

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 IN THE MATTER OF:

5 SITE REMEDIATION PROGRAM: R01-27
6 AMENDMENTS TO 35 ILL. ADM. (Rulemaking - Land)
7 CODE 740

8 _____

9 IN THE MATTER OF:

10 SITE REMEDIATION PROGRAM: R01-29
11 PROPOSED 35 ILL. ADM. CODE (Rulemaking - Land)
12 740 SUBPART H (SCHOOLS, PUBLIC (Consolidated)
13 PARKS, AND PLAYGROUNDS)

14

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16 Proceedings held on February 28, 2001, at 9:10 a.m., at the
17 Illinois Pollution Control Board, 600 South Second Street, Suite
18 403, Springfield, Illinois, before Bobb Beauchamp, Hearing
19 Officer.

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A P P E A R A N C E S

Board Member Marili McFawn
Board Member Elena Kezelis
Board Member Nicholas J. Melas

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1 P R O C E E D I N G S

2 (February 28, 2001; 9:10 a.m.)

3 HEARING OFFICER BEAUCHAMP: Good morning. My name is Bobb
4 Beauchamp. I am the Hearing Officer in this proceeding. I would
5 like to welcome you to this consolidated hearing being held by
6 the Illinois Pollution Control Board. Today's hearing involves
7 two dockets, In the Matter of: Site Remediation Program:
8 Amendments to 35 Illinois Administrative Code 740, Docket Number
9 R01-27, and Site Remediation Program: Proposed 35 Illinois
10 Administrative Code 740, Subpart H, Schools, Public Parks, and
11 Playgrounds, which is Docket Number R01-29.

12 Today's hearing is the first of two hearings scheduled in
13 these matters. The second hearing is scheduled for April 4th,
14 2001, at the James R. Thompson Center in Chicago, beginning at
15 9:30 a.m.

16 We have several members of the Board and the Board's staff
17 present with us today. To my immediate left is Board Member
18 Marili McFawn, the Board Member coordinating this rulemaking.
19 Seated to my right is Board Member Elena Kezelis, and to her
20 right is Board Member Nick Melas. To Ms. McFawn's left is Alisa
21 Liu, a member of the Board Members' technical staff.

22 MS. LIU: Good morning.

23 HEARING OFFICER BEAUCHAMP: Seated to Mr. Melas' right is
24 his assistant, Joel Sternstein.

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1 Over on the table to your right, the Board's left, I have
2 placed copies of sign-up sheets for the notice and service lists
3 for each docket. If your name is on the notice list you will
4 only receive copies of the Board's Opinions and Orders and all
5 Hearing Officer Orders. If your name is on the service list, not
6 only will you receive copies of the Board's Opinions and Orders
7 and all Hearing Officer Orders, but you will also receive copies
8 of all documents filed by all persons in this proceeding.

9 Please note that if your name is on the service list and
10 you file any documents with the Board regarding these proposals,
11 you must also serve all parties listed on the service list. If
12 you don't see your name on either the notice or the service lists
13 we, again, as I mentioned, have some sign-up sheets over there,
14 or you can just speak with me and I can make sure you get onto
15 those lists. Also on that table we have copies of both proposals
16 and each proponent's prefiled testimony, the February 5th, 2001
17 Hearing Officer Order, and the Orders Accepting for Hearings both
18 of these proposals.

19 As I mentioned, we have two related proposals docketed in
20 this rulemaking. The Agency filed its proposal on January 12th
21 of 2001. The Citizens for a Better Environment filed its
22 proposal on January 26th of 2001. The Agency's proposal is
23 Docket R01-27. The Citizens for a Better Environment's proposal

24 is docketed as R01-29. Since these proposals both seek to amend

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1 the Site Remediation Program rules, the Board consolidated these
2 hearings in an effort to conserve everyone's resources.

3 Today's hearing will be governed by the Board's procedural
4 rules for regulatory proceedings. All information that is
5 relevant and not repetitious or privileged will be admitted. All
6 witnesses will be sworn and subject to cross-questioning.

7 The purpose of today's hearing is to allow the proponents
8 to present testimony in support of these proposals and to allow
9 questioning of the proponents. Procedurally we will begin with
10 the Agency. After the Agency has presented its witnesses and its
11 testimony, we will take questions for the Agency. At the
12 conclusion of that period, we will then allow CBE to take the
13 table and make its presentation on its proposal and then allow
14 questions of Citizens for a Better Environment.

15 Before we close today's hearing, we will allow questions
16 again of the Agency in case members of the participating public
17 find that they have questions to ask of the Agency after the
18 Citizens for a Better Environment makes their proposal.

19 During each questioning period if you have a question,
20 would you please wait for me to acknowledge you. When I do
21 acknowledge you, identify your name and the company, if any, that
22 you represent before stating your question. It is important to
23 note that if more than one person tries speaking at one time the

24 court reporter may have a difficult time recording what everyone

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1 is saying. We want to make sure that the record is entered
2 clearly and correctly.

3 At this time I would ask if Board Member McFawn has
4 anything else she would like to add to my comments.

5 BOARD MEMBER McFAWN: No. I would just like to welcome you
6 on behalf of the Board. It is nice to see some familiar faces
7 from the first time around. I am sure this will be a very easy
8 rulemaking given the Agency's expertise and that of the audience.

9 HEARING OFFICER BEAUCHAMP: Thank you, Member McFawn. We
10 will then move into the Agency's testimony.

11 Mr. Wight, do you have an opening statement for the Agency?

12 MR. WIGHT: Yes, a brief opening statement. I will start
13 by stating that my name is Mark Wight. I am Assistant Counsel
14 with the Illinois Environmental Protection Agency. I am assigned
15 to the Bureau of Land.

16 With me today on my far left is Gary King, who is Manager
17 of the Division of Remediation Management within the Bureau of
18 Land.

19 On my immediate right is Larry Eastep, who is Manager of
20 the Remedial Project Management Section.

21 On my immediate left is Greg Dunn, who is a Unit Manager
22 for one of the Site Remediation Program units.

23 The Agency's proposal today primarily consists of a series
24 of relatively minor amendments to Part 740, the Site Remediation

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1 Program. Among others, we are proposing amendments that would
2 update technical methods and procedures, would recognize the role
3 for Licensed Professional Geologists, will require analyses of
4 environmental samples by accredited laboratories, and will
5 clarify certain procedures relating to the issuance of recording
6 and avoidance of NFR letters. I say relatively minor because as a
7 practical matter most of these amendments will not significantly
8 affect the way that the program is run.

9 However, this is not to say that they are unimportant.
10 Updating methods to ensure that the latest procedures are in use
11 in Illinois' remediation programs is important. Recognizing
12 professional geologists and requiring the use of accredited labs
13 keeps the program in step with Illinois law and with national
14 trends. Ironing out problems with NFR letters ensures that all
15 parties that rely on this document can continue to have
16 confidence and the assurances that it provides.

17 Another of the proposed amendments, Soil Management Zones,
18 will be a significant change in the way the SRP does business.
19 It is hoped that this change will facilitate redevelopment by
20 adding new flexibility to the way the contaminated soil is
21 handled on-site. At the same time, Soil Management Zones raise
22 issues of remediation waste disposal, nondegradation of

23 uncontaminated areas, and dealing with public perceptions. Taken
24 together, these amendments will fine-tune the program that the

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1 Agency believes has worked extremely well since its adoption by
2 the Board in 1997.

3 Larry Eastep and Greg Dunn have submitted prefiled
4 testimony on all these amendments. They will be joined by Gary
5 King to constitute our panel of witnesses and to answer your
6 questions.

7 Last, but not least, I would like to thank Chairman Harry
8 Walton and the members of the Site Remediation Advisory Committee
9 for their participation and input into the development of this
10 proposal. A few differences remain, and I am sure they will be
11 happy to tell you about them when their turn comes, but hopefully
12 nothing too significant.

13 Also, I would like to thank Citizens for a Better
14 Environment and the Chicago Legal Clinic for their participation.
15 The Agency is pleased to have public interest groups
16 participating in the regulatory development process.

17 With that, we are ready to proceed with the swearing in of
18 the witnesses.

19 HEARING OFFICER BEAUCHAMP: Okay. Very good. If we could
20 have the court reporter swear in the Agency's witnesses, please.

21 (Whereupon the Agency witnesses were sworn by the Notary

22 Public.)

23 HEARING OFFICER BEAUCHAMP: Mr. Wight, would you present
24 your first witness.

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1 MR. WIGHT: Yes. The first witness is Larry Eastep, and
2 Larry will present a brief summary of the prefiled testimony
3 which was submitted to the Board earlier.

4 MR. EASTEP: Thank you, Mr. Wight. I am just going to
5 briefly go over a couple of the things that I have covered in my
6 testimony. As Mark mentioned, there is really just three areas
7 that I have addressed; that is the role of the Licensed
8 Professional Geologist, the Soil Management Zones, and some
9 procedural changes to the No Further Remediation letters.

10 We have changed the -- we have proposed to change the rules
11 to recognize the role for the Licensed Professional Geologist.
12 There was no licensing procedure under the Board of Registration
13 and Education Rules when we initially adopted Part 740, and so we
14 have tried to do something to recognize their role.

15 A major area, though, that we have dealt with is we have
16 created something called the Soil Management Zone. This is to
17 allow the on-site management of contaminated soils without
18 otherwise violating the solid waste disposal regulations. We run
19 across a number of situations in our day-to-day activities where
20 people want to move soil around on their sites as part of a clean
21 up and development project. Frequently it is a matter of raiding

22 a site out, taking soil from a high spot in one area of the
23 property and putting it on a low spot at another area of the
24 property, and then leveling them out to put in a parking lot or a

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1 structure on top or something of that nature. So the Soil
2 Management Zone would allow this, as I mentioned. I think we
3 talked about it a little bit in the testimony. Examples would be
4 structural fill, consolidation of soils, or perhaps replacement
5 of treated soils on-site. Again, I would emphasize the on-site
6 activities. This is not to allow anything from off-site to come
7 on-site.

8 It is intended for contaminated soils, and part of the
9 underlying philosophy of the Agency in proposing this was that no
10 matter what we did it had to be done safely and in accordance
11 with TACO. In other words, when we were done even though we
12 might be moving contaminated stuff around it would have to meet
13 all of the requirements of TACO for all the constituents of
14 concern when we were done. In addition, there is provisions in
15 there that require that it also be constructed and operated and
16 maintained safely, as well.

17 One final point to note on the Soil Management Zone, we
18 have prescribed a limited period of effectiveness for the Soil
19 Management Zone. It is our intention that when people get in the
20 program, in the SRP, that they actually fulfill all their

21 obligations under the SRP and get an NFR letter for this
22 exemption from the solid waste disposal regs to be effective. So
23 we wanted to prohibit people from getting in, creating some sort
24 of really a disposal area, and getting out of the SRP without

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1 fulfilling all of the rest of the requirements. So that, in
2 general, is kind of what our intention was on the Soil Management
3 Zone.

4 On the No Further Remediation letters, we have proposed a
5 few changes which are principally procedural in nature. We have
6 also, I think, appended to the testimony a copy of certain
7 procedures from the proposed agreement with the Illinois
8 Department of Transportation. They have a number of properties
9 that for which there are no deeds, and they wanted to do
10 cleanups. And so there is a procedure so that everyone will know
11 that if there are any institutional controls that those have to
12 be maintained, and the appendix -- I think that appendix outlines
13 procedurally how IDOT would handle situations of that nature.
14 For example, if they were transferring property, they would have
15 a system to make sure that before the property gets transferred
16 the new owner would know that there is an NFR letter and there
17 are some requirements associated with the NFR letter.

18 Thank you.

19 HEARING OFFICER BEAUCHAMP: Thank you. Mr. Wight, would
20 you care to enter Mr. Eastep's written testimony as an exhibit at

21 this time?

22 MR. WIGHT: Yes, I would. Mr. Eastep, would you please
23 take a look at this document and look through it carefully. Do
24 you recognize the document?

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1 MR. EASTEP: Yes, I do.

2 MR. WIGHT: Could you please tell us what the document is?

3 MR. EASTEP: That is my written testimony.

4 MR. WIGHT: And this is a true and accurate copy of what
5 was earlier submitted to the Board as your prefiled testimony?

6 MR. EASTEP: Yes, it is.

7 MR. WIGHT: Okay. At this time I would move that the
8 document be marked for identification and moved into the record.

9 HEARING OFFICER BEAUCHAMP: If there are no objections --
10 and seeing none, we will mark as this as Exhibit Number 1, the
11 testimony of Lawrence W. Eastep, Proposed Amendments to 35
12 Illinois Administrative Code 740.

13 (Whereupon said document was duly marked for purposes of
14 identification and admitted into evidence as Hearing
15 Exhibit 1 as of this date.)

16 HEARING OFFICER BEAUCHAMP: Mr. Wight, would you like to
17 present your next witness?

18 MR. WIGHT: Yes. The next witness is Greg Dunn, and Greg
19 has a brief summary of his prefiled testimony.

20 MR. DUNN: Thank you, Mr. Wight. Good morning. My name is
21 Greg Dunn. I am a Manager of one of the Site Remediation Program
22 Units at the Illinois EPA. I am just going to give you a brief
23 summary of my written testimony.

24 First of all, the Agency is proposing some incorporations

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1 by reference. This would just keep the Agency current with the
2 recent updates by the United States Environmental Protection
3 Agency and also the American Society for Testing of Materials.
4 These updates are just to keep us current with those.

5 The next thing is laboratory accreditation. In 1998, 35
6 Illinois Administrative Code 186 Regulations, the accreditation
7 of laboratories for drinking water and wastewater and hazardous
8 waste analyses were adopted pursuant to Section 4(n) and 4(o) of
9 the Act. And we are proposing that labs be accredited so that
10 the data that is coming into the Site Remediation Program is of
11 known and established quality from these labs. Currently there
12 are 17 labs in Illinois that are accredited. That was as of
13 January 24th of this year.

14 The Agency has proposed a language at 740.415(d)(3).
15 However, we would like to defer that language at this time. We
16 are reworking that language. We are reworking our language in
17 that portion, and so we would like to submit that -- we will
18 prefile testimony for that and submit that and talk about that at
19 the April 4th hearing.

