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BEFORE THE POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 SITE REMEDIATION PROGRAM:) R01-27
 AMENDMENTS TO 35 ILL. ADM.) (Rulemaking-Land)
 CODE 740)
 _____)
 IN THE MATTER OF:)
 SITE REMEDIATION PROGRAM:) R01-29
 PROPOSED 35 ILL. ADM. CODE) (Rulemaking-Land)
 740.SUBPART H (SCHOOLS, PUBLIC)
 PARKS AND PLAYGROUNDS).)

The following is a transcript taken
 stenographically before TERRY A. STRONER, CSR, a
 notary public within and for the County of Cook and
 State of Illinois before HEARING OFFICER BOBB
 BEAUCHAMP, at Suite 2-025, 100 West Randolph Street,
 Chicago, Illinois, on the 4th day of April, A.D.,
 2001, scheduled to commence at 9:30 o'clock a.m.,
 commencing at 9:50 o'clock a.m.

1 A P P E A R A N C E S :

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-8916
7 BY: MR. BOBB BEAUCHAMP, HEARING OFFICER

8 ILLINOIS POLLUTION CONTROL BOARD MEMBERS:

9 Nicholas Melas, Marili McFawn, Elena Kezelis
10 and Alisa Liu.

11 OTHER MEMBERS OF THE PUBLIC WERE PRESENT BUT NOT
12 LISTED ON THIS APPEARANCE PAGE.

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1 HEARING OFFICER BEAUCHAMP: Good morning. My
2 name is Bobb Beauchamp. I am the assigned hearing
3 officer in this proceeding. Please let me welcome
4 you to this consolidated hearing being held by the
5 Illinois Pollution Control Board.

6 Today's hearing does involve two dockets.
7 The first is in the matter of site remediation
8 program, amendments to 35 Illinois Administrative
9 Code 740 docketed R01-27, and site remediation
10 program, proposed 35 Illinois Administrative Code
11 740 Subpart H, docketed R01-29.

12 Today's hearing is the second of two
13 hearings schedule in this matter. The first hearing
14 was held in Springfield on February 28th, 2001.

15 Present today on behalf of the Illinois
16 Pollution Control Board and seated two seats to my
17 right is Board member Marili McFawn.

18 MS. McFAWN: Good morning.

19 HEARING OFFICER BEAUCHAMP: She is the Board
20 member coordinating this rulemaking. Seated to my
21 left is Board member Elena Kezelis.

22 MS. KEZELIS: Good morning.

23 HEARING OFFICER BEAUCHAMP: Seated to my right
24 is Alisa Liu, a member of the Board's technical

1 staff and I see in the audience we have Joel
2 Sternstein who is Board member Nick Melas'
3 assistant. Member Melas will be joining us later.

4 In the corner to my right on the table I
5 have placed copies of -- several copies -- since we
6 have two dockets, there are lots of piles to be had.
7 There are copies of the service and notice list
8 sign-up sheets for each docket. If your name is on
9 the notice list, you will only receive copies of the
10 Board's opinions and orders and all hearing officer
11 orders. If your name is on the service list, not
12 only will you receive copies of the Board's opinions
13 and orders and all hearing officer orders, but you
14 will also receive copies of all documents filed by
15 all persons in this proceeding. If your name is on
16 the service list and you file any document in either
17 of these dockets, you must also file with or serve
18 all of the members listed on the service list. We
19 also have copies of each of the proposals from the
20 proponents on the table in the corner, February 5th,
21 2001 hearing officer order, copies of the Board
22 except for hearing orders in the order consolidating
23 these two dockets. We have copies of prefiled

24 testimony both from the first hearing and I also

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1 believe in this hearing we have the prefiled
2 testimony of Abigail Jarka, testimony from the
3 Department of Navy and the General Services
4 Administration, prefiled testimony of Harry Walton
5 and a motion presented by Bruce Bonczyk.

6 I'll move a little bit into how we're
7 going to proceed today. We do have two proposals
8 docketed in this rulemaking. The Agency filed its
9 proposal on January 12th, 2001. Citizens for a
10 Better Environment filed its proposal on January
11 26th, 2001. The Agency is docketed R01-27 and
12 Citizens for a Better Environment, which I will
13 refer to as CBE, is docket R01-29. Since these
14 proposals both seek to amend the site remediation
15 program rules, the Board consolidated these
16 proposals for purposes of hearing.

17 Today's hearing will be governed by the
18 Board's procedural rules for a regulatory
19 proceeding. All information which is relevant and
20 not repetitious or privileged will be admitted. All
21 witnesses will be sworn and subject to cross
22 questioning.

23 The purpose of today's hearing is
24 two-fold; first, to satisfy the statutory

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1 requirement that the Board accept evidence and
2 comments on economic impact of any provision of the
3 rule and shall consider -- the rules -- and shall
4 consider the economic impact of these rules based on
5 the record. The second purpose is to allow parties
6 other than the proponents to present testimony on
7 this proposal and ask additional questions of the
8 proponent. Both the Agency and CBE will also have
9 an opportunity to address issues held over from the
10 first hearing and to make an additional
11 presentation.

12 Pursuant to Section 28.5(h) of the
13 Environmental Protection Act, the Board shall accept
14 evidence and comments on the economic impact of any
15 provision of any rules proposed and shall consider
16 the economic impact of the rules based on the
17 record.

18 Under Section 27(b) of the Act, the Board
19 shall request that the Department of Commerce and
20 Community Affairs, otherwise known as DECA, conduct
21 an economic impact study on certain proposed rules

22 prior to adoption of those rules. DECA may produce
23 a study of an economic impact of the proposed rules
24 within 34 to 45 days of the Board's request. The

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1 Board must make the economic impact study or DECA's
2 explanation for not conducting the study available
3 to the public at least 20 days before public hearing
4 on the economic impact of the proposed rule.

5 In keeping with Section 27(b), the Board
6 has requested by letters dated January 30th, 2001,
7 for R01-27 and February 2nd 2001, for R01-29 that
8 DECA conduct an economic impact study of these
9 rulemakings. In addition to requesting an economic
10 impact study, the letter requested that DECA notify
11 the Board within ten days after receipt of each
12 request whether DECA intended to conduct the
13 economic impact studies. The Board further noted
14 that if it did no receive such notification, the
15 Board would rely on a March 10th, 2000, letter from
16 DECA as the required explanation for not conducting
17 the economic impact study. The March 10th, 2000,
18 DECA letter notified the Board that DECA would not
19 be conducting economic impact studies on rules
20 pending before the Board because DECA lacks staff

21 and the financial resources to conduct such study.
22 The ten days for DECA to notify the Board have
23 expired in each docket and the Board has not
24 received any notification from DECA that it will

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1 conduct an economic impact study for either of these
2 rulemakings. Accordingly, the Board has relied on a
3 March 10th, 2000, letter as DECA's explanation for
4 not producing an economic impact study.

5 Today's presentation will follow a little
6 different schedule from the first hearing. The
7 prefiled testimony the Board received has been
8 focused more on the Agency's proposal and in order
9 to accommodate everybody and be more efficient,
10 we're going to allow Citizens for a Better
11 Environment to make their presentation first. We
12 have several prefiled testimonies that we'll be
13 getting to after CBE makes their presentation.
14 We've also had one party who did not prefile
15 testimony and made a request to make a presentation
16 regarding CBE's proposal after CBE makes their
17 presentation.

18 At the conclusion of the prefiled
19 testimony we will allow the Agency to take the table

20 and make any presentation that they have to present
21 today and also answer questions and address issues
22 that were held over from the first hearing.

23 Does anyone have any questions about the
24 procedure we will follow today? At this time let me

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1 ask Board member McFawn then if she has anything
2 else she would like to add to my comments?

3 MS. McFAWN: No, thank you, Bob.

4 HEARING OFFICER BEAUCHAMP: Then before we get
5 into CBE's proposal, let me ask if there's anyone
6 here today who would like to present testimony,
7 questions or comments on DECA's decision not to
8 conduct an economic impact study for either of these
9 rulemakings? Sir, could you please stand and
10 identify yourself.

11 MR. SASSILA: My name is Ala Sassila, A-l-a,
12 S-i-s-s-i-l-a.

13 HEARING OFFICER BEAUCHAMP: Would you please
14 swear Mr. Sassila in? Would you please stand
15 forward and summarize what you would like to
16 present?

17 MR. SASSILA: Well, I have some questions to
18 CBE regarding their proposed amendments.

19 HEARING OFFICER BEAUCHAMP: We're not taking
20 questions from CBE yet. I'm sorry. We're just
21 taking questions -- just to clarify, again, we're
22 taking questions or comments on DECA's lack of an
23 economic impact study not regarding CBE's proposal
24 yet. Okay. Seeing none, then let's move on to

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1 CBE's proposal. Ms. Gordon, do you have an opening
2 statement you would like to make today?

3 MS. GORDON: Yes, I do. Good morning. My name
4 is Holly Gordon. I am an attorney with the Chicago
5 Legal Clinic. I am here today on behalf of Citizens
6 for a Better Environment. With me today is -- first
7 to my right is our expert witness, Abigail Jarka,
8 she will testifying shortly, to her right is Keith
9 Harley, who is also an attorney with the Chicago
10 Legal Clinic and to his right is Stefan Noe, who is
11 of counsel for Citizens for a Better Environment.

12 Many of you may have been with us for the
13 hearing in Springfield so I will just give a very
14 brief synopsis of our petition and then I will go
15 into answering questions that were deferred at the
16 Springfield hearing.

17 Our proposed rulemaking is an addition to

18 the site remediation program proposed of much needed
19 procedural requirements related to the cleanup of
20 brownfield sites that will eventually be used for
21 schools. I will now provide answers for many of the
22 questions that we chose to defer at the Springfield
23 hearing. I would also like to point out that many
24 of those deferred questions are not relevant at this

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1 time as we have decided to amend the proposal to
2 address just schools.

3 We've decided to defer our proposal
4 regarding parks and playgrounds to a later date.
5 Although we feel that new requirements for parks
6 and playgrounds are important, we feel that based
7 on many of the comments at the last hearing as well
8 the differences between schools versus parks and
9 playgrounds that it is more appropriate to focus on
10 schools in the current proposal. The format for
11 the deferred question is, I will give a shortened
12 version of the questions as well as identify who
13 asked the question and what page it appears on in
14 the transcript before offering a response and as
15 well, I will turn it over to Abby Jarka to testify
16 after these deferred questions and we'll open it up

17 to questions to the general public at that time so
18 if possible, if you could defer most of your
19 questions to then even in regard to these questions
20 that will be very helpful.

21 The first question was asked by Mr.
22 Rieser, it's on page 67 of the Springfield
23 transcript: Would the public process -- the public
24 notice be affected for a school site that had

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1 already been subject to a municipality's public
2 process? And in response, without specific
3 examples, the RAs at those sites would still have to
4 fulfill the requirement of this proposal since the
5 issues related to site remediation and therefore the
6 public notice process would likely be different from
7 those required by a municipality.

8 Question 2 was asked by Mr. Wight and it's
9 on page 68 of the transcript: In regard to the
10 five-year certification for engineered barriers and
11 institutional controls, who would be the appropriate
12 person to perform and sign off on the certification?

13 The requirements of the certification
14 letter will be fairly site specific. Therefore, we
15 feel that it would be appropriate for IEPA to

16 indicate in the NFR letter who the appropriate
17 person would be to sign the certification and what
18 would be required in the certification itself. In
19 addition, based on my conversations with Mr. Wight,
20 we will be working with IEPA to generate more
21 specific language in regard to the Agency's
22 discretion in this aspect of the requirements.

23 Question 3 was also asked by Wight and
24 it's on page 69 of the Springfield transcript: Also

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1 in regard to the five-year certification
2 requirement, should there also be a requirement that
3 the Agency be notified of any transfers in the
4 property so that the Agency would know where to send
5 that notice if the certification were not received
6 at the end of the five-year period?

7 In response, we have added additional
8 language under Section 740.810 requiring notice to
9 the Agency of subsequent changes in title or use of
10 the property.

11 Question 4 was also asked by Mr. Wight and
12 it is page 70 of the Springfield transcript: In the
13 situation where a five-year certification is not
14 received, what results from the voidance of an NFR

15 letter?

16 Voiding an NFR letter is currently subject
17 to Section 740.625 of the SRP and is globally
18 applied to the SRP, not just specific to this
19 proposal. Therefore, we feel that this is not the
20 proper forum to address this concern.

21 Question 5, some of the Board members
22 asked about the status of our communications with
23 interested agencies, the Chicago Board of Education,
24 the Public Building Commission and the Department of

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1 Environment have been added to the service list and
2 they have received copies of the amended petition
3 prior to today's hearing. We have been in contact
4 with the Department of Environment and we have met
5 with a representative of the Chicago Public Schools
6 and I would expect that if any of these agencies
7 have additional comments or questions, that they
8 will be addressed today or in future comments.

9 Question 6 was asked by Mr. Walton and it
10 is on page 73 of the Springfield transcript.

11 Since there appear to be requirements for
12 school sites upon entering the SRP, what happens if
13 a remedial applicant doesn't know what the future

14 use of a site will be?

15 And in response, upon enrollment into the
16 SRP, if the RA does not know what the future use of
17 the site will be, these requirements would not
18 apply.

19 And the last question was asked by Board
20 member McFawn on pages 87 and 88 of the Springfield
21 transcript: What is the legal authority that the
22 Board could look to to adopt a rule that would
23 restrict the use of land while an SRP process is
24 ongoing?

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1 The Board has authority to restrict the
2 use of a remediation site prior to the issuance of
3 an NFR letter in several sections of the SRP.
4 First, the general intent of the SRP is to establish
5 a risk-based system of remediation based on
6 protection of human health and the environment
7 relative to present and future uses of the site. In
8 addition, Section 58.5(b)(2) states that in the
9 event that the concentration of a regulated
10 substance of concern on the site exceeds a
11 remediation objective for residential land use, the
12 property may not be converted to residential use

13 unless such remediation objective or an alternative
14 risk-based remediation objective for that regulated
15 substance of concern is first achieved. Since,
16 residential, as defined by the SRP includes property
17 used for education, use of the land at that site
18 would already be prohibited under the current SRP.

19 Finally, for school sites in the Chicago
20 area Section 58.15(3) already prohibits such use by
21 stating that no person shall commence construction
22 on real property of a building intended for use as a
23 school unless the real property is enrolled in the
24 site remediation program and remedial action that

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1 the Agency approves for the intended use of the
2 property is completed.

3 I will now turn things over to Ms. Jarka.
4 Ms. Jarka is a registered professional engineer with
5 ten years of environmental engineering experience.
6 She has a BS in civil engineering and an MBA.

7 HEARING OFFICER BEAUCHAMP: Okay. If we could
8 have the court reporter swear Ms. Jarka in before
9 her testimony.

10 (Ms. Jarka was sworn.)

11 MS. JARKA: Good morning. My name is Abigail

12 Jarka and I'm representing CBE to provide testimony
13 regarding proposed requirements related to schools.

14 The proposed rules before you today would
15 ensure the maintenance of institutional controls and
16 enhanced public participation at remediation sites
17 intended for use as public schools. This proposal
18 is intended to promote a proactive approach to
19 remediation at school sites.

20 The inception of this proposal is based on
21 the site remediation that took place at two school
22 sites, Finkl Academy and Zapata Academy located in
23 the Little Village area of Chicago. These schools
24 were built on property contaminated with polynuclear

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1 aromatic compounds and inorganics. The Finkl and
2 Zapata sites were entered into the SRP. The
3 schools, however, were built and opened without
4 Agency notification and without an NFR letter.

5 When this fact came to light in 1999,
6 additional site investigation work was conducted.
7 Levels of polynuclear aromatic compounds and
8 inorganics were identified in site soils above the
9 Tier I ingestion levels. This included soils that
10 comprised an engineering cap put in place when the

11 schools were originally constructed. Addition
12 remediation was deemed necessary and an NFR letter
13 was issued to each of these sites in 1999. Since
14 that time, the manner in which school sites are
15 remediated has improved thanks in part to the effort
16 of the Chicago Public Schools and the Agency. The
17 proposed rules, however, will provide a standard of
18 performance for school sites in the SRP program that
19 can be relied upon by all interested and affected
20 persons.

21 Public school sites should be handled
22 differently from other sites entered into the SRP.
23 School are typically publically funded, which in
24 many cases eliminates the participation of

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1 third-party lending institutions that would
2 typically conduct due diligence with respect to
3 environmental issues. Similarly, there are few
4 triggering events to highlight the importance of
5 maintaining institutional controls. The proposal
6 addresses this difference by requiring receipt of an
7 NFR letter before the site could be available to
8 general public use. The rules would require that
9 institutional controls and engineered barriers were

10 put in place as part of the remediation be reviewed
11 every five years and documentation of such review be
12 sent to the Agency. The requirement would serve to
13 institutionalize knowledge about the requirements of
14 the NFR letter. Additionally, because of the
15 intense public use of school sites, enhanced public
16 participation in the SRP process is warranted. The
17 proposal would not add any more stringent
18 requirements to remediating a school site, but would
19 put in place simple cost-effective measures to
20 provide a level of certainty to communities faced
21 with SRP issues at school sites.

22 CBE welcomes any questions and comments
23 concerning our proposal. We realize that we may not
24 be able to address all of your concerns today, but

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1 will endeavor to do so in our final proposal.

2 I'd like to thank the Agency and the
3 Chicago Public Schools for their input during
4 development and the Board for the opportunity to
5 present our proposal and testify at this hearing .
6 Thank you.

7 HEARING OFFICER BEAUCHAMP: Thank you.

8 Ms. Gordon, at this time would you like to admit

9 Ms. Jarka's prefiled testimony as an exhibit?

10 MS. GORDON: Yes. Ms. Jarka, do you recognize
11 this document?

12 MS. JARKA: Yes, I do.

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

14 MS. JARKA: It is my prefiled testimony.

15 MS. GORDON: And is it a true and accurate copy
16 of your prefiled testimony?

17 MS. JARKA: Yes, it is.

18 MS. GORDON: I move that Ms. Jarka's testimony
19 be admitted into the record as Exhibit 1.

20 HEARING OFFICER BEAUCHAMP: Thank you. Are
21 there any objections to admitting this testimony of
22 Abigail Jarka? This will be Exhibit 2 in this
23 docket number. Do you have an additional copy for
24 the court reporter? Seeing no objections, then we

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1 will admit the testimony of Abigail C. Jarka as
2 Exhibit 2 in Docket R01-29.

3 If we could just have the record reflect
4 that Board member Melas has joined us now.

5 Ms. Gordon, does CBE have any other
6 matters they wish to address today?

7 MS. GORDON: No.

8 HEARING OFFICER BEAUCHAMP: Okay. Then we will
9 move into taking questions for CBE. Sir, if we
10 could have you identify yourself again.

11 MR. SASSILA: My name is Ala, A-l-a, Sassila,
12 S-a-s-s-i-l-a and I have several questions regarding
13 the proposed amendment.

14 My first question is it appears to me that
15 proposed amendment include additional administrative
16 work and addition paperwork for public schools and
17 it's not very clear to me why it would be more
18 protected to human health and the environment.

19 MS. JARKA: Well, I think the additional -- the
20 proposal provides a ways for the public to
21 participate in a meaningful way in schools that are
22 built in their communities. I don't believe that
23 the additional paperwork, as you call it, is a
24 deterrent to sites entering the SRP.

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1 MR. SASSILA: This additional work would not
2 really provide any additional protection to the
3 public or the environment, is that correct?

4 MS. JARKA: The requirements of the SRP are the
5 same, but I believe the public participation would
6 enhance the remediation of the site. The guidance

7 that the Agency puts out on community relations
8 plans acknowledges this, that participation from the
9 public would only enhance remediation and provide
10 additional insights into the remediation that's
11 going to take place.

12 MR. SASSILA: The community relations plan is
13 normally -- is optional or voluntarily planned while
14 under this requirement. Do you have to go through
15 that community relation plan, is that correct?

16 MS. JARKA: Well, it would be our hope that RA
17 would want to do a community relations plan in this
18 instance, but if not, the Agency would do a
19 community relations plan with the input of the RA.

20 MR. SASSILA: And who would be responsible for
21 payment for the plans since it's normally -- the RA
22 is supposed to have a contract with the Agency and
23 pay for the expense related to the community
24 relations, who would be responsible for it?

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1 MS. JARKA: Well, if the RA is going to
2 undertake the plan, I believe they would be
3 responsible for it.

4 MR. SASSILA: How about if they're not?

5 MS. JARKA: Then the Agency would undertake

6 that responsibility, I would hope.

7 MR. SASSILA: So the Agency would be
8 responsible for which is -- normally the Agency --
9 the SRP is funded by volunteer cleanup programs,
10 which has to be reimbursed from the RA and if the RA
11 is not accepting that then the Agency is supposed to
12 establish funds for community relations --
13 additional funds or new funds, is that correct?

14 MS. JARKA: Payable -- I'm sorry.

15 MR. SASSILA: Well, let me say it this way.

16 If the RA is not willing to go through
17 the community relations, I'm assuming you're
18 expecting the Agency to establish a new fund, a new
19 budget, for purpose of community relations?

20 MS. JARKA: I think that will be up to Agency
21 on how they would want to fund this.

22 MR. SASSILA: My second question is Section
23 740.805, which is stating that sites should not be
24 available to the general public without first

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1 completing its remedial action plan and receiving
2 NFR. That a little bit contradicts 58.15 of the
3 Environmental Protection Act, which states upon
4 completion of the site remediation, you can proceed

5 with your school construction. There's
6 contradiction -- you are overwriting or
7 overexceeding the requirement of the Environmental
8 Protection Act, is that correct?

9 MS. JARKA: Well, I believe 58.15 requires also
10 Agency approval before --

11 MR. SASSILA: Approval and completion but does
12 not require NFR. Here you are asking for the NFR.

13 MS. JARKA: That's correct.

14 MR. SASSILA: So you are overexceeding what's
15 being written in the Illinois Environmental
16 Protection Act.

17 MS. JARKA: Correct.

18 MR. SASSILA: My next question is regarding
19 engineered barriers. You stated that the Agency
20 should establish the qualification of the individual
21 who had a five-year recertification based on the
22 site condition of site specific, and my question
23 here is does that mean we're not going to have
24 uniform rules for all sites, we might have different

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1 rules for each site?

2 MS. JARKA: No. It would be consistent for
3 each site, but I mean the complexities of each site

4 are different so there may be -- so then the
5 requirement to do the five-year certification may be
6 slightly different for sites. It just depends --
7 based on the complexity of the site. The Agency has
8 indicated that they're working on some language
9 regarding that.

10 MR. SASSILA: But there are clearly no rules
11 under the existing SRP defining complex or simple or
12 semi-complex? I mean, there's no such thing that
13 exists to say we can look at this project as a
14 complex, now this is simple, this is easier or hard,
15 there's no such definition that exists in that
16 regulation.

17 MS. JARKA: No, there is not.

18 MR. SASSILA: So how are we going to decide
19 which site would require a PE, which site would
20 require principal, which site would require annual?

21 MS. JARKA: Well, again the Agency has
22 indicated that they're working on some language
23 regarding this, but I wouldn't foresee that you
24 would require a PE for one site and not a PE for

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1 another site. I mean, something like that would
2 be generally consistent, but maybe the level of

3 inspection of what needs to be inspected will be
4 different for each site because some sites are
5 definitely more complex than other sites.

6 MR. SASSILA: Yeah, but that for remediation
7 might require more complex. Once the remediation is
8 completed, all are at the same level really, there's
9 no complex site or complex site. The issue of
10 complex is rarely applied to remediation work not to
11 existing site after remediation being completed.

12 MS. JARKA: Yes. But there are different types
13 of institutional controls and engineered barriers.
14 Some sites may just have a fence, other sites may
15 have a concrete cap, other sites may have three-feet
16 of soil, they are all different so they may -- they
17 could conceivably require maybe a different way of
18 looking at them, a different way of inspecting them.

19 MR. SASSILA: My question next then in your
20 previous testimony or in the Springfield a statement
21 was made that any person can perform that inspection
22 or the five-year certification so for now it's not
23 really any person other than the Agency supposed to
24 come up with a new plan and that plan would be

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1 allowed for general public comments or is that

2 something that's going to be decided by the Agency?

3 MS. JARKA: I believe it will be decided by the
4 Agency. I don't know of any plan that they're
5 putting together, but in Springfield we had
6 recommended that this could be something that could
7 be written into an NFR letter at the time that it's
8 issued.

9 MR. SASSILA: Okay. My next question is
10 Section 740.810 and part of this recertification
11 there's a statement there which is stating that part
12 of the recertification that damage to soil has not
13 been disturbed and I'm wondering what that means.

14 MS. JARKA: Our intent was that the integrity
15 of the control or the engineered barrier is
16 maintained. That's currently a requirement of the
17 SRP regulation.

18 MR. SASSILA: That's not true since you -- if
19 you have a construction project to maintain your
20 engineering barrier but you can contaminate soil you
21 can remove it and dispose it at the landfill and
22 that's acceptable, but this does not read this way.
23 It says you cannot disturb it which means you cannot
24 have any future construction any site once you

1 completed a new construction.

2 MS. JARKA: I understand that. I understand
3 your point and we'll note it and consider it.

4 MR. SASSILA: Section 740.815, the RA shall
5 provide notice to interested persons. What is the
6 definition of interested persons?

7 MS. JARKA: We've -- I believe we're revising
8 this language to -- it's called interested and
9 affected persons to be consistent with the community
10 relations plan. There is no list of interested
11 persons. The community relation plan guidance
12 starts out and gives a list of possible contacts you
13 may want to start there, but we would think
14 interested persons would be potential parents of
15 school children, church groups, people located
16 nearby.

17 MR. SASSILA: So interested persons within the
18 school district or in the county, in the village?

19 MS. JARKA: It would be primarily within the
20 community where the school is going to be built.

21 MR. SASSILA: Would it be a one-mile radius,
22 two miles or anymore criteria because -- Cook County
23 is a very large county and you say interested
24 persons so it could be three million people

1 interested.

2 MS. JARKA: Well, I think it would -- I mean,
3 you'd have to look at each site and decide who is
4 affected by this school being built and that would
5 start your list of interested persons and I'm sure
6 the Agency community relations group will also --
7 could also have some input and give some
8 suggestions.

9 MR. SASSILA: I don't believe the Agency have a
10 list of interested persons in each community, each
11 school they can provide --

12 MS. JARKA: No, no, I'm not saying they have a
13 list of specific people, but they do have general
14 guidelines and general ways to go about deciding who
15 might be affected by this and then you can use those
16 guidelines to expand your own list.

17 MR. SASSILA: The same section, 740.815,
18 regarding that public notice. There is a statement
19 about providing the following information, one
20 through six, which is information public records
21 since this is what the SRP once enroll your site
22 it's public record and anyone can obtain this
23 information from the SRP program and freedom of
24 information request. So what's the purpose of

1 having all this mass mailing for public notice if
2 this information is already public records and
3 available to everyone?

4 MS. JARKA: Well, I think it enhances public
5 participation specifically with interested and
6 affected people in the community. The fact that
7 it's -- we're asking it be put into a publication of
8 general circulation, we'll put it in front of people
9 so that people can participate in a meaningful way
10 in this process.

11 MR. SASSILA: And what kind participation do
12 you expect from general public since the Agency have
13 the ultimate decision-making and they review all the
14 documents and they rely on scientific fact and
15 engineering practice to decide about NFR or closing
16 the project, what general public involvement would
17 decide about the remedial work?

18 MS. JARKA: Well, the Agency's community
19 relations plan guidance acknowledges that contacting
20 the public is beneficial because there are
21 additional insights that people who would live in
22 the community may have regarding a site that the RA
23 may not have or the Agency may not be aware of. So
24 if they can provide additional information of that

1 sort, then I think that is a benefit.

2 MR. SASSILA: But that is optional? 58.7 of
3 the Illinois Environmental Act, that is optional
4 already, it's not something you have to do.

