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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **FEB 14 2001**

IN THE MATTER OF: )  
 )  
REVISION OF THE WASTE ) R01-29  
DISPOSAL RULES: ADOPTION ) (Rulemaking)  
OF 35 ILL. ADMIN. CODE 740.800 )

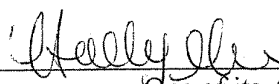
STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

TO: Persons on the Attached Service List

PLEASE TAKE NOTICE that today, on behalf of the Petitioner, CITIZENS FOR A BETTER ENVIRONMENT ("CBE"), I have filed with the Clerk of the Illinois Pollution Control Board the testimony of Abigail C. Jarka, P.E., copies of which are served on you.

CITIZENS FOR A BETTER ENVIRONMENT

By:   
One of its Attorneys

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**SERVICE LIST**

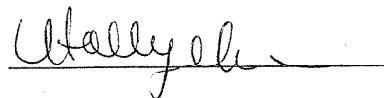
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**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the attached testimony of Abigail C. Jarka, P.E., were served upon the parties listed on the attached Service List by depositing said documents in the U.S. Mail in Chicago, Illinois on or before 5:00 p.m. on the 14<sup>th</sup> day of February, 2001.

A handwritten signature in cursive script, appearing to read "Wally", is written over a horizontal line.

**CURRICULUM VITAE**  
**ABIGAIL C. JARKA, P.E.**

Ms. Jarka is a registered professional engineer with ten years of environmental engineering experience. She has a B.S. in Civil Engineering from Drexel University in Philadelphia, Pennsylvania and a M.B.A. from New York University in New York City, New York. Prior to joining Citizens for a Better Environment (CBE) in 1998, Ms. Jarka worked for a private consulting firm. Her consulting experience focused on regulatory compliance, site investigations, and remedial feasibility and cost studies at many different types of industrial facilities. While at CBE, Ms. Jarka primarily worked with communities on risk management planning requirements under the Clean Air Act and as a technical resource on various issues, including brownfields.

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TESTIMONY OF  
ABIGAIL C. JARKA, P.E.

**Background**

The impetus for property transfer legislation resulted from lenders- financial institutions- seeking to protect themselves from liability. As environmental site assessments became a generally accepted part of any commercial or industrial property real estate transaction, the Illinois Environmental Protection Agency (Agency) developed the Site Remediation Program (Section 740) and the Tiered Approach to Corrective Action Objectives (Section 742) that provides parties with a voluntary process to evaluate and remediate contamination at brownfield sites. Essentially, the Site Remediation Program (SRP) was developed as a vehicle to return brownfield sites to productive industrial, commercial and residential uses. The SRP and Tiered Approach to Corrective Action Objectives (TACO) rules did not anticipate that brownfield sites would be redeveloped for use as schools, public parks, or playgrounds. However, brownfield sites, where the proposed end use is other than commercial, industrial, or residential, were and are being entered into the program; most notably, sites earmarked as schools, public parks, and playgrounds.

Citizens for a Better Environment (CBE) has been involved with environmental contamination and brownfield redevelopment issues at two school sites located in Chicago's Little Village community- the Finkl Academy and the Zapata Academy - since 1995. That year, CBE learned that the City of Chicago's Public Building Commission built two schools on contaminated sites. Testing indicated the presence of a number of inorganics and polynuclear aromatic hydrocarbons. These sites were in the Agency's SRP, but only after the construction of the schools had begun. This precluded the Agency from doing its own independent analysis of contamination levels, and agreeing

up front, on a clean-up plan.

The Public Building Commission and its contractors refused for four full years to address concerns raised by the Agency and CBE about both the site evaluation and clean-up. The Public Building Commission even allowed the schools to open without informing the Agency; and children began attending classes without parents or teachers realizing that they may be exposed to potentially unsafe levels of contamination.