20 BOARD MEMBER KEZELIS: Can you tell me the section number
21 again?

22 MR. DUNN: 740.415(d)(3).

23 BOARD MEMBER KEZELIS: Thank you.

24 MR. DUNN: The last thing that I am going to talk about are

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1 additions and corrections to the appendix in 740. Most of these
2 are just either typographical errors that I found or addition of
3 a couple of compounds. We took out cis-1,2-dichloroethene total
4 and put in trans -- or excuse me -- took out 1,2-dichloroethene
5 total -- excuse me -- and put in cis-1,2-dichloroethene and
6 trans-1,2-dichloroethene. That is to keep us current -- or that
7 is to keep us in line with the 742 Regulations.

8 The other thing the Agency did was added MTBE as a compound
9 in Appendix A. And the reason is that MTBE is starting to show
10 up in many of the community water supply wells in Illinois.
11 Currently 26 wells have been impacted by MTBE. Four of those
12 wells have been shut down at this point or not used any longer.
13 So we are adding MTBE.

14 And the other thing in the Appendix A is the Agency is just
15 going to update the methodologies to keep current with the U.S.
16 EPA's SW-846 regulations.

17 That concludes my testimony.

18 HEARING OFFICER BEAUCHAMP: All right. Thank you, Mr.

19 Dunn.

20 Mr. Wight, would you care to admit Mr. Dunn's prefiled
21 testimony as an exhibit?

22 MR. WIGHT: Yes, I would.

23 HEARING OFFICER BEAUCHAMP: All right.

24 MR. WIGHT: Would you please take a look through that. Do

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1 you recognize the document?

2 MR. DUNN: Yes, I do.

3 MR. WIGHT: Could you please tell us what it is?

4 MR. DUNN: That is my written testimony for the 740.

5 MR. WIGHT: Is this a true and correct copy of the document
6 that was previously submitted to the Board as your prefiled
7 testimony?

8 MR. DUNN: Yes, it is.

9 MR. WIGHT: Thank you. I move that this document be
10 admitted into the record and marked as an exhibit.

11 HEARING OFFICER BEAUCHAMP: Thank you, Mr. Wight. If there
12 are no objections -- seeing none, we will admit this exhibit or
13 this document as Exhibit 2. This is the testimony of Gregory W.
14 Dunn, on Proposed Amendments to 35 Illinois Administrative Code
15 740.

16 (Whereupon said document was duly marked for purposes of
17 identification and admitted into evidence as Hearing
18 Exhibit 2 as of this date.)

19 HEARING OFFICER BEAUCHAMP: Mr. Wight, do you have any
20 further statements from the Agency?

21 MR. WIGHT: No, we don't. Mr. King is part of the panel
22 for purposes of answering questions, but that concludes the
23 portion of our testimony concerning the prefiled testimony. We
24 are ready for questions if you are.

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1 HEARING OFFICER BEAUCHAMP: All right. Thank you. I guess
2 we will open up to members of the participating public for
3 questions.

4 Mr. Rieser, would you identify yourself first.

5 MR. RIESER: David Rieser from the law firm of Ross and
6 Hardies.

7 I would like to ask a couple of questions. Starting on
8 740.450, Remedial Action Plan, in (a)(3) there is an addition of
9 requiring dates of completion. I have just a couple of questions
10 about that. First of all, it is clear, isn't it, that you don't
11 need to have a schedule for completion until the time you submit
12 your Remedial Action Plan, correct?

13 MR. EASTEP: Just a second. Okay. There is a requirement
14 that a schedule be submitted with your entry into the Site
15 Remediation Program. What may be a little bit unclear, and we
16 will have to work with people on, is that at the time people
17 enter the SRP, even though we ask for a schedule, activities

18 conducted during the SRP may bring new information to light and
19 may cause people to change their plans.

20 Conceivably, this could happen with the Soil Management
21 Zone, so that if they had proposed something early on in the
22 schedule and discovered that they wanted to take advantage of the
23 Soil Management Zone, then they would have to have a date no
24 later than the time they submitted the Remedial Action Plan. So

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1 they could start out with the date that they would have to submit
2 in the initial submission, but that could change. And so the
3 latest possible time that they could have it would be the
4 Remedial Action Plan, because that would cover activities that
5 would occur under the SMZ -- excuse me -- under the Remedial
6 Action Plan.

7 MR. RIESER: Given that the initial submission involves
8 a -- may involve an application and an investigation plan prior
9 to the development of a Remedial Action Plan, it may be at that
10 initial point people don't have a very good idea of what the
11 dates of completion are, let alone -- or what activities they are
12 going to perform to deal with the investigation, correct?

13 MR. EASTEP: That's correct.

14 MR. RIESER: So the initial application schedule is going
15 to be a very generalized thing, where the Agency wouldn't expect
16 anything resembling final dates for the completion of the
17 activity?

18 MR. EASTEP: Can you repeat the question?

19 MR. RIESER: Well, the Agency would not expect very
20 specific dates for moving through the completion of the
21 remediation in the initial application schedule?

22 MR. EASTEP: Well, I think we like to see them, but
23 practically speaking, that's probably accurate, we don't expect
24 that people would be real accurate at the time of the initial

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1 submission.

2 MR. RIESER: When you talk about estimated dates for
3 completion in 450(a)(3), are these -- do you expect actual dates
4 or can these be days from approval by the Agency of the
5 particular plan?

6 MR. EASTEP: We would expect actual dates.

7 MR. RIESER: So people are going to need to build in time
8 for Agency approval in establishing those dates?

9 MR. EASTEP: That's correct.

10 MR. RIESER: Okay. Moving on to the Soil Management Zone.
11 And just as a preliminary matter, or a point of information, as a
12 member of the Site Remediation Advisory Committee, the Board
13 should understand that the Advisory Committee is very much in
14 favor of this concept. So these questions are put forward to
15 identify some issues that we do have with the actual language
16 being used.

17 For example, when the Agency uses the word "soil" what do
18 you mean?

19 MR. EASTEP: Well, I can't give you, as I sit here, an
20 exact definition. But we frequently run across materials which
21 are probably basically soil in nature, but are contaminated with
22 any variety of materials. Clearly, they would be contaminated
23 somehow with waste or if there were no waste involved, then they
24 would not be subject to regulation. But we would expect to find

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1 soils contaminated with constituents of concern above Tier 1
2 levels.

3 Primarily, though, what we have seen is soil contaminated
4 or mixed in with, like, demolition debris, which would be broken
5 concrete or asphalt, perhaps small bits of vegetation or trees or
6 wood, or we see a lot of slag. We see potentially ash sometimes.
7 So we see those types of materials, which they are certainly not
8 garbage or anything of a more recognizable putrescible nature,
9 although I guess soil is putrescible in itself. But generally we
10 don't deal with refuse. We deal with relatively inert materials
11 like ash, slag, construction debris that is contaminated with
12 soil.

13 BOARD MEMBER McFAWN: Could you allow those other
14 materials, those materials that are not soil, to remain as part
15 of the Soil Management Zone?

16 MR. EASTEP: Well, that's part of the problem, is it would

17 be -- if I had an area of -- that is, you know, soil mixed in
18 with broken concrete or perhaps ash or slag, there is,
19 practically speaking, no way to separate out purely the soil from
20 this other material. So the idea would be -- as an example,
21 let's say that in one situation they just kind of had an area
22 that was like a mound, and the company wanted to expand their
23 property, to level out the area so that they could have -- they
24 were going to add on to their property and they were going to

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1 level it to have a truck turnaround area. This was in Chicago,
2 one of the ones that the City of Chicago was working on. As I
3 recall, this was some kind of a slag and soil.

4 So what they wanted to do was to just level out the whole
5 area so that they could create this truck turnaround area, and it
6 would be flat. And then they would put a cap over it, like a
7 parking lot. And that would have been their proposal. So all of
8 the material would have stayed there. It would have just been
9 moved around on-site. It was otherwise suitable from a
10 structural standpoint.

11 MR. RIESER: And that type of situation would be
12 acceptable, that is the type of thing that would be acceptable
13 under the Soil Management Zone?

14 MR. EASTEP: That's correct.

15 BOARD MEMBER McFAWN: So is it the engineering that makes

16 it acceptable, like to leave the concrete, the fact that that
17 would not upset the leveling process? I mean, how will you
18 distinguish between what is garbage and should be removed from
19 the soil, so to speak, that would be moved around and what you
20 will allow to remain --

21 MR. EASTEP: Well, from a --

22 BOARD MEMBER McFAWN: -- as fill?

23 MR. EASTEP: Excuse me. I am sorry. I didn't mean to
24 interrupt.

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1 BOARD MEMBER McFAWN: That's okay.

2 MR. EASTEP: From a structural standpoint or an engineering
3 standpoint, I mean, that is kind of the obligation of the
4 applicant, because a lot of the site -- most of the sites we have
5 dealt with, I mean, they have wanted to do this for some
6 redevelopment use. In other words, they just haven't had this
7 idea to move this stuff around. They have had a use in mind that
8 they wanted to use it for. So that would really be their
9 obligation.

10 I think, as we saw, and the way we put the rules together,
11 our obligation would be that whatever they put in would be safe.
12 So that they would still have to meet, you know, the migration to
13 groundwater pathway, for example, the ingestion or inhalation
14 pathways and all of that. In addition, they would have to meet
15 certain construction requirements with regard to ensuring that

16 that was safe as well and didn't create a nuisance. Did I answer
17 your question?

18 BOARD MEMBER McFAWN: Kind of.

19 MR. KING: Can I just jump in? I mean, the issue of what
20 constitutes a soil is something that we have -- I mean, that was
21 a question when we did the original TACO hearings, you know, what
22 is really a soil that you are going to run the equations on, you
23 know. And we testified there that it couldn't be -- you are not
24 talking about debris and junk that has been, you know, disposed

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1 and trying to run equations on that kind of thing.

2 You are really talking about something that is a soil
3 matrix, but it has some of these materials involved. If stuff
4 can be recycled off of the site, I mean, that is going to happen.
5 It is not like we are going to see, you know, large quantities of
6 concrete sitting piled up and then moved around. That has got to
7 be moved somewhere.

8 BOARD MEMBER McFAWN: So when you say recycled off the
9 site, do you mean like they would extract the debris from the
10 soil and then move the soil around?

11 MR. KING: No.

12 BOARD MEMBER McFAWN: No? I am sorry.

13 MR. KING: Again, this is kind of -- as Larry was giving an
14 example, this is -- it has to be kind of a case-by-case

15 determination. I mean, if you have got, you know, very, very
16 small pieces of broken concrete that are really part of the soil
17 matrix, well, that is one thing. It is quite another thing if
18 you are talking about, you know, large chunks of concrete or
19 asphalt or building materials that are sitting around on a piece
20 of property. Really it is looking at do you have basically a
21 soil that is contaminated or do you really have materials that
22 constitute more of a -- more of a waste if they were just sitting
23 there.

24 BOARD MEMBER McFAWN: And the latter would have to be taken

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1 off-site? It would not become part of the Soil Management Zone?

2 MR. KING: Right.

3 MR. EASTEP: We see things even in -- on the other side of
4 my business, so to speak, you know, there is such a thing as
5 clean demolition, basically broken concrete.

6 BOARD MEMBER McFAWN: That's true.

7 MR. EASTEP: And we will have people approach us, you know,
8 wanting to sell us that as fill material on some of the other
9 projects. But one thing that we have always talked to people
10 about is we want to make sure it is a certain size. Because, for
11 example, if I am going to level out an area, I can't have, you
12 know, four foot chunks of concrete and stuff like that. I mean,
13 if you don't watch some of your contractors very carefully, you
14 will get that.

15 So most of the people when they are going to use it for
16 something, the engineers are always going to specify that it is,
17 you know, for example, smaller than a certain size or passes a
18 certain sieve size, just for purposes of nothing else, just being
19 able to work with the material. I mean, they can spend a lot of
20 time pushing around four foot chunks of concrete. You know, they
21 don't want to be pushing around shingles or anything like that.

22 Most of the engineering specs on this are going to require
23 that people remove the real big, visible, obvious debris that is
24 going to interfere with the redevelopment project. But, again,

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1 we didn't set that up to be the Agency's obligation. Rather, if
2 that material is there, they still have to manage it safely as
3 well as appropriately from an engineering standpoint.

4 MS. LIU: What if your matrix were primarily soil mixed
5 with clean, small construction debris and you came across the
6 occasional can of paint that might be considered a hazardous
7 waste. Could they still manage it as a Soil Management Zone --

8 MR. EASTEP: If it were a --

9 MS. LIU: -- if they were to remove those kinds of things?

10 MR. EASTEP: If they removed it?

11 MS. LIU: If they were to separate out those cans of paint
12 or oddities and disposed of them off-site?

13 MR. EASTEP: Let me take that kind of in two steps. First,

14 if it is a RCRA waste, then that kind of opens up -- I think we
15 have said that you could still have a Soil Management Zone, but
16 the first obligation is to satisfy all of the RCRA requirements.

17 MS. LIU: Okay.

18 MR. EASTEP: So if there is a RCRA closure requirement or
19 some sort of RCRA permitting requirement dealing with the
20 management of that waste, then that would have to be satisfied
21 first.

22 MS. LIU: Okay.

23 MR. EASTEP: Actually, if it is a RCRA closure, a formal
24 RCRA closure, they probably would not be in the SRP program,

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1 okay, because they would not be eligible. When you start moving
2 RCRA waste around -- for example, if they come across paint
3 sludge or drums, they couldn't take those drums and move them and
4 bury them somewhere else on-site because that would constitute
5 disposal under RCRA and they would have to get a formal permit
6 under RCRA. So they wouldn't -- the way I understand what is
7 written, they would not even be allowed to do those activities.
8 They would just be subject to RCRA.

9 What we have found, though, is some things, when you get
10 the old RCRA waste, there is a possibility for RCRA remedial
11 action permits, which are kind of a shortened form of a Part B.
12 But the -- and we have used -- we have probably -- I want to say
13 we have issued six of those maybe since the rules became

14 effective. But those have all been for temporary storage. I
15 don't -- I am saying that because I have not read every one of
16 them. But the first two or three were for temporary storage.
17 That, I would see as -- that or some sort of a temporary
18 treatment thing, that I see as the primary benefit of the
19 remedial action permit under RCRA.

