

1                   BEFORE THE POLLUTION CONTROL BOARD  
2                   OF THE STATE OF ILLINOIS  
3           IN THE MATTER OF:                   )  
4           REVIEW OF REMEDIATION COSTS        )  
5           FOR ENVIRONMENTAL                   )  
6           REMEDATION TAX CREDIT                ) R98-27  
7           (AMENDMENTS TO 35 ILL.ADM.        ) (Rulemaking-Land)  
8           CODE 740)                            )

9                   REPORT OF PROCEEDINGS HAD in the  
10          above-entitled cause, taken before Hearing Officer,  
11          Richard McGill, taken before       Stephanie L.  
12          Zwolinski, a Notary Public within and for the County  
13          of Cook, State of Illinois, and a Certified Shorthand  
14          Reporter of said state, at 100 West Randolph Drive,  
15          Suite 9-040, Chicago, Illinois, on February 24, 1998,  
16          commencing at the hour of 10:00 a.m.

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1 APPEARANCES:  
2  
3 HEARING TAKEN BEFORE:  
4 ILLINOIS POLLUTION CONTROL BOARD  
5 100 West Randolph Street  
6 Suite 11-500  
7 Chicago, Illinois 60601  
8 BY: Mr. Richard R. McGill, Jr.  
9  
10 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
11 1021 North Grand Avenue East  
12 P.O. Box 19276  
13 Springfield, Illinois 62794  
14 BY: Ms. Shirley Baer  
15 Mr. Douglas E. Oakley  
16 Mr. H. Mark Wight  
17 Mr. Lawrence W. Aestep  
18 Mr. Gary P. King  
19  
20 ILLINOIS POLLUTION CONTROL BOARD MEMBERS  
21 PRESENT:  
22 Ms. Cindy Ervin  
23 Ms. Claire Manning  
24 Ms. Kathleen Hennessey  
25 Ms. Marili McFawn

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1           MR. MCGILL: Good morning. My name is Richard  
2 McGill, and I have been appointed by the Illinois  
3 Pollution Board to serve as hearing officer in this  
4 rulemaking proceeding entitled In The Matter Of:  
5 Review of Remediation Costs for Environmental  
6 Remediation Tax Credit Amendments to 35 ILL.ADM Code  
7 740. The docket number for this matter R98-27, and  
8 today is the first hearing.

9           Also present today on behalf of the Board is  
10 Kathleen Hennessey, the lead board member, Claire  
11 Manning, Kathleen Hennessey --

12          MS. HENNESSEY: Good morning.

13          MR. MCGILL: -- Marili McFawn.

14          MS. McFAWN: Good morning.

15          MR. MCGILL: Cindy Ervin, attorney assistant to  
16 Chairman Manning.

17          Just by way of background, on January 21, 1998,  
18 the Illinois Environmental Protection Agency filed  
19 this proposal. The Agency's proposal seeks to amend  
20 the Site Remediation Program, SRP, which is located at  
21 35 Ill.Adm.Code 740.

22          The proposal is required by Public Act 90-12 which  
23 amended the Environmental Protection Act last year by  
24 adding, among other things, Section 58.14.

1       The proposal sets forth procedures for the Agency,  
2       potentially qualifying for an environmental  
3       remediation tax credit, and provided for later appeals  
4       to the Board. The Board accepted this matter for  
5       hearing by order of January 22, 1998, and must adopt  
6       on or before July 21, 1998, rules for second notice  
7       that are consistent with Section 58.14 of the  
8       Environmental Protection Act. The Board's last  
9       regularly-scheduled meeting for July 21st, deadline is  
10      July 9, 1998.

11      Please note that the -- that a service list --  
12      that service list, and notice list, sign-up sheets for  
13      a rulemaking proceeding are located at the back of the  
14      room. Those in the notice list will receive only  
15      Board opinions and orders and Hearing Officer orders.  
16      Those in the service list will receive these  
17      documents, plus certain other filings.

18      Also, at the back of the room are copies of the  
19      current notice and service lists, and these lists are  
20      updated periodically.

21      Besides the Agency's witnesses, if you wish to  
22      testify today, you must sign in on the sign-up sheet  
23      at the back of the room. Time-permitting, after the  
24      Agency's testimony, we will proceed with the testimony

1 of persons who sign up in the order their names appear  
2 on the sign-up sheet.

3 I have a few additional comments about the  
4 procedure we will follow today. This hearing will be  
5 governed by the Board procedural rules for regulatory  
6 proceedings. All information which is relevant and  
7 not repetitious or privileged will be admitted. All  
8 witnesses will be sworn subject to cross-questioning.  
9 If you do not wish to give testimony, you may submit  
10 written public comments.

11 As for the order of today's proceedings, we will  
12 begin with the Agency's testimony; then if time  
13 permits, after a question period for the Agency's  
14 witnesses, we will proceed with the testimony of  
15 anyone on the sign-up sheet.

16 Anyone may ask a question of any witness. I ask  
17 that during the question periods, if you have a  
18 question, please raise your hand and wait for me to  
19 acknowledge you. When I acknowledge you, you please  
20 state your name and any organization you represent.  
21 Please speak one at a time. If you are speaking over  
22 each other, the court reporter will not be able to get  
23 your statements down for the record.

24 Please note that any questions asked by a Board

1 member or staff are intended to help build a complete  
2 record for the Board's decision and not express any  
3 bias.

4 Are there any questions about the procedure that  
5 we will follow today?

6 MR. SOPCICH: What's the final date for submitting  
7 written comments?

8 MR. MCGILL: At this point in time, we haven't set  
9 a public comment deadline. The Board isn't accepting  
10 public comment right now. Hearing officer order will  
11 go out that we set that public comment deadline. Also  
12 at the end of the next hearing, which is coming up  
13 this Friday, I will be setting a pre-first notice  
14 public comment deadline.

15 Are there any other questions?

16 There are currently two additional hearings  
17 scheduled in this matter scheduled for February 27th  
18 and March 17, 1998, both in Springfield, and I will  
19 discuss those in more detail at the end of today's  
20 hearing.

21 Would any of the Board members present like to  
22 make any remarks at this time?

23 We will proceed with the Agency's testimony.

24 Mr. Wight, you may begin.

1           MR. WIGHT: My name is Mark Wight. I am assistant  
2 counsel with the Illinois Environmental Protection  
3 Agency, and the Agency's attorney assigned to this  
4 ruling. I have no opening statement as such, but I  
5 have a couple of housekeeping measures.

6           For those of you who are interested, we have  
7 additional copies of documents that we have submitted  
8 in this proceeding on the back table. It looks like  
9 we will have plenty for the people who are here. If,  
10 for some reason, we don't, there is also a sign-up  
11 sheet where you can put your name, address, and then a  
12 request for the specific documents in which you would  
13 like copies.

14          With me today -- they will be introducing  
15 themselves after they are sworn. Gary King on my far  
16 left; Larry Aestep on my immediate left; Doug Oakley  
17 on my immediate right, and Shirley Bear on the far  
18 right. Also, we have Vicky VonLanken who is a  
19 paralegal with the Agency. Vicky will be keeping  
20 track of the documents, and any document requests, so  
21 you also can check with Vicky if there is anything you  
22 need regarding the documents, and we will see that you  
23 get copies as needed. With that, I think we are  
24 ready, and then they can introduce themselves and tell



1 more specifically about which they are here to testify  
2 about today.

3 MR. MCGILL: Thank you.

4 Would you go ahead and swear them in.

5 (All Agency members were sworn.)

6 MR. MCGILL: Mark, so I understand, Larry King is  
7 going to be providing his testimony, and then all of  
8 the Agency witnesses will be available as a panel for  
9 questions; is that right?

10 MR. WIGHT: Yes. That's correct.

11 MR. MCGILL: Thank you.

12 Before we proceed with Mr. King's testimony, I  
13 would like each of the witnesses to identify  
14 themselves and their position with the Agency, and  
15 also briefly explain the reason they are here to  
16 testify today such as their relationship to the SRP,  
17 or their anticipated involvement in.

18 MR. WIGHT: Why don't we start with Gary King.

19 MR. KING: My name is Gary King, and I am the  
20 manager of the Division of Remediation Management in  
21 the Bureau of Land of the Illinois EPA. As such, I  
22 have the responsibility for administering the Tax  
23 Credit Program. That portion that's been assigned to  
24 the Agency is going to fall within the auspices of a

1 division that I -- that I manage. I have been -- was  
2 involved in development of the statutory language, and  
3 I have been involved in managing development of this  
4 rulemaking proposal.

5 MR. MCGILL: Thank you.

6 MR. AESTEP: My name is Larry Aestep. I am  
7 manager of the Remedial Project Management Section.  
8 One of the units in that section is the Voluntary Site  
9 Remediation Unit, and under that unit we are  
10 responsible for the conducting of reviews and  
11 processing applications under the Site Remediation  
12 Plan. It's anticipated that the personnel working in  
13 that unit will be the personnel reviewing budget plans  
14 and final cost estimates with regard to the activities  
15 that were conducted, and I was also involved in the  
16 development of them. Thank you.

17 MR. MCGILL: Thank you.

18 MR. OAKLEY: Doug Oakley. I manage and review  
19 claims for Underground Storage Tank remedial costs.  
20 We anticipate reviewing the claims in regards to this  
21 program also.

22 MS. BAER: My name is Shirley Baer. I work for  
23 the Voluntary Site Remediation Unit. I was involved  
24 in the discussion with the Department of Revenue and

1 DCCA on these rulings, coordinating some efforts.

2 MR. MCGILL: Thank you. Thank you all for being  
3 here this morning.

4 Mr. King, why don't you go ahead and begin your  
5 testimony.

6 MR. WIGHT: Before we begin, I have copies of the  
7 testimony, and I will have her identify this as an  
8 exhibit, and I can go ahead and give a synopsis.

9 Does anyone with the Board need copies of Gary's  
10 testimony? I have some additional copies here.

11 MR. MCGILL: No.

12 (Whereupon, the document  
13 above-referred to was marked  
14 Exhibit No. 1 for  
15 identification.)

16 MR. GARY KING,  
17 a witness herein, having been first duly sworn, was  
18 examined and testified as follows:

19 EXAMINATION

20 BY MR. WIGHT:

21 Q Mr. King, I am handing you a document which  
22 has been marked as Exhibit No. 1 for identification.  
23 Can you please take a close look at it. Do you  
24 recognize the document?

1           A       Yes, I do.

2           Q       Would you please tell us what it is.

3           A       The document is a written testimonial  
4 submission that I prepared. It was submitted to the  
5 Board for purposes of this proceeding prior to today.

6           Q       And is this a true and correct copy of that  
7 document that was submitted earlier?

8           A       Yes, it is.

9           Q       Thank you very much.

10          MR. WIGHT: At this time, I request that you  
11 accept this document as Exhibit No. 1, and enter it  
12 into the record.

13          MR. MCGILL: I have been handed -- this is the  
14 pre-file testimony of Gary King?

15          MR. WIGHT: Yes, it is.

16          MR. MCGILL: I have been handed the pre-file  
17 testimony of Gary King. Is there any objection to  
18 entering, as a hearing exhibit, the pre-file testimony  
19 of Gary King?

20          Seeing none, I am marking as Exhibit No. 1 and  
21 entering as a hearing exhibit, pre-file testimony of  
22 Gary King.

23          Go ahead when you are ready.

24          MR. KING: I am going to wander away from the

1 specifics of the written testimony a little bit in  
2 order to give a little more -- give some additional  
3 background information relative to the statute and a  
4 regulatory proposal, and everybody can read what the  
5 written statement is anyway, so --

6       Public Act 90-123, which became law last summer,  
7 established two mechanisms to provide financial  
8 incentives for the Environmental Remediation  
9 Brownfields sites. One of those was directed at  
10 assisting the public sector, and the second one was  
11 directed at assisting private sector. The one  
12 directed at assisting the public sector was the  
13 Brownfields Redevelopment Program, and that provided  
14 for the Agency to issue grants to municipalities to  
15 investigate and assess Brownfields sites. That  
16 program is going to have regulations adopted by the  
17 Agency this spring, and it's not the subject, of  
18 course, of this hearing.

19       The second financial incentive the Environmental  
20 Remediation Tax Credit, of course, is the subject of  
21 this hearing, in sum, that legislation provides for a  
22 credit against Illinois income tax that is equal to 25  
23 percent of unreimbursed eligible remediation costs  
24 that are in excess of \$100,000 per site, except that

1   there are certain situations where that \$100,000  
2   threshold can be waived. Those are outlined in  
3   statute, and I will not repeat those at this point.

4       Statute further goes on to say that the total  
5   credit cannot exceed 40,000 per year, and there is a  
6   maximum total of \$150,000 per site. As we went  
7   through the process of developing our proposal, it was  
8   required, and will be required, that there be  
9   coordination of three separate agencies of state  
10   government. Involved are the Department of Commerce  
11   and Community Affairs, the Illinois Environmental  
12   Protection Agency, and Department of Revenue.

13       The role of DCCA in this coordination is to --  
14   basically they are determining where sites -- location  
15   of sites, vis-a-vis, the applicability of the  
16   deductible rules so that we will know whether a site  
17   is really within or without -- inside or outside of  
18   the area as to the applicability of the deductible  
19   amount.

