

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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FEB 15 2001

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
SITE REMEDIATION PROGRAM) R01-27
(AMENDMENTS TO 35 ILL.) (Rulemaking - Land)
ADM. CODE 740))

NOTICE OF FILING

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Matthew J. Dunn, Chief
Environmental Bureau
Office of the Attorney General
James R. Thompson Center
100 West Randolph, 12th Floor
Chicago, Illinois 60601

Bobb Beauchamp, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Robert Lawley, Chief Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, Illinois 62701-1787

Attached Service List

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Illinois Environmental Protection Agency's Testimony of Lawrence W. Eastep and Testimony of Gregory W. Dunn, a copy of each of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: Mark Wight
Mark Wight
Assistant Counsel

DATE: February 13, 2001

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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TESTIMONY OF GREGORY W. DUNN ON PROPOSED AMENDMENTS TO
35 ILL. ADM. CODE 740

My name is Gregory W. Dunn. I am currently manager of one of the Site Remediation Program Units of the Bureau of Land of the Illinois Environmental Protection Agency (Agency). The Site Remediation Program (SRP), as established under 35 Ill. Adm. Code 740, provides Remediation Applicants (property owners, developers, bankers, real estate agents, businesses, etc.) the opportunity to receive review and evaluation services, technical assistance, and no further remediation determinations from the Agency.

I graduated from Eastern Illinois University in 1986 with a B.S. in Geology and a B.S. in Earth Science. I have been employed with the Agency since September 1986. I was a project manager in the Site Assessment Unit from September 1986 until October 1992. From October 1992 until July 1997, I was a project manager in the Pre-Notice Program, which became the Site Remediation Program in June 1997. From July 1997 until December 1998, I was a project manager in the State Sites Unit, which uses State

funds to remediate sites. Since December 1998, I have been manager of one of the Site Remediation Program units. I am registered as a Licensed Professional Geologist in the State of Illinois.

Today I will testify in support of some proposed rule changes in 35 Ill. Adm. Code 740 concerning the incorporations by reference (Sections 740.120, 740.125, 740.420(a) and 740.425(b)(2)(B)), laboratory accreditation (Sections 740.415(d)(6), 740.425(b)(6), 740.435(b)(8) and 740.455(a)(6)), and also the Target Compound List tables identified in Appendix A with a related amendment to Section 740.415(d)(3). Lawrence W. Eastep will testify on all proposed amendments not covered in my testimony.

Incorporations by Reference:
(Sections 740.120, 740.125, 740.420(a) and 740.425(b)(2)(B))

Section 740.125 incorporates by reference several documents that are required for use elsewhere in Part 740. In order to keep current with the changes by the United States Environmental Protection Agency (USEPA) and the American Society for Testing and Materials (ASTM), the Agency proposes the following changes to Section 740.125. Under 740.125(a), the Agency proposes to use the most current document prepared by ASTM for the performance of environmental site assessments. The proposal is to change the document number to 1527-00 from 1527-94 and the date to May 10, 2000, from April 15, 1994, to reflect the most current "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" reference manual. This

reference also is updated at Sections 740.420(a) and 740.425(b)(2)(B). Some of the differences between the 1994 version and 2000 version include: the addition of a reference assisting users on the selection of an environmental professional to conduct the Phase I assessment; new terminology for activity and use limitations, engineering controls and institutional controls; and addition of acronyms and sources.

The Site Remediation Program intends to remain current with USEPA promulgated "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (SW-846) and changes made to 35 Ill. Adm. Code 742. To this end, the Agency proposes to change the reference in Section 740.125(b) from Update I to Update III and the date from July 1992 to June 1997. This change will keep the Site Remediation Program current with the latest advances in sampling and analytical techniques.

Section 740.125(c) identifies a phone number for the National Technical Information Service (NTIS). This phone number has changed and the NTIS has added a toll free number. The Agency proposes to change the phone number from (703) 487-4600 to the following: (703) 605-6000 or 1-800-553-6847.

The Agency proposes to insert an addition into Section 740.125(c) for the Site Remediation Program to keep current with all available reference materials. "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111 (May 1994) will be added as additional reference material in support of EPA Publication No. EPA/600/4-91/010 dated June 1991 and titled "Methods for the Determination of Metals in Environmental Samples." This reference is

added to the definition for "practical quantitation limit" at Section 740.120.

Laboratory Accreditation:

(Sections 740.415(d)(6), 740.425(b)(6), 740.435(b)(8) and 740.455(a)(6))

In March 1998, the 35 Ill. Adm. Code 186 regulations, "Accreditation of Laboratories for Drinking Water, Wastewater and Hazardous Waste Analyses," were adopted pursuant to Sections 4(n) and 4(o) of the Environmental Protection Act [415 ILCS 5/4(n) and (o)]. These rules establish laboratory standards for data quality that are compliant with the standards of the National Environmental Laboratory Accreditation Program (NELAP). The NELAP is a USEPA operated program that implements standards developed by the National Environmental Laboratory Accreditation Conference (NELAC). The NELAC is a cooperative association of state and federal agencies formed to establish and promote mutually acceptable performance standards for the operation of environmental laboratories. The goal of NELAC is to foster the generation of environmental laboratory data of known and acceptable quality on which to base public health and environmental management decisions. Now that the Part 186 regulations are in place, the Agency believes that it is time to take the lead in ensuring that the standards of data quality intended by subsections 4(n) and (o) of the Act are implemented by requiring their use in the State's remediation programs.

Currently in the Site Remediation Program, compliance with the standards of data quality objectives in 35 Ill. Adm. Code 740.415(d) is reliant on the professional ability and integrity of the sample collector and the laboratory analyzing the samples. Adoption

of a requirement for participation in the Site Remediation Program to use a laboratory accredited under 35 Ill. Adm. Code 186 will further ensure that the environmental consultant and the Agency will receive analytical data of acceptable and known quality. In turn, the environmental consultant, the Agency and the public will feel confident that the decisions made from the analytical data are founded on standard, reliable data that is in compliance with the most recent national standards for environmental laboratory data.

To ensure that SRP data analyses are up to NELAP standards, the Agency proposes the following language under Section 740.415(d)(6): "Effective July 1, 2002, all quantitative analyses of samples collected on or after that date and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid."

The Agency is proposing July 1, 2002, as the effective date for the requirement of analyses by accredited laboratories to allow laboratories wishing to participate ample time to apply and gain accreditation provided all the requirements of the accreditation are met. The Agency's Division of Laboratories is reviewing all accreditation applications and estimates about six to nine months to get a laboratory from application to accreditation. Currently, seventeen laboratories have applied for SW-846/RCRA accreditation, with more than half of those laboratories located within the State of Illinois. (See Attachment 1)

Under the NELAP requirements, the Illinois Environmental Laboratory Accreditation Program (ELAP) must unconditionally recognize NELAP accreditations issued by another NELAP approved state (i.e. accrediting authority). A laboratory accredited for SW-846/RCRA testing by another state or federal accrediting authority can become an Illinois ELAP laboratory if the other state or federal accreditation requirements are equal to or exceed Illinois' requirements and the applicable Illinois ELAP fees are paid (Section 186.205(a)(2)). By design, another NELAP accrediting authority's program is equal to Illinois' requirements, and laboratories accredited by such accrediting authorities produce data that is in compliance with the most recent national standards for environmental laboratory data. In addition to Illinois, six states (California, Florida, Kansas, New Jersey, New York, and Utah) have received NELAP Accrediting Authority status for SW-846/RCRA accreditation.

