

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

AMENDMENTS TO REGULATION OF

PETROLEUM LEAKING UNDERGROUND

STORAGE TANKS:

35 ILL. ADM. CODE 732

PCB No. R01-26

(Rulemaking - Land)

Proceedings held on February 27, 2001, at 9:10 a.m., at the  
Illinois Pollution Control Board, 600 South Second Street, Suite  
403, Springfield, Illinois, before Joel J. Sternstein, Hearing  
Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR  
CSR License No.: 084-003677

KEEFE REPORTING COMPANY  
11 North 44th Street  
Belleville, IL 62226  
(618) 277-0190

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

A P P E A R A N C E S

Board Member Nicholas J. Melas  
Board Member Elena Kezelis  
Board Member Marili McFawn  
Alisa Liu, P.E., Environmental Scientist  
Bobb Beauchamp, Attorney Assistant to Board Member McFawn

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
BY: Judith S. Dyer  
M. Kyle Rominger  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
On behalf of the Illinois EPA.

KEEFE REPORTING COMPANY  
1-800-244-0190

I N D E X

1		
2		
3	WITNESS	PAGE NUMBER
4		
5	DOUGLAS W. CLAY, P.E.	12
6		
7	KENDRA N. BROCKAMP	16
8		
9	GREGORY W. DUNN, L.P.G.	23
10		
11	RONALD DYE	74
12		
13	KENNETH LISS	80
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

KEEFE REPORTING COMPANY  
1-800-244-0190

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Hearing Exhibit 1	15	15
Hearing Exhibit 2	23	23
Hearing Exhibit 3	27	27
Hearing Exhibit 4	28	28
Hearing Exhibit 5	28	28
Hearing Exhibit 6	30	30
Hearing Exhibit 7	30	30
Hearing Exhibit 8	77	77
Hearing Exhibit 9	84	84

KEEFE REPORTING COMPANY  
1-800-244-0190

1 P R O C E E D I N G S

2 (February 27, 2001; 9:10 a.m.)

3 HEARING OFFICER STERNSTEIN: Good morning. My name is Joel  
4 Sternstein. I have been appointed by the Illinois Pollution  
5 Control Board to serve as Hearing Officer in this proceeding  
6 which is titled, In the Matter of: Amendments to 35 Illinois  
7 Administrative Code Part 732, Regulation of Petroleum Leaking  
8 Underground Storage Tanks. The docketing number for this  
9 rulemaking is R01-26.

10 I would like to introduce some of the people from the  
11 Board who you see before you this morning. On my right is  
12 Nicholas Melas, the Board Member assigned to this matter.

13 BOARD MEMBER MELAS: Good morning.

14 HEARING OFFICER STERNSTEIN: To Mr. Melas' right is Elena  
15 Kezelis.

16 BOARD MEMBER KEZELIS: Good morning.

17 HEARING OFFICER STERNSTEIN: And to my left is Board Member  
18 Marili McFawn.

19 BOARD MEMBER McFAWN: Good morning.

20 HEARING OFFICER STERNSTEIN: To Marili McFawn's left is her  
21 Attorney Assistant, Bobb Beauchamp.

22 MR. BEAUCHAMP: Good morning.

23 HEARING OFFICER STERNSTEIN: And to Member Kezelis' right  
24 is Alisa Liu, a member of our technical unit.

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MS. LIU: Good morning.

2 HEARING OFFICER STERNSTEIN: I see in the back we also have  
3 Erin Conley, our rulemaking coordinator. I think I have  
4 everybody.

5 For the record, today's date is February 27th, 2001, and it  
6 is approximately ten after 9:00 a.m. This is a rulemaking  
7 subject to the Board's procedural rules and, therefore, all  
8 relevant, nonrepetitious and nonprivileged testimony will be  
9 heard at this first hearing of this proceeding and at the second  
10 hearing. The second hearing will be held Tuesday, April 3rd at  
11 the James R. Thompson Center in Chicago.

12 This matter was filed on December 6th of 2000 by the  
13 Illinois Environmental Protection Agency. On December 21st,  
14 2000, the Board accepted this matter for hearing.

15 At the table in the front of the room over there in the, it  
16 would be your right-hand corner, are copies of the current notice  
17 and service lists. If you notice that your name does not appear  
18 on these lists, there are also sign-up sheets for the notice and  
19 service lists. Please sign up if you wish to be included on  
20 either list. Individuals on the notice list receive only Board  
21 and Hearing Officer Opinions and Orders. While individuals on  
22 the service list receive copies of all documents filed by all  
23 persons on the service list, including prefiled testimony and

24 questions, motions and appearances, as well as Board and Hearing

6

KEEFE REPORTING COMPANY  
1-800-244-0190

1 Officer Orders and Opinions.

2 If your name is on the service list and you file documents  
3 with the Board, you must also serve everyone on the service list  
4 with copies of the same documents. If you have any questions  
5 about the lists please see me during a break or after the  
6 hearing.

7 In addition, in the front of the room on the right at the  
8 same table you will find copies of the Board's Accept for Hearing  
9 Order in this matter dated December 21st, 2000, and you will also  
10 find copies of the Hearing Officer Order dated January 29th of  
11 2001.

12 In addition, the Agency has brought along copies of its  
13 prefiled testimony and it has also brought along copies of its  
14 original proposal and Statement of Reasons. It has also brought  
15 along copies of its Motion to Amend plus the supplemental  
16 testimonies of Mr. Clay and Ms. Brockamp.

17 Just some housekeeping items. The rest room keys are also  
18 on the same table up here on the right, and the rest rooms are  
19 just out this door to your right and down the hallway a little  
20 bit. There is also some water and cups up there as well.

21 First off, at today's hearing we will hear the testimony of  
22 the Illinois Environmental Protection Agency. The Board received  
23 prefiled testimony from the Agency, and as I have said, copies of

24 the testimony are on the table on the right over there. If no

7

KEEFE REPORTING COMPANY  
1-800-244-0190

1 one objects, we will allow Mr. Clay and Ms. Brockamp to summarize  
2 their prefiled testimony and then we will admit the prefiled  
3 testimony as an exhibit rather than have the entire exhibit read  
4 into the record. In addition, we have Mr. Greg Dunn from the  
5 Illinois EPA who will also be testifying today. He will read his  
6 testimony in its entirety and then we will also enter that as an  
7 exhibit.

8 We have one other bit of prefiled testimony today, and  
9 that's from Mr. Ronald Dye with the Illinois Chapter of the  
10 American Institute of Professional Geologists. As the Agency has  
11 submitted prefiled testimony and also submitted some testimony  
12 today, Mr. Dye has graciously agreed to allow the Agency to  
13 present all of its testimony in one fell swoop and then he will  
14 come up and we will allow him to testify.

15 A few items about decorum. Anybody who testifies will be  
16 sworn in by the court reporter. Anyone may ask a question of  
17 anyone who testifies. However, if you are asking a question, I  
18 would ask that you raise your hand, wait for me to acknowledge  
19 you and after I have acknowledged you, please state your name and  
20 who you represent before you start asking questions.

21 Please speak one at time. If you are speaking over each  
22 other, the court reporter will not be able to get your questions

23 on the record. When answering questions, please be sure to say  
24 yes or no instead of nodding or shaking your head. Please note

8

KEEFE REPORTING COMPANY  
1-800-244-0190

1 that any questions asked by a Board Member or a member of the  
2 Board's staff are intended to help build a complete record for  
3 the Board's decision and are not intended to express any  
4 preconceived notions or bias.

5 Is there anyone else in the audience besides Mr. Dye who  
6 anticipates that they would be presenting testimony today? Your  
7 name, sir?

8 MR. LISS: Kenneth Liss.

9 HEARING OFFICER STERNSTEIN: Okay. Mr. Liss, once the  
10 Agency has testified and answered questions and once Mr. Dye has  
11 testified and answered questions, then we will allow you to  
12 testify and answer questions as well.

13 MR. LISS: Okay.

14 HEARING OFFICER STERNSTEIN: Is there anyone besides Mr.  
15 Liss who anticipates testifying today?

16 Okay. Mr. Melas, is there anything else you would like to  
17 add?

18 BOARD MEMBER MELAS: No. Thank you. You have covered it.  
19 Thank you.

20 HEARING OFFICER STERNSTEIN: Okay. Member Kezelis?

21 BOARD MEMBER KEZELIS: No. Thank you.

22 HEARING OFFICER STERNSTEIN: Member McFawn?

23 BOARD MEMBER McFAWN: No. Thank you.

24 HEARING OFFICER STERNSTEIN: Does the Agency have an

9

KEEFE REPORTING COMPANY  
1-800-244-0190

1 opening statement?

2 MS. DYER: I would like to introduce our panel today and I  
3 have a few points that I want to make, and some of it may be  
4 somewhat repetitive about these housekeeping issues.

5 HEARING OFFICER STERNSTEIN: Okay. Ms. Dyer, would you  
6 introduce yourself?

7 MS. DYER: Yes.

8 HEARING OFFICER STERNSTEIN: Okay.

9 MS. DYER: Good morning. My name is Judy Dyer. I am here  
10 today on behalf of the Illinois EPA.

11 HEARING OFFICER STERNSTEIN: Before you start testifying,  
12 maybe we should swear in the Agency as a panel.

13 (Whereupon the Agency witnesses were sworn by the Notary  
14 Public.)

15 HEARING OFFICER STERNSTEIN: Go ahead.

16 MS. DYER: Okay. With me today I have co-counsel Kyle  
17 Rominger in the middle here. And then our witnesses on behalf of  
18 the Agency are Greg Dunn to my right. Next to him, Kendra  
19 Brockamp. And on my left, Doug Clay. And over there at the end  
20 is Gary King, who has not submitted testimony but will be  
21 available to answer questions today as part of our panel.

22           As the Hearing Officer mentioned, the testimony of Greg  
23           Dunn was inadvertently not prefiled. I gave him an original and  
24           nine copies for the Board, and because his testimony was not

10

KEEFE REPORTING COMPANY  
1-800-244-0190

1           prefiled and it is brief, it addresses just one provision, we  
2           have arranged that he will read his testimony in its entirety.

3           Our other witnesses have summaries of their testimony, and  
4           after they summarize it, I will ask that it be entered into the  
5           record as if read.

6           I also wanted to touch on the point that we filed this  
7           motion to amend our proposal with some supplemental testimony as  
8           we -- as the Hearing Officer and I discussed beforehand, we  
9           intend to address -- to respond to questions on the original  
10          proposal and any questions on the amendments all at the same  
11          time. We are prepared to answer questions on all of the  
12          provisions. I did want to mention that regarding the federal  
13          sites, Section 732.703, alternative to recording an NFR letter,  
14          we have been in discussions with them quite recently and they are  
15          not able to be here today. So we would recommend that that be  
16          tabled to the next hearing when they will be present. Again, we  
17          are able to respond to any questions anyone has of us today.

18          We also filed an errata sheet. It covers two points, and  
19          we will be asking that that be entered as an exhibit. If anyone  
20          has questions on that, I can certainly answer those or our  
21          witnesses could.

22 I think that covers all of my points. So we can move on to  
23 testimony. Procedurally, would you prefer that they summarize  
24 their testimony and then I move it in at the end?

11

KEEFE REPORTING COMPANY  
1-800-244-0190

1 HEARING OFFICER STERNSTEIN: That would be the best way to  
2 do it, yes.

3 MS. DYER: Okay. Mr. Clay, do you want to start?

4 MR. CLAY: Sure. Good morning. My name is Doug Clay. I  
5 am the Manager of the Leaking Underground Storage Tank Section in  
6 the Bureau of Land at the Illinois Environmental Protection  
7 Agency. I have been in my current position since September of  
8 1994. This section is primarily responsible for reviewing the  
9 technical adequacy of plans, reports and associated budgets for  
10 the remediation of releases from underground storage tanks  
11 regulated under 35 Illinois Administrative Code, Parts 731 and  
12 732.

13 I have been a Registered Professional Engineer in Illinois  
14 since 1989. Today I will be testifying in support of the  
15 proposed amendments to 35 Illinois Administrative Code, Part 732.  
16 These amendments are the result of clarifications necessitated by  
17 issues that have arisen since implementation of Part 732 in 1994  
18 and subsequent amendments in 1997. And, second, the need to  
19 regulate Methyl tert-butyl ether, referred to as MTBE, as an  
20 indicator contaminant in gasoline.

21           The Agency has met with peer review groups on several  
22 occasions in an effort to reach consensus prior to submitting  
23 the proposed amendments to the Board. As a result, I believe the  
24 Agency and the groups have reached consensus on the proposed

12

KEEFE REPORTING COMPANY  
1-800-244-0190

1 amendments with the exception of the off-site access denial  
2 issue. We would like to defer discussion on that issue until the  
3 next hearing, by which time I hope we will have consensus between  
4 the Agency and the regulated community.

5           We recently received wording late last week that the  
6 regulated community was proposing for consideration. We have not  
7 had enough time to review that and to work with the community to  
8 reach a consensus. I believe we will be able to, though. In  
9 addition to the off-site access denial issue, proposed amendments  
10 include changes that would allow the Agency the ability to  
11 require plans, reports and forms submitted in electronic format.  
12 Also the changes include Licensed Professional Geologists to  
13 certify a specific work.

14           Modifications to Section 732.300 and Section 732.409, which  
15 would require certification by the property owner and --  
16 certification that the property owner agrees to the terms and  
17 conditions prior to the issuance of the No Further Remediation  
18 letter. Modifications to Section 732.310 that would regulate  
19 MTBE as an indicator contaminant for gasoline. Modifications to  
20 Section 732.703, which would establish that a No Further

21 Remediation letter is effective between the Agency and the owner  
22 and operator upon issuance. However, the No Further Remediation  
23 letter is perfected upon recording.

24 In Section 732.703 we have also added wording that would

13

KEEFE REPORTING COMPANY  
1-800-244-0190

1 allow a No Further Remediation letter issued for an IDOT  
2 right-of-way to be perfected by entering into a Memorandum of  
3 Agreement between IDOT and the Agency. That concludes the  
4 summary of my originally submitted testimony.

5 A brief summary of my testimony on the motion to amend  
6 would include testimony -- or changes to 732.203, to clarify that  
7 owners and operators do not have to receive an early action  
8 extension approval from the Agency when free product  
9 removal activities go beyond the 45 days.

