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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R07-8
SOLID WASTE LANDFILL) (Rulemaking - Land)
RULES, 35 ILL. ADM. CODE)
810 AND 811)

Proceedings held on February 28, 2007, at 1:04 p.m., at
the Illinois Pollution Control Board, 1021 North Grand
Avenue East, Springfield, Illinois, before Timothy J.
Fox, Hearing Officer.

Reported By: Karen Waugh, CSR, RPR
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APPEARANCES

Board Members present:

Chairman G. Tanner Girard
Board Member Thomas E. Johnson
Board Member Andrea S. Moore

Board Staff Members present:

Anand Rao, Senior Environmental Scientist
Erin Conley

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Ms. Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA

Also Present: Gwenyth Thompson
Christian J. Liebman

SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN,
LTD.
BY: Mr. Charles J. Northrup
Suite 800, Illinois Building
607 East Adams Street
PO Box 5131
Springfield, Illinois 62705
On behalf of the National Solid Wastes
Management Association

Also Present: Tom Hilbert
Terry Johnson
Bill Schubert
Eric Ballenger

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PROCEEDINGS

(February 28, 2007; 1:04 p.m.)

HEARING OFFICER FOX: Good afternoon, everyone, and welcome to this Illinois Pollution Control Board hearing. My name is Tim Fox, and I'm the hearing officer for this rulemaking proceeding, which is entitled "Proposed Amendments to Solid Waste Landfill Rules, 35 Illinois Administrative Code 810 and 811." The Board docket number for this rulemaking is R07-8. The Board received this rulemaking proposal on July 27 of 2006 from the Illinois chapter of the National Solid Wastes Management Association, which seeks to amend the Board's regulations governing solid waste landfills. The Board accepted the proposal for hearing on August 17, 2006.

Present today from the Board are, on my immediate left, Board Member Andrea Moore, who is the lead board member for this rulemaking. Ms. Moore, did you have any comments or introductions that you wanted to make?

BOARD MEMBER MOORE: Thank you. Only to welcome everyone here to continue establishing a record in order to make the amendments to the solid waste rules, and I appreciate the high degree of cooperation that we've seen between the Agency and the proponents, and hopefully we will get our further information established

1 on the record. Thank you.

2 HEARING OFFICER FOX: Surely. Also present
3 from the Board is Board Member Thomas Johnson to my
4 right. The Board's acting chairman, Dr. G. Tanner
5 Girard, is present here today, and I am certain he'll be
6 joining us as quickly as he can, within a moment or two.
7 Also present is Anand Rao from the Board's technical
8 staff, and he is seated to my far left at the head table.

9 Today we are of course holding the second hearing
10 in this rulemaking. The first took place on Monday,
11 January 29, 2007, in Chicago. As was the case with that
12 first hearing, this is governed by the Board's procedural
13 rules. All information that is relevant and that is not
14 repetitious or privileged will be admitted into the
15 record. Please note that any questions that are posed
16 today either by the board members or the board staff are
17 intended solely to develop -- help develop a clear and
18 complete record for the Board's decision and do not
19 reflect any bias or prejudgment about the issues before
20 us today.

21 For this second hearing, the Board received
22 prefiled testimony from the Illinois Environmental
23 Protection Agency from Gwenyth Thompson and from
24 Christian Liebman. Am I pronouncing your last name

1 correctly?

2 MR. LIEBMAN: Yes.

3 HEARING OFFICER FOX: Very good. The Board
4 also received prefiled testimony from the proponents, the
5 Solid Wastes Management Association, from Thomas Hilbert.

6 We will begin this hearing -- speaking off the
7 record before the hearing with Mr. Northrup on behalf of
8 the Association and Miss Geving on behalf of the Agency,
9 it was agreeable to have the Association begin with its
10 own testimony, and they had some information in the form
11 of questions that they wanted to introduce into the
12 record. Then that will be followed by any questions that
13 may be posed on the basis of that information. After
14 that, the Agency will testify on the basis of its
15 prefiled testimony, and after that, anyone else may
16 testify, of course, as time permits.

17 If there is a participant present who -- other
18 than the Agency and other than the Solid Wastes
19 Management Association that would like to testify today,
20 there is a sign-up sheet just inside the door on the
21 corner of the table there. If you would wish to testify
22 and would sign up there and identify any group you might
23 represent, that would be very helpful and appreciated.
24 Like any other witnesses, you would be sworn in and may

1 be asked questions about the substance of your testimony.

2 And again, it's worth repeating for the court reporter's
3 benefit today, please do speak clearly and slowly so that
4 she may make as clear a transcript as possible.

5 Any questions about procedures at this point?

6 Very good. Mr. Northrup, if you'd like, we could have
7 the witnesses for the Association sworn in simply as a
8 group and go right to the testimony.

9 MR. NORTHRUP: That would be great.

10 (Witnesses sworn.)

