

1 ILLINOIS POLLUTION CONTROL BOARD

2 TRI STAR MARKETING, INC., )  
 )  
 3 Petitioner, ) DOCKET NO.  
 ) PCB 97-199  
 4 )  
 v. )  
 5 )  
 ILLINOIS ENVIRONMENTAL ) Ogle County  
 6 PROTECTION AGENCY, ) Courthouse  
 ) Oregon, IL  
 7 Respondent. ) Dec. 1, 1997

8 Hearing commenced pursuant to assignment  
 at 11:00 a.m.

9  
 10 BEFORE:

11 John Burds, Hearing Officer

12 APPEARANCES:

13 ATTORNEY MARK P. MILLER,  
 14 of the firm of Meyer, Capel, Hirschfeld,  
 Muncy, Jahn & Aldeen,  
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16 Counsel for the Petitioner.

17 ATTORNEY STEPHEN C. EWART, Deputy Counsel,  
 18 Illinois Environmental Protection Agency,  
 Public Water Supplies,  
 19 Division of Legal Counsel,  
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 Springfield, Illinois, 62794-9276

20 Counsel for the Respondent.

21 Also Present: Susan Konzelmann, IEPA Legal Investigator;  
 and Attorney Brian Brooks for City of Byron

22 REPORTER:

23 Tammy S. Jones,  
 Certified Shorthand Reporter,  
 24 Ashton, Illinois

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1        HEARING OFFICER BURDS: Let's go on the record  
2 then. Let the record reflect that today's date is  
3 December 1st, 1997. We are in the Ogle County  
4 Courthouse in Oregon, Illinois. It is  
5 approximately a little after 11 a.m. in the  
6 morning. We are here pursuant to a Board order  
7 dated September 18th, 1997 requiring a hearing to  
8 be conducted in this matter. This matter is  
9 captioned Tri Star Marketing, Inc. as Petitioner  
10 versus the Illinois Environmental Protection Agency  
11 as Respondent, PCB No. 97-199, a water well setback  
12 exception. Pursuant to the Board order, this  
13 hearing cannot be waived pursuant to 35 Illinois  
14 Administrative Code 106-604-A; therefore, this is a  
15 public hearing to be held in this matter.

16            As the parties know, this is a proceeding  
17 that is conducted pursuant to the well water  
18 setback hearing requirements under 106, 601 et al  
19 of the Illinois Pollution Control Board's  
20 procedural rules. Pursuant to those proceedings  
21 the hearings in this matter are conducted pursuant  
22 to Illinois Administrative Code Chapter 35  
23 102-162.

24            This is more of an informal hearing. It

1 does not function like a normal court proceeding,  
2 but rather in a manner in which all parties may  
3 present testimony and present testimony in  
4 narrative fashion and anybody who so wishes may  
5 elicit questions from witnesses who testimony is  
6 presented on behalf of. Now, as far as  
7 procedurally the only thing that I would notice --  
8 and I don't think this will be a problem here, but  
9 if, in fact, you're going to present testimony all  
10 witnesses need to be sworn. I will ask that you be  
11 sworn. We'll go through the proceeding.

12           The Petitioner will present their case in  
13 chief first. The Respondent will then present be  
14 their case. Any other questions from members of  
15 the public or other attorneys may then be asked or  
16 any other evidence that they wish to present. All  
17 right. Let's have the parties identify themselves  
18 at this time and do so for the record.

19           Mr. Miller.

20           MR. MILLER: Counsel for Tri Star Marketing,  
21 Inc., here in the form of Mark P. Miller.

22           HEARING OFFICER BURDS: Okay. Mr. Miller, do  
23 you have any witness that you -- you are the  
24 attorney for the Petitioner, correct?

1       MR. MILLER: That's correct. I will be  
2 presenting two witnesses today. They are John D.  
3 Stewart, S-t-e-w-a-r-t, president of Tri Star  
4 Marketing. I'll also be eliciting testimony from  
5 Mr. Karl, K-a-r-l, Newman, N-e-w-m-a-n, who is a  
6 geologist with Midwest Engineering Services, Inc.

7       HEARING OFFICER BURDS: Okay. Why don't we  
8 swear those witnesses at this time.

9       (John Stewart and Karl Newman were duly sworn.)

10       HEARING OFFICER BURDS: All right. Mr. Ewart.

11       MR. EWART: Thank you. My name is Stephen  
12 Ewart. That spelled E-w-a-r-t. I'm an attorney  
13 for Illinois EPA. I plan to present two  
14 witnesses. The first one is Lynn Dunaway, L-y-n-n,  
15 D-u-n-a-w-a-y. He is a geologist with Illinois EPA  
16 and the other witness will be Brett Hanson,  
17 B-r-e-t-t, H-a-n-s-o-n. He is an environmental  
18 protection specialist with the Illinois EPA and  
19 also with me is Susan Konzelmann from the Division  
20 of Legal Counsel.

21       HEARING OFFICER BURDS: Okay. Would you please  
22 have your witnesses stand up and raise your right  
23 hand to be sworn at this time.

24       (Lynn Dunaway and Brett Hanson were duly

1 sworn.)

2 HEARING OFFICER BURDS: Let the record reflect  
3 that there are members of the public present. I  
4 don't know -- Mr. Brooks, do you intend to enter an  
5 appearance on behalf of the Village of Byron -- I'm  
6 sorry, the City of Byron?

7 MR. BROOKS: City of Byron. I believe I would,  
8 and at this point I hadn't planned on calling any  
9 witnesses other than what testimony may come from  
10 myself representing the City as far as -- like I  
11 mentioned earlier, the City's intent, what the  
12 City's looking at as far as to use those wells.

13 HEARING OFFICER BURDS: As I indicated earlier,  
14 it is an informal process. However -- and  
15 attorneys may testify. However, attorneys  
16 themselves must be sworn as well. In fact, any  
17 testimony that's elicited and any statements made  
18 must be made under oath, so if you wish to do so at  
19 this time you'll be sworn at this time.

20 (Brian Brooks was duly sworn.)

21 HEARING OFFICER BURDS: I would ask just as a  
22 voir dire question that if anybody has any  
23 questions procedurally -- this isn't a normal  
24 course of events for a lot of people who have seen

1 courtroom proceedings perhaps. Are there any  
2 questions regarding the process or the procedure?

3           Okay. Then -- now, as far as proceeding  
4 what we'll do is we'll go with Mr. -- the  
5 Petitioner will present their evidence first.

6           Mr. Miller.

7           MR. MILLER: May I assume that the exhibits  
8 offered, 1 through 6, on behalf of the Petitioner  
9 have been accepted?

10          HEARING OFFICER BURDS: Okay. Well, let's do  
11 this. Let's go through -- and I apologize,  
12 Mr. Miller. Let's go through the exhibits one at a  
13 time so we can identify them for the record and  
14 they're on the record. I have, so the record is  
15 clear, been presented six exhibits by Mr. Miller as  
16 Petitioner's Exhibits Nos. 1 through 6; is that  
17 correct, Mr. Miller?

18          MR. MILLER: That's correct. These are the  
19 exhibits to Tri Star's amended petition filed with  
20 the Board August 14, 1997 and bearing the notations  
21 Exhibit A through Exhibit F, marked for this  
22 hearing as Exhibits 1 through Exhibit 6. Exhibit 1  
23 being the site development plan for Byron, Illinois  
24 prepared by Tri Star Marketing. Exhibit No. 2 --



1 Petitioner's Exhibit No. 2 being the group exhibit  
2 B which contains the control technology to be used  
3 at this site. Exhibit No. 3 being the affidavit of  
4 Kerry S. Gifford, Director of Water and Waste Water  
5 Operations for the City of Byron. Exhibit No. 4,  
6 the affidavit of John Stewart, who is the president  
7 of Tri Star Marketing, although Mr. Stewart has  
8 been sworn and will be testifying here today.  
9 Exhibit No. 5 which is a report prepared by Midwest  
10 Engineering Services regarding searches that that  
11 entity provided for Tri Star Marketing regarding  
12 site geology and the presence of water wells in the  
13 area. That would be Exhibit No. 6.

14 HEARING OFFICER BURDS: All right. Mr. Ewart,  
15 any objections?

16 MR. EWART: I have no objections to the  
17 exhibits.

18 HEARING OFFICER BURDS: Mr. Brooks?

19 MR. BROOKS: No objections.

20 HEARING OFFICER BURDS: Okay. Hearing no  
21 objections -- Mr. Miller, I do have one question.  
22 The affidavit of Mr. Stewart, is that the same  
23 affidavit that the Board referred to in its  
24 September 18th order or is it a different

1 affidavit?

2 MR. MILLER: No, it should not be. This should  
3 be the revised and corrected affidavit, if I'm not  
4 mistaken.

5 HEARING OFFICER BURDS: I just want to make sure  
6 that they don't skip it and if it is different, let  
7 me indicate on the record that it is so.

8 MR. MILLER: No. This is the one that was filed  
9 with the petition of August 14th and accepted.

10 HEARING OFFICER BURDS: Okay. All right. Then  
11 hearing no objections, those documents shall be  
12 admitted as represented.

13 MR. MILLER: Mr. Hearing Officer, if I could  
14 have use of the exhibits for a short time while I  
15 examine the witness.

16 HEARING OFFICER BURDS: Of course. I'm, for the  
17 record, placing exhibit stickers on each.

18 JOHN D. STEWART,  
19 having been previously sworn, was examined and  
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MILLER:

23 Q. John, could you state your name for the record,  
24 please?

1 A. John D. Stewart.

2 Q. And, John, could you for the edification of the  
3 Board provide them with a brief educational and  
4 employment history?

5 A. Sure. I have a Bachelor of Geography from the  
6 University of Illinois and an MBA from the  
7 University of Arkansas. I worked with Conoco in  
8 Houston between '80 and '82 and joined Tri Star  
9 Marketing in 1982 as vice president of supply and  
10 trading. I was promoted to president in '96.

11 Q. And how long have you been involved with the  
12 development of gasoline service stations?

13 A. Since 1982.

14 Q. Okay. Could you describe your involvement with  
15 this proposed development site for Byron, Illinois?

16 A. Yes. We purchased this property from Amoco, if  
17 I recall correctly, in '94 along with the purchases  
18 of other properties from Amoco when we became an  
19 Amoco distributor, and our objective was  
20 development -- our primary line of business is  
21 development of gasoline stations and convenient  
22 stores and our objective was to purchase this from  
23 Amoco and develop it into an updated gasoline  
24 station and convenient store. That's our primary

1 objective.

2 Q. What was the status of the tanks at that site  
3 at the time of your purchase?

4 A. When we purchased the site from Amoco, the  
5 tanks had been removed.

6 Q. Okay, and what type of tanks were those tanks?

7 A. To the best of my knowledge they were single  
8 wall, steel tanks and the lines were steel, if I  
9 recall correctly from the documentation.

10 Q. It appears that Exhibit No. 1 may not clearly  
11 show the directions north, south, east and west.  
12 Could you mark on that exhibit the direction  
13 references so the Board has a better idea, please?

14 HEARING OFFICER BURDS: Could we also let  
15 Mr. Ewart --

16 MR. EWART: I'll watch.

17 A. I think -- if we've got -- for the most part I  
18 think that we're dealing -- north would be -- I'm  
19 going to say this way is north. Okay.

20 HEARING OFFICER BURDS: For the record this is  
21 Petitioner's Exhibit A, Mr. Miller?

22 MR. MILLER: This is Petitioner's Exhibit A  
23 which has now been marked for hearing purposes as  
24 Petitioner's Exhibit No. 1.

1 A. I think that's close. Okay.

2 Q. Could you provide us with your -- I guess the  
3 history and designing, the layout of this  
4 particular site? Why don't you first describe  
5 where this site is located and then proceed into  
6 the history of the design of the site?

7 A. Well, it's located on Main Street in Byron at  
8 the corner of Walnut and Main and Main is Route 2  
9 and just -- and I think Route 70 also runs together  
10 at that point in time, so it's right in the heart  
11 of Byron. It's right in the center of the  
12 community. It's a very nice commercial parcel.  
13 Anyway, it's --

14 Q. Where were the tank cavities at the time Amoco  
15 had the site?

16 A. The tank cavity was to the south and east of  
17 the main building.

18 Q. Could you mark that with an X as to the best of  
19 your knowledge as to where those tanks were  
20 previously located?

21 A. I think right about in this general area I'm  
22 going to say.

23 MR. BROOKS: That's the best of my recollection,  
24 too.

1 MR. MILLER: Let the record reflect Brian Brooks  
2 has assisted John Stewart in recalling the exact  
3 location of the tanks and they've now marked it on  
4 Petitioner's Exhibit 1 with an X and with the  
5 notation former tank cavity.

6 HEARING OFFICER BURDS: Thank you very much,  
7 Mr. Miller. For the record Mr. Brooks has been  
8 sworn.

9 Q. John, could you continue with discussion of  
10 design of the site itself?

11 A. Yes. In a gasoline facility in the nature that  
12 is being constructed today it's common that we want  
13 to make sure that the gasoline operation is as  
14 convenient and the flow through the dispensing  
15 facilities is comfortable for our customers, so  
16 typically that is positioned on the front of the  
17 property as this one is. The four quart or the  
18 covered canopy area orients itself to Main Street  
19 or Route 2. We then have a covered walkway back to  
20 the building and -- the convenient store building  
21 and then a car wash on the east side of the  
22 property. The underground -- the new underground  
23 storage tank cavity for petroleum products would be  
24 located west and north of the former tank cavity.

1 Q. Would that be farther away from Wells Nos. 1  
2 and 2 or closer to Wells Nos. 1 and 2 than the old  
3 location of the cavity?  
4 A. It would be further away.  
5 Q. Could you approximate the distance that it  
6 would be further away from the old location?  
7 A. 50 feet, 50 to a hundred, 75 feet. I'm going  
8 to say 75 feet.  
9 Q. Were there alternative tank placement locations  
10 discussed or considered prior to selecting the  
11 location of the tank cavity that is proposed to be  
12 used in this site?  
13 A. Absolutely. We looked at numerous locations  
14 for the underground storage tank installation,  
15 recognizing that we do have a 20-foot setback from  
16 property, from adjoining property, so we have to  
17 deal with that off of Walnut and our piping -- our  
18 piping is also considered part of the setback, so  
19 we have to have 20 feet off of the front yard for  
20 the piping system, so within that configuration we  
21 try to get the tanks in-lot so that we can have a  
22 safe delivery with our transport and then a safe  
23 exit, so those are the things that we factor in,  
24 the 20-foot setback and safety for the delivery and

1 for the exit of the transport.

2 Q. Okay. How about locations generally west of  
3 where the proposed locations are, why would those  
4 be less suitable for that site development?

5 A. If we were to orient the tanks -- we could move  
6 them and they'd have to be oriented north and  
7 south, but they would be contiguous to the building  
8 foundation and not -- what we would consider also  
9 would be underneath our prime parking space, so it  
10 would not be a safe situation.

11 Q. Okay. If you were to move those to that  
12 location, how many additional feet of setback from  
13 the old location and how many additional feet of  
14 setback from the Municipal Water Wells Nos. 1 and 2  
15 would that possibly be?

16 A. I don't think it would -- it wouldn't change it  
17 at all because I have a 20-foot side yard setback,  
18 20 feet backyard setback and if you run them end to  
19 end, the tip of the furthest south portion of those  
20 tanks will be in approximately the same location,  
21 maybe -- gosh, maybe we'd pick up 15, 20 feet  
22 maybe.

23 Q. Okay.

24 A. Yeah. I mean, that's a guess.



1 Q. Do you have an opinion as to the present value  
2 of that site for commercial development?

3 A. We have -- I have a pretty good indication of  
4 what the commercial value of the site is.

5 Q. Okay.

6 A. And the situation is that there just are not  
7 that many commercial parcels of this size in the  
8 community of Byron.

9 Q. Are there additional development parcels for  
10 Tri Star Marketing within the City of Byron  
11 available?

12 A. No, none of this magnitude there are not.

13 Q. Okay. What would be the value of the  
14 improvements that Tri Star would place on this site  
15 in developing it?

16 A. Easily three-quarters of a million dollars, so  
17 \$750,000.

18 Q. Okay. If -- let me strike that.

19 What would be the volume of sales that you  
20 would normally do in a site like this?

21 A. We would probably generate close to \$2 million  
22 a year in sales at this store. That is below my  
23 company average considerably.