20       Our role in the Agency is one of determining  
21   whether the claimed costs are remediation costs. And  
22   then finally the Department of Revenue -- their  
23   responsibility is to take the information that's come  
24   from DCCA and IPA and kind of apply that toward the

1 tax liability that a person would have in this state.

2 And so it's that -- it's those three agencies that  
3 are going to be involved in implementing this  
4 proposal -- excuse me -- not implementing this  
5 regulatory proposal, but in implementing the statute  
6 that was enacted under 90-123.

7 Now, the statutory language of 90-123 was explicit  
8 probably more so than many other statutes we had to  
9 deal with, and was explicit on a number of issues. So  
10 it is really meant that the development of our  
11 rulemaking proposal was pretty straightforward. As we  
12 developed it, we really had three goals in mind:  
13 First, it was to be consistent with the statute, that  
14 seems like a given, but it is obviously something we  
15 will always have to keep in our minds; second was to  
16 assure that we coordinated closely with our sister  
17 agencies that are going to be involved in implementing  
18 this rule. We had a number of meetings and conference  
19 calls during the fall of 1997, and we received and  
20 exchanged numerous comments to try to assure clarity  
21 and consistency among what all three agencies were  
22 doing.

23 As a result, I think when we went out for peer  
24 review to outside groups, we really didn't receive

1 much in the way of comments or objections from  
2 anybody. In fact, the only person really close to  
3 providing us with the comments or written comments was  
4 the Regional Commerce and Growth Association of  
5 Greater St. Louis, who was participating in these  
6 hearing and have filed pre-file testimony. So our  
7 second goal was this coordination.

8       The third important goal for us was to make sure  
9 we avoided adverse impact to the other IPA programs.  
10 In that light, we needed to make sure we were  
11 integrating successfully with our Site Remediation  
12 Program that Mr. Aestep talked about, and we also  
13 wanted to be -- make sure we were consistent with the  
14 review process under the Leaking Underground Storage  
15 Tank Program because of the similarities and the  
16 determinations between the costs. Mr. Oakley, who was  
17 in charge of reviewing the claims under the Tank  
18 Program, has also been closely involved with  
19 development of our rule here relative to the  
20 remediation costs under the Tax Credit Program. Part  
21 of that reason is, again, we have kind of approached  
22 the need for consistency with the Tank Program becomes  
23 critical. As we have looked at it, remediation costs  
24 under the Tax Credit Program should be pretty much the



1 same as corrective action costs under the UST Fund  
2 Reimbursement Program. There may be some differences  
3 because there are -- SRP Program tends to be broader  
4 in scope than the Tank Program, but we are really  
5 focused on keeping things as similar as we can.

6 Some of the -- let me give you a couple of  
7 examples on how we have tried to relate our experience  
8 from the LUST Program. One is the whole issue of  
9 having a preliminary budget review. That's something  
10 that we have -- was incorporated into the statute. We  
11 were in favor of that when it was proposed to be  
12 included in the statute because it is -- it's been  
13 very helpful in the LUST Program in terms of tending  
14 to reduce overall costs of remediation at projects,  
15 and also has helped to reduce conflicts between the  
16 Agencies and the tank owners and operators, and we  
17 think it will serve the same source of functions with  
18 the Tax Credit Program. That certainly will give  
19 greater reliability for people doing remediation for  
20 which they want to seek tax credit approval on --  
21 relative to.

22 So we have tended to -- as I am saying, there are  
23 some variation. We have tended to pick up that budget  
24 review process that we had in the Tank Program and

1    apply it in this program.

2           The second area where we have had -- really  
3    focused on, what we did in the Tank Program and  
4    brought it forward here is the notion of what are  
5    eligible and ineligible costs.  If you compare what we  
6    have included in Part 740 as eligible and ineligible  
7    costs for purposes of Tax Credit Program with the  
8    eligible and ineligible cost that you find under the  
9    LUST Program, you see there is a great deal of  
10   commonalty between the two.  And there are some  
11   differences, I was saying, because the SRP Program is  
12   a little broader, but, you know -- but it will be  
13   clear to you if you look at that, that there is this  
14   great deal of commonalty.

15          And there was something even while we were  
16   negotiating the legislative language, we made it very  
17   clear to people that that was going to be our source  
18   of eligible and ineligible costs for the Tax Credit  
19   Program, when we -- as far as where we are getting  
20   those from the LUST Program.

21          I am not going to go into specific description as  
22   to all of the specific items that are laid out in the  
23   written testimony.  I think it is -- they are,  
24   themselves, very straightforward; and I think the

1 rulemaking process was similarly straightforward. We  
2 would, at some point -- and I don't know if today is  
3 the appropriate time or if we want to wait until  
4 Friday -- RCGA has submitted written testimony, and we  
5 would like to take the opportunity to, at least at  
6 some point, to go ahead and provide some comments on  
7 the issues that they were raising. I think that will  
8 be -- I think that will be helpful, you know, for the  
9 Board, obviously, in understanding those issues, and  
10 it should be certainly helping in trying to resolve  
11 any of the problems that may be presented by the  
12 conference.

13 With that, that concludes things, unless you  
14 want --

15 MR. WIGHT: Would you have a preference for him to  
16 wait for his comments until after they formally  
17 present their testimony on Friday, or would it be okay  
18 to expand on his remarks this morning?

19 MR. MCGILL: Well, just let me clarify for the  
20 record, the RCGA filed a public comment with the  
21 Board. As I understand it, they are planning on  
22 testifying this Friday in Springfield. In addition, I  
23 believe there are some members of the RCGA here today  
24 that certainly may pose any questions they have got.

1       Mr. King, if there are things that you would like  
2       to address, at this point you are welcome to. That's  
3       up to you.

4       MR. KING: Well, let me dive into those. The  
5       other comments kind of addresses three different  
6       areas: One was on the budget review process. We have  
7       had an opportunity to spend some time talking to them  
8       about this -- about that this morning; the second one  
9       was outputted in terms of we have a prohibition on  
10      double-dipping in our rules -- and I phrase it that  
11      way because I think it makes our case sound  
12      stronger -- the third area is looking at some specific  
13      ineligible costs.

14      The issue, as I was saying before, with the budget  
15      review process, we have drawn from what we have done  
16      with the LUST Program in doing that, and what RCGA is  
17      concerned about is that if we have approved this part  
18      of the Remedial Action Plan or Site Investigation  
19      Plan, if we approved a budget and a set of activities  
20      within that budget, they are concerned that when they  
21      come in for final review relative to that, that we  
22      will turn around and say that those activities were  
23      ineligible activities.

24      On the other hand, we have been concerned as we

1 were under the Tank Program about making sure that you  
2 set up a budget review process that was truly a budget  
3 review. You have decided here is what you are going  
4 to do as far as remedial action, and you set up a  
5 budget to do that, and then you go through and you do  
6 your clean-up based on that budget.

7 But, as we all know from all sorts of construction  
8 activities, the budget is just a budget; it is not a  
9 final decision point. And your final decision point  
10 as to the payments you are making is at the end of the  
11 process. So we have been concerned that you -- that  
12 there is enough flexibility left in the process that  
13 we can deal with cost overruns, we can deal with cost  
14 underruns, and that we end up with a process of  
15 interacting on a stage basis, but making sure that at  
16 the end we have got -- we have ended up approving  
17 costs relative to what was actually spent.

18 To give you an example of what was causing us some  
19 problems: If you had a person come in, and they were  
20 going to do a clean-up, and they were going to do it  
21 by excavating and disposing of contaminated soil, in  
22 their budget in the Remediation Action Plan they would  
23 be designating how many yards of soil would have to be  
24 removed. And let's just assume they are saying 1,000,

1 and then in their budget they would identify unit cost  
2 of -- let's say a typical cost may be about around \$50  
3 a cubic yard. Well, you multiply those out, and you  
4 get a number of \$50,000, which would then appear as a  
5 line item within the budget.

6 If we approach the final review after the budget  
7 review too rigidly, you could be in a position that no  
8 matter what happens in the field, that \$50,000 is the  
9 amount that is applied to the tax credit. Well, what  
10 happens if they come in and they find, well, it's been  
11 \$50 a cubic yard, but they only had to remove 100  
12 cubic yards? Should they have remediation costs  
13 approved for 50,000 as opposed to 5,000? Well, that  
14 doesn't seem appropriate. What if they come in and  
15 say, instead of 1,000 cubic yards, it was 10,000 cubic  
16 yards? Again, on the other extreme, they have run way  
17 over the budget on that amount, but we need to have  
18 some kind of flexibility to make sure that if that was  
19 an appropriate clean-up, that that tax credit can be  
20 applied properly.

21 So I think kind of the difference in the views we  
22 have had is one that -- it is kind of that -- kind of  
23 an age-old debate between the Government and the  
24 private sector. The Government wants to maintain

1 enough flexibility to deal with situations which might  
2 be abusive. Private sector wants to be able to tie  
3 down Government decisions so they can rely on them in  
4 a sufficient sort of way.

5 I don't think it at this point -- I think we  
6 understand the concern that RCGA has, and we are going  
7 to try to work with them to try to see if there is  
8 some way -- maybe there is a way to change some of the  
9 language. I am not entirely hopeful that we can do  
10 that, but we still think it is important to maintain  
11 the kind of budget review process that we have  
12 outlined in our proposal.

13 MS. HENNESSEY: Can I ask a follow-up question?

14 Do you contemplate during the budget review --  
15 final review that you might actually revisit decisions  
16 about the type of clean-up technology; for example, in  
17 the example that you gave, excavation was a remedy,  
18 basically. Do you anticipate that the Agency might be  
19 able to look at costs that are finally submitted and  
20 say. You know, what you really should have done is  
21 vapor extraction or some other type of remedy  
22 altogether different from what was proposed, and  
23 ultimately may have been cheaper as it turns out but  
24 wasn't in the budget for you?

1       MR. KING: No. In that example, that would not be  
2 something that we would reconsider. And, in fact,  
3 that's sort of the language we have been trying to  
4 focus on, is to outline activities. I don't know that  
5 there is a successful way to do that, but that  
6 certainly is something we -- if we have approved a  
7 type of activity relative to remediation, we are not  
8 going to come back and say, oh, wrong one. We changed  
9 our minds. That would be inappropriate, I think.

10       MS. MANNING: Before I ask it, though, I want to  
11 commend the Agency on the development of this  
12 proposal. It is obvious that some of your rules  
13 obviously were met in terms of coordinating with the  
14 sister agencies, with DCCA, and reviewing proposals in  
15 coordinating with the special interest groups. And,  
16 of course, that makes our job that much easier when  
17 you have done a lot of footwork at the front end. It  
18 is our job, however, also to make sure that what we  
19 pass through this rule, that we have got a rule that's  
20 workable. And it's our job then to sort of look at it  
21 and ask the questions to get toward that end.

22       My concern about the budget review process -- I  
23 guess I don't understand what we mean by a non-binding  
24 nature of the budget review process when we are



1 providing for a board appeal of that budget.

2 Throughout the documents, you call it a  
3 non-binding budget determination that the Agency  
4 makes, the Board reviews it if there is an appeal of  
5 that budget process. And if it, in fact, is an  
6 interim decision of the Agency, that's the first step  
7 of the ultimate budget process, is that sort of  
8 inconsistent with the Board review of that decision?

9 MR. KING: I don't know that it is non-binding. I  
10 think we termed it a preliminary -- the term we have  
11 used. I think that's what the statute is.

12 MR. KING: I guess it does raise a question about  
13 whether it should be an appeal point there given the  
14 way it is structured.

15 MS. MANNING: I think there might be a statutory  
16 construction, because I think the statute does provide  
17 for appeal to the Board of the determination. But you  
18 do indicate it is a non-binding determination, and  
19 there is, I think, a problem in consistency,  
20 potentially with the whole nature of an appeal if it  
21 is non-binding.

22 And you don't have to answer this today  
23 necessarily. This may be something that we want to  
24 deal with maybe even in Springfield on Friday. It is

1 something we need to look at in terms of what are we  
2 really reviewing when we get a budget appeal, if we  
3 get a budget appeal, and maybe we won't even get any,  
4 because, you know, they are going through the process,  
5 and that the parties are happy. But if they do get a  
6 determination, the Board hears that determination, is  
7 that not binding then; and what does that do to the  
8 Agency's second level of the budget review process?

9 MR. KING: I certainly would prefer not to answer  
10 that right now.

11 MS. MANNING: You don't have to. I just wanted to  
12 raise the question. It is a question in my mind. We  
13 need to understand at the Board level what it is we  
14 are reviewing, and what the effect of that review is,  
15 and it is just something that I saw that sort of stuck  
16 out to me, that we have to resolve, I think, before we  
17 go final with the rule. We sort of have to deal with  
18 this one way or the other. And it is something you  
19 can take your time to answer, and that's fine.

20 MS. McFAWN: The word "non-binding" jumped out at  
21 me on Page 4 of the pre-file testimony that you filed  
22 in Exhibit 1, so you might want to look back at that.

