

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4       IN THE MATTER OF:

5       MUNICIPAL SOLID WASTE

6       LANDFILL (MSWLF) RULES:

7       AMENDMENTS TO 35 ILL. ADM. CODE                   R98-009

8       811, 813 AND 848

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13                       Proceedings held on October 27, 1997, at  
14       10:10 a.m., at the Illinois State Capitol Building,  
15       Room 400, Springfield, Illinois, before the  
16       Honorable Marie Tipsord, Hearing Officer.

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21           Reported by: Darlene M. Niemeyer, CSR, RPR  
                          CSR License No.: 084-003677

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A P P E A R A N C E S

Board Chairman, Claire A. Manning  
Board Member G. Tanner Girard, Ph.D.  
Mr. John Knittle, Assistant to Board Member Yi  
Anand Rao, Scientist, the Board's Technical Unit

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Judith Dyer, Esq.  
Assistant Counsel  
2200 Churchill Road  
Springfield, Illinois 62794-9276  
On behalf of the Illinois EPA

WEBBER & THIES, P.C.

BY: Phillip R. Van Ness, Esq.  
202 Lincoln Square  
Urbana, Illinois 61803  
On behalf of National Solid Wastes  
Management Association, Midwest Chapter

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I N D E X

PANEL OF WITNESSES PRESENT WHO WERE QUESTIONED:

THOMAS A. HILBERT

JOYCE MUNIE, P.E.

EDWIN C. BAKOWSKI, P.E.

KENNETH W. LISS

E X H I B I T S

Proponent Exhibit 1 Prefiled testimony of  
Mr. Thomas a. Hilbert

Proponent Exhibit 2 Prefiled testimony of Mr.  
Edwin C. Bakowski, P.E.

Proponent Exhibit 3 Prefiled testimony of Mr.  
Kenneth Liss

Proponent Exhibit 4 Prefiled testimony of Ms.  
Joyce Munie, P.E.

(The exhibits are attached to the back of this  
transcript.)

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P R O C E E D I N G S

(October 27, 1997; 10:10 a.m.)

HEARING OFFICER TIPSORD: Good morning.

My name is Marie Tipsord, and I have been appointed by the Board to serve as Hearing Officer in this proceeding entitled, In the Matter of Municipal Solid Waste Landfill Rules: Amendments to 35 Illinois Administrative Code 811, 813 and 848. The Docket Number is R98-9.

To my right is Dr. Tanner Girard, one of the Board Members assigned to this matter. Also present is Board Chairman, Claire A. Manning, who is also assigned to this matter. With me is John Knittle, to Dr. Girard's right, representing Mr. Yi. To my left is Anand Rao, from our Technical Unit.

This is the first hearing of this proceeding which was filed on August 11, 1997, as a joint proposal by the Illinois Environmental Protection Agency and the National Solid Waste Management Association. Along with the proposal the proponents filed a motion asking the Board to limit the scope of this proceeding. On August 21st, 1997, the Board accepted the proponents

1 proposal, and I will quote from that order. The  
2 Board notes both the proponents' desire to proceed  
3 with this rulemaking in an expeditious manner and  
4 that the expansion of the scope of the proposal to  
5 include other regulatory quote, wish list, unquote,  
6 could unduly delay the Board's deliberation.  
7 However, the Board will not limit the discussion of  
8 the regulatory alternative proposed or public  
9 testimony or comment period concerning subject  
10 matters addressed by this proposal. Therefore, at  
11 this time the Board agrees to limit the scope of  
12 this proceeding in that the Board will not  
13 entertain requests from other parties to expand the  
14 list of sections proposed for amendment. The Board  
15 will accept comments on the proposed language for  
16 the section opened in the proposal including any  
17 potential suggestions regarding alternatives, close  
18 quote.

19           Therefore, the Board limited the scope of  
20 this proceeding. I will limit the scope of the  
21 hearing consistent with the Board's order.

22           At the back of the room there are sign-up  
23 sheets for both the notice and the service lists as  
24 well as current copies of both the notice and

1 service lists. If you wish to be on the service  
2 list you will receive all pleadings and all  
3 prefiled testimony in the proceeding. If you wish  
4 to be on the notice list you will receive all Board  
5 and Hearing Officer orders in the rulemaking. If  
6 you have any question about which list you wish to  
7 be placed on, please see me at a break.

8           The Board received prefiled testimony  
9 from the proponents and we will begin with the  
10 proponent's testimony. Once we have proceeded  
11 through the testimony we will have summaries of the  
12 testimony and mark the testimony as it is read. We  
13 will allow questions for the specific testimony and  
14 the specific testifier.

15           We will then have a panel discussion and  
16 allow for questions to be addressed to the panel as  
17 a whole. Once we concluded all the prefiled  
18 testimony, if there is anyone here who may wish to  
19 testify today, if we have time we will try to allow  
20 that. At the close of today's hearing, we will  
21 determine the prefiling testimony days for the  
22 hearing to be held on November 19th in Chicago.

23           At this time, is there anything you would  
24 like to add, Dr. Girard?

1                   BOARD MEMBER GIRARD: Yes, I would just  
2 like to add that on behalf of the Board we welcome  
3 everyone here to this hearing this morning. I  
4 would also like to express the Board's appreciation  
5 to the joint proponents for all the hard work  
6 evidenced in this proposal which has come before  
7 us, and we look forward to a fair and efficient  
8 rulemaking process. Thank you.

9                   HEARING OFFICER TIPSORD: Thank you.  
10 Chairman Manning?

11                   BOARD CHAIRMAN MANNING: Thank you for  
12 bringing this forward as a joint proposal. It is  
13 nice to see a joint proposal.

14                   HEARING OFFICER TIPSORD: At this time I  
15 will turn to the proponents. Would either of you  
16 like to make an opening statement?

17                   MR. VAN NESS: Madam Hearing Officer, my  
18 name is Phillip Van Ness. I am the attorney for  
19 the NSWMA, one of the proponents today.

20                   As per your direction a few moments ago,  
21 we have one witness, Mr. Thomas A. Hilbert, who  
22 has, as you mentioned, previously filed testimony.  
23 For the record, I would note that a copy of his  
24 prefiled testimony is also available at the back of

1 the room, as per Pollution Control Board rules.

2 I have no particular comment. I think we  
3 would be better served and the Board's time better  
4 served by opening the floor to the questions that  
5 the Board Members themselves may have or you, Madam  
6 Hearing Officer, may have as well as any members of  
7 the public.

8 Without further ado, I guess I would be  
9 entering Mr. Thomas A. Hilbert, and we will  
10 subsequently move that his testimony, as prefiled,  
11 be admitted as is read.

12 HEARING OFFICER TIPSORD: Before we do  
13 that, Ms. Dyer, did you have an opening statement,  
14 or would you like to reserve that until  
15 afterwards?

16 MS. DYER: My opening statement will be  
17 very brief, as was Mr. Van Ness', and I think I  
18 will reserve it until after Mr. Hilbert responds to  
19 questions.

20 HEARING OFFICER TIPSORD: Okay. At this  
21 time would you swear in Mr. Hilbert.

22 (Whereupon the witness was  
23 sworn by the Notary Public.)

