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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**IN THE MATTER OF:
PROPOSED AMENDMENTS TO CLEAN CONSTRUCTION
OR DEMOLITION DEBRIS FILL OPERATIONS (CCDD):
PROPOSED AMENDMENTS TO 35 Ill. Adm. Code 1100**

DOCKET NO. R12-009

HEARING

SEPTEMBER 26, 2011

ORIGINAL

NATIONWIDE SCHEDULING

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau ■ **KANSAS** Overland Park ■ **ILLINOIS** Springfield

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

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PROPOSED AMENDMENTS TO)

CLEAN CONSTRUCTION OR)

DEMOLITION DEBRIS FILL)

Docket No. R12-009

OPERATIONS (CCDD):)

(Rulemaking - Land)

PROPOSED AMENDMENTS TO)

35 Ill. Adm. Code 1100)

HEARING HELD

SEPTEMBER 26, 2011

(Hearing commenced at 12:30 p.m.)

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I N D E X

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7 Permit Section, Bureau of Land
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9 Mr. Stephen F. Nightingale, P.E.
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10 Mr. Douglas W. Clay, P.E.
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IEPA Staff Present:
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1 MS. TIPSORD: Good afternoon. My name is
2 Marie Tipsord and I've been appointed by the Board to
3 serve as hearing officer in this proceeding entitled
4 Proposed Amendments To Clean Construction Or
5 Demolition Debris Fill Operations (CCDD): Proposed
6 Amendments to 35 Ill. Admin. Code 1100. The Docket
7 Number is R12-9.

8 To my immediate left is Acting Chairman G.
9 Tanner Girard. He's the presiding Board Member
10 assigned to this matter. To my far right is Board
11 Member Thomas Johnson, and to my immediate right is
12 Anand Rao from our technical unit.

13 The purpose of today's hearing is to hear
14 prefiled testimony of the Illinois Environmental
15 Protection Agency and allow questions to be asked of
16 the Agency. The witnesses for the Agency are Douglas
17 Clay, Stephen Nightingale, Paul Purseglove, and Leslie
18 Morrow.

19 We will swear the witnesses in, enter the
20 testimony as if read as an exhibit, and then begin
21 with the questions. Many of the questions are
22 addressed to the panel, so we will have the witnesses
23 as a panel.

24 We will begin with the questions filed by

1 the Illinois Association of Aggregate Producers, then
2 proceed with Waste Management of Illinois, and
3 conclude with Land Reclamation & Recycling
4 Association. And that order is based purely on the
5 number of questions. The Aggregate Producers had the
6 most questions, so I thought that might be the
7 smartest way to start, and we can follow up there.

8 And anyone may ask a question. However, I
9 do ask you raise your hand, wait for me to acknowledge
10 you. After I have acknowledged you, please state your
11 name and who you represent before you begin your
12 question.

13 Please speak one at a time. If you speak
14 over each other, the court reporter will not be able
15 to get your questions on the record.

16 Please note that any question asked by a
17 Board member or staff are intended to help build a
18 complete record for the Board's decision and not to
19 express any preconceived notion or bias.

20 Are there any questions on how we're going
21 to proceed today?

22 (No response)

23 MS. TIPSORD: Dr. Girard.

24 DR. GIRARD: Good afternoon. On behalf of

1 the Board, I welcome everyone to the hearing.

2 There's already been a considerable amount
3 of work put into this proceeding. We're very grateful
4 for that. And we look forward to the testimony and
5 questions this afternoon to round out the record.
6 Thank you.

7 MS. TIPSORD: With that, I believe we're
8 going to go to the Agency.

9 MR. WIGHT: Good afternoon. My name is
10 Mark Wight and I'm an Assistant Counsel with the
11 Illinois Environmental Protection Agency. I've worked
12 for the Agency for about 20 years and most of my work
13 is with the Bureau of Land.

14 Also assigned to this project are
15 Assistant Counsels Stephanie Flowers on my left and
16 Kim Geving who is in the second row.

17 Also here on behalf of the Agency are the
18 four witnesses who have prefiled testimony, three
19 additional witnesses who will participate on the
20 panel, and additional staff members who are here in a
21 consulting role.

22 The four witnesses who have prefiled
23 testimony are Doug Clay, Manager of the Division of
24 Land Pollution Control in the Bureau of Land -- Doug,

1 if you'd raise your hand and kind of acknowledge --
2 Steve Nightingale, Steve is manager of the Bureau of
3 Land, Permit Section; Paul Purseglove, Paul is manager
4 of the Bureau of Land, Field Operations Section; and
5 Les Morrow, Environmental Toxicologist in the Agency's
6 Toxicity Assessment Unit.

7 The three additional witnesses on the
8 panel are Dr. Tom Hornshaw, who is manager of the
9 Agency's Toxicity Assessment Unit; Chris Liebman,
10 Chris is the manager of the Solid Waste Unit in the
11 Bureau of Land, Permit Section; and Terri Blake Myers,
12 Manager, RCRA - Groundwater Assistance Unit in the
13 Bureau of Land, Permit Section.

14 Additional staff members here on behalf of
15 the Agency who have also been involved in the work
16 groups are Heather Nifong, Programs Advisor in the
17 Bureau of Land; Tom Hubbard, Environmental Protection
18 Engineer III in the Solid Waste Unit of the Bureau of
19 Land, Permit Section; Greg Morris, Environmental
20 Protection Engineer III in the Solid Waste Unit of the
21 Bureau of Land, Permit Section; and Jacki Cooperider,
22 Environmental Protection Engineer III in the Solid
23 Waste Unit of the Bureau of Land, Permit Section.

24 Is this the point where you would like to

1 swear in the witnesses?

2 MS. TIPSORD: Yeah. Let's go ahead and do
3 that.

4 MR. WIGHT: Okay.

5 MS. TIPSORD: If you would all raise your
6 hands.

7 (Whereupon the witnesses were duly
8 sworn.)

9 MS. TIPSORD: Do you want to go ahead and
10 enter the testimony as an exhibit at this point?

11 MR. WIGHT: That would be fine.

12 MS. TIPSORD: All right.

13 MR. WIGHT: And then I'll have a few
14 remarks, as will Doug Clay.

15 MS. TIPSORD: If there's no objection, we
16 will enter the testimony as if read, starting with the
17 testimony of Stephen F. Nightingale as Exhibit 1, if
18 there's no objection.

19 Seeing none, it's Exhibit 1.

20 The testimony of Paul Purseglove will be
21 Exhibit 2 if there's no objection.

22 Seeing none, it's Exhibit 2.

23 The testimony of Douglas Clay will be
24 Exhibit 3 if there's no objection.

1 Seeing none, it's Exhibit 3.

2 And finally, the testimony of Leslie
3 Morrow will be Exhibit 4, if there's no objection.

4 Seeing none, it's Exhibit 4.

5 Go ahead, Mr. Wight.

6 MR. WIGHT: Some may have noticed that
7 this is a larger contingent of witnesses and
8 supporting staff than the Bureau of Land typically
9 would bring to a regulatory hearing. And the
10 explanation for that is in the way that the project
11 was assigned out.

12 The statutory provisions require or
13 authorize numerous technical and operational revisions
14 to the existing Part 1100 rules, as well as the
15 addition to the rules of the soil-only fill sites.
16 Stephanie Flowers and the Bureau of Land participants
17 were assigned that task. They are the remaining and
18 new members of the work group that brought the
19 original Part 1100 proposal to the Board in late 2005
20 in PCB R2006-19.

21 The statute also requires the development
22 of maximum allowable concentrations of contaminants in
23 uncontaminated soil for purposes of CCDD fill
24 operations. A second work group was assigned to this

1 task. That work group consists of me, the
2 toxicologists, and some of the members of the primary
3 work group.

4 In addition to having overlapping
5 membership, portions of the two work groups met
6 periodically throughout the project to update the
7 others on the progress that was being made and also to
8 discuss and attempt to revolve outstanding issues.

9 Once that process was completed, Subpart F
10 was then merged with the proposed amendments to the
11 rest of Part 1100, resulting in the proposal before
12 you today.

13 So this provides some of the background on
14 how the proposal was developed and explains the number
15 of Agency personnel here today.

16 I'd also like to turn it over to Doug
17 Clay, who has a few remarks in opening.

18 MR. CLAY: Good afternoon. My name is
19 Doug Clay, and I would like to provide just a brief
20 opening statement with regard to the Agency's
21 proposal.

22 Public Act 96-1416 became law on July
23 30th, 2010. It requires that the Illinois EPA propose
24 rules to the Illinois Pollution Control Board within

1 one year, by July 30th, 2011, to establish additional
2 technical standards for CCDD facilities currently
3 regulated by the Illinois EPA, set operating standards
4 for uncontaminated soil fill operations, and develop
5 standards for maximum allowable concentrations of
6 chemical constituents in uncontaminated soil generated
7 during construction or demolition activities used as
8 fill at either of these types of sites.

9 Some of the major provisions of the
10 proposed rule include: professional engineer and
11 geologist uncontaminated soil certifications, methods
12 for determining numeric standards for uncontaminated
13 soil going to regulated sites, operating standards for
14 uncontaminated soil fill operations that had not
15 previously been regulated, and groundwater monitoring
16 at sites subject to this rule.

17 Illinois EPA's goal was to propose a rule
18 that is fair and workable while also being
19 sufficiently protective of the environment. To do
20 this, we sought input from a diverse set of
21 stakeholder groups. We posted interactive drafts --
22 or, interim drafts of the rule on Illinois EPA's
23 website for comment on February 17th and April 29th,
24 and from these two drafts received 160 comments from

1 over 24 stakeholders. And some of the stakeholders
2 included the Illinois Association of Aggregate
3 Producers, the Illinois Society of Professional
4 Engineers, the Illinois Landscape Contractors
5 Association, and the Illinois Department of
6 Transportation.

7 Illinois EPA appreciates the comments,
8 issues, and concerns raised by the stakeholders.
9 Their careful review of the draft proposal greatly
10 improved our approach to regulating CCDD and
11 uncontaminated soil. I would like to emphasize that
12 we reviewed and considered all of the comments and
13 revised our draft rules as we believe appropriate to
14 create the proposed rule that is currently before the
15 Board.

16 As I mentioned, Illinois EPA made a number
17 of changes as a result of comments received on our
18 draft rules. Some of the more significant changes
19 include an addition -- the addition of professional
20 geologists to certify uncontaminated soil, replacing
21 the term "industrial/commercial" with "potentially
22 impacted property", revising the definition of "other
23 excavation", and taking into consideration dewatering
24 activities when establishing the groundwater

1 monitoring requirements.

2 And finally, I would like to point out
3 there are two areas that received considerable
4 attention from both the Agency in our internal
5 discussions and from stakeholders.

6 One is the use of background values in
7 development -- in developing standards for
8 uncontaminated soil. The statute was amended with
9 Public Act 97-137 on July 14th, 2011, to allow the use
10 of background, and consequently, our proposal includes
11 background values in the maximum allowable
12 concentrations for soil.

13 And two, the Agency decided to require
14 groundwater monitoring. The Agency believes that
15 certification and the screening procedures will be
16 effective in ensuring that only uncontaminated soil
17 goes to CCDD and soil fill operations. However, no
18 system is fail-proof. We believe that groundwater
19 monitoring should be required to verify that
20 groundwater, an essential natural resource, is not
21 adversely impacted.

22 Thank you.

23 MS. TIPSORD: Anything further?

24 MR. WIGHT: I believe that's it.

1 MS. TIPSORD: Okay. All right. And then
2 let's begin with the Illinois Aggregate -- Association
3 of Aggregate Producers, please.

4 Whenever you're ready, if you could
5 introduce yourself and who's with you for the record.

6 MR. HENRIKSEN: Thank you. My name is
7 John Henriksen. I'm the Executive Director of the
8 Illinois Association of Aggregate Producers, and I'm
9 making an appearance today as counsel for the
10 association.

11 With me to my right is technical expert
12 John Hock from Civil & Environmental Consultants, Inc.

13 There may be a point where I ask the
14 Hearing Officer's indulgence to perhaps get leave from
15 the Board to have Mr. Hock ask a question or two. But
16 during this he'll be, I'm sure, submitting some
17 follow-up questions for me.

18 MS. TIPSORD: Okay. Thank you.

19 MR. HENRIKSEN: Now, I know that you all
20 plan to answer as a panel, but we tried to in our
21 prefiled testimony point you to the part of the set of
22 testimony that we're referring to.

23 Referring to Steve Nightingale,
24 Mr. Nightingale's testimony, at pages 5 and 37, states

1 at a CCDD or uncontaminated soil operation where a
2 cone of depression is maintained, a verification
3 report and annual notifications must be submitted to
4 the Agency.

5 What are the requirements of this report
6 and subsequent annual notifications?

7 MR. NIGHTINGALE: In the proposed
8 amendments to Part 1100.103, dewatering is defined as
9 removing water from a fill operation such that a cone
10 of depression is created. Therefore, initial reports
11 demonstrating that a fill operation is being dewatered
12 would logically include things like the rate at which
13 the water was pumped out of the fill operation over
14 the past year, as well as the pumping rate anticipated
15 during the next year, and drawings showing the current
16 and anticipated configuration of the cone of
17 depression, i.e. its depth, lateral extent, and shape,
18 based on calculations and/or field data. The same
19 type of information would need to be provided in the
20 subsequent annual updates.

21 MR. HENRIKSEN: Thank you.

22 Stephen Nightingale's testimony, at pages
23 6, 11, and 12, outlines the IEPA's rationale for
24 replacing the commercial/industrial standard in

1 Section 100.103 with a new standard entitled
2 potentially impacted property.

3 Please provide examples of properties the
4 IEPA would not consider potentially impacted.

5 MS. TIPSORD: And, Mr. Henriksen, are you
6 referring to 1100.103?

7 MR. HENRIKSEN: I certainly am. Thank you
8 for that. Yes, I certainly am. Thank you.

9 MR. NIGHTINGALE: The decision as to
10 whether a property is potentially impacted must be
11 made on a case-by-case basis. Potentially impacted
12 property means property on which an historical or
13 current use or contaminant migration from a nearby
14 site increases the presence or potential presence of
15 contamination at the source site.

16 MR. HENRIKSEN: How does an owner or
17 operator determine if a property is potentially
18 impacted?

19 MR. NIGHTINGALE: When determining whether
20 a property is potentially impacted, the owner or
21 operator should consider the current use of the
22 property, the prior use of the property, and the use
23 of the adjoining property.

24 MR. RAO: May I ask a follow-up question?

1 MR. HENRIKSEN: Certainly.

2 MR. RAO: The response that you just gave
3 now appears to be part of a Board note in the
4 proposal. Is that right? How an owner or operator
5 determines what a potentially impacted property is.

6 MR. NIGHTINGALE: I believe it is. It's
7 identified in the definition, but there is a Board
8 note also.

9 MR. RAO: Yeah. The Board note, the way
10 it's stated here, it almost seems like it's a
11 requirement for an owner or operator to go through
12 some of the things that you are mentioning in the
13 Board note. And the question is, should that note be
14 made part of the rule language?

15 Just to give you some background, a lot of
16 times we have issues with the JCAR when they see
17 substantive Board notes but they're not part of the
18 rule language since the Board notes cannot be
19 enforced. And we just wanted to know if they should
20 be part of the rule.

21 MR. NIGHTINGALE: Are you talking about
22 the Board note that -- one of the things is we were
23 just asked to give an example of what --

24 MS. FLOWERS: I mean we can look at it, I

1 guess.

2 MR. RAO: Can you? Because there are -- I
3 mean it's not just this Board note. There are a few
4 more in the rules where it seems like you're, you
5 know, saying what an owner or operator should be
6 doing, providing the explanation in a note rather than
7 putting it in the rules.

