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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

BROWNFIELDS SITE RESTORATION

PROGRAM (35 ILL. ADM.

CODE 740)

R03-020

Rulemaking-Land

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STATE OF ILLINOIS
Pollution Control Board

Proceedings held on April 30, 2003, at 9:59 a.m., at the
Illinois Pollution Control Board, 600 South Second
Street, Suite 402, Springfield, Illinois, before Amy C.
Antoniolli, Hearing Officer.

Reported By: Karen Bristow, CSR, RPR
CSR License No.: 084-003688

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APPEARANCES

Board Members present:

- Chairman Thomas E. Johnson
- Board Member Lynne P. Padovan
- Board Member Nicholas J. Melas
- Board Member Doris C. Karpel

Board Staff Members Present:

Erin Conley

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

BY: Judith S. Dyer
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA

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WITNESS

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GARY KING

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EXHIBITS

NUMBER	MARKED FOR I.D.	ENTERED
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IEPA Exhibit No. 1	5	9
IEPA Exhibit No. 2	5	

(Exhibits attached to transcript.)

1 PROCEEDINGS

2 (April 30, 2003; 9:59 a.m.)

3 (IEPA Exhibits Nos. 1 and 2 marked for
4 identification before the hearing commenced.)

5 HEARING OFFICER ANTONIOLLI: Welcome, everybody, to
6 the Illinois Pollution Control Board. Good morning. My
7 name is Amy Antoniolli, and I have been appointed by the
8 board to serve as hearing officer in this proceeding
9 entitled "In the Matter of Amendments to 35 Illinois
10 Administrative Code 740, Site Remediation Program,"
11 which the board references as R03-20. Please indicate
12 R03-20 when you submit information to the board
13 regarding this matter.

14 Present today and sitting on my right, your left,
15 is Mr. Nicholas Melas, the lead board member assigned to
16 this matter. Seated to the right of Member Melas is
17 Member Lynne Padovan, and seated to my left is Member
18 Doris Karpiel. Also present from the board today is
19 Pollution Control Board Chairman Mr. Tom Johnson, and
20 also present from the Pollution Control Board is Erin
21 Conley.

22 This proceeding is a rulemaking and was filed on
23 February 18, 2003, by the Environmental Protection
24 Agency. Today is the first of two scheduled hearings in

1 this matter. The second hearing will take place on May
2 14, 2003, in Chicago. Today's hearing will be governed
3 by the board's procedural rules for regulatory
4 proceedings. All witnesses will be sworn in and subject
5 to cross questioning.

6 The purpose of today's hearing is to hear the
7 prefiled testimony of the agency in this matter and then
8 allow questions to be asked of the agency. The agency
9 has prefiled testimony for one witness, Mr. Gary King,
10 who is the manager of the Division of Remediation
11 Management within the Bureau of Land of the Illinois
12 Environmental Protection Agency. The prefiled testimony
13 will be read into the record as if read. Mr. King may
14 then give an oral summary of that testimony.

15 The board will then allow questions directed to the
16 agency's witness to begin, although we have no other
17 members of the public present today so far. Anyone may
18 ask a question. However, I do ask that you raise your
19 hand and wait for me to acknowledge you. If you are
20 speaking over each other, the court reporter will not be
21 able to get your questions on the record. Please note
22 that any question asked by a board member or staff are
23 intended to help build a complete record for the board's
24 decision and not to express any preconceived notion or

1 bias.

2 I have placed a list at the side of the room for
3 anyone else who wishes to testify today. Also at the
4 side of the room are sign-up sheets for the notice and
5 service list. If you wish to be on the service list,
6 you will receive all pleadings and prefiled testimony in
7 this proceeding. In addition, you must serve all of
8 your filings on the persons on the service list. If you
9 wish to be on the notice list, you will receive all
10 board and hearing officer orders in the rulemaking. If
11 you have any questions about which list you should be
12 on, please see me.

13 There are also copies of the current service and
14 notice lists at the side of the room. Please also find
15 copies of the current service and notice list, a few
16 copies of the board's order and notice of hearing. Also
17 at the side of the room on the table is the agency's
18 proposal, an errata sheet and-- that the agency
19 submitted preliminarily making some corrections to the
20 original proposal.

21 At this time I would ask if Member Melas wishes to
22 say anything.

23 BOARD MEMBER MELAS: Other than to just welcome
24 everybody here, and we're looking forward to a

1 productive meeting. Hopefully there may be some members
2 of the public that have already spoken here, and they
3 will have an opportunity, of course, to file comments.

4 HEARING OFFICER ANTONIOLLI: Okay. At this time,
5 we'll turn to the agency's attorney, Ms. Kimberly
6 Geving, for opening statements, if she has any.

7 MS. GEVING: Good morning. As Amy stated, my name
8 is Kimberly Geving. I'm assistant counsel for the
9 Bureau of Land of the Illinois Environmental Protection
10 Agency. With me today to my right is Judy Dyer,
11 co-counsel, and to my left is Gary King, the Division of
12 Remediation Management manager and attorney.

