

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ILLINOIS POLLUTION CONTROL BOARD
March 1, 2006

IN THE MATTER OF:)
)
CLEAN CONSTRUCTION OR.)
DEMOLITION DEBRIS FILL) RO6-19
OPERATIONS UNDER P.A.) Rulemaking - Land
94-272 (35 ILL. ADM. CODE)
PART 1100))

RULEMAKING HEARING BEFORE THE ILLINOIS POLLUTION
CONTROL BOARD, and before Hearing Officer Amy C. Antonioli,
and Board Members Nicholas J. Melas and Anand Rao, and taken
in the above-entitled matter before Ann Marie Hollo, CSR,
RPR, RMR, and Notary Public, State of Illinois, at 2:10
o'clock P.M., on March 1, 2006, at the Illinois State
Museum, Auditorium - Lower Level, 502 South Spring Street,
Springfield, Illinois 62024, pursuant to notice.

Keefe Reporting Company
11 North 44th Street
Belleville, Illinois 62226
(618)277-0190
(800)244-0190

Keefe Reporting Company
(618) 244-0190

1 APPEARANCES:

2

3 Illinois Pollution Control Board
 4 James R. Thompson Center
 5 100 West Randolph Street
 6 Room 16-503
 7 Chicago, Illinois 60601
 8 By: Amy C. Antonioli, Esq., Hearing Officer
 9 and Nicholas J. Melas,
 10 Illinois Pollution Control Board Member
 11 and Anand Rao,
 12 Illinois Pollution Control Board Member

13 Illinois Environmental Protection Agency
 14 1021 North Grand Avenue
 15 Springfield, Illinois 62794
 16 By: Stephanie Flowers, Esq. and Kyle Rominger, Esq.

17 Also in attendance from IEPA:

18 Christian J. Liebman, P.E., P.G.
 19 Joyce Munie, P.E.
 20 Michael F. Nechvatal
 21 Paul M. Purseglove
 22 Thomas W. Hubbard, P.E.

23

24 E X H I B I T S

25 NUMBER MARKED FOR IDENTIFICATION

26 Exhibit Number 6 Page 6
 27 Exhibit Number 7 7
 28 Exhibit Number 8 7
 29 Hearing Officer Exhibit A 28

30

31

32

33

34

35

Keefe Reporting Company
(618) 244-0190

1 HEARING OFFICER ANTONIOLLI: Good
2 afternoon, everyone. And welcome to the
3 Illinois Pollution Control Board Springfield
4 hearing on Docket R06-19. The Board has
5 captioned this rule making, "In the
6 matter of: Clean Construction or Demolition
7 Debris Fill Operations Under P.A. 94-272, 35
8 Illinois Administrative Code 1100." And as I
9 mentioned, docketed it at R06-19.

10 My name is Amy Antoniolli, and I'm the
11 assigned hearing officer in this rule making.
12 In this proceeding, the Agency is seeking to
13 add a new part 1100, which would allow and
14 regulate the use of clean construction or
15 demolition debris as fill material in current
16 and former quarries, mines and other
17 excavations.

18 This rule making was filed on November 21,
19 2005 by the Illinois Environmental Protection
20 Agency, as I mentioned. The Board accepted the
21 proposal for hearing on December 1, 2005, and
22 today is the second hearing. The first hearing
23 was held in Chicago on January 26th.

24 The purposes of today's hearing is
25 two-fold. First, this rule making is subject

Keefe Reporting Company
(618) 244-0190

1 to Section 27(b) of the Environmental
2 Protection Act. 27(b) of the Act requires the
3 Board to request the Department of Commerce and
4 Economic Opportunity to conduct an economic
5 impact study on certain proposed rules prior to
6 adoption of those rules. If the DCEO chooses
7 to conduct the impact study, DCEO has 30 to 45
8 days after such request to produce a study of
9 the economic impact of the proposed rules. As
10 required, the Board requested a letter. DCEO
11 responded by a letter dated January 31st that
12 it has decided not to conduct a study.

13 The second purpose is to allow the
14 proponent to testify, to allow any members of
15 the public, who wish to testify, the
16 opportunity to do so and to ask questions of
17 the proponent. If you would like to testify
18 today and you haven't let me know, please come
19 see me at the next break. We'll take a break
20 shortly.

21 All the information that is relevant and
22 not repetitious or privileged will be admitted
23 into the record.

24 To my right today is Member Nicholas
25 Melas. He's the Board member assigned to this

Keefe Reporting Company
(618) 244-0190

1 rule making. And to my left is Anand Rao, a
2 member of our technical unit.