8 MR. CLAY: I think part of it, too, was we
9 tried to give an example in the Board note as far as
10 we'd -- you know, how we would interpret it. And so I
11 don't know -- is an example -- it probably isn't
12 appropriate for the actual regulation, but would that
13 be appropriate for a Board note?

14 MS. TIPSORD: I think Anand said it the
15 best. A Board note's not enforceable.

16 MR. CLAY: Right.

17 MS. TIPSORD: So if it's something that
18 you expect someone to do as a part of the process,
19 then it shouldn't be a Board note.

20 MR. CLAY: Okay.

21 MS. FLOWERS: Right. And I think the
22 issue is we don't -- we don't necessarily expect them
23 to do a set of anything. We're just saying these are
24 the types of things you should look at just to provide

1 clarification on what -- what is potentially impacted
2 property.

3 MS. TIPSORD: So do you --

4 MS. FLOWERS: But we'll look at it.

5 MS. TIPSORD: Okay. And do you want to
6 ask Mr. Clay if that's correct that that's what you
7 were doing or do you want me to have you sworn in?

8 MS. FLOWERS: Is that correct, Doug, is
9 that what we were doing?

10 MR. CLAY: That's correct.

11 MS. TIPSORD: Thank you.

12 MR. RAO: Thank you.

13 MR. HENRIKSEN: Thank you for that.

14 Going further, would a property that has
15 been -- that has historically been agricultural be
16 considered a potentially impacted property?

17 MR. NIGHTINGALE: Well, no type of
18 property can be categorically excluded. Agricultural
19 land would tend to be uncontaminated but may have
20 historic spills of pesticides or fertilizer or may be
21 situated near a contaminated site.

22 So again, the owner should use his
23 knowledge of the history of the site and nearby sites
24 or, if the history is unknown, consult a professional

1 engineer or geologist for their input.

2 MR. HENRIKSEN: So I guess they're not
3 automatically considered --

4 MR. NIGHTINGALE: I think in general it
5 would be uncontaminated unless there was situations
6 that make -- make it potentially impacted.

7 MR. HENRIKSEN: A greenfield site then
8 would assume to be not potentially impacted?

9 MR. NIGHTINGALE: A what type site?

10 MR. HENRIKSEN: A greenfield site, never
11 been developed.

12 MR. CLAY: Again, I think that's a
13 case-by-case basis and depending upon what had gone on
14 at the site in the past.

15 MR. HENRIKSEN: Okay. If potentially
16 impacted property is not defined within the Illinois
17 Environmental Protection Act, can it be added and
18 enforced under the proposed Part 1100 rule in Title 35
19 of the Illinois Administrative Code?

20 MR. NIGHTINGALE: Yes. The Agency has
21 added many definitions that are not in the Illinois
22 Environmental Protection Act.

23 MR. HENRIKSEN: And does this power to add
24 this new definition come from Public Act 96-1416 or is

1 it -- does it come from the IEPA's overall power under
2 the act?

3 MR. CLAY: I would say we -- we routinely
4 in rulemakings add definitions as part of the
5 rulemaking.

6 MR. HENRIKSEN: Section 1100.103 and pages
7 23 and 24 of Stephen Nightingale's testimony mentions
8 incidental amounts of rock, stone, sand, clay, and
9 vegetation in uncontaminated soils.

10 Is the IEPA interpretation that
11 uncontaminated rock, stone, sand, and clay do not meet
12 the definition of uncontaminated soils?

13 MR. NIGHTINGALE: Our response I think is
14 really the Agency recognizes that this may cause
15 confusion with the public and we're -- and is
16 considering addressing this issue as an errata sheet
17 for the second hearing.

18 MR. HENRIKSEN: Thank you.

19 Stephen Nightingale's testimony, at page
20 26, states that CCDD and uncontaminated soil
21 operations pose a threat to groundwater because
22 they're "unlined allowing direct access to
23 groundwater." However, naturally occurring low spots
24 and other unregulated areas where fill is allowed to

1 be placed do not have IEPA oversight.

2 Why is the concern for registered or
3 permitted facilities greater than for unregistered
4 facilities?

5 MR. PURSEGLOVE: The Agency is charged
6 with enforcing environmental law and regulations, and
7 this Agency is obligated to focus attention on
8 registered sites because those sites are covered by
9 the statute.

10 Nevertheless, properties that are lawfully
11 used to deposit CCDD and soils but which are not
12 required to obtain permits or file notifications can
13 be inspected by the Agency, and if contaminated
14 materials are found, an enforcement action will begin
15 with the outcome being the removal of the offending
16 materials.

17 MR. NIGHTINGALE: I have a follow-up on
18 that.

19 First, Section 3.160(b) of the Act
20 specifically allows CCDD to be used as fill with
21 certain restrictions.

22 Second, the sites regulated by Part 1100
23 have much greater volumes of material than is required
24 for filling a low spot. The greater volume increases

1 the chance that some contaminated material could be
2 accepted in the fill operation.

3 MR. HENRIKSEN: Can we ask this just --
4 just so I understand, currently the IEPA does not
5 register or regulate farmers, landowners that have
6 naturally occurring low spots in their fields. They
7 don't require them to get permits. Correct?

8 MR. NIGHTINGALE: Correct.

9 MR. HENRIKSEN: They don't allow them to
10 -- don't require them to register. Correct?

11 MR. NIGHTINGALE: Correct.

12 MR. HENRIKSEN: Okay. More for Stephen
13 Nightingale. Stephen Nightingale's testimony, at page
14 32, states that the IEPA chose, in proposed Section
15 1100.735, to require that monitoring be performed for
16 all parameters which have a Class I groundwater
17 standard in 35 Illinois Admin. Code 620.410.

18 Are all of these parameters, including
19 PCBs and radionuclides, required to be analyzed at all
20 sites?

21 MR. NIGHTINGALE: Yes. The groundwater
22 samples must be tested for all parameters that are
23 listed in Part 620.410.

24 MR. HENRIKSEN: Including radionuclides?

1 MR. NIGHTINGALE: Yes.

2 MR. HENRIKSEN: And PCBs?

3 MR. NIGHTINGALE: Yes.

4 MR. HENRIKSEN: What data has the IEPA
5 collected showing that these Class I parameters,
6 metals, radionuclides, such as radium-226, radium-228,
7 tritium, and strontium-90, and other inorganic
8 parameters, volatile organic compounds, semi-volatile
9 compounds, pesticides, herbicides, and PCBs, are found
10 in CCDD fill? What data justifies the breadth of that
11 kind of test requirement?

12 MR. PURSEGLOVE: Because groundwater
13 monitoring currently isn't required at these sites,
14 data collection is virtually nonexistent. However, at
15 a quarry site that operated in Lynwood prior to the
16 requirements to obtain permits some very limited
17 groundwater sampling has shown levels of lead and
18 cadmium many times higher than the groundwater
19 standards. The state's enforcement action at the
20 Lynwood site has resulted in, among other
21 requirements, an order by the court to install a
22 groundwater monitoring network at that facility.

23 MR. HENRIKSEN: Any test data from that
24 site showing the existence of radionuclides?

1 MR. PURSEGLOVE: No.

2 MR. HENRIKSEN: PCBs?

3 MR. PURSEGLOVE: No.

4 MR. RAO: May I ask a follow-up?

5 MR. HENRIKSEN: Please.

6 MR. RAO: Does the Agency want owners or
7 operators to monitor for these parameters on an annual
8 basis? Or if they monitor it once and they find some
9 of these constituents not detectable, can they drop it
10 and drop those constituents off the list?

11 MR. NIGHTINGALE: Well, the way that the
12 regulation is written now, we are expecting that they
13 would do the testing annually for all of the
14 parameters. In other words, we don't have any
15 provisions in there that would allow them to back off
16 over time.

17 MR. RAO: Would you consider adding those
18 provisions to the rules?

19 MR. CLAY: I think that would be
20 applicable if the site was closed and they were
21 continuing to do groundwater monitoring.

22 In this situation, they could be
23 monitoring groundwater for -- for 10, 20, 30 years
24 while they're still adding additional material. So we

1 think it's appropriate that they do all of the
2 parameters on an annual basis.

3 MR. RAO: Okay. Thanks.

4 MR. HENRIKSEN: What data has the IEPA
5 collected that justifies monitoring for all parameters
6 rather than for an indicator list based on potential
7 contaminants of concern based on the fill material
8 accepted at the facility?

9 MR. NIGHTINGALE: There is limited data
10 available on the CCDD fill sites, as previously
11 discussed by Paul Purseglove. However, since the soil
12 can be accepted from almost anywhere, almost anything
13 could be in it.

14 MR. HENRIKSEN: But if I heard what Paul
15 was saying when he was testifying, the data -- the
16 only data that you all have in-house from one site
17 shows elevated levels of two heavy metals. Correct?

18 MR. PURSEGLOVE: Very -- it was very
19 limited groundwater data that was made available to
20 us. It was not any sort of comprehensive analysis on
21 those samples.

22 MR. HENRIKSEN: And that's the only data
23 you have that shows a concern of contaminants from one
24 of these sites. Correct?

1 MR. PURSEGLOVE: That's all the data we
2 have. Correct.

3 MR. HENRIKSEN: Thank you.

4 Does the IEPA know the estimated cost of
5 analyzing for all these parameters?

6 MR. NIGHTINGALE: We've requested cost
7 estimates from our Bureau of Water as well as from our
8 Agency librarian. I would like to add, however, that
9 when we were developing these regulations, we -- we
10 did -- or, I looked at some reimbursement costs
11 through our site remediation program.

12 MR. HENRIKSEN: Now, the IEPA has been
13 regulating CCDD for a number of years; correct?

14 MR. NIGHTINGALE: Correct.

15 MR. HENRIKSEN: And you've been, I
16 presume, taking data from these sites, analytical data
17 from -- regarding what's in the material being
18 deposited?

19 MR. PURSEGLOVE: We have been conducting
20 compliance inspections at the sites for several years.
21 Any data that would be kept by the site operators is
22 available for our use.

23 Other than that, I'm not exactly sure what
24 -- what question you're asking.

1 MR. HENRIKSEN: Well, I'll try to sharpen
2 it then.

3 Do you have any data -- does the IEPA have
4 any data about what is in CCDD, what kind of
5 contaminants, what components are in the CCDD that the
6 companies that have been taking this for a number of
7 years that you all have been regulating for a number
8 of years have?

9 MR. PURSEGLOVE: We did a round of
10 compliance inspections in the infancy of this program,
11 collected samples, and we did find contaminants at a
12 variety of sites across the state. Some of which were
13 at very low levels. Others were at elevated levels.
14 And using our enforcement prerogative and discretion,
15 we proceeded on with enforcement cases against those
16 that had higher levels of contaminants.

17 MR. HENRIKSEN: We're going -- these are
18 follow-up questions for Mr. Nightingale that focus on
19 his groundwater monitoring testimony, his filed
20 testimony.

21 As I read Section 22.51(f)(1) of the Act,
22 that requires the IEPA to propose standards and
23 procedures for CCDD fill operations that are necessary
24 to protect groundwater, which shall include, but not

1 be limited to, testing and certification of soil used
2 as fill materials and requirements for recordkeeping.

3 Correct?

4 MR. NIGHTINGALE: Correct.

5 MR. HENRIKSEN: And that would also
6 include groundwater monitoring. Correct?

7 MR. NIGHTINGALE: That's correct.

8 MR. HENRIKSEN: But Section 50 --
9 22.51a(d)(1) of the Act does not require groundwater
10 monitoring. Correct?

11 MR. NIGHTINGALE: Would you repeat your
12 question one more time, please?

13 MR. HENRIKSEN: Okay. Section 22.51 of
14 the Act governs clean construction or demolition
15 debris fill operations. Correct?

16 MR. NIGHTINGALE: Correct.

17 MR. HENRIKSEN: Then going to Subsection
18 (f)(1) of that section of your statute, that requires
19 that a -- that would require that these rules that are
20 being promulgated include standards and procedures
21 necessary to protect groundwater, which may include,
22 but shall not be limited to -- and going to it, it
23 talks about groundwater monitoring. Correct?

24 MR. NIGHTINGALE: Correct.

1 MR. HENRIKSEN: Then going to the statute
2 that deals with uncontaminated soil fill operations,
3 that's 22.51a. Correct?

4 MR. NIGHTINGALE: That's correct.

5 MR. HENRIKSEN: (d)(1) of that statute
6 does talk about standards and procedures necessary to
7 protect groundwater, but that does not specifically
8 require groundwater monitoring. Is that correct?

9 MR. NIGHTINGALE: That would be correct.

10 MR. HENRIKSEN: Why did the IEPA elect to
11 mandate groundwater monitoring for uncontaminated soil
12 fill operations despite the fact that groundwater
13 monitoring for these operations was not specified in
14 Section 22.51a(d)(1) of the Act?

15 MR. CLAY: I think the -- we believe the
16 Board does have the authority to require groundwater
17 monitoring. The statute specifically does not require
18 it. And we want to be consistent with regard to the
19 CCDD facilities and the soil fill operations with
20 regard to the maximum level of concentrations in
21 groundwater monitoring because that's really where the
22 contaminant is carried in the soil. And so to require
23 groundwater monitoring in one and not the other didn't
24 make a lot of sense to us.

1 MR. HENRIKSEN: Even though the statute
2 that creates the regulatory program for uncontaminated
3 soil operations does not require monitoring, you all
4 elected to require that on that sector. That's
5 correct?

6 MR. CLAY: That's correct. We elected to
7 include that to protect groundwater.

8 MR. HENRIKSEN: And so what analytical
9 data has the IEPA gathered from uncontaminated soil
10 fill operations that would support the imposition of a
11 groundwater monitoring program on the sites, a program
12 that's not mandated by the Illinois Environmental
13 Protection Act?

14 MR. PURSEGLOVE: I think the answer to
15 that is similar to our previous response. There is no
16 monitoring at any of these sites, so the availability
17 of data is -- is limited, nonexistent with the
18 exception of the site in Lynwood that I mentioned
19 earlier.

20 MR. HENRIKSEN: I guess I go back to the
21 question that I was posing before that. I don't know
22 if it was answered.

23 Do you all -- does the IEPA know the
24 estimated cost of analyzing these parameters for

1 either a CCDD site or a clean soil fill site? Do you
2 have -- do you know the estimated cost -- what it's
3 going to cost the industry to do this test work?

4 MR. CLAY: We can provide that information
5 in supplemental testimony or prior to the next
6 hearing.

7 MR. HENRIKSEN: Thank you.

8 Okay. Referring to Section 1100.101, why
9 is it acceptable, from an environmental protection
10 standard, to use CCDD and uncontaminated soil as fill
11 in a topographically low area without a permit if the
12 topographically low area is not a former quarry, mine,
13 or other excavation, such as a natural low area in a
14 farm field?

15 MR. NIGHTINGALE: First, Section 3.160(b)
16 of the Act specifically allows CCDD to be used as a
17 fill with certain restrictions.

18 Second, a site regulated by Part 1100 has
19 much greater volumes of materials than is required by
20 filling a low spot. The greater volume increases the
21 chance that some contaminated material could be
22 accepted in a fill operation.

23 MR. HENRIKSEN: So from an environmental
24 -- it's okay from an environmental standpoint because

1 of the, in your mind, in EPA's opinion, smaller volume
2 of materials that's deposited in an unregistered or
3 unpermitted site, that makes it okay?

4 MR. CLAY: No. What -- what the Act
5 allows in 3.160(b) allows for low-lying areas. It
6 does not talk about at all any contamination of the
7 material. So it should be uncontaminated material.

8 The potential for contamination of the
9 groundwater is higher with a much larger volume and
10 material coming from hundreds, if not thousands, of
11 different locations.

12 MR. HENRIKSEN: What steps are the IEPA
13 taking to prevent these occurrences which violate
14 other IEPA regulations? In places that -- that you
15 don't -- where the site's not registered and they're
16 not permitted, what's -- what's the IEPA doing?