10 Modifications to 732.405, add the language allowing the  
11 Agency to require a new corrective action plan if it is  
12 determined that the approved corrective action plan has not  
13 achieved applicable remediation objectives within a reasonable  
14 time frame.

15 Section 732.703 would allow perfection of a No Further  
16 Remediation letter on federal property following the entering of  
17 a Memorandum of Agreement between the Agency and the federal  
18 entity.

19 And Section 732.704 adds several conditions under which the

20 Agency may void a No Further Remediation letter; failure to  
21 comply with IDOT Memorandum of Agreement and Memorandum of  
22 Agreement entered into with the federal government or failure to  
23 notify the affected property owners when utilizing an ordinance  
24 as an institutional control.

14

KEEFE REPORTING COMPANY  
1-800-244-0190

1 That concludes my summary.

2 HEARING OFFICER STERNSTEIN: All right. Thank you, Mr.  
3 Clay.

4 Would you like to admit Mr. Clay's testimony as an exhibit?

5 MS. DYER: He has testified -- I mean, he has summarized  
6 both his original and his supplemental testimony.

7 HEARING OFFICER STERNSTEIN: Okay.

8 MS. DYER: I think you wanted those as separate exhibits.

9 HEARING OFFICER STERNSTEIN: Yes.

10 MS. DYER: So maybe I will move to enter his original  
11 testimony as an exhibit at this point and defer --

12 HEARING OFFICER STERNSTEIN: That would be fine. Why don't  
13 we do that. Do you have a copy of that testimony and one for the  
14 court reporter?

15 MS. DYER: Yes.

16 HEARING OFFICER STERNSTEIN: Thank you. I am marking the  
17 Testimony of Doug Clay in Support of the Environmental Protection  
18 Agency's Proposal to Amend 35 Illinois Administrative Code 732 as  
19 Exhibit Number 1.

20 (Whereupon said document was duly marked for purposes of  
21 identification as Hearing Exhibit 1 and admitted into  
22 evidence as of this date.)

23 MS. DYER: Thank you. Now Ms. Brockamp will provide a  
24 summary of her testimony.

15

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MS. BROCKAMP: My name is Kendra Brockamp. I am a Unit  
2 Manager in the Leaking Underground Storage Tank Section within  
3 the Bureau of Land of the Illinois Environmental Protection  
4 Agency. I have been in my current position since November of  
5 1998. Prior to assuming that position I was a Project Manager in  
6 the Leaking Underground Storage Tank Section beginning in 1991.  
7 I received a B.S. in biology in 1989 from the University of  
8 Illinois at Urbana-Champaign.

9 I am providing a summary of my prefiled written testimony  
10 in support of Amendments to 35 Illinois Administrative Code Part  
11 732, including a summary of my testimony for the Motion to Amend.

12 Regarding early action, 35 Illinois Administrative Code,  
13 Section 732.202(g) has been changed to clarify that for purposes  
14 of reimbursement the early action activities set forth in  
15 Subsection (f) must be performed within 45 days after initial  
16 notification of a release to the Illinois Emergency Management  
17 Agency, rather than within 45 days after confirmation of a  
18 release.

19           Section 732.202(h) has been added requiring the owner or  
20 operator to determine whether or not contaminated soil exposed  
21 during early action activities meets the applicable Tier 1  
22 remediation objectives. The Agency expects this to be determined  
23 through soil sampling and analysis. Information gained from the  
24 soil samples is useful to the owner or operator for determining

16

KEEFE REPORTING COMPANY  
1-800-244-0190

1 whether to proceed with site classification or with a full  
2 cleanup in lieu of site classification in accordance with Section  
3 732.300(b).

4           Regarding the application for payment, proposed amendments  
5 to Section 732.204 remove the option of submitting early action  
6 costs as part of the site classification. Rather, owners and  
7 operators will simply submit a reimbursement request for early  
8 action activities.

9           Section 732.300(b)(2) includes proposed language to clarify  
10 when a groundwater investigation is required for a site where the  
11 owner or operator is performing a complete cleanup in lieu of  
12 site classification. Mainly the clarification allows the owner  
13 or operator to forego a groundwater investigation where there is  
14 no recharge of groundwater within 24 hours after water has been  
15 pumped from the excavation. Although the wording of this  
16 subsection has been changed, the central intent remains the same.  
17 A groundwater investigation is required if there is evidence that  
18 contaminated soils may be or may have been in contact with

19 contaminated groundwater.

20 Under plan submittal and review, Section 732.305(d) has  
21 been amended to allow owners and operators who have proceeded to  
22 perform site classification without having submitted a budget  
23 plan to submit an application for payment after the work is  
24 performed and to forego budget submission.

17

KEEFE REPORTING COMPANY  
1-800-244-0190

1 (The conference room phone rang.)

2 HEARING OFFICER STERNSTEIN: Sorry about that. Let's go  
3 off the record for a second.

4 (Discussion off the record.)

5 HEARING OFFICER STERNSTEIN: Let's go back on the record.  
6 Sorry about that, Ms. Brockamp. Go ahead.

7 MS. BROCKAMP: This same language has been added in Section  
8 732.312(k) and 732.405(d).

9 Regarding site evaluation, 35 Illinois Administrative Code  
10 Section 732.307(g) has been amended to clarify the Illinois EPA's  
11 expectations regarding the migration pathway investigation.  
12 Specifically, the Illinois EPA expects that soil, groundwater (if  
13 encountered), and surface water (if there is potential for  
14 surface water contamination) samples will be obtained and  
15 analyzed for the appropriate indicator contaminants along  
16 identified natural and man-made pathways or between contaminated  
17 soil and the pathways.

18           Additionally, under site classification, language has been  
19 added to 732.307(j)(1) to clarify that a groundwater  
20 investigation is required for any site classified under Methods 1  
21 or 2 which fails to meet the criteria for a No Further Action  
22 site classification as well as for any site where a groundwater  
23 investigation is necessary pursuant to 732.302(b) that would  
24 otherwise meet the No Further Action criteria.

18

KEEFE REPORTING COMPANY  
1-800-244-0190

1           Finally, through the Motion to Amend, Section  
2 732.307(c)(3)(A) under site evaluation has been amended to delete  
3 a specific requirement when performing in-situ hydraulic  
4 conductivity testing. The Agency is proposing to delete the  
5 requirement that the well stream be contained fully within the  
6 saturated zone.

7           Under indicator contaminant, Section 732.310(g) has been  
8 amended to clarify that the used oil screening sample be  
9 collected from an area that is most contaminated.

10           Under classification by exposure pathway exclusion, both  
11 Section 732.312(g) and (h) have been amended to eliminate the  
12 option of using 35 Illinois Administrative Code, Part 742,  
13 Subpart (i) to exclude pathways as part of the site  
14 classification process. Rather, Subpart (c) of TACO must be  
15 utilized. This will simplify the process of this method of site  
16 classification.

17           Through the Motion to Amend, Section 732.312(c) has been

18 amended to exclude the requirement of physical soil  
19 classification as part of the requirements for a site  
20 classification plan under this exposure pathway exclusion method  
21 of site classification. Physical soil classification is defined  
22 in the regulations and the Illinois Environmental Protection Act  
23 for purposes of Method 1 for site classification and is not  
24 intended to apply to the exposure pathway exclusion method of

19

KEEFE REPORTING COMPANY  
1-800-244-0190

1 site classification.

2 Under full review of plans and reports, 35 Illinois  
3 Administrative Code, Section 732.503(b) has been amended to make  
4 the current requirements more clear. The Agency is not and has  
5 not been required to provide written notification of final action  
6 on 20 day reports, 45 day reports, or free product removal  
7 reports.

8 Under application for payment, Section 732.601(b)(8), it is  
9 added to require that as part of the complete application for  
10 payment the owner or operator must provide an address to which  
11 payment and notice of final action should be sent. Any address  
12 designated on the application must be made on a form provided by  
13 the Agency in accordance with proposed amendments to Section  
14 732.601(c). Amendments to 732.602(g) also includes this  
15 language.

16 Under review of applications for payment Section 732.602(e)

17 has been amended to be consistent with Section 57.8(a)(1) of the  
18 Illinois Environmental Protection Act. The amendments specify  
19 that if the Agency fails to notify the owner or operator of its  
20 final action on an application for payment within 120 days after  
21 receipt of the application for payment the owner or operator may  
22 deem the application for payment approved by operation of law  
23 rather than rejected by operation of law.

24 Under the authorization for payment, 35 Illinois

20

KEEFE REPORTING COMPANY  
1-800-244-0190

1 Administrative Code Section 732.603(b) has been amended to  
2 clarify the application of deductibles to payments from the  
3 Underground Storage Tank Fund. The proposed amendment serves to  
4 clarify how the Agency has already been handling the application  
5 of deductibles to payment from the fund.

6 Finally, under authorization for payment, Section  
7 732.603(c), the Agency shall not authorize the office of the  
8 state comptroller to issue payment to an agent, designee, or  
9 entity who has conducted corrective action activities for the  
10 owner or operator.

11 Section 732.605(a)(13) under eligible costs clarifies that  
12 the Illinois EPA will not reimburse the owner or operator for the  
13 removal or disposal of any underground storage tank deemed  
14 ineligible by the Office of the State Fire Marshal. This  
15 clarification is also reflected under 732.606(1), ineligible  
16 costs. Also under ineligible costs, Subsection (kk) has been

17 amended to provide that costs an owner or operator incurred after  
18 receipt of the No Further Remediation letter will be reimbursed  
19 if the costs are incurred for MTBE remediation in accordance with  
20 732.310(i)(2). This is a new provision that allows an owner or  
21 operator to elect to address MTBE as an indicator contaminate if  
22 the Agency has issued an NFR letter and if the release at the  
23 site has caused off-site groundwater contamination.

24 Subsections (ll) and (mm) under ineligible costs declared

21

KEEFE REPORTING COMPANY  
1-800-244-0190

1 at handling charges for subcontractor costs shall not be  
2 reimbursed if they have been billed direct to the owner or  
3 operator and shall not be reimbursed if the contractor has not  
4 paid the subcontractor.

5 Through the Motion to Amend under ineligible costs, Section  
6 732.606(i) has been amended to include that costs associated with  
7 activities that violate any Office of the State Fire Marshal  
8 regulations will be ineligible.

9 Also through the Motion to Amend Section 732.606(nn) has  
10 been added to include costs for standby as ineligible.

11 Section 732, Appendix B, additional parameters, has been  
12 amended to include PCBs as an additional indicator contaminant.

13 Section 732, Appendix C, backfill volumes, has been amended  
14 to include the maximum amount of backfill material that can be  
15 removed in tons as well as cubic yards and to include the maximum

16 amount of backfill material that can be replaced in tons and  
17 cubic yards, in order to adhere to the requirements for purposes  
18 of reimbursement.

19 That concludes my summary.

20 HEARING OFFICER STERNSTEIN: Thank you, Ms. Brockamp.  
21 Would the Agency like to admit Ms. Brockamp's testimony as an  
22 exhibit?

23 MS. DYER: I move that the Board accept Ms. Brockamp's  
24 testimony as an exhibit.

22

KEEFE REPORTING COMPANY  
1-800-244-0190

1 HEARING OFFICER STERNSTEIN: Okay. Thank you, Ms. Dyer.  
2 Testimony of Kendra Brockamp in Support of the Environmental  
3 Protection Agency's Proposal to Amend 35 Illinois Administrative  
4 Code Part 732 will be admitted as Exhibit 2.

5 (Whereupon said document was duly marked for purposes of  
6 identification as Hearing Exhibit 2 and admitted into  
7 evidence as of this date.)

8 HEARING OFFICER STERNSTEIN: A note of clarification. If  
9 anybody has a cell phone, could you please take the calls  
10 outside. We are having a little trouble hearing up here, so a  
11 point of order. Thanks.

12 Ms. Dyer, go right ahead.

13 MS. DYER: At this time I would have Mr. Dunn read his  
14 testimony in its entirety.

15 MR. DUNN: Thank you. Good morning. I apologize for that.

16 I thought I had turned it off.

17 My name is Gregory W. Dunn. I am currently manager of one  
18 of the Site Remediation Program Units of the Bureau of Land of  
19 the Illinois Environmental Protection Agency, here and after  
20 referred to as the Agency.

21 I graduated from Eastern Illinois University in 1986 with a  
22 B.S. in Geology and a B.S. in Earth Science. I have been  
23 employed with the Agency since September of 1986. I was a  
24 project manager in the Site Assessment Unit from September of

23

KEEFE REPORTING COMPANY  
1-800-244-0190

1 1986 until October of 1992. From October 1992 until July of  
2 1997, I was a project manager in the Pre-Notice Program, which  
3 became the Site Remediation Program in June of 1997. From July  
4 of 1997 until December of 1998, I was a project manager in the  
5 State Sites Unit, which uses State funds to remediate sites.  
6 Since December of 1998, I have been manager of one of the Site  
7 Remediation Program Units. I am registered as a Licensed  
8 Professional Geologist in the State of Illinois.

9 Today I will testify in support of laboratory certification  
10 in 35 Illinois Administrative Code 732, specifically Section  
11 732.106. In March 1998, the 35 Illinois Administrative Code 186  
12 Regulations, "Accreditation of Laboratories for Drinking Water,  
13 Wastewater and Hazardous Waste Analysis," were adopted pursuant  
14 to Sections 4(n) and 4(o) of the Environmental Protection Act.

15 These rules establish laboratory standards for data quality that  
16 are compliant with the standards of the National Environmental  
17 Laboratory Accreditation Program, or NELAP.

18 The NELAP is a U.S. EPA operated program that implements  
19 standards developed by the National Environmental Laboratory  
20 Accreditation Conference or NELAC. The NELAC is a cooperative  
21 Association of States and Federal Agencies, formed to establish  
22 and promote mutually acceptable performance standards for the  
23 operation of environmental laboratories. The goal of NELAC is to  
24 foster the generation of environmental laboratory data of known

24

KEEFE REPORTING COMPANY  
1-800-244-0190

1 and acceptable quality on which to base public health and  
2 environmental management decisions. Now that the Part 186  
3 regulations are in place, the Agency believes that it is time to  
4 take the lead in ensuring that the standards of data quality  
5 intended by Subsections 4(n) and 4(o) of the Act are implemented  
6 by requiring their use in Agency remediation programs.

