

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
 )  
PROPOSED 35 ILL. ADM. CODE 820 )  
GENERAL CONSTRUCTION OR )R23-17  
DEMOLITION DEBRIS RECOVERY )  
FACILITIES )(Rulemaking-Land)

HEARING BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEPTEMBER 27, 2022

Ann Marie Hollo, CSR, RDR, CRR

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JAMES JENNINGS

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EXHIBIT

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(None.)

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HEARING BEFORE THE ILLINOIS POLLUTION CONTROL BOARD, on SEPTEMBER 27, 2022, between the hours of eight minutes after nine o'clock in the forenoon and fifty minutes after ten o'clock in the forenoon of that day, at the Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62701, before Ann Marie Hollo, CSR, RDR, CRR, in a certain cause now pending BEFORE THE ILLINOIS POLLUTION CONTROL BOARD.

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A P P E A R A N C E S

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A P P E A R A N C E S (CONT'D)

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The Court Reporter:  
Ann Marie Hollo, CSR, RDR, CRR

1           IT IS HEREBY STIPULATED AND AGREED that the  
2 hearing may be taken in shorthand by Ann Marie  
3 Hollo, RDR/CRR, a Certified Shorthand Reporter, and  
4 afterwards transcribed into typewriting.

5   \* \* \* \* \*

6           (Starting time of the hearing is: 9:08 a.m.)

7   HEARING OFFICER FOX: Good morning,  
8 and welcome to this Illinois Pollution Control Board  
9 hearing.

10    My name is Tim Fox, and with Chloe  
11 Salk to my left, we are the hearing officers for  
12 this rulemaking proceeding entitled, "Proposed 35  
13 Illinois Administrative Code 820, General  
14 Construction or Demolition Debris Recovery  
15 Facilities." The Board docket number for this  
16 rulemaking is R23-17.

17    To get started, I want to go quickly  
18 through three preliminary issues: Introductions,  
19 the Board's procedure to date, and then some  
20 housekeeping, including the order in which we'd like  
21 to conduct this hearing.

22    First, introductions. Present today  
23 from the Board are at my immediate left, Board  
24 Member Michelle Gibson, a lead Board member assigned  
25 to this docket, and in addition to Chloe Salk, who I

1 just introduced moment ago. Also present from the  
2 Board staff are Anand Rao and Essence Brown from the  
3 Board's technical unit, and off to the side is our  
4 general counsel, Marie Tipsord.

5 Secondly, the Board's procedure to  
6 date: On August 1st of 2022, IEPA filed this  
7 rulemaking proposal, and in an order on August 11,  
8 2022, the Board accepted the proposal for hearing.  
9 In an order on August 15th, the hearing officers  
10 scheduled two hearings. On August 18th of 2022,  
11 the Board published notice of the two hearings in  
12 both the Chicago Sun-Times and in The State  
13 Journal-Register of Springfield. Today we are, of  
14 course, conducting the first of the two hearings.

15 And in the order scheduling this one,  
16 the hearing officers directed participants that  
17 intended to testify today to prefile their testimony  
18 no later than Tuesday, September 6th. And on that  
19 day, the Board received pre-filed testimony on  
20 behalf of IEPA from Mr. James Jennings, who is  
21 present here today. No other participant did  
22 prefile testimony for this hearing.

23 The order also directed participants  
24 to prefile questions based on that testimony by  
25 Tuesday, September 20th of 2022, and on that date

1 the Board received prefiled questions from the  
2 Illinois Attorney General's office and the Illinois  
3 Environmental Regulatory Group often referred to as  
4 "IERG."

5 In a hearing officer order on that  
6 date, the Board also submitted its own questions  
7 based on the Agency's proposal and testimony.

8 I do want to note that yesterday the  
9 IEPA filed written responses to the three sets of  
10 questions. Those were not required or the subject  
11 of the hearing officer order, but they are helpful  
12 in clarifying and expanding the record and  
13 expediting the course of this hearing, and the Board  
14 appreciates the time and the effort on the part of  
15 the Agency and its staff in submitting those.

16 The Board has posted each of the  
17 filings and other documents that I mentioned to its  
18 clerk's office online, or "COOL," and they're  
19 available under this docket number, again, 23-17.

20 Finally, quickly, our housekeeping.  
21 The hearing is governed by the Board's procedural  
22 rules, and under Section 102.426 of those rules, all  
23 information that is relevant and is not repetitious  
24 or privileged will be admitted by the hearing  
25 officer into the record. Please bear in mind that



1 any questions posed today either by Board member or  
2 by the staff are intended solely to help develop a  
3 clear and complete record, and those do not reflect  
4 any determination or judgment on the testimony, the  
5 questions, or the proposal itself.

6 Finally, the proposed order for  
7 proceeding today, we will plan to begin, as  
8 originally suggested in the hearing officer order,  
9 with the prefiled testimony of IEPA's witness,  
10 Mr. Jennings. Again, this prefiled testimony will  
11 be entered into the record as if read under the  
12 Board's procedural rules. The witness may begin, if  
13 he wishes to do so, with a brief introduction or  
14 summary.

