BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R06- 19
DEBRIS FILL OPERATIONS	)	(Rulemaking –Land)
(35 ILL. ADM. CODE PART 1100)	)	
	)	

NOTICE

Dorothy Gunn, Clerk,
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

General Counsel
Office of Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matt Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Agency") Motion for Acceptance, Agency Proposal of Regulations, Appearance of Attorneys, Statement of Reasons, and the Proposed Regulations a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 11-16-05

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R06- 19
DEBRIS FILL OPERATIONS	)	(Rulemaking –Land)
(35 ILL. ADM. CODE PART 1100)	)	
	)	

MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Stephanie Flowers, and pursuant to 35 Ill. Adm. Code 102.106, 102.200, and 102.202 moves the Illinois Pollution Control Board ("Board") accept for hearing the Illinois EPA's proposal for 35 Ill. Adm. Code Part 1100. This proposal includes: 1) Appearance of Attorneys for the Illinois EPA; 2) Statement of Reasons; 3) Agency Proposal of Regulations; 4) Proposed Regulations; 5) electronic copy of the Proposed Regulations; and 6) Notice of Filing.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 11-16-05

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R06- 19
DEBRIS FILL OPERATIONS	)	(Rulemaking –Land)
(35 ILL. ADM. CODE PART 1100)	)	
	)	

APPEARANCE

The undersigned hereby enter their appearance as attorneys on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

By: Kyle Rominger
Kyle Rominger
Assistant Counsel
Division of Legal Counsel

DATED: 11-16-05

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R06- 19
DEBRIS FILL OPERATIONS	)	(Rulemaking –Land)
(NEW 35 ILL. ADM. CODE PART 1100)	)	
	)	

AGENCY PROPOSAL OF REGULATIONS

Pursuant to Section 27 of the Illinois Environmental Protection Act (415 ILCS 5/27), the Illinois Environmental Agency hereby moves the Illinois Pollution Control Board to adopt the attached proposed regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____
Douglas P. Scott
Director

DATED: 11-16-05

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R06- 19
DEBRIS FILL OPERATIONS	)	(Rulemaking –Land)
(35 ILL. ADM. CODE PART 1100)	)	
	)	

STATEMENT OF REASONS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and submits its Statement of Reasons for the above-captioned proceeding to the Illinois Pollution Control Board ("Board") pursuant to 35 Ill. Adm. Code 102.202(b).

I. FACTS IN SUPPORT, PURPOSE AND EFFECT

A. Background

The Illinois EPA submits this proposal pursuant to Public Act 94-272 ("P.A. 94-272") which requires the Illinois EPA to propose to the Board regulations for the use of clean construction or demolition debris ("CCDD") as fill material in current and former quarries, mines, and other excavations. See 415 ILCS 5/22.51(c)(1) (effective July 19, 2005). The regulations are to set forth standards for the operation of clean construction or demolition debris fill operations as well as procedures for the submission and review of permits for these facilities. P.A. 94-272 requires the Board to adopt rules no later than September 1, 2006. Id. A copy of P.A. 94-272 is included as Attachment A to this document.

B. Regulatory Development

The proposed language for Part 1100 was developed with input from the regulated community. An Illinois EPA workgroup originally drafted the proposed language and then circulated the draft to members of the regulated community and state and local government entities for comment. The Illinois EPA held several public outreach meetings in which drafts of the proposed language for Part 1100 were discussed and changes to the language of the drafts were developed. Persons attending one or more of these meetings include representatives from Andrews Environmental Engineering, Inc., Bluff City Materials, Chicago Department of Environment, Chicago Department of Streets and Sanitation, Dupage County Department of Transportation, Elmer Larson, LLC, Illinois Association of Aggregate Producers ("IAAP"), Illinois Department of Transportation ("IDOT"), Illinois Society of Professional Engineers ("ISPE"), Land and Lakes Co., Material Service Corporation, Meyer Material Co., Plote Construction, Inc., Prairie Material, Reliable Asphalt Corp., Rockford Sand & Gravel, Secor International Inc., Thelen Sand & Gravel, Inc., Underground Contractors Association of Illinois ("UCA"), Vulcan Materials Company, Waste Management, Inc., WRS Infrastructure & Environment, Inc., and members of the Illinois Senate and Senate staff. Additionally, the Illinois EPA had several less formal meetings with representatives of the IAAP and others on several occasions. Comments from these meetings and from further communications have been incorporated into the proposed rules and, as a result, significant concerns of the regulated community have been resolved. Several points of disagreement remain, but the Illinois EPA is not aware of major objections by the regulated community to the current language proposed for Part 1100. The following are identified as the remaining areas of disagreement between the Illinois EPA and the regulated community regarding this rulemaking:

1. Section 1100.302 of the proposed rules requires permit applicants to notify specific local public officials and General Assembly members that the applicant has filed an application for a permit with the Illinois EPA. The regulated community objects to the extent of this notification procedure and would prefer notification to the public via the Illinois EPA's website. The Illinois EPA is proposing the notification requirement because local public officials and General Assembly members have historically had an interest in the Illinois EPA's land permitting activities. Based on the Illinois EPA's experience, when large volumes of material are being brought into a community for permanent disposal the public becomes interested, and typically the public contacts their state and local officials regarding the matter. The notice requirement for the CCDD fill permit is similar to the notice requirements for other land-related site permits and helps assure that the officials are made aware of the activity so that they can better respond to their constituents' concerns. Simply posting a notice on the Illinois EPA's website as suggested by the regulated community would not provide the officials with the same type of timely notification unless all of these officials routinely check the appropriate page of the Illinois EPA's website for permit notices.

2. Section 1100.412 of the Illinois EPA's proposed rules requires that a professional engineer ("PE") certify to the facility's compliance with the closure plan and postclosure maintenance plan. The regulated community has expressed an objection to the need for a PE certification for both closure and postclosure. The Illinois EPA is proposing the requirement because the Illinois EPA routinely relies on PE certifications to provide assurance of compliance with the regulations in lieu of Illinois EPA personnel inspecting each site and directly overseeing the required activities. A PE certification is required after closure to determine the start of postclosure maintenance. A PE certification at this stage lessens the time required for closure

review and issuance of the certificate of closure. A final PE certification after the postclosure maintenance period confirms that the permit conditions have been met and that the permit may be terminated.

C. Description of Proposed Language for Part 1100

SUBPART A – GENERAL

Section 1100.101 - Scope and Applicability. Limits the applicability of this regulation to the use of CCDD as fill material in a current or former quarry, mine, or other excavation (i.e., CCDD fill operations required to be permitted pursuant to under Section 22.51 of the Act). Clarifies that the rules do not apply to the following uses of CCDD as fill material, which by statute do not require a permit: (1) use as fill material in a current or former mine, quarry, or other excavation on the site where the CCDD was generated, and (2) use as fill material in an excavation other than a current or former quarry or mine in compliance with Illinois Department of Transportation specifications. Clarifies that the portions of a site not used for CCDD fill operations are also excluded from the rules. Clarifies that Part 1100 does not apply to any material other than CCDD. States that the rules do not apply to facilities permitted pursuant to 35 Ill. Adm. Code 807 or 811 through 814.

Section 1100.102 - Severability. Contains standard severability language found in other Board regulations.

Section 1100.103 – Definitions. Includes definitions for terms found throughout the proposed rules. The definitions of "owner" and "operator" are consistent with the definitions of "owner" and "operator" in Senate Bill 67 recently passed by the General Assembly. However, the definitions in this proposal are not italicized because the bill is not yet signed into law.

Section 1100.104 - Incorporations by Reference. Incorporates USEPA publication SW-846 through the IIIB update. The incorporation is to provide standards for the proper handling of instrumentation required at Section 1100.205(a).

SUBPART B – STANDARDS

Section 1100.201 – Prohibitions. Lists prohibited activities including the prohibition against accepting material other than CCDD for fill at the facility. A Board note is also included to clarify that CCDD includes uncontaminated soil being used as fill at the facility.

Section 1100.202 - Surface Water Drainage. Lists requirements to control surface water drainage from filled areas.

Section 1100.203 - Annual Facility Map. Requires an annual map of the facility to show compliance with the permit boundaries.

Section 1100.204 - Operating Standards. Describes standards for daily operations at the facility, including placement of fill, fill elevation, size and slope of working face, control of mud tracking, dust control, noise control, maintenance, and standards for equipment and utilities.

Section 1100.205 - Load Checking. Describes the procedure for inspecting loads on a routine and random basis to help assure that accepted loads contain only CCDD. This Section also describes the record keeping requirements for each inspection and the procedures for rejecting a load.

Section 1100.206 – Salvaging. Describes the requirements for an acceptable salvaging operation at a CCDD facility.

Section 1100.207 – Boundary Control. Lists the requirements for proper boundary controls at a CCDD facility.

Section 1100.208 – Closure. Subsection (a) requires closure to begin 30 days after the date on which the facility receives the final load of CCDD but also provides for extensions of closure for up to one year or longer. Subsection (b) lists the requirements for closure regarding final cover and slope stabilization.

Section 1100.209 - Postclosure Maintenance. Sets forth requirements for postclosure maintenance and a one-year postclosure term. Allows for a shorter postclosure term if approved in the Illinois EPA permit.

Section 1100.210 - Recordkeeping Requirements. Lists records to be kept for the length of the permit.

Section 1100.211 - Annual Reports. Lists information to be included in annual reports.

SUBPART C – PERMIT INFORMATION

Section 1100.301 - Scope and Applicability – States permit applications must be filed with the Illinois EPA in accordance with the Act and Board regulations to obtain a permit for a CCDD fill operation.

Section 1100.302 – Notification. Requires permit applicants to notify state and local officials that a permit application is pending.

Section 1100.303 - Required Signatures. Lists required signatures on permit applications.

Section 1100.304 - Site Location Map. Requires geographical quadrangle map showing the entire site and topographical information to be submitted as part of the permit application.

Section 1100.305 - Facility Plan Map. Requires maps of the facility showing all facility features to be submitted as part of the permit application.

Section 1100.306 - Narrative Description of the Facility. Requires narrative of plans and procedures used to comply with this Part to be submitted as part of the permit application.

Section 1100.307 - Proof of Property Ownership and Certification. Requires certificate of ownership of facility property and compliance with Sections 39(i) and 39(i-5) of the Act to be submitted as part of the permit application. Section 39(i) of the Act requires disclosure of the permit applicant's prior conduct including repeated violations related to waste management, conviction in any federal or state court of a felony, and proof of gross carelessness or incompetence with regard to waste management. Section 39(i-5) of the Act requires the permit applicant to disclose any transfer of ownership of the CCDD fill operation between January 1, 2005 and July 19, 2005.

Section 1100.308 - Surface Water Control. Requires copy of National Pollutant Discharge Elimination System ("NPDES") permit and map showing surface water control structures to be submitted as part of the permit application.