Once accreditation is required for labs analyzing samples, SRP reports will be required to include confirmation of compliance with the requirement. Sections 740.425(b)(6), 740.435(b)(8), and 740.455(a)(6) provide references and data sources that should be included in the appendix portion of the comprehensive Site Investigation Report, focused Site Investigation Report, and the Remedial Action Completion Report, respectively. The Agency proposes to add language to these sections requiring reports with laboratory analyses for samples collected on or after July 1, 2002, to contain the accreditation status of the laboratory and a certification by an agent of the laboratory that the analyses were performed in accordance with the requirements of 35 Ill. Adm. Code

186 and the scope of the laboratory's accreditation.

Screening for Hazardous Substances and the Target Compound List:
(Section 740.415(d)(3); Appendix A, Tables A - D)

The Site Remediation Program uses the United States Environmental Protection Agency's Target Compound List as a representation of the hazardous substances most commonly found at remediation sites. The Target Compound List is found in Appendix A of Part 740. Under certain circumstances, the Target Compound List provides a basis for initial screening for the presence of hazardous substances. It is not intended to determine if the site has met remediation objective concentrations established in Part 742. Rather, if the presence of hazardous substances is revealed based on the screening concentrations, the substances become contaminants of concern and must be remediated to Tier 1, Tier 2 or Tier 3 remediation levels.

Section 740.415(d)(3) provides that all laboratory quantitative analyses shall be conducted using SW-846 Methods as incorporated by reference at Section 740.125. The current language in Section 740.415(d)(3) states that the Practical Quantitation Limit (PQL) "of the test methods selected must be less than or equal to the PQL for the Target Compound List at Appendix A of this Part, or, if the site remediation objective concentrations have been determined, the PQL must be less than or equal to the remediation objective concentrations for the site."

Based on this provision, one could sample for the Target Compound List parameters and meet the required quantitation limits (RQL) as identified in Appendix A,

but potentially have a site that is not protective of human health or the environment. This may occur if the compound is identified during the screening process at a concentration below the RQL value, but above the Tier 1 or site-specific remediation objective. The screening procedure allows the RA to treat the compound as if it is not present at the site. However, the RQLs for at least forty-four compounds identified in Appendix A are above the ingestion, soil migration to groundwater, or groundwater remediation objectives as established in Tier 1 of 35 Ill. Adm. Code 742 or in 35 Ill. Adm. Code 620. See Attachment 2. Thirty-four of these forty-four compounds are identified as potential carcinogens in the Tier 1 tables. If these hazardous substances are eliminated as contaminants of concern based on the higher screening levels of the RQLs, an unrestricted, comprehensive NFR Letter could be obtained with these compounds remaining at the site at concentrations above those that would be allowed under Part 742.

Therefore, the Agency proposes the deletion of the required quantitation limits in the Appendix A tables and the addition of the following language in Section 740.415(d)(3): "The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the Tier 1 remediation objectives for residential properties, applicable groundwater remediation objectives under 35 Ill. Adm. Code 742. Appendix B, or, if already determined, the remediation objective concentrations for the site. This revision will make the screening values for hazardous substances on the Target Compound List protective by ensuring that hazardous substances in concentrations above Part 742 objectives are identified as contaminants of concern and that no hazardous

substances remain on site above the Tier 1, Tier 2 or Tier 3 levels applicable to the site.

As noted above, the proposed amendment at Section 740.415(d)(3) also requires the amendment of Appendix A, Tables A through D. The Agency proposes to delete the water and soil RQLs and the statement concerning RQLs located below each table in Appendix A. The screening values then would be as provided in amended Section 740.415(d)(3) as discussed previously. Appendix A tables would contain only the CAS number, the compound name and the method used to analyze a particular compound.

Additions, Corrections, Methodologies:
(Appendix A, Tables A-D)

In addition to the deletion of the RQLs, several other revisions are proposed for Appendix A, Tables A through D. USEPA has completed Update III to amend "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846 (SW-846), which specifies the test methods for analyzing groundwater and soil samples. To remain current with USEPA changes to SW-846, the Agency proposes to change the 8260A test method identified in Table A to the current 8260B method established in Update III.

Currently, Table A contains the compound 1,2-dichloroethene (total). The Agency very rarely, if ever, sees 1,2-dichloroethene (total) reported in submittals and SW-846 Method 8260C does not identify 1,2-dichloroethene. Therefore, in order to be consistent with Part 742 and SW-846 Method 8260C, the Agency proposes to delete the 1,2-dichloroethene (total) compound and add the compounds cis-1,2-dichloroethene and

trans-1,2-dichloroethene along with their respective CAS numbers.

Methyl Tertiary Butyl Ether or MTBE is a volatile organic compound that has been used as an octane enhancer in gasoline since the late 1970's. In the Clean Air Act of 1990, Congress mandated the use of reformulated gasoline in areas of the country with the worst ozone or smog problems. Reformulated gasoline must meet certain technical specifications set forth in the Clean Air Act, including a specific oxygen content. Ethanol and MTBE are the primary oxygenates used to meet the oxygen requirement, with MTBE used in about 84% of the reformulated gasoline supplies.

MTBE is showing up in increasing levels in the environment, especially in groundwater. Although Illinois does not have monitoring data for MTBE in surface water, several Illinois communities utilizing groundwater have detected MTBE in their water supply. During the monitoring of over 1200 community water supplies within Illinois, MTBE has been detected in twenty-six water supply wells. Use of four community water supply wells has been discontinued due to MTBE contamination. See Attachment 3. Because of the increasing frequency with which MTBE is found in the environment and the potential risk to groundwater and human health, the Agency proposes to add MTBE as a target compound list compound on Table A, Appendix A. MTBE has a CAS number of 1634-04-4 and can be analyzed by Method 8260B.

Appendix A, Table B identifies the semi-volatile organic analytical parameters. In order to be consistent with changes made by USEPA to SW-846, the Agency proposes to change the method from 8270A to 8270C. Method 8270C is the overall method used

to analyze soil and water samples for semi-volatile organic compounds. However, many semi-volatile organic compounds have remediation objectives, established in 35 Ill. Adm. Code 742, less than the detection limits of method 8270C. Therefore, the Agency proposes to add method 8310 to some of the semi-volatile organic compounds that are also identified as polynuclear aromatic hydrocarbons. The use of method 8310, which has lower detection limits than the remediation objectives in Part 742, will verify if the remediation objectives for a site have been met.

The Agency has identified two spelling errors within Table B. The spelling of "acenaphthalene" should be "acenaphthylene" and "fluorine" should be "fluorene."

Table C of Appendix A identifies the pesticide and aroclor organic analytical parameters. In order to be consistent with changes made by USEPA to SW-846, the Agency proposes to change the method from 8081 to 8081A for the pesticides and from 8081 to 8082 for the aroclors.

Table D of Appendix A identifies the inorganic analytical parameters. In order to be consistent with changes made by USEPA to SW-846, the Agency proposes to change the method from 6010A to 6010B, where applicable. SW-846 also identifies method 6020, which can be used to analyze many of the inorganic metals. The Agency proposes to add method 6020 to the following metals: aluminum, antimony, arsenic, beryllium, chromium, cobalt, copper, lead, manganese, nickel, silver, thallium, and zinc.

This concludes my testimony.

