ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
PROPOSED AMENDMENTS TO CLEAN	)	R12-09
CONSTRUCTION OR DEMOLITION	)	(Rulemaking-
DEBRIS FILL OPERATIONS (CCDD)	)	Land
AND UNCONTAMINATED SOIL	)	
FILL OPERATIONS: PROPOSED	)	
AMENDMENTS TO 35 Ill. Adm. Code	)	
1100	)	

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Marie Tipsord, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 25th day of October, 2011, commencing at the hour of 11:00 a.m.

A P P E A R A N C E S

MS. MARIE TIPSORD, Hearing Officer
MS. ALISA LIU
MR. ANAND RAO
MR. THOMAS JOHNSON

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
BY: MS. STEPHANIE FLOWERS
MS. TERRI BLAKE MYERS
MR. PAUL PURSEGLOVE
MR. CHRISTIAN LIEBMAN
MS. KIMBERLY GEVING
MR. H. MARK WIGHT
MR. DOUGLAS CLAY
MR. THOMAS HORNSHAW
MS. HEATHER NIFONG
MR. STEPHEN NIGHTINGALE

ALSO PRESENT:

MR. SCOTT BELL
MR. JOHN HENRIKSEN
MR. RANDI WILLIE
MR. DENNIS WILT
MR. RYAN LADIEU
MR. MARK KRUMENACHER
MR. STEPHEN SYLVESTER
MR. DAVID PYLES
MR. JOHN HOCK
MR. JAMES HUFF
MR. KENNETH LISS
MR. STEVEN GOBELMAN
MR. GREGORY WILCOX

REPORTED BY:

Steven J. Brickey, CSR
CSR License No. 084-004675
L.A. COURT REPORTERS, LLC. (312) 419-9292

I N D E X

E X H I B I T S

MS. TIPSORD: My name is Marie Tipsord and I've been appointed by the Board to serve as Hearing Officer in this proceeding entitled Proposed Amendments to Clean Construction or Demolition Debris Operations (CCDD). Proposed amendments to 35 Ill. Adm. Code 1100.

This is Docket R12-9. With me today to my immediate left is Board Member Thomas Johnson and from our technical unit to my far right, Alisa Liu, and my immediate right, Anand Rao. Also, today, Lubko Berezowsky, who is one of our interns this semester and works on Tuesdays is with us. Lubko is here with us from -- not Kent.

MR. BEREZOWSKY: John Marshall.

MS. TIPSORD: I always forget. We have tomorrow Conner Kain from Kent will be with us. So -- or DePaul. Conner is from DePaul. See, too many interns. The purpose of today's hearing is twofold.

First, we will hear the pre-filed testimony from various witnesses. We will swear the witness in, enter the testimony as if read, and give it an exhibit number. We will then begin with questions starting with all

pre-filed questions. I ask that witnesses sit here to my right where Mr. Huff is sitting right now and people who have pre-filed questions can sit to my left.

The order of today's witnesses are James Huff and I apologize if I mispronounce the following names; Mark Krumenacher, David Pyles and Harvey Porkorny, John Hock, Greg Wilcox, Duane Kruger and Wayne Dixon, Michael Sturino, Kenneth Liss, Steven Gobelman, Brian LaDieu, Claire Manning, and we'll complete it with Stephen Nightingale and Thomas Hornshaw from the IEPA.

The second purpose of today's hearing is to satisfy the requirements of Section 27(b) of the Environmental Protection Act. Section 27(b) of the act requires the Board to request the Department of Commerce and Economic Opportunity to conduct an economic impact study on certain proposed rules prior to the adoption of those rules. If DCEO chooses to conduct the economic impact study, DCEO has 30 to 45 days after such a request to produce a study of the economic impact of the proposed rules.

The Board must then make the

economic impact study, or DCEO's explanation for not conducting the study, available to the public at least 20 days before a public hearing on the economic impact of the proposed rules.

In accordance with Section 27(b) of the act, the Board requested by a letter dated August 4th, 2011, that DCEO conduct an economic impact study for the above referenced ruling. On September 28th, 2001, the Board received a response from DCEO that no EcIS would be performed. A copy of DCEO's letter is available on the chair to my left.

Before we close the hearing, we will accept any comment on DCEO's decision. We do have pre-filed questions for some of the witnesses. We will begin with those for each witness, but anyone may ask a question of a witness. However, I do ask that you raise your hand, wait for me to acknowledge you, after I have acknowledged you, please state your name and whom you represent before you begin your questions.

Please speak one at a time. If you are speaking over each other, the court reporter will not be able to get your questions on

the record. Please note that any question asked by a board member or staff are intended to help build a complete record for the Board's decision and not to express any preconceived notion or bias. I also thought we would go until about 1:00 or 1:30 and take about an hour lunch break at that point in time just to give you an idea of what my plans are.

MR. JOHNSON: I want to welcome you. Thank you for coming. You don't know just how pleased I am to be here today. So start the hearing.

MS. TIPSORD: Are there any questions about the procedures?

MR. HENRIKSEN: Just a procedural matter. Randi Willie --

MS. TIPSORD: State your name, please.

MR. HENRIKSEN: John Henriksen, Illinois Association of Aggregate Producers. Thank you. Randi Willie should also be listed. He is in our pre-filed testimony along with John Hock.

MS. TIPSORD: Okay.

MR. HENRIKSEN: Thank you.

MS. TIPSORD: Any other questions? I believe the Agency had an errata sheet they wanted to present.

MR. WIGHT: We have two errata sheets. One was pre-filed with pre-filed testimony. One has been developed more recently as a result of ongoing discussions with some of the stakeholders. Would you like us to present both of those as exhibits at this point?

MS. TIPSORD: Yes, that's a good idea.

MR. WIGHT: Okay. I have the first errata sheet number one. How many copies?

MS. TIPSORD: Two is enough. Actually, we only need one.

MR. WIGHT: I have extra copies.

MS. TIPSORD: I'll just take one to mark as the exhibit. If there's no objection, we will mark errata sheet number one as Exhibit No. 7. Seeing none, it's Exhibit No. 7.

(Document marked as ILPCB Exhibit No. 7 for identification.)

MR. WIGHT: Do you want us to sit for questions at this point as well?

MS. TIPSORD: No, we'll do the questions on the errata sheet when we do the questioning of the Agency at the end of the day.

MR. WIGHT: So we're just getting the exhibits at this point?

MS. TIPSORD: Yes.

MR. WIGHT: I also have in support of errata sheet one pre-filed testimony of Stephen F. Nightingale.

MS. TIPSORD: Let's wait until we swear them in and enter that at that point. Let's just do the erratas right now.

MS. FLOWERS: Okay. So we also have an errata sheet two that we filed.

MS. TIPSORD: If I can have a couple extra of those. Great. Thank you.

MS. FLOWERS: I mean if anybody wants a copy of these, if there's a place where we could --

MS. TIPSORD: You can put them on the chair. If there's no objection, we will mark errata sheet number two as Exhibit No. 8. Seeing

none, it's Exhibit No. 8.

(Document marked as ILPCB Exhibit No. 8 for identification.)

MS. FLOWERS: We also have a form that kind of goes along with that errata sheet that we want to enter as an exhibit. Do you want me to do that now?

MS. TIPSORD: Sure. If there's no objection, we will mark Illinois Environmental Protection Agency Rejected Load Certification for Loads of CCDD and Uncontaminated Soil Accepted Pursuant to IAC 1100.205(a)4 LPC 667 as Exhibit No. 9. Seeing no objection, it is Exhibit No. 9.

(Document marked as ILPCB Exhibit No. 9 for identification.)

MS. TIPSORD: With that, I think we're ready to proceed with the pre-filed testimony of James Huff. Can we have Mr. Huff sworn in?

WHEREUPON:

JAMES HUFF

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: Mr. Huff, do you have a clean copy of your testimony with you?

MR. HUFF: I do.

MS. TIPSORD: I will mark Mr. Huff's testimony, if there's no objection, as -- his pre-filed testimony as Exhibit No. 10. Seeing none, it is Exhibit No. 10.

(Document marked as ILPCB Exhibit No. 10 for identification.)

MS. TIPSORD: Mr. Huff, did you want to give a brief summary or do you just want to sit for questions?

MR. HUFF: If I could, just one addition. The Village of Woodridge is also -- I represent as well. So they were a recent addition.

MS. TIPSORD: Okay. With that, are there questions? I believe we start with IEPA. Do you have questions for Mr. Huff?

MR. CLAY: Mr. Huff, on your testimony under the heading of groundwater impact from a CCDD site, pages four through seven discuss data from a road improvement project in Kane County. What is the name of the site and exactly where is it located?

MR. HUFF: LeRoy Daily, D-A-I-L-Y, Landfill, 7 North 508 Illinois 31, South Elgin, Illinois.

MR. CLAY: And what type of excavation was this?

MR. HUFF: Gravel pit.

MR. CLAY: What type of material was placed in the site?

MR. HUFF: That facility was permitted in 1972 for disposal of brick and broken concrete demolition debris.

MR. CLAY: When did this site last accept fill material?

MR. HUFF: 1989.

MR. CLAY: Roughly what percentage of fill material accepted at the site was soil, what percent was CCDD and what percent was other material?

MR. HUFF: March 29th, 2001, an Agency inspection report indicated rubble including broken brick, plaster, wood and concrete from the South Elgin Hospital. Waste was observed in 1989, which was subsequently cleaned up. A January 29th, 1976, letter from the Illinois EPA to Mr. Daily indicated that domestic refuse was observed along with open burning. June 13th, 1979, a letter also identifies, quote, plastic bags containing household refuse were present at the unrestricted site.

Asphalt shingles were also reported present by Mr. Daily in a letter received by the Agency on September 18th, 1985. Soil borings completed by Huff & Huff, Inc. at the Agency's request observed bricks, concrete, glass and wood as well as cinders all mixed with soils.

MR. CLAY: So --

MR. HUFF: I'm sorry. In summary, this was an uncontrolled site permitted for brick and broken concrete, but the lack of restricted access allowed the deposition of other material.

MR. CLAY: The data you referred to then is that why the investigation was conducted

or was the data collected for some other reason?

MR. HUFF: Some other reason.

MR. CLAY: Why was that?

MR. HUFF: The site never received closure from the Illinois EPA. Kane County needed a small section of the property for a new road and was required by the Daily family to purchase the entire site to secure the small portion of the land. Kane County assumed the responsibility to secure the closure from Illinois EPA. Illinois EPA initially requested the private wells be tested and subsequently decided that was not sufficient and required the monitoring wells to be installed and sampled on the site.

MR. CLAY: What sample collection methodology was used?

MR. HUFF: All sampling protocols were approved by the Illinois EPA in a December 29th, 2004, discussion and they followed US EPA protocols.

MR. CLAY: One sampling point was identified as an outside spigot most likely prior to treatment of the water softer. How many samples were collected after the water had been

treated and what were these treatments?

MR. HUFF: All private wells were sampled before the water softener. The one sampling point identified was collected from an outside spigot because the homeowner was not home at the time, but had granted access. Our experience is that outside spigots are connected prior to the water softener as the excess sodium is not desirable from a lawn or garden perspective. Each spigot was allowed to flow for ten minutes prior to sampling.

MR. CLAY: How many samples were collected using sampling techniques typically employed in performing groundwater monitoring at a landfill.

MR. HUFF: One hundred percent.

MR. CLAY: How deep on average were the 34 residential wells and how deep is the fill site?

MR. HUFF: Three of the private wells were screened between 30 and 34 feet below ground surface. The remainder were screened between 80 and 290 feet below ground surface. I've seen no information on the depth of the fill

site. From the perimeter monitoring wells, the gravel extended between 15 and 28 feet below ground surface above a clay/silt formation. So the fill site is likely in the same range 15 to 28 feet across the site.

MR. CLAY: In your testimony, Mr. Huff, on page nine, you propose a photoionization detector, PID, screening use of the value -- screening use a value of five parts per million as the threshold for load rejection instead of a reading in excess of background level as is currently required. What is the basis for your selecting five parts per million and how was this number derived?

MR. HUFF: My testimony pointed out a number of false positives when a limit of any deflection on a PID meter is used as a pass/fail criterion. The five parts per million was suggested based on my 40 years of experience associated with removal of soil from petroleum releases. When trying to decide when to stop excavation and actually collect the soil samples, a photoionization detector is typically used in the field and my experience has been if you can

achieve a five parts per million reading, the sample will meet the most restrictive limits found in 35 IAC 742.

It should be noted that petroleum products have a very low odor threshold. So you can smell petroleum at considerably lower concentration than the most restrictive Tier 1 objectives. Remember that there is analytical data associated with the material being screened with a PID meter so we have a situation where a PID reading is trumping analytical results.

MR. CLAY: Would you agree that the proposed rule only requires that some of the material may be -- have analytical results with them?

MR. HUFF: I would not. I believe that Form 663 requires a professional engineer to certify that he has representative samples of material being shipped in there. It is no different than the type of sampling that is done for anything that goes to a landfill or at anything in the SRP program where you take discreet samples and you analyze those samples.

MR. CLAY: What about the 662 form

that is also allowed for the certification?

MR. HUFF: My experience is nobody uses the 662 form, Mr. Clay. Right now, the marketplace is saying I don't care that this came from residential areas, test it and give me a 663 form.

MR. CLAY: Okay. Mr. Huff, in your testimony on page ten, you discuss the use of painted CCDD as fill material. Do the changes that IDOT has proposed in the proposed amendments in pre-filed testimony of Steven Gobelman fully address these questions? If not, what are the remaining concerns?

MR. HUFF: Mr. Gobelman's proposal would be a significant improvement over what the Agency has proposed and will certainly help highway departments. The proposal still deviates from collecting representative samples of the entire material as practiced in all other regulatory programs.

MR. CLAY: Thank you.

MS. TIPSORD: And then Waste Management has some questions for Mr. Huff.

MR. WILT: Dennis Wilt appearing on

behalf of Waste Management of Illinois. Just very few questions Mr. Huff. You identified the location where your testimony discusses the work that you did. Are you aware of any groundwater monitoring done on any other CCDD or soil fill sites?

MR. HUFF: I am not.

MR. WILT: The second question that we pre-filed referred you to a Board decision, a 1997 opinion in the TACO rulemaking and I think the question more correctly should have stated that on page four of your testimony you indicated that TACO should be considered for application to CCDD sites where there's contamination. Have you had a chance to look at the 1997 opinion to determine whether that is a consistent approach with that Board decision in the TACO rulemaking?

MS. TIPSORD: For the record, that's R97-12(b).

MR. WILT: If I could, I'll read the section from the opinion that we're referring to. It says -- it states as follows --

MR. HUFF: What page?

MR. WILT: This is on page two

towards the bottom after the heading establishing remediation objectives using the mixture rule. "The TACO methodology codified in Part 742 is not independent. It must be used in conjunction with remediation programs most specifically found at Part 740" and then it continues on.

The question is would the application of the TACO approach to contamination at CCDD sites be consistent with that 1997 order in your mind?

MR. HUFF: I believe it would. I believe that when the Board wrote that opinion we didn't have Section 1100 and the requirements that are being proposed today. So the question is what is the best program from a regulatory perspective that we should be regulating the CCDD facilities under and I believe that the Board's opinion other than what you just cited, which were the programs and effect at the time, are perfectly consistent with a TACO type approach.

MR. WILT: Last question is whether you're aware of any CCDD or soil fill sites that have accepted waste in violation of the Environmental Protection Act?

MR. HUFF: I was verbally told by an Illinois EPA employee about a year ago that enforcements had occurred where CCDD facilities were not using Form 662 and 663. The CCDD example I testified about in 1972 was cited for accepting CCDD material without a permit which was subsequently attained as well as operating an unsecured facility that resulted in midnight dumpers of domestic garbage. That's the sum extent of my knowledge.

MR. WILT: I have no further questions.

MS. TIPSORD: Are there any further questions for Mr. Huff?

MS. MANNING: I have a question. Claire Manning from the Chicago Public Building Commission. Mr. Huff, is it your experience that TACO has been utilized by the engineering community not just for remediation purposes, but to relocate soil from one area to another for purposes of fill?

MR. HUFF: Yes, it's also used for any phase one/phase two in trying to decide whether a site -- there are environmental risks

posed to those, but it also has been used exactly what you described in moving sites and communities.

MS. MANNING: Thank you.

MS. TIPSORD: Anything further? Thank you very much, Mr. Huff. It's a pleasure seeing you again. We're ready for you, Mr. Krumenacher, and if we could have him sworn in.

WHEREUPON:

MARK KRUMENACHER

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: Mr. Krumenacher, did you bring a copy of your testimony?

MR. KRUMENACHER: Yes, ma'am, I did.

MS. TIPSORD: If there's no objection, we will mark the pre-filed testimony of Mr. Krumenacher. Can I have that clean copy?

MR. KRUMENACHER: (Handing.)

MS. TIPSORD: We will mark the pre-filed testimony of Mark Krumenacher as Exhibit 11. Seeing no objection, it is Exhibit 11.

(Document marked as ILPCB Exhibit No. 11 for identification.)

MS. TIPSORD: I understand you want to give a brief summary?

MR. KRUMENACHER: Yes, ma'am. Okay. My name is Mark Krumenacher. I'm a principal and a senior vice president with GZA GeoEnvironmental and I'm here as a licensed professional geologist and a stakeholder in this process. I have worked with the existing CCDD rules since their inception. I have provided comments and suggested changes to previous and current rule drafts and have coordinated training programs for CCDD operators. Previous efforts to change the draft rule resulted in some changes with respect to professional geologist's licensing and other issues, but there's -- many more changes are needed to make the rule feasible for operators based on my experience working with operators.

Other individuals here are addressing this issue here today and I have provided comments in support of their efforts, but at this time in my testimony I provide legal,

regulatory and technical justifications to expand the role of licensed professional geologists in implementing the proposed rule.

My qualifications were included in my pre-filed testimony so I'm not going to go over those, but during the past 24 plus years as an environmental, geological and groundwater professional I have earned professional certifications from many states and national certifying boards and they're listed in my testimony.

As an active licensed professional geologist, I represent many associations and organizations on a daily basis including several state and national mining associations, state and national geologic professional associations and other industry peer associations of mining and environmental professionals. Licensed professional geologists in Illinois and elsewhere have been directly involved in the routine planning, execution and management of the characterization and final disposition of contaminated soil waste and other materials for several decades.

As you may be aware, environmental rules and programs are commonly managed for industry by environmental consulting and environmental engineering firms. The CCDD rule is just one of many examples of such rules. Prior to the mid to late '70s and early '80s, there were very few, if any, pure environmental consulting or engineering -- environmental engineering firms because there were very few, if any, environmental regulations pertaining to waste and contaminated soil and contaminated groundwater. There were many engineering firms like GZA, my company, that were managing soil and groundwater as part of engineering processes, but the new environmental regulations required that engineering firms deal with contaminated soil and contaminated groundwater differently and they needed scientists, they needed new talent to help that and the biggest available resource for these scientists were geologists.

Coincident with the downturn or the decrease in oil prices in the mid 1980s geologists were then -- the curriculum changed to environmental related geology and waste management

and groundwater issues and it was the geologist that put the science into the environmental and engineering consulting firms.

Although a common misconception is that geologists are typically out studying mountains and looking at rocks and volcanoes and earthquakes, as I mentioned, the vast majority of Illinois' approximately 780 licensed professional geologists don't do that and they're engaged by environmental and engineering consulting firms and are involved in evaluation and management of contaminated soil and contaminated groundwater issues.

An important component of most rules is the requirement for professional certifications. Professional certifications play a critical role in ensuring the effective and consistent implementation of the rule and plays a critical role in the ongoing health of any industry such as environmental and engineering consulting firms and it's important that the staff be licensed or certified to give those certifications and that includes professional geologists.

The professional certification processes identify levels of knowledge and the ability to apply industry accepted practices in a manner approved by industry peers and regulators which provides for adherence to industry best practices and standards of care.

As detailed in my testimony, licensed professional geologists are specifically qualified to perform many of the duties and provide the certifications required under the rule. Justification for this request is detailed in my testimony and includes the Illinois Professional Geologists Licensing Act, the education curriculum of professional geologists and the National Association of State Boards of Geology Criteria together with the Illinois Department of Financial and Professional Regulation criteria which set the standards and the criteria for professional geologists in Illinois as well as the historical role of professional geologists.

Each of these are summarized in detail in my testimony. Historically, professional geologists have had only a quiet

representation before such boards. Professional geologists are highly educated, have widespread experience and have a rigorous certification process developed and approved by the State of Illinois. As such, my testimony in writing and here today is to request that the Illinois Pollution Control Board and the Illinois EPA recognize the qualifications of professional geologists and make the requested amendments that I've outlined in my testimony.

MS. TIPSORD: Thank you. Are there any questions of Mr. Krumenacher? Thank you so much for taking the time to testify. I appreciate it. That moves us to David Pyles and Harvey Porkorny. Are they here yet? I was going to say I had an e-mail from Mr. Pyles this morning saying when he was going to be testifying.

Okay. We'll skip over them and when they come in later we'll come back to them. I do know they're coming because I did have an e-mail from them this morning. So, with that, that means, Mr. Henriksen, we're ready for your witnesses.

If there's no objection, we will

mark the pre-filed testimony of John Hock as Exhibit 12 and the pre-filed testimony of Randi Willie as Exhibit 13. Seeing none, they're Exhibit's 12 and 13.

(Document marked as ILPCB Exhibit No.'s 12-13 for identification.)

MS. TIPSORD: Did you want to go do a brief summary or go right to questions?

