

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)

FIRST NOTICE COMMENT OF THE CITY OF CHICAGO

**Maximum Allowable Concentrations for Chemical Constituents
in Uncontaminated Soils**

The Maximum Allowable Concentrations for Chemical Constituents in Uncontaminated Soils (“MACs”), established in Subpart F of the proposed rule, are based on an acidic soil-pH range of 4.5-4.74. Data, scientific information and expert opinions presented in pre-filed testimony and at the March 13-14, 2012, hearing, however, suggest that this range is inappropriately low. *See, e.g., Pre-Filed Testimony of James E. Huff, P.E (March 5, 2012), pp. 3-8 (“The Board’s proposed regulation is based on the soil pH of less than 1 percent of the soils in Illinois . . .”); Pre-Filed Testimony of Dr. Fabian G. Fernandez (March 5, 2012) (“I question the validity of the Illinois Environmental Protection Agency (Agency) using the lowest soil pH range of 4.5 to 4.74 found in Illinois . . . [T]he likelihood of encountering soil with pH 4.74 or lower [is] very limited.”); Pre-Filed Testimony of Dr. William Roy (March 5, 2012) (“A soil pH that is less than five is not typical for the soils in Illinois.”).*

The record suggests, further, that soils that exhibit very low pH are found in places unlikely to be excavated in construction or demolition, *i.e.*, bogs and fens, *see Pre-Filed Testimony of James E. Huff, P.E (March 5, 2012), p. 4 (“Low pH soils are limited to soils that essentially exist in a constant water saturated condition with elevated organic content, such as bogs.”)*, and that even if a quantity of soil exhibiting an acidic pH is deposited into a quarry, the soil would be unlikely to harm groundwater, *see id. at p. 5 (“[E]ven if some loads of low pH soil were to be introduced into a fill operation, the groundwater pH would be rapidly neutralized to the alkaline side due to the pH of the other material as well as the buffering capacity of the groundwater itself.”); Pre-Filed Testimony of Dr. Fabian G. Fernandez (March 5, 2012), p.2.*

Based on the foregoing, the City is concerned that the proposed MACs will exclude a great deal of soil that can, in fact, be safely deposited into Fill Operations. Given the extraordinary environmental and monetary costs of landfilling clean soil, the City urges the Board to reconsider Subpart F in light of the data and expert testimony in the record.

Soil Certification Standards

Each year, municipalities and other public entities throughout Illinois engage in thousands of public works projects, such as roadway work, and repair and replacement of critical water and sewer infrastructure. These projects' boundaries may extend over multiple city blocks, which may encompass dozens or even hundreds of parcels. They often involve linear excavations in the public way.

The ASTM Standards proposed by the Board for soil certification were not designed for these types of projects and, as a result, are a poor fit for them. Moreover, the costs of complying, in a public works project scenario, with standards designed for single- or discrete-parcel transactions, would often be prohibitive.

Without an appropriate soil certification standard, the proposed rules will prevent municipalities and other public entities from depositing uncontaminated soil into Fill Operations. This is of great concern, not only environmentally, but also economically. Mr. Metz has testified to the Fill Operation/landfill cost differential, stating that CWLP has paid \$100 to deposit 15 tons of material at a Fill Operation and \$420 to dispose of the same volume at a landfill. *See Pre-Filed Testimony of Pat Metz, P.E. (March 5, 2012).* The City of Chicago excavates hundreds of thousands of tons of soil and debris every year. Based on the costs incurred by CWLP, it would cost the City \$6,667 to deposit 1,000 tons at a Fill Operation and \$28,000 to dispose of the same 1,000 tons at a landfill. For 10,000 tons, these costs would obviously rise to \$66,670 at a Fill Operation and \$280,000 at a landfill. These numbers, and this differential, are staggering.

The City is not suggesting, of course, that all of its excavated soil is uncontaminated; but certainly some is. The high cost of disposing of contaminated soil in a landfill can be justified: contaminated material must, of course, be managed and disposed of accordingly. If, however, the City and other public entities are forced to landfill uncontaminated soil, due to the lack of an appropriate certification standard for public works projects, such as linear excavations in the public way, then the additional costs are very difficult to justify.