7 Currently in the Leaking Underground Storage Tank Program,  
8 compliance with the standards of data quality objectives is  
9 reliant on the professional ability and integrity of the samples  
10 collected and the laboratory analyzing the samples. Adoption of  
11 a requirement for participation in the Leaking Underground  
12 Storage Tank Program to use a laboratory accredited under 35  
13 Illinois Administrative Code 186 will further ensure that the  
14 environmental consultant and the Agency will receive analytical

15 data of acceptable and known quality. In turn, both will feel  
16 confident that the decisions made from the analytical data are  
17 founded on standard, reliable data that is in compliance with the  
18 most recent national standards for environmental laboratory data.

19 To ensure that LUST data analyses are up to NELAP  
20 standards, the Agency proposes the following language under  
21 Section 732.106: "All quantitative analyses of samples collected  
22 on or after July 1, 2002, and utilizing any of the approved test  
23 methods identified in 35 Illinois Administrative Code 186.180  
24 shall be completed by an accredited laboratory in accordance with

25

KEEFE REPORTING COMPANY  
1-800-244-0190

1 the requirements of 35 Illinois Administrative Code 186.  
2 Quantitative analyses not utilizing an accredited laboratory in  
3 accordance with Part 186 shall be deemed invalid."

4 The Agency is proposing July 1, 2002, as the effective date  
5 for the requirement of analyses by accredited laboratories to  
6 allow laboratories wishing to participate ample time to apply and  
7 gain accreditation provided all the requirements of the  
8 accreditation are met. The Agency's Division of Laboratories is  
9 reviewing all accreditation applications and estimates about six  
10 to nine months to get a laboratory from application to  
11 accreditation. Currently, 17 laboratories have applied for  
12 SW-846/RCRA accreditation, with more than half of those  
13 laboratories located within the State of Illinois. I have an

14 Attachment 1 to my testimony which includes those laboratories in  
15 the State of Illinois.

16 Under the NELAP requirements, the Illinois Environmental  
17 Laboratory Accreditation Program must unconditionally recognize  
18 NELAP accreditations issued by another NELAP approved state or  
19 accrediting authority. A laboratory accredited for SW-846/RCRA  
20 testing by another state or federal accrediting authority can  
21 become an Illinois ELAP laboratory if the other state or federal  
22 accreditation requirements are equal to or exceed Illinois'  
23 requirements and the applicable Illinois ELAP fees are paid.  
24 That is under Section 186.205(a)(2).

26

KEEFE REPORTING COMPANY  
1-800-244-0190

1 By design, another NELAP accrediting authority's program is  
2 equal to Illinois' requirements, and laboratories accredited by  
3 such accrediting authorities produce data that is in compliance  
4 with the most recent national standards for environmental  
5 laboratory data. In addition to Illinois, six states,  
6 California, Florida, Kansas, New Jersey, New York, and Utah have  
7 received NELAP Accrediting Authority status for SW-846/RCRA  
8 accreditation.

9 This concludes my testimony.

10 HEARING OFFICER STERNSTEIN: Thank you, Mr. Dunn. Would  
11 the Agency like to admit Mr. Dunn's testimony as an exhibit?

12 MS. DYER: I move that Mr. Dunn's testimony be entered as  
13 an exhibit.

14 HEARING OFFICER STERNSTEIN: We will admit the testimony of  
15 Gregory W. Dunn on Proposed Amendments to 35 Illinois  
16 Administrative Code 732 as Exhibit 3.

17 (Whereupon said document was duly marked for identification  
18 as Hearing Exhibit 3 and admitted into evidence as of this  
19 date.)

20 HEARING OFFICER STERNSTEIN: Can we just go off the record  
21 for a second.

22 (Discussion off the record.)

23 HEARING OFFICER STERNSTEIN: All right. Let's go back on  
24 the record. Ms. Dyer, where are we now?

27

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MS. DYER: We have an errata sheet and a Motion to Amend,  
2 and then the supplemental testimonies to have entered as  
3 exhibits.

4 HEARING OFFICER STERNSTEIN: Okay. Would you like to  
5 submit the errata sheet and the Motion to Amend as already read  
6 or would you like to go over those?

7 MS. DYER: No, I would like to just submit them as --

8 HEARING OFFICER STERNSTEIN: As already read into the  
9 record. Okay. If we have no objections from anybody else in the  
10 audience, go ahead and bring those up.

11 So we will be accepting Errata Sheet Number 1 to the  
12 Illinois Environmental Protection Agency's Proposal to Amend 35

13 Illinois Administrative Code 732 as Exhibit Number 4.

14 (Whereupon said document was duly marked for purposes of  
15 identification as Hearing Exhibit 4 and admitted into  
16 evidence as of this date.)

17 HEARING OFFICER STERNSTEIN: And we will accept Motion to  
18 Amend Agency Proposal Amending 35 Illinois Administrative Code  
19 Part 732 as Exhibit 5.

20 (Whereupon said document was duly marked for purposes of  
21 identification as Hearing Exhibit 5 and admitted into  
22 evidence as of this date.)

23 HEARING OFFICER STERNSTEIN: I guess for clarification  
24 purposes, the next two items of testimony we will hear will be

28

KEEFE REPORTING COMPANY  
1-800-244-0190

1 from Mr. Clay and from Ms. Brockamp, and those will be entered as  
2 separate exhibits once they have read those into the record. For  
3 everybody else's clarification, those who have -- I am sorry, Ms.  
4 Dyer. Go ahead.

5 MS. DYER: They have, in fact, already summarized those.

6 HEARING OFFICER STERNSTEIN: They have? Okay. I knew Mr.  
7 Clay had. Ms. Brockamp had as well?

8 MS. DYER: Right.

9 HEARING OFFICER STERNSTEIN: Okay.

10 MS. DYER: I would move at this time to have them entered  
11 as exhibits separately.

12 HEARING OFFICER STERNSTEIN: That is fine. For everybody

13 in audience, the Agency attached those to the back of what I just  
14 marked as Exhibit Number 5. So if you look at the end of motion  
15 to amend Agency's Proposal Amending 35 Illinois Administrative  
16 Code 732, which I just admitted as Exhibit Number 5, at the back  
17 there you will see testimony of Kendra Brockamp and you will  
18 see -- I think it is Mr. Clay's testimony that comes first,  
19 right?

20 MS. DYER: I am not sure how it was copied. I think that's  
21 correct.

22 HEARING OFFICER STERNSTEIN: No, his testimony is second.  
23 So at the back of the exhibit that we are talking about right  
24 now, there is Ms. Brockamp's and Mr. Clay's testimony in support

29

KEEFE REPORTING COMPANY  
1-800-244-0190

1 of that Motion to Amend the Agency Proposal Amending 35 Illinois  
2 Administrative Code 732. And right now we will admit those as  
3 Exhibits 6 and 7 respectively.

4 If anybody -- I am sorry if this is a little confusing. If  
5 anybody has any questions in the audience, please raise your  
6 hand. It is just much easier to break it up for purposes of  
7 drafting the opinion.

8 BOARD MEMBER KEZELIS: For the records filed with the  
9 Board, Ms. Brockamp's came first and Mr. Clay's came second in  
10 the Motion to Amend.

11 HEARING OFFICER STERNSTEIN: Okay. Then we will do that in

12 numerical order. So the testimony of Kendra Brockamp in Support  
13 of the Environmental Protection Agency's Motion to Amend its  
14 Proposal to Amend 35 Illinois Administrative Code Part 732 will  
15 be admitted as Exhibit 6.

16 (Whereupon said document was duly marked for purposes of  
17 identification as Hearing Exhibit 6 and admitted into  
18 evidence as of this date.)

19 HEARING OFFICER STERNSTEIN: And testimony of Douglas Clay  
20 in support of the Environmental Protection Agency's motion to  
21 Amend its Proposal to Amend 35 Illinois Administrative Code 732  
22 will be admitted as Agency Exhibit Number 7.

23 (Whereupon said document was duly marked for purposes of  
24 identification as Hearing Exhibit 7 and admitted into

30

KEEFE REPORTING COMPANY  
1-800-244-0190

1 evidence as of this date.)

2 HEARING OFFICER STERNSTEIN: Okay. Does the Agency have  
3 any other documents that it would like to admit as an exhibit at  
4 this time?

5 MS. DYER: Not at this time.

6 HEARING OFFICER STERNSTEIN: Does that conclude the  
7 Agency's testimony for today's hearing?

8 MS. DYER: It concludes the Agency's testimony. At this  
9 point Mr. Clay, Ms. Brockamp, Mr. Dunn, and Mr. King are  
10 available to answer any questions from the Board or other  
11 participants.

12 HEARING OFFICER STERNSTEIN: Okay. At this point I will  
13 open up questions to the Agency's panel from members of the  
14 audience. Again, I would just ask that you raise your hand,  
15 identify yourself, and allow me to recognize you.

16 Mr. Rieser, go ahead.

17 MR. RIESER: David Rieser from Ross and Hardies, on behalf  
18 of the Illinois Petroleum Council. I have a series of questions  
19 that come out of the -- that sort of got organized according to  
20 the way they appear in the proposal, so if that moves around as I  
21 go from the first proposal to the amended proposal, I am sorry.

22 With respect to 732.101 and elsewhere there is a  
23 requirement -- a proposed requirement that material be submitted  
24 in an electronic format. Does the Agency know whether this will

31

KEEFE REPORTING COMPANY  
1-800-244-0190

1 be a mandatory requirement that materials be submitted in an  
2 electronic format?

3 MR. CLAY: The provision allows at some point the Agency to  
4 require that. We envision that once we require it, it will be  
5 mandatory.

6 MR. RIESER: Will there be any information gathering effort  
7 on the part of the Agency to determine whether all underground  
8 storage tank owners in the state are in a position to submit  
9 materials in an electronic format?

10 MR. CLAY: We will consider that. Further, we actually got

11 a pilot that we are going to be looking at in another program for  
12 submittal of plans and reports over the next year. Hopefully  
13 that will help work out some of the problems that we will have  
14 with electronic reporting.

15 MR. RIESER: In what format will the Agency announce these  
16 requirements? Will it be in the form of a rule, so it would be  
17 subject to notice and comment by interested parties?

18 MR. CLAY: We didn't anticipate that it would be as part of  
19 a rule, but we would notify the regulated community.

20 MR. RIESER: What would be the method of notification?

21 MR. CLAY: We have not determined that at this point.

22 MR. RIESER: Okay. With respect to changes to the early  
23 action provision, which is 202(h), this appears to require  
24 sampling of the excavation at the conclusion of early action. Is

32

KEEFE REPORTING COMPANY  
1-800-244-0190

1 this mandatory for all early action sites, for all sites where  
2 there is an excavation.

3 MS. BROCKAMP: Yes.

4 MR. RIESER: Even if it is obvious that there is  
5 contamination in the excavation --

6 MS. BROCKAMP: Yes.

7 MR. RIESER: -- you would require sampling? What would be  
8 the purpose of requiring sampling in those situations where it is  
9 obvious that there is contamination and that the owner/operators  
10 can move on to the corrective action type mode?

11 MS. BROCKAMP: The sampling would be the -- the sample  
12 analysis would be used as a starting point to determine whether  
13 or not the owner/operator needs to proceed in the site  
14 classification. It may help the owner/operator determine which  
15 method of site classification might best serve them. In  
16 addition, the samples can be used subsequently for migration  
17 pathway investigation samples.

18 MR. RIESER: What types of problems was this change  
19 designed to solve?

20 MS. BROCKAMP: Frequently we would get information, say,  
21 for instance, for TACO evaluations where there was no clear  
22 information as to what contaminant levels were at the source so  
23 i.e., what the worst contaminant levels were, and those are  
24 necessary for TACO evaluations.

33

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. RIESER: Would the sampling that this is set out here  
2 always be sufficient to meet that need or would additional  
3 sampling also be required?

4 MS. BROCKAMP: For the migration pathway issues?

5 MR. RIESER: Right, or for whatever corrective action is  
6 being proposed.

7 MS. BROCKAMP: The samples collected at the excavation  
8 would merely give a picture of what the levels were at that area.  
9 It may still be necessary to define -- fully define and

10 characterize the extent of contamination. And that may be done  
11 either through site classification, depending on which method you  
12 choose, or high priority corrective action. So, you know, this  
13 would not be the limit of sampling required for the majority of  
14 sites. If the sample showed that the TACO Tier 1 levels were  
15 met, the owner or operator could choose to submit a corrective  
16 action completion report and apply for consideration for a No  
17 Further Remediation letter.

18 MR. RIESER: For those sites where there is no visible  
19 contamination, wouldn't it be the normal practice for most  
20 owners/operators to take the samples at the conclusion of the  
21 excavation anyway?

22 MS. BROCKAMP: Many people do take the samples. Not  
23 everyone takes the samples. That is about all I can say. I will  
24 have to think about that.

34

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. RIESER: But if they don't take the samples, then they  
2 don't have a technical basis to justify a No Further Remediation  
3 letter; is that correct?

4 MS. BROCKAMP: If they are applying for it under the  
5 732.300(b) provision.

6 MR. RIESER: Is there anybody who is not still doing that?

7 MS. BROCKAMP: Taking samples?

8 MR. RIESER: No, applying for the 732.300(b) provisions  
9 that you described.

10 MS. BROCKAMP: That is still doing it, or is not still  
11 doing it?

12 MR. RIESER: Is not still doing it?

13 MS. BROCKAMP: I mean, people do it when they believe the  
14 site is clean. They move on into site classification when they  
15 believe that there are still problems there.

16 MR. RIESER: Okay. Moving on to 300(b), this has to do  
17 with the owner -- obtaining the sign off from the owner/operator.  
18 This requirement appears a couple of different times in the  
19 regulation. Is it the Agency's intent that this only be -- that  
20 this certification only occur at one point, i.e., the point at  
21 which the final corrective action report is delivered, the site  
22 classification reporter, or however that is framed?

23 MR. CLAY: It is intended that it only be requested once at  
24 the end of the project. We want to make sure that the property

35

KEEFE REPORTING COMPANY  
1-800-244-0190

1 owner is comfortable with the conditions of the NFR letter and  
2 that they will allow that to be recorded, which will perfect the  
3 NFR letter.

