

ILLINOIS POLLUTION CONTROL BOARD

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

R12-09
 (Rulemaking-
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STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in the
 above entitled cause before Hearing Officer Marie
 Tipsord, called by the Illinois Pollution Control
 Board, taken by Steven Brickey, CSR, for the State
 of Illinois, 100 West Randolph Street, Chicago,
 Illinois, on the 25th day of October, 2011,
 commencing at the hour of 11:00 a.m.

A P P E A R A N C E S

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MR. PAUL PURSEGLOVE
MR. CHRISTIAN LIEBMAN
MS. KIMBERLY GEVING
MR. H. MARK WIGHT
MR. DOUGLAS CLAY
MR. THOMAS HORNSHAW
MS. HEATHER NIFONG
MR. STEPHEN NIGHTINGALE

ALSO PRESENT:

MR. SCOTT BELL
MR. JOHN HENRIKSEN
MR. RANDI WILLIE
MR. DENNIS WILT
MR. RYAN LADIEU
MR. MARK KRUMENACHER
MR. STEPHEN SYLVESTER
MR. DAVID PYLES
MR. JOHN HOCK
MR. JAMES HUFF
MR. KENNETH LISS
MR. STEVEN GOBELMAN
MR. GREGORY WILCOX

REPORTED BY:

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1 MS. TIPSORD: My name is Marie
2 Tipsord and I've been appointed by the Board to
3 serve as Hearing Officer in this proceeding
4 entitled Proposed Amendments to Clean Construction
5 or Demolition Debris Operations (CCDD). Proposed
6 amendments to 35 Ill. Adm. Code 1100.

7 This is Docket R12-9. With me
8 today to my immediate left is Board Member Thomas
9 Johnson and from our technical unit to my far
10 right, Alisa Liu, and my immediate right, Anand
11 Rao. Also, today, Lubko Berezowsky, who is one of
12 our interns this semester and works on Tuesdays is
13 with us. Lubko is here with us from -- not Kent.

14 MR. BEREZOWSKY: John Marshall.

15 MS. TIPSORD: I always forget. We
16 have tomorrow Conner Kain from Kent will be with
17 us. So -- or DePaul. Conner is from DePaul.
18 See, too many interns. The purpose of today's
19 hearing is twofold.

20 First, we will hear the
21 pre-filed testimony from various witnesses. We
22 will swear the witness in, enter the testimony as
23 if read, and give it an exhibit number. We will
24 then begin with questions starting with all

1 pre-filed questions. I ask that witnesses sit
2 here to my right where Mr. Huff is sitting right
3 now and people who have pre-filed questions can
4 sit to my left.

5 The order of today's witnesses
6 are James Huff and I apologize if I mispronounce
7 the following names; Mark Krumenacher, David Pyles
8 and Harvey Porkorny, John Hock, Greg Wilcox, Duane
9 Kruger and Wayne Dixon, Michael Sturino, Kenneth
10 Liss, Steven Gobelman, Brian LaDieu, Claire
11 Manning, and we'll complete it with Stephen
12 Nightingale and Thomas Hornshaw from the IEPA.

13 The second purpose of today's
14 hearing is to satisfy the requirements of Section
15 27(b) of the Environmental Protection Act.
16 Section 27(b) of the act requires the Board to
17 request the Department of Commerce and Economic
18 Opportunity to conduct an economic impact study on
19 certain proposed rules prior to the adoption of
20 those rules. If DCEO chooses to conduct the
21 economic impact study, DCEO has 30 to 45 days
22 after such a request to produce a study of the
23 economic impact of the proposed rules.

24 The Board must then make the

1 economic impact study, or DCEO's explanation for
2 not conducting the study, available to the public
3 at least 20 days before a public hearing on the
4 economic impact of the proposed rules.

5 In accordance with Section 27(b)
6 of the act, the Board requested by a letter dated
7 August 4th, 2011, that DCEO conduct an economic
8 impact study for the above referenced ruling. On
9 September 28th, 2001, the Board received a
10 response from DCEO that no EcIS would be
11 performed. A copy of DCEO's letter is available
12 on the chair to my left.

13 Before we close the hearing, we
14 will accept any comment on DCEO's decision. We do
15 have pre-filed questions for some of the
16 witnesses. We will begin with those for each
17 witness, but anyone may ask a question of a
18 witness. However, I do ask that you raise your
19 hand, wait for me to acknowledge you, after I have
20 acknowledged you, please state your name and whom
21 you represent before you begin your questions.

22 Please speak one at a time. If
23 you are speaking over each other, the court
24 reporter will not be able to get your questions on

1 the record. Please note that any question asked
2 by a board member or staff are intended to help
3 build a complete record for the Board's decision
4 and not to express any preconceived notion or
5 bias. I also thought we would go until about 1:00
6 or 1:30 and take about an hour lunch break at that
7 point in time just to give you an idea of what my
8 plans are.

9 MR. JOHNSON: I want to welcome you.
10 Thank you for coming. You don't know just how
11 pleased I am to be here today. So start the
12 hearing.

13 MS. TIPSORD: Are there any
14 questions about the procedures?

15 MR. HENRIKSEN: Just a procedural
16 matter. Randi Willie --

17 MS. TIPSORD: State your name,
18 please.

19 MR. HENRIKSEN: John Henriksen,
20 Illinois Association of Aggregate Producers.
21 Thank you. Randi Willie should also be listed.
22 He is in our pre-filed testimony along with John
23 Hock.

24 MS. TIPSORD: Okay.

1 MR. HENRIKSEN: Thank you.

2 MS. TIPSORD: Any other questions?
3 I believe the Agency had an errata sheet they
4 wanted to present.

5 MR. WIGHT: We have two errata
6 sheets. One was pre-filed with pre-filed
7 testimony. One has been developed more recently
8 as a result of ongoing discussions with some of
9 the stakeholders. Would you like us to present
10 both of those as exhibits at this point?

11 MS. TIPSORD: Yes, that's a good
12 idea.

13 MR. WIGHT: Okay. I have the first
14 errata sheet number one. How many copies?

15 MS. TIPSORD: Two is enough.
16 Actually, we only need one.

17 MR. WIGHT: I have extra copies.

18 MS. TIPSORD: I'll just take one to
19 mark as the exhibit. If there's no objection, we
20 will mark errata sheet number one as Exhibit No.
21 7. Seeing none, it's Exhibit No. 7.

22 (Document marked as ILPCB
23 Exhibit No. 7 for
24 identification.)

1 MR. WIGHT: Do you want us to sit
2 for questions at this point as well?

3 MS. TIPSORD: No, we'll do the
4 questions on the errata sheet when we do the
5 questioning of the Agency at the end of the day.

6 MR. WIGHT: So we're just getting
7 the exhibits at this point?

8 MS. TIPSORD: Yes.

9 MR. WIGHT: I also have in support
10 of errata sheet one pre-filed testimony of Stephen
11 F. Nightingale.

12 MS. TIPSORD: Let's wait until we
13 swear them in and enter that at that point. Let's
14 just do the erratas right now.

15 MS. FLOWERS: Okay. So we also have
16 an errata sheet two that we filed.

17 MS. TIPSORD: If I can have a couple
18 extra of those. Great. Thank you.

19 MS. FLOWERS: I mean if anybody
20 wants a copy of these, if there's a place where we
21 could --

22 MS. TIPSORD: You can put them on
23 the chair. If there's no objection, we will mark
24 errata sheet number two as Exhibit No. 8. Seeing

1 none, it's Exhibit No. 8.

2 (Document marked as ILPCB
3 Exhibit No. 8 for
4 identification.)

5 MS. FLOWERS: We also have a form
6 that kind of goes along with that errata sheet
7 that we want to enter as an exhibit. Do you want
8 me to do that now?

9 MS. TIPSORD: Sure. If there's no
10 objection, we will mark Illinois Environmental
11 Protection Agency Rejected Load Certification for
12 Loads of CCDD and Uncontaminated Soil Accepted
13 Pursuant to IAC 1100.205(a)4 LPC 667 as Exhibit
14 No. 9. Seeing no objection, it is Exhibit No. 9.

15 (Document marked as ILPCB
16 Exhibit No. 9 for
17 identification.)

18 MS. TIPSORD: With that, I think
19 we're ready to proceed with the pre-filed
20 testimony of James Huff. Can we have Mr. Huff
21 sworn in?

22

23

24

1 WHEREUPON:

2 JAMES HUFF

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 MS. TIPSORD: Mr. Huff, do you have
6 a clean copy of your testimony with you?

7 MR. HUFF: I do.

8 MS. TIPSORD: I will mark Mr. Huff's
9 testimony, if there's no objection, as -- his
10 pre-filed testimony as Exhibit No. 10. Seeing
11 none, it is Exhibit No. 10.

12 (Document marked as ILPCB
13 Exhibit No. 10 for
14 identification.)

15 MS. TIPSORD: Mr. Huff, did you want
16 to give a brief summary or do you just want to sit
17 for questions?

18 MR. HUFF: If I could, just one
19 addition. The Village of Woodridge is also -- I
20 represent as well. So they were a recent
21 addition.

22 MS. TIPSORD: Okay. With that, are
23 there questions? I believe we start with IEPA.
24 Do you have questions for Mr. Huff?

1 MR. CLAY: Mr. Huff, on your
2 testimony under the heading of groundwater impact
3 from a CCDD site, pages four through seven discuss
4 data from a road improvement project in Kane
5 County. What is the name of the site and exactly
6 where is it located?

7 MR. HUFF: LeRoy Daily, D-A-I-L-Y,
8 Landfill, 7 North 508 Illinois 31, South Elgin,
9 Illinois.

10 MR. CLAY: And what type of
11 excavation was this?

12 MR. HUFF: Gravel pit.

13 MR. CLAY: What type of material was
14 placed in the site?

15 MR. HUFF: That facility was
16 permitted in 1972 for disposal of brick and broken
17 concrete demolition debris.

18 MR. CLAY: When did this site last
19 accept fill material?

20 MR. HUFF: 1989.

21 MR. CLAY: Roughly what percentage
22 of fill material accepted at the site was soil,
23 what percent was CCDD and what percent was other
24 material?

1 MR. HUFF: March 29th, 2001, an
2 Agency inspection report indicated rubble
3 including broken brick, plaster, wood and concrete
4 from the South Elgin Hospital. Waste was observed
5 in 1989, which was subsequently cleaned up. A
6 January 29th, 1976, letter from the Illinois EPA
7 to Mr. Daily indicated that domestic refuse was
8 observed along with open burning. June 13th,
9 1979, a letter also identifies, quote, plastic
10 bags containing household refuse were present at
11 the unrestricted site.

12 Asphalt shingles were also
13 reported present by Mr. Daily in a letter received
14 by the Agency on September 18th, 1985. Soil
15 borings completed by Huff & Huff, Inc. at the
16 Agency's request observed bricks, concrete, glass
17 and wood as well as cinders all mixed with soils.

18 MR. CLAY: So --

19 MR. HUFF: I'm sorry. In summary,
20 this was an uncontrolled site permitted for brick
21 and broken concrete, but the lack of restricted
22 access allowed the deposition of other material.

23 MR. CLAY: The data you referred to
24 then is that why the investigation was conducted

1 or was the data collected for some other reason?

2 MR. HUFF: Some other reason.

3 MR. CLAY: Why was that?

4 MR. HUFF: The site never received
5 closure from the Illinois EPA. Kane County needed
6 a small section of the property for a new road and
7 was required by the Daily family to purchase the
8 entire site to secure the small portion of the
9 land. Kane County assumed the responsibility to
10 secure the closure from Illinois EPA. Illinois
11 EPA initially requested the private wells be
12 tested and subsequently decided that was not
13 sufficient and required the monitoring wells to be
14 installed and sampled on the site.

15 MR. CLAY: What sample collection
16 methodology was used?

17 MR. HUFF: All sampling protocols
18 were approved by the Illinois EPA in a December
19 29th, 2004, discussion and they followed US EPA
20 protocols.

21 MR. CLAY: One sampling point was
22 identified as an outside spigot most likely prior
23 to treatment of the water softer. How many
24 samples were collected after the water had been

1 treated and what were these treatments?

2 MR. HUFF: All private wells were
3 sampled before the water softener. The one
4 sampling point identified was collected from an
5 outside spigot because the homeowner was not home
6 at the time, but had granted access. Our
7 experience is that outside spigots are connected
8 prior to the water softener as the excess sodium
9 is not desirable from a lawn or garden
10 perspective. Each spigot was allowed to flow for
11 ten minutes prior to sampling.

12 MR. CLAY: How many samples were
13 collected using sampling techniques typically
14 employed in performing groundwater monitoring at a
15 landfill.

16 MR. HUFF: One hundred percent.

17 MR. CLAY: How deep on average were
18 the 34 residential wells and how deep is the fill
19 site?

20 MR. HUFF: Three of the private
21 wells were screened between 30 and 34 feet below
22 ground surface. The remainder were screened
23 between 80 and 290 feet below ground surface.
24 I've seen no information on the depth of the fill

1 site. From the perimeter monitoring wells, the
2 gravel extended between 15 and 28 feet below
3 ground surface above a clay/silt formation. So
4 the fill site is likely in the same range 15 to 28
5 feet across the site.

6 MR. CLAY: In your testimony,
7 Mr. Huff, on page nine, you propose a
8 photoionization detector, PID, screening use of
9 the value -- screening use a value of five parts
10 per million as the threshold for lead rejection
11 instead of a reading in excess of background level
12 as is currently required. What is the basis for
13 your selecting five parts per million and how was
14 this number derived?

15 MR. HUFF: My testimony pointed out
16 a number of false positives when a limit of any
17 deflection on a PID meter is used as a pass/fail
18 criterion. The five parts per million was
19 suggested based on my 40 years of experience
20 associated with removal of soil from petroleum
21 releases. When trying to decide when to stop
22 excavation and actually collect the soil samples,
23 a photoionization detector is typically used in
24 the field and my experience has been if you can

1 achieve a five parts per million reading, the
2 sample will meet the most restrictive limits found
3 in 35 IAC 742.

4 It should be noted that
5 petroleum products have a very low odor threshold.
6 So you can smell petroleum at considerably lower
7 concentration than the most restrictive Tier 1
8 objectives. Remember that there is analytical
9 data associated with the material being screened
10 with a PID meter so we have a situation where a
11 PID reading is trumping analytical results.

12 MR. CLAY: Would you agree that the
13 proposed rule only requires that some of the
14 material may be -- have analytical results with
15 them?

16 MR. HUFF: I would not. I believe
17 that Form 663 requires a professional engineer to
18 certify that he has representative samples of
19 material being shipped in there. It is no
20 different than the type of sampling that is done
21 for anything that goes to a landfill or at
22 anything in the SRP program where you take
23 discreet samples and you analyze those samples.

24 MR. CLAY: What about the 662 form

1 that is also allowed for the certification?

2 MR. HUFF: My experience is nobody
3 uses the 662 form, Mr. Clay. Right now, the
4 marketplace is saying I don't care that this came
5 from residential areas, test it and give me a 663
6 form.

7 MR. CLAY: Okay. Mr. Huff, in your
8 testimony on page ten, you discuss the use of
9 painted CCDD as fill material. Do the changes
10 that IDOT has proposed in the proposed amendments
11 in pre-filed testimony of Steven Gobelman fully
12 address these questions? If not, what are the
13 remaining concerns?

14 MR. HUFF: Mr. Gobelman's proposal
15 would be a significant improvement over what the
16 Agency has proposed and will certainly help
17 highway departments. The proposal still deviates
18 from collecting representative samples of the
19 entire material as practiced in all other
20 regulatory programs.

21 MR. CLAY: Thank you.

22 MS. TIPSORD: And then Waste
23 Management has some questions for Mr. Huff.

24 MR. WILT: Dennis Wilt appearing on

1 behalf of Waste Management of Illinois. Just very
2 few questions Mr. Huff. You identified the
3 location where your testimony discusses the work
4 that you did. Are you aware of any groundwater
5 monitoring done on any other CCDD or soil fill
6 sites?

7 MR. HUFF: I am not.

8 MR. WILT: The second question that
9 we pre-filed referred you to a Board decision, a
10 1997 opinion in the TACO rulemaking and I think
11 the question more correctly should have stated
12 that on page four of your testimony you indicated
13 that TACO should be considered for application to
14 CCDD sites where there's contamination. Have you
15 had a chance to look at the 1997 opinion to
16 determine whether that is a consistent approach
17 with that Board decision in the TACO rulemaking?

18 MS. TIPSORD: For the record, that's
19 R97-12(b).

20 MR. WILT: If I could, I'll read the
21 section from the opinion that we're referring to.
22 It says -- it states as follows --

23 MR. HUFF: What page?

24 MR. WILT: This is on page two

1 towards the bottom after the heading establishing
2 remediation objectives using the mixture rule.

3 "The TACO methodology codified in Part 742 is not
4 independent. It must be used in conjunction with
5 remediation programs most specifically found at
6 Part 740" and then it continues on.

7 The question is would the
8 application of the TACO approach to contamination
9 at CCDD sites be consistent with that 1997 order
10 in your mind?

11 MR. HUFF: I believe it would. I
12 believe that when the Board wrote that opinion we
13 didn't have Section 1100 and the requirements that
14 are being proposed today. So the question is what
15 is the best program from a regulatory perspective
16 that we should be regulating the CCDD facilities
17 under and I believe that the Board's opinion other
18 than what you just cited, which were the programs
19 and effect at the time, are perfectly consistent
20 with a TACO type approach.

21 MR. WILT: Last question is whether
22 you're aware of any CCDD or soil fill sites that
23 have accepted waste in violation of the
24 Environmental Protection Act?

1 MR. HUFF: I was verbally told by an
2 Illinois EPA employee about a year ago that
3 enforcements had occurred where CCDD facilities
4 were not using Form 662 and 663. The CCDD example
5 I testified about in 1972 was cited for accepting
6 CCDD material without a permit which was
7 subsequently attained as well as operating an
8 unsecured facility that resulted in midnight
9 dumpers of domestic garbage. That's the sum
10 extent of my knowledge.

11 MR. WILT: I have no further
12 questions.

13 MS. TIPSORD: Are there any further
14 questions for Mr. Huff?

15 MS. MANNING: I have a question.
16 Claire Manning from the Chicago Public Building
17 Commission. Mr. Huff, is it your experience that
18 TACO has been utilized by the engineering
19 community not just for remediation purposes, but
20 to relocate soil from one area to another for
21 purposes of fill?

22 MR. HUFF: Yes, it's also used for
23 any phase one/phase two in trying to decide
24 whether a site -- there are environmental risks

1 posed to those, but it also has been used exactly
2 what you described in moving sites and
3 communities.

4 MS. MANNING: Thank you.

5 MS. TIPSORD: Anything further?

6 Thank you very much, Mr. Huff. It's a pleasure
7 seeing you again. We're ready for you,
8 Mr. Krumenacher, and if we could have him sworn
9 in.

10 WHEREUPON:

11 MARK KRUMENACHER

12 called as a witness herein, having been first duly
13 sworn, deposeth and saith as follows:

14 MS. TIPSORD: Mr. Krumenacher, did
15 you bring a copy of your testimony?

16 MR. KRUMENACHER: Yes, ma'am, I did.

17 MS. TIPSORD: If there's no
18 objection, we will mark the pre-filed testimony of
19 Mr. Krumenacher. Can I have that clean copy?

20 MR. KRUMENACHER: (Handing.)

21 MS. TIPSORD: We will mark the
22 pre-filed testimony of Mark Krumenacher as Exhibit
23 11. Seeing no objection, it is Exhibit 11.

24

1 (Document marked as ILPCB
2 Exhibit No. 11 for
3 identification.)

4 MS. TIPSORD: I understand you want
5 to give a brief summary?

6 MR. KRUMENACHER: Yes, ma'am. Okay.
7 My name is Mark Krumenacher. I'm a principal and
8 a senior vice president with GZA GeoEnvironmental
9 and I'm here as a licensed professional geologist
10 and a stakeholder in this process. I have worked
11 with the existing CCDD rules since their
12 inception. I have provided comments and suggested
13 changes to previous and current rule drafts and
14 have coordinated training programs for CCDD
15 operators. Previous efforts to change the draft
16 rule resulted in some changes with respect to
17 professional geologist's licensing and other
18 issues, but there's -- many more changes are
19 needed to make the rule feasible for operators
20 based on my experience working with operators.

21 Other individuals here are
22 addressing this issue here today and I have
23 provided comments in support of their efforts, but
24 at this time in my testimony I provide legal,

1 regulatory and technical justifications to expand
2 the role of licensed professional geologists in
3 implementing the proposed rule.

4 My qualifications were included
5 in my pre-filed testimony so I'm not going to go
6 over those, but during the past 24 plus years as
7 an environmental, geological and groundwater
8 professional I have earned professional
9 certifications from many states and national
10 certifying boards and they're listed in my
11 testimony.

12 As an active licensed
13 professional geologist, I represent many
14 associations and organizations on a daily basis
15 including several state and national mining
16 associations, state and national geologic
17 professional associations and other industry peer
18 associations of mining and environmental
19 professionals. Licensed professional geologists
20 in Illinois and elsewhere have been directly
21 involved in the routine planning, execution and
22 management of the characterization and final
23 disposition of contaminated soil waste and other
24 materials for several decades.

1 As you may be aware,
2 environmental rules and programs are commonly
3 managed for industry by environmental consulting
4 and environmental engineering firms. The CCDD
5 rule is just one of many examples of such rules.
6 Prior to the mid to late '70s and early '80s,
7 there were very few, if any, pure environmental
8 consulting or engineering -- environmental
9 engineering firms because there were very few, if
10 any, environmental regulations pertaining to waste
11 and contaminated soil and contaminated
12 groundwater. There were many engineering firms
13 like GZA, my company, that were managing soil and
14 groundwater as part of engineering processes, but
15 the new environmental regulations required that
16 engineering firms deal with contaminated soil and
17 contaminated groundwater differently and they
18 needed scientists, they needed new talent to help
19 that and the biggest available resource for these
20 scientists were geologists.

21 Coincident with the downturn or
22 the decrease in oil prices in the mid 1980s
23 geologists were then -- the curriculum changed to
24 environmental related geology and waste management

1 and groundwater issues and it was the geologist
2 that put the science into the environmental and
3 engineering consulting firms.

4 Although a common misconception
5 is that geologists are typically out studying
6 mountains and looking at rocks and volcanoes and
7 earthquakes, as I mentioned, the vast majority of
8 Illinois' approximately 780 licensed professional
9 geologists don't do that and they're engaged by
10 environmental and engineering consulting firms and
11 are involved in evaluation and management of
12 contaminated soil and contaminated groundwater
13 issues.

14 An important component of most
15 rules is the requirement for professional
16 certifications. Professional certifications play
17 a critical role in ensuring the effective and
18 consistent implementation of the rule and plays a
19 critical role in the ongoing health of any
20 industry such as environmental and engineering
21 consulting firms and it's important that the staff
22 be licensed or certified to give those
23 certifications and that includes professional
24 geologists.

1 The professional certification
2 processes identify levels of knowledge and the
3 ability to apply industry accepted practices in a
4 manner approved by industry peers and regulators
5 which provides for adherence to industry best
6 practices and standards of care.

7 As detailed in my testimony,
8 licensed professional geologists are specifically
9 qualified to perform many of the duties and
10 provide the certifications required under the
11 rule. Justification for this request is detailed
12 in my testimony and includes the Illinois
13 Professional Geologists Licensing Act, the
14 education curriculum of professional geologists
15 and the National Association of State Boards of
16 Geology Criteria together with the Illinois
17 Department of Financial and Professional
18 Regulation criteria which set the standards and
19 the criteria for professional geologists in
20 Illinois as well as the historical role of
21 professional geologists.

22 Each of these are summarized in
23 detail in my testimony. Historically,
24 professional geologists have had only a quiet

1 representation before such boards. Professional
2 geologists are highly educated, have widespread
3 experience and have a rigorous certification
4 process developed and approved by the State of
5 Illinois. As such, my testimony in writing and
6 here today is to request that the Illinois
7 Pollution Control Board and the Illinois EPA
8 recognize the qualifications of professional
9 geologists and make the requested amendments that
10 I've outlined in my testimony.

11 MS. TIPSORD: Thank you. Are there
12 any questions of Mr. Krumenacher? Thank you so
13 much for taking the time to testify. I appreciate
14 it. That moves us to David Pyles and Harvey
15 Porkorny. Are they here yet? I was going to say
16 I had an e-mail from Mr. Pyles this morning saying
17 when he was going to be testifying.

18 Okay. We'll skip over them and
19 when they come in later we'll come back to them.
20 I do know they're coming because I did have an
21 e-mail from them this morning. So, with that,
22 that means, Mr. Henriksen, we're ready for your
23 witnesses.

24 If there's no objection, we will

1 mark the pre-filed testimony of John Hock as
2 Exhibit 12 and the pre-filed testimony of Randi
3 Willie as Exhibit 13. Seeing none, they're
4 Exhibit's 12 and 13.

5 (Document marked as ILPCB
6 Exhibit No.'s 12-13 for
7 identification.)

8 MS. TIPSORD: Did you want to go do
9 a brief summary or go right to questions?

10 MR. HOCK: I was going to give a
11 brief summary, if I may.

12 MS. TIPSORD: That's fine.

13 MR. HOCK: My name is John Hock.
14 I'm a vice president with Civil & Environmental
15 Consultants and two of the issues that have been
16 heavily discussed through this rulemaking process
17 have been the maximum allowable concentrations,
18 what are the appropriate numbers, and also
19 groundwater monitoring and during the previous
20 hearing the testimony given by the IEPA indicated
21 they didn't have a chance to look at, didn't
22 have -- or have a chance to review actual data
23 from CCDD fill sites about what types of
24 concentrations or parameters may be in CCDD.