MR. HOCK: I was going to give a brief summary, if I may.

MS. TIPSORD: That's fine.

MR. HOCK: My name is John Hock. I'm a vice president with Civil & Environmental Consultants and two of the issues that have been heavily discussed through this rulemaking process have been the maximum allowable concentrations, what are the appropriate numbers, and also groundwater monitoring and during the previous hearing the testimony given by the IEPA indicated they didn't have a chance to look at, didn't have -- or have a chance to review actual data from CCDD fill sites about what types of concentrations or parameters may be in CCDD.

CEC has been involved with the investigation of some facilities. We had the opportunity to review some additional data and wanted to basically provide a summary of that data and relate it to three items.

One is the applicability of groundwater monitoring, the second is if groundwater monitoring is required what the appropriate parameters should be and then the third was the appropriateness of the maximum allowable concentrations for soil remediation objectives with PH specific levels.

So the data that we had basically we reviewed data from 44 samples, 44 borings. These were obtained from the sites. Basically, standard sampling, split spoon sampling. The samples were analyzed for a large variety of compounds, VOC's, volatile organic compounds, pesticides, herbicides, PCB's and metals. Also PNA's or polynuclear aromatic compounds.

Basically, the data indicated that no VOC's on any of the samples were detected above the proposed MAC's, no SVOC's, no PCB's and

no pesticides or herbicides were detected above the proposed MAC's. There were PNA's detected above the proposed MAC's in 7 out of 44 and metals were detected above in most of them.

In terms of PNA's, the samples from those borings were noted to have -- in at least a few of them, noted to have either milled or crushed asphalt in them. PNA's are associated with things like asphalt. So, to me, that's actually not surprising given the definition of CCDD and the fact that that material is acceptable.

In terms of the metals, and I'll comment about that a little further, but basically all the concentrations detected were below the -- I should say nearly all were below the PH neutral soil remediation objectives for those metals or were very much within the range of background.

This data suggested what we, again, understood from the testimony is the IEPA indicated that if CCDD facilities -- if the material in there basically meets the MAC's, then really groundwater would not be required and it was really a conservative approach for material

that is either not CCDD or maybe well above that is being required.

This data just suggests to us or indicated to us that really groundwater monitoring is really not needed, that these are very typical CCDD fill sites and the material in there is indicative and I think meets the intent of what is supposed to go into these facilities.

In terms of the parameters for groundwater monitoring, determining exactly what you monitor for in a groundwater monitoring program can definitely be an involved process. One of the simple ways to look at it is what is in the source material. In this case, what it really suggested to us it that it's PNA's and it's metals are really going to be the primary thing and those should be the parameters of focus.

The parameters that are on the list are those listed in 35 IAC 620.410, which not only includes the metals, some of these PNA's, but it also includes radionuclides, VOC's, SVOC's and pesticides, herbicides, many of which were not detected at all, and the other part of this really is the cost for some of these parameters. The

radionuclides I really just don't understand why they're being proposed at all. There's no reason to think the radionuclides would be in CCDD fill.

The cost for those -- just those four; meaning Radium 226, Radium 228, Tritium and Strontium 90 is about $820. The total list based on a quote that we obtained is close to $3,000 per sample to analyze for the entire part 620 list for all Class 1 parameters. So, literally, over a forth of it is just the radionuclides and then some additional parameters that I pointed out. Some unique organic compounds, some herbicides and pesticides that in themselves are very expensive because they require different methodologies such that there was literally eight other parameters that cost $600.

So if groundwater monitoring is required, I think some consideration of those should be given and really, again, it should be metals and PNA's should be the focus. And the third item quickly was these -- the MAC's for many of these metals, other parameters, are based on the low PH specific remediation objective. The data that we obtained from these soils, the 44

samples, the lowest PH that we saw was a little over seven and the average was a little over eight which just says the low PH is just not appropriate and then the other thing we looked at -- we talked to a laboratory, First Environmental, from Naperville. They searched their database over the last several years, over 8,500 samples they looked at, and these were solid samples, meaning samples of solids. Over 97 percent of those parameters or those samples had a PH of 6.25 or greater. What we suggest actually is if there's a question about the PH to actually establish a MAC for PH of 6.25 and then using the neutral PH value would very much be even that much more appropriate.

MS. TIPSORD: Thank you.

Mr. Willie, do you have a brief summary?

MR. WILLIE: Yes. My name is Randi Willie. I'm the manager of environmental and land services for Meyer Material Company in Des Plaines, Illinois. We're a regional supplier of ready mix concrete and construction aggregates. We have a few mining sites northwest of Chicago. In my pre-filed testimony, you can find my education and work experience. I have about 24

years dealing with environmental compliance in Illinois involved in mine planning, permitting, land restoration and land use disposal and I guess I'm here to highlight a couple points of my testimony regarding where we've been over the last 12 years.

I'm a member of the Illinois Association of Aggregate Producers and back in 2000 I was the chairperson for the environmental committee. For about six years, I had firsthand knowledge of our dealings as an association with the Illinois EPA regarding I'll call it the embryo stage of CCDD regulation or conformance and as a group we reached out to the Agency and worked side by side designing and developing best management practices. We volunteered to do training for industries even above and beyond the aggregate association at the time. And back in 19 -- 2004, we actually had approval from -- and it's an exhibit in my testimony. We had an approval from Bill Child who was the chief of the Bureau of Land at the time who was basically complementing us on going beyond compliance when it came to CCDD management at the time and, you know,

unfortunately from that time on it appears as if we have picked up steam on the regulations. Part 1100 came into play and it is -- since we keep looking at additional soil and groundwater conditions or requirements in order to operate, unfortunately as a smaller operator in the CCDD clean fill basis we actually had to withdraw our business.

We had one site that we withdrew in 2005 and then, again, about 18 months ago we closed our other facilities because there's just too much at risk at this point and, again, land restoration for what we do whether it's 10 acres, 20 acres or 200 acres, it's a valuable part of what we look at in a business plan going forward when we model a mine and I just wanted to make sure that the Board was aware of some of the impacts that are going to take place with smaller operators for sure across the state if the procedures keep going the way they are.

MS. TIPSORD: Thank you. With that, IEPA, do you have any questions?

MR. CLAY: Mr. Hock, on page three of your testimony, you state that CEC, or Civil

Environmental Consultants, have performed or reviewed data from investigations of multiple CCDD fill sites based on 44 samples collected from 44 borings. How many sites or borings were made and samples taken for analysis?

MR. HOCK: CEC performed borings at three sites and we reviewed data from one additional site.

MR. CLAY: Where are the names of the sites where the boring samples were taken to be analyzed?

MR. HOCK: At CEC, we have to obtain permission from clients to share data that we obtain from a project with another party. We were only given permission to use this data based on keeping the names of the facilities and other identifying features confidential. So, unfortunately, due to client confidentially, I can't tell you the names of the sites.

MR. CLAY: Where are the sites located?

MR. HOCK: They're all in Illinois.

MR. CLAY: Can you give northern Illinois, southern Illinois, any additional

detail?

MR. HOCK: Northern Illinois.

MR. CLAY: What type of excavations was each site?

MR. HOCK: They're all former quarries, meaning sand or rock or borrow areas.

MR. CLAY: What types of materials were placed in each site?

MR. HOCK: These were all CCDD fill sites, CCDD as defined in 1100.103.

MR. CLAY: When did each site last accept fill material?

MR. HOCK: Most of these are still active.

MR. CLAY: For each site, roughly what percentage of fill material was soil and what percentage was CCDD and what percentage was other material?

MR. HOCK: We obviously do not have exact records, but basically just based on a review of the boring logs and related information, something greater than 80 percent is soil. The -- in these borings, there was no municipal solid waste, no industrial waste that was found. The

logs did note trace amounts of glass roots in wood.

MR. CLAY: When were the borings made?

MR. HOCK: Between 2007 to 2011.

MR. CLAY: Were the samples from the borings selected and submitted for analysis at the time the borings were made?

MR. HOCK: Yes, they were. Basically, multiple samples were obtained from each boring and, in general, the borings were field screened to try to -- when I say field screened, olfactory, visual, with a PID to try to determine the worst case sample and that's the one that was sent off for analysis.

MR. CLAY: And what sample collection methods were used?

MR. HOCK: The sample collection it was basically ASTM 1586, the standard penetration test procedure. It's basically using hollow stem augers to advance the bore holes and standard split barrel samplers to collect the samples. I would like -- the samples for VOC analysis were collected using the terra core sampler, which

meets the requirements of SW-846 Method 5035.

MR. CLAY: And why were these investigations conducted?

MR. HOCK: They were mostly performed for internal due diligence purposes.

MR. CLAY: Mr. Hock, on page seven of your testimony, you state "That if groundwater monitoring is required, it should be performed only on indicator list of metals and PNA's and any other site specific contaminants of concern." Do you have a list of what you're calling indicator contaminants of the metals and PNA's or are you talking about all the metals and all the PNA's?

MR. HOCK: I was generally referring to a fairly complete list of metals and a typical list of PNA's. It's about 20, 25 compounds.

MR. CLAY: Please explain how other site specific contaminants of concern would be identified and incorporated into the site's groundwater monitoring requirements?

MR. HOCK: Yeah, that was really just, I guess, a general statement to say if there -- for example, if a CCDD fill site took a large volume from a particular source or sources,

and I'll use the Busch Stadium project as an example, that material had particular contaminants that needed to be segregated or were close to the MAC that that is something that should be taken into consideration when consulting the program and another example is if, let's say, there's a site adjacent that's known to have some sort of contamination, if I were the site operator, that's something else that I would take into consideration and potentially add as well.

MR. CLAY: The Agency believes that a full list of indicator -- of groundwater monitoring compounds to be sampled, however, we would agree that the radionuclides are something that could be dropped and we also should note that there are on the horizon some explosives that may be included in the 620 groundwater monitoring requirements and we would agree that those should also -- or could also be dropped.

MS. TIPSORD: Mr. Clay, we'll go ahead and have you sworn.

WHEREUPON:

DOUGLAS CLAY

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: I'm assuming you'll be answering questions later on?

MR. CLAY: Yes, I will.

MR. HENRIKSEN: Ms. Tipsord, his last two statements were pretty significant. Do you want him to make those now so they're part of the record?

MS. TIPSORD: It's a retroactive swearing in.

MR. HENRIKSEN: Thank you.

MS. TIPSORD: That's why he was sworn in.

MR. HENRIKSEN: Thank you.

MS. TIPSORD: That happens a lot.

MR. HENRIKSEN: Okay. Thank you.

MR. CLAY: Mr. Hock, on page seven of your testimony, you reference attachment two and it's a letter from the First Environmental Laboratories concerning PH values 8,500 soil and non-soil samples analyzed between 2006 -- January

2006 and September 2011. What is the ratio between the soil and non-soil samples within this database?

MR. HOCK: Based on information that was provided from First Environmental.

MS. TIPSORD: Could you speak up? There's a lot of roaring and they're beginning to have difficulty hearing. So if you could speak up a little bit?

MR. HOCK: Based on information provided by First Environmental, which was based on them talking to their analytical chemist who has been involved doing that for about the last ten years, they estimated that 90 percent of the samples would be classified as soil and about ten percent would be classified as non-soil.

MR. CLAY: What is the geographic range from which the soil samples were taken?

MR. HOCK: Again, based on information provided from First Environmental, approximately 90 percent of the soil samples were within a two hour driving range of the Chicagoland area.

MR. CLAY: Okay. What is the

distribution of the soil samples within that geographic range?

MR. HOCK: First Environmental is unable to provide an answer to that question.

MR. WIGHT: Yes, I have a question for Mr. Willie. You had mentioned a couple of land reclamation projects you were involved in back around 2005, which you felt the risk had increased to the point where you had to withdraw from those projects. Could you tell us what the status of those projects were at the time of your withdrawal in terms of how close to being completed were they or how far from being completed?

MR. WILLIE: The one facility in 2005 we stopped and there was probably ten years worth of fill material we could have brought in. We were developing an area along a state highway where there is commercial potential. The one that is more current that we walked away from 18 months ago probably has five to six years remaining if we were to continue bringing material in.

MR. WIGHT: Okay. What has happened to this project since? Have they just maintained

their status as you left them or has somebody come along and picked those up since you were --

MR. WILLIE: They maintained their inactive status.

MR. WIGHT: They're still part of your --

MR. WILLIE: Yes, they're part of our operations in which we're not filling.

MR. WIGHT: Okay. Thank you.

MS. TIPSORD: Remember not to talk over one another. The court reporter can't get you both at once.

MR. RAO: May I ask a follow up? Mr. Willie, also in your testimony you mentioned that like Meyer Material, other companies were also closing shop because of these regulations. Do you know any names of these companies that were affected by the rules?

MR. WILLIE: To the best of my recollection, there was other operators in our industry that stopped taking clean fill, I believe, west towards the river, the Mississippi River, and I believe they stopped taking fill at least four or five years ago.

MS. TIPSORD: Anything else? Mr. Huff, you had some follow-up questions.

MR. HUFF: I have a few questions for Mr. Hock. On page four of your testimony, you note that 36 out of 44 samples, or 82 percent, exceeded the proposed Maximum Allowable Concentration for metals. Do you believe this dataset is reasonably representative of material that is taken to CCDD facilities?

MR. HOCK: I do. The sites that we're talking about were all operated by different companies. They're all located at least 20 miles from each other. So the fill material does seem to be reasonably representative of historic fills taken to these types of facilities.

MR. HUFF: So if 82 percent of material currently going to CCDD facilities can no longer go there due to just the metals, where would this material be taken?

MR. HOCK: Obviously, it will either need to go to a landfill or an unregulated Illinois facility or -- and when I say unregulated Illinois facility, a low lying area in a field or an undeveloped property or I know a lot of that

type of material is going out of state right now.

MR. HUFF: Can you expand on what the economic implications of adopting the proposed Maximum Allowable Concentration will have on both the generators and on the CCDD facilities and uncontaminated soil facilities that historically accepted this material, but will not be able to going forward?

MR. HOCK: Again, if CCDD facilities cannot accept this material, the economic implementation for generators is negative. They'll either have to pay more, higher tipping fees to take it to a landfill. In addition to the tipping fees, they may have to transport it further. If they elect to take it to what I'll refer to as an unregulated facility, in my view, they're taking on additional liability.

You know, for the CCDD or soil only fill sites, this will obviously decrease the volume on material they'll be able to accept and I do believe you'll see additional facilities cease operations in the fairly near future.

MR. HUFF: And, finally, on page four of your testimony, you note that seven out of

44 samples had PNA's detected above the proposed maximum allowable concentrations. Of these seven samples above the proposed maximum allowable concentrations, how many were over the Tier 1 soil migration and Class 1 groundwater remedial objectives?

MR. HOCK: Actually, three of the seven were above the Tier 1 soil migration to Class 1 groundwater remedial objectives. Two of those samples -- I actually went back and I reviewed the boring logs for those particular samples. Again, the way I described it, we took the worst case ones and the sample interval for two of those three samples clearly noted either ground or milled asphalt in that sample interval. So -- again, those types of compounds are associated with asphalt. So it's not surprising that some amount of PNA's are going to be in these facilities if they took asphalt.

MR. HUFF: Thank you.

MS. TIPSORD: Mr. Willie?

MR. HENRIKSEN: Excuse me. I know the Willie pre-filed testimony referred to an exhibit that was not actually attached to what I

have here now so I have a clean copy to give her so you have a complete exhibit.

MS. TIPSORD: Do you want to mark it as another exhibit or attach it?

MR. HENRIKSEN: Just attach it.

MS. TIPSORD: We'll attach it.

MR. HENRIKSEN: That was an attachment.

MR. WILT: Just a few questions for Mr. Hock who I'm pleased to say I know because he used to be with our company, Waste Management. He used to work for us just in a different setting. First, on the sampling you took. You testified in response to a question that was just raised that you looked at samples from four CCDD sites, if I recall correct?

MR. HOCK: Correct.

MR. WILT: How many are there in operation today? Do you know? Do you have a feel for? How many CCDD sites are in operation today?

MR. HOCK: According to the IEPA website, there are 62 that are permitted. I know that not all 62 of those are operational. So close to ten percent.

MR. WILT: And obviously there have been some CCD sites -- CCDD sites that have been in operation that are no longer operational?

MR. HOCK: Certainly.

MR. WILT: With respect to soil fill sites, were any of the four sites that you looked at borings from soil fill sites?

MR. HOCK: No.

MR. WILT: Do you have any understanding or any knowledge as to how many soil fill sites are in operation in Illinois today?

MR. HOCK: A list that we obtained from the IEPA from September 2011 indicated that there are about 25 registered soil fill sites in the state.

MR. WILT: So the total universe 61 CCDD sites, approximately 25 or so soil fill sites, 85 or so sites, is that approximately correct from your --

MR. HOCK: That are registered or permitted.

MR. WILT: And your information comes from four?

MR. HOCK: Correct.

MR. WILT: And your opinion is that is a representative sample of all CCDD sites or CCDD plus soil fill sites?

MR. HOCK: I think it's a representative sampling of the type of material that has been historically accepted at those sites. Most of the material that went into these facilities was before the current rule. I should say a lot of the material we sampled was even before the prescreening. So I think it is representative of historically what has gone into these types of facilities.

MR. WILT: We move to the question that I raised in the pre-filed -- whether Public Act 96-1416, in your opinion, will likely result in more soil from remediation projects being disposed of at CCDD and fill sites than at landfills?

MR. HOCK: I mean, I guess I do not believe that's true based on my understanding of the rules. Meaning, that soil from remediation projects, and I'm looking specifically at 1100.205, that it lists requirements for being able to accept CCDD and uncontaminated soil and it

indicates that as part of being able to accept it, you have to confirm and document that the CCDD or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants and it goes onto reference CERCLA, cleanups as part of RCRA, also as part of the Leaking Underground Storage Tank Program or the Site Remediation Program. There is an exclusion which I understand is for Cook County schools, which I'm not sure why that's there, but -- so, yes, most of the remediation projects, to me, are done under the SRP program so it would be specifically excluded.

MR. WILT: Let me ask a follow up. Non-remediation project, just the amount of soil that will be moved to CCDD or soil fill sites, do you anticipate that that will increase generally?

MR. HOCK: As part of these rules?

MR. WILT: Mm-hmm.

MR. HOCK: I actually think, again, as written it will decrease. I think most of it -- I think a lot of it will end up going -- I think a lot will go out of state. I think a lot will go to unregulated facilities. I was driving in the Joliet area and there's a permitted CCDD

fill site area and within a mile there's three unregulated fill sites right on the same street. One that was 150 feet away all with signs out front that say clean soil wanted. I've talked to a number of small generators that tend to say, nope, we've got CCDD, we take it out of state. We can't get rid of it in Illinois. It's too much of a problem. So I don't think it's going to go to landfills either, frankly, a lot of it.

MR. WILT: Your view seems to be contrary to the view of the Agency and during your preliminary comments you indicated that one of the reasons that the Agency has recommended groundwater monitoring in particular is the lack of data regarding contamination of these facilities. Isn't the primary reason or reasons of the sheer volume of additional soil material that will be disposed of and the fact that the soil would be disposed of in vulnerable settings, basically in the groundwater, on top of the groundwater?

MR. HOCK: Those are reasons that I believe is in the IEPA testimony, yes.

MR. WILT: Last question. Are you

aware of any waste that has been accepted at CCDD or soil fill operations in the past in violation of the Environmental Protection Act?

MR. HOCK: Personally, I am not. I have certainly heard of sites that have. There are some that was referenced like the Lynwood site and I guess that's where it was my thought or recommendation that, yes, if there are sites that are known or demonstrated to have taken, you know, general C and D or other things that do not meet the requirements, then the potential is, yes, groundwater monitoring might be appropriate.

MR. WILT: Let me ask you a follow-up question on your comment. In your testimony as you just stated, you say CEC suggests groundwater monitoring only be required for CCDD facilities which are known or demonstrated to have taken significant amounts of non-CCDD fill. How would you know which ones took waste? How is the public protected so that those bad sites would have groundwater monitoring? How do you know and can you know soon enough if you don't have monitoring?

MR. HOCK: In terms of whether --

you'd have to look at the enforcement history of the field operation section if they visited these sites over time. I guess it's been my experience that the bad actors out there, people know who they are, they've been bad actors for quite a while and it's not usually people who -- if they're going to go against the rules, they're going to do it consistently and they're going to do it for an extended period of time and it hasn't been that hard in the past it seems to figure out those places.

MR. WILT: Your view appears to be that the enforcement mechanisms utilized by the Agency would be the manner in which sites that are known or have demonstrated to have taken waste in would have been identified, is that a true statement?

MR. HOCK: It would certainly be one of the primary means, yes.

MR. WILT: Would there be any other way to determine whether a site accepted waste if -- set groundwater monitoring aside, without groundwater monitoring, would the enforcement by activities of the Agency be the only way to

determine what sites should have groundwater monitoring?

MR. HOCK: You could certainly look at the historical records of the facility, but -- yes, really looking at historical records, past enforcement, those would certainly be two primary means.

MR. WILT: Thank you. I have no other questions.

MS. TIPSORD: Any other questions for Mr. Willie?

MS. MANNING: Claire Manning, Chicago Public Building Commission. I have a couple follow-up questions from Mr. Wilt's questions to Mr. Hock. Mr. Wilt had asked you questions about groundwater monitoring kind of after the fact because what is in there now, correct me if -- there is no groundwater monitoring of CCDD facilities now, is that correct?

