

Illinois EPA Now Regulates Uncontaminated Soil Used as Fill

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The state of Illinois has begun regulating uncontaminated soil from construction or demolition projects that is used as fill, designating the places the fill is deposited as “Uncontaminated Soil Fill Operations.” Those using uncontaminated soil as fill must now register with the state and receive authorization to do so, unless the soil they use is generated on-site. They must also obtain certification showing that any such soil received for use as fill is uncontaminated, confirm that the soil was not removed from a site as part of a cleanup or removal of contaminants, and keep records regarding every load of soil received for at least three years. Each load of soil must be visually inspected and screened using a device approved by the Illinois Environmental Protection Agency (IEPA) for the detection of volatile organic compounds. The new law also imposes a mandatory state tipping fee for materials disposed of at Clean Construction or Demolition Debris (CCDD) facilities, and authorizes delegated municipal authorities to assess additional tipping fees.

Because the law became effective immediately, on July 30, 2010, with little warning and — for the next two years — without any accompanying regulations, it has caused substantial uncertainty and delays in construction, and left professional engineers hesitant to certify soil due to a lack of clear standards. Those in the transportation and construction industries, as well as municipalities, are struggling to ascertain what they need to do to comply with the law, even as IEPA scrambles to explain just what is required by the law. On August 3, 2010, IEPA and the Illinois Department of Transportation (IDOT) entered into an intergovernmental agreement, which provides that uncontaminated soil certifications for IDOT projects can be made based on IDOT’s existing Phase I preliminary engineering assessments, and that excavation of “holes, trenches, or similar earth removal created as part of normal construction, removal, or maintenance of a structure, utility, or transportation infrastructure” are exempt from the definition of “Uncontaminated Soil Fill Operations” through the end of 2010. It is unclear whether the terms of the IDOT/IEPA agreement apply to municipal projects. It should also be noted that the law subjects municipalities that use uncontaminated soil as fill to the same regulation as private entities.

The law also is complicating the normal operations of persons taking soil from nonconstruction or demolition related projects, such as for simple gardening or landscaping work. While IEPA’s explanations of the law indicate that it affects only construction and demolition derived soils, some disposal sites are insisting on certifications

anyway.

For further information, please contact Harvey M. Sheldon or your regular Hinshaw attorney.

In light of the extreme uncertainty surrounding the new law's requirements, this description should not be regarded or relied upon as individual legal advice. The law is complex and it may or may not affect particular soil related dispositions based on a variety of factors.

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