Section 1100.309 - Closure Plans. Requires a closure plan that complies with the requirements of this Part to be submitted as part of the permit application.

Section 1100.310 - Postclosure Maintenance Plan. Requires a postclosure maintenance plan that complies with the requirements of this Part to be submitted as part of the permit application.

SUBPART D – PROCEDURAL REQUIREMENTS FOR PERMITTING

Section 1100.401 - Purpose of Subpart. Declares the focus of this Subpart to be procedures for permit applicants.

Section 1100.402 - Delivery of Permit Application. Requires permit applications be on Illinois EPA forms.

Section 1100.403 - Agency Decision Deadlines. Subsection (a) repeats the 90-day deadline for Illinois EPA action on a permit application. Subsection (b) specifies when an

application is considered complete and deemed filed, and requires the Illinois EPA to notify applicants of incomplete applications. Subsection (c) allows permit applicants to waive the Illinois EPA's 90-day review deadline. Subsection (d) allows permit applicants to modify applications any time prior to an Illinois EPA decision and extends the Illinois EPA's review deadline for modified applications. Subsection (e) specifies how notice of final Illinois EPA action must be given and the date final action is deemed to have taken place.

Section 1100.404 - Standards for Issuance of a Permit. Contains statutory language regarding Illinois EPA actions for the issuance of a permit.

Section 1100.405 - Standards for Denial of a Permit. Contains statutory language regarding Illinois EPA actions for the denial of a permit.

Section 1100.406 - Permit Appeals. Contains statutory language regarding appeals.

Section 1100.407 - Permit No Defense. Contains standard language found in other Board regulations regarding the use of a permit as a defense to violations of the Act and Board rules.

Section 1100.408 - Term of Permit. Provides for a 10-year permit term, unless a permit is modified or revoked.

Section 1100.409 - Transfer of Permits. Contains standard language found in other Board regulations regarding the transfer of permits.

Section 1100.410 - Procedures for the Modification of Permits. Subsection (a) allows an owner or operator to modify a permit by submitting an application to the Illinois EPA. Subsection (b) sets forth the conditions and procedures for Agency initiated modifications of a permit.

Section 1100.411 - Procedures for the Renewal of Permits. Subsection (a) requires renewal applications to be filed with the Illinois EPA 90 days before expiration of the current

permit. Subsection (b) states a timely filed renewal application allows for the current permit to remain in full force and effect until the Illinois EPA reaches a decision on the permit renewal. Subsection (c) describes information required for the renewal of a permit. Subsection (d) subjects permit renewals to the requirements and time schedules of Sections 1100.402 through 1100.409.

Section 1100.412 - Procedures for Closure and Postclosure Maintenance. States the requirements for issuance of a certificate of closure and the termination of permit, including the requirements of PE certifications for closure and postclosure maintenance.

D. Technical Feasibility and Economic Justification

1. Technical Feasibility - New regulatory requirements for this industry were created by P.A. 94-272, which include the use of a monitoring device approved by the Agency that detects volatile organic compounds. The Act specifies that such devices may include, but are not limited to, photo ionization detectors, and requires that such monitors be used until such time as the Board adopts rules. See 415 ILCS 5/22.51(c)(1). The proposed rules at Section 1100.205 continue to require the use of monitoring devices that detect volatile organic compounds. The proposed rules specify that such devices may include a photo ionization detector ("PID"), a flame ionization detector (FID), or another device approved by the Agency. Therefore, the Illinois EPA believes that no new issues of technical feasibility are raised in the proposed rules

2. Economic Reasonableness –P.A. 94-272 requires that persons conducting clean construction or demolition debris fill operations are to be permitted by the Illinois EPA. Regular costs of permit programs may include costs associated with preparing and filing permit applications, preparing other documents such as reports and maps, record storage, additional personnel, personnel training, and professional engineer certifications. Although compliance

with the proposed regulations will increase costs to this industry compared to pre-regulation costs, the Illinois EPA believes that the costs will not be unduly burdensome, are consistent with other land permit programs, and are justified for compliance with the Act.

II. SYNOPSIS OF TESTIMONY

Currently, the Illinois EPA plans to call the following witnesses at the hearing: Joyce Munie, Manager of the Permit Section, Paul Purseglove, Field Operations Manager, Chris Liebman, Manager of the Solid Waste Unit of the Permit Section, and Thomas Hubbard, Permit Writer in the Solid Waste Unit of the Permit Section. These witnesses will testify about the permit rules in general and will assist in answering questions. Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules. Additionally, the Illinois EPA plans to have Mike Nechvatal, Manager of the Division of Land Pollution Control available to answer questions at hearing but Mr. Nechvatal will not be submitting written testimony. The Illinois EPA respectfully requests that the Board allow Illinois EPA witnesses to present their oral testimony in panel form rather than calling each individually. A panel format should streamline the hearing process, and has proven beneficial in past rulemakings.

III. STATEMENT REGARDING MATERIAL INCORPORATED BY REFERENCE

The material incorporated by reference in Section 1100.104 is a USEPA publication consisting of approximately 3,500 pages. According to the Board's technical staff, this reference material is already in the Board's possession. Therefore, the Illinois EPA respectfully requests that the Board waive the submission of copies of the material incorporated by reference as required under 35 Ill. Adm. Code 102.202(d).

IV. SUPPORTING DOCUMENTS

Exhibit A: P.A. 94-272.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 11-16-05

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Public Act 094-0272

SB0431 Enrolled LRB094 09305 RSP 39545 b

AN ACT concerning safety.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 10. The Environmental Protection Act is amended by changing Sections 3.160, 21.3, 22.44, 34, 39, 42, and 58.8 and by adding Sections 22.15a, 22.50, 22.51, and 22.52 as follows:

(415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

Sec. 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered clean construction or demolition debris and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in

accordance with item (i) in subsection (b) of this Section within 30 days of its generation.

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

To the extent allowed by federal law, clean construction or demolition debris shall not be considered "waste" if it is (i) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, or (ii) separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) within 30 days of its generation, or (iii) solely broken concrete without protruding metal bars used for erosion control, or (iv) generated from the construction or demolition of a building, road, or other structure and used to construct, on the site where the construction or demolition has taken place, a manmade functional structure not to exceed 20 feet above the highest point of elevation of the property immediately adjacent to the new manmade functional structure as that elevation existed prior to the creation of that new structure, provided that the structure shall be covered with sufficient soil materials to sustain vegetation or by a road or structure, and further provided that no such structure shall be constructed within a home rule municipality with a population over 500,000 without the consent of the municipality.

(Source: P.A. 92-574, eff. 6-26-02; 93-179, eff. 7-11-03.)

(415 ILCS 5/21.3) (from Ch. 111 1/2, par. 1021.3)

Sec. 21.3. Environmental reclamation lien.

(a) All costs and damages for which a person is liable to the State of Illinois under Section 22.2, 22.15a, 55.3, or 57.12 ~~and Section 22.18~~ shall constitute an environmental reclamation lien in favor of the State of Illinois upon all real property and rights to such property which:

(1) belong to such person; and

(2) are subject to or affected by a removal or remedial action under Section 22.2 or investigation, preventive action, corrective action, or enforcement action under Section 22.15a, 55.3, or 57.12 ~~22.18~~.

(b) An environmental reclamation lien shall continue until the liability for the costs and damages, or a judgment against the person arising out of such liability, is satisfied.

(c) An environmental reclamation lien shall be effective upon the filing by the Agency of a Notice of Environmental Reclamation Lien with the recorder or the registrar of titles of the county in which the real property lies. The Agency shall not file an environmental reclamation lien, and no such lien shall be valid, unless the Agency has sent notice pursuant to subsection (q) of Section 4, subsection (c) of Section 22.15a, subsection (d) of Section 55.3, or subsection (c) of Section 57.12 of this Act to owners of the real property. Nothing in this Section shall be construed to give the Agency's lien a preference over the rights of any bona fide purchaser or mortgagee or other lienholder (not including the United States when holding an unfiled lien) arising prior to the filing of a notice of environmental reclamation lien in the office of the recorder or registrar of titles of the county in which the property subject to the lien is located. For purposes of this Section, the term "bona fide" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting

as trustee for unsecured creditors of the liable person mentioned in the notice of lien who executed such chattel or real property mortgage or the document evidencing such credit transaction. Such lien shall be inferior to the lien of general taxes, special assessments and special taxes heretofore or hereafter levied by any political subdivision of this State.

(d) The environmental reclamation lien shall not exceed the amount of expenditures as itemized on the Affidavit of Expenditures attached to and filed with the Notice of Environmental Reclamation Lien. The Affidavit of Expenditures may be amended if additional costs or damages are incurred.

(e) Upon filing of the Notice of Environmental Reclamation Lien a copy with attachments shall be served upon the owners of the real property. Notice of such service shall be served on all lienholders of record as of the date of filing.

(f) (Blank) ~~Within 60 days after initiating response or remedial action at the site under Section 22.2 or 22.18, the Agency shall file a Notice of Response Action in Progress. The Notice shall be filed with the recorder or registrar of titles of the county in which the real property lies~~.

(g) In addition to any other remedy provided by the laws of this State, the Agency may foreclose in the circuit court an environmental reclamation lien on real property for any costs or damages imposed under Section 22.2, 22.15a, 55.3, or 57.12 ~~or Section 22.18~~ to the same extent and in the same manner as in the enforcement of other liens. The process, practice and procedure for such foreclosure shall be the same as provided in Article XV of the Code of Civil Procedure. Nothing in this Section shall affect the right of the State of Illinois to bring an action against any person to recover all costs and damages for which such person is liable under Section 22.2, 22.15a, 55.3, or 57.12 ~~or Section 22.18~~.

(h) Any liability to the State under Section 22.2, 22.15a, 55.3, or 57.12 ~~or Section 22.18~~ shall constitute a debt to the State. Interest on such debt shall begin to accrue at a rate of 12% per annum from the date of the filing of the Notice of

Environmental Reclamation Lien under paragraph (c). Accrued interest shall be included as a cost incurred by the State of Illinois under Section 22.2, 22.15a, 55.3, or 57.12 ~~or Section 22.18~~.

(i) "Environmental reclamation lien" means a lien established under this Section.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.15a new)

Sec. 22.15a. Open dumping cleanup program.

(a) Upon making a finding that open dumping poses a threat to the public health or to the environment, the Agency may take whatever preventive or corrective action is necessary or appropriate to end that threat. This preventive or corrective action may consist of any or all of the following:

(1) Removing waste from the site.

(2) Removing soil and water contamination that is related to waste at the site.

(3) Installing devices to monitor and control groundwater and surface water contamination that is related to waste at the site.

(4) Taking any other actions that are authorized by Board regulations.