24 MS. TIPSORD: All right. Go ahead.

1                   MR. VAN NESS: I guess I would say at  
2 this point that our intention is to ask no  
3 questions of him, and not ask him to summarize his  
4 testimony unless that be the will of the Board.  
5 The statement has been prefiled for a couple of  
6 weeks now. If you would like for him to summarize  
7 his testimony, he can do so briefly, or if you  
8 prefer to pass on that and move on, we will take  
9 our direction from you, Madam Hearing Officer.

10                   HEARING OFFICER TIPSORD: Okay. We will  
11 just go ahead and allow you to tender his testimony  
12 and proceed with the Agency and then have the panel  
13 questioning.

14                   MR. VAN NESS: Thank you. Then that  
15 would be our sum total testimony for the present.

16                   HEARING OFFICER TIPSORD: Okay. So you  
17 would like to offer his testimony as if read as  
18 Exhibit Number 1?

19                   MR. VAN NESS: That's fine.

20                   HEARING OFFICER TIPSORD: Okay. We will  
21 mark it as an exhibit and then we will attach it.

22                   MR. VAN NESS: All right. Do you want to  
23 mark that as NSWMA or proponents --

24                   HEARING OFFICER TIPSORD: Well, let's go

1 with proponents.

2 MR. VAN NESS: Okay.

3 HEARING OFFICER TIPSORD: And then that  
4 will be distinguished -- if that is okay with the  
5 Agency, that will be distinguishable and then if  
6 either of you have separate exhibits that you want  
7 to tender later on. We will assume the testimony  
8 is joint from the proponents. Is that okay?

9 MS. DYER: Yes.

10 HEARING OFFICER TIPSORD: Do you have a  
11 copy with you to hand to the court reporter?

12 MR. VAN NESS: Yes, I will hand her a  
13 copy.

14 HEARING OFFICER TIPSORD: Okay. I think  
15 the pleasure of the Board is to wait until the  
16 panel discussion to direct our questions. I don't  
17 think we have anything specific.

18 So we will proceed with you, Ms. Dyer.

19 MS. DYER: Good morning. My name is Judy  
20 Dyer. I am here today on behalf of the Illinois  
21 Environmental Protection Agency. With me, our  
22 Agency witnesses today. On my left is Ken Liss and  
23 Ed Bakowski. On my right is Joyce Munie.

24 I don't have very much to say as an

1 opening statement. I would just like to move on to  
2 offer the testimonies of Ed Bakowski and Kenneth  
3 Liss and Joyce Munie and have them entered into the  
4 record as if read. I have a copy.

5 HEARING OFFICER TIPSORD: We will mark Ed  
6 Bakowski's testimony as Exhibit Number 2.

7 MR. VAN NESS: Ed Bakowski as Number 2?

8 HEARING OFFICER TIPSORD: Yes, as Number  
9 2. Then Kenneth Liss as Number 3 and Joyce Munie  
10 as Number 4.

11 Ms. Dyer, did any of your testifiers wish  
12 to summarize in any way or do you want to just  
13 proceed to questioning?

14 MS. DYER: If it is all right with the  
15 Board, we will just proceed to the questioning. I  
16 would also like to mention that there are  
17 additional copies of our testimony, of the Agency's  
18 testimony in the back.

19 HEARING OFFICER TIPSORD: All right.  
20 Would the court reporter please swear in the  
21 witnesses.

22 (Whereupon witnesses Ed  
23 Bakowski, Kenneth Liss and  
24 Joyce Munie were sworn by the



1 I said on the order of 20 to 30 feet per year that  
2 would be a very high rate of groundwater movement,  
3 in considering that -- even that rate of movement,  
4 if the detection, the worse case scenario being  
5 that if this facility could go to semiannual  
6 monitoring, there would be an additional 90 day  
7 interval before there would be some samplings and  
8 statistical methods to evaluate, and it would not  
9 be significant in travel time.

10 What I didn't put in there, and I can  
11 clarify now, is looking at the well spacing that we  
12 have any analytical capabilities where we are  
13 basically down to the one part per billion for all  
14 organics, very close to five to ten most of the  
15 inorganics, it would not be significant in travel  
16 time.

17 HEARING OFFICER TIPSORD: Thank you.

18 All right Mr. Hilbert, in your testimony  
19 on page 3, under Subpart III, substantive features  
20 of this proposal, you refer to 811 -- on point  
21 number two you refer to 811.309 (e).

22 MR. HILBERT: Yes, excuse me. That's  
23 incorrect.

24 HEARING OFFICER TIPSORD: That should be

1 (g)?

2 MR. HILBERT: It should read (g)(1).

3 HEARING OFFICER TIPSORD: Great. Thank  
4 you. Okay. I think that's all I have for the  
5 specific testifiers.

6 Does anyone having anything else for the  
7 specific testifiers?

8 BOARD MEMBER GIRARD: I have one  
9 question. My question goes to Part 811.321, if you  
10 want to turn to that. In fact, 811.321(b)(4). It  
11 is on page 58 of the proposal.

12 Under this subsection we talk about  
13 having a CQA officer certifying or recertifying  
14 certain criteria, and the CQA officer is defined in  
15 811.502, which is one of the sections which is not  
16 open. So, first of all, I think we need to at  
17 least discuss the definition of what a CQA officer  
18 is to get into the record of this proceeding.

19 Secondly, we need something in the record  
20 here about why the CQA officer is the appropriate  
21 person to do this kind of certification, so that at  
22 least we get a discussion on the record. If you  
23 would like to discuss that today that would be fine  
24 or otherwise you can put it in the comments and

1 submit that before the next hearing. Whatever your  
2 pleasure is at this point in time.

3 MS. DYER: Joyce Munie can respond to  
4 that question.

5 MS. MUNIE: First, we would like to  
6 define the CQA officer today, just to get it into  
7 the testimony. However, as far as why the CQA  
8 officer is the appropriate person to make this  
9 certification, we would like to do that in written  
10 response, if you don't mind.

11 BOARD MEMBER GIRARD: That is fine.  
12 Thank you.

13 MS. MUNIE: The CQA officer himself or  
14 herself is defined in Section 811.502 and under  
15 subsection (b) it talks about the duties and  
16 qualifications of the CQA officer. Under (b)(1)  
17 the CQA officer shall supervise and be responsible  
18 for all inspections, testing, and other activities  
19 required to be implemented as part of the CQA  
20 program under the subpart, and (b)(2) requires that  
21 the CQA officer shall be a professional engineer.

22 BOARD MEMBER GIRARD: Thank you. What  
23 does the acronym CQA stand for?

24 MS. MUNIE: Construction quality

1 assurance.

2 BOARD MEMBER GIRARD: Thank you. That's  
3 all I have.

4 MR. RAO: I have a few questions. Some  
5 of them are clarification questions and some  
6 substantive. Under 811.309, Subsection (d)(6), the  
7 proposed amendment requires one day's worth of  
8 leachate storage capacity plus management of  
9 leachate through disposal of treatment.

10 Does this alternative provide the same  
11 margin of safety equivalent to the existing  
12 regulations which requires five days of storage?

13 If so, is it envisioned that the  
14 alternative means of leachate management will be  
15 available at all times to deal with any  
16 contingency, such as breakdown of one of the  
17 options?