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ATTACHMENT 1

Laboratories Accredited for SW-846/RCRA Testing in Illinois

American Technical & Analytical Services, Inc.	Heights, Missouri
Bodycote Industrial Testing, LTD.	St. Louis, Missouri
CT&E Environmental Services, Inc.	Ludington, Michigan
En Chem, Inc.	Green Bay, Wisconsin
Environmental Monitoring and Technologies, Inc.	Morton Grove, Illinois
First Environmental Laboratories, Inc.	Naperville, Illinois
Great Lakes Analytical	Buffalo Grove, Illinois
Heritage Environmental Services, Inc.	Indianapolis, Indiana
Metropolitan Water Reclamation District Greater Chicago	Schaumburg, Illinois
PDC Laboratories, Inc.	Peoria, Illinois
RTI Laboratories, Inc.	Livonia, Michigan
Safety-Kleen	Village, Illinois
Severn-Trent Laboratories, Inc.	University Park, Illinois
Severn-Trent Laboratories, Inc.	Valparaiso, Indiana
Suburban Laboratories, Inc.	Hillside, Illinois
Teklab, Incorporated	Collinsville, Illinois
TestAmerica, Inc.	Bartlett, Illinois

ATTACHMENT 2

740 Appendix A
Required Quantitation

<u>Compound</u>	<u>Objective</u>	<u>Route</u>	<u>Required Quantitation</u>
Bromomethane	9.8 ug/l	Class I Groundwater	10 ug/l
Vinyl Chloride	2.0 ug/l	Class I Groundwater	10 ug/l
Methylene Chloride	5.0 ug/l	Class I Groundwater	10 ug/l
1,1-Dichloroethylene	7.0 ug/l	Class I Groundwater	10 ug/l
Chloroform	0.02 ug/l	Class I Groundwater	10 ug/l
Chloroform	0.1 ug/l	Class II Groundwater	10 ug/l
1,2-Dichloroethane	5.0 ug/l	Class I Groundwater	10 ug/l
Carbon Tetrachloride	5.0 ug/l	Class I Groundwater	10 ug/l
Bromodichloromethane	0.02 ug/l	Class I Groundwater	10 ug/l
Bromodichloromethane	0.02 ug/l	Class II Groundwater	10 ug/l
1,2-Dichloropropane	5.0 ug/l	Class I Groundwater	10 ug/l
cis-1,3-Dichloropropane	4.0 mg/kg	Soil Migration to Groundwater - Class I	10 mg/kg
cis-1,3-Dichloropropane	1.0 ug/l	Class I Groundwater	10 ug/l
cis-1,3-Dichloropropane	5.0 ug/l	Class II Groundwater	10 ug/l
Trichloroethene	5.0 ug/l	Class I Groundwater	10 ug/l
1,1,2-Trichloroethane	5.0 ug/l	Class I Groundwater	10 ug/l
Benzene	5.0 ug/l	Class I Groundwater	10 ug/l
trans-1,3-Dichloropropane	4.0 mg/kg	Soil Migration to Groundwater - Class I	10 mg/kg
trans-1,3-Dichloropropane	1.0 ug/l	Class I Groundwater	10 ug/l
trans-1,3-Dichloropropane	5.0 ug/l	Class II Groundwater	10 ug/l
Bromoform	0.2 ug/l	Class I Groundwater	10 ug/l
Bromoform	0.2 ug/l	Class II Groundwater	10 ug/l
Tetrachloroethene	5.0 ug/l	Class I Groundwater	10 ug/l
Hexachloroethane	5.0 ug/l	Class I Groundwater	10 ug/l
Nitrobenzene	3.5 ug/l	Class I Groundwater	10 ug/l
Nitrobenzene	3.5 ug/l	Class II Groundwater	10 ug/l
2,4,6-Trichlorophenol	6.4 ug/l	Class I Groundwater	10 ug/l
2,6-Dinitrotoluene	0.7 ug/kg	Soil Migration to Groundwater - Class I	660 ug/kg
2,6-Dinitrotoluene	0.7 ug/kg	Soil Migration to Groundwater - Class II	660 ug/kg
2,6-Dinitrotoluene	0.02 ug/l	Class I Groundwater	10 ug/l
2,6-Dinitrotoluene	0.1 ug/l	Class II Groundwater	10 ug/l
2,4-Dinitrophenol	14 ug/l	Class I Groundwater	25 ug/l
2,4-Dinitrophenol	14 ug/l	Class II Groundwater	25 ug/l
Hexachlorobenzene	0.06 ug/l	Class I Groundwater	10 ug/l
Hexachlorobenzene	0.3 ug/l	Class II Groundwater	10 ug/l
Pentachlorophenol	30 ug/kg	Soil Migration to Groundwater - Class I	1600 ug/kg
Pentachlorophenol	140 ug/kg	Soil Migration to Groundwater - Class II	1600 ug/kg
Pentachlorophenol	1.0 ug/l	Class I Groundwater	25 ug/l
Pentachlorophenol	5.0 ug/l	Class II Groundwater	25 ug/l
Carbazole	600 ug/kg	Soil Migration to Groundwater - Class I	660 ug/l
Beno(a)anthracene	0.13 ug/l	Class I Groundwater	10 ug/l
Beno(a)anthracene	0.65 ug/l	Class II Groundwater	10 ug/l
Chrysene	1.5 ug/l	Class I Groundwater	10 ug/l
Chrysene	7.5 ug/l	Class II Groundwater	10 ug/l
bis(2-ethylhexyl)phthalate	6.0 ug/l	Class I Groundwater	10 ug/l
Benzo(b)fluoranthene	0.18 ug/l	Class I Groundwater	10 ug/l

Benzo(b)fluoranthene	0.9 ug/l	Class II Groundwater	10 ug/l
Benzo(k)fluoranthene	0.17 ug/l	Class I Groundwater	10 ug/l
Benzo(k)fluoranthene	0.85 ug/l	Class II Groundwater	10 ug/l
Benzo(a)pyrene	90 ug/kg	Ingestion (Residential)	660 ug/kg
Benzo(a)pyrene	0.2 ug/l	Class I Groundwater	10 ug/l
Benzo(a)pyrene	2.0 ug/l	Class II Groundwater	10 ug/l
Indeno(1,2,3-c,d)pyrene	0.43 ug/l	Class I Groundwater	10 ug/l
Indeno(1,2,3-c,d)pyrene	2.15 ug/l	Class II Groundwater	10 ug/l
Dibenzo(a,h)anthracene	90 ug/kg	Ingestion (Residential)	660 ug/kg
Dibenzo(a,h)anthracene	0.3 ug/l	Class I Groundwater	10 ug/l
Dibenzo(a,h)anthracene	1.5 ug/l	Class II Groundwater	10 ug/l
alpha-BHC	0.5 ug/kg	Soil Migration to Groundwater - Class I	8 ug/kg
alpha-BHC	3.0 ug/kg	Soil Migration to Groundwater - Class II	8 ug/kg
alpha-BHC	0.03 ug/l	Class I Groundwater	0.05 ug/l
Aldrin	0.04 ug/l	Class I Groundwater	0.05 ug/l
Dieldrin	4.0 ug/kg	Soil Migration to Groundwater - Class I	16 ug/kg
Dieldrin	0.02 ug/l	Class I Groundwater	0.1 ug/l
4,4'-DDE	0.04 ug/l	Class I Groundwater	0.1 ug/l
Antimony	6.0 ug/l	Class I Groundwater	60 ug/l
Antimony	24.0 ug/l	Class II Groundwater	60 ug/l
Beryllium	4.0 ug/l	Class I Groundwater	5 ug/l
Thallium	2.0 ug/l	Class I Groundwater	10 ug/l
Vanadium	49.0 ug/l	Class I Groundwater	50 ug/l

