ORIGINAL

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO)
CLEAN CONSTRUCTION OR) R12-9
DEMOLITION DEBRIS FILL)
OPERATIONS CCDD 35 ILL. ADM.)
CODE 1100)

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Marie Tipsord, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 14th day of March, 2012, commencing at the hour of 10:00 a.m.

A P P E A R A N C E S

MS. MARIE TIPSORD, Hearing Officer
MR. THOMAS E. JOHNSON
MR. THOMAS HOLBROOK
MR. ANAND RAO
MS. ALISA LIU
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MS. TIPSORD: Good morning, everyone. My name is Marie Tipsord and I've been appointed by the Board to serve as Hearing Officer in this proceeding entitled Proposed Amendments to Clean Construction or Demolition Debris Fill Operations CCDD. Proposed amendments to 35 Ill. Adm. Code 1100. R12-9 is the docket number.

With me today to my immediate left is Board Member Deanna Glosser, the presiding board member. To my immediate right is Chairman Thomas Holbrook. To his right is Board Member Thomas Johnson. To my far left or to the left of Member Glosser is Anand Rao and Alisa Liu of our technical unit.

This is day two. We adjourned a little early today and started again this morning. Dr. Glosser?

MS. GLOSSER: I just want to welcome everyone again and thank everyone for participating in this rulemaking process. It will help to make a better rule.

MS. TIPSORD: Thank you. And for those of you who heard this yesterday, I apologize, but for the record I need to repeat.

The purpose of today's hearing is twofold. We will hear the remaining testimony from the participants and the second purpose of today's hearing is to satisfy the requirements of Section 27(b) of the Environmental Protection Act.

Section 27(b) of the act requires the Board to request the Department of Commerce and Economic Opportunity, DCEO, to conduct an Economic Impact Study on certain proposed rules prior to the adoption of those rules. If DCEO chooses to conduct the Economic Impact Study, DCEO has 30 to 45 days after such request to produce a study of the economic impact of proposed rules.

The Board must then make the Economic Impact Study or DCEO's explanation for not conducting the study available to the public at least 20 days before a public hearing on the economic impact of the proposed rule.

In accordance with Section 27(b) of the act, the Board requested by letter dated August 4th, 2011, that DCEO conduct an Economic Impact Study for this rulemaking. On September 28th, 2011, the Board received a response from

DCEO indicating that no Economic Impact Study would be performed. A copy of DCEO's letter as well as the Board's request are available here at the front of the room. Some of you have already commented on at a prior hearing or in your pre-filed testimony on DCEO's decision, but we will accept additional comments on DCEO's decision at the end of the hearing today. We also had an opportunity to close the hearing yesterday and no one commented yesterday.

The pre-filed testimony that we have remaining is that of Dr. William Roy and Claire Manning on behalf of the Public Building Commission of Chicago. After you're sworn in, the pre-filed testimony will be marked as an exhibit and taken as if read. We will then go to questions. As there have only been pre-filed questions from the Board, if you have a series of questions for the witness, please let me know and you can move to the front so we can better hear you. Anyone may ask a question today. However, I do ask that you raise your hand, wait for me to acknowledge you. After I've acknowledged you, please state your name and whom you represent

before you begin your question.

Please speak one at a time. If you are speaking over each other, the court reporter will not be able to get your questions on the record. Please note that any question asked by a board member or staff are intended to help build a complete record for the Board's decision and not to express any preconceived notion or bias. At the close of the hearing today, we will set a final comment deadline for the end of the first notice comment period. Are there any questions? Okay. With that, can we have the witness sworn in and then Ms. Manning I'll turn it over to you.

MS. MANNING: Thank you.

WHEREUPON:

CLAIRE MANNING AND WILLIAM ROY

called as a witnesses herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: Ms. Manning?

MS. MANNING: Thank you, Madame Hearing Officer, Chairman Holbrook and Members' Johnson and Glosser and scientific unit Rao and Liu.

I'm very pleased to be here today to talk to you about a rulemaking of very much importance to my client, the Public Building Commission of the City of Chicago. The Public Building Commission of the City of Chicago is very much like those of you who are similar with CDB in Springfield. It really controls all public building in the City of Chicago. Before I begin and introduce Dr. Roy, I want to introduce a couple of people who are here today on behalf of the city Lee Ann Thomas-Foster is the environmental officer for the Chicago Public Building Commission. To her left is Dan Cooper. Dan is from the Chicago Park District. The Chicago Park District, along with the Chicago Police Department, along with the Chicago Public Schools are all clients of the Public Building Commission in terms of building in the City of Chicago. And this rulemaking is very important to these entities and to the city as -- as I was involved in the legislative effort as well to get this rule to the Board for the very reason that the cost -- the very real cost of excavating dirt, if you will, and CCDD, if you will, that has not

been impacted by any specific release, but just is general to an urban environment to the City of Chicago there is a very real cost to having to landfill that particular excavated dirt as opposed to having to allowing -- being allowed to treat this as CCDD and I think in my testimony I called out the idea that the Public Building Commission currently has 20 ongoing projects and the difference between taking excavated soil from those products -- the projects -- excuse me -- from a CCDD facility it could cost $20.6 million the estimators estimate to take that soil to a landfill where it would cost $5.7 million to take that same excavated soil to a CCDD facility.

So you -- you can see in terms of the economic impact, the economic impact is very real. Now, I also appreciated Mr. Cobb's and the EPA's good work on this particular rulemaking and the Board's as well in terms of the first notice. It's obvious you've been paying attention to all of these issues. You did a really good job in terms of getting the issues before us in first notice and what our major concern that we're going to talk about today and why we brought Dr. Roy

forward is to talk about the definition of uncontaminated and how that ought to play out from a science/risk based perspective and I think that what this legislation did in defining uncontaminated in a risk based perspective is really not even subject to questioning because the definition itself basically says for purposes of this section the term uncontaminated soil means soil that does not contain contaminates in concentrations that pose a threat to human health and safety in the environment.

And that was a very real, significant, I think, identification on the part of the legislature to define uncontaminated soil because part of the issue and the initiative originally from this piece of legislation that lasted, and I know Chairman Holbrook knows, at least three years in the making was the quarry interest and the city interest went to the legislature and said "We need a definition of uncontaminated soil" because currently the IEPA's definition was if it's not from God and the glaciers, it's not clean enough to put in a quarry. And that was very, very expensive and

while my client has deferred to the EPA's position on that particular definition of uncontaminated, we need a much more real science based definition.