23 And then in your example, too, you gave us really  
24 three facts to that example. And I, like the

1 Chairman, have wondered about the appeal to the Board  
2 at this preliminary stage. And you gave us the  
3 example of the activity, plus a unit cost, and then  
4 what would be an estimate. So maybe that's the way to  
5 dissect what you -- what parts of that are binding on  
6 the Agency. Maybe it's just the estimate that's not,  
7 you know, the last figure on the line, so to speak.

8 MR. KING: I think you mean what becomes perhaps  
9 binding is the type of the remediation as opposed to  
10 the --

11 MS. LEE: The activity of making the unit cost,  
12 \$50 a cubic yard, that sort of thing.

13 MR. KING: That we also have to be careful about.  
14 If somebody is estimating that the disposal cost is  
15 going to be budgeting for \$50 a cubic yard, you know,  
16 but they only end up paying \$30 a cubic yard. So we  
17 have to be careful that we aren't -- we don't end up  
18 tied in on something that you can't adjust to what is  
19 really happening.

20 MR. MCGILL: On that point, in terms of the final  
21 review, only actual incurred costs would be available  
22 for the tax credit, right? So in a situation where  
23 you just gave -- where the budget plan approves  
24 \$50-unit cost or cubic yard cost, and they actually do

1 it for 30, they wouldn't be getting a tax credit for  
2 30, it would just be the actual current cost of 30?

3 MR. KING: That's correct.

4 MS. McFAWN: Of course, if there is a cost  
5 overrun, say prices increase, you don't want -- does  
6 the Agency want to be binding that you can stand by  
7 your 50, or do you want the flexibility to be able to  
8 approve a unit cost, for example, of \$60 a cubic yard?

9 MR. KING: No. They should have the opportunity  
10 to come in and justify as to why that cost is -- was  
11 in that budget or not. Again, that's -- yeah. It is  
12 a difficult thing having that review item in there and  
13 calling it non-binding. From our standpoint we were  
14 really -- have really focused on the fact that by  
15 having this upfront interaction with the Agency really  
16 tends to limit the number of problems that you see on  
17 the back-end.

18 We were always finding early on in the LUST  
19 Program before we had the budget process was that  
20 people would do things without any real understanding  
21 of whether things were ultimately going to get  
22 reimbursed, and then would end up being caught short  
23 at the end, would be some confusion as to what was  
24 really included.

1       The budget process, whether it is, you know --  
2       whether it is non-binding or whatever, there is an  
3       opportunity to establish a dialogue as to what people  
4       think the costs are going to be. And it's an  
5       opportunity to catch things that may be way out of  
6       line early on before somebody spent the bulk of money.  
7       Really serves as a -- it's a service that we can -- we  
8       are providing that really helps owners and operators  
9       identify where things kind of come out, really excused  
10      as far as their proposal.

11      But we will consider the questions that were  
12      posed, and see how we can figure out what to do with  
13      the proposal.

14      Just continuing, the second area was the -- what I  
15      called the prohibition on double-dipping, and I don't  
16      think that this is a real significant point, but what  
17      we had -- we have a provision in there that says that,  
18      for instance, if you were reimbursed for your costs  
19      from the LUST Program, you could not also claim those  
20      costs as a tax credit. And we had a couple of other  
21      items in there.

22      We saw -- the purpose of the tax credit provision  
23      was to provide financial assistance, it was not to  
24      provide a financial windfall. And I think if we were

1 to the point where you could submit costs and get 100  
2 percent reimbursement from the LUST Program, and have  
3 those same costs working as on a tax credit side of  
4 things, it seems to me there is a windfall occurring.  
5 And then on top of that thought process, it really --  
6 as far as we are concerned, the tax code would  
7 prohibit that use of the tax credit in that way.

8       Anyways, the third area was the RCGA had brought  
9 up a series of items which they thought -- where we  
10 designated specific items as ineligible costs, and  
11 then their view was that those, perhaps, either should  
12 have more clarity or that those should be considered  
13 eligible costs. And the first one of those they  
14 looked at was -- or commented on was 740.730(e), and  
15 that's a provision which also prohibits this  
16 double-dipping issue, which I just talked about our  
17 reasons for excluding.

18       The second area, I think they were looking for  
19 some additional clarity on when a cost -- this is in  
20 Subsection F -- on when a cost only serves  
21 incidentally -- when a structure is only serving  
22 incidentally as an engineered barrier, and where it is  
23 only serving in that role incidentally, we say that  
24 that's not an eligible cost. We are in agreement with

1    them that it is -- that having such clarity on this  
2    item is advisable, but we find it really impossible to  
3    draw a bright line.

4           I can kind of give some examples of some things,  
5    and maybe that will help promote some dialogue  
6    relative to these issues.  RCGA gave a good example in  
7    their written testimony where they talked about if --  
8    for instance, if you had a design for a project, and  
9    that design included a parking lot, for instance, and  
10   they decided to -- and if they found some  
11   contamination on the property and then decided to  
12   redesign the project so that now the parking lot could  
13   serve as a barrier over the contamination, we would  
14   see -- in that kind of situation, because of the fact  
15   they have redesigned the project to place an  
16   engineered barrier over the contamination, that that  
17   would not be -- that would not be incidental.  That  
18   would be an eligible cost.

19          If, for instance -- on the other hand, if they had  
20   the project designed, and there was to be a building  
21   in a parking lot, and they found contamination where  
22   they were going to be building anyways, and so they  
23   got -- they came in and justified that as an  
24   engineered barrier, we would consider that to be then

1 that engineered barrier only working incidentally, in  
2 that situation will not be remediation cost.

3 We came up with another example. If you think  
4 about a site being designed with a site berm, and  
5 sometimes sites will be designed with a berm around  
6 the perimeter so that people don't have to observe  
7 what is going on on the other side for purposes of  
8 work activities. And normally you thought about  
9 putting a site berm six feet high, if the berm were  
10 being designed for those site purposes, and it turned  
11 out there was contamination there under there, it  
12 could serve as an engineered barrier; but again, it  
13 would be an incidental reason.

14 If, on the other hand, the contamination -- let's  
15 just say that the contamination went beyond the bounds  
16 of the existing or the initially-designed berm, and  
17 they decided to extend the berm an additional 100 feet  
18 to cover the contamination and have it serve as an  
19 engineered barrier, in that case it could be -- it  
20 could be eligible as a remediation cost, but we  
21 wouldn't -- we would say that not at six feet high,  
22 you know. In essence they would get it to three feet  
23 high, because that would be the amount of cover they  
24 would need for the additional cover. So the



1 additional six feet on top of that would not be  
2 considered remediation cost.

3 I present those as a couple of examples, not to be  
4 exhaustive, but as indicative of the kind of thought  
5 process that we think would be appropriate to go  
6 through in kind of analyzing when something is  
7 incidental or it's really a material issue as to the  
8 engineered barrier.

9 The next provision that I commented on was  
10 740.740, Subsection K. In there, our focus was to --  
11 and we have a similar provision in the LUST Program,  
12 that is that if there is a negligent damage or  
13 destruction of facilities as part of remediation  
14 activities, that should not be -- replacement of that  
15 should not be considered remediation cost.

16 We distinguish in the rules between a situation  
17 where, for instance, something has to be dismantled,  
18 and then you perform the remediation, and then you  
19 just -- you reassemble that item, that would be --  
20 those costs would be acceptable but not in a  
21 negligent, damage or destruction situation.

22 The next one I commented on was 730(1), and that  
23 provision is related to obtaining special waste  
24 generator identification numbers. We had a problem

1 with that under the LUST rules where we have a similar  
2 provision where we had some cost abuse, something that  
3 was extremely simple. You call up the Agency, you  
4 send us a letter, and we would get -- instead of doing  
5 that, people would run up fairly substantial bills.  
6 We just didn't think that appropriate.

7 On 730(m), they were suggesting some changes.  
8 This is the provision that talks about attorneys' fees  
9 and being reimbursed. And in their proposal they  
10 identify -- this looks like there were two thoughts  
11 going on. One was to expand that provision to allow  
12 for attorneys' fees where they were related to  
13 preparation of an application for an immediate --  
14 environmental remediation tax credit. As we thought  
15 about it, we really -- we thought, in essence, that  
16 was covered already in another provision. If it's  
17 appropriate to clarify that here, we could do that.

18 The second part was much more expansive and really  
19 talked about, in essence, any attorneys' fees arising  
20 out of the RA's participation in Site Remediation  
21 Program. We thought that was too broad. In the Tank  
22 Program we have been very restrictive as to the types  
23 of attorneys' fees that we had considered  
24 reimbursable. And it really comes down to type of

1 consideration as to what is corrective action and  
2 where does corrective action start and stop. We have  
3 been -- as far as the scientific and engineering  
4 disciplines, we have been pretty broad with that and  
5 in terms of -- in terms of allowing various activities  
6 to be considered part of corrective action. And  
7 that's really due to, I think, the result of the  
8 difference in the disciplines between the professions.

9       When you are talking about attorney work, it's a  
10 fundamentally different discipline than engineering or  
11 science work is. If you think about it in what an  
12 attorney is dealing with is words, ideas, and  
13 documents. And what scientists are dealing with is  
14 physical reality, and that's what -- they are either  
15 investigating what is physically at a site, or they  
16 are designing what is to physically occur at a site,  
17 or they are implementing something that is physically  
18 happening at the site, and it is all activities  
19 leading up to those physical reality situations.

20       So there is kind of -- that kind of philosophical  
21 difference. RCGA had a couple of examples in there,  
22 and it didn't -- they didn't seem to be the kind of  
23 things that would be appropriate or certainly that we  
24 would consider corrective action. For instance, they

1 mentioned like negotiations with the Agency for site  
2 target clean-up levels. Well, clearly if an engineer  
3 or a consultant is going through the process of  
4 developing a risk assessment under Tier 3 or doing --  
5 going through the equation process under Tier 2 of --  
6 both under TACO, those are legitimate corrective  
7 action activities, but those are not activities that  
8 attorneys should be doing. I think that's outside of  
9 their discipline.

10       So we really have tried -- what we have seen is  
11 what attorneys do relative to corrective action; the  
12 nexus is just too limited, and it is philosophically a  
13 different discipline. We think there really needs to  
14 be a fairly clear separate issue.

15       Let's see, I think there was -- oh, the next point  
16 I looked at was 740.730, Subsection N. And they had  
17 suggested some additional language to be included, and  
18 we would agree with that, that language should be  
19 included. We have an inconsistency with our LUST  
20 Rules, and we need to make that consistent.

21       The next one they commented on was 730, Subsection  
22 S. And the concern there is a concern that they  
23 related relative to the whole notion of the copy of  
24 the approval of the budget in the Remedial Action

1 Plan. They were concerned that what makes a test  
2 unnecessary. From our standpoint if something is --  
3 has been approved under the Site Investigation Plan or  
4 the Remedial Application Plan, as far as any testing,  
5 that would be necessary. And so if the concern is  
6 that if it is contained in the approved Remedial  
7 Action Plan, then it should be considered necessary.  
8 We would agree with that. It just is. If it is part  
9 of that plan, we would consider it being a necessary  
10 cost.

11 And then finally they added Subsections W, Y, and  
12 BB. And I think those issues really go back to the  
13 relationship between the budget plan and review of  
14 that, that we discussed.

15 And that concludes my comments on these findings.

16 MR. MCGILL: Thank you. Why don't we go off the  
17 record for a moment.

18 (WHEREUPON, a recess was taken.)

19 MR. MCGILL: At this point, we are back on the  
20 record.

21 We wanted to pose one more question before opening  
22 it up to everyone for questions.

23 MS. HENNESSEY: I just have a general background  
24 question. Have you developed any estimates on how

1 many sites that will be able to use this tax credit?

2 MR. KING: I don't know that we have developed any  
3 estimates as to how many, total, we will be able to  
4 use. We were anticipating once the program gets going  
5 fully, we probably have in the range of maybe 40 to  
6 50 -- 40 to 50 per year.

7 MS. HENNESSEY: Thank you.

8 MR. MCGILL: Does anyone have any questions for  
9 the Agency's witnesses?

10 MR. King: Can I add -- just pardon my  
11 interruption. I am not going to ask myself a  
12 question; although, many times I have. Not this time.

13 We were talking about, at the break -- I just  
14 wanted to clarify something. When I was talking about  
15 this prohibition on the double-dipping provision, let  
16 me give you an example of -- you could have a site  
17 with two underground storage tanks in two totally  
18 different parts of the site, and one of those tanks  
19 could be -- the cost for cleaning that up could be  
20 reimbursable. Well, with the other tank, you know,  
21 for whatever eligibility reasons, none of the costs  
22 may be reimbursement from the Tank Program. Well, the  
23 cost that you would be reimbursed from that first  
24 tank, those you could not claim for purposes of a tax

1 credit, the other costs you could. So the fact that  
2 there was a reimbursement for that site doesn't mean  
3 that everything is excluded from the tax credit, it is  
4 just those costs that received the reimbursement or  
5 the grant dollars is applied to, so I just wanted to  
6 explain that a little bit.