17 MR. PURSEGLOVE: FOS would respond to
18 complaints from the public about the dumping of
19 wastes, which could include contaminated soils. For
20 regulated sites, the soil certification forms and the
21 load checking procedures and the potential groundwater
22 monitoring are all designed to protect human health in
23 the environment by either preventing contaminated
24 materials from being accepted or detecting

1 contamination requiring -- and requiring corrective
2 action before it affects the neighboring properties.

3 MS. TIPSORD: Excuse me. You said FOS
4 would respond?

5 MR. PURSEGLOVE: I'm sorry. FOS is Field
6 Operations Section.

7 MS. TIPSORD: Thank you.

8 MR. HENRIKSEN: Referring to Section
9 1100.101(b)(3) of the rules -- proposed rules, is
10 there less environmental risk associated with CCDD and
11 uncontaminated soil used as fill material in an
12 excavation in accordance with IDOT specifications?

13 MR. NIGHTINGALE: Section 22.51b(4)(b) of
14 the Act provides an exemption for the use of CCDD as
15 fill material in an excavation other than a current or
16 former quarry or mine if the use complies with IDOT
17 specifications. The exemption predates Public Act
18 96-1416, and because it is a statutory exemption, the
19 Agency has not evaluated the environmental risk.

20 MR. RAO: May I ask a follow-up on the
21 same provision?

22 You have added the uncontaminated soil to
23 the previous rule language which addressed just CCDD.
24 I just wanted a clarification from the Agency if the

1 IDOT specifications address soils also.

2 MR. NIGHTINGALE: Are you -- are you
3 asking about the proposed regulation or the practices
4 of IDOT?

5 MR. RAO: IDOT. That was part of the rule
6 which addressed CCDD and now we have added soils to
7 that provision. I just want to make sure the IDOT
8 specification covers soils.

9 You can get back to us if you want to take
10 a look at it.

11 MS. FLOWERS: We will get back to you.

12 MR. NIGHTINGALE: Yeah.

13 MR. RAO: And also, you know, the Board
14 note under that provision was one of the Board notes I
15 had, you know, highlighted to see if that should be
16 part of the rules, if you can take a look at it.

17 MR. NIGHTINGALE: Okay.

18 MR. RAO: Thank you.

19 MR. HENRIKSEN: When using soil as fill
20 per the IDOT exemption, does IDOT have to test the
21 soil consistent with the new rules to demonstrate that
22 the material is uncontaminated, to demonstrate that
23 the material is truly CCDD or uncontaminated soil?

24 MR. NIGHTINGALE: Per proposed Part

1 1100.101(b)(3), the proposed amendments would not
2 apply to IDOT fill operations. The Agency does not
3 oversee IDOT and is not familiar with its practices.

4 MR. HENRIKSEN: Is IDOT material used as
5 fill in a former quarry or mine required to be tested
6 in accordance with these rules?

7 MR. NIGHTINGALE: IDOT material taken to a
8 fill operation regulated under Part 1100 is subject to
9 the same requirements as material from other source
10 sites. Thus, IDOT soil cannot be accepted at a fill
11 operation regulated by Part 1100 unless a form
12 certifying the soil to be -- I'm sorry -- unless a
13 form certifying the soil to be uncontaminated has been
14 completed for it. However, laboratory analysis is not
15 absolutely necessary for such certification.

16 MR. HENRIKSEN: Earlier -- going to Paul
17 Purseglove -- back to Paul Purseglove -- you talked
18 about the Lynwood site. Is that correct?

19 MR. PURSEGLOVE: Yes.

20 MR. HENRIKSEN: Was that a site that only
21 accepted clean construction demolition debris and
22 uncontaminated soil or was the Lynwood site a place
23 that accepted a, shall we say, wide variety of
24 material, much of which could never be considered

1 CCDD?

2 MR. PURSEGLOVE: It was purported to be
3 operating as a site that accepted clean construction
4 demolition debris, but, in practice, we observed many
5 instances where they had taken general construction
6 demolition debris.

7 MR. HENRIKSEN: The sites that you
8 currently regulate, the sites that are subject to this
9 rulemaking, are they taking general construction
10 demolition debris?

11 MR. PURSEGLOVE: No.

12 MR. HENRIKSEN: And the site that had the
13 high -- these readings of high metals, that was the
14 Lynwood site, a site that's not a CCDD site. Correct?

15 MR. PURSEGLOVE: It is not a permitted
16 CCDD site.

17 MR. HENRIKSEN: And was not a -- it's not
18 a registered soil fill operation. Correct?

19 MR. PURSEGLOVE: That's correct.

20 MR. HENRIKSEN: Okay. And that's the --
21 but that's the example of a site that -- that data
22 from that site is data that you have that causes you
23 to want to regulate the industry under these rules,
24 requiring them to come up with test data every year on

1 all of these parameters. Correct?

2 MR. PURSEGLOVE: No, I wouldn't -- I
3 wouldn't phrase it that way.

4 MR. HENRIKSEN: Do you have data from
5 other -- do you have data from sites that are -- that
6 are the subject of these proposed rules that show high
7 contaminant levels?

8 MR. PURSEGLOVE: The question that you
9 asked earlier is what data do we have for impacted
10 groundwater, and our response to that is we have
11 virtually none because groundwater monitoring is not
12 required at these sites. However, we did have that
13 limited data from the site in Lynwood that was a pit,
14 quarry, or other excavation that was authorized, was
15 operating under the law that allowed them to take
16 CCDD. They took things other than CCDD. But,
17 nevertheless, that limited data, all we have, showed
18 some extremely elevated levels of lead and cadmium.

19 But for you to characterize it as based on
20 this data alone you're going forward with groundwater
21 is where I depart from your statement. That is not
22 the reason why we're proposing groundwater assessment
23 at these sites.

24 MR. HENRIKSEN: Thank you.

1 For Leslie Morrow, page 7 of Leslie
2 Morrow's testimony states that the IEPA "proposes a
3 conservative approach of utilizing the lowest
4 pH-dependent value from Appendix B, Table C for each
5 ionizing organic constituent as the value to
6 substitute for the pH-neutral soil-to-groundwater
7 value from Appendix B, Table A."

8 Is this decision based upon the IEPA's
9 conclusion, as stated on page 7 of Leslie Morrow's
10 testimony, that pH conditions at fill operations are
11 expected to be variable and unpredictable?

12 MR. MORROW: The simple answer is yes.
13 The Agency expects pH variability between the numerous
14 fill operations currently in the state and future
15 operations. At various depths we expect variation in
16 pH, and we expect variability and unpredictability in
17 the loads that are coming into the fill operations.

18 MR. HENRIKSEN: What soil pH data has been
19 gathered by the IEPA that supports the notion that pH
20 conditions at these fill operations are expected to be
21 variable and unpredictable?

22 MR. MORROW: The Agency has relied
23 primarily on the Natural Resources Conservation
24 Service website, the STATSCO database. NRCS is a

1 division of the Department of Agriculture. The
2 database organizes soil data by county and includes
3 soil pH at various depths.

4 MR. HENRIKSEN: So you don't have soil pH
5 data gathered from particular operations that would
6 support this?

7 MR. MORROW: We gathered our data from a
8 Web-based database.

9 MR. HENRIKSEN: That has soil profiles
10 associated with a county?

11 MR. MORROW: Yes, sir.

12 MR. HENRIKSEN: But not soil pH data
13 gathered from the sites that are currently accepting
14 this material. Correct?

15 MR. MORROW: That's correct.

16 MR. HENRIKSEN: So you all do not know --
17 you do not have data that shows what the soil pH is at
18 any of the sites that are currently accepting --

19 MR. MORROW: Generally for the county that
20 that site is in we have that information. For the
21 operation itself specifically, no, we do not.

22 MR. HENRIKSEN: Thank you.

23 MR. CLAY: And I'd like to add, too, that,
24 you know, it's not the soil pH of the -- of the

1 facility receiving the material. Remember, we're
2 bringing in soil from, you know, anywhere inside or
3 conceivably outside the state into that hole in the
4 ground. And so it doesn't really matter what the pH
5 of the soil at that site is as much as the pH of the
6 soil being brought in there I would think.

7 MR. HENRIKSEN: Okay.

8 MS. TIPSORD: Excuse me, Mr. Henriksen.
9 Does somebody have a follow-up?

10 MS. MAENHOUT: Yeah. My name is Annick
11 Maenhout -- and I can spell that for you, A-n-n-i-c-k
12 M-a-e-n-h-o-u-t -- with Prairie Materials.

13 I just wanted to make sure I heard you
14 correctly, Mr. Clay. Did you say soil brought in from
15 outside the state?

16 MR. CLAY: I mean it could be brought in
17 from outside the state.

18 MS. MAENHOUT: What do you think the
19 likelihood is of a contractor bringing material in
20 from a state that has no regulations into Illinois for
21 disposal?

22 MR. CLAY: I don't know what the
23 likelihood of that is.

24 MS. MAENHOUT: Okay. Thank you.

1 MS. TIPSORD: Mr. Henriksen.

2 MR. HENRIKSEN: Yes. Thank you.

3 Doesn't monthly NPDES permit water
4 discharge monitoring data on file with the IEPA,
5 Bureau of Water, for these fill operations support the
6 use of the pH-neutral soil-to-groundwater value from
7 Appendix B, Table A?

8 MR. MORROW: The Agency is hesitant to
9 equate NPDES effluent pH results to the pH conditions
10 of the fill material. As we understand the situation,
11 operations that pump large volumes of water to create
12 this cone of depression in the groundwater are
13 discharging water that has not come into contact with
14 the fill material. Thus, the NPDES results more
15 accurately represent groundwater conditions than they
16 do conditions in the fill.

17 MR. HENRIKSEN: If the soil pH data
18 actually gathered revealed that the soil at these
19 facilities has neutral pH values, would the proposed
20 maximum allowable concentrations, MAC, still use
21 worst-case pH values for ionizing compounds?

22 MR. MORROW: The Agency seeks to develop a
23 statewide program that can be applied uniformly. For
24 this reason, we see fill operation specific soil pH

1 criteria as unacceptable. Furthermore, local pH
2 conditions will not account for soils of variable pH
3 that are deposited into the fill.

4 MR. HENRIKSEN: Referring to Section
5 1100.610. There are acceptable ASTM averaging
6 methods. Why does the IEPA not allow for these
7 methods in Section 1100.610(d)?

8 MR. MORROW: Averaging could not be
9 allowed in this program for several reasons. MACs are
10 derived from the lowest of the applicable TACO
11 objectives. This includes objectives that prohibit
12 averaging, such as the construction worker receptor
13 and the objectives for the soil component of the
14 groundwater ingestion pathway. These same constraints
15 must be applied to the MAC tables.

16 For some receptors and pathways averaging
17 is allowed in TACO cleanups. The underlying premise
18 in TACO cleanups is that the soil will, for the most
19 part, remain in place.

20 Because of the inherent alteration of the
21 receptor pathway designations for soil that have been
22 excavated, mixed, and redeposited, no averaging of
23 analytical results can be allowed.

24 Finally, averaging can mask potentially

1 elevated samples which would otherwise be prohibited
2 from a fill operation.

3 MR. HENRIKSEN: The testing methods and
4 procedures are not currently -- currently are not
5 specified in the proposed rules. Does IEPA intend on
6 issuing guidance on this or will this be left up to
7 the discretion of the P.E. or P.G.?

8 MR. MORROW: The proposed rule directs
9 soil analysis procedures to conform to USEPA SW-846
10 methods. The determination of which contaminants to
11 evaluate and where samples are to be obtained is at
12 the discretion of the P.E. or P.G..

13 MR. RAO: May I ask a follow-up related to
14 that?

15 MR. MORROW: Please.

16 MR. RAO: In Section 1100.610, Subsection
17 (c), the provision sets forth that chemical analysis
18 of soil samples must be conducted in accordance with
19 the requirements of Part 742 and USEPA's "Test Methods
20 for Evaluating Solid Waste", SW-846.

21 My first question is, could you please
22 clarify whether the requirements of Part 742 referred
23 to in this subsection are the test methods
24 incorporated by reference in Section 742.210?

1 MR. MORROW: One second.

2 Dr. Rao --

3 MR. RAO: Mister.

4 MR. MORROW: -- I don't know the answer to
5 that right now.

6 MR. RAO: Yeah.

7 MR. MORROW: Can we get back to you on
8 that?

9 MR. RAO: You can get back to us.

10 And if those requirements are not the ones
11 in 742.210, please provide what those specific
12 requirements are.

13 MR. MORROW: I think they are, but I'd
14 like to check before I say.

15 MR. RAO: Okay. And my next question also
16 deals with that same subsection. The USEPA's test
17 method SW-846 that you have proposed in your rule
18 language, is that the same version of the standard
19 incorporated by reference in the proposed rules at
20 1100.104?

21 You have -- I think the provision has
22 statutory language in there in Subsection (c). I just
23 want to make sure that's the same version that you've
24 proposed for incorporation by reference.

1 MR. WIGHT: Your reference is to the TACO
2 regulation?

3 MR. RAO: No, no. In the proposed rules
4 you have SW-846 incorporated by reference.

5 MR. WIGHT: Yes.

6 MR. RAO: I want to make sure what you
7 have in Subsection (c) is the same version, because
8 Subsection (c) doesn't refer to the Section 1100.104.

9 MS. TIPSORD: And the incorporation is
10 existing language, so -- the incorporation from SW-846
11 is Third Edition from 1986. And since you used the
12 statutory language, we just want to be sure that what
13 the legislature intended is the most updated version
14 of what you intended.

15 MR. WIGHT: Okay.

16 MR. MORROW: Okay. I'll go back and check
17 that and make any corrections.

18 MR. RAO: Thank you.

19 MR. HENRIKSEN: What if parameter result
20 is reported as not detected but the detection limit of
21 analyses is above the MAC due to sample interference
22 or dilution issues?

23 MR. MORROW: Analytical results of
24 nondetection above the MAC value cannot confirm

1 compliance. In these cases special analytical
2 services can be used to better identify the actual
3 concentration of the contaminant or the sample should
4 be considered in violation.

5 MR. HENRIKSEN: Thank you.

6 A question for Douglas Clay. On page 2,
7 Mr. Clay mentions the use of ecological receptor.
8 Will ecological receptors be taken into account when
9 developing standards?

10 MR. CLAY: No. Ecological receptors were
11 not taken into account in developing the maximum
12 allowable concentrations. They were based on TACO
13 which is designed to protect human health.

14 If at some point in the future these
15 numbers are developed and adopted, i.e. the protection
16 of ecological receptors, these rules could be modified
17 to reflect these new standards.

18 MR. HENRIKSEN: Thank you.

19 Now for the panel as a whole. In the July
20 6th, 2006, opinion and order of the Board to add Part
21 1100 the following statement was made: "Because the
22 People base their recommendations on other states'
23 regulations governing C & D rather than CCDD, the
24 Board finds no basis for adding leachate testing,

1 groundwater monitoring, or financial assurance
2 requirements to the proposed rules."

3 What has changed that would constitute a
4 need to implement groundwater monitoring at fill
5 operations where load screening procedures are in
6 place?

7 MR. NIGHTINGALE: What has changed is the
8 2010 modification of the Act by Public Act 96-1416 by
9 adding Section 22.51(f)(1), which states in part:
10 "The rules must include standards and procedures
11 necessary to protect groundwater, which may include,
12 but shall not be limited to, the following:
13 requirements regarding testing and certification of
14 soil used as fill material, surface water runoff,
15 liners or other protective barriers, monitoring
16 (including, but not limited to, groundwater
17 monitoring) . . ."

18 MR. HENRIKSEN: So what has changed is the
19 -- it's solely because of the passage of this PA
20 96-1416, that's why the IEPA is promulgating rules
21 with groundwater monitoring?

