

ILLINOIS POLLUTION CONTROL BOARD
July 6, 2006

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

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

This rulemaking proposes to add a new Part 1100 to the Board's regulations establishing a permit program for the use of clean construction or demolition debris (CCDD) as fill material in current or former quarries, mines, or other excavations. The Environmental Protection Agency (Agency) filed the proposal pursuant to Public Act 94-272. P.A. 94-272, *eff.* Jul. 19, 2005. Public Act 94-272 requires the Board to adopt rules no later than September 1, 2006. The Board meeting scheduled immediately before that date is August 17, 2006.

After the public hearing on the Agency's proposal, the Board adopted first notice rules on April 6, 2006. 30 Ill. Reg. 7711 (Apr. 21, 2006). To date, the Board has received nine public comments. The first-notice public comment period was scheduled to end June 5, 2006, but in a June 13, 2006 order, the hearing officer assigned to this rulemaking extended the public comment period through June 29, 2006. The proposal adopted today is substantively unchanged from that adopted at the Board's April 6, 2006 first-notice opinion and order. In this opinion, the Board provides the procedural history of this rulemaking, an overview of the proposed new Part 1100, a discussion of issues raised in public comments, and the second-notice proposal.

Today the Board adopts this proposal for second-notice review by the Joint Committee on Administrative Rules (JCAR).

PROCEDURAL BACKGROUND

On November 21, 2005, the Agency filed this proposal for rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 102.202(b).¹ The Board accepted the rulemaking for hearing on December 1, 2005. The Board has held two public hearings before Hearing Officer Amy Antonioli. The first hearing was held on January 26, 2006, in Chicago and the second hearing was held on March 1, 2006, in Springfield.²

¹ The Agency's statement of reasons will be cited to as "Stat. of Reas. at _."

² The transcripts from the January 26, 2006 hearing will be cited to as "Tr.1 at _," and the transcript from the March 1, 2006 hearing will be cited to as "Tr.2 at _."

Ms. Joyce Munie, Mr. Paul Purseglove, Mr. Christian Liebman, and Mr. Thomas Hubbard testified on behalf of the Agency at the first hearing. Ms. Munie, manager of the permit section within the Bureau of Land at the Agency, testified generally about the proposed rules, and specifically, about CCDD permits. Mr. Hubbard, an environmental engineer in the Solid Waste Unit of the permit section of the Agency's Bureau of Land, discussed the proposed recordkeeping and annual report requirements. Mr. Purseglove, Manager of the Field Operations Section within the Agency's Bureau of Land, testified regarding the proposed requirements for checking loads that are delivered to CCDD sites as fill material. Mr. Christian Liebman, Manager of the Solid Waste Unit in the permit section of the Bureau of Land, testified about the proposed new rules concerning maintenance and closure of a CCDD site.

The same witnesses, including Mr. Michael Nechvatal, manager of the land pollution control division, were present at the second hearing. The Agency filed five errata sheets reflecting issues raised prior to and at the first hearing.

There have been eleven public comments filed in this rulemaking. The first was filed on behalf of the Illinois Association of Aggregate Producers (IAAP) (PC 1), and the second and fifth were filed by Rockford Sand and Gravel, Inc. (RSG) (PC 2, PC 5), a member of the IAAP, with specific suggestions about the proposal. The third public comment was filed by Kim Robinson of the Illinois Society of Professional Engineers and David Kennedy of the American Council of Engineering Companies of Illinois (PC 3). The fourth comment was filed by the City of Chicago (PC 4). The sixth was filed by Vulcan Materials Company (VMC) (PC 6), the seventh by the Agency (PC 7), and the eighth by Land Reclamation Services, Inc. (LRS) (PC 8). The Office of the Attorney General on behalf of the People of the State of Illinois (People) filed the ninth public comment (PC 9). At the second hearing, the Illinois Department of Natural Resources gave an oral public comment. Tr.2 at 33-34.

The IAAP filed a second public comment on June 27, 2006 (PC 10). Land and Lakes Company (L&LC) filed the eleventh public comment on June 29, 2006 (PC 11).