20 So I guess the only way I can say it is they would have to
21 go back and satisfy all the RCRA requirements. And if RCRA
22 allowed something and maybe they had to get a RCRA permit and
23 this was contingent to that maybe they could do that. So that's
24 the first part. RCRA obligations would have to be taken care of.

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1 The second part, if they went in and just found some drums
2 or something and removed those and those drums were hazardous or
3 the paint cans were hazardous and they removed those, then I
4 think they could go forward with the Soil Management Zone.

5 MS. LIU: Okay.

6 MR. EASTEP: I know that was kind of long-winded.

7 MS. LIU: Thank you.

8 BOARD MEMBER MELAS: When you say removed off-site --

9 MR. EASTEP: Yes. They would have to -- once they dig them
10 up, they have triggered RCRA requirements for the management of
11 that waste.

12 HEARING OFFICER BEAUCHAMP: Mr. Rieser, did that answer

13 your question on soil, I think it was?

14 MR. RIESER: Yes. Thank you. Looking at (b)(5), which are
15 the requirements to satisfy the Remedial Action Plan, there is a
16 reference to the TACO regulations and talking about how the 742
17 Regulations shall be satisfied within the Soil Management Zone
18 and talked about institutional controls and engineered barriers.

19 Is it correct that this is a reference to things that will
20 be achieved at the conclusion of the Remediation Action Plan and
21 not things that have to be done during the construction of the
22 Soil Management Zone? In other words --

23 MR. EASTEP: What section did you --

24 MR. RIESER: I am looking at (b)(5).

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1 MR. EASTEP: Which section? 535? Okay.

2 MR. RIESER: In other words, you would not have an
3 engineered barrier or an institutional control until the
4 conclusion of the remedial action activity when everything was
5 done?

6 MR. EASTEP: That is correct.

7 MR. RIESER: So these are not things that you have to have
8 during the maintenance of the Soil Management Zone? These are
9 things that you have to have at the end, or document that you
10 will have at the end of the completion of the activity?

11 MR. EASTEP: That's correct.

12 MR. RIESER: Looking at (b)(8), (A) and (B), could you

13 explain the purpose of these two requirements?

14 MR. EASTEP: Section 535(b)(8)(A) is a requirement that the
15 material not be placed in -- a contaminated soil not be placed in
16 areas that are previously uncontaminated. And the -- well, the
17 idea was to keep clean areas clean and not further contaminate
18 them.

19 MR. RIESER: Now, are these absolute prohibitions or are
20 there things that people can do to respect these requirements
21 while still doing some of these activities? An example might be
22 if you built a pad with appropriate runoff control to place a
23 contaminated media in an area where there wasn't -- in an area
24 where there was not identified contamination.

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1 MR. EASTEP: I don't know if I understand the question.

2 MR. KING: Is that a temporary? You are thinking about as
3 a temporary activity?

4 MR. RIESER: Exactly. Another example is with respect to
5 (b) if you had a large -- a very large industrial site where it
6 was thousands of yards to any residential and you happened to be
7 ten yards closer going one direction and twenty yards closer
8 going in another direction in such a way that no one can say that
9 it really increased the risks for the residential populations at
10 that site.

11 MR. EASTEP: Okay. I was just dealing with (a), but going

12 back to the first part of your question on (a), if you were just
13 creating a temporary on-site storage pad for contaminated
14 material, I don't think that that would apply to the Soil
15 Management Zone prohibitions because you would be removing that
16 material when you were gone. Okay. So I don't believe that
17 would be subject to this.

18 Nor in the second instance, in the case of (b), if you
19 placed it from a temporary standpoint closer to a residential
20 property, I don't believe that would be subject of the Soil
21 Management Zone, because you would be removing it.

22 MR. RIESER: Well, even if you were having a management
23 activity that was temporary or you were managing these materials
24 on-site, even if that was temporary, wouldn't that still be the

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1 subject of the discussion of the Soil Management Zone and
2 wouldn't that be done under the Soil Management Zone concept?

3 MR. EASTEP: No. That type of -- that type of activity
4 could occur today.

5 MR. RIESER: Okay.

6 MR. EASTEP: So I don't think -- whatever discussions --
7 regarding this type of material, we might be having those
8 discussions today, and that would not change with these changes
9 to Part 740.

10 MR. RIESER: Okay. Well, then, to use the example with
11 respect to (b) where you had a large site and the placement of

12 closer to a residential area one direction or another, it didn't
13 at all increase the risk to that residential area because you had
14 such a large site.

15 MR. EASTEP: I am not sure it is a matter of risk that is
16 being addressed here. This is as much a matter of public
17 perception and public acceptance of this more than the risk. So
18 we have not done any risk analysis of this.

19 MR. RIESER: Well, the same -- even if it is a matter of
20 public perception, even from a public perspective, creating any
21 issue where the public would be involved and participate in the
22 process, they would be alarmed because of the size of the site.
23 Isn't that, under those conditions, when that type of
24 demonstration could be made to the Agency, something that could

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1 be provided for?

2 MR. EASTEP: Well, if you had a site where there was public
3 interest, and we certainly encourage applicants to work with
4 their neighbors as much as possible, risk is almost always an
5 issue when you are dealing with the public. And risk
6 communication is very important, because a lot of us have learned
7 how to analyze risk and calculate what risks are, but I don't
8 know if we have all learned how to communicate that to people who
9 don't deal with this every day very well.

10 So, yes, I mean, you would certainly bring that discussion

11 up, but regardless of whether -- the way this is written,
12 regardless of whether you have made a case that there was no
13 incremental risk or no unacceptable risk, and even if the public
14 accepted that, this is a prohibition of creating the Soil
15 Management Zone close to a residential property.

16 MR. RIESER: The Agency views that as an absolute
17 prohibition and under no circumstances can be modified?

18 MR. EASTEP: That is how it is written, yes.

19 BOARD MEMBER McFAWN: So in the example you gave earlier
20 about the company that wanted to create a truck turnaround, if
21 that truck turnaround was closer to the property line of
22 contiguous residential property, they would not have been allowed
23 to relocate the soil and materials for that fill?

24 MR. EASTEP: That would be correct. If the Soil Management

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1 Zone was located closer to residential property.

2 BOARD MEMBER McFAWN: But that is not based on risk, that
3 decision or that prohibition is not actually based on risk, is
4 it?

5 MR. EASTEP: That prohibition is based upon really a public
6 perception.

7 BOARD MEMBER McFAWN: But not actual risk?

8 MR. EASTEP: That is correct. We have done no risk
9 calculation.

10 BOARD MEMBER McFAWN: Is that really prudent? I mean, it

11 might mean that you would have to foreclose options for a
12 perception problem as opposed to a real problem.

13 MR. EASTEP: Well, I don't know how to answer regarding the
14 prudence of it. But we have -- most of our projects are in the
15 Chicago area, okay, probably if you go out to the collar
16 counties, three-fourths of them, perhaps. You know, a couple of
17 years ago -- and we are still dealing with the remnants of this.
18 We had what we referred to as Silver Shovel, which was certainly
19 in the news for several years.

20 But I have also dealt with a lot of sites that were not
21 necessarily Silver Shovel sites that we don't hear about all of
22 them. Maybe if you are from Chicago you hear about them. But
23 the City is up there enforcing against people that are doing
24 similar things probably today as we speak, and the City or some

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1 landlord gets put in the situation of dealing with these. Well,
2 of course, the first thing, you know, the neighbors or the local
3 community is going to say is, well, why on earth did we ever
4 allow this type of thing to occur in bringing this waste in here.

5 So people tend to get these pictures in their mind of these
6 awful things. And, of course, during Silver Shovel, you know, we
7 saw sites where they had four or five square blocks that were
8 together that were 30 or 40 foot high and it was right next to a
9 school. So I don't think anybody ever -- nobody would have

10 allowed that except maybe the FBI and Silver Shovel. But other
11 than that, nobody would have done that.

12 So, you know, it is sort of a concept type of thing that,
13 you know, you want to be able to tell people, well, no, we are
14 not going to do anything to put waste closer to your home or your
15 residence or anything like that. So that is some of the stuff
16 that we deal with on a somewhat routine basis. And in some cases
17 people just want things to just go away. They don't want any of
18 the waste there at all, forever in the future.

19 BOARD MEMBER McFAWN: Well, that's a different issue.

20 MR. EASTEP: Right.

21 BOARD MEMBER McFAWN: Here you are letting them keep it
22 on-site.

23 MR. EASTEP: I know.

24 BOARD MEMBER McFAWN: But put to a beneficial use,

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1 supposedly.

2 MR. EASTEP: Exactly. You are doing that, but I am saying
3 they don't want it there at all. They just want you to dig it up
4 and take it away. They don't care, and part of it is --

5 BOARD MEMBER McFAWN: But they don't get that wish
6 fulfilled by this rule.

7 MR. EASTEP: No. That's correct. That's correct.

8 BOARD MEMBER McFAWN: So I am just wondering why it is that
9 we -- I mean, I understand the perception is the reason why. But

10 the Soil Management Zone should be protected. It has to be
11 protected under TACO.

12 MR. EASTEP: Absolutely. It has to be protected. There is
13 no question about that.

14 BOARD MEMBER McFAWN: You will have the necessary
15 engineered barriers, etcetera.

16 MR. EASTEP: It would have to meet all of the requirements
17 of TACO.

18 MR. KING: If I could just jump in here a little bit. I
19 thought Mr. Rieser gave a good hypothetical of the one extreme
20 where you have got a very large site, and you only want to move
21 it -- you know, it is 2,000 feet to a residential boundary and
22 you only want to move it ten feet. Well, that seems -- it
23 sounds, on its face, fairly reasonable. But you could have the
24 other extreme where, you know, it is 2,000 feet to the

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1 residential boundary and the company wants to move it 2,000 feet,
2 right to the boundary.

3 You know, under TACO we would say, well, yeah, you can do
4 that because it is still going to be protective, but there is
5 certainly then going to be a perception within the community that
6 something is being moved much closer to the people living there.
7 And we were concerned about the kind of perception that would
8 create. We felt what we were doing with the whole Soil

9 Management Zone concept was to make things -- to make it easier
10 to handle certain types of problems and easier to get through the
11 remediation process.

12 However, we wanted to -- we wanted to make sure that we put
13 certain restrictions on things so that we didn't create those
14 perception problems. I mean, we could have just continued to
15 manage the program that we have. But we thought it would be an
16 improvement in the process, in the program, to create a Soil
17 Management Zone concept. We wanted to make sure that we didn't
18 go too far with that and create a perception problem going the
19 other way. That would have a negative impact on the way we were
20 managing the program.

21 BOARD MEMBER McFAWN: Wouldn't the residential contingent
22 of -- in the example you gave, if the waste was within a
23 proximity to the boundary of the contiguous residential property,
24 wouldn't they want it moved further into the interior of the

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1 property? I mean, you are saying don't move it closer to the
2 boundary, but if this perception that you are talking about is
3 correct, and I was a neighbor, I would say, hey, you can have
4 on-site management but you make sure you put it away from the
5 boundary. I don't care that it preexists there.

6 MR. KING: Right.

7 BOARD MEMBER McFAWN: We want you to move it more internal
8 if you are going to redistribute it. So doesn't the converse

9 work as well?

10 MR. KING: Well, yes, that could be the case. Again, it
11 becomes -- we have tried very hard to deal with community
12 relations issues at a site. I think, you know, a person could
13 say move it further away. But then that is just like them
14 saying, well, take it off the site. I mean, you know, that is --
15 you can respond and say that is not part of the deal. The
16 material is going to stay on the site, but --

17 BOARD MEMBER McFAWN: Well, what about the example, though,
18 about the truck turnaround or a bus turnaround in a city? Maybe
19 it is a perfect solution and you are not creating a health risk
20 by allowing the on-site fill and, yet, the bus -- it is not a big
21 enough parcel of land to say, oh, move it or, you know, don't put
22 the turnaround there. I mean, that is a real example in the
23 City.

24 MR. EASTEP: There may be -- you are right. There may be

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1 situations like that that occur.

2 BOARD MEMBER McFAWN: And you just have to say no?

3 MR. EASTEP: We will certainly cover a lot of those. This
4 rule will certainly allow a lot of that to happen, but there may
5 be situations where because of provisions (a) or (b) here that
6 they are prohibited from doing that. I think my kind of analysis
7 is on provision (a) most of the sites we deal with, I am not sure

8 that that is going to have any real impact. I just don't -- most
9 of the sites -- you know, a lot of the sites where this type of
10 thing has come up, the areas have all been contaminated. For
11 example, if I go to the Wisconsin Steel site, which is a very
12 complicated site, I mean, that is 170 acres. I don't think I
13 found any areas of that site that are uncontaminated, you know.
14 So would that apply? Well --

15 BOARD MEMBER McFAWN: So the Wisconsin site, then you would
16 look to (b) because there is -- the (a) is not raised --

17 MR. EASTEP: Right.

18 BOARD MEMBER McFAWN: -- so you would look to (b)?

19 MR. EASTEP: Right.

20 BOARD MEMBER McFAWN: And then you would require them to
21 remain -- well, then they could go right up to the boundary if it
22 is all contaminated.

23 MR. EASTEP: They -- you would look to (b) but, again, see,
24 (b), I don't have as good a feeling for, because we are not

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1 looking at that type of thing now.

2 BOARD MEMBER McFAWN: Okay.

3 MR. EASTEP: So those types of issue, how close are
4 residences, a lot of our sites they don't come up. So I just
5 don't have as good a feel. In general I know, well, if you ask
6 them these are industries and a lot of times they are surrounded
7 by industries so, you know -- but I can't tell you, because as

8 soon as I do there will be some site that is right in the middle
9 of a residential neighborhood.

10 BOARD MEMBER McFAWN: Right.

11 MR. EASTEP: So I don't have a very good feeling for that
12 second part.

13 BOARD MEMBER McFAWN: Could they -- when you talk about
14 Wisconsin Steel, under (b), and I don't even know if it has a
15 residential contiguous piece of property, to tell you the truth.
16 Could they -- let's say the property close to the boundary is
17 contaminated, and they exhume that contamination rather than
18 leaving it on-site. Could they then take fill that is not as
19 severely contaminated from elsewhere on the site and put it where
20 they did the -- where they removed --

21 MR. EASTEP: If it were closer to residential?

22 BOARD MEMBER McFAWN: Right.

23 MR. EASTEP: No.

24 BOARD MEMBER McFAWN: Okay.

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1 MS. LIU: If it is perception that is the driving factor
2 for not placing the soil closer to residential property, could
3 you include in the process perhaps a public notice and hearing
4 that would allow the people to speak, and if they felt that this
5 was for the betterment of the community, they were going to build
6 a tennis court or a bus turnaround for the kids going to school,

7 could that be a solution?