1 CEC has been involved with the
2 investigation of some facilities. We had the
3 opportunity to review some additional data and
4 wanted to basically provide a summary of that data
5 and relate it to three items.

6 One is the applicability of
7 groundwater monitoring, the second is if
8 groundwater monitoring is required what the
9 appropriate parameters should be and then the
10 third was the appropriateness of the maximum
11 allowable concentrations for soil remediation
12 objectives with PH specific levels.

13 So the data that we had
14 basically we reviewed data from 44 samples, 44
15 borings. These were obtained from the sites.
16 Basically, standard sampling, split spoon
17 sampling. The samples were analyzed for a large
18 variety of compounds, VOC's, volatile organic
19 compounds, pesticides, herbicides, PCB's and
20 metals. Also PNA's or polynuclear aromatic
21 compounds.

22 Basically, the data indicated
23 that no VOC's on any of the samples were detected
24 above the proposed MAC's, no SVOC's, no PCB's and

1 no pesticides or herbicides were detected above
2 the proposed MAC's. There were PNA's detected
3 above the proposed MAC's in 7 out of 44 and metals
4 were detected above in most of them.

5 In terms of PNA's, the samples
6 from those borings were noted to have -- in at
7 least a few of them, noted to have either milled
8 or crushed asphalt in them. PNA's are associated
9 with things like asphalt. So, to me, that's
10 actually not surprising given the definition of
11 CCDD and the fact that that material is
12 acceptable.

13 In terms of the metals, and I'll
14 comment about that a little further, but basically
15 all the concentrations detected were below the --
16 I should say nearly all were below the PH neutral
17 soil remediation objectives for those metals or
18 were very much within the range of background.

19 This data suggested what we,
20 again, understood from the testimony is the IEPA
21 indicated that if CCDD facilities -- if the
22 material in there basically meets the MAC's, then
23 really groundwater would not be required and it
24 was really a conservative approach for material

1 that is either not CCDD or maybe well above that
2 is being required.

3 This data just suggests to us or
4 indicated to us that really groundwater monitoring
5 is really not needed, that these are very typical
6 CCDD fill sites and the material in there is
7 indicative and I think meets the intent of what is
8 supposed to go into these facilities.

9 In terms of the parameters for
10 groundwater monitoring, determining exactly what
11 you monitor for in a groundwater monitoring
12 program can definitely be an involved process.
13 One of the simple ways to look at it is what is in
14 the source material. In this case, what it really
15 suggested to us it that it's PNA's and it's metals
16 are really going to be the primary thing and those
17 should be the parameters of focus.

18 The parameters that are on the
19 list are those listed in 35 IAC 620.410, which not
20 only includes the metals, some of these PNA's, but
21 it also includes radionuclides, VOC's, SVOC's and
22 pesticides, herbicides, many of which were not
23 detected at all, and the other part of this really
24 is the cost for some of these parameters. The

1 radionuclides I really just don't understand why
2 they're being proposed at all. There's no reason
3 to think the radionuclides would be in CCDD fill.

4 The cost for those -- just those
5 four; meaning Radium 226, Radium 228, Tritium and
6 Strontium 90 is about \$820. The total list based
7 on a quote that we obtained is close to \$3,000 per
8 sample to analyze for the entire part 620 list for
9 all Class 1 parameters. So, literally, over a
10 forth of it is just the radionuclides and then
11 some additional parameters that I pointed out.
12 Some unique organic compounds, some herbicides and
13 pesticides that in themselves are very expensive
14 because they require different methodologies such
15 that there was literally eight other parameters
16 that cost \$600.

17 So if groundwater monitoring is
18 required, I think some consideration of those
19 should be given and really, again, it should be
20 metals and PNA's should be the focus. And the
21 third item quickly was these -- the MAC's for many
22 of these metals, other parameters, are based on
23 the low PH specific remediation objective. The
24 data that we obtained from these soils, the 44

1 samples, the lowest PH that we saw was a little
2 over seven and the average was a little over eight
3 which just says the low PH is just not appropriate
4 and then the other thing we looked at -- we talked
5 to a laboratory, First Environmental, from
6 Naperville. They searched their database over the
7 last several years, over 8,500 samples they looked
8 at, and these were solid samples, meaning samples
9 of solids. Over 97 percent of those parameters or
10 those samples had a PH of 6.25 or greater. What
11 we suggest actually is if there's a question about
12 the PH to actually establish a MAC for PH of 6.25
13 and then using the neutral PH value would very
14 much be even that much more appropriate.

15 MS. TIPSORD: Thank you.

16 Mr. Willie, do you have a brief summary?

17 MR. WILLIE: Yes. My name is Randi
18 Willie. I'm the manager of environmental and land
19 services for Meyer Material Company in Des
20 Plaines, Illinois. We're a regional supplier of
21 ready mix concrete and construction aggregates.
22 We have a few mining sites northwest of Chicago.
23 In my pre-filed testimony, you can find my
24 education and work experience. I have about 24

1 years dealing with environmental compliance in
2 Illinois involved in mine planning, permitting,
3 land restoration and land use disposal and I guess
4 I'm here to highlight a couple points of my
5 testimony regarding where we've been over the last
6 12 years.

7 I'm a member of the Illinois
8 Association of Aggregate Producers and back in
9 2000 I was the chairperson for the environmental
10 committee. For about six years, I had firsthand
11 knowledge of our dealings as an association with
12 the Illinois EPA regarding I'll call it the embryo
13 stage of CCDD regulation or conformance and as a
14 group we reached out to the Agency and worked side
15 by side designing and developing best management
16 practices. We volunteered to do training for
17 industries even above and beyond the aggregate
18 association at the time. And back in 19 -- 2004,
19 we actually had approval from -- and it's an
20 exhibit in my testimony. We had an approval from
21 Bill Child who was the chief of the Bureau of Land
22 at the time who was basically complementing us on
23 going beyond compliance when it came to CCDD
24 management at the time and, you know,

1 unfortunately from that time on it appears as if
2 we have picked up steam on the regulations. Part
3 1100 came into play and it is -- since we keep
4 looking at additional soil and groundwater
5 conditions or requirements in order to operate,
6 unfortunately as a smaller operator in the CCDD
7 clean fill basis we actually had to withdraw our
8 business.

9 We had one site that we withdrew
10 in 2005 and then, again, about 18 months ago we
11 closed our other facilities because there's just
12 too much at risk at this point and, again, land
13 restoration for what we do whether it's 10 acres,
14 20 acres or 200 acres, it's a valuable part of
15 what we look at in a business plan going forward
16 when we model a mine and I just wanted to make
17 sure that the Board was aware of some of the
18 impacts that are going to take place with smaller
19 operators for sure across the state if the
20 procedures keep going the way they are.

21 MS. TIPSORD: Thank you. With that,
22 IEPA, do you have any questions?

23 MR. CLAY: Mr. Hock, on page three
24 of your testimony, you state that CEC, or Civil

1 Environmental Consultants, have performed or
2 reviewed data from investigations of multiple CCDD
3 fill sites based on 44 samples collected from 44
4 borings. How many sites or borings were made and
5 samples taken for analysis?

6 MR. HOCK: CEC performed borings at
7 three sites and we reviewed data from one
8 additional site.

9 MR. CLAY: Where are the names of
10 the sites where the boring samples were taken to
11 be analyzed?

12 MR. HOCK: At CEC, we have to obtain
13 permission from clients to share data that we
14 obtain from a project with another party. We were
15 only given permission to use this data based on
16 keeping the names of the facilities and other
17 identifying features confidential. So,
18 unfortunately, due to client confidentiality, I
19 can't tell you the names of the sites.

20 MR. CLAY: Where are the sites
21 located?

22 MR. HOCK: They're all in Illinois.

23 MR. CLAY: Can you give northern
24 Illinois, southern Illinois, any additional

1 detail?

2 MR. HOCK: Northern Illinois.

3 MR. CLAY: What type of excavations
4 was each site?

5 MR. HOCK: They're all former
6 quarries, meaning sand or rock or borrow areas.

7 MR. CLAY: What types of materials
8 were placed in each site?

9 MR. HOCK: These were all CCDD fill
10 sites, CCDD as defined in 1100.103.

11 MR. CLAY: When did each site last
12 accept fill material?

13 MR. HOCK: Most of these are still
14 active.

15 MR. CLAY: For each site, roughly
16 what percentage of fill material was soil and what
17 percentage was CCDD and what percentage was other
18 material?

19 MR. HOCK: We obviously do not have
20 exact records, but basically just based on a
21 review of the boring logs and related information,
22 something greater than 80 percent is soil. The --
23 in these borings, there was no municipal solid
24 waste, no industrial waste that was found. The

1 logs did note trace amounts of glass roots in
2 wood.

3 MR. CLAY: When were the borings
4 made?

5 MR. HOCK: Between 2007 to 2011.

6 MR. CLAY: Were the samples from the
7 borings selected and submitted for analysis at the
8 time the borings were made?

9 MR. HOCK: Yes, they were.

10 Basically, multiple samples were obtained from
11 each boring and, in general, the borings were
12 field screened to try to -- when I say field
13 screened, olfactory, visual, with a PID to try to
14 determine the worst case sample and that's the one
15 that was sent off for analysis.

16 MR. CLAY: And what sample
17 collection methods were used?

18 MR. HOCK: The sample collection it
19 was basically ASTM 1586, the standard penetration
20 test procedure. It's basically using hollow stem
21 augers to advance the bore holes and standard
22 split barrel samplers to collect the samples. I
23 would like -- the samples for VOC analysis were
24 collected using the terra core sampler, which

1 meets the requirements of SW-846 Method 5035.

2 MR. CLAY: And why were these
3 investigations conducted?

4 MR. HOCK: They were mostly
5 performed for internal due diligence purposes.

6 MR. CLAY: Mr. Hock, on page seven
7 of your testimony, you state "That if groundwater
8 monitoring is required, it should be performed
9 only on indicator list of metals and PNA's and any
10 other site specific contaminants of concern." Do
11 you have a list of what you're calling indicator
12 contaminants of the metals and PNA's or are you
13 talking about all the metals and all the PNA's?

14 MR. HOCK: I was generally referring
15 to a fairly complete list of metals and a typical
16 list of PNA's. It's about 20, 25 compounds.

17 MR. CLAY: Please explain how other
18 site specific contaminants of concern would be
19 identified and incorporated into the site's
20 groundwater monitoring requirements?

21 MR. HOCK: Yeah, that was really
22 just, I guess, a general statement to say if
23 there -- for example, if a CCDD fill site took a
24 large volume from a particular source or sources,

1 and I'll use the Busch Stadium project as an
2 example, that material had particular contaminants
3 that needed to be segregated or were close to the
4 MAC that that is something that should be taken
5 into consideration when consulting the program and
6 another example is if, let's say, there's a site
7 adjacent that's known to have some sort of
8 contamination, if I were the site operator, that's
9 something else that I would take into
10 consideration and potentially add as well.

11 MR. CLAY: The Agency believes that
12 a full list of indicator -- of groundwater
13 monitoring compounds to be sampled, however, we
14 would agree that the radionuclides are something
15 that could be dropped and we also should note that
16 there are on the horizon some explosives that may
17 be included in the 620 groundwater monitoring
18 requirements and we would agree that those should
19 also -- or could also be dropped.

20 MS. TIPSORD: Mr. Clay, we'll go
21 ahead and have you sworn.

22

23

24

1 WHEREUPON:

2 DOUGLAS CLAY

3 called as a witness herein, having been first duly
4 sworn, deposeseth and saith as follows:

5 MS. TIPSORD: I'm assuming you'll be
6 answering questions later on?

7 MR. CLAY: Yes, I will.

8 MR. HENRIKSEN: Ms. Tipsord, his
9 last two statements were pretty significant. Do
10 you want him to make those now so they're part of
11 the record?

12 MS. TIPSORD: It's a retroactive
13 swearing in.

14 MR. HENRIKSEN: Thank you.

15 MS. TIPSORD: That's why he was
16 sworn in.

17 MR. HENRIKSEN: Thank you.

18 MS. TIPSORD: That happens a lot.

19 MR. HENRIKSEN: Okay. Thank you.

20 MR. CLAY: Mr. Hock, on page seven
21 of your testimony, you reference attachment two
22 and it's a letter from the First Environmental
23 Laboratories concerning PH values 8,500 soil and
24 non-soil samples analyzed between 2006 -- January

1 2006 and September 2011. What is the ratio
2 between the soil and non-soil samples within this
3 database?

4 MR. HOCK: Based on information that
5 was provided from First Environmental.

6 MS. TIPSORD: Could you speak up?
7 There's a lot of roaring and they're beginning to
8 have difficulty hearing. So if you could speak up
9 a little bit?

10 MR. HOCK: Based on information
11 provided by First Environmental, which was based
12 on them talking to their analytical chemist who
13 has been involved doing that for about the last
14 ten years, they estimated that 90 percent of the
15 samples would be classified as soil and about ten
16 percent would be classified as non-soil.

17 MR. CLAY: What is the geographic
18 range from which the soil samples were taken?

19 MR. HOCK: Again, based on
20 information provided from First Environmental,
21 approximately 90 percent of the soil samples were
22 within a two hour driving range of the Chicagoland
23 area.

24 MR. CLAY: Okay. What is the

1 distribution of the soil samples within that
2 geographic range?

3 MR. HOCK: First Environmental is
4 unable to provide an answer to that question.

5 MR. WIGHT: Yes, I have a question
6 for Mr. Willie. You had mentioned a couple of
7 land reclamation projects you were involved in
8 back around 2005, which you felt the risk had
9 increased to the point where you had to withdraw
10 from those projects. Could you tell us what the
11 status of those projects were at the time of your
12 withdrawal in terms of how close to being
13 completed were they or how far from being
14 completed?

15 MR. WILLIE: The one facility in
16 2005 we stopped and there was probably ten years
17 worth of fill material we could have brought in.
18 We were developing an area along a state highway
19 where there is commercial potential. The one that
20 is more current that we walked away from 18 months
21 ago probably has five to six years remaining if we
22 were to continue bringing material in.

23 MR. WIGHT: Okay. What has happened
24 to this project since? Have they just maintained

1 their status as you left them or has somebody come
2 along and picked those up since you were --

3 MR. WILLIE: They maintained their
4 inactive status.

5 MR. WIGHT: They're still part of
6 your --

7 MR. WILLIE: Yes, they're part of
8 our operations in which we're not filling.

9 MR. WIGHT: Okay. Thank you.

10 MS. TIPSORD: Remember not to talk
11 over one another. The court reporter can't get
12 you both at once.

13 MR. RAO: May I ask a follow up?
14 Mr. Willie, also in your testimony you mentioned
15 that like Meyer Material, other companies were
16 also closing shop because of these regulations.
17 Do you know any names of these companies that were
18 affected by the rules?

19 MR. WILLIE: To the best of my
20 recollection, there was other operators in our
21 industry that stopped taking clean fill, I
22 believe, west towards the river, the Mississippi
23 River, and I believe they stopped taking fill at
24 least four or five years ago.

1 MS. TIPSORD: Anything else?

2 Mr. Huff, you had some follow-up questions.

3 MR. HUFF: I have a few questions
4 for Mr. Hock. On page four of your testimony, you
5 note that 36 out of 44 samples, or 82 percent,
6 exceeded the proposed Maximum Allowable
7 Concentration for metals. Do you believe this
8 dataset is reasonably representative of material
9 that is taken to CCDD facilities?

10 MR. HOCK: I do. The sites that
11 we're talking about were all operated by different
12 companies. They're all located at least 20 miles
13 from each other. So the fill material does seem
14 to be reasonably representative of historic fills
15 taken to these types of facilities.

16 MR. HUFF: So if 82 percent of
17 material currently going to CCDD facilities can no
18 longer go there due to just the metals, where
19 would this material be taken?

20 MR. HOCK: Obviously, it will either
21 need to go to a landfill or an unregulated
22 Illinois facility or -- and when I say unregulated
23 Illinois facility, a low lying area in a field or
24 an undeveloped property or I know a lot of that

1 type of material is going out of state right now.

2 MR. HUFF: Can you expand on what
3 the economic implications of adopting the proposed
4 Maximum Allowable Concentration will have on both
5 the generators and on the CCDD facilities and
6 uncontaminated soil facilities that historically
7 accepted this material, but will not be able to
8 going forward?

9 MR. HOCK: Again, if CCDD facilities
10 cannot accept this material, the economic
11 implementation for generators is negative.
12 They'll either have to pay more, higher tipping
13 fees to take it to a landfill. In addition to the
14 tipping fees, they may have to transport it
15 further. If they elect to take it to what I'll
16 refer to as an unregulated facility, in my view,
17 they're taking on additional liability.

18 You know, for the CCDD or soil
19 only fill sites, this will obviously decrease the
20 volume on material they'll be able to accept and I
21 do believe you'll see additional facilities cease
22 operations in the fairly near future.

23 MR. HUFF: And, finally, on page
24 four of your testimony, you note that seven out of

1 44 samples had PNA's detected above the proposed
2 maximum allowable concentrations. Of these seven
3 samples above the proposed maximum allowable
4 concentrations, how many were over the Tier 1 soil
5 migration and Class 1 groundwater remedial
6 objectives?

7 MR. HOCK: Actually, three of the
8 seven were above the Tier 1 soil migration to
9 Class 1 groundwater remedial objectives. Two of
10 those samples -- I actually went back and I
11 reviewed the boring logs for those particular
12 samples. Again, the way I described it, we took
13 the worst case ones and the sample interval for
14 two of those three samples clearly noted either
15 ground or milled asphalt in that sample interval.
16 So -- again, those types of compounds are
17 associated with asphalt. So it's not surprising
18 that some amount of PNA's are going to be in these
19 facilities if they took asphalt.

20 MR. HUFF: Thank you.

21 MS. TIPSORD: Mr. Willie?

22 MR. HENRIKSEN: Excuse me. I know
23 the Willie pre-filed testimony referred to an
24 exhibit that was not actually attached to what I

1 have here now so I have a clean copy to give her
2 so you have a complete exhibit.

3 MS. TIPSORD: Do you want to mark it
4 as another exhibit or attach it?

5 MR. HENRIKSEN: Just attach it.

6 MS. TIPSORD: We'll attach it.

7 MR. HENRIKSEN: That was an
8 attachment.

9 MR. WILT: Just a few questions for
10 Mr. Hock who I'm pleased to say I know because he
11 used to be with our company, Waste Management. He
12 used to work for us just in a different setting.
13 First, on the sampling you took. You testified in
14 response to a question that was just raised that
15 you looked at samples from four CCDD sites, if I
16 recall correct?

17 MR. HOCK: Correct.

18 MR. WILT: How many are there in
19 operation today? Do you know? Do you have a feel
20 for? How many CCDD sites are in operation today?

21 MR. HOCK: According to the IEPA
22 website, there are 62 that are permitted. I know
23 that not all 62 of those are operational. So
24 close to ten percent.

1 MR. WILT: And obviously there have
2 been some CCD sites -- CCDD sites that have been
3 in operation that are no longer operational?

4 MR. HOCK: Certainly.

5 MR. WILT: With respect to soil fill
6 sites, were any of the four sites that you looked
7 at borings from soil fill sites?

8 MR. HOCK: No.

9 MR. WILT: Do you have any
10 understanding or any knowledge as to how many soil
11 fill sites are in operation in Illinois today?

12 MR. HOCK: A list that we obtained
13 from the IEPA from September 2011 indicated that
14 there are about 25 registered soil fill sites in
15 the state.

16 MR. WILT: So the total universe 61
17 CCDD sites, approximately 25 or so soil fill
18 sites, 85 or so sites, is that approximately
19 correct from your --

20 MR. HOCK: That are registered or
21 permitted.

22 MR. WILT: And your information
23 comes from four?

24 MR. HOCK: Correct.

1 MR. WILT: And your opinion is that
2 is a representative sample of all CCDD sites or
3 CCDD plus soil fill sites?

4 MR. HOCK: I think it's a
5 representative sampling of the type of material
6 that has been historically accepted at those
7 sites. Most of the material that went into these
8 facilities was before the current rule. I should
9 say a lot of the material we sampled was even
10 before the prescreening. So I think it is
11 representative of historically what has gone into
12 these types of facilities.

13 MR. WILT: We move to the question
14 that I raised in the pre-filed -- whether Public
15 Act 96-1416, in your opinion, will likely result
16 in more soil from remediation projects being
17 disposed of at CCDD and fill sites than at
18 landfills?

19 MR. HOCK: I mean, I guess I do not
20 believe that's true based on my understanding of
21 the rules. Meaning, that soil from remediation
22 projects, and I'm looking specifically at
23 1100.205, that it lists requirements for being
24 able to accept CCDD and uncontaminated soil and it

1 indicates that as part of being able to accept it,
2 you have to confirm and document that the CCDD or
3 uncontaminated soil was not removed from a site as
4 part of a cleanup or removal of contaminants and
5 it goes onto reference CERCLA, cleanups as part of
6 RCRA, also as part of the Leaking Underground
7 Storage Tank Program or the Site Remediation
8 Program. There is an exclusion which I understand
9 is for Cook County schools, which I'm not sure why
10 that's there, but -- so, yes, most of the
11 remediation projects, to me, are done under the
12 SRP program so it would be specifically excluded.

13 MR. WILT: Let me ask a follow up.
14 Non-remediation project, just the amount of soil
15 that will be moved to CCDD or soil fill sites, do
16 you anticipate that that will increase generally?

17 MR. HOCK: As part of these rules?

18 MR. WILT: Mm-hmm.

19 MR. HOCK: I actually think, again,
20 as written it will decrease. I think most of
21 it -- I think a lot of it will end up going -- I
22 think a lot will go out of state. I think a lot
23 will go to unregulated facilities. I was driving
24 in the Joliet area and there's a permitted CCDD

1 fill site area and within a mile there's three
2 unregulated fill sites right on the same street.
3 One that was 150 feet away all with signs out
4 front that say clean soil wanted. I've talked to
5 a number of small generators that tend to say,
6 nope, we've got CCDD, we take it out of state. We
7 can't get rid of it in Illinois. It's too much of
8 a problem. So I don't think it's going to go to
9 landfills either, frankly, a lot of it.

10 MR. WILT: Your view seems to be
11 contrary to the view of the Agency and during your
12 preliminary comments you indicated that one of the
13 reasons that the Agency has recommended
14 groundwater monitoring in particular is the lack
15 of data regarding contamination of these
16 facilities. Isn't the primary reason or reasons
17 of the sheer volume of additional soil material
18 that will be disposed of and the fact that the
19 soil would be disposed of in vulnerable settings,
20 basically in the groundwater, on top of the
21 groundwater?

22 MR. HOCK: Those are reasons that I
23 believe is in the IEPA testimony, yes.

24 MR. WILT: Last question. Are you

1 aware of any waste that has been accepted at CCDD
2 or soil fill operations in the past in violation
3 of the Environmental Protection Act?

4 MR. HOCK: Personally, I am not. I
5 have certainly heard of sites that have. There
6 are some that was referenced like the Lynwood site
7 and I guess that's where it was my thought or
8 recommendation that, yes, if there are sites that
9 are known or demonstrated to have taken, you know,
10 general C and D or other things that do not meet
11 the requirements, then the potential is, yes,
12 groundwater monitoring might be appropriate.

13 MR. WILT: Let me ask you a
14 follow-up question on your comment. In your
15 testimony as you just stated, you say CEC suggests
16 groundwater monitoring only be required for CCDD
17 facilities which are known or demonstrated to have
18 taken significant amounts of non-CCDD fill. How
19 would you know which ones took waste? How is the
20 public protected so that those bad sites would
21 have groundwater monitoring? How do you know and
22 can you know soon enough if you don't have
23 monitoring?

24 MR. HOCK: In terms of whether --

1 you'd have to look at the enforcement history of
2 the field operation section if they visited these
3 sites over time. I guess it's been my experience
4 that the bad actors out there, people know who
5 they are, they've been bad actors for quite a
6 while and it's not usually people who -- if
7 they're going to go against the rules, they're
8 going to do it consistently and they're going to
9 do it for an extended period of time and it hasn't
10 been that hard in the past it seems to figure out
11 those places.

12 MR. WILT: Your view appears to be
13 that the enforcement mechanisms utilized by the
14 Agency would be the manner in which sites that are
15 known or have demonstrated to have taken waste in
16 would have been identified, is that a true
17 statement?

18 MR. HOCK: It would certainly be one
19 of the primary means, yes.

20 MR. WILT: Would there be any other
21 way to determine whether a site accepted waste
22 if -- set groundwater monitoring aside, without
23 groundwater monitoring, would the enforcement by
24 activities of the Agency be the only way to

1 determine what sites should have groundwater
2 monitoring?

3 MR. HOCK: You could certainly look
4 at the historical records of the facility, but --
5 yes, really looking at historical records, past
6 enforcement, those would certainly be two primary
7 means.

8 MR. WILT: Thank you. I have no
9 other questions.

10 MS. TIPSORD: Any other questions
11 for Mr. Willie?

12 MS. MANNING: Claire Manning,
13 Chicago Public Building Commission. I have a
14 couple follow-up questions from Mr. Wilt's
15 questions to Mr. Hock. Mr. Wilt had asked you
16 questions about groundwater monitoring kind of
17 after the fact because what is in there now,
18 correct me if -- there is no groundwater
19 monitoring of CCDD facilities now, is that
20 correct?

21 MR. HOCK: Yeah, I do understand
22 that there's limited monitoring performed for
23 mining purposes in a number of locations, but
24 certainly nothing that I'm aware of to the extent

1 that is proposed in the rules.

2 MS. MANNING: And since the Board
3 adopted the Part 1100 rules, is it your
4 understanding that a lot of front end controls
5 have been placed on the CCDD permitted operators
6 since those rules were adopted in whatever year
7 the Board adopted the Part 1100 rules?

