg.14534, effective August 24, 2006.

See Illinois Environmental Protection Agency's Responses to Pre-Filed Questions, pp. 9-10. The Illinois EPA identified exceedances of the MACs and/or the pH limits at ten of the twelve facilities. *Id.*

In addition, since the promulgation of Part 1100 regulations, the People have taken enforcement action for regulatory violations at 13 CCDD disposal sites. *See* The Office of the Attorney General's Responses to the Board's Pre-Filed Questions at pp. 3-4 (citing 13 enforcement actions against CCDD disposal owners/operators, including two cases for violations after the amendment to Section 22.51 requiring soil certifications).

Accordingly, the People believe that a more comprehensive approach (i.e. use of the MACs, groundwater monitoring, and, as needed, corrective action) to regulation of fill operations is appropriate to ensure that groundwater is protected, as required by Section 22.51(f)(1) of the Act. Such an approach is particularly significant for people who rely on groundwater as their primary source of drinking water. *See e.g.* Testimony of Rick Cobb, Illinois EPA, Tr. March 13, 2012, p. 20, ll. 18-24 and p. 21, ll. 1-8. Moreover, in the absence of groundwater monitoring at fill operations, contamination of the groundwater is only likely to be discovered after it has impacted those relying on it for drinking water. This type of situation is clearly against Illinois public policy concerning groundwater, and it is preventable via groundwater monitoring. Accordingly, the Board should adopt a comprehensive approach to the protection of groundwater from fill operations, which includes soil certifications, groundwater monitoring, and, as needed, corrective action in the Part 1100 Regulations.

III. The Effects of Reclaimed Asphalt Pavement on the Environment.

In previous comments regarding the need for groundwater monitoring, the People indicated concern for contaminants from reclaimed asphalt pavement, which contains PNAs. *See*

May 13, 2013 People's Response to Board's Questions, p. 7. During the Public Hearing on May 20, 2013, Marvin Traylor, Illinois Asphalt Paver's Association, testified that asphalt is "inert" and "nonleachable" and that it is "commonly known that asphalt cement is inert and not a threat to the groundwater." Tr. May 20, 2013, 99:15-99:16; 99:24-100:2. Mr. Traylor supplemented his testimony with two documents: 1) "Evaluation of RAP for the Use as Clean Fill," by Anthony J. Kriech, January 30, 1991 (Ex. 60); and 2) "Leachability of Asphalt and Concrete Pavements," March 5, 1992, Anthony J. Kriech (Ex. 61).

A review of State laws, guidance documents and scientific literature indicates that there is firm support for the contention that asphalt is not necessarily "inert" and that it poses a threat to groundwater.

A. Reclaimed Asphalt Pavement under Illinois Law.

The place to look regarding whether asphalt is "inert" under Illinois law is the Act and the Board's Solid Waste Disposal Regulations. The Board's definition of "inert waste" does not include "reclaimed or other asphalt pavement," like the definition for CCDD. *See* 415 ILCS 5/3.160(b).

"Inert waste" means any solid waste that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a contaminated leachate, as determined in accordance with 35 Ill. Adm. Code 811.202(b). Such inert wastes will include only non-biodegradable and non-putrescible solid wastes. Inert wastes may include, but are not limited to, bricks, masonry, and concrete (cured for 60 days or more).

35 Ill. Adm. Code 810.103.

In addition, Section 22.51(f)(1) of the Act also indicated that the CCDD regulations, which the Board is required to promulgate, could limit the amount of asphalt used as fill.

The rules may also include limits on the use of recyclable concrete and asphalt as fill material at clean construction or demolition debris fill operations, taking into account factors such as technical feasibility, economic reasonableness, and the availability of markets for such materials.

415 ILCS 5/22.51(f)(1).

B. Reclaimed Asphalt Pavement in Other Jurisdictions.

1. Utah

Utah considers asphalt to be a solid waste unless it is “recycled.” In a guidance document authored by the Utah Division of Solid and Hazardous Waste, Solid Waste Management Program, Utah unequivocally denies that asphalt is “inert.”

Disposal of asphalt in Utah has been and continues to be of concern to the local health departments, the State, and the asphalt paving industry. Limited testing of waste asphalt in Utah has not revealed the material to be hazardous waste. *Asphalt, however, is not an inert waste and cannot be used as inert fill.*

(Emphasis added) Asphalt Disposal and Recycling Guidance, May 2012, p. 1 (available at:

http://www.hazardouswaste.utah.gov/Solid_Waste_Section/Docs/SolidWaste/Asphalt_Guidance.pdf).

2. Montana

The Montana Department of Environmental Quality (“DEQ”) also has determined that asphalt for disposal is not “inert.” In a guidance document authored by the Permitting and Compliance Division Waste and Underground Tank Management Bureau Solid Waste Section, the Montana DEQ stated:

When asphalt is destined for disposal, it is considered a non-inert material and must be disposed of in a licensed Class II or Class IV landfill. Disposal of waste asphalt in a Class III landfill, reserved for inert materials only, is prohibited. In addition, waste asphalt may not be used as clean fill. [Clean fill is defined in ARM 17.50.502(6)]. The use of waste asphalt generated from off-site sources as backfill material for mine or gravel pit reclamation is also prohibited, unless the site is licensed as a Class IV solid waste management system.

