



1           A P P E A R A N C E S:

2           ILLINOIS POLLUTION CONTROL Board,  
3           100 West Randolph Street  
4           Suite 11-500  
5           Chicago, Illinois 60601  
6           (312) 814-6983  
7           BY: MARIE TIPSORD, HEARING OFFICER,

8           ILLINOIS POLLUTION CONTROL BOARD MEMBERS

9           PRESENT:

10           Mr. Thomas E. Johnson, Board Member  
11           Ms. Deanna Glosser, Ph.D., Board Member  
12           Mr. Anand Rao, Technical Unit  
13           Ms. Alisa Liu, Technical Unit

14           ILLINOIS ENVIRONMENT PROTECTION Agency,  
15           1021 North Grand Avenue East  
16           P.O. Box 19276  
17           Springfield, Illinois 62794-9276  
18           (217) 782-5544  
19           BY: MR. H. MARK WIGHT,

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ALSO PRESENT:

- Stephanie Flowers, IEPA
- Kim Geving, IEPA
- Richard Cobb, IEPA
- Les Morrow, IEPA
- Doug Clay, BOL
- Steve Nightingale, BOL
- Chris Liebman, BOL
- Terri Myers, BOL
- Paul Purseglove, BOL
- Heather NiFong, BOL
- Steven Gobelman
- Steve Sylvester
- Mr. Henriksen
- Brett Hall
- Annick Maenhout
- Gregory Wilcox
- John Hout
- Pat Metz
- Josh Quinn
- James Huff
- Dr. Fabian Fernandez
- Kenneth Liss
- Claire Manning
- Dennis Wilt
- Josh Quin

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1           HEARING OFFICER TIPSORD: Good morning. My  
2 name is Marie Tipsord, and I have been appointed  
3 by the Board to serve as hearing officer in this  
4 proceeding entitled, Proposed Amendments to  
5 Clean Construction or Demolition Debris Fill  
6 Operations (CCDD) Proposed Amendments to 35 Ill.  
7 Admin Code 1100, R12-9.

8           With me today to my immediate right is  
9 Board Member Deanna Glosser, the presiding board  
10 member, and to my immediate left is Board Member  
11 Thomas Johnson. To Dr. Glosser's right is Anand  
12 Rao and Alisa Liu from our technical unit.

13          BOARD MEMBER GLOSSER: Thank you. I just  
14 want to very briefly welcome everyone, but I  
15 particularly want to thank everyone for  
16 participating in this rulemaking process,  
17 because that's what makes a good rule is to have  
18 a lot of people sharing their thoughts, and with  
19 that, I think we just go on.

20          HEARING OFFICER TIPSORD: The purpose of  
21 today's hearing is two-fold. First, we will  
22 hear the pre-filed testimony from the  
23 participants. The second purpose of today's  
24 hearing is to satisfy the requirements of

1 Section 27B of the Environmental Protection Act,  
2 which requires the Board to request that the  
3 Department of Commerce and Economic Opportunity,  
4 DCEO, conduct an economic impact study on  
5 certain proposed rules prior to the adoption of  
6 the rule.

7 If DCEO chooses to conduct the economic  
8 impact study, DCEO has 30 to 45 days after such  
9 a request to produce a study of economic impact  
10 of the proposed rule. The Board must then make  
11 the economic impact study or DCEO's explanation  
12 for not conducting the study available to the  
13 public at least 20 days before a public hearing  
14 on the economic impact of the proposed rule.

15 In accordance with Section 27B of the  
16 act, the Board requested by a letter dated  
17 August 4th, 2011 that DCEO conduct an economic  
18 impact study for the above referenced  
19 rulemaking.

20 On September 28th, 2011, the Board  
21 received a response from DCEO indicating that no  
22 EcIS would be performed. A copy of DCEO's  
23 letter is available at the back of the room and  
24 as well as the Board's request that they perform

1 one.

2           Some of you have already commented at a  
3 prior hearing and in your pre-filed testimony,  
4 but we will accept additional comment on DCEO's  
5 decision at the end of the hearing tomorrow.  
6 The order of today's hearing will be and begin  
7 with the IEPA, followed by Steven Gobelman from  
8 IDOT, and then the Illinois Attorney General's  
9 Office. We will then turn to the Illinois  
10 Aggregate Producers witnesses, followed by Pat  
11 Metz and then James Huff and Dr. Fernandez,  
12 Fabian Fernandez. Kenneth Liss will be next,  
13 and then we will conclude tomorrow with Dr.  
14 William Roy and Claire Manning.

15           And after you are sworn in, the  
16 pre-filed testimony will be marked as an exhibit  
17 and taken as if read. We will then go to  
18 questions. As there have been no pre-filed  
19 questions other than those the Board presented,  
20 if you have a series of questions for a witness,  
21 please let me know and you can move up here to  
22 the front so that we can better hear you.

23           Anyone may ask a question. However, I  
24 do ask that you raise your hand and wait for me

1 to acknowledge you. After I have acknowledged  
2 you, please state your name and who you  
3 represent before you begin your question.  
4 Please speak one at a time. If you are speaking  
5 over each other, the court reporter will not be  
6 able to get your questions on the record.

7 Please note that any questions asked by  
8 a Board member or staff are intended to help  
9 build a complete record for the Board's decision  
10 and not to express any preconceived notion or  
11 bias.

12 Are there any questions on how we will  
13 proceed today?

14 Seeing none, we will start with the  
15 Agency. Mr. Wight.

16 MR. WIGHT: Good morning. My name is Mark  
17 Wight, and I am Assistant Counsel with the  
18 Illinois EPA. Also with me today are the  
19 earlier participants in this proceeding, with a  
20 couple exceptions. And I will go through and  
21 introduce everyone individually so we can  
22 identify who the witnesses are.

23 Stephanie Flowers with the Illinois  
24 Division of Legal Counsel is also with me, and

1 we have Kim Geving in the front row, also from  
2 the Division of Legal Counsel. Doug Clay, to my  
3 immediate left, is the manager of the Bureau of  
4 Land, Division of Land Pollution Control.

5 We have from the Bureau of Land, Permit  
6 Section, Steve Nightingale, Chris Liebman, and  
7 Terri Myers. Steve is the manager of the Permit  
8 Section. Chris Liebman manages the Solid Waste  
9 Unit and Terri manages the Groundwater Unit for  
10 the BOL Permit Section.

11 We have Paul Purseglove, also from the  
12 Bureau of Land. He is the manager of the Bureau  
13 of Land's Field Operations section, which would  
14 be our field inspectors, among other things.  
15 And we have Heather NiFong in the front row who  
16 is from the BOL Bureau of Chief's Office.

17 Also we have today Les Morrow. Les is  
18 from the Agency's Toxicology Unit. Les  
19 presented pre-filed testimony at the first  
20 hearing on September 26th, 2011 and also  
21 provided oral testimony at that hearing. He was  
22 not able to attend the October hearings in  
23 Chicago and Dr. Hornshaw attended those hearings  
24 in Les' place, but Les is back with us today.



1 testimony, we have six county maps that  
2 encompass the counties of Will, Cook, Kane,  
3 Kendall, Lake, and McHenry County. And Rick  
4 will be -- Rick has an enlarged example which we  
5 will try to set up so he can explain what these  
6 maps are intended to demonstrate. Rick's  
7 example is based on Will County. So I would  
8 like to start with that as the first exhibit.

9 And we do have extra copies of these.

10 HEARING OFFICER TIPSORD: And you have copies  
11 at the back of the room, too.

12 MR. WIGHT: Yes.

13 HEARING OFFICER TIPSORD: All right. If  
14 there is no objection, we will mark the CCDD and  
15 USFO Sites in Relation to the Potential For  
16 Aquifer Recharge Within Will County as Exhibit  
17 No. 27.

18 Seeing none, it's Exhibit 27.

19 (Whereupon, Exhibit No. 27 was  
20 marked for identification.)

21 MR. WIGHT: The next example is for Cook  
22 County.

23 HEARING OFFICER TIPSORD: If there is no  
24 objection, we will mark the same type of map for

1 Cook County as Exhibit 28.

2 Seeing none, it's Exhibit 28.

3 (Whereupon, Exhibit No. 28 was  
4 marked for identification.)

5 MR. WIGHT: The third is for Kane County.

6 HEARING OFFICER TIPSORD: If there is no  
7 objection, we will mark the Kane County map as  
8 Exhibit 29.

9 Seeing none, it's Exhibit 29.

10 (Whereupon, Exhibit No. 29 was  
11 marked for identification.)

12 MR. WIGHT: The fourth is for Kendall County.

13 HEARING OFFICER TIPSORD: If there is no  
14 objection, we will mark the map for Kendall  
15 County as Exhibit 30.

16 Seeing none, it's Exhibit 30.

17 (Whereupon, Exhibit No. 30 was  
18 marked for identification.)

19 MR. WIGHT: The fifth is for Lake County.

20 HEARING OFFICER TIPSORD: If there is no  
21 objection, we will mark the Lake County map as  
22 Exhibit 31.

23 Seeing none, it's Exhibit 31.

24

1 (Whereupon, Exhibit No. 31 was  
2 marked for identification.)

3 MR. WIGHT: And the sixth is for McHenry  
4 County.

5 HEARING OFFICER TIPSORD: If there is no  
6 objection, we will mark the McHenry County map  
7 as Exhibit 32.

8 Seeing none, it is Exhibit 32.

9 (Whereupon, Exhibit No. 32 was  
10 marked for identification.)

11 MR. WIGHT: And the last exhibit we have is  
12 the pre-filed testimony of Douglas W. Clay.

13 HEARING OFFICER TIPSORD: If there is no  
14 objection, we will mark the pre-filed testimony  
15 of Douglas Clay as Exhibit 33.

16 Seeing none, it is Exhibit 33.

17 (Whereupon, Exhibit No. 33 was  
18 marked for identification.)

19 MR. WIGHT: We would like to start then with  
20 a brief presentation from Rick Cobb on the -- he  
21 has a bit of oral testimony and then an  
22 explanation of the maps. At this point we have  
23 an enlarged version of the map I'm not sure  
24 where we will be able -- on the wall. So maybe

1 that will be sufficient.

2 MR. COBB: Okay. Good morning, everyone.

3 And I just wanted to provide a brief  
4 synopsis between my pre-filed testimony and the  
5 exhibits that you have for the six counties that  
6 we developed those maps for in northeastern  
7 Illinois. Basically the existing and potential  
8 locations of many of the fill operations covered  
9 under the proposed Part 1100 are in some of the  
10 most geologically susceptible areas of the State  
11 of Illinois.

12 And moreover, the importance of  
13 groundwater as a fresh water source within the  
14 Chicago metropolitan area really can hardly be  
15 overstated. Northeastern Illinois could be  
16 facing a future shortage of supplies, and really  
17 the biggest driver of the water use is  
18 population. In the year 2000, there were about  
19 8.6 million people in Illinois' northeastern  
20 region, and that number could grow to 12 million  
21 by the year 2050.

22 And based on growth trends, the  
23 metropolitan area may need as much as 50 percent  
24 more water within the next 40 years. And I will

1 refer you to the water study done by the  
2 northeastern regional water supply and/or demand  
3 study that was done by the Chicago Metropolitan  
4 Agency for Planning. And that was published in  
5 March of 2010.

6 The other thing of note is that the  
7 deeper aquifer systems are not sustainable.  
8 They are not being replenished via recharge by  
9 surface precipitation, and also, they are high  
10 in radionuclides. Further, the region's use of  
11 Lake Michigan, although there is plentiful water  
12 out there, is restricted as approved by the  
13 Supreme Court under the Lake Michigan Allocation  
14 Act.

15 Therefore, really, the sand and --  
16 shallow sand and gravel and the Silurian  
17 Dolomite aquifer systems will be the primary  
18 source of drinking water in northeastern  
19 Illinois. The future availability of clean and  
20 adequate sources of groundwater will be vital to  
21 the Illinois population and the economy.

22 And just before getting into the maps,  
23 I just want to talk a little bit about the term  
24 recharge. The water infiltrating to the soil

1 is -- either evaporates or is used by plants and  
2 can be transpired. The remainder of it migrates  
3 downward through the pore spaces in soil or rock  
4 and eventually reaching a zone where all the  
5 pore spaces are saturated. And water that moves  
6 into the saturated zone and flows downwards away  
7 from the water table is recharge. So that's  
8 what this map is all about.

9           Generally, only a portion of recharge  
10 will reach an aquifer and the overall recharge  
11 rate is affected by several factors, including  
12 the intensity and amount of precipitation,  
13 surface evaporation, vegetative cover, plant,  
14 water demand, land use, soil moisture content,  
15 depth and shape of the water table and distance  
16 and direction to the stream and the hydraulic  
17 conductivity of the soil and geologic materials.

18           The Illinois Potential for Aquifer  
19 Recharge Map, which I use as the base line --  
20 base line map behind the maps that you have was  
21 developed pursuant to Section 17.A of the  
22 Illinois Environmental Protection Act  
23 specifically for -- to design the priority  
24 groundwater protection planning areas for the

1 State of Illinois. Those are the highest areas  
2 for groundwater protection. The map itself is  
3 based on the probability of precipitation  
4 reaching the uppermost aquifer using a  
5 simplified function of depth to the aquifer, the  
6 occurrence of principal aquifers -- I will  
7 define that in a section -- and the potential  
8 infiltration rate of the soil.

9 A principal aquifer is one that's  
10 been defined by the State Water and Geologic  
11 Surveys as one that will produce at least one  
12 hundred thousand gallons per day per square  
13 foot over at least a 50 square mile area. So  
14 those are the components of that map.

15 And now I will just go to the enlarged  
16 map. I am still not sure the Board can see this  
17 very well, but we could pass it around, and I  
18 will walk through it for the audience.

19 HEARING OFFICER TIPSORD: Mr. Cobb, just to  
20 be sure, this is the exact same --

21 MR. COBB: This is Will County.

22 HEARING OFFICER TIPSORD: Right. It's an  
23 enlargement of what is Exhibit 27. So when you  
24 point to it, we are looking at Exhibit 27.

1           MR. COBB: Thank you. Okay. So we have an  
2 enlargement of Exhibit 27 for Will County, and  
3 basically, the map illustrates, No. 1, the  
4 potential for recharge, or you can also think of  
5 that as the geologic susceptibility to  
6 contamination.

7           We have digitized the CCDD sites that  
8 -- the clean construction and demolition debris  
9 sites and the uncontaminated soil fill sites,  
10 digitized those and then buffered each of those  
11 locations with a 2500-foot radius. The CCDD  
12 sites, the clean construction and demolition  
13 debris fill sites, we actually have the  
14 digitized polygon area; whereas, the -- for the  
15 USFO sites we just have a point with that  
16 buffered zone around it.

17           And then within that 2500-foot radius  
18 what we have done is an estimate of the number  
19 of potential private, public non-community and  
20 public water supply wells within that 2500-foot  
21 radius. So it -- like this particular site  
22 here, here's the site. Here's the radius, and  
23 then we have a legend for the different types of  
24 wells. The community wells are blue.

1 Non-community public wells are green. The  
2 potential private wells are grey. And then next  
3 to the site, we have cross-referenced --

4 HEARING OFFICER TIPSORD: Excuse me. Could  
5 you tell us which site you are looking at  
6 specifically.

7 MR. COBB: That's what I'm getting to.

8 Next to the site which has been labeled  
9 as No. 1, then you go over to the table, and  
10 that will tell you that that's the Elmhurst  
11 Chicago Stone Company. So the numbers next to  
12 the site on the map then come over and  
13 cross-reference this table, which tells you the  
14 name of the site, and it tells you the number  
15 and the different types of potential potable  
16 water supply wells within that 2500-foot  
17 distance.

18 And then it also gives the total for  
19 the nine CCDDs in Will County. And, you know,  
20 we have 398 potential private wells, 31 public  
21 non-community wells and 12 community water  
22 supply wells within those -- relative to those  
23 buffered areas around these sites.