4 MR. RIESER: Turning on -- again, still on 300(b), but  
5 turning to 2, it makes a statement, unless an evaluation pursuant  
6 to 35 Illinois Administrative Code 742 demonstrates that no  
7 groundwater investigation is necessary, the owner or operator  
8 must complete a groundwater investigation. What evaluation

9 pursuant to 35 Illinois Administrative Code 742 would make that  
10 demonstration?

11 MS. BROCKAMP: Potentially it would be if they pursued a  
12 pathway exclusion under Subpart (c) or Subpart (i) for purposes  
13 of the groundwater ingestion pathways.

14 MR. RIESER: Okay. Moving on to 307(g)(3), this is with  
15 respect to sampling --

16 BOARD MEMBER KEZELIS: I am sorry. Could you speak up a  
17 little?

18 MR. RIESER: I am sorry. 307(g)(3). I will speak up.

19 BOARD MEMBER KEZELIS: Thank you.

20 MR. RIESER: This requires soils -- it appears to require  
21 soil samples to be taken between a man-made pathway and the  
22 source of the contamination to document that there is no  
23 contamination moving towards the man-made pathway. It is very  
24 specific in the terms of the types of sampling that is required.

36

KEEFE REPORTING COMPANY  
1-800-244-0190

1 Would it also be allowable to extrapolate from other data  
2 points rather than having one that is exactly between the source  
3 and the man-made pathway?

4 MS. BROCKAMP: Extrapolate using what method, just distance  
5 over --

6 MR. RIESER: Well, if you had two data points at different  
7 locations that would suggest that the contamination stopped  
8 moving in that direction, but not one that was directly between

9 the source and the man-made pathway?

10 MS. BROCKAMP: I think we would have to look at that site  
11 specifically. I think there are instances where, you know, there  
12 would be things at the site that would show that that  
13 contamination was not moving toward that pathway.

14 MR. RIESER: Would the Agency also accept modeling type  
15 demonstrations that would document the same thing?

16 MS. BROCKAMP: Well, the modeling that we have does not  
17 really show the movement of the contamination specifically  
18 through the soil to a certain point. We can do that for water,  
19 but we can't really do that for, say, ingestion and inhalation  
20 pathway, that does not show the motion toward the receptor.

21 MR. RIESER: But, for example, those instances where a  
22 man-made pathway was a significant distance from the source, at a  
23 large site, for example, you need to document, again, for water  
24 using the 26 model out of TACO, that it was not going to move in

37

KEEFE REPORTING COMPANY  
1-800-244-0190

1 that direction, wouldn't that be sufficient to document that  
2 there would be no contamination of the man-made pathway?

3 MS. BROCKAMP: Again, I believe that whenever you are using  
4 the modeling concepts we don't really apply those to the Methods  
5 1 and 2 under site classification, and that's primarily what we  
6 are talking about with the migration pathway samples.

7 MR. RIESER: I guess what I am asking, the bottom line, is

8 if the site circumstances demonstrate that there is no movement  
9 of contaminants in the direction of the man-made pathway, even if  
10 you don't have a sample that documents that, will the Agency look  
11 at those site characteristics?

12 MS. BROCKAMP: I think we would be open to evaluate that on  
13 a site-specific basis but, you know, knowing that the standard  
14 that we are looking for is the sampling, but I am sure we would  
15 look at the data provided.

16 MR. RIESER: Okay. Thank you. Turning to 312(a), there is  
17 a deletion. "An owner or operator electing to classify a site by  
18 exclusion of human exposure pathways under 35 Illinois  
19 Administrative Code 742, Subpart C or I," and the "or I" was  
20 deleted. Is it the Agency's intent here to limit the use of TACO  
21 in this setting?

22 MS. BROCKAMP: TACO is still allowed to be used. Subpart C  
23 of TACO is still allowed to be used.

24 MR. RIESER: So this represents the Agency's interpretation

38

KEEFE REPORTING COMPANY  
1-800-244-0190

1 that the one would use C always and not I with respect to this  
2 particular issue?

3 MS. BROCKAMP: Yes, with respect to site classification by  
4 exposure pathway exclusion.

5 MR. RIESER: Turning to 732.411, off-site access, what  
6 problem was this proposed regulation designed to solve?

7 MR. CLAY: It was -- well, first of all -- well, we are

8 going to be looking at and working with the regulated community  
9 on some revised wording for this. But it was meant to solve  
10 situations where release from an underground storage tank has  
11 migrated off-site and the off-site property owner has -- there is  
12 an indication that they have denied access for investigation for  
13 remediation purposes.

14 MR. RIESER: How often did that occur?

15 MR. CLAY: I don't know if I would consider it routine, but  
16 it happened quite often.

17 MR. RIESER: In the Statement of Reasons there was a  
18 suggestion that this was, at some instances, the result of  
19 collusion. Does the Agency have any evidence of individual acts  
20 of collusion with respect to this issue?

21 MR. CLAY: We don't have any evidence. There have been  
22 situations where, for instance, one site that had the  
23 remediation, the adjacent property owner happened to have the  
24 last name, and they were denying access. The levels going onto

39

KEEFE REPORTING COMPANY  
1-800-244-0190

1 that adjacent property were very high.

2 MR. RIESER: Was there any other instances besides that  
3 one?

4 MR. CLAY: There have been a couple of situations where --  
5 it may not always be a situation where we could have expected  
6 collusion. It may be a situation where there is an activity

7 going on at an adjacent property and for that reason they have  
8 denied access, and we do have examples, and there are situations  
9 like that.

10 MR. RIESER: What do you mean, other activity going on?

11 MR. CLAY: Well, you know, it may be another gas station  
12 that has had a release. There could be a manufacturing facility  
13 that may have had historical releases. It could have been a  
14 fertilizer manufacturer that has had -- that may have had  
15 releases.

16 MR. RIESER: In other words, these are sites with problems  
17 of their own?

18 MR. CLAY: Potential problems.

19 MR. RIESER: That did not want it evaluated for one reason  
20 or another in the context of the underground storage tank?

21 MR. CLAY: I would say potential problems.

22 MR. RIESER: The 411(b) describes the contents of the  
23 letter that the owner/operator is supposed to send. Is it  
24 correct that the purpose of this letter is really to advise the

40

KEEFE REPORTING COMPANY  
1-800-244-0190

1 off-site property owner of basically what is going on and why  
2 access is necessary?

3 MR. CLAY: That's correct.

4 MR. RIESER: It is not the purpose of this letter for the  
5 owner or operator to make admissions or make commitments to the  
6 adjacent property owner above and beyond what would be normally

7 required for providing access to the site?

8 MR. CLAY: That's correct.

9 MR. RIESER: The factors in (d), what is the purpose of  
10 these factors?

11 MR. CLAY: The intent was to notify the regulated community  
12 what the Agency would be considering --

13 MR. RIESER: Okay.

14 MR. CLAY: -- in making their best efforts decision.

15 However, I would like to point out that, again, we are going to  
16 be meeting with the regulated community to discuss potential  
17 rewording, and then be proposing that to be -- if we can reach  
18 consensus, then we would be proposing that to the Board and be  
19 available for discussion at the next hearing.

20 MR. RIESER: Would it be correct that the key factor that  
21 the Agency wants to look at in addition to whether or not the  
22 owner or operator actually sent the letter to the adjacent  
23 landowner is whether there is significant and imminent risks  
24 associated with this off-site contamination that needs to be

41

KEEFE REPORTING COMPANY  
1-800-244-0190

1 addressed?

2 MR. CLAY: I would say that, you know, the Agency's main  
3 concern would be the potential for exposure to human health and  
4 the environment off-site. Exposure of those contaminants to --  
5 for human health and protection of the environment.

6 MR. RIESER: Looking at 503(c), is it correct that this is  
7 another item that the Agency and the regulated community are  
8 considering revising in light of our other discussions and that  
9 it is not consistent with 411?

10 MR. CLAY: That has been proposed as being deleted on the  
11 errata sheet.

12 MR. RIESER: Oh, okay. Moving to 603(b)(4), and this is  
13 with respect to the rules applying regarding deductibles. What  
14 is the basis for (b)(4), which is where more than one deductible  
15 determination is made, the higher deductible shall apply?

16 MS. BROCKAMP: Why was that put in there to begin with?

17 MR. RIESER: Yes.

18 MS. BROCKAMP: Because frequently -- well, not frequently,  
19 but we have had occasions where eligibility determinations have  
20 been issued, say, for two separate incidents where different  
21 deductibles have been applied by the Illinois Office of the State  
22 Fire Marshal.

23 MR. RIESER: What's the problem with that?

24 MS. BROCKAMP: When you go to apply the deductible, and if

42

KEEFE REPORTING COMPANY  
1-800-244-0190

1 it is a situation where they are only getting one deductible, you  
2 have to determine whether they will get the higher or the lower  
3 of the two deductibles.

4 MR. RIESER: If the two incidents are associated with two  
5 entirely different releases, two entirely different areas, is

6 there a problem with there being two deductibles?

7 MS. BROCKAMP: If the incidents were reported within the  
8 same calendar year, as you can see in (b)(3), it says "if  
9 multiple incident numbers are issued for a single site in the  
10 same calendar year, only one deductible shall apply for those  
11 incidents, even if the incidents relate to more than one  
12 occurrence."

13 MR. RIESER: But if there are for two different areas, why  
14 can't you have two different deductibles.

15 MS. BROCKAMP: Because they are only going to get one  
16 deductible applied, because they were reported within the same  
17 calendar year.

18 MR. RIESER: Is this a requirement of the Act?

19 MS. BROCKAMP: I am sorry. Could you repeat the question?

20 MR. RIESER: Is this a requirement of the Environmental  
21 Protection Act?

22 MS. BROCKAMP: Is what a requirement of the --

23 MR. RIESER: That there be only one deductible for two  
24 separate incidents, even if they are totally separate releases

43

KEEFE REPORTING COMPANY  
1-800-244-0190

1 and totally separate areas?

2 MS. BROCKAMP: 57.9(b)(3)(B) says a deductible shall apply  
3 annually for each site at which costs were incurred under a claim  
4 submitted pursuant to this title, except that a corrective action

5 in response to an occurrence takes place over a period of more  
6 than one year and subsequent years no deductible shall apply for  
7 costs incurred in response to such occurrence. That is not  
8 exactly what I was looking for. I am sorry.

9 MR. CLAY: David, if I could respond to your question about  
10 could you have multiple deductibles at a given site, the answer  
11 is yes. If -- I mean, if they are in different years and they  
12 are separate occurrences. What we were trying to clarify here is  
13 that if you have got two determinations on the same occurrences  
14 but different incident numbers and maybe years apart and there  
15 has been two different deductibles assessed, we just wanted to  
16 clarify that we would be going by the highest deductible.

17 MR. RIESER: What is the basis for going by the highest  
18 deductible and not the lowest deductible?

19 MR. CLAY: The highest deductible indicates that not all of  
20 the tanks were registered, timely registered, and I guess just  
21 being conservative.

22 MR. RIESER: But there is it no statutory requirement that  
23 the highest deductible applies as opposed to the lowest  
24 deductible?

44

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. CLAY: I am sorry. Would you say that again?

2 MR. RIESER: There is no statutory requirement that the  
3 highest rather than the lowest deductible should apply?

4 MR. CLAY: No.

5 MR. RIESER: Looking at 703(d), it says "the land use  
6 limitation specified in the No Further Remediation letter may be  
7 revised only by the recording of a subsequent No Further  
8 Remediation letter." When you say land use limitation, is this a  
9 reference to the industrial classification to the property or is  
10 there any reference to engineered barriers that are present on  
11 the site?

12 MR. CLAY: That was 703(e)?

13 MR. RIESER: 703(d), that is "D" as in dog.

14 MR. CLAY: It would be any limitations, institutional  
15 controls or engineered barriers.

16 MR. RIESER: So you can't modify -- according to these  
17 rules, you can't modify an engineered barrier without revising  
18 your No Further Remediation letter when you are recording it?

19 MR. CLAY: You couldn't exclude the engineered barrier. I  
20 mean, for example, if you were -- if you remove the asphalt and  
21 replace it with concrete, we wouldn't consider that a change in  
22 the engineered barrier, per se.

23 MR. RIESER: What if you remove the asphalt and replaced it  
24 with a building?

45

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. CLAY: I think what we are concerned with here is the  
2 engineered barrier serving the purpose that it was intended. So  
3 I think if you replace that with a building, it would be serving

4 the purpose it was intended.

5 MR. RIESER: So the issue is not any change. The issue is  
6 a change which removes the barrier entirely?

7 MR. CLAY: I think it would be a change that changes the  
8 purpose of that barrier. For example, if you have an engineered  
9 barrier and that is removed and you put down bisqueen and seeded  
10 over that, we would argue that that does not meet that same  
11 purpose, that thin bisqueen, that the asphalt barrier met.

12 MR. RIESER: But if you removed it -- removed the asphalt  
13 barrier and replaced it with three feet of soil, you would see  
14 that as acceptable?

15 MR. CLAY: I think if it is...

16 MR. KING: If I can just jump in here a little bit, I mean,  
17 the purpose of this was to be conservative so that where there  
18 were changes in the land and in the way the engineered barriers  
19 were structured, people would come back in and we would, you  
20 know, take a look at that to make sure things were okay. I mean,  
21 we have decided through the TACO process, through the way we have  
22 incorporated that into the programs, that institutional controls  
23 and engineered barriers make sense as a risk based approach to  
24 protecting human health and the environment. But we want to make

46

KEEFE REPORTING COMPANY  
1-800-244-0190

1 sure where there is, you know -- if people are going to change  
2 the engineered barriers in the future we want to make sure that  
3 the change in the barrier is going to be addressing the concern

4 the same way that the original approval did.

5 MR. RIESER: I guess the line of questions has to do with  
6 is this something -- is this requirement in (d) something that is  
7 unique to the underground storage program or is this also a part  
8 of the TACO program or the Site Remediation Program, because I am  
9 not sure I remember having seen this exact language in either 742  
10 or 740.

11 MR. KING: I don't recall whether this is in our 740  
12 proposal. We could check that, perhaps, during the break and see  
13 if it is there.

14 MR. RIESER: Because it would not be consistent with the  
15 way the Agency has implemented this, to have one requirement that  
16 would apply to the underground storage programs but not have it  
17 apply in the Site Remediation Program, an issue of this nature  
18 where it is an interpretation of how 742 is implemented.

