

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED AMENDMENTS TO TIERED  
APPROACH TO CORRECTIVE ACTION  
OBJECTIVES (35 ILL. ADM. CODE 742)

R06-10  
(Rulemaking-Land)

Proceedings held on March 1st, 2006, at 10:30 a.m. at the Illinois Environmental Protection Agency, North Entrance, TQM Room, 1000 E. Converse, Springfield, Illinois, before Richard R. McGill, Jr., Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR  
CSR License No.: 084-004316

KEEFE REPORTING COMPANY  
11 North 44th Street  
Belleville, IL 62226

1 HEARING OFFICER MCGILL: Sure. Yeah, that will not be a  
2 problem. But go ahead, again just state your name and the  
3 organization you're representing.

4 MR. THOMAS: Jarrett Thomas with Suburban Laboratories. I  
5 too would like to give a brief summary.

6 HEARING OFFICER MCGILL: Okay. Just -- And that's fine. I  
7 think we may save some time with the three Agency witnesses  
8 unless -- before we went on the record I was conferring with  
9 counsel for the agency, Ms. Kim Geving, and the Agency's  
10 comfortable not providing brief summaries. Is there any  
11 objection to the Agency's witnesses not running through a brief  
12 summary of their testimony? Is there anyone who would rather  
13 hear their summaries? Okay. Seeing no response, I think we'll,  
14 at least with the Agency witnesses, dispense with the summaries.

15 Are there any questions about the procedures we're going to  
16 be following today? I would ask that everyone please speak up  
17 and try not to talk over one another so our court reporter can  
18 clearly transcribe everyone's comments.

19 I'm going to -- At this point since the Agency witnesses  
20 are not going to be providing any summaries of their testimony,  
21 what I'd like to do is take care of some paperwork here. The  
22 Agency filed a Motion to Correct Portions of the Hearing  
23 Transcript, the first hearing transcript, the February 21, 2006,  
24 motion. Is there any objection to granting that motion, to

1 corrections to the first hearing transcript? Seeing no  
2 objection, I'll grant that Agency motion.

3 There are several proposed hearing exhibits. We had six  
4 hearing exhibits from the first hearing. Now there are several  
5 more Agency exhibits that are being proposed. The first is  
6 Errata Sheet Number 3 from IEPA. Is there any objection to  
7 entering that as a hearing exhibit? Seeing none, Errata Sheet  
8 Number 3 will be Exhibit 7. Is there any objection to entering  
9 into the record, as if read and made a hearing exhibit, the  
10 Pre-filed Testimony of Gregory Dunn? Seeing none, I'll grant  
11 that motion. That will be Exhibit 8, Pre-filed Testimony of Mr.  
12 Dunn entered as if read. The next motion is for the Pre-filed  
13 Testimony of Dr. Thomas Hornshaw of the Agency. Is there any  
14 objection to entering that as a hearing exhibit and entering it  
15 as if read? Seeing none, I'll grant that motion and that will be  
16 Exhibit 9. And last, Pre-filed Testimony of Lawrence Eastep of  
17 the Agency. Is there any objection to having that entered into  
18 the record as if read and made a hearing exhibit? Seeing none,  
19 that will be Hearing Exhibit 10. And that is entered into the  
20 record as if read.

21 With that, at this point what I'd like to do is open it up  
22 to questions for the Agency's witnesses. I understand the Agency  
23 would like to field the questions as a panel. I'm going to go  
24 ahead and have the court reporter swear in the Agency's witnesses

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ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO	)	
TIERED APPROACH TO	)	
CORRECTIVE ACTIO	)	No. R06-10
OBJECTIVES (35 ILL. ADM.	)	Rulemaking-Land
CODE 742)	)	

The following is a transcript  
held in the above-entitled cause, taken  
stenographically before TERRY A. BUCHANAN,  
CSR, a notary public within and for the  
County of Will and State of Illinois, at  
Suite N502, 160 North LaSalle Street,  
Chicago, Illinois, on the 31st day of  
January, A.D., 2006, commencing at 10:30  
o'clock a.m.

## 1       A P P E A R A N C E S:

2           ILLINOIS POLLUTION CONTROL BOARD,

3           100 West Randolph Street

4           Suite 11-500

5           Chicago, Illinois 60601

6           (312) 814-6983

7           BY: MR. RICHARD R. MCGILL, JR.

8                       (HEARING OFFICER)

9           ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

10          1021 North Grand Avenue East

11          Springfield, Illinois 62794

12          (217) 782-5544

13          BY: MS. KIMBERLY A. GEVING and

14                       MS. ANNET C. GODIKSEN

15       BOARD MEMBERS PRESENT:       IEPA WITNESSES:

16       Nicholas Melas

Thomas Hornshaw

17       Thomas Johnson

Gregory Dunn

18       Andrea Moore

Lawrence Eastep

19       G. Tanner Girard

Douglas Clay

20       Anand Rao

Gary King

21       Alisa Liu

22

23

24

1                   HEARING OFFICER MCGILL: We're  
2 going to go on the record.

3                   Good morning. I'd like to  
4 welcome you to this Illinois Pollution  
5 Control Board hearing in Chicago.

6                   My name is Richard McGill  
7 and I'm the hearing officer for this  
8 rulemaking proceeding docketed as  
9 R06-10, in the matter of proposed  
10 amendments to the tiered approach to  
11 corrective actions objectives, 35  
12 Illinois Administrative Code 742.

13                   Briefly, by way of  
14 background, on September 30, 2005 the  
15 Board received this rulemaking proposal  
16 from the Illinois Environmental  
17 Protection Agency. Generally, the  
18 tiered approach to corrective action  
19 objectives, or TACO, rules provide  
20 procedures for developing remediation  
21 objectives based on risks to human  
22 health post by sites environmental  
23 conditions.

24                   The Agency states that its

1 proposed amendments are designed to  
2 improve procedures and reflect updated  
3 contaminant standards, test methods and  
4 toxicity criteria.

5 On October 20th, 2005, the  
6 Board accepted the Agency's proposal  
7 for hearing.

8 Today is the first hearing  
9 in this rulemaking. A second hearing  
10 is currently scheduled for March 1,  
11 2006 in Springfield.

12 Also present today on behalf  
13 of the Board, to my left, member Andrea  
14 Moore, the lead Board member for this  
15 rulemaking. To her left, Dr. Tanner  
16 Girard, acting chairman of the Board  
17 and to his left, member Thomas Johnson.  
18 To my right, the Board's technical  
19 unit, Anand Rao and Alisa Liu.

20 Today's proceeding is  
21 governed by the Board's procedural  
22 rules. All information that is  
23 relevant and not repetitious or  
24 privileged will be admitted into the

1 record.

2 We will begin with the  
3 Agency's testimony. The Agency  
4 prefiled its testimony, so they will be  
5 providing summaries of that prefiled  
6 testimony.

7 After that, we will have  
8 questions from any members of the  
9 public here as well as questions from  
10 the Board for the Agency's witnesses.  
11 After that, anyone else may testify  
12 time permitting and I would expect  
13 there will be time for that today.

14 Those who testify will be  
15 sworn in and may be asked questions  
16 about their testimony.

17 For those who wish to  
18 testify today, but who did not prefile,  
19 there is a sign-up sheet to my left  
20 there in the center of the room by the  
21 entrance.

22 For the court reporter  
23 transcribing today's proceeding I would  
24 ask that you, please, speak up and do

1 not talk over one another and, please,  
2 identify yourself by name and title and  
3 organization before giving testimony or  
4 before posing a question.

5 Any questions about our  
6 procedures today? Seeing none, I would  
7 ask the court reporter to swear in the  
8 Agency's witnesses collectively.

9 (Whereupon, the Agency's  
10 witnesses were sworn in.)

11 HEARING OFFICER MCGILL: Thank  
12 you. I will now ask Agency attorney,  
13 Kimberly Geving to begin the Agency's  
14 presentation.

15 MS. GEVING: Good morning. As  
16 stated, my name is Kim Geving. I am  
17 assistant counsel for the division of  
18 legal counsel, bureau of land, Illinois  
19 Environmental Protection Agency and to  
20 my right is co-counsel Annet Godiksen,  
21 assistant counsel for the bureau of  
22 air.

23 This morning we're going to  
24 start with testimony summary by Gary

1 King who is to my far right.

2 Mr. King, I'm going to show  
3 you what's been marked as Exhibit 3 for  
4 identification and if you could,  
5 please, tell me what that is.

6 MR. KING: This is a copy of the  
7 testimony that I prepared for purposes  
8 of this proceeding.

9 MS. GEVING: Is that a true and  
10 accurate copy of what we filed with the  
11 Pollution Control Board in this matter?

12 MR. KING: Yes, it is.

13 MS. GEVING: At this time I  
14 would request that the Board accept  
15 this into the record.

16 HEARING OFFICER MCGILL: Okay.  
17 Just for clarification, this is being  
18 marked as Exhibit 3. There are  
19 Exhibits 1 and 2 which the Agency plans  
20 to be offering. Those are errata  
21 sheets one and two respectively.

22 Regarding Exhibit 3,  
23 Mr. Gary King's prefiled testimony, is  
24 there any objection to entering this as

1           Hearing Exhibit 3 and entering it into  
2           the record as if read? Seeing none,  
3           we'll do that.

4                    MS. GEVING: Mr. King, if you  
5           would, please, provide a summary of  
6           your testimony for the record?

7                    MR. KING: As I said, my name is  
8           Gary King. I'm the manager of the  
9           division of remediation management  
10          within the bureau of land of the  
11          Illinois EPA. I've been in that title  
12          since May of 1990. Within that  
13          division are three sections, all of  
14          which deal with remediation efforts of  
15          the agency and all three of which deal  
16          with the TACO regulations that we're  
17          here to talk about this morning.

18                    I've testified in numerous  
19          rulemaking proceedings before the  
20          Board, including all of the rulemakings  
21          under Title 17 that led to the adoption  
22          of the site remediation program and to  
23          the TACO rules.

24                    In this case we're proposing

1 amendments to part 742. We've been  
2 implementing part 742 since it was  
3 adopted in 1997. It has proven to be a  
4 very effective methodology for  
5 developing remediation objectives. I  
6 had the opportunity to do some  
7 traveling on behalf of the Illinois EPA  
8 through our national trade organization  
9 and I certainly get a lot of inquiries  
10 as to what Illinois does and is doing  
11 with regards to their remedial  
12 objectives program under TACO and I've  
13 personally spoken with state  
14 environmental representatives from  
15 Indiana, Missouri, Wisconsin, New York  
16 and Mississippi as they have developed  
17 their own state programs and have  
18 looked to Illinois TACO rules to help  
19 guide their decision-making.

20 As we have progressed with  
21 the implementation of TACO over the  
22 last year -- eight years we have found  
23 the need for updating and refinements  
24 either based on new information, that's

1 something I'm going to be talking about  
2 a little bit later, or from operational  
3 experience, which is one of the things  
4 I'm talking about this morning.

5 I'm not going to go through  
6 all the changes that are discussed in  
7 my testimony, but just let me talk  
8 about a couple of things.

9 We made some changes to the  
10 applicability provision and those  
11 aren't really -- those are not intended  
12 to do anything new with regards to how  
13 the TACO rule operates, but they  
14 represent longstanding Agency practices  
15 in interpreting TACO. For instance, in  
16 the original TACO rulemaking in 1997 I  
17 testified that landfills were not an  
18 appropriate fit for use of TACO because  
19 of technical and regulatory issues and  
20 really 742.105(h), that's really  
21 confirming that concept.

22 We've made a number of  
23 changes on the institutional control  
24 provisions and those are really

1 intended to reflect our experience with  
2 regards to using those institutional  
3 controls over the last eight years.

4 One of the things we  
5 progressed in implementing the rule  
6 when it first came out, it was just the  
7 rulemaking language and we learned that  
8 it would be appropriate to develop  
9 model documents. We developed model  
10 documents over the years. We then took  
11 those model documents and posted them  
12 on our web site to make them easy to  
13 use. We now think we're at a point  
14 where it's appropriate to codify those  
15 modeled documents within the TACO rule  
16 itself. That will help in terms of --  
17 sometimes we've had issues come up and  
18 we wanted to make sure that those were  
19 clarified and that the format of how  
20 those documents should be handled  
21 should be -- place it right in the rule  
22 itself.

23 I think that concludes my  
24 summary of my testimony. I'll be happy

1 to take questions at this time.

2 HEARING OFFICER MCGILL: Does  
3 the Agency prefer to take questions of  
4 an individual witness or as a panel?

5 MS. GEVING: I would prefer we  
6 do it as a panel.

7 HEARING OFFICER MCGILL: That's  
8 fine. Why don't you proceed then with  
9 your next witness?

10 MS. GEVING: My next witness is  
11 Dr. Tom Hornshaw who is the manager of  
12 the toxicity assessment unit for our  
13 Agency and I have three documents to  
14 show you this morning, Dr. Hornshaw.

