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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
CLEAN CONSTRUCTION OR DEMOLITION) R06-19
DEBRIS FILL OPERATIONS UNDER) (Rulemaking-Land)
PA 94-272 (35 ILL. ADM. CODE)
PART 1100))

Report of proceedings had at the hearing in
the above-entitled cause at 100 West Randolph Street,
Suite 16-503, Chicago, Illinois commencing at 1:00 p.m.
on the 26th day of January, A.D., 2006.

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1 MS. ANTONIOLLI: Good afternoon and
2 welcome to the Illinois Pollution Control Board Chicago
3 hearing on Docket R06-19.

4 The Board encaptions this
5 rulemaking "In the Matter Of: Clean Construction or
6 Demolition Debris Fill Operations Under P.A. 94-272
7 (35 Ill. Adm. Code 1100)" and, as I mentioned, docketed
8 as R06-19. And the Board amended the caption slightly
9 only to highlight the authorizing Public Act from when
10 it was originally filed.

11 My name is Amy Antonioli, and I'm
12 the assigned hearing officer in this rulemaking. In
13 this proceeding, the Agency is seeking to add a new
14 Part 1100 which would allow and regulate the use of
15 clean construction or demolition debris as fill
16 material in current and former quarries, mines, and
17 other excavations. This rulemaking was filed on
18 November 21st, 2005, by the Illinois Environmental
19 Protection Agency. The Board accepted the proposal for
20 hearing on December 1st, 2005.

21 Today's the first hearing, and the
22 second hearing is scheduled for March 1, 2006. These
23 are the only two currently scheduled hearings. The
24 second hearing will take place at 10:00 a.m. at the

1 Illinois State Museum in Springfield.

2 To my left is Member Nicholas
3 Melas, and he is the Board member assigned to this
4 matter. To the left of him is Chairman Girard, and to
5 the left of Chairman Girard is Member Thomas Johnson.
6 To my right are the two members of our technical unit,
7 Mr. Anand Rao and Alisa Liu.

8 If you'd like to testify today and
9 you haven't already told me, please let me know.

10 Today's proceeding is governed by
11 the Board's procedural rules. All information that is
12 relevant and not repetitious or privileged will be
13 admitted into the record.

14 We will begin with the testimony of
15 our four witnesses that have prefiled testimony in this
16 matter: Ms. Joyce Munie, Mr. Paul Purseglove,
17 Mr. Christian Liebman -- Am I pronouncing that right?

18 MR. LIEBMAN: That's right.

19 MS. ANTONIOLLI: Okay.

20 (Continuing.) -- and Mr. Thomas
21 Hubbard, all on behalf of the Illinois Environmental
22 Protection Agency. We will follow that with any
23 questions for the witnesses. Please note that any
24 questions posed by the Board members or staff are only

1 proponents and Ms. Flowers.

2 MS. FLOWERS: Good afternoon. My name
3 is Stephanie Flowers, and I'll introduce our panel
4 here.

5 This is Chris Liebman, who's
6 manager of the solid waste unit in the permit section;
7 Joyce Munie, who's manager of the permit section; Mike
8 Nechvatal, who's manager of the division of pollution
9 control; Thomas Hubbard is the permit writer; and Paul
10 Purselove, who's the manager of field operations. And
11 we also have Kyle Rominger, who is also assistant
12 counsel with the IEPA.

13 I just would like to let everybody
14 know that there are copies of the EPA filings out on
15 the table in the front, including the testimony.

16 Okay. First of all, there was a
17 legislation passed this fall that amended the new
18 sections to the -- in the Illinois Environmental
19 Protection Act that were added this summer under
20 94-272. The legislation passed this fall was assigned
21 into law last Friday, January 20th, and it is Public
22 Act 94-725. This Public Act was referenced in both our
23 testimony and the statement of reasons as Senate

24 Bill 67.

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1 So at this time I'd like to file
2 Public Act 94-725 with the Board, and I guess that we'd
3 like to mark it as Exhibit 1.

4 MS. ANTONIOLLI: Sure.

5 Does anyone object to marking
6 Public Act 94-725 as Exhibit 1?

7 And seeing none, I will enter this
8 into the record as Hearing Exhibit 1, and you can give
9 a copy to the court reporter.

10 (Hearing Exhibit No. 1 marked as
11 requested.)

12 MS. FLOWERS: This legislation is also
13 out on the table in the back.

14 And now we'll do testimony, and I
15 have a document I'd like Joyce to tell me what that is.

16 MS. ANTONIOLLI: And before you begin,
17 can we have your witnesses sworn in?

18 MS. FLOWERS: Yes.

19 (Witnesses sworn.)

20 MR. FLOWERS: Joyce, can you let me know
21 what the document is?

22 MS. MUNIE: Yes. This is my prefiled
23 testimony in support of this rulemaking.

24

MS. FLOWERS: And is it a true and

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1 accurate copy of what was filed before the Board?

2 MS. MUNIE: Yes.

3 MS. FLOWERS: Okay. If I could have
4 that entered as Exhibit 2 -- Oh, yes. I forgot to
5 mention there was a page missing in Joyce's testimony.
6 It was inadvertently omitted, and the testimony now
7 that has been entered does have page 11. And also, out
8 on the table, there's testimony that does include that
9 page as well.

10 MS. ANTONIOLLI: Okay. Does anyone
11 object -- Do I have any objections to entering the
12 testimony of Joyce Munie into the record as Exhibit 2?

13 And seeing none, I'll mark this as
14 Exhibit 2.

15 MS. FLOWERS: And I do have copies for
16 all of you of the testimony so that we all have
17 page 11.

18 And if I could have Mr. Liebman
19 verify that document. Could you tell us what the
20 document is first?

21 MR. LIEBMAN: This is a copy of my
22 prefiled testimony.

23 MS. FLOWERS: And is it a true and
24 accurate copy of what was filed before the Board?

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1 MR. LIEBMAN: Yes.

2 MS. FLOWERS: And if I could have that
3 document marked Exhibit 3.

4 MS. ANTONIOLLI: Does anyone object to
5 marking the testimony of Mr. Liebman in support of the
6 EPA's proposal to adopt this rulemaking as Exhibit 3?

7 And seeing none, I will mark this
8 as Exhibit 3.

9 MS. FLOWERS: And, Mr. Hubbard, if I
10 could ask you to verify that document.

11 MR. HUBBARD: This is a copy of the
12 prefiled testimony I submitted to the Board.

13 MS. FLOWERS: And is it a true and
14 accurate copy of what was submitted?

15 MR. HUBBARD: Yes.

16 MS. FLOWERS: And if I could have that
17 document marked Exhibit 4.

18 MS. ANTONIOLLI: Okay. Is there any
19 objection to entering Mr. Tom Hubbard's prefiled
20 testimony into the record as Exhibit 4?

21 And seeing none, I'll enter this as
22 Exhibit 4.

23 MS. FLOWERS: And if I could have
24 Mr. Purseglove verify this document.

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1 MR. PURSEGLOVE: This is a copy of my
2 prefiled testimony.

