BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 07 2011
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO CLEAN	)	
CONSTRUCTION OR DEMOLITION	)	R12-9
DEBRIS FILL OPERATIONS (CCDD):	)	(Rulemaking –Land)
PROPOSED AMENDMENTMENTS TO 35 Ill.	)	
Adm. Code 1100	)	
	)	

ORIGINAL

NOTICE OF FILING

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ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ERRATA SHEET NUMBER 1, ADDITIONAL TESTIMONY OF STEPHEN F. NIGHTINGALE, TESTIMONY OF THOMAS C. HORNSHAW copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 10-6-11

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ORIGINAL

ADDITIONAL TESTIMONY OF STEPHEN F. NIGHTINGALE

My name is Stephen F. Nightingale. I am the manager of the Permit Section within the Bureau of Land of the Illinois Environmental Protection Agency ("Agency"). I was present and testified at the September 26, 2011 hearing in this matter. In response to questions from the Illinois Pollution Control Board ("Board") and the public at the hearing, the Agency proposes to make changes to its proposal as set forth in Errata Sheet Number 1 which along with this written testimony is being served upon the Board and the Service List. This testimony is in support of some of the proposed changes set forth in Errata Sheet Number 1.

At Section 1100.101(b)(3), in response to a question from the Board, the Agency proposes adding "uncontaminated soil" to the IDOT regulatory exemption allowed under existing Part 1100.101(b)(3). This addition is consistent with IDOT specifications, which include provisions for handling soil. While the Agency understands that the Board would prefer all Board notes to be removed, this particular Board note is original to the Part 1100 regulations adopted in 2006 and therefore the Agency has chosen to let it remain a Board note.

At Section 1100.103, the Agency proposes a change to the definition of "clean construction or demolition debris." Clay and sand are two of the three basic components of soil as illustrated in the attached Soil Textural Triangle developed by the U.S. Department of

Agriculture. As currently written, the second sentence of the second paragraph of the definition of "clean construction or demolition debris" could be read to mean that soils containing more than incidental amounts of clay or sand do not qualify as uncontaminated soil. To avoid such confusion, the Agency proposes to delete the terms "clay" and "sand."

As a further clarification, the definition of "clean construction or demolition debris" in Section 1100.103 and Section 1100.615 both contain provisions regarding incidental amounts of naturally-occurring materials that are commonly found in soil. These provisions are discussed on Page 31 of the Agency's Statement of Reasons, filed with the Board on July 29, 2011 and on Page 23 of my pre-filed testimony, filed with the Board on September 2, 2011. Both discussions mention that the provision in Section 1100.103 predates the proposed amendments, that it was the topic of some debate in the rulemaking for the original Part 1100, and that the Agency is not inclined to revisit the issue. However, upon further consideration, the Agency determined that modification of the definition is warranted.

The Agency has proposed several other changes to the definitions at Section 1100.103. At the hearing, the IDOT representative expressed confusion as to how the term "other excavation" differs from a mine or quarry. To help alleviate this confusion, the Agency proposes to add definitions of "mine" and "quarry" and to amend the definition of "other excavation" to limit this term to the extraction of other resources such as clay and other soil.

Further, the Agency proposes a change to the definition of "potentially impacted property." At the recommendation of the Board, the Agency proposes to move information previously contained as a Board Note into the actual definition. Since the interpretation of "potentially impacted property" is made on a case-by-case basis, this language would not be a strict requirement but would clarify how a determination of "potentially impacted property" is to

be made and advises coordination with fill operators.

The Agency is proposing a couple of changes to Section 1100.205(b)(5). The Agency, in response to a comment by the Board, proposes deleting the phrase "as specified in the Agency permit" because this requirement in Section 1100.205(b)(5) also applies to uncontaminated soil fill operations which will not be permitted by the Agency. In addition, the Agency proposes adding the phrase "or PG" (professional geologist) to this Section to be consistent with the provisions of Public Act 97-137.

At Section 1100.615(a), the Agency proposes to delete the words "clay" and "sand" for reasons previously stated in the discussion of the change to the definition of "clean construction or demolition debris." Since clay and sand are two of the three basic components of soil, Subsection 1100.615(a) could be read to mean that soils containing more than incidental amounts of clay or sand do not qualify as uncontaminated soil which is incorrect.

At Section 1100.720(b), the Agency proposes that the phrase "subsection (d)" be deleted from Section 1100.720(b) and the phrase "Section 1100.760" be added to correct an error in the Agency's original proposal. In an earlier draft of the proposed regulations, the provisions regarding dewatering were in subsection (d) of Section 1100.720. When these provisions were moved to Section 1100.760 this cross reference was not updated.

Upon review of the original proposal, the Agency would like to propose changes at Sections 1100.745 and 1100.750. The Agency believes as originally worded, Section 1100.745 (Non-Compliance Response Program) and Section 1100.750 (Alternate Non-Compliance Program) have several inconsistencies. First, when routine detection monitoring shows that Class I groundwater quality standards have been exceeded, Section 1100.745(b) requires resampling unless the owner and operator has made a demonstration under Section 1100.750(b).

However, Section 1100.745(b) requires the resampling to be done within 60 days of the initial sampling event, while Section 1100.750(b) allows up to 240 days after the initial sampling event for the report making the demonstration to be submitted the Agency.

Second, Sections 1100.745(c) and (d) allow owners and operators to avoid developing and implementing corrective action programs if the results from resampling do not exceed Class I standards, but they are not required to make a demonstration to that effect. And finally, one of the provisions of Section 1100.745(b) was aimed at allowing owners and operators to avoid resampling if they notified the Agency that they intended to make the 1100.750(b) demonstration. However, an owner or operator, who did not resample and then could not make the 1100.750 demonstration, would have no clear path back into compliance, especially with Section 1100.755(a) stating that groundwater corrective action must begin within 120 days after submitting the resampling results to the Agency.

