

1 ILLINOIS POLLUTION CONTROL BOARD

2 IN THE MATTER OF: )  
 )

3 AMENDMENTS TO REQUIREMENTS ) R97-29  
FOR LANDSCAPE WASTE COMPOST ) (Rulemaking - Land)

4 FACILITIES, 35 ILL. ADM. )  
CODE 830.203(c) 831.107, )

5 AND 831.109(b)(3) )

6

7 The following is the transcript of a  
8 hearing held in the above-entitled matter, taken  
9 stenographically by Caryl L. Hardy, CSR, a notary  
10 public within and for the County of Cook and State  
11 of Illinois, before Richard McGill, Hearing Officer,  
12 at 100 West Randolph Street, Room 9-040, Chicago,  
13 Illinois, on the 7th day of August 1998, A.D.,  
14 commencing at the hour of approximately 10:10 a.m.

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1 PRESENT:

2 HEARING TAKEN BEFORE:  
3 ILLINOIS POLLUTION CONTROL BOARD  
4 100 West Randolph Street  
5 Suite 11-500  
6 Chicago, Illinois 60601  
7 (312) 814-6983  
8 BY: MR. RICHARD R. MCGILL, JR.

9  
10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

11 Ms. Kathleen Hennessey  
12 Ms. Marili McFawn  
13 Mr. Anand Rao  
14

15 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS  
16 PRESENT:

17 Mr. Edwin C. Bakowski, P.E.  
18 Ms. Judith S. Dyer  
19 Ms. Joyce Munie, P.E.  
20

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1 MR. MCGILL: Let's go on the record.  
2 Good morning. My name is Richard McGill, and I  
3 have been appointed by the Illinois Pollution  
4 Control Board to serve as hearing officer in this  
5 rulemaking proceeding entitled In The Matter Of:  
6 Amendments to Requirements for Landscape Waste  
7 Compost Facilities, 35 Illinois Administrative Code  
8 830.203(c) 831.107, and 831.109(b)(3). The docket  
9 number for this rulemaking is R97-29, and today is  
10 the third hearing.

11 Also present today on behalf of the board is  
12 Kathleen Hennessey, to my left, the board member  
13 assigned to this rulemaking.

14 MS. HENNESSEY: Good morning.

15 MR. MCGILL: To her left, board member Marili  
16 McFawn.

17 MS. McFAWN: Good morning.

18 MR. MCGILL: And to my right, from the board's  
19 technical unit, Anand Rao.

20 By way of background, in May of 1997 -- excuse  
21 me.

(Brief pause.)

22 MR. MCGILL: In May of 1997, the proponents,  
23 Dr. Renuka Desai and Susan Garrett, filed a proposal  
24 with the board to amend 35 Illinois Administrative  
Code 830.203(c). Section 830.203(c) contains  
location standards for composting areas at certain  
landscape waste compost facilities.

Generally, the proponents requested that the  
board amend that section to prohibit composting  
areas from being located within one-half mile of the  
property line of a hospital, school, athletic field,  
or public park and to require that existing  
composting areas located within that setback  
distance be relocated.

The proponents alleged that their proposed  
amendments are necessary because these composting  
areas release spores into the air that present risks  
to human health.

On June 17th, 1998, the board adopted proposed  
amendments for first notice. The board declined to  
adopt the proponents' proposal. Instead, the board  
proposed that the current one-eighth-mile setback  
applied to residences apply to health care  
facilities, primary and secondary schools and their  
associated recreational areas, and preschool and  
child care facilities and their associated  
recreational areas.

1 As proposed, the new setback requirements would  
2 apply only to the compost facility if it is  
3 developed after January 1st, 1999, or if it's  
4 permitted composting area is expanded after  
5 January 1st, 1999.

6 The board also proposed corresponding changes  
7 to certain permit application requirements.

8 Please note that sign-up sheets for this  
9 proceeding, service and notice lists are located at  
10 the back of the room. Those on the notice list will  
11 receive only board opinions and orders and hearing  
12 officer orders. Those on the service list will  
13 receive these documents plus certain other filings.

14 Also at the back of the room are copies of the  
15 current notice and service lists. These lists are  
16 updated periodically. I have also placed at the  
17 back of the room copies of my hearing officer order  
18 dated June 30th, 1998.

19 Besides witnesses for the proponents and the  
20 Illinois Environmental Protection Agency, if you  
21 wish to testify today, you must sign in on the  
22 appropriate sign-up sheet at the back of the room.

23 After any testimony from the proponents and the  
24 Illinois Environmental Protection Agency, we will  
25 proceed with the testimony of persons who sign up in  
26 the order their names appear on the sign-up sheet.

27 This hearing will be governed by the board's  
28 procedural rules for regulatory proceedings. All  
29 information that is relevant and not repetitious or  
30 privileged will be admitted. All witnesses will be  
31 sworn and subject to cross questioning. If you do  
32 not wish to give testimony, you may file written  
33 public comments.

34 As for the order of today's proceeding, we will  
35 begin with anyone who would like to testify  
36 regarding the decision of the Department of Commerce  
37 and Community Affairs to not conduct an economic  
38 impact study for this rulemaking. Then we will  
39 proceed with those who would like to provide  
40 testimony regarding the board's first notice version  
41 of the proposed rules. Again, for that testimony,  
42 we will first allow the proponents and the Illinois  
43 Environmental Protection Agency an opportunity to  
44 present testimony. After that, we will proceed with  
45 the testimony of persons who sign up in the order  
46 their names appear on the sign-up sheet.

47 Anyone may ask a question of any witness. I  
48 ask that during question periods, if you have a

1 question, please raise your hand and wait for me to  
acknowledge you. When I acknowledge you, please  
2 state your name and any organization you are  
representing here today.

3 Please speak one at a time. If you are  
speaking over each other, the court reporter will  
4 not be able to get your statements down for the  
record.

5 Also, please note that any questions asked by a  
board member or staff are intended to help build a  
6 complete record for the board's decision and not to  
express any preconceived notion or bias.

7 Are there any questions about the procedure we  
will follow today?

8 Seeing none, I note that the board has no  
additional hearing scheduled in this matter.

9 Also, at the end of today's hearing, I will set  
a deadline for filing public comments.

10 Would any of the board members present like to  
make any remarks at this time?

11 MS. HENNESSEY: I would just like to welcome  
everybody and also just note that although we are  
12 happy to receive written public comments following  
this hearing, we do give more weight to the  
13 testimony that's provided to the hearing than we do  
to public comments primarily because there is an  
14 opportunity for others to ask cross questions about  
the testimony.

15 Thank you.

MR. MCGILL: Okay. We will now proceed with  
16 the matter of the Department of Commerce and  
Community Affairs' decision to not conduct an  
17 economic impact study for this rulemaking.

As background for this portion of today's  
18 hearing, Public Act 90-489, which became effective  
January 1st, 1998, requires the board to request the  
19 Department of Commerce and Community Affairs, or  
DCCA, to conduct an economic impact study on certain  
20 proposed rules before adopting those rules.

Within 30 to 45 days of the board's request,  
21 DCCA may produce a study of the economic impact of  
the proposed rules. The board must make the  
22 economic impact study or DCCA's explanation for not  
conducting the study available to the public at  
23 least 20 days before public hearing on the economic  
impact of the proposed rules.

24 The board requested by letter dated January  
30th, 1998, that DCCA conduct an economic impact

1 study for this rulemaking. The board's letter  
referenced a letter dated January 26th, 1998, from  
2 DCCA in which DCCA notified the board that DCCA  
would not be conducting economic impact studies on  
3 rules pending before the board during the remainder  
of fiscal year 1998.

4 In its letter, DCCA explained that it lacks the  
technical expertise and the financial resources to  
5 conduct these studies. Therefore, in its letter,  
the board asked that DCCA notify the board within  
6 ten days of receipt of the board's letter if DCCA  
intended to conduct an economic impact study for  
7 this rulemaking.

The board further stated that if it did not  
8 receive this notification, the board would rely on  
DCCA's January 26th, 1998, letter as the required  
9 explanation for not conducting the study.

The ten days for DCCA to notify the board have  
10 expired, and the board did not receive any  
notification from DCCA that it will conduct an  
11 economic impact study. In fact, the board has  
received a letter from DCCA dated June 26th, 1998,  
12 stating that for the same reasons, DCCA would not be  
conducting economic impact studies on rules pending  
13 before the board during fiscal year 1999.