8 MR. EASTEP: You know, I mean, that addresses certainly
9 part of the problem. One of the problems we have found is --
10 well, see, we don't have any real public notice or public
11 participation portions of these rules. I think that would be
12 worth -- that would be something the Agency would consider, you
13 know. I mean, we would have to see what the proposal was. But I
14 think -- you know, it is hard to say. You know, you are
15 protecting the public, and the public, you know, wants something
16 and so -- but I don't know. I think if someone wanted to propose
17 that, we would certainly look at it.

18 MR. WIGHT: I think you also have to consider if you open a
19 public input aspect of this that that also is a procedure that
20 could work both ways. And if the public didn't think it was
21 desirable, then what would the remedy be in that case. I mean,
22 you know, would your hearing be only to approve things but not to
23 stop things. You know, it is one of the things that you would
24 have to look at about whether it is an opportunity for the public

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1 to give thumbs up, but it is also an opportunity for the public
2 to give thumbs down and put a stop to certain activities as well.
3 It seems it would have to work both ways to truly reflect public
4 input. So it is something that could be done, but it would be
5 time-consuming, burdensome, and it could go either way, not to
6 just the positive direction, I would think. It would not be easy

7 to put together.

8 HEARING OFFICER BEAUCHAMP: Mr. Rieser, did you have any
9 further questions?

10 MR. RIESER: Yes, I do. Thank you. Looking at (g) of that
11 same section, this talks about any otherwise standards or
12 requirements under 35 Illinois Administrative Code 807 or 811
13 through 815 shall not be applicable to the management of the
14 contaminated soil that is the subject of the Soil Management Zone
15 if certain conditions are met.

16 Would it also be accurate to say that contaminated soil
17 handled pursuant to a -- managed pursuant to a Soil Management
18 Zone and located on the property pursuant to the Soil Management
19 Zone would also meet the requirements of 21(e) of the Act? In
20 other words, it would not be a matter of handling waste without
21 compliance with the Act and the regulations?

22 MR. EASTEP: What is 21(e)? Excuse me a second. Well, I
23 am not sure what the relationship to 21(e) is because it still
24 goes to creating an exemption for those other regulations which

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1 would have been triggered by 21 -- triggered by 21(d). Even
2 though it is on-site, there may not be a permit requirement. I
3 think under 811.315, for example, they are still required to meet
4 the substantive requirements for disposal sites. That's what we
5 are trying to get away from. So I am not sure what the relation

6 to 21(e) is.

7 MR. KING: If I can just add, it was not our intention to
8 reserve 21(e) as an additional enforcement tool where an SMZ was
9 in place and was being met.

10 MR. RIESER: Well, I guess the question was not --
11 obviously, the Agency believes that this activity is appropriate
12 so long as it is done according to the regulations, but I wanted
13 to make it clear that the Attorney General or other people who
14 might be concerned with this would not be in a position to claim
15 that this was a violation of 21(e) as a result of this activity.
16 I just wanted to underline that fact from the Agency's
17 perspective.

18 MR. KING: Right. I don't -- I mean, we really looked at
19 the fact that the Board's authority, as far as the rulemaking
20 would go, how this provision operated within the context of other
21 Board provisions, and really couldn't put in there anything that
22 would reference 21(e).

23 MR. RIESER: All right. Thank you. Turning to the
24 appendices, what is the basis for deleting the required

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1 quantitation limits from the appendices?

2 MR. WIGHT: We would like to defer that until the next
3 hearing. We are going to revise some of the language affecting
4 that, and if possible if we could defer that until the Chicago
5 hearing we could discuss all of those questions at the same time.

6 MR. RIESER: Sure. All right. Thanks very much.

7 HEARING OFFICER BEAUCHAMP: Thank you, Mr. Rieser. Does
8 anyone else have any questions for the Agency?

9 Sir, would you identify yourself?

10 MR. WALTON: Harry Walton, Chairman of the Site Remediation
11 Advisory Committee and consultant to IERG, the Illinois
12 Environmental Regulatory Group.

13 I would like to follow-up on some of the questions raised
14 by the Board and by Mr. Rieser. I will set the stage first. The
15 Soil Management Zone has to comply with all aspects of the TACO
16 regulations. It has to be protected. In fact, in the Soil
17 Management Zone it is even more protective in that if you had a
18 site where you wanted to focus remediation, if you wanted to have
19 a Soil Management Zone, your contaminants of concern are much
20 broader in the Soil Management Zone. You have a better
21 understanding of what is in the soil that is being managed in a
22 Soil Management Zone. Is that correct, Mr. Eastep?

23 MR. EASTEP: That's correct.

24 MR. WALTON: One of the basic tenets of TACO and the Title

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1 17 legislation was that we will not be creating islands of clean.
2 Is that one of the basic tenets of the original legislation, the
3 TACO regulation, the islands of clean?

4 MR. EASTEP: I don't think that is in the purpose and

5 intent under Section 58, but if you look at the provisions in
6 terms of allowing -- in dealing with area background and
7 acknowledging risk, I think if you go back to the intent and
8 purpose, I think that speaks for itself and I think to a certain
9 degree it would address that, yes.

10 MR. WALTON: Also under TACO we have some criteria to tell
11 us what sources are in a remediation site, is that correct, for
12 Subpart C?

13 MR. EASTEP: Subpart C deals with the concept of source,
14 yes, in terms of exclusion pathways.

15 MR. WALTON: On the Soil Management Zone, those materials
16 that would be managed would have to comply with the Subpart C
17 criteria?

18 MR. EASTEP: Yes, that is one of the requirements.

19 MR. WALTON: Now, the materials that are being managed in a
20 Soil Management Zone would be materials that would remain at the
21 site if they were not managed typically. That residual risk,
22 independent of what happens to the soil in the Soil Management
23 Zone would probably stay the same in most scenarios that we use
24 as a Soil Management Zone. Is that correct or incorrect?

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1 MR. EASTEP: You have introduced a concept of relative
2 actions taken under there, and I think all I can say is that what
3 remains would be an acceptable risk pursuant to the Act and the
4 regulations.

5 MR. KING: But are you speaking of that question as to the
6 overall risk of the site? Is that what you are --

7 MR. WALTON: The overall risk of the site, yes.

8 MR. KING: Okay.

9 MR. EASTEP: The overall risk would end up being -- would
10 have to still be acceptable and meet 740, 742 and the Act.

11 MR. WALTON: Now, the TACO solution -- let me just call it
12 that. You have gone through the site, you have evaluated the
13 site, and you have developed a TACO solution. And that TACO
14 solution in one case includes the Soil Management Zone and in the
15 other case it does not. At the end of the day the level of
16 protection for both solutions is the same?

17 MR. EASTEP: The level of protection would have to meet the
18 Part 742 requirements.

19 MR. WALTON: The two additional conditions -- and you have
20 said this. The two additional conditions do not have any
21 relative affect on the risk? It is just a perception issue; is
22 that correct?

23 MR. EASTEP: We did not do a risk analysis when we put
24 those in, that's correct.

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1 MR. WALTON: Okay. Thank you. I have one other additional
2 question for Mr. Dunn. This is in regards to the requirement
3 that you certify laboratories as a part of the remedial process.

4 I am aware of many situations of large interstate companies that
5 have blanket contracts where they would have a response team on
6 line. This team would come in and respond to a release, and they
7 may not use an Illinois approved laboratory in the response
8 action. That is a very typical scenario at this point.

9 In the future it may not be an issue, but at this point in
10 time if these regulations were adopted, what opportunities would
11 that responsible party have to use that data to mitigate the
12 release to -- you know, if he wants to mitigate through the
13 Office of Chemical Safety under the SRP program, it will reflect
14 the body of data that may or may not be generated from a
15 certified lab. On a routine basis the SRP program may not be an
16 issue, but it may be an issue on a response action.

17 Do you envision any kind of opportunity for the responsible
18 party to make a demonstration to use that data to mitigate the
19 release?

20 MR. DUNN: Mr. Walton, in answer to your question, first of
21 all, if its before July 1st, 2002, they can use the data. That
22 is pretty evident. And the way I think we have set this up, and
23 I could be wrong, is if they did that prior to entering the SRP,
24 I believe these analyses are for sites in the Site Remediation

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1 Program. So if they use data prior to entering the SRP, we take
2 a look at that data. And if it was reasonable and with some
3 measure of confidence and we thought it was collected

4 appropriately, we would use it.

5 MR. WALTON: So there is an opportunity to give a
6 demonstration that the data is acceptable?

7 MR. DUNN: Yes.

8 MR. WALTON: Okay. Thank you.

9 MR. EASTEP: Could I add something? The NELAP site program
10 is the National Laboratory Certification and Accreditation
11 Program, and there are a number of laboratories that we are aware
12 of, not only in Illinois, but in neighboring states that have
13 large labs that have already been certified. I don't know if Mr.
14 Dunn knows the numbers.

15 MR. DUNN: There is close to 250 nationwide, labs that have
16 been accredited.

17 HEARING OFFICER BEAUCHAMP: Thank you, Mr. Walton. Does
18 anyone else have questions for the Agency on their proposal?

19 We will look to the Board and the Board staff here for
20 questions, then. Mr. Melas.

21 BOARD MEMBER MELAS: Yes. Mr. Dunn, just a question that
22 popped into my head here. On your Attachment 3, where you talked
23 about the community wells detected with the MTBE.

24 MR. DUNN: Yes.

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1 BOARD MEMBER MELAS: Just looking at these counties, it
2 seems that they are scattered throughout the whole state. Have

3 you found this to be the fact, that this MTBE has been found at
4 random through no particular geographical pattern, or have you
5 found any patterns at all in any particular areas?

6 MR. KING: If I could answer that, Mr. Melas. The answer
7 is random. It has been found all over the place, and it is one
8 of the things that as we look at the MTBE problem is most
9 disconcerting because we would have anticipated the problem to
10 show up in those areas where MTBE would have been considered to
11 be more used or more available, but that really was not the case.
12 So that is one of the reasons why we really have had to look at
13 this as a state-wide issue and not just restricted to the collar
14 counties or the Metro-East areas.

15 BOARD MEMBER MELAS: Thank you.

16 HEARING OFFICER BEAUCHAMP: Thank you, Board Member Melas.
17 Any there any other questions?

18 MS. LIU: Mr. Dunn, good morning.

19 MR. DUNN: Good morning.

20 MS. LIU: Could you describe the Agency's role in the
21 accreditation program in terms of how they interact with the
22 laboratories, conduct inspections, evaluate quality control, that
23 kind of thing?

24 MR. DUNN: The Agency goes -- first of all, the lab will

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1 turn in an application to the Agency for the accreditation. Our
2 Division of Laboratories will take a look at the application and

3 then actually go out to the lab and do a survey of the lab, talk
4 to people, make sure the methods are correct. There is a number
5 of different methods they could actually be accredited for. We
6 are more concerned with the SW-846/RCRA accreditation, but there
7 is also the Clean Water Act, the Clean Air Act, and the Safe
8 Drinking Water Act that they could be accredited for.

9 MS. LIU: Okay. Thank you. Mr. Eastep?

10 MR. EASTEP: Yes.

11 MS. LIU: I noticed, as I was reading through the Agency's
12 proposal, that Section 740.535 on the Soil Management Zones is
13 new, but it was not underlined. Was that an oversight?

14 MR. WIGHT: I am sorry. What was the question again?

15 MS. LIU: The Section 740.535 on Soil Management Zones is a
16 new section, correct?

17 MR. WIGHT: Yes.

18 MS. LIU: But it was not underlined in the proposal. I
19 just --

20 MR. WIGHT: That would be something that I prepared.

21 MS. LIU: Okay.

22 MR. WIGHT: And in reading the Secretary of State's Rules
23 on Rules I believe I read that new sections did not have to be
24 underlined. So if I misinterpreted that, then I apologize.

1 MS. LIU: Okay.

2 MR. WIGHT: But I thought that is what I understood the
3 Rules on Rules to say.

4 MS. LIU: Okay. I didn't know that. Thank you.

5 MR. WIGHT: Actually, I think in the past when I have
6 submitted rules, I have underlined new sections and was surprised
7 to see that. I read it three for four times and concluded that
8 that is what it meant. But it is more helpful when they are
9 underlined, and I really was kind of reluctant to take them out.
10 I thought, well, if this is what complies with the rules, I will
11 take them out. But now that I look at my own proposal, it is
12 hard to find that section because it looks like all of the rest.
13 So maybe I should read it a fifth time and just make sure.

14 BOARD MEMBER McFAWN: I don't know. Reading those rules
15 can be very mind-boggling.

16 MR. WIGHT: Yes. After you read it two or three times, you
17 think, well, I hope I have got it right, but it is time to move
18 on. I agree that it would have been more helpful had it been
19 underlined. Also the section on the IDOT procedures, which was a
20 new section, 621, the same thing. I took the underline out.
21 Originally it was underlined, and I removed them before I sent
22 them in.

23 MS. LIU: Okay. Thank you for that clarification.

24 MR. WIGHT: Sure.

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1 MS. LIU: Mr. Eastep, under the Soil Management Zone

2 provision could someone utilize a Soil Management Zone to move
3 contaminated soil for a land reclamation without actually doing
4 it as part of a remediation project? Or would they have to enter
5 the SRP and utilize that provision?

6 MR. EASTEP: They would have to be in the SRP and they
7 would have to follow all of the requirements of the SRP and
8 ultimately get a No Further Remediation letter.

9 MS. LIU: Okay. I noticed in comparing this rulemaking to
10 the rulemaking in R01-26 that there was mention of a new form, a
11 change of address form that parties would submit to ensure that
12 the NFR letter was sent to the right address. But I didn't
13 notice that this change of address form was specifically
14 mentioned in the rulemaking we are discussing today. I was
15 wondering if that was something the Agency was planning to use in
16 general and if it was worth putting in there as it was in Part
17 732?