3 MS. FLOWERS: And is it a true and
4 accurate copy that was filed before the Board?

5 MR. PURSEGLOVE: Yes.

6 MS. FLOWERS: And if I could have
7 Mr. Purseglove's testimony entered as Exhibit 5.

8 MS. ANTONIOLLI: Okay. Is there any
9 objection to entering Mr. Purseglove's testimony into
10 the record as Exhibit 5?

11 And seeing none, I'll mark this EPA
12 Exhibit 5.

13 MS. FLOWERS: We're going to proceed,
14 with your permission, as if the testimony has been read
15 into the record.

16 MS. ANTONIOLLI: Okay.

17 MS. FLOWERS: And I believe Joyce Munie
18 has a clarification on her testimony, and then the
19 panel would be open for questions.

20 MS. ANTONIOLLI: Okay. And before we
21 start, I'll ask if anyone else in the -- any other

22 member of the public would like a copy of this
23 testimony because it will be entered into the record as
24 if read.

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1 So again, there's extra copies out
2 in -- just right outside the door.

3 And you can go ahead.

4 MS. FLOWERS: Okay. Joyce.

5 MS. MUNIE: Yes. There is a
6 clarification in regards to the exemption for the IDOT
7 specifications.

8 In my testimony, I discussed that
9 the IDOT specifications are specifically for Department
10 use. And the law itself has this exception in it where
11 it exempts someone following the Illinois Department of
12 Transportation's specifications -- are exempt from
13 these regulations.

14 The clarification I'd like to give
15 to my original testimony is the fact that it appeared
16 in my testimony that "Department," as defined in the
17 IDOT specifications, was only the Department of
18 Transportation. But the definition in the IDOT
19 specification stands on its own, and it is -- it does
20 go beyond the IDOT engineers themselves. It includes
21 the county board when the county is awarding authority

22 on specifications on a grant on a contract. It also
23 includes the council -- city council, president, board
24 of trustees when the city, village, or town is the

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1 awarding authority. It further goes on to include the
2 county or municipality and the Illinois Department of
3 Transportation when Illinois Department of
4 Transportation is the awarding agency and the county
5 and municipality is supervising construction.

6 So this is a reminder that although
7 the legislation exempts them from a permit, it does not
8 exempt them from the requirement of the Acts -- the Act
9 itself, but this just gives them exemption from the
10 permits that we are proposing in these regulations.

11 MS. ANTONIOLLI: Okay. Thank you.

12 MR. RAO: Just a quick follow-up.

13 MS. ANTONIOLLI: Sure. Do you have
14 something?

15 MR. RAO: Yeah.

16 Does the rule also reflect your
17 position?

18 MS. MUNIE: Yes. The rule itself has
19 the exemption that comes out of the legislation, and
20 the rule and the law specifically goes to Illinois

21 Department of Transportation specifications. It
22 exempts someone who is following Illinois Department of
23 Transportation specifications, and the specifications
24 are a published document that are available to anyone.

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1 And the definitions, specifically the definition I just
2 gave, comes directly out of the Department of
3 Transportation's specifications.

4 MS. ANTONIOLLI: Okay. Now, at this
5 time would you like to open your panel up for
6 questions?

7 MS. FLOWERS: Yes.

8 MS. ANTONIOLLI: Okay. And is there
9 anyone from the public who has questions for the
10 witnesses at this time?

11 MS. MANNING: Claire Manning on behalf
12 of the City of Chicago.

13 First of all, we'd like to thank
14 the Agency. The City of Chicago has been discussing
15 the rule with the Agency at great length just to ensure
16 that the City has an understanding, with all of the
17 excavations that it does on a daily basis and its
18 maintaining of its roads and its maintenance operations
19 and its various departments -- that it has a clear
20 understanding of how the rule will impact City

20 you know, and when those are going to require a permit
21 but the day-to-day kind of maintenance work that's done
22 on the part of the City ...

23 So I guess what I'd ask the Agency
24 is: In the context of that kind of work, has the

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1 Agency really considered what is an "excavation," and
2 have you sort of talked about the idea of defining the
3 word "excavation"?

4 MS. ANTONIOLLI: And, again, that's
5 something you can answer now, if you feel comfortable,
6 and even add more later.

7 MS. MUNIE: Yes. The Agency has
8 discussed "excavation," and we were unable to come up
9 with a clear definition specifically during the time
10 frame that we had. We also didn't feel that it was
11 high on priority for us to put our time and effort, at
12 that point, in it.

13 However, we will continue to
14 discuss it before the next hearing, and we'll provide
15 at least a response as to what our opinion is to allow
16 the Board to consider that during their discussions.

17 MS. MANNING: Okay. How about the words
18 "fill operation"? Have you considered whether -- For
19 example, a maintenance project that takes part of a

20 sidewalk or part of a -- and the backhoe moves it
21 somewhere else and moves it to another area within
22 close proximity but what the Agency may traditionally
23 consider a different site, has the Agency talked about
24 or considered how it would deal with those kinds of

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1 situations, whether there's a fill operation there or
2 not? What is a "fill operation"?

3 MS. MUNIE: And I believe that the
4 response to the question on excavation, if we can get
5 you a definition of "excavation," that would answer
6 this question. I believe that's just the other end of
7 the coin in that question.

8 MS. MANNING: Okay. And then you're
9 willing to look at that and get a response to the
10 Board?

11 MS. MUNIE: Yes. We will get an opinion
12 and comments to the Board before the next hearing.

13 MS. MANNING: Great. Thank you.

14 MR. PURSEGLOVE: I have a follow-up,
15 Claire, on your first question.

16 Are you wondering -- Or is the City
17 wondering, if they do an excavation at one of these
18 17,000 digs a year, if this law would preclude them

19 from backfilling that hole?

20 MS. MANNING: Yes.

21 MR. PURSEGLOVE: I don't think that
22 there's -- We will -- We can certainly follow up on
23 that. But I don't think that we ever envisioned
24 requiring a permit to backfill a sewer cut that the

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1 City or any municipality might be doing. If you dig
2 out dirt, put in a sewer, and put that dirt back in the
3 hole, these rules are not applicable to that.

4 MS. MANNING: The question is when you
5 move it from one hole to another, potentially.

6 MR. PURSEGLOVE: Right.

7 MS. MANNING: Right. If the hole's down
8 the street or across the street or in a different
9 place, the City typically moves it from one place to
10 another. And it's a backfill, but it may not be in the
11 same location.

12 MR. PURSEGLOVE: Right.

13 MS. MANNING: That's the issue.

14 MR. PURSEGLOVE: Okay.

15 MR. RAO: Ms. Munie, just so I know --
16 you know, we also had the same questions about what an
17 "excavation" means or what would be a typical CCDD fill
18 operation. So, you know, whatever response that you

19 give would be helpful for us.

20 MS. MUNIE: Okay.

21 MS. ANTONIOLLI: Further questions?

22 MS. MANNING: Just a couple.

23 The question of clean construction
24 or demolition debris and the word "clean" and the

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1 statutory use of the word "uncontaminated," has the
2 Agency considered or -- the whole idea of what it would
3 consider to be -- in permitting this program and in
4 regulating this program, what it considers to be
5 "uncontaminated debris" and how it will make those
6 decisions?

