BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)
	) AS97-5
Petition of the Louis Berkman Company, d/b/a Swenson Spreader Company, for an Adjusted Standard from 35 Ill. Adm. Code Part 215, Subpart F	) Ogle Cty. Crths.) Oregon, Illinois) April 17, 1997)

Hearing commenced at 10:15 a.m.

BEFORE:

DEBORAH L. FRANK, Hearing Officer,
Illinois Pollution Control Board,
608 South Prospect Avenue,
Champaign, Illinois, 61820

APPEARANCES:

ATTORNEY JAMES E. MEASON,
of the firm of Hinshaw & Culbertson,
220 East State Street,
Rockford, Illinois, 61105-1389
Counsel for Swenson Spreader.

ATTORNEY BONNIE R. SAWYER and
ATTORNEY CHRISTINA ARCHER,
Illinois Environmental Protection Agency,
Assistant Counsel, Bureau of Air,
2200 Churchill Road,
Springfield, Illinois, 62794-9276
Counsel for the IEPA.

ALSO PRESENT:
Mr. Gary Beckstead, Environmental
Protection Engineer with IEPA.
Mr. Brooke Peterson,
Legal Investigator with IEPA.

REPORTER:
Carrie L. Vaske,
Certified Shorthand Reporter,
Ashton, Illinois

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EXHIBITS

HEARING OFFICER FRANK: Good morning and welcome to the Adjusted Standard hearing for the petition of Louis Berkman Company doing business as Swenson Spreader Company for an Adjusted Standard from 35 Illinois Administrative Code Part 215, Subpart F, AS97-5.

Before we proceed, I'd like to note for the record that there is still a pending motion before the Pollution Control Board. My guess is that they will rule on it before our second day of hearing which we have not set yet. There's a possibility, I guess, they could be ruling on it today while we're here, but I don't think that they are. We also have a pending motion in limine which was filed on behalf of Louis Berkman Company and a response to that which was filed by IEPA. I received the response yesterday by fax. We had a problem with the faxes or I would have had it on Tuesday.

At this point I'm going to make an oral ruling that I am going to allow evidence having to do with settlement negotiations as long as it does not go to any admissions by the Company to anything that is pending in the enforcement action and I

think what we're going to have to do is go on a case by case basis on the different evidence that's going to be coming in.

Swenson does not have to admit its guilt in this case and then have it used against it in the enforcement action is what I'm trying to protect, but I do believe what the Agency said, which is that in this case there really isn't an issue of liability because it is an Adjusted Standard rule making, so the burden will be on Swenson to show me why various evidence should not come in and I will rule on it on a case by case basis. So it's hard to make a blanket ruling because I don't know what I'm going to see so we'll just take it on a case by case basis and see what comes up.

I'm going to go ahead then and let the attorneys make their appearances on the record. Mr. Meason, if you want to go ahead and go first.

MR. MEASON: Yes, my name is James E. Meason. I'm an attorney with the law firm of Hinshaw and Culbertson in the Rockford, Illinois office and I represent Louis Berkman Company doing business as Swenson Spreader in this proceeding and in the

enforcement action PCB 101 -- 97-101.

HEARING OFFICER FRANK: Okay.

MS. SAWYER: Bonnie Sawyer, Assistant Counsel with the Illinois Environmental Protection Agency representing the Illinois Environmental Protection Agency.

MS. ARCHER: Christina Archer, Assistant Counsel for the Bureau of Air representing Illinois Environmental Protection Agency.

HEARING OFFICER FRANK: Okay. Are there any other preliminary matters?

MR. MEASON: Miss Sawyer and I had a conversation, was it yesterday or a couple days ago, regarding stipulations as to the authenticity of federal and state governmental documents, whether they're published in the federal register or they're regulations, and I don't want to speak for Ms. Sawyer, but I think we agreed that she would stipulate to the authenticity of those types of documents.

HEARING OFFICER FRANK: Okay.

MS. SAWYER: Yeah, I agree although I'm not sure exactly which documents you're referring to, but if they're federal register publications and

things like that or orders, I'll stipulate to that.

HEARING OFFICER FRANK: That's fine. I'll also note for the record that there are no members of the public present.

MS. SAWYER: I have one quick matter. We received an answer to our discovery request yesterday, and in relation to the production of documents we didn't receive any documents. It appears as though they have some architectural drawings available for us today and they also said that they were going to submit additional information regarding cost of powder coatings, but the Agency is aware of other documents that meet the demand of our discovery or request to produce documents that were not submitted to us. So I don't know if I want -- should move at this point or --

HEARING OFFICER FRANK: My preference is that if there are specific things that you're looking for that first you try and work it out with Jim. If you guys can't work it out, then you'll have to put something in writing to me so I can rule on whether or not it needs to be produced.

MS. SAWYER: That's fine.

HEARING OFFICER FRANK: And I would treat that in the nature of any -- like any objection and the Hearing Officer rules so you need to get that done earlier.

MS. SAWYER: May something?

HEARING OFFICER FRANK: Yeah, May 28th. Is there anything further? Okay. Then Mr. Meason, if you'd like to go ahead and begin with any opening statement you might have.

MR. MEASON: Yes, thank you very much. I'm used to standing up in court so --

HEARING OFFICER FRANK: That's fine.

MR. MEASON: You get in trouble if you don't stand up upstairs. As the Board knows, the Illinois Legislature created the Adjusted Standard mechanism. It is kind of a middle ground between a formal rule making proceeding and the more informal variance which was strictly not a rule making endeavor.

The main difference between those two options was one was permanent relief and basically a company had its own regulation written into the regulations with its own name, and the other one was a piece of paper, really wasn't -- public

didn't know much more about it unless they went down to the Board and did the research and it was limited in length. It was not something that could be set in stone for years and years and years to come. There was a definite time frame to that.

And so Illinois Legislature created this option kind of in between the two, and the Illinois Legislature provided statutory criteria to qualify for an Adjusted Standard. Those criteria are in Section 28.1 of the Act. Real briefly, factors relating to the Petitioner that are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation. The existence of those factors justifies an Adjusted Standard. Request standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule, and the Adjusted Standard is consistent with any applicable federal law.

Section 28.1 also refers to another section of the Act, Subsection A of Section 27. Subsection A of 27 lays out a number of other criteria such as particular contaminant sources in

geographic areas, character of surrounding land uses, zoning classifications and a technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. In a nutshell, those encompass the standards that are applicable to whether a company would qualify for an Adjusted Standard under the statute.

During the upcoming hearing days Swenson Spreader believes the evidence will show that with regard to substantiality and significantly different factors relied upon by the Board in adopting the general regulation that there are such factors that pertain to its industry. First, evidence will be presented that the primary consumers of Swenson products are government agencies themselves, from local municipalities to the federal government. Those are the primary purchasers either directly or indirectly of Swenson Spreader products.

The governmental procurement processes oftentimes requests not only a certain type of product but also a particular color and even times specify particular paint manufacturer and

particular paint number. When you obtain the material safety data sheet or MSDS for those what I will call specialty paints, Swenson Spreader is oftentimes confronted with paints that are above Illinois' regulatory standard of 3.5 pounds per gallon of volatile organic material. I'm speaking very slowly here for the benefit of the court reporter who I did not have a chance to make up a cheat sheet for her and I apologize.

HEARING OFFICER FRANK: She's actually -- she does a lot of Board hearings so she's probably okay. She'll let you know if she's not.

MR. MEASON: So Swenson Spreader is caught between a rock and a hard place right from the get go. It's supplying government agencies with the products it wants. Some of those government agencies are the City of Chicago and Illinois DOT. Evidence will be presented that Illinois DOT has put formal requests for proposals on the market requesting particular paints that are above the Board's 3.5 pound per gallon regulation.

Swenson Spreader has a choice. It can either stay in business and bid and try to successfully bid on those projects or it can not

bid on them or it can try to register an exception. Government agencies know what they want, that's why they specify a particular paint and a particular paint color. They don't want an exception. From a common sense standpoint, Swenson Spreader knows they will not generally be competitive if they don't give government agencies exactly what they call for. That's the first particular circumstance facing Swenson Spreader that it qualifies to substantially significantly differs from the factors relied upon by the Board in promulgating regulation.

The second one is with regard to simply the technology of the paint industry. The Board will receive evidence that there are limits to resins and pigments technology. Paint companies themselves generally are not in the resins and pigments business. They rely on entities called resin houses for their raw materials. They then work a lot of magic that I cannot pretend to do justice to on my own right now, and we have a witness who will testify to that later today.

They do reformulate most of Swenson's requirements but they have not been able to

reformulate all of them because the technology simply isn't there. Again, Swenson is caught between a rock and a hard place. It doesn't produce the paints, must rely on the paint manufacturers. The paint manufacturers will testify that technology in certain circumstances is not there.

Third, Swenson Spreader is basically what is known as a job shop. It does not have any particular steady product line that they produce on a daily, weekly basis. All of their production is a result of filling orders for government agencies. They experience great variability in their production runs. One week they might be producing for the State of Arizona, the next week they might be producing for Illinois DOT. The types of products produced, the numbers of products produced, whether they're painted, unpainted, the type of steel used, type of primer used are all variables and Swenson Spreader needs some level of flexibility.

There will also be evidence presented to the Board during the hearing days that if Swenson is granted its requested Adjusted Standard, and

I'll make a point right now, the petition has spoke of what I'll call a tiered -- a tiered request. The first year Swenson had asked for a 5.25 pounds per gallon based on a monthly average and after one year to go down to a 5.0 pounds per gallon VOM monthly average.

Over the ensuing months and working with their major paint supplier, Tioga, T-i-o-g-a, Coatings Corporation, Swenson Spreader and Tioga have come to the joint conclusion that they could support a slight rationing down of that standard to the first year being 5.0 pounds per gallon VOM and the years after that, 4.75 pounds per gallon VOM. So I'll make that distinction for the record right now, and that is not contained in the petition that's currently on file with the Board.

Swenson Spreader believes the evidence will show that these factors, among others, justify an Adjusted Standard. Now, will this Adjusted Standard, if granted, cause, according to the statute criteria, an environmental or health effect substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability? The Board will

receive evidence that we are in -- that Swenson Spreader is located in Ogle County, Illinois. Ogle County, Illinois, according to the Rockford, Illinois, EPA office records dating back to 1988, has never seen an excedence (phonetic) or violation of the National Ambient Air Quality Standard for ozone which is currently 0.12 parts per million.

Board will also receive evidence that Ogle County is part of a larger Air Quality Control Region, AQCR, of several counties, and going back to as far as 1988, the limit of local Illinois EPA records in Rockford office, the entire AQCR has never had a single excedence or any violations of the ozone NAAQS.

You also receive evidence that the two surrounding AQCRs, one that is in Illinois and part of Wisconsin has never had excedences or violations from 1988 to present of the ozone NAAQS. And the other surrounding AQCR, which extends slightly west into Iowa, the Illinois portion of that AQCR has never had any excedences or violations of the ozone NAAQS although there have been two excedences in the Iowa portion of the NAAQS some years ago but there have never been any violations of the Iowa

portion of the AQCR for the ozone standards.

US EPA has recently issued a proposed regulation for ozone in particular matter. That proposed standard is 0.08 parts per million. I'm simplifying it. There are other calculation criteria that go into that but for simplicity purposes it's 0.08 parts per million. That is not yet set in stone. The public comment period is still open. A lot of politics are going to be involved. I'm sure there are going to be plenty of lawsuits too no matter what US EPA decides to do.

Illinois EPA has already done studies looking at the 0.08 parts per million standard and has determined that Ogle County will remain in what is called attainment status with the ozone NAAQS at the proposed level. It is Swenson Spreader's position and we believe the evidence will show that there will be no environmental or health effects substantially and significantly more adverse than the Board considered in adopting the regulation.

Next criteria is whether the Adjusted Standard requested would be consistent with any applicable federal law. We believe the evidence will show that the Clean Air Act is the applicable

federal statutory body in this area. The Clean Air Act as designed by Congress requires implementation of reasonable and available control technology or RACT on areas that are not in attainment, meaning nonattainment status, and also applies it to areas to maintain such a status, and Congress and the US EPA have interpreted that provision also to include areas that are in attainment but would contribute to nonattainment of a neighboring jurisdiction.

As I've stated a little while ago, all the surrounding AQCRs in this region, except for an Iowa portion of the very extreme western region, have never had an excedence or a violation of the ozone NAAQS dating back to at least 1988. When Illinois promulgated its regulation back in the early '80s, it relied on a document that was generated by US Environmental Protection Agency regarding miscellaneous metal parts and products. The Board will receive evidence that that document is the source of the 3.5 pound per gallon standard. Illinois EPA adopted it in totality for the entire State regardless of a county's attainment or nonattainment status, and that US EPA cautioned numerous places in that original document

that it was putting together hundreds and hundreds of industry groups under the miscellaneous metal parts and products category that simply it was not reasonable to do individual industry specific studies to determine what a proper control level would be and that the State should view this as guidance and to look at industry specific factors because various technologies would not work from industry to industry with regard to this particular broad category.

In short, there is no federal requirement that 3.5 pounds per gallon standard be applied to sources in attainment areas that have never had an ozone excedence or ozone violation noted and for which US EPA, the courts nor Illinois EPA has ever identified as contributing to other local nonattainment areas such as that in Chicago or Milwaukee.

Finally, the one additional criteria from Section 27 A talks about the technical feasibility and economic reasonableness of measuring or reducing a particular type of pollution. The Board on many occasions has been faced with either a site special rule making request or an Adjusted Standard

petition regarding this particular section, Part 215, Subpart F that is under discussion today.

Companies such as John Deere, National Can, Road Master and others have argued that whatever technologies were that they were going to impose were economically unreasonable. Many of those companies cited a State of Illinois study of 1981 by the Illinois Institute of National Resources that found for this particular industry group in attainment areas that the average cost per ton for VOM abatement would be $1,032. The Board will receive evidence that of the various technologies examined by Swenson Spreader, all of the potential costs are far beyond $1,032, even taking inflation since 1981 into consideration.

Swenson Spreader believes it qualifies for an Adjusted Standard and looks forward to the opportunity to get more in detail later in the proceeding. Thank you.

HEARING OFFICER FRANK: Miss Sawyer.

MS. SAWYER: As stated by -- good morning, my name is Bonnie Sawyer. As stated by Petitioner, Petitioner is seeking an Adjusted Standard from Subpart F of 35 -- Title 35 of the Illinois

Administrative Code Part 215. This subpart applies to coating operations. In this Adjusted Standard proceeding pursuant to Section 28.1 Petitioner has the burden to prove its operations are substantially and significantly different than that contemplated by the Board in adopting the rule of general applicability.

In Adjusted Standard proceedings the Illinois Environmental Protection Agency is required to file a response with the Board recommending that the Adjusted Standard petition be granted or denied. In the instant case, the Illinois EPA is recommending that the Board deny the petition of the Louis Berkman Company doing business as Swenson Spreader Company because Swenson has failed to establish that Adjusted Standard relief is appropriate.

Specifically, the Illinois EPA recommends denial for the following reasons: Swenson has failed to establish that compliant coatings are not available for its use. Second, Swenson has failed to establish that control equipment is not technically feasible nor economically unreasonable -- nor economically reasonable.

Third, Petitioner has presented no evidence to justify the broad across-the-board standard it is requesting. And finally, Petitioner can use powder coatings for a large percentage of its coating operations and, in fact, has offered to use such powder coatings.

The significance of powder coatings is that they have no volatile organic material emissions from them. Petitioner's ability to use powder coatings is significant because this will lower Petitioner's VOM emissions to somewhere between 9 to 12 tons annually. This emissions level is well below the applicability threshold in Subpart F of Part 215. This means that Petitioner has the -- that Petitioner's ability to use compliant coatings on its remaining operations or Petitioner's ability to use add-on control equipment is of no significance in this proceeding as it would no longer be required to do so.

It cannot be stressed enough that Petitioner is not only able to use powder coatings for about 70 percent of its operations but has, in fact, offered to do so. Petitioner continues to maintain that it needs an Adjusted Standard because

certain customers of its specify the use of noncompliant coatings and continues to assert that the use of add-on control equipment is economically prohibited. In reality, Petitioner intends to use powder coatings which will bring it into compliance with Subpart F of Part 215 by lowering its emissions to well below the applicability threshold for the rule.

Interesting enough, Swenson has not put this position forth before the Board in this proceeding. Petitioner continues to request an Adjusted Standard and suggests that they cannot use compliant coatings. Because the Agency believes that Petitioner can use powder coatings and the Agency knows that Petitioner has, in fact, offered to use powder coatings, the Agency believes that Adjusted Standard relief is inappropriate for this facility as it does not need to have an Adjusted Standard. For these reasons the Illinois EPA ardently maintains that Swenson's Adjusted Standard petition be denied. Thank you.

HEARING OFFICER FRANK: Mr. Meason, you want to call your first witness.

MR. MEASON: Yes, I'd like to call Mr. Robert

Balogh.

ROBERT A. BALOGH,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MEASON:

Q. Good morning, Mr. Balogh. Would you please state your name and spell it for the record.

A. Robert A. Balogh, B-a-l-o-g-h.

Q. Thank you. Who is your employer, Mr. Balogh?

A. Meyer Products.

Q. And what is your position with Meyer Products?

A. Executive vice president.

Q. How long have you been an employee of Meyer Products?

A. 21 years.

Q. How long as executive vice president?

A. Three months.

Q. Three months. What are your duties as executive vice president of Meyer Products?

A. I run Meyer Products, all phases. They report to me.

Q. Ever heard of an entity called the Louis Berkman Company?

A. Yes.
Q. Could you describe what the Louis Berkman Company is.
A. The Louis Berkman Company is a privately held holding company consisting of several companies, Meyer being one of them.
Q. And where is Louis Berkman Company headquarters?
A. Steubenville, Ohio.
Q. Do you know how many entities compose the Louis Berkman Company?
A. I believe there's six or seven companies.
Q. Is a company called Swenson Spreader one of those?
A. Yes.
Q. How many Louis Berkman Companies operate in Illinois?
A. Just Swenson Spreader, one.
Q. Could you describe the relationship, if any, between Meyer Products and Swenson Spreader.
A. Swenson and Meyer are both parts of the Louis Berkman Company. Swenson reports through Meyer and then we report to the Louis Berkman Company.
Q. Operationally reports through you.

