



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 3371

2 AMENDMENT NO. _____. Amend House Bill 3371 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.160, 22.51, and 22.51a 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;

1 plastics that are not sealed in a manner that conceals waste;
2 electrical wiring and components containing no hazardous
3 substances; and corrugated cardboard, piping or metals
4 incidental to any of those materials.

5 General construction or demolition debris does not include
6 uncontaminated soil generated during construction, remodeling,
7 repair, and demolition of utilities, structures, and roads
8 provided the uncontaminated soil is not commingled with any
9 general construction or demolition debris or other waste.

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

18 (b) "Clean construction or demolition debris" means
19 uncontaminated broken concrete without protruding metal bars,
20 bricks, rock, stone, reclaimed or other asphalt pavement, or
21 soil generated from construction or demolition activities.

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

1 To the extent allowed by federal law, clean construction or
2 demolition debris shall not be considered "waste" if it is (i)
3 used as fill material outside of a setback zone if the fill is
4 placed no higher than the highest point of elevation existing
5 prior to the filling immediately adjacent to the fill area, and
6 if covered by sufficient uncontaminated soil to support
7 vegetation within 30 days of the completion of filling or if
8 covered by a road or structure, and, if used as fill material
9 in a current or former quarry, mine, or other excavation, is
10 used in accordance with the requirements of Section 22.51 of
11 this Act and the rules adopted thereunder or (ii) separated or
12 processed and returned to the economic mainstream in the form
13 of raw materials or products, if it is not speculatively
14 accumulated and, if used as a fill material, it is used in
15 accordance with item (i), or (iii) solely broken concrete
16 without protruding metal bars used for erosion control, or (iv)
17 generated from the construction or demolition of a building,
18 road, or other structure and used to construct, on the site
19 where the construction or demolition has taken place, a manmade
20 functional structure not to exceed 20 feet above the highest
21 point of elevation of the property immediately adjacent to the
22 new manmade functional structure as that elevation existed
23 prior to the creation of that new structure, provided that the
24 structure shall be covered with sufficient soil materials to
25 sustain vegetation or by a road or structure, and further
26 provided that no such structure shall be constructed within a

1 home rule municipality with a population over 500,000 without
2 the consent of the municipality.

3 For purposes of this subsection (b), reclaimed or other
4 asphalt pavement shall not be considered speculatively
5 accumulated if: (i) it is not commingled with any other clean
6 construction or demolition debris or any waste; (ii) it is
7 returned to the economic mainstream in the form of raw
8 materials or products within 4 years after its generation;
9 (iii) at least 25% of the total amount present at a site during
10 a calendar year is transported off of the site during the next
11 calendar year; and (iv) if used as a fill material, it is used
12 in accordance with item (i) of the second paragraph of this
13 subsection (b).

14 (c) For purposes of this Section, the term "uncontaminated
15 soil" means soil that does not contain contaminants in
16 concentrations that pose a threat to human health and safety
17 and the environment.

18 (1) No later than one year after the effective date of
19 this amendatory Act of the 96th General Assembly, the
20 Agency shall propose, and, no later than one year after
21 receipt of the Agency's proposal, the Board shall adopt,
22 rules specifying the maximum concentrations of
23 contaminants that may be present in uncontaminated soil for
24 purposes of this Section. For carcinogens, the maximum
25 concentrations shall not allow exposure to exceed an excess
26 upper-bound lifetime risk of 1 in 1,000,000; provided that

1 if the most stringent remediation objective or applicable
2 background concentration for a contaminant set forth in 35
3 Ill. Adm. Code 742 is greater than the concentration that
4 would allow exposure at an excess upper-bound lifetime risk
5 of 1 in 1,000,000, the Board may consider allowing that
6 contaminant in concentrations up to its most stringent
7 remediation objective or applicable background
8 concentration set forth in benzo(a)pyrene up to the
9 ~~applicable background concentration set forth in Table H of~~
10 ~~Appendix A of~~ 35 Ill. Adm. Code 742 in soil used as fill
11 material in a current or former quarry, mine, or other
12 excavation in accordance with Section 22.51 or 22.51a of
13 this Act and rules adopted under those Sections. Any
14 background concentration set forth in 35 Ill. Adm. Code 742
15 that is adopted as a maximum concentration must be, so long
16 ~~as the applicable background concentration is~~ based upon
17 the location of the quarry, mine, or other excavation where
18 the soil is used as fill material.