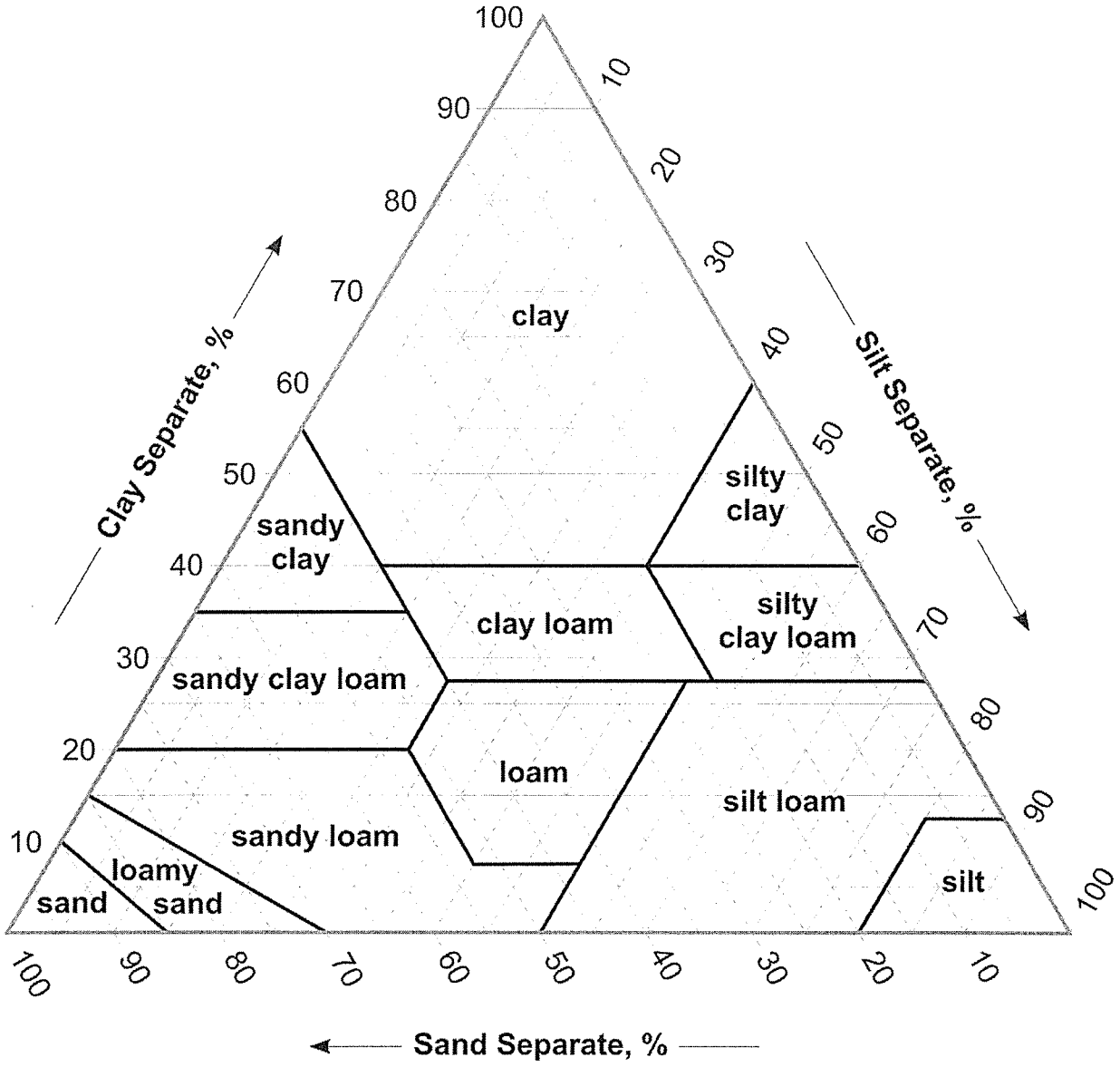
The changes proposed for Sections 1100.745 and 1100.750 should eliminate the inconsistencies by making resampling mandatory and also, as one of the options in the Alternate Non-Compliance Response Program, allowing for demonstration that the results of the resampling do not exceed Class I standards. Attachments 2 and 3 to this testimony show the respective timelines for the Non-Compliance Response Program and the Alternate Non-Compliance Response Program with the changes proposed for Sections 1100.745 and 1100.750.

Lastly, in response to issues that the Board raised at the hearing, the Agency proposes at Section 1100.750 to replace the phrase "an error in sampling, analysis, or evaluation" with the phrase "natural phenomena, sampling or analysis errors, or an offsite source." The Agency believes this will provide additional avenues by which the owners and operators of fill operations may demonstrate that groundwater corrective action is not needed. The phrase "natural

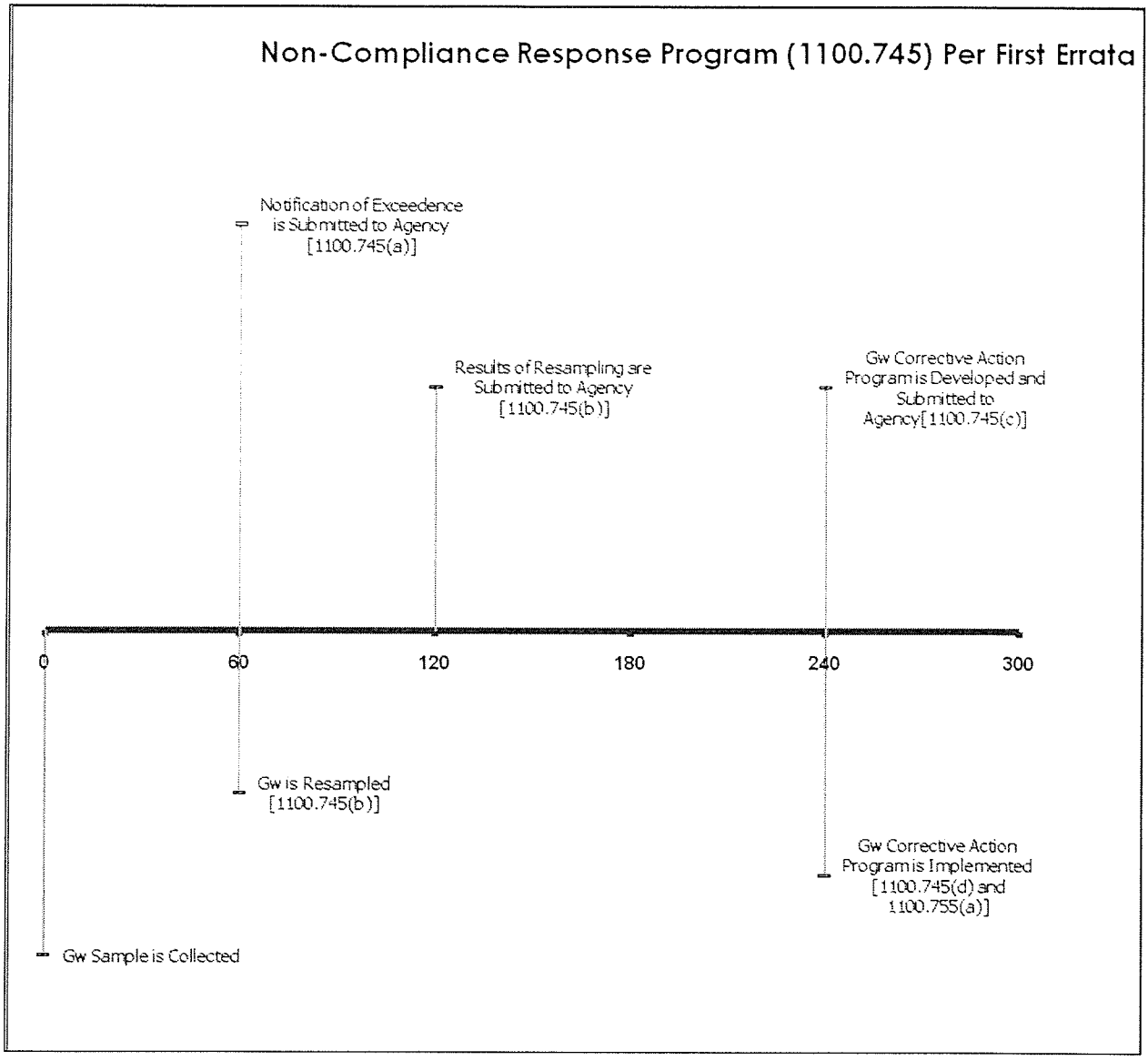
phenomena, sampling or analysis errors, or an offsite source" is also found in 35 Ill. Adm. Code 811.3194(a)(4)(B)(ii) where it is used in connection with confirmed increases. In addition, the markers "i), ii) and iii)" were added to make this Section more readable.