(Emphasis added.) Guidance on Waste Asphalt Recycling, Reuse or Disposal, July 2013, p. 1

(available at: <http://deq.mt.gov/SolidWaste/docs/GuidanceWasteAsphalt.pdf>).

In addition, the Montana DEQ specifically raised concerns of groundwater infiltrating disposed asphalt, stating that “[b]ecause asphalt is a degradable material, *it must not be placed in a position where it could be affected by fluctuating ground water levels.* (Emphasis added.) *Id.* at p. 2.

3. North Carolina

North Carolina does not require the disposal of asphalt at a permitted landfill, but it strictly prohibits the use of asphalt as fill material, which could contact ground water.

(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. *Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.*

(Emphasis added.) N.C. Gen. Stat. Ann. § 130A-294.

4. New Jersey

Similarly, New Jersey prohibits the disposal of asphalt (identified as “RAP” – reclaimed asphalt pavement) as fill material, where it would contact ground water. In the New Jersey Department of Environmental Protection's guidance document, it states as follows:

E. PROHIBITED USES

The following uses of RAP are prohibited, except as provided below:

* * *

4. *Use in the reclamation of quarries of unconsolidated materials (e.g., sand, gravel);*

5. *Use in the reclamation and restoration of bedrock quarries unless specifically approved in writing in advance by the Department and in accordance with all relevant permit and other regulatory requirements;*

* * *

7. *Less than two (2) feet above the seasonal high water table at the site of placement.*

(Emphasis added.) “Recycled Asphalt Pavement and Asphalt Millings (RAP) Reuse Guidance,

March 2013, pp. 5-6, (available at: <http://www.state.nj.us/dep/dshw/rrtp/asphaltguidance.pdf>).

5. Newfoundland

The Department of Environment and Conservation for the Government of Newfoundland and Labrador declare that waste asphalt is not "inert." In a guidance document, put out by the Department of Environment, it states as follows:

Because of its physical and chemical properties, waste asphalt is considered to be a non-hazardous, but not inert solid waste. This means that certain sources of asphalt, under certain conditions, may still pose a risk of contamination to the environment. Indiscriminate disposal of asphalt (product or pavement) may result in a negative environmental impact, due to the physical structure of the material depending upon where disposed.

(Emphasis added.) Guidelines for Waste Asphalt Reuse in New Pavement or in Roadbed Construction of Paved Roads; and/or Storage and Final Disposal, February 2011, p. 2 (available at: http://www.env.gov.nl.ca/env/env_protection/waste/guidancedocs/waste_asphalt.pdf).

6. United States National Parks Service

The National Parks Service ("NPS"), Water Resources Division, Fort Collins, Colorado presented information regarding asphalt. The NPS noted that although asphalt binds harmful compounds together, this binding is not as complete as has been assumed.

Asphalt used on roads and in water pipes is supposedly used in a manner which binds most of the harmful compounds together as part of a tough, cement-like solid. *In layman's terms*, the good news is that the many harmful compounds typically found in asphalt are presumably bound in place fairly tightly in many roadway and other controlled uses. *The bad news is that some of these harmful compounds may not always be as firmly and as universally "locked in place" as some have assumed.*

(Emphasis added.) Environmental Contaminants Encyclopedia Asphalt Entry, Roy J. Irwin, National Park Service July 1, 1997, p. 10 (available at: <http://www.nature.nps.gov/hazardssafety/toxic/asphalt.pdf>). The NPS also recognizes that asphalt may slowly leach into waters.

Since asphalt coating in water pipes have been documented to slowly leach PAH compounds into water [366], asphalt in rivers and other natural waters may also slowly leach harmful compounds into the water.

Id. at p. 11.

C. Other Issues with Reclaimed Asphalt Pavement.

1. Vehicle Debris and Road Salts

There are other concerns with asphalt pavement besides the constituents of asphalt itself, such as various substances from vehicles on the roadway and road salts. The Department of Environment and Conservation for the Government of Newfoundland and Labrador recognized this stating:

As well, contaminants of concern in asphalt may include various petroleum hydrocarbons, polyaromatic hydrocarbons, heavy metals and road salts that can leach into the environment.

Guidelines for Waste Asphalt Reuse in New Pavement or in Roadbed Construction of Paved Roads; and/or Storage and Final Disposal, February 2011, p. 2 (available at: http://www.env.gov.nl.ca/env/env_protection/waste/guidancedocs/waste_asphalt.pdf).

2. Sealcoating of Asphalt Pavement.

Another concern with asphalt pavement is that it is often covered with sealcoat (e.g. parking lots and driveways). The United States Geological Survey (“USGS”) in conjunction with the City of Austin Texas did a study discussing issues from stormwater runoff from sealcoated asphalt pavement. In the study, they discussed the nature and composition of sealcoat products.