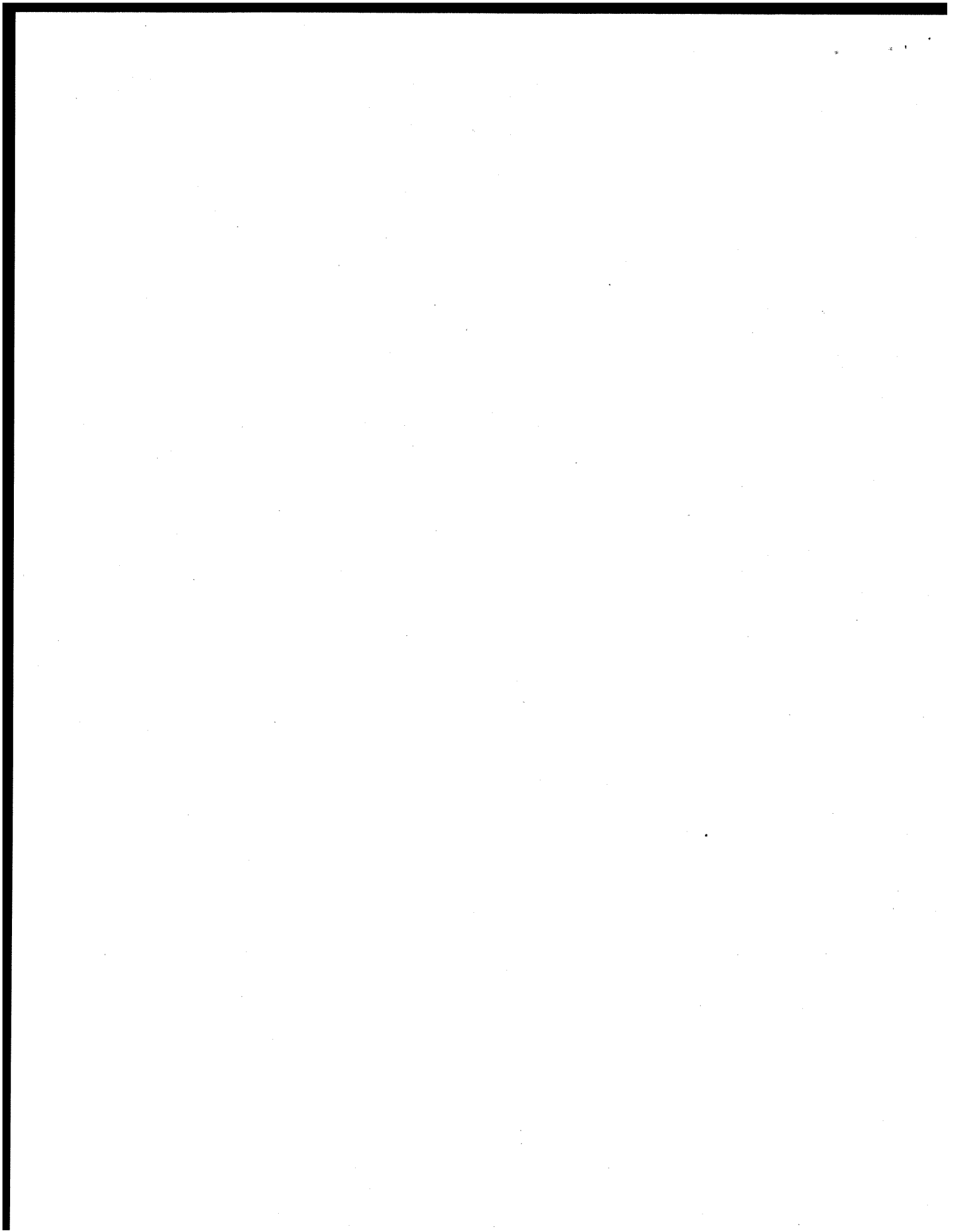
ATTACHMENT 3

Community Wells Detected with Methyl Tertiary Butyl Ether (MTBE)

T&C Mobile Estates	Adams County
Belvidere	Boone County
Hardin	Calhoun County
Germantown	Clinton County
Grafton	Jersey County
South Elgin	Kane County
Manteno	Kankakee County
Bethalto	Madison County
Crystal Lake	McHenry County
Crystal Heights	McHenry County
Marengo	McHenry County
McHenry	McHenry County
Saybrook	McLean County
Nokomis	Montgomery
Prairie Du Rocher	Randolph County
Rushville	Schuyler County
North Pekin	Tazewell County
Marquette Heights	Tazewell County
Creve Coeur	Tazewell County
Rock Falls	Whiteside County
Clearview Subdivision	Will County
Loves Park	Winnebago County

The following four community water supplies have discontinued use of wells as the result of MtBE contamination.

Oakdale Acres Subdivision	Kankakee County
East Alton	Madison
Island Lake	McHenry
Roanoke	Woodford



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TESTIMONY OF LAWRENCE W. EASTEP ON PROPOSED AMENDMENTS TO
35 ILL. ADM. CODE 740

My name is Lawrence W. Eastep. I am the manager of the Remedial Project Management Section of the Bureau of Land of the Illinois Environmental Protection Agency ("Agency"). The Remedial Project Management Section ("RPMS") is generally responsible for Bureau of Land remedial actions at sites that may pose environmental threats and that are not otherwise regulated by CERCLA, RCRA or LUST programs. The RPMS also is responsible for the voluntary Site Remediation Program ("SRP"), which encourages and administers many private party clean-ups.

I graduated from the University of Missouri at Rolla in 1969 with a B.S. in Civil Engineering. I received my M.S. in Civil Engineering (Sanitary/Environmental) in 1976 from the same institution. Except for a brief period from 1978 to early 1979, I have been employed by the Agency since 1971 in a variety of positions including manager of the Bureau of Land Permit Section from 1983 through 1993. I assumed my current responsibilities in January 1994. I am registered as a Professional Engineer in Illinois. I have thirty years experience in the environmental engineering field. A brief summary of my education and work experience is included as Attachment 1.

Today I will be testifying in support of the proposed amendments to 35 Ill. Adm. Code 740: Site Remediation Program. I will provide testimony on all proposed amendments except those concerning the updates for the incorporations by reference (Section 740.125), the laboratory certification requirements (Sections 740.415(d)(6), 740.425(b)(6), 740.435(b)(8), and 740.455(a)(6)), and the revisions to the tables in Part 740.Appendix A and Section 740.415(d)(3).

Section 740.120 **Definitions**

Three new definitions are proposed. The first is "Licensed Professional Geologist." This definition is based on the definition found in the Professional Geologist Licensing Act. 225 ILCS 745/15. It is added in support of amendments to Sections 740.405, 740.410 and 740.425 recognizing a role in the SRP for the expertise of Licensed Professional Geologists. These sections are discussed further below.

The second new definition is "perfected." This definition refers to the act of recording or filing documents in such a way as to place the public on notice of some act or change of status. The definition is added in support of amendments to Section 740.620(b) and will be discussed further below.

The third new definition is "soil management zone." This definition refers to the concept introduced in new Section 740.535 regarding the management of contaminated soils at remediation sites. It will be discussed further in that context.