(b) Subject to the availability of appropriated funds, the Agency may undertake a consensual removal action for the removal of up to 20 cubic yards of waste at no cost to the owner of property where open dumping has occurred in accordance with the following requirements:

(1) Actions under this subsection must be taken pursuant to a written agreement between the Agency and the owner of the property.

(2) The written agreement must at a minimum specify:

(A) that the owner relinquishes any claim of an ownership interest in any waste that is removed and in any proceeds from its sale;

(B) that waste will no longer be allowed to

accumulate at the site in a manner that constitutes open dumping;

(C) that the owner will hold harmless the Agency and any employee or contractor used by the Agency to effect the removal for any damage to property incurred during the course of action under this subsection, except for damage incurred by gross negligence or intentional misconduct; and

(D) any conditions imposed upon or assistance required from the owner to assure that the waste is so located or arranged as to facilitate its removal.

(3) The Agency may establish by rule the conditions and priorities for the removal of waste under this subsection (b).

(4) The Agency must prescribe the form of written agreements under this subsection (b).

(c) The Agency may provide notice to the owner of property where open dumping has occurred whenever the Agency finds that open dumping poses a threat to public health or the environment. The notice provided by the Agency must include the identified preventive or corrective action and must provide an opportunity for the owner to perform the action.

(d) In accordance with constitutional limitations, the Agency may enter, at all reasonable times, upon any private or public property for the purpose of taking any preventive or corrective action that is necessary and appropriate under this Section whenever the Agency finds that open dumping poses a threat to the public health or to the environment.

(e) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (g) of this Section, the following persons shall be liable for all costs of corrective or preventive action incurred by the State of Illinois as a result of open dumping, including the reasonable costs of collection:

(1) any person with an ownership interest in property where open dumping has occurred;

(2) any person with an ownership or leasehold interest in the property at the time the open dumping occurred;

(3) any person who transported waste that was open dumped at the property; and

(4) any person who open dumped at the property.

Any moneys received by the Agency under this subsection (e) must be deposited into the Subtitle D Management Fund.

(f) Any person liable to the Agency for costs incurred under subsection (e) of this Section may be liable to the State of Illinois for punitive damages in an amount at least equal to and not more than 3 times the costs incurred by the State if that person failed, without sufficient cause, to take preventive or corrective action under the notice issued under subsection (c) of this Section.

(g) There shall be no liability under subsection (e) of this Section for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the open dumping was caused solely by:

(1) an act of God;

(2) an act of war; or

(3) an act or omission of a third party other than an employee or agent and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable. For the purposes of this paragraph, "contractual relationship" includes, but is not limited to, land contracts, deeds, and other instruments transferring title or possession, unless the real property upon which the open dumping occurred was acquired by the defendant after the open dumping occurred and one or more of the following circumstances is also established by a preponderance of the evidence:

(A) at the time the defendant acquired the property, the defendant did not know and had no reason to know that any open dumping had occurred and the defendant undertook, at the time of acquisition, all appropriate inquiries into the previous ownership and

uses of the property consistent with good commercial or customary practice in an effort to minimize liability;

(B) the defendant is a government entity that acquired the property by escheat or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(C) the defendant acquired the property by inheritance or bequest.

(h) Nothing in this Section shall affect or modify the obligations or liability of any person under any other provision of this Act, federal law, or State law, including the common law, for injuries, damages, or losses resulting from the circumstances leading to Agency action under this Section.

(i) The costs and damages provided for in this Section may be imposed by the Board in an action brought before the Board in accordance with Title VIII of this Act, except that subsection (c) of Section 33 of this Act shall not apply to any such action.

(j) Except for willful and wanton misconduct, neither the State, the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any act or omission occurring under the provisions of this amendatory Act of the 94th General Assembly.

(k) Before taking preventive or corrective action under this Section, the Agency shall consider whether the open dumping:

(1) occurred on public land;

(2) occurred on a public right-of-way;

(3) occurred in a park or natural area;

(4) occurred in an environmental justice area;

(5) was caused or allowed by persons other than the owner of the site;

(6) creates the potential for groundwater contamination;

(7) creates the potential for surface water

contamination;

(8) creates the potential for disease vectors;

(9) creates a fire hazard; or

(10) preventive or corrective action by the Agency has been requested by a unit of local government.

In taking preventive or corrective action under this Section, the Agency shall not expend more than $50,000 at any single site in response to open dumping unless: (i) the Director determines that the open dumping poses an imminent and substantial endangerment to the public health or welfare or the environment; or (ii) the General Assembly appropriates more than $50,000 for preventive or corrective action in response to the open dumping, in which case the Agency may spend the appropriated amount.

(415 ILCS 5/22.44)

Sec. 22.44. Subtitle D management fees.

(a) There is created within the State treasury a special fund to be known as the "Subtitle D Management Fund" constituted from the fees collected by the State under this Section.

(b) The Agency shall assess and collect a fee in the amount set forth in this subsection from the owner or operator of each sanitary landfill permitted or required to be permitted by the Agency to dispose of solid waste if the sanitary landfill is located off the site where the waste was produced and if the sanitary landfill is owned, controlled, and operated by a person other than the generator of the waste. The Agency shall deposit all fees collected under this subsection into the Subtitle D Management Fund. If a site is contiguous to one or more landfills owned or operated by the same person, the volumes permanently disposed of by each landfill shall be combined for purposes of determining the fee under this subsection.

(1) If more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a

calendar year, the owner or operator shall either pay a fee of 10.1 cents per cubic yard or, alternatively, the owner or operator may weigh the quantity of the solid waste permanently disposed of with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of 22 cents per ton of waste permanently disposed of.

(2) If more than 100,000 cubic yards, but not more than 150,000 cubic yards, of non-hazardous waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $7,020.

(3) If more than 50,000 cubic yards, but not more than 100,000 cubic yards, of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $3,120.

(4) If more than 10,000 cubic yards, but not more than 50,000 cubic yards, of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $975.

(5) If not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $210.

(c) The fee under subsection (b) shall not apply to any of the following:

(1) Hazardous waste.

(2) Pollution control waste.

(3) Waste from recycling, reclamation, or reuse processes that have been approved by the Agency as being designed to remove any contaminant from wastes so as to render the wastes reusable, provided that the process renders at least 50% of the waste reusable.

(4) Non-hazardous solid waste that is received at a sanitary landfill and composted or recycled through a process permitted by the Agency.

(5) Any landfill that is permitted by the Agency to

receive only demolition or construction debris or landscape waste.

(d) The Agency shall establish rules relating to the collection of the fees authorized by this Section. These rules shall include, but not be limited to the following:

(1) Necessary records identifying the quantities of solid waste received or disposed.

(2) The form and submission of reports to accompany the payment of fees to the Agency.

(3) The time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly.

(4) Procedures setting forth criteria establishing when an owner or operator may measure by weight or volume during any given quarter or other fee payment period.

(e) Fees collected under this Section shall be in addition to any other fees collected under any other Section.

(f) The Agency shall not refund any fee paid to it under this Section.

(g) Pursuant to appropriation, all moneys in the Subtitle D Management Fund shall be used by the Agency to administer the United States Environmental Protection Agency's Subtitle D Program provided in Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as it relates to a municipal solid waste landfill program in Illinois and to fund a delegation of inspecting, investigating, and enforcement functions, within the municipality only, pursuant to subsection (r) of Section 4 of this Act to a municipality having a population of more than 1,000,000 inhabitants. The Agency shall execute a delegation agreement pursuant to subsection (r) of Section 4 of this Act with a municipality having a population of more than 1,000,000 inhabitants within 90 days of September 13, 1993 and shall on an annual basis distribute from the Subtitle D Management Fund to that municipality no less than $150,000. Pursuant to appropriation, moneys in the Subtitle D Management Fund may also be used by

the Agency for activities conducted under Section 22.15a of this Act.

(Source: P.A. 92-574, eff. 6-26-02; 93-32, eff. 7-1-03.)

(415 ILCS 5/22.50 new)

Sec. 22.50. Compliance with land use limitations. No person shall use, or cause or allow the use of, any site for which a land use limitation has been imposed under this Act in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of remedial objectives appropriate for the new land use and a new closure letter has been obtained from the Agency and recorded in the chain of title for the site. For the purpose of this Section, the term "land use limitation" shall include, but shall not be limited to, institutional controls and engineered barriers imposed under this Act and the regulations adopted under this Act. For the purposes of this Section, the term "closure letter" shall include, but shall not be limited to, No Further Remediation Letters issued under Titles XVI and XVII of this Act and the regulations adopted under those Titles.

(415 ILCS 5/22.51 new)

Sec. 22.51. Clean Construction or Demolition Debris Fill Operations.

(a) No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

(b)(1)(A) Beginning 30 days after the effective date of this amendatory Act of the 94th General Assembly but prior to July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation, unless they have applied for an interim authorization from the Agency for the clean construction or demolition debris fill operation.

(B) The Agency shall approve an interim authorization upon

its receipt of a written application for the interim authorization that is signed by the site owner and the site operator, or their duly authorized agent, and that contains the following information: (i) the location of the site where the clean construction or demolition debris fill operation is taking place, (ii) the name and address of the site owner, (iii) the name and address of the site operator, and (iv) the types and amounts of clean construction or demolition debris being used as fill material at the site.

(C) The Agency may deny an interim authorization if the site owner or the site operator, or their duly authorized agent, fails to provide to the Agency the information listed in subsection (b)(1)(B) of this Section. Any denial of an interim authorization shall be subject to appeal to the Board in accordance with the procedures of Section 40 of this Act.

(D) No person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation for which the Agency has denied interim authorization under subsection (b)(1)(C) of this Section. The Board may stay the prohibition of this subsection (D) during the pendency of an appeal of the Agency's denial of the interim authorization brought under subsection (b)(1)(C) of this Section.

(2) Beginning September 1, 2006, owners and operators of clean construction or demolition debris fill operations shall, in accordance with a schedule prescribed by the Agency, submit to the Agency applications for the permits required under this Section. The Agency shall notify owners and operators in writing of the due date for their permit application. The due date shall be no less than 90 days after the date of the Agency's written notification. Owners and operators who do not receive a written notification from the Agency by October 1, 2007, shall submit a permit application to the Agency by January 1, 2008. The interim authorization of owners and operators who fail to submit a permit application to the Agency by the permit application's due date shall terminate on (i) the

due date established by the Agency if the owner or operator received a written notification from the Agency prior to October 1, 2007, or (ii) or January 1, 2008, if the owner or operator did not receive a written notification from the Agency by October 1, 2007.

(3) On and after July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation without a permit granted by the Agency for the clean construction or demolition debris fill operation or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with Board regulations and standards adopted under this Act.

(4) This subsection (b) does not apply to:

(A) the use of clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation located on the site where the clean construction or demolition debris was generated; or

(B) the use of clean construction or demolition debris as fill material in an excavation other than a current or former quarry or mine if this use complies with Illinois Department of Transportation specifications.

