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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
REGULATION OF PETROLEUM LEAKING) R97-10
UNDERGROUND STORAGE TANKS,) (Rulemaking)
(35 ILL. ADM. CODE 732).)

The following is a transcript of a rulemaking hearing held in the above-entitled matter, taken stenographically by LORI ANN ASAUSKAS, CSR, RPR, a notary public within and for the County of Cook and State of Illinois, before Marie Tipsord, Hearing Officer, at 100 West Randolph Street, Room 9-040, Chicago, Illinois, on the 18th day of November, 1996, A.D., commencing at the hour of 10:00 o'clock a.m.

** ** * * * * *

1 A P P E A R A N C E S :2 HEARING TAKEN BEFORE:

3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY: MS. MARIE TIPSORD,
9 HEARING OFFICER.

10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

11 Mr. Kevin Desharnais
12 Mr. Chuck Feinen
13 Mr. Tanner Girard
14 Ms. Kathleen Hennessey
15 Ms. Marili McFawn
16 Mr. J. Theodore Meyer
17 Ms. Jennifer Moore
18 Ms. K.C. Poulos
19 Mr. Anad Rao
20 Mr. Hiten Soni
21 Mr. Joseph Yi

22 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
23 PRESENT:

24 Mr. Jack Burds
25 Mr. Douglas Clay
26 Mr. Gary P. King
27 Ms. Kimberly A. Robinson
28 Ms. Vicky L. VonLanken

29 OTHER AUDIENCE MEMBERS WERE PRESENT AT THE HEARING,
30 BUT NOT LISTED ON THIS APPEARANCE PAGE.

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1 (Prior to the commencement
2 of the proceedings,
3 document marked as Exhibit
4 No. 1 for identification,
5 11/17/96.)

6 THE HEARING OFFICER: I think we will
7 go ahead and start.

8 Good morning. My name is Marie
9 Tipsord and I have been named the hearing officer
10 by the Illinois Pollution Control Board in this
11 proceeding known as Regulation of Petroleum
12 Underground Storage Tanks, 35 Ill. Adm. Code 732,
13 Docket Number R97-10.

14 With me today are the presiding
15 board members. To my immediate right is
16 Dr. G. Tanner Girard. To his right is J. Theodore
17 Meyer, and at the end, Mr. Joseph Yi. Also with
18 us today to my immediate left is Board Member
19 Kathleen Hennessey and down two people is Board
20 Member Marili McFawn.

21 MS. McFAWN: Good morning.

22 THE HEARING OFFICER: In addition to
23 myself, with us is K.C. Poulos, attorney assistant
24 to Board Member Meyer, Charles Feinen, attorney

1 assistant to Board Member Yi, Anad Rao, who is up
2 here with us, and Hiten Soni from our technical unit.
3 I believe Kevin Desharnais is also here as well as
4 Jennifer Moore. I think that covers the board people
5 present.

6 This proceeding was filed pursuant
7 to Public Act 89-457. It was filed on September 16,
8 1996. Public Act 89-457 was effective on May 22,
9 1996. Pursuant to that public act, the board must
10 adopt the final rule on or before March 15, 1997.

11 The purpose of today's hearing is
12 to allow the agency to present testimony in support
13 of this proposal and then allow questions of the
14 agency.

15 Procedurally, this is how I plan
16 to proceed. We will take the prefiled testimony
17 in support of this proposal and to allow questions
18 of the agency. Procedurally, this is how I plan to
19 proceed. We will take the prefiled testimony as
20 if read and mark it as an exhibit. That's just the
21 agency's testimony this morning.

22 We will then allow the agency,
23 if they so desire, to present a brief summary of
24 that testimony and then we will go to the prefiled

1 questions. We received two sets of prefiled
2 questions and what we will do is allow, I believe,
3 Gardner Carton & Douglas -- Lewis Putman, is that
4 right?

5 MR. PUTMAN: Yes.

6 THE HEARING OFFICER: Lewis Putman,
7 on behalf of Gardner, Carton & Douglas, and David
8 Rieser, with the Illinois Petroleum Council, will
9 be reading the questions. We will go back and
10 forth between the two sets of prefiled questions
11 so that we may keep the sections of the rule
12 together.

13 For example, all questions on
14 732.100 will be read at that time. So it may take
15 a little bit more on the part of the agency, but
16 they have consented to do that and I thank them
17 for that.

18 We will also allow any follow-up
19 questions at that time and I will allow questions
20 from anyone in the audience. I would just caution
21 everyone that if the question is more detailed than
22 the agency can answer today, we will hold that over
23 to the second hearing at your request.

24 MS. ROBINSON: Okay.

1 THE HEARING OFFICER: Are there any
2 other questions regarding what procedure we are
3 going to follow today? I do also ask when you ask
4 a question that you identify yourself for the court
5 reporter and for those of us up here.

6 Okay. At this time, I would
7 like to ask the agency if they would like to make
8 an opening statement.

9 MS. ROBINSON: At this time, we would
10 like to proceed with an introduction, if you don't
11 mind.

12 THE HEARING OFFICER: Go right ahead.

13 MS. ROBINSON: I am thanking everyone
14 in advance for all of the hard work and effort that
15 the peer group has put in with this agency in
16 helping us develop constructive amendments to this
17 regulation.

18 To my left is Gary King. He is
19 the manager of the Division of Remediation Management
20 for the Bureau of Land. To my right is Doug Clay,
21 who is the manager of the Leaking Underground Storage
22 Tank Section, otherwise known as the Law Section for
23 the Bureau of Land. To his right is Jack Burds who
24 is also assistant counsel. My name is Kimberly

1 Robinson. I am assistant counsel in the Division of
2 Legal Counsel. Behind me is Vicky VonLanken, who is
3 our legal assistant here to assist us today.

4 THE HEARING OFFICER: Nice to see all
5 of you.

6 Do you want to go ahead and swear
7 in the witnesses at this point.

8 MS. ROBINSON: That would be fine.

9 THE HEARING OFFICER: Would anyone else
10 like to make an opening statement before we proceed?

11 Okay. Seeing none, if you would,
12 swear in the witnesses.

13 (Witnesses sworn.)

14 WHEREUPON:

15 D O U G L A S W. C L A Y

16 and

17 G A R Y P. K I N G ,

18 called as witnesses herein, having been first duly
19 sworn, depose and saith as follows:

20 THE HEARING OFFICER: Go ahead.

21 MS. ROBINSON: I have already had the
22 court reporter mark Mr. Clay's testimony as Exhibit 1
23 for identification.

24 Okay. So Mr. Clay, I'm going to

1 hand you this document. If you could, look at that,
2 please, and identify that for the record.

3 MR. CLAY: This is a copy of my prefiled
4 testimony.

5 MS. ROBINSON: Is that a true and
6 accurate copy of what you prepared earlier?

7 MR. CLAY: Yes, it is.

8 MS. ROBINSON: At this time, I would
9 move to have this admitted into the record as
10 Exhibit 1.

11 THE HEARING OFFICER: Is there any
12 objection.

13 Seeing none, we will admit that as
14 Exhibit 1.

15 (Whereupon, Exhibit
16 No. 1 was admitted
17 into evidence.)

18 MS. ROBINSON: Mr. Clay, would you like
19 to go ahead and proceed with the summary of your
20 testimony?

21 MR CLAY: Yes. My name is Doug Clay.
22 I'm the manager of the Leaking Underground Storage
23 Tank Section within the Bureau of Land of the
24 Illinois Environmental Protection Agency. I have

1 been in this position since September of 1994.

2 This section is mainly
3 responsible for reviewing the technical adequacy of
4 site classification plans and reports, groundwater
5 monitoring plans and reports, and corrective action
6 plans and reports and associated budgets with leaking
7 underground storage tanks.

8 I received a bachelor's in civil
9 engineering from the University of Illinois in 1983
10 and I'm a registered professional engineer in the
11 State of Illinois.

12 Today, I will be presenting a
13 brief summary of my prefiled testimony in support
14 of Illinois Administrative Code, Part 732.
15 Proposed amendments to Part 732 can be grouped
16 into three major categories.

17 First, it's a -- it was
18 required -- a category being required that are
19 associated with the statutory changes as part
20 of Public Act 89-457. There are also changes
21 that clarify issues that have arisen since the
22 original adoption of Part 732 in 1994. In the
23 third is an effort to develop and incorporate
24 the use of risk-based remediation objectives, an

1 issue that will be carried over from its Part 732
2 rulemaking, which is referred to as Appendix B.

3 In my testimony, my prefiled
4 testimony, I had referred to testimony of Gary
5 King. There is no testimony of Gary King. What
6 I did was I incorporated what Gary was going to
7 testify with regard to my testimony. So there
8 is a reference to Gary King's testimony, which is
9 inaccurate.

10 The agency met with a peer
11 review group on several occasions over the past
12 12 months in an effort to reach a consensus
13 prior to submitting proposed amendments to the
14 board.

15 The peer review group included
16 representatives from the agency, the board,
17 engineering consulting firms, the Illinois State
18 Chamber of Commerce, the Illinois Petroleum Council,
19 and Illinois Petroleum Marketers Association.

20 As a result of these meetings,
21 I believe we have reached substantial consensus
22 on the major issues with one exception, which
23 is the definition of stratigraphic units, and
24 I will discuss that a little bit later in more

1 detail.

2 I would like to go through
3 now some of the changes that are proposed in
4 the amendments to Part 732. The changes include
5 requirements that information be provided on
6 agency forms rather than forms that are similar
7 to agency forms and denial by operation of law
8 rather than approval by operation of law if the
9 agency does not take action within a certain
10 time frame. That was the result of comments
11 made by the USEPA to make sure that the state
12 rules are consistent with the federal rules.

13 Also, some of the changes
14 include making the exception -- making the
15 exceptions that apply -- that are covered by
16 these rules consistent with Federal Rule 40 CFR 280
17 and making the definition of occurrence consistent
18 with that in the act. We wanted to clarify the
19 time frames for which early action activities
20 needed to be conducted.

21 Another issue that the USEPA
22 has brought up as far as a consistency issue
23 with the federal program is allowing groundwater
24 monitoring. The agency required groundwater

1 monitoring at our bay sites if the conditions
2 have warranted that.

3 There are changes to allow
4 deferral of site classification not solely based
5 on the availability of funds in the underground
6 storage tank fund, but based on availability of
7 funds and whether or not the release posed a
8 threat to human health and the environment.

9 One thing we note on this
10 is it's the agency's position that since the
11 Environmental Impact Fee was passed, there is
12 money coming into the fund at a rate of \$45 million
13 to \$50 million a year. That should be the case
14 through the year 2002. So we don't think that
15 until after that date that deferral will be
16 an issue anyway since there will be money in the
17 fund.

18 Other changes include allowing
19 the agency to approve alternative methods for soil
20 testing. Methods that are being developed, you
21 know, it seems like every day. We wanted to allow
22 alternative methods as long as they were equivalent
23 to the methods that were in the rules.

24 Clarifying the use of thin-walled

1 tubes, which are shelby tubes, is part of site
2 classification. There is clarification on what's
3 required for conducting hydraulic conductivity and
4 yield tests.

5 Changes also include clarification
6 on where, under Method 2, how deep the boring needs
7 to be when there are multiple tanks in the tank pit.
8 What we have added there is that it's 15 feet below
9 the lowest invert of the tank in that tank pit.

10 The changes would give the
11 agency authority to modify the location of
12 groundwater monitoring wells so they cannot
13 physically be located where the regulations currently
14 identify or require them to be located, which is 200
15 feet of the property boundary, and this allows a
16 waiver of groundwater monitoring where there is no
17 groundwater to be monitored.

18 This is primarily for sites on
19 a bluff that overlook a river where there may not
20 be water for 50 or 100 feet to be monitored. There
21 is no reason to require ground monitoring for low
22 priority sites.

23 As far as notification of tank
24 owners and operators, we are proposing to not require

1 the agency to notify them if they are doing a full
2 review, but rather, we only notify them if we are not
3 doing a full review and they can proceed with their
4 site clarification or corrective action plans.

5 There are several sections that
6 clarify the owner and operator of what is eligible
7 and ineligible to be reimbursed. The agency will --
8 there is a portion or an apportionment where some
9 of the tanks may be eligible and some may not be
10 eligible.

11 There are two ways to look at
12 that, either by volume or by number of tanks. In
13 the past it was the owner and operator's
14 responsibility to do that. With the changes,
15 the agency would do that and in doing so, that's
16 most favorable to the owner and operators.

17 There is an entirely new section
18 which sets forth the procedures for issuance,
19 voidance and recording of no further remediation
20 letters. We have added Appendix B, which is added
21 to identify additional parameters.

22 We have also added Appendix C,
23 which identifies max values of backfill for early
24 action that can be reimbursed.

1 One of the major changes is
2 that they have allowed a third method for site
3 classification. What this does is it allows the
4 tiered approach to corrective action objectives
5 to be used in classifying a site.

6 Instead of having Method 1 or
7 Method 2, we are proposing to have three methods
8 now. Method 3, if you will, site classification
9 by exposure of pathways as an alternative
10 classification to Method 1 and Method 2.

11 The exclusion of exposure pathways
12 refers to the proposed Part 742 rulemaking currently
13 before the board. The agency believes that most
14 sites can ultimately reach closure, for less cost,
15 by use of this alternative classification.

16 Following the classification by
17 this method, the site will either be classified as
18 no further action or high priority.

19 The basic thrust of Section
20 732.312, which is this alternative classification,
21 is straightforward. If all the applicable exposure
22 pathways or exposure routes could be excluded from
23 consideration under Part 742, Subpart C, then the
24 site is a no further action site. If any of the

1 applicable exposure pathways cannot be excluded,
2 then the site is a high priority site.

3 To make this determination,
4 the owner or operator must determine the full extent
5 of soil or groundwater contamination and must collect
6 data sufficient to show which of the exposure routes
7 can be excluded.

8 In addition, throughout the
9 proposed rules, we referred to Part 742, which
10 is again the proposed tiered approach, to clean up
11 corrective action objectives that are currently
12 before the board.

13 THE HEARING OFFICER: Excuse me. I
14 would just like to insert that this is R97-11?

15 MS. ROBINSON: R97-12.

16 MR. CLAY: We are referring to
17 the board's proposed regulations, most notably
18 in Section 732.408, remediation objectives.

19 One thing I would like to note
20 here, as I said, we feel like that adding this
21 alternative method will, in the use of 742, greatly
22 reduce the cost of site classification remediation.

23 We have put out a questionnaire,
24 which only one group has responded to, and we are

1 hoping that we will get additional responses from
2 the regulating community as to the economic benefit
3 of using the 742 material approach to cleanup
4 objectives. So we do hope to get that and further
5 comments on that.

6 Method 3 would be reimbursable.
7 However, you can only get reimbursed for one method
8 of site classification. In other words, if you
9 begin to do a Method 1 classification and you want
10 to switch to Method 3 or the exclusion of pathway
11 method classification, you can only get reimbursed
12 for one of those methods.

13 We are providing more detail
14 to the 742 or to the T.A.C.O. tiered approach of
15 corrective action in the 742.

16 The last thing I would like to
17 touch on is the one issue that we really didn't
18 reach a consensus with on the peer review group
19 and that was the issue of the definition of
20 stratigraphic unit.

21 The agency believes that all
22 of the changes in geological material should be
23 identified in the soil boring. The most permeable
24 zones in that zone or in that boring need to be

1 sampled and analyzed in accordance with the
2 current regulations.

3 The agency's proposal, we
4 believe, meets that intent, but we are going
5 to look at alternative wording that meets that
6 same intent. The important part is that the
7 most permeable zones be looked at. Again, we
8 feel like the definition that we are proposing
9 would do that.

10 That concludes my summary.

11 MS. ROBINSON: Mr. King, would you
12 like to add anything?

13 MR. KING: No thank you.

14 THE HEARING OFFICER: Should we proceed
15 with the prefiled questions?

16 MS. ROBINSON: Yes.

17 THE HEARING OFFICER: Okay. We
18 received two sets of prefiled questions, as I stated
19 previously. We will try to organize those by section
20 number.