15 We will then turn to questions for  
16 the Agency's witnesses -- the Agency's single  
17 witness -- I'm sorry -- in discussing the order of  
18 procedure with the participants off the record  
19 before we begin. We will start with the attorney  
20 general's questions that were prefiled for this  
21 hearing. We will quickly go through those to make  
22 sure that the AG's office does not have any  
23 follow-up questions, clarifications, one by one  
24 until they have exhausted the questions they may  
25 have based on the responses the Agency filed

1 yesterday.

2                   Once the attorney general's office  
3 indicates that they've wrapped that up, we'll turn  
4 to IERG, who posed a single question to which the  
5 Agency has, of course, responded, and once IERG is  
6 finished with any follow-ups or clarifications, the  
7 Board then will follow roughly the same procedure in  
8 addressing the 49 questions that it included in its  
9 hearing officer order and to which the Agency  
10 submitted a written response.

11                   Pardon me.

12                   After all of those questions are  
13 wrapped up, we can see whether there's anyone  
14 present who did not prefile testimony, but would  
15 like to testify here today.

16                   There also will be an opportunity for  
17 any participant to offer comment or testimony on the  
18 Board's required request to the Department of  
19 Commerce and Economic Opportunity that -- to perform  
20 an economic impact study of the proposal.

21                   Before adjourning, we can then see if  
22 anyone wishes to offer a public comment. I do want  
23 to note that just inside the door, there is a  
24 sign-up sheet, so that anyone who does wish to offer  
25 a public comment on the proposal can indicate their

1 interest in doing so, and before we adjourn, as I  
2 said, we can address those.

3 Any questions about the order  
4 proceeding at all?

5 (No response.)

6 HEARING OFFICER FOX: Neither seeing  
7 nor hearing any, Mr. McDonough, I think that we are  
8 ready to turn to testimony if Mr. Jennings is ready  
9 to be sworn in by the court reporter for any  
10 introduction or summary. We can begin that.

11 MR. MCDONOUGH: Good morning, yes.

12 HEARING OFFICER FOX: Excellent. I  
13 should have asked, Mr. McDonough, if you wouldn't  
14 object to introducing yourself for the record.

15 MR. MCDONOUGH: Okay. Yes.

16 Good morning. My name is John  
17 McDonough. I'm assistant counsel for the land  
18 regulatory unit for the Illinois Environmental  
19 Protection Agency's division of legal counsel.

20 As indicated, our witness, James  
21 Jennings, is available for questions today, and the  
22 Agency moves to swear him in, and I'll provide a  
23 brief introduction before we proceed with the  
24 question.

25 HEARING OFFICER FOX: Thanks,

1 Mr. McDonough.

2 And whenever the court reporter is  
3 ready.

4 (Witness sworn.)

5 HEARING OFFICER FOX: Mr. Jennings,  
6 good morning. If you have any introduction or  
7 summary of your testimony you'd like to offer,  
8 please go ahead.

9 JAMES JENNINGS,  
10 of lawful age, being produced and sworn, testifies  
11 and says:

12 MR. JENNINGS: Good morning, and  
13 thank you all for accepting our prefiled responses.  
14 It's something that, ultimately, our team had been  
15 working with. Our division of legal counsel felt it  
16 would be very helpful to inform some of the  
17 questions that have been raised.

18 And as was noted, I'm James Jennings.  
19 I manage the Agency's materials management and  
20 compliance section, which will ultimately be the  
21 home for the permitting and compliance processes  
22 that are outlined in the proposed rulemaking.

23 As set forth in my prefiled testimony  
24 as well as in our statement of reasons, the Agency's  
25 intent behind this rulemaking process is to ensure a

1 smoother transition as operationally possible from  
2 the historic practices governing how facilities that  
3 manage general construction and demolition debris  
4 have been regulated in the past into this new  
5 rulemaking. Certainly there are some differences in  
6 what we've included in our rules compared to the  
7 historic practices that have applied to these  
8 facilities. Nevertheless, we contemplate this being  
9 a relatively easy shift in how these have operated.

10 To the extent there are differences,  
11 those are identified in both my prefiled testimony  
12 and in our filings, and I look forward to any  
13 questions you or the other stakeholders may have on  
14 those.

15 HEARING OFFICER FOX: Very good.  
16 Mr. Jennings, thank you very much.

17 As we discussed, we can turn to the  
18 questions on that proposal and testimony on the part  
19 of the attorney general's office.

20 Ms. Kordas, I wonder if it would make  
21 sense for you to join us, perhaps, at the corner of  
22 this head table, which might make you a little more  
23 audible both to the Agency and to the court  
24 reporter. Sorry to dislocate you.

25 MS. KORDAS: Thank you.

1 HEARING OFFICER FOX: And if you  
2 wouldn't object, please identify yourself for the  
3 record.

4 MS. KORDAS: Sure. My name is Molly  
5 Kordas, K-O-R-D-A-S. I'm an assistant attorney  
6 general for the Environmental Bureau of the Illinois  
7 Office of the Attorney General.