19 MR. KING: I would agree with your comment. I mean, we  
20 want to have as much consistency as we can across all of our  
21 programs. Of course, there is certain issues and aspects of each  
22 program, you know --

23 MR. RIESER: Right.

24 MR. KING: -- that prohibit total identification, but to

47

KEEFE REPORTING COMPANY  
1-800-244-0190

1 the extent we can make it consistent, I would agree with your  
2 comment.

3 MR. CLAY: Mr. Rieser, the other reason that this provision  
4 is in there is to emphasize that you are changing those  
5 engineered barriers or institutional controls, and you must go  
6 through the Site Remediation Program under Title 17 as opposed to  
7 back in the LUST program.

8 MR. RIESER: Is that language that you have to go through  
9 the Site Remediation Program contained in (d).

10 MR. CLAY: Yes.

11 MR. RIESER: That's what you mean by issued pursuant to  
12 Title 17 of the Act and regulations thereunder?

13 MR. CLAY: Correct.

14 MR. RIESER: So to change an engineered barrier you would  
15 have to submit a -- submit a proposal pursuant to the Site  
16 Remediation Program and pay the Agency for oversight and go  
17 through the entire investigation process and all of the reports  
18 that the Site Remediation Program requires to obtain a revised No  
19 Further Remediation letter, even if you are maintaining a barrier  
20 there that may be in different form?

21 MR. CLAY: Yes.

22 MR. KING: Just a comment. I don't think it is necessarily  
23 going to be that onerous of a process. I mean, in essence, the  
24 documentation has been established as far as the investigation

48

KEEFE REPORTING COMPANY  
1-800-244-0190

1 already. You know, there is no reason why we can't use that  
2 data. It should certainly be a fairly simple approval if it is

3 just changing the nature of an already approved engineered  
4 barrier. Yes, it would require an approval, but I don't think it  
5 is going to be an extensive kind of endeavor.

6 MR. RIESER: I think that's another item that is going to  
7 require further discussion.

8 Looking at the amended proposals now, looking at 307(c)(3),  
9 and this is in reference to hydraulic conductivity, there is a  
10 change in there, as I believe Ms. Brockamp discussed, the  
11 deletion of the phrase in (3)(e)(2), the screen must be contained  
12 within the saturated zone. What was the purpose of this change?

13 MS. BROCKAMP: The requirement for that, the screen to be  
14 contained within the saturated zone, prevents that well from  
15 being used as a well for groundwater sample analysis, groundwater  
16 sample collection, which involves costs associated with  
17 installing additional monitoring wells. Additionally, the Agency  
18 has not routinely enforced that provision, and in light of those  
19 two things and the fact that if you have a well that the screen  
20 straddles the water table, you are likely to get a hydraulic  
21 conductivity that would cause you to be overprotective. We  
22 believe that is no longer a stringent requirement for our  
23 program.

24 MR. RIESER: Turning, again, in the amended proposal to

1 Section 312(c)(2), this is the addition that, "the data shall

2 include, but is not limited to, site-specific data demonstrating  
3 the physical characteristics of soil and groundwater." What is  
4 the purpose of this addition?

5 MS. BROCKAMP: Originally the proposal included that  
6 physical soil classification be conducted under Method 3 for  
7 pathway exclusion, and that is defined in terms of Method 1 for  
8 site classification, which would involve doing the 50 foot boring  
9 demonstrating consistency with the Berg Circular, and we don't  
10 believe that is fully necessary to go to those lengths to gain  
11 the data for the TACO evaluation. Rather, there may be -- some  
12 of those things you need to do. Some of them you don't. So we  
13 characterized it by amending the language to demonstrate the  
14 physical characteristics of soil and groundwater. So you may  
15 have to do the hydraulic conductivity testing, but you would not  
16 necessarily have to drill a 50 foot boring to determine the  
17 hydraulic conductivity.

18 MR. RIESER: Is it accurate to say that this addition is  
19 not intended to modify the requirements under TACO for making a  
20 pathway exclusion pursuant to Subpart C?

21 MS. BROCKAMP: That is correct.

22 MR. RIESER: So if TACO didn't require site-specific data  
23 for pathway exclusion in a given situation, then the Agency would  
24 not require -- I am sorry -- site-specific soil physical

50

KEEFE REPORTING COMPANY  
1-800-244-0190

1 characteristics, then the Agency would not require site-specific

2 soil characteristics?

3 MS. BROCKAMP: Correct.

4 MR. RIESER: Turning to 405(f), this is the if the Agency  
5 determines any approved corrective action plan has not achieved  
6 applicable remediation objectives within a reasonable time, the  
7 Agency could require a revised corrective action plan. What was  
8 the purpose of this?

9 MR. CLAY: The purpose was to clarify that the Agency has  
10 the authority to do that. We have done this in some situations  
11 where we have notified the owner or operator that this treatment  
12 system was approved in a corrective action plan and may have been  
13 estimated to meet the remediation objectives in a couple of years  
14 and it is going on four or five or six years now, and you are not  
15 even close. We will notify them and say that we want you to  
16 submit a revised corrective action plan with some type of  
17 modification to the treatment.

18 MR. RIESER: So the idea is to allow the Agency to look at  
19 situations where people are performing corrective action, but it  
20 is really not working and it has not worked over an extended  
21 period of time, to start discussing what else would work in that  
22 situation, go to plan B, in other words?

23 MR. CLAY: Correct.

24 MR. RIESER: Okay. Just a moment. All right. Thank you

1 very much. That is all of my questions.

2 MR. KING: If I could just add a comment to the one  
3 question about 703(d), there is, in fact, a corresponding  
4 provision in Part 740. It is located at 620(c). The language  
5 between the two is a little bit different. That is part of the  
6 reason why we have restructured the language under 732, is to  
7 take into account the transition from the -- from the LUST  
8 program into the SRP program.

9 MR. RIESER: All right. Thanks very much.

10 HEARING OFFICER STERNSTEIN: Before we continue on with  
11 further questioning from the audience, why don't we take a ten  
12 minute break and we will reconvene at 10:35. Off the record.

13 (Whereupon a short recess was taken.)

14 HEARING OFFICER STERNSTEIN: All right. Let's go back on  
15 the record.

16 We had just finished -- before the break we had just  
17 finished with Mr. Rieser's questioning of the Agency.

18 Are there any other members of the audience who would wish  
19 to question the Agency some more?

20 Sir, could you please step forward and identify yourself  
21 and the group you are with?

22 MR. WALTON: My name is Harry Walton, with the Illinois  
23 Environmental Regulatory Group. I just have a few, I guess,  
24 follow-up questions along Mr. Rieser's lines, more for

1 clarification. I am a little confused on some issues.

2 The first issue is at 2.02 subparagraph (h), requesting  
3 that -- this would require the samples be obtained in all cases  
4 we have an excavation two on the bottom and four on the sides.  
5 Would that be the case if you encounter groundwater at the bottom  
6 of the excavation?

7 MS. BROCKAMP: If you encountered water at the excavation,  
8 then we would be expecting a groundwater investigation and we  
9 would forego sampling the bottom of the excavation as long as  
10 that was documented, the reason.

11 MR. WALTON: If you encountered free product in the  
12 saturated soil, would you still have to attain samples and  
13 analyze them for, for example, BTEX?

14 MS. BROCKAMP: Where the soil was accessible, yes, you  
15 should do the sampling.

16 MR. WALTON: Now, the objective for this data is to compare  
17 them against TACO criteria; is that correct?

18 MS. BROCKAMP: Yes.

19 MR. WALTON: Would it not be the case that another  
20 parameter for concern for that test would be a T -- a TPH  
21 determination, to be added to the contaminants of concern at this  
22 stage?

23 MS. BROCKAMP: Could you repeat the question?

24 MR. WALTON: Subpart C requires a series of criteria for

1 the thresholds, speed bumps, as Mr. Sherrill says. These speed  
2 bumps -- you have to pass the speed bump before you can use TACO  
3 in a sense. Free product is obvious. Soil saturation may or may  
4 not be obvious. In the sum of the organics it may or may not be  
5 obvious. The best tool to assess that would be a TPH analysis.  
6 In this situation, would that not be a good measure for the sum  
7 of the organics in the excavation?

8 MS. BROCKAMP: If -- are you saying for comparison to Tier  
9 1 objectives or further --

10 MR. WALTON: No, I am saying for compliance with Subpart C  
11 criteria you have to have a sum of the contaminants of concern  
12 cannot exceed the soil saturation or the site FOC or default FOC  
13 criteria. And in most releases TP -- BTEX would only cover part  
14 of the parameters that have been released. Typically in the SRP  
15 program you would also do a total petroleum hydrocarbon to get a  
16 total picture of the contaminants of concern relative to that  
17 criteria. Would that not be an appropriate criteria at this  
18 stage of the investigation?

19 MS. BROCKAMP: Well, I don't think this leads you directly  
20 to Subpart C. So I suppose if you know that you are going to be  
21 applying Subpart C at some point in the future --

22 MR. WALTON: Would this not be an opportunity to correct  
23 that data if you are going to use Subpart C? Would that be an  
24 appropriate parameter that would be recoverable and accepted?

1           MS. BROCKAMP: It is not a typical item we see as part of  
2 early action reimbursement.

3           MR. WALTON: Would it be acceptable for reimbursement?

4           MR. CLAY: Doing a TPH?

5           MR. WALTON: Yes, TPH at this time?

6           MR. CLAY: What are you going to use the TPH for? I mean,  
7 there --

8           MR. WALTON: For example --

9           MR. CLAY: There is no clean up -- I mean, there is no  
10 cleanup level --

11          MR. WALTON: You are going to do a TACO solution.

12          MR. CLAY: Okay.

13          MR. WALTON: And you want to demonstrate that your  
14 contaminant of concern -- again, if you want to be conservative  
15 one would look -- right now people look at the BTEX, the sum of  
16 the BTEX, and test those against the soil FOC. Would it not be a  
17 better demonstration to look at the -- because in the SRP program  
18 you most probably look at BTEX and TPH to look at the other  
19 organics that would be in the petroleum, the release of gasoline.

20          MR. CLAY: So you would compare those to the attenuation  
21 capacity --

22          MR. WALTON: Yes.

23          MR. CLAY: -- on your speed bumps in TACO, is --

24          MR. WALTON: Yes.

1 MR. CLAY: -- that what you are saying?

2 MR. WALTON: Yes.

3 MR. CLAY: I think that would be reimbursable because under  
4 TACO you need to demonstrate that you don't exceed those speed  
5 bumps prior to using TACO.

6 MR. WALTON: The next clarification would be 703(d). This  
7 is a situation where you want to change your engineered barrier  
8 in a sense, and for whatever reason you have to go through the  
9 SRP program. Wouldn't it be the case, the submission to the SRP  
10 program would include an application, the fee, and in a sense a  
11 corrective action completion report, and the width and breadth  
12 would only be that, and there would not be additional  
13 investigations, etcetera, is that the case?

14 MR. KING: I think that would be the typical one we would  
15 see in that situation. I mean, there might be, you know, if they  
16 are doing something else, you know, there might be some reasons  
17 to go back to an earlier step. But if they are just substituting  
18 one engineered barrier for another and basically it is an amended  
19 completion report indicating what the different remedy would be.  
20 So as I was saying before, I think in general that would be a  
21 pretty simple process.

22 MR. WALTON: The last issue, I don't know the site for it.  
23 We are now talking about the screening of wells relative to doing  
24 sludge tests. At a site where it is critical to have a more

1 realistic K value, would the owner still have the option of  
2 installing a well screen below the water table to do more  
3 realistic hydraulic conductivity determination?

4 MS. BROCKAMP: Yes.

5 MR. WALTON: Okay. That ends my questions. Thank you.

6 HEARING OFFICER STERNSTEIN: All right. Thank you, Mr.  
7 Walton.

8 Does anyone else in the audience have questions for the  
9 Agency today?

10 Seeing no one, I will turn over the questioning to the  
11 Members of the Board and the Board staff. Go ahead, Member  
12 Kezelis.

13 BOARD MEMBER KEZELIS: Good morning. Mr. Clay, I have one  
14 follow-up question. In your testimony you discuss, at least  
15 briefly, the progress of electronic reporting, and the State  
16 Records Commission expectations. What is the status of  
17 communications with the State Records Commission?

18 MR. CLAY: At this point I am not sure what the status is.  
19 I have not been responsible for this pilot. But as I stated,  
20 there is a pilot with another program requiring electronic  
21 reporting, at least on a limited basis. And our manager of our  
22 records unit has had the contact with the State Records  
23 Commission. If you would like, we can provide -- I can provide  
24 that status prior to the next hearing.

1 BOARD MEMBER KEZELIS: That would be fine. Thank you.

2 MR. CLAY: Okay.

3 MR. KING: Just one comment, just so you get a little  
4 understanding kind of the need for electronic reporting in this  
5 program. We get -- for just the LUST program, we get seven feet  
6 of material a week, you know. So when you think about that in  
7 terms, you know, cabinets full of paper, this goes on every week  
8 for -- you know, it has been going on for ten years now. So you  
9 can see kind of the magnitude of paper we have. So we are trying  
10 to get a handle on that paper before our building falls down out  
11 there kind of thing. So that's part of the reason why we are  
12 really focused on the LUST program, trying to find an electronic  
13 reporting methodology that would be useful for us and everybody  
14 else.

15 BOARD MEMBER KEZELIS: This pilot -- and, please, I  
16 understand that you are not in charge of this pilot. But will  
17 this be the first such offered by the Agency to accept electronic  
18 notification?

19 MR. CLAY: It will be the first that I am aware of for  
20 plans and reports. Now, the Agency has received electronic  
21 filing of groundwater data in other programs. But as far as the  
22 plans and reports similar to the LUST plans and reports, this  
23 would be the first that I am aware of.

24 BOARD MEMBER KEZELIS: Thank you. Very good. Thank you,

1 Mr. Clay and thank you, Mr. King.

2 MS. LIU: Good morning, Mr. Dunn. You spoke about the new  
3 laboratory accreditation program as it would apply to this  
4 rulemaking. I was wondering whether or not there were any other  
5 similar or acceptable accreditation programs that labs may  
6 already be using instead of the Illinois Environmental Laboratory  
7 Accreditation program, perhaps something on a national level?