Section 740.405 **Conduct of Site Activities and Preparation of Plans and Reports**

This section allows certain remediation site activities to be conducted by, or under the supervision of, a Licensed Professional Geologist (LPG) in addition to a Licensed Professional Engineer ("LPE"). However, all plans and reports submitted for review and evaluation still must

be prepared by, or under the supervision of, an LPE. Under this change LPGs may perform or supervise only remediation site activities. Preparation of plans and reports can only be performed by, or under the supervision of, LPEs as provided in Title XVII. The Environmental Protection Act ("Act") specifies only LPEs for site activities and preparation and review of plans and reports. Since that time, the Professional Geologist Licensing Act ("PGLA") has been passed. It expressly authorizes the performance of a number of activities related to geologic investigations and the interpretation of geologic data, which appear to correspond to a number of remediation site activities. The Agency believes this justifies harmonizing it with the requirements of the Act to the extent there is overlap. But the PGLA does not seem to include design of remedies and does not expressly authorize signing or review of plans and reports under the Act. In other words, it does not expressly change who is ultimately responsible for plans and reports under the Act. As a practical matter this probably means that LPGs could conduct site activities only as an employee or under contract to an LPE. The Agency would accept the agreed upon division of labor as long as the plan or report is signed by an LPE as responsible party. If LPEs must sign plans and reports, LPEs should continue to supervise review of plans and reports, so no changes are proposed for Subpart E: Submittal and Review of Plans and Reports. Similar amendments are found at Sections 740.410(b)(3) and (b)(4) and Section 740.425(b)(5)(B).

Section 740.450 **Remedial Action Plan**

The change at Section 740.450(a)(3) clarifies the requirement to submit a schedule that identifies remedial activities through the recording of the No Further Remediation Letter. The "schedule of activities" required by this Section always was intended to be a timetable to be used

as a basis for measuring reasonable progress for terminations from the SRP under Section 740.230(a)(3). However, the phrase frequently has been interpreted as a mere list of activities. In addition to being used to measure satisfactory progress, the timetable will be used for determining the duration of the Soil Management Zone under new Section 740.535(d). This is necessary to insure there will be no abuse of the SMZ process and the exemption from solid waste rules. Under this process an applicant could get a Remedial Action Plan approved and create what might otherwise be construed as a disposal unit. If there were not a schedule to follow and the applicant did not complete all the requirements of the SMZ within a reasonable time, there would be very little the Agency could do to insure the safety of the public. Only by following the entire SMZ process in a timely manner is the Agency assured that the applicant's use of the SMZ will not result in additional risk to human health and the environment. The SMZ would be allowed to remain in effect for the time indicated in the approved Remedial Action Plan or until the NFR letter became effective. If more time was needed, the remediation applicant ("RA") could submit an amendment to the Remedial Action Plan modifying the original schedule.

Under proposed Section 740.450(c)(4), the RA is required to formally request the SMZ as part of the remedy selection process. It is at this stage where the RA defines the site SMZ and demonstrates compliance with new Section 740.535.

Section 740.455 **Remedial Action Completion Report**

Under Section 740.455 (a)(2)(C), the RA must demonstrate compliance with the requirements for soil management zones, if used, when the Remedial Action Completion Report is submitted.

Section 740.525 **Standards for Review of Remedial Action Completion Reports and Related Activities**

New subsection 740.525(d) authorizes the Agency to consider compliance with the requirements for soil management zones, if used, in making its final determination on the Remedial Action Completion Report.

Section 740.535 **Establishment of Soil Management Zones**

With this entirely new section, a new concept and process will be added to the SRP rules. Many projects request redistribution of contaminated soil across the remediation site for purposes of regrading, structural fill, land reclamation, consolidation, replacement after treatment, and so forth. However, many of these activities meet the definition of disposal and might be subject to the design and operating requirements of Parts 807 and 811-815 of the Board's solid waste rules. The soil management zone ("SMZ") concept will allow these types of on-site solutions to on-site redevelopment problems under strictly controlled conditions. The projects mentioned above can proceed safely if they comply with the proposed requirements in Section 740.535 and of Part 742. Remediation Applicants would propose their SMZ plan in accordance with requirements of Section 740.535 as part of their Remedial Action Plan. The SMZ concept is not a major departure from present law and practice. 35 Ill. Adm. Code 817, which deals with steel production and foundry wastes, does allow for "beneficially reusable" wastes meeting certain standards to be reused for land reclamation or structural fill.

Under Section 740.535(b), there are a number of requirements with which an RA must comply to insure the SMZ is developed in a manner protective of human health and the environment. The RA is required to perform a comprehensive site investigation (as opposed to a

focused investigation) and identify all constituents of concern. Where the RA has specified limitations on the contaminants of concern to be addressed in the NFR letter, he or she has the option of limiting an investigation to those chemicals, even though many other chemicals may be present. This is referred to as a focused investigation. Since chemicals not investigated may have an impact on human health and the environment when redistributed as part of an SMZ, it is necessary to evaluate their presence and impact regardless of the type of NFR Letter desired. The final SMZ would have to be protective of human health and the environment for all contaminants, not just those identified and evaluated in a focused investigation.

All contaminants of concern identified within the SMZ must satisfy the requirements of Section 742.305 with regard to free product, soil saturation limits, characteristically hazardous wastes, and so forth. All other applicable requirements of Part 742 must be met in the SMZ (i.e., no migration to groundwater or unacceptable exposures; compliance with engineered barrier and institutional control requirements). The SMZ is to be constructed, operated and maintained safely so as to prevent odors, minimize fugitive emissions, control precipitation runoff, and avoid creating a breeding place or food for vectors.

RCRA requirements are controlling and must be complied with if there are any hazardous wastes involved. While persons or sites subject to Part B permits or RCRA closure requirements are prohibited from entering the SRP, there are several circumstances where RCRA may apply. If an RA encounters hazardous waste, but it was not subject to closure requirements, the waste could be managed under the SRP. For example, the RA could legally manage the waste by treating it in a permit exempt treatment unit but would still have to comply with any land disposal restrictions. Applicants now have an opportunity to obtain "remedial action plan

permits" (that are not part B permits) under RCRA. They could still manage waste under the SMZ but would also have to comply with RCRA permit requirements.

Subsection 740.535(b)(8)(A) would prohibit any contaminant of concern above Tier 1 residential levels from being treated or placed in any area where all contaminants of concern at the remediation site are at or below Tier 1 residential levels. This would prevent degradation of any area currently suitable for residential development, even when such areas are located on commercial properties (i.e. currently "clean" areas would remain clean).

Subsection 740.535(b)(8)(B) would prohibit soil with any contaminant of concern above Tier 1 residential concentrations from being treated or placed any closer to residential properties contiguous to the remediation site. This would prevent increasing contaminant loads or concentrations nearer contiguous residences under any circumstances.

Section 740.535(c) provides that SMZ boundaries must be defined in the Remedial Action Plan and remain within the boundaries of the remediation site. Were the SMZ-related activities to extend beyond the site boundaries, the Agency would lose regulatory control of the situation under Parts 740 and 742, and the activities would become subject to the solid waste requirements. Also, since institutional controls are likely to apply to the SMZ, the exact boundaries must be known.

Under Section 740.535(d), the Agency proposes to balance the needs of an RA to utilize an SMZ in a safe manner against potential abuse where an SMZ was approved in a Remedial Action Plan but an NFR Letter was never obtained. This will be achieved by controlling the duration of the SMZ. Waste or contaminated soil could be redeposited in accordance with the approved SMZ, but then the RA could drop out of, or be terminated from, the program for any of

a variety of reasons, never completing the Remedial Action Plan. In effect, disposal of remediation waste would have taken place with no environmental or developmental benefit and no control of the disposed waste. It is the Agency's intent that, if the SMZ is used and the RA gains the advantage of the exemption to the disposal rules, the remediation must be completed through the recording of the NFR Letter. The exemption is available only while an approved SMZ or an NFR Letter is in effect. Otherwise, there may be a violation of the disposal rules subject to enforcement.