So in my mind that the legislature recognized that we need a risk based approach to the definition of uncontaminated when you're talking about uncontaminated soil going to a quarry is a very real thing that we accomplish by the legislature and if you look at the legislative testimony you can tell that. I think Representative Tryon says that what we've learned in this process is not all dirt is created equal and Representative Fortner who, himself, is a scientist, he works at the Fermilab, he basically indicated that let the experts decide what uncontaminated ought to be.

So really what happened with this legislation is we threw it to the Pollution Control Board to make the right call in terms of what uncontaminated means in the context of bringing excavated soil and excavated CCDD to a quarry and, again, that's why we brought Dr. Roy forward to give us some indication in terms of the science issues related to dirt in a quarry

environment and that sort of thing.

So the other person I didn't introduce to you today is Bill Ingersoll is with me here today. Bill recently joined our firm and many of you know he was an attorney with the EPA for many years. Just recently, as I did, he retired as well from state government and now he and I are working together on environmental issues.

So I'm happy to have Bill with us as well and he is going to kind of walk Dr. Roy through his testimony and we've already been sworn so I'm going to leave it to Dr. Roy.

MS. TIPSORD: Before we do that, could we enter your pre-filed testimony?

MS. MANNING: Sure. Do you want to give me the number?

MS. TIPSORD: Yes, we'll mark Dr. Roy as No. 50.

MS. MANNING: Okay.

MS. TIPSORD: And yours will be No. 51. Do you have a clean copy for me?

MS. MANNING: I apologize. I don't.

MS. TIPSORD: If there is no

objection, we will mark the pre-filed testimony of Dr. William Roy as Exhibit No. 50. Seeing none, Dr. Roy's testimony is No. 50. If there is no objection, we'll mark the pre-filed testimony of Claire Manning as No. 51. Seeing none, it's Exhibit No. 51. Go ahead.

MR. INGERSOLL: I'd like to introduce Dr. William Roy. He is with the Illinois State Geological Survey and he is a professor at the University of Illinois. We're going to ask Dr. Roy to lead us through his testimony. Not read all of it, but give us some -- walk us through with a summary and then make him available for questions when he finishes.

MR. ROY: Good morning, everyone. I've been with the Geological Survey for 32 years now and I've been interacting with the Illinois EPA off and on. Rick Cobb and I we go back, I think, to the early '90s, maybe the '80s, when we were applying TACO to come up with soil cleanup objectives for pesticides for point sources with AgCam dealerships and I've been interacting with them long enough now that I'm seeing people I know retire from the IEPA.

So when this was all brought to my attention, I read a large stack of documents and among the first things that I noticed was a lack of science. So what I wanted to do was prepare a testimony using my background and try and put on paper things that I thought would be useful to you in making this decision. I'm primarily in research. So I tried to put as much research into coming up with a useful document for you guys as time would allow.

For starters, when I first became aware that we had proposed a pH of 4.5 to 4.74 as where to begin, I was really confused. I thought I misunderstood. Maybe -- I totally didn't understand it because we're in Illinois and then I realized, no, they're serious. They're serious. So that was the first thing I wanted to do was try and make you aware that soils don't have a pH literally. It's a reaction pH. You take the solid mass, you mix it with water and what you're getting is the consequence of a bunch of chemical reactions which produce that pH. So the mineralogy of that solid phase is what dictates what number you get. So what I tried to

do in Table 1 was to put down ranges in pH and why you would have such things like if you have a soil that yields a pH of 2 -- between 2 and 4 you're probably talking about the oxidation of sulfide minerals. Fool's Gold if you will. That would yield that kind of sulfuric acid.

MS. TIPSORD: Dr. Roy, I apologize. But, for the record, Table 1 is part of Exhibit 50 and it is on about page five. Numbered page five.

MR. INGERSOLL: Correct.

MR. ROY: So if you have something like a pH 3, you've probably got some sulfide minerals present. That would be a soil that you'd collect from a mine, a coal mine scenario. If you have a pH of 4 with a -- or a 5.5 you're really talking about the insolence of exchange of aluminum. At least some sort of aluminum hydroxides or iron hydroxides which would give you those kinds of acidic pH's.

I think previously participants said yesterday that most of the soils in Illinois aren't that kind of soil. These are the kinds of soils that you find in like Georgia and South Carolina and so forth where you have these nice

reddish colored soils. You put those with water and you'll get a pH of 4.3, 4.4, but that's consistent with the mineralogical composition of those soils. We don't have those kinds of soils here.

We have very few soils. I think one participant mentioned, rightly so, that what some people call organic soils such as bogs and fens and so forth some of those can contain large concentrations of organic acids that will yield rather acidic reactions, but the numbers I read here recently the distribution of those kinds of soils in Illinois is less than five percent. I don't think that's really what you're talking about as far as CCDD. They're out there, but really you see more bog soils in Michigan and Wisconsin which yield those kinds of pH's.

So that was kind of the first thing I wanted to put into my document here. The second thing I wanted to -- that I thought would be useful to you is a statewide survey that -- this is a report. It's on my desk. I'm reviewing it right now. Where we had pH data from most of the counties, I think all of the counties in

Illinois, and the median pH of all of those was 6.64 with a mean of 6.4 and I thought it was very timely for that report to come to my desk and be able to share that with you.

Now, certainly, it's not 4.5. We don't have that kind of material here really. The second thing I wanted to note or something else I want to say. The word soil has different meanings. I think to an agronomist the soil refers to the horizonation, A horizon, B and C horizon where they're trying to grow crops. I think with CCDD we're talking about it as far as an engineer's perspective. It's all the unconsolidated material, which can be considerably deeper if you're excavating this material for a school or a bridge or something like that. So I think probably for what we're doing here we'll just say soil is all the uncontaminated material, but I think it's good to acknowledge that a lot of this data is for that upper A/B horizon because that's where the most interest is because that's interested -- most relevant for crop yields and that sort of application whereas I think here we're going deeper. That's why I put in the

information on Table 2.

In Table 2, I found pH data down to a depth at least four feet and as you can see, you've got more acidic pH's at the surface and becomes progressively more alkaline. That's because as you go down with depth, you're becoming increasingly carbonate rich. You're getting the occurrence of calcium carbonate which is going to maintain a pH -- the equilibrium pH of calcium carbonate is 8.2. So it's trying to be even greater than 7 with depth.

So, again, we're a long way from that acidic 4.5. If you look here, the surface samples some of them were between 6.9, 6.2, but, again, this is consistent with the mineralogical composition of the kind of soils we have here in Illinois. So that was something else I wanted to bring out that I think as you excavate deeper you're going to have even more alkaline pH's greater than 7 because you get lower -- deeper and deeper. You get into till, cultivation till, that is less leached and you have the greater likelihood of having calcium carbonate available to buffer the pH of the system. From there, what

I tried to create was I tried to summarize the chemistry of three constituents, which seemed really relevant to what we're talking about here and I chose arsenic, lead and benzopyrene.