Is there anyone who would like to testify  
14 regarding DCCA's explanation for not conducting an  
economic impact study for this rulemaking?

15 Seeing no response, we will move on to the next  
portion of this hearing.

16 The purpose of this portion of the hearing is  
to receive testimony from all interested persons on  
17 the merits and economic impact of the first notice  
version of the proposed rules. In addition, the  
18 board would like to receive testimony on several  
issues enumerated in my hearing officer order dated  
19 June 30th, 1998. Copies of that hearing officer  
order are located in the back of the room.  
20 Testimony will also be received on other issues if  
relevant and not repetitive.

21 At this point, I would like to ask, would the  
proponents like to present any testimony?

22 MS. GARRETT: I would like just to make a  
comment.

23 MR. MCGILL: Why don't you step up here,  
please?

24 (Brief pause.)

MR. MCGILL: Why don't we have the court

1 reporter swear you in first?

(The witness was duly sworn.)

2 MS. GARRETT: I want to thank the Illinois  
3 Pollution Control Board for holding public hearings  
4 and allowing citizens to provide input on the siting  
5 of commercial compost operations in the state of  
6 Illinois. I'm proud to say that the impact and  
7 efforts of every day citizens can make a  
8 difference. The process made available through the  
9 Illinois Pollution Control Board and the IEPA made  
10 it possible for citizens to take on the challenge of  
11 revising a regulation and turning it into a reality,  
12 hopefully, by assembling and stating the facts.

While the final proposal does not go as far as  
13 we asked, it is certainly a very significant step in  
14 controlling the siting of compost operations  
15 throughout the state.

We have had consistency in the siting with  
16 regard to residences, but the new regulation  
17 includes guidelines for primary and secondary  
18 schools, health care facilities, and preschool and  
19 child care facilities, as well as the surrounding  
20 recreational fields.

On behalf of thousands of citizens throughout  
21 the state, I thank those parties who gave us the  
22 opportunity to address this important issue.

23 MR. MCGILL: Thank you. If you could just hang  
24 on, do the proponents have any additional witnesses  
25 to present today?

MS. GARRETT: No. The people that  
26 testified are in agreement with the proposed change  
27 in the regulation.

28 MR. MCGILL: Okay. At this point, we will open  
29 it up for any questions that anyone might have.

30 Again, as I mentioned earlier, if you have a  
31 question, please raise your hand and wait for me to  
32 acknowledge you. When I acknowledge you, please  
33 state your name and any organization you are  
34 representing here today.

Does the agency have any questions?

35 MS. DYER: None at this time.

36 MR. MCGILL: Before the board proceeds with any  
37 questions it may have, does anyone else have any  
38 questions for this witness?

39 At this point then, I thank you.

MS. HENNESSEY: Thank you.

40 MS. McFAWN: Thank you for all of your work, as  
41 well as your comments today.



1 MR. MCGILL: At this point, I would ask the  
agency if they would like to present any testimony.

2 MS. DYER: We do have some brief testimony in  
response to the --

3 MR. MCGILL: If you would like, you can step up  
here. It may be easier for us and the court reporter  
4 to hear you.

MS. DYER: Good morning. My name is Judy  
5 Dyer. I'm here today on behalf of the Illinois  
Environmental Protection Agency. With me on my left  
6 is Ed Bakowski. He's the manager of our permit  
section for the Bureau of Land at the agency. On my  
7 right is Joyce Munie. She works under Ed Bakowski  
in the permit section.

8 We have some brief testimony to present today  
in response to some of the questions that the board  
9 requested information on or responses on in the  
board order going to first notice.

10 MR. MCGILL: Why don't we swear in the  
witnesses first?

11 (The witnesses were duly sworn.)

MR. BAKOWSKI: My name is Ed Bakowski. I  
12 manage the permit section in the division of land  
pollution control with the Bureau of Land with the  
13 IEPA. My section has the responsibility for  
implementing and administering the landscape waste  
14 composting regulations in Illinois pursuant to  
Section 39 of the Illinois Environmental Protection  
15 Act. I have served in this capacity for more than  
four years. From 1987 to 1984, I was a solid waste  
16 unit manager in this section, and prior to that, I  
was in the mine pollution control program.

17 In the June 17th, 1998, notice concerning this  
proposal, the board asked for testimony on several  
18 specific subjects. As the regulating agency for  
these rules, the Illinois EPA wants to provide as  
19 much information to the board as possible. I wish  
to provide testimony on the notice Items 1, 4, and  
20 5. My unit manager in the solid waste unit, Joyce  
Munie, will be addressing Item 2. Ms. Munie will  
21 also be raising some technical concerns we have on  
the proposed rules.

22 Regarding Item 1, the technical feasibility and  
economical reasonableness of the proposed rule, as a  
23 general rule: The agency does not have access to  
business and financial information of permittees.  
24 The decision of where a site will be made is made by  
the owner/operator prior to submitting the

1 application to the agency. Because of this, we do  
not feel we can comment on the economic  
2 reasonableness of complying with this proposal  
either for new or existing facilities.

3 Concerning the technical feasibility, the  
Illinois EPA is confident that within the state of  
4 Illinois there is ample area to find parcels of land  
that can meet the proposed setbacks. It is probable  
5 that facilities would find more suitable parcels in  
more remote areas, and therefore, transportation  
6 costs will be higher as they are farther away from  
populated areas where there are the more  
7 concentrated markets for both generators and users  
of the landscape waste and subsequent composts.

8 If the rule is adopted as proposed, it is clear  
-- it needs to be clear in the rule when existence  
9 of a facility of concern is established. I have  
kind of generally categorized these facilities of  
10 concern in one group.

It is necessary to know what date a facility of  
11 concern is established to invoke the setback. In  
other rules, it could either be based on the date of  
12 the permit application or of the final decision, but  
we think that date is critical and how that date is  
13 established.

There is also the concern that if the setbacks  
14 are retroactively applied, the creation of a new  
facility of concern from which a setback -- a  
15 compost facility must be set back from -- excuse  
me. There is also a concern that if setbacks are  
16 retroactively applied, does the creation of a new  
facility of concern from which a compost facility  
17 must be set back cause an existing compost facility  
or even a facility permitted after these new rules  
18 to be relocated?

Regarding Item 4, the Illinois EPA is not  
19 exactly sure without additional definitions of the  
types of facilities of concern that the new setback  
20 will apply from, but even with a general reading of  
the terms, it's clear that the agency has no or very  
21 minimal information about the proximity and type of  
facilities of concern that are near existing compost  
22 facilities.

In an effort to help the board, the agency has  
23 prepared and mailed a letter to entities that we  
believe have this type of information. We have a  
24 list of where these facilities were -- these  
facilities -- these notices were mailed, and it was

1 felt that counties and municipalities are the most  
involved in zoning, and the compost sites themselves  
2 may be aware of their neighbors.

I guess I would submit --

3 MS. DYER: We would like to submit as an  
exhibit a letter that was sent.

4 MR. BAKOWSKI: I have ten copies of the letter  
we sent and the attached notice and then three lists  
5 of copies of who we sent it to. We basically sent  
it to the permitted compost facilities, the counties  
6 in Illinois, and the Illinois municipality.

MS. DYER: These are three copies of the letter  
7 that was mailed and the attachments of the notice  
and proposed rules.

8 MR. MCGILL: This is three copies of the same?

MS. DYER: Right, and I can give you more. We  
9 brought ten with us.

MR. MCGILL: Those are extras.

10 MS. DYER: That's three copies of the list.

MR. MCGILL: Mailing list?

11 MS. DYER: Mailing list.

MR. MCGILL: Okay. I have been handed two  
12 documents. The first is a letter from the Illinois  
Environmental Protection Agency dated July 30th,  
13 1998, regarding Proposed Amendments to Landscape  
Waste Compost Facilities request for comment. And  
14 attached to that letter is a copy of my hearing  
officer order of June 30th, 1998, along with the  
15 board's first notice opinion and order of June 17th,  
1998.

16 Is there any objection to entering the  
described documents as a hearing exhibit?

17 Seeing none, I am marking these documents as  
Exhibit Number 46 and entering them as a hearing  
18 exhibit.

(Hearing Exhibit No. 46 marked for  
19 identification, 8-7-98.)