22 MR. NIGHTINGALE: Yes.

23 MR. HENRIKSEN: Rather than data in your
24 possession that shows the need for groundwater

1 monitoring?

2 MR. NIGHTINGALE: That's correct.

3 MR. WIGHT: Excuse me, Mr. Nightingale, is
4 that the sole reason we've proposed groundwater
5 monitoring or just the starting point for our --

6 MR. NIGHTINGALE: Well, I think that would
7 be the starting point. When you're talking about
8 bringing in these -- this volume of material that
9 potentially could be contaminated, some of the
10 material will only be tested by or evaluated by a PID
11 and visual inspection. When you're talking about
12 those potential large quantities, we felt that there
13 was a need to add groundwater monitoring as the final
14 check.

15 MR. HENRIKSEN: And you felt there was a
16 need to add this even though this material has been
17 accepted for decades in existing -- in quarry pits and
18 quarries. Correct?

19 MR. NIGHTINGALE: As Paul said, I don't
20 think we have very much data telling us one way or the
21 other whether there's contamination.

22 MR. HENRIKSEN: But you talk about a large
23 -- your testimony focused -- as I heard, you talked
24 about large quantities of material. Are there

1 concerns on the EPA's part that there's going to be --
2 you know, is this a new problem or haven't we, in fact
3 -- our industry, in fact, been accepting large volumes
4 of this material for many years without the need for
5 groundwater monitoring? A fact that the Board order
6 of 2006 understood based on the testimony.

7 What -- you know, so I'm trying to
8 understand that you say it's a starting point. I
9 understand how the law has changed. But what
10 evidence, what data, you know, what do you have in
11 hand that would justify the imposition of groundwater
12 monitoring, not just on the CCDD sites but also
13 uncontaminated soil fill operations that never had,
14 never shown to have a need for this kind of
15 monitoring?

16 MR. NIGHTINGALE: Well, I -- these --
17 these sites previously were not regulated. They are
18 being regulated at this point and we have the
19 opportunity to evaluate the site in its entirety.

20 And when you're talking about bringing in
21 large quantities of material that could potentially be
22 contaminated, the natural approach would be to put a
23 groundwater monitoring system in since there is no
24 type of engineered barrier that would be put in place

1 here. We're not requiring any type of engineered
2 barrier. So we do feel that it's an important
3 component of this -- these proposed regulations.

4 MR. HENRIKSEN: Again, and mostly for the
5 benefit of the Board, our industry has been accepting
6 this material for decades without groundwater
7 monitoring in place. Correct?

8 MR. NIGHTINGALE: That's correct.

9 MR. HENRIKSEN: And you've -- the panel
10 has previously testified you don't have data in hand
11 from clean soil fill operations that shows the need of
12 groundwater monitoring from an industry-wide level.
13 Correct?

14 MR. NIGHTINGALE: We don't have data that
15 shows that it's causing groundwater contamination or
16 it's not causing groundwater contamination. We don't
17 have any data to support it either way.

18 MR. HENRIKSEN: Thank you.

19 With respect to soil removed from a site
20 regulated under an Agency remediation program, such as
21 the Leaking Underground Storage Tank Program or the
22 Site Remediation Program, would there be any instance
23 where the soil being removed, not as a part of a
24 cleanup or removal of contaminants, would not be

1 analyzed? If the incident is closed and remediated,
2 can the soils be certified without any further
3 analysis?

4 MR. CLAY: To answer your -- the first
5 part of the -- your first question, yes, soil being
6 removed as part of a construction project may be in an
7 area that had previously been sampled and analyzed as
8 part of the LUST release and defining the extent of
9 contamination and was nondetect. So in that case I
10 don't think additional sampling would be necessarily
11 be warranted or the professional engineer or geologist
12 may determine that additional sampling would not be
13 warranted.

14 With regard to your second question, if
15 the incident was closed and remediated, can soil be
16 certified without further analysis, the answer is no.
17 The instance may have been closed with contaminated
18 soil in place utilizing institution controls or
19 engineered barriers. You cannot assume that the soil
20 is uncontaminated just because it comes from a site
21 that has received an NFR letter, a no further
22 remediation letter.

23 MR. HENRIKSEN: There are significant
24 inconsistencies with the certification project for

1 LPC-662 and LPC-663 forms which result in some
2 operators losing business for doing the right thing.
3 For instance, if an LPC-662 form is completed and
4 signed for a site known to have been used for
5 commercial or industrial purposes, is the fill
6 operation responsible for verifying whether or not the
7 correct form has been completed? Is there any
8 enforcement action that can be taken against the
9 property owner in a case such as this?

10 MR. PURSEGLOVE: Ultimately, it's the fill
11 site operator's responsibility to accept only
12 uncontaminated soils and CCDD at their facilities. So
13 verification that the correct form is accompanying a
14 shipment received is the responsibility of the fill
15 site operator.

16 Fill sites may report fraudulent
17 certifications to the Illinois Department of Financial
18 and Professional Regulations. This is the Agency
19 that's responsible for licensing the engineers and
20 geologists.

21 MR. HENRIKSEN: But is there any
22 enforcement action that your Agency could take against
23 the property owner, the entity that filled out this
24 form, in a case like this?

1 MR. PURSEGLOVE: Was your question,
2 Mr. Henriksen, would we take enforcement against the
3 fill site operator or the generator of the soil?

4 MR. HENRIKSEN: The generator of the soil,
5 sir.

6 MR. PURSEGLOVE: If we could identify the
7 generator and their intent was to falsify records in
8 order to deliver what we believe would be then
9 contaminated soil to a CCDD site or an uncontaminated
10 soil site, then, yes, we would have the opportunity to
11 take enforcement against that generator of the soil.

12 MR. HENRIKSEN: Thank you.

13 If an LPC-663 form is completed by a
14 licensed professional engineer or geologist for a site
15 where there is known contamination identified and
16 present, based on analytical results, above the MAC
17 for the soil, is the fill operation responsible for
18 verifying whether or not the information is valid?

19 And the second part of that question, is
20 there any enforcement action that the IEPA will take
21 against the licensed professional engineer or
22 geologist in a case such as this?

23 MR. PURSEGLOVE: As I stated previously,
24 it's the fill site operator's responsibility to accept

1 only uncontaminated soils and CCDD at their facility.
2 The site operator is responsible for verifying that
3 the data that they base their acceptance on is
4 accurate.

5 If the Agency takes enforcement action, it
6 would be against the site owner and operator.
7 However, if the Agency's aware of professional
8 engineers or professional geologists who are
9 certifying that contaminated soils and CCDD aren't
10 contaminated, we would also make referrals to the
11 Illinois Department of Financial and Professional
12 Regulations.

13 MR. HENRIKSEN: Thank you.

14 Page 26 of the IEPA Statement of Reasons
15 provides that: "In the fill operation scenario, the
16 relevant pH affecting constituent leachability is not
17 the pH at the site where the soil was generated or the
18 pH of the native soil in the vicinity of the fill
19 operation . . . it is the pH of the soil being placed
20 inside the fill area, which the IEPA believes will be
21 variable and unpredictable. . . . the IEPA proposes
22 . . . the lowest pH-dependent values must be selected
23 . . . to determine the MACs for those constituents."

24 The first question, is the best indicator

1 of potential groundwater contamination -- excuse me --
2 if the best indicator of potential groundwater
3 contamination is through extraction analysis, to avoid
4 confusion and misinterpretation, why doesn't the IEPA
5 remove the option to analyze soil using totals and
6 comparing the lowest pH-dependent value?

7 MR. MORROW: In developing this proposal,
8 the Agency sought to find a simple approach to
9 screening potentially contaminated soil. We
10 understand the totals analysis uses fewer resources
11 and is quicker. The current proposal provides these
12 benefits and is equally protective.

13 MR. HENRIKSEN: Thank you.

14 In addition, could the option to analyze
15 results and compare against a multiplier of the soil
16 component of the groundwater ingestion route value
17 also be removed?

18 MR. MORROW: Within the framework the
19 Agency has proposed the multiplier method only could
20 be removed if an alternative method is substituted to
21 provide totals analysis criteria for the soil
22 component of the groundwater ingestion pathway.
23 This is necessary for determining MACs for a limited
24 number of inorganic constituents under Section

1 1100.605. Although conservative, the multiplier
2 method is protective and potentially conserves
3 resources when analysis is needed.

4 MR. HENRIKSEN: Thank you.

5 Earlier you spoke of the IEPA -- let me
6 direct my question to Paul, if I may, Mr. Purseglove.

7 Mr. Purseglove, earlier you testified that
8 the IEPA can and does do inspections of areas that are
9 not registered or under permit. Correct?

10 MR. PURSEGLOVE: Yes.

11 MR. HENRIKSEN: Such as a farm field or
12 other site that might be accepting material used to
13 fill a low spot. Correct?

14 MR. PURSEGLOVE: That's correct.

15 MR. HENRIKSEN: But if this is an
16 unregulated site, it's not registered or if they don't
17 have a permit, this site that you'd be going to has no
18 prescreened procedures. Correct?

19 MR. PURSEGLOVE: That's correct.

20 MR. HENRIKSEN: Follow-up questions from
21 you?

22 MR. RAO: I just had a follow-up regarding
23 registration. You know, we talk about different land
24 pollution control forms for registration and, you

1 know, certification. Would it be possible for you to
2 enter those forms into the record? I know -- I think
3 Mr. Nightingale's testimony said that they're
4 available on your website. But it would be helpful if
5 you could submit them into the record.

6 And also, could you comment on whether
7 those forms will be modified in any way to reflect the
8 proposed rules?

9 MR. CLAY: Yes, we can submit those into
10 the record and comment.

11 MR. RAO: Okay. Specifically what I
12 wanted to know is, right now for registration, LPC-665
13 generally requires name and address of the owner and
14 operator and the location of the facility. I'd like
15 to know if the form should also include a description
16 of the fill operation. Thank you.

17 MR. WIGHT: I'm sorry, what was your
18 second request?

19 MR. RAO: Your comment on whether the
20 registration form should include a description of the
21 facility in addition to the name and address of the
22 owner or operator and the location of the facility.
23 Just to get an idea as to whether -- you know, how the
24 Agency will know what kind of facility that they are

1 registering.

2 MR. LIEBMAN: You're talking about the
3 fill operation?

4 MR. RAO: Soil registration.

5 MR. LIEBMAN: Yeah. It's the soil
6 registration form, but you want on that -- which is
7 for -- mostly identifies the source site. And are you
8 suggesting that it also identify the -- well, where
9 the soil is going to be placed?

10 MR. RAO: Yeah, that's correct.
11 Information about the fill site.

12 MR. LIEBMAN: Okay. Sure. Yeah, we can
13 comment on that.

14 MR. RAO: Thank you.

15 MS. TIPSORD: Thank you, Mr. Henriksen.
16 That's all you've got?

17 MR. HENRIKSEN: Yes, thanks.

18 MS. TIPSORD: We'll move on to Waste
19 Management.

20 MS. FLOWERS: We were wondering if we
21 could take a short break at this time.

22 MS. TIPSORD: Sure. Ten minutes.

23 MS. FLOWERS: Thank you.

24

1 (A recess was taken from 1:50 p.m.
2 until 2:04 p.m..)

3 MS. TIPSORD: I think we're ready to go
4 back on the record.

5 And before we start with Waste
6 Management's questions, I understand the Agency had a
7 question.

8 MR. WIGHT: Yes. On Mr. Rao's last
9 comment about various forms and adding provisions that
10 would include a description of the facility, there's a
11 little confusion on our end about which form he's
12 referring to, whether he was referring to the
13 certification forms, the 662 and the 663, which are
14 completed to accompany soil coming to the facility, or
15 were you referring to the form where the soil-only
16 sites file a registration form with the Agency, as
17 opposed to the certification form that accompanies the
18 soil?

19 MR. RAO: I was referring to the
20 registration form LPC-665.

21 MR. WIGHT: 665.

22 MR. RAO: Not the other two forms.

23 MR. WIGHT: Okay.

24 MR. RAO: Regarding the other forms, I

1 just wanted the Agency to submit those forms into the
2 record.

3 MR. WIGHT: Okay.

4 MR. CLAY: So you're looking for maybe a
5 description such as how much fill area they have
6 available and maybe a diagram of the --

7 MR. RAO: The site.

8 MR. CLAY: -- facility? Okay.

9 MR. RAO: Yes.

10 MR. WIGHT: We do have copies of the 662
11 and 663 that we could submit to the record now.

12 MS. TIPSORD: All right. That's fine.

13 MR. WIGHT: Okay. I have multiple copies
14 here. How would you like me to distribute them?

15 MS. TIPSORD: One for each of us up here.

16 If there's no objection, we'll mark
17 LPC-662, Source Site Certification By Owner or
18 Operator for Use of Uncontaminated Soil as Fill in a
19 CCDD or Uncontaminated Soil Fill Operation as Exhibit
20 Number 5.

21 If there's no objection, it's Exhibit
22 Number 5.

23 And if there's no objection, we'll admit
24 Form LPC-663, Uncontaminated Soil Certification by

1 Licensed Professional Engineer or Licensed
2 Professional Geologist for Use of Uncontaminated Soil
3 as Fill in a CCDD or Uncontaminated Soil Fill
4 Operation as Exhibit Number 6.

5 Seeing none, it's Exhibit Number 6.

6 MR. WIGHT: I would like to add that these
7 forms are currently in use based on the interim
8 standard program that is operating under the Act until
9 the rules go into place. So it's certain that these
10 forms would change if the rule is adopted in the form
11 that the Agency has proposed.

12 I believe we also maybe have one more
13 clarifying question.

14 Doug, did you want to ask about specific
15 components of the description that might be included?

16 MR. CLAY: I think Mr. Rao answered that.

17 MR. WIGHT: Okay.

18 MR. CLAY: Thank you.

19 MS. TIPSORD: All right: Was there
20 anything else from the IEPA?

21 (No response)

22 MS. TIPSORD: Okay. Then let's begin with
23 Waste Management. If you would introduce yourself for
24 the record, please.

1 MR. WILT: My name is Dennis Wilt. I'm
2 the general counsel for Waste Management's Midwest
3 Group, and I'm here today on behalf of Waste
4 Management of Illinois.

5 In our prefiled questions we made a
6 preliminary comment, and I'd like to repeat it at this
7 time, really commending the Agency for doing a very
8 commendable, very good job on the draft regulations,
9 the changes to the process. It's been a difficult
10 process. It's been a long process. We're
11 participating not because we're disappointed in the
12 result. It's because we think there are some
13 meaningful changes that should be made, modest
14 changes, but changes that can really help protect the
15 environment and the people of Illinois.

16 With that said, I'll start out with just a
17 few questions on the self-implementing nature of the
18 rules. And on page 6 of the Statement of Reasons the
19 Agency states that it cannot be sure that the
20 front-end screening process will keep 100 percent of
21 the contamination out of the fill operations and that
22 currently permitted CCDD fill operations are located
23 in close proximity to both public and private wells.

24 And the question is, given that, given

1 those two statements, why are the rules
2 self-implementing as opposed to requiring the
3 submission of a permit application and review and
4 approval of the plans?

5 MR. NIGHTINGALE: Well, the Illinois EPA
6 does not concede that these fill operations will cause
7 groundwater contamination. The decision not to
8 administer the groundwater monitoring required for
9 fill operations through the permit program was based
10 on the potential threat level to groundwater posed by
11 these fill operations.

12 Part 615, which was used as a template in
13 developing proposed Part 1100 Subpart G, is an
14 existing regulation that includes self-implementing
15 groundwater monitoring requirements.

16 Also, Part 815 is another example of
17 existing regulations that include self-implementing
18 groundwater monitoring requirements.

