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ILLINOIS POLLUTION CONTROL BOARD

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| 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 26th day of October, 2011, commencing at the hour of 10:00 a.m.

A P P E A R A N C E S

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MS. ALISA LIU
MR. ANAND RAO
MR. THOMAS JOHNSON

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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:

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# E X H I B I T S

| | Marked for Identification |
|---|---|
| Exhibit No. 21..... | 20 |
| Exhibit No. 22..... | 20 |
| Exhibit No. 23..... | 63 |
| Exhibit No. 24..... | 67 |
| Exhibit No. 25..... | 76 |

MS. TIPSORD: Good morning, everyone. Welcome back. 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 Fill Operations (CCDD). Proposed Amendments to 35 Ill. Adm. Code 1100. This is Docket R12-9. To my immediate left today is Board Member Thomas Johnson. To my far right is Alisa Liu and to my immediate right is Anand Rao.

Also today, as I told all of you yesterday, we have Conner in the back. Conner is from DePaul and is one of -- Conner Kane. He is one of our interns this semester.

Today, we will continue hearing the testimony of the Agency and take questions of the Agency. In addition today, we will continue to take any comment at the close of the hearing on the Section 27(b) DCEO's decision not to conduct an EcIS. The EcIS letter is up here and since this is a continuation from yesterday, I'm not going to go into all of that.

Anyone may ask a question of the

Agency today. 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 question. Please speak one at a time. We had a lot of problems with that yesterday. If you're speaking over each other, the court reporter will not be able to get everything on the record.

Please note, any questions asked by the board member or staff are intended to help build a complete record for the Board's decision and not to express any preconceived notions or bias. I do want to give everybody a heads up. At the close of hearing today, we will set a public comment date so you may want to start thinking about that what day works best for all of you. And, with that, I think we're going to begin. Suburban Public Works Directors Association did pre file questions. They are not here to ask the questions. However, the technical unit thought some of the questions were relevant so the technical unit will be asking some of those questions of the Agency. So, with that, I'll let them begin.

MS. LIU: Good morning. I'll simply read the question as it's written. Number one, does a prior use that minutely or slightly increases the potential presence of contamination make the source site fall into the definition of a potentially impacted property? Please provide some meaningful guidance as to how much of an increase the IEPA is concerned with as it relates to increases, the presence or potential presence of contamination at the source site?

MS. TIPSORD: Before you answer, I would just like to remind everyone the Agency's witnesses were sworn in yesterday and they are still sworn in today.

MR. CLAY: Doug Clay. One of the intentions of the 2010 CCDD law is to identify soil as most likely to be contaminated and in need of professional evaluation and certification before placement within a fill site.

Illinois EPA created the term potentially impacted property to give maximum flexibility to source site owners and operators, receiving facilities, contractors, environmental professionals, while still aligning with the

purposes of the certification requirements. My response is a four part answer.

First, the decision as to which soil certification form to use, the source site certification or the PE/PG certification should be made by the source site owner/operator and the receiving facility in advance of any excavation or dropped hauling. Second, no matter how descriptive Part 1100 regulations may be in regard to load certifications, the receiving facility may choose to be more stringent and require a PE/PG 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 that only CCDD and uncontaminated soil are accepted for fill.

Third, for meaningful guidance as to whether a property, including right of ways or easements, may be potentially contaminated, we recommend you consult ASTM Standard Practices for Environmental Site Assessment Phase 1 Environmental Site Assessment Process E1527-05. This document is recognized national -- is a

recognized national standard for evaluating a properties' potential for environmental contamination and, fourth, no type of property or land used in category three may be excluded. The owner should use his or her knowledge of the site and history of the site, vicinity and the history in the vicinity of the site. If the history is unknown, consult a professional engineer or geologist.

MR. RAO: Question two. What does potential mean?

MR. CLAY: Again, we recommend you consult ASTM Standard Practices for Environmental Site Assessment Phase 1 Environmental Site Assessment Process E1527-05. No type of property or land can categorically be excluded.

MR. RAO: How do you measure potential?

MR. CLAY: I think it's the same answer there. If you look at the document we're referring to, it talks about how you -- the types of things you would look at to make that decision.

MS. TIPSORD: Excuse me. You've given us some guidance through the ASTM standard

and things like that on what they should look at. Do you think there's any benefit that it might be to add some of that information to the definition of potentially impacted?

MR. CLAY: Well, we didn't want to mandate the use of that. We just wanted to provide that as one document that someone could rely on. That's not to be mandated. They use that.

MR. RAO: Are there any other standards they can rely on other than the ASTM standards or they can propose something on their own?

MR. CLAY: They can propose or use whatever criteria they choose as a professional or as the site owner and operator. We were just providing this one document that is nationally recognized as a good source to use if they didn't have -- if they wanted some type of guidance.

MR. RAO: The next part of the question states what specific factors do you use to measure if there has been an increase in the potential for presence of contamination?

MR. CLAY: Again, we would refer to

the ASTM standards because, again, it goes through the types of things you'd be looking at to make that determination.

MR. RAO: Looking at the rest of the question it seems like your answers may be the same.

MR. CLAY: Yes.

MR. RAO: We'll go onto number three.

MS. LIU: Question number three. What specific factors are to be considered by the owner and/or operator of a source site in making a determination as to whether a past or current use of a property increases the potential presence of contamination? Are any of these factors weighed more heavily than others in making that determination? Which specific factor or factors are most likely to increase the potential for contamination?

MR. CLAY: Once again, we would refer you to the ASTM standards. The things such as what the property adjacent to where the soil is being generated would be a factor, but, again, the ASTM standards goes into a lot of the things you

should look at.

MS. TIPSORD: I understand Mr. Shepard from the Suburban --

MR. SMITH: I'm an attorney for the association. I apologize.

MS. TIPSORD: That's all right. If you would like to come up and continue asking the questions, we've just been going through the list.

MR. SMITH: Sure. I apologize for the tardiness.

MS. TIPSORD: That's quite all right. We've asked the first three questions so if you would like to continue with question four. Go ahead and have a seat and introduce yourself for the record.

MR. SMITH: My name is Greg Smith and I'm an attorney with the law firm of Klein, Thorpe & Jenkins and I'm here today on behalf of the Suburban Public Works Association. I appreciate your attention to this matter. Thank you.

Question number four. What is the meaning of, quote, contamination under the definition of, quote, potentially impacted

property? Is it above clean up objectives?

MR. CLAY: For purposes of the uncontaminated soil certification, contamination means above the MAC values established using the methodology proposed at 1100.605 for other non-CCDD.

MR. SMITH: Question number five. What specific due diligence steps should and/or must a source site owner and/or operator take to establish that the source site is or is not a, quote, potentially impacted property? If he or she takes those steps, are they still subject to the penalty of a felony if the IEPA is not in agreement with the analysis or conclusion that the site is not a, quote, potentially impacted property? What due diligence steps can be taken to ensure a site source operator will not be subject to a felony?

MR. CLAY: Please consult the ASTM E1528-06 standard practice for limited environmental due diligence transaction screening process. The felony provisions on the uncontaminated soil certification form is specific to the person who, quote, knowingly makes false,

fictitious or fraudulent material statements, end quote. Basically, don't lie on the certification.

MR. SMITH: Question number six. How is the term, quote, potentially impacted property applied directly to a transportation right of way or easement?

MR. CLAY: The source site owner or operator or the PE or PG should use the same three criteria to evaluate a right of way or easement as they would for a source site; the current use of the property, prior use of the property and uses of adjoining properties.

MR. SMITH: Question number seven. Is a transportation right of way and/or easement in a residential area a, quote, potentially impacted property? Is a transportation right of way outside a residential area and in a commercial or industrial area always considered a, quote, potentially impacted property that requires the certification of a professional engineer or geologist?

MR. CLAY: Again, no type of property or land use can be categorically excluded. The owners should use his or her

knowledge of the right of way or easement in the vicinity or if the history is unknown consult a professional engineer or geologist.

MR. SMITH: Question number eight. If a transportation right of way or other public works source site is outside of and not adjacent to or in close proximity to the boundaries of a site under the Comprehensive Environmental Response Compensation and Liability Act of 1980, The Resource Conservation and Recovery Act or a cite under an IEPA remediation program such as the Leaking Underground Storage Tank program or Illinois Site Remediation Program is that enough to certify that it is not a, quote, potentially impacted area? If not, what other steps must be taken to make that certification?

MR. CLAY: Again, no type of property or land use can be categorically excluded. The owner should use his or her knowledge of the right of way or easement in the vicinity. If the history is unknown, consult a professional engineer or geologist.

MR. SMITH: Question number nine. How do you determine if a site is a, quote,

proximate site under the definition? What factors do you use to determine if a site is a, quote, proximate site?

MR. CLAY: We recommend you consult ASTM Standard for Environmental Site Assessment Phase 1 Environmental Site Assessment Process E1527-05.

MR. RAO: Mr. Clay, can I ask a follow up?

MR. SMITH: Sure.

MR. RAO: You refer to the ASTM document quite a few times in response to these questions. I think it was asked earlier that be made part of the rules. Is that incorporated by reference?