3 So at this point, I will turn it over to
4 the Agency for an opening statement and to
5 present her witnesses.

6 MS. FLOWERS: My name is Stephanie Flowers
7 with Illinois EPA. And I have here with me
8 today is Mike Nechvatal, who is manager of the
9 Land Pollution Control Division; and Joyce
10 Munie, who is here as manager of the Permit
11 Section; Tom Hubbard, who is here as permit
12 writer; Chris Liebman, who is here as manager
13 of the solid waste unit; Paul Purseglove, who
14 is here as fill operations manager, and also
15 Kyle Rominger, here with -- as an attorney with
16 the Illinois EPA also.

17 The Agency filed an errata sheet and
18 additional testimony and also a response to
19 comments in this matter. And I guess at this
20 time, we would like to file the additional
21 testimony of Christian Liebman --

22 HEARING OFFICER ANTONIOLLI: Okay.

23 MS. FLOWERS: -- as an exhibit. I guess
24 this would be Exhibit 6?

25 HEARING OFFICER ANTONIOLLI: And this was

Keefe Reporting Company
(618) 244-0190

1 part of the -- this is additional to the
2 prefiled testimony?

3 MS. FLOWERS: Right. This is the
4 additional testimony that we filed with the
5 Board. And we would like it to be entered as
6 an exhibit and entered as if read.

7 HEARING OFFICER ANTONIOLLI: Does anyone
8 object to entering the additional testimony of
9 Christian Liebman into the record as Exhibit 6?
10 And seeing none, I'll mark it as Exhibit 6 and
11 enter it into the record.

12 (WHEREBY, EXHIBIT NUMBER 6 WAS
13 MARKED FOR IDENTIFICATION AND
14 ENTERED INTO THE RECORD.)

15 MS. FLOWERS: And we also have two
16 additional filings. We have an errata sheet 3
17 and an errata sheet 4 that we would like to
18 file with the Board. We would ask that this be
19 filed as Exhibit 7 and 8. And I have extra
20 copies for the Board.

21 HEARING OFFICER ANTONIOLLI: Is there
22 anyone else who would like to see a copy of the
23 errata sheet number 3 and errata sheet number
24 4? Okay.

25 MS. FLOWERS: The errata sheets have come

Keefe Reporting Company
(618) 244-0190

1 about because of continuing talks with the City
2 of Chicago, IEPA and IDOT. There was some
3 issues with some of the language we had already
4 proposed in an errata sheet, too. So this is
5 additional changes that we would like to make.

6 HEARING OFFICER ANTONIOLLI: Okay. I
7 mean, give everyone a second to get it. Do you
8 happen to have an extra copy for the court
9 reporter, too?

10 MS. FLOWERS: Yes.

11 HEARING OFFICER ANTONIOLLI: And is there
12 any objection to entering errata sheet number 3
13 into the record as Exhibit 7? And I see none.
14 So I will mark this as Exhibit 7 and enter it
15 into the record.

16 (WHEREBY, EXHIBIT NUMBER 7 WAS
17 MARKED FOR IDENTIFICATION AND
18 ENTERED INTO THE RECORD.)

19 HEARING OFFICER ANTONIOLLI: And is there
20 any objection to entering errata sheet number 4
21 into the record as Exhibit 8? And seeing none,
22 I'll mark it as Exhibit 8 and enter it into the
23 record. Okay.

24

25

Keefe Reporting Company
(618) 244-0190

1 (WHEREBY, EXHIBIT NUMBER 8 WAS
2 MARKED FOR IDENTIFICATION AND
3 ENTERED INTO THE RECORD.)

4 MS. FLOWERS: And that's all we have.

5 Now the panel would be open for questions
6 from the Board and the public.

7 HEARING OFFICER ANTONIOLLI: So the first
8 thing we'll do, I'll first remind everyone to
9 speak slowly and clearly for the court reporter
10 who is transcribing the proceeding today. And
11 then I'll have all of your witnesses sworn in.

12 Can you do that?

13 [WHEREBY ALL WITNESSES WERE DULY
14 SWORN BY THE NOTARY PUBLIC.]

15 HEARING OFFICER ANTONIOLLI: Okay.

16 MS. FLOWERS: And there is -- oh, I
17 forgot to mention there is additional things
18 that the Agency has filed in this hearing.
19 It's the proposal, the prior testimony and our
20 latest filing that we did on 2-23. So if
21 anybody doesn't have copies, there's extras
22 there.

23 HEARING OFFICER ANTONIOLLI: And the Board
24 just has some questions for the witnesses
25 today. But any questions that we have are not

Keefe Reporting Company
(618) 244-0190

1 meant to reflect any bias, but meant to form a
2 more complete record.

3 But before we begin with questions, we'll
4 ask the public, does anyone here have questions
5 for the witnesses that are present today?

6 Then we'll begin. And I didn't mean that
7 you can't ask questions later. Please feel
8 free to jump in or request to ask questions at
9 a later time.

