

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

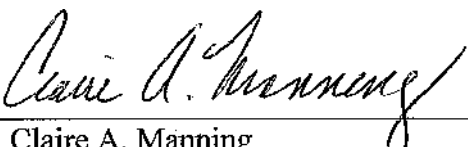
TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board, the **Post-Hearing Comments of the Public Building Commission of Chicago**, copies of which are herewith served upon you.

Dated: December 2, 2011

Respectfully submitted,

**PUBLIC BUILDING COMMITTEESION
OF CHICAGO**

By: 

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POST-HEARING COMMENTS
OF THE PUBLIC BUILDING COMMISSION OF CHICAGO

NOW COMES the Public Building Commission of Chicago ("PBC"), through its counsel, Claire A. Manning, Brown, Hay & Stephens, LLP, and presents the following Post-Hearing Comment for consideration by the Illinois Pollution Control Board ("Board") in the above-referenced proceeding.

I. LEGISLATIVE BACKGROUND

Obvious from the testimony at the three days of public hearing in this matter is that the legislature has required the Board to enhance and clarify its original Part 1100 rules on. Clean Construction Demolition Debris "CCDD" fill operations, promulgated in 2006 pursuant to P.A. 94-272. Since the Board's promulgation of those rules, various CCDD fill operations have become permitted: In accordance with the original CCDD law, CCDD fill operations are only authorized to accept material that meets the definition of CCDD. Acceptance of material that is *not* clean construction and demolition debris is a violation of the Act and the, violator is subject to enforcement pursuant to the Illinois Environmental Protection Act ("Act"). Thus, a responsible owner, contractor or fill operator who is excavating, hauling or accepting CCDD material wants to have a clear understanding of what it is and what it is not, so that he (and those who work for him) remains compliant and is not subject to enforcement.

In promulgating these rules, it is essential that the Board provide the necessary clarification. Since the recent legislation picked up an entirely new classification of those persons and entities regulated ("soil only" fill operations), and provided fees for the State (and delegated counties) to enforce the law and regulations, such clarification is even more essential.

While we commend the IEPA for its hard work on this complex and controversial regulatory package, we have three key areas of concern which require the exercise of the Board's special expertise and independent regulatory authority, as set forth in 27(a) of the Act 45 ILCS 5/27(a). Those areas are discussed below, in Section III. In debating the underlying bill (S.B. 3721), the legislature's expectation that the Board would exercise such authority is fully evident. When asked by fellow representatives whether the bill mandated various requirements on CCDD and soil only fill operations, the bill's sponsor in the House of Representative, Assistant Majority Leader Barbara Flynn Currie (whose late husband was the original Chairman of the IPCB), explained that the legislation allows for such "(I)f the Pollution Control Board felt that such requirements were necessary."

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Indeed, the House debate should be instructive to the Board, as it demonstrates the varied legislative interests and goals underlying the bill: delineation and clarification of soils (Rep. Tryon: "I...learned very quickly that all dirt [is] not created equal, that there was dirt of different risk levels."); enhanced state and local enforcement (Rep. Dugan); utilization of scientific expertise (Rep. Fortner: "let's have the experts, EPA, through them to the Pollution Control Board, establish the standards for what type of fill that we'll have."); cost of unnecessary landfilling of excavated soil (Rep. Colvin); and environmental protection (numerous representatives). See Illinois House Transcript, 2010 Reg. Sess. No. 138, provided for the Board's convenience as Attachment 1.

Thus, though the recent legislation enhances and strengthens the regulatory framework applicable to CCDD fill operations (and now "soil only" fill operations), it also for the first time provides a risk-based starting point for a sensible definition of "uncontaminated soil".

Specifically, new Section 3.160(c) reads:

For purposes of this Section, the term "uncontaminated soil" means soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment.

(1) - No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose, and, no later than one year after receipt of the Agency's proposal, the Board shall adopt, rules specifying the maximum concentrations of contaminants that may be present in uncontaminated soil *for purposes of this Section*. For carcinogens, the maximum concentrations shall not allow exposure to exceed an excess upper-bound lifetime risk of 1 in 1,000,000; provided that if the most stringent remediation objective or applicable background concentration for a contaminant set forth in 35 Ill. Adm. Code 742 is greater than the concentration that would allow exposure at an excess upper-bound lifetime risk of 1 in 1,000,000, the Board may consider allowing that contaminant in concentrations up to its most stringent remediation objective or applicable background concentration set forth in 35 Ill. Adm. Code 742 in soil used as fill material in a current or former quarry, mine, or other excavation in accordance with Section 22.51 or 22.51a of this Act and rules adopted under those Sections. *Any background concentration set forth in 35 Ill. Adm. Code 742 that is adopted as a maximum concentration must be based upon the location of the quarry, mine, or other excavation where the soil is used as fill material. Emphasis added*, 415 ILCS 5/3.160.