ATTACHMENT 1

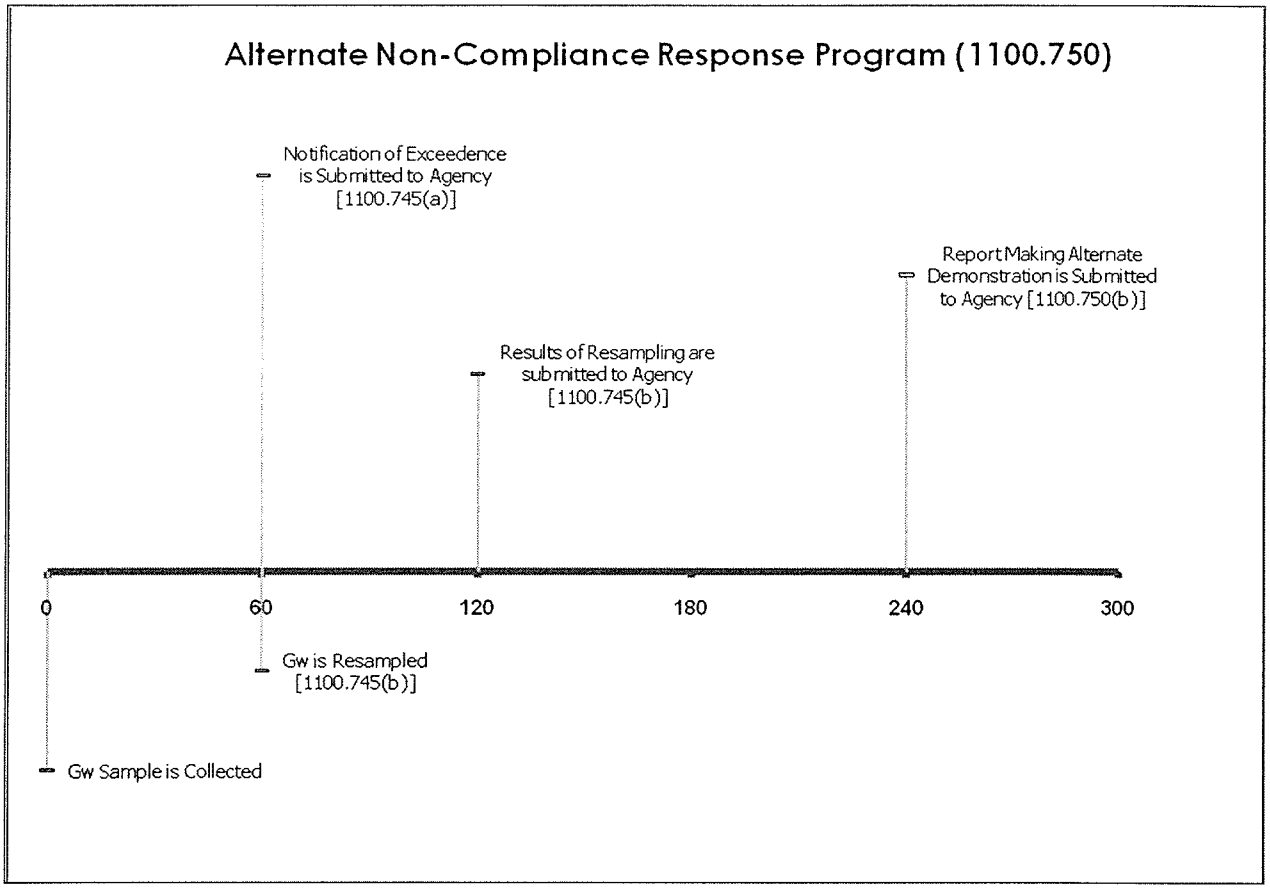
Soil Textural Triangle



ATTACHMENT 2



ATTACHMENT 3



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ORIGINAL

TESTIMONY OF THOMAS C. HORNSHAW ON AGENCY'S ERRATA SHEET NO. 1

Qualifications

My name is Thomas C. Hornshaw. I am a Senior Public Service Administrator and the Manager of the Toxicity Assessment Unit of the Illinois Environmental Protection Agency (Agency). I have been employed at the Agency since August of 1985, providing expertise to the Agency in the area of environmental toxicology. Major duties of my position include development and use of procedures for toxicity and risk assessments, review of toxicology and hazard information in support of Agency programs and actions, and critical review of risk assessments submitted to the Agency for various cleanup and permitting activities. I was a member of the Agency's Cleanup Objectives Team until February of 1993, when that Team's responsibilities were assumed mainly by the Toxicity Assessment Unit. I was also a member of the Groundwater Standards Technical Team during the development of the Groundwater Quality Standards. These two teams have looked in depth at the problems involved with determining acceptable residual concentrations of chemicals in soil and/or groundwater.

I received Bachelor of Science (with honors) and Master of Science degrees in Fisheries Biology from Michigan State University, East Lansing, Michigan. I also received a dual Doctor of Philosophy degree from Michigan State University, in Animal Science and Environmental Toxicology. I am a member of the Society of Environmental Toxicology and Chemistry and

Sigma Xi, the Scientific Research Society. I have authored or co-authored six papers published in peer-reviewed scientific journals, one report issued through the U.S. Environmental Protection Agency, and have written or co-written six articles that have appeared in trade journals. I have also presented nineteen posters and/or talks describing facets of my graduate work and my work at the Agency at various regional and national meetings. A more descriptive account of my work and educational background and a list of publications, posters, and talks are included in a Curriculum Vitae presented as Attachment A to this testimony.

