

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 05 2006

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
 )  
CLEAN CONSTRUCTION OR DEMOLITION )  
DEBRIS FILL OPERATIONS )  
(35 ILL. ADM. CODE PART 1100) )  
 )

R06-19  
(Rulemaking -Land)

NOTICE OF FILING

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

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ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: Stephanie Flowers

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IN THE MATTER OF: )  
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CLEAN CONSTRUCTION OR DEMOLITION ) R06-19  
DEBRIS FILL OPERATIONS UNDER P.A. ) Rulemaking –Land  
94-272 (35 ILL. ADM. CODE PART 1100) )  
)

COMMENTS OF THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) and submits the following comments on the First Notice Proposal dated April 6, 2006 and as published in the Illinois Register on April 21, 2006 and on the comments of Rockford Sand and Gravel submitted in this matter on April 21, 2006.

Comments on Board’s First Notice Proposal

The Illinois EPA supports the rules proposed by the Illinois Pollution Control Board (“Board”) in its First Notice Proposal dated April 6, 2006 (“Board’s Order”) and requests that the Board proceed with adopting the rules. However, the Illinois EPA would like to request some non-substantive changes to the rules and to indicate some discrepancies between the Board Order and the published version in the Illinois Register. Since the Hearing Officer indicated that the Board Order language is the correct language, the Illinois EPA will simply indicate whether it prefers the language of the Board Order or the Illinois Register.

1. On page 10 of the Board’s Order, in the table of contents, the title of Section 1100.307 reads “Proof of Property Ownership and Certification”. The title of Section 1100.307 as published in the Illinois Register reads “Proof of Property Ownership and Certifications”. The

5/22.51] to include the definition of “owner” and “operator” for purposes of a clean construction and demolition debris fill operation.

5. On page 15 of the Board’s Order, Section 1100.201(b) reads, “CCDD fill operations must not accept waste for use as fill.” As published in the Illinois Register, this Section goes on to include three more sentences to clarify that uncontaminated soil and other non-wastes may be accepted. The Illinois EPA requests that the language of Section 1100.201(b) be stated as in the Board’s Order because the additional sentences are unnecessary and confusing.

6. On page 26 of the Board’s Order, Section 1100.306(h) reads, “. . . operator will comply with Sections 1100.204(c) and (e). . .”, and in the Illinois Register it reads, “. . . operator will comply with Section 1100.204(c) and (e) . . .”. The Illinois EPA requests that the plural form of “Sections” be used because more than one section is referenced and the plural form is therefore appropriate.

7. On page 29 of the Board’s Order, the opening paragraph of Section 1100.405 is italicized to show statutory language and in the Illinois Register this opening paragraph is not italicized. The Illinois EPA would request that the opening paragraph be italicized as in the Board’s Order to reflect the fact that this paragraph is statutory language from Section 39 of the Illinois Environmental Protection Act.

8. On page 30 of the Board’s Order, Section 1100.408(c) contains a reference to the Illinois Environmental Protection Act and styles the reference as “415 ILCS 5/30”. In the Illinois Register this reference is styled as “415 ILCS 5/Title VIII”. The Illinois EPA would request that the reference be styled as in the Illinois Register because the reference to Title VIII is more appropriate.

deal of feedback to the Illinois EPA, and many of their comments and suggestions have been incorporated into the rules proposed by the Board. However, the latest comments by Rockford Sand and Gravel submitted in this proceeding as Public Comment #5 shows several misconceptions about the permitting exemption provided for persons using CCDD as fill material (in excavations other than quarries and mines) in accordance with IDOT specifications. The Illinois EPA would like to make several clarifications based on the comments submitted by Rockford Sand and Gravel. Please note that the absence of an Illinois EPA comment to a comment made by RSG should not be construed as Illinois EPA agreement with the RSG comment.

RSG notes in its comments that IDOT's Road and Bridge Construction Specifications contain two provisions dealing with how to determine whether material is considered contaminated for purposes of the IDOT Specifications; specifically Sections 107.19 and 669. PC #5 at 1-2. RSG believes these two Sections of IDOT's Specifications should be used to determine whether material is considered contaminated for the purposes of utilizing the statutory exemption provided for CCDD that is used as fill in accordance with IDOT Specifications at an excavation that is not a quarry or a mine. PC #5 at 2.

Pursuant to Section 3.160(b) of the Act, CCDD is by definition uncontaminated material. Since Part 1100 only applies to the use of CCDD (i.e., uncontaminated material), the determination of uncontaminated versus contaminated is made prior to the applicability of Part 1100. Therefore Section 669 and Section 107.19 of the IDOT Specifications are not applicable in Part 1100 as suggested in RSG comments. The Illinois EPA believes that the determination of whether material is considered contaminated for the purposes of Section 3.160(b) of the Act, as

the facility. Likewise, if an IDOT contractor wants to ensure the CCDD it hauls from an IDOT project can be accepted at a facility meeting the exemption for facilities using CCDD in accordance with IDOT Specifications, it should ensure that the CCDD it hauls meets the facility owner's or operator's requirements. In both cases it is the owner or operator of the CCDD fill operation, not the contractor, which must ensure that only appropriate material is accepted for use as fill.

The Illinois EPA would also like to address the RSG comment at page three, the paragraph entitled, "Documentation". There is no need for separate documentation regarding IDOT material received at the fill operation as suggested by RSG. The requirements of Part 1100 are the same for all CCDD accepted a facility, regardless of its source.

The Illinois EPA would also like to address the RSG comment at page three, the paragraph entitled, "Elevations". RSG discusses IDOT Specifications applicable to material disposed of off-site. See PC # 5 at 3. Regardless of what IDOT Specifications allow, CCDD that is placed above the highest point immediately adjacent to the fill area prior to filling does not meet the criteria of Section 3.160(b)(i) of the Act and therefore is considered waste. Such CCDD must be appropriately managed in accordance with the Act's provisions and Board's rules applicable to waste. Please note that this does not prevent IDOT or any other entity from placing uncontaminated soil or other non-waste material above grade.

The Illinois EPA would also like to address the RSG comments under the paragraph entitled "Departments Covered". RSG would like the statutory exemption for using CCDD in accordance with IDOT Specifications to be available to additional government entities. The Illinois EPA would like to clarify that the IDOT Specifications applicable to the use of CCDD as fill can be found at Articles 107.22 and 202.03 of IDOT's Standard Specifications for Road and

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON )

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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

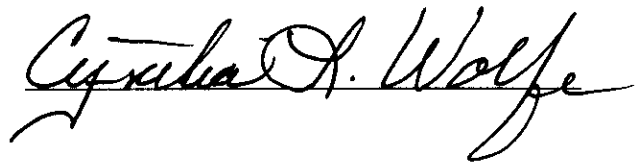
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**ATTACHED SERVICE LIST**

and mailing it by First Class Mail from Springfield, Illinois on June 2, 2006, with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME  
This 2<sup>nd</sup> day of June, 2006.

Brenda Boehner  
Notary Public



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