21 In looking at them, I see the
22 first question is to 732.100(d) and that's from
23 the Illinois Petroleum Council, Mr. Rieser.

24 MR. RIESER: Thank you. I should say

1 there are additional copies in the back of the room
2 if anyone else would like a copy.

3 Reading the first question, it
4 refers to 732.100(d), "The additions here add types
5 of tanks excluded from regulations under USEPA
6 regulations (40 C.F.R. 2880.10(b)). Why were waste
7 water treatment tanks (40 C.F.R. 280.10(b)(2)) and
8 hazardous waste tanks (40 C.F.R. 280.10(b)(1)) not
9 included on this list?"

10 MR. CLAY: They should have been
11 included and we can concur they should be included
12 and we will include those in our next errata sheet.

13 MR. RIESER: I'm going to ask this
14 as a follow-up question. With respect to all of
15 these excluded units, except for hazardous waste
16 tanks, how are releases from these types of units
17 handled by the agency if not under this program?

18 MR. CLAY: The agency has a site
19 remediation program typically referred to as the
20 voluntary program. There are releases that are
21 not -- that do not fall under other regulatory
22 programs such as the underground storage tanks
23 programs or RCRA Subtitle C. They can proceed with
24 clean up and receive agency oversight.

1 MR. RIESER: And that is at the option
2 of the owner or operator of the tank?

3 MR. CLAY: That's correct.

4 MR. RIESER: Thank you.

5 THE HEARING OFFICER: The next
6 questions are -- are there any other follow-ups on
7 732.100? Seeing none, we will move along.

8 The next prefiled questions
9 are to 732.103. Mr. Putman and Mr. Rieser both
10 have questions. We will start with Mr. Putman.

11 MR. PUTMAN: Thank you, Ms. Tipsord.

12 The first question on behalf
13 of Gardner, Carton & Douglas is regarding Section
14 732.103. In this section, the agency proposes to
15 add the definition of "stratigraphic unit." The
16 definition proposed by the agency provides that
17 "a change in stratigraphic unit is recognized by
18 a clearly distinct contrast in geologic material
19 or a change in physical features within a zone of
20 gradation."

21 Subpart A to that question is as
22 follows: What constitutes a "change in stratigraphic
23 unit?"

24 MR. CLAY: A change in the geologic

1 material.

2 MR. PUTMAN: The second subpart is
3 how does the agency propose that parties record the
4 differences in geologic material to identify a
5 "change in stratigraphic unit?"

6 MR. CLAY: You would record them on the
7 boring log. This is done visually if there is a
8 visual change in the geologic material and that is
9 recorded on the boring log.

10 MR. PUTMAN: And the third subpart
11 of this question is what methodology does the
12 agency propose that parties follow to identify
13 a clearly distinct contrast in geologic material
14 for the purposes of stratigraphic unit definition?

15 MR. CLAY: Methodology, I guess, would
16 be a visual identification of the change.

17 MR. PUTMAN: May I ask a clarification
18 question?

19 MR. CLAY: Yes.

20 MR. PUTMAN: By methodology, I was
21 referring to perhaps a standard accepted methodology,
22 for instance, a unified sole classification. Would
23 the agency propose that a certain methodology be
24 followed in lieu of another?

1 MR. CLAY: I don't understand. I mean,
2 when you are identifying -- I don't understand that
3 question.

4 When you are identifying the
5 changes, you are identifying the changes visually
6 and then there are certain areas of that boring
7 that require the additional testing such as the
8 methodology you referred to.

9 So physical testing, soil testing,
10 doesn't have to be done with the whole column of, you
11 know, when there is a 50-foot boring and a 40-foot
12 boring.

13 Did that answer your question?

14 MR. PUTMAN: Yes.

15 THE HEARING OFFICER: Mr. Rieser?

16 MR. RIESER: Just as a follow-up to
17 that, is there an ASTM methodology visual
18 identification of stratigraphic units which you all
19 reference in your regulation?

20 MR. CLAY: Yes, there is. It's ASTM D
21 2488-93.

22 MR. RIESER: That would be the method
23 that would be acceptable for using in that context?

24 MR. CLAY: Yes.

1 THE HEARING OFFICER: Go ahead with your
2 questions.

3 MR. RIESER: I had two questions with
4 respect to 732.103, the second of which dealt with
5 stratigraphic units with a slightly different context
6 than Mr. Putman's questions. So I will ask b. first
7 and then go back to a. since we are on the subject b.

8 Subpart b. says with regard to
9 the definition of "stratigraphic unit," what does
10 the term "zone of gradation" mean?

11 MR. CLAY: It's the change of
12 methodology against grades. For example, in a
13 unit, you may describe it as a silty clay with --
14 and within that unit, you may have sand and pebbles
15 and as you go deeper, there may be more and more
16 high content and sand and pebbles. Those may all
17 be within the zone of degradation, but you need to
18 identify those differences.

19 MR. RIESER: Okay. Well, aren't you --
20 according to the definition, aren't you looking for
21 clear contrast within that zone so that you have to
22 have a real demarcation between one type of substrate
23 and another type of substrate?

24 MR. CLAY: Well, as far as

1 stratigraphic unit, we are looking for you to
2 identify any changes in geological material.

3 MR. RIESER: In the agency's testimony
4 regarding this definition, it is clear that the
5 agency is requiring analysis of different units where
6 the differences between the units reflect a change
7 in the ability of the unit to transport contaminants
8 any not just any perceived or measured change in
9 physical characteristics.

10 This concept is also reflected
11 in the quote from the Pollution Control Board in
12 Kathe's Auto Service Center versus The Illinois
13 Environmental Protection Agency where the board
14 references significant units. Can language be added
15 to this definition or to Sections 732.307(c) and (d)
16 which reflects this focus?

17 MR. CLAY: I think this all ties
18 with the definition of stratigraphic units. I
19 think we will review that, I guess, when we look
20 at the definitions of stratigraphic unit.

21 MR. RIESER: In the summarization
22 of your testimony, you talked about requiring
23 each stratigraphic unit being logged for purposes
24 of testing. There is language that requires

1 testing only for the most permeable units
2 identified, is that correct?

3 MR. CLAY: That's correct. The
4 one thing that is not clear, though, is that
5 you can't -- we don't believe that you can
6 always determine visually one zone is more
7 permeable than another zone. There may be a couple
8 of zones that could be more permeable that would
9 require the physical testing, but, yes, we are
10 looking for the zone that is most permeable. If
11 we can narrow that down visually, I think that
12 would be acceptable.

13 MR. RIESER: Your testimony references
14 a June 28, 1994, letter from Richard Berg. Can the
15 entire letter be included as an exhibit?

16 MR. CLAY: Yes. I think we have copies
17 of that.

18 MS. ROBINSON: Should we mark that as
19 an exhibit?

20 THE HEARING OFFICER: That would be
21 fine.

22 (Document marked as
23 Hearing Exhibit No. 2 for
24 identification, 11/18/96.)

1 THE HEARING OFFICER: Is there any
2 objection to including this as Exhibit No. 2?

3 MR. RIESER: No, ma'am.

4 THE HEARING OFFICER: Seeing that
5 there are none, we will admit a letter from the
6 Illinois State Geological Survey to Ms. Claire A.
7 Manning, Chairman of the Illinois Pollution Control
8 Board, dated June 28, 1994, as Exhibit 2.

9 (Whereupon, Hearing
10 Exhibit No. 2 was
11 admitted into evidence.)

12 MR. RIESER: Thank you very much.

13 Going back to question 2(a),
14 the definition of "free product" was taken from
15 USEPA UST rules, (40 CFR 280.10). Is there any
16 reason not to make this consistent with the
17 definition for free product proposed in 35 Ill.
18 Adm. Code 742, R97-12?

19 MR. CLAY: We can make these
20 definitions consistent. I think the definition
21 in proposed R97-12 just adds further clarification
22 to the current definition in these rules.

23 MR. RIESER: So you will use the
24 R97 proposed language of free product in these

1 regulations?

2 MR. CLAY: That's correct. We will
3 do that in our next errata sheet.

4 MR. RIESER: Thank you.

5 THE HEARING OFFICER: Are there any
6 follow-up questions to anything in 732.103?

7 Okay. Seeing none, let's proceed.
8 I believe the next question is to 732.104. Again,
9 Mr. Rieser, you may proceed.

10 MR. RIESER: Thank you.

11 Has the agency verified that
12 these are the most recent editions of the texts
13 to be incorporated by reference?

14 MR. CLAY: Yes.

15 MR. RIESER: That's it.

16 THE HEARING OFFICER: The next set of
17 questions, then, is to 732.202 if there are none to
18 any sections prior to that.

19 Okay. Let's start with
20 Mr. Rieser's question number four.

21 MR. RIESER: What are the consequences
22 if an owner/operator fails to perform the required
23 actions within the 20 or 45-day time frame? Are the
24 reports rejected? Is there no reimbursement for

1 actions outside the time frame?

2 MR. CLAY: With regard to the first
3 part of your question, it could result in the
4 violation if the reports are not submitted within
5 the 24 to 45-day time frames. The fact that you
6 did not perform those actions within those time
7 frames may threaten the ability for reimbursement.

8 The second part of your question,
9 are the reports rejected, they are not automatically
10 rejected, but if the agency, in reviewing the 20 or
11 45-day time frame reports, determines that they are
12 not complete, they could be rejected. They would not
13 automatically be rejected.

14 MR. RIESER: The basis for rejection
15 would not be the fact that they were not complete,
16 but that they were not filed on time?

17 MR. CLAY: That's correct. Is there
18 no reimbursement for actions outside the time frames?
19 They still could be reimbursed. There still could
20 be reimbursement. They still could be reimbursed
21 under early action, but we need to look at that on a
22 case-by-case site-specific basis.

23 MR. RIESER: What would be the factors
24 for making that determination?

1 MR. CLAY: The factors would be whether
2 or not they were actually early action activities.

3 MR. RIESER: Let's go to my next
4 question. I think that may help on that issue.

5 What are the consequences if tank
6 and backfill removal are not performed within the
7 20-day limit?

8 MR. CLAY: Once again, they may not be
9 reimbursed.

10 MR. RIESER: The question goes on to
11 say would this preclude reimbursement for these
12 tasks as early action under Title XVI?

13 MR. CLAY: It wouldn't preclude them
14 from being reimbursed, but again, we need to look
15 at them on a site-specific basis to see whether this
16 was truly an early action activity or if it was
17 reimbursement for or requesting reimbursement for a
18 plant tank.

19 MR. RIESER: So there could be tasks
20 which are appropriately characterized as early
21 action performed 20 days after the release is
22 reported and there is no agency approval of
23 extension of time where the agency would approve
24 for reimbursement for those tasks as early action?

1 MR. CLAY: Yes.

2 MR. RIESER: Are there any factors that
3 you could think of how you would make that decision?

4 MR. CLAY: Are you referring to any
5 actions during the 20 or 45-day or specifically, tank
6 removal?

7 MR. RIESER: Let's stick with tank
8 removal and backfill removal.

9 MR. CLAY: Reasons that the tank or
10 backfill may not be able to be removed is if there
11 is weather problems that don't allow that; if there
12 are problems scheduling contractors. Those are two
13 examples.

14 We certainly look at any
15 justification that you could provide. The key is
16 that early action activities are to address immediate
17 threat of that release and not to be corrective
18 action. So we would take into account not being
19 able to schedule contractors and that kind of thing.

20 MR. RIESER: Something like fire
21 marshal approval or having the fire marshal coming
22 out?

23 MR. CLAY: That would also be an
24 acceptable justification.

1 MR. RIESER: So to characterize
2 this would be pragmatic in terms where an
3 owner/operator is making a good faith attempt to
4 remove the tank within that time frame, but has
5 specific reasons where that could not be done?

6 MR. CLAY: Yes.

7 MR. RIESER: The regulation discusses
8 obtaining extensions from the agency and what would
9 be the procedures used for obtaining extensions?

10 MR. CLAY: As a regulations point
11 out, you must submit a letter to the agency
12 requesting that extension. We would expect that
13 you would include the reasons you are requesting
14 that extension and when you think that the --
15 those activities would be conducted.

16 MR. RIESER: What will the standards
17 be for granting or denying extensions?

18 MR. CLAY: The standards would be
19 whether or not the agency determines it was a
20 reasonable request or, I mean, whether the reasons
21 for requesting that extension are reasonable.

22 Let me give you an example. We
23 have had people submit reimbursement requests for
24 early action activities a year or more after the

1 release. Obviously, if you submit a request to
2 extend those more than a year, that's not -- we
3 don't consider that a reasonable request.

4 One other thing is if there are
5 circumstances beyond the applicant's control, we
6 would certainly grant an extension for that purpose.

7 MR. RIESER: So the basis for the
8 reason would be the same pragmatic factors you talked
9 about earlier?

10 MR. CLAY: Yes.

11 MR. RIESER: Can the agency commit to
12 sufficient turnaround so that a person facing the
13 deadline on their "20-day" tasks will be certain to
14 receive a written extension within the time frame?

15 MR. CLAY: We cannot commit to
16 specific time frames, but we can make every attempt
17 to turn those requests around as quickly as
18 possible.

19 MR. RIESER: Can this be just as a
20 follow-up? Could a person obtain this extension, for
21 example, by calling you, Mr. Clay, and follow up that
22 phone call with a letter confirming the phone call?

23 MR. CLAY: The regulations require that
24 it be in writing. There is nothing to -- the agency

1 does not have to grant that extension or concur with
2 that within the 20 or 45-day time frames for you to
3 be granted that extension.

4 So, I mean, even if we were not
5 able to respond prior to the 20 days, there is no
6 reason that if it's a valid request and reasonable
7 that we won't grant that.

8 MR. RIESER: Without a letter to that
9 extent from the agency, a person could be sure that
10 that was the case?

11 MR. CLAY: Would you ask the question
12 again, please?

13 MR. RIESER: Would you read back the
14 question?

15 (Whereupon, the requested
16 portion of the record was
17 read back accordingly.)

18 MR. CLAY: Well, once again, if it
19 was -- right now, there is no granting of that
20 extension. So in the current rules, there is no
21 guarantee either that we will concur with these
22 early action activities.

23 So I think if they are early
24 action activities, it's reasonable to conclude --

1 it's reasonable the request is going to be granted.

2 Keep in mind that if someone
3 submits a letter on the 19th day, and you require
4 this, and you're asking for this letter before the
5 20th day, the agency, to turn those letters around
6 that quickly, is logistically impossible.

7 So the 20 days is calendar days,
8 not working days. It's calendar days. Frankly,
9 people haven't had problems in submitting their 20
10 to 45-day reports on time.

11 I mean, we don't see them coming
12 in necessarily on the 46th day or 47th day. We see
13 them not coming in at all. So we either see them by
14 the 45th day or they don't submit them at all. I
15 don't see this being a problem from the past.

16 MR. RIESER: What is the basis for the
17 20-day deadline?

18 MR. CLAY: It's in the regulations.

19 MR. RIESER: The federal regulations or
20 the state regulations?

21 MR. CLAY: I believe it's in both.

22 MR. RIESER: Although the federal
23 regulations identify 20 days as a potential time
24 frame, they allow states the flexibility to select

1 additional time frames. Given the tasks to be
2 completed and the difficulty of obtaining consultants
3 and fire marshal approval within 20 days, will the
4 agency consider a different time frame?

5 MR. CLAY: You know, we think that the
6 20 to 45 days has been working fine. You can get an
7 extension. Again, the key is, you know, if you can't
8 do those activities within the 20 days, you can get
9 an extension. What's the reason? We are making
10 these or proposing these changes to avoid the
11 situations that we have had come up in the past
12 couple of years where people are trying to be
13 reimbursed for corrective -- for early action costs
14 A year or two years after they have had their release
15 and that is really not the intent of early action.

16 It's to address the immediate
17 threats of vapors in basements and to eliminate the
18 release and stop the release from occurring rather
19 than doing corrective action.

20 That's why we are seeing
21 corrective action being conducted under the early
22 action umbrella rather than down the road as the
23 regulation is really intended to be done.

