

1 A P P E A R A N C E S :

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3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-3900
8 BY: MS. AMY C. ANTONIOLLI, HEARING OFFICER,
9 MS. ALISA LIU, BOARD STAFF and
10 MR. ANAND RAO, BOARD STAFF,

7

8 SWANSON, MARTIN & BELL,
9 One IBM Plaza
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11 Chicago, Illinois 60611
12 (312) 923-8260
13 BY: MS. ELIZABETH S. HARVEY,

11

12 Appeared on behalf of Jo'Lyn Corporation
13 and Falcon Waste and Recycling, Inc.;

12

13 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
14 1021 North Grand Avenue East
15 P.O. Box 19276
16 Springfield, Illinois 62794-9276
17 (217) 782-5544
18 BY: MR. JOHN J. KIM,

19 Appeared on behalf of the Illinois
20 Environmental Protection Agency.

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1 HEARING OFFICER ANTONIOLLI: Good
2 morning, everyone. My name is Amy
3 Antoniolli. Today, I am filling in for Brad
4 Halloran, who is the hearing officer assigned
5 to this matter but couldn't make it today
6 because he is sick as well as his family.

7 This matter is entitled Adjusted
8 Standard, it's docketed as AS 04-2 and the
9 title of it is, In The Matter Of: Petition
10 of Jo'Lyn Corporation and Falcon Waste and
11 Recycling for an adjusted standard from 35
12 Ill. Adm. Code, part 807, or in the
13 alternative, a finding of inapplicability.

14 We're here at the McHenry County
15 College and we appreciate them letting us use
16 their facility today. It's December 22nd,
17 2004. It's approximately five after 9:00,
18 and I do note that there are several members
19 of the public present, maybe 12 to 15 people
20 here from the public, and if they so choose,
21 anyone can make public comment. Members of
22 the public can also choose to testify about
23 this petition, but like all witnesses, anyone
24 who wishes to testify must be sworn in and

1 then subject to cross-questioning.

2 I will also note that from the
3 Board today there are two members here from
4 the technical unit, Mr. Anand Rao and
5 Ms. Alisa Liu.

6 The hearing is intended to develop
7 a more complete record for review for the
8 Illinois Pollution Control Board. I'm not
9 going to be making the ultimate decision in
10 this case, that decision is left up to the
11 five members of the Pollution Control Board.
12 They'll review the record, the transcript and
13 also the post-hearing briefs if they are
14 filed and render a decision in this matter.

15 My job is to ensure an orderly
16 hearing, a clear record and rule on any
17 evidentiary matters that may arise today.

18 I do note that we are going to run
19 this hearing pursuant to the Board's
20 procedural rules found at Section 104.400
21 through 104.428 of the Illinois
22 Administrative Code.

23 And, again, it's been noticed up
24 pursuant to Board regulations. With that

1 said, would the parties like to introduce
2 themselves?

3 MS. HARVEY: My name is Elizabeth
4 Harvey and I represent the petitioners,
5 Jo'Lyn Corporation and Falcon Waste and
6 Recycling Incorporated. I also have with me
7 Cathy Powles of those two entities. Thank
8 you.

9 HEARING OFFICER ANTONIOLLI: Thank
10 you.

11 MR. KIM: My name is John Kim,
12 attorney with the Illinois EPA.

13 HEARING OFFICER ANTONIOLLI: Thank
14 you. And with that I can turn it over to
15 Ms. Harvey to begin.

16 MS. HARVEY: Thank you, very much,
17 Madam Hearing Officer.

18 I just wanted to make a brief
19 opening statement, not to belabor the points,
20 but just to kind of set the stage a little
21 bit.

22 This is, as the Hearing Officer
23 mentioned, a hearing on the petition of
24 Jo'Lyn Corporation and Falcon Waste and

1 Recycling, Incorporated, for one of two
2 things. Either an adjusted standard from the
3 Pollution Control Board's waste regulation or
4 a determination that those waste regulations
5 are inapplicable.

6 Jo'Lyn and Falcon purchased a
7 material called granulated bituminous shingle
8 material or as we'll refer to it, GBSM, all
9 caps, which is a clean and consistent
10 pre-consumer material that is purchased from
11 the manufacturer of roofing shingles.

12 These are manufacturers'
13 residuals, if you will, small pieces of the
14 material, color and things that are wrong,
15 material that just simply cannot be packaged
16 and sold. These are not, for the record,
17 tear-off shingles that have already been used
18 by a consumer. Jo'Lyn and Falcon use the
19 GBSM after they purchase it to produce a
20 paving product which is called Eclipse Dust
21 Control. Eclipse Dust Control is a durable
22 product that is unique in the sense that it
23 requires no chemical binders and no hot mix
24 asphalt and no sealant on top of it. The

1 GBSM is shredded, those shredded pieces,
2 which we'll show you a sample of, are applied
3 to the end-user's location, whether it be a
4 driveway, a parking lot, bike paths, walking
5 paths, et cetera, that material is then
6 compressed using a very large, I believe,
7 ten-ton vibratory roller to compress the
8 material and then the sun does -- actually
9 completes the bonding process. The heat of
10 the sun just compresses those enough to form
11 a solid surface. IEPA has taken the position
12 that GBSM is a waste, which would require
13 Falcon and Jo'Lyn to comply with all the
14 waste rules applicable to landfills, transfer
15 stations and other waste facilities.

16 It is our position that the waste
17 regulations are inapplicable to this process
18 because GBSM is not discarded and therefore,
19 doesn't fit the statutory definition of
20 waste. So our position is it's not a waste.

21 The Illinois Appellate Court, in a
22 similar case, has ruled that a similar
23 material is not a waste, and recently the
24 Illinois Supreme Court agreed with that.

1 We believe that that's controlling
2 authority and that the Board should follow
3 that authority to determine that this product
4 is also not a waste.

5 We will address that and update
6 the status of that in our post-hearing briefs
7 that we will file after this hearing.

8 So our purpose today is two-fold.
9 First of all, we're going to supplement the
10 information that's already in the record.
11 We've already filed what's already been filed
12 in the record, so there will be additional
13 information placed in the record. And we
14 also want to take the opportunity to address
15 some specific questions that have been raised
16 by both the Pollution Control Board and by
17 IEPA, so we can perhaps address those issues.

18 I plan to call two witnesses,
19 Cathy Powles, on behalf of Jo'Lyn and Falcon
20 and I will also be calling Mr. David Foulkes,
21 who is a representative of IKO, who is the
22 entity from which we buy -- purchase the
23 GBSM. I don't know if Kim would like to --

24 MR. KIM: If I may, I just have a very

1 brief statement.

2 I just wanted to make clear that
3 the recommendation that's been filed thus far
4 by the Illinois EPA, which is to deny the
5 adjusted standard that's been presented, both
6 in its original and amended form, is not
7 reflective of any kind of judgment as to the
8 merits or benefits of the proposed operation.
9 It's simply the Illinois EPA's position that
10 based on the regulations and statutes that
11 are applicable -- that we believe are
12 applicable to the proposed facility and
13 proposed operation, the material that
14 Ms. Harvey just described, GBSM, is a waste
15 and therefore waste regulations must be
16 followed.

17 That being the case, the only
18 appropriate method for relief would be an
19 adjusted standard and we believe that there
20 are certain deficiencies that we brought to
21 the Board's attention that need to be
22 addressed before an adjusted standard could
23 be approved.

24 Ms. Harvey also mentioned a -- at

1 least one case that was issued by the
2 Illinois Supreme Court recently and I agree
3 with her that the case that she refers to may
4 have some direct impact on this case.

5 However, the Illinois EPA and
6 through the Illinois Attorney General's
7 office has asked the Supreme Court to
8 reconsider that decision, and therefore based
9 upon the Supreme Court's, to date, failure to
10 act upon that, we continue to take the
11 position that the material is a waste. That
12 may be amended. We may have to adjust our
13 position depending on what the Supreme Court
14 does down the road.

15 HEARING OFFICER ANTONIOLLI: Thanks
16 Mr. Kim and Ms. Harvey. At this point, does
17 anyone else have questions before we begin,
18 or comments? Okay. Would you like to call
19 your first witness?

20 MS. HARVEY: Yes, please. Are we
21 going to have the witness sit here?

22 HEARING OFFICER ANTONIOLLI: Whatever
23 is more comfortable for you both, really.
24 That's fine. As long as you talk loud enough

1 so that the public and the court reporter can
2 hear.

3 MS. HARVEY: Maybe we'll switch you
4 this way so -- but face and be sure that the
5 court reporter can hear you. That way she
6 can get down your every word. Thank you,
7 Madam Hearing Officer.

8 HEARING OFFICER ANTONIOLLI: Sure.
9 Would you please swear in the witness?

10 (Witness sworn.)

11 WHEREUPON:

12 KATHY POWLES
13 called as a witness herein, having been first duly
14 sworn, deposeeth and saith as follows:

15 DIRECT EXAMINATION

16 BY MS. HARVEY:

17 Q. Will you state your name for the
18 record, please?

19 A. Katherine Powles.

20 Q. And Kathy, what's your -- who are you
21 here representing today?

22 A. Well, I am here representing Falcon
23 Waste and Recycling, Inc., and Jo'Lyn Corporation.

24 Q. Okay. And what's your title with

1 those two corporations?

2 A. Jo'Lyn Corporation, I am
3 vice-president, and Falcon Waste and Recycling, I am
4 president of.

5 Q. Okay. Tell me a little bit about your
6 educational background. Did you graduate from high
7 school?

8 A. Yes.

9 Q. Do you have education past the high
10 school level?

11 A. Yes.

12 Q. What kind of education?

13 A. Just additional courses, just help my
14 education, no degree or anything like that.

15 Q. College courses?

16 A. Correct.

17 Q. Okay.

18 A. And I've gone to several seminars and
19 different things like that.

20 Q. What has the subject of the seminars
21 been?

22 A. Most of them have dealt with recycling
23 and asphalt pavement, beneficial uses for products,
24 those are the relevant ones to this case.

1 Q. Okay. What year did you start your
2 involvement with Jo'Lyn and Falcon?

3 A. Jo'Lyn started in 1997, and at that
4 time I was a part of it. So did Falcon Waste and
5 Recycling, however, they were of one entity at that
6 time.

7 Q. Okay. Who else is an officer in
8 Falcon and Jo'Lyn?

9 A. Donald Powles.

10 Q. Okay. Are you related to Mr. Powles?

11 A. Yes, he's my husband.

12 Q. Okay. Does Falcon and Jo'Lyn have
13 waste disposal -- waste business experience prior to
14 the formation of Falcon and Jo'Lyn in 1997?

15 A. Definitely. That was our whole
16 purpose of getting involved in the industry. My
17 husband, Don, used to work for BFI in Waukegan,
18 Illinois. He worked just about every single facet
19 of the industry there, in the landfill, on the back
20 of the trucks, dispatch, managing the drivers,
21 sales, and he was the recycling coordinator and he
22 implemented the recycling curb side and drop off
23 programs in Waukegan and Zion at the time.

24 Q. What did you do --

1 A. The first ever, I would like to add.

2 Q. Just briefly, what did you do before
3 you worked with Jo'Lyn and Falcon? What was your
4 work experience?

5 A. I was a stay-at-home mom to begin
6 with. I had my children, raised the children and
7 then I had my own sign business for 13 years, I was
8 self-employed.

9 Q. And you've been involved with Jo'Lyn
10 and Falcon since 1997; is that correct?

11 A. Yes, since the beginning.

12 Q. When Jo'Lyn was founded in 1997, what
13 was the purpose of that business? What business did
14 it practice?

15 A. Well, Jo'Lyn had two companies working
16 underneath it, one was Klip Art Signs, which was a
17 high sign company and we had billboards and signs.
18 And then it was Falcon Waste and Recycling, we
19 had -- we started with one roll-off truck and five
20 dumpsters, that's how it started.

21 Q. You mentioned earlier that Jo'Lyn and
22 Falcon are now two separate companies. Can you just
23 explain a little bit about the division of
24 responsibilities between the two entities?

1 A. Yes. Falcon pretty much does all the
2 legwork and the trucking and those sorts of things,
3 the paperwork, where Jo'Lyn more is the sales for
4 the recycled product. The reason why we've kind of
5 made that split was because it's been proven that if
6 you put recycled commodity on your product, it sells
7 less. They've done that in tests, so if we could
8 keep recycling out of the name of products, it seems
9 to work the best.

10 Q. So Jo'Lyn is essentially the marketing
11 arm and the purchasing arm; is that correct?

12 A. Yes.

13 Q. And then Falcon would be responsible
14 for that actual physical work?

15 A. Yes.

16 Q. But the two companies share the same
17 ownership, correct?

18 A. Yes.

19 Q. Now, we're here today to talk about a
20 process that Jo'Lyn and Falcon are involved in that
21 uses GBSM to create a paving product.

22 How did you come from the waste
23 disposal and recycling end of your business to
24 looking into using GBSM as a paving product? When

1 did that happen?

2 A. When we started the research or --

3 Q. Yeah. When did you start researching
4 the idea?

5 A. It was --

6 Q. Approximately?

7 A. It was approximately 1999.

8 Q. Okay.

9 A. And we went to our first seminar -- I
10 started research before that -- and then I was
11 fortunate enough to go to a seminar put on by ARMA,
12 Asphalt Roofing Manufacturers Association, and there
13 we formed many contacts, actually I believe our
14 manufacturer was there at the time, but it was --

15 Q. And when you say our manufacturer, who
16 do you mean?

17 A. David Foulkes from IKO.

18 Q. IKO is from whom you buy the GBSM; is
19 that correct?

20 A. Yes.

21 Q. Okay. Ms. Powles, I also forgot to
22 ask you, I think you have some memberships in some
23 organizations that are relevant when I asked you
24 about your educational background. Do you have

1 organizations that you belong to that have been --
2 you've served on?

3 A. Yes. Currently we're in the Chambers
4 with Harvard, Woodstock and Richmond-Spring Grove.
5 In 1999 or 2000 -- I'm not sure on the year, excuse
6 me -- I was president of the Richmond-Spring Grove
7 Chamber. And I'm in the Lou Marchi Total Recycling
8 Institute. I'm on the Solid Waste Committee for the
9 McHenry County Defenders. I'm a member of the
10 Illinois Recycling Association, a member of the
11 Construction Materials Recycling Association, also
12 known as CMRA, and I'm also a member of the Green
13 Building Council.

14 Q. Thank you. How many employees does
15 Jo'Lyn have?

16 A. Jo'Lyn has two.

17 Q. How about Falcon?

18 A. Currently we have about six or seven.

19 Q. Are those full-time positions?

20 A. Not all of them, no.

21 Q. Okay. Full-time year-round or
22 full-time -- not full-time year-round or not
23 full-time 40 hours a week?

24 A. Not full-time year-round.

1 Q. Okay.

2 A. The season typically slows down in the
3 winter months.

4 Q. Okay. So we've talked about that the
5 product that you use -- that you make from GBSM is a
6 paving product. And what's the name of the paving
7 product, what do you call it?

8 A. Eclipse Dust Control.

9 Q. And what kind of applications can you
10 use the Eclipse Dust Control for?

11 A. Well, primarily for dust control and
12 that's the best benefit for it, driveways, parking
13 lots, bike paths, pretty much we've just had it in
14 driveways currently. A lot of people use it in
15 roadways for dust control, gravel roads, things like
16 that.

17 Q. Okay. The GBSM that we're already
18 bantering those letters about, I'd like to be able
19 to show the Board and the people -- I think you
20 brought a sample. Is this the GBSM?

21 A. Yes.

22 Q. Okay. Now, this is after it's been
23 shredded at your facility, correct?

24 A. Correct.

1 MS. HARVEY: I guess I'd like to put
2 this into the record as Exhibit -- can we use
3 numbers -- 1.

4 HEARING OFFICER ANTONIOLLI: Please
5 do.

6 MS. HARVEY: I think that the exhibits
7 to the petition are lettered.

8 BY MS. HARVEY:

9 Q. This is the box that shows the GBSM
10 after it is shredded. Can you tell us approximately
11 the size of these pieces?

12 A. Yeah, they're a quarter inch by an
13 inch and a half, two inches.

14 Q. Is this representative of the kind of
15 thing you would use in your paving application?

16 A. Yes, it is.

17 Q. Okay.

18 MS. HARVEY: Let me show Mr. Kim so he
19 can see the GBSM.

20 So I'd like to introduce this as
21 Exhibit No. 1, I believe it would be.

22 HEARING OFFICER ANTONIOLLI: Okay.

23 (Document marked as Exhibit No. 1
24 for identification, 12/22/04.)

1 HEARING OFFICER ANTONIOLLI: I'll hold
2 this up for everyone. You can take a look.
3 If there are no objections, I will go ahead
4 and enter this box of GBSM into the record as
5 Hearing Exhibit 1. And seeing none, I will
6 enter that as Exhibit 1. Thank you.

7 (Whereupon, Exhibit No. 1 was
8 received in evidence by the
9 Hearing Officer.)

10 MS. HARVEY: Thank you, Madam Hearing
11 Officer.

12 BY MS. HARVEY:

13 Q. When you purchase the GBSM, what does
14 it look like?

15 A. Well, it looks similar to that, but
16 they're longer tabs and we will also get sheet
17 material which simply looks like a shingle for your
18 home. It's the bigger, longer sheets.

19 Q. Okay. And am I correct that you
20 actually purchase the GBSM?

21 A. Yes.

22 Q. And currently you purchase it from
23 IKO?

24 A. Correct.

1 Q. The GBSM is -- explain to me a little
2 bit about why one would have GBSM. What's the
3 course of it, why is it not usable by the
4 manufacturer?

5 A. Well, because of their quality
6 control, I would say, for their product to be placed
7 on to the roof of the material that they're selling.
8 Am I answering your question?

9 Q. Yes, you are.

10 A. You know, either it has mis-colored
11 rocks on top, or, you know, for whatever reason,
12 they do not pass certain quality control, they will
13 not put it on the market, so then we purchase it
14 from them and it's a very valuable commodity.

15 Q. When you say that it doesn't pass
16 quality control, you mean in terms of customer
17 satisfaction for their customers, correct?

18 A. Right. Exactly. For their roofing
19 shingle product. For their product that they're
20 currently manufacturing.

21 Q. Has that GBSM been mingled with any
22 other kind of waste at the facility to your
23 knowledge?

24 A. No.

1 Q. Okay. Let's talk a little bit about
2 some of the benefits of the GBSM -- or excuse me,
3 about the Eclipse Dust Control after you apply it.

4 A. Okay.

5 Q. Why is this a product that is useful?

6 A. Well, it keeps mud down and it keeps
7 noise down and it keeps the dust down. It's -- and
8 it actually looks nicer. It helps ruts in your
9 driveway, it elongates the life of gravel, it saves
10 natural resources as a product, it would be for a
11 nicer looking driveway, to not have to deal with the
12 gravel all the time, and to have a nice, solid coat
13 over the top. Basically the same reasons you would
14 pave your driveway, it's the exact same type of
15 thing, either blacktop or asphalt or even brick
16 pavers, brick pavers are pretty nice looking, but,
17 you know, it's the same type of reasoning.

18 Q. So you can essentially replace a
19 blacktop or asphalt application with Eclipse Dust
20 Control?

21 A. Yes.

22 Q. Okay.

23 A. And many people -- like, we've had a
24 couple tours of our facility and our test sections

1 that we do have out there, and interestingly enough,
2 a lot of the people commented on how they liked the
3 different look. You know, they want variety, they
4 don't what everybody else has. They like the
5 different look and the quality of it because it does
6 not crack.

7 Q. Okay. We're going to talk in a second
8 about it in a little bit more detail about your
9 operations and about how it's installed, but just
10 generally speaking, can you give me an idea of how
11 it goes from the larger the piece of the GBSM that
12 you purchased from IKO, to how it gets to the
13 Eclipse Dust Control. What do you do to it?

14 A. Well, it simply just gets ground in a
15 horizontal grinder, it comes out the opening.

16 Q. And how about the installation?

17 A. The installation, it's simply just
18 unloaded onto the pavement in different areas and
19 there's two ways to apply it. It is spread in two
20 different fashions and then it's rolled with a heavy
21 duty ten-ton vibratory roller.

22 Q. Do you use any sealant on it?

23 A. No, we don't. That's what makes the
24 product so great, it's just through the sun, we're

1 not adding any chemicals, there are no residuals in
2 our process. There's, you know -- so, here we're
3 taking a product, we're making a new product, we're
4 not creating any residuals. We're not using any
5 other chemicals to add on to it. It's just -- it's
6 a great thing.