(c) In accordance with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Section. The Agency shall consult with the mining and construction industries during the development of any regulations to promote the purposes of this Section.

(1) No later than December 15, 2005, the Agency shall propose to the Board, and no later than September 1, 2006, the Board shall adopt, regulations for the use of clean construction or demolition debris as fill material in current and former quarries, mines, and other excavations. Such regulations shall include, but shall not be limited to, standards for clean construction or demolition debris fill operations and the submission and review of permits

required under this Section.

(2) Until the Board adopts rules under subsection (c)(1) of this Section, all persons using clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation shall:

(A) Assure that only clean construction or demolition debris is being used as fill material by screening each truckload of material received using a device approved by the Agency that detects volatile organic compounds. Such devices may include, but are not limited to, photo ionization detectors. All screening devices shall be operated and maintained in accordance with manufacturer's specifications. Unacceptable fill material shall be rejected from the site; and

(B) Retain for a minimum of 3 years the following information:

(i) The name of the hauler, the name of the generator, and place of origin of the debris or soil;

(ii) The approximate weight or volume of the debris or soil; and

(iii) The date the debris or soil was received.

(d) This Section applies only to clean construction or demolition debris that is not considered "waste" as provided in Section 3.160 of this Act.

(415 ILCS 5/22.52 new)

Sec. 22.52. Conflict of interest. Effective 30 days after the effective date of this amendatory Act of the 94th General Assembly, none of the following persons shall have a direct financial interest in or receive a personal financial benefit from any waste-disposal operation or any clean construction or demolition debris fill operation that requires a permit or interim authorization under this Act, or any corporate entity related to any such waste-disposal operation or clean

construction or demolition debris fill operation:

(i) the Governor of the State of Illinois;

(ii) the Attorney General of the State of Illinois;

(iii) the Director of the Illinois Environmental Protection Agency;

(iv) the Chairman of the Illinois Pollution Control Board;

(v) the members of the Illinois Pollution Control Board;

(vi) the staff of any person listed in items (i) through (v) of this Section who makes a regulatory or licensing decision that directly applies to any waste-disposal operation or any clean construction or demolition debris fill operation; and

(vii) a relative of any person listed in items (i) through (vi) of this Section.

The prohibitions of this Section shall apply during the person's term of State employment and shall continue for 5 years after the person's termination of State employment. The prohibition of this Section shall not apply to any person whose State employment terminates prior to 30 days after the effective date of this amendatory Act of the 94th General Assembly.

For the purposes of this Section:

(a) The terms "direct financial interest" and "personal financial benefit" do not include the ownership of publicly traded stock.

(b) The term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, husband, wife, father-in-law, or mother-in-law.

(415 ILCS 5/34) (from Ch. 111 1/2, par. 1034)

Sec. 34. (a) Upon a finding that episode or emergency conditions specified in Board regulations exist, the Agency shall declare such alerts or emergencies as provided by those regulations. While such an alert or emergency is in effect, the

Agency may seal any equipment, vehicle, vessel, aircraft, or other facility operated in violation of such regulations.

(b) In ~~other~~ cases other than those identified in subsection (a) of this Section:

(1) At any pollution control facility where ~~in which~~ the Agency finds that an emergency condition exists creating an immediate danger to public health or welfare or the environment, the Agency may seal any equipment, vehicle, vessel, aircraft, or other facility contributing to the emergency condition; and~~.~~

(2) At any other site or facility where the Agency finds that an imminent and substantial endangerment to the public health or welfare or the environment exists, the Agency may seal any equipment, vehicle, vessel, aircraft, or other facility contributing to the imminent and substantial endangerment.

(c) It shall be a Class A misdemeanor to break any seal affixed under this section, or to operate any sealed equipment, vehicle, vessel, aircraft, or other facility until the seal is removed according to law.

(d) The owner or operator of any equipment, vehicle, vessel, aircraft or other facility sealed pursuant to this section is entitled to a hearing in accord with Section 32 of this Act to determine whether the seal should be removed; except that in such hearing at least one Board member shall be present, and those Board members present may render a final decision without regard to the requirements of paragraph (a) of Section 5 of this Act. The petitioner may also seek immediate injunctive relief.

(Source: P.A. 77-2830.)

(415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

Sec. 39. Issuance of permits; procedures.

(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the

applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

(i) the Sections of this Act which may be violated if the permit were granted;

(ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;

(iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

If there is no final action by the Agency within 90 days

after the filing of the application for permit, the applicant may deem the permit issued; except that this time period shall be extended to 180 days when (1) notice and opportunity for public hearing are required by State or federal law or regulation, (2) the application which was filed is for any permit to develop a landfill subject to issuance pursuant to this subsection, or (3) the application that was filed is for a MSWLF unit required to issue public notice under subsection (p) of Section 39. The 90-day and 180-day time periods for the Agency to take final action do not apply to NPDES permit applications under subsection (b) of this Section, to RCRA permit applications under subsection (d) of this Section, or to UIC permit applications under subsection (e) of this Section.

The Agency shall publish notice of all final permit determinations for development permits for MSWLF units and for significant permit modifications for lateral expansions for existing MSWLF units one time in a newspaper of general circulation in the county in which the unit is or is proposed to be located.

After January 1, 1994 and until July 1, 1998, operating permits issued under this Section by the Agency for sources of air pollution permitted to emit less than 25 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and regulations promulgated hereunder. Such operating permits shall expire 180 days after the date of such a request. The Board shall revise its regulations for the existing State air pollution operating permit program consistent with this provision by January 1, 1994.

After June 30, 1998, operating permits issued under this Section by the Agency for sources of air pollution that are not subject to Section 39.5 of this Act and are not required to have a federally enforceable State operating permit shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and its

rules. Such operating permits shall expire 180 days after the date of such a request. Before July 1, 1998, the Board shall revise its rules for the existing State air pollution operating permit program consistent with this paragraph and shall adopt rules that require a source to demonstrate that it qualifies for a permit under this paragraph.

(b) The Agency may issue NPDES permits exclusively under this subsection for the discharge of contaminants from point sources into navigable waters, all as defined in the Federal Water Pollution Control Act, as now or hereafter amended, within the jurisdiction of the State, or into any well.

All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act.

The Agency may issue general NPDES permits for discharges from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications and shall conform to regulations promulgated under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended.

The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by

regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

(c) Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act, no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act.

In the event that siting approval granted pursuant to Section 39.2 has been transferred to a subsequent owner or operator, that subsequent owner or operator may apply to the Agency for, and the Agency may grant, a development or construction permit for the facility for which local siting approval was granted. Upon application to the Agency for a development or construction permit by that subsequent owner or operator, the permit applicant shall cause written notice of the permit application to be served upon the appropriate county board or governing body of the municipality that granted siting approval for that facility and upon any party to the siting proceeding pursuant to which siting approval was granted. In that event, the Agency shall conduct an evaluation of the subsequent owner or operator's prior experience in waste management operations in the manner conducted under subsection (i) of Section 39 of this Act.

Beginning August 20, 1993, if the pollution control facility consists of a hazardous or solid waste disposal facility for which the proposed site is located in an unincorporated area of a county with a population of less than 100,000 and includes all or a portion of a parcel of land that was, on April 1, 1993, adjacent to a municipality having a population of less than 5,000, then the local siting review

required under this subsection (c) in conjunction with any permit applied for after that date shall be performed by the governing body of that adjacent municipality rather than the county board of the county in which the proposed site is located; and for the purposes of that local siting review, any references in this Act to the county board shall be deemed to mean the governing body of that adjacent municipality; provided, however, that the provisions of this paragraph shall not apply to any proposed site which was, on April 1, 1993, owned in whole or in part by another municipality.

In the case of a pollution control facility for which a development permit was issued before November 12, 1981, if an operating permit has not been issued by the Agency prior to August 31, 1989 for any portion of the facility, then the Agency may not issue or renew any development permit nor issue an original operating permit for any portion of such facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved by the appropriate county board or municipal governing body pursuant to Section 39.2 of this Act.

After January 1, 1994, if a solid waste disposal facility, any portion for which an operating permit has been issued by the Agency, has not accepted waste disposal for 5 or more consecutive calendars years, before that facility may accept any new or additional waste for disposal, the owner and operator must obtain a new operating permit under this Act for that facility unless the owner and operator have applied to the Agency for a permit authorizing the temporary suspension of waste acceptance. The Agency may not issue a new operation permit under this Act for the facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved or re-approved by the appropriate county board or municipal governing body under Section 39.2 of this Act after the facility ceased accepting waste.

Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation

District Act, and except for new pollution control facilities governed by Section 39.2, and except for fossil fuel mining facilities, the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility.

Before beginning construction on any new sewage treatment plant or sludge drying site to be owned or operated by a sanitary district organized under the Metropolitan Water Reclamation District Act for which a new permit (rather than the renewal or amendment of an existing permit) is required, such sanitary district shall hold a public hearing within the municipality within which the proposed facility is to be located, or within the nearest community if the proposed facility is to be located within an unincorporated area, at which information concerning the proposed facility shall be made available to the public, and members of the public shall be given the opportunity to express their views concerning the proposed facility.

The Agency may issue a permit for a municipal waste transfer station without requiring approval pursuant to Section 39.2 provided that the following demonstration is made:

(1) the municipal waste transfer station was in existence on or before January 1, 1979 and was in continuous operation from January 1, 1979 to January 1, 1993;

(2) the operator submitted a permit application to the Agency to develop and operate the municipal waste transfer station during April of 1994;

(3) the operator can demonstrate that the county board of the county, if the municipal waste transfer station is in an unincorporated area, or the governing body of the municipality, if the station is in an incorporated area, does not object to resumption of the operation of the station; and

(4) the site has local zoning approval.

(d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste as defined under this Act.

All RCRA permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a RCRA permit.

In the case of a permit to operate a hazardous waste or PCB incinerator as defined in subsection (k) of Section 44, the Agency shall require, as a condition of the permit, that the operator of the facility perform such analyses of the waste to be incinerated as may be necessary and appropriate to ensure the safe operation of the incinerator.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of RCRA permits, and which are consistent with the Act or regulations adopted by the Board, and with the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(e) The Agency may issue UIC permits exclusively under this subsection to persons owning or operating a facility for the underground injection of contaminants as defined under this Act.

All UIC permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a UIC permit.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of UIC permits, and which are consistent with the Act or regulations adopted by the Board, and with the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection, all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(f) In making any determination pursuant to Section 9.1 of this Act:

(1) The Agency shall have authority to make the determination of any question required to be determined by the Clean Air Act, as now or hereafter amended, this Act, or the regulations of the Board, including the determination of the Lowest Achievable Emission Rate, Maximum Achievable Control Technology, or Best Available

Control Technology, consistent with the Board's regulations, if any.