11 MR. NORTHRUP: Thank you, Mr. Hearing
12 Officer. Thanks to the Board for meeting with us again
13 today. Just as a recap, to my left is Tom Hilbert, Bill
14 Schubert, Eric Ballenger and Terry Johnson. Mr. Hilbert
15 did file some prefiled testimony that I will move into
16 the record. There are a few corrections that we need to
17 make to that testimony, and I will do that by asking
18 Mr. Hilbert some clarifying questions, and then I also
19 have a few questions as sort of a follow-up from our
20 Chicago hearing.

21 HEARING OFFICER FOX: Very good. Why don't
22 we deal first with the motion to admit into the record
23 the prefiled testimony of Thomas Hilbert. Is there any
24 objection to the admission of that exhibit into the

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1 record?

2 MS. GEVING: No objection.

3 HEARING OFFICER FOX: It has been marked as
4 Exhibit No. 5, and hearing no objection from the Agency
5 or any other participant, it will be admitted as Hearing
6 Exhibit No. 5, Mr. Northrup.

7 MR. NORTHRUP: And then I also have Exhibit
8 6 for the proponent, which is errata sheet number 3,
9 which I would also ask to be admitted into the record.
10 In fact, two have been filed electronically.

11 HEARING OFFICER FOX: Exactly so. Any --
12 Miss Geving or otherwise from the Agency, any objection
13 to the admission of that into the record?

14 MS. GEVING: No objection.

15 HEARING OFFICER FOX: Hearing no other
16 objections, the errata sheet number 3, which was
17 prefiled, will be entered into the record as Exhibit
18 No. 6. Thanks very much.

19 EXAMINATION OF TOM HILBERT

20 BY MR. NORTHRUP:

21 Q. Okay. Mr. Hilbert, can you take a look at
22 your testimony, which has been marked as Exhibit No. 6?

23 A. Sure.

24 Q. Okay. Now, there are a few typos in this,

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1 correct?

2 A. There are a few typos.

3 Q. Okay. Can you just explain to the Board
4 where those are and what they are?

5 A. In the first paragraph or the first page of
6 the written prefiled testimony, on the first line of the
7 first paragraph, where it says, "My name is Thomas
8 Hilbert, and as the Board knows," it says "form." It
9 should read "from," F-R-O-M. And in the second to last
10 line of that same paragraph on the first page, beginning
11 with the previous sentence, it says, "And greater
12 knowledge and experience in the field," rather than
13 "filed," and so that would be F-I-E-L-D instead of
14 F-I-L-E-D. Those were the only spelling errors that we
15 noted.

16 Q. Now, there were a few substantive changes,
17 clarifications that need to be made, correct?

18 A. Correct.

19 Q. And I believe the first one is at numbered
20 paragraph 4 with respect to proposed amendment 4; is that
21 correct?

22 A. If you are referring to some suggestions
23 made to us by the Illinois Environmental Protection
24 Agency, yes.

1 Q. Okay.

2 A. There --

3 Q. Let me take a step back. You've met with

4 the Agency about these clarifications, correct?

5 A. Right.

6 Q. And that was yesterday and this morning?

7 A. That's correct.

8 Q. Yeah. Why don't you talk about the first
9 clarification in paragraph number 4.

10 A. In amendment number 4, I have an analysis of
11 the economic effect that the proposed language changes
12 would have on leachate monitoring. There's a current
13 estimated annual cost for leachate monitoring in the
14 existing rules, which is on a per-facility basis and is
15 stated to be \$7200. That portion is correct. I had
16 mistakenly interpreted the proposed regulations to
17 require semiannual monitoring for four leachate
18 monitoring locations when in fact it actually is only one
19 leachate monitoring location per facility. Therefore,
20 the proposed leachate monitoring should read -- at the
21 very end of the amendment there's a section where I
22 summarize the cost, and it should read instead of four
23 times \$1250 times two quarters, it should be one times
24 \$1250 times two quarters, which would equal \$2500 instead

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1 of \$10,000, and that's a pretty substantial change. The
2 net effect of --

3 MR. RAO: Just for clarification, when you

4 had four times, were you assuming all the four, like,
5 locations? If there were four monitoring locations, all
6 the four would be sampled and analyzed?

7 MR. HILBERT: That's correct. I had
8 mistakenly assumed that all four of the points would be
9 required to be monitored on a semiannual basis when in
10 fact only one point is -- the intention is to only
11 monitor one point on a semiannual basis.

12 MR. RAO: Thank you.

13 A. The effect of that change has the economic
14 effect instead of being actual cost increase to operators
15 of the landfill, it would be a cost decrease, and the
16 decrease would be \$4700 per facility on an annual basis,
17 and on an industry-wide basis it would be, rounding up,
18 \$240,000.