13 I don't per se have any opening comments at this
14 time except to say that I have also brought extra copies
15 of our testimony that was prefiled under Gary's name
16 over at the side table as well. There are about ten
17 copies there, and if anything else is needed, I could
18 certainly provide those at a later time.

19 I in advance had the court reporter mark as
20 Exhibits 1 and 2 two items. The first one is Exhibit
21 1-- it is a copy of Gary King's testimony-- and Exhibit
22 No. 2 I had marked as errata sheet number 1, and I will
23 be mentioning those this morning and asking Gary to
24 summarize those. At this time, if you want to have the

1 witness sworn in.

2 (Witness sworn.)

3 MS. GEVING: Then at this time I would go ahead and
4 lay some foundation for Mr. King's testimony, if that's
5 all right.

6 HEARING OFFICER ANTONIOLLI: Please do.

7 MS. GEVING: Mr. King, I'm going to hand you what's
8 been marked as Exhibit 1 for the record. Could you
9 please tell me if you can identify that?

10 MR. KING: Yes, I'm familiar with this document.

11 MS. GEVING: And what is it?

12 MR. KING: This is a document entitled "Testimony
13 of Gary P. King," and it's a document that I prepared.

14 MS. GEVING: Is it a current and accurate copy of
15 what was filed with the Court?

16 MR. KING: Yes, it is. It certainly appears to be
17 so.

18 MS. GEVING: Okay. At this time I would make a
19 motion to have the board accept this into the record.

20 HEARING OFFICER ANTONIOLLI: Are there any
21 objections? Seeing none, I will accept the exhibit as
22 Exhibit No. 1, Mr. King's prefiled testimony.

23 MS. GEVING: At this time, Mr. King, I'm handing
24 you what's been marked as Exhibit No. 2, and if you

1 could identify that for the record.

2 MR. KING: Yes. This is a document entitled
3 "Errata Sheet Number 1" and just has corrections that
4 we made to our proposal in light of some numbering
5 issues within the rules as they were first filed.

6 MS. GEVING: And is that a true and accurate copy
7 of what was filed with the board?

8 MR. KING: It appears to be so, yes.

9 MS. GEVING: At this time I would make a motion to
10 have the board accept Exhibit No. 2 into the record.

11 HEARING OFFICER ANTONIOLLI: Can I also have a copy
12 of the exhibit?

13 MS. GEVING: Pardon?

14 HEARING OFFICER ANTONIOLLI: Can I also have a copy
15 of the exhibit?

16 MS. GEVING: Yes, absolutely.

17 HEARING OFFICER ANTONIOLLI: Okay. You can go
18 ahead.

19 MS. GEVING: Okay. Mr. King, would you like to
20 provide a summary, then, of your testimony, please?

21 MR. KING: Certainly. I'll go back in time just a
22 little bit, give you a little background. Back in I
23 believe it was 1997, legislature passed a bill that
24 incorporated the Environmental Remediation Tax Credit

1 Program, and that provided for a five-year life on that
2 program, and that sunsetted December 31, 2001. The
3 primary proponents of that from a legislative standpoint
4 was the-- were the Regional Commerce and Growth
5 Association of Greater St. Louis, and during the course
6 of the years that the tax-- state tax credit provision
7 was in effect, we really did not-- the board of course
8 adopted a set of rules to implement that, and we really
9 did not see much use of that provision over the five
10 years it was in effect. I think we maybe had a total of
11 four or five tax credit-- tax credits that we approved
12 during that period of time; certainly not what was
13 anticipated would happen.

14 So before the-- that tax credit expired, RCGA
15 wanted to put into place a different type of financial
16 incentive for cleanup and reuse of Brownfield sites that
17 they thought would be more effective and would get more
18 use than the tax credit provision would, and so that was
19 kind of the genesis of the amendments to the
20 Environmental Protection Act, and so what we have
21 carried forth in our rules is the-- in substance is what
22 is in the statute. The statute is very detailed, and
23 where we had to fill in gaps, we drew from language
24 which was in the old tax credit rule that the board had

1 adopted.

2 Basically, the way this program was intended to
3 work, the new program, the Brownfield Site Restoration
4 Program, is that if somebody were interested in getting
5 funding out of this program, which is now-- was intended
6 to be more of a reimbursement-- a direct reimbursement
7 type program as opposed to a tax credit program,
8 initially it would start with coming to the agency to
9 see if there in fact was money available to do this kind
10 of thing, and that would be kind of-- that would be a
11 nonbinding determination there as to whether it looked
12 like there would be funding for what they would-- the
13 applicant would want to do.