(2) The Agency shall, after conferring with the applicant, give written notice to the applicant of its proposed decision on the application including the terms and conditions of the permit to be issued and the facts, conduct or other basis upon which the Agency will rely to support its proposed action.

(3) Following such notice, the Agency shall give the applicant an opportunity for a hearing in accordance with the provisions of Sections 10-25 through 10-60 of the Illinois Administrative Procedure Act.

(g) The Agency shall include as conditions upon all permits issued for hazardous waste disposal sites such restrictions upon the future use of such sites as are reasonably necessary to protect public health and the environment, including permanent prohibition of the use of such sites for purposes which may create an unreasonable risk of injury to human health or to the environment. After administrative and judicial challenges to such restrictions have been exhausted, the Agency shall file such restrictions of record in the Office of the Recorder of the county in which the hazardous waste disposal site is located.

(h) A hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to neutralize the hazardous waste and render it nonhazardous. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the

purposes of the Act and are consistent with this Act and regulations promulgated by the Board hereunder. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit, pursuant to the provisions of subsection (a) of Section 40 of this Act. For purposes of this subsection (h), the term "generator" has the meaning given in Section 3.205 of this Act, unless: (1) the hazardous waste is treated, incinerated, or partially recycled for reuse prior to disposal, in which case the last person who treats, incinerates, or partially recycles the hazardous waste prior to disposal is the generator; or (2) the hazardous waste is from a response action, in which case the person performing the response action is the generator. This subsection (h) does not apply to any hazardous waste that is restricted from land disposal under 35 Ill. Adm. Code 728.

(i) Before issuing any RCRA permit, ~~or~~ any permit for a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, waste incinerator, or any waste-transportation operation, or any permit for a clean construction or demolition debris fill operation, the Agency shall conduct an evaluation of the prospective owner's or operator's prior experience in waste management operations. The Agency may deny such a permit if the prospective owner or operator or any employee or officer of the prospective owner or operator has a history of:

(1) repeated violations of federal, State, or local laws, regulations, standards, or ordinances in the operation of waste management facilities or sites; or

(2) conviction in this or another State of any crime which is a felony under the laws of this State, or conviction of a felony in a federal court; or

(3) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of waste.

(i-5) Before issuing any permit or approving any interim authorization for a clean construction or demolition debris

fill operation in which any ownership interest is transferred between January 1, 2005, and the effective date of the prohibition set forth in Section 22.52 of this Act, the Agency shall conduct an evaluation of the operation if any previous activities at the site or facility may have caused or allowed contamination of the site. It shall be the responsibility of the owner or operator seeking the permit or interim authorization to provide to the Agency all of the information necessary for the Agency to conduct its evaluation. The Agency may deny a permit or interim authorization if previous activities at the site may have caused or allowed contamination at the site, unless such contamination is authorized under any permit issued by the Agency.

(j) The issuance under this Act of a permit to engage in the surface mining of any resources other than fossil fuels shall not relieve the permittee from its duty to comply with any applicable local law regulating the commencement, location or operation of surface mining facilities.

(k) A development permit issued under subsection (a) of Section 39 for any facility or site which is required to have a permit under subsection (d) of Section 21 shall expire at the end of 2 calendar years from the date upon which it was issued, unless within that period the applicant has taken action to develop the facility or the site. In the event that review of the conditions of the development permit is sought pursuant to Section 40 or 41, or permittee is prevented from commencing development of the facility or site by any other litigation beyond the permittee's control, such two-year period shall be deemed to begin on the date upon which such review process or litigation is concluded.

(l) No permit shall be issued by the Agency under this Act for construction or operation of any facility or site located within the boundaries of any setback zone established pursuant to this Act, where such construction or operation is prohibited.

(m) The Agency may issue permits to persons owning or

operating a facility for composting landscape waste. In granting such permits, the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with applicable regulations promulgated by the Board. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit pursuant to this subsection, the Agency shall transmit to the applicant within the time limitations of this subsection specific, detailed statements as to the reasons the permit application was denied. Such statements shall include but not be limited to the following:

(1) the Sections of this Act that may be violated if the permit were granted;

(2) the specific regulations promulgated pursuant to this Act that may be violated if the permit were granted;

(3) the specific information, if any, the Agency deems the applicant did not provide in its application to the Agency; and

(4) a statement of specific reasons why the Act and the regulations might be violated if the permit were granted.

If no final action is taken by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued. Any applicant for a permit may waive the 90 day limitation by filing a written statement with the Agency.

The Agency shall issue permits for such facilities upon receipt of an application that includes a legal description of the site, a topographic map of the site drawn to the scale of 200 feet to the inch or larger, a description of the operation, including the area served, an estimate of the volume of materials to be processed, and documentation that:

(1) the facility includes a setback of at least 200 feet from the nearest potable water supply well;

(2) the facility is located outside the boundary of the 10-year floodplain or the site will be floodproofed;

(3) the facility is located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after November 17, 1991, the composting area is located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility);

(4) the design of the facility will prevent any compost material from being placed within 5 feet of the water table, will adequately control runoff from the site, and will collect and manage any leachate that is generated on the site;

(5) the operation of the facility will include appropriate dust and odor control measures, limitations on operating hours, appropriate noise control measures for shredding, chipping and similar equipment, management procedures for composting, containment and disposal of non-compostable wastes, procedures to be used for terminating operations at the site, and recordkeeping sufficient to document the amount of materials received, composted and otherwise disposed of; and

(6) the operation will be conducted in accordance with any applicable rules adopted by the Board.

The Agency shall issue renewable permits of not longer than 10 years in duration for the composting of landscape wastes, as defined in Section 3.155 of this Act, based on the above requirements.

The operator of any facility permitted under this subsection (m) must submit a written annual statement to the Agency on or before April 1 of each year that includes an estimate of the amount of material, in tons, received for composting.

(n) The Agency shall issue permits jointly with the Department of Transportation for the dredging or deposit of material in Lake Michigan in accordance with Section 18 of the

Rivers, Lakes, and Streams Act.

(o) (Blank.)

(p) (1) Any person submitting an application for a permit for a new MSWLF unit or for a lateral expansion under subsection (t) of Section 21 of this Act for an existing MSWLF unit that has not received and is not subject to local siting approval under Section 39.2 of this Act shall publish notice of the application in a newspaper of general circulation in the county in which the MSWLF unit is or is proposed to be located. The notice must be published at least 15 days before submission of the permit application to the Agency. The notice shall state the name and address of the applicant, the location of the MSWLF unit or proposed MSWLF unit, the nature and size of the MSWLF unit or proposed MSWLF unit, the nature of the activity proposed, the probable life of the proposed activity, the date the permit application will be submitted, and a statement that persons may file written comments with the Agency concerning the permit application within 30 days after the filing of the permit application unless the time period to submit comments is extended by the Agency.

When a permit applicant submits information to the Agency to supplement a permit application being reviewed by the Agency, the applicant shall not be required to reissue the notice under this subsection.

(2) The Agency shall accept written comments concerning the permit application that are postmarked no later than 30 days after the filing of the permit application, unless the time period to accept comments is extended by the Agency.

(3) Each applicant for a permit described in part (1) of this subsection shall file a copy of the permit application with the county board or governing body of the municipality in which the MSWLF unit is or is proposed to be located at the same time the application is submitted to the Agency. The permit application filed with the county board or governing body of the municipality shall include all documents submitted to or to be submitted to the Agency, except trade secrets as

determined under Section 7.1 of this Act. The permit application and other documents on file with the county board or governing body of the municipality shall be made available for public inspection during regular business hours at the office of the county board or the governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

(Source: P.A. 92-574, eff. 6-26-02; 93-575, eff. 1-1-04.)

(415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

Sec. 42. Civil penalties.

(a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed $50,000 for the violation and an additional civil penalty of not to exceed $10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) Any person that violates Section 12(f) of this Act or any NPDES permit or term or condition thereof, or any filing requirement, regulation or order relating to the NPDES permit program, shall be liable to a civil penalty of not to exceed $10,000 per day of violation.

(2) Any person that violates Section 12(g) of this Act or any UIC permit or term or condition thereof, or any filing requirement, regulation or order relating to the State UIC program for all wells, except Class II wells as defined by the Board under this Act, shall be liable to a civil penalty not to exceed $2,500 per day of violation; provided, however, that any person who commits such

violations relating to the State UIC program for Class II wells, as defined by the Board under this Act, shall be liable to a civil penalty of not to exceed $10,000 for the violation and an additional civil penalty of not to exceed $1,000 for each day during which the violation continues.

(3) Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed $25,000 per day of violation.

(4) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) of Section 21 of this Act shall pay a civil penalty of $500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(4-5) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of $1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be $3,000 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudication violation of that provision. The penalties shall be deposited into the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the

administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(5) Any person who violates subsection 6 of Section 39.5 of this Act or any CAAPP permit, or term or condition thereof, or any fee or filing requirement, or any duty to allow or carry out inspection, entry or monitoring activities, or any regulation or order relating to the CAAPP shall be liable for a civil penalty not to exceed $10,000 per day of violation.

(b.5) In lieu of the penalties set forth in subsections (a) and (b) of this Section, any person who fails to file, in a timely manner, toxic chemical release forms with the Agency pursuant to Section 25b-2 of this Act shall be liable for a civil penalty of $100 per day for each day the forms are late, not to exceed a maximum total penalty of $6,000. This daily penalty shall begin accruing on the thirty-first day after the date that the person receives the warning notice issued by the Agency pursuant to Section 25b-6 of this Act; and the penalty shall be paid to the Agency. The daily accrual of penalties shall cease as of January 1 of the following year. All penalties collected by the Agency pursuant to this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

(c) Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

(d) The penalties provided for in this Section may be recovered in a civil action.

(e) The State's Attorney of the county in which the violation occurred, or the Attorney General, may, at the request of the Agency or on his own motion, institute a civil

action for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

(f) The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the people of the State of Illinois. Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a wilful, knowing or repeated violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

Any funds collected under this subsection (f) in which the Attorney General has prevailed shall be deposited in the Hazardous Waste Fund created in Section 22.2 of this Act. Any funds collected under this subsection (f) in which a State's Attorney has prevailed shall be retained by the county in which he serves.

(g) All final orders imposing civil penalties pursuant to this Section shall prescribe the time for payment of such penalties. If any such penalty is not paid within the time prescribed, interest on such penalty at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, shall be paid for the period from the date payment is due until the date payment is received. However, if the time for payment is stayed during the pendency of an appeal, interest shall not accrue during such stay.