10 Mr. Melas, would you like to be it?

11 BOARD MEMBER MELAS: Shall we start? Can
12 you tell us a little bit more about the new
13 language, which you added to the Board notes in
14 Section 1100.201(b), which is in the -- it was
15 in the errata sheet number 2.

16 HEARING OFFICER ANTONIOLLI: It was in the
17 errata sheet number 2, and it has also been
18 amended in errata sheet number 4.

19 MS. FLOWERS: Okay. So that's the
20 Illinois Department of Transportation
21 specification?

22 BOARD MEMBER MELAS: No.

23 HEARING OFFICER ANTONIOLLI: Oh, no. I'm
24 sorry.

25 BOARD MEMBER RAO: Number 4.

Keefe Reporting Company
(618) 244-0190

1 HEARING OFFICER ANTONIOLLI: It's not
2 amended errata sheet number 4.

3 BOARD MEMBER MELAS: It's just the one at
4 the top. 1100.201(b), talking about
5 commingling, as a matter of fact.

6 QUESTIONS

7 BY BOARD MEMBER MELAS:

8 Q I'm just curious as to what do you -- now
9 anybody from the Agency can answer this. What do
10 you now see as the so-called universe of nonwaste
11 material that may be commingled with and then
12 considered CCDD?

13 A (By Ms. Munie) In particular --

14 HEARING OFFICER ANTONIOLLI: Could you
15 introduce yourself again?

16 MS. MUNIE: I'm Joyce Munie with the
17 Illinois EPA.

18 During discussions on -- with the
19 industry, the mining industry, there are many
20 types of overburdens or material that is waste
21 to their particular operation that must go back
22 into the same areas of the facility, in the
23 same fill areas. So they are not waste by
24 definition. They are exempt from being waste
25 by being a mining waste, and therefore they

Keefe Reporting Company
(618) 244-0190

1 could be allowed to go into these holes as well
2 as this CCDD or uncontaminated soils.

3 BY BOARD MEMBER MELAS:

4 Q So it would be the material that has been
5 excavated in order to create the hole CCDD is going
6 into?

7 A Yes.

8 Q Now, do you consider commingling as
9 something that must take place at the CCDD fill
10 operation or rather at the generation?

11 A If the material is commingled at the point
12 of generation?

13 Q Yeah.

14 A Meaning the uncontaminated soil is
15 commingled with construction debris?

16 Q Right.

17 A Then by definition, that commingled
18 material is all clean construction demolition
19 debris.

20 Q Okay.

21 BOARD MEMBER RAO: So may I follow up,
22 Mr. Melas?

23 BOARD MEMBER MELAS: Well, I have one last
24 follow-up, and then you can jump in.

25 Q If you decide to keep -- this is

Keefe Reporting Company
(618) 244-0190

1 specifically aimed at the Board notes. Would you
2 consider modifying the term, quote "nonwaste
3 material" with the phrase, quote, "generated from
4 construction or demolition activities" unquote? To
5 make it perfectly clear, that's --

6 A I'm sorry. Could you repeat that?

7 Q There's a term -- the term "nonwaste
8 material" is used. Could you modify that by adding
9 the phrase "generated from construction or
10 demolition activities"?

11 A And would you say that that would -- that
12 it would be adding to? You would not take away the
13 term "other nonwaste material"?

14 Q Oh, no, no. It would be more or less a
15 modification of that term.

16 A So it would read "other nonwaste material,
17 generated from construction or demolition debris" --

18 Q Right.

19 A -- "activities"?

20 Q Right.

21 A The problem there is that that would not
22 encompass the waste material that would come from
23 the mining operation because that's not a
24 construction or demolition process.

25 BOARD MEMBER MELAS: Okay.

Keefe Reporting Company
(618) 244-0190

1 QUESTIONS

2 BY BOARD MEMBER RAO:

3 Q When you say that it's not -- you know,
4 that will not cover the waste or nonwaste generated
5 at the mining or quarry site, are those the only
6 types of, you know, nonwaste materials you think
7 that would be commingled? Or is there any way you
8 can bring in, you know, other materials that you
9 think is not waste and mix it up and dump in these
10 fills?

11 A (By Ms. Munie) That's the only material
12 that we envision through our discussions.
13 Essentially that's the only thing we thought of that
14 could be the nonwaste material that could be
15 commingled here.

16 Q So would it be acceptable to the Agency to
17 then limit this nonwaste material to what you think
18 or what you envision going into these fill
19 operations? Right now the way the rule is or the
20 Board notes -- and first of all, it's in the Board
21 note, which kind of makes it difficult. You know,
22 it should be in the rules, I think, but we can talk
23 about that later.

24 But, anyway, just to narrow the scope
25 of this language here; it's very broad. It almost

Keefe Reporting Company
(618) 244-0190

1 seems like any material can be just added to CCDD
2 and be considered as CCDD.

