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JOINT COMMITTEE ON ADMINISTRATIVE RULES

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED RULES

- 1) Heading of Part: Procedures for Operation of the Clean Construction or Demolition Debris Fill Operation Fee System
- 2) Code Citation: 35 Ill. Adm. Code 1150
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1150.100	New Section
1150.105	New Section
1150.110	New Section
1150.115	New Section
1150.120	New Section
1150.200	New Section
1150.205	New Section
1150.210	New Section
1150.215	New Section
1150.220	New Section
1150.300	New Section
1150.305	New Section
- 4) Statutory Authority: Section 22.51b of the Environmental Protection Act (415 ILCS 5/22.51b)
- 5) A Complete Description of the Subjects and Issues Involved: Section 22.51b(b) of the Environmental Protection Act (415 ILCS 5/22.51b(b)) requires the Illinois EPA to establish rules relating to the collection of the fees authorized by Section 22.51b(a) of the Environmental Protection Act (415 ILCS 5/22.51b(a)). The proposed rules will set forth the procedures for the collection of fees from the owner or operator of a clean construction or demolition debris fill operation, including recordkeeping requirements, submittals to the Agency, and time and manner of payment.
- 6) Proposed Studies, and sources of underlying data, used to compose this rulemaking:
None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain an incorporation by reference? No

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- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: The proposed rules do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on these proposed rules may submit them in writing by no later than 45 days after publication of this Notice to:
- Stephanie Flowers, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-92762
- 217/782-5544
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business, small municipality, or not-for-profit corporation that operates a clean construction or demolition debris fill operation permitted, or required to be permitted, by the Agency will be subject to the procedures set forth in this new rule.
- B) Reporting, bookkeeping or other proposed procedures required for compliance: The proposed rules require that the owner or operator of a clean construction or demolition debris fill operation calculate fees, maintain records, and submit reports and fees to the Agency.
- C) Types of professional skills necessary for compliance: No specific professional skills are required for compliance with the proposed rules.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2010

The full text of the Proposed Rules is identical to that of the Emergency Rules found in this issue of the *Illinois Register*, which begins on page 11854:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

- 1) Heading of Part: Procedures for Operation of the Clean Construction or Demolition Debris Fill Operation Fee System
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1150.205	New Section
1150.210	New Section
1150.215	New Section
1150.220	New Section
1150.300	New Section
1150.305	New Section
- 4) Statutory Authority: Section 22.51b of the Environmental Protection Act (415 ILCS 5/22.51b)
- 5) Effective Date of Rules: August 2, 2010
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule is not set to expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: August 2, 2010
- 8) A copy of the emergency rule, including any material incorporated by reference, is on file in the Agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Emergency rules are necessary because the assessment and collection of fees by the Agency from clean construction or demolition debris fill operations begins on the date that Section 22.51b was signed into law. The Agency must provide information to the owners and operators of clean construction or demolition debris fill operations on how to calculate, report, and submit the fees. Identical rules will

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also be submitted for publication in the *Illinois Register* through the general rulemaking process by the Agency.

- 10) A Complete Description of the Subjects and Issues Involved: Section 22.51b(b) of the Environmental Protection Act (415 ILCS 5/22.51b(b)) requires the Illinois EPA to establish rules relating to the collection of the fees authorized by Section 22.51b(a) of the Environmental Protection Act (415 ILCS 5/22.51b(a)). The proposed rules will set forth the procedures for the collection of fees from the owner or operator of a clean construction or demolition debris fill operation, including recordkeeping requirements, submittals to the Agency, and time and manner of payment.
- 11) Are there any proposed amendments to this Part pending? Yes
- 12) Statement of Statewide Policy Objective: This rulemaking will not create a State mandate for units of local government.
- 13) Information and questions regarding these emergency rules shall be directed to:

Stephanie Flowers, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

217/782-5544

The full text of the Emergency Rules begins on the next page:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF EMERGENCY RULES

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE J: CLEAN CONSTRUCTION OR DEMOLITION DEBRIS
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 1150

