

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO CLEAN)
CONSTRUCTION OR DEMOLITION)
DEBRIS (CCDD) FILL OPERATIONS:)
PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code 1100

R 2012-009
(Rulemaking – Land)

NOTICE OF FILING

To: John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street – Suite 11-500
Chicago, IL 60601-3218

Marie Tipsword, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street – Suite 11-500
Chicago, IL 60601-3218

Also Attached Service List

Please take notice that I have today filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Pre-Filed Testimony of Pat Metz, P.E., a copy of which is served upon you.

By: Pat Metz
Pat Metz, P.E.
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Office of Environmental Health and Safety
201 East Lake Shore Drive
Springfield, IL 62761

and

Christine Zeman
Regulatory Affairs Manager
City Water, Light and Power
800 East Monroe
Springfield, IL 62701

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PRE-FILED TESTIMONY OF PAT METZ, P.E.

Introduction

My name is Pat Metz and I am a licensed Professional Engineer employed by City Water, Light and Power (CWLP) which is a municipal utility serving the residents of Springfield and surrounding communities with water and electricity. My responsibilities with the Utility include assuring compliance to state and federal waste disposal regulations. I received an Associate of Arts Degree from Springfield College in Illinois and a Bachelor's Degree in General Engineering from the University of Illinois in Champaign/Urbana in 1976. I began my career at the Illinois Environmental Protection Agency, followed by 25 years at the Illinois Department of Public Health as an Environmental Engineer and most recently 7 years as an Engineer at CWLP.

I have been responsible for the proper disposal of excavated material generated from the construction, maintenance and emergency repair of both water pipes and electrical lines. When these utilities are located in a street, alley, or driveway, engineering practice prohibits placing the excavated material back in the hole, necessitating the need to find a proper home for the material. While we recycle the concrete and asphalt when possible, our Water Department alone generates over 8,000 tons per year of Clean Construction or Demolition Debris (CCDD). Prior to the enactment of Public Act 96-1416 on July 30, 2010, this material was placed in a quarry permitted by the Illinois Environmental Protection Agency (IEPA) to accept CCDD material. However, with the passage of P.A. 96-1416 and the requirement to comply with the Agency's Interim Standards, CWLP had no choice but to abate the use of this facility and dispose of the material in a municipal landfill. It is my hope that reasonable rules will be adopted that will allow us to resume the practice of using the material for the beneficial use of filling the quarry.

My testimony will address differences between the last proposed rules of the IEPA and the proposed rules of the Illinois Pollution Control Board as published in the February 24, 2012 edition of the *Illinois Register*. The focus of my testimony is as a municipal generator of excavated material in the course of routine maintenance and repairs of water and electrical systems, rather than, for example, generators excavating material from planned projects. I am appreciative of the opportunity to express my concerns with the Board's proposed amendments to the Clean Construction or Demolition Debris Fill Operation rules as contained in the February 2, 2012 Opinion and Order.

Testimonial Statement

It is my belief that the Board's proposed amendments to the Clean Construction or Demolition Debris Fill Operations rules are both unreasonable and unnecessary for the type of excavations conducted by not only City Water, Light and Power, but every similar utility throughout the state. My basic belief is that P.A. 96-1416 was unnecessary as there were adequate and appropriate regulations in place prior to the enactment of this law. A review of the transcript of the testimony during the debate of Senate Bill 3721 supports my position. For example, it was stated that one of the necessities for passing the Bill was that "... 90 to 95 % of the quarries in the state are not registered with the EPA". The regulations in existence since 2006 have required that the quarries receive a permit and be inspected by IEPA if they accept CCDD material. Imposing more restrictive requirements on the generators and CCDD fill operations that have attempted to comply will not cause the noncompliant operators to automatically comply. My review of the testimony of both the IEPA staff and representatives of the public regarding the Agency's proposed rules has failed to convince me of the need for more stringent regulations of CCDD material because of environmental concerns or the lack of necessary enforcement authority. Nonetheless, I understand that P.A. 96-1416 mandates the rulemaking, so I will attempt to bring to your attention areas of the Board's proposed amendments that I believe are unreasonable as they apply to excavations related to utility repairs.

Immediately following the enactment of P.A. 96-1416, IEPA provided guidance that specified that street right-of-ways, whether in residential or commercial areas, are considered commercial/industrial property. Consequently, a licensed Professional Engineer (or now also a Licensed Professional Geologist) must certify that the soil was not contaminated. While an actual analysis of the soil was not required, I do not know any engineers or geologists that have the ability to look at a pile of dirt and determine that none of the 137 chemicals required by the regulations are exceeded. As a Licensed Professional Engineer, I informed my superiors that I could not comfortably or knowingly certify that the soils from our excavations were "uncontaminated".

The only other option if CWLP were to use a CCDD permitted site for our excavated material would be to sample and analyze each of the excavation sites. But actually sampling each of our more than 80 annual excavations is totally impractical with

the cost of each analysis approximately \$1,500, a time delay of at least two weeks and no place to legally store the material while we wait for the results. The current proposal by the Board contains this same impractical option. If we want to comply with the requirements, which we do as evidenced by my appearance today, we have no reasonable option but to take the material to the local municipal landfill. Disposal in the municipal landfill is much more expensive than disposing of the CCDD material in the permitted CCDD facility, but less expensive than sampling each excavation site. We continue to recycle concrete and asphalt as much as practical.