SUMMARY OF PROPOSED NEW PART 1100

Section 3.160(b) of the Act currently distinguishes general construction and demolition debris from clean construction or demolition debris and defines the latter as "uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities." 415 ILCS 5/3.160(b) (2004). The definition specifically excludes "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." *Id.* Clean construction or demolition debris was first defined by the general assembly in 1997 (P.A. 90-475), and subsequently amended in 1998, 2000, 2002, and 2003.

Public Act 94-272 requires a permit to use CCDD as fill material in a current or former quarry, mine, or other excavation. P.A. 94-272, eff. July 19, 2005 (*to be codified at* 415 ILCS 5/22.51). Finally, Public Act 94-272 directed the Board to adopt regulations for the use of

CCDD as fill material in current and former quarries, mines, and other excavations by September 1, 2006. P.A. 94-272, eff. July 19, 2005 (*to be codified at 415 ILCS 5/22.51(c)(1)*).

The proposed new Part 1100 establishes a permit program for the use of CCDD in former quarries, mines, or other excavations. Subpart A establishes the scope of the regulation, provides definitions, and clarifies its applicability. Subpart B sets forth the standards applicable to the operation of CCDD facilities, CCDD load inspections, closure and postclosure, including recordkeeping requirements, and annual reports. Subpart C identifies what information an applicant must include in the permit application. How an application must be filed with the Agency, deadlines, standards for issuance, and permit terms are discussed in Subpart D.

POST-FIRST NOTICE PUBLIC COMMENTS

Many of the public comments submitted post-first notice raise the issue of “uncontaminated” as an undefined term, and also discuss “clean fill.” Under the Act, CCDD is a waste. The only exceptions depend on how CCDD is used. 415 ILCS 5/3.160(b) (2004). One of the exceptions, created by the Act and implemented in the proposed Part 1100, allows CCDD to be used as fill material in a current or former quarry, mine, or other excavation. Anytime CCDD includes material not within the Act’s definition, or regulated substances exceeding background levels, however, the material cannot be used as fill in a quarry, mine or other excavation, but instead must be managed in accordance with solid or hazardous waste regulations.

The Definition of “Uncontaminated” Debris

At first notice, the Board discussed the Agency’s explanation for not defining the term “uncontaminated,” which is that the law that allows an exemption from the term “waste” using the term “uncontaminated” has been in effect for 15 years. Tr.1 at 21. The Agency stated “we knew contaminated when we saw it,” and noted that when materials do not meet the definition of CCDD, the matter can be handled as an enforcement issue. Tr.1 at 22.

In its public comment, VMC requests that the Agency define “uncontaminated.” VMC states that if otherwise left undefined, the proposed Part 1100 is overbroad, impermissibly vague, and creates an incentive to avoid testing proposed clean fill material. PC 6 at 2. VMC offers examples of four different approaches used by other states to define “uncontaminated.” PC 6 at 4-5. Ultimately, VMC proposes that Illinois adopt a two-pronged test that would require the fill operator to: (1) perform due diligence on the proposed fill material; and (2) test the material only if due diligence turns up evidence that the fill has been impacted by a spill or release. PC 6 at 5-6. L&LC supports VMC’s recommendation, but adds that as part of the definition, the Agency should set a “maximum contamination level for soils.” PC 11 at 7.

LRS is also concerned about leaving the term “uncontaminated” undefined. For example, LRS questions what circumstances will trigger the Agency to do additional testing of CCDD and the standards the Agency will apply in determining whether a load of CCDD is contaminated. PC 8 at 3. LRS contends the proposed regulations do not specifically dictate whether CCDD containing background levels of contaminants can be accepted at a facility. LRS

is also worried that the Agency may be able to reject a load “based upon more stringent standards nowhere stated in the proposed regulations.” *Id.*

RSG seeks clarification about how to determine whether material is uncontaminated under the IDOT specifications exemption. PC 5 at 2. RSG asserts that two sections of IDOT’s Specifications (Sections 107.19 and 669) should be used to determine whether material qualifies for the statutory exemption available for CCDD that is used as fill in accordance with IDOT Specifications at an excavation that is not a quarry or a mine. *Id.*

The Agency maintains that whether material is considered contaminated should be determined under the Act, not IDOT Road and Bridge Construction Specifications. PC 7 at 6. The Agency clarifies that it determines the status of CCDD by the way CCDD is used, not whether CCDD is contaminated. *Id.* Therefore, the use of CCDD as fill material in a current or former quarry, mine, or other excavation must meet Part 1100 standards. CCDD may be used as fill material at excavations other than current or former quarries without a Part 1100 permit if the use complies with IDOT Specifications, including requirements for determining contamination levels.

