



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1138

Introduced 2/11/2009, by Rep. Mike Fortner

SYNOPSIS AS INTRODUCED:

415 ILCS 5/3.160
415 ILCS 5/22.51

was 415 ILCS 5/3.78 and 3.78a

Amends the Environmental Protection Act. In the definition of "clean construction or demolition debris", provides that the term includes debris with contaminants that do not exceed certain levels. Requires the Environmental Protection Agency to develop a special authorization for clean construction or demolition debris fill operations that accept urban soil or other urban construction or demolition debris from the Chicago metropolitan area or the Metro-East area. Requires the Agency to grant interim authorization to any such facility, subject only to a demonstration that the acceptance of any such material will not adversely impact existing groundwater. Requires the Agency and the Pollution Control Board to adopt rules concerning the special authorizations. Effective immediately.

LRB096 09429 JDS 19586 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning environmental safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.160 and 22.51 as follows:

6 (415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

7 Sec. 3.160. Construction or demolition debris.

8 (a) "General construction or demolition debris" means
9 non-hazardous, uncontaminated materials resulting from the
10 construction, remodeling, repair, and demolition of utilities,
11 structures, and roads, limited to the following: bricks,
12 concrete, and other masonry materials; soil; rock; wood,
13 including non-hazardous painted, treated, and coated wood and
14 wood products; wall coverings; plaster; drywall; plumbing
15 fixtures; non-asbestos insulation; roofing shingles and other
16 roof coverings; reclaimed or other asphalt pavement; glass;
17 plastics that are not sealed in a manner that conceals waste;
18 electrical wiring and components containing no hazardous
19 substances; and piping or metals incidental to any of those
20 materials.

21 General construction or demolition debris does not include
22 uncontaminated soil generated during construction, remodeling,
23 repair, and demolition of utilities, structures, and roads

1 provided the uncontaminated soil is not commingled with any
2 general construction or demolition debris or other waste.

3 To the extent allowed by federal law, uncontaminated
4 concrete with protruding rebar shall be considered clean
5 construction or demolition debris and shall not be considered
6 "waste" if it is separated or processed and returned to the
7 economic mainstream in the form of raw materials or products
8 within 4 years of its generation, if it is not speculatively
9 accumulated and, if used as a fill material, it is used in
10 accordance with item (i) in subsection (b) of this Section.

11 (b) "Clean construction or demolition debris" means
12 uncontaminated broken concrete without protruding metal bars,
13 bricks, rock, stone, reclaimed or other asphalt pavement, or
14 soil generated from construction or demolition activities.

15 Material that would be clean construction or demolition
16 debris but for the presence of contaminants is clean
17 construction or demolition debris if the contaminants do not
18 exceed "area background", as defined in Section 58.2 of this
19 Act.

20 Clean construction or demolition debris does not include
21 uncontaminated soil generated during construction, remodeling,
22 repair, and demolition of utilities, structures, and roads
23 provided the uncontaminated soil is not commingled with any
24 clean construction or demolition debris or other waste.

25 To the extent allowed by federal law, clean construction or
26 demolition debris shall not be considered "waste" if it is (i)

1 used as fill material outside of a setback zone if the fill is
2 placed no higher than the highest point of elevation existing
3 prior to the filling immediately adjacent to the fill area, and
4 if covered by sufficient uncontaminated soil to support
5 vegetation within 30 days of the completion of filling or if
6 covered by a road or structure, or (ii) separated or processed
7 and returned to the economic mainstream in the form of raw
8 materials or products, if it is not speculatively accumulated
9 and, if used as a fill material, it is used in accordance with
10 item (i), or (iii) solely broken concrete without protruding
11 metal bars used for erosion control, or (iv) generated from the
12 construction or demolition of a building, road, or other
13 structure and used to construct, on the site where the
14 construction or demolition has taken place, a manmade
15 functional structure not to exceed 20 feet above the highest
16 point of elevation of the property immediately adjacent to the
17 new manmade functional structure as that elevation existed
18 prior to the creation of that new structure, provided that the
19 structure shall be covered with sufficient soil materials to
20 sustain vegetation or by a road or structure, and further
21 provided that no such structure shall be constructed within a
22 home rule municipality with a population over 500,000 without
23 the consent of the municipality.