15 The first one has been  
16 marked as Exhibit 1 for identification.  
17 If you could take a look at that,  
18 please, and identify it for the record.

19 MR. HORNSHAW: This is errata  
20 sheet number one.

21 MS. GEVING: And is that a true  
22 and accurate copy of what we filed with  
23 the Pollution Control Board?

24 MR. HORNSHAW: Yes, it is.

1 MS. GEVING: Thank you very  
2 much. I'm going to show you now  
3 Exhibit 2 marked for identification.  
4 If you could, please, identify that for  
5 the record?

6 MR. HORNSHAW: Errata sheet  
7 number two.

8 MS. GEVING: And is that a true  
9 and accurate copy of what we have filed  
10 with the Pollution Control Board?

11 MR. HORNSHAW: Yes, it is.

12 MS. GEVING: The third is marked  
13 as Exhibit 4 for identification. If  
14 you could, please, identify that.

15 MR. HORNSHAW: This is a copy of  
16 the prefiled testimony I prepared for  
17 this hearing.

18 MS. GEVING: And is that a true  
19 and accurate copy of what we filed with  
20 the Pollution Control Board?

21 MR. HORNSHAW: Yes, it is.

22 MS. GEVING: At this time I  
23 would request that the Board accept  
24 these into the record as if read and

1           then Dr. Hornshaw may provide his  
2           summary of testimony.

3                       HEARING OFFICER MCGILL:   Okay.  
4           We'll take these one at a time.

5                       There's a motion to enter  
6           errata sheet number one as a hearing  
7           exhibit.  Is there any objection to  
8           that?  Seeing none, errata sheet number  
9           one is Hearing Exhibit No. 1.

10                      The second motion is for  
11           errata sheet number two to become  
12           Hearing Exhibit No. 2.  Is there any  
13           objection to that?  Seeing none, errata  
14           sheet number two will be our Hearing  
15           Exhibit No. 2.

16                      And finally a motion to  
17           enter as if read the prefilled testimony  
18           of Thomas Hornshaw.  Any objection to  
19           that?  Seeing none, that will be  
20           entered as if read and will be  
21           designated as Hearing Exhibit 4.  Thank  
22           you.

23                      MS. GEVING:  Dr. Hornshaw, you  
24           may proceed with your summary.

1                   MR. HORNSHAW: Before I  
2                   summarize my testimony I have to  
3                   confess that it's probably my fault  
4                   primarily that we had to do errata  
5                   sheet numbers one and two. I've been  
6                   extremely busy with writing the report  
7                   that the legislature has required of us  
8                   regarding flame retardants and I didn't  
9                   get a chance to review the full copy of  
10                  TACO until very late in the proceedings  
11                  when I caught some of the typos and  
12                  things that I will be discussing, so I  
13                  confess, I was the culprit.

14                         Regarding my testimony, it's  
15                         in four pieces basically. The first  
16                         has to do with toxicity information  
17                         that has changed from USEPA. As in the  
18                         first amendment to TACO there are a  
19                         handful of chemicals that USEPA has  
20                         updated the toxicity data. There are  
21                         six of them this time that require  
22                         changes in the Tier 1 tables. We also  
23                         learned in discussions with our  
24                         counterparts in region five, the

1 toxicologist in region five, that EPA  
2 does Manganese kind of differently, the  
3 chemical Manganese differently. When  
4 they developed the toxicity information  
5 originally they did not account for the  
6 Manganese that people take from their  
7 diet so they have since reduced the  
8 toxicity criteria to account for the  
9 exposure that comes from diet and water  
10 so we've done that with Manganese in  
11 the Tier 1 tables as well.

12 The second portion of my  
13 testimony deals with lead. There have  
14 -- in the original TACO the only  
15 toxicity information available is  
16 regarding childrens exposure to lead  
17 and soil and because of that objective  
18 for all of the exposure routes;  
19 residential, industrial, commercial,  
20 construction and migration to  
21 groundwater were 400 milligrams per  
22 kilogram in the soil because that was  
23 the only data available. Since then we  
24 have talked with USEPA staff about how

1 to deal with adult exposures to lead.  
2 We have used the adult blood lead model  
3 to calculate objectives for industrial,  
4 commercial and construction workers  
5 rather than have them based on a  
6 child's exposure and we also got a  
7 document from USEPA that gives us a way  
8 of calculating pH specific migration to  
9 groundwater objectives. So we're  
10 proposing to fill in the Tier 1  
11 toxicity tables with new values for  
12 lead.

13 Another thing that I'm  
14 testifying to has to do with the major  
15 nutrients, calcium, magnesium,  
16 phosphorous, sodium and potassium.  
17 We've had numerous inquiries about how  
18 to deal with these major nutrients  
19 because laboratories quite often report  
20 them. When they show up on an  
21 analytical sheet some people have  
22 determined that they need objectives  
23 for them so what we did was look at the  
24 intakes that would come from normal

1 diet and made calculations based on how  
2 much that intake would compare with the  
3 intakes that are assumed for the TACO  
4 cleanup calculations and we have  
5 decided that most of the major  
6 nutrients do not need to have cleanup  
7 objectives because the daily diet is  
8 already so much more than you would  
9 expect just from incidental ingestion  
10 of soil.

11 And then the last thing on  
12 my testimony deals with a lot of the  
13 things that are in the two errata  
14 sheets, minor changes and corrections  
15 in the text. There were some  
16 formatting problems that occurred and  
17 so we made quite a bit of changes that  
18 were either held over from the previous  
19 update of TACO and there were some text  
20 corrections that had to be made as well  
21 as some formatting problems that turned  
22 up some screwy things in the draft  
23 that's before the Board right now.

24 A couple of other things, we

1 had to update analytical methodology  
2 and a couple of the incorporations by  
3 reference to bring them up-to-date with  
4 current publications.

5 We had to clarify how  
6 compositing and averaging should be  
7 done to show compliance with  
8 remediation objectives and finally,  
9 because of a quirk in the software that  
10 we use to calculate remediation  
11 objectives, we found that our software  
12 treated mercury as a particulate even  
13 for the inhalation exposure route and  
14 when we forced it to treat it as a  
15 vapor instead of a particulate it  
16 resulted in fairly large changes in the  
17 remediation objectives for mercury for  
18 the construction worker and the  
19 industrial commercial worker, so we  
20 made those changes.

21 That's the summary of my  
22 testimony.

23 HEARING OFFICER MCGILL: Thank  
24 you.

1                   MS. GEVING: The Agency's third  
2                   witness is Larry Eastep. Larry is now  
3                   retired, but he is the former manager  
4                   of the remedial project management  
5                   section and is back on contract with  
6                   the state for purposes of this hearing.

7                   Mr. Eastep, I'm going to  
8                   show you what's been marked as  
9                   Exhibit 5 for identification. If you  
10                  would, please, identify that for the  
11                  record.

12                  MR. EASTEP: This is a copy of  
13                  the prefiled testimony that I prepared.

14                  MS. GEVING: Is that a true and  
15                  accurate copy of what we filed with the  
16                  Pollution Control Board?

17                  MR. EASTEP: Yes, it is.

18                  MS. GEVING: At this time I  
19                  would request that the Board enter this  
20                  into the record as read.

21                  HEARING OFFICER MCGILL: We have  
22                  a motion to enter into the record as if  
23                  read the prefiled testimony of Lawrence  
24                  Eastep. Any objection to that? Seeing

1 none, we will enter this as a Hearing  
2 Exhibit 5 and enter it into the record  
3 as if read.

4 MS. GEVING: Mr. Eastep, you may  
5 proceed with your summary.

6 MR. EASTEP: I really prepared  
7 testimony to address two issues. The  
8 first of which is being the background,  
9 polynuclear aromatic hydrocarbons.  
10 Because of the experience in the site  
11 remediation program it became evident  
12 after a couple of years that we were  
13 seeing levels of certain polynuclear  
14 aromatic hydrocarbons or PNAs as I'll  
15 refer to them. We were seeing PNAs  
16 occur very frequently in situations not  
17 just in heavily industrialized areas,  
18 but throughout the state as well. The  
19 more we looked into it the more we  
20 became aware that there was perhaps a  
21 background in the state of these  
22 particular chemicals, although we  
23 didn't -- at the time we didn't have  
24 enough information to really quantify

1           what that background was.

2                         In about 19 -- excuse me.

3           About 1999 or 2000 we started  
4           addressing the issue and we addressed  
5           it really two ways. A Brownfield's  
6           grant was issued to the City of Chicago  
7           to do a PNA background study strictly  
8           within the city limits of Chicago. We  
9           also talked with the Electric Power  
10          Research Institute, which is a group  
11          that is funded -- it's a nationwide  
12          group funded by utilities across the  
13          country and they were also interested  
14          in this topic and so the Electric Power  
15          Research Institute or EPRI conducted a  
16          study across the state exclusive of the  
17          boundaries of the city of Chicago. We  
18          weren't active partners nor did we fund  
19          the EPRI study, but we did work with  
20          them throughout the process and we were  
21          in constant communication and  
22          consultation with EPRI.

23                         What resulted from both of  
24          these studies were the identification

1 of naturally occurring levels of PNAs  
2 throughout the state in what we've  
3 defined as populated areas and what we  
4 did here with this change is we created  
5 a table and allowed people to use, if  
6 they qualify, to use the background  
7 PNAs. I'll be available for questions  
8 later on the PNA issue.

9 The other particular part  
10 that I addressed, the inclusion of  
11 construction worker objectives for  
12 certain chemicals in appendix B, table  
13 A for the residential scenario. There  
14 are a number of chemicals that have  
15 industrial, commercial, construction  
16 worker remedial inhalation objectives  
17 that are more stringent than  
18 residential inhalation objectives.  
19 However, the manner in which TACO is  
20 used allows for the construction  
21 activities on residential properties.  
22 For example, a site cleaned up to  
23 residential objectives might be  
24 expected to have construction on

1 residential property, et cetera.  
2 Additionally, many states clean up to  
3 TACO residential objectives even though  
4 the intended use of the property might  
5 be industrial. In other words, they're  
6 kind of going that extra step to clean  
7 up a little better. Therefore, in  
8 order to protect the construction  
9 worker we felt that it was necessary to  
10 apply industrial, commercial  
11 construction worker remedial inhalation  
12 objectives to residential scenarios.  
13 Trying to do that, there were several  
14 options we could have looked at and we  
15 felt that since there were only 28  
16 chemicals involved, what we did was  
17 footnote those 28 chemicals in the Tier  
18 1 table and that footnote directs the  
19 reader to apply the construction worker  
20 inhalation objectives in these  
21 particular instances.

22 That concludes my summary.

23 HEARING OFFICER MCGILL: Thank  
24 you. Why don't we proceed with your

1 next witness then?

2 MS. GEVING: The Agency's fourth  
3 witness is Greg Dunn and Greg is the  
4 manager of one of the voluntary site  
5 remediation units for the Agency.

6 Greg, I'm going to show you  
7 what's been marked as Exhibit 6 for  
8 identification. If you would, please,  
9 identify that for the record.

10 MR. DUNN: This is a copy of my  
11 prefiled testimony.

12 MS. GEVING: Is that a true and  
13 accurate copy of what we filed with the  
14 Pollution Control Board?

15 MR. DUNN: Yes, it is.

16 MS. GEVING: At this time I  
17 would request that the Board enter this  
18 into the record as if read.

19 HEARING OFFICER MCGILL: There's  
20 a motion to enter into the record as if  
21 read the prefiled testimony of Gregory  
22 Dunn. Is there any objection to that?  
23 Seeing none, this will be entered into  
24 the record as if read and identified as

1           Hearing Exhibit 6. Thank you.

2                   MS. GEVING: Mr. Dunn, you may  
3           proceed with your summary.

4                   MR. DUNN: Thank you, Kim.

5                   Good morning. Again, my  
6           name is Greg Dunn. I am manager of one  
7           of the voluntary site remediation units  
8           with the bureau of land at the Illinois  
9           Environmental Protection Agency. My  
10          testimony has been prefiled, therefore,  
11          I will summarize my testimony.

12                   The Agency is proposing a  
13          number of changes to the incorporations  
14          by reference. This is done to update  
15          to the most current and up-to-date  
16          documents available to us and those  
17          changes are outlined in my proposal, in  
18          my prefiled testimony.