Testimonial Statement

In my testimony today I will provide a brief explanation for several of the amendments proposed by the Agency to its original Part 1100 proposal. The specific amendments are set forth in the Agency's Errata Sheet No. 1. The amendments I will be explaining generally change or affect Subpart F and the painted CCDD provisions in Subpart B. I'll address them in the order in which they appear in the proposal.

Section 1100.104 Incorporations By Reference: The Agency proposes to amend the incorporation by reference for SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," by adding Updates IVA and IVB. At pages 47 through 49 of the Transcript, Mr. Rao and Ms. Tipsord raised several questions about the incorporation by reference of SW-846. This proposed amendment ensures that the most up-to-date version of SW-846 is incorporated by reference in Part 1100. Additional discussion of this issue is in my testimony on the proposed revision to Section 1100.610(c).

Section 1100.212 Use of Painted CCDD as Fill Material: The Agency proposes to revise the introductory language to eliminate repetitive language and in response to the request of Mr. Rao at pages 20 and 21 of the Transcript to reevaluate the use of Board Notes and

incorporate them into regulatory language where possible.

In an additional amendment to Section 1100.212, the Agency proposes to revise subsection 1100.212(c)(1) by adding language to prohibit compositing of paint samples for analysis when demonstrating compliance with the metals content for painted CCDD. The Agency has no ingestion or inhalation concern for painted concrete, brick, or asphalt. We propose TCLP/SPLP analysis of paint samples to provide protection to groundwater. Averaging/compositing of discrete samples from the same boring is allowed in TACO but the boring concept cannot be applied to volumes of painted debris being placed into a fill operation. Averaging and compositing are thus prohibited.

Section 1100.600 Purpose and Applicability: The Agency proposes to revise Section 1100.600(d)(3) to correct an erroneous statutory citation to Section 22.51a.

Section 1100.605 Maximum Allowable Concentrations for Chemical Constituents in Uncontaminated Soils: The Agency proposes to clarify subsection 1100.605(a)(5) by specifying that subsections (b)(1) and (b)(1)(A) of 35 Ill. Adm. Code 742.215 are the TACO provisions that must be used to determine whether the attenuation capacity of soils is exceeded. TACO subsections 742.215(b)(1) through (b)(3) provide three alternatives for determining exceedence of the attenuation capacity of the soil. Subsections (b)(2) and (b)(3) require interaction with the Agency and Agency approval, but, because the Agency's proposal is self-implementing, there is no context in which Agency review and approval can occur. Therefore, the proposed revision excludes these two alternatives.

TACO subsection 742.215 (b)(1) offers a uniform, self-implementing alternative that is consistent with the Agency's proposal. Subsection (b)(1)(A) employs two default f_{oc} values, 0.6% for the upper one meter of soil and 0.2% below one meter. Soil removal during

construction and demolition activities is variable and follows no predictable pattern for depth and extent of the excavated soil. Because the Agency cannot predict a default ratio for the relative quantities of surface to subsurface soil destined to be hauled to fill operations, we are obliged to err on the side of being protective of human health and to propose using the default attenuation capacity for potentially impacted uncontaminated soil at the lower f_{oc} value of 0.2% or 2,000 milligrams per kilogram.

Section 1100.610 Compliance Evaluation: Performance and Documentation of Soil Sampling and Chemical Analysis: The Agency proposes to amend subsection 1100.610(b)(1) by deleting the word "ionizing." The word "ionizing" was used in error. The contaminants listed in Table H are all PNAs, which must be distinguished from the ionizing organics. PNAs are organics, but not ionizing organics.

Also in Section 1100.610, the Agency proposes to amend subsection (c) by adding additional statutory language and a citation to clarify that the Environmental Protection Act specifies using the latest version of SW-846 analytical methods for chemical analysis. In further response to the questions of Mr. Rao and Ms. Tipsord at pages 47 through 49 of the Transcript, the statutory language cited in this subsection (c) requires chemical analyses to be conducted in accordance with both TACO (35 Ill. Adm. Code 742) and SW-846. The current version of TACO does not incorporate the most recent version of SW-846. However, the TACO incorporation of SW-846 will be amended in the proposed indoor inhalation amendments (PCB R2011-009) to include all updates through IVB.

The second revision to subsection 1100.610(c) clarifies that when modified or alternative analytical methods are used because SW-846 methods do not support detection at the concentration specified for a particular chemical constituent, a demonstration of compliance with

the maximum allowable concentration using modified or alternative methods is acceptable as a basis for certification by the PE or PG.

And, finally, a third revision to Section 1100.610 at subsection 1100.610(d) prohibits soil sample compositing when demonstrating compliance with the maximum allowable concentration. TACO allows averaging and compositing in some cases. Because averaging and compositing are limited to specific pathways and not allowed for others, we either carry these limits into the CCDD rule or, for practicality and to remain protective, we disallow it. Some maximum allowable concentrations are based on construction worker objectives. No averaging or compositing is allowed in TACO for the construction worker. Soil averaging/compositing in a boring is allowed in TACO for migration to groundwater but soil being moved to a disposal site will lose its vertical relationships and the averaging is meaningless. A further limiting factor is that compositing is never allowed for volatiles. Therefore, the Agency has determined that averaging and compositing are inappropriate when demonstrating compliance with the maximum allowable concentration.

This concludes my testimony.

ATTACHMENT A

CURRICULUM VITAE

THOMAS C. HORNSHAW

EDUCATION: Ph.D., Animal Science and Environmental Toxicology, 1985. M.S., 1981, and B.S., 1976, Fisheries Biology, Michigan State University.

EXPERIENCE: Senior Public Service Administrator, Illinois Environmental Protection Agency, 1985 - Present.

Graduate Research Assistant, Department of Animal Science, Michigan State University, 1981 - 1984.

Graduate Research Assistant, Department of Fisheries and Wildlife, Michigan State University, 1978 - 1981.

Student Aide, Water Quality Division, Biology Section, Michigan Department of Natural Resources, 1976 - 1977.

FIELDS OF EXPERIENCE: At the Illinois Environmental Protection Agency, Dr. Hornshaw's major duties include the management of the Toxicity Assessment Unit; development and use of procedures for human and environmental exposure assessments and risk assessments; review of toxicological data and hazard information in support of Agency programs and actions; and critical review of remedial investigation and risk assessment documents submitted to the Agency during hazardous waste site investigations and cleanups. Dr. Hornshaw was a member of the Agency's Cleanup Objectives Team until 1993, when that Team's functions were assumed by the Toxicity Assessment Unit. As a member of Agency work groups, he participated in the development of Illinois= Air Toxics, Groundwater Quality, Tiered Approach to Corrective Action Objectives, and Clean Construction or Demolition Debris Fill Operations rules. He is one of the Agency's representatives to the Great Lakes Toxic Substances Control Agreement (member of the Fish Advisory Task Force) and is the Chair of the multi-agency Illinois Fish Contaminant Monitoring Program. Dr. Hornshaw was also a member of the National Advisory Committee for Acute Exposure Guidance Levels, moderated by USEPA, whose task was the development of action levels for use in unplanned air releases of hazardous chemicals. In an earlier assignment at the Agency, Dr. Hornshaw assisted in the development of bioassay protocols and quality assurance procedures for the Biomonitoring Unit.