24 Q. Does that have a net economic benefit to the

1 City of Byron?

2 A. I would think so with respect to real estate  
3 and sales tax revenues.

4 Q. Okay. Are you familiar with the control  
5 technology being used at this site?

6 A. Yes, I am.

7 Q. Could you take a look at Petitioner's Group  
8 Exhibit B. Mr. Hearing Officer, at this time --

9 HEARING OFFICER BURDS: I want to clarify just  
10 so we're not referring to 1 through 6 and A through  
11 B.

12 MR. MILLER: Oh, I'm sorry.

13 HEARING OFFICER BURDS: Let's identify the  
14 documents as Petitioner's Exhibits 1 through 6 and  
15 that would be --

16 Q. Could you take a look at Petitioner's Exhibit  
17 2, which is Group Exhibit B to the amended  
18 petition.

19 A. Yes.

20 MR. MILLER: Mr. Hearing Officer, at this time I  
21 would like to request of the Illinois Environmental  
22 Protection Agency that they stipulate that this  
23 group exhibit marked as Petitioner's Exhibit No. 2  
24 represents best available control technology for a

1 site of this development type.

2 HEARING OFFICER BURDS: All right. The document  
3 has been admitted for the record as Petitioner's  
4 Exhibit 2.

5 Mr. Ewart, any objection to Mr. Miller's  
6 request regarding best available control  
7 technology?

8 MR. MILLER: Best available control technology.

9 HEARING OFFICER BURDS: Mr. Ewart?

10 MR. EWART: The Agency has reviewed this  
11 document in detail and does conclude that this is  
12 the best available control technology.

13 HEARING OFFICER BURDS: As far as that  
14 representation -- that would be subject to any  
15 questions from members of the public or  
16 Mr. Brooks. However, based on those  
17 representations and no objection from the Agency,  
18 the stipulation will be entered as such. Now, just  
19 so we have a clear identification of what the  
20 representation is, do we need to be more specific  
21 about what in the document constitutes best  
22 available control technology? Is there only one  
23 such technology identified?

24 MR. MILLER: Let me go through the testimony of

1 Mr. Stewart regarding this point and I think it  
2 will become a little bit clearer.

3 HEARING OFFICER BURDS: That's fine.

4 Q. Okay. John, could you in a nutshell and  
5 without really referring to brand or product names  
6 give us an outline of the type of technology that's  
7 going to be used at this site to control releases  
8 of petroleum?

9 A. Sure. Consistent with all of our other  
10 developments, we install double wall fiberglass  
11 tanks, double wall fiberglass lines and piping  
12 sumps underneath the dispensers as well as an  
13 electronic continuous leak detection system on the  
14 entire system and we have done so for a number of  
15 years and are proposing that type of installation  
16 here.

17 Q. Are you aware of federal standards that have to  
18 be met regarding a release detection system for  
19 underground storage tanks?

20 A. Yes.

21 Q. And does this proposed system to be used at  
22 this development site meet the 1998 federal  
23 standards?

24 A. It meets and in some areas it exceeds.

1 Q. Okay. Are you aware of any other service  
2 station developments that are in proximity to the  
3 City of Byron's Wells Nos. 1 and 2?  
4 A. To my knowledge there's an existing Amoco  
5 facility and a Mobil facility.  
6 Q. Where is the Amoco facility in relation to  
7 Wells Nos. 1 and 2?  
8 A. Did I say Amoco? I mean Marathon and Mobil, so  
9 where is our facility in relation to those?  
10 Q. No, where is the Marathon facility in relation  
11 to Wells Nos. 1 and 2?  
12 A. The Marathon facility is directly east of the  
13 well facility.  
14 Q. Can you estimate for the Board the distance  
15 from the tanks at that Marathon facility to Wells  
16 Nos. 1 and 2?  
17 A. Within 50 feet.  
18 Q. And for the Mobil facility could you estimate  
19 the distance from those tanks to Wells Nos. 1 and  
20 2?  
21 A. I would say that they would be within 200 feet.  
22 Q. And what is the proposed distance using your  
23 site development from your proposed tank location  
24 to Wells Nos. 1 and 2?

1 A. Our tanks would be 300 -- I think 310 feet was  
2 the correct measurement and the lines on the  
3 furthest -- or the closest line installation under  
4 the dispenser would be, I think, 260. I think it's  
5 260.

6 Q. All right. Are you aware of the status of  
7 either the Marathon or the Mobil station as far as  
8 the design of their present tank systems?

9 A. No, I'm not.

10 Q. Okay. You wouldn't be aware as to whether  
11 they've upgraded to 1998 federal standards or not?

12 A. I could speculate, but I don't have any facts.

13 Q. What evidence would you need in order to give  
14 an opinion as to whether they have upgraded or not?

15 A. Well, if there had been an upgrade, then there  
16 would have been a permit issued from the Office of  
17 the State Fire Marshal to allow an upgrade.

18 Q. Okay. Had you applied to the Office of the  
19 State Fire Marshal for these tanks here at the  
20 site?

21 A. We did not get that far because we were denied  
22 on our building permit.

23 Q. All right. Would they have -- would either  
24 Marathon or Mobil in your opinion have needed a

1 building permit in order to upgrade their tanks at  
2 their site?

3 A. Quite possibly if they had done additional work  
4 on site, non-petroleum related work on site.

5 Q. If the petition for the water well setback is  
6 not granted by the Illinois Pollution Control  
7 Board, what will be the effect on Tri Star  
8 Marketing and the development of this site?

9 A. I can't honestly answer that at this point in  
10 time. We would reassess our position on the  
11 property and make a determination at that  
12 juncture. I honestly can't tell you if or when it  
13 would be developed.

14 Q. Do you have an opinion as to the effect of  
15 denial of Tri Star Marketing's petition on the  
16 potential sale price of the property should this  
17 petition be denied?

18 A. Well, we feel that the highest and best use of  
19 this facility is for a gasoline station-convenient  
20 store combination. That's the type of operation  
21 that was there. That's the type of operation that  
22 we feel would be the most conducive. We've  
23 actually purchased additional property adjoining so  
24 that we could make sure that we could develop the

1 site properly, so the highest and best use of this  
2 site we feel is for our type of development. If  
3 we're unable to develop it in that mode, it's  
4 possible that there would be an economic  
5 detriment.

6 Q. John, as you sit there today, are you aware of  
7 the status of well -- new Well No. 4 for the City  
8 of Byron?

9 A. No.

10 Q. As you sit there today, are you aware of the  
11 City of Byron's intention regarding Wells Nos. 1  
12 and 2 once Well No. 4 goes on line?

13 A. No. I can speculate, but I don't have any  
14 facts to that.

15 Q. Okay. What was your belief at the time of  
16 purchasing the site as to what the City of Byron  
17 might be doing with Wells Nos. 1 and 2?

18 A. Well, when we purchased the site, water wells  
19 were -- it wasn't even an issue. We purchased a  
20 former gasoline service station, and our objective  
21 was to put it back into service as a gasoline  
22 service station, so water wells were a non-event.  
23 There was no consideration. We bought a service  
24 station and we were going to continue to operate it



1 as a service station. The existing underground  
2 storage tanks had been removed in '88 and our  
3 intention was to install new underground storage as  
4 we do at all other facilities, so if the tanks had  
5 been in place when we had purchased it previously,  
6 we would have removed them ourselves. Fortunately  
7 Amoco -- or unfortunately Amoco removed them  
8 earlier for us.

9 MR. MILLER: I have no further questions at this  
10 time.

11 HEARING OFFICER BURDS: Mr. Ewart.

12 MR. EWART: Could I take just a minute to talk  
13 with my --

14 HEARING OFFICER BURDS: We'll go off the  
15 record.

16 (A discussion was held off the record.)

17 HEARING OFFICER BURDS: Back on the record.

18 Mr. Miller, you are done presenting testimony of  
19 Mr. Stewart.

20 Mr. Ewart, your witness.

21 MR. EWART: Thank you, Mr. Hearing Officer. I  
22 just have a few questions.

23 CROSS EXAMINATION

24 BY MR. EWART:

1 Q. Mr. Stewart, would you briefly in general terms  
2 describe the leak detection system that you have  
3 proposed for this site?

4 A. Well, with brand numbers or how do you want  
5 it?

6 Q. No, basically the function -- from a functional  
7 standpoint.

8 A. Sure. Okay. We install double wall fiberglass  
9 tanks, so there's -- there are two layers of  
10 fiberglass and there's an interstice in between.  
11 On top of that tank we have a piping sump and into  
12 that piping sump the double wall lines then  
13 connect -- double wall fiberglass lines then  
14 connect to the dispenser drip boxes which are then  
15 tied in by -- into the dispensing equipment above  
16 the ground. The entire system is then monitored by  
17 an electronic leak detection system or what we  
18 commonly refer to as the Veeder-Root TLS 350.

19 Q. I'm sorry, I didn't hear that.

20 A. Veeder-Root TLS 350 and that's the model  
21 number. That is consistent with our entire chain.  
22 That's the only system that we use, so we have a  
23 good understanding of that monitoring system. That  
24 system will then monitor the tank levels of

1 products, temperature, the volumes, whether there's  
2 water. It will also monitor the interstice, the  
3 space between the two tanks for potential release.  
4 It will monitor the piping sump to make sure that  
5 there's no release from the inner piping. It will  
6 also perform a continuous leak detection on the  
7 line -- on the line and tank system and then it  
8 will also perform a continuous leak detection on  
9 the line system, primary line. It's a good  
10 system.

11 Q. It sounds like it. Does this -- do you  
12 envision anywhere in this leak detection system of  
13 installing a down gradient monitoring well?

14 A. We had not planned on one, no, had not.

15 Q. Have you ever installed down gradient  
16 monitoring wells in other locations?

17 A. I think we have. You know, I think we have,  
18 yes.

19 Q. Under what circumstances did --

20 A. It was -- we had a release at a location in  
21 Morris, Illinois on Route 47 and we installed a  
22 down gradient monitoring well.

23 Q. So basically --

24 A. We're familiar with the technology.

1 Q. So basically your -- is it true that your  
2 decision to monitor or to install a monitoring well  
3 would then be based upon a discovery of a leak?

4 A. No, this was adjoining -- this was an old tank  
5 system that we purchased and this was not our  
6 current technology. This technology was -- we're  
7 talking about tanks that were installed in the  
8 early '80s at an older site and this well was  
9 installed 10 years ago, so no, we don't typically  
10 have down gradient wells. We do typically install  
11 a monitoring well inside the tank cavity. It's  
12 common for us to do that, so within the peat gravel  
13 of the backfill we typically install one or two  
14 wells so we can sample groundwater in the event  
15 there's a question.

16 Q. Mr. Stewart, are you aware of the monitoring  
17 protocol that is involved in -- for monitoring of  
18 Wells No. 1 and 2 in Byron?

19 A. No.

20 MR. EWART: I have no further questions.

21 HEARING OFFICER BURDS: Any other questions of  
22 Mr. Stewart from Mr. Brooks or other members of the  
23 public?

24 MR. BROOKS: No, sir.

1        HEARING OFFICER BURDS: Other people on behalf  
2 of the Agency?

3        MR. HANSON: My name is Brett Hanson, Illinois  
4 EPA.

5                                CROSS EXAMINATION

6 BY MR. HANSON:

7 Q. Are there any monitoring wells on the site at  
8 the current time?

9 A. Yes, I think there are.

10 Q. Is there a pump and treat well on the site  
11 also?

12 A. No.

13 Q. Okay. Will the monitoring well be sealed?

14 A. The monitor -- I think there are a series of  
15 wells, Brett, but we received -- if I recall  
16 correctly, I think we received a no further action  
17 on the site, so whether those wells have been  
18 sealed off or not I can't honestly answer that.  
19 Amoco was responsible for the remediation of the  
20 site. Typically their contractors come back in and  
21 seal those wells off, but I honestly -- I honestly  
22 can't tell you whether they're done. I think Delta  
23 Environmental has done most of their work. I would  
24 assume those wells are sealed off, but I'd have to

1 double-check honestly. I can't tell you.

2 HEARING OFFICER BURDS: Any other questions of  
3 Mr. Stewart?

4 MR. MILLER: No follow-up.

5 HEARING OFFICER BURDS: Okay. Mr. Miller, next  
6 witness.

7 MR. MILLER: Thank you. In accordance with the  
8 Hearing Officer's request, at this time let's just  
9 clarify what the contents of Petitioner's Exhibit 3  
10 are which is the affidavit of Kerry S. Gifford,  
11 Director of Water and Waste Water Operations for  
12 the City of Byron. Mr. Gifford states in his  
13 affidavit that Wells 1 and 2 are approximately 20  
14 feet apart, located to the south and east and  
15 across Highway 2 from the former Amoco site now  
16 owned by Tri Star Marketing. That due to test  
17 results which exceeded the MCL for radium in Well  
18 No. 1, the City began to blend the water from Wells  
19 Nos. 1 and 2 together. The City has applied for  
20 and received a radium variance from the Illinois  
21 Pollution Control Board in proceeding PCB 93-110  
22 and it operates under that variance. The City  
23 voluntarily placed Wells Nos. 1 and 2 on standby  
24 status. As a result of placing Wells Nos. 1 and 2

1 on standby status, the City was removed from the  
2 restricted status list by the Illinois  
3 Environmental Protection Agency. The City has  
4 constructed a new elevated 500,000 gallon storage  
5 tower which is located next to New Well No. 4, and  
6 that the City has approved bids for completion of  
7 Well No. 4 and expects for that well to be on line  
8 in July of 1997. Once Wells 3 and 4 are both on  
9 line each should have the capacity to serve the  
10 current City water needs. When Well No. 4 is on  
11 line, it is the intent of Kerry S. Gifford to  
12 convert Wells Nos. 1 and 2 from standby status to  
13 inactive status.

14 At this time, Mr. Hearing Officer, I would  
15 like to call to testify Karl Newman of Midwest  
16 Engineering services.

17 HEARING OFFICER BURDS: Mr. Newman, you've  
18 already been sworn.

19 KARL F. NEWMAN,  
20 having been previously sworn, was examined and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q. Could you state your name and educational and

1 employment history for the Board's edification,  
2 Mr. Newman?

3 A. My name is Karl F. Newman. I have a Bachelor  
4 of Science Degree in Geology from the University of  
5 Illinois and I did postgraduate work at the  
6 University of Utah also in geology. I'm currently  
7 environmental department manager for Midwest  
8 Engineering Services in Champaign, Illinois. I've  
9 been at Midwest for approximately five years.  
10 Prior to that I worked for another consulting  
11 engineering firm in relatively the same position  
12 and for an environmental remediation company and  
13 I've been working on environmental projects,  
14 primarily UST projects since 1989.

15 Q. Could you describe for the Board and for people  
16 present at this hearing the work that you performed  
17 for Tri Star Marketing at the Byron site?

18 A. Primarily the work that I performed for Tri  
19 Star Marketing was a cursory review of the geology  
20 pertaining to the site, reviewing different  
21 publications produced by the Illinois State  
22 Geological Survey, then also looking at a report  
23 performed on behalf of Amoco Oil Company in  
24 response to TCE contamination and gleaning some of



1 the information from that report and compiling a  
2 letter document containing the summary of the  
3 geology review. I'm also involved doing a query  
4 for private water wells within the various sections  
5 surrounding the subject site and also including  
6 that there was a second document --

7 Q. Let's hold it right there for a second. When  
8 you're referring to the work up to this point in  
9 time, are you referring to that report prepared for  
10 Tri Star which has been marked and accepted as  
11 Petitioner's Exhibit No. 5?

12 A. Correct.

13 Q. Okay, and with regard to Petitioner's Exhibit  
14 No. 6 could you briefly review for the Board what  
15 work you performed for Tri Star there?

16 A. Exhibit No. 6, similar type work in regards to  
17 private water wells, another query through the  
18 Illinois State Water Survey and then taking that  
19 information pertaining to private wells and  
20 producing a document trying to determine whether or  
21 not there were any private wells within the various  
22 radii in relation to the subject site.

23 Q. What was your conclusion with regard to the  
24 presence of private wells?

1 A. That there were no private water wells within a  
2 200-foot radius of the subject site, no private  
3 wells -- or the subject site is not within the  
4 setback -- minimum setback zone of any private  
5 water wells.