3 A (By Mr. Nechvatal) My name is Mike
4 Nechvatal. I'm with the Environmental Protection
5 Agency.

6 The other things we could think of
7 would be loads of nonwaste, like gravel or sand,
8 that for some reason would be returned back to the
9 quarry for filling. That doesn't necessarily make
10 economic sense, but I suppose it could happen. That
11 would fit in that definition. It's more likely to
12 be uncontaminated soils that were separated and
13 segregated from other CCDD waste. So it did not
14 become CCDD material, and then it could be put into
15 this fill and then commingled. There may be other
16 things. That's the best we can think of, I think.

17 MS. FLOWERS: I think it has to be a
18 nonwaste under the Act, and I'm not sure that
19 we could list the whole realm of what that
20 would be without missing some.

21 BY BOARD MEMBER RAO:

22 Q Correct me if I'm wrong. I thought you
23 had also clarified that the CCDD fills -- you know,
24 the operator was free to put any other nonwaste
25 material. It need not to be considered as a CCDD by

Keefe Reporting Company
(618) 244-0190

1 definition. You know, I thought you gave this
2 example about, you know, it can be below grade. It
3 can be CCDD above grade. You can put whatever else
4 you want to do to bring it up to the elevations that
5 they want.

6 So does it have to be, you know,
7 within the context of the definition? Or, you know,
8 if it's just looking at the statutory language in
9 the definition, it seems like it's pretty tight in
10 terms of what the statutes say about CCDD.

11 A (By Ms. Munie) Actually, I think it has to
12 be in the statutory definition of "waste," meaning
13 anything that is exempt from being a waste can be
14 put into these fill areas.

15 QUESTIONS

16 BY HEARING OFFICER ANTONIOLLI:

17 Q Instead of something that's necessarily
18 generated from demolition or construction
19 activities?

20 A (By Ms. Munie) Yes.

21 Q Okay. And the only other place we
22 envision talking about the non CCDD material, rather
23 than the Board note, would be in the definition of
24 clean construction or demolition debris. And that
25 would be in the place where as pursuant to errata

Keefe Reporting Company
(618) 244-0190

1 sheet number 2, it was added, that sentence about
2 "For the purposes of this part, uncontaminated soil
3 may include incidental amounts of stone, clay, rock,
4 sand, gravel, roots and other vegetation." So
5 that's something at this point to consider.

6 MS. FLOWERS: Are you saying to add that
7 at that same point?

8 HEARING OFFICER ANTONIOLLI: Either to add
9 it at the same point or to move it outside of
10 the Board note, because of -- as Anand raised
11 earlier, the Board note would be more guidance
12 than part of our Board regulations.

13 MS. FLOWERS: Right.

14 HEARING OFFICER ANTONIOLLI: So it's
15 something to consider.

16 MS. FLOWERS: Our intention was to modify
17 B or to clarify B. I guess where it says,
18 "CCDD fill operations will not accept fill
19 other than CCDD," I think we had some questions
20 about what if they did bring in a load of sand
21 and they did not bring that, and we're saying
22 that was where we were clarifying, well, if
23 you're going to put it with the CCDD, then it
24 is CCDD. And that's so --

25 HEARING OFFICER ANTONIOLLI: Or that could

Keefe Reporting Company
(618) 244-0190

1 be part of that.

2 MS. FLOWERS: There might be a better way
3 to say it. We just haven't figured it out.

4 BOARD MEMBER RAO: Now, if you think that
5 any other nonwaste material commingling with
6 CCDD will become CCDD, then you might have to
7 add that language in the definition, which
8 makes it clear what, you know, CCDD means.

9 MS. MUNIE: Actually, I think maybe it was
10 something I said you might have misunderstood.

11 BOARD MEMBER RAO: Yeah.

12 MS. MUNIE: We were not suggesting that
13 anything that's not uncontaminated soil mixed
14 with CCDD becomes CCDD. It's --

15 HEARING OFFICER ANTONIOLLI: It must be
16 uncontaminated soil.

17 MS. MUNIE: It must be uncontaminated soil
18 mixed with CCDD to become CCDD. The other
19 material is nonwaste, and as such, can be put
20 into the fill area. That is defined as a CCDD
21 fill area. Does that make sense?

22 MS. FLOWERS: I mean, we had talked about
23 some other language there as well, and I don't
24 know if maybe we need to review that and see if
25 there would be a better way to say that.

Keefe Reporting Company
(618) 244-0190

1 BOARD MEMBER RAO: It may be helpful if
2 you take another look at it because we have
3 this provision which says, "CCDD fill
4 operations must not accept fill other than
5 CCDD." And in the Board notes, we're saying
6 it's okay to accept other material. So, you
7 know, you may want to take a look at it.