As part of his duties during his Ph.D. research at Michigan State University, Dr. Hornshaw conducted experiments to develop protocols for mammalian wildlife dietary LC_{50} and reproduction tests, using mink and European ferrets as representative mammalian carnivores. He has published four papers in scientific journals as a result of this research, and the protocols

developed from these studies have been published by USEPA.

As part of his duties during his M.S. research at Michigan State, Dr. Hornshaw conducted experiments to assess the suitability of several species of Great Lakes fish for animal feed, testing the fish in reproduction trials with mink. He quantitated levels of polychlorinated biphenyls in fish, mink fat, and mink milk as a portion of this research, and published the results of these studies in a scientific journal. These results were also published in several trade journals serving the fur industry. He has authored or co-authored articles detailing the results of several other studies sponsored by the fur industry in these trade journals.

After receiving his Bachelor's degree from Michigan State, Dr. Hornshaw worked as a student aide in the Biology Section of the Water Quality Division of Michigan's Department of Natural Resources. His duties included assisting staff aquatic biologists in the collection of fish, water, sediment, and benthos samples, in laboratory work, in data handling, and in reporting requirements. His field experience included sample collection and identification from inland lakes, Great Lakes, and rivers and streams.

HONORS: Bachelor of Science, with honors; Member, Sigma Xi, the Scientific Research Society.

AFFILIATIONS: Member, Society of Environmental Toxicology and Chemistry.

THESES:

Hornshaw, T. C. 1984. Development of Dietary LC_{50} and Reproduction Test Protocols Using Mink and Ferrets as Representative Mammalian Carnivores. Ph.D. Thesis, Michigan State University, East Lansing, MI. 212pp.

Hornshaw, T. C. 1981. Renewed Use of Underutilized Species of Great Lakes Fish for Animal Feed. M.S. Thesis, Michigan State University, East Lansing, MI. 45pp.

PUBLICATIONS (Peer Reviewed):

Ringer, R. K., Hornshaw, T. C., and Aulerich, R. J. Mammalian Wildlife (Mink and Ferret) Toxicity Test Protocols (LC_{50}, Reproduction, and Secondary Toxicity). U.S. Environmental Protection Agency Report No. EPA/600/3-91/043. July 1991. NTIS Document # PB91-216507.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1987. Toxicity of thiram (tetramethylthiuram disulfide) to mink and European ferrets. Bull. Environ. Contam. Toxicol. 38: 618 - 626.

Hornshaw, T. C., Ringer, R. K., Aulerich, R. J., and Casper, H. H. 1986. Toxicity of sodium monofluoroacetate (Compound 1080) to mink and European ferrets. Environ. Toxicol. Chem. 5: 213 - 223.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1986. Toxicity of o-cresol to mink and

European ferrets. Environ. Toxicol. Chem. 5: 713 - 720.

Hornshaw, T. C., Safronoff, J., Ringer, R. K., and Aulerich, R. J. 1986. LC_{50} test results in polychlorinated biphenyl-fed mink: age, season, and diet comparisons. Arch. Environ. Contam. Toxicol. 15: 717 - 723.

Bleavins, M. R., Aulerich, R. J., Hochstein, J. R., Hornshaw, T. C., and Napolitano, A. C. 1983. Effects of excessive dietary zinc on the intra- uterine and postnatal development of mink. J. Nutr. 113: 2360 - 2367.

Hornshaw, T. C., Aulerich, R. J., and Johnson, H. E. 1983. Feeding Great Lakes fish to mink: effects on mink and accumulation and elimination of PCBs by mink. J. Toxicol. Environ. Health 11: 933 - 946.

PUBLICATIONS (Trade Journals):

Hornshaw, T. 1992. Illinois' Air Toxics selection process described. National Air Toxics Information Clearinghouse (NATICH) Newsletter. USEPA Office of Air Quality Planning and Standards, Research Triangle Park, NC. January, 1992.

Aulerich, R. J., Napolitano, A. C., and Hornshaw, T. C. 1986. How supplemental copper affects mink kit hemoglobin concentration. In The Fur Rancher Blue Book of Fur Farming. Communications Marketing, Inc., Eden Prairie, MN. pp. 42 - 46.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1985. Mineral concentrations in the hair of natural dark and pastel mink. Scientifur 9(3): 216 - 219.

Aulerich, R. J., Napolitano, A. C., and Hornshaw, T. C. 1985. Effect of supplemental copper on mink kit hemoglobin concentration. Fur Farmer's Gazette of the United Kingdom 35(4): 8 - 11.

Hornshaw, T. C., Aulerich, R. J., Johnson, H. E., and Ringer, R. K. 1982. How suitable are today's Great Lakes fish for use in feeding mink? Fur Rancher 62(9): 21 - 23.

Hornshaw, T. C., and Aulerich, R. J. 1980. Can Great Lakes fish again be fed safely to mink? In The Fur Rancher Blue Book of Fur Farming. Communications Marketing, Inc., Eden Prairie, MN. pp. 48 - 49.

PRESENTATIONS:

Hornshaw, T.C. "The Indoor Inhalation Exposure Route under TACO." Talk presented at the Southwestern Illinois Employers Association Environmental Managers Committee meeting, April 2, 2009, Wood River, IL.

Hornshaw, T.C. "The Illinois Fish Contaminant Monitoring Program." Talk presented at the

27th Annual Fall Meeting, Midwest Regional Chapter, Society of Toxicology, November 7, 2008, Downers Grove, IL.

Hornshaw, T.C. "Illinois EPA Pilot Study: PPCPs in Illinois Drinking Water." Talk presented at the Meds with Water...Not in Water Pharmaceutical Summit Conference, October 1, 2008, Springfield, IL.

Willhite, M. and Hornshaw, T. "Illinois EPA Study of Pharmaceuticals in Drinking Water." Talk presented at the Illinois Waste Management and Research Center Symposium on Pharmaceuticals and Personal Care Products (PPCPs) in the Illinois Environment, April 25, 2008, Champaign, IL.

Hornshaw, T.C. "Emerging Contaminants: What Next to Worry About?" Talk presented at the Illinois Lake Management Association Annual Conference, February 28-29, 2008, Springfield, IL.