Those three represented I think a lot of diversity in soil chemistry. Arsenic being an anion that is not prone to be controlled by the precipitation of solid phases. Lead being primarily a cation in groundwater. It is strongly controlled by the solubility of lead containing solid phases and benzopyrene being a hydrophobic constituent. Something that is not very soluble in water and has a strong tendency to be sorbed by soil organic matter. Let me back up a bit.

Endemic to each of these is their chemical fate. Their environmental fate. Each of these can be sorbed or retained by soil organic matter or the clay particles, which make up soils. This is referred to as sorption. They can also be desorbed. That is the reaction goes the other way. If the concentration of each of these in solution becomes less, say by groundwater dissolution, then they can desorb and go back into solution. When we apply things like TACO, we're

assuming that sorption/desorption reaction is completely reversible. And it's not just TACO. All models do that because it's the mathematical necessity of doing so. To do otherwise, the math is very complicated.

So that's kind of one thing to point out is these numbers generated from TACO are going to be conservative just because of that. We're not allowing for -- we're assuming desorption is completely reversible when experimentally we know it's not. I've got some examples of that in a little bit. For example, I don't think TACO takes into account when lead precipitates as a solid phase. Then its dissolution behavior is not based on sorption/desorption, but a whole bag of chemistry, which I don't think TACO takes into account.

I think what we do with TACO is we take that total concentration, plug it into a formula and we go from there. We've got these other chemical considerations, which makes the outcome conservative. They're built in safeguards if you will. What else?

I also tried to put in a few

studies. Let's see. Figure 1 I thought was kind of interesting, too. This shows lead desorption. That is lead that has been bound by, in this case, a clay mineral as a function of pH. You can see a pH 1, which would be darn acidic, you have 100 percent desorbibility. It all comes off.

As you can see in the graph as you get up to a pH of about 5, that decreases to less than 20 percent and we understand that now. Now, if we talk about what is a good pH for Illinois soils, 6ish shall we say, you can see that the proportion of lead that will likely desorb is much less than 100 percent whereas TACO assumes it's a hundred percent. That's why I say the TACO results are going to be inherently conservative.

Benzopyrene. We chose -- I chose that because I thought it was a good representative of the pH's that you are all concerned with. These things are not very water soluble. Parts per billion in a lot of these cases. Because of their lack of solubility they can be strongly sorbed by soil organic matter. This is expressed as the organic carbon partition

coefficient, which I give you here and for benzopyrene it's anywhere from 270,000 to over a million. So it has a strong tendency to be bound by soil organic matter and as I will show in a little bit that sorption -- absorption of that constituent, too, is not very reversible. Once it is sorbed it may not come off again. And we think a lot of it has to do with the molecule will actually defuse into the organic matter and the game is changed. It won't come out into solution, but, again, TACO doesn't do that. It assumes it is completely reversible as we allow it to flow in the system under study.

So that's something that needs to be taken into account, I believe. The next stage I was looking for information on CCDD. Leaching studies, chemical composition. Anything. I couldn't find anything. I tried umpteen different search strategies. I found nothing for Illinois, which really surprised me that you are all trying to accomplish something important here and you're doing it with almost no data. I was puzzled by that, but I did find some studies that were conducted in other states that apparently are

ahead of us. Particularly, in Florida. What I tried to do I put into my document most of those studies that I thought would be helpful for you. For example, I found one study where they had looked at the leaching behavior of pyrene, which is, again, a hydrophobic constituent and they found that the concentration of pyrene in some C and D samples is what they call it in Florida was between about 6 and about 19 mg/kg and they did some laboratory extractions and they could only find between 0 and half a percent would leach. Well, that makes sense because probably it's irreversibly bound by the soil organic matter. It's not going to come out in the solution, but I thought that was a good find. They concluded that organic chemicals in their C and D debris really was not a concern. So whereas we haven't done that kind of work in Illinois, I thought one of the things I could do is bring this to your attention that at least some other states have done some studies that I thought would be helpful. That same research group looked at inorganics and, let's see here, they use the synthetic precipitation leaching procedure.

Again, this is another laboratory basic extraction procedure. It's kind of the same genre as the TCLP and one thing I noticed was the initial pH of their solution was a little aggressive. It was 4.2. But the pH's of the extracts at the conclusion of the experiment were between 6 and 10.

In other words, the soils neutralized acidity, which makes sense. That even if you did have some acidic media in CCDD it's going to be neutralized by these other constituents that we have in Illinois soils and they showed it here.

Some results from that study are given in Table 2. The one thing I wanted to point out is lead. They found 92 mg/kg in the matrix, but in the extract less than 0.01 mg/L because lead is not soluble at neutral pH's. They couldn't measure it. That makes sense. Any time there is carbonates present, lead is going to be relatively insoluble. It will be in the parts per billion range. Very difficult to measure. Very difficult to detect. And in this particular case, they couldn't.

MS. TIPSORD: Dr. Roy, I apologize for interrupting you yet again, but you have two Table 2's in your testimony. So when you refer to Table 2, in this instance, you're referring to Table 2 elemental compensation in C&D samples and laboratory extracts --

MR. ROY: Yes, ma'am.

MS. MANNING: -- from Townsend, et al, 2004, correct?

MR. ROY: Yes.

MS. TIPSORD: Thank you.

MR. INGERSOLL: I will admit blame for the formatting boo boo's in this document.

MS. TIPSORD: Not a problem. I just realized it as I was looking back at the tables.

MS. MANNING: Thank you, Madame Hearing Officer.

MR. ROY: Let's see. Another thing that seemed to be missing was putting -- if we're putting CCDD into a quarry was the influence of the quarry rocks, the limestone. The groundwater -- groundwater equilibrium of calcium carbonate, which is the major constituent of limestone, is about at a pH of 8.2 and that didn't seem to be

taken into account, but, again, you have the sources of things that aren't acidic that would help immobilize things like lead and zinc and copper and a lot of other elements and that seemed to be missing from the discussion here.

The next topic that seemed like I could help was on the topic of urban soils. I tried to compile a lot of information for you on what I could find about urban soils, but I enjoined the quote from a publication that you have in your list now that elevated heavy metal concentrations are almost universally reported in urban soils. I found a textbook called urban soils. I may get it yet. I haven't yet.