8 HEARING OFFICER ANTONIOLLI: And the way
9 you explained it to us now was clearer than it
10 currently reads.

11 MS. MUNIE: Sure.

12 BOARD MEMBER MELAS: Yes.

13 MS. MUNIE: Can we suggest as a
14 possibility that it would read, "CCDD fill
15 operations must not accept material other than
16 CCDD or other nonwaste material for use as
17 fill"?

18 BOARD MEMBER RAO: That would work.

19 HEARING OFFICER ANTONIOLLI: That's
20 better.

21 MS. MUNIE: And then we would offer that
22 we would still like to keep the Board note in
23 here as just a further explanation for it.

24 HEARING OFFICER ANTONIOLLI: Okay.

25

Keefe Reporting Company
(618) 244-0190

Keefe Reporting Company
(618) 244-0190

1 manufacturer's margin of error. Any reading in
2 excess of background levels --." And then it
3 continues on to "using any of these instruments must
4 result in the rejection of the inspected load." And
5 that's a change based on our discussions at the
6 first hearing. Would the Agency consider -- was it
7 already considered to change the next sentence also
8 to base the Agency's readings on background levels
9 as well or their opportunity to reject a load?

10 A (By Mr. Purseglove) No, we haven't
11 considered that change.

12 Q Would that be something you would
13 consider, or was it left intentionally that way?

14 A It's something we would consider.

15 MS. FLOWERS: Just to clarify that a
16 little bit. We were going to request in the
17 permit that they give us a description of how
18 they are going to determine background levels
19 so that we can verify that they are
20 consistently getting a certain background
21 reading.

22 BY HEARING OFFICER ANTONIOLLI:

23 Q It would be something that they keep at
24 the facility?

25 A (By Ms. Flowers) Right. And then the

Keefe Reporting Company
(618) 244-0190

1 inspectors would have access to the information. So
2 I'm not sure then about whether or not how we would
3 go about calibrating our instrumentation to reflect
4 that background level. I'm not sure.

5 MR. PURSEGLOVE: Therein lies the problem
6 that we would have our instrument calibrated to
7 zero error and not have a background effect on
8 our instrument.

9 MS. FLOWERS: I think what you're saying
10 is, it seems inconsistent?

11 MR. PURSEGLOVE: Yeah, I recognize that.

12 QUESTIONS

13 BY BOARD MEMBER RAO:

14 Q Actually, Ms. Flowers answered my -- I was
15 about to ask you the question about how they were
16 going to get them in the background at these sites,
17 and you mentioned that you want to do it as part of
18 the permit?

19 A (By Ms. Flowers) Yes.

20 Q Would you consider adding some language in
21 the permit requirement section that they should give
22 you that information? Or do you already have it in
23 there?

24 HEARING OFFICER ANTONIOLLI: The 1100.300
25 is the permit information.

Keefe Reporting Company
(618) 244-0190

1 MS. MUNIE: And, actually, we believe that
2 it was already covered under 1100.306 between
3 (a) and (e), between the two sections.

4 BY BOARD MEMBER RAO:

5 Q Okay. I asked --

6 A (By Ms. Munie) Yes. We believe that that
7 would be something specifically that would be
8 required to meet those two sections.

9 Q For some of the other requirements in
10 the -- not in the description of the facility. You
11 know, you have site-specific section numbers.

12 A Yes.

13 Q Would you consider adding Section 205 in
14 one of those sections?

15 A Actually, if you look at Subsection A, it
16 specifically does cite to 205.

17 Q Oh, yes.

18 BOARD MEMBER RAO: Thank you.

19 HEARING OFFICER ANTONIOLLI: Very good.

20 I have a question about the exhibits that
21 were attached to Mr. Liebman's pre-filed
22 testimony.

23 QUESTIONS

24 BY HEARING OFFICER ANTONIOLLI:

25 Q And just for clarification, I am turning

Keefe Reporting Company
(618) 244-0190

1 to Exhibit A, which talks about the industry's
2 estimate of cost compliance as well as the Agency's
3 estimate to the State of Illinois. Were you
4 considering then the Agency's estimate based on
5 all -- processing all 83 of these permits? And then
6 the industry's estimate would be per site?

7 A (By Mr. Liebman) Yes. Well, the Agency's
8 estimate is based on the assumption that we will
9 hire four engineers, four additional engineers to
10 review these applications, and have three and a half
11 field inspectors to inspect the sites. But with
12 regard to the industry's estimate, yes, that was for
13 a single site.

14 Q Okay.

15 A So a little bit inconsistent. Some of the
16 items in the industry's estimate are for a onetime
17 occurrence. Other things are for something that
18 they would have to do every year.

19 Q And that as well applies to the Agency's
20 estimate, because once these preliminary permits are
21 processed, it would be the yearly maintenance that
22 would continue, the yearly inspections?

23 A We plan to maintain that. We anticipate
24 that we will need these people indefinitely.

25 Q Okay. And besides the 83 that you've

Keefe Reporting Company
(618) 244-0190

1 cited that have already filed for interim permits,
2 do you foresee many more being created or that
3 haven't applied yet?

