

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2
3 IN THE MATTER OF:
4
5 PETITION OF THE LOUIS BERKMAN
6 COMPANY d/b/a THE SWENSON
7 SPREADER COMPANY, FOR AN ADJUSTED AS 97-05
8 STANDARD FROM 35 ILLINOIS
9 ADMINISTRATIVE CODE, PART 215, SUBPART F

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14 Proceedings held on May 21st, 1997, at
15 8:10 a.m., at the Illinois Pollution Control Board,
16 600 South Second Street, Suite 402, Springfield,
17 Illinois, before the Honorable Deborah L. Frank,
18 Hearing Officer.

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20

21 Reported by: Darlene M. Niemeyer, CSR, RPR
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A P P E A R A N C E S

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P R O C E E D I N G S

(May 21, 1997; 8:10 a.m.)

HEARING OFFICER FRANK: The hearing before us today is the continuation of the Petition of Louis Berkman Company, doing business as Swenson Spreader Company for an adjusted standard from 35 Illinois Administrative Code, Part 215, Subpart F, Adjusted Standard, 97-5.

Let's go off the record for just a second.

(Discussion off the record.)

HEARING OFFICER FRANK: Back on the record.

I would note for the record that there are no members of the public present today.

Okay. If you would like to go ahead and re-introduce yourselves on the record.

MR. MEASON: This is Jim Meason, Counsel for Swenson Spreader Company.

MS. SAWYER: Bonnie Sawyer, representing the Illinois Environmental Protection Agency.

MS. ARCHER: Christina Archer, representing the Illinois Environmental Protection Agency.

1 HEARING OFFICER FRANK: Okay. Mr.
2 Meason, you had a preliminary matter you would like
3 to address?

4 MR. MEASON: Yes. Ms. Frank, I have a
5 motion in limine. On May 15th the Illinois EPA
6 filed a supplemental response to our
7 interrogatories request for admissions and request
8 for production of documents. It provided two
9 documents in that supplement. The first is called,
10 "The Effect of RACT II, Environmental Controls in
11 Illinois."

12 The second is a memo from Bob Smet to
13 Bonnie Sawyer, dated April 15th, 1997. It is a one
14 page memo. This memo lists a number of companies,
15 the products that the companies allegedly produce,
16 and the VOM content of the coatings that the
17 companies allegedly emit or use.

18 First, I would argue that this memo is
19 irrelevant to the proceeding and has no probative
20 value one way or another with regard to Swenson
21 Spreader's operations.

22 Secondly, it is hearsay and would not
23 qualify as a business record since it wasn't kept
24 in the normal course of business, wasn't put

1 together close in period of time of learning the
2 allegedly varied information. And even if the
3 matter is ruled by you not to be hearsay and to be
4 relevant, it still is misleading and would unfairly
5 prejudice this proceeding against Swenson
6 Spreader. Therefore, I would move that it be
7 excluded from use as evidence.

8 HEARING OFFICER FRANK: Okay. Let's go
9 off the record for a second.

10 (Discussion off the record.)

11 HEARING OFFICER FRANK: Okay. Back on
12 the record.

13 Mr. Meason, did you have anything
14 further?

15 MR. MEASON: No.

16 HEARING OFFICER FRANK: Okay. Ms.
17 Sawyer, did you wish to respond?

18 MS. ARCHER: I will respond to that.

19 HEARING OFFICER FRANK: Okay. For the
20 record, this is Ms. Archer.

21 MS. ARCHER: Thank you, Ms. Hearing
22 Officer.

23 The Illinois EPA believes that this
24 memorandum is a business record, and it will be --

1 it was documented in the normal course of business.
2 This was part of Mr. Smet's investigation into the
3 adjusted standard petition. It was made in the
4 regular course of business. This is the normal
5 type of documentation that the Illinois EPA relies
6 upon in their investigation of such adjusted
7 standard petitions, and testimony will elicit that
8 this is a fact.

9 HEARING OFFICER FRANK: Okay. Is there
10 anything further, Mr. Meason?

11 MR. MEASON: No.

12 HEARING OFFICER FRANK: Okay. I am going
13 to disallow the motion in limine, but the Agency
14 still needs to prove this document at the time. I
15 am not admitting it as an exhibit yet, just
16 allowing you the chance to try and get it in.

17 MS. ARCHER: That's fine. Thank you.

18 HEARING OFFICER FRANK: Okay. Is there
19 anything further as a preliminary matter before we
20 begin again?

21 MR. MEASON: No.

22 HEARING OFFICER FRANK: Okay. Then let's
23 go ahead and begin. If you could go ahead and call
24 your first witness.

1 MS. SAWYER: I am sorry. I would like to
2 raise a preliminary matter, also.

3 HEARING OFFICER FRANK: Okay.

4 MS. SAWYER: Yesterday the Agency
5 received the fourth amendment to the petition for
6 an adjusted standard. I would move that any
7 testimony, either in direct or cross-examination,
8 of any of the issues raised in this amended
9 petition be excluded from this proceeding.

10 We just received it yesterday. We
11 haven't had the opportunity to review it. If it is
12 needed, the Agency would also like to suggest that
13 another hearing date may be needed to address
14 issues raised in this amended petition. And,
15 additionally, of course, the Agency has a
16 thirty-day period to file a response to this
17 amendment.

18 HEARING OFFICER FRANK: Okay.

19 MS. SAWYER: But I believe that since we
20 only received it yesterday that matters raised in
21 this petition should be excluded from this
22 proceeding.

23 HEARING OFFICER FRANK: Okay. Mr.
24 Meason?

1 MR. MEASON: Regulations allow amendment
2 of petitions at any time before the close of the
3 hearing. It is explicitly provided for in the
4 regulations. There is also a thirty-day response
5 period, as the Agency has pointed out.

6 It is true that they did receive the
7 document yesterday, and it was filed with the
8 Board, I believe, the day before that. However,
9 since it is explicitly contemplated by the
10 regulations, I would submit that the Agency could
11 have reviewed it yesterday and today.

12 For the record, there are two attorneys
13 of record in this proceeding representing the
14 Agency. Certain documents were delivered to me
15 yesterday, and I stayed up until 2:40 in the
16 morning this morning reviewing those documents.

17 I would argue that information contained
18 in this amended petition be allowed to be put into
19 evidence and testified to today at this hearing and
20 not be put off for a third day of hearings.

21 HEARING OFFICER FRANK: Okay. I am going
22 to allow testimony dealing with the amended
23 adjusted standard. However, if the Agency feels
24 that a third day of hearing is necessary to address

1 some of the issues, I will allow it.

2 I received the amended petition at 10:30
3 yesterday morning, or 10:00 yesterday morning and
4 found it hard to gather all of the information for
5 this hearing. So if the Agency feels that they
6 need an additional day to respond to those items, I
7 would allow it.

8 However, I would like to suggest that it
9 be done in the next couple of weeks, so if we
10 decide at the end of hearing today we need it, we
11 are going to have to pick a hearing date fairly
12 quickly. Otherwise, if the Agency decides at the
13 end of hearing the rules do allow for a written
14 response, and so we will go ahead and allow a
15 written response as the rules allow for.

16 Mr. Meason is correct, the rules allow
17 him to amend, so he shouldn't be penalized for
18 that, which is why I am going to allow him to ask
19 witnesses questions about the information in the
20 new amended petition.

21 We can just revisit this either after a
22 lunch break or toward the close of hearing,
23 depending if the Agency has a feel for whether or
24 not we need an additional hearing.

1 MS. SAWYER: Okay.

2 HEARING OFFICER FRANK: Is there anything
3 further?

4 MR. MEASON: No.

5 HEARING OFFICER FRANK: Ms. Sawyer, is
6 there anything further?

7 MS. SAWYER: No.

8 HEARING OFFICER FRANK: Okay. I think
9 before we begin, this would be a good time to just
10 give what one of the Board members yesterday
11 referred to as the civility talk. This proceeding
12 has gotten fairly contentious. Some of the filings
13 have been a little disrespectful between both
14 parties.

15 I would like today to run a little bit
16 more smoothly. I am not asking either side to not
17 make zealous arguments on behalf of their client,
18 but I do expect respect on both sides, and I will
19 enforce that for the rest of the day.

20 So if we could go ahead and move on. Mr.
21 Meason, if you could call your first witness.

22 MR. MEASON: Thanks. What I would like
23 to do first is move the fourth amended petition
24 into evidence, which would amend our first -- it

1 will be Petitioner's Exhibit Number 1.

2 HEARING OFFICER FRANK: Okay. Is there
3 any objection?

4 MS. SAWYER: No, no objection.

5 HEARING OFFICER FRANK: Okay. The fourth
6 amended adjusted standard, am I correct with that?

7 MR. MEASON: Correct.

8 HEARING OFFICER FRANK: It will be marked
9 as Petitioner's Exhibit 16 in this case. It is
10 admitted into evidence.

11 (Whereupon said document was
12 duly marked for purposes of
13 identification and admitted
14 into evidence as Petitioner's
15 Exhibit 16 as of this date.)

16 HEARING OFFICER FRANK: For the record,
17 so that the Board knows, you have reprinted
18 everything, am I correct? They don't have to flip
19 back and forth between documents? The fourth
20 amended petition contains everything that they
21 need?

22 MR. MEASON: It is a page-for-page
23 substitution with additional exhibits.

24 HEARING OFFICER FRANK: Okay.

1 MR. MEASON: Just to clarify the record,
2 if page nine exists in the fourth amended petition,
3 it is simply to take out the old page nine and put
4 in the new page nine.

5 HEARING OFFICER FRANK: Right. Is there
6 anything else before you call your first witness?

7 MR. MEASON: No. Ms. Frank, I would like
8 to call as my first witness Terry Rielly.

9 HEARING OFFICER FRANK: Mr. Rielly, why
10 don't you have a seat over here.

11 (Whereupon the witness was
12 sworn by the Notary Public.)

13 P A T R I C K T. R I E L L Y,
14 having been first duly sworn by the Notary Public,
15 saith as follows:

16 DIRECT EXAMINATION

17 BY MR. MEASON:

18 Q Good morning, Mr. Rielly.

19 A Good morning.

20 Q Could you state your full name and spell
21 it for the record.

22 A Patrick T. Rielly, R-I-E-L-L-Y.

23 Q And do you go by the name of --

24 A Terry.

1 Q Terry.

2 A Patrick Terrence Rielly.

3 Q And who is your employer?

4 A Swenson Spreader Company.

5 Q What is your position with Swenson
6 Spreader?

7 A Industrial engineering manager slash
8 safety manager.

9 Q How long have you been a Swenson Spreader
10 employee?

11 A Just over eight years, 1989.

12 Q And have you held the same position with
13 Swenson Spreader during your entire tenure there?

14 A The industrial engineering aspect of it,
15 yes. I have just graduated into the compliance
16 field kind of by evolution.

17 Q When you say "compliance," what do you
18 mean by compliance?

19 A OSHA, the EPA.

20 Q What is your prior professional
21 experience before joining Swenson Spreader?

22 A I have always been in production
23 management as some form of a supervisor, a general
24 supervisor.

1 Q Do you have a Bachelor's Degree?
2 A Yes, I do.
3 Q In what field?
4 A Industrial management.
5 Q From what college?
6 A Northern Illinois University.
7 Q Do you have any graduate work?
8 A I have a Master of Science Degree in
9 industrial management from Northern Illinois
10 University.
11 Q In your duties in the compliance area
12 that you mentioned -- you have duties in the
13 compliance area. What are those duties?
14 A Well, it started out where I -- shortly
15 after I started Swenson Spreader, the person that
16 handled the safety committee retired or left, and I
17 was appointed to be the management representative
18 and the chairman of the safety committee.
19 The longer I was on the safety committee,
20 the more I got into OSHA regulations and started
21 reading a lot more OSHA programs and trying to get
22 us in compliance, and for the most part we were.
23 But I was trying to keep us in compliance with
24 OSHA, and I really had not had any background with

1 the Environmental Protection Agency until we had an
2 inspection. Then I started reading up and reading
3 the regulations, and they provided me with Title
4 35s.

5 Q Okay.

6 A And in the last two years I have been
7 doing a lot of studying on EPA regulations.

8 Q Do you know why we are here at this
9 meeting today?

10 A Yes, Swenson Spreader. We are trying for
11 a variance for our air permit. We cannot --

12 Q Do you mean a variance?

13 A A variant petition of -- a variance to
14 the air standard, an adjusted standard.

15 Q An adjusted standard?

16 A Yes.

17 Q Okay. Why does Swenson Spreader need an
18 adjusted standard?

19 A Due to our customers -- and our customers
20 are all state and municipalities. We don't sell to
21 the open public, per se. They demand certain types
22 of paint. And these paints are always or usually
23 pretty high in what we call the VOCs or VOMs.

24 And we -- the painting technology and the

1 painting industry cannot really supply all the
2 pigments and resins and powders to match the colors
3 with the capabilities of the IMRONS and the
4 different types of hardness of paints at this point
5 in time. We have succeeded in changing over quite
6 a few.

7 Q Does Swenson Spreader experience the same
8 production week after week after week?

9 A Oh, no, no. Not even day after day after
10 day. We change customers. We change product
11 lines.

12 HEARING OFFICER FRANK: Let's go off the
13 record for just a minute.

14 (Discussion off the record.)

15 HEARING OFFICER FRANK: Let's go back on
16 the record. Please continue.

17 MR. MEASON: Could you read back where we
18 were.

19 (Whereupon the requested
20 portion of the record was read
21 back by the Reporter.)

22 Q (By Mr. Meason) Are you familiar with the
23 term job shop?

24 A Yes.

1 Q What, in your estimation, entails a job
2 shop?

3 A Well, job shop is someone who has to
4 adjust and vary depending on their customers'
5 needs. They have a diverse base of customers, all
6 different types, and these people order different
7 types of equipment, and you more or less make it to
8 their order and their specifications. You don't
9 make a standard product, like a refrigerator or a
10 table and that's all you do. A job shop conforms
11 to whatever the customer wants.

12 Q And that can vary from day-to-day?

13 A Yeah.

14 Q That can vary from week to week and month
15 to month?

16 A Customers have even been known to change
17 their order from the last time to the new time, new
18 specifications, new requirements.

19 Q Does Swenson Spreader coat with either a
20 primer or a paint all the products that it
21 manufacturers?

22 A Not the stainless steel ones, no. But
23 the other products we prime. We prime the APBs.

24 Q What's an APB?

1 A All purpose body. That's a new line that
2 we are trying to develop, trying to come out with.
3 It has been on the market now for six months, a
4 year, maybe. But that is a primer only, and it is
5 painted by the end user.

6 Q Why is it primed only?

7 A Well, the dealer or the end user usually
8 paints it. That's the way APBs are sold. I don't
9 know.

10 Q Okay.

11 A They sit in our yard outside and in the
12 dealer's yard outside maybe for months before they
13 are painted.

14 Q Does that pose any particular problems?

15 A Well, depending on your geographical
16 location, you have to have a strong primer on there
17 if it is going to be exposed to a lot of sun and
18 then freezing weather, snow, ice and everything.

19 Q Has Swenson experienced problems with the
20 prime only boxes?

21 A Yes. We had to -- we tried a couple
22 different primers before we locked in on the one
23 that we are using now. And the lower VOC primers,
24 we couldn't get much adhesion.

1 Q When you say "lower VOC," what do you
2 mean?

3 A Below 3.5 or below. 3.5 or below.

4 Q You have had better experience with VOCs
5 above 3.5 for your prime-only products?

6 A Yes.

7 Q Why is that?

8 A It gives us -- due to the ingredients in
9 the formula, and I don't know all of them, it gives
10 us more adhesion. It protects the metal better.
11 They don't rust out.

12 Q Was that a problem, rusting in the yards?

13 A Yes.

14 Q Are you involved in any way with Swenson
15 Spreader's paint and primer operations?

16 A Yes.

17 Q How are you?

18 A On the industrial engineering side I try
19 to watch the process and see what the process is
20 and make any helpful changes, or I suggest
21 equipment changes.

22 Q Okay.

23 A I don't supervise that operation.

24 Q Do you review at any time the MSDS sheets

1 for the paints and primers that are being used at
2 Swenson Spreader?