The schedule approved under the Remedial Action Plan will be used to monitor timely progress and to calculate an automatic end to the SMZ, which should be at the time of the recording of the NFR Letter. In approving the duration of the SMZ, the Agency will consider the RA's schedule for completion of the work plan and preparation of the Remedial Action Completion Report, the statutory time for review of the Remedial Action Completion Report, issuance of the NFR Letter, and the recording of the NFR Letter. These procedural requirements generally will take four to six months in addition to performance of the work plan (60 or 90 days for review of plans and reports, 30 days for issuance of the NFR letter, and 45 days for recording of the NFR Letter). Assuming timely progress under Section 740.230, the SMZ can continue for as long as the RA needs if it is approved in a Remedial Action Plan. It could last until the agreement is terminated, or until the NFR is recorded.

Under Section 740.535(e), in the event the Agency determines the RA has failed to comply with the requirements of subsection (b), it can terminate the SMZ in accordance with SRP rules and require that an alternative Remedial Action Plan be developed so that problems at

the site can be corrected and the remediation can proceed to acceptable completion. The RA has the right to appeal an SMZ termination to the Board.

Under Section 740.535(f), in the event the RA cannot comply with the remediation objectives of the SMZ (as outlined in the Remedial Action Plan), then new objectives must be developed and these must be complied with. This provision will allow applicants to modify their remediation objectives later in the process if they can't meet the original objectives. Once activities in the SMZ have begun, they must be completed or acceptable alternatives developed and implemented. The failure to complete SMZ activities is not the same as a simple failure to achieve remediation objectives under Part 742 because the excavation and redistribution of contaminated soils have the potential to make the original migration and exposure scenarios worse or to create new scenarios if not performed to completion.

Section 740.535(g) provides the exemption from the requirements of parts 807 and 811-815 during remediation. The exemption continues when the NFR Letter becomes effective. The NFR Letter, rather than the solid waste disposal rules, contains the requirements for long-term management of the contaminated soil. If an SMZ has been terminated or allowed to expire without completion and an NFR Letter covering the remedial activities performed in the SMZ has not been issued and perfected, then an enforcement action may be appropriate.

Section 740.605 Issuance of No Further Remediation Letter

A new subsection (d) has been added allowing the Agency to correct errors in No Further Remediation Letters arising from oversight, omission or clerical mistake. Because of the SRP's practice of sending drafts before issuing the final NFR Letter, mistakes have been relatively rare. However, on occasion the Agency has received requests to correct errors in final NFR Letters

such as in legal descriptions, common addresses, and site identification numbers. Even though the changes are non-substantive, the Agency has been constrained by reluctance to modify a final determination in any way. Providing the authority to correct these mistakes serves the important public policy interest of insuring that accurate documents are recorded in the chain of title.

Section 740.615 **Payment of Fees**

The Agency is proposing a small change at Section 740.615(a) that would allow avoidance of the NFR Letter if fees for program participation have not been paid in full. The Agency has statutory authority to deny an NFR Letter if the applicable fees have not been paid. However, NFR Letters must be issued within 30 days of the approval of a Remedial Action Completion Report. Billing often is not completed within this period, especially when there are costs associated with drafting of the NFR letter itself and the No Further Remediation Letter Assessment. Because NFR Letters usually are issued before final payment is expected, avoidance of the NFR Letter is a better remedy for non-payment than denial.

Section 740.620 **Duty to Record No Further Remediation Letter**

Two amendments have been proposed for this section. Exception language is added to Section 740.620(a) to conform to the new requirement for Illinois Department of Transportation sites located in rights-of-way. The substance of this change is found in Section 740.621 and is discussed further below.

Section 740.620(b) is amended to introduce the concept of "perfecting" the NFR Letter. The Agency proposes this change for two reasons. First, the Agency believes the issuance of the letter constitutes a final determination by the Agency with regard to its immediate interest in the remediation activities performed by the RA. Therefore, the letter should be effective between the

Agency and the RA at the time of issuance. Recording is a critical step because it serves the purpose of placing the public on notice that the RA has resolved site environmental issues as specified in the letter. This additional step makes the letter effective as to others who may have a current or future interest in the property. This is similar to the perfection of a security interest.

Second, there have been some problems (although mainly in the LUST Program) with responsible parties failing to record their NFR Letters within 45 days of receipt. Based on Sections 58.8(a) and (b) of the Act, Section 740.620 requires recording of the NFR Letter within 45 days of receipt for the letter to become effective. This could be interpreted to mean that if the letter is not recorded within 45 days it cannot be made effective by recording after the 45th day. On the other hand, Section 58.10(e)(4) states that the letter is voidable if not recorded in accordance with Section 58.8. However, there is nothing to void if the letter has never become effective. To resolve this inconsistency, the Agency has clarified that the letter is voidable if not recorded (or perfected) within 45 days. Through public outreach and by sending reminders, the Agency has reduced the incidence of failures to record. This has been more efficient than the alternative of denying the effectiveness of letters not timely recorded and creating uncertainty with regard to the status of the site or requiring reentry into the SRP to obtain a new NFR Letter.

Section 740.621 **Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way**

This new section has been proposed to address the difficulties of recording NFR Letters or other land use restrictions at certain remediation sites of the Illinois Department of Transportation ("IDOT"). On occasion IDOT encounters contamination in its highway system at sites for which there is no legal description, real estate tax index, or parcel index number. To

enable continued use of risk-based remediation criteria, including land use limitations, IDOT has requested and the Agency is proposing that such sites be made subject to Memoranda of Agreement (“MOA”) between IDOT and the Agency. The framework of the MOA has been negotiated with IDOT. See Attachment 2. The IDOT MOA would contain all pertinent information about the site and the applicable land use controls. It would describe procedures for tracking IDOT remediation sites and notifying IDOT personnel and permittees of the location of such sites so that land use limitations may be observed. It would contain provisions for preservation of the integrity of any limitations through future conveyances, including the recording, upon creation of a deed, of the NFR Letter and any other limitations. It would require notification of the Agency prior to any conveyance along with a description of mechanism(s) used to ensure the integrity of any limitations. It also would require notification of the Agency of any changes at the site resulting in the failure or inability to satisfy the requirements of the Remedial Action Plan and the NFR Letter. Failure by IDOT to comply with the requirements of the MOA or any violation of an institutional control or other conditions could result in voidance of the NFR Letter.

Section 740.625 **Voidance of No Further Remediation Letter**

Three amendments are proposed for Section 740.625. The first is at subsection (a)(4) where the Agency proposes to strike the statutory reference to create conformity with the changes previously discussed at Section 740.620(b). The statutory reference is generally to the provisions that create the inconsistency resolved by the amendments proposed at Section 740.620.

The second amendment is at subsection (a)(9) where a new reason for voidance is created for the failure to comply with the IDOT MOA requirements proposed in Section 740.621. The third amendment is at subsection (a)(10). This adds as a basis for voidance the failure to comply with the notice and confirmation requirements of 35 Ill. Adm. Code 742.1010(b)(3), 742.1015(b)(5) and 742.1015(c). These requirements are in support of the use of institutional controls when residual contamination remains at the site. The Agency proposes that the failure to serve the notice or submit the required confirmation in a timely manner be made a basis for voidance of the NFR letter.