7 Q. Okay. Let's talk a little bit in a
8 little bit more detail. I want to -- I think you
9 have a copy of this.

10 MS. HARVEY: I want to introduce this
11 as Exhibit No. 2, Madam Hearing Officer, what
12 I have provided to Mr. Kim and to I think all
13 of you, this is the operating manual for the
14 production and application of Eclipse Dust
15 Control for Jo'Lyn Corporation and Falcon
16 Waste dated this year. So I guess I would
17 ask that that be marked and admitted as
18 Exhibit No. 2.

19 (Document marked as Exhibit No. 2
20 for identification, 12/22/04.)

21 HEARING OFFICER ANTONIOLLI: Okay. And
22 I have that in front of me, and if there are
23 no objections, I will enter this operating
24 manual for production and application of

1 Eclipse Dust Control into the record as
2 Hearing Exhibit 2.

3 MR. KIM: I'm not going to object, but
4 I just want to note for the record that
5 Exhibit 1 and Exhibit 2 and probably some of
6 these other exhibits, the Illinois EPA hasn't
7 seen the documents yet, so the recommendation
8 that we filed thus far would not necessarily
9 make reference to these things and based upon
10 this information presented at hearing, we may
11 have to enter our post-hearing filing, revise
12 our comments.

13 HEARING OFFICER ANTONIOLLI: And
14 you'll have the option to file a post-hearing
15 brief if you wish to do that.

16 MR. KIM: Thank you.

17 HEARING OFFICER ANTONIOLLI: So I will
18 go ahead then and enter this operating manual
19 into the record as Exhibit 2.

20 (Whereupon, Exhibit No. 2 was
21 received in evidence by the
22 Hearing Officer.)

23 MS. HARVEY: Thank you, Madam Hearing
24 Officer.

1 BY MS. HARVEY:

2 Q. Kathy, I just want to walk you a
3 little bit through this so that we can explain to
4 the Board and the Agency and the members of the
5 public exactly where you are and what you do
6 basically. The first portion of this operating
7 manual just simply provides a site map. Where is
8 your facility located?

9 A. We're in the city limits of Woodstock,
10 it's located 1200 North Rose Farm Road. It is
11 commercial or industrial zoned property, it's
12 properly zoned.

13 Q. Okay. And I believe on Page 3 of this
14 Exhibit, there is a map of your site?

15 A. Uh-huh.

16 Q. That indicates where specific
17 activities are performed on your site?

18 A. Correct.

19 Q. Can you just walk us through a little
20 bit for those of us who have the benefit of having
21 copies what the major features of your facility are?

22 A. Well, I think one of the better
23 features of our facility is it's very far away from
24 any public view, it's one of the benefits. The road

1 is all the way -- well, you see on the bottom if you
2 hold your paper upright -- the road is down there,
3 Rose Farm Road, it's surrounded with trees and it's
4 just very nice and mature.

5 Q. So when you go up the driveway, what
6 are there storage areas, is there parking? What's
7 at your facility when you come up that driveway from
8 Rose Farm Road?

9 A. Well, when you come up the driveway
10 right in front of you are the stockpiles of the
11 GBSM.

12 Q. Okay.

13 A. To the right, we have parking and
14 storage area and our office building.

15 Q. Where does the grinding actually
16 occur?

17 A. Right in between the two piles of
18 GBSM. I know it's hard to see, but X marks the
19 spot. Which we'd relocate according to which part
20 of the pile that we'd be grinding at that time.

21 Q. So the grinder is movable?

22 A. Right. It's portable, so the
23 operation would be portable.

24 Q. Okay.

1 A. But at that location specifically.

2 MR. RAO: Ms. Harvey, may I?

3 MS. HARVEY: Please.

4 MR. RAO: In this Figure One, does it
5 also show your property boundary lines?

6 THE WITNESS: Pretty much it does,
7 yes. This is actually a property map, but I
8 don't have it all in here.

9 MS. HARVEY: I will tell you, it is
10 not exactly to scale because when we
11 reproduced it it smooshed it a little bit,
12 but it's still representative of the site.

13 MR. RAO: Does the property boundary
14 go all the way up to the working railway
15 line?

16 THE WITNESS: Yes, it does.

17 MR. RAO: Okay. And what is the
18 zoning of this area?

19 THE WITNESS: It is commercial or
20 industrial, I'm not -- you know, sometimes
21 they change, depending on where you're at,
22 and quite frankly it is properly zoned. They
23 have zoned it research and development,
24 whatever it's commercial or industrial. I do

1 believe it's industrial.

2 MS. HARVEY: There is information in
3 our petition about the zoning of this site.

4 MR. RAO: Thanks.

5 MS. HARVEY: Sure.

6 BY MS. HARVEY:

7 Q. Do you store the finished product
8 after -- and by the finished product, I mean after
9 you've shredded the GBSM -- do you store the
10 finished product on-site?

11 A. No. We really -- we haven't been able
12 to grind, but we feel it is absolutely the best
13 service to our customers, and just the application
14 of the whole procedure, we grind it and place it
15 right into a receptacle that then gets transported
16 to the customer.

17 Q. So you don't grind it until you have
18 an order ready to grinding?

19 A. Correct.

20 Q. Let's move on and I want to talk a
21 little bit about your operating manual provides a
22 list of the equipment that you use at your facility.
23 Can you just go through those real quickly so that
24 the Board has an idea of what's used out there?

1 A. Okay. Yeah. We have the grinder,
2 that's what actually does the grinding. It's a
3 horizontal grinder. It's pretty -- it's a portable
4 horizontal grinder. We have a link belt excavator
5 on tracks, so that moves around when we stockpile
6 the material when it needs to be. We also have a
7 bobcat. We don't really use that to move the
8 shingles. Shingles are very difficult to move so
9 the bobcat really won't --

10 Q. When you say shingles, you mean the
11 GBSM?

12 A. Correct, excuse me.

13 Q. That's okay.

14 A. So the bobcat is basically used for
15 when we spread it and apply it, and we have the
16 truck and a trailer for hauling the material and
17 several roll-off receptacles.

18 Q. Okay. Now, this operating manual also
19 contains, I believe, it's about two-and-a-half
20 almost three pages of your operating procedures. We
21 won't take the time of the Board and the Agency to
22 go through every detail, but let's hit on the
23 highlights of what it breaks down to. The first
24 category, I believe, is the trucking. How do you

1 know when to go to IKO to make a pick-up for
2 shingles or GBSM?

3 A. We actually have a camera set up and
4 we see pictures of it, we have an hourly snapshot of
5 it that we retrieve over the internet.

6 Q. So you're looking at the actual box
7 on-site at IKO?

8 A. Uh-huh.

9 Q. Correct?

10 A. Uh-huh.

11 Q. So when it gets close to full, is that
12 when you --

13 A. Yeah, I know about when. It's on a
14 little conveyor, so you can kind of predict.
15 Sometimes we get there a little bit too early and
16 sometimes we've gotten there just a little bit too
17 late. We just have to wait a little bit longer and
18 reorganize, but yes.

19 Q. Okay. So you send a driver to -- from
20 the Jo'Lyn facility to IKO. Where is IKO's facility
21 located?

22 A. Bedford Park, it's down by Midway.

23 Q. Okay. And is IKO the only
24 manufacturer that you currently purchase GBSM from?

1 A. Yes.

2 Q. Are you interested, if approved, to be
3 able to run your operation -- do you anticipate
4 perhaps seeking additional manufacturers of GBSM?

5 A. Yes, I really do because we've had
6 just great feedback from this, so to have enough
7 supply for the demand, it would be --

8 Q. Are there asphalt shingle
9 manufacturers in Illinois?

10 A. Yes.

11 Q. Who are in the Chicago -- located in
12 the Chicago metropolitan area?

13 A. Yes.

14 Q. So you have other sources of the GBSM
15 potentially?

16 A. Yes.

17 Q. When your truck gets to IKO, I'm sure
18 it goes in, it's weighed, then what happens?

19 A. We switch out the boxes and they get
20 re-weighed. We do examine the boxes. Some of this
21 stuff is just to normal for us I forget to go over
22 it.

23 Q. Let me stop you there. When you say
24 the boxes, it's my understanding -- and please

1 correct me if I'm wrong -- that there are two
2 different types of boxes at the IKO facility, one
3 has the GBSM tabs in it; is that correct?

4 A. Yes.

5 Q. What is a GBSM tab?

6 A. It's the little piece -- if you look
7 at your shingle, it's a little tab, you usually have
8 three tabs on your shingles, and it's that little
9 slot that makes it look like there's three pieces.

10 Q. So its the cutout?

11 A. Yes.

12 Q. Okay. And I believe that you've also
13 referred previously to GBSM sheets?

14 A. Uh-huh.

15 Q. Where are GBSM sheets?

16 A. They're the full shingle that has not
17 passed quality control for whatever reason, could be
18 wrong colors. Additionally, it could be a line
19 break in the back feed of material, when they're
20 creating it, so they don't want that piece out on
21 the market, however it does have to go through the
22 whole process, things like that.

23 Q. Okay. And those -- the GBSM sheets
24 are stored separately from the GBSM tabs?

1 A. Yes, they are.

2 Q. So when you pick up, do you pick up
3 both boxes?

4 A. Yes.

5 Q. Then they're hauled back into the
6 Jo'Lyn facility?

7 A. Correct.

8 Q. When your driver picks up the GBSM at
9 the facility, you mentioned that you do examine the
10 GBSM. What's the purpose of that? What are you
11 looking for?

12 A. Well, just to make sure that
13 everything is safely packed in there and just to
14 kind of glance to make sure it's a clean, consistent
15 load, which we have never had anything in there, but
16 you always want to check your load no matter what
17 you're hauling, and then to tarp the box to make
18 sure that it hauls safely.

19 Q. Does your contract give you the right
20 to refuse or to reject GBSM if it's not consistent
21 with the consistent material?

22 A. Yes. However, that has never
23 occurred.

24 Q. Okay.

1 A. It's never occurred.

2 Q. But you have the right to do it if it
3 were to occur?

4 A. Yes.

5 Q. And I think -- I'm sorry, I think I
6 might have talked over you. I understand that you
7 tarp this material -- or you tarp the boxes before
8 it's transported back to Woodstock; is that correct?

9 A. Correct.

10 Q. Okay. When you get it back to your
11 facility in Woodstock, what happens?

12 A. We put it in a -- I don't know if --
13 I'm going to say the staging area.

14 Q. That's okay.

15 A. I'm not sure if that's correct. And
16 it's in the center of the picture right around where
17 the grinder actually sits. We use that and the
18 grinder isn't sitting there right now, but we use
19 that as a temporary storage just to kind of conserve
20 on when we hire the excavator to come in and all
21 that type of stuff, and it gets placed there, when
22 that area gets full we stockpile it onto the
23 piles --

24 Q. Do you rotate that?

1 A. -- in chronological order so freshest
2 is here and it goes around in a circle and it comes
3 back on the side. So we would always use the oldest
4 product first and --

5 Q. Why do you use the oldest product
6 first?

7 A. Because I think it makes good sense.
8 I think that's the best way to do business.

9 Q. Does it cut down on your storage time
10 in that particular load of GBSM?

11 A. Yes.

12 Q. Do you mix the GBSM tabs and the GBSM
13 sheets when you store them at your facility?

14 A. Kind of, but not. I mean, they can be
15 combined in rolls, but they're not really, they are
16 done separately. I don't know that we've --
17 purposely have done that.

18 Q. Okay. Do you have a standard on how
19 high the piles of GBSM can be?

20 A. Yes.

21 Q. How high is that?

22 A. Twenty-five feet.

23 Q. What happens if you were to have more
24 than that, would you just create a new pile?

1 A. No. We're kind of at a standstill
2 right now, so...

3 Q. Yes.

4 A. We would just move it over a little
5 bit more. No, we are limited to that area.

6 Q. Oh, yeah, I'm sorry, I wasn't clear.
7 I didn't mean that you'd create a new area, I meant
8 that instead of going up you'd go over, correct?

9 A. Correct.

10 Q. Now, when you get an order for Eclipse
11 Dust Control and it's time to go out and pave --
12 install the product at the site, what procedures
13 happen then? Is that when you do the grinding?

14 A. Yes.

15 Q. How does the grinding work?

16 A. Well, the excavator puts it into the
17 grinder, it has an in-feed and a little drum roller
18 and it pushes it through grates which actually make
19 it smaller, it comes out about -- feeds directly
20 into the receptacle, it is carried to the customer.
21 And there's two different ways to install it, so he
22 would either put it right into the asphalt spreader,
23 or kind of spread/dump it like you see gravel doing,
24 to spread it with the bobcat.

1 Q. Okay. When you truck it to the --
2 when you truck the shredded GBSM to the location, is
3 that container tarped, is it covered?

4 A. Yes.

5 Q. Let's talk a little bit about the
6 installation of the actual -- you mentioned that you
7 would spread it out, depending upon whether you use
8 an asphalt spreader or the bobcat. Then what
9 happens after you've deposited the GBSM at the
10 customer's location?

11 A. I'm going to step back just a minute.
12 Before we even do that, the area needs to be graded,
13 just like you would a regular driveway. If you're
14 getting -- whatever product you're using, you have
15 to properly grade the material so it has a little
16 arc in the driveway. All that kind of stuff,
17 otherwise the product really won't last. So that is
18 done first. We fill it with gravel, smooth out the
19 actual gravel and base, we make a good solid base,
20 the material is brought in and it's spread either
21 way, there's two different ways it's spread, and
22 then it is compacted with a roller.

23 Q. How thick is the GBSM after spreading
24 but before it's compacted? How much do you put on

1 there?

2 A. After it is spread, before it's
3 compacted?

4 Q. Right.

5 A. It's between six to four inches. It
6 varies between six to four inches. And when it's
7 compacted, it really just smooshes down quite a bit
8 and it goes to about a two-inch material, some areas
9 it's three and it's --

10 Q. After it's compacted with the
11 vibratory roller, does the sun continue that process
12 of the sealing, if you will?

13 A. Yes. And you do need the full sun.

14 Q. So you only currently apply this
15 product in full-sun areas?

16 A. Yes.

17 Q. I have another sample. This is -- Ms.
18 Powles, can you identify for us what this is?

19 A. That is actually the material that we
20 submitted in Exhibit 1, and we actually just made a
21 little sample of it, so it's very heavy, sorry, and
22 it's made of steel and we put it in here and
23 actually drove over it with the truck. We did have
24 one of those little halogen lights on it for a

1 minute which softened it up just a little bit.

2 Yeah. And I think that has been there for, I'm
3 going to say three, four years that has been in
4 this.

5 Q. Okay. So is this representative of
6 the finished product that the GBSM would be?

7 A. Yes, it is.

8 Q. Okay. So that's called Eclipse Dust
9 Control, right?

10 A. Yes. Uh-huh.

11 Q. Okay.

12 MS. HARVEY: So I would like to place
13 this into evidence as Exhibit 3. I'll show
14 to Mr. Kim so that you can actually see what
15 the product looks like. You can see that it
16 looks quite a bit like asphalt.

17 (Document marked as Exhibit No. 3
18 for identification, 12/22/04.)

19 MR. KIM: Can I see the back?

20 MS. HARVEY: Sure. It's just a frame
21 essentially. Obviously, think of this
22 without the metal.

23 MS. HARVEY: It's heavy, sorry.

24 HEARING OFFICER ANTONIOLLI: Now that

1 everyone has had a chance to see this, does
2 anyone have any objection to me entering this
3 into the record as Hearing Exhibit 3? And
4 seeing none, I will enter this sample of
5 Eclipse Dust Control into the record as
6 Exhibit 3.

7 (Whereupon, Exhibit No. 3 was
8 received in evidence by the
9 Hearing Officer.)

10 MS. HARVEY: Thank you, Madam Hearing
11 Officer.

12 BY MS. HARVEY:

13 Q. Miss Powles, have Jo'Lyn and Falcon
14 created test sections of the Eclipse Dust Control?

15 A. Yes.

16 Q. How many?

17 A. Two.

18 Q. Okay. When was the first one
19 installed?

20 A. Well --

21 Q. Approximately?

22 A. It was over four years ago.

23 Q. Okay. In 2000?

24 A. Uh-huh. Sounds good.

1 Q. And where was that installed?

2 A. In Harvard at Two Kennedy Drive.

3 Q. Is it a driveway installation?

4 A. Yes.

5 Q. And how has that test section held up?

6 A. It's really held up the best out of
7 all the test sections. We're very happy with it.
8 There's -- there is no cracking there. It's a
9 beautiful product, it really is. It's held up
10 great.

11 Q. And your second test section, when was
12 that installed?

13 A. That is two solid years. I want --

14 Q. Yeah.

15 MS. HARVEY: For the record --

16 BY THE WITNESS:

17 A. It's a little over two years.

18 MS. HARVEY: -- most of this
19 information is contained in the amended
20 petition that was filed by the petitioners
21 in, I believe, July, and also, there are
22 pictures attached to that exhibit of the GBSM
23 test sections as well.

24 HEARING OFFICER ANTONIOLLI: Ms.

1 Powles, can I ask real quick, is this
2 Exhibit 3 now the sample of Eclipse Dust
3 Control, what you would take to visit a
4 client when you show them what the final
5 product would be like?

6 THE WITNESS: Yes.

7 HEARING OFFICER ANTONIOLLI: Okay.

8 BY MS. HARVEY:

9 Q. I'm sorry, forgive me if I've asked
10 you this. How has the second test section held up?

11 A. It's held up very good, also, in the
12 full sun area. Part of that was installed in the
13 shade and when we did do that, we were aware that it
14 needed full sun, but we still wanted to test the
15 area -- test -- you know. So it has held up very
16 well. We plow at both locations.

17 Q. Let me ask you this. What's the
18 location of your second test section? Where is that
19 installed?

20 A. That is in McHenry County in the
21 Heartland Township.

22 Q. Okay. Have you installed any other
23 test sections or just those two?

24 A. No, just those two.

1 Q. Am I correct that you have orders from
2 customers -- when you have the environmental okay to
3 go ahead, that you have orders for installation?

4 A. Yes.

5 Q. Okay.

6 A. In fact, we've had several calls for a
7 more -- more material -- more customers, however,
8 we're not able to service them. And, you know,
9 luckily they're waiting for us so far, but, yeah, we
10 did lose one customer.

11 MS. HARVEY: And, again, for the
12 record, the information relating to those
13 contracts is attached to the -- I believe the
14 first petition for adjusted standard and
15 copies of those contracts are also included
16 as exhibits to that petition.

17 BY MS. HARVEY:

18 Q. Miss Powles, I want to turn to -- the
19 Pollution Control Board asked some fairly specific
20 questions in the order directing us to come to
21 hearing, and we have prepared a written document
22 that I think you have that addresses some of those.
23 It looks like this (indicating). I think everybody
24 has it.

1 MS. HARVEY: I just want to -- first
2 of all, I guess I'd like to mark this as
3 Exhibit 4, I believe it would be, although I
4 do intend to have Ms. Powles read the answers
5 for the benefit of the public and because
6 Mr. Kim had not had a chance to see this
7 prior to this morning. But I'd like to mark
8 it as an exhibit because I am going to ask
9 her to read directly off of it.

10 (Document marked as Exhibit No. 4
11 for identification, 12/22/04.)

12 HEARING OFFICER ANTONIOLLI: Okay.
13 And I know you've had a short time to look at
14 this, Mr. Kim, but do you or anyone else have
15 any objection to me entering this testimony
16 of Kathy Powles on behalf of petitioners into
17 the record as Exhibit 4?

18 MR. KIM: No.

19 HEARING OFFICER ANTONIOLLI: Okay.
20 And seeing none, I will enter that as
21 Exhibit 4.

22 (Whereupon, Exhibit No. 4 was
23 received in evidence by the
24 Hearing Officer.)

1 HEARING OFFICER ANTONIOLLI: And you
2 can go ahead.

3 MS. HARVEY: Thank you.

4 BY MS. HARVEY:

5 Q. Ms. Powles, "How does the GBSM form a
6 cohesive surface through compaction and sun
7 exposure?"

8 A. "GBSM is predominantly crushed
9 limestone, trap rock and asphalt; it comes to us in
10 various sized strips. These strips bend easily.
11 Once they have been exposed to the sun for one to
12 two hours, the material becomes more pliable and
13 bends easier. The trap rock is the outer coating on
14 one side of the GBSM; this rock is a small cubical
15 rock. A cubical rock has a larger surface area than
16 a smooth rounded rock, and has pointed edges. This
17 rock and the asphalt/limestone mixture is the major
18 factor in the binding capabilities. Please note
19 that, when GBSM is used as a roofing shingle, it
20 will bond together on the roof. The roofers do use
21 nails, but you can clearly see in a windstorm that
22 shingles do not start to flop in the wind because
23 there is a bond with each shingle not only at the
24 nailed area." And that occurs simply from the sun.

1 "For pavement application the
2 material is ground, installed, and compacted. Under
3 the pressure of compaction, the small trap rock will
4 puncture the crushed limestone/asphalt mixture,
5 creating a secure adhesion to the material above and
6 below. Plus, the fresh ground edges will bond
7 together, by their composition alone."