24 MR. RIESER: Thank you.

1 THE HEARING OFFICER: Mr. Putman?

2 MR. PUTMAN: Thank you. Mr. Rieser's
3 questions somewhat touched upon Subpart A.

4 The question that I have, and
5 nonetheless, I will proceed with the question in
6 Section 732.202(g), which is, the agency proposes
7 an additional paragraph requiring that parties
8 perform early action activities within 45 days after
9 confirmation of a release for purposes of continuing
10 such activities unless "special circumstances,"
11 approved by the agency in writing, warrant continuing
12 such activities beyond 45 days.

13 This provision raises several
14 concerns particularly when early action requires free
15 product recovery, which could take more than 45 days
16 to complete.

17 The first subpart is what does the
18 agency mean by "special circumstances" in Section
19 732.202(g)? Specifically, what circumstances must
20 exist before the agency will approve continuing such
21 early action activities beyond 45 days?

22 MR. CLAY: As I had responded to
23 Mr. Rieser's question, such things as equipment
24 scheduling or scheduling or referring obviously

1 fire marshal permits. A lot of times, they will
2 require an inspector being present scheduling that
3 inspection on-site.

4 There is a multitude of possible
5 circumstances, and as I said before, especially
6 anything beyond the owner and operator's control.

7 Once again, if they are
8 reasonable -- to answer the second part of your
9 question, if they are reasonable, these
10 justifications will most likely be approved.

11 MR. PUTMAN: Thank you. Subpart B
12 of this question is does the 45-day time limit
13 for early action activities apply to free product
14 recovery, which often takes more than 45 days to
15 complete?

16 MR. CLAY: No, it doesn't. I think
17 it's very clear in the regulations now that free
18 product removal can be -- can continue beyond the
19 45-day and be reimbursed for that.

20 MR. PUTMAN: I believe that answers the
21 rest of the questions that I had on this area.

22 THE HEARING OFFICER: Okay.

23 MR. GIRARD: Marie, I have a follow-up
24 question along those lines.

1 THE HEARING OFFICER: Sure.

2 MR. TANNER: I have a question that
3 concerns 732.202(g). In the special circumstances
4 here, if the special circumstances are factors
5 beyond the control of the owner or operator, could
6 that phrase be inserted there instead of special
7 circumstances or are there other special
8 circumstances that are beyond the control of the
9 owner/operator that you have in mind?

10 MR. KING: One of the difficulties
11 we're getting into when we use a phrase like out
12 of control or beyond the control of the operator,
13 then, is what does that mean?

14 If he schedules -- if he has some
15 control over how he schedules people, is that beyond
16 his control or not beyond his control? That may be,
17 in some ways, a little bit too limiting if you use
18 just a phrase like that.

19 We have tried to -- we wanted
20 to keep it fairly open-ended here so that there
21 was an opportunity to make a reasonable demonstration
22 because somebody could come in and claim, well, I
23 can't schedule my contractor to come in here because
24 he is busy for the next 18 months. He may claim

1 that's out of his control, but we think that's not
2 a reasonable kind of circumstance.

3 I mean, we could reflect on
4 putting some additional language in there, but I
5 don't think we want to put language in there that
6 makes it -- makes the judgment call more difficult
7 to make.

8 We really -- with this provision,
9 we are trying to make it -- set up a procedure so
10 that there was something in the rules that was clear
11 to people that they could follow a given procedure to
12 get an extension, but at the same time, so we didn't
13 have to deal with these situations where people were
14 coming in and really, from our view, were seeking to
15 do an entire corrective action under the guise of
16 early action.

17 That's really kind of the issue
18 we were trying to control here. We can certainly
19 consider putting some additional language in there.

20 MR. GIRARD: So you see special
21 circumstances including factors beyond the control
22 of the owner/operator, but also tempered by what
23 the agency considers reasonable?

24 MR. KING: Right, I think so.

1 MR. GIRARD: Thank you.

2 THE HEARING OFFICER: Are there any
3 other questions.

4 Okay. Seeing none, the next
5 section of questions in the prefiled questions is
6 732.203(d). Are there any -- does anyone have any
7 questions before that section.

8 Seeing none, Mr. Rieser,
9 you may continue.

10 MR. RIESER: This section references
11 determination of free product "in accordance with
12 OSFM regulations," but there are no OSFM regulations
13 which deal with free product. This reference may
14 be a carry over from the prior language which only
15 referenced "released." Should the reference to
16 OSFM be deleted?

17 MR. CLAY: No, we don't believe it
18 should be deleted because it deals with confirmation
19 of a related presence of free product.

20 MR. RIESER: Which of the fire
21 marshal's regulations deal with free product as
22 opposed to release in general?

23 MR. CLAY: I'm not familiar with the
24 fire marshal's regulations.

1 MR. RIESER: Well, it would be my
2 suggestion that the agency review this because
3 my recollection is that there are fire marshal
4 regulations that deal with confirming releases
5 reviewed.

6 I don't believe any of those
7 reviews deal with the issue of whether free product
8 is there or not. If there are such regulations,
9 obviously, they should be brought forward. That
10 would be my continuing request and I would suggest
11 the agency review this issue.

12 MR. CLAY: We will review that.

13 MR. RIESER: Thank you.

14 THE HEARING OFFICER: Is there anything
15 additional.

16 Seeing none, the next set of
17 questions deals with Section 732.300. Mr. Putman,
18 we will begin with you.

19 MR. PUTMAN: 732.300(b)(1)(C)(i)
20 provides that "groundwater infiltrating the tank
21 excavation" is evidence that contaminated soils
22 may be in contact with groundwater.

23 The first subpart of this question
24 is as follows: What visual test or other type of

1 study would the agency propose that a party use to
2 determine whether groundwater is infiltrating the
3 tank excavation?

4 MR. CLAY: Again, some of this is
5 visual. You can see the groundwater in the tank when
6 there has been precipitation of that area for a
7 period of time. A lot of times, there is a claim
8 that this is rain water.

9 In that case, it may require
10 pumping out the excavation and seeing if there is
11 a recharge of water in the excavation.

12 MR. PUTMAN: The second subpart is
13 again referring to this section. How does the agency
14 define "contaminated soils?"

15 MR. CLAY: It would be soils that
16 have contamination above the 742 Tier 1 residential
17 values.

18 MR. PUTMAN: As a follow-up question,
19 would that be just for indicator compounds associated
20 with petroleum release?

21 MR. CLAY: Yes. If that is the -- it
22 would be if the indicator contaminants are
23 compounds that is the focus of the remediation being
24 conducted.

1 MR. PUTMAN: The third part of this
2 question, and final part, is does the reference to
3 "contaminated soils" in Section 732.300(b)(1)(C)
4 apply to contamination observed at the time the
5 tank is initially excavated or at some other time?

6 MR. CLAY: It would be -- it would
7 pertain to the -- at the time when the report
8 or plan is submitted to the agency. It is not
9 necessarily the time at which the tank was pulled
10 and release was identified.

11 MR. PUTMAN: I have a follow-up
12 question to that. So what basis would you propose a
13 party use to judge whether or not contaminated soils
14 are present?

15 MR. CLAY: Well, you know, if you pull
16 the tank, report a release, you go out there six
17 months later and do sampling which is what is
18 included in a plan or report submitted to the agency,
19 we would want the most recent data that you have
20 collected to be what you use to determine the
21 contamination. It may be different than the
22 contamination identified at the time the release
23 occurred.

24 MR. PUTMAN: I have no further

1 questions.

2 THE HEARING OFFICER: Mr. Rieser?

3 MR. RIESER: With respect to
4 732.300(b), can the agency clarify that the
5 732.300(b) groundwater evaluation requirements
6 are only for sites where no classification is
7 performed and do not apply where a classification
8 under 732.307 or 732.312 is performed?

9 MR. CLAY: Yes.

10 MR. RIESER: 732.300(b) references
11 35 Ill. Adm. Code 742 for allowing determinations
12 that no groundwater investigation will be required.
13 Would this be limited to pathway exclusions or are
14 there other portions of 35 Ill. Adm. Code 742 under
15 which no groundwater investigation would be
16 required?

17 MR. CLAY: Any applicable portion of
18 742 could be used.

19 MR. RIESER: Okay. Are the groundwater
20 wells referenced in 732.300(b)(1)(A) only potable
21 water wells or any groundwater wells?

22 MR. CLAY: Any.

23 MR. RIESER: Does that include
24 piezometers, p-i-e-z-o-m-e-t-e-r-s, or monitoring

1 wells?

2 MR. CLAY: Either one. Any groundwater
3 data can be used.

4 MR. RIESER: 732.300(b)(1)(B) refers
5 to free product "found to need recovery." Does this
6 reference some threshold amount of free product and
7 not just a sheen?

8 MR. CLAY: There is no threshold amount.
9 It could be just a sheen.

10 MR. RIESER: In 732.300(b)(1)(C), two
11 examples are given of circumstances supporting the
12 determination that groundwater is in contact with
13 soil. Will the agency confirm that these are the
14 only two circumstances in which this determination
15 will be made?

16 MR. CLAY: Yes. It was written --
17 it wasn't meant to be examples. It was these two
18 situations, so, yes.

19 MR. RIESER: Will the agency accept
20 demonstrations that water observed in an excavation
21 is surface water runoff rather than groundwater?
22 What factors would support such a determination?

23 MR. CLAY: We concur with that
24 demonstration. We accept that it is not groundwater

1 and that it is surface water runoff.

2 As I stated to the previous
3 question, you may pump out the excavation and observe
4 whether or not the water in the excavation recharges
5 also taking into account the climate conditions and
6 whether there was precipitation in the recent time
7 period.

8 MR. RIESER: So objective data which
9 supports that documentation that it was surface water
10 runoff rather than groundwater would be accepted by
11 the agency?

12 MR. CLAY: Yes.

13 MR. RIESER: Thank you.

14 MR. RAO: I have a follow-up question.
15 Under Section 732.300(b)(1), the amendment states
16 that a groundwater investigation may be required if
17 the following conditions exist. I want the agency
18 to clarify if the word may should be shall or if
19 there must have been an optional requirement there.

20 MR. CLAY: Well, I think it's probably
21 an issue to be made because in one situation I could
22 think of under (b)(1)(B), if free product is found,
23 there may have been free product, but it was
24 recovered in a timely manner and everyone concurred

1 that the free product did not migrate into areas
2 where it could come into contact with groundwater.
3 That may be a situation where a groundwater
4 investigation was not required.

5 MR. RAO: Do you foresee any other
6 circumstances other than free product that you may
7 not require them to investigate groundwater?

8 MR. CLAY: I can't think of any right
9 now.

10 MR. RAO: Is there any way you could
11 clarify the rules so that the agency shall require
12 groundwater monitoring if they don't meet these
13 conditions that I have been proposing?

14 MR. CLAY: Yes. We will look at
15 modifying that wording.

16 MR. RAO: Okay. Under Section
17 732.300(b)(1)(A), the proposal states that if there
18 is evidence that groundwater wells have been affected
19 by the release, what do you mean by affected by the
20 release? Is there, like, a threshold level that you
21 are looking at or is that something else?

22 MR. CLAY: We would be looking at
23 anything with contamination above the Tier 1
24 residential groundwater values that are proposed in

1 Part 742.

2 MR. RAO: Would it be acceptable for
3 that to include the site for the 742 regulations
4 to say that groundwater levels not exceed Tier 1
5 objectives?

6 MR. CLAY: Yes, we could.

7 MR. RAO: Also, in the same
8 subsection, when you talk about groundwater wells,
9 are you talking about wells that are within the
10 property boundary or at the property boundary or
11 outside the property boundary?

12 MR. CLAY: It could be any of those.

13 MR. RAO: Any of those. So you
14 need to have exceedance within the property line
15 or compliance requiring groundwater monitoring?

16 MR. CLAY: It would be at the
17 compliance or -- I don't know. It doesn't have
18 to be on-site, but you may have an off-site well,
19 but it's at the compliance or beyond. So it's
20 200 feet of the property boundary, whichever is
21 less.

22 MR. RAO: Thanks.

23 THE HEARING OFFICER: Are there any
24 other follow-up questions? Seeing none --

1 MR. RIESER: I'm sorry. With respect
2 to the free product discussion, you asked whether a
3 sheen would fall under this. How is sheen recorded?

4 MR. CLAY: I'm sorry?

5 MR. RIESER: What are the methodologies
6 required under Method 3?

7 MR. CLAY: Well, it would be to pump
8 out the groundwater, which the sheen would be a
9 part of. Again, I think the wording is it's a
10 reasonable effort to remove that. That doesn't mean
11 that every molecule of free product of sheen would
12 necessarily be removed, but if you have water with a
13 sheen on it, you should make the effort to pump that
14 out and treat it appropriately.

15 MR. RIESER: Thank you.

16 THE HEARING OFFICER: All right.

17 Seeing that there are no further questions on
18 that section, we will move along to the next set
19 of questions, which is 732.302.

20 Mr. Putman, we will start with you
21 and your question number four.

22 MR. PUTMAN: In Section 732.302(b),
23 the agency proposes to add language providing that
24 "a groundwater investigation shall be required to

1 confirm that a site meets the criteria of a 'no
2 further action' site if the agency has received
3 information indicating that the groundwater is
4 contaminated at levels in excess of applicable
5 groundwater objectives."

6 The first subpart to my question
7 is as follows: What types of information will the
8 agency rely upon as an indication that groundwater
9 is contaminated at a site?

10 MR. CLAY: We would be looking at
11 analytical data monitoring a well or some other
12 type of valid analytical data.

13 MR. PUTMAN: And what do you mean by
14 valid?

15 MR. CLAY: Well, I mean, the well needs
16 to be installed properly. I mean, someone has gone
17 out there, used the geoprobe, for example, and
18 collected a groundwater sample and, you know, we
19 would accept that.

20 MR. PUTMAN: The second subpart to
21 that question is would the agency rely on data
22 from old wells that were not placed or installed
23 following procedures acceptable under current Part
24 732 regulations as "information indicating that

1 the groundwater is contaminated" at a site?

2 MR. CLAY: We would look at old wells
3 if they were installed properly. If they were within
4 200 feet of the property boundary or further out,
5 that type of data could be used.

6 MR. PUTMAN: When you say "installed
7 properly," would you include wells that were
8 installed without regards to the saturated interval
9 lines that were installed, let's say, 15 feet whether
10 or not there was groundwater there? When I say
11 "placed," that's what I mean by placed.

12 MR. KING: Just to follow-up on that,
13 really, this is a triggering issue. So we want to
14 be fairly comprehensive on this.

15 For instance, there could be --
16 somebody could have an off-site well where they --
17 it's used as a drinking water well. It may not be
18 installed for monitoring purposes, but if that
19 drinking water well showed contamination levels,
20 you know, we would want to use that as a potential
21 trigger for doing further groundwater investigation.

22 MR. PUTMAN: The third subpart of
23 this question is what types of "contamination" is
24 the agency referring to in Section 732.302(b)? Is

1 the agency referring to any type of contamination
2 or only contamination from indicator contaminants
3 related to petroleum tank releases?

4 MR. CLAY: It's indicator contaminants
5 related to the tank.

6 MR. PUTMAN: No further questions.

7 THE HEARING OFFICER: Mr. Rieser?

8 MR. RIESER: Will the agency state
9 that it does not intend to use this section to
10 reopen sites where no further remediation letters
11 have already been issued?

12 MR. CLAY: We do not plan to go
13 back to sites where we have already issued further
14 remediation letters.

15 MR. RIESER: Will the agency state
16 that it does not intend to use this section to
17 require groundwater investigations at sites which
18 have already received IEPA approvals of no further
19 action classifications?

20 MR. CLAY: Yes. We do not plan on going
21 back to those.

22 MR. RIESER: Will the agency clarify
23 that the only information indicating that groundwater
24 is contaminated at levels in excess of applicable

1 groundwater objectives is actual sampling data from
2 existing investigation or monitoring wells set at
3 appropriate compliance points?