8 MR. HOCK: Yes. I mean,
9 prescreening of load checking, the inspection
10 program, are all part of the requirements of
11 current operators, yes.

12 MS. MANNING: Is it your
13 understanding that those rules work sufficiently
14 or have worked as intended such that CCDD
15 operators are much more responsible and they're
16 permitted and they're part of the Agency's
17 enforcement program in the event that there's
18 something that is wrong?

19 MR. HOCK: Yes, I do believe there
20 is much more control in place than historically.

21 MS. MANNING: And is it your concern
22 with the groundwater monitoring with all of the
23 front end controls to have back end controls as
24 well might be overly conservative for purposes of

1 getting what needs to safely and can safely be
2 disposed of in a CCDD facility given the rules as
3 they're written right now?

4 MR. HOCK: Yes, a lot of cost, a lot
5 of effort for little value.

6 MS. MANNING: Okay. Thank you.

7 MR. SYLVESTER: Hi. Steven
8 Sylvester on behalf of the Attorney General's
9 Office. I had a couple of follow-up questions to
10 the questions that have been asked so far. One of
11 the things that you had talked about so far was
12 the enforcement mechanism to determine if there
13 was -- in the absence of groundwater monitoring if
14 the Illinois EPA inspectors would go out, are you
15 aware of how many inspectors there are that
16 inspect these CCDD facilities?

17 MR. HOCK: The exact number, no. I
18 know of several, but I don't know the number.

19 MR. SYLVESTER: A ballpark number.

20 MR. HOCK: I guess 25, 30.

21 MR. SYLVESTER: Okay. Well, where
22 I'm going with that is these CCDD landfill
23 operations fill up basically Monday through
24 Friday, correct, and the purpose of the permits is

1 they self report that they comply with the Part
2 11 --

3 THE COURT REPORTER: After Part 11?

4 MS. TIPSORD: We can't hear you.

5 MR. SYLVESTER: That the operators
6 self report their compliance with Part 1100
7 regulations?

8 MR. HOCK: I'm sorry. Could you
9 repeat the question?

10 MR. SYLVESTER: Sure. Did the sites
11 self report their compliance with the Part 1100
12 regulations?

13 MR. HOCK: Yes. I mean, they
14 maintain documentation on site and things like
15 that, yes.

16 MR. SYLVESTER: So, say the Illinois
17 EPA goes out and inspects on January 1st any site
18 and they come back and say they do one inspection
19 a year, that means they were out there for maybe a
20 an hour, maybe two hours to see what is going on
21 in the site, would you agree with that?

22 MR. HOCK: If they're only out there
23 once a year, yes.

24 MR. SYLVESTER: Assuming that.

1 MR. HOCK: If the inspector is just
2 taking a snapshot of when they go out there --

3 MR. SYLVESTER: For the enforcement
4 people, how ever many inspections they actually
5 do, one, two, they're there a couple hours, the
6 site operates for hundreds and thousands of hours,
7 would you agree with that?

8 MR. HOCK: Yes, I guess my point
9 with the bad actors is when you go out and
10 visually look at a site and everything is neat and
11 clean and you don't see any evidence of non-CCDD
12 material and they have all their documentation in
13 order, those are all indications that they're at
14 least doing their best to follow the rules. What
15 I guess the problem sites, to me, are ones that it
16 seems like people know about for years and it
17 takes sometimes a long time to come down on those
18 folks and those are really the bad actors and
19 everybody knows about them.

20 So I just don't think it's that
21 hard -- if you're out there on some routine basis,
22 if you look around, if you see the documentation,
23 if you see how the facility is kept, it's not that
24 hard to figure out which ones are trying to break

1 the rules and which ones are not.

2 MR. SYLVESTER: If I could follow
3 up. Even the companies that are trying to follow
4 the rules sometimes, whatever, you get a new
5 employee who may not be familiar with the
6 regulation, sometimes waste is going to get into a
7 site under the current rules --

8 MS. TIPSORD: Mr. Sylvester, I'm
9 having a lot of difficulty hearing you. Could you
10 speak up little bit?

11 MR. SYLVESTER: Sure.

12 MR. HENRIKSEN: Let me say as the
13 attorney for IAAP I think what the gentleman is
14 doing is testifying rather than asking questions
15 so maybe we could put these in forms of questions
16 that he could try to answer rather than a series
17 of questions and assume all sorts of facts that
18 are not in evidence.

19 MS. TIPSORD: I think we can -- he's
20 asking him if he agrees or disagrees. At this
21 point, we're fine. I'll keep an eye on it.

22 MR. SYLVESTER: The question I have
23 and basically it's in a nutshell. Even when an
24 operator is in good faith trying to comply with

1 the regulations sometimes they slip through the
2 cracks and waste could enter into the facility
3 with all the best intentions, would you agree with
4 that?

5 MR. HOCK: Yes, that's absolutely
6 possible.

7 MR. SYLVESTER: And that's really
8 what I'm getting at is in the absence of
9 groundwater monitoring, how would you know that
10 material was in there?

11 MR. HOCK: I guess my point is and,
12 again, I'm using the data from these facilities is
13 will there be some amount of material that gets in
14 that is above the MAC or is not what they intended
15 to get in? Yes, I do believe that's true. Is the
16 large majority, the vast majority, going to be the
17 stuff that is intended to be there that is
18 really -- CCDD uncontaminated soil I do believe
19 that answer is yes such that when taken in the
20 aggregate that the people who are following the
21 rules that the large majority of the material in
22 there will truly be uncontaminated soil as is
23 intended.

24 MR. SYLVESTER: Just to clarify on

1 your opinion. You believe it should be on a case
2 by case basis we should be required to do
3 groundwater testing?

4 MR. HOCK: I guess my opinion would
5 be that it should not be required unless you --
6 these other things have been demonstrated or
7 determined that it was known that you took general
8 C and D or MSW or other things like that.

9 MR. SYLVESTER: So how would that
10 account for CCDD or non-CCDD waste that gets into
11 the site where they're not a bad actor, but it
12 does impact groundwater where it's a resource
13 groundwater and may not even appear for a couple
14 years after the site is closed?

15 MR. HOCK: I guess my opinion is,
16 again, for sites that do attempt to follow the
17 rules where a large majority is uncontaminated
18 soil that the risk of groundwater contamination
19 from these facilities is very low.

20 MR. SYLVESTER: That's all my
21 questions.

22 MS. TIPSORD: Thank you.

23 MR. RAO: Mr. Hock, are you familiar
24 with the Board's inert waste landfill regulations?

1 MR. HOCK: Just generally.

2 MR. RAO: Are you aware of these
3 rules that they don't require groundwater
4 monitoring, but they require testing of leachate
5 groundwater monitoring?

6 MR. HOCK: I'm not that familiar
7 with the rules because I haven't been involved
8 with any inert waste landfills. I've been
9 involved with many municipal solid waste
10 landfills, but not inert waste landfills.

11 MR. RAO: Okay. Thank you.

12 MS. TIPSORD: Anything further?
13 Thank you very much, gentlemen. We appreciate it.
14 Mr. Pyles, Harvey Porkorny, is he with you?

15 MR. PYLES: He is not here.

16 MS. TIPSORD: Do you want to then
17 have his testimony entered as a public comment?

18 MR. PYLES: That would probably be
19 appropriate.

20 MS. TIPSORD: Okay. We can go ahead
21 and go with you as soon as Member Johnson gets
22 back. So go ahead and grab a seat. Let's go
23 ahead and take a ten-minute break and then we'll
24 start.

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 MS. TIPSORD: Okay. We'll go to
5 David Pyles. I would note it was pre-filed with
6 both his name and Harvey Porkorny, but Harvey is
7 not with us today so this is the pre-filed
8 testimony of David Pyles. Do you have a clean
9 copy with you today.

10 MR. PYLES: I can give you this one,
11 sure.

12 MS. TIPSORD: Okay. If there's no
13 objection -- can we have the witness sworn in,
14 please.

15 WHEREUPON:

16 DAVID PYLES
17 called as a witness herein, having been first duly
18 sworn, deposeth and saith as follows:

19 MS. TIPSORD: If there's no
20 objection, we'll have the pre-filed testimony of
21 David Pyles entered as Exhibit No. 14. Seeing
22 none, it's Exhibit 14.

23

24

1 (Document marked as ILPCB
2 Exhibit No. 14 for
3 identification.)

4 Go ahead if you'd like to give
5 a brief summary.

6 MR. PYLES: I understand -- I guess
7 first let me start by apologizing for running late
8 today. Traffic is always a joy in Chicago.
9 However, we filed this with the Board to bring
10 light to several sections within the proposed
11 rules here that cover Sections 205, 212, 412, 525,
12 530 and 710 of the 1100 regs and I understand that
13 Mark previously had testified so basically a lot
14 of my testimony will reflect identical and similar
15 viewpoints.

16 So not to drag through
17 previously heard details and the point of
18 expediency here as an Illinois licensed
19 professional geologist, the American Institute of
20 Professional Geologists, Illinois and Indiana
21 sections, have discussed these regs and have asked
22 us to present our viewpoints and as geologists we
23 fought for inclusion into the CCDD 1100 bill when
24 they signed it into law and on these amendments

1 here, proposed amendments, in the sections I
2 previously cited are absent of any reference to a
3 licensed professional geologist in our practice
4 and I add that there is a licensing act for
5 professional geologists within our state which
6 provide for academic criteria and professional
7 ethics and it also provides for us for the
8 protection of public safety.

9 I'll acknowledge the fact that
10 we're not a large group in numbers compared to
11 other professions within the state. However, to
12 seek and hold the license within Illinois, you
13 have to have the requisite qualifications and we
14 feel that we do and we feel that we should be
15 included into those six reference points
16 previously cited so that we may certify, review
17 and provide the necessary oversight and guidance
18 of these regulations.

19 As far as the groundwater
20 elements, we hold the requisite educational
21 training and experience to work with these types
22 of conditions and prepare the appropriate reports.
23 These have been previously recognized by the
24 Illinois EPA and other programs as well and we

1 wish to be added amongst this as a stewardship of
2 the CCDD rules.

3 I don't wish to go through a
4 whole narrative reading word and verse, but the
5 licensure act provides for this and if there's any
6 questions to that we can reference that act as
7 well, but, in essence, that's my testimony today
8 is to request inclusion in here for the Illinois
9 licensed professional geologist into this
10 rulemaking.

11 MS. TIPSORD: For Mr. Pyles, do we
12 have any questions? Thank you so much for taking
13 the time to testify and be here today.

14 MR. PYLES: Thanks.

15 MS. TIPSORD: We'll move onto
16 Gregory Wilcox. Can we have the witness sworn in.

17 WHEREUPON:

18 GREGORY WILCOX

19 called as a witness herein, having been first duly
20 sworn, deposeth and saith as follows:

21 MS. TIPSORD: Do we have a clean
22 copy of Mr. Wilcox's testimony?

23 MR. WILCOX: I do.

24 MS. TIPSORD: Thank you so much. If

1 there's no objection, we will admit the pre-filed
2 testimony of David Wilcox as Exhibit 15. Seeing
3 none, it's Exhibit 15.

4 (Document marked as ILPCB
5 Exhibit No. 15 for
6 identification.)

7 MR. WILCOX: Gregory Wilcox.

8 MS. TIPSORD: I'm so sorry.

9 MR. WILCOX: It's okay. Just
10 briefly to summarize our testimony we do feel that
11 the Maximum Allowable Concentrations proposed by
12 the EPA using residential ingestion and inhalation
13 standards for PNA's we don't believe that pathway
14 exists in quarries and mines and, therefore,
15 exceeds the one in a million cancer risk that is
16 stated in the legislation.

17 We don't see, also, groundwater
18 monitoring. There's nothing in evidence to show
19 why clean fill sites would require this and we
20 also feel that the use of the term
21 industrial/commercial that was stated in the
22 legislation is a fairly standardized process for
23 the 662 form and is working quite well and to
24 change that to the potentially impacted property

1 is very confusing and we think would be
2 problematic. That's in summary our testimony and
3 I'll open it up to questions.

4 MS. TIPSORD: Thank you. Mr. Wilt,
5 you had some pre-filed testimony.

6 MR. WILT: Dennis Wilt from Waste
7 Management of Illinois. At the conclusion of your
8 testimony, Mr. Wilcox, you question whether there
9 is sufficient data to support the proposed
10 groundwater monitoring. There's a reference to
11 fill site at Lynwood that apparently took waste
12 and the question is Lynwood is not the only CCDD
13 site that has taken waste, is it?

14 MR. WILCOX: I'm sorry. Are you
15 asking me?

16 MR. WILT: Yes, I am.

17 MR. WILCOX: I have no knowledge of
18 any other sites that have taken waste. I think
19 that question was asked at the last hearing to
20 Mr. Purseglove and I think the only example they
21 gave was the Lynwood site. That's the only one
22 I'm aware of.

23 MR. WILT: Are you aware of the
24 Reliable materials site in Lyons?

1 MR. WILCOX: I am.

2 MR. WILT: Are you aware of the fact
3 that a complaint has been filed regarding that
4 site in accepting materials?

5 MR. WILCOX: I am.

6 MR. WILT: And are you aware that
7 the allegation in that complaint is that the
8 Reliable CCDD site has taken as much as 60,000
9 yards of waste?

10 MR. WILCOX: I believe that is the
11 premise of the allegation.

12 MR. WILT: Do you know the nature of
13 the contamination that's alleged in the complaint?

14 MR. WILCOX: I do not. I have not
15 seen data to show that any contaminated soils
16 exceeding health and human impacts have been put
17 into that site.

18 MR. WILT: Have you seen the
19 complaint?

20 MR. WILCOX: I have seen the
21 complaint.

22 MR. WILT: Have you seen the exhibit
23 to the complaint that lists the levels of
24 contamination based on certain soil borings that

1 goes on page after page after page?

2 MR. WILCOX: I think you're
3 talking -- are you talking about the soil borings
4 from the site where some of the soil was taken to
5 a landfill? I'm not sure what data you're saying
6 to.

7 MR. WILT: Let me just go on. The
8 alleged contamination or --

9 MS. MANNING: Madam Hearing Officer,
10 if I might, and I'm sorry to interrupt Mr. Wilt,
11 but I realize that an objection is not necessarily
12 what is the course at a rulemaking, but in this
13 particular line of questioning, the Board has this
14 case before them, that complaint has been filed
15 with the Illinois Pollution Control Board. It's
16 settled by some of the parties. It's in large
17 part the reason that we're here to define
18 uncontaminated so these kinds of enforcement
19 actions don't continue.

20 So I don't necessarily -- if you
21 want to allow Mr. Wilt to continue asking
22 Mr. Wilcox what the allegations of that matter
23 are, that's fine. I'm just telling you I don't
24 know where we're going with all of this because

1 there is an allegation that somebody thinks the
2 soil was uncontaminated, somebody else thought it
3 was contaminated, and that is the issue before the
4 Board in an adjudicatory context, which has yet to
5 be adjudicated. So I am just trying to put the
6 record straight in where we're going with this for
7 the Board to decide what is appropriate.

8 MS. TIPSORD: Thank you very much,
9 Ms. Manning. I would note you cannot discuss the
10 substance of the complaint as far as any arguments
11 about what is or is not happening at the site
12 because it is a contested case before the Board.
13 You certainly can ask him about the allegations in
14 the complaint and if he is aware of the
15 allegations in the complaint, but we have to be
16 careful that you don't cross over into argument or
17 where there might be discussion about facts
18 involved with that complaint because Member
19 Johnson will be sitting in judgment on that.

20 MR. WILT: I tried to be careful in
21 categorizing my allegations, but in response to
22 Ms. Manning's comment Mr. Wilcox submitted
23 testimony questioning the Agency's proposed rules,
24 the requirements for groundwater monitoring

1 because there is insufficient data, only Lynwood,
2 to consider where there was contamination.

3 In his testimony, he did not
4 identify allegations, I understand no findings,
5 and I think the questions and the answers have --
6 are now in the record that there are no findings
7 with respect to that case, but there are
8 allegations that have been made involving -- let
9 me ask the question.

10 First, the allegations with
11 respect to the Reliable case involves a CCDD site,
12 does it not?

13 MR. WILCOX: Yes.

14 MR. WILT: And the allegations are
15 that that site accepted waste, correct?

16 MR. WILCOX: I believe so, yes.

17 MR. WILT: And the allegations are
18 that the waste was accepted in 2006, is that
19 correct?

20 MR. WILCOX: I don't recall any of
21 the details of it.

22 MR. WILT: I have no further
23 questions.

24 MS. TIPSORD: Thank you. Are there

1 any other questions for Mr. Wilcox?

2 MS. MANNING: Just a couple
3 follow-up questions. And, Mr. Wilcox, in that
4 manner, is there a dispute as well regarding the
5 waste that Mr. Wilt is asking you about, is the
6 waste that's alleged to be waste soil?

7 MR. WILCOX: Yes.

8 MS. MANNING: Is the dispute as to
9 whether the soil was contaminated or
10 uncontaminated?

11 MR. WILCOX: Yes.

12 MS. MANNING: To your knowledge, was
13 the soil tested?

14 MR. WILCOX: Yes, to my knowledge,
15 it was tested.

16 MS. MANNING: To your knowledge, is
17 the dispute really what kind of TACO parameters
18 are appropriate for contaminated or uncontaminated
19 soil in that case?

20 MR. WILCOX: I believe that to be
21 the heart of the case.

22 MS. MANNING: Thank you.

23 MS. TIPSORD: Anything further?

24 Thank you so much for taking the time to testify

1 this morning. With that, we'll move onto
2 Mr. Dixon. Mr. Kruger is not here, is that
3 correct, Mr. Dixon?

4 MR. DIXON: Yes, ma'am.

5 MS. TIPSORD: We will transfer his
6 pre-filed testimony to a public comment. I will
7 have the clerk's office take care of that later
8 today. With that, can we have Mr. Dixon sworn in.

9 WHEREUPON:

10 WILLIAM DIXON

11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 MS. TIPSORD: If there's no
14 objection, we will admit the pre-filed testimony
15 of Mr. William Dixon as Exhibit 16. Seeing none,
16 it's Exhibit 16.

17 (Document marked as ILPCB
18 Exhibit No. 16 for
19 identification.)

20 MS. TIPSORD: Mr. Dixon, do you have
21 a clean copy of that with you.

22 MR. DIXON: I have a borrowed copy.

23 MS. TIPSORD: That's all right.

24 I'll print one off later today and would you like

1 to summarize your testimony briefly?

2 MR. DIXON: Really, my concern is
3 that the act was passed and in several places the
4 act provides for professional engineers or
5 professional geologists to perform activities
6 related to the CCDD fill and in the last copy of
7 the regulations that are the proposed regulations
8 under the 1100, in some places they say
9 professional geologist -- professional engineer or
10 professional geologist and in other places they do
11 not include both and I strongly feel that both
12 should be included all the way through the
13 regulation consistently. Mr. Krumenacher and
14 Mr. Pyles have testified on the same point before
15 and I would be happy to answer any questions
16 anyone might have.

17 MS. TIPSORD: Thank you. Are there
18 any questions for Mr. Dixon? Thank you so much
19 for taking the time to be here today and
20 testifying.

21 MR. DIXON: Thank you.

22 MS. TIPSORD: That moves us onto
23 Michael Sturino -- am I pronouncing that
24 correctly -- from the Illinois Road and

1 Transportation Builders Association. Okay. We
2 will go then to Mr. Liss from Waste Management.
3 Can we have the witness sworn in.

4 WHEREUPON:

5 KENNETH LISS

6 called as a witness herein, having been first duly
7 sworn, deposeth and saith as follows:

8 MS. TIPSORD: Thank you. If there's
9 no objection, we will enter Mr. Liss' testimony as
10 Exhibit 17. Seeing none, it's Exhibit 17.

11 (Document marked as ILPCB
12 Exhibit No. 17 for
13 identification.)

14 MR. LISS: I have no statements to
15 make. I'll just accept questions or go sit down.

16 MS. TIPSORD: Okay. There were
17 pre-filed questions I believe from Mr. Henriksen,
18 is that correct?

19 MR. HENRIKSEN: Correct.

20 MS. TIPSORD: Whenever you're ready,
21 go ahead.

22 MR. HENRIKSEN: Thank you.

23 Mr. Liss, did you review the Agency's proposed
24 amendments to 35 Ill. Adm. Code Part 1100 prior to

1 the filing of your testimony with the Illinois
2 Pollution Control Board?

3 MR. LISS: Yes.

4 MR. HENRIKSEN: Did you also review
5 Public Act 96-1460 prior to the filing of your
6 testimony with the Illinois Pollution Control
7 Board?

8 MR. LISS: Yes.

9 MR. HENRIKSEN: Prior to the
10 enactment of Public Act 96-1460, did the Illinois
11 Environmental Protection Agency, IEPA, regulate
12 the operation of soil fill sites?

13 MR. LISS: I don't think it was as
14 defined. It's -- they're regulated inert in CCDD
15 material.

16 MR. HENRIKSEN: So prior to the
17 enactment of the act, they did not regulate soil
18 fill sites?

19 MR. LISS: Uncontaminated -- are we
20 talking about what is proposed here,
21 uncontaminated soil fill?

22 MR. HENRIKSEN: Well, Public Act
23 96-1460, which you reviewed, had a Section
24 22.51(a) that purports to regulate soil fill

1 operators and you're aware of that since you
2 reviewed this law, correct?

3 MR. LISS: Yes. I'm trying to
4 understand if you're asking is there regulated
5 uncontaminated soil that is defined in these
6 proceedings? That's all.

7 MR. HENRIKSEN: No, sir. My
8 question is --

9 MR. LISS: Yes, they're regulated.

10 MR. HENRIKSEN: So prior to the
11 enactment, the IEPA regulated the operation of
12 soil sites?

13 MR. LISS: Yes.

14 MR. HENRIKSEN: It did?

15 MR. LISS: Well, in the context of
16 my answer to you, it depends on what you want to
17 call it back then. I said there was some
18 provisions for regulated soil.

19 MR. HENRIKSEN: And what were those
20 provisions?

21 MR. LISS: It's in the inert and
22 it's in the CCDD.

23 MR. HENRIKSEN: Was there any --
24 prior to the enactment of 96-1460, did the IEPA

1 have regulatory authority over sites that just
2 accepted clean soil?

3 MR. LISS: What do you mean by
4 regulatory authority? The EPA has broad
5 authorities to investigate instances where it
6 might be damaging to human health and the
7 environment.

8 MR. HENRIKSEN: Do they require
9 sites that merely took clean soil to --

10 MR. LISS: Get a permit, no.

11 MR. HENRIKSEN: -- register?

12 MR. LISS: To register? I think
13 register, yeah.

14 MR. HENRIKSEN: Prior to the
15 enactment of --

16 MR. LISS: No.

17 MR. HENRIKSEN: -- 96-1460?
18 Screening prior to the enactment of 96-1460?

19 MR. LISS: I'm not familiar.

20 MR. HENRIKSEN: Isn't it true that
21 the IEPA's proposed amendments to 35 Ill. Adm.
22 Code Part 1100 seek to regulate the operation of
23 soil fill sites?

24 MR. LISS: Yes.

1 MR. HENRIKSEN: Yet on page two of
2 your pre-filed testimony, you state "The Agency's
3 proposed rules take a hands off approach with no
4 effective regulation of soil fill sites," is that
5 correct?

6 MR. LISS: That's my opinion.

7 MR. HENRIKSEN: You have read and
8 reviewed these regulations prior to following your
9 testimony with the Board?

10 MR. LISS: Yes.

11 MR. HENRIKSEN: Prior to appearing
12 today?

13 MR. LISS: I said yes.

14 MR. HENRIKSEN: In these rules that
15 you reviewed, there is a part Section 1100.505
16 operating standards, did you review those rules?

17 MR. LISS: Yes.

18 MR. HENRIKSEN: Does not these rules
19 state in uncontaminated soil fill operations in
20 which we're speaking says uncontaminated soil
21 operations are subject to all the standards and
22 requirements of Section's 1100.202 and 1100.209
23 Subpart B excluding Section 1100.203, correct?

24 MR. LISS: Yes.

1 MR. HENRIKSEN: Section 1100.201 has
2 a list of prohibitions that also applies to clean
3 soil fill sites?

4 MR. LISS: Yes.

5 MR. HENRIKSEN: It has requirements
6 for surface water drainage that also applies to
7 soil fill sites?

8 MR. LISS: Yes.

9 MR. HENRIKSEN: Does 1100.204
10 operating standards that also apply to soil fill
11 sites?

12 MR. LISS: Yes.

13 MR. HENRIKSEN: Does 1100.205
14 certifications and load checking also apply to
15 soil fill sites?

16 MR. LISS: Yes.

17 MR. HENRIKSEN: Section 1100.206,
18 salvaging, also applies to soil fill sites?

19 MR. LISS: Yes.

20 MR. HENRIKSEN: 1100.207 boundary
21 control --

22 MR. LISS: Do you want me to say yes
23 that I read it all or do you want to go by each
24 subsection?

1 MR. HENRIKSEN: I just --

2 MR. LISS: You're taking it out of
3 context. I say it's a hands off approach. There
4 is no enforcement just to speed this up to answer
5 your questions. I know there's regulations
6 proposed here, but if you read it in the context
7 of my opinion, I say it's a hands off approach.
8 There's no enforcement. There isn't good load
9 checking.

10 MR. HENRIKSEN: That wasn't my
11 question. My question was you said that the
12 Agency's proposed rules take a hands off approach
13 with no effective regulations of soil fill sites.
14 You said that's a true statement.

15 MR. LISS: I said, yes, that's my
16 opinion and the key word would be effective.

17 MR. HENRIKSEN: But all of these
18 provisions 1100.505 place all of the provisions
19 that are applicable to CCDD sites on soil --

20 MR. LISS: It's my opinion that
21 these are not effective.

22 MR. HENRIKSEN: And you consider
23 that these operating requirements that are now in
24 soil fill sites is a hands off approach?