8 Q. Thank you. Are fine or loose GBSM
9 present in newer applications after you completely
10 compact the material and it's been exposed to the
11 sun?

12 A. "As in any pavement application, there
13 are small amounts of material that do not bond.
14 (This is true with concrete and blacktop pavements.)
15 The same is true with GBSM. Our test sections show
16 that the trap rock is the material that typically
17 falls to the edge of the pavement. We are convinced
18 that this happens because the material has gotten
19 dusty. Picture if you will two balls of dough. If
20 you try to stick them together they will stick with
21 ease. However if you roll those same balls of dough
22 in flour and press them together they do not stick."

23 Q. I think that's a good analogy. Could
24 you please describe the expected EDC (Eclipse Dust

1 Control) surface as it wears and continues to
2 weather beyond its useful life, and whether or not
3 it yields fines or loose material?

4 A. "We expect the surface of EDC to
5 continue to have a strong bond for several years.
6 Our four-year-old test section shows only a small
7 amount of wear. When closely examined, the minimal
8 breakdown comes from some of the trap rock that is
9 on the top of the surface, which breaks away. We
10 believe this breakaway to occur when plowing the
11 snow off the surface in the winter months. It has
12 been a very small amount.

13 In a regular blacktop or concrete
14 roadway, during the winter months contraction and
15 expansion occur. During this time, you can notice
16 cracking and upheaval of the blacktop or concrete
17 material in large sections, where large pieces will
18 break away. This will occur within its first year
19 of life of the blacktop or concrete surface.
20 Conversely, EDC has not cracked in four-year-old
21 test section; there have not been any large or small
22 chunks that have broken away during the seasonal
23 weather changes.

24 We expect the surface to continue

1 its secure bond, with small amounts of loose
2 material, the trap rock, to flow to the edge of the
3 pavement. The shingles are more resilient to the
4 weather than other current pavement methods. We
5 believe this to be from the larger pieces that make
6 up the material, because of the overlapping of that
7 material that bonds together makes it more difficult
8 to crack during expansion and contraction."

9 Q. What is the range of the expected
10 useful life of the EDC surface?

11 A. "We foresee the expected life of EDC
12 as a solid pavement base to range from six to
13 eight years, if not longer. We currently have two
14 test sections of EDC. The first test section was
15 made of 1/4" by 6" pieces of GBSM. The first test
16 section was installed in August 2000. The second
17 test section was created with 1/2" minus pieces of
18 GBSM, installed in August of 2001. In the full-sun
19 areas, both are holding a strong bond, with a smooth
20 surface. We anticipate the material to last as long
21 as blacktop paving, if not longer."

22 Q. Please discuss the fate of the EDC
23 applied product after its useful life: Whether it
24 becomes a new waste to be removed, whether it can be

1 incorporated into a fresh application of EDC,
2 whether it can serve as a subbase for another paving
3 material, whether it can be removed and used as a
4 component of recycled asphalt pavement or if there
5 are other possible applications?

6 A. "Good question, because I think all
7 products should be asked this question before they
8 come on the market. As everything, it could become
9 a waste; it's basically up to the owner. However,
10 EDC can be broken up and graded, used by itself or
11 mixed with either gravel, recycled asphalt pavement
12 (RAP) or recycled concrete and used as a subbase
13 material for roadways. There are other potential
14 uses. Other uses and markets for removed EDC are:
15 1) Subbase material for roadways; 2) Subbase
16 material for around piping (i.e., water and sewer
17 lines); 3) Mixed with an emulsion and used as
18 pothole patch; 4) Mixed with gravel, for dust
19 suppression; 5) Compressed and formed into paving
20 blocks; 6) Gravel/EDC mixture for the edge of
21 roadways."

22 Q. Would you incorporate an old EDC
23 application into a new EDC application?

24 A. Currently, not at this time, no.

1 Q. Do you plan to promote EDC for use --
2 installation on feed lots?

3 A. "No. We will remove --" even though
4 it is on our flyer. "We will remove feedlots from
5 the list of uses of the material. We have not
6 actively gone after this market even though it is on
7 our flier, which we will remove. I stress that our
8 removal of this use is not because we believe there
9 is any harmful exposure to livestock to fines or
10 particles of EDC. However, in order to allay any
11 concerns about potential health effects, we will not
12 include feedlots as a potential market for EDC. I
13 would like to add, though, they do use this method
14 to keep down mud in Canadian feedlots."

15 Q. And finally in this particular
16 section, do you intend to use GBSM in hot mix
17 asphalt?

18 A. "During research and development we
19 did look at GBSM being used in the hot mix asphalt.
20 GBSM is often used in hot mix asphalt in other areas
21 of the country. However, we have found the 'Eclipse
22 Dust Control' method to be a far superior
23 application. It uses less energy to create, both in
24 trucking and processing. So the answer to the

1 question is: No, we do not intend to use GBSM in
2 hot mix asphalt."

3 Q. Thank you, Ms. Powles. During the
4 course of this proceeding, and I believe in some of
5 your conversations with IEPA even prior to the
6 beginning of this process, there have been some
7 environmental concerns that have been raised about
8 the GBSM and its applications.

9 First of all, let me back up. Did
10 you meet with IEPA prior to -- or during the time
11 when your were starting this business?

12 A. Yes.

13 Q. And what was the purpose of those
14 meetings?

15 A. Well, to get our water -- water runoff
16 or our storm water permit, which we have, and to get
17 an air permit.

18 Q. And did you receive an air permit?

19 A. No.

20 Q. Why was the air permit denied?

21 A. They said I needed a land permit.

22 Q. And did you file an application for a
23 land permit?

24 A. Yes.

1 Q. And what was the outcome of that?

2 A. It was denied.

3 Q. Okay. And why was it denied?

4 Let me put it another way. Was it
5 denied for reasons that you hadn't complied with
6 some of the content requirements that are applicable
7 to waste facilities? You didn't provide some of the
8 information that they needed?

9 A. Yes.

10 Q. Okay. In your conversations with
11 IEPA, did they consistently take the position that
12 GBSM is a waste?

13 A. No.

14 Q. Okay. Were you ever told that it was
15 not a waste and you didn't need a permit?

16 A. Yes.

17 Q. But then the eventual outcome was the
18 Agency's position was that it is a waste, correct?

19 A. Yes, currently.

20 Q. Okay. There have been some
21 environmental questions raised about the GBSM. Do
22 you know if there has been testing of the GBSM
23 itself performed, not by Jo'Lyn, but by IKO?

24 A. Yes.

1 Q. And do you know what the results of
2 those tests were in general?

3 A. They were all good. They all passed.
4 So much so that the IEPA gave them a letter of its
5 approval of GBSM to use -- to be used for pavement
6 purpose and in hot-mix applications.

7 Q. Do you know what the date of that
8 letter was?

9 A. 1993.

10 Q. Okay.

11 MS. HARVEY: And for the record, we've
12 submitted that letter into the record, it's
13 attached as an exhibit to the petition -- the
14 original petition, and actually it would also
15 be included in a group exhibit we'll be
16 entering later.

17 HEARING OFFICER ANTONIOLLI: Okay.

18 BY MS. HARVEY:

19 Q. Did you rely upon that letter when you
20 started your business -- or when you moved into the
21 Eclipse Dust Control, excuse me?

22 A. Yes.

23 Q. And are you aware of any reason -- any
24 change in the IKO -- the IKO GBSM since that 1993

1 date that would change any of the environmental
2 concerns?

3 A. No. There have been no changes and we
4 have requested information on that, and there have
5 been no changes in the composition of the material
6 since they got their determination, as is stated in
7 that letter.

8 Q. Now, we touched a little bit upon the
9 quality control that Jo'Lyn uses, but let's go back
10 to that for a second.

11 How do you ensure that nothing
12 gets into the GBSM that you shred except GBSM? Do
13 you do a visual inspection at the facility?

14 A. It's visual, yes. We do a visual at
15 both locations when we unload it, when we stockpile
16 it and, you know, if I might add, we are putting
17 this through a very expensive piece of machinery and
18 if there are any contaminants in it, we are risking
19 a \$225,000 piece of machinery to be damaged and, you
20 know, that just won't happen.

21 Q. And I believe you said that in your
22 business relationship with IKO you've never had a
23 need to reject any GBSM?

24 A. Correct.

1 Q. But I'm correct that your contract
2 allows you to do so if you were to find that there
3 was a problem with the load?

4 A. Yes.

5 Q. Okay. Do you do, at your site, any
6 physical or chemical testing of the -- I'm talking
7 about at the Jo'Lyn facility now -- of the GBSM?

8 A. No, we do not.

9 Q. Okay. Do you think that there's a
10 need to test?

11 A. No, because it is a consistent
12 material that comes from the manufacturer. We are
13 purchasing that specific material and that is what
14 we are getting.

15 Q. Okay.

16 A. We have no reason to doubt that, you
17 can visually see.

18 Q. So you could tell by looking at it,
19 with your level of experience, that this is the
20 material that you need for your business?

21 A. Yes.

22 MS. HARVEY: I do want to go back a
23 minute to the 1993 waste determination, which
24 I think I will, with the hearing officer's

1 permission, pull out of it. There's a large
2 rubber banded exhibit that has IKO letterhead
3 on the top. The third document in that
4 exhibit is the May 1993 solid waste
5 determination from IEPA. It is already in
6 the record, but so that I can show this to
7 the witness, I would like to mark this
8 separately as -- I think that's Exhibit 5?

9 (Document marked as Exhibit No. 5
10 for identification, 12/22/04.)

11 HEARING OFFICER ANTONIOLLI: This
12 letter separate from the documents in the
13 packet?

14 MS. HARVEY: Yes, please.

15 HEARING OFFICER ANTONIOLLI: Okay.
16 What I have before me is a letter from IKO
17 Chicago to the -- no, from the Environmental
18 Protection Agency to IKO Chicago, dated May
19 20th, 1993.

20 Are there any objections to me
21 entering this into the record as Hearing
22 Exhibit 5? And seeing none, and I'll note as
23 Ms. Harvey's already noted, that it's
24 attached to the petitioner's original

1 petition, dated April 1st, 2004.

2 And I will enter that into the
3 record as Exhibit 5, if you give me a minute
4 so I can give this to the court reporter.

5 (Whereupon, Exhibit No. 5 was
6 received in evidence by the
7 Hearing Officer.)

8 MS. HARVEY: Thank you, Madam Hearing
9 Officer.

10 BY MS. HARVEY:

11 Q. Ms. Powles, you have before you the
12 May 1993 waste determination letter that we've
13 marked as Exhibit 5. Is this the letter you talked
14 about earlier that you relied upon?

15 A. Yes.

16 Q. This letter talks about -- please just
17 read me the first sentence of the letter.

18 A. The Agency's?

19 Q. Yes.

20 A. "The Agency has evaluated your request
21 for a solid waste determination for granulated
22 bituminous shingle material(GBSM) generated by the
23 Bedford Park facility and has determined that it is
24 not a solid waste when utilized for the following

1 applications."

2 Q. Thank you. Now, the rest of the
3 letter talks about -- or the next two numbered
4 paragraphs talk about these enumerated applications
5 that are approved. Can you summarize for me the
6 first one? What does that say? What is the
7 approved application there?

8 A. Well, it's exactly what we're doing at
9 Jo'Lyn Corporation, Eclipse Dust Control, which is,
10 "GBSM Shingle Chips may be used to form a pavement
11 surface for unpaved, muddy, soft or dusty roadways.
12 The Shingle chips shall be applied at a sufficient
13 thickness to ensure a cohesive, durable roadbed."

14 Q. Okay. Is that consistent with what
15 Jo'Lyn and Falcon do with their Eclipse Dust
16 Control?

17 A. Yes.

18 Q. The second numbered paragraph there,
19 can you summarize for us what process that
20 describes?

21 A. The second paragraph?

22 Q. Yeah, the numbered Paragraph 2.

23 A. Okay. "GBSM Ground Chips are divided
24 into the following categories: Coarse ground chips

1 may be used to form a pavement surface for unpaved
2 roadways. Also, these chips may be used to form a
3 pavement subbase material for road construction
4 projects. Once again, the chips should be applied
5 at a sufficient thickness to provide a stable base
6 structure."

7 Q. Okay.

8 A. And they may be -- and fine ground
9 chips (-1/2") may be added as an ingredient to hot
10 mix asphalt paving components.

11 Q. Okay. And you testified earlier that
12 Jo'Lyn does not -- Jo'Lyn and Falcon do not use the
13 GBSM in the hot mix asphalt, correct?

14 A. Correct.

15 Q. But that is an approved use of GBSM
16 under this letter?

17 A. Yes, it is.

18 Q. Okay. So is it your position that
19 GBSM -- that Jo'Lyn's and Falcon's use of GBSM in
20 paving products is consistent with the approval
21 obtained from the Agency in 1993?

22 A. Yes.

23 Q. Thank you.

24 MS. HARVEY: Madam Hearing Officer, if

1 I can have just a couple minutes, I think I
2 may be done with my direct examination.

3 HEARING OFFICER ANTONIOLLI: Sure.

4 MS. HARVEY: I don't know if you want
5 to take five minutes now?

6 HEARING OFFICER ANTONIOLLI: Yes.
7 We'll take a break now then before we
8 continue on to cross-questioning by Mr. Kim,
9 if he chooses to do so. So we'll go off the
10 record now.

11 (Whereupon, after a short
12 break was had, the following
13 proceedings were held
14 accordingly.)

15 HEARING OFFICER ANTONIOLLI: We're
16 back on the record. It's about 10:15 and we
17 just took a short break. At this point, Ms.
18 Harvey, do you have any further questions for
19 your witness?

20 MS. HARVEY: I do not.

21 HEARING OFFICER ANTONIOLLI: Okay.
22 Let me explain a little bit how we'll proceed
23 then from this point forward. Of course, as
24 I mentioned before, anyone here has the

1 opportunity to testify. And, again, if you
2 choose to testify, you will subject -- you'll
3 be sworn in and subject to cross-questioning.
4 We'll hold people who wish to testify until
5 after the petitioner's witnesses have
6 finished and we've asked questions of the
7 witnesses.

8 But at this point, I'd like to
9 open the floor to public comments. So anyone
10 here who wishes to make a statement on the
11 record can do so. Please just raise your
12 hand, I'll recognize you and then I'll ask
13 you to state your name and who you represent
14 for the record.

15 And is there anyone here that
16 would like to do that now? Yes, can you
17 introduce yourself and tell us who you
18 represent?

19 MS. MEUCH I'm Beverly Meuch and I'm
20 representing the Lou Marchi Total Recycling
21 Institute, and I am going to read a statement
22 from the waste reduction assistant of that
23 institute.

24 It says to the Illinois Pollution

1 Control Board, in the past, the Lou Marchi
2 Total Recycling Institute at McHenry County
3 College has supported the production and
4 application of Jo'Lyn Corporation's Eclipse
5 Dust Control to save natural resources and to
6 save our limited landfill space.

7 Recently, I flew to their
8 operations and observed driveways which had
9 been applied with recycled roofing shingles
10 that are from the manufacturer. The
11 driveways had been applied two to four years
12 ago and still had a good surface for vehicles
13 to use.

14 These materials definitely need to
15 be classified as a recycled commodity and not
16 a waste material, Pat Dieckhoff.

17 And I would like to present this
18 letter for -- in a hard-copy form, to whom, I
19 don't know.

20 MS. HARVEY: The Hearing Officer.

21 MS. MEUCH: Okay.

22 HEARING OFFICER ANTONIOLLI: Thank
23 you.

24 MS. MEUCH: You're welcome.

1 HEARING OFFICER ANTONIOLLI: Now, I
2 don't have a list of the public comments
3 here, and what we need to do is -- I may have
4 to ask you to file this with the Clerk of the
5 Board as a public comment.

6 MS. MEUCH: That's fine.

7 HEARING OFFICER ANTONIOLLI: So I can
8 talk to you on our next break about that.

9 Okay. Is there anyone else here
10 who would like to make a public comment?
11 Please remember that this isn't the only
12 opportunity you'll have, you can also do so
13 after the witnesses have finished testifying
14 and we've also completed questions. So if I
15 see no further public requests for public
16 comment --

17 MR. LOWE: I'd like to make a comment.

18 HEARING OFFICER ANTONIOLLI: Go ahead
19 and introduce yourself and can you spell your
20 name for the court reporter?

21 MR. LOWE: L-O-W-E.

22 HEARING OFFICER ANTONIOLLI: Okay.

23 And state who you represent.

24 MR. LOWE: Myself.

1 HEARING OFFICER ANTONIOLLI: Would you
2 like to make a statement?

3 MR. LOWE: Yes, I would now.

4 HEARING OFFICER ANTONIOLLI: Please do
5 so, yes.

6 MR. LOWE: I think what they're doing
7 is admirable. I think it doesn't affect the
8 environmental situation of this world at all.
9 There are a lot of shingles that are going to
10 landfills that I think they ought to take out
11 of the other construction and demolition
12 debris. They're taking a pure shingle from a
13 manufacturer with absolutely no contaminants
14 in it whosoever and trying to turn it into a
15 useful product.

16 They -- I think I'm missing the
17 boat. You have to get the Illinois
18 Department of Transportation to agree to
19 this, but I think those shingles should be
20 used in asphalt, not surface, but binders and
21 lower levels of asphalt. The reason being is
22 that recycled -- I recycle asphalt and
23 concrete. The recycled asphalt that we put
24 back into a product that is used on the state

1 highways contains very little amount of
2 asphalt material. Probably about -- I don't
3 know -- 3 to 5 percent, 6 percent.

4 On the other hand, shingles, have
5 almost a 35 percent less asphalt content.
6 So, therefore, when they -- you know, they're
7 talking about not putting it into the
8 asphalt, I think they should put it in the
9 asphalt, but I don't know if IDOT would agree
10 with that. But it's a very useful product.
11 I think the benefit of that is, you know,
12 you're using less asphalt material in making
13 the recycled asphalt because of the content
14 of the asphalt in the shingles. So it's --
15 to me, it's a very economical thing and end
16 of my theory.

17 HEARING OFFICER ANTONIOLLI: Thank
18 you. And anyone else? The gentleman in the
19 second row.

20 MR. MURRAY: My name is Michael
21 Murray, I'm a commissioner at the Heartland
22 Township, and I've known Don and Kathy for
23 the last -- quite a few years, since they
24 moved into our area. I think the product

1 that they are proposing looks good and that,
2 like, in our township, we still have quite a
3 few miles of gravel road and that it could be
4 incorporated and to keep the dust down. And
5 I've seen the applications that they have
6 done in their driveways and what have you,
7 and it looks like it has held up real well.
8 And I have not seen where I think that it
9 would be any endangerment to the environment.
10 Thank you.

11 HEARING OFFICER ANTONIOLLI: Thanks,
12 Mr. Murray. And is there anyone else? Okay.
13 Please go ahead.

14 MS. NEIMANN: Yes, I'm Jean Niemann,
15 that's N-I-E-M-A-N-N, and I'd like to give a
16 comment as a citizen of McHenry County, as
17 well as the planner -- the solid waste
18 coordinator for McHenry County.

19 And McHenry County currently has a
20 solid waste management plan and the plan
21 supports recycling. And the reason that it
22 supports recycling largely is because they
23 want to keep as much waste
24 products/commodities out of the landfill as

1 possible, so they support recycling.

2 And I guess I have a question for
3 Mr. Kim, which would be what could the EPA do
4 to facilitate all aspects of recycling in
5 Illinois?

6 HEARING OFFICER ANTONIOLLI: That's a
7 question that we may choose to ask Mr. Kim.
8 He can answer it now if he feels like it or
9 later when we will take questions. Would you
10 like to respond to her right now?

11 MR. KIM: Well, it's a good question
12 and I guess the best answer I can give you --
13 it's also a broad question. And the best
14 answer I can give you is that I know that our
15 Agency has a policy and the State has a
16 policy and you're a solid waste planner and
17 coordinator, so you know this, there's a
18 hierarchy of the solid waste management of
19 the state, and recycling is certainly at or
20 near the top of that hierarchy. And so our
21 Agency and the State does everything it can
22 to promote and to encourage recycling. At
23 the same time, we have to be mindful of
24 regulations and statutes that are still going

1 to be there and still need to be addressed.

2 So we can't completely turn a
3 blind eye to one aspect of the law while
4 trying to promote another. We have to try
5 and keep things in balance and that's what
6 we're trying to do here. But to say -- I
7 wish I could be more specific to answer that,
8 but it's a good question, that's just the
9 best answer I can give you.

10 HEARING OFFICER ANTONIOLLI: Okay.
11 Thanks for your comment. And Ms. Niemann,
12 thank you for your statement.

13 Yes, in the back?

14 MS. STEVENS: Laura Stevens, and I'm
15 just a citizen. I've known Cathy and Donny
16 for over 25 years and I see this as a win-win
17 situation. You're taking a material that
18 otherwise I see is being landfilled and
19 turning it into a useful product. I have
20 also seen the application itself and it has
21 held up as they say.