II. REGULATORY BACKGROUND

Despite Waste Management's continued attempts to paint it otherwise, the legislation does *not* create a new regulatory class of soil that is appropriate for use as fill. Lead IEPA witness Doug Clay made that absolutely clear in responses to questions posited by Waste Management in the company's attempt to raise alarm:

"Well, in the past, uncontaminated was not defined. What this proposed rule would do is define what uncontaminated is".... "I don't think that's a fair statement. As we - we just testified to, it was a gray area as far as what is considered uncontaminated." ... "I think you have two [categories of soil]. You have uncontaminated fill material and something that is considered a waste [requiring landfill disposal]. You know, those are the two. I *mean something you need to remember is just because there's a chemical constituent in the soil doesn't make it contaminated.*" *Emphasis added.* See September 26, 2011 hearing transcript, at pages 75-77.

Indeed, as Mr. Clay recognized, prior to this legislation calling for Board rulemaking, the regulated community has been left to fend for itself in this gray area and, as a consequence, disputes have arisen - in some cases leading to the initiation of enforcement.)

That this confusion would occur was telegraphed to the Board during the original proceeding leading to the promulgation of the Part 1100 rules, in R06-19. Several participants (the undersigned included on behalf of the City of Chicago) attempted to clarify what the IEPA would consider to be "uncontaminated soil" and whether the IEPA would agree that the methodology established in the Board's Tiered Approach to Clean Up Objectives (TACO) would be helpful.² One of the quarry participants submitted an excellent post-hearing comment explaining why the Board needed to tackle this issue prior to promulgation of its final rule. See In the Matter of Clean Construction Demolition Debris, Fill Operations under P.A. 94-272, R06-19, Public Comment #6, submitted on behalf of Vulcan Materials June 5, 2006. At the time, given that the original rules were focused primarily on permitting and procedural requirements for the CCDD fill operations, the Board did not feel such definition was warranted. See In the

1. As the Board knows, an entity is not deemed guilty of violating the Act until it is adjudicated as such. See *Martell y. Maury*, Supp. 729 (1981). Thus, the Board should not be swayed by Waste Management's references to pending enforcement matters.

2 At the time, the IEPA's answer can best be described as "we know it when we see it." See In the Matter of Clean Construction Demolition Debris, Fill Operations Under P.A. 94-272, R-06-19, Transcript of January 26, 2006 hearing at pages 23-24.

Matter of Clean Construction Demolition Debris, Fill Operations under P.A. 94-272, R06-19,
Second Notice Order of the Board, at pages 3-4 and 7-8, July 6, 2006.

Much has happened since those original rules took effect which, in part, led to the recent
legislation:

- TACO methodology has become an industry standard in Illinois and is widely used beyond its original regulatory purpose of remediation. Consultants routinely use TACO methodology to determine if soil is clean enough for certain purposes, including use as fill at a CCDD fill operation;

An owner or consultant who responsibly conducts analytical testing of soil risks enforcement if his determination that the soil is clean enough for use as fill at a CCDD fill operation differs with the IEPA's "we know it when we see it" approach;

- Permitted CCDD fill operations (those within the "regulatory awareness" of the IEPA) became routinely subject to inspection (and enforcement); Given the gray area, many responsible contractors (PBC included) began sending all excavated soils to a landfill, at much greater cost to taxpayers - even though such soils were not the victims of any release or spill or other contamination and were tested and evaluated by professional engineers and others to be appropriate for use as fill at a CCDD fill operation;
- Meanwhile, unpermitted "soil only" operations (those not within the "regulatory awareness" of the IEPA) routinely accepted soil as clean without regard to any regulatory parameters or safeguards.

Now, the Board has been legislatively directed to amend the CCDD rules, in a manner which provides greater safeguards and enforcement enhancements but, at that same time, provides a reasonable and workable framework for determining what soils can be considered clean fill (uncontaminated) for purposes of acceptance as fill at a CCDD fill operation.

III. RECOMMENDATIONS

PBC has three key concerns with the rules as proposed by the IEPA: (1) the lack of clarity concerning the use of "potentially impacted property" in lieu of the legislative language "industrial/commercial"; (2) the "one size fits all" definitional approach, which fails to recognize

important site specific conditions or characteristics of the operation receiving the fill; and (3) the overly prescriptive and overly conservative use of certain TACO parameters (Subpart F).