The People suggest that the Board include a list of items typically found in demolition debris that should be expressly prohibited from entering a CCDD fill site. PC 9 at 12. The People request that a non-exhaustive list should include: fluorescent lamps, mercury-containing electrical devices and apparatus, and electrical transformers and ballasts. *Id.* L&LC contends all of these items are clearly waste and are already banned by the Act. PC 11 at 5. L&LC asserts that rather than materials that are obviously wastes, rule should instead exclude types of remediation sites and potential spill areas that could be contaminated. *Id.* at 5-6.

The IDOT Exemption

RSG comments on the application of the IDOT exemption to governmental agencies other than the departments identified in the IDOT specifications. The Agency, in response, clarifies that Part 1100 applies only to the use of CCDD in current and former quarries, mines, and other excavations, not IDOT projects. Part 1100 rules and regulations must be met for any load of CCDD hauled from an IDOT project to be used as fill material at a site permitted under Part 1100. Likewise, IDOT contractors must ensure that CCDD hauled from an IDOT project for use as fill at a facility using CCDD in accordance with IDOT specifications must meet IDOT requirements.

RSG also requests that the statutory exemption apply to additional government entities. The Agency responds that, by definition, the IDOT Specifications are limited to IDOT, counties, municipalities, and townships. PC 7 at 8; *citing* IDOT Specifications for Road and Bridge Construction, Art. 107.22 and 202.03 (Jan. 1, 2002).

Final Fill Elevation

At first notice the Agency added language clarifying that other non-waste, non-CCDD material may be placed above grade to increase elevations at the site. Proposed 35 Ill. Adm.

Code 1100.204(h), Board Note. RSG is concerned that IDOT Specifications conflict with the Part 1100 regulations concerning elevation requirements. PC 5 at 3.

The People and L&LC oppose any language that allows the Agency to approve placing CCDD at elevations higher than the prior existing highest point of adjacent elevation. PC 9 at 11; PC 11 at 4.

Instrument Calibration and Load-Checking Program

Load Certification

RSG claims that the regulations do not adequately define the responsibilities of the property owner of fill sites. RSG proposes that the Board modify the regulations to require the generator claiming the IDOT exemption to document the eligibility of each load. PC 5 at 3. The People also request that the Board include a requirement that generators of CCDD certify that the materials they produce meet the definition of CCDD. PC 9 at 13.

Calibration for Background Levels of Contaminants

In the first notice rule language, the criterion for rejecting a load of CCDD is based on “any reading in excess of background levels” for both the facility inspector and the Agency. At hearing, the Agency stated it would ask the applicant to describe in the permit application how it will determine background levels so the Agency can verify a consistent background reading. Tr.2 at 20.

The People oppose the IAAP’s recommendation that all PID and FID devices be calibrated to account for specific background conditions. PC 9 at 4. In response, IAAP insists that operators must calibrate PID/FID meters according to background levels at the site. PC 10 at 5. Otherwise, background readings may cause devices to register above zero at all times. PC 10 at 5. L&LC supports the IAAP’s position. PC 11 at 2.

Detection for Metals

The People comment that the proposed rules require routine load checking with the use of a photo ionization detector (PID), a flame ionization detector (FID), or other devices approved by the Agency. PC 9 at 3; citing Proposed 35 Ill. Adm. Code 1100.205. Despite favoring the use of those devices, the People contend that a PID or FID only detect the presence of volatile organic contaminants. The People state that metals are commonly found in CCDD materials and that facilities should be required to screen for the presence of lead, chromium and cadmium at the very least. *Id.* The People state that the proposed rule should require each load entering a permitted facility to be scanned with an X-ray fluorescence (XRF) analyzer for the presence of metals, at an estimated \$35,000 per XRF analyzer.

The IAAP argues that the People’s proposal to check every load for metals using X-ray fluorescence analyzers would produce frequent false positives because the tests would detect

naturally occurring metals in the soil. PC 10 at 5. L&LC agrees that the XRF could be an additional safeguard for protecting human health and the environment. PC 11 at 2.