4 MR. CLAY: The answer there is yes,
5 or at points further out than those compliance
6 points.

7 MR. RIESER: The statutory authority
8 for revisions to this section is the amendment to
9 Section 57.7(b)(2)(B) of the Illinois Environmental
10 Protection Act (415 ILCS 5/57.7). The revised
11 language states, "groundwater investigation
12 monitoring may be required to confirm that a site
13 meets the criteria of a no further action site."
14 At which statutory "no further action" criteria
15 would this groundwater investigation be directed?

16 MR. CLAY: Any of the criteria.

17 MR. RIESER: Any of the criteria
18 for no further action sites?

19 MR. CLAY: Yes.

20 MR. RIESER: Will the agency clarify
21 that it will not require persons seeking "no further
22 action" classifications to perform groundwater
23 investigations under this section unless there is
24 actual groundwater sampling data from existing

1 monitoring wells demonstrating exceedences of 732.408
2 standards at points of compliance?

3 MR. CLAY: That is the agency's intent
4 or at locations outside that for compliance.

5 MR. RIESER: By point of compliance,
6 that indicates non-compliance at a point?

7 MR. CLAY: Right.

8 MR. RIESER: Thank you.

9 THE HEARING OFFICER: Any follow-up?

10 MR. RAO: I have a follow-up question.

11 Under Section 732.302(b), the last
12 sentence, states that the investigation confirms
13 there is an exceedance of an applicable indicator
14 contaminant objective, the agency may reclassify
15 the site as high priority. Under what circumstances
16 would you reclassify a site as high priority?

17 MR. CLAY: If the indicator
18 contaminants are above the Tier 1 levels.

19 MR. RAO: Can that be stated in the
20 rule that the agency shall reclassify the site as
21 high priority if there is an exceedance of the
22 Tier 1 objectives?

23 MR. CLAY: We can make that change.

24 MR. RAO: Thank you.

1 THE HEARING OFFICER: Anything
2 further?

3 MS. ROBINSON: I have one. Just a
4 second. Sorry.

5 Regarding Mr. Rieser's second
6 question on 732.302(b), will the agency state that
7 it does not intend to use this section to require
8 groundwater investigations at sites which have
9 already received IEPA approvals of no further action
10 classification? I think Mr. Clay stated that it
11 was not our intent, but I would like to ask the
12 question, isn't it USEPA's concern that we have
13 the right to do that if we do, in fact, receive
14 information that there is groundwater contamination
15 that's been classified as NFA based technology we
16 may, in fact, require a groundwater investigation
17 at those sites?

18 MR. CLAY: We could. It's not our
19 intent to go back and review those at this time.

20 MS. ROBINSON: Thank you.

21 THE HEARING OFFICER: Anything
22 further?

23 MR. RIESER: Is that same distinction
24 true for no further sites which have received no

1 further remediation letters?

2 MR. KING: You know, I'm thinking
3 through this. I suppose there might be some extreme
4 case in which we get some kind of information and
5 it's really some kind of extreme problem and we
6 can conclude, based on that situation, no further
7 remediation letter has to be voided and then we
8 have to go back in and require a further groundwater
9 investigation, but I'm struggling to think as to
10 what the circumstances would be relative to that
11 case. It would have to be very unusual.

12 Our purpose in putting this
13 here is not to find a mechanism to reopen no
14 further remediation sites where there has been a
15 letter issued. We don't want to do that. So
16 there may be some very unusual circumstances,
17 but it would be very, very limited.

18 MR. CLAY: I think if we did that,
19 it would be the fact that the plan or the report
20 that was submitted was not representative of the
21 situations at the site and that would be our
22 justification for going back in and reopening that.

23 MR. RIESER: Would the type of
24 circumstances that Mr. King envisions involve setting

1 aside the addition that Mr. Clay provided? Would
2 the type of circumstances involve, say, really gross
3 groundwater contamination?

4 MR. KING: Yes, that could be. I guess
5 there also could be -- and again, it almost gets into
6 the issue of what creates a voidable no further
7 remediation letter -- if we found there was some kind
8 of fraud related to it and then that might reopen
9 this issue.

10 As far as the levels, I guess I'm
11 not quite sure. I really haven't thought about it
12 too much more beyond when you asked the question.

13 MR. RIESER: So it would be the type of
14 things that were covered -- things the agency would
15 have to demonstrate to void a no further remediation
16 letter?

17 MR. KING: I would think so because
18 otherwise, there would be no vehicle to get through
19 things. I mean, if the no further remediation letter
20 was issued, that has its own regulatory and statutory
21 significance. Unless that letter was voided, I don't
22 know procedurally how this would come up.

23 MR. RIESER: Okay. Thank you.

24 MR. JAMES: I'm Ken James from Carlson

1 Environmental. As a follow-up to Mr. Rieser's
2 question, if for some reason, due to information
3 received through interested third parties or
4 whatever, you reopen a site, would that also reopen
5 that site for eligibility to access that?

6 MR. KING: I would say no.

7 MR. JAMES: As a follow-up to your no,
8 is there any reopening the case?

9 MR. KING: You know, as we were just
10 conferring here for a couple minutes, I think we are
11 a little bit concerned about that question, where
12 that question is -- where my response to that may be
13 leading us because we do have some specific instances
14 in-house right now where we have specific cases where
15 this type of issue is coming up for review.

16 You know, rather than try to make
17 an off-the-cuff statement here that's going to
18 influence a decision on a site-specific case, maybe
19 it would be better just to kind of reserve that
20 question and deal with it in the context of the
21 site-specific issue that's coming up.

22 MR. RIESER: Perhaps this could be
23 something that could be a test with some thought at
24 the next hearing.

1 MR. CLAY: Well, I think we can say
2 generally no, but there may be specific situations --

3 MR. RIESER: Generally, no
4 reimbursement?

5 MR. CLAY: Yes.

6 MR. RIESER: Okay.

7 MR. CLAY: There may be specific
8 situations where the site is allowed to be
9 reimbursed. Generally, once you receive a no further
10 remediation letter, you are out of this program and
11 that's the end of your eligibility.

12 MR. JAMES: As a follow-up, then, once
13 that letter is rescinded or voided, doesn't that put
14 you back into the program?

15 MR. KING: I'm not sure if we are
16 dealing with the -- the question is addressing a
17 specific thing about proposal.

18 That's kind of a general question
19 relative to how the whole regulatory program
20 operates. It seems to me this specific -- I guess
21 I'm trying to figure out how this specifically fits
22 into what we are talking about here.

23 MR. CLAY: I mean, is your question
24 directed at one of the proposed amendments?

1 MR. JAMES: My question is directed at
2 the rescinding or the voiding out of a letter that's
3 already in hand stating that a site is in a no
4 further remediation file or action.

5 MS. ROBINSON: May I suggest that we
6 hold this question back until we get to the section
7 on the NFR letters and that way, we can maybe during
8 a break or something discuss this a little bit
9 further so we are not holding anything up.

10 THE HEARING OFFICER: Okay. Could we
11 go off the record for a second?

12 (Whereupon, a discussion
13 was had off the record.)

14 THE HEARING OFFICER: We will go ahead
15 and get started again. I think we are ready to
16 proceed with question five from Gardner, Carton &
17 Douglas.

18 Mr. Putman?

19 MR. PUTMAN: The question is as
20 follows: Proposed Section 732.306(b)(2) provides
21 that before an owner or operator may defer site
22 classification, low priority groundwater monitoring
23 or remediation activities, the owner or operator
24 shall submit a report demonstrating that the release

1 does not pose a "threat to human health or the
2 environment through migratory pathways."

3 Is the agency proposing that
4 the demonstration necessary to meet the "no threat
5 to human health or the environment" should be the
6 procedures set forth in Section 307(g) for the
7 investigation of migration pathways?

8 MR. CLAY: Yes.

9 MR. PUTMAN: Thank you.

10 THE HEARING OFFICER: Any follow-up?

11 Okay. Next, I believe,
12 would be question number eight by Mr. Rieser of the
13 Illinois Petroleum Council.

14 Mr. Rieser?

15 MR. RIESER: This is a question
16 regarding 732.307(c)(2). With respect to this
17 section and others, what will be the standards
18 for agency approval of alternate methodologies?

19 MR. CLAY: An evaluation on whether
20 those methodologies are equivalent to the approved
21 method and that they meet the same intent.

22 MR. RIESER: One factor might be
23 whether these are approved methodologies of ASTM
24 or other groups?

1 MR. CLAY: Yes. That certainly would
2 be taken into account.

3 THE HEARING OFFICER: Mr. Rieser, I
4 believe the next question again is yours.

5 MR. RIESER: With respect to
6 732.307(d)(2), which has to do with the physical
7 soil classification for Method 2, would a slug test
8 be acceptable as an equivalent to a pump test?

9 MR. CLAY: No. They are not
10 equivalent.

11 MR. RIESER: If not, what method would
12 be equivalent to a pump test?

13 MR. CLAY: You can do an equation that
14 would be equivalent to a pump test.

15 MR. RIESER: This is specifically
16 looking at 732.307(d)(2). What type of equation?

17 MR. CLAY: There are a number of
18 equations that could be used. I believe there is
19 one referred to as a Theiss equation.

20 MR. RIESER: Theiss?

21 MR. CLAY: I believe that's the case.
22 There are a number of other equations that could be
23 proposed.

24 MR. RIESER: What type of physical

1 factors would have to be gathered to use those
2 equations?

3 MR. CLAY: I'm not sure. I don't have
4 the equations in front of me.

5 MR. RIESER: Can examples of those
6 equations be provided at the next hearing?

7 MR. CLAY: Yes, we can do that.

8 MR. RIESER: Can aquifer geometry be
9 determined by using local and regional geologic
10 maps?

11 MR. CLAY: No. We are looking for
12 site-specific information.

13 MR. RIESER: If a local map is very
14 local based on detailed analysis of the area for
15 consideration, would that be acceptable?

16 MR. CLAY: We will look at data.
17 I mean, the data doesn't need to be collected
18 necessarily for this specific project, but we
19 don't -- we're not looking for regional type
20 maps or, I mean, there was a water well installed or
21 some other type of well installed in the immediate
22 area, that may be used. We need to look at this on
23 a site-specific basis. We want to know the geometry
24 of the aquifer at that site.

1 MR. RIESER: If it can't be used --
2 can't be determined by local or regional geography
3 maps, how is that determined?

4 MR. CLAY: Through pump tests,
5 calculations of the equation.

6 MR. RIESER: Other methods?

7 MR. CLAY: Other methods may be
8 acceptable.

9 MR. RIESER: The section -- again,
10 we are talking about references to analytical
11 solutions. What analytical solutions would be
12 accepted?

13 MR. CLAY: There are a number of
14 acceptable analytical solutions.

15 MR. RIESER: Name one or two.

16 MR. CLAY: We can provide examples of
17 those at the next hearing if you like.

18 MR. RIESER: Thank you. I would
19 appreciate that.

20 Is there one standard method for
21 calculating yield from hydraulic conductivity and
22 vice versa?

23 MR. CLAY: Not one standard method.

24 MR. RIESER: And those are the types

1 of methods you will bring as the analytical
2 equations?

3 MR. CLAY: Yes.

4 MR. RIESER: Would the calculated value
5 be considered representative of field measurements?

6 MR. CLAY: Can you give a further
7 explanation as to what you are specifically asking?

8 MR. RIESER: Yes. I think the next
9 question gets into it. Let me ask that. Maybe that
10 will firm this up.

11 Where no water bearing unit is
12 encountered during the physical soil classification
13 boring, will the calculation for yield provide a
14 reliable result?

15 MR. CLAY: Yes.

16 MR. RIESER: It is meaningful to
17 calculate a yield for a non-water bearing unit?

18 MR. CLAY: Yes, because even know there
19 may not be a water bearing unit -- let me correct my
20 answer. What I meant was you need to calculate the
21 hydraulic conductivity for a non-water bearing unit
22 because it still provides an avenue for contaminants.
23 But you are correct in a yield for a non-water
24 bearing unit.

1 It is not beneficial unless there
2 are seasonal fluctuations in the groundwater where at
3 one time of the year, you have a zone that is not
4 water bearing and another time of the year, it is
5 water bearing.

6 MR. RIESER: The issue you just
7 described where there is a non-water bearing unit,
8 is that an example of the situation where the
9 calculated value would not be representative of
10 field measurement?

11 MR. CLAY: That's correct. It would
12 not be representative.

13 MR. RIESER: Going on to 732.307(d)(3),
14 are there situations where a measured hydraulic
15 conductivity of less than one times ten plus would
16 result in a calculated yield greater than 150 gallons
17 per day?

18 MR. CLAY: Yes.

19 MR. RIESER: Would this -- in that
20 instance, would this be a no further action test
21 even though the yield has not actually been measured?

22 MR. CLAY: Yes. In that case, it would
23 fail.

24 MR. RIESER: That's the question

1 by these proposed revisions, the agency requires
2 meeting both yield and hydraulic conductivity
3 tests. Yet, if the unit measured is not water
4 bearing, the yield is merely a number calculated
5 from the hydraulic conductivity that has little
6 realistic meaning.

7 Would the agency consider revising
8 this section so that in those instances where there
9 is no water bearing unit, the yield does not have to
10 be calculated?

11 MR. CLAY: I guess at this point, I
12 would like to -- we will consider changing that,
13 but without a commitment to change it, our concern
14 is if you can fail one and pass the other when we
15 are talking about yield and hydraulic conductivity.

16 If there is no water bearing
17 unit to measure yield and there is no seasonal
18 fluctuation, that is going to -- so that you have
19 a water bearing unit there, then, we will look at
20 warding so that you will be strictly relying on
21 the yield. I mean, I'm sorry, hydraulic conductivity
22 rather than calculate yield value.

23 Let us look at that and we will
24 respond to this at the next hearing.

1 MR. RIESER: All right. Shall I go
2 on to my next one? I'm sorry for the delay. This
3 gets back to the discussion with Mr. Putman's earlier
4 section regarding a stratigraphic unit. Can an
5 engineer evaluate factors which would support
6 mobility of the contaminant in determining the
7 further testing of each unit as defined is not
8 necessary?

9 MR. CLAY: Again, this hinges back on
10 the definition of stratigraphic unit. I think we
11 need to look at, as I discussed earlier, revising
12 that definition that may answer this question. Is
13 that acceptable or is there --

14 MR. RIESER: I think that's acceptable.
15 I guess the purpose the question is proposed
16 revisions might consider that type of engineering
17 geologic judgment as to what the change means
18 rather than just sampling because there is a
19 change.

20 MR. CLAY: I would agree with that, but
21 the -- what the problem is is when you are preparing
22 a plan, a site classification plan, and you are going
23 to be seeking reimbursement, you are trying to
24 predict exactly what you are going to have to do and

1 have an associated budget with that.

2 If the engineer in the field,
3 our geologist and project manager, disagree with
4 that, the evaluation of the soil boring and the
5 geologic material, we don't want to set up a
6 situation where we are having people go out and
7 remobilize and do additional drilling or additional
8 boring.

9 Let us look at that and the only
10 problem we are trying to avoid is if there is a
11 difference in opinion between the agency people
12 versus the engineer that's doing the site
13 classification.

14 MR. RIESER: If additional soil boring
15 demonstrates that a unit is discontinuous, would
16 testing still be required?

17 MR. CLAY: I think this needs to be
18 looked at on a site-specific basis. If it's very
19 limited, I would say yes. If it's discontinuous,
20 but it's overly large -- it could still be over a
21 large area, then, it may be appropriate to do that
22 testing.

23 MR. RIESER: Thank you.

24 THE HEARING OFFICER: Okay. Are there

1 any other questions on 307(d).

2 Seeing none, I think the next
3 question, then, would be Mr. Putman. That would be
4 question six.

5 MR. PUTMAN: Section 732.307(g)(3)(A)
6 provides that the "licensed professional engineer
7 shall be presumed correct when certifying whether
8 or not there is evidence that, through natural or
9 man-made pathways, migration of petroleum vapors may
10 potentially threaten human health or human safety."
11 What does the agency propose as the standard for
12 measuring the potential threat to human health and
13 safety under this provision?