The PBC supports the operational and regulatory enhancements applicable to the site operator and excavation site owner; as they provide necessary safeguards. PBC focuses its concerns on issues related to a workable definition of uncontaminated (clean) soil and the process for determining such, with certainty.

It is PBC's position that, unless these issues are sufficiently addressed by the Board, the legislation will not have achieved its purpose of defining what soils can be safely accepted as fill at a CCDD fill operation. Further, unless the PBC amends or requires the amendment of Subpart F, it is likely that unimpacted excavated urban soil will need to be sent to a landfill, at great and unnecessary cost, despite the fact that such soils have *never* been the victim of any specific release or pollution event.

A. Potentially Impacted Property.

Section 22.51(f)(2)(B) requires the fill site operator to require a certification from the owner or operator of the excavation site as follows:

(B) For all soil, obtain either (i) a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil or (ii) a certification from a licensed Professional Engineer or licensed Professional Geologist that the soil is uncontaminated soil. Certificates required under this subdivision (f)(2)(B) must be on forms and in a format prescribed by the Agency.

In new Section 1100.205 the IEPA proposes to modify that requirement as follows:

Certifications and Load Checking

The owner or operator must do all of the following activities and document all the activities for all CCDD and uncontaminated soil accepted for use as fill material:

1. For all soil, including soil mixed with CCDD, obtain:

A) a certification from the source site owner or source site operator that the site is not a *potentially impacted property* and is presumed to be uncontaminated soil; or,

a certification from a licensed Professional Engineer or licensed Professional Geologist that the soil is uncontaminated soil.

Certifications required under this subsection must be on forms and in a format prescribed by the Agency.

The IEPA proposed a definition of "potentially impacted property" at Section 1100.103 and, in testimony, explained that it would be within the discretion of the professional consultant to determine whether the property (where the soil is excavated from) met such definition. Yet, the IEPA failed to sufficiently clarify specific situations that it would consider to be (or not be) "potentially impacted property". On page 1-2 of Errata Sheet #3, filed with the Board on November 21, 2011, the IEPA attempted to clarify the terminology by incorporating the appropriate ASTM standards. Yet, the proposed regulatory language is still much vaguer than the specific statutory language (which states, that if the soil is from a site that has never been "industrial" or "commercial" it is presumed uncontaminated).

PBC understands and appreciates the stakeholder comments that led the IEPA to utilize the new terminology, but remains concerned that, as proposed, the language fails to give the proper direction to those who will be defining soil and, as such, will likely lead to unnecessary

enforcement and dispute. In its proposal the IEPA attempts to explain (albeit via Board note) when a property might be considered not "potentially impacted" and includes examples that are the very type of considerations made by professionals in Phase I environmental assessments. Yet, the proposal fails to provide definitive regulatory language that can be relied upon to provide a safe harbor for those who make determinations consistent with this language.

Accordingly, PBC proposes that the definition of "potentially impacted property" be changed as follows:

"Potentially impacted property" means property on which a historical or current use, or contaminant migration from a proximate site, increases the presence or potential presence of contamination at the source site. "Potentially impacted property" is intended to identify soil that is more likely to be contaminated and in need of professional evaluation and certification before placement in a fill site. The following should be considered when determining whether property is "potentially impacted property": the current use of the property, prior uses of the property, and the uses of adjoining property. Where due diligence has been performed in accordance with one of the two below ASTM methods, and a recognized environmental condition (REC) has not been identified, not the property can be deemed not "potentially impacted".

ASTM E 1527-05 Standard Practice for
Environmental Site Assessments: Phase I Environmental
Site Assessment Process, approved November 1, 2005.

ASTM E 1528-06 Standard Practice for Limited
Environmental Due Diligence: Transaction Screen Process,
approved February 1, 2006.

Thus, where a Phase I is conducted and no recognized environmental conditions have been identified in the excavated area, the property shall safely be considered "not potentially impacted" and, thus, may be utilized as fill.

B. One Size Fits All - Site Specific Considerations

The IEPA has steadfastly rejected any site specific approach in favor of uniform MAC's (maximum acceptable contaminants) - applicable throughout Illinois regardless of type of soil or character of the fill operation and surrounding area. With respect, the IEPA is wrong to suggest that the legislation does not allow for this. Indeed, as the last sentence of the new definition of "uncontaminated soil" directs: "Any background concentration set forth in 35 Ill. A . Code 742 that is adopted as a maximum concentration must be based upon the location of the quarry, mine, or other excavation where the soil is used as fill material." The IEPA's uniform approach ignores the flexibility called for by the definition which, at its core, declares uncontaminated soil to be that "soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment."