19 Q. (By Mr. Northrup) Now, with respect to
20 another just typo on proposed amendments 5, 6, 7, 8 and
21 9, they reference or state, "See analysis in proposed
22 amendment 5." That should actually be 4, correct?

23 A. Right, right. I had misreferenced this
24 analysis in the sections dealing with leachate.

1 Q. Now, the next clarification I believe is at
2 paragraph 19.

3 A. That is correct.

4 Q. And can you explain that for the Board,

5 please?

6 A. In paragraph 19 I looked at the -- there's a
7 list of constituents that I refer to as the G1 list.
8 It's the list of indicator parameters that we would
9 typically monitor on a quarterly basis. That list is
10 being amended with the proposed rules. I -- Because the
11 amendment to that list is pretty short, I just assumed
12 that the impact would be pretty nominal, really not much
13 of an effect on operators and landfills. In fact, the
14 Agency points out to me that two of the parameters that
15 we have dropped from the indicator list, total organic
16 carbon and phenols, they are more expensive than the
17 typical indicator parameters and they do amount to a
18 significant cost savings underneath the indicator list.

19 Before I go into it, I should also point out that
20 we really haven't dropped phenols, but we have taken them
21 from a quarterly sampling parameter to a semiannual
22 sampling parameter. In looking at the effect what that
23 would have, since TOC is being dropped, assuming a cost
24 of \$24 per analysis for TOC and sampling of four quarters

1 a year, that's \$96 per well per year for TOC. Phenols,
2 assuming an average laboratory cost of \$22 per analysis
3 and two quarters would be dropped, that would amount to
4 \$44 per year savings on a per-well basis for phenols.

5 The total savings on a per-well basis annually would
6 be \$140 per well, and using the assumed -- the
7 hypothetical landfill that we assumed at the outset of
8 the economic analysis, 20 wells per year at \$140 per well
9 amounts to a cost savings of \$2800 per year per facility.
10 Industry-wide, that's \$143,000, roughly.

11 BOARD MEMBER JOHNSON: Is that 96 sites or
12 thereabouts? Is that what the -- the figure you're using
13 to come up with the industry-wide?

14 MR. HILBERT: It was at -- I believe the --
15 what I used was 51 actively permitted operating
16 landfills, and I derived that number from the current
17 Waste Capacity Report, I believe, which cites the number
18 of operating landfills in the state.

19 Q. (By Mr. Northrup) That's a state document?

20 A. That's a state document, yeah.

21 Q. I believe the next typo is at paragraph
22 number 36?

23 A. In amendment number 36 I did an analysis of
24 the cost effect of reestablishing background. Actually,

1 this section I believe takes in a number of different
2 changes in the rules, and I just put them in this section
3 because it was convenient, and it really looks at the
4 cost of producing an assessment monitoring plan and what
5 the proposed changes would do for reducing the number of

6 assessment monitoring plans that we had to submit during
7 a year, and assuming that we do two per year, the annual
8 cost per facility would be \$50,000, but a bolded out
9 summary section that's in this amendment says actually
10 \$25,000 under the current rules. It should read 50.
11 That's the only change I would make in this section. The
12 actual economic effect isn't affected. It was just a
13 typo that was left in the bold section.

14 Q. Okay. Now, turning to the very last
15 paragraph that begins, "In conclusion," the two numbers
16 that are stated there then have to be revised based on
17 your earlier clarifications, correct?

18 A. Correct.

19 Q. What are those revisions?

20 A. Okay. Based on the revisions suggested by
21 the Illinois Environmental Protection Agency, the actual
22 cost savings on a facility -- for each facility annually
23 would amount to -- or are estimated to be \$52,500 per
24 year, so the actual cost savings goes up by \$10,000 per

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1 year per facility. On an industry-wide basis, assuming
2 the 51 actively operating landfills, the amount should
3 read \$2,678,000.

4 Q. And those are all the clarifications in your
5 testimony, correct?

6 A. Yep, that's it.

7 Q. So with those clarifications, your testimony
8 is true and accurate?

9 A. That is correct.

10 MR. NORTHRUP: Okay. I do have some
11 additional follow-up questions from the Chicago hearing,
12 if I could proceed with those.

13 HEARING OFFICER FOX: Go ahead.

14 MR. NORTHRUP: And these questions are
15 really designed -- they're very broad questions, but I
16 felt at the hearing we talked a whole lot about the real
17 specifics of the rule, so I wanted to give some sort of
18 broader approach to the rulemaking.

19 Q. (By Mr. Northrup) Mr. Hilbert, do the
20 proposed amendments establish or authorize the emission
21 or discharge of any substances into the environment?

22 A. No, they do not.

23 Q. To the extent that concentrations of a
24 constituent have been identified as posing a threat to

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1 human health or the environment in other regulations, do
2 these proposed amendments do anything to change those
3 concentrations?