Visual Inspections for Asbestos

The People also recommend that the load checking program under Section 1100.205 also include a requirement that the facility visually inspect for asbestos-containing materials. Accompanying the asbestos inspection requirement, the People recommend that all personnel conducting the load checking inspections undergo training on how to visually identify materials associated with asbestos. The IAAP responds that the IAAP and IEPA are developing a training program for clean fill sites. PC 10 at 5.

Leachate and Contingent Groundwater Sampling Requirements

The People propose that the Board include groundwater monitoring or leachate sampling and analysis in the proposed CCDD rule. PC 9 at 5. Because the proposal includes load checking only for volatile organic compounds, yet inappropriate substances such as metals will also be present in incoming loads, the People believe a detection system is needed to protect against well contamination. *Id.* at 6. According to the People, at least 27 other states require a form of water monitoring at CCDD disposal sites. *Id.* The People suggest that if contaminated leachate is found, then groundwater sampling requirements should apply. PC 9 at 7.

The IAAP disagrees that operators should perform leachate sampling and groundwater monitoring at CCDD fill sites and argues that the People rely on other state's C&D regulations as their basis for this proposal. PC 10 at 6. For that reason, the IAAP states that the article attached to the People's comment should not guide the Board's decision. *Id.* L&LC supports the IAAP's position and states that "requiring leachate and groundwater monitoring at unlined sites surrounded by bedrock is equivalent to 'shutting the barn door after the horse got out.'" PC 11 at 3.

Miscellaneous Comments

The People warn that the Board cannot legally expand the class of materials that may be accepted for disposal at CCDD facilities beyond those designated by Section 3.78 of the Act. 415 ILCS 5/3.78 (2004). PC 9 at 9. The People suggests that the Board add a subsection to Section 1100.303 "Required Signatures" requiring a member to sign for a member managed limited liability company (LLC) and a manager or member sign for a manager-managed LLC. PC 9 at 10. This requirement, argue the People, will ensure that the Agency will be able to identify the responsible party. *Id.*

Regarding notification requirements, the People support the written notice requirement of Section 1100.302 as necessary to inform elected officials and local residents. PC 9 at 10.

The People suggest that the proposed language require financial assurance such as a letter of credit, performance, or surety bond. PC 9 at 11-12. In response, IAAP notes that operators position most clean fill operations at projects that require reclamation bonds. PC 10 at 7.

Furthermore, IAAP notes that the Agency and Board’s authority to require financial assurance must be explicitly granted by statute. The CCDD fill program, however, does not authorize the Agency to require any form of financial assurance from site operators. *Id.* Therefore, IAAP believes that the People’s proposal for financial assurance is not appropriate. *Id.* Likewise, L&LC opposes financial assurance requirements. PC 11 at 5. According to L&LC, if the Agency ensures that contaminated materials do not enter the sites by defining the term “uncontaminated,” remediation will never be required. *Id.*

DISCUSSION OF POST FIRST-NOTICE PUBLIC COMMENTS

The Board notes that several post first-notice public comments mistake CCDD with a broader category of materials known generally as construction and demolition (C&D) debris. C&D debris sites, known in Illinois as inert waste landfills, are allowed to accept a much broader range of demolition debris including wood, roofing material, cardboard, and wall board. All of these items are excluded from the definition of CCDD. The Board emphasizes the difference between the two terms and that the proposed rules govern only the use of CCDD.

Like the IAAP, the Board reviewed the article attached to the People’s comment and investigated other states’ regulations concerning leachate testing and groundwater monitoring. Because the People based their recommendations on other states’ regulations governing C&D rather than CCDD, as discussed above, the Board finds no basis for adding leachate testing, groundwater monitoring, or financial assurance requirements to the proposed rules. PC 9, Attachment. The same reasoning applies to the People’s suggestion that the Board add a list of excluded items or sites to further define the limitations of what may enter a CCDD fill site or where a CCDD fill site may be located. The Board similarly declines to add the XRF fluorescence analyzer as a required technology for load checking. The Board finds that not only is the XRF fluorescence analyzer a very costly technology, but testing for metals should not be necessary based on the Act’s very strict definition of CCDD.