24 Further, what we did is we -- for the

1 county itself, we determined the number of  
2 community water systems that use groundwater in  
3 Will County, and we have associated the  
4 populations served by each of those community  
5 water supplies and then provided a total for  
6 Will County. So about -- almost 350,000 people  
7 are served by groundwater supplies for community  
8 wells in Will County.

9 HEARING OFFICER TIPSORD: And just to  
10 clarify, when you are talking about the  
11 groundwater sources, there are ten sites listed  
12 here, but there are -- only nine of those are  
13 CCDDs.

14 Which one of those is a soil fill?

15 MR. COBB: USFO, you should be able to  
16 determine by the white symbol. I'm sorry. The  
17 yellow triangle is the --

18 HEARING OFFICER TIPSORD: Which is Site No.  
19 10.

20 MR. COBB: It is a USFO site. Thank you. I  
21 skipped over that. Thanks.

22 So, in conclusion, what I just want to  
23 emphasize is we are not suggesting with these  
24 maps that any of these individual facilities are

1 currently or will become sources of groundwater  
2 contamination. Again, the Agency's larger point  
3 is because of imperfect certification and  
4 screening procedures that are just inherent in  
5 screening procedures of any type and the strong  
6 likelihood of maybe an imperfect performance of  
7 certification in the screening procedures -- I  
8 mean, even with certified public water supply  
9 operators we have enforcement cases and other  
10 sorts of things. There is no certification  
11 process that's absolutely perfect.

12           And with the acceptance of large  
13 quantities of soil over time, and nearly the  
14 complete absence of any technical control such  
15 as liners to prevent any contamination, and the  
16 location of such facilities in these extremely  
17 highly sensitive geological areas with heavy  
18 reliance on groundwater as not only a current  
19 and future source of fresh water, we really  
20 think that for the CCDD and uncontaminated soil  
21 fill operations, that we must -- that the Board  
22 should consider the potential to cause  
23 groundwater contamination, and not just be  
24 thinking about contamination that's been caused

1 and allowed.

2           We emphasize that, because really the  
3 State's policy of preventing groundwater  
4 contamination is to prevent and protect  
5 groundwater resources from -- for current and  
6 future beneficial uses. And we believe that's  
7 the potential reason enough to justify  
8 groundwater monitoring in fill operations. This  
9 policy and the importance of the groundwater  
10 resource requires that any uncertainties really  
11 be resolved in favor of groundwater monitoring.  
12 That's all I have.

13           HEARING OFFICER TIPSORD: Thank you.  
14 Anything further.

15           MR. WIGHT: I don't think he has an  
16 additional statement. So we will just go with  
17 the pre-filed testimony for Mr. Clay, and we  
18 will be ready to move to the next step.

19           MS. TIPSORD: Thank you, Mr. Wight. Are  
20 there any questions for the IEPA?

21           MS. LIU: I have a question.

22                    Good morning, Mr. Cobb. I do have one  
23 question.

24                    Under the Illinois Groundwater

1 Protection Act I think it's in the Section 14 of  
2 the Environmental Protection Act or it's dealing  
3 with the water well setbacks.

4 Would the CCDD or fill sites be  
5 considered primary potential sources or  
6 secondary sources?

7 MR. COBB: Under the CCDD legislation itself,  
8 it just referenced back the setbacks that were  
9 defined under section -- under the definitions  
10 of the Environmental Protection Act under  
11 Section 14.1, and so that Section 14.1 is not --  
12 or not the potential source definitions. They  
13 are the well setbacks. So, for example, all  
14 private, non-community and semi-private wells  
15 would have a 200-foot setback, and all -- and  
16 community wells could vary between either a 200  
17 or a 400-foot minimum setback based on the  
18 geologic susceptibility and the requirements  
19 under Section 14.1 of the Environmental  
20 Protection Act.

21 MS. LIU: Thank you.

22 MR. COBB: You're welcome.

23 MR. RAO: I guess my question was whether  
24 CCDD or these USFO sites fall under the

1 definition of a potential primary source or  
2 potential secondary source under the act?

3 MR. COBB: The answer is no, but they were  
4 defined as being set back relative to the well  
5 setbacks under the CCDD.

6 MR. RAO: All right. I think we had  
7 pre-filed some questions to the part of a  
8 hearing officer order for Mr. Clay, and I will  
9 start with the first question.

10 On Pages 2 through 4 you state that the  
11 Board's first notice proposal certification  
12 requirement under Section 1100.205(a)(1)(A)  
13 would be overly burdensome to source site owners  
14 and operators. That's your pre-filed testimony  
15 on Page 2. You maintain that the definition of  
16 potentially impacted property along with an  
17 incorporation by reference to ASTM standards is  
18 a more reasonable and effective approach than to  
19 what the Board took.

20 Question 1, please comment on whether  
21 the Agency considered strengthening the  
22 definition of potentially impacted property by  
23 including any additional elements from the ASTM  
24 due diligence standards. If so, what elements

1 of the due diligence standards should be  
2 included in the definition of potentially  
3 impacted property?

4 MR. CLAY: Doug Clay with the Illinois IEPA.

5 Potentially impacted property is  
6 defined as property on which historical or  
7 current use or contaminant migration from a  
8 proximate site increase the presence or  
9 potential presence of contamination at the  
10 source site. The Agency believes this  
11 definition identifies key elements that should  
12 be considered. We do not want to pick and  
13 choose investigation techniques as identified in  
14 ASTM due diligence standards.

15 So we believe the definition should  
16 remain as the Agency proposed.

17 MR. RAO: The second part of the question is,  
18 would you please comment on whether it would be  
19 acceptable to the Agency if the definition of  
20 PIPs amended to include the ASTM due diligence  
21 standard as a guidance rather than a required  
22 standard under Section 1100.205(a)(1)(A).

23 MR. CLAY: Yes. It would be acceptable to  
24 the Agency to include the ASTM standard as

1 guidance, as long as it is not the only guidance  
2 that would be acceptable.

3 MR. RAO: Okay. When you say it's not the  
4 only guidance, if someone wants to use some  
5 other guidance documents like IDOT or an  
6 Illinois Tollway document, should any other  
7 equivalent guidance -- should it be approved by  
8 the Agency or, you know, under what context will  
9 the Agency, you know, review the guidance used?

10 MR. CLAY: Well, I don't believe it should  
11 be required that it be approved by the Agency.  
12 I think it's up to the professional that's  
13 utilizing that document to determine whether or  
14 not it's appropriate.

15 MR. RAO: Thank you.

16 MS. LIU: Good morning, Mr. Clay.

17 MR. CLAY: Good morning.

18 MS. LIU: Question No. 3. On Page 3 of your  
19 pre-filed testimony, you note the cost of  
20 purchasing the ASTM documents and the complexity  
21 of following the technical documents may force  
22 owners or operators to hire environmental  
23 professionals, increasing costs to site owners  
24 and operators beyond what is economically

1 reasonable.

2           Question A, would you please provide a  
3 range of cost estimates for a site owner or  
4 operator to hire a technical consultant, not  
5 necessarily a PE or a PG, to assist the owner or  
6 operator in making the determination in  
7 accordance with ASTM E1528-06 including the cost  
8 of purchasing the document under proposed  
9 Section 1100.205(a)(1)(A)?

10           MR. CLAY: The cost of the ASTM document is  
11 \$57 a copy, and there are discounts available  
12 for purchases of a larger number of documents.

13           The cost to hire a technical consultant  
14 could vary greatly based on the individual you  
15 hire, complexity of the site, the size of the  
16 site, the surrounding properties and their use,  
17 et cetera. I assume this work will be billed on  
18 an hourly basis and could range from several  
19 hundred dollars to several thousand dollars per  
20 site.

21           MS. LIU: In that regard, if any  
22 environmental professionals want to comment on  
23 the same question, you are more than welcome.

24           Question B. Please comment on the

1 approximate number of annual certifications by  
2 site owners or operators across the state; two,  
3 also, would you be able to estimate the  
4 percentage of such certifications versus the  
5 PE/PG certifications that might be expected for  
6 a typical CCDD fill site?

7 MR. CLAY: The Agency does not receive these  
8 certifications. These certifications are kept  
9 on record at the fill site and would be reviewed  
10 as part of an inspection. So we do not know the  
11 number of certifications or the breakdown of  
12 these certifications from the owner/operator  
13 certifications versus the PE/PG certifications.

14 It might be more appropriate if the  
15 fill sites -- for the fill sites to provide  
16 these numbers and comments.

17 MS. LIU: And I will echo that. If anyone  
18 would like to do that, we would be more than  
19 happy to hear that information.

20 Question C. Would you please compare  
21 your estimated cumulative costs of the site  
22 owner/operator certifications with the expected  
23 groundwater monitoring costs at a typical CCDD  
24 fill site on an annual basis? From this

1 information, would you be able to estimate a per  
2 ton or a per cubic yard cost for IEPA's proposed  
3 groundwater monitoring versus the first notice  
4 proposal for the ASTM certifications?

5 MR. CLAY: The cost of groundwater monitoring  
6 is going to vary from site to site and depends  
7 on the professional's judgment as to the number  
8 of wells, depth and location of wells, size of  
9 the fill site, the geology, et cetera.

10 The Agency will provide in comments  
11 cost for groundwater monitoring for an example  
12 site. This example in no way should be  
13 interpreted as what the Agency believes is  
14 appropriate for other sites. That needs to be  
15 determined on a site specific basis by the  
16 environmental professional, PE or PG.

17 With regard to the cumulative costs of  
18 the site owner and operator certification, as I  
19 stated previously, each certification could  
20 range from several hundred dollars to several  
21 thousand dollars. The number of different owner  
22 and operator certifications at a given fill site  
23 is not known to the Agency.

24 Once again, these numbers should be

1 readily available from the fill site, and it  
2 might be more appropriate for them to provide  
3 this information.

4 MS. LIU: Question D. Would you please  
5 comment on alternatives to groundwater  
6 monitoring to address the language in Section  
7 22.51(f)(1) of the Environmental Protection Act?  
8 In particular, would you please address  
9 financial assurance, post-closures, land use  
10 controls and mechanisms used in 35 Illinois  
11 Administrative Code Part 811 Subpart B for inert  
12 waste landfills?

13 MR. CLAY: The Agency does not believe that  
14 financial assurance and post-closure land use  
15 controls are alternatives to groundwater  
16 monitoring, but rather something that is used  
17 after groundwater has been contaminated.

18 The Agency did look at all of the  
19 requirements for inert waste landfills,  
20 including leachate monitoring. We did not  
21 believe that leachate monitoring was practical  
22 because of the material being placed in the fill  
23 sites and the probability that the wells would  
24 be damaged during placing this material.

1           Also, as a side note, it should be  
2           noted that there are no permitted inert waste  
3           landfills in Illinois.

4           MS. GLOSSER: Mr. Clay, on Pages 4 and 5 you  
5           state that the proposed revisions to Section  
6           1100.205(a)(1)(B) to require analytical cell  
7           testing results to show compliance with the MACs  
8           (maximum allowable concentrations) suggest that  
9           the entire list of contaminants on the MAC table  
10          must be sampled. The proposed requirement at  
11          Section 1100.205(a)(1)(b) specifically requires  
12          compliance with MACs established pursuant to  
13          Subpart F.

14          As noted by you, Section 1100.610(a)  
15          Subpart F allows a PE or PG to narrow the list  
16          to contaminates of concern. Please clarify  
17          whether any other provisions in Subpart F  
18          conflicts with Section 1100.610(a) or requires  
19          the analysis of all chemical constituents listed  
20          in the MAC table.

21          MR. CLAY: We don't believe there are any  
22          other conflicts with Subpart F. However, we  
23          are -- we were confused a little bit about the  
24          question and whether or not the Board is

1 proposing changes because of the confusion we  
2 raised in the -- in our question and in our  
3 testimony or if the Board believes that the  
4 current draft doesn't require any additional  
5 changes.

6 MS. GLOSSER: I don't know that we know the  
7 answer to that question.

8 MR. RAO: Yeah. I guess we were trying to  
9 understand your concern there, because we didn't  
10 see anywhere it said that a PE or a PG could not  
11 narrow down the list. So we were trying to  
12 figure out where -- if there is any other thing  
13 that was causing the confusion.

14 MR. CLAY: Yes. I think the issue was that  
15 in one spot it appeared to say that all  
16 constituents in the MAC table needed to be  
17 sampled, and you're comparing to the MAC table,  
18 and then I believe in Subpart F then it  
19 identified that the PE or PG could determine  
20 that fewer constituents would be sampled.

21 So we just thought it was confusing.

22 MR. RAO: Because I think the proposed  
23 language said the analysis shall be -- it's --  
24 let me see.

1           Yeah. It's Section 1100.205(a)(1)(b)  
2 specifically requires compliance with MAC in  
3 accordance with the Subpart F. So whatever the  
4 requirements under the Subpart F, which was  
5 originally proposed by IEPA, were retained in  
6 the Board proposal.

7           MR. CLAY: Okay. Let us look at that again,  
8 and we will provide a response and comments.

9           MR. RAO: Thank you.

10           We are going to Question 5. On Page 5  
11 you recommended that it would be clearer and  
12 more prudent to provide the ASTM standard as a  
13 guidance.

14           In this regard, could you please  
15 comment on the revisions proposed by Mr. Huff to  
16 Section 1100.205(a) to include the use of  
17 alternate standards, whether that language is  
18 acceptable to the Agency?

19           MR. CLAY: The Agency believes that ASTM  
20 standards should only be used as guidance, and  
21 that other guidance may also be used as well.  
22 We do not believe that Mr. Huff's revisions  
23 would be appropriate.

24           Furthermore, we do not believe that the

1     ASTM standard or any portion of that standard  
2     should be referred to specifically in the  
3     certification statement.

4             MR. RAO: Question 6. The Illinois  
5     Association of Aggregate Producer members and  
6     Mr. James Huff recommended that MACs for pH  
7     dependent chemical constituents be based on a pH  
8     range of 6.25 to 6.64 with a pH floor of 6.25  
9     for uncontaminated soil.

10            Question A. Have you reviewed the pH  
11     data submitted by the IAAP members?

12            MR. CLAY: If I may, can I respond to all  
13     three questions at the same time?

14            MR. RAO: That will be easy for us.

15            MR. CLAY: First, I believe in C, of the  
16     first notice draft, the Agency does not believe  
17     the pH determination is required. And I think  
18     that's kind of implied in the question.

19            Having said that, the Agency has  
20     reviewed the testimony and data submitted as  
21     part of these proceedings. I believe there have  
22     been some good arguments made regarding the  
23     appropriate pH values to use in developing the  
24     MAC table. The Agency would like to take

1 additional time to further evaluate the pH data  
2 and testimony and will provide comments during  
3 the comment period as set by the Board.

4 MR. RAO: Thank you very much.

5 MS. GLOSSER: Question No. 7. The Agency  
6 submitted a document entitled, A Summary of  
7 Illinois Soil pH Values, during the October 26th  
8 hearing that was entered into the record as  
9 Exhibit 25. The Agency noted that the summary  
10 presents pH values statewide by county for soil  
11 depths up to 80 inches.

12 Please provide a narrative to the  
13 summary of Illinois pH values to explain the  
14 following: The percentages and pH ranges  
15 included for each county, how specifically this  
16 data is relevant to potential soil accepted at  
17 CCDD or uncontaminated soil fill sites and how  
18 the pH ranges for each percentage can vary so  
19 widely particularly in comparison to other data  
20 presented.

21 MR. WIGHT: Mr. Less Morrow, we would like  
22 him to respond to this, and he covered this in  
23 his original testimony.

24 MR. MORROW: First of all, I would like to

1 apologize for that table. It wasn't very  
2 intuitive. It was prepared for our work group,  
3 and only at the last minute was it decided we  
4 would submit it as an exhibit.

5 We have a preliminary response. We  
6 could go through that, or we could answer in  
7 post-hearing comments.

8 HEARING OFFICER TIPSORD: I think it would be  
9 helpful if you could answer, and we'd get at  
10 least a preliminary answer.

11 MR. MORROW: Yes. To the first point, we did  
12 present a narrative in the October hearing that  
13 was presented by Dr. Hornshaw. I could reread  
14 that into the record, if you would like.