14 The applicant would then go to DCCA under the
15 statutory terms and have-- DCCA would make an
16 eligibility determination as to whether this is the type
17 of project that would qualify for the reimbursement
18 plan. It then would come back to the agency, go through
19 our site remediation program to get the cleanup done,
20 then once the cleanup was done and the-- no further
21 remediation letter was filed, then they could request
22 reimbursement for their cleanup expenditures in
23 accordance with the-- DCCA's eligibility determination,
24 then also in accordance with the statutory provisions

1 and the rules that we've proposed here in this
2 proceeding.

3 It is a-- It undoubtedly is a complex proceeding--
4 procedure and it certainly has a lot of steps to go
5 through, but, you know, in essence, given what has
6 happened with the state budget, I think it was wise that
7 there was a significant number of steps put into the
8 process before, you know, in essence somebody would get
9 a reimbursement from the State for this type of project.

10 And so that's what we have. We have had nobody
11 come in to us at this point-- nobody come in to the
12 agency and ask for a preliminary determination as to
13 whether funding was available or not, so we really have
14 not had anybody come through to-- even to go to the
15 first step of this long process.

16 So that's kind of-- And then we-- when we had
17 prepared the proposal, we sent it out to RCGA in
18 December. They received it and indicated to me they
19 would be submitting some comments back, and, you know,
20 this is kind of almost, you know, how these things
21 happen. We received the comments from RCGA on the
22 afternoon of February 14, and of course we had sent
23 our-- put our proposal in the mail to send to the board
24 on the morning of the 14th, so-- you know, so rather

1 than bothering to try to pull that out of the mail or
2 whatever, we-- I just figured in the-- as far as the
3 testimony, I would go ahead and address the questions
4 that they raised in the e-mail they sent to me, and I
5 did that, went through the specifics of that, as you see
6 in the testimony I prepared.

7 So that's all I have as far as a summary, and I'd
8 be happy to take any questions.

9 HEARING OFFICER ANTONIOLLI: We will now proceed
10 with questions for Mr. King. If anyone has questions,
11 please raise your hand and I will acknowledge you.

12 CHAIRMAN JOHNSON: This is a picky point, but just
13 for the record, all the documents are replete with
14 references to DCCA, and just for the record, we should--
15 the department formerly known as the Department of
16 Commerce and Community Affairs is now known as what?
17 DCOE? Is that--

18 BOARD MEMBER PADOVAN: Economic Opportunity.

19 HEARING OFFICER ANTONIOLLI: DCEO, I think.

20 BOARD MEMBER PADOVAN: Department of Commerce and
21 Economic Opportunity.

22 MR. KING: We didn't make those changes the-- at
23 this point because the statute still has the DCCA.

24 CHAIRMAN JOHNSON: Right, and whenever these were

1 drafted, I'm sure that that was-- DCCA was still in
2 existence. I just wanted to--

3 MR. KING: Right.

4 CHAIRMAN JOHNSON: -- make note of that change in
5 department title for the record.

6 MS. GEVING: One more point of clarification too.
7 Gary, if you could for the record state what the acronym
8 RCGA stands for.

9 MR. KING: Oh, yeah. Again, that-- RCGA stands for
10 Regional Commerce and Growth Association of Greater St.
11 Louis.

12 MS. GEVING: Thank you.

13 HEARING OFFICER ANTONIOLLI: Okay. And I have a
14 question for you, Mr. King. In the Section 740.100, in
15 section C, under that purpose section, should we
16 identify DCCA or the new DCEO as the assisting agency?
17 Because that agency is included within the statutory
18 language.

19 MR. KING: I would have no objection to that.

20 HEARING OFFICER ANTONIOLLI: Okay. Something-- And
21 then again, in Section 740.120, in the definitions, we--
22 would you suggest including DCCA as a definition and
23 defining it as we do with agency as the Environmental--
24 or the Illinois Environmental Protection Agency?

1 MR. KING: I think that would be a-- Yes, I think
2 that'd be good, and as Board Member Johnson was saying,
3 I think that would be a good place to maybe handle this
4 transition language from DCCA to DCEO.

5 HEARING OFFICER ANTONIOLLI: Very good. Member
6 Melas, do you have a--

7 BOARD MEMBER MELAS: As an aside, how do you
8 pronounce DCEO?

9 MR. KING: Well, I keep thinking decoupage. I
10 don't know.

11 CHAIRMAN JOHNSON: It's been DCCA for a long time.

12 BOARD MEMBER MELAS: Yeah. I just have a question
13 on the 740.905(e), which is the preliminary review of
14 these remediation costs, and when RCGA posed their third
15 question to you, Gary, they asked if the submittal of an
16 amended budget plan could be deemed as a new 60-day
17 waiver of the RAP deadline, and they also asked if only
18 the budget amendment would restart the time for review
19 or if any amendment for the plan would restart the
20 clock. It seems that the answer to this question is
21 that it's only a budget amendment that restarts the
22 clock. Is that the correct assumption?