But there's a whole school of thought that has already thrown a lot of attention at the chemical composition of urban soils and yet I had the impression that we were trying to use criteria for CCDD that was not based on urban soils. It wasn't taking into account that, I'm sorry, since the glacier brought the stuff, we've lived here a long time and we have these anthropogenic emissions. And what I tried to put in Table 3, I hope there's only one of those, lead

concentrations near large cities.

Chicago, this is from a USGS report, which they collected soil samples from the first six inches. So it's rather shallow data, but they have 395 mg/kg. What I tried to find and add to this table were other major cities. London, for example, London, England about 340 mg/kg. So it isn't just here, that this appears to be pretty typical of larger urban cities is that you have lead and this is probably from lead based gasoline that was admitted prior to 1996, which I think is when they phased it out. That -- that seemed to be missing also in the studies here. Backing up to I also found a couple of studies that seemed reminiscent of CCDD.

I found one study where they were looking at brownfield soils in Scotland and they were trying to measure metal sorption of a brownfield soil and they tried to measure the sorption of lead and, again, they couldn't do it because lead wasn't soluble at the pH of that soil.

Again, which reiterates that using a pH of 4.5 isn't realistic in Illinois

soils and it really is very important for the Board to understand how important that a good science based pH is in promulgating these cleanup objectives. What else?

Some of the questions that I think you asked. You asked about how do the pH's here compare with pH's of organic soils and, again, I took that to mean like fens and bogs and I did find some information and those could range from 3.8 to 7.5. So they're all over the place. Organic soils is a whole taxonomic, diverse topic, but, again, I don't think organic soils are really all that relevant to this picture.

You asked what input parameters should we use for TACO. I think I can reiterate what some people have said yesterday. Using a pH that is really accurate and reflects the soils we have in Illinois would be very beneficial. I mean, the information is there. I wanted to mention, too, the pH can tell you a lot about the mineralogical or the chemical composition of any solid. When I get an unknown in my lab, I like to take a quick pH of it because that can tell me something about its chemical composition and if

you handed me a soil sample of pH of 4.5, I'd say, what, you got battery acid in this? This is not Illinois soil. There is something wrong with it. This is not typically what we want to see. What else? Also, something else I wanted to throw out all of this is assuming Type 1 groundwater -- are all these sites really Type 1? I think we're doing that because it's conservative. I understand that, but Type 2 groundwater -- Class 2 groundwater I was just wondering that has quite an impact on the outcome of TACO and I just throw that out there is do we have the option of considering these facilities?

I was thinking about this last night that is it possible to have CCDD facilities that are reflective of urban soils versus rural soils or could you have CCDD facilities that reflect the prevalent groundwater whether it's Type 1 groundwater or Type 2 groundwater to take advantage at least what we understand about the geology and the composition of urban soils to maybe strengthen the science here as far as going forward with this. I don't understand the ingestion in that ration exposure very well.

If you're putting this into a quarry, I'm a little lost. If we're talking about residential ingestion and inhalation, I was wondering who is living next to one of these things that would really be impacted by that. I mean, including those characteristics make the 107 mg/kg over a large range of pH. It makes it more conservative, but is this really good science because you all know this better than I do whether or not residential would really be applicable to CCDD facilities when they're placed into a quarry.

The last thing I think I could add to this there's some question if you're putting CCDD into an excavation that is not a limestone quarry, sand and gravel, I think what we're concluding here is it doesn't matter. We're saying we agree with TACO in it doesn't pose a risk if the concentration of lead, for example, is less than 107.

We're saying it doesn't matter. It doesn't pose a risk. It would be additional insurance to have that carbonate terrain, but we're saying, in essence, we agree with TACO. The last thing I kind of wanted to put in when you go

to the TACO website, the TACO websites talks a lot about flexibility and different options and I really admire TACO. It's obvious a lot of thought went into it, but when I started reading how it's been applied to CCDD, a lot of those options seemed to be missing and I can't understand why we didn't take advantage of all the options and all the things that are there.

The last thing I tried to put into my testimony and I may be naive for saying this. Are we rushing this? Is there no opportunity to collect any real data to accomplish our goals? I realize there are deadlines and you are all marching to different orders and I realize there's no money. I know this is a bad time to ask for money. But I just put that out there because I can. I think that's all I remember.

MR. INGERSOLL: I was going to ask a question or two, if I may. Dr. Roy, I believe some have expressed some concerns about the difference between a rock quarry, a limestone quarry and a sand quarry and would that sand quarry present more risk? Do you have any thoughts on that?

MR. ROY: Like we're saying, if you take this CCDD and if the concentrations are less than those numbers in Table 2, no, we're saying there is not a risk. It seems we've done the TACO analysis. It already is conservative for the reasons we mentioned. That it doesn't matter where it goes from there.

MR. INGERSOLL: Okay. So if it's one to the minus ten to the sixth of the rock quarry, it would be met -- it would meet that in a sand quarry as well?

MR. ROY: Yes.

MR. INGERSOLL: Okay. The other things you mentioned about ingestion. You mentioned that you used the 107 number, which I believe is the groundwater ingestion for mid range pH's for lead. There is also I believe in the proposed MAC's ingestion number -- I mean, soil ingestion number for soil PAH's. Do you have any thoughts on the suitability for that kind of pathway being placed into these MAC's?

MR. ROY: Again, it didn't make a lot of sense to me that you would consider that pathway. I was focusing on the pathway to

groundwater.

MR. INGERSOLL: You covered that.

MR. ROY: And because of the lack of solubility of most pH's and I think what you're concerned about is it seemed like it would be useful to revisit that.

MR. INGERSOLL: Okay. Thank you.

MS. MANNING: Thank you.

MS. TIPSORD: Are there any questions --

MS. MANNING: We're ready to open it up to questions.

MS. TIPSORD: -- for Dr. Roy?

MR. WILT: Dennis Wilt from Waste Management. Final part of your testimony and that I believe was that you were talking about the ingestion/inhalation residential standard. Are you aware of the fact that quarries have been developed for residential use and, in fact, recreational use?

MR. ROY: Yes, I grew up in southern Indiana in a little town called Bedford, which is nicknamed the limestone capital of the world. I grew up collecting fossils in quarries. So this

is a big part of my background.

MR. WILT: I have no other questions. Thank you.

MR. JOHNSON: Doctor, I notice you departed Indiana in the early '80s and you moved to Champagne Urbana, is that correct?

MR. ROY: 1980.

MR. JOHNSON: So obviously you're an intelligent individual. Let me ask you. We've been focusing on pH and if you were writing this rule, what would you set the pH level at, the maximum contaminant level for pH?

MR. ROY: Probably the 6.2 -- 6.3 to the 6.6 range just because that blends well with the information I've got and it just makes sense to me as far as the mineralogical composition and all the inherent safeguards we've got going for us in TACO.