MR. HOCK: Yeah, I do understand that there's limited monitoring performed for mining purposes in a number of locations, but certainly nothing that I'm aware of to the extent

that is proposed in the rules.

MS. MANNING: And since the Board adopted the Part 1100 rules, is it your understanding that a lot of front end controls have been placed on the CCDD permitted operators since those rules were adopted in whatever year the Board adopted the Part 1100 rules?

MR. HOCK: Yes. I mean, prescreening of load checking, the inspection program, are all part of the requirements of current operators, yes.

MS. MANNING: Is it your understanding that those rules work sufficiently or have worked as intended such that CCDD operators are much more responsible and they're permitted and they're part of the Agency's enforcement program in the event that there's something that is wrong?

MR. HOCK: Yes, I do believe there is much more control in place than historically.

MS. MANNING: And is it your concern with the groundwater monitoring with all of the front end controls to have back end controls as well might be overly conservative for purposes of

getting what needs to safely and can safely be disposed of in a CCDD facility given the rules as they're written right now?

MR. HOCK: Yes, a lot of cost, a lot of effort for little value.

MS. MANNING: Okay. Thank you.

MR. SYLVESTER: Hi. Steven Sylvester on behalf of the Attorney General's Office. I had a couple of follow-up questions to the questions that have been asked so far. One of the things that you had talked about so far was the enforcement mechanism to determine if there was -- in the absence of groundwater monitoring if the Illinois EPA inspectors would go out, are you aware of how many inspectors there are that inspect these CCDD facilities?

MR. HOCK: The exact number, no. I know of several, but I don't know the number.

MR. SYLVESTER: A ballpark number.

MR. HOCK: I guess 25, 30.

MR. SYLVESTER: Okay. Well, where I'm going with that is these CCDD landfill operations fill up basically Monday through Friday, correct, and the purpose of the permits is

they self report that they comply with the Part 11 --

THE COURT REPORTER: After Part 11?

MS. TIPSORD: We can't hear you.

MR. SYLVESTER: That the operators self report their compliance with Part 1100 regulations?

MR. HOCK: I'm sorry. Could you repeat the question?

MR. SYLVESTER: Sure. Did the sites self report their compliance with the Part 1100 regulations?

MR. HOCK: Yes. I mean, they maintain documentation on site and things like that, yes.

MR. SYLVESTER: So, say the Illinois EPA goes out and inspects on January 1st any site and they come back and say they do one inspection a year, that means they were out there for maybe a an hour, maybe two hours to see what is going on in the site, would you agree with that?

MR. HOCK: If they're only out there once a year, yes.

MR. SYLVESTER: Assuming that.

MR. HOCK: If the inspector is just taking a snapshot of when they go out there --

MR. SYLVESTER: For the enforcement people, how ever many inspections they actually do, one, two, they're there a couple hours, the site operates for hundreds and thousands of hours, would you agree with that?

MR. HOCK: Yes, I guess my point with the bad actors is when you go out and visually look at a site and everything is neat and clean and you don't see any evidence of non-CCDD material and they have all their documentation in order, those are all indications that they're at least doing their best to follow the rules. What I guess the problem sites, to me, are ones that it seems like people know about for years and it takes sometimes a long time to come down on those folks and those are really the bad actors and everybody knows about them.

So I just don't think it's that hard -- if you're out there on some routine basis, if you look around, if you see the documentation, if you see how the facility is kept, it's not that hard to figure out which ones are trying to break

the rules and which ones are not.

MR. SYLVESTER: If I could follow up. Even the companies that are trying to follow the rules sometimes, whatever, you get a new employee who may not be familiar with the regulation, sometimes waste is going to get into a site under the current rules --

MS. TIPSORD: Mr. Sylvester, I'm having a lot of difficulty hearing you. Could you speak up little bit?

MR. SYLVESTER: Sure.

MR. HENRIKSEN: Let me say as the attorney for IAAP I think what the gentleman is doing is testifying rather than asking questions so maybe we could put these in forms of questions that he could try to answer rather than a series of questions and assume all sorts of facts that are not in evidence.

MS. TIPSORD: I think we can -- he's asking him if he agrees or disagrees. At this point, we're fine. I'll keep an eye on it.

MR. SYLVESTER: The question I have and basically it's in a nutshell. Even when an operator is in good faith trying to comply with

the regulations sometimes they slip through the cracks and waste could enter into the facility with all the best intentions, would you agree with that?

MR. HOCK: Yes, that's absolutely possible.

MR. SYLVESTER: And that's really what I'm getting at is in the absence of groundwater monitoring, how would you know that material was in there?

MR. HOCK: I guess my point is and, again, I'm using the data from these facilities is will there be some amount of material that gets in that is above the MAC or is not what they intended to get in? Yes, I do believe that's true. Is the large majority, the vast majority, going to be the stuff that is intended to be there that is really -- CCDD uncontaminated soil I do believe that answer is yes such that when taken in the aggregate that the people who are following the rules that the large majority of the material in there will truly be uncontaminated soil as is intended.

MR. SYLVESTER: Just to clarify on

your opinion. You believe it should be on a case by case basis we should be required to do groundwater testing?

MR. HOCK: I guess my opinion would be that it should not be required unless you -- these other things have been demonstrated or determined that it was known that you took general C and D or MSW or other things like that.

MR. SYLVESTER: So how would that account for CCDD or non-CCDD waste that gets into the site where they're not a bad actor, but it does impact groundwater where it's a resource groundwater and may not even appear for a couple years after the site is closed?

MR. HOCK: I guess my opinion is, again, for sites that do attempt to follow the rules where a large majority is uncontaminated soil that the risk of groundwater contamination from these facilities is very low.

MR. SYLVESTER: That's all my questions.

MS. TIPSORD: Thank you.

MR. RAO: Mr. Hock, are you familiar with the Board's inert waste landfill regulations?

MR. HOCK: Just generally.

MR. RAO: Are you aware of these rules that they don't require groundwater monitoring, but they require testing of leachate groundwater monitoring?

MR. HOCK: I'm not that familiar with the rules because I haven't been involved with any inert waste landfills. I've been involved with many municipal solid waste landfills, but not inert waste landfills.

MR. RAO: Okay. Thank you.

MS. TIPSORD: Anything further? Thank you very much, gentlemen. We appreciate it. Mr. Pyles, Harvey Porkorny, is he with you?

MR. PYLES: He is not here.

MS. TIPSORD: Do you want to then have his testimony entered as a public comment?

MR. PYLES: That would probably be appropriate.

MS. TIPSORD: Okay. We can go ahead and go with you as soon as Member Johnson gets back. So go ahead and grab a seat. Let's go ahead and take a ten-minute break and then we'll start.

(Whereupon, a break was taken after which the following proceedings were had.)

MS. TIPSORD: Okay. We'll go to David Pyles. I would note it was pre-filed with both his name and Harvey Porkorny, but Harvey is not with us today so this is the pre-filed testimony of David Pyles. Do you have a clean copy with you today.

MR. PYLES: I can give you this one, sure.

MS. TIPSORD: Okay. If there's no objection -- can we have the witness sworn in, please.

WHEREUPON:

DAVID PYLES

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: If there's no objection, we'll have the pre-filed testimony of David Pyles entered as Exhibit No. 14. Seeing none, it's Exhibit 14.

(Document marked as ILPCB Exhibit No. 14 for identification.)

Go ahead if you'd like to give a brief summary.

MR. PYLES: I understand -- I guess first let me start by apologizing for running late today. Traffic is always a joy in Chicago. However, we filed this with the Board to bring light to several sections within the proposed rules here that cover Sections 205, 212, 412, 525, 530 and 710 of the 1100 regs and I understand that Mark previously had testified so basically a lot of my testimony will reflect identical and similar viewpoints.

So not to drag through previously heard details and the point of expediency here as an Illinois licensed professional geologist, the American Institute of Professional Geologists, Illinois and Indiana sections, have discussed these regs and have asked us to present our viewpoints and as geologists we fought for inclusion into the CCDD 1100 bill when they signed it into law and on these amendments

here, proposed amendments, in the sections I previously cited are absent of any reference to a licensed professional geologist in our practice and I add that there is a licensing act for professional geologists within our state which provide for academic criteria and professional ethics and it also provides for us for the protection of public safety.

I'll acknowledge the fact that we're not a large group in numbers compared to other professions within the state. However, to seek and hold the license within Illinois, you have to have the requisite qualifications and we feel that we do and we feel that we should be included into those six reference points previously cited so that we may certify, review and provide the necessary oversight and guidance of these regulations.

As far as the groundwater elements, we hold the requisite educational training and experience to work with these types of conditions and prepare the appropriate reports. These have been previously recognized by the Illinois EPA and other programs as well and we

wish to be added amongst this as a stewardship of the CCDD rules.

I don't wish to go through a whole narrative reading word and verse, but the licensure act provides for this and if there's any questions to that we can reference that act as well, but, in essence, that's my testimony today is to request inclusion in here for the Illinois licensed professional geologist into this rulemaking.

MS. TIPSORD: For Mr. Pyles, do we have any questions? Thank you so much for taking the time to testify and be here today.

MR. PYLES: Thanks.

MS. TIPSORD: We'll move onto Gregory Wilcox. Can we have the witness sworn in.

WHEREUPON:

GREGORY WILCOX

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: Do we have a clean copy of Mr. Wilcox's testimony?

MR. WILCOX: I do.

MS. TIPSORD: Thank you so much. If

there's no objection, we will admit the pre-filed testimony of David Wilcox as Exhibit 15. Seeing none, it's Exhibit 15.

(Document marked as ILPCB Exhibit No. 15 for identification.)

MR. WILCOX: Gregory Wilcox.

MS. TIPSORD: I'm so sorry.

MR. WILCOX: It's okay. Just briefly to summarize our testimony we do feel that the Maximum Allowable Concentrations proposed by the EPA using residential ingestion and inhalation standards for PNA's we don't believe that pathway exists in quarries and mines and, therefore, exceeds the one in a million cancer risk that is stated in the legislation.

We don't see, also, groundwater monitoring. There's nothing in evidence to show why clean fill sites would require this and we also feel that the use of the term industrial/commercial that was stated in the legislation is a fairly standardized process for the 662 form and is working quite well and to change that to the potentially impacted property

is very confusing and we think would be problematic. That's in summary our testimony and I'll open it up to questions.

MS. TIPSORD: Thank you. Mr. Wilt, you had some pre-filed testimony.

MR. WILT: Dennis Wilt from Waste Management of Illinois. At the conclusion of your testimony, Mr. Wilcox, you question whether there is sufficient data to support the proposed groundwater monitoring. There's a reference to fill site at Lynwood that apparently took waste and the question is Lynwood is not the only CCDD site that has taken waste, is it?

MR. WILCOX: I'm sorry. Are you asking me?

MR. WILT: Yes, I am.

MR. WILCOX: I have no knowledge of any other sites that have taken waste. I think that question was asked at the last hearing to Mr. Purseglove and I think the only example they gave was the Lynwood site. That's the only one I'm aware of.

MR. WILT: Are you aware of the Reliable materials site in Lyons?

MR. WILCOX: I am.

MR. WILT: Are you aware of the fact that a complaint has been filed regarding that site in accepting materials?

MR. WILCOX: I am.

MR. WILT: And are you aware that the allegation in that complaint is that the Reliable CCDD site has taken as much as 60,000 yards of waste?

MR. WILCOX: I believe that is the premise of the allegation.

MR. WILT: Do you know the nature of the contamination that's alleged in the complaint?

MR. WILCOX: I do not. I have not seen data to show that any contaminated soils exceeding health and human impacts have been put into that site.

MR. WILT: Have you seen the complaint?

MR. WILCOX: I have seen the complaint.

MR. WILT: Have you seen the exhibit to the complaint that lists the levels of contamination based on certain soil borings that

goes on page after page after page?

MR. WILCOX: I think you're talking -- are you talking about the soil borings from the site where some of the soil was taken to a landfill? I'm not sure what data you're saying to.

MR. WILT: Let me just go on. The alleged contamination or --

MS. MANNING: Madam Hearing Officer, if I might, and I'm sorry to interrupt Mr. Wilt, but I realize that an objection is not necessarily what is the course at a rulemaking, but in this particular line of questioning, the Board has this case before them, that complaint has been filed with the Illinois Pollution Control Board. It's settled by some of the parties. It's in large part the reason that we're here to define uncontaminated so these kinds of enforcement actions don't continue.

So I don't necessarily -- if you want to allow Mr. Wilt to continue asking Mr. Wilcox what the allegations of that matter are, that's fine. I'm just telling you I don't know where we're going with all of this because

there is an allegation that somebody thinks the soil was uncontaminated, somebody else thought it was contaminated, and that is the issue before the Board in an adjudicatory context, which has yet to be adjudicated. So I am just trying to put the record straight in where we're going with this for the Board to decide what is appropriate.

MS. TIPSORD: Thank you very much, Ms. Manning. I would note you cannot discuss the substance of the complaint as far as any arguments about what is or is not happening at the site because it is a contested case before the Board. You certainly can ask him about the allegations in the complaint and if he is aware of the allegations in the complaint, but we have to be careful that you don't cross over into argument or where there might be discussion about facts involved with that complaint because Member Johnson will be sitting in judgment on that.

MR. WILT: I tried to be careful in categorizing my allegations, but in response to Ms. Manning's comment Mr. Wilcox submitted testimony questioning the Agency's proposed rules, the requirements for groundwater monitoring

because there is insufficient data, only Lynwood, to consider where there was contamination.

In his testimony, he did not identify allegations, I understand no findings, and I think the questions and the answers have -- are now in the record that there are no findings with respect to that case, but there are allegations that have been made involving -- let me ask the question.

First, the allegations with respect to the Reliable case involves a CCDD site, does it not?

MR. WILCOX: Yes.

MR. WILT: And the allegations are that that site accepted waste, correct?

MR. WILCOX: I believe so, yes.

MR. WILT: And the allegations are that the waste was accepted in 2006, is that correct?

MR. WILCOX: I don't recall any of the details of it.

MR. WILT: I have no further questions.

MS. TIPSORD: Thank you. Are there

any other questions for Mr. Wilcox?

MS. MANNING: Just a couple follow-up questions. And, Mr. Wilcox, in that manner, is there a dispute as well regarding the waste that Mr. Wilt is asking you about, is the waste that's alleged to be waste soil?

MR. WILCOX: Yes.

MS. MANNING: Is the dispute as to whether the soil was contaminated or uncontaminated?

MR. WILCOX: Yes.

MS. MANNING: To your knowledge, was the soil tested?

MR. WILCOX: Yes, to my knowledge, it was tested.

MS. MANNING: To your knowledge, is the dispute really what kind of TACO parameters are appropriate for contaminated or uncontaminated soil in that case?

MR. WILCOX: I believe that to be the heart of the case.

MS. MANNING: Thank you.

MS. TIPSORD: Anything further? Thank you so much for taking the time to testify

this morning. With that, we'll move onto Mr. Dixon. Mr. Kruger is not here, is that correct, Mr. Dixon?

MR. DIXON: Yes, ma'am.

MS. TIPSORD: We will transfer his pre-filed testimony to a public comment. I will have the clerk's office take care of that later today. With that, can we have Mr. Dixon sworn in.

WHEREUPON:

WILLIAM DIXON

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: If there's no objection, we will admit the pre-filed testimony of Mr. William Dixon as Exhibit 16. Seeing none, it's Exhibit 16.

(Document marked as ILPCB Exhibit No. 16 for identification.)

MS. TIPSORD: Mr. Dixon, do you have a clean copy of that with you.

MR. DIXON: I have a borrowed copy.

MS. TIPSORD: That's all right. I'll print one off later today and would you like

to summarize your testimony briefly?

MR. DIXON: Really, my concern is that the act was passed and in several places the act provides for professional engineers or professional geologists to perform activities related to the CCDD fill and in the last copy of the regulations that are the proposed regulations under the 1100, in some places they say professional geologist -- professional engineer or professional geologist and in other places they do not include both and I strongly feel that both should be included all the way through the regulation consistently. Mr. Krumenacher and Mr. Pyles have testified on the same point before and I would be happy to answer any questions anyone might have.

MS. TIPSORD: Thank you. Are there any questions for Mr. Dixon? Thank you so much for taking the time to be here today and testifying.

MR. DIXON: Thank you.

MS. TIPSORD: That moves us onto Michael Sturino -- am I pronouncing that correctly -- from the Illinois Road and

Transportation Builders Association. Okay. We will go then to Mr. Liss from Waste Management. Can we have the witness sworn in.

WHEREUPON:

KENNETH LISS

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: Thank you. If there's no objection, we will enter Mr. Liss' testimony as Exhibit 17. Seeing none, it's Exhibit 17.

(Document marked as ILPCB Exhibit No. 17 for identification.)

MR. LISS: I have no statements to make. I'll just accept questions or go sit down.

MS. TIPSORD: Okay. There were pre-filed questions I believe from Mr. Henriksen, is that correct?

MR. HENRIKSEN: Correct.

MS. TIPSORD: Whenever you're ready, go ahead.

MR. HENRIKSEN: Thank you.

Mr. Liss, did you review the Agency's proposed amendments to 35 Ill. Adm. Code Part 1100 prior to

the filing of your testimony with the Illinois Pollution Control Board?

MR. LISS: Yes.

MR. HENRIKSEN: Did you also review Public Act 96-1460 prior to the filing of your testimony with the Illinois Pollution Control Board?

MR. LISS: Yes.

MR. HENRIKSEN: Prior to the enactment of Public Act 96-1460, did the Illinois Environmental Protection Agency, IEPA, regulate the operation of soil fill sites?

MR. LISS: I don't think it was as defined. It's -- they're regulated inert in CCDD material.

MR. HENRIKSEN: So prior to the enactment of the act, they did not regulate soil fill sites?

MR. LISS: Uncontaminated -- are we talking about what is proposed here, uncontaminated soil fill?

MR. HENRIKSEN: Well, Public Act 96-1460, which you reviewed, had a Section 22.51(a) that purports to regulate soil fill

operators and you're aware of that since you reviewed this law, correct?

MR. LISS: Yes. I'm trying to understand if you're asking is there regulated uncontaminated soil that is defined in these proceedings? That's all.

MR. HENRIKSEN: No, sir. My question is --

MR. LISS: Yes, they're regulated.

MR. HENRIKSEN: So prior to the enactment, the IEPA regulated the operation of soil sites?

MR. LISS: Yes.

MR. HENRIKSEN: It did?

MR. LISS: Well, in the context of my answer to you, it depends on what you want to call it back then. I said there was some provisions for regulated soil.

MR. HENRIKSEN: And what were those provisions?

MR. LISS: It's in the inert and it's in the CCDD.

MR. HENRIKSEN: Was there any -- prior to the enactment of 96-1460, did the IEPA

have regulatory authority over sites that just accepted clean soil?

MR. LISS: What do you mean by regulatory authority? The EPA has broad authorities to investigate instances where it might be damaging to human health and the environment.

MR. HENRIKSEN: Do they require sites that merely took clean soil to --

MR. LISS: Get a permit, no.

MR. HENRIKSEN: -- register?

MR. LISS: To register? I think register, yeah.

MR. HENRIKSEN: Prior to the enactment of --

MR. LISS: No.

MR. HENRIKSEN: -- 96-1460? Screening prior to the enactment of 96-1460?

MR. LISS: I'm not familiar.

MR. HENRIKSEN: Isn't it true that the IEPA's proposed amendments to 35 Ill. Adm. Code Part 1100 seek to regulate the operation of soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: Yet on page two of your pre-filed testimony, you state "The Agency's proposed rules take a hands off approach with no effective regulation of soil fill sites," is that correct?

MR. LISS: That's my opinion.

MR. HENRIKSEN: You have read and reviewed these regulations prior to following your testimony with the Board?

MR. LISS: Yes.

MR. HENRIKSEN: Prior to appearing today?

MR. LISS: I said yes.

MR. HENRIKSEN: In these rules that you reviewed, there is a part Section 1100.505 operating standards, did you review those rules?

MR. LISS: Yes.

MR. HENRIKSEN: Does not these rules state in uncontaminated soil fill operations in which we're speaking says uncontaminated soil operations are subject to all the standards and requirements of Section's 1100.202 and 1100.209 Subpart B excluding Section 1100.203, correct?

MR. LISS: Yes.

MR. HENRIKSEN: Section 1100.201 has a list of prohibitions that also applies to clean soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: It has requirements for surface water drainage that also applies to soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: Does 1100.204 operating standards that also apply to soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: Does 1100.205 certifications and load checking also apply to soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: Section 1100.206, salvaging, also applies to soil fill sites?

MR. LISS: Yes.

MR. HENRIKSEN: 1100.207 boundary control --

MR. LISS: Do you want me to say yes that I read it all or do you want to go by each subsection?

MR. HENRIKSEN: I just --

MR. LISS: You're taking it out of context. I say it's a hands off approach. There is no enforcement just to speed this up to answer your questions. I know there's regulations proposed here, but if you read it in the context of my opinion, I say it's a hands off approach. There's no enforcement. There isn't good load checking.

MR. HENRIKSEN: That wasn't my question. My question was you said that the Agency's proposed rules take a hands off approach with no effective regulations of soil fill sites. You said that's a true statement.

MR. LISS: I said, yes, that's my opinion and the key word would be effective.

MR. HENRIKSEN: But all of these provisions 1100.505 place all of the provisions that are applicable to CCDD sites on soil --

MR. LISS: It's my opinion that these are not effective.

MR. HENRIKSEN: And you consider that these operating requirements that are now in soil fill sites is a hands off approach?