19 (2) To the extent allowed under federal law and
20 regulations, uncontaminated soil shall not be considered a
21 waste.

22 (Source: P.A. 95-121, eff. 8-13-07; 96-235, eff. 8-11-09;
23 96-1416, eff. 7-30-10.)

24 (415 ILCS 5/22.51)

25 Sec. 22.51. Clean Construction or Demolition Debris Fill

1 Operations.

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

5 (b) (1) (A) Beginning August 18, 2005 but prior to July 1,
6 2008, no person shall use clean construction or demolition
7 debris as fill material in a current or former quarry, mine, or
8 other excavation, unless they have applied for an interim
9 authorization from the Agency for the clean construction or
10 demolition debris fill operation.

11 (B) The Agency shall approve an interim authorization upon
12 its receipt of a written application for the interim
13 authorization that is signed by the site owner and the site
14 operator, or their duly authorized agent, and that contains the
15 following information: (i) the location of the site where the
16 clean construction or demolition debris fill operation is
17 taking place, (ii) the name and address of the site owner,
18 (iii) the name and address of the site operator, and (iv) the
19 types and amounts of clean construction or demolition debris
20 being used as fill material at the site.

21 (C) The Agency may deny an interim authorization if the
22 site owner or the site operator, or their duly authorized
23 agent, fails to provide to the Agency the information listed in
24 subsection (b) (1) (B) of this Section. Any denial of an interim
25 authorization shall be subject to appeal to the Board in
26 accordance with the procedures of Section 40 of this Act.

1 (D) No person shall use clean construction or demolition
2 debris as fill material in a current or former quarry, mine, or
3 other excavation for which the Agency has denied interim
4 authorization under subsection (b)(1)(C) of this Section. The
5 Board may stay the prohibition of this subsection (D) during
6 the pendency of an appeal of the Agency's denial of the interim
7 authorization brought under subsection (b)(1)(C) of this
8 Section.

9 (2) Beginning September 1, 2006, owners and operators of
10 clean construction or demolition debris fill operations shall,
11 in accordance with a schedule prescribed by the Agency, submit
12 to the Agency applications for the permits required under this
13 Section. The Agency shall notify owners and operators in
14 writing of the due date for their permit application. The due
15 date shall be no less than 90 days after the date of the
16 Agency's written notification. Owners and operators who do not
17 receive a written notification from the Agency by October 1,
18 2007, shall submit a permit application to the Agency by
19 January 1, 2008. The interim authorization of owners and
20 operators who fail to submit a permit application to the Agency
21 by the permit application's due date shall terminate on (i) the
22 due date established by the Agency if the owner or operator
23 received a written notification from the Agency prior to
24 October 1, 2007, or (ii) or January 1, 2008, if the owner or
25 operator did not receive a written notification from the Agency
26 by October 1, 2007.

1 (3) On and after July 1, 2008, no person shall use clean
2 construction or demolition debris as fill material in a current
3 or former quarry, mine, or other excavation (i) without a
4 permit granted by the Agency for the clean construction or
5 demolition debris fill operation or in violation of any
6 conditions imposed by such permit, including periodic reports
7 and full access to adequate records and the inspection of
8 facilities, as may be necessary to assure compliance with this
9 Act and with Board regulations and standards adopted under this
10 Act or (ii) in violation of any regulations or standards
11 adopted by the Board under this Act.

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

13 (A) the use of clean construction or demolition debris
14 as fill material in a current or former quarry, mine, or
15 other excavation located on the site where the clean
16 construction or demolition debris was generated;

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

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

24 (c) In accordance with Title VII of this Act, the Board may
25 adopt regulations to promote the purposes of this Section. The
26 Agency shall consult with the mining and construction

1 industries during the development of any regulations to promote
2 the purposes of this Section.

