

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN) R12-009
CONSTRUCTION OR DEMOLITION) (Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)
PROPOSED AMENDMENTS TO 35 III.)
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 Public Comments Submitted by Waste Management of Illinois, Inc., a copy of which is herewith served upon you.

Dated: December 1, 2011

Respectfully submitted,

**WASTE MANAGEMENT OF
ILLINOIS, INC.**

By: 

Michelle A. Gale
Waste Management
720 East Butterfield Road
Lombard, Illinois 60148
(630) 572-8800

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO CLEAN)	R12-009
CONSTRUCTION OR DEMOLITION)	(Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)	
PROPOSED AMENDMENTS TO 35 III.)	
Adm. Code 1100)	

**PUBLIC COMMENTS SUBMITTED BY
WASTE MANAGEMENT OF ILLINOIS, INC.**

Waste Management of Illinois, Inc. (“Waste Management”) by and through its counsel, Dennis Wilt, hereby files its public comment in this matter, pursuant to the Hearing Officer Order issued on October 26, 2011. As Waste Management has indicated during this rulemaking, the Board should adopt the proposed rules submitted by the Illinois Environmental Protection Agency, with the groundwater monitoring requirements strengthened and limited other changes, as recommended herein.

1. CCDD and Soil Fill Operations are Located in Vulnerable Geological Settings.
The Illinois EPA, on page 6 of the Statement of Reasons filed in this matter, makes the following statement:

“However, since the Illinois EPA cannot be sure that the front-end screening process will keep 100% of contamination out of the fill operations, the groundwater monitoring requirement is necessary to detect any contamination of groundwater and provide timely corrective action and remediation. This will allow continued use of groundwater resources by the communities surrounding the fill operations without concerns for the costs to health from drinking contaminated groundwater and the cost to provide alternative sources of drinking water. A map of the current permitted CCDD fill operations shows that both public and private wells are found in close proximity to CCDD fill operations due to the fact that the same geologic material that is good to be quarried is also appropriate material in which to sink a groundwater well.”

The only witness in this matter who testified with respect to the vulnerability of the CCDD and soil fill sites was Kenneth Liss. His pre-filed testimony included a statement that “the CCDD and other fill operations that will be accepting will now be defined as uncontaminated soil are generally located in areas without any natural protection of the underlying aquifer that are highly

susceptible to groundwater contamination.” Although Mr. Liss was cross-examined aggressively with respect to many aspects of his testimony, no questions were even posed with respect to his opinion as to the vulnerable nature of the CCDD and soil fill sites that will be taking material that will now be redefined as uncontaminated soil.

2. Front-End Screening has Not and Will Not Present Contaminated Soil from Being Disposed of at CCDD and Other Soil Fill Operations in the Future. The statement made by the Illinois EPA in its Statement of Reasons that is quoted above that “the Illinois EPA cannot be sure that the front-end screening process will keep 100% of contamination out of the fill operations . . .” has been supported throughout this rulemaking by reference to recent enforcement actions. These matters include *People vs. Stark Excavating, Inc.*, Case No. PCB 09-65, *People vs. 87th and Greenwood, LLC*, Case No. PCB 10-71 and *People vs. Reliable Materials, et al.*, Case No. PCB 2012-052. Pre-screening in the past has not prevented waste materials from being disposed of at unpermitted facilities in Illinois. The pre-screening required by the Illinois EPA’s proposed rules will not likely prevent waste materials from inadvertently, or otherwise, being disposed of at CCDD and soil fill operations in the future.