7 MS. MUNIE: And the answer is: As far
8 as "uncontaminated," under this definition under the
9 statute and under these rules, this legislation did not
10 change the term "uncontaminated" --

11 MS. ANTONIOLLI: Ms. Munie, can I have
12 you --

13 MS. MUNIE: Oh, sure.

14 MS. ANTONIOLLI: -- talk towards the
15 court reporter?

16 And I apologize --

17 MS. MUNIE: That's okay.

18 MS. ANTONIOLLI: -- for this sort of
19 orientation --

20 MS. MANNING: That's okay. I can hear
21 her from the back.

22 MS. ANTONIOLLI: Okay.

23 MS. MUNIE: As far as the term
24 "uncontaminated" goes in this rulemaking and in the

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1 legislation, it has not changed from the law for the
2 last 15 years. This law has been in effect and has
3 been used for 15 years, and the term "uncontaminated"
4 has always been in that law. So we did not feel that,
5 under these rules, there was a necessity to define that
6 term.

7 MS. ANTONIOLLI: Do you have any further
8 questions --

9 MR. RAO: I have a follow-up --

10 MS. ANTONIOLLI: -- Mr. Rao --

11 MR. RAO: -- on that --

12 MS. ANTONIOLLI: -- on that point?

13 MR. RAO: Yeah.

14 Ms. Munie, you just mentioned how
15 you have been implementing this program for the last
16 15 years.

17 So how have you been, you know,

18 determining what is contaminated and what is
19 uncontaminated in your current program?

20 MS. MUNIE: Sure. And I didn't mean to
21 say that we've been implementing this law for the last
22 15 years because we have not been implementing the law.
23 The law stood on its own and allowed an exemption from
24 the term "waste" using the term "uncontaminated." It

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1 was a matter of, we knew contaminated when we saw it.
2 It was an enforcement issue. And when the materials
3 were not meeting the definition of "clean construction
4 or demolition debris" as defined, which is very
5 specific materials that are not contaminated, then, if
6 it did not meet that law, we would enforce against it.

7 MR. RAO: Okay. More specifically, in
8 the definition of "clean construction or demolition
9 debris," there's also, you know, terms used there that
10 says -- talks about "uncontaminated soil," and it
11 prohibits any commingling of uncontaminated soil with
12 the CCDD.

13 So is there any specific
14 demonstrations that the Agency requires, or is it just
15 you go with the law as you just mentioned now?

16 MS. MUNIE: We just go with the law as I

17 mentioned. The demonstration is that the soil is not
18 mixed with other clean construction or demolition
19 debris, and there's no -- It's not a prohibition
20 against mixing the two. It's just that if they are
21 mixed, then the soil, in addition to the clean
22 construction or demolition debris, becomes clean
23 construction or demolition debris.

24 MS. ANTONIOLLI: And is that

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1 determination made at the time that it arrives at the
2 fill site or when it leaves the site of origin?

3 MS. MUNIE: Under these rules, that's
4 determined at the point it comes into the fill site.
5 These rules are not -- are meant to regulate only the
6 fill site. It is the upstream end of this system.
7 It's not meant to be covered by these rules.

8 MS. ANTONIOLLI: Okay. Thank you.

9 Does anyone have anything further
10 on this point?

11 And, Ms. Manning, would you like to
12 continue with questions?

13 MS. MANNING: Just so that I understand
14 the issue of -- And maybe that answer answers it, but
15 the issue of uncontaminated -- I understand that we've
16 been working with this law for a long time. But you

17 would agree, would you not, that the whole nature of
18 whether something's contaminated or clean has changed
19 with the outset of TACO and risk-based objectives on
20 soil cleanup; and, as a result of that, there may be
21 different levels of clean or contaminated for various
22 different uses in certain areas.

23 MS. MUNIE: Actually, no, I would not
24 agree with that statement. TACO is the tiered approach

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1 to cleanup objectives, and it is meant to be,
2 specifically, levels that are safe to remain at a site
3 when that specific site is being used in a specific
4 manner. It does not give levels of what clean soil is
5 or uncontaminated soil. It is a level -- risk-based
6 level of cleanup for already precontaminated sites.

7 MS. MANNING: So does that mean, then,
8 that the Agency's definition of "uncontaminated" means
9 pure, clean, absolutely made of virgin soil?

10 MS. MUNIE: The Agency's definition of
11 "uncontaminated" comes from the term "uncontaminated"
12 which is a defined environmental term that means it is
13 not contaminated with something else.

14 MS. MANNING: That's all for now, I
15 think, with that.

16 definitions, I have a question here and it deals with
17 the definition of "clean construction or demolition
18 debris," and it says that it means uncontaminated
19 broken concrete without protruding metal bars.

20 So that means that you can have a
21 chunk of concrete and have rebar in it and it still can
22 be clean construction debris as long as it's not
23 protruding?

24 MS. MUNIE: Yes.

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1 MR. GIRARD: But if it's protruding half
2 an inch, does that mean that it's not clean?

3 MS. MUNIE: I will tell you that from a
4 practical standpoint, we look at really -- from an
5 enforcement standpoint, what the -- how close it could
6 get cut off, and that's based on equipment that is
7 used. And a half an inch of protruding rebar really is
8 about as close as they can get to the concrete to cut
9 it off.

10 MR. GIRARD: So at what point do you
11 enforce?

12 MS. MUNIE: That's up to the field
13 office on a case-by-case basis, and it's one of those,
14 "You'll know it when you see it," but it's hard to

15 define as far as defining it with a de minimis level of
16 what that protruding rebar is.

17 MR. GIRARD: So to be safest, you either
18 have it flush or within half an inch or you just crush
19 it all up and pull the iron out?

20 MS. MUNIE: To be safe, you would crush
21 it all up and pull the iron out. That would be,
22 clearly, the safest.

23 MR. GIRARD: Thank you.

24 MR. PURSEGLOVE: I might add that what

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1 we're seeing in the field is very small, de minimis
2 amounts of concrete going into these kinds of fill
3 operations because there is a network of
4 concrete-recycling plants around the state. And people
5 who have large volumes of concrete deliver that
6 concrete to the crushers who crush it and then market
7 it as kind of a surrogate for aggregate. It's not that
8 the CCDD sites won't except some concrete, but the vast
9 majority of it is going to recycle as opposed to
10 disposal sites.

11 MR. GIRARD: Thank you.

12 MS. ANTONIOLLI: Okay. And the Board
13 and the Board's technical unit have more questions for
14 the witnesses. We'll start with some general questions

15 and then try to go through the proposed rule section by
16 section.

17 So do any of the Board members have
18 questions at this time?

19 MR. RAO: Ms. Munie, I had some general
20 questions about -- just to get a handle on the CCDD
21 fill operations.

22 How many of these, you know, I'd
23 say, fairly bigger fill operations are currently, you
24 know, operating in the state? Do you have a number or

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1 estimate?

2 MS. MUNIE: Under this law, there was a
3 first interim application that had to come to us and
4 notification that came to us, and there were 87 that
5 applied for that. We think, possibly, there might be a
6 few more out there that did not become aware of the
7 law. But there are at least 87 who wanted to continue
8 to operate under the new standards.

9 MR. RAO: And with these 87 or so
10 applications that you received, have you had an
11 opportunity to go through these applications and see
12 how big these facilities are, how much CCDD they are
13 taking in on an annual basis?