8 HEARING OFFICER FOX: Ms. Kordas, the  
9 attorney general's office had, of course,  
10 filed -- prefiled eight questions from the attorney  
11 general's office. Would you be prepared for us to  
12 start with the first of those?

13 MS. KORDAS: Sure.

14 HEARING OFFICER FOX: Excellent.

15 The first of those questions dealt  
16 with the deadline to apply for a permit, and, of  
17 course, the IEPA had submitted its written answers.  
18 Did the attorney general's office have any  
19 follow-ups or clarifications it wished to raise?

20 EXAMINATION

21 BY MS. KORDAS

22 **Q. So I just wanted to clarify that those**  
23 **permits we were asking about will not be modified;**  
24 **is that correct?**

25 A. (By Mr. Jennings) Yes. So the Agency

1 doesn't have the current regulatory authority to  
2 unilaterally modify a permit for a GCDD facility.  
3 That's something that is incorporated in this  
4 rulemaking to address that.

5           And so as a result, how the order of  
6 operations would occur is that any of these  
7 facilities that hold a permit that is less stringent  
8 than the existing provisions of either of these  
9 rules or the Act, would either need to come in and  
10 submit a permit application reflecting those  
11 changes, or they would maintain their permit during  
12 the one-year interim period or would still need to  
13 satisfy the various operational requirements set  
14 forth in the state law.

15           HEARING OFFICER FOX: Moving ahead to  
16 the next question that the Agency's designated "1a,"  
17 you had asked about the estimated number of these  
18 facilities, and if you have any follow-ups, please  
19 go ahead.

20           MS. KORDAS: I don't have any  
21 follow-ups on that one.

22           HEARING OFFICER FOX: Very good.

23           Question Number 2 addressed -- from  
24 the attorney general's office addressed the  
25 possibility of requiring a dust control plan. If

1 you have any follow-ups, please go ahead.

2 MS. KORDAS: No follow-ups on that  
3 one.

4 HEARING OFFICER FOX: Very good.

5 The following question referred to  
6 coverage, potential coverage under a National  
7 Pollutant Discharge Elimination System, or "NPEDS,"  
8 permit. Please go ahead with any follow-ups or  
9 clarifications.

10 MS. KORDAS: No follow-ups on that  
11 one.

12 HEARING OFFICER FOX: Very good.

13 And the fifth question -- Question  
14 Number 4, as designated by the IEPA, dealt with the  
15 statutory language at Section 22.38(j) of the Act,  
16 and if you have any clarifications or follow-up  
17 questions, please go ahead.

18 MS. KORDAS: Sorry. One moment.

19 FURTHER EXAMINATION

20 BY MS. KORDAS

21 Q. So to clarify that one, it's my  
22 understanding that the facilities would not be  
23 allowed to accept other materials, but if materials  
24 are commingled, is that the -- they have the 72-hour  
25 period to kind of deal with that?



1 A. (By Mr. Jennings) Correct, yeah.

2 MS. KORDAS: Okay. I think that's it  
3 on that question.

4 HEARING OFFICER FOX: Very good.

5 The attorney general's office's next  
6 question dealt with, quote, "All other materials at  
7 the facility," unquote.

8 Please go ahead with any follow-ups,  
9 Ms. Kordas.

10 MS. KORDAS: So that was kind of  
11 related to our last question as well.

12 FURTHER EXAMINATION

13 BY MS. KORDAS

14 **Q. So just to clarify, that's, again, kind of**  
15 **aimed at that commingling, or is that referring to**  
16 **something else?**

17 A. (By Mr. Jennings) It would still be the  
18 commingling.

19 HEARING OFFICER FOX: Very good.

20 And the next question designated  
21 Number 6 by IEPA referred to completing closures.

22 Ms. Kordas, please go ahead with any  
23 follow-ups.

24 MS. KORDAS: I don't think we have  
25 any follow-ups.

1 HEARING OFFICER FOX: Very good.

2 And what the Agency has designated as  
3 "6a" refers generally to the same issue.

4 Again, if you have any follow-ups,  
5 please go ahead.

6 MS. KORDAS: No follow-ups on that.

7 HEARING OFFICER FOX: Okay. And as  
8 designated "Number 7" by the Agency, your question  
9 had dealt with self-insurance. If you have any  
10 follow-ups?

11 MS. KORDAS: No.

12 HEARING OFFICER FOX: And Question  
13 Number 8 addressed the use of a trust agreement.

14 If you have any follow-up questions,  
15 Ms. Kordas.

16 MS. KORDAS: I don't think we have  
17 any follow-ups on the proposed language.

18 HEARING OFFICER FOX: You're  
19 referring to the proposed revisions that IEPA --

20 MS. KORDAS: Yes.

21 HEARING OFFICER FOX: -- had included  
22 in its written responses? Very good.

23 That seems to have exhausted the  
24 questions you had, Ms. Kordas. Do you have any  
25 other questions you wanted to raise while the

1 Agency's witness is sworn in?

2 MS. KORDAS: No.

3 HEARING OFFICER FOX: Very good.

4 And, Ms. Brown, I can give you the  
5 opportunity as well while the Agency's witness is  
6 here addressing the attorney general's questions.  
7 Did you have any follow-ups you wish to ask on those  
8 issues before we turn to your question?