19                   The second area is  
20          determining fraction organic carbon.  
21          This problem was identified by an  
22          outside lab to us about a month -- a  
23          year and a half ago that the way the  
24          fraction organic carbon was calculated

1           may be wrong. There are two methods  
2           identified in TACO right now to  
3           determine the fraction organic carbon  
4           of a site. The first one is the ASTM,  
5           that's the American Society for Testing  
6           Materials method D2974 and USEPA SW-846  
7           method 9060(a). I'm going to briefly  
8           go over the two methods. 9061(a) is a  
9           water method. However, you can modify  
10          this method for soil. However, this  
11          method had some problems. The sample  
12          amount that you use for this method is  
13          very small, somewhere in the range of  
14          ten to 50 milligrams and there is no  
15          standard protocol to modify this method  
16          for soils. With the small sample that  
17          you have to analyze for the fraction  
18          organic carbon obtaining reproducible  
19          results are very difficult. Method  
20          9060(a) does give you a total organic  
21          carbon number, however. Under the ASTM  
22          method it produces a total organ matter  
23          concentration. This is an identified  
24          method that has been widely used

1           throughout by ASTM and this is  
2           something they have put out for  
3           everybody to use. The problem with the  
4           ASTM method, it is a total organ matter  
5           not a total organ carbon. However,  
6           under Nelson and Sommers they state  
7           that there is a conversion factor that  
8           you can use for the ASTM method  
9           anywhere from 0.5 to 0.58 to convert  
10          from total organic matter to total  
11          organ carbon. Therefore, the Agency is  
12          proposing to leave the ASTM method in  
13          TACO and remove the 9060 USEPA method.  
14          At the same time, we will leave the  
15          reference to Nelson and Sommers. That  
16          is all located in 742.215 and also in  
17          appendix C, table F.

18                   HEARING OFFICER MCGILL: I'm  
19                   sorry, table?

20                   MR. DUNN: Table F.

21                   One of my other issues is  
22                   under 742.305(e), an exposure route may  
23                   not be excluded if no soil exhibits the  
24                   characteristics of toxicity for

1 hazardous waste as determined by  
2 721.124 or an alternative method  
3 determined by the Agency. There is no  
4 alternative method determined by the  
5 agency to determine toxicity,  
6 therefore, the Agency proposes to  
7 delete alternative method.

8 Under 742.320(d), it does  
9 identify that an ordinance within  
10 2,500 feet from the source has to be  
11 used to exclude a groundwater exposure  
12 route pathway. However, there are many  
13 sites that have come through the site  
14 remediation program where the source of  
15 the release has been located within  
16 this 2,500 feet barrier from a  
17 municipal boundary that has a  
18 groundwater ordinance.

19 Within this 2,500 feet these  
20 people cannot use the groundwater  
21 exclusion pathway. Therefore, the  
22 Agency is proposing to remove the  
23 2,500 foot exclusion from this part  
24 because there are a number of sites

1           where the source of release, even  
2           though it's located within 2,500 feet,  
3           the extent of the contamination which  
4           has to be determined by the regulations  
5           anyway may only extend a short  
6           distance. Therefore, there should be  
7           no reason why they cannot still use the  
8           exclusion -- groundwater exclusion  
9           pathway under 320. We propose to take  
10          out the 2,500 feet from that section.

11                         Under 742.805(c)(1) there's  
12          a number of contaminants that are  
13          identified in this section and they  
14          range from 2 to 14. However, if you  
15          review appendix A, table E and appendix  
16          A, table F, the actual range should be  
17          from 2 to 33. Therefore, the Agency is  
18          proposing to revise that to -- from 2  
19          and 14 to 2 to 33.

20                         Under 742.1015(b)(2) the  
21          word modeled was inadvertently left off  
22          after the last TACO rulemaking and,  
23          therefore, the Agency proposes to  
24          reinsert modeled after contamination in

1 742.1015(b)(2).

2 My last area is in appendix  
3 C, table D, the symbol for soil bulk  
4 density is mislabeled and, therefore,  
5 the Agency proposes to correct that.  
6 That concludes my testimony.

7 HEARING OFFICER MCGILL: Thank  
8 you. Why don't we go off the record  
9 for a second?

10 (Whereupon, a discussion  
11 was had off the record.)

12 HEARING OFFICER MCGILL: The  
13 Agency has concluded with its witnesses  
14 who prefiled their testimony, so I will  
15 turn it back over to Kimberly Geving to  
16 introduce the last Agency witness.

17 MS. GEVING: Yes. The last  
18 Agency witness is Doug Clay who is the  
19 manager of the leaking underground  
20 storage tank section for the Agency and  
21 he is here for purposes of questions as  
22 a panel.

23 HEARING OFFICER MCGILL: Thank  
24 you. Thank you all for your testimony

1 and for being here today.

2 Before the Board proceeds  
3 with some of the questions it has we'd  
4 like to open it up to members of the  
5 public who are present here who may  
6 have a question for any of the Agency's  
7 witnesses. I would ask, if you do have  
8 a question, to just signal me first and  
9 state your name, title and any  
10 organization that you're representing  
11 before you proceed with your question.

12 So with that, does anyone  
13 have any questions for any of the  
14 Agency's witnesses? Go ahead. Again,  
15 if you would state your name and title  
16 and organization, please.

17 MR. THOMAS: My name is Jarrett  
18 Thomas. I'm with Suburban  
19 Laboratories. I'm vice-president of  
20 Suburban Laboratories, an environmental  
21 testing laboratory. I'm also president  
22 of an environmental -- Illinois  
23 Association of Environmental  
24 Laboratories.

1                   HEARING OFFICER MCGILL:  Would  
2                   you mind stepping up here to the front?

3                   MR. THOMAS:  Sure.

4                   HEARING OFFICER MCGILL:  Thanks  
5                   a lot.  Let's go off the record for a  
6                   moment.

7   (Whereupon, a discussion  
8   was had off the record.)

9                   HEARING OFFICER MCGILL:  Why  
10                  don't we go back on the record?

11                  Please proceed with your  
12                  questions.

13                  MR. THOMAS:  I have a few  
14                  questions, most of which are going to  
15                  be related to the ADLs and TACO  
16                  objectives itself and the ability to  
17                  achieve those limits analytically, but  
18                  I have a couple quick questions with  
19                  regards to FOC.

20                  Is there any reason why the  
21                  Agency didn't include the actual factor  
22                  to be used for the determination of  
23                  FOCs?  You mentioned the range of -- I  
24                  think it was .5 or .58.  Is that

1 something that could be specified in  
2 the actual reference so as to alleviate  
3 any potential confusion as to what  
4 factor to use?

5 MR. DUNN: Under Nelson and  
6 Sommers they give a typical range of  
7 0.5 to 0.58. However, in some of their  
8 literature, when you read through  
9 Nelson and Sommers, it can be as high  
10 as .86. So you can have a conversion  
11 factor as high as .86. When we  
12 discussed this conversion factor we did  
13 not want to put a number in there that  
14 would set exactly what that conversion  
15 factor would have to be. We want the  
16 consultants to propose a conversion  
17 factor to us. We have widely accepted  
18 the 0.5 to 0.58 conversion factor.  
19 However, if a consultant wants to come  
20 in and prove that they can have a  
21 higher conversion factor, we were going  
22 to allow that, that's why we didn't put  
23 an actual number in there.

24 MR. THOMAS: At that point would

1 the consultant need to justify the  
2 factor they provided if it was in that  
3 range or do they just simply use -- use  
4 whatever factor as long as it's within.  
5 .5 to .58 without any support for that  
6 factor.

7 MR. DUNN: The factor between .5  
8 and .58 they can use without pretty  
9 much any justification. Once we get  
10 above that -- the .58 conversion factor  
11 -- we assume they won't go below, but  
12 once they go above the .58 they're  
13 going to have to have some kind of  
14 justification.

15 MR. THOMAS: The remainder of my  
16 comments have to do primarily with the  
17 ADLs that are specified in the TACO  
18 tables. I guess my first question is  
19 how were those ADLs actually  
20 determined?

21 MR. HORNSHAW: You're testing my  
22 memory a little bit. In the original  
23 TACO rulemaking we looked through the  
24 -- all the different SW-846 and USEPA

1           drinking water methodologies to  
2           determine the lowest detection limit  
3           from any of the methodologies that  
4           pertain to a particular analyte and if  
5           the calculated risk based remediation  
6           objective was less than the lowest of  
7           the detection limits then we used the  
8           lowest detection limit, the ADL, as the  
9           remediation objective.

10                        I believe in the first  
11           update to TACO we updated some of those  
12           ADLs and I'd really have to go back and  
13           look through either my testimony or  
14           somebody from my unit's testimony on  
15           that.

16                        I'm not sure about this  
17           current update, if there are reasons to  
18           update any of the ADLs.

19                        MR. THOMAS: For some of the  
20           analytes where there was no specific  
21           detection limit -- let me rephrase  
22           this.

23                        Were all the ADLs that are  
24           listed in TACO, did those all come from

1 the USEPA methodology reference?

2 MR. HORNSHAW: Yes. Either the  
3 SW-846 methods or the EPA drinking  
4 water methods for groundwater criteria.

5 HEARING OFFICER MCGILL: Could I  
6 just ask both of you to speak up a  
7 little bit. With the air conditioning  
8 and we're having a hard time hearing  
9 you? Thanks.

10 MR. THOMAS: And you mentioned  
11 that there were actual detection limits  
12 were what was used for the ADL, not  
13 quantitation limits, it was the method  
14 of detection from those methods?

15 MR. HORNSHAW: Right. It's  
16 defined in TACO as the lowest PQL,  
17 practical quantitation limit.

18 MR. THOMAS: There is a  
19 difference between PQL and detection  
20 limit as defined, but you said earlier  
21 that was the lowest detection limit?

22 MR. HORNSHAW: Right. And ADL  
23 is specifically defined in the  
24 definition section as being the lowest

1 PQL of any method.

2 MR. THOMAS: One of the tables  
3 -- one of the issues that we are trying  
4 to review these ADLs is that there's  
5 groundwater limits and soil limits and  
6 in looking at the groundwater  
7 objectives there were no ADLs listed.  
8 It seems like all the ADLs were listed  
9 on for soil, but appendix A, table A is  
10 being proposed to be changed to table  
11 I, but originally H, that's the  
12 chemicals, Tier 1, class one,  
13 groundwater remediation objectives  
14 exceeds the one, one million cancer  
15 risk by concentration. There's  
16 actually ADLs listed there for  
17 groundwater.

18 What is it the same type of  
19 situation in terms of how those were  
20 evaluated, just the lowest detection in  
21 the method applied and then ADLs --

22 MR. HORNSHAW: That's correct.

23 MR. THOMAS: Okay. Why are ADLs  
24 listed in TACO at all? What's the

1           purpose of having those listed there?

2                       MR. HORNSHAW:  The purpose of  
3           having them there is to allow the  
4           determination of a remediation  
5           objective that is verifiable and  
6           achievable.  Some of the chemicals,  
7           especially the -- almost entirely the  
8           carcinogens, have risk based values  
9           that are less than the lowest of the  
10          detection limits that we could find and  
11          if you can't show that the chemical is  
12          there because the detection limit is a  
13          problem then we reasoned in the  
14          original TACO that the detection limit  
15          would have to be a remediation  
16          objective just because you can't go  
17          lower than that and I might add, the  
18          620 standards specify that -- for  
19          carcinogens -- not the standards, but  
20          the health advisory section specifies  
21          for carcinogens the groundwater  
22          objective -- the groundwater health  
23          advisory is the lowest PQL.

24                      MR. THOMAS:  Are you familiar

1 with the SW-846 definition of PQL in  
2 that the method allows for PQLs to be  
3 elevated based on the type of matrix?  
4 For example, most methods specify --

5 HEARING OFFICER MCGILL: Excuse  
6 me. If you want to provide testimony  
7 I'm going to go ahead and swear you in.  
8 It might make sense if there's some  
9 substantive pieces of information you'd  
10 like the Board to consider.

11 MR. THOMAS: Sure.

12 (Mr. Thomas was sworn in by  
13 the court reporter.)

14 MR. THOMAS: I was saying that  
15 the definition of the practical  
16 quantitation limit in SW-846 provides  
17 for matrix effects and the PQLs listed  
18 are necessarily always achievable. For  
19 groundwater, for example, most SW-846  
20 methods have a factor of ten that they  
21 -- they have applied to the detection  
22 limit. Some soil, for example, has  
23 different factors as high as, I  
24 believe, 600 times the factor -- the

1 actual detection specified in the  
2 method.

3 Were those factors at all  
4 considered when putting these  
5 ADLs in for soil and groundwater?

6 MR. HORNSHAW: Yes, they were.  
7 I'm kind of testifying for Jim O'Brien  
8 who did all of the testimony regarding  
9 ADLs in the original TACO hearing. I'm  
10 testifying from memory right now, but  
11 I'm almost positive that all of the  
12 modifying factors were used in  
13 developing the ADL list.

14 MR. THOMAS: And are you aware  
15 that the environmental laboratory  
16 community cannot achieve all of the  
17 ADLs and all of the TACO objectives  
18 that are currently specified in TACO?

19 MR. HORNSHAW: I'm not the one  
20 who should be testifying to that.

21 MR. THOMAS: Maybe I'll ask Greg  
22 that question since I know I've had  
23 a lot of conversations with Greg over  
24 the years about what the environmental

1 lab community can do and what it can't.