MR. CLAY: It's not now and, again, we want to provide this as one tool, one guided document we can use, but I guess we would incorporate it by reference.

MR. RAO: Especially, since you consider that document as a national standard. I'm assuming that the Agency relies on it a lot in evaluating issues?

MR. CLAY: Yes.

MR. RAO: There are other standards at least. You didn't mention any on the record. So it would be helpful if you could.

MR. CLAY: We have no objection if you want to incorporate it.

MR. RAO: Thanks.

MR. JOHNSON: But you want it obviously referred to as one document rather than the document?

MR. CLAY: Correct.

MR. JOHNSON: As squishy as possible.

MS. TIPSORD: Is that a legal term?

MR. JOHNSON: Yes.

MR. WIGHT: I think the incorporation would be fine, but we wouldn't want to include it in a substantive provision indicating the use is required. So if we can make that distinction, we're fine with the incorporation.

MR. SMITH: Question number ten. What factors do you use to determine who is, quote, responsible for the operation of the site of origin of these CCDD or uncontaminated soil

under the definition of source site operator?

MR. CLAY: The source site operator is the person with managing authority for the property and the ability to make decisions about activities at the property. The source site operator should be someone knowledgeable about the property and its history and historical use.

MR. SMITH: Do you have anything else that you can share with us to explain the part of the question which deals with who is responsible for the operation of the site?

MR. CLAY: Once again, it's the person that is managing the site. Other than that and the definition, I'm not sure what else we can add.

MR. SMITH: Thank you. Question number 11. Are contractors who are engaged in public works jobs throughout the bidding process, quote, responsible for the operation of the source site? Can these contractors be considered source site operators?

MR. CLAY: The answer to both of those questions is no for the reasons stated in ten above.

MR. SMITH: Thank you. The final question. Number 12. How many certification forms are needed for a public works project or source site? Does each load have to have a separate certification form? What testing requirements and address should be used on the certification for soils consolidated for stockpiling soils from different areas within the village such as in the case of water main breaks? Is the source site the area where the water main break occurred or where the soils are stockpiled and transported from? What would be considered a proximate site?

MR. CLAY: The number of certification forms needed must be coordinated between the source site and the receiving facility. You're asked -- you are asking a job specific question and the answer may vary depending on the fill site. In regards to stockpiling of soils, if using a source site certification form, the addresses where the soil originated should be listed. If using a PE certification or PG certification form, the address of the location of the stockpile soil

should be listed. EG, the municipal public works yard. In both cases, the source site owner or operator or PE or PG should coordinate with the receiving facility.

MR. SMITH: Thank you.

MS. TIPSORD: Thank you. All right. With that, I think we're ready to move onto pre-filed testimony.

MR. HUFF: Do you have me on those questions?

MS. TIPSORD: Since you specifically asked questions about the pre-filed testimony, we were going to have pre-filed testimony and then have you ask those questions.

MR. HUFF: Fair enough.

MR. WIGHT: We've already had both the rider sheets admitted as exhibits. So what I have in addition to that would be the pre-filed testimony, additional testimony of Stephen F. Nightingale, which was, as we said, pre-filed.

MS. TIPSORD: Just one is all I need.

MR. JOHNSON: It's already been identified.

MS. TIPSORD: Yes, just one.

MR. WIGHT: And we have the same, testimony for Thomas C. Hornshaw on the Agency's errata sheet number one.

MS. TIPSORD: If there's no objection, we will admit the additional testimony of Stephen F. Nightingale as Exhibit 21. Seeing none, it's Exhibit 21.

(Document marked as IL PCB Exhibit No. 21 for identification.)

MS. TIPSORD: And the testimony of Thomas C. Hornshaw will be admitted as Exhibit 22 if there's no objection. Seeing none, it's Exhibit 22.

(Document marked as IL PCB Exhibit No. 22 for identification.)

MS. TIPSORD: And with that, Mr. Huff?

MR. HUFF: Good morning. I'd just like to start with kind of a follow up to the same line of questioning that we had. Could the Agency compare and contrast a recognized environmental

condition under the ASTM standards and your definition of potentially impacted property? Are they the same? Is there a difference between those two terms?

MR. CLAY: We're saying the ASTM standard is something that could be used when the professional engineer or professional geologist makes that determination. So it's really up to the professional on how they use that.

MR. HUFF: Same question. In your mind, is there any difference between the recognized environmental condition and a potentially impacted property?

MR. CLAY: I think that's up to the professional or to the source site owner or operator.

MR. NIGHTINGALE: What do you mean by a recognized --

MR. HUFF: Under ASTM, that's the term that is used and that's where the confusion comes in and all the questions under the what we've operated under for the past year on industrial/commercial. If you look at the law, it looked to me like it was modeled after ASTM where

you went out and identified recognized environmental conditions. That's the term that is used under ASTM and the confusion was the first interpretation on industrial/commercial and then that confusion still resides today. Although, I think -- although, the last set of comments was very helpful in clarifying because what I heard is that possibly impacted property is exactly the same as a recognized environmental condition under ASTM. So I'm just trying to figure out is what I heard today consistent with what the Agency's intent is under potentially impacted property?

MR. CLAY: I think if the professional followed ASTM standards and based that -- that was the basis of their decision, that would be a very good standard to follow. It's not the only standard, but it's certainly a recognized environmental condition under the ASTM and would be a reasonable parallel to the potential impact of property.

MR. HUFF: So they could be the same then?

MR. CLAY: Yes.

MR. HUFF: Thank you. That's what

I'm trying to get. My pre-filed questions are directed back to Tom Hornshaw. On page three of your pre-filed testimony, you note that the Agency, quote, has no ingestion or inhalation concern for painted concrete, brick or asphalt, end quote. Question A, what ingestion and inhalation concerns does the Agency have with all material placed in CCDD facilities below three and five feet respectfully?

MR. HORNSHAW: The Agency has the same concerns for soil ingestion and dust and vapor inhalation that are recognized in TACO. Soil ingestion and soil dust and vapor inhalation are potential contact pathways in TACO for human exposure to soil contaminants. Paint when adhered to a substrate is less likely than soil to be inadvertently eaten or become airborne or inhaled.

MS. TIPSORD: Just for the record, Mr. Huff. Your question -- your pre-filed question had three and ten feet. I just want to be sure that ten feet and five feet make no difference in your answer?

MR. HORNSHAW: It's a difference if you consider what is in TACO because TACO uses

three feet as the limit for clean soil by ingestion and ten feet for clean soil by inhalation.

MR. HUFF: That was my intent. Three feet and ten feet.

MS. TIPSORD: I just wanted to double check.

MR. HUFF: So if there's ten feet of clean material over the top, then under TACO that would be acceptable for excluding that pathway?

MR. HORNSHAW: For excluding the inhalation pathway.

MR. HUFF: And three feet for excluding the ingestion pathway?

MR. HORNSHAW: Yes.

MR. HUFF: Thank you. Is scraping paint off a surface a representative sample under 35 IAC Part 72110?

MR. HORNSHAW: The Agency uses the term representative in its common dictionary sense of being typical or shared characteristics with others. It's legal definition in the hazardous waste rule is not relevant in this context. In its usage to describe paint samples, a

representative sample might be of the same color and texture and have the same number of layers as the painted debris being sampled.

MR. HUFF: On page five of your pre-filed testimony, you indicate that the Agency has added Section 1100.610D to prohibit soil sampling compositing. Does not compositing provide a more representative sample?

MR. HORNSHAW: The Agency does not require representative soil samples when demonstrating compliance using Section 1100.610B. The purpose of soil sampling is to identify for exclusion any soil that is noncompliant. Decreet samples in associated areas that fail the Section 1100.610C comparisons are excluded from CCDD and soil only disposal sites.

Furthermore, TACO does not allow averaging or compositing for the construction worker scenario and only allows compositing for the soil to groundwater pathway within a bore hole. We believe these concepts should be continued in the CCDD rule.

MR. HUFF: What about for ingestion and inhalation with respect to compositing and

averaging?

MR. HORNSHAW: That's allowed in TACO.

MR. HUFF: Thank you. When soil is excavated, loaded in the trucks and then emptied at CCDD facilities, wouldn't this result in some soil mixing reducing the peak concentrations?

MR. HORNSHAW: Reducing peak concentrations through soil mixing is another way to express contaminant dissolution. Section 3.610C of the act defines uncontaminated soil to be, quote, soil that does not contain contaminates in concentrations that pose a threat, end quote. The Agency interprets this to be uncontaminated soil used as fill at regulated fill operations should pose no threat to human health and safety at any location and at any volume. And you have a second question?

MR. HUFF: I did. Wouldn't this type of activity result in composited samples being more representative?

MR. HORNSHAW: TACO rules for averaging overexposure units and through specific depths are meaningless in the fill site situation.

In the absence of a logical and meaningful averaging and compositing strategy for fill operations, the Agency has determined that averaging and compositing are inappropriate.