15 HEARING OFFICER TIPSORD: I don't think --

16 MR. RAO: I think we were looking for a  
17 little bit more detailed explanation.

18 MR. MORROW: It is very detailed.

19 MR. RAO: I guess it would be helpful if you  
20 can add anything to it at this point or maybe  
21 your comments will be --

22 MR. MORROW: Well, off the top of my head --  
23 I will misspeak, but I will try.

24 MR. WIGHT: We said these were preliminary,

1 and we certainly would be happy to provide more  
2 detail at the comment stage, but understanding  
3 that we might have to revise his remarks later,  
4 if it would be helpful, I would say go ahead.

5 HEARING OFFICER TIPSORD: Well, I think it  
6 would be very helpful, since we have several  
7 witnesses who are going to continue to talk  
8 about this pH issue. I think we need to know a  
9 little bit more where the Agency's position is  
10 coming from, which the Board agreed with at  
11 first notice, but we need to have a little bit  
12 more detail.

13 MS. GLOSSER: Yes. Particularly the  
14 questions under A. I mean, how this -- and he  
15 may have addressed it in his testimony. I  
16 apologize for not having that in front of me,  
17 but how that relates to what we are talking  
18 about now and specifically the ranges of the pH  
19 under each of these.

20 I mean, they vary quite widely compared  
21 to what we have seen from data from soil  
22 testing. So I'm not really quite sure I  
23 understand how that goes.

24 And then there is the S data sets, is

1 that correct?

2 MR. MORROW: That's correct.

3 MS. GLOSSER: I'm not really quite sure how  
4 NRCS comes up with these pH ranges, and so I  
5 don't understand the comparison between the data  
6 we have seen and this.

7 MR. MORROW: I'm not sure I can answer that  
8 question, how NRCS comes up with this  
9 information, but they do physical samples in  
10 agricultural fields across every county and  
11 every state. We identify 24 counties in  
12 Illinois that we are going to target with the  
13 STATSGO database, and that was based upon the  
14 presence of a CCDD fill site or an  
15 uncontaminated soil fill site.

16 That was probably a little naive.  
17 There were comments at the time that the  
18 surrounding area of these sites would impact the  
19 fill material. So there was some kind of a  
20 neutralizing. So we targeted those sites. I  
21 went into the STATSGO database for 24 counties.  
22 I looked at the soil types in a each county, and  
23 using Will County as an example, there were 155  
24 soil types. The majority of these were under

1 one percent.

2 So I -- looking through the data, I  
3 identified as many soil types as necessary to  
4 come up with about a third of the coverage for  
5 each county. In Will County it only took three  
6 soil types. In other counties it took a dozen  
7 soil types.

8 So do you have copies of that table?

9 MS. GLOSSER: Yes, I do. Exhibit 25.

10 MR. MORROW: If you look at Will County, you  
11 will see that there are three soil types, and  
12 the percentage associated with that is the  
13 percentage of coverage for the county; 15.5,  
14 13.2 and 5.3. And so for that soil type, I  
15 looked at the pH results, and for all of these  
16 types there were several levels, five, six  
17 levels up to 80 inches, and they were ranges, 0  
18 to 7 inches, 0 to 12 inches usually to begin  
19 with, and the range through all the levels I  
20 took the lowest pH and the highest pH. So  
21 sometimes it's from surface to 60 inches and  
22 sometimes it's surface to 80 inches. And that's  
23 what the range for pHs represents.

24 Does that explain the table?

1 MS. GLOSSER: Well, sort of. Not completely.  
2 I'm not really quite sure I understand the  
3 percentages. Again, would you -- I'm sorry I'm  
4 not getting it, but explain again. Like, for  
5 Will County, 15.5 percent equals pH 5.6 to 8.4,  
6 and then 13.2 percent equals 5.6 to 8.4.

7 Are you reflecting the depth?

8 MR. MORROW: Generally it's through all the  
9 depth levels that were presented. The five,  
10 six, seven results based on depth. Generally,  
11 the higher pH, the more acidic soils were at the  
12 surface, and as you go deeper it became more  
13 alkaline. So that range or pH is across all the  
14 depths, the lowest to the highest.

15 I'm advised that the 15.5 percent, that  
16 is for one soil type. That's the coverage for  
17 that county.

18 MS. GLOSSER: Oh, I see. So that's -- the  
19 15.5 percent is for a soil type?

20 MR. MORROW: Yes.

21 MS. GLOSSER: Okay. That's what I wanted to  
22 know, what these percentages applied to, and it  
23 wasn't clear.

24 MR. MORROW: Yes, that's what it is.

1           And you will see other counties had  
2 much more soil types to get to the 30 percent.

3           MS. GLOSSER: Thank you.

4           MR. MORROW: Champaign County being unique in  
5 that they only had two. One soil type was  
6 40 percent coverage in Champaign County.

7           And I probably should mention, too,  
8 that it was organized by geographical area;  
9 north, central and south. The 23 counties, we  
10 had 14 from the northern part, 7 from the  
11 central part, and 2 from the south.

12          MS. GLOSSER: Do you know why the pH ranges  
13 are so different than what we have reported from  
14 other sources? Like, for example, this data --  
15 and I know NRCS's data goes as high as 8.4, but  
16 in other data sets we have seen the pHs are at  
17 10 and 11.1, I believe was the highest.

18          MR. MORROW: I'm at a loss. I can't explain  
19 it. I do know there is a lot of variation  
20 across the state. I don't know why the -- we  
21 don't see the lower pHs and the values that were  
22 presented by the other people testifying.

23          MS. GLOSSER: Thank you.

24          MR. RAO: We will appreciate anything you can

1 add to this in your comments very much.

2 MR. MORROW: Okay.

3 HEARING OFFICER TIPSORD: Are there any other  
4 questions for the Agency?

5 Please identify yourself for the court  
6 reporter.

7 MR. HUFF: James Huff, Huff and Huff,  
8 Incorporated.

9 I just have a brief question for Mr.  
10 Cobb. On Page 13 of your testimony, you talk  
11 about the groundwater impacts where elevated  
12 levels of lead and cadmium were detected and  
13 enforcement action ensued that resulted in an  
14 order requiring groundwater monitoring.

15 Can you provide any results of that  
16 groundwater monitoring that was required under  
17 the enforcement act?

18 MR. WIGHT: This was originally from Mr.  
19 Purseglove's testimony. So we just incorporated  
20 that information into Mr. Cobb's testimony since  
21 it was already on the record.

22 So the question is probably more  
23 precisely directed to Mr. Purseglove, but I'm  
24 not sure that he will have the answer for you

1 without a chance to look it up.

2 MR. PURSEGLOVE: Yeah. I think you are  
3 right.

4 MR. HUFF: Well, could I ask that if the  
5 Agency has any groundwater data as a result of  
6 enforcements that they provide that in the  
7 record?

8 MR. WIGHT: You certainly may, and we would  
9 be happy to do that.

10 MR. HUFF: And then I have one follow-up  
11 question. Mr. Sylvester gives some results of  
12 lead and cadmium.

13 Is that going to be the exact same  
14 site?

15 MR. PURSEGLOVE: Probably.

16 MR. HUFF: Thank you. And I have questions I  
17 will save for Mr. Sylvester that will probably  
18 come back to the Agency as well.

19 HEARING OFFICER TIPSORD: Thank you. Any  
20 other questions for the Agency.

21 Again, identify yourself for the court  
22 reporter.

23 MR. GOBELMAN: Yes. Steve Gobelman, Illinois  
24 Department of Transportation.

1           You said that you were going to  
2   reevaluate the pH values for statewide that's  
3   been submitted.

4           Would you be willing to take other pH  
5   values that would be provided to you for  
6   statewide in your evaluations?

7           MR. CLAY: Certainly. I think they should be  
8   submitted as part of the proceedings, but, yeah,  
9   if you could get those to us right away. I  
10   don't know how much time we are going to have  
11   before the comment period ends, but, yes, we  
12   would take those into account, too.

13          HEARING OFFICER TIPSORD: Anything else for  
14   the Agency? Okay.

15          MR. WIGHT: If we might just take a moment,  
16   Mr. Cobb would like to elaborate on his earlier  
17   answer to Ms. Liu and Mr. Rao's question. He  
18   had a few --

19          MR. COBB: Yeah. I just wanted to follow-up  
20   on your question, and I don't want you to think  
21   that the potential sources that are identified  
22   in the act that are prohibited within certain  
23   land use areas are the only types of threats to  
24   groundwater, because they are not.

1           When we are talking about threat, we  
2           are talking, for example, of maybe 35 Illinois  
3           Administrative Code Part 620.301 of the Board's  
4           groundwater quality standards where it says, No  
5           person shall cause, threaten or allow release of  
6           any contaminant, and any contaminant isn't --  
7           not every contaminant is covered by those  
8           potential source definitions relative to  
9           setbacks.

10           Those were negotiated during the  
11           legislative process, and that's what we could --  
12           I just wanted in that just to further emphasize  
13           then that portion in 620.301 threat is the same  
14           as Section 12A of the Environmental Protection  
15           Act threat, and that's what we were talking  
16           about when we were talking about the range of  
17           potential sources. So I just wanted to clarify  
18           that.

19           MR. RAO: Thank you for the clarification,  
20           yes.

21           HEARING OFFICER TIPSORD: Anything further?  
22           Okay.

23           Then we will move on to Mr. Gobelman  
24           and IDOT.

1                   We can have him sworn in.

2                                 (Whereupon, the witness was duly  
3                                 sworn.)

4           HEARING OFFICER TIPSORD:  If there is no  
5   objection, we will mark the pre-filed testimony  
6   of Steven Gobelman as Exhibit 34.

7                   Seeing none, it's Exhibit 34.

8                                 (Whereupon, Exhibit No. 34 was  
9                                 marked for identification.)

10          MS. TIPSORD:  Go ahead.  Do you want to do a  
11   little summary?

12          MR. GOBELMAN:  I'm good.

13          HEARING OFFICER TIPSORD:  Are there any  
14   questions for Mr. Gobelman?

15          MR. RAO:  Mr. Gobelman, on Page 1 of your  
16   pre-filed testimony, you suggested IDOT's  
17   proposed language for Section 1100.205 in  
18   Attachments 2 and 3.

19                   Could you please comment on IDOT's  
20   position regarding the alternate language  
21   suggested by James Huff from the Illinois  
22   Transportation as follows and for Section  
23   1100.205(a)(1)(B) on Page 8 and 9 of his  
24   pre-filed supplemental testimony?

1           MR. GOBELMAN: Yeah. Mr. Huff suggested a  
2 language change of -- for policies developed by  
3 the Illinois Department of Transportation and  
4 Illinois' Tollway consistent with ASTM 1327-05,  
5 and in a note that the Department's policies can  
6 be found in Chapter 27 of the Department's  
7 Bureau of Design and Environment manual.

8           Chapter 27 does lay out the procedures  
9 that all State highway projects and local road  
10 projects on State right of way or requiring  
11 state right of way in the name of the State must  
12 follow. However, all projects that go through  
13 Chapter 27 procedures can either be screened out  
14 by the Department's district environmental staff  
15 or are sent into the Illinois State Geological  
16 Survey to complete an equivalent ASTM E1527-05  
17 standard.

18           Mr. Huff's proposed language change to  
19 Section 1100.205(a)(1)(B) would be acceptable to  
20 the Department. However, the Department would  
21 suggest that a similar language change be  
22 included as such in the 1100.205(a)(1)(A), which  
23 would be in accordance to the ASTM E1528-06  
24 standard practices for a limited environmental

1 due diligence transaction screening process  
2 incorporated by reference at Section 1100.104  
3 and then added in or the policies developed by  
4 the Illinois Department of Transportation and  
5 Illinois Tollways consistent with ASTM E1528-06,  
6 and is presumed to be uncontaminated soil.

7 This adjusted language change would  
8 also need to be included in the certification  
9 language of Section 1100.205(a)(2)(A) and  
10 Section 1100.205(a)(2)(B).

11 MR. RAO: Thank you.

12 MR. LIU: Good morning, Mr. Gobelman.

13 Your pre-filed testimony suggested that  
14 an approved alternative was what you included as  
15 Attachment 4, and we were wondering about Mr.  
16 Huff's Chapter 27 reference.

17 Would either one or both of those be  
18 appropriate as incorporations by reference in  
19 the rules?

20 MR. GOBELMAN: Both proposed changes would be  
21 appropriate, but as stated in my previous  
22 response to the previous question, similar  
23 language would have to be included in Section  
24 1100.205(a)(1)(A) in addition to certification

1 language in Section 1100.205(a)(2)(A) and  
2 Section 1100.205(a)(2)(B) would need to be  
3 modified to incorporate Mr. Huff's proposed  
4 language change.

5 MS. LIU: Thank you.

6 HEARING OFFICER TIPSORD: Mr. Gobelman, I  
7 have a couple of questions just because as a  
8 lawyer I felt left out.

9 My question is, the manuals that we are  
10 talking about, the IDOT manuals, how are those  
11 adopted? Are they adopted as rules under the  
12 Administrative Procedure Act? Are they  
13 developed pursuant to --

14 MR. GOBELMAN: The Chapter 27, our  
15 policies on -- the BDA manual in Chapter 27?

16 HEARING OFFICER TIPSORD: Yeah.

17 MR. GOBELMAN: They are just policies that  
18 the Department approves. So they are not  
19 incorporated by any legal, I guess, statute or  
20 anything like that.

21 HEARING OFFICER TIPSORD: Okay. And then  
22 what is Attachment 4 to your testimony; a manual  
23 conducting preliminary environmental site  
24 assessments for IDOT infrastructure project.

1           Again, I see here that it was developed  
2           under contract by the Prairie Research  
3           Institute?

4           MR. GOBELMAN: I think they have a contract,  
5           but ISGS is under contract with the Department  
6           of Transportation to do all our Phase 1  
7           preliminary environmental investigations on any  
8           property that we are doing within highways.

9           HEARING OFFICER TIPSORD: So when they  
10          develop these manuals, do they offer those up  
11          for comment? Are they based on the actual  
12          practices.

13          MR. GOBELMAN: Yes. They are developed based  
14          upon the procedures that IDOT -- that they do  
15          for IDOT under IDOT's direction, and then this  
16          is the second version of it that they published.  
17          It's a published document based upon how IDOT  
18          does business and IDOT wants the forms, and then  
19          it's published so other people can use it.

20                 And then the first edition was also  
21          approved by the Agency as an approved  
22          alternative under the SRP program, because the  
23          SRP language allows for -- to use ASTM in  
24          devaluating contaminated property owner-approved

1 alternatives.

2 HEARING OFFICER TIPSORD: Any other questions  
3 for Mr. Gobelman.

4 MR. HUFF: James Huff again.

5 Mr. Gobelman, just a point of  
6 clarification. The manual you reference is  
7 specifically the Illinois State Geological  
8 Survey Procedure Manual, and they are not the  
9 only ones in the State that does preliminary  
10 environmental site assessments; is that correct?

11 MR. GOBELMAN: That's correct. They are our  
12 contract to do work with the State with right of  
13 ways.

14 MR. HUFF: Right. But local roads, counties,  
15 they also follow the IDOT, but they do not use  
16 the Illinois State Geological Survey.

17 MR. GOBELMAN: Local roads that are not -- do  
18 conducting work on State right of ways or  
19 proposed State right of ways or property being  
20 held in the name of the State are what -- are  
21 free under the local rules policy to conduct  
22 their environmental investigation any way they  
23 see fit.

24 MR. HUFF: Thank you.

1 HEARING OFFICER TIPSORD: Anything else.

2 MR. WIGHT: Mark Wight. Illinois EPA.

3 Mr. Gobelman, just to clarify, your  
4 testimony also stated that IDOT would find a  
5 return to the Agency's initially proposed  
6 language acceptable as well?

7 MR. GOBELMAN: Correct. I believe the  
8 original language gave flexibility to allow the  
9 State -- the Department of Transportation to use  
10 its current practices to do this work.