MR. JOHNSON: Thank you.

MS. MANNING: Mr. Morrow, you have a question?

MR. MARROW: Hi. Les Marrow from the Agency. As a way of clarification for the TAH's that were mentioned earlier, the MAC's are

based on background, anthropogenic background and not risk.

Dr. Roy, in your second Table 2, you list a totals concentration and an SPLP concentration. Do you think the SPLP concentration is a more reliable value for valuating migration to groundwater?

MR. ROY: Then?

MR. MARROW: Then a landfill. Than a total solid would.

MR. ROY: Absolutely. I mean, the total concentrations are just that. They don't tell you anything about speciation. They don't tell you what form they're in. They don't tell you if they're leachable or not. They could be darn near insoluble carbonates. That's all they are.

MR. MARROW: We do offer that as an option, a leaching test as an option in our rule.

MR. ROY: Okay. I think it's a step forward. I mean, if you're trying to protect groundwater, then I think that's the logical step is to collect good representative samples and do some sort of laboratory extraction at the pH that

is relevant to the system you're trying to study, but that's a much better indication than totals.

MR. MARROW: Okay. And, thirdly and lastly, you mentioned in your summary that there's a lack of any relevant field data for CCDD fills?

MR. ROY: Yes, sir.

MR. MARROW: Would you consider groundwater data to be relevant field data groundwater --

MR. ROY: You mean groundwater adjacent to a CC --

MR. MARROW: Yes, next to the fill operation.

MR. ROY: Absolutely. Do you have any?

MR. MARROW: No, we don't. Not at this time. Thank you.

MR. ROY: Like I said, when I was reading through all these documents, I kept waiting to see what kind of concentrations are we talking about, which metals are we talking about and there was nothing.

MR. MARROW: Yes, I understand. Thank you very much.

MR. ROY: Mm-hmm.

MS. TIPSORD: And along those lines, Dr. Roy, I would like to ask if it could be possible for you to provide to the Board copies of the two soil leaching studies you were talking about? I believe the first one was Gang and Townsend 2001 and the second one was Townsend, et al 2004.

MR. ROY: Absolutely.

MS. MANNING: We'll get that.

MR. ROY: Absolutely.

MS. TIPSORD: Mr. Cobb?

MR. COBB: I have a few questions for Dr. Roy.

MS. TIPSORD: Give your name for the court reporter.

MR. COBB: Rick Cobb, Illinois EPA. With respect to many of the metals and even the PAH's for, say, benzopyrene, are you aware, Dr. Roy, that we've -- the Board has concluded in their groundwater standards that those have been found commonly and Illinois groundwaters require adopting groundwater standards because we do have groundwater standards based on Section 8 of the

Illinois Groundwater Protection Act, which we provided that -- that burden and it has been found commonly in groundwater.

I was just wondering if given all the lack of the mobility of PAH's and maybe they could never be found in groundwater, they have been found in groundwater and the Board does have standards for those as well as the inorganic apply except due to natural causes. So basically for the inorganics the naturally occurring level the groundwater standard is that naturally occurring level under the non-degradation.

MR. INGERSOLL: Could we break that question down?

MS. MANNING: I'm not sure we follow.

MR. COBB: I was testifying, too, as well as -- I wasn't asking a question.

MS. TIPSORD: I would note Mr. Cobb was sworn in yesterday and remains sworn in for today's proceeding.

MR. INGERSOLL: It doesn't require an answer then.

MR. COBB: It was mixed. I was just

responding to what I heard in the testimony and so the concept of threat under Section 12(a) of the act and in the legislation threat to the environment and in Section 620.301 uses the word threat. That is not a risk based concept. The standards apply except due to natural causes.

MS. MANNING: If I may respond to that a bit as well. I see very little difference between threat and risk. I think they're kind of, you know, two sides of the same coin. That's what we're talking about and that's what I believe the legislature was talking about when I talked about risk and we're not talking necessarily about groundwater pursuant to the Board's groundwater rules, but we're talking about the risk to the groundwater as a result of the placement of soil in quarries. Risk, threat, whatever you want to call it, Dr Roy's testimony, in my opinion, is absolutely relevant to that question.

MR. COBB: I just want to clarify. I'm not talking about risk. I'm talking about threat and there's a calculation to calculate risk and threat is based on what can be removed from ordinary treatment techniques in a private water

supply well. That's always been the Board's standards for years.

MS. MANNING: And, again, I'm going to have to respond for the sake of this legislation I believe them to be one in the same thing and I believe responsibility of the Board is to balance the threat and the risk versus the real economic cost to making an overly conservative, overly stringent rule for no environmental gain, but a lot of economic cost and that is the role of the Board and that is why the legislature threw this question to the Board.

MR. COBB: Yes. Risk is to human health. Threat is to groundwater. For example, in our Braidwood Exelon case where we were looking at tritium where we had a lawsuit against some of those threats to the well, they were nowhere near the drinking water standards. So I just wanted to clarify that. Dr. Roy, you were mentioning that you do get some variable pH's and bogs and fens?

MR. ROY: I didn't have a lot of information, but I looked up in a soil taxonomic book that had pH measurements and that was the information I garnished as quickly as I could.

MR. COBB: I did have information, and I may need to provide this in comments, but one of the sites that are on the map that we provided yesterday as an exhibit I think it's Bluff City Materials they're actually in the recharge zone of a Class 3 groundwater area.

MS. TIPSORD: Mr. Cobb, what county is that?

MR. COBB: I'm going to have to go back in comments and clarify that, but that's a Class 3 groundwater that has been designated by the Board and that recharge area contributes groundwater to the fen, which is a dedicated nature preserve. So we do have some of these sites that bump up against those types of sites.

MS. MANNING: And I would reiterate and respond to obviously Mr. Cobb's testimony now that we have always maintained that the Board has the flexibility and I think the legislature gave it the flexibility to make site specific kinds of considerations relevant in this rulemaking because as -- as there may be sites in groundwater three areas, I wouldn't disagree with Mr. Cobb's testimony.

He is certainly an expert where these facilities are in relation to Illinois' groundwater, but there are also some in areas that a site owner could make a groundwater two demonstration adequately whereas there is no drinking water sources near because they're all subject to an ordinance under the TACO -- under the TACO parameters and/or they may have already impacted wells as a result.

I know one of these CCDD facilities has about 50 former underground storage tanks near them and I'm not suggesting that's what -- I'm just suggesting you have to look at the whole gamont, not the most pristine of the CCDD facilities and then create a rule that requires all soil to be based on that most pristine of standards. I don't think that's what the legislature did and I don't think that that's where the Board ought to be going with this rule.