MR. HUFF: When characterizing if a solid waste is a hazardous waste, does not 35 IAC Part 721 Part 120C require a representative sample as defined in 35 IAC Part 720?

MR. HORNSHAW: Uncontaminated soil is not a waste and Part 720 and 721 are not directly applicable. In Part 1100.610, the Agency outlines procedures whereby soil may be judged to be uncontaminated. We seek to include only, quote, soil that does not contain contaminates in concentrations that pose a threat, end quote. For purposes of soil used as fill material at regulated fill operations, it is our intent that soil below the MAC criteria is uncontaminated and that soil over the criteria is contaminated. It is our position that mixing of the two through sample compositing or averaging results is contrary to the statutory intent and the TACO requirements.

MR. HUFF: In the proposed

regulations, you have referenced an SW-846 as a method of sampling, is that not correct?

MR. HORNSHAW: I believe so.

MR. HUFF: Let's skip to 2H. For linear projects such as a highway project that extends for over one mile and extending to a depth of ten feet for sewer installation, how many samples for analysis would be appropriate in your professional opinion assuming --

MR. HORNSHAW: You lost me.

MR. HUFF: Pardon me?

MR. HORNSHAW: You lost me. Where are you?

MR. HUFF: H. The last question.

MS. TIPSORD: We don't have an H.

MR. HUFF: We'll make this contemporaneous. You have a linear project such as a highway that extends for a mile to a depth of ten feet for sewer installation. How many samples for analysis would be appropriate in your professional opinion assuming no recognized environmental conditions have been identified?

MR. CLAY: I think that is up to the environmental professional.

MR. HUFF: Mr. Clay, you're a professional engineer. You're an environmental professional. I'm asking your professional opinion.

MR. CLAY: I guess I need to have more information.

MR. HUFF: What do you need?

MR. CLAY: I need to know what the surrounding property was.

MR. HUFF: Residential. No RECs. We've already established there's no REC's.

MR. CLAY: I don't think my professional opinion is applicable. I think it's a professional that is certifying to it that has to make that determination.

MR. HUFF: So if you collect 20 samples and you analyze for arsenic for some reason, you would expect statistically that one out of those 20 are going to exceed 13 due to natural background? Dr. Hornshaw, would you agree with that?

MR. HORNSHAW: I would agree with that.

MR. HUFF: So you would conclude

that naturally occurring arsenic above 13 then has to be excluded from a CCDD facility?

MR. HORNSHAW: I believe so, yes.

MR. HUFF: Focus on taking these over a mile area. I have one depth with one sample at 13. The next step the environmental professional would do is then conduct step out borings. They do another 20 and low and behold one out of 20 of those fail. It's a never ending process where you give me an absolute limit of 13, which is really at variance of what the background intent was under TACO where one would be allowed to compute the upper confidence level as a mean and as long as that was below 13 it was acceptable and I further point out that the 13 is an ingestion exposure pathway, not a soil migration.

MS. FLOWERS: Is he testifying?

MS. TIPSORD: He's been sworn in so if he is --

MS. FLOWERS: Just making sure.

MR. HUFF: How do we overcome that kind of issue with arsenic?

MR. CLAY: In your example, Mr. Huff, if there is one sample out of the 20

that exceeds the MAC table for arsenic, then you can either do further evaluation or it should be treated as waste and taken for disposal. The idea is we're trying to prevent dissolution of the contaminants and identify hot spots. If you have one hot spot, then that should be taken off the disposal.

MR. HUFF: It's kind of naive to think there aren't going to be other, quote, unquote, hot spots. You've already acknowledged that 13 mg/L and above of arsenic can occur here naturally and, in fact, about five percent of the Illinois soils already do that. It's a never ending process because what you -- you don't have money budgeted for this so you would go out and do additional samplings trying to cut down on the arsenic and every time you do that you find another arsenic value over 13. So you're then obligated how much do you dig before you take more confirmation samples and at the end of the day you're going to have exactly what you heard yesterday. 82 percent of the soils here are going to go out of state or into a landfill at a very significant economic impact.

My recommendation is the Agency needs to go back and look at your Maximum Allowable Concentrations that were based on the soil migration pathway which arsenic was not and most of the carcinogenic PNA's are not and reconsider whether you should be allowed to do compositing or averaging for those that are in ingestion or inhalation controlling contaminant levels because you've created, in my opinion, a situation here where nothing is going to be allowed to go in these CCDD facilities. There is a major problem.

My final question I think is another hypothetical. If a CCDD facility is found to have a concentration of, let's say, chlorides above background exiting the site property, as I read that correctly, they then would be required to get into some kind of remediation to reduce that chloride. Would the Agency support in that example a groundwater management zone and if there's not enough information, under what scenario would the Agency support a request for a groundwater management zone?

MR. NIGHTINGALE: Steve Nightingale.

That's something we have considered and there wouldn't be any reason why they couldn't apply for a groundwater management zone.

MR. HUFF: My question is whether the Agency would support it?

MR. NIGHTINGALE: I think we would support it like we would anybody else who would apply for a GMZ.

MR. HUFF: How many GMZ's has the Agency supported over the last ten years?

MR. NIGHTINGALE: I don't know that. I do know that we have GMZ's that have been approved for landfills and I think GMZ's have been approved by our public water supply, but I don't have that number and RCRA facilities as well.

MR. HUFF: In your mind, the Agency would be open to supporting a GMZ where chloride was going offsite above background?

MR. NIGHTINGALE: I think if they've gone through the process that we laid out here where they could show that -- first off, they need to potentially show that it's from somebody else and if it is, then they don't have to, but it's from them --

MR. HUFF: From them.

MR. NIGHTINGALE: -- that would be the mechanism that you would normally go through to allow you a period of time to come into compliance. So, yeah, I think that would be an option.

MR. HUFF: So a period of time and how would they come into compliance? They have chlorides coming out of the CCDD from highway deicing salt that was brought in as just on the roadway itself, you had elevated chlorides, and you're not above Class 1, you're just above the background chloride levels in that area, but it's going off site?

MR. NIGHTINGALE: If you weren't above Class 1, I don't think you would generally be getting into a situation that you need to get a GMZ.

MR. HUFF: Do not your regulations say you have to meet background concentrations at the property line?

MR. NIGHTINGALE: These regulations require that you either meet the 620 numeric standards or background. Whichever is higher.

MR. HUFF: I believe that's on the property. What about exiting the property?

MR. NIGHTINGALE: They do have -- leaving the property or off the property, they are required to meet the non-degradation requirements that are in 620.

MR. HUFF: What does that mean, non-degradation requirements? That's my question.

MR. WIGHT: I think we have our interpretation of that, but I don't think that's been a clearly settled issue and I think the original Board opinion on that reflects it wasn't even settled in the Board's mind at that time. So I don't think we can give you a clear answer as to what constitutes non-degradation.

MR. HUFF: Let me get this straight. The Agency is proposing rules here that says you can't have degradation which in the Agency's mind says above whatever the background concentration is and they're now asking the Board to adopt that when we don't have a clear understanding of what background means?

MR. WIGHT: That's a result of the 620 rules and not a result of this rule. And I

don't know that we even mentioned GMZ in this rule. You raised the issue in your question, but as I think as you very well know that is a difficult issue when what we have are interpretations and the Agency would touch that on a site specific basis. So we can't give you blanket answers.

MR. NIGHTINGALE: Mr. Huff, I want to add something on that. If they're not exceeding the 620 numeric standards on site, they are not required to deal with the issue off site.

MR. HUFF: So don't ask, don't tell?

MR. NIGHTINGALE: No.

MR. HUFF: You have a lot of facilities that the quarry basically goes almost to the property line. So they're going to end up putting these monitoring wells at the property line?

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

MR. NIGHTINGALE: That could be true, yes.

MR. HUFF: And if that property line shows that the chlorides are above whatever the

established background was at that site, as I read the regulations they then would be required to start corrective actions, whatever those may be.

MR. NIGHTINGALE: They would be -- it wouldn't necessarily be background. First, what they would have to do is show that they were exceeding the 620 numeric standards. That would kick them into showing that it's either at the 620 numeric standard or the background. Whichever is higher.

MR. HUFF: Just so I understand. If I have a property lined well that meets the 620 numeric standards, I'm done? I don't have to say that that -- at the property line because everybody knows then that going off site is going to be above background?

MR. NIGHTINGALE: That's correct. That's the way these regulations are written and they're done in conjunction with all the front end precautionary measures that are being applied. Our intent was to have the groundwater monitoring as a final check to verify that there was not a problem and we felt the 620 Class 1 numeric standard was the appropriate number to use as that

check.

MR. HUFF: So if you had a quarry that basically went to the property line, then they're going to have to put the monitoring wells off site?

MR. NIGHTINGALE: No.

MR. HUFF: They're going to put it inside the fill?

MR. NIGHTINGALE: Well, that may be something that would potentially subject them to obtaining an adjusted standard because they do have to put it -- it does need to be at the property line or at the distance that's described in the regulations, whichever is smaller. So if they go right up to the property, the regulations don't address that. So -- I mean to me, that may be something that they would have to seek relief from the Board.