18 MS. MUNIE: Under this section, the  
19 proposed change, we would expect it to be  
20 equivalent protection because of the two  
21 alternatives for leachate management on top of the  
22 one day's worth of storage. Assuming that one of  
23 your options would breakdown, you have the second  
24 one to deal with.

1                   Generally, these leachate management  
2 options are things that you know are going to go  
3 down because you are doing routine maintenance on  
4 them. Under routine maintenance you have a second  
5 backup to deal with the leachate that has  
6 accumulated during that day. If something  
7 catastrophic happens, you would have one day's  
8 worth of storage on site to store the leachate as  
9 you dealt with the catastrophic problem, be it  
10 everything breaking down all at once.

11                   MR. RAO: These two alternative means of  
12 leachate management that should be available, so  
13 would that be part of the permit, you know, to have  
14 demonstrated that these options are available to  
15 them?

16                   MS. MUNIE: Clearly, that would be part  
17 of the permit application, that they would have to  
18 demonstrate that they have these two options. And  
19 it would be a requirement that if they knew  
20 something was going to happen to one of these  
21 options it would require a permit modification to  
22 make available a second option for them.

23                   Also, I want to point out that both of  
24 these leachate options for management must be able

1 to manage all of the leachate that should be  
2 generated in that one day. It can't just manage  
3 half the leachate. It has to be able to manage  
4 everything that they expect to encounter in that  
5 one day.

6 MR. RAO: And when you talk about one  
7 day's storage, it is the maximum leachate  
8 generation, right, that is used to recommend the  
9 one day storage capacity?

10 MS. MUNIE: Yes.

11 MR. RAO: Okay. In the same Section,  
12 under Subsection (g)(1) the proposed amendment to  
13 require leachate to be characterized on the basis  
14 of individual monitoring locations within a  
15 disposal unit rather than treating the unit as a  
16 whole, can you please explain how the leachate  
17 characteristics at each monitoring location will be  
18 used to evaluate the performance of the unit as a  
19 whole?

20 MS. MUNIE: Currently, the way the  
21 Section reads, it requires that leachate be  
22 monitored from each individual unit, and the unit  
23 could be up to 200 acres in an area. Whereas this  
24 proposal establishes leachate monitoring locations

1 which within that specific unit which is a defined  
2 area. So it would allow us to monitor, say, the  
3 south end and the north half, the east side and the  
4 west side. It would allow us to monitor more than  
5 one location within each unit.

6 MR. RAO: From a treatment standpoint,  
7 would it be more useful to have leachate quality  
8 data representative of the leachate from the unit  
9 as a whole or do you feel that the individual  
10 monitoring locations is a better way to do that?

11 MS. MUNIE: From the treatment  
12 standpoint, it would be better to understand what  
13 the leachate constituents are as a whole. However,  
14 from the groundwater monitoring it would be better  
15 to have spacial variations to determine whether or  
16 not, say, that the west side is going to impact the  
17 west side groundwater as opposed to what overall or  
18 a combination of all the leachate would look like.

19 Generally, whenever leachate is  
20 collected, it is collected in one tank. Before  
21 that tank can go off for treatment it must be  
22 monitored for the specific hazardous  
23 characteristics. So that leachate tank is also  
24 monitored in addition to these monitoring locations

1 within the unit itself.

2 MR. RAO: Okay. When you talk about this  
3 monitoring of leachate in the tank, is that  
4 required by the rules, or is that something that an  
5 operator does to make sure that the treatment meets  
6 the requirements?

7 MS. MUNIE: Testing the leachate before  
8 it goes to a treatment facility is required by the  
9 treatment facility itself. It is required that  
10 they do not send hazardous leachate off-site.  
11 Therefore, they must test and monitor the leachate  
12 that is being sent off-site to determine whether or  
13 not it is hazardous.

14 MR. RAO: In Subsection (g)(1) the  
15 proposed amendment allows the Agency to require  
16 additional leachate sampling as necessary to ensure  
17 compliance with the Act and Subtitle (g). Could  
18 you identify the specific requirements under the  
19 Act or regulations pertaining to leachate sampling  
20 from landfills?

21 MS. MUNIE: We don't believe that there  
22 is additional leachate sampling in the Act. What  
23 we are getting at there is ensuring compliance with  
24 the Act that this new line would allow the Agency

1 to add additional leachate monitoring to ensure  
2 that the leachate that is discharged from the unit  
3 does not cause a violation of the Act. It is not  
4 that there is additional leachate monitoring  
5 requirements in the Act that this subsection is  
6 trying to make them monitor for.

7 HEARING OFFICER TIPSORD: I have a  
8 follow-up question on that, along the same lines.  
9 That sentence says that the Agency may, by permit  
10 conditions, require additional leachate sampling.  
11 I am assuming that the Agency would make that  
12 determination pursuant to its permitting process  
13 and its permitting authority. Is that correct?

14 MS. MUNIE: Clearly, it would be part of  
15 the permit application. We would envision that  
16 these additional sampling requirements would come  
17 about because we found a groundwater problem or  
18 there was a hit in the groundwater where we wanted  
19 to determine whether or not it was actually coming  
20 from the unit itself.

21 HEARING OFFICER TIPSORD: Okay.

22 MR. RAO: I have one more question on the  
23 same subsection. Subsection (g)(1) requires  
24 leachate to be tested in accordance with

1 subsections (g)(2)(G), and (g)(3)(D).

2 Under what circumstances would leachate  
3 samples be tested for parameters listed in  
4 subsections (g)(2)(A) through (g)(2)(F) and  
5 (g)(3)(A) through (g)(3)(C)?

6 MS. MUNIE: Once leachate comes out of  
7 the unit and it is going for treatment or  
8 pretreatment, these are standard constituents that  
9 you would monitor for that would be specific for  
10 that treatment plant. These are constituents that  
11 are important in a biological treatment of  
12 leachate.

13 Whereas, the leachate that is within the  
14 unit itself only needs to be monitored for the  
15 groundwater constituents, because those are the  
16 parameters that you are looking for to indicate  
17 whether there was a groundwater concern.

18 MR. RAO: So the proposed amendment as to  
19 what is going to be tested within the unit and what  
20 would be tested when the leachate is being disposed  
21 after treatment, is that what you are saying?

22 MS. MUNIE: Yes. The change that we make  
23 to the leachate monitoring section in (g)(1) are  
24 really changes to what is monitored within the unit

1    itself.  Whereas, we made no changes to the  
2    Subsection (2) and (3) of the Subsection (g), and  
3    those are the constituents that are monitored prior  
4    to treatment and pretreatment.

5                   MR. RAO:  Okay.  I have one more question  
6    on 811.309.

7                   The proposed changes to the leachate  
8    monitoring that are applicable to both putrescible  
9    waste and chemical waste landfills.  Should the  
10   changes also apply to steel and foundry waste  
11   landfills under Part 817, since such landfills are  
12   also a subset of chemical waste landfills?  Because  
13   the requirements which are based on these 811  
14   requirements --

15                   MS. MUNIE:  I will be perfectly honestly  
16   with you.  We did not look at the 817 requirements  
17   in regard to these particular provisions.  But,  
18   yes, clearly, they could also go to the 817 units,  
19   because those units are similar to chemical and  
20   putrescible in that if the constituents in leachate  
21   are high enough they became chemical and  
22   putrescible waste landfills.  So if the Board chose  
23   to, these would be appropriate changes to 817.