3 A Yes. I keep a monthly -- a monthly
4 compilation of our averages of our VOCs of the
5 paints we spray. The foremen turn into me a sheet
6 with their figures of every gallon of paint that
7 they painted during a monthly period. And then I
8 look up the VOCs on the most recent MSDS sheet. I
9 try to keep a running figure, by the month, of our
10 paint usage, what type of paint it was, and the
11 total VOCs per pound.

12 Q Now, you say you look at the MSDS sheets
13 after it is sprayed. Do you ever look at the MSDS
14 sheets before you actually fill an order?

15 A Yes, if we get the paint in, the MSDS
16 sheets usually come in with the paint. If we get
17 the paint in a couple weeks ahead of time, the MSDS
18 sheet will come to me. Then I will check it over
19 to see if it is duplicative of the one on file.
20 But I usually keep the most recent one on file.

21 Q Does Swenson Spreader have a sales staff,
22 per se, that deals with the various governmental
23 agencies?

24 A We have a five-person sales staff. I

1 don't know. I think they deal with dealers and
2 states. They talk to the people in the states.

3 Q Do they ever ask you for input as far as
4 VOCs or VOM are concerned prior to you filling a
5 bid?

6 A There have been times when we have
7 discussed it. At that -- when sales gets a request
8 for bid it will just be a paint number to them, and
9 then they will pass it off to engineering, who will
10 go through the bid and see if there is any changes
11 to the last time we made the unit for the different
12 entity. And then they will assign a paint to it
13 based on the request for paint. At that point in
14 time sometimes I get into it.

15 Q Okay. Are you familiar with the federal
16 regulations as far as the VOM content is concerned
17 for miscellaneous metal parts and products?

18 A The VOC content?

19 Q Yes.

20 A I don't believe there is a federal
21 standard for that. That's a State of Illinois
22 standard.

23 Q Do you know what that State of Illinois
24 standard is?

1 A It is 3.50 VOM per gallon of paint,
2 pounds of VOM per gallon of paint.

3 Q Does that regulation apply to all levels
4 of VOM emission in an industry?

5 A As far as the State of Illinois is
6 concerned, I believe it does. But the federal --
7 what I have read on the federal is that -- in fact,
8 this week I was reading, and they have asked
9 various state organizations to kind of look at the
10 industry itself and not just have a blanket cross
11 the board for everything. It says that some
12 industries -- some industries vary. The processes
13 vary. You can't apply the same standard across the
14 board.

15 Q Is there -- in Illinois regulations, is
16 there a trigger above or below which the regulation
17 does or does not apply?

18 A You don't go above 3.5, to the best of my
19 knowledge, in Illinois.

20 Q Does that 3.5 pound per gallon rule apply
21 whether you emit ten tons a year or fifty tons a
22 year annually?

23 A It is 25 tons.

24 Q It applies below 25 tons or above 25

1 tons?

2 A Above 25 tons.

3 Q Under Illinois regulations, is it your
4 understanding that you can -- that you are allowed
5 to average your paint usage so that you are below
6 3.5 pounds per gallon?

7 A I don't believe in Illinois you are
8 supposed to spray anything over 3.5.

9 Q Not one gallon?

10 A Not one ounce. We try to -- Tioga has
11 just jumped hoops getting us down. Bimonthly they
12 are doing one or two.

13 Q A few moments ago you said that you track
14 monthly paint usage for Swenson Spreader?

15 A Yes.

16 Q Do you have a recollection of what the
17 monthly numbers look like, at what levels they are
18 at?

19 A I can remember April. I think it is 3.96
20 or 3.86, but I can't remember off the top of my
21 head all those numbers.

22 Q Did you supply the figures that were
23 incorporated in the adjusted standard petition?

24 A Yes, I did.

1 Q If I showed you those numbers, would it
2 refresh your recollection of what the numbers were?

3 A Yes.

4 Q Mr. Rielly, I am showing you page 51 of
5 Petitioner's Hearing Exhibit Number 1. If you
6 could take a look at that, please.

7 A Okay.

8 Q Could you tell me what you see on that
9 page?

10 A Well, I see 16 months of paint usage and
11 the averages for VOC pounds per gallon. I see the
12 highest one is 4.37. The lowest one is probably
13 3.65.

14 Q Now, what is the first month and year of
15 your compilation there?

16 A January of 1996.

17 Q What is the latest month and year?

18 A April of 1997.

19 Q And are all months listed between January
20 1996 and April of 1997?

21 A Yes, sir.

22 MS. ARCHER: If I could just clarify for
23 the record, I believe that we are now looking at
24 Petitioner's Exhibit 16, the fourth amended

1 petition, rather than Petitioner's 1.

2 MR. MEASON: Good point.

3 HEARING OFFICER FRANK: Thank you.

4 MR. MEASON: Good point.

5 Q (By Mr. Meason) Now, is there a column
6 there that lists all of the averages?

7 A Yes.

8 Q And those averages, on what time frame
9 are they based?

10 A They are in monthly increments.

11 Q Monthly increments. Okay.

12 A They are usually figured at the end of
13 every month beginning at the new month.

14 Q So during any particular month would
15 Swenson Spreader have paints and primers that were
16 lower than the number for that particular month?

17 A Yes.

18 Q And would Swenson Spreader also have
19 paints that were higher than that number for a
20 particular month?

21 A Yes. It varies, but traditionally or
22 historically we have taken bids, and we have what
23 is called a spring sale, and we take government
24 bids and give out bids on the spring sale. And

1 that usually takes place in May, April, May and
2 into June. We get state bids in that period of
3 time, too. But then we actually do all of the
4 painting towards the fall and the winter.

5 Q So, say, as of right now, what would be
6 the lowest pound per gallon paint or primer that
7 Swenson is currently spraying, say, this month?

8 A 3.3.

9 Q 3.3?

10 A (Nodded head up and down.)

11 Q What would be the highest that you are
12 aware of, this particular month?

13 A Next week. The State of West Virginia,
14 5.08.

15 Q 5.08?

16 A Yes.

17 Q How do those numbers compare, say, to a
18 year ago, for your high and your low?

19 A Well, according to this, we are lower.
20 Our standard paints have come down pretty much
21 across the boards due to Tioga's efforts. These
22 paints from the state bids and the municipal bids
23 that call out CORLORs and IMRONs, these are paints
24 that take a lot of solvents. They take a

1 hardener. The hardener is mixed in with the paint,
2 and the volatile emissions are a lot higher.

3 Q Okay.

4 A It is a much harder paint once it is
5 applied.

6 Q All right. Do the monthly averages, that
7 are depicted on page 51 there, are they dependent
8 upon the types of bids that the company is filling
9 at any particular point in time?

10 A Yes.

11 Q Okay. How so?

12 A Well, if you are -- during the month if
13 you are spraying a lot of high VOC paints and if
14 you have a large bid -- say, a particular state
15 bids a three-foot box, that calls for 5.07 VOCs.
16 If they bid over 100 of them, that's really going
17 to skew your averages for the month up very high,
18 if you are not doing a lot of standard painting.

19 Q Have you, on behalf of Swenson Spreader,
20 approached the various paint companies to
21 reformulate their paints to be below or meet the
22 Illinois regulatory requirement of 3.5 pounds per
23 gallon?

24 A Yes.

1 Q And could you -- well, did you approach
2 Tioga?

3 A A little over a year ago, when we were
4 getting into our Title 5, and we wanted to get our
5 VOCs down to get our air permit, we approached
6 Tioga, DuPont, Sherwin-Williams. I called a lady
7 from Rust-oleum. We called Barrett and Tioga.
8 Tioga at that time was only -- '95, a 30 some
9 percent vendor of ours. We were using a lot of the
10 DuPonts, the Sherwin-Williams, things like that.
11 And I called all of them and says, we have got to
12 get these down. You have to reformulate.

13 Tioga jumped right up at the top. They
14 started immediately. They were calling us, coming
15 out to the plant, taking samples. They started
16 bringing down averages on our standard paints that
17 we bought from them, and then we started giving
18 them some of the other paints that we were buying
19 from some of the other companies to see what they
20 could do, and they did.

21 Q So Tioga previously was -- what did you
22 say, 30 some?

23 A 30 some percent.

24 Q 30 some percent?

1 A I think I compared the year of 1995 and
2 1996.

3 Q Okay. So it was in 1995 that they were
4 about --

5 A About a 30 percent, somewhere in that 30
6 to 40 range.

7 Q In 1996 do you know roughly what --

8 A They were about 80 percent.

9 Q About 80 percent?

10 A And the other vendor, the 20 percent
11 vendor, was our vendor for our standard Omaha
12 Orange, which we buy from Barrett in Chicago.

13 Q What accounts for the change for Tioga
14 being in the 30 percentile range and now being in
15 the 80 percentile range?

16 A Their just immediate reaction to this
17 problem and just getting right on it and working to
18 help us solve this problem.

19 Q Has Tioga been able to reformulate all of
20 the paints that you have questioned of them?

21 A No.

22 Q No?

23 A Not all of them. They have done most of
24 our standard paints as they come up. But when we

1 get into trying to crossmatch some of the DuPonts,
2 they haven't been able to do that yet. It is not
3 really their fault because they are not working
4 hard enough. It is just that technology isn't
5 there.

6 Q Did you approach DuPont to reformulate
7 their paints?

8 A Yes, DuPont, Sherwin-Williams, and
9 Rust-oleum. We approached all of them.

10 Q And what was the result of those efforts?

11 A DuPont and Sherwin-Williams, we got phone
12 calls, and called them back they got -- it was more
13 or less just phone calls and a lot of questions,
14 and they would send us samples. A gentleman from
15 the EPA gave me the name of a lady in Rust-oleum,
16 Nancy Osterroot (spelled phonetically) or something
17 like that.

18 Q Okay. A gentleman from the EPA. Was it
19 the U.S. EPA or the Illinois EPA?

20 A Illinois. I called her. I called them,
21 and she came in. She spent a couple hours at the
22 plant, and then she left. Then about a week and a
23 half to two weeks later they had lateraled us off
24 to the local -- well, I wanted to say distiller --

1 the local distributor. I think that is Moss Paint
2 in Rockford. Then we just started with the phone
3 calls. Well, in the interim, Tioga is already
4 going. They are already doing it. So we decided
5 to stay with Tioga, because they were showing
6 results immediately.

7 Q Did --

8 A We felt that rather than dilute our
9 efforts with all these other companies, we would go
10 with them.

11 Q Did Rust-oleum ever come back with a
12 reformulated paint meeting the Illinois standard?

13 A No, because once a distributor -- the
14 local distributor called, and he started asking
15 questions and wanting samples, I thought, man, we
16 are too far down the road here. We have to just
17 concentrate our efforts, you know.

18 Q Too far down the road in what way?

19 A Well, as far as what Tioga had already
20 done. We had already lost two to three weeks from
21 the time we started this, and I just thought it
22 would be too long to bring Rust-oleum up to speed
23 because I had no idea, other than the fact that
24 this gentleman had recommended them, whether they

1 could do it or not. Tioga had already shown us
2 that they could do it, plus they were local.

3 Q What was your experience with DuPont?

4 A DuPont, my experience with them was just
5 phone calls and, yeah, we will try, but when we buy
6 from DuPont, even through a local distributor, we
7 just buy small quantities. We don't want a lot of
8 inventory, these VOC paints in the house. So we
9 might buy anywhere from 2 gallons, 22 gallons, or
10 42 gallons, and that's it. Well, they are kind of
11 lukewarm about doing a whole rechemistry on their
12 paints for 22 gallons.

13 Q Simply, you are too small?

14 A Yeah, that's about it.

15 Q How about Sherwin-Williams?

16 A Sherwin-Williams was basically about the
17 same as DuPont. I want to say lip service;
18 telephone calls, you know, back and forth, and a
19 lot of questions, but nothing coming in the door.

20 Q Okay.

21 A By this time Tioga was already sending us
22 down five gallon pails and ten gallon pails of
23 samples to try out that were working, and we would
24 just turn around and order them.

1 Q Do you know how many paints,
2 approximately, Swenson Spreader has been successful
3 in having reformulated?

4 A Just probably ten or eleven total by now.

5 Q And do you know what the pounds per
6 gallon of VOM was prior to reformulation and what
7 they currently are?

8 A On some of them I remember.

9 Q If I showed you a document, might that
10 refresh your recollection of those numbers?

11 A Yes.

12 MR. MEASON: I show this first to Ms.
13 Sawyer and Ms. Archer.

14 Q (By Mr. Meason) Okay. Mr. Rielly, I am
15 handing you a document. Can you examine that
16 document, please?

17 A Yes.

18 Q Do you recognize that document?

19 A Yes.

20 Q Did you prepare that document?

21 A Yes.

22 Q Would you explain for the Board what that
23 document is?

24 A We started out with probably figures of

1 early 1996, late 1995.

2 Q Take a step back. Could you generally
3 describe what the document is?

4 A It shows two lines of paints listed, and
5 it shows the prior VOCs, and it shows the current
6 VOCs --

7 Q Okay.

8 A -- of paints that have been
9 reformulated. There is a total of eight of them
10 here.

11 Q Is that an exclusive listing?

12 A No, there is probably three or four more
13 by now.

14 Q Okay. Could you read the top, say, the
15 first item, and what the pound per gallon was prior
16 to reformulation?

17 A Bartel Company, gloss black, 4.80.

18 Q And what has that been reformulated to?

19 A Tioga, gloss black, 3.50.

20 Q So it is currently 3.5. What was it
21 previously?

22 A It was 4.8.

23 Q Okay. 4.8. Could you read the second
24 line?

1 A Yenkin Majestic Meyer, 3.72. That was
2 the old one.

3 Q Okay.

4 A The new one is Tioga Meyer Yellow, 3.29.

5 Q All right. 3.29. How about the third
6 line?

7 A It is North Carolina Yellow. It was
8 4.49, and now the North Carolina Yellow is 3.42.

9 Q Okay. The fourth line?

10 A Is Federal Yellow, 4.63 VOCs, and the
11 Tioga Federal Yellow, 3.45.

12 Q How about the fifth line?

13 A It is a School Bus Yellow at 4.49, and
14 now it is a Tioga School Bus Yellow at 3.43.

15 Q And the sixth line?

16 A It is a Tioga Air-Dri Gray primer, 3.94.
17 The new one is Tioga Gray Primer, 3.16.

18 Q Okay. The seventh line?

19 A Tioga Beige Primer, 4.69. Now it is a
20 Tioga Beige Primer, 3.48.

21 Q And the eighth line?

22 A Indiana Yellow. It was 4.52, and now it
23 is Tioga Indiana Yellow, 3.23.

24 Q Are there any other lines listed there?

1 A No, sir.

2 MR. MEASON: Ms. Frank, I would like to
3 move this document into evidence.

4 HEARING OFFICER FRANK: Is there any
5 objection?

6 MS. SAWYER: Yes, I object. It was not
7 introduced as an exhibit. It was just introduced
8 to refresh his recollection. It is not a business
9 record.

10 Q (By Mr. Meason) Did you personally write
11 that document up?

12 A Yes, sir.

13 Q And on what were these entries based?
14 What were the entries based on?

15 A What do you mean, they were based?

16 Q Were they based off the MSDS sheets?

17 A Yes, they were based off figures from the
18 MSDS sheets. Sometimes the MSDS is very ambiguous
19 in their contents, so I call the manufacture, and I
20 tell them the code number and I want the exact VOCs
21 for that paint, and I usually get it over the
22 phone.

23 Q And for any particular paint listed on
24 that sheet, do you look at the MSDS sheets close in

1 time to the reformulation effort?

2 A Yes.

3 Q Okay.

4 HEARING OFFICER FRANK: Okay. Is there a
5 continuing objection?

6 MS. SAWYER: Yes. We haven't established
7 any sort of background as to when this document was
8 prepared and for what purpose.

9 HEARING OFFICER FRANK: I am going to go
10 ahead and allow this document. All the evidence on
11 it has already been admitted through his
12 testimony. I think it will aid the Board to have
13 it all written out.

14 (Whereupon said document was
15 duly marked for purposes of
16 identification and admitted
17 into evidence as Petitioner's
18 Exhibit 17 as of this date.)