11 MR. WIGHT: Would you say that the Agency's  
12 language is probably even more flexible than  
13 incorporating the specific IDOT document that  
14 would serve your needs, but not necessarily the  
15 needs of others?

16 MR. GOBELMAN: I think any proposed change  
17 and the way -- the reason why I drafted my  
18 testimony the way I did is because I didn't know  
19 exactly how the Board was leaning towards this  
20 process. I proposed two options, and one was  
21 that the Agency's proposed language change back  
22 to the original gives us equal flexibility in  
23 allowing us to do the work that we do currently.

24 And if the Board is looking to create a

1 language change that is tied to an ASTM, then  
2 there was really two other options that are on  
3 the table that need to be incorporated. One was  
4 how it was proposed in here, that if you're  
5 wanting to tie this to an ASTM standard, then  
6 there has to be an ability to do something that  
7 is an equivalent alternative. The only other  
8 option is that it has to be an equivalent  
9 approved by the Agency.

10 If the Agency does not necessarily have  
11 the staff or the time to go through this, or if  
12 you were just able to -- the equivalent  
13 alternative is technically in place already in  
14 -- and through the SRP program that you can  
15 submit that through the SRP program and have  
16 your equivalent alternative approved as an ASTM  
17 alternative.

18 I did not -- the Department didn't want  
19 to propose an additional workload on the Agency  
20 to do an approval process. So both alternatives  
21 as far as the State is concerned are equally --  
22 the flexibility to be able to do what we need to  
23 do.

24 MR. WIGHT: Okay.

1 HEARING OFFICER TIPSORD: Anything further?

2 Thank you very much. We will move on  
3 to the people.

4 (Whereupon, the witnesses were  
5 duly sworn.)

6 MS. TIPSORD: If there is no objection, we  
7 will mark the pre-filed testimony presented by  
8 Steven Sylvester on behalf of the People of the  
9 State of Illinois as Exhibit 35.

10 Seeing none, it's Exhibit 35.

11 Did you want to give a brief summary?

12 (Whereupon, Exhibit No. 35 was  
13 marked for identification.)

14 MR. SYLVESTER: Just briefly. One thing I  
15 did want to point out in case it got lost in our  
16 filing is that we did concur in Mr. Cobb's  
17 pre-filed testimony regarding groundwater and  
18 the substance of our -- I guess more of a  
19 comment than a lot of testimony -- but is  
20 focused on the decision to remove the  
21 groundwater monitoring requirement from the  
22 proposed Part 1100 regulations.

23 The theme that I would like to  
24 highlight is that in Section 2B of the

1 Environmental Protection Act, the purpose of the  
2 Environmental Protection Act when it was created  
3 was to restore, protect and enhance with the  
4 emphasis on enhance the environment, and the  
5 legislature also did the same for groundwater of  
6 the State of Illinois in Section 2B of the  
7 Groundwater Protection Act where they had the  
8 same language, but specifically directed towards  
9 groundwater for the State of Illinois.

10           And that -- like I said, that's kind of  
11 the theme that is something that, you know, I  
12 don't think should be lost in what we are doing  
13 here. There is a lot of detail. There is a lot  
14 of technical information that's required. There  
15 is an awful lot of expertise in this room and  
16 throughout this proceeding, but the overarching  
17 purpose of the act is something I wanted to  
18 highlight.

19           Also, in connection with the -- with  
20 our testimony was, you know, the landfills or  
21 specifically nonhazardous landfills are  
22 obviously the most highly regulated waste  
23 disposal sites in Illinois, and we provided a  
24 few examples where even these types of

1 facilities were unable to keep hazardous waste  
2 from being disposed at their facilities.

3           And also along that line, since the  
4 Part 1100 regulations have been adopted, there  
5 is -- we cited to 11 cases, seven in front of  
6 the Pollution Control Board and another four  
7 that were filed in circuit court throughout the  
8 counties where the owners/operators were either  
9 not following the procedures or actually, in  
10 fact, accepted waste at the facilities.

11           And the last point I wanted to touch  
12 upon was there was a statement in the Board's  
13 February 2nd opinion where basically -- well,  
14 verbatim, the Board came out and said, CCDD and  
15 uncontaminated soil are not classified as waste  
16 and accordingly did not require the stringent  
17 rules that exist for nonhazardous waste  
18 landfills.

19           In our testimony we touched on several  
20 areas where that's simply not the case, and, in  
21 fact, I would say it's the opposite, that CCDD  
22 is always considered waste unless somebody can  
23 meet the exceptions that are set forth in  
24 Section 3.160(b) of the act, and in the People

1       versus Lincoln, Limited, a case which I was  
2       personally involved in as a trial attorney, the  
3       First District Court of Appeals says that it's  
4       incumbent upon the defendant to show that they  
5       meet those exceptions.

6               Now, of course, in 2010 it was amended  
7       to say that you have to meet the requirements of  
8       the 22.51 CCDD fill operation, which didn't  
9       exist prior. And also, there was an instance  
10       that I'm sure the Board is very familiar with in  
11       the Administrative -- as well as the Illinois  
12       EPA, the administrative citation procedure there  
13       is 21 that -- in which is the open dumping of  
14       clean construction or demolition debris waste or  
15       what is categorically defined as waste. That's  
16       it.

17               Questions?

18               HEARING OFFICER TIPSORD: Would you agree  
19       that the CCDD and uncontaminated soil that we  
20       are dealing with under this rule, though,  
21       specifically meets the exception to the  
22       definition of waste.

23               MR. SYLVESTER: In theory. I would -- you  
24       know, of course the reason we are here is the

1 proof is in the pudding. I mean, not always  
2 does the CCDD material that -- get to a fill  
3 operation does it meet the requirements of CCDD,  
4 but the theory behind it is, yes, that it's  
5 clean, and it can be used below grade to the  
6 extend permitted by federal law.

7 HEARING OFFICER TIPSORD: Because I would  
8 note that it was repeated often at the prior  
9 hearings that CCDD is not waste, and that was  
10 some of the stuff the Agency has put out,  
11 because I do believe we are all talking about  
12 what it's dealing with under this rulemaking.

13 I just wanted to be sure that we were  
14 on the same page, that we agree that this  
15 rulemaking -- under this rulemaking CCDD and  
16 uncontaminated soil are specifically defined to  
17 meet the definition in the act.

18 MR. SYLVESTER: Correct. And just to follow  
19 up on that, one thing I would point out, and we  
20 did it -- stated it in our testimony is that  
21 depending on where the CCDD is placed, sometimes  
22 it's waste, and sometimes the General Assembly  
23 decided it wasn't. I guess our point in the  
24 groundwater testimony is, is if in certain

1 incidences that the General Assembly considered  
2 it to be waste, then it should be -- it's not  
3 what the actual definition is. It's the  
4 properties of the material that should be more  
5 focused on in determining whether or not  
6 groundwater monitoring is appropriate.

7 HEARING OFFICER TIPSORD: Any other  
8 questions.

9 MR. HUFF: Mr. Sylvester, on Page 24 you  
10 present some very interesting analytical results  
11 from groundwater at this unpermitted site.  
12 What's not included in here is what kind of  
13 turbidity was measured in that well at the time  
14 of sampling. That data was omitted from here.

15 MR. SYLVESTER: Well, first of all, just to  
16 get the foundation right, at the time that this  
17 information was taken, permits weren't required  
18 for these facilities. This was in 2000 that the  
19 data was taken. So I do not have the  
20 information on the turbidity.

21 The data that was presented was  
22 presented at trial subject to cross-examination  
23 by an engineer from Consoer Townsend Envirodyne,  
24 and I don't know that that was -- came out in

1 testimony.

2 MR. HUFF: Can you introduce his report into  
3 the record as well?

4 MR. SYLVESTER: Well, there was some strange  
5 circumstances around the reporting. Just to  
6 give you a little background on it, there was --  
7 this data came from a Phase 2 environmental  
8 assessment. The defendants in this case had  
9 attempted to gift the property to a public  
10 entity and prior to that eliminated Phase 2 -- I  
11 guess the Phase 2 was aborted prior to final  
12 reports. So not all the information that would  
13 normally be done in a Phase 2 that was brought  
14 to completion was included in it.

15 There was analytical data, some boring  
16 logs and the usual chain of custody information,  
17 but it wasn't a final report.

18 MR. HUFF: So you don't know with any degree  
19 of certainty if those wells were even properly  
20 developed before they were sampled?

21 MR. SYLVESTER: Well, I didn't testify at it.  
22 I can certainly provide the information and the  
23 testimony.

24 MR. HUFF: Well, do you know if they ran

1 dissolved metals or they were just total metals?

2 MR. SYLVESTER: Once again, I'm not an  
3 engineer like yourself, but I certainly can  
4 provide that information and the testimony that  
5 was developed by the engineer to supplement the  
6 record.

7 MR. HUFF: That would be very helpful.

8 And then moving to Page 25 you present  
9 some additional data on a bunch of polynuclear  
10 aromatic hydrocarbons as well as lead from a  
11 Phase 2 report.

12 Can you provide the complete report on  
13 that as well? Was there any conclusion in there  
14 as to the source of the polynuclear aromatic  
15 compounds?

16 MR. SYLVESTER: There was not. Just a little  
17 bit further background, this site was originally  
18 a sand pit mine for about 40 feet below the --  
19 below grade back at that time and now the  
20 highest adjacent point, and that was filled in,  
21 which at the time that it was done, it was  
22 lawful to fill in to grade, and then they  
23 continued to fill another 100 feet above and  
24 then -- so the filling continued after this was

1 done. So that information at this point is not  
2 available.

3 Did you have another question?

4 MR. HUFF: No. I thought -- so there is no  
5 report that has that data in there that you have  
6 present here?

7 MR. SYLVESTER: No. I didn't say that, but  
8 you were -- the specifics about the --

9 MR. HUFF: Yeah, the origin of those PNAs,  
10 because reclaimed asphalt pavement is an  
11 acceptable material and could be well the source  
12 of those PNAs.

13 HEARING OFFICER TIPSORD: Anyone else.

14 MR. SYLVESTER: Can I follow-up on that?

15 MS. TIPSORD: Yes, go ahead.

16 MR. SYLVESTER: Earlier, Mr. Huff, you had  
17 asked about any groundwater monitoring that was  
18 going on currently. I just want to follow up on  
19 that.

20 We are currently in the approval  
21 process for the groundwater monitoring plant.  
22 So it has not, in fact, begun yet.

23 MS. MANNING: Claire Manning, Public Building  
24 Commission of Chicago.

1           Mr. Sylvester, I just wanted to  
2           clarify. In all of the cases that you cited in  
3           enforcement cases, none of them involved a  
4           finding of violation of the Groundwater Act; is  
5           that correct?

6           MR. SYLVESTER: Groundwater Act?

7           MS. MANNING: Yes. The Groundwater  
8           Protection Act.

9           MR. SYLVESTER: No.

10          HEARING OFFICER TIPSORD: Anything else.

11                     Okay. Thank you Mr. Sylvester.

12                     It's 12:15. Our next group is the  
13           Aggregate Producers. I said we were going to go  
14           until about 12:30, but this might be a good time  
15           to break so we can move around. We will start  
16           -- we will do 30 minutes. We will start back  
17           with the Aggregate Producers when we get back  
18           from lunch. Thank you.

19                     (Whereupon, a short break was  
20                     taken.)

21                     (Whereupon, the witness was duly  
22                     sworn.)

23          HEARING OFFICER TIPSORD: And you have copies  
24           of their testimony?

1 MR. HENRIKSEN: Yes, I do.

2 HEARING OFFICER TIPSORD: We will go ahead  
3 and get those entered.

4 MR. HENRIKSEN: Would you like them all at  
5 once?

6 MS. TIPSORD: Yes.

7 If there is no objection, we will mark  
8 the pre-filed testimony of Brett Hall as  
9 Exhibit 36.

10 Seeing none, it's Exhibit 36.

11 (Whereupon, Exhibit No. 36 was  
12 marked for identification.)

13 MS. TIPSORD: If there is no objection, we  
14 will enter the pre-filed testimony of Annick  
15 Maenhout as Exhibit 37.

16 Seeing none, it's Exhibit 37.

17 (Whereupon, Exhibit No. 37 was  
18 marked for identification.)

19 MS. TIPSORD: And then Gregory Wilcox's  
20 pre-filed testimony will be Exhibit 38 if there  
21 is no objection.

22 Seeing none, it's Exhibit 38.

23

24

1 (Whereupon, Exhibit No. 38 was  
2 marked for identification.)

3 MS. TIPSORD: And finally, the testimony of  
4 John Hock. If there is no objection, that will  
5 be Exhibit 39.

6 Seeing none, it's Exhibit 39.

7 (Whereupon, Exhibit No. 39 was  
8 marked for identification.)

9 MS. TIPSORD: Mr. Henriksen, did you want to  
10 make an opening statement, or do any of them  
11 when to summarize their testimony?

12 MR. HENRIKSEN: Yes. Our thought would be  
13 each would summarize their testimony at the  
14 close of each of their summaries. It's my  
15 understanding that the Board had some questions  
16 regarding recalculating the pH values in  
17 conformance with Dr. Roy's concept. So each  
18 would be able to answer that question, and we  
19 prepared evidence to put in the record of the  
20 recalculated pHs pursuant to his formula.

21 HEARING OFFICER TIPSORD: Okay. Then let's  
22 go ahead and begin with Mr. Hall.

23 MR. HALL: My name is Brett Hall. I work for  
24 Hanson Material Service as manager of CCDD

1 operations. I manage two permitted CCDD  
2 facilities and two registered uncontaminated  
3 soil fill facilities in the Chicagoland area.

4 In the course of my duties, I primarily  
5 perform due diligence on construction sites. So  
6 I have done that for approximately -- well, I  
7 can't say approximately, but several thousand  
8 construction sites over the last 12 years, which  
9 is how long I have worked for the company. I  
10 have been involved in the rulemaking process  
11 actively, and I have also previous to Public Act  
12 96-1416 have been involved in industry best  
13 management practices developing and implementing  
14 them for CCDD.

15 I'm here today. I would like to  
16 present for the Board's consideration a  
17 compilation of analytical pH data for several  
18 sites throughout the Chicagoland area that I  
19 have gathered since July of 2010 through January  
20 of 2012.

21 I received this information as  
22 attachments to the IEPA soil certification  
23 forms, LPC 663 in particular, and these are  
24 forms that CCDD and USF operators are required

1 to collect from construction site owners or  
2 operators.

3 The pH data represents 53 separate  
4 construction projects that we have received or  
5 considered accepting material from throughout  
6 the Chicagoland area. They range from the  
7 northern suburbs like Wheeling to central in  
8 Hodgkins; south, Oak Lawn; west, Naperville and  
9 east in downtown Chicago. The average pH values  
10 from this data was 8.3.

11 From my experience and with regards to  
12 CCDD generation, Chicago area soils tend to be  
13 either pH neutral to pH alkaline, and I believe  
14 that using the maximum level concentrations  
15 based on the most acidic TACO pH based clean-up  
16 objectives is unrealistic and not indicative of  
17 soil material generated from construction  
18 projects in northeastern Illinois. Thank you.

19 MR. HENRIKSEN: If you would like to ask your  
20 question regarding the pH.

21 MS. LIU: Good afternoon. The pre-filed  
22 testimonies of Brett Hall, Annick Maenhout and  
23 Gregory Wilcox presented pH data along with  
24 average pH values.

1           We were wondering if you could please  
2           comment on recalculating those values in the  
3           manner that Mr. Wilcox had presented?

4           MR. HALL: Yes. John Hock was actually able  
5           to recalculate these pH values, and what he came  
6           up with was an average of 7.6 using the  
7           logarithmic pH scale.

8           MR. HENRIKSEN: And Mr. Hall, if you would,  
9           would you identify this document I'm handing you  
10          and tell me if that is the recalculated pH  
11          values that were produced by Mr. Hock following  
12          Dr. Roy's methodology?