4 A. No, they do not.

5 Q. Do these proposed rule amendments establish
6 any concentrations of any substance as posing or not

7 posing a threat to human health or the environment?

8 A. No.

9 Q. Do these proposed amendments change the
10 existing obligation to monitor groundwater?

11 A. No, they do not.

12 Q. Do these proposed amendments change the
13 existing obligation to conduct corrective or remedial
14 action?

15 A. No.

16 Q. Do these proposed amendments change the
17 existing triggers to perform corrective or remedial
18 action?

19 A. No.

20 Q. Do these proposed amendments change the
21 existing obligation to notify the Agency of events which
22 trigger assessment monitoring?

23 A. No.

24 Q. Do these proposed amendments eliminate

1 sampling for any constituents that must currently be
2 sampled for that type of monitoring?

3 A. No, they do not.

4 Q. Now, the proposed amendments do eliminate
5 the need to sample for total metals during detection
6 monitoring; is that correct?

7 A. That's correct.

8 Q. Okay. But these total metals are included
9 in assessment monitoring, correct?

10 A. Yes, right, if -- Yes, that's correct.

11 Q. And when we were in Chicago, we went over a
12 whole lot of the rationale for that, for deleting these
13 metals; is that right?

14 A. That is correct. It's hard to say yes and
15 no answers for these things.

16 Q. The elimination of the total metals from the
17 detection program has been approved by the U.S.
18 Environmental Protection Agency; is that correct?

19 A. That is correct.

20 Q. And is the elimination of those total metals
21 consistent with neighboring states to Illinois?

22 A. Yes.

23 Q. For landfills that accept more than 50
24 percent by volume non-municipal waste, they must test for

1 constituents based in part on leachate and waste
2 characteristics; is that right?

3 A. That's correct.

4 Q. Okay. So if a landfill accepted more than
5 50 percent of a waste that likely contained one of the
6 deleted metals, they would have to test for that metal
7 anyway, right?

8 A. That's correct.

9 Q. Under the proposed amendments, the 11 total
10 metals need to be sampled in the leachate of a landfill,
11 correct?

12 A. That is correct.

13 Q. Do the proposed amendments establish a new
14 regulatory requirement requiring a minimum number of
15 leachate monitoring locations where none existed before?

16 A. Yes.

17 Q. Do the proposed amendments establish a new
18 regulatory requirement mandating a specific list of
19 leachate parameters to be tested for where none existed
20 before?

21 A. Yes.

22 Q. Do the proposed amendments establish a
23 mandatory schedule of leachate monitoring location
24 sampling where none existed before?

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1 A. Yes.

2 Q. Do the proposed amendments establishing the
3 submittal of a groundwater assessment monitoring program
4 as a significant modification permit application allow
5 for greater public notice and opportunity for comment?

6 A. Yes.

7 MR. NORTHRUP: Those are all the questions I

8 have.

9 MR. RAO: The last question that you asked
10 about, you know, submitting the assessment monitoring
11 plan, that's also required under the existing rules too,
12 right?

13 MR. HILBERT: Not -- Yes and no. There was
14 not a requirement to submit the information as a
15 significant modification of a permit, which gives the
16 Agency the authority to review it and comment on it and
17 either accept it or deny it.

18 MR. RAO: Actually, if you look at
19 subsection -- it would be 319(b)(2), the existing
20 language states that assessment monitoring should be --
21 the plan should be submitted as a significant permit
22 modification pursuant to subpart B.

23 MR. HILBERT: I'm sorry. I was --

24 MR. RAO: Yeah.

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1 MR. HILBERT: What section were you --

2 MR. RAO: 811.319, subsection (b)(2).

3 MR. HILBERT: Just to clarify, what is a new
4 requirement for submittal of a significant modification
5 is the notification of the Agency of a confirmed increase
6 and a demonstration of whether or not that increase is
7 the result of the landfill unit or some other type event.

8 MR. RAO: Thanks for the clarification.

9 HEARING OFFICER FOX: Mr. Northrup has
10 indicated that that in effect concludes for now the
11 presentation from the Association and we can move on to
12 any questions. If you are representing an association or
13 other organization, please let me know and identify
14 yourself by name and by the name of that association, and
15 we'll certainly recognize you for questions. Were there
16 any questions to begin with on the part of the Agency or
17 any of its witnesses here?

18 MS. GEVING: We have no questions.

19 HEARING OFFICER FOX: Great. Any other
20 questions at all? Very well. Anything further that you
21 wanted to add, Mr. Northrup, or any of your witnesses on
22 behalf of the Association?

23 MR. NORTHRUP: Nothing further.

24 HEARING OFFICER FOX: Very good. Did the

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1 board members or board staff have any questions for the
2 Association before we move on?