7 MR. WIGHT: On that same issue I would like to  
8 provide the Board with a citation upon what your  
9 interpretation is based. It is from the Tax Code of  
10 35ILCS5/201L, which it's when you have an opportunity  
11 to take a look, there is -- in about the third or  
12 fourth line down this also appears elsewhere in this  
13 section, but they -- the reference is to unreimbursed  
14 eligible remediation costs.

15 So those items that were listed with regard to the  
16 Tank Program and so on were our idea of  
17 reimbursements, and this has been coordinated with DOR  
18 as well. So that's the statutory provision upon which  
19 it was based, just for your reference.

20 MR. MCGILL: Thank you.

21 The Board has some questions that they would like  
22 to pose. Before that, again, I want to open it up to  
23 anyone here today. Does anyone have any questions for  
24 the Agency's witnesses?

1       Seeing none, the Board will proceed with some  
2 additional questions that it has.

3       First question is in Section 740.120, the  
4 definitions; did the Agency obtain the definition of,  
5 quote, act of God, end quote, from any particular  
6 source or sources?

7       MR. KING: Yes, we did.

8       MR. WIGHT: I think it is found at Section 9601,  
9 and just the initial definition section of.

10       MR. MCGILL: Next question relates to Sections  
11 740.705 -- Oh, I am sorry.

12       MS. MANNING: As long as we are on the  
13 definitions, you use the term "enterprise zone"  
14 several times in the rules, but you don't define  
15 enterprise zone. Did you think about a definition of  
16 enterprise zone, or would you like to think about a  
17 definition of enterprise zone so we are not left to do  
18 that later.

19       MR. KING: I think if you look at the statutory  
20 structure, that's really -- that's a DCCA  
21 responsibility, and they're defining -- they have  
22 defined what are enterprise zones, and I believe they  
23 are also adopting a rule that will implement their  
24 part of this program, and assume they will be



1 designating those things there.

2 Do you think perhaps there needs to be a  
3 cross-reference?

4 MS. MANNING: Maybe. If you say that enterprise  
5 zones shall be those zones defined by the DCCA  
6 pursuant to ILAC, something like that, if it, in fact,  
7 comes from DCCA's definition.

8 MR. KING: We are making no independent judgment  
9 relative to that.

10 MS. MANNING: I hope they are doing it then,  
11 because there could be some dispute about what it is,  
12 I supposed. But you're convinced that DCCA will make  
13 that determination and you will know when we are  
14 dealing with this whether it is --

15 MR. KING: They are required to make that  
16 determination. So before somebody comes to us, they  
17 are supposed to go to DCCA and get a decision whether  
18 it is part of the enterprise zone, and whether it is  
19 within this census tract that's over minority income.  
20 We were able to escape that determination provision as  
21 far as our --

22 MS. HENNESSEY: I am confused. Are you going to  
23 consider addressing a cross-reference to the DCCA  
24 definition?

1       MR. KING: Yes. We would like to do that to some  
2 extent. I think it is going to depend on how their  
3 rulemaking proceeds in relationship to this  
4 rulemaking.

5       MR. MCGILL: Any other questions?

6       Okay. Again, I have some questions relating to  
7 Section 740.705. Does the Agency's proposal or the  
8 current part 740 impose any time deadline on the  
9 Agency for making its determination on the budget  
10 plan?

11       MR. KING: We thought we had addressed that in  
12 Subsection D. We get -- for the Remedial Action Plan  
13 you normally get 60 days and then the submittal of the  
14 budget plan, that expands it out to 120 days for both.  
15 At least that was the area we were intending to do  
16 that.

17       MR. MCGILL: Do you think there is any language in  
18 740.705, or are you suggesting that you need to add  
19 some language?

20       MR. KING: I guess what you are saying to us is  
21 this is not entirely clear from your standpoint?

22       MR. MCGILL: Yeah. I didn't see where they have  
23 imposed a time deadline for the Agency determination  
24 of the budget plan. I saw the language about the

1 60-day waiver for the RAP period.

2 MR. KING: I think that became a little bit -- was  
3 too implicit as to what happens and everything. Okay.  
4 We can certainly take a look at that and try to  
5 clarify that.

6 MR. MCGILL: Is the idea that there is a 60-day  
7 time deadline on the Agency for the determination of  
8 the budget plan?

9 MR. KING: The way we were looking at it, it's not  
10 60 plus 60. It is just if you submit the budget plan  
11 and you have a total of 120.

12 MS. LEE: What if they don't submit the budget  
13 plan at the time they submit your Remedial Action  
14 Plan, and, say, it comes in ten days later?

15 MR. KING: I think then you would have 130 days to  
16 do both.

17 MS. McFAWN: What if they submitted it on the 59th  
18 day? What would you do with the RAP then? Hold it  
19 for another 60 days?

20 MR. KING: I think -- right. That's what we meant  
21 by it's an automatic 60-day waiver.

22 MS. McFAWN: Well, I think Mr. McGill was trying  
23 to point out when we read this to see, there is a  
24 waiver of Remediation Action Plan in determination,

1 but it doesn't specifically address what you are going  
2 to do with the budget plan. What you are telling us  
3 is you are going to handle that change -- should  
4 handle them together?

5 MR. KING: Yes.

6 MS. McFAWN: And they will always stay together.  
7 You won't approve a RAP unless you have a preliminary  
8 budget approval or just approval done.

9 MR. KING: We could approve a RAP without a  
10 budget.

11 MS. McFAWN: Okay. What if you had in-house  
12 budget, though, was pending.

13 MR. KING: I think, right, we would handle them  
14 together.

15 MS. McFAWN: Okay. Before we go on, if you have  
16 approved the RAP, can they still come in and ask for a  
17 preliminary review of the budget? Can these act  
18 independently, is what I am asking?

19 MR. KING: I think that's correct. Yes.

20 MS. McFAWN: And then how long will the Agency  
21 allow themselves to review that budget?

22 MR. KING: That should be a 60-day review.

23 MS. McFAWN: And is this 60-day statutory, or is  
24 it just a number that seemed reasonable to the Agency?

1       MR. KING: I think -- I think the way the statute  
2 was raised, it really envisioned that once you submit  
3 the budget plan, it would be coming in with the  
4 remedial action plan, and that the -- in order to tie  
5 the two of them together, there should be an  
6 additional 60 days to review both documents so they  
7 could stay together.

8       One of the concerns we had was that -- and I think  
9 people correctly analyze that in terms of saying,  
10 well, the budget and the RAP should stay together as  
11 much as possible. But we didn't want to be in a  
12 position where we had to review both of those within  
13 the same 60-day period because they are two documents.  
14 So the statute was set up to allow for a 120-day  
15 review of both documents when they came in together.

16       MR. WIGHT: The statutory reference is 5814(d)4.

17       MR. MCGILL: That's for the automatic 60-day  
18 waiver of the RAP review period?

19       MR. WIGHT: Yes.

20       MR. MCGILL: Is it the Agency's position that the  
21 budget plan is not subject to Subpart E of Part 740 --  
22 and I have a copy of Part 740 if you need that. Well,  
23 Subpart E of 740 entitled Submittal and Review of  
24 Plans and Reports. Within that subpart for various

1 plans and reports under the SRP deadlines and where  
2 time review periods are set forth, it just wasn't  
3 clear whether the budget plan under this proposal is  
4 subject to the already-existing Subpart E of the Site  
5 Remediation Program.

6 MR. KING: I think that was not our intention. We  
7 had intended the -- we did not intend for Subpart E to  
8 apply to review of budget plans under Subpart G.

9 MR. MCGILL: Would your answer be the amount for  
10 final review under this proposed rule?

11 MR. KING: That's correct.

12 MR. MCGILL: Just to clarify, a RAP may be  
13 submitted before a budget plan, is that correct?

14 MR. KING: That's correct.

15 MR. MCGILL: A RAP may be submitted before a  
16 budget plan. From when do you count the automatic  
17 60-day waiver under Section 740.705(d)? In other  
18 words, is it 60 days from the current deadline of a  
19 determination on the RAP, or 60 days from the Agency's  
20 foresight of the budget plan, or some other  
21 calculation?

22 MR. KING: I think the way we were intending it to  
23 be calculated is that, the start date for remedial  
24 action plan review, that date normally is 60 days, it

1 would now become 120 days. So just whatever that  
2 start date was for Remedial Action Plan to the  
3 endpoint, where now we just add 60 days to that.

4 MS. HENNESSEY: I believe earlier somebody asked  
5 if somebody submitted a budget plan on the tenth day  
6 after the Remedial Action Plan was submitted, the  
7 total time for review would be 130 days; is that  
8 right? But as I understand what you are saying now,  
9 it would never exceed -- as long as it came in by the  
10 60th of the budget claim date, by the 60th day after  
11 you received your Remedial Action Plan, the total time  
12 of review of the Remedial Action Plan would be 120  
13 days?

14 MR. KING: Right.

15 MS. HENNESSEY: So it would never exceed 120 days.

16 MR. MCGILL: Is there a time limit for budget plan  
17 submitted after a RAP is submitted or approved?

18 MR. KING: I think -- I don't think we have  
19 included that type of restriction in the proposal.

20 MS. McFAWN: Do you think we should after we get  
21 the RAP approval? Is that why we invest money into  
22 the incorporation of a budget?

23 MR. KING: It's a potential to do that, but I  
24 don't think it's that necessary or that likely. If

1 somebody wants to be taking advantage of the tax  
2 credit, they are going to be thinking about that issue  
3 early on in planning the project. And if they want --  
4 if they are looking at having the budget review, I  
5 think they will be submitting it at the time or close  
6 to the time that they submit the RAP. I really -- I  
7 guess --

8 MS. McFAWN: If I was going to do this, I might  
9 want to two-step it because I might want to wait 120  
10 days for the RAP -- the RAP approval. I might want to  
11 say I am relieving my RAP. You have your 60 days for  
12 your -- your time to do the RAP. When you have it  
13 done, and I note things are fixed, then I will be  
14 getting the paperwork on budget.

15 MR. KING: I suppose that's a possibility. Things  
16 weren't really set up in the statute to work that way.  
17 I really envisioned it would be coming in together;  
18 and, again, I guess it just -- from a practical  
19 standpoint I wouldn't think there is -- that's going  
20 to happen, certainly not very often.

21 MS. McFAWN: Well, do you think we should make a  
22 provision in case it does happen at some time? Are  
23 you against that happening? And if you are not, then  
24 how much time do you want to make that review? You



1 know, would you like another 60 days?

2 MR. KING: I would think it certainly needs to be  
3 a 60-day review time on that.

4 MS. McFAWN: Okay.

5 MR. KING: I think that's kind of the notion that  
6 is being envisioned here with the addition of the  
7 additional 60 days. I don't know that we are  
8 necessarily against it. It shouldn't cause us too  
9 much in the way of problems. Yeah. I can't think of  
10 any significant administrative problem that it would  
11 cause.

12 MR. MCGILL: Do you have any follow-up?

13 MR. KING: No. Go ahead.

14 MR. MCGILL: Since various investigative  
15 activities may have been formed prior to submittal of  
16 a RAP, is it accurate to say that the budget plan may  
17 contain costs actually incurred and not exclusively  
18 estimated costs?

19 MR. KING: I think that's true.

20 MR. MCGILL: Does the Agency contemplate the  
21 determinations on budget plans under Section 740.705  
22 will approve, disapprove or modify the budget plan on  
23 a line-item-by-line-item basis?

24 MR. KING: We will have a set of line item

1   approvals.  We haven't quite finalized how we are  
2   going to -- how we are going to organize that with  
3   the -- for instance, with the Tank Program.  We have  
4   got six budget line items which we grouped of various  
5   costs within each of those line items, and you have to  
6   be within -- the final costs have to be within each of  
7   those line items, you know, so we have outlined here  
8   in five categories of line items, you know.  We  
9   haven't quite finished our forms as to how we are  
10  going to accumulate all of those, but these would all  
11  be types of activities that would be included within  
12  specific line items.

13       MR. MCGILL:  I was referring to Section  
14  740.705(e), should that subsection refer to Agency  
15  disapproval of a RAP in addition to Agency approval  
16  with conditions?

17       MR. KING:  The reason why we didn't include the  
18  disapproval there, it seems to be that's kind of a  
19  start-over point.  Here, if we have approved Remedial  
20  Action Plan with conditions, I mean, we are saying is  
21  the plan approved.  But there may be an impact on the  
22  budget plan based on what the approval has been.  If  
23  it's -- if we have just disapproved the Remedial  
24  Action Plan all together, then that would be kind of a

1 Subpart E thing, and it would just seem like it would  
2 start all over. We didn't see that there really  
3 needed to be a reference to the disapproval here.

4 MR. MCGILL: Are there any limits on when an RA  
5 may amend its budget plan? And I just have an example  
6 in mind, an RA amends it's budget plan even if there  
7 is no amendment to the RAP, but cost estimates in the  
8 original budget plan have been increased due to  
9 inflation, for example.

10 MR. KING: Say that again.

11 MR. MCGILL: The poor question is, are there any  
12 limits on when an RA may amend its budget plan?

13 MR. KING: As far as time frames, I don't think we  
14 have any restrictions. There will be some natural  
15 kind of restrictions. No point in submitting a budget  
16 plan after the clean-up is done. Maybe if you can go  
17 over that example again.