MR. HUFF: Thank you.

MR. RAO: Mr. Nightingale, in your response to Mr. Huff regarding meeting the 620 standards, is that clearly spelled out in the rules?

MR. NIGHTINGALE: Yes, it is.

MR. RAO: What section of the rules? I was looking at Section 1100.410C under termination of permits.

MS. TIPSORD: 412C. That's why I was looking over. I couldn't find a 410C.

MR. NIGHTINGALE: Section 1100.720 compliance with groundwater quality standards.

MR. RAO: Does it say where Subsection B talks about a compliance point that defines --

MS. TIPSORD: In other words, we're not seeing at the property line anywhere.

MR. NIGHTINGALE: It is in the -- let's see. The definition of compliance boundary. It's in -- the definition of compliance boundary means a line at the land surface that surrounds a CCDD fill operation or uncontaminated soil fill operation and that extends vertically from the ground surface to the bottom of the upper most --

THE COURT REPORTER: Can you speak up and slower.

MR. NIGHTINGALE: The distance between the compliance boundary and the edge of the fill operation can be no more than one hundred

feet or the distance between the property boundary and the edge of the fill operation, whichever is less. That, in conjunction with the compliance point, means a point on or within the compliance boundary at which the concentration of constituents from the fill operation may not cause the groundwater to exceed the Class 1 groundwater quality standard at 35 Ill. Adm. Code 620.410.

And then that in conjunction with Section 1100.720 where it actually indicates that the owner/operator must ensure that the fill operation does not cause or exceed Class 1 groundwater quality standard at 35 Ill. Adm. Code 620.410 ties it together.

MR. RAO: Okay. What do you have under determination of permit requirements under 412? Is that consistent with compliance with groundwater quality standards?

MR. NIGHTINGALE: Under 412?

MR. RAO: 412C. C1D.

MR. NIGHTINGALE: Yes. C1D. 1100.412C1D, it's consistent with that requirement, yes.

MR. RAO: All right. Thank you very

much for the clarification.

MS. TIPSORD: Are there any more questions at this time for the Agency? Start right here. Identify yourself for the record, please.

MR. QUINN: I'm Josh Quinn, Vulcan Materials Company. Q-U-I-N-N. Going back to Mr. Huff's example about the 20 samples along the roadway. If you had a PH for each of those bore holes and you compared the arsenic result within that PH range, would that be acceptable even if it was above the background standard? Can you please clarify that?

MR. CLAY: In Public Act 097-10137, which is effective July 14th of 2011, it talks about the use of -- this is a carcinogen. Arsenic is a carcinogen and you can -- so one in a million risk would apply. However, you can use background and in this case you would -- the background number is the one that would apply and you would not be able to use site specific PH that would give you a number above background. So you would still -- the background numbers would still apply from the MAC table.

MS. TIPSORD: For the record, that is in Section 3.160C1 of the act.

MR. CLAY: Correct.

MS. TIPSORD: Are there any other questions for follow up?

MR. GOBELMAN: Steve Gobelman. Illinois Department of Transportation. Under Mr. Huff's example regarding arsenic, if I have an arsenic value total of 20, but I have run a TCLP or SPLP test and that arsenic concentration was at or below the Class 1 groundwater standard, would that stuff be considered uncontaminated soil?

MR. HORNSHAW: Samples that are analyzed by a TCLP or SPLP only pertain to migration to groundwater pathway. The answer that Doug just gave to the previous question I think applies here as well. You would be potentially exceeding or probably exceeding the background based values that are in the MAC table. So I think you would not be able to pass.

MR. GOBELMAN: Okay.

MS. TIPSORD: Are there any other questions right now? The Agency has some more testimony to present so they'll be here for a

couple more minutes if you think of anything. Mr. Wight?

MS. FLOWERS: I guess at this time we would want to direct your attention to errata sheet two and provide a little bit of background as to why we submitted errata sheet two and Doug Clay will give that testimony.

MR. CLAY: Errata sheet two makes modifications to Section 1100.205. The first part is in 205A1A. We're adding a sentence. If soil is consolidated from more than one source site, a certification must be obtained for each source site owner or operator. This is to clarify the question was who would -- you consolidate soils for a public -- at a public works yard and have those -- you can have those soils certified by a professional and then meet the MAC table, take those to a CCDD facility. Is there an option to get an owners -- a site owners certification for each project, consolidate the load and have all of those 662 forms that the owner's certification as another option and we said yes. You just need to get the source site owner's certification for each of the projects that was part of the consolidated

load. So that was just a clarification as to how the Agency interpreted that.

The second portion -- the second part of the changes to 205 had to do with issues that were brought up at the last hearing. The last hearing Steve Gobelman from the Illinois Department of Transportation had several questions regarding rejected loads and being able to provide additional information or analysis that would allow the loading to then be accepted at a CCDD site or soil fill operation. At the hearing, we said that we would consider revising the load rejection wording at Section 1100.205. Subsequent to the last hearing, we met with IDOT shortly after the hearing so that we would better understand their issues.

After that, we conducted a couple of conference calls that included IDOT, the IAAP, which is the Illinois Association of Aggregate Producers, LRRA, Land Reclamation and Recycling Association, and representatives from the road builders.

What we submitted in errata number two we believe all of those groups have

agreed to the wording that is part of errata number two. The errata before you represents wording changes to Sections 1100.205A4 and 1100.205B4A. Do you have any questions regarding that?

MS. TIPSORD: Actually, I do, Mr. Clay. Funny you should ask. In B4A, you have B4 -- wait. Let's see. Yes. A4 sorry. A4A, B, C, D and then something JCAR doesn't like and neither does the Secretary of State, a paragraph that is unnumbered that doesn't appear to go with Sub D. Could you take a look at that. It is an unnumbered paragraph and that's not something the SOS or JCAR likes to see. So maybe recommend to us in final comments how best to address that.

MS. FLOWERS: We can do that.

MR. CLAY: We will do that. Thank you. Are there any other questions for the Agency on these errata sheets or on any -- does the Agency have anything else?

MS. MANNING: I have a question.

MS. TIPSORD: I can't see you today.

MS. MANNING: Claire Manning with the Chicago Public Building Commission. On these

questions that we had this morning about site specific -- the ability of the Agency to look at things beyond just a uniform MAC and the legislative history of this particular regulation, would you agree with me that the legislation was created not solely for the purpose of providing further regulation of CCDD, hauling, tracking, deposition in CCDD facilities, but also to provide a reasonable and workable definition for uncontaminated soil such that soils in the state wouldn't all have to be landfill, but they could be safely deposited in a CCDD facility?

MR. CLAY: I believe the statute in the legislature passed and the governor signed was intended to define uncontaminated soil with numeric standards as to what was uncontaminated for purposes of mines, quarries and other excavations.

MS. MANNING: CCDD facilities?

MR. CLAY: CCDD facilities as well as soil fill operations.

MS. MANNING: And I read nothing in this legislation nor in -- as I testified was very involved in the legislative development of the

proposal on behalf of the Public Building Commission of the City of Chicago. I see nothing in this proposal that forecloses the Agency or the Board -- not in the proposal, but in the legislation or the legislative history that forecloses the Agency and the Board from developing a more flexible, if you will, approach to what the MAC is as it relates to specific soil conditions, soil conditions at the quarries, background at the quarries, PH levels at the quarries.

Does the Agency -- can you point me to something more specific about why you believe that a one size fits all approach is the only approach envisioned by the legislature in passing this legislation?

MR. CLAY: Section 3.160C, and I'll read this, of the Environmental Protection Act. For purposes of this section, the term uncontaminated soil means soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment. Under C1, it directs -- it directs the Board to adopt rules specifying the, quote,

maximum concentrations of contaminants that may be present in uncontaminated soils for purposes of this section, end quote.

So we believe that the legislature is directing the Agency and the Board to adopt rules that -- for uncontaminated soil. Not uncontaminated soil based on location or engineered barriers or what the characteristics, physical or chemical characteristics of the soil is, but rather it directs the Board to adopt regulations for uncontaminated soil that are protected of human health in the environment and we believe that is one standard and not 20, 30, 50 standards depending on where you're at and what the conditions are of that site.

MS. MANNING: And just for purposes of the record, I would agree with Doug's statement at the very end of that statement that the Board is directed to make MAC's that are protective of human health and safety, but I disagree that a one size fits all approach is appropriate I think that they wrote in TACO. I think that the legislation talks about a one in one hundred million declaration to the Board.

I do not think it says anything about a one size fits all and I think you can tell from a lot of the testimony today when we talk about background we're talking about PH issues at the site. Those are all TACO related issues that I believe this legislation calls for a more flexible approach.

MS. TIPSORD: I would note Ms. Manning was also sworn in yesterday.

MS. MANNING: Thank you. That's it. Thank you.