MS. HENNESSEY: Just a question. Did you  
20 provide a copy of this letter to the proponents?

MS. DYER: No. I was going to offer that.

21 MS. GARRETT: Can I ask for clarification?

MR. MCGILL: Sure. Just state your name again  
22 for the record.

MS. GARRETT: Susan Garrett.

23 I guess I'm just a little confused. It appears  
as if the IEPA is asking for -- the retroactive  
24 aspect of the proposed regulation I thought was not  
supported by the Illinois Pollution Control Board,

1 but it seems as if, you know, the IEPA is concerned  
2 that that is part of the proposed change in the  
3 regulation.

MS. DYER: Excuse any confusion, if I could  
3 just respond. We are trying to respond to questions  
4 that the board posed in its order.

4 MS. GARRETT: Okay.

MS. DYER: And maybe it will become clearer  
5 when Ms. Munie testifies as to what our position is  
6 and remains and why we are providing this  
7 information.

MS. GARRETT: Okay. All right.

7 MR. MCGILL: Let me just ask one question to  
8 reiterate this for the record. When you were  
9 referring to question numbers in your earlier  
10 testimony, you were referring to questions that were  
11 set forth in my hearing officer order of June 30th,  
12 1998; is that correct?

10 MR. BAKOWSKI: No. I was referring to the  
11 questions in the June 17th, 1998, notice.

11 MS. HENNESSEY: And those are on Page 7 of the  
12 June 17th order?

12 MR. BAKOWSKI: I believe so.

MS. HENNESSEY: Okay.

13 MR. BAKOWSKI: They are one through five  
14 there.

14 MR. MCGILL: Thank you.

MS. HENNESSEY: I just have a question. Are  
15 you going to give these exhibit numbers for the  
16 record or what?

16 MR. MCGILL: Yes. This is Exhibit Number 46,  
17 the agency letter with the attachments.

17 MS. HENNESSEY: Okay.

MR. MCGILL: We left off at 45 last time.

18 MS. HENNESSEY: Okay.

MR. MCGILL: And the other document that the  
19 agency has handed me is a list of mailing  
20 addresses. These are the persons to whom the agency  
21 sent the letter and attachments that are now Exhibit  
22 46.

21 Is there any objection to entering this mailing  
22 list as a hearing exhibit?

22 Seeing none, I'm marking this document as  
23 Exhibit Number 47 and entering it as a hearing  
24 exhibit.

(Hearing Exhibit No. 47 marked for  
24 identification, 8-7-98.)

MR. MCGILL: Would the agency like to proceed

1 with its testimony?

MR. BAKOWSKI: A little further in response to  
2 Ms. Garrett's question, we didn't send you a copy of  
our letter because all we were trying to do is  
3 solicit information for the board. When the board  
proposed its notice, it asked specific questions,  
4 and the agency feels obligated to provide testimony  
as much as we can. In this instance, we didn't feel  
5 we had the information, so we tried to find -- think  
about who had that information and tried to let them  
6 know that the board was seeking that type of  
information. And we knew you would be here, so you  
7 would see the letter eventually. But it was just an  
effort to try to -- try to get as much information  
8 to the board because we didn't feel we had that type  
of information.

9 MS. GARRETT: Okay.

MR. BAKOWSKI: I think I'm finished.

10 MR. MCGILL: Okay.

MS. HENNESSEY: Thank you for your efforts to  
11 solicit comments. We appreciate that.

MS. MUNIE: Good morning. My name is Joyce  
12 Munie. I manage the solid waste unit of the permit  
section division of land pollution control at the  
13 Illinois EPA.

I am testifying today in response to the  
14 board's request for testimony on specific issues and  
other issues, if relevant and not repetitive, on  
15 Page 7 in the June 17th, 1998, first notice order in  
this matter. I would like to address the second  
16 issue identified in the order: If the setbacks  
proposed in this first notice order were applied to  
17 existing compost facilities, should they apply  
immediately or after some period of time expires?

18 The Illinois EPA testified in the original  
hearings that these setbacks should not be added at  
19 all either prospectively or retroactively. Since  
sufficient protection is in place with existing  
20 operational and location standards, the Illinois  
EPA's position has not changed. But since the  
21 board, in its order, has indicated that retroactive  
applicability of the setbacks may be under  
22 consideration, the Illinois EPA feels compelled to  
address that possibility.

23 If the board were to apply the setbacks to  
existing facilities, the Illinois EPA would  
24 recommend that the applicability be phased in with  
the compliance deadline for each existing facility

1 being the current permit expiration date for that  
2 facility.

3 As I testified in the first hearing, the  
4 Illinois EPA does not believe that adding the  
5 proposed setback requirement to new facilities will  
6 have any impact on our administrative cost. Any  
7 proposed facility would just need to be located  
8 outside any setbacks that are in place at the time  
9 of application, and review of setback demonstration  
10 would just be a small part of the overall review of  
11 the application.

12 However, if the additional setbacks are imposed  
13 retroactively, the Illinois EPA would expect the  
14 need to permit additional compost facilities to  
15 replace the existing facilities required to close.

16 This would have a short-term impact when the rule is  
17 first adopted.

18 As I stated in the first hearing, if 35 new  
19 facilities were needed to replace facilities that  
20 needed to close, it was estimated that this would  
21 cost the Illinois EPA between 525,000 and \$700,000  
22 within the first couple of years after the rules  
23 became effective.

24 If this requirement were phased in, the  
25 Illinois EPA could distribute these costs over a  
26 longer period of time. This estimate was based on  
27 an assumption that 50 percent of the facilities  
28 would close. If the information gathered by the  
29 board in these proceedings reveal that more or less  
30 of that percentage will close, this cost can be  
31 adjusted accordingly.

32 We also want to mention that under the current  
33 compliance schedule, in 35 Illinois Administrative  
34 Code 830.107, the facilities that are continuing to  
35 operate under permits issued pursuant to 39(m) of  
36 the act must demonstrate compliance with all of the  
37 provisions of Part 830 upon renewal. We expect  
38 these additional requirements to cause some  
39 facilities to close anyway based on our experience  
40 with our facilities that have come to that  
41 deadline.

42 As stated by Edwin Bakowski, the remainder of  
43 the questions posed by the board need to be  
44 addressed by the industry and communities that will  
45 be impacted by the proposed rules.

46 We want to identify a few concerns about the  
47 regulations as proposed by the board.

48 First, no definitions have been added. What

1 type of facilities are to be included in the scope  
of health care facilities? There are many types of  
2 facilities that could arguably be included. Is a  
nursing home a health care facility? Does a  
3 doctor's office fit into this definition? Is a  
psychiatrist's office included? Is a mental health  
4 hospital included?

We assume that primary and secondary schools  
5 would be kindergarten through 12th grade and could  
include public and private schools. Is a home where  
6 children are home-schooled included?

For preschool and child care facilities, the  
7 definition could be very broad. Are all children's  
day care facilities included? Would this include  
8 in-home day care facilities? Is there a minimum  
number of children that must be cared for in the day  
9 care? Are church schools included in either of  
these definitions? Also, are the associated  
10 recreational areas to schools only the contiguous  
areas? Are arenas or fields not owned by the  
11 schools but leased or used for recreational  
activities included? From where is the measurement  
12 to the composting area made? In the case of a  
health care facility, would the measurement be made  
13 to the building or to the property line? Are  
buildings that are used for support such as  
14 maintenance buildings at health care facilities  
included in the setback?

15 For the school and child care facilities with  
the associated recreational areas, is the  
16 measurement made to the associated area and building  
or to the property line? These issues should be  
17 addressed in the definitions.

Second, we would like to make it clear that  
18 compost facilities must be set back only from  
facilities of concern that exist and are used for  
19 purposes for which a setback applies on the date  
that a complete application for the development of  
20 the compost facility or expansion of the compost  
facility is submitted to the Illinois EPA.

21 Also, if the board chooses to make the setback  
retroactive, it should be made clear on what date to  
22 consider the location of the facility of concern  
from which the compost facility is set back. A  
23 school, day care, or health care facility could have  
moved within 660 feet of the compost area after the  
24 compost facility was developed and in operation.