14 MS. MUNIE: We have the statistics on
15 how much they take in on an annual basis on some major
16 categories. We have not had a chance to really go
17 through those statistics yet. And specifically, with
18 these interim applications or authorizations, it is
19 just more a locational-type application as opposed to
20 how large the facility itself is.

21 MR. RAO: Okay. Any information that
22 you may have regarding these facilities in terms of the
23 number of facilities and the size or where they're
24 located, if you could, you know, provide that

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1 information into the record, that would be helpful.

2 MS. MUNIE: We will -- We'll provide
3 that information before the next hearing. We should be
4 able to develop a map for you, show you the locations,
5 and give you our statistics on it.

6 MR. RAO: That would be helpful.

7 And there are some other general
8 questions that I had related to the economic impact of
9 this rulemaking.

10 In your testimony -- or in the
11 statement of reasons, you have mentioned that one of
12 the costs that these facilities may face is going
13 through the permit process, and there's a mention that

13 section, 1100.101(a), the proposal sets forth that the
14 proposed rules do not apply to CCDD fill operations
15 permitted pursuant to 35 Ill. Adm. Code 807 or 811
16 through 814.

17 I realize that these are the
18 facilities permitted under the landfill rules. So is
19 the rationale here for this exemption that since they
20 go through the landfill permitting, those sites should
21 be okay to accept this CCDD?

22 MS. MUNIE: Yes. The rationale is that
23 a facility that's permitted as a landfill -- a
24 municipal waste landfill, a chemical waste landfill, or

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1 a putrescible waste landfill -- would be more
2 protective than the regulations we're proposing here
3 for these fill operations. And, in fact, those
4 facilities are allowed to accept construction and
5 demolition debris as part of their entire waste
6 treatment. It's part of a municipal waste stream, and
7 they have been and continue to accept those types of
8 materials.

9 MR. RAO: Can similar exemptions be
10 provided for landfills regulated under 816 and 817?

11 MS. MUNIE: Landfills that are regulated
12 under 816 and 817 would not be accepting these type of

13 material.

14 MR. RAO: All right. And I had one more
15 clarification about your IDOT exemptions -- the
16 specifications.

17 So any entity that follows the IDOT
18 specifications are completely exempted from this rule?

19 MS. MUNIE: No. It's quite the
20 opposite. Only the county boards, city councils,
21 municipalities, only the groups that are defined in the
22 IDOT specifications as the "Department" because the
23 specifications under IDOT are clear that they only
24 apply to the Department.

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1 MR. RAO: Should that be made part of
2 our rules, too, to clarify, you know, the applicability
3 of the rules?

4 Because right now, when I read
5 this, it seems like, you know, as long as they're
6 following the -- you know, the use of CCDD complies
7 with IDOT specifications, that they're exempted.

8 So somebody has to go to the IDOT
9 rules to figure out who it applies to?

10 MS. MUNIE: Someone would have to know
11 what the IDOT specifications are to follow the IDOT

12 specifications, and the IDOT specifications only apply
13 to -- have a requirement that the Department approve
14 it.

15 MR. RAO: Would it be acceptable to the
16 Agency if we provide a citation to the IDOT
17 specifications in the rules as far as, you know,
18 pursuant to whatever section of the --

19 MS. ANTONIOLLI: In addition to the Act
20 citation?

21 MR. RAO: Yeah.

22 MS. MUNIE: Of course.

23 MR. RAO: Okay.

24 MS. MUNIE: Would you like us to provide

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1 that?

2 MR. RAO: I think so. It would be
3 helpful.

4 MS. MUNIE: Yes. We will provide that
5 before the next hearing.

6 MS. ANTONIOLLI: Actually, I think that
7 is part of the testimony, too.

8 MS. MUNIE: It is part of the testimony.

9 MS. ANTONIOLLI: If you could just put
10 that into the rule language.

11 MS. MUNIE: Okay.

12 MS. FLOWERS: What are we clarifying?
13 We're clarifying the sections of which -- the Agency
14 sections of the IDOT specs that we think are
15 applicable?

16 MS. ANTONIOLLI: The exemption that's
17 part of this --

18 MR. RAO: We want a cross-reference to
19 the IDOT specifications.

20 MS. MUNIE: Okay. And our only concern
21 on that is that IDOT can change their specifications.
22 They can also change their numbering on the
23 specifications, okay. So it was a concern and really
24 why we did not do it to start with.

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1 However, we will be glad to provide
2 that to you. And if you decide to do it, that's
3 entirely up to you.

4 MS. LIU: I think in a public comment,
5 too, Rockford Sand & Gravel had read the language and
6 tried to see how they could apply the IDOT
7 specifications, and I don't think they ran across the
8 same definition of "Department" you did. Otherwise,
9 they would have realized it, and it would have opened
10 things up for them.

11 Would it be helpful to provide a
12 Board Note that said that this would apply to
13 departments such as county boards and city councils and
14 municipalities rather than having someone completely
15 skip over it and think that they're not eligible for
16 that exemption?

17 MS. MUNIE: I think a Board Note could
18 provide better clarification. Again, the danger would
19 be IDOT could open their specifications and go beyond
20 municipality, county, and other groups.

21 However, under the -- the Board
22 Note being not really the regulation itself, it may
23 provide a little more -- provide the clarification
24 without the constraints.

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1 MR. RAO: We can list the entities that
2 we know now that are in the IDOT specifications
3 (inaudible) "during but not limited to," that kind of
4 language in there.

5 And I have one more follow-up about
6 an earlier topic we talked about, the uncontaminated
7 soil. There was a public comment filed by the
8 Aggregate Producers. In that comment, they had
9 requested that the Board ask the Agency to confer with
10 them to come up with a definition for "uncontaminated

10 And we were not -- We were not willing to go beyond
11 what we thought the legislation allowed us.

12 MS. FLOWERS: Basically that's just a
13 listing of what was in 3.160 of the Illinois EPA Act.

14 MR. RAO: Okay. But --

15 MS. FLOWERS: We never really discussed
16 anything other -- I mean, we didn't really discuss the
17 issue. We just went ahead and put that in.

18 MR. RAO: Do you believe it's consistent
19 to protect regulated recharged areas the same way you
20 protect well setback zones?

21 MS. MUNIE: It would be consistent with
22 our landfill regulations. However, these are not
23 landfills.

24 MR. RAO: Okay.

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1 MS. LIU: In that same section, I had a
2 question also.

3 1100.201(b) states, "CCDD fill
4 operations must not accept material other than CCDD for
5 use as fill." Does that mean that no other fill
6 material would be allowed?

7 MS. MUNIE: Correct, because anything
8 else would be contaminated or a waste. This is the
9 only material that is defined as not being a waste when

10 used in this manner.

11 MS. LIU: Does that mean that someone
12 wouldn't be allowed to bring in a clean load of sand or
13 gravel to place in the same fill areas as CCDD?

14 MS. MUNIE: No, because that material is
15 not a waste. It's dirt.

16 MS. LIU: So it wouldn't be allowed?

17 MS. MUNIE: It would be allowed, yes.

18 MS. LIU: It would be allowed?

19 MS. MUNIE: It would be allowed, but if
20 it came from construction or demolition debris -- a
21 construction and demolition site, it would -- when
22 commingled with that CCDD, clean construction or
23 demolition debris, it would become clean construction
24 or demolition debris because it was, at that point,

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1 commingled.