MR. LISS: Yes, there's no permitting process nor review by the EPA of what is coming in here.

MR. HENRIKSEN: But these are requirements that they have to adhere to?

MR. LISS: Yes, there are requirements in here that are being proposed that these facilities must adhere to.

MR. HENRIKSEN: And those requirements we -- I just read to you. You said, yes, that they're required to adhere to notwithstanding these new requirements they are only a function of this new law you still maintain the IEPA is taking a hands off approach to soil fill operations?

MR. LISS: I read it. I am aware that there's proposed regulations, I agreed with everything that you've said and it's in my opinion that they're not effective.

MR. HENRIKSEN: Is it true that on page four of your pre-filed testimony that no owner/operator certification is required to be obtained by fill operators?

MR. LISS: Yes, that's a typo. I'd

like that corrected. I was referring to -- and then I'll answer your next question, too. I meant generator. It's generator.

MR. HENRIKSEN: So it's not true your testimony that you pre-filed and said was correct you say no owner/operator certification required to be obtained by fill operators, that's not your testimony?

MR. LISS: I said it's an error.

MR. HENRIKSEN: So what is the actual -- what should it be?

MR. LISS: Section 1100.205 talks about certification for load checking. My testimony was referring to that.

MR. HENRIKSEN: I'm just reading --

MR. LISS: I understand.

MR. HENRIKSEN: Page four, line two no owner/operator certification is required to be obtained by fill operators, is that true?

MR. LISS: No.

MR. HENRIKSEN: That's not true?

MR. LISS: In the section that I'm talking about, do you want me to read it to you? You can have a certification from the source site

owner or the source site operator that the site is not a potentially impacted property and is presumed to be uncontaminated soil or a certification from a licensed professional engineer or a licensed professional geologist that the soil is uncontaminated. So, now, what's your question again?

MR. HENRIKSEN: I'm just -- okay. I'm just trying to ascertain what in your testimony is accurate and what isn't. So you're saying this pre-filed testimony, the testimony you put in the record today, you raised your hand and said was correct, the statement says no owner/operator certification is required to be obtained by fill operator, that's not true?

MR. LISS: I am going on the record to say that one statement was an error.

MR. HENRIKSEN: Thank you. Is it true as stated on page four of your pre-filed testimony that generator certification is an important deterrent to waste disposed of improperly?

MR. LISS: Yes.

MR. HENRIKSEN: Is it true as stated

on page four of your pre-filed testimony that there are no screening requirements for fill operations?

MR. LISS: Yes, that's what I stated in my opinion.

MR. HENRIKSEN: In fact, though, doesn't Section 1100.505, operating standards for uncontaminated soil fill operations state that uncontaminated soil fill operations are subject to all the standards and requirements of Section 1100.202 and 1100.209 Subpart B excluding 1100.203?

MR. LISS: That gets back to the context of my testimony which is it's ineffective, the methods that are in there. So, in effect, there are no good screening methods. So you're saying it includes screening methods and you're correct. If that's what you want me to say, you are correct and I made a statement that it doesn't, but mine was a comment that they're ineffective.

MR. HENRIKSEN: So the statement that you had there are no screening requirements for fill operations, that was incorrect, there are

screening requirements?

MR. LISS: There are screening requirements included.

MR. HENRIKSEN: And you did say that there are -- there are certification and load checking requirements for soil fill as well as CCDD, correct?

MR. LISS: I didn't state that.

MR. HENRIKSEN: I'm sorry?

MR. LISS: Which number are you on? I have your list here. Where are we at?

MR. HENRIKSEN: Page eight you stated there are no screening requirements, but that was incorrect, there are screening requirements?

MR. LISS: We already went through that one. I want to know the next question you went to. I have your sheet. Which one are we on?

MR. HENRIKSEN: Question eight. Is it true that stated on page four of your screening requirements --

MR. LISS: I already answered that.

MR. HENRIKSEN: In fact, that was incorrect?

MR. LISS: Can you read my answer back?

MS. TIPSORD: Gentlemen, you need to let him finish. This is a rulemaking. We don't need to be -- everything relevant comes in and if we could, he did ask and answer that, but his follow-up question you were asking a follow-up question not a question on the number and his follow-up question if we could repeat -- if you could repeat that follow-up question.

MR. HENRIKSEN: So you stated that your answer before that there are no screening requirements for fill operations was an error?

MR. LISS: It depends on how you look at it. I said, yes, there are screening requirements listed in the rule, but my testimony is that they're ineffective and that's why I made that statement.

MR. HENRIKSEN: And these rules that are applied to soil fill require certification from the source owner/operator licensed PE or PG, correct?

MR. LISS: Could you repeat that?

MR. HENRIKSEN: These certification

requirements that you characterize ineffective don't they require certification from the source owner/operator or licensed PE --

MR. LISS: What section are you referring to?

MR. HENRIKSEN: 2005.

MR. LISS: A? 205A? I could read it. I read it earlier. There was an or. A certification from the site from the source site owner or source site operator that the site is not a potentially impacted property and is presumed to be contaminated -- uncontaminated soil or the certification from a licensed professional engineer or a licensed professional geologist that the soil is uncontaminated soil.

MR. HENRIKSEN: There also has to be a confirmation and a documentation that the CCDD or uncontaminated soil is not removed from the site as part of a cleanup or removal of contaminants, that's part of the certification in there?

MR. LISS: The owner/operator must make that certification. That would be Section 1100.205(a).

MR. HENRIKSEN: There's also --

MR. LISS: It states those things for the owner/operator.

MR. HENRIKSEN: There's also a requirement in there for Section 1100.205 that there's a requirement for implementation of a load checking program, including random inspections?

MR. LISS: Is that a question?

MR. HENRIKSEN: Yes.

MR. LISS: Yes, for the owner/operator.

MR. HENRIKSEN: There's also special measures for accepting loads that are from suspect persons or sources?

MR. LISS: What section?

MR. HENRIKSEN: 205.

MR. LISS: What part?

MR. HENRIKSEN: That would be (a)5.

MR. LISS: 205 doesn't have an A5.

MR. HENRIKSEN: We're talking about the proposed rules here.

MR. LISS: I've got them.

MS. TIPSORD: Proposed rules don't have an A5. 205(a)1, 2, 3 and B.

MR. HENRIKSEN: We'll move on. Fill site operators are, in fact, required to obtain generator certifications, but you just don't feel they're effective, is that your testimony or your opinion?

MR. LISS: Where did I write that?

MR. HENRIKSEN: Well, you said no owner/operator certification is required to be obtained by fill operators and you said -- that turned out to be wrong and then you said there's no screening requirements for fill operations. I guess that turned out to be wrong as well.

MR. WILT: Madame Hearing Officer, I'm not sure he is restating the testimony correctly. It's clear that Mr. Liss has indicated he acknowledges the rules have requirements. He has said repeatedly he doesn't think they're effective and that's what he has indicated on the record and that's why he set forth his pre-filed testimony. He's also indicated that he made a mistake with respect to the owner/operator certification. It should have been generator certification. We've gone through this again and again. We can keep going through it, but I would

appreciate that his testimony not be restated improperly.

MS. TIPSORD: It's noted for the record and please resist characterizing the testimony unless it's evident.

MR. HENRIKSEN: So there are -- so it's your testimony that there are screening requirements for fill operations, but you don't think they're effective?

MR. LISS: Correct.

MR. HENRIKSEN: Given that you're aware that generator certifications are mandated by proposed rules for all materials brought to a CCDD or uncontaminated soil site, correct?

MR. LISS: Am I aware of that?

MR. HENRIKSEN: Of that requirement in the rules, are you aware of that?

MR. LISS: I stated that Section 1100.205(a) has owner/operator certifications.

MR. HENRIKSEN: Doesn't the owner/operator refer to as the site owner/operator --

MR. LISS: Correct.

MR. HENRIKSEN: -- aren't they

required to get a certification from the source site owner?

MR. LISS: Where does it read that?

MR. HENRIKSEN: That's in the proposed rules.

MR. LISS: Which section?

MR. HENRIKSEN: 205A.

MR. LISS: Correct. I stated that earlier, yes. How many times do I have to repeat that?

MR. HENRIKSEN: I just asked you given that generator certifications are mandated by proposed rules for all materials brought to a CCDD or uncontaminated soil fill site wouldn't this requirement that you just read deter improper disposal at these facilities?

MR. LISS: No, I think it's ineffective and it will not always deter improper disposal. That's my opinion.

MR. HENRIKSEN: Thank you. Is it true as stated on page four of your pre-filed testimony that there are no standards set forth in the Agency's proposed rules regarding sampling? And then you say see Section 1100.610.

MR. LISS: What page of my testimony?

MR. HENRIKSEN: It's page four, sir. It's right under where you said there were no screening requirements for fill operations and your next sentence states there are no standards set forth in the Agency's proposed rules regarding sampling (See Section 1100.610).

MR. LISS: Yes, that's what I stated in my opinion.

MR. HENRIKSEN: Thank you. But doesn't Section 1100.104 of the proposed rules incorporate several materials by reference including test materials for evaluating solid waste, physical/chemical methods, EPA publication SW-846?

MR. LISS: Where are you at, 104?

MR. HENRIKSEN: Yes, it's 1100.104.

MR. LISS: What is the question referring to 104?

MR. HENRIKSEN: The question is doesn't Section 1100.104 in the proposed rules incorporate several materials by reference including test methods for evaluating solid waste?

MR. LISS: No, these are not standards. I just remembered what you asked me. Three are incorporations by reference.

MR. HENRIKSEN: So your answer is no?

MR. LISS: To this section, I don't think these are standards. I think these are just incorporation by reference.

MR. HENRIKSEN: Thank you. And you're familiar with these rules, correct?

MR. LISS: Yeah.

MR. HENRIKSEN: Are you also familiar with test methods for evaluating solid waste physical/chemical methods EPA publication SW-846?

MR. LISS: Yes, I am.

MR. HENRIKSEN: Doesn't Chapter 9 of SW-846 entitled sampling plan provide detailed information regarding the design and development of sampling plans including random sampling, stratified random sampling?

MR. LISS: I'm familiar with all of those and they are in that section as an incorporation by reference. Now, if they're

specifically included under a section and it reads you must do this in accordance with, then I would say that would be a standard.

So some of the them may be standards, but they would have to be -- you would have to tell me -- ask me these questions in the specific way they're going to be used referenced in the subsections and I would acknowledge that some of these are used as standards.

MR. HENRIKSEN: So these are not standards --

MR. LISS: Ask me specifically where. I just explained to you my answer. I'm trying to help you out here.

MR. HENRIKSEN: Thank you. It's your opinion that you stated in your testimony that there are no standards and then so I understand this document incorporated by reference is SW-846, that's incorporated by reference, correct?

MR. LISS: Yeah. All right. Let's go to what my -- the question was if you don't mind. I'll stop if you don't want me to say it. You asked me are there no standards set forth in

the Agency's proposed rules regarding sampling. I'm on page four of my testimony.

MR. HENRIKSEN: Yes.

MR. LISS: In brackets, it's see Section 1100.610.

MR. HENRIKSEN: Correct.

MR. LISS: So why don't we ask me these questions in the context of that part of my testimony.

MR. HENRIKSEN: I just did.

MR. LISS: We were in the incorporation by reference part.

MR. HENRIKSEN: Don't these rules -- doesn't the incorporation by reference rules actually pull these standards into Part 1100, isn't that correct?

MR. LISS: Yes, some of these are pulled in here.

MR. HENRIKSEN: Isn't one of the things pulled in here this EPA publication SW-846?

MR. LISS: Let me go back to that. By way of TACO -- let me get back to 610 here. The following -- I'm in .610(b)1 if the background value -- I'll go slow -- 35 IAC Code 742 appendix

A tables G or H was determined to be the Maximum Allowable Concentration I would say, yes, that looks like it's being used as a standard.

MR. HENRIKSEN: And don't these analyses -- is the analysis that's required to be done to implement these rules required to be performed under the guidance of SW-846 as being incorporated by reference?

MR. LISS: Yes, I think so under the guidance, but doesn't it maybe allow alternative methods, too?

MR. HENRIKSEN: So these are -- and part of this SW-846 has to do with rules regarding sampling, correct?

MR. LISS: Mm-hmm.

MR. HENRIKSEN: So given --

MR. LISS: Where are the proper procedures for screening? If we're going to talk about the context of my testimony, it's ineffective.

MR. HENRIKSEN: I --

MS. TIPSORD: Go ahead with your question.

MR. HENRIKSEN: So there are, in

fact, standards in the rules that set forth requirements for sampling?

MR. LISS: Yes, there are some that are considered standards.

MR. HENRIKSEN: Thank you. Is it true as stated on page four your testimony that Public Act 94-1416 allows soil contaminated with background levels of benzopyrene removed in connection with a ground fill cleanup project to be disposed of in an unlined fill operation? And that's under part of your testimony page four dealing with what you call tainted soils.

MR. LISS: Yes, that's how I stated it.

MR. HENRIKSEN: Isn't it true that Section 1100.205(a)2 certifications and load checking list the requirements for acceptance of CCDD and uncontaminated soil and that includes the following that the operator has to confirm and document that CC or uncontaminated soil was not removed from a site and specifically lists a SRP site, a Site Remediation Program site, as a site where this material can't be --

MR. LISS: What would happen before

you entered the SRP site and the soil was moved around? Isn't it possible that you can take soil from a site that you're going to go into the SRP and move the now defined as uncontaminated soil around as a technicality before you actually comply with this? Yes. The answer is yes.

MR. HENRIKSEN: That wasn't my question.

MR. LISS: I'm sorry.

MR. HENRIKSEN: I'm just trying to understand what part of --

MR. LISS: I'm trying to explain it because I know some of it's convoluted and it's trying to follow it through the rules and it's my opinion that you can get away with that.

MR. HENRIKSEN: Focusing on the statement you make. You state that soil contaminated with background levels of benzopyrene moved in connection with ground fill cleanup projects can be disposed of in an unlined fill operation under this law? That's what you're saying, correct?

MR. LISS: Yeah.

MR. HENRIKSEN: Doesn't the rule

state on its face that the certifications and load checking that CCDD or clean soil sites have to do have to confirm and document that the soil doesn't come through an SRP site?

MR. LISS: You're citing a regulatory definition of a cleanup program or site. I said a cleanup site and I didn't mean it to be a play on words.

I'll go back to what I said when we started on this dialogue. You could have a building that you're tearing down and you know there's existing contamination. Before you enter the SRP program, you could move unwanted soil to an unlined quarry.

MR. HENRIKSEN: But isn't the operator required to confirm that the material doesn't come from those kinds of places?

MR. LISS: It depends upon on what point. If you file and you enter the SRP program, the certification would say, oops, can't go to this CCDD soil fill because it's in the SRP, but with good planning before you enter the program I don't think this applies. You can move this soil.

MR. HENRIKSEN: But you can't accept

material that's knowingly been part of an SRP program?

MR. LISS: That goes to what I just said.

MR. HENRIKSEN: It can't be part of a CERCLA cleanup, correct?

MR. LISS: Pardon me?

MR. HENRIKSEN: It can't be part of a comprehensive environmental response -- CERCLA cleanup?

MR. LISS: No. They're all listed there.

MR. HENRIKSEN: It can't be part of a LUST cleanup, correct?

MR. LISS: It doesn't apply to -- do you want me to read them all?

MR. HENRIKSEN: I'm trying to --

MR. LISS: These are programs that you enter into these programs. What my testimony is saying that before you enter into the program it doesn't apply. It's very possible.

MR. HENRIKSEN: Is it true as stated on page six of your testimony that if groundwater monitoring is ever conducted and monitoring data

indicates that a groundwater standard has been exceeded, the operator can self certify at any point that there was an error or possibly an offsite influence causing the aggregation?

MS. TIPSORD: Question 14?

MR. LISS: Yes.

MS. TIPSORD: Sorry.

MR. HENRIKSEN: In fact, doesn't Section 1100.745(b) require resampling of parameters that exceeded the standard and submittals --

MR. LISS: Which one?

MR. HENRIKSEN: Doesn't Section 1100.745(b) require resampling of parameters that exceeded the standard and submit it to IEPA?

MR. LISS: That's a part of the process. That's the beginning of the process, yes.

MR. HENRIKSEN: Isn't it also true that Section 1100.750 requires an alternate, noncompliant demonstration, i.e., that the exceedance was due to an error, is not statistically significant of a background or is due to another source, be submitted to the IEPA?

MR. LISS: Yes. 1100.750 just says submit. It doesn't have to be that the Agency approves or has the authority to deny. You can say -- my testimony is saying that when you get to that very point, somebody could write in and say, gee, it was the guy across the street. So this is an aberration in our groundwater monitoring and I'm going to file it and I'm not going to do anything else. That's my opinion.

MR. HENRIKSEN: Even though they have to submit these documents to the IEPA?

MR. LISS: It says they submit them. It doesn't they can approve them.

MR. HENRIKSEN: You can consider that self certification that they have to do this work and submit it to the IEPA -- is the IEPA a rubber stamp, is that what you're saying?

MR. LISS: I'm not saying the IEPA is a rubber stamp at all. I worked at the IEPA for about 14 years doing this very work and I don't think -- I can't give you a number because you're going to ask me to prove it, but I don't know if anybody ever went through with a statistical aberration and then an assessment that

the EPA approved up front because of the difference, the subjectiveness of the process. And we have the authority of a permit to enforce it at the time. You know, I didn't say the EPA is a rubber stamp at all and I don't appreciate you even saying that.

MR. HENRIKSEN: So what is the purpose of submitting it to the IEPA if you're saying they're not -- are you saying they're not going to analyze this material?

MR. LISS: Isn't that my point? Somebody writes something up, submits it and there it sits and they can cease groundwater monitoring. There's no permit process. There is no approval process where the Agency has the opportunity to agree or disagree. It's such an important point. Is the facility affecting groundwater adversely or not? They have no authority to do so. It's submitted to the file. That's my testimony.

MR. HENRIKSEN: That basically ends it, you're thinking, when it's submitted?

MR. LISS: No, I didn't say that.

MR. HENRIKSEN: Then what happens to the material that goes to the IEPA?

MR. LISS: What did I just say? It goes to file. They don't have the opportunity to review it. They have a lot of permitted sites to review. This is self certifying. You terminate the program. I might say one thing. You might say something. Mr. Hock may say something totally different. And we're all knowledgeable in this field. So now you have people that are going to be able to self certify, right, that might not be as knowledgeable as the three of us in this field and there's another opinion and you can stop the monitoring, the assessment, you're done. It's not us. That's my point.

MR. HENRIKSEN: Because the material just goes to the IEPA and they file it, is that your understanding?

MR. LISS: Yes.

MR. HENRIKSEN: Is it true as stated on page six of your testimony at any time during this review process of data, the operator may implement Section 1100.760, dewatering fill operations, and forego any investigation of groundwater contamination, cease monitoring in any required corrective action in its entirety

possibly forever?

MS. TIPSORD: It's question 15.

MR. LISS: Yes, that's my opinion.

MR. HENRIKSEN: Doesn't Section 1100.760(b) require that groundwater monitoring requirements must be implemented within one year after the dewatering ceases?

MS. TIPSORD: We can't get a nod on the record.

MR. LISS: I'm sorry. Yes, it states that.

MR. HENRIKSEN: In addition, doesn't 1100.412(c) or (d) for CCDD sites and Section 1100.530 for uncontaminated soil fill sites state that as part of the termination for post closure care the site must demonstrate the fill operation has not contributed to an exceedance in Class 1 groundwater quality standards or background quality, whichever is higher, during the proceeding three years under representative groundwater conditions?

MR. LISS: I'm trying to find out where you are.

MR. HENRIKSEN: Section -- well,

because one is CCDD and one is uncontaminated soil. Look at 1100.412(c)1(d).

MR. LISS: What happens if you're continuing to de-water?

MR. HENRIKSEN: My question is --

MR. LISS: You don't have to close. I'm trying to answer your question. If you continue to de-water, if you don't follow closure, you can just keep dewatering. Yeah, at some point, you will make that, but couldn't you -- I mean, if we're talking theoretically here, you could pump forever and you don't have to make that determination. You'd never close.

MR. HENRIKSEN: In addition, doesn't Section 1100.412(c)1(d) state that as part of termination of post closure care, the site must demonstrate that the fill operation does not contribute to an exceedance of Class 1 groundwater quality standards or background quality, whichever is higher, during the preceding three years under representative groundwater conditions?

MR. LISS: You don't have to close. So my testimony and my opinion is you can continue dewatering. You don't have to make that

certification because you do not have to close. So my opinion is correct.

MR. HENRIKSEN: So the reading from the rule at the end of the post closure maintenance period here is what the operator has to do. It has to -- from the rule. Based on the groundwater monitoring program required under Subpart G of this part, fill operations do not contribute to an exceedance of the Class 1 groundwater quality standards or the background quality water, whichever is higher, during the proceeding three years under the representative groundwater conditions?

MS. TIPSORD: I think he has asked and answered. I think that has been asked and answered. His answer is you don't have to close and your question is asking him about post closure. So he is saying you don't have to close. If you never close the facility -- your question is about post closure.

MR. LISS: If the facility were to close, you are correct.

MR. HENRIKSEN: So aside -- you're thinking a site may never close. It will never be

filled is that why --

MR. LISS: Yes, it's my opinion that you don't have to close.

MR. HENRIKSEN: But if the site does close, you have to go through this?

MR. LISS: Yes.

MR. HENRIKSEN: That's it. Thanks.