3 BOARD MEMBER MOORE: I had a question, but
4 do they need to put their stuff on the record yet or --
5 okay. Yes, actually, in trying to actually read the rule
6 that you proposed to us and step by step go through it, I
7 wondered if you could kind of -- I'm not sure which one
8 would choose to do it -- walk us through 319(a)(4), which

9 is the "Confirmation of Monitored Increase," if you could
10 turn to that page and kind of walk through all of these
11 steps.

12 MR. JOHNSON: This is under confirmation?

13 BOARD MEMBER MOORE: Yeah, the "Confirmation
14 of Monitored Increase," 319(a)(4), and it starts with --
15 it's right -- amendment number 23 is incorporated in
16 there, as is 24 and 25.

17 MR. JOHNSON: Okay. Yeah. 319(a)(4) is the
18 confirmation stage, and this lists four triggers that
19 indicate when we've got an observed increase or a
20 monitored increase, and the first one would be the
21 confirmation of an inorganic that would not be a VOC, but
22 an inorganic indicator parameter. The language shows
23 eight consecutive quarter increase. That would be
24 evidence of a trigger or a confirmation. On the second

1 one, the concentration of any constituent exceeds its
2 maximum allowable predicted concentration at an
3 established monitoring point within the zone of
4 attenuation. That is a predicted or a modeled
5 concentration, and that's also a second tier or trigger.
6 The third one would be the concentration exceeds the
7 preceding concentration at any established monitoring
8 point, and this is beyond the zone of attenuation and
9 exceeds the applicable groundwater standard. So under

10 all those situations, that would be the confirmation of a
11 monitored increase.

12 BOARD MEMBER MOORE: Okay.

13 MR. JOHNSON: And the only change that we're
14 proposing to these is the change from four to eight
15 consecutive quarters, and the basis for that was
16 submitted as an exhibit, I believe, in the -- in Chicago,
17 and that was a statistical basis in order to maintain a
18 reasonable or a specified false positive rate.

19 BOARD MEMBER MOORE: Right. And then --
20 excuse me.

21 HEARING OFFICER FOX: I'm sorry to
22 interject. I believe you're referring to what's Exhibit
23 No. 4, the statistical guidelines that were authored by
24 Robert Gibbons of UIC?

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1 MR. JOHNSON: Yes, that's correct.

2 HEARING OFFICER FOX: Very good.

3 BOARD MEMBER MOORE: And then if you would
4 proceed, then, to (B) and go through (B).

5 MR. SCHUBERT: I was just going to add
6 something. The context of your -- It sounded like your
7 question was explain these steps, and I just wanted to
8 make clear that these aren't steps, but they're
9 criteria --

10 BOARD MEMBER MOORE: Right.

11 MR. SCHUBERT: -- that are applied
12 simultaneously to any two sets of data, so if you get
13 detection data, detection monitoring data, you would
14 apply these criteria to that detection monitoring data to
15 see if it would be considered an increase.

16 BOARD MEMBER MOORE: Thank you. I think
17 actually we get to the steps in (B) --

18 MR. SCHUBERT: Right.

19 BOARD MEMBER MOORE: -- so --

20 MR. JOHNSON: Yeah. Continuing to (B),
21 these would be the actual -- once we have a trigger from
22 above, these would be the actual confirmation to confirm
23 whether or not that is an actual increase, confirmed
24 increase, and that would be resampling. If for instance

1 we notify one of these, we would have the option of
2 resampling that particular well during the next quarterly
3 event and either verifying that indeed we do have two
4 consecutive triggers or perhaps we don't. That would be
5 number (i). And if we do, that also includes under (ii)
6 the operator shall determine the source, because just
7 because we have an observed increase, we still haven't
8 attributed that to the landfill. It could be due to
9 sampling error. It could be due to an off-site source.
10 Could also be due to the landfill, so --

11 BOARD MEMBER MOORE: So if you determine
12 that the confirmed source is not from the landfill, then
13 what?

14 MR. JOHNSON: If we determine that it's not
15 from the landfill, we would write up how we do that and
16 under (iii) provide notification.

17 HEARING OFFICER FOX: And I'm sorry. When
18 you say determine how we do that, how we determine that
19 it was not caused by the landfill; is that correct?

20 MR. JOHNSON: That's correct. We measure
21 water quality upgradient, the water flowing into the
22 landfill, and downgradient.

23 BOARD MEMBER MOORE: You'd have to list your
24 strategy.

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1 MR. JOHNSON: Yeah. We would have -- It
2 could vary.

