BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO	)	
CLEAN CONSTRUCTION OR DEMOLITION	)	R2012-009
FILL OPERATIONS	)	(Rulemaking-Land)
(35 ILL. ADM. CODE 1100	)	

NOTICE OF FILING

To: John Therriault, Clerk
Illinois Pollution Control Board
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Persons included on the attached

Please take notice that I have today filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Response to the First Notice Comments of the Illinois Transportation Coalition, a copy of which is served upon you.

HUFF & HUFF, INC.

By: James E. Huff
Senior Vice President

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JAMES E. HUFF, P.E., ON BEHALF OF THE ILLINOIS TRANSPORTATION COALITION
RESPONSE TO FIRST NOTICE COMMENTS ON THE PROPOSED CLEAN CONSTRUCTION
OR DEMOLITION DEBRIS FILL OPERATIONS

The Illinois Pollution Control Board (Board) has completed additional hearings on its First Notice opinion and order relating to Clean Construction or Demolition Debris (CCDD) fill operations. At the close of these additional hearings, the position of the Illinois Environmental Protection Agency with regard to the appropriate minimum soil pH used for establishing Maximum Allowable Concentrations (MACs) was unfortunately unknown. The Agency's First Notice Comments suggest the Agency continues to believe the appropriate soil pH range for establishing MACs is the range 4.5 to 4.74.

The Agency continues to ignore the economic burden the low pH range proposed will have on the State of Illinois, apparently sticking with its economic impact assessment presented in its Statement of Reasons. The Agency's analysis ignored the costs associated with the rejection rate of 82% of the soil historically gone to CCDD that are above the proposed MACs[1] without demonstrating any clear benefits. There is supposition but no data to support the agency's concern regarding groundwater impacts that would justify such conservative pH regulations. As both the undersigned testimony demonstrated[2] and the Post-Hearing Comments of the Public Building Commission of Chicago,[3] the economic impacts are significant and will have a heavy impact on the ability of Illinois to create jobs.

Specific comments to the Agency's First Notice Comments are presented below:

- The Agency originally explained that the pH concern was the soil brought into the CCDD facilities, not the groundwater pH. Les Morrow testified;

  ..the NPDES results more accurately represent groundwater conditions than they do conditions in the fill....Furthermore, local pH conditions will not account for soils of variable pH that are deposited into fill.[4]

[1] Illinois EPA Statement of Reasons, pages 6-7.
[2] Pre-filed Testimony of James E. Huff, March 2012, pages 2-3.
[3] April 2012, pages6-7 and Attachment A.
[4] Hearing Transcript, September 26, 2011, pages 45-46.

The First Notice comments now raise concerns about the groundwater pH;

> *...reasons to believe these fill sites and potential fill sites are subject to water table fluctuations and are hydraulically linked to adjacent wetland complexes in many cases. The potential for interaction with saturated materials in fill operations of acidic or alkaline pH within these hydrogeologic settings is another reason to restore the Agency's proposed groundwater monitoring requirements in Subpart G. .... Since the CCDD and soil fill sites are located within the geologic materials comprising aquifers adjacent to these wetland areas, it is expected that fluctuation of the water table within the wetland aquifer complex and saturated CCDD and soil fill materials may at times create a more acidic or alkaline contaminants in fill material in contact with groundwater.* [5]

So first the Agency rejected the notion that the groundwater pH at these quarries was relevant, but now raises concerns that adjacent to wetlands or fens, the pH can be acidic or alkaline and could influence groundwater pH within the quarry. The Agency has the pH data on the groundwater pumped from all the quarries under the NPDES program, which they elected not to introduce, apparently because the Agency did not feel it was relevant. The Illinois Transportation Coalition did, however, introduce these data as Attachment 1 to its Pre-First Notice Comments.[6] For convenience, it is again included herein as Attachment 1. The results show the Agency's "concerns" are without foundation. The pH values are consistently on the alkaline side.