5 MS. JARKA: I understand that.

6 MR. SASSILA: That's all my questions.

7 HEARING OFFICER BEAUCHAMP: Thank you,
8 Mr. Sassila. Any other questions for CBE?

9 MR. HARLEY: Will we be given an opportunity to
10 ask Mr. Sassila questions?

11 MS. McFAWN: Mr. Sassila did not testify so
12 he's not subject to cross-examination.

13 MR. HARLEY: I see.

14 MS. McFAWN: Mr. Sassila, would you be open to
15 entertaining questions from CBE? You are not
16 required to, but --

17 MR. SASSILA: Fine.

18 MR. HARLEY: Simply one question, are you here
19 on your own behalf or are you here on behalf of a
20 firm?

21 MR. SASSILA: No. I'm a consultant engineer on
22 my own behalf.

23 MR. HARLEY: And with whom do you consult
24 regularly on issues --

1 MR. SASSILA: I work with Carnow, Conibear and
2 Associates.

3 MR. HARLEY: I'm sorry.

4 MR. SASSILA: I work for CCA, Carnow, Conibear
5 and Associates, C-a-r-n-o-w, Conibear,
6 C-o-n-i-b-e-a-r and Associates. We are consultant
7 engineers in Chicago.

8 MR. HARLEY: With what school districts do you
9 regularly consult?

10 MR. SASSILA: Well, there's -- we have
11 different type of clients, with no school districts.
12 We work on -- we have a wide variety of work with
13 the city of Chicago, we work with the state, we work
14 with the city, Agency, CPS, PBC, Department of
15 Environment and different agencies.

16 HEARING OFFICER BEAUCHAMP: Thank you.

17 MR. HARLEY: Thank you.

18 MR. NOE: Is there an opportunity for me to
19 make some comments in addition to those made by
20 Ms. Jarka? Would I need to be sworn in?

21 HEARING OFFICER BEAUCHAMP: Are they formed in
22 the form of testimony or --

23 MR. NOE: They would be in response to some of
24 the comments that were made.

1 HEARING OFFICER BEAUCHAMP: Could you identify
2 yourself first?

3 MR. NOE: My name is Stefan Noe, that's
4 S-t-e-f-a-n, the last name is Noe, N-o-e. I was
5 sort of the original drafter of these regulations
6 so there's some things that he brought up that I
7 thought I might be able to shed a little bit of
8 light on.

9 HEARING OFFICER BEAUCHAMP: Why don't we have
10 you sworn in and also move closer to the court
11 reporter.

12 (Mr. Noe was sworn in.)

13 MR. NOE: One of the comments I had was he
14 mentioned the language of interested persons and I
15 just wanted to note that in most all of the Agency's
16 notification requirements under other environmental
17 statutes and so forth that interested persons
18 language is used and the notification provision that
19 was drafted was really modeled after other
20 provisions within the Illinois Environmental
21 Protection Act. So whatever ambiguity there is in
22 using the term interested persons that already
23 exists in other statutes and somehow it's been able
24 -- the Agency has been able to work around it.

1 The other thing I wanted to comment on
2 is the fact that I'm also very familiar with the
3 Little Village situation and there was a comment
4 about the fact that the Freedom of Information Act
5 is available to the community if they want to find
6 out about what's going on with a particular site
7 and I just wanted to -- you know, I think the Little
8 Village situation is a good example of why that
9 doesn't work. You know, it requires first, that a
10 span of community be familiar with the Freedom of
11 Information Act process, that they make a request
12 and that then they decipher what are, you know,
13 fairly technical documents that would, you know,
14 indicate that there is contamination and then they'd
15 ask also -- have to know that the contaminates that
16 were there were potentially harmful to their health
17 and I think what we're suggesting in a situation
18 with respect to schools where there are going to be
19 children exposed that a much more open process is
20 warranted. That was really all I had to say.

21 HEARING OFFICER BEAUCHAMP: Thank you,
22 Mr. Noe. Do we have any other questions for CBE
23 from the members of the audience? Mr Rieser, if you

24 could just identify yourself for the record.

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1 MR. RIESER: David Rieser with the law firm of
2 Ross & Hardies. With respect to 740.820 what's the
3 timing of the community relations plan? What point
4 in the process does it have to be prepared and
5 available and things of that nature?

6 MS. JARKA: Well, I think the community
7 relations plan, the earlier you start in the process
8 the better. I don't think there's any specific time
9 frame requirement, but certainly if you get the
10 community engaged early on, I think your remediation
11 will be more successful.

12 MR. RIESER: Thank you.

13 MR. WALTON: My name is Harry Walton. I'll be
14 offering testimony and I would like to speak to --
15 in our testimony we filed some comments in support
16 of the proposal, but we'd like to provide some
17 clarification on implementation and --

18 THE REPORTER: I'm sorry. Could you speak up?
19 There's an echo in here.

20 HEARING OFFICER BEAUCHAMP: We need you to step
21 up.

22 MR. WALTON: I'll be testifying on this fact

23 later on?

24 HEARING OFFICER BEAUCHAMP: Would you like to

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1 wait until later.

2 MR. WALTON: Yes.

3 HEARING OFFICER BEAUCHAMP: Just to clarify
4 that, Mr. Walton will be presenting additional
5 testimony in support of CBEs proposal later in case
6 we missed that.

7 Other questions for CBE? Sir, could you
8 identify yourself and who you represent?

9 MR. EASTEP: I'm Larry Eastep with the
10 Illinois EPA.

11 In your responses to the other gentleman's
12 questions regarding this certification I thought at
13 one point you indicated you thought the Agency was
14 working on some language for the certification.

15 MS. JARKA: I believe the Agency was in contact
16 with the Chicago Legal Clinic and they were
17 interested in putting in some language for the
18 quality of the certification and the Agency
19 indicated that they would be willing to put some
20 of that language together for that and then send it
21 out kind of as a straw proposal for comments.

22 MR. EASTEP: Did you intend that that would be
23 part of the rulemaking?

24 MS. JARKA: I don't believe we intended to

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1 rewrite any rules based on that, but I believe that
2 that type of language could be made included as an
3 appendix and certainly be included in the other
4 letters.

5 MR. EASTEP: Okay. But you didn't intend it to
6 be we were proposing something --

7 MS. GORDON: I'm sorry. She's actually
8 speaking on a conversation that I had with Mr. Wight
9 and my understanding was that at some point the
10 Agency would be willing to put forth some language
11 that the Legal Clinic and Citizens for a Better
12 Environment could consider and would be willing to
13 negotiate putting some language into an amended
14 petition. I don't think it was the Agency's
15 understanding or our understanding that it would be
16 put forward for public comment. I think it was
17 something they'd be willing to negotiate with the
18 clinic.

19 MR. EASTEP: And I guess my confusion was
20 whether it was part of the rule and I think your

21 saying that it is not going to be part of the rule.

22 MS. GORDON: Right.

23 MR. EASTEP: Under your public notice
24 provisions 815(a), one through six, you had two

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1 public notice methods, one of them being in a
2 newspaper and under item three you had indicated
3 that the notice should include the location and site
4 boundaries of the remediation site. What were you
5 thinking about? What would that entail?

6 MS. JARKA: With our conversations with the
7 Chicago Public Schools actually a very good point
8 was brought up concerning this list and we're
9 considering maybe putting some minimum requirements
10 for public notification in as -- what I mean is
11 minimum requirements for publication in a newspaper
12 and then having the larger amount of information put
13 into a central depository such as a library or some
14 business located in the community that people can
15 easily access.

16 MR. EASTEP: Okay. Number three, though, did
17 you envision a map, a site drawing or a map here and
18 would then be included in the newspapers notice?

19 MS. JARKA: Well, like I said, we're going to

20 work on the language from minimum requirements for a
21 newspaper notice understanding that would be
22 difficult to maybe publish a map in a newspaper, but
23 if that type of information goes into a central
24 depository, yes, a map would be more than

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1 appropriate.

2 MR. EASTEP: Certainly.

3 On -- actually, you've got three item
4 threes here, but you said a description of the
5 intended use, did you envision something other than
6 a school?

7 MS. JARKA: Well, no since these rules
8 primarily apply to school sites, but I mean at a
9 school site there are ballfields, playgrounds so...

10 MR. EASTEP: So you would --

11 MS. JARKA: I mean, I would --

12 MR. EASTEP: You're looking for a more detailed
13 description of how they're going to use that area of
14 the site?

15 MS. JARKA: Yes.

16 HEARING OFFICER BEAUCHAMP: I'm sorry. Can you
17 hold your question until Mr. Eastep is done? Thank
18 you.

19 MR. EASTEP: On number six, the statement of
20 the nature of the NFR letter requested, what would
21 we expect to see there? When I think of nature I
22 think of comprehensive versus focus or something of
23 that nature or residential versus industrial. What
24 did you have in mind?

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1 MS. JARKA: Well, I think those points would be
2 applicable, possibly if there would be institutional
3 controls and engineered barriers anticipated for the
4 site, that could also be included under that item.

5 MR. EASTEP: And this would all be part of the
6 notice that went out --

7 MS. JARKA: Yes.

8 MR. EASTEP: I have no further questions.

9 HEARING OFFICER BEAUCHAMP: Mr. Sassila?

10 MR. SASSILA: Regarding the description of the
11 intended use of the site, it's not unusual to make
12 changes to a site after receiving the NFR, does that
13 mean a new notice has to go out every time you have
14 a playground, let's say we're going to have some
15 addition to the school and no longer a playground,
16 does that mean you have to change this intended
17 usage or not and a new public notice has to go out?

18 MS. JARKA: Well, at that point the site would
19 be outside of the SRP program. I mean, you're done
20 with your remediation and you're enhancing the site
21 and not --

22 MR. SASSILA: How about if there's a change in
23 the plan during construction, which is not unusual?

24 MR. NOE: Actually, there is language if you

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1 look at 740.815(a) where it says if the site
2 remediation action plan is amended, the Agency
3 will determine based on the nature of the amendments
4 whether the RA needs to provide additional notice.

5 MR. SASSILA: Yeah. But this is for the
6 remediation work not for the site layout.

7 MR. NOE: In terms of --

8 MR. SASSILA: You might have remediation work
9 plan does not have to be by any mean related to your
10 proposed construction site layout, I'm going to have
11 a playground here, I'm going to have classroom here,
12 you might change that and that's not going to be
13 part of your remedial work then.

14 MR. NOE: Are you saying later in time?

15 MR. SASSILA: Yeah.

16 MS. JARKA: Well, conceivably you could use the

17 list of -- a mailing list of your interested parties
18 and, you know, give them updates on the ongoing
19 work.

20 MR. SASSILA: Well, then my question is about
21 the second notice, assume the remedial work plans
22 change, you have to issue a second notice, which is
23 not unusual when you go through the SRP to go
24 through several changes to your final document

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1 before it's been final, does that means every time
2 there are changes into the remedial work plan, a new
3 notice has to go out?

4 MR. NOE: What I'm saying is that the language
5 here addresses that. It's within the Agency's
6 discretion whether or not additional notice needs
7 to be provided.

8 MR. SASSILA: Would it be more fair to everyone
9 to know the process before they start the process --

10 MR. NOE: Well, it's going to be a case-by-case
11 basis. If your plan -- if it's a minor change to
12 your plan, the Agency might decide that it's not
13 necessary for you to give additional notice, whereas
14 if it's a significant change to your plan where, you
15 know, a new engineered barrier might be added, it

16 might be significant and, therefore, require
17 additional notice to the public. It's simply -- I
18 don't know how you would craft something that would
19 consider every possible scenario in terms of the
20 amendment.

21 MR. SASSILA: Does the Agency have any plan of
22 adopting this subject here?

23 MR. WIGHT: No.

24 HEARING OFFICER BEAUCHAMP: I'm sorry.

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1 Mr. Wight could you identify yourself for the
2 record?

3 MR. WIGHT: Excuse me. Mark Wight of the
4 Illinois EPA. No, we do not. We have committed to
5 work with the CBE on flushing out certain provisions
6 that we may not fully understand how they're
7 intended to work, but at this point we did not have
8 any specific language.

9 MR. SASSILA: Is there any plan to have another
10 public notice and allow the general public to have
11 comments on any proposed changes to the SRP
12 procedure?

13 MR. WIGHT: That would depend upon the CBE and
14 the Pollution Control Board.

15 MS. McFAWN: By that, Mr. Wight, you mean by
16 what we ultimately adopt as a rule?

17 MR. WIGHT: Exactly and whether or not you feel
18 that additional hearings will be needed if these
19 were submitted to you.

20 HEARING OFFICER BEAUCHAMP: Thank you,
21 Mr. Sassila.

22 MR. HARLEY: If I may elaborate. For the
23 record, Keith Harley, attorney, Chicago Legal
24 Clinic. To elaborate on Mr. Noe's and Ms. Jarka's

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1 testimony on this issue --

2 MS. McFAWN: Mr. Harley, are you going to be
3 testifying?

4 MR. HARLEY: No, I'm not testifying. I'm
5 simply to clarify one issue.

6 MS. McFAWN: Why don't we have you sworn in.

7 (Mr. Harley was sworn.)

8 MR. HARLEY: This issue came up during a
9 meeting that we had yesterday with a representative
10 of the Chicago Public Schools. There was a
11 recognition that what can be accomplished through a
12 newspaper notice in terms of details about any
13 specific project is limited and that the proposal in

14 its present form may be placing too much burden on
15 the notice in terms of -- as being the primary
16 mechanism to be providing information about how a
17 site is going to go through the SRP and the
18 representative of the Chicago Public Schools made a
19 very good recommendation that I believe ultimately
20 will be incorporated into this proposal and that is
21 that the notice provide basic information, but not
22 detail, but that it refer people who are interested
23 for a more comprehensive description of the site and
24 what's going on at the site to a local repository.

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1 This is something that Ms. Jarka alluded to in her
2 testimony and the repository would be located in the
3 local library or someplace where community members
4 would be able to have ready access to that
5 information unlike a notice which is a one time, a
6 repository can grow and it can grow according to
7 changes in the site, it can grow according to
8 changes in the site layout, all of the contingencies
9 that occur from the time an initial application is
10 filed until there's final agreement about how a
11 cleanup is going to be conducted and I thought that
12 that was a very, very sensible recommendation. I

13 believe that will find its way into our final
14 proposal.

15 HEARING OFFICER BEAUCHAMP: Thank you,
16 Mr. Harley. Additional questions for CBE? Are
17 there any questions from members of the Board, Board
18 staff? Member Kezelis?

19 MS. KEZELIS: Good morning. I have a general
20 question and if you're not -- any of you for CBE
21 comfortable with answering it, that's fine and
22 comments would be acceptable as well.

23 Are any of you familiar with the status
24 or the text of Senate bill 1180 that's pending in

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1 the Illinois General Assembly? No?

2 HEARING OFFICER BEAUCHAMP: Just for the
3 record, if we could reflect that CBE indicated no to
4 member Kezelis' question.

5 MS. KEZELIS: What I would be interested in
6 learning from CBE is whether that legislation would
7 satisfy the concerns that you all have given the
8 nature of the proposed changes you've submitted to
9 the Board in this rulemaking. It doesn't go as far
10 as your proposed rulemaking would, but it does
11 address the issue of schools within Cook County in a

12 site remediation program. Okay. I have no other
13 questions.

14 HEARING OFFICER BEAUCHAMP: Other questions
15 from members of the Board or the Board staff?

16 MS. LIU: Good morning, Ms. Jarka.

17 MS. JARKA: Good morning.

18 MS. LIU: Earlier today you spoke of the
19 importance of a community relations plan in terms
20 of allowing the public to offer information that
21 maybe the remedial applicant or the Agency hadn't
22 thought of and I was wondering if you could provide
23 some examples of the types of information the public
24 could provide that would impact the outcome of the

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1 remediation.

2 MS. JARKA: Well, the first thing that comes to
3 mind is perhaps some long-term residents may have
4 observed former uses of the site that may not be
5 readily available through some public records that
6 are typically searched for Phase I activities, that
7 could be one type of information. Other types of
8 information could be concerns that the community
9 might bring up regarding how the site is developed.
10 For instance, we have a community in on the

11 southeast side of Chicago which brought up a very
12 valid point to a facility saying well, the trains
13 always cross this road and sometimes they stop in
14 the middle of the road, how does the fire department
15 get to your plant. This was something the plant
16 people hadn't thought about, mainly because they
17 don't live in the community most of the time. So
18 issues like that could be brought up in a public
19 arena.

20 MS. LIU: Earlier this morning Ms. Gordon was
21 going over some questions that were deferred from
22 the last hearing and one of them was from
23 Mr. Walton, he had asked about at what point sites
24 would be triggered to go into your proposal once

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1 they're in the SRP and you had indicated if they
2 didn't know the future use that they wouldn't have
3 to go to that extent. If at some later date a
4 future use is defined to include a school, would
5 this proposal take affect retroactively to bring
6 them back into that requirement?

7 MS. GORDON: I think that we would hope that it
8 would take affect retroactively, but I think that's
9 sort of hard to think about in the hypothetical

10 situation because it would depend on how far along
11 in the process they were, if they had completed the
12 remediation and they decided to become a school, it
13 almost becomes a moot point, but I think that that
14 -- I mean the terms of the five-year certification,
15 I think that would definitely come into play, just
16 to clarify, but things like public participation and
17 things that need to happen right away, it would
18 really have to be discretionary based on the
19 specific situation.

20 MS. LIU: Is the intention of this to apply to
21 schools just in Cook County or all across the state
22 of Illinois?

23 MS. JARKA: No. This would be applicable to
24 all schools in Illinois -- or all public schools.

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1 MS. LIU: The proposed definition that you use
2 in your proposal refers to the definition of school
3 as defined by 105 Illinois Compiled Statutes,
4 5/34.1-1. Do you happen to have that definition
5 with you?

6 MS. JARKAS: I do not.

7 MS. LIU: I hope you don't mind, but I actually
8 took the liberty of jotting it down if you don't

9 have it.

10 MR. NOE: The definition was -- I haven't
11 looked at the definition, there is some -- it
12 actually was mentioned earlier I think in Section
13 58.15 of the Environmental Protection Act and it
14 also refers to that definition to define schools and
15 so we used it to be consistent, but I realize -- go
16 ahead, you can read the definition, I don't have it
17 right in front of me, but go ahead.

18 MS. LIU: The definition is, quote, schools and
19 attendant centers are used interchangeably to mean
20 any attendant center operated pursuant to this
21 Article 34, and under the direction of one
22 principal. Not knowing what Article 34 was, I
23 looked it up and Article 34 says that it applies
24 only to cities having a population exceeding

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1 500,000.

2 Since CBE's proposed definition of school
3 would be schools operated pursuant to Article 34, my
4 nonlawyer's read of this seems to indicate that this
5 would limit your proposal to Cook County, city of
6 Chicago, is that maybe how you interpret it?

7 MR. NOE: To tell you the truth, I don't think

8 that I noticed the fact that there was that
9 limitation on the schools. I think in the time I
10 was drafting it I assumed I think because the 58.15
11 actually had language relating to Cook County and I
12 assumed the definition was actually broader and
13 would encompass the entire state. So I appreciate
14 you pointing that out because I think our intention
15 was to have the regulation applied throughout the
16 state and not just related to Cook County.

17 MR. HARLEY: If I may elaborate on that as
18 well, I think that one of the things that we found
19 in the architecture of the existing site remediation
20 program that surprised us was that when you look at
21 the definition of what constitutes a residential
22 site for purposes of the site remediation program
23 where the IEPA is already invested with authority
24 pursuant to Board rule and where the Board has

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1 rulemaking authority by virtue of legislation it
2 includes educational sites, it explicitly includes
3 sites that are set aside for education. So we feel
4 that this provides a legislative basis for
5 rulemaking relating to school sites. It also gives
6 the Board the authority to define what constitutes a

7 residential slash education site in the state of
8 Illinois consistent with, you know, it's existing
9 granting of authority under the Act.

10 MS. LIU: Could you perhaps propose a specific
11 definition for what would constitute an educational
12 facility?

13 MR. HARLEY: Off the top of my --

14 MS. LIU: Some things to think about if I was
15 trying to imagine in my head what types of schools
16 this would apply to. If you could address whether
17 it would apply to colleges and universities, schools
18 where children are in attendance for only one day a
19 week, schools without outdoor play areas, maybe some
20 other thoughts you might have.

21 MS. McFAWN: Also you mentioned that you
22 thought it was just applicable to public schools.
23 Is that the way you want it to be, just public
24 versus private?

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1 MR. NOE: Yeah. The reason for that is again
2 the original basis for coming up with the new rules
3 and that is that when you -- when a public entity
4 remediates a site, there usually isn't this third
5 party due diligence that takes place and so, you

6 know, that was essentially the situation in Little
7 Village where you have public funding, it's going to
8 develop the school, therefore, you don't have a
9 financial institution looking in to make sure that
10 the site is completely remediated before you can
11 start using the property. So that's why I think
12 we're comfortable limiting it to public schools as
13 opposed to all schools.

14 MS. LIU: Based on what we discussed today,
15 do you plan to submit a new proposal or a reversion
16 of your last amendment?

17 MS. GORDON: Yes, we will.

18 MS. LIU: Thank you.

19 MR. NOE: Can I just comment on that too? We
20 were trying to work things out with the Agency so
21 that we'd be able to address a lot of these concerns
22 and integrate them in our amendments before this
23 hearing. The Agency has a lot of work that they're
24 doing on the rest of the rules and are very busy and

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1 it was very difficult for us to find time to
2 coordinate all of that. So it looks as if yes,
3 we're going to have to submit a proposal following
4 this hearing.

5 MS. McFAWN: It also sounds like you've learned
6 or had some insights through your discussions with
7 the Department of Education that help you with such
8 revision.

9 MR. NOE: Absolutely, that's true as well.

10 MS. McFAWN: Usually rulemakings are like this,
11 you go through the revisions during the course of
12 the rulemaking, this is more the rule than the
13 exception.

14 HEARING OFFICER BEAUCHAMP: Do we have any
15 other questions for CBE today? Mr. Sternstein?

16 MR. STERNSTEIN: Joel Sternstein with the
17 Pollution Control Board. I just had one minor
18 technical question or a couple actually. In the
19 amended petition that you submitted to the Board for
20 this hearing, the italicized language is the
21 language that's been added since the proposal from
22 the first hearing, is that true?

23 MS. GORDON: Yes.

24 MR. STERNSTEIN: Okay. And then the stricken

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1 language is language that was stricken from the
2 proposal you submitted for the first hearing, right?

3 MS. GORDON: Yes.

4 MR. STERNSTEIN: Okay. I just wanted to
5 clarify that for the record. Thank you.

6 HEARING OFFICER BEAUCHAMP: Any other
7 questions? Ms. Gordon, speaking of the amended
8 petition, I don't know, did you intend to introduce
9 that as an exhibit today or simply have it in the
10 record as an amended petition filed?

11 MS. GORDON: I think just filed would be fine.

12 HEARING OFFICER BEAUCHAMP: Okay. We do have
13 copies of that on the table in case anyone doesn't
14 have them. I'll make a last call for questions for
15 CBE before we let them go. All right. Seeing none,
16 thank you. If we can go off the record for a
17 moment.

18 (Whereupon, a discussion
19 was had off the record.)

20 HEARING OFFICER BEAUCHAMP: We've had a request
21 from Ms. Crivello, who's a representative of the
22 Chicago Public Schools, to present a brief statement
23 on CBE's proposal. This was not prefiled testimony.
24 So we're going to ask if there are any objections to

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1 allowing her to make this statement? Seeing none,
2 we're going to turn the floor over to Ms. Crivello.

3 Would you please swear the witness in?

4 (Ms. Crivello was sworn.)

5 MS. CRIVELLO: My name is Lynn Crivello. I'm
6 an employee of the Consoer, Townsend & Envirodyne
7 Engineers and their joint venture, Chicago School
8 Associates. We are contractors to the Board. My
9 duties include environmental management of the
10 capital improvement program for the Chicago Public
11 Schools. I have spoken with the chief -- deputy
12 chief operations officer at the Chicago Public
13 School, Karen Burke, B-u-r-k-e, and she has
14 requested that I present testimony today on behalf
15 of the Chicago Public Schools.

16 The Chicago Public Schools wishes to
17 comment on the rules proposed by the Citizens for a
18 Better Environment and designated as R01-29 by the
19 Pollution Control Board. We would like to begin by
20 stating categorically that the health and welfare of
21 the children attending Chicago Public Schools is our
22 number one priority.

23 Since 1996 CPS has spent in excess of 100
24 million dollars related to environmental remediation

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1 and maintenance of environmental health and safety

2 in all schools. One part of this overall program is
3 the remediation of sites designated for construction
4 of new schools and additions.

5 In 1999, in response to the issues raised
6 by the finding of contaminated soil at the Finkl and
7 Zapata schools, the Illinois State Legislature past
8 Public Act 91-0442, entitled An Act to Amend the
9 Environmental Protection Act by adding Section
10 58.15. The Act states: Construction of school
11 requirement. This section applies only to counties
12 with populations of more than three million. In
13 this section, school means a school as defined in
14 Section 34-1.1 of the school code. No person shall
15 commence construction on real property of a building
16 intended for use as a school unless a Phase I
17 environmental audit conducted in accordance with
18 Section 22.2 of this Act is obtained.

19 If the Phase I environmental audit
20 disclosed the presence or likely presence of a
21 release or a substantial threat of a release of a
22 regulated substance at, on, to, or from the real
23 property, a Phase II environmental audit conducted
24 in accordance with Section 22.2 of this Act is

1 obtained and three, if the Phase II environmental
2 audit discloses the presence or likely presence of a
3 release or a substantial threat of a release of a
4 regulated substance at, on, to, or from the real
5 property, the real property is enrolled in the site
6 remediation program and remedial action that the
7 Agency approves for the intended use of the property
8 is completed.

9 Cook County schools, including Chicago
10 Public School, are required by this law to enter
11 into the SRP program and to complete corrective
12 action prior to construction of the school. This
13 results in essentially two engineered barriers at
14 each school, the engineered barrier approved by the
15 Illinois Environmental Protection Agency and
16 completed by the CPS prior to construction of the
17 school and the school itself.

18 Since 1999, CPS has enrolled 18 sites into
19 the SRP program. To date, CPS has received NFR
20 letters on nine of these 18 sites. The average time
21 it takes CPS to complete the SRP process for a
22 project is approximately 4.5 months, but this
23 project can stretch to over a year depending upon
24 the extent of contamination and the complexity of

1 the site.

2 Since the passage of Public Act 91-0442
3 the SRP process has become a critical part of new
4 construction project scheduling. Nearly every
5 parcel of property designated as a school building
6 exceeds the level of contaminants that the IEPA has
7 set for residential cleanup objectives. In some
8 cases, the cleanup objectives set by the IEPA are
9 lower than the levels that occur naturally or are
10 lower than levels found in soils across the street
11 from the school. Therefore, nearly every CPS site
12 must complete the SRP program before construction of
13 the school can begin.

14 Section 58.15 requires the completion of
15 the SRP process prior to construction. This law
16 robs the CPS of the option of integrating the
17 cleanup of the site into the construction program.
18 Typically, when contamination is found on a site, an
19 engineered barrier is used to prevent contamination
20 from being inhaled or ingested by children or
21 others. The IEPA routinely approves the use of
22 building foundations and parking lots as engineered
23 barriers. The concrete foundations and parking lots
24 cover the contaminated soil and prevent the

1 ingestion or inhalation of the contaminants by the
2 building occupants. Because of the way Public Act
3 91-0442 is written, the engineered barrier must be
4 in place before construction, including the pouring
5 of concrete foundations, can begin. In effect, the
6 law requires two engineered barriers on every Cook
7 County school site.

8 Once the corrective action completion
9 letter is received, the Illinois Environmental
10 Protection Agency issues an NFR letter. In this
11 letter, it states that the engineered barrier must
12 be maintained over the area of concern. Failure to
13 maintain the barrier will result in the IEPA voiding
14 the NFR letter. This is consistent with Section
15 740.625(a) of Subtitle G, which states that any
16 violation of institutional controls or land use
17 restrictions will result in the NFR letter being
18 voidable by the IEPA.

19 With regards to public participation and
20 notice, we would like to make you aware that CPS has
21 an extensive program of public outreach and
22 communication. Whenever a property is designated by
23 CPS for a school the alderman of the ward in which
24 the property is located is contacted by CPS and CPS

1 remains in close communication with the alderman
2 throughout the process of the SRP and the new school
3 construction program. In addition, CPS places a
4 sign on the designated property and identifies that
5 site as a new school location.