3. Significant Quantities of Soils Considered to be Uncontaminated under Public Act 96-1416 and the Board’s Rules Will be Disposed of at CCDD and Other Fill Operations. It should be obvious to the Board, given the significant participation in this rulemaking and in the legislative activity that led to the enactment of Public Act 96-1416, that the final rules promulgated by the Board will apply to significant volumes of soil with certain levels of contamination, including carcinogens, that in the past have been considered to be solid waste under Illinois law. During the rulemaking, the Agency has acknowledged the potentially large volume of material that could be accepted pursuant to the final rules. During the September 26 hearing in Springfield, Steve Nightingale provided the following testimony, in response to questions regarding the Agency’s proposed groundwater monitoring:

On page 52 of the transcript:

When you're talking about bringing in these - - this volume of material that potentially could be contaminated, some of the material will only be tested by or evaluated by a PID and visual inspection. When you're talking about those potential large quantities, we felt that there was a need to add groundwater monitoring as the final check.

On pages 53-54 of the transcript:

And when you're talking about bringing in large quantities of material that could potentially be contaminated, the natural approach would be to put a groundwater monitoring system in since there is no type of engineered barrier that would be put in place here. We're not requiring any type of engineered barrier. So we do feel that it's an important component of this - - these proposed regulations.

There should be no question in anyone's mind but that there will be significant volumes of soil materials redirected from lined, fully regulated sanitary landfills to CCDD and soil fill operations which operate pursuant to the final rules to be promulgated by this Board. As indicated by Mr. Nightingale's testimony, the volume of contaminants that is likely to be deposited in these vulnerable environments has the real potential to contaminate groundwater.

4. Recommended Enhancements to the Agency's Proposed Rules. Based on the unrefuted evidence in this record that CCDD and soil fill operations are generally located in vulnerable geological settings, that waste materials have been inadvertently or otherwise disposed of improperly in the past in Illinois and that Public Act 96-1416 will result in significant amounts of soils with certain levels of contamination being disposed of in unlined CCDD and soil fill operations, Waste Management recommends that the Board promulgate final rules that include enhanced groundwater monitoring requirements and other protections identified below.

a. Groundwater Monitoring Enhancements. The current rules proposed by the Illinois EPA with respect to groundwater monitoring are self-implementing, as the Illinois EPA states at page 32 of its Statement of Reasons. Waste Management believes that the groundwater monitoring plan for these facilities should be pre-approved by the Illinois EPA as part of a

permitting process applicable to both CCDD and soil fill operations. Standards for the groundwater program need to be at least as stringent as those contained in 35 Ill. Adm. Code 811.315, 316, 318 and 319, considering the vulnerability of the geologic environment and lack of engineering controls.

Illinois EPA's proposed rule Section 1100.720 would allow CCDDs and soil fill operations to adversely impact groundwater quality up to Class 1 standards. We believe the appropriate standard should be based upon site specific groundwater data, consistent with the Illinois Groundwater Protection Act which provides that any level of degradation in background groundwater quality be prevented. 415 ILCS 55/2. CCDDs and soil fill operations should not be allowed to impact the groundwater up to Class 1 standards.

The one-year post-closure maintenance period in the Agency's proposed rules (see Sections 1100.715 and 1100.209) is inadequate with respect to identifying potential long-term impacts a CCDD or soil fill operation may have on surrounding areas. Given the IEPA admission in its Statement of Reasons that "EPA cannot be sure that the front-end screening will keep 100% of contamination out of the fill operations," extended post-closure monitoring is essential. Given the geology of where many CCDDs and soil fill operations are located, it may take five or more years for contamination to be identified. We suggest the post-closure monitoring period should be a minimum of 15 years.

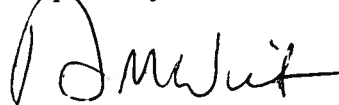
b. Financial Assurance. Given the limited financial resources needed to operate a CCDD or a soil fill operation and the importance of post-closure monitoring, CCDDs and soil fill operations should be required to provide financial assurance to insure that the post-closure monitoring program will be conducted.

c. Post-Closure Monitoring Plan. The post-closure maintenance plans required in the final rules should include a description of the groundwater monitoring to be performed after closure, including the number of monitoring points and parameters and the frequency of sampling. Illinois EPA proposed rule Section 1100.715 is inadequate in this regard.