19 MR. WILT: Let me as a follow-up question
20 -- I represent a company with many landfills in the
21 state, and during the permit process we submit a
22 proposed groundwater monitoring plan, certainly
23 prepared by professional engineers, and we don't
24 believe we've ever had a proposed groundwater

1 monitoring plan approved as we've submitted it,
2 whether it be number of wells, spacing of wells and
3 the like. And given the fact that the Agency -- and I
4 understand it's a sanitary landfill -- so carefully
5 reviews those plans and given the fact that the Agency
6 in its Statement of Reasons regarding this situation
7 acknowledges that there may well be -- end up being
8 contamination, and many of these facilities are
9 adjacent to public wells, it seems to me that there
10 should be the same level of scrutiny on these
11 groundwater monitoring plans. I don't understand why
12 there would not be.

13 MR. NIGHTINGALE: Well, first off, this is
14 not a waste. It's by -- by definition. And the waste
15 regulations do specifically have a set of requirements
16 that are -- need to be met to verify that that
17 facility is not going to cause contamination.

18 What we're intending to do here is to put
19 really a final check. We have all of this screening
20 requirements to try to prevent something from getting
21 in there, but we felt it necessary to add something to
22 the back end as the final check with the idea that
23 there would be a potential for something to make it
24 through the system.

1 MR. WILT: And you know by experience that
2 things have made it through the system with respect to
3 other enforcement actions of facilities that have
4 taken wastes in when they were not permitted to do so.

5 MR. NIGHTINGALE: Well, there's limited
6 information on that, but there is that potential.

7 MR. WILT: Let me ask a couple questions
8 then on oversight enforcement.

9 In light of the fact that the rules are
10 self-implementing, and if you assume that because of
11 the additional material that would be able to go into
12 fill operations, the additional material being
13 material that formerly was considered a waste that's
14 not considered a waste any longer, is the Agency
15 planning on adding personnel and on implementing a
16 robust inspection program?

17 MR. CLAY: Let me answer that.

18 At this point we feel we have sufficient
19 regional field staff to inspect the current sites.
20 However, in addition, counties can be delegated to be
21 the inspectors for the Agency at these sites.

22 And we already do this in our solid waste
23 program. And the counties that are delegated are out
24 at those sites a lot more frequently than we would be

1 able to be out there with Agency staff.

2 So there's already been a couple of
3 counties either delegated or expressed delegation that
4 have CCDD or soil fill operations in their counties,
5 so they would be doing those inspections. Paul's
6 staff would train them and certify their inspectors,
7 and then they would do the inspections, and then any
8 violations and a copy of those inspections would be
9 sent to the Agency for -- for enforcement, if
10 necessary.

11 MR. WILT: If during the enforcement of
12 the regulations it's discovered that waste has been
13 accepted in a soil fill operation, am I correct in
14 assuming that the only remediation that would be
15 acceptable would be complete excavation of the waste
16 and proper disposal in a sanitary landfill?

17 MR. PURSEGLOVE: If a facility has been
18 found to have accepted waste, they will be required to
19 remove the offending material and properly transport
20 it to a facility which is properly permitted to accept
21 it.

22 Perhaps the simplest example would be
23 accepting some small amount of plastic pipe or wood
24 which can be simply retrieved and removed. However,

1 if a random scan of an area with a PID indicates the
2 presence of contamination, then material will have to
3 be removed until the PID indicates no detection, and
4 after that, confirmation samples will need to be
5 collected for laboratory analysis. The impacted area
6 of the fill will have to be quarantined until the lab
7 results are obtained.

8 If circumstances are such that the
9 contaminated material cannot be removed, then an
10 enforcement action would ensue, and the terms for
11 future groundwater monitoring would be determined by
12 the courts. Depending upon the facts, the Agency
13 could recommend additional groundwater monitoring and
14 analysis that is supplemental to what is required by
15 Part 1100.

16 MR. WILT: In the event that there is --
17 it's determined that waste has been accepted, the
18 rules now require that the remediation plan be
19 submitted to the Agency, but I don't believe requires
20 any review and approval of that plan. And given your
21 answer, isn't it a necessity that the Agency be
22 involved in reviewing and approving a remediation plan
23 and shouldn't the rules be modified in that regard?

24 MR. PURSEGLOVE: If a fill site is found

1 to have accepted waste, the Agency would issue a
2 violation notice and the required corrective action in
3 response -- and tell them what the required corrective
4 action is. Any actions taken to resolve the violation
5 would be overseen by the Agency's Field Operations
6 Section. This kind of corrective action is separate
7 from the corrective action associated with groundwater
8 contamination.

9 MR. WILT: A few questions regarding the
10 postclosure time period and groundwater monitoring in
11 particular. As I read Section 1100.209, the
12 postclosure period could be as short as one year. I
13 may not be reading it correctly. But it could be as
14 short as one year. If that's the case, I believe then
15 that the groundwater monitoring postclosure could be
16 as short as one year.

17 First, is that a correct reading?

18 . And second, does that make sense to have
19 such a limited postclosure monitoring period that
20 could be as short as one year?

21 MR. NIGHTINGALE: I think I'd like to
22 answer that.

23 As far as the postclosure care period, the
24 regulations do have a one-year postclosure care in

1 there, but they also have a requirement that the
2 facility have sampled their groundwater and have not
3 violated the 620 numeric standards or the background,
4 whichever is higher, for three consecutive years.

5 So what you would end up with is that
6 maybe for the first two years before postclosure care
7 that they were doing groundwater monitoring they would
8 show up clean -- yeah, the two years before they can
9 show up clean for both those two years and then when
10 they started -- they closed and they started
11 postclosure care, they would have one year of
12 postclosure care. But if they have any problems with
13 groundwater to where they have to get into any
14 corrective action, the postclosure care period could
15 go on indefinitely, at least until they got to the
16 point where they were in compliance with the 620
17 numeric standards.

18 MR. WILT: This is an example of a
19 concern: If there is a quarry operation, a small
20 quarry operation that accepts in a short period of
21 time a substantial amount of what previously was
22 uncontaminated soil which is now tainted soil or not
23 waste, and it takes that material, because many of
24 these projects are large projects, that's the type of

1 projects we service at our landfills, can be hundreds
2 of thousands of yards, and could close that quarry in
3 a very short period of time, two years, three years,
4 and then when you add that to the one-year postclosure
5 period, you could have as little as two, three, four
6 years of groundwater monitoring.

7 Are you confident in that type of a
8 situation that if there was a problem it would be
9 identified in three to four years?

10 MR. NIGHTINGALE: I think we are confident
11 in that. First off, these facilities don't have any
12 engineered barrier. There's nothing -- there's no
13 liners that are being put in. So there will be three
14 years -- at least three years of sampling for them to
15 show that they're not having any problems.

16 MR. WILT: There were a couple questions
17 in the prefiled questions, 10 and 11, that I will not
18 be asking at this point in time.

19 I have a few questions that are questions
20 that I'd like to ask as a result of the questions that
21 were previously asked and some of the comments by the
22 previous counsel.

23 A comment was made that many of these soil
24 fill operations have been accepting the same material

1 for decades. Am I correct in interpreting Public Act
2 96-1416 that it really allows those operations to
3 accept additional materials, not that they will
4 definitely, but materials that were formerly
5 considered as waste materials that are now no longer
6 going to be considered as waste materials? Is that a
7 correct interpretation of the law and the regulations?

8 MR. CLAY: Well, in the past,
9 uncontaminated was not defined. What this proposed
10 rule would do is define what uncontaminated is. And
11 so have they been taking materials up to this point,
12 I'm not -- I don't know. But the previous -- the
13 previous standard was uncontaminated soil, which was
14 undefined. So we're trying to provide a bright line,
15 if you will, instead -- a bright line as far as what
16 is contaminated and what isn't for the purposes of
17 mines, quarries, and other excavations.

18 MR. WILT: I understand that and I
19 appreciate that answer. But clearly, under the
20 wording of the statute there is certain material that
21 was formerly considered waste, perhaps difficult to
22 define, that is no longer being considered waste. If
23 that's not the case, then the statute wouldn't be
24 needed. That being the case, it seems to me that the

1 soil fill operators have an opportunity to accept more
2 material than they could have accepted in the past.

3 Is that a true statement?

4 MR. CLAY: I don't know that that's a fair
5 statement. As we -- we just testified to, it was a
6 gray area as far as what is considered uncontaminated.
7 There were no numeric standards. As far as what fill
8 operators and CCDD facilities received, you know, we
9 would -- we inspect -- we inspected the CCDD
10 facilities on a regular basis and used our enforcement
11 discretion based on the samples that we took and what
12 the levels were as to what -- what cases we would take
13 forward and refer to the Attorney General's office.

14 So I don't -- I don't think I can make
15 that statement that you made. It's possible that it's
16 not a -- I don't think it's an absolute statement.

17 MR. WILT: Yeah, and I respect the answer.
18 The answer is to a difficult question because there
19 wasn't a bright line and I suppose there is now a
20 bright line.

21 Let me ask one final question along those
22 lines. A generator in the past either generated clean
23 fill -- isn't it true that a generator in the past
24 either generated clean fill or contaminated soil that

1 was waste?

2 MR. CLAY: Yes. Uncontaminated -- CCDD
3 which included uncontaminated soil or waste that would
4 have to go to a landfill.

5 MR. WILT: And isn't it true that the Act
6 that we're here to discuss rules for now in effect
7 says -- it doesn't say this, but it ends up -- and
8 this isn't a trick question. I'm just trying to
9 understand. Clean fill hasn't changed. Clean fill is
10 clean fill. And you have contaminated soil on the
11 other side. And in the middle you have, if I
12 understand the law, contaminated soil that used to be
13 a waste that's no longer a waste because it's not
14 contaminated. You have three -- don't you have really
15 three categories of materials? Or am I just confused
16 by the whole framework?

17 MR. CLAY: Well, I think -- and again,
18 this is for purposes of mines, quarries, and other
19 excavations. I think you have two. You have
20 uncontaminated fill material and something that's
21 considered a waste. You know, those are the two.

22 I mean something you need to remember is
23 just because there's a chemical constituent in the
24 soil doesn't make it contaminated. It could be

1 naturally occurring.

2 So I think we have two categories. We
3 have uncontaminated soil and you have contaminated
4 soil which would be considered a waste. And what the
5 -- in part what these proposed rules do is define that
6 in numeric standards.

7 MR. WILT: I have no further questions.

8 MS. TIPSORD: Thank you very much.

9 MR. WILT: Thank you.

10 MS. TIPSORD: Then let's move on to Land
11 Reclamation & Recycling Association.

12 Good afternoon, gentlemen, if you could
13 introduce yourselves for the record.

14 MR. LANSU: Good afternoon. My name is
15 Brian Lansu, L-a-n-s-u. I have an appearance on file
16 as counsel for the Land Reclamation & Recycling
17 Association.

18 To my right is Mr. Gregory Wilcox, who is
19 the executive director of the association.

20 I have also prefiled certain questions of
21 the Illinois Environmental Protection Agency, and
22 Mr. Wilcox may be asking follow-up questions based on
23 the responses of the witnesses.

24 The first question I have today is for

1 Mr. Nightingale and relates to the proposed amendments
2 to the CCDD fill operation regulations and
3 specifically Section 1100.103.

4 It appears that the EPA proposes to
5 replace the term "industrial/commercial" with the term
6 "potentially impacted property". Can a property owner
7 continue to use the definition of
8 industrial/commercial as prescribed in the law to
9 determine if P.E. certification is required?

10 MR. NIGHTINGALE: The answer -- short
11 answer would be no. But industrial/commercial may be
12 used as part of the decision-making. The use of
13 property that is industrial/commercial does raise the
14 probability that the site is impacted. The term
15 industrial/commercial is closely identified with
16 zoning designations and, as a result, has caused
17 confusion among stakeholders.

18 The law's intention was to identify soil
19 that is more likely to be contaminated and in need of
20 professional evaluation and certification before
21 placement within a fill site. To better align with
22 the purpose of the certification requirements and to
23 give more flexibility to source site owners and
24 operators, receiving facilities, contractors, and

1 environmental professionals, Illinois EPA created a
2 new term "potentially impacted property".

3 MR. LANSU: At this point I'd like to
4 withdraw the first two questions that I had previously
5 prefiled for the panel as they relate to groundwater
6 monitoring, as those are redundant of the questions
7 asked by the Illinois Association of Aggregate
8 Producers and the answers that were provided.

9 Moving on to the third question for the
10 panel: In developing the MAC tables for CCDD, did the
11 IEPA establish standards for compounds that are more
12 conservative than the one in one million risk for
13 contamination of groundwater?

14 MR. MORROW: The Agency relied on the
15 methods and equations in TACO. To our knowledge, no
16 MAC values for carcinogenic constituents are more
17 protective than one in a million.

18 MR. LANSU: Prefiled question number 4,
19 and this is again for the panel: In the IEPA
20 testimony it states that, for carcinogens, the maximum
21 concentrations shall not allow exposure to exceed an
22 excess upper-bound lifetime risk of one in one
23 million.

24 In developing the MAC standards, did EPA

1 consider what pathways are involved in calculating the
2 one in one million risk?

3 MR. MORROW: We did. Five TACO receptor
4 pathways were considered. The Agency used the lowest
5 objective from the TACO residential
6 ingestion/inhalation, the construction worker
7 inhalation -- ingestion/inhalation, and the soil
8 component of the Class I groundwater ingestion
9 pathway.

10 MR. LANSU: Was the length of time of
11 exposure to carcinogens in a quarry or mine used in
12 the MAC determination?

13 MR. MORROW: No, they were not. No
14 exposure duration for time spent in a quarry, mine, or
15 other excavation were utilized.

16 MR. LANSU: I have no further questions.

17 MS. TIPSORD: I actually have a couple of
18 questions on the -- on your testimony, Mr. Morrow.

19 You, on page 5, in discussing the MACs are
20 talking about the MAC table that you're going to put
21 into the rules or into -- on the website. And your --
22 you state that the Illinois EPA's position is that
23 publication of the table will not constitute a
24 generally applicable rule under the Administrative

1 Procedure Act as long as the values published in the
2 table are determined using the promulgated
3 methodology.

4 My question is: Once you publish that
5 table, are those standards applicable to anyone in the
6 state or are you going to redo those every time?

7 MR. MORROW: They will be revised as TACO
8 is revised.

9 MS. TIPSORD: But TACO --

10 MR. MORROW: And anytime --

11 MS. TIPSORD: The TACO is revised by rule;
12 correct?

13 MR. MORROW: Correct.

14 MS. TIPSORD: So -- but these you don't
15 believe are a rule, and I guess I'm looking for more
16 explanation on why they're not a rule.

17 MR. WIGHT: We'll have --

18 MR. MORROW: Because they -- go ahead.

19 MR. WIGHT: We'll have to -- if you're
20 speaking of legal research, we'll have to provide that
21 later.

22 MS. TIPSORD: I think we need more than
23 just this as a reason for this not being a rule. To
24 me, they appear to be a generally applicable standard.

1 Even though you're using a methodology and rule, they
2 are a generally applicable standard that you're going
3 to apply statewide.

4 MR. RAO: Also, could you look into
5 whether, if we go with the Agency's proposal, should a
6 link be provided in the rules to your web page on your
7 website where those tables could reside?

8 MR. WIGHT: We could look into that.

9 MR. RAO: Thank you.

10 MS. TIPSORD: Is there any other questions
11 for the Agency from anyone else?

12 You can stay there or if you want to go
13 back to your seats.

14 We have a few from -- I saw someone.
15 Sure. Could you stand up, give me your name, and who
16 you represent.

17 MR. GOBELMAN: Steve Gobelman, Illinois
18 Department of Transportation. We have like five or
19 six questions we'd like to ask.

20 MS. TIPSORD: Okay. Why don't you come on
21 up here. That way you don't have to shout so much.

22 MR. GOBELMAN: I am Steve Gobelman,
23 G-o-b-e-l-m-a-n. I'm a professional engineer,
24 professional geologist with the Illinois Department of

1 Transportation.

2 Section 1100.101(b)(6) provides that Part
3 1100 does not apply to the portion of a site not used
4 for CCDD fill operations or an uncontaminated fill
5 operation.