6 On a monthly basis CPS conducts public
7 meetings throughout the city. These meeting are
8 televised and provide an opportunity for anyone to
9 raise any kind of issue regarding schools. Once a
10 year the CPS conducts a series of six public
11 meetings focusing only on the capital improvement
12 program. During these meetings, residents of the
13 city, parents and any other interested parties can
14 request information on capital projects.

15 Finally, CPS maintains a web page that
16 identifies all capital projects. This web page is
17 continually updated. Interested parties may review
18 this information and contact the CPS electronically
19 to request additional information.

20 It should be noted that the Citizens for a
21 Better Environment never contacted CPS nor did CBE
22 afford CPS any opportunity to contribute or
23 participate in the development of these amendments.
24 We believe that if CPS had been given an opportunity

1 to participate and to inform the CBE of our program,
2 it would have afforded CPS the participation that
3 these amendments seek to promote.

4 CPS has gone far beyond the intent of the
5 amendments proposed by the Citizens for a Better
6 Environment. Also, CPS is required by law to enroll
7 into the SRP program. These amendments are not
8 voluntary for CPS or any other school in Cook
9 County. Given this, CPS believes that the
10 additional requirements proposed by Citizens for a
11 Better Environment would be redundant and would
12 result in additional reporting, administrative costs
13 without adding any additional level of safety,
14 security or public participation than what currently
15 exists within the CPS system. Therefore, we are
16 requesting that the amendment identified as R01-29
17 be amended to exclude the Chicago Public Schools
18 from the requirements of that part.

19 HEARING OFFICER BEAUCHAMP: Thank you,
20 Ms. Crivello. Before we move into the questions, I
21 notice that the microphone is outside so we're going
22 to take a short break while we set up the
23 microphone.

24

1 (Whereupon, after a short
2 break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER BEAUCHAMP: We will now take
6 questions from Ms. Crivello if your presentation is
7 finished.

8 MS. CRIVELLO: Yes.

9 HEARING OFFICER BEAUCHAMP: We'll open the
10 floor to questions. Mr. Harley?

11 MR. HARLEY: For purposes of the record, my
12 name is Keith Harley, I'm an attorney for Citizens
13 for a Better Environment.

14 Also, for the purposes of full and
15 complete disclosure, Ms. Crivello, this isn't the
16 first time that we've ever met, is it?

17 MS. CRIVELLO: No.

18 MR. HARLEY: In fact, I represent you and your
19 husband in a case involving the remediation of a
20 site in the Pullman community, don't I?

21 MS. CRIVELLO: My husband, myself and about 50
22 other community residents.

23 MR. HARLEY: Okay. And you're satisfied with

24 that representation, yes? I'm just --

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1 MS. CRIVELLO: Yes. I haven't seen the invoice
2 yet.

3 MR. HARLEY: It's pro bono. I wanted to start
4 off by talking about a portion of the testimony
5 which you gave today that suggested that Citizens
6 for a Better Environment had not been open to the
7 recommendations or the input of the Chicago Public
8 Schools, which was in the next to last paragraph in
9 the written testimony and I wanted to be clear that
10 today you are here testifying on behalf of the
11 Chicago Public Schools, is that correct?

12 MS. CRIVELLO: That's correct.

13 MR. HARLEY: But before today, you did attend
14 the public hearing in Springfield, is that right?

15 MS. CRIVELLO: That's correct.

16 MR. HARLEY: When you attended the public
17 hearing in Springfield, you did not identify
18 yourself as having a relationship to the Chicago
19 Public Schools at that time, did you?

20 MS. CRIVELLO: That's correct.

21 MR. HARLEY: You did not identify that you had
22 that relationship?

23 MS. CRIVELLO: I did not identify myself as a
24 representative of the Chicago Public School system.

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1 MR. HARLEY: And that was at the end of
2 February that that hearing took place?

3 MS. CRIVELLO: That's correct.

4 MR. HARLEY: And the first time that you
5 contacted Citizens for a Better Environment through
6 us as their attorneys and identified yourself as a
7 representative of the Chicago Public Schools was
8 last Friday, March 30th, is that correct, by phone?

9 MS. CRIVELLO: That's correct.

10 MR. HARLEY: And on Monday -- the following
11 Monday we arranged for you to receive in advance by
12 e-mail a copy of the most recent amended proposal
13 that we had at that time, is that correct?

14 MS. CRIVELLO: I received an e-mail Monday
15 afternoon, that's correct.

16 MR. HARLEY: And on Tuesday you came to our
17 office and met with me and with the other attorney
18 for Citizens for a Better Environment, Holly Gordon,
19 for two hours discussing your concerns about this
20 proposal, is that correct?

21 MS. CRIVELLO: Yes. I believe I requested

22 a meeting with Holly and you, we had a met yesterday
23 morning.

24 MR. HARLEY: Okay. And at that time you

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1 expressed concerns, some of which are also reflected
2 in your testimony today about exempting Cook County
3 from the proposal about the definition of interested
4 person, about the nature of the community relations
5 plan, about specific language relating to land use
6 limitations, about public notice issues. You were
7 given an opportunity to provide all of that input,
8 is that correct?

9 MS. CRIVELLO: Yesterday morning, that's
10 correct.

11 MR. HARLEY: Okay. And we agreed that in
12 every -- one of these issues that we would continue
13 to speak with one another about in anticipation of
14 developing our final process, is that correct?

15 MS. CRIVELLO: I believe so.

16 MR. HARLEY: All right. Moving on, in your
17 role as a consultant on environmental issues
18 relating to the Chicago Public Schools, have you
19 ever dealt with issues relating to lead containing
20 and asbestos containing material on properties

21 operated by the Chicago Public Schools?

22 MS. CRIVELLO: Yes.

23 MR. HARLEY: And are you familiar with the
24 practice of maintaining as opposed to removing

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1 asbestos containing and lead containing materials
2 under some circumstances?

3 MS. CRIVELLO: Yes.

4 MR. HARLEY: Is that a common practice in the
5 Chicago Public Schools?

6 MS. CRIVELLO: I'd have to say so, yes.

7 MR. HARLEY: And isn't it true that as a key
8 part of maintaining proper controls to ensure that
9 asbestos and lead containing materials do not become
10 bioavailable to children, the Chicago Public Schools
11 have to maintain observation and maintenance
12 programs?

13 MS. CRIVELLO: We are required by law by the
14 Illinois Department of Public Health to conduct
15 periodic inspections of asbestos containing
16 materials. We're required to do these inspections
17 on a periodic basis.

18 MR. HARLEY: And the purpose of these
19 observations and maintenance programs is to ensure

20 that the materials are in good condition, that they
21 are not creating a risk of exposure of the toxins
22 that are contained in the materials to the children
23 who go to the Chicago Public Schools, is that
24 correct?

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1 MS. CRIVELLO: That's correct.

2 MR. HARLEY: And so it's not an unusual thing
3 for environmental managers or an organization like
4 the Chicago Public Schools to have to regularly
5 inspect, observe, maintain controls that have been
6 developed to prevent toxins from being released from
7 otherwise sound materials?

8 MS. CRIVELLO: The Chicago -- as I said, the
9 Chicago Public Schools conduct periodic asbestos
10 inspections. This costs the Chicago Public Schools
11 approximately \$2 million a year to conduct these
12 inspections. Part of those inspections are to
13 denote the condition of the asbestos in the
14 locations where we observe it and to verify that
15 it has been abated or that it is being properly
16 controlled.

17 MR. HARLEY: And all of this is to protect the
18 public health and safety of the children who are

19 attending the schools?

20 MS. CRIVELLO: That's correct.

21 MR. HARLEY: In your testimony, you talked
22 about the efforts which the Chicago Public Schools
23 take already to involve the community in the
24 development of new school sites, is that correct?

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1 MS. CRIVELLO: That's correct.

2 MR. HARLEY: And you talked about the proactive
3 outreach efforts which you make through the local
4 alderman's office, for example?

5 MS. CRIVELLO: Yes.

6 MR. HARLEY: And you also talked about hosting
7 regular meetings where members of the public can
8 come forward and voice their concerns?

9 MS. CRIVELLO: That's correct.

10 MR. HARLEY: And I think that you may have also
11 referenced the fact that documents are available at
12 these meetings or are provided by the Chicago Public
13 Schools about the development of new school sites?

14 MS. CRIVELLO: Yes.

15 MR. HARLEY: And you talked about the fact that
16 you post notices actually at the physical location
17 of a new school development, is that correct?

18 MS. CRIVELLO: That's correct.

19 MR. HARLEY: Have you ever had an opportunity
20 to review the community relations plan that was
21 developed by the Illinois Environmental Protection
22 Agency pursuant to the requirements of the site
23 remediation program?

24 MS. CRIVELLO: Yes.

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1 MR. HARLEY: Do you have an opinion as to
2 whether or not the efforts which you are already
3 undertaking are in the spirit of that community
4 relations plan?

5 MS. CRIVELLO: I would say they're probably
6 within the spirit of that plan, although they may
7 not conform to every aspect of the plan.

8 MR. HARLEY: But you also are aware of the fact
9 that the community relations plan is very flexible
10 and doesn't mandate a rigid, one size fits all
11 approach to community relations, but instead lays
12 out a general approach that's designed to ensure
13 public participation in the site remediation program
14 consistent with the clear legislative intent?

15 MS. CRIVELLO: I'm aware that the guidance that
16 exists today is not a rule made by the Pollution

17 Control Board, a law mandated by the state
18 legislature and that this guidance could change at
19 any moment in time and although at the present time
20 I believe that in general we are meeting the spirit
21 of that guidance, I can't say that in six months
22 that this guidance would not be changed by IEPA to
23 include requirements such as that we have a public
24 hearing specifically for an SRP site, for instance.

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1 This concerns me because I think that these
2 amendments basically require us to conform to those
3 guidances and to those guidelines, thus in effect
4 making them into regulations.

5 MR. HARLEY: So you're essential concern is
6 based on a fear that the proposal may at some time
7 in the future engender a more restrictive approach
8 than the one which CPS has already engaged in?

9 MS. CRIVELLO: What I'm concerned about is that
10 in the proposal in the community relations plan
11 under 740.820 it states that the RA has the option
12 of following a community relations plan according
13 to the -- consistent with the guidance developed by
14 the Illinois EPA and if the RA forgoes that option,
15 then the Illinois EPA would then implement that

16 community relations plan. This basically means that
17 we would be required either to do it ourselves or to
18 pay for the Agency to do it and to implement a
19 community relations plan, which we have no idea of
20 what the scope the Agency would enact or what the
21 scope is in six months or a year or two years.

22 MR. HARLEY: Okay. Thank you.

23 In your -- to change subjects, in your
24 role as an environmental consultant for the Chicago

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1 Public Schools you spoke about your involvement in a
2 number of SRP sites?

3 MS. CRIVELLO: That's correct.

4 MR. HARLEY: What is your program after the no
5 further remediation letter is received to ensure
6 that institutional controls, engineering barriers,
7 land use restrictions, contained in the NFR are
8 adhered to in the future?

9 MS. CRIVELLO: We have a program at Chicago
10 Public Schools currently consisting of approximately
11 20 consulting companies that are present in the
12 school at any given time. As I stated earlier, we
13 are required to inspect schools at least once every
14 three years for asbestos. At that time, they would

15 also survey the property. If they notice that
16 there's any disturbance of the property that we
17 didn't -- that we have no knowledge of or hadn't
18 authorized, we would be notified of that and we also
19 are notified by the property managers for the
20 Chicago Public School system who are the entities
21 to maintain the property of the school outside of
22 environmental issues as well as within environmental
23 issues. So we have a presence in the schools on a
24 daily basis.

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1 MR. HARLEY: Why.

2 MS. CRIVELLO: From the standpoint of
3 maintaining the building for school occupancy we're
4 required by several different regulatory agencies,
5 city, state, national, federal, local, to maintain
6 certain aspects of the buildings. We're required to
7 inspect swimming pools. We're required to provide
8 safe lunchrooms and cafeterias. We're -- we are
9 continuously doing maintenance on these buildings.

10 MR. HARLEY: Would you say that on the issue
11 of after the NFR letter, that period after the NFR
12 letter has been issued that the Chicago Public
13 Schools are a model of how public schools should

14 conduct themselves to ensure the children are safe?

15 MS. CRIVELLO: Well, I would like to think
16 that we run a model program.

17 MR. HARLEY: And on the issue of a community
18 relations plan and the kind of proactive outreach
19 that you described in your testimony, do you believe
20 that the Chicago Public Schools are a model of how
21 public schools should operate?

22 MS. CRIVELLO: I really have no expertise in
23 public outreach and I wouldn't want to say what's a
24 model and what's not a model. I'm an environmental

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1 engineer.

2 MR. HARLEY: Okay. I have no further questions.
3 Thank you.

4 HEARING OFFICER BEAUCHAMP: Thank you,
5 Mr. Harley. Are there other questions for
6 Ms. Crivello? Questions from the Board members.

7 MS. McFAWN: I have some questions.

8 HEARING OFFICER BEAUCHAMP: I'm sorry. I
9 didn't see Mr. Eastep's hand. Mr. Eastep?

10 MR. EASTEP: Larry Eastep, Illinois EPA.

11 In your testimony you refer to cleanup
12 objectives as being set by the IEPA?

13 MS. CRIVELLO: Correct.

14 MR. EASTEP: Did you mean that the Agency
15 actually sets the cleanup objectives for the
16 remedial applicant or were you referring to the Part
17 742 objective?

18 MS. CRIVELLO: Actually, our cleanup objectives
19 that we use I think in about every case that we've
20 ever gone through has been the Tier I residential
21 objectives that are in 742. So that's what I meant
22 when I refer to it.

23 MR. EASTEP: So you didn't mean that the Agency
24 was involved?

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1 MS. CRIVELLO: No, I wouldn't mean to imply
2 that you were involved.

3 MR. EASTEP: If the objectives are typically
4 residential Tier I objectives and your cleanup plan
5 called for removing all of the contaminated soil,
6 assuming it was contaminated soil that was involved,
7 then there wouldn't be any need for an engineered
8 barrier, would there?

9 MS. CRIVELLO: That's correct.

10 MR. EASTEP: Okay. So in your testimony in a
11 couple cases you said that the fact that the effect

12 of the law required engineered -- two engineered
13 barriers, if you did a complete soil removal, there
14 would be no need for engineered barriers at all?

15 MS. CRIVELLO: Yeah. What I meant to I guess
16 state was that in every case that I can think of, we
17 have left some contamination in place and in those
18 cases we're required to put down two engineered
19 barriers. I believe we may have one, maybe two
20 sites where we were able to remove all the
21 contamination. Typically, that's not the case.

22 MR. EASTEP: But the reason for that isn't
23 because the law requires that, it's because of the
24 professional judgment of a consultant using the

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1 rules under part 742?

2 MS. CRIVELLO: The reason for that is if we are
3 going to use an engineered barrier, the engineered
4 barrier has to be in place before we start
5 construction, if we choose to use an engineered
6 barrier as a remedial action plan.

7 MR. EASTEP: Okay. But you don't -- again, in
8 those cases where they have removed all the
9 contamination then that statement that they're
10 required by law really doesn't apply?

11 MS. CRIVELLO: Correct. That wouldn't apply
12 there.

13 MR. EASTEP: Thank you.

14 In your testimony you provided several
15 instances of public outreach and communication
16 through communication with the alderman or various
17 meetings the city has. Do you ever make any -- have
18 any outreach or communication with the direct
19 neighbors of the schools that are being worked on,
20 say, people within a six-block radius or something
21 of that nature?

22 MS. CRIVELLO: That has occurred and that's
23 not one of my duties so I can't say how
24 institutionalized that is. It's my understanding

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1 that the Board meets with the interested parties
2 when they are designating a site and that would be
3 the students that would be going there, but as I
4 said, I don't -- I am not involved in setting up
5 the hearing process so I don't know the particulars
6 of that.

7 MR. EASTEP: Do you know if when they do meet
8 when -- they're setting up a site and they meet with
9 the neighbors, do they discuss any of the remedial

10 activity or the fact they will be cleaning up the
11 site?

12 MS. CRIVELLO: I haven't personally attended
13 one of those meetings so I can't say that. I can't
14 answer that.

15 MR. EASTEP: In your judgment, would that be a
16 good opportunity to disseminate this information to
17 the public in a meeting such as that?

18 MS. CRIVELLO: Yes. I'm not saying that that
19 doesn't happen. I'm just saying that I personally
20 have not been present.

21 MR. EASTEP: Thank you. No further questions.

22 HEARING OFFICER BEAUCHAMP: Thank you,
23 Mr. Eastep. Additional questions from Ms. Crivello?
24 Board member McFawn, do you have some?

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1 MS. McFAWN: Yes, I do.

2 You mentioned or you discussed at length
3 this requirement as Mr. Eastep was referring to for
4 the two engineered barriers and it seems to be
5 because of the way that Section 58.15 is worded that
6 you have to have in place either complete removal of
7 the contamination or an engineered barrier before
8 you would begin to construct a school?

9 MS. CRIVELLO: That's correct.

10 MS. McFAWN: Has there been any attempt by the
11 Department of Education or other persons responsible
12 for this to change that legislation?

13 MS. CRIVELLO: I personally cannot answer that.
14 I'm not involved in their legislative processes.

15 MS. McFAWN: How much money do you think it
16 costs them to do that when they are prohibited from
17 using the actual construction of the building as an
18 engineered barrier? Make across the board or even
19 on a per school base, some kind of estimate.

20 MS. CRIVELLO: It's cost had us in the vicinity
21 of approximately \$1 million to date for consulting
22 costs. More of the concern is the limitations that
23 it puts on us regarding our construction schedule
24 where if we were allowed to build the school as part

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1 of the remediation process, we would have 16 to 18
2 months during construction of the school from the
3 time that we got the property until the school was
4 completed to actually complete the SRP process and
5 we could integrate the construction of the school
6 with the development of the barrier. As it stands
7 now, we generally have about six months to complete

8 the SRP process before they actually start
9 construction of the school and this does two things;
10 one, it results in a lot of activity that we
11 wouldn't have to do such as if we have to put in a
12 three-foot barrier at a school for our engineered
13 barrier and typically then the contractor comes in
14 and has to dig it out and put in the foundations.
15 So we're putting engineer fill into a hole and then
16 we're removing engineer from the hole so we can put
17 concrete back into the hole.

18 Secondly, the longer it takes us to
19 conduct the SRP program, get the completion and then
20 start construction of the school, the longer the
21 children have to stay in overcrowded old schools
22 that are probably not as conducive a learning
23 environment or as healthy learning environment as a
24 new school would be. So we end up basically -- we

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1 end up with children having to attend substandard
2 schools because we can't complete the process as
3 quickly which is supposed to benefit children. So
4 it's -- we don't see it as an ideal situation.

5 MS. McFAWN: When you mentioned the \$1 million
6 in consulting fees, that is over the last two years

7 or could you put that in context?

8 MS. CRIVELLO: That's over the last,
9 approximately, 18 months.

10 MS. McFAWN: And that would be consulting fees
11 to advise the Department of Education about how to
12 comply with Section 58.15?

13 MS. CRIVELLO: These consulting fees typically
14 cover investigation, investigations of the site,
15 investigation procedures, sampling, analysis,
16 development of reports and in many cases because we
17 have to do this in an expedited fashion in order to
18 get our corrective action completed, it drives up
19 the cost of what we would normally spend.

20 MS. McFAWN: Okay. So those are consulting
21 fees that you would normally even incur in large
22 part just to comply with SRP?

23 MS. CRIVELLO: Probably 60 percent of that is
24 what we would normally incur. The other 40 percent

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1 is just an excess that we pay to expedite -- the
2 faster turnaround we have to have for our samples so
3 we can get our reports in. Faster results in 100
4 percent increase in our costs for our analytical
5 fees which if we're doing a comprehensive site

6 investigation of a typically three-acre site that we
7 use for a school can result in \$50,000 or more.

8 MS. McFAWN: Okay. Did the Department of
9 Education ever estimate how much it cost to put in
10 the engineered soil barrier of three feet and then
11 pull it back out?

12 MS. CRIVELLO: No.

13 MS. McFAWN: It seems like they should.

14 Currently, the legislation doesn't require
15 you to get an NFR letter before you open the school,
16 is that correct?

17 MS. CRIVELLO: That's correct.

18 MS. McFAWN: Under this CBE's proposal that
19 would be required, is that an impediment?

20 MS. CRIVELLO: No. The current law requires
21 that we complete our corrective action before we
22 start construction. Once we complete our corrective
23 action, we send a letter to the state that our --
24 corrective action completion letter and the state

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1 has 30 days to then issue us an NFR. We have to
2 have the completion done before we start
3 construction of the school and then we've got
4 approximately 14 months before we complete the

5 school. So we have the NFR letter far ahead of
6 time.

7 MS. McFAWN: Okay. You talked about your
8 communications or CPS' communications through a
9 series of public meetings. I was wondering, you
10 said you publicized the information on a web site.
11 Do you have the address for that web site?

12 MS. CRIVELLO: I was afraid you were going to
13 ask me that. I don't have that web site available.
14 I can get you that web site.

15 MS. McFAWN: Okay. Are SRP programs discussed
16 as part of those public meetings, the six public
17 meetings that focus on the capital improvement
18 program?

19 MS. CRIVELLO: The six public meetings that we
20 have are basically an opportunity for anyone in the
21 city of Chicago to come to the meeting and ask us --
22 it's basically for them to ask us whatever it is
23 they want to know about the capital program.

24 MS. McFAWN: They would need to raise the

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1 issue?

2 MS. CRIVELLO: They would basically need to
3 raise the issue, yes.

4 MS. McFAWN: You testified a little bit about
5 the community relations plan and the outreach
6 program used by the city and the two -- you seemed
7 --or you did testify that the current process used
8 by the city complies with the spirit of the
9 community relations plan, is that right?

10 MS. CRIVELLO: I believe it does.

11 MS. McFAWN: Is that outreach program or the
12 public meeting and the other ways, communicating
13 with the alderman about capital improvement in these
14 schools, is that written down anywhere?

15 MS. CRIVELLO: I can't answer that.

16 MS. McFAWN: Maybe you could check with the
17 city and if so, could we see a copy of it to know
18 what guidelines the city uses as outreach?

19 MS. CRIVELLO: Oh, sure.

20 MS. McFAWN: You mentioned that there would be
21 additional reporting and administration costs if the
22 proposal in R01-29 was adopted. Administration
23 costs for what and how much?

24 MS. CRIVELLO: We haven't done an economic

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1 analysis of what this would cost to implement.
2 Basically, our position is is that we're already

3 doing it so anything that we did would be an extra
4 cost that wouldn't benefit the safety or health of
5 the children or increase our public awareness.
6 Probably what we're most concerned about is the
7 nebulousness of the idea of this community relations
8 plan in that it's not something that is delineated
9 in the regulations and so if the Illinois EPA
10 decided that they were not satisfied with the plan
11 that we were following, they could institute their
12 own plan and under 740 basically charge us as the
13 remedial applicant the cost for that community
14 outreach plan. We wouldn't necessarily know what
15 that would cost us.

16 MS. McFAWN: But you believe that you're
17 currently doing it. So what you're doing is
18 satisfactory?

19 MS. CRIVELLO: We believe what we're doing is
20 satisfactory so that any cost that we would incur
21 to abide by any new regulations is money that comes
22 out of school books and boiler repairs and new
23 schools and educational enhancements and our first
24 priority is to educate children.

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1 MS. McFAWN: But actually if what you're doing,

2 if your assessment is correct, it's already
3 providing the community relations plan and if we
4 knew about it we might be able to --

5 MS. CRIVELLO: Well, I don't know what a
6 community relations plan is exactly because it
7 doesn't say what it is in the regulations. All I
8 have is a guidance that that guidance now becomes
9 regulation and we don't know what that's going to
10 be.

11 MS. McFAWN: Okay. But let's assume that
12 that's the guidance and then that's what constitutes
13 a community relations plan and you still think that
14 what the city's doing is comparable to what's called
15 for?

16 MS. CRIVELLO: Well, if you go through the
17 community relations plan, it says that you have to
18 develop separate documents, this document should be
19 two pages long, that document should be three pages
20 long, you should have four public hearings, you
21 should -- there's a number of different things that
22 they say you should do, which of course with us
23 would become mandatory and such as an example I can,
24 if they think we have to have four public hearings

1 when maybe we only have one public hearing, who's to
2 say that we now -- you know, we have to pay for four
3 public hearings.

4 MS. McFAWN: All right. So that's where the
5 additional costs come up?

6 MS. CRIVELLO: Correct.

7 HEARING OFFICER BEAUCHAMP: Could we go off the
8 record for few moments.

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

11 MS. LIU: I have one point of curiosity.

12 In your testimony you mentioned that since
13 1999, Chicago Public Schools have enrolled 18
14 different sites in the SRP. Do you know if they
15 plan to keep up this pace of new school construction
16 in the future?

17 MS. CRIVELLO: My understanding is that the
18 capital improvement program, which was started in
19 1996, had a target of approximately 30 new schools
20 or additions. So we have 18 that we've either
21 constructed, that are in construction or are
22 planned. If you go on the web site, assuming I can
23 find the address, we published the capital
24 improvement program for the next, I believe, it's

1 five years and that indicates what schools -- new
2 schools are planned. That is heavily contingent
3 upon funding and if the funding goes away, the
4 schools go away.

5 MS. LIU: Thank you.

6 MR. MELAS: One quick question.

7 Towards the end of your testimony you made
8 a suggestion that as far as this particular
9 amendment is concerned exclude Chicago from this
10 amendment -- exclude the Chicago Public Schools?

11 MS. CRIVELLO: Correct.

12 MR. MELAS: Leaving in place for the rest of
13 the state?

14 MS. CRIVELLO: Yes. That would be our
15 position.

16 HEARING OFFICER BEAUCHAMP: Any other
17 questions?

18 MS. McFAWN: I had one more.

19 You talked about the schools being subject
20 to property managers, is that correct?

21 MS. CRIVELLO: There are property managers who
22 are private contractors to the Board who's -- they
23 manage properties just like U.S. Equities would
24 manage an office building.

1 MS. McFAWN: Are they the ones that supervise
2 the inspection for asbestos and lead?

3 MS. CRIVELLO: No. That would be done through
4 my office.

5 MS. McFAWN: Through your office?

6 MS. CRIVELLO: Yes.

7 MS. McFAWN: And then when you've done that
8 information, do you then produce a written document
9 for the public schools -- Chicago Public Schools
10 verifying what you inspected and that it was done
11 and --

12 MS. CRIVELLO: Yes.

13 MS. McFAWN: So they get a report on that and
14 that's done for all the schools?

15 MS. CRIVELLO: Yes.

16 MS. McFAWN: So the proposal that CBE makes
17 that such a certification be done every five years,
18 could that be woven into that other process?

19 MS. CRIVELLO: Well, our position is we don't
20 need to certify every other five years because we
21 maintain these barriers on a daily basis and we are
22 required by the Act, the regulation, and NFR letter
23 that says by law you must maintain these barriers.
24 So we don't really see a need to certify that. We

1 basically are compelled to follow those regulations
2 and the requirements of our NFR letter or else we
3 have no NFR letter. It's voidable. To certify it
4 does not serve a purpose.

5 MS. McFAWN: Okay. But CBE has testified as to
6 why they believe there is a purpose on that and I'm
7 just wondering from an administrative standpoint if
8 that's something that could then be integrated into
9 the current legally required asbestos maintenance
10 program?

11 MS. CRIVELLO: We would have a problem with
12 that. For one thing the people that inspect
13 asbestos, although they're educated environmental
14 professionals, they may not be deemed appropriate
15 personnel by the Illinois EPA who is going to
16 determine who can certify this barrier as being
17 qualified to do that. At this point, I don't know
18 who's going to certify the barrier. Probably more
19 to the heart of the matter is that I don't believe
20 that there has ever been a documented instance where
21 this five-year notification would have affected any
22 operation at any school and essentially, we're
23 requiring notification, but there hasn't been a
24 problem identified that would require a

1 notification.