6 Q. Do you have specific knowledge of the  
7 underlying geology of this proposed development  
8 site?

9 A. I don't have specific knowledge pertaining to  
10 the exact geology lying beneath the site. The  
11 knowledge that I have is gleaned from available  
12 public information published by the Illinois State  
13 Geological Survey, also from water well records  
14 available at the Illinois State Water Survey.

15 Q. And is that information reflected in  
16 Petitioner's Exhibit No. 5?

17 A. Correct.

18 Q. Okay, and just generally what were the results  
19 shown?

20 A. In general the geology of the site and the  
21 immediate vicinity of the site is you have  
22 predominantly sand and gravel deposits associated  
23 with a Henry (phonetic) formation overlying bedrock  
24 pertaining -- or associated with ancill group,

1 primary sandstones.

2 Q. How do you spell ancell?

3 A. A-n-c-e-l-l. The sand and gravel deposits can  
4 range anywhere from roughly 25 to 50 feet upwards  
5 of 200 feet at which time you would hit the bedrock  
6 surface.

7 Q. Do you have general knowledge as to the  
8 construction of Municipal Wells Nos. 1 and 2 for  
9 the City of Byron?

10 A. No.

11 Q. Do you know the depths that those wells are  
12 located?

13 A. From my review of the records at the Illinois  
14 State Water Survey I don't recall that right  
15 offhand. The wells range in depth from  
16 approximately 350 feet to 2,000 feet below ground  
17 surface.

18 Q. Are you aware of the presence of TCE as a  
19 contaminant in either of these two municipal water  
20 wells?

21 A. Yes.

22 Q. Just for the record what is TCE?

23 A. TCE is trichloroethylene,  
24 t-r-i-c-h-l-o-r-o-e-t-h-y-l-e-n-e. It's a

1 chlorinated solvent.

2 Q. And is that used in the operations of a service  
3 station?

4 A. No.

5 Q. Are you aware of the source of TCE in the  
6 municipal water well system for the City of Byron?

7 A. Not to a specific source. My review of the  
8 water well records makes reference to a plating  
9 company building which was raised in approximately  
10 the 1970s and that was suspected as a source of the  
11 TCE.

12 Q. Could you describe the characteristics of TCE  
13 as compared to petroleum or petroleum by-products  
14 or its constituents?

15 A. TCE, it's a chlorinated solvent and it has a  
16 specific gravity which is greater than one which  
17 is -- would be for water, so if you had TCE and  
18 groundwater it's a sinker. You would expect it to  
19 sink as opposed to a gasoline product which has a  
20 specific gravity close to that of water and that  
21 it's considered a floater, so if you had those two  
22 types of compounds, relatively speaking gasoline  
23 would float and the TCE would sink downward until  
24 it hit a migration barrier.

1 Q. What is the -- do you have knowledge of what  
2 the source of radium in the municipal water well  
3 system of the City of Byron is?

4 A. Not specifically, but if I remember correctly  
5 it could be considered background.

6 Q. What does background mean?

7 A. Naturally occurring.

8 Q. Okay. Karl, are you aware of the location of  
9 other potential sources of contamination to the  
10 municipal water supply, Wells Nos. 1 and 2 for the  
11 City of Byron?

12 A. Potential sources?

13 Q. Yes.

14 A. Yes. As Mr. Stewart said, there is a Marathon  
15 service station butting Wells Nos. -- or the  
16 property of Wells No. 1 and 2. There's also the  
17 Mobil service station. There's a dry cleaning  
18 facility in the general area of the subject site of  
19 Wells No. 1 and 2. There's also an auto dealership  
20 to the west of Wells Nos. 1 and 2, which some vent  
21 pipes typical of a UST system, older system are  
22 visible.

23 Q. Would a gasoline service station such as that  
24 proposed by Tri Star Marketing for the site be the

1 source of chromium contamination to the municipal  
2 water supply system?

3 A. No.

4 Q. Would your answer be different regarding the  
5 issue of nitrate contamination in the system?

6 A. Would my answer be different --

7 Q. Yes.

8 A. -- from no? No, it would not be different.

9 Q. Should there be a release from the UST system  
10 at the proposed development site of Tri Star, what  
11 has to happen in order for the municipal water  
12 supply system of the City of Byron to be  
13 contaminated?

14 A. Wells Nos. 1 and 2?

15 Q. Wells Nos. 1 and 2. I'm sorry, yes.

16 A. Most likely the release would have to migrate  
17 most likely downward until it encounters  
18 groundwater and then that contamination in the  
19 groundwater would have to migrate it to the wells.

20 Q. So what distance are you testifying that the  
21 contamination would have to migrate in order to  
22 reach the wells?

23 A. Laterally it would be on the order of 300 feet,  
24 but if the well is screened I believe at an

1 interval deeper than 200 feet -- I can't remember  
2 my geometry right off the bat, but it would be at a  
3 distance greater than 300 feet.

4 MR. MILLER: I'm not going to help you out with  
5 that. That's why I became an attorney. I don't  
6 think I have any other questions.

7 HEARING OFFICER BURDS: Mr. Ewart.

8 MR. EWART: Can I just take a minute?

9 HEARING OFFICER BURDS: We'll go off the record  
10 for about -- why don't we -- let's go off the  
11 record.

12 (A recess was taken at 11:54 a.m. and  
13 proceedings resumed at 12:04 p.m.)

14 HEARING OFFICER BURDS: Why don't we go back on  
15 the record. Okay. Again, my name is John Burds.  
16 I'm a Hearing Officer with the Illinois Pollution  
17 Control Board. We are continuing the proceeding  
18 captioned Tri Star Marketing, Inc. versus the  
19 Illinois Environmental Protection Agency, PCB  
20 97-199. We left off with Mr. Miller concluding his  
21 questioning of Mr. Newman.

22 Mr. Newman, you are still under oath.

23 Mr. Miller, do you have anything else of  
24 Mr. Newman?

1 MR. MILLER: No, not at this time.

2 HEARING OFFICER BURDS: Mr. Ewart.

3 MR. EWART: Thank you, Mr. Hearing Officer.

4 CROSS EXAMINATION

5 BY MR. EWART:

6 Q. Mr. Newman, are you aware or have you reviewed  
7 anything regarding the UST remediation conducted by  
8 Amoco on the proposed site?

9 A. No, I'm not aware of any remediation occurring  
10 at the Amoco site, no.

11 Q. Are you aware of the -- any existing monitoring  
12 wells on site right now?

13 A. No.

14 Q. How about a pump and treat --

15 A. No.

16 Q. -- well? With regard to your characterization  
17 of the components of gasoline, you indicated that  
18 the components -- gasoline was a floater. Is it  
19 not true that there are dissolve components of  
20 gasoline?

21 A. That is true. When I characterized it as a  
22 floater, there is a dissolve component of the  
23 floating product which would dissolve and go into  
24 the water column. What I was trying to make



1 reference to really in a relative term is that a  
2 sinker would -- the three-phase component of a  
3 sinker would sink and there still is a dissolve  
4 component of a sinker as well, but there's a  
5 dissolve component of a floater, correct.

6 Q. And what would those components be?

7 A. From a gasoline?

8 Q. Yes.

9 A. Illinois EPA requirements for an unleaded  
10 gasoline, we specifically test for benzene  
11 b-e-z-e-n-e -- excuse me, b-e-n-z-e-n-e,  
12 ethylbenzene, e-t-h-y-l-b-e-n-z-e-n-e, toluene,  
13 t-o-l-u-e-n-e, and xylenes, x-y-l-e-n-e-s.

14 Q. Are you aware of any octane enhancers that are  
15 in gasolines that are sold by Amoco?

16 A. Not specifically Amoco, but just general  
17 knowledge of gasoline products. There are  
18 different octane enhancers which can be added to  
19 the different formulations of gasoline, but to the  
20 specific brand, no, I don't know exactly.

21 Q. Generally are you aware of how octane enhancers  
22 react with water, react in the presence of water?

23 A. Not specifically, no.

24 Q. Are you aware of methyl tert butyl ether?

1 A. Yes.

2 Q. Otherwise known as MTBE?

3 A. Correct, yes, I'm aware of it.

4 Q. Are you aware of its solubility?

5 A. Not offhand, no.

6 Q. You don't have any opinion on MTBE?

7 MR. MILLER: As to what, Steve?

8 MR. EWART: Its solubility in water.

9 A. No, not per se.

10 MR. EWART: I have no further questions.

11 HEARING OFFICER BURDS: Any other questions of

12 Mr. Newman from any other members of the public or

13 attorneys or members of the Agency?

14 Okay. Mr. Miller, do you have any

15 questions?

16 MR. MILLER: We'd like to have a moment to

17 confer before we rest our case. As an initial

18 matter in order to expedite this hearing process, I

19 did not present those portions of the petition that

20 were uncontested by the Agency and I would request

21 that the Agency -- that those factual matters that

22 could have been testified to by John Stewart in

23 his -- in the petition of Tri Star Marketing which

24 was supported by affidavit be accepted as evidence.

1 MR. EWART: I have no objection.

2 MR. MILLER: Thank you.

3 HEARING OFFICER BURDS: There being no  
4 objection -- as far as the representations you are  
5 asking for all matters not --

6 MR. MILLER: Not presented as live testimony  
7 here to be accepted as testimony as if read by the  
8 witness.

9 HEARING OFFICER BURDS: Let's go off the  
10 record.

11 (A discussion was held off the record.)

12 HEARING OFFICER BURDS: Let's go on the record  
13 then.

14 Mr. Miller.

15 MR. MILLER: I'd like to recall John Stewart for  
16 additional testimony.

17 HEARING OFFICER BURDS: Mr. Stewart, you were  
18 previously sworn. You are still under oath.

19 REDIRECT EXAMINATION

20 BY MR. MILLER:

21 Q. John, have you had an opportunity to review the  
22 amended petition of Tri Star concerning water well  
23 setback exception which has been filed with the  
24 Illinois Pollution Control Board?

1 A. Yes.

2 Q. There are certain factual matters in that  
3 amended petition to which you did not testify here  
4 today; is that true?

5 A. That is correct.

6 Q. If you were to testify as to those points which  
7 are contained in the amended petition in additional  
8 and further direct testimony, would those be your  
9 sworn statements?

10 A. Yes.

11 Q. And would those be your sworn statements as  
12 if -- strike that.

13 Would those be your sworn statements to  
14 the same extent that you have offered the Board  
15 your affidavit in support of the amended petition?

16 A. Yes.

17 MR. MILLER: Mr. Hearing Officer, then for  
18 purposes of shortening the length of time for this  
19 hearing I would offer those factual representations  
20 of Mr. Stewart as contained in the amended petition  
21 for water well setback filed with the Board August  
22 14th, 1997 as evidence to be afforded the same  
23 consideration by the Board as if prefiled testimony  
24 filed with the Hearing Officer here today.

1 HEARING OFFICER BURDS: Mr. Ewart.

2 MR. EWART: I have no objection to that. I, of  
3 course, wish the Board to recognize the  
4 cross-examination that the Agency has done of  
5 witnesses in earlier parts of this hearing and, of  
6 course, our case in rebuttal as Respondent's case  
7 that will proceed after Petitioner's case.

8 MR. MILLER: Mr. Hearing Officer, I would  
9 stipulate for the Board's benefit and the benefit  
10 of the Illinois Environmental Protection Agency  
11 that my offer that I've just concluded is not  
12 intended to preclude the Agency's right to  
13 cross-examine witnesses nor does it in any way  
14 obviate the cross-examination of witnesses that the  
15 Agency has already conducted.

16 HEARING OFFICER BURDS: Okay. Mr. Ewart, with  
17 that representation --

18 MR. EWART: I have no objection.

19 HEARING OFFICER BURDS: Okay. Then what we'll  
20 do is --

21 MR. MILLER: I would like to then just for  
22 purposes of making the record clear offer to be  
23 admitted into evidence as if containing prefiled  
24 testimony for purposes of this hearing a copy of

1 the petition of Tri Star Marketing for a water well  
2 setback exception --

3 HEARING OFFICER BURDS: Okay. Now, there was a  
4 petition, an amended petition, Mr. Miller. Are we  
5 referring to one or both?

6 MR. MILLER: We are offering the amended  
7 petition for water well setback exception as filed  
8 stamped by the clerk's office of the Board on  
9 August 14th, 1997 as Petitioner's Exhibit No. 7.

10 HEARING OFFICER BURDS: Let the record reflect  
11 that I have received a document entitled amended  
12 petition for waiver of well setback exception, a  
13 one -- eight-page document and will be marked  
14 Petitioner's Exhibit No. 7. Any objection to that  
15 document being admitted?

16 MR. EWART: No objection.

17 HEARING OFFICER BURDS: The document is admitted  
18 as Petitioner's Exhibit 7.

19 Mr. Miller, has -- Mr. Ewart, do you have  
20 any questions of Mr. Stewart?

21 MR. EWART: No, I don't.

22 HEARING OFFICER BURDS: Any other questions of  
23 Mr. Stewart at this time based on his additional  
24 testimony? Let the record reflect that there are

1 no additional questions of Mr. Stewart at this  
2 time.

3 Mr. Miller, do you have additional  
4 questions of Mr. Stewart?

5 MR. MILLER: Just one small matter, Mr. Hearing  
6 Officer.

7 HEARING OFFICER BURDS: Yes, Mr. Miller.

8 CONTINUED REDIRECT EXAMINATION

9 BY MR. MILLER:

10 Q. John, I'm going to hand you a document and  
11 could you identify that document for me?

12 A. It's a letter dated February 27, 1997 from Bill  
13 Bolen, United States Environmental Protection  
14 Agency, Section Chief, addressed to my father, Dean  
15 Stewart, at Tri Star Marketing concerning the Byron  
16 Municipal Well Field, Byron, Illinois.

17 Q. Could you tell me in general terms what the  
18 contents of that letter is?

19 A. USEPA was releasing Tri Star Marketing from any  
20 potential source -- groundwater source at our site  
21 and -- regarding the contamination of the wells in  
22 Byron.

23 Q. Could you tell me what the conclusion of USEPA  
24 is as contained in that letter as far as the status

1 of Tri Star Marketing as a potentially responsible  
2 party for the contamination in Municipal Wells Nos.  
3 1 and 2?

4 A. USEPA felt that we were no longer a responsible  
5 party.

6 MR. MILLER: Okay. Mr. Hearing Officer, I'd  
7 like to offer into evidence this Petitioner's  
8 Exhibit No. 8 which is the letter dated February  
9 27, 1997 from William Bolen to Tri Star Marketing,  
10 Inc. I'm tendering that to Mr. Ewart for his  
11 examination.

12 HEARING OFFICER BURDS: Let the record reflect  
13 that Mr. Ewart is reviewing the document.

14 MR. EWART: Can we get copies made?

15 MR. MILLER: Off the record. That's --

16 HEARING OFFICER BURDS: Wait. I think we can go  
17 off the record and get copies made of the document  
18 at a break. That's not a problem.

19 MR. EWART: That's no problem. I have a few  
20 questions.

21 MR. MILLER: I have no further direct of  
22 Mr. Stewart.

23 HEARING OFFICER BURDS: Mr. Ewart, do you have  
24 any questions of Mr. Stewart or would you like an



1 opportunity to review the letter?

2 MR. EWART: Yes. I'd like just a short period.

3 HEARING OFFICER BURDS: Why don't we take a  
4 five-minute recess.

5 (A recess was taken at 12:25 p.m. and  
6 proceedings resumed at 12:31 p.m.)

7 HEARING OFFICER BURDS: Let's go back on the  
8 record. Before we go back on the record and  
9 proceed, just so we know where we left off,  
10 Mr. Ewart was reviewing the document that had been  
11 marked as Petitioner's Exhibit 8; is that correct,  
12 Mr. Miller?

13 MR. MILLER: That's correct.

14 HEARING OFFICER BURDS: Mr. Ewart, have you had  
15 an opportunity to review that document?

16 MR. EWART: Yes, I have.

17 HEARING OFFICER BURDS: Mr. Miller, that  
18 document, am I correct, has been tendered as  
19 Petitioner's Exhibit 8?

20 MR. MILLER: Right, correct.

21 HEARING OFFICER BURDS: Mr. Ewart, any questions  
22 of Mr. Stewart regarding the document, Petitioner's  
23 Exhibit 8?