4 A (By Mr. Purseglove) We asked that
5 question during a recent discussion, and the
6 response was that in the affirmative, yes, but that
7 some industries were just waiting to see how the
8 final rule package was going to be developed before
9 they made a decision about converting one of their
10 mines, quarries or excavations into a permitted CCDD
11 fill site.

12 Q Okay.

13 A If you look at the map, you'll see some
14 geographic areas of the State that are not very well
15 represented in terms of a location to deliver CCDD.

16 HEARING OFFICER ANTONIOLLI: Okay.

17 QUESTIONS

18 BY BOARD MEMBER RAO:

19 Q You know, talking about the location of
20 these facilities for which you have received
21 permits, the bar chart is very helpful in
22 visualizing, you know, the number of facilities
23 based on the volume that they receive. Do you have
24 any information as to where these are located in the
25 map? That you -- are those the bigger ones? The

Keefe Reporting Company
(618) 244-0190

1 Chicago, Cook County area? Or is it spread out
2 around the state?

3 A (By Mr. Liebman) We have not -- we do
4 have that information. We've not tried to break it
5 down in that way. My guess is you're right. That
6 most of the larger volume ones would be in and
7 around the larger population centers.

8 QUESTIONS

9 BY HEARING OFFICER ANTONIOLLI:

10 Q I am going back to Section 1100.103. And
11 I apologize for jumping around a little bit here.

12 But pursuant to errata sheet 2 again,
13 I'm going to take you to part 1100.101. And the
14 Board note in that section, that per the errata
15 sheet number 2, adds a sentence that says,
16 "According to the definition of engineer in article
17 101.16 of the IDOT specifications, this exemption
18 applies to IDOT, a county, a municipality or a
19 township."

20 Would the Agency consider also
21 including or referring to the definition of a
22 "contractor" in that section? Since "contractor" is
23 so frequently referenced in IDOT specifications?
24 And that I think as Ms. Munie described at the last
25 hearing, a contractor would not necessarily have to

Keefe Reporting Company
(618) 244-0190

1 be an IDOT contractor. That may be something you
2 feel is implied, but for the Board note, it may be a
3 good thing to be -- to have explicitly mentioned
4 there.

5 A (By Ms. Munie) And our problem with the
6 clarification that you're suggesting is that the
7 term "contractor" goes directly that the contractor
8 is a group contracting with the department.

9 Q Right.

10 A And the department are the ones that then
11 go to being the county, the council, city council or
12 academy or municipality. So it really is the
13 department that we were pointing to there when we
14 were saying that this exemption fell to that group.

15 Q Well, as with the definition of an
16 engineer; isn't that right?

17 A (By Ms. Flowers) Right.

18 Q So it's something that you can consider
19 adding? I think the same restrictions would be on
20 the contractor as with engineer pursuant to that
21 definition.

22 A (By Ms. Munie) That shouldn't actually be
23 "engineer." That should be "department."

24 MS. FLOWERS: I think that -- I mean, I
25 just want to clarify what you're asking. We've

Keefe Reporting Company
(618) 244-0190

1 got "according to the definition of engineer,"
2 and you would just like "according to the
3 definition of engineer or contractor, this
4 exemption only applies to"?

5 HEARING OFFICER ANTONIOLLI: Right. And
6 the contractor is defined in those
7 articles -- I think it's 101.102, like engineer
8 is defined as well.

9 MS. FLOWERS: Okay.

10 BOARD MEMBER RAO: So it won't change the
11 intent of the --

12 MS. FLOWERS: Okay. We can take a look at
13 that.

14 HEARING OFFICER ANTONIOLLI: Okay. I
15 am -- at this point, does anyone have any
16 further questions for the witnesses? I'm
17 prepared to take a 10-minute break.

18 And before I do, I want to distribute a
19 letter that the Board received in the
20 Springfield office yesterday that was addressed
21 to acting Chairman Tanner Girard and was sent
22 on behalf of -- I didn't want to miss
23 the -- Illinois Society of Professional
24 Engineers. And I will just distribute this
25 before we take a 10-minute break so everyone

Keefe Reporting Company
(618) 244-0190

1 can look at it. What I plan to do is move it
2 as entering it into the record as a hearing
3 officer exhibit. And then I believe someone
4 from the Illinois Society of Professional
5 Engineers is here today to answer questions or
6 talk about it.

7 So we will go off the record right now.

8 (WHEREBY A SHORT BREAK WAS
9 TAKEN.)