As pointed out by several participants, but most succinctly suggested by Ryan LaDieu, the MACs should be "evaluated base on their `true' risk assessment value." Pre-Filed Testimony, October 7, 2011. Instead of doing that, the IEPA errs on the side of overly conservative uniform parameters which are not based upon site specific conditions. In PBC's opinion, the legislation does not mandate or support such uniform approach, nor is there any testimony or scientific data offered on the record that supports the necessity of such approach in order to protect groundwater. Moreover, PBC does not follow how such site specific conditions cannot reasonably be considered, especially for permitted CCDD fill operations, as part of the operation's permit process. The wholesale requirement for groundwater monitoring for all fill operations illustrates the unworkability of the proposed uniform approach. The PBC does not object to groundwater monitoring, where it may be necessary at a specific operation to adequately protect area groundwater. But the justification should be science-based, not for the

reason offered by the IEPA: concern that some contaminated soil may get past the front gate, even with the added regulatory safeguards for identifying uncontaminated soil.

PBC is not opposed to the Board establishing reasonable MACs as a default value, but it suggests that where fill operations can justify a different, site-specific MAC, based upon site conditions, the facility ought to be allowed to propose such in its permit application. For years such process (which requires approval by the IEPA and allows appeal to the Board and courts) has been quite effective. There is no reason to suspect it would not be equally effective here.

C. Proposed Maximum Acceptable Contaminants (MACs)

Throughout this legislative and regulatory effort, PBC has supported rationale regulatory safeguards for the protection of groundwater at CCDD fill sites that accept soil, to ensure that they do not receive and accept contaminated soil. It has supported all the regulatory enhancements required in terms of monitoring, testing, certification, tracking, etc. Clearly, it supports an understandable and workable definition of uncontaminated soil (clean fill).

However, the proposed Subpart F needs much more work prior to adoption. As is, the proposed MACs are without sufficient scientific justification, as they are based upon parameters that have little or no bearing on the placement of soil in a CCDD facility (quarry), nor do they sufficiently consider the type of soil or the surrounding environment.

As an example the regulations as proposed specify that, for inorganic constituents, the lowest chemical specific pH dependent value in 35 Ill. Adm. Code 742, Appendix B, Table C thereby limiting values to a pH of 4.5 to 4.74 (strongly acidic range) and 8.75 to 9.0 (strongly alkaline). In IEPA testimony on October 26, 2011, the IEPA submitted as Exhibit 25 the "Summary of Illinois Soil pH Values" as a basis for recommending the strongly acidic and

strongly alkaline pH ranges. The data itself does not support the IEPA's position as it demonstrates that:

- For the 14 listed Northern Illinois counties listed, pH levels of either 4.5 - 7.3 or 4.5 - 7.8 and 4.5 - 8.4, were noted in 10 of 103 sets of pH ranges, and none of the 103 sets of pH ranges contained pH levels of 8.75 to 9.0.
- For the 7 Southern Illinois counties listed, none of the 23 sets of pH ranges contained a pH of 4.5 - 4.74 as all pH levels ranged between 5.1 and 8.4, and none of the pH ranges contained pH levels of 8.75 to 9.0.
- For the 2 Southern Illinois counties listed, 12 of the 14 sets of pH ranges contained a pH level 4.5 - 6.0 or 4.5 - 7.3 and none of the pH ranges contained pH levels of 8.75 to 9.0.

Further, testimony and exhibits provided by John Hock on October 25, 2011 demonstrates quite different pH results than the IEPA uses as a basis, and those laboratory results are taken from the very sources these rules will regulate. Mr. Huff's testimony was equally compelling.

Clearly, the IEPA has not sufficiently justified sending this rule to First Notice, particularly as it relates to the defuution of uncontaminated soil and the approach to uniform MACS at Subpart F. PBC further asks the Board to consider moving Subpart F into a separate docket, for separate and independent science-driven consideration.

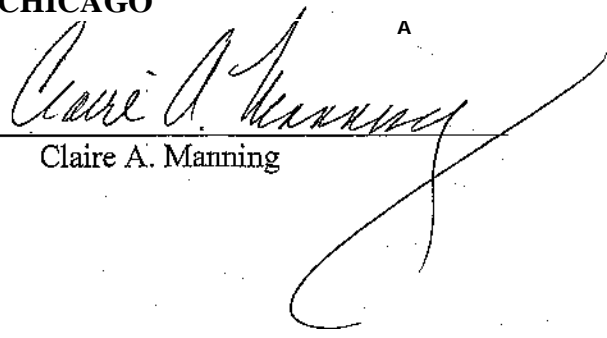
We look forward to continuing to work with the IEPA and the Board and participants. in this rulemaking.