2 MS. LIU: What if it was not commingled;
3 it was brought in separately?

4 MS. MUNIE: Then it's just dirt.

5 MS. LIU: And you could put dirt --

6 MS. MUNIE: You can put dirt in these
7 holes, yes.

8 MS. FLOWERS: It would not be a CCDD

9 fill operation at that point.

10 MS. LIU: Okay. That would be helpful
11 if you could define "fill operation," then.

12 Is it -- Does it just apply truck
13 by truck, or does it apply to the whole site?

14 MS. MUNIE: Okay. And "CCDD fill
15 operation" is defined specifically as the use of CCDD
16 as fill material in a current or former quarry, mine,
17 or other excavation. So it's specifically the use of
18 clean construction or demolition debris as the fill.

19 MR. RAO: I guess -- You know what Alisa
20 is asking is -- correct me if I'm wrong -- the proposed
21 language says "CCDD fill operation must not accept
22 material other than CCDD." And I thought your reply to
23 her question was CC- -- that CCDD fill operations is
24 prohibited from accepting any waste, but they can

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1 accept other clean material.

2 Is that correct?

3 MS. MUNIE: That's correct. That's just
4 dirt.

5 MR. RAO: So in this proposed language,
6 should this read as "CCDD fill operations must not
7 accept other waste" or "material"?

8 MS. MUNIE: When it's talking about

9 this, it's saying for use as fill, okay, and it is just
10 the use as fill that the -- it could only be clean
11 construction or demolition debris. It's not the --
12 It's not the filling of the hole. It's for use as fill
13 within -- within this hole.

14 MS. LIU: I guess the way I read it, in
15 a very practical sense, is that it says if you've got a
16 fill operation for CCDD, then it's exclusive to CCDD.
17 I don't read into that statement that you can bring in
18 a clean load of sand or gravel that's not associated
19 with that demolition project.

20 MS. ANTONIOLLI: I think maybe -- Is it
21 the word "material" that you're actually ...

22 MS. FLOWERS: We might need to propose a
23 clarification as to what the definition of "clean
24 construction or demolition debris" is because there is

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1 a provision there that if anything is commingled with
2 CCDD, it becomes CCDD. And that is where you're saying
3 a load of sand, but if it's going in to be fill with
4 other CCDD, it is itself CCDD.

5 MS. ANTONIOLLI: But not anything;
6 something that's not otherwise a waste?

7 MR. RAO: Uncontaminated.

8 MS. ANTONIOLLI: Yeah, uncontaminated.

9 MS. FLOWERS: Yes.

10 MS. LIU: So although it's not CCDD when
11 you bring it into the site to dump it, once you dump
12 it, it becomes commingled; then it becomes CCDD?

13 MS. MUNIE: Yes. And that was the point
14 of the Board Note that we had there. So maybe a
15 clarification on the Board Note we have.

16 MS. ANTONIOLLI: And the Board Note --
17 Yes, that might need a clarification because it doesn't
18 have the full definition there of what "uncontaminated
19 soil that is being placed as fill material" is.

20 MS. MUNIE: Okay.

21 MS. ANTONIOLLI: So yeah, that would be
22 a good idea.

23 MR. RAO: I think, in the Board Note,
24 you've got part of the definition there. I think the

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1 next sentence that follows is where -- you know, "as
2 long as it's not commingled."

3 MR. RAO: On Section 1100.202, the
4 surface water drainage requirements, you have provided
5 requirements for runoff control from filled areas and
6 unfilled areas. And in subsection (a) -- (a)(1) -- oh,
7 it's in (a)(2) -- it says, "All surface water control

8 structures must be operated until the final cover is
9 placed and the vegetative or other cover meeting the
10 requirements of 1100.208 of this Part provides
11 erosional stability."

12 Does this rule require surface
13 water control structures?

14 MR. LIEBMAN: Yes.

15 MR. RAO: Okay. I didn't see any design
16 criteria provided in this rule like you have done for
17 diversion of runoff from unfilled areas.

18 Is this something that, when the
19 facility goes through the NPDES permit, there will be
20 specified any additional requirements for surface water
21 control structures?

22 MR. LIEBMAN: You mean beyond what our
23 bureau of water would ask for in a non-CCDD site?

24 MR. RAO: Yeah, or something -- No. On

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1 what basis will they provide -- or construct surface
2 water control structures under this rule?

3 I didn't see any part of the rules
4 that require them to do it. That's my question.

5 MR. LIEBMAN: I understand your
6 question, and I think it's something we'll need to

7 discuss internally and get back to you on.

8 MR. RAO: That would be great. Thank
9 you.

10 MS. FLOWERS: Maybe we ought to clarify
11 that.

12 Are you asking if we have any other
13 surface water control structure requirements in this
14 Part 1100 other than what NPDES permits would require?

15 MR. RAO: Yeah. I wanted to know, you
16 know, whether, first of all, they're required to have
17 any surface water control structures because I didn't
18 see any requirement in there other than that it should
19 be operated. And my other question was whether that
20 would be required as a part of the NPDES permit since
21 it's not in the rule.

22 MS. FLOWERS: Right. And under
23 Section 1100.308, that's where we cover surface water
24 control, and it does -- does show that they need to

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1 comply with the NPDES permit.

2 MR. RAO: But to me, it seems like
3 water -- surface water control structures are
4 measured -- will be a part of the NPDES permit under
5 309.

6 Is that correct?

7 MS. FLOWERS: Yes.

8 MR. RAO: Okay.

9 MS. FLOWERS: I shouldn't answer.

10 MR. LIEBMAN: Yes.

11 MR. RAO: All right.

12 MS. LIU: In Public Comment No. 1, the
13 Illinois Association of Aggregate Producers suggests
14 adding some language to proposed Section 1100.204(h)
15 regarding the final fill elevation. The proposal would
16 allow filling higher than the existing elevation for a
17 site development or reclamation as long as there is
18 Agency approval. And I was wondering if the Agency
19 would comment on the Agency's position regarding that
20 proposal.

21 MR. LIEBMAN: Well, I believe, in this
22 comment, they were suggesting that a permit could
23 perhaps be issued whereby CCDD material could be used
24 to go above the surrounding grades, and that would not

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1 be consistent with the definition of "clean
2 construction or demolition debris" and how it can be
3 used such that it's not a waste. So we would not
4 support that idea.

5 MS. LIU: If the site was intended for

6 some sort of future development, how would they get the
7 type of grading that they would need if they didn't use
8 CCDD --

9 MR. LIEBMAN: Using materials other than
10 clean construction or demolition debris.

11 MS. ANTONIOLLI: As a part of that same
12 section, 204, the section immediately before that, (g),
13 on noise control, there was also a comment about that
14 first sentence under "Noise Control." And I'm
15 wondering what the Agency's idea is of how a facility
16 is designed to minimize noise that would be audible
17 outside of the site or if it would be -- or if you'd
18 consider eliminating that first sentence and just going
19 with the Board's -- as long as it is in compliance with
20 the Board's noise regulation provisions.

21 MR. LIEBMAN: I don't believe our intent
22 was to make these regulations more stringent than the
23 Board's standards.

24 MS. ANTONIOLLI: Okay. Are there any

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1 other questions on that section, 204?