PROCEDURES FOR OPERATION OF THE CLEAN CONSTRUCTION OR
DEMOLITION DEBRIS FILL OPERATION FEE SYSTEM

SUBPART A: GENERAL PROVISIONS

Section

1150.100 Applicability

EMERGENCY

1150.105 Definitions

EMERGENCY

1150.110 Retention of Records

EMERGENCY

1150.115 Certification

EMERGENCY

1150.120 Severability

EMERGENCY

SUBPART B: PROCEDURES FOR MAINTAINING RECORDS

Section

1150.200 Records

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1150.205 Daily Fill Record

EMERGENCY

1150.210 Monthly Fill Record

EMERGENCY

1150.215 Quarterly Fill Summary

EMERGENCY

1150.220 Revisions to Monthly Fill Record and Quarterly Fill Summary

EMERGENCY

SUBPART C: PROCEDURES FOR PAYMENT OF FEES

Section

ENVIRONMENTAL PROTECTION AGENCY

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1150.300 Quarterly Submission of Payment

EMERGENCY

1150.305 Manner of Payment

EMERGENCY

AUTHORITY: Implementing and authorized by Section 22.51b of the Environmental Protection Act [415 ILCS 5/22.51b]

SOURCE: Emergency rules adopted at 34 Ill. Reg. 11854, effective August 2, 2010, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 1150.100 Applicability

EMERGENCY

The regulations of this Part apply to *owners and operators of clean construction or demolition debris (CCDD) fill operations permitted or required to be permitted by the Agency to use CCDD or uncontaminated soil for use as fill in a CCDD fill operation if the CCDD fill operation is located off the site where the CCDD or uncontaminated soil was generated and if the CCDD fill operation is owned, controlled and operated by a person other than the generator of the CCDD or uncontaminated soil.* [415 ILCS 5/22.51b(a)]

Section 1150.105 Definitions

EMERGENCY

a) Unless specified otherwise, all terms have the meanings set forth in the Act.

b) For the purposes of this Part, the following definitions apply:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" is the Illinois Environmental Protection Agency established by the Act. [415 ILCS 5/3.105]

"CCDD" means clean construction or demolition debris.

"Clean construction or demolition debris" means clean construction or demolition debris as defined in Section 3.160(b) of the Act.

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"CCDD fill operation" means a current or former quarry, mine, or other excavation where clean construction or demolition debris is used as fill material. [415 ILCS 5/22.51(e)(3)]

"Operator" means a person responsible for the operation and maintenance of a CCDD fill operation. [415 ILCS 5/22.51(e)(1)]

"Owner" means a person who has any direct or indirect interest in a CCDD fill operation or in land on which a person operates and maintains a CCDD fill operation. A "direct or indirect interest" does not include the ownership of publicly traded stock. The "owner" is the "operator" if there is no other person who is operating and maintaining a CCDD fill operation. [415 ILCS 5/22.51(e)(2)]

"Uncontaminated soil" means uncontaminated soil as defined in Section 3.160(c) of the Act and rules adopted thereunder.

**Section 1150.110 Retention of Records
EMERGENCY**

Copies of all records required to be kept under this Part shall be retained by the site operator for three years and must be made available at the site during the normal business hours of the operator for inspection and photocopying by the Agency.

**Section 1150.115 Certification
EMERGENCY**

- a) All records, summaries or reports submitted to the Agency as required by this Part must be signed by a person responsible for preparing and reviewing such documents as part of his or her duties in the regular course of business.
- b) Any person signing a document submitted under this Part shall make the following certification:

I certify that this document and all attachments were prepared under my direction or supervision. Based on my inquiry of the person or persons who manage the fill operation, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

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and complete. I am aware that there are significant penalties under Section 44 of the Environmental Protection Act for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**Section 1150.120 Severability
EMERGENCY**

If any Section, subsection, sentence or clause of this Part is adjudged unconstitutional, void, invalid or otherwise unlawful, such adjudication does not affect the validity of this Part as a whole or any Section, subsection, sentence or clause thereof not adjudged unconstitutional, void, invalid or otherwise unlawful.

SUBPART B: PROCEDURES FOR MAINTAINING RECORDS

**Section 1150.200 Records
EMERGENCY**

- a) The operator of a CCDD fill operation shall keep a Daily Record of the CCDD and the uncontaminated soil accepted for use as fill material at the CCDD fill operation.
- b) For purposes of reporting and submitting fees, the operator shall prepare the following records from the Daily Record:
 - 1) Monthly Fill Record; and
 - 2) Quarterly Fill Summary.
- c) Operators of CCDD fill operations shall submit each Monthly Fill Record, each Quarterly Fill Summary, and each fee payment:
 - 1) on the basis of weight, in tons, where the operator has weighed the CCDD and the uncontaminated soil received with a device for which certification has been obtained under the Weights and Measures Act [225 ILCS 470];
or
 - 2) on the basis of volume, as measured in cubic yards, where the measurement of the CCDD and the uncontaminated soil received is based on volume.