24                   MR. BAKOWSKI:  May I say something?  I

1 think we have to kind of look at that thoroughly,  
2 though, because I think the steel and foundry  
3 landfills are more homogenous than these types of  
4 landfills. So you might have to have a provision  
5 where you could address that factor.

6 MR. RAO: The reason I ask you is, you  
7 know, the steel and foundry waste landfills right  
8 now have the quarterly sampling and, you know, it  
9 is similar to what was in the existing Part 811.  
10 Since we are relaxing these rules, I want to know  
11 what the Agency thinks about the steel and foundry  
12 chemical waste landfills.

13 MR. BAKOWSKI: Specifically, I don't  
14 think the steel and foundry -- I don't know how  
15 many are members of -- how many are members of the  
16 NSWMA. They really haven't been a part of that. I  
17 think we would need some direct discussions with  
18 them to think about proposing any changes that  
19 effect them. They are kind of a separate group  
20 that work on their own rules with their own set of  
21 constituents.

22 MR. RAO: Yes, I know about the  
23 organization and everything, but in terms of the  
24 landfill itself I just wanted to get your feedback,

1 since we have a docket open in the steel and  
2 foundry waste landfills, also. I just thought  
3 maybe you could address --

4 MR. BAKOWSKI: I am sorry?

5 MR. RAO: We have ongoing rulemaking in  
6 steel foundry landfills, too.

7 MR. BAKOWSKI: Oh, okay.

8 MR. RAO: Okay. Moving on to Section  
9 811.310. In Subsection (d)(1)(C) the proposed  
10 amendment recommends that we eliminate monitoring  
11 of nitrogen from landfill gas. In the testimony  
12 supporting the change it says that there was no  
13 reason for monitoring nitrogen.

14 I have looked at the justification in the  
15 Board's final opinion in Docket R88-7, and it  
16 states that nitrogen should be monitored as an  
17 indicator of air leaks which can aid in the  
18 interpretation of the validity of the sample and  
19 integrity of the monitoring devices.

20 Since the proposed amendment Section  
21 (d)(1)(C) eliminates the requirement to monitor  
22 nitrogen, what will be used as an alternative  
23 indicator of air leaks in the system?

24 MR. HILBERT: Well, you could still

1 determine nitrogen concentrations, assuming the  
2 mass balance approach, you know, if nitrogen was a  
3 component of the gas you were sampling and you had  
4 tested all the other components, then the remaining  
5 fraction would be the nitrogen.

6 MR. RAO: The air leaks were supposed to  
7 be -- you know, in terms of you measure for  
8 nitrogen and then you do the mass balance and see  
9 if it matches up. If it does not, then that is an  
10 indication of an air leak. And so if you are  
11 proposing that we eliminate nitrogen, there is no  
12 way of eliminating air leaks in the system.

13 MR. HILBERT: The general idea was not to  
14 specifically eliminate nitrogen. It was to  
15 eliminate specific testing for nitrogen. Because  
16 that test requires that the samples be sent to an  
17 analytic lab, and it is not readily done in the  
18 field. That is an additional expense that is  
19 really not necessary, because the mass balance  
20 approach is pretty foolproof. It is pretty  
21 consistent.

22 MS. MUNIE: Also, the point you are  
23 trying to get at here is air leaks within a  
24 controlled system where you are actually getting --

1 you are pulling the methane out of the landfill.  
2 The provision here is talking about below ground  
3 monitoring devices, which are all devices where you  
4 place a monitoring device into the ground, and you  
5 are just monitoring the constituents there. It is  
6 not in a closed system.

7 If you are in a closed system and you are  
8 monitoring -- specifically monitoring for nitrogen,  
9 you are going to see whether you have any air leaks  
10 there. This is not a closed system that we are  
11 monitoring. These are just the air monitoring  
12 devices that are within the ground itself.

13 So for the monitoring of the landfill  
14 itself, doing a direct measurement of nitrogen  
15 seems excessive because you have got -- you have to  
16 send those particular samples off to a lab. You  
17 are not getting any direct measurements on the day  
18 that you are monitoring it. It is also a very  
19 expensive test and for a non enclosed system, it  
20 just seemed excessive to us.

21 MR. RAO: Okay. Then moving on to  
22 Section 811.312, under Subsection (g)(1), a  
23 landfill gas processing facility which is permitted  
24 to receive and process landfill gas under the Act

1 and Board regulations is considered -- is not  
2 considered as part of the facility under the  
3 proposed amendments.

4 Under what provisions of the Act and/or  
5 Board regulations are the landfill gas processing  
6 facilities required to obtain permits?

7 MS. MUNIE: You mean from the Agency?

8 MR. RAO: Yes.

9 MS. MUNIE: Under the Bureau of Air,  
10 permitting requirements.

11 MR. RAO: I was asking you what  
12 provisions of the Act or Board regulations are  
13 landfill gas processing facilities required to  
14 obtain permits? Because it says in the Board  
15 regulations and the Act.

16 MS. MUNIE: You are looking for the  
17 specific regulations and --

18 MR. RAO: Yes.

19 MS. MUNIE: -- provisions in the Act?

20 MR. RAO: If you don't have it, you can  
21 provide it in the comments.

22 MS. MUNIE: We will provide that in the  
23 comments.

24 MR. BAKOWSKI: You just need the

1 citation?

2 MR. RAO: Yes. Thank you.

3 MR. BAKOWSKI: Okay.

4 MR. RAO: Are all landfill gas processing  
5 facilities required to have a permit to receive and  
6 process landfill gas?

7 MS. MUNIE: Could you ask that question  
8 again?

9 MR. RAO: Are all landfill gas processing  
10 facilities required to have a permit to receive and  
11 process landfill gas?

12 MS. MUNIE: We will provide that in our  
13 comments, our written responses.

14 MR. RAO: Okay. In the case of a  
15 permitted off-site gas processing facility, would  
16 the operator of the landfill, from which the  
17 facility receives landfill gas, have any control  
18 over the processing system to ensure that an  
19 adequate system for gas disposal is always  
20 accessible and available?

21 MR. HILBERT: The way that that has been  
22 amended, it still requires the landfill facility to  
23 maintain financial assurance for the landfill gas  
24 control measures that would be required. Just

1 because you have entered into a contract with a  
2 third party or some other entity to utilize your  
3 gas and maintain the control systems on the  
4 landfill, that does not relieve you from the  
5 financial burden to always have something there in  
6 case they default it. So that -- I mean, there is  
7 still protection to ensure that that could be done  
8 if this third party no longer existed.

9 MR. RAO: Actually, I was more interested  
10 in knowing about during the operation of the  
11 landfill, you know, if there is a buildup of  
12 landfill gas or some dangerous situation occurs,  
13 will this off-site gas processing facility, will it  
14 be always available and accessible to the operator  
15 to make sure that, you know, the safety concerns  
16 are addressed?