MS. TIPSORD: Let's take a lunch break and then we'll go with Mr. Huff. Be back in one hour, please.

(Whereupon, a break was taken after which the following proceedings were had.)

MS. TIPSORD: I think we're ready to go back on the record and continue with the testimony of Mr. Kenneth Liss and we now have questions pre-filed by James Huff.

MR. HUFF: Can I just ask a follow-up question first on the previous line of questioning.

MS. TIPSORD: Sure.

MR. HUFF: As you explained, Mr. Liss, you believe in your opinion that a facility could avoid ever going through closure by

basically just continuing to pump groundwater dewatering for some extended, indefinite period of time, is that fair to say, characterize?

MR. LISS: In the line of questions concerning groundwater management, yes.

MR. HUFF: So you do you believe that that's truly a viable option that the facilities could reasonably elect to do such a thing in lieu of monitoring?

MR. LISS: Yeah.

MR. HUFF: So the water that they pump out, where does that water go to typically?

MR. LISS: I don't know.

MR. HUFF: Direct discharge.

MR. LISS: I don't know. Do they have NPDES outfall for that? What does it state in here?

MR. HUFF: If they have a NPDES outfall, they would be paying a manual fee for that permit application or permit?

MR. LISS: If they have it.

MR. HUFF: If --

MR. LISS: And they would be --

MS. TIPSORD: Mr. Liss, you need to

let him finish his question. The court reporter can't get both of you.

MR. LISS: Sorry.

MR. HUFF: If they're a direct discharger, they could also have monthly monitoring costs and monthly discharge monitoring reports that they would have to prepare?

MR. LISS: Yes.

MR. HUFF: So they would have to weigh those costs versus ultimately putting in groundwater monitoring?

MR. LISS: Yes.

MR. HUFF: Thank you. On page three of your pre-filed testimony, you note that soil fill operation will often be located in areas with high susceptibility to groundwater contamination. Do you have any supporting data on any groundwater impacts from such operations in Illinois?

MR. LISS: No, I couldn't find any.

MR. HUFF: On page four of your pre-filed testimony, you note that less than one percent of the soil materials are actually tested. Can you compare this to the fraction of soil that is sent to landfill that is tested?

MR. LISS: I was estimating on landfill I would say that it's probably about the same.

MR. HUFF: Thank you. Form 663 requires the professional engineer to certify that the soil is uncontaminated, which requires the professional engineer to test to the level necessary in his or her professional judgment. In discussing the inadequacies of the testing, are you implying that the professional engineers are not meeting their responsibilities?

MR. LISS: No. My testimony is without defined standards or procedures, it's very subjective.

MR. HUFF: Has your firm ever signed a 663 form?

MR. LISS: No.

MS. TIPSORD: For the record, the 663 form has been part of the record as Exhibit 6.

MR. HUFF: On page four of your pre-filed testimony, you note that the use of, quote, background samples creates a risk to groundwater contamination. Have you defined the risk levels in which you are referring?

MR. LISS: Yeah, the risk of moving tainted soil around. Risks to groundwater impacts.

MR. HUFF: Would those risks be greater than one times ten to the minus six?

MR. LISS: I don't know because I'm saying the procedures for screening that are so ineffective that you're not going to know.

MR. HUFF: I don't think we're talking about screening. We're talking about the use of background samples setting Maximum Allowable Concentration.

MR. LISS: I think it's the same thing. If you're taking soil from somewhere and you're declaring it's within the configurations of the rules for screening with background, that the screening process or procedures to make that determination are ineffective. So I'm saying that in itself imposes the risk to contaminate groundwater.

MR. HUFF: So the professional engineer that is taking samples here has not adequately characterized what he has signed off on on Form 663?

MR. LISS: What samples?

MR. HUFF: Whatever samples that he says this needs background concentration.

MR. LISS: Is it required to have samples? Is there a requirement to sample? I don't think the certification requires a sample, does it?

MR. HUFF: As a professional geologist, if you were asked to sign off on some soils and sign a Form 663, could you come to in your mind what would be a professionally appropriate amount of sampling and testing that is required albeit --

MR. LISS: Yes.

MR. HUFF: Do you believe other professional geologists and professional engineers would that have same ability?

MR. LISS: I think it's subjective without a little more definition in the procedures for making that determination.

MR. HUFF: My question was really on the background concentrations that exist. If you go onto question 5(b). If background concentrations pose such a risk to groundwater

contamination, why then isn't the groundwater under all of Illinois where these background concentrations exist impacted today?

MR. LISS: Well, I guess one answer would be if there's no groundwater monitoring around these facilities, we don't know.

MR. HUFF: So Illinois EPA collects significant data on groundwater quality throughout the state and reports that and would that not show up in their database?

MR. LISS: What would show up?

MR. HUFF: That we have widely contaminated groundwater in Illinois from where all this background concentrations exist that you believe pose a threat to groundwater?

MR. LISS: I don't think groundwater is Illinois is widely sampled.

MR. HUFF: 5C. You specifically use benzopyrene as an example. How does the Tier 1 remedial objective for soil migration to groundwater for this compound compare to the background concentration that's used in the Maximum Allowable Concentration table?

MR. LISS: How is it used?

MR. HUFF: How do they compare the Tier 1 soil migration to groundwater --

MR. LISS: The MAC table, is that what you're referring to?

MR. HUFF: I'm referring to what is the Tier 1 soil migration to groundwater objective for benzopyrene.

MR. LISS: I don't know offhand.

MR. HUFF: Is it higher or lower than the background concentration?

MR. LISS: I have a 50/50 chance. I don't know offhand.

MR. HUFF: Let's assume that it's higher than the background concentration. So you then testified that if we're allowing background concentration levels of benzopyrene to go into these facilities, that that's posing a risk to soil migration to groundwater?

MR. LISS: Yes, I'd like to answer your questions with an example maybe. I use benzopyrene as an example. One reason because it generally won't be picked up by a single gas PID. PID, which is an instrument referenced in the rules that you need to use. If you miss it, and

with what I think are ineffective certifications and load checking procedures, this material doesn't say you have to sample it.

MR. HUFF: So we're focusing --

MR. LISS: I'm not done.

MS. TIPSORD: One at a time. One at a time. Go ahead, Mr. Liss.

MR. LISS: And you don't have to sample it and it goes into one of these unlined facilities, there is the risk of impact to groundwater. That's the basis of my testimony, my opinion.

MR. HUFF: So if the benzopyrene background concentration is less than the Tier 1 remedial objective for soil migration to groundwater and we're putting material in the CCDD facility that is less than the background concentration, what risk does that pose to groundwater?

MR. LISS: Let's assume that back with the groundwater -- the groundwater has no benzopyrene in it beneath the facility. Couldn't -- I want to ask you a question. There's the potential for that constituent, benzopyrene or

another, to leach out and enter the groundwater because it is an unlined facility and I think the risk is even higher because of the ineffective screening procedures, no location standards, no engineering controls.

MR. HUFF: So let's get past this screening and assume we have analytical data and the analytical data says that the material going in here meets the background number. So to the extent that you get some benzopyrene in the groundwater that is less than one times ten to the minus six risk concentration, in your mind that's still unacceptable?

MR. LISS: If it causes an increase over the existing background concentrations of the facility it's being disposed in, I disagree with that. Yes, I think it's wrong.

MR. HUFF: So the benzopyrene is along every highway in the State of Illinois and you've got storm water that is percolating through that that is then reaching the groundwater.

MR. LISS: I don't think that, but if you have data to show me that benzopyrene is along every highway in Illinois, I can alter my

opinion somehow.

MR. HUFF: Fine.

MR. LISS: I used benzopyrene as a simple example.

MR. HUFF: So would you apply the same background concern you had for benzopyrene to arsenic?

MR. LISS: I think the potential is there, yes.

MR. HUFF: So we should then preclude any arsenic that is above 3 mg/kg of going into CCDD facility?

MR. LISS: Is that a trick question?

MR. HUFF: No, sir. That's the background level -- or that's the risk level of benzopyrene.

MR. LISS: If it was a perfect world and everyone followed exactly what should be done, the EPA has indicated that that risk level if it entered the groundwater is okay. I disagree with that because there's the potential under the way these rules are structured with no oversight, the lack of standards, that one load could be sampled and show that the arsenic is low enough or at that

level that you're discussing and other stuff could be brought in there with higher arsenic levels and dumped in there.

MR. HUFF: The lowest number that is in there currently is the 13 mg/kg which is the 95th percentile of the upper confidence level of mean in Illinois. The risk number was 3 mg/kg based on ingestion, not based on soil migration to groundwater. So if your answer is still you believe that putting 3 mg/L and higher of arsenic in the CCDD facility poses an unacceptable risk, then --

MR. LISS: I think it's a case by case determination that's not being made. So the answer would be, yes, I think it's an unnecessary risk and it could apply to any of these constituents.

MR. HUFF: So, really, what you're saying is we should not allow any material to go into the CCDD facilities, it should all go to landfills in Illinois?

MR. LISS: No, not at all.

MR. HUFF: So what material could go into the CCDD facility?

MR. LISS: Properly screened material that meets the criteria that the Agency has laid out in this proposal provided it went to a facility that had some safeguards and was prescreened, say, with location standards, eliminate the bad sites, the potential bad guys or the potentially bad geographically located poor sites.

MR. HUFF: So that seems at variance with your testimony. Let's go back to the benzopyrene and background levels. You testified that we're now allowing tainted soil because it only meets the background level for benzopyrene. You testified that's inappropriate for going into a CCDD facility. Now you're saying that if we meet those levels proposed by the Agency with proper screening, it would be okay to go into a CCDD facility?

MR. LISS: I said both and it's not that I changed my opinion. It's not now that I'm saying. I answered two different questions that you had. I'm saying the potential is under both scenarios, the tainted soil could be placed in these facilities above susceptible groundwater and

without knowing the condition of the groundwater beneath there what you're advocating is to allow some amount of contamination that could potentially contaminate the groundwater by using the TACO standards that were designed for a different purposes.

MR. HUFF: If the regulations were to adopt your concern over the use of, quote, background concentration, what would you propose doing with the soil and what would be the economic impact on the annual $2 billion a year of highway construction work in northeastern Illinois?

MR. LISS: That's a tough question because I don't have the economic data. Do you?

MR. HUFF: I testified to the $2 billion. That's in my testimony, yes, sir. The clients that I represent that's the annual budget of what they're spending on roadways in northeastern Illinois.

MR. LISS: I do know for a fact that some of the work we do with the definition of uncontaminated soil that the proponents of this pushed through were successful and that's why we're here. It is now costing the state,

specifically IDOT, more money to sample all these parcels of property that they investigate. So without even going to disposal there seems to be an increased cost already to try and comply with the bright line that's being developed, if we can call it that, under this proposal. Now, where would the soil go? That's the second part.

MR. HUFF: That was my question.

MR. LISS: Where would the soil go? I think if the rules included some better screening standards, a way of removing the sites out of location standards, then maybe some engineering controls because there aren't any financial assurance requirements under here, are there? You would still have facilities where this soil can go. I think there's about 60 something facilities potentially around this area, this six or seven county area.

MR. HUFF: Moving onto question six. On page seven of your testimony, you recommend that any level of degradation in groundwater quality be prevented citing 35 Ill. Adm. Code 742.410. Can you specifically quote the section from Part 742.410 that you are referring to

regarding your statement that degradation and groundwater quality be prevented?

MR. LISS: No, I didn't bring it with me.

MR. HUFF: Part 742.415(b)2 allows the use of area background in lieu of objectives developed pursuant to other procedures in Part 742 such as the Class 1 or Class 2 groundwater standards. Can you explain your understanding how this section is consistent with your testimony regarding degradation being prevented on background?

MR. LISS: It's the same answer that I had. That any use of background without some diligence done on making sure it is not over the background and it's going to an area that doesn't have more pristine groundwater under it has the potential to be impacted. That's my opinion.

MR. HUFF: You believe that's what it says on 742.410 --

MR. LISS: I don't have it in front of me. I'm telling you this is my opinion to using the regulations --

MR. HUFF: Well, that's what you

cite.

MS. TIPSORD: One at a time, please.

MR. LISS: I'm clarifying.

MR. HUFF: Have you read the Pollution Control Board's opinion in R8914(b) regarding its intent regarding non-degradation and adopting the Part 620 regulations?

MR. LISS: Yes, I participated in those hearings.

MR. HUFF: So since you answered that yes, can you summarize your understanding of the Board's intent?

MR. LISS: There's quite a bit. I think the Boards's statement was they were reluctant that they couldn't address non-degradation as was discussed on the record.

MR. HUFF: You believe that Section 742.410(b) does have that non-degradation requirement?

MR. LISS: I have 742.410. I don't have B in front of me, but I'm saying the use of background in the manner under the proposed rules has the potential to put -- and the screening procedures that are in here, the lack of location,

the lack of permitting, the lack of Agency's authority for oversight through permitting process I think you have the potential of impacting susceptible groundwaters.

MR. HUFF: And define impact for me. Above Class 1 or above background concentration?

MR. LISS: I wouldn't use a Class 1 or Class 2 as a threshold to add contaminants. Let's get rid of Class 1 and Class 2 and I can boil this down. If background at this site is 50 whatever in groundwater and something leaches from this soil into the groundwater and it brings it up to 60, that's degradation. How much further do you want to go?

MR. HUFF: No further questions.

MS. TIPSORD: Are there any other additional questions for Mr. Liss? Thank you very much. I appreciate your testimony. Michael Sturino, did you make it in? Then we'll move onto Steven Gobelman from IDOT.

MR. GOBELMAN: Do you want a copy?

MS. TIPSORD: Do you have a clean copy? That would be great. Can we have the witness sworn in, please?

WHEREUPON:

STEVEN GOBELMAN

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: If there's no objection, we will mark the pre-filed testimony of Steven Gobelman as Exhibit 18. Seeing none, it Exhibit 18.

(Document marked as ILPCB Exhibit No. 18 for identification.)

MS. TIPSORD: Mr. Gobelman, did you want to give a brief summary?

MR. GOBELMAN: No.

MS. TIPSORD: Then we can go right back to Mr. Huff I believe has questions.

MR. HUFF: Do I have questions?

MS. TIPSORD: Yes, one. Would you like -- I have my copy of it here.

MR. HUFF: Mr. Gobelman, on page two of your pre-filed testimony, you indicated that the Department of Transportation leaching testing on pavement markings did not exceed Class 1 groundwater standards. Would you expect a similar

result on the pavement markings used by the tollway counties and municipalities in Illinois?

MR. GOBELMAN: If they follow the IDOT spec book and use similar pavement markings manufactured that we look at, I would assume that they would have similar results.

MR. HUFF: Thank you.

MS. TIPSORD: Any further questions for Mr. Gobelman? That was a lot faster than last time. Thank you very much for coming today.

MR. GOBELMAN: You're welcome.

MS. TIPSORD: Then we move onto Mr. Ryan LaDieu. Thank you. Could we have the witness sworn.

WHEREUPON:

RYAN LADIEU

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: If there's no objection, we will mark Mr. LaDieu's pre-filed testimony as Exhibit 19. Seeing none, it's Exhibit 19.

(Document marked as ILPCB Exhibit No. 19 for identification.)

MS. TIPSORD: Go ahead, Mr. LaDieu.

MR. LADIEU: The intent of my testimony was to address the Maximum Allowable Concentrations of chemical constituents and uncontaminated soils as listed in the 35 Ill. Adm. Code Section 1100.605. Basically, the intent is to identify that as far as the act goes, the Public Act 96-1416 indicates that the IEPA is to promulgate a regulation that identifies Maximum Allowable Concentrations to be used to determine what soils are eligible to be accepted at CCDD facilities. Based on this, the Maximum Allowable Concentrations for chemical constituents in contaminated soils was generated by the IEPA and it used the most stringent Tier 1 soil remediation objectives, which included residential ingestion and inhalation values.

The issue becomes how these values are used when evaluating soils that are going to these facilities and where these soils are placed at a quarry or a mine as most of these

soils end up being placed at elevations that are far below the surface and evaluating a risk level which has been mandated by the Public Act of one in a million as a risk level for human exposure. At 200 feet below the surface, these residential, ingestion/inhalation values end up becoming less of a risk or the one in a million risk level doesn't apply as the exposure pathway is taken away when the quarry or mine is actually completed.

So as the TACO regulations were setup based on evaluating risk for sites for cleanup -- and so it's based on a site by site basis. The residential ingestion/inhalation values are very conservative and I'm not sure that there should be the values that need to be evaluated when determining what soils go to a CCDD facility.

In my pre-filed testimony, I do mention that there does need to be some type of evaluation done and the act specifically indicates that this is a protection of groundwater, the importance of the protection of groundwater at these facilities. So, therefore, an evaluation of

the soil component of the groundwater ingestion exposure route and in order to protect construction workers, the construction worker exposure routes need to be evaluated, but beyond that using the residential ingestion/inhalation values don't seem to be appropriate.

MS. TIPSORD: Thank you. Are there any questions for Mr. LaDieu? Thank you very much for taking the time to testify today. We appreciate it. That moves us onto Claire Manning.

MS. MANNING: Good afternoon.

MS. TIPSORD: Can we have the witness sworn, please.

WHEREUPON:

CLAIRE MANNING

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: If there's no objection, we will mark the pre-filed testimony of Claire A. Manning and mark it as Exhibit 20. Seeing none, it's Exhibit 20.

(Document marked as ILPCB Exhibit No. 20 for identification.)

MS. TIPSORD: Do you have a clean copy with you?

MS. MANNING: Thank you. I do. Madame Hearing Officer, Board Member Johnson and the technical staff, as you know, I'm not a technical expert. I'm not here to testify as a technical expert. I am here, however, to provide some background to the legislative and legal sort of arena that led us here to this particular rulemaking. I represent the Illinois Public -- the Public Building Commission of Chicago, which is sort of very similar to the capital development board in Springfield. It is the body that contractually oversees all construction -- all public construction in Chicago; Chicago Public Schools, Chicago parks, Chicago Fire Department, and that sort of thing. For the last three years, we've been working with the Agency supporting a legislative effort that would define uncontaminated so the contractors that work for the Public Building Commission would know what the rules of the game are and what soil can be appropriately taken to a quarry, a CCDD permitted facility versus what soil needs to be taken to a

landfill and that is the gist in my opinion of the impetus of this legislation. Various other aspects came into this particular legislative effort, but the impetus of the legislation, in my opinion, was enforcement efforts occurring.

Mr. Wilt talked about some of that today. The Board will be deciding those matters where the Agency had taken the position that soil is only uncontaminated if it doesn't have anything naturally occurring in it or soil is uncontaminated if it's from the glaciers, but if it's something different it is contaminated and, therefore, cannot be taken to a CCDD facility where on the other hand the state of the art of all the engineers that are out there on using TACO to determine even when they're moving soil from place to place, they're using TACO to determine how clean is that soil. Is it clean enough to be considered uncontaminated for the purpose of sending it to a permitted CCDD facility.

What this legislation did was really send that question to you. With your technical expertise, to send that question to you with just a few parameters. We were very

supportive. My client was very supportive of all the protocols that have been put in place in terms of the regulation and the added regulation, but it was also important that from a cost perspective and an environmental protection perspective that we make the right decision in terms of what soil is clean enough to be able to safely be put into a quarry.

I think you heard John Hock testify earlier that if we make that decision the wrong way and it's too conservative that what you're going to have is everybody taking it either to a landfill, those conservative people that want to err on the side of responsibility and those other people who are going to err on the side of not responsibility, but lower costs are going to take it elsewhere that's not regulated.

So that's the charge I think the Board has in terms of deciding and listening to the testimony and listening to the technical information in terms of what the proper protocol is out there for contractors to be sure when they send something to a quarry it's appropriate to send it there, a quarry being a CCDD permitted

facility.

My client is interested really in two things. Number one, environmental protection. We've come a long way with already the positive steps we've taken in the CCDD rules. You'll all recall there was a day when lots of things went everywhere. As a result of that practice, the CCDD regulations -- first of all, the CCDD statute was put in place. Then the Part 1100 regulations followed. Since those Part 1100 regulations, we now have permitted CCDD facilities that are trying to act responsibly under the law and they need to understand what the law is, what the regulations are and that kind of thing. If you'll recall, and I put in my testimony here, the Part 1100 rules when we had the rulemaking the point was made by several people that we need to define what uncontaminated is. We, however, left the record without making that more definitive and as a result the workplace out there has -- in the engineering community, everybody has made a determination as to what is clean enough. The Agency doesn't always agree with that determination and when they don't an enforcement

action occurs and in my opinion that's a great impetus for one of the reasons we're here today.

Secondly, my client is very interested in, as it should be, it's a public contractor, interested in the costs and the cost benefits of sending something to a landfill if they're going to incur the costs of sending something to a landfill which estimates are it's four times the cost of sending soil to a CCDD facility. That means millions of dollars in public projects for the city projects. They want to make sure that's the right call. That it needs to be landfill because it's not -- it's contaminated. And they want to make the right call if it's appropriate to go to a quarry and will not impact the groundwater.

Thirdly, my client is interested in contractor compliance. My client has specifications. They develop specifications. They have to tell the contractor where things are supposed to go. Right now as the situation is given enforcement actions, given the flux in the law, they have made the determination to landfill almost everything until a determination is made as

to what is appropriate and what isn't appropriate at great costs.

So as they go through that and the Board goes through this rulemaking, we'd like to at the end of the day make sure that my clients, the Public Building Commission, can give rules out to their contractors in terms of their contractor's obligations to make sure that soil goes in the right place when it needs to be excavated and removed and taken out of the city. With that, that is my -- I'm happy to answer any questions that anybody may have.