2 MS. McFAWN: Okay. Accepting all of that, you
3 also mentioned that there are routine inspections in
4 the school?

5 MS. CRIVELLO: Correct.

6 MS. McFAWN: For all sorts of things?

7 MS. CRIVELLO: Correct.

8 MS. McFAWN: And are these done by individual
9 contractors like someone for asbestos, someone for
10 lead, someone for public health?

11 MS. CRIVELLO: Yes.

12 MS. McFAWN: Okay.

13 HEARING OFFICER BEAUCHAMP: Mr. Eastep, you
14 have some additional questions?

15 MR. EASTEP: Yeah. I wanted to follow-up on
16 some of the comments of Board member McFawn's
17 questions.

18 Are you familiar with the publication that
19 the Agency prepared pursuant to Section 58.7,
20 guidance for community relations?

21 MS. CRIVELLO: Yes?

22 MR. EASTEP: Okay. So you've read it?

23 MS. CRIVELLO: Yes.

24 MR. EASTEP: In one of your responses you

1 mentioned guidance requiring four public hearings or
2 something, three public -- something like that?

3 MS. CRIVELLO: Yeah. That was a suggestion in
4 the guidance.

5 MR. EASTEP: The guidance, does it require
6 three or four public hearings?

7 MS. CRIVELLO: The guidance doesn't require
8 anything, but they suggest, you know, as a
9 suggestion here's what a community relations plan
10 would be and in that is four public hearings.

11 MR. EASTEP: Okay.

12 HEARING OFFICER BEAUCHAMP: On that,
13 Ms. Crivello, do you have a copy of that guidance
14 document with you today that you might be able to
15 submit as an exhibit?

16 MS. CRIVELLO: I think I do. I have one copy,
17 yes, I can submit that.

18 HEARING OFFICER BEAUCHAMP: Okay. If we can
19 assist you in making copies so we can get that, let
20 us know. Mr. Sassila has a question?

21 MR. SASSILA: I would like to make one comment
22 that the asbestos inspection normally performed by
23 licensed asbestos --

24 HEARING OFFICER BEAUCHAMP: I'm sorry. Is this

1 a question or do you have some comments you'd like
2 to present?

3 MR. SASSILA: It's a comment to one of the
4 issues being addressed regarding asbestos
5 inspection -- the three-year inspection.

6 HEARING OFFICER BEAUCHAMP: We should have you
7 sworn in then if it's just a statement. Would you
8 swear Mr. Sassila in?

9 (Mr. Sassila was sworn.)

10 MR. SASSILA: That three-year asbestos
11 inspection normally performed by licensed asbestos
12 inspectors and who are normally licensed by the
13 Illinois Department of Public Health, the engineer
14 barrier has to be certified by the professional
15 engineer as per the existing SRP requirement, and
16 generally there are two different requirements and
17 qualifications and I don't believe they are --
18 should be an asbestos inspector to be able to
19 inspect an engineered barrier and make a decision on
20 behalf of professional engineer. I don't know what
21 is the Agency's position.

22 MS. McFAWN: I don't know that the Agency has a
23 position either. I was just prying to investigate

24 and learn more about the current inspections

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1 performed at public schools. Thank you.

2 HEARING OFFICER BEAUCHAMP: Thank you.

3 Are there any other questions anyone may
4 have? Mr. Eastep?

5 MR. EASTEP: I guess I'm a little confused.
6 Given all the other work that's done on the schools,
7 who is currently responsible for ensuring that the
8 engineered barriers are maintained?

9 MS. CRIVELLO: That would be through the
10 capital program.

11 MR. EASTEP: I'm not sure -- who would be --

12 MS. CRIVELLO: The capital program is the --
13 that part of the Chicago Public School systems for
14 which we work for the capital operations program.
15 The operations program office at CPS is responsible
16 for the maintenance and operation of all CPS
17 buildings, school buildings and otherwise.

18 MR. EASTEP: The maintenance of an engineered
19 barrier, is that a specific item that they would
20 look at because that's not conventional maintenance
21 in the same sense as fixing windows and --

22 MS. CRIVELLO: The maintenance of the

23 engineered barrier would be in the same category
24 as maintenance of asbestos safety, lead safety,

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1 integrated pest management requirements, air quality
2 requirements. There's a whole collection of
3 environmental issues that I work with on a daily
4 basis and we maintain compliance with all of those,
5 that's our mission basically is to maintain
6 environmental compliance with all aspects of our
7 schools.

8 MR. EASTEP: Is there a specific section or
9 line item in some operations manual that would
10 require somebody to do this?

11 MS. CRIVELLO: Yes, absolutely.

12 MR. EASTEP: So there's something for
13 engineered barriers?

14 MS. CRIVELLO: It does not say engineered
15 barriers. It says environmental compliance or
16 environmental work.

17 MR. EASTEP: Is there anything specific that
18 will alert a maintenance worker to the requirements
19 for the engineered barrier?

20 MS. CRIVELLO: I don't believe so, not at this
21 point.

22 MS. McFAWN: And you do your work for what part
23 of the city? I mean, you were saying capital
24 development board and --

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1 MS. CRIVELLO: I'm sorry. In the city of
2 Chicago, school buildings are basically built by
3 two separate entities; one, is the Public Building
4 Commission, the other entity is the Chicago Public
5 Schools. They have different sources of funding so
6 based on the funds available and negotiations and
7 commitments and agreements between the two parties,
8 the PBC builds, all public buildings in Chicago as
9 well as schools and CPS also builds schools so...

10 MS. McFAWN: And who maintains them?

11 MS. CRIVELLO: The Chicago Public Schools is
12 responsible for the maintenance of all buildings.

13 MS. McFAWN: And they would --

14 MS. CRIVELLO: All school buildings once they
15 are built.

16 MS. McFAWN: So Chicago Public Schools is,
17 therefore, responsible for the maintenance and the
18 inspections of the whole litany and possibly the
19 engineered barriers?

20 MS. CRIVELLO: We're responsible for all

21 environmental compliance.

22 MS. McFAWN: Okay. Thank you. I was getting
23 lost in who does what at the city.

24 HEARING OFFICER BEAUCHAMP: Are there any other

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1 questions for Ms. Crivello? Ms. Jarka?

2 MS. JARKA: I have a question.

3 You just described the Public Building
4 Commission built some buildings, but the Chicago
5 Public Schools maintains those buildings. Is there
6 any mechanism in place if the Public Building
7 Commission does remediation, receives an NFR letter
8 that the requirements of that NFR letter are
9 translated to the Chicago Public School system so
10 that the people who maintain the building actually
11 know what's in the NFR letter and know that it
12 exists?

13 MS. CRIVELLO: My understanding is that all the
14 buildings plans and documents that went in -- the
15 building plans in building and construction
16 documents would include the SRP program, would be
17 available to CPS, I believe copies are made for CPS.
18 I don't have first-hand knowledge of that, but we
19 would be made aware of any restrictions on the

20 buildings as part of our obligation to maintain
21 environmental compliance.

22 MS. McFAWN: We being your consulting firm?

23 MS. CRIVELLO: Yes.

24 HEARING OFFICER BEAUCHAMP: Other questions for

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1 Ms. Crivello? Very Good. Then at this time, would
2 you like to submit the guidance document that you
3 were referring to as an exhibit?

4 MS. CRIVELLO: Yes.

5 HEARING OFFICER BEAUCHAMP: This is -- it's got
6 Community Relations and Site Remediation Program
7 Guidance for fulfilling 415ILCS5-58.7(h) Community
8 Relations and Site Remediation. It is dated June
9 1996. If there are no objections, we will admit
10 this as Exhibit 3.

11 MR. HARLEY: I have potentially an objection.
12 Ms. Crivello received that document for the first
13 time yesterday when she came to our office and we
14 just gave her the most current version that we have.
15 I don't know if it's the most up-to-date version
16 that the Agency uses and so I think that as the
17 document that we had in our files that we provided
18 to her to review, it's the most up-to-date thing we

19 have, but it may not be the document now effective
20 at the Agency.

21 HEARING OFFICER BEAUCHAMP: Thank you,
22 Mr. Harley. Would you agree to admitting it then as
23 the most recent version of the document that you had
24 that you made available to Ms. Crivello and if the

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1 Agency has a more recent version, if they can submit
2 that and we will admit that into the record as well?

3 MS. McFAWN: Yeah.

4 HEARING OFFICER BEAUCHAMP: It's dated June
5 1996.

6 MS. McFAWN: Why don't we just ask the
7 Agency --

8 MR. EASTEP: I haven't seen what they're
9 talking about.

10 MS. McFAWN: Could you take a look at it?

11 MR. EASTEP: Sure.

12 HEARING OFFICER BEAUCHAMP: We'll go off the
13 record and we'll take a short break while the Agency
14 reviews that.

15 (Whereupon, after a short
16 break was had, the
17 following proceedings

18 were held accordingly.)

19 HEARING OFFICER BEAUCHAMP: We're looking at --
20 Ms. Crivello has moved to admit a copy of the
21 guidance which she was relying on and then referring
22 to during her testimony and Mr. Harley raised an
23 objection or more of a question really as to whether
24 or not it was the most recent version. During the

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1 break, we discussed with the Agency and they have
2 presented what they have stated is the most recent
3 version of this guidance and what we've proposed to
4 do is to admit both of these documents into the
5 record as exhibits. The first exhibit will be the
6 document dated June 1996, entitled Community
7 Relations in the Site Remediation Program, Guidance
8 for Fulfilling 415ILCS5/58.7(h) Community Relations
9 and Site Remediation. This will be Exhibit 3 if
10 there are no objections.

11 MS. McFAWN: Just a point of clarification, the
12 reason we're doing this is that that's the document
13 that was relied upon by Ms. Crivello in her
14 testimony.

15 HEARING OFFICER BEAUCHAMP: And then the
16 document with the same title, although this document

17 has no date, this will be Exhibit 4 and this is a
18 copy of this guidance provided by the Agency as the
19 most recent copy of this document containing --
20 Mr. Wight, if I'm not mischaracterizing this,
21 nonsubstantive changes to the guidance.

22 MR. WIGHT: Mr. Eastep, may have additional
23 comments.

24 MR. EASTEP: That's correct. I just want to

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1 point out that this is on our web site.

2 HEARING OFFICER BEAUCHAMP: Very good. Thank
3 you. We'd like to move forward now with the
4 presentation from the Department of the Navy and
5 General Services Administration. Ms. Vlahos, I'd
6 turn the floor over to you now.

7 MS. VLAHOS: Yes. Mr. Beauchamp, I think the
8 General Services Administration is going to proceed
9 first. Mr. Richard Butterworth will give his
10 testimony.

11 HEARING OFFICER BEAUCHAMP: Very good. Would
12 you swear Mr. Butterworth in, please?

13 (Mr. Butterworth was sworn.)

14 MR. BUTTERWORTH: I will be reading from the
15 prefiled testimony with one change to mark an error

16 where it was printed out for submission, for some
17 reason the first three lines of page two also appear
18 at the bottom of page one. So I will be skipping
19 that redundancy.

20 Good morning, my name is Richard R.
21 Butterworth, Jr. I am a senior assistant general
22 counsel in the Office of General Counsel, General
23 Services Administration, GSA. My testimony is
24 provided on behalf of the GSA.

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1 I've been an employee of the GSA for 13
2 years and have been in my current role for the past
3 five years. In addition to other duties, I serve
4 as chief counsel for the Office of Property Disposal
5 within the Public Buildings Service, GSA. In that
6 capacity, I am responsible for policy development,
7 legislative initiatives, regulatory interpretation
8 and adoption, overall program legal review and for
9 individual real property disposal actions.

10 I appreciate the opportunity to address
11 this Board specifically on the legal limitations
12 which exist on the ability of federal agencies to
13 deed record land use restrictions on federal
14 property.

15 Why federal installations need a recording
16 exemption.

17 Federal installations in Illinois need the
18 proposed recording exemption because unlike
19 privately owned facilities, certain legal
20 limitations exist on the ability of federal agencies
21 to deed record land use restrictions on federal
22 properties to be retained in federal hands.
23 To understand the scope of federal Agency real
24 property management authority, it must first be

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1 recognized that those real properties which the
2 various federal agencies occupy or otherwise control
3 are not, quote, unquote, owned as such by them, but
4 rather by the United States as sovereign. This is
5 simply because the ultimate authority to manage all
6 federally owned land rests with Congress pursuant to
7 the Property Clause of the U.S. Constitution,
8 Article IV, Section 3, and Congress has not chosen
9 to assign ownership over federal lands to any
10 particular agency or agencies.

11 GSA derives its authority to manage and
12 dispose of federal lands from the Federal Property
13 and Administrative Services Act of 1949, as amended,

14 the same statute under which my agency was
15 established. This is in 40 U.S.C., Section 471 et.
16 seq and hereafter I will be referring to it as the
17 Property Act.

18 One of the principal purposes of the
19 Property Act was to provide economies of scale and
20 consolidation of resources and authorities within
21 the Federal Government. One of those key areas of
22 consolidation was the authority to manage and
23 dispose of real property. Specifically, GSA was
24 authorized to ensure the effective utilization of,

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1 quote, unquote, excess real property, which is
2 property which a landholding has determined is no
3 longer needed to accomplish its particular mission
4 and the efficient disposal of surplus real property
5 which is excess property for which there is no other
6 federal needs. This authority is 40 U.S.C, Sections
7 483 and 484. GSA is authorized to provide these
8 functions for all federal executive agencies.
9 Therefore, unless an agency has specific authority
10 to dispose of real property, once a landholding
11 agency has determined that the property is excess to
12 its needs, it must turn the property over to GSA for

13 disposition. The Department of Defense, DoD, is in
14 a unique situation in the federal government in that
15 it has a specific delegation of the same property
16 and management functions as GSA, but only with
17 regard to closing of realigning base properties
18 identified under one of the various Base Closure
19 Realignment or BRAC statutes passed by Congress in
20 recent years. Therefore, in those limited
21 circumstances, DoD can act as both the landholding
22 and disposal agency - in effect, stepping into the
23 shoes of GSA.

24 While it is true that Congress has chosen

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1 on other occasions to grant certain specific
2 property management authorities to other federal
3 agencies, including the DoD, the scope of those
4 authorizations has been very limited. For example,
5 federal agencies have the general authority to grant
6 utility easements or rights-of-way to third parties.
7 However, the Department of Justice has previously
8 determined that the authority Congress provided to
9 agencies to execute these types of instruments does
10 not extend into other broader disposal of property
11 interests.

12 The Property Act defines the term property
13 to include any interest in property, 40 U.S.C.,
14 Section 472(d). Accordingly, it is GSA's position
15 that the granting of a property right in perpetuity,
16 such as a restriction on the future use of federal
17 property as envisioned in the proposed SRP
18 regulations, is an interest in property as designed
19 by the Property Act. Thus only GSA and not the
20 landholding agency can grant such an interest.

21 GSA has chosen not to delegate the
22 authority to landholding agencies to record land
23 use restrictions that would run with the land in
24 perpetuity for three principal reasons. First, we

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1 believe it would be contrary to Congressional
2 desires as to who should hold property disposal
3 authority. In the case of DoD, the fact that
4 Congress has only chosen to expressly grant that
5 agency full property disposal authority in the
6 context of BRAC real estate action clearly indicates
7 that it was not their intent for DoD to have those
8 same authorities in the context of managing active
9 base properties. Secondly, GSA believes that
10 recorded land use restrictions should only be agreed

11 to in the context of an actual property disposal so
12 that such restrictions can truly reflect the risks
13 associated with known site conditions in the context
14 of a particular contemplated reuse of the property
15 rather than some hypothetical use in the future. At
16 the time of disposal, GSA or any landholding agency
17 with disposal authority could review the
18 institutional controls previously set in place
19 during the landholding agency's use of the property
20 and determine, with appropriate regulatory agency
21 input, whether those controls should remain and
22 become permanent use restrictions or be modified in
23 order to be truly protective in the context of the
24 pending reuse.

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1 And finally, as previously mentioned,
2 GSA strongly believes that there are other effective
3 means to impose use restrictions on federal property
4 without requiring that those restrictions be
5 recorded. For example, while federal landholding
6 agencies may be legally precluded from recording
7 permanent use restrictions, those agencies may enter
8 into land use restriction agreements, which may run
9 for the length of the agency's custody of the

10 property. Since many agencies retain their primary
11 facilities for many years, such agreements can
12 implement land use controls practically and
13 perpetuity. The LUC MOA process that was adopted in
14 the TACO regulations and has been proposed in the
15 LUST regulations results in exactly such an
16 agreement. Therefore, GSA hopes that the Board will
17 adopt the amendment proposed by the defense agencies
18 in this proceeding, which are intended to mirror the
19 LUC MOA process.

20 We believe it important to also point out
21 to this Board that in addition to those LUC MOA
22 agreements, two federal laws, namely CERCLA and
23 NEPA, independently impose certain preproperty
24 disposal related notice requirements and other

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1 obligations on federal landholding agencies. These
2 obligations are of a kind not similarly imposed on
3 any private landholder. For example, CERCLA Section
4 120(h)(3) requires federal agencies disposing of
5 surplus properties to specifically state in the form
6 of a deed covenant that all remedial action
7 necessary to protect human health and the
8 environment with regard to identified hazardous

9 substance activity has been taken prior to
10 conveyance. The United States also commits to
11 return to the property to correct any other
12 hazardous substance condition from the prior federal
13 activity that was not previously identified.

14 Second, federal landholding agencies must
15 comply with the National Environmental Policy Act or
16 NEPA in the context of making closure and excessing
17 decisions. Under NEPA, federal agencies are
18 required to assess potential impacts to the quality
19 of the human environment from the proposed federal
20 disposal action. Thus, if any institutional
21 controls are affected by an agency's decision to
22 close a facility or declare property excess, the
23 landholding agency must evaluate those impacts and
24 allow public comment on that evaluation. GSA must

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1 also comply with NEPA for our disposal action and if
2 there is contamination in place on property GSA is
3 disposing, we routinely notify the appropriate state
4 regulatory agency to obtain their input on the need
5 for land use restrictions on the property.

6 In light of the foregoing, GSA urges the
7 Board to adopt the amendment to the proposal

8 submitted by federal agencies. GSA believes that
9 the proposal will adequately address our concerns
10 regarding a perfection of the NFR that would include
11 deed recordation for ongoing federal facilities.
12 While the deed recordation requirement has been
13 removed, GSA believes the proposal contains adequate
14 safeguards to ensure the viability of the
15 institutional controls. These safeguards include
16 identification and notice requirements, procedures
17 to ensure ongoing updates are communicated to IEPA,
18 measures to ensure continued compliance with the LUC
19 MOA and advance notification to IEPA of any proposed
20 disposal of a property regulated by an institutional
21 control.

22 In conclusion, we at GSA support the
23 proposal to modify the proposed SRP rules as
24 submitted by DoD to take into account the unique

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1 authorities given to and responsibilities imposed
2 upon the federal agencies' management of federal
3 real property.

4 I appreciate the opportunity the federal
5 government has had to work with the Board and IEPA
6 to resolve this issue and I thank you for the

7 opportunity to present this testimony to you today.

8 HEARING OFFICER BEAUCHAMP: Thank you,
9 Mr. Butterworth. Ms. Vlahos, would you like to take
10 questions from Mr. Butterworth before continuing
11 with your presentation?

12 MS. VLAHOS: Yes, that would be good.

13 HEARING OFFICER BEAUCHAMP: Very good. At
14 this time then we'll open the floor to questions for
15 Mr. Butterworth regarding his testimony. Seeing
16 none from the audience, do the Board members or
17 staff have any questions?

18 MS. LIU: Good afternoon, Mr. Butterworth.

19 MR. BUTTERWORTH: Hi.

20 MS. LIU: Do you think that the amendments
21 posed by the Navy are open enough to include other
22 nonDoD federal agencies in the future who might run
23 up against these same type of limitations?

24 MR. BUTTERWORTH: Yes.

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1 MS. LIU: Thank you.

2 HEARING OFFICER BEAUCHAMP: Are there any other
3 questions? Ms. Vlahos, let me ask you if you would
4 like to admit Mr. Butterworth's testimony as an
5 exhibit while he's still here so that if he needs to

6 leave he can do so without --

7 MS. VLAHOS: Yes.

8 HEARING OFFICER BEAUCHAMP: Okay.

9 MR. BUTTERWORTH: I provided one to the court
10 reporter, here's an additional.

11 HEARING OFFICER BEAUCHAMP: Very good. Thank
12 you. This is the prefiled testimony of Richard R.
13 Butterworth, Jr. Just to clarify, the previous
14 documents that we've admitted as exhibits today were
15 in Docket R01-29. This exhibit will be admitted as
16 Exhibit No. 3 in Docket R01-27 unless there are any
17 objections. Seeing none, this will be admitted as
18 Exhibit 3. Thank you, Mr. Butterworth.

19 MR. BUTTERWORTH: Thank you.

20 MS. McFAWN: Thank you for coming. We
21 appreciate it.

22 MR. BUTTERWORTH: Thanks.

23 MS. McFAWN: Coming from D.C., isn't it?

24 MR. BUTTERWORTH: Yes.

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1 HEARING OFFICER BEAUCHAMP: Ms. Vlahos, if
2 you'd like to proceed. Do you have testimony you
3 would like to present today?

4 MS. VLAHOS: Yes. I do have prefiled testimony

5 that I submitted. I will be reading that into the
6 record today with only some slight modifications,
7 some changes that happened after I filed my prefiled
8 testimony.

9 HEARING OFFICER BEAUCHAMP: Okay. If we could
10 have you sworn in then.

11 (Ms. Vlahos was sworn.)

12 MS. VLAHOS: I guess it's still -- it's good
13 afternoon. My name is Georgia Vlahos. I'm counsel
14 to the commander of the Navy Training Center Great
15 Lakes located in North Chicago, Illinois. My duties
16 include advising the commander in the capacity as
17 the Department of the Navy's Regional Environmental
18 Coordinator for USEPA Region 5 an area that, of
19 course, includes the state of Illinois. In this
20 regard, I assist the command in coordinating
21 environmental policy among the various Navy and
22 other Department of Defense, DoD, components in the
23 region concerning, among other things, those
24 pertaining to environmental compliance,

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1 environmental restoration and property disposal.

2 My testimony here today was developed in
3 consultation with other DoD component agencies.

4 On behalf of the Navy and the other military
5 services, I thank you for the opportunity to be here
6 today and provide you with our views on the
7 revisions to the Part 740 site remediation program,
8 SRP, regulations proposed by the Illinois
9 Environmental Protection Agency, which I shall refer
10 to as the Agency. I shall refer to these revisions
11 as the Agency proposal. The Agency proposal
12 introduces the concept of perfecting, close quote,
13 no further remediation, NFR, letters by recording
14 them in county land records as was addressed in
15 testimony presented to you today by Mr. Butterworth
16 of the General Services Administration. This
17 recording requirement is problematic for federal
18 landholding entities because federal entities do not
19 generally own the federal lands on which they
20 operate and, therefore, have no legal authority to
21 record restrictions on the future use of that land.

22 I appear before you to present an
23 alternative to this recording requirement for the
24 Navy and other federal landholding agencies in

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1 Illinois. Our proposal reflects our desire to apply
2 the Land Use Control Memorandum of Agreement, LUC

3 MOA, concept, which was recently incorporated by the
4 Board into the TACO rules in Part 742 into the Part
5 740 regulations for the site remediation program.

6 At this point, I must note that, by
7 suggesting revisions to the Agency's proposal, we in
8 the DoD community do not mean to imply that we view
9 every effort we undertake to address hazardous
10 substance contamination on our facilities as subject
11 to SRP requirements. As I'm sure this Board is
12 aware, unlike the private sector, DoD has its own
13 independent CERCLA lead Agency authorities which
14 allow us to deal directly with hazardous substance
15 releases on, or from our facilities. However, we
16 believe there well could be times where we might
17 want to seek an NFR letter from the Agency in
18 connection with a site where long-term institutional
19 controls are contemplated. Hence, we believe it
20 appropriate to allow such sites to be encompassed
21 under the same LUC MOA concept, which was adopted in
22 the new TACO regulations and which we hope will soon
23 be adopted under the LUST program rules.

24 We concur with the General Assembly's

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2 set forth in Section 58 of the Illinois
3 Environmental Protection Act that under appropriate
4 circumstances risk-based site cleanups are desirable
5 in Illinois. Such cleanups can be a protective,
6 timely and cost-effective alternative to more
7 extensive and potentially cost prohibitive remedial
8 measures which may or may not ultimately permit
9 unrestricted use of the affected property. We wish
10 to secure the flexibility afforded by this approach
11 for our sites in the state where both the Agency and
12 we agree that use of a risk-based cleanup approach
13 is practicable.

14 Unfortunately, unless federal landholding
15 agencies are provided a similar alternative to
16 recording NFR letters as is proposed for the
17 Illinois Department of Transportation, IDOT, in the
18 new Section 740.621 of the Agency's proposal, our
19 ability to utilize the SRP will be jeopardized since
20 the existing regulations in Subpart F of
21 Part 740 contain specific deed recordation
22 requirements which we are legally precluded from
23 satisfying. All that we in the federal community
24 seek is to have the same ability that now exists

1 for private industry and that is proposed by IDOT
2 to close our sites with full Agency concurrence
3 utilizing risk-based approaches.

4 Because we're asking this Board to adopt
5 our alternative to the NFR recordation requirement
6 contained in the existing SRP regulations, we need
7 to explain how in the absence of a publically
8 recorded land record we will ensure the future
9 maintenance of any land use restrictions applicable
10 to a site. First, we would have no problem
11 recording NFR letters for active installations,
12 which contain notice but no land use restrictions.
13 Under those circumstances, the letters cannot be
14 construed as imposing restrictions on future uses
15 of the property and, therefore, do not run afoul
16 of the prohibition against restricting future land
17 use. For circumstances where the NFR letters
18 contain land use restrictions, we have proposed to
19 the Agency and today present for your consideration
20 the use of a tri-party LUC MOA between, I should say
21 among, the federal landholding agency, USEPA Region
22 5 and the Agency similar to that provided for IDOT
23 in Section 740.621 of the Agency's proposal. The
24 Navy has executed such LUC MOAs in other states and

1 U.S. EPA regions and more important, the Board
2 recently approved their use as a form of
3 institutional control by federal landholding
4 entities under the amended TACO regulations.
5 Furthermore, this LUC MOA approach is consistent
6 with the recently established DoD, Policy on Land
7 Use Controls Associated with Environmental
8 Restoration Activities, which was issued by the
9 Deputy Under Secretary of Defense for Environmental
10 Security on January 17th, 2001. I would be happy to
11 provide a copy of this policy to the Board and to
12 any other interested person.

13 Under the form of LUC MOA we propose DoD
14 facilities within the state would commit to, among
15 other things, certain periodic site inspection and
16 reporting requirements to ensure that our facility
17 personnel adequately maintain those site
18 remedy-based land use controls necessary for
19 long-term protection of human health and the
20 environment. I have provided as an exhibit to my
21 testimony today a model LUC MOA for your
22 consideration that has been negotiated between a DoD
23 working group, EPA Region 5 and Agency
24 representatives. We believe it provides a sound

1 and adequately protective alternative to requiring
2 federal entities such as ourselves to record NFRs at
3 active, non-transferring installations and at
4 installations that may be transferred from one
5 federal landholding entity to another. The LUC MOA
6 makes clear that compliance with its provision is a
7 prerequisite for the continued validity of NFRs.

8 I'm presenting as part of my testimony
9 today as an exhibit a suggestive revision to the
10 Agency's proposal to address the concerns noted in
11 my testimony. These revisions have Agency
12 concurrence. I need to amend, however, what was
13 previously submitted with my testimony as prefiled
14 because we have been in communication with the
15 Agency since that time and have agreed to certain
16 additional revisions and I will read those into the
17 record at the conclusion of this testimony.

18 In conclusion, we're proposing to the
19 Board that the Part 740 SRP regulations be revised
20 to exempt federal facilities from the aforementioned
21 NFR recordation requirement subject to a given
22 facility's execution of and subsequent compliance
23 with a tri-party LUC MOA with the Agency and USEPA.
24 Is it appropriate at this time for me to read the

1 additional revision into the record?