19 MR. MEASON: It is Exhibit Number 17,
20 correct?

21 HEARING OFFICER FRANK: Yes.

22 Q (By Mr. Meason) Mr. Rielly, are you aware
23 that Swenson Spreader received an afterburner quote
24 in 1995?

1 A After the quote came in, I was aware of
2 it.

3 Q I would like to show you what has already
4 been --

5 MR. MEASON: Can we go off the record
6 real quick.

7 (Discussion off the record.)

8 MR. MEASON: All right. Back on the
9 record.

10 I would like to show you Petitioner's
11 Exhibit Number 1, Item I. Could you explain to the
12 Board what that document is?

13 A It is Brule's proposal for Swenson
14 Spreader Company.

15 Q Who is that proposal sent to?

16 A Terry Rielly, myself.

17 Q Did you actually have any role in the
18 solicitation of that quotation?

19 A No, no. At that point in time, 1994 and
20 1995, under a prior general manager, I did almost
21 all of the requests for bids. I would solicit bids
22 for equipment needed in the house. Therefore, most
23 bids that came in -- when all the bids came in,
24 they were addressed to me.

1 Then if I didn't actually solicit it, I
2 would go to the person that did and give it to
3 them. Mr. Henderson requested this bid from Brule,
4 and they asked who to send it to, and he had them
5 send it to me.

6 Q Otherwise, did you have any type of role
7 in that?

8 A No, I didn't know he even did it. I know
9 that there was a little bit of discussion about it
10 after we had left one of the meetings, but I didn't
11 know he actually did it until we got it.

12 Q After you received the -- after the
13 company received the bid, did you have a chance to
14 review the bid?

15 A Yes. After I gave it to him, he gave it
16 back to me a few days later, and I kind of went
17 through it a little bit.

18 Q Do you know what the size of the system
19 that was quoted in that bid was?

20 A It was 32,000 cubic feet per minute.

21 Q When you were -- a few days after you got
22 the quote in, when Mr. Henderson returned it to
23 you, did you have an opportunity to examine it in
24 more detail?

1 A Yes.

2 Q And did you -- were you satisfied with
3 all areas of that quotation?

4 A No. I believe they overstated the
5 savings here because they state that about 95
6 percent of the volume of solid waste, meaning our
7 paint sludge and some paper, currently would cost
8 \$27,000.00. They estimated the costs of removal
9 from our plant.

10 Q So \$27,000.00 a year?

11 A Yes, \$27,000.00 a year, when in
12 actuality, right now it probably runs us less than
13 \$1,000.00 for our paint sludge.

14 Q How was that number so much greater than
15 what you say to be your actual cost?

16 A Evidently, Mr. Henderson had provided
17 them with some figures, but at that point in time
18 our water pit in our paint booth had been
19 contaminated with Toluene. So we had two -- we
20 cleaned it out once and had everything sent away
21 under a hazardous waste hauler, and the price was
22 \$330.00, \$340.00 a barrel, as opposed to the \$75.00
23 to \$90.00 a barrel for nonhaz waste.

24 We did that twice, plus we went through

1 the second time, and we had a little bit more time,
2 and we were able to go through and steam clean the
3 pit, fill in any little tiny cracks, and have the
4 integrity of it certified. We did that, and then
5 when we refilled it with fresh water, the Rockford
6 office of the EPA reclassified our pit as
7 nonhazardous waste.

8 During that period, we sent away two
9 loads of probably 40 barrels each at \$300.00 and
10 some a barrel. That was quite expensive. That's
11 the figures they were using here. That's the only
12 thing I could come up with how it was that high.

13 Q Presently, what is your annual cost for
14 the waste in the paint booth?

15 A For paint sludge, if -- it is about
16 \$1,000.00, \$900.00 to \$1,000.00. We have a bag
17 system now. We send out dried sludge.

18 Q That's per year?

19 A Yes, a unit price per year.

20 Q Are you aware of a 1997 afterburner quote
21 that Swenson received?

22 A Yes. Mr. Swisher resolicited a quote
23 from Brule just to see what their figures were now
24 to see if they had changed, and they quoted the

1 same size.

2 Q Okay. I am going to hand you a
3 document.

4 A Okay.

5 MR. MEASON: First I will show it to Ms.
6 Archer and Ms. Sawyer.

7 MS. SAWYER: Is this something different
8 than the exhibit that you introduced at the
9 previous hearing?

10 MR. MEASON: I didn't have the exhibit
11 list. I couldn't remember if it was the same or
12 not.

13 Okay. Let's go off the record just to
14 clarify.

15 HEARING OFFICER FRANK: It should be.

16 (Discussion off the record.)

17 HEARING OFFICER FRANK: Let's go back on
18 the record.

19 MR. MEASON: I will withdraw my offering
20 of that document.

21 Q (By Mr. Meason) I am handing you a
22 document, Mr. Rielly, that has been entered into
23 evidence as Petitioner's Exhibit 4, on the first
24 day of hearing.

1 Could you examine that document, please?

2 A It is the second proposal from Brule to
3 Mark, and it is for --

4 Q Mark Swisher?

5 A Yes.

6 Q Okay.

7 A It is for 32,000 square feet again.

8 Q And that's the same size as the prior
9 quotation?

10 A Yes, they are both 32,000.

11 Q Is it the same model afterburner as the
12 prior quotation?

13 A I think so.

14 Q Did you have a chance to review that
15 afterburner proposal?

16 A Not really.

17 Q Were you --

18 A We had looked at the price and saw the
19 price didn't change, and that the size hadn't
20 changed that they recommended. I briefly read
21 through it. I am not an expert on afterburners. I
22 have never worked at a place that has got an
23 afterburner. So other than seeing a Brule
24 promotional video on it, I don't know a whole lot

1 about the engineering on an afterburner.

2 Q After you received -- the company
3 received this 1997 bid, did you at all look into
4 any aspect of the capacity or size of the
5 afterburners being quoted?

6 A Yes. At one point there we thought that
7 that -- we were advised that we probably could go
8 smaller and still attain our same objective with a
9 smaller afterburner. So I had called Binks. I
10 called up Binks.

11 Q Who is Binks?

12 A Binks is a manufacturer that manufactured
13 our paint spray booth and installed it. I told
14 them, I says, you have a 32,000 feet per minute
15 ventilation system here. What was the rationale
16 behind 32,000? Why isn't it 15,000 or 20,000 or
17 50,000?

18 Q The ventilation system, what is that?

19 A The exhaust for the paint booth.

20 Q Okay.

21 A And I says, well, how did you lock on to
22 32,000. So he got out his old bid sheets and
23 everything, and he said, well, we built that
24 according to the current OSHA ventilation specs

1 that were in place at that time, 1981. And he
2 says, we had to meet the OSHA ventilation specs.
3 So I asked him to write me a letter and to put his
4 formula in there. Then I checked the OSHA regs and
5 saw that that was exactly right.

6 Q Okay.

7 A And it is the same regs today as it was
8 back then.

9 Q I am going to show you a document.

10 A Okay.

11 MR. MEASON: First I will show it to Ms.
12 Archer and Ms. Sawyer.

13 Now I will show it to the Hearing
14 Officer.

15 Q (By Mr. Meason) Mr. Rielly, do you
16 recognize that document?

17 A Yes, sir.

18 Q Can you explain to the Board what that
19 document is?

20 A This is a letter from Binks, Mr. Erling
21 Horn, telling us why they installed this size booth
22 that they did, and why they installed the
23 ventilation equipment that they did.

24 Q Does that letter contain any references

1 to standards or regulations?

2 A Yes. It quotes 1910.107 from the OSHA
3 regulations, and it also quotes 1910.094.

4 Q Okay.

5 A I think that this is also an NFPA
6 standard.

7 Q What does NFPA stand for?

8 A National Fire Protection Association, I
9 think. Yes, the National Fire Protection
10 Association.

11 Q Okay. Did you have a chance to examine
12 the OSHA regulations cited in that letter?

13 A Yes, yes.

14 Q And is the booth designed in accordance
15 with the OSHA regulations?

16 A Yes.

17 Q How did you determine that?

18 A Well, the OSHA regulation has a table.
19 When you read through it, it has a table in it, and
20 it tells you for the size booth, for a manual
21 automatic spray gun, the minimum and maximum
22 requirement of air movement or ventilation for
23 exhaust that is required in that range. It is 100
24 to 200 feet per minute.

1 Taking the design of our spray booth, it
2 is 20 feet by 16 feet, or 320 square feet, and if
3 the movement of air, the feet per minute, is 100
4 feet per minute, that's a simple calculation of 320
5 square feet times the 100, and it gives you
6 32,000. They installed two 16,000 fans, feet per
7 minute fans.

8 Q So the existing fan capacity matches what
9 your calculation would be?

10 A Yes.

11 Q Okay.

12 A And this was back in 1981 that they did
13 it.

14 Q Did you examine what the regulation
15 actually was in 1981?

16 A Yes.

17 Q Was there any difference to what Binks
18 quoted in the --

19 A No, this formula was the same.

20 MR. MEASON: Okay. I would like to move
21 this document into evidence.

22 HEARING OFFICER FRANK: Is there any
23 objection?

24 MS. SAWYER: Yes, an objection to

1 hearsay.

2 MR. MEASON: This is a quasi, a
3 regulatory quasi-judicial proceeding. It is a
4 highbred adjusted standard mechanism. This was --
5 this is on company stationery directed to Mr.
6 Rielly, who is under oath today. I think given
7 this type of proceeding, it should not be excluded
8 as hearsay.

9 MS. SAWYER: The letter includes various
10 legal interpretations and things such as that,
11 without presenting an opportunity to cross-examine
12 the author of the letter.

13 HEARING OFFICER FRANK: May I see it
14 again, please?

15 MR. MEASON: I would like to note that
16 that company is the company that built the existing
17 paint booth and downdraft that is currently at
18 Swenson Spreader. I believe that we have already
19 introduced into evidence, in the first day, the
20 blueprint, Petitioner's Exhibit 3, from Binks
21 Manufacturing of the downdraft spray booth.

22 HEARING OFFICER FRANK: I am going to
23 allow the document.

24 Did you have something further?

1 MS. SAWYER: Can I just add a couple
2 further specifics about that letter? It refers to
3 whether the OSHA standard is concerned with
4 particulate matter or VOCs. I think that it goes
5 into legal interpretations without really
6 justifying them or offering the opportunity.

7 On the other hand, Mr. Rielly testified,
8 you know, as to his understanding of the OSHA
9 standard in relation to the coating booth. I think
10 that that sort of testimony is acceptable to
11 address this matter. On that particular issue, I
12 think that we are really prejudiced if we are not
13 allowed the opportunity to cross-examine the author
14 of that letter.

15 HEARING OFFICER FRANK: Okay. Well, I am
16 going to allow this, and if we end up having an
17 additional day of hearing, you can subpoena that
18 witness if you feel that it is prejudicial to the
19 Agency.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification and admitted
23 into evidence as Petitioner's
24 Exhibit 18 as of this date.)

1 MR. MEASON: At this point in time, also,
2 I would like to introduce into evidence two other
3 documents. Prior to the last hearing date, Ms.
4 Sawyer and I reached an agreement that any official
5 publications of the government would be stipulated
6 to, as far as authenticity.

7 I will show Ms. Archer and Ms. Sawyer a
8 copy of the current OSHA Regulations, 29 CFR
9 1910.94, C6, and accompanying Table G-10, as well
10 as a copy of the portion of the Federal Register
11 from Thursday, June 27th, 1974, where the OSHA
12 standard was first promulgated and has, in its
13 entirety, the regulation in question, including
14 Table G-10. I would like to note for the record
15 that the regulation is unchanged from 1974 through
16 today.

17 MS. SAWYER: Just to clarify, we did
18 stipulate to the authenticity of these documents.
19 I guess we didn't anticipate that excerpts of them
20 were going to be actually introduced. We don't
21 necessarily have a problem with the excerpts, but
22 it is not clear where these items come from. If
23 you look at these excerpts, they need
24 clarification, a cover page or something like

1 that.

2 MR. MEASON: On the Federal Register
3 Notice, it is the very first page of the Federal
4 Register Notice. It has the date.

5 MS. SAWYER: Oh, it does have the date on
6 that one. Okay. I missed that one here.

7 HEARING OFFICER FRANK: Yes, it has the
8 date and the volume.

9 MR. MEASON: I believe on the CFR, it
10 lists right at the top what the section of the CFR
11 is.

12 MS. SAWYER: Yes, but not the -- I mean,
13 that's just the -- that's not the full citations of
14 the CFR.

15 MR. MEASON: Well, I didn't want to
16 include the entire Title 29 of the CFR. It is
17 about six or seven volumes.

18 HEARING OFFICER FRANK: Okay. Is the
19 Title 29, is it--

20 MS. SAWYER: Yes.

21 MR. MEASON: Yes.

22 HEARING OFFICER FRANK: Okay.

23 MR. MEASON: Simply for ease for the
24 Board, since it is a different regulatory scheme.

1 HEARING OFFICER FRANK: Is there still an
2 objection to it, or are you satisfied now?

3 MS. SAWYER: No objection.

4 HEARING OFFICER FRANK: Okay. Then
5 Exhibit 19 will be the Federal Register, Volume 39,
6 Number 125, page 23502.

7 (Whereupon said document was
8 duly marked for purposes of
9 identification and entered into
10 evidence as Petitioner's
11 Exhibit 19 as of this date.)

12 HEARING OFFICER FRANK: And Exhibit 20
13 will be the Title 29 pages.

14 (Whereupon said document was
15 duly marked for purposes of
16 identification and entered into
17 evidence as Petitioner's
18 Exhibit 20 as of this date.)

19 Q (By Mr. Meason) Mr. Rielly, based on your
20 prior testimony, it is your opinion that the
21 current paint booth and downdraft meet the OSHA
22 regulation?

23 A Yes, sir.

24 Q And could you tell us, again, why that

1 is?

2 A The OSHA table and the regulation calls
3 for a minimum of 100 -- a range of from 100 to 200
4 feet per minute of air ventilation or air
5 movement. According to the size of our booth, 320
6 square feet, times 100 is 32,000, and that's the
7 size that they installed.

8 MR. MEASON: I have nothing further,
9 subject to recall.

10 HEARING OFFICER FRANK: Okay. Ms.
11 Sawyer? Would it be easier for you if the witness
12 sat in that chair next to Mr. Meason?

13 MS. SAWYER: I think we are okay.

14 HEARING OFFICER FRANK: Okay.

15 MS. SAWYER: I don't have too many
16 questions for this witness.

17 HEARING OFFICER FRANK: Okay.

18 CROSS EXAMINATION

19 BY MS. SAWYER:

20 Q Mr. Rielly, are you an engineer?

21 A A professional engineer?

22 Q Just an engineer.

23 A My title is industrial engineer, but my
24 training is not that of an engineer. I have never

1 had engineering school, if that is what you are
2 asking. This is the first time I have ever worked
3 in an engineering capacity. I have always been in
4 production management. This is an offshoot of
5 production management.

6 Q Mr. Rielly, you stated that you looked to
7 MSDS sheets, the material safety data sheets, to
8 determine the VOM contents of coatings; is that
9 correct?

10 A Yeah. Yes.

11 Q Okay.

12 A And if they are not -- sometimes they are
13 listed on there, and sometimes they are not. The
14 manufacturers have a tendency, when they list their
15 ingredients on an MSDS sheet, to say less than 20
16 percent or less than 10 percent. They don't give
17 you exact numbers. So, therefore, you call them up
18 and ask them what is the exact VOC of this paint.

19 Q So in those instances, where the MSDS
20 does not list the VOC content, you call the vendor?

21 A Yes, yes. Because it is almost
22 impossible to figure it out with the formula unless
23 they give you the exact figures, and they don't
24 give you exact figures. I might add that Tioga

1 supplies us -- every new paint that comes out has a
2 cover sheet, before we even get an MSDS, showing
3 all of the different components of what the VOM is.