6 Does Part 1100 apply to portions of a site
7 not used as a mine or quarry and will the Agency
8 consider modifying 101(b)(6) to include the portions
9 of a site not used for a mine or quarry?

10 MR. NIGHTINGALE: I think I understand
11 your question. Our intent -- the portion of the site
12 -- basically what it states here is the portion of a
13 site not used for a CCDD fill operation or an
14 uncontaminated soil fill operation, those -- these
15 would not apply to the other part.

16 Is that what you're -- is that what you're
17 asking?

18 MR. GOBELMAN: Well, I can give you -- I
19 guess I can give you an example and then maybe that'll
20 make it clear. If a site, let's say it's -- you know,
21 let's just use this room as an example is -- is a
22 site, and in the back corner of the room they have a
23 quarry or a mine that they operate but they're not
24 planning on using it as a fill operation. Can that

1 site take -- receive uncontaminated soil or CCDD
2 material that isn't going to go into that mine or
3 quarry?

4 MR. CLAY: Steve, are you asking if, for
5 example, a mine or quarry can they take in CCDD, maybe
6 pull out asphalt and concrete they can recycle, and
7 then dispose of the other?

8 MR. GOBELMAN: No. I'm asking when it --
9 it's getting into the definition of a site and whether
10 or not you consider the entire property that a person
11 has that may have a former mine or quarry in it still
12 considered to be the entire site being a mine or
13 quarry? He's not planning on operating it as a fill
14 operation, but it has low-lying topography on the
15 surface that he wants to maybe take material in to
16 level off his land, like you would do in any farm
17 field. Maybe it is used as farming but in one portion
18 of the property is a mine or a quarry.

19 MR. CLAY: I think that if -- I mean these
20 regulations are only intended to regulate mines and
21 quarries. So if he's filling another portion of his
22 site in accordance with 3.160 of the Act, then I think
23 that would be allowed and would not -- and that
24 portion, if it's not part of the fill operation, would

1 not be subject to these rules.

2 MR. GOBELMAN: Okay. With regards to the
3 definition of other excavation in Section 1100.103,
4 can the Agency provide an example of an other
5 excavation which is not a mine or a quarry?

6 MR. CLAY: One of the things that we had
7 talked about -- and I think we need to research, I
8 guess, the standard definition of quarry, because we
9 don't have it in these rules. If someone was -- had
10 created an excavation just to obtain clay, for
11 example, I think we would consider that an other
12 excavation.

13 Now, I don't know if that by definition is
14 considered a quarry. I tend to think of a quarry as,
15 you know, rock, gravel, that type of operation, or a
16 mining operation for coal or something like that. But
17 that -- I think that was our intent.

18 One second.

19 Other examples would be filling in
20 basements -- other examples of not --

21 MR. GOBELMAN: That's what's not -- you're
22 saying that is what is not other excavation; right?

23 MR. CLAY: Yes.

24 MR. GOBELMAN: I'm asking what is.

1 MR. LIEBMAN: I think, Steve, it depends
2 on how you define quarry and mine. And if you define
3 them as extracting resources, then probably not.

4 MR. GOBELMAN: So is IDOT going to be
5 allowed to make its own definition of what a mine or
6 quarry is?

7 MR. LIEBMAN: Well, I mean if it's
8 consistent -- I think we explain what we consider
9 other excavation to be. Right?

10 MR. GOBELMAN: Well, the definition of
11 other excavation states it's an excavation used to
12 extract mineral resources.

13 MR. LIEBMAN: Correct.

14 MR. GOBELMAN: Isn't that a mine or a
15 quarry?

16 MR. LIEBMAN: Again, I think a lot of
17 people would say yes, and I would tend to agree with
18 them.

19 MR. GOBELMAN: Then what is other
20 excavation that is not a mine or a quarry?

21 MR. LIEBMAN: I'm not sure there is.

22 MR. GOBELMAN: Then why do we have it?

23 MR. LIEBMAN: It's statutory language.

24 MS. TIPSORD: It's not indicated in the

1 rule as statutory language.

2 MR. LIEBMAN: Oh, I thought it was.

3 MS. TIPSORD: And I guess I am confused as
4 well.

5 MR. LIEBMAN: Do you need a definition?

6 MS. TIPSORD: Let me finish. I'm a little
7 confused as well, because, Mr. Clay, you just said
8 that, you know, extracting gravel would be a quarry,
9 but you specifically say other excavation means a pit
10 created primarily for the purpose of extracting
11 resources, e.g. sand -- soil, sand, gravel, or clay.
12 So you then define other excavation as someplace where
13 you would extract gravel. So I guess I -- I, too, am
14 a little confused by what other excavation wouldn't be
15 a mine or a quarry.

16 Because you also exempt from it holes,
17 trenches, or similar earth removal created as a part
18 of normal construction. Which would be the basement.
19 I mean --

20 MR. GOBELMAN: Or a borrow pit.

21 MR. CLAY: Well, I think the other
22 excavation was in the regulations adopted in 2006, I
23 believe. I believe that wording -- there was actually
24 clarifying language, because the same question came

1 up, and that's why there was language put as to what
2 it was not.

3 We could look -- look further -- we tried
4 to provide the -- by adding the extracted for -- the
5 wording --

6 MR. LIEBMAN: Excuse me, Doug, if I may.
7 When I said it's regulatory language, I didn't mean
8 the definition. I think the term, though, "other
9 excavation" was statutory language, and we were trying
10 to provide some clarity as to what was meant in the
11 statutory language.

12 MS. TIPSORD: Okay. Thank you.

13 MR. LIEBMAN: And we've done that in a way
14 that from our point of view really probably does allow
15 -- you know, depending again how you define quarry or
16 mine, it probably is a quarry or mine.

17 MR. GOBELMAN: Who is defining quarry or
18 mine then?

19 MR. LIEBMAN: If by quarry or mine you
20 mean extracting resources, if that's the primary
21 purpose, the proposed regulations do.

22 MR. GOBELMAN: Okay. So I take it that
23 you will get back to me -- get back and actually give
24 us examples of what is other excavations that aren't

1 quarries and mines?

2 MR. CLAY: Well, you know, you've raised
3 this issue, you know, since 2006. I mean if you guys
4 would like to provide language, we'd be happy to look
5 at it.

6 MR. GOBELMAN: I believe there is no such
7 thing as other excavations.

8 MR. CLAY: So your suggestion would be to
9 delete that?

10 MR. GOBELMAN: Based upon the way you have
11 defined it.

12 MR. CLAY: Okay.

13 MR. GOBELMAN: You have eliminated
14 anything that would be considered other excavations.

15 MR. PURSEGLOVE: You mentioned the term
16 "borrow pit". Is a borrow pit a quarry or a mine?

17 MR. GOBELMAN: Borrow pits have been
18 excluded as part of the transportation infrastructure.
19 I don't have the rules with me, but they're not part
20 of this regulation, so you've excluded them.

21 MR. CLAY: The "other excavation" wording
22 is in the statute.

23 MS. TIPSORD: Right.

24 MR. CLAY: We would welcome, you know, any

1 language you can provide. I mean I don't know that we
2 can propose striking it out when it's statutory.

3 MR. GOBELMAN: I can't give you an example
4 of what is because I don't think they exist. So
5 that's why I'm hoping that you guys can clarify what
6 is other.

7 MS. TIPSORD: And if I may, I think part
8 of the problem is if you look at what was existing
9 language in CCDD fill operations, you've added the
10 statutory language which means a current or former
11 quarry, et cetera, and then you tried to move that
12 into a -- then you tried to move into another
13 definition "other excavation". But when you added the
14 phrase "means a pit created primarily for the
15 purpose", you've almost -- by adding that language,
16 you've really taken and made the meaning, at least the
17 way I read it, almost meaningless.

18 So you might want to look at what was
19 existing language and what you've done with this
20 definition and see if you can't work something out.
21 Because the "For the purposes of this part, the term
22 other excavation does not include" is repeated in your
23 definition of other excavation, but it's that first
24 sentence -- like I said, Mr. Clay, when you

1 specifically said, you know, removal of gravel is a
2 quarry, but then you used removal of gravel as an
3 example that's not an other excavation. So you might
4 just want to take a look at that.

5 MR. CLAY: Okay.

6 MS. FLOWERS: Are you suggesting that
7 we've excluded certain things that should be included
8 as --

9 MS. TIPSORD: No.

10 MS. FLOWERS: -- as an excavation?

11 MS. TIPSORD: No. What I'm saying is that
12 when -- when he was asked the question -- when Mr.
13 Clay -- or, when you were asked the question what is
14 other excavation, he said that a quarry would be where
15 you remove gravel. And that's the most real example.
16 But your definition of other excavation includes
17 gravel removal as something that would be an other
18 excavation. So you've then said that other excavation
19 is really just a quarry, by this discussion we've just
20 had. Just take a look at it.

21 MS. FLOWERS: If that's the truth, is it
22 fine how we have it? I mean are you saying there's no
23 -- you're just saying that we may have a confusion
24 with how we've testified or --

1 MR. RAO: The existing language doesn't,
2 you know, create any confusion. It says what is --

3 MS. FLOWERS: Oh, I disagree.

4 MR. GOBELMAN: No, I disagree.

5 MR. RAO: Compared to what you have
6 proposed.

7 MS. FLOWERS: We proposed this because of
8 the confusion. Yes.

9 MR. GOBELMAN: I believe in the existing
10 language DOT would still want to know what is other
11 excavation, an example of it, because I don't think it
12 still would be clarified.

13 MS. FLOWERS: This has been a problem area
14 since day one.

15 I think we might -- you know, if we're
16 going to leave it in -- I mean, you know, I'm not sure
17 we're going to change it. So if you want to suggest
18 that we change it, I think there's going to have to be
19 -- come from someone else.

20 MR. CLAY: I mean, you know, we tried to
21 define it in as clear of terms as we have. And this
22 is an issue that's come up, like I said, over and over
23 again since 2006. And I guess I'm not -- I'm not sure
24 what the concern is or where there's been a problem

1 with this.

2 MR. GOBELMAN: Okay.

3 MR. RAO: Any possibility of requesting a
4 statutory fix?

5 MR. GOBELMAN: All right. With regard to
6 Section 1100.205(b)(4) regarding rejection of loads,
7 given that a fill operation may have different
8 criteria for rejecting loads, including rejecting a
9 load that meets the standards for uncontaminated soil
10 under Part 1100, will the Agency consider allowing the
11 source site owner or operator to recertify the
12 rejected loads through a P.E. certification and then
13 allowing it to go to another fill site?

14 MR. LIEBMAN: Steve, I've just gotten to
15 your reference. Could you repeat the question,
16 please?

17 MR. GOBELMAN: Given that the fill
18 operators may have a different criteria for rejecting
19 loads, meaning that you have the MAC levels but a
20 quarry or a mine can accept something more stringent
21 if that's what they want to accept as far as the
22 criteria. So will the Agency consider allowing those
23 rejected loads to be recertified by the owner or
24 operator through a P.E. certification and then allowed

1 to go to a different fill operation?

2 MR. NIGHTINGALE: Because that original
3 fill site had some more restrictive requirements?

4 MR. GOBELMAN: Right, yeah.

5 MR. CLAY: I think, one, you need to
6 coordinate with the fill site operator prior to taking
7 material there.

8 Two, if it was rejected and you can
9 address the reason that it was rejected with that fill
10 operation, with that same fill site, then they can
11 take -- then you could take it back there.

12 For example, if there was pipe and wood in
13 there and you separated that out and now it was -- it
14 was acceptable to that fill site operator, you could
15 take it back to the same fill site, but you can't take
16 it to other fill sites.

17 MR. GOBELMAN: Why?

18 MR. CLAY: Well, I mean part of it is you
19 need to coordinate with the fill site operator and
20 understand what the requirements are up-front. And we
21 don't want someone -- and we've -- we've heard reports
22 of this from the fill industry is they reject a load
23 and it goes to someone else down the road. And when
24 they reject a load, you know, we follow up on that and

1 want to make sure that -- you know, where those loads
2 are going that are rejected.

3 MR. GOBELMAN: But if I'm -- but if I'm in
4 a sense certifying loads that are going to a mine or a
5 quarry in a fill operation, I am not necessarily
6 certifying or taking analytical test results on every
7 truck that's leaving that particular job. The P.E.
8 certification is based upon an analytical evaluation
9 of the project as a whole. Which could be, according
10 to that, perfectly acceptable to the quarry fill
11 operation that we're going to take it to. But if a
12 particular truck for whatever reason is rejected, even
13 though we can prove that it is certifiably clean or un
14 -- I should say meets the uncontaminated definition
15 for reanalyzing that particular truck, why can't it
16 then -- that particular truck go to a different fill
17 operation if the original one still doesn't want to
18 take it with the new P.E. cert? I've shown that that
19 material is -- meets the definition, that particular
20 truck.

21 MR. CLAY: Again, we were trying to
22 prevent someone from shopping around so that, you
23 know, if there is something that causes that load to
24 be rejected, sets off the PID or there's something in

1 the visual inspection, there's an opportunity to
2 resolve that through -- maybe the PID wasn't
3 calibrated, maybe it was picking up exhaust or
4 something from the truck, maybe it was -- you know,
5 for some reason you got a false positive. You go
6 back, either you recalibrate the PID or maybe you take
7 analysis -- you know, samples from that truck and
8 provide that with the P.E. cert. But, you know -- and
9 so you should be able to resolve that from that fill
10 site, rather than, you know, going down the road and
11 shopping around. So that's what we were trying to
12 prevent.

13 MR. GOBELMAN: But does the regulation
14 state that I can P.E. certify and go back to the same
15 fill site?

16 MR. CLAY: You can still -- yeah, you can
17 certify and go back to the same fill site.

18 MR. GOBELMAN: Where is that at that I can
19 go back to the same fill site with that truck once
20 it's rejected? Because under rejected loads, it
21 specifically says that it cannot go -- if it's
22 rejected, it must go -- it cannot go to another fill
23 site.

24 MR. CLAY: No, what it says is -- and this

1 is in (4)(A)(ii), the wording "properly recycled or
2 disposed of at a permitted landfill" was taken out.

3 MR. GOBELMAN: All right.

4 MR. CLAY: Okay? And so it talks about
5 material must be taken to -- must not be taken to
6 another fill site -- fill operation, and the material
7 must be managed appropriately.

8 Now, our intent there was to allow it to
9 go back to the same fill site if the issue that it --
10 for the reason it was rejected was resolved. There's
11 nothing here that would prohibit that.

12 MR. GOBELMAN: But the new language that
13 you added that it must be handled appropriately, why
14 couldn't that -- why would that exclude it from going
15 to another fill site if it's been recertified?

16 Because the process that you've defined
17 before does not allow that particular load to be
18 recertified. Why can't that load be recertified and
19 then allowed to go where it needed to go?

20 MR. CLAY: Well, again, we were trying to,
21 one, prevent people shopping around. And we
22 identified the fact that, you know, there may be
23 reasons it was rejected that could be resolved and so
24 that it is an acceptable load to these facilities.

1 And that's why we specifically took out that any
2 rejected loads had to go to a -- either for recycling
3 or a permitted landfill. So we were trying to allow
4 that flexibility, but at the same time not allow, you
5 know, someone to go from site to site to site and shop
6 around until they found somebody that would take the
7 load that had no additional data or information.

8 MR. GOBELMAN: That's my point. You're
9 defining it as having no additional information. My
10 point is why don't you allow it that if you have new
11 additional information that it can be moved as
12 uncontaminated to another fill site?

13 MR. CLAY: The second fill site may not
14 know that it was rejected from the other site.

15 MR. GOBELMAN: He doesn't need to know.
16 He has brand new analytical for that particular truck
17 that says it meets the definition of uncontaminated,
18 where the previous analytical was for the site as a
19 whole. What better information does that fill site
20 need than to have absolute analytical from that truck?