2 Greg, are you aware that  
3 there is some real problems achieving  
4 the necessary TACO objective as they  
5 stand right now in TACO?

6 MR. DUNN: Yes. It has been  
7 discussed between not only us, but a  
8 couple other labs.

9 MR. THOMAS: Was there a reason  
10 why that -- that there were no changes  
11 to these ADLs or to the TACO objectives  
12 to create ADLs where ones didn't exist  
13 in response to that?

14 MR. HORNSHAW: Again, I can't  
15 totally testify to this, but it's my  
16 recollection that the SW-846 methods  
17 that were on the books when we did the  
18 first update have not changed with  
19 maybe a couple of exceptions. So I  
20 didn't think there was reason to change  
21 the ADLs for this update.

22 MR. THOMAS: I guess back to my  
23 question as to why ADLs are included in  
24 the -- in TACO at all.

1                   If different programs  
2           reference TACO for their own specific  
3           reasons, why wouldn't the analytical  
4           requirements, detection limits and so  
5           forth for those programs be specified  
6           in the program because they may have  
7           different requirements than TACO in  
8           terms of the analytical objectives?  
9           For example, the method references, for  
10          example, TACO lists dozens of method  
11          references for drinking water, but  
12          drinking water is not a applicable  
13          matrix when you're talking about soils.  
14          You can't reference a drinking water  
15          MDL or PQL when you're running a soil  
16          SW-846 procedure. They're completely  
17          separate.

18                   Why does TACO include any  
19          information with regards to the method  
20          to be selected or the detection limits  
21          that the laboratory needs? Shouldn't  
22          that be placed in the applicable  
23          program side of the regulatory  
24          requirements? There's a lot of things

1 in TACO that I don't understand why  
2 there's reference to SW-846 when  
3 there's -- nowhere in TACO does it  
4 state you need to use SW-846? That's a  
5 program issue.

6 MR. HORNSHAW: Again, I'm  
7 probably not the best person to testify  
8 to this, but as I stated before, we had  
9 to have objectives and they had to be  
10 achievable. They couldn't be totally  
11 risk base because the laboratories  
12 can't go as low as some of the risk  
13 based values. So they had to go into  
14 the rule. It's a one size fits all  
15 rule. It applies to whatever programs  
16 are allowed to use it. It just made  
17 sense to have them there.

18 MR. THOMAS: Even though  
19 drinking water methods are referenced  
20 here and used as a guidance for some of  
21 these ADLs, have no applicability with  
22 regards to soil, groundwater that are  
23 being run primarily for TACO?

24 MR. HORNSHAW: Well, they would

1 have applicability to groundwater.

2 MR. THOMAS: Do the other  
3 regulatory programs like SRP reference  
4 groundwater methods or drinking water  
5 methods, I should say, in their  
6 requirements? Do they reference  
7 anything to do with what method should  
8 be followed.

9 MS. GEVING: If we could take  
10 just a moment?

11 HEARING OFFICER MCGILL: Sure.  
12 Before we go off the record I'll just  
13 remind everyone that we do have a  
14 second hearing scheduled about a month  
15 from now and if the Agency cares to,  
16 they certainly may supplement their  
17 responses with testimony at that  
18 hearing and certainly you, sir, will  
19 have an opportunity to provide  
20 testimony at that hearing. In  
21 addition, everybody can provide written  
22 public comment. Just to be clear, if  
23 someone wants to postpone responding to  
24 make a more complete or thoughtful

1 answer, they'll have a later  
2 opportunity.

3 MR. THOMAS: I would like to  
4 just mention that the Laboratory  
5 Association did intend to present  
6 testimony, but a lot of these questions  
7 were completely unanswered and we felt  
8 it was premature until we got some of  
9 these questions answered. We probably  
10 will be at the next hearing.

11 HEARING OFFICER MCGILL:  
12 Terrific. Why don't we go off the  
13 record for a moment?

14 (Whereupon, a discussion  
15 was had off the record.)

16 HEARING OFFICER MCGILL: Why  
17 don't we go back on the record? The  
18 Agency can proceed with its response.

19 MR. DUNN: Concerning the  
20 question are drinking water methods  
21 identified in 740, under the  
22 incorporations by reference Section,  
23 740.125 it does reference USEPA method  
24 -- or USEPA SW-846. It also identifies

1 methods for the determination of  
2 organic compounds in drinking water  
3 supplement two to that and supplement  
4 three to that. So it does identify  
5 drinking water -- the method for  
6 drinking water in 740.

7 MR. CLAY: And with regard to  
8 the leaking underground storage tank  
9 program under 732.104 SW-846 is also  
10 incorporated by references.

11 MR. EASTEP: Can I add one  
12 thing? If you look at the  
13 applicability of 742, it's not  
14 restricted to LUST or the SRP.

15 MS. GEVING: For clarification  
16 of the record, LUST stands for leaking  
17 underground storage tank.

18 MR. EASTEP: Sorry.

19 MR. CLAY: Also, the two methods  
20 that Greg referred to as far as  
21 incorporation by reference, the methods  
22 for the detection of organic compounds  
23 in drinking water and determination of  
24 organic compounds supplement three is

1           also referenced in leaking underground  
2           storage tank regulations.

3                       MR. KING: I guess I'm a little  
4           bit confused by the question in terms  
5           of, are you suggesting we should be  
6           changing either what we have proposed  
7           here in a certain way or suggesting the  
8           program rule should be changed in some  
9           fashion?

10                      MR. THOMAS: I don't know and  
11           that's why I'm trying to get these  
12           questions answered. We've had a lot of  
13           discussions in the association about  
14           what do we suggest or what do we submit  
15           to address some of these problems that  
16           the industry has been having with  
17           meeting of TACO objectives and it seems  
18           to be that either the program -- the  
19           program itself needs to be expanded to  
20           include analytical requirements or TACO  
21           needs to be expanded to improve  
22           regulatory requirements. There's a  
23           little bit of both in each regulation.  
24           If the SRP and LUST and all the

1 individual programs specify the methods  
2 to be used, then why should they be  
3 included in TACO as well, if TACO is  
4 meant to be the one place where all of  
5 these other regulations refer or they  
6 go to to get their objectives, then  
7 shouldn't TACO be a place for that,  
8 just the objective and not necessarily  
9 where the analytical requirements  
10 should be found.

11 HEARING OFFICER MCGILL: Where  
12 the analytical --

13 MR. THOMAS: Where the  
14 analytical requirements should be  
15 found.

16 HEARING OFFICER MCGILL: If I  
17 could just ask you to slow up a little  
18 bit because I'm having a hard time  
19 following and she's trying to get it  
20 all down. Thanks.

21 MR. THOMAS: Again, as an  
22 association we're trying to prepare our  
23 testimony to deal with these problems  
24 that we're experiencing as an industry

1           and we don't know where we should be  
2           submitting these comments or what  
3           exactly we should be commenting on.  
4           There's ADLs in TACO. A lot of them  
5           reference drinking water even though  
6           drinking water is not applicable to  
7           soil. There's situations, and I guess  
8           my next question was going to be how  
9           does the Agency currently handle  
10          situations where they get analytical  
11          data that does not meet the TACO  
12          objectives?

13                   MR. DUNN: Under the site  
14           remediation program at least when the  
15           project manager receives a report where  
16           we have a compound or two that exceeds  
17           a remediation objective in TACO they  
18           have to address that compound one way  
19           or another, whether it be through  
20           modeling. If it's in the soil, they  
21           can model it -- theoretical model to  
22           ground water. If it's an objective  
23           that exceeds ingestion inhalation  
24           route, we may expect them to put some

1 kind of barrier in there to address  
2 that compound.

3 MR. CLAY: And that would be the  
4 same with the leaking underground  
5 storage tank program.

6 MR. THOMAS: And for these  
7 analytes that come across your desks  
8 that are unachievable, why wouldn't  
9 there be a recommendation by the Agency  
10 to add an ADL for those compounds  
11 instead of have it continually be  
12 something that has to be modeled by the  
13 engineer and explained in a report. If  
14 it's not analytically achievable by the  
15 analytical community, why go through  
16 this procedure and is that procedure  
17 that you're using defined?

18 MR. HORNSHAW: I'm not sure I  
19 follow the question.

20 HEARING OFFICER MCGILL: It was  
21 sort of a compound question. Maybe you  
22 could break it down.

23 MR. THOMAS: First question, is  
24 that procedure that you just stated

1           defined? Is it clear in the  
2           regulations that this is how one would  
3           deal with a compound that is not  
4           achievable?

5                       MR. DUNN: In TACO you have to  
6           meet the objective setting already set  
7           in the regulation. I don't believe  
8           that there is any set -- anything set  
9           in TACO that says well, if you exceed  
10          -- well, if you exceed an objective you  
11          have to determine how to address it and  
12          I think TACO does state that out. The  
13          Agency or at least the site remediation  
14          program and the leaking underground  
15          storage tank program have come to the  
16          conclusion you have to address it,  
17          whether it be through modeling or the  
18          use of barriers. It's probably spelled  
19          out in TACO through the regulation.

20                      MS. GEVING: I have a clarifying  
21          question. This is Kim Geving for the  
22          record.

23                               In an instance where  
24          something is not readily achievable,

1           would that be an instance that would  
2           move a remediation applicant into a  
3           Tier 3 scenario or would, for instance,  
4           a Tier 2 be able to address some of  
5           these problems? Could you run us  
6           through maybe an example of a type of  
7           situation like this, please.

8                         MR. RAO: Before you answer  
9           that, I just had a clarification  
10          question. When you say achievable, are  
11          you talking about whether you're able  
12          to measure it in the lab or are you  
13          talking about exceedence of a TACO  
14          objective?

15                        MR. DUNN: Being able to measure  
16          it in the lab.

17                        MR. RAO: Maybe that will help  
18          you address this question. He's  
19          talking about the lab capabilities, at  
20          what level the detection level is. I  
21          think that's what he was getting at.  
22          To me it seemed like you were going at  
23          different perspectives.

24                        MS. GEVING: You're right.

1 HEARING OFFICER MCGILL: Why  
2 don't we go off the record? Thanks.

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

5 HEARING OFFICER MCGILL: Back on  
6 the record. I think we had left off  
7 with the Agency about to begin a  
8 response to the last question.

9 MS. GEVING: May we have the  
10 court reporter read back the last  
11 question, please?

12 (Whereupon, the requested  
13 portion of the record  
14 was read accordingly.)

15 MS. GEVING: That's the question  
16 I was looking for. I think what I'd  
17 like to do is have Mr. Dunn go ahead  
18 and explain how the Agency addresses  
19 this type of situation.

20 MR. DUNN: Typically, when we  
21 run into a compound that exceeds the  
22 objective in TACO where our lab  
23 performed the analytical test method in  
24 accordance with the SW-846 method or



1 an analyte at the TACO -- that happens  
2 quite frequently that a laboratory  
3 cannot achieve the TACO objective?

4 MR. EASTEP: Was that a  
5 question?

6 MR. THOMAS: Yes. Is that a  
7 common practice?

8 MR. DUNN: Typically, my project  
9 managers review the reports, so I'm not  
10 privy to that information, whether they  
11 have that, but I believe there are a  
12 number of compounds and I can't  
13 remember the number that are out there  
14 that the labs have issues with where  
15 when they analyze the compound. The  
16 number they achieve is above the  
17 objective in TACO. If that is the  
18 case, the project managers are  
19 instructed to have the consultant  
20 address those compounds.

21 MR. THOMAS: If that's the case,  
22 then why not propose an ADL for those  
23 compounds so that it's no longer an  
24 issue needing to model, needing to do

1 all this other justification from the  
2 engineering side? If it's not  
3 achievable analytically, why not create  
4 an ADL for that?

5 MR. HORNSHAW: Let me start out  
6 answering that one by what my unit's  
7 experience is. My unit gets the Tier  
8 3s. The bureau of land reviews the  
9 Tier 2s, the modeling ones and then we  
10 get the ones that take care of  
11 everything else and when we have that  
12 problem almost always it's because the  
13 sample that was being analyzed is dirty  
14 and there are interferences that  
15 require the detection limit to be  
16 raised.

17 Now, if it's a problem with  
18 a detection limit that's elevated  
19 because of interferences, I don't  
20 believe that qualifies for what you're  
21 talking about. If it's truly a problem  
22 with the lab not being able to achieve  
23 detection limits in a quote, unquote,  
24 clean sample, then maybe that should be

1           addressed.  Maybe if you would give us  
2           an example where you have problems,  
3           then that would kind of clarify it for  
4           us, a chemical that you see as having a  
5           detection limit that doesn't match with  
6           what's in TACO.

7                         MR. THOMAS:  That information  
8           has been presented to the Agency over  
9           the last several years and that's why  
10          we're surprised it's not in the current  
11          revision.  So that's why I'm trying to  
12          understand why it wasn't included.  I  
13          thought that information was presented.  
14          We'll be happy to provide that  
15          information through this process.