Polycyclic aromatic hydrocarbons (or PAHs) are a group of organic contaminants that form from the incomplete combustion of hydrocarbons, such as coal and gasoline. PAHs are an environmental concern because they are toxic to aquatic life and because several are suspected human carcinogens.

Coal tar is a byproduct of the coking of coal, and can contain 50 percent or more PAHs by weight.

Sealcoat is a black liquid that is sprayed or painted on asphalt pavement in an effort to protect and beautify the asphalt. Most sealcoat products are coal-tar or asphalt based. Many coal-tar sealcoat products contain as much as 30 percent coal tar by weight. *Product analyses by the City of Austin indicated that coal-tar sealcoat products have median concentrations of total PAHs about 70 times higher than concentrations in asphalt-based sealcoat products.*

Sealcoat is used commercially and by homeowners across the Nation. It is applied to residential driveways and to parking lots associated with commercial businesses (including strip malls and shopping centers), apartment and condominium complexes, churches, schools, and business parks. The City of Austin, Texas, estimates that about 600,000 gallons of sealcoat are applied every year in the greater Austin area. *National use numbers are not available, but commercial availability suggests that asphalt-based sealcoat is commonly used on the West Coast and coal-tar based sealcoat is commonly used in the Midwest, the South, and on the East Coast.*

(Emphasis added.) Parking Lot Sealcoat: A Major Source of Polycyclic Aromatic Hydrocarbons (PAHs) in Urban and Suburban Environments, January 2006, p. 1 (available at: <http://pubs.usgs.gov/fs/2005/3147/pdf/fs2005-3147.pdf>). The USGS/Austin study indicated that sealcoated asphalt will leach PAHs into the environment via stormwater. *Id.* at 2. In addition they noted that coal-tar based sealcoating had PAH levels 65 times higher than not-seal coated asphalt pavement and that asphalt-based sealcoating had 10 times the level of PAHs as not-seal coated asphalt pavement. *Id.*

Further, the University of New Hampshire's research on coal-tar-based sealcoat has contributed to growing concern about the substance's impact on human and environmental health.

Conducting side-by-side studies of coal-tar-based sealcoated and nonsealcoated parking lots at UNH's West Edge lot, Watts, a researcher with the UNH Stormwater Center, found that the *soil at the edge of the sealcoated lot contained "orders of magnitude higher concentrations" -- several hundred parts per million (ppm) from the sealcoated lot versus less than 10 ppm from the lot without sealcoating -- of PAHs. What's more, soil samples taken three years after the initial application of sealcoat remained high in PAHs.*

(Emphasis added.) Science Daily, Science News, Health and Ecosystem Issues Found With Popular Pavement Sealcoat, March 14, 2012, p. 2 (available at:

<http://www.sciencedaily.com/releases/2012/03/120314124209.htm>). The significance of these findings is that reclaimed sealcoated asphalt or the nearby soils affected by sealcoating, which may have been disposed in CCDD fill sites prior to the requirement that soils meet the MACs, could pose a substantial threat to groundwater.

3. Based on the Inert Waste Regulations, Groundwater Monitoring Should be Required for Fill Operations.

If the Board were to consider that reclaimed asphalt pavement was inert, then it would also be appropriate to reexamine the Board's Inert Waste Regulations. 35 Ill. Adm. Code 811.200 *et seq.* Inert wastes include "only non-biodegradable and non-putrescible solid wastes; including, but not limited to, bricks, masonry, and concrete." 35 Ill. Adm. Code 810.103. Similarly, the definition for CCDD means 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).

At this time, one of the main differences in fill operations and inert waste landfills is that the inert waste landfills are required to collect and analyze leachate samples at least every 6 months and also notify the Illinois EPA within 1 business day of the discovery of any leachate contamination. *See* 35 Ill. Adm. Code 811.206. In addition, Section 811.206(d) of the inert waste landfill regulations provides, among other things, that an inert waste landfill becomes subject to regulation, as a chemical or putrescible waste landfill (Subparts C of Parts 811 & 812), if its leachate becomes contaminated at any time.² The significance of this is that chemical or putrescible waste landfills are subject to a host of more stringent Regulations and are required to conduct groundwater monitoring. Asphalt has not been categorized as "inert" and there is

² In accordance with §§811.206(d), 810.103, & 811.202(a), leachate is contaminated if it contains concentrations of constituents greater than the water supplies standards set forth at 35 Ill. Adm. Code 302.301, -.304, & -.305.

information provided herein that indicates asphalt may not be inert. *See* 35 Ill. Adm. Code 810.103. Therefore, CCDD fill regulations should be at least as stringent as the inert waste landfill regulations.


IV. Conclusion

Based on the Public Policy of this State to protect, enhance and restore the environment and groundwater in particular, coupled with the ample evidence provided in the Record, the Board should require groundwater monitoring at all fill operations to ensure that there are no adverse impacts to the environment. *See* 415 ILCS 5/2(b) (2012).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 1st day of August, 2013, the foregoing Office of the Attorney General's Post Hearing Comments 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