

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
UNDERGROUND STORAGE TANKS) R11-22
(35 ILL. ADM. CODE 731) AND) (Rulemaking-
PETROLEUM LEAKING UNDERGROUND) Land
STORAGE TANKS (35 ILL. ADM. CODE)
AND COMMERCIAL PRODUCTS: 732)
AND 734))

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STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer Tim
Fox, called by the Illinois Pollution Control
Board, taken by Steven Brickey, CSR, for the State
of Illinois, 100 West Randolph Street, Chicago,
Illinois, on the 16th day of June, 2011,
commencing at the hour of 1:00 p.m.

A P P E A R A N C E S

MR. TIM FOX, Hearing Officer
MR. THOMAS JOHNSON,
MS. CARRIE ZALEWSKI
MS. ANDREA MOORE
MS. ALISA LIU
MR. GARY BLANKENSHIP

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
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BY: MR. KYLE ROMINGER
MR. HERNANDO A. ALBARRACIN
MR. GARY P. KING

ALSO PRESENT: MR. VINCE E. SMITH
MS. CAROL ROWE
MR. KEVIN M. CORCORAN
MR. RUSS GOODIEL

REPORTED BY:

Steven J. Brickey, CSR
CSR License No. 084-004675

1 MR. FOX: Good afternoon to everyone
2 and welcome to this Illinois Pollution Control
3 Board hearing. My name is Tim Fox and I'm the
4 Hearing Officer for this rulemaking proceeding,
5 which is entitled In The Matter of Underground
6 Storage Tanks (35 Ill. Adm. Code 731) and
7 Petroleum Leaking Underground Storage Tanks (35
8 Ill. Adm. Code 732 and 734).

9 I want to note that also present
10 today with us at my immediate right is Board
11 Member Andrea Moore, who is the lead Board Member
12 assigned to this rulemaking. To her right is
13 Board Member Thomas E. Johnson and to his right is
14 Board Member Carrie Zalewski. At my far left is
15 Board Member Gary Blankenship and at my immediate
16 left is Alisa Liu of the Board's technical staff.

17 The Board docket number for this
18 rulemaking is R11-22. The IEPA filed this
19 rulemaking proposal on February 18th, 2011, and
20 the Board accepted it for hearing in an order on
21 March 17th, 2011. Today, we are holding, of
22 course, the second hearing in this proposal. The
23 first took place in Springfield on May 10th, 2011.

24 For this second hearing, the

1 Board received amended pre-filed testimony from
2 Mr. Vince Smith on behalf of the CW3M company that
3 was filed with the Board on June 1st of 2011. I
4 want also to note that the Board on June 2nd of
5 2011 filed post hearing comments which have also
6 been made part of the record in this proceeding.

7 I did place in front of the door
8 a sign-in sheet so that anyone who did not
9 pre-file testimony could indicate that they wished
10 to testify here today, but plainly no one has made
11 that indication and it appears we will be
12 addressing only the pre-filed testimony today of
13 Mr. Smith on behalf of CW3M.

14 In discussing the procedural
15 matter of the order of the hearing of the
16 participants, we will begin with Mr. Smith who
17 indicates that he does not have any introductory
18 remarks or summary to offer, but that he does have
19 a hearing exhibit that he would like to be moved
20 to be admitted into the record. We can begin with
21 that and then, Mr. Smith, turn to questions that
22 other participants including Board members and
23 staff may have for you on the basis of your
24 pre-filed testimony.

1 After that, the Board does have
2 some questions that it had submitted to the Agency
3 and asked it to prepare a response to and we can
4 turn to those fairly quickly I believe once we
5 have exhausted the questions for you, Mr. Smith.
6 I do want to note that the proceeding today is
7 governed by the Board's procedural rules and that
8 all information that is relevant and that is not
9 repetitious or privileged will be admitted into
10 the record.

11 I please ask you bear in mind
12 that any questions that are asked by the Board
13 members or the Board staff are designed solely to
14 complete the record and not to reflect any
15 prejudgment or predetermination of the issues. I
16 simply ask for the benefit of the court reporter
17 that if you speak loudly and clearly and avoid
18 talking at the same time as another person we will
19 then have a clearer record for everyone's benefit.

20 Any questions, first of all,
21 about our order of hearing or other procedural
22 issues? I don't see or hear any. Mr. Smith, why
23 don't we proceed with you. We could have the
24 court reporter swear you in first of all and then

1 move to questions.

2 WHEREUPON:

3 VINCE SMITH

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

6 MR. FOX: Very good, Mr. Smith. You
7 had indicated I believe that you did have a
8 document that you were wishing to admit into the
9 record, shall I construe that with a motion to
10 that effect?

11 MR. SMITH: Yes.

12 MR. FOX: Very good. Why don't I
13 first before we address that ask if you would
14 distribute that to the representatives of the
15 Agency and the Board members. It looks like you
16 have a good number of copies there.

17 MR. SMITH: Mm-hmm.

18 MR. FOX: Mr. Rominger, I know this
19 is new material. If you want to give me an
20 indication that you have had a chance to look this
21 over and move onto the motion to admit, we can do
22 that certainly.

23 MR. ROMINGER: Yeah, I'm not
24 objecting to it being admitted.

1 MR. FOX: Very good. Mr. Rominger
2 has indicated on behalf of the Agency that he has
3 no objection to admitting what Mr. Smith has named
4 Amended Testimony From CW3M Company, Incorporated
5 for the Illinois Pollution Control Board's First
6 Notice of Amendments to 35 Ill. Adm. Code 732 and
7 734.

8 Mr. Smith, we appreciate you
9 circulating that to the folks who are here. Does
10 anyone else wish to voice any objection to
11 admitting this into the record as Hearing Exhibit
12 No. 5? Neither seeing nor hearing any, Mr. Smith,
13 it will be so marked and admitted and if you'll
14 give me just a moment we can proceed to questions
15 based on both your June 1st testimony and the
16 hearing Exhibit No. 5 that you submitted to us
17 today.

18 (Document marked as Hearing
19 Exhibit No. 5 for
20 identification.)

21 MR. FOX: Mr. Rominger, would the
22 Agency like to begin with any questions at this
23 point?

24 MR. ROMINGER: I don't think we have

1 any questions, but in order to give us time to
2 look at it we may include some comments in post
3 hearing comments --

4 MR. FOX: Very good.

5 MR. ROMINGER: -- if that's
6 available.

7 MR. FOX: I'm sorry to speak over
8 you. We can certainly before we adjourn today
9 establish guidelines for pre-filing -- for filing
10 any post hearing comments so that we can deal with
11 that before we leave today certainly, but -- I'm
12 sorry.