MR WILT: Just a follow-up question along these lines. The act that Mr. Clay referred to talks about rules to be protective of health and environment. I just want to clarify. The act does not require that the rules be adopted so that the amount of soil being landfilled is landfill limited, I think, is that correct? That's not the intention or that's not the role of the rulemaking to necessarily limit the amount of soil that has to be landfilled. That is dependant entirely on the application of the rules, but that's not the mission of the Board or the Agency with respect to the rules and I guess I pose that as a question to

confirm that is not -- the Agency hasn't submitted these proposed rules based on an understanding that these rules are intended to limit the amount of soil to be landfilled?

MR. CLAY: I would say the Agency did not submit these rules and we don't believe it is the legislature's intent to reduce the amount of material going to landfills or increase the amount of material going to CCDD facilities or other fill operations. The intent is to define uncontaminated that it is protected of human health in the environment.

MR. WILT: Thank you.

MS. MANNING: Just for purposes of the record. Claire Manning again. I just never intimated that the legislature's intent had anything to do with that other than defining contaminated and uncontaminated for purposes of making a workable rule and the Board knows well its role under Section 27(a) of the act. What factors it needs to continue, technically justified, economically reasonable and those factors in terms of whatever it makes a decision in the rulemaking and those are the factors that

are applicable to the Board. Thank you.

MS. TIPSORD: Mr. Gobelman?

MR. GOBELMAN: Just another follow-up question. Did the Agency go through the process of a professional engineer, professional geologist who has a sample boring of 20 for arsenic and non-detect TCLP of their evaluation of compliance and determining uncontaminated levels going through the regulation of how you evaluate that sample?

MR. CLAY: I think the same answer as Mr. Hornshaw gave is we went out and took a sample as part of an inspection and the sample came up with a total arsenic of 20 and the background number on the MAC table is 13 and then we ran a TCLP and it was under the 620 groundwater standards, that would be a violation and we would potentially send a violation notice and pursue enforcement.

MR. GOBELMAN: Can you go through the points of the regulations that allows that process under 1100.605, the Maximum Allowable Concentration of chemical constituents and uncontaminated soils?

MR. WIGHT: I think we just provided the statutory background of carcinogens that the highest we can go is the background. That's a particular subset of contaminants. I believe that question has already been answered. It's a statutory interpretation that plays itself out through the methodology proposed in 1100.605.

MR. GOBELMAN: Why under Section 1100.610 on compliance of evaluation performance and documentation of soil sampling and chemical analysis that for inorganic constituents you allow the alternatives of evaluating a sample for TCLP or SPLP? My reading of this is that it's one or the other.

MR. HORNSHAW: Under the scenario you just described, Section 1100.610 when you get to B1 first of the determinants for the chemicals that are in tables G or H, the background tables, you don't get past that. You don't get to the option of doing that value base on a TCLP. That only is relevant when the migration to groundwater pathway is controlling what value goes into the MAC table. The first option is background. You never get to doing a comparison between either

TCLP or soil total for showing compliance.

MR. GOBELMAN: Where is that stated that it says you stop there?

MR. HORNSHAW: I'll just read 1100.610A1. If the background value -- I'm sorry. B1. Section 1100.610B1. The background value from 35 Ill. Adm. Code 742 Appendix A, tables G or H, was determined to be the Maximum Allowable Concentration for ionizing organic constituent or an inorganic constituent, a direct comparison of that value with a total soil concentration from the laboratory report must be used to evaluate compliance.

MR. GOBELMAN: What chemical constituent then would TCLP fall under?

MR. HORNSHAW: Migration of groundwater pathway is the most restrictive of the pathways evaluated.

MS. TIPSORD: Mr. Hornshaw, you need to speak to the court reporter.

MR. HORNSHAW: Then you have an option of doing the TCLP or SPLP instead of totals to show compliance.

MS. TIPSORD: Mr. Huff?

MR. HUFF: Now, I'm confused. Arsenic and lead, which one is controlling for that? What is it we're supposed to be running?

MR. HORNSHAW: The background value is controlling for arsenic.

MR. HUFF: So I don't ever run to see if I leach out above the drinking water standard despite that all this is going in below the water table?

MR. HORNSHAW: We have chosen the most restrictive value.

MR. HUFF: Which is 13?

MR. HORNSHAW: Correct.

MR. HUFF: So the SPLP value that I thought was listed in there also is not applicable?

MR. HORNSHAW: Not for arsenic.

MR. HUFF: I'm going to tell you the whole regulating community doesn't understand that. How about lead?

MR. HORNSHAW: I couldn't tell you. I'd have to look up what the basis was. I think it was background, but only for counties outside of metropolitan statistical areas. I'd have to

look.

MS. TIPSORD: Mr. Hornshaw, remember, the court reporter can't see you or hear you.

MR. HORNSHAW: Sorry.

MR. GOBELMAN: I believe the lead was PH driven. We were using the most stringent PH value for lead as the number.

MR. HORNSHAW: For counties outside of the metropolitan statistical area, the value is 23 milligrams per kilogram, which is based on the lowest of the PH values available for migration to groundwater. That's the controlling value. For counties within metropolitan statistical areas, the value is 36 milligrams per kilogram, which is background based.

MS. GIVENS: Dr. Hornshaw, are you referring just to lead in that example?

MR. HORNSHAW: Yes, I am. I'm sorry. In response to Steve's question.

MR. GOBELMAN: So in the way you're looking at this evaluation, you have -- before you even get to a leachate test, you have to eliminate the parameters that are being controlled by

background, eliminate the parameters that are being controlled by PH before you ever get to the point that you'd need to run a TCLP test?

MR. HORNSHAW: The first thing you do is select a parameter that is the most restrictive out of all five of the potential pathways. Residential ingestion, residential inhalation -- I'm sorry. Construction ingestion, construction inhalation and migration to Class 1 groundwater. Whichever of those values is the lowest, is most restrictive, is where you start and then if that value is above -- I'm sorry -- below background, then background comes in as the first determinant.

MR. GOBELMAN: In your example that you gave for lead, since it is being controlled by the PH, then you --

MR. HORNSHAW: For counties outside metropolitan statistical areas.

MR. GOBELMAN: Aren't they both being controlled by a PH value?

MR. HORNSHAW: No. For counties within the metropolitan statistical areas, the background value is the controlling factor.

MR. GOBELMAN: But in either case, you can't run TCLP on it because they're being controlled by either a background or a PH specific value?

MR. HORNSHAW: Since lead is not being treated as a carcinogen for counties outside of metropolitan statistical areas where value is controlled by a PH table you could substitute TCLP or SPLP values to show compliance.

MR. HUFF: What about inside a major metropolitan area, could you not do the same thing there?

MR. HORNSHAW: For that case, the MAC value is controlled by background. It's not based on the migration to groundwater pathway.

MR. HUFF: So background is one of the factors since putting that table together even if you meet all the Tier 1 remedial objectives, the soil migration to groundwater, ingestion, inhalation and construction worker?

MR. HORNSHAW: If the controlling value for those values is less than background values for tables G and H, then the background value which is higher is the MAC available.

MR. HUFF: But not necessarily higher because if you're on the leaching test, you meet the soil groundwater standard?

MR. HORNSHAW: Fur purposes of showing compliance, if the value originally is based on migration to groundwater, then you can use the TCLP or SPLP procedures to show compliance rather than the total concentration.

MR. HUFF: What about lead in a major metropolitan area?

MR. HORNSHAW: The controlling value is based on background.

MR. HUFF: So background is one of the five factors? You can never be above background?

MR. HORNSHAW: It's one of the factors. The first five are the five pathways that are employed in this rule. Again, like I said, residential ingestion and inhalation, construction worker ingestion and inhalation and migration to Class 1 groundwaters. Whichever is the lowest out of those controls, unless you look at the background values and if the background values are higher, it replaces the lowest value

from the previous five.

MR. HUFF: But the background values for lead, 36 I believe you said, that is higher than which pathway?

MR. HORNSHAW: The PH specific, I believe.

MR. HUFF: But that's the soil migration to groundwater?

MR. HORNSHAW: Correct.

MR. HUFF: So why couldn't I run an SPLP in that example? Because the reg says or in that 410 section --

MR. HORNSHAW: I think you can use the TCLP in that case because the lower value is still based on the PH table, which is migration to groundwater driven.

MR. HUFF: So I could run SPLP in lieu of total lead in that scenario?

MR. HORNSHAW: Yes.

MR. HUFF: Thank you.

MS. TIPSORD: Are there any other questions for the Agency? Thank you very much. Before we close, I would like to ask if anyone wishes to comment -- go ahead.

MR. WIGHT: I was going to say we do have some additional responses on questions that we brought back from the first hearing so we have additional --

MS. TIPSORD: Let's go right ahead to that.

MR. WIGHT: Those include specific responses to questions plus Mr. Hornshaw -- Dr. Hornshaw's supplemental testimony on the PH issue so we'll start with the responses to the specific questions. Give us a moment to reorganize here.

MS. TIPSORD: Sure. Why don't we take about a ten minute break.

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

MR. NIGHTINGALE: At page 30 and 35 of the transcript, John Henriksen asks whether Illinois EPA knows the estimated cost of analyzing for all the proposed groundwater monitoring parameters. The Agency has done some additional research on the cost and our findings are very similar to the cost estimates provided by John Hock's testimony dated October 6th, 2011, and also

at page 61 of the transcript Mr. Rao recommends revising the uncontaminated soil fill operation registration form to include a description of the fill operation.