A. Through me.
Q. Do you exercise day-to-day control over Swenson Spreader?
A. No.
Q. And who does that?
A. Mark Swisher.
Q. What was -- you said you'd only been executive vice president for three months.
A. Yes.
Q. Is there a president of Meyer Products?
A. Yes.
Q. And what is his name?
A. Jim Ciula (phonetic).
Q. And is Mr. Ciula currently active in the company?
A. Well, he's out right now. He's had heart problems.
Q. Has he been hospitalized several times recently?
A. Yes, majority of the last three months.
Q. So you are, you are the person at Meyer Products now.
A. Yes.
MR. MEASON: I have nothing further. Reserve

the right to recall on cross.

CROSS EXAMINATION

BY MS. SAWYER:

Q. Okay. Mr. Balogh, Meyer Products' relationship through Swenson Spreader is that you are just another division of the Louis Berkman Company; is that correct?

A. Swenson is another division but they report through Meyer.

Q. To the Louis Berkman Company?

A. And we report to the Louis Berkman Company.

Q. Okay. Now, do you or does Mr. Ciula from Meyer Products, do you have some title within Swenson Spreader?

A. I don't.

Q. Does Mr. Ciula?

A. I don't know.

Q. Okay, but you would -- you are the corporate -- the Louis Berkman Corporate, I don't know, intermediary with Swenson Spreader.

A. Yes.

Q. If Swenson Spreader is going to make a major capital acquisition, do they require approval from the Louis Berkman Company?

A. Well, first they require approval from us, from Meyer.
Q. Oh, they require approval from Meyer?
A. Yes.
Q. And does Meyer have to obtain further approval through the Louis Berkman Company?
A. Yes.
Q. Has -- are you aware if Meyer or the Louis Berkman Company has given approval for Swenson Spreader to install a powder coating system?
A. Yes.
Q. Yes, they have --
A. Yes.
Q. -- given corporate approval? Just a couple questions about the operations at Meyer. What do you do at Meyer Products?
A. We make snowplows.
Q. Snowplows, and do you use powder coating operations there?
A. Yes.
Q. On about what percentage of your products do you use the powder coating operations?
A. 95 percent.
MS. SAWYER: I have nothing further at this

time.

HEARING OFFICER FRANK: Do you have anything else?

MR. MEASON: Yes, I do.

REDIRECT EXAMINATION

BY MR. MEASON:

Q. Mr. Balogh, you stated on cross examination that corporate approval has been given for powdered coating; is that correct?

A. Yes, to go ahead with it and look into it, yes.

Q. To look into it.

A. Yes, we haven't finalized any plans yet.

Q. Okay, so no green light, no corporate green light has yet been given to the definite installation of powder coating.

A. That's true. We're waiting for permits and there's testing to be done on the paint itself.

Q. Have architectural drawings been prepared?

A. Yes.

Q. Have you -- has the architect received quotations yet for contractor work?

A. No, no, we have to wait for permits first.

MR. MEASON: No further questions.

HEARING OFFICER FRANK: Okay. Miss Sawyer, do

you have anything else?

MS. SAWYER: Just a couple quick questions.

RECROSS EXAMINATION

BY MS. SAWYER:

Q. When you refer to permits, what type of permits are you referring to?

A. Part of our proposed area is in a floodplain and we're waiting for permits from, I think it's the natural resource -- Department of Natural Resource.

Q. Have you applied for an air construction permit from the Illinois EPA? Are you aware whether --

A. Not that I'm aware of.

Q. At the powder coating operation at Meyer Products, how large -- does this -- how large can the equipment that's coated in this system be, do you know? Is there a size limitation?

A. For our system?

Q. Uh-huh.

A. Yes.

Q. And what is that?

A. The way it's constructed, it would be 10 foot long by 18 inches in width and 40 inches in height.

Q. And when did you install that equipment?

A. Approximately two years ago.

MS. SAWYER: I have no further questions.

HEARING OFFICER FRANK: Anything else, Mr. Meason?

MR. MEASON: No.

HEARING OFFICER FRANK: Thank you, Mr. Balogh.

THE WITNESS: Thank you.

HEARING OFFICER FRANK: Please call your next witness.

MR. MEASON: Miss Frank, at this time I would like to move into evidence Swenson's petition on file with the Board to be the record in this hearing.

HEARING OFFICER FRANK: You have several petitions. There was an amended and some additional --

MR. MEASON: Right, they're accumulative basically. I don't know -- I brought a copy but the Board already has all this, so I don't know if you want --

HEARING OFFICER FRANK: I actually would like to mark it so that it's part of all the exhibits, so. Is there any objection to the petition being marked as Exhibit 1?

MS. SAWYER: No.
HEARING OFFICER FRANK: Okay. The petition is marked --
MS. SAWYER: I just have a question. Is that the accumulative petition?
MR. MEASON: Yeah.
MS. SAWYER: With the three amendments?
MR. MEASON: That -- if I remember correctly, the third amendment or the second amendment was nature of the substitute so the old pages are gone.
MS. SAWYER: But it has the third amended --
MR. MEASON: What she has right there is the latest and greatest up-to-date petition through our last file.
HEARING OFFICER FRANK: There's no objection?
MS. SAWYER: (Shakes head.)
MR. MEASON: But there wouldn't be, like, two Page 45s or whatever.
HEARING OFFICER FRANK: Good, thank you.
MR. MEASON: At least I hope not.
HEARING OFFICER FRANK: It will be marked as Petitioner's Exhibit 1 and it is the Adjusted Standard Petition.
MR. MEASON: Just for the record I'd like to

note that there is a section in there that has exhibit tabs when it was filed, and those exhibit tabs range from A through R. In the course of this proceeding I'll refer to Petitioner's Exhibit 1, Item A, for example, to reference Exhibit A tab.

HEARING OFFICER FRANK: That's great.

MR. MEASON: Next like to call Mark Swisher.

HEARING OFFICER FRANK: Please swear the witness.

MARK SWISHER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MEASON:

Q. Good morning, Mr. Swisher. Would you please state your name and spell it for the record.

A. Mark A. Swisher, S-w-i-s-h-e-r.

Q. And who's your employer?

A. Swenson Spreader.

Q. And what's your position with Swenson Spreader?

A. General manager.

Q. How long have you held that position?

A. Approximately a year and a half.

Q. And how long have you been with Swenson

Spreader?
A. Two years.
Q. What's your duties as general manager?
A. At that facility I manage all functions.
Q. You're responsible for all functions?
A. Responsible for all the functions there, yes.
Q. And does that include environmental health and safety issues?
A. Yes, they fall under my umbrella.
Q. They fall under your umbrella. Does that signify that you don't take primary operational responsibility for that?
A. That's correct.
Q. And who does?
A. I've passed that on to Terry Rielly to handle that for our company.
Q. Could you go into a little bit of your prior professional experience before Swenson Spreader.
A. Well, going back to where I graduated, I have a BS in industrial engineering from Purdue University.
Q. What year was that?
A. 1977. If you want to know previously where I've worked, I've worked at various companies. I

started work with Rockwell International, moved on to Caterpillar Tractor in engineering and planning. I've worked for a company local here, White Sundstrand in Belvidere.
Q. What did you do for Rockwell?
A. I was a design engineer, design process, industrial engineer.
Q. And how about for Sundstrand?
A. For White Sundstrand I was a manufacturing engineer.
Q. Have you taken any graduate work?
A. Yes, I have. I've most recently -- had been working towards a master's degree in engineering through NIU.
Q. That's Northern Illinois University?
A. Northern, yes.
Q. What is Swenson Spreader?
A. Well, Swenson Spreader is a company that manufactures equipment for the snow and ice control industry, mainly what you would call salt spreaders, salt, sand, chip spreaders.
Q. Have you ever heard the term original equipment manufacturer before?
A. Yes.

Q. And could you explain what that is.
A. Well, it's a company that manufactures equipment usually from the ground up, from bare metals, manufacturing through to the finished product and sells or distributes to other people.
Q. Does it signify something more than mere assembly, actually fabrication?
A. Usually does, yes.
Q. And would that original equipment manufacturer designation apply to Swenson Spreader?
A. Yes.
Q. Mr. Swisher, I'm going to hand you a document from Petitioner's Exhibit No. 1, Item A. I'll show it to the -- showing it to Miss Sawyer.
HEARING OFFICER FRANK: Got it.
Q. If you could take a look at that document, please. Do you recognize those documents?
A. Yes.
Q. Could you describe what those documents are.
A. Basically what these are, these are our specification sheets that we hand out to our dealers or our people wanting to purchase our equipment to describe what our products are.
Q. Are there photographs in those documents?

A. Yes, there are.
Q. And what do those photographs describe?
A. Well, photographs that we have here show the variety of equipment that we manufacture and actually shows some of them setting in place on bodies on -- dump bodies on trucks.
Q. And does Swenson manufacture the dump bodies on trucks?
A. In essence we do have a new product line that can be considered a dump body, yes, but historically we are not a dump body manufacturer.
Q. I'll take those documents back, thank you. Could you go into a little detail as far as what type of actual processes and activities Swenson Spreader undertakes when it's producing its salt spreaders.
A. Just to give you an idea of what we do, we take basically raw materials of various makeups, sizes, shapes, bring those in and through a fabricating department we will cut the link, cut the size, punch holes, shear angles to make finished components. We take these components then and we assemble them in our welding department to come up with a finished weldment which we call finished

weldment. We take those products as finished weldments, we remove them through a cleaning process, a painting process. Once painted, you know, the various weldments would be assembled together along with purchase parts to come up with the finished product which would then be rolled outside and either stored or shipped out to the final destination.

Q. I'm going to show you a potential exhibit. Showing it to Ms. Sawyer, the Hearing Officer. Can you examine that, please. Do you recognize that particular material?

A. Yes, I do.

Q. Could you tell the Board what that particular material is.

A. Well, this is hot rolled bar material that has two holes punched in it.

Q. Do you get that type of material in Swenson Spreader?

A. This is the primary material that we use in the manufacture and the making of our products.

MR. MEASON: Miss Frank, I would ask to move this bar stock into evidence.

HEARING OFFICER FRANK: Any objection?

MS. SAWYER: No.
HEARING OFFICER FRANK: Then it's admitted.
Q. And that bar stock that's been introduced --
MR. MEASON: Petitioner's Exhibit 2; correct?
HEARING OFFICER FRANK: Yes.
Q. It's Petitioner's Exhibit 2, is that representative of the bar stock you get in the plant?
A. Yes, it is.
Q. Does Swenson Spreader machine the surface in any way to get the -- let me back up. Could you describe the outer surface of that bar stock.
A. Well, it has a typical hot rolled surface condition. It's not a highly polished-type condition. It has what they call a scaly condition. It's typical of a hot rolled piece of material.
Q. Is it common to have some type of corrosion or rust to some extent on it --
A. It can, yes.
Q. -- when you get it in your plant?
A. It can, yes.
Q. And is it coated with any type of material typically?

A. Most times not, no.
Q. Sometimes it does have a coating?
A. Depending on where you purchase and who the supplier is it could come in with a slightly oily coating.
Q. Slightly oily coating?
A. Yes.
Q. Okay. Could you describe Swenson Spreader's market. Who do you supply products for?
A. Majority of our products, nature of, you know, the size and the market that we're in are provided to various types of government agencies. It might be a state, a county, federal, a city, airport entity.
Q. Government agencies.
A. That's correct.
Q. And how do you sell them your products?
A. The majority of our work is done through our distributor network.
Q. And what does that signify, your distributor network?
A. We have various distributors throughout the country and they would work with the requirements of all the various agencies local to them, and

through that process they would bid on certain requirements that they would have. That would generate orders to us and we would build those, ship those to our distributors and they would supply the needs of the local agencies.

Q. So is it correct to say the local agencies -- have local agencies issued any type of specification or request for proposal that the dealers are acting upon?

A. Normally what they do is they would come up with a request for proposal or request for quotation which would include a list of specifications of what this equipment is supposed to meet.

Q. And do those specifications at times require particular color paints?

A. Yes, they do.

Q. And do those specifications at times require particular paint manufacturers?

A. Yes, they do.

Q. And do those specifications at times require particular paint manufacturer numbers?

A. That's correct.

MR. MEASON: Mr. Swisher and Miss Frank, Miss

Frank, I'd like to direct your attention generally to Plaintiff's Exhibit No. 1, Items D1 through D4 and E as containing -- just generally containing various requests for proposals and MSDS sheets in response to those proposals.

Mr. Swisher, I'm going to hand you a document --

HEARING OFFICER FRANK: He can use this one if that's easier.

MR. MEASON: Okay. Well, keep me on track.

I've handed you a document. Do you recognize that document?

A. Yes, I do.

Q. What is it?

A. It's from Kaffenbarger Truck Equipment who is one of our distributors and it's basically asking for a quotation from -- a request for quotation from the City of Dayton.

Q. And does that -- for lack of a better term I'll call it a request for proposal, RFP. Does that RFP specify the type of paint?

A. Yes, it does.

Q. And what is that?

A. The paint they're calling out is a DuPont

Centari Paint No. 6847 A, yellow.
Q. Okay. I'll take the document back, please.
HEARING OFFICER FRANK: That is Exhibit D1, Petitioner's Exhibit 1.
MR. MEASON: I'm going to the very next sheet now.
Mr. Swisher, I'm handing you another document. Can you examine that, please. Here's the second page, two pager. Do you recognize that document?
A. Yes, I do.
Q. Could you tell the Board what that document is.
A. This is a material safety data sheet from DuPont for Product 6847 AM, yellow.
Q. Is that the product that was specified by the City of Dayton in its RFP?
A. That's correct.
Q. And does that MSDS sheet specify the VOC or VOM content of that paint?
A. Yes, it does.
Q. And what is that VOM content?
A. VOM content is 4.3 pounds per gallon.
Q. 4.3 pounds per gallon.

A. Right.
Q. And what is the Illinois standard?
A. 3.5.
Q. Thank you. I'm now turning to D2. Mr. Swisher, I'm going to hand you a document. Would you examine it, please. Do you recognize that document?
A. Yes, I do.
Q. Could you tell the Board what that document is.
A. Okay, this is a specification from the State of Illinois for request for quote for a dump body for a hopper-type spreader.
Q. And does Illinois specify the type of paint to use?
A. Right, yes.
Q. And what does it specify?
A. A DuPont No. LF1021 AM.
Q. Okay. Mr. Swisher, I'm handing you another document.

Ms. Sawyer, it's just the next several pages under D2 but not the entire.

Can you examine that document, please, Mr. Swisher. Do you recognize that document?
A. Yes, I do.

Q. And what is that document?
A. This is a DuPont MSDS sheet for Paint No. 1021 A, alternate one.
Q. And is that the point specified by Illinois in its RFP?
A. Yes.
Q. Does the MSDS list the VOC content of the paint?
A. Yes, it does.
Q. And what is that?
A. It's 4.3 pounds per gallon.
Q. So the MSDS sheet for Illinois is 4.3 pounds per gallon.
A. That's correct.
Q. And what is the Illinois regulatory standard?
A. 3.5 pounds per gallon.
Q. Thank you. Mr. Swisher, I'm handing you another document, if you could examine it, please.
That's the remainder of D2, Miss Sawyer.
Could you examine that document.
A. Yes.
Q. Do you recognize that document?
A. Yes, I do.
Q. Could you tell the Board what it is.

A. This is a DuPont MSDS sheet for Paint No. 1021 A, alternative No. 2, lead free.
Q. And is that the paint number specified in Illinois' RFP?
A. Yes.
Q. And is the VOC content specified?
A. Yes, it is.
Q. And what is that?
A. It's 4.5 pounds per gallon.
Q. So alternative two and the -- what -- again, what is the VOC content in the MSDS?
A. 4.5 pounds per gallon.
Q. What is Illinois regulatory standard?
A. 3.5 pounds per gallon.
Q. Thank you. In the RFPs that -- let me back up. The request proposals that you examined here today from the City of Dayton, Illinois DOT, are they representative generally of what Swenson receives then?
A. Yes.
Q. When a governmental agency specifies a particular paint, how often is it that they allow an alternative or a substitute? Is it normal that they at least put in the RFP that a substitute is

potentially available?
A. Well, the spec clearly spells out what they're looking for if that's what you're asking, so you either put down that you will match the specification or you take an exception.
Q. Take an exception to it meaning you don't give them exactly what they want.
A. That's correct.
Q. And how do you go about taking an exception?
A. When you would submit a bid on a certain product you would list -- basically list your price for this bid specification and you would list all the exceptions that you would be taking.
Q. And all those exceptions is not what that particular agency wanted.
A. Well, I mean, they want what they have on their specification.
Q. And you're not giving that to them in taking an exception.
A. Oh, that's right.
Q. From a business perspective do you have an opinion as to whether it's advisable to file these exceptions as opposed to giving the government agencies exactly what they specify?

A. Well, it's never advisable to put an exception down because that is one way for you to be thrown out of the bid process.
Q. In favor of who?
A. Well, if you take an exception you would be thrown out and someone else that did not take an exception would be allowed to take that particular bid.
Q. Is it -- the government agency has specified in these cases particular paint because it has a track record with those paints; would that be correct?
A. Majority of the time what happens is that yes, they are buying probably a truck from someone, say GM or something, and they would spec out the exact same paint that General Motors would have put on that truck. That's what happens a lot of times and then they might again put that on their specification.
Q. So for example, the City of Dayton or Illinois have developed the specification and RFPs many times to match the original truck or whatever the equipment is going to be placed on.
A. Yes.
Q. So that the exact same paint --

A. Right.
Q. -- on -- okay. Mr. Swisher, do you know generally why we're here today?
A. Yes, I do.
Q. And why is that?
A. Well, we're here seeking an Adjusted Standard from the Illinois EPA ruling stating, I guess, that we have to meet the 3.5 pounds per gallon VOC emissions rule.
Q. Is that 3.5 rule always applicable? Does it depend on any other factors to be applicable?
A. As far as the 25, you have to be over 25, I guess, tons emissions during a year, and once you've exceeded that limit, then you have to be 3.5 pounds or not allowed to use 3.5 pounds per gallon paint.
Q. And is Swenson Spreader above 25 tons a year --
A. Yes, we are.
Q. -- VOM emissions?
A. Yes.
Q. Could you describe -- let me strike that.
Is Swenson Spreader's production on a weekly or monthly basis the same from one week to the next or one month to the next?