Hornshaw, T.C. and Homer, D. "Calumet Ecotox Protocol: Protecting Calumet's Plants and Animals." Talk presented at the Calumet Research Summit, January 10-11, 2006, Hammond, IN.

Hornshaw, T.C. "Background Metals and PAHs – Panel Discussion." Session Chair and Panel Member at the Midwestern States Risk Assessment Symposium, August 25-27, 2004, Indianapolis, IN.

Hornshaw, T.C. "Vapor Intrusion Action Levels – Panel Discussion." Panel Member at the Midwestern States Risk Assessment Symposium, July 24-26, 2002, Indianapolis, IN.

Hornshaw, T. C. AThe Illinois Strategy for Endocrine Disruptors.@ Talk presented at The Endocrine Disruptor Debate: Environmental Chemicals and Reproductive and Developmental Health, October 17, 1997, St. Paul, MN.

Hornshaw, T. C. ARisk Pathways and Exposure Potential as Critical Factors in the Determination of Remedial Objectives.@ Talk presented at the Science for Environmental Professionals and Attorneys Conference, January 8, 1997, Chicago, IL.

Hornshaw, T. C. APotential Health Effects of Triazine Herbicides and Their Metabolites in Community Water Supplies.@ Talk presented at the 1996 Illinois Agricultural Pesticides Conference, January 3-4, 1996, Champaign, IL.

Hornshaw, T. C. "The Illinois Fish Contaminant Monitoring Program." Talk presented at the Biannual Meeting of the Federal-State Toxicology and Risk Assessment Committee (FSTRAC), November 6-8, 1991, Chicago, IL.

Hornshaw, T. C. "Assessing Exposure to Toxic Air Releases from a Chemical Facility: Illinois Acrylonitrile Exposure Assessment." Talk presented at the National Governors' Association Conference on Assessing Exposure to Toxic Contaminants: Issues and Problems Facing State Government, March 29, 1989, Salt Lake City, UT.

Hornshaw, T. C. "Risk Assessment from State Point of View." Talk presented at the 1st Annual Hazardous Materials Management Conference/Central, March 16, 1988, Chicago, IL.

Perino, J. V., Whitaker, J. B., and Hornshaw, T. C. Technical aspects of an aquatic toxicological testing program at a state regulatory agency. Poster presented at the 1st Annual Meeting of the Ozark-Prairie Chapter of the Society of Environmental Toxicology and Chemistry, April 24-26, 1986, Columbia, MO.

Hornshaw, T. C. "Illinois EPA's Aquatic Toxicity Testing Program." Talk presented to the Illinois Environmental Consensus Forum. December 12, 1985. Springfield, IL.

Aulerich, R. J., Bursian, S. J., Nachreiner, R. F., Olson, B. A., Hochstein, J. R., Hornshaw, T. C., and Koudele, K. A. Toxicological manifestations of dietary exposure to 3,4,5,3', 4', 5' - hexachlorobiphenyl in mink. Poster presented at the 24th Annual Meeting of the Society of Toxicology, March 18-22, 1985, San Diego, CA.

Hornshaw, T. C. "Effects of Feeding Great Lakes Fish to Mink." Talk presented at the Great Lakes Commercial Fisheries Workshop, March 12, 1985, Mackinaw City, MI.

Hornshaw, T. C., Safronoff, J., Aulerich, R. J., and Ringer, R. K. Development and validation of dietary LC_{50} test protocols for wildlife mammalian carnivores using mink and ferrets. Poster presented at the 5th Annual Meeting of the Society of Environmental Toxicology and Chemistry, November 4-7, 1984, Arlington, VA.

Hornshaw, T. C., Ringer, R. K., and Aulerich, R. J. Toxicity of thiram to mink and European ferrets. Poster presented at the 23rd Annual Meeting of the Society of Toxicology, March 12-16, 1984, Atlanta, GA.

Hornshaw, T. C., Ringer, R. K., and Aulerich, R. J. Toxicity of sodium monofluoroacetate (Compound 1080) to mink. Poster presented at the 22nd Annual Meeting of the Society of Toxicology, March 6-11, 1983, Las Vegas, NV.

Hornshaw, T. C., Aulerich, R. J., Johnson, H. E., and Ringer, R. K. Suitability of today's Great Lakes fish for animal feed. Poster presented at the International Symposium on PCBs in the Great Lakes, March 15-17, 1982, East Lansing, MI.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO CLEAN	)	
CONSTRUCTION OR DEMOLITION	)	R12-9
DEBRIS FILL OPERATIONS (CCDD):	)	(Rulemaking –Land)
PROPOSED AMENDMENTMENTS TO 35 Ill.	)	
Adm. Code 1100	)	
	)	

ORIGINAL

ERRATA SHEET NUMBER 1

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Stephanie Flowers, and submits this ERRATA SHEET NUMBER 1 to the Illinois Pollution Control Board ("Board") and the participants on the Service List. Testimony in support of these amendments is provided by Tom Hornshaw and Steve Nightingale in pre-filed written testimony, which is also being served upon the Board and the Service List.

1. Section 1100.101(b)(3)

The Illinois EPA proposes to make the following underlined amendment to Section 1100.101(b)(3).

b) This Part does not apply to:

3) The use of CCDD or uncontaminated soil as fill material in an excavation other than a current or former quarry or mine if the use complies with Illinois Department of Transportation specifications;

Board Note: The Illinois Department of Transportation (IDOT) specifications applicable to the use of CCDD <u>or uncontaminated soil</u> as fill can be found at Articles 107.22 and 202.03 of IDOT's "Standard Specifications for Road and Bridge Construction." According to IDOT specifications, this exemption applies to IDOT, a county, a municipality, or a township.

2. Section 1100.103 Definitions

The Illinois EPA proposes to make the following amendments to Section 1100.103 shown by strikeout or underline.

"Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. For purposes of this Part, CCDD may include uncontaminated broken concrete without protruding metal bars, bricks, rocks, stone, reclaimed or other asphalt pavement that has been painted ("painted CCDD") if the painted CCDD is used as fill material at a CCDD fill operation in accordance with Section 1100.212 of this Part.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste. For purposes of this Part, uncontaminated soil may include incidental amounts of stone, ~~clay,~~ rock, ~~sand,~~ gravel, roots and other vegetation.

"Mine" means an excavation created for the purpose of extracting ore or minerals, including, but not limited to, coal.

"Other excavation" means a pit other than a quarry or mine created primarily for the purpose of extracting resources including, but not limited to, clay or other soil ~~(e.g. soil, sand, gravel, clay)~~ and does not include holes, trenches, or similar earth removal created as part of normal construction, removal, or maintenance of a structure, utility, or transportation infrastructure.

