

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN) R-12-009
CONSTRUCTION OR DEMOLITION) (Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)
PROPOSED AMENDMENTS TO 35 ILL.)
Adm. Code 1100)

NOTICE OF FILING

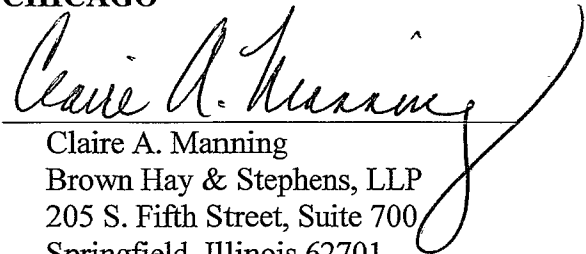
TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Entry of Appearance of Claire A. Manning and the Pre-Filed Testimony of the Public Building Commission of Chicago, copies of which is herewith served upon you.

Dated: October 7, 2011

Respectfully submitted,

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

By: 
Claire A. Manning
Brown Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, Illinois 62701
(217) 544-8491

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PRE-FILED TESTIMONY OF CLAIRE A. MANNING

My name is Claire Manning. I am an attorney with Brown, Hay & Stephens, LLP, in Springfield, Illinois, practicing primarily in the area of environmental law. My testimony is offered for the limited purpose of supplementing the Statement of Reasons presented by the Illinois Environmental Protection Agency (IEPA), in order to provide the Board with further background as to the origins of the legislation underlying this rule – from the perspective of the Public Building Commission of Chicago (PBC), the entity that contractually oversees construction of schools, city colleges, libraries, parks, fire houses, police stations and other facilities in Chicago and Cook County.

First, let me state that PBC appreciates the hard work and effort of the IEPA, particularly the Division of Land, not only in its preparation of this rulemaking proposal, but also in its four years of discussions, negotiations, drafting, and deliberating that resulted in the final legislative product – P.A. 96-1416, as amended in P.A. 97-0137.

The primary purpose of this legislation is to provide a workable methodology and definition for the type of soil (“uncontaminated”) which can safely be accepted as fill at CCDD-permitted quarries. As Doug Clay pointed out in his answers to Waste Management’s questions at the September 26, 2011 hearing: “What this proposed rule would do is define what uncontaminated is.” (Tr., page 75). Correctly, he denied the insinuation that this legislation was created for the purpose of taking material out of any particular waste stream. (Tr., page 76)

The lack of a definition of “uncontaminated soil” in the CCDD law and regulations has long been a source of frustration among the regulated community. Although the Board noted in its initial promulgation of 35 Ill. Adm. Code Part 1100 that many commenters raised this issue, the State’s focus at the time was creating a workable permitting program for CCDD fill operations, not creating a workable definition of “uncontaminated soil”. See *In the Matter of: Clean Construction or Demolition Debris Fill Operations Under PA 94-272*, R06-19, pp. 4 -5. (August 17, 2006) (“Many of the public comments submitted post-first notice also raised the issue of whether “uncontaminated” should be a defined term, and also discussed the meaning of

"clean fill.") Yet, as Vulcan Materials Company pointed out in public comment in that proceeding:

The current version of the Rule is unworkable because it fails to clarify what is meant by the term "uncontaminated." The definition and interpretation of the word "uncontaminated" is of paramount importance in the Rule because under § 1100.103 of the Rule, only uncontaminated materials qualify as CCDD fill. IEPA did not define this critical term in the Rule's text, instead apparently opting for a "we know it when we see it" approach. Absent a clear guideline, responsible members of the regulated community will be forced to guess at the practical meaning of "uncontaminated." To play it safe, a member of the regulated community would have to assume that "uncontaminated" means free from any foreign substances. Yet few, if any, materials meet the definition of uncontaminated in that sense, as IEPA has recognized by promulgating statewide background concentrations for certain contaminants. IEPA's approach to leave the term "uncontaminated" undefined is out of step with similar "clean fill" rules in other states that have incorporated either numerical limits or easily understood definitions as to what is regulated. By contrast, IEPA's Rule creates a "don't ask, don't tell" incentive to avoid testing potential CCDD fill for fear of what the testing will reveal. For these reasons, Vulcan asks this Board to remand the Rule to IEPA so that it may add a definition for "uncontaminated" to the Rule. (R06-9, Public Comment #6)

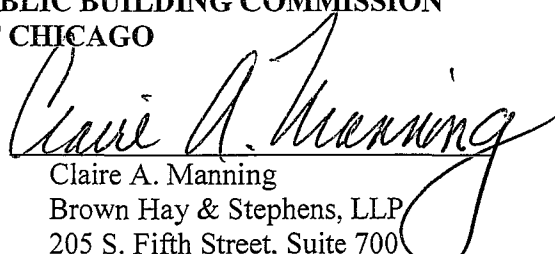
As regulatory certainty provides for greater environmental responsibility than unclear enforcement principles, the IEPA championed this legislation – which calls for regulations by the Board to define uncontaminated soil. It is now the Board's job to ensure that any promulgated regulation is workable for its intended purpose. Hopefully, the final rule will assist the PBC in meeting the following three goals: (a) environmental protection; (b) wise and responsible use of taxpayer dollars; and (c) contractor compliance. I look forward to fully participating in this proceeding on behalf of PBC.

Dated: October 7, 2011

Respectfully submitted,

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ENTRY OF APPEARANCE

The undersigned hereby enters her appearance in the above-titled proceeding on behalf of the Public Building Commission of Chicago.

Dated: October 7, 2011

Respectfully submitted,

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

By: 

Claire A. Manning
Brown Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, Illinois 62701
(217) 544-8491

PROOF OF SERVICE

I, Claire A. Manning, certify that I have served the attached Notice of Filing, Entry of Appearance and Pre-Filed Testimony of the Public Building Commission, by U.S. Mail, first class postage prepaid, on October 7, 2011 to the following:

John Therriault
Clerk Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Kimberly A. Geving, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62704

Marie Tipsord
Hearing Officer Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Mark Wight, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62704

Matthew J. Dunn, Chief
Environmental Enforcement
Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, IL 60602

Stephanie Flowers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62704

Stephen Sylvester, Asst. Attorney General
Environmental Enforcement
Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, IL 60602

Mitchell Cohen, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

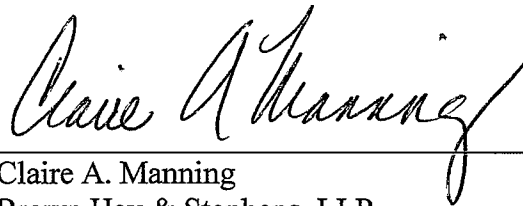
Steven Gobelman, Geologic/Waste
Assessment Specialist
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

John Henrickson, Executive Director
Illinois Association of Aggregate Producers
1115 S. Second Street
Springfield, IL 62704

Brian Lansu, Attorney
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

Greg Wilcox, Executive Director
Land Reclamation & Recycling Association
2250 Southwind Blvd.
Bartlett, IL 60103

James Huff, Vice President
Huff & Huff, Inc.
915 Harger Road, Suite 330
Oak Brook, IL 60523



Claire A. Manning
Brown Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, Illinois 62701
(217) 544-8491