14 MR. CLAY: I don't believe that this
15 is a proposed change. This wording has not been
16 changed from what was adopted by the board in
17 September of '94. To answer the question anyway,
18 that is what the engineer must determine what is
19 appropriate and that is the job and responsibility
20 of the professional engineer.

21 MR. PUTMAN: The reason I ask that
22 question is to clarify that this issue of threat
23 to human health and safety is something that --
24 a threat that runs through the regulations even

1 part of the proposed regulations. I'm just trying
2 to establish perhaps there is some consistencies
3 in and thought that I believe that answers my
4 question.

5 THE HEARING OFFICER: The next one,
6 then, would be Mr. Rieser's question twelve.

7 MR. RIESER: This section is
8 732.307(j)(1). Based on Sections 732.300(b) and
9 732.302(b), groundwater investigation should only
10 be required in the following three circumstances:
11 (a), the owner/operator is not performing a site
12 classification and the circumstances specified
13 in Section 732.300(b) require groundwater
14 investigation; (b), the site can be classified
15 as a no further action site, but under Section
16 732.302(b), the agency has information that
17 groundwater objectives are exceeded and requires
18 a groundwater investigation to be performed; or
19 (c), the owner/operator classifies a site as high
20 priority pursuant to Section 732.312.

21 Can the language of Section
22 732.307(j)(6)(D) be changed to reflect that these
23 are the only specified conditions under which
24 groundwater investigation is required?

1 MR. CLAY: Well, I'm not sure if I
2 understand your question because there are other
3 circumstances. If the geology does not meet the
4 methodology under Method 1, you would have to do
5 a groundwater investigation under low priority
6 site.

7 MR. RIESER: Okay. I think the
8 basis of the question is that the language of
9 one is modified from any site that fails to
10 satisfy these requirements for no further action
11 site classification under Subsection B.

12 So it's that shall perform
13 language that would say you always have to view
14 it rather than you have to do it with regard to
15 this requirement specified at this part. So I
16 think that's what I'm trying to find is whether
17 the agency will accept limited language on that
18 section that reflects there are limitations under
19 which groundwater investigations are warranted.

20 MS. ROBINSON: May I ask you a
21 question?

22 MR. RIESER: Yes.

23 MS. ROBINSON: Are you stating here
24 that (j) (1) should just -- instead of reading

1 Subsection (j) should read Subsection (j)(6), in
2 accordance with Subsection (j)(6)?

3 MR. RIESER: I would think you would
4 want to see a licensed professional engineer perform
5 groundwater investigations as required under this
6 part. If you didn't want to specify the exact
7 section in accordance with Subsection (j), how will
8 there be limitations or circumstances under which
9 you would do this?

10 MR. CLAY: Okay. We will include that
11 in our next errata.

12 MR. RIESER: Thank you.

13 THE HEARING OFFICER: I believe the
14 next question, then, would be question number seven
15 for Mr. Putman.

16 MR. PUTMAN: Section 732.307(j)
17 provides that wells must be installed so that they
18 "provide the greatest likelihood of detecting
19 migration of groundwater contamination." What
20 criteria does the agency propose that parties use
21 to determine well locations for the greatest
22 likelihood of detecting migration of contamination?

23 MR. CLAY: Again, there is no change
24 here, but the requirement is, at a minimum,

1 redowngrading or upgrading the well and the location
2 of those is somewhat variable. That's part of what
3 the engineer and the geologist in submitting the
4 plan are to determine.

5 MR. PUTMAN: Is it the agency's
6 position on the use of old wells that were not
7 placed following procedures currently required
8 under Part 732 regulations to meet the Section
9 732.307(j)(3) requirements? Is it the agency's
10 position that parties may use these wells, if
11 they so choose, for groundwater investigation?

12 MR. CLAY: They would not be approved
13 unless there were physical barriers to preventing
14 it at the location of the wells to be installed at
15 200 feet of the property boundaries.

16 MR. PUTMAN: Thank you.

17 THE HEARING OFFICER: Okay.

18 Mr. Putman, I believe you also have the next
19 question, number eight.

20 MR. PUTMAN: Thank you. My next
21 question is proposed Section 732.307(j)(6)(A)
22 provides that as an alternative to installing
23 monitoring wells that a "licensed professional
24 engineer may demonstrate to the agency through

1 a site-specific evaluation that the ground
2 monitoring should not be required." The proposed
3 section lists three factors upon which such a
4 demonstration should be based. The third factor
5 requires an evaluation of "whether seasonal
6 fluctuation of groundwater could result in
7 groundwater contacting contaminated soil."

8 The first subpart of this question
9 is how does the agency propose that seasonal
10 fluctuation be monitored or measured?

11 MR. CLAY: There are a number of
12 ways, one of which is listed as an example,
13 which is historical records. This could be
14 from their specific wells in the area and what
15 those seasonal fluctuations have been in the
16 past.

17 MR. PUTMAN: Just building on your
18 comment about historical wells, when you refer
19 to historical records, does the agency propose
20 that this seasonal fluctuation be identified from
21 data obtained from old wells that were not placed
22 or installed following currently acceptable
23 requirements under the Part 732 rules?

24 MR. CLAY: Here, we are looking

1 strictly at the -- I mean, we need to look at the
2 specific situation, but we are looking at seasonal
3 fluctuations in the groundwater elevation. So I
4 would say if it adequately represented seasonal
5 fluctuation groundwater levels, it could be used.

6 MR. PUTMAN: How would you suggest
7 that adequately represented that determination to
8 be made?

9 MR. CLAY: Are the wells screened
10 in the proper intervals. In this case, we are not
11 looking at contaminant concentrations in the water.
12 We are simply looking at the groundwater elevation.

13 MR. PUTMAN: Thank you.

14 THE HEARING OFFICER: I believe
15 the next question is question number thirteen on
16 Mr. Rieser's set of questions and question number
17 nine from Mr. Putman's group of questions, which
18 are pretty much the same question.

19 Mr. Rieser, you may ask your
20 question and then you may follow-up if you have
21 anything further, Mr. Putman.

22 MR. RIESER: If no groundwater
23 investigation is warranted, should not the site
24 be deemed no further action rather than low

1 priority?

2 MR. CLAY: No, it should not, and
3 the reason being is that it still doesn't need
4 the NFA geology, which is the key. So the way we
5 had set it up is it would be a no further action --
6 I'm sorry -- a low priority site does not require
7 ground level monitoring and receives no further
8 remediation letters.

9 MR. RIESER: A no further remediation
10 letter would be automatic as low priority under this
11 section?

12 MR. CLAY: Once the agency
13 administratively issues that letter, yes, there
14 is no additional report required in addition to
15 what would be required for a low priority site
16 that had concluded their three years of groundwater
17 monitoring.

18 MR. PUTMAN: That answers my questions
19 as well. I have no follow-up.

20 MR. RAO: I have a follow-up question.
21 I wanted to know if under Section 732.307(j)(6)(A),
22 you have listed the three factors on which a licensed
23 professional engineer has the basis of demonstrating
24 to the agency. How does the agency evaluate that

1 demonstration? Do they just look under those three
2 factors listed in Subsection (b)(6) or does the
3 agency take into consideration other factors?

4 MR. CLAY: I think it's our intent
5 to look at those three factors and rely on the
6 professional engineer's certification.

7 MR. RAO: So essentially, if there
8 is no groundwater present within the depth of the
9 boring, which can be 200 feet or 15 feet into the
10 tank, and there is no groundwater being there and
11 there is no seasonal fluctuation, then, there is
12 no ground monitoring requirement?

13 MR. CLAY: Right. The issue where
14 this came up is the situation where you have a
15 site on a bluff around a river. If you don't
16 meet the no further action geology so that there
17 is a requirement to do a groundwater investigation
18 and you did a 50-foot boring there and there is
19 no water even to monitor, is the agency going
20 to require the owner/operator to monitor a dry
21 well basically for the next three years when we
22 know and don't anticipate any water in those
23 wells over the next three years or can they
24 go ahead and get their no further remediation

1 letter?

2 MR. RAO: It kind of makes sense
3 when you're talking about a 50-foot boring, but
4 Method 2 goes to 15 feet.

5 MR. CLAY: Well, under Method 2, it's
6 really 15-foot below the invert of the tank. In
7 most cases, you are looking at 30 or 35-foot boring
8 below the surface.

9 So it's not just 15 feet. It's
10 actually 15 feet below the invert of the lowest
11 tank in that tank field. So it actually ends up
12 being 30 or 35 feet normally below the surface
13 level.

14 MR. RAO: You also said in response
15 to Mr. Rieser's question that when a site is
16 classified as low priority, they don't have to
17 do any compliance monitoring either to show that
18 they are complying with the groundwater objectives
19 and the compliance boundary.

20 MR. CLAY: Did I say that?

21 MR. RAO: I think you did.

22 MR. CLAY: If it's a low priority
23 site, they need to do the three years of groundwater
24 monitoring in accordance to those requirements.

1 Now, what -- at the end of that, they submit a --
2 assuming there has not been an exceedance of the
3 Tier 1 numbers, they would submit a low priority
4 groundwater report.

5 MR. RAO: So are you saying they will
6 monitor it?

7 MR. CLAY: If there is water. Okay.
8 Let me clarify this. Your question is located
9 specifically to a (j)(6) site where the engineer
10 has certified there is no groundwater and they have
11 met these criteria basically?

12 MR. RAO: Yes.

13 MR. CLAY: In that case, there would
14 be no monitoring required and that the engineer
15 would simply submit a low priority completion report
16 showing that they met those criteria providing that
17 justification and certification and the agency would
18 issue a no further remediation letter.

19 MR. RAO: Do you see under any
20 circumstances where a site may meet these three
21 factors, but then there must still be groundwater
22 underlying the site, which may potentially be
23 affected by the contaminated soil?

24 MR. CLAY: We really don't see that

1 as a situation. I mean, I guess it's possible.
2 We feel if they meet the criteria, there is not
3 going to be any water to sample anyway.

4 MR. RAO: And the compliance boundary
5 also, you don't see --

6 MR. CLAY: At the 200-foot or the
7 property boundary, yes, whatever is appropriate.

8 MR. RAO: Okay.

9 MR. RIESER: If I could follow-up,
10 Mr. Clay, it's true that a site is no further action
11 not because of the ground, not necessarily because
12 of the groundwater condition at the compliance point,
13 but because of the soil type in accordance with the
14 Berg map?

15 MR. CLAY: A site would be no further
16 action under Method 1 as far as the geology with
17 regard to the Berg map and the idea there is a --
18 that you have clay type of soils, and there is no
19 reason there would be migration.

20 MR. RIESER: Under Method 1, you have
21 certain types of soils and no groundwater. It seems
22 at the compliance point, this would make it a low
23 priority site whether or not there is no water
24 identified at the site.

1 MR. CLAY: Correct.

2 MR. RIESER: The purpose of this is
3 directed specifically at the situation where there
4 is no groundwater to measure and based on the
5 seasonal fluctuation evaluation and you don't expect
6 any groundwater to measure during the three years,
7 the low priority site is required to measure
8 groundwater, is that correct?

9 MR. CLAY: That's correct.

10 MR. RIESER: Thank you.

11 THE HEARING OFFICER: Okay. I think
12 the next question, then, is also yours, Mr. Rieser.

13 MR. RIESER: Going on to question
14 fourteen, this deals with 732.310(g)(2). Should not
15 the reference be to (g)(1) rather than (a)?

16 MR. CLAY: Why do you think it should be
17 to (g)(1) rather than (a)?

18 MR. RIESER: I asked the question,
19 sir. The reason being is that (a) of 310 talks
20 about for purposes of this part, indicator
21 contaminants shall mean the parameters listed
22 subsections (b) through (g). In other words,
23 it talks about all of those things whereas (g)(2)
24 references certain types of used oil indicator

1 contaminants shall be those volatile, base/neutral
2 polynuclear aromatic and metal parameters listed
3 at Appendix B or as otherwise identified at
4 subsection (a) of this section that exceed their
5 cleanup objective at 742 or as determined by the
6 agency in addition to benzene, ethylbenzene, et
7 cetera, which it would seem to be more appropriate
8 in (g) (1), which talks about other used oil
9 contaminants that a P.E. would identify to a
10 given site rather than (a) through (g), which
11 talks about the whole range involved to indicator
12 contaminants.

13 MR. CLAY: We agree. We will include
14 that in our next errata sheet.

15 MR. RIESER: Does the phrase as
16 determined by the agency reference cleanup
17 objectives, indicator contaminants, or something
18 else? Can this phrase be deleted?

19 MR. CLAY: It refers to the indicator
20 contaminants.

21 MR. RIESER: I'm sorry?

22 MR. CLAY: It refers to the indicator
23 contaminants, yes. We can delete that.

24 MR. RIESER: Thank you.

1 Are there indicator parameters
2 in Appendix A which should be deleted because there
3 are no Tier 1 objectives established for these
4 parameters under proposed 35 Ill. Adm. Code 742?

5 MR. CLAY: No, there are not. There
6 are some that don't have objectives, but we would
7 like to reserve the right to site specific bases to
8 determine those objectives. To do that, you come to
9 the agency and our Office of Chemical Safety would
10 provide those objectives for sites that had those
11 compounds.

12 MR. RIESER: But they still have to
13 be sampled if you have used oil?

14 MR. CLAY: Yes.

15 MR. RIESER: Thank you.

16 THE HEARING OFFICER: Any follow-up?

17 Okay. Seeing none, I think we
18 are still with Mr. Rieser for question fifteen.

19 MR. RIESER: This is the Method 3
20 classification added in this rule. With respect
21 to (a)(1), when is the election made?

22 MR. CLAY: You can make that election
23 at any time. Please keep in mind, as stated in my
24 summary testimony, that as far as reimbursement,

1 only one method site classification is reimbursable.
2 So if you have provided Method 1 or Method 2
3 and you elect to use the classification 732.312,
4 you may not be reimbursed for some of those costs.

5 MR. RIESER: Can an approved work plan
6 be modified to shift from Method 1 or 2 to a Method 3
7 workplan?

8 MR. CLAY: Yes.

9 MR. RIESER: With respect to (b)(1),
10 what is the methodology for compliance sampling in
11 this context?

12 MR. CLAY: Here, I believe it's with
13 regard to sampling during early action of the tank
14 pit. Is that what you are referring to?

15 MR. RIESER: Yes.

16 MR. CLAY: Normally, we would be asking
17 for six samples, two bottom samples and one over each
18 of the sidewalls. The agency will consider fewer
19 samples at a site where the sampling has already
20 been conducted, the hole has been backfilled, and
21 it may have been already paved over. So there are
22 historical numbers or analytical data out there.
23 You know, we would look at that and it wouldn't
24 necessarily be six samples, but as a general rule,

1 we normally like to see two bottom samples and one
2 over each of the sidewalls.

3 MR. RIESER: With respect to (c), does
4 the term physical soil classification reference tasks
5 as required under 732.307?

6 MR. CLAY: No, not necessarily.

7 MR. RIESER: If not, are the
8 requirements solely those deemed necessary to meet
9 the standards under 732.312(c)(1) and (2)?

10 MR. CLAY: Yes.

11 MR. RIESER: Does the agency
12 contemplate certain minimum tasks for this
13 demonstration?

14 MR. CLAY: I don't know at this time.
15 We are looking at certain minimum tasks. It's
16 whatever is appropriate for the site specific
17 conditions.

18 MR. RIESER: Similarly, is the
19 groundwater investigation the same as required
20 under 307(j)?

21 MR. CLAY: Groundwater investigation
22 is the same as 307(j).

23 MR. RIESER: It is the same as 307(j)?

24 MR. CLAY: Yes.

1 MR. RIESER: Will the agency confirm
2 that the full extent of contamination can be
3 determined without physically installing borings
4 and/or monitoring wells to mark the edge of the
5 plume and that modeling and other predictive
6 methodologies be employed to determine the full
7 extent of contamination?

8 MR. CLAY: Yes.

9 MR. RIESER: Will the agency allow
10 direct push technology to document the extent of
11 contamination?

12 MR. CLAY: The agency will review
13 whatever technology is proposed and there is some
14 push technology that I'm familiar with which has
15 been accepted such as the geoprobe.