22 HEARING OFFICER ANTONIOLLI: Thank
23 you. Is there anyone else now? Okay. I see
24 a hand over here.

1 MS. MARSH: Pamela Marsh, M-A-R-S-H,
2 and I too am a citizen and I would like to
3 support them. As a healthcare professional
4 as well, I see that there are uses for this
5 that -- to keep out of the landfills to keep
6 our environment healthier. And I have seen
7 it applied, I like it too. It's not
8 offensive, the odor is not offensive and, to
9 me, I think that's important. I just support
10 the whole thing.

11 HEARING OFFICER ANTONIOLLI: Okay.
12 Thanks for your comment, Ms. Marsh.

13 MR. LOWE: Yes, I'd like to make
14 another statement saying that, you know, I
15 have no idea who these people are, I just
16 think that their idea is a great idea.

17 HEARING OFFICER ANTONIOLLI: Okay.
18 We're happy you can be here to make your
19 comment.

20 Is there anyone else now? Okay.
21 Seeing no hands, at this point I will turn it
22 over to Mr. Kim and he can begin his
23 questioning of Ms. Powles.

24 MR. KIM: Thank you.

1 CROSS EXAMINATION

2 BY MR. KIM:

3 Q. And Ms. Powles, I'll -- I'm going to
4 ask questions sort of in the order that you
5 presented your testimony. So if I ask a question
6 and you don't understand it, or you need a little
7 context or what have you, just let me know.

8 A. Okay.

9 Q. When you were speaking about the
10 Eclipse Dust Control, or EDC, you said that can be
11 used in addition to asphalt or pavement or in
12 substitution of asphalt and pavement; is that right?
13 You said the EDC could be applied to driveways,
14 parking lots and pathways?

15 A. Correct.

16 Q. And would that be -- and I think you
17 kind of touched on this in some other answers, but
18 if you could just sort of clarify, that would be
19 used either in conjunction with traditional pavement
20 materials or would that be used in substitution of
21 that or either one?

22 A. In substitution currently. It's just
23 in substitution.

24 Q. Okay. And when I said driveways,

1 parking lots and pathways, would that also include
2 roadways?

3 A. Yes.

4 Q. Okay. As far as you know, or in your
5 marketing to potential customers, do you have any
6 limits as to what types of roadways EDC could be
7 used upon?

8 In other words, have there been
9 any types of roads where you said, we don't think
10 this would be a good application, for whatever
11 reason, or you don't see any limits at this point in
12 time?

13 A. We have not.

14 Q. You have not?

15 A. Denied anybody.

16 Q. Okay.

17 A. However, we are not going to sell a
18 product that isn't going to fit their application.
19 I don't see where it wouldn't fit, but if there is a
20 possibility -- but, you know, we would just use our
21 judgment.

22 Q. Can you think of any example where it
23 might not be appropriate?

24 A. Well, on top of 90, you know,

1 something like that, I know that's a little extreme.

2 But something like that, no.

3 Q. So that would be, for example, you
4 know, a high volume roadway? Is that the kind of
5 thing you're saying maybe would not be appropriate?

6 A. At this time, that is correct.

7 Q. Okay.

8 MR. RAO: May I ask a follow-up to
9 your question?

10 MR. KIM: Sure.

11 MR. RAO: Are there any regulatory
12 restrictions in terms of using EDC on
13 roadways, like, you know, some department of
14 transportation limitation or such?

15 THE WITNESS: No.

16 BY MR. KIM:

17 Q. You said that the -- and correct me if
18 I'm wrong when I go through the process -- you said
19 the GBSM is basically ground up and then after it's
20 ground up, I guess then it becomes EDC; is that
21 right?

22 A. GBSM becomes EDC, correct.

23 Q. After the grinding process?

24 A. Correct.

1 Q. Okay. And then you said it's spread
2 in two different fashions and then it's rolled, and
3 I think later on you -- were there two different
4 fashions? Either -- well, what are the two
5 different fashions?

6 A. That it's applied -- it's either
7 applied through an asphalt spreader.

8 Q. Okay.

9 A. Or it is spread out through the back
10 of the truck and then leveled with a bobcat blade,
11 and then they both are compacted.

12 Q. Okay. When would you use one, you
13 know, means as opposed to the other, or does it
14 matter?

15 A. I don't think it really matters. It
16 depends on the equipment that is available. We
17 would like to use the asphalt spreader, however, we
18 have to rent that equipment or subcontract. So it
19 would just --

20 Q. Would using an asphalt spreader allow
21 for a more uniformed distribution as opposed to, you
22 know, prior to rolling?

23 A. Not necessarily.

24 Q. Okay. I don't even know, so I'm just

1 asking.

2 A. Okay.

3 Q. You were making reference to the
4 piles, and why don't you -- if you've got Exhibit
5 Number 2, figure one, your site map.

6 A. Uh-huh.

7 Q. In this map I see two dark piles that
8 are identified GBSM?

9 A. Correct.

10 Q. Was one of these piles what you said
11 was sort of the interim pile that's then moved to
12 the more --

13 A. No.

14 Q. Okay. Could you explain what the two
15 different piles are?

16 A. Well, we started on the back as the
17 original stockpile of material and then we moved to
18 the front here.

19 Q. So when you say the back, is that the
20 larger pile?

21 A. Correct.

22 Q. And then the smaller pile?

23 A. Correct.

24 Q. So is this reflective of what you

1 actually have on-site right now?

2 A. Yes, it is.

3 Q. Do you know roughly what volume or how
4 much GBSM you have on-site right now?

5 A. I believe its 5000 tons. I haven't
6 really looked at that number, so I really have to
7 confirm that. We can put that in the
8 after-paperwork.

9 Q. Okay. And these piles are separated
10 -- well, let me clarify that -- or let me rephrase
11 that.

12 You said that you would try and
13 keep the tabs and the shingles or the sheets from
14 being commingled?

15 A. No. I said that they have been, not
16 that we've done that purposely. They can be
17 mingled.

18 Q. Okay.

19 A. But no, they are not purposely
20 separated.

21 Q. Okay. So when your trucks go to IKO,
22 there's -- you said there was a separate box for
23 tabs and a separate box for -- is it --

24 A. Sheet material.

1 Q. Sheets. Okay. So then you would --
2 so at IKO those two different sizes are segregated,
3 correct?

4 A. Uh-huh.

5 Q. When you bring them to your facility,
6 do you maintain that segregation or do you put them
7 in one pile?

8 A. We don't purposely maintain it.

9 Q. Okay.

10 A. But it has been done that way.

11 Q. Okay.

12 A. You know, there is some consistency
13 with that.

14 Q. Okay. So -- okay. The piles that you
15 have on your site right now, do you have any tarps
16 or any covers over those piles?

17 A. No, we do not.

18 Q. Okay. And you said you only will
19 grind on an as-needed basis; is that right?

20 A. Yes.

21 Q. Roughly, how much GBSM basically does
22 it take to grind down to make, you know -- I guess
23 what I'm thinking of is if I've got a driveway
24 that's, say, 15 feet by 30 feet, do you have some

1 idea of how much GBSM you need to grind so that you
2 can get enough EDC? So in other words, does one
3 cubic foot come down to, you know, half a cubic foot
4 of EDC, that kind of thing?

5 A. We actually have a -- we made a
6 program for it.

7 Q. Okay.

8 A. I'd have to refer to that program.

9 Q. Okay. But there is -- and I guess I
10 think the --

11 A. There is an equation, yes.

12 Q. Yes. Some kind of conversion factor?

13 A. Yes.

14 Q. Okay. If it's possible, do you think
15 you could provide that in your post-hearing
16 information?

17 A. Yes.

18 Q. Okay. And the material that you've
19 got on your site, is it sitting on any kind of
20 concrete pad or is it just sitting on dirt or
21 asphalt?

22 A. We formed a gravel base, so it's
23 sitting on a gravel base.

24 Q. Okay. It would have been great if you

1 said you put it on top of the EDC.

2 A. Right. Well, we're hoping.

3 Q. You said that you've got a camera --
4 and this is also in your operating manual on Page 4.
5 You've got a live camera feed from IKO that you can
6 maintain over the internet so that you can see when
7 the boxes are full?

8 A. Uh-huh.

9 Q. And that's pretty much when you go out
10 to retrieve the boxes?

11 A. Correct.

12 Q. Is it a -- do those boxes fill on a
13 regular basis or is it sort of uneven? Does it
14 depend upon -- and some of these questions may be
15 better for IKO's witness, but...

16 A. They'd probably be better from Dave,
17 but, yes, from our stand, you know, if something
18 happens on the line and they have to take a pause,
19 so they do vary.

20 Q. Okay. Do you know, roughly speaking,
21 what your intervals have been as far as sending your
22 trucks out to go bring the boxes back? Are we
23 talking weekly or monthly?

24 A. They go daily.

1 Q. Daily? Okay.

2 A. Yes.

3 Q. How big are the boxes that we're
4 talking about?

5 A. Eight-foot across, 18 feet long and
6 about six-foot tall.

7 Q. So 8-by-18-by-6?

8 A. Uh-huh.

9 Q. And you may not know this and I can
10 ask the other witness, but if for some reason you
11 notice that the box is full but you -- for
12 mechanical problems or weather problems, what have
13 you, if you can't go out and retrieve the box, do
14 you know what they do with the material that won't
15 go in the box?

16 A. We'll make sure we get it.

17 Q. Okay.

18 A. You know, we're a service company and
19 we will service them.

20 Q. Okay.

21 A. I can't imagine -- you know, if
22 there's a tornado, I'm not sure. That's a question
23 for David too, but we will service them.

24 Q. Okay. But in terms of what they would

1 do if for some reason you can't -- and I understand
2 what you're saying -- but if for some reason you
3 couldn't make it out there, do you know what they
4 would do with the material?

5 A. No, I don't. I do not.

6 Q. Okay.

7 MR. RAO: May I ask a follow-up?

8 MR. KIM: Sure.

9 MR. RAO: Are you hauling GBSM
10 material from IKO right now --

11 THE WITNESS: No.

12 MR. RAO: -- on an ongoing basis?

13 THE WITNESS: No.

14 MR. RAO: So your responses to
15 Mr. Kim's questions were what? If you go
16 into your full-time operations, that's when
17 you do this on a daily basis?

18 THE WITNESS: Correct.

19 MR. RAO: Thanks.

20 BY MR. KIM:

21 Q. I was mistaken. I thought you were
22 doing that on a daily basis right now. You don't
23 actively do that right now?

24 A. No, we've actually been told to halt

1 by the IEPA.

2 Q. Okay. So how did you get the -- where
3 did the GBSM on your site right now come from?

4 A. When we started the research and
5 development, we had formed a contract with them. We
6 didn't go for the air permit immediately -- well, we
7 went for it twice. You know, it's best that -- I'm
8 not really sure on this and I'd really like to be
9 sure.

10 Q. Sure.

11 A. And I do have it documented at the
12 office, so I'd like to follow-up with this in the --

13 Q. Okay. Well, would it be safe to say
14 that this material was received from IKO before you
15 ran into what, you know, any kind of problems with
16 the EPA?

17 A. Correct.

18 Q. Okay.

19 A. That's right.

20 Q. But there are these actual boxes that
21 are in place right now at IKO that you can see on
22 camera?

23 A. Well, I'm sure there are, however, we
24 have not been looking because we are not hauling.

1 Q. So do you actually have this internet
2 camera feed right now?

3 A. No.

4 Q. Okay. So right now you don't know
5 what IKO does with these tabs and the sheets right
6 now?

7 A. I'm not getting them.

8 Q. Okay.

9 A. That's all I know.

10 Q. That's fine. And, again, looking at
11 your operating manual, the operating procedures, it
12 seems to be clear, for example, in item number one,
13 this live camera feed, and number two, arriving at
14 IKO, this is intended to address specifically the
15 receipt of material from IKO Chicago; is that right?

16 A. Correct.

17 Q. And this would need to be revised if
18 you received GBSM from other suppliers; is that
19 right?

20 A. This wouldn't -- what do you mean this
21 would need to be revised?

22 Q. Well, do you anticipate having a
23 camera feed at every supplier, the same as you would
24 have at IKO?

1 A. You know, we'd have to look at the
2 facility.

3 Q. Okay.

4 A. That's not anything I could determine
5 right now.

6 Q. Okay. But you did say that you would
7 anticipate IKO not being your sole provider of
8 material because of your expected demand; is that
9 right?

10 A. That is correct.

11 Q. Okay. You said that it's in your
12 contractor agreement with IKO that you could, based
13 on your visual inspection -- and I guess this
14 would -- well, let me ask a different question.

15 Is it right that there are two
16 chances for you to do a visual inspection? Once,
17 when you actually go to IKO to look at the boxes
18 before you basically put them on your truck, and
19 then the second time, at your site when you're
20 actually -- before you put them into the grinder; is
21 that a fair statement? And if not, explain what
22 that is?

23 A. Well, we look at it at the facility
24 and then when we unload it. However, like I said,

1 we have never had anything besides the material in
2 the load. It is a material we are purchasing. We
3 do inspect it and it's a very easy visual
4 inspection, you can just see.

5 Q. Okay. So there are at least then two
6 opportunities, once at IKO's facility and then once
7 at your facility before you actually put it into
8 your grinder; is that right? At least those two
9 chances?

10 A. When we stockpile would be the second
11 time.

12 Q. I'm sorry. When you stockpile it.
13 I'm sorry. Okay. And you said that your contract
14 does allow you to reject a load or a box that you
15 don't find to be meeting your criteria; is that
16 right?

17 A. Correct.

18 Q. If that happens at your site, let's
19 say the visual inspection at IKO doesn't prove to be
20 a problem, but you do have a problem when you do the
21 visual inspection at your site before you stockpile
22 it?

23 A. Uh-huh.

24 Q. What would you do with the material

1 then?

2 A. I would actually have to speak with
3 the head man who oversees that --

4 Q. Okay.

5 A. -- operation. I'd have to answer that
6 in rebuttal. We've never had that problem. I do
7 not anticipate ever having that problem. We would
8 handle it, you know, depending on what it was or --
9 it's just --

10 Q. Okay. When you said the head man, you
11 mean?

12 A. The head man, I didn't know what else
13 to say.

14 Q. No, I understand. Do you mean the
15 head man at Falcon/Jo'Lyn or the head man at IKO
16 Chicago?

17 A. The supervisor -- I would say both,
18 but I was speaking of Don.

19 Q. Okay. Do you know if the contract --
20 the agreement that you have with IKO, does that lay
21 out what contingent would be if the visual
22 inspection fails?

23 A. Yes, it does.

24 Q. Okay. And I'm assuming Ms. Harvey

1 might have a copy of that contract.

2 MS. HARVEY: I can either show it to
3 her now or I can ask her on redirect.

4 MR. KIM: You can show it to her now.
5 Can you tell me where you're looking?

6 MS. HARVEY: Yes. I'm sorry. This is
7 actually Exhibit A to the initial petition
8 dated April 21st, it's the very first exhibit
9 and, Kathy, you will see here it talks about
10 what happens if it's rejected.

11 THE WITNESS: "In the event that any
12 BSM furnished to Jo'Lyn by IKO as BSM is
13 hereafter, due to the presence of
14 contaminants therein, rejected by potential
15 purchaser or otherwise determined by Jo'Lyn
16 not to be resaleable, IKO shall pay Jo'Lyn
17 the charges incurred by Jo'Lyn for hauling
18 and disposal of such material."

19 BY MR. KIM:

20 Q. Okay. So by your contract, if your
21 visual inspection turns up some abnormalities or
22 some material that you couldn't use for your
23 operation, IKO would pay you the costs for your
24 taking that and having it disposed of; is that

1 right?

2 A. Correct. That's what that reads.

3 Q. Okay. And that contract is the one
4 that's still -- that's the most recent and that's
5 the most up-to-date contract that you have between
6 your companies and IKO; is that correct?

7 A. That is the most recent.

8 Q. Okay. You said as far as the
9 stockpiles at your facility, you maintain no more
10 than 25 feet in height?

11 A. Uh-huh.

12 Q. And if it gets higher than that, you
13 would just basically spread it out a little more; is
14 that right?

15 A. Uh-huh.

16 Q. How did you happen to arrive at the
17 25 feet?

18 A. That's about where it's at. And I'd
19 have to answer that in the post-hearing. You know,
20 I don't want to answer it incorrectly.

21 Q. Okay. But it's not pursuant to some
22 specific zoning requirement or anything like that,
23 it's just more of a site-specific type thing you
24 guys have come up with on your own?

1 A. Pretty much, but I believe I'd have to
2 get back on that.

3 Q. Sure.

4 A. Because I'd like to follow-up on that
5 properly.

6 Q. That's fine. As far as the
7 application of the EDC is concerned, who actually
8 does the application? Would it be your company or
9 would it be the buyer of the product? For example,
10 if I'm a township and I see I've got a section of
11 road that I'd like to have EDC applied on and I make
12 an agreement with you, I sign a contract, would your
13 people come out and spread the EDC and roll it and
14 compact it or would my people do that or how would
15 that work?

16 A. It just depends on their -- what they
17 desire. Typically, we always do the installation
18 for driveways, and roadways for the townships, I did
19 not negotiate those contracts, so I truly cannot
20 answer the question.

21 Q. Okay. Are there contracts right now
22 with some townships?

23 A. Yes.

24 Q. Do you know -- well, to the best of

1 your recollection, do you think those contracts
2 might specify who does the application?

3 A. I'm not clear. It's been quite a
4 while since I have seen those.

5 Q. That's fine. Do you know -- and Ms.
6 Harvey may know this -- but are any of those
7 contracts included as exhibits? I think that's what
8 she's checking.

9 MS. HARVEY: There are some contracts
10 that are included as exhibits if you --

11 MR. KIM: Okay.

12 MS. HARVEY: In the original petition,
13 I believe the contracts for purchase begin --
14 it's Group Exhibit E.

15 MR. KIM: Okay. We'll just take a
16 look at that then.

17 BY MR. KIM:

18 Q. And you said that the sun plays an
19 active role in the sealing process of the EDC; is
20 that correct?

21 A. Yes.

22 Q. Does it depend on -- so aside from you
23 needing full sun, do you need -- are there any
24 ranges as far as temperature that come into play?

1 A. At this time, I really can't answer
2 that. I would have to say yes. However, on the
3 other hand, I would tend to say yes to the other.
4 We would not install it in cold weather, however, I
5 can testing that theory, but I believe that it would
6 work in cold weather.

7 Q. Okay. Does your
8 operating --

9 MR. POWLES: Excuse me, Madam Hearing
10 Officer?

11 HEARING OFFICER ANTONIOLLI: Yes?

12 MR. POWLES: May I speak, please?

13 HEARING OFFICER ANTONIOLLI: Yes.

14 Ms. Powles, your husband may have an answer
15 to John's question, if no one objects, we
16 could have him sworn in and he can answer
17 that question.

18 MR. KIM: That's fine.

19 MR. POWLES: Before I swear in and
20 everything, I just want to say the reason
21 they don't have me up there is because I'm
22 really frustrated with this whole thing, but
23 I'd like to -- because some of the
24 frustration in the length of what's happening

1 is because --

2 MR. KIM: Well, before --

3 MR. POWLES: -- the questions asked
4 and there's no answers, by golly, if I'm
5 sitting here, I'd like to give an answer. I
6 don't want to give testimony, but I'd like to
7 give an answer.

8 HEARING OFFICER ANTONIOLLI: Sir, why
9 don't we have you sworn in. If you do have a
10 specific answer to Mr. Kim's question, you
11 can go ahead and provide that now and then
12 you can follow-up with comments or testimony
13 at a later time.

14 MS. HARVEY: Don, can you specifically
15 answer John's question.

16 MR. POWLES: Well, about five or six
17 of them.

18 THE WITNESS: Well, we can answer it
19 in the post-brief thing.

20 MR. POWLES: I was just wondering -- I
21 didn't want to be sworn in, but I was
22 wondering if it would be possible for me to
23 sit next to my wife and give her a technical
24 answer that he asks of her.

1 HEARING OFFICER ANTONIOLLI: Well,
2 since you would be the one providing the
3 information, we would like to have you sworn
4 in. And you can do that if you can answer
5 those questions.