(h) In determining the appropriate civil penalty to be

imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

(7) whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial

hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

(i) A person who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the person can establish the following:

(1) that the non-compliance was discovered through an environmental audit, as defined in Section 52.2 of this Act, and the person waives the environmental audit privileges as provided in that Section with respect to that non-compliance;

(2) that the non-compliance was disclosed in writing within 30 days of the date on which the person discovered it;

(3) that the non-compliance was discovered and disclosed prior to:

(i) the commencement of an Agency inspection, investigation, or request for information;

(ii) notice of a citizen suit;

(iii) the filing of a complaint by a citizen, the Illinois Attorney General, or the State's Attorney of the county in which the violation occurred;

(iv) the reporting of the non-compliance by an employee of the person without that person's knowledge; or

(v) imminent discovery of the non-compliance by the Agency;

(4) that the non-compliance is being corrected and any environmental harm is being remediated in a timely fashion;

(5) that the person agrees to prevent a recurrence of the non-compliance;

(6) that no related non-compliance events have occurred in the past 3 years at the same facility or in the past 5 years as part of a pattern at multiple facilities

owned or operated by the person;

(7) that the non-compliance did not result in serious actual harm or present an imminent and substantial endangerment to human health or the environment or violate the specific terms of any judicial or administrative order or consent agreement;

(8) that the person cooperates as reasonably requested by the Agency after the disclosure; and

(9) that the non-compliance was identified voluntarily and not through a monitoring, sampling, or auditing procedure that is required by statute, rule, permit, judicial or administrative order, or consent agreement.

If a person can establish all of the elements under this subsection except the element set forth in paragraph (1) of this subsection, the person is entitled to a 75% reduction in the portion of the penalty that is not based upon the economic benefit of non-compliance.

(j) In addition to an other remedy or penalty that may apply, whether civil or criminal, any person who violates Section 22.52 of this Act shall be liable for an additional civil penalty of up to 3 times the gross amount of any pecuniary gain resulting from the violation.

(Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04; 93-831, eff. 7-28-04.)

(415 ILCS 5/58.8)

Sec. 58.8. Duty to record; compliance.

(a) The RA receiving a No Further Remediation Letter from the Agency pursuant to Section 58.10, shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days of receipt of the letter. The Office of the Recorder or the Registrar of Titles shall accept and record that letter in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(b) A No Further Remediation Letter shall not become

effective until officially recorded in accordance with subsection (a) of this Section. The RA shall obtain and submit to the Agency a certified copy of the No Further Remediation Letter as recorded.

(c) (Blank). ~~At no time shall any site for which a land use limitation has been imposed as a result of remediation activities under this Title be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new No Further Remediation Letter obtained and recorded in accordance with this Title.~~

(d) In the event that a No Further Remediation Letter issues by operation of law pursuant to Section 58.10, the RA may, for purposes of this Section, file an affidavit stating that the letter issued by operation of law. Upon receipt of the No Further Remediation Letter from the Agency, the RA shall comply with the requirements of subsections (a) and (b) of this Section.

(Source: P.A. 92-574, eff. 6-26-02.)

Section 99. Effective date. This Act takes effect upon becoming law.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE J: CLEAN CONSTRUCTION OR DEMOLITION DEBRIS
CHAPTER I: POLLUTION CONTROL BOARD

PART 1100

CLEAN CONSTRUCTION OR DEMOLITION DEBRIS FILL OPERATIONS

SUBPART A: GENERAL

Section

SUBPART B: STANDARDS

Section

SUBPART C: PERMIT INFORMATION

Section

SUBPART D: PROCEDURAL REQUIREMENTS FOR PERMITTING

Section

AUTHORITY: Implementing Sections 5 and 22.51 and authorized by Section 22.51 and 27 of the Environmental Protection Act [415 ILCS 5/5, 22.51, and 27].

SOURCE: Adopted in _____at ____ Ill. Reg. _____, effective _____ _____.

SUBPART A: GENERAL

Section 1100.101 Scope and Applicability

a) This Part applies to all CCDD fill operations that are required to be permitted pursuant to Section 22.51 of the Act, other than CCDD fill operations permitted pursuant to 35 Ill. Adm. Code 807 or 811 through 814.

b) This Part does not apply to:

1) CCDD other than CCDD used as fill material in a current or former quarry, mine, or other excavation.

2) *The use of* CCDD *as fill material in a current or former quarry, mine, or other excavation located on the site where the* CCDD *was generated* (Section 22.51(b)(4)(A) of the Act);

3) *The use of* CCDD *as fill material in an excavation other than a current or former quarry or mine if* [the] *use complies with Illinois Department of Transportation specifications* (Section 22.51(b)(4)(B) of the Act);

4) The use of the following types of material as fill material:

A) CCDD that is considered "waste" under the Act or rules adopted pursuant to the Act; or

B) Any material other than CCDD, including, but not limited to, material generated on site as part of a mining process; and

5) The portions of a site not used for a CCDD fill operation.

Section 1100.102 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication must not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 1100.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part will be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5]:

"10-year, 24-hour precipitation event" means a precipitation event of 24-hour duration with a probable recurrence interval of once in 10 years.

"100-year, 24-hour precipitation event" means a precipitation event of 24-hour duration with a probable recurrence interval of once in 100 years.

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" is the Illinois *Environmental Protection Agency established by* [the] *Act.* (Section 3.105 of the Act)

"Applicant" means the person submitting an application to the Agency for a permit for a CCDD fill operation.

"Board" is the Pollution Control Board established by [the] *Act.* (Section 3.130 of the Act)

"CCDD" means clean construction or demolition debris.

"CCDD fill operation" means the use of CCDD as fill material in a current or former quarry, mine, or other excavation.

"Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated

soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

To the extent allowed by federal law, clean construction or demolition debris shall not be considered "waste" if it is (i) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, or (ii) separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) within 30 days of its generation, or (iii) solely broken concrete without protruding metal bars used for erosion control, or (iv) generated from the construction or demolition of a building, road, or other structure and used to construct, on the site where the construction or demolition has taken place, a manmade functional structure not to exceed 20 feet above the highest point of elevation of the property immediately adjacent to the new manmade functional structure as that elevation existed prior to the creation of that new structure, provided that the structure shall be covered with sufficient soil materials to sustain vegetation or by a road or structure, and further provided that no such structure shall be constructed within a home rule municipality with a population over 500,000 without the consent of the municipality. (Section 3.160(b) of the Act)

"Documentation" means items, in any tangible form, whether directly legible or legible with the aid of any machine or device, including but not limited to affidavits, certificates, deeds, leases, contracts or other binding agreements, licenses, permits, photographs, audio or video recordings, maps, geographic surveys, chemical and mathematical formulas or equations, mathematical and statistical calculations and assumptions, research papers, technical reports, technical designs and design drawings, stocks, bonds, and financial records, that are used to support facts or hypotheses.

"Facility" means the areas of a site and all equipment and fixtures on a site used for a CCDD fill operation. A facility consists of an entire CCDD fill operation. All structures used in connection with or to facilitate the CCDD fill operation will be considered a part of the facility.

"Filled area" means areas within a unit where CCDD has been placed as fill material.

"Malodor" means an odor caused by *one or more contaminant emissions into the atmosphere from a facility that is in sufficient quantities and of such characteristics and duration as to be* described as malodorous and which may be *injurious to human, plant, or animal life, to health, or to property, or may unreasonably interfere with the enjoyment of life or property.* (Section 3.115 of the Act (defining "air pollution"))

"National Pollutant Discharge Elimination System" or "NPDES" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under the Clean Water Act (33 USC 1251 et seq.), Section 12(f) of the Act, Subpart A of 35 Ill. Adm. Code 309, and 35 Ill. Adm. Code 310.

"NPDES permit" means a permit issued under the NPDES program.

"Operator" means a person responsible for the operation and maintenance of a CCDD fill operation.

"Owner" means a person who has any direct or indirect interest in a CCDD fill operation or in land on which a person operates and maintains a CCDD fill operation. A "direct or indirect interest" does not include the ownership of publicly traded stock. The "owner" is the "operator" if there is no other person who is operating and maintaining a CCDD fill operation.

"Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent or assigns. (Section 3.315 of the Act)

"Professional engineer" means a person who has registered and obtained a seal pursuant to the Professional Engineering Practice Act of 1989 [225 ILCS 325].

"Runoff" means water resulting from precipitation that flows overland before it enters a defined stream channel, any portion of such overland flow that infiltrates into the ground before it reaches the stream channel, and any precipitation that falls directly into a stream channel.

"Salvaging" means the return of CCDD to use other than use as fill at a CCDD fill operation.

"Setback zone" means a geographic area, designated pursuant to [the] *Act, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain*

prohibitions or regulations are applicable in order to protect groundwaters. (Section 3.450 of the Act)

"Unit" means a contiguous area within a facility that is permitted for the placement of CCDD as fill material.

"Working face" means any part of a unit where CCDD is being placed as fill.

Section 1100.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

U.S. Government Printing Office, Washington, D.C. 20402, Ph: 202-783-3238:

Test Methods for Evaluating Solid Waste, Physical/Chemical methods, EPA Publication SW-846 (Third Edition, 1986 as amended by Updates I, II, IIA, IIB, III, IIIA and IIIB).

b) This incorporation includes no later amendments or editions.

SUBPART B: STANDARDS

Section 1100.201 Prohibitions

a) *No person shall conduct any* CCDD *fill operation in violation of* the *Act or any regulations or standards adopted by the Board.* (Section 22.51(a)).

b) CCDD fill operations must not accept material other than CCDD for use as fill.

BOARD NOTE: Pursuant to Section 3.160 of the Act, CCDD includes uncontaminated soil that is being placed as fill material in a unit.

c) CCDD fill operations must not be located inside a setback zone of a potable water supply well. (See Section 3.160(b)(i) of the Act).

Section 1100.202 Surface Water Drainage

a) Runoff From Filled Areas

1) All discharges of runoff from filled areas to waters of the State must be permitted by the Agency to the extent required under 35 Ill. Adm. Code 309.

2) All surface water control structures must be operated until the final cover is placed and the vegetative or other cover meeting the requirements of Section 1100.208 of this Part provides erosional stability.

b) Diversion of Runoff From Unfilled Areas.

1) Runoff from unfilled areas must be diverted around filled areas to the greatest extent practical.

2) Diversion facilities must be constructed to prevent runoff from the 10-year, 24-hour precipitation event from entering filled areas.

3) Runoff from unfilled areas which becomes commingled with runoff from filled areas must be handled as runoff from filled areas in accordance with subsection (a) of this Section.

4) All diversion structures must be designed to have flow velocities that will not cause erosion and scouring of the natural or constructed lining (i.e., the bottom and sides) of the diversion channel and downstream channels.

5) All diversion structures must be operated until the final cover is placed and the vegetative or other cover meeting the requirements of Section 1100.208 of this Part provides erosional stability.

Section 1100.203 Annual Facility Map

The owner or operator must submit an annual facility map to the Agency each calendar year by the date specified in the Agency permit. The map must have a scale no smaller than one inch equals 200 feet, show the horizontal extent of filled areas as of the date of the map, and show the same information as required for facility plan maps under Sections 1100.305(a) through (d) of this Part.