18 MR. MCGILL: There is a situation where an RA  
19 would like to amend its budget plan even though there  
20 has been no amendment to the RAP, maybe its cost  
21 estimates in the original budget plan have now  
22 increased because of inflation, is there anything  
23 preventing them from submitting an amended budget  
24 plan?

1       MR. KING: I wouldn't think so. I am not aware of  
2 anything that would prohibit that under the proposal  
3 that we have drafted.

4       MR. MCGILL: Thank you.

5       MS. HENNESSEY: Before we move on, I still have  
6 questions about the timing of this, and under  
7 Subparagraph D, the last sentence; submittal of  
8 amended budget plan restarts the time for review.  
9 Under the scenario where you have the RAP in-house and  
10 an amended budget comes in, does that restart the  
11 whole 120 days, or does it tag on 60, or do you still  
12 calculate the maximum 120? This amended plan comes.  
13 Obviously the time line, I guess, is my question.

14       MR. WIGHT: I think there are several combinations  
15 of events that could occur here; obviously we haven't  
16 thought out each one carefully, the various scenarios.  
17 I mean, if you have additional questions, you should  
18 ask them today so that we know what your remaining  
19 questions are, but I think probably the best way to  
20 handle this for us would be to go back and think this  
21 through a little more carefully and bring you some  
22 sort of a coherent, whole response on Friday rather  
23 than the type of piecemeal that we are giving today.  
24 I am not sure we are able, under these circumstances,

1 to think each of these scenarios through clearly. We  
2 would like to hear any other questions on the issue,  
3 any more scenarios that you can think of, and then we  
4 will try to pull this all together and give you a full  
5 response on Friday.

6 MR. MCGILL: Great. Thanks.

7 Any other questions on this section?

8 Did the audience have any questions on Section  
9 740.705?

10 MS. ERVIN: I did have one.

11 The way you word Subsection F, I assume that if  
12 the Agency fails to issue a final determination on the  
13 budget plan within the applicable time period, that  
14 you deem that a denial of the budget plan?

15 MR. KING: That's correct.

16 MS. ERVIN: Is that explained anywhere else? The  
17 way it is worded right there, is that statutory?

18 MR. KING: The citation would be to 5814(d)6.

19 MS. ERVIN: Thank you.

20 MR. MCGILL: I am sorry, Mark. Did you say (d)6?

21 MR. WIGHT: Yes. There is similar language in C.

22 MS. ERVIN: Well, that says if you disapprove or  
23 modify, it doesn't say if you don't act within a  
24 certain time period. I guess my question is, I was

1 just wondering why you deemed it denied instead of  
2 deemed it approved as we do in some of the permits.

3 MR. WIGHT: I think --

4 MS. ERVIN: You can possibly get back to us on  
5 Friday.

6 MR. KING: I think what we are trying to do is set  
7 this up to be consistent with the way -- on this issue  
8 consistent with the way the rest of 740 works, in  
9 which is distinguished from the way the permit process  
10 works.

11 MS. ERVIN: Right.

12 MR. MCGILL: Did anyone have any questions on  
13 Section 740.705?

14 Seeing none, I have a few questions on Section  
15 740.710. This actually is a general question. Do the  
16 proposed amendments state that an RA must apply for  
17 and obtain the Agency's determination on remediation  
18 costs before appealing to the DOR for the tax credit?

19 MR. WIGHT: Could you?

20 MR. MCGILL: Do the proposed amendments state that  
21 an RA must appeal for and obtain the Agency's  
22 determination on remediation costs before applying to  
23 the DOR for the tax credit?

24 MR. KING: I think, yeah, that's not covered in

1 our regulations. That's covered in Tax Code and what  
2 Revenue does, and it's kind of more of a transition  
3 point, you know, now that transition is covered by  
4 Revenue as to when something can appear on their tax  
5 return.

6 MR. MCGILL: The Agency determination is a  
7 prerequisite to applying for tax credit?

8 MR. KING: That's correct.

9 MR. MCGILL: Thank you.

10 MR. MCGILL: Next question I had where an NFR  
11 letter issued by operation of law, can the RA satisfy  
12 Section 740.710(a)2 by providing a copy of the  
13 affidavit described in Section 740.620(a)2?

14 MR. MCGILL: Again, I have Part 740 here if you  
15 need to look on it.

16 MR. KING: What we have there is pretty much what  
17 the statute says. The statute doesn't talk about the  
18 affidavit situation, you know. I don't consider that  
19 a significant difficulty. I mean, we could expand --  
20 we could expand this Subsection too to include that.  
21 The question would be whether that's something that  
22 the statute really contemplated or whether the statute  
23 has really contemplated that the NFR letter had to  
24 actually issue, the affidavit would not be included --

1 would not be an included option.

2 MS. HENNESSEY: Is there any reason to make a  
3 distinction between the situations which an NFR letter  
4 is actually issued by the Agency as opposed to  
5 situations in which an affidavit is filed and the NFR  
6 issued -- basically issued by the law.

7 MR. KING: I don't think -- I don't think there is  
8 a -- really a significant policy reason not to include  
9 it.

10 MR. MCGILL: The question, again, regarding  
11 Section 740.710(a)2, what does it mean for a County  
12 Recorder or Registrar of Titles to have certified an  
13 NFR letter?

14 MR. KING: In our eyes that would be a certified  
15 copy or a copy that in which the recorder or the  
16 registrar is attesting to the fact that this is  
17 actually a recorded document.

18 MR. MCGILL: Next question, should the application  
19 under Section 740.710 also include a copy of the  
20 Section 740.620(d), owner certification, as that may  
21 be applicable?

22 MR. KING: I wouldn't think that that's  
23 necessary -- that it would be necessary to have that  
24 owner certification. There may actually have been an



1 exchange of title at some point. I mean tax credit  
2 can apply to people other than the actual owner, so, I  
3 guess, I don't see a reason for it to be there.

4 MR. MCGILL: The reason I asked is under Section  
5 740.620(b), the NFR letter is not effective until it,  
6 and the owner certification, if applicable, are  
7 officially recorded. I think that's what 620(b)  
8 reads.

9 MR. KING: I think that's why we were putting in  
10 terms of if it has been accepted for recording, it's  
11 been recorded, then the owner certification will have  
12 been there already, so we really didn't need an  
13 additional -- we didn't think we needed an additional  
14 certification from the owner for purposes of this tax  
15 credit application.

16 MR. MCGILL: I have a couple of questions  
17 regarding proportionate share.

18 MR. KING: I think I thought that was a different  
19 regulatory proceeding.

20 MS. MANNING: It is.

21 MS. HENNESSEY: There is a cross-reference, as you  
22 know, in Section 5814(b)3, which provides that after  
23 the Board has adopted a rule, proportionate, and the  
24 determinations as to credit available, shall be made

1 consistent with those rules.

2 I guess, first of all, how do you interpret that  
3 statutory provision? Do you interpret it as a --  
4 referring to the prohibition on anyone getting a tax  
5 credit if they have caused or contributed to a  
6 release?

7 MR. KING: What was the citation again?

8 MS. HENNESSEY: 58.14(b)3.

9 MR. KING: I think the key issue here that kind of  
10 draws 58.9 and the tax credit provision, linking them  
11 together, I don't see as much as the proportionate  
12 share issue but the -- but issue of cause or  
13 contribute, whether something is a proximate cause or  
14 it has contributed to a release; which, again, is  
15 another issue under 68.9. I don't think what we have  
16 here is inconsistent with what we put together in our  
17 proposal relative to the proportionate share liability  
18 rule.

19 You know, obviously, when we were kind of -- we  
20 have been on a parallel course of putting these things  
21 together, and we have tried to be cognizant of what's  
22 going on between the two. It's kind of why we have  
23 taken the approach that we have in this proposed rule  
24 in terms of -- if you look in 710(a)4, we have this

1 very lengthy certification, part of which is really  
2 this whole issue of whether somebody has caused or  
3 contributed in any material respect to the release.  
4 It's really certification process there, and then what  
5 we have done, so that we didn't put ourselves in a  
6 position of somebody using our acceptance of a  
7 certification for tax purposes, is undermining our  
8 ability to pursue our cost recovery for purposes of  
9 the proportionate share liability rules. We put in  
10 this Subsection C under that same section which says  
11 that our acceptance of that tax credit doesn't -- is  
12 not a binding effect as far as any enforcement or cost  
13 recovery.

14 We thought that based on where we were at when we  
15 were putting this together, that that was the best way  
16 to integrate what was going on with the PSL Rule and  
17 Tax Credit Rule. I think it still works in light of  
18 what we ended up proposing. I think this will still  
19 work regardless of what the Board ends up adopting as  
20 far as the PSL Rule. I think this will still work in  
21 those terms.

22 MS. HENNESSEY: What if you have a situation when  
23 someone has made this certification that they didn't  
24 cause or contribute in any material respect to the

1 release, but then it's later determined that this  
2 person did, in fact, cause or contribute to a release,  
3 either the proportionate share proceeding or any other  
4 type of proceeding, what would happen?

5 MR. KING: The procedure that would be employed at  
6 that time would be to let the Department of Revenue  
7 know that there is probably something that's in error  
8 that's been submitted on a prior tax return, and that  
9 there will be a need to look, going back and adjusting  
10 the tax liability relative to that earlier return.  
11 That would be the procedure that I would anticipate  
12 having.

13 MS. HENNESSEY: Would the Agency be issuing any  
14 kind of formal notification to Department of Revenue?

15 MR. KING: I think -- I don't think there would be  
16 a formal notification. It would be probably more of a  
17 letter, referral-type thing where we would -- there.  
18 I am sure there would be some Board order coming out  
19 of the enforcement or cost recovery case, and we would  
20 notify Department of Revenue through that letter,  
21 attaching the Board's order and whatever certification  
22 approval we had given earlier, and then leave them --  
23 leave it up to them to proceed with how they would  
24 handle the tax return situation.

1           MS. HENNESSEY: And if there was a pending action  
2 to determine proportionate share involved, the party  
3 that was applying for the tax credit, I take from your  
4 comment that you would not wait for the outcome of  
5 that proceeding, and would you accept the  
6 certification and proceed?

7           MR. KING: That's correct. We probably would just  
8 let the Department of Revenue -- let them know what  
9 the situation was so that they could be monitoring it  
10 for the future as a matter of coordination. So if  
11 they knew there was a result in that enforcement case,  
12 it could, at some point, impact tax liability for  
13 the -- you know, for the person.

14          MS. MANNING: Does the Department of Revenue have  
15 the discretion to not grant the tax credit if you have  
16 approved it through this process under these rules? I  
17 mean, they wouldn't, would they?

18          MR. KING: No. They would go ahead and approve  
19 it.

20          MS. MANNING: Sort of axiomatic. If you approve  
21 it under this, Department of Revenue, I think, has to  
22 approve it regardless of a false certification?

23          MR. WIGHT: I don't think that's our view, and I  
24 don't think it's their view either, because what we

1 are really doing is reviewing and, in a way, approving  
2 remediation costs and schedules to gather certain  
3 information for them. But I think that they --

4 MS. MANNING: So are they retaining the ability  
5 then to determine the question of liability in the  
6 context of their proceeding?

7 MR. WIGHT: Well, eligible for the tax credit. I  
8 mean, they may be in the same position we are. I am  
9 hesitant to say more because I am probably testifying  
10 here. But, I mean, I think they may be in the same  
11 position that we find ourselves. This simply isn't  
12 the proper forum to investigate that question. It's a  
13 question that requires a great deal of investigation  
14 regarding information that may or may not be readily  
15 available and could be a very time-consuming,  
16 expensive process, as I am sure we will discuss with  
17 when we get to the PSL Rule. But I think they would,  
18 at least, hold out the authority to deny tax credit if  
19 the eligibility factors aren't demonstrated to their  
20 action.

21 And, in fact, we do have some forms that are --  
22 they are draft DOR forms, so we hesitate to introduce  
23 them as an exhibit. But surely if you would read the  
24 relevant part there.

1 MS. BAER: Yeah. The way we have written,  
2 Illinois EPA has reviewed the application for review  
3 of the remediation cost for the applicants listed  
4 above, and found the total unreimbursable remediation  
5 cost for the site to be -- we will fill that in. And  
6 this is the language that the Department of Revenue  
7 has asked -- this is the form that we have probably  
8 attached to the tax form. The costs are, however,  
9 subject to additional examination and verification by  
10 the Illinois Department of Revenue to determine the  
11 proper amount of environmental remediation tax credit  
12 that may be claimed under Section 201(1) of the  
13 Illinois Income Tax Act, and that's IITA. We may want  
14 to reserve the right.

15 MR. MCGILL: That's a draft letter that would be  
16 from whom to who?

17 MS. BAER: This would be a draft certification  
18 that we give to the remedial applicant that he  
19 attaches to his form -- his tax return.

20 MS. BAER: The schedule they would be filing with  
21 the Department of Revenue.

22 MR. WIGHT: I misspoke. I said it was a DOR form.  
23 It is our form, but it is their language that they  
24 asked us to put on our tentative form.





1 government grant, UST Fund and insurance policy?