21 MR. CLAY: Once again, I don't know that
22 the fill site owner is going to know that this is
23 brand new analytical and that it was done before or
24 after a rejected load. You can still have analytical

1 and if it fails the PID, it has to be rejected.

2 MR. GOBELMAN: So you're going to clarify
3 the language to say that it can go back to the same
4 fill operation so it's clear?

5 MR. CLAY: Well, I --

6 MR. GOBELMAN: Because I don't think it's
7 clear.

8 MR. CLAY: We'll look at wording to
9 address that. That was our intent. We felt like this
10 would allow that to happen, but let us look at the
11 wording.

12 MR. GOBELMAN: Okay. Will the Agency
13 consider excluding residual or incidental pavement
14 markings from the requirements of painted CCDD in
15 Section 1100.212?

16 MR. PURSEGLOVE: Yes, I think that we
17 would consider that if IDOT could provide us
18 information on the -- what constitutes the pavement
19 markings. I think we're under the general provisions
20 that it isn't paint. It's some sort of epoxy or
21 plastic material that's used to mark the pavement.
22 If that information is available, we could address it.

23 MR. GOBELMAN: Okay. Under Subpart F does
24 Section 1100.610(a) provide that a professional

1 engineer or professional geologist determines the
2 chemical constituents to be analyzed under Section
3 1100.610(c), if any, based upon the site-specific
4 conditions?

5 I know this may be part of the questions
6 that the -- I think the Ag Producers may have asked,
7 too.

8 MR. NIGHTINGALE: Can you ask that
9 question again, please?

10 MR. GOBELMAN: If Subpart F, Section
11 1100.610(a) provides that the professional
12 engineer/professional geologist determines the -- does
13 it provide that the professional geologist and
14 professional engineer determines the chemical
15 constituents to be analyzed under 610(c)? And is that
16 based upon site-specific conditions?

17 MR. CLAY: Yes. It's up to the
18 professional judgment of the P.E. or P.G..

19 MR. GOBELMAN: Okay. All right. That's
20 all the questions we have.

21 MS. TIPSORD: Thank you.

22 Any other questions?

23 (No response)

24 MS. TIPSORD: Dr. Rao, did you have any

1 questions -- or, Mr. Rao, sorry.

2 MR. RAO: Thank you. Yeah, I have a few
3 questions on the proposed rule language, so I'll go
4 section by section.

5 MS. TIPSORD: And getting back to us is a
6 perfectly appropriate answer --

7 MR. RAO: Yeah.

8 MS. TIPSORD: -- to any and all of these
9 as well.

10 MR. RAO: Starting with 1100.103,
11 Definitions. In the definition of acceptable
12 detection limit, could you please clarify what lowest
13 appropriate Practical Quantitation Limit means?
14 Focusing more on the word "appropriate".

15 MR. CLAY: Okay. We'll look at where that
16 came from.

17 MR. RAO: Okay. In the proposed
18 definition of compliance point, could you please
19 clarify the rationale for requiring compliance with
20 Class I groundwater quality standards rather than the
21 groundwater quality standard applicable at the site,
22 for example, Class II or Class III?

23 MS. FLOWERS: So basically you want us to
24 answer why we're not allowing Class II or Class III?

1 MR. RAO: Or whatever the applicable
2 groundwater quality standard is at that site.

3 MS. TIPSORD: For example, if the site is
4 a facility that has Class III groundwater, why would
5 you require, you know, the applicable -- why would you
6 say with your groundwater monitoring Class I if it's a
7 site that's a Class III?

8 MR. CLAY: The Agency wanted uniformity
9 for CCDD sites and soil fill operations with regard to
10 the maximum allowable concentrations, with the
11 exception of the use of background, for which limited
12 statutory variations from the site -- from site to
13 site are authorized based on the existing
14 location-based TACO tables.

15 Uniformity is important because
16 establishing site-specific MACs would require
17 substantially more rules and resources for the
18 underlying investigations and the Agency review and
19 approval and would tend to create confusion for
20 implementation. As a conservative approach for
21 uniformity, Class I standards are most appropriate
22 because their use will minimize potential for
23 degradation of groundwater resources.

24 MR. RAO: Thank you. My next question is

1 under 1100.205, Certifications and Load Checking.
2 Subsection (a)(3) sets forth that all soil testing
3 must be done in accordance with the requirements of
4 Subpart F of Part 1100.

5 Please clarify whether soil testing is
6 required on a routine basis. If not, explain under
7 what circumstances soil testing would be required
8 under the proposed rules.

9 MR. CLAY: Soil testing is not required.
10 This is referring to the -- if a P.E. or P.G. tests
11 the soil, any analyticals that would be associated
12 with that need to be done in accordance with Subpart
13 F. There's no routine or periodic sampling
14 requirements at the fill site.

15 MR. RAO: So it's left to the discretion
16 of the P.E. or P.G.?

17 MR. CLAY: Right.

18 MR. RAO: Okay.

19 MR. CLAY: Of course, I mean the fill site
20 may take samples as well if they choose to. And if we
21 do inspections, we would likely take samples.

22 MR. RAO: Okay. So if they do take
23 samples and analyze, it should be done under -- in
24 accordance with Subpart F?

1 MR. CLAY: Correct.

2 MR. RAO: Okay. In subsection (b)(5), the
3 proposed rule sets forth that special precautionary
4 measures as specified in the Agency permit must be
5 taken prior to accepting loads from persons or sources
6 found or suspected of sending material other than CCDD
7 or uncontaminated soil.

8 Please clarify whether the precautionary
9 measures are limited only to permitted fill
10 operations. If not, comment on whether the rule
11 should apply to unpermitted fill operations.

12 MR. NIGHTINGALE: We can look into that.
13 I think that's an error or typo.

14 MR. RAO: All right.

15 MR. NIGHTINGALE: But we'll look into it
16 further.

17 And next moving on to 1100.212, Use of
18 Painted CCDD as Fill Material. Subsection (c)(2)
19 requires that all quantitative analyses of paint
20 samples are to be performed by an accredited
21 laboratory.

22 Please clarify whether painted CCDD from
23 outside Illinois should be tested by a laboratory
24 accredited by IEPA in accordance with Part 186 or can

1 they use, you know, other accreditation for --

2 MR. WIGHT: We think the circumstances are
3 that Part 186 provides for reciprocal agreements with
4 other states, but we'll have to get back to you on the
5 details of that.

6 MR. RAO: Okay. Not a problem.

7 Moving on to 1100.412, Procedures for
8 Closure and Postclosure. Subsection (c)(1)(D)
9 requires groundwater monitoring records to show the
10 fill operation has not contributed to an exceedance of
11 the Class I groundwater quality standards or the
12 background groundwater quality, whichever is higher.

13 Please clarify whether the proposed rule
14 allows an increase in concentration of a monitored
15 contaminant of concern up to Class I groundwater
16 quality standards if the background groundwater
17 quality is lower than the Class I standard.

18 MR. CLAY: What was the reference again?

19 MR. RAO: It's Subsection (c)(1)(D). It's
20 the new language you have proposed.

21 MR. NIGHTINGALE: I think I'd like to
22 attempt to answer that.

23 The way that we look at this or the way
24 that we intended to draft up these -- that we intend

1 for these regulations to be used would be that we are
2 using the 620 Class I standards pretty much as just a
3 check. And as long as you're below the 620 numeric
4 standards, we're not requiring that they do anything
5 more. And I think we're using that in conjunction
6 with the fact that they have all this -- the front-end
7 precautionary measures. And so really, the way that
8 we have this written would be that as long as it's
9 below the 620 numeric standards, they don't have to do
10 any checking.

11 If they exceed that, then they do have the
12 opportunity to show that the upgradient number, if
13 they're not above that number, then they are still
14 okay, and they don't have to go into any kind of
15 corrective action.

16 MR. RAO: So are you saying that an owner
17 or operator of a site needs to worry about background
18 only if the monitored levels are above Class I
19 standards?

20 MR. NIGHTINGALE: Yes.

21 MR. RAO: Does the rule reflect that
22 intent or do you think it would be helpful to clarify
23 the rule language a little?

24 MR. NIGHTINGALE: Well, the 620 numeric --

1 or, the 620 regulations, there's a provision in there
2 that actually allows for us to develop groundwater
3 standards on activity-by-activity basis, and I think
4 that's what we were trying to do here. And I think
5 actually it's under 620.301(d) and it reads: "Nothing
6 in this Section shall limit the Board from
7 promulgating nondegradation provisions applicable to
8 particular types of facilities or activities which
9 impact upon groundwater, including but not limited to
10 landfills regulated pursuant to 35 Illinois
11 Administrative Code: Subtitle G."

12 So I guess what we -- we did consult with
13 our public water supply counterparts about the
14 possibility of using this approach at these fill sites
15 and got concurrence with them to use the 620 numeric
16 standards pretty much for -- for this situation.

17 As far as off-site, the facility would be
18 required to -- the way that we have these written
19 would be required to meet the nondegradation
20 provisions as written.

21 MR. RAO: I'm not -- what I was asking
22 was, you explained that if the levels are below Class
23 I, a site owner doesn't have to worry about
24 background. The rule doesn't say that specifically.

1 Should the rule clarify that's part of the intent is
2 what I was asking.

3 MR. CLAY: Are you saying --

4 MR. RAO: You have the authority to do it
5 under 620. I know that. But just to make the rule
6 clearer. It almost seems like, you know, it doesn't
7 say when background should be established for a site
8 as proposed.

9 MR. CLAY: Is the concern that you're not
10 sampling the upgradient wells? I mean the intent was
11 to sample --

12 MR. RAO: Yeah, the --

13 MR. CLAY: -- all of the wells.

14 MR. RAO: The concern is and my next
15 question was about, does the rule say how we establish
16 background?

17 MR. NIGHTINGALE: The rules do reference
18 the RCRA groundwater monitoring draft technical
19 guidance. And that's pretty much what we're
20 anticipating these facilities would use that -- that
21 guidance document that's pretty much used by the
22 landfills to -- to establish background.

23 MS. MYERS: Actually, background is by the
24 Unified Guidance and is also incorporated by reference

1 as a statistical guidance from USEPA and it's
2 incorporated by reference.

3 MR. NIGHTINGALE: Oh, that's right, yeah.

4 MR. RAO: Does it say anywhere in the
5 rules that you should use that document to establish
6 background?

7 MS. MYERS: Yeah, I believe so.

8 MR. RAO: You can take a look at this and
9 get back to us, because right now the way I -- you
10 know, when I read the rule, I saw that groundwater
11 monitoring is required on an annual basis, whereas
12 background was based on statistical groundwater
13 monitoring. So I didn't see any reference in the
14 rules. If you could take a look at it and see if the
15 rules address the issue of how background is
16 established, that's fine.

17 MS. FLOWERS: I don't think it does. I
18 think that we -- we had decided to put it as a --
19 because there's different ways or I don't -- but I
20 mean we decided to just put it as a reference
21 document. And I guess what I'm taking you to say is
22 that you don't think that's sufficient. Right?

23 MR. RAO: No. What I'm saying is you
24 have --

1 MS. TIPSORD: Excuse me. Before you go
2 any farther, we need to have you sworn in.

3 MS. FLOWERS: Okay.

4 MS. TIPSORD: Could we have Ms. Flowers
5 sworn in, please.

6 (Whereupon Ms. Flowers was duly
7 sworn.)

8 MS. TIPSORD: Go ahead. Sorry.

9 MR. RAO: You might have included a
10 document in the incorporation by reference, but
11 usually when you do that, somewhere in the rule you
12 should say, you know, how the background is
13 established in accordance with that document, and that
14 part is missing in the rule. So it looks like, you
15 know, background --

16 MS. FLOWERS: I think it was intentionally
17 not included. So I guess what I'm saying is you think
18 that we should put --

19 MR. CLAY: Let us -- let us review that
20 and then --

21 MR. RAO: Yeah, sure.

22 MR. CLAY: We'll look at how other
23 groundwater monitoring background is established in
24 other rules --

1 MR. RAO: Yeah.

2 MR. CLAY: -- and how it's referenced.

3 MR. RAO: Yeah, I think that would be
4 helpful.

5 MR. CLAY: Thank you.

6 MR. RAO: Okay. This is moving on to
7 Section 1100.500, the general prohibitions under
8 Subpart E. On page 18 of Mr. Nightingale's testimony
9 it states that closure and postclosure periods for
10 uncontaminated soil fill operations are
11 self-implementing with no Agency oversight.

12 I think you responded to some questions on
13 this section earlier. I just wanted to know if there
14 would be no Agency oversight even during operation of
15 the fill operation?

16 MR. CLAY: There's no Agency preapproval.
17 When our inspectors go out to the sites, they're
18 required to keep those -- that information on record
19 at the site. They will be looking at, you know, that
20 data.

21 MR. RAO: Okay.

22 MR. NIGHTINGALE: And a follow-up, the
23 point that I just wanted to bring up in my comments
24 was that it's -- the self-implementing process is not

1 new. It is being used in the Part 615 regulations and
2 in the 815 regulations.

3 MR. RAO: I think one difference between
4 the 815 regulations and this one is there they have to
5 submit annual reports to the Agency. Are they
6 required to do any ongoing reporting in this case?

7 MR. NIGHTINGALE: No. For the soil-only
8 sites they're required to register, and they are
9 required to address any of the corrective action
10 issues, and then they're required to notify us for
11 closure, and then termination of their postclosure.
12 That would be the only requirements at this point.

13 MR. CLAY: I might add, though, that on
14 the 815 sites we normally don't inspect those, you
15 know. Where for the CCDD sites and the soil fill
16 operations, you know, those are things that we will be
17 inspecting, certainly, the permitted facilities and
18 then probably periodically the soil fill operations as
19 well, and at that time we can review the groundwater
20 data.

21 MR. RAO: Moving on to 1100.605, Maximum
22 Allowable Concentrations for Chemical Constituents in
23 Uncontaminated Soils, Subsection (c) allows an owner
24 or operator to request the Agency to develop maximum

1 allowable concentrations for any chemicals of concern
2 not listed in Part 742, Appendix B, Tables A, B, and
3 C.

4 The rules do not specify any time frame
5 within which the Agency has to respond to a request
6 for a maximum allowable concentration determination.
7 Please comment on whether the rules should include any
8 time period for the Agency response.

9 MR. MORROW: We can do that.

10 MR. RAO: Moving on to Section 1100.700.

11 MR. WIGHT: Could you pause just a moment,
12 please?

13 MR. RAO: Yep.

14 MR. WIGHT: We'll get back to you on that.

15 MR. RAO: Section 1100.700 sets forth the
16 general requirements for groundwater monitoring.
17 Could you please comment on whether a description of
18 how an owner or operator of a permitted CCDD will
19 comply with the groundwater monitoring program under
20 this subpart, whether the description should be
21 included in a permit application along with other
22 information listed in Section 1100.306? There's a
23 list of information under 1100.306, but that doesn't
24 include anything relating to groundwater monitoring.

1 MR. LIEBMAN: Are you asking if the
2 proposed wording would already require that?

3 MR. RAO: No.

4 MR. LIEBMAN: Or are you suggesting that
5 maybe if that's what we have in mind that we add
6 something like that?

7 MR. RAO: Right now the permit application
8 requirements does not require them to submit
9 information about their groundwater monitoring system
10 or a description of their monitoring system.

11 MR. NIGHTINGALE: That's correct.

12 MR. RAO: And I'm asking whether that
13 should be listed under the permit application
14 information.

15 MR. NIGHTINGALE: Well, you know, at this
16 point our intent was to have this a self-implementing
17 program, the groundwater monitoring program.