2 MR. RAO: I had just a general kind of a
3 suggestion to the Agency in that under the operating
4 standards for the various provisions that you have, the
5 proposed language includes phrases like "safe manner,"

6 "proper design," and things like that. It would be
7 helpful if you could, you know, be a little bit more
8 specific in the proposed language that way we can
9 address deeper concerns. It would be a little bit more
10 easier for us to deal with them because, a lot of
11 times, we get those questions of what it means and I'll
12 know where this language is coming from. But it would
13 be helpful.

14 MR. LIEBMAN: We'll see what we can do.

15 MR. RAO: Yeah.

16 MS. FLOWERS: Is that only under the
17 operating standards?

18 MR. RAO: Yes.

19 MS. FLOWERS: We'll just come up with
20 some different language --

21 MR. RAO: Yeah.

22 MS. LIU: Mr. Purseglove?

23 MR. PURSEGLOVE: Yes.

24 MS. LIU: In Public Comment No. 1, the

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1 Illinois Association of Aggregate Producers also makes
2 another suggestion regarding training for
3 load-checking. They propose that a mining industry
4 would pay for the training program but that there would

5 be Agency oversight to ensure continuity and
6 consistency. I was wondering if the Agency could
7 comment on how they feel about that.

8 MR. PURSEGLOVE: Yes, we can. We are --
9 We are not supporting such a proposal. We don't have
10 the resources to run a training program. There are --
11 We anticipate that there will be people operating CCDD
12 fill operations who are not necessarily members of the
13 Aggregate Producers Association. We don't want to be
14 in a position of training and then retraining people.
15 The rules as proposed are, we feel, fairly
16 straightforward. They do not require a lot of
17 training, nothing similar to what it might require for
18 Certified Subtitle B, landfill operations.

19 MS. FLOWERS: And if I could just
20 interject. We did talk with IAAP yesterday or the day
21 before about the same issue, and they are comfortable
22 with us just providing -- maybe having us come and
23 speak at something that they themselves develop the
24 training program.

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1 MS. ANTONIOLLI: Okay.

2 MS. FLOWERS: And we're okay with that.
3 We just -- We do not want to have the burden of
4 developing a program and providing it for everyone.

5 MS. LIU: Would it need to be an
6 Agency-approved training program?

7 MS. FLOWERS: No.

8 MR. JOHNSON: What are you -- Are you
9 talking about using the PIDs and the FIDs, that
10 training? Is that what you're referring to, Alisa?

11 MS. LIU: I guess I was just trying to
12 establish some sort of minimum training guidelines that
13 people would be able to adhere to so that there would
14 be some sort of consistency.

15 MS. FLOWERS: I think they're wanting
16 somewhat of our guidance. I don't really want to say,
17 though, whether there would be an approval.

18 MS. MUNIE: And I believe what Stephanie
19 was stating earlier, about us providing speakers for
20 their programs, we do this, typically, on every other
21 program where we provide technical expertise and allow
22 an organization such as the Aggregate Producers to put
23 on training, and we provide the technical part of it.
24 The problem with creating an approved program is that

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1 there are a lot more resources that we have to put into
2 it, and we don't have those resources at this time.

3 The problem with putting a Board

4 regulation where it allows a group such as the
5 Aggregate Producers to be -- to provide training that
6 is required in these regulations is the Aggregate
7 Producers, first of all, may decide that they only
8 offer it to their group. Someone has to be a member of
9 their group. Also, there is the problem that if
10 someone left or their trained person left, the
11 Aggregate Producers would have to offer this training
12 quite frequently throughout the year, and they may not
13 be willing to do a formal training that -- as
14 frequently as they -- They realize that they might not
15 have to -- They may not realize how frequently it has
16 to happen. It's just, in our experience, it has to
17 happen quite frequently, and it's just something that
18 we don't think we have the resources to put into right
19 now.

20 MR. RAO: Just a related question.
21 Under the recordkeeping requirements that you propose,
22 you require these facilities to maintain, you know,
23 written provisions for load-checking, load-rejection
24 notifications, and training required under 1100.205.

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1 So if the Agency goes on an
2 inspection and they find that whatever information they
3 have in their files doesn't, you know, meet your goal

4 or standard, then would that be an opportunity for the
5 Agency to say, you know, "You should have a better
6 training procedure"?

7 MS. MUNIE: That would definitely be an
8 opportunity for the Agency to assist the company to do
9 better training. We would also envision that this
10 information would come to us in an application and that
11 we would be able to assist them during the application
12 process on what -- all they need to do to train their
13 employees.

14 MR. RAO: Okay.

15 MS. LIU: Mr. Purseglove, another
16 question following on the suggestion by IAAP about
17 Section 1100.205(a) and (b). They suggest some
18 language about calibration of instruments, and I was
19 wondering what the Agency's position was on that.

20 MR. PURSEGLOVE: I need to see that.

21 Do you have the response that we
22 prepared for IAAP?

23 (Document tendered.)

24 MR. PURSEGLOVE: Did you submit this to

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1 them?

2 MS. MUNIE: No. That's for us.

3 MR. PURSEGLOVE: We feel that these
4 instruments should be calibrated with pure air which is
5 specified by the manufacturers. It's called a zero gas
6 as opposed to zeroing them with air in the atmosphere.
7 That would be the proper way to calibrate an instrument
8 so that when you turn it on and it reads zero, it is,
9 in fact, based on a calibration from zero-gas air.

10 MS. LIU: Do you think that there needs
11 to be any revision to the language the Agency proposed
12 to reflect that?

13 MR. PURSEGLOVE: I don't think our
14 language needs to be revised. We can look at it again.
15 if you think that -- having read it, you think you're
16 unclear as to what is required.

17 Instrument manufacturers provide
18 all that documentation about how to zero and calibrate
19 an instrument. Those are the procedures the Illinois
20 EPA follows when we use these instruments.

21 MS. FLOWERS: Would you suggest a
22 clarification, then?

23 MS. LIU: I guess IAAP thought there
24 should be a clarification. That's why I just wanted to

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1 follow up with you.

2 MS. FLOWERS: Okay.

3 MS. ANTONIOLLI: Well, I think what
4 their -- Their suggestion was, actually, to change the
5 language affirmatively to, "to measure background
6 noises as included in the prohibitions." So I think
7 the Agency's position is that they're sticking with
8 their original -- I don't want to put words in your
9 mouth, but I think that's just what he said.

10 MR. PURSEGLOVE: That is correct, right.

11 MS. LIU: We have a series of questions
12 relating to 1100.209, the postclosure maintenance.

13 Mr. Liebman, based on your
14 experience, once a quarry or a mine or an excavation
15 has completed fill activities using CCDD, what are some
16 of the final uses of those sites?

17 MR. LIEBMAN: Well, the use that the
18 Aggregate Producers keep telling us about is a big box
19 store.

20 MS. LIU: So some type of a building or
21 a structure?

22 MR. LIEBMAN: Yes.

23 MS. LIU: Homes? Would you see homes on
24 these types of sites?

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1 MR. LIEBMAN: Excuse me. A big box

2 store is something like a Walmart.