13          MR. HALL: Yes. Yes, that's correct.

14          HEARING OFFICER TIPSORD: If there is no  
15          objection, we will mark this and enter it as  
16          a -- Table, Dates July 2010 through  
17          January 2012, Project Location, Data Points,  
18          Data Points and Units of pH superscript Plus Ion  
19          Concentrations.

20                    We will mark this as Exhibit 40.

21                    Seeing none, it's Exhibit 40.

22                                (Whereupon, Exhibit No. 40 was  
23                                marked for identification.)

24          MS. LIU: Mr. Hall, is this for your pH data

1       only, or for the rest of --

2               MR. HALL:  That one is just for Hanson  
3       Material Service data, correct.

4               MS. LIU:  Thank you.

5               MS. GLOSSER:  I have a question that I would  
6       actually ask all four based on your data.

7                       I am trying to understand the  
8       difference in the pH values between what's being  
9       reported from the STATSGO database in the  
10      summary of Illinois soil pH values that IEPA  
11      presented as Exhibit 25 where they show  
12      values -- I can't remember how many counties  
13      were in here; 25 counties were represented?

14               MR. MORROW:  Twenty-four.

15               MS. GLOSSER:  And they show a pH range from  
16      this data set as low as 3.6 to the maximum of  
17      8.4 with low numbers being 4.5 and 5.1 and in  
18      that range, and yet the data that has been  
19      presented here shows data points at a much more  
20      neutral and/or alkaline levels, and I'm  
21      wondering, can you explain the difference  
22      between the NRCS STATSGO data being so much  
23      lower in pH than what you are seeing from your  
24      actual soil samples?

1           MR. HALL: Well, I have an idea. But did you  
2 want to speak to that, Greg or John?

3           MR. WILCOX: I have a theory on it.

4           MS. GLOSSER: Okay, good.

5           MR. WILCOX: I'm Gregory Wilcox with Winston  
6 Engineering. I do consulting work for two  
7 quarries in the Chicagoland area, Bluff City  
8 Materials and Reliable Materials in Lyons.

9                   We also -- I also do consulting work  
10 for a lot of contractors, and one of the things  
11 that we did notice is the type of soil coming to  
12 the site is not black soil or top soil. We  
13 don't get the organic soils, which typically  
14 tend to have a lower pH, and I think Dr. Roy is  
15 going to testify to some of that to maybe help  
16 clear that up. One of the reasons we don't see  
17 that is that it is very expensive for  
18 contractors to haul topsoil and dispose of it at  
19 a CCDD site when generally they need that  
20 topsoil in their construction project to restore  
21 the site.

22                   The other thing that we caution all of  
23 our customers when they come to the sites is  
24 that organic soils will set off the PID meter.

1 The organic content will give us a false  
2 reading. That's one of our major sources of  
3 false readings, and per the law, if the PID  
4 meter does go off, it is not accepted as a CCDD  
5 site, which causes tremendous problems for the  
6 contractor, because now he is hauling this  
7 material back to his site and trying to figure  
8 out what to do with it.

9 So that's my one theory that I offer to  
10 you. I can't verify that 100 percent, but I do  
11 know that Dr. Roy's testimony will say that  
12 organic soils or the very topsoil will have a --  
13 can have a lower pH, and that's something I have  
14 not seen on our sites.

15 Should I go ahead and put my testimony  
16 in?

17 MS. TIPSORD: Sure.

18 MR. WILCOX: Just to supplement my testimony,  
19 again, I do -- I am a registered environmental  
20 engineer in the State of Illinois.

21 I have looked at 218 separate project  
22 sites and went to both the sites that I do  
23 review work for. That represents over 767 pH  
24 analyses. Typically, we see ranges between 7.7

1 and 8.8. We did have a couple that did go below  
2 7. Out of that 767, we had two, one at 6.7 and  
3 one at 6.88.

4 So it's my opinion that at a CCDD site  
5 it is very rare that we would see anything below  
6 7.0 come into the site. In addition to that, we  
7 did recalculate it -- John Hock did that for  
8 us -- doing the averaging. And again, the data  
9 I presented was an average of results and not an  
10 average of a cumulative result, but John did  
11 recalculate that, and at the two sites, the  
12 average was 7.8 and 7.77, which is really right  
13 in line with what we see as typical data there.  
14 And I have that.

15 MR. HENRIKSEN: Mr. Wilcox, I have a document  
16 I want to hand you.

17 Is this the recalculated pH values  
18 pursuant to Dr. Roy's methodology?

19 MR. WILCOX: Yes, it is.

20 MR. HENRIKSEN: From your two sites?

21 MR. WILCOX: Yes.

22 MR. HENRIKSEN: Part of the record.

23 MS. TIPSORD: Thank you very much. If there  
24 is no objection we will mark this. This is

1 another table. Across the top is REF, location  
2 city, number of data, range, average, minimum  
3 and minimum value H plus ion concentration.

4 We will mark this as Exhibit 41 if  
5 there is no objection.

6 Seeing none, it's Exhibit 41.

7 (Whereupon, Exhibit No. 41 was  
8 marked for identification.)

9 MR. HENRIKSEN: Thank you. I will then move  
10 to Annick Maenhout.

11 MS. MAENHOUT: My name is Annick Maenhout. I  
12 work for VCNA Prairie as the land manager. I  
13 have been working with CCDD facilities since  
14 1998 in a variety of facets.

15 The information that we gathered was pH  
16 data submitted as part of the LPC 663 form.  
17 Each 663 that the data was pulled from was  
18 signed by either a professional engineer or a  
19 professional geologist. We have 103 data  
20 points, with the lowest pH value being 7.19.

21 I apologize. I'm going to back up for  
22 a second. We operate four CCDD sites in the  
23 Chicagoland area; McHenry County, two in Kane  
24 County and one in Kankakee County. So we also

1 run a pretty vast range across the Chicago area.

2 The average of that -- of the 103 data  
3 points was 8.3. Per Dr. Roy's testimony and  
4 request by the Board to do -- to redo the  
5 averages in a logarithmic fashion, the pH  
6 average was altered to 7.97 from the original  
7 8.3.

8 MR. HENRIKSEN: Ms. Maenhout, is this a copy  
9 I am showing you of the revised pHs from Prairie  
10 through Dr. Roy's methodology?

11 MS. MAENHOUT: Yes.

12 HEARING OFFICER TIPSORD: Thank you very  
13 much.

14 If there is no objection, we will admit  
15 another table, Sample Data, Sample Data in H  
16 Plus Ion Concentrations as Exhibit 42.

17 Seeing none, it's Exhibit 42.

18 (Whereupon, Exhibit No. 42 was  
19 marked for identification.)

20 MR. HENRIKSEN: The last witness will be Mr.  
21 John Hock.

22 MR. HOCK: My name is John Hock. I work for  
23 Civil and Environmental Consultants, and I was  
24 asked to review the data from Hanson, from Bluff

1 City, Reliable Materials and Prairie relative --  
2 and evaluate it in addition to the previous  
3 testimony and the previous data we had provided  
4 relative to the maximum allowable concentrations  
5 for specific parameters of pH dependent values.

6 As each one of the previous witnesses  
7 indicated, all of the data was neutral to  
8 alkaline. I would like to just kind of clarify.  
9 In terms of how we recalculated the averages,  
10 basically, per the suggestion, we converted the  
11 pH values to the hydrogen ion concentrations and  
12 averaged those and then reconverted back to an  
13 average pH. In general it did -- it lowered, as  
14 it will, lowered the pH slightly, but not  
15 significantly relative to our conclusion that it  
16 was still a neutral or in the alkaline range.

17 The other quick clarification is that  
18 the data conversion that we did for Reliable  
19 Materials in Bluff City is actually a  
20 conservative calculation. For Hanson and for  
21 Prairie we had every data point. So we were  
22 able to convert each one individually and  
23 re-average them. For Reliable Materials in  
24 Bluff City, there was quite a bit more data, and

1 they had only provided a range. So when we  
2 converted, we actually used the lowest. So, for  
3 example, for some of the locations there may  
4 have been five data points. We didn't have each  
5 of the five. We had the range, the lowest and  
6 the highest. So we used the lowest just to be  
7 conservative.

8 We used that, converted it, and again  
9 averaged all the locations and came up with the  
10 revised number. So I just wanted to point out  
11 that the data for those two sites was a  
12 conservative calculation.

13 This data is very consistent with the  
14 previous data that we had reviewed and provided  
15 upon testimony. The previous data, just to  
16 quickly recap, was boring data. There was 44  
17 borings from four different facilities. Again,  
18 they had an average pH of 7.3. It generally  
19 ranged higher than that.

20 We also reviewed data from First  
21 Environmental Laboratories who does a large  
22 amount of soil analyticals in and around the  
23 Chicagoland area. All of that data is not  
24 material that went to CCDD facilities, but just

1 soil for various purposes. And again, that data  
2 also indicated neutral to alkaline pHs.

3 So based on all of that, my conclusion  
4 was that, you know, basing the maximum allowable  
5 contaminant levels for the chemical specific pH  
6 dependent parameters is overly conservative and  
7 completely inappropriate. What we suggested and  
8 what I believe is appropriate is using a low  
9 value that's in that 6.25 range and above, and  
10 that that's what the MAC for those chemical  
11 specific pH dependent values should be.

12 HEARING OFFICER TIPSORD: Are there any other  
13 questions for Aggregate Producers.

14 MS. LIU: Mr. Henriksen, earlier this morning  
15 we had asked Mr. Clay of the Illinois  
16 Environmental Protection Agency Question No. 3  
17 of our hearing officer order questions. And on  
18 Part B and Part C he suggested that the industry  
19 might be able to better provide answers to those  
20 questions.

21 I was wondering whether or not the  
22 Illinois Association of Aggregate Producer  
23 members would be interested in looking over  
24 those questions and perhaps providing the Board

1 with some information on that.

2 MR. HENRIKSEN: We would be happy to, and  
3 we'd submit it as post-hearing comments.

4 MS. LIU: We appreciate that. Thank you very  
5 much.

6 MS. TIPSORD: Mr. Wight, you had a question.

7 MR. WIGHT: Yes. It's just a question or two  
8 to clarify a couple things.

9 Mr. Hock, in your brief statement just  
10 now you suggested starting with the range in the  
11 6.25 and above that for establishing MACs for pH  
12 sensitive constituents. So just to clarify a  
13 little bit, are you talking about -- are you  
14 familiar with the Table C and the TACO rules  
15 which those values are based on? They -- it  
16 ranges from about 4.75 up to 9, the entire  
17 table, and we had suggested using the most  
18 conservative values on either end of the table.

19 MR. HOCK: I am familiar with the table, yes.

20 MR. WIGHT: So is your suggestion that you  
21 would use a truncated version of the table from  
22 6.25 and above, or are you suggesting just using  
23 the one column of the table based on the 6.25  
24 range and selecting the values within that

1 single column as the MACs?

2 MR. HOCK: I am suggesting a truncated  
3 version of the table. So it would be the lowest  
4 value starting from the 6.25 on the low end  
5 value; so whatever the lowest value is in all of  
6 those ranges.

7 MR. WIGHT: All right. I also have a  
8 question for each of the other witnesses; Mr.  
9 Hall, Mr. Wilcox and Ms. Maenhout. It's just a  
10 little clarification on your data so we are  
11 clear about that.

12 Mr. Hall, your testimony -- and I  
13 believe you repeated this as part of your oral  
14 testimony -- suggests that your data were  
15 received from July 2010 through January 2012?

16 MR. HALL: That's correct.

17 MR. WIGHT: And that it comes from  
18 attachments to the IEPA soil certification  
19 forms, which would be the 663 forms?

20 MR. HALL: That's correct.

21 MR. WIGHT: And then the data represents 53  
22 separate construction project locations?

23 MR. HALL: That's correct.

24 MR. WIGHT: My question is, is that the

1 entire selection of data that you had within  
2 that time period, or are these data a subset of  
3 all of the 663s that you received during that  
4 time frame?

5 MR. HALL: That is the entirety of the 663  
6 forms that we received during that time period.

7 MR. WIGHT: And my question for Mr. Wilcox  
8 and Ms. Maenhout would be the same.

9 Are those all the -- summarize all the  
10 663 forms received during the time period or  
11 some subset of those?

12 MS. MAENHOUT: That is every 663 that had  
13 analytical data with pH analyzed for attached  
14 during that time period.

15 MR. WILCOX: It's the same for me also,  
16 except I actually -- I think when I looked back,  
17 we did go into February a little bit. So it's  
18 not January 2012. It's -- we had some data  
19 points in February of 2012.

20 MR. WIGHT: Fine, thank you. That's all I  
21 have.

22 MR. HALL: I guess I should clarify that,  
23 too. It was the 663 forms for which we did have  
24 data, that we had pH data.

1 MR. WIGHT: Thank you very much.

2 HEARING OFFICER TIPSORD: Anything else for  
3 the Aggregate Producers.

4 Thank you very much. We will move on  
5 to the CWLP. We will have Mr. Metz sworn in.

6 (Whereupon, the witness was duly  
7 sworn.)

8 MS. TIPSORD: It if there is no objection, we  
9 will mark the pre-filed testimony of Mr. Pat  
10 Metz as Exhibit 43.

11 Seeing none, it's Exhibit 43.

12 Mr. Metz, did you want to give a brief  
13 summary or just go right to questions?

14 (Whereupon, Exhibit No. 43 was  
15 marked for identification.)

16 MR. METZ: Sure. I appreciate that.

17 Thanks for the opportunity to listen to  
18 my comments. I do have an additional document  
19 that I would like to enter into the record, if  
20 that would be okay, and this is a copy of the  
21 actual text that I have prepared that I  
22 referenced in my pretrial comments for the  
23 proposed rule.

24 HEARING OFFICER TIPSORD: Mr. Metz has handed

1 me Suggested Amendments to Section 1100-205, Pat  
2 Metz, City of Springfield, City Water Light and  
3 Power March 13, 2012.

4 If there are no objections, we will  
5 mark that as Exhibit 44.

6 Seeing none, it's Exhibit 44.

7 (Whereupon, Exhibit No. 44 was  
8 marked for identification.)

9 MR. METZ: I will have additional copies for  
10 anybody that's interested.

11 My name is Pat Metz, and I am a  
12 licensed professional engineer with City Water  
13 Light and Power, which is a municipal utility in  
14 Springfield serving the Springfield residents  
15 with electricity and water. And one of my  
16 responsibilities is to enforce the waste  
17 regulations for the utility.

18 And in reviewing the proposed  
19 regulations, it's my belief that they are very  
20 impractical for the type of CCDD material that  
21 we generate in the course of excavating for  
22 water lines and electric lines.

23 And to briefly summarize my testimony,  
24 I think it's impractical for a number of

1 reasons. One, the proposed ASTM standard has  
2 basically 39 items that a person would need to  
3 complete, and that's, I believe, unwarranted and  
4 an unnecessary expense. Based on the nature of  
5 what we are generating, which is material that's  
6 in the ground already, and assumed not to be  
7 contaminated and would not be dug up if it  
8 weren't for the water line or the electric line,  
9 the expense to our utility alone represents a  
10 cost of \$170,000 annually, and this is based on  
11 generating 8,000 tons a year of CCDD material.

12 While we do recycle the concrete and  
13 the asphalt, there is quite a bit of material  
14 that we are unable to find a proper home to, and  
15 prior to the law that was passed in 2010, we  
16 were disposing of this material in a licensed  
17 IEPA quarry.

18 And this in my mind was a very  
19 environmental and proper thing to do with this  
20 material, and it's my hope that after the  
21 rulemaking we will be able to continue to do  
22 this. One of the problems in the event that we  
23 would have to sample the material is the fact  
24 that in addition to the cost of an estimated

1     \$1,500 to sample the material, is the fact that  
2     it's going to take two weeks to actually have  
3     that material analyzed.

4             In a typical year we have 80  
5     excavations, and a typical excavation may  
6     generate three or four truck loads of material.  
7     In this two-week period when we are having the  
8     material analyzed, we have to find a home for  
9     the material that meets IEPA regulations.  
10    That's a concern for us.