As to bogs and wetlands being connected hydraulically to the quarries, if this were significant, the bogs and wetlands would quickly be drained from the quarry dewatering pumping. The Agency knows full well this would be a federal violation. No specific examples or data were provide by the Agency to support its hypothesis. You are not allowed to drain a wetland in the United States. As the Volo Bog is also a nature preserve, if the adjacent quarry was dewatering this site, it is our understanding that Illinois Law requires approval from the Illinois Legislature to allow such an activity.

- The Agency's approach included some additional items, such as acid rain, which are extraneous to the matter under consideration. Acid rain is a concern, but to lakes with low buffering capacity. This is not the case for quarries or the uncontaminated soil, which have a significant buffering capacity and the NPDES pH data provided from the quarries clearly show this is not a real concern. Under the Agency's thought process, acid dissolution of metals from all of the Illinois croplands should be their focus; a lot more rain falls on cropland than falls on quarries, and the agriculture soil layer is considerably thinner than the uncontaminated soil fill in a quarry, so there is less buffering capacity. The Agency's acid rain argument has no place in the current CCDD proceedings and the mobilization of the metals argument also ignores Dr. Roy's hysteresis explanation of metals adsorbed to soil.[7]

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[5] Illinois EPA First Notice Comments, April 2012, pages 12-13.
[6] December 2, 2011.
[7] Pre-filed Testimony of Dr. William Roy, March 5, 2012, page 7-13.

- The Agency rejected the concept of using local ordinances as a method of addressing groundwater contamination.[8] The Agency states;

> *..using restrictive ordinances to allow groundwater contamination from materials intentionally deposited at a site would be contrary to prohibition in the Act and rules and tantamount to allowing local ordinances to trump the board's groundwater protection regulations.....*

No one has proposed placing *materials* that would intentionally cause groundwater contamination. This is analogous to gasoline underground storage tanks (USTs). No one places gasoline USTs in the ground with the intent of causing groundwater contamination, but it occasionally happens. The Agency has repeatedly argued in the CCDD proceedings that the testing and screening procedures are not perfect, and some contaminants may get deposited in CCDD facilities. This is just like gasoline USTs, some releases will occur. Having the same options for addressing groundwater impacts, should they occur as allowed in the other Illinois programs is a cost effective approach and protective of the environment.

- The Agency provided considerable comments on the role of soil pH in determining Maximum Allowable Concentrations in its First Notice Comments,[9] and continues to stick with its approach, despite overwhelming information in the record that clearly demonstrates raising the minimum soil pH. The Agency concludes with;

The Agency cannot say with any certainty the extent to which soils with pH values below 6.25 are being accepted at fill operations nor can it rule out the possibility that such soils will be accepted at fill operations in quantities large enough to leach higher concentrations of pH-sensitive contaminants to groundwater.[10]

Given the record, which includes a number of CCDD pH testing over a year period and the soil borings at four quarries, the Agency's inability to accept the appropriateness of the alternative pH range of 6.25 to 6.64, ignores the economic ramifications of its proposal with no documented benefit to the environment. A simple solution is to require a soil pH from each job site, including those job sites using Form 662, and let the market determine whether the generator or the quarry will do this testing.

- The Agency on page 39 of its First Notice Comments notes that loads rejected for soil pH would <u>not</u> be a waste, yet notes Section 1100.205(b)(4) would require rejected loads to be landfilled. This is another unnecessary economic burden. As Dr. Roy noted, a little crushed limestone mixed in with the load would quickly increase the pH,[11] and this should be allowed. Simply returning low pH soil to the job site for re-use should also be

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[8] Illinois EPA First Notice Comments, April 2012, pages 16.
[9] April 18, 2012, pages 27-40.
[10] April 18, 2012, page 37.
[11] Pre-filed Testimony of William Roy, March 5, 2012, page 14.

allowed. Why does the Agency continue to push for placing uncontaminated soil in landfills?

- Finally, the Agency notes;

> *Given the declining pH values as one moves southward across the State, one would expect greater amounts of soil to be excluded from fill operations in central and southern Illinois than in northern Illinois.*

So we should penalize the northern part of the state, where nearly all of the CCDD facilities are located[12] because the central and southern parts of the state have lower pH?? If the Agency is concerned about keeping low pH soil out, why impose such an economic burden on the northern portion of the State based on the Agency's desire for *one size fits all approach?* What is appropriate from an economic impact perspective on the State of Illinois is to adopt for the lower soil pH range 6.25 to 6.64 for establishing MACs! If the Agency believes this imposes an economic hardship on the central and southern part of the State that should be also be incurred for the northern part of the State for some reason, there are simple options. As the undersigned suggested previously as well as Dr. Roy, adding crushed limestone to low pH soil **if** t hey are encountered, is a simple, cost effective alternative to keeping uncontaminated soils in our landfills.

We look forward to continue to work with the Board and other participants in these proceedings.

Dated: April 28, 2012

ILLINOIS TRANSPORTATION COALITION

By: _____
James E. Huff, P.E.

[12] See Attachment 7 of the Agency's First Notice Comments, April 18, 2012.

ATTACHMENT 1

GROUNDWATER DISCHARGE PH DATA FROM QUARRY NPDES PERMITS

Various facilities throughout Illinois, listed by County.
pH Values of NPDES Permitted Outfalls or Groundwater Monitoring Wells

County	Type	Actual Minimum	Actual Maximum	Average
Adams	Limestone	6.94	8.51	7.87
Adams	Limestone	7.50	8.46	8.03
Boone	Limestone	7.45	8.08	7.78
Cook	Limestone	6.39	8.10	7.17
Cook	Limestone	7.70	8.50	8.09
Cook	Limestone	7.20	7.80	7.50
Grundy	Sand & Gravel	8.22	8.62	8.45
Hancock	Limestone	7.64	8.34	8.01
Henry	Limestone	7.60	8.00	7.76
Iroquois	Limestone	7.22	9.00	7.92
Kane	Sand & Gravel	7.49	8.40	8.08
Kane	Sand & Gravel	7.49	8.22	7.95
Kane	Limestone	6.58	8.50	7.39
Kane	Sand & Gravel	7.83	8.33	8.14
Kane	Limestone	7.61	8.41	8.03
Kankakee	Limestone	7.45	8.61	7.87
Kendall	Sand & Gravel	7.86	8.78	8.34
LaSalle	Limestone	7.90	7.90	7.90
LaSalle	Sand & Gravel	7.10	7.60	7.30
Livingston	Limestone	7.43	8.60	8.13
McDonough	Limestone	7.64	8.43	8.03
McHenry	Sand & Gravel	6.11	8.96	7.40
McHenry	Sand & Gravel	7.60	8.20	8.00
Montgomery	Limestone	7.40	8.40	8.00
Pike	Limestone	7.50	8.46	8.03
Pike	Limestone	6.54	8.53	7.86
Rock Island	Limestone	7.70	8.00	7.88
Rock Island	Limestone	7.40	8.20	7.88
Warren	Limestone	6.70	8.20	7.74
Will	Limestone	7.73	8.36	8.03
Will	Limestone	7.80	8.20	8.01
Will	Limestone	7.60	8.10	7.80
Will	Limestone	5.40	8.78	7.57
Winnebago	Limestone	7.50	9.03	8.13
Winnebago	Limestone	7.63	8.85	8.10
Winnebago	Limestone	7.04	8.66	7.90

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 28th day of April, 2012, I have served electronically the attached Pre-Filed First Notice Comments of the Illinois Transportation Coalition and accompanying Attachments, and Notice of Filing upon the following person(s):

John Therriault, Clerk Pollution Control Board James R. Thompson Center 100 West Randolph Street - Suite 11-500 Chicago, IL 60601	
and by U.S. Mail, first class postage prepaid, to the following person(s):	
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