The Board agrees that asbestos is not acceptable at CCDD fill sites but finds no need to make changes to the current rule language. The Board finds that Section 1100.205(g) currently requires personnel to be trained in identifying asbestos: “[t]he owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD.” Proposed 35 Ill. Adm. Code 1100.205(g).

The Board finds that no new language is required to clarify the definition of “uncontaminated.” In response to VMC’s concerns surrounding leaving the term “uncontaminated” undefined, the Board finds the proposed Part 1100 is not overbroad or vague, and does not create an incentive to avoid testing CCDD. The Board notes that the load-checking requirements of the proposed Section 1100.205 allow either a facility-designated inspector or an Agency inspector to reject any load resulting in a contaminant reading above background levels. Proposed 35 Ill. Adm. Code 1100.205(a), (b). Proposed Section 1100.205(a) provides that every load must be checked before acceptance at the facility, and if material other than CCDD is found at the facility, it is the owner or operator’s responsibility to remove and properly dispose of the material. *See* Proposed 35 Ill. Adm. Code 1100.205(f). The Agency has also stated that it will provide training if a permit holder is not meeting the Agency’s goals or standards. Tr.1 at 50.

Accordingly, because each load must be checked and may be rejected if produces readings above background levels of contamination, the Board finds that the proposed Section 1100.205 is adequately instructive and also alleviates VMC's concern that the proposed rule would create an incentive to avoid testing CCDD fill. Also for these reasons, the Board declines to require certification from CCDD generators. The Agency has drafted the rules in a way that places the liability for complying with the Part 1100 rules on owners or operators of a CCDD fill site. The Board agrees.

As discussed above, loads of CCDD containing up to but not exceeding background levels of contaminants (interpreted based on the instrument manufacturer's margin of error) are acceptable at a site permitted for the use of CCDD as fill material. Regarding RSG's concern about which standards apply, the Board reiterates that uses of CCDD in excavations other than quarries or mines qualifying for the IDOT exemption must comply with IDOT Specifications. Likewise, at quarries, mines or other excavations permitted under Part 1100, the use of CCDD must comply with Part 1100 requirements, not IDOT Specifications.

The Board does not have the authority to expand the statutory permit exemption to apply to additional government agencies. As noted by the Agency, Section 22.51(b)(4)(B) of the Act provides that the permit requirement does not apply to 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. P.A. 94-272, *eff.* Jul. 17, 2005 (*to be codified as* 415 ILCS 5/22.51(b)(4)(B)).

Today the Board amends the rule language to incorporate one of the suggestions made by the People. The Board adds a new Section 1100.303(b)(5) to require signatures on permit applications on behalf of LLCs. The Board adds signatories for LLCs to the list of duly authorized agents of the owner or operator. The Board also makes the changes suggested by the Agency in its post-hearing comment.

DISCUSSION OF SECOND-NOTICE PROPOSAL

Today the Board adopts the rulemaking, which adds a new Part 1100 to the Board's rules establishing a permit program for the use of CCDD as fill material in current or former quarries, mines, or other excavations, for second notice. As described in more detail below, the proposed new Part 1100 contains Subparts A through D.

Subpart A

Subpart A contains general provisions including scope and applicability, severability, definitions, and incorporations by reference. CCDD fill operations at facilities that are permitted as a landfill under Sections 35 Ill. Adm. Code 807, or 811 through 814 (municipal, chemical, or putrescible waste landfills) are exempt from the proposed Part 1100 CCDD permitting rules because the landfill permitting rules are more protective. *See* Tr.1 at 30-31. Accordingly, those facilities are allowed to accept CCDD.

In addition to CCDD, CCDD fill operations may accept other non-waste material such as overburdens or material that would be considered waste to a particular industry, such as mining, and is deposited in the same area from which it was extracted. Tr.2 at 10.

Subpart B

Subpart B contains the standards that apply to the operation, closure, and post-closure of a permitted CCDD facility. Subpart B also establishes procedures for load-checking of CCDD to determine compliance applicable to both the Agency and the facility's designated inspector.