Would an existing compost facility use the date it

1 was originally developed or another compliance date  
that the board establishes when demonstrating that  
2 the existing compost area is appropriately set back  
from the facility of concern?

3 That concludes my testimony on behalf of the  
Illinois EPA today.

4 MR. MCGILL: Does the agency have any  
additional testimony they would like to present  
5 today?

MS. DYER: That's all the testimony we have.  
6 If there are any questions, we could try to respond  
to those.

7 MR. MCGILL: Okay. Why don't we open it up for  
questions?

8 Are there any additional questions for the  
agency's witnesses?

9 Seeing none, the board may have a question.  
Why don't we go off the record for a moment?

10 (Whereupon, a discussion was held off  
the record.)

11 MR. MCGILL: Let's go back on the record.  
This is a question for Ms. Munie. I believe in  
12 your testimony you stated that even if the board  
were to adopt the first notice version of the rules  
13 as final rules that a facility would have a  
compliance date at some point at which it would need  
14 to be in compliance with these new setback  
requirements?

15 MS. MUNIE: No, with all of 830. But the way  
your rule is written, it's clear that it's only  
16 facilities that are expanded or developed after a  
specified date that have to comply with that new  
17 setback, but the rest of 830 must be complied with  
upon renewal or expansion.

18 MR. MCGILL: So you would view these additional  
setback requirements that the board has proposed as  
19 a siting requirement?

MS. MUNIE: Yes, for new facilities.

20 MS. HENNESSEY: New or expanded.

MS. MUNIE: New or expanded, yes.

21 MR. MCGILL: Thank you.

MS. HENNESSEY: I have a question. Earlier in  
22 your testimony, I thought I heard you say that the  
agency doesn't support the setbacks even as  
23 proposed. Is that correct? I guess, I -- first of  
all, is that -- did I understand you correctly?

24 MS. MUNIE: Yes. In our original testimony, we  
stated that we don't support the need for it.



1 MS. HENNESSEY: Although I thought in your  
later public comments filed after we had kind of  
2 discussed this potential compromise proposal that  
the agency at least didn't object to it.

3 MS. MUNIE: We don't object to it.

MS. HENNESSEY: And also, on definitions, I  
4 would just -- you raised some interesting questions  
on definitions. In terms of health care facilities,  
5 I would note that the TACO refers it to -- which was  
an agency proposal, refers just to health care  
6 facilities, and I'm just wondering if the agency has  
had experience with that kind of term in other  
7 regulations outside of the composting facility and  
whether that might aid the agency in applying this  
8 regulation without further definitions.

MS. HENNESSEY: By TACO, just for the record, I  
9 will make it clear, the Tiered --

MR. MCGILL: Tiered Approach to Corrective  
10 Action Objectives, Part 742 of 35 Illinois  
Administrative Code.

MR. BAKOWSKI: Right. In the permit section,  
we do utilize some of the TACO information, but we  
12 don't routinely go through -- and it's fairly new,  
and we haven't -- in our section haven't run across  
13 that. We did look back and look at some other  
permitting rules that had references, and we found  
14 one for hospitals, and I think we have a general  
idea what a hospital is, but some of the health care  
15 facilities were a little unclear. I guess we can  
address some of that. In comment, we can go back  
16 and talk to the -- primarily the underground storage  
tank program and the remedial project management  
17 programs, look at that. They might have had some  
experience over the past year in that.

MS. HENNESSEY: Okay. I'm a little --  
18 certainly we will have to give some thought to  
19 definitions. One of the problems, though, when you  
start defining things is then there are questions  
20 about the definitions, so it seems there is never an  
end. I mean, there are always going to be some gray  
21 areas, but it may be that health care facilities and  
schools, et cetera need some further definition.

I think we were thinking of those terms -- I'm  
22 not speaking for the board, but at least my  
23 impression when we think of these terms in kind of  
ordinary, common sense usage of those terms to the  
24 health care facility would not be, for example, a  
drug rehab facility, I mean, because that wasn't the

1 kind of facility that we were necessarily concerned  
about. It wasn't really discussed in some of the  
2 hearings that we had had. But I guess I would just  
encourage you, if you can, to help us to come up  
3 with any suggested definitions that would be helpful  
for us to consider.

4 MR. ANAND: I would just like to add to what  
Ms. Hennessey was saying regarding landfill rules,  
5 we use the term schools in setting setbacks from  
landfills, so if you have any experience in defining  
6 schools under your landfill program, we can look at  
that.

7 MS. MUNIE: Actually, the schools was the  
easiest one. It's when it went to day care  
8 facilities and the associated areas that it became  
tougher.

9 MR. BAKOWSKI: Yes, and recreational areas to  
schools because a lot of schools, you know, they  
10 just -- they just have adjacent areas that might be  
a public park that the school doesn't even control  
11 or a piece of land that some other entity may own  
and they let the schools go out and use those  
12 areas.

MR. McGILL: I just had a question. The  
13 current regulations have a setback requirement for  
residences, and the rule, as far as I know, does not  
14 specify a date certain by when the measurement is  
made. How does the agency apply the current  
15 regulation?

MS. MUNIE: The current regulation, first of  
16 all, there is a 200-foot setback and a 660-foot  
setback, and it's based on the date that the  
17 facility was first permitted or was expanded.

DR. DESAI: Can I respond to the question about  
18 the home day care?

MR. McGILL: Maybe we better let the agency  
19 respond to the question I just posed, but please  
keep your question, and you will have a chance to  
20 ask that.

MS. MUNIE: The reference on that is Section  
21 830.203(c), and it specifies the 200-foot setback  
came from Section 39(m) of the act, and it was when  
22 compost facilities were first permitted under  
39(m). And then there was a second setback added by  
23 the legislature of November 17th, 1991, for a  
facility that is developed or the permitted  
24 composting area is expanded after 1991 -- November  
17th, 1991, so that is set by that date that that is

1 the date you look at, location.

MR. MCGILL: Right. I understand that. I'm  
2 just saying that as far as I know, the rules don't  
specify a compliance date or a date when you would  
3 measure that eighth of a mile for a residence. You  
were suggesting it should be a time certain like  
4 when a permit is -- permit application is submitted  
or when a permit is issued.

5 MS. MUNIE: Actually, we believe that for the  
rules as written, it would be the date that the  
6 application is complete -- made complete to us.

It was the question of if you make it  
7 retroactive, you will need to make it clear that --  
because we haven't seen a proposal on that yet, you  
8 should make it clear that it's a date that's  
specified, and that's the date that they look at  
9 it.

MR. MCGILL: In terms of the existing -- you  
10 had mentioned being in compliance with the setback  
at the time the permit application was complete.

11 MS. MUNIE: Yes.

MR. MCGILL: Is that approach that you just  
12 described anywhere in the regulations, the current  
regulations?

13 MS. MUNIE: That is under 830.203(d).

MR. MCGILL: If I understand (d), that's an  
14 operational requirement that you have to, by the end  
of each day, have your landscape waste in the  
15 windrows?

MS. MUNIE: The only time you are required by  
16 the regulations to make an application demonstrating  
your location is when you are developing a new area  
17 or expanding under your compliance deadlines. So if  
you don't have to make an application demonstrating  
18 it, the demonstration is not questioned again.

MR. MCGILL: Can we just go off the record for  
19 a minute?

(Whereupon, a discussion was held off  
20 the record.)

MR. MCGILL: Let's go back on the record.  
21 Just for clarification, if we could get a  
response from the agency on what date they feel is  
22 the most appropriate to measure or to determine  
compliance with the setback.

23 MS. MUNIE: For retroactivity if it's  
retroactive?

24 MR. MCGILL: No. Forgetting that, as proposed  
by the board in its first notice and in the order.

1 MS. MUNIE: We will be glad to do it in written  
comment. However, you do have a compliance date set  
2 in the rules and --

MR. MCGILL: I think I need to specify. By  
3 compliance date, I'm not referring to the January 1st,  
1999, date where we are talking about the facilities  
4 developed or expanded after that date.

You had talked about the permitting process and  
5 when you would determine if a proposed facility or  
expansion is within a certain distance from a  
6 protected facility. Would it be when a permit  
application arrives or when it's complete or when a  
7 permit is issued or some other time? In terms of  
the latter compliance date, what does the agency  
8 feel would be the most appropriate time to make that  
determination?