16                        MR. KING:  To make sure what you  
17          presented or talked about, you're  
18          talking about a chemical that you  
19          cannot achieve the ADL in a clean  
20          matrix?

21                        MR. THOMAS:  Correct.

22                        MS. GEVING:  Mr. Thomas, is it  
23          possible that you could present some  
24          testimony or some alternative

1 suggestions at the next set of hearings  
2 that we could consider?

3 MR. THOMAS: Yes. And one of  
4 the things, maybe for the Board's  
5 benefit I'd like to try to explain, I  
6 think what's happened with the TACO  
7 regulation is a lot of people have  
8 gotten used to how to work around some  
9 of the things that are not clear.

10 In the analytical laboratory  
11 industry we usually like things to be  
12 very specific. We want you to use this  
13 method. We want you to achieve this  
14 detection limit. In some cases, the  
15 Agency has evaluated some of these  
16 compounds and determined that they  
17 cannot be met analytically and in that  
18 case they've assigned ADLs. Some of  
19 the ADLs that have been assigned are  
20 higher than what the analytical lab  
21 community can achieve and in other  
22 cases there's compounds that the --  
23 using the methods again that are  
24 specified for soil in most cases and

1           then for groundwater, some of those  
2           analytes are unachievable using  
3           conventional methods that are used by  
4           environmental labs every day.

5                         There are methods that exist  
6           in USEPA that have supersensitive  
7           detection limits. However, the cost of  
8           using those methods is very high.

9                         One of the analytes, for  
10          example, that we cited is  
11          Pentachlorophenol. Pentachlorophenol  
12          is an analyte that is listed as a  
13          carcinogen. It's an analyte that does  
14          not include an ADL, but most  
15          laboratories that are running the  
16          conventional method, in this case 8270  
17          is the SW-846 method, that that method  
18          just simply cannot meet the  
19          pentachlorophenol limit, so we report a  
20          higher value.

21                        There's other methods that  
22          exist, for example, method 8151, which  
23          is an SW-846 method, a separate  
24          technique, that can be used if we

1           needed to get pentachlorophenol down to  
2           the TACO objective, but as an industry,  
3           again, there's been a -- seems to be a  
4           work around. The modeling concept is  
5           something that a lot of laboratories  
6           really don't understand and the  
7           question as to why doesn't a laboratory  
8           need to meet pentachlorophenol at the  
9           TACO objective, why is it okay to model  
10          that out, is more of an engineering  
11          question and maybe a good decision from  
12          the engineering side of things, but  
13          from the analytical side of things, if  
14          it's not achievable at the objective  
15          that's being specified, we would like  
16          that to be clear. We would like there  
17          to be some ADL or some other  
18          acknowledgment that this is the TACO  
19          objective, here's the method reference,  
20          but we understand you may not need to  
21          get down that low, the engineer can  
22          model that out or do whatever they need  
23          to to compensate for that analytical  
24          limitation.

1                   So, again, I don't quite  
2                   know exactly where the best place is to  
3                   make these changes. I personally  
4                   believe that TACO should either include  
5                   ADLs for various programs. For  
6                   example, the ADLs for soil should be  
7                   specified for a soil sample and an ADL  
8                   for groundwater should be a groundwater  
9                   sample and the method should reflect  
10                  that, not drinking water methods  
11                  applying to a soil sample. It's  
12                  totally inappropriate to do that  
13                  analytically.

14                  So our association is  
15                  trying to evaluate whether we want to  
16                  submit a proposal that would include  
17                  ADLs for each analyte that we think  
18                  needs to be changed in TACO or to make  
19                  those recommendations at a program  
20                  level. So since we're here to talk  
21                  about the TACO objective, that's where  
22                  we're probably going to land. I don't  
23                  know if that's something that would  
24                  cause more problems.

1                   Again, my question, back to  
2                   it, why is it okay that you have to --  
3                   you don't have to meet a  
4                   pentachlorophenol objective, but you  
5                   have to meet a benzo (inaudible)  
6                   objective? That I never understood. I  
7                   don't know that most of the laboratory  
8                   community understands that, but if it  
9                   would make it easier for everyone  
10                  involved, our association can provide a  
11                  proposal to say here's the ADL we  
12                  recommend for these compounds.

13                  HEARING OFFICER MCGILL: Let me  
14                  just note for the record Board member  
15                  Nicholas Melas has joined us and I'll  
16                  also mention that at the end of today's  
17                  hearing we will be establishing a  
18                  prefiled testimony deadline for the  
19                  second hearing.

20                  Any further questions from  
21                  you, Mr. Thomas, at this point?

22                  MR. THOMAS: No.

23                  HEARING OFFICER MCGILL: Did  
24                  anyone present have any questions for

1 Mr. Thomas? There's two Agency  
2 witnesses who have questions.

3 MR. HORNSHAW: I'd just like to  
4 make a couple clarifying statements.

5 Mr. Thomas stated that we  
6 shouldn't be using a drinking water  
7 method for a soil sample, but there is  
8 a reason to do that. When you're  
9 having a lechate test be the  
10 determination of a soil objective,  
11 that's for the inorganics, most of them  
12 can be achieved by showing that the  
13 leachate test meets the groundwater  
14 objective. So in that case a water  
15 objective is appropriate for a soil  
16 sample.

17 Regarding technology  
18 availability, when we proposed the  
19 objectives for the pHs in the original  
20 TACO, the groundwater objectives were  
21 based on drinking water -- I'm sorry,  
22 the soil objectives were based on the  
23 values that -- detection limits that  
24 were available then from method 8310

1           and at that time -- that point in time  
2           method 8310 was not available from a  
3           lot of labs, but since we specified  
4           that as the most appropriate way of  
5           showing that the chemical is there or  
6           not there, then the labs did adopt  
7           method 8310 fairly widespread. I don't  
8           know what the economics of that is, but  
9           in that case we kind of forced the  
10          technology to catch up with the  
11          detection limits.

12                       MR. THOMAS: And that's a very  
13           good point. I tried to say something  
14           similar in that one could probably  
15           achieve every single TACO objective  
16           that's listed in there now without an  
17           ADL using a variety of different  
18           methods. It would also cost \$10,000 to  
19           analyze one sample because you'd be  
20           using the most sensitive equipment and  
21           I think you'll find, we did some  
22           research on this and we're happy to  
23           provide more testimony at the next  
24           hearing, but most of these methods that

1           would be necessary to achieve the  
2           limits that are SW-846 methods that are  
3           referenced in TACO, there are no labs  
4           accredited for those. So that's  
5           something that if -- a lab has to be  
6           accredited according to SRP and LUST in  
7           order to submit data to the Agency. So  
8           just because there are methods that are  
9           -- that exist, I think you'll find a  
10          lot of laboratories may not have those  
11          accreditations or the equipment or they  
12          may have the equipment, but they're not  
13          validated for that type of situation.

14                         I also disagree that a  
15          drinking water method is applicable for  
16          a leachate. It's not at all applicable  
17          for a leachate. Just because it's an  
18          aqueous matrix does not necessarily  
19          mean that a drinking water method is  
20          the right method and, again, as I  
21          mentioned earlier, SW-846 does include  
22          factors for dealing with groundwaters  
23          and deal with other things. A  
24          detection limit should never be used as

1 a compliance objective. Again, we'll  
2 go into that more when we provide  
3 testimony.

4 MR. KING: I want to make sure  
5 I'm understanding what you are going to  
6 be coming back with. Is this going to  
7 be from the association or just your --

8 MR. THOMAS: The association.

9 MR. KING: Okay. So you will be  
10 identifying specific chemicals where  
11 you believe the ADL is not appropriate  
12 as it's stated in the TACO rule  
13 currently?

14 MR. THOMAS: Correct, either not  
15 existent or not appropriate.

16 MR. KING: And then you'll be  
17 providing an explanation of why you  
18 think that ADL should be there or be  
19 changed from what it is now?

20 MR. THOMAS: Yes.

21 MR. KING: And then that will be  
22 part of your prefiled testimony before  
23 the next hearing?

24 MR. THOMAS: Yes.

1                   HEARING OFFICER MCGILL:  Yes,  
2                   sir.  If you could state --

3                   MR. WALTON:  I'm Harry Walton.  
4                   I'm chairman of the site remediation  
5                   advisory committee and I also represent  
6                   the Environmental Regulatory Group and  
7                   have participated in all of these  
8                   rulemakings in regard to TACO and SRP.  
9                   I'd like to ask Mr. Thomas a question  
10                  relative to his understanding.  What  
11                  are the goals of -- how important is a  
12                  remedial objective to the remedial  
13                  applicant's role with the release?  
14                  Does he need a definitive number that  
15                  he can achieve to get a release from  
16                  the state for that compound?

17                  MR. THOMAS:  When you're saying  
18                  a release from the state, can you be --

19                  MR. WALTON:  When you get an NFR  
20                  letter from the State of Illinois, no  
21                  further action letter, that is a letter  
22                  that the state issues to a remedial  
23                  applicant that says he has satisfied  
24                  all obligations for those contaminants

1           that are identified in the remediation  
2           site and that also states that the  
3           contaminants achieve a concentration  
4           and a receptor. That's a critical  
5           point of TACO that you demonstrated  
6           through your efforts that the  
7           concentrations are acceptable for  
8           exposure to a receptor.

9                         HEARING OFFICER MCGILL: I'm  
10           sorry. Could you state your question  
11           or I'm going to have to swear you in?  
12           Why don't you state your question for  
13           the witness and then if you want to  
14           provide testimony, we'll swear you in.  
15           Let's swear you in.

16                         (Whereupon, Mr. Walton was  
17                         sworn in by the court  
18                         reporter.)

19                         MR. WALTON: My comment is, the  
20           remedial applicant when he gets a  
21           release from the State of Illinois he  
22           wants a number, a target, that gives  
23           him (inaudible) now and in the future  
24           that remedial objectives are such that



1 affects environmental laboratories is  
2 it to be very specific on what is --  
3 what you want from us, what method  
4 you'd like us to analyze, what type of  
5 detection limit you'd like us to  
6 achieve. Very simple questions. We're  
7 analytical people. We like it to be  
8 very black and white.

9                   What we propose to present  
10 in testimony would be what is  
11 achievable currently for these target  
12 TACO compounds. I don't know and I  
13 haven't -- the engineering customers  
14 that use laboratories, they take it to  
15 the next level of taking our data and  
16 applying it and presenting it to the  
17 Agency, but it seems only logical to me  
18 that if an objective cannot be achieved  
19 analytically that it would be specified  
20 somehow in either the program or in  
21 TACO that this is the case and if it is  
22 important that that analyte be achieved  
23 analytically for some of the cases  
24 you're mentioning, then specify the

1 method to be used in order to achieve  
2 that and the entire laboratory industry  
3 will then start using that method and  
4 achieving that limit, but right now we  
5 have a situation in this industry that  
6 most, if not all, laboratories are  
7 using methods that cannot achieve all  
8 of the, in most cases, the SRP target  
9 compounds at the TACO objective. It's  
10 routine. It happens every day in every  
11 lab. Just make it clear, what do you  
12 want from the laboratories. That's  
13 what we would like to see in TACO.

14 HEARING OFFICER MCGILL: Okay.  
15 Thank you.

16 Any other questions at this  
17 point for any of the witnesses who have  
18 testified so far?

19 Seeing no further questions  
20 from members of the public or  
21 otherwise, why don't we go off the  
22 record for a moment?

23 (Whereupon, a discussion  
24 was had off the record.)

1                   HEARING OFFICER MCGILL: Back on  
2 the record.

3                   At this point the Board  
4 would like to proceed with some of the  
5 questions it has for the Agency's  
6 witnesses and mindful that some of the  
7 witnesses may need to leave sooner than  
8 others, we're going to ask a question  
9 initially here for Mr. Hornshaw,  
10 although I suspect this will end up  
11 being a question for the lawyers, but  
12 it does come up in your testimony so  
13 I'll pose it to the panel.

14                   Your testimony notes that  
15 the Agency proposes to incorporate  
16 USEPA's SW-846 by referring to a web  
17 site rather than to a date certain  
18 document. Your testimony recognizes  
19 that the Illinois Administrative  
20 Procedure Act requires a date certain  
21 reference. The Agency requests that  
22 the Board make a special exception here  
23 and my question is is the Agency aware  
24 of any authority for making that

1 exception?

2 MR. HORNSHAW: On advice of  
3 counsel, no, we're not.

4 HEARING OFFICER MCGILL: Okay.

5 We have some technical  
6 questions for you actually. I don't  
7 know if anyone else wanted to take a  
8 stab at that question or at least take  
9 that under consideration for the next  
10 hearing.