2 HEARING OFFICER BEAUCHAMP: If you'd like to,
3 please.

4 MS. VLAHOS: The first revision from what was
5 -- has been filed is in Section 740.120 which is the
6 definition section. It's on the page marked three
7 of what I filed and it's the definition of
8 institutional control. That should now read
9 institutional control means a legal mechanism for
10 imposing a restriction on land use as described in
11 35 Illinois Administrative Code 742, Subpart J and
12 that's to ensure consistency with the same
13 definition which appears in the TACO regulations.

14 The second revision is to 740.610(a)(2),
15 which is on page four of what I previously filed and
16 that subsection should now read a description of the
17 remediation site by adequate legal description or by
18 reference to a plat showing the boundaries comma or
19 this is the additional language, for federally owned
20 property under Section 740.622 by other means
21 sufficient to identify site locations with
22 particularity.

23 The third revision appears in
24 740.622(a)(1)(A), which is on page five of what I

1 previously submitted and that is additional language
2 at the end, I will simply just tell you what that
3 additional language is insert it at the end and that
4 is acceptable to the Agency. That is all.

5 HEARING OFFICER BEAUCHAMP: Ms. Vlahos, are
6 there any exhibits that you'd like to submit to
7 their entrance into the record at this time?

8 MS. VLAHOS: Yes, I would with the revisions
9 that I just noted, I would like to submit my
10 prefiled testimony which attaches two documents, one
11 is the model LUC MOA that as I said has been
12 negotiated with federal and state EPA and then with
13 our suggested revisions to the Agency's proposal.

14 HEARING OFFICER BEAUCHAMP: Are you submitting
15 this as one exhibit then -- the attached exhibit.

16 MS. VLAHOS: Yes, I am. I'm submitting it as a
17 single exhibit.

18 HEARING OFFICER BEAUCHAMP: And the suggested
19 revisions, does that include the additional language
20 that you just read into the record?

21 MS. VLAHOS: Yes. That's not reflected on the
22 copy I gave you, but it is, I hope, reflected in the
23 record.

24 HEARING OFFICER BEAUCHAMP: It is titled

1 Prefiled Testimony of Georgia Vlahos, if there are
2 no objections and I see none, we will admit this as
3 Exhibit 4 in Docket R01-27. Could I ask Ms. Vlahos
4 if it might be possible in perhaps a public comment
5 if you could submit maybe a clean version, including
6 the language that you just read into the record?

7 MS. VLAHOS: We will do so.

8 HEARING OFFICER BEAUCHAMP: Okay. At this time
9 then we'll look for any questions from the floor,
10 the audience attending for Ms. Vlahos, any questions
11 from the members of the Board or staff. Board
12 member Kezelis?

13 MS. KEZELIS: Thank you.

14 Ms. Vlahos, would you provide to the Board
15 a copy of the Department of Defense policy on land
16 use controls?

17 MS. VLAHOS: Certainly. I have a copy
18 available.

19 HEARING OFFICER BEAUCHAMP: Would you like to
20 make that an exhibit as well?

21 MS. VLAHOS: Yes, I would.

22 HEARING OFFICER BEAUCHAMP: This is entitled
23 Memorandum for Assistance Secretary of the Army,

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1 of the Navy, Installations and Environment;
2 Assistant Secretary of the Air Force, Manpower
3 Reserve Affairs, Installations and Environment;
4 Director, Defense Logistics Agency and the subject
5 is policy on land use controls associated with the
6 environmental restoration activities. It is dated
7 January 17th, 2001. If there are any objections,
8 seeing none, we will admit this as Exhibit No. 5 in
9 R01-27.

10 MS. KEZELIS: Thank you, Ms. Vlahos.

11 I have one other question and that is
12 this: In addition to Illinois, how many other
13 states have you entered into LUC MOAs.

14 MS. VLAHOS: I am aware of Florida and it's one
15 of the Carolinas. I believe it's North Carolina.

16 MS. KEZELIS: Thank you.

17 HEARING OFFICER BEAUCHAMP: Other questions?

18 MS. LIU: Good afternoon, Ms. Vlahos.
19 What happens in states where you don't have these
20 LUC MOA type agreements?

21 MS. VLAHOS: Certainly it depends on whether
22 the state's regulations require deed recordation or

23 not. Where it does, we're simply not able to close
24 out our sites.

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1 MS. LIU: In the proposed LUC MOA that you did
2 provide you mentioned that it applies to an
3 installation. Could you please describe what an
4 installation is in terms of DoD?

5 MS. VLAHOS: Typically, it is a military base.
6 It could also be a reserve center. It is the
7 facility on which activities related to the
8 Department of Defense would take place.

9 MS. LIU: Generally speaking, how big could an
10 installation be?

11 MS. VLAHOS: Well, our installation at the
12 Great Lake's is fairly vast, 1,638 acres so I
13 suppose it is that vast. I don't know how large
14 Scott Air Force Base is or the Rock Island Arsenal
15 which are the other two principal military
16 installations in Illinois.

17 MS. LIU: Would separate MOAs be treated for
18 separate installations?

19 MS. VLAHOS: Correct. Separate MOAs would be
20 created for separate installations.

21 MS. LIU: An installation could consist of more

22 than one remediation site?

23 MS. VLAHOS: Yes. The LUC MOA is to apply to
24 an installation and then the control is imposed --

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1 we have a term LUCIPs, in the implementation plan
2 for various things could encompass more than one
3 site. We view it also as a living document more
4 sites are found in the future that require some sort
5 of remediation is going to be modified or advised
6 with, of course, full Agency, USEPA necessary
7 concurrence as time goes by.

8 MS. LIU: The LUC MOA also seems to create a
9 lot of new work for the Navy. There seems to be
10 30-day notification, quarterly reports, inspections
11 annual reports that kind of thing?

12 MS. VLAHOS: Annual certifications, correct.
13 These are some of the -- this is the effort to do by
14 contract, if you will, and to give notice and to
15 give assurance to the Agency what we cannot do by
16 recording on the land records. It's to ensure the
17 continuation, the effective management of the
18 controls.

19 MS. LIU: How is the Navy preparing to budget
20 for and provide training for those kinds of new

21 requirements.

22 MS. VLAHOS: This will fit very much into our
23 environmental compliance program. At our base, for
24 example, we have an environmental department

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1 comprised of over 20 people who would undertake this
2 function. It would be part of our budgeted
3 environmental compliance operations.

4 MS. LIU: Thank you very much.

5 HEARING OFFICER BEAUCHAMP: Other questions?
6 All right. I see none. Thank you, Ms. Vlahos.
7 Let's go off the record for a few moments.

8 (Whereupon, a discussion
9 was had off the record.)

10 HEARING OFFICER BEAUCHAMP: Next we are going
11 to have the testimony of Harry Walton. Could you
12 please swear Mr. Walton in?

13 (Mr. Walton was sworn in.)

14 MR. WALTON: Good afternoon. My name is Harry
15 Walton. Today I'll be testifying on behalf of IERG,
16 the Environmental Regulatory Group and SRAC, the
17 Site Remediation Advisory Committee. We'll be
18 providing comments with regards to Illinois EPA's
19 proposal and the Citizens for a Better Environment's

20 proposed amendments to the SRP program.

21 First of all, SRAC is a ten-member
22 committee that was appointed by the Governor. This
23 committee was formed as a part of Title XVII, the
24 Brownfield legislation. This committee was charged

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1 with working with the Agency, offering our insight
2 and to develop regulatory proposals for
3 implementation of Brownfield.

4 The two main regulations that were
5 developed were the SRP program and TACO. During
6 this process, we worked and built on the experiences
7 of the Agency. We had a lot of experience within
8 this committee. I have an excess of 26 years of
9 remedial experience in regulatory programs ranging
10 from the TACO, RCRA, CERCLA, numerous different
11 remedial processes. The goal of SRAC and the Agency
12 was to develop a consensus proposal in the initial
13 rulemaking, initial SRP and TACO program and during
14 our testimony in front of the Board I guess in 1996,
15 '97, we supported the Agency on this consensus
16 proposal. We had worked out many important issues
17 and resolved many issues to have a more effective
18 rulemaking in front of the Board. SRAC and IERG

19 have worked with the Agency in regards to these
20 proposed amendments. We are in support of many
21 aspects of them. We are a bit confused on some
22 aspects of these proposed amendments and I would
23 like to get into those in a few moments, but another
24 issue that's been brought and we discussed at length

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1 this morning was the proposed Subpart H, Community
2 Relations proposal.

3 During my professional career, I've worked
4 with community relations starting in about 1986.
5 Community relations is an effective tool to be used
6 in the remedial process. The community relations
7 program should be based upon the site
8 characteristics. As it has been said prior, the
9 community relations, one size does not fit all.
10 Community relations should be implemented by the
11 remedial applicant. The need for community
12 relations should also be determined by the remedial
13 applicant. It's been my experience that one out of
14 100 sites requires community relations, except for
15 one class of sites in Illinois, they are historical
16 former gas manufacturing plants. Those plants
17 typically require community relations because of

18 their location and the nature of the contaminant.
19 They stink, they smell. The old factory levels are
20 very, very low for coal tar, but it is a program
21 that if it's appropriate, it should be implemented.
22 We had a lot of discussion this morning in regards
23 to what consists of community relations. It's been
24 our experience, again, I'm speaking primarily for

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1 Harry Walton here not members of IERG and SRAC, we
2 have implemented several -- right now I'm involved
3 in a number of sites that we're using community
4 relations. The need for community relations -- we
5 use a community survey, we go out four to five, six
6 blocks from the site and see who the interested
7 parties are. We talk to the local government. We
8 talk to any organizations within that zone. We go
9 to the newspapers, they have a very good idea of who
10 are the interested parties. Based upon that, we
11 implement a number of strategies going from what we
12 call a living room meeting with the use of facts
13 sheets. You always want to put something on paper
14 that you can leave with them. It's been our
15 experience when we're at public meetings or anything
16 formal, the participation was not good. The people

17 you want to hear from typically do not respond in a
18 forum. We found that the community survey, if
19 appropriate, the living room meetings, were the best
20 way to solicit information and actually had
21 one-on-one meetings with those individuals that
22 could be effective, but again, it depends on the
23 site issues. Location, location, location, is very
24 critical and the contaminants of concern.

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1 IERG and SRAC support the concept of
2 community relations that has been advanced by the
3 Citizens for a Better Environment. We think there's
4 some opportunities to work with them to give them
5 our insight from SRAC on ways to have a program that
6 is effective and it will really be a program that
7 will respond to the characteristics of the site and
8 the needs at the site. One size does not fit all.

9 The next area I'd like to comment on, the
10 main provisions of the amendments by the Agency to
11 the SRP program is the concept of soil management
12 zone and it has been our practice, IERG, SRAC and
13 the Agency worked together, we had a number of
14 meetings to explore this concept. IERG and SRAC
15 are very supportive of the soil management zone.

16 We're a bit confused on one of the conditions that
17 were attached to the soil management zone. These
18 conditions were attached subsequent to the
19 interaction and the consensus agreement between --
20 among IERG, SRAC and the Agency. One provision --
21 the provision with regards to moving a soil
22 management zone onto soils that are Tier I or clean.
23 From an antidegradation sense, common sense, we
24 don't have a lot of problems with that additional

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1 condition. It doesn't make sense to take dirty
2 material and move it into a clean zone. We do have
3 a problem with the other condition; that is, the
4 prohibition of moving a soil management zone closer
5 to a residential area. I've had this explained to
6 me a number of times during our discussions and
7 truthfully, I'm a bit confused on the need for it.

8 First of all, there's one basic situation.
9 When you use a soil management zone, that material
10 is going to be characterized. That soil has to be
11 analyzed for all the contaminants of concern under
12 the SRP program, a comprehensive evaluation of the
13 materials in them so you have an understanding what
14 this material consists of.

15 You have the TACO solution, you have to be
16 protective according to TACO. That protection is
17 afforded regardless of where the -- the receptor is
18 always on the other side -- is at the compliance
19 point. If you have a soil management zone,
20 typically you use a barrier. On the other side of
21 the barrier, that's the compliance point. You have
22 to be protective at that point. An example would
23 be, if you have a site that's in a residential area,
24 totally surrounded by residential, it will be

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1 residential, you implement a TACO solution, it's
2 protective, everybody pretty much agrees upon that,
3 it is protective. Now, let's take another site, you
4 have a large industrial complex, if you have
5 residential over here, you're going to have a
6 solution that's protective, but we have an arbitrary
7 prohibition about moving soil closer to the
8 residents. What is the difference in those two
9 scenarios? They're both protective. In fact, in
10 this location, we have residents on and adjacent to
11 the site. The same solution is afforded in both
12 locations. From a risk perspective under TACO, many
13 people involved in that rule -- we always get ten

14 minus six protection at the point of compliance and
15 that's critical. In the Agency's statements this
16 isn't about risk, it's about perception. As I
17 eluded to earlier, if it's about perceptions and
18 risks, if there are conditions at a site and the
19 site conditions warrant a community relations
20 evaluation of that site because of location,
21 location, location, residents or the contaminant
22 concerned, then it would be appropriate to address
23 that issue head on with a community relations plan.
24 If it's an issue, let's address the issue. Our goal

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1 under SRAC and IERG and I think the Agency also,
2 when we have a TACO solution, it's protected. Why
3 do we need additional conditions?

4 Another issue that we'd like to offer --
5 we offered a definition on what is soil management
6 zone and to that what is soil. I know we wrestled
7 this term with the Agency, the Agency wrestled with
8 it, we wrestled with it. The term soil to us means
9 material that is not source material. As we said
10 previously, the good gooey stuff, it passes Subpart
11 C, it's not hazardous, it's not corrosive, it does
12 not exceed soil attenuation. You know, those help

13 us define what is source material that has to be
14 removed. Under all TACO solutions you have to
15 remove source material or the good gooey stuff. So
16 what we're saying is if it's not that, if it passes
17 that test and the Agency approves it, is soil. We
18 try to construct a definition -- we know what it
19 isn't, we know it's not landfill material. We know
20 it's not material that we would look at as going to
21 a landfill, meeting those activities. It is
22 material that is at the site based upon typically
23 the historical activities at the site. Hundreds of
24 years of fill, land use, casual disposal, material

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1 have numerous different materials in it. It is not
2 a homogeneous, heterogenous mixture of materials.
3 Again, we tried to construct a definition and we
4 wrestled with it, but I think we have enough faith
5 in the ability to characterize this material in
6 compliance with the aspects of TACO and again, it
7 will be an approved remedial action plan that
8 prevents people outside the process to manage these
9 facilities or construct these facilities.

10 I think those are my main points. One
11 other additional issue and this is an issue that

12 we've discussed with the Agency subsequent to this
13 and this is in regards to use of data from
14 noncertified labs. We are in support of the
15 certification of laboratories. It does give us --
16 it is a more effective program. It does reduce
17 costs to remedial applicants and it allows
18 comparability of data, but there are certain
19 situations where a company may have a contract with
20 a response company, they will go out -- they may or
21 may not be following the SRP certification
22 requirements. This may or may not be a problem, we
23 don't know. It's just an issue we like, we brought
24 up. We have an understanding that the Agency agrees

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1 that this type of information could be used for site
2 characterization and depending on the data, it
3 probably would not be able to be used for TACO
4 compliance sampling, but the data still has value
5 and it should be used for some aspect of the
6 investigation. That ends my testimony. I'd be
7 happy to take any questions.

8 HEARING OFFICER BEAUCHAMP: Thank you,
9 Mr. Walton. Before we open the floor to questions,
10 would you like to submit your prefiled testimony as

11 an exhibit?

12 MR. WALTON: Yes.

13 HEARING OFFICER BEAUCHAMP: This is the
14 prefiled testimony of Harry R. Walton. Are there
15 any objections to admitting this as an exhibit?
16 Seeing none, we will admit this. Mr. Walton, your
17 testimony addresses both Dockets R01-27 and R01-29?

18 MR. WALTON: Yes.

19 HEARING OFFICER BEAUCHAMP: Should we admit it
20 as an exhibit in both dockets then?

21 MR. WALTON: Yes.

22 HEARING OFFICER BEAUCHAMP: You wouldn't happen
23 to have extra copies, would you?

24 MR. WALTON: There were some over on the table.

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1 HEARING OFFICER BEAUCHAMP: I can run a copy of
2 this off during our break. It will be Exhibit 6 in
3 R01-27 and it will also be Exhibit 5 in R01-29.

4 Are there any questions for Mr. Walton?
5 Mr. Eastep, I think I saw your hand up?

6 MR. EASTEP: Yes. In the first part of your
7 testimony, Mr. Walton, you don't seem to be confused
8 about community relations and whether or not formal
9 public hearings are effective. It's my

10 understanding you don't think they're very
11 effective?

12 MR. WALTON: It's been my personal experience
13 they are not effective.

14 MR. EASTEP: Are you familiar with the Agency
15 guidance on community relations?

16 MR. WALTON: Yes.

17 MR. EASTEP: Is there anywhere in that guidance
18 that explicitly or even implicitly requires public
19 hearings?

20 MR. WALTON: My past review and understanding
21 of that guidance, it does not require public
22 hearings.

23 MR. EASTEP: It's all site specific?

24 MR. WALTON: Site specific.

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1 MR. EASTEP: You also mentioned that you
2 thought that all the MGP sites, manufactured gas
3 plant sites, needed community relations. Is it your
4 understanding that the sites in the program now
5 pretty much all do have community relation plans?

6 MR. WALTON: The sites and programs I'm
7 familiar with would be primarily Illinois Power
8 companies and to some extent, several other

9 utilities. They all include community relations as
10 a part of the remedial program.

11 MR. EASTEP: So they're all doing that now?

12 MR. WALTON: Yes.

13 MR. EASTEP: Thank you. No further questions.

14 HEARING OFFICER BEAUCHAMP: Thank you,
15 Mr. Eastep. Additional questions for Mr. Walton?
16 Questions from the Board members or staff?

17 MS. McFAWN: Manufacturing gas plants also have
18 community relations programs. Have you used formal
19 hearings in any of those that you're familiar with?

20 MR. WALTON: My personal experience has been
21 with about 25 gas manufacturing plants. We did not
22 have formal hearings. We had a number of different
23 types of public meetings from a -- what I call a
24 PR event to a living room meeting, but the type of

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1 meeting was dependant upon what activity was
2 occurring at the site and what the site
3 characteristics dictated we do.

4 MS. McFAWN: You mentioned community surveys.

5 MR. WALTON: Yes.

6 MS. McFAWN: Did you conduct those before you
7 began the SRP process or in the midst of it or at

8 the conclusion?

9 MR. WALTON: Again, I can speak to one program.
10 The program that I was involved with, we conducted
11 those surveys in 1986 long before the existence of
12 the SRP program.

13 MS. McFAWN: And those were done then prior --
14 obviously before you started the remediation?

15 MR. WALTON: Yes.

16 MS. McFAWN: What did you do with the
17 information you gained at that living room meetings
18 or other contact with the public?

19 MR. WALTON: Well, it depends on the site. I
20 can give you a number of examples. One site we were
21 in a commercial area on one site, residential on the
22 other site. One of the critical issues is
23 groundwater. During the living room meetings, we
24 surveyed the areas. Our records, our review, our

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1 Phase I, Phase II effort did not identify any wells
2 that were used for potable consumption. Lo and
3 behold, community living room meetings we found a
4 number of dug well cisterns if you would that were
5 used -- they were 25, 30 feet deep that were using
6 groundwater for watering gardens and incidental

7 drinking. So they -- it was critical information to
8 us.

9 MS. McFAWN: If persons at those meetings
10 objected to what you were engaged in in the program
11 for remediation, how did that factor into your
12 decision-making?

13 MR. WALTON: Again, another case we had was
14 located -- a site was located in totally a
15 residential area. We had information that indicated
16 that there may be materials beneath their basements.
17 We had an idea what the aerial extent was. We
18 raised these issues to them. They had few issues
19 themselves and we implemented additional
20 investigations, additional sampling. It came to
21 pass, we actually emptied out their basements of all
22 of their own materials so we could monitor their
23 basements. We took that information we gathered
24 during these living room meetings and reacted to it.

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1 MS. McFAWN: You stated at the outset that
2 MPG sites all had community relation plans?

3 MR. WALTON: The ones -- I'm aware of a certain
4 universe that do have community relations attached
5 to them.

6 MS. McFAWN: Okay. What was the driving force
7 for that again?

8 MR. WALTON: Primarily, the location and odors.

9 MS. McFAWN: Locations because of residents?

10 MR. WALTON: These are historical sites. These
11 sites started operation from 1855 as recently in
12 Illinois as 1950s they operated. Most of them were
13 built before and at the turn of the century. Most
14 of these were in the downtown area located next to
15 streams. There's been a lot of redevelopment and
16 other uses subsequent to this activity. So there
17 are a lot of issues that have to be addressed from
18 community acceptance. These sites are within the
19 community. They're visible, there's a lot of
20 activity proximate to them, there's activities such
21 as daycare, hospitals, numerous things, and the
22 bottom line is they stink. They have odors and
23 there's a perception of risk.

24 MS. McFAWN: When you talked about the fact

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1 sheets, I assume you distributed those at the living
2 room meetings and other meetings?

3 MR. WALTON: Fact sheets were developed -- they
4 are a relatively concise document that gave what I

5 call a high level of information, what the issue is
6 and why we're doing it. That fact sheet was used a
7 lot. That fact sheet was sent out to -- say, we're
8 going to start a site investigation. We sent the
9 facts sheet out to the media, to the residents, to
10 any -- we had a list of people that would be at
11 interest at the site, we sent them copies. So
12 everybody had an awareness of what was going on at
13 that stage of the game and I think somebody else
14 also stated, community relations program is a
15 dynamic plan. It has to change based on where
16 you're at in the process. Most of the issues may or
17 may not develop until after you completed the
18 investigation, you developed the remedial action
19 plan and such as that. It is a dynamic document.
20 It has to be periodically evaluated, but again, it's
21 not a typical requirement. As I said earlier, less
22 -- one in 100 sites may require it.

23 MS. McFAWN: Those were the only questions I
24 had on that issue. Let me make sure that -- others

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1 have questions on the same issues focus on that.

2 MR. WALTON: Again, I'd like to offer -- I said
3 earlier, SRAC and IERG like to work with the Agency

4 and the Citizens for a Better Environment to help
5 instruct an effective program that would work and
6 would be based upon -- you know, would give you
7 something that's effective. It is an effective
8 tool, as a part, if it's required.

9 MS. McFAWN: There was -- I do have one more
10 question. There has been interest -- some concern
11 about defining interested persons. Could it be
12 defined by rule or is it better not defined?

13 MR. WALTON: I don't know how you would define
14 that because every site is different. The site
15 survey, the site walk around, tells you who's
16 interested and sometimes you may go out four, five,
17 six blocks, you pretty much have -- and you talk to
18 the local newspaper, the mayor, the city counsel,
19 they know the interested groups. It's a pretty
20 standard protocol and it really -- very soon you
21 know who they are. There's a couple people you
22 typically would have, the local governmental
23 officials, the state and federal representatives.
24 Those are our typical ones. The local newspaper and

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1 TV stations. Those are our typical ones. But
2 again, it may not be of interest to them.

3 MS. McFAWN: I'm not that familiar with the
4 Agency's guidance document. Do they have -- maybe
5 the Agency can respond as well -- suggestions of how
6 you identify the interested persons as you just
7 described? You do? Mr. Eastep is nodding yes.

8 MR. EASTEP: Yes and I don't have the document
9 in front of me, but there is a recommendation on how
10 to come up with that list. It talks about some of
11 the same -- similar things and it's -- again, that's
12 really site specific. You figure that out kind of
13 when you get there type of thing. That is in there.

14 MS. McFAWN: Thank you.

15 MS. LIU: Good afternoon, Mr. Walton. I have a
16 question about soil management zones.

17 MR. WALTON: Yes.

18 MS. LIU: IERG had proposed a definition of
19 soil that contained the term contaminated media.
20 Could you provide a definition of contaminated
21 media?

22 MR. WALTON: To me, contaminated media is
23 material fine for a site -- and again, this goes --
24 I hate to say the word, as a common sense

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1 definition. We tried to construct something and we

2 kept getting in trouble trying to construct a
3 definition. We know what it isn't. We know it's
4 not material that fails Subpart C. We know it's not
5 land typical municipal waste. I can't speak for the
6 Agency, but I think they wrestled with the issue.
7 We had a lot of discussion on the issue ourselves.
8 The site characteristics -- you know, again the
9 basis for TACO, we want to have a program that
10 reacts to the characteristics of the site. It's
11 constructed to react on the characteristics of the
12 site and the risk presented by that site. So, to
13 me, in certain parts of Chicago you have a lot of
14 fills from various materials. We had the old
15 Chicago fire debris that's causing problems, but
16 that's there. You've got to manage it. Again, we
17 have tools that help us out with area backgrounds
18 and things such as that, but there's still materials
19 that have to be managed in the remedial process and
20 the redevelopment of that site. So that is the end
21 goal, the redevelopment and use of that site. The
22 theme of this legislation was Brownfield. The basis
23 for TACO and the SRP was Brownfield. This is being
24 used at a lot of Brownfield sites.

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1 HEARING OFFICER BEAUCHAMP: Board member
2 Kezelis?

3 MS. KEZELIS: Mr. Walton, thank you.
4 The benefit of your experience in site remediation
5 is very helpful for purposes of the questions I have
6 and specifically they are this: Do you, in your
7 experience, in site remediation and community
8 relations work, have you identified any problems
9 in the community relations element of what you've
10 done over the years that would be unique to Chicago?
11 Does Chicago present any problems that are unique or
12 no?

13 MR. WALTON: As long as the process is
14 constructed to allow for the site characteristics,
15 it will be effective. It cannot be that
16 prescriptive. Again, the process is -- it should be
17 a flexible process that reacts to a site's
18 conditions.

19 MS. KEZELIS: Thank you.

20 HEARING OFFICER BEAUCHAMP: Any other questions
21 for Mr. Walton?

22 MS. McFAWN: I had some questions about the
23 soil management zone. In your suggestion that you
24 be allowed to put a soil management zone nearer to a

1 residential property than would now be allowed under
2 the proposed rules and, as I read it, if that
3 ability should be conditioned upon the preliminary
4 mentation of the community relations plan?

5 MR. WALTON: I think I said two things, I had
6 an or in there. One thing is if site conditions
7 dictate it's not an issue, it's not an issue. If
8 you have a large industrial site and the residents
9 is somewhat remote, again, that's objective, but
10 again the TACO solution is protective. It's
11 protective with that barrier is if the residence is
12 on top of the exposure or whatever -- what I'm
13 saying if those -- that is issue -- there is an
14 issue in regards to adjacent residences, the
15 remedial applicant has the opportunity to do a
16 community relations plan to address the issue, the
17 perceptions issues, inform them, let them know if
18 the site conditions dictate that's an issue.

19 MS. McFAWN: I was looking at the language you
20 proposed at page 7 of your prepared testimony and I
21 guess I'm missing something here, I'm not exactly
22 sure how that is -- that concept is integrated with
23 that language.

24 MR. WALTON: The language is not currently in

1 there. What I'm saying is delete the section that
2 requires -- that prohibits moving closer to the
3 residents, then the remedial applicant -- again, the
4 remedial applicant makes this determination. If
5 there are issues there, they'll come out in the
6 process about adjacent residents, you would have the
7 opportunity as we do now -- community relations is
8 not required at gas manufacturing sites. It is not
9 required, but based upon site conditions,
10 contaminates of concern, it is implemented. What
11 I'm saying is -- or if these are issues let's use
12 community relations to address them.

13 MS. McFAWN: Okay. What happens if the RA and
14 the Agency disagree? The RA wants to put it closer
15 to a residential area and the Agency says no, not
16 because of risk, because of perception, which they
17 have testified to, would they have the ability to
18 compel the RA to engage in the community relations?

19 MR. WALTON: My basic premise is if it's a
20 protective TACO solution, it's protective. What
21 community relations does it facilitate acceptance of
22 that by outside parties? If it's an issue and it
23 needs to be facilitated, community relations does
24 it, but I don't believe -- I still -- the logic

1 fails me to include this prohibition about moving it
2 closer to a residential area. I just can't
3 understand it. People have tried to explain it to
4 me and I do not understand the need for that
5 prohibition.