4 Q Does that sheet list how they determine
5 what the VOM content is?

6 A They don't show a formula, no.

7 Q They don't show if they have done any
8 tests, or what they have done?

9 A No. All I do is I look at the
10 ingredients and see that -- in a lot of cases, when
11 comparing one paint to the same paint or a change,
12 I will notice a big drop in Toluene, a drop in
13 Xylene, and drops in Acetone. That's what we are
14 concerned about.

15 Q Mr. Rielly, in your testimony you stated
16 that you are responsible for environmental and
17 safety issues and the compliance issues at Swenson?

18 A Yes, ma'am.

19 Q As part of that job, you have reviewed
20 Title 35 of the Illinois Administrative Code?

21 A Yes.

22 Q And you have also stated that all levels
23 of industry must comply with the 3.5 pounds per
24 gallon standard in Illinois?

1 A My understanding of reading those --
2 actually, they cite some differences in some of the
3 different corporations in Moline that have an
4 adjusted standard for site specific reasons.

5 Q But other than that, it is your
6 understanding that in Illinois all levels of
7 industry must comply with that standard?

8 A Yes. I didn't get that so much from the
9 Title 35. I have been getting this environmental
10 newsletter. They have been sending it to me. I
11 couldn't give you the author or where it comes
12 from. It comes from out east someplace.

13 But different articles in that little
14 newsletter have stated different states and their
15 standards. I would highlight some of them and go
16 back and look them up in the regs when I have time,
17 either the OSHA regs or the Title 35, Land and Air
18 that I have got. I try to cross-reference them.

19 Q In your testimony you stated that you
20 have been concentrating your reformulation efforts
21 with Tioga; is that correct?

22 A Yes, ma'am.

23 Q And you also stated that Tioga has been
24 unable to formulate -- or has been unable to

1 reformulate all of your coatings; is that correct?

2 A They have been successful in our standard
3 coatings, and in what we call one-coat
4 applications. But when we are getting into trying
5 to duplicate the IMRONS and the polyurethanes that
6 have two components, a paint and have a hardener
7 added to it, nobody has been able, to the best of
8 my knowledge, and if they did, I would buy it.
9 Nobody has been able to get right down to below 3.5
10 because the technology in the paint industry isn't
11 there yet. I have had several conversations with
12 Mr. Olsen over the telephone, in Rockford,
13 regarding this.

14 Q Okay. So that's what Mr. Olsen stated,
15 that no one in the paint industry is up to that
16 standard?

17 A He says that -- he told me, he said, they
18 can -- all of the resins, all of the dyes and
19 everything that they use to formulate paint, they
20 are all available from the same paint houses, and
21 that people like himself, and like DuPont, like
22 your other different paint manufacturers, they all
23 go to the same sources to buy their raw materials.

24 Q You were referring to an OSHA regulation

1 in talking about the airflow in the coating booth,
2 and you stated that a certain level, I believe
3 32,000 standard feet per cubic minute, airflow was
4 required to comply with an OSHA standard?

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q Do you know if there is any other ways to
9 comply with that standard, other than through the
10 airflow or other than keeping the airflow at that
11 exact level?

12 A You mean either a higher or a lower
13 airflow through there?

14 Q Or just any other ways?

15 A No, I don't. If you have to maintain a
16 minimum of 100 feet per minute, I don't know.
17 There may be some exotic ways that you can pull
18 some of the air out of the booth and run it through
19 filters or something down at ground level. I don't
20 know.

21 Q This airflow that you are referring to,
22 then, you are basing that determination on the size
23 of the booth?

24 A Yes.

1 Q Is that correct?

2 A Yes, ma'am.

3 MS. SAWYER: I don't think we have any
4 further questions of this witness.

5 HEARING OFFICER FRANK: Mr. Meason, do
6 you have anything further on redirect?

7 MR. MEASON: Yes, just a couple.

8 REDIRECT EXAMINATION

9 BY MR. MEASON:

10 Q Mr. Rielly, you stated on
11 cross-examination that all levels of industry had
12 to comply, in your opinion, with the regulation.

13 Did you mean every single industry in
14 Illinois or all industries within the miscellaneous
15 metal parts and products category?

16 A The Illinois standard, to the best of my
17 knowledge, is 3.5 for miscellaneous paints (sic).

18 MR. MEASON: Thank you. I have nothing
19 further.

20 HEARING OFFICER FRANK: Do you have
21 anything else, Ms. Sawyer?

22 MS. SAWYER: No.

23 HEARING OFFICER FRANK: Okay. Thank you,
24 Mr. Rielly.

1 THE WITNESS: Thank you.
2 (The witness left the stand.)
3 MR. MEASON: Can we go off the record
4 real quick?
5 HEARING OFFICER FRANK: Yes.
6 (Discussion off the record.)
7 HEARING OFFICER FRANK: Please call your
8 next witness.
9 MR. MEASON: I would like to call John
10 Stefan.
11 HEARING OFFICER FRANK: All right. Could
12 you please swear the witness.
13 (Whereupon the witness was
14 sworn by the Notary Public.)
15 J O H N J. S T E F A N,
16 having been first duly sworn by the Notary Public,
17 saith as follows:
18 DIRECT EXAMINATION
19 BY MR. MEASON:
20 Q Good morning, Mr. Stefan. Could you
21 state and spell your name for the record.
22 A John J. Stefan, S-T-E-F-A-N.
23 Q Who is your employer?
24 A The Illinois EPA.

1 Q What is your position with the Illinois
2 EPA?
3 A I am an EPE II, in the Bureau of Air,
4 Compliance and Systems Management Section.
5 Q What is an EPE II?
6 A An Environmental Protection Engineer.
7 Q Okay. How long have you been with the
8 Illinois EPA?
9 A Three years.
10 Q In that same position?
11 A I was an EPE I when I started.
12 Q Is the difference between a I and a II a
13 promotion?
14 A Yes.
15 Q What are your duties with the Illinois
16 EPA?
17 A I am in the Compliance Section, so it
18 would be working on compliance functions.
19 Q Okay. Go ahead.
20 A Insuring compliance with the facilities
21 that we have in the State.
22 Q Okay. Are you employed in the Bureau of
23 Air?
24 A The Bureau of Air.

1 Q Within the Bureau of Air, you said you
2 are in the Compliance Section. Could you describe
3 what the duties or the responsibilities are of the
4 Compliance Section?

5 A We take the -- we work with the permits
6 which are written on the facilities. We work with
7 the field engineers when they do field inspections
8 and find noncompliant activities. We work with
9 Legal. We work with Air Quality Planning. We work
10 with the laws of the State of Illinois and the
11 federal laws, to then insure that facilities are in
12 compliance.

13 Q What is your prior professional
14 experience before you joined the Illinois EPA?

15 A I was a field engineer for approximately
16 20 years.

17 Q That was in the private sector?

18 A In the private sector, yes.

19 Q Could you give us a flavor for what your
20 range of experience was when you were in the
21 private sector?

22 A It was field engineering, specifically
23 sales, working with various industrial clients,
24 mainly in the Chicago area, selling industrial

1 instrumentation, which could be anywhere from
2 sensors up through computer systems.

3 Q And in your private sector experience,
4 did you have any need to have knowledge of
5 environmental and health and safety regulations?

6 A Yes.

7 Q Do you have a college degree?

8 A Yes.

9 Q And what is that degree?

10 A It is a Bachelor of Science Degree in
11 electrical engineering.

12 Q From where?

13 A It is from the Milwaukee School of
14 Engineering.

15 Q Do you have graduate work?

16 A No.

17 Q Do you know what this proceeding is about
18 today?

19 A It has to do with Swenson's petition for
20 an adjusted standard.

21 Q Have you been involved in the Agency's
22 discussions, contemplation of the adjusted standard
23 application?

24 A Yes.

1 Q Have you participated in meetings with
2 Agency personnel?

3 A Yes.

4 Q Have you participated in meetings with
5 Swenson Spreader personnel?

6 A Yes.

7 Q Have you participated in teleconferences
8 with Swenson Spreader personnel?

9 A Yes.

10 Q So you have basically been in a lot of
11 communication regarding the adjusted standard
12 petition?

13 A Yes.

14 Q Have you personally, from time to time,
15 been in direct communication with Swenson Spreader?

16 A Not directly, but through you.

17 Q Right. But from time to time you --

18 A Yes.

19 Q As depicted in the petition and in the
20 various communications that have taken place
21 regarding Swenson's petition, have you developed a
22 level of familiarity with Swenson Spreader's
23 operations?

24 A Yes.

1 Q Are you familiar with Swenson Spreader's
2 existing paint booth and downdraft?

3 A Yes.

4 Q Do you know -- can you recall what the
5 size, the capacity of the existing downdraft is, as
6 attached to the paint booth?

7 A There is two fans, each 16,000 CFM, for a
8 total of 32,000 CFM.

9 Q All right. Previously you stated that
10 you were cognizant and worked with environmental
11 and public health and safety regulations in the
12 private sector?

13 A Yes.

14 Q Did you perform any type of calculations
15 with regard to whether the existing downdraft was
16 properly sized for Swenson Spreader's paint booth?

17 A Yes.

18 Q Okay. What regulations, if any, did you
19 consult in doing your calculations?

20 A There is an OSHA regulation that relates
21 to the air velocity entering the spray booth. I
22 don't know the exact number of it, but there is an
23 OSHA regulation pertaining to that spray booth, to
24 any spray booth.

1 Q Okay. I will show you what has been
2 marked as Exhibit 20, Petitioner's Exhibit 20. If
3 you could examine that real briefly, and if you
4 could --

5 A Okay. Are you talking about what is
6 underlined here or what is --

7 Q Well, there is more than one page.

8 A Okay.

9 Q Is that the regulation that you consulted
10 in developing your calculations?

11 MS. SAWYER: Objection. That misstates
12 his testimony.

13 HEARING OFFICER FRANK: Sustained.

14 Q (By Mr. Meason) Do you recognize that
15 regulation, Mr. Stefan?

16 A I recognize some of the data that is in
17 it. The number, I don't know.

18 Q Okay.

19 A The data that I saw was in a different
20 format. It could have been -- it could have come
21 from this regulation. I don't know. But the data
22 that I see, as far as air pull velocity, is
23 consistent with the data that I saw.

24 Q Thank you. Let me direct your attention

1 to Table G-10 in this document. Is there a column
2 for -- labeled design?

3 A Yes.

4 Q And are there categories of operating
5 conditions?

6 A Yes.

7 Q Are there specific entries for air
8 operated guns, manual or automatic?

9 A Yes.

10 Q In the design column, are there -- is
11 there a range stipulated for air operated guns,
12 manual or automatic?

13 A Yes.

14 Q What is the minimum design that is
15 listed?

16 A It would be 100 per minute.

17 Q What is the maximum listed?

18 A It would be 150, if I am reading it
19 correctly. It is hard to -- I am not sure how to
20 read the table. I don't know what the range means
21 there.

22 Q Looking at the design column solely, is
23 there a maximum?

24 A Well, it depends on the cross draft feet

1 per minute.

2 Q Right.

3 A These are both the same. So it depends
4 on the cross draft feet per minute. It would be
5 150.

6 Q Okay.

7 A The design criteria is 100 to 150.

8 Q Okay. Thank you very much. Is this data
9 consistent with the regulations that you consulted,
10 although in a different form?

11 A Yes.

12 MS. SAWYER: Objection. He misstates his
13 testimony. If you read it back, he never said he
14 consulted the regulations. You asked him if he was
15 familiar with it.

16 HEARING OFFICER FRANK: I believe he did
17 say he consulted regulations, but he couldn't
18 remember which number specifically, so I am going
19 to allow it.

20 Q (By Mr. Meason) Okay. You stated earlier
21 that you had 20 years in the private sector as what
22 type --

23 A A field engineer.

24 Q As a field engineer. You have been with

1 the Agency for three years?

2 A Yes.

3 Q As a -- what was the title again?

4 A Environmental Protection Engineer.

5 Q An Environmental Protection Engineer.

6 You have a Bachelor's Degree in engineering --

7 A Yes.

8 Q -- also? You also stated, am I correct,
9 that you did have knowledge of OSHA -- excuse me --
10 of public safety and environmental regulations
11 during your 20 year private sector career; is that
12 correct?

13 A Yes.

14 MR. MEASON: At this point in time, I
15 would like to have the Board recognize Mr. Stefan
16 as an opinion witness.

17 HEARING OFFICER FRANK: Is there any
18 objection?

19 MS. SAWYER: Objection. I don't think he
20 is qualified for an opinion witness just because he
21 has some knowledge of these regulations. He hasn't
22 provided any sort of a --

23 MR. MEASON: I will limit it as to air
24 emissions control technologies and the related

1 regulatory requirements.

2 MS. SAWYER: I don't believe Mr. Stefan
3 has provided any information about his knowledge on
4 air emissions control technologies.

5 MR. MEASON: I am willing to develop that
6 further.

7 HEARING OFFICER FRANK: Okay. Please do.

8 Q (By Mr. Meason) Mr. Stefan, in your
9 position with the Illinois EPA, do you ever review
10 company's air emissions control technologies that
11 they either have installed or are considering to
12 install at their facilities?

13 A Yes.

14 Q And is that a normal component of your
15 job?

16 A Yes.

17 Q And do you develop engineering opinions
18 on those various technologies?

19 A Not on the technologies.

20 Q On the applicability of that particular
21 facility?

22 A Generally that is done by permit upstream
23 of us.

24 Q What is, then, your role with looking at

1 air emissions control technologies?

2 A We sometimes get into review of permits
3 and applicability to the law and compliance at the
4 facility.

5 Q Have you ever been involved in matters
6 involving companies installing or wishing to
7 install afterburners?

8 A I don't understand your question.

9 Q In your position at the Illinois EPA have
10 you ever been involved in matters dealing with the
11 company's installation or proposed installation of
12 an afterburner at their facility?

13 A Yes.

14 Q Have you ever been involved in matters
15 pertaining to a company's installation or proposed
16 installation of powder coating at a facility?

17 A No.

18 Q In your private sector experience, did
19 you have any contact with afterburners?

20 A Yes.

21 Q Did you have any contact with powder
22 coating systems?

23 A Not to my recollection.

24 Q Okay. What was the nature of your -- in

1 the private sector, what was the nature of your
2 contact with afterburners?

3 A It was working both with the original
4 equipment manufacturers, the people that actually
5 manufactured and sell the afterburners, and also
6 with the people that had the existing afterburners
7 that wanted to retrofit the controls: The sensors,
8 the controls, the control system, the safeties for
9 those devices.

10 Q So direct involvement in afterburners?

11 A Yes.

12 Q Would that require a knowledge of public
13 safety, meaning OSHA and environmental regulations?

14 A Yes.

15 MR. MEASON: At this point in time, I
16 would like to move Mr. Stefan as an opinion witness
17 with regard to afterburners and their related
18 regulatory requirements as far as OSHA and
19 environmental matters are concerned.

20 HEARING OFFICER FRANK: Ms. Sawyer?

21 MS. SAWYER: Well, I would like to ask
22 some questions of him.

23 EXAMINATION

24 BY MS. SAWYER:

1 Q You said that you had contact with
2 facilities that were equipment manufacturers.
3 Could you expand on that a little bit? Contact in
4 what respect?

5 THE WITNESS: The original equipment
6 manufacturers fabricate the steel work and
7 generally go out and buy the burners and the
8 controls for that. When you have an afterburner,
9 you have a sensor, which I would then supply. You
10 have the controller, the three-mode controller with
11 the --

12 Q (By Ms. Sawyer) So your involvement had
13 to do with the sensors that you were supplying for
14 the piece of equipment?

15 A Correct.

16 Q Did you ever work for a company that
17 manufactured afterburners?

18 A No.

19 Q Or supplied afterburners?

20 A No.

21 Q Did you ever work for a company that had
22 an afterburner operating?

23 A Yes.

24 Q And what was your responsibility with

1 that company?

2 A Field sales.

3 Q Okay. So did you have any involvement in
4 that company with the afterburner in your position
5 in sales?

6 A No.

7 Q You referred to at the Illinois EPA you
8 have been involved with companies that are planning
9 to install afterburners. What has been the extent
10 of that involvement?

11 A Variances. Variances, and reviewing some
12 of the permits and some of the compliance functions
13 associated with that. Reporting.