13 Did you wish at this point to
14 proceed with any questions based on the June 1st
15 submission from CW3M or on the Hearing Exhibit No.
16 5 that you've just been provided?

17 MR. ROMINGER: No, we don't have any
18 questions on this.

19 MR. FOX: Very good. Mr. Smith, I
20 did have one question and forgive me if I'm not as
21 familiar with Exhibit No. 5 as I might be. During
22 the first hearing, there were a number of concerns
23 expressed about the initial reporting of the
24 release with regard to the Illinois Emergency

1 Management Agency, or IEMA, or to OSFM -- under
2 OSFM, Office of the State Fire Marshall, and I
3 think it's fair to say there was some concerns
4 those requirements might be cumbersome and might
5 add expenses.

6 The Agency did in its filing on
7 June 2nd, of course, propose further amendments of
8 the language at Section 734.210(a) and forgive me
9 if I didn't see this in quickly reviewing
10 Exhibit 5 that you just submitted. Do you have
11 any comments on the Agency's proposed additional
12 revisions to that language?

13 MR. SMITH: I believe in terms of
14 the 20 plus 7 change to come in alignment with the
15 state fire marshall regulations I don't believe we
16 have a problem with that. However, with the 45
17 plus 7, we would like to see -- remain at the 45
18 plus 14 simply because it just gives us that much
19 more time to collect all the documentation that is
20 necessary before the early action window closes in
21 terms of a reimbursable cost.

22 MR. FOX: I should have been more
23 specific, Mr. Smith. The language I was referring
24 to was the Subsection A1, the initial report that

1 was under the Agency's original proposal required
2 to follow the procedures that are established by
3 the OSFM.

4 MR. SMITH: We believe that could be
5 done within that timeframe.

6 MR. FOX: In terms of the very
7 initial -- the immediate report of the release,
8 which they have proposed is to be made only to
9 IEMA, for example, by telephone or electronic mail
10 as opposed to other local authorities or local
11 jurisdictions that had been discussed previously,
12 does that restriction of an immediate report to
13 IEMA help address some of the concerns that we
14 have heard expressed about the difficulties in
15 cost?

16 MR. SMITH: To some degree, I would
17 say yes, but not entirely.

18 MS. ROWE: Ms. Rowe, if we could, if
19 you don't object, we could have you sworn in and
20 you could offer a statement on that.

21 WHEREUPON:

22 CAROL ROWE

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

1 MR. FOX: Ms. Rowe, please go ahead
2 if you have a comment on this issue.

3 MS. ROWE: I think we're still going
4 to have to make all of those notifications no
5 matter -- we're going to have to follow the
6 immediate to IEMA regardless and then the fire
7 marshall's new regulations still require all this
8 reporting to the local jurisdictions. So that
9 didn't change I don't think, am I correct about
10 that?

11 MR. SMITH: That would be my read on
12 that.

13 MR. FOX: Thank you for that
14 clarification, Ms. Rowe. I appreciate that. And,
15 Mr. Smith, if I may pose one other question and,
16 again, forgive me if I didn't have an opportunity
17 to review what you submitted here today. The
18 Agency's comments on June 2nd proposed an
19 amendment to Section 734.632(d), as in David,
20 which addresses costs that may be eligible for
21 reimbursement at a site that has already been
22 issued an NFR letter and specifically the language
23 that they have proposed to add reads "Costs
24 eligible for payment under this Subsection D are

1 the costs to transport the soil to a properly
2 permitted disposal site and disposal site fees"
3 and there was some discussion near the end of the
4 hearing on May 10th about the various costs that
5 might be reimbursable and I wanted to see if from
6 the standpoint of CW3M, your company, whether that
7 addressed the concerns you heard expressed at the
8 first hearing?

9 MR. SMITH: It does to an extent
10 along with -- if you generate contaminated soil
11 and you need to dispose of it off site, it's not
12 as simple as loading it on a truck and taking it
13 the landfill because the landfill will not accept
14 that. There's preapprovals which could involve
15 testing and so forth to basically characterize the
16 waste, find out what it is, what it isn't, and to
17 get that improved and we feel those costs at a
18 minimum would need -- should be included in this,
19 in that section.

20 MS. LIU: Mr. Smith, is that what
21 you refer to on page two of Exhibit 5 where you
22 discuss other things like waste characterization,
23 sample analysis?

24 MR. SMITH: Landfill authorization.

1 MS. LIU: Manifests?

2 MR. SMITH: Yes. It's not
3 consulting fees, per se, but it's components that
4 could be seen as consulting fees.

5 MR. FOX: Very good. Thank you for
6 that clarification, Mr. Smith.

7 MS. LIU: Mr. Smith, would you like
8 to introduce the other gentleman you brought with
9 you today?

10 MR. SMITH: This is Kevin Corcoran.
11 He is a biologist with our firm.

12 MR. FOX: Mr. Rominger, Mr. King,
13 Mr. Albarracin, any questions for Mr. Smith or the
14 folks from CW3M today?

15 MR. ROMINGER: We don't have any
16 questions, but we could probably add some
17 clarification on the changes you were discussing.
18 I don't know if you want us to do that now.

19 MR. FOX: Very good. Why don't we
20 have the court reporter swear in perhaps in the
21 interest of efficiency both Mr. King and
22 Mr. Albarracin so that they may be able to clarify
23 the Agency's language in that June 2nd set of
24 comments.

1 WHEREUPON:

2 GARY KING AND HERNANDO ALBARRACIN
3 called as witnesses herein, having been first duly
4 sworn, deposeth and saith as follows:

5 MR. FOX: Mr. Rominger, would you
6 like to introduce a question to draw out the
7 clarification that you had referred to?

8 MR. ROMINGER: The first one was
9 regarding the question you just talked about as
10 far as disposing soil and the costs that we
11 thought were covered in the language that we
12 proposed.

13 MR. FOX: Referring specifically to
14 this Subsection 632(d), is that correct?

15 MR. ROMINGER: Very good. If
16 Mr. Albarracin or Mr. King would like to address
17 that, that would be great.

18 MR. ALBARRACIN: In our proposal, we
19 included language to cover the costs of not only
20 transporting the soil to the -- properly bringing
21 it to the disposal site, but also what we deem
22 disposal site fees. So rather than trying to
23 define what those are as it was done here in
24 Exhibit 5, that's what we mean. It was hard to

1 list what all those fees might be. Waste
2 characterization will fall under that landfill
3 authorization. Sampling, although we did not have
4 sampling, but sampling in order to dispose of the
5 soil that's what we meant by disposal site fees.
6 If we have to be more clear on that, I think we
7 can be. Perhaps we'll get to that.