9 MS. BROWN: I do not.

10 HEARING OFFICER FOX: Very good.

11 Thank you.

12 Ms. Kordas, thank you very much for  
13 your help, and we appreciate your presence and your  
14 involvement here today.

15 Ms. Brown, if I may ask you to take  
16 the same chair. I think that worked well and should  
17 work well for you also.

18 And when you've had a second, if you  
19 would please identify yourself for the record, for  
20 the court reporter.

21 MS. BROWN: Melissa Brown.

22 M-E-L-I-S-S-A. Last name is B-R-O-W-N. I'm outside  
23 counsel for the Illinois Environmental Regulatory  
24 Group also known as "IERG," I-E-R-G.

25 HEARING OFFICER FOX: Ms. Brown,

1 thanks very much for your attendance today. You  
2 have a single question dealing very generally, I  
3 know, with the applicability of the proposed part  
4 20. Of course, the Agency's witness is here. Did  
5 you have any follow-up or clarification you wish to  
6 raise on the record with the Agency?

7 MS. BROWN: We do not have any  
8 follow-ups. We appreciate the Agency's pre-filed  
9 response.

10 HEARING OFFICER FOX: Ms. Kordas, did  
11 the AG's office have any follow-up based on IERG's  
12 question or the Agency's response?

13 MS. KORDAS: We do not.

14 HEARING OFFICER FOX: Very good.

15 Ms. Brown, very quick, very simple,  
16 very much appreciated. Thanks very much.

17 MS. BROWN: Thank you.

18 HEARING OFFICER FOX: And that brings  
19 us to the questions that were prefiled by the Board  
20 itself, of course.

21 I do want to stress Ms. Kordas,  
22 Ms. Brown, if you have any of the Board's questions  
23 on which you would like to pose a follow-up or  
24 request to clarification, please just raise your  
25 hand to signify that you do have that, and we can

1 recognize you to raise that question.

2 I apologize that this may seem a  
3 little mechanical, but it's made faster, I'm sure,  
4 by the written responses that the Agency has  
5 submitted and that are appreciated.

6 Let's start with, logically, Board  
7 Question Number 1. This addressed the Section  
8 820.101, the purpose provision.

9 Mr. Rao, or Ms. Brown, does the  
10 Board -- the Board's technical unit have any  
11 follow-up questions to the Agency's response?

12 MS. TIPSORD: Go ahead.

13 MR. RAO: No.

14 HEARING OFFICER FOX: Good.

15 Mr. Rao has indicated that he does  
16 not have a follow-up question.

17 Question Number 2 regarding the  
18 Section 820.102, applicability. The Board had asked  
19 about a potential revision of Subsection A. Would  
20 Member Gibson or the technical unit have any  
21 follow-up questions on the Agency's response?

22 MR. RAO: No, I don't.

23 HEARING OFFICER FOX: Not hearing  
24 any, Question Number 3 asked for comment on the  
25 application of Part 820.

1 Does the Board or any other  
2 participant have a follow-up question on that?

3 (No response.)

4 HEARING OFFICER FOX: Neither seeing  
5 nor hearing any --

6 MR. RAO: Are you talking about  
7 Number 4?

8 HEARING OFFICER FOX: I'm getting to  
9 that right now.

10 MR. RAO: Oh, okay.

11 HEARING OFFICER FOX: Yes.

12 Question Number 4 -- pardon  
13 me -- asked about the Agency's rationale for a  
14 particular exemption.

15 And, Mr. Rao, it appears you've got  
16 the follow-up questions for the Agency based on  
17 their written response.

18 MR. RAO: Yes, I do.

19 I understand what the Agency's  
20 rationale is to exempt facilities that are located  
21 on permitted landfills. I wanted to know whether it  
22 would be acceptable to the Agency if the rule is  
23 clarified to specifically identify facilities that  
24 are permitted to accept GCDD material at these  
25 landfill sites? Right now, the proposed language

1 generally exempts GCDD facilities in permitted  
2 landfills, but should those landfills be also  
3 specifically permitted to accept GCDD? If you can  
4 take a look at it and get back to us, that will be  
5 good.

6 MR. JENNINGS: Okay.

7 MR. RAO: Thank you.

8 HEARING OFFICER FOX: And if we can  
9 move it along to Question Number 5, the Board had  
10 asked about a potential revision of the preamble to  
11 the definitions. The Agency indicated that it had  
12 no objection.

13 Any follow-up on the part of the  
14 Board or any other participant?

15 (No response.)

16 HEARING OFFICER FOX: Neither seeing  
17 nor hearing any, Question Number 6 asked about the  
18 definition of quote, "adjudicated bankrupt,"  
19 unquote, and we have the Agency's response.