"Potentially impacted property" means property on which a historical or current use, or contaminant migration from a proximate site, increases the presence or potential presence of contamination at the source site.

~~Board Note:~~ "Potentially impacted property" is intended to identify soil that is more likely to be contaminated and in need of professional evaluation and certification before placement in a fill site. The following should be considered when determining whether property is "potentially impacted property": the current use of the property, prior uses of the property, and the uses of adjoining property. For example, for transportation rights of way or utility easements, the current use of the property as a right of way or easement, the uses of the property prior to its use as a right of way or easement, and the uses of adjoining property should be considered. Source site owners are encouraged to coordinate with the receiving facility on soil certifications.

"Quarry" means an open surface excavation or pit created for the purpose of extracting stone, rocks, sand, or gravel.

3. Section 1100.104

The Illinois EPA proposes to make the following amendment to Section 1100.104 shown by strikeout or underline.

> NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (800) 553-6847:
>
> > Test Methods for Evaluating Solid Waste, Physical/Chemical methods, EPA Publication SW-846 (Third Edition, 1986 as amended by Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA and IVB ~~and IV~~).

4. Section 1100.205(b)(5)

The Illinois EPA proposes to make the following amendments to Section 1100.205(b)(5) shown by strikeout or underline.

b) The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

5) The owner or operator must take special precautionary measures ~~as specified in the Agency permit~~ prior to accepting loads from persons or sources found or suspected to be responsible for sending or transporting material other than CCDD or uncontaminated soil to the facility. The special precautionary measures may include, but are not limited to, communication with the source site owner or source site operator of the CCDD or uncontaminated soil, communication with the PE or PG certifying pursuant to subsection (a)(1)(B) of this Section, questioning the driver about the load prior to its discharge and increased visual inspection and instrument testing of the load.

5. Section 1100.212

The Illinois EPA proposes to make the following amendments to Section 1100.212 shown by strikeout or underline.

For purposes of this Part, ~~CCDD may include~~ uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, or reclaimed or other asphalt pavement that has been painted ("painted CCDD") may be used as fill material at a CCDD fill operation ~~if the painted CCDD is used as fill material at a CCDD fill operation. Painted CCDD may be used as fill material at a CCDD fill operation~~ if it is evaluated analytically under the supervision of a PE and if all requirements of this Section are satisfied. Acceptance or management of painted CCDD for any purpose other than use as fill material at a CCDD fill operation must be in accordance with applicable law and may require a permit(s) or

beneficial use determination(s) from the Agency. Such other purposes include, but are not limited to, processing of painted CCDD for reuse.

~~BOARD NOTE: Acceptance or management of painted CCDD for any purpose other than use as fill material at a CCDD fill operation must be in accordance with applicable law and may require a permit(s) or beneficial use determination(s) from the Agency. Such other purposes include, but are not limited to, processing of painted CCDD for reuse.~~

a) The PE must determine on a site-specific basis the number and location of paint samples that will provide a representative analysis of paint from the painted CCDD to be used as fill material.

b) The PE must obtain paint samples consisting of representative paint chips or scrapings that include all layers of paint in the area sampled and that minimize the amount of substrate in the sample.

c) Paint samples must be analyzed for arsenic, cadmium, chromium (total), lead, mercury and zinc ("contaminants of concern") using the TCLP or SPLP extraction test analytical procedures in accordance with Methods 1311 and 1312 respectively in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW-846.

1) Paint samples must not be composited for analysis, and analytical ~~Analytical~~ results from paint samples must not be averaged.

2) All quantitative analyses of paint samples must be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of the accreditation.

3) Documentation of any chemical analysis must include, but is not limited to:

A) Chain of custody control;

B) A copy of the lab analysis;

C) Accreditation status of the laboratory performing the analysis; and

D) Certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of the accreditation.

d) For painted CCDD to be used as fill material, analytical results for each paint sample must not exceed the chemical-specific Class I groundwater quality

standard at 35 Ill. Adm. Code 620.410 for any contaminant of concern identified in subsection (c) of this Section.

6. Section 1100.600(d)(3)

The Illinois EPA proposes to make the following amendment to Section 1100.600(d)(3) shown by strikeout or underline.

d) Soil or materials to which this Subpart F does not apply include, but are not limited to:

3) Soil that has been *removed from a site as part of cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; as part of a closure of corrective action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program, such as the leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of [the] Act (415 ILCS 5/58.16) where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on or from the real property* and excluding soil that is uncontaminated and has not been excavated or treated as part of the cleanup or removal of contaminants. [415 ILCS 5/22.51(f)(2)(C), 5/22.51a(d)(2)(C) ~~5/22.51(d)(2)(C)~~].

7. Section 1100.605(a)(5)

The Illinois EPA proposes to make the following underlined amendment to Section 1100.605(a)(5).

a) Except as provided for background concentrations in subsection (b) of this Section, the maximum allowable concentrations for chemical constituents in uncontaminated soil must be determined pursuant to subsections (a)(1) through (a)(5) of this Section.

5) The total concentration of organic contaminants may not exceed the attenuation capacity of the soil as determined in accordance with subsections (b)(1) and (b)(1)(A) of 35 Ill. Adm. Code 742.215 using a default value of 2000 mg/kg for the natural organic carbon fraction (f_{oc}).

8. Section 1100.610

The Illinois EPA proposes to make the following amendments to Section 1100.610 shown by strikeout or underline.

a) For purposes of this Subpart F, the chemical constituents to be evaluated, if any, and the soil sample points must be determined on a site-specific basis by the professional engineer or professional geologist.

b) If soil sampling and analysis are used to evaluate compliance with the maximum allowable concentrations for chemical constituents in uncontaminated soils, compliance generally must be determined by comparing total soil concentrations from the laboratory reports with the maximum allowable concentrations as determined pursuant to Section 1100.605 of this Part. The following procedures will be required, as applicable, when making the comparisons for ionizing organic constituents and inorganic constituents:

1) If the background value from 35 Ill. Adm. Code 742.Appendix A, Tables G or H was determined to be the maximum allowable concentration for an ~~ionizing~~ organic constituent or an inorganic constituent, a direct comparison of that value with the total soil concentration from the laboratory report must be used to evaluate compliance.

2) For ionizing organic constituents, if, as determined pursuant to Section 1100.605 of this Part, the lowest Tier 1 chemical-specific soil value is for the soil component of the Class I groundwater ingestion exposure route, the total soil concentration from the laboratory report must be compared with the lowest corresponding pH-dependent value in 35 Ill. Adm. Code 742.Appendix B, Table C.