18 MR. EASTEP: With regard to change of address with regard
19 to what?

20 MS. LIU: I imagine if parties potentially move their
21 contact point and they want to ensure that reimbursement checks
22 from the fund are sent to the correct address as well as the NFR
23 letter that they had to file this form. I was wondering since
24 NFR letters would also be issued under the SRP program, if that

1 wouldn't be something that would be worth including.

2 MR. EASTEP: We would normally -- our focus would go in the
3 future towards the property. For example, if we were to go out
4 and do an inspection of some sort of engineered barrier on a
5 piece of property, you know, our activities would go to the
6 geographic location of the property, and I guess we just attempt
7 to locate the owner then.

8 I really had not thought about including that, and I am
9 just -- I am not sure how that would work, knowing how many
10 properties we get in and the fact that, you know, a lot of times
11 they are part of redevelopment and they may change ownership
12 fairly quickly. I just hadn't thought about the aspect of trying
13 to keep track of all that and enforce compliance with someone
14 that didn't happen to send in a change of notification.

15 MS. LIU: Okay. Very good.

16 MR. WIGHT: We could look at what they have done in the
17 LUST provisions. I am not sure that we are entirely familiar
18 with what they have changed there. We could take another look at
19 that and maybe get back to you at the second hearing, too, if it
20 looks like something we might want to consider using. So if that
21 is okay, we will take a second look and we will respond in
22 Chicago on the 4th.

23 MS. LIU: Okay. That's fine. Today we also have a
24 proposal in R01-29 from the Citizens for a Better Environment.

1 How does the Agency feel about these revisions?

2 BOARD MEMBER McFAWN: I think the Hearing Officer said that
3 you would be available for questioning after the CBE has put
4 their presentation on.

5 MR. KING: Yes.

6 MS. LIU: Oh, I apologize.

7 BOARD MEMBER McFAWN: That is fine. Why don't we defer
8 that question until then.

9 MR. KING: Okay. Sure. That would be fine.

10 MS. LIU: I also had some questions on the IDOT MOA. I
11 think Hearing Officer Joel Sternstein in the R01-26 had asked
12 whether or not the intention was to provide a MOA for each
13 individual project or an umbrella MOA listing several sites and
14 several different corresponding provisions. Could you explain
15 how that MOA process would work?

16 MR. EASTEP: Well, initially, we would have an umbrella to
17 handle with IDOT for their properties and they would give us a
18 list of numerous sites that they knew about that would be
19 covered. Then the way it is structured is that they would modify
20 that if they changed something.

21 BOARD MEMBER McFAWN: Modify the list or --

22 MR. EASTEP: Modify the MOA when they changed something, so
23 that it wouldn't be a site-specific one, but I don't know that --
24 as I recall, I don't know that we couldn't do another one, but I

1 don't think it had been set up that way.

2 (Mr. Eastep and Mr. Wight briefly confer.)

3 MR. EASTEP: The intention was to be an umbrella with the
4 sites attached. But I didn't recall if there was anything
5 prohibiting it the other way.

6 BOARD MEMBER KEZELIS: Do you want to answer this in the
7 Chicago hearing?

8 MR. EASTEP: Well, as a practical matter, if I were
9 administrating it, I would rather keep it as an umbrella
10 agreement with an up-to-date appendix. Otherwise, you know, that
11 is one extra piece of paper or data that is in the system that is
12 harder to keep track of. So the intention would be to keep it as
13 one agreement.

14 MR. STERNSTEIN: So the intention would be to have the
15 initial MOA and then have an appendix that would change from time
16 to time if new IDOT sites were discovered or if they came into
17 possession of new properties that might fall under 740?

18 MR. EASTEP: That is correct.

19 MR. STERNSTEIN: Is it your intention that the IDOT MOA in
20 the changes to 740 would substantially match the IDOT MOA that is
21 being proposed for 732 for the LUST?

22 MR. EASTEP: I haven't -- I can't answer. I haven't read
23 the --

24 MR. KING: That's correct.

1 MR. EASTEP: Okay.

2 MR. STERNSTEIN: Substantially similar?

3 MR. KING: Right.

4 MR. STERNSTEIN: Okay.

5 BOARD MEMBER McFAWN: When you speak of the list that will
6 be an appendix to the MOA --

7 MR. EASTEP: Uh-huh.

8 BOARD MEMBER McFAWN: -- will that be a list of prospective
9 sites or will that be a list of the sites that had been
10 remediated or how will that work?

11 MR. EASTEP: That will be a list of the ones that they know
12 about now that I think have been or are being remediated.

13 BOARD MEMBER McFAWN: And then they will be added as they
14 add to them?

15 MR. EASTEP: Right.

16 BOARD MEMBER McFAWN: Okay. I see. Thank you.

17 MS. LIU: Of the appendices and the draft MOA there is a
18 reference to an Appendix A, which is, like, the process for
19 maintaining the institutional controls?

20 MR. EASTEP: Yes.

21 MS. LIU: And then there is Appendix B, which is the
22 listing of the sites that you spoke of?

23 MR. EASTEP: Right.

24 MS. LIU: And then an Appendix E, which is the listing of

1 the Agency representatives. I was wondering if Appendices C and
2 D were reserved for something special?

3 MR. EASTEP: Excuse me.

4 (Mr. Eastep and Mr. Wight confer briefly.)

5 MR. EASTEP: We will have to respond at the April meeting
6 to that.

7 MS. LIU: Okay. Thank you very much.

8 BOARD MEMBER McFAWN: On that issue, the draft that is
9 attached to your testimony, Mr. Eastep, it is a draft MOA?

10 MR. EASTEP: Yes.

11 BOARD MEMBER McFAWN: Will that be finalized at what point
12 between IDOT and the Agency?

13 MR. EASTEP: I am not sure as to the status of that. We
14 can -- again, that is something that we can probably talk to IDOT
15 and our management about and give you a better idea at the April
16 hearing.

17 BOARD MEMBER McFAWN: All right. If memory serves me
18 correctly, when we did the Subdocket A in TACO, we were waiting
19 anxiously for that agreement to be signed prior to going final.
20 I think that scenario might repeat itself. So if you could tell
21 us if you anticipate it to be signed before we go final, that
22 would be helpful.

23 MR. EASTEP: Okay.

24 BOARD MEMBER KEZELIS: I concur.

1 MS. LIU: Mr. Eastep, returning back to the Soil Management
2 Zones, from the questions that Mr. Rieser asked, it appeared that
3 industry groups are very open and receptive to the proposal. I
4 was wondering what other kind of feedback the Agency got on this?

5 MR. EASTEP: We have -- I think on the proposal we have
6 generally gotten positive feedback from most of the industry
7 people. We have also dealt with a number of communities, the
8 largest community, of course, being the City of Chicago. And I
9 don't want to speak for them, but the one site that I was talking
10 about was one that the City was trying to -- the City ends up
11 seeing us in a couple of situations. One, where they are
12 actually doing the clean up, because there is nobody else there
13 to do the clean up.

14 MS. LIU: Okay.

15 MR. EASTEP: And then they want to get it cleaned up to
16 redevelop it, obviously. But the other is where they have helped
17 people as part of their Brownfield program. They help broker
18 sites -- I guess that is as good a word as any -- to make sure
19 that, you know, a developer knows who to talk to and how to get
20 the NFR letter and the banks are assured and all of that.

21 So I think that the City has recognized that this would
22 have been very useful in a couple of cases if we could have used
23 it. So I think that could accurately characterize the City. My
24 understanding is a representative of the City, from the Chicago

1 Department of Environment, is going to be present at the April
2 hearing.

3 MS. LIU: Okay. Good. Were there any major points of
4 controversy between you and industry or community groups on this?

5 MR. EASTEP: Well, I think Mr. Rieser probably raised those
6 with regard to the sections dealing with moving on to
7 uncontaminated property or closer to residences.

8 MS. LIU: Okay. Thank you.

9 MR. EASTEP: Can I add to that? I guess one area where
10 there has not been any controversy is the fact that throughout
11 the process it is a legitimate bona fide process. We are not
12 allowing people in to move things just to avoid the solid waste
13 rules or to do anything in an unsafe or unenvironmentally
14 acceptable manner. I think I could characterize all of our
15 discussions as everybody has agreed from the onset that no matter
16 what we do that we end up with something that is ultimately as
17 safe as we can make it.

18 HEARING OFFICER BEAUCHAMP: Okay. Are there any further
19 questions for the Agency on their proposal, then?

20 Seeing none, this concludes this portion of the hearing.
21 We will give the Agency a few moments to step down and to have
22 Citizens for a Better Environment step up to the table.

23 Why don't we take a ten minute break and we will reconvene
24 at 10:40.

1 (Whereupon a short recess was taken.)

2 HEARING OFFICER BEAUCHAMP: All right. Let's go back on
3 the record. We are going to continue now, moving into Docket
4 R01-29. Citizens for a Better Environment has a proposal that
5 they would like to discuss.

6 Ms. Gordon, do you have an opening statement?

7 MS. GORDON: Yes, I do. Good morning. My name is Holly
8 Gordon. I am here with the Chicago Legal Clinic, on behalf of
9 Citizens for a Better Environment.

10 The proposed rulemaking this morning is an addition to the
11 SRP, composed of much needed procedural requirements.

12 HEARING OFFICER BEAUCHAMP: Excuse me, Ms. Gordon. I think
13 the people in the back of the room may be having a hard time
14 hearing you.

15 MS. GORDON: All right. I am sorry.

16 HEARING OFFICER BEAUCHAMP: Could you speak up a little
17 bit?

18 MS. GORDON: Sure.

19 BOARD MEMBER McFAWN: Would you prefer to use a microphone?

20 MS. GORDON: No, actually.

21 BOARD MEMBER McFAWN: All right.

22 HEARING OFFICER BEAUCHAMP: And we also need you to slow
23 down a little bit for the court reporter so that she has no
24 trouble.

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1 MS. GORDON: All right. This morning the proposed
2 rulemaking is an addition to the SRP, composed of much needed
3 procedural requirements related to the clean up of unused sites
4 for schools, public parks, and playgrounds.

5 With me today is Abby Jarka, and she will be giving you
6 more of a background and details of the proposal. Ms. Jarka's
7 background is she is a Registered Professional Engineer with ten
8 years of environmental engineering experience. She has a BS in
9 civil engineering and an MBA.

10 And with that, I will turn things over to you, Ms. Jarka.

11 HEARING OFFICER BEAUCHAMP: All right. Thank you. Before
12 we begin, could we have the court reporter swear you in.

13 (Whereupon the witness was sworn by the Notary Public.)

14 HEARING OFFICER BEAUCHAMP: Thank you, Ms. Jarka. Again,
15 if you could project a little. We have a lot of people in the
16 back and we have fans blowing all over here. So it would help us
17 to hear.

18 MS. JARKA: Good morning. My name is Abigail Jarka. I am
19 here representing Citizens for a Better Environment on this
20 rulemaking proposal. The proposed rules before you would ensure
21 the --

22 HEARING OFFICER BEAUCHAMP: I am sorry. I think people in
23 the back are still having a hard time. Would you mind if we use
24 the microphone?

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1 MS. JARKA: Sure.

2 HEARING OFFICER BEAUCHAMP: Okay. Let's go off the record
3 for a minute.

4 (Discussion off the record.)

5 HEARING OFFICER BEAUCHAMP: All right. Let's go back on
6 the record.

7 MS. JARKA: Okay. Good morning. Is that better? Okay.

8 The proposed rules before you today would ensure
9 maintenance of institutional controls and enhanced public
10 participation at remediation sites intended for future use as
11 public schools, public parks, and playgrounds. The proposal is
12 intended to promote a proactive approach to remediation at those
13 type of sites.

14 The inception of this proposal is based on-site remediation
15 that took place at two school sites, Finkl Academy and the Zapata
16 Academy, located in the Little Village area of Chicago. These
17 schools were built on properties contaminated with polynuclear
18 aromatic compounds and inorganics. The Finkl and Zapata sites
19 were entered into the SRP. The schools, however, were built and
20 opened without Agency notification and without an NFR letter in
21 place.

22 When this fact came to the attention of the media in 1999,
23 additional site investigation work was conducted. The levels of
24 polynuclear aromatic compounds and inorganics were identified in

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1 site soils above the Tier 1 ingestion levels. This included
2 soils that were put in place at each site as an engineered
3 barrier. Additional remediation was deemed necessary and the top
4 three feet of soil at each site was removed and replaced with
5 three feet of clean fill material. NFR letters have been issued
6 for these sites.

7 The fact that this problem occurred at all emphasizes the
8 need that these type of sites should be handled slightly
9 differently from typical industrial sites entered into the SRP.
10 These type of sites are publicly funded, which in many cases
11 eliminates the participation of a third-party lending institution
12 that would typically do due diligence on environmental issues.
13 Similarly, there are few triggering events to highlight the
14 importance of maintaining institutional controls.

15 The proposal addresses this difference by requiring receipt
16 of an NFR letter before the site could be opened for general use
17 to the public. The rules also require that institutional
18 controls be put in place as part of remediation and be reviewed
19 every five years and documentation of that review submitted to
20 the Agency. This requirement would serve to institutionalize
21 knowledge about the requirements contained in the NFR letters.
22 This proposal would not add any more stringent requirements to
23 site remediation, but would put in place some simple and
24 cost-effective measures to provide a level of certainty to

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1 communities faced with SRP issues at sites to be used for public
2 schools, public parks and playgrounds.

3 CBE's proposal is not yet finalized, and we welcome any
4 questions and concerns regarding this proposed rulemaking. Thank
5 you.

6 HEARING OFFICER BEAUCHAMP: All right. Thank you, Ms.
7 Jarka.

8 Ms. Gordon, at this time would you like to move that Ms.
9 Jarka's prefiled testimony be admitted into the record?

10 MS. GORDON: Yes, I would.

11 HEARING OFFICER BEAUCHAMP: Okay.

12 MS. GORDON: Do you recognize the document?

13 MS. JARKA: Yes, I do.

14 MS. GORDON: Can you please tell us what it is?

15 MS. JARKA: It is my prefiled testimony.

16 MS. GORDON: Is it a true and accurate copy of your
17 prefiled testimony?

18 MS. JARKA: Yes, it is.

19 MS. GORDON: I would move that Ms. Jarka's testimony be
20 admitted as an exhibit in the record.

21 HEARING OFFICER BEAUCHAMP: Thank you. I will see if there
22 are any objections. Seeing none, we will mark this as Exhibit 3,
23 the testimony of Abigail C. Jarka, P.E.