20 On the part of the Board and the  
21 staff or any other participants, a follow-up or  
22 clarification?

23 MR. RAO: Okay. We're good.

24 HEARING OFFICER FOX: Neither seeing  
25 nor hearing any on Number 7, the Board had asked

1 about the Agency's proposed definition of  
2 "applicant" -- pardon me -- and the Agency indicated  
3 that it did not object to the proposed revision.

4 Any follow-up on the part of the  
5 Board and its staff or the participants?

6 (No response.)

7 HEARING OFFICER FOX: Neither seeing  
8 nor hearing any, we'll move on to Question Number 8.  
9 Regarding the proposed definition of "disposal," the  
10 proposed revision was supported by IEPA.

11 Any questions or follow-up on the  
12 part of the participants?

13 (No response.)

14 HEARING OFFICER FOX: Neither seeing  
15 nor hearing any, Question Number 9 asked about the  
16 definition, proposed definition of "malodor," to  
17 which the Agency has, of course, submitted its  
18 written response.

19 Any follow-up or clarification on the  
20 part of any of the participants or the Board?

21 (No response.)

22 HEARING OFFICER FOX: Neither seeing  
23 nor hearing any, the next Question Number 10  
24 addressed the definition of "operator." The Agency  
25 responded with a source of that.



1 Any follow-up or any clarification on  
2 the part of any of the participants?

3 (No response.)

4 HEARING OFFICER FOX: Neither seeing  
5 nor hearing any, Question Number 11, the proposed  
6 definition of "owner," to which the Agency responded  
7 with the source of that definition.

8 Any clarifications or follow-up  
9 questions on the part of the participants?

10 (No response.)

11 HEARING OFFICER FOX: Neither seeing  
12 nor hearing any, the next Question Number 12 is  
13 regarding the proposed definition of "putrescible,  
14 recyclable GCCD," to which the Agency has -- of  
15 course, has responded.

16 Any follow-up or clarification?

17 (No response.)

18 HEARING OFFICER FOX: Neither seeing  
19 nor hearing any, the Question Number 13, the next  
20 question, dealt with the proposed definition of  
21 "run-on." We have the Agency's written response, of  
22 course. I don't see any indication that there is  
23 follow-up or a request for a clarification.

24 We'll turn from the definitions to  
25 Question Number 14, regarding the severability

1 provision in Section 820.105. The Agency's  
2 indicated that it had no objection to the Board's  
3 proposed revision to that.

4 Do I -- is there anyone who wishes to  
5 ask a follow-up question or request a clarification?

6 (No response.)

7 HEARING OFFICER FOX: Neither seeing  
8 nor hearing any, the next questions deal with the  
9 proposed language regarding permit applications.  
10 Pardon me. Number 15 asked about the requirement to  
11 submit applications on Agency forms, and the Agency  
12 has given us its written response.

13 Is there any follow-up on the part of  
14 the Board or any other participant?

15 (No response.)

16 HEARING OFFICER FOX: Neither seeing  
17 nor hearing any, Number 16 asked about a potential  
18 duration or expiration date. The Agency, of course,  
19 has filed its written response.

20 Is there any follow-up or  
21 clarification?

22 MR. RAO: No.

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any, Question Number 17 asked about the  
25 map required by -- required to be a part of the

1 permit application.

2 Any follow-up to the Agency's  
3 response?

4 (No response.)

5 HEARING OFFICER FOX: Neither seeing  
6 nor hearing any, Question Number 18, the next, asked  
7 about the description of adjoining property in the  
8 permit application.

9 Any follow-ups to the Agency's  
10 written response?

11 (No response.)

12 HEARING OFFICER FOX: Seeing none,  
13 Question Number 19 referred to references to  
14 "surface waters" in the permit application.

15 Is there any request for follow-up or  
16 clarification to the Agency's written response?

17 (No response.)

18 HEARING OFFICER FOX: Question Number  
19 20 referred to -- references to "floodplains" in the  
20 required permit application.

21 Any request for clarification or for  
22 a follow-up on that response?

23 (No response.)

24 HEARING OFFICER FOX: Neither seeing  
25 nor hearing any, the Board asked in Question 21

1 whether a clarifying revision was acceptable to the  
2 Agency; they had no objection.

3 Is there any follow-up to that  
4 response?

5 (No response.)

6 HEARING OFFICER FOX: Neither seeing  
7 nor hearing any, Question Number 2 referring to the  
8 waiver of a decision deadline, we, of course, have  
9 the Agency's response.

10 Is there any request for a  
11 clarification for a follow-up question on that  
12 language?

13 MR. RAO: No.

14 HEARING OFFICER FOX: No?

15 Neither seeing nor hearing any, we'll  
16 move on to Question Number 23, Section 820.204,  
17 regarding transfers of permits. The Board asked  
18 whether it would clarify this section to reorganize  
19 and revise. The Agency has indicated that it does  
20 not object to what the Board has proposed.

21 Any follow-up at all?

22 (No response.)

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any, we'll turn to Question Number 24,  
25 regarding Section Number 820.205. "Agency initiated

1 modifications of permits." Again, the Agency has  
2 indicated that it does not object to a proposed  
3 revision that was offered by the Board.