23 MR. KING: Let me explain that a little bit. I
24 mean, if you're looking simply at 905, that's correct.

1 Only the budget plan restarts it under 905, because
2 that's what 905 applies to.

3 BOARD MEMBER MELAS: Strictly the budgets.

4 MR. KING: Right, right. But there is a-- there
5 are corollary provisions within the other part-- other
6 portions or sections of part 740 that deal with amended
7 remedial action plans.

8 BOARD MEMBER MELAS: Oh.

9 MR. KING: And those would govern our remedial
10 action plan.

11 BOARD MEMBER MELAS: And those also would provide
12 for that extension?

13 MR. KING: Yeah, right. They would provide for a
14 restart.

15 BOARD MEMBER MELAS: A restart. Okay. Then going
16 down to their sixth question, RCGA wanted to know if
17 there is a fee payment schedule missing from Section
18 940.911. What is missing there?

19 MR. KING: My answer there was a very succinct
20 "yes."

21 BOARD MEMBER MELAS: You said yes.

22 MR. KING: Yeah, I did say yes, so-- but if you
23 look at Section 910(c), Section 910, subsection C, there
24 is a parallel fee provision element that could be

1 included or probably should be included in 911. Neither
2 one of those is absolutely necessary, because in the
3 actual-- they're more of a cross-reference to the other
4 payment section under 820, but I think that's what they
5 were getting at with the-- with that question.

6 BOARD MEMBER MELAS: Okay. Then just a last
7 question that I had. Under Section 740.920, under fees
8 and manner of payment, should we identify that
9 subsection A and B are statutory requirements with
10 italics and then cite the Section 58.15?

11 MS. GEVING: If I might jump in here and answer
12 that question for you, I think that the rules are worded
13 a little bit differently than the statute, although
14 that's where the authority for that language comes
15 from. What I've done in previous rules when I-- when
16 language has been changed or derived from the statute,
17 in parentheses I would put a clause that it's derived
18 from whatever section of the act that that comes from,
19 and I'd be happy to do that here.

20 BOARD MEMBER MELAS: Okay.

21 HEARING OFFICER ANTONIOLLI: Okay. Are there any
22 other further questions at this time? Okay. Let's go
23 off the record for a few minutes and we can discuss a
24 prefiling deadline for the next hearing.

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(Discussion held off the record.)

HEARING OFFICER ANTONIOLLI: Okay. We'll go back on the record now, and we set the prefiling deadline for May 9, so the board has a second hearing scheduled for May 14, 2003, in Chicago. The hearing is at 1 p.m. in Room 225 on 100 West Randolph Street, and that's in the James R. Thompson Center.

The transcript in this matter will be available on the board's Internet Web site, and the Web site is www.ipcb.state.il.us. As soon as it becomes available, we'll post it there. If anyone would like a copy of the transcript, please speak to the court reporter directly. If you choose to order a copy of the transcript from the board, the cost is 75 cents a page, but as I mentioned, you can download the transcript from the Web site when it becomes available for no charge.

If there's nothing further, I want to thank everyone for coming and for your comments and testimony. This discussion will continue at the next hearing in Chicago, and that's all for today.

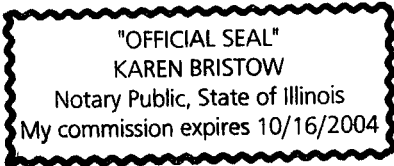
(Hearing adjourned.)

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF ST. CLAIR)

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I, KAREN BRISTOW, a Notary Public and
Certified Shorthand Reporter in and for the County of
St. Clair, State of Illinois, DO HEREBY CERTIFY that I
was present at 600 South Second Street, Suite 402,
Springfield, Illinois, on April 30, 2003, and did record
the aforesaid Hearing; that same was taken down in
shorthand by me and afterwards transcribed upon the
typewriter, and that the above and foregoing is a true
and correct transcript of said Hearing.

IN WITNESS WHEREOF I have hereunto set
my hand and affixed my Notarial Seal this 3rd day of
May, 2003.



Karen Bristow

Notary Public--CSR
#084-003688

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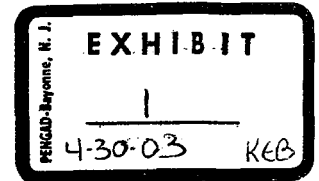
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Appendix

Testimony of Gary P. King on behalf of the Illinois Environmental Protection Agency(exhibit 1)

Errata sheet number one submitted by the Illinois Environmental Protection Agency (exhibit #2

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS



IN THE MATTER OF:)
)
)
BROWNFIELD SITE RESTORATION)
PROGRAM) R03-20
) Rulemaking-Land
)
(AMENDMENTS TO 35 ILL. ADM.)
CODE 740))
)

TESTIMONY OF GARY P. KING

My name is Gary King. I am the manager of the Division of Remediation Management within the Bureau of Land of the Illinois Environmental Protection Agency ("Agency"). I have been in my current title since May 1990. Prior to assuming my current position I was the senior counsel for the Bureau of Land within the Agency's Division of Legal Counsel. I have been employed at the Agency since 1977. I received a B.S. in Civil Engineering in 1974 from Valparaiso University and a J.D. in 1977 from the same university.