2 MR. KING: We came up with that. That seemed to  
3 us to be a reasonable list. Certainly there may  
4 perhaps be other things that could be included in that  
5 list. I am not sure exactly what they would be.  
6 Those were the sites that we thought would tend to  
7 come up most frequently, so that was why we put them  
8 in.

9 MR. MCGILL: Is this intended to be an exhaustive  
10 list, though?

11 MR. KING: Let me just double check. If you look  
12 at 740.730, I mean, those are -- this is also  
13 included. There is a series of items, but it comes  
14 under the banner of "include but are not limited to,"  
15 so that there could be -- there could be other  
16 reimbursements that would also not be eligible. But  
17 these were the ones that we saw as being the ones that  
18 would predominantly come up.

19 MR. MCGILL: In terms of the certification, that's  
20 all you were looking for?

21 MR. KING: I think that's correct.

22 MS. HENNESSEY: Is there a reason why you didn't  
23 have the certificate first mirror 740.730(e)?

24 MR. MCGILL: It mentions federal grants as well.

1 Is that the one?

2 MS. HENNESSEY: Yeah.

3 MR. KING: I think -- I don't know why they are  
4 not parallel. I think that comes in the oversight  
5 category. They should be parallel.

6 MR. MCGILL: I think earlier it was mentioned that  
7 the statutory basis for the idea of considering an  
8 eligible cost that's reimbursed is the Section 210(1)  
9 of the Illinois Income Tax Act, and the use of the  
10 term "unreimbursed eligible remediation costs"; is  
11 that correct?

12 MR. KING: I think that's correct.

13 MR. MCGILL: That same section of the Income Tax  
14 Act appears to specifically exclude costs that are  
15 deducted under the Internal Revenue Code or for which  
16 an environmental remediation credit is granted against  
17 a tax imposed under the Internal Revenue Code. Do you  
18 think these should be listed in the certification or  
19 in the exclusions in 730?

20 MR. KING: No. We didn't think that should be  
21 included there because that's more of an issue now of  
22 tax law as opposed to a definition of remediation  
23 costs. What we had included with our list was the  
24 notion of, well, here is a set of -- here is a set of

1 items that are no longer costs because they have been  
2 reimbursed. The issue of what is a deduction or a  
3 credit under the Federal Tax Code and how that  
4 interrelates to the State Income Tax Code, it means  
5 then you are almost putting the tax issue ahead of the  
6 remediation cost issue. We don't want to do that  
7 because this is supposed to be the decision before  
8 that.

9 MS. McFAWN: Are you saying you leave the  
10 determination to the DOR?

11 MR. KING: That's correct.

12 MS. LEE: Have you had discussions with DOR to  
13 that effect, after they received your form that there  
14 is an investigation or a test they should put to the  
15 claimed income tax credit?

16 MR. KING: I think, right, that's something they  
17 told us they would be doing.

18 MR. MCGILL: I had a question of what the limits  
19 are on what -- considering the costs being reimbursed.  
20 And the example I am thinking of is a real estate  
21 transaction where perhaps a purchaser of property is  
22 going to be performing a clean-up under the SRP, and  
23 maybe the seller of that property is going to pay for  
24 it through an indemnity or some contractual risk

1 allocation provision, would you consider cost to be  
2 ineligible in a situation like that?

3 MR. KING: I think we will have to defer that one  
4 until Friday and think about that.

5 MR. MCGILL: The next question then, I am  
6 referring to Section 740.105(a)3, would you exclude  
7 from the SRP investigative and remedial activities  
8 required under UST laws. In light of that, is the  
9 Agency --

10 MR. KING: I think -- What was the citation?

11 MR. MCGILL: 740.105(a)3. I think 105 is the  
12 applicability section in SRP, specifically (a)3.

13 MR. KING: Okay.

14 MR. MCGILL: I was just wondering, if in light of  
15 that provision, why the Agency believes it is  
16 necessary to refer to the UST Fund in this  
17 certification or the ineligible costs under 730?

18 MR. KING: I think the way you are reading it --  
19 the way you are reading the overall structure is that  
20 they -- if a site was going to be reimbursed, or at  
21 least the tank system was going to be reimbursed, then  
22 they wouldn't be under the SRP Program anyway.

23 MR. MCGILL: I am wondering about that.

24 MR. KING: Yeah. It's a good point. I think we

1   were just trying to be -- trying to be over-inclusive  
2   on this point but it is something we can think  
3   through.

4       MS. McFAWN:  If you are an ineligible tank under  
5   UST, then you need -- if you are an ineligible tank  
6   and ineligible to recover from the fund or reimbursed  
7   from the fund, your clean-up is under UST; isn't it?

8       MR. KING:  It can be.  It wouldn't -- just because  
9   you are ineligible from receiving money from the Fund  
10   doesn't mean that you are outside of a 731, but --  
11   731, so you could still be cleaning up as a tank under  
12   Part 731 without going into the separate remediation  
13   program.

14       MS. McFAWN:  Okay.  Could you go into the off-site  
15   remediation program or are you bound to do it under  
16   731?

17       MR. KING:  You could go into the site remediation.

18       MS. McFAWN:  You could go?

19       MR. KING:  I think that's correct.

20       MS. LEE:  Thank you for that clarification.

21       MR. MCGILL:  Just to question about the  
22   certification there in 710(a)4 -- this comes up in a  
23   couple other points -- should that refer to pesticides  
24   as well as regulated substances?

1       MR. KING: We are going to look at that. It seems  
2 from an issue of consistency perhaps adding pesticides  
3 is the appropriate thing to do. We will look at that  
4 issue.

5       MR. MCGILL: It is 730(c), for example, there is  
6 mention of pesticides. Another question I had about  
7 the certification is, it refers to the release not  
8 having been caused or contributed to any material  
9 respect by the RA or any related party as described  
10 under the Illinois Income Tax Act or any person whose  
11 tax attributes the RA has succeeded to under the  
12 Internal Revenue Code. Should that same language be  
13 provided in, for example, 740.710(c), rather than just  
14 referring to any related party?

15       MR. KING: We will take that back and review that  
16 as far as any additional language.

17       MS. HENNESSEY: I think the question, as I  
18 understand it, is, should the language in 710(c),  
19 mirror the language in the certification?

20       MR. KING: Right. There is an issue of whether  
21 the language should be parallel. We understand the  
22 question.

23       MS. HENNESSEY: Okay.

24       MR. MCGILL: Let's go off the record for a second.

1 (WHEREUPON, a recess was taken.)

2 MR. MCGILL: We left off with questions regarding  
3 Section 740.710. Did anyone else have any questions  
4 on Section 740.710?

5 Seeing none, we are going to move to some  
6 questions we had on Section 740.715. Looking at the  
7 certification in Section 740.715(c)1, does that  
8 certification mean that for the budget plan to be used  
9 as part of the final review, that the RA's actual line  
10 item costs must be equal to or less than each of the  
11 corresponding line item costs approved in the budget  
12 plan determination?

13 MR. KING: That's correct.

14 MS. HENNESSEY: What if only one of 200 line items  
15 happens to be above the line item costs as approved in  
16 the budget plan decision? How are you going to  
17 handle --

18 MR. KING: Well, it won't be 200.

19 MS. HENNESSEY: 20.

20 MR. KING: Well, it certainly wouldn't be 20. It  
21 would not be more than 6, around that range, maybe a  
22 few more. But those would be cut or reduced unless  
23 there was a justification brought forward as to why  
24 those need to be above that number.

1           MS. HENNESSEY: But as to the line items that are  
2 actually at or less than the budget plan, you are not  
3 going to revisit -- well, you have the authority to  
4 look at the documentation for those costs, but you are  
5 not going to revisit those in any -- just as to  
6 general eligibility?

7           MR. KING: Typically those are going to be the  
8 ones we are going to look, if it is less than the line  
9 item. If it is, it's okay. If -- there might be  
10 reason to look at those a little more closely. If  
11 every single one comes in at the exact amount the  
12 budget was, and, you know, there is maybe something  
13 looks like it is a little out of whack, we might look  
14 at it closer. But the idea is that if they are within  
15 those line item amounts that we see in that light, and  
16 proceed with reviewing process, and --

17          MS. HENNESSEY: As part of the certification could  
18 someone still sign it the way you have drafted but  
19 simply list exceptions?

20          MR. KING: No. That was not the way we were  
21 intending to do it.

22          MR. MCGILL: Since the only time that C would come  
23 into play is if the actual -- each of the actual line  
24 items was below each of the corresponding line items



1 in the approved budget plan; is that right?

2 MR. KING: Right.

3 MS. McFAWN: Do I understand if one line item is  
4 above the preliminary budget plan, it is really of no  
5 effect?

6 MR. KING: Well, I don't think that's quite true.  
7 There is going to have to be -- potentially they are  
8 going to go back and amend the plan and explain why  
9 it's been above that amount.

10 MS. McFAWN: Should they do that as part of the  
11 final review, or wouldn't you require them to list the  
12 exceptions and explain why they are an exception?  
13 They can't give you the certification unless they can  
14 certify to each and every being equal or less.

15 So let's say we have a line item that's above it,  
16 should they just not even submit the certification  
17 then?

18 MR. KING: I assume that's was going to happen.  
19 They won't submit it.

20 MS. McFAWN: Well, if there are six items, and  
21 five of them are equal or less, that I was the  
22 submitter, I would think that that takes care of five  
23 of them. We are on the same page on those five, and  
24 the sixth is where we are having questions. It is

1 applicable to five of the six.

2 MR. KING: Well, that's true. I mean, the fact  
3 that they are over the budget doesn't mean that those  
4 claimed costs are not going to be part -- approved,  
5 and they can be approved. We are just trying to set  
6 up a process that's -- that streamlines things and  
7 makes things go a little more smoothly for the guy who  
8 has met all of the line items.

9 MS. McFAWN: Okay. I guess if I was the  
10 submitter, and I have done a preliminary budget plan,  
11 and only one of them went over or two of them or  
12 whatever, I would want the benefit of the preliminary  
13 for those that came in at or below the budget.

14 MR. KING: Well, yes. In effect, that's the case.

15 MS. McFAWN: Right. But if you -- how do you get  
16 that into your final review process? Do you just go  
17 ahead and submit the preliminary review and say, well,  
18 you guys have this. I have it. So let's consider  
19 five out of the six items taken care of, just focus on  
20 the sixth. Wouldn't it be easier for you to know that  
21 five out of the six came in and you have the  
22 certification on five out of the six?

23 MR. KING: I think you wouldn't do that one single  
24 certification. We would see. Yes, you are okay on

1 five of those. You could not make this certification,  
2 but you could explain why that sixth item was over the  
3 budget and justify that overage.

4 MS. McFAWN: So then would you want them to put  
5 the certification in for the five out of the six so  
6 you have that in your file? Wouldn't that be easier  
7 for you as well as for the submitter?

8 MR. KING: I don't know that it makes it easier to  
9 do that.

10 MS. McFAWN: Why have anyone do this?

11 MR. KING: Why have anyone do it?

12 MS. McFAWN: Yeah.

13 MR. KING: I mean, why have anyone submit any kind  
14 of certification as to having met the budget plan?

15 MS. McFAWN: Uh-huh.

16 MR. KING: What we are looking at is 58.14(c) of  
17 the statute. If you look at the second paragraph in  
18 that section, we took this procedure in 715,  
19 Subsection C from that paragraph of the statute.

20 MS. McFAWN: I agree that's probably the section  
21 we should look at. I am curious. This doesn't say  
22 anything. Will line item -- actually if you come  
23 under -- if I read this in a different way, I could  
24 say, if I came under the total budget, you know, maybe

1 shifted some dollars from this line item up to that  
2 line item, and came in under budget at that line item,  
3 I should get approval. That's one way to read the  
4 statutory language.

5       Knowing what little I know about your UST review,  
6 it seemed like the line items are important. What I  
7 am wondering, I am not trying to do away with the line  
8 item analyses that you all do. I am just saying that  
9 I think -- wouldn't -- think about this, wouldn't it  
10 benefit the Agency to get the certification if you can  
11 do it for each and every line item, great; if you  
12 can't, I have them list the exceptions. Does the  
13 statutory language allow that?

14       MR. KING: We have to consider that.

15       MS. McFAWN: Yeah. I think it is worth thinking  
16 about.

17       MR. KING: Right.

18       MR. MCGILL: The last question that I had on  
19 Section 741.715 in Subsection D in the second line  
20 there, I was wondering if the word "estimated" should  
21 be removed referring to estimated remediation costs?

22       MR. WIGHT: What was that section again, please?

23       MR. MCGILL: 740.715(d).

24       MR. KING: We will take a little further review of

1 that, but in first reading it, that appears there  
2 might be some redundant language there or some -- an  
3 oversight on our part.

4 MR. MCGILL: Were there any other questions from  
5 anyone on Section 740.715?

6 Seeing none, we will move onto Section 740.720. I  
7 had a question on Subsection C. It refers to a  
8 reduced fee under Subsections (a)2 and (b)2. Just so  
9 I make sure I understand this, is the fee actually  
10 waived?