24 For purposes of this subsection (b), reclaimed or other
25 asphalt pavement shall not be considered speculatively
26 accumulated if: (i) it is not commingled with any other clean

1 construction or demolition debris or any waste; (ii) it is
2 returned to the economic mainstream in the form of raw
3 materials or products within 4 years after its generation;
4 (iii) at least 25% of the total amount present at a site during
5 a calendar year is transported off of the site during the next
6 calendar year; and (iv) if used as a fill material, it is used
7 in accordance with item (i) of the second paragraph of this
8 subsection (b).

9 (Source: P.A. 94-272, eff. 7-19-05; 95-121, eff. 8-13-07.)

10 (415 ILCS 5/22.51)

11 Sec. 22.51. Clean Construction or Demolition Debris Fill
12 Operations.

13 (a) No person shall conduct any clean construction or
14 demolition debris fill operation in violation of this Act or
15 any regulations or standards adopted by the Board.

16 (b) (1) (A) Beginning 30 days after the effective date of
17 this amendatory Act of the 94th General Assembly but prior to
18 July 1, 2008, no person shall use clean construction or
19 demolition debris as fill material in a current or former
20 quarry, mine, or other excavation, unless they have applied for
21 an interim authorization from the Agency for the clean
22 construction or demolition debris fill operation.

23 (B) The Agency shall approve an interim authorization upon
24 its receipt of a written application for the interim
25 authorization that is signed by the site owner and the site

1 operator, or their duly authorized agent, and that contains the
2 following information: (i) the location of the site where the
3 clean construction or demolition debris fill operation is
4 taking place, (ii) the name and address of the site owner,
5 (iii) the name and address of the site operator, and (iv) the
6 types and amounts of clean construction or demolition debris
7 being used as fill material at the site.

8 (C) The Agency may deny an interim authorization if the
9 site owner or the site operator, or their duly authorized
10 agent, fails to provide to the Agency the information listed in
11 subsection (b)(1)(B) of this Section. Any denial of an interim
12 authorization shall be subject to appeal to the Board in
13 accordance with the procedures of Section 40 of this Act.

14 (D) No person shall use clean construction or demolition
15 debris as fill material in a current or former quarry, mine, or
16 other excavation for which the Agency has denied interim
17 authorization under subsection (b)(1)(C) of this Section. The
18 Board may stay the prohibition of this subsection (D) during
19 the pendency of an appeal of the Agency's denial of the interim
20 authorization brought under subsection (b)(1)(C) of this
21 Section.

22 (2) Beginning September 1, 2006, owners and operators of
23 clean construction or demolition debris fill operations shall,
24 in accordance with a schedule prescribed by the Agency, submit
25 to the Agency applications for the permits required under this
26 Section. The Agency shall notify owners and operators in

1 writing of the due date for their permit application. The due
2 date shall be no less than 90 days after the date of the
3 Agency's written notification. Owners and operators who do not
4 receive a written notification from the Agency by October 1,
5 2007, shall submit a permit application to the Agency by
6 January 1, 2008. The interim authorization of owners and
7 operators who fail to submit a permit application to the Agency
8 by the permit application's due date shall terminate on (i) the
9 due date established by the Agency if the owner or operator
10 received a written notification from the Agency prior to
11 October 1, 2007, or (ii) or January 1, 2008, if the owner or
12 operator did not receive a written notification from the Agency
13 by October 1, 2007.

14 (3) On and after July 1, 2008, no person shall use clean
15 construction or demolition debris as fill material in a current
16 or former quarry, mine, or other excavation without a permit
17 granted by the Agency for the clean construction or demolition
18 debris fill operation or in violation of any conditions imposed
19 by such permit, including periodic reports and full access to
20 adequate records and the inspection of facilities, as may be
21 necessary to assure compliance with this Act and with Board
22 regulations and standards adopted under this Act.