3 (1) No later than December 15, 2005, the Agency shall
4 propose to the Board, and no later than September 1, 2006,
5 the Board shall adopt, regulations for the use of clean
6 construction or demolition debris as fill material in
7 current and former quarries, mines, and other excavations.
8 Such regulations shall include, but shall not be limited
9 to, standards for clean construction or demolition debris
10 fill operations and the submission and review of permits
11 required under this Section.

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

16 (A) Assure that only clean construction or
17 demolition debris is being used as fill material by
18 screening each truckload of material received using a
19 device approved by the Agency that detects volatile
20 organic compounds. Such devices may include, but are
21 not limited to, photo ionization detectors. All
22 screening devices shall be operated and maintained in
23 accordance with manufacturer's specifications.
24 Unacceptable fill material shall be rejected from the
25 site; and

26 (B) Retain for a minimum of 3 years the following

1 information:

2 (i) The name of the hauler, the name of the
3 generator, and place of origin of the debris or
4 soil;

5 (ii) The approximate weight or volume of the
6 debris or soil; and

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

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

11 (e) For purposes of this Section:

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

15 (2) The term "owner" means a person who has any direct
16 or indirect interest in a clean construction or demolition
17 debris fill operation or in land on which a person operates
18 and maintains a clean construction or demolition debris
19 fill operation. A "direct or indirect interest" does not
20 include the ownership of publicly traded stock. The "owner"
21 is the "operator" if there is no other person who is
22 operating and maintaining a clean construction or
23 demolition debris fill operation.

24 (3) The term "clean construction or demolition debris
25 fill operation" means a current or former quarry, mine, or
26 other excavation where clean construction or demolition

1 debris is used as fill material.

2 (4) The term "uncontaminated soil" shall have the same
3 meaning as uncontaminated soil under Section 3.160 of this
4 Act.

5 (f) (1) No later than one year after the effective date of
6 this amendatory Act of the 96th General Assembly, the Agency
7 shall propose to the Board, and, no later than one year after
8 the Board's receipt of the Agency's proposal, the Board shall
9 adopt, rules for the use of clean construction or demolition
10 debris and uncontaminated soil as fill material at clean
11 construction or demolition debris fill operations. The rules
12 must include standards and procedures necessary to protect
13 groundwater, which may include, but shall not be limited to,
14 the following: requirements regarding testing and
15 certification of soil used as fill material, surface water
16 runoff, liners or other protective barriers, monitoring
17 (including, but not limited to, groundwater monitoring),
18 corrective action, recordkeeping, reporting, closure and
19 post-closure care, financial assurance, post-closure land use
20 controls, location standards, and the modification of existing
21 permits to conform to the requirements of this Act and Board
22 rules. The rules may also include limits on the use of
23 recyclable concrete and asphalt as fill material at clean
24 construction or demolition debris fill operations, taking into
25 account factors such as technical feasibility, economic
26 reasonableness, and the availability of markets for such

1 materials.

2 (2) Until the effective date of the Board rules adopted
3 under subdivision (f)(1) of this Section, and in addition to
4 any other requirements, owners and operators of clean
5 construction or demolition debris fill operations must do all
6 of the following in subdivisions (f)(2)(A) through (f)(2)(D) of
7 this Section for all clean construction or demolition debris
8 and uncontaminated soil accepted for use as fill material. The
9 requirements in subdivisions (f)(2)(A) through (f)(2)(D) of
10 this Section shall not limit any rules adopted by the Board.

11 (A) Document the following information for each load of
12 clean construction or demolition debris or uncontaminated
13 soil received: (i) the name of the hauler, the address of
14 the site of origin, and the owner and the operator of the
15 site of origin of the clean construction or demolition
16 debris or uncontaminated soil, (ii) the weight or volume of
17 the clean construction or demolition debris or
18 uncontaminated soil, and (iii) the date the clean
19 construction or demolition debris or uncontaminated soil
20 was received.