A. No.
Q. Is there a great variability in production runs?
A. Yes, there are.
Q. Could you explain to the Board why that is.
A. What happens in our business is depending on who we have won bids from or who our dealers are winning bids from, you'll be just running a large variety of types of products through at various times. At one point in time we might win a bid from Arizona, say, for 50 Large B box units and they'll require a specific paint, and so during one month we might be only painting Arizona's versus, say, our -- you know, the next month we might be building a lot of stainless steel units which require very small amounts of paint or we might have a mixture where we are doing some specification or we would be also filling in with our standard product coloring which is Omaha orange which is below 3.5 pounds per gallon VOCs, so tends to be -- you know, depending on what bids we are winning, it greatly affects our production runs.
Q. Would it be correct to say that Swenson Spreader is a job shop?

A. I would say so, yes.
Q. Does Swenson Spreader coat all its products?
A. No.
Q. What type of products does it -- under what conditions would it not coat the product?
A. We have products that are requested to be made out of 304 stainless steel which we do not paint in most instances.
Q. Are there instances where you would only prime as opposed to prime and paint a product?
A. That's correct. We -- there's probably a couple instances. Sometimes a specific agency might request that we only use a primer coat. We also have a product line that we produce called an APB, an all purpose body, which we send out only primed to the dealer distributor and they would finish coat that to match the particular chassis body that they're going to be assembling to.
Q. And when you send this APB, all purpose body line that is primed only to the dealers, the dealers themselves paint?
A. That's correct.
Q. What -- how do the dealers store your product after it leaves your facility?

A. Oh, because of the size of the product -- it is a dump body. It is very large and majority of them would end up setting these things outside until they're ready to install it on the truck.
Q. What length of time might it sit outside?
A. Could be anywhere from three to eight months from what I've heard depending on the turnaround, depending on truck deliveries and things like that, so yeah, there's a chance they can sit outside.
Q. Now, has that presented any particular problems for Swenson in choosing a primer for that particular line of product?
A. Yes, it has.
Q. And what problems are those?
A. Well, what it means is you can't use a very general lightweight primer because they're not made to withstand being set outside in the rain, the snow and the sun and everything else that degrades that, okay? And what happens is if you don't -- if you use a real lightweight-type primer it ends up either coming off or rusting through, or whatever, after a short period of time, so we've had to look into some alternatives and find something that has a better outdoor storage life. And all the ones

that we've ran into that will allow you to have any type of outdoor storage life tend to have more VOCs than those so you go to, like, an epoxy type of a primer.

Q. And generally speaking, are those primers -- is it one primer you use or are there more than one primer?

A. We use one primer for our APB which we store outside, right.

Q. And is that particular primer in compliance with the 3.5 pound per gallon --

A. No, it's not.

Q. And the reason being that -- what is the reason?

A. The reason is is that we're putting that on there so we store it out in our yard before we ship it and dealer stores it in his yard, that you don't end up basically rusting the body which means you have to bring it in for all kinds of surface preparation after that.

Q. There's a question I should have asked you a little while ago. What's the smallest size product that Swenson makes?

A. Size-wise?

Q. Size-wise.
A. Probably like a 2 by 3 by 8 foot.
Q. 2 by 3 by 8 foot, and what would be the largest product that Swenson Spreader makes?
A. We've made some that are 21 feet long, 7 feet wide, approximately 7 feet tall.
Q. So quite a --
A. Yes.
Q. Quite a difference in product lines.
A. That's finished goods.
Q. Right, right. What has Swenson Spreader done to try to come into compliance with the 3.5 pound per gallon VOM regulation?
A. Well, we've tried to and looked into a lot of different things. One of the first things that we did is we converted over to some electrostatic paint guns from what they had previously been using to try and get a better transfer efficiency.

Along with that we went into and purchased and installed some in-line heaters which won't allow us to use different types of paints, like high solid-type paints that are a little thicker and you don't have to use solvents to thin those out to spray them. The heating action would tend

to thin them so that you can spray those.

We've spent a lot of time and worked with, you know, and talked to a lot of different people about reducing the VOCs in the paints that we are using, you know, the ones we have control over and the ones that we have some alternatives on. And we do talk to, you know, Tioga which is one of our people that we deal with and various others.

Q. Mr. Swisher, I'm going to hand you a document. This is from Petitioner's Exhibit 1, Item H, the first three pages. Would you examine that document, please. Do you recognize that document?

A. Yes, I do.

Q. Could you explain to the Board what that document is.

A. Well, this is just literature for the high pressure electrostatic spray gun that we use currently.

Q. That you installed.

A. Right, that we installed.

Q. Thank you. Mr. Swisher, I'm going to hand you another document which are the next two sheets also in Item H. Examine those, please.

A. Okay.

Q. Do you recognize those documents?
A. Yes, I do.
Q. Could you tell the Board what those documents are.
A. Okay. Well, this is an invoice showing that we ordered and received an in-line heater system from Dove Equipment.
Q. In-line heater, does that mean the heated lines that you referred to before?
A. Yeah, heats the paint up for spraying.
Q. What's the advantage of heating it up?
A. The idea is it thins the paint out through the heating action so that you can spray it, you know, eliminating the alternative of having to thin it with solvent or a thinner.
Q. Does it have something to do with viscosity?
A. Right, so it lowers the viscosity.
Q. So by lowering the viscosity through heat you can change your solvent use; is that correct?
A. That's correct, right.
Q. And you change your use upward or downward?
A. You definitely reduce the amount of solvent used which means you'd reduce the amount of VOCs that we would emit.

Q. And what's the advantage -- going back to the high efficiency spray guns, what's the advantage of moving to the high efficiency spray guns from what you had before?
A. Well, the idea of those is that you want to reduce the amount of paint that you're using so -- which would cause you to reduce your emissions. This type of gun will allow you to, I guess, increase your transfer efficiencies so you can use less paint and get a good coating which means you're not overspraying a lot. You're not spraying material that's actually just going on the floor or going down into the paint pit.
Q. Now, you mentioned real briefly that you've worked with companies like Tioga to reformulate paints. Could you give a little more detail on what your efforts have been.
A. Well, what we've done, I mean, once we realized where the problems were that we've had, we've contacted anybody and everybody that we could to talk about, you know, how do we go about doing this, and Tioga was very, very helpful. And they were at one time, still are, one of our vendors and explained the situation and they've been very

helpful in reformulating the paints that we, I guess, call our standard -- color standard paints that we can utilize in our operation to come to change those to more of a high solid, low VOC-type paint.

Q. Did you contact any other paint companies also?

A. Oh, we've talked with a variety of other ones. We've talked to DuPont, Sherwin Williams, Rustoleum, you know.

Q. So national companies --

A. Right.

Q. -- in addition to Tioga.

A. In addition to also other local manufacturers of paint.

Q. Who is your major paint supplier at present?

A. Right now it would be Tioga.

Q. And is there a reason for that?

A. The main reason is that they've worked very well with us and they're willing to work on lower volumes of paint and reformulating versus some of the other companies and the larger companies tend to, you know, have a standard product, this is it, take it or leave it, and they're not very responsive, you know, to our needs.

Q. So for a bigger company, a national company, it's just not worth -- is it possible that one of their considerations is it's just not economically worth their while to engage in RFPs on your behalf?

MS. SAWYER: I'm going to object to this question. It calls for hearsay. I don't think that's within Mr. Swisher's knowledge.

MR. MEASON: Mr. Swisher has already testified that they have contacted Sherwin Williams and DuPont and he has knowledge of what the results of those contacts were and I'd like to allow him to answer.

MS. SAWYER: Now he's trying to say what they want to do and what they don't. I think that's a little bit different.

MR. MEASON: I'll rephrase the question.

HEARING OFFICER FRANK: Okay, please do.

Q. Did you contact DuPont at any point in time regarding reformulating paints?

A. Yes, we did.

Q. And was DuPont receptive to reformulating paints to your requirements?

A. No.

Q. Did you contact Sherwin Williams with regard to

reformulating paints?
A. Yes.
Q. Was Sherwin Williams receptive to your reformulation requests?
A. No.
Q. Did you contact any other national paint companies that you can recall?
A. Rustoleum was the only other one that we've really talked to.
Q. And was Rustoleum receptive to your reformulation requests?
A. No.
Q. Thank you. Has Swenson been successful in reformulating all of its standard spray coatings?
A. Yes, we have.
Q. And standard meaning what?
A. What we would call standard would be a color that a -- we would get an order and they would spec out mainly a color versus a specific paint-type name brand or designation.
Q. Has Swenson been successful in working to reformulate all its specialty spray coatings?
A. No.
Q. And for Swenson a specialty coating would be

what?
A. Well, that would be one where certain specs for a customer would call out a given type of paint or a given name brand, such as maybe a certain number of a Centari or a Dulux or an Imron or Sunfire, if you will.
Q. Now, those names you just gave, Centari and the others, Imron, are those trade names?
A. Well, they're -- I guess you would call that a trade name of a paint that DuPont would supply some of them and Sherwin Williams supplies Sunfire. They're just a standard line of paints that they produce.
Q. When Swenson Spreader approached regional or local paint companies such as Tioga, was Tioga -- was Tioga receptive to those reformulation requests?
A. Yes.
Q. Was Tioga always your major paint supplier?
A. No.
Q. Is it today?
A. Yes, it is.
Q. And why is it today?
A. Well, mainly because they have worked with us

on our standard coatings which are the ones that we, you know, use the highest volumes of, you know, to work with us on trying to come up with some different formulations that would meet the 3.5 rules.

Q. So they reformulated.

A. Right.

Q. Did Swenson Spreader look at any other alternatives to try to come in compliance with the 3.5 pound per gallon regulation?

A. Yeah, we tried and looked into, you know, other things, yes.

Q. And what were they?

A. Well, along the way we've looked at, you know, I guess other paint formulations. I mean, there's other avenues to go by. There's water based paints. We did some testing and tried to see if there's a way that we could utilize those but we didn't have a lot of success because of adhesion problems and the type of materials that we utilized. We looked at another approach, I guess, of eliminating the VOCs and we got a quote for an afterburner, a fume oxidizer, whatever you want to call it, to burn off the emissions that would be

coming out of our paint booth.
Q. Mr. Swisher, I'm going to hand you a document from Petitioner's Exhibit 1, Item I, ask you to examine it. Do you recognize that document?
A. Yes, I do.
Q. And could you tell the Board what that document is.
A. This is a proposal quotation from Brule, Incorporated, for an afterburner or a fume oxidizer, as they call it.
Q. And Swenson Spreader requested that quotation?
A. That's correct.
Q. And what's the date of that quotation?
A. May 16th, 1995.
Q. Does that quotation list a size of the system?
A. Yes, it lists the flow at 32,000 SCFM which matches up to the flow of our -- out of the paint booth in our paint system.
Q. Okay. Is there a price listed on that quotation?
A. Yes, there is.
Q. And what is the price?
A. The price for the fume oxidizer itself is $203,720 just for the equipment.

Q. Thank you very much. Mr. Swisher, I'm going to hand you a document. I'll show it to Ms. Sawyer and to the Hearing Officer.

Mr. Swisher, can you examine that document, please.

A. Okay, yes.

Q. Do you recognize it?

A. Yes, I do.

Q. And could you tell the Board what that document is.

A. It's a blueprint from Binks Manufacturing who manufactured the spray booth for Swenson Spreader.

Q. Does this blueprint specify the capacity or size of the afterburner?

A. Yes, it does.

Q. And what does it say?

A. It says total --

MS. SAWYER: Excuse me, the size of the afterburner? As I recall that print wasn't about that.

Q. Well, this is what? This is down draft?

A. This is down draft.

Q. Let me ask the question again. What is this blueprint of?

A. It is the blueprint from Binks Manufacturing who manufactured the down draft spray booth for Swenson Spreader.
Q. Does the blueprint specify capacity of the down draft?
A. Yes, it does.
Q. And what is that capacity?
A. The capacity is stated as 32,000 SCFM.
Q. Does the blueprint state any number of fans in that down draft?
A. Yes, it does.
Q. And what is that number?
A. Says two required, total of two required, each one at 16,000 SCFM.
MR. MEASON: Thank you. I would move that this document be entered into evidence.
HEARING OFFICER FRANK: Is there any objection?
MS. SAWYER: (Shakes head.)
HEARING OFFICER FRANK: Then the blueprint of the down draft spray booth is marked as Petitioner's Exhibit 3.
Q. Mr. Swisher, you previously stated that you have a bachelor's degree from Purdue in industrial

engineering; is that correct?
A. That's correct.
Q. And you've done some graduate work at Northern Illinois University, also in engineering; is that correct?
A. That's correct.
Q. And you've worked for, if I recall correctly, Rockwell, White Sundstrand, Caterpillar and Swenson Spreader in your professional career; is that correct?
A. That's true.
Q. And you're currently the general manager of Swenson Spreader?
A. That's correct.
MR. MEASON: Ms. Frank, I would move that Mr. Swisher be recognized based on his professional background and education as an opinion witness.
HEARING OFFICER FRANK: Is there any objection?
MS. SAWYER: No.
HEARING OFFICER FRANK: Do you want to ask him any questions in voir dire?
MS. SAWYER: Can I do that on cross?
HEARING OFFICER FRANK: Yeah, I didn't know if

you want to voir dire his credentials.

MS. SAWYER: No, that's fine.

HEARING OFFICER FRANK: Then he is admitted -- or qualified, I guess. You can't be admitted.

Q. Based upon the blueprint of the down draft and based upon the existing paint booth at Swenson Spreader, do you have a professional opinion as to the appropriateness of the quotation for an afterburner system? I believe it was 32,000 cubic feet a minute from Brule. Do you have a professional opinion on the appropriateness of the size of that quotation?

A. I guess what I would say is that yeah, you would have to match the air flow from the paint system to the afterburner, you know, otherwise if you did not it would be undersized and you wouldn't be able to burn off all the VOC emissions coming from the system. So yeah, it does match and in my opinion that's what it would have to do.

Q. As a professional engineer?

A. Yes.

Q. Thank you. When you -- when Swenson Spreader received the Brule quotation in 1995, did Swenson immediately act upon that and install it?

A. No, it did not.
Q. Why was that?
A. Well, one of them was because of the high cost involved, also in discussions with other people that had installed them, looked at, you know, annual operating costs, plus just all the problems that could be related to that type of technology.
Q. Do you need water?
A. I'm fine. Just got a frog in my throat.
Q. So what did Swenson Spreader do then to try to find a solution to its noncompliance problem?
A. Well, the initial tact was and talking to some of the initial people involved, in any investigation the tact was to reduce our emissions below 25 tons as best we could so that we would not have to meet that 3.5 pounds per gallon rule. That was the tact strategy, if you will. And the way we approached it was yes, we're going to go in and we are going to eliminate as many VOCs, VOMs as we could through reformulation which is what we have tried to do.

We also changed our practices for solvent use, basically have eliminated, I guess, the solvent that we use for thinning by going to heated

lines. So in that respect we have reduced emissions by doing that also.
Q. Were these efforts enough?
A. No.
Q. Why?
A. Well, there's a couple things that happened. One was we did end up reducing the emissions but at the same time we've had a pretty steady increase in business and change in product lines that, you know, the reductions we did achieve we offset by higher paint usage so we're not able to reduce enough to get below the 25-ton rule.
Q. So despite your working with paint companies and despite your installation of heated paint lines and high efficiency spray guns, you weren't able to come in compliance.
A. That's correct.
Q. Roughly when did Swenson kind of come to this realization that this wasn't going to be enough?
A. Probably the end of '95, towards the end of '95, 1995.
Q. So end of '95 Swenson realizes something else has to be looked at; is that correct?
A. That's correct.

Q. So what did Swenson do then?
A. Well, one thing we did is we hired someone that was more of a specialist in the, I guess, legal field as far as EPA concerns, because, you know, we did have some problems, to get some guidance. And we also worked with the people at Meyer in starting to look at and evaluate what we could do as far as powder coating.
Q. With regard to your legal avenues available, did you start considering some type of waiver, for lack of a better term, a waiver?
A. That was another option that was put forth to us, that, you know, there was other -- I guess other avenues to get through the situation, and I think one of them was the Adjusted Standard which I think was brought up to us in some of the meetings that we had had probably back in '95.
Q. With regard to powder coating, why did Swenson -- why is Swenson potentially interested in powder coating?
A. Well, there's a lot of reasons. One is that there aren't any VOCs, VOMs involved in powder coating, so that's an immediate reduction right there. Two, it's a very, very good, durable,

strong type of coating so there's some benefits to be had by the coating, but also a reduction in VOMs.

Q. So some type of product enhancement aspect to it?

A. Well, there's definitely an enhancement to your product and something that people would look very positively on as far as an enhancement, not only to the product but also customers would look at it also.

Q. Is powder coating considered to be a more durable coating than -- generally speaking, than water based or high solids?

A. Yes, it is.

Q. Did Swenson Spreader solicit bids on powder coatings?

A. Yes, we have.

Q. Did Swenson Spreader solicit more than one bid, do you know?

A. Can't answer that.

Q. The bid that's being contemplated for the powder coating system, was there a definitive dollar amount that was put forward for the powder coating system itself?

A. As I understand it, we've come up with a budgetary number.
Q. Planning purposes?
A. Right.
Q. Rough planning number?
A. Right.
Q. And what is that number?
A. It's approximately $750,000.
Q. And that's just -- what does that entail?
A. That would be just the powder coating system itself.
Q. Can Swenson Spreader's existing facility house that powder coating system?
A. No, it cannot.
Q. Has Swenson looked into the cost of facility erection to house the powder coating system?
A. Yes, we have.
Q. And did Swenson receive any type of cost estimate?
A. A budgetary type number we have, yes.
Q. Strictly for planning?
A. Right.
Q. Rough planning purposes?
A. Rough planning purposes.

Q. And what is that cost?
A. It was initially $750,000.
Q. And do you know roughly how that cost was derived?
A. Well, what you tend to do and what builders can do is they know what the square footage is and there's -- you can make a standard assumption of what the approximate cost per square foot would be and you multiply the two together and you come up with a general cost for a building.
Q. So the -- for planning purposes, what is the combined cost of the powder coating system and the facility to house the powder coating system?
A. 750,000 plus 750,000 is $1.5 million.
Q. And that's just a rough planning figure?
A. Right.
Q. Where does that project stand today?
A. Right now we've -- well, we have actually done quite a bit of work. We have hired an architect to draw up some plans for the building. He's actually done quite a bit of work working with some engineering firms as far as doing test borings for the areas where we're looking at building to decide what type of footings, foundation, et cetera, need

to be put into that building which are definitely going to affect the cost. Like I said, he's to the point where he is, I think, ready to almost go out and put out for a bid.