8 MR. FOX: Very good. And,
9 Mr. Rominger, you had referred generally to post
10 hearing comments. It sounds like that might be an
11 avenue to address any more specific descriptions
12 and the kinds of costs that are under disposal
13 site fees?

14 MR. ROMINGER: Yes, it would be
15 helpful if they have certain costs that they have
16 in mind if we knew those so we could craft
17 language to take those into account.

18 MR. FOX: Very good. It appears to
19 me, Mr. Smith, you've listed a number of things in
20 Hearing Exhibit No. 5 and I'm certain that post
21 hearing if you were to collaborate with the Agency
22 I think I speak for Mr. Rominger in suggesting
23 that they be receptive to hearing that.

24 MR. ROMINGER: Sure.

1 MR. FOX: Ms. Rowe, I do see your
2 hand. I'm sorry if I've been overlooking you for
3 the moment.

4 MS. ROWE: That's fine. I think it
5 was the exclusion of this Section D under F of
6 consulting fees that kind of created that issue
7 that no consulting fees were included in that
8 part. So maybe somewhere between defining the
9 type of, you know, items that would be or maybe
10 addressing that in Section F where it says
11 consulting fees I'm not sure which section is the
12 best place to fix that.

13 MR. FOX: It sounds like, if I may
14 speak informally, your concern is what made
15 eligible conceivably were reimbursement in
16 Subsection D is pulled back from the possibility
17 of reimbursement in Subsection F?

18 MS. ROWE: Yes.

19 MR. FOX: Okay. And perhaps that,
20 again, is an issue that a post hearing comment on
21 that language can address.

22 MR. ROMINGER: I'm not sure what
23 changes they're thinking about for F.

24 MR. ALBARRACIN: In this section,

1 these are the so-called reopeners. A through C
2 the Agency deems these as additional corrective
3 action that need to be done at the site after the
4 no further remediation letter was issued.

5 Therefore, we would need plans and budgets and
6 what we normally deal with to review and approve.

7 D and E are not viewed -- the
8 Agency does not view these as additional
9 corrective action at the site. This is more of a,
10 as is defined in here, any type of construction
11 activity that takes place at the site after the no
12 further remediation letter was issued pursuant to
13 the new law or amendment to the act.

14 Therefore, we do want to limit
15 what costs are eligible for reimbursement and
16 that's why we voted this way. So our intention is
17 not to have consulting fees included as we know of
18 and this is not deemed corrective action as
19 defined in the act. This is just, for example, a
20 pipe needs to be installed, a new sewer pipe, some
21 soil needs to be taken out, it cannot be put back
22 in the hole, it has to go to the landfill so we're
23 looking at strictly that.

24 This is not to -- if more

1 digging is done besides what is needed for that
2 pipe, that is not what we intend to do, what was
3 intended with D and E.

4 So, therefore, direct consulting
5 fees as we know them, as we have them in our
6 program, are not intended to be eligible under
7 these two subsections, but it will help to know as
8 they define it here in page two what costs they
9 have in mind to further define what we call
10 basically disposal site fees.

11 MR. FOX: And those disposal site
12 fees as opposed to kind of the consulting fees in
13 the Agency's view that stem from true corrective
14 action?

15 MR. ALBARRACIN: Correct.

16 MR. FOX: Did you have any follow
17 up, Ms. Rowe?

18 MS. ROWE: I was just trying to
19 think of another way to call it because it is
20 consulting fees. An engineer getting land fill
21 authorization is a consulting fee. It's just done
22 under a -- I understand what you're saying,
23 Hernando. It's not true corrective action. We're
24 not out here doing a planned excavation or site

1 investigation, but they're still consulting fees,
2 but done under a different format.

3 MR. ALBARRACIN: I would add that
4 under A, B and C after corrective action,
5 additional corrective action was done, the Agency
6 will issue a new no further remediation letter
7 more than likely. Under D and E, there is no
8 reentry to get a new no further remediation
9 letter. It's just a small piece of work that
10 needs to be done, construction activity, some
11 disposal needs to take place whether it's soil
12 and/or groundwater and we'll pay for certain costs
13 and that's the end of the project. There's no --
14 I wouldn't call it a reopener because to me a
15 reopener means coming back into the room, getting
16 a new NFR letter as opposed to this work where
17 it's just related to construction activities at
18 the site.

19 MS. ROWE: Question.

20 MR. FOX: Ms. Rowe, please go ahead.

21 MS. ROWE: Hernando, we would be
22 submitting a reimbursement claim for those costs.
23 Do you foresee the need of a budget for those or
24 do you submit that after the fact?

1 MR. ALBARRACIN: We foresee the
2 reimbursement claim coming after the fact. We
3 don't foresee reviewing a plan or a budget before
4 this activity. Again, this is not corrective
5 action as we know it. Therefore, we would expect
6 to see a claim at the end of the project and, in
7 fact, we're considering simplifying that process
8 so that the reimbursement claim would not be the
9 typical reimbursement claim that we've seen for
10 corrective action work, but we'd have all this
11 documentation and forms to fill out. We're
12 looking at considering simplifying that so that
13 the work is minimal really involved regarding
14 reimbursement.

15 MR. FOX: And, if I may clarify
16 please, Ms. Rowe, correct me if I'm mistaken or,
17 Mr. Albarracin, of course, the disposal of soil,
18 the disposal of water under D and E would not
19 require approval of any kind of plan or budget and
20 would simply be reimbursed on the submission of a
21 request for payment?

22 MR. ALBARRACIN: Correct.

23 MR. FOX: And that assuming the
24 application was granted in full that site under

1 Subsection D or E would rest on the previously
2 existing NFR letter the Agency would not intend to
3 reissue a revised NFR letter in the general case
4 as addressed by those two subsections?

5 MR. ALBARRACIN: That's correct.

6 MR. FOX: Very good. Mr. Rominger,
7 I think we were at the point where you were
8 eliciting some comments on behalf of the Agency's
9 staff on the June 2nd comments you had submitted
10 and if you wish to continue in that frame, go
11 ahead.

12 MR. ROMINGER: We just had the
13 clarification on the disposal site fees. I don't
14 think we had anything beyond that right now.

15 MR. FOX: Very good.

16 MS. LIU: Just to further clarify.
17 When you envision reimbursement of these disposal
18 site fees, are you considering the cost of the lab
19 samples, the cost of the manifest forms, not the
20 cost of someone actually putting those together,
21 the consulting word that you were using that you
22 wanted to define another word for, is that what
23 you're envisioning for the cost?