6 MS. McFAWN: Well, if the need, as the Agency
7 testified, which is the perception, it is the
8 community's perception, wouldn't a rule that
9 obligates the RA to engage in community relations
10 plan modified for that site, wouldn't it be well
11 served to have such a rule rather than just a
12 voluntary action by the RA?

13 MR. WALTON: No. I don't see a mandatory
14 requirement for that appropriate. Again, remember
15 the community relations now are being implemented
16 where appropriate, where the site issues -- my
17 experience again, I can't speak for school
18 districts, I have not worked on those types of
19 sites, if it's an issue, community relations plans
20 are being implemented. And the Agency -- you know,
21 the SRP program there's a lot of interaction with
22 the Agency. If the need arises, I think the Agency
23 has -- can -- it has been my experience that they
24 can suggest these things and the merits can be

1 evaluated but the remedial applicant, he can make a
2 needs determination. If his needs determination
3 indicates it's an appropriate thing, he can
4 implement it, but we don't want to lose sight of the
5 fact that TACO is protective. I have a site here in
6 a residential area, I have the same conditions here
7 as here. I have residents all around me and on top
8 of me. That's not an issue. It's only here where I
9 have a property, I'm going to move a little bit
10 closer. If somebody -- I cannot understand the
11 logic and the need for this.

12 MS. McFAWN: Well, we've been talking about the
13 need for community relations plans or the possible
14 need for it as proposed by CBE concerning the
15 schools and that's a perception thing because TACO
16 is protective.

17 MR. WALTON: Uh-huh.

18 MS. McFAWN: And now we're talking about other
19 sites and sites that want to use and remain -- keep
20 contaminated material on-site and move it closer to
21 a residential area. So again, it's perception.
22 I mean, if I accept your concept that TACO is
23 protective, so why would it be okay for us to adopt
24 a rule which requires community relation plans for

1 schools and not do the same for soil management
2 zones?

3 MR. WALTON: Okay. This is Harry Walton
4 speaking. It's my experience one of the primary
5 triggers for a community relations plan in what my
6 criteria would be a school and daycare center and a
7 hospital, those are the things that would make Harry
8 Walton personally want to implement a community
9 relations plan.

10 MS. McFAWN: And that's because of perception.

11 MR. WALTON: Yeah. But those are unique
12 situations. We deal with residents all the time.

13 MS. McFAWN: Let's say that you accept the
14 argument that another trigger should be residents.
15 It doesn't mean that there has to be a public
16 hearing if you have a community relations plan, you
17 just have to reach out to those people with the
18 adjoining or nearby residences which you have
19 testified to you did it at gas manufacturing plants.

20 MR. WALTON: A community relations plan is
21 an -- is not something one enters into lightly.
22 It's a commitment and it's an effort. When I was
23 working at Illinois Power I'd say one-third of our
24 effort -- one-third of our effort went to community

1 relations. One-third of our effort went to keeping
2 the community informed, making sure we met with all
3 the right people. We had the right response actions
4 in place in case an event happened. Community
5 relation, it's a useful tool, but it also -- it
6 takes a lot of support to implement it correctly.
7 It's not something I would enter into lightly.
8 There's nothing worse than an ineffective community
9 relations plan.

10 MS. McFAWN: Thanks.

11 HEARING OFFICER BEAUCHAMP: Mr. Wight, you have
12 some questions.

13 MR. WIGHT: I have a couple questions.

14 Mr. Mark Wight, Illinois EPA.

15 Mr. Walton, you suggested that and, in
16 fact, you emphasized several times TACO is
17 protective. Doesn't that -- isn't that based on the
18 assumption that engineered barriers are properly
19 maintained and that institutional controls are
20 honored at or over a period of time?

21 MR. WALTON: That would be the case regardless
22 of location, yes.

23 MR. WIGHT: Okay. Is there an issue with

24 regard to SNZs -- within SNZs moving contamination

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1 closer to a residential property? Is there an issue
2 with regard to increasing contaminant loading near a
3 residential property and then relying on engineered
4 barriers and institutional controls as your
5 protective device? In other words, is it possible
6 that when you increased contaminant loading near the
7 residential property, that failure to maintain an
8 engineered barrier or to abide by an institutional
9 control would in some way possibly increase risk
10 near that residential property?

11 MR. WALTON: One, let's define -- if you could
12 define loading, I could respond to it. To me,
13 loading is a very nebulous term, has to be put in
14 context of the pathway you're trying to address, in
15 the context of Tier I, Tier III information. I
16 can't really speak to loading.

17 MR. WIGHT: Okay. And I'm not sure that I have
18 the background to make that more clear. I guess
19 what I mean by generally and this may help you
20 answer the question, but just increasing the -- not
21 necessarily increasing the concentrations, although
22 that might be possible under an SMZ might it not

23 where you move more contaminated material to an area
24 that was already contaminated, but perhaps

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1 contaminated in lesser concentrations.

2 MR. WALTON: I think it's basically from a TACO
3 solution it's -- I don't want to use the word
4 irrelevant -- but it's not a critical factor.
5 Remember this, risk is based on where the exposure
6 occurred. When you use soil management zone and
7 they will have a barrier over them, the risk is
8 measured on the other side of the barrier so,
9 therefore, there's no change and the actual
10 concentration as long as it does not exceed the
11 Subpart C criteria and if appropriate Tier I or the
12 Tier two numbers, it's protective.

13 MR. WIGHT: Again, that assumes that the
14 engineered barrier is maintained properly and on or
15 over time, is that correct?

16 MR. WALTON: Again, that basic premise is there
17 on the side I described over here, that's barrier
18 residential all around, it makes no difference.
19 There's no change in risk.

20 MR. WIGHT: We may be talking past one another,
21 but I'll move on.

22 I guess the other point I wanted to make
23 contaminant loading was not just the possibility
24 that the concentrations might increase near a

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1 residential property, but also simply even though
2 concentrations might be the same or perhaps even
3 less than just volumes of particular contaminant
4 might also increase under soil management zone
5 movement of the soil, does that help clarify what I
6 meant by contaminant loading or not?

7 MR. WALTON: No. The contaminants at the site
8 are at the site. We're not bringing more
9 contaminants onto the site. Basically, the relative
10 mass of contaminants at the site are the same.

11 MR. WIGHT: I would agree with that, but isn't
12 location also a factor with determining pathways
13 that need to be addressed?

14 MR. WALTON: Yes. But if you use a soil
15 management zone, one would have to look at the
16 pathways from that location of the soil management
17 zone. You would have to look at the soil
18 groundwater issues.

19 MR. WIGHT: Okay. I agree with that in order to
20 meet TACO once you redistribute the contamination

21 then is when you determine what is a proper TACO
22 solution in that particular area?

23 MR. WALTON: There location is an important
24 criteria for the development of the Tier two number,

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1 but you're going to address that.

2 MR. WIGHT: And then at that point you may lead
3 to additional reliance on engineered barriers and
4 institutional controls?

5 MR. WALTON: For soil groundwater, no.

6 MR. WIGHT: I have no additional questions.

7 HEARING OFFICER BEAUCHAMP: Thank you,
8 Mr. Sassila?

9 MR. SASSILA: You stated that community
10 relations plan is ineffective and you've been
11 involved mainly on MGP sites before and then you
12 said you think community relation plans should be
13 implemented only for schools, hospitals and daycare
14 centers?

15 MR. WALTON: I think you've misstated what I
16 said. I said that some of the important criteria
17 for me to determine when I would implement a
18 community relations plan would be those factors and
19 I think community relation plans are effective.

20 MR. SASSILA: Well, let me ask you this:
21 Generally, what you said here, it depends on the
22 site characteristics to decide if you need to have
23 community relation or not, is that correct?
24 MR. WALTON: To me, the site characteristic is

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1 the contaminant of the concern, the distribution of
2 the contaminant of concern and the location of the
3 site and the adjacent neighbors and the adjacent
4 potential receptors.

5 MR. SASSILA: So you look at all this criteria
6 and then you decide if there's a need for community
7 relations?

8 MR. WALTON: That's what I personally would do.

9 MR. SASSILA: But you said that you would do it
10 for a school anyway?

11 MR. WALTON: I said that that was one of the
12 typical -- the site I was talking about were MGP
13 sites, former gas manufacturing sites. They have an
14 odor problem, odor threshold that's very critical.
15 I would -- in that scenario, I would always have a
16 community relations plan when those potential
17 receptors were proximate to the site.

18 MR. SASSILA: Well, let me ask you this

19 question. Generally, in the Chicago area and
20 Chicago majority of the areas and do not have any
21 smells, any odor, any stick which you referred to
22 then having background contaminants off-site or in
23 the parkway of the street might be higher than what
24 you have in your site, what would be the purpose of

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1 having community relations when you tell them I have
2 some contamination here or my site is cleaner than
3 outside the street?

4 MR. WALTON: I didn't really understand your
5 question.

6 MR. SASSILA: My question is, background
7 contaminants exist everywhere in the Chicago area
8 and you might have a scenario which I believe the
9 Agency's been involved in where you have the site
10 above residential levels, however, the level of --
11 they are required to implement corrective measures
12 and clean it even though the background of the area
13 is contaminated at the higher levels. So what's the
14 purpose of having community relations addressing low
15 residual contaminates on a given site while the
16 surrounding areas might be a contaminated higher
17 level?

18 MR. WALTON: I think -- let me put what I think
19 you're saying in context. One, I'm dealing with
20 sites, my perspective is this is my site, this is
21 owned by let's say me and I have adjacent properties
22 and there may be a school here in the community
23 relations, the conditions you're talking about this
24 site's going to be a school, totally different

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1 scenario, this party is now the owner or the real
2 applicant of the site. When we had Illinois Power
3 sites, all Illinois Power sites where we had
4 facilities operating, we had very, very aggressive
5 community relations so all of the employees were
6 aware of this because they're at the site. It's a
7 different -- what you're presenting is a little bit
8 different than what I was discussing. It's all in
9 the context of what the site is. My site is, I'm
10 the owner and I want to make sure my adjacent
11 residents are informed of their potential receptor.
12 Your site is there on the site and there receptor.

13 MR. SASSILA: Let me ask you another question
14 here. For soil management zone, when you have
15 commercial industrial sites and you have residential
16 adjacent to that site for the ingestions exposure

17 you are required to have three feet of clean fill,
18 and now the definition of clean fill for residential
19 properties is not the same as for a residential one.
20 In other words, you have three feet of impacted soil
21 at industrial commercial site you might have level
22 of contaminants higher than what would be required
23 for the residential sites, is that correct or not?

24 MR. WALTON: Rephrase that.

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1 MR. SASSILA: Let me say it a different way.
2 The cleanup objectives for residential properties is
3 different than residential ones?

4 MR. WALTON: Yes.

5 MR. SASSILA: Correct? So if I have a
6 residential site here and the adjacent site is
7 industrial commercial and they decided to say -- I
8 have only a fence separating the two sites so this
9 side of the fence is the industrial commercial
10 property there they might have higher levels of
11 contaminants than would be allowed on the
12 residential site and the exposure --

13 MR. WALTON: In context -- in context I put
14 this, I have a barrier over that material --

15 MR. SASSILA: No. Your barrier is three feet

16 of fill which is for ingestion exposure routes for
17 industrial commercial. The concentration would not
18 be allowed on the residential property, but
19 acceptable under industrial commercial properties?

20 MR. WALTON: Most of my experience is we put a
21 barrier in, we put a barrier in so that we can meet
22 Tier I on the receptor side.

23 MR. SASSILA: But that is not required now
24 under the SRP program because off-site for soil is

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1 not an issue, is this correct?

2 HEARING OFFICER BEAUCHAMP: Mr. Sassila, are
3 you directing your question to --

4 MR. SASSILA: I am directing my question to the
5 EPA.

6 HEARING OFFICER BEAUCHAMP: Would it be more
7 proper to wait until they are taking the table to
8 direct it? Could you save that question?

9 MR. SASSILA: Sure, I can.

10 MR. WALTON: The SRP does -- SRP is a process.
11 The cleanup objectives are determined by TACO. TACO
12 has a series of options to develop a solution for
13 the site. The remedial applicant can choose to meet
14 whatever, the Tier I at the point of exposure or

15 residential or commercial.

16 MR. SASSILA: On the site?

17 MR. WALTON: On the site.

18 MR. SASSILA: Not the adjacent site?

19 MR. WALTON: But the point of exposure is the
20 critical point and what I'm saying is most barriers
21 that are put in -- you're going to put a barrier in
22 most cases -- there's a lot of asphalt going in.

23 MR. SASSILA: Well, you have to define barrier
24 here. You have different barriers, you have asphalt

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1 is different than three feet of fill. They are not
2 the same one.

3 MR. WALTON: In my experience, three foot of
4 fill changes to fill land is not effective to
5 redevelopment of the site. It's much more cost
6 effective to put in asphalt.

7 MR. SASSILA: Why you want to have landscape
8 areas? I mean, you cannot say we eliminate all
9 landscape areas, we cannot allow to have landscape,
10 you have to have asphalt.

11 MR. WALTON: And again, you still have to do
12 worker protection. Worker protection drives it even
13 lower. Typically, at these sites we use barriers

14 that are protective enough to allow certain
15 activities to occur at the site which do not require
16 these controls.

17 MR. SASSILA: But that's not correct. Worker
18 protection normally higher level -- the level for
19 cleanup of workers is higher than what you have for
20 residential, for industrial commercial, they are not
21 the same one.

22 MR. WALTON: That is -- but we try to hit the
23 Tier I so we don't even --

24 MR. SASSILA: For what --

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1 HEARING OFFICER BEAUCHAMP: Just a minute,
2 Mr. Sassila, you need to let Mr. Walton finish.

3 MR. SASSILA: I'm sorry.

4 MR. WALTON: TACO is a series of options. You
5 can use whatever solutions you want. People have
6 the opportunity to develop the solution that is
7 appropriate for their site. I cannot speak to
8 schools. I have no familiarity with schools. I
9 cannot speak to the process in the city of Chicago.
10 I don't understand the process nor do I have any
11 need to understand the process. What I'm saying
12 is we have a TACO process, they develop a solution

13 and the remedial applicant has that option.

14 MR. SASSILA: Thank you.

15 HEARING OFFICER BEAUCHAMP: Mr. Eastep?

16 MR. EASTEP: For my clarification, in getting
17 back to the community relations standpoint, do you
18 think it would be important to let the neighbors to
19 a school know that their site, in fact -- let's say
20 an adjacent site is an industrial site with
21 contamination, do you think it would be important or
22 do you think that the community would like to know
23 that the school where their children are attending
24 is, in fact, being cleaned up to safe levels?

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1 MR. WALTON: One part of me says -- you know
2 this is Harry Walton speaking, it wouldn't be a bad
3 idea if the contaminants of concern were such that
4 it was an issue to them. If the contaminants of
5 certain distribution was such there was a potential
6 to them -- there's too many variables to make a
7 general statement. Again, it goes to the site
8 characteristics of whether it would be important to
9 them or not.

10 MR. EASTEP: If the people were interested in
11 -- let's say the local neighbors were confused and

12 there is no communication, sometimes people tend to
13 just dream up facts. So given that circumstance, do
14 you think it would ever be helpful for the neighbors
15 to know that their site isn't being left
16 contaminated, in fact, it is being cleaned up?

17 MR. WALTON: I'm aware of a number of
18 situations where people fail -- they did an
19 appropriate, they failed to provide sufficient
20 information to people that things got out of control
21 and the effectiveness of the remediation -- it was
22 not an effective process in the long run, but again,
23 the remedial applicant has the opportunity to make
24 that determination based on-site conditions, based

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1 on his awareness and based upon the encouragement of
2 Illinois EPA. Most remedial applicants have a
3 number of meetings with the Agency. These issues
4 can be brought forward if it's an issue. Again,
5 based on-site characteristics. One size does not
6 fit all.

7 MR. EASTEP: No further questions.

8 HEARING OFFICER BEAUCHAMP: Other questions for
9 Mr. Walton? I see none. Thank you very much,
10 Mr. Walton.

11 MR. WALTON: Thank you. If we can go off the
12 record for a moment.

13 (Whereupon, a discussion
14 was had off the record.)

15 HEARING OFFICER BEAUCHAMP: We now have
16 Mr. Bruce Bonczyk. Please swear Mr. Bonczyk in.

17 (Mr. Bonczyk was sworn.)

18 MR. BONCZYK: My name is Bruce Bonczyk. I'm an
19 attorney with Bruce S. Bonczyk, Limited and I
20 represent the Illinois Society of Professional
21 Engineers, ISPE, and Consulting Engineers Council of
22 Illinois, CECI. I'm also a licensed professional
23 engineer.

24 I'm testifying today to object to certain

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1 portions of proposed amendments to 35 Illinois
2 Administrative Code 740. On behalf of ISPE and CECI
3 I filled with the Board a motion to oppose certain
4 proposed amendments to the Environmental Protection
5 Agency's proposal to amend 35 Illinois
6 Administrative Code 740 in a companion memorandum of
7 law in support of said motion.

8 We object to the proposed inclusion of
9 terminology and regulations which allows for

10 licensed professional geologists to perform certain
11 functions assigned to licensed professional
12 engineers in the enabling legislation for the SRP
13 program. We object on the grounds there is no
14 statutory authority in the enabling legislation to
15 include licensed professional geologists in these
16 rules. The SRP legislation only refers to licensed
17 professional engineers. An examination of
18 legislation provides no guidelines or standards upon
19 which the Agency or the Board may conclude that
20 licensed professional geologists are equally charged
21 by the General Assembly to provide specific services
22 subject to this rulemaking. We do ask the Agency
23 and Board to review the motion to oppose and the
24 memorandum of law previously filed.

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1 The prior testimony filed February 15th,
2 2001, of Mr. Eastep of the Agency confirms the above
3 objections. Mr. Eastep states the proposed rule
4 allows licensed professional geologists to perform
5 and to supervise only remediation site activities,
6 but not designed or signing or review of plans and
7 reports under the SRP program. This conflicts with
8 the expressed provisions of Section 58.6 of the SRP

9 legislation which make no reference to licensed
10 professional engineer -- excuse me, geologists.

11 Also, quoting Mr. Eastep's testimony
12 referring to the Professional Geologist Licensing
13 Act on page three of his prefiled testimony in
14 quotes, it does not expressly change who is
15 ultimately responsibility for plans and reports
16 under the Act. As a practical matter, this probably
17 means that licensed professional geologists could
18 conduct site activities only as an employee or under
19 contract to a licensed professional engineer, end
20 quotes. This is the status as it exists today. The
21 Professional Geologists Licensing Act allows for
22 such geotechnical services and there is no
23 corresponding overlap with the licensed professional
24 engineer services as purported by the Agency. The

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1 geologist services are subject -- excuse me, are
2 subset of the licensed professional engineers and
3 the licensed professional engineers bear the
4 ultimate responsibility of those services under
5 this Act. We believe there is no justification for
6 the proposed change as the existing rule allows for
7 the current relationships between licensed

8 professional engineers and licensed professional
9 geologists for the site activities.

10 Basically, we believe the Agency is
11 attempting to address a problem that doesn't
12 currently exist, but in doing so, it may actually
13 be creating the potential for confusion both in a
14 legal sense and a practical sense. Thus, we request
15 the Board and the Agency to strike the reference to
16 licensed professional geologists in the proposed
17 rules. Thank you. Any questions?

18 HEARING OFFICER BEAUCHAMP: Thank you,
19 Mr. Bonczyk. Before we go to questions, let me ask
20 you if you'd like to submit a written version or
21 maybe a longer version of your testimony as an
22 exhibit?

23 MR. BONCZYK: I don't have any with me. I just
24 kind of toned it today, but if you'd like us to, we

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1 could clean one up for you.

2 HEARING OFFICER BEAUCHAMP: It's entirely up to
3 you. If you'd like to submit a public later on,
4 that's at your discretion.

5 MR. BONCZYK: Okay.

6 HEARING OFFICER BEAUCHAMP: And we'll open the

7 questions for Mr. Bonczyk. Ms. Sassila.

8 MR. SASSILA: To the best of your knowledge,
9 is there any national standard for licensed
10 professional geologists, nation-wide, like,
11 standard?

12 MR. BONCZYK: Not that I know. Standards -- I
13 think each states vary. I do believe there's some
14 national associations for geologists, but I'm not
15 aware of specifically what your defining as the
16 standard.

17 MR. SASSILA: Well, is there a national
18 examination board or any national examination to
19 obtain a professional geologists license?

20 MR. BONCZYK: I don't have the answer to that
21 question.

22 HEARING OFFICER BEAUCHAMP: Other questions for
23 Mr. Bonczyk? I see none. Thank you, Mr. Bonczyk.

24 MR. BONCZYK: Thank you.

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1 HEARING OFFICER BEAUCHAMP: Can we go off the
2 record?

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

5 HEARING OFFICER BEAUCHAMP: After taking a

6 quick break, we've got the Agency at the witness
7 table now. Mr. Wight, do you have any opening
8 statements?

9 MR. WIGHT: No opening statement today.

10 HEARING OFFICER BEAUCHAMP: Okay. You have
11 two people with you. Could you identify who's with
12 you today?

13 MR. WIGHT: Yes. With me today on my right is
14 Larry Eastep, who is the manager of the remedial
15 projects management section of the Bureau of Land
16 and on my left is Greg Dunn, who is a unit manager
17 for the site remediation program. Unfortunately,
18 Gary King could not be with us today. Mr. King has
19 been ill and unable to attend several Agency
20 obligations within the last few days and today is
21 another. So we will carry on with Mr. Eastep and
22 Mr. Dunn. Do these witnesses need to be sworn in
23 again?

24 HEARING OFFICER BEAUCHAMP: I think just as a

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1 formality we could.

2 MR. WIGHT: Okay. If you'd like, we'll start
3 with that.

4 HEARING OFFICER BEAUCHAMP: If you could swear

5 the witnesses in.

6 (Mr. Dunn and Mr. Eastep were sworn.)

7 MR. WIGHT: We actually have a couple of things
8 that we need to take care of here. We have some old
9 business, some remnants from the first hearing where
10 we promised to go back and bring in some additional
11 information. We have done that. Then we have some
12 new business which involves a rework provision of
13 our original proposal and Mr. Dunn will be offering
14 new testimony on that. However, I'd like to start
15 with the brief statement regarding the Agency's
16 intentions with regard to the CBE proposal.

17 It was mentioned on a couple of occasions
18 in this morning's testimony that there had been
19 conversations with -- or between CBE and the Agency.
20 What has happened is that CBE has approached us on
21 at least a couple of occasions in the past asking
22 for our comments on their proposal and also if we
23 could agree with the contents if we would endorse
24 their proposal or support their proposal. The

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1 original proposal we had some problems with. We did
2 share some comments with them, but we did not have
3 an opportunity to work out those issues. We had

4 hoped then after the first hearing that we would
5 find some time between the first and second hearing
6 to work out those problems, we did not. CBE went
7 ahead and made some revisions to their first
8 proposal. They have taken care of some of the
9 problems that were raised, but they've also raised
10 some new issues with their second proposal, and we
11 have some things that cause us some concern, and we
12 have committed to work with CBE to work out
13 something and perhaps share with them some language
14 that we could live with along the lines of what
15 they're suggesting. They might accept our comment,
16 they might not. That, of course, would be up to CBE
17 in what they would like to do. If they ultimately
18 end up proposing something that we don't support in
19 its entirety, then we will respond in the
20 appropriate way at the appropriate time whether they
21 be additional hearings or in written comments, but
22 as of this point, we don't have an agreement on
23 language, but we have committed to continue working
24 with them. So that's the Agency position for now.

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1 MS. McFAWN: Could you tell us what some of
2 those concerns are offhand?

3 MR. WIGHT: Well, in a general sense I think
4 the concerns are that there are some provisions in
5 there that require the use or expenditure of Agency
6 resources. We're not certain whether or not we
7 agree with those just from the point of manpower and
8 budgeting and some of those issues. We do have some
9 questions about the way they have proposed their
10 community relations plan. The alternative that the
11 Agency would be required to do that if the RA did
12 not care to do that, that could be a very resource
13 intensive endeavor and also may or may not even be
14 effective. That may be our primary concern, but
15 also resource questions were raised by the tracking
16 and notice provisions with regard to engineered
17 barriers and institutional controls and then there
18 may be some other things that we don't have
19 conceptual concerns with, but we may have some
20 concerns about the language and maybe the vagueness
21 of the language and maybe we feel that some
22 additional specificity is needed.

23 MS. McFAWN: Thank you.

24 MR. WIGHT: If it's okay with you, we'd like to

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1 go back and start with the old business first, the

2 remnants from the first hearing and I will do a bit
3 of a set up and when I refer to the transcript all
4 the references to the transcript are for the
5 proceeding that was held on February 28th, 2001, in
6 Springfield. Once I do the set up, then either
7 Mr. Dunn or Mr. Eastep will respond or we will have
8 an additional exhibit to admit into the record.

9 The first of these items at page 46 to 47
10 of the transcript there was a suggestion from
11 Mr. Walton to Mr. Dunn about the Agency's proposal
12 to require that analyses of soil and groundwater
13 sample collected on or after July 1st, 2002, be
14 performed by accredited laboratories. Mr. Walton
15 suggested that large interstate companies often
16 have blanket contracts providing response teams to
17 mitigate releases. The response teams may or may
18 not use Illinois accredited laboratories.
19 Mr. Walton asked Mr. Dunn if the Agency envisioned
20 any kind of opportunity for the responsible party to
21 make a demonstration to use that data to mitigate
22 the release. Mr. Dunn stated that the use of the
23 data obtained from unaccredited labs for samples
24 collected prior to July 1, 2002, would not be an

1 issue. If the data were obtained for samples
2 collected on or after July 1, 2002, but prior to
3 entering the SRP, there would be an opportunity to
4 demonstrate that the data is acceptable for some
5 use. Mr. Dunn would like to clarify and expand on
6 that answer.

7 MR. DUNN: Thank you, Mr. Wight. Yes, I would
8 like to clarify the Agency's position on Mr.
9 Walton's question from the last hearing. Under our
10 proposal, all samples collected on or after July 1st
11 of 2002 shall be analyzed by an Illinois accredited
12 laboratory. For samples collected prior to July
13 1st, 2002, and analyzed either prior to or after the
14 July 1st, 2002, date an Illinois accredited
15 laboratory is not required. However, if a
16 responsible party is -- was performing mitigation of
17 a release and did not use an Illinois accredited
18 laboratory, then under the site remediation program
19 the data could be evaluated for suitability in a
20 manner similar to what is identified in 740.410(c).
21 The consultant or remediation applicant can submit
22 the data for consideration, but the Illinois EPA
23 does not have to use that data. What I would like
24 to say is that that data, however, cannot be used to

1 determine compliance with remediation objectives at
2 the site.

3 MR. WIGHT: Would it be better to proceed
4 through each of these before we get to questions or
5 do you think it would be better to allow questions
6 at the end of each response?

7 HEARING OFFICER BEAUCHAMP: I think it would
8 make more sense to go through your presentation in
9 its entirety and then take questions like we've done
10 with the other presentations.

11 MR. WIGHT: That's fine with us.

12 The second item at pages 51 and two of the
13 transcript, Ms. Liu noted that change of address
14 form has been proposed in R01-26 for the leaking
15 underground storage tank regulations to ensure that
16 the NFR letter is sent to the right address.

17 Ms. Liu further noted that the LUST program would
18 use the change use of address form to ensure that
19 reimbursement checks from the LUST fund are sent to
20 the correct address. She asked if the form would be
21 useful in a site remediation program for ensuring
22 that the NFR letter is sent to the correct address.
23 The Agency witnesses were unfamiliar with the
24 leaking underground storage tank provision and

1 offered to check further and reply at the April 4th
2 hearing. Mr. Eastep would like to respond.