Illinois EPA has revised that the LPCPA 665 form for registering an uncontaminated fill operation, specifically under Section 1, the form now requires an estimate of the total area of fill, the average depth of fill and the total volume of fill when the proposed fill project has been completed. Additionally, the form requires the operator to submit maps depicting the fill boundaries and elevations and we have the revised 665 form available for exhibit.

MS. TIPSORD: A couple of notes for the record. The transcript you're referring to is from the September 26th, 2011, hearing that took place in Springfield.

MR. NIGHTINGALE: That's correct.

MS. TIPSORD: For the record, Mr. Hock's testimony is Exhibit 12.

MR. WIGHT: I have copies of the revised form 665. These were not pre-filed so you

do not already have copies of these.

MS. TIPSORD: If there's no objection, we will enter this -- did we previously admit the LPC665 as an exhibit at the last hearing? I lost my hearing sheet. I just want to be able to distinguish between the two.

MR. WIGHT: That's a good point and I'm not certain if that was previously an exhibit or not. I know we did the 662 and the 663.

MS. TIPSORD: I don't think we did 665.

MR. WIGHT: I don't believe we did the 665.

MS. TIPSORD: I apologize. I misplaced my --

MR. WIGHT: For people who may be interested, we do have additional copies of this form over here as well and, unfortunately, we didn't have a table to layout all of the documents, but there are additional documents in this white box and, unfortunately, those are not on the top, but we can certainly get you fixed up with those before you leave if you're interested in copies of these additional exhibits.

MS. TIPSORD: If there's no objection, we will admit the Illinois Environmental Protection Agency's form titled Uncontaminated Soil Fill Operations Registration Form by Owner and/or Operator LPC665 as Exhibit 23. Seeing none, it's Exhibit 23. Go ahead.

(Document marked as IL PCB Exhibit No. 23 for identification.)

MR. HORNSHAW: At page 102 of the transcript, Dr. Rao asks for clarification of the definition of, quote, acceptable detection limit, unquote, or ADL and Section 1100.103. In particular, he asks what the phrase, quote, lowest appropriate practical quantitation limit, end quote, means focusing on the word appropriate. The phrase acceptable detection limit is used only at proposed Section 1100.605A4 and the phrase practical quantitation limit is not used at all in Part 1100 except in the definition of ADL. The Agency's proposed definitions of ADL and practical quantitation limit are taken directly from Section 742.200 of the current TACO rule and they are identical. The Agency used TACO definitions to

maintain consistency between the TACO remediation objectives and the MAC methodology. In both TACO and the MAC methodology, the concept is important because the ADL serves as the remediation objective or the Maximum Allowable Concentration, whenever the lowest Tier 1 soil value for a chemical is less than the ADL.

In the phrase lowest appropriate practical quantitation limit, the word appropriate refers to the lowest immediate specific PQL, EG, low soil or sediment and the high soil or sediment of the specific laboratory analytical methods applicable to the chemical that is subject to the analysis.

MR. RAO: Thank you.

MR. HORNSHAW: Next, at pages 105 and 106 of the transcript, Dr. Rao asks for clarification of Section 1100.212C2. Specifically, Dr. Rao asks whether painted CCDD from outside Illinois should be tested by a laboratory and credited by IEPA in accordance with Part 186 or whether other quantitation is acceptable. Yes, the paint from painted CCDD to be used as fill at a regulated fill operation no

matter where the CCDD facility originates must be analyzed by a laboratory accredited in accordance with 35 Ill. Adm. Code 186 within the scope of the accreditation.

Part 186 draws its authority from Subsections N and O of Section 4 of the Environmental Protection Act. Section 186.110 authorizes the Agency to accredit laboratories under the standards adopted at the National Environmental Laboratory Accrediting Conference or NELAC. The NELAC standards are incorporated by reference at Section 186.115.

There are no formal state to state reciprocity agreements. Under the governing NELAC standards, the Illinois EPA is one of 15 state recognized accreditation bodies that grants primary accreditations and that recognizes primary accreditations granted by other state accreditation bodies under the National Environmental Laboratory Accreditation Program or NELAP. Illinois does not grant primary NELAP accreditation to out of state laboratories. However, out of state laboratories with primary accreditation from other state accreditation

bodies may apply for secondary NELAP accreditation from the Illinois EPA.

These are routinely granted within 30 days. The scope of the secondary accreditation is the same as the scope of the primary accreditation unless the Illinois EPA does not or cannot offer accreditation for a particular test method granted by the primary accrediting besides. The secondary accreditation enables the out of state laboratories to participate in Illinois programs requiring Illinois accreditation.

Other state accreditation bodies would similarly grant secondary accreditation standards -- or statute to Illinois laboratories, statute to Illinois laboratories that have received primary accreditation from Illinois EPA. There are currently over 50 out of state laboratories with secondary accreditation from Illinois and I believe Mark has an exhibit.

MR. RAO: I appreciate that detailed response on that.

MR. WIGHT: You know more than you wanted now. This exhibit is a list of the out of

state laboratories with NELAP secondary accreditation from Illinois.

MS. TIPSORD: If there's no objection, we will enter the list of out of state laboratories with NELAP secondary accreditation from Illinois 2011 as Exhibit 24. Seeing none, it is Exhibit 24.

(Document marked as IL PCB Exhibit No. 24 for identification.)

MR. RAO: Thank you.

MR. HORNSHAW: At pages 113 to 114 of the transcript, Dr. Rao requests Agency comment on whether Subsection C of Section 1100.605 should specify a timeframe within which the Agency must respond to a request to develop a Maximum Allowable Concentration for a chemical not listed in the TACO tables in which the MAC's are derived. The Agency does not think a timeframe is necessary or desirable. The provision is very similar to 35 Ill. Adm. Code 742.510C, which authorizes the Agency to develop site specific remediation objectives for contaminants of concern that are not listed in the TACO Tier 1 tables. The Agency

has been providing these objectives for several years under the TACO provision with little or no problem. It has compiled a list of 140 additional sets of remediation objectives for the Tier 1 exposure routes. These requests normally are addressed within two days or less. Occasionally, additional toxicity data is needed and the response may take up to 30 days. For purposes of Section 1100.605C, once the Agency has determined the remediation objectives for the TACO Tier 1 tables, it takes only minutes to determine the Maximum Allowable Concentration using the methodology in Section 1100.605A.

This can be done by either the Agency or the requestor. If the timeframe were added to the provision, it would have to accommodate the worst case scenario for gathering toxicity data and would not come into play in the vast majority of requests. Moreover, the Agency does not expect a significant number of requests because the Tier 1 tables and the additional 140 sets of objectives already developed in TACO should cover most, I might add nearly all, of the chemical constituents likely to be found at

construction or demolition sites. In calendar year 2011, the Agency so far has received and responded to six requests for the development of remediation objectives under the TACO provision.

MR. RAO: Thank you.

MS. BLAKE MYERS: At pages 107 through 117 of the transcript, Mr. Rao requests Agency comment and clarification on Section 1100.750 in regards to the use and establishment of background groundwater quality. 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 would 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 wells will provide the data needed to calculate background water quality. However, the establishment of background values for the purposes 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. The guidance document Statistical Analysis of Groundwater Monitoring at RCRA Facilities Unified Guidance 2009 has been added to Ill. Adm. Code 1100.104 incorporation by reference rather than requiring the guidance in the rule in order to allow the decision on the appropriate statistical methods and strategies to be left to the experience and judgment of the professional engineer.

MR. RAO: Just to get a clarification. If there is an exceedance of 620 standard, then it's up to the owner or operator to see whether the 620 standard is -- if it's below the background data that they have, then they can use a statistical method to establish background and make comparisons?

MS. BLAKE MYERS: Right. The data would be available. It would just be a matter of performing the appropriate statistical method to see if there was a statistically significant increase.

MR. RAO: I think my question is, is there enough guidance to make sure whatever data

they collect would be adequate for establishing --

MS. BLAKE MYERS: Yes, the guidance is hundreds of pages long with a lot of different methods, a lot of different approaches and there is an entire section on how to collect data for background purposes.

MR. RAO: Okay.

MR. WIGHT: Okay. We have one more part to our presentation. By way of introduction, I'd like to say that soil PH has been one of the more significant issues raised in this proceeding. The Agency's proposed use of the 35 Ill. Adm. Code, appendix B, table C, PH sensitive values as MAC has been somewhat contested because of our conservative approach to the use of that table. We did do some analysis of our own as far as PH goes.

We had not presented that to this point because we assumed that at some point we would be asked about it, but we had not yet been asked about it or at least we didn't understand the question to be asking this about it. So now we've reached the end of the second hearing and still have not entered our data to the

record. So we think it's important to get that data as part of the record before we conclude. So Mr. Hornshaw has a brief introduction about how we approached the issue of statewide soil PH and he would like to explain that and then we have an additional exhibit which would be our worksheet on how we attempted to make some determination of what statewide PH values would be.