24 MR. ALBARRACIN: Yes.

1 MS. LIU: And then the owner would
2 be responsible for the person to actually do that
3 work, right?

4 MR. ALBARRACIN: Yes. This type of
5 work, you know, if some digging needs to be done
6 in order to install a new pipe of some sort and
7 some soil cannot go back into the original
8 excavation, then the soil needs to go somewhere
9 else and that's a given. That's going to happen
10 no matter what. Then, somebody will be there to
11 supervise this work whether it's a contractor that
12 was doing the work and so that's why we limited D
13 and E to disposal and now we're further clarifying
14 what else will be eligible for payment. Just the
15 disposal of that soil transportation as you said,
16 waste characterization, lab analysis, those kinds
17 of costs to complete this from shall we say cradle
18 to grave activities from the site to the landfill.

19 MS. ROWE: Now, I'm confused again.
20 Did we just take a step back because I thought we
21 said that the small amount of what we typically
22 call consulting fees somebody getting the landfill
23 authorization, someone collecting the samples,
24 those people, professionals or whatever, doing

1 that minimal type work was included in the
2 disposal site fees, is that --

3 MR. FOX: Maybe the word -- the word
4 I haven't heard is personnel. That's my sense,
5 Mr. Albarracin, and correct me if I'm wrong, is
6 that the actual fees and expenses of a waste
7 characterization or a sample analysis would be
8 reimbursable under the Agency's position, but the
9 personnel expenses on an hourly basis perhaps to
10 be more concrete would not be reimbursable, is
11 that reflecting the Agency's position more
12 precisely perhaps?

13 MR. ALBARRACIN: Yes, it is. And I
14 want to emphasize that this work, this type of
15 work, they would be doing this type of work anyway
16 if they were replacing a pipe, for example, moving
17 dirt around, that kind of thing. We're stepping
18 in because we're looking at a very narrow
19 circumstance here where an NFR letter was issued
20 pursuant to the new law where commercial
21 objectives were used or a ground restriction was
22 used and, therefore, you need to dispose the
23 contaminated soil or groundwater. So that's why
24 we're narrowing it down to that particular case,

1 that particular circumstance. And, again, it's
2 not a reopener to conduct additional corrective
3 action and so forth.

4 MR. FOX: Ms. Rowe, you had a
5 follow-up question, I believe?

6 MS. ROWE: Hernando, I appreciate
7 what you're saying as someone is going to be there
8 excavating, doing that work anyway, but someone in
9 that crew will not be collecting waste
10 characterization samples, doing landfill
11 authorization, had they not had to do this if we
12 left the contamination in place because of
13 engineer barriers or whatever type of restrictions
14 so the personnel involved to do that are a
15 necessary component of disposing of that soil. I
16 mean, it doesn't take a lot, but it does take
17 someone to get the job done, to get the paperwork,
18 get the samples, to make sure it gets there,
19 someone to put the application for payment back to
20 the Agency, there are some minor tasks.

21 We don't need two people
22 overseeing it. We don't need all those things
23 because that's already in place. People are
24 already digging it, but I thought I heard at the

1 start that small amount of personnel not defined
2 under the old type of corrective action was
3 included in the disposal site fees. So I don't
4 know. Kind of like we went around in a big circle
5 on it.

6 MR. SMITH: I think our position on
7 when they specifically took out the word
8 consulting that took it out entirely. Now, we're
9 hearing there's some pieces of that that are back
10 in play and obviously I think regardless we need
11 to clarify it in some manner. It's just what is
12 back in now.

13 MR. ALBARRACIN: What the Agency
14 envisions in this type of work is that this type
15 of work happens I would say on a regular basis
16 without our involvement.

17 MR. FOX: Without your involvement?

18 MR. ALBARRACIN: Without our
19 involvement. There are people moving dirt where
20 they find contamination while they're installing a
21 new utility. We might not hear about it. We get
22 calls like that sometime. Can we put this back
23 into the hole, this contaminated soil? Sure, you
24 can. Whatever you can't put back needs to be

1 taken somewhere else.

2 So the Agency doesn't see the
3 involvement of a consultant every time this type
4 of work is done. Whoever is doing it takes care
5 of whatever needs to be done. They make a call to
6 the Agency and say what do you think about this
7 and there's no involvement as far as the LUST
8 program or the voluntary cleanup program. What
9 I'm thinking is maybe we need to see -- maybe they
10 can propose some type of what do they envision as
11 far as what would be needed in terms of hours.
12 Maybe we can include some time, some amount of
13 hours for type of work that needs to be done
14 whether it's preparing the application for payment
15 which, again, I said we envision that being
16 simplified or the collection of a sample in order
17 to characterize the soil before it goes to the
18 landfill or other than that the way we envision
19 this is this work is done regularly, I think,
20 without our involvement and we don't see or we
21 didn't envision an environmental consultant being
22 brought in necessarily doing those times. That's
23 all. That's our understanding.

24 MR. FOX: Ms. Rowe, why don't we

1 wrap up this issue with you if you have one last
2 thing you'd like to say.

3 MS. ROWE: Well, I think with the
4 statutory changes last year, and we're leaving
5 higher levels of contamination, we've gone to
6 industrial/commercial. We're using the
7 groundwater ordinance, water use restrictions. So
8 a lot of these sites were potentially leaving a
9 lot more in the ground. So -- and the thing was,
10 okay, we're going to have a back in program to
11 address this stuff. So it potentially could
12 increase the amount of things that come back to
13 you guys where you didn't see it before because
14 there was no come back to you guys before.

15 MR. ALBARRACIN: What I'm going to
16 say is I'm speculating. It's hard to tell how
17 many reopeners we're going to see and by that I
18 mean, A, B or C. Regarding D and E, I envision
19 even fewer of those than A, B or C because we're
20 talking about a very narrow activity where
21 somebody needs to put in a new line or the sign at
22 the site needs to be -- they're going to put a new
23 sign and the amount of soil, for example, that
24 needs to be removed related to this, we don't see

1 that as a large amount of soil compared to what we
2 see at a normal cleanup where you might see a
3 hundred cubic yards, hundreds of cubic yards. We
4 see this more in terms of just a few cubic yards
5 that need to be taken to the landfill, for
6 example.

7 MR. FOX: Both CW3M and the Agency
8 have expressed their positions, their views, on
9 those costs that may be eligible under Subsection
10 D and Subsection E and, at this point, perhaps, it
11 might be most profitable to let you and any other
12 participant address that in the post hearing
13 comment and as I suggested before we'll establish
14 an agreeable deadline for any further statements
15 or any further arguments about that issue.