Subpart C

Information that must be included in CCDD permit applications is found in Subpart C. These informational requirements generally parallel existing Board regulations relating to land permits. Munie Prefiled Test. at 4-5. The Agency included a provision in Subpart C that requires notice of the application be sent 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 the legislative districts in which the facility is located, and the clerk of each municipality located within three miles of the facility." Proposed 35 Ill. Adm. Code 1100.302.

For second notice adoption, the Board adds a new Section 1100.303(b)(5) to require signatures on permit applications on behalf of LLCs. The Board adds signatories for LLCs to the list of duly authorized agents of the owner or operator.

Subpart D

The procedural rules that both the Agency and applicant must follow for permitting are contained in Subpart D. Subpart D contains standards for approval and denial and provides the Agency's deadlines for review of permit applications. The Agency must make a final decision on an application within 90 days of receiving the application or the permit is deemed issued.

According to proposed Section 1100.408, permits issued under Part 1100 will have a term of 10 years. An expiration date allows the Agency to re-evaluate the operation on a routine basis. Further, many CCDD facilities will expect to close within a 10-year period. Munie Prefiled Test. at 8.

Technical Feasibility and Economic Reasonableness

The Board requested the Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact study (EcIS) on this proposed rule in a letter dated January 10, 2006. The DCEO responded by a letter dated January 31, 2006 that it had decided not to conduct an EcIS.

The Board received no testimony or comments regarding the DCEO's decision not to perform an EcIS. The Agency states that 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. Stat. of Reas. at 10. The Agency estimates that the cost associated with preparing and filing a permit application and obtaining closure certification will total approximately \$31,000 per site. Ongoing compliance is estimated at approximately \$66,000 per site. In addition, the Agency estimates its cost for implementing the CCDD permit program at approximately \$792,330 per year. The Agency reasons that although the CCDD permit program will increase costs to the industry compared to pre-regulation costs, the costs are not unduly burdensome, are consistent with other land permit programs, and are justified for compliance with the Act. *Id.*

The Board finds the proposed amendments technically feasible and economically reasonable for both the permit applicant as well as the State. The Board also finds that the proposed exemptions will not negatively impact the environment. Rather, the CCDD permit program will benefit the environment by allowing CCDD that is currently disposed of in municipal, chemical and putrescible waste landfills to be used as clean fill in quarries, mines, or other excavations, saving both space in these landfills as well as natural resources.

CONCLUSION

The proposed rulemaking creates a new Part 1100 of the Board's regulations, establishing the use of CCDD as fill material in current and former quarries, mines, and other excavations. The Board finds that the Agency's proposal, as amended, adequately addresses the concerns raised at hearing and in public comments. Today's opinion distinguishes CCDD from a broader category of materials known generally as construction and demolition debris. C&D debris sites are allowed to accept a much greater range of demolition debris. The Board emphasizes the difference between the two terms and that the proposed rules govern only the use of CCDD.

In addition to amendments proposed in the Agency's post-hearing comments and non-substantive technical changes, the Board makes one change to the rule text based on a suggestion by the People. The Board adds a signature requirement on permit applications on behalf of LLCs.

The Board adopts the rule for second-notice review by JCAR. The 45-day second-notice public comment period will begin on the date written notice is received by JCAR and the Board will accept comments only from JCAR during the second-notice period. *See* 35 Ill. Adm. Code 102.606.

ORDER

The Board directs the Clerk to cause the filing of the following rule with the Joint Committee on Administrative Rules for its second-notice review.

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	
1100.101	Scope and Applicability
1100.102	Severability
1100.103	Definitions
1100.104	Incorporations by Reference

SUBPART B: STANDARDS

Section	
1100.201	Prohibitions
1100.202	Surface Water Drainage
1100.203	Annual Facility Map
1100.204	Operating Standards
1100.205	Load Checking
1100.206	Salvaging
1100.207	Boundary Control
1100.208	Closure
1100.209	Postclosure Maintenance
1100.210	Recordkeeping Requirements
1100.211	Annual Reports

SUBPART C: PERMIT INFORMATION

Section	
1100.301	Scope and Applicability
1100.302	Notification
1100.303	Required Signatures
1100.304	Site Location Map
1100.305	Facility Plan Maps
1100.306	Narrative Description of the Facility
1100.307	Proof of Property Ownership and Certifications
1100.308	Surface Water Control
1100.309	Closure Plan
1100.310	Postclosure Maintenance Plan

