

INTERGOVERNMENTAL AGREEMENT BETWEEN THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AND THE ILLINOIS DEPARTMENT OF TRANSPORTATION REGARDING THE REUSE OF SOIL FROM IDOT CONSTRUCTION PROJECTS

This intergovernmental agreement (“Agreement”) is made and entered as of the third day of August, 2010, by and between the Illinois Environmental Protection Agency (“IEPA”) and the Illinois Department of Transportation (“IDOT”), pursuant to the “Intergovernmental Cooperation Act” (5 ILCS 220), for the management of uncontaminated soil during IDOT Construction Projects.

WHEREAS, IDOT routinely constructs roadways in this State (“Construction Projects”);

WHEREAS, as a part of its Construction Projects, IDOT routinely needs to relocate excess uncontaminated soil that has been removed from within its right-of-way or uncontaminated soil is brought to its right-of-way;

WHEREAS, IDOT has a contractual arrangement with an individual, firm, partnership, joint venture, or corporation (“Contractor”) to perform the prescribed Construction Project;

WHEREAS, the Contractor in performing the prescribed Construction Project shall do such work in accordance with the adopted IDOT’s Standard Specifications for Road and Bridge Construction;

WHEREAS, there is currently highway construction in the State of Illinois during the 2010 construction season in excess of \$2 billion. Of these projects, all projects with soil excavation have previously undergone an environmental analysis in accordance with the IDOT Bureau of Design and Environment manual, Chapter 27. In recognition of this existing process and analysis IEPA and IDOT agree that certifications of uncontaminated soil pursuant to P. A. 96-1416 can be made on the basis of the existing Phase 1 preliminary engineering assessment until December 31, 2010 and IDOT agrees to abide by existing provisions of the Illinois Environmental Protection Act, including but not limited to Section 12(d).

WHEREAS, Public Act 96 - 1416, was enacted into law on July 30, 2010, amending the Illinois Environmental Protection Act (“Act”) by changing Sections 3.160, 22.51, 31.1 and 42 and by adding Sections 22.51a and 22.51b.

WHEREAS, P.A. 96 - 1416, provides for a definition of “uncontaminated soil” (Section 3.160), creates “uncontaminated soil fill operations” (Section 22.51a) and requires rulemaking by the Pollution Control Board (“Board”) to specify the maximum concentrations of contaminants that may be present in uncontaminated soil for purposes of the clean construction and demolition debris Section of the Act, and to regulate uncontaminated soil fill operations. This Public Act further provides in Section 22.51a(d)(2) certain requirements for an interim program for uncontaminated soil fill operations pending the effective date of the Board rules.

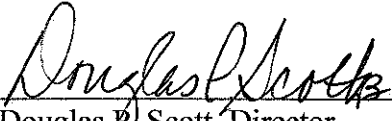
WHEREAS, this Interagency Agreement is intended to memorialize the understanding between IEPA and IDOT regarding the application of Section 22.51a to IDOT Construction

Projects, and in particular the manner and method for removing, replacing or relocating excess uncontaminated soil occasioned by its Construction Projects.

NOW, THEREFORE, IEPA and IDOT hereby agree as follows:

1. The foregoing recitals are incorporated into this Agreement by reference as if set forth fully herein.
2. Consistent with the Illinois Pollution Control Board's interpretation of "other excavation" in 35 Ill. Adm. Code 1100, IEPA and IDOT agree that the term "other excavation" as it relates to uncontaminated soil fill operations, as set forth in Section 22.51a of the Act, 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.
3. The maximum concentration of contaminants that may be present in uncontaminated soil is the chemical's most stringent Tier 1 exposure route value: (1) if a chemical's most stringent Tier 1 exposure route is less than the chemical's acceptable detection limit (ADL) listed in 35 Ill. Adm. Code 742, Appendix B, as amended, then the ADL shall serve as the most stringent Tier 1 exposure route value and (2) if a chemical's most stringent Tier 1 exposure route value is less than the chemical's lowest background concentration listed in Table H of 35 Ill. Adm. Code 742, Appendix A, as amended, then the chemical's lowest background concentration listed in Table H shall serve as the most stringent Tier 1 exposure route value. For purposes of this subsection (3), the lowest background concentration listed in Table H shall be used, regardless of whether it is the background concentration listed for Chicago, a Metropolitan Area, or a Non-Metropolitan Area. The most stringent Tier 1 exposure route values shall be determined solely from the values listed in 35 Ill. Adm. Code 742, Appendix A and Appendix B as provided above. Other provisions of the Board's rules, such as those pertaining to the use of engineered barriers or institutional controls, cannot be used to exclude or otherwise alter exposure routes or exposure route values for purposes of determining the most stringent Tier 1 exposure route.
4. The IEPA will accept the IDOT Phase 1 preliminary engineering certification of uncontaminated soil, pursuant to 22.51 a (d) (2) for current construction projects until December 31, 2010.
5. This Agreement does not apply to any material other than uncontaminated soil, including, but not limited to, rebar, wood, concrete, asphalt, asbestos, and refuse, provided that soil reused under this Agreement may contain de minimus amounts of material other than uncontaminated soil that may reasonably become intermingled with the uncontaminated soil as a result of loading and transportation.
6. This Agreement shall be effective upon its execution by the Director of IEPA and the Secretary of IDOT.
7. This Agreement shall continue in full force and effect without modification, unless subsequently amended by written agreement executed by the Director of IEPA and the Secretary of IDOT.

8. Upon the Illinois Pollution Control Board's adoption of rules under P.A. 96-1416, this Agreement shall terminate or the IEPA and IDOT may amend this Agreement in writing as necessary so that it is not inconsistent with the Board's rules.
9. In the event that any portion of this Agreement is determined to be void or otherwise unenforceable, all other provisions of this Agreement shall continue with full force and effect.

  
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Douglas P. Scott, Director  
Illinois Environmental Protection Agency

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Gary Hannig, Secretary  
Illinois Department of Transportation

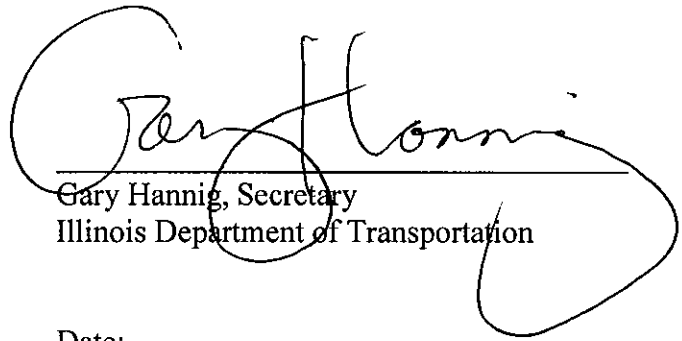
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Douglas P. Scott, Director  
Illinois Environmental Protection Agency

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Gary Hannig, Secretary  
Illinois Department of Transportation

Date: \_\_\_\_\_