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.

b) Size and Slope of Working Face

The working face of the fill operation must be no larger than is necessary, based on the terrain and equipment used in material placement, to conduct operations in a safe and efficient manner.

c) Equipment

Equipment must be maintained and available for use at the facility during all hours of operation, so as to achieve and maintain compliance with the requirements of this Part.

d) Utilities

All utilities, including but not limited to heat, lights, power, and communications equipment, necessary for safe operation in compliance with the requirements of this Part must be available at the facility at all times.

e) Maintenance

The owner or operator must maintain and operate all systems and related appurtenances and structures in a manner that facilitates proper operations in compliance with this Part.

f) Dust Control

The owner or operator must implement methods for controlling dust so as to minimize off-site wind dispersal of particulate matter.

g) Noise Control

The facility must be designed, constructed, and maintained to minimize the level of equipment noise audible outside the site. The facility must not cause or contribute to a violation of the Board's noise regulations or Section 24 of the Act.

h) Fill Elevation

The owner or operator must place CCDD used as fill *no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area.* (Section 3.160(b) of the Act)

i) Mud Tracking

The owner or operator must implement methods to minimize tracking of mud by hauling vehicles onto public roadways.

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 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. 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. 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.

2) Cameras or other devices may be used to record the visible contents of shipments. Where such devices are employed, their use should be designated on a sign posted near the entrance to the facility.

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. 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.

2) Cameras or other devices may be used to record the visible contents of shipments. Where such devices are employed, their use should be designated on a sign posted near the entrance to the facility.

c) Documentation of Inspection Results

The documentation for each inspection must include, at a minimum, the following:

1) The date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the CCDD;

2) The results of the routine inspection required under subsection (a) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection;

3) The results of any random inspection required under subsection (b) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection; and

4) The name of the inspector.

d) Rejection of Loads

1) If material other than CCDD is found or suspected, the owner or operator must reject the load and present the driver of the rejected load with written notice of the following:

A) That only CCDD is accepted for use as fill at the facility;

B) That the rejected load contains or is suspected to contain material other than CCDD, and that the material must not be taken to another CCDD fill operation and must be properly recycled or disposed of at a permitted landfill;

C) That for all inspected loads the owner or operator is required to record, at a minimum, the date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the fill and is required to make this information available to the Agency for inspection.

2) The owner or operator must ensure the cleanup, transportation, and proper disposal of any material other than CCDD that remains at the facility after the rejection of a load.

e) The owner or operator must take special precautionary measures as specified in the Agency permit prior to accepting loads from persons or sources found or suspected to be responsible for sending or transporting material other than CCDD to the facility. The special precautionary measures may include, but are not limited to, questioning the driver about the load prior to its discharge and increased visual inspection and instrument testing of the load.

f) If material other than CCDD is discovered to be improperly accepted or deposited at the facility, the owner or operator must remove and properly dispose of the material.

g) The owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD.

h) All field measurement activities relative to equipment and instrument operation, calibration and maintenance and data handling shall be conducted in accordance with the following:

1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 1100.104 of this Part;

2) The equipment or instrument manufacturer's or vendor's published standard operating procedures; or

3) Other operating procedures specified in the Agency permit.

i) Documentation required under this Section must be kept for a minimum of three years at the facility or in some alternative location specified in the Agency permit. The documentation must be available for inspection and copying by the Agency upon request during normal business hours.

Section 1100.206 Salvaging

a) All salvaging operations must in no way interfere with the CCDD fill operation, result in a violation of this Part, or delay the construction of final cover.

b) All salvaging operations must be performed in a safe manner in compliance with the requirements of this Part.

c) Salvageable materials:

1) May be accumulated onsite by an owner or operator, provided they are managed so as not to create a nuisance, harbor vectors, cause malodors, or create an unsightly appearance; and

2) May not be accumulated at the facility for longer than one year unless a longer period of time is allowed under the Act or is specified in the Agency permit.

Section 1100.207 Boundary Control

a) Unauthorized vehicular access to the working face of all units and to all other areas within the boundaries of the facility must be restricted.

b) A permanent sign must be posted at the entrance to the facility or each unit stating that only CCDD is accepted for use as fill.

Section 1100.208 Closure

a) Completion of Filling

1) The owner or operator is deemed to have completed CCDD filling:

A) 30 days after the date on which the facility receives the final load of CCDD for use as fill; or

B) If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional CCDD for use as fill, no later than one year after the most recent receipt of CCDD for use as fill.

2) The Agency must grant extensions beyond the one year deadline in subsection (a)(1)(B) of this Section if the owner or operator demonstrates that:

A) The facility has the capacity to receive additional CCDD for use as fill; and

B) The owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the facility.

b) Closure

1) Final Cover

All filled areas must be *covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or* [must be] *covered by a road or structure.* (Section 3.160 of the Act) The minimum amount of soil to support vegetation is one foot. The final surface must prevent or minimize erosion.

2) Final Slope and Stabilization

A) The final slopes and contours must be constructed to complement and blend with the surrounding topography of the proposed final land use of the area.

B) All drainage ways and swales must be constructed to safely pass the runoff from the 100-year, 24-hour precipitation event without scouring or erosion.

C) The final configuration of the facility must be constructed in a manner that minimizes erosion.

D) Standards for Vegetation

i) Vegetation must minimize wind and water erosion;

ii) Vegetation must be compatible with (i.e. grow and survive under) the local climatic conditions;

iii) Temporary erosion control measures, including, but not limited to, the application, alone or in combination, of mulch, straw, netting, or chemical soil stabilizers, must be undertaken while vegetation is being established.

Section 1100.209 Postclosure Maintenance

The owner or operator must conduct postclosure maintenance in accordance with this Section and the Agency permit for a minimum of one year after the Agency issues a certificate of closure in accordance with Section 1100.412 of this Part unless a shorter period of time for postclosure maintenance is specified in the Agency permit. Reasons for which the Agency may specify a shorter period of time for postclosure maintenance include, but are not limited to, conformance with existing reclamation plan requirements, zoning requirements, local ordinances, private contracts, or development plans.

a) The owner or operator must remove all equipment or structures not necessary for the postclosure land use, unless otherwise authorized by the Agency permit.

b) Maintenance and Inspection of the Final Cover:

1) Frequency of Inspections. The owner or operator must conduct a quarterly inspection of all surfaces during closure and for a minimum of one year after closure.

2) All rills, gullies, and crevices six inches or deeper identified in the inspection must be filled. Areas identified by the owner or operator or the Agency as particularly susceptible to erosion must be recontoured.

3) All eroded and scoured drainage channels must be repaired and lining material must be replaced if necessary.

4) All holes and depressions created by settling must be filled and recontoured so as to prevent standing water.

5) All reworked surfaces, and areas with failed or eroded vegetation in excess of 100 square feet cumulatively, must be revegetated in accordance with the approved closure plan for the facility.

6) The Agency must approve postclosure use of the property if the owner or operator demonstrates that the disturbance of the final cover will not increase the potential threat to human health or the environment.

Section 1100.210 Recordkeeping Requirements

The owner or operator must maintain an operating record at the facility or in some alternative location specified in the Agency permit. The owner or operator must make the operating record available for inspection and copying by the Agency upon request during normal business hours. Information maintained in the operating record must include, but is not limited to, the following:

a) Any information submitted to the Agency pursuant to this Part, including, but not limited to, copies of all permits, permit applications, and annual reports;

b) Written procedures for load checking, load rejection notifications, and training required under Section 1100.205 of this Part.

Section 1100.211 Annual Reports

The owner or operator must submit an annual report to the Agency each calendar year by the date specified in the Agency permit. The annual report must include, at a minimum, the following information:

a) A summary of the number of loads accepted and the number of loads rejected during the calendar year.

b) Amount of CCDD expected in the next year;

c) Any modification affecting the operation of the facility.

d) The signature of the owner or operator, or the owner or operator's duly authorized agent as specified in Section 1100.303 of this Part.

SUBPART C: PERMIT INFORMATION

Section 1100.301 Scope and Applicability

All persons seeking a permit for a CCDD fill operation must submit to the Agency an application for the permit in accordance with the Act and this Part.

Section 1100.302 Notification

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.

Section 1100.303 Required Signatures

a) All permit applications must contain the name, address, and telephone number of the owner and operator, and any duly authorized agents of the owner or operator to whom inquiries and correspondence should be addressed.

b) All permit applications must be signed by the owner and operator, or by their duly authorized agents with an accompanying oath or affidavit attesting to the agent's authority to sign the application on behalf of the owner or operator. All signatures must be notarized. The following persons are considered duly authorized agents of the owner and operator:

1) For corporations, a principal executive officer of at least the level of vice president;

2) For a sole proprietorship, the sole proprietor;

3) For a partnership, a general partner; and

4) For a municipality, state, federal or other public agency, by the head of the agency or a ranking elected official.

Section 1100.304 Site Location Map

All permit applications must contain a site location map on the most recent United States Geological Survey (USGS) quadrangle of the area from the 7 1/2 minute series (topographic) that clearly shows the following information:

a) The site boundaries, the facility boundaries, and all adjacent property extending at least 1000 meters (3300 feet) beyond the facility boundaries;

b) All surface waters;

c) All potable water supply wells within 1000 meters (3300 feet) of the facility boundaries;

d) All potable water supply well setback zones established pursuant to Section 14.2 or 14.3 of the Act;

e) Any recharge zone and sole source aquifer designated by the United States Environmental Protection Agency pursuant to Section 1424(e) of the Safe Water Drinking Act (42 USC 300f).

f) All main service corridors, transportation routes, and access roads to the site and facility.

Section 1100.305 Facility Plan Maps

The application must contain maps showing the details of the facility. The maps must have a scale no smaller than one inch equals 200 feet, have appropriate contour intervals as needed to delineate all physical features of the facility, and show the following:

a) The entire facility, including, but not limited, to all permanent structures and roads within the facility;

b) The boundaries, both above and below ground level, of the facility and all units included in the facility;

c) All roads entering and exiting the facility; and

d) Devices for controlling access to the facility.