6 MS. HARVEY: Can I make a suggestion?
7 After Mr. Kim --

8 THE WITNESS: I better not.

9 MS. HARVEY: -- has finished his
10 questions, maybe you would give us an
11 opportunity to consult with Mr. Powles and
12 see if there are questions that he can answer
13 at that time. That way, we'll know all of it
14 at once that --

15 HEARING OFFICER ANTONIOLLI: Sure. In
16 fact, we'll probably take a break in another
17 15, 20 minutes.

18 MR. POWLES: Sorry to interrupt.

19 HEARING OFFICER ANTONIOLLI: That's
20 okay.

21 BY MR. KIM:

22 Q. Well, I was looking at the operating
23 manual and it does say on the last page, on Page 7,
24 that it sort of says -- there's a sentence on Page 7

1 -- this is again in Exhibit 2 in the last paragraph,
2 "During the working season (approximately April
3 through September, depending upon the weather),
4 storage times will be quite short. During the "off
5 season," storage time could be as long as
6 eight months, if the GBSM is received late in the
7 working season and the beginning of the next season
8 is delayed due to weather."

9 So -- and if you don't want to
10 answer this, if you'd rather wait, that's fine --
11 but is it safe to say that you generally anticipate
12 only doing application during the working season,
13 which would be from April to September?

14 A. Yes. Relatively the same working
15 season as the hot mix plants.

16 Q. Okay. That's fine.

17 A. It's pretty identical.

18 Q. Okay. And you were talking about two
19 test sections that have been applied of EDC. One
20 installed in 2000, and one installed roughly in
21 2002. I know you said the first installation was on
22 a driveway. Do you know what was the second
23 installation? Was it another driveway?

24 A. It was a driveway.

1 Q. Driveway, okay. And you said that --
2 you testified that it held up very good in the sunny
3 areas and not so good in the shaded areas.

4 What was the condition of the EDC
5 in the shaded areas?

6 A. It slightly broke up. The bond wasn't
7 there 100 percent, so there was wear.

8 Q. Okay.

9 MR. RAO: May I ask a follow-up
10 regarding the test section?

11 MR. KIM: Sure.

12 MR. RAO: Ms. Powles, what was the
13 length of these driveways that you used for
14 the test section?

15 THE WITNESS: The one was roughly --
16 I'm going to say between 50 -- I'd say 50 to
17 100 feet. I'm trying to think of a football
18 field.

19 MR. RAO: Approximately. Just give us
20 an idea.

21 THE WITNESS: Yeah. And about
22 ten feet from side to side. And then the
23 other driveway was eight feet from side to
24 side and I'd say about 200 feet.

1 MR. RAO: And what type of vehicle
2 traffic are these sections subjected to?

3 THE WITNESS: The first one, it's
4 fairly heavy traffic. It's in a parking lot.
5 It used to be our old facility. We have
6 several of our trucks go in and out of there,
7 it's a storage facility for small storage.
8 So there's cars going in and out on a daily
9 basis, both heavy and light. And then the
10 other one is a basic driveway for our home.

11 MR. RAO: Thank you.

12 BY MR. KIM:

13 Q. And when you said the other one, the
14 driveway for the home, was that the more recent
15 application or was that the older application?

16 A. It was the more recent.

17 Q. Okay. And if EDC is applied to
18 roadways, do you have any information as to what the
19 impact application of road salt might have to the
20 material?

21 A. No.

22 Q. Okay. Do you know --

23 A. I might be able to follow-up on that
24 for you though.

1 Q. Okay. Do you know -- I ask this
2 because my father has an asphalt driveway and he
3 does not put salt down, he says it makes a stain and
4 makes a mess and I don't know -- do you know if the
5 people that have the test sections, do they apply
6 any kind of salt to those surfaces to the best of
7 your knowledge?

8 A. Yeah. To the best of my knowledge, I
9 don't know, but I can follow-up on that also.

10 Q. Okay. You were talking about in I
11 think your written testimony, potential results of
12 old EDC -- it's on -- this would be Exhibit 4 on the
13 last page -- I thought you testified -- and correct
14 me if I'm wrong -- I thought you testified that you
15 had not incorporated old EDC into new EDC; is that
16 right?

17 A. That's correct.

18 Q. Okay. Now, what did you -- when you
19 say incorporate, do you mean you wouldn't put a new
20 application of EDC over an existing application of
21 EDC?

22 A. Mix it -- I would not mix it together.
23 I would not mix the two materials together --

24 Q. Okay.

1 A. -- because we are selling, currently,
2 EDC fresh and clean.

3 Q. Uh-huh.

4 A. At this point, I really don't have
5 that much. I really don't have any used EDC to use
6 at this time, but I would not sell it mixed.

7 Q. Okay.

8 MS. LIU: As a follow-up, could you
9 apply new EDC over an old application?

10 THE WITNESS: Yes.

11 MS. LIU: Would you need to do any
12 modification to create a subbase?

13 THE WITNESS: I guess I answer your
14 question a little bit unknowingly. However,
15 we have put EDC directly on top of blacktop
16 and it has gone on top of concrete a little
17 bit and it has formed against it. We have
18 not done any test sections to where we've put
19 EDC on top of EDC. However, I believe it
20 would bond.

21 MS. LIU: Okay. Thank you.

22 BY MR. KIM:

23 Q. I think I just have two questions
24 remaining for you. One is, when you were speaking

1 about the visual inspections, regardless of where
2 that takes place, what kind of thing would lead to
3 your visual inspection being -- to something failing
4 the visual inspection? In other words, what do you
5 look for and what would you see that would say,
6 well, we can't accept that?

7 A. On the load?

8 Q. Yes.

9 A. What would make us not accept it? You
10 know, when a little piece of paper that flew in
11 there, we would pick it out. If there were several
12 things, that would be up to the supervisor and that
13 would be determined right there.

14 Q. Okay.

15 A. There's definite rules and guidelines
16 to that, but if we can handle the situation
17 ourselves right there, we will. We don't want to
18 waste time or money, so we try and we would take
19 care of it the best way we can.

20 Q. When you say there are definite rules
21 and guidelines, what are you referring to?

22 A. Well, what we would accept and what we
23 wouldn't.

24 Q. Okay. Are those spelled out

1 somewhere? Do you know?

2 A. Not on the rejected loads, we've never
3 had any. We don't anticipate having any. If -- I
4 would be more than willing to write it up for you if
5 you'd like.

6 Q. Okay. So there is nothing right now
7 that you have that sets out what you would -- would
8 constitute a failed visual inspection; is that
9 right? Like for example --

10 A. I'd have to go check. I have lots of
11 documents to show. I cannot answer that.

12 Q. Okay.

13 MS. HARVEY: Can I just clarify?

14 MR. KIM: Sure.

15 MS. HARVEY: Are you asking if there's
16 anything in writing now that spells out when
17 a load is rejected; is that your question?

18 MR. KIM: Yes. I guess I'm wondering
19 either if there's something in writing unique
20 to Jo'Lyn and Falcon or you made reference to
21 some rules and guidelines that there's
22 something else that you're specifically
23 referring to, you know, is some independent
24 body that has a list of guidelines or

1 something like that.

2 THE WITNESS: I'd have to get back to
3 you on that.

4 MR. KIM: Okay. That's fine.

5 BY MR. KIM:

6 Q. And then the last question I have is
7 you made reference to Exhibit No. 5, which is the
8 May 1993 letter that Illinois EPA sent to IKO
9 Chicago?

10 A. Uh-huh.

11 Q. And in that letter, Paragraph 2 has
12 two categories, A and B?

13 A. Correct.

14 Q. And you said that you're not going to
15 be using -- you're not going to be getting into
16 what's in category B, which is the hot mix asphalt;
17 is that right?

18 A. That's correct.

19 Q. Okay. So you would be limiting your
20 use of the GBSM so that it would be consistent with
21 what is defined in Section 2A; is that right?

22 A. That's correct.

23 Q. Okay.

24 MR. KIM: That's all I have.

1 HEARING OFFICER ANTONIOLLI: Okay.
2 Thank you, Mr. Kim. We are going to break
3 now, it's 10:55. Let's take a ten-minute
4 break and come back at 11:05 and then we can
5 continue with questions at that point.

6 (Whereupon, after a short
7 break was had, the following
8 proceedings were held
9 accordingly.)

10 HEARING OFFICER ANTONIOLLI: Okay. We
11 are back on the record now. It is ten after
12 11:00 and I'd like to note just two things
13 before we get back to questions. First,
14 Senator Althoff was here with us for a short
15 while this morning and she just left.

16 And second of all, we also heard
17 after the first break this morning a public
18 comment from Beverly Meuch and at that point
19 she read into the record a letter from Pat
20 Dieckhoff and Lou Marchi of Total Recycling
21 Institute at McHenry County College, and at
22 this time, if there are no objections, I'm
23 going to enter that into the exhibits as
24 Hearing Officer Exhibit 1 because it's not

1 been presented by either of the parties.
2 I'll just go ahead and make that a part of
3 the record now.

4 (Document marked as Hearing
5 Officer Exhibit No. 1 for
6 identification, 12/22/04.)

7 HEARING OFFICER ANTONIOLLI: Thank
8 you. And Mr. Kim, you finished your
9 questions at this point?

10 MR. KIM: Yes.

11 HEARING OFFICER ANTONIOLLI: And,
12 Ms. Harvey, would you like to continue with
13 any follow-up questions?

14 MS. HARVEY: I would defer until after
15 the Board staff has questions that they
16 wanted to ask and I would wait until after
17 that.

18 MR. RAO: We have a few clarifying
19 questions. My first few questions relate to
20 your GBSM quality control, and on Page 2 of
21 your petition, it cites that Jo'Lyn has a
22 contract for purchase of GBSM from IKO
23 Chicago. There were no cost figures
24 presented in that copy of the contract.

1 Could you please comment on what's the cost
2 of GBSM raw material on a first-time basis?

3 THE WITNESS: Per ton, it's \$5 a ton.

4 MR. RAO: Also, in the IEPA's
5 recommendation, one of the concerns they had
6 raised was about quality control requirements
7 and you did testify today about what kind of
8 quality control that you will implement as
9 part of your operating procedures.

10 My question is in terms of
11 purchasing GBSM material from other
12 manufacturers, would you follow the same
13 procedures that you plan to follow with IKO?

14 THE WITNESS: Essentially, yes, but
15 some things might be changed a little bit
16 because of their locations and the way that
17 their plant is set up. But basically it
18 would be the same process. Just, you know,
19 on the pick up and the contracts.

20 MR. RAO: Also, regarding the chemical
21 composition testing, you have presented some
22 information which is still not marked as an
23 exhibit, which I am sure supports your
24 contention that it's a material that meets

1 all the regulatory requirements. That was
2 part of the Board's question in the court
3 order. Would you require the same kind of
4 testing from other manufacturers before you
5 enter into a contract with the manufacturers
6 to purchase GBSM material?

7 THE WITNESS: I would require their
8 MSDS reports to see the compositions and that
9 it's already deemed safe for the environment
10 because it is on the roof of every home, so
11 they all should be -- I would require that.

12 HEARING OFFICER ANTONIOLLI: Can you
13 explain for the record what MSDS stands for?

14 THE WITNESS: Material Safety Data
15 Sheets.

16 HEARING OFFICER ANTONIOLLI: Thank
17 you.

18 MR. RAO: Also in response to
19 Mr. Kim's question regarding the procedures
20 that you follow for inspecting the material
21 when you pick it up at the manufacturer's
22 facility to make sure that you are receiving
23 the consistent material that, you know, meets
24 your specifications, you mentioned that there

1 were some guidelines that you follow and that
2 you're going to provide us the information.

3 THE WITNESS: Uh-huh.

4 MR. RAO: Are you aware of any
5 load-checking requirements in the Board's
6 landfill regulations for solid waste? And if
7 you're not, however, that's fine. It's
8 something that the Board has where it spells
9 out the kinds of visual inspections that's
10 done when most solid waste is picked up and I
11 was just wondering if you could follow some
12 of those procedures as to how you eliminate
13 different types of material getting into your
14 wastestream?

15 THE WITNESS: Right, you know, we
16 don't have a way -- I mean, to me this is --
17 we're purchasing a product, so it would be
18 like a regular business purchasing a product
19 to make whatever they make.

20 I have not analyzed those.
21 However, they do not pertain to this case
22 here because it is not a waste.

23 MR. RAO: Okay.

24 THE WITNESS: And we are purchasing a

1 product and it's from a reputable company.

2 MR. RAO: Okay. And also part of your
3 petition in response to some questions about
4 whether this waste is -- I mean, this
5 material is classified as a special waste, I
6 think in one of your responses you said that
7 the facility selling you this material will
8 provide you with a certification that it's
9 not a special waste; is that correct?

10 MS. HARVEY: Maybe I can just direct
11 you to the appropriate part of that. It's in
12 the amended petition that was filed in July.
13 I believe in there it discusses the fact that
14 this waste -- this material was previously
15 declassified by IEPA as not a special waste.
16 I'll be discussing that with Mr. Foulkes
17 briefly in his testimony.

18 Since the special waste rules have
19 changed since that declassification was done
20 and now it can basically be
21 self-despecialized, for lack of a better
22 word, you can self-certify that it falls in
23 the exemptions. It is our belief that IKO
24 can self-certify that, if the Board takes the

1 position that it's a waste, that it could be
2 self-declassified, if you will, as falling
3 under one of the exemptions as not being a
4 special waste.

5 MR. RAO: Thank you. I have a few
6 questions regarding the proposed adjusted
7 standard language itself. These are just for
8 classification purposes, we know exactly what
9 you're proposing here. In -- I'm referring
10 to the language proposed in the amended
11 subsection on Page 8.

12 HEARING OFFICER ANTONIOLLI: On Page
13 8.

14 MR. RAO: In Subsections 1 and 2, you
15 used the word clean as a qualifier to
16 describe the GBSM material. Could you please
17 explain what clean means in the context of
18 describing the GBSM?

19 THE WITNESS: Well, it wouldn't have
20 dust on it.

21 MR. RAO: Okay.

22 THE WITNESS: That's a silly
23 question -- I mean, a silly answer.

24 MR. RAO: You have a definition for

1 GBSM, so if it meets the definition, is that
2 considered clean?

3 MS. HARVEY: I can tell you what
4 the -- I'm a little uncomfortable, I don't
5 want to be testifying, but I guess I can shed
6 a little light on the discussions that I
7 wrote this language based on discussions with
8 Ms. Powles. The intent of the word clean is
9 that there not be anything other than GBSM,
10 not that it -- not that there be a dirt
11 factor to it, but that it would be solely
12 GBSM and not contaminated with, let's say,
13 paper or some other industrial material that
14 would be in it. So that's the only intent of
15 the word clean based upon our conversations.

16 MR. RAO: Okay. And that's fine.

17 MS. HARVEY: I suppose actually the
18 word clean could just be stricken.

19 MR. RAO: Okay. In Subsection 3, the
20 current -- you know, when you're referring to
21 the grinding of GBSM material, you used the
22 term coarse ground or fine ground, and I
23 didn't, you know, see those categorizations
24 of ground material in your petition or other

1 information that you have provided. Can you
2 please explain what fine ground is and what
3 coarse ground is?

4 THE WITNESS: I believe that we took
5 that directly from the 1993 letter, where
6 they have put it into two -- GBSM ground
7 chips are divided into two of the following
8 categories, coarse ground chips and fine
9 ground chips.

10 MR. RAO: That's not applied to your
11 process, the way you grind your material and,
12 therefore, apply it?

13 THE WITNESS: I'm not sure on that
14 question.

15 MR. RAO: I know you're referring to
16 IEPA's letter that reduces the size of the
17 chips to define what's fine ground and what's
18 coarse ground, but in your process that you
19 have presented to the Board, do you
20 differentiate between, you know, fine ground
21 and coarse ground or is that just --

22 THE WITNESS: No, we do not.

23 MR. RAO: So, you know, if we remove
24 the terms fine and coarse, it should still be

1 acceptable for your purpose of grinding the
2 material and using it?

3 MS. HARVEY: Just so I'm clear on the
4 question, your question is basically if 3
5 said that Jo'Lyn and Falcon continue to grind
6 the GBSM into uniform pieces, period, whether
7 that would meet their requirements; is that
8 what you're asking?

9 MR. RAO: Uh-huh.

10 MS. HARVEY: Thank you.

11 THE WITNESS: Yes.

12 HEARING OFFICER ANTONIOLLI: I have a
13 question too. I think part of Anand's
14 question was that in the IEPA letter, which
15 we were just talking about, A) describing
16 coarse ground chips, describe the coarse
17 ground chips as 1/2" x 1/2" to 5" x 5", and
18 the fine ground chips are described as less
19 than 1/2" x 1/2", but that they may be used
20 as an ingredient in a hot mix paving
21 compound, which is a process that you
22 mentioned you will not investigate or --

23 THE WITNESS: Not --

24 HEARING OFFICER ANTONIOLLI: -- will

1 use.

2 THE WITNESS: Not with GBSM.

3 HEARING OFFICER ANTONIOLLI: Okay.

4 MR. KIM: So to clarify then, the
5 language means --

6 HEARING OFFICER ANTONIOLLI: It's
7 getting more confusing.

8 MR. KIM: Yeah. Well first of all --
9 and I think that the letter that you're
10 referring to and language in here, I think
11 that the EPA letter uses two different
12 spellings of the word coarse. I think
13 C-O-A-R-S-E is the correct spelling, and
14 certainly I think that --

15 MS. HARVEY: I would agree with Mr.
16 Kim on that.

17 HEARING OFFICER ANTONIOLLI: Yeah.

18 MR. KIM: -- under the adjusted
19 standard, it should probably read that.

20 Second, the adjusted standard
21 anticipates use of either coarse ground or
22 fine ground chips, but Ms. Powles has, I
23 think, testified that even if fine ground
24 chips are used, the only reference to that

1 term in this EPA letter is just as to define
2 what the size of a fine ground chip is. It's
3 not to allow that chip to be used in hot mix
4 asphalt.

5 HEARING OFFICER ANTONIOLLI: Right.
6 It doesn't limit the use of those two
7 specific applications.

8 MR. KIM: It just defines the size.
9 Okay. Yeah, with that clarification.

10 HEARING OFFICER ANTONIOLLI: Okay.

11 MR. RAO: Could you comment on whether
12 you think the installation specifications
13 that you testified to, the minimum
14 requirements of the thickness and how it
15 should be compacted? Should those
16 specifications be part of the adjusted
17 standard, especially in terms of if you are
18 provided with material to some entity who
19 wants to purchase this and install it on
20 their own? Like, for example, we earlier
21 talked about the townships, which you are not
22 really sure whether you would be installing
23 the product or you'd provide the material and
24 they will install the product. So, you know,

1 could you care to comment on this?

2 MS. HARVEY: Are you asking if the
3 adjusted standard should include installation
4 thickness?

5 MR. RAO: Should it include it, yeah.

6 MS. HARVEY: Can I ask her a question?
7 Maybe it might help her answer that.

8 Do you anticipate that there might
9 be circumstances where you might need to
10 somewhat adjust those specifications for some
11 reason relating to where you're going to
12 apply it, in other words, if there might be
13 future developments of your process that
14 might lead to some minor adjustments to those
15 specifications?

16 THE WITNESS: Yes.

17 MS. HARVEY: Okay. So, therefore, do
18 you believe that -- would limiting the
19 adjusted standard language to the -- what's
20 currently known as the installation
21 specification potentially limit the
22 appropriate installation of the EDC in the
23 future? That's a bad question, I'm sorry.
24

1 MR. RAO: Let me put it this way.

2 If you provide this material to --
3 you know, I want to say a client who wants to
4 install it themselves, then will you also
5 ensure that part of the contract will say,
6 you know, ask the client to install it in --
7 according to your specifications?

8 THE WITNESS: I think we can.

9 MS. HARVEY: Can I just -- I'm a
10 little concerned about -- I think we're going
11 -- these are all, of course, extremely
12 appropriate questions. I don't know that
13 there is any indication. We haven't been
14 able to look back at all the documents yet to
15 determine if there's even been an instance
16 where Jo'Lyn and Falcon would sell it for
17 installation by somebody else. The contracts
18 that I've looked at currently talk about
19 installation of -- about selling the
20 materials and the labor for installation. I
21 would rather have Ms. Powles have an
22 opportunity to consider these issues and
23 address them in the post-filing comments, if
24 that's acceptable, rather than to speculate

1 here as she's sitting here about something
2 that, at least to my current knowledge, isn't
3 even on the horizon, it hasn't happened yet.
4 We are certainly willing to answer the
5 question, but I think that she needs an
6 opportunity to think about some of those
7 issues before she answers those questions.

8 MR. RAO: That's perfectly all right,
9 yes.

10 MS. HARVEY: But it's not something
11 that's come up prior to this because, you
12 know, all the contracts have been for
13 furnishing and installed.

14 HEARING OFFICER ANTONIOLLI: Well, at
15 this point, let's have Anand ask the
16 questions, and Alisa ask questions, at this
17 point for the witness and you can answer to
18 the best of your ability, and if not, respond
19 in written comments after the hearing.