16 Mr. Rominger, we were, again, I
17 think you had indicated that you had illicited the
18 comments you had wanted to from Mr. Albarracin and
19 Mr. King, is that correct at this point?

20 MR. ROMINGER: I think that's all we
21 have.

22 MR. FOX: Very good. Thanks very
23 much. Mr. Smith, we kind of launched away from
24 your statement into some clarifications. So we've

1 turned away from you, but I do want to come back
2 to your pre-filed testimony from June 1st at the
3 Hearing Exhibit 5 you submitted today. Was
4 there -- and to see only if there was anyone else
5 either those of us that are here today up front
6 with the Agency or otherwise. Are there any more
7 questions for Mr. Smith on the basis of his
8 filings on behalf of CW3M? I am not seeing nor
9 hearing any indication, but, Mr. Smith, I'm sure
10 you'll be present here until the end and won't
11 object if we ask you for any answers or
12 clarifications. So thank you for your submission.

13 MR. SMITH: Sure.

14 MR. FOX: Mr. Rominger, I know the
15 Board and the staff have a small number of
16 questions for you. Why don't we if it's
17 acceptable to the Agency turn to those now as our
18 next order of business.

19 MR. ROMINGER: That will be fine.

20 MS. LIU: Good afternoon. I'm going
21 to be reading from the Hearing Officer questions
22 that were issued on June 13th. They're Guide
23 734.855, the section on bidding.

24 During the first hearing on

1 Tuesday, May 11th, 2011, Mr. Russ Goodiel of Chase
2 Environmental expressed concern that proposed
3 bidding process does not contain provisions
4 similar to those used by Central Management
5 Services for prequalification or bonding of
6 bidders or for change orders if there was
7 something that was not expected in a project.

8 Mr. Hernando Albarracin, I
9 apologize, of the Illinois EPA proposed that the
10 proposed Section 35 Ill. Adm. Code 734.8559(d)
11 list factors that would be considered to determine
12 if a bidder is, quote, responsible. You stated
13 that the Agency would examine other factors that
14 participants wished to propose. However, you did
15 not specifically address the prospect of change
16 orders that Mr. Goodiel had mentioned.

17 Question A, does the Agency or
18 any other party intend to propose
19 prequalification, certification or bonding
20 requirements for contractors that would be similar
21 to CMS requirements?

22 MR. ROMINGER: We didn't have
23 anything that we planned to submit, but after
24 discussions we have some explanations I think to

1 further explain the questions in B and C, but if
2 the Board thinks some clarifying information would
3 help or clarifying in the rules would help we'll
4 submit those in post hearing comments.

5 MS. LIU: Do I need to read
6 questions B and C?

7 MR. ROMINGER: No, we know what the
8 questions are. We can discuss those questions.

9 MR. FOX: Mr. Albarracin, if you are
10 prepared to address those, including the related
11 questions B and C on requirements of that nature,
12 please go ahead.

13 MR. ALBARRACIN: The
14 prequalification of bidders is something that is
15 optional. This is in the Code Title 44 government
16 contracts, procurement and property management
17 where we obtain what we proposed in the law and
18 the legislation regarding bidding so the
19 prequalification is something that will be
20 optional and it's limited to what is defined as a
21 responsible bidder whether the vendor in this case
22 as it says here a vendor has been -- is likely to
23 be responsible. So it's limited to this
24 responsible bidder part. They may be limited to

1 that particular definition of responsible bidder.

2 We're prepared to explain once a
3 maximum payment amount is determined via bidding,
4 then a change order -- this can be handled through
5 our current plan amendment, budget amendment
6 process. So when someone needs to do additional
7 work, something that was not expected of this
8 site, currently that's handled under an amended
9 plan or an amended budget.

10 In this case, the maximum
11 payment amount was determined via bidding meaning
12 a higher rate was approved and the Agency approved
13 that amount. If additional work needs to be done
14 related to that task, we would honor and
15 approve -- continue to approve that higher rate
16 for that particular task. So through a budget
17 amendment or a plan amendment, we would review
18 what needs to be done. So, for example, if the
19 original plan had 400 cubic yards needed to be
20 excavated and something unforeseen happens and
21 they need to excavate another 200 yards, we would
22 need to see a plan amendment and a budget and if
23 the maximum payment amount for this work was
24 approved at a higher rate via bidding, we will

1 still honor that same rate for the amendment. We
2 wouldn't have to go through the bidding process
3 again.

4 Now, if there's a gap in time
5 here where the additional work that needs to be
6 done -- let's just say three years and now this
7 rate that was approved previously via bidding is
8 no longer applicable or the consultant says we
9 can't find anybody to do it for that rate, then it
10 will have to be rebid. So the whole process
11 we'll go through that again and that's how we
12 envisioned this.

13 So, again, change orders will be
14 handled through our current amendment process and
15 we will honor whatever was approved via bidding.
16 We will honor those rates for that particular
17 additional work assuming that those rates are
18 still good in the marketplace.

19 MR. ROMINGER: While we're on that,
20 just a clarifying question. That's what has been
21 the Agency's practice in the past, right?

22 MR. ALBARRACIN: That is correct.
23 That is the procuring practice. It doesn't come
24 up very often. Bidding has been in place in our

1 rules since 2006. But that has been our position
2 when somebody has called and said "I need to do
3 some additional work. Will you honor that
4 previous rate that was approved via bidding," for
5 example, for drilling. We have approved higher
6 rates for drilling in bedrock. So they go on and
7 do the work. They find out they have to do more
8 drilling, more borings, more wells in bedrock.
9 People have called in and said "Will you honor
10 that higher rate?" For example, \$30 a foot. Yes,
11 we will honor that rate, submit your amendment,
12 justify why you need more wells, and we will
13 review it.

14 That's been our position. It
15 doesn't come up very often, but that has been our
16 position since bidding came into --

17 MR. FOX: Generally, the existing
18 plan and budget amendment process is, in the
19 Agency's position, able to address both a wider
20 scope of a project or a higher cost that might
21 result from the passage of time.

22 MR. ALBARRACIN: Correct.

23 MR. FOX: Mr. Goodiel, I hate to put
24 you on the spot.

1 MR. ROMINGER: I'm sorry. We
2 haven't covered A and B. Prequalification and
3 bonding questions.

4 MR. FOX: Mr. Albarracin had some
5 additional comment on that.

6 MR. ALBARRACIN: Yes, I do. We're
7 prepared to propose additional language where the
8 invitation for bids may include contract terms and
9 conditions limited to -- included, but not limited
10 to warranty and bonding or other security
11 requirements and also qualification requirements
12 that include factors such as how to determine
13 whether the bidder is responsible pursuant to
14 Subsection D of 734.855.