8 MR. DUNN: Well, this is a national accreditation that is  
9 being certified in Illinois, so this is the national program that  
10 has been adopted in Illinois along with a number of other states.

11 MS. LIU: So there are really no other acceptable or  
12 similar programs?

13 MR. DUNN: No.

14 MS. LIU: Would a laboratory accredited in another state  
15 under this national program, seeking a reciprocal accreditation  
16 in Illinois, still need to pay the Illinois fees?

17 MR. DUNN: Yes.

18 MS. LIU: Do they pay those fees to the Agency?

19 MR. DUNN: Yes.

20 MS. LIU: What are those fees used for?

21 MR. DUNN: Those fees are used for the administration of  
22 the program itself and for the staff that does the work on the  
23 review of the applications.

24 MS. LIU: Okay. According to your prefiled testimony, you

KEEFE REPORTING COMPANY  
1-800-244-0190

1 mentioned that there were 17 labs that had already filed for  
2 accreditation for the SW-846/RCRA method?

3 MR. DUNN: Uh-huh.

4 MS. LIU: Could you estimate how many other labs in  
5 Illinois might be interested in doing this?

6 MR. DUNN: Well, there is 25 total right now in Illinois  
7 that have accredited. Those include the 17 for SW-846 and then  
8 there is an additional eight for other analyses, either the Clean  
9 Air Act or the Clean Water Act or the Drinking Water Analyses.  
10 Throughout the nation I believe there is over 250 labs that have  
11 been accredited to date, and this was just -- this came out, I  
12 believe, in January 24th of this year with this list. I have  
13 heard indications from other labs that they were reluctant to get  
14 the accreditation until something was in the rules, and once  
15 something does get in the rules I have heard that the labs will  
16 go after the accreditations.

17 MS. LIU: Any idea how many more there might be?

18 MR. DUNN: There is 17 right now. We counted up in our  
19 program over -- some of the project managers did -- that we use  
20 about 30 or 40 labs. We assume that most of those will probably  
21 come into the program.

22 MS. LIU: Thank you.

23 MR. DUNN: Thank you.

24 MS. LIU: Good morning, Ms. Brockamp.

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MS. BROCKAMP: Good morning.

2 MS. LIU: There are some changes in Section 732.202(g) that  
3 the Agency made to clarify the difference between initial  
4 notification and confirmation of a release.

5 MS. BROCKAMP: Right.

6 MS. LIU: Typically how long after a confirmation of a  
7 release does initial notification actually take place? Does it  
8 happen within 24 hours, two years?

9 MS. BROCKAMP: The requirement is within 24 hours after a  
10 confirmation of a release, that they notify the Illinois  
11 Emergency Management Agency.

12 MS. LIU: Historically speaking, has it been longer than  
13 that before?

14 MS. BROCKAMP: Typically people are fairly compliant with  
15 that.

16 MS. LIU: Okay. Further down in that subsection,  
17 732.202(h), there is a new description in there about the number  
18 of samples to be taken from an excavation of the side walls and  
19 the bottom.

20 MS. BROCKAMP: Right.

21 MS. LIU: And then in your prefiled testimony you also  
22 mentioned sampling every 20 feet along a piping excavation run.

23 MS. BROCKAMP: Right.

24 MS. LIU: But that is not described in the rules. Is that

KEEFE REPORTING COMPANY  
1-800-244-0190

1 something that should be in there?

2 MS. BROCKAMP: The rules do state that any contamination  
3 exposed as a result of early action excavation including the  
4 piping runs would be sampled. Your concern is that the 20 feet  
5 is not in there?

6 MS. LIU: (Nodded head up and down.)

7 MS. BROCKAMP: That is guidance that we have used in our  
8 section for quite some time, so I believe that is probably  
9 familiar to most people. I think that's why we didn't put it in  
10 there.

11 MS. LIU: Do you think this is a good opportunity to do  
12 that or would you like to leave it as guidance?

13 MS. BROCKAMP: I think at this time we would like to leave  
14 it as guidance.

15 MS. LIU: There is also a new Subsection 732.305(d). This  
16 allows the owners or operators who have proceeded to site  
17 classification to forego their budget submission process?

18 MS. BROCKAMP: Right.

19 MS. LIU: Just a general question. Does approval of a  
20 budget plan ensure that eligible versus ineligible costs are  
21 identified up front?

22 MS. BROCKAMP: Generally, yes. There might be some  
23 exceptions to that if someone went, say, over the cap for total  
24 site costs, but in general the approval of a budget implies that

KEEFE REPORTING COMPANY  
1-800-244-0190

1 those costs would be reimbursed when the application for  
2 reimbursement is submitted.

3 MS. LIU: Does the owner or operator run a risk of having  
4 some cost determined ineligible if they proceed?

5 MS. BROCKAMP: Yes.

6 MS. LIU: Before they proceed with a budget plan?

7 MS. BROCKAMP: Yes.

8 MS. LIU: Okay. I am still a little unclear about the  
9 wells with the hydraulic conductivity testing versus the  
10 contaminant sampling. How does using the same well for hydraulic  
11 conductivity testing and the contaminant testing impact the  
12 measurement for hydraulic conductivity? Is that higher or lower?

13 MS. BROCKAMP: In terms of using a well that is not fully  
14 screened in the saturated -- is that your question?

15 MS. LIU: Yes.

16 MS. BROCKAMP: In that case we would -- we would anticipate  
17 an overestimation of the hydraulic conductivity. That would  
18 cause us to be more protective of that aquifer. So while it may  
19 not be the most accurate hydraulic conductivity, we believe that  
20 it would be sufficient for purposes of protection of human health  
21 and the environment.

22 MS. LIU: Okay. So basically is it the Agency's position  
23 that the cost to install that separate well just for hydraulic

24 conductivity is generally more expensive than the cost to provide

63

KEEFE REPORTING COMPANY  
1-800-244-0190

1 that additional protection to the aquifer that would result in a  
2 slightly less accurate result?

3 MS. BROCKAMP: Yes.

4 MS. LIU: Thank you. Mr. Clay, I have a few questions for  
5 you, too.

6 MR. CLAY: Okay.

7 MS. LIU: In your prefiled testimony you listed four  
8 community water supplies that actually ceased using their wells  
9 because of MTBE contamination.

10 MR. CLAY: Yes.

11 MS LIU: I was wondering if you knew how those  
12 municipalities compensated for the loss of water?

13 MR. CLAY: I can answer at least one. For example, East  
14 Alton, I believe, has nine wells and they had shut down one of  
15 the wells, but continued to use the other eight. And they  
16 typically would only be pumping from a portion of those wells at  
17 any given time. I believe, and I don't -- I believe that the  
18 other ones may have just relocated new wells.

19 MS. LIU: Okay.

20 MR. CLAY: But I am not sure of that.

21 MS. LIU: You also listed 22 other communities which had  
22 detected MTBE in very low levels. Do you know if they are using  
23 any special drinking water treatment to combat those levels of

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. CLAY: Not that I am aware of.

2 MS. LIU: Okay.

3 MR. CLAY: The treatment -- the levels were extremely low,  
4 in some cases one or two parts per billion. I don't think there  
5 were -- I don't recall any of them being over, say, ten parts per  
6 billion. So I am not aware of any special treatment that they  
7 are providing for that MTBE.

8 MS. LIU: Okay. Under 732.402 there is a clarification  
9 that if the Agency fails to respond to a site classification  
10 completion report within 120 days that the report is considered  
11 rejected by operation of law. Just out of curiosity, how often  
12 does that happen?

13 MR. CLAY: I won't say it has never happened. Our goal is  
14 to have that never happen. I believe the only time it has  
15 happened is when there has been a report misfiled, for example.  
16 It is not our intention to ever let that happen. We want to make  
17 sure that we review everything and respond within 120 days.

18 MS. LIU: Okay. There is a new Subsection 732.405(f).  
19 This allows the Agency to require a new corrective action plan if  
20 it is determined that it is not affective in achieving a  
21 remediation objective in an effort to preserve the LUST fund. If  
22 there is a disagreement between what is considered a reasonable

23 time frame can the Agency withhold reimbursement if an owner or  
24 operator would continue to follow that initial corrective action

65

KEEFE REPORTING COMPANY  
1-800-244-0190

1 plan?

2 MR. CLAY: Our intent would be that we would -- once we  
3 notify the owner and operator that they need to shut that system  
4 off and submit a revised corrective action plan, at that point on  
5 we would say that is not reimbursable.

6 MS. LIU: There is also a new Subsection 732.606(kk) that  
7 now allows reimbursement of voluntary cleanup efforts for MTBE  
8 that is found off-site after receiving an NFR letter. I was  
9 wondering if there would be any similar provisions if someone  
10 were to find it on-site, if that would be reimbursable as well?

11 MR. CLAY: That was not our intent. The intent was that if  
12 there was MTBE -- well, let me go back. The MTBE regulation we  
13 intended was for new releases after the effective dates of the  
14 amendments would be required to monitor or remediate the MTBE if  
15 it was above the remediation objectives. Also if there were  
16 sites that were in the program and had not received an NFR letter  
17 to allow those to remediate MTBE both on and off-site.

18 And then the provision I believe you are talking about is  
19 if an owner and an operator had received a No Further Remediation  
20 letter for the release and there is off-site contamination above  
21 70 parts per million for remediation objectives off-site, they  
22 would be allowed back into the LUST program to remediate them.

23 So just off-site, and that was in an effort to protect private  
24 and community water supply wells.

66

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MS. LIU: Very good. I just have one other nitpicky  
2 question. I am sorry. In your prefiled testimony you referred  
3 to Section 732.610(b)(2) and that was on page two of the second  
4 part of your prefiled testimony, the Motion to Amend the  
5 amendments, I think. It was to change the word amount to  
6 amounts, and I was unable to find where that was in the proposed  
7 rule. I was wondering if I was missing it or if it was actually  
8 a different citation.

9 MR. CLAY: I am sorry. It is 601.

10 MS. DYER: 601(b)(2).

11 MS. LIU: 601(b)(2)?

12 MR. CLAY: Yes, not 610.

13 MS. LIU: Okay. Thank you very much.

14 MR. CLAY: Sorry about that.

15 MS. DYER: Thank you for pointing that out.

16 HEARING OFFICER STERNSTEIN: Thanks, Ms. Liu. Any other  
17 questions from the Board?

18 HEARING OFFICER STERNSTEIN: Go ahead, Mr. Beauchamp.

19 MR. BEAUCHAMP: Mr. Dunn, I have clarifying question for  
20 you.

21 MR. DUNN: Yes.

22 MR. BEAUCHAMP: In your prefiled testimony you stated that  
23 17 laboratories have applied for SW-846/RCRA accreditation. How  
24 many of those laboratories, do you know, or if you know, have

67

KEEFE REPORTING COMPANY  
1-800-244-0190

1 received final accreditation?

2 MR. DUNN: All 17 have.

3 MR. BEAUCHAMP: And that accreditation comes from the  
4 Division of Laboratories?

5 MR. DUNN: Yes.

6 MR. BEAUCHAMP: Thank you.

7 HEARING OFFICER STERNSTEIN: Yes, Mr. Rieser. Go ahead.

8 MR. RIESER: If I could just ask a couple of follow-up  
9 questions to Ms. Liu's questions.

10 With respect to lab certification and accreditation, are  
11 the labs that the Agency uses required to be accredited under  
12 this program?

13 MR. DUNN: The labs that the Agency are using now are  
14 accredited.

15 MR. RIESER: Does the Agency require --

16 MR. DUNN: We are going to require our labs.

17 MR. RIESER: Then the follow-up on the question on the  
18 reasonable time frame for going to plan B, if you will, if the  
19 existing corrective action program is not working, Ms. Liu asked  
20 about whether or not -- whether the costs would not be  
21 reimbursable. Let me ask the question in a different context.

22 If -- when the Agency notifies an owner/operator that they want  
23 to review their on-going corrective action plan because it is not  
24 working, is that an action that is appealable to the Board in

68

KEEFE REPORTING COMPANY  
1-800-244-0190

1 case there is a dispute about whether either a reasonable time  
2 frame has passed or whether the system is working or not?

3 MR. CLAY: That is not set up as an appealable decision.

4 MR. RIESER: But, in fact, wouldn't it be essentially a --  
5 well, a rejection of a corrective action plan that would  
6 otherwise be appealable if you had done it at the time it was  
7 originally submitted?

8 MR. CLAY: If it is all right with the Board, can we look  
9 at how we can make that an appealable decision and provide  
10 testimony and talk about that at the next hearing?

11 HEARING OFFICER STERNSTEIN: That would be fine, Mr. Clay.

12 MR. CLAY: Okay.

13 MR. RIESER: Thank you.

14 HEARING OFFICER STERNSTEIN: Are there any further  
15 questions for the Agency?

16 I have a couple, actually. Turning to 732.703, the  
17 discussion of the Illinois Department of Transportation  
18 Memorandum of Agreement. I am a little confused. Has the Agency  
19 already entered into a Memorandum of Agreement with the Illinois  
20 Department of Transportation with respect to Part 732?

21 MR. CLAY: I believe that is final, but we need to check  
22 whether it has actually been signed off by all parties.

23 HEARING OFFICER STERNSTEIN: If provided that Memorandum of  
24 Agreement is final, could that be submitted as an exhibit at the

69

KEEFE REPORTING COMPANY  
1-800-244-0190

1 next hearing?

2 MR. CLAY: Yes.

3 HEARING OFFICER STERNSTEIN: Then also, again, on the  
4 wording, would the Memorandum of Agreement be a single document  
5 that would cover all future No Further Remediation letters, or  
6 would a Memorandum of Agreement be signed with each No Further  
7 Remediation letter? The wording was a little bit ambiguous  
8 there.

9 MR. CLAY: Can we review the draft MOA that hopefully we  
10 will be admitting as an exhibit, and that should clarify that  
11 question?

12 HEARING OFFICER STERNSTEIN: That would be fine. You will  
13 get back to me on that, the answer to that at the second hearing?