24 MR. EWART: I have some questions, but more so

1 with regard to the condition of the site after this  
2 document.

3 RECROSS EXAMINATION

4 BY MR. EWART:

5 Q. Mr. Stewart, are you aware of any existing  
6 monitoring wells on this site?

7 A. I'm unaware of existing monitoring wells.  
8 There may be some, but we are not involved in  
9 remediation of the site.

10 Q. Would that be also true that you don't --  
11 aren't aware of any pump and treat wells on the  
12 site?

13 A. My understanding was that there was a pump and  
14 treat facility. Whether there's still an active  
15 well on site, I just don't know. I honestly don't  
16 know. I haven't inspected the site recently.  
17 There very well may be.

18 Q. If for purposes of this cross-examination there  
19 were -- you were to review the site and to discover  
20 monitoring wells and/or pump and treat wells on the  
21 site, would these not be potential access ways for  
22 pollution to the groundwater and aquifer?

23 A. They could be, yes.

24 Q. Again, under the supposition if they do exist

1 on the site, what, if anything, would Tri Star do  
2 with regard to those existing monitoring wells or  
3 pump and treat wells?

4 A. Consistent with our operation, if the  
5 monitoring wells and/or pump and treat wells were  
6 not in active service, we would make sure that they  
7 were properly sealed off and abandoned -- well,  
8 excuse me, not abandoned, properly sealed off and  
9 eliminated from use.

10 Q. Would Tri Star be willing to stipulate to this  
11 as part of this proceeding before the Board?

12 A. Yes, we would be.

13 MR. MILLER: Let me back up here. If I  
14 understand what Mr. Ewart is proposing, that should  
15 the Board in its discretion feel that the petition  
16 is justified and were there an Agency  
17 recommendation as a condition to the grant of the  
18 petition for the water well setback exception that  
19 the existing monitoring wells, if any, be properly  
20 closed, then Tri Star would stipulate that they  
21 would do that.

22 MR. EWART: I have no objection except that you  
23 add pump and treat wells to the monitoring wells.

24 THE WITNESS: That's fine.

1 MR. MILLER: Is that acceptable?

2 THE WITNESS: Yeah.

3 MR. MILLER: We'd stipulate to that.

4 HEARING OFFICER BURDS: Okay, so it's clear I  
5 don't want to discourage any stipulations at all.  
6 That would make it more convenient for the Board to  
7 decide this case or determine what they have to  
8 determine, but why don't we for the record's sake  
9 clearly stipulate or identify or articulate what  
10 the stipulation is and I'm not sure -- if you feel  
11 comfortable with what you've done, Mr. Miller,  
12 that's fine. I just want to make sure that there  
13 is a stipulation that there -- that it is  
14 represented by the stipulated -- by both parties,  
15 Tri Star and the IEPA. That is my understanding,  
16 but can we articulate then what exactly the  
17 stipulation is?

18 MR. MILLER: The stipulation would be subject to  
19 clarification by Mr. Ewart that should there be  
20 existing monitoring wells or a pump and treat  
21 system on the site and in the event that the Board  
22 in its discretion would grant Tri Star's petition  
23 for water well setback exception, as a condition to  
24 that grant it would be acceptable for Tri Star to

1 commit in advance that it will properly close  
2 both -- any existing monitoring wells and remove  
3 any pump and treat system and associated wells with  
4 that system.

5 HEARING OFFICER BURDS: Mr. Ewart, is that your  
6 understanding?

7 MR. EWART: Yes, in accordance with the  
8 appropriate State rules and regulations that they  
9 would be -- that the wells would be abandoned and  
10 closed in accordance with the --

11 MR. MILLER: My stipulation used the word  
12 properly and that's what it meant.

13 MR. EWART: The well construction code of the  
14 Department of Public Health.

15 HEARING OFFICER BURDS: Mr. Miller.

16 MR. MILLER: So stipulated.

17 HEARING OFFICER BURDS: Okay. Just for a  
18 moment, court reporter, are you having difficulty  
19 hearing with the adjacent noise? We're working  
20 through the lunch hour for the record. Apparently  
21 we have a lunch break going on next door, so what I  
22 want to do is make it convenient for the court  
23 reporter. Let's go off the record for a minute.

24 (A discussion was held off the record.)

1 HEARING OFFICER BURDS: Let's go back on the  
2 record. All right. I'm trying to remember where  
3 we were with Mr. Stewart. Mr. Stewart has been  
4 called as a witness.

5 Mr. Ewart, you have been given an  
6 opportunity to cross-examine Mr. Stewart for the  
7 third time, I believe. Do you have any other  
8 questions of Mr. Stewart?

9 MR. EWART: No, I do not, sir.

10 HEARING OFFICER BURDS: Are there any other  
11 questions from members at large or members of the  
12 public or other attorneys present for Mr. Stewart?

13 MR. BROOKS: Just a couple of quick follow-up  
14 for clarification.

15 HEARING OFFICER BURDS: Would you please  
16 identify yourself?

17 MR. BROOKS: Mr. Brooks, City of Byron.

18 CROSS EXAMINATION

19 BY MR. BROOKS:

20 Q. Mr. Stewart, I think you already testified that  
21 when you bought the property in '94 the tanks had  
22 already been removed, correct?

23 A. Correct.

24 Q. Has Tri Star conducted any activity on the

1 property regarding the operation of any sort of  
2 business?

3 A. No.

4 Q. And was there any sort of business in operation  
5 when you bought the property?

6 A. No.

7 Q. Regarding the exhibit that has been tendered  
8 from Bill Bolen, it doesn't state what contaminants  
9 you would be released from as a potential  
10 responsible party. Do you have indication of what  
11 contaminants that he's referring to?

12 A. No, I do not.

13 Q. Is it possible he's referring to TCE  
14 contaminants?

15 A. Quite possibly.

16 Q. Because you had already stated that Amoco had  
17 gotten a release letter from Illinois EPA regarding  
18 the petroleum contaminants?

19 A. That's correct.

20 HEARING OFFICER BURDS: Any further questions,  
21 Mr. Brooks?

22 MR. BROOKS: No.

23 HEARING OFFICER BURDS: Any other questions of  
24 Mr. Stewart at this time? Let the record reflect

1 there are none.

2 Mr. Miller, would you have any other  
3 questions for Mr. Stewart?

4 MR. MILLER: No further questions of  
5 Mr. Stewart.

6 HEARING OFFICER BURDS: Okay. Any other  
7 evidence or testimony, Mr. Miller?

8 MR. MILLER: I do not believe so at this time.

9 HEARING OFFICER BURDS: Okay. Then so we go  
10 through this -- and what I want to do is make a  
11 clear and accurate record because there have been  
12 changes made to Petitioner's exhibits previously  
13 submitted and admitted and I want to make sure  
14 those documents are referred to correctly in the  
15 record. I want to go through each of your exhibits  
16 at this time if that's satisfactory with you,  
17 Mr. Miller.

18 Okay. What I have is Petitioner's Exhibit  
19 No. 1 which appears to be identified as a site  
20 development plan, Byron, Illinois. There was, I  
21 believe, one or -- some testimony elicited  
22 regarding the document. That document has been  
23 presented by the Petitioner.

24 Mr. Ewart, do you have any objection to



1 that document being admitted?

2 MR. EWART: No.

3 HEARING OFFICER BURDS: Any other objections to  
4 that document? Okay. Now, referring to  
5 Petitioner's Exhibit No. 2, it has a cover page  
6 entitled Index to Group Exhibit B. It appears to  
7 be a group exhibit composed of several documents.  
8 That document has been tendered and previously  
9 admitted. However, testimony has been elicited  
10 regarding the document.

11 Any objection to that document, Mr.  
12 Ewart?

13 MR. EWART: No.

14 HEARING OFFICER BURDS: So for the record  
15 Petitioner's Exhibit 1 and Petitioner's Exhibit 2  
16 are admitted. All right. The next two documents  
17 referred to as Petitioner's Exhibit 3 and  
18 Petitioner's Exhibit 4 are affidavits of --  
19 presented -- Petitioner's Exhibit 3 is an affidavit  
20 of Kerry S. Gifford. For the record Mr. Gifford  
21 was not present at the hearing; however, the  
22 affidavit has been submitted as if -- as read into  
23 the record as if testified to at the hearing. That  
24 document again is Petitioner's Exhibit 3, an

1 affidavit of Kerry S. Gifford, and I would refer to  
2 the summary that Mr. Miller gave regarding this  
3 document.

4 Any objection to that document,  
5 Mr. Ewart?

6 MR. EWART: No.

7 HEARING OFFICER BURDS: Any other objections to  
8 the document? Hearing none, the document is  
9 admitted. Petitioner's Exhibit 4 refers to an  
10 affidavit of John D. Stewart who has been present  
11 for the record at the hearing and has -- testimony  
12 has been elicited and he has been questioned on  
13 numerous occasions. That document has been  
14 presented by Petitioner.

15 Any objection, Mr. Ewart?

16 MR. EWART: No.

17 HEARING OFFICER BURDS: Any other objections  
18 regarding Petitioner's Exhibit No. 4, the affidavit  
19 of one John Stewart? Hearing none, that document  
20 is admitted. All right. Now, referring to  
21 Petitioner's Exhibit No. 5, that appears to be a  
22 document on Midwest Engineering Services, Inc.  
23 letterhead to a Mr. Dean Stewart and consists of a  
24 letter and attachment, four attachments. That

1 document has been submitted and referred to in  
2 testimony by, I believe, Mr. Newman and  
3 Mr. Stewart. I believe that document has been  
4 submitted for admission by the Petitioner.

5 Any objection to that document,  
6 Mr. Ewart?

7 MR. EWART: No.

8 HEARING OFFICER BURDS: Any other objections to  
9 the document? Hearing none, that document is  
10 admitted. All right. Petitioner's Exhibit No. 6,  
11 again is a document with a cover page on Midwest  
12 Engineering Services, Inc. letterhead with  
13 attachments, again identified as Petitioner's No. 6  
14 submitted by the Petitioner.

15 Any objection to that document,  
16 Mr. Ewart?

17 MR. EWART: No.

18 HEARING OFFICER BURDS: Any other objection --  
19 any objections to the document be admitted by any  
20 other party? Hearing none, the document is  
21 admitted. Finally, what we have is Petitioner's  
22 Exhibit No. 7 which is, in fact, the amended  
23 petition for water well setback exception which is,  
24 in fact, a pleading in this matter. That document

1 has been admitted, and I believe there was no  
2 objection by you to that document being admitted,  
3 Mr. Ewart.

4 MR. EWART: No.

5 HEARING OFFICER BURDS: All right. Any other  
6 objections to that document being admitted into  
7 this proceeding? Hearing none, the document is  
8 admitted. Now, there was one other document that I  
9 do not have a copy of and that was a letter which  
10 copies were made. Okay. Let the record reflect a  
11 copy of a document has been marked as --  
12 Petitioner's Exhibit 8 has been supplied to the  
13 Hearing Officer by the Petitioner. It is marked as  
14 Petitioner's Exhibit No. 8. It is what appears to  
15 be on USEPA letterhead. That document has been  
16 submitted for admission by the Petitioner.  
17 Any objection to that document being  
18 admitted?

19 MR. EWART: No.

20 HEARING OFFICER BURDS: Any objection to that  
21 document be admitted by any party? Hearing none,  
22 that document is admitted.

23 All right. Any other evidence or  
24 testimony at this time, Mr. Miller?

1 MR. MILLER: None, Mr. Hearing Officer.

2 HEARING OFFICER BURDS: Okay. Mr. Ewart.

3 MR. EWART: Yes. I need about five minutes to  
4 get my exhibits in order.

5 HEARING OFFICER BURDS: Mr. Ewart did ask  
6 previously that he be given an opportunity -- a  
7 short recess before presenting his case in chief.  
8 We'll take a recess at this time.

9 (A recess was taken at 12:45 p.m. and  
10 proceedings resumed at 12:58 p.m.)

11 HEARING OFFICER BURDS: Let's go back on the  
12 record. When we went off the record, and this  
13 proceeding is PCB 97-199, Mr. Miller had rested.  
14 Mr. Ewart was about to begin his case in chief.  
15 Mr. Ewart.

16 MR. EWART: Thank you, Mr. Hearing Officer. At  
17 this time I would like to introduce for  
18 identification purposes certain exhibits that have  
19 been presented to the Petitioners beforehand and to  
20 which they have stipulated to or at least that is  
21 my understanding, Mr. Miller.

22 MR. MILLER: Mr. Hearing Officer, we have no  
23 objection to stipulating to the admissibility of  
24 the Respondent's exhibits subject to our right to

1 cross-examine.

2 HEARING OFFICER BURDS: Okay. Let's do this.

3 Why won't we identify -- is there more than one

4 Respondent exhibit? Are there -- how many exhibits

5 are there?

6 MS. KONZELMANN: Seven.

7 HEARING OFFICER BURDS: Seven Respondent's

8 exhibits, okay and, Mr. Miller, you've indicated

9 you've had an opportunity to review all seven of

10 the Respondent's exhibits?

11 MR. MILLER: That's true.

12 HEARING OFFICER BURDS: Okay, and he's already

13 represented that there is no objection. Why

14 don't -- Ms. Konzelmann, are you going to identify

15 the exhibits?

16 MS. KONZELMANN: Yes, I will.

17 HEARING OFFICER BURDS: Okay. If you would --

18 can you tender a copy to the Board at this time or

19 Hearing Officer at this time, that way I can mark

20 them?

21 Ms. Konzelmann.

22 MS. KONZELMANN: Respondent Exhibit No. 1 is the

23 Byron public water supply evaluation report and

24 it's dated November 21st, 1997.

1 HEARING OFFICER BURDS: Let the record reflect  
2 that I have been handed a copy of a document  
3 stapled appearing to be numerous pages in length  
4 identified as Respondent Exhibit No. 1.

5 MS. KONZELMANN: Respondent Exhibit No. 2 is the  
6 Byron inorganic chemical samples from Well No. 1  
7 collected on July 15th, 1997 which shows chromium  
8 and nitrate levels.

9 HEARING OFFICER BURDS: All right. Let the  
10 record reflect I've been handed a document entitled  
11 Illinois Environmental Protection Agency, Division  
12 of Public Water Supply sample verification,  
13 Respondent Exhibit 2. All right.

14 MS. KONZELMANN: Respondent Exhibit No. 3 is  
15 Byron inorganic chemical samples from Well No. 2  
16 collected on July 15th, 1997, shows chromium and  
17 nitrate levels.

18 HEARING OFFICER BURDS: Let the record reflect  
19 that I've had a document tendered to me entitled  
20 Respondent's Exhibit No. 3 in the right-hand corner  
21 referring to -- has reference to Well 2. It has  
22 been tendered to the Hearing Officer. All right.

23 MS. KONZELMANN: Respondent Exhibit No. 4 is  
24 Byron volatile organic chemical samples from Well

1 No. 1 collected on July 15th, 1997. It shows  
2 trichloroethylene levels or TCE levels.

3 HEARING OFFICER BURDS: Let the record reflect  
4 that Respondent's Exhibit No. 4 has been tendered  
5 to the Hearing Officer. It's entitled -- it's an  
6 eight and a half by 11 piece of paper, Illinois  
7 Environmental Protection Agency, refers to a sample  
8 number and then a sampling point description,  
9 Byron/Tap 01, Well No. 1.

10 Ms. Konzelmann.

11 MS. KONZELMANN: Respondent Exhibit No. 5, Byron  
12 volatile organic chemical samples from Well No. 2  
13 collected on July 15th, 1997, shows  
14 trichloroethylene levels.

15 HEARING OFFICER BURDS: Let the record reflect  
16 the document entitled Respondent's Exhibit No. 5 in  
17 the right-hand, upper corner has been tendered to  
18 the Hearing Officer with the caption Illinois  
19 Environmental Protection Agency underneath the left  
20 sample number, refers to a number and then below  
21 that is a sampling point description: Byron/Tap 01,  
22 Well No. 2.

23 Ms. Konzelmann.

24 MS. KONZELMANN: Respondent Exhibit No. 6 are



1 Byron samples from monitoring wells near Wells No.  
2 1 and 2. These were collected on July 21st and  
3 August 18th, 1988 and this shows gasoline  
4 constituents in the upper aquifer.