11 We'll proceed with some  
12 technical questions that we had  
13 regarding your testimony, Mr. Hornshaw.

14 MS. LIU: Good morning,  
15 Mr. Hornshaw. Following up on the  
16 hearing officer's question, in your  
17 prefiled testimony on page eight you  
18 indicate that the Agency is proposing  
19 to make this change, but I didn't find  
20 the actual change in the statement of  
21 reasons in the proposed language made  
22 there and I was wondering if that was  
23 an oversight? Your change specifically  
24 deleted the reference to April 1998,

1 added update 2 and 2B and the words  
2 available at the web site address for  
3 the EPA.gov, but I didn't see those  
4 revisions made in the proposal.

5 MR. HORNSHAW: I believe that  
6 was an oversight on our part.

7 MS. LIU: Would that be  
8 something that might show up in errata  
9 sheet three?

10 MR. HORNSHAW: Yes, it would.

11 MS. GEVING: I'm sorry. Can you  
12 tell me again specifically what we  
13 missed? He was pointing to something  
14 and I didn't catch the reference, the  
15 exact reference.

16 MS. LIU: On his prefiled  
17 testimony on page eight he indicates  
18 what the proposed wording would be as  
19 an incorporation by reference for the  
20 test methods for solid waste.

21 MS. GEVING: Thank you.

22 HEARING OFFICER MCGILL: Then  
23 you go to section 742.210(a) dealing  
24 with incorporations by reference. Is

1           that where we didn't see it in their  
2           proposal?

3                     MR. RAO:  That's correct.

4                     HEARING OFFICER MCGILL:  We  
5           didn't see that corresponding proposed  
6           change in 742.210(a).

7                     MR. HORNSHAW:  You mean in the  
8           new version of --

9                     MR. RAO:  The rule language --

10                    HEARING OFFICER MCGILL:  Rule  
11           language you're proposing.  We didn't  
12           see a reference in the proposed  
13           language.  We just saw the reference in  
14           your testimony.

15                    MR. RAO:  And also, you may want  
16           to take a look at the Agency's web  
17           site, which has a more recent version  
18           of SW-846 and see whichever version you  
19           want us to incorporate by reference.

20                    HEARING OFFICER MCGILL:  Can we  
21           proceed then?  Do you have any  
22           follow-up questions?

23                    MS. GEVING:  You can proceed.

24                    HEARING OFFICER MCGILL:  Thanks.

1                   MS. LIU: Continuing along that  
2                   same vain, I can understand you wanting  
3                   to defer to the most recent updates  
4                   that are out there available on the  
5                   internet, but even in the proposed  
6                   citation that you provide for the  
7                   incorporation by reference the latest  
8                   update is still only 3A, although the  
9                   date certain has been removed. If a  
10                  final update four perhaps were to be  
11                  issued some time in the future, are you  
12                  envisioning it automatically be  
13                  included in that incorporation by  
14                  reference merely because you cited to  
15                  the web address?

16                 MR. HORNSHAW: Our intent was to  
17                 have the remedial applicants going to  
18                 the web site and using the most recent  
19                 version of SW-846 that is on their web  
20                 site at the time they're doing their  
21                 work. So the answer, I guess, is yes.

22                 MS. LIU: Just out of curiosity,  
23                 how often are updates made? The last  
24                 one is referenced 1998.

1                   MR. HORNSHAW: I'm probably not  
2                   the right person to answer this.  
3                   Somebody from our division of  
4                   laboratories could probably answer that  
5                   better.

6                   In my experience it's been a  
7                   little bit sporadic. Some years  
8                   nothing is updated and maybe something  
9                   else would get updated in the following  
10                  year. Do you want to try that?

11                  HEARING OFFICER MCGILL: I'll  
12                  just remind you you're sworn in.

13                  MR. THOMAS: SW-846 it is not  
14                  updated on a regular basis. It is very  
15                  sporadic. There is a trend to not be  
16                  issuing as many updates. I would say  
17                  probably every three years a new method  
18                  would come out, but that doesn't  
19                  necessarily mean that each method is  
20                  updated every three years.

21                  MS. LIU: Since TACO seems to be  
22                  updated every few years anyway because  
23                  of other changes, would it be  
24                  appropriate to just defer the SW-846

1 updates to the time when you're simply  
2 updating the other TACO --

3 MR. HORNSHAW: Instead of having  
4 the remedial applicant go to the web  
5 site and get the most recent?

6 MS. LIU: My concern is about  
7 perhaps having laboratories being  
8 required to use a new method when it  
9 might not be in a statute or in the  
10 regulations.

11 MR. HORNSHAW: I think the way  
12 we should do it is to cite the most  
13 recent one at the time TACO is amended  
14 and then the next amendment go to  
15 whatever is current at that time.

16 HEARING OFFICER MCGILL: Thank  
17 you.

18 MR. RAO: I have a bunch of  
19 questions that were kind of triggered  
20 by Mr. Eastep's testimony, but I think,  
21 Dr. Hornshaw, you may also pipe in when  
22 it touches on risk assessment and  
23 things like that.

24 Under the current

1 regulations, the use of area background  
2 as remediation objectives as provided  
3 under part 742 subpart D which sets out  
4 the procedures for determining area  
5 background and also it lists certain  
6 limitations on the use of area  
7 background. Could you, please, clarify  
8 whether it's the Agency's intent to  
9 allow the use of area background for  
10 the proposed polynuclear aromatic  
11 hydrocarbons in accordance with subpart  
12 D.

13 MR. EASTEP: No applicant would  
14 be prohibited from using area  
15 background if they wished to and, in  
16 fact, I think some people have used the  
17 area background provisions to determine  
18 objectives, but our intent here was to  
19 do the PNAs similarly to how we handled  
20 arsenic a few years ago, was to go in  
21 and instead of -- we thought it would  
22 be a lot simpler assistance we know  
23 that there is a certain background  
24 concentration out there, these various

1 PNA chemicals, that they would simply  
2 go into the tier tables, look at the  
3 footnote and if they qualified then  
4 they would be automatically able to use  
5 that background number and the reason  
6 why was it -- originally we never  
7 anticipated that we would have  
8 background levels that were naturally  
9 occurring that were higher than the  
10 risk based objectives, which sort of  
11 put people behind the eight ball, so to  
12 speak, when they went out and there was  
13 absolutely no reason for arsenic a  
14 couple of years ago or PNAs now to be  
15 there and all of the sudden they're  
16 there and they haven't been contributed  
17 to by the applicant then how do they  
18 address this and so that's why we did  
19 it in the objectives.

20 MR. RAO: Under subpart D in  
21 section 742.405(b) -- do you have --  
22 it's not part of the proposal. I'm  
23 looking at the current regulations for  
24 TACO.

1                   HEARING OFFICER MCGILL:  If you  
2                   need a copy, we have a copy here.

3                   MR. EASTEP:  We've got it here.

4                   MR. RAO:  Under 742.405 sub  
5                   section B, which describes different  
6                   approaches for determining area  
7                   background, under (b)(1) the rules list  
8                   the concentrations of inorganic  
9                   chemicals in background soils in  
10                  appendix A, table G.  Do you think a  
11                  similar provision should be included  
12                  for the proposed PNAs also in the rules  
13                  part of the TACO instead of just having  
14                  it in a footnote in a table so that  
15                  people know where the area background  
16                  provisions are?

17                  MR. EASTEP:  This kind of goes  
18                  back a little bit and I recall  
19                  discussing that briefly internally and  
20                  I can't recall our exact discussions  
21                  now because it was so long ago, but I  
22                  think we put it in there, but I think  
23                  our feel was at the time we really  
24                  didn't need it.  The footnoting in the

1 tables was sufficient.

2 MR. RAO: Would this be  
3 something the Agency can take a look  
4 and tell us whether it would be  
5 appropriate to have something in the --  
6 some provision in the rule which  
7 directs a person using the rules to how  
8 this area background provisions fit in?

9 MR. EASTEP: We'd be happy to  
10 look at that.

11 MR. RAO: Also under the same  
12 subpart, moving on to section 742.415,  
13 which basically sets forth the  
14 procedures and limitations for use of  
15 area background. There are two sub  
16 sections, sub section C and D, which  
17 has the statutory limitations on the  
18 use of area background.

19 Do those limitations also  
20 apply to the use of PNAs, the proposed  
21 area background for PNAs?

22 MR. EASTEP: No, they don't.

23 MR. RAO: They don't?

24 MR. EASTEP: No. We haven't put

1           them in a position to apply here  
2           because we've essentially used the area  
3           background as the Tier 1 objective.

4                   MR. RAO:  If these provisions  
5           don't apply to the PNAs, as a part of  
6           the Agency's evaluation of those area  
7           background levels for the proposed --  
8           in table -- appendix A, table H, did  
9           the Agency do any evaluation to see  
10          whether those area background levels  
11          comply with the statutory provisions?

12                   MR. HORNSHAW:  Are you talking  
13          about the one about acute threat?

14                   MR. RAO:  Yeah, both acute  
15          threat and also -- yeah, mainly the  
16          acute threat.

17                   MR. HORNSHAW:  We didn't do that  
18          per se, but since so many millions of  
19          people are exposed to these  
20          concentrations and we don't see acute  
21          toxicity occurring, we just didn't  
22          think it was worth doing an actual  
23          calculation of what an acute threat  
24          would be at these levels.

1                   MR. RAO: So based on the  
2                   proposed levels, you're comfortable  
3                   that there's no acute threat to human  
4                   health of the environment?

5                   MR. HORNSHAW: That's correct.

6                   MR. RAO: Okay. Moving onto sub  
7                   section D, which talks about the  
8                   situation where the area background may  
9                   be higher than a remediation objective  
10                  for residential use. It says that the  
11                  property may not be converted to  
12                  residential use unless such remediation  
13                  objective is met or an alternative  
14                  remediation based objective is  
15                  determined.

16                  Could you explain what this  
17                  alternative risk based remediation  
18                  objective means in this context? Is it  
19                  something that under Tier 3 --

20                  MR. HORNSHAW: That would be a  
21                  Tier 2 or a Tier 3 remediation  
22                  objective. So what am I supposed to be  
23                  answering now?

24                  MR. RAO: I was just asking what

1 does alternative risk based remediation  
2 objective mean in the context of this  
3 provision?

4 MR. HORNSHAW: That's when site  
5 specific information is used to  
6 calculate a Tier 2 value or risk based  
7 information is used to calculate a Tier  
8 3 value.

9 MR. RAO: In the list of PNAs  
10 for which area background has been  
11 proposed, are you aware if any of those  
12 PNAs or carcinogens are similarly  
13 acting substances?

14 MR. HORNSHAW: Yes. Seven of  
15 them are carcinogens.

16 MR. RAO: Has the Agency taken  
17 into consideration whether the levels  
18 that they propose are consistent with  
19 the risk levels -- the acceptable risk  
20 levels in section 58 --

21 MR. HORNSHAW: Yes. We did look  
22 into that and the sum of the risk -- or  
23 the background based value still falls  
24 within the risk range that's acceptable

1           for TACO. It's less than ten to the  
2           minus four.

3                       HEARING OFFICER MCGILL: I'm  
4           sorry. You said less than ten to the  
5           minus four?

6                       MR. HORNSHAW: It falls within  
7           ten to the minus four to ten to the  
8           minus six risk range when you sum up  
9           the risks from the seven carcinogens.

10                      MR. RAO: How about for  
11           residential use where ten to the minus  
12           six is set as the acceptable risk  
13           levels? Are any of those proposed  
14           levels -- do all of those levels meet  
15           the ten to the minus six for  
16           residential use?

17                      MR. HORNSHAW: No, they don't.

18                      MR. RAO: I guess Alisa had some  
19           questions about, you know, a little bit  
20           more about the risk levels associated  
21           with carcinogens and also about similar  
22           acting substances if you want to go  
23           ahead and ask them.

24                      MS. LIU: Good morning,

1 Mr. Eastep. I first would just like to  
2 say congratulations on your retirement  
3 and for your years of service to the  
4 Agency and let you know that we really  
5 appreciate you being here and  
6 continuing to lend your experience.

7 MR. EASTEP: Thank you for those  
8 kind comments.

9 MS. LIU: Thank you.

10 This question actually can  
11 go to both you and Mr. Hornshaw.

12 First of all, is there a  
13 difference between a PNA and a PAH?

14 MR. HORNSHAW: No. For all  
15 practical purposes, no. Some people,  
16 I'm not even sure which one it is, some  
17 people consider polycyclic aromatic  
18 hydrocarbons to be strictly carbon and  
19 hydrogen compounds, whereas polynuclear  
20 aromatic hydrocarbons, PNAs, can have  
21 something other than carbon in the  
22 molecular background, but they're used  
23 so interchangeably that effectively  
24 there's no difference.

1                   MS. LIU: Thank you for that  
2 explanation.

3                   Following on Mr. Rao's last  
4 question about the cancer risk levels,  
5 the acceptable levels of either one in  
6 a million or one in 10,000. From what  
7 I understand when you have the multiple  
8 similarly acting chemicals you're  
9 allowed to show a cumulative risk level  
10 of ten to the minus four and Mr. Rao  
11 asked is that applicable then to a  
12 residential cleanup and I wasn't quite  
13 clear on the answer.