3 BOARD MEMBER MOORE: Okay. So you give your
4 rationale for why it's not and you send that in a letter
5 to the Agency, or is it a modification that you're --

6 MR. JOHNSON: In the old -- I hate to call
7 them old regulations --

8 BOARD MEMBER MOORE: That's all right.

9 MR. JOHNSON: -- but the existing approach,
10 we -- this is where there was some ambiguity, and so that

11 could be submitted just as a letter or more of an
12 informal notification. Under the new proposal in section
13 iii, this notification has to be submitted in the form of
14 a sig mod, so that's --

15 BOARD MEMBER MOORE: Where does it say that,
16 though, in this -- in section iii?

17 MR. JOHNSON: Under (iii), the last sentence
18 under (iii).

19 BOARD MEMBER MOORE: Oh, yes. Okay. Good.
20 And so then that automatically triggers the assessment or
21 it doesn't? The Agency determines or --

22 MR. JOHNSON: That would be if we -- It
23 depends on the determination. If we stated that we
24 believed that this is due to an alternate source, we

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1 would put that in the notification that would go in to
2 the Agency. If the Agency agreed, then we would not
3 enter assessment monitoring. If the Agency disagreed or
4 we determined that it was due to the landfill, then we
5 would at the same time submit an assessment monitoring
6 plan also as --

7 BOARD MEMBER MOORE: So you're thinking that
8 this section covers whether or not the confirmed source
9 comes from the facility or from some other location, the
10 procedure is the same. You go with the modification of
11 the permit --

12 MR. JOHNSON: Yes, that's correct.

13 BOARD MEMBER MOORE: -- to the Agency with
14 the rationale for either determination.

15 MR. JOHNSON: Right.

16 MR. SCHUBERT: It's important to note that,
17 you know, what Terry had said before, the previous
18 regulation didn't require Agency review of an alternate
19 source determination.

20 BOARD MEMBER MOORE: Right.

21 MR. SCHUBERT: Now it does. In addition, it
22 sets in a time frame for which that needs to be
23 submitted, within 180 days of the initial sampling. The
24 time frame for the submittal of an assessment report is

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1 that same 180-day period, and so it is incumbent on the
2 regulated party to figure out, okay, what are we going to
3 apply for, are we going to apply for an ultimate source
4 determination to be approved by the Agency or are we
5 going to apply for -- are we going to go right into the
6 assessment, and we have that choice, but we need to
7 submit --

8 BOARD MEMBER MOORE: So as an example, if
9 you knew it was the facility, you'd go right to the
10 assessment and start -- and begin remediation as agreed
11 to by the Agency.

13 that would be my last question, and I guess I -- it's
14 just -- you know, I am not an attorney, but I have a very
15 strong view that just regular people that can read
16 English ought to be able to understand rules and
17 regulations or they ought to be written clearly enough,
18 so I was somewhat confused by the beginning that says,
19 "Except as provided for in 811.319 (a)(4)(B)(iii),"
20 because that's a little different than what (ii) is, and
21 I'm -- it's not clear to me how that fits in.

22 MR. RAO: So if somebody provides a
23 notification under (B)(iii), are they exempted from
24 (B)(ii)?

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1 MR. SCHUBERT: Well, I think the intent
2 there is if it -- if you can get that determination
3 approval within the 180-day period.

4 BOARD MEMBER MOORE: You mean that it's not
5 the facility?

6 MR. SCHUBERT: Right. If you can get that
7 determination approved within the 180-day period, you
8 would not have to submit the assessment report. In the
9 event that it was not approved, I would think you would
10 still be under obligation to submit the report.

11 BOARD MEMBER MOORE: Do you think that's
12 clear there?

13 MR. SCHUBERT: That's -- We had hoped it
14 would be clear. I guess the way we looked at it was
15 there are two concurrent requirements. If you submit an
16 alternate source determination, you have to do that
17 within 180 days. If you can get that approved and it's
18 accepted by the Agency, you're okay.

19 MR. RAO: Would it be helpful to add that
20 language in there, say if you have an alternate source,
21 then provide the notification or do the assessment
22 monitoring?

23 MR. SCHUBERT: It probably would be helpful.

24 BOARD MEMBER JOHNSON: We don't want to put

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1 any lawyers out of business here, but --

2 BOARD MEMBER MOORE: That would be Tom's
3 view because he's the lawyer on board.

4 MR. RAO: And of course that determination
5 can be appealed to the Board, right?

6 MR. SCHUBERT: Sure, sure. This was an area
7 we had a lot of discussion with the Agency on how this
8 was going to occur because it was an obvious defect in
9 the current regulation.

10 BOARD MEMBER MOORE: Right, and we -- we're
11 looking at it from a different perspective than the
12 Agency because they have to enforce and we're looking at
13 it when there's an appeal that would come to us for some

14 reason and, you know, how would that be interpreted, so
15 we were -- do you think you might be able to suggest some
16 language that would make that issue perfectly clear?

17 MR. SCHUBERT: I think we would, yes.

18 BOARD MEMBER MOORE: How would you think
19 they should do that? Just during public comment?

20 HEARING OFFICER FOX: I suspect we'll come
21 to a pretty quick agreement on the availability of the
22 transcript and the deadline for any public comments, and
23 if there was a suggestion in the form of an errata sheet
24 or a public -- post-hearing public comment that the Board

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1 would look at that with great interest.