5 HEARING OFFICER BURDS: Let the record reflect  
6 that the document has been submitted as  
7 Respondent's Exhibit No. 6. It's a document  
8 consisting of multiple pages. It has been tendered  
9 to the Hearing Officer, so the record is clear  
10 Ms. Konzelmann is only identifying what the  
11 documents are regarding the Respondent's exhibits.

12 Ms. Konzelmann.

13 MS. KONZELMANN: Respondent Exhibit No. 7 are  
14 the testimony and qualifications of Lynn D.  
15 Dunaway. He's an environmental protection  
16 specialist with the Illinois Environmental  
17 Protection Agency.

18 HEARING OFFICER BURDS: All right. Let the  
19 record reflect that Respondent's Exhibit 7 appears  
20 to be in the manner of pre -- or filed testimony;  
21 is that correct, Ms. Konzelmann?

22 MS. KONZELMANN: Yes, it is. Lynn will be  
23 testifying to this.

24 HEARING OFFICER BURDS: Okay. For the record

1 Mr. Dunaway is present and has been previously  
2 sworn.

3 Mr. Ewart, subject to the  
4 cross-examination of Mr. Miller and his  
5 representations, can we briefly summarize this  
6 testimony for the record?

7 MR. EWART: Yes.

8 LYNN D. DUNAWAY,  
9 having been previously sworn, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. EWART:

13 Q. Mr. Dunaway, go ahead.

14 A. My name is Lynn Dunaway. I am an environmental  
15 protection specialist for the Illinois EPA and I  
16 work in the Division of Public Water Supplies. I  
17 have a BS Degree in geology and I did some  
18 postgraduate work at Northern Illinois University.  
19 For almost the past 10 years since February of 1988  
20 I worked at the Agency in the Division of Public  
21 Water Supplies. Previously I worked for Analytical  
22 Logging Company in the oil and gas industry.

23 I used existing data from the Division of  
24 Public Water Supply files in addition to generally

1 available documents from the Illinois State Water  
2 Survey and the Illinois Geological Survey to  
3 describe the geologic setting for the Byron wells  
4 as well as construction information that was  
5 available to summarize the construction of those  
6 wells. From the testimony one correction I would  
7 make, on Page 3 the second paragraph, the third  
8 sentence reads, raw water monitoring in 1986 from  
9 Well 1 indicated TCE at three parts per billion.  
10 It should actually read Well 2 in that sentence as  
11 opposed to Well 1.

12 MR. MILLER: Lynn, could you repeat where that  
13 is?

14 THE WITNESS: Okay. On Page 3, second  
15 paragraph, third sentence in that paragraph.

16 MR. MILLER: Thank you.

17 HEARING OFFICER BURDS: Let the record reflect  
18 that I have gone to Page 3 of what has been  
19 identified as Respondent's Exhibit 7 and in the  
20 second paragraph with the one, two -- third full  
21 sentence -- within the third full sentence of the  
22 second paragraph on that page raw water monitoring  
23 in 1986 from Well 2 indicated TCE at 3.0 PBP, it  
24 previously was referred to one; is that correct?

1 THE WITNESS: Yes, that's correct.

2 HEARING OFFICER BURDS: Any objections to that,  
3 Mr. Miller?

4 MR. MILLER: No objections to the correction.

5 HEARING OFFICER BURDS: Okay.

6 A. Essentially the wells are located in the  
7 floodplain along the Rock River. The upper  
8 formations are sand and gravel. The wells -- both  
9 Wells 1 and 2 have a casing that stems to  
10 approximately 200 feet with a total depth of Well 1  
11 being approximately 1400 feet and the total depth  
12 of Well 2 being almost 700 feet.

13 I then responded to several aspects of the  
14 Tri Star's petition. Should I review those also,  
15 my responses to those or -- do you want to question  
16 me on these? The concerns we had in regard to the  
17 exception were in regard to the compliance, whether  
18 the setback requirements would propose arbitrary  
19 and unreasonable hardship. The Agency was  
20 maintaining the fact that Byron Wells 1 and 2 were  
21 in existence in July of 1988 when the minimum  
22 setback zones became effective in regard to  
23 potential secondary sources; however, Tri Star  
24 didn't purchase the property until 1994, and based

1 on the testimony that they've already provided the  
2 tanks had been pulled at that time and there was no  
3 operating business at that site. Therefore, the  
4 setback zones were in place and should have been --  
5 Tri Star should have been aware of the prohibition  
6 of locating new potential secondary sources within  
7 setback zones.

8           The maximum alternative setback utilized,  
9 Mr. Stewart addressed that concern and found that  
10 by a westward orientation as opposed to the  
11 proposed southern orientation of the facility, very  
12 little additional setback distance would have been  
13 gained, and the last concern of the Agency is that  
14 the location of the potential source will not  
15 constitute a significant hazard to the well, and in  
16 reviewing other decisions by the Board and in  
17 looking at the site specific data it appears to  
18 us -- it appears to us that based on the  
19 information that we have Byron wishes to keep Wells  
20 1 and 2 available as a public supply. They may be  
21 not in frequent use, but we typically consider a  
22 well which is attached to the distribution system a  
23 community water supply to be active, and inactive  
24 status would only be acceptable to the Agency on a

1 very temporary basis while repairs were being  
2 sought. We wouldn't expect wells to be left in an  
3 inactive state indefinitely. We would expect them  
4 to be properly abandoned pursuant to water well  
5 construction code or that they be refurbished and  
6 be held as an active standby well. The replacement  
7 of a community well is expensive. The new well  
8 that Byron drilled cost approximately \$160,000 to  
9 construct; therefore, the loss of those wells or  
10 the replacement of those wells would be expensive.

11           Contaminants that are in the upper sand  
12 and gravel by whatever means have entered into the  
13 wells and are being produced by those wells in the  
14 water -- as the water monitoring data indicates,  
15 and based on my review of the technology controls  
16 that Tri Star submitted the monitoring system can  
17 lose anywhere from .1 to .2 gallons of product per  
18 hour without triggering the sensor. Since  
19 contaminants that are already in the upper sand and  
20 gravel formation have entered the Byron wells, it  
21 seems likely that any additional contamination that  
22 was released would also potentially impact those  
23 wells, and one of my attachments was a graph from a  
24 document called the -- Attachment 5 on Page 13

1 contains graphs that indicate .2 gallons of  
2 gasoline contains enough benzene to contaminate a  
3 million gallons of water, so therefore, a fairly  
4 small amount of gasoline product could impact a  
5 fairly large amount of gasoline -- excuse me,  
6 fairly large amount of water. I don't have  
7 anything else.

8 HEARING OFFICER BURDS: Mr. Ewart, do you have  
9 any other questions of Mr. Dunaway?

10 MR. EWART: Mr. Hearing Officer, at this time I  
11 offer him up for cross-examination.

12 HEARING OFFICER BURDS: Okay. Any questions of  
13 Mr. Dunaway, Mr. Miller?

14 MR. MILLER: I'll be brief, and I'm not sure we  
15 want this on the record or off. You've offered,  
16 Steve, Respondent's Exhibit No. 7, the prefiled  
17 testimony. It contains a signature line. Did he  
18 submit a signed copy?

19 MR. EWART: Of course.

20 HEARING OFFICER BURDS: I'm looking at the copy  
21 that was submitted to me. It is not signed.

22 Thank you, Mr. Miller.

23 MR. MILLER: Former Board attorney.

24 MR. EWART: Thank you.

1           HEARING OFFICER BURDS: For the record  
2 Respondent's Exhibit No. 7, the filed testimony of  
3 Mr. Dunaway, has, in fact, now -- the copy that was  
4 previously made was unsigned; however, the document  
5 that has been submitted to the Hearing Officer as  
6 the exhibit has now been signed.

7           Mr. Dunaway, that is your testimony?

8           THE WITNESS: Yes, it is.

9           HEARING OFFICER BURDS: Okay. Is that a true  
10 and accurate document -- is this -- I'm going to  
11 show you what's been marked Respondent's Exhibit 7  
12 and submitted to me. Is that a true and accurate  
13 copy of the document you prepared and are  
14 submitting with your signature? Let the record  
15 reflect that Mr. Dunaway is reviewing the document  
16 now identified as Respondent's Exhibit No. 7.

17          THE WITNESS: Yes, it is.

18          HEARING OFFICER BURDS: Thank you. Mr. Ewart,  
19 anything further of Mr. Dunaway?

20          MR. EWART: Nothing further.

21          HEARING OFFICER BURDS: Mr. Miller.

22                       CROSS EXAMINATION

23 BY MR. MILLER:

24 Q. Mr. Dunaway, you've testified that the



1 technical controls that Tri Star proposes to use  
2 can lose from .1 and .2 gallons of water without  
3 triggering a sensor. Could you tell me just  
4 briefly upon what information you base that  
5 conclusion?

6 A. That was the -- I found that information in the  
7 submissions from Tri Star. Petitioner's Exhibit  
8 No. 2, there were several places within the  
9 description of the equipment depending on -- it was  
10 my understanding depending on the particular type  
11 of sensors that go into it can lose, if accurate,  
12 .1 gallons up to .2 gallons of loss which is within  
13 the precision required by USEPA; however, there is  
14 some potential for loss.

15 Q. I think you just anticipated my question.  
16 That's actually at or exceeding the precision  
17 required for --

18 A. Yes.

19 Q. -- USEPA for monitoring systems of that type?  
20 You're not disputing that the type of monitoring  
21 system that Tri Star intends to use has several  
22 levels of redundancy to it in order to, I guess,  
23 minimize the chances of releases?

24 A. No.

1 Q. In addition to a release from a UST, what has  
2 to happen in order for a water supply to be  
3 contaminated?

4 A. The water -- the contaminated water has to  
5 reach the open end of the well and the pump.

6 Q. Do you have specific knowledge maybe in the  
7 form of a groundwater directional flow diagram or  
8 Piezometric Study, P-i-e-z-o-m-e-t-r-i-c Study of  
9 this site to show which direction contaminants  
10 would likely flow in the event of a release?

11 A. I don't have any study like that, no.

12 Q. Okay. Do you have direct knowledge of the --  
13 other than what's contained in your prefiled  
14 testimony regarding the geology of the area in  
15 general, do you have direct knowledge of the  
16 geology underlying either the proposed development  
17 site or the location of Water Wells Nos. 1 and 2?

18 A. In general based on well logs, the geology in  
19 the upper 200 feet is sand and gravel  
20 predominantly. Beneath that it's bedrock --

21 Q. You're referring to Wells Nos. 1 and 2?

22 A. Yes, I am.

23 Q. Okay.

24 A. I should probably specify Well 2. There's no

1 well log available for Well 1 that I'm aware of.  
2 Q. With regard to Respondent's Exhibit No. 7 --  
3 I'm sorry, Respondent's Exhibit No. 6 which is a  
4 report of a sampling result from Byron monitoring  
5 well, can you -- can you tell me what the location  
6 of that exact monitoring point is?  
7 A. I was -- I don't know the location, no.  
8 Q. Okay. With regard to that same exhibit can you  
9 tell me what the date of sampling was?  
10 A. It was July 21st of 1988.  
11 Q. Would that have been prior to Tri Star's  
12 purchase of the site?  
13 A. Yes.  
14 Q. Would that have been prior to any of Amoco's  
15 remediation activities at the site?  
16 A. I don't know.  
17 Q. With regard to those constituents that are  
18 reported to be present in this monitoring well, I  
19 take it that your testimony would be that this is  
20 not -- this exhibit is not confirmation that those  
21 constituents are present in either Wells Nos. 1 or  
22 2?  
23 A. Can you repeat the question?  
24 Q. Sure. The existence of these constituents

1 which you testified to as reflected in Respondent's  
2 Exhibit No. 6, these are not verification of the  
3 existence of those contaminants in Wells Nos. 1 and  
4 2, are they?

5 A. This -- in my testimony I have a sample taken  
6 by IEPA staff that indicates -- or excuse me, it  
7 wasn't taken by IEPA staff. It was operator  
8 collected. That indicates that in 1988 that BETX  
9 compounds, B-E-T-X, were found in Well 2  
10 specifically in Respondent's Exhibit 4, Attachment  
11 3.

12 MR. EWART: For the record strike that. It's  
13 Respondent's Exhibit No. 7.

14 THE WITNESS: Oh, I'm sorry.

15 MR. EWART: Attachment 3.

16 HEARING OFFICER BURDS: Thank you, Mr. Ewart.

17 Do you have that document, Mr. Miller?

18 MR. MILLER: I'm still trying to locate it.

19 Q. Was the --

20 A. Okay. Specifically on --

21 HEARING OFFICER BURDS: Hold on, Mr. Miller. Do  
22 you have a copy?

23 MR. MILLER: I have the attachment, yes. Thank  
24 you.

1 HEARING OFFICER BURDS: Okay. Go ahead,  
2 Mr. Miller.

3 THE WITNESS: Okay. On the sample taken -- Page  
4 8 of the monitoring.

5 MR. EWART: It's in Page 8 of the monitoring.

6 A. On September -- or excuse me -- July 21st of  
7 1988 a sample was taken by Mr. Hanson, Brett  
8 Hanson, as opposed to operator collected, from  
9 Byron Well No. 2 which indicates ethylbenzene and  
10 xylene were detected in that well.

11 Q. Have there been additional sampling events in  
12 that well since that time?

13 A. There was, yes.

14 Q. And what's the date of that?

15 A. There was additional volatile organic sample  
16 event 10 of '88, 1 of '89 and the other are two  
17 sample events indicated on 1 of '89. Those  
18 monitoring results are located in Attachment 3 of  
19 the monitoring of the well site survey report,  
20 which is the well site survey report, and the  
21 monitoring data Pages 6 and 7.

22 HEARING OFFICER BURDS: For the record we are  
23 still referring to Respondent's Exhibit No. 7?

24 THE WITNESS: Yes, that's correct.

1 HEARING OFFICER BURDS: Thank you.

2 Q. That's for which well, Mr. Dunaway?

3 A. That would be Well 2.

4 Q. Okay. I'm looking at a selected sample

5 expanded report for 1 of '89.

6 A. Yes.

7 Q. That's for Well No. 2 also. You're looking at

8 the lines for benzene, toluene, ethylbenzene and

9 xylene showing those below the MCL?

10 A. Correct.

11 Q. Okay. Which would be subsequent to the date

12 that you just testified to; is that correct?

13 A. That's correct.

14 Q. And for reporting periods subsequent to 1/89 is

15 it not true that the reported results for what's

16 commonly referred to as BTEX were below the MCLs?

17 A. I'm not aware of any detections of the BTEX

18 compounds.

19 Q. Uh-huh.

20 A. However, these -- in my testimony -- the water

21 analysis of my testimony are for raw water. The

22 ones for the MCL determination for compliances made

23 are from treated water.

24 Q. For raw water do you have data for, let's say,

1 year 1997 to show BTEX considerations?

2 A. To the best of my knowledge we don't have any  
3 more recent raw water monitoring data from Well 2.

4 Q. Than what you've already testified to?

5 A. Than what I've already testified to.

6 Q. You're not disputing the facts, Mr. Dunaway,  
7 are you, that TCE is not a contaminant of concern  
8 at a gasoline station, are you?

9 A. Typically, no. Though, a service station may  
10 have a parts washer that could use that sort of a  
11 compound. I'm not trying to indicate that TCE  
12 contamination is responsible or is coming from the  
13 Amoco site.

14 Q. Okay. Mr. Dunaway, are you aware of the depth  
15 at which groundwater underlies the development  
16 site?

17 A. No.

18 Q. Okay. Do you have any specific knowledge as to  
19 the length of time it would take a release from the  
20 development site to affect Municipal Wells 1 or 2?

21 A. No.

22 Q. By your earlier testimony regarding down  
23 gradient monitoring wells, are you suggesting that  
24 as an additional control measure for Tri Star

1 Marketing?

2 A. I didn't testify to down gradient wells.

3 MR. MILLER: I'm sorry. That was probably  
4 Steve. Maybe you elicited that through a  
5 question. I withdraw that. I don't think I have  
6 any further questions of Mr. Dunaway.