11            Since 2006 the material that we take to  
12    the quarry has been checked with a  
13    photoionization detector, which we feel is an  
14    additional safeguard that's appropriate and  
15    certainly warranted, but we feel that that has  
16    been adequate, because I personally am not aware  
17    of any environmental situations that have been  
18    created as a result of taking our CCDD material  
19    to a particular quarry.

20            One of the suggestions in the proposed  
21    language that I also suggested was language that  
22    would allow a utility representative sign off on  
23    the excavation site as being uncontaminated CCD  
24    material as opposed to the property owner,

1 because in most cases of utilities, the occupant  
2 or the owner of the street is not the person  
3 that's actually digging the excavation.

4           So I am thinking that some legal issues  
5 could be resolved by authorizing the utility  
6 representative to certify that the soil is  
7 uncontaminated. And maybe one of the most  
8 important aspects or concerns that I have over  
9 this whole issue is the environmental impact  
10 that I feel that this legislation and  
11 corresponding rulemaking will have on our  
12 landfills.

13           As I indicated right now, we are  
14 annually taking about 8,000 tons of CCD material  
15 to a landfill, because we cannot comply with the  
16 requirements that are in existence. And this to  
17 me is contrary to the environmental hierarchy of  
18 reduce, reuse and recycle. I know EPA's latest  
19 landfill report indicated that by the year 2035  
20 our landfill space will be used up.

21           So I would appreciate appropriate  
22 consideration to this issue and consideration  
23 for it, an exemption for utility operations such  
24 as City Water Light and Power. Thank you.

1 HEARING OFFICER TIPSORD: Thank you very  
2 much.

3 Does the Agency have a copy of the  
4 suggested language? And there are additional  
5 copies of the suggested language if anyone would  
6 like them.

7 MS. GLOSSER: Mr. Metz, I have a question.

8 On Page 4 of your pre-filed testimony,  
9 you indicate and it seems to be confirmed in  
10 your handout that you have here, that you would  
11 like to incorporate an exclusion for CCDD  
12 material generated in association with water and  
13 electrical utility maintenance and repair when  
14 no condition exists that presents an  
15 environmental risk.

16 I guess my question is, does your  
17 utility have protocols and review processes in  
18 place that get at some of the same questions  
19 that are being asked by ASTM standards? If not,  
20 how would you come to that determination that  
21 there is nothing that presents an environmental  
22 risk?

23 MR. METZ: Actually, I have no problem with  
24 the ASTM standards being used as a guidance, and

1 that's what we basically train our crews, too,  
2 as far as looking at the material and looking at  
3 the environment around it and smelling for  
4 gasoline, diesel fuel, looking for sewage, well,  
5 using their senses.

6 So I don't have a problem using that as  
7 a guidance, that particular standard.

8 MR. RAO: I have a question, Mr. Metz.

9 With a certification from a utility  
10 company, who signs off on the certification? Is  
11 that you as a professional engineer, or is it a  
12 staff member who certifies it?

13 MR. METZ: Of course, this is just proposed.  
14 So it would be a management type person. It  
15 wouldn't necessarily be the backhoe operator,  
16 but it would be -- it might not be a  
17 professional engineer, but it would be the  
18 supervisor of the crew.

19 MR. SYLVESTER: Steve Sylvester with the  
20 Illinois Attorney General's Office.

21 I haven't had a chance to look at your  
22 proposed amendment, but one point of curiosity.  
23 With the certifications you said that the  
24 personnel would be able to do visual, you know,

1 observations.

2           What do you propose for inorganic  
3 metals, to be able to certify those?

4           MR. METZ: I guess my position would be that  
5 for, you know, several years we have not had any  
6 standards at all for this. And the chance that  
7 there could be inorganic metals, in my mind, is  
8 slight based on my experience from -- based on  
9 my experience.

10           So, you know, it's possible that there  
11 could be, but I think the over regulation of  
12 this material is going to be detrimental to the  
13 environment by using up landfill space that --  
14 you know, just to make sure that this material  
15 is 99.9 percent uncontaminated in the first  
16 place. You know, it does not contain, you know,  
17 inorganic metals to the extent allowable.

18           MR. SYLVESTER: Just a follow-up question.

19           Just based on your experience, has the  
20 company done testing for inorganic metals and --

21           MR. METZ: No, we haven't.

22           MS. TIPSORD: Mr. Wight.

23           MR. WIGHT: Yes. Mr. Metz, I appreciate that  
24 you have submitted some suggested language to

1 the Board, but you also, I believe, suggested in  
2 your testimony that you were comfortable with  
3 the language, as originally proposed by the  
4 Agency, following the amendment to the concept  
5 of potentially impacted property and leaving the  
6 general certification to the discretion of the  
7 professional.

8 So you would also be happy then if the  
9 Board adopted the Agency's proposed language as  
10 well as the language you have just proposed  
11 today?

12 MR. METZ: Yeah. My preference would be the  
13 language that I proposed today.

14 MR. WIGHT: Okay.

15 MR. RAO: Just as a follow-up, under the  
16 Agency's proposal in typical excavations that  
17 you come across with your utility will a  
18 certification -- you said since you -- in most  
19 cases you will not be the owner of the property,  
20 then will a certification be done by a PE or a  
21 PG under the Agency's proposal?

22 MR. METZ: As far as not being the owner of  
23 the property? I mean, in our case with City  
24 Water Light and Power we are the owner of the

1 property. I mean, the city owns the property,  
2 and our utility is owned by the city. So it's  
3 one and the same.

4 So your question is whether a PE would  
5 necessarily have to sign off on that?

6 MR. RAO: Yes.

7 MR. METZ: My answer would be that's not  
8 required under my proposal, as it has not been  
9 in the past.

10 MS. GLOSSER: Can I ask a question of Mr.  
11 Wight?

12 MS. TIPSORD: You can ask a question, but as  
13 an attorney, he may not want to answer. He may  
14 just defer to someone else.

15 MS. GLOSSER: My question is, are you  
16 concerned about the variability of  
17 certifications from the source sites, source  
18 operator or owner if you don't provide specific  
19 standards for what to review by? I mean, if you  
20 leave it up to the professional, are you  
21 concerned about the variability and what kind of  
22 responses you may get?

23 Vulcan, for example, I believe in  
24 testimony from last fall reported a high degree

1 of variability in what they were seeing in soil  
2 certification responses; various degrees of  
3 professionalism and accuracy. If you don't give  
4 people guidance to say, this is kind of what we  
5 are looking for in your assessment, is there any  
6 concern at all that you would get one that would  
7 be really good and then one that would say, oh,  
8 yeah, this is fine, it looks fine to me, and  
9 then just sign off on it?

10 MR. CLAY: Doug Clay with the Illinois EPA.

11 There is going to be some variability,  
12 and it is based on professional judgement. So  
13 one professional may require three  
14 representative samples, and one may require one  
15 and one may do a review of the use of the  
16 property and have more constituents that they  
17 sample for than others.

18 So there is some variability, but  
19 again, we are relying on the professionals,  
20 which we do in a number of areas regarding  
21 environmental laws. So we are comfortable with  
22 that. I might add that with regard to Mr.  
23 Metz's testimony, Mr. Rao, what we would  
24 normally see from a utility is if they were

1 doing a water main and had an easement across  
2 three properties and were doing that, we would  
3 normally see the 662 form, which is the property  
4 owner certification for those three properties  
5 from the property owner.

6           So that's what we would normally see.  
7 They wouldn't have to have a professional in  
8 there, but the property owner then could just  
9 certify that it's not a potentially impacted  
10 property based on the definition that we had  
11 proposed.

12           HEARING OFFICER TIPSORD: Any other questions  
13 for Mr. Metz.

14           MS. MANNING: For purposes of enforcement,  
15 what is the Agency going to look at to insure  
16 that they are relying and they signed off on the  
17 judgment of the LE and the LG? In other words,  
18 what enforcement standards will the Agency look  
19 for to determine that everything was done  
20 according to the rules?

21           MR. CLAY: I mean, if we saw a pattern from,  
22 for example, the professional engineer or  
23 professional geologist certifying things that  
24 were either rejected by the facility or that we

1 actually went out there and sampled for and  
2 compared to the MAC table, then that may result  
3 in a referral to the Department of Professional  
4 Regulation with what used to be -- the  
5 Department of Financial and Professional  
6 Regulation, we may consider a referral to them.

7           The mere fact if we go out and take a  
8 sample of soil that was certified, it doesn't  
9 mean that the consultant did anything wrong or  
10 there is any improper certification there. It  
11 just means that the sample we took did not pass,  
12 and that would then have to be removed.

13           Does that answer your question?

14           MS. MANNING: I think it does partially.

15           The Agency would go behind potentially  
16 an LG certification, but only if they had reason  
17 to be suspect as to that particular professional  
18 judgment and not on the basis of testing  
19 necessarily or -- and if a licensed professional  
20 engineer or geologist were to follow ASTM  
21 guidance or ASTM, that kind of thing, the Agency  
22 doesn't plan to go behind that judgment on the  
23 certification?

24           MR. CLAY: No. We do not plan on

1 second-guessing the professionals. If we took a  
2 sample, though, ultimately I guess it would fall  
3 to the fill operation to be responsible for  
4 that.

5 MS. MANNING: Thank you.

6 HEARING OFFICER TIPSORD: Any other questions  
7 for Mr. Metz.

8 MR. METZ: I guess I may have one question  
9 maybe for the Agency, and in reviewing the  
10 testimony during the discussion of Senate Bill  
11 3721, one of the supporting arguments was that  
12 90 to 95 percent of the quarries in the State  
13 are not registered with the EPA.

14 And so that to me served as a basis for  
15 passing this law back in 2010, and I guess my  
16 question is, is there going to be an effort to  
17 increase the enforcement of these noncompliant  
18 CCDD facilities?

19 MR. CLAY: Whose testimony were you referring  
20 to?

21 MR. METZ: I don't have the particular  
22 representative or senator, I should say that --  
23 but that's in the -- it wasn't a sponsor, but  
24 somebody that would cosponsor the -- of the

1 bill. I can get you that information.

2 MR. CLAY: Yeah. I'm not familiar with those  
3 figures. I mean, all CCDD facilities were  
4 permitted, and as we would come across one that  
5 was not permitted, you know, that would be a  
6 violation.

7 What the 2010 law does is bring in the  
8 facilities that are only accepting soil and not  
9 the rubble and the debris. So those we didn't  
10 know how many they were, but that's part of what  
11 this -- the legislation and subsequent rules  
12 require is the notification.

13 So I'm not sure where the figures that  
14 you talked about came from.

15 MR. PURSEGLOVE: I might add to that -- this  
16 is Paul Purseglove -- that one of the questions  
17 that the field inspectors will ask when we are  
18 doing inspections at the sites that are  
19 permitted or that have filed registrations is,  
20 are you aware of any location near you that is  
21 accepting this material? Because it is a -- you  
22 know, the business interests for the people who  
23 have obtained permits or who have filed their  
24 registrations are such that they don't want

1 unregistered unpermitted sites operating.

2           So we gather some intelligence during  
3 our inspections, and if we are aware of a site  
4 that's operating without a license, without the  
5 permit or without their required notification,  
6 that would prompt a field inspection to that  
7 site and an enforcement if it was necessary.

8           HEARING OFFICER TIPSORD: Anything further?

9           Thank you very much, Mr. Metz.

10           We will move on then to Mr. Huff and  
11 Dr. Fernandez.

12                           (Whereupon, the witness was duly  
13                           sworn.)

14           MS. TIPSORD: If there is no objection, we  
15 will mark the pre-filed testimony of James Huff  
16 as Exhibit 45.

17           Seeing none, it's Exhibit 45.

18                           (Whereupon, Exhibit No. 45 was  
19                           marked for identification.)

20           MS. TIPSORD: And then Mr. Huff also handed  
21 me copies of two of the manuals in response to  
22 the Board's pre-filed questions that we put out  
23 on March 9th. The first is Chapter 27  
24 Environmental Surveys Bureau of Design and

1 Environment Manual. If there is no objection,  
2 we will mark that as Exhibit 46.

3 And seeing none, it's Exhibit 46.

4 (Whereupon, Exhibit No. 46 was  
5 marked for identification.)

6 MS. TIPSORD: And then the other manual is  
7 Environmental Studies Manual Illinois Tollway,  
8 Prepared For the Illinois State Tollway  
9 Authority, July 2001, by Consoer Townsend  
10 Envirodyne Engineering, Inc.

11 If there is no objection, we will mark  
12 that as Exhibit 47.

13 Seeing none, it's Exhibit 47.

14 (Whereupon, Exhibit No. 47 was  
15 marked for identification.)

16 MS. TIPSORD: And then Mr. Huff, did you want  
17 to give us a brief summary.

18 MR. HUFF: If I could, please.

19 Thank you, I am here today with Dr.  
20 Fernandez representing a group of government  
21 agencies basically that are involved in the  
22 transportation that I have referred to as the  
23 Illinois Transportation Coalition, which  
24 includes the tollway, all of the counties except

1 for Cook County and the Chicagoland area, and  
2 approximately ten cities and communities.

3 I'd just first start and say that we  
4 support the Board's removal of the proposed  
5 groundwater monitoring requirements on CCDD fill  
6 operations. I think this is a significant  
7 relief to the industry and more importantly, it  
8 will result in this remaining an active industry  
9 in Illinois. But the sole remaining large issue  
10 in my mind is the use of the pH from 4.5 to 4.74  
11 in setting the maximum allowable concentration  
12 or MAC for the inorganics and ionized organics.

13 My fear is that as John Hock has  
14 testified, that 82 percent of the samples that  
15 he took failed the current proposed MACs inside  
16 these CCDD facilities and also further indicated  
17 he thought those were representative of what  
18 historically is generated in that industry.

19 So the good news is we are going to  
20 maintain this industry. The bad news is they  
21 are going to lose -- 82 percent of their market  
22 is going to have to go somewhere else, and  
23 that's a concern. We talked at the last hearing  
24 about the economic impact. My client said, we

1 really need to address this. The Agency was  
2 kind enough to provide me with how much CCDD  
3 material went in 2011, and that was 3.4 million  
4 cubic yards of CCDD and uncontaminated soil.

5 I quarried my clients, and \$3.50 per  
6 cubic yard was a typical range that's being  
7 charged today in the industry, and so you can  
8 multiply that 3.50 by the 3.4 million pounds,  
9 and this industry is generating about \$12  
10 million of revenue a year.

11 If you then take the -- Mr. Hock's  
12 82 percent of this, just on the metals alone,  
13 and that is redirected to the landfills, that's  
14 going to cost \$80 million a year for that  
15 82 percent to go.

16 So the incremental cost on just the  
17 disposals, approximately \$71 million per year --  
18 we have fewer landfills up here than we do CCDD  
19 facilities. So there will be more trucking  
20 costs, plus the additional analytical. You are  
21 looking at on the order of \$100 million a year  
22 economic impact as the regulations are proposed  
23 today with a low minimum pH.

24 And using the Elgin O'Hare Expressway

1 economic data, that translates into a billion  
2 dollars over ten years, which is the equivalent  
3 of lost jobs in the construction industry and  
4 21,600 man years of jobs or 2160 a year. That's  
5 very significant to the Illinois economy.

6 I'd point out too that up until the  
7 last hearing I don't think the regulated  
8 community understood that the MAC was to be  
9 based on this minimum pH, and the standard  
10 practice was to measure the pH of the soil at  
11 the time we collected samples and then compare  
12 those to TACO. So it was only in late 2011 that  
13 the industry understood what the intent was in  
14 the proposal that we were always to use that low  
15 pH instead of the actual pH of those samples.

16 Looking at the record on that pH and  
17 how that was established, you heard some  
18 testimony today. I think, on the Agency's part  
19 they are going to go back and look at that,  
20 which I would strongly encourage. When we run  
21 across these low pHs, they tend to be associated  
22 with a bog. Volo bog is a good example up here  
23 and then down in Southern Illinois you've got  
24 some swamps down there, and typically they are

1 attributed to where you've had the nutrient  
2 leaching and the production of the volatile  
3 organic acids that happen.