Dated: December 2, 2011

Respectfully submitted,

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

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ATTACHMENT A

Black: "And I'll move up there. Under Motor Voter, I can probably vote for you anyway."

Davis, W.: "Thank you very much, Representative."

Speaker Mautino: "Representative Davis to close."

Davis, W.: "Thank you very much, Mr. Speaker. You've heard conversations about what we're attempting to do with this, and exactly what the Amendment to the Resolution does. I certainly... simply just ask for the adoption of this Resolution. Thank *you.*"

Speaker Mautino: "The Gentleman moves that the House adopt Senate Joint Resolution 72. All in favor say `yes'; opposed `no'. The `yeses' have it. And the House does adopt Senate Joint Resolution 72. Representative Davis is seeking recognition."

Davis, M.: "I rise, Mr. Speaker, for a point of personal privilege."

Speaker Mautino: "Certainly, state your point."

Davis, M.: "A friend of mine is visiting Springfield, I haven't seen him in a very long time. I knew him when he was a very young kid, Mr. Brian Cooper, who is now the President of his local of ASCME. Mr. Cooper, if you're there, we're going to give you a nice Springfield welcome. Wherever you are."

Speaker Mautino: "Welcome to the House of Representatives. On page 9 of the Calendar appears Senate Bill 3721. Mr. Clerk, what's the status of that Bill?"

Clerk Mahoney: "Senate Bill 3721, a Bill for an Act concerning safety. Third Reading."

Speaker Mautino: "Read the Bill. Representative Currie."

Currie: "Thank you, Speaker, Members of the House. This is an initiative of the Environmental Protection Agency to enhance requirements that are applicable to the current Clean Construction and Demolition... Demolition Debris Law. When the Bill becomes effective, it would require a variety of things: manifesting of all CCDD and soil sent to CCDD fill operations, requiring the excavator of *soil* sent to the CD... CDD fill operator to certify that the soil is not contaminated. If the soil is from an industrial or commercial site, a licensed professional engineer will have to certify that the soil indeed *is* not contaminated. Enhances the enforcement authority of the Illinois Environmental Protection Agency by permitting fines for those who violate the law. Provides for fees so that the IEPA and local government both will have enhanced ability to enforce the law. For the first time, requires those that say they are accepting `clean fill soil' to register with the EPA. Currently, these sites are totally unregulated. The Bill also authorizes IEPA and the Pollution Control Board to develop rules that will provide standards for determining what constitutes clean soil so that groundwater is protected. Allow for the proper placement of soil and CCDD in the facility. Allow for liners or other barriers. Other requirements such *as* groundwater monitoring. Allows the board to develop alternatives to the use of CCDD as filling quarries, for example, asphalt recycling. And allow for financial assurance requirements on CCDD facilities. The rule making authorized by this legislation may include provisions for fill disposal sites other than quarries. So, the City of Chicago joins IEPA in supporting this Bill, and does believe that it needs greater opportunity to assess the effectiveness of the contractors it employs. I would be happy to answer your questions, and I would appreciate your support for this EPA initiative that will provide for greater regulation of what goes into the ground across the State of Illinois."

Speaker Mautino: "The Lady moves passage of Senate Bill 3721. And on that question, Representative Beiser."

Beiser: "Thank you, Mr. Speaker, Members of the House. To the Bill. I just want to say I'm a strong supporter of this and for the following reasons. Right now, I would venture a guess that 90 to 95 percent of the quarries in this state are not registered with the EPA, even though they all say they accept clean fill. For the first time, and the first time ever, we will be able to know where they're at, and have the EPA to do the necessary inspections and/or enforcement that comes along with this Act. So, it's important. These quarries are accepting this now, we don't know where they're at. We will now. This will establish fees that

will enforce... allow the IEPA to enforce this Bill. It allows them to not only do that, but it allows them to have administrative fines. And it provides new testing requirements on the part of those who opt to excavate soil to make sure that it's clean and uncontaminated. And it also includes... it has to include a clean certification from a professional engineer on all soils excavated from industrial and commercial sites. For all these reasons, I think it's a good Bill. The IEPA... it's an initiative as the Majority Leader says. It's my impression that, since the committee hearing, the Sierra Club has gone neutral on the Bill. And for all the reasons I've mentioned, I would urge all to support this Bill and give it an `aye' vote."

Speaker Mautino: "Further discussion? The Gentleman. from DuPage, Representative Fortner."