7 HEARING OFFICER BURDS: Okay. Are there any  
8 questions from members at large here at the hearing  
9 to Mr. Dunaway?

10 Mr. Brooks.

11 MR. BROOKS: Just one quick question for  
12 clarification.

13 HEARING OFFICER BURDS: Mr. Brooks, so the  
14 record is clear if you need any of the documents  
15 that they're referring to, obviously I have copies  
16 of those documents.

17 MR. BROOKS: Thank you.

18 CROSS EXAMINATION

19 BY MR. BROOKS:

20 Q. You indicated Wells 1 and 2 are located in the  
21 floodplain. Can you describe what you mean by that  
22 for clarification?

23 A. When I say floodplain, the Rock River --  
24 actually the area was previously -- there was a



1 bedrock valley. In other words, the bedrock had  
2 been previously eroded. That has actually been  
3 filled with glacial outwash 10 to 12,000 years  
4 ago. On top of that the modern day Rock River has  
5 cut a valley into that outwash and there are  
6 with -- and the floodplain, the area where the  
7 river in flood stage may reach or in the case of  
8 the Rock River these areas are frequently referred  
9 to as terraces where the deeper melt waters 10 to  
10 12,000 years ago left higher deposits than the  
11 river actually reaches.

12 Q. So your use of the term floodplain would be  
13 different than if I were saying the 100-year  
14 floodplain --

15 A. Yes.

16 Q. Different standard?

17 A. Yes.

18 MR. BROOKS: Okay. Just clarification.

19 HEARING OFFICER BURDS: Any others questions,  
20 Mr. Brooks?

21 MR. BROOKS: No. Thank you.

22 HEARING OFFICER BURDS: Are there any other  
23 questions of Mr. Dunaway at this time?

24 Mr. Ewart.

1       MR. EWART: Yes. Mr. Hearing Officer, I would  
2 like to briefly bring in as a witness Mr. Andrew  
3 Jackson from Byron who I have talked to briefly on  
4 just a number of questions. I don't believe he's  
5 been sworn in.

6       HEARING OFFICER BURDS: I do not believe so.  
7 Mr. Jackson, if you'll step forward. I think it  
8 would be easier if you have a seat up here. I  
9 think so. We'll see. I didn't realize there would  
10 be so much background noise.

11                   ANDREW JACKSON,  
12 being first duly sworn, was examined and testified  
13 as follows:

14                   DIRECT EXAMINATION

15 BY MR. EWART:

16 Q. Mr. Jackson, will you state your name and spell  
17 it for the record?

18 A. Andrew Jackson, A-n-d-r-e-w, J-a-c-k-s-o-n.

19 Q. Would you -- what is your address?

20 A. Street address?

21 Q. Yes.

22 A. 820 West Second Street in Byron.

23 Q. In Byron. Where do you work?

24 A. I'm in zoning building permits. I'm permit

1 officer for the City of Byron.

2 Q. Were you also involved with the water supply in

3 Byron?

4 A. Yes, I retired in 1994. Previous to that I was

5 employed for close to 25 years with the City of

6 Byron.

7 Q. How long have you lived in Byron?

8 A. 48 years.

9 Q. Are you aware of the proposed site, the former

10 Amoco station?

11 A. Yes.

12 Q. Are you also -- and where is this located?

13 A. Route 2 and Walnut Street.

14 Q. And Walnut Street, otherwise known as Main and

15 Walnut?

16 A. Main and Walnut.

17 Q. Are you aware of what they call an underground

18 storage tank remediation that was conducted by

19 Amoco?

20 A. Yes.

21 Q. And are you aware of the monitoring wells that

22 were installed --

23 A. Yes.

24 Q. -- in that, and were there any other -- was

1 there a pump and treat well also installed?

2 A. There was a pump and treat well installed at

3 the southeast corner of the property.

4 Q. When approximately do you recall becoming aware

5 of these wells?

6 A. When the tanks were taken out, there was

7 suspected pollution at the time and that's when --

8 I believe that's when we started having the

9 problems showing up in the wells. If I remember

10 correctly, that's when they did it.

11 Q. So approximately when did you become aware of

12 these, approximately what date in terms of year?

13 A. Offhand I can't name the year.

14 Q. Was it before 1990?

15 A. Yes.

16 Q. Are you aware of the current status of these

17 wells that you discovered prior to 1990?

18 A. Of the monitoring wells?

19 Q. Yes, monitoring wells.

20 A. As far as I know the pump and treat pump (sic),

21 I believe, was taken out. I'm not sure if they

22 pulled the casing out on the pump and treat well or

23 not. I believe there's still a manhole there at

24 the corner that the well was in, the southeast

1 corner.

2 Q. So that the aperture would still -- of these  
3 wells would still -- of this well, would it still  
4 be open?

5 A. I would suppose that if they didn't pull it and  
6 seal it that -- pull the manhole cover off you can  
7 probably tell whether it's there or not.

8 Q. Would this also be true of the monitoring  
9 wells?

10 MR. MILLER: Would what also be true? That  
11 they're still there?

12 MR. EWART: That they're still there.

13 A. It's possible. I'm not sure. I haven't been  
14 over to the property lately to pay attention.

15 Q. How many monitoring wells were we talking  
16 about?

17 A. I'm not sure. I think there was four or five  
18 on the property site.

19 Q. But to your knowledge they have not been  
20 abandoned?

21 A. Not to my knowledge. They may have been, but  
22 not to my knowledge.

23 MR. EWART: Thank you very much.

24 HEARING OFFICER BURDS: Mr. Miller, do you have

1 any questions for Mr. Jackson?

2 MR. MILLER: Yes.

3 CROSS EXAMINATION

4 BY MR. MILLER:

5 Q. Mr. Jackson, you testified that there was  
6 contamination in Wells Nos. 1 and 2 at or about the  
7 time that Amoco was conducting remediation  
8 activities on its site; is that true?

9 A. Uh-huh. My understanding was that was why they  
10 were doing the remedial work is because of the  
11 contamination in the wells. In other words --

12 Q. Was the contamination in the wells ever linked  
13 to the Amoco site?

14 A. It was suspected. I wouldn't say it was proven  
15 that it was. It was suspected.

16 Q. How many gasoline stations are in the vicinity  
17 of Wells Nos. 1 and 2?

18 A. Two right now. There were two more besides the  
19 two that are there right now, the one across the  
20 street and the one at the Ford garage, right next  
21 door to it.

22 Q. Were they ever suspected as the source of  
23 contamination in Wells Nos. 1 and 2?

24 A. Not to my knowledge that they were suspected.

1 They may have been, but not to my knowledge.

2 Q. Okay. Do you know of any investigation that  
3 was ever done to remove either the Marathon station  
4 or the Mobil station or the two other sources that  
5 you just testified to as possible sources of  
6 contamination of Wells Nos. 1 and 2?

7 A. There was a test well at the one across the  
8 street and there's one at the Sunoco I believe,  
9 right next to the Sunoco or the Marathon. It was  
10 formerly Sunoco.

11 Q. Mr. Jackson, when you talk about contamination  
12 of Wells Nos. 1 and 2, what contamination are you  
13 talking about?

14 A. Well, there were two. There were chromium  
15 and --

16 Q. Trichloroethylene?

17 A. And trichloroethylene.

18 MR. MILLER: Okay. No further questions of this  
19 witness.

20 HEARING OFFICER BURDS: Any other questions from  
21 members at large or the public at large for  
22 Mr. Jackson?

23 Mr. Ewart, do you have any other questions  
24 of Mr. Jackson?

1 MR. EWART: No, I don't.

2 HEARING OFFICER BURDS: So it's clear I made the  
3 court reporter aware that if there's something that  
4 she doesn't get that she should make me aware of  
5 that fact so we have a clear record and so for the  
6 record's sake the court reporter has not indicated  
7 such awareness at this point much to her credit.

8 MR. MILLER: Thank you, Mr. Jackson.

9 HEARING OFFICER BURDS: Mr. Ewart, do you have  
10 any other evidence or testimony to --

11 MR. EWART: Yes, I do. I have one other  
12 witness.

13 HEARING OFFICER BURDS: All right. Let the  
14 record reflect I've tendered back to the  
15 Respondent's attorney Respondent's Exhibits 1  
16 through 6.

17 Mr. Ewart.

18 MR. EWART: Thank you.

19 BRETT HANSON,  
20 having been previously sworn, was examined and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. EWART:

24 Q. Would you state your name for the record and



1 spell it?

2 A. Brett Hanson, B-r-e-t-t, Hanson, H-a-n-s-o-n.

3 HEARING OFFICER BURDS: For the record

4 Mr. Hanson has been previously sworn.

5 Q. Would you state your address?

6 A. 715 Paris Avenue, Rockford, Illinois.

7 Q. And where have you been -- where have you

8 worked and how long?

9 A. For the past 17 years I've been at the Rockford

10 Regional Office, Illinois EPA, Division of Public

11 Water Supplies.

12 Q. What is your current title?

13 A. Current title is environmental protection

14 specialist.

15 Q. And would you briefly state your education

16 that's pertinent to your work at EPA?

17 A. Yes, I have a Bachelor of Science Degree in

18 industrial technology.

19 HEARING OFFICER BURDS: Off the record.

20 (A discussion was held off the record.)

21 HEARING OFFICER BURDS: Let's go back on the

22 record. The court reporter indicated if you keep

23 your voice up and speak slowly we can proceed.

24 Let's go back to the last question and repeat the

1 last question.

2 Q. With regard to education.

3 A. Bachelor of Science Degree in industrial

4 technology from Southern Illinois University.

5 Q. Briefly describe your current position as it

6 involves inspections of the Byron public water

7 supply and distribution system.

8 A. Sure. My function at the Illinois EPA is to do

9 field work in the northwestern regional area and a

10 part of that field work is to perform periodic

11 reviews of the status of a public water supply.

12 Q. And how long have you been doing this?

13 A. 17 years.

14 Q. I show you what has been identified as

15 Respondent's Exhibit No. 1. Are you familiar with

16 this document?

17 A. Yes, I am.

18 Q. What briefly does this document represent?

19 A. That's a summary of findings from my last visit

20 at the City of Byron.

21 Q. I refer you to Item No. 7 with regard to the

22 standby status of Wells No. 1 and 2. Would you

23 please describe your findings and your

24 recommendations at those wells?

1 A. Sure. Byron Wells 1 and 2 have had a history  
2 of radium contamination in them above the MCL.  
3 There has been a trichloroethylene and chromium  
4 contamination also. Recent samples we found in the  
5 raw water from the wells have shown that the  
6 trichloroethylene has increased substantially.  
7 Most recent sample was collected in July of 1997.  
8 It shows a trichloroethylene content in Well No. 1  
9 at 32 parts per billion and in Well No. 2 at 16  
10 parts per billion. Also chromium was found at --  
11 and excuse me, there's an error on this document  
12 also. Chromium from Well No. 1 is 85 --

13 HEARING OFFICER BURDS: Okay. We're referring  
14 to Respondent's Exhibit -- Mr. Ewart?

15 MR. EWART: No. 1.

16 HEARING OFFICER BURDS: I apologize. I tendered  
17 that back to you.

18 MR. EWART: Sure. No. 1.

19 HEARING OFFICER BURDS: Mr. -- I apologize.

20 THE WITNESS: Hanson.

21 HEARING OFFICER BURDS: -- Hanson, would you  
22 please refer to specifically where the error is in  
23 the document, what page you're referring to.

24 THE WITNESS: The error is on Item 7 of Exhibit

1 No. 1 and the sixth line down from that paragraph  
2 should read chromium at 85 micrograms per liter.

3 MR. MILLER: I'm sorry. That line states  
4 chromium at 129 and 5 --

5 THE WITNESS: It should say 85.

6 HEARING OFFICER BURDS: Okay. Hold on. Only  
7 one person can speak at a time.

8 Mr. Miller, you had a question.

9 MR. MILLER: The question was whether we were  
10 correcting the first reference to micrograms per  
11 liter on Line 6 or the second one on Line 7, and I  
12 I've been told we're correcting the first one.

13 HEARING OFFICER BURDS: Okay. Now, is that  
14 correction being made on the document, Mr. Ewart?

15 MR. EWART: It is on this document and you will  
16 be making it on the -- why don't you initial it for  
17 purposes of this record.

18 HEARING OFFICER BURDS: Why don't we allow  
19 Mr. Miller an opportunity to review the correction  
20 to the document that will be admitted.

21 MR. EWART: I already showed him.

22 HEARING OFFICER BURDS: Thank you.

23 Q. (By Mr. Ewart) Mr. Hanson, with regard to the  
24 levels of trichloroethylene, I refer you to

1 Respondent's Exhibits No. 4 and 5. With regard to  
2 4 what does this represent?  
3 A. This is a raw water sample, site sample that  
4 was collected from an EPA groundwater staff person.  
5 Q. This is a report, correct?  
6 A. This is a sample analysis. That was collected  
7 on July 15th, 1997 from Well No. 1.  
8 Q. And what does it show the level of  
9 trichloroethylene on this report?  
10 A. 32 parts per billion -- or 32 parts per  
11 billion.  
12 Q. I refer you to Respondent's Exhibit No. 5.  
13 What, if anything, is this report?  
14 A. It's the same sample set from Well No. 2.  
15 Q. And who took these samples?  
16 A. The Agency groundwater -- groundwater section  
17 staff member.  
18 Q. Please proceed with regard to your statements  
19 on chromium --  
20 A. During the same sample --  
21 Q. -- with regard to Respondent's Exhibit No. 1.  
22 A. Okay. Chromium content was also found to have  
23 increased greatly between the previous sample set  
24 and the current sample set of July 15th, 1997.

1 Q. And I refer you to Respondent's Exhibits No. 2  
2 and No. 3. With regard to Respondent's Exhibit No.  
3 2 what, if anything, is this report?  
4 A. This is a water sample analysis from Well No. 1  
5 showing inorganic chemicals. Date of collection  
6 was July 1997.  
7 Q. And who collected this?  
8 A. Agency groundwater staff.  
9 Q. And what does it show with regard to chromium?  
10 A. It shows chromium 85 parts per billion.  
11 Q. And how about nitrate?  
12 A. Let me hunt that one.  
13 MR. MILLER: It's about the sixth from the top.  
14 A. That's 8.8 milligrams per liter.  
15 Q. What's the standard for nitrate?  
16 A. 10 milligrams per liter.  
17 Q. With regard to Respondent's Exhibit No. 3 would  
18 you describe what this report it?  
19 A. Sure. This is water analysis for inorganic  
20 chemicals collected for Well No. 2 collected by the  
21 same staff person on the same date.  
22 Q. And what does it show with regard to chromium?  
23 A. It shows the chromium content to be 530  
24 micrograms per liter.

1 Q. And what is the nitrate on this report?

2 A. Nitrate on that one is 4.4 milligrams per  
3 liter.

4 Q. I would also refer you to Respondent's Exhibit  
5 No. 6, and what is this document?

6 A. These are sample analyses that were collected.  
7 There was actually -- there are actually sample  
8 sets here collected in 1988.

9 Q. Who collected these samples?

10 A. They were collected by various persons,  
11 different samples were. I collected some of them.  
12 An Agency land pollution control staff member  
13 assisted in another sample collection set and I  
14 believe there's one in there from the City of  
15 Byron.

16 Q. Okay. Why don't we go through this on a  
17 page-by-page basis. Would you describe on the  
18 first page of Respondent's Exhibit No. 1 what the  
19 results for benzene, toluene, ethylbenzene and  
20 xylene were?

21 A. The first -- the first sample set was collected  
22 on July 21st, 1988 by myself and that was from a  
23 monitoring well located near Wells 1 and 2, shows a  
24 benzene content of 13 micrograms per liter, toluene

1 at 52, ethylbenzene at 470, xylene at 1500.

2 Q. And what are these units?

3 A. These are all micrograms per liter or parts per  
4 billion.

5 Q. Thank you. Proceeding on to Page 2 there is a  
6 listing of substitute benzenes.

7 A. Correct. Those vary in concentration from 5700  
8 parts to 420 parts.

9 Q. Per?

10 A. Per billion.

11 Q. Thank you. Proceeding on to page -- the next  
12 analysis is dated, I believe 8/18/88. What, if  
13 anything, is this?

14 A. This is a repeat sample set collected from  
15 monitoring well number, which is adjacent to City  
16 Wells 1 and 2.