10 HEARING OFFICER ANTONIOLLI: We're back on
11 the record, and it's about 2:55, just after our
12 short break.

13 And what I have before me is a letter.
14 First the cover page is a letter to Director
15 Doug Scott of the Illinois Environmental
16 Protection Agency. And it is signed both by
17 Kim Robinson of the Illinois Society of
18 Professional Engineers as well as David Kennedy
19 on behalf of the American Council of
20 Engineering. And I think everyone had a chance
21 to look at the letter. I'm entering it as a
22 public comment.

23 Does anyone have any objection to me
24 entering this into the record as Hearing
25 Officer Exhibit A? And seeing none, I'm

Keefe Reporting Company
(618) 244-0190

1 marking this as Hearing Officer Exhibit A.

2 (WHEREBY, HEARING OFFICER
3 EXHIBIT A WAS MARKED FOR
4 IDENTIFICATION.)

5 HEARING OFFICER ANTONIOLLI: And would
6 anyone I guess -- I will start with the
7 question for the Agency as to what your
8 position is or what your opinion is of this
9 proposed language, which would in fact add a
10 section that would require a professional
11 engineer certification on the design, as well
12 as the application of this fill operation.

13 And I'll also note that a PE
14 certification, "PE" stands for professional
15 engineer. And that's already required for the
16 certification of closure.

17 MS. FLOWERS: Go ahead.

18 MS. MUNIE: We were aware of this letter
19 prior to the drafting of it, the final drafting
20 of these rules. We did have discussions with
21 the Illinois Society of Professional Engineers
22 specifically in regards to this letter, also
23 with the industry being the mining industry,
24 the aggregate industry.

25 BOARD MEMBER MELAS: Aggregate.

Keefe Reporting Company
(618) 244-0190

1 MS. MUNIE: And we chose not to add this
2 requirement into our rules as we were drafting
3 them. Our rules are not meant to circumvent
4 the PE Act or any requirements that must be met
5 under that Act. Those rules are independently
6 enforced by different state agencies. And just
7 because our rules didn't add this
8 requirement -- if the requirement existed
9 independent from our rules, that could be
10 enforced independent from our rules.

11 HEARING OFFICER ANTONIOLLI: Okay. Thanks
12 for your comment.

13 And is there anyone else who wants to
14 comment on this exhibit? Okay.

15 Well, now that that's been made part of
16 the record, I will turn it back to you, the
17 Agency, who wanted to make a brief comment on
18 the errata sheets number 3 and number 4.

19 MS. FLOWERS: Yes. We just wanted to go
20 ahead and talk about the changes that were made
21 and why we made them.

22 MR. NECHVATAL: Maybe I'll talk about the
23 errata sheet number 3.

24 We wanted to explain better what "other
25 excavation" was, and to explain what

Keefe Reporting Company
(618) 244-0190

1 not -- more importantly, to explain what is not
2 included in that term. So that things that are
3 holes or trenches or other earthmoving that is
4 done as normal construction or demolition or
5 maintenance of buildings, roads, other
6 transportation infrastructure would not be
7 included in that. That that was not the
8 intent, and should not be included in this. It
9 does not completely -- it explains what we
10 might -- what "other excavation" might be, but
11 it certainly excludes what we believe will be
12 the preponderance of the examples of the types
13 of sites that should be part of this rule
14 making.

15 BOARD MEMBER MELAS: That makes sense.

16 MS. FLOWERS: And I think that I -- just
17 to clarify what specifically was changed, we
18 did add in the term "other excavation" where as
19 before we just had "excavation." And that was
20 to make sure that we were talking about -- we
21 weren't talking about quarries or mines. This
22 does not modify quarry or mines at all.

23 And we changed where it said "other
24 similar earthmoving operations," we changed it
25 to "or other similar earth removal created."

Keefe Reporting Company
(618) 244-0190

1 BOARD MEMBER MELAS: Okay.

2 MS. FLOWERS: And then we also changed
3 "building" to "structure." We thought that
4 took in more, made it a little bit broader and
5 applicable. And also we changed "road" to
6 "transportation infrastructure" to make that
7 more applicable.

8 HEARING OFFICER ANTONIOLLI: Okay. About
9 errata sheet number 4, we weren't clear what
10 was changed in this errata sheet compared to
11 what was changed in errata sheet number 2, the
12 changes that were made to the same section,
13 1100.101(b)3.

14 MS. FLOWERS: There. What we did was we
15 took out the reference to a specific IDOT
16 specification published edition. It had
17 previously included after the title, "Standard
18 Specifications for Road and Bridge
19 Construction," it said January 1, 2002 edition.

20 HEARING OFFICER ANTONIOLLI: Okay.

21 MS. FLOWERS: That was left out.

22 HEARING OFFICER ANTONIOLLI: Okay.

23 BOARD MEMBER MELAS: Okay.

24 HEARING OFFICER ANTONIOLLI: Do you have
25 any further questions?

Keefe Reporting Company
(618) 244-0190

1 BOARD MEMBER MELAS: No, none.

2 MS. FLOWERS: We also just -- we had a
3 discussion to clarify the request by the Board
4 on adding "contractor" to 101 (b)3.