Q. Any particular problems that have come up at all with this potential project?

A. Well, where we're located, we're located near a creek which has some areas that are considered close to or in the floodplain so in reviewing that and the engineers reviewing that, they found that we needed to submit to get a permit, I guess, from the division of natural resources for construction in a floodplain.

Q. And has Swenson Spreader received approval from the Department of Natural Resources?

A. No, we have not.

Q. And are there zoning or other issues that still have to be addressed at some point in time?

A. Right, the actual -- once those things are resolved you have to go through the building permit process to get a building permit, so those things had to be reviewed also.

Q. And has Swenson Spreader applied for an Illinois EPA construction permit yet?

A. I can't answer that.
Q. The powder coating system being contemplated by Swenson Spreader, can it powder coat all of Swenson's products?
A. No.
Q. What types of products can it not coat?
A. We have a couple of problems. One is that a lot of our products are very, very large, might use different sizes and things for the materials, so those would not be able to be run through this specific system just because of the size, general shear size of the products. The other ones are as -- we have certain ones that require a specific primer coating so on those also we would have to run through a wet coated system.
Q. Wet coated meaning regular spray?
A. Regular spray coating as we currently do it now.
Q. Can powder coating -- can you use powder coating on plastics and motors and things like that?
A. That's, I guess, another problem is you can't do it on every single part of a smaller product line because you have motors and bearings and

plastic parts, as you stated, that you can't run through the curing oven of a powder coat system so those would also have to be wet coated.
Q. When Swenson Spreader went forward and started looking at powder coating, did Swenson Spreader have to make a decision as to the size or amount of product that it was willing to have powder coated or the system set up to powder coat?
A. Yes.
Q. And how was that derived?
A. Well, we tried to look at all the different product lines that we had and try and size the system so at least we could get possibly 70 percent, somewhat, of our product. We just looked at our higher volume-type products and the sizes that related to it and that's how it was sized.
Q. And is there a specific size that corresponds with this 70 -- this rough 70 percent figure?
A. Well, it's related basically to one of our product lines. We make large V boxes and it was sized to a 10 foot maximum size of a V box, so anything 10 foot and below we could powder coat, try to powder coat. Anything above that would not fit through the system.

Q. And based on Swenson's rough analysis of the demand for your product, you've estimated that somewhere in the neighborhood of 70 percent of your product is 10 foot and below.
A. That's correct.
Q. Do the governmental RFPs, the request for proposals that you receive, currently do they permit powder coating or do they ask for powder coating?
A. No, they don't. I haven't seen one.
Q. And so what will Swenson Spreader have to do to sell a powder coated product to an agency that's not asking for a powder coated product?
A. We'll have to work with our distributors and the end users to have that approved or added to the specification in those cases where they're spelling out the type that's required.
Q. Does Swenson Spreader believe that that's going to happen quickly?
A. No.
Q. So you're going to have to work at it for awhile to achieve some measure of success.
A. Yes, yes, we will.
Q. In the time period between when -- if and when

Swenson institutes powder coating and government agencies begin to start asking for powder coated products in their request for proposals, will Swenson use powder coating up to its capacity at the plant?

A. I'm not sure I understand the question.

Q. I'll rephrase it. You stated previously that Swenson's going to have to work to change governments to permit powder coating --

A. Right.

Q. -- on their products and you stated that you were not optimistic that that was going to happen quickly.

A. That's true, right.

Q. So if Swenson decided to install powder coating there would be a certain production rate that is theoretically possible through the powder coating system; is that correct?

A. That's correct.

Q. But would it be correct to say that the demand for powder coating for Swenson Spreader products, powder coated products, would not be up to the maximum or preferred utilization rate of the new system?

A. You could assume, yeah. You could say that, yes.
Q. And that's a situation that would last for some unknown period of time.
A. That's true, depending on how long it takes to, like I say, convert over more and more of the specifications to that, to the powder coating.
Q. And during that time frame how will Swenson coat its products?
A. Well, those that you can't will still have to go through the current paint system which uses solvent based paints.
Q. And there's no guarantees that Swenson is ultimately going to be successful in changing these government agencies' minds to include powder coating in their request for proposals.
A. That's true.
Q. So this is strictly a gamble on Swenson Spreader's part, an educated guess, that there is likely success --
A. That's true.
Q. -- at some point in time in the future.
A. Right.
Q. And Swenson Spreader doesn't know how long

that's going to be.
A. Couldn't make a good estimate, no.
Q. Did Swenson Spreader ever -- you stated earlier that Swenson Spreader got a quotation for an afterburner back in 1995. Did Swenson Spreader revisit that possibility?
A. Revisit?
Q. Yeah, go back and look into afterburners again?
A. Oh, yes, we did.
Q. And when was that?
A. Approximately a month ago we went back.
Q. And who did you go back to?
A. Well, we went back to the person who we had the original quotation from, Brule.
Q. I'm going to hand you a document. First I'll show it to Ms. Sawyer. Mr. Swisher, I'm handing you a document, ask you to examine it, please.
A. Okay, yes.
Q. Do you recognize that document?
A. Yes, I do.
Q. Would you tell the Board what that document is.
A. This is basically an updated proposal from Brule for a Model FB 1270 fume oxidizer.

Q. Is that the same model that was quoted by Brule in 1995?
A. Yes, it was.
Q. Is there a capacity listed in that document for that model afterburner?
A. Yes, there is.
Q. And what is that capacity?
A. It's 32,000 SCFM.
Q. Is that the same capacity as was quoted in the 1995 afterburner?
A. That's correct.
Q. What is the price, if any, that's listed in that quote?
A. The price for the basic system is $168,965.
Q. That's actually a little cheaper than what you -- the quote in 1995.
A. That's correct.
MR. MEASON: Madam Hearing Officer, I'd ask that this document be moved into evidence.
HEARING OFFICER FRANK: Any objection?
MS. SAWYER: No. I'm wondering if we could get a copy of that document. Do you have an extra copy?
MR. MEASON: That's my only copy but we can go

some place and get one done at the break.

HEARING OFFICER FRANK: It's admitted into evidence and hopefully at lunch we can get another copy made.

Q. Based upon this second quotation from Brule, did Swenson Spreader calculate the total cost of the system?

A. Yes, we did.

Q. And do you recall the specifics of those calculations?

A. Not all the specifics, no.

Q. If I handed you a document, would you be able to refresh your recollection?

A. Yes.

Q. I'm going to hand you a document, show it to Ms. Sawyer first. Here's a copy. Here's a partial copy of the quote. That's not the whole thing.

I'll hand you this document. If you could examine it, please.

A. Okay, yes.

Q. Do you recognize that document?

A. Yes, I do.

Q. Did you prepare that document?

A. Yes, I did.

Q. Does it refresh your recollection?
A. Yes, it does.
Q. Do you have a better recollection of your calculations of the total costs of the second quotation?
A. Yes, it is. What we came up with was basically adding everything together as we had done previously to come up with just a total what it would take to install this system, and it consisted of $315,000 for purchasing the equipment which included the heat exchanger, a thousand dollars to be operated, so much -- thousand dollars for the foundation, $1100 for the handling and erection, $16,000 for piping, $570 for electrical hookup, $10,000 for performance test, $5,000 for contingencies which totaled up to $351,891.
Q. Where did you get these various figures from? How did you arrive at these figures?
A. Majority of them we went out and solicited a quotation from someone to find out what it would cost.
Q. I'm going to hand you a document, show it first to Ms. Sawyer.
MS. SAWYER: Are you introducing these

documents as exhibits?

MR. MEASON: Ultimately it is my intention to introduce them as exhibits, including what Mr. Swisher has in front of him now.

Mr. Swisher, I'm going to hand you a document. If you'd examine it, please.

A. Okay, yes.

Q. And what is that document?

A. It's a budget --

Q. Excuse me, excuse me. Do you recognize that document?

A. Yes, I do.

Q. Could you state to the Board what that document is.

A. It's a budget quotation from Miller Engineering for doing all the piping and duct work for installing the afterburner.

HEARING OFFICER FRANK: Can you spell that.

THE WITNESS: M-i-l-l-e-r.

Q. And does that quote list a price for the work?

A. Yes, it does.

Q. And what is that quote?

A. $16,390.

Q. And is that quote listed in your calculations

of the overall cost for the afterburner?
A. Yes, it is.
Q. And is it listed as $16,390?
A. Yes, it is.
MR. MEASON: Thank you. Off the record.
(A discussion was held off the record.)
Q. I'm going to hand you another document that Ms. Sawyer has already reviewed, and if you could examine it, please.
A. Okay, yes.
Q. Do you recognize that document?
A. Yes, I do.
Q. Would you tell the Board what it is.
A. It's a proposal from Concrete Systems to pour a concrete pad for this afterburner.
Q. Is there a price listed for that service?
A. Yes, there is.
Q. And what is that price?
A. It's $1,260.
Q. And is that price reflected in your cost calculations for the overall cost of the afterburner?
A. Yes, it is.
Q. And where is that reflected?

A. In the foundation cost.
Q. And what is the cost that you have put in your calculations?
A. We put in $2,000 for that cost.
Q. And is there a reason that you put in a higher cost than the bid?
A. We added some additional costs because this certain bid did not allow for any certain excavation or fill required.
Q. Specifically says that in the bid?
A. Right.
Q. And it was your engineering estimation that that type of work might be required?
A. Could be possible, yes.
Q. And so you added --
A. That's right.
Q. -- some money to cover that potentiality.
A. That's correct.
Q. I hand you another document that Ms. Sawyer has reviewed. Take a look at that document for me, please.
A. Okay.
Q. Do you recognize that document?
A. Yes, I do.

Q. Would you tell the Board what that document is.
A. It is a quotation proposal from Area Rigging for unloading and assembling and installing the incinerator unit.
Q. Is there a price listed in that quotation?
A. Yes, there is.
Q. And what is that price?
A. $1,150.
Q. Is that price reflected in your overall cost calculation?
A. Yes, it is.
Q. And what is the cost that you put in your calculation?
A. $1,150.
Q. With regard to the capital cost, the capital cost calculations, did those three bids constitute all the categories?
A. Not completely, no.
Q. Where did you -- could you go down the list and tell the Board where you obtained the various amounts from starting at purchase price.
A. Purchase price was a quotation from Brule. The freight cost that we put in was in discussions with

our shipping foreman who had contacted various freight companies. He got a verbal estimate of what it would cost shipping it from Chicago area to here.

Foundation was a quotation. The handling and erection was a quotation. Piping was a quotation. Electrical hookup, based on discussions with Brule and with our maintenance people, we made an estimate of the time required and came up with $570.

Q. Is that something you'd be doing in-house --

A. Yes, that's correct.

Q. -- to keep costs down?

A. That's correct.

Q. Instead of contracting it out.

A. That's true.

Q. Performance test was --

A. Came up with an average of some discussions that we had with some people we had contacted, plus also was in one of the, I think, reports that we had received from EPA that they had contacted other people and I took the average of those numbers to get $10,000 for the performance test.

Q. And contingencies?

A. Basically put something in there for something that maybe we had possibly overlooked in any of the above categories to try to cover that.
Q. So that's your engineering professional judgment?
A. We made an estimate, yes.
Q. Made an estimate of $5,000.
A. Right.
Q. And what is the total capital calculation?
A. It's $351,890.
Q. And that's strictly -- is it correct to say that's strictly the one-time cost of powder coating, purchase and installation?
A. That's correct.
Q. Were there other costs?
A. The other costs we looked at would be the annual operating costs.
Q. Now, where'd you get those annual operating costs from?
A. What we did was we used the manufacturers -- we broke it down to direct and indirect. The direct costs we put in were the maintenance and the fuel costs which came up to $203,589 per year based on information given from the manufacturer.

Q. Is there another category listed?
A. There's an indirect annual operating cost summary which came to $168,527 which I based all those numbers on EPA recommendations that we had received on a report February 25th, 1997.
Q. Was that February 25th, 1997 report the affidavit by Gary Beckstead attached to the Agency's response to our Adjusted Standard?
A. Yes.
MR. MEASON: Off the record.
(A discussion was held off the record.)
MR. MEASON: Back on the record.
I believe I misspoke a few minutes ago when I referred to the term powder coating when I was actually referencing the Brule's second afterburner quotation. Is it possible for the court reporter to go back and --
HEARING OFFICER FRANK: There's no need to do that if you just straighten it out on the record. They don't need to go back and strike it.
Q. Just to make that clear, Mr. Swisher, I'll be handing you a document I'm showing Miss Sawyer right now. If you could examine that document, please. Is that the document that you spoke of a

few minutes ago?
A. Yes, it is.
Q. Is that the document from which you obtained your bases for the cost calculations?
A. Yes, it was.
HEARING OFFICER FRANK: For the record, it's been marked Petitioner's Exhibit 9 and it is the affidavit of Gary Beckstead.
MR. MEASON: Off the record.
(A discussion was held off the record.)
Q. Mr. Swisher, could you share with the Board how you arrived at the various calculations for the second -- for Brule's second afterburner quotation, the overall costs, based on Mr. Beckstead's affidavit.
A. You're talking about the indirect costs?
Q. Indirect costs, yes.
A. I basically used his method of, I guess, information that he had used, the formulas he had used. It was stated on there that they were approved, came from an approved source as, I guess, budgetary-type concerns or estimates, and so I basically used the same format and formulas as he had done, just basically related it to the project

and the costs that we had at hand.
Q. So your figures are not identical to his.
A. No, of course not.
Q. Because they relate to Swenson's specific cost quotations that they had to consider.
A. That's true.
Q. What were your total direct annual operating cost calculations?
A. It came to $203,589.
Q. What is the biggest component of that cost?
A. It's the natural gas fuel cost.
Q. Could you share with the Board how you derive that particular figure.
A. Basically I got with the manufacturer just to double-check exactly what, you know, this piece of equipment was rated as, and it was rated at, as I recall, 50 million BTUs per hour, and in talking with them a number of times and having them recheck and recheck, that is indeed what they said it is rated at. And in converting that to therms, I just made simple calculations from BTUs to therms per hour and made a calculation based on 500 therms per hour, 16 hours per day, five days per week, 50 weeks per year, 25 -- an average of 25 cents per

therm, gives you an annual fuel cost.
Q. Of --
A. Well, for a system with a heat exchanger it came to $200,000 per year.
Q. The cost per therm that you used, where did you get that figure from?
A. Well, one, that was kind of the standard that was used in the previous proposal that we had submitted as an average, and in looking at ours, it falls in the range that we paid for per therm also.
Q. You also -- did you also look at indirect annual operating costs?
A. Yes, I did.
Q. And on what did you base your calculations?
A. Like I said, all those calculations were based on information provided in the affidavit that Gary Beckstead had prepared previously, and I used his same percentages and formulas to produce those numbers.
Q. Gary Beckstead is an Illinois EPA employee to your knowledge?
A. As far as I know, yes.
Q. Could you go over the various categories of indirect annual operating costs.

A. Okay. Well, we had -- for overhead we had $2,154; administrative charges came to $70,378; property taxes to 3 -- $35,189; insurance, $3,519 and capital recovery at $57,287, came to a total of $168,527 per year.
Q. Did you attempt to figure out what the annualized cost per ton of required VOM reduction would be for this afterburner system?
A. Yes, I did.
Q. And could you share with the Board how you derived your calculations.
A. Well, the basic calculation would be to take the tons of emissions for 1996 as an estimate, which were 32.1 tons, multiply it times 81 percent minimum efficiency, which was a requirement stated in, we've got here, Section 215.205 B1, and you multiply those two together and you have come up with 26 tons required reduction in emissions.
Basically I took the sum of the annual costs, the direct, plus the indirect, which was 372,116 divided by the 26 tons, gives you $14,312.
Q. So the $14,312 is the annualized cost per ton of required VOM reduction in your calculation?
A. Yes.

Q. And in your judgment as a professional engineer, are your calculations and the bases for those calculations based upon sound engineering principles?
A. Yes.
MR. MEASON: I have nothing further subject to recall.
HEARING OFFICER FRANK: Let's go off the record.
(A discussion was held off the record and a recess was taken at 12:55 p.m. and proceedings resumed at 1:45 p.m.)
HEARING OFFICER FRANK: Okay. Let's go ahead and go back on the record. Mr. Swisher, I remind you we're still under oath.
MR. MEASON: Off the record real quick.
(A discussion was held off the record.)
HEARING OFFICER FRANK: Let's go back on the record. We're discussing Exhibits 5 through 9 and did you want to go ahead and move those and then you can correct the one that -- assuming there's no objection.
MR. MEASON: Do you want to correct it before or after?

HEARING OFFICER FRANK: Why don't we go ahead and -- first of all, are there going to be any objections because otherwise we'll take them individually if there are going to be objections?

MS. SAWYER: No.

HEARING OFFICER FRANK: Why don't we go ahead and admit them and we'll correct them.

MR. MEASON: How many are there?

HEARING OFFICER FRANK: 5 through 9.

MR. MEASON: Madam Hearing Officer, I would move that Petitioner Exhibits 5 through 9 be admitted into the record.

HEARING OFFICER FRANK: And there's no objection from the Agency?

MS. SAWYER: No.

HEARING OFFICER FRANK: You had a correction to make on one of the exhibits.

MR. MEASON: Mr. Swisher, did you see an error on one of those exhibits?

THE WITNESS: I don't know which exhibit that is.

HEARING OFFICER FRANK: It is Exhibit 5.

THE WITNESS: On Exhibit 5, the Brule thermal oxidizer quotation --

MS. SAWYER: The quotation from Brule, this is what you're referring to?

THE WITNESS: This is the actual summary sheet.

MR. MEASON: His calculations.

MS. SAWYER: What Exhibit number?

HEARING OFFICER FRANK: 5.

THE WITNESS: On the indirect operating costs, the administrative charges and the property tax charges were estimates. The actual calculation ended up being off. I just noticed that. I'm looking at -- the decimal place got moved so those costs are overstated.

MS. SAWYER: What are the --

HEARING OFFICER FRANK: We all want to know that.

MR. MEASON: Mr. Swisher, what would the proper figures be?

THE WITNESS: Without a calculator in hand, instead of $70,000 it would be 7 -- you'd be moving the decimal point one place to the left so it would be $7,378 and for the property taxes it would be $3,519.

MR. MEASON: Instead of?