14                  MR. HORNSHAW: I'm not sure  
15 exactly how that gets worked out, to be  
16 honest. There is the prohibition in  
17 the original legislation of not more  
18 than ten to the minus six and I don't  
19 know for sure whether that only applies  
20 to an individual chemical carcinogen or  
21 to the sum of all chemical carcinogens  
22 for residential uses. In either case,  
23 the background values for some of those  
24 seven carcinogens do exceed ten to the

1           minus six.

2                            You could probably read into  
3           subpart D that -- it talks about  
4           regulated substance of concern, which  
5           means something that is known to be  
6           there because of the actions of the  
7           remedial applicant and if you accept  
8           that these carcinogens are there  
9           because of background issues, then it  
10          may not be a regulated substance of  
11          concern.  In that case, you don't  
12          really consider it as part of the  
13          chemicals to be evaluated for the site.

14                        HEARING OFFICER MCGILL:  That's  
15          an interesting interpretation.  I take  
16          it that by the proposed footnote in  
17          appendix D, tables A and B you're  
18          suggesting that the background PAH  
19          value would be a remediation objective?  
20          So presumably it would be considered a  
21          contaminant of concern, is that  
22          correct?

23                        MR. EASTEP:  That's correct.

24                        MR. HORNSHAW:  Just exactly as

1           we did with arsenic in the previous  
2           update to TACO.

3                       HEARING OFFICER MCGILL: I think  
4           that part of our question is you now  
5           have -- to take your arsenic example,  
6           there's table G with arsenic and a  
7           background value, but table G is  
8           followed into subpart D and is still  
9           subject to those protections, the  
10          statutory limitations that you were  
11          discussing earlier, but the way you're  
12          proposing table H for PAHs, it's  
13          standalone, it's not folded into  
14          subpart D, area background. So that's  
15          our question and it sounds like, and  
16          you can certainly add to your earlier  
17          responses, but it sounds like you're  
18          also going to take a closer look and  
19          get back to us at the second hearing as  
20          well? Could we go off the record for  
21          one moment?

22                                       (Whereupon, a discussion  
23                                       was had off the record.)

24                       HEARING OFFICER MCGILL: In

1           addition to looking at subpart D of the  
2           current part 742 rules, you'll  
3           obviously want to be looking at section  
4           58.5 of the act that sets forth a lot  
5           of the area background information  
6           we've been discussing and whether you  
7           think the current proposal is subject  
8           to that or is it consistent with it.

9                         We've got some more  
10           questions for the Agency witnesses.

11                        MS. LIU: Mr. Hornshaw or  
12           Mr. Eastep, this question goes to  
13           appendix B, table A, the Agency's  
14           statement of reasons explain that there  
15           are 28 chemicals that have the  
16           industrial, commercial or construction  
17           worker inhalation objectives more  
18           stringent than the residential  
19           objectives and the Agency is proposing  
20           to add a footnote, footnote X, designed  
21           to apply to the -- designed to apply  
22           these levels to residential settings.

23                        Is the intent to always  
24           replace the residential remediation

1 inhalation objectives for these 28  
2 chemicals with the worker objectives?

3 MR. EASTEP: Yes.

4 MS. LIU: Would there ever be a  
5 scenario where there would be no  
6 construction worker activity allowed on  
7 a residential site?

8 MR. EASTEP: I suppose that  
9 could be a condition of the NFR letter.  
10 You could do that, but we tried looking  
11 at different ways to put this in here.  
12 I mean, it doesn't -- something just  
13 doesn't stand alone. If you make a  
14 change here, that could impact  
15 something else and I wasn't sure why we  
16 didn't because we had so many different  
17 scenarios. When we were trying to put  
18 this together it wasn't just as simple  
19 as well, you might have a residential  
20 scenario where somebody could come in  
21 and have a contractor there putting in  
22 a sewer line or something that might be  
23 exposed to this because we have a lot  
24 of people, and I won't say it's the

1 rule, but it's very common where in an  
2 industrial setting just to protect  
3 themselves and their liability and to  
4 ensure it's cleaned up better will  
5 actually clean up to some residential  
6 level. Well, you're much more likely  
7 to have construction activities at an  
8 industrial site. So we kind of  
9 grappled with how to put that in and  
10 how to make it meaningful and we just  
11 don't know because it's voluntary and  
12 people have the option of doing either  
13 -- and, of course, you do find  
14 situations where, you know, maybe  
15 they're used as an industrial setting  
16 and they decide to sell the property  
17 and convert it to townhomes or  
18 something like that. We've seen that.

19 MR. HORNSHAW: And one other  
20 thing I'd like to add is even if you  
21 were able to put in a sentence that  
22 prohibits construction work in an NFR  
23 letter the construction worker scenario  
24 was always intended to include

1 emergency repair workers and you can't  
2 prohibit them from working on a site.

3 MR. EASTEP: I don't know if I  
4 answered your question or not.

5 MS. LIU: I was just thinking  
6 along the road someone might come up  
7 with a financial incentive for not  
8 wanting to go down that far and if they  
9 could place an institutional control in  
10 there I would think they would want to  
11 do that. I was just wondering if that  
12 was ever a practical scenario.

13 MR. EASTEP: I would think the  
14 Agency has the authority to do that, to  
15 implement some sort of an institutional  
16 control that would prohibit  
17 construction.

18 MS. LIU: But what if you have  
19 the emergency worker situation, would  
20 that contradict --

21 MR. HORNSHAW: In most cases it  
22 would unless there's no utilities.

23 MS. LIU: Thank you.

24 MS. MOORE: This question is for

1 Gary King. On your prefiled testimony  
2 on page two and three the section is  
3 742.105(a), applicability. The Agency  
4 proposes to expand part 742,  
5 applicability, beyond the leaking  
6 underground storage tank program, the  
7 SRP and the RCRA part B permits and  
8 closures.

9 What other remediation  
10 programs have been using or are  
11 expected to use TACO and would the  
12 Agency provide, as applicable, the  
13 Illinois Compiled Statutes and Illinois  
14 Administrative Code citations to these  
15 other programs?

16 MR. KING: One of the programs  
17 that the Agency runs is dealing with  
18 emergency responses. We have an office  
19 of emergency response and they really  
20 -- they don't have a specific set of  
21 program rules that determine their  
22 procedural requirements for making  
23 decisions. However, you do end up with  
24 -- there will be situations where

1 persons who are doing an emergency  
2 response want to have a remediation  
3 objective relative to that emergency  
4 response. So that's an example of one  
5 of the programs that isn't really  
6 referenced -- it doesn't have a set of  
7 procedural rules that are already in  
8 the Board rules.

9 MS. MOORE: Any other programs  
10 that you're aware of just by -- just as  
11 a matter of practice?

12 MR. KING: Another program would  
13 be the -- we work with the Federal  
14 Superfund program. The TACO  
15 procedures, they are not considered an  
16 ARAR (phonetic) for purposes of CERCLA,  
17 but they are still something that are  
18 called a to be considered. So that is  
19 a -- TACO can be used by people in  
20 Illinois who are doing cleanups under  
21 CERCLA, looking at it as a reference  
22 document and, again, there's not a set  
23 of Board rules that guides how the  
24 Federal Superfund programs operate.

1                   MS. MOORE: Is there then  
2 something in the Illinois Statute that  
3 allows that?

4                   MR. KING: No. That would be a  
5 matter of procedures under the federal  
6 rules that govern the Superfund program  
7 in that instance.

8                   HEARING OFFICER MCGILL: I guess  
9 a follow-up question is, do you think  
10 it's consistent with Title 17 of the  
11 act to expand TACO to these other  
12 programs you have in mind?

13                   MR. KING: I think it's  
14 appropriate because we have, for  
15 instance, in the private world many  
16 cleanups are performed in which the  
17 Agency doesn't have any oversight  
18 responsibilities and yet -- you know,  
19 so what do people in the private sector  
20 who are dealing in a private  
21 transaction, they are not coming to the  
22 agency for oversight, where do they  
23 look to figure out what remediation  
24 objective should be used. They

1 generally looked to TACO and so it's --  
2 it's a reference that allows it, I  
3 think, a problem.

4 HEARING OFFICER MCGILL: That  
5 example that you just gave, again, I'm  
6 looking at your proposed language --

7 MR. KING: Maybe that one  
8 doesn't exactly fit the language there  
9 because it does say under one of  
10 Illinois EPA's remediation programs.  
11 So it might not be quite as direct  
12 there.

13 HEARING OFFICER MCGILL: I guess  
14 it would be helpful -- this is just  
15 such an open-ended reference in the  
16 proposed language to IEPA remediation  
17 programs, if you could let us know  
18 everything you have in mind. You've  
19 given us a couple of examples, the  
20 federal CERCLA sites and emergency  
21 response and that's helpful. If other  
22 examples occur to you that you could  
23 share with us later or at the next  
24 hearing, it would just help us

1 understand where these Board rules are  
2 intended to be used or have been used  
3 in practice and how you want to codify.

4 MR. KING: Now, a number of  
5 those -- so a number of those will not  
6 be cited to specific Board rules. The  
7 issue is you want to know what kind --  
8 what the programs are regardless of  
9 whether there's a Board procedural rule  
10 that guides it along?

11 HEARING OFFICER MCGILL:  
12 Exactly. If there is an Illinois  
13 Compiled Statute site or an Illinois  
14 Administrative Code site for that  
15 particular program, that would be  
16 excellent, but if there isn't, we'd  
17 still like to know what those programs  
18 are.

19 MR. KING: We certainly can do  
20 that.

21 HEARING OFFICER MCGILL: Just so  
22 Mr. Clay doesn't feel neglected, I  
23 wondered if we should, in light of the  
24 pending R04-23 rulemaking and Public

1 Act 92-554, I believe it is, should the  
2 TACO rules where we site to part 731  
3 and 732 UST rules now also include a  
4 reference to part 734?

5 MR. CLAY: Yes, they should.

6 HEARING OFFICER MCGILL: Okay.  
7 Thank you.

8 This is a question for  
9 Mr. King. Your prefiled testimony  
10 discusses the proposed form documents  
11 in appendices D through I. Who would  
12 the Agency expect to be completing  
13 these forms? Would it be an  
14 environmental consultant for a client?  
15 Take the first example, I think  
16 appendix D is a highway authority  
17 agreement and then there's a memorandum  
18 of understanding.

19 There are several legal  
20 document forms that are now being  
21 proposed and am I correct that the  
22 proposal that those forms would be  
23 mandatory, all but the ordinance, I  
24 believe, is that correct?

1                   MR. KING:  Some would be  
2                   mandatory, others would not be  
3                   mandatory.  I think how it's cross  
4                   referenced in the rule depends on  
5                   whether it's mandatory or not.  You  
6                   know, I guess there could be a debate  
7                   between engineers and lawyers as to  
8                   whether this is -- filling out one of  
9                   these forms is the practice of law.  I  
10                  really don't -- authorized practice of  
11                  law.  I don't particularly want to be  
12                  involved in that debate, but I think we  
13                  certainly have had these agreements  
14                  prepared by lawyers and by non-lawyers  
15                  I think over the course of the  
16                  administration of our programs.

17                 HEARING OFFICER MCGILL:  Did the  
18                  Agency receive any input from any of  
19                  the bar associations or ARDC about  
20                  these forms -- proposed forms?

21                 MR. KING:  When we had meetings  
22                  with the site remediation advisory  
23                  counsel, as we generally have done with  
24                  the TACO rules, there are environmental

1 attorneys who are on that -- part of  
2 that, so they did review these -- this  
3 proposal and I presume they may have  
4 looked at that issue. I'm not sure.  
5 There certainly -- as this was  
6 distributed to the -- to SRAC for their  
7 comment and discussion with us, I know  
8 that they, as an internal process, sent  
9 our proposal out to a fairly widespread  
10 group that would have included  
11 attorneys working within -- for private  
12 companies who would have looked at  
13 this. We did not transmit anything  
14 directly to the bar association.

15 HEARING OFFICER MCGILL: Would  
16 the Agency consider making the form  
17 models as opposed to mandatory? Do you  
18 think that would really lose the  
19 benefit that you're seeking?

20 MR. KING: We had proposed this  
21 as mandatory because of the fact that  
22 we see so many of these and you really  
23 would -- you begin to lose the benefit  
24 if you don't have it mandatory because

1           then it's a model, now you have to --  
2           well, then you have to review the --  
3           what they proposed against the  
4           regulations, et cetera, et cetera. It  
5           makes the process of review more  
6           complex.

7                                 We felt we're at a point  
8           that the model documents had been used  
9           enough by the private sector and by the  
10          Agency that we've been able to flush  
11          out issues that were important so that  
12          they could go in as a model that would  
13          be mandatory in certain instances.