16 MR. RIESER: Are there other examples
17 other than geoprobe which you can recall?

18 MR. CLAY: Not at this time. We will
19 review those for any given site.

20 MR. RIESER: With respect to subsection
21 (d), what is the language of the P.E. certification
22 which is required here?

23 MR. CLAY: The certification is the
24 same that is required throughout the regulations and

1 the agency has forms which provide the certification
2 statement which we will be providing to the board in
3 our next errata at the next hearing. I'm sorry.
4 Basically, the certification statement is that the
5 plan or report has been prepared under the
6 professional engineer's supervise and it's accurate
7 and correct, but we will present specific language
8 at the next hearing.

9 MR. RIESER: Okay. Going back -- I'm
10 sorry, but going back to the issue of the scope of
11 the required groundwater investigation, I think you
12 said it would have to meet the standards of 307(j),
13 which requires a minimum number of groundwater
14 monitoring wells installed at the property boundary
15 of 200 feet.

16 This groundwater investigation is
17 required in the context of a classification of the
18 site by virtue of the evaluation of the site. So
19 even given that limited framework, would you still
20 require all of 307(j) or each side where groundwater
21 is to be considered?

22 MR. CLAY: I'm not sure I understand
23 your question, but let me restate it, or make the
24 comment that if you are doing an investigation to

1 determine the extent of groundwater contamination,
2 then, you may use, as we talked about earlier, a
3 geoprobe to do that.

4 Now, in that case, you would not
5 need to -- that would not meet the requirements of
6 307(j), but once you have determined there is
7 groundwater contamination at that point, if you are
8 installing monitoring wells, you should do that in
9 accordance with the requirements of 307(j).

10 MR. RIESER: Will it be necessary
11 to install groundwater monitoring wells to document
12 compliance with the remedial objectives?

13 MR. CLAY: Yes.

14 MR. RIESER: Okay.

15 MR. CLAY: Let me clarify that. Even
16 if you are doing modeling to predict the extent of
17 that contamination, you are going to need some
18 concentration on which to start from. To do that,
19 to get that concentration, you are going to need
20 to install monitoring wells.

21 MR. RIESER: So if there are
22 circumstances where there is no need for remediation
23 objectives, the groundwater monitoring wells would
24 be necessary to provide that type of information?

1 MR. CLAY: Yes.

2 MR. RIESER: Obviously, if they were
3 excluding a pathway through a type of analysis, which
4 is provided under 742, that would not be necessary?

5 MR. CLAY: That's correct.

6 MR. RIESER: With respect to
7 732.312(h), will the agency confirm that such a site
8 would only be high priority as to the pathways not
9 excluded?

10 MR. CLAY: Yes.

11 MR. RIESER: If the site is classified
12 as high priority due to insufficient data to exclude
13 a groundwater pathway, will the agency accept
14 monitoring as a remedy, similar to low priority
15 approach, if it appears that more data will document
16 compliance?

17 MR. CLAY: Yes.

18 MR. RIESER: Thank you.

19 THE HEARING OFFICER: Okay. Any other
20 questions.

21 Seeing none, I think the next
22 question, then, would be question ten from Gardner,
23 Carton & Douglas.

24 MR. PUTMAN: Proposed 732.403(b)(6)

1 provides that "the owner or operator may use
2 groundwater monitoring data that has been collected
3 up to three years prior to the site being certified
4 as 'low priority,' if the data meets the requirements
5 of Subsections (b) (2) and (b) (5) of this section."
6 In particular, Section 732.403(b) (3) refers to
7 groundwater monitoring well requirements specified
8 under Sections 732.307(j) (3) and 732.307(j) (4).

9 In addition, Section
10 732.403(b) (5) refers to groundwater sampling
11 protocols set in Section 732.307(j) (5). The
12 question is as follows: Is it the agency's intention
13 to allow parties to use data from old wells that
14 were not placed or installed following procedures
15 required under the current Part 732 requirements to
16 satisfy the groundwater monitoring data requirements
17 at low priority sites as set forth in Section
18 732.403(b) (6)?

19 MR. CLAY: No. In Sections (b) (2)
20 through (b) (5), all the criteria set forth there
21 needs to be met.

22 MR. PUTMAN: Okay. Thank you.

23 THE HEARING OFFICER: I believe
24 the next one is question number sixteen by Petroleum

1 Council.

2 MR. RIESER: Thank you. With respect
3 to 732.403(d)(2), are the "agency-approved
4 objectives" those derived under 35 Ill. Adm. Code
5 742?

6 MR. CLAY: Yes.

7 MR. RIESER: Are these different than
8 those derived in accordance with Section 732.311?

9 MR. CLAY: No. The answer to the
10 first question is they are derived from 742 and
11 they are not different from what is referred to in
12 732.311.

13 MR. RIESER: Thank you.

14 THE HEARING OFFICER: Any follow-up?

15 MR. RIESER: No.

16 THE HEARING OFFICER: Okay. I believe
17 that question eleven and question seventeen are very
18 similar. At this time, I will let Mr. Putman ask the
19 question. Mr. Rieser, if you have any follow-up,
20 you can proceed at that time.

21 MR. PUTMAN: Proposed Section
22 732.403(i) requires that "the owner or operator of
23 a site classified as 'low priority' by a licensed
24 professional engineer as a result of a demonstration

1 approved by the agency under Section 732.307(j)(6),
2 shall evaluate the potential for exceedance of
3 applicable indicator objectives to occur during
4 the succeeding three years."

5 The question is as follows:

6 What is the agency's position on the methods that
7 should be followed to meet the "demonstration
8 approved by the agency under Section 732.307(j)(6)"
9 as required in this section?

10 MR. CLAY: Once again, a lot of this
11 is up to the professional engineer, but the main
12 criteria, I think, is that there is water to be
13 sampled.

14 MR. PUTMAN: You said that was the
15 main criteria?

16 MR. CLAY: Well, I mean, that's one
17 of the main things you are going to be looking at.
18 If there is no groundwater to be sampled, then,
19 the potential for groundwater contamination is not
20 there.

21 MR. PUTMAN: Mr. Rieser?

22 MR. RIESER: This is a follow-up
23 of our discussion on the 307(j)(6). If no
24 further remediation letters are issued based

1 on the documentation you made under 307(j)(6)(D),
2 is it correct that this language regarding applicable
3 indicator contaminants is already taken into account
4 in 307(j)(6)(3)? In other words, that demonstration
5 is the demonstration already made?

6 MR. CLAY: That's correct.

7 MR. RIESER: This would not require you
8 to perform additional demonstrations that you have
9 not already done?

10 MR. CLAY: Yes.

11 MR. RIESER: Maybe the agency would
12 consider referring to (j)(6)(D) alone or striking
13 the language to avoid the confusion of having to
14 do something in addition to that that you have
15 already required the people to do under section
16 (j)(6)(D).

17 MR. CLAY: Are you proposing that
18 we reference 307(j)(6)(D) right here?

19 MR. RIESER: As a result of a
20 demonstration approved under Section 732, I would
21 think you would strike the shall evaluate the
22 potential to create an additional requirement
23 and restate it so that it says a person having
24 made the demonstration or having evaluated the

1 potential as required under (j)(6)(D) shall
2 receive no further remediation letter or something
3 like that so that the language is focused or
4 immediate clarify that an additional activity
5 is not to be performed in this context?

6 MR. CLAY: We will look at modifying
7 that and include that in our next errata.

8 MR. RIESER: Thank you very much.

9 THE HEARING OFFICER: Anything
10 further?

11 Okay. I believe the next
12 question, then, is 404(b)(3), question number
13 eighteen, Mr. Rieser.

14 MR. RIESER: Why are there differences
15 in (b)(3) and (b)(4) between institutional controls
16 and engineered barriers?

17 MR. CLAY: Under (b)(3), this is
18 for when there is no reliance on engineered
19 barriers and under (b)(4), this is for when
20 there is a reliance on engineered barriers.

21 MR. RIESER: So it's accurate that
22 under (b)(4), when you have an engineered barrier,
23 you're not required to meet a specific numeric
24 remedial objective?

1 MR. CLAY: If the engineered barrier
2 results in limiting that exposure, you're excluding
3 that exposure, yes.

4 MR. RIESER: And under the
5 institutional control, you are only measuring it
6 under 35 Ill. Adm. Code 742 to the point of human
7 exposure around the boundaries of the institution,
8 is that correct?

9 MR. CLAY: Yes.

10 MR. RIESER: In 732.404(b)(3)(A)(i),
11 would the agency accept a language change to delete
12 "there is a physical barrier" and insert "a separate
13 sampling point agreed to by the the agency"?

14 THE HEARING OFFICER: Excuse me.

15 MR. RIESER: I'm sorry. Thank you.

16 MR. CLAY: Yes.

17 MR. RIESER: Under 404(b)(3)(ii), it
18 says in an institutional control prohibiting the
19 use of groundwater as a potable supply is obtained
20 under 35 Ill. Adm. Code 742, Subpart J, sampling
21 points shall be located at the property boundary
22 line.

23 If there is an institutional
24 control that controls municipal ordinances, including

1 the use of groundwater, would the sampling point
2 still be at the property line or is that some other
3 point?

4 MR. CLAY: It would still be at the
5 property line because that's where you would be able
6 to install that --

7 MR. RIESER: The compliance point would
8 be at the edge of the institutional control?

9 MR. KING: No. The point of human
10 exposure would be the edge of the human control. The
11 compliance point is still occurring at the property
12 line.

13 MR. RIESER: Thank you.

14 MR. RAO: I have a follow-up question.
15 When an engineered barrier had been relied on between
16 the compliance point, would there be any monitoring
17 required or is the agency convinced that the
18 demonstration has served its purpose?

19 MR. CLAY: They would have to make the
20 demonstration that it serves the purpose. They are
21 stating its purpose, but the requirement for that
22 engineered barrier or the maintenance of that would
23 be included in the institutional control. So it
24 would be the owner's and operator's or subsequently

1 an owner's responsibility to maintain that engineered
2 barrier or that would be a reason for a potential
3 further remediation letter.

4 MR. RAO: Would there be any monitoring
5 measuring the performance of the barrier or will it
6 say the barrier sufficient for the agency to say
7 you're in compliance?

8 MR. CLAY: I guess it depends on what
9 the engineered barrier is. If you are relying on a
10 slurry wall, you probably have monitoring wells on
11 the other side of that. If you are relying on six
12 inches of concrete, I don't think that we have any
13 concerns about the integrity of that other than what
14 you can determine visually. If you have cracks in
15 there, obviously you need to maintain it so it
16 doesn't have cracks, but I don't see that there would
17 be any requirement for groundwater monitoring.

18 MR. RAO: The rule that's provided,
19 doesn't it reflect what you are saying?

20 MR. CLAY: I don't think it precludes
21 us from requiring monitoring nor does it require the
22 owner/operator to provide it. It depends on the
23 engineered barrier that's being relied upon.

24 MR. RAO: And this will be based

1 upon your evaluation of what is proposed by the
2 licensed professional engineer?

3 MR. KING: Frequently, I think we run
4 into situations where you are not monitoring the
5 environmental condition. You are not monitoring the
6 air. You are monitoring the integrity of the
7 engineered barrier. For instance, if it's a cap you
8 are monitoring, you are monitoring the cap to make
9 sure it's still working properly. You're not going
10 to go around monitoring the air above the cap to see
11 if it's meeting criteria.

12 MR. RAO: That's the reason I would
13 give the example of groundwater than if you are
14 monitoring water or other pathways.

15 MR. KING: As Doug was saying, there
16 will be situations where depending on the type of
17 engineered barrier, it would be appropriate to
18 monitor on the other side of the barrier and then
19 there would be other situations where that doesn't
20 make a lot of sense to do that.

21 MR. RAO: I just wanted to clarify that
22 the proposal allowed you to require monitoring if
23 there is a need for monitoring.

24 MR. CLAY: Yes, it would.

1 MR. KING: Yes.

2 MR. RAO: Thanks.

3 THE HEARING OFFICER: Are there any
4 other follow-up questions.

5 Seeing none, I think we are ready
6 to move to question twelve, which will be asked by
7 Mr. Putman.

8 MR. PUTMAN: Thank you. The question
9 is as follows: Proposed Section 732.406(b) (2)
10 requires as a prerequisite to deferring site
11 classification, low priority groundwater monitoring
12 or remedial activities that the owner or operator
13 demonstrate that "the release does not pose a threat
14 to human health and the environment through migratory
15 pathways." What type of method does the agency
16 propose the owner or operator follow to demonstrate
17 that a release does not pose a threat to human
18 health and the environment through migratory
19 pathways?

20 MR. CLAY: This really depends on what
21 the professional engineer is going to propose. It
22 may include borings doing a search of utilities on
23 the site and some confirmation borings around those
24 utilities to make sure that is not a migratory

1 pathway. There are a number of methodologies the
2 consulting engineer could use and those are up
3 to the engineer.

4 MR. PUTMAN: But among those procedures
5 would be the procedure set forth in 732.397(g), is
6 that correct?

7 MR. CLAY: Is that the portion on
8 regulatory pathways?

9 MR. PUTMAN: Yes.

10 MR. CLAY: Yes, that would be correct.

11 THE HEARING OFFICER: Is there any
12 further follow-up?

13 Okay. Seeing none, I think the
14 next question is number nineteen for Petroleum
15 Council, Mr. Rieser.

16 MR. RIESER: This references
17 732.409(a)(2)(A). If corrective action is performed
18 according to 35 Ill. Adm. Code 742 pursuant to
19 732.408, why is there a difference between sites
20 submitting classification under 732.309 and those
21 classified under 732.312? Are not they achieving
22 the same objectives, i.e., those derived under
23 732.408 and 35 Ill. Adm. Code 742?

24 MR. CLAY: I think they are, yes.

1 They are achieving the same goal of Part 742 and
2 732.408, but the requirements are different. If
3 you proceed under 312 versus pursuing under the
4 309 method, you're looking at Method 1 or Method 2.

5 MR. RIESER: Which are the requirements
6 for those?

7 MR. CLAY: Under 309, your classifying
8 the site under Method 1 or Method 2, which requires
9 an investigation of pathways where class three
10 resource groundwater is threatened to surface bodies.
11 Under 312, you are actually looking at excluding
12 pathways.

13 MR. RIESER: Wasn't there testimony --
14 well, I believe there was testimony that adopted that
15 for a site designated as high priority. Under 309,
16 you only had to address that aspect, which made it a
17 high priority, correct?

18 MR. CLAY: That's correct

19 MR. RIESER: So if the issue is
20 ground -- so you might or might not identify each
21 of these issues in a groundwater -- I'm sorry --
22 remediation completion report if you have only
23 classified the site as a priority under 30 for
24 one specific issue, correct?

1 MR. CLAY: You could just address,
2 yes, what made it a high priority.

3 MR. RIESER: So if the issue was
4 groundwater, you would still be addressing it
5 through 408 and 742 and resolving it whichever
6 way those required it to be resolved, is that
7 correct?

8 MR. CLAY: That's correct.

9 MR. RIESER: Is that provided for under
10 this rule?

11 MR. CLAY: Yes. Under site
12 classification, if you are reclassified by Method 1
13 and Method 2 and you are high priority, once you are
14 high priority, you can use, I think, 407.

15 732.408 provides for sites
16 requiring high priority corrective action or for
17 which the owner or operator has elected to conduct
18 corrective action pursuant to the stated sections
19 where the owner or operator shall propose remediation
20 objectives for applicable indicator contaminants
21 proposed in 742 for establishing cleanup objectives.

22 At that point, yes, 742 is
23 used once you have gotten to the high priority
24 classification under Method 1 or Method 2. Under

1 Method 3, if you will, or 732.312, you basically
2 bypass that Method 1 or Method 2 and are looking
3 at exclusion of pathways and you are basically
4 going directly into 742.