4           And we don't necessarily see that in  
5 the wetlands up here. It's more truly in the  
6 bog type areas where you see these pHs. And all  
7 of these bogs, much like the swamps, they are  
8 highly protected deemed irreplaceable resources  
9 to the State and to the federal government. The  
10 U.S. Corp of Engineers would never issue a  
11 permit for the removal of that kind of material.  
12 So the base -- a MAC on a soil that basically is  
13 deemed irreplaceable is technically, I believe,  
14 an over simplistic and flawed approach.

15           We have talked a little today also  
16 about the logarithm scale of the soil pH,  
17 because it's just not a matter of if you have a  
18 low pH it's going to stay there, and there is  
19 clearly buffering capacity in these quarries  
20 just by the nature of those, and Dr. Fernandez  
21 will talk a little more about that.

22           And John Hock talked about the alkaline  
23 pH side. We just heard testimony on that from a  
24 number of the quarries that we have had here as

1 well. So if you go back and you compare these  
2 MAC proposed versus what would be acceptable in  
3 your backyard, it leads in my mind to a very  
4 troublesome kind of conclusion.

5           If you had a pH in your backyard that's  
6 between 6.25 and 6.64, you could have 5.2  
7 milligrams per kilogram of cadmium, but to put  
8 that same soil on a CCDD, that cadmium has to be  
9 at one milligram per kilogram, and the same with  
10 lead where 107 would be acceptable in your yard  
11 versus 23 to go into a CCDD facility based on  
12 that low pH. And then mercury, you would be  
13 able to have 0.89 milligrams per kilogram in  
14 your backyard and that would be deemed safe for  
15 residential use, but to take that into the  
16 quarry at that low pH, and it comes out at 0.01.

17           So there you've got a dichotomy between  
18 what we deem as safe for a backyard. It's 89  
19 times higher than what we think is acceptable in  
20 a quarry type material. So I would encourage  
21 that just with this economic impact and from a  
22 technical perspective that the Board really go  
23 back and look at the technical justification  
24 behind the minimum pH.

1           And then one of the items I proposed  
2           was on the -- if we are getting pH data on the  
3           form 663 -- not in all cases if the professional  
4           engineer or geologist has signed off, but on a  
5           lot of those it would be pretty simple to run a  
6           pH test. Whether the generator of that material  
7           is required to run that or the quarry would run  
8           that is not a big deal, and you could let the  
9           marketplace decide that. It would be pretty  
10          easy to just put a condition on that no quarry  
11          can accept a material with a pH of less than  
12          6.25 and then let the quarry figure out how they  
13          are going to make sure that that happens on  
14          there.

15                 We have talked also this morning about  
16          the due diligence, and as it was noted in some  
17          of the questions that the ASTM procedures --  
18          that really it's the first two steps of those  
19          that are historically done as part of the due  
20          diligence. So I would encourage the Board to  
21          narrow the requirements on the due diligence  
22          aspect from a full Phase 1 environmental site  
23          assessment to the record search and the site  
24          reconnaissance, and the record search would

1 include the historical.

2           And then finally, the grab versus  
3 composite sample, I testified on this before.  
4 The Board noted that to be conservative they  
5 felt that the grab samples were important,  
6 what -- and where we have potentially impacted  
7 properties maybe grab samples are appropriate.  
8 My concern is that in the marketplace  
9 today there are a lot of quarries who have said,  
10 I don't care if you have a Form 662 or 663. I  
11 want analytical, and those are the ones that --  
12 we heard in Springfield where they found it too  
13 costly to really go through all the analytical  
14 testing.

15           What's pretty standard practice is that  
16 all the public works departments, the gas  
17 utilities, the electric utilities, they bring  
18 that back to their yards. Then when they have a  
19 pile depending on how much area they have, it  
20 could be 100 cubic yards or 600 cubic yards. We  
21 segregate those for residential from the  
22 industrial/commercial, but even on the  
23 residential then, we have to test that pile.  
24 And it makes no technical sense to me to take a

1 single grab sample out of a pile instead of a  
2 representative composite sample of ground in the  
3 pile.

4           So maybe for PIPs grab samples are  
5 okay, but I would encourage the Board to put in  
6 the language that where you don't have  
7 potentially impacted properties it would be  
8 appropriate to utilize composite samples. It  
9 would help everybody in the industry. That  
10 completes my summary.

11           HEARING OFFICER TIPSORD: We will go ahead  
12 with Dr. Fernandez and then take questions from  
13 the panel.

14           DR. FERNANDEZ: Okay. Very good. So my  
15 employer is the University of Illinois. I am an  
16 assistant professor there. My area of expertise  
17 is soil fertility and plant nutrition. And the  
18 testimony that I filed is regarding mostly the  
19 pH issue. And I really question the validity of  
20 this approach of using the lowest pH found in  
21 Illinois to the determine what will be a maximum  
22 allowable concentration.

23           And the reason for that is basically  
24 twofold. One is the potential of finding those

1 low PHs is pretty limited as has been described  
2 today. In addition, I -- in my testimony I  
3 mentioned a study that we conducted -- that I  
4 conducted in the last few years looking at  
5 agricultural soil specifically, looking at the  
6 top seven inches of the soil. These were  
7 basically corn fields across Illinois. We took  
8 samples from 51 different counties. There was a  
9 total of 567 samples, and these were random  
10 fields so we weren't biased in results in any  
11 way.

12 We were just collecting these samples  
13 for a fertility determination, and one of the  
14 parameters that we looked at was the soil pH,  
15 and out of those 567 samples we found only one  
16 sample that had a pH of 4.74. That was the  
17 lowest value. The next two values were 4 --  
18 let's see and find it here -- 4.96 and a 5.14.  
19 Those were the next few lowest values.

20 And then when we looked at the mean and  
21 the median, the mean was 6.72 and the median  
22 value was .6.71. Now these fields where we  
23 sampled were basically random fields. We are  
24 pretty confident this is a pretty good

1 representation of what the pH of the soils in  
2 Illinois would be for agricultural purposes.  
3 And we have about 23 million acres of  
4 agricultural land in the State.

5           So if we take that one sample that  
6 would fall within the range that the Agency is  
7 proposing for these maximum allowable  
8 concentrations, it would represent 0.18 percent  
9 of the agricultural land surface area in  
10 Illinois. So you can see that it's a very  
11 limited amount. The other concern that I  
12 have -- and by the way, these samples were from  
13 the top seven inches of the soil, which if we  
14 looked at an excavation, it will be biased in  
15 the results towards very acidic pHs, because in  
16 Illinois as you go down in the soil profile, the  
17 pH is increased because of the carbonate  
18 presence in the soil.

19           We were discussing today earlier the  
20 issue of variability, and one of the reasons why  
21 there is so much variability -- I mean, there is  
22 a lot of inherent variability in soils, but it  
23 has to do with the formation, the process that  
24 the soil forms. As you move west in Illinois --

1 as you move west, the depth to carbonate  
2 increases. This is because during the formation  
3 of many of the soils here in Illinois, materials  
4 from the Mississippi River were blown to -- on  
5 top of the these carbonates, okay, and so as we  
6 move east, that depth to carbonates decreases.  
7 So basically in this area of the State, Cook  
8 County and eastern parts of the State, the depth  
9 to carbonate is much lower. And carbonate is  
10 basically what buffers the pH of the soil.

11 Okay. So again, if we take only a  
12 seven-inch depth sample or a shallow sample, we  
13 will be biased in results towards more acidic  
14 pHs than the actual when we go deeper.

15 The other reason I question the  
16 approach of using these lowest pH levels found  
17 in the State is that we are not accounting for  
18 the buffering capacity of the these CCDD  
19 facilities. These facilities were basically  
20 created by excavating materials that are used in  
21 agriculture for the most part or a large part of  
22 it to maintain adequate pHs for crop production.  
23 And so we have a lot of carbonate presence in  
24 these materials and mostly calcium carbonate or

1 calcium magnesium carbonate. And the  
2 equilibrium pH of carbonate is 8.2.

3           So we have a huge amount of these  
4 carbonates present in these facilities, that  
5 even if we put a soil that has a somewhat acidic  
6 pH, the buffering capacity of these materials  
7 will basically -- even if something gets -- a  
8 metal gets diluted or dissolved, I mean, once it  
9 reaches an area where there is carbonate, the pH  
10 will be increased, and that material will  
11 basically precipitate.

12           So it will not stay in the solution.  
13 Let's see. That's -- yes. That's all regarding  
14 the pH conditions.

15           I think, again, that using an approach  
16 of looking at the pH of 6.25 or higher would be  
17 a more appropriate label of -- for these  
18 materials, because again, it will -- it will be  
19 more representative of the soils that we have in  
20 Illinois, and we also need to consider the  
21 buffer pH in these facilities.

22           The other point I would like to testify  
23 or talk about as I mention in my testimony is  
24 these grab versus composite samples and any --

1 and I'm talking from an agricultural background.  
2 Any person that goes out to a field to take a  
3 sample knows that collecting one sample with few  
4 composites will be more variable than collecting  
5 fewer samples with more composites.

6           Okay. When we reduce the number of  
7 composites in a sample, we increase the  
8 variability. Basically what we do is we reduce  
9 our -- our confidence that that value is  
10 representative of what we are looking at. So  
11 while I believe that a grab sample may be useful  
12 in some situations to determine the variability  
13 of pH or other constituents and may be  
14 appropriate in some situations, for the purposes  
15 of disposing of some of these materials, I don't  
16 see the benefits, because what we are interested  
17 in is to see if this materials will have an  
18 impact. Are they going to be impacting in water  
19 quality.

20           So as I mentioned earlier, we are not  
21 so concerned about the specific pH of a small  
22 fraction or a fraction of the soil, but we are  
23 more interested in the pH as a whole, because  
24 the water that will maybe dissolve some of these

1 metals as it moves through and encounters pHs  
2 that are higher than where it was low enough to  
3 dissolve a metal, it will basically precipitate  
4 that metal.

5           So I think it's more important for us  
6 to understand the pH of the soil or that  
7 material as a whole rather than being focused on  
8 a small fraction of the soil, which is what you  
9 would want to do if you go and do a grab sample  
10 approach.

11           Then, let's see. I believe that's all  
12 I have to say.

13           HEARING OFFICER TIPSORD: Thank you, Dr.  
14 Fernandez.

15           If there is no objection, we will mark  
16 the pre-filed testimony of Dr. Fernandez as  
17 Exhibit 48.

18           Seeing none, it's Exhibit 48.

19                           (Whereupon, Exhibit No. 48 was  
20                           marked for identification.)

21           MS. TIPSORD: And with that, are there any  
22 questions for Mr. Huff or Dr. Fernandez?

23           Go ahead. State your name and who you  
24 represent.

1 MR. QUINN: Josh Quinn from Vulcan Materials.

2 Mr. Huff, I am referring to Page 7 on  
3 your pre-filed testimony in the last paragraph.  
4 It reads, A simple solution to the Board's  
5 concern is to require pH testing of soil brought  
6 into these facilities. This is a simple test  
7 that could even be conducted at the facilities  
8 as Vulcan does on it as it places the material.

9 Can you describe a frequency of that  
10 particular testing method that you are  
11 proposing?

12 MR. HUFF: I would say it would be exactly  
13 the same as when you accept material in. So if  
14 it's a professional engineer or professional  
15 geologist that has signed off, he would take  
16 whatever he deems to be an appropriate number of  
17 samples, whether that's one sample, that would  
18 approve that site, and if you are doing it at  
19 the receiving facility, I would say the same  
20 thing. You would want to check one of the first  
21 loads that came in from that construction  
22 project.

23 MR. COBB: I have a question.

24 Mr. Fernandez, Dr. Fernandez, most of

1 your testimony was regarding soils that evolved  
2 from underlying carbonate bedrock conditions.  
3 Based on the information from our field manager  
4 or regional field offices, many of these sites  
5 are not necessarily in dolomitic or limestone  
6 quarries. We are looking at sand and gravel  
7 quarries. So, therefore, the soils that were  
8 developed from the underlying conditions are not  
9 derived from carbonate materials.

10 So I just wanted to bring up that as a  
11 question to you. Your testimony was primarily  
12 in relation to carbonate environments.

13 DR. FERNANDEZ: That's correct. And while  
14 there are some sites that have sand deposits,  
15 those are again, not extremely common in  
16 Illinois. Most of the soil that in developed  
17 Illinois --

18 MR. COBB: These six counties that I showed  
19 where these principal aquifers are primarily  
20 overlain by sand and gravel deposits --

21 MR. FERNANDEZ: Yes. And the gravel will  
22 have a pretty high pH as well. So you will have  
23 quite a bit of a buffering capacity just like we  
24 would have in a quarry with calcium carbonate.

1 MR. COBB: Coming from sand and gravel?

2 DR. FERNANDEZ: From the gravel, mostly, and  
3 not so much the sand.

4 MR. COBB: And from sand?

5 DR. FERNANDEZ: The sand doesn't have very  
6 much buffering capacity.

7 MR. COBB: The sand is composed of silicon  
8 dioxide. So you really wouldn't have any  
9 calcium carbonate in a very sandy environment.

10 DR. FERNANDEZ: Not very much, but my point  
11 in that would be that if we bring materials that  
12 have -- the pH of the materials that are  
13 typically disposed of have higher pHs than the  
14 soil that was originally there that was  
15 excavated out of those sites.

16 MR. MORROW: Both witnesses -- I want to make  
17 a clarification, if I can.

18 Both witnesses indicated that the  
19 Agency selected the lowest pH as the criterion  
20 for determining the MAC. That's incorrect.

21 We could not find a summary pH that we  
22 could use for the State of Illinois. We saw too  
23 much variation. So we -- in Part 1100.605 we  
24 indicated that you use the lowest value on that

1 table in Appendix B, Table C, and that would be  
2 on the high pH range, or it could be on the low.  
3 For all the ionizing organics, they are on the  
4 high end, and for two of the inorganics they are  
5 on the high end. Everything else is on the very  
6 low.

7 MR. HUFF: So noted.

8 MS. TIPSORD: Other questions?

9 MR. WILT: Dennis Wilt from Waste Management.  
10 We now have a couple of different sets of data.  
11 Based on prior submissions from the Agency, the  
12 Board's opinion on Page 69 -- and I will read  
13 this to set this up. In contrast, the summary  
14 of statewide pH data submitted by the IEPA  
15 indicates a much wider pH range for the State's  
16 soils. IEPA's data indicates soil pH ranges  
17 from 5.1 to 8.4 in the northern and central  
18 counties, while soil pH in southern counties  
19 range from 4.5 to 7.3. That's one set of data.

20 The testimony that we just heard from  
21 Mr. Hall and Mr. Wilcox and Ms. Maenhout are --  
22 indicates an adjusted average of, I believe I  
23 have, at 7.8. I may be wrong. It may be 7.7 or  
24 7.8. The record will show what it is. You just

1 indicated, Doctor, that your study shows an  
2 average in agricultural property of 6.7. So we  
3 have three different areas.

4           And my question is, isn't there at  
5 least one other set of data that should be  
6 looked at, and that is the pH level in the soils  
7 that have been land filled over the past few  
8 years? And wouldn't that -- those four data  
9 points give us the best set of information  
10 available?

11           DR. FERNANDEZ: With the -- I believe that if  
12 we were to look at the pH in landfills, it would  
13 definitely be a good data point or points to  
14 have in addition to what has been already  
15 presented. And, in fact, I present this as my  
16 opinion, that if we were to send the same soil  
17 to a landfill facility versus sending it to a  
18 quarry, we might have more issues with  
19 contaminants than we would have in the -- in the  
20 quarry.

21           The reason for this is because in  
22 landfills, the pH of the soil tends to be lower  
23 because of all the decomposition that takes  
24 place in these landfills. There is a lot of

1       acidic acid that is produced that lowers the pH  
2       and makes metals more soluble. And you don't  
3       have the buffering capacity that you would have  
4       naturally in a lot of these other quarries.

5               MR. WILT: I understand that. I think my  
6       question is the data regarding the pH level of  
7       the soil before it is land filled that ends up  
8       being land filled, and that is data that it  
9       sounds like you believe should be considered  
10      anyways.