20 THE WITNESS: Okay.

21 MR. RAO: Yeah. And like the Hearing
22 Officer earlier said, these are the questions
23 we are asking just so because if it's not in
24 the record, if a Board member asks us a

1 question, we can come up with the answers for
2 them. So, you know, bear with us and, you
3 know, I know it may seem frustrating for you,
4 but it helps to have a complete record. So
5 you can feel free to answer those questions
6 in writing. Okay.

7 Also one other issue that was
8 not -- the Agency, in the proposal, lists a
9 standard with any kind of limitations on
10 storage of this material at the site. Please
11 comment on whether such limitations are
12 appropriate to ensure a quick turnover of the
13 accumulated material or if there's a need for
14 any sort of limitations.

15 MS. HARVEY: Do you mean storage
16 limits in terms of time?

17 MR. RAO: Accumulated, yeah.

18 MS. HARVEY: Time, not amount?

19 MR. RAO: Not amount, time, yeah,
20 because there are some regulatory
21 requirements that would say if it goes over a
22 period of a year, it becomes a waste pile.

23 MS. HARVEY: Right. If you can answer
24 that, you can answer it, otherwise we'll --

1 THE WITNESS: We always want to use
2 the material as soon as we possibly can. We
3 should be using the material no more than
4 eight months, but as soon as two months, even
5 a month from when the material comes in.
6 Does that answer your question?

7 MS. LIU: I have a question. On the
8 facility map that you provided us, is there a
9 limit to the storage area that you could keep
10 the GBSM?

11 THE WITNESS: There is for us, not a
12 limit, per se, by anybody else, it is a large
13 parcel, but we are keeping it within the tree
14 line.

15 MS. LIU: And that's --

16 THE WITNESS: Which you can -- you
17 know, I put the little lines in there and
18 then coming around this way.

19 MS. LIU: That's your own designation?

20 THE WITNESS: Correct.

21 MS LIU: Okay.

22 HEARING OFFICER ANTONIOLLI: And what
23 you're referring to, again, is the map on
24 Page 3 of the operating manual?

1 THE WITNESS: Uh-huh.

2 HEARING OFFICER ANTONIOLLI: Okay.

3 MS. LIU: In your petition, you also
4 provided a very complete definition of what
5 GBSM is, but I notice in the adjusted
6 standard wording, there is no definition
7 provided. Just so that it can't be ever
8 redefined outside the scope of the adjusted
9 standard, would it be acceptable to include a
10 definition in your adjusted standard wording?

11 THE WITNESS: I do believe we can
12 write one up.

13 MS. HARVEY: I think -- yeah.

14 THE WITNESS: I would be more than
15 happy to write one up.

16 MS. HARVEY: I just want to direct
17 your attention to number two in the adjusted
18 standard language in the amended petition. I
19 think that's the same definition.

20 MS. LIU: Okay. Thank you.

21 MS. HARVEY: This is Page 8 in the
22 amended petition.

23 MS. LIU: Would you want to put any
24 qualifiers on the word clean?

1 MS. HARVEY: It seems to me that clean
2 is only redundant, if you will, because it
3 already requires only GBSM.

4 MR. RAO: Okay. Moving on. You
5 talked a little bit about the grinder itself.
6 Can you describe it a little bit more in
7 detail? I know there's an -- I've seen some
8 of these grinders which are huge with 500 and
9 800 horsepower, with timers and stuff like
10 that.

11 THE WITNESS: You know, is that it
12 right there?

13 MR. RAO: Yeah. I want something in
14 the record.

15 THE WITNESS: Okay.

16 MR. RAO: If you can take a look at
17 this, you know, that would be fine. The
18 thing is, the Board cannot go outside the
19 record.

20 THE WITNESS: And I can get -- yes.

21 MR. RAO: I was just curious about,
22 you know, how loud can these grinders get?
23 You mentioned a muffler was being used to
24 muffle the sounds?

1 THE WITNESS: Yeah. It just has a
2 muffler. It does tend to get a little bit
3 loud. Not more -- definitely not more than a
4 combine outside out in McHenry County. So,
5 you know, we have tractors out here that are
6 doing things that are much louder than the
7 grinder, plus we are in a location that has
8 such an excellent buffer. You know, we have
9 the big woods around there, plus we're right
10 next to the railroad and it's not louder than
11 the railroad either. Does that answer your
12 question?

13 MR. RAO: Yes, it does.

14 THE WITNESS: Okay.

15 MS. LIU: Just in a follow-up to that
16 concerning the grinding in Exhibit 1, the
17 shredded GBSM you have provided, is that
18 after it's been grinded?

19 THE WITNESS: Yeah. And actually that
20 is just the tabs that were ground, so that's
21 not a mixture with the sheet, but just to
22 give you a real accurate --

23 MS. LIU: So that is what it actually
24 looks like when you apply it?

1 THE WITNESS: Yes.

2 MS. LIU: Okay.

3 MR. RAO: And the part of your
4 testimony you referred to how, initially, you
5 applied for an air permit and that's how it
6 started --

7 THE WITNESS: Uh-huh.

8 MR. RAO: -- with the IEPA?

9 THE WITNESS: Uh-huh.

10 MR. RAO: If Jo'Lyn is granted relief
11 in this proceeding, do you still have to get
12 an air permit from the IEPA?

13 THE WITNESS: From my understanding,
14 yes, a machine that big needs one. However,
15 I have heard -- the rules could have changed,
16 you know, I must say. So I don't know
17 because I know there were a couple in that
18 were going through. I haven't looked at the
19 air permits for a while to be honest with
20 you.

21 MR. RAO: Okay. Actually, I am done.
22 Thank you, very much.

23 HEARING OFFICER ANTONIOLLI: Okay.

24 MS. LIU: One follow-up question out

1 of curiosity. Do the piles, after they've
2 been exposed to the sun for a while,
3 eventually just turn into a big solid mass?

4 THE WITNESS: No.

5 MS. LIU: Okay.

6 THE WITNESS: No, but they stick
7 together just a little bit, but as soon as we
8 hit it with the excavator or whatever, you
9 know, it's all -- it all separates very
10 easily.

11 MS. LIU: Okay. Thank you. Just
12 curious.

13 MR. RAO: So it is the compaction that
14 helps in the bonding?

15 THE WITNESS: Yes, the compaction and
16 the sun. It's really neat, I bet you guys
17 would like it.

18 HEARING OFFICER ANTONIOLLI: Okay.
19 Thank you, Ms. Liu and Mr. Rao. Ms. Harvey,
20 would you like to continue?

21 MS. HARVEY: I have just a couple of
22 short follow-up questions for Ms. Powles.

23

24

1 FURTHER DIRECT EXAMINATION

2 BY MS. HARVEY:

3 Q. Just to clarify some of the testimony
4 that you gave in response to Mr. Kim's questions.
5 Ms. Powles, he asked you about basically how you get
6 these piles of GBSM that's currently on site. When
7 did you -- did you obtain that GBSM prior to knowing
8 that you couldn't operate the facility without a
9 waste permit?

10 A. Yes. We thought we would be able to
11 process the material right away.

12 Q. So it wasn't stockpiled speculatively
13 or thinking that --

14 A. No, it never was.

15 Q. And am I correct that once you learned
16 that you couldn't continue to operate, that you
17 stopped hauling GBSM to the site?

18 A. That is correct.

19 Q. Okay. Can you give me an idea of how
20 long it would take to use the current supply of GBSM
21 that you have on-site? For example, could you use
22 that whole supply in one working season?

23 A. Definitely.

24 Q. Could you use it in less than a

1 working season?

2 A. Yes.

3 Q. Okay. Do you believe that you have --
4 currently have contracts that are sufficient to use
5 up all the GBSM you currently have on-site?

6 A. Contracts plus the contracts that we
7 haven't contacted because one of our contracts did
8 back out.

9 Q. Why did they back out?

10 A. Because they needed to get the dust
11 down on their driveways so they went to RAP,
12 actually, Recycled Asphalt Pavement.

13 Q. Would it be correct for me to say
14 that -- would it be correct to say that the contract
15 backed out because there was a delay in getting
16 approval for your process?

17 A. Exactly.

18 Q. Okay. And I think just one other
19 area. There was also some testimony about your --
20 the basis for your rejection of GBSM --
21 theoretically we understand that you haven't had to
22 reject any GBSM -- but you testified earlier that
23 it's a visual inspection that you undergo, at least
24 twice. What are you looking for?

1 A. Anything other than GBSM.

2 Q. Okay. And then you would make a
3 decision whether or not you would remove that from
4 the GBSM or whether or not you would reject the
5 load; is that correct?

6 A. Correct.

7 Q. Okay.

8 MS. HARVEY: I don't have anything
9 else.

10 HEARING OFFICER ANTONIOLLI: Okay.
11 Thank you. Does anyone else have questions
12 for the witness at this point? Yes, sir.
13 Can you introduce yourself?

14 MR. TURLEY: I'm William Turley.

15 HEARING OFFICER ANTONIOLLI: Thank
16 you.

17 MR. TURLEY: What is your recycling
18 rate, the material you bring in, how much you
19 can recycle and how much you can send to the
20 landfill after that?

21 THE WITNESS: Of the GBSM?

22 MR. TURLEY: Yes.

23 THE WITNESS: It's 100 percent
24 recyclable.

1 MR. TURLEY: Thank you.

2 HEARING OFFICER ANTONIOLLI: Okay.

3 Thank you and anyone else?

4 MS. LIU: I have a follow-up to that
5 question. Are there any waste byproducts
6 from this process from cleaning the grinder?

7 THE WITNESS: No. There is no
8 residuals. You just -- as to what we're
9 getting in, you can see in that box, yes,
10 it's brown, but, you know, that's it.

11 MR. LIU: Okay.

12 HEARING OFFICER ANTONIOLLI: Okay.

13 Thank you. And Ms. Harvey, would you like to
14 call your next witness --

15 MS. HARVEY: Yes, I would.

16 HEARING OFFICER ANTONIOLLI: -- and
17 have them sworn in.

18 MS. HARVEY: I'd like to call
19 Mr. David Foulkes of IKO.

20 HEARING OFFICER ANTONIOLLI: Tammi,
21 could you swear in the witness?

22 (Witness sworn.)

23

24

1 WHEREUPON:

2 DAVID FOULKES

3 called as a witness herein, having been first duly
4 sworn, depose and saith as follows:

5 DIRECT EXAMINATION

6 BY MS. HARVEY:

7 Q. Can you state your name for the
8 record, please?

9 A. My name is David Foulkes, F, as in
10 Frank, O-U-L-K-E-S, as in Sam.

11 Q. Who is your employer, Mr. Foulkes?

12 A. I work for IKO.

13 Q. And what are your job responsibilities
14 at IKO?

15 A. I'm on the corporate staff of the
16 parent company and I have responsibilities for
17 environmental issues, for transportation,
18 responsibility for a railcar fleet of about 150
19 railcars, I'm involved in raw material purchasing,
20 labor relations and new site selection.

21 Q. Quite a bit, I'd say, apparently.

22 A. It makes the job interesting.

23 Q. What is your educational background?
24 Do you have an undergraduate degree?

1 A. I have an undergraduate degree in
2 economics and a graduate degree, master's with
3 emphasis in labor relations.

4 Q. Where did you obtain those degrees?

5 A. University of Cincinnati.

6 Q. Okay. How long have you worked for
7 IKO?

8 A. It will be 18 years in March.

9 Q. Prior to your employment at IKO, who
10 did you work for immediately before your employment
11 at IKO?

12 A. I worked for a company called Fuji
13 Tech, which was a Japanese elevator company.

14 Q. What did you do there?

15 A. Basically production control,
16 warehousing, shipping and receiving
17 responsibilities.

18 Q. And did you have employment prior to
19 your employment at Fuji Tech?

20 A. I worked for a company by the name of
21 Sun Chemical, which was involved in the manufacture
22 of organic pigments.

23 Q. Okay. And as you said, you started
24 your employment at IKO roughly 18 years ago; is that

1 correct?

2 A. Correct.

3 Q. Have you held any position other than
4 the position you currently hold?

5 A. Well, I started in operations
6 management. I was plant manager in the Franklin,
7 Ohio facility for a number years before I moved into
8 my current position.

9 So rather than being quite as
10 focused, it just then blossomed into a number of
11 different responsibilities.

12 Q. What year did you move into your
13 current position at IKO?

14 A. January 1996.

15 Q. Thank you. I want to talk a little
16 bit about the background of IKO as an entity. Can
17 you tell me a little bit about the corporate
18 history? What does IKO do?

19 A. IKO is a family-owned corporation.
20 The family -- the owners are in Canada. We started
21 in Canada in 1948 as a roofing manufacturer and
22 since, then have grown to become the largest
23 manufacturer of asphalt roofing products in Canada.
24 We started a presence in the United States in the

1 late 1970s. We are still relatively small-fish in
2 the United States, but are working to increase our
3 market penetration. We also have a number of plants
4 in Europe.

5 Q. Okay. And the types of products that
6 you manufacture, are they all roofing products?

7 A. Well, they're all roofing-related
8 products.

9 Q. Okay.

10 A. The plant that we're talking about
11 here in Bedford Park is strictly an asphalt roofing
12 manufacturing facility. However, as a corporation,
13 we have become almost totally vertically integrated,
14 so that we have our own quarries where we crush our
15 own rock, we color our own rock, we have our own oil
16 and gas wells where we can produce our own
17 petroleum, we have our own fleet of trucks. I
18 mentioned we have our own fleet of railcars, we even
19 have our own distribution line where we sell the
20 finished product.

21 Q. How many plants do you have in the
22 United States that make asphalt roofing products?

23 A. We have four plants in the United
24 States that are roofing manufacturers.

1 Q. And where are they located?

2 A. We have the one in Bedford Park, we
3 have one in Franklin, Ohio, southwest Ohio near
4 Cincinnati, we have one in Wilmington, Delaware and
5 we have one in Sumas, Washington, which is northeast
6 of Seattle.

7 Q. Are you building a new plant in
8 Illinois?

9 A. We are building a new facility in
10 Kankakee, just south of Chicago, which will be
11 supplementary to the Bedford Park facility making a
12 slightly different product, still asphalt roofing,
13 but a different product than the Bedford Park
14 facility, so that would be operating together.

15 Q. Okay. When do you anticipate that --
16 hopefully that plant going online?

17 A. Well, a lot of it's going to depend on
18 weather, but if everything works out, we hope to be
19 producing shingles by this summer -- this coming
20 summer.

21 Q. I want to go back for a second to your
22 discussion of the vertical integration concept.
23 Would it be correct for me to say that IKO or an IKO
24 company is able to provide all of the ingredients of

1 the asphalt shingles that IKO manufactures?

2 A. Not completely.

3 Q. Okay.

4 A. We do not have our own refineries.

5 Q. Okay.

6 A. We do have our own oil and gas wells
7 and we use those as a hedge against the volatility
8 of the petroleum market these days. But we will
9 sell that, for instance, out in western Canada, and
10 yet, we will buy our asphalt, say, from Whiting,
11 Indiana. Not the same raw material that went into
12 it, but we are hedged there on the pricing.

13 Q. The other ingredients of your roofing
14 shingles, the trap rock, the limestone, et cetera --
15 there's information in the record that we will mark
16 soon -- are those all provided by IKO companies?

17 A. The carrier sheets, which can be
18 either paper, organic in base or fiberglass, we do
19 produce. We have our own paper mills for the
20 organic sheet and we have a joint venture in
21 Danville, Illinois where we produce our own
22 fiberglass matters. The granules -- we produce 100
23 percent of our own face granules. There are some
24 granules that are called head-lap granules that are

1 hidden underneath the shingle above, where we buy
2 boiler slag and other waste products to try and
3 recycle those. We don't have to use the expensive
4 face granules.

5 The limestone that we use in the
6 products, we do buy that on the market. That is
7 just a very inexpensive commodity-type item.

8 Q. Okay. Let's focus on the GBSM that
9 we've heard so much about today.

10 From IKO's perspective, what is
11 GBSM? Why do you end up with it?

12 A. We are, as a company, very sensitive
13 to quality, and so when we put out a product that
14 has an IKO label on it, that has the owning family's
15 name on it. They will not allow us to put out a
16 product that isn't of very high quality. If it
17 doesn't meet those specifications, then it is
18 surplus. We will not put it out, we will not sell
19 it on the market and we will recycle it. We do have
20 recycling operations associated with all of our
21 North American plants right now, except for the
22 Bedford Park plant, which is where we've had the
23 issues.

24 Q. And we'll come back to that in a

1 little bit. But do you know what the other plants
2 use the GBSM for?

3 A. The majority of the GBSM in the other
4 plants is used as an ingredient in hot mix paving.
5 Most of the other plants are urban applications and
6 there's not the demand for an alternative to gravel
7 driveways in the urban environment, people are
8 looking at asphalt pavement for driveways and
9 parking lots and that's why the majority of it --

10 Q. So that GBSM is used for a paving
11 application?

12 A. Correct.

13 Q. Okay.

14 MS. HARVEY: I want to show you what
15 I'd like to mark as, I think, Exhibit 6 -- it
16 would actually be Group Exhibit 6. This is
17 the large rubber band-bound packet that has
18 on its top a February 22nd, 1993 letter from
19 IKO Chicago to Larry Easterp at IEPA. So I
20 guess I just ask that we mark this as Group
21 Exhibit 6.

22 (Document marked as Exhibit No. 6
23 for identification, 12/22/04.)

24 HEARING OFFICER ANTONIOLLI: Okay.

1 And what I have in my hand is exactly as
2 Ms. Harvey described, a letter from IKO
3 Chicago to Mr. Easterp, and it is a
4 collection of six documents.

5 Does anyone have an objection to
6 me entering that as Exhibit 6 at this time?

7 Seeing none, I will go ahead and
8 enter that as Exhibit 6.

9 (Whereupon, Exhibit No. 6 was
10 received in evidence by the
11 Hearing Officer.)

12 MS. HARVEY: Thank you, Madam Hearing
13 Officer.

14 BY MS. HARVEY:

15 Q. Mr. Foulkes, can you tell me what this
16 letter is related to? Did there come a time when
17 IKO needed to submit materials to IEPA regarding the
18 GBSM?

19 A. In the early '90s there was a question
20 raised by the IEPA about our wastestream and whether
21 our wastestream should be classified as a special
22 waste or not.

23 Q. When you say your wastestream, are you
24 referring specifically to GBSM?

1 A. Actually, I'm talk about everything --

2 Q. Okay.

3 A. -- that comes out of the plant.

4 Q. Okay.

5 A. And what we did is we made a number of
6 trips to Springfield, we sat down with the EPA
7 officials, and at that point it was suggested we
8 submit an application for decertification -- or I
9 don't know if decertification is the correct word --
10 but reclassification of your wastestream, number
11 one, and number two, if you're going to try to sell
12 the GBSM, then you want to ask for some type of
13 determination as to whether GBSM can be used -- can
14 be sold and can be used as a road application, a
15 road filler.

16 So we submitted it early in 1993,
17 a packet, and I believe that that is the second one
18 in here, it's called Solid Waste Determination
19 Request dated January 29, 1993.

20 Q. And what was the outcome of that --
21 well, let me back up a second.

22 Mr. Foulkes, were you personally
23 involved with the negotiations or the submittal of
24 this material to the Illinois Environmental

1 Protection Agency?

2 A. No. At the time, I was plant manager
3 in the plant -- in the Ohio plant, but there was a
4 great deal of interaction between the plants and so
5 with my environmental background, I did stay in
6 touch with this.

7 Q. Have you subsequently in the course of
8 your current duties at IKO had reason to become
9 involved actually -- or obviously here with Falcon
10 and Jo'Lyn, with the issue of how to classify the
11 GBSM?

12 A. Yes, very much so, having made a
13 number of trips to Springfield to talk with the EPA
14 officials in Springfield in reference to this and
15 actually also our new plant in Kankakee and the
16 issues surrounding that.

17 Q. Okay.

18 MS. HARVEY: Madam Hearing Officer,
19 I'm not going to ask Mr. Foulkes to go
20 through all the contents of these documents
21 because he didn't create them. However, they
22 are created in the course of business of
23 Mr. Foulkes' business, so I want to submit
24 them into the record and just indicate to --

1 have Mr. Foulkes indicate to some degree what
2 the contents of these documents are so that
3 the Board will have the information in front
4 of it.

5 More specifically, I want to point
6 you to the second document which Mr. Foulkes
7 just stated is dated January 29, 1993. This,
8 I believe, was the original submittal in
9 support of both the request that you referred
10 to in the rebuttal in the special waste
11 declassification, as well as the
12 determination that you could sell the GBSM;
13 is that correct?

14 THE WITNESS: That's my understanding,
15 yes.

16 BY MS. HARVEY:

17 Q. And the table of contents lists the
18 complete contents of the application, including
19 information such as the GBSM composition, some
20 testing results on the GBSM and a number of
21 appendixes that support those; is that correct?