3 MR. MELAS: That's a common
4 nomenclature.

5 MS. LIU: But not necessarily a
6 commercial-type building; it could be any type of a
7 building?

8 MR. LIEBMAN: Yes, or open space.
9 Essentially anything, I believe.

10 MS. LIU: From a geotechnical
11 perspective, what makes CCDD well-suited for something
12 like that?

13 MR. LIEBMAN: Well, it can be very
14 stable as opposed to putrescible waste.

15 MS. LIU: Since CCDD is comprised of
16 concrete and other types of very rigid materials, does
17 the placement of it tend to create void spaces?

18 MR. LIEBMAN: I would say, as a general
19 rule, that would not be a problem.

20 MS. LIU: In terms of what?

21 MR. LIEBMAN: In terms of having large
22 voids that later collapse and cause the surface to
23 settle differentially.

24 MS. LIU: That's what I was trying to

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1 get at.

2 You don't see situations where
3 those large voids are created by --

4 MR. LIEBMAN: I don't think that would
5 be a common occurrence.

6 MS. MUNIE: If I can clarify. A large
7 majority of what we see going into these quarries is
8 soil-type materials, and it is not so much the truly
9 large chunks of concrete. As Paul testified earlier,
10 most of that really goes into making CA-6, a rock-type
11 material and aggregate which is then used again in
12 concrete -- or reused in concrete or used in
13 road-building materials, road building, things like
14 that.

15 So between that and the weight in
16 the material and the materials themselves, as they're
17 being placed, they're going to go to a natural grade.
18 We're just not seeing the large voids as an issue.
19 Someone is going to maximize the space and -- to the
20 point where they can run a compactor over material, run
21 a piece of equipment if they start seeing voids. They
22 want to be able to put as much material on the ground
23 as they can.

24 MS. LIU: Even given that, do you see a

1 propensity for these sites at all to exhibit shifting
2 and settling?

3 MR. LIEBMAN: I'm not aware of that
4 being a common problem.

5 MS. LIU: Are you aware of how this type
6 of fill material might respond in a seismic event since
7 it's an unconsolidated-type material; it's not in need
8 of soil?

9 MR. LIEBMAN: No, I'm not aware of -- Or
10 I don't -- I have not done any research into how this
11 material may respond differently from unfilled areas.

12 MS. LIU: I know this kind of goes
13 beyond what's being allowed in the proposal. But from
14 a geotechnical-engineering standpoint or
15 foundation-engineering standpoint, just to improve the
16 structural properties of a fill area, could CCDD
17 filling operations benefit from the introduction of
18 other types of compatible materials?

19 MR. LIEBMAN: Perhaps.

20 MS. MUNIE: But that would not be
21 consistent with the law.

22 MR. HUBBARD: I'd just like to say that,
23 as Chris mentioned, they normally are -- or Joyce, I
24 meant. Sorry. They normally are using very large

1 equipment to place this, so they tend to compact as
2 they go just with the weight of all this equipment
3 running back and forth on them.

4 MR. RAO: Is that one of the reasons for
5 why the Agency has picked a fairly short postclosure
6 maintenance period of one year for these
7 specifications, that there's not much settling or any
8 other kinds of problems --

9 MS. MUNIE: In addition to where we do
10 not expect much settling, it's also not putrescible
11 waste; meaning, it does not decompose. Specifically,
12 it cannot be that type of material. Usually a large
13 postclosure care period is needed when you expect the
14 materials to change inside the fill boundaries
15 themselves. We expect that once this material is
16 placed in the fill, it's just there. It's not going to
17 change its characteristics.

18 MR. RAO: Thank you.

19 I have just one more clarification
20 question. This is for the recordkeeping requirements
21 under 1100.210.

22 This provision doesn't state how
23 long the records should be maintained. I realize,
24 under load-checking, the Agency has proposed a

1 three-year time period.

2 Should the same three-year time
3 period apply to recordkeeping requirements --

4 MR. HUBBARD: Generally --

5 MR. RAO: -- for maintenance of records
6 outside?

7 MR. HUBBARD: Generally we'd like them
8 to keep all -- a copy of all their permits and permit
9 applications.

10 MR. RAO: All the -- From the time the
11 facility starts operating, you want --

12 MS. MUNIE: Until the completion of
13 postclosure care, yes, right, with the exception of the
14 load-checking, which -- because we expect that to be a
15 large volume of paper, which is why there's less time
16 requirements. The rest of the papers, we do not expect
17 to be quite as significant, and we would expect them to
18 know what they've applied for throughout the life of
19 the facility.

20 MR. RAO: Okay. That's all I have.

21 Thank you very much.

22 MS. ANTONIOLLI: I have one more
23 organizational question. This rulemaking is addressing
24 Public Act 94-272. But just out of curiosity, if the

1 Agency foresees any other material that could be used
2 as fill in the future, would you consider entitling the
3 Part, Section 1100, something more general and then
4 having the CCDD material rules be, I guess, in the
5 environment of the 1100s for now and in the future
6 potentially have that section apply to other fill
7 materials that may be used?

8 MS. MUNIE: We -- I don't think that we
9 can envision something that could also be used as fill
10 in this manner simply because this is one of the few
11 exemptions in the Act where a material being used as
12 fill is not a waste.

13 MS. ANTONIOLLI: Right. That's --

14 MS. MUNIE: Everything else --

15 MS. ANTONIOLLI: -- the new section?

16 MS. MUNIE: Right. Any other fills, we
17 would expect to be a landfill and would be more
18 suitable to fit into the 800 series or the 700 series,
19 depending on whether or not it's hazardous waste or
20 nonhazardous waste.

21 MS. ANTONIOLLI: Okay. Thanks for your
22 opinion.

23 MS. FLOWERS: I just have a couple
24 questions. As far as the IDOT specifications, I

1 believe that at some time it was said that "do they
2 just need to be consistent with," and I would just like
3 to -- I guess I'll have Joyce testify to whether --
4 what that exactly is not consistent with, what that
5 actually says if you could.

6 MS. MUNIE: Yes. In fact, I believe my
7 response to the question made it clear that I did not
8 agree with the term "consistent with." They have to
9 follow the specifications laid out in the IDOT
10 handbook. IDOT specifications are very clear and very
11 specific as to what steps must be taken, what tests
12 have to be made, and what procedures have to be
13 followed.

14 MS. FLOWERS: And if I could just have
15 you read what that says.

16 MS. MUNIE: Specifically the Act allows
17 that this subsection does not apply to the use of clean
18 construction or demolition debris as fill material in
19 an excavation other than a current or former quarry or
20 mine if this use complies with Illinois Department of
21 Transportation specifications. And it specifically
22 uses the words "complies with."

23 MS. FLOWERS: And the other thing I'd
24 just like to mention is that -- just for the Board's

1 information, is that we have worked very closely with
2 the IAAP on this matter. They do represent a large
3 portion of what we -- who we think are going to be
4 subject to these regulations, and we -- we still now
5 talk with them about what's going on. They know all
6 their issues. What they submitted as comments, we have
7 heard before. We have also given them our views on the
8 matter. They do want to, of course, present them for
9 the record. But we have had a very open communication
10 with them, and I would just like to let you know that
11 that's still going on.

12 MS. ANTONIOLLI: Okay.

13 MR. JOHNSON: And the two main areas
14 that you identified in your statement of reasons here,
15 the extent of the notification procedure and the
16 requirement of a professional engineer to certify, are
17 still your two big areas of disagreement? Or have you
18 developed more?