24

Well, let's make a correction on that. Since these are

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1 separate dockets and we want to consolidate them for the purposes
2 of hearing, we will mark this as Exhibit Number 1 in Docket
3 R01-29.

4 (Whereupon said document was duly marked for purposes of
5 identification and admitted into evidence as Hearing
6 Exhibit 1 in R01-29 as of this date.)

7 HEARING OFFICER BEAUCHAMP: Okay. Ms. Gordon, do you have
8 any other statements to be made?

9 MS. GORDON: No, I do not.

10 HEARING OFFICER BEAUCHAMP: Okay. Very good. At this
11 point, then, let's open up to questions from members of the
12 public here today.

13 Yes, ma'am. Could you identify yourself and who you
14 represent?

15 MS. CRIVELLO: My name is Lynn Crivello. I am with CTE.
16 My question is, is it your intent that the SRP be required for
17 schools, parks, and playgrounds? In the draft that I read there
18 is no language in there that says that any park or school shall
19 enroll in the SRP or, in fact, that they do, Phase 1 or Phase 2.

20 MS. JARKA: The SRP is still a voluntary program. Correct
21 me if I am wrong, Holly. The way our rules are written, for a
22 public park or a public school or a public playground to be open
23 to the general public, they would need an NFR letter, which that

24 would mean they would have to be in the SRP.

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1 MS. CRIVELLO: I am sorry. Where does it say that?

2 MS. JARKA: At Section 740.805.

3 HEARING OFFICER BEAUCHAMP: Mr. Rieser?

4 MR. RIESER: I am not sure I understood the answer to that
5 question. Is it the intent of these rules that any property
6 intended for use as a public park or a school that has some
7 measure of contamination on it, has to go through the voluntary
8 program and get an NFR letter before it is used for that purpose?

9 MS. GORDON: I can answer that. No. The way the rules are
10 written, it would actually -- if the end use of the site is a
11 school, public park, or playground, then they would have to
12 voluntarily be in the SRP program for the rules to apply to them.

13 MR. RIESER: So this applies to a school property that may
14 be used in the future for a school or park that is in the
15 voluntary program? It would not mandate that they enter the
16 voluntary program?

17 MS. GORDON: We are not trying to force anyone to be in the
18 SRP that would not originally be in the SRP.

19 MR. RIESER: Okay. Thank you.

20 HEARING OFFICER BEAUCHAMP: Yes, Ms. Crivello?

21 MS. CRIVELLO: If you have a school that is a new school
22 that is scheduled for construction somewhere outside of Cook

23 County, they normally would not do a Phase 1 or a Phase 2 or any
24 type of investigation. They build that school. Would they be in

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1 violation of any of these regulations if they built a school
2 without doing any investigation and opened it to the public?

3 MS. JARKA: Well, if they entered the SRP, yes, they would
4 be if they didn't follow it. If they were not in the SRP, then
5 the SRP is still a voluntary program. So, no, they would not.

6 MS. CRIVELLO: Can I?

7 HEARING OFFICER BEAUCHAMP: Yes, please continue.

8 MS. CRIVELLO: So if I understand correctly, the SRP being
9 a voluntary program, if they did not -- if they chose not to
10 enroll in the SRP program, therefore, they did not get an NFR
11 letter because they were never enrolled in the program, they
12 could still open that school and allow attendance of their -- of
13 the pupils?

14 MS. JARKA: Yes, because it is a voluntary program. We
15 would hope they would want to enter the program or seek Agency
16 guidance, but the SRP is still a voluntary program.

17 MS. CRIVELLO: I guess my question is doesn't this stifle
18 anyone who believes that there could be a problem at a park or a
19 playground, that they would choose not to do any investigation
20 and that, therefore, they would choose not to go into the SRP
21 program because of a construction schedule or because they wanted
22 to avoid public hearings?

23 MS. JARKA: I don't believe the -- what is laid out in our
24 rules is that burdensome to a school or a park that would enter

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1 the SRP program that it would defer them from entering that
2 program.

3 MS. CRIVELLO: Well, I think from my experience that you
4 can end up spending several thousands of dollars on just the SRP
5 process, and any sort of a clean up that you would do, including
6 the time that is required. So I can understand why someone would
7 choose -- I do believe that there is an additional onerous on
8 this if someone would chose to go through the SRP program. There
9 is additional reporting. There is additional consulting. There
10 is additional remediation that takes place.

11 So if they chose to go through the SRP program, not only
12 would they have to take that up, they would also have to take on
13 any costs involved with public hearings and those types of costs.
14 So I think there is an additional burden for an agency who may --
15 who may want to do investigation, but is not prepared to go
16 through the NFR process.

17 MS. JARKA: Our proposal does not affect the investigation
18 or remediation requirements of the SRP. If they are going to
19 enter the SRP, they are going to be doing the same type of
20 investigation and the same type of remediation they would do with
21 or without this rulemaking in place. This rulemaking just puts

22 some additional information requirements on an RA. As far as the
23 certification that you mentioned, the five year certification,
24 that would really -- that would be something that could be

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1 written into an NFR letter and it would not be burdensome. I
2 mean, in most cases that would be just a visual inspection.

3 HEARING OFFICER BEAUCHAMP: Mr. Wight, did you have a
4 question?

5 MR. WIGHT: My question has been answered. Thank you, Mr.
6 Hearing Officer.

7 HEARING OFFICER BEAUCHAMP: Other questions for Citizens
8 for a Better Environment? Mr. Rieser.

9 MR. RIESER: With respect to the public notice and public
10 participation in public hearings and things and notices, as I
11 read it, a requirement, and the hearing is discretionary on
12 behalf of the Agency. Would it make any difference to that
13 process, either for mandatory notice or for discretionary public
14 hearing, if the siting of the park or the school purchase of the
15 property had already been subject to a public process when the
16 municipality made that decision? In other words, many
17 municipalities have public processes for those activities
18 already.

19 MS. JARKA: I am just going to defer questions on the
20 public participation at this point because Citizens for a Better
21 Environment is currently working with the Agency on some mutually

22 agreeable language.

23 MR. RIESER: Thank you very much.

24 HEARING OFFICER BEAUCHAMP: Mr. Dunn.

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1 MR. DUNN: Greg Dunn with the Illinois EPA. I just had a
2 point of clarification, under 740.810, the engineered barriers
3 and institutional controls. You state in your proposed language
4 that every five years that there shall be a written
5 certification. This only applies to the schools, public parks,
6 and playgrounds, right?

7 MS. JARKA: Yes.

8 HEARING OFFICER BEAUCHAMP: Mr. Wight?

9 MR. WIGHT: Mark Wight with the Illinois EPA. On the same
10 section, the recertification would be performed just by the
11 property owner, no LPE would be required?

12 MS. JARKA: We would actually leave that up to the
13 discretion of the Agency, because every site is different and we
14 anticipate that there would be different inspection requirements
15 based on the complexity of the site. As I said, that is
16 something that could be written into the NFR letter.

17 MR. WIGHT: Okay. With regard to the certification
18 language itself, did you consider any specific language or do you
19 also think that would be a site-specific consideration in terms
20 of precisely what was being certified?

21 MS. JARKA: We have not considered language. I believe it
22 would be site-specific, but we would be open to maybe putting a
23 sample letter together to attach as an appendix.

24 MR. WIGHT: So you think that overall the Agency would have

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1 discretion with regard to the degree of inspection that would be
2 necessary to make the recertification and that would be a part of
3 the NFR letter?

4 MS. JARKA: Yes, we believe so, just based on the
5 complexities at each site.

6 MR. WIGHT: May I follow-up?

7 HEARING OFFICER BEAUCHAMP: Certainly.

8 MR. WIGHT: On a slightly different issue, but regarding
9 this same section, the provision provides that if the Agency does
10 not receive certification and has to send written notices
11 provided in Subsection (a)(1), that it is -- I guess my question
12 is it seems to impose a burden on the Agency to have knowledge of
13 subsequent transfers of the property. I am not sure why the
14 Agency would have that notification, although I doubt that these
15 types of properties change hands all that often either.

16 But since it has been addressed in the proposal, should
17 there also be a requirement there that the Agency be notified of
18 any transfers in the property so that we would know where to send
19 that notice if the certification were not received at the end of
20 the five year period? Would that be something that you would

21 consider?

22 MS. JARKA: Yes, it would be something that we would
23 consider.

24 MR. WIGHT: Also, just a suggestion that the -- if the

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1 certification were not received as a result of the Agency's
2 follow-up notice, you provided that the No Further Remediation
3 letter could be voided then by the Agency.

4 I am wondering, given the fact that the avoidance of the NFR
5 letter could be a very passive sanction if no property
6 transaction is planned, what is your expectation of what would
7 happen then if the Agency were to void an NFR letter as a result
8 of the failure to receive the notice? What do you think would
9 happen next? What do you think would change at the site as a
10 result of that?

11 MS. JARKA: I don't think -- the usage of the site probably
12 would not change given the public nature, but I think that some
13 of the requirements in the NFR letter may be forgotten over time
14 and there may be the potential for contamination or
15 recontamination at the site if those engineered barriers aren't
16 maintained. Is that your question?

17 MR. WIGHT: Well, it seems that the avoidance of the NFR
18 letter is intended to be an incentive to provide the
19 certification and to make sure the institutional controls and

20 engineered barriers are still effective and are still being
21 maintained. But if it comes to the point where the Agency has to
22 impose a sanction or chose to impose a sanction of voidance of
23 the NFR letter, is that really a remedy to the problem? I mean,
24 what happens at that point? Once we have voided the NFR letter,

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1 is there any additional incentive, then, to go out and make sure
2 that the site is brought back into compliance?

3 MS. JARKA: I would like to defer this question until the
4 Chicago hearing and think about it a little bit more.

5 MR. WIGHT: Okay.

6 HEARING OFFICER BEAUCHAMP: Yes, Board Member Kezelis.

7 BOARD MEMBER KEZELIS: Thank you. Ms. Jarka or Ms. Gordon,
8 can you tell me the status of any communications you might have
9 had with the Chicago Board of Education or the Chicago Park
10 District about your proposal, if any?

11 MS. JARKA: We have been providing the Park District with
12 copies of our rulemaking as we have made drafts of it. We have
13 not received any verbal comments back from them to date.

14 BOARD MEMBER KEZELIS: Okay. Was that the Park District or
15 the --

16 MS. JARKA: The Park District.

17 BOARD MEMBER KEZELIS: The Park District. Okay. What
18 about the Board of Education?

19 MS. JARKA: I don't think we have been in contact with the

20 Board of Education. We have been in contact with the DER.

21 BOARD MEMBER KEZELIS: Okay.

22 BOARD MEMBER MELAS: What about the Public Building
23 Commission? They are the ones that have been building these
24 schools.

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1 MS. JARKA: We have not been in contact with them.

2 BOARD MEMBER KEZELIS: Or the State Board of Education?

3 MS. JARKA: I don't think so.

4 BOARD MEMBER KEZELIS: Okay.

5 HEARING OFFICER BEAUCHAMP: Ms. Crivello.

6 MS. CRIVELLO: If there was an SRP process with an NFR that
7 resulted in no engineered barriers or controls, would that negate
8 the requirement for the five year recertification?

9 MS. JARKA: Yeah, I guess, depending on the contents of the
10 NFR letter it could.

11 MS. CRIVELLO: Okay. Thank you.

12 HEARING OFFICER BEAUCHAMP: Mr. Walton.

13 MR. WALTON: My questions go to the applicability of this.
14 Would this proposal be for sites outside of Cook County?

15 MS. JARKA: Yes, it would.

16 MR. WALTON: So this section would apply to all sites in
17 the State of Illinois that are enrolled in the remediation
18 program?

19 MS. JARKA: That are intended for public schools, public
20 parks, or playgrounds.

21 MR. WALTON: The definition of public park -- do you
22 envision that to include bike ways and natural areas and those
23 types of environments?

24 MS. JARKA: Can I defer that question until Chicago?

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1 MR. WALTON: Along the lines of the actual mechanics of
2 taking the site through the SRP program, what is the basis for
3 the trigger upon enrollment into the SRP for this notification
4 process?

5 MS. GORDON: I am sorry. I don't understand the question.

6 MR. WALTON: The remedial applicant upon enrollment into
7 the SRP program -- you are requiring that this process be
8 implemented. There are certain facts that are known to the
9 remedial applicant. He doesn't know the extent and the nature of
10 the contaminants typically at that time. He most probably does
11 not know the future new scenario at that time. Is that a
12 relevant point of entering the program?

13 MS. JARKA: Well, if the remedial applicant was not a -- if
14 his intent upon entering the program was not to redevelop the
15 site into a public school, a public park, or a playground, then
16 he would not be required to comply with these rules.

17 MR. WALTON: Many remedial applicants in large industrial
18 areas now go through the investigation process for the

19 feasibility of different remedial alternatives and different
20 future land uses. At some point in time the future land use may
21 be an activity, that based on your language, would require them
22 to participate upon entering into the program. It is like a
23 catch 22. Does that appear to be a problem to you?

24 MS. GORDON: I think that was -- we discussed that with the

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1 EPA to the extent of the contaminant, the known contaminants, in
2 740.815. And I think that in regard to what contaminants were
3 present we would want you to respond to the extent necessary and
4 to the extent of your understanding at that time.

5 In terms of the future use of the site, obviously, if you
6 are not aware of what the future use is at that time, we would
7 not expect you to be able to enter into the program. But I think
8 we would have to defer that for a detailed answer at the Chicago
9 hearing.

10 MR. WALTON: Okay.

11 HEARING OFFICER BEAUCHAMP: Mr. Eastep.

12 MR. EASTEP: When you -- I want to make sure I understand.
13 When you define -- when you talk about site here, are you talking
14 about the entire parcel of property the school sits on or the
15 entire park or like a state park or forest preserve? Are you
16 talking about just the area of contamination or the entire
17 boundaries of the park?