1 MR. LISS: Yes, there's no
2 permitting process nor review by the EPA of what
3 is coming in here.

4 MR. HENRIKSEN: But these are
5 requirements that they have to adhere to?

6 MR. LISS: Yes, there are
7 requirements in here that are being proposed that
8 these facilities must adhere to.

9 MR. HENRIKSEN: And those
10 requirements we -- I just read to you. You said,
11 yes, that they're required to adhere to
12 notwithstanding these new requirements they are
13 only a function of this new law you still maintain
14 the IEPA is taking a hands off approach to soil
15 fill operations?

16 MR. LISS: I read it. I am aware
17 that there's proposed regulations, I agreed with
18 everything that you've said and it's in my opinion
19 that they're not effective.

20 MR. HENRIKSEN: Is it true that on
21 page four of your pre-filed testimony that no
22 owner/operator certification is required to be
23 obtained by fill operators?

24 MR. LISS: Yes, that's a typo. I'd

1 like that corrected. I was referring to -- and
2 then I'll answer your next question, too. I meant
3 generator. It's generator.

4 MR. HENRIKSEN: So it's not true
5 your testimony that you pre-filed and said was
6 correct you say no owner/operator certification
7 required to be obtained by fill operators, that's
8 not your testimony?

9 MR. LISS: I said it's an error.

10 MR. HENRIKSEN: So what is the
11 actual -- what should it be?

12 MR. LISS: Section 1100.205 talks
13 about certification for load checking. My
14 testimony was referring to that.

15 MR. HENRIKSEN: I'm just reading --

16 MR. LISS: I understand.

17 MR. HENRIKSEN: Page four, line two
18 no owner/operator certification is required to be
19 obtained by fill operators, is that true?

20 MR. LISS: No.

21 MR. HENRIKSEN: That's not true?

22 MR. LISS: In the section that I'm
23 talking about, do you want me to read it to you?
24 You can have a certification from the source site

1 owner or the source site operator that the site is
2 not a potentially impacted property and is
3 presumed to be uncontaminated soil or a
4 certification from a licensed professional
5 engineer or a licensed professional geologist that
6 the soil is uncontaminated. So, now, what's your
7 question again?

8 MR. HENRIKSEN: I'm just -- okay.
9 I'm just trying to ascertain what in your
10 testimony is accurate and what isn't. So you're
11 saying this pre-filed testimony, the testimony you
12 put in the record today, you raised your hand and
13 said was correct, the statement says no
14 owner/operator certification is required to be
15 obtained by fill operator, that's not true?

16 MR. LISS: I am going on the record
17 to say that one statement was an error.

18 MR. HENRIKSEN: Thank you. Is it
19 true as stated on page four of your pre-filed
20 testimony that generator certification is an
21 important deterrent to waste disposed of
22 improperly?

23 MR. LISS: Yes.

24 MR. HENRIKSEN: Is it true as stated

1 on page four of your pre-filed testimony that
2 there are no screening requirements for fill
3 operations?

4 MR. LISS: Yes, that's what I stated
5 in my opinion.

6 MR. HENRIKSEN: In fact, though,
7 doesn't Section 1100.505, operating standards for
8 uncontaminated soil fill operations state that
9 uncontaminated soil fill operations are subject to
10 all the standards and requirements of Section
11 1100.202 and 1100.209 Subpart B excluding
12 1100.203?

13 MR. LISS: That gets back to the
14 context of my testimony which is it's ineffective,
15 the methods that are in there. So, in effect,
16 there are no good screening methods. So you're
17 saying it includes screening methods and you're
18 correct. If that's what you want me to say, you
19 are correct and I made a statement that it
20 doesn't, but mine was a comment that they're
21 ineffective.

22 MR. HENRIKSEN: So the statement
23 that you had there are no screening requirements
24 for fill operations, that was incorrect, there are

1 screening requirements?

2 MR. LISS: There are screening
3 requirements included.

4 MR. HENRIKSEN: And you did say that
5 there are -- there are certification and load
6 checking requirements for soil fill as well as
7 CCDD, correct?

8 MR. LISS: I didn't state that.

9 MR. HENRIKSEN: I'm sorry?

10 MR. LISS: Which number are you on?
11 I have your list here. Where are we at?

12 MR. HENRIKSEN: Page eight you
13 stated there are no screening requirements, but
14 that was incorrect, there are screening
15 requirements?

16 MR. LISS: We already went through
17 that one. I want to know the next question you
18 went to. I have your sheet. Which one are we on?

19 MR. HENRIKSEN: Question eight. Is
20 it true that stated on page four of your screening
21 requirements --

22 MR. LISS: I already answered that.

23 MR. HENRIKSEN: In fact, that was
24 incorrect?

1 MR. LISS: Can you read my answer
2 back?

3 MS. TIPSORD: Gentlemen, you need to
4 let him finish. This is a rulemaking. We don't
5 need to be -- everything relevant comes in and if
6 we could, he did ask and answer that, but his
7 follow-up question you were asking a follow-up
8 question not a question on the number and his
9 follow-up question if we could repeat -- if you
10 could repeat that follow-up question.

11 MR. HENRIKSEN: So you stated that
12 your answer before that there are no screening
13 requirements for fill operations was an error?

14 MR. LISS: It depends on how you
15 look at it. I said, yes, there are screening
16 requirements listed in the rule, but my testimony
17 is that they're ineffective and that's why I made
18 that statement.

19 MR. HENRIKSEN: And these rules that
20 are applied to soil fill require certification
21 from the source owner/operator licensed PE or PG,
22 correct?

23 MR. LISS: Could you repeat that?

24 MR. HENRIKSEN: These certification

1 requirements that you characterize ineffective
2 don't they require certification from the source
3 owner/operator or licensed PE --

4 MR. LISS: What section are you
5 referring to?

6 MR. HENRIKSEN: 2005.

7 MR. LISS: A? 205A? I could read
8 it. I read it earlier. There was an or. A
9 certification from the site from the source site
10 owner or source site operator that the site is not
11 a potentially impacted property and is presumed to
12 be contaminated -- uncontaminated soil or the
13 certification from a licensed professional
14 engineer or a licensed professional geologist that
15 the soil is uncontaminated soil.

16 MR. HENRIKSEN: There also has to be
17 a confirmation and a documentation that the CCDD
18 or uncontaminated soil is not removed from the
19 site as part of a cleanup or removal of
20 contaminants, that's part of the certification in
21 there?

22 MR. LISS: The owner/operator must
23 make that certification. That would be Section
24 1100.205(a).

1 MR. HENRIKSEN: There's also --

2 MR. LISS: It states those things
3 for the owner/operator.

4 MR. HENRIKSEN: There's also a
5 requirement in there for Section 1100.205 that
6 there's a requirement for implementation of a load
7 checking program, including random inspections?

8 MR. LISS: Is that a question?

9 MR. HENRIKSEN: Yes.

10 MR. LISS: Yes, for the
11 owner/operator.

12 MR. HENRIKSEN: There's also special
13 measures for accepting loads that are from suspect
14 persons or sources?

15 MR. LISS: What section?

16 MR. HENRIKSEN: 205.

17 MR. LISS: What part?

18 MR. HENRIKSEN: That would be (a)5.

19 MR. LISS: 205 doesn't have an A5.

20 MR. HENRIKSEN: We're talking about
21 the proposed rules here.

22 MR. LISS: I've got them.

23 MS. TIPSORD: Proposed rules don't
24 have an A5. 205(a)1, 2, 3 and B.

1 MR. HENRIKSEN: We'll move on. Fill
2 site operators are, in fact, required to obtain
3 generator certifications, but you just don't feel
4 they're effective, is that your testimony or your
5 opinion?

6 MR. LISS: Where did I write that?

7 MR. HENRIKSEN: Well, you said no
8 owner/operator certification is required to be
9 obtained by fill operators and you said -- that
10 turned out to be wrong and then you said there's
11 no screening requirements for fill operations. I
12 guess that turned out to be wrong as well.

13 MR. WILT: Madame Hearing Officer,
14 I'm not sure he is restating the testimony
15 correctly. It's clear that Mr. Liss has indicated
16 he acknowledges the rules have requirements. He
17 has said repeatedly he doesn't think they're
18 effective and that's what he has indicated on the
19 record and that's why he set forth his pre-filed
20 testimony. He's also indicated that he made a
21 mistake with respect to the owner/operator
22 certification. It should have been generator
23 certification. We've gone through this again and
24 again. We can keep going through it, but I would

1 appreciate that his testimony not be restated
2 improperly.

3 MS. TIPSORD: It's noted for the
4 record and please resist characterizing the
5 testimony unless it's evident.

6 MR. HENRIKSEN: So there are -- so
7 it's your testimony that there are screening
8 requirements for fill operations, but you don't
9 think they're effective?

10 MR. LISS: Correct.

11 MR. HENRIKSEN: Given that you're
12 aware that generator certifications are mandated
13 by proposed rules for all materials brought to a
14 CCDD or uncontaminated soil site, correct?

15 MR. LISS: Am I aware of that?

16 MR. HENRIKSEN: Of that requirement
17 in the rules, are you aware of that?

18 MR. LISS: I stated that Section
19 1100.205(a) has owner/operator certifications.

20 MR. HENRIKSEN: Doesn't the
21 owner/operator refer to as the site
22 owner/operator --

23 MR. LISS: Correct.

24 MR. HENRIKSEN: -- aren't they

1 required to get a certification from the source
2 site owner?

3 MR. LISS: Where does it read that?

4 MR. HENRIKSEN: That's in the
5 proposed rules.

6 MR. LISS: Which section?

7 MR. HENRIKSEN: 205A.

8 MR. LISS: Correct. I stated that
9 earlier, yes. How many times do I have to repeat
10 that?

11 MR. HENRIKSEN: I just asked you
12 given that generator certifications are mandated
13 by proposed rules for all materials brought to a
14 CCDD or uncontaminated soil fill site wouldn't
15 this requirement that you just read deter improper
16 disposal at these facilities?

17 MR. LISS: No, I think it's
18 ineffective and it will not always deter improper
19 disposal. That's my opinion.

20 MR. HENRIKSEN: Thank you. Is it
21 true as stated on page four of your pre-filed
22 testimony that there are no standards set forth in
23 the Agency's proposed rules regarding sampling?
24 And then you say see Section 1100.610.

1 MR. LISS: What page of my
2 testimony?

3 MR. HENRIKSEN: It's page four, sir.
4 It's right under where you said there were no
5 screening requirements for fill operations and
6 your next sentence states there are no standards
7 set forth in the Agency's proposed rules regarding
8 sampling (See Section 1100.610).

9 MR. LISS: Yes, that's what I stated
10 in my opinion.

11 MR. HENRIKSEN: Thank you. But
12 doesn't Section 1100.104 of the proposed rules
13 incorporate several materials by reference
14 including test materials for evaluating solid
15 waste, physical/chemical methods, EPA publication
16 SW-846?

17 MR. LISS: Where are you at, 104?

18 MR. HENRIKSEN: Yes, it's 1100.104.

19 MR. LISS: What is the question
20 referring to 104?

21 MR. HENRIKSEN: The question is
22 doesn't Section 1100.104 in the proposed rules
23 incorporate several materials by reference
24 including test methods for evaluating solid waste?

1 MR. LISS: No, these are not
2 standards. I just remembered what you asked me.
3 Three are incorporations by reference.

4 MR. HENRIKSEN: So your answer is
5 no?

6 MR. LISS: To this section, I don't
7 think these are standards. I think these are just
8 incorporation by reference.

9 MR. HENRIKSEN: Thank you. And
10 you're familiar with these rules, correct?

11 MR. LISS: Yeah.

12 MR. HENRIKSEN: Are you also
13 familiar with test methods for evaluating solid
14 waste physical/chemical methods EPA publication
15 SW-846?

16 MR. LISS: Yes, I am.

17 MR. HENRIKSEN: Doesn't Chapter 9 of
18 SW-846 entitled sampling plan provide detailed
19 information regarding the design and development
20 of sampling plans including random sampling,
21 stratified random sampling?

22 MR. LISS: I'm familiar with all of
23 those and they are in that section as an
24 incorporation by reference. Now, if they're

1 specifically included under a section and it reads
2 you must do this in accordance with, then I would
3 say that would be a standard.

4 So some of the them may be
5 standards, but they would have to be -- you would
6 have to tell me -- ask me these questions in the
7 specific way they're going to be used referenced
8 in the subsections and I would acknowledge that
9 some of these are used as standards.

10 MR. HENRIKSEN: So these are not
11 standards --

12 MR. LISS: Ask me specifically
13 where. I just explained to you my answer. I'm
14 trying to help you out here.

15 MR. HENRIKSEN: Thank you. It's
16 your opinion that you stated in your testimony
17 that there are no standards and then so I
18 understand this document incorporated by reference
19 is SW-846, that's incorporated by reference,
20 correct?

21 MR. LISS: Yeah. All right. Let's
22 go to what my -- the question was if you don't
23 mind. I'll stop if you don't want me to say it.
24 You asked me are there no standards set forth in

1 the Agency's proposed rules regarding sampling.
2 I'm on page four of my testimony.

3 MR. HENRIKSEN: Yes.

4 MR. LISS: In brackets, it's see
5 Section 1100.610.

6 MR. HENRIKSEN: Correct.

7 MR. LISS: So why don't we ask me
8 these questions in the context of that part of my
9 testimony.

10 MR. HENRIKSEN: I just did.

11 MR. LISS: We were in the
12 incorporation by reference part.

13 MR. HENRIKSEN: Don't these rules --
14 doesn't the incorporation by reference rules
15 actually pull these standards into Part 1100,
16 isn't that correct?

17 MR. LISS: Yes, some of these are
18 pulled in here.

19 MR. HENRIKSEN: Isn't one of the
20 things pulled in here this EPA publication SW-846?

21 MR. LISS: Let me go back to that.
22 By way of TACO -- let me get back to 610 here.
23 The following -- I'm in .610(b)1 if the background
24 value -- I'll go slow -- 35 IAC Code 742 appendix

1 A tables G or H was determined to be the Maximum
2 Allowable Concentration I would say, yes, that
3 looks like it's being used as a standard.

4 MR. HENRIKSEN: And don't these
5 analyses -- is the analysis that's required to be
6 done to implement these rules required to be
7 performed under the guidance of SW-846 as being
8 incorporated by reference?

9 MR. LISS: Yes, I think so under the
10 guidance, but doesn't it maybe allow alternative
11 methods, too?

12 MR. HENRIKSEN: So these are -- and
13 part of this SW-846 has to do with rules regarding
14 sampling, correct?

15 MR. LISS: Mm-hmm.

16 MR. HENRIKSEN: So given --

17 MR. LISS: Where are the proper
18 procedures for screening? If we're going to talk
19 about the context of my testimony, it's
20 ineffective.

21 MR. HENRIKSEN: I --

22 MS. TIPSORD: Go ahead with your
23 question.

24 MR. HENRIKSEN: So there are, in

1 fact, standards in the rules that set forth
2 requirements for sampling?

3 MR. LISS: Yes, there are some that
4 are considered standards.

5 MR. HENRIKSEN: Thank you. Is it
6 true as stated on page four your testimony that
7 Public Act 94-1416 allows soil contaminated with
8 background levels of benzopyrene removed in
9 connection with a ground fill cleanup project to
10 be disposed of in an unlined fill operation? And
11 that's under part of your testimony page four
12 dealing with what you call tainted soils.

13 MR. LISS: Yes, that's how I stated
14 it.

15 MR. HENRIKSEN: Isn't it true that
16 Section 1100.205(a)2 certifications and load
17 checking list the requirements for acceptance of
18 CCDD and uncontaminated soil and that includes the
19 following that the operator has to confirm and
20 document that CC or uncontaminated soil was not
21 removed from a site and specifically lists a SRP
22 site, a Site Remediation Program site, as a site
23 where this material can't be --

24 MR. LISS: What would happen before

1 you entered the SRP site and the soil was moved
2 around? Isn't it possible that you can take soil
3 from a site that you're going to go into the SRP
4 and move the now defined as uncontaminated soil
5 around as a technicality before you actually
6 comply with this? Yes. The answer is yes.

7 MR. HENRIKSEN: That wasn't my
8 question.

9 MR. LISS: I'm sorry.

10 MR. HENRIKSEN: I'm just trying to
11 understand what part of --

12 MR. LISS: I'm trying to explain it
13 because I know some of it's convoluted and it's
14 trying to follow it through the rules and it's my
15 opinion that you can get away with that.

16 MR. HENRIKSEN: Focusing on the
17 statement you make. You state that soil
18 contaminated with background levels of benzopyrene
19 moved in connection with ground fill cleanup
20 projects can be disposed of in an unlined fill
21 operation under this law? That's what you're
22 saying, correct?

23 MR. LISS: Yeah.

24 MR. HENRIKSEN: Doesn't the rule

1 state on its face that the certifications and load
2 checking that CCDD or clean soil sites have to do
3 have to confirm and document that the soil doesn't
4 come through an SRP site?

5 MR. LISS: You're citing a
6 regulatory definition of a cleanup program or
7 site. I said a cleanup site and I didn't mean it
8 to be a play on words.

9 I'll go back to what I said when
10 we started on this dialogue. You could have a
11 building that you're tearing down and you know
12 there's existing contamination. Before you enter
13 the SRP program, you could move unwanted soil to
14 an unlined quarry.

15 MR. HENRIKSEN: But isn't the
16 operator required to confirm that the material
17 doesn't come from those kinds of places?

18 MR. LISS: It depends upon on what
19 point. If you file and you enter the SRP program,
20 the certification would say, oops, can't go to
21 this CCDD soil fill because it's in the SRP, but
22 with good planning before you enter the program I
23 don't think this applies. You can move this soil.

24 MR. HENRIKSEN: But you can't accept

1 material that's knowingly been part of an SRP
2 program?

3 MR. LISS: That goes to what I just
4 said.

5 MR. HENRIKSEN: It can't be part of
6 a CERCLA cleanup, correct?

7 MR. LISS: Pardon me?

8 MR. HENRIKSEN: It can't be part of
9 a comprehensive environmental response -- CERCLA
10 cleanup?

11 MR. LISS: No. They're all listed
12 there.

13 MR. HENRIKSEN: It can't be part of
14 a LUST cleanup, correct?

15 MR. LISS: It doesn't apply to -- do
16 you want me to read them all?

17 MR. HENRIKSEN: I'm trying to --

18 MR. LISS: These are programs that
19 you enter into these programs. What my testimony
20 is saying that before you enter into the program
21 it doesn't apply. It's very possible.

22 MR. HENRIKSEN: Is it true as stated
23 on page six of your testimony that if groundwater
24 monitoring is ever conducted and monitoring data

1 indicates that a groundwater standard has been
2 exceeded, the operator can self certify at any
3 point that there was an error or possibly an
4 offsite influence causing the aggregation?

5 MS. TIPSORD: Question 14?

6 MR. LISS: Yes.

7 MS. TIPSORD: Sorry.

8 MR. HENRIKSEN: In fact, doesn't
9 Section 1100.745(b) require resampling of
10 parameters that exceeded the standard and
11 submittals --

12 MR. LISS: Which one?

13 MR. HENRIKSEN: Doesn't Section
14 1100.745(b) require resampling of parameters that
15 exceeded the standard and submit it to IEPA?

16 MR. LISS: That's a part of the
17 process. That's the beginning of the process,
18 yes.

19 MR. HENRIKSEN: Isn't it also true
20 that Section 1100.750 requires an alternate,
21 noncompliant demonstration, i.e., that the
22 exceedance was due to an error, is not
23 statistically significant of a background or is
24 due to another source, be submitted to the IEPA?

1 MR. LISS: Yes. 1100.750 just says
2 submit. It doesn't have to be that the Agency
3 approves or has the authority to deny. You can
4 say -- my testimony is saying that when you get to
5 that very point, somebody could write in and say,
6 gee, it was the guy across the street. So this is
7 an aberration in our groundwater monitoring and
8 I'm going to file it and I'm not going to do
9 anything else. That's my opinion.

10 MR. HENRIKSEN: Even though they
11 have to submit these documents to the IEPA?

12 MR. LISS: It says they submit them.
13 It doesn't they can approve them.

14 MR. HENRIKSEN: You can consider
15 that self certification that they have to do this
16 work and submit it to the IEPA -- is the IEPA a
17 rubber stamp, is that what you're saying?

18 MR. LISS: I'm not saying the IEPA
19 is a rubber stamp at all. I worked at the IEPA
20 for about 14 years doing this very work and I
21 don't think -- I can't give you a number because
22 you're going to ask me to prove it, but I don't
23 know if anybody ever went through with a
24 statistical aberration and then an assessment that

1 the EPA approved up front because of the
2 difference, the subjectiveness of the process.
3 And we have the authority of a permit to enforce
4 it at the time. You know, I didn't say the EPA is
5 a rubber stamp at all and I don't appreciate you
6 even saying that.

7 MR. HENRIKSEN: So what is the
8 purpose of submitting it to the IEPA if you're
9 saying they're not -- are you saying they're not
10 going to analyze this material?

11 MR. LISS: Isn't that my point?
12 Somebody writes something up, submits it and there
13 it sits and they can cease groundwater monitoring.
14 There's no permit process. There is no approval
15 process where the Agency has the opportunity to
16 agree or disagree. It's such an important point.
17 Is the facility affecting groundwater adversely or
18 not? They have no authority to do so. It's
19 submitted to the file. That's my testimony.

20 MR. HENRIKSEN: That basically ends
21 it, you're thinking, when it's submitted?

22 MR. LISS: No, I didn't say that.

23 MR. HENRIKSEN: Then what happens to
24 the material that goes to the IEPA?

1 MR. LISS: What did I just say? It
2 goes to file. They don't have the opportunity to
3 review it. They have a lot of permitted sites to
4 review. This is self certifying. You terminate
5 the program. I might say one thing. You might
6 say something. Mr. Hock may say something totally
7 different. And we're all knowledgeable in this
8 field. So now you have people that are going to
9 be able to self certify, right, that might not be
10 as knowledgeable as the three of us in this field
11 and there's another opinion and you can stop the
12 monitoring, the assessment, you're done. It's not
13 us. That's my point.

14 MR. HENRIKSEN: Because the material
15 just goes to the IEPA and they file it, is that
16 your understanding?

17 MR. LISS: Yes.

18 MR. HENRIKSEN: Is it true as stated
19 on page six of your testimony at any time during
20 this review process of data, the operator may
21 implement Section 1100.760, dewatering fill
22 operations, and forego any investigation of
23 groundwater contamination, cease monitoring in any
24 required corrective action in its entirety

1 possibly forever?

2 MS. TIPSORD: It's question 15.

3 MR. LISS: Yes, that's my opinion.

4 MR. HENRIKSEN: Doesn't Section
5 1100.760(b) require that groundwater monitoring
6 requirements must be implemented within one year
7 after the dewatering ceases?

8 MS. TIPSORD: We can't get a nod on
9 the record.

10 MR. LISS: I'm sorry. Yes, it
11 states that.

12 MR. HENRIKSEN: In addition, doesn't
13 1100.412(c) or (d) for CCDD sites and Section
14 1100.530 for uncontaminated soil fill sites state
15 that as part of the termination for post closure
16 care the site must demonstrate the fill operation
17 has not contributed to an exceedance in Class 1
18 groundwater quality standards or background
19 quality, whichever is higher, during the
20 proceeding three years under representative
21 groundwater conditions?

22 MR. LISS: I'm trying to find out
23 where you are.

24 MR. HENRIKSEN: Section -- well,

1 because one is CCDD and one is uncontaminated
2 soil. Look at 1100.412(c)1(d).

3 MR. LISS: What happens if you're
4 continuing to de-water?

5 MR. HENRIKSEN: My question is --

6 MR. LISS: You don't have to close.
7 I'm trying to answer your question. If you
8 continue to de-water, if you don't follow closure,
9 you can just keep dewatering. Yeah, at some
10 point, you will make that, but couldn't you -- I
11 mean, if we're talking theoretically here, you
12 could pump forever and you don't have to make that
13 determination. You'd never close.

14 MR. HENRIKSEN: In addition, doesn't
15 Section 1100.412(c)1(d) state that as part of
16 termination of post closure care, the site must
17 demonstrate that the fill operation does not
18 contribute to an exceedance of Class 1 groundwater
19 quality standards or background quality, whichever
20 is higher, during the preceding three years under
21 representative groundwater conditions?

22 MR. LISS: You don't have to close.
23 So my testimony and my opinion is you can continue
24 dewatering. You don't have to make that

1 certification because you do not have to close.
2 So my opinion is correct.

3 MR. HENRIKSEN: So the reading from
4 the rule at the end of the post closure
5 maintenance period here is what the operator has
6 to do. It has to -- from the rule. Based on the
7 groundwater monitoring program required under
8 Subpart G of this part, fill operations do not
9 contribute to an exceedance of the Class 1
10 groundwater quality standards or the background
11 quality water, whichever is higher, during the
12 proceeding three years under the representative
13 groundwater conditions?

14 MS. TIPSORD: I think he has asked
15 and answered. I think that has been asked and
16 answered. His answer is you don't have to close
17 and your question is asking him about post
18 closure. So he is saying you don't have to close.
19 If you never close the facility -- your question
20 is about post closure.

21 MR. LISS: If the facility were to
22 close, you are correct.

23 MR. HENRIKSEN: So aside -- you're
24 thinking a site may never close. It will never be

1 filled is that why --

2 MR. LISS: Yes, it's my opinion that
3 you don't have to close.

4 MR. HENRIKSEN: But if the site does
5 close, you have to go through this?

6 MR. LISS: Yes.

7 MR. HENRIKSEN: That's it. Thanks.

8 MS. TIPSORD: Let's take a lunch
9 break and then we'll go with Mr. Huff. Be back in
10 one hour, please.

11 (Whereupon, a break was taken
12 after which the following
13 proceedings were had.)