d. Soil Sampling. The final rules should specify the standard to which the professional engineer needs to certify the sampling plan. Specifically, the engineer should certify that the sampling plan has been designed to identify any contamination concentrations of the soil within the property, including any zones of high concentration that can be segregated for treatment and/or disposal. The soil sampling should also be designed to derive concentrations for soil that are representative of the soil, considering segregation of such zones, such that the concentration of contaminants in those zones are not diluted by other less contaminated soils on the property. Appropriate ASTM standards should be referenced with respect to development and implementation of these sampling plans.

e. Generator Certification. The final rules should require both CCDD and soil fill operators to obtain written certification from the site owners or operators that the soil material to be disposed of is not waste under Illinois law.

Respectfully submitted,



Dennis Wilt

Attorney for Waste Management of Illinois, Inc.

Dated: December 1, 2011

PROOF OF SERVICE

I, Michelle A. Gale, certify that I have served the attached Notice of Filing and Public Comments Submitted by Waste Management of Illinois, Inc., on December 1, 2011 to the following by the methods indicated:

By electronic mail:	
John Therriault, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, IL 60601 therriaj@ipcb.state.il.us	Marie Tipsord, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph St., Suite 11-500 Chicago, IL 60601 tipsorm@ipcb.state.il.us
Matthew J. Dunn, Chief Environmental Enforcement Office of the Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602 mdunn@atg.state.il.us	Stephen Sylvester, Asst. Attorney General Environmental Enforcement Office of the Attorney General 69 West Washington Street, Suite 1800 Chicago, IL 60602 ssylvester@atg.state.il.us
Kimberly A. Geving, Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 Kimberly.Geving@illinois.gov	Mark Wight, Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 Mark.Wight@illinois.gov
Stephanie Flowers, Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 Stephanie.Flowers@illinois.gov	Mitchell Cohen, General Counsel Illinois Department of Natural Resources One Natural Resources Way Springfield, IL 62702-1271 Mitchell.Cohen@illinois.gov
John Henrickson, Executive Director Illinois Association of Aggregate Producers 1115 S. Second Street Springfield, IL 62704 iaap@hansoninfosys.com	Claire A. Manning Brown, Hay & Stephens LLP 700 First Mercantile Bank Building 205 South Fifth St., P.O. Box 2459 Springfield, IL 62705-2459 cmanning@bhslaw.com
Greg Wilcox, Executive Director Land Reclamation & Recycling Association 2250 Southwind Blvd. Bartlett, IL 60103 gww@grp7.com	Brian Lansu, Attorney Land Reclamation & Recycling Association 2250 Southwind Blvd. Bartlett, IL 60103 blansu@lansulaw.com

James Huff, Vice President Huff & Huff, Inc. 915 Harger Road, Suite 330 Oak Brook, IL 60523 jhuff@huffnhuff.com	James M. Morphew Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. Illinois Building, 607 East Adams, Suite 800 Springfield, IL 62705 jmmorphew@sorlinglaw.com
Dennis G. Walsh Klein, Thorpe and Jenkins, Ltd. 20 North Wacker Drive, Suite 1660 Chicago, IL 60606-2903 dgwalsh@ktjlaw.com	Gregory T. Smith Klein, Thorpe and Jenkins, Ltd. 20 North Wacker Drive, Suite 1660 Chicago, IL 60606-2903 gtsmith@ktjlaw.com

By First Class Mail, postage prepaid:	
Steven Gobelman, Geologic/Waste Assessment Specialist Illinois Department of Transportation 2300 S Dirksen Parkway Springfield, IL 62764	Tiffany Chappell City of Chicago, Mayor's Office of Intergovernmental Affairs 121 N. LaSalle Street City Hall - Room 406 Chicago, IL 60602
Doris McDonald Chicago Department of Law 30 North LaSalle St., Suite 900 Chicago, IL 60602	



Michelle A. Gale