21 (B) For all soil, obtain either (i) a certification
22 from the owner or operator of the site from which the soil
23 was removed that the site has never been used for
24 commercial or industrial purposes and is presumed to be
25 uncontaminated soil or (ii) a certification from a licensed
26 Professional Engineer or licensed Professional Geologist

1 that the soil is uncontaminated soil. Certifications
2 required under this subdivision (f)(2)(B) must be on forms
3 and in a format prescribed by the Agency.

4 (C) Confirm that the clean construction or demolition
5 debris or uncontaminated soil was not removed from a site
6 as part of a cleanup or removal of contaminants, including,
7 but not limited to, activities conducted under the
8 Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980, as amended; as part of a Closure or
10 Corrective Action under the Resource Conservation and
11 Recovery Act, as amended; or under an Agency remediation
12 program, such as the Leaking Underground Storage Tank
13 Program or Site Remediation Program, but excluding sites
14 subject to Section 58.16 of this Act where there is no
15 presence or likely presence of a release or a substantial
16 threat of a release of a regulated substance at, on, or
17 from the real property.

18 (D) Document all activities required under subdivision
19 (f)(2) of this Section. Documentation of any chemical
20 analysis must include, but is not limited to, (i) a copy of
21 the lab analysis, (ii) accreditation status of the
22 laboratory performing the analysis, and (iii)
23 certification by an authorized agent of the laboratory that
24 the analysis has been performed in accordance with the
25 Agency's rules for the accreditation of environmental
26 laboratories and the scope of accreditation.

1 (3) Owners and operators of clean construction or
2 demolition debris fill operations must maintain all
3 documentation required under subdivision (f)(2) of this
4 Section for a minimum of 3 years following the receipt of each
5 load of clean construction or demolition debris or
6 uncontaminated soil, except that documentation relating to an
7 appeal, litigation, or other disputed claim must be maintained
8 until at least 3 years after the date of the final disposition
9 of the appeal, litigation, or other disputed claim. Copies of
10 the documentation must be made available to the Agency and to
11 units of local government for inspection and copying during
12 normal business hours. The Agency may prescribe forms and
13 formats for the documentation required under subdivision
14 (f)(2) of this Section.

15 Chemical analysis conducted under subdivision (f)(2) of
16 this Section must be conducted in accordance with the
17 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
18 Methods for Evaluating Solid Waste, Physical/Chemical
19 Methods", USEPA Publication No. SW-846, as amended.

20 (g)(1) No person shall use soil other than uncontaminated
21 soil as fill material at a clean construction or demolition
22 debris fill operation.

23 (2) No person shall use construction or demolition debris
24 other than clean construction or demolition debris as fill
25 material at a clean construction or demolition debris fill
26 operation.

1 (Source: P.A. 96-1416, eff. 7-30-10.)

2 (415 ILCS 5/22.51a)

3 Sec. 22.51a. Uncontaminated Soil Fill Operations.

4 (a) For purposes of this Section:

5 (1) The term "uncontaminated soil" shall have the same
6 meaning as uncontaminated soil under Section 3.160 of this
7 Act.

8 (2) The term "uncontaminated soil fill operation"
9 means a current or former quarry, mine, or other excavation
10 where uncontaminated soil is used as fill material, but
11 does not include a clean construction or demolition debris
12 fill operation.

13 (b) No person shall use soil other than uncontaminated soil
14 as fill material at an uncontaminated soil fill operation.

15 (c) Owners and operators of uncontaminated soil fill
16 operations must register the fill operations with the Agency.
17 Uncontaminated soil fill operations that received
18 uncontaminated soil prior to the effective date of this
19 amendatory Act of the 96th General Assembly must be registered
20 with the Agency no later than March 31, 2011. Uncontaminated
21 soil fill operations that first receive uncontaminated soil on
22 or after the effective date of this amendatory Act of the 96th
23 General Assembly must be registered with the Agency prior to
24 the receipt of any uncontaminated soil. Registrations must be
25 submitted on forms and in a format prescribed by the Agency.