3) For inorganic constituents, if, as determined pursuant to Section 1100.605 of this Part, the lowest Tier 1 chemical-specific soil value is for the soil component of the Class I groundwater ingestion exposure route, compliance must be evaluated by comparing the total soil concentration from the laboratory report using the following methods:

A) Total soil concentrations from the laboratory report must be compared with the lowest chemical-specific, pH-dependent value for the soil component of the Class I groundwater ingestion exposure route in Appendix B, Table C; or

B) For inorganic chemical constituents that are listed in Appendix B, Table A but not in Appendix B, Table C, the total soil concentrations from the laboratory report must be compared with the product of the extraction test values for the soil component of the Class I groundwater ingestion exposure route in Appendix B, Table A multiplied by twenty (20) to convert to total soil concentration values; or

C) As an alternative to subsections (a)(3)(A) and (a)(3)(B) of this Section, concentrations in the extract from the Toxicity Characteristic Leaching Procedure (TCLP) or Synthetic Precipitation Leaching Procedure (SPLP) analytical extraction test in accordance with Methods 1311 and 1312, respectively, in SW-846 may be compared with the chemical-specific extraction test values for the Class I soil component of the groundwater ingestion exposure route in Appendix B, Table A.

c) *Chemical analysis* of soil samples *conducted under this* Subpart F *must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended, ~~,~~ and "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW-846, as amended,* incorporated by reference at Section 1100.104 of this Part (SW-846). [415 ILCS 5/22.51(f)(3), 22.51a(d)(3)] If SW-846 methods do not support detection at the concentration specified for a particular chemical constituent (e.g., aldicarb, carbofuran, endothall), the laboratory may use modified or alternative methods available to the laboratory to achieve the lowest practical detection level possible. If concentrations of these constituents in soil are demonstrated to be equal to or lower than the applicable maximum allowable concentrations using modified or alternative methods pursuant to this subsection (c), the soil may be certified as complying with the maximum allowable concentrations.

d) Samples must not be composited for analysis, and analytical ~~Analytical~~ results from samples must not be averaged.

e) All quantitative analyses of samples must be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of the accreditation. *Documentation of any chemical analysis must include, but is not limited to:*

1) Chain of custody control;

2) A copy of the lab analysis;

3) Accreditation status of the laboratory performing the analysis; and

4) Certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of the accreditation. [415 ILCS 5/22.51(f)(2)(D)]

9. Section 1100.615(a)

The Illinois EPA proposes to make the following amendment to Section 1100.615(a) shown by strikeout or underline.

a) Uncontaminated soil may include incidental amounts of stone, ~~clay,~~ rock, ~~sand,~~ gravel, roots, and other vegetation.

10. Section 1100.720(b)

The Illinois EPA proposes to make the following amendment to Section 1100.720(b) shown by strikeout or underline.

b) Except as provided in ~~subsection (d)~~ Section 1100.760, throughout the compliance period as defined in Section 1100.715, the owner or operator must measure compliance with the Class I groundwater quality standards at the compliance point, or compliance points if more than one such point exists.

11. Section 1100.745

The Illinois EPA proposes to make the following amendments to Section 1100.745 shown by strikeout or underline.

If monitoring results collected pursuant to Sections 1100.735 and 1100.740 show that a Class I groundwater quality standard has been exceeded, the owner or operator must:

a) Within 60 days of the date the groundwater sample was collected, notify the Agency in writing of the exceedance. The notification must indicate which Class I groundwater quality standards have been exceeded, include the analytical results showing the exceedence, and identify the groundwater monitoring well where the exceedence has occurred.

b) Within 60 days of the date the groundwater sample was collected, resample the groundwater in all monitoring wells where a Class I groundwater quality standard has been exceeded and measure the concentration of each parameter required pursuant to Section 1100.735 where a Class I groundwater quality standard has been exceeded ~~unless the owner or operator makes a demonstration pursuant to Section 1100.750~~. A report of the results should be prepared and submitted to the Agency within 60 days of the date of the resampling.

c) Prepare a corrective action program designed to achieve the requirements of Section 1100.755. This plan must be submitted to the Agency in writing within 120 days of the date on which the resampling results were submitted to the Agency pursuant to subsection (b), unless~~:~~

~~1) None of the parameters identified under subsection (b) exceed the Class I groundwater quality standards; or~~

~~2) The~~ the owner or operator makes a demonstration pursuant to Section 1100.750.

d) Begin implementation of the corrective action program specified in subsection (c) within 120 days of the date on which the resampling results were submitted to the Agency pursuant to subsection (b), unless~~:~~

~~1) None of the parameters identified under subsection (b) exceed the Class I groundwater quality standards; or~~

~~2) The~~ the owner or operator makes a demonstration pursuant to Section 1100.750.

12. Section 1100.750

The Illinois EPA proposes to make the following amendments to Section 1100.750 shown by strikeout or underline.

If the groundwater sampling required pursuant to Section 1100.740 shows that a Class I groundwater quality standard has been exceeded, the owner or operator may demonstrate i) that the exceedence resulted from ~~error in sampling, analysis, or evaluation, or~~ natural phenomena, sampling or analysis errors, or an offsite source, ii) that the exceedance is not statistically significant over background groundwater quality, or iii) that none of the parameters identified under subsection 1100.745(b) exceed the Class I groundwater quality standards. In making such demonstration the owner or operator must:

a) ~~Notify the Agency in writing that the owner or operator intends to make a demonstration under this Section within 60 days of the date on which the Agency was notified in writing of the exceedance pursuant to Section 1100.745(a);~~

~~b)~~ Submit a report to the Agency that demonstrates i) that the Class I groundwater quality standard was exceeded due to ~~an error in sampling, analysis, or evaluation, or~~ natural phenomena, sampling or analysis errors, or an offsite source, ii) that the exceedance is not statistically significant over background groundwater quality, or iii) that none of the parameters identified under subsection 1100.745(b) exceed the Class I groundwater quality standards. The report must be submitted to the Agency in writing within 180 days of the date on which the Agency was notified in writing of the exceedance pursuant to Section 1100.745(a); and

~~c)~~b) Continue to monitor in accordance with the groundwater monitoring program established pursuant to Sections 1100.730, 1100.735, and 1100.740.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 10-6-11

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)
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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached ERRATA SHEET NUMBER 1, ADDITIONAL TESTIMONY OF STEPHEN F. NIGHTINGALE, TESTIMONY OF THOMAS C. HORNSHAW upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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ATTACHED SERVICE LIST
(First Class Mail)

and mailing them from Springfield, Illinois on October 6th, 2011, with sufficient postage affixed as indicated above.

Cindy Wolfe

SUBSCRIBED AND SWORN TO BEFORE ME

This 6th day of October, 2011.

Brenda Boehner
Notary Public

"OFFICIAL SEAL"
BRENDA BOEHNER
NOTARY PUBLIC
STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-14-2013

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