This concludes my testimony on amendments to Part 740 proposed by the Agency. Amendments proposed by the Agency but not covered by my testimony will be addressed in the testimony of Gregory W. Dunn.

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

ATTACHMENT ONE

RESUME

LAWRENCE W. EASTEP, P.E.
MANAGER, REMEDIAL PROJECT MANAGEMENT SECTION
BUREAU OF LAND
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

EDUCATION

1969

UNIVERSITY OF MISSOURI AT ROLLA
B. S. CIVIL ENGINEERING

1976

UNIVERSITY OF MISSOURI AT ROLLA
M. S. CIVIL ENGINEERING (SANITARY/ENVIRONMENTAL)

EXPERIENCE

1/94 -

PRESENT

MANAGER, REMEDIAL PROJECT MANAGEMENT SECTION,
BUREAU OF LAND - RESPONSIBLE FOR SUPERFUND
CLEANUPS, THE VOLUNTARY SITE REMEDIATION PROGRAM
AND STATE FUNDED REMEDIAL ACTIONS.

5/83 - 1/94

MANAGER, BUREAU OF LAND PERMIT SECTION -
RESPONSIBLE FOR STATE (SOLID WASTE) AND RCRA
(HAZARDOUS WASTE) PERMITTING.

5/83 - 2/79

MANAGER, INDUSTRIAL UNIT, DIVISION OF WATER
POLLUTION CONTROL PERMIT SECTION - RESPONSIBLE FOR
STATE AND NPDES PERMITS FOR INDUSTRY, AND
DEVELOPMENT OF THE STATE PRETREATMENT PROGRAM.

2/79 - 7/78

ENGINEER, SHEPHERD MORGAN AND SCHWAB, CONSULTING
ENGINEER, GRANITE CITY, ILLINOIS

7/78 - 10/71

FIELD OPERATIONS ENGINEER IN DIVISION OF WATER
POLLUTION CONTROL, PEORIA AND COLLINSVILLE OFFICES

10/71 - 1/71

FIELD ENGINEER, FLUOR CORPORATION, JOLIET, ILLINOIS

8/70 - 1/69

FIELD ENGINEER, BECHTEL CORPORATION, PONCE, PUERTO
RICO

REGISTERED AS PROFESSIONAL ENGINEER IN ILLINOIS

ATTACHMENT TWO
MEMORANDUM OF AGREEMENT
BETWEEN
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

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THIS AGREEMENT is entered into this ____ day of _____, by and between the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Department of Transportation ("IDOT"), also referred to herein as "the Parties," for the specific purposes hereinafter set forth.

I. BACKGROUND

Environmental investigative activities being undertaken on IDOT's highway property have revealed and may in the future reveal certain areas of environmental contamination ("sites") on this property. These sites include those where substances regulated by Illinois EPA were or may have been released into the environment as a result of activities conducted over the history of the highway property.

Because the highway property is currently and will likely remain a highway property, IDOT desires future site remedy determinations take land use into account in order to facilitate the use of risk-based remediation criteria. The Parties agree when institutional controls ("IC's") are necessary to assure the reliability of land use assumptions, it is essential that appropriate procedures be put in place to ensure such controls will be maintained for as long as necessary to keep the chosen remedy fully protective of human health and the environment.

In response to negotiations between Illinois EPA and IDOT, IDOT has developed a process, attached hereto as Appendix A, to maintain those IC's the Parties have chosen, or may hereafter agree should be implemented in connection with any site on IDOT's highway property. This Agreement is an integral part of the process.

II. DEFINITION

As used herein, the term "institutional control" or "IC" means any restriction or control arising from the need to protect human health and the environment and limits the use of and/or exposure to environmentally contaminated media (e.g., soils, surface water, groundwater) at any site on IDOT's highway property. The term includes controls on access and encompasses deed restrictions and other non-engineered mechanisms for ensuring compliance with necessary land use limitations.

III. PURPOSE

The Parties intend to accomplish the following specific objectives through execution of this Agreement:

- a. To implement a process to ensure appropriate long term maintenance of those IC's that may have already or may hereafter be selected for implementation as part of remedy selection for any site on IDOT's highway property. It is intended such a process will in turn:

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1. Facilitate the application of risk-based remediation criteria to site remediations through consideration of assumed future land usage at those sites where IC's will be necessary to make such assumptions reliable;
2. Elevate the general level of awareness among IDOT personnel as to the need to maintain such controls in order to ensure long term protection of human health and the environment.

b. To implement procedures, described in Appendix A, for integrating all site remedies, including IC's, into IDOT's design, construction, maintenance and surplus property transfer processes;

c. To provide, in part through IDOT's good faith compliance with this Agreement, reasonable assurances to Illinois EPA that those specific pathway and exposure assumptions relied upon in applying a risk-based remediation standard to a given site will remain valid until such time as the Parties agree either different site controls or unrestricted site usage would be appropriate;

IV. LIST OF SITES

Within thirty (30) days after execution of this Agreement, IDOT agrees to develop a draft listing of sites (Appendix B) on highway property to be covered under the terms of this Agreement. The list will be sent to Illinois EPA for review and concurrence prior to finalization and should include a reference to the site location on the highway property, its incident number and/or Land Pollution Control number. Once finalized, the initial Appendix will be updated to reflect any additions or deletions of sites as may hereafter be agreed to by the Parties. The absence of a site from Appendix B in no way relieves IDOT of the requirement to comply with the procedures set forth in this or MOA as applicable to that site.

V. FUTURE PROPERTY CONVEYANCE

Should the decision later be made to transfer to any other agency, private person or entity, either title to, or some lesser form of property interest in any site on the highway property with an existing IC's, then IDOT shall ensure:

- a. Illinois EPA is provided with notice at least sixty days prior to any such intended conveyance. Such notice must indicate the mechanism(s) intended to be used to reasonably ensure any IC's needing to remain in place after interest conveyance will be maintained, and when a deed is created, that the proper recording of such IC's will be done in accordance with the applicable Illinois statute or regulation. No Further Remediation ("NFR") letter(s) containing IC's issued by the Illinois EPA will be appended to this Memorandum of Agreement. Also, those NFR letters must travel with the land until such time that all Parties agree that IC's are no longer necessary for the protection of human health and the environment at the site(s) identified in the NFR letter(s). IDOT agrees to record the Illinois EPA NFR letter with the county recorder's office upon the creation of a deed to transfer ownership of any property with IC's imposed on it.

The planned conveyance of any site with IC's may prompt Illinois EPA to re-evaluate the continued appropriateness of any previously agreed upon IC's based upon the level of assurance provided.

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VI. CHANGE IN APPLICABLE STANDARDS

Nothing herein should be construed to preclude IDOT from proposing at any time or from the Parties otherwise agreeing to effect the deletion of any site from coverage under the terms of this Agreement on account of either: (i) a post-remedy implementation change to applicable State risk-based cleanup standards, or (ii) a change in previously documented contaminant concentration levels allowing for unrestricted use.

VII. FUTURE COMMUNICATIONS

Within ten days of execution of this Agreement, each Party shall notify the other Parties as to the name(s), address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of their respective representative(s) who should receive all correspondence and communications on behalf of the Party pertaining to all matters falling under the terms of this Agreement. A listing of agency representatives will be attached hereto as Appendix E and will be updated by the Parties as appropriate.