THE WITNESS: Instead of $35,119.

HEARING OFFICER FRANK: I'm going to hand you a pen. Would you go ahead and write on that exhibit and correct it so in case someone doesn't find this transcript page when they're looking at it.

MR. MEASON: Bonnie, if I could get a copy of that from you because I gave you my copy.

MS. SAWYER: Oh, I didn't realize that, Jim. I thought it was an extra copy. We have notes all over it.

MR. MEASON: I'll get a copy from the Hearing Officer. That's fine.

THE WITNESS: It also affects another page on that same document, so should I go ahead and change that?

HEARING OFFICER FRANK: Please do. We can go off the record while he's changing that.

(A discussion was held off the record.)

HEARING OFFICER FRANK: Let's go ahead and go back on the record.

Mr. Swisher, can you tell us the corrections that you've made to the document.

THE WITNESS: On indirect annual operating cost summary the administrative charges were changed to $7,378. The property tax estimate was changed to

$3,519. The total was changed to $73,517 per year. And on the cost per ton of required VOM reduction, the indirect annual cost was changed to $73,517 with the total changed to -- of the total of the indirect, and the direct changed to 277,106 and the annualized cost per ton of required VOM reduction, that calculation was also changed. The annualized reduction was changed to $10,657.

MS. SAWYER: 10,000 --

THE WITNESS: 657.

MR. MEASON: What was that exhibit marked ultimately?

HEARING OFFICER FRANK: 5.

MR. MEASON: That's Exhibit 5.

THE WITNESS: Page 2.

MR. MEASON: And then what is Exhibit 6?

HEARING OFFICER FRANK: I'm going to read them all and identify them. Exhibit 5 is the Brule thermal oxidizer sheet. Exhibit 6 is the Miller Engineering document. Exhibit 7 is the Concrete Systems document. Exhibit 8 is the Area Rigging document, and Exhibit 9 is Gary Beckstead's affidavit and the attached documents. And those are all admitted with the corrections on Exhibit

5. Is there anything further, Mr. Meason?

MR. MEASON: No.

HEARING OFFICER FRANK: Okay.

CROSS EXAMINATION

BY MS. SAWYER:

Q. Good afternoon, Mr. Swisher. Could you describe your coating operations at your facility. For instance, do you have one coating booth?

A. Yes, we do.

Q. And is all of your coating done in that booth?

A. Yes.

Q. And that's for both if you have to coat motors and plastic parts?

A. Right, yes, it's strictly just a wet system.

Q. You characterized Swenson Spreader's operations as a job shop-type operation; isn't that correct?

A. Yes.

Q. And by job shop, do you mean that you essentially produce products to fill a specific order?

A. That's true.

Q. And essentially you would fill it -- be fulfilling that order just in time to ship it?

A. Yes.

Q. In your testimony you referenced a prime coat only operation, that you do some coating that's prime coat only. Is that something you manufacture on an adjusted time basis?
A. We do both. We do have orders that would come through for a specific order to be shipped right away. We do have -- we only have certain versions that we make and we might want to put into stock in our backyard, a common size which you would prime and stick out in our storage area.
Q. And why would you want to do that?
A. Because we only make so many common sizes and if we don't have the orders, rather than not produce anything or if you want to produce something to a forecast that you know that is going to be sold in a short period of time, we would possibly do that.
Q. Okay, so you're suggesting that to kind of fill time at the facility you may produce --
A. Yes.
Q. -- product to store.
A. That's true.
Q. When you ship the prime coat only to a -- I believe it's a dealer that you ship them to.

A. Right.
Q. Why is it that the dealer needs to store that equipment rather than just order it to fulfill an order, an immediate order?
A. Probably -- there's two ways that this could work. One is that they want to order and have it on hand based on something they see in the future, you know, they're speculating that they're going to win a bid. Two is that they would get the product in. They have to marry many, many products to come in to build a complete unit. Ours is one small portion of that whole bid so if ours gets in and, you know, a truck manufacturer is on strike and they're six months behind schedule receiving a chassis, it's going to sit there.
Q. And what percentage of your business is this prime coat only?
A. I would say -- currently it's a new product. Approximately say 10 percent.
Q. You said it's a new product. What product is this?
A. It's called our all purpose body.
Q. And I believe this was -- this is Attachment A to your Exhibit 1 -- to Petitioner's Exhibit 1. I

was just wondering if you could point out which product you're referring to.

HEARING OFFICER FRANK: For the record we need to --

MS. SAWYER: Is there a page number?

THE WITNESS: It is the one that says APB, all purpose body.

MR. MEASON: It's the second -- I believe it's the last two pages under Petitioner's Exhibit 1, Item A; is that correct?

HEARING OFFICER FRANK: Yes.

Q. And during your direct examination when you were referring to the dump body, is this what you're referring to?

A. That's true.

Q. Could I take that back. On your direct examination you stated that some of your products were made with hot rolled steel; isn't that correct?

A. That's true.

Q. And what products are those?

A. All of our products utilize hot rolled steel except those made out of stainless as far as I can tell.

Q. And what is that? I mean, how many are made out of hot rolled steel versus stainless?
A. I guess a rough -- I don't have the exact numbers in front of me at this point in time but a rough estimate might be 80 percent are hot rolled.
Q. And why is it that Swenson uses hot rolled steel for these products?
A. One, it's a very common material, easy to get. It's a material that has been used by other manufacturers. I mean, we are not the only person in this business and it's very competitive so you all utilize the same type of resources.
Q. Okay. I'm going to move ahead to your testimony on government contracts, and I believe you stated that they comprise the majority of your business; is that correct?
A. That's true.
Q. In Petitioner's Exhibit 1 on Page 4 -- just one second. Sorry, strike that question or that statement. I don't know if it made a question, but on Page 13 of Petitioner's Exhibit 1 it's stated that in 1995 government contracts comprised about 27 percent of your business.
HEARING OFFICER FRANK: Page 13?

THE WITNESS: Of which exhibit?
MR. MEASON: Just Page 13 of the text, referring to the second full paragraph on that page.
A. That's correct.
Q. And what are you referring to when you refer to that 27 percent on that page?
A. What the statement is is that approximately 27 percent of our paint usage in 1995 was related to special requests for paints other than standard type colors that we utilized.
Q. And in all of those instances was the paint that you're -- the specialized paint, was that a noncompliant coating?
A. I can't say. I don't have all that information in front of me but I would say that not all of it would be, no.
Q. So the 27 percent represents the portion of Swenson's business that is not fulfilled using standard coatings?
A. Correct.
Q. And the standard coatings are?
A. Are paints that we have some control under how they're formulated. They're not specified by any

agency that it has to be a DuPont, Imron, Centari, whatever.
Q. I guess I'm asking specifically what are your standard coatings, the actual coatings, do you know?
A. All of the different ones?
Q. How many are there?
A. I think approximately 11.
Q. And you stated that your standard coatings are all in compliance with the 3.5 standard; isn't that correct?
A. I believe so, yes.
Q. Mr. Swisher, did you sign the Title V application submitted to the Illinois Environmental Protection Agency?
MR. MEASON: Objection, beyond scope of direct.
MS. SAWYER: If I could give an offer of proof, it's just to really go over the same number. There's a number included in that application, a percentage.
HEARING OFFICER FRANK: I'm going to allow it. Go ahead.
Q. You did sign the application?

A. Yes.
Q. And in that application did you state that over the last several years the government contract specified coatings constituting approximately 21 percent of Swenson's coating usage? Do you recall -- if you don't recall --
A. I can't recall.
Q. Perhaps if I show you the application that would refresh your recollection.
A. Yes.
MR. MEASON: I would like to see it.
Q. Mr. Swisher, what I have here is not the complete application. I'll refer you to your signature page, first of all, and is that your signature?
A. Yes, my signature, yes.
Q. And you signed this on March 7th, 1996.
A. That's correct.
Q. Then if you would refer to this page, if you could just take a look at that.
A. Okay.
Q. In your Title V application did you specify that coating usage on government contracts specified of Swenson -- the portion of Swenson's

business that was comprised of government contract specified coating operations comprise about 21 percent of your business?
A. That's what it says.
Q. Thank you. Set that aside.
A. Approximately 21 percent.
Q. Okay. This is what's referred to as Exhibit D of Exhibit 1 of Petitioner's Exhibit 1 and it's No. 1 under Exhibit D. It's a quotation.
HEARING OFFICER FRANK: He's got it.
Q. Oh, okay. If you look at the second page of that quotation, it reads, all portions of the Spreader shall be DuPont Centori 6847, a yellow. What are the three words that follow that?
A. Or approved equal.
Q. Does this RFP, does that represent a bid that you were successful on?
A. I don't recall. I can't say for sure.
Q. So on the coating specification it provides a DuPont coating or an approved equal as what should be used to fulfill that.
A. That's true.
Q. I'm now looking at what would be No. 2 in that same section of Petitioner's Exhibit 1 and the

request for a proposal from State of Illinois Department of Transportation. If you turn to the second page of that specification, essentially it reads all parts normally painted shall be finished in a color complying with Department of Transportation paint specification serial number M 1487, DuPont No. LF 1021 AM or equal. Is that what that reads on that specification?

A. I don't have it.

Q. You don't have that page?

MR. MEASON: It's not in there.

THE WITNESS: I don't see it.

MR. MEASON: Under 2, go to Tab 2.

THE WITNESS: Now I have it. I'm sorry.

Q. If you look under general No. 1 --

A. Yes, okay.

Q. -- does it state that it should be a color complying with Department of Transportation paint specification serial number M 1487, DuPont No. LF 1021 AM or equal; is that correct?

A. That's correct.

Q. In fact, doesn't it say that the paint or the part shall be coated with a color complying with Department of Transportation's paint

specifications? It references color specifically.
A. That's true.
Q. Does it specify what coating you have to use?
A. I think it does by saying DuPont No. LF 1021 AM.
Q. Doesn't it say that that's supposed to be the color?
A. I don't think that is a color. That is a paint because that's related to DuPont material safety data sheet for a certain paint with an identity number of 1021 A, alternative one. That's what it says.
Q. Right. Could you read the first two lines -- or yeah, the first two lines of that No. 1 there.
A. All parts normally painted shall be finished in a color complying with.
Q. So aren't they indicating that the color is what must comply with DuPont No. LF 1021 AM?
MR. MEASON: Objection, it's quite clear what it says. It talks about particular national paint manufacturer, that particular manufacturer's paint number.
MS. SAWYER: I don't understand your objection. Was that testimony? I didn't

understand your objection. What is the basis for your objection?

MR. MEASON: Asked and answered.

HEARING OFFICER FRANK: I think that it's still unclear and I would like an answer to the question. They may be disagreeing with the answer but I would like to at least hear what the answer is.

A. If I was looking at this my impression would be I would go to DuPont, which is what we do, and say, hey, we were given this, here's the spec, how do you interpret that. They sent us a material safety data sheet saying this would be the paint we recommend and that is what we would do.

Q. Okay. Doesn't this No. 1 go on to say, a color sample of which will be furnished the successful bidder upon request? Doesn't it make that statement?

A. That's true. That's standard practice in every business I've ever been. They will give you a color sample so that you can match your paints to that sample.

Q. If you're using DuPont LF 1021 AM, what do you have to match it to?

A. We match it to that. That's what I'm saying. You have to get that paint and that is what they want you to verify that you are providing the right paint with the right color.
Q. Is DuPont No. LF 1021 AM a specific color paint?
MR. MEASON: I'm going to have to object. I believe the Agency's questions are going more in depth into paint chemistry than Mr. Swisher is able to answer.
HEARING OFFICER FRANK: I'm going to overrule you. If Mr. Swisher can't answer, then he can just state that he can't answer and if he can, I think it's a valid question.
A. I can't answer that question then.
Q. So you don't know if a specific DuPont numbered paint is a specific color?
A. That's correct.
Q. So this IDOT or Illinois Department of Transportation RFP requests a certain color paint or equal.
A. Okay, looking at this data sheet it gives you the number. I do not see a color, so my assumption is by reviewing this that they are telling you the

type of paint you need. They will send you the color chip to match the paint to that color.
Q. What paint are you matching if you're purchasing DuPont No. LF 1021 AM?
A. That is a type of paint.
HEARING OFFICER FRANK: Do you then add die?
THE WITNESS: I do not do that, no. We do not.
Q. Does DuPont do that?
A. DuPont would match that to the color chip just like you would do if you would go to your store and get a paint for your house.
Q. Okay.
MR. MEASON: Could we go off the record real quick?
HEARING OFFICER FRANK: Sure.
(A discussion was held off the record.)
HEARING OFFICER FRANK: Let's go back on the report. This conversation is not one that should be had off the record. At this point you have no formal objection --
MR. MEASON: I object. The Agency is attempting through its own lack of preparation, lack of understanding, to paint Swenson Spreader as lacking or having insufficient knowledge to contact

paint companies to solicit their paints from them.

HEARING OFFICER FRANK: I disagree and you're overruled. I think what is trying to happen here is the Agency's trying to ask questions. If your witness can't answer them, he can simply say that it's beyond the scope of what his knowledge is. It doesn't reflect on Swenson as a whole. It reflects that this witness can't answer their questions and maybe they can ask them of another witness.

And at this point I'm fairly confused about how the paint works and I think that it's worth this being on the record, because if I am confused by it, it's possible that someone at the Board may be confused by it, so I think these questions are useful.

MR. MEASON: I will recall my opening statement where I did state on the record that a representative of Tioga Coatings, a paint chemist, would provide testimony today.

HEARING OFFICER FRANK: And if Mr. Swisher can't answer it, then maybe Miss Sawyer will ask the same questions. I can't ask questions for her.

MR. MEASON: I would ask that the Agency

reserve these particular questions for the paint chemist.

MS. SAWYER: I think these questions are appropriate for Mr. Swisher. You've put him on as an expert, first of all, in industrial engineering in general. He is involved in Swenson's production of these products and Swenson is the company that coats these products. I think that it's appropriate to ask these questions.

As the Hearing Officer has pointed out, if he can't answer them, if he's unable, then -- you know, then he's unable and that's fine, but I think --

MR. MEASON: I think he's already stated on the record that he wasn't able to answer the questions and if continued along the same line of questioning.

HEARING OFFICER FRANK: He said he was unable to answer one question. He answered other ones, so I'm going to allow the questioning. If there's a specific objection to a specific question, then I will take it. If the witness doesn't have knowledge, then he just simply has to say that he doesn't have knowledge and I'm sure that they will

be reasked of another witness. Please continue.
Q. Mr. Swisher, do you know if you were successful in bidding on this particular request for proposal?
A. No, I don't.
Q. In general on bidding on these request for proposals, both of them said -- had a specific coating listed and then said or equal. When you respond or bid on such proposals, do you always specify the coating listed or do you at times suggest that you will use an or equal, something equal?
A. We have done both depending on availability.
Q. So you do fulfill some of the orders with a coating other than the ones listed on the specification.
A. And/or equal, yes, that's correct.
Q. And in those cases -- I'll strike that.

In your direct testimony you testified a little bit about powder coatings and you stated that they are a good and durable product and more durable than conventional coatings, I believe; is that correct?
A. That's my understanding, yes.
Q. And you also stated that they are considered a

product enhancement and would be viewed positively by your customers; is that correct?
A. Yes.
Q. If it's your understanding that they would be viewed positively by your customers, do you think there is going to be situations where you're going to be able to substitute the listed coating and the specification with a powder coating?
A. I can't answer that. I don't know.
Q. So when you say your customers view it positively, which customers are you referring to?
A. Well, the end users of the products that would get it I'm sure would be very happy with the quality.
Q. So powder coating is a higher quality coating and that was your testimony.
A. Yes.
Q. But you can't really speculate on whether any individual customer would accept a product with powder coating.
A. No.
Q. In your direct testimony you also referred to essentially there being a time frame if you use powder coating in the time that it would take for

Swenson to get these coatings accepted as an alternative to the listed coating in the specification.
A. That's correct.
Q. So you do anticipate that you will be able to in some instances be able to substitute powder coating for your listed coating.
A. I wouldn't say you could substitute it. What you would have to do, you would have to work very hard and work through the people that write the specifications to get them to look at and review and try and coax them into making that the specification.
Q. Do you have any idea how long this process may take?
A. No.
Q. Do you have any knowledge as to whether Meyer Products had to do a similar -- if Meyer Products -- let me strike that and start again.

Do you have any idea if Meyer Products had to convince customers that powder coating was something that was acceptable on their products?

MR. MEASON: Objection, calls for speculation. Mr. Swisher is not a Meyer Products employee. He's

a Swenson Spreader employee.

MS. SAWYER: Well, I don't think it calls for speculation, but as he isn't a Meyer Products employee, I just asked him if he had any knowledge on not something speculative but something that has already occurred since they've already installed powder coating.

HEARING OFFICER FRANK: I'm going to allow it.

A. No.

Q. In your testimony you stated that Swenson was considering using powder coating, in essence that they had evaluated that possibility.

A. Are evaluating, yes.

Q. And as part of this evaluation you've actually applied for permits to construct a new area or something like that, to house the powder coating system.

A. That's correct.

Q. And you've also had architects out at the facility to -- or an architect out at the facility to evaluate that?

A. That's correct.

Q. Isn't it true that Swenson Spreader has offered to use powder coatings in the context of an

enforcement proceeding involving the facility, has made this offer to the attorney general's office?
A. Can you re --
Q. Okay. Isn't it true that Swenson Spreader has offered to use powder coating in an enforcement action that -- involving the attorney general's office?
A. I guess I can't state for sure.
Q. Mr. Swisher, are you aware of the enforcement case, it's docketed as PCB 97 101?
A. Yes, I am.
Q. And are you aware that there have been communications with the attorney general's office in response to this or in relation to this enforcement action?
A. Yes, I am.
Q. And have you been copied on some of those communications?
A. Some, yes.
Q. But you said you're not aware that the company had offered to use powder coatings in this enforcement action.
MR. MEASON: Objection, misstates his answer.
MS. SAWYER: Okay. Could you read back his

answer.

(The requested portion of the record was read.)

MR. MEASON: Could the Hearing Officer rule on my objection.

HEARING OFFICER FRANK: I'm sorry?

MR. MEASON: I objected on the basis that her question misstated his answer.

HEARING OFFICER FRANK: His answer was basically that he didn't recall.

MR. MEASON: Correct.

HEARING OFFICER FRANK: So can you rephrase your question, Bonnie.

MS. SAWYER: Sure.