9 MS. MUNIE: It's when the application is  
complete at the agency.

10 MR. MCGILL: Okay. Is that an agency  
determination that's made in writing?

11 MS. MUNIE: That an application is complete?

MR. MCGILL: Right.

12 MS. MUNIE: Yes.

MR. MCGILL: And that is sent to the permit  
13 applicant?

MS. MUNIE: It's sent to the permit applicant.  
14 We inform them either it's complete or it's  
incomplete for these reasons, and we give them the  
15 date -- the date that we receive the application is  
the date that it's determined approved.

16 MR. MCGILL: Thank you.

As you know, these setback requirements apply  
17 also to nonpermitted landscape waste compost  
facilities. Does the agency have any thoughts on  
18 what a compliance date would be for purposes of  
siting those nonpermitted facilities?

19 MS. MUNIE: It would be the date where it's  
developed or it's expanded because since they don't  
20 come in with an application to us, there is no paper  
trail. It should be the date of construction for  
21 development or construction for expansion.

MR. MCGILL: You mean the date the construction  
22 commences?

MS. MUNIE: Commences, yes.

23 MR. MCGILL: I just have one more question.

You had mentioned where to measure from. The  
24 board's first notice opinion and order of Page 37  
mentions that the setback should be measured from

1 the nearest edge of the composting area to the  
nearest property line of the protected facilities.

2 Does the agency agree with that approach?

MS. MUNIE: The property line is a fine  
3 approach as long as -- when a city owns a school and  
they own more property than what is the school, but  
4 it's contiguous, there is a very hazy line right  
there where where does the school property line end  
5 and where does the city property begin if it could  
be the school property as opposed to the owner of  
6 the school which, in general, for public schools is  
the city.

7 MS. HENNESSEY: Is that different than -- how  
is it currently done for residences? Is it done the  
8 same way: Composting area to the property line?

MS. MUNIE: Yes, yes.

9 MS. HENNESSEY: Okay.

MR. MCGILL: It is done to the property line of  
10 the residence?

MS. MUNIE: It's done to the property line.

11 MR. BAKOWSKI: Usually a residence has a  
defined property. When you have schools associated  
12 with churches, the church may have all kinds of  
pieces of property everywhere, and a school may sit  
13 on one part and they might go a half-mile over and  
that's their recreational area and things like  
14 that.

MS. MUNIE: And in the case of a farm, it's  
15 defined as the manicured area around the home.

MS. HENNESSEY: I see.

16 MS. McFAWN: Under what regs?

MS. MUNIE: Under a determination --

17 MR. BAKOWSKI: I think that the agency's view  
is residences at farms are -- you know, a farm might  
18 be 9,000 acres, but what we consider the residence  
of a farm is the area where the house is where  
19 people live, and usually they manicure a certain  
area around there. They maintain landscaping

20 MS. McFAWN: So that's how you have interpreted  
it for those?

21 MR. BAKOWSKI: Right.

MS. McFAWN: I see.

22 MR. MCGILL: Are there any other questions for  
the agency?

23 If you would just state your name for the  
record, please.

24 DR. DESAI: My name is Renuka Desai. I'm from  
Lake Forest, Illinois, and I just have a question

1 for the EPA.

How many violations do you need to revoke the  
2 permit of the existing facility?

MS. MUNIE: The Illinois EPA does not have the  
3 authority to revoke a permit.

DR. DESAI: So even if they have 100 violations,  
4 200 violations, still we can't do anything about  
it?

MS. MUNIE: We can enforce against them, and  
through an enforcement action, a permit can be  
6 revoked by the board.

MR. BAKOWSKI: The decision to pursue  
7 revocation of a permit is based on the history of  
the facility, the number of violations, but more  
8 important than the number is the severity and the  
potential threat to human health and the  
9 environment. So one violation that's real serious  
might cause a revocation where 100 violations of  
10 other provisions that don't have a direct impact on  
human health and the environment may not.

MS. MUNIE: But these violations must be  
adjudicated in front of a court where a determination  
12 must be made that we are right in the violation that  
we have cited.

DR. DESAI: Okay. Thank you.

MR. MCGILL: Go ahead and state your name,  
14 please.

MS. BUCKO: My name is Chris Bucko, and I was  
15 curious. It appears that Ms. Munie was indicating  
that the agency's position was that this -- these  
16 proposed regulations would affect only developmental  
permits or expansion permits, and I was interested  
17 to hear how a renewal would be handled.

MS. MUNIE: Under the regulation as written, it  
18 would just be facilities that expanded their  
composting area or newly developed facilities after  
19 a certain date. And renewals would be handled the  
same way renewals are handled now. If a facility  
20 was developed before 1991, it has a 200-foot setback  
from a residence; whereas, if it was developed after  
21 November 17th of 1991, there is a 660-foot setback  
to a residence. This would be handled similarly.

MR. MCGILL: Thank you. Ms. Bucko, just for  
the record, you are with the Attorney General's  
23 office?

MS. BUCKO: That's correct.

MR. MCGILL: Thank you.

Are there any other questions for the agency's

1 witnesses?

Seeing none, I'm just going to go off the  
2 record for a moment.

(Whereupon, a discussion was held off  
3 the record.)

MR. MCGILL: Let's go back on the record.

4 Seeing no further questions for the agency's  
witnesses, I would like to thank the agency for  
5 coming here today and presenting this testimony.

MS. DYER: You are welcome.

6 MR. MCGILL: Let's go off the record for a  
moment.

(Whereupon, a discussion was held off  
7 the record.)

8 MR. MCGILL: Let's go back on the record.

At this point, we are going to turn to the  
9 testimony of those who have signed up to testify  
today. Again, we will proceed in the order in which  
10 their names appear on the sign-up sheet.

At this point, I would ask Ms. Joy Hinz if she  
11 would step up.

(Brief pause.)

12 MR. MCGILL: Why don't we go ahead and have the  
court reporter swear you in?

13 (The witness was duly sworn.)

MR. MCGILL: I just want to make sure that you  
14 again state your name and the organization you are  
representing here today and your position with that  
15 organization.

MS. HINZ: My name is Joy Hinz, and I am with  
16 Will County. We are responsible for enforcing the  
Environmental Protection Act and the regulations set  
17 forth, and I am here to make a statement prepared by  
our office in regards to two of the permitted  
18 facilities, as well as the proposal.

MR. MCGILL: Excuse me. Would you just speak  
19 up a little? I'm having a hard time hearing you.

MS. HINZ: Oh, sure.

20 MR. MCGILL: Thank you.

MS. HINZ: I will go ahead and read the  
21 statement.

The Will County Land Use Department Waste  
22 Services Division would like to provide comments  
with regard to the technical feasibility of  
23 requiring a one-eighth mile setback for landscape  
waste compost facilities from health care  
24 facilities, from primarily secondary schools and  
their associated recreational areas, and preschool

1 and child care facilities and their associated  
recreational areas.

2 The Pollution Control Board has concluded,  
quote, no relationship between exposure to certain  
3 levels of *A. fumigatus* spores and adverse health  
effects has been demonstrated. This was stated in  
4 the opinion and order of the board, proposed rule,  
first notice, Page 5.

5 In addition, the board further concluded that  
the concentration of *A. fumigatus* spores falls to  
6 background within approximately 500 feet of the  
composting area quoted in the opinion and order of  
7 the board, proposed rule, first notice, Page 5.

Given these conclusions, there appears to be no  
8 imminent threat to cause the board to apply the new,  
more stringent setback requirements either  
9 prospectively or retroactively.

If the more stringent setback requirements must  
10 be imposed, the board should only apply them  
prospectively to any composting area developed or  
11 expanded no earlier than January 1st, 1999.

The Will County Land Use Department Waste  
12 Services Division is not aware of any documented  
adverse health effects resulting from exposure to  
13 *A. fumigatus* within Will County. However, if more  
stringent setback requirements are imposed  
14 retroactively, at least one permitted compost site  
in the county would be closed: Referenced, Land and  
15 Lakes in Romeoville.

Loss of this facility would inevitably result  
16 in an increased transportation cost for those  
residents using this site, increased open dumping  
17 and open burning, illegal dumping of landscape waste  
in landfills, and loss of sustainable market for  
18 landscape waste compost.