14 MS. TIPSORD: I think we're ready to
15 go back on the record and continue with the
16 testimony of Mr. Kenneth Liss and we now have
17 questions pre-filed by James Huff.

18 MR. HUFF: Can I just ask a
19 follow-up question first on the previous line of
20 questioning.

21 MS. TIPSORD: Sure.

22 MR. HUFF: As you explained,
23 Mr. Liss, you believe in your opinion that a
24 facility could avoid ever going through closure by

1 basically just continuing to pump groundwater
2 dewatering for some extended, indefinite period of
3 time, is that fair to say, characterize?

4 MR. LISS: In the line of questions
5 concerning groundwater management, yes.

6 MR. HUFF: So you do you believe
7 that that's truly a viable option that the
8 facilities could reasonably elect to do such a
9 thing in lieu of monitoring?

10 MR. LISS: Yeah.

11 MR. HUFF: So the water that they
12 pump out, where does that water go to typically?

13 MR. LISS: I don't know.

14 MR. HUFF: Direct discharge.

15 MR. LISS: I don't know. Do they
16 have NPDES outfall for that? What does it state
17 in here?

18 MR. HUFF: If they have a NPDES
19 outfall, they would be paying a manual fee for
20 that permit application or permit?

21 MR. LISS: If they have it.

22 MR. HUFF: If --

23 MR. LISS: And they would be --

24 MS. TIPSORD: Mr. Liss, you need to

1 let him finish his question. The court reporter
2 can't get both of you.

3 MR. LISS: Sorry.

4 MR. HUFF: If they're a direct
5 discharger, they could also have monthly
6 monitoring costs and monthly discharge monitoring
7 reports that they would have to prepare?

8 MR. LISS: Yes.

9 MR. HUFF: So they would have to
10 weigh those costs versus ultimately putting in
11 groundwater monitoring?

12 MR. LISS: Yes.

13 MR. HUFF: Thank you. On page three
14 of your pre-filed testimony, you note that soil
15 fill operation will often be located in areas with
16 high susceptibility to groundwater contamination.
17 Do you have any supporting data on any groundwater
18 impacts from such operations in Illinois?

19 MR. LISS: No, I couldn't find any.

20 MR. HUFF: On page four of your
21 pre-filed testimony, you note that less than one
22 percent of the soil materials are actually tested.
23 Can you compare this to the fraction of soil that
24 is sent to landfill that is tested?

1 MR. LISS: I was estimating on
2 landfill I would say that it's probably about the
3 same.

4 MR. HUFF: Thank you. Form 663
5 requires the professional engineer to certify that
6 the soil is uncontaminated, which requires the
7 professional engineer to test to the level
8 necessary in his or her professional judgment. In
9 discussing the inadequacies of the testing, are
10 you implying that the professional engineers are
11 not meeting their responsibilities?

12 MR. LISS: No. My testimony is
13 without defined standards or procedures, it's very
14 subjective.

15 MR. HUFF: Has your firm ever signed
16 a 663 form?

17 MR. LISS: No.

18 MS. TIPSORD: For the record, the
19 663 form has been part of the record as Exhibit 6.

20 MR. HUFF: On page four of your
21 pre-filed testimony, you note that the use of,
22 quote, background samples creates a risk to
23 groundwater contamination. Have you defined the
24 risk levels in which you are referring?

1 MR. LISS: Yeah, the risk of moving
2 tainted soil around. Risks to groundwater
3 impacts.

4 MR. HUFF: Would those risks be
5 greater than one times ten to the minus six?

6 MR. LISS: I don't know because I'm
7 saying the procedures for screening that are so
8 ineffective that you're not going to know.

9 MR. HUFF: I don't think we're
10 talking about screening. We're talking about the
11 use of background samples setting Maximum
12 Allowable Concentration.

13 MR. LISS: I think it's the same
14 thing. If you're taking soil from somewhere and
15 you're declaring it's within the configurations of
16 the rules for screening with background, that the
17 screening process or procedures to make that
18 determination are ineffective. So I'm saying that
19 in itself imposes the risk to contaminate
20 groundwater.

21 MR. HUFF: So the professional
22 engineer that is taking samples here has not
23 adequately characterized what he has signed off on
24 on Form 663?

1 MR. LISS: What samples?

2 MR. HUFF: Whatever samples that he
3 says this needs background concentration.

4 MR. LISS: Is it required to have
5 samples? Is there a requirement to sample? I
6 don't think the certification requires a sample,
7 does it?

8 MR. HUFF: As a professional
9 geologist, if you were asked to sign off on some
10 soils and sign a Form 663, could you come to in
11 your mind what would be a professionally
12 appropriate amount of sampling and testing that is
13 required albeit --

14 MR. LISS: Yes.

15 MR. HUFF: Do you believe other
16 professional geologists and professional engineers
17 would that have same ability?

18 MR. LISS: I think it's subjective
19 without a little more definition in the procedures
20 for making that determination.

21 MR. HUFF: My question was really on
22 the background concentrations that exist. If you
23 go onto question 5(b). If background
24 concentrations pose such a risk to groundwater

1 contamination, why then isn't the groundwater
2 under all of Illinois where these background
3 concentrations exist impacted today?

4 MR. LISS: Well, I guess one answer
5 would be if there's no groundwater monitoring
6 around these facilities, we don't know.

7 MR. HUFF: So Illinois EPA collects
8 significant data on groundwater quality throughout
9 the state and reports that and would that not show
10 up in their database?

11 MR. LISS: What would show up?

12 MR. HUFF: That we have widely
13 contaminated groundwater in Illinois from where
14 all this background concentrations exist that you
15 believe pose a threat to groundwater?

16 MR. LISS: I don't think groundwater
17 in Illinois is widely sampled.

18 MR. HUFF: 5C. You specifically use
19 benzopyrene as an example. How does the Tier 1
20 remedial objective for soil migration to
21 groundwater for this compound compare to the
22 background concentration that's used in the
23 Maximum Allowable Concentration table?

24 MR. LISS: How is it used?

1 MR. HUFF: How do they compare the
2 Tier 1 soil migration to groundwater --

3 MR. LISS: The MAC table, is that
4 what you're referring to?

5 MR. HUFF: I'm referring to what is
6 the Tier 1 soil migration to groundwater objective
7 for benzopyrene.

8 MR. LISS: I don't know offhand.

9 MR. HUFF: Is it higher or lower
10 than the background concentration?

11 MR. LISS: I have a 50/50 chance. I
12 don't know offhand.

13 MR. HUFF: Let's assume that it's
14 higher than the background concentration. So you
15 then testified that if we're allowing background
16 concentration levels of benzopyrene to go into
17 these facilities, that that's posing a risk to
18 soil migration to groundwater?

19 MR. LISS: Yes, I'd like to answer
20 your questions with an example maybe. I use
21 benzopyrene as an example. One reason because it
22 generally won't be picked up by a single gas PID.
23 PID, which is an instrument referenced in the
24 rules that you need to use. If you miss it, and

1 with what I think are ineffective certifications
2 and load checking procedures, this material
3 doesn't say you have to sample it.

4 MR. HUFF: So we're focusing --

5 MR. LISS: I'm not done.

6 MS. TIPSORD: One at a time. One at
7 a time. Go ahead, Mr. Liss.

8 MR. LISS: And you don't have to
9 sample it and it goes into one of these unlined
10 facilities, there is the risk of impact to
11 groundwater. That's the basis of my testimony, my
12 opinion.

13 MR. HUFF: So if the benzopyrene
14 background concentration is less than the Tier 1
15 remedial objective for soil migration to
16 groundwater and we're putting material in the CCDD
17 facility that is less than the background
18 concentration, what risk does that pose to
19 groundwater?

20 MR. LISS: Let's assume that back
21 with the groundwater -- the groundwater has no
22 benzopyrene in it beneath the facility.

23 Couldn't -- I want to ask you a question. There's
24 the potential for that constituent, benzopyrene or

1 another, to leach out and enter the groundwater
2 because it is an unlined facility and I think the
3 risk is even higher because of the ineffective
4 screening procedures, no location standards, no
5 engineering controls.

6 MR. HUFF: So let's get past this
7 screening and assume we have analytical data and
8 the analytical data says that the material going
9 in here meets the background number. So to the
10 extent that you get some benzopyrene in the
11 groundwater that is less than one times ten to the
12 minus six risk concentration, in your mind that's
13 still unacceptable?

14 MR. LISS: If it causes an increase
15 over the existing background concentrations of the
16 facility it's being disposed in, I disagree with
17 that. Yes, I think it's wrong.

18 MR. HUFF: So the benzopyrene is
19 along every highway in the State of Illinois and
20 you've got storm water that is percolating through
21 that that is then reaching the groundwater.

22 MR. LISS: I don't think that, but
23 if you have data to show me that benzopyrene is
24 along every highway in Illinois, I can alter my

1 opinion somehow.

2 MR. HUFF: Fine.

3 MR. LISS: I used benzopyrene as a
4 simple example.

5 MR. HUFF: So would you apply the
6 same background concern you had for benzopyrene to
7 arsenic?

8 MR. LISS: I think the potential is
9 there, yes.

10 MR. HUFF: So we should then
11 preclude any arsenic that is above 3 mg/kg of
12 going into CCDD facility?

13 MR. LISS: Is that a trick question?

14 MR. HUFF: No, sir. That's the
15 background level -- or that's the risk level of
16 benzopyrene.

17 MR. LISS: If it was a perfect world
18 and everyone followed exactly what should be done,
19 the EPA has indicated that that risk level if it
20 entered the groundwater is okay. I disagree with
21 that because there's the potential under the way
22 these rules are structured with no oversight, the
23 lack of standards, that one load could be sampled
24 and show that the arsenic is low enough or at that

1 level that you're discussing and other stuff could
2 be brought in there with higher arsenic levels and
3 dumped in there.

4 MR. HUFF: The lowest number that is
5 in there currently is the 13 mg/kg which is the
6 95th percentile of the upper confidence level of
7 mean in Illinois. The risk number was 3 mg/kg
8 based on ingestion, not based on soil migration to
9 groundwater. So if your answer is still you
10 believe that putting 3 mg/L and higher of arsenic
11 in the CCDD facility poses an unacceptable risk,
12 then --

13 MR. LISS: I think it's a case by
14 case determination that's not being made. So the
15 answer would be, yes, I think it's an unnecessary
16 risk and it could apply to any of these
17 constituents.

18 MR. HUFF: So, really, what you're
19 saying is we should not allow any material to go
20 into the CCDD facilities, it should all go to
21 landfills in Illinois?

22 MR. LISS: No, not at all.

23 MR. HUFF: So what material could go
24 into the CCDD facility?

1 MR. LISS: Properly screened
2 material that meets the criteria that the Agency
3 has laid out in this proposal provided it went to
4 a facility that had some safeguards and was
5 prescreened, say, with location standards,
6 eliminate the bad sites, the potential bad guys or
7 the potentially bad geographically located poor
8 sites.

9 MR. HUFF: So that seems at variance
10 with your testimony. Let's go back to the
11 benzopyrene and background levels. You testified
12 that we're now allowing tainted soil because it
13 only meets the background level for benzopyrene.
14 You testified that's inappropriate for going into
15 a CCDD facility. Now you're saying that if we
16 meet those levels proposed by the Agency with
17 proper screening, it would be okay to go into a
18 CCDD facility?

19 MR. LISS: I said both and it's not
20 that I changed my opinion. It's not now that I'm
21 saying. I answered two different questions that
22 you had. I'm saying the potential is under both
23 scenarios, the tainted soil could be placed in
24 these facilities above susceptible groundwater and

1 without knowing the condition of the groundwater
2 beneath there what you're advocating is to allow
3 some amount of contamination that could
4 potentially contaminate the groundwater by using
5 the TACO standards that were designed for a
6 different purposes.

7 MR. HUFF: If the regulations were
8 to adopt your concern over the use of, quote,
9 background concentration, what would you propose
10 doing with the soil and what would be the economic
11 impact on the annual \$2 billion a year of highway
12 construction work in northeastern Illinois?

13 MR. LISS: That's a tough question
14 because I don't have the economic data. Do you?

15 MR. HUFF: I testified to the \$2
16 billion. That's in my testimony, yes, sir. The
17 clients that I represent that's the annual budget
18 of what they're spending on roadways in
19 northeastern Illinois.

20 MR. LISS: I do know for a fact that
21 some of the work we do with the definition of
22 uncontaminated soil that the proponents of this
23 pushed through were successful and that's why
24 we're here. It is now costing the state,

1 specifically IDOT, more money to sample all these
2 parcels of property that they investigate. So
3 without even going to disposal there seems to be
4 an increased cost already to try and comply with
5 the bright line that's being developed, if we can
6 call it that, under this proposal. Now, where
7 would the soil go? That's the second part.

8 MR. HUFF: That was my question.

9 MR. LISS: Where would the soil go?
10 I think if the rules included some better
11 screening standards, a way of removing the sites
12 out of location standards, then maybe some
13 engineering controls because there aren't any
14 financial assurance requirements under here, are
15 there? You would still have facilities where this
16 soil can go. I think there's about 60 something
17 facilities potentially around this area, this six
18 or seven county area.

19 MR. HUFF: Moving onto question six.
20 On page seven of your testimony, you recommend
21 that any level of degradation in groundwater
22 quality be prevented citing 35 Ill. Adm. Code
23 742.410. Can you specifically quote the section
24 from Part 742.410 that you are referring to

1 regarding your statement that degradation and
2 groundwater quality be prevented?

3 MR. LISS: No, I didn't bring it
4 with me.

5 MR. HUFF: Part 742.415(b)2 allows
6 the use of area background in lieu of objectives
7 developed pursuant to other procedures in Part 742
8 such as the Class 1 or Class 2 groundwater
9 standards. Can you explain your understanding how
10 this section is consistent with your testimony
11 regarding degradation being prevented on
12 background?

13 MR. LISS: It's the same answer that
14 I had. That any use of background without some
15 diligence done on making sure it is not over the
16 background and it's going to an area that doesn't
17 have more pristine groundwater under it has the
18 potential to be impacted. That's my opinion.

19 MR. HUFF: You believe that's what
20 it says on 742.410 --

21 MR. LISS: I don't have it in front
22 of me. I'm telling you this is my opinion to
23 using the regulations --

24 MR. HUFF: Well, that's what you

1 cite.

2 MS. TIPSORD: One at a time, please.

3 MR. LISS: I'm clarifying.

4 MR. HUFF: Have you read the
5 Pollution Control Board's opinion in R8914(b)
6 regarding its intent regarding non-degradation and
7 adopting the Part 620 regulations?

8 MR. LISS: Yes, I participated in
9 those hearings.

10 MR. HUFF: So since you answered
11 that yes, can you summarize your understanding of
12 the Board's intent?

13 MR. LISS: There's quite a bit. I
14 think the Boards's statement was they were
15 reluctant that they couldn't address
16 non-degradation as was discussed on the record.

17 MR. HUFF: You believe that Section
18 742.410(b) does have that non-degradation
19 requirement?

20 MR. LISS: I have 742.410. I don't
21 have B in front of me, but I'm saying the use of
22 background in the manner under the proposed rules
23 has the potential to put -- and the screening
24 procedures that are in here, the lack of location,

1 the lack of permitting, the lack of Agency's
2 authority for oversight through permitting process
3 I think you have the potential of impacting
4 susceptible groundwaters.

5 MR. HUFF: And define impact for me.
6 Above Class 1 or above background concentration?

7 MR. LISS: I wouldn't use a Class 1
8 or Class 2 as a threshold to add contaminants.
9 Let's get rid of Class 1 and Class 2 and I can
10 boil this down. If background at this site is 50
11 whatever in groundwater and something leaches from
12 this soil into the groundwater and it brings it up
13 to 60, that's degradation. How much further do
14 you want to go?

15 MR. HUFF: No further questions.

16 MS. TIPSORD: Are there any other
17 additional questions for Mr. Liss? Thank you very
18 much. I appreciate your testimony. Michael
19 Sturino, did you make it in? Then we'll move onto
20 Steven Gobelman from IDOT.

21 MR. GOBELMAN: Do you want a copy?

22 MS. TIPSORD: Do you have a clean
23 copy? That would be great. Can we have the
24 witness sworn in, please?

1 WHEREUPON:

2 STEVEN GOBELMAN

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 MS. TIPSORD: If there's no
6 objection, we will mark the pre-filed testimony of
7 Steven Gobelman as Exhibit 18. Seeing none, it
8 Exhibit 18.

9 (Document marked as ILPCB
10 Exhibit No. 18 for
11 identification.)

12 MS. TIPSORD: Mr. Gobelman, did you
13 want to give a brief summary?

14 MR. GOBELMAN: No.

15 MS. TIPSORD: Then we can go right
16 back to Mr. Huff I believe has questions.

17 MR. HUFF: Do I have questions?

18 MS. TIPSORD: Yes, one. Would you
19 like -- I have my copy of it here.

20 MR. HUFF: Mr. Gobelman, on page two
21 of your pre-filed testimony, you indicated that
22 the Department of Transportation leaching testing
23 on pavement markings did not exceed Class 1
24 groundwater standards. Would you expect a similar

1 result on the pavement markings used by the
2 tollway counties and municipalities in Illinois?

3 MR. GOBELMAN: If they follow the
4 IDOT spec book and use similar pavement markings
5 manufactured that we look at, I would assume that
6 they would have similar results.

7 MR. HUFF: Thank you.

8 MS. TIPSORD: Any further questions
9 for Mr. Gobelman? That was a lot faster than last
10 time. Thank you very much for coming today.

11 MR. GOBELMAN: You're welcome.

12 MS. TIPSORD: Then we move onto
13 Mr. Ryan LaDieu. Thank you. Could we have the
14 witness sworn.

15 WHEREUPON:

16 RYAN LADIEU
17 called as a witness herein, having been first duly
18 sworn, deposeth and saith as follows:

19 MS. TIPSORD: If there's no
20 objection, we will mark Mr. LaDieu's pre-filed
21 testimony as Exhibit 19. Seeing none, it's
22 Exhibit 19.

23

24

1 (Document marked as ILPCB
2 Exhibit No. 19 for
3 identification.)

4 MS. TIPSORD: Go ahead, Mr. LaDieu.

5 MR. LADIEU: The intent of my
6 testimony was to address the Maximum Allowable
7 Concentrations of chemical constituents and
8 uncontaminated soils as listed in the 35 Ill. Adm.
9 Code Section 1100.605. Basically, the intent is
10 to identify that as far as the act goes, the
11 Public Act 96-1416 indicates that the IEPA is to
12 promulgate a regulation that identifies Maximum
13 Allowable Concentrations to be used to determine
14 what soils are eligible to be accepted at CCDD
15 facilities. Based on this, the Maximum Allowable
16 Concentrations for chemical constituents in
17 contaminated soils was generated by the IEPA and
18 it used the most stringent Tier 1 soil remediation
19 objectives, which included residential ingestion
20 and inhalation values.

21 The issue becomes how these
22 values are used when evaluating soils that are
23 going to these facilities and where these soils
24 are placed at a quarry or a mine as most of these

1 soils end up being placed at elevations that are
2 far below the surface and evaluating a risk level
3 which has been mandated by the Public Act of one
4 in a million as a risk level for human exposure.
5 At 200 feet below the surface, these residential,
6 ingestion/inhalation values end up becoming less
7 of a risk or the one in a million risk level
8 doesn't apply as the exposure pathway is taken
9 away when the quarry or mine is actually
10 completed.

11 So as the TACO regulations were
12 setup based on evaluating risk for sites for
13 cleanup -- and so it's based on a site by site
14 basis. The residential ingestion/inhalation
15 values are very conservative and I'm not sure that
16 there should be the values that need to be
17 evaluated when determining what soils go to a CCDD
18 facility.

19 In my pre-filed testimony, I do
20 mention that there does need to be some type of
21 evaluation done and the act specifically indicates
22 that this is a protection of groundwater, the
23 importance of the protection of groundwater at
24 these facilities. So, therefore, an evaluation of

1 the soil component of the groundwater ingestion
2 exposure route and in order to protect
3 construction workers, the construction worker
4 exposure routes need to be evaluated, but beyond
5 that using the residential ingestion/inhalation
6 values don't seem to be appropriate.

7 MS. TIPSORD: Thank you. Are there
8 any questions for Mr. LaDieu? Thank you very much
9 for taking the time to testify today. We
10 appreciate it. That moves us onto Claire Manning.

11 MS. MANNING: Good afternoon.

12 MS. TIPSORD: Can we have the
13 witness sworn, please.

14 WHEREUPON:

15 CLAIRE MANNING

16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

18 MS. TIPSORD: If there's no
19 objection, we will mark the pre-filed testimony of
20 Claire A. Manning and mark it as Exhibit 20.
21 Seeing none, it's Exhibit 20.

22 (Document marked as ILPCB
23 Exhibit No. 20 for
24 identification.)

1 MS. TIPSORD: Do you have a clean
2 copy with you?

3 MS. MANNING: Thank you. I do.
4 Madame Hearing Officer, Board Member Johnson and
5 the technical staff, as you know, I'm not a
6 technical expert. I'm not here to testify as a
7 technical expert. I am here, however, to provide
8 some background to the legislative and legal sort
9 of arena that led us here to this particular
10 rulemaking. I represent the Illinois Public --
11 the Public Building Commission of Chicago, which
12 is sort of very similar to the capital development
13 board in Springfield. It is the body that
14 contractually oversees all construction -- all
15 public construction in Chicago; Chicago Public
16 Schools, Chicago parks, Chicago Fire Department,
17 and that sort of thing. For the last three years,
18 we've been working with the Agency supporting a
19 legislative effort that would define
20 uncontaminated so the contractors that work for
21 the Public Building Commission would know what the
22 rules of the game are and what soil can be
23 appropriately taken to a quarry, a CCDD permitted
24 facility versus what soil needs to be taken to a

1 landfill and that is the gist in my opinion of the
2 impetus of this legislation. Various other
3 aspects came into this particular legislative
4 effort, but the impetus of the legislation, in my
5 opinion, was enforcement efforts occurring.

6 Mr. Wilt talked about some of
7 that today. The Board will be deciding those
8 matters where the Agency had taken the position
9 that soil is only uncontaminated if it doesn't
10 have anything naturally occurring in it or soil is
11 uncontaminated if it's from the glaciers, but if
12 it's something different it is contaminated and,
13 therefore, cannot be taken to a CCDD facility
14 where on the other hand the state of the art of
15 all the engineers that are out there on using TACO
16 to determine even when they're moving soil from
17 place to place, they're using TACO to determine
18 how clean is that soil. Is it clean enough to be
19 considered uncontaminated for the purpose of
20 sending it to a permitted CCDD facility.

21 What this legislation did was
22 really send that question to you. With your
23 technical expertise, to send that question to you
24 with just a few parameters. We were very

1 supportive. My client was very supportive of all
2 the protocols that have been put in place in terms
3 of the regulation and the added regulation, but it
4 was also important that from a cost perspective
5 and an environmental protection perspective that
6 we make the right decision in terms of what soil
7 is clean enough to be able to safely be put into a
8 quarry.

9 I think you heard John Hock
10 testify earlier that if we make that decision the
11 wrong way and it's too conservative that what
12 you're going to have is everybody taking it either
13 to a landfill, those conservative people that want
14 to err on the side of responsibility and those
15 other people who are going to err on the side of
16 not responsibility, but lower costs are going to
17 take it elsewhere that's not regulated.

18 So that's the charge I think the
19 Board has in terms of deciding and listening to
20 the testimony and listening to the technical
21 information in terms of what the proper protocol
22 is out there for contractors to be sure when they
23 send something to a quarry it's appropriate to
24 send it there, a quarry being a CCDD permitted

1 facility.

2 My client is interested really
3 in two things. Number one, environmental
4 protection. We've come a long way with already
5 the positive steps we've taken in the CCDD rules.
6 You'll all recall there was a day when lots of
7 things went everywhere. As a result of that
8 practice, the CCDD regulations -- first of all,
9 the CCDD statute was put in place. Then the Part
10 1100 regulations followed. Since those Part 1100
11 regulations, we now have permitted CCDD facilities
12 that are trying to act responsibly under the law
13 and they need to understand what the law is, what
14 the regulations are and that kind of thing. If
15 you'll recall, and I put in my testimony here, the
16 Part 1100 rules when we had the rulemaking the
17 point was made by several people that we need to
18 define what uncontaminated is. We, however, left
19 the record without making that more definitive and
20 as a result the workplace out there has -- in the
21 engineering community, everybody has made a
22 determination as to what is clean enough. The
23 Agency doesn't always agree with that
24 determination and when they don't an enforcement

1 action occurs and in my opinion that's a great
2 impetus for one of the reasons we're here today.

3 Secondly, my client is very
4 interested in, as it should be, it's a public
5 contractor, interested in the costs and the cost
6 benefits of sending something to a landfill if
7 they're going to incur the costs of sending
8 something to a landfill which estimates are it's
9 four times the cost of sending soil to a CCDD
10 facility. That means millions of dollars in
11 public projects for the city projects. They want
12 to make sure that's the right call. That it needs
13 to be landfill because it's not -- it's
14 contaminated. And they want to make the right
15 call if it's appropriate to go to a quarry and
16 will not impact the groundwater.

17 Thirdly, my client is interested
18 in contractor compliance. My client has
19 specifications. They develop specifications.
20 They have to tell the contractor where things are
21 supposed to go. Right now as the situation is
22 given enforcement actions, given the flux in the
23 law, they have made the determination to landfill
24 almost everything until a determination is made as

1 to what is appropriate and what isn't appropriate
2 at great costs.

