

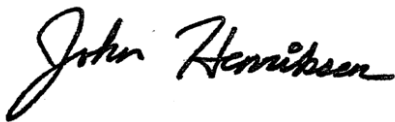
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO CLEAN)	R12-9
CONSTRUCTION OR DEMOLITION)	(Rulemaking – Land)
DEBRIS (CCDD) FILL OPERATIONS:)	
PROPOSED AMENDMENTS TO 35 Ill.)	
Adm. Code 1100)	

NOTICE OF FILING

TO: SEE ATTACHED PROOF OF SERVICE

PLEASE TAKE NOTICE that I have today filed the Illinois Association of Aggregate Producers' First Notice Comments, with the Office of the Clerk, Illinois Pollution Control Board, copies of which are served upon you.



By: _____
John Henriksen, Executive Director
Illinois Association of Aggregate Producers
1115 South Second Street
Springfield, IL 62704
217.241.1639

Date: March 18, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROPOSED AMENDMENTS TO CLEAN))	R12-9
CONSTRUCTION OR DEMOLITION))	(Rulemaking – Land)
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**ILLINOIS ASSOCIATION OF AGGREGATE PRODUCERS
FIRST NOTICE COMMENTS**

The Illinois Association of Aggregate Producers (IAAP) hereby files the following First Notice Comments in this matter directed to the Illinois Pollution Control Board ("Board"), pursuant to the Hearing Officer’s March 14, 2012 Order.

To facilitate hearing efficiency and the participants’ ability to provide information, Hearing Officer Tipsord issued a pre-hearing order listing questions the Board would direct to witnesses appearing at the hearings scheduled for this rulemaking. This list included the following two questions directed to the Illinois Environmental Protection Agency (IEPA):

- Question 3b: Please comment on the approximate number of annual certifications by site owners/operators received by the Agency. Also, what would be the percentage of such certifications vs. PE/PG certifications that might be expected for a typical CCDD fill site?
- Question 3c: Please compare your estimated cumulative costs of the site owner/operator certification with the expected groundwater monitoring costs at a typical CCDD fill site on an annual basis. From this information, would you be able to estimate a per ton (or per cubic yard) cost for IEPA’s proposed groundwater monitoring vs. the First Notice proposed ASTM certification? (See PFT Kenneth Liss 3/5/12 at 2.)

[See March 9, 2012 Hearing Officer Order, page 2].

During the March 13, 2012 hearing on this matter, Doug Clay suggested that CCDD fill site operators may be better able than IEPA personnel to provide data in response to these questions. [See Transcript of March 13, 2012 Hearing, pp. 29-31]. Later during the hearing, Ms. Alisa Liu, Board Technical Unit, asked “. . . whether or not the Illinois Association of Aggregate Producer members would be interested in looking over those questions and perhaps providing the Board with some information on that.” [See Transcript of March 13, 2012 Hearing, pp. 78-79].

As outlined below, IAAP members currently operating fill sites regulated under Part 1100 have provided data in response to Questions 3b and 3c, as requested by the Board. In addition, the IAAP is providing comments on two key issues in this proceeding advanced by the IEPA: **groundwater monitoring at sites regulated under Part 1100 and MACs based upon low pH soil remediation objectives.**

Question 3b: Comparison of site owner certifications (662) vs. PE/PG certifications (663)

Annick Maenhout, Lands Manager, VCNA Prairie, Inc., reports the following numbers of certifications filed at **Prairie Materials sites** during 2010 - 2012 as well as a comparison of site owner certifications (662) vs. PE/PG certifications (663):

Year	662's accepted	663's accepted
2010	61	13
2011	221	73
2012	41	11

Bret Hall, Acting Manager of CCDD Operations, Hanson Material Service, reports the following numbers of certifications filed at **Hanson Material Service sites** during 2010 - 2012 as well as a comparison of site owner certifications (662) vs. PE/PG certifications (663):