22 A. That is correct.

23 Q. Okay. Do you know, in general,
24 laypeople's terms, the results of toxicity testing

1 on GBSM?

2 A. The TCLP tests showed no issues or any
3 reasons why there should be any concern from a toxic
4 standpoint on the GBSM material.

5 Q. Okay. And after this material was
6 submitted to IEPA, I believe the next step was IKO
7 received from IEPA the waste determination that the
8 GBSM was not a waste when used for a paving product.
9 I'm referring to, I believe, it's Exhibit 5, the May
10 1993 waste determination.

11 A. That is correct.

12 Q. So to your knowledge, that waste
13 determination was based upon the information in this
14 January 29th submittal, correct?

15 A. That is correct, yes.

16 Q. Okay. Did IKO subsequently receive
17 additional correspondence from IEPA in relation to
18 this solid waste declassification? I believe that
19 might be the next item in your exhibit.

20 A. Yes. In June of 1993, we received a
21 letter from the IEPA saying that our request for
22 declassification was incomplete and they
23 specifically noted a number of items in here that we
24 needed to address in our submittal to the IEPA.

1 Q. Okay. And then am I correct that the
2 next two documents in your packet, which are a cover
3 letter dated November 5th, 1993 from IKO and an
4 application for waste classification dated April --
5 excuse me, October 29th, 1993 -- was that IKO's
6 response to that June letter from the IEPA?

7 A. That is correct.

8 Q. Okay. And am I correct that the
9 application for waste classification, this October
10 document, provides yet additional information in
11 response to IEPA's content requests, if you will?

12 A. That is correct, yes.

13 Q. Then what happened?

14 A. Then I believe it was in January of
15 '94 we received a letter from the IEPA agreeing with
16 our request for declassification of our general
17 wastestream as a special waste and --

18 Q. I'm sorry, go ahead.

19 A. -- and so that we could take any
20 material that we needed to dispose of to the
21 sanitary island fill.

22 Q. Is that the last letter, the last
23 document in that packet? Does that look to be --

24 A. Yes. January 14th, '94.

1 Q. May I ask you, before this issue arose
2 in the early '90s of whether or not your wastestream
3 was special waste, how did IKO dispose of its waste?

4 A. We have owned this plant since 1981,
5 and since we owned the plant, we had been taking the
6 material to the sanitary landfill. And our
7 predecessors had been taking it to the landfill and
8 our competitors had been taking it to the landfill.

9 Q. Did there come a time when you were
10 notified by the IEPA that you had to stop taking it
11 to the landfill?

12 A. I think it was in 1992 that we were
13 notified by the IEPA that we could no longer take it
14 to the sanitary landfill and we had to consider all
15 of our waste as a special waste.

16 Q. Do you know if your competitors in
17 Illinois were also informed that they needed to
18 dispose of their waste as special waste?

19 A. To our understanding, we were the only
20 manufacturer in the state of Illinois that was so
21 picked on.

22 Q. Do you know how many asphalt shingle
23 manufacturers there are in the state of Illinois,
24 roughly?

1 A. Well, right now, there are only two
2 plants left in the state of Illinois, ours in
3 Bedford Park and Owens Corning in Summit here.

4 Q. You say right now, were there more?

5 A. There were a number of additional
6 plants. They have closed up and moved their
7 applications out of the state.

8 Q. Okay.

9 HEARING OFFICER ANTONIOLLI: As long
10 as we have a pause now, I am going to
11 recommend that we take a break and let's go
12 off the record.

13 (Whereupon, after a short
14 break was had, the following
15 proceedings were held
16 accordingly.)

17 HEARING OFFICER ANTONIOLLI: We are
18 now back on the record. We are now prepared
19 to go back on the record and it is about
20 12:00 o'clock and we're continuing with
21 questions of the second witness.

22 BY MS. HARVEY:

23 Q. Mr. Foulkes, the information that was
24 submitted to IEPA in support of the solid waste

1 determination and the declassification of special
2 waste is all dated 1992 and 1993. Have the
3 ingredients that IKO uses in its process changed
4 appreciably since that time?

5 A. No.

6 Q. Okay.

7 MS. HARVEY: I'm going to show you
8 what I would like to mark as Exhibit 7, which
9 is a one-page letter from Mr. Foulkes to
10 Ms. Powles on IKO's letterhead that
11 confirms -- well, I'll let Mr. Foulkes
12 testify to the content of the letter. In
13 fact, I'd like to mark it as Exhibit 7.

14 (Document marked as Exhibit
15 No. 7 for identification,
16 12/22/04.)

17 HEARING OFFICER ANTONIOLLI: Okay.

18 And Mr. Kim, you had an opportunity to take a
19 look at this?

20 MR. KIM: Yes.

21 HEARING OFFICER ANTONIOLLI: If there
22 are no objections, I'll enter this letter
23 from IKO to Ms. Powles as Exhibit No. 7.

24 And seeing none, I will enter that

1 as Exhibit 7.

2 (Whereupon, Exhibit No. 7 was
3 received in evidence by the
4 Hearing Officer.)

5 MS. HARVEY: Thank you, Madam Hearing
6 Officer.

7 BY MS. HARVEY:

8 Q. Mr. Foulkes, did you author this
9 letter?

10 A. That is correct.

11 Q. And what's the gist of the letter, if
12 you will?

13 A. Basically, the ingredients that go
14 into asphalt shingles today are the same ingredients
15 that went into asphalt shingles in the early '90s.
16 The only real difference today is the shape of the
17 finished products. The raw material ingredients
18 basically are the same.

19 Q. Okay. I think you testified a little
20 earlier too that you supplied to the market -- you
21 supplied most of the ingredients for those at IKO?

22 A. That's probably the biggest change is
23 that in the early '90s, we were buying the majority
24 of our raw materials and today we are producing the

1 majority of our raw materials.

2 There are two reasons for that
3 really. One is -- three reasons. One is cost.
4 Obviously, we can control the cost factors a little
5 bit better. Two is a continuous supply, we can
6 control the supply of the materials. But number
7 three, and probably the most important reason for
8 doing this, is quality.

9 Again, the K of IKO is the initial
10 for the owning family of the company, so they
11 literally are putting their name in every bundle of
12 shingles that goes out, and they want to make sure
13 that we are the best shingle on the market today.
14 So that's really the reason we have gone in this
15 direction.

16 Q. Okay. You testified a little earlier
17 in your explanation that the wastes -- the GBSM from
18 your -- the paving plants in the United States,
19 other than Bedford Park, are all used for paving
20 applications -- or approved for use of paving
21 applications?

22 A. Yes.

23 Q. I just want to direct your attention
24 to -- this is, again, I'm referring to the

1 January 29th, 1993 submittal -- does this include --
2 I believe, I'll direct your attention to starting
3 with Appendix E, it's found on Pages 79 and 80. Do
4 these -- and then going on through, I believe, Page
5 97. Do these documents discuss the regulatory
6 approval in other states for this paving use?

7 A. That is correct, yes.

8 Q. Okay. And to your understanding,
9 these approvals are still in effect, there's been no
10 changes? Nobody has revoked their approval, so to
11 speak?

12 A. That is correct. We are recycling all
13 of the products out of our Wilmington and Franklin,
14 Ohio facilities.

15 Q. Do you have occasions to talk to other
16 people in your field, other manufacturers, about
17 what they do with their GBSM?

18 A. Yes. I, personally, and we, as a
19 company, are very active in the industry trade
20 association, ARMA, the Asphalt Roofing Manufacturers
21 Association -- and ARMA has tried to focus on the
22 issue of recycling as one of their main thrusts.
23 And, in fact, I believe that it was a program -- a
24 seminar that was put on by ARMA and then several

1 other organizations, recycling operations, that
2 started Falcon Waste down the road of looking at the
3 concept of using GBSM.

4 Q. To your knowledge, do some of your
5 competitors also have their GBSM used as paving?

6 A. A large number. In fact, wherever
7 possible, the industry in general recycles, yes.

8 Q. Okay. There were some questions a
9 little earlier from Mr. Kim about what are you doing
10 with your GBSM since -- currently since Falcon and
11 Jo'Lyn are not able to pick it up and haul it. What
12 is happening to the GBSM from Bedford Park?

13 A. Well, unfortunately, the majority of
14 it is going into the landfill at the moment. We are
15 able to recycle or sell a very small amount of it to
16 a small recycling operation in Chicago.

17 Q. What do they do with it?

18 A. They make what's called Protective
19 Board, which is where they grind up the material and
20 then put it between two sheets of fiberglass and it
21 becomes a very hard walking surface that is then
22 used on flat built-up roofs as a surface for
23 maintenance people, et cetera, so they won't destroy
24 the basic membrane of the roof.

1 MS. LIU: Can you say what that was
2 called again? Protective --

3 THE WITNESS: Protective Board.

4 MS. LIU: Board?

5 THE WITNESS: Board.

6 MS. LIU: Is that the name of the
7 product?

8 THE WITNESS: That's a brand name. I
9 think there are a number of different names.
10 It's a walking surface for built-up roofs.

11 BY MS. HARVEY:

12 Q. Is there any reason other than the
13 fact that operations in Illinois can't currently
14 pick up and use your GBSM -- is there any other
15 reason that your GBSM is being landfilled?

16 A. No. We cannot find anybody else in
17 Illinois that can do it. There are people out of
18 state that will take it, the problem is the
19 economics, the freight costs, to send it out of
20 state are just too high.

21 Q. Okay.

22 MS. HARVEY: I want to show you what
23 I'm going to ask to be marked as Exhibit 8,
24 which is an ASTM standard for -- it's

1 D 3462-00, and I'm going to ask this to be
2 marked as Exhibit 8. Is that right?

3 (Document marked as Exhibit No. 8
4 for identification, 12/22/04.)

5 HEARING OFFICER ANTONIOLLI: Yes. We
6 are at Exhibit 8 at this point. And if there
7 are no objections, I'll enter this, what I
8 have in front of me, entitled Standard
9 Specification For Asphalt Shingles Made From
10 Glass Felt and Surfaced With Mineral Granules
11 as Exhibit 8.

12 And seeing no objections, this is
13 Exhibit 8.

14 (Whereupon, Exhibit No. 8 was
15 received in evidence by the
16 Hearing Officer.)

17 MS. HARVEY: Thank you, Madam Hearing
18 Officer.

19 BY MS. HARVEY:

20 Q. Mr. Foulkes, are you familiar with
21 this standard?

22 A. I am familiar with this standard.

23 Q. What is this standard for?

24 A. This is a standard put out by the

1 National Standards Institute for minimum quality
2 standards for asphalt shingles so that the
3 architects or the users can specify minimum quality
4 standards for the shingles that they specify on
5 their jobs.

6 Q. Does IKO manufacture their shingles to
7 be consistent with these standards?

8 A. One hundred percent of our shingles
9 are included in this standard.

10 Q. And just so I'm clear, this
11 specification talks about design and strength of
12 your shingles, not about the use of GBSM?

13 A. That is correct. This is for finished
14 shingles.

15 MS. HARVEY: Madam Hearing Officer,
16 just to make it clear, I think there have
17 been some concerns both by the Agency and by
18 the Board about what specifications are in
19 place. This is for -- it's submitting that
20 basically there are no standards for how you
21 put down Eclipse Dust Control, Falcon and
22 Jo'Lyn are leaders in the area, but this does
23 demonstrate that there are standards to which
24 the shingles and, therefore, the GBSM is

1 manufactured, that it's not a willy-nilly, if
2 you will, process.

3 HEARING OFFICER ANTONIOLLI: Thank
4 you.

5 BY MS. HARVEY:

6 Q. Do you have other standards that you
7 have to -- that IKO chooses to comply with? Are
8 there state standards in other places about the
9 durability, if you will, of asphalt shingles?

10 A. Well, one that comes to mind right now
11 is the state of Florida has been hit very hard by
12 weather-related incidents, and so over the last
13 couple of years they have developed standards that
14 you have to meet in order to sell shingles into the
15 state of Florida. And even though Florida is not a
16 typical market for us, we have met those standards
17 and have received state certification to sell in the
18 state of Florida if we so desire.

19 We use that as a marketing tool
20 that when we go out, even if we're not selling in
21 Florida, we meet state of Florida requirements and
22 it's just another way of differentiating our product
23 from our competitor's when we try to sell the
24 concept of quality.

1 Q. Thank you.

2 MS. HARVEY: I don't have anything
3 else on direct examination.

4 HEARING OFFICER ANTONIOLLI: Okay.
5 Mr. Kim, would you like to ask questions?

6 MR. KIM: Yes. I will speak as
7 quickly as I can without being unintelligible
8 to just try and move things along.

9 HEARING OFFICER ANTONIOLLI: But slow
10 enough so the court reporter can get it down.

11 MR. KIM: Yes, certainly.

12 CROSS EXAMINATION

13 BY MR. KIM:

14 Q. Mr. Foulkes, as I told Ms. Powles, I'm
15 going to sort of ask you questions in the order that
16 you testified. So if anything seems -- if you need
17 some background, just let me know.

18 You spoke about one of the
19 emphases -- major emphasis for your company being on
20 quality control?

21 A. Correct.

22 Q. And to try and achieve that, your
23 company employs the concept of vertical integration
24 to ensure you have as much control over what you're

1 using and so forth; is that right?

2 A. That is correct.

3 Q. Do you know if that's a standard
4 practice or a standard business model for other
5 shingle manufacturers in your business?

6 A. No. In fact, we're bucking the trend
7 from most of the industry.

8 Q. Okay.

9 A. But I do personally believe that
10 that's why we, as a company, have been so successful
11 where an awful lot of our competitors are no longer
12 in business today.

13 Q. Okay. And along those lines, you said
14 that, right now, aside from your company and your
15 soon-to-be-up plant in Kankakee, Owens Corning is
16 the only other manufacturer in Illinois that's
17 making asphalt shingles; is that correct?

18 A. That's my understanding.

19 Q. In terms of output, do you know how
20 your Bedford plant compares with the volume that
21 Owens puts out?

22 A. I'm not sure.

23 Q. Okay. Do you know, to the best of
24 your knowledge, if Owens employs a vertical

1 integration concept in terms of their manufacturing
2 process?

3 A. To a certain extent, but not to the
4 same degree that we do.

5 Q. Sure. In terms of your process, are
6 there certain aspects of IKO's manufacturing and so
7 forth that are -- that you would consider to be
8 trade secret and confidential in terms of, you know,
9 processes or what have you that are unique to your
10 company? And I'm specifically talking about the
11 Bedford Park facility.

12 A. I'm just trying to think. Sure. I
13 don't think that there is anything that we do in
14 Bedford Park that is not standard in the industry.

15 Q. Okay. So it would be safe to say then
16 that nothing happens at Bedford Park that wouldn't
17 happen at, say, Owens Corning in terms of
18 manufacturing?

19 A. As far as the manufacturing of the
20 base sheet, now, the cutting and the forming of the
21 individual shingles is unique to each manufacturer.

22 Q. And I'm not asking you to say exactly
23 what Owens does, I'm just saying to the best of your
24 knowledge -- and I guess that's kind of my point --

1 there may be some differences in manufacturing from
2 one company to the other; is that safe to say?

3 A. No.

4 Q. Okay.

5 A. As far as a manufacturer, the
6 application of raw materials, I think, would be
7 very, very similar.

8 Q. Okay.

9 A. The actual cutting and forming of the
10 finished product would be different.

11 Q. Okay.

12 A. But that has no impact on GBSM.

13 Q. Right. Okay. That helps. And I
14 think you answered this question, but just so I'm
15 clear. From the time that you received the -- that
16 your company received the letters from the Illinois
17 EPA in 1993, up until the period of time that Falcon
18 and Jo'Lyn were accepting the GBSM, was it your
19 testimony that most of that GBSM didn't have a
20 market, so aside from the small manufacturer, you
21 were primarily landfilling that?

22 A. During the whole period?

23 Q. No. I'm just specifically looking
24 from say -- and I don't know exactly when it was

1 that Falcon began accepting it, but let's just --
2 I'm going to say 2002, okay?

3 MS. HARVEY: The first test
4 application, just for the record, was 2000.

5 BY MR. KIM:

6 Q. Okay. Say from roughly 1993 to
7 roughly 2000, do you know -- after EPA sent the
8 letters and before Falcon started accepting your
9 GBSM, do you know what your Bedford Park facility
10 was doing with the GBSM?

11 A. The majority of it went to the
12 landfill.

13 Q. Okay.

14 A. We did try to start recycling
15 operations with several other people in the Chicago
16 area --

17 Q. Okay.

18 A. -- but they did not pan out.

19 Q. Sure. And since the period of time
20 that Falcon has not been able to accept that
21 material to the present, is the GBSM still being
22 taken except for the company that's making the
23 Protective Board? Is that GBSM still being taken to
24 a landfill?

1 A. After we stopped using Falcon, we
2 started using a company in Indiana.

3 Q. Okay.

4 A. And we worked with them for quite a
5 while until freight just got too expensive. One of
6 the problems -- I'm not from Chicago -- but traffic
7 in Chicago is terrible and it means that the trucks
8 spend an extremely large amount of time just
9 sitting in traffic.

10 Q. Sure.

11 A. You're paying for the use of that
12 truck, you're paying for the driver, so from a
13 financial standpoint, it did not make sense to truck
14 it out of state.

15 Q. Okay. So once that business decision
16 was made, did you then revert back to landfill?

17 A. To the landfill, yes.

18 Q. Okay.

19 A. We have a contract with our current
20 waste disposal firm that they handle anything that
21 goes to the landfill. We, however -- anything we
22 wish to recycle, we can immediately pull it out of
23 that stream.

24 Q. Okay. Do you know roughly right now

1 how much GBSM your Bedford Park facility is
2 producing?

3 A. Including the material that's going to
4 the landfill?

5 Q. Yeah.

6 A. Probably 10,000 to 12,000 tons this
7 year.

8 Q. Okay. Is it a consistent production
9 or is it -- because, again, I would imagine from
10 an application standpoint, summer months are going
11 to use more shingles than winter months -- is it a
12 consistent production line or does it vary from the
13 time of the year?

14 A. It is somewhat seasonal in nature, but
15 we try very hard to keep our employees gainfully
16 employed twelve months a year. So during the slower
17 application periods, the wintertime, we build stock.

18 Q. Okay.

19 A. And keep the plant going, so we do
20 continue to generate GBSM during that time frame.

21 Q. Okay. And you may or may not know
22 this, but just for clarification. The information
23 that was in Exhibit No. 6 -- and specifically I'm
24 looking at -- there was a February 22, 1993 cover

1 letter, and that, I think, referenced the attachment
2 which was dated January 29th, 1993?

3 A. Correct.

4 Q. Did that packet of information lead to
5 both the June 22nd, 1993 letter that's in that
6 exhibit, as well as the May 1993 letter that was
7 pulled out and is a separate exhibit now?

8 A. That is my recollection, yes.

9 Q. Okay. So I just want to make clear,
10 there's not a separate set of documents that led to
11 the use of the --

12 A. No. We made one submittal for both.

13 Q. Okay. Then the last question that I
14 have for you -- the second to the last question that
15 I have for you is in terms of plant locations. Do
16 you know off the top of your head if there are other
17 asphalt shingle manufacturers located in Wisconsin
18 near the Illinois border and Indiana near the metro
19 Chicago area, in those locations?

20 A. Well, there's one just across the
21 Indiana border which sells a lot of material, a big
22 competitor of ours. There's also one on the
23 southern Illinois/Indiana border. I'm not aware of
24 any on the Wisconsin border.

1 Q. Do you know what the company in
2 Indiana -- not in southern, but near Chicago -- do
3 you know what they do with their GBSM?

4 A. They send it to the same Indiana
5 recycler that we were trying to use.

6 Q. Okay. The last question that I have
7 for you was as far as the ASTM standard, your
8 shingles all meet or exceed the ASTM standard that's
9 in Exhibit A; is that right?

10 A. That's correct.

11 Q. Okay. And I don't even know how to
12 phrase this question, but would it be -- I
13 understand that what's going to be considered the
14 GBSM, which would be the tabs and the sheets, that
15 those aren't really shingles, those are the -- those
16 are what used to be part of what's the finished
17 product of the shingle. But I guess what I'm asking
18 is, can you tie any correlation between this ASTM
19 standard and the tabs and the sheets? I mean, would
20 those meet that ASTM standard if that's -- I mean,
21 can you say that or -- I understand the shingles do,
22 but I guess what I'm wondering is what's the
23 relationship to this ASTM standard and the GBSM?

24 A. The products that make up GBSM in most

1 cases are -- well, let me go back and give you the
2 sources. When we make three-tab shingles, these are
3 the shingles that have three equal sized tabs with
4 little notches cut out in between.

5 Q. Okay.

6 A. The notches are the tabs that we
7 talked about earlier that are part of the
8 wastestream or the byproducts, whatever you -- GBSM
9 stream.