The City requests, therefore, that the rule be modified as recommended in the March 5, 2012, *Pre-Filed Testimony of James E. Huff, P.E.*, at pages 8-9. This recommendation both protects the environment at the Fill Operation site and enables source site owners, such as the City, to deposit uncontaminated soil at a Fill Operation, as opposed to wastefully landfilling it.

In-Progress and Already-Bid Public Works Projects

Like many public entities, the City of Chicago has public works projects in progress at virtually all times. The City estimates that over \$200 million worth of already-in-progress and already-bid transportation projects will be affected by the proposed soil certification requirements. (This estimate does not include water or sewer projects.) The projects at issue are located throughout the City.

The City is concerned that applying new certification requirements to projects that are already in progress, or that have already been bid, will foreseeably cause project delays. This concern is not merely economic. Delayed projects are unfinished projects: they involve open holes and trenches, unfinished sidewalks and roadways, extended lane closures, and/or other potential problems. In addition, delayed projects can result in foreseeably large public monetary losses, as contractors file claims. Moreover, in the City's experience, contractors are not always able to maintain workers on their payrolls for extended time periods and may lay people off. This can also delay restarting the already-delayed projects.

The problems associated with applying new standards to already-bid and already-in-progress projects are foreseeably large, but the number of projects at issue is limited. Moreover, because public contracts are public records, there is no difficulty in distinguishing the already-in-progress or already-bid projects from new projects.

The City asks, therefore, that the Board consider a "grandfathering" clause for public works projects that are already in progress or that have already been bid, as of the effective date of the new rules. Under such a clause, the current, statutory requirements and forms would continue to apply. (For additional protection, such a clause might disallow use of the existing form 662 for these projects and require a PE or PG to use existing form 663, regardless of whether the source site is residential, industrial/commercial, etc.)

Grab Samples and Composite Samples

The proposed rule requires that only grab samples are to be collected for purposes of demonstrating compliance with the MACs. The record indicates, however, that grab samples may be less representative than composite samples, with respect to chemical constituents other than VOCs. *See Pre-Filed Testimony of James E. Huff, P.E., pp. 9-10; Pre-Filed Testimony of Dr. Fabian G. Fernandez, p. 2.* The City, therefore, asks the Board to reconsider the grab sample requirement in light of the record. The City asks the Board also to consider the possibility of allowing composite sampling as an option, to be exercised in the discretion of the PE or PG, for soils that exhibit no visual or olfactory indicia of impact. (Again, this would not include sampling for VOCs, for which grab samples would still be required.)

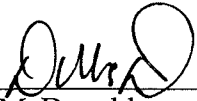
Small Excavations and Unplanned Excavations

While many public works projects are large and involve massive excavations, others are quite small and may result in only one or two truckloads of excavated material. Still others – over 12,000 per year, in the City of Chicago's case – are emergency or otherwise unplanned projects, such as emergency repairs. These projects may involve large or small excavations, but they obviously cannot be planned in advance.

The City is concerned that it will have to landfill uncontaminated soil from its small excavations, rather than sending uncontaminated soil to Fill Operations, simply because the costs of certification will be very high relative to the amount of material at issue.¹ The City is also concerned that it will have to landfill uncontaminated soil from emergency/unplanned excavations, regardless of the volume of soil excavated, because it will be impossible to conduct the required certification activities.

The City understands that environmental concerns probably preclude a simple exemption for small excavations or emergency excavations; however, the City believes that some alternative to the proposed standards will be needed. The City asks, therefore, that the Board give consideration to alternative requirements for small excavations and for emergency/unplanned excavations.

Respectfully submitted,



Doris McDonald
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30 North La Salle Street #1400
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Dated: April 18, 2012

¹ Again, the City is not suggesting that all of this soil will be uncontaminated; but certainly some will.


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NOTICE OF FILING

To: SERVICE LIST (ATTACHED)

Please take notice that I have this day filed with the Office of the Clerk of the Illinois Pollution Control Board the First Notice Comment of the City of Chicago, a copy of which is hereby served upon you.

By: 
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Dated: April 18, 2012

PROOF OF SERVICE

I hereby certify that on this day, **April 18, 2012**, I have caused copies of the attached Pre-First Notice Comment of the City of Chicago to be served via **FedEx Overnight Delivery** to:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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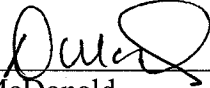
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