Fortner: "Thank you, Mr. Speaker. I rise in strong support of this Bill. This has been a problem for a number of years where we have not had any sound regulation for what does it mean to have clean fill. We don't have any regulation. It would be nice to be able to say, well, we're just going say right here in statute this is what it is. But I know that for three years there's been negotiations, and we've not been able to do that. We're. now actually doing the right thing, which is to say, let's have the experts, EPA, through them to the Pollution Control Board, establish the standards for what type of fill that we'll have, with a clear and fixed date certain, that we will be able to say we know what is clean fill, how to regulate the filling of our quarries and other facilities that would be taking this type of construction debris. Because the problem underlying that we have is that when we have soil, we can say, well, this has never been built on, it's clean, but what if it's been built on but it's been fully remediated and it's met all the criteria for mediation. We should be able' to still transport that and move that as well. This will provide us with the rules that will make it clear what those standards are and how we can go forward. I think, though, this is not perfect, this is the result of a lot of difficult negotiation. And I commend the Sponsor for bringing this forward in a way that will protect us all in the future with... once we have these rules in place. I urge an `aye' vote."

Speaker Mautino: "Further discussion? Representative Holbrook."

Holbrook: "Thank you, Speaker. To the Bill. Last night at a late hour, about 8:00 or later, as I went through the witness slips and announced them, I was incorrect. Robert Schillerstrom is the board chairman, and he was... one moment... the president of it supports the Bill. However, the county is an opponent to it, I believe, I want to correct that. As I read the slips and read many of them through last night, that was incorrect on my part. I had a deck of slips that I read through and that was a mistake, and I want to make that clear to everyone. The second one is, I truly prefer a moratorium on this quarry and gravel pit dumping of anything but pristine or virgin top soil from the farms, but that's not going to happen. And in this case, this by far is the best solution to this dilemma we have. These are throughout the state; they're unregulated, and very haphazard on enforcement only upon complaints. And I know Representative Fortner and Representative Tryon and I worked through this last year trying to develop these regulations, just under... almost similar to what we hope the Pollution Control Board will adopt. So with that, even though I voted `no' last night in committee, I have to after reflecting on it even further, this is by far the best solution we're going to get, and I'll be supporting this Bill. And I apologize for any mistake on the announcement last night of proponents and opponents at the time. Thank you.."

Speaker Mautino: "Further discussion? The Lady from Cook, Representative Nekritz."

Nekritz: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Mautino: "Indicates that she will."

Nekritz: "Leader, this Bill gives the Illinois Pollution Control Board broad rule making authority to adopt requirements for fill sites that take clean construction or... and demolition debris that CCDD or uncontaminated soil. The board's rules would have to include requirements necessary to protect groundwater. Would this Bill allow the board to adopt requirements similar to the requirements that apply to inert waste landfills?"

Currie: "Yes. If the Pollution Control Board felt that such requirements were necessary, this Bill would allow it to adopt requirements similar to those that apply to inert waste landfills. The rule making authorized by this legislation may include provisions for fill disposal sites other than quarries."

Nekritz: "And could that be something... Representative, could that be something like the liners?"

Currie: "Sure. Absolutely. That's specifically referenced in the Bill."

Nekritz: "Very good. Thank you."

Speaker Mautino: "Further discussion? The Lady from Lake, Representative May."

May: "Thank you. Will the Sponsor yield?"

Speaker Mautino: "She indicates that she will."

May: "Yes. Thank you. I was concerned in committee last night that perhaps with the Pollution Control Board having two years to adopt rules and set parameters for this that it might be some sort of a holiday. I was concerned that quarry owners would maybe just walk away from a site and that there wouldn't be any protections there, and there were very good answers. Could you just read into the record or state for the record that the taxpayers will not be responsible in this case? That was my concern."

Currie: "And nothing in this Bill changes the liability for operators who provide for toxic problems and nothing will change in that respect under this Bill. So, I think the taxpayers should not be fearful that anything in this Bill would provide them with any greater responsibility than we bear today. The owners are the responsible parties. They are the ones who would bear the cost."

May: "And in other Sections of the law, the EPA has that control right now so that there is no..."

Currie: "That's right."

May: "...gap?"

Currie: "Correct."

May: "Okay. Thank you. I just wanted to state that this is a step forward that the industry is voluntarily supporting fees so that there can be monitoring and watching. While we were concerned at the lateness of the hour and some uncertainty, I voted 'no' in committee, but the Siena Club is neutral and I've gotten further information and intend to support the matter. Thank you."

Speaker Mautino: "Further discussion? The Gentleman from McHenry, Representative Tryon."

Tryon: "Thank you, Mr. Speaker. Would the Sponsor yield?"