14                                HEARING OFFICER MCGILL: It  
15          would help -- if you mentioned SRAC,  
16          site remediation advisory committee,  
17          was created when Title 17 came about  
18          and maybe for the next hearing you  
19          could just tell us what the makeup of  
20          SRAC is -- who --

21                                MR. KING: Mr. Walton is  
22          chairman of SRAC

23                                HEARING OFFICER MCGILL: You're  
24          still sworn in, so could you just tell

1 -- the Agency has represented in their  
2 proposal that they've gotten input from  
3 SRAC and that SRAC -- that you've  
4 circulated various versions of their  
5 proposal, I guess.

6 MR. WALTON: Yes, we have and we  
7 concur with using these forms.

8 HEARING OFFICER MCGILL: Could  
9 you tell us what the makeup of the site  
10 remediation advisory committee is.

11 MR. WALTON: They are  
12 representatives from the state chamber,  
13 representatives from the IMA, chemical  
14 industry counsel, he's a lawyer, two  
15 banking groups, realtors, then ERG, the  
16 environmental regulatory group,  
17 basically provides a support staff for  
18 that and in this rulemaking, Hodge,  
19 Dwyer, Zeman, that's their legal  
20 counsel for ERG, and then we have a  
21 number of lawyers that provide support  
22 to the various associations. All of  
23 these people have reviewed and  
24 commented on this and we've had a

1           number of meetings independent of the  
2           Agency and in none of these meetings  
3           did any of the various groups have any  
4           problems with these documents. In  
5           fact, these documents save a lot of  
6           money and time for remedial applicants.  
7           It provides them a very clear target of  
8           what issues have to be addressed. Most  
9           of the details in the agreements are  
10          very technical. They go to the nature  
11          of the contaminants, the extent of the  
12          contaminants, types of barriers, legal  
13          strategies that were used to resolve  
14          the issues at the site. Again, it's a  
15          very technical legal document, but the  
16          legalities comes from the issuance of  
17          the state of Illinois and the  
18          acceptance by the property owner and  
19          all of those parties have their own  
20          representation on these issues.

21                       HEARING OFFICER MCGILL: Thank  
22                       you.

23                       MS. LIU: Good afternoon,  
24                       Mr. King. I have one very simple

1 question.

2 On page seven of the  
3 statement of reasons the Agency  
4 proposal for appendix A, table G  
5 indicates that a footnote is proposed  
6 to be removed, but I didn't notice it  
7 in the actual proposal. I was  
8 wondering if you could shed some light  
9 on that.

10 MR. KING: You said page seven  
11 of the statement of reasons --

12 MS. LIU: Appendix A, table G.

13 MR. KING: The letters here are  
14 so small. I'm trying to see whether I  
15 can see whether there's a strike  
16 through it. I can't. Yeah. I guess  
17 if you look real closely there's a  
18 strike through on just the footnote,  
19 not the text of the Board note, just  
20 the cross reference --

21 MS. LIU: Thank you. I see it.

22 MR. KING: This is  
23 non-substantive. This truly fits that  
24 category.

1 MS. LIU: Thank you.

2 MS. GEVING: So, in other words,  
3 our intent was to leave the Board note  
4 intact, but to just delete the footnote  
5 itself?

6 MR. KING: That's correct.

7 HEARING OFFICER MCGILL: And  
8 that's a tiny A?

9 MS. GEVING: It's a very tiny A.

10 MR. KING: A very tiny A with a  
11 tiny slash mark.

12 HEARING OFFICER MCGILL: While  
13 we're on the subject. Current table H  
14 is going to become table I as proposed.  
15 I think it's getting displaced by the  
16 new PAH table. There are references in  
17 the current rules to table H, but those  
18 were not proposed to be changed to  
19 table I on the Agency proposal. It may  
20 just be a matter of doing an electronic  
21 search in the part 742 rules, but as an  
22 example in 742.505 and 742.805 there  
23 were some references to table H and I  
24 just want you to consider whether that

1           should become table I.

2                       MS. GEVING: The answer would be  
3           yes. That's an oversight on the  
4           Agency's part. I apologize.

5                       HEARING OFFICER MCGILL: No  
6           problem.

7                       One last question, I don't  
8           expect a response to this, it's mostly  
9           for Kim. The Illinois Administrative  
10          Procedures Act was amended fairly  
11          recently and it requires that first  
12          notice publication in a rulemaking  
13          describe any I'll quote, I'll give you  
14          the citation, quote, published study or  
15          research report used in developing the  
16          rule, among other things. That is at  
17          section 5-409(b)3.5 of the IAPA and  
18          it's in the Board's procedural rules at  
19          102.202(b) and we would just ask if you  
20          could supply us with the Agency's  
21          response to that. It's something that  
22          the Board would have to complete for  
23          first notice publication of the  
24          Illinois Register, identifying any such

1 published studies or reports that were  
2 used in developing the rule. It's  
3 something that we have to do now in all  
4 of our rulemakings.

5 MS. GEVING: Are you asking for  
6 new studies that we've relied on or  
7 everything in the rule --

8 HEARING OFFICER MCGILL: Just to  
9 -- I'm sorry. Could you repeat your  
10 question?

11 MS. GEVING: Is it everything  
12 that is in the rule currently that  
13 existed before this amendment or just  
14 new things that we're putting in that  
15 we relied on?

16 HEARING OFFICER MCGILL: Just  
17 for this rulemaking proposal. Do you  
18 want to answer that now?

19 MS. GEVING: Well, I'd have to  
20 go through the incorporations by  
21 reference probably one-by-one, but I  
22 can tell you that both PNA studies were  
23 included in that.

24 HEARING OFFICER MCGILL: I would

1           imagine so.  If there's anything else  
2           you want to add to that you can do that  
3           in prefiled testimony or at hearing.

4                        Is there anyone else who  
5           wishes to testify or pose any questions  
6           today at this point?  Mr. Thomas?

7                        MR. THOMAS:  I just have one  
8           follow-up question.  Mr. King had made  
9           a couple of comments that triggered  
10          these questions about the incorporation  
11          by reference and other programs using  
12          TACO.

13                       My first question is with  
14          regard to incorporation by references.  
15          One of the ASTM methods specifically  
16          referenced in the incorporation by  
17          reference section, however, SW-846 is  
18          referenced as an overall incorporation,  
19          that document is about this long, it's  
20          a huge document.  Could the methods be  
21          specified in there instead of the  
22          entire manual?  There's a lot of things  
23          in there that have no applicability at  
24          all to TACO.

1                   HEARING OFFICER MCGILL:  Could I  
2                   just make sure I understand your  
3                   question.  You're asking for more  
4                   specific identification of test methods  
5                   within SW-846 as opposed to just  
6                   referring generally to SW-846?

7                   MR. THOMAS:  Yes.

8                   HEARING OFFICER MCGILL:  I think  
9                   I understand the question.  Does the  
10                  Agency care to respond to that at this  
11                  point.

12                  MR. HORNSHAW:  I'm not sure why  
13                  you'd want to do that because if there  
14                  is a chemical that -- if you specify  
15                  just individual methods, there may be  
16                  reason to go to a different method to  
17                  obtain a detection limit for a specific  
18                  compound that would be of concern to us  
19                  and if you haven't got that method  
20                  specified in the current version of  
21                  TACO, you wouldn't be able to use it, I  
22                  think.

23                  MR. RAO:  Would there be also a  
24                  possibility that a chemical that's not

1 listed in one of the appendix tables  
2 may be encountered at one of these  
3 sites for which --

4 MR. HORNSHAW: That happens all  
5 the time and that's why I'm making the  
6 comment that I am.

7 MR. THOMAS: That's kind of the  
8 purpose for the request, is that there  
9 are methods that -- for one thing,  
10 there's no one certified to perform to  
11 comply with the other regulations where  
12 the use of a certified lab must be  
13 used, so that's why I was thinking it  
14 would be much more appropriate to have  
15 the actual method specified instead of  
16 leaving it up to the dozens and dozens  
17 of methods which no one performs. Some  
18 of those methods that are listed in  
19 there are completely experimental.

20 My other question is there  
21 is a reference in appendix B, table B,  
22 I believe, both tables for soil  
23 remediation objectives there's a  
24 footnote F that states the level is at

1 or below the contract laboratory  
2 program required quantitation limit for  
3 regular analytical services. That  
4 particular reference is not in the  
5 incorporation by reference. So I would  
6 ask that that -- whatever that is be  
7 specified in the incorporation by  
8 reference.

9 HEARING OFFICER MCGILL: Could  
10 you identify again the appendix and the  
11 table?

12 MR. THOMAS: Appendix B, table  
13 B. I believe it's also in table A, but  
14 I am looking at table B. I believe  
15 it's the same footnote for both. It's  
16 footnote F.

17 MS. GEVING: Are you saying that  
18 we don't have the method incorporated  
19 in the incorporations by reference?

20 MR. THOMAS: Correct.

21 Mr. King had made reference  
22 to the Superfund program. That is a  
23 Superfund document, which is why I  
24 believe it should be incorporated, a

1 USEPA Superfund program.

2 HEARING OFFICER MCGILL: Does  
3 the Agency have anything they'd like to  
4 add at this point?

5 MS. GEVING: We will take a look  
6 at that before the next hearing.

7 HEARING OFFICER MCGILL: And  
8 certainly, Mr. Thomas, feel free to  
9 include any suggestions, rule language  
10 that you care to.

11 Is there anyone else who  
12 would like to testify today? Anyone  
13 who has any questions they'd like to  
14 pose?

15 MR. WALTON: In error I didn't  
16 include the Illinois Consulting  
17 Engineering Counsel as a member of SRAC  
18 and they'd kill me if I didn't mention  
19 them.

20 HEARING OFFICER MCGILL: We  
21 wouldn't want that. Why don't we go  
22 off the record for a moment?

23 (Whereupon, a discussion  
24 was had off the record.)

1                   HEARING OFFICER MCGILL: Just a  
2                   few procedural items before we adjourn.

3                   I'll note that anyone may  
4                   file written public comments on this  
5                   rulemaking with the clerk of the Board.

6                   The second hearing is  
7                   scheduled for March 1 starting at  
8                   10:30. It will be held in the IEPA  
9                   building, the north entrance, TQM room,  
10                  that's 1000 East Converse in  
11                  Springfield.

12                  Prefiled testimony for the  
13                  second hearing must be filed with the  
14                  clerk of the Board by February 22.

15                  The mailbox rule does not  
16                  apply to this filing. So the clerk  
17                  must receive the prefiled testimony by  
18                  that date, that's Wednesday the 22nd.

19                  The current notice and  
20                  service list are located by the  
21                  entrance to this room. There are also  
22                  sign-up sheets if you would like to be  
23                  added to either of those lists.

24                  Persons who are on the

1 notice list receive only Board and  
2 hearing officer orders. Those on the  
3 service list are those who wish to  
4 actively participate in this proceeding  
5 and receive copies not only of those  
6 orders, but also other filings such as  
7 prefiled testimony and public comments.

8 Prefiled testimony and  
9 public comments may be filed on-line  
10 through the clerk's office on-line.  
11 It's on the Board's web site. Again,  
12 that's filling, that's not service.  
13 You still have to serve those on the  
14 service list and, please, check with  
15 the Board before you do file something  
16 to make sure you have the most recent  
17 version of the service list.

18 We expect copies of this  
19 transcript to be in the Board's offices  
20 by February 10 and we will get it  
21 posted on our web site shortly after  
22 that.

23 Are there any other matters  
24 that need to be addressed at this time?

1 Go ahead.

2 MS. GEVING: Just one quick  
3 question. If we file on your on-line  
4 COOL system on the 22nd, that's  
5 considered meeting the filing  
6 requirement, correct?

7 HEARING OFFICER MCGILL: Yes.  
8 Just do so early enough in the day,  
9 don't do it at 11:59 at night. I don't  
10 know how our voluntary electronic pilot  
11 project is working exactly, but I think  
12 we need to get it before 4:30 that day.

13 Anything else? Seeing no  
14 further matters I'd like to thank  
15 everyone for participating today and  
16 this hearing is adjourned.

17 (Whereupon, no further  
18 proceedings were had.)

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24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF W I L L )

4  
5

6 I, TERRY A. BUCHANAN, CSR,  
7 do hereby state that I am a court reporter  
8 doing business in the City of Chicago,  
9 County of Cook, and State of Illinois; that  
10 I reported by means of machine shorthand the  
11 proceedings held in the foregoing cause, and  
12 that the foregoing is a true and correct  
13 transcript of my shorthand notes so taken as  
14 aforesaid.

15  
16

17 \_\_\_\_\_  
18 Terry A. Buchanan, CSR  
19 Notary Public  
20 Will County, Illinois

21

22 SUBSCRIBED AND SWORN TO  
23 before me this \_\_\_ day  
24 of \_\_\_\_\_, A.D., 2006.

\_\_\_\_\_  
Notary Public