14 MR. CLAY: Yes.

15 HEARING OFFICER STERNSTEIN: Okay. Great. One other  
16 question. On 732.701(e), this is the -- this concerns the  
17 provision on correcting clerical errors in No Further Remediation  
18 letters. Is the Agency simply going to do its own corrections  
19 and then contact the owner or operator and say here is your new  
20 No Further Remediation letter with these changes? Or would the

21 Agency be amenable to contacting the owner or operator, say by  
22 telephone or by some other means, and actually letting the owner  
23 or operator know, hey, there are some minor changes that we would  
24 like to make in your No Further Remediation letter before we send

70

KEEFE REPORTING COMPANY  
1-800-244-0190

1 you a new one, and make that the final No Further Remediation  
2 letter, would these changes be acceptable to you, or do we need  
3 to discuss those?

4 MS. BROCKAMP: Typically it is the owner or operator that  
5 initiates, you know, that there is a mistake in the letter.  
6 Sometimes the owner is not referred to in the proper sense in  
7 terms of an incorporation or something like that. So it is  
8 frequently the owner or the operator that comes to us and says we  
9 would like to have this changed before we record the NFR letter.

10 HEARING OFFICER STERNSTEIN: By using this provision then  
11 the Agency could simply make the changes and then the owner or  
12 operator would be able to record the new one?

13 MS. BROCKAMP: Right.

14 HEARING OFFICER STERNSTEIN: It is fairly rare that the  
15 Agency notices something wrong on the letter before it is  
16 recorded?

17 MS. BROCKAMP: Yes.

18 HEARING OFFICER STERNSTEIN: Okay. So that's the typical  
19 situation?

20 MS. BROCKAMP: Yes.

21 HEARING OFFICER STERNSTEIN: Okay. Thank you. Are there  
22 any other questions for the Agency?

23 Mr. Liss, go ahead.

24 MR. LISS: My name is Kenneth Liss. Concerning the

71

KEEFE REPORTING COMPANY  
1-800-244-0190

1 inclusion of the Licensed Professional Geologist, I would like to  
2 ask the Agency if they had consulted with the Department of  
3 Professional Regulation?

4 MR. CLAY: Yes, we have. We contacted them and provided  
5 them a draft of the proposed regulations. They concurred that  
6 the areas that we -- where we had inserted Licensed Professional  
7 Geologist or Licensed Professional Engineer was appropriate.

8 MR. LISS: Could I ask that that be entered as part of  
9 these proceedings so we can understand the context in which that  
10 was presented to the --

11 HEARING OFFICER STERNSTEIN: Could we --

12 MR. LISS: -- Board for further comments?

13 HEARING OFFICER STERNSTEIN: I am sorry, Mr. Liss. Could  
14 the Agency submit that prior to the second hearing?

15 MS. DYER: As an exhibit?

16 HEARING OFFICER STERNSTEIN: As an exhibit, yes.

17 MS. DYER: Sure.

18 HEARING OFFICER STERNSTEIN: Okay.

19 MS. DYER: It is a matter of public record.

20 MR. CLAY: We have the letter now.

21 MS. DYER: We only have one copy. We can submit it now or  
22 we could just provide it before the next hearing.

23 HEARING OFFICER STERNSTEIN: Mr. Liss, what would you  
24 prefer?

72

KEEFE REPORTING COMPANY  
1-800-244-0190

1 MR. LISS: They can provide it later. It would just be  
2 easier as part of this proceeding rather than through a FOIA  
3 request.

4 HEARING OFFICER STERNSTEIN: Okay. Then the Agency will  
5 submit it along with the proper number of copies prior to the  
6 second hearing.

7 MR. LISS: That is all. Thank you.

8 MR. GOODWIN: Is that going to be --

9 HEARING OFFICER STERNSTEIN: Yes. Please identify  
10 yourself.

11 MR. GOODWIN: -- distributed to everyone on the service  
12 list?

13 HEARING OFFICER STERNSTEIN: I am sorry. Could you  
14 identify yourself, please?

15 MR. GOODWIN: Daniel Goodwin. Will that letter then be  
16 distributed to everyone on the service list?

17 HEARING OFFICER STERNSTEIN: Yes, if it is submitted  
18 before the second hearing it will be.

19 MS. DYER: Yes, we will provide copies to everyone on the  
20 service list.

21 MR. GOODWIN: Okay. Thank you.

22 HEARING OFFICER STERNSTEIN: Are there any other questions  
23 from the audience or from the Board?

24 Okay. Then I guess that will conclude the Agency's

73

KEEFE REPORTING COMPANY  
1-800-244-0190

1 testimony for today's hearing.

2 Why don't we go ahead and have Mr. Dye give his testimony.

3 MR. DYE: Good morning.

4 HEARING OFFICER STERNSTEIN: Hold on. Why don't we have  
5 you sit up front here and we will swear you in and everything.

6 MR. DYE: Okay.

7 HEARING OFFICER STERNSTEIN: Why don't you swear Mr. Dye  
8 in.

9 (Whereupon the witness was sworn by the Notary Public.)

10 HEARING OFFICER STERNSTEIN: Go ahead.

11 MR. DYE: Good morning. My name is Ron Dye. I currently  
12 serve as a member of the Advisory Board of the Illinois Chapter  
13 of the American Institute of Professional Geologists. The  
14 Illinois Chapter of the AIPG is an advocacy group of Professional  
15 Geologists in the State of Illinois. This group represents  
16 approximately 900 Licensed Professional Geologists.

17 The Illinois Environmental Protection Agency provided us  
18 with an opportunity to review the draft amendments to 35 IAC Part

19 732 prior to their being filed with the Board. We appreciate the  
20 Agency providing this opportunity. At that time we suggested  
21 several changes to the draft amendments. The Agency agreed with  
22 a number of the suggestions and incorporated them into the  
23 proposed amendments that are the subject of this hearing.

24 However, the Agency did not feel that they could make all

74

KEEFE REPORTING COMPANY  
1-800-244-0190

1 of the changes that were suggested. One of the changes that the  
2 Agency did not feel they could make we are respectfully  
3 requesting that the Board consider our suggested change to  
4 Section 732.409(a)(2). Specifically, we believe that the phrase,  
5 quote, or Licensed Professional Geologist, quote, should be  
6 inserted into this paragraph after the phrase, Licensed  
7 Professional Engineer.

8 The Agency indicated that there may be portions of a  
9 corrective action completion report that are outside what a  
10 professional geologist can certify. We agree that this may be  
11 true during some instances, however, this has always been true  
12 for professional engineers as well. Most environmental work is  
13 multidisciplinary. It has been the professional engineers  
14 responsibility to obtain additional support for those aspects of  
15 the work that is not their specialty or area of expertise.  
16 Likewise, professional geologists will need to obtain support  
17 from other disciplines and/or a Professional Engineer to conduct

18 or supervise work.

19           There are a large number of sites where the corrective  
20 action activities are not limited to Professional Engineering  
21 expertise. For example, at sites where the approved corrective  
22 action is monitored natural attenuation and/or where remediation  
23 objectives established by TACO do not require active remediation.  
24 Therefore, we respectfully request that the Board consider

75

KEEFE REPORTING COMPANY  
1-800-244-0190

1 inserting language similar to that inserted by the Agency at  
2 732.312(d), specifically Section 732.409(a)(2), the high priority  
3 corrective action completion report shall include, but not  
4 limited to, a narrative and timetable describing the  
5 implementation and completion of all elements of the corrective  
6 action plan and the procedures used for the collection and  
7 analysis of samples, soil boring logs, actual analytical results,  
8 laboratory certification, site maps, well logs, and any other  
9 information or documentation relied upon the Licensed  
10 Professional Engineer or to the extent authorized by the  
11 Professional Geologists Licensing Act, a Licensed Professional  
12 Geologist in reaching the conclusion, so and so on.

13           Now, in addition to the above, we note that one of our  
14 suggested changes to the Agency indicated they -- indicated that  
15 they agreed does not appear to have made it into the proposed  
16 amendments before the Board. And specifically this was -- we  
17 suggested and we believed that the Agency agreed that Section

18 732.307(g)(5), the phrase, or Licensed Professional Geologist,  
19 should be inserted after the phrase, Licensed Professional  
20 Engineer. We believe that this was just an oversight on the part  
21 of the Agency and request the Board to insert this language. In  
22 reality, I have come to find out that that is contained in Errata  
23 Sheet 1.

24 There are a number of other changes that we feel merit

76

KEEFE REPORTING COMPANY  
1-800-244-0190

1 consideration by the Board in this proceeding. We feel that  
2 these changes help clarify a number of points in the regulations  
3 without changing the intent of the regulation. We, therefore,  
4 believe that these are not controversial changes. The specific  
5 changes are provided in our written testimony. I could either  
6 read them now or just refer you to that.

7 HEARING OFFICER STERNSTEIN: Whatever you are more  
8 comfortable with.

9 MR. DYE: I will just refer you to that. On behalf of the  
10 Illinois Chapter of the American Institute of Professional  
11 Geologists and Licensed Professional Geologists of Illinois, I  
12 would like to thank the Board and the Agency for your  
13 consideration of the issues I have presented today. I would be  
14 happy to answer any of the questions you may have.

15 HEARING OFFICER STERNSTEIN: Mr. Dye, did you bring an  
16 extra copy of your testimony to be submitted as an exhibit.

17 MR. DYE: No.

18 HEARING OFFICER STERNSTEIN: Okay. I will make sure that  
19 gets done, and I will admit the prefiled testimony of Ron Dye on  
20 behalf of the American Institute of Professional Geologists as  
21 Exhibit 8.

22 (Whereupon said document was duly marked for purposes of  
23 identification as Hearing Exhibit 8 and admitted into  
24 evidence as of this date.)

77

KEEFE REPORTING COMPANY  
1-800-244-0190

1 HEARING OFFICER STERNSTEIN: At this point does anyone in  
2 the audience have any questions for Mr. Dye? Does anyone from  
3 the Board have any questions for Mr. Dye?

4 BOARD MEMBER McFAWN: Mr. Dye, did you talk over these  
5 changes proposed at -- or suggested at page three and four of  
6 your prepared testimony with the Agency.

7 MR. DYE: I believe we have had ongoing discussions when  
8 the Board provided us with the draft changes and we initially  
9 thought that the -- that it was an oversight in that one area for  
10 the corrective action completion report, and I believe we have  
11 had dialog with the Agency, but the exact nature of what their  
12 concerns are, maybe they could address. I am not really sure  
13 what they were.

14 BOARD MEMBER McFAWN: All right. When you were just  
15 talking, you were talking about the oversight referring to your  
16 suggestion that a Licensed Professional Geologist also be

17 included under section 732.409(a)(2).

18 MR. DYE: That is correct.

19 BOARD MEMBER McFAWN: Thank you. I was also wondering  
20 about those that you suggested 732.307(c)(2) and (c)(3). Those  
21 are the ones that you actually provided suggestive language at  
22 pages three and four of your prepared testimony?

23 MR. DYE: Correct.

24 BOARD MEMBER McFAWN: Did you talk to the Agency about

78

KEEFE REPORTING COMPANY  
1-800-244-0190

1 these suggestions?

2 MR. DYE: No, I don't believe we did. We met as members of  
3 the Advisory Board and we had our comments, and I would like to  
4 say we have furnished them to the Board without having a  
5 dialogue.

6 BOARD MEMBER McFAWN: Okay. I just wondered. That is  
7 fine. But if I heard your testimony correct, you are suggesting  
8 these as nonsubstantive changes, just --

9 MR. DYE: That is correct.

10 BOARD MEMBER McFAWN: And they are recommended by yourself  
11 or your association?

12 MR. DYE: By the Illinois Chapter of the American Institute  
13 of Professional Geologists.

14 BOARD MEMBER McFAWN: Okay. So this would be how a  
15 geologist would propose that this would be written; is that

16 right?

17 MR. DYE: Pretty much so. There are items and points of  
18 clarification. For an example, on page three of my testimony  
19 under 732.307(c)(2)(d), it says unconfined compression, strength  
20 may be determined in tons per square foot. We have just taken  
21 the word compression and stricken it out and suggested the word  
22 compressive.

23 BOARD MEMBER McFAWN: Okay.

24 MR. DYE: So it would have no substantial change, but just

79

KEEFE REPORTING COMPANY  
1-800-244-0190

1 more of a grammatical, and to the most point the changes that I  
2 have not read that I have referred to are of that nature. They  
3 are strictly to clarify the language that exists.

4 BOARD MEMBER McFAWN: Okay. I just wanted to verify that.  
5 That is a geologist, in your reading of it?

6 MR. DYE: Yes.

7 BOARD MEMBER McFAWN: Okay.

8 HEARING OFFICER STERNSTEIN: Any other questions for Mr.  
9 Dye?

10 Okay. Mr. Dye, thank you very much.

11 MR. DYE: Thank you.

12 HEARING OFFICER STERNSTEIN: At the beginning of the  
13 hearing Kenneth Liss indicated that he would like to testify, and  
14 since we have dispensed with all of the prefiled testimony, Mr.  
15 Liss, if you will come forward now, and we will have the court

16 reporter swear you in.

17 (Whereupon the witness was sworn by the Notary Public.)

18 HEARING OFFICER STERNSTEIN: All right. Go ahead, Mr.

19 Liss.

20 MR. LISS: Good morning. My name is Kenneth Liss. I am a  
21 geologist licensed by the Illinois Department of Professional  
22 Regulation. I am here to provide testimony concerning the  
23 pairing of the title of Licensed Professional Engineer with the  
24 title of Licensed Professional Geologist throughout the proposed

80

KEEFE REPORTING COMPANY  
1-800-244-0190

1 amendments to 35 Illinois Administrative Code Part 732.

2 For several years I worked on various drafts and testified  
3 in favor of the bill that ultimately became the Professional  
4 Geologist Licensing Act. I was appointed to the first Board of  
5 Licensing under the Act. During my tenure on the Board, we  
6 formulated the rules required for the administration of the Act,  
7 including the recommendations and opinions regarding the  
8 qualifications of applicants for licensing.

9 Prior to the enactment of the Geologists Act, the Illinois  
10 Environmental Protection Agency, Bureau of Land, relied on  
11 Licensed Professional Engineers to certify technical submissions  
12 related to the management of wastes. The incorporation of  
13 Licensed Professional Geologist to Part 732 as proposed by the  
14 IEPA is viewed by many in this profession as a long-awaited

15 regulatory amendment to conform with the current statutory  
16 requirements concerning the practice of professional geology.