3 MR. EASTEP: In checking with the LUST work
4 group, we found the primary purpose in the change of
5 address provision is to ensure payments from the
6 LUST fund are directed to the correct location.
7 Over the years, the LUST program occasionally has
8 had problems arising from oral request that payments
9 be sent to addresses different than the address of
10 record for the owner/operator. To avoid
11 misunderstanding and confusion, the Agency wants to
12 ensure that it has a written record of the
13 owner/operator's intentions as to where the LUST
14 payment is to be sent. This is not necessarily the
15 same address where the NFR letter is sent. The SRP
16 does not have the same considerations with regard to
17 payments and has had no problems with mailing NFR
18 letters to remediation applicants. At this time, we
19 don't see a need for change of address provision
20 similar to those proposed for the LUST program.

21 MR. WIGHT: The third item at pages 55 to 57 of
22 the transcript, Ms. Liu asked for a clarification of
23 the labeling of the appendixes for the draft of the
24 Illinois Department of Transportation Memorandum of

1 Agreement attached to Mr. Eastep's prefiled
2 testimony. The draft MOA references Appendixes A, B
3 and E, but not Appendixes C and D. Also, Member
4 McFawn when the draft attached to Mr. Eastep's
5 testimony would become final. Mr. Eastep will
6 respond.

7 MR. EASTEP: In reverse order, the IDOT MOA was
8 signed and became final September 29th, 1999. We
9 now understand that it has been used twice for sites
10 in the LUST program. It has not been used for sites
11 in the SRP. We have a signed document that we will
12 submit as an exhibit. While there are a few minor
13 revisions, there are no significant differences
14 between the copy submitted as a draft and the final
15 signed version.

16 With regard to the appendixes, the
17 reference in paragraph seven to Appendix E is
18 erroneous. The reference should have been to
19 Appendix C. They are not Appendixes D or E to the
20 IDOT MOA.

21 MR. WIGHT: We have a copy of that document
22 now. Mr. Eastep, would you please take a look at
23 that? Do you recognize that document?

24 MR. EASTEP: Yes, I do.

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

3 MR. EASTEP: This is a signed copy of the
4 memorandum agreement between the Agency and the
5 Department of Transportation and it does include an
6 Appendix B with institutional controls site listings
7 and in Appendix C even though there are no names on
8 it.

9 MR. WIGHT: Thank you. At this time, I move to
10 have this document admitted as an exhibit.

11 HEARING OFFICER BEAUCHAMP: Thank you. Are
12 there any objections to admitting this document into
13 the record as an exhibit? Seeing none, we will mark
14 this as Exhibit 7 in R01-27. Again, this is the
15 Memorandum of Agreement between the Illinois
16 Environmental Protection Agency and the Illinois
17 Department of Transportation.

18 Just for clarification, I'm reading at the
19 top of this document that it says this agreement is
20 entered into this 29 day of September and what year
21 is that again?

22 MR. EASTEP: Ninety-nine.

23 MR. WIGHT: You will not find that year in the
24 document itself. That was one of several oversights

1 that seemed to be in the document, but that is the
2 document that was signed without the year, only the
3 date.

4 HEARING OFFICER BEAUCHAMP: Thank you.

5 MR. WIGHT: Item four, on pages 80 to 85
6 there's a general discussion of whether the proposal
7 by CBE in R01-29 for schools, public parks and
8 playgrounds would effect small gardening plots on
9 vacant lots throughout the city of Chicago.

10 On page 83 Member McFawn asked Mr. Eastep
11 if he was aware of any such sites coming through the
12 SRP and to whom NFR letters would have been issued
13 if they have come through the SRP. Mr. Eastep
14 offered to investigate and provide any additional
15 information at the hearing on April 4th. It's
16 possible that this information now has become
17 irrelevant since the CBE has withdrawn the public
18 parks and playgrounds provision of its proposal. We
19 do have some information if you would like to have
20 it, but it's up to you.

21 MS. McFAWN: I would like it. I was surprised
22 that the garden plot would have come through the SRP
23 program so enlighten me.

24 MR. EASTEP: They're not exactly garden plots,

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1 there's -- and I think I mentioned in my previous
2 testimony that I discussed this issue with the city
3 of Chicago, Department of Environment. After the
4 last hearing I spoke with David Renalds (phonetics)
5 who's with Chicago DOE and we went through them and
6 the ones that came to mind, there was site in the
7 site remediation program or the SRP and that site
8 was located at 1900 North Clark. The site is an old
9 gas station and then it was a bus garage and that's
10 to be developed into a community park. Now, I don't
11 -- they're treating it down to residential levels,
12 but I don't know if there's any indication that
13 there's going to be a vegetable garden or anything
14 there. I just don't know one way or the other.

15 MS. KEZELIS: Isn't that part of Lincoln Park?

16 MR. EASTEP: I don't know. Is 1900 North Clark
17 --

18 MS. McFAWN: That would be Armitage and Clark.

19 MS. KEZELIS: Which is part of Lincoln Park.

20 MS. McFAWN: No.

21 MR. MELAS: That's on the south side of --

22 MS. KEZELIS: Lincoln Park. Okay.

23 MR. EASTEP: Well, it's in that area.
24 I would suspect that it wouldn't be recognizable. I

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1 mean, it was previously a gas station and a bus
2 garage and maybe the idea is to get it to blend it,
3 but I thought Mr. Renalds was going to try to be
4 here today, but apparently he couldn't make it.

5 There have been three sites that come
6 through the underground storage tank program. They
7 were all former Amoco sites and the city has a
8 program where they're taking some of these old sites
9 or Brownfields and they're turning them in to what
10 they call pocket parks because it's just a little
11 pocket and actually the size of these can be quite
12 small. The three sites he gave me were located at
13 6963 South Stony Island Avenue, 10051 South Ewing,
14 E-w-i-n-g, and 2501 East 83rd Street. Now, these
15 are just going to be these little pocket parks. And
16 the east 83rd Street site may have a -- like a
17 flower garden, but he didn't know any intentions on
18 using it as a vegetable garden. So I believe that's
19 the extent of my investigation.

20 MS. McFAWN: Thank you, Mr. Eastep.

21 MR. WIGHT: Item five, on pages 91 and two of

22 the transcript as part of an extended discussion of
23 Chicago school sites and how they deal with
24 environmental problems Ms. Jarka mentions a

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1 memorandum of understanding between the Illinois EPA
2 and the Chicago Department of Environment concerning
3 Chicago schools.

4 On pages 93 and four of the transcript
5 Member Kezelis asks if the Agency would submit a
6 copy of that MOU. We do have a copy of that MOU
7 with us today.

8 Could you take a look at that document
9 please? Could you tell us what that document is?

10 MR. EASTEP: This is a memorandum of
11 understanding between the Illinois Environmental
12 Protection Agency and city of Chicago, Department of
13 the Environment. It is signed by director Skinner
14 and Commissioner Abolt for the city on October 6th,
15 1999.

16 MR. WIGHT: And that's a true and correct copy
17 of the memorandum of understanding --

18 MR. EASTEP: Yes, it is.

19 MR. WIGHT: -- signed by the Agency? I would
20 like to move that this be admitted as an exhibit.

21 HEARING OFFICER BEAUCHAMP: Are there any
22 objections to admitting this document into the
23 record as an exhibit? Seeing none, we will mark
24 this as Exhibit No. 8. This again is a memorandum

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1 of understanding, Illinois Environmental Protection
2 Agency and the city of Chicago, Department of
3 Environment, there's a signature and date on the
4 back page of October 6, 1999.

5 Let me ask the Agency, is this document
6 more relevant towards Docket 01-27 of the proposal
7 or towards Citizens for a Better Environment's
8 proposal?

9 MR. EASTEP: I'm not sure it's particularly
10 relevant to either one directly. Indirectly it
11 maybe gives you an indication of the relationship
12 between the city and the state.

13 MR. WIGHT: It came out of questions involving
14 CBEs proposal. Ms. Jarka was testifying at the time
15 and I think that this was a question that came out
16 of that so perhaps it is better in the other docket.

17 HEARING OFFICER BEAUCHAMP: Okay. Then we will
18 renumber it. Instead of it being Exhibit No. 8 in
19 01-27, it will be marked as Exhibit No. 6 in 01-29.

20 MR. WIGHT: Item six, and this also probably
21 has more to do with the CBE proposal than the
22 Illinois EPA proposal. On page 95 of the transcript
23 Mr. Eastep offers to submit state-wide lists of
24 school sites that have come through the site

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1 remediation program. We have that list. Mr. Eastep
2 would you please take a look at that document?

3 MR. EASTEP: Yes.

4 MR. WIGHT: Please tell us what the document
5 is.

6 MR. EASTEP: This is a computer printout.
7 It's entitled Schools in the Site Remediation
8 Program and we searched our database and tried to
9 come up with either site names or site owners that
10 had school in the name or public schools or
11 something to that nature and I don't have my copy.
12 I thought there were 27 here.

13 MR. WIGHT: I haven't counted.

14 MR. EASTEP: I'm not going to count, but
15 there's about that many. So we think this is most
16 of the schools that are in there, but if for
17 whatever reason they didn't have school in the site
18 name or site owner, it wouldn't be here. I think

19 this is, if not exact, reasonably close.

20 MR. WIGHT: Mr. Eastep, is this a state-wide
21 list?

22 MR. EASTEP: This is a state-wide list. Most
23 of them are in Chicago, but it does have sites in
24 Carlisle, Illinois, Clinton, Lake Forest, Ottawa and

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1 Rolling Meadows.

2 MR. WIGHT: I would like to move that this
3 document be admitted to the record for the CBE
4 proposal.

5 HEARING OFFICER BEAUCHAMP: Are there any
6 objections to the admission of this document?
7 Seeing none, we will mark this as Exhibit 8 in
8 Docket 01-29. This is a chart and there's a date in
9 the corner of March 22nd, 2001. The title is School
10 in the Site Remediation Program. I correct that,
11 it's Exhibit No. 7 in 01-29.

12 MR. WIGHT: I believe that concludes our list
13 of old business. We also have some new business.
14 On page 15 of the transcript Mr. Dunn asked that the
15 Agency be allowed to defer its testimony on
16 amendments proposed for Section 740.415(d)(3) and
17 related amendments to Appendix A because the Agency

18 was reworking its language for Subsection(d)(3). On
19 March 13th, the Agency submitted to the Board a
20 motion to amend its proposal for Subsection(d)(3)
21 and additional prefiled testimony by Mr. Dunn in
22 support of the revised amendment. Mr. Dunn would
23 like to summarize his prefiled testimony.

24 MR. DUNN: Thank you, Mr. Wight. At the last

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1 hearing I did ask that my testimony on 740.415(d)(3)
2 be deferred to today's hearing and it's kind of
3 complicated --

4 THE COURT REPORTER: Could you move more
5 towards me?

6 MR. DUNN: The testimony I submitted is kind
7 of confusing because we actually have three
8 different languages for 740.415(d)(3) and I'll try
9 and go through that and try to clarify the best I
10 can in why we're making this change.

11 First of all, the original -- or current
12 language 740.415(d)(3) states that the practical
13 quantitation limit of the test method selected must
14 be less than or equal to the PQL for the target
15 compound list at Appendix A of this part or if the
16 site remediation objective concentrations have been

17 determined, the PQL must be less than or equal to
18 the remediation objective --

19 THE COURT REPORTER: Please slow down. I have
20 to take it down and I have to understand what you're
21 saying.

22 MR. DUNN: Okay. I apologize.

23 THE COURT REPORTER: Thank you.

24 MR. DUNN: The PQL must be less than or equal

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1 to the remediation objective concentrations for the
2 site. The reason this language is one that we're
3 trying to rework is that if you sampled for the
4 compounds on the target compound list in Appendix A
5 of 740 and you met the required quantitation limits
6 that are identified in Appendix A, it's quite
7 possible that you would miss a number of compounds
8 at your site. Specifically, there are 38 compounds
9 that have remediation objectives below the required
10 quantitation limits that are identified in Appendix
11 A in 740. Of those 38, 28 are identified as
12 potential carcinogens in the 742 regulations.

13 So going through the language in this
14 session we thought it needed reworking. So in our
15 original submission on January 10th, 2001, we

16 thought we had it fixed and we didn't. The one
17 change that we had in there was that we added that
18 the PQLs must be less than or equal to the Tier I
19 soil remediation objectives for residential
20 properties. This actually gave us a couple of
21 problems. One, is that there are nine compounds
22 that have construction work or inhalation values
23 below the residential values. So we weren't really
24 correcting the problem and the other problem was

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1 that there are 41 compounds identified -- that are
2 not identified on the Appendix A 740 list and these
3 are -- excuse me, 41 compounds not identified in
4 742. So if you were analyzed with one of those
5 compounds, you wouldn't have an RQL to compare to.
6 One of the examples for the construction work or
7 inhalation value and these are not compounds that
8 are just unusual compounds, toluylene is one of
9 them, that's a main compound especially at LUST
10 sites, but a main compound even at SRP sites and the
11 construction work or inhalation value is 42 for
12 toluylene, yet the residential objective is 650.
13 So this is the reason we went and tried to rework
14 our language in 740.415(d)(3). And we hope that the

15 new language that we proposed in my prefiled
16 testimony will correct the problems that were in the
17 original proposal in 740 and also in our subsequent
18 January 10th, 2001, prefiled testimony of our
19 proposed change, but hopefully, this change will
20 take care of that problem.

21 MR. WIGHT: Mr. Dunn, would you please take a
22 look at this document?

23 MR. DUNN: Yes.

24 MR. WIGHT: Would you tell us what it is,

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1 please?

2 MR. DUNN: This is my testimony concerning the
3 revision to Section 740.415(d)(3) including
4 attachments.

5 MR. WIGHT: Is that a true and correct copy of
6 the document that was prefiled with the Board.

7 MR. DUNN: Yes, it is.

8 MR. WIGHT: I'd like to move that this be
9 admitted as an exhibit.

10 HEARING OFFICER BEAUCHAMP: Thank you. Are
11 there any objections to the admission of this
12 document as an exhibit? Seeing none, this will be
13 marked as Exhibit No. 8 in Docket R01-27.

14 MR. WIGHT: I think you probably have copies of
15 this as well as copies of the new language, which
16 were attached to our motion to amend and there are
17 additional copies on the table.

18 HEARING OFFICER BEAUCHAMP: Thank you.

19 MR. WIGHT: This concludes the formal part of
20 our presentation today. So we're ready to accept
21 questions at this point.

22 HEARING OFFICER BEAUCHAMP: Thank you very
23 much, Mr. Wight. We'll open the floor to questions
24 for the Agency. We've lost a lot of people for the

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1 day, but do we you have any questions for the
2 Agency. Mr. Sassila?

3 MR. SASSILA: For the soil management zone, can
4 you clarify, are you going to allow any hazardous
5 waste being treated on-site to be buried on-site
6 instead of being -- have to be disposed off-site?

7 MR. EASTEP: Any hazardous waste that's on-site
8 would have to be managed under any applicable
9 requirements of the Resource Conservation Recovery
10 Act, RCRA. And specifically, I'm thinking of
11 remediation waste action plans. I'm getting the
12 acronym mixed up, but there's a provision under RCRA

13 to deal with remediation waste and if it -- if
14 contaminated soil were treated and allowed to remain
15 on-site under RCRA, then it would be also allowed
16 on-site under the SMZ. Is that clear?

17 MS. McFAWN: So in other words, if you can do
18 it under RCRA, you can leave it there under SRP?

19 MR. EASTEP: Yes. Provided it, of course,
20 meets all the other requirements.

21 MR. SASSILA: My second question is about the
22 remedial action plan schedule. Can you clarify what
23 are the changes regarding the SRP schedule or
24 schedule of activities?

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1 MR. EASTEP: Let me find the session here.
2 740.450(a) -- excuse me, 740.450 paragraph A,
3 subparagraph three, was changed to add the language
4 with estimated dates of completion through the
5 recording of the no further remediation letter and
6 the intent here is to have sites when they submit
7 their remedial plan to give us a schedule, and some
8 people do this already. We're asking -- formally
9 asking this because if we do get a soil management
10 zone, we think it's important to know how long
11 they're going to be operating as a soil management

12 zone and when they're going to be done. We don't
13 want to do anything that encourages people to get
14 in the program and to just create an illegal dump
15 and not proceed towards getting -- fulfilling the
16 other requirements of the soil management zone and
17 the SRP.

18 MR. SASSILA: Okay. And regarding soil
19 management zone, are you going to allow any owners
20 to import from -- if you own two facilities to
21 transfer contaminated soil from one to another one?

22 MR. EASTEP: No. The soil management zone is
23 intended only for on-site contaminated soils.

24 MR. SASSILA: So it has to -- how about if the

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1 site is large enough, are they allowed to remove any
2 contaminated soil to clean area?

3 MR. EASTEP: No. They cannot put soil on areas
4 that are currently clean and meet all the Tier I
5 requirements.

6 MR. SASSILA: So just for an example, if you
7 have a new construction project, you are excavating
8 for a new building, you're going to need some fill
9 where you might use some soil being generated from
10 the site you're creating or some other activities,

11 the owner cannot transfer their soil from area A to
12 area B, which could be, like, 50 feet apart on the
13 same site?

14 MR. EASTEP: Is area B currently contaminated?

15 MR. SASSILA: Well, area B could be
16 contaminated. Once you finish your excavation, you
17 might --

18 MR. EASTEP: Well, I'm not -- if they excavate
19 it out -- if they excavate material out, why would
20 they bring more material in?

21 MR. SASSILA: Well, it's very normal during
22 construction to use different type of fill and
23 might be not suitable for that intended construction
24 work, but still could be other materials maybe

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1 suitable for the intended usage.

2 MR. EASTEP: If the area B that you're
3 referring to, if it was previously contaminated, I
4 would say that it would be allowed under the SMZ.
5 If it were uncontaminated, you would not be allowed
6 to move soil there.

7 MR. SASSILA: And then my last question
8 regarding property boundary, when you have
9 contaminated soil, which may be industrial

10 commercial adjacent to residential properties, which
11 standards or scenarios do you use, on-site or
12 off-site or the most stringent one?

13 MR. EASTEP: The way the site is characterized
14 in terms of future use is up to the applicant.

15 MR. SASSILA: So if I say it this way, assume I
16 have industrial commercial site, I'm proposing an
17 engineered barrier of three feet of fill at my fence
18 line and then point of exposure for off-site which
19 is only separated by fence, I would apply the
20 industrial commercial standards, not the
21 residential?

22 MR. EASTEP: That's correct. I answered his
23 question, but I might want to amplify that. There's
24 still under the SRP and TACO even though you might

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1 need an industrial standards, you're still not
2 allowed to have releases from the site that would
3 violate any other requirements. So, for example,
4 under groundwater, it doesn't matter whether it's
5 industrial or residential. I mean, the numbers are
6 the same and whatever left the site would have to
7 meet the appropriate standard whether it's part 620
8 or NCL or whatever it might.

9 HEARING OFFICER BEAUCHAMP: Mr. Sassila?

10 MR. SASSILA: But that is only for groundwater.
11 I'm talking about soil.

12 MR. EASTEP: Okay. Then my answer stands.

13 HEARING OFFICER BEAUCHAMP: Thank you. Other
14 questions for the Agency today? Members of the
15 Board, Board staff?

16 MS. LIU: Good afternoon. Earlier this morning
17 an issued was raised about a conflict the CBE
18 proposal had with Section 58.15 of the Act whereas
19 the CBE proposal requires an NFR letter before the
20 site could be used. 58.15 simply requires
21 completion of the corrective action. You mentioned
22 that sometimes there are sites that are ready for
23 use that haven't received that letter yet. Is there
24 another Agency document that could be used as a

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1 check point besides the NFR letter?

2 MR. EASTEP: Not really because that -- the
3 activities occur pretty quickly once the remedial
4 action is done -- especially if they're fast
5 tracking a project, when the remediation is done,
6 the consultants usually try and submit the remedial
7 action completion report pretty quickly. We then

8 review those and once we've reviewed it and found
9 them to be acceptable, we have 30 days after that
10 to issue the NFR letter. So it happens fairly
11 quickly. What we do in that 30 days is typically
12 we'll draft up an NFR letter and send it to the
13 remedial applicant and give them a brief period of
14 time to look at it to make sure that they understand
15 it and it's okay with them. So there's not much
16 time involved.

17 MS. LIU: Is there a great deal of time between
18 when an NFR letter is issued and when it's actually
19 perfected?

20 MR. EASTEP: We -- in the site remediation
21 program, we try and monitor -- we don't use the term
22 perfected exactly, but filed under today's -- the
23 way the rules are today. In the site remediation
24 program, most of them are filed within the time

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1 frame. I would say well over 90 percent. We do
2 monitor those and if we do notice one we haven't
3 heard back from them and it should have been filed,
4 we try and call them and usually that does the
5 trick. So the best of my understanding is we have a
6 pretty high compliance with that.

7 MS. LIU: There's been so -- I'm sorry. Go
8 ahead.

9 HEARING OFFICER BEAUCHAMP: Mr. Sassila.

10 MR. SASSILA: To the best of your knowledge,
11 what is that time frame between remediation work
12 being completed and the final NFR being issued?
13 Do you have any idea, is it two months, three months
14 time period?

15 MR. EASTEP: It would probably be -- it all
16 depends when the consultant sends in the remedial
17 action completion report. I would say most of them
18 occur within two months.

19 For a point of clarification, we do have a
20 60-day review time for any single report that comes
21 in and actually we have another 30 after that.
22 After we approve it, we have 30 days to issue, but I
23 think most of those -- I haven't tracked that, but
24 that's kind of my gut instinct is that they probably

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1 happen in the two month range. Some of them
2 probably -- if people are really pressed, I know --
3 if they're under the gun for closing or opening a
4 school or something like that we try and help them
5 out. So some of them will be even shorter.

6 MS. KEZELIS: But the two-month period is from
7 the receipt by the Agency of the documentation?

8 MR. EASTEP: Correct.

9 MS. KEZELIS: Reflecting completion of the
10 work.

11 MR. EASTEP: Right. And I might add, it
12 depends on how -- if we've been working pretty
13 closely on a project that's very time sensitive, I
14 mean, we've turned them around almost in a matter of
15 a couple of days, but if we haven't or if there's
16 errors or problems then, of course, it could go up
17 to three months or if they're deficient it could get
18 sent back and actually go longer than that. I would
19 say a good median type figure is around two months.

20 MS. LIU: There's been a great deal of
21 discussion today about a community relations plan
22 and you even provided a guidance document on it. I
23 was wondering if could you describe what a community
24 relations plan entails in a nutshell.

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1 MR. EASTEP: Well, I don't know if I can do it
2 in a nutshell, but in the interest of time I'll try
3 and be brief.

4 A good community relations plan involves

5 telling your story to the people that are going to
6 be most effected in the nearby area. Mr. Walton, I
7 think, testified that when he was with Illinois
8 Power their standards, so to speak, was like the
9 local officials, the newspaper and media and that's
10 all fine. You also -- he might only have briefly
11 touched on is the ones that I've seen that are most
12 successful are people out, you know, pounding the
13 beat, they're walking the pavement, they're knocking
14 on doors, they're, you know, finding out, you know,
15 what the real citizen issues are with regards to
16 some of these sites. So you have to identify what
17 impacts you might have on the community, who might
18 most be affected and then from there you kind of
19 start thinking about well, how do I communicate to
20 them and educate those people as best as possible as
21 to what's going on. There's going to be some sites
22 where the people are never going to like what you
23 do. For example, there's always that chance, but if
24 you've gone out and you've educated them and they

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1 understand what's going on, then you've probably
2 been pretty successful.

3 Overall, I would say that in good

4 community relations, they don't cost anything and in
5 the long run, they tend to pay for themselves.
6 Although in terms of dollar and cents, it's much
7 more excessive to do a good community relations plan
8 than it is to put out a couple newspaper notices or
9 even hold a hearing. I don't think those are
10 particularly effective. I think what's effective is
11 the effort and energy people put into what they do.

12 So going back to kind of summarize, and I
13 think the document there was written by -- that I
14 submitted earlier was written by Greg Michaud, who's
15 formally head of community relations with IEPA and
16 it's fairly succinct, you go through this process of
17 identifying kind of what the issues are, who might
18 be affected and try and figure a way to communicate
19 what you're going to do to those people so they have
20 a good understanding.

21 HEARING OFFICER BEAUCHAMP: Mr. Sassila?

22 MR. SASSILA: From your own experience, don't
23 you agree that that process of having a new school
24 is different than remediating an MGP site given the

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1 fact most MGP sites now -- either residential,
2 public parks or some other -- are being useful for

3 different purposes where the entire community is not
4 aware of the fact an MGP site used to be here, why
5 for the school that process to have new school
6 normally take three to four months before you build
7 any school and you have to go through different
8 steps before you decide the site and other factors?
9 So they are two different really issues when it
10 comes to school, MGP or some other site and each one
11 should be addressed in separate ways and the most
12 appropriate way other than one generic forum for all
13 of them.

14 MR. EASTEP: In general, I think that every
15 applicant ought to evaluate their site for the
16 potential need for community relations plan. I
17 think Mr. Walton said 99 percent. I'm not sure
18 that -- that figure might be low, but everybody
19 should look to see whether they need a plan. Most
20 sites won't need a plan. All the sites are unique.
21 They're all individuals -- individual sites.

22 The point that I was trying to make in
23 some of my questions earlier is that in some cases,
24 if the public is interested, and I've seen this many

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1 times, they're going to -- I don't know, sit Friday

2 evenings when they're going out to supper and
3 something and they'll start talking and they'll,
4 like, assume facts not in evidence, as we say, and
5 they will just imagine all sorts of things going on
6 because nobody has taken the time to sit down and
7 communicate appropriately with them.

8 In those cases, a community relation plans
9 can be quite simple and easy and pretty inexpensive.
10 If you're telling people that you're cleaning up to
11 a residential standard, trying to explain to them in
12 layman's terms that it's safe for people not only go
13 to school, but to live for 70 years, for example,
14 then they won't conjure up all of these other types
15 of thoughts and I think that type of thing pays
16 for -- more than pays for itself down the line.

17 So I think everybody ought to evaluate the
18 sites and take that into consideration and community
19 relations plans, some of them, can be one or two
20 pages whereas as other might be -- the Superfund
21 site, of course, might be 1,000 pages, but most of
22 them are going to tend to be relatively brief.

23 One situation that he didn't mention is
24 comparing MGP sites to schools and we've had a

1 couple of instances where we've had MGP sites -- or
2 schools located on MGP sites, which, by the way,
3 that particular site went very well and the school
4 actually ended up with a track and a playground and
5 it's state-of-the-art, but it went very well because
6 they did a lot of work up front and worked with them
7 and there was no traffic -- for example, no
8 construction traffic during periods when kids would
9 be coming to school or leaving school or during
10 lunch hour. So they worked with each other pretty
11 good.

12 MS. LIU: Besides schools, could you provide
13 some examples of other situations where the Agency
14 has recommended a community relations plan?

15 MR. EASTEP: Besides Finkl and Zapata, you
16 mean? We've recommended -- there have been specific
17 sites where we get calls from people wondering
18 what's going on and why they're doing things and in
19 those cases, we'll try and get back to the company
20 or the applicant and let them know that there's some
21 citizen interest and suggest that they start doing
22 community relations. If we have real large sites
23 like a major industry shuts down in an area and
24 they're going to sell it and they're going to come

1 through the remediation program, there's obviously a
2 lot of public interest there, we would suggest that
3 they get in the program. People that -- even though
4 we advise them otherwise, they might want to involve
5 some sorts of thermal destruction on-site.

6 We know that citizens -- when that
7 happens, citizens get real excited and they don't
8 know what's going on and so we always advise those
9 people to develop a community relations plan and
10 actually we tell them in addition to that, in some
11 of these, we suggest they go out and obtain
12 qualified, professional help in that matter. They
13 wouldn't, you know, just hire any engineer. They
14 would hire an engineer that's experienced in
15 remediation work and likewise, we ask them to get
16 community relations people that are experienced in
17 this type of -- in this line of work.

18 MS. LIU: Would the Agency prefer keeping the
19 requirement -- just keeping the community relations
20 plan a voluntary kind of process rather than making
21 it a requirement? Is there enough initiative --

22 MR. EASTEP: I don't know if I can directly
23 answer that because I haven't figured out a way to
24 write what makes sense because like I said, it's

1 only a small percentage that really needs them and
2 when that need them, they should really have them.