4 Any follow-up or clarification on  
5 that?

6 (No response.)

7 HEARING OFFICER FOX: We will turn  
8 then to Question Number 25, Section 820.301,  
9 prohibitions. Again, the Agency has indicated that  
10 it does not object to a proposed revision from the  
11 Board.

12 Any follow-up on that?

13 (No response.)

14 HEARING OFFICER FOX: Neither seeing  
15 nor hearing any, we'll move on to Section 820.302,  
16 general operating standards.

17 Section -- or Question Number 26  
18 refers to notification of emergency circumstances,  
19 and we do have the Agency's response.

20 Is there any follow-up or request for  
21 clarification on that issue specifically?

22 (No response.)

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any, the next Question 27 addressing the  
25 same general issue of emergency situations, and the

1 extension of a finding of an emergency.

2 Any response -- any follow-up to the  
3 Agency's response?

4 (No response.)

5 HEARING OFFICER FOX: Neither seeing  
6 nor hearing any, the next Question Number 28, the  
7 Agency has indicated that it does not object to the  
8 Board's proposed revision regarding operating hours.

9 Any follow-up to that response?

10 (No response.)

11 HEARING OFFICER FOX: Section --  
12 Question Number 29, rather, refers to particulate  
13 matter at GCDD facilities and the potential  
14 requirement of a dust control plan.

15 Is there any follow-up? Is there any  
16 request for additional clarification on the Agency's  
17 response?

18 (No response.)

19 HEARING OFFICER FOX: Neither seeing  
20 nor hearing any, the 30th question deals with  
21 vehicle safety. The Agency has indicated that it  
22 does not object to the Board's proposed revision of  
23 that section -- subsection.

24 Is there any request for further  
25 information?

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(No response.)

HEARING OFFICER FOX: Neither seeing nor hearing any, Question Number 31 addresses run-on or run-off from a GCDD facility. We have the Agency's written response.

Any questions for clarification or follow-up?

(No response.)

HEARING OFFICER FOX: Neither seeing nor hearing any, Question Number 32, the IEPA has indicated that it does not object to the Board's proposed revision.

Again, any follow-up on that?

(No response.)

HEARING OFFICER FOX: Neither seeing nor hearing any, Question Number 33, again, no objection on the part of the Agency to the Board's proposed revision.

Seeing no request for any follow-up on that, we'll turn to 34, which refers to the obligation of an owner or operator to develop and maintain a contingency plan. We have the Agency's written responses.

Is there any follow-up or request for clarification?

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(No response.)

HEARING OFFICER FOX: Neither seeing nor hearing any, Question Number 35, the Agency indicates that it has no objection to the Board's proposed revision of that section.

Is there any follow-up on that?

(No response.)

HEARING OFFICER FOX: Neither seeing nor hearing any, we'll turn to Section 820.303, processing program. The Board -- the Agency has indicated that it has no objection to a proposed revision by the Board.

I'm not seeing any request for follow-up or clarification.

Question Number 37. The Agency, again, indicates that it has no objection to a proposed revision by the Board.

I'm not seeing any indication that there is a question, follow-up question.

Question Number 38 -- pardon me -- refers to clean construction or demolition debris and uncontaminated soil that's received.

Is there any follow-up or request for clarification of the Agency's response?

(No response.)



1 HEARING OFFICER FOX: Neither seeing  
2 nor hearing any, the Agency has indicated in  
3 Question Number 39 that it has no objection to the  
4 Board's proposed revision.

5 Any follow-up on that response?

6 (No response.)

7 HEARING OFFICER FOX: Neither seeing  
8 nor hearing any, we'll move on to Section 820.304,  
9 recordkeeping requirements. Question Number 40,  
10 again, addresses forms that will be required by the  
11 Agency.

12 Is there any request for follow-up to  
13 the Agency's response on that issue?

14 (No response.)

15 HEARING OFFICER FOX: Neither seeing  
16 nor hearing any, Question Number 41, IEPA indicates  
17 that it does not -- does not object -- pardon  
18 me -- to a proposed revision of Subsection D from  
19 the Board.

20 Any follow-up or questions on that  
21 issue?

22 (No response.)

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any, we'll turn to Section 820.305,  
25 closure. Question Number 42 addresses completion of

1 closure, and the Agency has, of course, provided its  
2 written response.

3 Is there any follow-up, or is there  
4 any clarification?

5 MS. TIPSORD: Yes. Marie Tipsord.

6 I just -- in reading our question and  
7 then going back to the AG's Question Number 6, where  
8 the AG asked about closure cannot be practically  
9 completed, in looking at your response that it often  
10 be site-specific, I'm assuming that things that  
11 could contribute are things such as weather or other  
12 issues that might occur. Is there any possibility  
13 that you could give us some examples that we might  
14 either be able to use when JCAR asks us, or include  
15 as a "such-as" list in the rule?

