


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO CLEAN)	R2012-009
CONSTRUCTION OR DEMOLITION)	(Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)	
PROPOSED AMENDMENTS TO 35 ILL.)	
Admin. Code 1100)	

NOTICE OF FILING

To: PLEASE SEE ATTACHED SERVICE LIST.

Please take notice that I have this day filed with the Office of the Clerk of the Illinois Pollution Control Board the: (1) Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by the City of Chicago; and (2) Appearance of Doris McDonald, copies of which are hereby served upon you.

By: 

Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

Dated: October 17, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROPOSED AMENDMENTS TO CLEAN) R2012-009
CONSTRUCTION OR DEMOLITION) (Rulemaking – Land)
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**PRE-FILED QUESTIONS OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY SUBMITTED BY THE CITY OF CHICAGO**

- 1) At least three terms are relevant or potentially relevant to whether LPE/LPG certification is or is not required:
- (i) the statutory interim requirement (“has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil”);
 - (ii) the Agency’s proposal (“potentially impacted property”); and
 - (iii) the term “Industrial/Commercial,” which has been referenced by at least one stakeholder.

The City requests clarification, from the Agency’s point of view, as to how the use of these different terms would affect source site owners and operators. Specifically, in the Agency’s view, do the following sites of origin require LPE/LPG certification under the statutory interim requirement, and how, if at all, would that change if the Board were to adopt “potentially impacted property” or “Industrial/Commercial Property”:

- a) a transportation right of way (“ROW”) that has always been a ROW;
 - b) a park, school or residence that was formerly the site of industrial activity;
 - c) a commercial dry cleaning facility; and
 - d) a metal heat treating facility.
- 2) Can you provide examples, real or hypothetical, of: (i) current and former industrial and commercial sites that, in the Agency’s view, are not potentially impacted properties; and (ii) current and former industrial and commercial sites, other than properties with known releases, such as LUST incidents, that in the Agency’s view, are necessarily potentially impacted properties?
- 3) Under what circumstances, if any, would a residential property that has never been used for an industrial or commercial purpose be a potentially impacted property?
- 4) Under what circumstances, if any, would a ROW running through a residential neighborhood be a potentially impacted property?
- 5) The proposed Board Note to the definition of “potentially impacted property” states, in part: “[F]or transportation rights of way or utility easements, the current use of the property as a right of way or easement . . . should be considered.” Does the Agency

believe that current use as a transportation right of way or utility easement itself renders, or could itself render, the property a potentially impacted property? If so, how and why?

6) Can you provide examples, real or hypothetical, of ROWs that are and are not potentially impacted properties?

7) The proposed Board Note to the definition of "potentially impacted property" states that the uses of adjoining property should be considered in determining whether the ROW is a potentially impacted property. How does knowledge that a property adjoining a ROW is currently or was formerly used for industrial or commercial purposes help the ROW owner to determine whether the ROW is potentially impacted, if not all industrial and commercial properties themselves are considered potentially impacted?

8) A ROW project can involve excavation along one or more city blocks. Could the ROW owner properly identify a portion of the project site (a block, several blocks, or a portion of a block) as not potentially impacted, and seek LPE/LPG certification only for soil from the remaining portions of the project? If not, why not?

9) If a property was contaminated and was extensively remediated years ago in the Site Remediation Program -- including pumping out contaminated groundwater, excavating contaminated soil, and replacing the excavated soil with virgin soil and vegetation -- and the Agency issued a Comprehensive NFR Letter, is the property a potentially impacted property today? Why or why not? Does the SRP or NFR Letter matter to this determination, or would the answer be the same, regardless of whether the remediation had been performed in the SRP?

10) Is a ROW or other site abutting the property described in the previous question necessarily potentially impacted, as the result of abutting that property? Why or why not? If more facts are needed to answer this question, what facts are those?

11) If a property, such as a former industrial site, was contaminated and was remediated years ago in the Site Remediation Program, but little if any contaminated soil was removed, the site was capped with an engineered barrier, and the Agency issued a Comprehensive NFR Letter, is the property a potentially impacted property today? Is the entire property necessarily potentially impacted? Does the size of the property, or any other feature of the property, matter to this determination?

12) Is a ROW or other site abutting the property described in the previous question necessarily potentially impacted, as the result of abutting that property? Why or why not? If more facts are needed to answer this question, what facts are those?

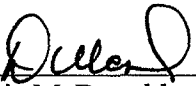
13) Assuming no contaminant migration from adjacent sites, if a property was operated as an industrial facility 100 years ago but has been a park or residence for the past 10, 25, 50 or 99 years, can the property's owner at any point properly certify that the property is not a potentially impacted property? If so, when and why?

14) Is the duration of activity on a site relevant to whether the site is a potentially impacted property? Does it matter, for example, whether a property was used as a metal heat treating facility for 2 months versus 20 years?

15) If the Agency were to issue a notice of violation to a source site owner (generator) for allegedly causing or contributing to groundwater contamination or allegedly disposing of contaminated material at a Fill Operation, and the source site owner were to provide its sampling protocol and test results, showing no MAC exceedances, would this showing be sufficient in the Agency's view to disprove the allegations and resolve the matter? If not, please explain.

16) Is asphalt considered painted CCDD if it contains pavement markings?

17) Can asphalt containing pavement markings properly be used as fill at a CCDD Fill Operation? If not, why not?

By: 

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Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

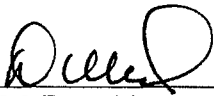
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APPEARANCE

The undersigned hereby enters her appearance as attorney in the above-titled proceeding on behalf of the City of Chicago.

By: 

Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

Dated: October 17, 2011

PROOF OF SERVICE

I hereby certify that on this day, **October 17, 2011**, I have caused copies of the attached Notice of Filing, Pre-Filed Questions of the Illinois Environmental Protection Agency Submitted by the City of Chicago, and Appearance of Doris McDonald to be served via **FedEx Overnight Delivery** to:

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

and by **first class mail, postage prepaid**, to:

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

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

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

Claire A. Manning
Brown, Hay & Stephens LLP
700 First Mercantile Bank Building
205 South Fifth St. PO Box 2459
Springfield, IL 62794-9276

Kimberly A. Geving, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Mark Wright, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Stephanie Flowers, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
PO 19276
Springfield, IL 62794-9276

Dennis Wilt
Waste Management
720 East Butterfield Road
Lombard, IL 60148

Michele Gale
Waste Management
720 East Butterfield Road
Lombard, IL 60148

Mitchell Cohen, General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Steven Gobelman, Geologic/Waste
Assessment Specialist
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62794

Tiffany Chappell
City of Chicago, Mayor's Office of
Intergovernmental Affairs
121 N. LaSalle Street
City Hall, Room 406
Chicago, IL 60602

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

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

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

John Henriksen, Executive Director
Illinois Association of Aggregate Producers
1115 S. 2nd. Street
Springfield, Il 62704



Doris McDonald
Assistant Corporation Counsel
City of Chicago Department of Law
30 North La Salle Street #1400
Chicago, Illinois 60602

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