18 MS. JARKA: It would be the portion or the part that was
19 entered into the SRP. So if, for instance, there was a very
20 large, say, open area that had certain areas of contamination, we
21 would be talking about the entire area. But I could see a
22 scenario where this would apply to certain general use areas in a
23 situation such as a large open field or a large forest preserve.

24 MR. EASTEP: Okay. If we had an area, say, like a large

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1 forest preserve, and we discovered on that forest preserve some
2 area of contamination. And the forest preserve is like 500 or
3 600 acres, and it has multiple uses, and I discover a waste pile
4 or something. Now, under the SRP, I can delineate that area of
5 contamination and define that as my remediation site and come in
6 and conduct remedial activities there irrespective of the rest of
7 the park.

8 But here you said you can't make available that site or any
9 buildings contained within the boundary lines of the site. I was
10 not sure on that language whether you were saying if I come in
11 and do the remediation on a part of the site does that prohibit
12 use on the rest of that property if it is outside the remediation
13 site?

14 MS. JARKA: No, I believe it wouldn't. If that particular
15 area where you did the remediation was going to be open for
16 general use by the public then, yes, I could foresee that these
17 would apply.

18 MR. EASTEP: I would not necessarily have to define my
19 remediation site as being the entire property?

20 MS. JARKA: Correct.

21 MR. EASTEP: Okay. Under your definition of public park --
22 and I am not really sure I understand my question, but I will ask
23 it anyway.

24 (Laughter.)

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1 MR. EASTEP: If you have an area that is designated by the
2 federal government then that area would potentially be subject to
3 this regardless of whether the federal government owned the
4 property. I understand there are situations where there could be
5 some federal designation on a parcel of property that they don't
6 own.

7 MS. JARKA: Well, I think we narrow it and say for public
8 recreational use.

9 MR. EASTEP: Okay. But it would be designated by any
10 federal agency, like a scenic waterway?

11 MS. JARKA: Yes, I would assume so.

12 MR. EASTEP: Okay. Then I am just trying to -- I am just
13 trying to understand the relationship of how the federal
14 government would be involved here. Because I guess they would --
15 being a voluntary program, they would not have to get in the
16 program?

17 MS. JARKA: You are correct.

18 MR. EASTEP: Okay. If it was federally owned then that
19 would present another series of problems because if they got in
20 the program as it stands now they couldn't get an NFR letter if
21 they didn't have a deed on the property; is that right? I think
22 I am probably going beyond what --

23 MS. JARKA: Yes. I am not really understanding your
24 federal --

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1 MR. EASTEP: I am just wondering how a federally designated
2 park, as you have defined it, how they would be affected by the
3 program.

4 BOARD MEMBER McFAWN: Could it be that if it is an area
5 designated as a public park by the federal or state government,
6 not necessarily owned by them, then the remedial applicant might
7 be the actual owner of the property, and then that would be the
8 person under the proposed rules that would be obligated to
9 trigger the no public notice requirements or issue the public
10 notice requirements? Is that how you intend for it to work?

11 MS. JARKA: I would like to defer this until Chicago and
12 think about this federal issue a little further.

13 BOARD MEMBER McFAWN: Okay. Thank you.

14 BOARD MEMBER MELAS: Maybe it might be helpful if we talked
15 about a couple of specific areas. For example, there is
16 something called the Shawnee National Forest down in Southern

17 Illinois, which it is a national forest for public recreation.
18 Yet, I know there are some sites of extreme contamination down
19 there from coal mining that took place years ago. That is one
20 example.

21 There is another example I am thinking of that the federal
22 government has also designated, the historic I&M Canal, the canal
23 corridor, as a public park as well.

24 In the first instance, I believe the Shawnee National

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1 Forest has always been owned by the federal government, although
2 somebody can check with me on that.

3 BOARD MEMBER KEZELIS: That's right.

4 BOARD MEMBER MELAS: But in the second instance, it is land
5 that is owned by a multitude of owners, private, county,
6 etcetera. How would -- how do you figure that would fall into
7 this?

8 MS. JARKA: Well, if the government agencies who own this
9 property entered into the SRP program, then I believe that this
10 rulemaking would apply to the portions of the site that they are
11 going to clean up that will be open to the general public.

12 BOARD MEMBER MELAS: Only that -- like the Shawnee National
13 Forest, I don't know how many hundreds of acres that encompasses,
14 maybe thousands. There is maybe only certain discreet areas that
15 are contaminated. So it would only be that discreet area that

16 would come under this and not the entire park?

17 MS. JARKA: I believe it would -- in a situation like that,
18 we would have to -- I mean, you would look at -- say the whole
19 site was entered into the Site Remediation Program, realizing
20 that there are several discrete areas of contamination. I think
21 at that point they would have to assess whether those areas are
22 going to be open to the public or not. And if they are not, then
23 I guess conceivably this might not apply, because it would not be
24 used for recreational use.

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1 Even though it is a park owned by the government, it is not
2 open for recreational use, those areas that are possibly
3 contaminated. If they were to open those discrete areas and they
4 wanted to remediate it and maybe open them for ball fields, for
5 instance, then I could see this being applicable, because they
6 would be used by the general public on a relatively consistent
7 basis.

8 HEARING OFFICER BEAUCHAMP: Mr. Rieser.

9 MR. RIESER: Isn't there a real difference in the types of
10 uses that you would expect to be made of those types of parks
11 that really ought to be considered in terms of whether you need
12 the level of participation that you are thinking of? I mean, it
13 is one thing if you have a school and you are concerned about
14 children or people who are at risk who are there for a period of
15 time. But if you are talking about the I&M Canal, you are

16 talking about people bike riding or walking through who are not
17 going to be interacting with the park in the same way as kids
18 would in a park that was being used as a kids park.

19 Is there some consideration of working with the definition
20 of the public -- certainly, the public park so that that type of
21 issue can be recognized?

22 MS. JARKA: Well, we would like to work with the -- as far
23 as park districts on this rulemaking.

24 HEARING OFFICER BEAUCHAMP: Ms. Crivello.

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1 MS. CRIVELLO: I have a concern. In the neighborhood where
2 I live in Chicago there is -- we have a voluntary gardening
3 group, about twelve people who plant flowers. And one of the
4 programs that they are involved in is that they want to take over
5 abandoned parcels, small lots within the city, to basically
6 reclaim them and plant flowers. Part of that process
7 historically has been they -- these types of programs would get
8 assistance from the Department of Environment and get an NFR
9 letter, a no further action letter.

10 I can see a real problem here in the fact that they don't
11 have the funds and they don't have the abilities to basically do
12 five year notifications because these are completely voluntary
13 groups. So it may not be the same person there in five years
14 that are there now. So I think there is a big onerous on that.

15 I think there is also a big problem from the standpoint of
16 who is going to give testimony at these public hearings, who is
17 going to pay to go to these public hearings. All of these people
18 have jobs. They have commitments. They are not necessarily --
19 they should not necessarily be compelled to give testimony to
20 their friends and neighbors only because they are trying to plant
21 flowers and put down, you know, ground cover.

22 BOARD MEMBER McFAWN: Can I ask one point of clarification?
23 You are telling me that these parcels, these gardening parcels
24 are entered into the SRP program?

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1 MS. CRIVELLO: In some cases, yes.

2 BOARD MEMBER McFAWN: Through whose auspices, the City's or
3 the owners?

4 MS. CRIVELLO: There is different groups within the City of
5 Chicago, open lands, park groups, that type of thing, that act as
6 assistants. But they basically provide assistance. The
7 Department of the Environment or another group will actually
8 handle the -- some of the paperwork. Historically, it is a very
9 small and minor part of what happens. These are not really what
10 we envision as Brownfield developments or anything. They are
11 very small scale.

12 BOARD MEMBER McFAWN: So when the Agency issues the NFR
13 letter, they issue it to --

14 MS. CRIVELLO: It would be issued --

15 BOARD MEMBER McFAWN: Has this actually happened?

16 MS. CRIVELLO: -- to a group or to an umbrella
17 organization. I am not an expert on this, so I don't want to
18 really get into that.

19 BOARD MEMBER McFAWN: No. Actually, we probably should
20 have you sworn in. But answer me this. So this has happened,
21 these groups have gotten NFR letters?

22 MS. CRIVELLO: From my understanding it is but, again, I am
23 not an expert.

24 BOARD MEMBER McFAWN: Can we just ask the Agency, those of

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1 you that administer this program, are you aware of these types of
2 parcels coming through the SRP program? Mr. Eastep? I feel like
3 a school teacher.

4 (Laughter.)

5 BOARD MEMBER McFAWN: Can you --

6 MR. EASTEP: I am used to it.

7 (Laughter.)

8 BOARD MEMBER McFAWN: She is explaining that there are
9 these scenarios in the City of Chicago where gardening plots are
10 sent through the SRP program and NFR letters are issued. Is the
11 Agency -- can you tell me, has this happened? And who do you
12 issue the NFR letters to?

13 MR. EASTEP: I remember speaking with Dave Reynolds with

14 the City of Chicago's Department of Environment about a couple of
15 sites, but I don't recall how we identified them or whether they
16 have gone through the program. I just don't recall, and I guess
17 we can make a note and see if we can find out about that.

18 BOARD MEMBER McFAWN: That would be helpful. I mean, this
19 is a scenario that I don't think I ever considered. So your
20 description has been helpful on --

21 MR. EASTEP: I know we have discussed that and these were
22 sites that, you know, are part of the areas where the City is
23 trying to broker them more than anything else.

24 BOARD MEMBER McFAWN: Okay. Thank you for that point of

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1 clarification. I should have had her sworn in.

2 HEARING OFFICER BEAUCHAMP: Yes, why don't we have the
3 court reporter swear Ms. Crivello in since she did present some
4 testimony that we would like supported in the record.

5 BOARD MEMBER McFAWN: It is just a formality. That way we
6 can use your testimony.

7 MS. CRIVELLO: Okay.

8 BOARD MEMBER McFAWN: It runs more weight to it. If you
9 would like -- it seems like -- if you would like to join us at
10 the front table, that would be helpful, too.

11 MS. CRIVELLO: I appreciate it but, no, that is okay.

12 (Whereupon the witness was sworn by the Notary Public.)

13 BOARD MEMBER McFAWN: Okay. Thank you for the

14 interruption.

15 MS. CRIVELLO: I guess the issue -- the concern I have is
16 that this is going to put a huge onerous on small neighborhood
17 groups who want to reclaim their neighborhood and to promote
18 green space and to promote public utilization of these spaces,
19 and it also deters crime and a bunch of other unsavory types of
20 activities that go on. I think this is something that we want to
21 really promote and not something that we want to discourage by
22 adding additional requirements or record keeping requirements or
23 bureaucratic type of requirements to these. I think there should
24 be some thought given to exempting these types of activities.

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1 BOARD MEMBER McFAWN: You said you -- excuse me for a point
2 of clarification. You said you are with CTE?

3 MS. CRIVELLO: Yes. Although I am speaking for my garden
4 club now, if you don't mind.

5 BOARD MEMBER McFAWN: All right. Could you tell me what
6 CTE is?

7 MS. CRIVELLO: It is Consoertowsend Envirodyne.

8 BOARD MEMBER McFAWN: Thank you.

9 MS. CRIVELLO: It is spelled C-O-N-S-O-E-R-T-O-W-S-E-N-D,
10 E-N-V-I-R-O-D-Y-N-E.

11 BOARD MEMBER McFAWN: Okay. Thank you.

12 MS. JARKA: I just wanted to clarify that. I don't believe

13 these rules would be applicable, actually, to a site such as
14 that. Because, as you say, the NFR letter is issued to a private
15 group. The site certainly is not open for general public use or
16 general public recreational use.

17 BOARD MEMBER McFAWN: And another point of clarification,
18 so that we can establish a dialogue between all of us, you might
19 want to look at the landscape composting rules. The garden club
20 issue came up in that set of rules and it was dealt with. And it
21 was a very valid concern then, as well. That is just a point of
22 information.

23 HEARING OFFICER BEAUCHAMP: Mr. Walton.

24 MR. WALTON: I am a little bit confused. Really confused.

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1 Really confused.

2 MR. RIESER: Get this man sworn.

3 (Laughter.)

4 MR. WALTON: But to my understanding the issue here is
5 public schools and the awareness of remediation and NFR letters
6 relative to public schools. That is a very focused issue and
7 nobody can really disagree with that issue and that intent. We
8 have -- we are using a thermal nuclear device instead of a very
9 focused attack, so to speak.

10 I really have concerns about the scope of this. The scope
11 is huge. I think there should be some -- I question the scope on
12 public use. And a lot of Brownfield sites there are a lot of --

13 many natural areas being established. They will be established,
14 but this could restrict public access. Business owners have to
15 make decisions that mitigate future obligations and things like
16 that to minimize the cost.

17 Bike trails, as Mr. Melas stated, most of -- a lot of the
18 land along these bike trails are owned by private entities and
19 they are willing to redevelop them and put the appropriate
20 barriers in and the appropriate structures. My understanding of
21 this was the intent was to not complicate industrial
22 remediations. I just challenge you to look at this regulation in
23 that light.

24 MS. JARKA: Point noted, and we will take that into

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1 consideration.

2 HEARING OFFICER BEAUCHAMP: Okay. Are there other
3 questions for Citizens for a Better Environment?

4 BOARD MEMBER McFAWN: I have a couple of questions and they
5 are going back before we got into this most recent discussion.
6 You mentioned the two schools in the City of Chicago. Could you
7 tell us a little bit more about the facts of those schools? For
8 instance, I was curious, were those brand-new schools or were
9 they remodeled schools or what was the scenarios?

10 MS. JARKA: They were new schools. They were elementary
11 schools. And I don't know the entire history at the sites, but

12 the sites were previously used for industrial commercial use.
13 And they were built in an area that new schools were much needed.
14 However, the -- the area needed the schools so badly and the
15 Public Building Commission wanted the schools opened so quickly
16 that that was a factor, I believe, in them opening the schools
17 immediately.

18 BOARD MEMBER McFAWN: Were those schools actually enrolled
19 or the remedial work prior to those schools being built, as I
20 understand, from the ground up they were brand-new?

21 MS. JARKA: Yes.

22 BOARD MEMBER McFAWN: So was the remedial work done under
23 the auspices of the SRP?

24 MS. JARKA: Yes, I believe it was. They were entered into

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1 the SRP in 1994.