Year	662's accepted	663's accepted
2010	124	110
2011	291	54
2012	42	13

Gregory Wilcox, P.E., President of Winston Engineering, reports the following numbers of certifications filed at **Bluff City Materials** and **Reliable Materials Lyons** sites during 2010 - 2012 as well as a comparison of site owner certifications (662) vs. PE/PG certifications (663):

Company	662's accepted	663's accepted	Total Dirt projects	% 662 of dirt projects	% 663 of dirt projects
Bluff City	409	314	723	56.57%	43.43%
RML	644	493	1137	56.64%	43.36%

Question 3c: Expected annual groundwater monitoring costs at a typical CCDD fill site

Responding to the Board's request to estimate costs for a ground water monitoring system at a typical CCDD site is extremely difficult due to the numerous variables for each site. The size of the site, depth of excavation, type of material mined (sand or limestone) and depth of groundwater are just some of the variables which will affect the cost for ground water monitoring. In an attempt to derive such estimates, the IAAP obtained the costs incurred by member Bluff City Materials to develop a groundwater monitoring model and wells for their CCDD site located within a sand and gravel operation in Bartlett, Illinois. Sand and gravel mines are typically large shallow sites that rarely have inward gradients and would be required to do annual testing of wells under the IEPA's initial rulemaking.

The Bluff City groundwater model was developed to determine flow rates and direction of flow from the CCDD site to determine if there would be any impact to the groundwater flow for the Bluff Springs Fen. The project included developing wells around the 1,000 acre sand and gravel mine to determine upstream and downstream gradients and the modeling to determine groundwater flow rates.

According to **Gregory Wilcox, P.E.**, the total cost for engineering, surveying, well development, and analysis by consultants for the Bluff City Materials groundwater model totaled \$528,000. Some of these costs were attributable to flow rate modeling for Bluff City Materials that would not be required in the proposed IEPA groundwater monitoring rules. After backing out the additional costs generated by more complex modeling, Bluff City Materials' estimated total costs to determine groundwater gradients – before filling, after filling and to establish testing and monitoring wells for this site as proposed by IEPA – would be approximately \$350,000.

In addition, the annual sampling proposed by the IEPA would require purging wells, collecting samples and preparing a sampling report. Bluff City Materials estimates total sampling and testing costs for the 6 wells potentially included within a groundwater monitoring program to total \$20,000 to \$25,000 annually. These costs would be added to the significant expenses already required for coming into compliance with the Board's proposed changes to Part 1100.

Conclusion

I. The evidence in the record of this proceeding does not support the need for groundwater monitoring, as proposed by the IEPA.

After reviewing the evidence in the record regarding the IEPA's initial rule proposal, the Board's February 2, 2012 decision in this proceeding made the following two findings regarding the need for groundwater monitoring at fill sites regulated under Part 1100:

“First, the Board finds that no evidence was provided to demonstrate that CCDD or uncontaminated soil fill sites were a source of groundwater contamination. Also, considering the potentially sizeable costs for groundwater monitoring, the Board finds that this record does not support groundwater monitoring at this time. The Board therefore proceeds to first notice without Subpart G of IEPA's proposal.” [See February 2, 2012 Opinion and Order of the Board, page 78].

No participant to this proceeding has offered a shred of probative evidence contrary to the Board's findings on this issue. Thus, Subpart G of the IEPA's proposal should remain excluded from the final rules adopted by the Board for fill sites regulated under Part 1100.

II. The evidence in the record of this proceeding does not support low pH soil remediation objectives, as proposed by the IEPA.