MR. HORNSHAW: Let me preface my remarks by Mr. Marrow, who was not able to be here, did all of this investigation and took quite a bit of time and it's pretty in depth and I apologize in advance if somebody asks a really detailed question. I may have to bring him in when he gets back into the office. So, with that said, I'll go into this.

For ionized inorganic and most inorganic constituents, TACO provides multiple allowable concentration candidates based on the soil PH. At Section's 1100.6605A2 and 1100.605A3A of our proposed rule, the Agency proposes that the lowest of the available PH dependant concentrations in Part 742 appendix B table C should become the Maximum Allowable Concentration

in uncontaminated soil. The Agency recognizes that any default soil PH must be relevant at various levels from the ground surface level to great depths, perhaps to bedrock.

This includes soils that may extend into the saturated zone. One of the Agency's goals is that our proposal should be generally applicable across the entire state and to facilities established in the future. Thus, another requirement was that any default soil PH value should be appropriate to use at any location in Illinois. With these requirements, the Agency sought to identify a default soil PH value for use in this proposed rule. Through Internet searches and other inquiries, the Agency selected the state soil geographic database known as STATSGO, S-T-A-T-S-G-O, as our source for soil PH values. The STATSGO database is maintained by the Natural Resources Conservation Service, which is a division of the US Department of Agriculture and it is regarded as scientifically reliable. The STATSGO database provides statewide coverage by county for soil depths of up to 80 inches. County results are organized by soil type and soil PH

provided at several depth ranges. A review of Agency records show that CCDD and soil only sites were located in 23 counties, 14 northern, seven central and two southern. These counties were targeted to determining a default soil PH value for each of the 23 counties, the STATSGO database was queried for soil unit type. This search yielded dozens of soil types, many of which represented minimal coverage of the county. For practical reasons, the major soil types were selected to represent the county. A target of 30 percent coverage was selected.

Using the major soil types for each county, the database was again searched for soil, quote, chemical properties, end quote, which includes soil PH. For each soil type, the high and low across all depths recorded was record. A table of PH ranges for each selected soil type in each county was prepared for the workgroup. The summary of soil PH values showed varied PH for each soil type and between the various counties. For most soil types, PH trended higher with depth. This is expected due to the high organic content and the impact of precipitation on the upper

levels. The most striking result was the trend to lower PH at all soil depths seen in the southern counties and from this our conclusions are based on this investigation. The workgroup determined that no single default soil PH value could be identified that would provide a level of safety for all soil depths at all locations in the state.

Use of the most protective PH dependant TACO objective is the Agency's recommendation in light of the widely varying soil PH's determined in our investigation and expected to be introduced into the fill site pits and I believe Mark has another exhibit.

MR. WIGHT: Yes. We have an exhibit that is essentially our worksheet where we assembled the data just described by Mr. Hornshaw. So, again, these have not been seen before so I have copies for each of you.

MS. TIPSORD: If there's no objection, we will mark what is a two-sided document Summary of Illinois Soil PH Values and mark that as Exhibit 25. Seeing no objection, it's Exhibit 25.

(Document marked as IL PCB Exhibit No. 25 for identification.)

MR. WIGHT: Again, I'm sure these will be of interest to everybody. We have a number of copies here that you can pick up and examine at your convenience whenever the hearing concludes or I guess I can even hand some of these out now. I think this is a document that people will be curious in seeing. So maybe I'll just go ahead and circulate some of these and you pass them up and down the rows if you would please. Did everybody get a copy who is interested?

MS. TIPSORD: Are there any questions of Dr. Hornshaw based on this? Okay. Anything else from the Agency today?

MR. WIGHT: No, that concludes our presentation.

MS. TIPSORD: Thank you very much. Before we do anything further, I want to ask if anyone wishes to comment on DCEO's decision not to do an economic impact study? I've had no one come up and approach me to ask about that and I see -- Mr. Huff?

MR. HUFF: I would.

MS. TIPSORD: I remind you that you are sworn in. You were sworn in yesterday.

MR. HUFF: We heard yesterday from Mr. Hock that 82 percent of the soil samples that he took inside CCDD facilities failed for metals. He also indicated he felt that was representative of what was currently being generated in the industry today. 82 percent. Where is this material going to go if these regulations are promulgated where they're at today? And we heard, well, it's going to go to Indiana. It's going to go to Wisconsin. It's going to go to landfills here. And it's going to go to unregulated sites.

And the implication of this, one, it's not very sustainable. We're trucking this stuff further. It costs more to the transportation department here in Illinois. It's not sustainable from the greenhouse gas emission from the additional CO2 that's going to be generated from that and certainly material -- increasing what we put in the landfills, in my mind, is not a sustainable alternative here and I can't imagine anybody believes increasing the

amount of this material we take on on unregulated sites is in the best interest of the State of Illinois. And the only groundwater data we have was what I submitted. We have seen nothing in the way of groundwater data that even suggests that there's a problem with these CCDD facilities.

So from an economic perspective, I am confident you're going to see a very high percentage of these CCDD facilities begin to go out of business and that's going to force additional work to go out of state and, of course, the jobs that go with that as well, the toll ways and their $13 billion budget. Where are we going to take this excess material because we're trying to improve the roads and create jobs up in Illinois?

So I'm very fearful that we have a regulation that is going to be an incredible economic burden and I see no demonstration that there's been any benefits that are going to come from this. So I'm disappointed that we don't have an economic impact analysis. So I think this is a perfect case where we need to understand what are the implications of these CCDD facilities as well

as the regulated communities that is generated. Thank you.

MS. TIPSORD: Thank you.

Ms. Manning?

MS. MANNING: I also was going to say, economically, somebody needs to look at the economics of all this in terms of -- he spoke in terms of the CCDD facilities. My concern and my client's concern is that the Board is able to make a wise decision in terms of having soil safely from the urban areas which, of course, has background kind of constituents that aren't necessarily -- aren't from an underground storage tank, but historically have urban kinds of contaminants and the Board needs to make a good decision and the EPA needs to have, in my opinion, a more flexible approach in terms of issues as to where and what types of soils can go into the CCDD facility which aren't necessarily just a one size fits all approach because the soils in upper Illinois are much different than they are in southern Illinois and the type of facilities that can accommodate those soils in northern Illinois are also much more flexible in terms of being able

to be protective where those soils can be put.

So, in that vein as well, it's a real economic -- the way this rule is proposed, it's a real economic issue proposed and if DCEO would do a particular analysis this would be a good one to do an analysis on in terms of just the impact of the rule and how the rule needs to be setup. Thank you.

MS. TIPSORD: Mr. Henriksen?

MR. HENRIKSEN: Please.

MS. TIPSORD: Mr. Henriksen has said off the record he does not wish to be sworn in so this will be a comment.

MR. HENRIKSEN: Well, I'll be glad to be sworn.

WHEREUPON:

JOHN HENRIKSEN

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

MR. HENRIKSEN: And, again, my name is John Henriksen. I'm with the Illinois Association of Aggregate Producers. My industry represents companies that mine and produce crushed stone, sand and gravel and as such we have a

number of our members that accept clean soil and CCDD and have for many years. I echo Ms. Manning's and Mr. Huff's concerns about the lack of economic analysis for DCEO. It's very disappointing and to explain why I think we can go back a time a little bit to look at this rulemaking in context. Somebody coming in from the street might think that for the first time the State of Illinois is thinking about setting up a regulatory scheme to regulate the disposal of clean soil or CCDD. As I hope everyone does know, we've been doing this in our state successfully for many years. My industry has been partnering with the IEPA for decades, specifically starting in the '90s to make sure that our pits and quarries were good homes for excess soil and CCDD. We did this and we're encouraged by the IEPA to do this so soil that shouldn't go in landfills, So CCDD that shouldn't go in landfills, that's why we did this, that's why we started accepting this. It was an aggressive course, but we were also encouraged by the Agency to have our pits and quarries be places where clean soil and CCDD could be placed to help complete reclamation or to be

filled up to create home sites or whatever.

We further as we became concerned with the risk out there -- we, led by Vulcan Materials, worked on best management practices to give our agencies -- excuse me -- our industry guidance about what we should do to make sure we wouldn't be taking bad materials. We worked with them to create BMP's for due diligence, for load checking, for manifesting, for everything that is necessary to prevent problems and, in fact, in 2005 the BMP's that are attached to Mr. Willie's testimony were approved by the IEPA.

In fact, Bureau Chief Childs sent out a letter saying these BMP's went beyond what was required by law. So we worked as an industry with the IEPA to make sure that the soil and the CCDD that are generated and we took wouldn't hurt the environment and we're encouraged by the IEPA to do that. As all of us in the room know because of a family dispute with the Blagojevich family, the law changed, and then Section 22.51 became law and that setup a statutory program to require the EPA to regulate

CCDD for the first time even though there wasn't a track record, from my understanding, of having environmental problems associated with accepting this material.