3 So as they go through that and
4 the Board goes through this rulemaking, we'd like
5 to at the end of the day make sure that my
6 clients, the Public Building Commission, can give
7 rules out to their contractors in terms of their
8 contractor's obligations to make sure that soil
9 goes in the right place when it needs to be
10 excavated and removed and taken out of the city.
11 With that, that is my -- I'm happy to answer any
12 questions that anybody may have.

13 MS. TIPSORD: Thank you. Are there
14 any questions for Mr. Manning?

15 MS. MANNING: Thank you.

16 MS. TIPSORD: Thank you very much.
17 Okay. One last chance for Michael Sturino. All
18 right. We will move his pre-filed testimony to a
19 public comment and, with that, I believe we are
20 ready to go to the IEPA. Why don't we take about
21 ten minutes so we can get the IEPA moved up here
22 and the first set of questions for the IEPA I have
23 that was filed came from Land and Lakes. Yes,
24 from Land and Lakes. Is Land and Lakes here

1 today? Awesome. We'll begin with you.

2 (Whereupon, a break was taken
3 after which the following
4 proceedings were had.)

5 MS. TIPSORD: The questioner from
6 Land and Lakes, come on up. Before she gets
7 seated, if we could go ahead and have the Agency's
8 witnesses sworn in.

9 WHEREUPON:

10 THOMAS HORNSHAW, CHRISTIAN LIEBMAN, PAUL
11 PURSEGLOVE, STEPHEN NIGHTINGALE, DOUGLAS CLAY and
12 TERRI BLAKE MYERS
13 called as witnesses herein, having been first duly
14 sworn, deposeth and saith as follows:

15 MS. TIPSORD: And this is the same
16 panel from the last hearing, correct?

17 MR. WIGHT: With one exception.
18 Leslie Morrow is unable to attend today, but Tom
19 Hornshaw is. Mr. Marrow's supervisor has been
20 involved in the workgroup at IEPA so Mr. Hornshaw
21 should be able to handle any of those questions.

22 MS. TIPSORD: Great. Thank you.
23 With that, we'll go ahead and begin with the
24 pre-filed questions from Land and Lakes.

1 MS. TROYER: I'm just going to
2 paraphrase these a little bit. We've been doing
3 precertification of our material coming into our
4 clean fill since the clean fill opened in 2004.
5 We were happy to see the implementation of the LPC
6 662 and 663, but we're not real happy with the
7 outcomes we're seeing with the 663's. Some
8 examples are that we're getting things coming in
9 certified by PE's that have no supporting evidence
10 or historical data associated with the site. It's
11 basically this site is clean. In running what we
12 call an EDR report, we're finding that evidence of
13 Leaking Underground Storage Tanks on the site and
14 other spills and having to go back and do
15 analysis.

16 We're also seeing places where
17 they would take a ton plus acre site, do three or
18 four bore holes down three or the four feet, stick
19 a PID in there, get zero and tell us that the soil
20 is clean without any other analytical evidence or
21 metals, other things that are not picked up by a
22 PID and certifying it as clean.

23 Another example is that we will
24 have them not do the entire list of the Maximum

1 Allowable Contaminates, which I think is okay if
2 they can justify why we didn't do this group of
3 metals, this group of PCB's, this group of
4 pesticides or some other type of a certification
5 like we do for landfills for pesticides and
6 herbicides, but there's no evidence, nothing to
7 trace back why the PE said we didn't need to do
8 these analyses.

9 The other thing is we will see
10 analysis come through that's perfect and the PE
11 will sign off everything is good, it's under the
12 MAC. We actually had this happen last week. We
13 specifically mentioned arsenic. In looking over
14 their results, the arsenic was over the MAC that
15 was presented to the Pollution Control Board.

16 MS. FLOWERS: Can I interrupt? She
17 is testifying.

18 MS. TIPSORD: I need to have you
19 sworn in. You're offering testimony and giving us
20 facts that we need to have sworn testimony. So
21 could we have you sworn in, please?

22 MS. TROYER: Sure.

23 WHEREUPON:

24 CHARLENE TROYER

1 called as a witness herein, having been first duly
2 sworn, deposeth and saith as follows:

3 MS. TROYER: When, in fact, we
4 looked over that analytical data, the arsenic was
5 over both the MAC presented to you for approval
6 and they wanted posted on the board. In addition
7 to that, both lead and iron were above those
8 levels. What I'm wondering and hoping is we can
9 get some kind of a protocol for the PE's to
10 follow, something that includes them writing a
11 justification of why they didn't do certain
12 analysis. Also, if there could be some kind of
13 training protocol for people that are working for
14 the CCDD sites on what they should be looking for
15 to accompany those 663 forms. So that's the
16 question. Will the EPA consider some type of a
17 program along those lines?

18 MR. NIGHTINGALE: To answer the
19 first part of your question about the standard
20 protocol or certification of clean fill, there are
21 no plans to do this protocol.

22 MS. TIPSORD: You need to speak up.
23 Remember, you're talking to the back of the room
24 as well.

1 MR. NIGHTINGALE: Okay. There are
2 no plans to do this. The protocol will be up to
3 the professional engineers and the professional
4 geologists. Your second question which was
5 related to the Illinois EPA developing a
6 certification program to educate professional
7 engineers or professional geologists that is
8 similar to the certification for Stormwater
9 Pollution Prevention Plan Preparers. Our response
10 is, no, there is no need to develop a separate
11 certification program because both the
12 professional engineers and professional geologists
13 are licensed by the Illinois Department of
14 Financial and Professional Regulation.

15 MS. TROYER: Question number two
16 relates to the groundwater standards. In
17 comparing the list of the groundwater standards to
18 the MAC's, it appears that some of those
19 parameters that we're looking for for Maximum
20 Allowable Contaminations are not covered on the
21 groundwater standards.

22 If that being true, how can
23 anybody be sure that some of those other
24 parameters that we're looking at for Maximum

1 Allowable Contamination should even be looked at
2 if we're not concerned for those in the
3 groundwater?

4 MR. PURSEGLOVE: My name is Paul
5 Purseglove. The Agency can at any time collect a
6 sample from one of the monitoring wells at the
7 disposal fill site and have that analyzed for a
8 broader range of organic and inorganic
9 constituents. Ultimately, though, the CCDD owner
10 will be responsible if an impact to the
11 groundwater is discovered. The CCDD owner must
12 exercise all due diligence before accepting
13 material as fill at their site knowing that if
14 groundwater is impacted due to leaching of
15 contaminants from the materials they have accepted
16 they will be responsible for the remediation.

17 MS. TROYER: And the last question
18 is that many construction companies move soil from
19 one site to another without having the soil looked
20 at. Basically, for structural issues, they'll
21 have soil that is not structurally sound. They'll
22 want to remove that, put something in something
23 more structural. Where is there any guidance on
24 that material they're bringing into their site to

1 make sure it is equivalent in quality to what they
2 moved off site?

3 MR. CLAY: My name is Doug Clay.
4 None. These regulations only apply to material
5 that is generated for construction and demolition
6 activities that are going to mines, quarries and
7 other excavations as defined in these proposed
8 regulations. We do investigate complaints of
9 illegal disposal waste.

10 MS. TROYER: Thank you.

11 MS. TIPSORD: With that, the next
12 set of questions I received were from Dennis Walsh
13 and the Suburban Public Works Director
14 Association. Mr. Walsh? Okay. Moving onto the
15 City of Chicago. Doris McDonald? Go ahead.

16 MS. MCDONALD: Thank you. I'll try
17 to be as brief as I can be. The city's first
18 question concerns whether when LPE/LPG
19 certification is required or would be required for
20 purposes of Section 205 and under the act as it
21 applies currently as the city understands it
22 LPE/LPG certification is not required if the
23 source site owner certifies that the source site
24 has never been used for commercial or industrial

1 purposes and is presumed to be uncontaminated
2 soil. Under the Agency's proposed rules as the
3 city understands them hopefully I understand them,
4 correctly, hopefully you'll tell me if I don't,
5 LPE/LPG certification is not required if the
6 source site owner certifies that the source site
7 is not a personally impacted property and is
8 presumed to be uncontaminated soil and then
9 finally there's been some discussion of the Board
10 perhaps adopting a term industrial/commercial
11 instead of potentially impacted whereby presumably
12 LPE/LPG certification would be required for any
13 property that would be industrial/commercial.

14 And the city would like to
15 understand the Agency's view of how these three
16 different terms play out or would play out in
17 practice. So, specifically, the city is wondering
18 from the Agency's point of view whether LPE/LPG
19 certification is or would be required for each of
20 the four properties we listed as A, B, C and D and
21 I can read those into the record if necessary.

22 First, under the act as it
23 applies currently. Second, under the Agency's
24 proposal of potentially impacted properties and,

1 third, if the term potentially impacted will be
2 replaced by industrial/commercial property. I can
3 read the four properties in.

4 MS. TIPSORD: Yes, please.

5 MS. MCDONALD: Certainly. The first
6 property that the city is interested in is the
7 transportation right of way that has always been a
8 transportation right of way. The second property
9 is a park, school or residence that was formally
10 the site of industrial activity, the third is a
11 commercial dry cleaning facility and the fourth is
12 a metal heat treating facility?

13 MR. NIGHTINGALE: My response is a
14 five part answer. First, the decision is to which
15 soil certification form to use. Source site
16 certification or PE/PG certification should be
17 made by the source site owner or operator and the
18 receiving facility in advance of any excavation or
19 truck hauling. Second, no matter how descriptive
20 Part 1100 regulations may be in regards to road
21 certifications, the receiving facility may choose
22 to be more stringent and require professional
23 engineers or professional geologists certification
24 and analytical testing.

1 The interpretation of
2 potentially impacted property is ultimately made
3 by the receiving facility since the responsibility
4 falls to them to make sure only CCDD and
5 uncontaminated soil are accepted for fill.

6 Third, for meaningful guidance
7 as to whether a property, including a right of way
8 or easement, may be potentially contaminated we
9 recommend you consult ASTM standard practice for
10 environmental site assessments phase one
11 environmental site assessment process E1527-05.
12 This document is the recognized national standard
13 for evaluating a properties' potential for
14 environmental contamination.

15 Fourth, no type of property or
16 land use can be categorically excluded. The owner
17 should use his or her knowledge or the history of
18 the site and the vicinity or the history if it --
19 or if the history is unknown, consult a
20 professional engineer or geologist and, finally,
21 fifth, if the Board were to adopt potentially
22 impacted property or industrial/commercial
23 property, it would not change the certification
24 requirements.

1 MS. MCDONALD: I guess I'll chew on
2 them in the back of my mind while I go on and ask
3 some more questions. I'm not trying to trick
4 anybody. I'm just trying to learn. Are you able
5 to provide examples, whether real or hypothetical,
6 of current or former industrial or commercial
7 sites that in the Agency's view would not be
8 potentially impacted properties and on the other
9 side of the coin current or former industrial or
10 commercial sites other than a property with a
11 known release of some kind of less incident that
12 not in the Agency's view would necessarily be
13 potentially impacted property?

14 MR. NIGHTINGALE: The response would
15 be no type of property or land use can be
16 categorically excluded or included. The owner
17 should use his or her knowledge of the history of
18 the site and vicinity or if the history is
19 unknown, consult a professional engineer or
20 geologist.

21 MS. MCDONALD: Understood. Could
22 you give me an example? Again, I'm not trying to
23 trick you. I'm just trying to learn. Could you
24 give me an example, even a hypothetical example,

1 of a property that was once industrial or
2 commercial that the Agency would say is not
3 potentially impacted property and if you have to
4 add more facts, hypothetical facts, to make it
5 come to life, that's fine.

6 MR. NIGHTINGALE: Well, I guess
7 possibly. I guess an example would possibly be a
8 bank that was pretty much always used as a bank
9 and they may have a part of their property that's
10 just been there and it's really never been used
11 for anything, maybe a picnic area or something
12 like that. That could probably fall into that
13 situation.

14 MS. MCDONALD: That would not be
15 potentially impacted?

16 MR. NIGHTINGALE: Correct.

17 MS. MCDONALD: Can you think of
18 circumstances under which a residential property
19 that has never been used for an
20 industrial/commercial purpose would be a
21 potentially impacted property?

22 MR. NIGHTINGALE: Circumstances
23 could include the property contains materials that
24 could impact the property and impacted property

1 could be located near a residential property or
2 other circumstances. Again, no type of property
3 or land use can be categorically excluded. The
4 owner should use his or her knowledge of the
5 history of the site and the vicinity or if the
6 history is unknown consult a professional engineer
7 or geologist.

8 MS. MCDONALD: I understand. So if
9 I have a house and it's always been a house, most
10 likely that would not be potentially impacted
11 property?

12 MR. NIGHTINGALE: I think that would
13 be fair to say unless there was something going on
14 around or near it or even at the site if they were
15 storing used oil or something like that, that
16 could potentially impact the property.

17 MS. MCDONALD: Okay. Now, I'm
18 thinking about a right of way running through a
19 residential neighborhood that's always been a
20 residential neighborhood let's just say there are
21 no less incidences in the immediate vicinity and
22 we're not aware of any major spills. Can you
23 think of any circumstances hypothetical, real,
24 whichever, under which that right of way would be

1 potentially impacted?

2 MR. NIGHTINGALE: Could you repeat
3 that question?

4 MS. MCDONALD: You have a right a
5 way -- I can't repeat verbatim. I'll do my best.
6 You have a right of way that is running through a
7 residential neighborhood, it's always been a
8 residential neighborhood, we're not aware of any
9 approximate LUST incidences or releases or
10 anything like that, the street -- it runs through
11 a residential neighborhood, it's always been a
12 residential neighborhood, what facts would I have
13 to add to make that right of way potentially
14 impacted or what facts could I add to make that
15 right of way potentially impacted?

16 MR. NIGHTINGALE: To make it
17 potentially impacted, I guess if there was some
18 type of spill that was going on on the right of
19 way, if there was I guess a tanker that may have
20 tipped over or somebody were to have dumped oil,
21 if you had perhaps a transformer or say, for
22 example, pesticide spills that may have gone on
23 there, heating tanks could be another situation.

24 So really it depends on the

1 situation at the site and that's where we really
2 think that if there's any question that a
3 professional engineer or professional geologist --

4 MS. TIPSORD: Keep your voice up.
5 They can't hear you in the back of the room.

6 MR. NIGHTINGALE: I think that's why
7 we feel that it is so important that if you're not
8 really confident that it hasn't been impacted that
9 you should contact a professional engineer or a
10 professional geologist.

11 MS. MCDONALD: The proposed Board
12 note to the definition of potentially impacted
13 properties states in part "For transportation
14 rights of way or utility easements, the current
15 use of the property as a right of way or easement
16 should be considered" and other things obviously
17 should be considered as well as stated in the
18 Board note. Does the Agency believe the current
19 use of the transportation right of way or utility
20 easement itself renders or could itself render the
21 property potentially impacted and, if so, how and
22 when?

23 MR. NIGHTINGALE: The answer would
24 be yes. As stated before, no type of property or

1 land use can be categorically excluded or included
2 and, again, the owner should use his or her
3 knowledge of the history of the site and the
4 vicinity or if the history is unknown consult a
5 professional engineer or geologist.

6 MS. MCDONALD: Okay. Understand.
7 But thinking about the right of way itself the
8 Board note says one of the things that I should
9 consider is the current use of the property as a
10 right of way or easement and I'm trying to
11 understand how to take that into consideration so
12 that I make sure my client takes it into
13 consideration in the right of way.

14 Does its use as a right of way
15 lean it in one direction or another or you just --
16 why should I consider that fact or what relevance
17 does that have?

18 MR. NIGHTINGALE: I think you would
19 probably have to look at a right of way where it's
20 at and what is going on at the site. If it's in a
21 residential area and there doesn't appear to have
22 been any problems or contamination, then that
23 could potentially fall into the non-contaminated
24 side of things, but, again, it's really going to

1 have to be done on a site by site basis.

2 It's really going to be critical
3 that the site owner or operator of this evaluate
4 what they've got going on and if there's any
5 question, again, our recommendation is to have a
6 professional engineer or a professional geologist
7 consult it to make those decisions.

8 MS. MCDONALD: I'm just going to
9 withdraw question six. On question seven, what
10 I'm trying to get at here is we have to think
11 about each individual property. I get that. And
12 the Board note to the definition, again, of
13 potentially impacted properties states the use of
14 adjoining property should be considered in
15 determining if the right of way is potentially
16 impacted. Got it. But am I correct in thinking
17 that mere knowledge that the right of way is
18 surrounded by industrial and commercial properties
19 is in itself insufficient to make a determination
20 as to whether the right of way is potentially
21 impacted? I would need to know more about those
22 individual properties?

23 MR. NIGHTINGALE: Yeah, I would
24 think you would need to know more about those

1 other properties, but being in an industrial
2 setting that you probably -- if you're not really
3 familiar with what has been going on it may be a
4 good idea to consult a professional engineer or
5 geologist.

6 MS. MCDONALD: So a right of way
7 project could obviously involve excavation along
8 one or more city blocks. Could the right of way
9 owner properly identify a portion of the project
10 site which might be a block, several blocks or a
11 portion of a block as not potentially impacted and
12 seek LPE/LPG certification only for soil from the
13 remaining portions or is it the case that if any
14 part of the right of way project is potentially
15 impacted than the whole right of way project is
16 potentially impacted in the Agency's view? I
17 understand. I'll talk to the quarry. But in the
18 Agency's view is it -- can it be separated out or
19 is one project simply one project?

20 MR. NIGHTINGALE: Yes, it can be
21 separated out.

22 MS. MCDONALD: Segregate the soils
23 and that sort of thing?

24 MR. NIGHTINGALE: Yeah, you've got

1 them blocked. If you have contamination, that
2 area may -- you may need a professional engineer
3 or professional geologist or if you have another
4 block or if there's no indication --

5 MS. TIPSORD: They can't hear you in
6 the back of the room.

7 MR. NIGHTINGALE: If you had a
8 portion of your block or of your activity that was
9 going on and it included a series of blocks we
10 would not require that you go to and -- because
11 one block had a problem that you would have to do
12 the whole project, require that a professional
13 engineer or professional geologist certify it. So
14 you could break it up and if some areas would not
15 appear to be contaminated you would not have to
16 have a PE or a PG for that.

17 MS. MCDONALD: If a property was
18 contaminated and was extensively remediated years
19 ago in the SRP, including pumping out contaminated
20 groundwater, excavating contaminated soil,
21 replacing the excavated soil with virgin soil and
22 vegetation and the Agency issued a comprehensive
23 NFR, is the property a potentially impacted
24 property today or do you lack the facts to know

1 and, if so, what extra facts would you need to
2 know?

3 MR. CLAY: That determination would
4 be made by the source site owner/operator and
5 their PE or PG, if applicable. One thing that
6 should be considered in making this determination
7 is what activities have taken place at the site
8 since the NFR letter was issued.

9 MS. MCDONALD: And if none had taken
10 place since the NFR had been issued, if the
11 property was exactly the same as it was on the
12 date the NFR was issued, does the Agency have an
13 opinion on whether that property would be
14 potentially impacted?

15 MR. CLAY: I think you need to look
16 at the situation. I'm not sure there's a
17 comprehensive -- and it was many years ago. I'm
18 sure there has been changes in the TACO numbers.
19 So that's a possibility. I don't know if you said
20 there was a comprehensive NFR letter with no
21 restrictions. You know, if there were any
22 restrictions, obviously it would pick up
23 contamination behind the required institutional
24 controls or engineered barriers.

1 MS. MCDONALD: Assuming there were
2 none required?

3 MR. CLAY: Again, it would have to
4 be an evaluation by the property, the source site
5 owner/operator and/or their PE or PG.

6 MS. TIPSORD: Could we hold for just
7 a second?

8 (Whereupon, a break was taken
9 after which the following
10 proceedings were had.)

11 MS. TIPSORD: We can continue.

12 MS. MCDONALD: Thank you. I think I
13 can guess, but I'm going to ask anyway. The
14 property that I just described had a comprehensive
15 NFR letter issued years ago after the extensive
16 remediation that I described and let's assume no
17 restrictions on the NFR, no activity on the
18 property since then, is a right of way or other
19 property abutting that property necessarily
20 potentially impacted as a result of abutting it
21 and if more facts are needed to answer this
22 question, what kinds of facts are those?

23 MR. CLAY: Once again, the
24 determination falls to the source site

1 owner/operator and their professional engineer or
2 professional geologist, if applicable. In all
3 cases, a consultation with the fill site should be
4 conducted to know what they will require prior to
5 receiving material.

6 MS. MCDONALD: Sure. But at the end
7 of the day, it's not the fill site, it's the
8 Agency that might pursue an enforcement action so
9 I'm interested in finding out from the Agency's
10 point of view is it impossible for the Agency to
11 answer that question just because there just
12 aren't enough facts presented and, if so, I don't
13 ask you to supply every single fact you would need
14 to know, but what are the kinds of facts that you
15 would need to know to make that determination?

16 MR. CLAY: Again, this is up to the
17 professional engineer, professional geologist.
18 Facts that could be considered is have there been
19 spills from along the roadway from trucks, not
20 from adjacent sites, but from trucks along the
21 roadway. What has happened at the adjacent
22 property since the comprehensive NFR letter has
23 been issued? How long has it been since the NFR
24 letter was earned, 20 years? What could have

1 happened in that period of time?

2 Again, this is -- you know, we
3 can't give a definitive yes or no without knowing
4 exactly what happened at the property and it is up
5 to the judgment of the professional engineer. In
6 some situations, one professional engineer or
7 geologist may require sampling. Another
8 situation, they may not. So it really -- you
9 know, we can't give you a definitive answer with a
10 hypothetical situation. And it really doesn't --
11 you know, if the Agency goes out and takes samples
12 of this site and they're above the standards,
13 they're going to be cited for violation. So, you
14 know, weather we agree or we believe that they can
15 certify to it really doesn't matter.

16 It's whether the professional
17 believes they can certify us to it and whether the
18 receiving facility, the fill site owner/operator
19 concurs. I mean, they may have certifications
20 from the PE or PG, but the fill site may say, you
21 know, this is adjacent to a former NFR site. I
22 want samples.

23 MS. MCDONALD: I'm going to withdraw
24 11 and 12, please, and question 13 what I think

1 the city is getting at with question 13 is looking
2 at if industrial activity -- let's assume the
3 industrial activity would render the property
4 potentially impacted.

5 Does the amount of time that's
6 passed since that activity has occurred play into
7 whether the property is potentially impacted
8 today? Is that something that should be
9 considered? So if there was activity that took
10 place a hundred years ago, but the property has
11 been a park or a home for the last 99 years, 50 or
12 25 or 10, is that a relevant factor that would be
13 taken into consideration?

14 MR. CLAY: You know, I think this is
15 up to the source site operator, but I think you
16 would take that into consideration. What weight
17 you would give to it is up to the source site
18 owner/operator or the professional engineer or
19 geologist.

20 MS. MCDONALD: And would the same be
21 true for the duration of activity, potentially
22 contaminating activity, on the site whether it was
23 two months, 20 years, that sort of thing? Same
24 answer?

1 MR. CLAY: Yeah, the relevancy of
2 that information and another site use information
3 should be considered by the source site
4 owner/operator and their professional engineer,
5 professional geologist at that point.

6 MS. MCDONALD: Thank you. If the
7 Agency were to issue a notice of violation to a
8 source site owner for allegedly causing or
9 contributing to groundwater contamination or
10 allegedly disposing of contaminated material and
11 fill operation and the source site owner were to
12 provide its sampling protocol and test results
13 showing no exceedances of the Maximum Allowable
14 Concentrations, would that showing be sufficient
15 in the Agency's view to disprove the allegations
16 and resolve the matter and, if not, could you
17 explain?

18 MR. PURSEGLOVE: If the data from
19 the generator indicated that the MAC was not
20 exceeded, than an enforcement action would be
21 dismissed. However, if subsequent analysis of
22 samples of the material that was sent to the CCDD
23 site indicated MAC exceedances, enforcement would
24 proceed and the assessment of the soils that was

1 conducted by the PE or PG would be in question.

2 MS. MCDONALD: Is asphalt considered
3 painted if it contains pavement markings?

4 MR. PURSEGLOVE: Yes.

5 MS. MCDONALD: Can asphalt
6 containing pavement markings properly be used as
7 fill at a CCDD fill operation?

8 MR. PURSEGLOVE: Yes, provided the
9 paint complies with IDOT specifications or it's
10 sampled and tested and certified to be below the
11 regulatory level.

12 MS. MCDONALD: Thank you.

13 MS. TIPSORD: I believe we'll go
14 then to --

15 MR. GOBELMAN: Can we ask follow-up
16 questions on theirs?

17 MS. TIPSORD: Sure. You can ask
18 questions in follow up.

19 MR. GOBELMAN: Steve Gobelman,
20 Illinois Department of Transportation. Just so
21 we're clear about evaluating properties whether or
22 not those properties have potential contaminant
23 concerns, if in doing a right of way project and
24 we are looking at the adjacent properties and

1 their associated impacts to our property, isn't it
2 acceptable that if we are -- if the transportation
3 group, whoever it may be, is doing a proper phase
4 one property assessment and have determined that
5 in those assessments that both adjacent properties
6 have no recognized environmental concerns that
7 those properties can -- that the transportation
8 agency can then certify as the owner/operator that
9 there are no -- that this material is
10 uncontaminated?

11 MR. CLAY: Yes, they can, but
12 they're making that determination based on --
13 based on phase one that there is that impact.

14 MR. GOBELMAN: Correct. And that
15 would be put on that form stating that it's based
16 upon their phase one property assessments that
17 they're making this certification as the
18 owner/operator?

19 MR. CLAY: Yes, and as we said
20 before, in all cases, you need to make sure you're
21 working with the fill site owner/operator to make
22 sure that's all they're going to require or
23 they're going to require additional information.