17 If not, do you believe the alternative  
18 backup system must be available to the operator  
19 like, you know, flares or something of that sort,  
20 in the event that the off-site facility is not  
21 available for some reason?

22 MR. HILBERT: It is my understanding that  
23 that would still be the requirement. I mean, the  
24 landfills are still required to satisfy the other

1 portions of the regulations. So that if there was  
2 a problem with excessive gas, let's say your full  
3 ground monitoring devices, and some other  
4 indication that the landfill gas was not under  
5 control, the landfill would still have to make  
6 whatever or do whatever requirements are necessary  
7 to control the landfill gas. I mean, even if he  
8 didn't have some kind of working relationship with  
9 this third party he would still be responsible for  
10 ensuring that the public health and safety was  
11 protected and the environmental issues were  
12 protected.

13 MR. RAO: Is there anything in the rules  
14 that require the operator to do that?

15 MR. HILBERT: Yes. This doesn't amend  
16 other sections of 811 that require -- I don't know  
17 the specific references here, but this is really  
18 geared towards off-site processing facilities, so  
19 that they are not considered a part of the  
20 landfill. I mean, it would allow easier access for  
21 people entering the contracts with utilities, other  
22 entities that want to utilize the gas that they  
23 have available, but --

24 MR. RAO: The reason I ask this question

1 was when this rule was adopted in Docket 88-7, a  
2 similar thing was proposed and was not accepted by  
3 the Board, and at that time, you know, as an  
4 alternative you can have backup systems to be  
5 contingencies if you want to. You can take a look  
6 at the Board's opinions and get back to us on that.

7 MS. MUNIE: But just because a landfill  
8 facility has, as part of its permit, this off-site  
9 processing facility, that does not ensure that they  
10 have any real control on whether or not that  
11 off-site processing facility continues to operate.  
12 That off-site processing facility, although still  
13 permitted under the landfill's permit, it could  
14 choose to shut down.

15 MR. RAO: That's the reason I asked if  
16 there is a need for backup options if it decided to  
17 shutdown for some reason.

18 MS. MUNIE: That is what I am saying.  
19 That is the way it is now. Without any changes to  
20 the Act as it is right now, the regs, as they are  
21 written, even though the landfill has a permit for  
22 this off-site facility, they have no real control  
23 over it.

24 MR. RAO: Because if it is 50 percent

1 over -- if it is 50 percent or more, the landfill  
2 gas right now is considered part of the facility  
3 and the operator will have control over the  
4 facility.

5 MS. MUNIE: But just because --

6 MR. RAO: Under the existing rules.

7 MS. MUNIE: Under the existing rules it  
8 is required to be permitted as part of the landfill  
9 facility. That does not ensure that the operator  
10 has any control over the facility, the processing  
11 facility.

12 MR. RAO: Okay. But still, you know,  
13 there is concern about what happens in terms of,  
14 you know, if there is a shutdown a or breakdown or  
15 anything of that sort.

16 MS. MUNIE: Sure. We will be glad to go  
17 through the Board's original reasoning in the R88-7  
18 and respond further.

19 MR. RAO: Because the operator has  
20 control over the --

21 MS. MUNIE: Sure.

22 MR. RAO: -- facility.

23 MS. MUNIE: We understand that, and we  
24 will be glad to respond further in our written

1 comments.

2 MR. RAO: Okay. Then moving on to  
3 811.319. Under 811.319, Subsection (a)(1)(A), the  
4 amendments require certification described in 35  
5 Illinois Administrative Code 813.304(b) take into  
6 consideration the levels of the monitored  
7 constituents within the --

8 MR. VAN NESS: Could you repeat that?

9 MR. RAO: Under (a)(1)(A), the  
10 certification required under 811 -- it is not 811.  
11 Under 813.304(b), does it take into consideration  
12 that the levels of the monitored constituents  
13 should be within the zone of attenuation or just at  
14 the edge of the unit?

15 (Chairman Manning exited the  
16 hearing room.)

17 MR. HILBERT: If I understand your  
18 question right, the certification in 304(b), you  
19 are questioning if it -- I mean, what realm does it  
20 encompass?

21 MR. RAO: Yes.

22 MR. HILBERT: If I understand 304(b), and  
23 I am doing this from memory, that is just basically  
24 certifying that nothing has changed from the

1 original groundwater impact assessment that was  
2 completed for the facility, if I am correct. And  
3 that would encompass -- actually, when you are  
4 preparing groundwater impact assessments, you are  
5 looking at not only the waste footprint, the zone  
6 of attenuation, point of compliance, but you are  
7 also looking at the type of geology outside of that  
8 region, because you need to understand groundwater  
9 flow directions, background groundwater quality and  
10 other issues.

11           So, yes, it covers the waste footprint,  
12 the zone of attenuation, the point of compliance,  
13 but it also covers some site-specific areas outside  
14 of that boundary that are unique to each site when  
15 you prepare your groundwater impact assessment.

16           MR. RAO: So the certification involves  
17 more than just, you know, demonstrating that the  
18 monitoring constituents meet all the MAPCs within  
19 the zone of attenuation?

20           You have two options in your proposed  
21 amendment, and one is the certification or an  
22 operator could just demonstrate, you know, the  
23 groundwater within the zone of attenuation meets  
24 the MAPC?

1                   MR. LISS: I guess I need to know if you  
2 are asking how we plan to do it in the regulatory  
3 framework as opposed to how the operator --

4                   MR. RAO: I was looking at this and  
5 basically the certification where no data is  
6 provided to the Agency you could see whether they  
7 meet the levels so --

8                   MR. LISS: Well, you have to --

9                   MR. RAO: Monitoring, would it be more  
10 appropriate to just go with the monitoring data to  
11 show whether they meet the MAPCs or not?

12                   MR. LISS: All right. I am ready to  
13 answer. You have to read that with part of (a).  
14 You said that first that doesn't require the  
15 submittal of any data. Basically it is  
16 certification.

17                   Under (a) there is some criteria listed  
18 here, one through five, and that if any of these  
19 things occur that, obviously, they can't meet (b).  
20 That's a compliance issue, first of all, whether or  
21 not they have told us if any of these things have  
22 or have not occurred. That's a compliance issue  
23 there. We have reviews, file reviews, and tracking  
24 these things that happen.

1                   So assuming that they meet (b), no, they  
2 would not submit anything different for that, but  
3 with the data that we get throughout the year, the  
4 data that comes in quarterly, we easily would be  
5 able to verify that, and that's what we plan to  
6 do. We don't want all that data resubmitted under  
7 (b) because we already have it.

8                   MR. RAO: Okay. You are still going to  
9 look at the data that you review with the  
10 compliance?

11                  MR. LISS: Yes. At the first part I was  
12 a little confused. I think you were getting at  
13 what if the MAPC is found to be exceeded?

14                  MR. RAO: Yes. My concern was you have  
15 two options here. One is the certification which  
16 just states, you know, the original groundwater  
17 impact assessment still applies, or an operator  
18 could demonstrate that they meet all MAPCs within  
19 the zone of attenuation. So I was looking at those  
20 two options and I was asking you, you know, in a  
21 detection monitoring, would you rather have a  
22 demonstration or a certification.