11 MR. KING: That's correct.

12 MR. MCGILL: Regarding the written certification  
13 under Section 740.720(c)2, is DCCA or the RA  
14 certifying information?

15 Just to clarify, RA is Remedial Applicant in the  
16 SRP program.

17 MR. KING: Well, the way we had put this  
18 together -- your understanding was that it would be  
19 DCCA doing certification; but as we were saying  
20 earlier, we are going through a rulemaking process on  
21 this as well, and so we kind of see -- as we go along  
22 with this and see where that ends up.

23 MR. MCGILL: So at this point, I guess, it's still  
24 unsettled. You said DCCA is going to be providing --

1       MR. KING: DCCA is going through their own  
2       rulemaking process relative to the statutory  
3       provisions.

4       MS. McFAWN: Do you know what their time line is,  
5       their time frame here?

6       MS. BAER: They filed their proposal today.

7       MS. McFAWN: Secretary of State filed their  
8       proposal today?

9       MS. BAER: That's what they planned on. I talked  
10      to them last week. They were hoping to file today.

11      MS. McFAWN: That might tell us about how to fix  
12      their procedures into this.

13      MR. KING: Right. So, I mean, from our  
14      standpoint, you know, the timing, it would have been  
15      nice to be able to actually refer to a part of their  
16      regulations, but it wasn't available at the time we  
17      were drafting these.

18      MS. McFAWN: I wonder if you call upon the Agency,  
19      maybe you can ask DCCA for a copy of those for  
20      Friday's meeting. They won't be published, as I  
21      understand it, for like at least two weeks in the  
22      Illinois Register. So if we can get a copy --

23      MS. BAER: -- of the file?

24      MS. McFAWN: Yes.

1       MR. WIGHT:  Actually we have seen earlier drafts,  
2   but part of what was going on there, they were making  
3   some changes based on changes that they anticipated  
4   would be made in the legislature this spring, and we  
5   understand that there are some bills that might affect  
6   some of these provisions; but we didn't think it  
7   appropriate to approach things that hadn't been passed  
8   yet.  So they may be doing some of that in their  
9   proposal, and we would have to check for those things  
10  tomorrow.

11       MS. McFAWN:  Okay.  Thank you.

12       MR. MCGILL:  Just to clarify, "RA" is Remediation  
13  Applicant.

14       Were there any other questions on Section 740.720  
15  from anyone?

16       Seeing none, we will move onto Section 740.725.  
17  Now the first item I just wanted to note, Section  
18  740.725(a)7 and 8, and actually this is in 730 --  
19  Subsection F there it says regulated substances but  
20  not pesticides.  I just wanted to hear from the Agency  
21  on whether that should also refer to pesticides.

22       MR. KING:  We will cover that when we have checked  
23  on the other item for consistency across the  
24  legislation.

1 MR. MCGILL: Thank you.

2 Referring now to Section 740.725(a)11, what  
3 application is being referred to in this Subsection?

4 MR. KING: I think it would be the document under  
5 740.715.

6 MR. MCGILL: So this is not referring to  
7 preparation of budget plan for preliminary review by  
8 the Agency?

9 MR. KING: You know, I should have said 710. I am  
10 sorry. Excuse me.

11 MR. WIGHT: Yeah.

12 MR. KING: I think -- no. We had not intended it  
13 to cover the budget review, at least the way we had  
14 had it set up here is it would not be covering 705.

15 MR. MCGILL: Okay. So just referring to the  
16 application in 740.710?

17 MR. KING: That's correct.

18 MS. McFAWN: Why wouldn't you include the  
19 preliminary budget application?

20 MS. BAER: Basically it would be when they  
21 submit -- when they submit like forms to us, they have  
22 a form, DRM2 form, all they do is check a box off. It  
23 is not really -- you know, that's the only thing that  
24 provides --



1           MS. McFAWN:  If they choose to present a  
2     preliminary review -- preliminary budget plan, don't  
3     you think that would cost them something to prepare  
4     that?

5           MS. BAER:  I think it is covered under -- so you  
6     are saying when they prepare their budget, they should  
7     be able to allow for that cost?

8           MS. McFAWN:  Would you consider that a remediation  
9     cost?

10          MR. KING:  We will go back and add that.  It seems  
11     like we may have a consistency issue there.  We will  
12     go back and review that.

13          MR. MCGILL:  I had a question.  The preparation of  
14     the application for final review, might that take  
15     place after the NFR letter is reviewed?  I think that  
16     application is supposed to actually include the NFR  
17     letter.

18          MR. KING:  Yes.  That's correct.

19          MR. MCGILL:  The Section 740.730(d), the last  
20     phrase in that subsection refers to -- these are  
21     ineligible costs referred to costs incurred after the  
22     date of issuance of a no further remediation letter.  
23     I am just wondering how the Agency would reconcile  
24     that -- those two provisions?

1       MR. KING: I guess we will have to look at that  
2 further because D, as I recall, is the language coming  
3 out of the statute -- statutory definition. And if we  
4 are interpreting that strictly, then that might mean  
5 11 would not, you know -- we wouldn't pay for an  
6 application. I think we will evaluate that further to  
7 see if we can resolve that consistency issue.

8       MR. MCGILL: I will just mention that 732 in the  
9 LUST Regulations 732.606(k), has a -- again, this is  
10 an eligible costs, and that refers to costs incurred  
11 for additional remediation after receipt of an NFR  
12 letter, if you want to take a look at that, among  
13 other things.

14       MR. KING: Right. We were just talking about that  
15 as we were formulating our answer to the question.

16       MR. MCGILL: The -- I just want to refer to  
17 Section 740.725(a)12, and I am wondering -- I believe  
18 there is some testimony earlier today about Section  
19 740.730(k). I am just wondering how the Agency would  
20 reconcile 725(a)12 with 730(k). I think, Mr. King,  
21 you have had some testimony earlier about the meaning  
22 of 730(k), but maybe you can just address that.

23       MR. KING: I think if you are looking at 12, the  
24 725(a)12, the concept there is that in order to plan,

1 and that you are doing certain activities to meet the  
2 requirements of that plan and those items, include  
3 removal or replacement of specific items of concrete  
4 and asphalt. And so that would be the kind of  
5 thing -- it would be something which I would consider  
6 to be eligible. On the other hand, if you have a  
7 piece of equipment on site, and you're backing into  
8 above-ground structures, or you are running over  
9 monitoring wells, that now you need to replace the  
10 monitoring wells, we wouldn't consider that to be the  
11 type of cost that should be considered eligible. And  
12 it really depends on the concept of whether something  
13 is being designed to be accomplished or somebody is  
14 just kind of being negligent in the way they are  
15 performing the operation.

16 MR. MCGILL: So 730(k) is really limited to  
17 negligent destruction?

18 MR. KING: Well, you could have, you know, a  
19 vandalistic -- I don't even know if that's a word --  
20 type of destruction where somebody intends to do it,  
21 but it really wasn't something that was envisioned as  
22 part of the plan, and so wouldn't necessarily be a  
23 negligent thing, but it would be something that was  
24 not intended activity.

1           MR. MCGILL: It wasn't -- is it correct to say  
2   that 730(k) is where the -- limited to situations  
3   where the damage or destruction doesn't occur as part  
4   of a RAP?

5           MR. KING: That's correct.

6           MR. MCGILL: Could you just provide an example.  
7   This is referring to Section 740.725(a)12, an example  
8   of the replacement of concrete, asphalt or paving that  
9   would be necessary to achieve remediation objectives.  
10   When would a replacement of concrete, asphalt or  
11   paving be necessary to achieve remediation objectives?

12          MR. KING: One of the situations that's  
13   encountered with some regularity, you have  
14   contamination that's under concrete or asphalt, and  
15   it's necessary to break up the pavement in order to  
16   get to the contamination and remove it. Then the  
17   replacement can act as an additional barrier there or  
18   just -- it seems like again, it's part of the  
19   remediation to go in and break up the concrete, dig  
20   out the contamination, and then replace the concrete  
21   with the same -- replace the surface with the same  
22   type of surface material that was there before.

23          MR. MCGILL: Would the replaced concrete have to  
24   be serving as an engineered barrier?

1 MR. KING: Not necessarily.

2 MR. MCGILL: So you could break up the concrete,  
3 remove the contaminated soil to Tier 1 residential  
4 TACO clean-up objectives, so there is no need for an  
5 engineered barrier, and then you put in your  
6 replacement concrete. That replacement concrete could  
7 be ineligible or would be eligible?

8 MR. KING: I think I have to back up on that. I  
9 was being informed that I may have misstated a  
10 response earlier. If we can respond in a little more  
11 detail, I don't want to give the wrong answer on the  
12 question, because we have had some experience with the  
13 Tank Program.

14 MR. MCGILL: That's fine. And, again, in Section  
15 740.725(a)13 and 14, why does the Agency limit those  
16 subsections to geologic materials?

17 MR. KING: You mean as opposed to a synthetic  
18 material?

19 MR. MCGILL: Sure.

20 MR. KING: What we are trying to do is to point  
21 out in these two sections clay soil or other  
22 appropriate geologic materials are allowed. It is not  
23 to exclude some other material from being considered  
24 as an eligible item.

1 MS. McFAWN: So maybe clearly synthetic materials,  
2 if they are going to serve as a cap, those aren't so  
3 controversial. So here you are trying to put out the  
4 one that may cause concern so that an applicant would  
5 know this is an eligible cost.

6 MR. KING: That's correct.

7 MR. MCGILL: I have a few questions regarding  
8 Section 740.725(a)15. To be covered by this  
9 subsection, does the -- I am quoting from the  
10 subsection -- does the, quote, destruction,  
11 dismantling, reassembly, or relocation, end quote, of  
12 the permanent above-grade structure have to be  
13 necessary to achieve remediation objectives pursuant  
14 to an approved RAP?

15 MR. KING: Can we defer on that? I would like to  
16 defer on that for Friday.

17 MR. MCGILL: Okay. Yeah. There are a couple of  
18 other questions.

19 MR. KING: I think -- let me make -- I understand  
20 your question when you are saying necessary to -- I  
21 think you were talking about necessary to remediation  
22 objectives. That is kind of the notion of what you  
23 were getting toward?

24 MR. MCGILL: Yes. Specifically Section

1 740.725(a)12, 13, and 14 seem to have language along  
2 those lines being necessary to achieve mediation  
3 objectives pursuant to an approved RAP. I was  
4 wondering --

5 MR. KING: You are really pointing out whether  
6 that concept that's spelled out in 12, 13, and 14 is  
7 embodied within 15 without saying so?

8 MR. MCGILL: Yeah. Should it be in 15 as well?

9 MR. KING: Okay. Well, we will take a further  
10 look.

11 MR. MCGILL: I had some other questions about how  
12 this --

13 MR. WIGHT: Excuse me. Before we move on, it is  
14 part of 15, if I am understanding the question -- I am  
15 a little confused.

16 MS. McFAWN: Not exactly the same language.

17 MR. WIGHT: Okay.

18 MR. KING: The phrase necessary to achieve  
19 remediation.

20 MS. McFAWN: In 15 has to do -- I was noting that  
21 in 15, it says: Plan post-remediation. Isn't the  
22 site versus the remediation objectives?

23 MR. MCGILL: I just had some other questions on  
24 how this provision, Subsection (a)15, works, and I can

1 pose these at this point or do you want to think on  
2 them, and you can take them on Friday? If you want to  
3 respond now, it's up to you.

4 Does each individual activity, that's the  
5 destruction, the dismantling, the reassembly or the  
6 relocation, does each individual activity have to be  
7 necessary to achieve the remediation objectives? And  
8 I can provide you an example. If an above-grade  
9 structure is dismantled to allow contaminated soil  
10 beneath to be removed up to Tier 1, residential TACO  
11 remediation objectives so that there would be no need  
12 for any engineered barrier, once the soil was removed,  
13 would the removal of the above-grade structure on that  
14 spot be eligible?

15 MR. KING: I would like to defer on that.

16 MR. MCGILL: I have just another question on that.  
17 What if -- in this example, what if the dismantled  
18 structure is not reassembled but disposed of off-site,  
19 would the cost of dismantling be covered?

20 MR. KING: We will get back to you.

21 MR. MCGILL: I was also wondering what's meant by  
22 the word "permanent" in describing the above-grade  
23 structures in Subsection (a)15.

24 MR. KING: We will take a look at all of those



1 questions.

2 MR. MCGILL: Okay. We may have a couple of  
3 follow-up questions on this, but I think we will hold  
4 off on them until Friday once we have heard you flush  
5 out this subsection.

6 Does anyone have any questions on 740.725?

7 Seeing none --

8 MR. WIGHT: Could I ask you to back up a moment.  
9 We are obviously not going to have a transcript to  
10 react to, and I am not sure I have gotten your last  
11 three questions on (a)15.

12 There was the question about whether or not  
13 reassembly of above-grade structure would be  
14 compensated from the destruction of the structure were  
15 necessary to achieve compliance with Tier 1 objectives  
16 where engineered barriers are not allowed to do that.  
17 I think that was the first. I didn't state that very  
18 well, but I think that was the gist of it, and there  
19 was the second question which I didn't get at all.