I have testified before the Board in numerous rulemaking proceedings.

A. LEGISLATION

Section 58.15 of the Environmental Protection Act ("Act") was amended by P.A. 92-715, effective July 23, 2002 to add Subsection (B), the Brownfields Site Restoration Program ("BSRP"). Proponents of the BSRP legislation hoped it would provide an effective financial incentive for the cleanup and reuse of Brownfield sites, in lieu of the Environmental Remediation Tax Credit ("ERTC") that sunset December 31, 2001. Section 58.15(B)(m) directs the Agency to submit to the Board proposed regulations prescribing procedures and standards for the

administration of the BSRP.

Section 58.15(B) prescribes in substantial detail the procedures for obtaining reimbursement under the BSRP.

B. REGULATORY DEVELOPMENT

Because the statutory language of P.A. 92-715 is very explicit on many issues relative to the administration of this program, development of this rulemaking proposal has been straightforward. Because much of the language of the Section 58.15(B) BSRP finds parallel language in the Section 58.14 ERTC, the Agency has drawn much of the language for this rulemaking from 35 Ill. Adm. Code 740 Subpart G.

The Agency sought input on this rulemaking from the Regional Commerce and Growth Association of Greater St. Louis ("RCGA"). The Agency sought input from RCGA because of their keen interests in the BSRP and their efforts to see it enacted by the General Assembly. The Agency transmitted a copy to a representative of RCGA by email on December 11, 2002. The Agency received comments from RCGA on February 14, 2003. Those comments and the RCGA's questions are discussed later in this testimony. The Agency had already sent its proposal to the Board on February 14 and thus was unable to make any changes based on the comments of RCGA.

C. DISCUSSION OF PROPOSED REGULATIONS

Because the procedures of the Brownfields Site Restoration Program are based on performance of remediation under the Site Remediation Program, the Agency believes that the appropriate placement of the review procedures is in the Site Remediation Program regulations at

35 Ill. Adm. Code 740 ("Part 740"). Therefore, the proposal is presented as amendments to Part 740 including a new Subpart H and miscellaneous conforming amendments to the existing Part 740. The Agency's Statement of Reasons adequately outlines the procedures in the rules without further repetition here.

Following in this testimony are the comments and questions of RCGA as to the proposed BSRP rules as sent to the Agency on February 14, 2003.

RCGA: *I think overall the IEPA was trying to be pretty fair with these regulations. The process for applying for this grant money is pretty cumbersome, but most of this is defined by the legislation so I don't think there's much we can do.*

IEPA: I concur

RCGA: *1. In 740.805(a), ask IEPA to clarify what "satisfying the requirements of Section 740.450" means. At this point, the applicant does not have to have an IEPA-approved RAP - does this language give the IEPA the ability to reject a budget plan based on a pre-review or completeness review of the RAP?*

IEPA: If a RAP submitted under Section 740.450 is incomplete, then Section 740.805(a) authorizes the Agency to reject the budget plan. This language was drawn from Section 740.705(a). The same concept applies to the BSRP as the ERTC. The Agency should not be making decisions about whether costs in a budget are appropriate unless the Agency can determine that the remediation, as reflected in the RAP, will be appropriate.

RCGA: *2. Something that's not addressed in the legislation or regulations pertains to the earlier reports required by the SRP. It appears that the presumption is that the applicant will have submitted and obtained approval for these reports already, but what if they haven't or what if they have submitted some of the prior reports but not received IEPA approval yet? (The SRP allows a RA to submit all the reports at one time, if it chooses, and in some cases, not all reports must be submitted.)*

IEPA: Section 740.805(a) provides for the Agency to reject a budget plan unless a RAP has been presented to the Agency that meets Section 740.450.

RCGA: 3. 740.805(g)(3) states that submittal of an amended plan restarts the time for review. Does this include the 60-day waiver? Are they referring to just the budget plan, or does any amendment to the RAP (including one that does not affect the budget) restart the clock?

IEPA: The reference to "amended plan" in 740.805(g)(3) refers to "amended budget plans", as provided for in the introductory language of 740.805(g).

RCGA: 4. Section 740.805(i)(4) allows the IEPA to return the budget plan un-reviewed if it disapproves a RAP or approves a RAP with conditions. In some cases it does not make sense for the IEPA to review a budget for a RAP that requires significant revisions, but where the IEPA approves a RAP with conditions, it seems IEPA could provide comments on the budget as well. The LUST program requires owner/operators to submit cleanup plans and budgets together and the IEPA issues comments to both, even if it does not approve the cleanup plan - perhaps our program should work the same way. The RA is paying for this initial review (\$500).

IEPA: The language of 740.805(j)(4) for the BSRP parallels the language adopted by the Board in 740.705(e)(1) for the ERTC. The Agency's authority to return the budget plan unreviewed is discretionary on the part of the Agency; it is not mandatory.