We again stepped up and partnered with the IEPA. The original Part 1100 of the rules came from our BMP's. We made sure the regulatory scheme that these folks put together and we adhered to protected the environment. We're successful. We did run into -- one of our members did run into some problems with the IEPA regarding whether or not some material they were accepting was clean. There was a dispute which is still in the Pollution Control Board and that led to the subsequent legislation that Ms. Manning was referring to that tried to create a bright line to determine what is clean, what isn't clean, what we can take and what we can't. And that's where we are today.

Our industry wants very much to be able to take this material, but do so in a way that protects the environment, protects human health and safety. That being said, we think it's

highly inappropriate that the regulatory program as currently we're facing -- it's highly inappropriate for us to try to adhere to that. You heard Randy Willie testify that he has put up chains on his sites, Meyer Material. Meyer Material was a leader in the industry to take clay and other soil and use that to reclamation. They're not doing that anymore because the cost of this program makes it prohibitive. Plus they're concerned how the IEPA will enforce these rules against them. All the other legitimate companies that are doing or likewise who are just taking soil, they're going to be going out of business. They're going to be closing up.

You'll hear hopefully, if my members who have CCDD operations do their job, they'll be writing letters to you all explaining what their increased costs are and absent changes, they will have to go out of business as well and what you're going to see is what you're already seeing and Mr. Purseglove talked about, you're already seeing more and more trucks that -- loads that we reject some go out of state, but a lot go down the road. A lot go to farm fields all over

northeast Illinois and downstate because a farm field, even though they can't take waste, they're not under the regulatory purview of the IEPA because a low lying spot in the ground, whether it's a farm, forest preserve district or anywhere else, you can put CCDD in there and clean soil and not have to register, not have to get a permit. That's where it going right now. And if you follow those trucks you will see.

We're not asking -- we're not suggesting that we should be unregulated. Far be it because unlike a road contractor or a bidding contractor, once they get their last check, once their job is spotted off, they're done. We get a hot load, we're on the hook forever. We're on the hook for generations. So we have a strong business ethical interest in making sure we don't take hot loads, don't take bad loads and that's why we are so intimately involved in this rulemaking process.

We have -- in my opinion, we have clearly shown a path to the EPA and more importantly to the Board about a regulatory scheme that will work. John Hock's testimony outlined in

detail the kinds of tweaks that can be made to the rulemaking that would allow us to stay in business. Absent those kinds of changes and absent responses form the Board to some of the things that the IDOT representative and Mr. Huff talked about, absent the Board taking those suggestions into consideration and fashioning a good regulatory program, a livable regulatory program, we won't be in business and we can't be in business. And then we will be -- they will be the only state that has a cradle to grave CCDD program like Illinois with very few people participating.

We shouldn't be. This program has to be reasoned and I'm very disappointed with DCEO's decision not to do an economic analysis and my industry we're counting on you all to do what you can do which is take into account the economic impact of what these folks are proposing in good faith. They're trying to get their arms around a real tough problem and not take anything away from them, we've worked with them for years. They listened to a lot of things we've had to say, but where they're at right now, still it's

unacceptable. We will not be in business. We're asking you to take this program and make the changes to make it work. Thank you.

MS. TIPSORD: Thank you. Are there any questions for Mr. Henriksen? Thank you very much.

MR. HENRIKSEN: You're quite welcome.

MS. TIPSORD: Let's go off the record for just one moment.

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

MR. WILT: I would like to make a comment, and it can be a public comment, I don't need to be sworn, on the economic impact statement. When we started yesterday, you commented that was something that would be discussed. In my mind, I don't know what an economic impact study would study because there's nothing in the record that I'm aware of other than perhaps speculation based upon borings at four sites as to how much soil would have to be regulated through this, how much would be -- would

have to go into a landfill. It's pure speculation.

So I'm not sure what an economic study would do. So I'm not surprised that the decision was made not to have one. There's nothing in this record indicating that these rules as recommended by the Agency, if they were adopted, would result in more soil going to landfills at that cost or less soils going to landfill. It may well be, particularly since background is being considered that there may be far less soil going into landfills in the future when these rules were adopted then is going in today, but we just don't know that. So I don't know what an impact study would evaluate and that's the comment I would like to make. Thank you.

MS. TIPSORD: Anything else on the record change?

MS. MANNING: I just had a follow up to that comment. I think there is information in the record and certainly there will be information put in the public comment as well for the Board to ascertain this. Obviously, we had to go through

the whole issues of asking the Agency questions in order to understand how the rule would be implemented in order to make those kinds of determinations, but there will be that information for the Board to assess.

In addition to that, I had one final question for the Agency because last night I was thinking about something that is unclear on the record. The attorney general's office -- if I might, Madame Hearing Officer.

MS. TIPSORD: Mm-hmm.

MS. MANNING: The Attorney General's Office asked a lot of questions about inert landfills and my question to the Agency is my understanding is there are no inert landfills in Illinois and very few, if any, landfills have ever been permitted through the Board's inert landfill regulations and I just thought we should close that question and just answer that question before we ended the record. Am I right, Steve?

MR. NIGHTINGALE: Yes, that's correct.

MS. MANNING: Okay. Just so the Board understands, you have the inert landfill

regulations, but they've never really been utilized and practiced by anybody, is that correct?

MR. NIGHTINGALE: That's correct.

MS. MANNING: That's correct.

MR. RAO: As a follow up. When the Agency is developing these rules, did you look at the inert waste landfill regulations to see how those requirements would be applied?

MR. NIGHTINGALE: We did look at them. One of the things that caused us I guess to shy away from them was this leachate monitoring program and with these sites and the variability of the waste or the variability of the fill material, you would have to put in a substantial amount of leachate monitoring in the program and the cost would be a lot -- trying to put them in there and not damaging them, would be very difficult and I guess we kind of looked at the inert waste type of situation being more of a uniform type of waste. So we kind of stepped away from trying to use those and those regulations do -- if you have a problem with that, it kicks you into another set of regulations and we felt

the way we had this setup would be more appropriate.

MR. RAO: Thank you.

MR. LIEBMAN: One of our other concerns that Steve didn't get into with trying to apply some of the requirements for inert waste landfills to the site regulations was the dewatering that we understand often occurs at CCDD fill operations and we thought that that dewatering would make monitoring the leachate difficult.

MR. RAO: Thanks.

MR. SYLVESTER: Could I ask just a follow-up question regarding the inert waste? One of the things that I think is brought to light is the detention between inert waste and CCDD and based on the definitions inert waste includes nonbiodegradable, nonputrescible solid waste, including, but not limited to bricks, masonry and concrete and then the definition for CCDD is uncontaminated broken concrete without protruding metals bars, bricks, rocks, stones and painted or other asphalt pavement. And the question I have is if you have a pile of bricks or if you have

some concrete, how can you tell whether it's CCDD or inert waste or a recyclable material?

MR. NIGHTINGALE: Well, as far as for the regulation for the inert waste, there is a description of what would be considered inert waste I think based on the leachability test or at least the leachate that would be coming from it. So I guess there wouldn't be anything in these regulations that would prevent somebody from going and applying for an inert waste landfill if they could meet those regulations. I think what we found historically is that they really cannot meet this leachability test. So people don't apply for those types of permits.

MR. SYLVESTER: I guess as a follow-up question more from a regulatory oversite perspective. I mean, the definition it says bricks, multiple. One is a waste. If you put it in an unlined hole, it's CCDD. I just don't understand the rationale behind that and why there hasn't been any kind of preceding to clarify the CCDD regulations to have a unified system under the regulations. I would agree that there hasn't been much done with the inert waste regulations

and landfills or whatnot, but they are still on the board and they're still good law as far as I know.

MR. WIGHT: If I might add, I think to some extent the question was addressed by Mr. Clay yesterday in response to Mr. Sylvester's question number 11 and Mr. Clay did make -- part of Mr. Clay's statement -- the question was about whether or not this is consistent with federal law and Mr. Clay pointed out that part of the answer to Mr. Sylvester's questions was simply the legislature had a different idea about how this material would be handled and if it were used as fill material, that it could be managed differently and that's why we have different sections in the act. So I think that's at least part of the answer is we've been directed to take a different approach.

MR. SYLVESTER: I don't disagree with that. I just thought throughout the regulations if you look at 810.103, there's a waste pile that would include those same bricks. It's just -- in enforcing the Environmental Protection Act, it's become clear that there's

some inconsistencies on how you define what waste is or CCDD is in terms of that and I was just wondering if it could be something considered going forward because there are these inconsistencies.

MS. TIPSORD: Anything further? Let's go off the record for just one moment.

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

MS. TIPSORD: After a discussion off the record, we've decided that the post hearing comment deadline will be December 2nd. That's in the clerk's office on December 2nd. Also, if you file electronically with the clerk's office there is no need to serve me as the Hearing Officer a hardcopy. I will have it in my hands about ten minutes after it comes into the clerk's office. So it's much quicker for me to do that. So if you do file electronically, please do not feel the need to serve me a hardcopy. Although I'm on the service list, you don't have to do that if you file electronically. Is there anything else? Thank you all very, very much. It's been a

pleasure.

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 7th day of November, A.D., 2011.

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