MS. TIPSORD: Thank you. Are there any questions for Mr. Manning?

MS. MANNING: Thank you.

MS. TIPSORD: Thank you very much. Okay. One last chance for Michael Sturino. All right. We will move his pre-filed testimony to a public comment and, with that, I believe we are ready to go to the IEPA. Why don't we take about ten minutes so we can get the IEPA moved up here and the first set of questions for the IEPA I have that was filed came from Land and Lakes. Yes, from Land and Lakes. Is Land and Lakes here

today? Awesome. We'll begin with you.

(Whereupon, a break was taken after which the following proceedings were had.)

MS. TIPSORD: The questioner from Land and Lakes, come on up. Before she gets seated, if we could go ahead and have the Agency's witnesses sworn in.

WHEREUPON:

THOMAS HORNSHAW, CHRISTIAN LIEBMAN, PAUL PURSEGLOVE, STEPHEN NIGHTINGALE, DOUGLAS CLAY and TERRI BLAKE MYERS

called as witnesses herein, having been first duly sworn, deposeth and saith as follows:

MS. TIPSORD: And this is the same panel from the last hearing, correct?

MR. WIGHT: With one exception. Leslie Morrow is unable to attend today, but Tom Hornshaw is. Mr. Marrow's supervisor has been involved in the workgroup at IEPA so Mr. Hornshaw should be able to handle any of those questions.

MS. TIPSORD: Great. Thank you. With that, we'll go ahead and begin with the pre-filed questions from Land and Lakes.

MS. TROYER: I'm just going to paraphrase these a little bit. We've been doing precertification of our material coming into our clean fill since the clean fill opened in 2004. We were happy to see the implementation of the LPC 662 and 663, but we're not real happy with the outcomes we're seeing with the 663's. Some examples are that we're getting things coming in certified by PE's that have no supporting evidence or historical data associated with the site. It's basically this site is clean. In running what we call an EDR report, we're finding that evidence of Leaking Underground Storage Tanks on the site and other spills and having to go back and do analysis.

We're also seeing places where they would take a ton plus acre site, do three or four bore holes down three or the four feet, stick a PID in there, get zero and tell us that the soil is clean without any other analytical evidence or metals, other things that are not picked up by a PID and certifying it as clean.

Another example is that we will have them not do the entire list of the Maximum

Allowable Contaminates, which I think is okay if they can justify why we didn't do this group of metals, this group of PCB's, this group of pesticides or some other type of a certification like we do for landfills for pesticides and herbicides, but there's no evidence, nothing to trace back why the PE said we didn't need to do these analyses.

The other thing is we will see analysis come through that's perfect and the PE will sign off everything is good, it's under the MAC. We actually had this happen last week. We specifically mentioned arsenic. In looking over their results, the arsenic was over the MAC that was presented to the Pollution Control Board.

MS. FLOWERS: Can I interrupt? She is testifying.

MS. TIPSORD: I need to have you sworn in. You're offering testimony and giving us facts that we need to have sworn testimony. So could we have you sworn in, please?

MS. TROYER: Sure.

WHEREUPON:

CHARLENE TROYER

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MS. TROYER: When, in fact, we looked over that analytical data, the arsenic was over both the MAC presented to you for approval and they wanted posted on the board. In addition to that, both lead and iron were above those levels. What I'm wondering and hoping is we can get some kind of a protocol for the PE's to follow, something that includes them writing a justification of why they didn't do certain analysis. Also, if there could be some kind of training protocol for people that are working for the CCDD sites on what they should be looking for to accompany those 663 forms. So that's the question. Will the EPA consider some type of a program along those lines?

MR. NIGHTINGALE: To answer the first part of your question about the standard protocol or certification of clean fill, there are no plans to do this protocol.

MS. TIPSORD: You need to speak up. Remember, you're talking to the back of the room as well.

MR. NIGHTINGALE: Okay. There are no plans to do this. The protocol will be up to the professional engineers and the professional geologists. Your second question which was related to the Illinois EPA developing a certification program to educate professional engineers or professional geologists that is similar to the certification for Stormwater Pollution Prevention Plan Preparers. Our response is, no, there is no need to develop a separate certification program because both the professional engineers and professional geologists are licensed by the Illinois Department of Financial and Professional Regulation.

MS. TROYER: Question number two relates to the groundwater standards. In comparing the list of the groundwater standards to the MAC's, it appears that some of those parameters that we're looking for for Maximum Allowable Contaminations are not covered on the groundwater standards.

If that being true, how can anybody be sure that some of those other parameters that we're looking at for Maximum

Allowable Contamination should even be looked at if we're not concerned for those in the groundwater?

MR. PURSEGLOVE: My name is Paul Purseglove. The Agency can at any time collect a sample from one of the monitoring wells at the disposal fill site and have that analyzed for a broader range of organic and inorganic constituents. Ultimately, though, the CCDD owner will be responsible if an impact to the groundwater is discovered. The CCDD owner must exercise all due diligence before accepting material as fill at their site knowing that if groundwater is impacted due to leaching of contaminates from the materials they have accepted they will be responsible for the remediation.

MS. TROYER: And the last question is that many construction companies move soil from one site to another without having the soil looked at. Basically, for structural issues, they'll have soil that is not structurally sound. They'll want to remove that, put something in something more structural. Where is there any guidance on that material they're bringing into their site to

make sure it is equivalent in quality to what they moved off site?

MR. CLAY: My name is Doug Clay. None. These regulations only apply to material that is generated for construction and demolition activities that are going to mines, quarries and other excavations as defined in these proposed regulations. We do investigate complaints of illegal disposal waste.

MS. TROYER: Thank you.

MS. TIPSORD: With that, the next set of questions I received were from Dennis Walsh and the Suburban Public Works Director Association. Mr. Walsh? Okay. Moving onto the City of Chicago. Doris McDonald? Go ahead.

MS. MCDONALD: Thank you. I'll try to be as brief as I can be. The city's first question concerns whether when LPE/LPG certification is required or would be required for purposes of Section 205 and under the act as it applies currently as the city understands it LPE/LPG certification is not required if the source site owner certifies that the source site has never been used for commercial or industrial

purposes and is presumed to be uncontaminated soil. Under the Agency's proposed rules as the city understands them hopefully I understand them, correctly, hopefully you'll tell me if I don't, LPE/LPG certification is not required if the source site owner certifies that the source site is not a personally impacted property and is presumed to be uncontaminated soil and then finally there's been some discussion of the Board perhaps adopting a term industrial/commercial instead of potentially impacted whereby presumably LPE/LPG certification would be required for any property that would be industrial/commercial.

And the city would like to understand the Agency's view of how these three different terms play out or would play out in practice. So, specifically, the city is wondering from the Agency's point of view whether LPE/LPG certification is or would be required for each of the four properties we listed as A, B, C and D and I can read those into the record if necessary.

First, under the act as it applies currently. Second, under the Agency's proposal of potentially impacted properties and,

third, if the term potentially impacted will be replaced by industrial/commercial property. I can read the four properties in.

MS. TIPSORD: Yes, please.

MS. MCDONALD: Certainly. The first property that the city is interested in is the transportation right of way that has always been a transportation right of way. The second property is a park, school or residence that was formally the site of industrial activity, the third is a commercial dry cleaning facility and the fourth is a metal heat treating facility?

MR. NIGHTINGALE: My response is a five part answer. First, the decision is to which soil certification form to use. Source site certification or PE/PG certification should be made by the source site owner or operator and the receiving facility in advance of any excavation or truck hauling. Second, no matter how descriptive Part 1100 regulations may be in regards to road certifications, the receiving facility may choose to be more stringent and require professional engineers or professional geologists certification and analytical testing.

The interpretation of potentially impacted property is ultimately made by the receiving facility since the responsibility falls to them to make sure only CCDD and uncontaminated soil are accepted for fill.

Third, for meaningful guidance as to whether a property, including a right of way or easement, may be potentially contaminated we recommend you consult ASTM standard practice for environmental site assessments phase one environmental site assessment process E1527-05. This document is the recognized national standard for evaluating a properties' potential for environmental contamination.

Fourth, no type of property or land use can be categorically excluded. The owner should use his or her knowledge or the history of the site and the vicinity or the history if it -- or if the history is unknown, consult a professional engineer or geologist and, finally, fifth, if the Board were to adopt potentially impacted property or industrial/commercial property, it would not change the certification requirements.

MS. MCDONALD: I guess I'll chew on them in the back of my mind while I go on and ask some more questions. I'm not trying to trick anybody. I'm just trying to learn. Are you able to provide examples, whether real or hypothetical, of current or former industrial or commercial sites that in the Agency's view would not be potentially impacted properties and on the other side of the coin current or former industrial or commercial sites other than a property with a known release of some kind of less incident that not in the Agency's view would necessarily be potentially impacted property?

MR. NIGHTINGALE: The response would be no type of property or land use can be categorically excluded or included. The owner should use his or her knowledge of the history of the site and vicinity or if the history is unknown, consult a professional engineer or geologist.

MS. MCDONALD: Understood. Could you give me an example? Again, I'm not trying to trick you. I'm just trying to learn. Could you give me an example, even a hypothetical example,

of a property that was once industrial or commercial that the Agency would say is not potentially impacted property and if you have to add more facts, hypothetical facts, to make it come to life, that's fine.

MR. NIGHTINGALE: Well, I guess possibly. I guess an example would possibly be a bank that was pretty much always used as a bank and they may have a part of their property that's just been there and it's really never been used for anything, maybe a picnic area or something like that. That could probably fall into that situation.

MS. MCDONALD: That would not be potentially impacted?

MR. NIGHTINGALE: Correct.

MS. MCDONALD: Can you think of circumstances under which a residential property that has never been used for an industrial/commercial purpose would be a potentially impacted property?

MR. NIGHTINGALE: Circumstances could include the property contains materials that could impact the property and impacted property

could be located near a residential property or other circumstances. Again, no type of property or land use can be categorically excluded. The owner should use his or her knowledge of the history of the site and the vicinity or if the history is unknown consult a professional engineer or geologist.

MS. MCDONALD: I understand. So if I have a house and it's always been a house, most likely that would not be potentially impacted property?

MR. NIGHTINGALE: I think that would be fair to say unless there was something going on around or near it or even at the site if they were storing used oil or something like that, that could potentially impact the property.

MS. MCDONALD: Okay. Now, I'm thinking about a right of way running through a residential neighborhood that's always been a residential neighborhood let's just say there are no less incidences in the immediate vicinity and we're not aware of any major spills. Can you think of any circumstances hypothetical, real, whichever, under which that right of way would be

potentially impacted?

MR. NIGHTINGALE: Could you repeat that question?

MS. MCDONALD: You have a right a way -- I can't repeat verbatim. I'll do my best. You have a right of way that is running through a residential neighborhood, it's always been a residential neighborhood, we're not aware of any approximate LUST incidences or releases or anything like that, the street -- it runs through a residential neighborhood, it's always been a residential neighborhood, what facts would I have to add to make that right of way potentially impacted or what facts could I add to make that right of way potentially impacted?

MR. NIGHTINGALE: To make it potentially impacted, I guess if there was some type of spill that was going on on the right of way, if there was I guess a tanker that may have tipped over or somebody were to have dumped oil, if you had perhaps a transformer or say, for example, pesticide spills that may have gone on there, heating tanks could be another situation.

So really it depends on the

situation at the site and that's where we really think that if there's any question that a professional engineer or professional geologist --

MS. TIPSORD: Keep your voice up. They can't hear you in the back of the room.

MR. NIGHTINGALE: I think that's why we feel that it is so important that if you're not really confident that it hasn't been impacted that you should contact a professional engineer or a professional geologist.

MS. MCDONALD: The proposed Board note to the definition of potentially impacted properties states in part "For transportation rights of way or utility easements, the current use of the property as a right of way or easement should be considered" and other things obviously should be considered as well as stated in the Board note. Does the Agency believe the current use of the transportation right of way or utility easement itself renders or could itself render the property potentially impacted and, if so, how and when?

MR. NIGHTINGALE: The answer would be yes. As stated before, no type of property or

land use can be categorically excluded or included and, again, the owner should use his or her knowledge of the history of the site and the vicinity or if the history is unknown consult a professional engineer or geologist.

MS. MCDONALD: Okay. Understand. But thinking about the right of way itself the Board note says one of the things that I should consider is the current use of the property as a right of way or easement and I'm trying to understand how to take that into consideration so that I make sure my client takes it into consideration in the right of way.

Does its use as a right of way lean it in one direction or another or you just -- why should I consider that fact or what relevance does that have?

MR. NIGHTINGALE: I think you would probably have to look at a right of way where it's at and what is going on at the site. If it's in a residential area and there doesn't appear to have been any problems or contamination, then that could potentially fall into the non-contaminated side of things, but, again, it's really going to

have to be done on a site by site basis.

It's really going to be critical that the site owner or operator of this evaluate what they've got going on and if there's any question, again, our recommendation is to have a professional engineer or a professional geologist consult it to make those decisions.

MS. MCDONALD: I'm just going to withdraw question six. On question seven, what I'm trying to get at here is we have to think about each individual property. I get that. And the Board note to the definition, again, of potentially impacted properties states the use of adjoining property should be considered in determining if the right of way is potentially impacted. Got it. But am I correct in thinking that mere knowledge that the right of way is surrounded by industrial and commercial properties is in itself insufficient to make a determination as to whether the right of way is potentially impacted? I would need to know more about those individual properties?

MR. NIGHTINGALE: Yeah, I would think you would need to know more about those

other properties, but being in an industrial setting that you probably -- if you're not really familiar with what has been going on it may be a good idea to consult a professional engineer or geologist.

MS. MCDONALD: So a right of way project could obviously involve excavation along one or more city blocks. Could the right of way owner properly identify a portion of the project site which might be a block, several blocks or a portion of a block as not potentially impacted and seek LPE/LPG certification only for soil from the remaining portions or is it the case that if any part of the right of way project is potentially impacted than the whole right of way project is potentially impacted in the Agency's view? I understand. I'll talk to the quarry. But in the Agency's view is it -- can it be separated out or is one project simply one project?

MR. NIGHTINGALE: Yes, it can be separated out.

MS. MCDONALD: Segregate the soils and that sort of thing?

MR. NIGHTINGALE: Yeah, you've got

them blocked. If you have contamination, that area may -- you may need a professional engineer or professional geologist or if you have another block or if there's no indication --

MS. TIPSORD: They can't hear you in the back of the room.

MR. NIGHTINGALE: If you had a portion of your block or of your activity that was going on and it included a series of blocks we would not require that you go to and -- because one block had a problem that you would have to do the whole project, require that a professional engineer or professional geologist certify it. So you could break it up and if some areas would not appear to be contaminated you would not have to have a PE or a PG for that.

MS. MCDONALD: If a property was contaminated and was extensively remediated years ago in the SRP, including pumping out contaminated groundwater, excavating contaminated soil, replacing the excavated soil with virgin soil and vegetation and the Agency issued a comprehensive NFR, is the property a potentially impacted property today or do you lack the facts to know

and, if so, what extra facts would you need to know?

MR. CLAY: That determination would be made by the source site owner/operator and their PE or PG, if applicable. One thing that should be considered in making this determination is what activities have taken place at the site since the NFR letter was issued.

MS. MCDONALD: And if none had taken place since the NFR had been issued, if the property was exactly the same as it was on the date the NFR was issued, does the Agency have an opinion on whether that property would be potentially impacted?

MR. CLAY: I think you need to look at the situation. I'm not sure there's a comprehensive -- and it was many years ago. I'm sure there has been changes in the TACO numbers. So that's a possibility. I don't know if you said there was a comprehensive NFR letter with no restrictions. You know, if there were any restrictions, obviously it would pick up contamination behind the required institutional controls or engineered barriers.

MS. MCDONALD: Assuming there were none required?

MR. CLAY: Again, it would have to be an evaluation by the property, the source site owner/operator and/or their PE or PG.

MS. TIPSORD: Could we hold for just a second?

(Whereupon, a break was taken after which the following proceedings were had.)

MS. TIPSORD: We can continue.

MS. MCDONALD: Thank you. I think I can guess, but I'm going to ask anyway. The property that I just described had a comprehensive NFR letter issued years ago after the extensive remediation that I described and let's assume no restrictions on the NFR, no activity on the property since then, is a right of way or other property abutting that property necessarily potentially impacted as a result of abutting it and if more facts are needed to answer this question, what kinds of facts are those?

MR. CLAY: Once again, the determination falls to the source site

owner/operator and their professional engineer or professional geologist, if applicable. In all cases, a consultation with the fill site should be conducted to know what they will require prior to receiving material.

MS. MCDONALD: Sure. But at the end of the day, it's not the fill site, it's the Agency that might pursue an enforcement action so I'm interested in finding out from the Agency's point of view is it impossible for the Agency to answer that question just because there just aren't enough facts presented and, if so, I don't ask you to supply every single fact you would need to know, but what are the kinds of facts that you would need to know to make that determination?

MR. CLAY: Again, this is up to the professional engineer, professional geologist. Facts that could be considered is have there been spills from along the roadway from trucks, not from adjacent sites, but from trucks along the roadway. What has happened at the adjacent property since the comprehensive NFR letter has been issued? How long has it been since the NFR letter was earned, 20 years? What could have

happened in that period of time?

Again, this is -- you know, we can't give a definitive yes or no without knowing exactly what happened at the property and it is up to the judgment of the professional engineer. In some situations, one professional engineer or geologist may require sampling. Another situation, they may not. So it really -- you know, we can't give you a definitive answer with a hypothetical situation. And it really doesn't -- you know, if the Agency goes out and takes samples of this site and they're above the standards, they're going to be cited for violation. So, you know, weather we agree or we believe that they can certify to it really doesn't matter.

It's whether the professional believes they can certify us to it and whether the receiving facility, the fill site owner/operator concurs. I mean, they may have certifications from the PE or PG, but the fill site may say, you know, this is adjacent to a former NFR site. I want samples.

MS. MCDONALD: I'm going to withdraw 11 and 12, please, and question 13 what I think

the city is getting at with question 13 is looking at if industrial activity -- let's assume the industrial activity would render the property potentially impacted.

Does the amount of time that's passed since that activity has occurred play into whether the property is potentially impacted today? Is that something that should be considered? So if there was activity that took place a hundred years ago, but the property has been a park or a home for the last 99 years, 50 or 25 or 10, is that a relevant factor that would be taken into consideration?

MR. CLAY: You know, I think this is up to the source site operator, but I think you would take that into consideration. What weight you would give to it is up to the source site owner/operator or the professional engineer or geologist.

MS. MCDONALD: And would the same be true for the duration of activity, potentially contaminating activity, on the site whether it was two months, 20 years, that sort of thing? Same answer?

MR. CLAY: Yeah, the relevancy of that information and another site use information should be considered by the source site owner/operator and their professional engineer, professional geologist at that point.

MS. MCDONALD: Thank you. If the Agency were to issue a notice of violation to a source site owner for allegedly causing or contributing to groundwater contamination or allegedly disposing of contaminated material and fill operation and the source site owner were to provide its sampling protocol and test results showing no exceedances of the Maximum Allowable Concentrations, would that showing be sufficient in the Agency's view to disprove the allegations and resolve the matter and, if not, could you explain?

MR. PURSEGLOVE: If the data from the generator indicated that the MAC was not exceeded, than an enforcement action would be dismissed. However, if subsequent analysis of samples of the material that was sent to the CCDD site indicated MAC exceedances, enforcement would proceed and the assessment of the soils that was

conducted by the PE or PG would be in question.

MS. MCDONALD: Is asphalt considered painted if it contains pavement markings?

MR. PURSEGLOVE: Yes.

MS. MCDONALD: Can asphalt containing pavement markings properly be used as fill at a CCDD fill operation?

MR. PURSEGLOVE: Yes, provided the paint complies with IDOT specifications or it's sampled and tested and certified to be below the regulatory level.

MS. MCDONALD: Thank you.

MS. TIPSORD: I believe we'll go then to --

MR. GOBELMAN: Can we ask follow-up questions on theirs?

MS. TIPSORD: Sure. You can ask questions in follow up.

MR. GOBELMAN: Steve Gobelman, Illinois Department of Transportation. Just so we're clear about evaluating properties whether or not those properties have potential contaminant concerns, if in doing a right of way project and we are looking at the adjacent properties and

their associated impacts to our property, isn't it acceptable that if we are -- if the transportation group, whoever it may be, is doing a proper phase one property assessment and have determined that in those assessments that both adjacent properties have no recognized environmental concerns that those properties can -- that the transportation agency can then certify as the owner/operator that there are no -- that this material is uncontaminated?

MR. CLAY: Yes, they can, but they're making that determination based on -- based on phase one that there is that impact.

MR. GOBELMAN: Correct. And that would be put on that form stating that it's based upon their phase one property assessments that they're making this certification as the owner/operator?

MR. CLAY: Yes, and as we said before, in all cases, you need to make sure you're working with the fill site owner/operator to make sure that's all they're going to require or they're going to require additional information.

MR. GOBELMAN: Correct. And if you

were doing that and you discovered that there are properties adjacent to your work that have recognized environmental conditions, then additional investigations most likely would have to be conducted to prove whether or not that soil that's going to be generated is going to be uncontaminated?

MR. CLAY: Again, if it's determined to be a potentially impacted property, then a PE or PG, professional engineer or professional geologist, has to certify that based on their evaluation which may include additional information.