RCGA: 5. Under 740.810(d) (and similar provisions in 740.811), can the IEPA reject a RA's certification?

IEPA: Yes. See Section 740.830(a)(2).

RCGA: 6. Is there a fee payment provision missing from 740.811?

IEPA: Yes

RCGA: 7. What happens if the IEPA does not complete its review of an application for payment within the timeframes in 740.815(b)? Is it automatically approved or automatically denied?

IEPA: The applicant can wait for the Agency to complete its review or the applicant can file a request for review with the Board as if the Agency had denied the request.

RCGA: 8. It appears the reference to "budget plan" in 740.815(c) should be changed to "application."

IEPA: Section 740.815(c) uses the word "application".

RCGA: 9. *The regulations are not clear on when an amended application must be submitted under 740.815. The statute allows IEPA to approve an application with modifications - the regulations should clarify that this type of approval does not require submittal of an amended application, only if the IEPA disapproves the application. Also the regulations should probably specify that a RA could submit an amended application in the event the IEPA disapproves an application.*

IEPA: It is not clear from the question as to whether the concern relates to submitting an amended application before, or after, the Agency decision. Where an application is approved with modifications the modified approval stands as the determination controlling future actions, unless an appeal is filed with the Board. An applicant who receives an IEPA disapproval can file an appeal with the Board or submit a new application meeting the points of the disapproval.

RCGA: 10. *Under 740.830, can the IEPA provide specific examples of subparagraphs (c), (g), (h) and (j)*

IEPA: Example of (C): construction of a building. Example of (g): contractor backs over and destroys monitoring well. Example of (h): construction of a building. Example of (j): purchase of x-ray fluorescence monitoring equipment.

RCGA: 11. *Also under 740.830, subparagraph (n), as currently drafted, gives the IEPA too much discretion. Regarding subparagraph (w), will the IEPA publish a list of reasonable rates so RA's know what is unreasonable? Will the reasonable and customary rate sheet for the LUST program that IEPA is working on now with the Consulting Engineers Counsel also apply to our program?*

IEPA: As to 740.830(n), the Board used the same language in 740.730(p) for the ERTC. As to 740.830(w), this question is premature since the Agency has not proposed to the Board a change to the Board regulations on the LUST reimbursement program under Part 732.

RCGA: 12. *According to the rules, no costs incurred prior to DCCA approval (step 4) are reimbursable. It is key that the IEPA will accept for step 1, a general or rough budget for the site. Otherwise, the potential developer will have to spend a fair amount of money, which is not reimbursable, and they may find out that the money does not exist or the site doesn't meet DCCA's approval.*

IEPA: I concur.

RCGA: 13. *Step 6 is an option for the RA. However, if this step is not done, the developer risks the IEPA disapproval of costs during final approval*

(step 9). This will be after they are incurred, so the RA is wise to pursue pre-approval. The Rules state in 740.805.a that this budget can't be submitted until the RAP is submitted. The costs to complete a RAP can be considerable (hundreds of thousands of dollars) and the RA runs the risk that the IEPA will not approve these costs.

IEPA: I concur, although the costs can be quite variable from site to site.

RCGA: *14. The additional time associated with going through this program is going to be cumbersome. There is no indication of how quickly IEPA will complete Step 2 or of how quickly DCCA will complete their approval. Normally IEPA has 60 or 90 days to approve reports. The way I read Section 740.805 e and g 2, the IEPA gives itself an additional 60 days to approve the projected budget. IE, for this step alone, the IEPA will have between 120 and 150 days.*

IEPA: The interpretation of the proposed rules is correct. The procedures for reimbursement could well prove to be cumbersome, but this is the framework set forth in the legislation. An applicant is required to follow these procedures only if and when the applicant chooses to seek reimbursement.

RCGA: *15. Assuming that EPA initial approval (Step 2) and DCCA approval (Step 4) take 30 days each and IEPA pre approval (Step 6) takes 120 days, the developer will have an additional 180 days before they can begin site remediation. This is on top of the time it will take for their consultant to submit all of the budgets conduct the site investigation and generate the RAP.*

IEPA: An applicant who wants to take advantage of reimbursement under the BSRP must be very careful in planning ahead on site activities to account for Agency and DCCA review times.

RCGA: *16. I.E. at a minimum the "additional 60 days" needs to be eliminated and if possible, the time for initial IEPA and DCCA approval needs to be defined, hopefully as a limited period. Also, the IEPA will hopefully understand that the initial budget that will be submitted will not be very detailed.*

IEPA: I disagree that the "additional 60 days" needs to be eliminated. If it is eliminated then the Agency will have to review the RAP and the budget plan within the same 60 days. This would mean that the Agency would be given no time to review, by regulation, the budget plan.