16 MR. JENNINGS: Absolutely.

17 MS. TIPSORD: Thank you.

18 HEARING OFFICER FOX: Any further  
19 questions on Number 42?

20 (No response.)

21 HEARING OFFICER FOX: Neither seeing  
22 nor hearing any, the next question addresses  
23 Section 820.306, certification of closure and  
24 termination of permit.

25 The Board's question addressed that

1 general issue. We have the Agency's response.

2 Is there any follow-up or any request  
3 for clarification on the Agency's part?

4 Mr. Rao?

5 MR. RAO: I have a follow-up.

6 I wanted to know if it would be  
7 acceptable to the Agency if a cross reference to  
8 Section 39 of the Act is added under 823.06 to  
9 provide the reader of that -- the Agency's decisions  
10 that are made under Section 39?

11 MR. JENNINGS: Conceptually, that  
12 would be acceptable. Certainly we'd want to see the  
13 language to confirm that it aligns with this, but  
14 from a conceptual perspective, that's absolutely --

15 MR. RAO: If you can take a look at  
16 it and get back to us.

17 MR. JENNINGS: Yes.

18 MR. RAO: Thank you.

19 HEARING OFFICER FOX: Any further  
20 questions on Number 43?

21 (No response.)

22 HEARING OFFICER FOX: Question Number  
23 44 addresses Section 820.042, closure cost estimate.  
24 The Agency's indicated that it does not object to  
25 the Board's proposed revision.

1 Is there any follow-up?

2 (No response.)

3 HEARING OFFICER FOX: Neither seeing  
4 nor hearing any, Question Number 45 on the same  
5 section asks about the effect of a pending permit  
6 application. Is there any request for follow-up or  
7 clarification to the Agency's written response?

8 (No response.)

9 HEARING OFFICER FOX: Neither seeing  
10 nor hearing any -- and I promise that we're  
11 approaching the end -- Question Number 46 addresses  
12 Section 820.403, release of financial institution.  
13 The Agency has proposed amending Subsection B in its  
14 written responses.

15 Is there any request for  
16 clarification or follow-up on its response or that  
17 proposed revision?

18 (No response.)

19 HEARING OFFICER FOX: Neither seeing  
20 nor hearing any, we'll turn to Question Number 47,  
21 which addresses Section 820.404, trust fund. This  
22 addresses required forms from the Agency. We have  
23 the response.

24 Is there any request to follow up or  
25 clarify?

1 (No response.)

2 HEARING OFFICER FOX: Neither seeing  
3 nor hearing any, Question Number 48, the Agency has  
4 no objection to the Board's proposed revision of  
5 this section, specifically Subsection C.

6 Is there any request for follow-up on  
7 that?

8 (No response.)

9 HEARING OFFICER FOX: Neither seeing  
10 nor hearing any, Question Number 49. The Agency,  
11 again, indicated that it had no objection to the  
12 Board's proposed revision of that language.

13 Is there any request for follow-up?

14 (No response.)

15 HEARING OFFICER FOX: Neither seeing  
16 nor hearing any, let me -- Ms. Brown, and  
17 Ms. Kordas, see whether at the conclusion of the  
18 Board's questions you have anything additional that  
19 you would like to raise with the Agency and its  
20 witness while he's here and under oath?

21 MS. BROWN: IERG does not.

22 HEARING OFFICER FOX: Very well.

23 Thank you, Ms. Brown.

24 MS. AVILA: Audrey Avila with the  
25 Illinois Attorney General's Office. I had a

1 question on 9, malodor.

2 THE REPORTER: I'm sorry. Could you  
3 repeat your last name, please.

4 MS. AVILA: Avila, A-V-I-L-A.

5 THE REPORTER: Thank you.

6 HEARING OFFICER FOX: Ms. Avila, we  
7 may need a little more volume from you.

8 MS. AVILA: Sure. Sorry.

9 HEARING OFFICER FOX: No, not at all.  
10 Thank you very much.

11 EXAMINATION

12 BY MS. AVILA

13 **Q. The definition of malodor is based upon**  
14 **the reason -- on a reasonable person, and I'm just**  
15 **wondering if you could explain a little bit more**  
16 **what is meant by a "reasonable person."**

17 A. (By Mr. Jennings) So that is a fantastic  
18 question.

19 Ultimately, this would be much like the  
20 rest of the operational standards that are intended  
21 to provide both the Agency and the facilities some  
22 flexibility when evaluating potential compliance  
23 issues on a site. This was developed in context  
24 with some of our permitting staff as well as some of  
25 our field staff. We'd be happy to provide some

1 additional feedback in post-hearing comment. I just  
2 wanted to make sure the perspectives that they  
3 inserted into this are adequately captured in a  
4 response.

5 HEARING OFFICER FOX: Ms. Avila,  
6 anything else on that issue or any other question  
7 you might wish to raise?

8 MS. AVILA: No, not at this time.  
9 Thank you.

10 HEARING OFFICER FOX: Ms. Kordas, I  
11 believe you indicated that you were fine for now?

12 MS. KORDAS: Yes.

13 HEARING OFFICER FOX: Excellent.  
14 Thanks very much.

15 MR. MCDONOUGH: Officer Fox, there is  
16 one clarification regarding Question 40. The Agency  
17 has some forms that it -- we'll follow up and file  
18 in post-hearing comments as well.