3 So it would be -- it would be foolish to
4 ask people in sites where there's really no interest
5 and lot of times you can tell by just talking to
6 some of the neighbors or some of the employees, you
7 know, at a site that there's no interest. It would
8 be foolish to require them to do much more than just
9 find that out. So I don't know if the Agency has a
10 position as they sit here. I'm pretty sure we
11 don't.

12 MS. LIU: Skipping around a bit, under the
13 discussion of soil management zone, IERG had
14 proposed the definition of soil. How does the
15 Agency feel about that proposed definition?

16 MR. EASTEP: I don't think that their
17 definition does anything to improve our ability
18 to communicate between one another what soil is.

19 MR. WIGHT: There was also some discussion of
20 that in the transcript at the last hearing. I think
21 this issue came up a little bit so you might like to
22 review that. I think Mr. King had some remarks in
23 there about that as well -- about the difficulties
24 of coming up with a definition that would work and

1 some of the considerations involved such as whether
2 or not the TACO models would work on the material
3 and that had been an issue discussed during the
4 TACO hearings some years ago and the consensus at
5 that time was that it should not be defined because
6 of the difficulties of it, but you might want to
7 review that part of the transcript. I can't tell
8 you exactly where that was. I'm sure if Mr. King
9 were here today, that would be area where he might
10 have some comments too, but unfortunately he's not
11 so -- but you may want to review those.

12 MR. EASTEP: It was during my testimony.

13 MS. LIU: Okay. Thank you.

14 MS. McFAWN: Mr. King could, of course,
15 supplement that testimony in public comment on this
16 proposed definition?

17 MR. WIGHT: And we probably will do that in
18 direct response to the proposal by Mr. Walton.

19 MS. McFAWN: Thank you.

20 MR. EASTEP: But in discussions, I don't
21 believe Mr. King's opinion has changed.

22 MS. LIU: IERG had also proposed removing the
23 prohibition against moving an SMZ closer to a
24 residential property, but instead rather applying a

1 TACO risk-based approach. How does the Agency feel
2 about that?

3 MR. EASTEP: I think going back to
4 Mr. Wight's comments. I think this issue was
5 discussed during the last hearing and I believe I
6 was asked that question in a couple different ways
7 and I think I responded.

8 MS. McFAWN: I think Mr. Walton also included
9 in his prefiled testimony your responses and is it
10 correct as he summarized it that it is a perception
11 as opposed to a risk issue?

12 MR. EASTEP: I don't recall that we exactly
13 said that, although we might. I don't recall that.
14 I recall the gist of my response being that we did
15 not do -- when we developed that particular section
16 of the rule, we did not do any risk analysis. We
17 did not evaluate how a risk was impacted as part of
18 putting that in.

19 MS. McFAWN: All right. I see the distinction.
20 I had come away from that hearing likewise thinking
21 this is a public perception problem and if it's
22 that, then the suggestion that a community relations
23 plan be used to diffuse that perception, is that a
24 good remedy or a usable remedy to the perhaps

1 misperception or accurate perception by the public?

2 MR. EASTEP: I suppose the Agency may have
3 comments later on that particular aspect. I don't
4 know that we could -- I mean, that might be -- if
5 you accept the fact that perception is the problem,
6 then that might be one way to address it, but that
7 in and of itself would still be fraught with
8 implementation issues.

9 For example, if you were to craft
10 something that said well, you had to have a
11 community relation plan, then you'd have to make it
12 acceptable to the Agency and then if they went out
13 and did their community relations and the people
14 were opposed to it, would that mean that they
15 couldn't do it?

16 Would it mean all the people had to be for
17 it or could one person be against it and stop it or
18 would it take all the people? And so you would
19 still have some of those sorts of issues to work
20 your way through.

21 MS. McFAWN: You know, I can see that as an
22 argument, but there are other scenarios where TACO
23 has removed the risk and we don't mandate a
24 community relations plan, but if a community

1 relations plan is used, it diffuses the
2 misunderstanding hopefully and reaches a consensus
3 maybe, but it's not obligated to reach a consensus
4 for you to get an NFR letter?

5 MR. EASTEP: That's correct. Yes, ma'am.

6 MS. McFAWN: Okay. I'm glad we agree and I'm
7 just thinking in this scenario if the risk has been
8 removed by TACO, then why would you prohibit someone
9 from putting a site management zone in a place that
10 isn't of any greater risk to the public if -- and to
11 make sure that this is more acceptable to the
12 affected public that maybe perhaps require -- and
13 Mr. Walton doesn't even oppose that we require it,
14 but what if you were to require community relations
15 plan which generally should -- I don't know about
16 the question should it be acceptable to the Agency
17 or what, but wouldn't that be a very logical way of
18 diffusing the misunderstanding?

19 MR. EASTEP: I think certainly community
20 relations are usually logical ways of dealing with
21 misunderstandings. On the other hand, they don't --
22 as I mentioned, if you do good, everybody will
23 communicate, educate people, but they may not like

24 it in the end. Even though you -- people just don't

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1 like stuff. Well, if you're tying this particular
2 aspect of the program directly to community
3 relations, then the next logical question after that
4 is if they have it, does it have to be acceptable to
5 100 percent of the people that are affected,
6 whatever that might be?

7 MS. McFAWN: But isn't that same question posed
8 by CBEs proposal then?

9 MR. EASTEP: Well, now that you mention it.

10 MS. McFAWN: They're not mandating community
11 relations programs, but...

12 MR. EASTEP: Their approach is a little bit
13 different, I think. They're just having -- they're
14 building a school and creating a community
15 relation -- or some sort of community relation as
16 part of the remediation for that school site. Under
17 that circumstance, the school is going to be built
18 regardless. They have to clean it up to meet
19 residential standards regardless. So that's a
20 little -- I think that is a little bit different
21 situation.

22 MS. McFAWN: Just because of the difference

23 between a soil management zone possibly going in at
24 an industrial site versus one that's cleaned up to

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1 residential because the school could have a soil
2 management zone, couldn't it?

3 MR. EASTEP: Well, I think the way we've
4 written it, it probably could.

5 MS. McFAWN: So the distinction there is the
6 level of cleanup that's going to be required at a
7 school site versus using an SMZ at an industrial
8 site?

9 MR. EASTEP: Say that again.

10 MS. McFAWN: So you're telling me that the
11 distinction is that at the school site, they will
12 clean the site up to residential which is about as
13 clean as clean can get?

14 MR. EASTEP: Absolutely.

15 MS. McFAWN: Versus being at an industrial site
16 with an SMZ not being the most clean that be
17 achieved under TACO?

18 MR. EASTEP: Well, it would still have to be
19 clean to the industrial standard.

20 MS. McFAWN: Which means it can't migrate
21 off-site?

22 MR. EASTEP: Absolutely. Absolutely.
23 But here you're creating a situation with the SMZ
24 that you're not mandated to create. There's no

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1 mandate in any of the statutes or the rest of the
2 regulations that require you to create an SMZ or
3 what otherwise might be construed as an onsite
4 disposal activity closer to somebody's house.
5 There's no requirement that you do that.

6 On the other hand, with the school, there
7 is a requirement that if the site is contaminated,
8 that you have to get in the SRP and you have to
9 clean it up before you commence construction of the
10 school. That's all part of the statute and that's
11 how we're operating now. So I think that's kind of
12 a distinction under the scenario that you just
13 brought up.

14 MS. McFAWN: So on either site, you could not
15 put the SMZ in an uncontaminated area?

16 MR. EASTEP: That's correct.

17 MS. McFAWN: And on the industrial site, you
18 could put the SMZ in a contaminated area and you
19 could do the same at the school site so that way
20 they're equal?

21 MR. EASTEP: That's correct.

22 HEARING OFFICER BEAUCHAMP: Mr. Walton, you had
23 something to ask?

24 MR. WALTON: Mr. Eastep, I have a question.

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1 Again, I'm a little confused. I have a site --
2 industrial commercial site. I'm going to clean it
3 up to residential through the use of barriers. Can
4 I move it closer to the property boundaries? I'm
5 going to achieve Tier I ROs with the use of
6 barriers, et cetera, et cetera, this land use is
7 going to be residential, can I --

8 MR. EASTEP: Are you moving it to previously
9 uncontaminated?

10 MR. WALTON: It will be above Tier I.

11 MR. EASTEP: What is the adjacent contiguous
12 property?

13 MR. WALTON: It will be residential.

14 MR. EASTEP: The adjacent property is
15 residential. Then you could not move it closer the
16 way the proposal is written.

17 MR. WALTON: That logic fails me.

18 MR. EASTEP: Well, it shouldn't because the way
19 it is now, regardless of what your current land use

20 is, the way the rule is drafted, you can't move a
21 soil management zone closer to a contiguous
22 residential property. So you still probably have
23 your same objection to that part of the rule.

24 MR. WALTON: Yeah.

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1 MR. EASTEP: So how your end use ends up
2 doesn't matter. It's the impact you're having on
3 the nearest resident -- or the contiguous resident.

4 MR. WALTON: I'd like to follow-up. You said
5 the impact I'm having to the adjacent areas, that
6 connotes risk. My TACO solution says there is no
7 risk.

8 MR. EASTEP: I didn't mean to use impact in
9 the sense of risk, only in the sense of evaluating
10 its compliance with the proposed regulation.

11 MS. KEZELIS: And what's the rationale for
12 that?

13 MR. EASTEP: The rationale is very difficult to
14 put your finger on. It's the same as it was before.
15 I mean, the site -- we made it clear for the SMZ
16 that it had to meet all the requirements of TACO
17 when you were done. It had to be safe. The
18 restriction we put -- and that doesn't differentiate

19 between industrial commercial or residential or some
20 other use if you had one for that matter.

21 What it did was it didn't allow you to
22 move something closer to contiguous residential
23 property. So that gets back to the other -- his
24 inability to understand our confusion for him on why

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1 we did that to begin with which he's asserting is a
2 perception issue. So that issue still remains.

3 HEARING OFFICER BEAUCHAMP: Mr. Sassila?

4 MR. SASSILA: Can you explain what -- that
5 rationale here if you have contaminated soil being
6 removed to a clean area and then you have engineered
7 barriers so you're understaffed with your
8 compliance? You have pavement or concrete. So
9 there's no exposure. So what the rationale is
10 though you cannot place it at this location even
11 though you are in compliance with TACO? It's not
12 clear to me why not.

13 MR. EASTEP: We're just trying to protect clean
14 areas from degradation. It's like -- the concept is
15 antidegradation. If you've got an area that's
16 clean, we leave it clean.

17 MR. SASSILA: But the source is no longer

18 there. Really, it's not going to change anything,
19 that's the fact. Now, we are in agreement the
20 source is gone. Having contaminated soil at point A
21 or B is not going to change or denigrate the site.
22 The reality is not going to change anything of the
23 site conditions. You have your engineered barrier.
24 It does make sense to say no, you cannot because

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1 there, it doesn't make sense to say no, you cannot.

2 MR. EASTEP: I think my answer was that it was
3 protecting areas from degradation.

4 MS. McFAWN: So in other words, TACO is just
5 meant to clean up?

6 MR. EASTEP: Yes.

7 MS. McFAWN: Not to denigrate areas?

8 MR. EASTEP: Yes. Well put. Thank you.

9 MS. LIU: Does the TACO solution mean no risk?

10 MR. EASTEP: The TACO solution means no
11 unacceptable risk.

12 MS. LIU: Thank you.

13 MR. EASTEP: I'd like to clarify that. It also
14 means management of residual risk.

15 MS. LIU: Could an SMZ be established in place
16 where no soils are actually moved?

17 MR. EASTEP: I don't know if that would really
18 be an SMZ. That's what people do today. If they
19 operate in an area where it's all -- where it's
20 contaminated. I mean, that's where the issue came
21 up was people wanted to start moving stuff around.
22 It stays exactly where it is or it wouldn't be
23 called an SMZ.

24 MR. WIGHT: May I make a comment here?

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1 This is just for a point of clarification
2 and this may just people's shorthand way of
3 discussing this, but several times, it's been
4 mentioned about moving the SMZ around. The issue is
5 really moving soil around within an SMZ.

6 An SMZ may be established anywhere on the
7 remediation site, but I believe the way the proposal
8 is drafted and the reason for this because you may
9 have different concentrations of contamination at
10 various places within your defined SMZ, but the
11 issue is where you move the contaminated soil not
12 where the SMZ is established. So I don't know if
13 that helps clarify anything or not, but it seems
14 like sometimes that's important to keep in mind.
15 It's not so much where you can establish the SMZ,

16 but what you can do within the SMZ once you've
17 established it.

18 HEARING OFFICER BEAUCHAMP: We'll need you to
19 identify yourself for the record.

20 MS. HIRNER: My name is Deirdre Hirner,
21 D-e-i-r-d-r-e, H-i-r-n-e-r, and I'm with the
22 Illinois Environmental Regulatory Group and my
23 question -- here is what I have a difficulty
24 understanding. Again, knowing that I'm a technical

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1 person, but say I have large industrial site and I
2 have a soil management zone and I have different
3 levels of contamination within this site and at the
4 south end of the site is a residential area, at the
5 north end of the site, it's just open space. If the
6 soil has a heavier concentration of contamination on
7 the side that's toward the residential site and I'm
8 going to make a zone with some of the less
9 contaminated soil, but I can't do that because I'm
10 going to be moving that closer to a residential
11 site. What's the sense in that? What's the sense
12 in the prohibition? You know, people are talking
13 about different concentrations or different levels
14 of contamination or, you know, you said a minute

15 ago, it's about concentration of the contamination
16 on the site. You know, if it's towards the
17 residential area and you want to move the media
18 there with what -- I don't understand and let's say
19 it's a huge industrial site.

20 MR. EASTEP: Well, part of the issue could be
21 that let's say you decide you're going to move very
22 large volumes of contaminated soil to the
23 residential area and let's say you want to, in
24 effect, allow this isn't certainly our intention or

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1 desire here to create things that start looking like
2 landfills, but what if you create a pile that's 50
3 or 60 feet high of contaminated material? Even
4 though it meets TACO, even though there's no
5 unacceptable risk, all of the sudden now you've got
6 something that looks like a landfill, smells like a
7 landfill and absent the SMZ provision, would be a
8 landfill.

9 Of course, we know how the public reacts.
10 I think if a person built a site today in accordance
11 with solid waste rules, they can build a perfectly
12 safe landfill, but you're not going to get very many
13 people to agree to allowing you to put that landfill

14 next to their house no matter how safe you tell them
15 it's going to be. So in effect, you could be doing
16 some of that under the SMZ and I think if you want
17 to call that public perception, that would be public
18 perception, I guess.

19 So what you're doing there is that's part
20 of the logic, too, that you're creating something
21 that's right next to somebody's house or some
22 residences and that's kind of what a lot of Silver
23 Shovel is about because a lot of those sites were
24 next to people's homes.

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1 MS. HIRNER: Just a little more questioning
2 maybe kind of as a follow-up, if that's okay. When
3 we look at being no closer to the residential area
4 and again, I'm going to look at in the context of
5 large industrial site where is it -- is it -- if I
6 am located in the middle of the state of Illinois, I
7 mean just to make it easy, and the residential area
8 is 25 miles away from it, but it's a residential
9 area, does this mean that I can't move it closer
10 to --

11 MR. EASTEP: No. It would be contiguous
12 residential.

13 HEARING OFFICER BEAUCHAMP: Mr. Sassila?

14 MR. SASSILA: I'm a little bit confused.

15 You keep referencing to landfill and you said you
16 cannot accept any waste or any soil from off-site.
17 We all know in a landfill, you are allowed to import
18 waste and while it's being generated on-site means
19 management site, it cannot be even close to
20 definition of landfill. So how are you drawing this
21 conclusion of land fill?

22 MR. EASTEP: Regardless of where the waste is
23 generated, it could still be a landfill and I think
24 the Agency would treat on-site disposal areas as

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1 being subject to the design and operation
2 requirements for landfills. There's a permit
3 exemption, but nonetheless, they'd -- if somebody
4 were to -- some industry were to build an on-site
5 RCRA landfill, they'd have to get a RCRA permit.

6 MS. McFAWN: Even a solid --

7 MR. EASTEP: Even a solid -- if they were to
8 build --

9 MS. McFAWN: Oh, they don't need the permit,
10 you're right.

11 MR. EASTEP: Right. I shouldn't have used

12 RCRA. They would need to conform with Parts 811
13 through 815.

14 HEARING OFFICER BEAUCHAMP: Mr. Walton?

15 MR. WALTON: Does this prohibition about moving
16 a soil management zone closer to a property boundary
17 with contiguous residential property prevent the
18 construction of a 50-, 60-foot landfills? There's
19 nothing in the -- my understanding is there's
20 nothing within the proposal soil management zone
21 regulation other than a little common sense that
22 would prevent the construction of this 50-foot
23 monster.

24 MR. EASTEP: That's correct.

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1 MS. McFAWN: So do you think there should be?

2 MR. EASTEP: Right now, I don't know. I'm kind
3 of up in the air the more this issue comes up. Most
4 of the sites that I've had experience with -- Greg
5 can jump in -- I haven't seen circumstances where
6 that would -- where the sites in the SRP -- I've
7 seen sites outside the SRP that might have been
8 under enforcement where they might be wanting to do
9 that, but that's a little bit of a different
10 situation. Sites in the SRP, that type of thing.

11 I don't know if I've seen too many of those. They
12 just lend themselves to that, but could there be one
13 in the future. Well, I never say never.

14 If I had some sort of limitation, I don't
15 know, first of all, what the -- if you had a
16 limitation on, say, height or above grade, I don't
17 know what that would be first of all and secondly, I
18 don't know how I would justify it, but in some case
19 some years down the road, if we had a case where
20 that came up, I'd think, boy, I wish we had
21 something, but I don't know what it is now.

22 MR. WIGHT: Mr. Eastep -- just as a point of
23 clarification, when you said sites in the SRP don't
24 typically lend themselves to that, do you mean

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1 because that type of structure doesn't usually
2 facilitate redevelopment? Is that what you meant by
3 that?

4 MR. EASTEP: Exactly, that's exactly correct.
5 Most of the sites that are in the SRP are being
6 developed for one purpose or another and that
7 usually -- usually, you want to level -- they want
8 to be leveled off, frankly. So thank you.

9 MR. DUNN: Typically, we see cotton fill in the

10 site remediation program where they'll take a little
11 soil from here and put it over here. When they're
12 doing digging for foundations, that's typically what
13 we see happening.

14 MS. LIU: To follow up on a question that
15 Ms. Hirner asked, if you have an enormous site that
16 just happens to be contiguous with a residential
17 property and your remediation activities are on the
18 far side, wouldn't the size of the site have some
19 bearing on whether or not it could be moved slightly
20 closer to that residential area?

21 MR. EASTEP: Not the way the rule is currently
22 written.

23 MR. WIGHT: I think also Mr. King had some
24 comments on that at the first hearing as well too.

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1 So again, I can't give you a citation, but you may
2 want to review the first transcript from Mr. King's
3 comment on that.

4 MS. LIU: If you don't mind, could I turn your
5 attention to the MOA with IDOT. It was submitted as
6 Exhibit 7. There's a definition in Section two of
7 institutional controls and it states, quote,
8 nonengineered mechanisms for ensuring compliance

9 with necessary land use limitations, end quote.

10 MR. EASTEP: Yes.

11 MS. LIU: Does this MOA exclude engineered
12 mechanisms as land use controls?

13 MR. EASTEP: It's not meant to exclude
14 engineered mechanisms.

15 MS. LIU: Skipping around again, Mr. Dunn had
16 testified today about the revision under Section
17 740.415(d)(3). There are two very similar terms
18 that are used in this part, required quantitation
19 limit and practical quantitation limit. Could you
20 differentiate between those for me, please?

21 MR. DUNN: The reason those were in there is
22 and I was not privy to the original site remediation
23 program regulations when they were -- when we were
24 first working on them back in '95, '96, but

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1 apparently there were terms mixed and matched in
2 there. Practical quantitation limit was actually --
3 I believe there is a definition in the regulation
4 for that. The required quantitation limit was only
5 mentioned in the Appendix and from my understanding
6 is they are similar.

7 They are -- if you talk to a chemist,

8 they're not used interchangeably, but we have here
9 in the regulations and so that's why when you go
10 through my testimony I talk about PQL and RQL and it
11 depends on whether I refer back to the original
12 language or I refer to the Appendix A. That's the
13 reason there is some confusion. I hoped I answered
14 your question.

15 MS. LIU: You did. Thank you.

16 When the RQLs were removed from Appendix
17 A, I was wondering whether or not the practical
18 quantitation limits or the method detection limits
19 were listed anywhere else in Title 35.

20 MR. DUNN: I do not think so. I believe the
21 only kind of detection limits that are identified
22 are the acceptable detection limits in 742 for a
23 number of compound where the remediation objectives
24 for a compound may be so low that you can't get that

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1 low with any kind of instrument or any kind of
2 method that you use. So they use an acceptable
3 detection limit. There are no other places I
4 believe that identify those. They are sort of
5 identified in our incorporations by reference when
6 you identify SW846. They are identified in SW846.

7 MS. LIU: In part of the revision, you propose
8 using a figure of ten times the method detection
9 limit in determining a practical quantitation limit
10 for contaminants that weren't specifically included
11 in Part 742. I was wondering if you could explain
12 the rationale behind the number ten times?

13 MR. DUNN: Unfortunately, I can't take credit
14 for that. I took that right out SW846, method 8260
15 for volatiles, and that was the closest thing I had
16 come to where -- when they did not have a detection
17 limit. They used that language there and that's the
18 closest thing I could come up with.

19 MS. LIU: Thank you very much.

20 HEARING OFFICER BEAUCHAMP: Are there any other
21 questions for the Agency today?

22 MS. McFAWN: I have a couple on the lab
23 certification issue. As I understood Mr. Walton's
24 testimony, he wanted the ability to use uncertified

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1 laboratory results before -- collected before he
2 enters the SRP program. Is that your understanding
3 of what he was asking for?

4 MR. EASTEP: That's right.

5 MR. DUNN: His was having to do with -- I

6 understand -- spills and mitigation of releases.
7 Under the first hearing, my understanding was more
8 for emergency response actions and I think his
9 testimony today, and unfortunately I may be speaking
10 for him, but I think he did agree that they would
11 not be used for compliance with remediation
12 objectives at the site, but that that data did have
13 some validity, that it did have some merit to look
14 at.

15 MS. McFAWN: Okay. And the Agency agrees with
16 that -- the use of it in the -- for mitigation
17 purposes, emergency or nonemergency or just in the
18 emergency situation?

19 MR. DUNN: Typically, we see more of it in the
20 non -- excuse me -- the emergency situations. I
21 think what we're trying to not get into is somebody
22 doing a lot of work out of a site and then coming
23 into the site remediation program and all the work
24 that they have completed has been at a nonaccredited

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1 laboratory and the purpose of putting this in is
2 that all sites that come into the program use an
3 accredited laboratory whether that be before they
4 actually come into the program because we actually

5 see a lot of sites that actually do a lot of work
6 before they actually get into the program. We would
7 like to see those sites also use an accredited lab
8 so we know the data that we are seeing is of good
9 quality.

10 MR. EASTEP: I'd like to expand on that a
11 little bit. I was surprised when we were preparing
12 for this at the number of laboratories that we found
13 that have already become certified and maybe -- I
14 think -- has Mr. Walton left? We could talk to him
15 see and because a lot of these large companies, you
16 know, they're not using small out of the way labs,
17 they're using typically larger, well staffed, well
18 equipped laboratories and I wouldn't be surprised if
19 some of the laboratories that are working for the
20 large companies doing emergency responses are -- if
21 they're not certified already, that they will soon
22 become certified. So that's kind of a marketing
23 ploy for a lot of the labs we've seen anyway.
24 They're selling that certification to get business.

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1 MS. McFAWN: All right. I guess where I'm
2 not -- maybe I just haven't processed this enough
3 yet, but are you in agreement with Mr. Walton's

4 testimony today? I mean, he actually -- as I
5 understand it -- would like the ability to use data
6 from laboratories that aren't certified and is the
7 Agency willing to consider that and issue a decision
8 on that?

9 MR. EASTEP: No. I thought that we said only
10 in the context of its suitability, not for
11 compliance purposes. There's another provision that
12 allows the use of older data, if you will, where
13 the LPE is looking at previous work and they
14 evaluate that previous work on its own merits and
15 the suitability of that as it relates to the current
16 situation and I would think we would have to do that
17 with that type of laboratory data, too, and so to
18 that extent, it might be quite valuable, but it
19 would certainly not be suitable for compliance
20 purposes.

21 MS. McFAWN: So it would just be for the old
22 data, not the new data collected before the cutoff
23 date? Is that what you mean by old data?

24 MR. EASTEP: No. I was referring back to that

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1 420 or something --

2 MR. DUNN: 410(c).

3 MR. EASTEP: That allows an LPE to refer back
4 to work done by a prior PE or information submitted
5 and so he doesn't have to certify that that's 100
6 percent accurate because the current PE hasn't done
7 it, but he can look at that and say well,
8 regardless, I've looked at it and I've evaluated it
9 and it's suitable for a certain purpose in my
10 current application. And so that's not good for
11 compliance purposes, if you will, but it's probably
12 pretty good information to have and pretty useful
13 and pretty valuable in terms of conducting his
14 current remediation.

15 MS. McFAWN: By compliance purposes, do you
16 mean a final sign-off that the site has reached its
17 objectives?

18 MR. EASTEP: That as well -- as far as the
19 investigation because they might be trying to
20 determine the extent of investigation and if he's
21 using a noncertified lab and he doesn't have the
22 same detection limits, he might not be describing
23 the extent of contamination and the work they're
24 doing might be perfectly suitable for emergency

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1 response work, but it might not be suitable for

2 determining whether or not they're meeting the TACO
3 rules, plus that some of the emergency response data
4 might be three or four years old and it might
5 have -- what looked suitable then, I mean, if they
6 didn't get the all the source material, it might
7 have traveled some distance and your whole scenario
8 is different. So that's what I mean by the
9 suitability of it.

10 MS. McFAWN: Thank you.

11 HEARING OFFICER BEAUCHAMP: I will ask if there
12 are any more questions for the Agency today? Seeing
13 none, Mr. Wight let me ask if you have anything
14 further the Agency wishes to present today?

15 MR. WIGHT: Nothing further today.

16 HEARING OFFICER BEAUCHAMP: Thank you very
17 much. Before we wrap up, let me ask -- I know that
18 our members of the public has dwindled as the
19 afternoon has gone, but is there anyone here who
20 wants to present testimony before we wrap things up?
21 Seeing none, we will move into our conclusion then.

22 The transcript from today's hearing should
23 be available in ten business days. The Board will
24 post the transcript from this hearing on its web

1 site. The web site address is www.ipcb.state.il.us.
2 You can obtain hard copies of the transcript by
3 contacting either the court reporter or the Board,
4 although the Board does charge 75 cents per page.
5 The court reporter will inform you of the fee for
6 providing a hard copy of the transcript.

7 The Board will accept public comments on
8 these proposals until May 3rd, 2001. In the event
9 the Board receives the transcript after April 18th,
10 the Board will accept public comments up to 14 days
11 after receipt of the transcript.

12 There will be an additional public comment
13 period after the Board adopts these rules either
14 jointly or separately for first notice.

15 Today's hearing concludes the hearings
16 scheduled by the Board in these matters. Any party
17 may request an additional hearing pursuant to
18 Section 102.412(b) of the Board's procedural rules.
19 The party making the request must demonstrate that
20 failing to hold an additional hearing would result
21 in material prejudice to that party.

22 I want to thank everyone for their
23 patience and endurance this afternoon unless. Are
24 there any other matters to be addressed at this

1 time? Seeing none then, this matter is hereby
2 adjourned. Thank you for your attendance and
3 participation in this hearing.

4 (Whereupon, the hearing was concluded.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)

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5

6 I, TERRY A. STRONER, CSR, do
7 hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook, and
9 State of Illinois; that I reported by means of
10 machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

14
15

16 _____
17 Terry A. Stroner, CSR
18 Notary Public, Cook County, Illinois

19

20 SUBSCRIBED AND SWORN TO
21 before me this ___ day
22 of _____, A.D., 2001.

22
23 _____
24 Notary Public

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