Speaker Mautino: "She indicates that she will."

Tryon: "Thank you. Representative Currie, certainly want to thank you. Representative Holbrook and I worked on this last year, learned very quickly that all dirt was not created equal, that there was dirt of different risk levels, and that's kind of the point of my question. I wanted to... for the record, I think people need to understand that if I operate a quarry, a gravel pit, and all I'm doing is taking daily fill cover, and that daily fill cover came from an agricultural farm or came from a road building project or came from a residential use, and is considered a low risk source of fill, I don't have to submit that in any kind of

testing requirements. That's correct?"

Currie: "You answered the question correctly."

Tryon: "Okay. So, really what we're trying to get at is... is contaminated fill material and trying to make sure that we're placing it in a proper place with the proper safeguards, correct?"

Currie: "Exactly."

Tryon: "Okay. One of the things, as you know, and I mentioned this in committee, in McHenry County we have 32 operating aggregate extraction operations in our county. So, it's... to McHenry County, that's a big business to us and we want to make sure that everybody's treated fairly. And I talked to a few of those operators this morning, and one of their concerns is that, occasionally, this... this Bill applies to operations that are excavated or mined. And sometimes they're a big filling operations .for somebody that might want to fill a lowland area in to build something on in the future, and the question was proposed to me, in these areas where there are individuals accepting large amounts of fill, maybe in excess of 2 to 10 thousand yards of fill, maybe *we* wouldn't be amenable next year to coming back and saying a site, any site that takes maybe 10 thousand yards of fill would have to be subject to those same criteria. Is that something you think you'd be willing to explore?"

Currie: "I'd be happy to work with you..."

Speaker Mautino: "Please allow the Gentleman to finish his statement."

Tryon: "I want to, again, I know how difficult this was, and I know the industry and how divided they are, and I, like Representative Fortner, believe that this was probably a good compromise, and hopefully we'll get the right rules out of the Pollution Control Board and deal with the risk levels that we... of soil that we tried to address originally. So, thank *you*."

Speaker Mautino: "Further discussion? The Gentleman from Cook, Representative Colvin."

Colvin: "Thank you, Mr. Speaker. I'm going to be real brief and stand in support of the Bill, and commend Leader Currie for her hard work in bringing this Bill together. It's been a long time coming. And really, hailing from the City of Chicago, wanted to speak with regard to the significant savings it would bring to the City of Chicago, and despite it being the fact that this is something that the IEPA has been at the table and negotiated. It is my understanding, Leader Currie, that the Sierra Club is neutral on this Bill as well as other environmental groups?"

Currie: "As is the Environmental Law and Policy Center."

Colvin: "Yes."

Currie: "There's no opposition from environmental groups nor from the state's Attorney General's Office."

Colvin: "Right. And I know it didn't start that way, so, this Bill has come a very long way. Again, for the City of Chicago, this has really been a boondoggle because it's costing so much, and when you look at the unintended consequences of when this law was first passed, but dealing with the clean construction and demolition debris, making sure that we dispose of those materials safely, and the way this Bill is drafted, it will bring a considerable savings of millions of dollars to the City of Chicago in a very tough economic time. This will be a great plus for the City of Chicago as they continue to struggle with their own budget deficits. And I urge an `aye' vote. Thank you."

Speaker Mautino: "Further discussion? Representative Kosel."

Kosel: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Mautino: "She indicates that she will."

Kosel: "I think I heard from Representative May that it would take two years to write the rules for this Bill. Is that correct?"

Currie: "That's right. The Environmental Protection Agency would have a year to propose a rule making, and the board would have another year to go ahead and adopt rules. But in the meantime, there will be some regulation of these sites. Regulation that is not on the books today."

Kosel: "And what kind of regulation will protect the groundwater from the consumers, because there's just a whole bunch of these quarries within Will County which is part of the district that I represent, and we have a tremendous amount of people who are on well water, including myself. So, what kind of protections do we have that..."

Currie: "Well, right now, I would say very little. But under this. Bill, immediately, the operators of those quarries that take other than the agricultural products, that Representative Tryon mentioned, they will have to be... they will have to be permitted by the agency. They will have to pay fees, and they will have to manifest what comes to them. They will have to, in a sense, let the agency know what they've got. So, the agency will begin to have not only the resources to enforce strong standards but an ability to find out what is going on in... what is going into those quarries in your area today."

Kosel: "But... but there are no standards listed within this Bill for that two-year period?"

Currie: "Nothing... nothing changes. Whatever standards exist, exist. It is illegal to dump certain items in... in sites that do not have liners today, for example, but under this Bill, the Environmental Protection Agency might be able to find out where that illegal activity is happening. Today, they don't have much opportunity unless there is some kind of terrible leak or explosion or what have you."