MR. GOBELMAN: Thanks.

MS. TIPSORD: Go ahead.

MS. MANNING: I have a follow up to that, Mr. Clay. Mr. Gobelman asked that in terms of the transportation Agency, but your answers would be applicable to any soil excavator/owner, correct?

MR. CLAY: That's correct.

MS. MANNING: Thank you.

MS. TIPSORD: Actually, Ms. Manning, your questions are next. If you'd like to come

up.

MS. MANNING: I apologize. I forgot to number these. So what I'm going to do is in the very issue areas, I'll just call that A and then I'll do one, two, three, four. Other excavation definition -- obviously, there's a lot of material here, but the bottom line is there was a definition of other excavation that was included in the original Part 1100. It's changed in just a minor way. So my question and it appears from my EPA testimony that the proposed definition would exclude from the realm of CCDD regulation definition as I believe was intended from the original regulatory definition in Part 1100 soil that is placed in sites that have been excavated, by that, I mean cleared of existing building, structures, earth, et cetera as part of a construction project be that for a home, a new building, a bridge construction, a highway or street reconstruction for a sewer reconstruction and I guess my first question under that other excavated definition is, does the IEPA agree that the CCDD law nor these proposed regulations are intended to apply to soil or fill that is utilized

as explained above including the soil standard that you've proposed?

MR. CLAY: Yes, these regulations only apply to CCDD including uncontaminated soil that is placed in mines, quarries and other excavations as defined in Section 1100.103 of these proposed regulations. Uses of CCDD as fill other than mines, quarries and other excavations must comply with Section 3.10.160(b) of the Illinois Environmental Protection Act. Also, please refer to our errata sheet number one which was filed on October 6th, 2011, where we modify the definition of mines, quarries and other excavations.

MS. MANNING: Thank you. Does the IEPA agree that a project engineer or consultant at one of these construction sites that fills an excavation that not subject to the CCDD law could utilize TACO to do so in terms of whether the soil is adequately protective of human health and safety when they use it as fill at that other excavation?

MR. CLAY: No, the Board's TACO rules do not apply to soil or other fill being

brought on site. See Section 35 Illinois Adm. Code Part 742, specifically Section 742.105 applicability. Soil and other fill material brought to a site for use must be uncontaminated. There is no regulatory -- there is no regulations for uncontaminated soil generally and your question is outside the scope of this rulemaking.

MS. MANNING: Right. That's what I wanted you to say. I understand that. Thank you. I just want to make sure we weren't mixing apples and oranges and everybody understood that's a totally different issue than the one we have before us.

Does the IEPA agree or consent, if you will, that despite the reasons, the initial reasons for the Board's TACO rules to remediate a specific site they have nonetheless been utilized as sort of an industry standard by engineers, geologists, other technical professionals in terms of determining when someone believes soil is clean enough for specific uses?

MR. CLAY: No, I don't think we can make that conclusion. The Board's TACO rules do not apply to soil or other fill being brought on

site. See 35 Ill. Adm. Code 742.105 of the applicability. Soil or other fill material brought to the site for use must be uncontaminated. There are no regulations for uncontaminated soil generally and your question is outside the scope of this rulemaking.

MS. MANNING: Okay. Let's go to the uncontaminated soil that is -- we'll call this B, the first question. I won't go through what I've got written here. I suppose in many ways you've already answered this through your record evidence, but I'll ask the question anyway and if there's anything further you want to add beyond what you have already presented in record evidence I would expect you to do it at this time.

And the question is, did the IEPA rely on any relevant scientific studies or information to support the use of the most conservative of the TACO parameters regardless of fill placement or the deposition site as being necessary for the protection of human health and safety?

MR. CLAY: No.

MS. MANNING: Number two, does the

IEPA agree that some permitted CCDD facilities, quarries, are located in areas or have geological attributes that posed much less risk to human health and safety than others might?

MR. CLAY: No, we need a lot more information to make that conclusion.

MS. MANNING: What if there was a quarry in a heavily industrial area that the groundwater was already impacted by surrounding underground storage tank sites, remediated properties versus a quarry that's in a more pristine area downstate where there has been no industrial impact?

MR. CLAY: I think the proposed rules take into account if there's background contamination around the site so that hasn't taken into account.

MS. MANNING: In what way?

MR. CLAY: If you've got contamination above the standards coming onto your site, then that can be considered and compared to the groundwater monitoring wells down gradient.

MS. MANNING: How do you expect someone, a quarry owner or a CCDD facility to

evaluate the background?

MR. CLAY: Well, the groundwater monitoring program is to be designed and implemented by a professional engineer. So it's relying on their professional judgment in regard to that.

MS. MANNING: As to soil standards, though, and not groundwater, what background soils exist at a particular site?

MR. CLAY: I don't think background soils come into play. I'm talking about background groundwater and, again, we said at the last hearing that we want a consistent approach throughout the state as far as what defines uncontaminated for purposes of this rulemaking as part of this rulemaking for mines, quarries and other excavations.

MS. MANNING: I'll go to the next question. This would be two on page two. I didn't number my pages either. Does the IEPA agree the legislation -- I know your approach is kind of a one size fits all, but do you agree that the legislation allows you the latitude for a more site specific approach to the receive and

placement of soils via specific permit conditions that will nonetheless ensure the protection of the environment at a more sensible cost to taxpayers that considers the particular site that the soil will be used as fill?

MR. CLAY: No. We believe the legislation calls for the Illinois EPA to propose, and the Illinois Pollution Control Board to adopt, quote, the maximum concentrations of contaminates that may be present in uncontaminated soil for purposes of this action, end quote, other than consideration and for background, which we have incorporated into this proposed rule.

MS. MANNING: Does the IEPA believe that Section 1100.605 require a generator who conducts soil testing to analyze for all the chemical constituents listed in Part 742 not just the target compounds or instead does it allow an excavation contractor or site owner to rely on the professional judgment of its engineer or geologist as to what chemical constituents need to be evaluated and, again, on the basis of what you were talking about before, a phase one, phase two, historical, resource, whatever.

MR. CLAY: The source site owner/operator not the excavation contractor, may rely on the judgment of the professional engineer or professional geologist as to what chemical constituents need to be analyzed.

MS. MANNING: Thank you. Number four on that page. Under what circumstances, if any, will the state initiate an enforcement action against an owner/operator of an excavation site from which soil was taken to a permitted CCDD facility where the excavation site owner or operator relied upon the judgment as you just suggested they could on a licensed professional engineer or geologist that was soil was uncontaminated?

MR. PURSEGLOVE: The generator of a waste is the first party the Agency identifies when a question concerning proper management in disposal arises. If a CCDD operator informed the Agency that they expected CCDD was being misrepresented by a generator, we might take enforcement action against any and all parties involved in the process in certifying the material properly as uncontaminated.

The PE relied upon lab test results to certify the material and demonstrate that a reasonable and proper assessment was conducted then further enforcement might be dismissed. In any event, the available facts will all be considered before an enforcement action was taken.

MS. MANNING: Does it make a difference as to whether the soil was tested or not tested and the analytical results? You just consider the analytical results?

MR. PURSEGLOVE: I think all of those factors come into play.

MS. MANNING: Thank you. Would the IEPA support the development of a specific list of contaminants routinely present in certain soils and inquire testing only for those compounds unless there is reason to indicate other testing should be done on the basis of historic use?

MR. CLAY: I think this is already the case as we stated in number seven above. The professional engineer or geologist should use their professional judgment as to what chemical constituents the soil should be analyzed for.

MS. MANNING: I think you answered the one that follows in your other question, Doug, but I'm going to read it into the record and you can say you answered it if that's all right.

Would the IEPA support a approach where each CCDD fill site operator can designate via authorized permit conditions what soil parameters define uncontaminated for purposes of use as fill at its site on the basis of background conditions at a particular permitted facility? If not, how does the EPA envision background factors at the destination fill site to be considered?

MR. CLAY: The Agency does not support permit authorized site specific background concentrations as Maximum Allowable Concentration per Section 3.160(c)1 authorizes a use of, quote, applicable background concentration set forth in 35 Ill. Adm. Code Part 742, end quote, the only location based background concentrations actually set forth in Part 742 of the appendix A, table G and H. Second, proving and authorizing permit conditions, background based site specific MAC at each fill operation would require permit reviewers

potentially to evaluate thousands of individual calculations for inclusion of site specific MAC and permit conditions.

Third, the Agency's view is that effective use of administrations of the MAC depends on significant -- to a significant extent on uniformity. In general, MAC's based on site specific conditions at each fill operation would complicate administration for permit reviewers and state and local inspectors and create confusion among soil generators certifying LP -- certifying professional engineers, professional geologists and haulers. To the extent allowed by Section 3.160(c)1 as amended by Public Act 97-137, the Illinois EPA supports the use of background concentrations as the Maximum Allowable Concentration when the most stringent exposure route value from the TACO Tier 1 tables are lower than a chemical applicable background concentration set forth in 35 Ill. Adm. Code 742 appendix A, tables G or H, Section 1100.605(b), tables G and H are location based tables of background concentrations. It's developed under the state, quote -- under the, quote, statewide

area background approach, end quote, at Section 742.405(b01 of the TACO rules.

The Agency's proposal, therefore, satisfies the statutory requirements for background concentrations up to the applicable drop down concentrations set forth in 35 Ill. Adm. Code 742 must be based on the location where the soil is used as fill material.

MS. MANNING: Thank you. Does the IEPA agree that some constituents routinely present in soil, particularly urban soils such as lead and other metals, are not readily soluble and thus pose a lesser risk to human health and safety by being buried deep in the earth as opposed to being present in the topsoil?

MR. HORNSHAW: This is Tom Hornshaw. The answer to this liability question --

MS. TIPSORD: Slow down just a little bit.

MR. HORNSHAW: Pardon me?

MS. TIPSORD: Slow down just a little bit.

MR. HORNSHAW: I'll try again. The answer to the solubility question is it depends.

For example, solubility of metals depends on the PH levels of the soil which must be appropriate to minimize risk to humans through the groundwater ingestion exposure route. The degree of risk also depends on factors such as depth of the constituents, geologic conditions, current and future property uses and so forth.

The Agency's interpretation is that Section 3.160(c) does not authorize the use of risk assessment based -- onsite risk assessments based on site -- based on site specific considerations to determine the mass. Instead, the concept of uncontaminated soil and the protectiveness of the MAC must depend solely on the concentrations in the soil.

MS. MANNING: Thank you. We're going to move onto the next question. Then C, certification, load checking, acceptance and rejection of loads. Number one, if an excavation site owner or contractor demonstrates the material brought to the permitted CCDD facility is uncontaminated in accordance with these rules through analytic testimony or other appropriate means, example phase one demonstrates no

recognized environmental condition and/or site was never developed as industrial or commercial, would the IEPA agree that the excavation owner or contractor is not responsible for any contamination that is later discovered at the permitted fill site?

MR. PURSEGLOVE: The Agency would have no reason to take an action against a generator if they delivered uncontaminated CCDD to a site.

MS. MANNING: Number two, if the material is accepted by the CCDD facility presumably through the use of protocols established in these rules, PID meter, prescreening, would the IEPA agree that the site owner or contractor is not responsible for any contamination that is later discovered at a permitted fill site?

MR. PURSEGLOVE: Again, the Agency would have no reason to take an action against a generator if they delivered uncontaminated CCDD to a fill site.

MS. MANNING: This is three. What is the IEPA's position with regard to an

excavation site owner or contractor's liability or responsibility for a load which is rejected by the fill site?

MR. PURSEGLOVE: The excavation site owner which is the generator of the protected load is responsible for transporting the waste to a facility that is properly permitted to accept the waste for disposal if needed. Depending upon the reasons as to why the load was rejected, physical removal of the offending material may be all that is required. For example, some wood waste may have contaminated the load. If volatile organics and a PID reading caused the load to be rejected, the generator would have to send the load to a permitted landfill for disposal. The generator is responsible for the proper management of the material which may include disposal in the landfill.

MS. MANNING: Thank you. I didn't get a chance to go through the exhibit you all put in this morning, but is that a form that you're going to use in terms of --

MR. PURSEGLOVE: Yes, errata two that we submitted this morning further explains

some revisions to that process for reevaluating soils that have been rejected in fill sites.

MS. MANNING: Thank you. Does the IEPA agree that PID testing has a propensity to yield false positives? And I think maybe, Paul, you answered a little bit of this just a little while ago. If so, has the IEPA considered the economic and environmental costs of transporting and relocating the rejected loads? Does the PID test at the CCDD facility trump analytical soil testing conducted by the excavation site owner or contractor?

MR. PURSEGLOVE: The Agency is unaware of any propensity for a PID to yield a false positive result. PID's can read VOC's that are below the MAC values. Fill site operators are required to reject any load that tests positive with the PID. So, in that sense, the PID does trump the laboratory testing. Even when a PE does a reasonable site assessment and certifies the material as uncontaminated, not every square meter of a site can be tested. The PID remains the final check and the gate verifies that the volatile organics do not contaminate the material

being delivered to the fill site.

MS. MANNING: Thank you. According to your testimony, Mr. Purseglove, I think you said if a facility has been found to have accepted waste they will be required to remove the offending material and properly transport it to a facility which is properly permitted to accept it. Does the IEPA envision the responsibility for such removal and liability for its acceptance, if any, is on the permitted CCDD facility?

MR. PURSEGLOVE: Ultimately, the owner of the fill site will be responsible for removing the non-CCDD waste from their site and if that owner cannot identify the generator, then it will be between those two parties relative to the cost for removal and disposal. The Agency would consider all the available facts and circumstances in the manner and possibly take an action against all parties involved in the transaction.

MS. MANNING: Let's go to the next section then. Thank you. Number one, how does IEPA intend -- this is potential groundwater impact. How does the IEPA intend to determine that groundwater near a permitted CCDD facility

has been adversely impacted as a result of the facilities' acceptance of CCDD or uncontaminated soil as opposed to more likely sources that might neighbor such facilities such as Leaking Underground Storage Tank sites, industrial releases, air containments, et cetera?

MS. MYERS: I'm Terri Balke Myers.

MS. TIPSORD: You'll have to speak way up.

MS. MYERS: In errata number one dated October 6th, 2011, the Illinois EPA proposes to make an amendment to Section 1100.750 that in part allows the owner or operator to demonstrate that the exceedance of a Class 1 groundwater quality standard resulted from an off site source using results obtained from the groundwater monitoring system at the facility. The groundwater monitoring system is installed to monitor groundwater conditions from all wells at the facility. Throughout the compliance period as part of routine detection monitoring, samples will be obtained on an annual basis from up gradient and down gradient well locations. Analysis will be performed and the results will be compared to

the appropriate 35 Ill. Adm. Code 620 Class 1 groundwater quality standards. Monitoring the up gradient well will provide the data background. However, establishment of background values for the purpose of statistical analysis is not necessary until such time that an exceedance of a 35 Ill. Adm. Code 620 Class 1 groundwater quality standard occurs.

MS. MANNING: Number two, can the IEPA provide information related to where the existing permitted CCDD facilities are located and whether the respective locations are located in already existing Class 1 or Class 2 groundwater areas and whether the respective locations are in jurisdictions which have an established groundwater restriction authorized as an institutional control by Board rules?

MR. CLAY: No. Because there are no Class 1 Class 2 groundwater areas in quotes. Instead, these are limited site specific demonstrations of groundwater classifications based on geology and hydrogeology data from the specific site.

MS. MANNING: Okay. The second part

of that is can you identify the respective locations or have you identified the respective locations and ascertained whether there's a groundwater ordinance authorized as an institutional control under TACO for any of those locations of a CCDD permitted facility?

MR. CLAY: We have not looked at it in regard to ordinances. Ordinances can change. They're situations where there's been an ordinance in place and that ordinance has changed and in the case of no further remediation letters those can be voided. However, we think the same consistent standard should apply to all soil going into these facilities.

MS. MANNING: The next question. Would the IEPA agree that the Board established residential ingestion or inhalation levels in TACO for the protection of human health and welfare as it relates to surface soils not necessarily or not as it relates to groundwater impacts?

MR. HORNSHAW: The Agency does not agree that the Board's residential ingestion and inhalation levels in TACO relate only to surface soils. They also pertain to subsurface soils.

The Agency does agree that the Board establish residential ingestion and inhalation levels in TACO for the protection of human health and welfare as it relates to soils rather than to potential groundwater impacts.

MS. MANNING: Thank you. I think you've answered the last question sufficiently earlier in the record when we had discussions about monitoring. So that concludes my questions.

MS. TIPSORD: Thank you. Then moving onto the Attorney General's Office.

MR. SYLVESTER: Good afternoon. We're at that point. My name is Steven Sylvester. I'm an Assistant Attorney General in the Attorney General's Environmental Enforcement Bureau. Just a couple of background things to our questions that I'd like to add before we move directly to the questions, if I may.

MS. TIPSORD: Do I need to swear you in? Probably just.

MR. SYLVESTER: Just to make sure.

WHEREUPON:

STEPHEN SYLVESTER

called as a witness herein, having been first duly sworn, deposeth and saith as follows:

MR. SYLVESTER: The Attorney General, part of her responsibilities are to represent the interests of the people of the State of Illinois so as to ensure a helpful environment for all the citizens and as part of that, Section 2(b) of the Environmental Protection Act its purpose is to establish unified statewide programs which along with other remedies is to restore, protect and enhance the quality of the environment and to ensure that adverse effects upon the environment are fully considered and born by those due causes.

Moving along, Illinois had a final determination of adequacy of state municipal solid waste permit program that was approved by the US EPA in 1994, January 3rd, and at that time there were regulations that were in place for inert waste landfills. Part of the inert waste landfill regulation required the collection and analyzation of leachate at least every six months.

Also, if the inert waste was found to be contaminated, the inert waste landfill would be converted to a chemical waste landfill upon a showing that there was material other than inert waste delivered to the landfill. Moving along in Section 2251 of the act, the legislature, specifically in 2251(f)1 talked about what was supposed to be considered for this rulemaking and the specific language was that the rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to the following: Requirements regarding tests and certification of soil used as fill material, surface water runoff, liners or other protective barriers, monitoring; including, but not limited to groundwater monitoring, corrective action, recordkeeping, reporting, closure and post closure care, financial assurance, post closure land use controls, location standards and the modification of existing permits to confirm in the requirements of the act and Board rules.

With that limited background, I'll move directly to the questions that we had.

The first is in regard to Section 1100.205 Subsection B regarding the certifications and load checking. That section requires inspection of incoming loads with a PID. However, the PID will not reveal the presence of any elevated levels of metals in each particular load. So the question I had for the Agency was why the part -- proposed Part 1100 regulations do not require operators to inspect incoming loads via x-ray fluoroscopy to detect the presence of heavy metals?

MR. PURSEGLOVE: Requiring the additional screening of incoming loads with an x-ray fluoroscope, XRF, was considered by the Agency. We decided not to require XRF screening because the cost of the instrument and the technical expertise that is required to calibrate, operate and interpret the data that is generated by the instrument. Our experience indicates that the instrument is effective in identifying the presence of certain heavy metals, but the precise quantification is unreliable. The Agency uses the XRF as a tool that allows field staff to focus on where a sample would be collected for subsequent laboratory analysis.

MR. SYLVESTER: So it's the Agency's opinion that XRF technology is unreliable?

MR. PURSEGLOVE: For the purposes of determining metals concentrations at the MAC level, yes.

MR. SYLVESTER: The second question that I have relates to a couple of sections, specifically Part 1100.404, 405 and 409, those are standards for issuance of a permit for denial of a permit and for transfer of a permit respectfully to each section. Section 1100.104 states that the Agency must issue a permit upon proof that the facility will not cause a violation of the act or Board regulations. However, there is nothing in either of these sections that allows the Agency to consider the previous operating experience and past record of convictions or admissions of violations of the applicant or any subsidiary or parent corporation in the field of solid waste management and CCDD operations when considering issuing or transferring the permit unlike Section 39.2 of the act for permit landfills.

Under the regulations as written, the Illinois EPA would be required to

issue a permit to an owner/operator who has willfully violated the act and Board regulations previously. The question I have is why did the Part 1100 regulations not address this potential problem and what steps will the Illinois EPA take to ensure the historically bad owners or operators are closely scrutinized in the CCDD permitting including the transfer of permits?

MR. NIGHTINGALE: Under Section 39(i) of the act, the Agency can use the prior experience in waste management of the owner and/or operator as a reason to deny a permit application including CCDD applications. Therefore, the Agency does and will continue to scrutinize the permitting and transfer of permits for CCDD fill operations. I wanted to add one little thing here, too, is that the application form the LPCPA 25 specifically mentions 39(i) in Section 7 and requires the LPCPA 25(d) form which is a 39(i) form for all owners and operators.

MR. SYLVESTER: Moving along to question three. Section 11 -- I guess -- moving along. Section 1100.411, Subsection A, procedures for the renewal of permits. This section requires

a permittee to file a renewal application within 90 days prior to the expiration date of the existing permit, but doesn't indicate what such failure to comply would entail. Is it a violation of the regulations or would the permit terminate? So the question I have is why did the proposed Part 11 regulation not include bright line language to address the consequences of the late filing of a permit renewal application and provide guidance to the regulated community and -- unless there's another section that would do that outside of the regulations?

MR. NIGHTINGALE: Section 110.411(a) does not have any proposed changes from the existing regulations. Additionally, the act is clear that no one can conduct a fill operation which requires a permit unless they have a permit. Section 1100.408(b) states that in part, quote, all permits are valid until post closure care maintenance is completed or until the permit expires or is revoked, end quote. Therefore, the permit expires on the expiration date unless the renewal application is timely filed then the permit continues until a final action on the

renewal application.