Mr. Swisher, you stated that you do not recall whether Swenson has offered to use powder coating in the context of the enforcement proceeding; is that correct?

A. That's true.

Q. I have in front of me a letter that was sent to the attorney general's office and you are copied on it and it does make this offer. Would this letter possibly refresh your recollection?

A. Yes, it would, I'm sure.

Q. You can read the whole thing.
A. Okay.
Q. Mr. Swisher, do you -- after reviewing this letter do you now recall that Swenson Spreader has offered to use powder coating in the context of this enforcement proceeding?
A. Yes, I do.
Q. And in the context of this enforcement proceeding, is Swenson Spreader maintaining that the system is capable of handling roughly 70 percent of Swenson Spreader's components?
A. I don't recall the exact numbers.
HEARING OFFICER FRANK: Miss Sawyer, do you want to reask the question now that he's looked at the document.
Q. Do you recall that within the context of the enforcement action Swenson Spreader is suggesting that the powder coating system is quoted as being capable of handling roughly 70 percent of Swenson Spreader's components?
A. That's correct.
Q. And are you aware that in the context of this enforcement proceeding Swenson Spreader has stated that the rationale behind Swenson Spreader's

commitment to use powder coating is the fact unlike other pollution prevention such as an afterburner, powder coating immediately would solve the Company's 3.5 pound per gallon VOM problems based on current production while affording great product quality improvement.
A. That's correct.
Q. Mr. Swisher, prior to this hearing -- to your knowledge, prior to this hearing had Swenson Spreader ever put forth the position that it was offering to use powder coating within the context of the enforcement proceeding in any pleading filed in this Adjusted Standard proceeding?
MR. MEASON: Could you repeat the question.
Q. To your knowledge has Swenson Spreader ever filed a pleading in this proceeding that put forth the fact that Swenson has offered to use powder coating within the context of the enforcement proceeding?
A. I don't recall that.
Q. If Swenson Spreader were to use powder coating for about 65 to 70 percent of its product based on its production levels in the last several years, would its emissions be in the range of 9 to 12 tons

per year?
A. I'd say approximately, yes.
Q. Mr. Swisher, during direct examination you testified about I believe it's Petitioner's Exhibit 2, which is a blueprint; is that correct? Is that Exhibit 2?
HEARING OFFICER FRANK: No, it's --
MR. MEASON: 3, I believe.
Q. Petitioner's Exhibit 2, which is a blueprint of the portion of Swenson Spreader's facility, specifically the coating that you currently use; is that correct?
A. That's true.
Q. And when was that coating booth installed?
A. To the best of my knowledge it was sometime in 1982.
Q. In Exhibit 1, and I'm not certain on what page but I could flip through and find it, Petitioner states that it cannot use the press line averaging provisions of 35 Illinois Administrative Code 215 -- I believe it's 207. 215 is missing from my book.
HEARING OFFICER FRANK: I have 215.
MS. SAWYER: Yeah, that's the right citation.

HEARING OFFICER FRANK: 215.207.
MS. SAWYER: Yes, 215.207.
Do you want me to flip through the petition and find that?
A. Maybe you could help me.
Q. Well, that's okay. If you would just look at this regulation. Is one of the reasons that you couldn't meet it, one of the reasons, that it only applies to coating lines constructed or modified -- or let's see. Oh, it does not apply to coating lines constructed or modified after July 1, 1997. You don't really know?
A. I don't know.
Q. Okay, that's fine. Moving back to Exhibit 3, I think you stated that the coating booth had two 16,000 SCFM down draft fans; is that correct?
A. That's correct.
Q. Which is a total down draft of 32,000 SCFM; is that correct?
A. That's true.
Q. Is the size or the 32,000 SCFM down draft used to keep the air flow in the booth below the lower explosive limitation?
A. I guess I can't say for sure. I don't know.

Q. Do you know why there is a 32,000 SCFM fan installed on the down draft of the coating booth?
A. Not directly, no, other than that it is designed to get a certain amount of air movement in the system.
Q. Based on your engineering knowledge, is the air flow of the booth to an extent, does it affect the lower explosive limit?
A. I would assume so, yes.
Q. And is lower explosive limit based or determined in part based on the VOM content of the coatings that are sprayed?
A. I don't think I'm really qualified to answer that.
Q. Okay. Mr. Swisher, in Exhibit A or Exhibit 1 which is your Adjusted Standard petition, you presented one cost for a recuperative thermal afterburner, one cost quotation; is that correct?
A. That's correct.
Q. And that quotation was from Brule?
A. That's correct.
Q. And then today you provided another cost quotation also from Brule; is that correct?
A. That's true.

Q. And this is also for a -- I don't have a copy of it in front of me. May I see exhibits -- I just want to make sure. It's not in this. It's right there.

Well, in exhibit -- Petitioner's Exhibit 4, the cost quotation is for the same type of system as in the original quotation; is that correct?

A. That's correct.

Q. Mr. Swisher, did you contact any other companies for a quotation on add-on control type of equipment?

A. We did not get any true quotations from anyone else, no.

Q. Did you -- so that's the only quotation. You didn't get a quotation from Regenerative Thermal Oxidizer?

A. We did not go through the whole quotation process. We've, you know, tried to talk to different people and it was the cost that we were informed of were in the same range, so we stuck with something that we knew something about, the quotation that we had and decided to get it requoted, see if it -- indeed it was the correct

quotation.
Q. And you went back to the same company to get it requoted?
A. Yeah, same guy that we had. He was most familiar with our process.
Q. Did the person who quoted you from Brule come out to Swenson Spreader's facility?
A. Yes, he did.
Q. And on how many occasions did he come out?
A. At least one that I know of.
Q. I just want to ask a couple questions about Exhibit 5 which is your cost calculations. On No. 1, capital cost summary, the purchasing price that you have included includes a heat exchanger; is that correct?
A. That's correct.
Q. If you would look to Exhibit 1 in your original quotation from the afterburner, it's Exhibit I.
MR. MEASON: Item I in that.
A. Okay.
Q. I believe it's on the second page, third page. Could you go down from the -- go down to where it says value of heat recovered from air to air heat exchanger.

A. Yes.
Q. And go down to where it says the second to the bottom line. Isn't it true that Brule quoted you a total savings of $41,250 if you use the heat exchanger on that original quotation?
A. That's what they stated, yes.
Q. Moving on to Item 2 of your -- of Petitioner's Exhibit No. 5, you have estimated natural gas usage at 200,000. Does that include or is that based on a 95 percent destruction efficiency for the unit?
A. That's true.
Q. And if you move to the next page, when you estimate annual costs per ton of required VOM reductions, that figure is based on an 81 percent control; is that correct?
A. That's correct, per Section 215.205 B1. That's what it said you're supposed to use the way I understood it.
Q. In your natural gas usage, did you include any type of -- did you factor in any type of heat value -- strike that question. In your natural gas usage did you factor in the heat value of the VOM destroyed?
A. I don't understand the question.

Q. Is it your understanding based on your engineering knowledge that you would get -- recover heated value based on VOMs destroyed in this system?
A. I would assume, yes, you could because you're burning, but most of the heat is generated through the process of using the natural gas to create the heat to burn whatever VOCs are going through the system.
Q. So you said that yes, there would be some heat value.
A. Some minute amount, yes.
Q. Did you factor that into this calculation?
A. No, I did not.
Q. It's my understanding that this is a recuperative system that you are providing a cost quotation for.
A. Has a heat exchanger on it.
Q. Right. Did you factor in any value or -- did you factor in the fact that you're going to be recovering heat from the heat exchanger in that calculation of the natural gas usage?
A. Yes, I did.
Q. And how did you factor that in?

A. The essence of the heat exchanger is it uses the heat previously produced, reinserts it back into the system so that it does not have to heat up the air again. It starts out with warmer air so you utilize the heat that you've produced previously before to run more efficient, thus using less therms.
Q. So this figure that you've included does not assume that you are heating this device to 1400 Fahrenheit as far as the gas usage goes.
A. Yes, it would be heated.
Q. But isn't some of that heat coming from the heat exchanger so you don't need to use natural gas to necessarily heat it up to 1400?
A. You still have to heat it up to 1400. You might start from a different starting point, yes. Those calculations that are on here are based on using the heat exchanger. Without the heat exchanger you'll have a much higher gas usage is what you're asking, right?
Q. Yeah, I'm asking if it's factored into that figure.
A. Yes. It would be $500,000 a year to run it without a heat exchanger based on their numbers.

Q. In your direct testimony you stated that you could not coat plastic parts and motors in a powder coating system.
A. That's correct.
Q. Do you know the melting point of the plastics that you coat?
A. Not all of them, no.
Q. Do you know if the melting point is below 350 Fahrenheit?
A. I can't answer that for sure.
Q. Why is it that you state that you can't coat motors in the powder coating system?
A. Because we've been told by manufacturers that excessive heat that you would adhere powder coatings to can affect materials inside of the motor.
Q. Is it the epoxy in the motor that is of concern or do you know what inside of the motor is the specific concern?
A. I can't state.
Q. Mr. Swisher, I believe you testified that you couldn't -- and I don't want to quote you because I don't think I can, but in essence to paraphrase what you stated, that you couldn't respond to the

question as to whether you had received one or more -- I mean, more than one quote on powder coating; is that correct?
A. I don't think so.
Q. Have you received more than one coating on or more than one bid on a powder coating system?
A. Not to my knowledge.
Q. Is it your understanding that there is an inherent limitation in powder coating systems, that they can only take or they can only coat -- would you strike that.
Is it your understanding that there is an inherent limitation in powder coating systems, that they can only handle parts 10 feet or smaller?
A. I don't think -- that's not what I said and I don't think that's the limitation.
Q. I'm not suggesting that's what you're saying.
A. No, I don't think that's it. In our system it would be.
Q. In --
A. In the system that was proposed it would be.
Q. Have you looked into a larger system or a system that would accommodate larger parts?
A. I would say it was reviewed, yes.

Q. And the determination was made that not to pursue that avenue or you haven't decided on that?
A. Well, it was all somewhat an economic issue. The larger you are, the bigger the building you put in. The larger the system, the bigger everything gets. There are some economics involved so it was in reviewing with the people that were going to supply or could supply the system, we tried to get something that could economically coat a large percentage of our products.
Q. On Item A of Petitioner's Exhibit 1 there is a catalog of products. Isn't it true in the specifications provided as to the size of these products the only product that exceeds 10 feet is the APB, all purpose body?
A. That is incorrect.
Q. Which other parts exceed 10 feet in length?
A. Okay, the APB would do that, and all our different varieties of V boxes have the potential of being longer than 10 feet.
Q. They have the potential of being longer than 10 feet?
A. Yes, we produce many that are over 10 feet.
MS. SAWYER: I have no further questions at

this time.

HEARING OFFICER FRANK: Okay. Mr. Meason?

MR. MEASON: I have a few on redirect.

REDIRECT EXAMINATION

BY MR. MEASON:

Q. Mr. Swisher, on cross the Agency asked the question with regard to whether permits had been applied for and architect drawings generated pursuant to the powder coating possibility. Is it a -- to your knowledge is it a standard practice when a company is contemplating a potential major investment such as powder coating to engage in certain initial activities?

A. Yes.

Q. And would an initial activity in your opinion be applying for permits that would allow you to build potentially into a floodplain?

A. That's correct.

Q. And would a potential -- excuse me. Would a preliminary activity involve hiring an architect to draw blueprints?

A. That's true.

Q. Would those types of activities indicate that a company has definitely made a decision to 100

percent for sure go ahead with that particular project?
A. No, that's not true.
Q. On cross examination the Agency provided you a letter that was written with regard to the enforcement action pending before the Board and being prosecuted by the Illinois Attorney General's Office on behalf of the State and the Agency asked you to read a particular section. Could I borrow that? I don't have that letter here.
Do you recall reading a provision where the letter stated the installation of the powder coating system would immediately bring Swenson under 25 tons based upon prior production levels?
MS. SAWYER: I object. Just for clarification, I don't believe I had him read any provision of the letter.
HEARING OFFICER FRANK: No, you had him refer to it and you asked him specific questions about it. He used it for --
MS. SAWYER: Right, I was just clarifying. I don't believe he read any specific provisions.
Q. Was there a provision in the letter to your recollection that stated that the installation of a

powder -- of a powder coating system would immediately resolve the 25 ton problem?
A. That's true, yes, correct.
Q. In hindsight should that letter have been worded a little differently?
A. I would say --
MS. SAWYER: I object to that question.
HEARING OFFICER FRANK: What's your objection?
MS. SAWYER: Relevance.
MR. MEASON: I'd do an offer of proof.
HEARING OFFICER FRANK: First do you have something to offer in the way -- I'm not requiring an offer of proof yet. We're still arguing on the objection. She wants to know whether or not it's relevant.
MR. MEASON: I will state that -- well, I have to say my next question would be relevant to an offer of proof.
HEARING OFFICER FRANK: Let's go off the record.
(A discussion was held off the record.)
HEARING OFFICER FRANK: Let's go back on record.
MS. SAWYER: Well, I mean, perhaps his question

could be worded differently but he's asking on hindsight if the letter should have been worded differently. The letter is from Mr. Meason. Mr. Swisher was copied on it.

HEARING OFFICER FRANK: Can you rephrase your question.

Q. Will the -- will or would the installation of a powder coating system immediately, immediately solve 3.5 pound per gallon problem?

A. Not immediately.

Q. And why is that?

A. Well, there are a lot of things going into bringing the system on board. There's a big long learning curve. There's -- every product that has to be run through would have to be run through and proved and parameters set up to run, so based on an installation and immediately being up to 100 percent proof, that doesn't happen. I mean, you don't go into 100 percent productivity, plus you also have -- it's going to be a long time in trying to get these people to also come on board for some of the special paints that we talked about before, trying to see if we can get specifications written for those.

Q. Is it Swenson Spreader's hope that ultimately it will be able to fully implement a powder coating system if it installs one?
A. That's true, yes.
Q. On cross examination the Agency asked whether any representatives of Brule came out to the plant in connection with providing the quotation for an afterburner. Do you recall?
A. Yes.
Q. And what was your answer?
A. That was correct.
Q. I believe it was your answer that to your knowledge they came out at least once; is that correct?
A. That's true.
Q. Did Brule representatives ask for any type of documentation from Swenson Spreader regarding the existing paint booth and/or down draft?
A. Yes, they did.
Q. And did you provide it to them?
A. Yes, I did.
Q. And what type of documents did you provide?
A. Well, they wanted a layout or print of our paint booth powder system, our exhaust system.

Q. And you're referring to exhibit --
A. Exhibit 5.
HEARING OFFICER FRANK: No, that one's 3.
THE WITNESS: 3, I'm sorry.
Q. Were there any other documents that they required to do their quotation that you recall?
A. No. Could I add something to that last question?
Q. Sure.
A. Prior work that was given to them also is they needed to know the type of paints that we were utilizing so they would know the types of VOCs that would be coming out of and going through the system so that information was also provided.
Q. I'd like you to refer to Petitioner's Exhibit 1, Item I, the Tab I, fourth page back, the payback analysis. This is part of Brule's original quote in 1995; correct?
A. That's true.
Q. Was this payback analysis more along the lines of true engineering calculations or a marketing tool?
A. My assumption is it's a marketing tool because Brule is the one that provided it. It wasn't, as

far as I know, by anyone at Swenson.
Q. With regard to the Agency's cross examination questioning along the lines of, and I'm probably going to get this all wrong, the heat value returned on combustion, Bonnie tried a couple times and I wasn't following too well, and I believe if I'm wrong correct me, you stated there would be some minute heat value returned to the system.
A. I assume that there would be some, yes. I have no -- it would only be a small amount, I'm sure.
Q. And when you did your calculations did you rely on guidance or documents from any other --
A. I used the documents that were given to me by Brule who is the manufacturer of the product and they're the ones that guided me through the calculations, so.
Q. On cross examination the Agency asked you about Page 13 of Exhibit No. 1, Page 13. The Agency directed your attention to the second paragraph where it states that Swenson Spreader's government contract specified paints fluctuate greatly from year to year and constituted approximately 27 percent of Swenson's paint usage in 1995. Do you recall that question?

A. Yes, I do.
Q. And then the Agency referred you to a -- to the Clean Air Act Permit -- excuse me, Clean Air Act -- getting long. The CAAP permit, the CAAP permit that I think is on -- somewhere on the table. It's not important, and I believe the statement there that you had signed said that in prior years Swenson Spreader contract specified paints were approximately 21 percent. Do you recall that?
A. Yes, I do.
Q. Was there a year specified in that CAAP permit language? Do we still have that here someplace? I'm handing you the document that you've examined on cross examination which is at least a portion of the CAAP permit for Swenson Spreader. Could you read the relevant line for the record.
A. "In previous years government contract specified coatings constituted approximately 21 percent of Swenson's coating usage."
Q. Does that specify a particular year in that sentence?
A. No, it doesn't.
Q. Does it say that it constituted exactly a certain percentage of your coating usage?

A. No, it doesn't.
Q. Does it use the word approximately 21 percent?
A. Yes, it does.
Q. And is the time frame listed specific?
A. No.
Q. What is the time frame listed?
A. Previous years.
Q. In previous years. Thank you. One last question, on cross examination the Agency inquired as to the percentage of hot rolled versus stainless steel and you responded that approximately 80 percent was hot rolled and 20 percent was stainless. Does that figure vary from year to year?
A. That's going to vary, I would assume. It could vary quite a bit depending on which State bids we get and which ones we don't get throughout that current year.
Q. So it's not set in stone.
A. No, it's not a set in stone parity.
Q. So it could be 90-10, it could be 70-30.
A. Yes.
MR. MEASON: Thank you. I have nothing further.

HEARING OFFICER FRANK: Ms. Sawyer?

RECROSS EXAMINATION

BY MS. SAWYER:

Q. Referring to Petitioner's Exhibit 1, Page 13, 1994 was the percentage of government specified contracts or the percentage of Swenson's paint usage that was used to fulfill the government specified contracts 12 percent?

A. That's true.

Q. And isn't it true that the average of those four years is about 25 percent?

A. Without a calculator I suppose I could do that but that could be true.

Q. Mr. Swisher, are any of the Swenson products that are in excess of 10 feet in length or in excess of 10 feet produced to fulfill government specified contracts?

A. Yes.

MS. SAWYER: I have nothing further.

HEARING OFFICER FRANK: Mr. Meason?

MR. MEASON: (Shakes head.)