5 MR. RIESER: I guess my point or
6 question is that under 309, you might have a site
7 which you were handling exactly the same as the
8 site under 312, and it would be the same remedial
9 objectives, but the remediation completion report
10 would require different documentation for the 309
11 site than the 312 site even though they were both
12 addressing the same issue and addressing it under
13 the same set of regulations.

14 MR. CLAY: That's correct. For
15 example, if there was only a migratory pathway
16 that made you high priority under 309, you would
17 address that migratory pathway where under 312,
18 you have to determine the extent of the groundwater
19 contamination, which would not have been required
20 if you are only addressing the migratory pathway
21 of 309.

22 MR. RIESER: Okay. I understand.
23 Thank you.

24 THE HEARING OFFICER: Any follow-up?

1 Okay. Seeing none, the next
2 couple of questions deal with Section 503. I
3 believe Mr. Putman from Gardner, Carton & Douglas
4 has a little more detail in his questions thirteen
5 and fourteen. Mr. Rieser, if you have any follow-up
6 questions, we'll take those questions then.

7 MR. PUTMAN: I have two broad
8 questions about Section 732.503(b). The first
9 one is this. The first question is proposed
10 Section 732.503(b) refers to the rejection by
11 operation of law of various plans and reports
12 submitted by parties under Part 732 regulations.
13 The proposed changes provide that a plan or
14 report is rejected by operation of law if the
15 agency fails to notify the owner or operator of
16 its final action on a plan or a report within
17 120 days after its receipt of a plan or a report.

18 Subpart A of this question
19 is as follows: How does the agency propose that
20 a party appeal an agency's denial by operation
21 of law if the agency does not provide any basis
22 for denying the request for a no further remediation
23 letter other than its failure to act within the
24 required time period?

1 MR. CLAY: I think you would just
2 appeal the fact that we didn't act within the
3 time frame.

4 MR. PUTMAN: As a second question
5 to that, what is the time period and what are
6 the options for an appeal once this has occurred?
7 You mentioned 120 days. What would be the time
8 period for appeal?

9 MR. CLAY: It would be 35 days and
10 it would be the same as an appeal for any of
11 the agency's decisions and you can reference
12 Section 40 of the Illinois Environmental Protection
13 Act.

14 MR. PUTMAN: Mr. Rieser?

15 MR. RIESER: Yes. This is with the
16 appeal not being of the agency's failure to act,
17 but failure to an ability resulted in the actual
18 rejection so that the appeal itself would challenge
19 the agency's denial of whatever it is that somebody
20 was asking for, correct?

21 MR. CLAY: I think you are just
22 appealing the fact that we didn't act or give
23 specific reasons for denial.

24 Did I answer your question?

1 MR. RIESER: You did, but I'm --
2 I mean, Mr. Putman's point should be well taken,
3 which is how do you frame -- how does a person
4 seeking to challenge that decision frame their
5 appeal?

6 They would be basically saying
7 draft a document that said that the agency didn't
8 act, yet we proposed all of these reasons, and
9 all of these meet whatever the criteria is or
10 whatever it is we are seeking. We would have
11 to just submit a broad based thing or appeal
12 to the board and explain what was submitted
13 to the agency.

14 THE HEARING OFFICER: Let's go off
15 the record for just a second.

16 (Whereupon, after a short
17 break was had, the
18 following proceedings were
19 held accordingly.)

20 THE HEARING OFFICER: We can go back on
21 this record at this point.

22 MS. ROBINSON: Thank you. At this
23 time, I would ask that we swear in Mr. Burds.
24 He is one of our appeal guys. He is going to

1 kind of explain how it works from a procedural
2 point of view.

3 THE HEARING OFFICER: Sure.

4 You may swear in the Mr. Burds.

5 (Witness sworn.)

6 WHEREUPON:

7 J A C K B U R D S ,

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

10 MR. BURDS: On the cuff, this language
11 wording works the same way the language works to
12 Section 31 where one effectively appeals to the board
13 for failure to act on a statutory decision deadline
14 effectively.

15 As I understand it, it does not
16 issue the permit, but effectively it is denied and
17 in fact the appellate court then remands it back to
18 the Illinois Pollution Control Board in that fashion
19 to have a hearing or to make a decision within a
20 certain designated period.

21 Here, I can see the same type
22 of flow chart or analysis being used for this type
23 of language.

24 MR. RIESER: Wouldn't the board be

1 empowered to not only remand it for hearing or
2 decision, but all to say we believe these facts
3 and certain decisions should be made?

4 MR. BURDS: If they decided to make
5 the hearing de novo.

6 MR. RIESER: And there would be
7 authority to do that?

8 MR. BURDS: Yes.

9 THE HEARING OFFICER: I would just
10 like to point out, Mr. Burds, I believe that the --
11 what you are referring to is that there are certain
12 federal permits that don't go by operation of law,
13 but rather you go to the court and the court issues
14 a writ of mandamus. There are, I believe, some of
15 the permits that do go by operation of law
16 automatically. That's just from the board's
17 position.

18 MR. BURDS: Right. I think I'm talking
19 about -- you're right from the agency's perspective.
20 Assuming the agency has made a decision within that
21 statutory time frame and if, in fact, it's my
22 understanding that -- correct me if I'm wrong, but I
23 don't know of any permit for the board's failure to
24 act that would be issued.

1 THE HEARING OFFICER: Mr. Meyer?

2 MR. MEYER: There was a case recently
3 where Justice Breslin ordered a permit awarded and
4 it was remanded back to us. I know because I
5 descended on it. It was direct action of the court
6 not sending it back to us for further review.

7 THE HEARING OFFICER: Okay.

8 MR. BURDS: I'm not familiar with
9 the case, but my understanding, and forgive me,
10 because I wasn't prepared for this question, but
11 my understanding of how the period of time deals
12 with the board's failure to act would be similar
13 to the circumstances here.

14 If the agency failed to act
15 and an appeal took place by the petitioner to a
16 sought decision by the agency, the board has the
17 power to remand it back to the agency to make a
18 decision just as the board's failure to act.

19 I'm not familiar with any cases
20 where the board has failed to act at a statutory
21 decision deadline and what remedies they imposed.

22 MS. ROBINSON: I might just add here
23 that this may be a point the board would want to
24 make a decision on. I think we are open to

1 suggestion here. This is one of the things that
2 was required by USEPA that got into the statute
3 as far as denials by operation of law rather than
4 approval. So maybe the board wants to give that
5 some thought as far as how you want it to operate.

6 MR. RIESER: And you will take
7 suggestions from interested parties?

8 MS. ROBINSON: Absolutely.

9 THE HEARING OFFICER: As a further
10 follow-up of that, we had previously included, in
11 fact, I think we included it in the board's proposed
12 procedural rules a list of appeal points and several
13 provisions including the underground storage tank
14 stuff, we were wondering if it would be possible
15 for the agency to provide the board with a list
16 based on this new information of potential appeal
17 points within the proposal. For example, if no
18 further action is denied, can that be appealed?
19 If a remediation letter is rescinded, can that be
20 appealed? Those are just some potential suggestions
21 we would like to see from the agency.

22 MS. ROBINSON: Would you like for us
23 just to propose to you the ones that we think are
24 new based upon the amendments because I know we did

1 that as part of our rulemakings? You should already
2 have a complete list of the old provisions.

3 THE HEARING OFFICER: That would be
4 fine.

5 MS. ROBINSON: Okay.

6 THE HEARING OFFICER: All right.
7 Okay. Mr. Putman, I'm sorry.

8 MR. RIESER: I have one follow-up
9 that is slightly different. If a plan is rejected
10 by operation of law, are there resources other than
11 filing an appeal?

12 MR. CLAY: Yes. It can be resubmitted
13 and the 120-clock would start over.

14 MR. RIESER: Go ahead.

15 MR. PUTMAN: Are there any other
16 options other than resubmission and appeal that you
17 would consider?

18 MR. CLAY: There are none that I can
19 think of right now.

20 MR. PUTMAN: Thank you.

21 THE HEARING OFFICER: I have a
22 follow-up to that. Does the agency believe that
23 some of the 90-day extension provisions might apply
24 to these?

1 MR. CLAY: Yes, we do. That would
2 be fine too. You may be granted a 90-day extension.

3 THE HEARING OFFICER: Is there anything
4 further?

5 MR. PUTMAN: I have a second question
6 on Section 732.503(b).

7 Proposed Section 732.503(b)
8 also provides that no notification of final action
9 is necessary from the agency in the case of 20-day,
10 45-day or free product report. As mentioned earlier,
11 free product recovery may require more than 45 days
12 to complete. Because aspects of free product
13 recovery may last longer than 45 days, it would be
14 helpful if the agency could provide feedback on
15 free product recovery plans. In this regard, is the
16 agency saying here that it will not provide long-term
17 strategies to recover free product?

18 MR. CLAY: We are not saying that.
19 We will respond and provide feedback as requested.
20 Normally, the response to the 20-day, 45-day and
21 free product reports we are referencing is the
22 notification we are requiring -- referencing
23 is just that we have accepted this and it's going
24 to receive a full review or is not going to receive

1 a full review. That is the notification that we
2 are referring to. We will respond to and provide
3 feedback any time that we have requested it.

4 MR. PUTMAN: The second part of this
5 question is may parties still seek reimbursement
6 from the LUST Fund if free product recovery is
7 undertaken beyond the 45-day period?

8 MR. CLAY: Yes. As I stated earlier,
9 I think free product recovery is specifically
10 identified as an activity that can go beyond the
11 45 days and that certainly would be reimbursable.

12 MR. PUTMAN: Thank you.

13 THE HEARING OFFICER: Any follow-up?

14 Okay. Seeing none, I believe the
15 next question would be as to 732.503(f), Petroleum
16 Council, Mr. Rieser?

17 MR. RIESER: The last section of
18 this sentence provides for approval by default of
19 a plan modified by the agency. This sentence may
20 not be consistent with the changes to the first
21 sentence based on the statutory change from approval
22 by default to rejection by default. Does the agency
23 actually modify plans or does it reject plans unless
24 they are modified by the owner/operator as directed

1 by the agency?

2 MR. CLAY: Yes, we do modify plans.

3 In many instances, we will approve a plan with
4 modifications. If the applicant wishes to proceed
5 as we have modified the plans or under those
6 conditions, they are welcome to do so. If they
7 do not wish to proceed under the modified approval,
8 they can resubmit to propose their changes to the
9 plan.

10 MR. RIESER: Okay.

11 THE HEARING OFFICER: Follow-up?

12 Seeing none, I think Mr. Rieser,
13 the next question is also your question.

14 MR. RIESER: This is in reference to
15 732.606(hh) and (ii). What are the standards for
16 determining what costs are unreasonable?

17 MR. CLAY: In the past, we have used
18 historical records or the experience of cost for
19 specific tasks or for projects and compared those
20 to what is being submitted for reimbursement.

21 MR. RIESER: So this is a basis of
22 comparing to other plans that were submitted to
23 the agency in evaluating those costs compared to
24 the ones that you are considering rejecting?

1 MR. CLAY: In most cases. In some
2 cases we are talking about the costs for disposal
3 of soil or a landfill, we can call the landfill
4 and find out what their actual costs are.

5 In regard to engineering fees
6 and those types of things, we are relying on
7 historical data on what is considered reasonable
8 by the majority of people submitting plans and
9 reports.

10 MR. RIESER: If this is based on a
11 comparison with other submitted plans, can the
12 standard be included in the rule?

13 MR. CLAY: We do not propose to
14 include the standard in the rule because -- for
15 a couple of reasons. The costs may change.
16 They may go up or they may go down over time.

17 Another issue is there are
18 exceptions and we considered putting a hard and
19 fast number in the rule, but there were some
20 concerns that there are exceptions to -- there
21 would be exceptions to those numbers. So we
22 decided at this time we would not propose specific
23 costs in the rule.

24 MR. RIESER: Well, I don't think the

1 question was directed so much at proposing specific
2 costs, but including a standard that says they were
3 based on comparisons with other plans submitted
4 to the agency.

5 MR. CLAY: Again, I think -- I was
6 going to say this may change over time. We didn't
7 want to -- I don't know that that really adds a
8 whole lot to the rule or authority or anything else.
9 So I don't know what benefit that type of wording
10 would be if we were to add it.

11 Gary, do you have anything?

12 MR. KING: Yes. I would agree with
13 what Doug was saying. If we just added language
14 that says we are comparing it to something else,
15 I'm not sure what that really adds. We considered
16 putting either hard numbers in there or putting a
17 hard formula in there.

18 Some of the states have gone
19 to that approach, but we just didn't think at this
20 point in time that that was the fairest way to do
21 it. We needed to have some greater level of
22 experience with the methodology than we have been
23 employing.

24 MR. RIESER: Does the agency

1 maintain an information base for consultants and
2 consumers who identify reasonability? If not,
3 can this be done?

4 MR. CLAY: We don't maintain one
5 for consultants or consumers. Again, a lot of
6 it depends on areas of the state. It's more
7 expensive to dispose of soil and landfill up
8 in the Chicago area than it is maybe down in
9 Southern Illinois.

10 I think if you publish some
11 type of data as far as what average costs are
12 or whatever, you intend to increase some costs
13 where people maybe have been trying to be
14 competitive with someone else. If you publish
15 Costs, all of a sudden, that becomes the minimum.

16 I think that would cause a
17 resource or increase costs of site classifications
18 of corrective action and reduce funds available
19 for reimbursement over the long run. That's why
20 we haven't provided those costs.

21 MR. RIESER: Would this reasonability
22 determination apply to each identified cost or to
23 total costs?

24 MR. CLAY: Actually, both. What

1 we normally look at was total costs for site
2 classification and if that appears to be reasonable,
3 you know, we don't review it any further.

4 If the costs seem to be higher
5 than what we normally see, we may look at the
6 specific line item costs for different tasks and
7 say, okay, pull out the one that seems to be
8 excessive and review that in more detail.

9 THE HEARING OFFICER: Did you have
10 further follow-up Mr. Rieser?

11 MR. RIESER: Just a minute. I need
12 to look at something.

13 Going back to 503(f), I think
14 you said when the agency submitted a modified
15 plan to the owner/operator where the owner/operator
16 could either accept it or resubmit it, isn't it
17 true that that owner/operator could also appeal
18 the modification?

19 MR. CLAY: Yes.

20 MR. RIESER: Thank you.

21 THE HEARING OFFICER: Mr. James?

22 MR. JAMES: I'm Ken James from Carlson
23 Environmental. As a follow-up to Mr. Rieser's
24 earlier questions about the reasonableness of

1 the cost sites located in the metropolitan Chicago
2 area, are these costs compared to sites within
3 that area or statewide?

4 MR. CLAY: Overall costs have
5 basically been compared statewide. Most of the
6 costs -- the example I gave was for specific
7 line item costs. I mean, most of the costs should
8 be comparable as far as engineering services and
9 transportation. I don't know that we have actually
10 broken down the costs into geographical regions.

11 MR. JAMES: As a follow-up, then,
12 in practice, we have noticed an increase in, say,
13 for instance, setting a well in the metropolitan
14 area as it would be to set a well in an agricultural
15 area. There are differences in costs to perform
16 those functions. Now, if you are comparing statewide
17 costs, people who are going to perform those remedial
18 activities in a metropolitan area are going to be
19 somewhat at a disadvantage on a statewide basis.

20 MR. CLAY: Why is the cost higher in a
21 metropolitan area?

22 MR. JAMES: There are more underground
23 things in the ground than there would be underground
24 things in the agricultural area. So the costs to

1 perform that work may take longer, two days to set a
2 well as to one day down state, for instance.

3 MR. CLAY: I think all of those factors
4 are taken into account in the numbers that we have
5 been approving. Obviously, there are a lot more
6 sites up here. So a lot more of those costs for
7 installation of wells have been looked at up here.
8 I think that is taken into account in our reasonable
9 determination.

10 MR. JAMES: Okay.

11 THE HEARING OFFICER: Is there anything
12 further?

13 Okay. I think the next question
14 will be question fifteen for Gardner, Carton &
15 Douglas.

16 Mr. Putman?

17 MR. PUTMAN: Proposed Section
18 732.701(b) provides for the denial by operation of
19 law of a no further remediation letter request if
20 the agency does not act on the request within 120
21 days. There is nothing further to add on that point.
22 I propose to withdraw the question.