MR. COBB: And in the exhibits I provided, I did indicate that those are probably the most vulnerable aquifers in the State of Illinois and northeastern Illinois and they're also as I iterated in my testimony extremely

important for the future of northeastern Illinois due to the restriction on Lake Michigan, the future population growth and so I mean it's extremely important to protect these groundwaters and I also say that as you know a lot has been said about the limestone quarries in McHenry County in particular, which is definitely not going to get a Lake Michigan allocation from what I've seen.

We're talking about sands at the surface and sands in gravels. I do have another question. On page 13, Dr. Roy, that's the Table 2 with the leachate concentrations. I numbered these pages, but I think I was in line with what you were -- Hearing Officer Tipsord --

MR. ROY: Laboratory extracts?

MR. COBB: At the bottom of the page, it says soils and the quarry environment.

MR. ROY: Uh-huh.

MR. COBB: At the bottom of that page, the last sentence. You indicate may be neutralized. You use the phrase may be.

MR. ROY: Mm-hmm.

MR. COBB: So it's not an absolute?

MR. ROY: I think I'm just writing as a scientist rather than saying, yes, it would be neutralized.

MR. COBB: You concluded in your testimony that it was an absolute.

MR. ROY: Yes, I would stand by that.

MR. COBB: So is it may be or should it be changed?

MR. ROY: It should be changed.

MR. COBB: Okay. That's all I've got.

MS. TIPSORD: Anything else for Dr. Roy from the audience? Do you have questions?

MR. RAO: Actually, Dr. Roy answered our pre-filed questions in his testimony. Thank you very much.

MR. ROY: Sure.

MS. TIPSORD: Chairman Holbrook, you had a couple of questions?

MR. HOLBROOK: I guess this goes back to my legislative days. Yesterday, we were given aquifer maps and they were all up in the northeast ten percent of the state. I know we're

talking about the soils of Illinois now and I know your Table 2 represents four counties all within about ten percent of the geographic area, again, northeast and are non-glaciated areas of our state, southern Illinois, along the river. Would these all be the same? Is this indicative of what they all are? I mean, you go down to Hardin County, do these type of studies hold up? Are they -- are they the same?

MR. ROY: Yeah, that information I presented in that table, it was my understanding most of the CCDD concerns were in this area. Going back to your question. As you get further into Illinois, the southern part, the soils are going to tend to be a little more acidic because the parent material is older. These are older glacial material, but still trying to find pH 4.5, you know, it's still -- the mineralogy is not there even though the parent material, like I said, is older and you've had much more longer times for weathering early and the production of more acidic values, but, again, if you go down with depth, you're going to get into more carbonate available -- carbonate rich materials

and keep the pH from being too -- keeping the pH from being very acidic.

MR. HOLBROOK: I'm concerned about the entire state.

MR. ROY: So am I.

MR. HOLBROOK: Thank you.

MS. TIPSORD: Along those lines, would it be possible -- and we know City of Springfield has been participating in the hearing as they talk about taking out some of their stuff to a quarry. I assume in the Sangamon County area. Would it be possible to give us some details on soils perhaps like in Sangamon County where we know there may be another facility? Would that be possible? Something like Table 2 to include Sangamon County in the first Table 2?

MR. ROY: You mean after this?

MS. TIPSORD: Yes.

MR. ROY: Sure.

MS. TIPSORD: I thought you were doing that off the top of your head, Dr. Manning.

MS. MANNING: We could do that in post-hearing comments. You can get information on all the counties in Illinois.

MR. ROY: Yes.

MS. MANNING: We'll present that in our post hearing comments.

MS. TIPSORD: Thank you.

MS. MANNING: On the pH, correct?

MS. TIPSORD: Right.

DR. GLOSSER: Dr. Roy, I have a question. I'm trying to understand the difference between the data you presented in your Table 2 on page six, which is consistent with data we heard yesterday, but if you look at the Natural Resources Conservation Service data that IEPA submitted previously, they did something called summary of Illinois soil pH value, which is from the STATSGO database, the soil ranges are much more acidic than anything we're hearing and I really have desperately been trying to understand why NRCS, which is our soil agency, our national soil agency, their data ranges go down, in one case as low as 3.6, but typically more matter of 4.5 to 8.4 they show is the range for one soil type.

So I think that's maybe part of the confusion why we're looking at lower pH values

because NRCS is showing ranges much lower than what we're seeing in the data that you have and I have been presented.

MR. ROY: I think it's because NRCS they're looking at soils -- the pH's of the A horizon, the B horizon, the O horizon because that's where they're most concerned and you're going to have more pH's as you go towards the surface because soil formation is an acidification type of process.

So I'm thinking they have not gone very deep with their sampling because they don't have to and that would -- I hate to use the word bias, but certainly that would bias their data to be a little more acidic because that's the type of soil profile that they're most interested in.

So I think that's probably why there's a bit of confusion here whereas with CCDD I think, again, we're talking much greater depths. We're getting away from pathogenesis, the effects of soil formation and that's where you get those more alkaline pH's.

MS. GLOSSER: The data you presented

in Table 2, page six and you're reporting a 7.3, those appear to be from a 0 to -- depths of 0 to 0.06 and they're all really very alkaline.

NRCS would show a range that may go that high, but it would also possibly be 4.5. So I don't see any 4.5's in your data. How do you -- I'm not understanding why NRCS -- maybe somebody from EPA can explain NRCS's data would show a threat of such a low pH?

I guess that would be the concern to me. If NRCS is showing a really low pH as a possibility from soils I guess that's one thing that maybe is being considered here is if there is the risk of a low pH then we want to factor that into the rulemaking unless it's all alkaline than that's a whole different situation.

MR. ROY: I wouldn't -- I wouldn't want to say they're all alkaline. I think like most natural median you have a lot of natural variation. I mean, the result I brought from our study the median pH was about 6.6. So it's not -- it's less than 7 and even in our study we saw in those results, we saw some pH's that were 5, 6 and sometimes 4, but you're always going to have that

level of variation.

MS. MANNING: It -- go ahead.

MR. ROY: It doesn't surprise me that you would see some occasional acidic values. No, it doesn't surprise me. I guess I would want to look at what would be the central tendency, what would be the most expected values and it wouldn't be those. Again, you could have pH's of 4 from organic acids depending on if you've got a nice, O horizon for example. O as in inorganic or a well developed A horizon, a nice, dark prairie soil. You can get some good acidic pH's if you take those into the lab and mix them with water, but if you go down ten feet, no, you don't have those. Does that help? I guess different databases intended for different applications would be the short answer.