19 MS. FLOWERS: No. I -- Yeah. They were
20 at the -- They were at the time that we submitted our
21 proposal, but I guess they're -- whatever they
22 submitted as comments would be -- And I don't
23 believe -- I believe one of those issues is in their
24 comments, the notification. So ...

1 MR. JOHNSON: Okay.

2 MS. ANTONIOLLI: And, Ms. Flowers, I
3 have one more question for you on -- I'm looking at
4 the -- your motion-for-acceptance proposal and
5 statement of reasons, and attached to it, you did
6 attach P.A. 94-272.

7 MS. FLOWERS: Right.

8 MS. ANTONIOLLI: There is a new section
9 of Section 42 of the Act, and it's Section i-5. And
10 Section i-5 talks about one basis for the Agency to
11 deny an interim authorization or permit for this type
12 of fill and that it's based on activities at the site
13 that may have caused or allowed contamination unless
14 such contamination is authorized under any permit
15 issued by the Agency. And the responsibility is also
16 on the owner or operator to provide this information.

17 Do you think that's something that
18 should be part of the permit application content
19 requirements? I guess that would be subpart (c) of the
20 proposed rule?

21 MS. FLOWERS: Joyce, do you want to --
22 This is a form that we -- It is required --

23 MS. ANTONIOLLI: I guess it would be
24 implicit, but ...

1 MS. FLOWERS: It's mentioned in the --
2 somewhere.

3 MS. MUNIE: Are you referencing
4 Section 39(i-5), the new Section 39(i-5)?

5 MS. ANTONIOLLI: Yes, 39(i-5). I think
6 I mentioned 42, but it's 39(i-5).

7 MS. MUNIE: And this is regarding what
8 we commonly called a bad Act or clause but is in the
9 Act. This provision itself is something that we deal
10 with procedurally, separate from the standard
11 applications and outside each individual regulation,
12 because 39(i) applies to all permits issued.

13 MS. ANTONIOLLI: Okay.

14 MS. FLOWERS: We do require, though --
15 Under 1100.307, we mention that they have to provide
16 certifications that comply with 39(i) and 39(i-5).

17 MS. ANTONIOLLI: Okay. It's in there.

18 MS. FLOWERS: And it is submitted as
19 part of the permit application, right?

20 MS. MUNIE: Yes. It's just a separate
21 form in and of itself.

22 MS. ANTONIOLLI: Okay. Thank you.

23 Are there any other questions at
24 this time?

1 MR. RAO: I've just got a quick one.

2 MS. ANTONIOLLI: Go ahead.

3 MR. RAO: So has the Agency developed
4 forms for CCDD landfill operations?

5 MS. MUNIE: We have for the interim, but
6 we have not yet completed ones for the landfill -- fill
7 operations. And that's mostly because these
8 regulations, as we're proposing, are not as solid as we
9 normally would do when we propose to the Board. It
10 takes us usually a lot longer to develop them. And so
11 usually we would have the forms available for the Board
12 to review, but I don't know that we would be able to do
13 that until we actually see what your final rules are
14 going to be.

15 MR. RAO: Okay.

16 MS. ANTONIOLLI: Okay.

17 MR. HUBBARD: I have copies of the
18 interim form if you'd like them. I don't know if
19 that's ...

20 MS. ANTONIOLLI: Is that something that
21 you'd want to enter into the record?

22 MS. FLOWERS: I don't think it's
23 applicable -- I don't really think it's applicable to
24 this regulation.

1 MS. ANTONIOLLI: Okay. Thank you.

2 Any further questions?

3 And if not, then I want to thank
4 you all for being here today and for the testimony that
5 you've provided.

6 Is there anything further?

7 MS. MANNING: Just as a matter of
8 clarification.

9 MS. ANTONIOLLI: Sure.

10 MS. MANNING: Would the Agency be
11 answering the questions within a certain period of time
12 prior to the next hearing?

13 MS. ANTONIOLLI: Agency, would you like
14 to respond to that?

15 We have -- I want to remind you
16 that we do have a prefiling deadline scheduled already,
17 as it was scheduled in the notice of hearing, and that
18 would be February 17th.

19 Agency, would you like to say
20 whether you could meet that deadline or whether you'd
21 like to set a separate one?

22 And we'll go off the record for a
23 second.

24 (Discussion off the record.)

1 MS. ANTONIOLLI: And we're still
2 discussing the Agency's response to a question we had
3 earlier about what the definition of an "excavation"
4 is. So the Agency has agreed to provide us sort of a
5 clarification on that topic approximately a week before
6 our next scheduled hearing on March 1st.

7 MS. MANNING: And that's acceptable.

8 And what I just wanted to say to
9 make it easier for the Agency, we could continue the
10 dialogue, number one; but, number two, we're not
11 looking for a specific definition as much as a
12 clarification. And I think there was quite a bit of
13 clarification already provided today. So I'm not
14 looking necessarily for a piece of language that goes
15 into the rules that you're asking the Board to put in
16 the rules so much as I'm looking for a clarification of
17 applicability, if that helps.

18 Thank you.

19 MS. ANTONIOLLI: Okay. Anything further
20 at this point?

21 Okay. Again, thanks, everyone, for
22 being here today and, Proponents, for all of your
23 testimony that you've provided.

24 The Board has scheduled, as I

1 mentioned, a second hearing in this matter for
2 March 1st, 2006, and that will be in Springfield at the
3 Illinois State Museum. That hearing will begin at
4 10:00 a.m. And any person who wishes to prefile
5 testimony for that next hearing should do so by
6 February 17th, 2006. And please contact the Board for
7 a copy of the service list if you wish to prefile that
8 testimony.

9 We will post the transcript of
10 today's hearing on our website, which is
11 www.ipcb.state.il.us. There, the transcript as well as
12 the Agency proposal and all of the Board's orders
13 throughout this proceeding will be viewable and
14 downloadable at no charge. Alternatively, you can
15 order a copy of the transcript from the Clerk of the
16 Board at 75 cents per page.

17 Also, I'd like to remind everyone
18 that you can file public comment in this proceeding.
19 Again, please note that when you file a public comment,
20 please serve all of the people on the service list with
21 a copy of the public comment. Today, we'll have
22 sign-up sheets just outside the room for the service
23 list and the notice list.

24

If there's nothing further, I want

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66

1 to thank all of you for your comments and testimony,
2 again, and this hearing is closed. I will see you
3 again on March 1st.

4 Thank you.

5 (Which were all the proceedings had
6 in the above-entitled cause.)

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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF COOK)

3 Martina Manzo, being first duly sworn, on
 4 oath says that she is a Certified Shorthand Reporter
 5 doing business in the City of Chicago, County of Cook
 6 and the State of Illinois;

7 That she reported in shorthand the
 8 proceedings had at the foregoing Illinois Pollution
 9 Control Board hearing;

10 And that the foregoing is a true and correct
 11 transcript of her shorthand notes so taken as aforesaid
 12 and contains all the proceedings had at the said
 13 Illinois Pollution Control Board hearing.

14

15

16

MARTINA MANZO, CSR

17

18

CSR No. 084-004341

19

20

SUBSCRIBED AND SWORN TO
 21 before me this 7th day of
 February, A.D., 2006.

22

23

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