5 HEARING OFFICER ANTONIOLLI: Okay.

6 MS. FLOWERS: On the Board note there. I
7 think there was a bit of confusion about why we
8 would want that term in there as well. And so
9 what we came up with was maybe if it would
10 satisfy everyone to say, "According to the IDOT
11 specifications, this exemption applies to the
12 following." And that would leave out any
13 reference to a specific definition of either
14 engineer, contractor or department or anything.

15 HEARING OFFICER ANTONIOLLI: I think
16 that's a good solution.

17 MS. FLOWERS: Okay.

18 HEARING OFFICER ANTONIOLLI: Okay?

19 Is there anyone else that has questions
20 for the Agency witnesses that are here today?
21 Or anyone else that would like to make a public
22 comment at this time?

23 Yes. Can you please identify yourself?

24 MS. YOUNG: Hello. My name is Virginia
25 Young, and I'm deputy counsel with the Illinois

Keefe Reporting Company
(618) 244-0190

1 Department of Natural Resources. And I'm here
2 representing the Office of Mines and Minerals.
3 I just am attending this proceeding, and I just
4 wanted to note that we have been talking with
5 the Illinois Environmental Protection Agency,
6 and John Hendricks' Group, the Illinois
7 Association of Aggregate Producers.

8 Our concern is that there may be some
9 overlapping issues in relationship to the
10 existing IDNR Mines and Mineral Program that
11 regulate current ongoing quarry operations and
12 the program that's being discussed right now
13 that would regulate the use of these sites for
14 future CCDD operations. There are just certain
15 scenarios of specific site operations where
16 there may be some overlap in trying to make
17 sure that the two regulatory programs don't
18 conflict and can work in conjunction.

19 I don't have any formal comments right
20 now. But I just wanted to advise the Board
21 that we do have some side discussions going on,
22 and we may be filing a written statement, you
23 know, the next week or so.

24 HEARING OFFICER ANTONIOLLI: Okay.

25 MS. YOUNG: Okay.

Keefe Reporting Company
(618) 244-0190

1 HEARING OFFICER ANTONIOLLI: Thank you.

2 And are there any further questions or
3 comments at this time? Okay.

4 All right. Then it looks like we are
5 close to concluding. Thank you for being here
6 today and for the testimony you've provided.

7 Seeing no more questions for the
8 witnesses, we will expect to have the
9 transcript of today's hearing in the Board's
10 offices hopefully within eight business days?
11 So that would make it approximately March 13th.

12 Because the adoption deadline applicable
13 to this rule making is so tight, we are
14 constrained to a shorter first notice public
15 comment period. Therefore the Board will
16 accept public comments prior to first notice on
17 this proposal until March 17, 2006. But
18 everyone please keep in mind, of course, that
19 there will be an additional public comment
20 period of at least 45 days after the Board
21 adopts these rules for first notice.

22 Today's hearing concludes the hearing
23 scheduled by the Board in this matter, but any
24 party may request an additional hearing
25 pursuant to Section 102.412(b) of the Board's

Keefe Reporting Company
(618) 244-0190

1 procedural rules.

2 And once we receive it, the Board will
3 post the transcript on their Web site, which is
4 www.ipcb.state.il.us. There the transcript, as
5 well as the Agency's proposal and all of the
6 Board orders, errata sheets, etcetera, will be
7 available to download at no charge.

8 Alternatively, you can call the clerk's
9 office, and we will have copies of the
10 transcript made, but they will be at a charge
11 of 75 cents per page. Anyone can file a public
12 comment, but please file with the clerk of the
13 Board. And know when you file a public
14 comment, you must serve all the people on the
15 service list with a copy.

16 There's nothing further. I wish to thank
17 all of you for your comments and for your
18 testimony. And this hearing is adjourned.
19 Thank you.

20 [END OF HEARING.]

21

22

23

24

25

Keefe Reporting Company
(618) 244-0190

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTARIAL CERTIFICATE

I, ANN MARIE HOLLO, a Certified Shorthand Reporter for the State of Illinois, CSR# 084-003476, and a duly commissioned Notary Public within and for the State of Illinois, do hereby certify that there came before me at the Illinois State Museum, Auditorium - Lower Level, 502 South Spring Street, Springfield, Illinois 62024,

THE MERIT AND ECONOMIC RULE MAKING HEARING,

before the Illinois Pollution Control Board. All witnesses were first duly sworn to testify to the truth and nothing but the truth of all knowledge touching and concerning the matters in this cause. That said hearing was reduced to writing. And this transcript is a true and correct record of the hearing.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on March 6, 2006.

My commission expires April 5, 2006.

Notary Public

Keefe Reporting Company
(618) 244-0190