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- d) Each Monthly Fill Record and Quarterly Fill Summary submitted to the Agency must be on forms and in a format as prescribed and provided by the Agency.
- e) The Monthly Fill Record and Quarterly Fill Summary must be kept in accordance with Section 1150.110 of this Part.

**Section 1150.205 Daily Fill Record
EMERGENCY**

- a) The Daily Fill Records must be maintained at the site of the CCDD fill operation, and must include the Agency designated site number and the site name.
- b) For each load of CCDD or uncontaminated soil accepted for use as fill material at the CCDD fill operation the following information must be recorded in the Daily Fill Record, in addition to any other information required by the Act and rules adopted thereunder:
 - 1) The date and day of the week the load was accepted.
 - 2) The quantity, in tons weighed or cubic yards measured, of CCDD or uncontaminated soil accepted for use as fill material at the CCDD fill operation.

**Section 1150.210 Monthly Fill Record
EMERGENCY**

- a) Monthly Fill Records must be maintained at the site of the CCDD fill operation and must include the following information:
 - 1) The Agency designated site number, the site name, and the calendar month for which the record applies.
 - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, for each day of the calendar month.
- b) On or before April 15, July 15, October 15 and January 15, the owner or operator of the CCDD fill operation shall submit to the Agency the Monthly Fill Records

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for the preceding three calendar months. The Monthly Fill Records must be submitted to the address in Section 1150.305.

- c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit Monthly Fill Records to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

**Section 1150.215 Quarterly Fill Summary
EMERGENCY**

- a) The Quarterly Fill Summary must be maintained at the site of the CCDD fill operation and must include the following information:
 - 1) The Agency designated site number, the site name, and the calendar quarter for which the summary applies.
 - 2) The total quantity of CCDD and uncontaminated soil accepted for use as fill material in tons weighed or cubic yards measured:
 - A) for each month of the calendar quarter;
 - B) for the entire calendar quarter; and
 - C) for the calendar year-to-date.
 - 3) The fee rate applicable under Section 22.51b of the Act.
- b) The Quarterly Fill Summary must be received by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months. The Quarterly Fill Summary must be submitted to the address in Section 1150.305.
- c) Upon issuance of a valid CCDD fill operation permit pursuant to 35 Ill. Adm. Code 1100, and until termination of such permit, the owner or operator of the CCDD fill operation shall submit a Quarterly Fill Summary to the Agency in accordance with this Section regardless of the amount of CCDD and uncontaminated soil accepted for use as fill material by the CCDD fill operation.

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**Section 1150.220 Revisions to Monthly Fill Record and Quarterly Fill Summary
EMERGENCY**

When errors in the amount of the fee due under Section 22.51b or errors in the amount of CCDD and uncontaminated soil accepted for use as fill material are discovered in any of the records required to be kept under this Part, a revised Monthly Fill Record and Quarterly Fill Summary reflecting the corrections must be completed by the site operator and submitted to the Agency. The revised Monthly Fill Record and Quarterly Fill Summary, and any payment due the Agency, must be received by the Agency no later than the seventh day following the discovery of the error. If the revision results in an overpayment, the site operator shall show the adjustment on the next Quarterly Fill Summary.

SUBPART C: PROCEDURES FOR PAYMENT OF FEES

**Section 1150.300 Quarterly Submission of Payment
EMERGENCY**

- a) Payment of the fee due under Section 22.51b of the Act must be made on a quarterly basis with the submission of the Quarterly Fill Summary. Such payment must be received by the Agency on or before April 15, July 15, October 15 and January 15 of each year and must cover the preceding three calendar months.
- b) The fee payment due must be calculated by multiplying the quantity of CCDD and uncontaminated soil accepted for use as fill material, in tons weighed or cubic yards measured, as reported on the Quarterly Fill Summary, times the applicable rate in Section 22.51b of the Act.

**Section 1150.305 Manner of Payment
EMERGENCY**

Payment must be made by check or money order payable to Illinois Environmental Protection Agency. To pay by Electronic Fund Transfer (EFT), please submit a request for EFT to the address below. Payment and forms must be mailed to the Agency at the following address:

Illinois Environmental Protection Agency
Division of Administration, Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276

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Springfield, Illinois 62794-9276