18 MR. RAO: Even for the permitted
19 facilities?

20 MR. NIGHTINGALE: Yes, that's correct.

21 MR. RAO: So you don't want to know, you
22 know, what kind of monitoring system they're going to
23 put in place or --

24 MR. NIGHTINGALE: No, you know, based on,

1 you know, the potential contamination, we felt that
2 the self-implementing program would be appropriate for
3 the uncontaminated fill sites and the permitted sites.
4 They are required to submit to us the results when
5 they do have exceedances and then it kicks them into
6 the -- potentially the additional monitoring and
7 corrective action. But we're requiring that the
8 program that they develop, the groundwater monitoring
9 program, the wells, and the locations of the wells all
10 be certified by a professional engineer and that
11 information be kept on site.

12 MR. RAO: Okay. Thanks.

13 Moving on to 1100.720, Subsection (b) of
14 Section 1100.720 sets forth that: "Except as provided
15 in Subsection (d) throughout the compliance period as
16 defined in Section 1100.715, the owner or operator
17 must measure compliance with the Class I groundwater
18 quality standards at the compliance point, or
19 compliance points if more than one such point exists."

20 But this section doesn't have a Subsection
21 (d) in it. Could you take a look at it?

22 MR. LIEBMAN: Yes, that is a typo. It
23 should reference 1100.760. And I think we'll have an
24 errata, if we don't already, that makes that

1 correction.

2 MR. RAO: Okay. Thank you.

3 My last question deals with 1100.750,
4 Alternate Non-Compliance Response Program. The
5 provisions of this section allow an owner or operator
6 to demonstrate that an exceedance of a Class I
7 standard resulted from an error in sampling, analysis,
8 or evaluation, or that the exceedance is not
9 statistically significant.

10 Please comment on the merits of allowing
11 the owner or operator the option to demonstrate that
12 the fill operation is not the source of exceedance.

13 MR. NIGHTINGALE: This approach, I guess,
14 would be similar to what they do with landfills. I
15 guess the -- I have a question for you. Are you --
16 now, you're talking about the appropriateness of --

17 MR. RAO: Whether to have that kind of a
18 demonstration for these fills.

19 MR. NIGHTINGALE: Well, I think its
20 consistent with what we do at municipal waste
21 landfills, for one. We think that it would be
22 appropriate for these sites, too.

23 MR. CLAY: I think the idea is that if you
24 have contamination coming from off-site onto your

1 property and you're not -- you don't exceed the 620 or
2 you're not contributing, that you shouldn't be
3 responsible for corrective action in those situations.
4 It's really looking at the back -- the background
5 groundwater quality situation.

6 MR. RAO: Actually, the scenario I was
7 looking at was they may be exceeding the background
8 groundwater quality downgradient, but they may not be
9 contributing to the exceedance.

10 MR. CLAY: Exactly. And that's what we
11 were anticipating here. So, as long as they're not
12 contributing to it, then, you know, they shouldn't be
13 responsible for the corrective action.

14 MR. RAO: Yeah. Would you consider adding
15 that to the rule, the demonstration that --

16 MS. FLOWERS: I think I'm --

17 MR. RAO: -- they can make?

18 MS. FLOWERS: I'm confused about the
19 question as well. Are you saying that they could be
20 -- they could be -- have elevated background
21 downgradient and still --

22 MR. RAO: No. I'm saying they may be
23 exceeding the background value downgradient. So will
24 they be allowed to make a demonstration that they are

1 not contributing to the exceedance?

2 MR. NIGHTINGALE: Yes, they will be.
3 They will be allowed to show that if they are
4 exceeding the 620 numeric standards and it's from
5 upgradient that they would not be required to clean
6 that up downgradient.

7 MS. FLOWERS: I think we're not
8 understanding the question.

9 MR. CLAY: Yeah. I think you're saying
10 that they've got upgradient --

11 MR. RAO: Yeah.

12 MR. CLAY: -- and the background and
13 they're exceeding --

14 MR. RAO: There may be a facility adjacent
15 to them that can be contributing to the exceedance.

16 MR. CLAY: And it's not being picked up in
17 the upgradient wells?

18 MR. RAO: Yeah.

19 MR. CLAY: And so I think they -- they
20 would have to -- I mean they can make that
21 demonstration, but they would probably -- I mean if
22 they're not picking it up upgradient, they would have
23 to install more wells to make that demonstration I
24 would think.

1 MR. RAO: Will the rule allow them to do
2 it, is what I was asking, as proposed?

3 MR. CLAY: We think -- yes, we believe it
4 will.

5 MR. NIGHTINGALE: I think there's enough
6 flexibility in the way the rule's written that would
7 allow them to do that.

8 MR. RAO: Because right now it kind of
9 limits them to, you know, other than sampling or
10 analysis, or is that -- the term "evaluation" in there
11 allows that flexibility?

12 MR. NIGHTINGALE: We can look at it
13 closer.

14 MR. RAO: Yeah. Can you do that?
15 And that's all I have.

16 MS. TIPSORD: Are there any other --

17 MR. RAO: Thank you very much.

18 MS. TIPSORD: Are there any other
19 questions for the Agency today?

20 Mr. Henriksen.

21 MR. HENRIKSEN: Yes. Questions posed
22 regarding the soil-only sites kind of triggered some
23 questions in my mind, so I'll just put these questions
24 to the panel.

1 How many states in the nation regulate
2 clean soil disposal as proposed in the IEPA's rules to
3 your knowledge?

4 MR. WIGHT: We're not aware of any.

5 MS. TIPSORD: Mr. Wight, would you like to
6 be sworn in or would you prefer to ask one of your
7 colleagues if that's correct?

8 MR. CLAY: We're not aware of any.

9 MR. WIGHT: I'll ask Mr. Clay to answer.

10 MR. CLAY: We're not aware of any.

11 MR. HENRIKSEN: Thank you.

12 Has the IEPA historically had enforcement
13 issues with soil-only sites?

14 MR. CLAY: We weren't even aware of where
15 they are. That's why we required the notification and
16 then the similar requirements as far as operation and
17 the groundwater. But unless there was a complaint, we
18 wouldn't necessarily have even known where they are.

19 MR. HENRIKSEN: I see. So you all don't
20 have in your Agency files groundwater monitoring data
21 or groundwater data that indicates there's been a
22 problem with these sites?

23 MR. CLAY: No, we don't.

24 MR. HENRIKSEN: You don't have data or

1 test results, analytical results in your Agency files
2 that show these sites have been an historical problem?

3 MR. CLAY: No, we don't. Like I said, we
4 don't even know necessarily where these sites are
5 located.

6 MR. HENRIKSEN: And isn't it true that the
7 IEPA is only regulating soil-only sites because this
8 requirement is contained within Public Act 96-1416?

9 MR. CLAY: That -- yes, that's the main
10 reason we're regulating soil-only sites.

11 MR. HENRIKSEN: That's in fact the reason.
12 Correct?

13 MR. CLAY: Correct.

14 MR. HENRIKSEN: Yet, in the absence of
15 IEPA data showing past problems, why is the IEPA
16 imposing a regulatory regime for soil-only sites that
17 is as strict as for CCDD sites?

18 MR. CLAY: We believe the potential for
19 contamination at the soil-fill operations or soil-only
20 sites is similar to that at CCDD sites, because really
21 the soil is the portion that's going to be carrying
22 the contamination in most cases. So we think the
23 potential for groundwater contamination is similar for
24 both of those types of sites. That's why the

1 screening is similar, the certifications are the same,
2 the groundwater monitoring is the same.

3 MR. HENRIKSEN: That's your belief, but
4 it's not based on any data that you have in your
5 possession showing that there are any of these
6 problems. Is that correct?

7 MR. CLAY: We don't have the data. That's
8 correct.

9 MR. HENRIKSEN: Doesn't the fact that
10 Public Act 96-1416 distinguishes between CCDD and soil
11 fill sites regarding mandatory regulatory requirements
12 indicate the General Assembly's intent that these
13 operations be treated differently?

14 MR. CLAY: Well, and I -- yes, it does.
15 And I believe they are being treated differently,
16 because the permitted sites have a higher level of
17 regulatory control than the CCDD sites -- or, I mean
18 than the soil-only sites.

19 MR. HENRIKSEN: If I understand it, don't
20 soil-only sites and CCDD sites have to have basically
21 identical prescreening? Correct?

22 MR. CLAY: Correct.

23 MR. HENRIKSEN: Don't they also have to do
24 almost identical due diligence before they accept the

1 material? Isn't that correct?

2 MR. CLAY: Correct.

3 MR. HENRIKSEN: Don't they also have to
4 put in place a groundwater monitoring regime that's
5 identical?

6 MR. CLAY: That's correct.

7 MR. HENRIKSEN: Isn't in fact the only
8 difference between these two type of sectors the
9 requirement for getting a permit versus registration?

10 MR. CLAY: That's correct.

11 MR. HENRIKSEN: And paying fees, tipping
12 fees. Correct?

13 MR. CLAY: Those are two things, as well
14 as the permitted sites will be inspected more
15 frequently.

16 MR. HENRIKSEN: But the -- but you are --
17 I'm sorry, go ahead, sir.

18 MR. NIGHTINGALE: I was just going to add
19 and the reporting requirements are different.

20 MR. HENRIKSEN: Explain how the reporting
21 requirements are different.

22 MR. NIGHTINGALE: Well, the CCDD sites are
23 required to do an annual report and the uncontaminated
24 soil fill sites are not required to do an annual

1 report that would include all of the activities that
2 are going on.

3 MR. HENRIKSEN: So a soil-fill-only site
4 wouldn't have to report how much material they're
5 taking in on an annual basis. Correct?

6 MR. NIGHTINGALE: That's correct.

7 MR. HENRIKSEN: Versus a CCDD site.
8 Correct?

9 MR. NIGHTINGALE: That's correct.

10 MR. HENRIKSEN: However, every load that
11 comes in for, you know, 365 days, they basically have
12 to screen them the same way.

13 MR. NIGHTINGALE: Correct.

14 MR. HENRIKSEN: And they do the due
15 diligence up-front the same way.

16 MR. NIGHTINGALE: That's correct.

17 MR. HENRIKSEN: And under your rules they
18 do the groundwater monitoring the same way.

19 MR. NIGHTINGALE: That's correct.

20 MR. HENRIKSEN: And the cost -- and the
21 cost for our industry -- whether it's the CCDD
22 industry, the soils industry, or both, the cost comes
23 from these -- these kinds of analytical requirements
24 imposed on us. Correct?

1 MR. NIGHTINGALE: That would appear to be
2 correct.

3 MR. HENRIKSEN: As opposed to an annual
4 report saying how many tons of stuff we took or didn't
5 take. My question is, that's -- the annual report is
6 not exactly a very expensive regulatory requirement.
7 Correct?

8 MR. NIGHTINGALE: The annual report has a
9 substantial amount of information that needs to be
10 included and submitted to the Agency.

11 MR. HENRIKSEN: Fair enough. But then I
12 go back to my original question. The General Assembly
13 when it -- when it created this program for the clean
14 fill industry and the CCDD industry under this new
15 act, it clearly stated things that were mandated for
16 CCDD and things that were mandated for clean fill, and
17 the mandated things are a lot more extensive for clean
18 fill sites than soil only. That's correct; right? Am
19 I right?

20 MR. CLAY: I don't believe that I would
21 characterize them as a lot more -- there's a lot more
22 mandatory requirements. I think -- you know, I think
23 part of it is the CCDD sites were already required to
24 have permits, already required that. And so there was

1 an acknowledgment that the soil-only facilities or the
2 soil fill operations did not have to get a permit.
3 Which I think is a significant cost, up-front anyway.
4 And as Steve pointed out, they don't have the annual
5 report requirements. But the potential for receiving
6 contaminated soil or contaminated material and the
7 similarities in the soil fill operation and the CCDD
8 operations are similar in preventing acceptance of
9 material that's contaminated, the soil screening, the
10 certifications, and the groundwater monitoring.

11 MR. HENRIKSEN: But this is based on what
12 you think might happen. You don't have data in-house
13 that say these things have happened.

14 MR. CLAY: We don't have data in-house
15 because these were never regulated facilities.

16 MR. HENRIKSEN: Okay. And the General
17 Assembly also did not mandate that the soil-only sites
18 would have groundwater monitoring. Correct?

19 MR. CLAY: Okay. Looking at the statute
20 under 22.51(f)(1) and 22.51a(d)(1), they both have the
21 requirement "must include standards and procedures
22 necessary to protect groundwater."

23 MR. HENRIKSEN: Correct. And for clean
24 fill sites those do not include mandatory groundwater

1 monitoring. Correct?

2 MR. CLAY: Well, I don't think either type
3 of site requires groundwater monitoring. I don't
4 believe the statute says that. I think that it's -- I
5 think the Board -- I don't know if the Board is to
6 consider or the Agency considers in their proposal
7 groundwater monitoring, but both are required to
8 protect groundwater. What we propose is required to
9 protect groundwater.

10 MR. HENRIKSEN: I appreciate that, but I
11 still have not got a good answer to my question.

12 The General Assembly when it passed this
13 law clearly made a differentiation between CCDD sites
14 and soil-only sites. They clearly did. That's why
15 they included -- they specifically mentioned
16 groundwater monitoring and a lot of things for CCDD,
17 and they didn't mention that for soil-only. And that
18 fact plus the fact that you don't have historical data
19 in your records showing that clean soil-only sites are
20 a problem for the people of Illinois, I still -- we --
21 our industry still does not have an answer to why you
22 chose to put an almost identical regulatory regime,
23 maybe not the permit requirement, maybe not the annual
24 report about how much tonnage comes in, granted, but

1 the things that cost money, the due diligence,
2 screening, you know, and then the groundwater
3 monitoring, the things that cost money are identical.
4 I still haven't received an answer why that you all
5 have elected to do that because you don't have data
6 that would drive you that way.

7 MR. CLAY: Well, again, I think the Agency
8 believes the potential for contamination at these
9 sites is -- is really with the soil. And so at either
10 one of these sites I don't understand the difference
11 in the potential for contamination -- receiving
12 contaminated soil. I don't understand how you can
13 distinguish for me from a potential contamination
14 standpoint how they're different.

15 MR. HENRIKSEN: And I understand your
16 answer and respect your opinion. But all -- but -- I
17 guess you've answered my question. The IEPA does not
18 have data in its possession, groundwater data, soil
19 contamination data, that shows that soil-only sites
20 have had problems that justify the same regulatory
21 regime for groundwater monitoring and the screening
22 and testing that CCDD sites have had. That's --

23 MR. CLAY: Well, we don't -- again, we
24 don't have data because we didn't even know where

1 these sites were until about a year ago. And you
2 know, we don't have data that they are causing
3 groundwater contamination. But the requirement to
4 protect groundwater and what -- and the standards and
5 procedures that we propose to the Board are, you know,
6 the same for CCDD and for the soil fill operations,
7 and the potential for contamination we believe is the
8 same.

9 MR. HENRIKSEN: Thank you. I appreciate
10 your answer. Thank you for your indulgence. Again,
11 thank you.

12 MS. TIPSORD: Are there any other
13 questions for the Agency today?

14 (No response)

15 MS. TIPSORD: Thank you. Seeing none, our
16 next hearing is scheduled for October 25th, 2011, in
17 Chicago, at the Thompson Center, Room 2025. I believe
18 we start at 11 a.m.

19 We will allow for comments and testimony
20 by all other persons, including the IEPA. Testimony
21 must be prefiled by October 7th with prefiled
22 questions by October 17th.

23 I would anticipate, unless the
24 participants have a specific request, that the first

1 testimony I receive would be the first person who
2 testifies and so on, unless when we get there that day
3 the participants have another requested order.

4 With that, anything, Dr. Girard?

5 DR. GIRARD: No.

6 MS. TIPSORD: I want to thank you all. I
7 appreciate the level of preparedness and the testimony
8 we got today. Thank you very much. We're adjourned.

9 (The hearing adjourned at 3:45 p.m.)

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