In summary, first, there appears to be no  
19 imminent public health threat to require a  
one-eighth-mile setback. Secondly, retroactively  
20 applying the one-eighth mile setback would result in  
loss of permitted composting capacity within Will  
21 County and a sustainable market for landscape waste  
compost in this area.

22 That's it.

MR. MCGILL: Thank you. Are there any  
23 questions for this witness?

Seeing none, I'm just going off the record for  
24 a moment.



- 1 (Whereupon, a discussion was held off  
the record.)
- 2 MR. MCGILL: Let's just go back on the record.  
We just have one question. Can you provide any  
3 testimony on the anticipated economic impact or  
economic effect of the first notice version of the  
4 proposed rules?
- MS. HINZ: We do not have any evidence at this  
5 time.
- MR. MCGILL: Okay. Thank you.
- 6 Are there any other questions for this  
witness?
- 7 MS. McFAWN: I had just a few background  
questions. Maybe I missed it, but you are with Will  
8 County?
- MS. HINZ: Yes.
- 9 MS. McFAWN: And your position with Will County  
is?
- 10 MS. HINZ: Environmental enforcement officer.  
We are a -- at the moment we are not, but we are  
11 normally a delegated county with the Illinois EPA.
- MS. McFAWN: And your statements today were  
12 made on behalf of Will County?
- MS. HINZ: Correct.
- 13 MR. MCGILL: Any further questions for this  
witness?
- 14 Seeing none, we would like to thank you for  
being here today.
- 15 MS. HENNESSEY: Thank you.
- MS. HINZ: Thank you.
- 16 MR. MCGILL: We will now proceed with the  
testimony of Mr. Charlie Pick.
- 17 (Brief pause.)
- MR. MCGILL: If the court reporter would swear  
18 in the witness, please.
- (The witness was duly sworn.)
- 19 MR. MCGILL: Again, before you begin, if you  
would just please state your name and identify any  
20 organization you are representing here today and  
your position with that organization.
- 21 MR. PICK: Certainly. My name is Charlie  
Pick. I am vice-president of Organics Management  
22 Company. It's based in Chicago.
- First, I would like to say for the record that  
23 the first notice recommendation by the board to  
apply the setback requirements to new or expanded  
24 facilities I think is entirely reasonable. It's  
consistent, I think, with the intent -- original

1 intent of the setback requirements of the original  
EPA regulations.

2 However, I do agree with Joyce Munie that a lot  
of work should go into looking at the definitions of  
3 the proposed additional facilities, health care  
facilities, schools and so forth that would be  
4 affected by this rule.

About a year ago, I think, in this room, I gave  
5 testimony about the economic impact as to the  
retroactive application of this rule, and I'm not  
6 going to rehash that other than to say that I  
maintain that a retroactive application of this rule  
7 would be pretty devastating to the composting  
infrastructure in the state.

8 With respect to a prospective application, at  
the end of your first notice, you asked for  
9 testimony with respect to prospective and  
retroactive application of the rule, especially with  
10 regard to economics, and based on DCCA's comment  
that they are not able to provide it, I thought that  
11 my testimony might be helpful in looking at the  
prospective side of it.

12 With a prospective application, what I  
understand that to mean would be an application of  
13 the rule at the time of permit expiration or renewal  
sometime in the future, and I do think that a  
14 prospective application would at least give an  
operator the opportunity to minimize the loss of  
15 investment by having some ability to plan for that  
date when their permit expires. But obviously,  
16 there are a number of different dates across the  
whole variety of facilities that are currently  
17 permitted when that would occur. It could be two  
months from now, two days from now, or two years  
18 from now, so the impact could range from devastating  
to at least, you know, minimal, although site  
19 improvement costs generally are completely lost when  
a facility is closed simply because you can't sell  
20 those improvements typically to a new property  
purchaser. They don't place any economic value on  
21 those.

But aside from the economic implications of a  
22 closure sometime in the future, I think it's more  
important to look at the effect on the composting  
23 capacity in the state of Illinois if that were put  
into effect prospectively. Essentially, the  
24 facilities that would be affected by this rule would  
be unlikely to relocate in any kind of close

1 proximity to where they are now simply because if  
2 the rule affects them, it's quite likely that they  
3 are in a densely populated area where it would be  
4 almost impossible to find another piece of property  
5 nearby that would find -- that would be suitable for  
6 composting. Lake Forest did an investigation to try  
7 and move their site, and they couldn't find anything  
8 with any kind of reasonable distance -- reasonable  
9 proximity to the original site.

10 And to give you an illustration of the problem  
11 in relocating, if you look at a five-acre composting  
12 facility and then look at a 660-foot setback around  
13 that facility, if you look at that all told, you are  
14 looking at a 73-acre block of land that has --  
15 effectively has to have nothing in it, so to speak,  
16 in terms of applicable receptors as far as the  
17 setback requirements are concerned. So 73 acres of  
18 land, that's 660 feet all around plus the size of  
19 the facility. That is a huge piece of land in any  
20 kind of urban environment where essentially nothing  
21 is going on.

22 In addition to that, typically operators look  
23 for more than 660 feet in the prevailing wind  
24 direction where there is no receptor at all, whether  
25 that be -- forget about the statutory requirements,  
26 but in terms of any sort of office building or any  
27 other sensitive receptor that would object to the  
28 facility, they are looking for 1,000 feet, 1200  
29 feet, 1500 feet where there is nobody there. So the  
30 likelihood of relocating a facility in close  
31 proximity to the affected facility that was closed  
32 down under this rule is really, really, really  
33 slim.

34 MS. HENNESSEY: Can I just interrupt you  
35 because I think there may be unwitting confusion  
36 that we have created about the terms prospective and  
37 retroactive. I think I speak for the board. I  
38 don't officially speak for the board. My  
39 understanding when we talked about this  
40 prospectively -- applying it prospectively, that  
41 meant it would only apply to facilities -- to either  
42 new facilities or facilities that were expanding.

43 MR. PICK: Okay.

44 MS. HENNESSEY: What you seem to be talking  
45 about when you use the word prospective is having  
46 this requirement apply to existing facilities  
47 already sited sometime in the future, so either when  
48 their permits come up for renewal or at some set

1 date.

MR. MCGILL: Even if they don't expand.

2 MR. PICK: Right.

MS. HENNESSEY: Okay. So what you have been  
3 addressing now is the application of these setbacks  
to existing facilities?

4 MR. PICK: Right. Maybe I misunderstood.

MR. MCGILL: That is one of the questions we --

5 MR. PICK: I thought that was part of the  
question.

6 MS. HENNESSEY: We did pose that question, but  
I just wanted to make sure that you don't have a  
7 problem with this proposal as it applies to only new  
or expanded facilities.

8 MR. PICK: That's correct.

MS. HENNESSEY: Okay. Thank you.

9 MR. PICK: Yeah. I'm just looking at the  
existing facilities, and I'm trying to give you some  
10 economic basis.

MS. HENNESSEY: Which is exactly what we asked  
11 for. Thanks.

MR. PICK: Okay.

12 So given that the facilities affected would  
close, it would be unlikely to relocate in any kind  
13 of close proximity to their original location. What  
you are left with in a scenario like that, in my  
14 estimation, would be not unlike what the solid waste  
experience -- solid waste industry experienced under  
15 Subtitle D, which is that a lot of the small, local  
landfills have no choice but to close. And what was  
16 left was essentially a transfer station  
infrastructure, which is not a bad thing, but it was  
17 a transfer station that took this solid waste from  
more densely populated areas out to larger, more  
18 remote landfills, and I don't see the composting  
business going in any other direction under this  
19 scenario. So many of these composting sites would  
likely become transfer stations, or some of them  
20 would just close completely and other transfer  
stations would open.

21 The net result, I believe, is that you would  
have two things. One: You would have larger, more  
22 remote composting facilities just like you have  
larger, more remote landfills now. And number two:  
23 The transportation costs to get the materials from  
the populated areas to those remote facilities would  
24 have to be borne by the generators, and when I say  
generator, it's the taxpayer or a landscaper which

1 would, in turn, pass that cost on to the homeowner.  
2 So ultimately, the citizens would pay the additional  
3 cost of transportation and processing to move the  
4 material from the transfer station and over to the  
5 remote composting facilities.