2 BOARD MEMBER MOORE: And you would run --

3 HEARING OFFICER FOX: Absolutely. It would
4 be filed as a public comment and circulated to the
5 service list as well.

6 BOARD MEMBER MOORE: Okay.

7 MS. GEVING: I'm a little concerned, because
8 it's my understanding -- and correct me if I'm wrong,
9 please -- that a public comment is not given the same
10 weight as testimony and things that are submitted during
11 the hearing process. Is that accurate? So if we want to
12 make a substantive change like that, it should actually
13 be at this stage rather than the public comment stage?

14 CHAIRMAN GIRARD: Not necessarily.
15 BOARD MEMBER MOORE: Yeah. We haven't gone
16 to first notice yet, so --
17 MS. GEVING: Okay. Then I have no problem
18 with that.
19 BOARD MEMBER MOORE: I think we're all on
20 the same page. We just --
21 MR. SCHUBERT: Yes.
22 MS. GEVING: Right. And perhaps Charlie and
23 I can discuss this and do it as a joint comment, maybe.
24 BOARD MEMBER MOORE: That'd be perfect.

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1 Thank you.
2 BOARD MEMBER JOHNSON: Typically, when it's
3 us that's asking for it, we're going to give it --
4 BOARD MEMBER MOORE: Some weight.
5 BOARD MEMBER JOHNSON: -- some significant
6 weight.
7 MS. GEVING: That was the clarification I
8 wanted.
9 BOARD MEMBER MOORE: Yeah, yeah. Thank you,
10 Tom.
11 HEARING OFFICER FOX: That question was
12 answered by every person except the one you posed it to,
13 I'm afraid, but it sounds like that was satisfactory.
14 MS. GEVING: As long as it was answered,

15 that's fine.

16 BOARD MEMBER MOORE: I think that's it. We
17 just -- Thank you very much.

18 HEARING OFFICER FOX: Any further questions
19 on the part of any participant, any person who's present,
20 for the Solid Wastes Management Association at this
21 point? Anything further, Mr. Northrup?

22 MR. NORTHRUP: No.

23 HEARING OFFICER FOX: Very good. Miss
24 Geving, if you are prepared to go on to your part of the

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1 hearing, we'd certainly be ready to start that when you
2 are ready.

3 MS. GEVING: We are, and I would first like
4 to make a motion to the Board that they accept the
5 testimony of both Gwenyth Thompson and Christian Liebman
6 into the record as if read.

7 HEARING OFFICER FOX: That's certainly
8 allowed by the Board's procedural rules, and we would be
9 up to Exhibit No. 7. Why don't we mark the prefiled
10 testimony of Gwenyth Thompson as Hearing Exhibit No. 7
11 and the prefiled testimony of Mr. Liebman as Hearing
12 Exhibit No. 8, and I -- correct me if I'm wrong, Miss
13 Geving. I did hear a motion to introduce those into the
14 record?

15 MS. GEVING: Yes, you did.

16 HEARING OFFICER FOX: Was there any
17 objection to that on the part of the Association or
18 otherwise?

19 MR. NORTHRUP: No objection.

20 HEARING OFFICER FOX: Very good. Those --
21 The motion is granted and those will be admitted. Again,
22 the prefiled testimony of Miss Thompson is No. 7 and of
23 Mr. Liebman is No. 8.

24 MS. GEVING: Okay. Then at this time I

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1 would like to introduce my two witnesses. To my
2 immediate right is Chris Liebman, who is manager of the
3 Solid Waste Unit and the Permit Section within the Bureau
4 of Land, and to his right is Gwenyth Thompson, who is the
5 groundwater assistant manager to the Solid Waste and
6 Permit Section. And then I would like to offer them both
7 the opportunity to summarize their testimony if they so
8 choose.

9 MR. LIEBMAN: I'll start.

10 MS. GEVING: Mr. Liebman?

11 MR. LIEBMAN: I'm Chris Liebman and I manage
12 the Solid West Unit in the Illinois EPA's Bureau of Land
13 Permit Section. In my prefiled testimony I discussed the
14 three changes to leachate monitoring that this rulemaking
15 proposes.

16 MS. GEVING: Let me interrupt you for just
17 one second. I believe our witnesses have not been sworn
18 in.

19 HEARING OFFICER FOX: You're correct, Miss
20 Geving. Thank you very much for pointing that out. If
21 the court reporter would swear the two of them in.

22 (Witnesses sworn.)

23 MS. GEVING: Please proceed, Mr. Liebman.

24 MR. LIEBMAN: I'm going to start where I

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1 left off. The first change specifies a default list of
2 parameters for which leachate should be monitored. The
3 second change requires a minimum number of leachate
4 monitoring points for new landfills. The third change
5 modifies the frequency at which leachate must be
6 monitored. These changes will provide better data
7 regarding the leachate produced by Illinois landfills.
8 In the testimony, I also provide a list of the
9 unpermitted on-site landfills in response to a question
10 raised by the Board in the first hearing. Now, if you
11 have any questions for me, I'd be glad to answer them.