17 Q. Who collected it?

18 A. They were collected by myself and an Agency  
19 land pollution control staff member.

20 Q. And what, if anything, do those results show on  
21 the subsequent pages?

22 A. It shows toluene at 33 parts per billion,  
23 ethylbenzene at 640 parts per billion, xylene at  
24 1100 parts per billion.



1 Q. What, if anything, about the substituted  
2 benzenes?

3 A. Substituted benzene is 4900 parts per billion.

4 Q. Proceeding on to the next report in this  
5 Respondent's Exhibit No. 6, that is February 12th  
6 and I cannot read the -- February 12th, 1989 --  
7 1988. Would you please briefly describe what the  
8 report represents?

9 A. I'm trying to locate that one. Okay. My  
10 copy's not very clear.

11 MR. MILLER: I can't read the date.

12 HEARING OFFICER BURDS: Okay.

13 Q. The date it was received, if you look in the  
14 lower, right-hand corner August 19th, 1988 and I  
15 believe that's by the Agency laboratory.

16 A. Right.

17 HEARING OFFICER BURDS: Okay. What I want to be  
18 sure of --

19 MR. MILLER: What was received?

20 HEARING OFFICER BURDS: Exactly. What was  
21 received, which page or is there -- we're still  
22 referring to Respondent's Exhibits No. 1?

23 MR. MILLER: 6.

24 HEARING OFFICER BURDS: 6. I apologize. All

1 right, and then as far as the page number that  
2 we're referring to?

3 MR. EWART: It is the third sampling report in  
4 this.

5 THE WITNESS: I believe that's August 18th.

6 MR. EWART: Group exhibit --

7 HEARING OFFICER BURDS: Hold on. Only one  
8 person can speak at a time, gentlemen. We've got  
9 to make a clear record here and what I'm trying to  
10 do -- I want to accommodate you in getting in the  
11 document that you're referring to, but I want to  
12 make sure, as Mr. Miller has indicated, that what  
13 we're referring to is clear for the record's sake.  
14 Respondent's Exhibit No. 6 for the record, which  
15 page of that document are we referring to?

16 MR. EWART: Page 5.

17 HEARING OFFICER BURDS: Page 5 of that  
18 document.

19 Mr. Miller, are you there?

20 MR. MILLER: Yes.

21 HEARING OFFICER BURDS: Okay. Now, what are you  
22 eliciting specifically regarding the date on the  
23 document, Mr. Ewart?

24 Q. In the lower, right-hand corner it shows date

1 received. What is the date received in regard --

2 A. August 19th, 1997.

3 Q. And who -- 19 --

4 A. Or 1988, excuse me.

5 Q. And what does that mean --

6 HEARING OFFICER BURDS: If I can interrupt. Is  
7 that clear on the document, the copy that you have  
8 Mr. Hanson?

9 THE WITNESS: Yes, it is.

10 Q. And what does that date received represent?

11 A. That's the date that our laboratory received  
12 samples that are the sample set.

13 Q. And who's our laboratory?

14 A. Illinois EPA.

15 Q. And on the subsequent Pages 6 and 7 what does  
16 that represent?

17 A. That's sample results from the water sample  
18 which was collected at that time.

19 Q. And what, if anything, of note on the sample --

20 A. This shows that the water from Monitoring Well  
21 No. 2 is -- had no detections of volatile organics  
22 in it.

23 MR. MILLER: You said no detections?

24 THE WITNESS: No detections.

- 1 Q. Moving on to Page 8, this again is a sampling  
2 report and who is it collected by?
- 3 A. That's collected by myself.
- 4 Q. Can you read the date on that?
- 5 A. It's very hard to distinguish it, but it  
6 appears to be 7/21/1988.
- 7 Q. And what, if anything, do the sampling results  
8 show?
- 9 A. Trichloroethylene at a sample site -- at the  
10 entry point to the distribution tap one, blended  
11 water from Wells 1 and 2.
- 12 Q. Moving on to Page 9 of Respondent's Exhibit No.  
13 6 what, if anything, does -- do the next two pages  
14 represent?
- 15 A. That's a water sample collected by myself and  
16 Kerry Keller from our land pollution office.  
17 Sample results --
- 18 Q. What was the date?
- 19 A. Date of collection was August 18th, 1988.  
20 Sample was collected from a monitoring well  
21 approximately 50 feet north of Byron City Well No.  
22 1.
- 23 Q. And what, if anything, do the results show?
- 24 A. Really nothing out of the ordinary for

1 inorganic contamination. It does show a high level  
2 of iron.

3 Q. Moving on to the next -- I refer you to the  
4 last page of Respondent's Exhibit No. 1.

5 HEARING OFFICER BURDS: Respondent's Exhibit No.  
6 6; is that correct?

7 MR. EWART: Strike that. Respondent's Exhibit  
8 No. 6. Thank you.

9 What, if anything, does this show?

10 A. This is a water sample collected from Well No.  
11 2 and it shows a trichloroethylene content at 10  
12 parts per billion. This was sample collected by  
13 the City of Byron. The water rep at the time was  
14 Harold Frye.

15 Q. What's the date?

16 A. I have trouble distinguishing that on this  
17 document.

18 Q. What was the date it was received by our  
19 laboratory?

20 A. Lab received this sample on April 29th, 1988.

21 Q. Now, it's been testified by other witnesses  
22 here that trichloroethylene is usually not found at  
23 a site such as a gasoline station other than if  
24 they have a parts washing system in the repair,

1 you've heard that, have you not, in this testimony  
2 today?

3 A. Yes, I have heard that.

4 Q. What is your opinion with regard to that?

5 A. For a service station which performs repair  
6 work on automobiles I think trichloroethylene could  
7 be found readily.

8 Q. What about with regard to benzene,  
9 ethylbenzene, xylene, toluene with regard to the  
10 gasoline station?

11 A. Those are all constituents of gasoline.

12 Q. So in your opinion that would be readily found  
13 at a gasoline station?

14 A. Yes.

15 Q. With regard to the -- you are familiar, of  
16 course, with public water supply wells identified  
17 as No. 1 and 2 --

18 A. Correct.

19 Q. -- in Byron?

20 A. Correct.

21 Q. Are you aware of the monitoring frequency that  
22 occurs at these wells?

23 A. Sure. At the present time these wells are in  
24 an emergency standby mode and they are not

1 monitored routinely for inorganic chemicals,  
2 volatile chemicals, synthetic organics. The only  
3 thing they're being monitored for right now is  
4 bacteria on a quarterly basis.

5 Q. You've heard in prior testimony here that if  
6 approved the detection system would not have a  
7 monitoring well -- or that Tri Star would not have  
8 a monitoring well installed on its site?

9 A. I've heard that, yes.

10 Q. Is there any other monitoring station between  
11 these Wells No. 1 and 2 and the proposed site that  
12 would routinely monitor what is known as BTEX,  
13 benzene, ethylbenzene, xylene and toluene?

14 A. There's no routine monitoring for any of the  
15 contaminants at any monitoring well that I'm aware  
16 of.

17 MR. EWART: Okay. I have no further questions  
18 at this time.

19 HEARING OFFICER BURDS: Mr. Miller?

20 CROSS EXAMINATION

21 BY MR. MILLER:

22 Q. Mr. Hanson, with regard to the last page of  
23 Respondent's Exhibit No. 6 wherein you testified as  
24 to the sample results for trichloroethylene --

- 1 A. Yes.
- 2 Q. -- do you see the sample results for the BTEX
- 3 constituents there also?
- 4 A. No, I don't.
- 5 Q. Last four lines.
- 6 A. Okay, yes.
- 7 Q. And what are those?
- 8 A. They are below detection.
- 9 Q. What's an MCL?
- 10 A. An MCL is called a maximum contaminant level.
- 11 Q. What's the purpose of an MCL?
- 12 A. Purpose of the MCL is to provide safe drinking
- 13 water to the public.
- 14 Q. Are there MCLs for substituted benzenes?
- 15 A. Not that I'm aware of.
- 16 Q. Okay. With regard to Respondent's Exhibit No.
- 17 6 again and the first page of that exhibit I think
- 18 you testified as to benzene, toluene, ethylbenzene
- 19 and xylene. Would the xylene concentration
- 20 reported there exceed the MCL?
- 21 A. Can you tell me what --
- 22 Q. It's 1500 micrograms per liter as represented
- 23 on the first page of Respondent's Exhibit No. 6.
- 24 A. No, this does not exceed an MCL. This is a



1 water sample from a monitoring well. There's not  
2 an MCL established for a monitoring well.

3 Q. If that were present in a municipal water well  
4 system, would that exceed the MCL?

5 A. Yes.

6 Q. Do those report of results exceed groundwater  
7 quality standards for those constituents?

8 A. I don't know.

9 Q. Okay. With regard to Respondent's Exhibit No.  
10 1 --

11 A. Yes.

12 Q. -- again referring to your Paragraph 7 entitled  
13 wells/source protection.

14 A. Yes.

15 Q. What is the significance of your statement in  
16 here at the second to last sentence that the  
17 gasoline components found in the upper aquifer have  
18 not been found in the wells?

19 A. Based on the sample results I have not seen any  
20 consistent detections of benzene, toluene, xylene  
21 in the Byron Wells No. 1 and 2.

22 Q. And the last sentence of that Paragraph 7  
23 states that radium naturally occurs in the  
24 aquifer.

1 A. Yes.

2 Q. And that's the probable source of the radium in  
3 Wells 1 and 2?

4 A. Correct.

5 Q. Okay. It's not your testimony that chromium is  
6 a contaminant commonly found in a service station,  
7 is it?

8 A. No.

9 Q. Do you have any idea as to the likely source of  
10 the chromium?

11 A. There are a couple of potential sites.

12 Q. Would that be consistent with the plating  
13 operation that's been referred to earlier?

14 A. That's a possible source.

15 Q. As with the TCE?

16 A. That's a possible source also.

17 MR. MILLER: Okay. No further questions.

18 HEARING OFFICER BURDS: Any other questions at  
19 large of Mr. Hanson, Mr. Brooks?

20 MR. BROOKS: Briefly.

21 CROSS EXAMINATION

22 BY MR. BROOKS:

23 Q. Do you know when those Wells 1 and 2 went on  
24 standby status or emergency standby status?

- 1 A. I don't recall when they were placed on standby  
2 status.
- 3 Q. If I said it was the summer of 1996, would that  
4 be approximately correct?
- 5 A. That's within reason, yes.
- 6 Q. So to your knowledge how much activity have  
7 those wells seen since that time?
- 8 A. Virtually none other than quarterly operations  
9 for bacteria collection.
- 10 Q. So they haven't be used to put any water into  
11 the municipal water supply since that time?
- 12 A. No.
- 13 Q. Would the fact that the wells have been  
14 inactive for the last, oh, approximately a year  
15 since those July samples were taken in '97, would  
16 that -- could that possibly attribute to the  
17 escalated results for the chromium and the TCE?
- 18 A. That is possible.
- 19 Q. Because there wasn't a chromium problem when  
20 the wells were active prior to the last several  
21 years when they went on standby status?
- 22 A. No, not in the last several years; however, in  
23 the early '70s there was a chromium problem.
- 24 Q. But after consistent monitoring --

1 A. After use these levels went -- appeared to go  
2 down unless we have a new source of chromium, TCE  
3 entering the site.

4 HEARING OFFICER BURDS: Mr. Brooks, anything  
5 further?

6 MR. BROOKS: I think that's it.

7 HEARING OFFICER BURDS: Mr. Ewart?

8 MR. EWART: I have one question on redirect.

9 REDIRECT EXAMINATION

10 BY MR. EWART:

11 Q. I have here a regulation, Sub Title F  
12 regulations for Public Water Supplies and I refer  
13 you to a Board regulation that is 35 Illinois  
14 Administrative Code 624-10-B as in boy. What, if  
15 anything, are those regulations?

16 A. These are volatile organic MCLs and SOCs also.

17 Q. And referring briefly to your prior testimony  
18 as to the groundwater that is taken from a  
19 water -- from a monitoring well, in your opinion,  
20 what class would that water be subject to under  
21 Part 620?

22 A. Well, these are groundwater standards. Excuse  
23 me.

24 Q. What, if anything, would those standards be

1 subject to in the vicinity of Walnut and Main?  
2 A. I'm not familiar with these groundwater  
3 standards.  
4 MR. EWART: I see. Okay. Thank you.  
5 HEARING OFFICER BURDS: Mr. Miller?  
6 MR. MILLER: No recross.  
7 HEARING OFFICER BURDS: Mr. Jackson, you had a  
8 question.  
9 MR. JACKSON: Mr. Hanson, isn't there still a  
10 monitoring well about 15 feet north of 1 and 2  
11 wells?  
12 MR. HANSON: Yes.  
13 MR. JACKSON: There in between the former  
14 Standard property and the well.  
15 HEARING OFFICER BURDS: Mr. Jackson, just for  
16 our purposes it's important that you let him answer  
17 the question. Would you please repeat your  
18 question, your second question.  
19 MR. JACKSON: I asked Mr. Hanson if we still  
20 don't have a monitoring well approximately 50 feet  
21 north of Well No. 1 and 2 which is between the  
22 former Standard Oil property and Well No. 1 and 2.  
23 MR. HANSON: I believe the monitoring well is  
24 still there.

1 HEARING OFFICER BURDS: Any other questions?

2 MR. JACKSON: The question was asked a while ago  
3 if we had any monitoring wells between and I think  
4 we do.

5 HEARING OFFICER BURDS: Okay. Any other  
6 questions for Mr. Hanson?

7 Okay. Any other questions for Mr. Hanson,  
8 Mr. Miller?

9 MR. MILLER: No recross.

10 HEARING OFFICER BURDS: Any other questions for  
11 Mr. Hanson?

12 All right. Mr. Ewart.

13 MR. EWART: I conclude our case, Respondent's  
14 case in this matter.

15 HEARING OFFICER BURDS: Mr. Miller, are you  
16 going to have rebuttal?

17 MR. MILLER: Just one question, one witness.

18 HEARING OFFICER BURDS: Sure. Okay. Why don't  
19 we proceed then. Before we proceed to rebuttal,  
20 the documents that have been submitted, there have  
21 been corrections made on Respondent's exhibits  
22 with -- rather than going -- well, let's go through  
23 Respondent's Exhibits 1 through 7. I'm asking now  
24 as far as those documents -- they have been

1 previously admitted and conditionally accepted upon  
2 your cross and any questions that you may have.  
3 I'm going to ask at this time individually for each  
4 of the Respondent's exhibits that have been  
5 tendered based on the testimony elicited or  
6 corrections made thereto. Are there any objections  
7 to those documents being admitted into the record  
8 at this time? I'm going to ask that as to  
9 Respondent's Exhibit No. 1.

10 Mr. Miller?

11 MR. MILLER: None.

12 HEARING OFFICER BURDS: Any other parties?  
13 Hearing none, the document is admitted.

14 Respondent's Exhibit No. 2, Mr. Miller?

15 MR. MILLER: None.

16 HEARING OFFICER BURDS: Hearing none -- any  
17 objection to Respondent's Exhibit No. 2? Hearing  
18 none, the document is admitted. Respondent's  
19 Exhibit No. 3, Mr. Miller?

20 MR. MILLER: None.

21 HEARING OFFICER BURDS: Any objections to  
22 Respondent's Exhibit 3? Hearing none, the document  
23 is admitted. Respondent's Exhibit No. 4,  
24 Mr. Miller?

1 MR. MILLER: No objection.

2 HEARING OFFICER BURDS: Any objection to  
3 Respondent's Exhibit No. 4? Hearing none, the  
4 document is admitted. Respondent's Exhibit No. 5?

5 MR. MILLER: No objection.

6 HEARING OFFICER BURDS: Any objection to  
7 Respondent's Exhibit No. 5? Hearing none, the  
8 document is admitted. Respondent's Exhibit No. 6?

9 MR. MILLER: No objection.

10 HEARING OFFICER BURDS: Any objection to  
11 Respondent's Exhibit No. 6? Hearing none, the  
12 document is admitted. Respondent's Exhibit No. 7,  
13 Mr. Miller?

14 MR. MILLER: No objections.

15 HEARING OFFICER BURDS: Any objection from any  
16 other parties regarding Respondent's Exhibit No.  
17 7? Hearing none, the document is so admitted. I  
18 believe that is all the documents submitted for  
19 admission by the Respondent.