1 (d) (1) No later than one year after the effective date of
2 this amendatory Act of the 96th General Assembly, the Agency
3 shall propose to the Board, and, no later than one year after
4 the Board's receipt of the Agency's proposal, the Board shall
5 adopt, rules for the use of uncontaminated soil as fill
6 material at uncontaminated soil fill operations. The rules must
7 include standards and procedures necessary to protect
8 groundwater, which shall include, but shall not be limited to,
9 testing and certification of soil used as fill material and
10 requirements for recordkeeping.

11 (2) Until the effective date of the Board rules adopted
12 under subdivision (d) (1) of this Section, owners and operators
13 of uncontaminated soil fill operations must do all of the
14 following in subdivisions (d) (2) (A) through (d) (2) (F) of this
15 Section for all uncontaminated soil accepted for use as fill
16 material. The requirements in subdivisions (d) (2) (A) through
17 (d) (2) (F) of this Section shall not limit any rules adopted by
18 the Board.

19 (A) Document the following information for each load of
20 uncontaminated soil received: (i) the name of the hauler,
21 the address of the site of origin, and the owner and the
22 operator of the site of origin of the uncontaminated soil,
23 (ii) the weight or volume of the uncontaminated soil, and
24 (iii) the date the uncontaminated soil was received.

25 (B) Obtain either (i) a certification from the owner or
26 operator of the site from which the soil was removed that

1 the site has never been used for commercial or industrial
2 purposes and is presumed to be uncontaminated soil or (ii)
3 a certification from a licensed Professional Engineer or a
4 licensed Professional Geologist that the soil is
5 uncontaminated soil. Certifications required under this
6 subdivision (d)(2)(B) must be on forms and in a format
7 prescribed by the Agency.

8 (C) Confirm that the uncontaminated soil was not
9 removed from a site as part of a cleanup or removal of
10 contaminants, including, but not limited to, activities
11 conducted under the Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980, as amended; as
13 part of a Closure or Corrective Action under the Resource
14 Conservation and Recovery Act, as amended; or under an
15 Agency remediation program, such as the Leaking
16 Underground Storage Tank Program or Site Remediation
17 Program, but excluding sites subject to Section 58.16 of
18 this Act where there is no presence or likely presence of a
19 release or a substantial threat of a release of a regulated
20 substance at, on, or from the real property.

21 (D) Visually inspect each load to confirm that only
22 uncontaminated soil is being accepted for use as fill
23 material.

24 (E) Screen each load of uncontaminated soil using a
25 device that is approved by the Agency and detects volatile
26 organic compounds. Such a device may include, but is not

1 limited to, a photo ionization detector or a flame
2 ionization detector. All screening devices shall be
3 operated and maintained in accordance with the
4 manufacturer's specifications. Unacceptable soil must be
5 rejected from the fill operation.

6 (F) Document all activities required under subdivision
7 (d)(2) of this Section. Documentation of any chemical
8 analysis must include, but is not limited to, (i) a copy of
9 the lab analysis, (ii) accreditation status of the
10 laboratory performing the analysis, and (iii)
11 certification by an authorized agent of the laboratory that
12 the analysis has been performed in accordance with the
13 Agency's rules for the accreditation of environmental
14 laboratories and the scope of accreditation.

15 (3) Owners and operators of uncontaminated soil fill
16 operations must maintain all documentation required under
17 subdivision (d)(2) of this Section for a minimum of 3 years
18 following the receipt of each load of uncontaminated soil,
19 except that documentation relating to an appeal, litigation, or
20 other disputed claim must be maintained until at least 3 years
21 after the date of the final disposition of the appeal,
22 litigation, or other disputed claim. Copies of the
23 documentation must be made available to the Agency and to units
24 of local government for inspection and copying during normal
25 business hours. The Agency may prescribe forms and formats for
26 the documentation required under subdivision (d)(2) of this

1 Section.

2 Chemical analysis conducted under subdivision (d)(2) of
3 this Section must be conducted in accordance with the
4 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
5 Methods for Evaluating Solid Waste, Physical/Chemical
6 Methods", USEPA Publication No. SW-846, as amended.

7 (Source: P.A. 96-1416, eff. 7-30-10.)

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