Section 1100.306 Narrative Description of the Facility

The permit application must contain a written description of the facility with supporting documentation describing the procedures and plans that will be used at the facility to comply with the requirements of this Part. Such descriptions must include, but are not limited to, the following information:

a) A description of the CCDD being used as fill and a load checking plan describing how the owner or operator will comply with Section 1100.205 of this Part;

b) The types of CCDD expected in each unit, an estimate of the maximum capacity of each unit, and the rate at which CCDD is to be placed in each unit;

c) The estimated density of the CCDD;

d) The length of time each unit will receive CCDD;

e) A description of all equipment to be used at the facility for complying with the facility permit, the Act, and Board regulations.

f) A description of any salvaging to be conducted at the facility, including, but not limited to, a description of all salvage facilities and a description of how the owner or operator will comply with Section 1100.206 of this Part;

g) A description of how the owner or operator will comply with the requirements of Section 1100.207 of this Part;

h) A description of how the owner or operator will comply with Sections 1100.204(c) and (e) of this Part;

i) A description of the methods to be used for controlling dust in compliance with Section 1100.204(f) of this Part;

j) A description of how the owner or operator will control noise in compliance with Section 1100.204(g) of this Part; and

k) A description of all existing and planned roads in the facility that will be used during the operation of the facility, the size and type of such roads, and the frequency with which they will be used.

Section 1100.307 Proof of Property Ownership and Certifications

The permit application must contain a certificate of ownership of the facility property and certifications regarding the provisions of Sections 39(i) and 39(i-5) of the Act. The owner and operator must certify that the Agency will be notified within seven days of any changes in ownership.

Section 1100.308 Surface Water Control

The permit application must contain a plan for controlling surface water which demonstrates compliance with Section 1100.202 of this Part, and which includes at least the following:

a) A copy of any approved National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to 35 Ill. Adm. Code 309 to discharge runoff from all filled areas of the facility, or a copy of any such NPDES permit application if an NPDES permit is pending; and

b) A map showing the location of all surface water control structures at the facility.

Section 1100.309 Closure Plans

The permit application must contain a written closure plan that contains, at a minimum, the following:

a) Maps showing the configuration of the facility after closure of all units, including, but not limited to, appropriate contours as needed to show the proposed final topography after placement of the final cover for all filled areas. All maps must have a scale no smaller than one inch equals 200 feet;

b) Steps necessary for the temporary suspension of CCDD filling in accordance with Sections 1100.208(a)(1)(B) or (a)(2) of this Part;

c) Steps necessary for closure of the facility at the end of its intended operating life;

d) An estimate of the expected year of closure;

e) Schedules for temporary suspension of CCDD filling and closure, which must include, at a minimum, the total time required to close the facility and the time required for closure activities that will allow tracking of the progress of closure;

f) A description of how the applicant will comply with Section 1100.208 of this Part; and

g) A description of the final cover, including, but not limited to, the material to be used as the final cover, application and spreading techniques, the types of vegetation to be planted, and the types of roads or structures to be built pursuant to Section 1100.208 of this Part.

Section 1100.310 Postclosure Maintenance Plan

The permit application must contain a postclosure maintenance plan that includes a description of the planned uses of the property during the postclosure maintenance period and a description of the measures to be taken during the postclosure maintenance period in compliance with the requirements of Section 1100.209 of this Part.

SUBPART D: PROCEDURAL REQUIREMENTS FOR PERMITTING

Section 1100.401 Purpose of Subpart

This Subpart contains the procedures to be followed by all applicants and the Agency for applications for permits for CCDD fill operations.

Section 1100.402 Delivery of Permit Application

All permit applications must be submitted on forms prescribed by the Agency, and must be mailed or delivered to the address designated by the Agency on the forms. The Agency must provide a dated, signed receipt upon request. The Agency's record of the date of filing must be deemed conclusive unless a contrary date is proved by a dated, signed receipt.

Section 1100.403 Agency Decision Deadlines

a) *If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued.* (Section 39 of the Act)

b) An application for permit pursuant to this Subpart must not be deemed filed until the Agency has received all information and documentation in the form and with the content required by this Part. However, if, the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and the reason the Agency deems it incomplete, the application must be deemed to have been filed as of the date of such purported filing as calculated pursuant to Section 1100.402 of this Part. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for the purposes of review pursuant to Section 1100.406 of this Part.

c) The applicant may waive the right to a final decision in writing prior to the applicable deadline in subsection (a) of this Section.

d) The applicant may modify a permit application at any time prior to the Agency decision deadline date. Any modification of a permit application must constitute a new application for the purposes of calculating the Agency decision deadline date.

e) The Agency must mail all notices of final action by registered or certified mail, postmarked with a date stamp and accompanied by a return receipt request. Final action must be deemed to have taken place on the date that such final action is signed.

Section 1100.404 Standards for Issuance of a Permit

a) *The Agency must issue a permit upon proof that the facility, unit, or equipment will not cause a violation of* the *Act or of Board regulations set forth in 35 Ill. Adm. Code: Chapter I.* (Section 39 of the Act)

b) *In granting permits, the Agency must impose such conditions as may be necessary to accomplish the purposes of* the *Act, and as are not inconsistent with Board regulations set forth in 35 Ill. Adm. Code: Chapter I.* (Section 39 of the Act)

Section 1100.405 Standards for Denial of a Permit

If the Agency denies any permit under this Part, *the Agency must transmit to the applicant within the time limitations of this* Part *specific, detailed statements as to the reasons the permit application was denied. Such a statement must include, but not be limited to, the following:*

a) the Sections of the Act which may be violated if the permit were granted;

b) the provisions of the regulations, promulgated under the Act, which may be violated if the permit were granted;

c) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

d) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted. (Section 39 of the Act).

Section 1100.406 Permit Appeals

If the Agency refuses to grant or grants with conditions a permit the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the Agency. (Section 40(a)(1) of the Act). The petition must be filed, and the proceeding conducted, pursuant to the procedures of Section 40 of the Act and Board rules.

Section 1100.407 Permit No Defense

The issuance and possession of a permit does not constitute a defense to a violation of the Act or any Board rules, except for the use of CCDD as fill material in a current or former quarry, mine, or other excavation without a permit.

Section 1100.408 Term of Permit

a) Permits issued under to this Part must not have a term of more than 10 years.

b) All permits are valid until postclosure maintenance is completed or until the permit expires or is revoked, as provided herein.

c) The violation of any permit condition or the failure to comply with any provision of this Part is grounds for sanctions as provided in the Act, including, but not limited to, permit revocation. Such sanctions must be sought by filing a complaint with the Board pursuant to Title VIII of the Act (415 ILCS 5/30).

Section 1100.409 Transfer of Permits

No permit is transferable from one person to another except as approved by the Agency. Approval must be granted only if a new owner or operator who is seeking transfer of a permit can demonstrate the ability to comply with all applicable requirements of this Part.

Section 1100.410 Procedures for the Modification of Permits

a) Owner or operator initiated modification.

A modification to an approved permit may be initiated at the request of an owner or operator at any time after the permit is approved. The owner or operator initiates a modification by application to the Agency.

b) Agency initiated modification.

1) The Agency may modify a permit under the following conditions:

A) Discovery of a typographical or calculation error;

B) Discovery that a determination or condition was based upon false or misleading information;

C) An order of the Board issued in an action brought pursuant to Title VIII, IX or X of the Act; or

D) Promulgation of new statutes or regulations affecting the permit.

2) Modifications initiated by the Agency must not become effective until after 45 days of receipt by the owner or operator, unless stayed during the pendency of an appeal to the Board. All other time periods and procedures in Section 1100.403 of this Part apply. The owner or operator may request the Agency to reconsider the modification, or may file a petition with the Board pursuant to Section 1100.406 of this Part. All other time periods and procedures in Section 1100.403 of this Part apply.

Section 1100.411 Procedures for the Renewal of Permits

a) Time of Filing

An application for the renewal of a permit must be filed with the Agency at least 90 days prior to the expiration date of the existing permit.

b) Effect of Timely Filing

When a permittee has made timely and sufficient application for the renewal of a permit, the existing permit must continue in full force and effect until the final agency decision on the application has been made and any final board decision on any appeal pursuant to Section 40 has been made unless a later date is fixed by order of a reviewing court. (See Section 10-65 of the Illinois Administrative Procedure Act (5 ILCS 100/10-65))

c) Information Required for Permit Renewal

The owner or operator must submit only the information required under Subpart C of this Part that has changed since the last permit review by the Agency. The application for renewal must be signed in accordance with the signature requirements of Section 1100.303 of this Part.

d) Procedures for Permit Renewal

Applications for permit renewal are subject to all requirements and time schedules in Sections 1100.402 through 1100.409 of this Part.

Section 1100.412 Procedures for Closure and Postclosure Maintenance

a) Notification of Receipt of Final Volume

Within 30 days after the date the final volume of CCDD is received the owner or operator must notify the Agency in writing of the receipt of the final volume of CCDD.

b) Certification of Closure

1) When the closure of the facility is complete, the owner or operator must submit to the Agency:

A) Documentation concerning closure of the facility, including, but not limited, to plans or diagrams of the facility as closed and the date closure was completed.

B) An affidavit by the owner or operator and the seal of a professional engineer that the facility has been closed in accordance with the closure plan and the closure requirements of this Part.

2) When the Agency determines, pursuant to the information received pursuant to subsection (b)(1) of this Section and any Agency site inspection, that the facility has been closed in accordance with the specifications of the closure plan and the closure requirements of this Part, the Agency must:

A) Issue a certificate of closure; and

B) Specify the date the postclosure maintenance period begins, based on the date closure was completed.

c) Termination of the Permit

1) At the end of the postclosure maintenance period the owner or operator may submit to the Agency an application for termination of the permit. The application must be submitted in a format prescribed by the Agency and must include, at a minimum, the certification of a professional engineer and the affidavit of the owner or operator demonstrating that, due to compliance with the postclosure maintenance plan and the postclosure maintenance requirements of this Part, postclosure maintenance is no longer necessary because:

A) Vegetation has been established on all nonpaved areas;

B) The surface has stabilized sufficiently with respect to settling and erosion so that further stabilization measures, pursuant to the postclosure maintenance plan, are no longer necessary; and

C) The owner or operator has completed all requirements of the postclosure maintenance plan.

2) Within 90 days after receiving the certification required by subsection (c)(1) of this Section, the Agency must notify the owner or operator in writing that the permit is terminated, unless the Agency determines, pursuant to the information received pursuant to subsection (c)(1) of this Section and any Agency site inspection, that continued postclosure maintenance is required pursuant to the postclosure maintenance plan and this Part.

3) The owner or operator may deem the Agency action pursuant to subsection (c)(2) of this Section as a denial or grant of permit with conditions for purposes of appeal pursuant to Section 40(d) of the Act and the appeal provisions of this Part.

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois Environmental Protection Agency's Motion for Acceptance, Agency Proposal of Regulations, Appearance of Attorneys, Statement of Reasons, and the Proposed Regulations on behalf of the Illinois Environmental Protection Agency upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph St., Ste 11-500
Chicago, Illinois 60601

General Counsel
Office of Legal Counsel
Il. Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matt Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601

and mailing it from Springfield, Illinois on 11-16-05

Kimberly Bolt

SUBSCRIBED AND SWORN TO BEFORE ME
this 16th day of November, 2005

Brenda Boehner
Notary Public

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-3-2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER