

Overview of Changes Made to the Draft CCDD Rule in Response to Stakeholder Comments

External Review of the Draft Rule for Clean Construction and Demolition Debris

Illinois EPA released its draft proposed amendments to 35 Ill. Adm. Code Part 1100 to stakeholders on February, 17, 2011. The Agency received 88 pages of comments from 24 stakeholder groups:

- American Institute of Professional Geologists
- American Public Works Association – Chicago Metro Chapter
- Chicago Public Building Commission
- Chicago Street CCDD
- City of Chicago
- Forest Preserve District of Will County
- Illinois Association of Aggregate Producers
- Illinois Association of County Engineers
- Illinois Attorney General’s Office
- Illinois Department of Transportation
- Illinois Groundwater Association
- Illinois Landscape Contractors Association
- Illinois Road and Transportation Builders Association
- Illinois Society of Professional Engineers
- JAS Environmental, Inc.
- Land Reclamation and Recycling Association
- National Solid Waste Management Association
- Naval Facilities Engineering Command Midwest
- Professional Geologists of Indiana, Inc.
- Suburban Public Works Directors Association
- Vulcan Materials Company
- Waste Management of Illinois, Inc.
- Will County
- Wills Burke Kelsey Associates, Inc.

Illinois EPA appreciates the comments, issues and concerns raised by CCDD stakeholders, especially given the short deadline of March 11, 2011. The stakeholders’ careful review of the draft proposal has improved our approach to managing CCDD and uncontaminated soil.

Key Changes to the Draft Rule

1. Provided for Professional Geologists to certify that soil is uncontaminated

Illinois EPA’s revised draft rule extends the signature authority of the uncontaminated soil certification form to professional geologists. Certifications by professional engineers will continue to be accepted, and during the interim period before the CCDD rule is adopted, professional engineers are the ONLY group allowed by law to certify uncontaminated soil from industrial/commercial sites.

Some commenters requested that geologists also be recognized under Part 1100, Subpart G: Groundwater Monitoring. Illinois EPA invites stakeholders to provide legal, regulatory and/or technical justification to expand the role of professional geologists in implementing Part 1100.

2. Replaced “industrial/commercial” with “potentially impacted property”

The term “industrial/commercial,” is closely identified with zoning designations and, as a result, has caused confusion among stakeholders. The law’s intention was to identify soil that is more likely to be contaminated and in need of professional evaluation and certification before placement within a fill site. To better align with the purpose of the certification requirement and to give more flexibility to source site owners and operators, receiving facilities, contractors and environmental professionals, Illinois EPA has created a new term, “potentially impacted property.” As defined in the revised draft rule, “potentially impacted property” means property on which historical or current use increases the presence or potential presence of contamination. Illinois EPA deleted specific reference to rights of way and easements because the term “potentially impacted property” can be applied directly to these land uses.

Please note that during the interim period before the CCDD rule is adopted, the use of “industrial/commercial” is required by law and existing forms, LPC-662 and LPC-663, must still be used.

3. Revised the definition of “other excavation”

This term has long been problematic and several stakeholders requested clarification. Illinois EPA has expanded the definition as follows: “other excavation” means a pit created primarily for the purpose of extracting resources (e.g., soil, sand, gravel, clay) and does not include holes, trenches, or similar earth removal created as part of normal construction, removal, or maintenance of a structure, utility, or transportation infrastructure.

Illinois EPA Seeking Specific Comments

Illinois EPA would like feedback from stakeholders on one particular issue of concern. To be most effective, stakeholders should provide this input in the form of proposed regulatory language along with the underlying reasoning for the proposed solution.

How should the regulations address situations where an inspected load accompanied by a P.E. or P.G. certification is rejected because of a positive PID reading?

Under Section 1100.205, the draft rule requires fill sites to perform a load checking inspection using a PID instrument. Any PID reading in excess of background levels must result in rejection of the inspected load. A number of stakeholders have commented that a professional engineer’s certification of uncontaminated soil (when accompanied by lab analytical results) should take precedence over the PID reading. Please consider in your discussion that neither approach is likely to be 100 percent accurate and the relative consequences of error to the P.E. or P.G., the client and the fill site owner and operator.

Full List of Draft Rule Changes (identified by citation)

1100.103	Revised definitions for “carcinogen,” “CCDD,” “compliance point,” “other excavation,” and “uncontaminated soil.”
----------	------------------------------------------------------------------------------------------------------------------

Added definitions for “aquifer,” “compliance boundary,” “potentially impacted property,” “Professional Geologist,” “representative groundwater conditions,” “site of origin” and “uppermost aquifer.”

Deleted definitions for “commercial/industrial,” “malodor” and “zone of attenuation.”

- 1100.205(a)(1)(A) Provides for certification by source site owner or operator that site is not a potentially impacted property.
- 1100.205(a)(1)(B) Allows Professional Geologists to certify that soil is uncontaminated.
- 1100.205(a)(3) Removed statutory language also found in Subpart F section 1100.603(d).
- 1100.412(c)(1)(D) Added that three years of groundwater monitoring must be under representative groundwater conditions. Added Board note per Section 1100.715(a) that facilities have one year to install groundwater monitoring systems.
- 1100.507(d) Same change as above but applied to uncontaminated soil fill operations: Added that three years of groundwater monitoring must be under representative groundwater conditions. Added Board note per Section 1100.715(a) that facilities have one year to install groundwater monitoring systems.
- 1100.601(a) Simplified/clarified “Purpose” section.
- 1100.601(d)(2) Allows exception from soil treatment prohibition for soil physically separated from construction or demolition debris at the site where generated or at a site authorized by permit or other law to perform such treatment of construction or demolition debris.
- 1100.601(d)(3) Further clarifies that soil from a site where cleanup or removal of contaminants is performed may be taken to a fill operation if the soil is not part of the cleanup or remediation and is otherwise uncontaminated.
- 1100.602(a) Clarified TACO table references for maximum allowable concentrations for chemical constituents in uncontaminated soil.
- 1100.602(b)(1),(b)(2) Revises provisions allowing limited use of background values from 35 Ill. Adm. Code 742.Appendix A, Tables G and H as maximum allowable concentrations (MACs) to state that the use of background values is not location-specific, and that, except for benzo(a)pyrene, only the most stringent chemical-specific

background values from the tables may be used as MACs regardless of the location of the fill operation.

- 1100.603(b) Moved subsection (b) to (a) and (a) to (b); added that the chemical constituents to be evaluated must be determined on a site-specific basis; and inserted reference to Professional Geologist.
- 1100.603(d) Added “chain of custody control” to sampling documentation requirements.
- 1100.720(c) Revised language on compliance point(s).
- 1100.725(a) Added requirement that the groundwater system must be installed to monitor groundwater conditions at the fill site.
- 1100.730(e) Revised the conditions under which the requirements of the groundwater monitoring program are no longer met.
- 1100.740 Added language requiring collection of groundwater samples from all wells.
- 1100.745(b) Revised language so that fill operations pursuing an alternative noncompliance response under 1100.750 need not meet the resampling requirement.
- 1100.750(a) and (b) Revised language to allow report to be submitted with regard to Illinois EPA notification of exceedance in 1100.745(a) instead of from resampling event in 1100.745(b).
- 1100.755(b) Revised language to allow corrective action to demonstrate that the fill operation does not contribute to an exceedance of the Class I groundwater quality standards.

Next Steps

Illinois EPA requests new stakeholder comments on the revised draft rule by **May 12, 2011**.

When submitting comments on the draft rule, please observe the following:

1. Address all comments to epa.cddcomments@illinois.gov
2. If you are submitting comments from a trade association or professional organization, please prioritize your group’s concerns and, as much as possible, organize the comments you receive from members.
3. Be specific and propose alternative language where applicable.

For more information about the CCDD rulemaking, please go to
<http://www.epa.state.il.us/land/ccdd/index.html>

Please note that Illinois EPA's CCDD website, including the FAQ section, has been updated to reflect the changes made to the April 29, 2011 revised draft rule.