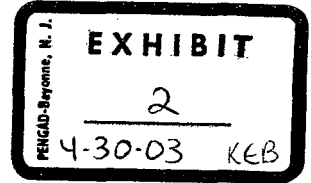
D. TECHNICAL FEASIBILITY

No new technical requirements are created by the proposed Subpart H. All that will be required of RAs and their consultants will be to maintain records of site activities and expenses and assemble them for purposes of the applications for review. These activities are similar to those long required of LUST owner/operators seeking payment from the UST Fund. Therefore, the Agency concludes that no issues of technical feasibility are raised in this proposal.

E. ECONOMIC REASONABLENESS

As described previously, Section 58.15(B) of the Act prescribes in substantial detail how the BSRP is to function. As a result, there is little discretion as to the form and content of the procedures, and any economic issues are diminished for the purposes of this rulemaking. Moreover, no new regulatory burdens are imposed as a result of this proposal. Application for the BSRP reimbursement is elective, and potential applicants may decide for themselves if the benefits outweigh the costs.

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS



IN THE MATTER OF:)
)
BROWNFIELD SITE RESTORATION)
PROGRAM)
) R03-20
(AMENDMENTS TO 35 ILL.ADM.) (Rulemaking)
CODE 740))

NOTICE

Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste. 11-500
Chicago, Illinois 60601

Robert T. Lawley
Dept. Of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702

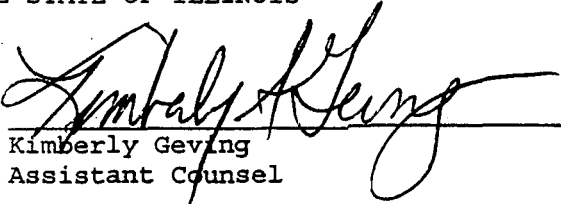
Attorney General's Office
Environmental Bureau
188 W. Randolph, 20th Floor
Chicago, Illinois 60601

See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Errata Sheet Number 1 of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By:



Kimberly Geving
Assistant Counsel

DATE: April 18, 2003
Agency File #:
Illinois Environmental
Protection Agency

1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
BROWNFIELD SITE RESTORATION) R03-20
PROGRAM) (Rulemaking)
)
(AMENDMENTS TO 35 ILL. ADM. CODE 740))
)

ERRATA SHEET NUMBER 1

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") through one of its attorneys, Kimberly A. Geving, and submits this ERRATA SHEET NUMBER 1 to the Illinois Pollution Control Board ("Board") and the participants listed on the Service List.

It appears that the Illinois EPA's February 14, 2003 Proposed Amendments submitted to the Board were based on a version of Part 740 that was adopted prior to the most recent amendments (which were adopted in April of 2002). Therefore, the Illinois EPA is now submitting this ERRATA SHEET NUMBER 1 to correct the errors in its February 2003 submittal.

Language that has already been adopted by the Board, but inadvertently omitted by the Illinois EPA, will not be reflected with underlining. However, corrections to the current proposal will be reflected with underlining.

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Establishment of Soil Management Zones

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Requirements for No Further Remediation Letters Issued to Illinois

Department of Transportation Remediation Sites Located in Rights-of-Way

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Contents page 740.800	General
Contents page 740.805	Requirements Prior to Public Use
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Contents page 740.815	Public Notice of Site Remedial Action Plan
Contents page 740.820	Establishment of Document Repository
Contents page 740.825	Fact Sheet
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740.905	<u>Preliminary Review of Estimated Remediation Costs</u>
740.910	<u>Application for Final Review and payment of Remediation Costs</u>
740.911	<u>Application for Final Review and Payment of Remediation Costs Where the Remediation Applicant Will Remediate Groundwater For More Than</u>

One Year

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AUTHORITY

Implementing Section 58 through 58.8 and 58.10 through ~~58.15~~ ~~58.14~~ and authorized by Sections 58.5, 58.6, 58.7, 58.11, and 58.14, and ~~58.15~~ of the Environmental Protection Act [415 ILCS 5/58 through 58.8 and 58.10 through ~~58.15~~ ~~58.14~~].

Section

740.120

Definitions

The Illinois EPA proposal left out several of the definitions that were adopted from the most recent amendments in April 2002. In alphabetical order, the following definitions should have been incorporated into Section 740.120.

“Federal Landholding Entity” means that federal department, agency or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

“GIS” means Geographic Information System.

"GPS" means Global Positioning System.

"Institutional Control" means a legal mechanism for imposing a restriction on land use.

"Land Use Control Memorandum of Agreement" or "LUC MOA" means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 740.621 and 740.622 of this Part.

"Soil management zone" or "SMZ" means a three dimensional region containing soil being managed to mitigate contamination caused by the release of contaminants at a remediation site.

NOTE to Board: all the new definitions as proposed in the Illinois EPA's February 2003 submittal for this Section remain the same.