VIII. DISPUTES

All Parties agree to use a good-faith effort to resolve any and all disputes, hereafter arising with regard to the Department's substantial good-faith compliance with the terms of this Agreement relating to the sites addressed hereunder.

IX. RESERVATION OF RIGHTS

It is agreed and understood that Illinois EPA reserves all rights and authorities it may currently have or hereafter acquire by law to require IDOT to comply with those federal or State laws and regulations applicable to the investigation, cleanup and long term maintenance of those sites to be covered by this Agreement. It is also understood that IDOT reserves those rights and authorities granted to it by federal or State law, regulation, or executive order. IDOT further reserves the right to put highway property to those uses deemed necessary in its discretion for mission accomplishment.

X. AMENDMENT

Any amendments to this Agreement must be in writing and will be executed by the undersigned signatories or their duly authorized designees or successors and must be attached to this original Agreement.

XI. TERMINATION

This Agreement will terminate at such time as the undersigned representatives of the Parties or their successors, mutually concur the aforesaid objectives of the Parties have been fulfilled and the need for such an Agreement no longer exists. Alternatively, any Party may unilaterally withdraw from this Agreement upon sixty (60) days written notice to the other Parties but only after reasonable efforts have first been made by all Parties to resolve the dispute(s) leading to the taking of such action. If any Party decides to

unilaterally withdraw, the Parties shall nonetheless work towards resolving any outstanding issues as may exist between them. It is understood should IDOT choose to unilaterally withdraw from this Agreement, Illinois EPA may choose to reconsider any remedy(ies) associated with any site with an IC still in place at the time of such withdrawal.

XII. REPRESENTATIVE AUTHORITY

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Each undersigned representative of the Parties to this Agreement certifies she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute the same as to effectively bind each Party to its terms.

XIII. EXECUTION

This Agreement shall become effective on the date the last of the authorized representatives of the Parties signs.

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____

Title: _____

FOR THE ILLINOIS DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

IDOT may need to obtain a No Further Remediation letter ("NFR letter") at non-fixed facilities. In most cases, these facilities are pump stations within our highway system that contain underground storage tanks (USTs) that are removed because they are no longer being used. Occasionally, NFR letters are obtained under the Site Remediation Program for orphan USTs that are removed from our right-of-way (ROW) during construction. In either case, IDOT will remediate the contaminants of concern until they meet the requirement of 35 Illinois Administrative Code 742 (TACO). The following is the procedure to be utilized by IDOT to match NFR letters to property that do not have a legal description, real estate tax index, or parcel index number.

Once IDOT receives an NFR letter from IEPA on a property that does not have a legal description, real estate tax index, or parcel index number, copies of the NFR letter will be sent to the district's Environmental Coordinator, district's Land Acquisition Engineer, Central Office's Land Acquisition Engineer, Chief Counsel's Office, Bureau of Operations, Bureau of Local Roads and Streets, and Illinois State Geological Survey (ISGS). ISGS is recording the location of all IDOT environmental concerns (Preliminary Environmental Site Assessment (PESA), Preliminary Site Investigation (PSI), highway authority agreements, and access permits) using Street Atlas software. ISGS provides the Central Office and the districts with the database and it is updated on a regular basis. The location of the NFR letter will be recorded on this database and the database will be provided to the appropriate IDOT personnel.

Prior to disposing of excess property, IDOT's Central Bureau of Land Acquisition and district's Bureau of Land Acquisition will review ISGS's database to determine if the excess property has any environmental concerns. If an NFR letter is discovered on an excess parcel in that process, it will be recorded with the quick claim deed. Notification of the recording will be sent to IEPA.

Prior to a jurisdictional transfer of property, IDOT's Central Bureau of Local Roads and Streets, Central Bureau of Land acquisition, district's Bureau of Local Roads and Streets, and district's Bureau of Land Acquisition will review ISGS's database to determine if the excess property has any environmental concerns. If an NFR letter is discovered on an excess parcel in that process, it will be noted. The jurisdictional transfer document will provide that the transfer is subject to the NFR letter, and it will be appended to those documents and property recorded, if a conveyance of title is involved, in the chain of title to the property when the deed is recorded. Notification of the transfer will be sent to IEPA.

Prior to issuing a utility permit, IDOT's Bureau of Operations and district's Bureau of Operations review ISGS's database to determine if the property has any environmental concerns. If an NFR letter is discovered on the property, then the utility affecting any condition of the NFR letter will be required to restore the property to meet those conditions. IEPA will be notified if the property cannot be restored to meet the conditions in the NFR letter.

Prior to maintenance excavation on the property, IDOT's Central Bureau of Operations and district's Bureau of Operations will review ISGS's database to determine if the property has any environmental concerns. If an NFR letter is discovered on the

property, then any maintenance affecting any condition of the NFR letter will be required to be restored to meet those conditions. IEPA will be notified if the property cannot be restored to meet the conditions in the NFR letter.

Prior to construction excavation on the property, IDOT's Central Bureau of Design and Environment and district's Bureau of Programming will review ISGS's database to determine if the property has any environmental concerns. If an NFR letter is discovered on the property, then any construction affecting any condition of the NFR letter will be required to be restored to meet those conditions. IEPA will be notified if the property cannot be restored to meet the conditions in the NFR letter.

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Testimony of Lawrence W. Eastep and Testimony of Gregory W. Dunn upon the persons to whom they are directed by placing copies in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(FEDERAL EXPRESS - OVERNIGHT)

Matthew J. Dunn, Chief
Environmental Bureau
Office of the Attorney General
James R. Thompson Center
100 West Randolph, 12th Floor
Chicago, Illinois 60601
(FIRST CLASS MAIL)

Bobb Beauchamp, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(FEDERAL EXPRESS - OVERNIGHT)

Robert Lawley, Chief Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, Illinois 62701-1787
(FIRST CLASS MAIL)

Attached Service List
(FIRST CLASS MAIL)

and mailing them from Springfield, Illinois on 2-13-01, with sufficient postage affixed as indicated above.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME
this 13th day of February, 2001.

Brenda Boehner
Notary Public



THIS FILING SUBMITTED ON RECYCLED PAPER

Service List – R01-27
February 9, 2000

Matthew J. Dunn
Environmental Bureau
Office of the Attorney General
100 W. Randolph
12 th Floor
Chicago, IL 60601

Robert Lawley
Department of Natural Resources
524 South Second Street
Springfield, IL 62701-1787

Mark Wight
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9278

Thomas V. Skinner
Director
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Dorothy M. Gunn
Clerk
Illinois Pollution Control Board
100 W. Randolph
Suite 11-500
Chicago, IL 60601

Erin Curley
Midwest Engineering Services, Inc
4243 W. 166 th St.
Oak Forest, IL 60452

Steven Gobelman
IDOT
BD & E
2300 South Dirksen Parkway
Room 330
Springfield, IL 62764

William G. Dickett
Sidley & Austin
10 South Dearborn
Suite 5200
Chicago, IL 60603

Monte Nienkerk
Clayton Group Services
3140 Finley Road
Downers Grove, IL 60515

Stephen Kirschner
Advanced GeoServices Corp.
Rt. 202 & 1
Brandywine One
Suite 202
Chadds Ford, PA 19317

Daniel J. Goodwin, P.E.
Goodwin Environmental Consultants
400 Bruns Lane
Springfield, IL 62702

John Reimann
INDECK
600 N. Buffalo Grove Rd.
Suite 300
Buffalo Grove, IL 60089