23                  MR. LISS: It is in the context of a  
24 renewal, and for that we already have the data. I

1 would rather -- we prefer the way it is written as  
2 a certification.

3 MR. RAO: Okay.

4 MR. LISS: But there might be -- the  
5 alternate serves as two functions. One, that they  
6 could have exceedance of MAPC at the time and when  
7 they submit that we are going to look at that.  
8 There is other triggering mechanisms that are  
9 required by the rules for the evaluation of  
10 groundwater data and also put into the permit when  
11 we issue that we would already know that they  
12 reported that to us under the assessment being  
13 triggered into assessment.

14 When the renewal comes up, it could be  
15 that a facility can't make this but they were  
16 triggered into assessment. I am sure at that point  
17 they would give us that information and show us  
18 that basically going through the administrative  
19 functions of responding to an assessment and the  
20 MAPC could, at that point, be an analytical error,  
21 a false-positive, and then maybe we would rely on  
22 the assessment data and still probably allow them  
23 with the certification in (b) to go to the  
24 monitoring. Does that answer your question?

1 MR. RAO: It kind of clears it up, yes.

2 MS. LISS: Okay.

3 MR. RAO: Under 811.319 (a)(1)(A), if the  
4 groundwater monitoring results indicate that the  
5 monitored unit constitutes a threat to groundwater,  
6 would the monitoring frequency revert back to a  
7 quarterly interval?

8 MR. BAKOWSKI: Can you repeat that,  
9 please?

10 MR. RAO: Yes. If the groundwater  
11 monitoring results indicate that the monitored unit  
12 constitutes a threat to groundwater, would the  
13 monitoring frequency revert back to quarterly  
14 intervals?

15 MR. LISS: We have that technical data  
16 that would trigger an assessment, and under  
17 assessment monitoring we would still have increased  
18 monitoring which could be quarterly or some other  
19 frequency that we maintain that monitoring at that  
20 frequency until such time it was cleared up or it  
21 went to corrective action.

22 MR. RAO: Okay.

23 HEARING OFFICER TIPSORD: I have a  
24 general question, as well. In Section 813.501,

1 there is a requirement having to do with a  
2 modification that is nonsignificant and --

3 MS. MUNIE: Do you mean 103?

4 MR. BAKOWSKI: 501 is annual reports.

5 HEARING OFFICER TIPSORD: I am sorry.

6 Yes, 813.103. The provision would allow the Agency  
7 30 days to review that modification, and there is a  
8 possibility that -- in fact, it says the Agency's  
9 decision deadline date shall be stated as  
10 determined -- as of the date of such written notice  
11 the Agency's determination date -- my question is  
12 having to do with the possibility that this 30 days  
13 could extend the Agency's 180 day decision deadline  
14 or 90 day decision deadline assessed in the  
15 statute. And, in fact, I believe that Mr. Bakowski  
16 and Mr. Hilbert both referred to the fact that if  
17 this modification came in the last 30 days it  
18 could, in fact, extend that time.

19 My general question is since the statute  
20 sets your deadline at 90 or 180 days, and most  
21 would be 180 days in this context, what is your  
22 authority for extending that time, or do you see  
23 that as, in fact, extending the statutory time?

24 MR. BAKOWSKI: No, our understanding is

1 that that modification is -- it makes it a new  
2 application. So that time starts over again.

3 HEARING OFFICER TIPSORD: Even a  
4 modification that is not significant?

5 MR. BAKOWSKI: By the wording in this  
6 rule we intended that to mean that even an  
7 insignificant modification is -- makes it a new  
8 application. For example, in the composting rules,  
9 any modification at all, no matter what, it defines  
10 that in the rules that that makes it a new  
11 application. So we paralleled that. Clearly,  
12 right now significant modifications make it a new  
13 application. We wanted to add minor modifications.

14 HEARING OFFICER TIPSORD: So any  
15 modification would be considered a new application  
16 and start the time frame over again?

17 MR. BAKOWSKI: Right. And then by rule  
18 we have a new deadline to decide similar. Right  
19 now operating permits under 807, there is a  
20 provision where we have to do them within 45 days  
21 even though there is no statutory deadline.

22 HEARING OFFICER TIPSORD: Yes, Mr. Van  
23 Ness?

24 MR. VAN NESS: I am going to jump in here

1 even though this isn't, per se, an issue that is  
2 terribly near and dear to the NSWMA's heart, per  
3 say. We view this as more of a holding type  
4 provision. It is not necessarily one that messes  
5 with the statute. What we see this is is a safe  
6 haven for the Agency and the applicant to basically  
7 arrive at the decision as to whether this is or is  
8 not a sig mod in the first place.

9           If the decision is that it is not, you  
10 will notice that the way that this section is  
11 worded that the clock then picks up where it left  
12 off subject to this possible 30-day umbrella  
13 period, which to the extent possible is tucked  
14 within the existing statutory deadline. Only when  
15 you get to that eleventh hour change, when the  
16 Agency desperately needs the ability to make the  
17 decision, is this or is this not a sig mod, that  
18 this extension comes into play. We view it more as  
19 a holding while that decision is made. Once that  
20 decision is made, then the clock is back on.

21           But I don't think that this poses a  
22 statutory construction problem. JCAR may have a  
23 disagreement with us on that. I think a fair  
24 reading of the statute is almost to the doctrine of

1 necessity. At some point in time the Agency simply  
2 must have the time to make the determinations to go  
3 through the data submitted to it before making  
4 decisions.

5           The alternative is satisfactory to both  
6 the Agency and to the regulated community, which  
7 would be the Agency would have to maybe either  
8 allow something to pass that might or might not  
9 qualify the sig mod or, alternatively, reject the  
10 permit, start the clock over again, simply to  
11 preserve the statutory time limits. That seems to  
12 be a tremendous waste of administrative resources.  
13 So I guess I am kind of invoking a doctrine of  
14 necessity in terms of providing the Agency the time  
15 it clearly needs.

16           MR. RAO: I have a clarification question  
17 for the Agency. Does the Agency make the  
18 determination whether the modification is a  
19 significant modification or -- I don't know what --

20           MR. BAKOWSKI: Yes. Whenever a  
21 modification comes in we have to because it effects  
22 our decision.

23           MR. RAO: That would be in accordance  
24 with the definition of a significant modification?

1 MR. BAKOWSKI: Right.

2 MS. MUNIE: Yes.

3 MR. BAKOWSKI: The current definition of  
4 significant modification was really contemplated in  
5 the context of an operating permit, not an  
6 application that is not really there yet. We  
7 rather than really just rewrite the definition of  
8 significant modification. We thought we would do  
9 it by calling it a nonsignificant or some other  
10 kind.

11 MR. RAO: Okay.

12 HEARING OFFICER TIPSORD: So to make  
13 clear, then, what you envision is that this would  
14 hold the decision deadline, for example, if it came  
15 in on the 135th day or the 150th day that you would  
16 hold for 30 days that decision deadline and then  
17 kick it back in once you decided what this was and  
18 say it is a nonsignificant modification you would  
19 start over and the Agency would have another 25  
20 days then to make it's decision after that initial  
21 30 so it would add --

22 MR. BAKOWSKI: Let's say if it came in on  
23 the 170th day, okay, and we considered it at a  
24 minimum it would go to 200 because you have got 170

1 plus 30. Okay. If it was significant, then you  
2 would have 170 plus 180, whatever that is.