15 So while we don't have any
16 recurring current language in our proposal right
17 now, we're prepared to add a clarification as to
18 what an invitation for bid may include in order to
19 address this prequalification issue.

20 MR. ROMINGER: Just for
21 clarification. Following the Board's question
22 that they had, the Agency believes that its
23 existing language would allow the proposal to
24 include requirements for bonding or requirements

1 for qualifications of the people they're seeking
2 that it's from. We think that language would
3 allow that to be included in the bidding package.

4 MR. ALBARRACIN: That's correct.

5 MR. FOX: Included by an owner or
6 operator in his or her own bidding package?

7 MR. ALBARRACIN: Yes.

8 MR. FOX: Very good. Mr. Goodiel, I
9 began to put you on the spot and I'm sorry to do
10 that again. It was, of course, as Ms. Liu
11 referred to some of the testimony in questions at
12 the first hearing she was referring to some of
13 your questions or comments on the issue of
14 prequalification and change orders.

15 You've obviously been present as
16 Mr. Albarracin was speaking about that. I just
17 want to give you an opportunity if you wish to
18 pose any questions specifically on that.

19 MR. GOODIEL: The change orders -- I
20 don't know if it's a question. I mean, I know I
21 do a lot of work in Illinois and --

22 MR. FOX: If you want to ask a
23 question, that would be great. If you are going
24 to offer something in the nature of testimony or a

1 statement, we would probably want to swear you in
2 so you can do that.

3 MR. GOODIEL: I guess we can do
4 either way.

5 MR. FOX: Why don't we swear you in
6 and that way we can give you a little more
7 latitude, Mr. Goodiel.

8 WHEREUPON:

9 RUSS GOODIEL

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

12 MR. FOX: And, Mr. Goodiel, you're a
13 little further away from us. We may need a little
14 more volume if you can.

15 MR. GOODIEL: My issue is the Agency
16 they bring up the prospect of budget amendments.
17 I know we have submitted several budget amendments
18 only to be denied every time with what I consider
19 to be substantial backup and reasoning for those
20 budget amendments. So even though they have that
21 language in there, I've not found it to be a
22 reasonable method of getting an issue resolved
23 and, you know, coming in -- we're looking at some
24 projects in Kankakee and I don't know if we can do

1 those projects and I may just walk away from them
2 and let somebody else have them, but this bidding
3 process would maybe be an opportunity, but for me
4 to put a bid in Kankakee, I'm from Centralia, and
5 then be bound to use someone that submits the
6 lowest bid and the -- and I guess the expense of
7 prequalifying them and getting to the point where
8 I'm sure that work is going to be done
9 satisfactory for us as well as the client and then
10 make the EPA happy is the issue that I've got, I
11 guess, and I don't know what -- I'll be honest.

12 I don't know what the solution
13 is, but I just don't like the idea of having to
14 accept a low bidder without some prequalification
15 process and if we as consultants and/or our
16 owners/operators are required to precertify those
17 or qualify those bidders, then that presents a
18 whole another issue with expenses and background
19 checks -- quote, background checks, to determine
20 if they've done this type of work before.

21 So, I mean, I appreciate that
22 the Agency is looking at the prequalification
23 issues and bonds and that type of thing, but I
24 just don't know if that would resolve the issue.

1 MR. FOX: Mr. Albarracin, you had
2 referred to some language that you would be
3 considering. Is the proposed language that you
4 had in mind relating to the kind of issues or
5 subject that Mr. Goodiel had just raised or
6 addressed?

7 MR. ALBARRACIN: Not exactly. The
8 proposed language is more about defining or
9 allowing bid invitations to include
10 prequalification requirements, but the Agency is
11 not going to get involved in prequalifying
12 consultants or contractors. We have never done
13 that and we don't envision doing that.

14 So it's more about allowing
15 this -- these requirements to be included in a bid
16 invitation. You know, consultants work with these
17 people on a regular basis. They're more familiar
18 with what these people do as opposed to the Agency
19 trying to figure this out and trying to prequalify
20 ahead of time.

21 So it's more about allowing
22 invitation for bids to include the so-called
23 prequalification requirements.

24 MR. FOX: At the discretion of the

1 owner or operator, it sounds like you're saying?

2 MR. ALBARRACIN: That's correct.

3 MR. FOX: Thank you. Mr. Goodiel,
4 would you have any follow up?

5 MR. GOODIEL: I guess my question is
6 if the Agency were more receptive to looking at
7 budget amendment requests and approving it with
8 substantial documentation, then the bidding
9 process would not even be as necessary as it may
10 be. You know, whether or not you're using a
11 qualified contractor or not it's work we do every
12 day. We know how to get it done. Down south, if
13 your landfill is two hours away, you're losing
14 somewhere else to get it done and we've submitted
15 budget amendments stating that fact and every time
16 we've, since the initial rulemaking, it's been
17 denied.

18 So that's why looking at the
19 bidding that was another option, but then we get
20 into the bidding process and there's some numerous
21 unknowns associated with the bidding process.

22 If the budget amendment process
23 was there and a viable alternative, then the
24 bidding process wouldn't be as necessary and be as

1 much of a concern.

2 MR. FOX: Very good. Ms. Rowe, you
3 had a question. I'm sorry to overlook you.

4 MS. ROWE: No. I think it was just
5 a clarification from Hernando and Kyle that the
6 language there proposed would maybe be a little
7 stronger that the contractor or owner/operator has
8 the ability to prequalify, certify and require
9 bonds of these subcontractors or bid winners or
10 whoever they run into bidders that they're going
11 to pick up so you're not shooting in the dark and
12 those costs to conduct and do that work are
13 eligible expenses to do the bidding process.

14 MR. FOX: Did you want to phrase
15 that as a question to the Agency?

16 MS. ROWE: A --

17 MR. FOX: That may be a fair bit of
18 rephrasing.

19 MS. ROWE: Part of it was the last
20 one where we discussed consulting fees associated
21 with the bidding are eligible and maybe asking
22 Hernando to clarify from the questions today that
23 the owner/operator or the contractor does have the
24 ability or will have to prequalify, certify and

1 require bonding of the bidders.

2 MR. ALBARRACIN: The language that
3 we would propose, if necessary, would go in the
4 current proposal which would be under 734.855(a)1
5 where it specifies what is involved in the bidding
6 and it begins by saying the owner/operator must
7 issue invitations and so on and so forth.