14 Q Have you ever visited one of the
15 facilities?

16 A No.

17 Q In terms of variances, did you have to
18 make some sort of technical evaluation about the
19 afterburner?

20 A As far as -- I don't understand your
21 question as far as "technical evaluation."

22 Q In your involvement with the company that
23 was planning to install an afterburner, did you
24 ever have to investigate the feasibility of that

1 afterburner for that company, or did you determine
2 just if the afterburner, you know, would meet the
3 applicable requirements, that sort of thing?

4 A Just that it would meet the
5 requirements. There was no initial design
6 responsibilities.

7 MS. SAWYER: Okay. I would suggest that
8 this witness may be -- may have some limited
9 qualifications to answer questions on afterburners
10 and control systems, but that that is somewhat
11 limited. So if we could kind of take it on a case
12 by case basis, as he asks the questions.

13 HEARING OFFICER FRANK: That's fine. I
14 agree with you.

15 So let's continue. I will allow you to
16 ask the questions.

17 Ms. Sawyer, I am sure you will object if
18 you believe that it is beyond the scope of
19 knowledge of this witness.

20 DIRECT EXAMINATION (cont.)

21 BY MR. MEASON:

22 Q Mr. Stefan, did you read Swenson
23 Spreader's petition?

24 A Yes.

1 Q And did you review any accompanying
2 materials that were supplied, either through the
3 teleconferences or various meetings, during the
4 Agency's deliberations over the adjusted standard
5 petition?
6 A Yes.
7 Q Are you familiar with the 1995
8 afterburner quotation that the company received
9 from Brule?
10 A Yes.
11 Q And do you recall what that -- what the
12 size capacity was in that quotation?
13 A Yes.
14 Q What was that size?
15 A 32,000 CFM.
16 Q Does that size match the existing
17 downdraft and the paint booth at its facility?
18 A Yes.
19 Q Do you have an opinion on whether that
20 afterburner is properly sized for the existing
21 downdraft and paint booth?
22 A Yes.
23 Q Upon what is your opinion based?
24 A My opinion is based upon the drawings for

1 the 32,000 CFM.

2 MS. SAWYER: Could we go off the record
3 for --

4 HEARING OFFICER FRANK: Yes.

5 MS. SAWYER: -- just a moment? This is
6 an Agency witness so...

7 (Discussion off the record.)

8 HEARING OFFICER FRANK: Back on the
9 record.

10 MR. MEASON: Could you read back his last
11 few comments?

12 (Whereupon the last question
13 and answer was read back by the
14 Reporter.)

15 THE WITNESS: From my calculations of the
16 paint booth size and the quotation that was
17 provided.

18 Q (By Mr. Meason) You did state you do have
19 an opinion on whether the afterburner is properly
20 sized. What is your opinion?

21 MS. SAWYER: Objection.

22 HEARING OFFICER FRANK: What is your
23 objection?

24 MS. SAWYER: It is beyond the scope of

1 this witness' expertise. He has never -- he has
2 never established that he has designed afterburners
3 or had any involvement in evaluating the technical
4 feasibility of afterburners, and issues such as
5 that that would be needed to make such an opinion.

6 HEARING OFFICER FRANK: Mr. Meason?

7 Q (By Mr. Meason) Did you consult the OSHA
8 regulations in coming to an opinion?

9 A I don't understand the question.

10 Q When you did your calculations, okay, on
11 what were your calculations based?

12 A The calculations for the size of the
13 spray booth were based upon the OSHA regulations.

14 HEARING OFFICER FRANK: Do you wish to
15 continue with your original question that there was
16 an objection to?

17 MR. MEASON: Yes.

18 HEARING OFFICER FRANK: Okay. Ms.
19 Sawyer, your objection is that it is beyond the
20 scope of the witness' --

21 MS. SAWYER: Expertise.

22 HEARING OFFICER FRANK: -- expertise?

23 Okay.

24 Mr. Meason, do you have a response to

1 that?

2 MR. MEASON: Mr. Stefan is a professional
3 engineer. He has 23 years experience in both the
4 private and the public sector. He is regularly
5 involved in certain aspects of afterburners in the
6 private sector. He is involved in certain aspects
7 of evaluating afterburners for the Illinois EPA and
8 consulted the black and white OSHA regulations as
9 to whether the quotation is properly sized for
10 Swenson Spreader's existing paint booth and
11 downdraft, based upon the blueprint of that paint
12 booth and downdraft.

13 HEARING OFFICER FRANK: Okay. I am going
14 to allow an answer, and so if you remember the
15 question at this point --

16 THE WITNESS: I would like to hear the
17 question again.

18 Q (By Mr. Meason) What is your opinion on
19 whether the afterburner is properly sized for
20 Swenson Spreader's existing paint booth and
21 downdraft?

22 A It is the proper size.

23 Q It is the proper size?

24 A Yes.

1 Q Are you aware of any cost calculations
2 that were done for that afterburner by the Illinois
3 EPA?

4 A Yes.

5 Q Did you receive a memo from John Reed
6 regarding cost calculations?

7 A Yes.

8 Q I will show you a document.

9 A Okay.

10 MR. MEASON: First I will show it to Ms.
11 Archer and Ms. Sawyer. It was a document that was
12 provided in their supplement to discovery that I
13 received at ten till 5:00 yesterday afternoon.

14 I will show it to the Hearing Officer.

15 Q (By Mr. Meason) I will show you this
16 document, Mr. Stefan. Do you recognize this
17 document?

18 A Yes.

19 Q Can you describe for the Board what that
20 document is?

21 A It is a document put together by John
22 Reed based upon the data provided in the petition
23 for adjusted standard, which utilizes perimeters
24 provided by the Illinois EPA -- oh, no, this is a

1 different one.

2 Okay. This is -- this goes back a ways.
3 It provides different flow rates and different cost
4 perimeters for afterburners based upon U.S. EPA
5 data entirely.

6 Q Are there four different calculations
7 provided?

8 A Four different calculations.

9 Q And are there four different sized
10 afterburners?

11 A Four different sizes, yes.

12 Q What are those sizes listed?

13 A The largest one is 32,000 CFM, 24,000,
14 16,000, and 10,000 CFM.

15 MS. SAWYER: Can I ask where Mr. Meason
16 is going with this document? It is a document
17 authored by Dr. Reed of the Agency. I am not
18 exactly sure why Mr. Stefan is testifying about it
19 at this point.

20 HEARING OFFICER FRANK: Mr. Meason?

21 MR. MEASON: That will become clear in
22 another one or two questions. The document was
23 written to Mr. Stefan. He is entitled to comment
24 on the document.

1 HEARING OFFICER FRANK: I thought it was
2 written to Mr. Beckstead.

3 MR. MEASON: And Mr. Stefan.

4 HEARING OFFICER FRANK: Okay. That's
5 fine. Please continue your questioning.

6 Q (By Mr. Meason) Did you have an
7 opportunity to review that document when it was
8 sent to you?

9 A Yes.

10 Q In your opinion, do any of the three
11 afterburner quotations, smaller than 32,000, have
12 any basis in OSHA regulations?

13 MS. SAWYER: Objection.

14 HEARING OFFICER FRANK: What is your
15 objection?

16 MS. SAWYER: First of all, this document
17 is hearsay that he is asking him to read off of.
18 And, secondly, the question doesn't seem to make
19 sense, whether Dr. Reed's calculations have any
20 relevance to OSHA. I don't quite understand why
21 Mr. Stefan is qualified to respond to a question
22 about that.

23 MR. MEASON: Mr. Stefan has already
24 offered an opinion that has been accepted by the

1 Hearing Officer with regard to the proper size of
2 the afterburner based upon OSHA regulation. That
3 size is 32,000 cubic feet a minute. There are four
4 different calculations there listed, one of which
5 is 32,000 cubic feet a minute, three others are
6 smaller than 32,000 cubic feet a minute. I am
7 simply asking Mr. Stefan, based upon his previous
8 testimony, whether those other three capacities
9 would meet the OSHA regulation.

10 MS. SAWYER: You are asking him to
11 explain whether -- you are asking him to explain
12 the rational behind Dr. Reed's memo. Dr. Reed is
13 going to testify, first of all, today.

14 MR. MEASON: I am not going into Dr.
15 Reed's calculations. I am simply looking at three
16 other sized afterburners he used.

17 MS. SAWYER: I think it would be more --

18 HEARING OFFICER FRANK: I am going to
19 sustain the objection. Let's go ahead and
20 continue.

21 MR. MEASON: Do you have Exhibits 5
22 through 9?

23 HEARING OFFICER FRANK: Yes, underneath
24 here.

1 MR. MEASON: Okay.

2 Q (By Mr. Meason) I am going to hand you a
3 document, Mr. Stefan, that has been admitted into
4 evidence on the prior hearing date as Petitioner's
5 Exhibit Number 5. If you could examine that,
6 please.

7 A (Witness complied.)

8 Q I am also going to hand you Exhibits 6,
9 7, 8, and 9, which were admitted into evidence in
10 the prior hearing date and are supporting
11 documentation for the figures listed in Exhibit 5.
12 If you could examine those, please.

13 A (Witness complied.)

14 HEARING OFFICER FRANK: For the record,
15 while he is examining those, Exhibit 6 is a budget
16 quote from Miller Engineering.

17 Exhibit 7 is a proposal for an
18 incineration unit from Concrete Systems, Inc.

19 Exhibit 8 is a quote proposal from Area
20 Rigging.

21 Mr. Meason, Exhibit 9, did you say,
22 also?

23 MR. MEASON: Right.

24 HEARING OFFICER FRANK: Is an affidavit

1 of Gary Beckstead.

2 Q (By Mr. Meason) Have you had a chance to
3 review all of those documents?

4 A Yes.

5 Q Okay. Do you find that Exhibits 6, 7, 8,
6 and 9 are reflected in Exhibit 5? The costs
7 ascribed, for example, to Rigging, are they set
8 forth in Exhibit 5? Well, let me restate this.

9 A Okay.

10 Q These exhibits were found, in the prior
11 hearing date, to be supported as line items in
12 Exhibit 5, okay. You have had a chance to review
13 Exhibit Number 5. Do you have an opinion as to
14 the -- as to the reasonability of those costs in
15 Exhibit 5?

16 MS. SAWYER: I object to this question.
17 I don't think Mr. Stefan is qualified. He was not
18 at the previous hearing. He doesn't know the
19 testimony from that hearing.

20 MR. MEASON: He was not at the previous
21 hearing because the Agency asked for and received
22 my release of Mr. Stefan from subpoena.

23 HEARING OFFICER FRANK: Besides the issue
24 of him not being present, do you have a specific

1 objection as to whether or not he is qualified as
2 an opinion witness to answer this question?

3 MS. SAWYER: Yes. I don't think he has
4 had an opportunity to review this document. I
5 don't think he has been qualified at all as a
6 witness that could provide any information on the
7 cost of control equipment.

8 HEARING OFFICER FRANK: Mr. Meason?

9 Q (By Mr. Meason) In your position at the
10 Illinois EPA, do you have the opportunity to review
11 the cost of control equipment in your job?

12 A Yes.

13 HEARING OFFICER FRANK: Okay. Please go
14 ahead and answer the question, although I am sure
15 that you don't remember it at this point.

16 Can we have it read back?

17 (Whereupon the requested
18 portion of the record was read
19 back by the Reporter.)

20 THE WITNESS: I don't see the stack tests
21 specifically identified in Exhibit 5.

22 Q (By Mr. Meason) I don't either, but go
23 ahead. Besides that --

24 A The rest of them seem to be identified in

1 that analysis.

2 Q Okay. Do you have an opinion as to
3 whether those costs are reasonable?

4 A Yes, I do.

5 Q And what is that opinion?

6 A The costs are reasonable.

7 Q Meaning that they accurately reflect, for
8 example, the cost of what rigging services would be
9 in an afterburner installation, what the cost of
10 excavation of a concrete pad, construction of a
11 concrete pad would be; is that what you mean?

12 A Yes.

13 Q I would like to direct your attention to
14 a line in Exhibit 5, the annualized cost per ton of
15 required VOM reduction. The entry in this document
16 is \$10,657.00 as the cost per ton of required VOM
17 reduction as a result of the installation of this
18 afterburner.

19 Do you have an opinion as to the
20 reasonableness of the cost as it pertains to the
21 VOM reduction?

22 MS. SAWYER: Objection.

23 HEARING OFFICER FRANK: What is your
24 objection?

1 MS. SAWYER: It is beyond the scope of
2 this witness' expertise.

3 HEARING OFFICER FRANK: I believe this
4 witness testified that he does have experience with
5 the costs of these systems, so I am going to go
6 ahead and allow it. It goes to the weight of
7 whether or not the Board wants to give any weight
8 to his testimony.

9 All right. Please continue.

10 THE WITNESS: I don't think the
11 calculation was done correctly.

12 Q (By Mr. Meason) In what way?

13 A Well, the calculation is based upon 26
14 tons. I think the EPA requirement is divided by
15 the 32 tons. I would question the calculation.

16 Q Okay. The 26 tons is of required
17 reduction. Are you aware that there is an
18 efficiency regulation in the Illinois EPA's code?

19 A Yes, 81 percent.

20 Q And do you know what Swenson's 1996
21 emission totals were in tons?

22 A I don't know. 32?

23 Q That's correct.

24 A All right.

1 Q If you would, multiply the regulatory
2 required reduction by 32. Do you know what that
3 total would be?

4 A It would be 26.

5 Q Okay. Do you have an opinion --

6 A But I think the requirement is to take
7 the whole 32 tons to arrive at the cost per ton.

8 Q Okay. In terms of required reduction for
9 26 tons, do you have an opinion as to whether
10 \$10,657.00 per ton is a reasonable cost for that
11 emissions control alternative?

12 A I am still confused with the question.

13 Q As pertains to this particular
14 afterburner, as it would apply to Swenson Spreader
15 if it were installed, and based upon the supporting
16 costs and the regulatory requirement of required
17 VOM reduction, do you have an opinion as to whether
18 the \$10,657.00 figure cost per ton of reduction is
19 reasonable or not?

20 A I have an opinion.

21 Q Okay. What is that opinion?

22 A That's too high.

23 Q That is too high? Thank you. Are you
24 aware that Swenson Spreader has concern or is

1 considering the installation of powder coating at
2 its facility?

3 A Yes.

4 Q Are you generally aware of what
5 activities Swenson would have to engage in to get a
6 powder system up and running?

7 A No.

8 Q Let's go back to some of your earlier
9 testimony when we talked about the role of the
10 Compliance Section generally. Is it normally the
11 role of a Compliance Section in the Bureau of Air
12 to be involved in adjusted standard proceedings,
13 site specific rulemaking proceedings, and variance
14 proceedings?

15 A Yes.

16 Q And what is Compliance's role in those
17 types of proceedings?

18 A To put forth the technical recommendation
19 on the adjusted standard or the variance, site
20 specific.

21 Q Now, is that technical recommendation
22 just for the Compliance Section or the technical
23 recommendation for the Bureau of Air?

24 A The Bureau of Air.

1 Q In this particular matter, did the
2 Compliance Section attempt to perform that
3 function?

4 A Yes.

5 Q And did, ultimately, the Compliance
6 Section exercise that role?

7 A Yes.

8 Q How did the Compliance Section exercise
9 that role?

10 A I requested data from the field
11 operation, from Air Quality Planning, from permits,
12 and they wrote a recommendation.

13 Q The recommendation, the technical
14 recommendation for the Bureau of Air was given to
15 who?

16 A Bonnie Sawyer.

17 Q In Legal?

18 A Yes.

19 Q Did Legal follow that technical
20 recommendation?

21 A No.

22 Q What was Compliance's technical
23 recommendation?

24 A The recommendation was --

1 MR. MEASON: Can we go off the record
2 real quick?

3 HEARING OFFICER FRANK: Yes.

4 (Discussion off the record.)

5 MR. MEASON: Could you read back?

6 (Whereupon the last question
7 and answer was read back by the
8 Reporter.)

9 THE WITNESS: The recommendation was to
10 grant the petition for an adjusted standard.

11 Q (By Mr. Meason) Was the Compliance
12 Section actively involved in the consideration of
13 this adjusted standard from approximately the time
14 of its filing in October of 1996?