23 MR. CLAY: Our answer to these questions
24 would be the same with regard to the previous one.

1 THE HEARING OFFICER: Thank you.

2 We will move along to question twenty-three with
3 Mr. Rieser.

4 MR. RIESER: With respect to 732.703,
5 what happens if the person performing remediation
6 is no longer the owner of the site and the current
7 owner will not record a no further remediation
8 letter?

9 MR. CLAY: Then, you would have
10 an ineffective no further remediation letter.
11 The recording is a requirement for that no further
12 remediation letter to be effective.

13 MR. RIESER: On the contra side, if
14 the letter is recorded by a former owner and there
15 is no other information, the agency doesn't have
16 information whether or not the current owner has
17 signed off on that letter, would that be acceptable
18 as long as it's recorded?

19 MR. KING: Assuming that's legal to
20 do. If it's been legally recorded and we get a
21 copy that indicates it's been legally recorded and
22 it's been accepted by the local recorder, that would
23 be sufficient.

24 MR. RIESER: Thank you.

1 THE HEARING OFFICER: Any follow-up to
2 that?

3 MR. RIESER: With respect to 703(b),
4 why is a certified copy required?

5 MR. CLAY: It's to certify that the no
6 further remediation letter was actually filed. It's
7 to make sure it was recorded and it's an accurate
8 copy of what was recorded.

9 MR. RIESER: So the agency will not
10 accept simply a copy with all of the various
11 recorded stamps on it, but it wants an additional
12 certification from the recorder itself that that
13 copy is an accurate copy?

14 MR. CLAY: Yes. I think a copy of a
15 properly certified recorded copy is okay.

16 MR. RIESER: Okay.

17 MR. CLAY: But it's got to have all the
18 stamps and signatures that you would have for a
19 recorded copy.

20 MR. RIESER: I suggest that that's
21 different than a certified copy. A certified copy,
22 in my mind, means the recorder is actually recording
23 and certifying an additional document that says the
24 document you are looking at is a true and accurate

1 copy as opposed to a copy that has all the stamps on
2 it.

3 MS. ROBINSON: It's possible different
4 counties are looking at that differently. It's very
5 possible what you are saying is true. With the
6 understanding that their actual stamp is in the
7 corner, that's what we are looking for. We are
8 looking for that and that all the information is
9 accurate and it's there.

10 MR. RIESER: Might it be possible to
11 add to the language certified or otherwise verifiable
12 information certifies the copy?

13 MR. CLAY: Yes. We can do that.

14 THE HEARING OFFICER: I believe that
15 the last of the prefiled questions is number sixteen
16 for Gardner, Carton & Douglas.

17 Mr. Putman?

18 MR. PUTMAN: Thank you. Proposed
19 Section 732.704(a)(4) refers to the avoidance of
20 a no further remediation letter if contaminants
21 are discovered that were not identified as part
22 of the investigation or remedial activities upon
23 which issuance of a no further remediation letter
24 was based and "that pose a threat to human health

1 or the environment."

2 What does the agency propose as
3 the standard for judging what constitutes a "threat
4 to human health or environment" as it appears
5 in this section?

6 MR. CLAY: Here, we are talking
7 about levels above Tier 1 of Part 742, Tier 1
8 residential, or other developed objectives in
9 accordance with Part 742 for the constituents
10 that were sent that no further remediation letter.

11 MR. PUTMAN: And this would be
12 materials discovered that were not discovered
13 during the initial study that resulted in the
14 initial no further remediation letter?

15 MR. CLAY: Yes. For example, if
16 you were to receive a no further remediation
17 letter for an unlighted gasoline tank, you basically
18 would meet the BTEX parameters. If there were
19 another constituent not related to that and it was
20 discovered, that would not be an issue for avoidance
21 of that no further mediation letter.

22 However, if benzene was
23 discovered and that was not part of the initial
24 report, that could be a reason for avoidance of

1 that initial remediation letter.

2 MR. RIESER: This is language that was
3 taken from the site remediation at Brownfields which
4 added Title 17 to the Environmental Protection Act,
5 correct?

6 MR. CLAY: Yes.

7 MR. RIESER: Am I correct that there
8 was discussion on that that adopted the demonstration
9 that the agency would have to do something where
10 there was a real measurable direct threat to human
11 health and the environment and not just the
12 exceedance of standards?

13 MR. KING: I think if you look at it
14 in the context of the whole structure of the way
15 742 operates, you know, I think the first thing we
16 look at is are those levels above the Tier 1 numbers.
17 Well, that would trigger potentially a further look
18 at the whole situation.

19 You might end up in the context
20 where those levels might be above a Tier 1 number,
21 but you do some further evaluation and they are okay
22 as far as Tier 2 and they meet the qualifications of
23 that. So you really don't end up having to go
24 through the revocation process.

1 So I think the reference to Tier
2 1, really, it's like it's used in 742. Its initial
3 screen is let's see what that reason is for the
4 purpose of the resident site.

5 MR. RIESER: It's still the agency's
6 burden to demonstrate threat to human health and
7 environment in this context, correct, if the
8 intention is to void no further remediation letter?

9 MR. KING: Right. I'm sure if we were
10 doing that on the basis of the Tier 1 numbers, that
11 would be our initial justification.

12 MR. RIESER: Excuse me. What if you
13 had an NFR letter that was based on release from one
14 tank and then there was evidence of release from a
15 second tank, would that lead to voiding the NFR
16 letter or simply handling the second tank as a
17 separate ruling?

18 MR. CLAY: That would lead to handling
19 the tank as a separate ruling.

20 MR. RIESER: Thank you.

21 THE HEARING OFFICER: Any other
22 follow-up?

23 I guess I have a question, and
24 this is based on a question we had earlier. We

1 talked about bringing it back up.

2 I believe it was Mr. James who
3 had asked the question about whether or not voidance
4 of a no further remediation opened up the eligibility
5 determination. I can see where this might not since
6 eligibility would not really change that much based
7 on this, but would it reopen the issue of
8 reimbursement.

9 For example, if you void a no
10 further remediation letter, then, is someone allowed
11 to seek reimbursement for the remediation that they
12 do do?

13 MR. KING: We tried to cover that
14 issue. If you look at 606(kk), it was our intent
15 once the NFR letter was issued, there might be an
16 opportunity for some people to come back into the
17 program at some point in the future as far as getting
18 reviewed for additional proposed plans, but as
19 far as being reimbursed, no.

20 THE HEARING OFFICER: Even though
21 it's your action that's kicking them back into
22 reimbursement?

23 MR. CLAY: Right. I don't think it's
24 our action. If the issuance of the NFR letter was

1 done appropriately -- and to give an example, a
2 condition of that was that they maintain an
3 engineered barrier and if that engineered barrier
4 was not maintained, that is the responsibility
5 of the owner/operator.

6 There really isn't -- I don't
7 feel that should allow if we take action, then, to
8 void that NFR letter because the owner/operator to
9 maintain that engineered barrier, which they agreed
10 to up front when they got the NFR letter, you know,
11 they should not be eligible to seek reimbursement
12 from the fund.

13 MR. KING: For additional corrective
14 action?

15 MR. CLAY: For additional corrective
16 action.

17 MR. MEYER: You could say they have
18 unclean hands.

19 MR. KING: I think that's the basic
20 principle from our point of view.

21 MR. MEYER: Because you revoke
22 the letter for some cause, the cause would
23 be sufficient enough to deny them reimbursement.

24 MR. CLAY: I think, too, there is

1 another situation. If that NFR letter was issued
2 because of a fraudulent certification by an
3 engineer, for example, that would be cause for a
4 third-party suit against that engineer.

5 Again, we would take the
6 position that any damage needs to be part of
7 that third-party lawsuit and not basically entered
8 back into being eligible for further reimbursement
9 from the underground storage tank fund.

10 THE HEARING OFFICER: Thank you.
11 That clarifies the issue for me.

12 Are there any other questions
13 for the agency at this time? Seeing none, I have
14 a couple of questions which are sort of housekeeping.

15 One of them is you had indicated
16 that you will be supplying the forms -- copies of
17 your forms to the board?

18 MR. CLAY: Yes.

19 THE HEARING OFFICER: Have those forms
20 been approved pursuant to the Forms Management Act?

21 MR. CLAY: Yes, they have. We have
22 forms that we are currently using. We are in the
23 process of revising those forms and so we will
24 provide you with our current forms and the draft

1 or revised forms. Those forms are basically in
2 final form. I'm not sure that the revised forms
3 have actually received approval with -- I guess
4 they are being reviewed for that purpose right now
5 as opposed to being modified.

6 THE HEARING OFFICER: Secondly, when
7 the testimony was prefiled, you also filed a copy
8 of the economic analysis form, which has been
9 requested in the board order. I will officially
10 accept that at this time.

11 MS. ROBINSON: Okay.

12 THE HEARING OFFICER: There were
13 several answers, Mr. Clay, that you indicated that
14 you would bring to us at the next hearing including
15 some language changes that have been proposed or
16 discussed in these prefiled questions.

17 I have some concern that given
18 the short time frame and the short turn around
19 that we have in this rulemaking, if you present
20 those at the next hearing, that might not give us
21 sufficient time to review those and ask you any
22 questions on it.

23 So I would like to ask if it
24 is possible for you to file the errata sheet and

1 proposed language changes by perhaps the 2nd of
2 December, which would be one week before the hearing.
3 That would give us all an opportunity to look those
4 over.

5 MS. ROBINSON: As you know, that's the
6 date of the T.A.C.O. hearings, which I'm also
7 assigned to. That's a tight time frame. Is there
8 any way the 4th would be acceptable?

9 THE HEARING OFFICER: Is the 4th
10 acceptable to the other members or participants?

11 MR. RIESER: Yes.

12 THE HEARING OFFICER: December 4th.

13 MS. ROBINSON: Okay.

14 THE HEARING OFFICER: Please have them
15 in the board office, if possible. That also brings
16 up another question.

17 You were mentioning T.A.C.O.
18 We had discussed at the prehearing conference the
19 problem that can occur since this rule references the
20 T.A.C.O. tiered approached regulations in
21 several places. This rule is, by statute, required
22 to go final in March. T.A.C.O. is three months
23 behind that also by statute.

24 We had offered several

1 suggestions. I am going to ask that participants
2 and the agency also specifically address how they
3 believe this should be handled and what approach
4 is best to take.

5 There were several options
6 discussed at the prehearing conference. I won't go
7 back into those at this time, but I think that we
8 do need to look at how we specifically will address
9 that at the December 9th hearing.

10 Finally, I would just like to
11 note at this point in time, we received three sets
12 of prefiled testimony for the December 9th hearing.
13 I anticipate at this time that the order of that
14 hearing will go as follows.

15 We will begin with the agency
16 and follow-up from today's testimony in their
17 filings that they will get to us on December 4th.
18 It will be followed by Peter Gates, William
19 Fleischli, am I saying that correctly, and Michael
20 Rapps, and the questions of each of those at the
21 appropriate time.

22 Are there any other issues that
23 anyone can think of we need to address?

24 MR. RIESER: Ms. Hearing Officer, with

1 respect to the operations to the board on how to
2 handle the different time frames, you want those to
3 be submitted orally at the next hearing or in writing
4 or how do you propose that?

5 What format do you want those and
6 when do you want those by?

7 THE HEARING OFFICER: I guess, if
8 appropriate, if the testimony is -- if we can hear
9 testimony on that, fine. Certainly, it should be
10 in final comments at the latest.

11 MS. ROBINSON: As far as testimony
12 on our behalf, as a second point, I have not received
13 any testimony from Pete Gates or Bill Fleischli.
14 I'm real concerned about that. I'm not on the
15 service list. I know you and I have talked about
16 that.

17 THE HEARING OFFICER: Right. You've
18 got the Petroleum Council's testimony?

19 MS. ROBINSON: Yes.

20 THE HEARING OFFICER: That included
21 testimony from Mr. Gates, I believe.

22 MR. RIESER: You received testimony
23 from Petroleum Council, correct?

24 MS. ROBINSON: Yes.

1 MR. RIESER: He testifies in that.

2 MS. ROBINSON: We don't have Bill
3 Fleischli's, though, unless I'm missing something.

4 THE HEARING OFFICER: I think it's
5 upstairs. If you want, at the end of this, we can
6 provide that to you. It's two pages.

7 MR. RIESER: Isn't it attached to
8 Mr. Rapp's testimony?

9 THE HEARING OFFICER: It might have
10 been.

11 MR. RIESER: I think there was a cover
12 letter to Mike Rapp's testimony.

13 THE HEARING OFFICER: You can pick
14 it up upstairs. It's only two pages. We will give
15 you leave to ask any questions you may need to ask.

16 MS. ROBINSON: Would you like for us
17 to proceed with our position on this?

18 THE HEARING OFFICER: That will be
19 fine.

20 MR. KING: I know there had been
21 some discussion about changing the statutory time
22 frame. I don't know where that's exactly at from
23 a legislative standpoint or whether that's going
24 to happen this month. That obviously would be the

1 cleanest way, if that occurs.

2 If it doesn't occur, then,
3 actually I think we like the suggestion -- I
4 think the hearing officer made it at the prehearing
5 conference of the board finishing its action by
6 March 15th and then just postponing the effective
7 date of the rule to coincide with the effective
8 date of 742. I think that would put in place --
9 the board would clearly be meeting its requirement
10 of taking an action within that time frame and then
11 just puts in place for things to happen automatically
12 once 742 becomes effective. I think that would be
13 the cleanest way for things to happen.

14 MS. STEINHOOR: I'm Beth Steinhour.
15 Hopefully, as Gary stated, this is a legislative
16 change that will coincide with the T.A.C.O. rulings.

17 THE HEARING OFFICER: Thank you. Are
18 there any other comments at this time?

19 MR. RIESER: I would certainly agree
20 with Gary. The way he suggested would be the easiest
21 way to do that. I would say legislative change seems
22 to be the simplest way to approach it and still be
23 consistent with legislative requirements.

24 THE HEARING OFFICER: I should have

1 prefaced that by saying assuming there would be no
2 legislative action. Thank you.

3 Let me just ask this. The agency
4 prefiled questions of the three testifiers for the
5 next hearing. Did anyone else want to prefile
6 questions? We didn't have any questions from any
7 other group.

8 Mr. Rieser, these are all from
9 your group, aren't they?

10 MR. RIESER: I believe.

11 THE HEARING OFFICER: Aren't they also
12 with Petroleum Marketers Association?

13 MR. RIESER: Only the testimony of
14 Pete Gates is on the Illinois Petroleum Council.
15 The others are on behalf of the Illinois Petroleum
16 Marketers Association.

17 THE HEARING OFFICER: Was there any
18 desire to prefile questions? Okay. All right.
19 Then, is there anything else?

20 Okay. I want to thank everyone.
21 I greatly appreciate the level of preparedness at
22 this hearing. I think it helped it go along smoothly
23 and quickly. Thank you very much, and we will see
24 you on December 9th in Springfield.

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We are adjourned.

(Whereupon, no further
proceedings were had in
the above-entitled cause.)


* * * * *

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3 I, LORI ANN ASAUSKAS, CSR, RPR, notary
4 public within and for the County of Cook and State
5 of Illinois, do hereby certify that the testimony
6 then given by all participants of the rulemaking
7 hearing was by me reduced to writing by means of
8 machine shorthand and afterwards transcribed upon
9 a computer, and the foregoing is a true and correct
10 transcript.

11 I further certify that I am not counsel
12 for nor in any way related to any of the parties to
13 this procedure, nor am I in any way interested in the
14 outcome thereof.

15 In testimony whereof I have hereunto set
16 my hand and affixed my notarial seal this 27th day of
17 November, A.D., 1996.

18 
19 Lori Ann Asauskas, CSR, RPR
20 Notary Public, Cook County, IL
Illinois License No. 084-002890

21 SUBSCRIBED AND SWORN
22 before me this 27th
day of November, 1996.

23 
24 Notary Public