8 So it is already -- it will be a
9 requirement whatever needs to be put into the bid
10 in order to prequalify someone who will be
11 responsible, whether it's bonding, any experience
12 doing this work, that will be something that can
13 be done by the owner/operator. You will be free
14 to do that, to put whatever requirements need to
15 be done to be included in this invitation for bid
16 in order to get a qualified, responsible bidder
17 and at the same time I would say done in a way
18 that will not exclude certain people.

19 So it needs to be fair. That's
20 what I want to say. But the owner/operator would
21 be free to include whatever terms are necessary in
22 order to hire or in order to get a qualified,
23 responsible bidder.

24 MR. FOX: And I had understood you

1 to suggest that the Agency may, post hearing,
2 offer specific language that reflected that that
3 would be made part of the record through a
4 comment?

5 MR. ALBARRACIN: That's correct.

6 MR. FOX: Very good.

7 MR. ALBARRACIN: And I also want to
8 address the cost issues in whatever costs are
9 associated with the preparation of this invitation
10 for bid will be eligible for payment. I stated
11 that at the last hearing and I'll state it again.
12 So they will be eligible for payment.

13 MR. FOX: Any follow up, Ms. Rowe?

14 MS. ROWE: No, that was my
15 clarification.

16 MR. FOX: Very good. Thanks.

17 Mr. Goodiel, anything further from you?

18 MR. GOODIEL: No.

19 MR. FOX: Very good. Mr. Rominger,
20 I had one question that addresses Section 734.630
21 and the Agency's June 2nd filing the Agency had
22 proposed the addition -- the addition to
23 Subsection DDD of the Board note regarding the
24 reimbursability of certain costs and my question

1 simply was this and whether Mr. King perhaps or
2 Mr. Albarracin would like to address that that
3 would be fine. I think it's fair generally to say
4 that a Board note consists of a cross reference,
5 an explanation or what lawyers might refer to as a
6 practice pointer rather than substantive language
7 and my question which certainly would be addressed
8 in the post hearing comments is whether instead of
9 the Board note that might be more suitable as
10 however language at the end of the Subsection DDD
11 and there are a couple of other subsections of
12 Part 630 that have similar language that state
13 that certain costs will be ineligible with an
14 explicit exception and, if I may, ask you to
15 consider the possibility for reasons of
16 enforceability and clarity that it might be drawn
17 out of the Board note into the actual language of
18 the subsection I request that you consider that
19 possibility, please.

20 MR. ROMINGER: Sure. We'll look
21 into that.

22 MR. FOX: Great. Thank you very
23 much. I'm going to recognize Board Member Moore.
24 I'm sorry. For the gentlemen at the Agency, I

1 know she has a couple of questions she wished to
2 ask.

3 MS. MOORE: I may need you to help
4 me work my way through the process. It's a
5 hypothetical question and it relates to a site
6 that has received an NFR letter based on the
7 remediation to industrial/commercial objectives
8 and sometime later this site undergoes corrective
9 action to achieve residential objectives because
10 it is going to be developed into residential
11 property.

12 Based on your revised first
13 paragraph of Section 34.632, am I correct that you
14 would receive an approval plan and budget for that
15 corrective action of that nature?

16 MR. ALBARRACIN: Yes.

17 MS. MOORE: Assuming that corrective
18 action follows that plan and budget, would you
19 then issue a new NFR later?

20 MR. ALBARRACIN: That's correct.

21 MS. MOORE: After issuance of that
22 new NFR letter, how long does an owner/operator
23 have to submit an application for payment from the
24 UST firm?

1 MR. ALBARRACIN: One year from
2 issuance of the NFR letter.

3 MS. MOORE: Do UST regulations
4 require any preliminary review by the Agency to
5 determine whether the application is complete?

6 MR. KING: The reimbursement
7 application?

8 MS. MOORE: (Affirmative nod.)

9 MR. ALBARRACIN: It would be as we
10 currently do it. Part of the review includes
11 completeness in whether all the documents are
12 there. So it allows for that, yes.

13 MS. MOORE: And is there any
14 deadline to perform that review for completeness?

15 MR. ALBARRACIN: As part of our
16 standard review, we have 120 days to review this
17 application completeness and the whole package and
18 issue a decision within 120 days. Currently, we
19 issue decisions within 30 days. Turning this
20 around fairly quickly.

21 MS. MOORE: Is that a policy or is
22 that in the statute?

23 MR. ALBARRACIN: The 120 days?

24 MS. MOORE: Yes.

1 MR. ALBARRACIN: It's in the
2 statute.

3 MR. FOX: Do you by any chance have
4 a citation to that comitted to memory?

5 MR. ROMINGER: I don't know if we
6 have a copy of the act. Do you have a copy of the
7 act?

8 MS. MOORE: It just so happens.

9 MR. FOX: Mr. Rominger, I'm sorry.
10 I don't have a complete subpart, only part of the
11 Agency's proposal, but if there's a regulatory
12 provision that addresses that deadline -- I'm
13 speaking for Member Moore.

14 MR. ALBARRACIN: It's 57.8(a)1.

15 MS. MOORE: Just to follow up.
16 Thank you for that reference. It's not possible
17 then from the NFR letter and the year where the
18 application goes in, the Agency can come back at
19 ten months and say "I'm sorry. Your application
20 is not complete"?

21 MR. ALBARRACIN: That's correct. We
22 have 120 days to review it. If it's not reviewed
23 within 120 days, it's actually approved by
24 operation of law. So we have to act on it.

1 MS. MOORE: Thank you. One other
2 thing that we didn't find that was at the last
3 hearing I want to ask you about an owner/operator
4 who has received estimates and determined that a
5 job cannot be done at or below the Subpart H
6 reimbursement rate. They go to bidding and let's
7 assume they follow those procedures correctly. If
8 the lowest responsible bid happens to fall below
9 those Subpart H reimbursements, has the Agency
10 considered whether it would reimburse the cost of
11 obtaining that bid?

12 MR. ALBARRACIN: Yes, we would. We
13 would reimburse those costs.

14 MS. MOORE: So the estimates came in
15 thinking it would be one way, but it actually came
16 in under you would still reimburse the bidding
17 costs?

18 MR. ALBARRACIN: Yes.

19 MS. MOORE: Okay. Thank you.

20 MR. ALBARRACIN: And they would be
21 required to use that winning bid. If they don't
22 use the winning bid, then we would not reimburse
23 the bidding costs, if they want to go with the
24 Subpart H, maximum payment amounts.

1 MS. MOORE: Okay. Thank you.

2 MR. FOX: Mr. Rominger, that wraps
3 up the issues that I believe Member Moore and the
4 other Board members wanted to raise and you've
5 certainly addressed the question I had brought up
6 and I appreciate your willingness to look into the
7 issue of those Board notes.