15 A Yes.

16 Q Is Compliance still actively involved in
17 this matter?

18 A Yes.

19 Q Are you aware of an Illinois EPA
20 initiated enforcement action against Swenson
21 Spreader?

22 A Yes.

23 Q Are you personally involved in that
24 matter?

1 A No.

2 Q Are other Illinois EPA representatives
3 involved in both the adjusted standard matter and
4 the enforcement matter?

5 A Yes.

6 Q Given the outstanding enforcement action,
7 do you believe Swenson Spreader has had the benefit
8 of an unbiased review of the adjusted standard
9 petition?

10 A Let me have that question again.

11 Q Based upon the outstanding enforcement
12 action that the Illinois EPA initiated, do you
13 believe Swenson Spreader has had the benefit of an
14 unbiased review by the Illinois EPA representatives
15 of its adjusted standard petition?

16 MS. SAWYER: I have an objection.

17 MS. ARCHER: Objection.

18 HEARING OFFICER FRANK: What is your --

19 MS. SAWYER: As to the relevance of this
20 witness' opinion as to that.

21 HEARING OFFICER FRANK: Mr. Meason?

22 MR. MEASON: Mr. Stefan has already
23 stated that the Compliance Section is charged with
24 providing the technical support document to legal

1 in this proceeding. He has also testified that
2 Compliance Section's recommendation was that the
3 adjusted standard be granted.

4 That technical document was given to
5 legal, and the official position of the Illinois
6 EPA is that the Board deny the adjusted standard
7 request.

8 MS. SAWYER: He has not established that
9 this witness has any authority to make any Agency
10 decisions in this matter.

11 HEARING OFFICER FRANK: Sustained.

12 Q (By Mr. Meason) Do you know a gentleman
13 named Gary Beckstead?

14 A Yes.

15 Q And have you had communications with him
16 on this adjusted standard matter?

17 A Yes.

18 Q Are you aware of Mr. Beckstead's being
19 involved in the -- in any way in the enforcement
20 action?

21 A I was not aware of that.

22 Q What personnel are you aware of, Illinois
23 EPA personnel, that are involved in both the
24 adjusted standard matter and in the enforcement

1 matter?

2 A Bob Smet, Bonnie Sawyer, Karen Barancik
3 and John Reed.

4 Q In your communications with Bob Smet, did
5 he ever express any opinions with regard to Swenson
6 Spreader's deserving or not deserving an adjusted
7 standard?

8 MS. ARCHER: I will object to this
9 question. First of all, there is no foundation
10 that Mr. Stefan has ever had a conversation with
11 Bob Smet regarding the enforcement action.

12 Second, I believe it would be hearsay.

13 HEARING OFFICER FRANK: Is Mr. Smet going
14 to be testifying today?

15 MS. ARCHER: Yes.

16 HEARING OFFICER FRANK: Mr. Meason, you
17 can ask Mr. Smet.

18 MR. MEASON: Okay. I have no further
19 questions, subject to recall.

20 HEARING OFFICER FRANK: All right. Ms.
21 Sawyer?

22 MS. SAWYER: Just a moment, please.

23 (Ms. Sawyer and Ms. Archer
24 confer briefly.)

1 CROSS EXAMINATION

2 BY MS. SAWYER:

3 Q Mr. Stefan, how many adjusted standards
4 have you worked on in your responsibilities with
5 the Illinois EPA?

6 A This is my first one.

7 Q And is it your understanding that this is
8 also the first adjusted standard that the
9 Compliance Unit has worked on?

10 A Yes.

11 Q Are you aware of any site specific rules
12 the Compliance Section has worked on?

13 A No.

14 Q How many variances have you personally
15 worked on in your responsibilities with the
16 Compliance Section?

17 A Three to four.

18 Q Do you recall? Was it three?

19 A It is a small number. I don't know if it
20 is three or four.

21 Q What are they? What were the companies
22 involved?

23 A D.B. Hess.

24 HEARING OFFICER FRANK: D.B. Hess?

1 THE WITNESS: D.B. Hess, yes. I can't
2 remember the names.

3 Q (By Ms. Sawyer) So you can only recall
4 one company that you have done the adjusted
5 variance for?

6 A I can recall one name.

7 Q Mr. Stefan, in your responsibilities in
8 the Compliance Unit, do you have any authority to
9 make final Agency decisions with regards to
10 variances?

11 A No.

12 Q Do you have any authority to make final
13 Agency decisions with regards to adjusted standards
14 petitions?

15 A No.

16 Q Do you have any final Agency authority to
17 make final Agency decisions with regards to
18 enforcement actions?

19 A No.

20 Q Do you have any final Agency -- any
21 authority to make final Agency decisions with
22 regards to permitting matters?

23 A No.

24 Q Do you have any authority to make final

1 Agency decisions with regards to reasonableness of
2 control technology?

3 A No.

4 Q Mr. Stefan, on direct examination you
5 stated that you provided a technical recommendation
6 for the Bureau of Air?

7 A Correct.

8 Q Is it your testimony that this technical
9 recommendation incorporated the opinions of other
10 units from the Bureau of Air?

11 A Ask that question again.

12 Q Is it your testimony that this technical
13 recommendation incorporated the opinion or the
14 technical comments from other units in the Bureau
15 of Air?

16 A The technical comments were not
17 summarized in my recommendation. They went in to
18 influence and were part of my decision.

19 Q And is it your position that the
20 technical recommendation provided by Mr. Beckstead
21 from the Air Quality Planning Section suggested
22 that an adjusted standard for this company should
23 be supported by the Illinois EPA?

24 A No.

1 Q Is it your assessment that the technical
2 recommendation from the Permit Section from Mr.
3 Smet, Dr. Smet, suggested that the adjusted
4 standard petition should be supported by the
5 Agency?

6 A No.

7 Q And is it your assessment that the
8 technical recommendation from the field suggested
9 that the adjusted standard petition should be
10 supported by the Agency?

11 A No.

12 Q So, essentially, did you receive input
13 from any other units in the Agency?

14 A No.

15 Q So, essentially, you received unit input
16 from three other units in the Bureau of Air, all of
17 which suggested that the adjusted standard petition
18 should not be supported by the Illinois EPA; is
19 that correct?

20 A Correct.

21 Q Your technical recommendation, that took
22 all of these assessments into account, suggested
23 that the adjusted standard should be supported?

24 A Correct.

1 Q Mr. Stefan, who is the manager of your
2 unit?

3 A The unit manager is Angela Tin.

4 Q Who is the manager of the section?

5 A Dave Kolaz.

6 Q Did Mr. Kolaz review your technical
7 recommendation prior to sending it to the Division
8 of Legal Counsel?

9 A I believe so.

10 Q Okay. Mr. Stefan, you made the
11 assessment that the -- you answered some questions
12 about the downdraft of the coating booth at Swenson
13 Spreader?

14 A Yes.

15 Q Isn't it true that it is your
16 understanding that the entire room in which the
17 coating booth is located is drafted through this
18 coating booth?

19 A Yes.

20 MS. SAWYER: I have no further questions
21 at this time.

22 HEARING OFFICER FRANK: Okay. Mr.
23 Meason?

24 MR. MEASON: Yes. Thank you.

1 REDIRECT EXAMINATION

2 BY MR. MEASON:

3 Q Mr. Stefan, with the Compliance -- is it
4 called the section, is that the entire unit,
5 section?

6 A Compliance and Systems Management
7 Section.

8 Q Within the Compliance Section?

9 A You can call it CASM.

10 Q CASM. Okay. Within CASM, what
11 individual was charged with getting input from the
12 various Bureau of Air entities that might have
13 technical input on the adjusted standard
14 application?

15 A I was.

16 Q And who assigned you that job?

17 A Dave Kolaz.

18 Q And on cross-examination I believe you
19 testified that it was the Permit Section, the
20 Planning Section, and the Field Operation Section
21 that supplied comments to --

22 A Correct.

23 Q -- Compliance? And were those comments
24 taken into consideration by the Compliance Section

1 on behalf of the Bureau of Air?

2 A Yes.

3 Q And did you personally write the

4 Compliance Section's recommendation on behalf of

5 the Bureau of Air?

6 A Yes.

7 Q Was that recommendation reviewed by Ms.

8 Tin, your unit manager?

9 A Yes.

10 Q And I believe you stated, on

11 cross-examination, that you believe that Dave Kolaz

12 also reviewed that recommendation before it was

13 sent to Legal?

14 A Yes.

15 Q Did you have any meetings with Ms. Tin

16 and Ms. Kolaz (sic) to discuss the input you

17 received from the other technical sections within

18 the Bureau of Air?

19 HEARING OFFICER FRANK: Mr. Kolaz.

20 MR. MEASON: What I did say?

21 HEARING OFFICER FRANK: Ms.

22 Q (By Mr. Meason) I am sorry. Mr. Kolaz.

23 A I had meetings with Angela.

24 Q Angela?

1 A Angela Tin, Ms. Tin.

2 Q Okay.

3 A I am not sure if Dave Kolaz and I

4 discussed the input prior to writing my

5 recommendation. I don't recall.

6 Q But you believed that he did review your

7 recommendation before it was sent to Legal?

8 A He signed off on it. I believe he

9 reviewed it.

10 Q Okay. Why did the Permits, Planning and

11 Field Operations Unit send to the Compliance Unit

12 technical input?

13 A They are part of the decision making

14 process. Their inputs are valuable, as they have

15 different requirements and different ways of

16 looking at the problem.

17 Q But the Compliance Section is charged

18 with developing the formal position, formal

19 technical position of the Bureau of Air?

20 A Yes.

21 MR. MEASON: Thank you. I have nothing

22 further.

23 HEARING OFFICER FRANK: All right. Ms.

24 Sawyer?

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RE CROSS EXAMINATION

BY MS. SAWYER:

Q Mr. Stefan, by developing a technical position, does that mean that the Compliance Section is supposed to gather and synthesize the information from the other sections and formulize a document incorporating those opinions?

A Not necessarily. I think our role is to take inputs, evaluate them based upon law and the requirements, and put forth a recommendation.

Q So it is your understanding, then, that the compliance person assigned to these matters has the authority to ignore the assessments of other sections?

MR. MEASON: Objection. Argumentative.

HEARING OFFICER FRANK: Can you rephrase your question, please?

Q (By Ms. Sawyer) So it is your understanding that the Compliance Section has the authority to disregard --

MR. MEASON: Objection. Argumentative.

HEARING OFFICER FRANK: Can she please finish her question?

Q (By Ms. Sawyer) So it is your assessment

1 or your opinion that the Compliance Section has the
2 authority to disregard the technical assessment of
3 other sections in developing its technical
4 recommendation?

5 HEARING OFFICER FRANK: Don't answer yet.

6 MR. MEASON: Objection. Argumentative.
7 She is drawing a conclusion on the activities of
8 the Compliance Section and terming them as -- what
9 was the word?

10 HEARING OFFICER FRANK: Disregard.

11 MR. MEASON: Yes, as disregarding instead
12 of incorporating or some other term.

13 HEARING OFFICER FRANK: I am going to
14 allow the question. She is trying to get out how
15 he develops his document.

16 Please answer it, if you can remember it.

17 THE WITNESS: Yes. In evaluating the
18 input there are certain requirements that have to
19 be there for it to be valid and useful. In looking
20 at input and the requirements and the lack of
21 supporting documentation, I could see a basis for
22 the contrary input.

23 Q (By Ms. Sawyer) Mr. Stefan, did you
24 perform any calculation on the cost of control for

1 this facility?

2 A Did not.

3 Q So Mr. Stefan, when you testified that --
4 can I see Exhibits 5 through 9?

5 So when you testified that the costs on
6 Petitioner's Exhibit 5 seemed accurate, this was
7 not based upon a former calculation you had
8 performed in reference to this adjusted standard?

9 A That's correct.

10 Q Have you had the opportunity to look at
11 this cost calculation prior to this hearing?

12 A I am not sure. There were some
13 calculations that were done in the adjusted
14 standard, but I have not looked at that in so long.

15 Q In the adjusted standard petition?

16 A The petition, yes. The numbers, at
17 least, seem to be similar.

18 MS. SAWYER: I have no further questions
19 for this witness.

20 HEARING OFFICER FRANK: Mr. Meason?

21 MR. MEASON: Yes, redirect, please.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. MEASON:

24 Q Mr. Stefan, you stated there was a lack

1 of supporting documentation to support the
2 recommendations of the other sections in your
3 compiling or your synthesizing a technical position
4 on behalf of the Bureau of Air; is that correct?

5 A That's correct.

6 Q In the Compliance Section's development
7 of the Bureau of Air's technical position, did you
8 examine the regulatory and statutory criteria for
9 an adjusted standard?

10 A Yes.

11 Q Did you specifically examine whether
12 factors relating to Swenson Spreader were
13 substantially and significantly different from the
14 factors relied upon by the Board in adopting the
15 general regulation?

16 A Can I have that question again?

17 Q Did the Compliance Section specifically
18 examine whether factors relating to Swenson
19 Spreader were substantially and significantly
20 different from the factors relied upon by the Board
21 in adopting the general regulation?

22 A Yes.

23 MS. SAWYER: Objection. Calls for a
24 legal conclusion.

1 HEARING OFFICER FRANK: No, it doesn't.

2 He is asking if he --

3 MS. SAWYER: If he limited it to a
4 technical assessment, it wouldn't call for --
5 perhaps, it would not call for a legal conclusion.
6 The way he asked it calls for a legal conclusion.

7 MR. MEASON: It is applying facts to
8 law. It is not objectionable.

9 HEARING OFFICER FRANK: I am going to
10 allow the question.

11 THE WITNESS: I forgot the question.

12 HEARING OFFICER FRANK: The question was
13 did you -- can you read the section of the act,
14 please?

15 MR. MEASON: Right.

16 Q (By Mr. Meason) Did the Compliance
17 Section take into consideration the factors
18 relating to Swenson Spreader -- whether the factors
19 relating to Swenson Spreader were substantially and
20 significantly different from the factors relied
21 upon by the Board in adopting the general
22 regulation?

23 A Yes.

24 Q And did the Compliance Section find that

1 Swenson Spreader met that particular statutory and
2 regulatory criteria?

3 A Rephrase the question.

4 Q Did the Compliance Section find that
5 Swenson Spreader met that criteria?

6 A I don't know what you mean by "met the
7 criteria."

8 MS. SAWYER: Is this question in terms of
9 the Compliance Section? Are you asking this
10 question as to Mr. Stefan's opinion?

11 MR. MEASON: I stated the Compliance
12 Section.

13 MS. SAWYER: I object to that question
14 then.

15 HEARING OFFICER FRANK: Can you please
16 limit it to Mr. Stefan?

17 MR. MEASON: Mr. Stefan has testified
18 that he was charged by Dave Kolaz, the head of the
19 section, to be the -- to compile the comments from
20 the Bureau of Air and technical matters and that
21 Ms. Tin and Mr. Kolaz reviewed that recommendation
22 before it went to legal. So the section -- on
23 behalf of the section he was the scribe, and it was
24 reviewed by the section before it left the section.

1 HEARING OFFICER FRANK: I will allow it.

2 Please go ahead and answer it.

3 THE WITNESS: Okay. The question again,
4 please.

5 Q (By Mr. Meason) Okay. You are not the
6 only one having trouble remembering questions.

7 Did the Compliance Section find that the
8 factors relating to Swenson Spreader were
9 substantially and significantly different from the
10 factors relied upon by the Board in adopting the
11 general regulation?

12 A Yes.

13 Q Did the Compliance Section examine
14 whether the existence of those factors justified an
15 adjusted standard?

16 MS. SAWYER: Object to this question.
17 The notion that the Compliance Section examined
18 that has never been established.

19 MR. MEASON: I think the Hearing Officer
20 has already basically ruled on this line of
21 objections.

22 MS. SAWYER: I think it is a little bit
23 different to suggest that the Compliance Section
24 examined something.

1 MR. MEASON: We have already dealt with
2 this topic.

3 HEARING OFFICER FRANK: I am going to
4 allow the question as to technical matters, so I
5 am -- because Mr. Stefan's job is to apply his
6 technical knowledge to the technical factors, he
7 doesn't make a legal determination but makes a
8 technical determination.