24 MR. GOBELMAN: Correct. And if you

1 were doing that and you discovered that there are
2 properties adjacent to your work that have
3 recognized environmental conditions, then
4 additional investigations most likely would have
5 to be conducted to prove whether or not that soil
6 that's going to be generated is going to be
7 uncontaminated?

8 MR. CLAY: Again, if it's determined
9 to be a potentially impacted property, then a PE
10 or PG, professional engineer or professional
11 geologist, has to certify that based on their
12 evaluation which may include additional
13 information.

14 MR. GOBELMAN: Thanks.

15 MS. TIPSORD: Go ahead.

16 MS. MANNING: I have a follow up to
17 that, Mr. Clay. Mr. Gobelman asked that in terms
18 of the transportation Agency, but your answers
19 would be applicable to any soil excavator/owner,
20 correct?

21 MR. CLAY: That's correct.

22 MS. MANNING: Thank you.

23 MS. TIPSORD: Actually, Ms. Manning,
24 your questions are next. If you'd like to come

1 up.

2 MS. MANNING: I apologize. I forgot
3 to number these. So what I'm going to do is in
4 the very issue areas, I'll just call that A and
5 then I'll do one, two, three, four. Other
6 excavation definition -- obviously, there's a lot
7 of material here, but the bottom line is there was
8 a definition of other excavation that was included
9 in the original Part 1100. It's changed in just a
10 minor way. So my question and it appears from my
11 EPA testimony that the proposed definition would
12 exclude from the realm of CCDD regulation
13 definition as I believe was intended from the
14 original regulatory definition in Part 1100 soil
15 that is placed in sites that have been excavated,
16 by that, I mean cleared of existing building,
17 structures, earth, et cetera as part of a
18 construction project be that for a home, a new
19 building, a bridge construction, a highway or
20 street reconstruction for a sewer reconstruction
21 and I guess my first question under that other
22 excavated definition is, does the IEPA agree that
23 the CCDD law nor these proposed regulations are
24 intended to apply to soil or fill that is utilized

1 as explained above including the soil standard
2 that you've proposed?

3 MR. CLAY: Yes, these regulations
4 only apply to CCDD including uncontaminated soil
5 that is placed in mines, quarries and other
6 excavations as defined in Section 1100.103 of
7 these proposed regulations. Uses of CCDD as fill
8 other than mines, quarries and other excavations
9 must comply with Section 3.10.160(b) of the
10 Illinois Environmental Protection Act. Also,
11 please refer to our errata sheet number one which
12 was filed on October 6th, 2011, where we modify
13 the definition of mines, quarries and other
14 excavations.

15 MS. MANNING: Thank you. Does the
16 IEPA agree that a project engineer or consultant
17 at one of these construction sites that fills an
18 excavation that not subject to the CCDD law could
19 utilize TACO to do so in terms of whether the soil
20 is adequately protective of human health and
21 safety when they use it as fill at that other
22 excavation?

23 MR. CLAY: No, the Board's TACO
24 rules do not apply to soil or other fill being

1 brought on site. See Section 35 Illinois Adm.
2 Code Part 742, specifically Section 742.105
3 applicability. Soil and other fill material
4 brought to a site for use must be uncontaminated.
5 There is no regulatory -- there is no regulations
6 for uncontaminated soil generally and your
7 question is outside the scope of this rulemaking.

8 MS. MANNING: Right. That's what I
9 wanted you to say. I understand that. Thank you.
10 I just want to make sure we weren't mixing apples
11 and oranges and everybody understood that's a
12 totally different issue than the one we have
13 before us.

14 Does the IEPA agree or consent,
15 if you will, that despite the reasons, the initial
16 reasons for the Board's TACO rules to remediate a
17 specific site they have nonetheless been utilized
18 as sort of an industry standard by engineers,
19 geologists, other technical professionals in terms
20 of determining when someone believes soil is clean
21 enough for specific uses?

22 MR. CLAY: No, I don't think we can
23 make that conclusion. The Board's TACO rules do
24 not apply to soil or other fill being brought on

1 site. See 35 Ill. Adm. Code 742.105 of the
2 applicability. Soil or other fill material
3 brought to the site for use must be
4 uncontaminated. There are no regulations for
5 uncontaminated soil generally and your question is
6 outside the scope of this rulemaking.

7 MS. MANNING: Okay. Let's go to the
8 uncontaminated soil that is -- we'll call this B,
9 the first question. I won't go through what I've
10 got written here. I suppose in many ways you've
11 already answered this through your record
12 evidence, but I'll ask the question anyway and if
13 there's anything further you want to add beyond
14 what you have already presented in record evidence
15 I would expect you to do it at this time.

16 And the question is, did the
17 IEPA rely on any relevant scientific studies or
18 information to support the use of the most
19 conservative of the TACO parameters regardless of
20 fill placement or the deposition site as being
21 necessary for the protection of human health and
22 safety?

23 MR. CLAY: No.

24 MS. MANNING: Number two, does the

1 IEPA agree that some permitted CCDD facilities,
2 quarries, are located in areas or have geological
3 attributes that posed much less risk to human
4 health and safety than others might?

5 MR. CLAY: No, we need a lot more
6 information to make that conclusion.

7 MS. MANNING: What if there was a
8 quarry in a heavily industrial area that the
9 groundwater was already impacted by surrounding
10 underground storage tank sites, remediated
11 properties versus a quarry that's in a more
12 pristine area downstate where there has been no
13 industrial impact?

14 MR. CLAY: I think the proposed
15 rules take into account if there's background
16 contamination around the site so that hasn't taken
17 into account.

18 MS. MANNING: In what way?

19 MR. CLAY: If you've got
20 contamination above the standards coming onto your
21 site, then that can be considered and compared to
22 the groundwater monitoring wells down gradient.

23 MS. MANNING: How do you expect
24 someone, a quarry owner or a CCDD facility to

1 evaluate the background?

2 MR. CLAY: Well, the groundwater
3 monitoring program is to be designed and
4 implemented by a professional engineer. So it's
5 relying on their professional judgment in regard
6 to that.

7 MS. MANNING: As to soil standards,
8 though, and not groundwater, what background soils
9 exist at a particular site?

10 MR. CLAY: I don't think background
11 soils come into play. I'm talking about
12 background groundwater and, again, we said at the
13 last hearing that we want a consistent approach
14 throughout the state as far as what defines
15 uncontaminated for purposes of this rulemaking as
16 part of this rulemaking for mines, quarries and
17 other excavations.

18 MS. MANNING: I'll go to the next
19 question. This would be two on page two. I
20 didn't number my pages either. Does the IEPA
21 agree the legislation -- I know your approach is
22 kind of a one size fits all, but do you agree that
23 the legislation allows you the latitude for a more
24 site specific approach to the receive and

1 placement of soils via specific permit conditions
2 that will nonetheless ensure the protection of the
3 environment at a more sensible cost to taxpayers
4 that considers the particular site that the soil
5 will be used as fill?

6 MR. CLAY: No. We believe the
7 legislation calls for the Illinois EPA to propose,
8 and the Illinois Pollution Control Board to adopt,
9 quote, the maximum concentrations of contaminants
10 that may be present in uncontaminated soil for
11 purposes of this action, end quote, other than
12 consideration and for background, which we have
13 incorporated into this proposed rule.

14 MS. MANNING: Does the IEPA believe
15 that Section 1100.605 require a generator who
16 conducts soil testing to analyze for all the
17 chemical constituents listed in Part 742 not just
18 the target compounds or instead does it allow an
19 excavation contractor or site owner to rely on the
20 professional judgment of its engineer or geologist
21 as to what chemical constituents need to be
22 evaluated and, again, on the basis of what you
23 were talking about before, a phase one, phase two,
24 historical, resource, whatever.

1 MR. CLAY: The source site
2 owner/operator not the excavation contractor, may
3 rely on the judgment of the professional engineer
4 or professional geologist as to what chemical
5 constituents need to be analyzed.

6 MS. MANNING: Thank you. Number
7 four on that page. Under what circumstances, if
8 any, will the state initiate an enforcement action
9 against an owner/operator of an excavation site
10 from which soil was taken to a permitted CCDD
11 facility where the excavation site owner or
12 operator relied upon the judgment as you just
13 suggested they could on a licensed professional
14 engineer or geologist that was soil was
15 uncontaminated?

16 MR. PURSEGLOVE: The generator of a
17 waste is the first party the Agency identifies
18 when a question concerning proper management in
19 disposal arises. If a CCDD operator informed the
20 Agency that they expected CCDD was being
21 misrepresented by a generator, we might take
22 enforcement action against any and all parties
23 involved in the process in certifying the material
24 properly as uncontaminated.

1 The PE relied upon lab test
2 results to certify the material and demonstrate
3 that a reasonable and proper assessment was
4 conducted then further enforcement might be
5 dismissed. In any event, the available facts will
6 all be considered before an enforcement action was
7 taken.

8 MS. MANNING: Does it make a
9 difference as to whether the soil was tested or
10 not tested and the analytical results? You just
11 consider the analytical results?

12 MR. PURSEGLOVE: I think all of
13 those factors come into play.

14 MS. MANNING: Thank you. Would the
15 IEPA support the development of a specific list of
16 contaminants routinely present in certain soils
17 and inquire testing only for those compounds
18 unless there is reason to indicate other testing
19 should be done on the basis of historic use?

20 MR. CLAY: I think this is already
21 the case as we stated in number seven above. The
22 professional engineer or geologist should use
23 their professional judgment as to what chemical
24 constituents the soil should be analyzed for.

1 MS. MANNING: I think you answered
2 the one that follows in your other question, Doug,
3 but I'm going to read it into the record and you
4 can say you answered it if that's all right.

5 Would the IEPA support a
6 approach where each CCDD fill site operator can
7 designate via authorized permit conditions what
8 soil parameters define uncontaminated for purposes
9 of use as fill at its site on the basis of
10 background conditions at a particular permitted
11 facility? If not, how does the EPA envision
12 background factors at the destination fill site to
13 be considered?

14 MR. CLAY: The Agency does not
15 support permit authorized site specific background
16 concentrations as Maximum Allowable Concentration
17 per Section 3.160(c)1 authorizes a use of, quote,
18 applicable background concentration set forth in
19 35 Ill. Adm. Code Part 742, end quote, the only
20 location based background concentrations actually
21 set forth in Part 742 of the appendix A, table G
22 and H. Second, proving and authorizing permit
23 conditions, background based site specific MAC at
24 each fill operation would require permit reviewers

1 potentially to evaluate thousands of individual
2 calculations for inclusion of site specific MAC
3 and permit conditions.

4 Third, the Agency's view is that
5 effective use of administrations of the MAC
6 depends on significant -- to a significant extent
7 on uniformity. In general, MAC's based on site
8 specific conditions at each fill operation would
9 complicate administration for permit reviewers and
10 state and local inspectors and create confusion
11 among soil generators certifying LP -- certifying
12 professional engineers, professional geologists
13 and haulers. To the extent allowed by Section
14 3.160(c)1 as amended by Public Act 97-137, the
15 Illinois EPA supports the use of background
16 concentrations as the Maximum Allowable
17 Concentration when the most stringent exposure
18 route value from the TACO Tier 1 tables are lower
19 than a chemical applicable background
20 concentration set forth in 35 Ill. Adm. Code 742
21 appendix A, tables G or H, Section 1100.605(b),
22 tables G and H are location based tables of
23 background concentrations. It's developed under
24 the state, quote -- under the, quote, statewide

1 area background approach, end quote, at Section
2 742.405(b01 of the TACO rules.

3 The Agency's proposal,
4 therefore, satisfies the statutory requirements
5 for background concentrations up to the applicable
6 drop down concentrations set forth in 35 Ill. Adm.
7 Code 742 must be based on the location where the
8 soil is used as fill material.

9 MS. MANNING: Thank you. Does the
10 IEPA agree that some constituents routinely
11 present in soil, particularly urban soils such as
12 lead and other metals, are not readily soluble and
13 thus pose a lesser risk to human health and safety
14 by being buried deep in the earth as opposed to
15 being present in the topsoil?

16 MR. HORNSHAW: This is Tom Hornshaw.
17 The answer to this liability question --

18 MS. TIPSORD: Slow down just a
19 little bit.

20 MR. HORNSHAW: Pardon me?

21 MS. TIPSORD: Slow down just a
22 little bit.

23 MR. HORNSHAW: I'll try again. The
24 answer to the solubility question is it depends.

1 For example, solubility of metals depends on the
2 PH levels of the soil which must be appropriate to
3 minimize risk to humans through the groundwater
4 ingestion exposure route. The degree of risk also
5 depends on factors such as depth of the
6 constituents, geologic conditions, current and
7 future property uses and so forth.

8 The Agency's interpretation is
9 that Section 3.160(c) does not authorize the use
10 of risk assessment based -- onsite risk
11 assessments based on site -- based on site
12 specific considerations to determine the mass.
13 Instead, the concept of uncontaminated soil and
14 the protectiveness of the MAC must depend solely
15 on the concentrations in the soil.

16 MS. MANNING: Thank you. We're
17 going to move onto the next question. Then C,
18 certification, load checking, acceptance and
19 rejection of loads. Number one, if an excavation
20 site owner or contractor demonstrates the material
21 brought to the permitted CCDD facility is
22 uncontaminated in accordance with these rules
23 through analytic testimony or other appropriate
24 means, example phase one demonstrates no

1 recognized environmental condition and/or site was
2 never developed as industrial or commercial, would
3 the IEPA agree that the excavation owner or
4 contractor is not responsible for any
5 contamination that is later discovered at the
6 permitted fill site?

7 MR. PURSEGLOVE: The Agency would
8 have no reason to take an action against a
9 generator if they delivered uncontaminated CCDD to
10 a site.

11 MS. MANNING: Number two, if the
12 material is accepted by the CCDD facility
13 presumably through the use of protocols
14 established in these rules, PID meter,
15 prescreening, would the IEPA agree that the site
16 owner or contractor is not responsible for any
17 contamination that is later discovered at a
18 permitted fill site?

19 MR. PURSEGLOVE: Again, the Agency
20 would have no reason to take an action against a
21 generator if they delivered uncontaminated CCDD to
22 a fill site.

23 MS. MANNING: This is three. What
24 is the IEPA's position with regard to an

1 excavation site owner or contractor's liability or
2 responsibility for a load which is rejected by the
3 fill site?

4 MR. PURSEGLOVE: The excavation site
5 owner which is the generator of the protected load
6 is responsible for transporting the waste to a
7 facility that is properly permitted to accept the
8 waste for disposal if needed. Depending upon the
9 reasons as to why the load was rejected, physical
10 removal of the offending material may be all that
11 is required. For example, some wood waste may
12 have contaminated the load. If volatile organics
13 and a PID reading caused the load to be rejected,
14 the generator would have to send the load to a
15 permitted landfill for disposal. The generator is
16 responsible for the proper management of the
17 material which may include disposal in the
18 landfill.

19 MS. MANNING: Thank you. I didn't
20 get a chance to go through the exhibit you all put
21 in this morning, but is that a form that you're
22 going to use in terms of --

23 MR. PURSEGLOVE: Yes, errata two
24 that we submitted this morning further explains

1 some revisions to that process for reevaluating
2 soils that have been rejected in fill sites.

3 MS. MANNING: Thank you. Does the
4 IEPA agree that PID testing has a propensity to
5 yield false positives? And I think maybe, Paul,
6 you answered a little bit of this just a little
7 while ago. If so, has the IEPA considered the
8 economic and environmental costs of transporting
9 and relocating the rejected loads? Does the PID
10 test at the CCDD facility trump analytical soil
11 testing conducted by the excavation site owner or
12 contractor?

13 MR. PURSEGLOVE: The Agency is
14 unaware of any propensity for a PID to yield a
15 false positive result. PID's can read VOC's that
16 are below the MAC values. Fill site operators are
17 required to reject any load that tests positive
18 with the PID. So, in that sense, the PID does
19 trump the laboratory testing. Even when a PE does
20 a reasonable site assessment and certifies the
21 material as uncontaminated, not every square meter
22 of a site can be tested. The PID remains the
23 final check and the gate verifies that the
24 volatile organics do not contaminate the material

1 being delivered to the fill site.

2 MS. MANNING: Thank you. According
3 to your testimony, Mr. Purseglove, I think you
4 said if a facility has been found to have accepted
5 waste they will be required to remove the
6 offending material and properly transport it to a
7 facility which is properly permitted to accept it.
8 Does the IEPA envision the responsibility for such
9 removal and liability for its acceptance, if any,
10 is on the permitted CCDD facility?

11 MR. PURSEGLOVE: Ultimately, the
12 owner of the fill site will be responsible for
13 removing the non-CCDD waste from their site and if
14 that owner cannot identify the generator, then it
15 will be between those two parties relative to the
16 cost for removal and disposal. The Agency would
17 consider all the available facts and circumstances
18 in the manner and possibly take an action against
19 all parties involved in the transaction.

20 MS. MANNING: Let's go to the next
21 section then. Thank you. Number one, how does
22 IEPA intend -- this is potential groundwater
23 impact. How does the IEPA intend to determine
24 that groundwater near a permitted CCDD facility

1 has been adversely impacted as a result of the
2 facilities' acceptance of CCDD or uncontaminated
3 soil as opposed to more likely sources that might
4 neighbor such facilities such as Leaking
5 Underground Storage Tank sites, industrial
6 releases, air containments, et cetera?

7 MS. MYERS: I'm Terri Balke Myers.

8 MS. TIPSORD: You'll have to speak
9 way up.

10 MS. MYERS: In errata number one
11 dated October 6th, 2011, the Illinois EPA proposes
12 to make an amendment to Section 1100.750 that in
13 part allows the owner or operator to demonstrate
14 that the exceedance of a Class 1 groundwater
15 quality standard resulted from an off site source
16 using results obtained from the groundwater
17 monitoring system at the facility. The
18 groundwater monitoring system is installed to
19 monitor groundwater conditions from all wells at
20 the facility. Throughout the compliance period as
21 part of routine detection monitoring, samples will
22 be obtained on an annual basis from up gradient
23 and down gradient well locations. Analysis will
24 be performed and the results will be compared to

1 the appropriate 35 Ill. Adm. Code 620 Class 1
2 groundwater quality standards. Monitoring the up
3 gradient well will provide the data background.
4 However, establishment of background values for
5 the purpose of statistical analysis is not
6 necessary until such time that an exceedance of a
7 35 Ill. Adm. Code 620 Class 1 groundwater quality
8 standard occurs.

9 MS. MANNING: Number two, can the
10 IEPA provide information related to where the
11 existing permitted CCDD facilities are located and
12 whether the respective locations are located in
13 already existing Class 1 or Class 2 groundwater
14 areas and whether the respective locations are in
15 jurisdictions which have an established
16 groundwater restriction authorized as an
17 institutional control by Board rules?

18 MR. CLAY: No. Because there are no
19 Class 1 Class 2 groundwater areas in quotes.
20 Instead, these are limited site specific
21 demonstrations of groundwater classifications
22 based on geology and hydrogeology data from the
23 specific site.

24 MS. MANNING: Okay. The second part

1 of that is can you identify the respective
2 locations or have you identified the respective
3 locations and ascertained whether there's a
4 groundwater ordinance authorized as an
5 institutional control under TACO for any of those
6 locations of a CCDD permitted facility?

7 MR. CLAY: We have not looked at it
8 in regard to ordinances. Ordinances can change.
9 They're situations where there's been an ordinance
10 in place and that ordinance has changed and in the
11 case of no further remediation letters those can
12 be voided. However, we think the same consistent
13 standard should apply to all soil going into these
14 facilities.

15 MS. MANNING: The next question.
16 Would the IEPA agree that the Board established
17 residential ingestion or inhalation levels in TACO
18 for the protection of human health and welfare as
19 it relates to surface soils not necessarily or not
20 as it relates to groundwater impacts?

21 MR. HORNSHAW: The Agency does not
22 agree that the Board's residential ingestion and
23 inhalation levels in TACO relate only to surface
24 soils. They also pertain to subsurface soils.

1 The Agency does agree that the Board establish
2 residential ingestion and inhalation levels in
3 TACO for the protection of human health and
4 welfare as it relates to soils rather than to
5 potential groundwater impacts.

6 MS. MANNING: Thank you. I think
7 you've answered the last question sufficiently
8 earlier in the record when we had discussions
9 about monitoring. So that concludes my questions.

10 MS. TIPSORD: Thank you. Then
11 moving onto the Attorney General's Office.

12 MR. SYLVESTER: Good afternoon.
13 We're at that point. My name is Steven Sylvester.
14 I'm an Assistant Attorney General in the Attorney
15 General's Environmental Enforcement Bureau. Just
16 a couple of background things to our questions
17 that I'd like to add before we move directly to
18 the questions, if I may.

19 MS. TIPSORD: Do I need to swear you
20 in? Probably just.

21 MR. SYLVESTER: Just to make sure.
22
23
24

1 WHEREUPON:

2 STEPHEN SYLVESTER

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 MR. SYLVESTER: The Attorney

6 General, part of her responsibilities are to
7 represent the interests of the people of the State
8 of Illinois so as to ensure a helpful environment
9 for all the citizens and as part of that, Section
10 2(b) of the Environmental Protection Act its
11 purpose is to establish unified statewide programs
12 which along with other remedies is to restore,
13 protect and enhance the quality of the environment
14 and to ensure that adverse effects upon the
15 environment are fully considered and born by those
16 due causes.

17 Moving along, Illinois had a
18 final determination of adequacy of state municipal
19 solid waste permit program that was approved by
20 the US EPA in 1994, January 3rd, and at that time
21 there were regulations that were in place for
22 inert waste landfills. Part of the inert waste
23 landfill regulation required the collection and
24 analyzation of leachate at least every six months.

1 Also, if the inert waste was
2 found to be contaminated, the inert waste landfill
3 would be converted to a chemical waste landfill
4 upon a showing that there was material other than
5 inert waste delivered to the landfill. Moving
6 along in Section 2251 of the act, the legislature,
7 specifically in 2251(f)1 talked about what was
8 supposed to be considered for this rulemaking and
9 the specific language was that the rules must
10 include standards and procedures necessary to
11 protect groundwater, which may include, but shall
12 not be limited to the following: Requirements
13 regarding tests and certification of soil used as
14 fill material, surface water runoff, liners or
15 other protective barriers, monitoring; including,
16 but not limited to groundwater monitoring,
17 corrective action, recordkeeping, reporting,
18 closure and post closure care, financial
19 assurance, post closure land use controls,
20 location standards and the modification of
21 existing permits to conform in the requirements of
22 the act and Board rules.

23 With that limited background,
24 I'll move directly to the questions that we had.

1 The first is in regard to Section 1100.205
2 Subsection B regarding the certifications and load
3 checking. That section requires inspection of
4 incoming loads with a PID. However, the PID will
5 not reveal the presence of any elevated levels of
6 metals in each particular load. So the question I
7 had for the Agency was why the part -- proposed
8 Part 1100 regulations do not require operators to
9 inspect incoming loads via x-ray fluoroscopy to
10 detect the presence of heavy metals?

11 MR. PURSEGLOVE: Requiring the
12 additional screening of incoming loads with an
13 x-ray fluoroscope, XRF, was considered by the
14 Agency. We decided not to require XRF screening
15 because the cost of the instrument and the
16 technical expertise that is required to calibrate,
17 operate and interpret the data that is generated
18 by the instrument. Our experience indicates that
19 the instrument is effective in identifying the
20 presence of certain heavy metals, but the precise
21 quantification is unreliable. The Agency uses the
22 XRF as a tool that allows field staff to focus on
23 where a sample would be collected for subsequent
24 laboratory analysis.

1 MR. SYLVESTER: So it's the Agency's
2 opinion that XRF technology is unreliable?

3 MR. PURSEGLOVE: For the purposes of
4 determining metals concentrations at the MAC
5 level, yes.

6 MR. SYLVESTER: The second question
7 that I have relates to a couple of sections,
8 specifically Part 1100.404, 405 and 409, those are
9 standards for issuance of a permit for denial of a
10 permit and for transfer of a permit respectfully
11 to each section. Section 1100.104 states that the
12 Agency must issue a permit upon proof that the
13 facility will not cause a violation of the act or
14 Board regulations. However, there is nothing in
15 either of these sections that allows the Agency to
16 consider the previous operating experience and
17 past record of convictions or admissions of
18 violations of the applicant or any subsidiary or
19 parent corporation in the field of solid waste
20 management and CCDD operations when considering
21 issuing or transferring the permit unlike Section
22 39.2 of the act for permit landfills.

23 Under the regulations as
24 written, the Illinois EPA would be required to

1 issue a permit to an owner/operator who has
2 willfully violated the act and Board regulations
3 previously. The question I have is why did the
4 Part 1100 regulations not address this potential
5 problem and what steps will the Illinois EPA take
6 to ensure the historically bad owners or operators
7 are closely scrutinized in the CCDD permitting
8 including the transfer of permits?

9 MR. NIGHTINGALE: Under Section
10 39(i) of the act, the Agency can use the prior
11 experience in waste management of the owner and/or
12 operator as a reason to deny a permit application
13 including CCDD applications. Therefore, the
14 Agency does and will continue to scrutinize the
15 permitting and transfer of permits for CCDD fill
16 operations. I wanted to add one little thing
17 here, too, is that the application form the LPCPA
18 25 specifically mentions 39(i) in Section 7 and
19 requires the LPCPA 25(d) form which is a 39(i)
20 form for all owners and operators.

21 MR. SYLVESTER: Moving along to
22 question three. Section 11 -- I guess -- moving
23 along. Section 1100.411, Subsection A, procedures
24 for the renewal of permits. This section requires

1 a permittee to file a renewal application within
2 90 days prior to the expiration date of the
3 existing permit, but doesn't indicate what such
4 failure to comply would entail. Is it a violation
5 of the regulations or would the permit terminate?
6 So the question I have is why did the proposed
7 Part 11 regulation not include bright line
8 language to address the consequences of the late
9 filing of a permit renewal application and provide
10 guidance to the regulated community and -- unless
11 there's another section that would do that outside
12 of the regulations?