2 BOARD MEMBER McFAWN: So they did go through the SRP
3 process and ultimately received an NFR?

4 MS. JARKA: Well, they went through the SRP process. The
5 schools were built and opened before an NFR letter was issued.
6 The schools were actually built and opened without notifying the
7 Illinois EPA. And it was only later when the media kind of
8 attached themselves to the issue that the Public Building
9 Commission went in and did some additional site investigation
10 under the auspices of the Agency and found some additional
11 contamination in the engineered cap that was put at these sites.

12 BOARD MEMBER McFAWN: So they needed to do more
13 investigation and do more remediation before they could gain the
14 NFR?

15 MS. JARKA: They had to redo the remediation.

16 BOARD MEMBER McFAWN: Redo it. Was that -- were these the
17 two instances that provided for an amendment to the Environmental
18 Protection Act having to do with schools in Cook County?

19 MS. JARKA: Yes, they were.

20 BOARD MEMBER McFAWN: In Section 740.805 you propose that
21 they not be allowed to use buildings or structures contained
22 within the remediation site for general public use prior to the
23 NFR letter being issued?

24 MS. JARKA: Correct.

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1 BOARD MEMBER McFAWN: Under the voluntary program, that the
2 SRP is, that is not a legal obligation at other sites. And I
3 wonder what the legal authority is for the Board to adopt a rule
4 to prohibit the use of land?

5 MS. JARKA: I guess I am not sure what you are asking.

6 BOARD MEMBER McFAWN: What is the legal authority that --
7 this might be better handled by the attorneys at CBE. What is
8 the legal authority that the Board could look to to adopt a rule
9 that would restrict the use of a land while an SRP process is
10 ongoing?

11 MS. JARKA: I would defer that to our attorney or to
12 Chicago so that the legal clinic can discuss this.

13 BOARD MEMBER McFAWN: That would be fine. I just wanted to
14 raise it so that we could talk about it at that time.

15 MS. JARKA: Okay.

16 BOARD MEMBER McFAWN: As you have proposed this, you have
17 proposed that there be a public hearing or that the Agency have
18 the option of holding a public hearing in these cases. It does
19 seem to be a one-sided hearing, so to speak, in that the public
20 hearing would be held, but what would happen with what the Agency
21 learns at that? What do you foresee happening?

22 MS. JARKA: Actually, I am going to again defer on the
23 public notification and hearing, because we are working with new
24 language. We are working with the Agency on new language on the

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1 public participation component of this proposal.

2 BOARD MEMBER McFAWN: Very good.

3 HEARING OFFICER BEAUCHAMP: Are there other questions for
4 Citizens for a Better Environment? Mr. Sternstein?

5 MR. STERNSTEIN: Yes, I had one. I live in Chicago as well
6 and I know there is lot of new school construction going on up
7 there. Are you aware of any schools that have been recently
8 built in the City of Chicago on ground that has been used for
9 either commercial or industrial activity that have successfully
10 gone through the SRP program and gotten an NFR letter?

11 MS. JARKA: There are several. The two schools that I
12 mentioned actually do have their NFR letters. I believe there
13 are two others in the SRP program that have received NFR letters
14 from the City of Chicago.

15 MR. STERNSTEIN: Do you know which schools those are?

16 MS. JARKA: Let's see. Do we have a list here?

17 BOARD MEMBER MELAS: Did you say the two schools, Finkl and
18 the other one now do have --

19 MS. JARKA: Yes, they received it in 1999 after they redid
20 the remediation. The Davis-Shields School on South Kedzie
21 received a No Further Remediation letter in April of 2000. There
22 is a site that is next to the Benito Warez School, which I am not
23 sure what the City is planning to do with the property. It is
24 called Continental Glass and Plastic, and that also received an

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1 NFR letter in July of 2000.

2 MR. STERNSTEIN: And that is next to Benito Warez?

3 MS. JARKA: Yes.

4 MR. STERNSTEIN: Okay. And when was that NFR letter
5 received?

6 MS. JARKA: July of 2000. That was entered into the
7 program by the Chicago Public Schools.

8 MR. STERNSTEIN: Has there been -- it seems that these two
9 schools that you mentioned that have successfully went through

10 the SRP program and received an NFR letter, those NFR letters
11 were sent subsequent to what happened at Finkl, and I am sorry.
12 I don't remember the other school.

13 MS. JARKA: Zapata.

14 MR. STERNSTEIN: Zapata. These two happened subsequent to
15 what happened at Finkl and Zapata?

16 MS. JARKA: Yes.

17 MR. STERNSTEIN: Okay. Has there been a renewed emphasis
18 at the Board of Education and the Public Building Commission in
19 Chicago to make sure that schools -- from here on out that
20 schools that are entered into the SRP program receive an NFR
21 letter?

22 MS. JARKA: I can't speak for those two agencies. I know
23 that the Department of Environment in Chicago has a Memo of
24 Understanding with the Agency on participating in some oversight

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1 of remediation, and they are focused on school sites in Chicago.

2 MR. STERNSTEIN: So the Department of Environment in the
3 City of Chicago is ensuring that any new schools that are built
4 that are entered into the SRP program receive an NFR letter
5 before they are open to students?

6 MS. JARKA: I can't say that they are ensuring that. I
7 know that they are participating in the process.

8 MR. STERNSTEIN: And you said that they would participate
9 in the Chicago hearing, the DOE would? Or will it? I guess -- I

10 am sorry. I must be confusing that with 27. Will DOE be on hand
11 to answer questions with respect to this?

12 MS. JARKA: I don't know.

13 MR. STERNSTEIN: Okay.

14 MS. JARKA: They are aware of the hearing and --

15 BOARD MEMBER MELAS: They are?

16 MS. JARKA: -- these proceeding. Yes. I believe we have
17 been in contact with them.

18 (Ms. Jarka and Ms. Gordon confer briefly.)

19 MS. JARKA: Okay. Well, they may not be aware of the April
20 4th hearing, but they are aware of that we are --

21 BOARD MEMBER MELAS: If you would make them aware if you
22 are in touch with them I think it might be helpful.

23 MS. JARKA: Okay.

24 HEARING OFFICER BEAUCHAMP: Ms. Crivello.

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1 MS. CRIVELLO: A point of clarification. Some of the
2 schools are built by the Public Building Commission and in those
3 cases the Department of Environment is working with the Public
4 Building Commission to oversee the environmental issues on those.
5 Other schools are being built -- or the site is being developed
6 actually by Chicago Public Schools and those cases the Department
7 of Environment is not that involved.

8 BOARD MEMBER MELAS: Really?

9 BOARD MEMBER McFAWN: But anyone involved in this is
10 subject to Section 58.15 of the Act; isn't that right?

11 MS. JARKA: Yes.

12 BOARD MEMBER McFAWN: Section 58.15 of the Act requires, in
13 fact, that they get the NFR letter before they commence
14 construction of the school?

15 MS. JARKA: It does not specifically say an NFR letter.

16 BOARD MEMBER McFAWN: Okay. You are right. It says that
17 the remedial action is approved for the intended use of the
18 property.

19 MS. JARKA: Right.

20 HEARING OFFICER BEAUCHAMP: Okay. Are there anymore
21 questions?

22 BOARD MEMBER KEZELIS: Yes, I do. Would the Agency be
23 willing to provide this rulemaking document with a copy of the
24 Memorandum of Understanding that was just referenced a few

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1 minutes ago if you can acquire it for us?

2 MR. WIGHT: Yes.

3 BOARD MEMBER KEZELIS: Thank you.

4 BOARD MEMBER McFAWN: Has CBE considered or would they
5 consider between now and April 4th the difference between your
6 proposal being applied to the schools and being applied to
7 playgrounds and other public use property?

8 MS. JARKA: Yes, definitely we would consider that.

9 HEARING OFFICER BEAUCHAMP: All right. Are there more
10 questions for the Citizens for a Better Environment?

11 Yes, Mr. Eastep.

12 MR. EASTEP: Yes. Just as a follow-up, I guess, to Mr.
13 Sternstein's question, tentatively we have identified I think ten
14 schools that have received NFR letters since mid 1999 in the Cook
15 County area.

16 MR. STERNSTEIN: Mr. Eastep, ten schools?

17 MR. EASTEP: Yes.

18 MR. STERNSTEIN: In Cook County?

19 MR. EASTEP: Nine in Cook County and one downstate.

20 MR. STERNSTEIN: Do you have figures for previous years,
21 say 1998, 1997, and 1996?

22 MR. EASTEP: No. Part of the reason is that we didn't
23 start -- I mean, we didn't start differentiating in our database
24 schools from other things early on, and as time went on and

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1 especially after Finkl and Zapata we started paying more
2 attention, so the records are better. The further back they go
3 the less confidence I have in the accuracy of the records.

4 MR. STERNSTEIN: Not as good?

5 MR. EASTEP: Yes.

6 MR. STERNSTEIN: Okay.

7 MR. EASTEP: But we feel pretty confident that there is

8 ten.

9 BOARD MEMBER McFAWN: Could you submit that list to the
10 Board as an exhibit?

11 MR. EASTEP: I would prefer to do that in April when we
12 have had -- we put this together pretty quickly and just --

13 BOARD MEMBER McFAWN: That would be fine.

14 MR. EASTEP: -- kind of for discussion purposes.

15 HEARING OFFICER BEAUCHAMP: All right. Are there anymore
16 questions?

17 During the Agency's presentation we deferred a question
18 from Ms. Liu regarding what the Agency's impression of the
19 Citizens for a Better Environment proposal's was. Would the
20 Agency care to address that question now or would you like to
21 defer that until April?

22 MR. KING: I will respond. The first thing I would like to
23 say is that from an Agency perspective we were really pleased to
24 see CBE come forward with this proposal. We have been -- we had

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1 discussions with them over the last several months, and we still
2 have some issues with them, but we were really pleased to see
3 them come forward and be involved and express a voice from the
4 environmental community in this regulatory process related to the
5 SRP.

6 The two biggest concerns that we have had, and I think the
7 questions here have brought that out very nicely, in that one of

8 those was the whole issue of public park. It is -- it tends to
9 raise so many other issues beyond -- you know, the definition of
10 school is pretty clear and you know what that is. But once you
11 get into the discussion of public parks, it becomes very fuzzy
12 because you go from -- now all of the sudden you have issues
13 related to garden plots, to the Shawnee National Forest, and to
14 the I&M Canal, to industrial property. So we really think that
15 this is the first time going into this area and that perhaps the
16 proposal would be best served by really not expanding into that
17 area. So that's a comment that we have discussed with CBE as
18 recently as Monday of this week.

19 The second area relates to the public participation issues
20 and the notion of a public hearing. In the SRP program we really
21 have stayed away from that public hearing concept. What we
22 really like to see is public participation done through community
23 relation plans. And we have encouraged any site that is entering
24 our program to first have established -- have done an assessment

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1 of whether they need a community relations plan, and if they have
2 done one to prepare one and to submit it to the Agency.

3 We have a guidance document that we have prepared pursuant
4 to Title 17 when it was first adopted, and we refer people to use
5 that guidance document as something to be used in developing
6 community relations plans. We think it would be -- that it would

7 be -- that kind of approach ends up being more effective in terms
8 of gathering public participation. It does not end up as
9 adversarial as sometimes public hearings can be. Holding a
10 public hearing, from our perspective, can be quite expensive, and
11 a lot of times ends up, as I was saying, in an adversarial kind
12 of thing that really limits the flow of information.

13 So we would really like to see -- we would like to see a
14 concept that is more related to, you know, a school that is
15 entering our program making sure that they had a community
16 relations program so that they were going out to interested
17 people in the community and letting them know what was going on.
18 And then you would have the notice come -- the more formal notice
19 of something going to happen would come later in the process once
20 the remedial action plan had been established. Now you go out
21 with a more formal notice and indicate, hey, here is what is
22 being planned as far as the efforts at that school site. But
23 that would, again, be in the context of a community relations
24 plan that would be covering more start to finish.

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1 So that is kind of our general concept. We have shared
2 those thoughts with CBE, as I said, as late as Monday of this
3 week, and they certainly indicated a willingness to discuss those
4 issues further and hopefully we will move in that direction with
5 their proposal. So that is kind of where we are at as far as at
6 this point.

7 HEARING OFFICER BEAUCHAMP: Okay. Thank you, Mr. King.
8 Are there anymore questions on the Citizens for a Better
9 Environment proposal?

10 Before we let everyone step down, does anyone have any
11 questions for the Agency regarding their presentation this
12 morning or any matter that has been raised today?

13 BOARD MEMBER McFAWN: Well, we certainly look forward to
14 seeing you all on April 4th.

15 HEARING OFFICER BEAUCHAMP: Again, remember that hearing on
16 Wednesday, April 4th, will begin at 9:30. It is scheduled to be
17 in room 20-25 of the James R. Thompson Center in Chicago.

18 Thank you, Ms. Gordon, Ms. Jarka, for presenting your
19 proposal today.

20 We will post the transcript of this entire hearing on our
21 web site. It will be about ten business days before we can do
22 so. At that point it will be available, and you may obtain a
23 hard copy from the Clerk of the Board or you may contact the
24 court reporter. If you obtain it from the Board we charge 75

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1 cents per page. So the most economic choice may be to download
2 it once we post it to the web site.

3 We have had several issues that have been held over until
4 the second hearing on April 4th for both the Agency and for the
5 Citizens For a Better Environment. So I remind both of you to

6 try to be prepared to address those issues at that time.

7 I would ask if there are any other matters to be addressed
8 at this time? Seeing none, let me ask if there is anyone who
9 wishes to present any further testimony?

10 Again, seeing none, that concludes this hearing and this
11 matter is adjourned. See you all in Chicago in April.

12 (Hearing exhibits were retained by
13 Hearing Officer Bobb Beauchamp.)

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I, DARLENE M. NIEMEYER, a Notary Public in and for the

6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 99 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 28th of February A.D.,
9 2001, at 600 South Second Street, Suite 403, Springfield,
10 Illinois, In the Matter of: Site Remediation Program: Amendments
11 to 35 Illinois Administrative Code 740, in proceedings held
12 before Bobb Beauchamp, Hearing Officer, and recorded in machine
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 9th day of March A.D., 2001.

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