SUBPART D: PROCEDURAL REQUIREMENTS FOR PERMITTING

Section	
1100.401	Purpose of Subpart

1100.402	Delivery of Permit Application
1100.403	Agency Decision Deadlines
1100.404	Standards for Issuance of a Permit
1100.405	Standards for Denial of a Permit
1100.406	Permit Appeals
1100.407	Permit No Defense
1100.408	Term of Permit
1100.409	Transfer of Permits
1100.410	Procedures for the Modification of Permits
1100.411	Procedures for the Renewal of Permits
1100.412	Procedures for Closure and Postclosure Maintenance

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 R06-19 at 30 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1100.101 Scope and Applicability

- a) This Part applies to all clean construction or demolition debris (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* [415 ILCS 5/22.51(b)(4)(A)];
 - 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* [415 ILCS 5/22.51(b)(4)(B)];

BOARD NOTE: The Illinois Department of Transportation (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 Bridge Construction." According to IDOT specifications, this exemption applies to IDOT, a county, a municipality, or a township.

- 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.* [415 ILCS 5/3.105]

“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.* [415 ILCS 5/3.105]

“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. For purposes of this Part, the term “other excavation” does not include holes, trenches, or similar earth removal created as part of normal construction, removal, or maintenance of a structure, utility, or transportation infrastructure.

“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. For purposes of this Part, uncontaminated soil may include incidental amounts of stone, clay, rock, sand, gravel, roots, and other vegetation.

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. [415 ILCS 5/3.160(b)]

“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.* [415 ILCS 5/3.115]

“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. [415 ILCS 5/3.115]

“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. [415 ILCS 5/3.450]

“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.* [415 ILCS 5/22.51(a)].
- b) CCDD fill operations must not accept waste for use as fill.
- 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 in conformance with the provisions of the Act and the regulations adopted under the Act.
- 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 in conformance with the provisions of the Act and the regulations adopted under the Act.
- 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 not place CCDD used as fill *higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area.* [415 ILCS 5/3.160(b)]

BOARD NOTE: This does not prohibit non-CCDD materials, such as uncontaminated soil and other non-waste material, from being placed above grade in accordance with the Act and regulations adopted thereunder to increase elevations at the fill site.
- 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 waste at the facility. At a minimum, the load checking program must consist of the following components:

- a) **Routine Inspections**
 - 1) An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing an elevated structure, a designated ground level inspection area, or another acceptable method as specified in the Agency permit. 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. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels 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. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels 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 3 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. [415 ILCS 5/3.160] 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 6 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.
- c) 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 3 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;
 - 4) For a municipality, state, federal or other public agency, by the head of the agency or a ranking elected official; and
 - 5) For a member-managed limited liability company, by a member and for a manager-managed limited liability company, by a manager or member.

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 7½ 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 wellhead protection areas pursuant to Section 1428 of the Safe Water Drinking Act (SDWA) (42 USC 300f) and any sole source aquifer designated by the United States Environmental Protection Agency pursuant to Section 1424(e) of SDWA; and
- 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 7 days after any changes in ownership.

Section 1100.308 Surface Water Control

The permit application must contain a plan for controlling surface water that demonstrates compliance with Section 1100.202 of this Part, and that 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 Plan

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. [415 ILCS 5/39]*
- 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. [415 ILCS 5/39]*
- 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. [415 ILCS 5/39]*

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. [415 ILCS 5/39].*

Section 1100.406 Permit Appeals

If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency [415 ILCS 5/40(a)(1)]. 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 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 in this Part.
- 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/Title VIII).

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 will not become effective until 45 days after 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.

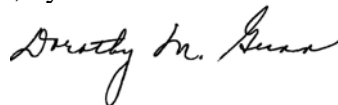
2) When the Agency determines, pursuant to the information received pursuant to subsection (b)(1) of this Section and any Agency site inspection, that the facility has been closed in accordance with the specifications of the closure plan and the closure requirements of this Part, the Agency must:

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) For purposes of appeal pursuant to Section 40(d) of the Act and the appeal provisions of this Part, Agency action pursuant to subsection (c)(2) of this Section is deemed a denial or grant of permit with conditions.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board