12 MS. GEVING: Miss Thompson, do you have a
13 summary that you'd like to offer before we go into the
14 question session?

15 MS. THOMPSON: Sure. My name is Gwenth

16 Thompson and I manage the Groundwater Assistance Unit for
17 Solid Waste. My testimony is comprised mostly of answers
18 to questions that were -- that arose during the previous
19 hearing, and I clarified a point that I had made on my
20 own. That's all.

21 HEARING OFFICER FOX: Anything further, Miss
22 Geving?

23 MS. GEVING: At this time I think we're
24 ready for questions.

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1 HEARING OFFICER FOX: Very good. Are there
2 questions on the part of the Association or any of the
3 other participants that are here? Seeing none, do either
4 any of the board members or the board staff have any
5 questions?

6 MS. GEVING: Wonderful.

7 MR. RAO: Thank you for resolving our
8 concerns and also providing the list of landfills,
9 unpermitted landfills.

10 HEARING OFFICER FOX: Miss Geving, Miss
11 Thompson, Mr. Liebman, thank you very much for your
12 testimony. That should wrap it up. We do certainly --
13 would certainly make time for any other persons, those
14 who did not prefile testimony. I believe I can see that
15 the list at the door is blank, that no one has signed in,
16 and I -- if there's anyone else who wishes to testify,

17 there appear to be none.

18 What we can do is walk on to the issue of the
19 economic impact study, and forgive me if I do this
20 somewhat mechanically. As many of you know, since 1998,
21 section 27(b) of the Environmental Protection Act has
22 required that the Board request that the department now
23 known as the Department of Commerce and Economic
24 Opportunity conduct an economic impact study of proposed

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1 rules before the Board adopts rules. The Board must
2 either make the economic impact study or the Department's
3 explanation for not conducting one available to the
4 public at least 20 days before public hearing.

5 In this docket, on -- in a letter dated November
6 21 of 2006, the Board requested that the Department
7 conduct that economic impact study on this specific
8 rulemaking proposal, and on December 8 of 2006, the Board
9 received and posted to its publicly accessible Web site a
10 letter from the Department responding to that request.
11 The letter states based upon its review of the request
12 and in light of its continued financial constraints that
13 the Department had determined not to conduct a study of
14 the economic impact of that proposal. I do have copies
15 of that letter that I'll place at the door for anyone who
16 would like to have a copy of it, but is there anyone who

17 would like to offer any testimony regarding either the
18 Board's request to the Department of Commerce and
19 Economic Opportunity or the letter responding to that
20 request?

21 Seeing none, it makes sense, I believe, at this
22 point to go off the record just for a moment to address
23 any procedure issues before we would adjourn, then.

24 (Discussion held off the record.)

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1 HEARING OFFICER FOX: The proponents and
2 participants went off the record for a brief time in
3 order to discuss procedural issues relating to the filing
4 of comments. The transcripts will be available within
5 approximately eight business days, on or before Monday,
6 March 12 of 2007. Once the transcript is received by the
7 Board, the hearing officer will issue a hearing officer
8 order setting a public comment period of 14 days in
9 length. It would be foreseeable that that would end on
10 or about Monday, March 26 of 2007.

11 The copies of the transcript as soon as they are
12 provided to the Board will be on the Board's Web site,
13 which is www.ipcb.state.il.us. Any comments may be filed
14 electronically through the Board's Clerks's Office
15 On-Line, known by the acronym of COOL, and any questions
16 about electronic filing through the COOL system should be
17 directed to the Board's clerk's office. Those filings,

18 whether paper or electronic, must be served on the
19 hearing officer and any persons on the service list, and
20 before filing with the clerk, any party or participant
21 should check with the Board at 312-814-3623 to assure
22 that they have the most current and accurate service
23 list. If anyone has questions about the procedural
24 aspects of this rulemaking or otherwise, I may certainly

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1 be reached at 312-814-6085, and for the record now, no
2 other hearings now are scheduled in this rulemaking
3 docket.

4 Are there any other matters that any of the
5 participants wish to address at this time?

6 MR. NORTHRUP: No.

7 HEARING OFFICER FOX: Seeing none, I know
8 that I speak for the board members and the rest of the
9 board staff in thanking you for all of your effort, your
10 time and your preparation in building a record for the
11 Board's consideration, and we appreciate your efforts in
12 this endeavor. Thank you very much.

13 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at
7 Illinois Pollution Control Board, Springfield, Illinois,
8 on February 28, 2007, and did record the aforesaid
9 Hearing; that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 5th day of March, 2007.

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Notary Public--CSR

#084-003688

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