8 Why don't we do this. Why don't
9 we return to Mr. Smith for you since we haven't
10 yet adjourned. Were there any questions that
11 anyone wished to direct to Mr. Smith on the basis
12 of his testimony or comments here today?
13 Mr. Smith, you appear to be off the hook, which
14 I'm sure doesn't disappoint you.

15 And, Mr. Rominger -- thank you
16 for your testimony and while I'm thinking of it I
17 can make certain that we direct you to our clerk's
18 office so this can be formally filed into the
19 Board's record of this docket. Ms. Rowe, I do see
20 an indication that you have a question, though.

21 MS. ROWE: We had just given this to
22 the Agency so they haven't had time, but I would
23 like to thank them for trying to work on some
24 language on 734.360. We made some comments on

1 that on our testimony that we brought with us
2 today and one of the things that we were asking
3 for was for this not to be just done on a site by
4 site basis as something that could be -- it's
5 there and, again, this is kind of at the whim of a
6 project manager. We had this site that got stuck
7 and we discussed this at the last hearing to
8 address those kinds of sites.

9 So if they could think about
10 that for the next time we meet, I'd appreciate
11 that, but I do like that they made a really good
12 attempt at this and we had a couple of minor
13 thoughts on it. So we handed those out today.

14 MR. FOX: Certainly, the Agency's
15 proposed revision is in the Board's record and
16 with Mr. Smith's supply of these copies the
17 position of CW3M as well. So, in addition, the
18 opportunity for post hearing comments will come up
19 in our proceeding in just a minute and we could
20 solicit any further kind of comments or propose
21 language that any of the participants may want to
22 offer, but I'm sure they appreciate your credit,
23 Ms. Rowe. Thank you.

24 Were there any further questions

1 of the Agency. Mr. Rominger, I appreciate you
2 making available Mr. King and Mr. Albarracin
3 today. I do see Mr. Goodiel he'd like to pose
4 something.

5 MR. GOODIEL: Hernando, I do have
6 one question and it goes back to the UST
7 abandonment and with the proposal it's understood
8 and the abandonment is going to go to T&M. That's
9 great. I really appreciate that.

10 MR. FOX: Mr. Goodiel, if I may
11 clarify, T and M refers to time and material?

12 MR. GOODIEL: Time and material.

13 MR. FOX: Thanks for letting me
14 interrupt you.

15 MR. GOODIEL: Going back to the
16 abandoned UST, you're required to do soil borings
17 in addition to doing that. And my question is is
18 it the borings associated with UST you have to do
19 it for fire marshall then as well, but for the
20 Agency are those costs reimbursable as early
21 action costs if you go in and do the -- stage one
22 is not required to be approved prior to. So if we
23 go in and do soil borings around an abandoned UST,
24 doing the abandonment, do the soil borings, are

1 those costs eligible for reimbursement outside a
2 plan and budget?

3 MR. ALBARRACIN: Assuming that a
4 release has been called in?

5 MR. GOODIEL: Yes.

6 MR. ALBARRACIN: Then, yes, they're
7 reimbursable under the early action activity
8 provision as long as you follow 734.210(h)
9 whatever that section is, that subsection that
10 talks about sampling when the tank is not removed
11 or when the tank is in place.

12 MR. GOODIEL: Correct. I've just
13 got a particular site where those costs were
14 refused and I just wanted to, again, just clarify
15 that and we can talk about that later on. Thank
16 you.

17 MR. FOX: Any other follow ups,
18 Mr. Goodiel?

19 MR. GOODIEL: Nothing.

20 MR. FOX: That takes care of it.
21 Great. Mr. Rominger, again, thank you for the
22 availability of your witnesses, Mr. King and
23 Mr. Albarracin. Does that wrap up the questions
24 that those of you present today had? Why don't we

1 go off the record briefly and we can take up a
2 quick procedural issue or two.

3 (Whereupon, a discussion was had
4 off the record.)

5 MR. FOX: We went off the record
6 briefly to address a procedural issue and coming
7 back on the record I want quickly to address the
8 issue of an economic impact study.

9 Section 27(b) of the
10 Environmental Protection Act has required -- does
11 require that the Board request that the Department
12 of Commerce and Economic Opportunity, or DCEO,
13 conduct an economic impact study of proposed
14 rules. The Board then must make either the
15 economic impact study or the department's
16 explanation for not conducting one available at
17 least 20 days before a public hearing.

18 In a letter dated March 17th,
19 2011, the Board requested to the chairman of the
20 department that DCEO conduct an economic impact
21 study on this specific rulemaking proposal. On
22 May 23rd, just over 20 days ago, the Board
23 received from the director of DCEO a letter dated
24 May 5th and that letter stated that, quote, the

1 department is unable to undertake such an economic
2 impact study. Therefore, I must respectfully
3 decline your request, close quote.

4 Is there anyone who would like
5 to testify or comment regarding either the Board's
6 request or DCEO's response? Neither seeing nor
7 hearing any, I'll move the issue of our post
8 hearing comments and going off the record briefly
9 the participants discussed that procedural issue.
10 Before it takes action on the Agency's proposal,
11 the Board will hold open a post hearing comment
12 period ending 30 days after the Board receives the
13 transcript of this hearing.

14 That is expected on
15 approximately Thursday, June 23rd, 2011. Once
16 those copies -- once that transcript is available
17 to the Board, it will be posted promptly to the
18 Board's website where it will be available to be
19 read and printed out by the participants and in
20 order to set the specific post hearing comment
21 period and deadlines, I will be sure to issue a
22 Hearing Officer order once we have that transcript
23 in hand and know when the 30 day period begins.

24 That, of course, will be

1 supplied to all participants on the service and
2 notice list. In addition, I want to note that any
3 person may file written public comments regarding
4 this rulemaking. They must be filed with our
5 clerk's office and may be filed electronically and
6 questions about electronic filing our clerk's
7 office can certainly address. Those filings must
8 be served on the Hearing Officer and all those
9 entities that are on the service list and I would
10 ask that you please verify with our clerk's office
11 to ensure that you have the most recent version of
12 that service list document.

13 If you have any procedural
14 questions, you may certainly reach me. My contact
15 information is listed on the Board's website. I
16 note that having -- being just about to conclude
17 our second hearing that no other hearings in this
18 document in this proceeding are now scheduled.

19 Any other questions or matters
20 that we should address before adjourning? Seeing
21 and hearing no indication that there are, I will
22 simply thank all of you for your testimony and
23 your time. We appreciate your information and
24 look forward to your comments and with that, we're

1 adjourned. Thank you.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)

4
5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this 22nd day of
15 June, A.D., 2011.

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