Subpart H

All references in the Illinois EPA February 2003 proposal to Subpart H should be changed to Subpart I. Likewise, all numbering of the 800 series in our proposal should be changed to a 900 series. The Illinois EPA did not intend to usurp the existing Subpart H regarding Requirements Related to Schools.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

Date: April 18, 2003

1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Errata Sheet Number 1 on behalf of the Illinois Environmental Protection Agency upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph St., Ste 11-500
Chicago, Illinois 60601
(1st Class)

Robert T. Lawley
Dept. Of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702
(1st Class)

Attorney General's Office
Environmental Bureau
188 W. Randolph, 20th Floor
Chicago, Illinois 60601
(1st Class)

See Attached Service List
(1st Class)

and mailing it from Springfield, Illinois on April 18, 2003

Lambert H. King

SUBSCRIBED AND SWORN TO BEFORE ME

this 18th day of April, 2003

Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

R 03-20 SERVICE LIST*
 IN THE MATTER OF: BROWNFIELDS SITE RESTORATION PROGRAM; AMENDMENTS TO 35 ILL. ADM. CODE 740
 Updated April 11, 2003

Iname	fname	company	Address	citystate	zip
Antoniolli	Amy	Hearing Officer Illinois Pollution Control Board	100 W. Randolph Street Suite 11-500	Chicago, IL	60601
Cohn Curley	Matthew Erin B.	The Jeff Diver Group, LLC Environmental Department Manager Midwest Engineering Services, Inc.	1749 South Naperville Road, Suite 102 4243 W. 166th Street	Wheaton, IL Oak Forest, IL	60187 60452
Dickett	William G.	Sidley Austin Brown & Wood	Bank One Plaza 10 S. Dearborn Street	Chicago, IL	60603
Diver Dunn	Jeffrey R. Matt	The Jeff Diver Group, LLC Chief Environmental Bureau Office of the Attorney General	1749 South Naperville Road, Suite 102 188 W. Randolph, 20th Floor	Wheaton, IL Chicago, IL	60187 60601
Dye Dyer	Ronald R. Judith S.	CORE Geological Services, Inc. Assistant Counsel Illinois Environmental Protection Agency	2621 Montego, Suite C 1021 North Grand Avenue East P.O. Box 19276	Springfield, IL Springfield, IL	62704 62794-9276
Frede	Lisa	Chemical Industry Council of Illinois	2250 E. Devon Avenue, Suite 239	Des Plaines, IL	60018
Gobelman	Steven	IDOT Bureau of Design & Environment	2300 S. Dirksen Parkway	Springfield, IL	62703
Gunn	Dorothy M.	Clerk Illinois Pollution Control Board	100 W. Randolph Street Suite 11-500	Chicago, IL	60601
Hambley, Ph.D., P.E., P.G.	Douglas F.	Practical Environmental Consultants, Inc.	919 N. Plum Grove Road, Suite E	Schaumburg, IL	60173
Jamison Lawley	George F. Robert	Environmental Operations, Inc. Chief Legal Counsel Illinois Department of Natural Resources	111 N. Sixth Street, Suite 301 One Natural Resources Way	Springfield, IL Springfield, IL	62701 62702-1271
Mack	Karen Kavanagh	Deutsch, Levy & Engel, Chtd.	225 W. Washington Street Suite 1700	Chicago, IL	60606
Messina	Robert A.	Illinois Environmental Regulatory Group	3150 Roland Avenue	Springfield, IL	62703
Moncek	George F.	United Environmental	119 E. Palatine Road, Suite 101	Palatine, IL	60067

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From ILLINOIS POLLUTION CONTROL BOARD

10:00 AM

14-03

R 03-20 SERVICE LIST*
 IN THE MATTER OF: BROWNFIELDS SITE RESTORATION PROGRAM; AMENDMENTS TO 35 ILL ADM. CODE 740
 Updated April 11, 2003

Perzan	Chris	Consultants, Inc. Office of the Attorney General Environmental Law Bureau	188 W. Randolph, Suite 20	Chicago, IL	60601
Petersen	Daniel W.	ERM, Inc.	704 North Deerpath Drive	Vernon Hills, IL	60061
Poplawski	Steven	Bryan Cave, L.L.P.	One Metropolitan Sq., Suite 3600	St. Louis, MO	63102
Rapps, P.E.	Michael	Rapps Engineering & Applied Science, Inc.	821 S. Durkin Drive	Springfield, IL	62704
Sechen	Glenn C.	Schain, Burney, Ross & Citron, Ltd.	222 N. LaSalle Street, Suite 1910	Chicago, IL	60601
Vogel	Musette H.	The Stolar Partnership	The Lammert Building 911 W. Washington, 7 th Floor	St. Louis, MO	63101-1290
Yonkauski, Jr.	Stanley	Legal Services Illinois Department of Natural Resources	One Natural Resources Way	Springfield, IL	62702-1271

*Subject to change without notification. Please contact the Clerks Office at 312-814-3461 to obtain the current list.

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P. 005

P-504

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From-ILLINOIS POLLUTION CONTROL BOARD

10:00am

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