Proposed Sections 1100.605(a)(2) and (a)(3)(A) require that, for both ionizing organic and inorganic constituents, the lowest pH-dependent values for the soil component of the Class I groundwater ingestion exposure route in 35 IAC 742. Appendix B, Table C be substituted for the pH-neutral value provided for the soil component of the Class I groundwater ingestion exposure route value in Appendix B, Table A. During the October 25, 2011 hearing in this proceeding, the IAAP offered persuasive testimony in opposition to the IEPA's decision to base Maximum Allowable Concentrations (MACs) in proposed Part 1100 upon specific low pH soil remediation objectives. [See October 25, 2011 Hearing Transcript, pp. 30-35; Exhibit 12, Pre-Filed Testimony of John Hock]. During his testimony, Mr. Hock outlined why basing MACs upon low pH specific soil remediation objectives is not appropriate.

Specifically, the First Environmental data cited within Mr. Hock's testimony provided pH data from "solid" samples analyzed by their lab. These solid samples included soil and non-soil materials (e.g., wastes that are not even considered to be sent to a CCDD facility). First Environmental analyzed approximately 8,500 solid samples from January 2006 to September 2011. Eight thousand three hundred of these samples (over 97.6 percent) had a pH of 6.25 or greater (See Attachment 3 to Exhibit 12). Based on this data, Mr. Hock testified in support of a MAC for pH of 6.25 or greater and basing MACs for applicable parameters on the lowest pH specific soil remediation objectives from pH 6.25 and above.

During the March 13, 2012 hearing in this proceeding, the IAAP offered further written and oral testimony in opposition to the low pH specific soil remediation objectives in proposed Part 1100. [See March 13, 2012 Hearing Transcript, pp. 65-81; Exhibits 36-39, Pre-Filed Testimony of Bret Hall, Annick Maenhout, Gregory Wilcox, P.E. and John Hock, P.E.]. Mr. Hall (Hanson Material Service), Ms. Maenhout (VCNA Prairie, Inc.) and Gregory Wilcox, P.E. (Bluff City Materials and Reliable Material Lyons) all stated, based upon data taken from their facilities, that using MACs based on the most acidic TACO pH based cleanup objectives is unrealistic and not indicative of soils material generated from construction projects in northeastern Illinois.

In contrast to data derived from testing soil actually accepted at CCDD facilities, the IEPA supports its specific low pH soil remediation objectives on data published in the National Resources Conservation Resources STATSGO database. Specifically, as Thomas Hornshaw testified during the October 26, 2011 hearing: "[t]hrough internet searches and other inquiries, the Agency selected the state soil geographic database known as STATSGO as our source for pH values." [See October 26, 2011 Hearing Transcript, page 73; Exhibit 25]. Mr. Hornshaw explained that a range of pH data was provided for major soil types in the 23 Illinois counties which have a permitted CCDD fill site or registered uncontaminated soil fill site. [See October 26, 2011 Hearing Transcript, pp. 71-76]. Yet the manner in which these results were measured and its relevance to potential soil acceptance at CCDD or uncontaminated soil fill sites was not explained. More significantly, and in contrast to the testimony provided by the IAAP witnesses, the IEPA presented absolutely no evidence that soils matching STATSGO pH values were used as fill at any permitted CCDD fill site or registered uncontaminated soil fill site. In summary, the pH values from the STATSGO database have not been shown to be representative of soils typically accepted at CCDD fill sites or registered uncontaminated soil fill sites.

At the close of the IAAP presentation at the March 13, 2012 hearing, John Hock, P.E. testified that data provided from the operators outlined above is consistent with his previous testimony and is believed to be representative of soil fill material accepted at greater than 90% of the currently permitted CCDD fill sites in Illinois. The IAAP respectfully submits that the only probative evidence in the record of this proceeding mandates establishing a MAC for pH of 6.25 or greater and basing MACs for applicable parameters on the lowest pH specific soil remediation objectives from pH 6.25 and above.



John Henriksen, Executive Director
Illinois Association of Aggregate Producers

PROOF OF SERVICE

I, John Henriksen, certify that I have served the attached **Illinois Association of Aggregate Producers' First Notice Comments**, via electronic filing, on April 18, 2012, to the following:

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

and by first class mail, postage prepaid, on April 18, 2012, to the following:

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