13 MR. NIGHTINGALE: Section 110.411(a)
14 does not have any proposed changes from the
15 existing regulations. Additionally, the act is
16 clear that no one can conduct a fill operation
17 which requires a permit unless they have a permit.
18 Section 1100.408(b) states that in part, quote,
19 all permits are valid until post closure care
20 maintenance is completed or until the permit
21 expires or is revoked, end quote. Therefore, the
22 permit expires on the expiration date unless the
23 renewal application is timely filed then the
24 permit continues until a final action on the

1 renewal application.

2 MR. SYLVESTER: Just to clarify that
3 in case I missed your response. If the permit
4 terminates and they submit an application,
5 however, it's three or four months late, does the
6 permit officially terminate and they have to
7 refile for a new permit?

8 MR. NIGHTINGALE: Well, I think
9 technically they would not have a permit and I
10 think that they would as far as our field office
11 would have the option or the opportunity to take
12 an action against them. But they would have to
13 submit another application. Now, would it be a
14 renewal or not, I guess that would be a question
15 for the lawyers to work out, but as far as the
16 permit section would be concerned, we would
17 process it just as an application just as if it
18 was a renewal application I guess.

19 MR. SYLVESTER: Moving to the next
20 question here. Section 1100.412(c) Roman numeral
21 I subsection capital D, procedures for closure and
22 post closure maintenance. This subsection allows
23 for termination of the permit if there have been
24 no exceedances of the Class 1 groundwater quality

1 standards during the preceding three years. In
2 addition, Section 1100.755 also requires a
3 demonstration that there are Class 1 groundwater
4 exceedances for a period of three years. Section
5 22.17 of the Environmental Protection Act requires
6 a minimum of 15 for sanitary landfills.

7 So the question I have is why do
8 the proposed Part 1100 regulations limit to three
9 years the acceptable timeframe for an
10 owner/operator to be without an exceedance of the
11 Class 1 groundwater quality standards and what, if
12 any, protections are there for citizens using
13 groundwater as the resource that becomes
14 contaminated beyond the three year period?

15 MR. NIGHTINGALE: The three year
16 period is consistent with 35 Ill. Adm. Code Part
17 615 and the requisite subtitle C standards. The
18 Agency pursues any known groundwater pollution to
19 try to find the responsible party and make them
20 remove and/or contain the contamination.

21 MR. SYLVESTER: So how could the
22 Agency -- I'm posing this I guess as a bit of a
23 hypothetical. If there was a situation where an
24 owner/operator did everything by the book, they

1 did their three years and was clean and then a
2 couple years down the road there was contamination
3 in the groundwater, you know, Class 1 groundwater,
4 what would the recourse be?

5 MR. NIGHTINGALE: I think the
6 recourse would be under the general provisions
7 under the act would allow us to pursue somebody
8 that is causing groundwater contamination. It
9 wouldn't be under the 1100 regulations, though.

10 MR. SYLVESTER: Section 1100.740
11 sampling frequency. This section provides for
12 only annual groundwater testing at a minimum.
13 However, the Board's inert waste regulations
14 require semiannual testing and inert waste is
15 potentially more benign because it does not
16 contain asphalt which is a source -- potential
17 source of PNA's yet the regulations require that
18 inert waste be tested at least twice a year. The
19 question I have is why do the proposed Part 1100
20 regulations limit the frequency of groundwater
21 CCDD facilities to once a year when the inert
22 waste landfills require biannual testing for
23 contamination -- contaminants?

24 MR. NIGHTINGALE: First, CCDD and

1 uncontaminated soils are not a waste when used as
2 fill in conformance with Section 1100 regulations.
3 Second, the biannual sampling described in Section
4 811.206(d) is for leachate, not groundwater.
5 Inert waste landfills do not require groundwater
6 monitoring. If the leachate is contaminated, they
7 would then revert to a chemical waste landfill and
8 require a groundwater monitoring. I want to add
9 one thing. The groundwater monitoring for CCDD
10 and uncontaminated soil facilities is meant to be
11 a final check for contamination after the upfront
12 checks are implemented.

13 MR. SYLVESTER: If I could draw your
14 attention to the leachate sampling regulations for
15 inert waste. Section 811.206 leachate sampling
16 Subsection A states all inert waste landfill shall
17 be designed to include a monitoring system capable
18 of collecting representative samples of leachate
19 generated by the waste using methods such as, but
20 not limited to a pressure vacuumed limiter, trench
21 limiter or a well point and then it says the
22 sampling locations shall be located as to collect
23 the least non-diluted leachate samples. Would you
24 agree that a well point could be a groundwater

1 monitoring well under -- for those?

2 MR. LIEBMAN: I think -- excuse me.
3 I'm Chris Liebman, L-I-E-B-M-A-N. I think in the
4 section of the regulations you're looking at, they
5 wouldn't be talking or it's not referring to a
6 groundwater monitoring point. It's referring to a
7 well that is completed within the waste and, thus,
8 would be sampling leachate versus a groundwater
9 monitoring point that would be outside the waste.

10 MR. SYLVESTER: Just a follow up to
11 that. So that sampling point would be in the fill
12 area and it could also be in the groundwater where
13 the leachate --

14 MR. LIEBMAN: Are you asking could
15 it be collecting a -- sort of a mixture of
16 leachate and groundwater?

17 MR. SYLVESTER: Yes.

18 MR. LIEBMAN: Yes, it could.

19 MR. SYLVESTER: Thank you. Another
20 follow-up question. You said the CCDD that is
21 placed in the fill area is not considered waste,
22 is -- that was your testimony?

23 MR. NIGHTINGALE: That's correct.

24 MR. SYLVESTER: How would you

1 differentiate CCDD that is placed in the fill
2 area, or let me use the proper definition, below
3 the -- the old definition was below grade and now
4 it's below the highest elevation immediately
5 adjacent to the fill area, that material that is
6 placed for lack of a better word the hole in
7 the -- the online hole in the ground is not
8 considered waste, but if you put it on the lip of
9 the fill area, it would be considered waste?

10 So I guess in light of that
11 information, how does that change the calculus or
12 how would that change your answer in any way,
13 shape or form?

14 MR. NIGHTINGALE: How would it
15 change my answer? I guess in what way?

16 MR. SYLVESTER: Your prefatory
17 remark is CCDD is not considered waste. So the
18 context of the question was the sampling frequency
19 and compared to inert waste versus CCDD and that's
20 all I'm saying. Whether or not it's considered
21 waste or it's considered CCDD, does that have any
22 bearing on frequency of sampling?

23 MR. NIGHTINGALE: No. I mean, it's
24 not a waste by definition as far as that's

1 concerned. As far as looking at what we're
2 being -- what is being allowed to be put into the
3 site taking into account all the front end
4 provisions that are being implemented, I guess we
5 would consider the groundwater. I guess are we
6 talking about the groundwater monitoring now?

7 MR. SYLVESTER: That's all I was
8 trying to get at. Your introductory remark was
9 that CCDD is not considered waste, which I agree
10 with. I just want to know if it was, like I said,
11 if they overfilled the quarry by a few feet does
12 that change the amount of sampling that would need
13 to be done post closure?

14 MR. NIGHTINGALE: It would change
15 the whole scope of everything. Now, they would be
16 disposing of waste and it could be subject to a
17 different set of regulations.

18 MR. SYLVESTER: So your answer would
19 be that it would change the calculus if it was
20 considered waste?

21 MR. NIGHTINGALE: Yes.

22 MR. SYLVESTER: Okay. Moving to the
23 next topic here. This is regarding the sixth
24 question. Section 1100.745, the noncompliance

1 response program. I kind of lined out here a two
2 part question or two sections. Section one is the
3 section that provides for dates by which the owner
4 or operator must do the following. A, report
5 groundwater exceedances to the Agency and that's
6 within 60 days after the sample was collected.
7 Retest the groundwater once again within 60 days
8 after the date the sample was collected and submit
9 a report with the sample results to the Agency 60
10 days after receiving the resampling data and then
11 submit a corrective action program within what
12 would amount to 120 days after the date the
13 sampling results were sent to the Agency and,
14 thereafter, implement the corrective action
15 program just to keep these timeframes straight
16 within 120 days after the resampling results were
17 sent to the Agency.

18 Under the Board's inert waste
19 regulations, an owner/operator must report any
20 exceedance within one business day. That's under
21 Section 811.206, Subsection D. So the first
22 question I have is why did the proposed Part 1100
23 regs allow a CCDD owner/operator 60 days to report
24 an exceedance when an inert waste landfill

1 operator must report an exceedance within one
2 business day?

3 MR. NIGHTINGALE: Again, CCDD
4 uncontaminated soils are not a waste when used as
5 fill in accordance with Part 1100. The proposed
6 response times 1100.60 regulations begin after the
7 sampling occurs. The Agency added this soil to a
8 verifiable date before the start of the process is
9 included. Section 811.206(d) starts with, quote,
10 if the result of the testing of the leachate
11 samples, unquote. Obviously, there is some built
12 in delay of how the samples are transported to the
13 laboratory, analyzed, a report generated and then
14 the report submitted to the operator. However,
15 the inert waste regulation does not specify the
16 length of time for the process.

17 MR. SYLVESTER: A follow-up question
18 to that. Once again, you mention that CCDD is not
19 waste and I would ask if you have contaminated
20 soil based on an exceedance of the groundwater,
21 wouldn't that fall within the definition of waste.

22 MR. NIGHTINGALE: I guess are we
23 talking about CCDD permitted site that had
24 groundwater contamination would it be a waste or

1 would it not be a waste?

2 MR. SYLVESTER: Well, the
3 contamination had to come from somewhere.
4 Obviously, the most likely source would be the
5 contaminated fill material, which had leached into
6 the groundwater. So the question I have is once
7 you get a groundwater exceedance, and I'm not sure
8 at what point in time that occurs, but wouldn't
9 that material then go from being CCDD to waste
10 because it was not uncontaminated fill?

11 MR. NIGHTINGALE: I guess that would
12 be a legal question, but the regulations are set
13 up to address the contamination or the groundwater
14 contamination as far as that is concerned. What
15 is the site after that, I don't -- I couldn't
16 answer that.

17 MR. SYLVESTER: I guess just to
18 clarify. In case you haven't guessed, in
19 comparing the CCDD regulations to inert waste
20 landfill regulations, you know, inert waste is
21 almost identical to CCDD except that CCDD allows
22 for definition to include asphalt whereas inert
23 waste is materials -- well, it's a subset I would
24 argue of CCDD or state. And, in that context, you

1 have the CCDD which requires that the reporting be
2 done immediately and that gets converted into a
3 chemical waste landfill.

4 MS. TIPSORD: Mr. Sylvester, we're
5 losing you. You need to speak up. We can't hear
6 you.

7 MR. SYLVESTER: Sure. Sorry. The
8 reason I'm asking about the inert waste
9 regulations in the context of the CCDD and the
10 contaminated is just for the timeframes. You
11 know, under these regulations the timeframes can
12 balloon up to, what is it, 120 days before
13 anything happens and, arguably, you'd have waste.
14 That's the point I was trying to raise and whether
15 the Agency has any concerns with those timeframes.

16 MR. NIGHTINGALE: Well, no, I think
17 these are comparable to what you would see in 811
18 requirements. I think there's, like, a 90 day
19 period that's in there for landfills.

20 MR. SYLVESTER: You may have
21 answered the next question in part, but I'll pose
22 it for the record in any event. Why do the
23 proposed Part 1100 regulations allow a CCDD
24 owner/operator 60 days to report an exceedance

1 when each additional day, additional fill material
2 is being placed upon the allegedly contaminated
3 soil or waste?

4 MR. NIGHTINGALE: My response is as
5 mentioned above the sampling and analytical
6 process takes time. Also, 35 Ill. Adm. Code Part
7 811 regulations allow 90 days from the sampling
8 date to report exceedance in groundwater sampling.

9 MR. SYLVESTER: Moving to the next
10 section here. In addition, in Section 1100.745
11 Subsection C there are no procedures or timeframes
12 regarding any deficiencies that the Illinois EPA
13 might identify in an owner/operator's corrective
14 action program, i.e., it assumes that the plan
15 will be acceptable to the Agency. So the question
16 I have is how will the proposed Part 1100
17 regulations ensure that these plans are subject to
18 review and approval by the Illinois EPA and the
19 approval process does not continue for an overly
20 extended period of time where groundwater
21 contamination has been identified?

22 MR. NIGHTINGALE: The proposed
23 Section 1100.745 regulations are designed to be
24 self implementing and while they do not require

1 Agency approval, proposed subpart G, which
2 includes 1100.745 requires that all systems,
3 programs, plans, notifications and reports be
4 designed or prepared under the supervision of a
5 professional engineer. Additionally, the PE must
6 affix their seal and a statement attesting to the
7 accuracy of the information contained in the above
8 referenced documents.

9 MR. SYLVESTER: All right. Notice
10 of time, I'll move onto the next question here.
11 Section 1100.750 alternate noncompliance response
12 program. The preamble to that was once again the
13 amount of time, and I won't go through that to try
14 to get folks out of here by 5:00, so I'm assuming
15 that you've prepared answers and are familiar with
16 my introductory remarks.

17 So first question is why do the
18 proposed Part 1100 regulations allow a CCDD
19 owner/operator 60 days to report an exceedance
20 when inert waste -- I'm sorry. No. When an inert
21 waste landfill operator must report it within one
22 day?

23 MR. NIGHTINGALE: Two points to make
24 before addressing the 60 days in the report in

1 exceedances are CCDD and uncontaminated soils are
2 not considered waste, which is why they have
3 separate regulations under Part 1100. The
4 reporting requirements referenced in 811.206(d) is
5 for leachate sampling, which is separate from
6 groundwater sampling. The proposed response times
7 in 1100.600 regulations begin after the sampling
8 occurs. The Agency added this to the verifiable
9 date for the start of the processes included
10 Section 811.206(d) starts with, quote, if the
11 result of the testing of the leachate samples,
12 unquote. Obviously, there is some built in delay
13 while the samples are transported to the
14 laboratory, analyzed, a report generated and then
15 the report submitted to the operator. However,
16 the inert waste regulation does not specify the
17 length of time for this process.

18 MR. SYLVESTER: All right. I'll
19 move onto the next question. Why did the proposed
20 Part 1100 regulations allow a CCDD owner/operator
21 approximately 300 days to provide an alternate
22 noncompliance plan when the plan and the support
23 for it may be deficient and then the
24 owner/operator would be required to sample the

1 groundwater again as required in Section 1100.745
2 Subsection B, thereby, providing an additional 120
3 days to provide the Illinois EPA with the sampling
4 results?

5 MR. NIGHTINGALE: The errata sheet
6 number one filed on October 6th, 2011, revised
7 Section 1100.745 and Section 100.750 to have
8 consistent timelines for the noncompliance
9 response program and the alternate noncompliance
10 response program. The maximum time for this
11 series of information and inaction is 240 days in
12 either case.

13 MR. SYLVESTER: And then the last
14 question was with the extended timeframe. That
15 question might be moot, but I'll put it on the
16 record in any event. Why would any owner/operator
17 ever initiate the Section 1100.745(b) sampling
18 without first attempting to provide the Illinois
19 EPA with a Section 1100.750 alternate
20 noncompliance program?

21 MR. NIGHTINGALE: The errata sheet
22 number one filed on October 6th, 2011, revised
23 Section 1100.745 and 1100.750 by making sampling
24 mandatory.

1 MR. SYLVESTER: Moving on to the
2 next question. This is in regard to Section
3 1100.760, the dewatering fill operations. The
4 first question I had was are there any CCDD fill
5 operations or registered uncontaminated soil
6 operations that are dewatering their facilities
7 without a benefit of an NPDES permit and, if so,
8 how many?

9 MR. NIGHTINGALE: The Agency does
10 not keep a database of which CCDD soil only fill
11 operations are dewatering or have any NPDES
12 permits.

13 MR. SYLVESTER: Is there any
14 antidotal or any cases -- are you aware of any?
15 Let's put it that way.

16 MR. NIGHTINGALE: All I can say is I
17 assume they are, but I don't know for sure.

18 MR. SYLVESTER: Well, then that
19 would obviate the second question since you don't
20 have any information on the NPDES permits, is that
21 fair to say?

22 MR. NIGHTINGALE: Yes.

23 MR. SYLVESTER: And the third
24 question. Why did the proposed Part 1100

1 regulations not require the CCDD fill operations
2 to register uncontaminated soil operations
3 currently discharging from their facilities
4 pursuant to an NPDES permit to modify the permits
5 for sampling the discharge for all the
6 constituents identified in Subpart F?

7 MR. NIGHTINGALE: The NPDES
8 requirements, including the parameters that must
9 be analyzed, have been established in the federal
10 regulations and subsequently adopted in state
11 regulations and are administered in our Bureau of
12 Water. Bureau of Land does not issue or regulate
13 NPDES permits. We do, however, know the advocate
14 for an NPDES permit is required to provide initial
15 sampling analysis for a select set of parameters
16 when filling out the permit application as well as
17 providing additional analysis for any other
18 parameters believed present.

19 In addition, once a permit is
20 issued, the permittee would be obligated to
21 request a permit modification and identify those
22 additional parameters that were not identified in
23 the initial application process. Once evaluated,
24 the IEPA Bureau of Water would have the

1 opportunity to incorporate any additional permit
2 limitations or conditions.

3 MR. SYLVESTER: Is there any
4 mechanism for the Bureau of Land to get
5 information that is relevant to --

6 MS. TIPSORD: Mr. Sylvester, you
7 need to speak up.

8 MR. SYLVESTER: Sure. Sorry. The
9 question is can the Bureau of Land get any of the
10 information from the Bureau of Water that is
11 relevant to their own regulatory oversight? In
12 this case, it could be the NPDES information
13 regarding modified permits? Is there any
14 mechanism to share information amongst the
15 bureaus?

16 MR. NIGHTINGALE: Yes, there is.
17 Generally, when either of the bureaus get a permit
18 application, we have to coordinate a review
19 process that we would go through so we actually
20 get memos sent over to us or we send memos over to
21 them to make sure they're aware that we have an
22 application and if there are any issues that we
23 think they need to be aware of or we need to be
24 aware of or they need to be aware of and it gets

1 discussed at that point.

2 MR. SYLVESTER: Moving onto the next
3 question. Basically, this comes from Section
4 22(f)1 regarding some of the things that the
5 Illinois EPA was to consider in coming up with the
6 proposed Part 1100 regulations. I'm not going to
7 read that long intro. Why did the proposed Part
8 1100 regulations not include any such requirements
9 for financial assurance and all permitted CCDD
10 operations and clean soil fill operations?

11 MR. NIGHTINGALE: CCDD and
12 uncontaminated soils are not considered a waste.
13 Again, there are minimal waste closure of these
14 fill sites with no engineered barriers, liners and
15 such required, therefore, requiring financial
16 assurance was not considered appropriate.

17 MR. SYLVESTER: What went into the
18 considerations not to require liners or any other
19 protective barrier as the statute recommended?

20 MR. NIGHTINGALE: We considered --
21 our work group that was looking at this considered
22 the front end sampling protocol -- sampling
23 requirements for the generator of the material,
24 the fill sites, the CCDD fill and uncontaminated

1 fill sites, their sampling plan that they have to
2 incorporate that was reviewed to determine -- I
3 guess to determine if we thought something was
4 very -- the likelihood of something getting into
5 the site. So based on that, we didn't feel like
6 there was a need for any engineered type equipment
7 or liners.

8 MR. LIEBMAN: You were asking I
9 think specifically, Steve, why we didn't include
10 any engineered barriers like a liner. If we were
11 to require a liner in order to keep the leachate
12 from overtopping and going into the groundwater or
13 surface water, we'd have to require a leachate
14 collection system that would have to be managed
15 and then essentially you would be looking at the
16 same requirements for these sites as a landfill
17 and we didn't think the materials in these sites
18 warranted the same types of engineered barriers as
19 a landfill accepted waste.

20 MR. SYLVESTER: To beat that dead
21 horse, inert waste landfills have to have a
22 leachate collection system, do they not?

23 MR. LIEBMAN: I don't believe they
24 have to be a leachate collection system. I think

1 they just have to have a leachate monitoring
2 system.

3 MR. SYLVESTER: One other question
4 and I kind of got sidetracked on the liners. The
5 financial assurance, and I think part of the
6 preamble, our offices have often worked together
7 on enforcement cases, two of them come to mind
8 right now, the Lynwood site as well as the
9 Companion site in Ford Heights. In Lynwood,
10 bringing the site into compliance has been
11 estimated to cost in excess of \$30 to \$40 million.
12 The Ford Heights site has been talked about as
13 being in excess of \$100 million. Given the
14 state's resources and the lack of resources from
15 the regulated entity, why isn't that something
16 that should be considered by the Agency for other
17 facilities going forward, the final assurance?

18 MR. WIGHT: Could you repeat the
19 question, please?

20 MR. SYLVESTER: Sure. Just two
21 sites that we're using as an example. I think
22 some of you are probably very well aware of the
23 sites. They have -- part of the remedy is one of
24 them was taken to trial, another one had a

1 judgment entered and the remedies are tens of
2 millions of dollars and based on the state's
3 ability to deal with orphan sites, you know, in
4 these economic times and the regulated entity who
5 may or may not be able to do any of that
6 compliance work, has that been a factor that was
7 considered by the Agency regarding final
8 assurance?

9 MR. PURSEGLOVE: Both the Lynwood
10 and the Ford Heights facility operated certainly
11 outside of the Part 1100 regulations. They pretty
12 much disregarded all environmental regulations.

13 THE COURT REPORTER: Louder.

14 MR. PURSEGLOVE: So to compare
15 remediation costs of those sites with the site
16 that was properly operating under 1100 I don't
17 think is comparing apples and oranges. I'm
18 certainly aware of those two sites and took those
19 into consideration when we're proposing these
20 rules.

21 MR. SYLVESTER: I guess as a follow
22 up to that, just in general, if you have a
23 situation where you have a business that's a
24 corporate form or other business form that comes

1 into existence for the sole purpose of filling an
2 operation, this is obviously surely hypothetical
3 and at the end of the filling time after the
4 assets have been dissipated and there's a problem
5 down the road, does the Agency have any position
6 on how they would address that sort of
7 contamination?

8 MR. NIGHTINGALE: Are you talking
9 about when they were still in post closure care or
10 are you talking about when they were out of it?

11 MR. SYLVESTER: Basically, if you
12 had an orphan site that was contaminated, that's
13 what I'm asking. How would the Agency handle
14 that?

15 MR. NIGHTINGALE: I think we would
16 treat that like any other site, a landfill site or
17 a site that has ground contamination. We would be
18 using the provisions in the act to go after them
19 to get them to clean things up.

20 MR. WIGHT: We do not have a pot of
21 money available to us to address orphan sites. If
22 we find them, we put them on the list and if we
23 have resources available we might address them,
24 but the EPA, we have no financial assurance trust

1 fund to handle these sorts of things.

2 MR. SYLVESTER: That's the reason I
3 bring up the point understanding the state's
4 position and I understand the regulations don't do
5 a site by site evaluation, but perhaps it's
6 something that should be considered going forward
7 whether if there's an area that has groundwater
8 that's used by the residents nearby there might be
9 some sort of allocation to consider the negative
10 impacts that may be forced upon those residents.
11 I'll move to the last question since we're right
12 here. And this is pretty much a legal question.
13 I don't know if, Mark, that would be directed to
14 you or not. Do the proposed Part 1100 regulations
15 in Section 3.160 Subsection B 2251 of the act
16 comport with federal law when CCDD is not being
17 recycled, but rather is being disposed of in
18 various unlined quarry, mines or other
19 excavations?

20 MR. CLAY: Yes, the Agency believes
21 the proposed regulations as well as the statutory
22 provisions are consistent with federal law.
23 Although, the states primary role of defining and
24 regulating the management of nonhazardous, solid

1 waste, including construction and demolition
2 debris, and US EPA has minimal regulation that
3 pertain to disposal at construction and demolition
4 landfills of what Illinois defines as general
5 construction and demolition. 40 CFR Part 257, the
6 date is 2010, because Illinois does not have
7 construction, demolition landfills, the disposal
8 of general construction or demolition debris must
9 occur at municipal wastelands. However, the
10 Illinois legislature has determined that when used
11 as fill material as prescribed in Section 3.160
12 (b) the (clean destruction and demolition debris)
13 fraction of the general construction and
14 demolition debris landfill is not subject or is
15 not waste and is being used beneficially rather
16 than disposed of.

17 MR. SYLVESTER: Just to clarify that
18 point. The regulations or the statute approved --
19 set forth by the Illinois legislature says to the
20 extent permitted by federal law and then they go
21 onto say it shall not be. So the question still
22 stands does federal law permit the dumping of CCDD
23 into an unlined quarry? Does that comport with
24 the federal law for the treatment and disposal of

1 waste?

2 MR. CLAY: We believe these rules
3 are in accordance with federal law and it would be
4 allowed by federal law as we're proposing these
5 rules.

6 MR. SYLVESTER: Good evening,
7 everyone.

8 MS. TIPSORD: All right. Thank you,
9 Mr. Sylvester. We still have some -- Mr. Huff has
10 some questions for Mr. Hornshaw about his
11 pre-filed testimony and we still have to get to
12 the Agency's pre-filed testimony. So it's five
13 after 5:00 so we're going to recess today and
14 we'll start again tomorrow morning at 10:00
15 instead of 9:00. Is that okay? Because we're
16 only going to probably go for another hour, hour
17 and a half. 10:00 tomorrow morning.

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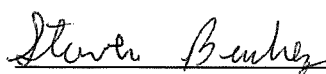
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this 3rd day of
15 November, A.D., 2011.

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