10 Q. I understand, yes.

11 A. There are actual shingles that go into
12 this stream also, because when you have -- when you
13 are making slices on the fiberglass or the paper
14 carrier, the medium that carries the asphalt, we do
15 not sell the splices. Some of our competitors do,
16 don't.

17 Q. Okay.

18 A. So that if a shingle includes a
19 splice, then that goes into the GBSM stream.

20 Q. Okay.

21 A. Would that meet ASTM standards?
22 Probably not, because part of that standard includes
23 what's called tear resistance, it's an actual
24 strength factor for the shingle.

1 Q. Okay.

2 A. We don't believe that splices will,
3 long term, provide that tear strength.

4 Q. Okay.

5 A. So from that standpoint, no. There
6 are times when there might not be enough granules on
7 the sheet. Now, you can't sell that sheet because
8 it's just going to look like a big, black mess up on
9 the roof. Will that meet the strength standards?
10 Probably not, because the granules do provide some
11 strength to the sheet. But is it consistent as far
12 as the raw materials are concerned? Yes. It's the
13 same asphalt, it's the same granule source, might
14 just be in a slightly different ratio.

15 Q. And using that as an example, that
16 would be the type of thing that typically -- or that
17 not typically -- but potentially could end up as
18 part of the GBSM stream; is that correct?

19 A. Yes.

20 MR. KIM: I have no further questions.

21 HEARING OFFICER ANTONIOLLI: Okay.

22 Thank you. Does anyone else have questions
23 for this witness?

24 MS. MARSH: I do. I guess maybe I'm a

1 little confused because I'm thinking that the
2 product -- we're talking about the tabs as
3 well as the surplus of the shingles or
4 whatever. Is that safe to use on our roofs
5 and our buildings? This is what are
6 considered as being -- it's certified, we can
7 use this, correct? But this is just surplus
8 and we just have nothing do with it? I mean,
9 it doesn't change molecularly, correct?

10 THE WITNESS: GBSM is molecularly
11 exactly the same as the roofs that you have
12 on your home.

13 MS. MARSH: So that's exposed to
14 elements and it doesn't harm our environment
15 according to the Illinois Protection Agency;
16 correct?

17 THE WITNESS: That's correct. In
18 fact, my understanding is that the EPA has
19 given approval to groups to use as a
20 collection system for assistance. Many of us
21 who grew up in rural areas drank water that
22 came off that roof that was made of an
23 asphalt shingle. So...

24 MS. MARSH: So why is this so much

1 different then? Why is there a conflict with
2 this being used? If it's safe to use in
3 whole pieces, why is it not safe to use
4 ground?

5 THE WITNESS: You'll have to address
6 that question to somebody else.

7 MS. MARSH: I'm just confused.

8 HEARING OFFICER ANTONIOLLI: Thank
9 you.

10 MR. RAO: I have a little
11 clarification question.

12 In the amended petition on Page
13 10, it was stated that IKO Chicago generates
14 approximately 8300 tons of GBSM per year. So
15 was that figure based on some earlier data or
16 you mentioned you --

17 MS. HARVEY: I don't think Mr. Foulkes
18 has had the benefit of reviewing the amended
19 petition, so let me find that for him.

20 MR. RAO: Okay.

21 MR. KIM: What page, I'm sorry, were
22 you referring to?

23 MR. RAO: Page 10 of his answer.

24 MR. KIM: Thank you.

1 THE WITNESS: When was this
2 application put into place?

3 MS. HARVEY: I filed it -- this is in
4 2000 -- or I'm sorry, 2004.

5 THE WITNESS: Okay. It was based on
6 2003 data.

7 MS. HARVEY: It would have been based
8 upon data from 2003. Okay.

9 THE WITNESS: That probably was a good
10 number from 2003. What has happened is
11 though at the end of 2003, we installed
12 what's called a laminator, and I talked about
13 the different sizes of shingles. What we do
14 with the laminator is we laminate two pieces
15 of the sheet together to make a solid
16 shingle. You've probably seen them on
17 upscale homes. It duplicates the appearance
18 of a wood shake, but has all the advantages
19 of an asphalt shingle.

20 Manufacturing that changes your
21 byproduct volume significantly. It reduces
22 it on the one hand because you have no little
23 notches that you cut out. But because you're
24 taking two pieces and putting them together,

1 the actual total byproduct, GBSM, production
2 probably increases two- or three-fold. And
3 the Bedford Park plant came out producing
4 both laminated shingles and three tab
5 shingles. Up until the time you cut it,
6 there's no difference, it's the same thing,
7 it's just how you cut and form that sheet so
8 that the -- I think we will see this year in
9 2004 somewhere between 10,000 and 12,000, I
10 still think that's a good number.

11 MR. RAO: So this laminated shingle,
12 is that also called architectural?

13 THE WITNESS: It's an architectural
14 shingle or a dimensional shingle also.

15 MR. RAO: All right. As a follow-up,
16 you mentioned that your Kankakee plant may go
17 online sometime this summer?

18 THE WITNESS: Yes.

19 MR. RAO: What is the capacity of that
20 plant and what kind of tonnage do you think
21 that plant will produce of GBSM material?

22 THE WITNESS: When that plant is at
23 full production, which I don't anticipate for
24 over five years or more, they could be

1 producing in the range of 20,000 tons a year
2 of GBSM.

3 MR. RAO: Okay. Thank you.

4 THE WITNESS: That's why, again, we
5 hope to be able to do something like this
6 because the idea of putting 20,000 tons into
7 the landfill just goes against our corporate
8 grain.

9 MR. RAO: Okay. Thanks.

10 MS. LIU: Mr. Foulkes, I have some
11 questions regarding the analytical results
12 from your testing of the GBSM.

13 THE WITNESS: Okay.

14 MS. LIU: They appear in Group
15 Exhibit 6 under the January 29th, 1993
16 portion.

17 THE WITNESS: Yes.

18 MS. LIU: And they begin on Page 22.
19 The analytical results lists the several
20 parameters and results as well as the
21 regulatory criteria that they're compared to.
22 Is that regulatory criteria referring to the
23 hazardous waste characteristics?

24 THE WITNESS: These -- again, I wasn't

1 directly involved in the discussions with the
2 EPA, these were done at the EPA's request.
3 I'm assuming that it's -- that's where they
4 came from.

5 MS. LIU: Okay. Do you know if there
6 has been any comparison of these results to
7 the Illinois remediation objective under our
8 tiered approach to clean up?

9 THE WITNESS: I'm not familiar with
10 that regulation.

11 MS. HARVEY: I can tell you that some
12 of that will be addressed in our post-hearing
13 brief.

14 MS. LIU: I also noticed during the
15 public commenting one of the ladies mentioned
16 that she doesn't mind the smell at all from
17 the Eclipse Dust Control application and I
18 was wondering is there a detectable smell?
19 Are there detectable volatiles from the
20 product?

21 THE WITNESS: The only thing that I
22 could think that she was referring to was
23 actually during the application process when
24 this product is first being dumped, it's

1 being aerated and it's going to have a slight
2 asphalt odor to it in the same way when you
3 would seal your driveway. You're going to
4 have some asphalt-type odors that very
5 quickly dissipate and then they're gone. So
6 I wouldn't anticipate any reason for there
7 being odors here, any different than there
8 are odors off your roof at home, as an
9 example.

10 MS. LIU: You don't happen to have any
11 analytical results of the volatiles, do you?

12 THE WITNESS: No. There's never been
13 any reason for that. In fact, during the
14 manufacturing of the products, in the plant
15 itself, the only thing that the EPA is
16 concerned about is particulate matter. They
17 are not concerned about VOCs, volatile
18 organic compounds.

19 MS. LIU: So the odor dissipates
20 rather quickly?

21 THE WITNESS: If there even is any. I
22 mean, when you put down shingles, there might
23 be a very slight odor when you first open the
24 package. But, I mean, when you drive down

1 your street when you go home tonight, you're
2 not going to smell the asphalt shingles. It
3 would be the same way here.

4 MS. LIU: Okay. Thank you, very much.

5 HEARING OFFICER ANTONIOLLI: Okay.
6 Are there any further questions or at this
7 point would anyone else wish to make a public
8 comment or testify if they so choose? Go
9 ahead.

10 MR. TURLEY: I'm William Turley, I'm
11 the executive director of Construction
12 Materials Recycling Association. We are a
13 national non-profit organization, promotes
14 recycling of materials, including concrete,
15 asphalt, wood, gypsum and asphalt shingles.

16 HEARING OFFICER ANTONIOLLI: Please
17 slow down, the court reporter is trying to
18 keep up with you.

19 MR. TURLEY: We're a national
20 non-profit organization. We've been working
21 with the U.S. EPA and various state EPAs
22 around the country to promote the recycling
23 of asphalt shingles and ARMA, and we were one
24 of the co-sponsors of that meeting and all

1 that kind of stuff, and held a couple more
2 since then.

3 Just a few -- and we also put up,
4 with a grant from the U.S. EPA, Region 5 --
5 www.shinglerecycling.org -- everything and
6 anything you ever want to know about shingle
7 recycling is on there, okay? So we kind of
8 like to think we know a little bit about this
9 subject, okay?

10 A couple of things that come to
11 mind, you mentioned earlier a couple of
12 little things. First, that you wanted to
13 limit how thick they could put the material
14 on to the -- the ground -- on to the
15 pavement. Whether it be a limit between four
16 and six inches. They've done two test
17 pavements. They're not going to know until
18 they do a little more testing, do more of
19 these, what exactly is the limit that they
20 should put this material at.

21 HEARING OFFICER ANTONIOLLI: Please
22 slow down just a little.

23 MR. TURLEY: Okay.

24 HEARING OFFICER ANTONIOLLI: Thank

1 you.

2 MR. TURLEY: And it would be -- you
3 know, we've discovered that we would rather
4 not have the states regulate how thick you do
5 this stuff, you find out what works best and
6 most efficiently, so you use the material in
7 the most efficient manner.

8 This material, asphalt shingles,
9 are currently manufactured -- which there's
10 two types that's mentioned, tear-offs and
11 manufacturer's waste -- as manufacturer's
12 waste. Why are we -- they keep using the
13 word clean, it's what we use as an industry
14 term. It has no contaminants in it such as
15 what post-consumer shingles might have.

16 So basically, the materials that
17 are in these shingles are the same as asphalt
18 pavement. Any regulations along those lines
19 should be -- you know, is saying what's used
20 in asphalt pavement, especially with the
21 application that Falcon wants to do.

22 One of the things I asked about
23 the recycling rate is, at 100 percent,
24 they're matching concrete and asphalt

1 recyclers. Concrete and asphalt recyclers
2 don't have to go through a hearing like this.
3 It's a the same thing, okay? And they're the
4 same materials.

5 One of the things with the product
6 was rejected loads. Is it a standard
7 industry practice what the -- the guy brings
8 his roll-off into the yard, dumps it and
9 there's a bunch of junk in there. You make
10 him -- you scoop it back up, you put it in
11 there and you get him to take it to the
12 landfill and he learns real quick that's a
13 more expensive way to do it and he keeps his
14 load clean. And so, you know, as far as, you
15 know, this standard of what goes on, they're
16 going to be very careful about it -- the
17 customer will as far as putting it in there.

18 And finally, as the national
19 organization who promotes this thing, I get
20 to deal with 49 other state EPAs. I have to
21 say that I've never seen anything like this
22 done in any other state for manufacturers'
23 waste. This is the first time and everyone's
24 got to run to congratulate the Illinois EPA

1 for being a leader here.

2 As far as questioning this
3 material, because it is a very -- we just
4 heard testimony -- a very safe material that
5 is on everyone's house in our neighborhood,
6 it is also very economically feasible to
7 recycle and it also makes tremendous
8 environmental sense I know the Illinois EPA
9 agrees with, but continues to throw up
10 barriers to these kind of people.

11 We suggest that and we hope the
12 Pollution Control Board will help the
13 Illinois EPA move into the 21st century and
14 join the rest of the country, which has a
15 tremendous amount of asphalt shingle
16 recycling, especially manufacturer's waste
17 going on. Thank you, very much.

18 HEARING OFFICER ANTONIOLLI: Thank
19 you, Mr. Turley. Any other comments? Please
20 introduce yourself.

21 MR. MITCHELL: Mike Mitchell.

22 MS. HARVEY: Yeah. I think that he
23 wanted to decide whether he wanted to testify
24 or actually do a public comment.

1 HEARING OFFICER ANTONIOLLI: Okay.

2 And what do you prefer?

3 MS. HARVEY: We talked a little bit
4 about the fact that if he testifies, he needs
5 to be sworn and subject to cross-examination,
6 but that because of that --

7 HEARING OFFICER ANTONIOLLI: Your
8 testimony would also be given more weight
9 than a public comment because you would be
10 subject to that cross-questioning on your --

11 MR. MITCHELL: Well, yeah, my
12 expertise is not as thorough in some ways as
13 Bill's, but I have a feel for the recycling
14 industry. So I'm willing to testify, sure.

15 HEARING OFFICER ANTONIOLLI: Sure.
16 Why don't we have you sworn in then?

17 (Witness sworn.)

18 HEARING OFFICER ANTONIOLLI: And why
19 don't you introduce yourself and mention who
20 you represent.

21 MR. MITCHELL: Sure. My name is Mike
22 Mitchell, I'm the executive director of the
23 Illinois Recycling Association. And Illinois
24 Recycling Association is a non-profit

1 organization. Basically, we were founded in
2 1980. In 2005, it will be our 25th
3 anniversary, promoting recycling in the state
4 of Illinois. And we are a broad-based
5 professional association for recyclers. Our
6 membership includes some people who deal in
7 construction material recycling. The
8 majority of our members are involved in
9 curbside programs, you know, both the
10 processors on the curb-end, as well as the
11 county officials, municipal officials who,
12 you know, provide the service and get those
13 green bins to your curb, and then also
14 coordinate with the operator of the material
15 recovery facilities that -- so we are a very
16 broad-based promotion of recycling.

17 And we submitted back in -- I
18 submitted and half of the Illinois Recycling
19 Association back on July 26th -- it's
20 actually a matter of your public record as PC
21 Document Number 1, a letter of support for
22 Falcon Waste and Recycling in terms of their
23 petition for an adjusted standard. I just
24 want to underscore that and to say that our

1 support is -- our support of that process is
2 very strong and we believe this is, indeed,
3 recycling, not waste handling. And that, in
4 fact, I know that in the statement of the
5 case, it mentions that they're applying for
6 an adjusted standard or as an alternative,
7 finding inapplicability. I think,
8 technically, a finding of inapplicability is
9 more proper just in the sense that this is,
10 with all due respect, more obviously a
11 recycling operation as Bill mentioned. And
12 Mr. Kim mentioned that, you know, with EPA
13 standards, recycling is very high in the
14 waste-handling hierarchy. And in terms of
15 recycler's terminology, we always say we have
16 our own hierarchy, we speak -- very
17 similarly, we speak of reduce, re-use,
18 recycle. And I see this -- Kathy's --
19 Falcon's proposal or process, you know, as
20 exactly that, you're reducing IKO's
21 wastestream, and it's being re-used by Falcon
22 or Jo'Lyn Corporation and is being marketed
23 as a commodity. So it's not waste, it is, in
24 fact, very clearly a commodity.

1 And in the letter that we wrote in
2 July cited the statutory -- the Illinois
3 statutory definition of recycling. This new
4 product made from recycled material is a
5 perfect example of the statutory definition
6 of recycling. Quote, any of -- any process
7 by which materials that would otherwise be
8 disposed of or discarded are collected,
9 separated or processed and returned to the
10 economic mainstream in the form of raw
11 materials or products.

12 So the questions that were going
13 on, what happens to the load if it is not
14 received -- if Falcon doesn't take it, it is
15 disposed of and landfilled. And you said,
16 unfortunately, that can be true of anything.
17 Being if an office building in the Loop
18 doesn't recycle, that paper is disposed of.
19 You know, if a resident in McHenry County
20 doesn't recycle, those cans and newspapers
21 are disposed of, yet the office paper,
22 newspaper and cans are unquestionably
23 recyclable commodities, but the absence of a
24 service provider and an end-market,

1 everything is waste.

2 You know, which we think is
3 really, you know, the genius of Falcon's
4 proposal here, and we think it's very
5 important for the IEPA and the Illinois
6 Pollution Control Board to approve the
7 development of this type of creative and
8 innovative market development that increases
9 the recycling industry's ability to serve as
10 a significant economic driver in Illinois.

11 Innovative processes such as
12 Falcon's should be embraced and applauded for
13 finding ways to keep otherwise hard to
14 recycle material out of landfills and into
15 the productive economy in an environmentally
16 friendly way.

17 So we are very much in favor of
18 these processes being encouraged in Illinois.
19 We think it's very important that a case like
20 this be determined in their favor to just
21 reduce the obstacles and promote creative
22 recycling in construction materials. And
23 nothing was mentioned about the fact that the
24 market itself has a major role to play. In

1 other words, AKO (sic) is facing -- either
2 Falcon Waste and Recycling will pay them \$5 a
3 ton for the commodity, or in absence of a
4 service provider, in an absence of a market,
5 they get stuck paying perhas up to \$40 a ton
6 at the landfill. So from the business'
7 interest, what would you rather do? Would
8 you rather get \$5 for a commodity or be put
9 in the unfortunate situation of throwing
10 something, otherwise that could be useful,
11 away in absence of a service provider and in
12 absence of a market, paying up to \$40 a ton
13 to dispose of it.

14 So that's where we feel very
15 strongly that this is a recycling process
16 because there is a clearly defined market for
17 the material. And I mentioned the example of
18 bottles, cans and papers that become waste,
19 if they are not recycled, but they're clearly
20 recognized as recyclable materials. Also
21 there's a -- for example, we have a lot of
22 members in the plastic lumber industry,
23 people that make decking and fencing and
24 stuff like that, and patio furniture out of

1 post-manufacturer pre-consumer scrap plastic.
2 None of our members -- I checked with a
3 couple of our members even today -- none of
4 our members in those industries are required
5 to have waste handling permits, even though
6 they handle pre-consumer post-manufacturer's
7 scrap from an industrial facility. That
8 industrial facility would otherwise dispose
9 or discard of the material, but fortunately
10 there is, you know, a service provider and an
11 end-market for the material, so it is not
12 waste, it is a recyclable commodity, and
13 those industries are not -- none of those
14 businesses have a waste-siting permits or
15 anything like that, it's clearly understood
16 that's a recycled commodity and that's --
17 outside of reading the chicken scratch that
18 passes for my notes, that might be it.

19 HEARING OFFICER ANTONIOLLI: Okay.
20 Well, thank you. Let's take a break right
21 now and you can go ahead and change your
22 paper. We're off the record.

23
24

1 (Whereupon, after a short
2 break was had, the following
3 proceedings were held
4 accordingly.)

5 HEARING OFFICER ANTONIOLLI: We're
6 back on the record and it's about 1:00
7 o'clock in the afternoon. We last ended
8 before the break with Mr. Mitchell providing
9 some testimony and at this point, does anyone
10 have questions for Mr. Mitchell or would
11 anyone else like to make a comment?

12 And seeing no hands, then I will
13 thank you all for your attendance here today
14 and your interests in this petition.

15 The Board will try to address all
16 of your questions, especially, for example,
17 the question Ms. Marsh had, in its final
18 opinion and order when it makes a
19 determination.

20 And we also discussed some dates
21 for post-hearing briefs off the record. So
22 on the record, I'd like to say that the
23 petitioners have until January 14th to file a
24 post-hearing brief and then the Agency has

1 until January 28th to file a response and
2 then any reply will be due by February 7th.

3 And, again, thank you all for
4 attending. I'd like to note also that based
5 on my legal experience and judgment and
6 observation, I find there are no credibility
7 issues with the witnesses that testified here
8 today and thank you both for your testimony.

9 And would the technical unit like
10 to add anything before we conclude?

11 MR. RAO: Yes, to thank all the
12 participants for being patient with us on
13 this proceeding.

14 HEARING OFFICER ANTONIOLLI: And we
15 thank McHenry College for their hospitality
16 and if there's nothing else, thank you, very
17 much, everyone, and have a safe trip home.
18 Happy holidays.

19 (Which were all the proceedings
20 had in the above-entitled cause
21 on this date.)

22
23
24

1 STATE OF ILLINOIS)

2) SS.

3 COUNTY OF WILL)

4

5

6 I, Tamara Manganiello, RPR, do hereby state
7 that I am a court reporter doing business in the
8 city of Chicago, County of Cook, and state of
9 Illinois; that I reported by means of machine
10 shorthand the proceedings held in the foregoing
11 cause, and that the foregoing is a true and correct
12 transcript of my shorthand notes so taken as
13 aforesaid.

14

15

TAMARA MANGANIELLO, RPR
License No. 084-004560

16

17

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19

20

21 SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D., 2005.

22

23

24 Notary Public