11              MR. HUFF: If I could just -- is this  
12      uncontaminated soil we are talking about, or is  
13      this contaminated soil?

14              MR. WILT: I supposed -- today you testified,  
15      Mr. Huff, that your information is it was  
16      3.4 million yards or tons -- you said yards of  
17      contaminated soil that went into CCDD and soil  
18      fill sites.

19                      Do you know how much soil went into  
20      landfills, whether it was contaminated or not?

21              MR. HUFF: I do not.

22              MR. WILT: If I told you that it could be an  
23      equal amount, would you dispute that?

24              MR. HUFF: No, sir.

1           MR. WILT:  If it's an equal amount, then you  
2           are only looking at the pH data from 50 percent  
3           of the soil that's been managed for disposal  
4           purposes.  It seems to me you are missing  
5           50 percent.  That's the only point I'm making.  
6           I don't even know what the numbers are going to  
7           show and what we are going to get them to.

8           MR. HUFF:  Well, I guess I would say, you  
9           know, if we have got 50 percent of the data  
10          statistically, what -- you have seen three  
11          different independent data sets that all had  
12          similar pHs, and they were consistent with what  
13          Mr. Hock found.  So we have had four studies  
14          that have all been consistent.

15                 My only reservation with your proposal  
16          is how much of this is hazardous waste or  
17          contaminated waste or special waste that you are  
18          trying to represent as a pH for uncontaminated  
19          soil.  That you have to take out of your  
20          database.

21          MR. WILT:  If one of your clients has been  
22          able to take soil that it needs to dispose of to  
23          a CCDD facility, wouldn't it have done so over  
24          the past few years instead of incurring the cost

1 differential that you put at about \$24 a ton?

2 MR. HUFF: You know, we just turned a  
3 gentleman from Springfield -- explained exactly  
4 why it goes to a landfill today. So in a  
5 perfect world it should be going to a CCDD  
6 facility, but there is so much confusion right  
7 now and regulatory blocks that are set up that  
8 there is a large amount of this material I  
9 believe that is not only going into landfills,  
10 but it's going into Wisconsin and Indiana. Mr.  
11 Hock had testified -- or it's going out on the  
12 farmland.

13 MR. WILT: I will move onto another question,  
14 because I don't want to get into a dialogue and  
15 an argument here.

16 You have clearly indicated, Mr. Huff,  
17 in your testimony the importance of the pH level  
18 that will be considered for the approached pH by  
19 this Board. And you indicate on Page 1 of your  
20 testimony that the pH range used has devastating  
21 economic implications. If the wrong pH level is  
22 used, considering that the soil may go into  
23 unlined facilities perhaps without groundwater  
24 monitoring, no site specific standards, aren't

1       there also devastating environmental impacts  
2       given your testimony that the pH level  
3       difference of two points could result in 89  
4       times the amount of mercury going in, than would  
5       otherwise be able to go?  So aren't there --  
6       isn't there equally potentially important  
7       environmental considerations as well as  
8       important economic consideration with respect to  
9       pH?

10           MR. HUFF:  Well, I think there are absolutely  
11       environmental implications.  I think you are  
12       going to hear Dr. Roy tomorrow talk about this  
13       hysteresis that the leaching of these metals at  
14       lower pH is not as complete as what's on there.  
15       It's a very incomplete absorption.  So the  
16       assumptions on that pH table don't assume that  
17       only part of that is going to leach off at that  
18       high pH.

19           MR. WILT:  Let's try to clarify.  Is it your  
20       proposal that the Board consider job specific pH  
21       testing similar to the Vulcan where you would  
22       test every load coming into a CCDD facility?

23           MR. HUFF:  I think there was a concern  
24       expressed by the Board and the Agency that if we

1 go at a pH, say, of 6.25 to 6.64, and it's the  
2 lower one, and recognizing you've got the higher  
3 limit, what if lower pH material came in there?

4           And I think what Dr. Fernandez was  
5 trying to say was that there is enough buffering  
6 capacity that it really wouldn't pose an  
7 environmental threat, but to address that  
8 concern, the amount of pH soil that's going to  
9 be below 6.25 is so small and the cost of  
10 running a PH test is something that we could do  
11 and just reject that.

12           So that's exactly my proposal was if  
13 you are really concerned we are going to take  
14 this stuff in, and if you are really concerned  
15 that it's going to pose an environmental threat  
16 by mobilizing metals, just say nothing can come  
17 into these facilities with a pH less than 6.25.

18           MR. WILT: And just so I understand it, your  
19 proposal is different than the proposal that's  
20 been advanced by Mr. Wilcox, and Mr. Hock and  
21 others; am I correct there? Your proposal is  
22 testing on a per load basis. If it's above a  
23 certain pH, it can come in. If it's below, it  
24 can't come in. Is that --

1           MR. HUFF: I don't think there is any  
2           discrepancy between what the Aggregate  
3           Association has supported with the same pH  
4           range. I was trying to take this a step farther  
5           and answer a concern that came up, what if this  
6           material came in? So frankly I don't know where  
7           the aggregate industry stands on whether they  
8           would be amenable to a pH testing. That would  
9           be an appropriate question for them.

10          MR. WILT: But your proposal would be, as you  
11          indicated, a simple test could be conducted  
12          on -- as Vulcan has done on every load that  
13          comes in?

14          MR. HUFF: Well, I wasn't proposing every  
15          load. Every construction site. They have  
16          testing on some 663 now. If there is a PIP,  
17          there will be analytical test results, and that  
18          test result should be representative then of  
19          whatever has been asked for approval to come  
20          into the site.

21          MR. WILT: And this would be another test  
22          result that would be based on the professional  
23          engineer's judgment as to how many and where to  
24          take the test results from?

1           MR. HUFF: Or the quarry itself, because now  
2 we are going to open this up to non-PIP sites.  
3 So a 662 form that comes in, one may be  
4 concerned about that there might be low pH  
5 there. So then a quarry has got to decide --  
6 okay, are we just going to -- every time we  
7 accept a job site, run a soil pH on that, or  
8 they can go back to the applicant and say, we  
9 will accept that subject to on the first day you  
10 are going to run a soil pH and give us that  
11 data.

12                     Let the marketplace decide.

13           MR. WILT: Those would be standards that  
14 would be set by the generator or generators and  
15 consultants and the quarry and not be set  
16 pursuant to the Public Act or these rules?

17           MR. HUFF: Well, I think these rules -- what  
18 I would envision is that if you are concerned  
19 about mobilization of metals at a low pH, put in  
20 there as I put in my testimony that no soil can  
21 be accepted if it has a pH of less than 6.25.

22           MR. WILT: Thank you.

23           HEARING OFFICER TIPSORD: Anything further.

24           MR. MORROW: Can I make a clarification?

1           I referred to a pH table. I should  
2           have specified that's part of TACO, Part 742.  
3           Appendix B, Table C.

4           MS. LIU: Good afternoon, Mr. Huff.

5           As proposed in the first notice  
6           proposal, soil testing wouldn't be required for  
7           soil that was certified by the owner or the  
8           operator. Would you please clarify whether you  
9           are now recommending that soil testing be  
10          required for the owner/operator certification?

11          MR. HUFF: I was referring, and I think you  
12          are, too, specifically to the pH issue, and for  
13          pH, I think if the Board's rules have a minimum  
14          pH that could be accepted in, then the  
15          marketplace can decide how they want to make  
16          sure that they are compliant with that. So the  
17          quarry could run the pH themselves, or they  
18          could require a 662 applicant to run the soil pH  
19          on the first day of excavation.

20          MS. LIU: Could you refresh my memory? Do we  
21          have costs of how much a pH soil test would be?

22          MR. HUFF: Well, if you were to drive it to a  
23          laboratory, they would be on the order of \$15  
24          for a test. You just need a calibrated pH

1 meter, and that's it. So if you have got a  
2 calibrated pH meter, you could run that on site.

3 MS. LIU: Your recommendation of a soil pH of  
4 6.25, it didn't specify an upper limit.

5 MR. HUFF: Well, I think as Mr. Morrow  
6 pointed out, they are some of the ionizing  
7 metals that are also on the upper end. I'm okay  
8 with those. I focused on that minimum pH,  
9 because that's where the hardships are created  
10 with the proposal as written.

11 MS. LIU: Earlier this morning I asked Mr.  
12 Clay a question that was No. 3A on our hearing  
13 officer order, and I was wondering if in your  
14 capacity with the Illinois Transportation  
15 Coalition, to the extent that they obtain  
16 owner/operator certifications on projects, if  
17 maybe perhaps you could provide some sort of a  
18 cost estimate of how much an owner/operator  
19 might have to spend to get a certification if  
20 they were to follow the ASTM standards or some  
21 subset of those.

22 MR. HUFF: If you were to do a full Phase 1  
23 environmental site assessment today, you are  
24 looking on the order of \$3,000. If it's a

1 complex industrial, it could be 5,000. If it's  
2 an apartment building, maybe it would be 2,000;  
3 so between 2,000 and \$5,000.

4 MS. LIU: Thank you.

5 MR. RAO: Any ideas about doing the ASTM due  
6 diligence?

7 MR. HUFF: Well, I think the same answer. If  
8 you are doing the full ASTM, there are two  
9 problems; one, of course, is the cost, but if  
10 you are a highway project, and you are going  
11 adjacent to one of these properties, how do you  
12 get access in to go through the inside of the  
13 building that's required? How do you get the  
14 owner to fill out a questionnaire, which is  
15 required under ASTM?

16 So the record search you can do. The  
17 site reconnaissance you can do. It's the other  
18 steps that unless you have ownership of that  
19 property or have agreed to a price for that, you  
20 are not going to be able to complete those other  
21 tests. You go along one of these busy streets,  
22 and there literally could be several hundred  
23 properties that you would have to do a Phase 1  
24 environment site assessment on.

1           MR. RAO: And as a part of your suggested  
2 changes to the Board rules, you had chosen, I  
3 think, two components of the ASTM standards; the  
4 records search and the site reconnaissance as  
5 something that could be included in the rules  
6 along with the IDOT and Illinois Tollway policy.

7                     Were you suggesting that these apply  
8 only to linear projects or are generally  
9 applicable to any excavation?

10           MR. HUFF: Well, clearly my focus is on the  
11 linear projects, but I have no reservations to  
12 applying that to all projects.

13           MR. RAO: Thank you very much.

14           HEARING OFFICER TIPSORD: Anything else at  
15 all for Mr. Huff or Dr. Fernandez? Thank you  
16 very much.

17                     We are ready to move on to Mr. Liss for  
18 Waste Management.

19                             (Whereupon, the witness was duly  
20                             sworn.)

21           HEARING OFFICER TIPSORD: If there is no  
22 objection, we will mark the pre-filed testimony  
23 of Kenneth Liss as Exhibit No. 49.

24                     Seeing none, it's Exhibit 49.

1                                   (Whereupon, Exhibit No. 49 was  
2                                   marked for identification.)

3           MS. TIPSORD: Mr. Liss, would you like to  
4 give a brief summary or go right to questions?

5           MR. LISS: Let's go right to questions.

6           MS. TIPSORD: Okay. Do we have any questions  
7 for Mr. Liss?

8                           I see no questions for Mr. Liss. Okay.

9           MR. WIGHT: Before you dismiss him, maybe  
10 just one. You had testified with regard to the  
11 cost of annual sampling if the groundwater  
12 monitoring requirements were part of the rules  
13 and extrapolated from those annual costs for  
14 sampling to a cost per ton or a cost per cubic  
15 yard, and I thought that was fairly  
16 straightforward depending on the quantities of  
17 soil that were taken at the various facilities  
18 and so on.

19                           I was wondering if you had any opinion  
20 beyond your testimony with regard to the design  
21 and installation of groundwater monitoring  
22 systems, and, you know, perhaps in your  
23 professional career you have had some experience  
24 with that and the costs that would be involved

1 in that portion of the groundwater monitoring  
2 requirement.

3 And if you could prepare a -- realizing  
4 there are potentially a lot of site specific  
5 differences, but for some sort of a simple  
6 system, very basic system, and a very basic  
7 groundwater monitoring system, would you have  
8 any idea on the same type of cost extrapolations  
9 so that you could reduce that to a cost per ton  
10 or a cost per yard, you know, just as sort of a  
11 baseline and not to cover the entire gamut of  
12 possibilities, but a basic reference point for a  
13 simple system in an uncomplicated facility.

14 Maybe that's not even realistic, but  
15 I'm just asking if that's possible.

16 MR. LISS: Would you like us to submit that  
17 in the comment period? That would probably be a  
18 little easier.

19 MR. WIGHT: Yes. I agree. That would be  
20 very helpful if you could present even the  
21 simplest form of that information.

22 MR. LISS: And I will boil it down similar to  
23 Point 6 on Page 2 of my testimony, because  
24 that's just what you referred to.

1 HEARING OFFICER TIPSORD: Any other questions  
2 for Mr. Liss? Thank you very much.

3 I do have -- I want to back up. Mr.  
4 Metz, if I could ask you a question, and you may  
5 not be able to answer this given -- I know your  
6 testimony about how much of what is CCDD or  
7 uncontaminated soil you now landfill rather than  
8 send to the quarry near you. Does the proximity  
9 of the quarry affect that? I mean, for example,  
10 let's say you had to send it farther away.

11 Would that impact how much you would  
12 send to a CCDD, do you think, or is the cost  
13 significantly enough different that you would  
14 still ship to a CCDD?

15 MR. METZ: We actually only have one option  
16 for a quarry, one reasonable option, and that's  
17 within ten miles. Your question of that was,  
18 for example, within 60 miles, would we landfill  
19 the material as opposed to sending it to a CCDD?

20 The answer would probably be that based  
21 on the cost analysis, if it's cheaper to  
22 landfill it than to drive it the 60 miles, then,  
23 yeah, we would probably landfill it.

24 HEARING OFFICER TIPSORD: Thank you. Okay.

1 With that, I think we are done with the  
2 witnesses that we have for today.

3 We will do Claire Manning and Dr. Roy  
4 tomorrow morning. My hearing officer order had  
5 said we would start at 9:00 a.m., but given that  
6 we only have the two witnesses tomorrow, I think  
7 we can easily get them done in a couple of  
8 hours. So how about we start at 10:00 instead  
9 of 9:00. I will be down here for anybody who  
10 might come down here at 9:00 and let them know  
11 we're going to wait until 10:00.

12 I do want to ask, though, for people  
13 that are here today. You picked up the DCEO  
14 letters and the Board statements. Does anyone  
15 want to comment today on DCEO's decision not to  
16 do an economic impact study?

17 Okay. I will make that offer again  
18 tomorrow then. With that, we will -- Mr.  
19 Sylvester.

20 MR. SYLVESTER: Just one point. I don't know  
21 whether it's better addressed during the comment  
22 period, but you had asked me a question during  
23 the testimony and I just wanted to clarify it.  
24 It had stuck in my head after we had closed, and

1 I -- it's very brief.

2           You had asked about -- when we were  
3 talking about the CCDD and we were talking about  
4 in some contexts it was considered waste, and  
5 you said for purposes of the Board rulemaking  
6 that we were talking about using it below grade,  
7 and I just wanted to clarify that our position  
8 is laid out in our testimony and is to the  
9 extent permitted by federal law. And I don't  
10 have an answer to that question. We are not  
11 aware of the Board or any court of competent  
12 jurisdiction in Illinois making a decision on  
13 that issue.

14           And that's what I wanted to clarify. I  
15 don't know whether it kind of got lost in the  
16 translation. Initially I thought you were just  
17 talking about this one specific use of CCDD, but  
18 I just wanted to put that caveat in there that's  
19 in the statute.

20           HEARING OFFICER TIPSORD: Okay, thank you.  
21 With that we are adjourned today. I will see  
22 you all tomorrow at 10:00.

23           (FURTHER DEPONENT SAITH NOT.)

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I, KARI WIEDENHAUPT, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date, and at the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of same.

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I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

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KARI WIEDENHAUPT, CSR