9 MR. MEASON: Right. Okay.

10 HEARING OFFICER FRANK: Can you remember
11 the question?

12 THE WITNESS: No.

13 Q (By Mr. Meason) Did the Compliance
14 Section examine whether the existence of those
15 factors I previously asked you about, substantially
16 and significantly different factors or that these
17 factors justified an adjusted standard?

18 A The determination was not based entirely
19 on one thing. There were several things that went
20 into the decision.

21 Q Okay.

22 A It was part of it.

23 Q Okay. But the factors that the
24 Compliance Section did examine, did those support

1 or justify an adjusted standard on behalf of
2 Swenson Spreader?

3 A Yes.

4 Q Did the Compliance Section examine
5 whether the requested standard in this particular
6 case, 5.0 for the first year -- or excuse me. At
7 the time I guess the Compliance Section was
8 examining it, it was 5.25 for the first year and
9 5.0 thereafter. After that we have amended that to
10 5.0 for the first year and 4.75 thereafter.

11 Did the Compliance Section examine
12 whether the requested standard would result in an
13 environmental or health affects substantially or
14 significantly more adverse than the affects
15 considered by the Board in adopting the general
16 rule?

17 A Yes.

18 Q And did the Compliance Section find that
19 the requested standard would not result in
20 environmental or health affects substantially and
21 significantly more adverse than the affects
22 considered by the Board?

23 A You are going to have to do that again.

24 Q That's a long one. Did the Compliance

1 Section find that Swenson's request for an adjusted
2 standard, okay, did they find that there would be
3 any environmental or health affects substantially
4 and significantly more adverse than the affects
5 considered by the Board when they adopted the
6 general rule? Would there be more substantial and
7 significant --

8 A No.

9 Q Did the Compliance Section examine the
10 technical feasibility and economic reasonableness
11 of measuring or reducing the particular type of
12 pollution involved in this adjusted standard?

13 A Yes.

14 Q Did the Compliance Section find that it
15 was technically feasible for Swenson Spreader to
16 comply with the general regulation?

17 A No.

18 Q Did the Compliance Section find that it
19 was economically unreasonable for Swenson Spreader
20 to comply with the general regulation?

21 A Yes.

22 MR. MEASON: I have nothing further.

23 HEARING OFFICER FRANK: Ms. Sawyer?

24 MS. SAWYER: I have just a couple more

1 questions.

2 FURTHER RECROSS EXAMINATION

3 BY MS. SAWYER:

4 Q Mr. Stefan, I am handing you a document.

5 A All right.

6 MS. SAWYER: I will hand it to Mr. Meason
7 first.

8 Would you like to see it, Ms. Frank?

9 HEARING OFFICER FRANK: Yes.

10 Q (By Ms. Sawyer) Mr. Stefan, I am handing
11 you a memo that you prepared and sent to me on this
12 adjusted standard proceeding. Is that your
13 technical recommendation in this matter?

14 A Yes.

15 MS. SAWYER: I would like to move this
16 document into evidence as an exhibit.

17 HEARING OFFICER FRANK: Is there any
18 objection?

19 MR. MEASON: Yes. The Agency was
20 requested to note any exhibits they wished to move
21 into evidence through witnesses, and they haven't
22 done so with regard to this particular document.

23 MS. SAWYER: I don't think we are
24 required to list all exhibits. The need for this

1 exhibit has arisen during the course of this
2 testimony. We certainly have the opportunity to
3 present rebuttal to testimony.

4 MR. MEASON: All right. I remove my
5 objection.

6 HEARING OFFICER FRANK: Okay.

7 MS. SAWYER: I don't have any questions
8 on that. I would like to move that into evidence
9 as this point.

10 HEARING OFFICER FRANK: The memo to
11 Bonnie Sawyer from John Stefan, dated January 24th,
12 1997, is admitted as Respondent's Exhibit 1.

13 (Whereupon said document was
14 duly marked for purposes of
15 identification and entered into
16 evidence as Respondent's
17 Exhibit 1 as of this date.)

18 HEARING OFFICER FRANK: Off the record
19 for a moment.

20 (Discussion off the record.)

21 HEARING OFFICER FRANK: Back on the
22 record.

23 Q (By Ms. Sawyer) Mr. Stefan, have you ever
24 seen this document before today?

1 A No.

2 Q Did you review that document in
3 conjunction with your investigation of Swenson
4 Spreader's petition?

5 A No.

6 Q Are you aware that this is the document
7 relied upon by the Board in adopting the 35
8 Illinois Administrative Code Part 215.204 J?

9 A No.

10 MS. SAWYER: I have nothing further.

11 HEARING OFFICER FRANK: Can you tell us
12 what "this document" is, for the record --

13 MS. SAWYER: Sure. We are going to
14 introduce it as an exhibit.

15 HEARING OFFICER FRANK: -- and for the
16 Board?

17 MS. SAWYER: "Effect of RACT II,
18 Environmental Controls in Illinois, R80-5, document
19 number 81/28. It is prepared by the Illinois
20 Institute of Natural Resources.

21 HEARING OFFICER FRANK: Okay. Is there
22 anything further of Mr. Stefan?

23 Anything further, Mr. Meason?

24 MR. MEASON: No.

1 HEARING OFFICER FRANK: Anything further,
2 Ms. Sawyer?
3 MS. SAWYER: Nothing further.
4 (The witness left the stand.)
5 HEARING OFFICER FRANK: All right. Off
6 the record.
7 (Discussion off the record.)
8 HEARING OFFICER FRANK: Let's take a
9 break.
10 (Whereupon a short recess was
11 taken.)
12 HEARING OFFICER FRANK: Back on the
13 record.
14 Okay. Can you call your next witness,
15 please, Mr. Meason?
16 MR. MEASON: I would like to call Ms.
17 Angela Tin.
18 HEARING OFFICER FRANK: Could you please
19 swear the witness.
20 (Whereupon the witness was
21 sworn by the Notary Public.)
22 HEARING OFFICER FRANK: Off the record
23 for a second.
24 (Discussion off the record.)

1 HEARING OFFICER FRANK: Back on the
2 record.

3 A N G E L A T I N,
4 having been first duly sworn by the Notary Public,
5 saith as follows:

6 DIRECT EXAMINATION

7 BY MR. MEASON:

8 Q Good morning, Ms. Tin.

9 A Hello.

10 Q Could you please state your full name and
11 spell it for the record.

12 A My name is Angela A. Tin. A-N-G-E-L-A.
13 My middle name is A-Y-E. The last name is Tin,
14 T-I-N.

15 Q And who is your employer?

16 A I am employed at the Illinois
17 Environmental Protection Agency.

18 Q How long have you been an Illinois EPA
19 employee?

20 A For 16 years.

21 Q And what is your current position?

22 A I am the Compliance Unit Manager in the
23 Compliance Section of the Bureau of Air.

24 Q What is your education?

1 A I have an Undergraduate Degree in
2 physiology, and I have a Master's Degree in cell
3 biology.
4 Q Cell biology?
5 A Cell biology.
6 Q And where did you go to school,
7 undergrad?
8 A Undergraduate, I went to SIU --
9 Q A good school.
10 A -- at Carbondale.
11 Q Yes. And how about your Master's?
12 A My Master's is U of I.
13 MS. ARCHER: A better school (laughing).
14 MR. MEASON: Watch it (laughing).
15 Q (By Mr. Meason) Have you held any other
16 positions during your 16 year tenure with the
17 Illinois EPA?
18 A Yes. I was with the Bureau of Water, and
19 I was also with the Bureau of Land.
20 Q Do you know why we are all here today?
21 A Yes.
22 Q And why is that?
23 A Why we are here, or why I am here?
24 Q We, the collective group, what this

1 proceeding is about?

2 A It is to deal with the adjusted standard
3 petition that Swenson has filed with the Board.

4 Q Okay. Has the Compliance Section been
5 involved in evaluating the adjusted standard
6 petition since it was filed, roughly in October of
7 1996?

8 A I am not sure of the date that the
9 Compliance Section became involved. I am not sure
10 when John became involved.

11 Q That's John Stefan?

12 A Yes.

13 Q How did the Compliance Section become
14 involved?

15 A Whenever there is any type of a variance
16 or an adjusted standard or provisional variance,
17 the Compliance Section, the Compliance Unit of the
18 Compliance Section is part of the group that
19 evaluates the item for discussion.

20 Q Is the Compliance Section charged with
21 generating the technical recommendation on behalf
22 of the Bureau of Air?

23 A It depends on which document you are
24 talking about. Like, for variances the Compliance

1 Section generates the technical recommendations,
2 which is, you know, it has all the recommendations
3 of the other section members.

4 Q Okay.

5 A It is not as clear for the adjusted
6 standard process.

7 Q Why is that?

8 A Because the Compliance Section has only
9 been around for about, oh, a little bit under two
10 years. And we have dealt with a few variances, but
11 this is our first adjusted standard.

12 Q Now, when you say the Compliance Section,
13 you mean the Compliance Section in the Bureau of
14 Air?

15 A Yes.

16 Q Okay. When you were in the Bureau of
17 Water, was there a Compliance Section in the Bureau
18 of Water?

19 A Yes.

20 Q And did the Compliance Section --

21 A In the Bureau of Water?

22 Q Yes.

23 A Yes.

24 Q In the Bureau of Water's Compliance

1 Section, did the Compliance Section have the task
2 of generating the technical recommendation on
3 behalf of the Bureau of Water with regard to
4 adjusted standard proceedings or site specific
5 rules or variances?

6 A I don't know, because I was never in the
7 Compliance Section for the Bureau of Water. I was
8 in the Permit Section.

9 Q Okay. When you were in the Permit
10 Section in the Bureau of Water, were you ever
11 involved with either an adjusted standard or a site
12 specific rule or a variance petition?

13 A No.

14 Q When you were in the Bureau of Land, were
15 you in the Compliance Section?

16 A Yes.

17 Q When you were in the Compliance Section
18 of the Bureau of Land, did the Compliance Section
19 ever become involved in either a variance, a site
20 specific rulemaking, or an adjusted standard
21 proceeding?

22 A No. There were hearings, but it wasn't
23 for those three elements.

24 Q What type of hearings?

1 A They were appeal hearings of decisions
2 that the Bureau of Land made.

3 Q With regard to enforcement?

4 A It was -- a lot of it was -- some was
5 enforcement. A lot of it was decisions that we
6 made on clean up plans, and there were appeals of
7 our decisions. So we were heavily involved in
8 that.

9 Q So when you say our compliance plans, you
10 meant the Bureau of Land compliance plans?

11 A It was a clean up, a remediation plan
12 that a company would submit, and Bureau of Land
13 would review these clean up plans and make a
14 decision on the plan, and there were appeals of
15 those plans.

16 Q Okay. And during the consideration of
17 those plans and the appeal, what section, within
18 the Bureau of Land, was given the lead to develop a
19 technical position on behalf of the Bureau of Land?

20 A It would depend on where the appeal was.
21 If it was with the underground tanks, then they
22 made the technical recommendation. If it was with
23 the Superfund Program, they did the
24 recommendations. If it was hazardous waste, they

1 would to it.

2 Q Okay. In this particular proceeding,
3 Swenson Spreader's adjusted standard petition, did
4 John Stefan ever consult with you regarding the
5 petition?

6 A Yes.

7 Q And did he ever discuss with you what the
8 inputs from the Planning Section were?

9 A Yes.

10 Q Did he ever discuss with you what the
11 inputs from Field Operations were?

12 A I don't think field had any comments.

13 Q Did he ever discuss with you any input
14 from the Planning Section? Did I already ask that?

15 A You asked that.

16 Q Permits?

17 A Yes.

18 Q He did?

19 A Yes.

20 Q Okay. I believe you stated a few moments
21 ago that Mr. Kolaz assigned Mr. Stefan. I will
22 withdraw that.

23 How did Mr. Stefan become involved?

24 A I don't know how he became involved.

1 Since I am a new manager for the unit, Dave Kolaz,
2 a lot of times, will make the assignments or Dave
3 Kolaz will consult with me before he makes the
4 assignments. So on this one I am not sure. I
5 didn't go to John and assign him this one.

6 Q Dave Kolaz is the section head?

7 A Yes.

8 Q Is the section head your superior?

9 A Yes.

10 Q Okay. Is John Stefan under your chain of
11 command?

12 A Yes.

13 Q Did John Stefan formulate a technical
14 recommendation on behalf of the Bureau of Air?

15 A On behalf of Compliance.

16 Q On behalf of Compliance?

17 A Yes.

18 Q Did he discuss that with you?

19 A Yes.

20 Q Did you agree with his recommendation?

21 A I didn't have an opinion on his
22 recommendation. I listened to his recommendation
23 and the other members of the group and went to Dave
24 Kolaz.

1 Q But you did review his recommendation?

2 A Yes.

3 Q Did you give his recommendation to Dave
4 Kolaz for review?

5 A We discussed his recommendation and
6 planning and permits.

7 Q We meaning who?

8 A Dave Kolaz and myself and John.

9 Q And was that recommendation forwarded to
10 Legal?

11 A John Stefan's recommendation?

12 Q Right.

13 A Yes, I believe so.

14 Q On behalf of the Compliance?

15 A Yes.

16 MR. MEASON: I have nothing further,
17 subject to recall.

18 HEARING OFFICER FRANK: Ms. Sawyer?

19 MS. SAWYER: Yes, I have just a couple of
20 questions.

21 CROSS EXAMINATION

22 BY MS. SAWYER:

23 Q Ms. Tin, in reference to variances, you
24 referred to a process being in place where the

1 Compliance Unit develops a Bureau of Air
2 recommendation; is that correct?

3 A Yes.

4 Q You also stated that in the case of
5 adjusted standards there really wasn't the same
6 procedure in place?

7 A Yes.

8 Q And in this case you stated that Mr.
9 Stefan's recommendation was that of the Compliance
10 Section?

11 A Yes.

12 Q Is it your understanding that that
13 recommendation is also representative of the Bureau
14 of Air's position?

15 A No, it was not the Bureau of Air's
16 position. It was one position amongst many; one
17 viewpoint.

18 Q In the variance process, where Compliance
19 does have responsibility of putting together a
20 technical recommendation for the Bureau of Air, do
21 the individuals from the Compliance Unit that are
22 assigned to draft these recommendations, do they
23 have the authority to disregard the technical
24 recommendations of other units?

1 A No.

2 Q If there is a disagreement in this
3 process, what is typically the procedure?

4 A If there is a disagreement, the group
5 first tries to figure out where the differences are
6 and tries to work it out. If the group cannot work
7 things out, then each of the members of the group
8 can go to their immediate supervisors. If the
9 supervisors can't work it out, we go to the section
10 managers, and we try to get a decision from the
11 section managers.

12 Q In this particular case, in Swenson
13 Spreader's case, did you sign-off on the Agency's,
14 the Illinois Environmental Protection Agency's,
15 response?

16 A No.

17 MS. SAWYER: I have nothing further at
18 this time.

19 REDIRECT EXAMINATION

20 BY MR. MEASON:

21 Q Were you asked to sign-off on the
22 Agency's position with regard to Swenson Spreader's
23 adjusted standard position?

24 A I am not part of the sign-off process.

1 Q In this particular matter, was there
2 disagreement among the various sections in the
3 Bureau of Air with regard to Swenson Spreader's
4 adjusted standard petition?

5 A There were some areas where there were
6 some concerns that were not in agreement, yes.

7 Q Okay. It was the Compliance Section's
8 position that those areas brought to its attention
9 by the other sections were without merit?

10 A No.

11 Q Then on what were they disagreeing?

12 A There were some areas that were not in
13 agreement between the members of the group, and
14 when the discussions were brought up to Dave Kolaz,
15 where the different areas were, he signed-off on
16 the final document that was prepared.

17 Q Are you aware of any conditions that he
18 placed on that sign-off?

19 A There were some questions that he asked
20 of John and I in our initial discussions.

21 Q And what questions were those?

22 A He had some questions about additional
23 costs for the control units, why there were not any
24 additional costs and he had some questions about

1 why the standard was being asked for all the lines
2 instead a few of the lines.