Speaker Mautino: "The Lady's time has expired. Would you grant her an additional minute?"

Kosel: "Under this Bill, the person who has this type of waste has two options. They can put it in a landfill or they can... which is a lined regulated landfill or they can put it into these quarries that currently are not lined. What is the difference in cost between those two methods of disposing of a truckload of dirt?"

Currie: "A very, very significant. I think about \$60 if it's going to a quarry and 400 and something if it's going to a facility with a liner."

Kosel: "And where's most of this waste coming from?"

Currie: "Well, I think it's coming from wherever construction is happening."

Kosel: "Okay. Thank you."

Speaker Mautino: "Further discussion? Representative Dugan."

Dugan: "Thank you, Speaker. Will the Sponsor yield?" Speaker

Mautino: "She indicates that she will."

Dugan: "Yes. Leader Currie, I just wanted to make sure, I know there's been concerns brought forward from some of the other counties and one that I represent in Will County. We understand that they've... you guys have worked on, with this Bill, worked very closely with them, so I just want to make sure that what we understand, that as the rules are designed that I understand counties are going to be involved so that some of the other concerns, we can make sure that all the concerns are addressed. Is that what you believe to be the case?"

Currie: "Absolutely, Representative. And remember, that in the meantime, in this two-year interval, the counties under this Bill are going to get additional resources to do their own enforcing. So, the county chair in Will is neutral, is not an opponent of the Bill."

Dugan: "Correct. And I, in fact, I just got off the phone with... I just wanted to make sure, going forward with the rules, that even maybe some other concerns that they will be involved in that. Thank you very much."

Currie: "Yes."

Speaker Mautino: "Further discussion? Representative Myers. Excuse me. Representative Thapedi."

Thapedi: "Thank you, Mr. Speaker. Will Leader Currie yield for a few inquiries?"

Speaker Mautino: "She indicates that she will."

Thapedi: "Than* you. Leader Currie, if this Bill passes, will the landfills be held to a higher standard per EPA regulations when operating their landfills and accepting these materials?"

Currie: "There will be the opportunity for the EPA to enforce existing law because they will have better information about what is going into quarries and fill sites."

Thapedi: "Thank you. We heard someone mention earlier lining. Will these landfills be required to line or install a liner in the areas that this material will be accepted?"

Currie: "Some material today can only go into facilities that have liners, waste... disposal facilities because of the toxic nature of the items in the fill. So, this does not directly address that, but it does ask the Pollution Control Board, after the Environmental Protection Agency sets them some parameters, to adopt rules that clarify what things need to go into facilities with liners, what things don't, what other kinds of fill facilities we might design and support."

Thapedi: "Okay. Will the quarries be required to test every load to make sure that contaminated loads are properly rejected in the necessary case?"

Currie: "The board rules could require that, but that is not current law today."

Thapedi: "Okay. And lastly, will the county, township or municipalities receive a host fee per load for quarries that accept these materials?"

Currie: "Yes."

Thapedi: "Thank you, Leader."

Speaker Mautino: "Representative Coladipietro."

Coladipietro: "Thank you, Mr. Speaker. There's been some confusion as to the position of DuPage County, and I just wanted to clarify for the record that the DuPage County Chairman Bob Schillerstrom supports the legislation, and that the DuPage County Board has no position."

Speaker Mautino: "Representative Currie to close."

Currie: "Thank you, Speaker. We've had a good, open, lengthy discussion. I urge your `aye' votes."

Speaker Mautino: "The Lady moves passage of Senate Bill 3721. All in favor vote `yes'; opposed vote `no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish?Mr. Clerk... Representative Ford, Representative Golan, Representative Howard, do you wish to be recorded? Representative Jackson. Mr. Clerk, take the record. 94 voting `yes', 22 voting `no', 2 voting `present', Senate Bill 3721, having received the Constitutional Majority is hereby declared passed. Representative Myers."

Myers: "Point of personal privilege, Mr. Speaker."

Speaker Mautino: "State your point, Sir."


Myers: "Behind me in the gallery today are students from Western Illinois University that are members of a graduate class, their advisor Dr. Garry Johnson. They're down here to talk the Illinois Board of Higher Education and the Illinois Community College Board and observe the Legislature in action. Please welcome them to Springfield."

PROOF OF SERVICE

I, Claire A. Manning, certify that I have served the attached **Post-Hearing Comments of the Public Building Commission of Chicago**, by U.S. Mail, first class postage prepaid, on December 2, 2011 to the following:

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