3 HEARING OFFICER TIPSORD: Therein lies my  
4 question. You are, then extending the decision  
5 deadline.

6 MR. BAKOWSKI: No. Right now when a  
7 significant modification comes in on day 170 it  
8 goes to 180.

9 HEARING OFFICER TIPSORD: I understand  
10 that, Mr. Bakowski. But if it is a significant  
11 modification you view that as a new application you  
12 start the clock over for another 180 days. What  
13 you are doing now is saying that we get 30 days to  
14 decide if it is a significant modification.

15 MR. BAKOWSKI: No, not necessarily,  
16 because it has to be either a minor or a  
17 significant, okay. So by the regulatory language  
18 you are making it a modification.

19 HEARING OFFICER TIPSORD: If I modify my  
20 permit on the 170th day, you have now another 30  
21 days, so you are getting another 20 days beyond the  
22 statutory 180 days to make the decision.

23 MR. BAKOWSKI: No, what I am saying is we  
24 have a new application which is the result of a

1 minor modification and we have 30 days to review  
2 that. And you could extend -- like, you could  
3 extend it -- it is a new application so statutorily  
4 we have 180 days but through negotiations with  
5 NSWMA, we decide that those we are going to turn  
6 in -- have the rule establish a 30 day deadline  
7 similar to 807 operating permits that are right now  
8 45 days even though there is no statutory deadline  
9 for 45 days. See, I think the Board can establish  
10 a shorter time than the statutory time frame and  
11 that's what we are proposing here, is to establish  
12 a shorter time frame rather than doing it similar  
13 to the composting applications where we said any  
14 change is a new one and starts the statutory time  
15 frame over. This does start the statutory time  
16 frame over, but by rule you are making it shorter.

17 HEARING OFFICER TIPSORD: But if it comes  
18 in on the 145th day, it doesn't start the statutory  
19 time frame over.

20 MR. BAKOWSKI: Any modification starts  
21 the statutory time frame over but the Board is --

22 HEARING OFFICER TIPSORD: Okay, but now  
23 you just by saying that you just trapped yourself  
24 into the -- if they bring in something on day one,

1 and they modified it day two, you only have 30 days  
2 to approve or disapprove the application.

3 MR. BAKOWSKI: Good point. I think we  
4 can -- if that's your issue, I think we want to  
5 address that and clarify that. We will never  
6 shorten that original one.

7 MR. VAN NESS: If I could clarify that,  
8 Madam Hearing officer, I wasn't sure if I was  
9 getting your point either. Now I think I am. I  
10 want to make sure so we want to respond to that.  
11 If I understand correctly, your concern is that the  
12 additional 30 days might end up coming in addition  
13 to the subsequent 180 days if we should determine  
14 that this was indeed a significant modification.  
15 Is that correct? Do I understand that right.

16 HEARING OFFICER TIPSORD: My concern is  
17 that you are creating a whole new --

18 MR. VAN NESS: 210 days.

19 HEARING OFFICER TIPSORD: -- permutation  
20 year that triggers -- really becomes a concern to  
21 me when you get beyond that 150 days. And what you  
22 are saying is if it comes in any time before the  
23 150 days it has no effect -- unless it becomes a  
24 significant modification, it has no effect on the

1 180 days, but if it comes in on the 151st day, then  
2 it becomes the new application but only if it comes  
3 in on the 151st day. I see some real legal issues  
4 with that. I would like to see some discussion or  
5 some explanation on that. You see what I am  
6 saying.

7 MS. DYER: I think this is a legal issue  
8 and it would involve construing the statute. I see  
9 your point and I think that we would have to  
10 interpret final action but maybe we should respond  
11 in our comments.

12 HEARING OFFICER TIPSORD: I think that is  
13 probably a good idea to see some legal discussion  
14 on it. I think at a minimum we need to include  
15 something in the Board's opinion clarifying this.

16 Were there any questions from anyone in  
17 the audience?

18 Seeing none, are there anymore from the  
19 Board?

20 BOARD MEMBER GIRARD: I have some  
21 questions considering new section 813.504. That's  
22 on page 64 of the proposal. This section concerns  
23 an annual report that is supposedly to be kept at  
24 or near the facility for inspection by Agency

1 personnel pursuant to I think it is section before  
2 813.503. If the Agency desired to have a copy of  
3 this annual report, would a copy be made available  
4 to the Agency?

5 MS. MUNIE: The information in the annual  
6 report itself would be available for anyone to  
7 inspect at the facility itself including the Agency  
8 to inspect at the facility.

9 BOARD MEMBER GIRARD: Well, now, when you  
10 say "anyone," does that include a member of the  
11 public?

12 MS. MUNIE: As part of the operating  
13 record, yes, it would be. This is all information  
14 that is required in the operating record, and  
15 that's available to anyone.

16 BOARD MEMBER GIRARD: So if a member of  
17 the local Sierra Club, just to take an example,  
18 desired to come in during normal working hours and  
19 inspect these annual reports that would be made  
20 available to that person?

21 MS. MUNIE: At a municipal solid waste  
22 landfill, that's the kicker. Yes, 811.112 all of  
23 the information that is required to be combined and  
24 kept in the annual report is also required under

1 811.112 for the record keeper requirements for  
2 municipal solid waste landfills. So municipal  
3 solid waste landfills, yes, it would be available  
4 to anyone. Legally I am not sure whether anyone  
5 can go on any other site and ask for their annual  
6 report, like chemical waste landfills. To answer  
7 your question, we don't believe it would be  
8 available to anyone except for municipal solid  
9 waste landfills.

10 MR. VAN NESS: We will look into that.

11 BOARD MEMBER GIRARD: You see only that  
12 one class of landfill having that annual report  
13 available to members of the public?

14 MS. MUNIE: I believe that's probably  
15 true.

16 BOARD MEMBER GIRARD: But it is available  
17 to the Agency?

18 MS. MUNIE: It is available to the  
19 Agency, yes.

20 BOARD MEMBER GIRARD: So it is public  
21 information?

22 MS. MUNIE: It is available for the  
23 Agency to see. It is not -- we do not have a  
24 requirement in here that allows us to require that

1 they submit it to us.

2 MR. RAO: But most of the information  
3 that is listed here the Agency does get that  
4 information under other requirements or rules?

5 MR. BAKOWSKI: Right.

6 MS. MUNIE: Yes.

7 MR. RAO: Other information can be  
8 available to the public?

9 MS. MUNIE: Right. The public would have  
10 to go through our files. It is not available at  
11 one report within our files but the information  
12 itself is.

13 MR. BAKOWSKI: Under a FOIA request they  
14 could specifically list all these documents and  
15 obtain them through the Freedom of Information Act.