MS. MANNING: And to add to that, I would just -- I would just caution the Board that you don't make a good rule necessarily by just going with the lowest number because that doesn't necessarily mean you've -- you've effectuated the correct balance between risk and threat or, you know, that you're overpresuming risk at a great

cost.

MS. GLOSSER: Thank you.

MS. TIPSORD: Mr. Morrow?

MR. MORROW: Les Morrow, again, from the Agency. To help Board Member Glosser try to comprehend the differences. I think perhaps the NRCS data being an agricultural database we're going to see a lot of organic breakdown in the upper levels. That's where we get a lot of our lower pH's and the NRCS database does go down to 80 inches. So it's over six feet and that's where we see the higher pH's. So that might be one possible explanation. Maybe Dr. Roy can comment on that.

MR. ROY: I agree.

MS. TIPSORD: I would note Mr. Morrow was sworn in yesterday and is sworn in for purposes of today. Are there any other questions for Dr. Roy? I have a couple of questions for Ms. Manning and they have to do with economics and I also -- some of these you may be able to answer and others you may want to comment on in final comment. First of all, Ms. Manning, you and Mr. Huff both presented us with some

pretty startling economic data on the difference between landfilling versus CCDD and I just want to be sure. Do you agree with Mr. Huff's testimony? Are they consistent --

MS. MANNING: Absolutely. I thought he presented very good data as a matter of fact.

MS. TIPSORD: Thank you. The other question I have is you indicate you don't have an objection to the soil testing and the testing in your testimony. I'm just wondering in the prior appearance before we went to first notice we got a lot of evidence about how much it costs a month to do the testing for groundwater parameters.

We've really never gotten any information on what the cost of soil testing for some of these parameters might be. Do you have that information or if anyone has that information we --

MS. MANNING: We can do that and we can present that with our post hearing comments. I would -- I would like to in response to your question also talk a little bit about the soil testing. The projects that the Public Building Commission deals with are generally very large

projects. However, there could be small projects, too. I note that the gentleman from the department -- Chicago Park District is not here right now, but his projects can be much different obviously than the projects -- a big excavation project where they're building a huge building, public building in the city.

And the concern for those smaller projects is similar to the concern of the City of Springfield and on that note I would suggest to you that the Board really needs to have a good understanding of when you change the statutory definition from the line of demarcation of industrial/commercial/residential where there was no testing necessary unless it was industrial/commercial, now you're changing that to potentially impacted, there's really confusion out there as to what needs to be tested as a potentially impacted property.

As an example, they've raised with me this has been a park in Chicago for a hundred years. What it was in Chicago a hundred years before that we're not necessarily sure, but we don't want to presume that's a potentially

impacted property because it's a park in the City of Chicago. We want to presume it's the legislature -- the legislative enactment would allow us to presume it's never been industrial or commercial, therefore, no testing is required for that particular piece of property.

So while I said that testing is fairly routine for the Public Building Commission what I really meant is in those large projects they almost always do a phase one, you know, based on some sort of ASTM requirement and I know they would support as the Agency suggested not necessarily writing in the entire ASTM, but guidance in terms of what the ASTM process does, which is what they utilize. Additionally, I think they support the idea of, you know, calling out various other tools that various other large contractors utilize like IDOT and like the toll ways and we're in the process of developing one as well for the Public Building Commission and that kind of thing.

So I think the Board's rule ought to encourage those kinds of self developed, if you will, site investigation tools that tie

into determinations. So I hope -- that was a long answer to your question and we'll get you that extra information in our post hearing comments.

MS. TIPSORD: Thank you. Are there any other questions for either Dr. Roy or Ms. Manning?

MR. MORROW: I have one. Ms. Manning, you mentioned the qualitative -- I don't have it right here. It's wrong to refuse qualitative definition. I just wondered what you meant by that.

MS. MANNING: What I meant in the Board's first notice opinion there was a statement that accepted the Agency's one size fits all and we're not going to look at soil from a qualitative definitional perspective. I'm not exactly sure what the Board meant by that, but my concern is that's exactly what I believe the legislature asked you to do in the definition of uncontaminated, which says -- means soil that does not contain soil contaminants in concentrations that pose a threat to human health, safety and the environment and then later on calls out background concentrations and basically says if you use TACO

when you use the background concentrations you have to use those that are at the location of the quarry and that kind of thing.

Reading those portions of the definition together and knowing, you know, and my involvement in the legislative process on this I really -- I really believe the Board's job here is to make an assessment of the risk and that a one size fits all approach may not work.

MR. RAO: You're not applying here that the Board adopt kind of a narrative standard without specifying concentrations to define uncontaminated soil?

MS. MANNING: I think concentrations are helpful when there's testing done and I think concentrations were -- were -- were presumed. I think that the concentrations can vary by the TACO application that a PE decides is appropriate for the -- and that's really -- you heard a lot of testimony yesterday and I think before about when the Agency established this MAC stuff stopped going to CCDD facilities at a great cost to the state and nobody anticipated that result because the anticipation was that we would have a risk

based determination as to what is safely placed in a quarry. There's been no evidence that there is any real harm that is caused over the course of many years of soil going to quarries or CCDD going to quarries. We have gone forward every step of the process and added regulations. I mean, in 2006, the Board did the permits for the quarries.

We're not looking at the kind of situations where people are dumping all kinds of different things in quarries and CCDD facilities. These quarries largely many of them are mandated to fill their -- their places through land reclamation plans that they have because they have interfaces as well with the Department of Mines and Minerals at the Department of Natural Resources.

Many of them -- most of them that I know have NPDES permits. So they have data from their NPDES permits and they're required to -- they're just a different regulatory structure than a landfill and when the Attorney General's Office comes in and, you know, Mr. Sylvester argues that, well, this is by all intents and purpose a landfill, it is not a

landfill. It's a creation already of the earth that is either a quarry or a mine that needs to be filled and the question is not is it a waste or isn't it is a waste in my mind.

It's dirt and the question is is the dirt clean enough to go there without an adverse impact on the groundwater. We're not talking about waste. We're not talking about RCRA. We're not talking about the federal government coming in and saying we're going to regulate dirt. There's no federal oversight. There's no federal impact here. There's simply a question of is the dirt clean enough and that's really how TACO is created.