20 Is that correct, Mr. Ewart?

21 MR. EWART: Yes, it is.

22 HEARING OFFICER BURDS: Okay. Those documents  
23 will be admitted into the record.

24 Mr. Miller, you indicated that you had



1 some rebuttal.

2 MR. MILLER: Yeah, I'd like to recall John  
3 Stewart.

4 HEARING OFFICER BURDS: Mr. Stewart, you were  
5 previously sworn. You are still under oath.

6 Mr. Miller.

7 DIRECT EXAMINATION

8 BY MR. MILLER:

9 Q. Just for a point of clarification, John, when  
10 we refer to service stations and Tri Star's  
11 operation of service stations, that may be a bit of  
12 a misnomer; isn't that true?

13 A. That's correct.

14 Q. And why is that?

15 A. The term service station is misused. We our  
16 company does not perform service work. We would  
17 not be constructing a facility that would be  
18 involved in the automobile repair and service.  
19 This would be self-service gasoline only.

20 Q. So you would not have a service center on site  
21 that would use a parts washer or solvents to  
22 degrease parts?

23 A. Absolutely not.

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

1        HEARING OFFICER BURDS: Okay. I'm going to ask  
2 at this time if any member of the public at large  
3 or anyone else has evidence or testimony or  
4 statements they would like to make at this time?

5                Mr. Brooks.

6                        BRIAN BROOKS,  
7 having been previously sworn, testified as follows:  
8        MR. BROOKS: Briefly on behalf of the City of  
9 Byron, for its importance to the Board to make a  
10 determination I think a little background from the  
11 City may be helpful here. Back in the late -- in  
12 the '80s a super pump site was established on the  
13 south side of the Rock River known as the salvage  
14 yard. Part of the remedy of that was that the  
15 Byron public water supply was piped out to what's  
16 known as the Rock River Terrace to provide them  
17 with drinking water. Wells 1 and 2 at that time  
18 were a vital part of our municipal water supply  
19 system. When the radium was detected and we were  
20 put on restricted status, the City did apply for --  
21 in the early '90s for a variance for that and was  
22 granted that variance. Wells 1 and 2 had to be  
23 blended for the high radium level in No. 1 and then  
24 the TCE level in No. 2.

1           The City in 1996, by taking those wells  
2 out of the system and not having them produce water  
3 in the system, was given -- was removed from the  
4 restricted status list of Illinois EPA. Those  
5 wells have not been used as part of the drinking  
6 water system since then. I need to make the Board  
7 aware that although the affidavit of Kerry Gifford  
8 at the time was accurate, Mr. Gifford is no longer  
9 employed with the City of Byron, but that's not to  
10 say that his affidavit is incorrect. The facts as  
11 contained in there are still valid facts as some of  
12 the background I've just explained.

13           When Well No. 4 comes on line -- and there  
14 were questions about that earlier. Well No. 4 is  
15 not yet on line, although it has passed the  
16 required test from Illinois EPA and it will provide  
17 a safe drinking water system. We're waiting for  
18 some final tests to make sure it's going to  
19 cooperate with the system. Wells 1 and 2 at that  
20 time were not necessarily -- will not be necessary  
21 to the system; however, the City at this point  
22 can't say that we're going to abandon those wells.  
23 The reason I gave the background on the USEPA  
24 involvement is that because the drinking water

1 supply was part of their remedy and, in fact, they  
2 were given as a remedy water that contained TCE,  
3 USEPA has been conducting a survey of the area to  
4 see if they can determine where the TCE is coming  
5 from and that is an ongoing investigation by them.  
6 They have sent out letters to potentially  
7 responsible parties asking for inquiries. Part of  
8 the City's reluctance to say that we can abandon  
9 Wells 1 and 2 is that those are a potential remedy  
10 for the TCE contaminant that's in there.

11           It's been explained to me by Mr. Bolen of  
12 USEPA that one way to get rid of the TCE is simply  
13 to pump it out and not into the drinking water  
14 supply, but into a treatment facility and then  
15 out. There are several ways to do that, but  
16 certainly we are not going to put those wells --  
17 especially when Well No. 4 comes on line we are not  
18 going to put those wells into the drinking water  
19 system until we can take care of the contaminants  
20 that are in there.

21           The City very much wants to see this  
22 property developed. This property has been  
23 abandoned since -- and abandoned, not in use, since  
24 the mid to late 1980s probably for a good 10 years

1 now, almost 10 years. No disrespect to Tri Star,  
2 but the place is an eyesore in that it's located  
3 right on our commercial frontage, right at the --  
4 half a block off the intersection of the two major  
5 highways that run through town. Last information  
6 we received from the Illinois Department of  
7 Transportation was that approximately 13,000 cars a  
8 day go through that intersection. It is one of the  
9 most highly traveled intersections in Northern  
10 Illinois. They're ready to do some reworking of  
11 that intersection to create for Route 2 turn lanes  
12 both right and left as well as left turn lanes on  
13 Route 72 there. It's a very high volume area and  
14 to have a site like this go unproductive for a city  
15 for this long a period of time is inexcusable in  
16 our respect. We want to see the property  
17 developed.

18           We worked with USEPA and with Tri Star. I  
19 personally was involved in trying to see what we  
20 could do to get the property up and moving and be  
21 developed. That's what the City wants to see.

22           Is the City absolutely thrilled and  
23 ecstatic that another gas station is going in  
24 there? I can't honestly say, but we do want to see

1 the property developed. Tri Star is the legal  
2 owner of that property. They have a right to  
3 develop it as they see fit within whatever  
4 guidelines are established, so I guess from a City  
5 standpoint -- I don't know that I can take a stance  
6 one way or the other because there is some  
7 disagreement about whether a gas station should or  
8 should not go there, but we do want to see the  
9 property developed. It is probably one of the most  
10 valuable commercial properties in the City of Byron  
11 right now given its location and high traffic and  
12 it sits vacant. We want to see it developed.  
13 Maybe a gas station is or is not the best for that,  
14 but Tri Star is the current owner, and so from the  
15 City standpoint, a little background and a little  
16 information and, as I say, I worked with  
17 Mr. Gifford when he did prepare that affidavit and  
18 I don't want -- we don't want that affidavit to  
19 imply that the City was going to abandon those  
20 wells. I think his use of the term inactive meant  
21 that it was not going to be part of the drinking  
22 water system, but that's not to say if those wells  
23 are rehabilitated and gotten properly tested that  
24 they may or may not come on line at some point, but

1 right now given the test results that we've just  
2 recently received there's no way we're going to  
3 pump that type of water into our drinking water  
4 system to our residents.

5 HEARING OFFICER BURDS: Anything further,  
6 Mr. Brooks?

7 MR. BROOKS: No.

8 HEARING OFFICER BURDS: Okay. As far as the  
9 record Mr. Brooks has been sworn, the statements  
10 that have been made. Is there anybody that would  
11 like to ask Mr. Brooks questions at this time?

12 Mr. Miller?

13 MR. MILLER: No questions.

14 HEARING OFFICER BURDS: Mr. Ewart?

15 MR. EWART: Yes, I have one question.

16 DIRECT EXAMINATION

17 BY MR. EWART:

18 Q. Do you have an estimate as to when Well No. 4  
19 will be coming on line?

20 A. Any day now. It's -- basically what has  
21 happened is -- because the way the system is  
22 designed we now have an upper loop and a lower  
23 loop. Well No. 3 provides water to the lower loop,  
24 Well No. 4 and there is a pressure reducing valve

1 that works because the -- Well No. 4 is located on  
2 high ground above the City. I can't even  
3 guesstimate how far up elevation-wise it is, but  
4 we're working out the logistics of a pressure  
5 reducing tube to ensure that we're not -- with the  
6 new well and tower -- the tower is located right  
7 next to the new well -- it's going to flood the  
8 slower system, so those are ready to be tested.  
9 Basically I think -- in fact, I think tomorrow is  
10 the day that they're going to be tested to make  
11 sure the system works, so it's ready to come on  
12 line.

13 MR. EWART: Thank you.

14 HEARING OFFICER BURDS: Any other questions of  
15 Mr. Brooks from anyone? Hearing none, any other  
16 statements to be made? Okay. I guess --

17 MR. EWART: I just have one point of  
18 clarification.

19 HEARING OFFICER BURDS: Yes.

20 MR. EWART: In prior questioning I used the  
21 word -- used the term MTBE and I didn't define it.  
22 It's methyl tert butyl, b-u-t-y-l, ether.

23 HEARING OFFICER BURDS: Court reporter, would  
24 you like to have that spelled out?



1 THE REPORTER: Yes.

2 MR. EWART: Methyl, m-e-t-h-y-l, tert, t-e-r-t,  
3 butyl, b-u-t-y-l, ether e-t-h-e-r. Those are four  
4 separate words.

5 HEARING OFFICER BURDS: Any objection to that  
6 clarification? Mr. Miller, any objection?

7 MR. MILLER: None.

8 HEARING OFFICER BURDS: Hearing none, so noted.  
9 At this point a statement -- I think we're going to  
10 procedurally -- a little -- I want to give  
11 Mr. Miller an opportunity to have the last word.  
12 It is his burden. I want to make sure that he has  
13 the opportunity.

14 Mr. Miller, is there anything else that  
15 you would like to submit in the form of evidence  
16 and testimony after the statement of Mr. Brooks  
17 regarding -- in re-rebuttal?

18 MR. MILLER: None.

19 HEARING OFFICER BURDS: Thank you. All right.  
20 At this time I'm going to ask if anybody has any  
21 closing remarks.

22 Mr. Miller?

23 MR. MILLER: Waive.

24 HEARING OFFICER BURDS: Mr. Ewart?

1 MR. EWART: I waive.

2 HEARING OFFICER BURDS: Any closing statements?

3 All right. What I would like to do at this point  
4 is first make a statement as to credibility of  
5 witnesses. I don't think credibility of witnesses  
6 is an issue in this case. Based upon my legal  
7 judgment and experience, all of the testimony that  
8 has been elicited has been credible from all  
9 witnesses.

10 Now, what I would like to do at this point  
11 is set up a briefing schedule. It doesn't mean you  
12 have to take advantage of that briefing schedule,  
13 but I would like to set a briefing schedule so we  
14 can know when the record will close in this case.  
15 What we usually account for is 10 to 14 days for a  
16 transcript to be prepared. You should be aware  
17 that when the Board -- pursuant to Board rule it is  
18 provided a copy of the transcript 14 days from that  
19 date according to the Board rule and it's very  
20 specific. 14 days from that date any corrections  
21 or notations need to be made by the parties if they  
22 feel that's necessary.

23 MR. MILLER: I'm sorry to interrupt. Do the  
24 parties -- the attorneys for the parties receive a

1 copy of the transcript at the time that the Board  
2 does?

3 HEARING OFFICER BURDS: You can contact -- my  
4 understanding is as far as -- I don't know just --  
5 practically I don't think that's possible, but I  
6 know that you can contact the Board. They will  
7 supply you copies once they have it and they can  
8 certainly make you aware when the transcript is  
9 available, unless you'd like to make alternative  
10 arrangements --

11 MR. MILLER: All right. Thank you.

12 HEARING OFFICER BURDS: -- which is certainly  
13 agreeable as well. Now, let me ask this, is there  
14 an intent to brief this case?

15 MR. MILLER: Yes.

16 HEARING OFFICER BURDS: Mr. Ewart?

17 MR. EWART: As far as we're concerned there  
18 hasn't been a great deal of information that is new  
19 that hasn't been presented -- that the Agency  
20 hasn't already submitted in terms of its  
21 recommendations, but we will be happy to respond to  
22 Petitioner's brief.

23 HEARING OFFICER BURDS: So it's clear there's no  
24 obligation -- I'm not imposing any obligation on

1 either party. It's entirely up to you. What we'll  
2 do here is if, in fact, you do want to brief the  
3 case -- I've been trying to look at dates and I  
4 don't know if all of you have calendars with you.  
5 I'm looking -- obviously today is December 1st. If  
6 we assume the record or the transcript, I would  
7 assume, would be available no later than December  
8 15th, dependent on the parties, we're in the  
9 holiday period as well and I want to accommodate  
10 the parties as best I can. I certainly will, but I  
11 don't know what your needs are and how soon you  
12 want a transcript as well.

13           Mr. Miller, any idea how long you would  
14 like to have in reviewing the transcript in  
15 preparing your initial brief?

16           MR. MILLER: I'll need no longer than 14 days.

17           HEARING OFFICER BURDS: All right. Then why  
18 don't we -- do you want to look at the 1st of the  
19 year? I'm looking at the 15th as the date the  
20 transcript should be -- no later than I would think  
21 it would be available. 14 days from that date  
22 would be approximately January 2nd. Is that --

23           MR. MILLER: Well, let's take it outside of the  
24 holiday period and move it to --

1 HEARING OFFICER BURDS: Is January 9th --  
2 MR. MILLER: January 9th.  
3 HEARING OFFICER BURDS: That would be  
4 approximately one week later. Let's do this, why  
5 don't we make the Petitioner's brief due January  
6 9th. Then as far as response time what I'd like to  
7 do is obviously give the State at least the  
8 two-week period to the 23rd if that's not  
9 objectionable, Mr. Miller.  
10 MR. MILLER: That's fine with me.  
11 HEARING OFFICER BURDS: Mr. Ewart, any objection  
12 to that?  
13 MR. EWART: I have no objection to that.  
14 HEARING OFFICER BURDS: And then that would be  
15 for any briefs due from the Respondent January 23rd  
16 and then reply, assuming that you do want to reply,  
17 Mr. Miller --  
18 MR. MILLER: Seven days.  
19 HEARING OFFICER BURDS: Why don't we make that  
20 due January 30th?  
21 MR. MILLER: Would you put all this down in  
22 your --  
23 HEARING OFFICER BURDS: What I will do is I will  
24 enter a record referring to all of the documents

1 admitted at the hearing. I'll refer to how they  
2 were individually admitted and refer to -- what I  
3 will then do is obviously put in the briefing  
4 schedule as well referring to these dates and,  
5 again, that would be January 9th for Petitioner's  
6 brief to be due, January 23rd for Respondent's,  
7 January 30th for any reply brief. All right. Any  
8 motions before we go off the record?

9 MR. MILLER: Yes.

10 HEARING OFFICER BURDS: Mr. Miller.

11 MR. MILLER: I would like to make an oral motion  
12 to be carried to the Board.

13 HEARING OFFICER BURDS: Yes.

14 MR. MILLER: To expedite decision in this  
15 matter. It's my understanding this is a  
16 non-decision deadline case and the Board can -- has  
17 the opportunity to decide this at their  
18 convenience. Because of timing on development of  
19 this property and also the wish on behalf of the  
20 Petitioner and the City of Byron to see this  
21 property developed, the best time to do that would  
22 be in the spring of 1998; therefore, I would  
23 request that the Board attempt to at its earliest  
24 possible time to decide this case, but to decide it

1 no later than March 15, 1998 so that we can take  
2 advantage of the full construction season.

3 HEARING OFFICER BURDS: Mr. Ewart, any reply or  
4 response to that comment?

5 MR. EWART: I have no problem with that.

6 HEARING OFFICER BURDS: Any other statements or  
7 comments or motions? Okay, so noted, Mr. Miller.  
8 I would indicate to you that there are at least  
9 three Board hearing dates prior to that date. I  
10 would also note to you that they do like to have  
11 the record complete a full 30 days prior to the  
12 decision. This deadline would give them at least  
13 that 30-day period and that's where we'll go from  
14 there. All right. Off the record for one moment.

15 (A discussion was held off the record.)

16 HEARING OFFICER BURDS: Back on the record. All  
17 right. We are back on the record after having a  
18 discussion regarding one of the stipulations  
19 entered into. Now, I'm going to ask one last time  
20 if there are any motions or evidence or testimony  
21 that you want to be presented at this time.

22 Mr. Miller?

23 MR. MILLER: None.

24 HEARING OFFICER BURDS: Mr. Ewart?

1 MR. EWART: None.

2 HEARING OFFICER BURDS: Any other parties that  
3 would like to make a statement or present any other  
4 evidence or testimony? I would thank you all for  
5 your patience mainly for the background noise that  
6 we've had at various times. Thank you all for your  
7 patience, and this hearing is adjourned.

8 (The hearing was concluded at 2:28 p.m.)

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