It was only when CBE released the story to the media that the Public Building Commission finally undertook the additional testing that both the Agency and CBE had recommended. The majority of the soil samples collected contained levels of contamination above the residential standards set forth in the TACO standards. For instance, at the Finkl Academy, levels of inorganics and polynuclear aromatic hydrocarbons were found in excess of the Tier I soil and groundwater remediation objectives in site soils. The contaminated soils, in part, comprised the original engineered cap constructed at the time the school building was built to limit exposure to on-site contamination. Additionally, the original engineered cap only ranged in depth from 3-inches to 18-inches which is significantly less than the 3-feet required in Section 742.1105 of the TACO standards.

It is likely that the experience at the Little Village sites is not an isolated incident and thereby underscores the need for changes to the current regulatory structure in order to accommodate similar sites. In Chicago alone there are at least ten sites currently enrolled in the SRP earmarked for redevelopment as school and/or park sites which could benefit from the proposed regulatory changes to the SRP.

#### **Reasons for the Proposed Rules**

One of the primary differences between sites designated for schools, parks, or playgrounds, as compared to other, more typical industrial sites entered into the SRP, is that these types of sites require public funding for development and maintenance. Private lending institutions conduct due diligence and make sure proper site characterization and clean-up are performed prior to receipt of an NFR letter in order to protect their investment and avoid future liability. Often the lending institutions that would be involved in a private transaction and clean-up are not part of these public redevelopment

projects. In the case of public projects such as schools, public parks and playgrounds, the redevelopment may be funded by public money and the same scrutiny may not exist. The proposed rules would provide enhanced public notice and comments about the redevelopment as well as ensuring that use of the site would not commence until an No Further Remediation (NFR) letter has been issued. Public notification would be appropriate in the case of publicly funded sites and would serve to provide an added layer of review at these type of sites.

In addition, schools, public parks, and playgrounds require public stewardship in order to remain viable. However, few triggering events exist that maintain the integrity of institutional controls and engineered barriers erected at sites developed using public funds. People administering and maintaining these sites frequently change, thereby losing the institutional memory of restrictions outlined in the NFR letter. For instance, at the time the Little Village school sites were constructed, the Public Building Commission typically undertook the redevelopment of a public property. Once a school was built, the property was transferred to the Board of Education where the property was maintained. However, at this time there is no mechanism to ensure that provisions outlined in a NFR letter are transmitted to the people maintaining the site. It should be noted that according to Section 742.1000(c) the NFR letter is viewed as an institutional control and, therefore, should be maintained as such.

The proposed rules would require that parties who are administering schools, public parks, and playgrounds to review the institutional controls outlined in the NFR letter every five years and notify the Agency of such review. This five-year certification would ensure that those responsible for maintaining these sites are aware that a NFR letter exists. In addition, the responsible parties would be knowledgeable about any institutional controls that are outlined within the letter, thereby maintaining the integrity of such controls and limiting exposure of contaminants to children at the site. By ensuring that appropriate site personnel are knowledgeable of the requirements in the NFR letter, any deficiencies in institutional controls or engineered barriers should be noted sooner than the required five-year inspection.

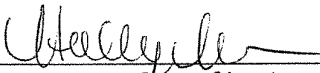
**Additional Aspects of the Proposed Rules**

The proposed rules would not mandate more stringent clean-up objectives for these sites nor hinder development of brownfield sites into much needed schools, public parks, and playgrounds. Instead, the proposal would enhance existing SRP policies to establish and maintain institutional controls and to encourage public participation. Additionally, costs associated with these proposed rules are not likely to be burdensome. Anticipated costs associated with rules include: public notification requirements, public hearings, and five-year review of existing institutional controls. It is likely that public notification and hearings would be part of the existing Agency public participation process (Section 58.7(h) of the Environmental Protection Act) in conjunction with the property owner. Five-year reviews would be completed by the property owner and, in many cases, could simply involve a visual inspection and letter-type documentation to the Agency.

**Conclusion**

The proposed rules are designed to offer simple cost-effective measures that provide a level of certainty to communities faced with SRP issues at schools, public parks, and playgrounds.

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