In my mind, and maybe the Agency has a different memory of this, but I recognized that when we originally started dealing with cleanups of underground storage tank sites there was a rulemaking that there was no consideration of the difference between the soil standards and the groundwater standards. So when -- when the Board looked at this, the Board sent it back and said, you know, we need to look at attenuation factors. We need to look at other kinds of issues

and out of that sort of interchange between the Board and the EPA, TACO was born and my point here to you is TACO has many uses and that's what people were using prior to everybody figuring out the Agency's definition, their enforcement definition, of whether it was clean or not was well it's from God and the glaciers, but if it was from an urban environment we can't have it and I would suggest to the Board that -- that in your rulemaking in 2006, and I pointed this out in my earlier testimony at least one of the quarries, it was Vulcan, came to the Board and said, you know, you can't leave this rule without telling us what is uncontaminated for the purposes of the quarries. You need to define this for us because otherwise we're going to get enforced against and we're not going to know if we're doing what is right or not.

So now we didn't do that. So now we get all these enforcement actions. It's really in my mind the enforcement actions that drove this rule because we needed a clearer definition of what is safe to put in quarries and that is what the task of the Board is. And I

appreciate that the Agency did as much work -- good work on this bill. Not just this rule, but as well as all the legislative effort that went on into getting this to the Board, but I do think to answer your question just simply there are different kinds of applications and a one size fits all may not be the one that is best suited to moving forward with a permitted rule.

MS. TIPSORD: Any other questions? Thank you very much. I did have -- I've been notified that the mayor of Lyons was going to be here and would like to make a statement. Is there anyone else here who would like to testify today that has not pre-filed questions? Okay. We do have time for you if you'd like to come up and be sworn in and we can have you sworn in.

WHEREUPON:

CHRISTOPHER GETTY

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MR. GETTY: Good morning. Good morning, board members. My name is Christopher Getty. I'm the mayor of the Village of Lyons. We're a small community just west of the City of

Chicago and the County of Cook.

I'd like to make a brief statement about an experience my community went through and I believe it pertains to the matters you'll be making decisions on. After my election in 2009, I inherited the task of finishing a park development next to a new town hall site. During the construction phase of this project, excess dirt was excavated which did not meet the residential inhalation and ingestion standards for soil and was, therefore, too dirty to remain on the future park site.

At that time, the village decided to enroll into the Illinois EPA's SRP program to ensure the material at issue was being disposed of in a responsible manner. The village hired a professional soil consultant who proposed removing all unsuitable soil from the park site and disposing it into the Lyons -- Reliable Materials Lyons Quarry CCDD site, which is just adjacent to this park and our new town hall.

As the soil posed no threat to local groundwater, this proposal represented the lowest cost and most environmentally safe disposal

option. The proposed plan was rejected by the Illinois EPA because the soil did not meet the EPA's proposed rules for CCDD disposal and, therefore, could not be deposited into the quarry CCDD site.

In response, our village consultant proposed a plan which included comprehensive testing and all excess soils to be separated into areas which passed CCDD standards from those that did not. The plan was to dispose the soil that met the CCDD standards into the quarry while hauling the ineligible material away to a landfill. After spending a significant amount of money on soil testing, which pushed our budget to the limit, we were able to dispose of approximately only half of the soil on site. The remaining material was to be designated for a landfill at a projected cost of $1.5 million.

This would have caused tremendous, financial hardship to our village so a request was made for a more realistic alternative. Our soil consultant and the Illinois IEPA finally arrived at a comprehensive compromise, which whereby a berm was to be constructed with the

remaining excess soil on a portion of that parkland. After being told the initial material could not remain on site, the village and myself questioned why it could remain on site in a berm on that park property. We were informed that the berm was to be covered with a three foot cap of clean soil to act as a barrier. This would render the material harmless to humans.

We then asked if that -- if the risk of this harm would further be reduced by installing a deeper cap as recommended by our consultant. While the answer was yes, we were also told that since we didn't have the space or the funding to construct such a barrier, it wasn't necessary at the time. So, thus, the berm was built on the park property at a cost of $150,000 to the municipality. This was not cheap, but it did allow us to make line adjustments within our budget to complete the project. Given all this, the Village of Lyons has two main questions.

Why can we bury soil with the Illinois EPA approval under a three foot cap in a park site adjacent to a CCDD operation, but the same material can not be disposed of in a quarry

located right next to the park a hundred feat under a clean soil cap?

It would be safer for the public to keep this soil in an area where no accidental excavation would release it into the environment. As a responsible municipal government and the ultimate owner upon closure of the Reliable Materials Lyons Quarry and CCDD fill operations, we feel the Village of Lyons has very vested interest in the answers to these questions and I ask in deliberating on your final rules, please review the matter carefully so in the future neither my village nor another village has a similar situation which detrimentally impacts us with arbitrary standards which were used in this matter. Thank you very much for your time.

MS. TIPSORD: Thank you. One second. Can you tell me the name of your soil consultant?

MR. GETTY: It was Mackey Consultants.

MS. TIPSORD: We received a public comment yesterday from Mr. McClain with very similar fact situations. I'm just trying to

establish if it's the same situation.

MR. GETTY: I'm not sure if it was. I didn't know if they were coming in.

MS. TIPSORD: Thank you.

MR. GETTY: Sure.

MS. TIPSORD: Any other questions for the mayor of Lyons? Would anyone like to comment on the Department of Commerce and Economic Opportunity's decision not to do an Economic Impact Study on this rule?

As I noted before, some of you have already commented both in your comments and your testimony so thank you very much. Can we go off the record for just a second?

(Whereupon, a break was taken after which the following proceedings were had.)

MS. TIPSORD: After a discussion was held off the record, we will close initial first comment -- first notice comment period on April 20th and allow responses to be filed on April 27th and the April 27th comments should be responsive comments, not new comments, and that will then close the comment period so that the Board can

adopt. We would anticipate second notice and, in fact, statutorily pretty much have to go to the second notice before the first meeting in June. Are there any other questions or comments?

MS. FLOWERS: Can we have another discussion about the timeframe because I think the 20th is a Friday. So we would really only have about three or four days to review comments.

MS. TIPSORD: Then the 27th is also a Friday. Does it work better for you midweek? I don't have a calendar in front of me. I was just giving you a week.

MS. FLOWERS: I was just thinking that it might be better to have the first set of comments due earlier so there would be some time to review. Maybe just midweek like you said.

MS. TIPSORD: 18th?

MS. FLOWERS: The 18th would be a Wednesday.

MS. TIPSORD: We'll do April 18th then and I'll memorialize this in a Hearing Officer order as well. I want to thank you all. It's been a pleasure. We've gotten a lot of new information and good information and we really

appreciate your assistance in this matter. Thank you very much. We're adjourned.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Steven Brickey, Certified Shorthand Reporter, do hereby certify that I reported in shorthand the proceedings had at the trial aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said trial as appears from my stenographic notes so taken and transcribed under my personal direction.

Witness my official signature in and for Cook County, Illinois, on this 26 day of March, A.D., 2012.

Steven Brickey

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