23 (4) This subsection (b) does not apply to:

24 (A) the use of clean construction or demolition debris
25 as fill material in a current or former quarry, mine, or
26 other excavation located on the site where the clean

1 construction or demolition debris was generated;

2 (B) the use of clean construction or demolition debris
3 as fill material in an excavation other than a current or
4 former quarry or mine if this use complies with Illinois
5 Department of Transportation specifications; or

6 (C) current or former quarries, mines, and other
7 excavations that do not use clean construction or
8 demolition debris as fill material.

9 (c) In accordance with Title VII of this Act, the Board may
10 adopt regulations to promote the purposes of this Section. The
11 Agency shall consult with the mining and construction
12 industries during the development of any regulations to promote
13 the purposes of this Section.

14 (1) No later than December 15, 2005, the Agency shall
15 propose to the Board, and no later than September 1, 2006,
16 the Board shall adopt, regulations for the use of clean
17 construction or demolition debris as fill material in
18 current and former quarries, mines, and other excavations.
19 Such regulations shall include, but shall not be limited
20 to, standards for clean construction or demolition debris
21 fill operations and the submission and review of permits
22 required under this Section.

23 (2) Until the Board adopts rules under subsection
24 (c)(1) of this Section, all persons using clean
25 construction or demolition debris as fill material in a
26 current or former quarry, mine, or other excavation shall:

1 (A) Assure that only clean construction or
2 demolition debris is being used as fill material by
3 screening each truckload of material received using a
4 device approved by the Agency that detects volatile
5 organic compounds. Such devices may include, but are
6 not limited to, photo ionization detectors. All
7 screening devices shall be operated and maintained in
8 accordance with manufacturer's specifications.
9 Unacceptable fill material shall be rejected from the
10 site; and

11 (B) Retain for a minimum of 3 years the following
12 information:

13 (i) The name of the hauler, the name of the
14 generator, and place of origin of the debris or
15 soil;

16 (ii) The approximate weight or volume of the
17 debris or soil; and

18 (iii) The date the debris or soil was received.

19 (d) This Section applies only to clean construction or
20 demolition debris that is not considered "waste" as provided in
21 Section 3.160 of this Act.

22 (e) For purposes of a clean construction or demolition
23 debris fill operation:

24 (1) The term "operator" means a person responsible for
25 the operation and maintenance of a clean construction or
26 demolition debris fill operation.

1 (2) The term "owner" means a person who has any direct
2 or indirect interest in a clean construction or demolition
3 debris fill operation or in land on which a person operates
4 and maintains a clean construction or demolition debris
5 fill operation. A "direct or indirect interest" does not
6 include the ownership of publicly traded stock. The "owner"
7 is the "operator" if there is no other person who is
8 operating and maintaining a clean construction or
9 demolition debris fill operation.

10 (f) The Agency shall develop a special authorization for
11 clean construction or demolition debris fill operations that
12 accept urban soil or other urban construction or demolition
13 debris from the Chicago metropolitan area or the Metro-East
14 area, which shall be known as CCDD urban facilities. Within 30
15 days after the effective date of this amendatory Act of the
16 96th General Assembly, the Agency shall grant interim
17 authorization to any facility requesting to be authorized as a
18 CCDD urban facility, subject only to a demonstration that the
19 acceptance of any such material will not adversely impact
20 existing groundwater. The Agency's denial of this interim
21 authorization, or its failure to grant this interim
22 authorization in accordance with this subsection, is
23 considered to be a final decision of the Agency that is subject
24 to appeal to the Board under Section 40 of this Act. Within 30
25 days after the effective date of this amendatory Act of the
26 96th General Assembly, the Agency shall propose rules to the

1 Board to make this special permit program permanent. The Board
2 shall engage in rulemaking under Sections 27 and 28 of this Act
3 and shall adopt rules within 12 months after the effective date
4 of this amendatory Act of the 96th General Assembly. The rules
5 must include procedures to ensure that the acceptance of
6 material pursuant to this Section will not adversely impact
7 existing groundwater at or near the fill operation.

8 (Source: P.A. 94-272, eff. 7-19-05; 94-725, eff. 6-1-06.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.