MR. SYLVESTER: Just to clarify that in case I missed your response. If the permit terminates and they submit an application, however, it's three or four months late, does the permit officially terminate and they have to refile for a new permit?

MR. NIGHTINGALE: Well, I think technically they would not have a permit and I think that they would as far as our field office would have the option or the opportunity to take an action against them. But they would have to submit another application. Now, would it be a renewal or not, I guess that would be a question for the lawyers to work out, but as far as the permit section would be concerned, we would process it just as an application just as if it was a renewal application I guess.

MR. SYLVESTER: Moving to the next question here. Section 1100.412(c) Roman numeral I subsection capital D, procedures for closure and post closure maintenance. This subsection allows for termination of the permit if there have been no exceedances of the Class 1 groundwater quality

standards during the preceding three years. In addition, Section 1100.755 also requires a demonstration that there are Class 1 groundwater exceedances for a period of three years. Section 22.17 of the Environmental Protection Act requires a minimum of 15 for sanitary landfills.

So the question I have is why do the proposed Part 1100 regulations limit to three years the acceptable timeframe for an owner/operator to be without an exceedance of the Class 1 groundwater quality standards and what, if any, protections are there for citizens using groundwater as the resource that becomes contaminated beyond the three year period?

MR. NIGHTINGALE: The three year period is consistent with 35 Ill. Adm. Code Part 615 and the requisite subtitle C standards. The Agency pursues any known groundwater pollution to try to find the responsible party and make them remove and/or contain the contamination.

MR. SYLVESTER: So how could the Agency -- I'm posing this I guess as a bit of a hypothetical. If there was a situation where an owner/operator did everything by the book, they

did their three years and was clean and then a couple years down the road there was contamination in the groundwater, you know, Class 1 groundwater, what would the recourse be?

MR. NIGHTINGALE: I think the recourse would be under the general provisions under the act would allow us to pursue somebody that is causing groundwater contamination. It wouldn't be under the 1100 regulations, though.

MR. SYLVESTER: Section 1100.740 sampling frequency. This section provides for only annual groundwater testing at a minimum. However, the Board's inert waste regulations require semiannual testing and inert waste is potentially more benign because it does not contain asphalt which is a source -- potential source of PNA's yet the regulations require that inert waste be tested at least twice a year. The question I have is why do the proposed Part 1100 regulations limit the frequency of groundwater CCDD facilities to once a year when the inert waste landfills require biannual testing for contamination -- contaminants?

MR. NIGHTINGALE: First, CCDD and

uncontaminated soils are not a waste when used as fill in conformance with Section 1100 regulations. Second, the biannual sampling described in Section 811.206(d) is for leachate, not groundwater. Inert waste landfills do not require groundwater monitoring. If the leachate is contaminated, they would then revert to a chemical waste landfill and require a groundwater monitoring. I want to add one thing. The groundwater monitoring for CCDD and uncontaminated soil facilities is meant to be a final check for contamination after the upfront checks are implemented.

MR. SYLVESTER: If I could draw your attention to the leachate sampling regulations for inert waste. Section 811.206 leachate sampling Subsection A states all inert waste landfill shall be designed to include a monitoring system capable of collecting representative samples of leachate generated by the waste using methods such as, but not limited to a pressure vacuumed limiter, trench limiter or a well point and then it says the sampling locations shall be located as to collect the least non-diluted leachate samples. Would you agree that a well point could be a groundwater

monitoring well under -- for those?

MR. LIEBMAN: I think -- excuse me. I'm Chris Liebman, L-I-E-B-M-A-N. I think in the section of the regulations you're looking at, they wouldn't be talking or it's not referring to a groundwater monitoring point. It's referring to a well that is completed within the waste and, thus, would be sampling leachate versus a groundwater monitoring point that would be outside the waste.

MR. SYLVESTER: Just a follow up to that. So that sampling point would be in the fill area and it could also be in the groundwater where the leachate --

MR. LIEBMAN: Are you asking could it be collecting a -- sort of a mixture of leachate and groundwater?

MR. SYLVESTER: Yes.

MR. LIEBMAN: Yes, it could.

MR. SYLVESTER: Thank you. Another follow-up question. You said the CCDD that is placed in the fill area is not considered waste, is -- that was your testimony?

MR. NIGHTINGALE: That's correct.

MR. SYLVESTER: How would you

differentiate CCDD that is placed in the fill area, or let me use the proper definition, below the -- the old definition was below grade and now it's below the highest elevation immediately adjacent to the fill area, that material that is placed for lack of a better word the hole in the -- the online hole in the ground is not considered waste, but if you put it on the lip of the fill area, it would be considered waste?

So I guess in light of that information, how does that change the calculus or how would that change your answer in any way, shape or form?

MR. NIGHTINGALE: How would it change my answer? I guess in what way?

MR. SYLVESTER: Your prefatory remark is CCDD is not considered waste. So the context of the question was the sampling frequency and compared to inert waste versus CCDD and that's all I'm saying. Whether or not it's considered waste or it's considered CCDD, does that have any bearing on frequency of sampling?

MR. NIGHTINGALE: No. I mean, it's not a waste by definition as far as that's

concerned. As far as looking at what we're being -- what is being allowed to be put into the site taking into account all the front end provisions that are being implemented, I guess we would consider the groundwater. I guess are we talking about the groundwater monitoring now?

MR. SYLVESTER: That's all I was trying to get at. Your introductory remark was that CCDD is not considered waste, which I agree with. I just want to know if it was, like I said, if they overfilled the quarry by a few feet does that change the amount of sampling that would need to be done post closure?

MR. NIGHTINGALE: It would change the whole scope of everything. Now, they would be disposing of waste and it could be subject to a different set of regulations.

MR. SYLVESTER: So your answer would be that it would change the calculus if it was considered waste?

MR. NIGHTINGALE: Yes.

MR. SYLVESTER: Okay. Moving to the next topic here. This is regarding the sixth question. Section 1100.745, the noncompliance

response program. I kind of lined out here a two part question or two sections. Section one is the section that provides for dates by which the owner or operator must do the following. A, report groundwater exceedances to the Agency and that's within 60 days after the sample was collected. Retest the groundwater once again within 60 days after the date the sample was collected and submit a report with the sample results to the Agency 60 days after receiving the resampling data and then submit a corrective action program within what would amount to 120 days after the date the sampling results were sent to the Agency and, thereafter, implement the corrective action program just to keep these timeframes straight within 120 days after the resampling results were sent to the Agency.

Under the Board's inert waste regulations, an owner/operator must report any exceedance within one business day. That's under Section 811.206, Subsection D. So the first question I have is why did the proposed Part 1100 regs allow a CCDD owner/operator 60 days to report an exceedance when an inert waste landfill

operator must report an exceedance within one business day?

MR. NIGHTINGALE: Again, CCDD uncontaminated soils are not a waste when used as fill in accordance with Part 1100. The proposed response times 1100.60 regulations begin after the sampling occurs. The Agency added this soil to a verifiable date before the start of the process is included. Section 811.206(d) starts with, quote, if the result of the testing of the leachate samples, unquote. Obviously, there is some built in delay of how the samples are transported to the laboratory, analyzed, a report generated and then the report submitted to the operator. However, the inert waste regulation does not specify the length of time for the process.

MR. SYLVESTER: A follow-up question to that. Once again, you mention that CCDD is not waste and I would ask if you have contaminated soil based on an exceedance of the groundwater, wouldn't that fall within the definition of waste.

MR. NIGHTINGALE: I guess are we talking about CCDD permitted site that had groundwater contamination would it be a waste or

would it not be a waste?

MR. SYLVESTER: Well, the contamination had to come from somewhere. Obviously, the most likely source would be the contaminated fill material, which had leached into the groundwater. So the question I have is once you get a groundwater exceedance, and I'm not sure at what point in time that occurs, but wouldn't that material then go from being CCDD to waste because it was not uncontaminated fill?

MR. NIGHTINGALE: I guess that would be a legal question, but the regulations are set up to address the contamination or the groundwater contamination as far as that is concerned. What is the site after that, I don't -- I couldn't answer that.

MR. SYLVESTER: I guess just to clarify. In case you haven't guessed, in comparing the CCDD regulations to inert waste landfill regulations, you know, inert waste is almost identical to CCDD except that CCDD allows for definition to include asphalt whereas inert waste is materials -- well, it's a subset I would argue of CCDD or state. And, in that context, you

have the CCDD which requires that the reporting be done immediately and that gets converted into a chemical waste landfill.

MS. TIPSORD: Mr. Sylvester, we're losing you. You need to speak up. We can't hear you.

MR. SYLVESTER: Sure. Sorry. The reason I'm asking about the inert waste regulations in the context of the CCDD and the contaminated is just for the timeframes. You know, under these regulations the timeframes can balloon up to, what is it, 120 days before anything happens and, arguably, you'd have waste. That's the point I was trying to raise and whether the Agency has any concerns with those timeframes.

MR. NIGHTINGALE: Well, no, I think these are comparable to what you would see in 811 requirements. I think there's, like, a 90 day period that's in there for landfills.

MR. SYLVESTER: You may have answered the next question in part, but I'll pose it for the record in any event. Why do the proposed Part 1100 regulations allow a CCDD owner/operator 60 days to report an exceedance

when each additional day, additional fill material is being placed upon the allegedly contaminated soil or waste?

MR. NIGHTINGALE: My response is as mentioned above the sampling and analytical process takes time. Also, 35 Ill. Adm. Code Part 811 regulations allow 90 days from the sampling date to report exceedance in groundwater sampling.

MR. SYLVESTER: Moving to the next section here. In addition, in Section 1100.745 Subsection C there are no procedures or timeframes regarding any deficiencies that the Illinois EPA might identify in an owner/operator's corrective action program, i.e., it assumes that the plan will be acceptable to the Agency. So the question I have is how will the proposed Part 1100 regulations ensure that these plans are subject to review and approval by the Illinois EPA and the approval process does not continue for an overly extended period of time where groundwater contamination has been identified?

MR. NIGHTINGALE: The proposed Section 1100.745 regulations are designed to be self implementing and while they do not require

Agency approval, proposed subpart G, which includes 1100.745 requires that all systems, programs, plans, notifications and reports be designed or prepared under the supervision of a professional engineer. Additionally, the PE must affix their seal and a statement attesting to the accuracy of the information contained in the above referenced documents.

MR. SYLVESTER: All right. Notice of time, I'll move onto the next question here. Section 1100.750 alternate noncompliance response program. The preamble to that was once again the amount of time, and I won't go through that to try to get folks out of here by 5:00, so I'm assuming that you've prepared answers and are familiar with my introductory remarks.

So first question is why do the proposed Part 1100 regulations allow a CCDD owner/operator 60 days to report an exceedance when inert waste -- I'm sorry. No. When an inert waste landfill operator must report it within one day?

MR. NIGHTINGALE: Two points to make before addressing the 60 days in the report in

exceedances are CCDD and uncontaminated soils are not considered waste, which is why they have separate regulations under Part 1100. The reporting requirements referenced in 811.206(d) is for leachate sampling, which is separate from groundwater sampling. The proposed response times in 1100.600 regulations begin after the sampling occurs. The Agency added this to the verifiable date for the start of the processes included Section 811.206(d) starts with, quote, if the result of the testing of the leachate samples, unquote. Obviously, there is some built in delay while the samples are transported to the laboratory, analyzed, a report generated and then the report submitted to the operator. However, the inert waste regulation does not specify the length of time for this process.

MR. SYLVESTER: All right. I'll move onto the next question. Why did the proposed Part 1100 regulations allow a CCDD owner/operator approximately 300 days to provide an alternate noncompliance plan when the plan and the support for it may be deficient and then the owner/operator would be required to sample the

groundwater again as required in Section 1100.745 Subsection B, thereby, providing an additional 120 days to provide the Illinois EPA with the sampling results?

MR. NIGHTINGALE: The errata sheet number one filed on October 6th, 2011, revised Section 1100.745 and Section 100.750 to have consistent timelines for the noncompliance response program and the alternate noncompliance response program. The maximum time for this series of information and inaction is 240 days in either case.

MR. SYLVESTER: And then the last question was with the extended timeframe. That question might be moot, but I'll put it on the record in any event. Why would any owner/operator ever initiate the Section 1100.745(b) sampling without first attempting to provide the Illinois EPA with a Section 1100.750 alternate noncompliance program?

MR. NIGHTINGALE: The errata sheet number one filed on October 6th, 2011, revised Section 1100.745 and 1100.750 by making sampling mandatory.

MR. SYLVESTER: Moving on to the next question. This is in regard to Section 1100.760, the dewatering fill operations. The first question I had was are there any CCDD fill operations or registered uncontaminated soil operations that are dewatering their facilities without a benefit of an NPDES permit and, if so, how many?

MR. NIGHTINGALE: The Agency does not keep a database of which CCDD soil only fill operations are dewatering or have any NPDES permits.

MR. SYLVESTER: Is there any antidotical or any cases -- are you aware of any? Let's put it that way.

MR. NIGHTINGALE: All I can say is I assume they are, but I don't know for sure.

MR. SYLVESTER: Well, then that would obviate the second question since you don't have any information on the NPDES permits, is that fair to say?

MR. NIGHTINGALE: Yes.

MR. SYLVESTER: And the third question. Why did the proposed Part 1100

regulations not require the CCDD fill operations to register uncontaminated soil operations currently discharging from their facilities pursuant to an NPDES permit to modify the permits for sampling the discharge for all the constituents identified in Subpart F?

MR. NIGHTINGALE: The NPDES requirements, including the parameters that must be analyzed, have been established in the federal regulations and subsequently adopted in state regulations and are administered in our Bureau of Water. Bureau of Land does not issue or regulate NPDES permits. We do, however, know the advocate for an NPDES permit is required to provide initial sampling analysis for a select set of parameters when filling out the permit application as well as providing additional analysis for any other parameters believed present.

In addition, once a permit is issued, the permittee would be obligated to request a permit modification and identify those additional parameters that were not identified in the initial application process. Once evaluated, the IEPA Bureau of Water would have the

opportunity to incorporate any additional permit limitations or conditions.

MR. SYLVESTER: Is there any mechanism for the Bureau of Land to get information that is relevant to --

MS. TIPSORD: Mr. Sylvester, you need to speak up.

MR. SYLVESTER: Sure. Sorry. The question is can the Bureau of Land get any of the information from the Bureau of Water that is relevant to their own regulatory oversight? In this case, it could be the NPDES information regarding modified permits? Is there any mechanism to share information amongst the bureaus?

MR. NIGHTINGALE: Yes, there is. Generally, when either of the bureaus get a permit application, we have to coordinate a review process that we would go through so we actually get memos sent over to us or we send memos over to them to make sure they're aware that we have an application and if there are any issues that we think they need to be aware of or we need to be aware of or they need to be aware of and it gets

discussed at that point.

MR. SYLVESTER: Moving onto the next question. Basically, this comes form Section 22(f)1 regarding some of the things that the Illinois EPA was to consider in coming up with the proposed Part 1100 regulations. I'm not going to read that long intro. Why did the proposed Part 1100 regulations not include any such requirements for financial assurance and all permitted CCDD operations and clean soil fill operations?

MR. NIGHTINGALE: CCDD and uncontaminated soils are not considered a waste. Again, there are minimal waste closure of these fill sites with no engineered barriers, liners and such required, therefore, requiring financial assurance was not considered appropriate.

MR. SYLVESTER: What went into the considerations not to require liners or any other protective barrier as the statute recommended?

MR. NIGHTINGALE: We considered -- our work group that was looking at this considered the front end sampling protocol -- sampling requirements for the generator of the material, the fill sites, the CCDD fill and uncontaminated

fill sites, their sampling plan that they have to incorporate that was reviewed to determine -- I guess to determine if we thought something was very -- the likelihood of something getting into the site. So based on that, we didn't fell like there was a need for any engineered type equipment or liners.

MR. LIEBMAN: You were asking I think specifically, Steve, why we didn't include any engineered barriers like a liner. If we were to require a liner in order to keep the leachate from overtopping and going into the groundwater or surface water, we'd have to require a leachate collection system that would have to be managed and then essentially you would be looking at the same requirements for these sites as a landfill and we didn't think the materials in these sites warranted the same types of engineered barriers as a landfill accepted waste.

MR. SYLVESTER: To beat that dead horse, inert waste landfills have to have a leachate collection system, do they not?

MR. LIEBMAN: I don't believe they have to be a leachate collection system. I think

they just have to have a leachate monitoring system.

MR. SYLVESTER: One other question and I kind of got sidetracked on the liners. The financial assurance, and I think part of the preamble, our offices have often worked together on enforcement cases, two of them come to mind right now, the Lynwood site as well as the Companion site in Ford Heights. In Lynwood, bringing the site into compliance has been estimated to cost in excess of $30 to $40 million. The Ford Heights site has been talked about as being in excess of $100 million. Given the state's resources and the lack of resources from the regulated entity, why isn't that something that should be considered by the Agency for other facilities going forward, the final assurance?

MR. WIGHT: Could you repeat the question, please?

MR. SYLVESTER: Sure. Just two sites that we're using as an example. I think some of you are probably very well aware of the sites. They have -- part of the remedy is one of them was taken to trial, another one had a

judgment entered and the remedies are tens of millions of dollars and based on the state's ability to deal with orphan sites, you know, in these economic times and the regulated entity who may or may not be able to do any of that compliance work, has that been a factor that was considered by the Agency regarding final assurance?

MR. PURSEGLOVE: Both the Lynwood and the Ford Heights facility operated certainly outside of the Part 1100 regulations. They pretty much disregarded all environmental regulations.

THE COURT REPORTER: Louder.

MR. PURSEGLOVE: So to compare remediation costs of those sites with the site that was properly operating under 1100 I don't think is comparing apples and oranges. I'm certainly aware of those two sites and took those into consideration when we're proposing these rules.

MR. SYLVESTER: I guess as a follow up to that, just in general, if you have a situation where you have a business that's a corporate form or other business form that comes

into existence for the sole purpose of filling an operation, this is obviously surely hypothetical and at the end of the filling time after the assets have been dissipated and there's a problem down the road, does the Agency have any position on how they would address that sort of contamination?

MR. NIGHTINGALE: Are you talking about when they were still in post closure care or are you talking about when they were out of it?

MR. SYLVESTER: Basically, if you had an orphan site that was contaminated, that's what I'm asking. How would the Agency handle that?

MR. NIGHTINGALE: I think we would treat that like any other site, a landfill site or a site that has ground contamination. We would be using the provisions in the act to go after them to get them to clean things up.

MR. WIGHT: We do not have a pot of money available to us to address orphan sites. If we find them, we put them on the list and if we have resources available we might address them, but the EPA, we have no financial assurance trust

fund to handle these sorts of things.

MR. SYLVESTER: That's the reason I bring up the point understanding the state's position and I understand the regulations don't do a site by site evaluation, but perhaps it's something that should be considered going forward whether if there's an area that has groundwater that's used by the residents nearby there might be some sort of allocation to consider the negative impacts that may be forced upon those residents. I'll move to the last question since we're right here. And this is pretty much a legal question. I don't know if, Mark, that would be directed to you or not. Do the proposed Part 1100 regulations in Section 3.160 Subsection B 2251 of the act comport with federal law when CCDD is not being recycled, but rather is being disposed of in various unlined quarry, mines or other excavations?

MR. CLAY: Yes, the Agency believes the proposed regulations as well as the statutory provisions are consistent with federal law. Although, the states primary role of defining and regulating the management of nonhazardous, solid

waste, including construction and demolition debris, and US EPA has minimal regulation that pertain to disposal at construction and demolition landfills of what Illinois defines as general construction and demolition. 40 CFR Part 257, the date is 2010, because Illinois does not have construction, demolition landfills, the disposal of general construction or demolition debris must occur at municipal wastelands. However, the Illinois legislature has determined that when used as fill material as prescribed in Section 3.160 (b) the (clean destruction and demolition debris) fraction of the general construction and demolition debris landfill is not subject or is not waste and is being used beneficially rather than disposed of.

MR. SYLVESTER: Just to clarify that point. The regulations or the statute approved -- set forth by the Illinois legislature says to the extent permitted by federal law and then they go onto say it shall not be. So the question still stands does federal law permit the dumping of CCDD into an unlined quarry? Does that comport with the federal law for the treatment and disposal of

waste?

MR. CLAY: We believe these rules are in accordance with federal law and it would be allowed by federal law as we're proposing these rules.

MR. SYLVESTER: Good evening, everyone.

MS. TIPSORD: All right. Thank you, Mr. Sylvester. We still have some -- Mr. Huff has some questions for Mr. Hornshaw about his pre-filed testimony and we still have to get to the Agency's pre-filed testimony. So it's five after 5:00 so we're going to recess today and we'll start again tomorrow morning at 10:00 instead of 9:00. Is that okay? Because we're only going to probably go for another hour, hour and a half. 10:00 tomorrow morning.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Steven Brickey, Certified Shorthand Reporter, do hereby certify that I reported in shorthand the proceedings had at the trial aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said trial as appears from my stenographic notes so taken and transcribed under my personal direction.

Witness my official signature in and for Cook County, Illinois, on this 3rd day of November, A.D., 2011.

Steven Brickey

STEVEN BRICKEY, CSR
8 West Monroe Street
Suite 2007
Chicago, Illinois 60603
Phone: (312) 419-9292
CSR No. 084-004675

F

G