17           However, the proposed amendments, in a broad sense, grant  
18 license to all Professional Engineers, to engage in the practice  
19 of professional geology without regard to qualification. If the  
20 majority of the Professional Engineers were qualified to practice  
21 geology, the amendments may be appropriate as written. However,  
22 they are not. However, during the entire time period I reviewed  
23 applications for Professional Geologists as a member of the  
24 Board, geotechnical engineering was the only curriculum of

81

KEEFE REPORTING COMPANY  
1-800-244-0190

1 engineering that came close to the minimum education requirements  
2 for geologists. This overlap in the two professions was  
3 recognized at the same time the Geologist Act was being moved  
4 through the state legislature. Modifications were made to the  
5 Professional Engineering Practice Act to avoid a potential dual  
6 licensing requirement for geotechnical engineers practicing  
7 within their own expertise.

8           The Engineers Act includes a definition for "Professional  
9 engineering practice" in Section 4(o). The second paragraph of  
10 that definition lists examples of the practice of professional  
11 engineering including: Forensic engineering, geotechnical  
12 engineering including, subsurface investigations; soil  
13 classification, geology and geohydrology, incidental to the  
14 practice of professional engineering; that was emphasized, and

15 energy analysis, environmental design, hazardous waste mitigation  
16 and control.

17           The emphasized wording was added to the Engineers Act to  
18 ensure that geotechnical engineers could practice their  
19 profession independent of the forthcoming license requirements  
20 for the practice of professional geology. Ultimately, this  
21 change has been interpreted by some to allow Professional  
22 Engineers to directly engage in the practice of professional  
23 geology, despite the limitations imposed by the competence and  
24 integrity requirements of the rules regulating the engineering

82

KEEFE REPORTING COMPANY  
1-800-244-0190

1 profession. Illinois Title 68, Section 1380.300, Standards of  
2 Professional Conduct, limit the Professional Engineer to perform  
3 services only in their area of competence as determined by their  
4 education and experience, and to affix their seal or signature  
5 only to documents dealing with subject matter within their  
6 competence and prepared by them or under their direct supervisory  
7 control. Leaving the amendments as proposed is misleading and  
8 will result in a rule which will be in direct conflict with the  
9 Geologists Act and the Engineering Act.

10           Therefore, I am asking the Board to consider striking all  
11 references to Licensed Professional Engineer where it appears  
12 with Licensed Professional Geologist in Subpart C, D, E and F of  
13 the proposed amendments to Part 732.

14           In closing, most professionals recognize that the  
15 environmental field is multidisciplinary and includes chemists,  
16 biologists and toxicologists, to name a few. Any one of these  
17 professions can perform a majority of the tasks required under  
18 the Environmental Protection Act. While it may be beyond the  
19 scope of this docket, developing a certification for  
20 environmental professionals should be considered sometime in the  
21 future.

22           I want to thank the Board for the opportunity to present my  
23 testimony. Thank you.

24           HEARING OFFICER STERNSTEIN: Thanks, Mr. Liss. Would you

83

KEEFE REPORTING COMPANY  
1-800-244-0190

1 like to have your testimony entered as an exhibit?

2           MR. LISS: Yes, I would, please.

3           HEARING OFFICER STERNSTEIN: Okay. I will enter the  
4 testimony of Kenneth W. Liss as Exhibit Number 9.

5           (Whereupon said document was duly marked for purposes of  
6 identification as Hearing Exhibit 9 and admitted into  
7 evidence as of this date.)

8           HEARING OFFICER STERNSTEIN: At this point I will ask if  
9 anybody in the audience has any questions for Mr. Liss?

10           Seeing none, does any of the Members of the Board or the  
11 Board staff have any questions for Mr. Liss?

12           BOARD MEMBER McFAWN: Mr. Liss, did you discuss your  
13 suggestions with the Illinois EPA?

14 MR. LISS: Yes. Not recently. But I was employed at the  
15 Agency up until about two years ago.

16 BOARD MEMBER McFAWN: So were your discussions there while  
17 you were an employee or were --

18 MR. LISS: Yes, there were discussion then and since the  
19 time that I left the Agency.

20 BOARD MEMBER McFAWN: Okay. Since that time I think the  
21 Agency has probably prepared this proposal. You have not spoken  
22 with them?

23 MR. LISS: Yes, I have. I am also a member of the Site  
24 Remediation Advisory Committee.

84

KEEFE REPORTING COMPANY  
1-800-244-0190

1 BOARD MEMBER McFAWN: Oh. Forgive me. I didn't know that.

2 MR. LISS: I didn't put it in there, because I am not  
3 representing myself as a member of that committee.

4 BOARD MEMBER McFAWN: Okay. Was this discussed as part of  
5 the --

6 MR. LISS: It was briefly discussed when we went over the  
7 rules.

8 BOARD MEMBER McFAWN: Okay. Do you recall what was -- what  
9 the dialogue was?

10 MR. LISS: A difference of interpretation.

11 BOARD MEMBER McFAWN: Okay. You are suggesting that all of  
12 the references to Licensed Professional Engineer be deleted in

13 Subpart C, D, E and F?

14 MR. LISS: In those subsections, yes.

15 BOARD MEMBER McFAWN: And your reasoning for that is --  
16 could you provide me a little bit more as to what that might be?

17 MR. LISS: Yes. It is a tenuous subject, actually. The  
18 Act for geologist licensing came out after the Professional  
19 Engineering Act. So most of the rules, as I tried to bring out  
20 in the first page of my testimony, relied on professional  
21 engineering to certify all of this work. Since then geologists  
22 were licensed by a separate Act. Right now concerning  
23 specifically the LUST rules, I think it is in Section 57 of the  
24 Environmental Protection Act, it indicates that certain reports

85

KEEFE REPORTING COMPANY  
1-800-244-0190

1 must be certified by a Professional Engineer.

2 As I state in the second page of my testimony, not all  
3 engineers and probably a majority of those are not able or  
4 shouldn't be certifying the geologic work. It would not have  
5 the -- meet the competence or education and experience  
6 requirements of their own Act which enables them to do that. In  
7 putting the geologists and the Licensed Professional Engineer  
8 together in this -- the way it is proposed, I think it is  
9 misleading and it just indicates that one is synonymous with the  
10 other, and it is not. They are two separate professions.

11 BOARD MEMBER McFAWN: If you were to delete the requirement  
12 that a Licensed Professional Engineer sign or -- I am looking at

13 one example. It appears at 732.312(e) of the Agency's proposal  
14 where they are going to insert the language or propose that the  
15 Board insert the language Licensed Professional Geologist. If  
16 you were to delete the option for Licensed Professional Engineer  
17 to conduct the physical soil classification there, would you be  
18 excluding those Licensed Professional Engineers that are  
19 embarking on a geological inquiry incidental to their practice?

20 MR. LISS: No. Like I stated in my testimony, I think it  
21 is a minority from my review of the qualifications of engineer  
22 and geologist while I am on the Board, and their own Act allows  
23 the geotechnical professional to do such work incidental to their  
24 own practice.

86

KEEFE REPORTING COMPANY  
1-800-244-0190

1 BOARD MEMBER McFAWN: All right. So they are allowed to  
2 under their own Act and as an engineer to do that type of work.  
3 And that means that they don't have to get two types of licenses,  
4 correct?

5 MR. LISS: Correct.

6 BOARD MEMBER McFAWN: But if we delete them as an option,  
7 wouldn't we then be foreclosing them from using their license as  
8 provided under their own Act?

9 MR. LISS: I don't think so.

10 BOARD MEMBER McFAWN: Could you explain exactly why? I  
11 mean --

12 MR. LISS: Why I don't think so?

13 BOARD MEMBER McFAWN: Yes, why they would not be excluded.

14 MR. LISS: Because the language that is in the Professional  
15 Engineering Act, the way it was written recognizes that they  
16 could perform that work without getting a geologic license, a  
17 professional geologist license.

18 BOARD MEMBER McFAWN: Okay.

19 MR. LISS: I am suggesting to remove that as written  
20 because that is a minority of the practicing Professional  
21 Engineers. In the way it is written right now it is so broad and  
22 encompassing it implies that anyone that is an engineer could  
23 certify the work.

24 BOARD MEMBER McFAWN: When you say the way it is written,

87

KEEFE REPORTING COMPANY  
1-800-244-0190

1 do you mean the way that the Agency's proposed language is  
2 written?

3 MR. LISS: Yes.

4 BOARD MEMBER McFAWN: All right. My question is if I just  
5 strike, as you suggest, the option for Licensed Professional  
6 Engineer, I am also excluding that minority that under their own  
7 Act is allowed to do what is set forth in the Board's rules.

8 MR. LISS: I think you are correct, someone could take that  
9 strict interpretation and go with it.

10 BOARD MEMBER McFAWN: Okay. Good.

11 MR. LISS: If I may make a suggestion, in 812 of 35

12 Illinois Administrative Code, 812, concerning landfill  
13 regulations, up front there is a certification section. I think  
14 it is 106, 812.106. So instead of taking the interpretation --  
15 adding geologist or engineer or professional land surveyor  
16 throughout the rules, it is put up front, recognizing that the  
17 State of Illinois has licensing requirements for people that  
18 perform that work, and it is up to them to make sure they conform  
19 with the licensing provisions and submit the work as appropriate  
20 with their seal on it.

21 The reason why I propose the change is I don't see that the  
22 Department of Professional Regulation is being involved in this,  
23 and the Agency has taken the position of deciding who is and who  
24 is not qualified to do the work of geology. I am not trying to

88

KEEFE REPORTING COMPANY  
1-800-244-0190

1 exclude anyone. So maybe there is a better way to write it.

2 BOARD MEMBER McFAWN: Okay. You mentioned that you thought  
3 that maybe under the Environmental Protection Act under the  
4 underground storage tank provisions that perhaps it requires, in  
5 fact, that a Licensed Professional Engineer do the signing?

6 MR. LISS: Yes, on some of the reports. It is 57.10,  
7 possibly. I am not sure.

8 BOARD MEMBER McFAWN: Okay. We can find it. I just  
9 thought if you knew offhand that would help. All right. Thank  
10 you.

11 HEARING OFFICER STERNSTEIN: Is there anybody else that has  
12 any questions for Mr. Liss?

13 Yes. Go ahead, please, and identify yourself.

14 MS. GEVING: My name is Kim Geving with the Illinois EPA.  
15 I just have one question for Mr. Liss.

16 Isn't it true that the Department of Professional  
17 Regulation will take disciplinary action against a licensee under  
18 one of their Acts for practicing outside the scope of their  
19 license?

20 MR. LISS: They have that authority.

21 MS. GEVING: Okay.

22 HEARING OFFICER STERNSTEIN: Anyone else? Okay. Go ahead,  
23 Ms. Liu.

24 MS. LIU: Along those same lines, aren't Professional

89

KEEFE REPORTING COMPANY  
1-800-244-0190

1 Engineers somewhat self-regulating, where they would not practice  
2 outside of their scope of competence?

3 MR. LIST: Yes. All of the professions are. That is why,  
4 as I stated here, I think it is misleading, then, to put them  
5 side by side to make them look synonymous.

6 MS. LIU: I guess I was under the impression that the  
7 definition of a Professional Engineer was always dependent upon  
8 what they got their license in, since you don't go for one  
9 general professional engineer test when you take your test, you  
10 do it in a specific area to demonstrate a competence level. So

11 if you are a Licensed Professional Environmental Engineer, for  
12 instance, that is your area of expertise.

13 So I guess is there some way to address your concern and  
14 still recognize the fact that Professional Engineer, although a  
15 broad term when it is used, is actually very specific in terms of  
16 the competence required for the type of job we are discussing in  
17 this context?

18 MR. LISS: Yes. I think the best way would be to put it up  
19 front, as I mentioned in the example in 812, with the  
20 certification subsection that identifies that there are certain  
21 requirements within the Acts or within the rules themselves to  
22 require the services of these licensed individuals.

23 MS. LIU: Okay.

24 MR. LISS: Instead of the Agency defining who does what,

90

KEEFE REPORTING COMPANY  
1-800-244-0190

1 because it is an interpretation. I think the Department of  
2 Professional Regulation is the one who makes that interpretation.

3 MS. LIU: Okay. Thank you.

4 MR. LISS: All right.

5 HEARING OFFICER STERNSTEIN: Are there any other questions  
6 for Mr. Liss?

7 Okay. Seeing none, thank you very much, Mr. Liss.

8 BOARD MEMBER McFAWN: Thank you.

9 MR. LISS: Thank you.

10 HEARING OFFICER STERNSTEIN: Does anyone present here today  
11 have any further comments or questions on this rulemaking,  
12 R01-26?

13 Seeing none, the second hearing in this matter will be held  
14 in Chicago on Tuesday, April 3rd, 2001, at 10:00 a.m. at the  
15 James R. Thompson Center, 100 West Randolph Street, Room 2-025.  
16 Prefiled testimony for that hearing must be filed with the Board  
17 by Tuesday, March 27th, 2001, at 4:30 p.m.

18 Requests for additional hearings will be accepted pursuant  
19 to the Board's procedural rules at 35 Illinois Administrative  
20 Code 102.412(b). Those are the new procedural rules which went  
21 into effect on January 1st of this year. That provision requires  
22 that the proponent or any other participant demonstrate in a  
23 motion to the Board that failing to hold an additional hearing  
24 will result in material prejudice to the movant.

91

KEEFE REPORTING COMPANY  
1-800-244-0190

1 The transcript for this hearing held today should be  
2 available within ten business days. If anyone would like a copy,  
3 you can speak to the court reporter directly, or you can contact  
4 the Board's Clerk's office in Chicago for a hard copy, which is  
5 75 cents a page. I think the preferred method is to download the  
6 hearing transcript from the Board's web site. That should be  
7 available within a couple of days after us getting the copy from  
8 the court reporter. You can also contact me in Chicago. My  
9 number is 312-814-3665.



9 2001, at 600 South Second Street, Suite 403, Springfield,  
10 Illinois, In the Matter of: Amendments to Regulation of Petroleum  
11 Leaking Underground Storage Tanks: 35 Ill. Adm. Code 732, in  
12 proceedings held before Joel Sternstein, Hearing Officer, and  
13 recorded in machine shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed  
15 my Notarial Seal this 8th day of March A.D., 2001.

16

17

18 Notary Public and  
19 Certified Shorthand Reporter and  
Registered Professional Reporter

20

CSR License No. 084-003677  
My Commission Expires: 03-02-2003

22

23

24