I was hopeful with the rulemaking reasonable regulations would allow us to resume taking the material to the quarry. As indicated in my October 14, 2011 comments to the Board on the rules proposed by the Agency which were filed with the Board on July 29, 2011, I supported the use of the term "potentially impacted property" and believed that the Agency's proposal gave the site owner or operator where the CCDD was generated the latitude to determine if an excavation in a street right-of-way needed further analysis. The source site owner or operator of any property including street right-of-ways in commercial or residential areas could certify based on their knowledge that the soil was "uncontaminated". It is my opinion that the experience and training that our excavation crews have is adequate to assure the safety of the environment. Since 2006 there has been the additional safeguard of requiring the load to be checked with a photo ionization detector before actually placed in the quarry.

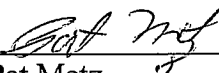
However, I believe the Board's First Notice proposal of requiring a detailed site evaluation of each excavation per ASTM Standard 15427-05 is inappropriate for these types of excavations. While I support the Board's decision not to require groundwater monitoring around the fill operations, I believe the proposed extensive scrutiny by the site owner or occupant of any location that generates CCDD cannot be justified since there is no documentation to my knowledge of detrimental environmental effects of the placement of the CCDD in IEPA permitted fill operations as has been required since 2006. Better enforcement of the previous law is what was needed. I think it is important to look at the big picture of the type of excavations a utility such as CWLP performs. Prior to the enactment of P.A. 96-1416, we were simply taking the material that was already in the ground and not known to be contaminated and moving it to another location, in our case 10 miles away, where each truckload was checked with a photo ionization detector before being placed in a 40 feet deep hole. If in the rare instance during the excavation diesel fuel, gasoline or sewage was detected, we would sample the material and properly dispose of it based on the results. However, the proposed rules will require a 39-item site screening questionnaire to be completed for each excavated location. The amount of time to complete this questionnaire, including historical research, may be appropriate for a major IDOT project or a planned development, but is difficult to justify for a simple excavation of 3 truckloads of CCDD. Our staff is familiar with recognizing when the soil is contaminated with petroleum and related products. My suggestion, short of recommending that the Agency's proposal for Section 1100.205 be adopted, would be to incorporate an exclusion for CCDD material generated in association with water and electrical utility maintenance and repair when no conditions exist that present an environmental risk.

In reviewing the supporting information pertaining to the rulemaking from both IEPA and the Board, I fail to find any specific cost estimate of the effect of the rulemaking to the generator of the CCDD or the operator of the CCDD fill location. IEPA concurred that there would be a cost incurred, but believed that it "will not be detrimental as the proposal is a continuation of the interim standards required by P.A. 96-1416." Of course no cost impact was required when the law was amended. I also disagree with the comment that "The Board finds that the rule as proposed for first notice is economically reasonable and technically feasible." How can it be considered "economically reasonable" when to my knowledge no costs have been estimated by either the Agency, the Board, or the Department of Commerce and Economic Opportunity? While the proposal may be "technically feasible", I certainly do not consider them "reasonably feasible" as they apply to utility excavations. I do not understand why the statutory requirement for an economic impact study has not been conducted and am hopeful that the Joint Committee on Administrative Rules will mandate an economic analyses, which would likely result in more appropriate rules. For our utility, the impact is drastic. Specifically, prior to P.A. 96-1416, we were paying \$100 to dispose a tandem truckload (15 tons) of CCDD material at the local quarry. Because the regulations left us with the only option to landfill the material, our cost increased to \$420 for this same truckload, representing a 320% increase. Based on 8,000 tons per year, this equates to an increase from \$53,333 to \$224,000 or \$170,667 annually. CWLP is only one of more than 1,000 municipalities in Illinois.

While the intent of the regulations supposedly is to protect the environment, I contend that it does the opposite. Because of the reasons mentioned above, unless appropriate rules are adopted for utility excavations, municipalities such as the City of Springfield will continue to needlessly fill valuable landfill space with material that previously was used beneficially. The IEPA 2010 *Landfill Capacity Report* indicates that landfill space in Illinois will be depleted by the year 2035. I suggest that these regulations will cause the capacity to be met prior to that date if utility generators such as CWLP attempt to comply with proposed rules that are unreasonable. It appears there is a lack of concern for one of our valuable but limited resources - landfills. In my opinion, the Board's proposed amendments to the CCDD regulations fail to subscribe to the waste hierarchy of Reduce, Reuse and Recycle that is codified in Illinois law. Efforts should be made to prevent the least favorable option - actual disposal in a landfill.

Thank you. I truly appreciate the opportunity to express my concerns and am hopeful they will be given appropriate consideration.

Respectfully Submitted,



Pat Metz
City of Springfield
Office of Public Utilities
dba/ CWLP

March 5, 2012

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on March 5, 2012, I have filed electronically the attached **PRE-FILED TESTIMONY OF PAT METZ, P.E. OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES**, upon John Therriault, Assistant Clerk, and Marie Tipsword, Hearing Officer, and by First Class Mail, postage prepaid, a true and correct copy to the individuals named on the foregoing Notice of Filing on March 5, 2012, from Springfield, Illinois.



This filing uses recycled paper as defined in Subpart B of the Procedural Rules.

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