HEARING OFFICER FRANK: Thank you, Mr. Swisher. I'd like to take a five minute break.

(A recess was taken at 3:22 p.m. and proceedings resumed at 3:32 p.m.)

HEARING OFFICER FRANK: Let's go ahead and get ready to go back on the record. Mr. Meason, do you want to go ahead and call your next witness.

MR. MEASON: Yes, I would. I'd like to call Jerry Olson.

HEARING OFFICER FRANK: Could you please swear in Mr. Olson.

JERRY OLSON,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MEASON:

Q. Good afternoon, Mr. Olson. I apologize personally for you having to sit in the ice box or on ice, as we like to say, out there. It's taken a little longer than I had anticipated.

Could you please state your name and spell it for the record.

A. My name is Gerald Olson, G-e-r-a-l-d, L. middle initial, O-l-s-o-n.

Q. Do you have a business card on you?

A. Yes, I do.

Q. Could you state who your employer is.
A. It's Tioga Coatings.
Q. How long have you been with Tioga Coatings?
A. Nine and a half months.
Q. Nine and a half months. Could you provide the Board with a little bit of your professional experience prior to coming on board at Tioga.
A. I worked at Gordon Bartels Company for 32 and three-quarters years. Prior to that I was working with industrial engineering at National Lock. I took a training course, a method in rates department and decided I wanted to be a paint chemist and saw an ad in the paper and I hired in at Gordon Bartels. Gordon Bartels Company has since gone out of business. They announced in May they were closing. I started looking for a job and there was an opportunity with a man retiring at Tioga and I took it.
Q. Was Gordon Bartels considered a regional versus a national company?
A. They were -- it covered the entire United States. They were exceptionally big in can coatings, implement enamels, toy enamels, any metal deco where there was an extreme degree of

fabrication and high requirements, technical requirements for the coatings.
Q. Let's back up a little bit. You said metal deco.
A. Metal deco is anything that is coated. The metal that is decorated, fabricated in any sense. Your pop can there is a metal decorated coating. It has a white ink on it, red ink and a varnish on it. We made those type coatings. The coatings such as beer cans and anything with metal, to do with metal. We also deal with plastic as well but metal is the primary function of the company.
Q. And I believe you also mentioned the word hide or hiding.
A. Hiding is the degree of hiding. Your pop can there is sort of transparent so that you can see the aluminum through it. You have a white base coat, for instance, and then the ink is transparent, so the degree of hiding is important in the coatings in the sense that -- such as these -- the low VOC coatings that we're achieving right now, you have to be able to achieve a degree of hiding with as little paint as you can put on because the solids are so high on these to keep the

cost in check as well as if you put less paint on you're putting less solvent in the atmosphere.
Q. What is your current position with Tioga?
A. I'm an operations chemist.
Q. And what does that --
A. I deal with all the coatings, types of coatings at Tioga and customers. I deal with new development and assuring that all new development, the colors and the quality, is up to the specs of the customer.
Q. So you've been in the paint business totally more than three decades, 33 years --
A. Yes, sir.
Q. -- between Bartel and Tioga.
A. That's true.
Q. I imagine you've worked with a lot of different people in 33 years in the paint industry.
A. Yes, I've worked with many. I've attended many seminars and I've worked in the field as far as whatever new technology comes and Bartels has eight chemists there and we had a research and development staff and we had an application staff and we had staff that worked with -- specifically with customers, technical field. And so in that

area you reach and touch all aspects of the customers, the suppliers as well.
Q. Over the years was part of your job to train new chemists or personnel?
A. I trained all the new chemists that came into the Bartels research and worked with all the teams. I was -- my boss was the original chemist and I was his technician and we went on with the training program, and once he left, then I was in charge of upgrading and further. The original lab was set up with two people and then it grew into where it was eight chemists and two technicians.
Q. Would you characterize your background, your 33 years in the paint industry, as encompassing kind of an apprenticeship where you worked under the supervision of someone and they taught you -- they taught you the job?
A. Yes, it was on-the-job training with supplemental courses such as palmer course at Rolla.
Q. And that's University of Missouri at Rolla?
A. University of Missouri. Courses in OSHA, EPA, color matching courses at ACS in New Jersey.
Q. What is ACS?

A. ACS is the unit that manufactures the color eye and the components of the software for matching colors on a computer. They had the first unit that worked in the software that could tell you what colors to put in, how much. It's very sophisticated color matching. We purchased -- originally purchased the color matching set from IBM computer, went out to learn how to use the computer and worked on it for one week.

All it could do was design grafts on colors, tell you there were two blue, two green, two red, couldn't tell you units, couldn't tell you how much, what colors to use or anything. Found the unit, Gordon Bartels told me if you see anything, let me know. We found a unit, went out. He let me go to New Jersey and look at it and I took a one-week course at ACS Applied Color Corporation and it was very sophisticated. It had what we wanted.

In other words, you'd store your colors in the computer and it could tell you which of those colors to use. It could tell you the percentage of those colors. It could tell you the differentials and how much differentials to use. In other words,

if you made a brown up and it was too gray, it could tell you that it needed yellow, red and white. It could tell you it needed 5 pounds of this, 4 pounds of that, 1 pound of that.

You had to use it as a tool. You couldn't do it absolute but if you made it in such as two hits, you'd try to put in 70 percent of that add, you could see it, and then readjust it, put it back in the computer, you could get the color on two hits on brown. However, color computer is not designed for high, deep mass tone colors such as Swenson has.

Q. Mask tone?

A. Mass tone. These are where the color is like that red there in that book, extremely red, extremely yellow, extremely orange.

HEARING OFFICER FRANK: For the record, that doesn't really help.

MR. MEASON: Point to a bright red flower for the record.

THE WITNESS: A bright red flower.

HEARING OFFICER FRANK: On the Sierra Club Date Book.

A. But what happens is there's not enough

differential in those colors other than just red for the computer. It could tell you what red.
Q. Are you referring to the shading of red?
A. The shading. The problem is that red can there and this red can here is --
Q. Dr. Pepper and Coca-Cola, for the record.
A. They're two different colors, see? That's an orange shade. This has, like, a blue undertone to it. That's what it can't pick out. Here's two shades of red right here.
HEARING OFFICER FRANK: On the Dr. Pepper can.
A. That's what it can't do. That's what the chemist has to do.
Q. We're all in for an education today, I think.
A. In that case the computer will tell you what color, what red to use. Can't tell you how much and it can't tell you if you got to put a little bit of this or that in it. That's where the color matching ability comes in. So computers are nice but they're not absolute. But as I said, the computer that we looked at from ACS worked, we bought it, we brought it back, trained on it and then we have to train other people to use it and use it as a tool. It's not something you plug in,

put a color in it and get a color match out of it.

Now, in our case with colors that the computer can't match it, you have to make and put several colors together in a clear -- you have to spray it out, come up with a reasonable color match. Then you go about making paint and this is what happens when Swenson brings a panel to us. They send in a request either from their customer or they bring in a panel or wet paint that they've got something they wish to arrive at.

We -- takes us approximately two hours to arrive at something for a color match. We then composite a paint, make up a sample, and this takes anywhere from six to eight hours to make a sample. We therefore have to fine-tune the color. We submit a sample to them, they submit it to their customer.

Q. So you attempt -- if a paint company, if it's Swenson or other, they come to you, you try to give them what they need.

A. We give them what they need to the absolute color match under the light source that they specify. There are three main light sources; incandescent, fluorescent and daylight. Swenson

Spreader has to have all their color matches 100 percent under daylight. They'd like to have them under fluorescents so when they show it in a showroom or someplace else and they're looking at the panels, that there's not a huge differential.

Some of the times we have what they call metamerism where it matches under one light, does not match under the other. We have to take -- physically take every color and walk outside and make sure that color matches outside under daylight. So we start off and we try to make it so it matches under both. It doesn't always do it. Reason being is the pigments in the standards many times are less bearing pigments. They're old standards. They're from State government where they use lead chromate. These colors give us a lot of problems. We're using more transparent pigments because we cannot use lead or toxic colors. Those pigments have extremely good hiding, extremely low cost.

Q. Hold on. You said a lot of these State agencies used lead chromates?

A. Their standards are all based on lead chromate because at that time all the implements from these

states were based on high hiding, very good pigments. The lead chromate was a very good pigment.

Q. Can you still use that today?

A. We cannot use that today.

Q. Why is that?

A. Because it is toxic.

Q. Is this an EPA regulation or something?

A. There are State standards and there was established that they would be strictly nontoxic for the waste stream and there is not a -- where you cannot 100 percent use them. There are some places that still use lead.

Q. But you're still seeing specifications based upon --

A. The specifications are based on lead bearing standards.

Q. Because the States have never changed their specs.

A. Right.

HEARING OFFICER FRANK: So the chip they send you is a lead paint chip?

THE WITNESS: Yes, it's a pigment that had lead in it and therefore we have to use different

pigments that use the same color.
Q. Let's take a step back real briefly and then we'll get into a lot of detail on paints. Can you tell us a little about Tioga. What is Tioga?
A. Tioga is a corporation of several different companies. They have a company -- I'm not real familiar with them but they have basically three companies. They have one that makes door inserts for plastics. They have another one that makes insulation for the different cars and different things and then they have a paint division. And they have a developmental lab in Cal City that strictly works on making as low of VOC coatings. They are research and development for the large companies in the United States such as General Motors, Ford. These companies that need and want very low VOC coatings to compete against powder coatings.
Q. Mr. Olson --
A. Yes, there is a brochure.
Q. -- I'm going to hand you a document in a second. I'm showing it to Ms. Bonnie Sawyer, Counsel for Illinois Environmental Protection Agency. Handing you a document, if you could

examine that document real briefly. Tell me if you recognize the document.
A. Yes, I do. This details --
Q. Could you tell me what it is.
A. This details about the parent organization which is Tioga International. As I said, we're -- Tioga Coatings is a division of Tioga International.
Q. Thank you. Do you know if this document is a formal business document of Tioga Corporation?
A. Yes, they give it to their customers.
MR. MEASON: I would move to admit this into evidence.
HEARING OFFICER FRANK: Any objection?
MS. SAWYER: No.
HEARING OFFICER FRANK: Then it's admitted into evidence as Petitioner's Exhibit 10.
Q. Where is Tioga located?
A. Tioga Coatings?
Q. Tioga Coatings.
A. It's 208 Quaker Road, Rockford, Illinois.
Q. Are there any -- are there other corporate offices or an RD staff anyplace else?
A. Yes, Cal City, Illinois.

Q. Calumet City?
A. Calumet City, yes.
Q. What are your general duties in your position?
A. I supervise the lab. I have one technician. I assist with QC, quality control, any production problems. I color match and take care of customers' needs in any way, shape or form, problems, new color development, new systems development, OSHA, EPA requirements that they need assistance.
Q. Do you know what the purpose of this proceeding is today?
A. Yes, sir.
Q. And what is that?
A. That is for abatement to try to get a VOC requirement raised from 3.5 requirement to perhaps 4.75 to 5.
Q. How long have you personally had dealings with Swenson Spreader?
A. I would say at least seven, eight years.
Q. So that --
A. At Bartels we made coatings. In fact, we had worked on their low solids coatings, regular coatings. We had made and developed two colors for

them on high solids coatings, a red and a black, as well as we worked perhaps three months on a high solids primer.

Q. What do you mean by high solids?

A. The high solids means that the coating has a solids high enough to meet the 3.5 VOC. The old coatings typically would have a solids in the 45 to 55 range. The high solids --

Q. Solids meaning pigments and resins?

A. Solids means the amount of solid material that would be left in the coating after the solvent is gone. This is what remains on the actual part. Therefore it is the solids from the pigment, the resin, certain additives and fillers.

Q. Could you in layman's terms explain what a primer is.

A. A primer is laid down on the metal to give adhesion and corrosive resistant properties to the metal and you can put a topcoat -- there are -- we make coatings that go just over bare metal, but what happens is you do not have enough chemical resistance with a one-coat system for high quality coatings such as implements. And there are can coatings we put down only a single coat, we do not

use primers, except where we have an adhesion problem, such as galvanized metal or tin plated or something like that.
Q. You said for high quality implements?
A. Implements, yes, where you have to be able to stick to the metal and give a base for a topcoat. It gives you -- it helps the color of the topcoat in a sense that you do not need as much on the topcoat as well. In other words, you make the color of the primer the right color and therefore you do not need as much of a topcoat.
Q. They complement one another?
A. They complement each other and form a continuous film between the two. The topcoat has to bite into the primer. The primer has to be resistant and it gives you the salt spray properties of the coating basically. And in our implement field we require 500 hours of salt spray and there's different --
Q. Every paint or primer has to undergo 500 hours of tests of salt spray?
A. Yes, it's a 5 percent solution of salt in water and it's atomized in this cabinet that we have, heated to 140 degrees. It forms a fog inside there

just like if you were living up -- like Corpus Christi where it's really salt and fog all the time. So anything that's put into this has to requires -- now, there are types of primers which are called two component primers, two component epoxy primer which Swenson buys from us, is required at certain State levels. We've not been able to make these at 3.5 because their extreme resistance will not allow just a small amount of solvent in them to solvate them.

Q. To what them?

A. Solvate them, to thin them down.

Q. Okay.

A. They require more solvent due to the fact that their molecular chain -- the higher the molecular weight, the more chemical resistance you get. Some States require a two component epoxy system because, like, they're going on salt spreaders or something like that which is extremely -- eats the paint right off basically. It's extreme.

Q. And that's Swenson's product line, is it not?

A. Yes, that's part of their product line and that's the two component. In some cases we have to use a two component topcoat over two component

epoxy. The two component topcoat we manufacture is called acrylic urethane. That is a blend of acrylic and a blend of urethane, basically like a four to one ratio. You blend the two together. You get a coating that will resist high degree salt, water, moisture. They use it on bridge deckings, for instance. You have to have something that you're not going to have to repaint for 20 years.

Q. Not going to wear off easily.

A. Not going to wear off. A typical Swenson system is one component of a primer and one component of a topcoat. That system is designed for 3.5. The -- we had to have -- in the past it was much higher. Since I've been to Swenson every coating of that type, their general line coating, which just has general requirements for typically farm tractors and trucks and certain types of, you know, general line, what's called a general line, not special, is meeting -- is being reformulated. If it wasn't or isn't 3.5, it has been reformulated.

Q. Tioga has reformulated to Swenson's --

A. Yes, I believe we've had 11 of them since I've

been there. There perhaps is as many as 20 coatings involved, another nine, but these nine have not been ordered or in the -- if they order something and it was an old coating, is being reformulated to make sure that it meets and does what they want.

Q. And what is involved in reformulating the coating?

A. Well, reformulating means we look at the old formula and see what the pigments are and the color. We therefore take those pigments and put them in the high solid systems, grind it up, mix it, check the color and the property and see if they're good. If they're good, we submit a panel to Swenson, they approve it, we make the paint.

Now, if it was a color that used some sort of a pigment that was -- is too puffy, absorbs too much solvent and therefore cannot meet the 3.5 VOC because of the pigment that was in the old system, we change to some of the new pigments that I brought -- since I've been to Bartels I brought some new pigments in the house to give Swenson some additional hiding for some of the very bright and clean colors that they buy.

Q. Let me interrupt you there. I'm going to hand you two objects. I'll show them to Ms. Sawyer first. Handing you these two objects, could you examine them for a bit.
A. Okay.
Q. Do you recognize those objects?
A. Yeah, that is a typical -- these are type of Swenson's coatings that they make. They're very, very clean, very, very bright.
Q. What are those objects called?
A. These are panels. This is what we -- we make these type of panels. We put the primer down. We color match the topcoat or even match anything for Swenson that -- we have to know what the primer is. If the customer specs their basic primer, high solid primer, we spray up a set of panels and we start color matching them over top of their panels. The primer underneath will affect the color.

In the case of Swenson they buy a light yellow, kind of a beige primer for -- and it works very well. If they have one -- in fact, here it is right here.

MR. MEASON: Bonnie?

MS. SAWYER: (Nods head.)
Q. Here's another one too. One more while we're at it. I've just given you three additional objects. Could you examine them, please.
A. Okay. Now, this is the main primer from Swenson.
MR. MEASON: Let the record reflect that is a brown -- what color would you call this?
THE WITNESS: I call it a tan.
MR. MEASON: A tan color, for the record.
A. It's unique in this color because it lends itself very well for bright yellows, medium yellows and even reds because this deal on the back, as you see, is quite dark.
HEARING OFFICER FRANK: For the record, that's Exhibit 13.
MR. MEASON: Which one?
HEARING OFFICER FRANK: The primer.
MR. MEASON: Primer, 13, okay.
A. This primer here took at least three months to develop. Me and myself and Tioga had been working on this. We both submitted primers to them. They chose Tioga's -- I was at Bartels at the time. They approved ours as well. When I went to Tioga

and I had looked at the primer and had to do some extra developmental work looking at the primer, exactly the same resin system.

Shows you up close the manufacturers are all supplying us with the same thing, the same samples. We're working with the same materials as far as raw material suppliers go in many, many cases, McQuarters (phonetic), Cargil, Richold (phonetic). These suppliers all call on us as well as Tioga, DuPont, whoever it be, so this is what arrived out of that work. This primer takes the 500 hours, takes the scribe test, the resistance.

Q. What's a scribe test?

A. Scribe is when you scribe it and you tape it to make sure it isn't going to come off. There's also a gravelometer test put on this to make sure the gravel doesn't chip it off.

Q. So you actually shoot gravel at it to see --

A. Yes, there's a lot of tests involved to make this. The primer is the base to the topcoat. The reason I bring the primer up, the topcoat could not be developed until the primer was developed. This took a lot of time because the original resins would not dry properly.

They did not have the type of dryers that you need for high solids coating. When you get high solids coating, they're thicker, they don't have as much solvent. They have a tendency not to dry through and therefore they're soft and cheesy. You stick them outside and they become tacky. This is what happened for the first year or two of samples that we looked at, and then as I said, within the last two years we were able to develop this primer.

Q. So --

A. So therefore --

Q. Tioga worked for two years to develop one primer?

A. On and off we both looked at samples for two -- at least two years, trying to find something that would not. There was -- at the time Tioga was selling the basic primer to them but the --

Q. To Swenson.

A. To Swenson but until the primer was developed we couldn't have a topcoat that would dry over the top of it because the primer would soften the topcoat.

HEARING OFFICER FRANK: Let's go off the record

for just a moment.