19 HEARING OFFICER FOX: Mr. McDonough,  
20 if I understand you correctly -- and forgive me if I  
21 don't --

22 MR. MCDONOUGH: Yes.

23 HEARING OFFICER FOX: -- you intend  
24 to file some post-hearing comments that include the  
25 forms that the Agency has already prepared; is that

1 correct?

2 MR. MCDONOUGH: Regarding Question  
3 40.

4 HEARING OFFICER FOX: The one of the  
5 set of forms to which you had referred?

6 MR. MCDONOUGH: Yes.

7 HEARING OFFICER FOX: Excellent.

8 And when we go off the record, I  
9 think, shortly just to talk about some procedural  
10 issues including any deadlines for responses, we can  
11 address that more specifically, if that makes sense.

12 MR. MCDONOUGH: Okay.

13 HEARING OFFICER FOX: Very good.

14 I had gracelessly also asked our  
15 general counsel, Marie Tipsord, to check the sign-in  
16 sheet to see whether anyone wished to offer a  
17 comment, and she indicates quite clearly that there  
18 is no one on the list. Is there anyone present,  
19 however, who does wish to offer a public comment on  
20 the Agency's proposal or on the issues that have  
21 been raised here in the hearing today?

22 (No response.)

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any at all, let me take just a moment to  
25 see also whether there is anyone who did not



1 pre-file testimony, but does wish to offer sworn  
2 testimony here at the hearing today. Am I correct  
3 that there is no one who wishes to do so, no one who  
4 wishes to testify that has not already done so?

5 (No response.)

6 HEARING OFFICER FOX: Seeing no one  
7 who indicates -- neither seeing nor hearing anyone  
8 who indicates that they wish to testify, let me take  
9 one quick moment to address the issue of an economic  
10 impact statement.

11 Section 27(b) of the Environmental  
12 Protection Act requires that the Board must request  
13 that the Department -- Department of Commerce and  
14 Economic Opportunity, or DCEO, conduct an economic  
15 impact study of proposed rules before the Board  
16 adopts the rules. The Board must then make either  
17 the economic impact study itself or the Department's  
18 explanation for not conducting one available at  
19 least 20 days before public hearing.

20 In a letter dated August 11th of  
21 2022, the Board's chair, Barbara Flynn Currie,  
22 requested that DCEO conduct the study, and the Board  
23 specifically requested a response no later than  
24 yesterday, September 26th of 2022. To date, the  
25 Board has received no response to that request from

1 DCEO.

2 While we intend also to address this  
3 at the second hearing schedule for November, is  
4 there anyone present today who would like to testify  
5 or comment regarding the Board's request for that  
6 study and DCEO's response to date?

7 (No response.)

8 HEARING OFFICER FOX: Neither seeing  
9 nor hearing anyone, why don't we go off the record  
10 just for a moment or two to clarify some procedural  
11 issues? And I think at that point, we'll be ready  
12 to adjourn.

13 (Whereupon there was a short discussion  
14 off the record.)

15 HEARING OFFICER FOX: Thank you very  
16 much for bearing with us a moment or two.

17 We did go off the record just for a  
18 short time to address procedural issues, one of  
19 which is to confirm that the second hearing will  
20 proceed as scheduled on Wednesday, November 16th,  
21 with a deadline to prefile testimony of Wednesday,  
22 October 26th, and a deadline to prefile questions  
23 of Wednesday, November 9th.

24 The IEPA had indicated that there  
25 were four questions that had arisen on which they

1 wish to prepare a written response. Those dealt  
2 with the Board's Questions Number 4, Number 9,  
3 Number 42, and Number 43. The Agency's counsel  
4 indicates that written responses to those can be  
5 filed by the deadline to prefile testimony for the  
6 second hearing on October 26th, and we appreciate  
7 your flexibility in preparing that.

8 Do we have anything else that we  
9 would need to address before we adjourn?

10 (No response.)

11 HEARING OFFICER FOX: Neither seeing  
12 nor hearing anything, thank you, all, for your  
13 participation today. We're set to adjourn, and  
14 we'll see you in November.

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16 (Hearing ended 9:50 a.m.)  
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CERTIFICATE OF REPORTER

I, Ann Marie Hollo, Certified  
Shorthand Reporter, Registered Diplomate Reporter,  
and Certified Realtime Reporter, within and for the  
State of Illinois, do hereby certify that the  
foregoing hearing was taken by me to the best of my  
ability and thereafter reduced to typewriting under  
my direction; that I am neither counsel for, related  
to, nor employed by any of the parties to the action  
in which this hearing was taken, and further that I  
am not a relative or employee of any attorney or  
counsel employed by the parties thereto, nor  
financially or otherwise interested in the outcome  
of the action.

Dated this 28th day of September,  
2022.

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Certified Shorthand Reporter  
State of Illinois

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