20 MR. MCGILL: Well, the first question was if you  
21 dismantled the above-grade structure to access the  
22 contaminated soil, you clean up that soil to Tier 1  
23 residential levels under TACO, is the reassembly of  
24 that above-grade structure an eligible cost? And the

1 second in the example was, is the dismantling cost  
2 eligible if you don't reassemble the above-grade  
3 structure and instead you dispose it to off-site?  
4 Actually I would be curious as to whether in that  
5 situation the off-site transport or disposal cost  
6 would be eligible.

7 Were there any other questions on Section 740.725?

8 Seeing none, we will move to the last section,  
9 Section 740.730. I had a question about terminology  
10 in various subsections in 730. The term -- different  
11 terms are used like remediation, remediation services,  
12 remediation activities. We were wondering if it would  
13 be more appropriate to use the term "remedial action"  
14 which is a defined term in SRP?

15 MR. WIGHT: That would be one that we would just  
16 have to go back and read each one in context and see,  
17 but I understand the need for consistency. If we can  
18 do that, that may be a useful change.

19 MR. MCGILL: I just had a question on Section  
20 740.730(h), and I was -- in the -- in Part 732 -- Part  
21 732, Section 732.605(a)14 and 732.606(c), it looks  
22 like the LUST Program has taken a different approach  
23 to vandalism and theft, and things along those lines.  
24 And I was just wondering if there was a reason for

1 different treatment in the SRP. And I do have a copy  
2 of Part 732 if you wanted to look at that now, or if  
3 you wanted to defer until Friday, that's fine.

4 MR. KING: I think you are referring to the  
5 language in the LUST Rule where it talks about owner  
6 or operator or agent, if the owner and operator is  
7 that kind of --

8 MR. MCGILL: Well, in 732.605(a)14, listed under  
9 potentially eligible costs, has cost incurred as a  
10 result of a release of petroleum because of vandalism,  
11 theft or fraudulent activity by a party other than an  
12 owner, operator, or agent of an owner, operator. And  
13 then 732.606(c) under ineligible costs says, costs  
14 incurred as a result of vandalism, theft or fraudulent  
15 activity by the owner, or operator, or agent of an  
16 owner or operator including the creation of spills,  
17 leaks or --

18 MR. KING: We will look at that further.

19 MR. MCGILL: Again, just in 740.730, I am  
20 referring to Subsection J, and Subsection P. There is  
21 a question about consistency of terminology. In  
22 Subsection J the Agency uses the terms contractor,  
23 subcontractor, or other person providing remediation  
24 services; and M refers to an operator or agent of the

1 RA, either directly or indirectly. I was wondering if  
2 any distinction is intended by using this different  
3 language?

4 MR. KING: We would have to look at that as well  
5 for consistency between the two.

6 MR. MCGILL: Okay. I have just questions about  
7 attorneys' fees. Looking at Section 740.725(a)1, I  
8 was wondering how the Agency reconciles to that  
9 provision with Section 740.730(m). As it would seem,  
10 preparation of bid documents and contracts would be  
11 things done by an attorney.

12 MR. KING: I thought we had a corresponding  
13 provision of LUST Rules. I am not seeing it right off  
14 the top of my head, and I will go back and look at  
15 that and see how that fits into the context of the  
16 discussion we had earlier about that.

17 MR. MCGILL: And a similar question for Section  
18 740.725(a)11, I don't know to the extent if an  
19 attorney would be involved in that preparation.

20 MR. KING: Right. Right. That was one of the  
21 items I talked about earlier as well.

22 MR. MCGILL: Section 740.730(m) includes an  
23 exception where attorneys' fees may be eligible. In  
24 that exception, can you explain the phrase, quote, and

1 the Board has not authorized payment of petitioner's  
2 legal fees, end quote.

3 MR. KING: The issue there is if the Board has  
4 authorized the payment of the fees, for instance, and  
5 then it was the Agency that had to pay those fees,  
6 then there wouldn't be a reason to apply the tax  
7 credit to that because, in essence, they will have  
8 been reimbursed.

9 MR. KING: I think that's the logic we have got.

10 MR. MCGILL: There is a similar provision in the  
11 LUST Provision 732.606(g), that says, quote, and the  
12 Board authorizes payment of legal fees, end quote.

13 MR. KING: I think so. You are saying there is a  
14 difference between the two.

15 MR. MCGILL: And there may be structural reasons  
16 between the two programs for treating them  
17 differently. I just --

18 MR. KING: Right.

19 MR. MCGILL: I want the Agency to provide  
20 testimony on that.

21 MR. KING: I am sure there is an explanation, but  
22 it is not real clear.

23 MR. WIGHT: We will provide it on Friday.

24 MR. MCGILL: Thanks.

1 MS. HENNESSEY: When you are addressing that  
2 question on Friday, if you could also just generally  
3 give us your opinion as to the eligibility of  
4 attorneys' fees as remediation costs. That's also a  
5 question that we have.

6 MR. KING: Could you restate that question?

7 MS. HENNESSEY: Yeah. Occasionally the Board  
8 placed limits on the Board's authority to award  
9 attorneys' fees. This is a situation that involves  
10 attorneys' fees as remediation costs, and we would  
11 just like to, I guess, have you verify that the Board  
12 does of -- the Board and the Agency have authority to  
13 allow attorneys' fees as remediation costs.

14 MR. KING: Well, I mean, if the Board in a  
15 proceeding directed that they should be allowed, we  
16 certainly would do that. That -- our issue has been  
17 one that we have consistently raised in the LUST  
18 Program is that attorneys' fees, other than some very  
19 limited situations, are not corrective action costs.  
20 And so that's what we have focused in on, is that  
21 other than the specific examples we have delineated,  
22 we really didn't feel they were corrective action. It  
23 was just too limited of a nexus between the actual  
24 physical activities and what the terms would be

1 considered to do corrective action.

2 MS. HENNESSEY: But then under this program you  
3 are going to consider certain attorneys' fees as  
4 remediation cost under 725, right?

5 MR. KING: I think what we would like to do is we  
6 have -- there was a suggestion made -- we had a  
7 provision put in here, and then RCGA suggested some  
8 additional language, some of which we thought might be  
9 okay. And then I think there was a question raised as  
10 to whether some other items should be included. I  
11 believe we probably would like a fairly specific set  
12 of things that would be reimbursable.

13 MR. MCGILL: Part of the concern is in the LUST  
14 Program, and I think there is actually statutory  
15 language on when legal defense costs might be  
16 eligible. I think it is something along the lines of  
17 where the owner, operator prevails before the Board  
18 statutorily set forth, and I don't believe there is an  
19 analogous statutory provision for attorneys' fees in  
20 this tax credit program.

21 MR. KING: You mean as far as them being allowed  
22 or being excluded?

23 MR. MCGILL: Being allowed.

24 MS. HENNESSEY: Is the exception in M -- the

1   exception in M, in fact, is one can as an allowance;  
2   is that right?

3           MS. McFAWN:   Yeah.

4           MR. MCGILL:   Yeah.

5           MR. WIGHT:   So the question -- the question is  
6   really, why are we allowing for any attorneys' fees to  
7   be paid.

8           MS. HENNESSEY:   Right.

9           MR. WIGHT:   Okay.

10          MR. KING:   I mean, we were trying to parallel what  
11   was in the LUST Rules.

12          MS. McFAWN:   You might want to revisit that  
13   question if you want to parallel LUST Rules.   You were  
14   indicating that's an exception, that's an unusual  
15   exception, and this exception under Subparagraph M  
16   puts you in somewhat of an awkward position.   You are  
17   basically allowing them to get a tax credit when they  
18   prevail.   Again, the Agency before the Board, but we  
19   haven't awarded for it.

20          MR. KING:   Okay.   We will take a look at that.

21          MR. MCGILL:   Okay.   Just a few more questions.  
22   Section 7040.730(p) suggests that costs incurred  
23   through delays and timely performance of remedial  
24   action may be eligible where the delay was caused by



1 an act of God or other listed causes. I was wondering  
2 how the Agency reconciles that with Section  
3 740.730(t).

4 MR. KING: We would have to look. I think that's  
5 a good point. We need to -- the cross-reference  
6 between the two needs to be set forth.

7 MR. MCGILL: And I was wondering regarding  
8 Subsection P, I believe that now reads, quote, where  
9 the delay was caused solely by an act of God, end  
10 quote. I was wondering if the exception should read  
11 something along the lines of, to the extent the delay  
12 was caused by an act of God.

13 MR. KING: I think that's good language for us to  
14 consider.

15 MS. McFAWN: I had a question about P. When I  
16 read that I thought the exception almost now includes  
17 vandalism, theft, negligence, all of those things you  
18 saw to exclude under H and I.

19 MR. KING: I think you are right. I think the  
20 point was raised earlier about H being tied into  
21 owner, operator or Remediation Applicant activities,  
22 and we need to have a better tie between P and H as  
23 well.

24 MS. McFAWN: Okay.

1       MR. MCGILL: This is the last question. Costs and  
2 indirect costs are defined terms in Section 740.120,  
3 and they both refer to costs incurred by the Agency.  
4 Nevertheless, costs and indirect costs are terms used  
5 in these proposed amendments. And I was wondering if  
6 the definition need to be modified or alternate  
7 language needs to be used.

8       MR. KING: We would have to take a look at that.  
9 That's a good suggestion as well on that because,  
10 direct -- there is -- direct and then indirect are  
11 intended to be broader than just Agency and cost, and  
12 those types of things.

13       MR. MCGILL: Does anyone else have any questions  
14 on Section 740.730?

15       MR. O'BRIEN: 740.730, specialized waste generator  
16 identification number, can we revisit that?

17       MR. MCGILL: Bob, why don't you state your name  
18 and.

19       MR. O'BRIEN: Bob O'Brien. It states obtaining a  
20 special waste generator identification number. You  
21 said you don't want to count that, but aren't there  
22 reasonable costs for obtaining one since that's part  
23 and parcel of disposing any set of waste?

24       MR. KING: The reason why in the Tank Program we

1 ended up excluding that is because we ran into abuse  
2 situations, and the cost for obtaining a special waste  
3 generator identification number or, you know, you make  
4 one phone call to the Agency and the number is  
5 assigned, and that's it. And we were having people  
6 submit bills in the Tank Program for \$500 or \$1,000  
7 for the costs of getting these numbers. And so for  
8 purposes of the Tank Program, we chose to close off a  
9 situation that we considered to be an abuse. We put  
10 it in there. We just carried over the same provision.

11 So, I mean, yes, there are some costs to getting  
12 the special waste generator identification number, but  
13 rather than have an abuse situation, we thought we  
14 would just exclude it.

15 MR. MCGILL: Thank you.

16 Did anyone else have any questions for the Agency  
17 on Section 740.730? Okay. Did anyone have any other  
18 questions for the Agency today on any aspect of the  
19 proposal or otherwise?

20 MS. HENNESSEY: Is the same panel going to be  
21 available on Friday?

22 MR. WIGHT: Yes.

23 MR. MCGILL: Seeing that there are no further  
24 questions, there are a few procedural items we will

1 take care of.

2 Let's go off the record for a moment.

3 (WHEREUPON, a recess was taken.)

4 MR. MCGILL: I just checked the sign-up sheet to  
5 see if anyone else wanted to testify today, and no one  
6 has signed up to testify. Is there anyone else who  
7 would wish to testify today?

8 Seeing no response, I will just move on to a few  
9 procedural matters we have to address before we  
10 adjourn.

11 As I mentioned earlier today, there are two more  
12 hearings presently scheduled in this rulemaking. The  
13 next hearing will take place this Friday, February  
14 27th, at 10:00 a.m. at the Illinois State Library, 300  
15 South Second Street, Room 403/404 in Springfield,  
16 Illinois. An additional hearing is scheduled for  
17 Tuesday, March 17, 1998 at 10:00 a.m., also at the  
18 Illinois State Library, but in the Illinois Authors  
19 Room.

20 The purpose of the latter hearing is to receive  
21 testimony concerning the Department of Commerce and  
22 Community Affairs' explanation for not producing an  
23 economic impact study on the proposed rules.

24 Copies of the transcript of today's hearing should

1 be available here at the Board by Friday February  
2 27th, and shortly after that we will put the  
3 transcript on our home page on the World Wide Web.  
4 Our home page is located at [www.ipcb.state.il.us/](http://www.ipcb.state.il.us/).

5 Are there any other matters that need to be  
6 addressed at this time?

7 MR. WIGHT: It's a question about what you expect  
8 from us on Friday. Would you anticipate then that we  
9 would be first up in Friday's hearing to respond to  
10 these questions prior to your taking your testimony?

11 MR. MCGILL: yeah. I think that's what we would  
12 probably do. I know RCGA has indicated they wanted to  
13 provide testimony this Friday. Counsel for the RCGA  
14 is here, Eugene Schmittgens.

15 Do you have any objection to starting off Friday  
16 with the Agency?

17 MR. SCHMITTGENS: None, sir.

18 MR. MCGILL: Thank you.

19 Are there any other matters that need to be  
20 addressed before we adjourn?

21 Seeing none, I would like to thank everyone for  
22 their participation today. This hearing is adjourned.

23 (WHEREUPON, the hearing was adjourned.)

24

