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Pollution Control Board

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Illinois Association of
Aggregate Producers

John Henriksen, Executive Director
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December 7, 2005

PC#1

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

In the Matter of: Clean Construction or Demolition Debris Fill Operations under PA 94-272
(35 Ill. Adm. Code 1100) / Docket R2006-019

Dear Ms. Gunn:

The following comments are being submitted by the Illinois Association of Aggregate Producers (IAAP). Given that a number of IAAP members currently accept clean construction or demolition debris as fill, the IAAP formed a Clean Fill Work Group to collaborate with the IEPA on the above-referenced rulemaking. Although the majority of our industry's concerns were resolved during our work with the IEPA, the following comments are offered to further clarify how this new regulatory program will be implemented:

Section 1100.204 of the IEPA's proposed rules should be amended by adding the following underlined language:

Section 1100.204 Operating Standards

a) Placement of fill material

Fill material must be placed in a safe manner that protects human health and the environment in conformance with existing reclamation plan requirements, zoning requirements, local, state and federal regulations, or development plans.

Rationale: Inserting this additional language in subsection (a) provides standards by which the IEPA may determine if fill material placement has occurred "in a safe manner that protects human health and the environment", as mandated by Section 5-20 of the Illinois Administrative Procedure Act (5 ILCS 100/5-20).

h) Fill Elevation

The owner or operator must place fill no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area unless the Agency approves higher elevations for site development or reclamation as outlined through the permitting process.

Rationale: Inserting this additional language in subsection (h) recognizes that reclamation plans or development plans approved by other agencies may call for fill to be placed at higher elevations.

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Section 1100.205 of the IEPA's proposed rules should be amended by adding the following underlined language:

Section 1100.205 Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of material other than CCDD or uncontaminated soil at the facility. At a minimum, the load checking program must consist of the following components:

a) Routine Inspections

1) An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing: (i) an elevated structure, (ii) a designated ground level inspection area, or (iii) an other acceptable method. In addition to a visual inspection, the inspector must use an instrument with a photo ionization detector utilizing a lamp of 10.6 eV or greater or an instrument with a flame ionization detector, or other monitoring devices approved by the Agency, to inspect each load. Any reading above zero using any of these instruments must result in the rejection of the inspected load. All instruments shall be calibrated utilizing established background levels and interpreted based on the manufacturer's margin of error. In addition, any reading above zero on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

Rationale: The additional language inserted in subsection (a) (1) provides a facility operator with specific guidance regarding safe, effective methods for performing routine inspections.

b) Random Inspections

1) In addition to the inspections required under subsection (a) of this Section, an inspector designated by the facility must conduct a discharge inspection of at least one randomly selected load delivered to the facility each day. The driver of the randomly selected load must be directed to discharge the load at a separate, designated location within the facility. The inspector must conduct an inspection of the discharged material that includes, but is not limited to, additional visual inspection and additional instrument testing using the instruments required under subsection (a)(1) of this Section. All instruments shall be calibrated utilizing established background levels and interpreted based on the manufacturer's margin of error. Any reading above zero using any of these instruments must result in the rejection of the inspected load. In addition, any reading above zero on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

Rationale: Background readings in existence at many sites may cause the devices being used to screen loads to register above zero at all times. The additional language inserted above in subsection (b), as well as in subsection (a), helps to ensure that the decision to reject a load of fill material properly accounts for existing environmental conditions.

- g) The owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD or uncontaminated soil. Such training shall be in accordance with an Agency training program developed in consultation with the aggregate mining industry.

Rationale: Although the aggregate mining industry will pay for and implement necessary training programs, the additional language inserted in subsection (g) ensures that all personnel working at clean construction or demolition debris fill site receive consistent training.

Section 1100.302 of the IEPA's proposed rules should be amended by adding the following underlined language:

Section 1100.302 Notification

Unless the facility was previously approved through state or local permitting, the applicant must provide notification of the request for a permit to the State's Attorney and the Chairman of the County Board of the county in which the facility is located, each member of the General Assembly from legislative districts in which that facility is located, and the clerk of each municipality located within three miles of the facility. Proof of providing the notifications required under this Section must be included in the permit application. If the facility was previously approved through state or local permitting, notification may be satisfied through publication on the Agency's website.

Rationale: The aggregates industry is not opposed to providing public notice of a potential fill operation unless such notice has already been provided during prior state or local permitting procedures for the site. Written notice to local government officials regarding a proposed clean fill operation could potentially jeopardize zoning already obtained by active mines, operations that routinely use clean fill for to reclaim land affected by mining operations. In essence, local officials might oppose a proposed fill operation if such activities are perceived as "landfilling", rather than "reclamation". It is important to note that IEPA/Bureau of Water permits issued to aggregate producers provide public notice by publication on the IEPA website; IEPA/Bureau of Air permits issued to aggregate producers do not routinely require any public notice.

The Illinois Association of Aggregate Producers requests that the Illinois Pollution Control Board order the above-referenced rulemaking amended in accordance with these comments. In addition, the IAAP requests that the Board order the above-referenced rulemaking amended to direct the IEPA to consult with the aggregates industry and construction industry in order to begin formulating a definition of "uncontaminated soil".

Respectfully submitted,

John Henriksen, Executive Director
Illinois Association of Aggregate Producers
JCH/gls

Cc: Docket R2006-19 Service List
IDNR, Office of Legal Counsel