(A discussion was held off the record.)

HEARING OFFICER FRANK: Let's go back on the record.

A. The only point I wanted to bring out was the reason that we're so slow in developing the topcoat was the primer. Now the topcoat -- the primer is developed whereas the topcoats had been developed and are being developed. This part of the system is put to bed.

Q. Now, your work on the primer and the topcoats, was that a result of Swenson or other companies requesting a reformulation of the then existing paint or primer?

A. Yes, it was. They wanted to go high solids, low VOCs.

Q. So to lower the VOC content you had to engage for the primer the one- to two-year research and development efforts.

A. Yes, right.

Q. And until that was done you couldn't even start to work on the topcoats that would be applied on top of that primer; is that correct?

A. Yes, yes.

Q. Okay. Let's go back to the five objects that I placed in front of you. The four panels, are those panels Swenson Spreader panels?
A. Yes, they are.
Q. Meaning that -- meaning what?
A. They're colors that were developed for Swenson.
Q. Developed specifically for Swenson Spreader.
A. Yes.
Q. And there is a fifth object in front of you. Could you examine that object. Do you recognize it?
A. Yes.
Q. And what is it?
A. This is a dipping block for Swenson. The part comes in, it's oily. It's a little rusty and it takes -- they want a black that goes over it with no primer and they'd like to dip the -- the advantage of dipping is on spraying you lose upwards to 30, 40 percent --
HEARING OFFICER FRANK: Again, Mr. Olson, you're expanding way beyond the questions that are asked of you. If you could just confine your answers.
A. Yes, this is a dipping enamel for Swenson.

HEARING OFFICER FRANK: And that's Exhibit 15.
MR. MEASON: I would move to have these entered into evidence.
HEARING OFFICER FRANK: Is there any objection?
MS. SAWYER: No.
HEARING OFFICER FRANK: For the record, that's Exhibits 11 through 15 and they're admitted into evidence.
MR. MEASON: The black is which one?
HEARING OFFICER FRANK: 15, and the primer is 13. The rest are color panels.
Q. Could you examine the two yellow panels. Is there a difference between those two yellow panels?
A. Yes, there is. One is darker and the other has less hiding than the other one.
Q. And with regard to those two panels, how is the hiding or lack of hiding noted?
A. Let's see, this panel here has --
HEARING OFFICER FRANK: You need to --
MR. MEASON: What exhibit is that?
HEARING OFFICER FRANK: Exhibit 12.
A. 12 has less hiding.
Q. 12 has less hiding and how --

HEARING OFFICER FRANK: Than Exhibit 11.
Q. And how can you tell that?
A. It looks greener.
Q. Where?
A. It cuts the metal more on -- you can see it cuts the metal more.
Q. So for the record you're looking at the left edge of Exhibit 12?
A. Yes.
Q. Is that correct? Here?
A. Yes, left edge.
Q. And basically you're starting to see the metal and/or the primer show through the topcoat.
A. Yes.
Q. Could you examine Exhibit 14.
A. Yes.
Q. And is there anything noteworthy exhibited on Exhibit 14?
A. Now, the hiding looks excellent.
Q. Meaning you cannot see through the topcoat.
A. You can't see through.
Q. Is there a relationship between the amount of VOCs used and the hiding?
A. In the -- yes.

Q. What is that relationship?
A. You have to put more paint on to get more hiding.
Q. Meaning more paint, you can have more VOCs.
A. Yes.
Q. Has Tioga been successful in reformulating all of Swenson's requests thus far?
A. No.
Q. Are there some coatings that because of a lack of technology in the industry will not be able to be reformulated below 3.5 pounds per gallon?
A. Yes.
Q. And is -- move to a different question. With regard to Exhibit 15, the black bar stock in front of you, what is, if you know, Swenson's current VOC content on its black dip paint?
A. It's 5.8.
Q. 5.8 pounds per gallon. Why is it that high?
A. It's a very oily piece. They dip the black in the very thin -- or dip the part in the very thin paint and it helps to remove the oil and the oil becomes part of the paint.
Q. Has Swenson Spreader come to Tioga and asked that Tioga attempt to reformulate black dip to meet

the 3.5 pound per gallon Illinois standard?
A. Yes, they have.
Q. And has Tioga worked along those lines?
A. Yes.
Q. And what have you developed?
A. I've got a 3.5 VOC black. There are problems with it but there are --
Q. What are the problems?
A. One of the problems is to get it to 3.5 you need to use acetone and acetone is a very low flash point solvent.
Q. Do you know what the flash point is?
A. It's zero.
Q. Zero, meaning?
A. It will flash under any condition, you know, if you've got a spark.
Q. Extremely flammable?
A. It's extremely flammable and extremely volatile so in a dip tank you have to make sure you're sealed when you're out using it. You're going to have a lot of evaporation also.
Q. So you developed an acetone based black dip for Swenson Spreader?
A. Yes.

Q. What is that VOC content?
A. 3.5.
Q. 3.5, so you barely made the standard.
A. Yes.
Q. Are you professionally satisfied with that formulation?
A. No, the evaporation rate is quite fast. The next step up is 4.2.
Q. Based on a replacement of the acetone?
A. Yes.
Q. With what?
A. MEK. That's meth --
Q. Why is that preferable?
HEARING OFFICER FRANK: Let's get what MEK is.
THE WITNESS: Methyl ethyl ketone.
Q. Why is methyl ethyl ketone preferable to acetone?
A. Evaporation rate is less, therefore you'd have less solvent coming off of the tank, flash point is 25, safer to handle, less stuff coming up as you're using it.
Q. So basically for worker safety or workplace safety in your professional judgment you'd rather have an MEK based black dip --

A. Yes.
Q. -- that doesn't meet the State standard than an acetone based black dip that barely does meet the State standard.
A. Yes.
Q. Does the technology Tioga employs in developing, reformulating these coatings differ substantially in your opinion from what is available from other companies in the paint industry?
MS. SAWYER: I object to this question. Mr. Olson has not been -- he is asking him an opinion question about the industry.
Q. Mr. Olson, based upon your 33 years of paint industry experience and your numerous classes and your ties within the industry, both professionally within the industry and with companies working to reformulate, do you have an opinion as to what -- let me finish.
Do you have an opinion as to what the possibly differing levels of technology are, if any, within the paint industry?
MS. SAWYER: I object to this question also. I don't think that the rephrasing of it has changed

the nature.

MR. MEASON: Allow me one more question?

HEARING OFFICER FRANK: I'm not going to allow him to answer that. I would allow you --

MR. MEASON: My next question is going to solve it. I would move to have the Board consider Mr. Jerry Olson an expert in paint chemistry based upon his more than three decades of experience as a paint chemist.

HEARING OFFICER FRANK: Is there any objection?

MS. SAWYER: I would like to ask a question on voir dire.

HEARING OFFICER FRANK: Sure.

MS. SAWYER: Mr. Olson, do you have a degree as a chemist?

THE WITNESS: No.

MS. SAWYER: And your education as a chemist is comprised of supplemental courses that you've mentioned?

THE WITNESS: I've had approximately two years of college, a little better than one year. I've had qualitative chemistry and organic chemistry.

MS. SAWYER: Those are your college level

chemistry courses?

THE WITNESS: Yes, absolutely. I attended night school when I was in the Air Force as well.

MS. SAWYER: I don't have an objection. I just wanted --

HEARING OFFICER FRANK: You just want to --

MS. SAWYER: I wanted to clarify his education.

HEARING OFFICER FRANK: You are now qualified as an expert for purposes of this hearing and you may answer the question if you remember what it is about your opinion. Would you like it restated?

A. My opinion is based on the suppliers available, they're nationwide, that we have exactly the same raw materials and therefore it would be right, we would have the highest quality we could obtain. They bring the supplies to us and the data sheets and the formulas. We check out their formulas.

Q. The supplies are resins and pigments?

A. Yes.

Q. Paint -- do paint companies generally develop their own resins and pigments?

A. Absolutely not.

Q. Who does that?

A. That is the resin people such as McQuarters,

Cargil, Richold. They develop the resins. They check the formulas out and the resins in their formulas and they present them to us. We check them out to see if they work.

Q. So a company going to any particular paint company is going to encounter approximately the same technology regardless of the paint company approached.

A. Yes.

Q. There would be no substantial differences between --

A. No.

Q. -- Tioga and DuPont or Sherwin Williams.

A. No.

Q. Do you have a professional opinion on the efforts Swenson Spreader has made to come into compliance to reformulation?

MS. SAWYER: Object to this question as overly vague.

HEARING OFFICER FRANK: It's sustained. Can you be a little bit more specific.

Q. Do you have a professional opinion as to Swenson Spreader's ability to come into compliance with an absolute 3.5 pounds per gallon VOM

standard?
A. My opinion is they've done what they could do. They approached Tioga. When I was at Bartels they approached Bartels. In other words, any salesman or anyplace they could approach to get this job done, they tried to get people working in it and tried to see if there was technology available and coatings.

I mean, they had worked with Tioga many, many years before they worked with Bartels. Bartels comes in there and they give us, the Bartels people, the same opportunity. They wanted the job done. Bartels came up with two coatings. They bought them from them. In other words, they didn't hold back. I've seen companies do that, so they did what they could. They approached other suppliers and said, hey, I need help and that's what we do. That's what's done.
Q. Do you have a professional opinion as to what a reasonable available technology as far as level of control VOM would be for a company like Swenson Spreader?
MS. SAWYER: I'll object to this question.
HEARING OFFICER FRANK: What's your reason for

your objection?

MS. SAWYER: That the witness doesn't have sufficient knowledge to respond to this question.

MR. MEASON: Can I respond?

HEARING OFFICER FRANK: Yes, please.

MR. MEASON: Mr. Olson's already testified he has personally been involved with Swenson Spreader, I believe for seven years between two different companies, over 30 years as a paint chemist in the industry. He's already qualified as an opinion witness in this proceeding. I think he has more than substantial background to answer this question.

MS. SAWYER: You're asking --

HEARING OFFICER FRANK: The opinion was for paint base not for the control technology, so unless you're going to qualify him as someone who's an expert in the control technology also, you're beyond the scope of what he was qualified for as an expert.

Q. Mr. Olson, did you testify a few minutes ago that there is little, if no, difference in technology between companies in the paint industry?

A. Yes.

Q. And that the paint companies are reliant upon the resin and pigments manufacturers --
A. Yes.
Q. -- for their raw products and those resins and pigments are offered equally?
A. Yes.
MR. MEASON: I would respectfully move that Mr. Olson be considered an expert with regard to reasonably available control technology with regard to coatings in the United States.
MS. SAWYER: I still object. I think that reasonably available control technology is a -- it's a regulatory question. It's asking for almost a legal interpretation. If he were asking him reasonably available -- are certain coatings reasonably available, that would be different, but reasonably available control technology, it's a regulatory standard. It's a term of art within --
HEARING OFFICER FRANK: Can you rephrase your question?
MR. MEASON: A couple of hours ago I could do it real quick. I'm getting a little brain dead now.
Do you have a professional opinion as far

as Swenson Spreader's ability to seek out -- success with which Swenson Spreader would be able to seek out 3.5 pound per gallon VOM content coatings or lower from other companies in the industry?

MS. SAWYER: I'll object to that. I think it's overly speculative.

HEARING OFFICER FRANK: I'm going to allow it because I think he rephrased it sufficiently.

A. In other words you're saying you think we can get 3.5 from any supplier or any -- is that what you're saying?

Q. Swenson can't get it from you, can they go to somebody else and get it? If you can't formulate it, can they get it from somebody else?

A. Not other coatings, no.

MR. MEASON: That's all I have subject to redirect.

HEARING OFFICER FRANK: Okay.

MS. SAWYER: I just have a couple of quick questions about the dipping black coating that you referred to.

CROSS EXAMINATION

BY MS. SAWYER:

Q. How does Swenson coat the parts with the dipped black coating?
A. You'd basically hang it on a hook or something, drop it down, have it come through on a conveyor system and lift up.
Q. Have it come through what?
A. A dip tank.
Q. A dip tank?
A. Yeah, where the paint is in.
Q. So is this part of their coating booth where they spray coat things?
A. No, no, the spray booth you have a regular spray. Now, the operation of the dip is very nice compared to the spray. Spray you lose about anywhere from 24 --
HEARING OFFICER FRANK: Mr. Olson, again, I'm going to direct you to just answer the question that was asked.
A. No, it's not. It would be a dip tank. It would be a separate entity.
Q. Mr. Olson, you've been in the coating industry, is it 33 years?
A. Yes.
Q. And over that time there has been a great deal

of progress in reformulating coatings to achieve lower VOM contents; isn't that correct?
A. That's right.
Q. And that progress is ongoing.
A. That's right.
Q. Your direct knowledge of Swenson Spreader's efforts to find compliant coatings is their interaction with you as a Tioga representative and as a Bartel, I believe the name of the company was, representative?
A. Right, uh-huh.
Q. What types of coatings does Tioga produce? If that's too broad I could be more specific.
A. They make a very broad range. They have water base solvent, general solvent that's not high solids, high solids. They have what they call a zero VOC coating. That's extremely heavy, takes heat to apply it. That would detail -- basically metal decorating coatings.
Q. Is a zero VOC coating a powder coating?
A. No, it's not. It's an extremely heavy 100 percent solid coating.
Q. Does Tioga produce a powder coating?
A. No.

Q. You referred to a -- I believe it was a black dip coating that you were working on reformulating and you said you got it to a 3.5 VOM content using acetone.
A. Right.
Q. What were the other volatile organic materials used in that coating?
A. Probably xylyl. I think there's xylyl in there. That would be about it. Might be a little toluol and xylyl.
Q. So the VOC content that you're referring to is comprised of those components?
A. Yes, it is.
Q. And your current formulation, you said it's at 4.2, I believe, pounds of VOM per gallon of coating?
A. The current is 5.8.
Q. Okay. The one you're currently working on.
A. The one that I'm happy with is 4.3.
Q. And that includes methyl ethyl ketone and acetone also?
A. No acetone.
Q. No acetone.
A. You would have the other aromatics in there

though, the xylyl and the toluol.
Q. What type of market share as far as coatings, producing coatings, does Tioga have?
A. You mean as far as selling to all different type of customers?
Q. Yeah, do you know?
A. I don't know.
Q. How about in selling to customers for extreme performance type uses.
A. I would have to say they've got a pretty good market share because they've got two major customers on this type of coatings.
Q. Pretty good share meaning locally or --
A. Yes, locally.
Q. Within the State, something like that?
A. Within the State, exactly.
Q. Mr. Olson, on direct examination you were asked if Swenson could obtain coatings with 3.5 pound per gallon VOC content elsewhere in the industry and you answered, not other coatings.
A. That's right.
Q. Are there some coatings with 3.5 VOM per gallon content available?
A. The general line is 3.5 or less. There's a

couple special coatings that they manufactured for state -- special requirements such as State of Indiana, Arizona, those. They do not meet the 3.5.
Q. So you're saying that the coatings requested by those entities or the coatings listed on their specs don't meet the 3.5 standard.
A. Absolutely.
Q. But you're not saying necessarily that they can not be reformulated.
A. That's right.
Q. I believe you stated that you've been with Tioga for nine months; is that correct?
A. That's right.
Q. And how long has Swenson been using Tioga as a supplier of coatings?
A. I really don't know exactly. That's prior to my time.
Q. Is it more than two years, do you know?
A. Oh, absolutely. They used to be Rockford Chemical. Tioga bought Rockford Chemical and that's where the supply comes in.
Q. And you stated that they had been working on reformulating the primer coating that is --
HEARING OFFICER FRANK: Exhibit 13.

Q. -- Exhibit 13 for about two years.
A. Yes.
Q. Now, you were involved with those efforts for the last nine months or so?
A. Right.
Q. Just for clarification, earlier in your testimony you were -- you made a statement along the lines of a lot of government entities specified lead chromate-type paints.
A. They originally had lead chromate on their -- in the specification color coming in to us, the supplier were lead chromate based color chips.
Q. Okay, so some of the specifications still actually specify that color?
A. Yes.
Q. And you reformulate so that the coating no longer has lead in it to match that color from the spec.
A. Absolutely, yes.
MS. SAWYER: I think that's it for me.
HEARING OFFICER FRANK: Redirect?
MR. MEASON: Yes, real briefly.

REDIRECT EXAMINATION

BY MR. MEASON:

Q. Can all coatings that are currently above 3.5 pounds per gallon be reformulated to below a 3.5 pound per gallon?
A. No.
MR. MEASON: Nothing further.
HEARING OFFICER FRANK: Anything else, Mr. Sawyer?
MS. SAWYER: Yes.

RECROSS EXAMINATION

BY MS. SAWYER:
Q. As you say no, you mean for the rest of time they cannot be reformulated?
A. At this time the epoxy coatings because of the high molecular weight are not available. I just within the last 30 days talked to Shell and Ciba, the major manufacturers. They are not able to supply the resins to give us a 3.5 two component epoxy system that will meet the requirements of the State government. Those are the -- what I'm referring to.
MS. SAWYER: Okay.
HEARING OFFICER FRANK: Anything further?
MR. MEASON: (Shakes head.)
HEARING OFFICER FRANK: I'd just like to state

that the three witnesses who testified I found credible so that we don't have to go back and revisit that at the next hearing.

I did check with the Board in Springfield and we have the use of the Board's conference room so we will be in the Board's Springfield office on the 21st of May.

Let's go off the record.

(A discussion was held off the record.)

HEARING OFFICER FRANK: Let's go back on the record. The hearing then is continued until May 21st at 8 o'clock in the Board's Springfield office. Thank you.

(The hearing was adjourned at 4:35 p.m.)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	AS97-5
Petition of the Louis Berkman Company, d/b/a Swenson Spreader Company, for an Adjusted Standard from 35 Ill. Adm. Code Part 215, Subpart F	)	Oregon, Illinois April 17, 1997

I, Carrie L. Vaske, hereby certify that I am a Certified Shorthand Reporter of the State of Illinois; that I am the one who by order and at the direction of the Hearing Officer, Deborah L. Frank, reported in shorthand the proceedings had or required to be kept in the above-entitled case; and that the above and foregoing is a full, true and complete transcript of my said shorthand notes so taken.

Dated at Ashton, Illinois, this 23rd day of April, 1997.

Carrie L. Vaske
Registered Professional Reporter
Certified Shorthand Reporter
Illinois License No. 084-003845
8991 South Prairie Road
Ashton, Illinois 61006