6 Transfer stations mean additional handling,  
7 additional processing, and then the trucking in both  
8 directions because not only would you transfer raw  
9 material out to the sites, but you would have to  
10 bring the compost back to the urban areas in order  
11 to make it marketable because if you are 60 miles  
12 from downtown Chicago or 100 miles from downtown  
13 Chicago, it is quite difficult to market finished  
14 product in that area of the world.

15 So in conclusion, I believe that if the rule  
16 were applied to facilities at the time of permit  
17 expiration or renewal that that would result in most  
18 of those facilities closing down and considerable  
19 additional costs to the homeowner in terms of  
20 disposal fees for the yard waste that they  
21 generate.

22 MS. HENNESSEY: We had a lot of testimony at  
23 the first hearing about how the half-mile proposed  
24 setback would be a problem. As I understand what  
25 you are saying today, even an eighth-of-a-mile  
26 setback is going to cause just -- would it cause the  
27 same number of facilities to close, would you  
28 think?

29 MR. PICK: Well, it's going to be fewer than a  
30 half a mile for sure, but there are a number of  
31 facilities -- because schools in particular are --  
32 there are a lot of facilities that are not very far  
33 from schools, and so they would be closed down. I  
34 mean, I know that there was testimony even to the  
35 effect of the rule on the eighth-of-a-mile setback  
36 for existing facilities, and a lot of them would be  
37 affected. I believe Crystal Lake would be, village  
38 of Winnetka, the city of Evanston. I don't have a  
39 complete list, but a lot of facilities. So to the  
40 extent that each one of those closes, then those  
41 costs are going to be higher.

42 MR. MCGILL: Are there any questions for this  
43 witness?

44 Go ahead and state your name.

45 MS. GARRETT: Susan Garrett.

46 In regard to the economic impact, I think we  
47 testified originally that other communities make  
48 allowances for the cost of transporting yard waste,

1 and that is picked up by taxpayers. As far as I  
2 know, Highland Park is a good example. There have  
3 not been any negative repercussions on that issue at  
4 all, and I think it's important to discuss and to  
5 debate the idea of having these sites farther away  
6 from the public and then having the transportation  
7 cost built into it because I think in the long run,  
8 that's what the citizens do want, and I think in the  
9 long run it will be a much healthier industry for  
10 the composting business.

11 MR. PICK: Was that a question or a comment?

12 MS. GARRETT: I just wanted to comment on what  
13 you said regarding the extra dollars that taxpayers  
14 would pick up.

15 MR. MCGILL: Let me just clarify, Ms. Garrett  
16 is still under oath, and there will be an  
17 opportunity to provide additional testimony since  
18 Mr. Pick is the last person to sign up. So if you  
19 have any specific questions for this witness, why  
20 don't we pose those now? Then everyone will have a  
21 chance to provide any additional testimony, if they  
22 would like, a little later.

23 Are there any questions for this witness?

24 Seeing none, I just have one question. I was  
wondering if you could provide any testimony on the  
anticipated economic effect of the first notice  
version of the proposed rules. And just for  
clarity, as proposed at the first notice, the new  
setback requirements would apply only to a compost  
facility if it is developed after January 1st, 1999,  
or if it's permitted composting area is expanded  
after January 1st, 1999.

MR. PICK: I think the economic impact under  
that notice would be minimal because the expansion  
is voluntary and you know what the rules are, and if  
it doesn't make economic sense, you don't do it.

As far as a new facility, it's the same thing:  
You go in with your eyes open and make that decision

MR. MCGILL: But a facility -- if someone did  
want to develop or expand a facility, what sort of  
economic impact do you think these new rules would  
have?

MR. PICK: I think what you are more likely to  
see is larger, more remote facilities because the  
more stringent the setback requirements, the harder  
it is to site these facilities. But again, the  
developer or owner of a facility that would be new  
or expanded would not undertake that investment

1 unless they felt it warranted. So I think it's -- I  
2 don't see any net impact on the industry as a result  
3 of it or on cost.

MR. MCGILL: Are there any other questions for  
4 this witness?

Seeing none, I would like to thank you for  
5 being here today and providing that testimony.

At this point, I would ask if there is anyone  
6 who would like to provide testimony at this point.

I see two individuals. I saw Dr. Desai's hand  
7 first, so Dr. Desai, if you would step up here,  
8 please.

(Brief pause.)

MR. MCGILL: Why don't you go ahead and let the  
9 court reporter swear you in first?

(The witness was duly sworn.)

MR. MCGILL: If you would just state your name  
10 for the record.

DR. DESAI: Okay. My name is Renuka Desai, and  
11 I just want to make a statement. I would like to  
12 thank the board for taking their time and looking  
13 into this issued because nobody was ready to listen  
14 to this. You have invested so much time and you  
15 have come to some kind of reasonable conclusion, and  
16 I want to thank you, and I would strongly support  
17 whatever decision the board will make because I know  
18 that you will make the decision in good faith.

Thank you.

MR. MCGILL: Thank you.  
19 Were there any questions for Dr. Desai?

Seeing none, I will just note that  
20 Dr. Desai was one of the proponents, along with  
21 Susan Garrett.

I believe there was one other person who  
22 indicated they would like to provide testimony. If  
23 you would step up, you are welcome to sit or stand  
24 as you wish.

MR. GEISS: Okay.

(Brief pause.)

MR. MCGILL: We'll go ahead and have the court  
25 reporter swear you in.

(The witness was duly sworn.)

MR. MCGILL: Before you begin, if you would  
26 state your name and any organization you are  
27 representing here today and your position with that  
28 organization.

MR. GEISS: My name is Jeffrey Geiss. I work  
29 for CDT Landfill in Joliet, and I am operations

1 manager at the Joliet landscape waste compost  
2 facility. I have been the manager there since  
3 1992.

4 First, CDT would like to support the positions  
5 of the Illinois Environmental Protection Agency and  
6 the Will County land use department. The only -- we  
7 have talked to our engineers and we do not feel that  
8 the setback requirement will affect our facility  
9 today, but the questions that we were concerned  
10 about would be that if new child care facilities or  
11 health care facilities were located within the  
12 setback at a later time, if this would affect our  
13 permit.

14 The other question we had was if a permit  
15 renewal was considered in an expansion, and I think  
16 that question was answered earlier.

17 We also believe that this regulation could, in  
18 fact, increase illegal dumping of yard waste in  
19 areas where the compost facilities would be  
20 affected.

21 Thank you.

22 MR. MCGILL: I just wanted to ask -- was that  
23 the extent of your testimony?

24 MR. GEISS: Yes.

25 MR. MCGILL: I just wanted to ask a question.

26 In terms of what the board has proposed at first  
27 notice, the new setback requirement would apply only  
28 if a facility is developed or expanded after  
29 January 1st, 1999.

30 MR. GEISS: Correct.

31 MR. MCGILL: The organization you represent, do  
32 you have any -- do they have any thoughts on what  
33 the board has proposed at first notice in terms of  
34 economic impact or the merits of the first notice  
35 proposal?

36 MR. GEISS: As I have read this and as I  
37 understand it, it would not affect us today. There  
38 was some question, I believe, to the effect of  
39 retroactive. We still don't believe a retroactive  
40 would affect us.

41 Currently, we are a fairly rural area. There  
42 is farms to the north. The facility is sited on top  
43 of a closed landfill. There are not many other uses  
44 for that landfill, so if it was a retroactive and at  
45 a later date one of these facilities that required  
46 an eighth-mile setback was located within that  
47 eighth mile and that would displace the facility,  
48 that would be an economic hardship for us because we



1 do not feel that we could relocate this site and  
operate the facility at a profit because of the  
2 current competitive economic state of the industry.

MR. MCGILL: Okay. I would just like to note  
3 one thing for clarification. This is on Page 37 of  
the board's first notice opinion and order. It's in  
4 a footnote. A similar concern that you just  
expressed was raised by the city of Lake Forest, and  
5 the board clarified in that footnote, and I will  
just quote: To clarify, the proposed first notice  
6 amendments to 35 Illinois Administrative Code  
830.203(c) are siting requirements. A compost  
7 facility sited in compliance with these requirements  
would not violate them because a health care  
8 facility, for example, is thereafter constructed  
within one-eighth of a mile.