16 MR. HILBERT: They can FOIA all the  
17 components of 504 separately from the Agency.

18 MS. MUNIE: Yes.

19 BOARD MEMBER GIRARD: I understand that  
20 this annual report is basically a compilation of  
21 quarterly groundwater monitoring reports and other  
22 data which comes to the Agency and which would be  
23 available at the Agency for inspection, but  
24 certainly it is put together in a different way and

1 there are some items that, you know, may possibly  
2 be of interest to the public, and I was just  
3 wondering if the public then went to the Agency and  
4 FOIAed the annual report for facilities which were  
5 not municipal solid waste landfills may not be  
6 available under statute or regulation, would the  
7 Agency have to go to that facility to get a copy  
8 and then supply it to the public? It seems like --

9 MR. BAKOWSKI: I am looking at my  
10 attorneys here, but if has not been submitted to  
11 the Agency and get a request for it under FOIA, I  
12 don't think we are obligated to go out and get it.  
13 The way this is set up, they have to keep it at the  
14 facility and not submit it to us. If we have a  
15 FOIA request for that, we have -- it would not be a  
16 state record at that time.

17 BOARD MEMBER GIRARD: So then as one  
18 consequence of this not being submitted to the  
19 Agency, it is hidden from the public?

20 MS. MUNIE: Compiling in this manner it  
21 could be considered hidden from the public. The  
22 information would be available in our files and  
23 would be available to the public but compiled in  
24 the manner of annual reports, I don't believe it is

1 available to the public.

2 BOARD MEMBER GIRARD: Well, so the  
3 question I have then is, why doesn't the Agency  
4 just get a copy of this annual report? I  
5 understand you are trying to cut down on paperwork  
6 and storing paper documents but nowadays, I mean,  
7 you could get a computer disk of this annual report  
8 once a year and it would be very easy to store and  
9 wouldn't have these questions about whether or not  
10 it is available for the public because it would  
11 be -- I see it as public information.

12 MR. VAN NESS: If I may, I suppose we  
13 could address it in our subsequent written remarks,  
14 but I think the question, again, is not public  
15 information. The issue is the format, it seems to  
16 me. Our thesis has been in this all of the  
17 information that is compiled in the annual report  
18 is already submitted on a far more current basis  
19 four times a year in the quarterly reports. So the  
20 loss is of format. I am not sure that there is any  
21 public right to format. There certainly is a  
22 public right to information, but our thesis is that  
23 the information is in there. If someone wanted to  
24 submit a FOIA request asking for the last four

1 quarterly reports, they have the net effect -- they  
2 have, in effect, I suppose a running annual report  
3 that is probably more current than what they would  
4 be able to get otherwise. If I submit a request  
5 today for the most recent annual report I am  
6 getting information that is 9 months old. On the  
7 other hand, if I submit a request today for the  
8 last four quarterly reports, I have information  
9 that is not more than three months stale. It is  
10 far more current. It may not be set out in the  
11 exact same format. Frankly, I am not sure whether  
12 one format is superior to the other for the purpose  
13 of some member of the public, but it occurs to me  
14 that if the data is there the information is there  
15 and the public interest is served in either  
16 respect, in either way. There is certainly nothing  
17 in the statute that says that the public has a  
18 right to information in a specific format as long  
19 as the information is understandable and  
20 available. So I think we need to understand what  
21 the issue here is strictly format and not the  
22 availability of information. Nevertheless, we will  
23 be happy to submit the written response to you and  
24 kind of discuss that issue. Perhaps we can lay out

1 what the formatting differences are and address  
2 those.

3 BOARD MEMBER GIRARD: Thank you for your  
4 comments. I appreciate your concerns in trying to  
5 reduce paperwork, and I agree that the data will be  
6 available at the Agency in different forms than,  
7 say, quarterly, biannual reports. However, I also  
8 see evaluation of data here. I think that goes  
9 beyond just having data available. There is lot of  
10 data out there but, quite frankly, it is hard to  
11 evaluate that data many times which determines what  
12 people think is going on. So that is something  
13 that we need to look at and hopefully you will  
14 address in the comments, is whether or not the  
15 evaluation of the data is still going to be there  
16 for the public. Because it is the evaluation that  
17 determines how that data is a used, how that data  
18 is viewed, and what value is placed on that data.  
19 So it is not just a matter of having the data in a  
20 form available. It is a matter of how that data is  
21 evaluated, which needs to be available to the  
22 public.

23 MR. VAN NESS: I think I would agree with  
24 that. You know, I have been working on the premise

1 that the data is usable in either format. But I  
2 think we do need to go back and address that and  
3 see if there is information that becomes difficult  
4 to the point of material concern as to whether a  
5 member of the public is interested might get lost  
6 going through the quarterly data and not have the  
7 ability to analyze or evaluate what is in front of  
8 them. I think that's a legitimate issue that we  
9 can discuss and supply to the Board in writing.

10 BOARD MEMBER GIRARD: Thank you.

11 HEARING OFFICER TIPSORD: Let's go off  
12 the record for a second.

13 (Discussion off the record.)

14 HEARING OFFICER TIPSORD: Back on the  
15 record.

16 We have a second hearing scheduled in  
17 this proceeding for November 19th in Chicago at  
18 Room 11-504, I think it is. It is the Board's  
19 conference room. We are trying to check into  
20 getting a larger room although that may not be  
21 necessary. If we do change it, it will be posted  
22 at the desk at 11-500, so you will be able to find  
23 it fairly easily.

24 We have set November -- after the

1 discussion off the record we decided that November  
2 12th will be the deadline for prefiling testimony.  
3 That is in the Board's office on November 12th.  
4 Then we can proceed on the 19th. After the hearing  
5 on the 19th we can discuss how best the proponents  
6 see the proceeding going as far as the final  
7 comment and all of that should come in, final  
8 first -- pre first comments. We have first notice  
9 at this time and also as a point I have noticed in  
10 going through this there are some typographical  
11 style errors some references to paragraphs,  
12 subsections and things like that. If you would  
13 like to take a look at those and present an errata  
14 sheet it would be helpful to the Board. I found  
15 some, but it is always helpful to have more eyes on  
16 those kinds of things.

17           Was there anyone else here who wanted to  
18 testify today or say anything on the record?

19           All right. Seeing nothing, I think that  
20 pretty much concludes the business for today. I  
21 think you all very much. It has been a very  
22 productive hearing. I look forward to more comment  
23 and seeing you on the 19th. This hearing is  
24 closed.

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

3 C E R T I F I C A T E  
4

5 I, DARLENE M. NIEMEYER, a Notary Public  
6 in and for the County of Montgomery, State of  
7 Illinois, DO HEREBY CERTIFY that the foregoing 57  
8 pages comprise a true, complete and correct  
9 transcript of the proceedings held on the 27th of  
10 October A.D., 1997, at the Illinois State Capitol  
11 Building, Room 400, Springfield, Illinois, in the  
12 matter of: Municipal Solid Waste Landfill Rules:  
13 Amendments to 35 Ill. Adm. Code 811, 813, and 848,  
14 in proceedings held before the Honorable Marie  
15 Tipsord, Hearing Officer, and recorded in machine  
16 shorthand by me.

17 IN WITNESS WHEREOF I have hereunto set my  
18 hand and affixed my Notarial Seal this 5th day of  
19 November A.D., 1997.  
20

21 Notary Public and  
22 Certified Shorthand Reporter and  
23 Registered Professional Reporter

24 CSR License No. 084-003677  
My Commission Expires: 03-02-99