9 MR. GEISS: Thank you. That clarifies my  
question then.

10 MS. HENNESSEY: Maybe what you are suggesting  
to us is that needs to be set forth in the  
11 regulation itself?

MR. GEISS: Well, as I read the regulation,  
12 that was a question that came to mind, and me being  
a layman and an operations manager and not a lawyer,  
13 that's the questions that popped into my mind.

MS. HENNESSEY: Does your facility have any  
14 current plans to expand?

MR. GEISS: Our site is approximately 20 acres,  
15 and currently, it meets all the needs for our  
customers, so we don't have any immediate future  
16 plans to expand the site.

MS. HENNESSEY: Assuming you were to expand,  
17 would this regulation affect you?

MR. GEISS: Today it wouldn't because today  
18 there is corn fields to the north of us. And if  
that cornfield, for example, is developed and a  
19 facility of such nature that would require a setback  
was placed within that setback, then that could  
20 affect an expansion.

MS. HENNESSEY: How large is your site? You  
21 said it's 20 acres?

MR. GEISS: Approximately 20 acres.

22 MS. HENNESSEY: Okay. Thank you.

MR. GEISS: Thank you.

23 MR. MCGILL: Are there any other questions for  
this witness?

24 Seeing none, let's just go off the record for a  
moment.

- 1 (Whereupon, a discussion was held off  
the record.)
- 2 MR. MCGILL: Let's go back on the record.  
I would like to thank you for participating  
3 today.
- MR. GEISS: Thank you for having the hearing.
- 4 MR. MCGILL: Is there anyone else who would  
like to testify today?
- 5 MS. FRANZETTI: I do have a question based on  
the last comment made by you on your footnote if I  
6 could ask that
- MR. MCGILL: Maybe I could explain the context  
7 of this proceeding. The people you see before you  
up here are not the entire board, so we can't really  
8 speak on behalf of the board.
- MS. FRANZETTI: I understand.
- 9 MR. MCGILL: The board speaks through its  
written opinions and orders, but we certainly  
10 welcome comments and questions.
- MS. FRANZETTI: I will put it in the form of a  
11 comment.
- MR. MCGILL: In the form of public comment,  
12 that would be fine.
- MS. FRANZETTI: I should not have called it a  
13 question.
- My name is Susan Franzetti. I'm with Gardner,  
14 Carton, & Douglas here in Chicago.
- The confusion that I think starts getting  
15 created when you --
- MR. MCGILL: I'm sorry. Are you posing a  
16 question? We don't have a witness right now.
- MS. FRANZETTI: No, no. I just want to make a  
17 comment
- MR. MCGILL: If you are testifying, we need to  
18 get you sworn in, so why don't you step up, if you  
don't mind?
- 19 MS. FRANZETTI: I will stand right here. It's  
not going to take that long.
- 20 MR. MCGILL: Okay. Why don't we swear in the  
witness?
- 21 (The witness was duly sworn.)
- MR. MCGILL: Could you just again state the --
- 22 MS. FRANZETTI: Susan Franzetti for Gardner,  
Carton, & Douglas for the city of Lake Forest.
- 23 MR. MCGILL: Thank you.
- MS. FRANZETTI: I think the confusion that  
24 starts to get created -- and I just want to point it  
out. I know we can address this in comments, but I

1 think it just got underscored by the exchange with  
the last witness, and that is that the footnote on  
2 Page 37 does clarify things with respect to the  
proposed first notice regulation that the setback is  
3 a siting requirement and, therefore, for an existing  
facility. If a protected facility or facility of  
4 concern -- we have used a few different terms for  
those today -- gets located within that new setback  
5 requirement, that wouldn't cause the facility to  
close down. I think that's clear.

6 However, when you start talking about  
retroactivity, that's when I think it becomes very  
7 unclear because let's just assume if you made this  
retroactive and at some point, let's say at renewal,  
8 let's assume that, an existing facility violates the  
new revised setback requirement, I believe they  
9 would have to close down. However, under this  
footnote statement, an existing facility shouldn't  
10 have to close down if a protected facility comes to  
be located within the setback. It doesn't seem to  
11 make sense. It doesn't add up in terms of how this  
footnote is written and then when you start to talk  
12 about retroactivity because, in fact, then unless  
this footnote were to then change, you have this  
13 incongruous situation whereby an existing facility  
that wouldn't meet this proposed new setback  
14 requirement would have to close, but a new one that  
met it at one time but now something locates within  
15 that setback -- one-eighth-of-a-mile setback would  
not have to close.

16 I can't rationalize that, so I just wanted to  
make that comment, and I know we can address that in  
17 public comment, but I think that's why you have some  
of this uncertainty about what happens then with an  
18 existing facility. I think it's because of the  
specter of retroactively when you combine it with  
19 this footnote.

Thank you.

20 MR. MCGILL: Thank you. And I just would like  
to ask, is there anyone who has a question for this  
21 witness?

MS. HENNESSEY: Ms. Franzetti, just to clarify  
22 your comment, are you raising the similar issue that  
the agency raised which is suppose we apply this a  
23 retroactively. Do we need to basically go back and  
look at when the facility was originally sited and  
24 see if in one one-eighth of a mile there were any of  
these protected facilities? Is that the inquiry

1 that we should undertake? Or will it be looking at  
the time of renewal? At the time that a permit is  
2 renewed, do we need to then determine if there are  
any protected facilities within the one-eighth-of-a-mile  
3 setback?

MS. FRANZETTI: It's certainly a related point,  
4 but it's not the same point that I think I'm trying  
to make. There would seem to be -- when you get  
5 into retroactivity, there would seem to be an  
arbitrariness introduced between how the regulation  
6 works for a brand new facility that only has to meet  
it at the beginning and then it can be violated  
7 afterwards by things moving in to its area versus  
the existing facility. That's the point I'm trying  
8 to make. They are related points. I'm not sure  
they are identical.

9 MS. HENNESSEY: Okay. I understand. Thank  
you.

10 MR. MCGILL: Are there any further questions  
for this witness?

11 Seeing none, I will ask again, is there anyone  
else who wishes to testify today?

12 Seeing no response, I will move on to a few  
procedural matters to address before we adjourn.

13 Why don't we go off the record for a moment?  
(Whereupon, a discussion was held off  
14 the record.)

MR. MCGILL: Let's go back on the record.

15 Public comments must be received by the clerk  
of the board no later than 4:30 on September 4th,  
16 1998. The mailbox rule does not apply to this  
filing.

17 Anyone may file public comments. These public  
comments must be filed with the clerk of the board.

18 Public comments should reference the docket number  
of this rulemaking, R97-29, as well as the name,  
19 address, and affiliation, if any, of the  
commentary.

20 If you are on the service list, your public  
comment must be simultaneously delivered to all  
21 persons on the service list. You should contact me  
or the clerk's office to make sure you have the  
22 current service list.

Copies of the transcript of today's hearing  
23 should be available at the board here in Chicago by  
August 12th, 1998. At the present time, we cannot  
24 put transcripts on the board's home page on the  
Worldwide Web. Accordingly, for the time being, we

1 will provide an electronic copy of this transcript  
on disk free of charge.

2 Are there any other matters that need to be  
addressed at this time?

3 MS. HENNESSEY: I would just like to, again,  
thank everyone for participating. I wish we had as  
4 much public participation in all of our  
rulemakings. Some great points have been raised,  
5 and we would take them back and give them some  
thought and look forward to your public comments.

6 MR. MCGILL: Thank you.

Are there any other matters that need to be  
7 addressed at this time?

Seeing none, I would like to also thank  
8 everyone for their participation today. This  
hearing is adjourned.

9 (Whereupon, the hearing was adjourned  
at 11:40 a.m.)

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1 STATE OF ILLINOIS )  
                                  ) SS.  
2 COUNTY OF COOK    )

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4         I, CARYL L. HARDY, a Certified Shorthand  
5 Reporter doing business in the County of Cook and  
6 State of Illinois, do hereby certify that I reported  
7 in machine shorthand the proceedings at the hearing  
8 of the above-entitled cause.

9         I further certify that the foregoing is a  
10 true and correct transcript of said proceedings as  
11 appears from the stenographic notes so taken and  
12 transcribed by me.

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17                 CSR No. 084-003896

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19 SUBSCRIBED AND SWORN TO  
   before me this \_\_\_\_ day  
20 of \_\_\_\_\_, A.D., 1998.

21 \_\_\_\_\_  
   Notary Public

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