3 Q Are you aware that there is only one
4 paint booth at Swenson Spreader?

5 A No, I am not aware of what it is now.

6 Q Are you aware that there has only been
7 one paint booth at Swenson Spreader?

8 A No.

9 Q If you were to know that there was only
10 one paint booth at Swenson Spreader, would Mr.
11 Kolaz's concerns appear to have merit?

12 A I don't know.

13 Q Are you familiar with how other Illinois
14 EPA Bureaus handle adjusted standard proceedings?

15 A No.

16 Q Okay.

17 A I am a little familiar with Water's, but
18 not generally.

19 Q And how does Water, based on your
20 knowledge --

21 A I believe that Water Compliance does deal
22 with the variances and adjusted standards and
23 provisional variances, Water Compliance.

24 Q To your knowledge, does the Compliance

1 Section of the Bureau of Water compile a technical
2 support recommendation on behalf of the Bureau of
3 Water?

4 A I don't know.

5 MR. MEASON: I have nothing further.

6 HEARING OFFICER FRANK: Ms. Sawyer?

7 MS. SAWYER: No further questions at this
8 time.

9 HEARING OFFICER FRANK: Okay. Thank
10 you.

11 (The witness left the stand.)

12 HEARING OFFICER FRANK: Who is next?

13 MS. SAWYER: Can Ms. Tin leave?

14 MR. MEASON: Yes.

15 MS. SAWYER: Okay.

16 MR. MEASON: The Petitioner rests its
17 case.

18 HEARING OFFICER FRANK: Okay. Let's go
19 off the record.

20 (Discussion off the record.)

21 HEARING OFFICER FRANK: Back on the
22 record.

23 Ms. Sawyer or Ms. Archer, will you please
24 call your first witness.

1 MS. ARCHER: Yes. I call Dr. Robert Smet
2 to the stand, please.

3 HEARING OFFICER FRANK: Okay. Can you
4 please spell your last name for our court
5 reporter?

6 THE WITNESS: Sure. It is S-M-E-T.

7 HEARING OFFICER FRANK: Thank you.

8 MS. ARCHER: Can the witness be sworn?

9 HEARING OFFICER FRANK: Yes.

10 (Whereupon the witness was
11 sworn by the Notary Public.)

12 R O B E R T S M E T,
13 having been first duly sworn by the Notary Public,
14 saith as follows:

15 DIRECT EXAMINATION

16 BY MS. ARCHER:

17 Q Mr. Smet, where are you employed?

18 A I am employed with the Illinois EPA.

19 Q What is your occupation there?

20 A I am a Permit Analyst.

21 THE REPORTER: I am sorry?

22 THE WITNESS: I am a Permit Analyst.

23 HEARING OFFICER FRANK: Mr. Smet, you
24 need to talk up for our court reporter.

1 THE WITNESS: All right.

2 HEARING OFFICER FRANK: Mr. Meason, would
3 you object to Mr. Smet sitting next to you?

4 MR. MEASON: Excuse me? What?

5 HEARING OFFICER FRANK: Would you object
6 to Mr. Smet sitting next to you?

7 MR. MEASON: Kind of. I have all of my
8 papers here.

9 HEARING OFFICER FRANK: Okay. That's
10 fine.

11 If you could try to remember it is real
12 important for the court reporter to hear.

13 THE WITNESS: Sure.

14 MS. SAWYER: Deb, can I make a
15 suggestion?

16 HEARING OFFICER FRANK: Yes.

17 MS. SAWYER: Perhaps the witnesses could
18 sit in that corner, since it is our presentation
19 now. It would probably be easier for the court
20 reporter and for us.

21 HEARING OFFICER FRANK: Okay. That's
22 fine.

23 Let's go off the record.

24 (Discussion off the record.)

1 HEARING OFFICER FRANK: Back on the
2 record.

3 Q (By Ms. Archer) Did you state your
4 occupation for the record?

5 A Pardon?

6 Q Did you?

7 A Yes.

8 Q Could you again?

9 A Sure. I am a Permit Analyst with the
10 EPA.

11 Q How long have you been employed as a
12 Permit Analyst?

13 A About five, five and a half years.

14 Q Okay. Where did you work before that, if
15 anywhere?

16 A I worked at a place called S-Cubed in San
17 Diego.

18 Q Okay. Could you please describe your
19 educational background?

20 A Sure. A Bachelor's Degree in math and
21 physics and computer science, a Master's Degree in
22 physics, and a Ph.D. in engineering mechanics.

23 Q What school would that be from?

24 A University of Illinois.

1 Q At Urbana-Champaign?

2 A Yes.

3 Q Could you please describe your job duties
4 as a Permit Analyst, for the record, please?

5 A Sure. I review permit applications to
6 determine compliance to the applicable regulations
7 and anything related to permitted facilities and
8 such, as well.

9 Q Do you, as related to permitted
10 facilities, do you investigate regulatory matters?

11 A Yes, I do.

12 Q Okay. Specifically, what would those
13 types of regulatory matters be?

14 A They could be variances, provisional
15 variances, adjusted standards, appeals, things of
16 that nature.

17 Q What type of investigation do you usually
18 do with permitted facilities regarding adjusted
19 standards, variances, permit appeals?

20 A Well, it could be maybe not even limited
21 to permitted facilities. They could be determining
22 the facts of the matter as stated in a petition,
23 inconsistencies, anything related along the
24 technical lines to determine whether, in fact,

1 there is merit brought up in the petition.

2 Q The type of investigation you do, is that
3 consistent with normal Illinois EPA practices?

4 A Yes, it is.

5 Q Are you specifically aware of Swenson
6 Spreader's adjusted standard petition?

7 A Yes, I have read it.

8 Q Could you please describe your role in
9 the investigation of Swenson Spreader's adjusted
10 standard?

11 A Well, I read through it. I provided
12 comments. I looked to see what I felt were the
13 stated reasons why Swenson sought the adjusted
14 standard. I determined whether I thought that
15 there was merit in their claims.

16 Q Did you make any specific investigations
17 into Swenson's adjusted standard?

18 A I looked into -- yes, I did. I looked
19 into the bid specification aspect of the petition.

20 Q Okay. When you say bid specifications,
21 could that also be a request for proposals?

22 A Yes.

23 Q For different entities?

24 A Yes.

1 Q What is your understanding of who bids or
2 provides RFPs for Swenson's operations?

3 A Generally they can be government
4 entities, like county governments, municipalities,
5 state and federal government entities.

6 Q Did you contact any specific entities in
7 regards to their bid specifications?

8 A I spoke with three groups. I spoke with
9 IDOT, the Illinois Department of Transportation. I
10 spoke with KDOT, the Kansas DOT. Those two were
11 mentioned in the Swenson petition itself. And I
12 also spoke with the Sangamon County Highway
13 Department, which they were not listed in the
14 petition, but I wanted to generally ask them what
15 they looked for in bid specifications.

16 Q Okay. What were the results of your
17 investigation by talking to these entities?

18 A Well, generally speaking, I wanted to
19 find out if the assertion made in the petition that
20 the coatings that were listed in the specification
21 were, indeed, what was required. I wanted to find
22 out if -- whether there was -- I am sorry. I
23 wanted to find out if, in fact, there was anything
24 more than just color and durability and such

1 required in the specifications.

2 Q As far as the entities being concerned
3 with pre-application properties as compared to
4 post-application properties?

5 A Generally speaking, they only concern
6 themselves with the post-application properties of
7 the coatings.

8 Q What were those?

9 A Color and durability.

10 Q Specifically, I would like to refer your
11 attention to Petitioner's Exhibit 1 and within that
12 Exhibit D2?

13 A Yes.

14 Q Was this bid specification part of what
15 you investigated --

16 A Yes, it was.

17 Q -- as part of the adjusted standard
18 petition?

19 A Yes, it was.

20 Q This is included as part of Swenson's
21 adjusted standard petition?

22 A Right.

23 Q Okay. What is Exhibit D2?

24 A It states here it is specifications and

1 questionnaire for dump body mounted, large, hopper
2 body type spreaders.

3 Q What entity would that be from?

4 A From the DOT, the Illinois DOT.

5 Q In your understanding, what is required
6 by the Illinois DOT's bid specifications?

7 A Well, number one listed here is the
8 equipment proposed equals or exceeds that specified
9 in all respects, including capacity operating
10 features and accessory items.

11 Q That would be number one --

12 A Yes, number one.

13 Q -- on the first page?

14 A Right.

15 Q State of Illinois, Department of
16 Transportation, Bureau of Operations, dated January
17 of 1994?

18 A Yes.

19 Q Does Exhibit D2 require anything else?
20 Specifically, I refer your attention to the second
21 page. It is actually listed as page 5 out of six
22 on the bottom.

23 A Right, right. When you look under the
24 heading of general, and you look under number one,

1 it states all parts normally painted shall be
2 finished in a color complying with the Department
3 of Transportation paint specification serial number
4 M14-87, and in parentheses it says DuPont Number
5 LF1021AM or equal.

6 Q Based upon your --

7 A Excuse me.

8 Q I am sorry.

9 A Comma, a color sample, of which will be
10 furnished the successful bidder upon request.

11 Q Thank you. I am sorry. In your review
12 of Exhibit D2, is this document consistent with the
13 results of your investigation?

14 A Yes, it is.

15 Q In what ways?

16 A Well, like I said, generally they only
17 said the color and durability. I mean, not all
18 three of them said even durability. Color was
19 essentially the thing that they were most
20 interested in.

21 Q I would like to refer your attention now
22 to Exhibit D1 of the same Petitioner's Exhibit 1.
23 Are you familiar with this document?

24 A Yes.

1 Q What is -- well, actually, I would like
2 to refer your attention to a specific page of
3 this.

4 A All right.

5 Q I am specifically looking to page 10 of
6 Exhibit D1. My sheets might be out of order. Have
7 you found that?

8 A Uh-huh.

9 Q Okay. Referring specifically to
10 paragraph 27 --

11 A Right.

12 Q -- under paint, could you please read
13 that, please?

14 A Right. Here it lists the different
15 requirements of it, and 427 it says, paint, color
16 to be DuPont IMRON 326-Y, Precaution Blue, 23665.

17 Q And referring to paragraph 29, could you
18 please read the last -- just the last sentence of
19 that would be fine.

20 A Okay. Amber spreader spotlight -- I am
21 sorry. That's not quite the last sentence. Color
22 to be DuPont Precaution Blue 23665.

23 Q And you reviewed this bid specification
24 as part of your adjusted standard investigation?

1 A Yes, I did.

2 Q And is what required by this bid

3 specification consistent with the results of your

4 investigation?

5 A Yes.

6 Q In what way?

7 A Again, it just specifies color.

8 Q Okay. Do you recall what percentage of

9 governmental orders where they specify a certain

10 color listed in their specification make up

11 Swenson's business?

12 A Government orders?

13 Q Yes.

14 A Roughly 35 percent, I think the highest,

15 but generally would be in the 20s.

16 Q I would like to refer you to page 13 of

17 the text of Petitioner's Exhibit 1?

18 A Yes.

19 Q Okay. Are those special paint

20 percentages from the past four years, 1992 through

21 1995, based upon your understanding of past

22 governmental bid --

23 A Yes.

24 Q -- specifications? Let me rephrase that

1 question.

2 A Sure.

3 Q You previously stated that you believe
4 approximately 25 percent or so of Swenson's
5 business is from governmental entities.

6 MR. MEASON: Objection. It misstates his
7 testimony.

8 Q (By Ms. Archer) In the 20 range?

9 A Yes, uh-huh.

10 HEARING OFFICER FRANK: I am sustaining
11 your objection, but go ahead and ask your new
12 question.

13 Q (By Ms. Archer) I believe you previously
14 stated that somewhere in the 20 percent range of
15 Swenson's business is from governmental entities?

16 A Yes.

17 Q Looking at page 13 of Petitioner's
18 Exhibit 1, what percentage from the past four years
19 makes up Swenson's governmental entity business,
20 approximately?

21 A Well, if it is based upon the special
22 paint percentages, 35 is the highest percent in
23 1992, to as low as 12 percent in 1994.

24 Q Is it your understanding that the special

1 paint percentage makes up the government entities
2 business, if you know?

3 A Yes.

4 Q Out of this percentage in the adjusted
5 standard petition, does it specify which coatings
6 are noncompliant?

7 A What percent? No.

8 Q Mr. Smet, what is your understanding of
9 Swenson's coating operations?

10 A Well, they coat metal that has to meet
11 extreme performance conditions.

12 Q Do you know what that standard is?

13 A Under 215.204J, that would be 3.5 pounds
14 per gallon minus one on exempt compounds.

15 Q And where is Swenson Spreader located?

16 A Lindenwood, in Ogle County.

17 Q Is Ogle County an attainment area for
18 ozone?

19 A It is attainment.

20 Q Is there an applicability threshold for
21 sources in attainment areas, as far as having to
22 use compliant coatings?

23 A Well, you are allowed to -- if you are a
24 coating plant, you are allowed to use noncompliant

1 coatings up to plant wide emissions levels, VOM of
2 25 tons per year. But once you exceed 25 tons per
3 year then you are required to use compliant
4 coatings.

5 Q Are you aware of other sources in
6 Illinois that are similar to Swenson?

7 A If it is similar in the sense of coating
8 metal for extreme performance conditions, yes.

9 Q And did you investigate any of these
10 other sources --

11 A Yes, I did.

12 Q -- in your review of Swenson's adjusted
13 standard petition?

14 A Yes, I did.

15 Q What did your investigation reveal with
16 respect to these other sources?

17 A Well, there is a number of facilities
18 that can meet the 3.5 pounds per gallon standard.

19 Q Do you know where these other sources are
20 located?

21 A They are located both in the attainment
22 areas and the nonattainment areas so, you know,
23 whether it is the Chicago nonattainment area or the
24 downstate attainment area.

1 Q What types of coatings are these other
2 sources using, based on the results of your
3 investigation?

4 A They use wet paints that can meet the 3.5
5 pounds per gallon standard.

6 Q Are any of these other sources utilizing
7 powder coatings?

8 A There is a couple of them that, you know,
9 whether it is for lawn and garden equipment and
10 such.

11 Q As part of your investigation, did you
12 document the results of these other sources?

13 A Yes, I did.

14 Q I am handing you a document. I am
15 showing Mr. Meason first, and also the Hearing
16 Officer.

17 Could you identify this document, Mr.
18 Smet?

19 A This was a memo I wrote to Bonnie in
20 regard to permitted facilities that we have records
21 of that can meet the 3.5 pounds per gallon
22 standard, that I felt that the metal and the
23 products that they produced and coat would meet
24 pretty much the same conditions that a spreader

1 would.

2 Q And this document was prepared by you in
3 the course of your investigation?

4 A Yes, it was.

5 MS. ARCHER: Okay. I would move to have
6 this document admitted into evidence as a business
7 record under Section 103.208 of the Board's
8 procedural rules.

9 MR. MEASON: I would object to that. It
10 was obviously prepared in anticipation of
11 litigation. It is not -- it would not qualify
12 under a business record. It is irrelevant, with
13 regard to this particular proceeding, in that none
14 of these companies are broken out as far as to what
15 their particular industry is.

16 They range from trunk -- from cars to
17 truck bumpers, to lawn and garden equipment. There
18 is no verification that any of these numbers have
19 actually been authenticated by the Agency. They
20 could be self-certifications by the companies. It
21 is hearsay.

22 Even if it is ruled not to be hearsay and
23 ruled to be relevant, it is -- it would be
24 unjustifiably prejudicial to Swenson Spreader

1 without further elaboration on the particulars of
2 every company listed, as far as their industrial
3 group and SIC codes, etcetera, and what particular
4 VOM concentrations apply to their operations.

5 HEARING OFFICER FRANK: Okay. Ms.
6 Archer?

7 MS. ARCHER: Mr. Smet did testify that it
8 is acceptable Illinois EPA practices to conduct the
9 types of investigations that he has done in the
10 course of Swenson Spreader's adjusted standard
11 efforts. It was a document that was prepared in
12 the normal course of business and standard Illinois
13 EPA practice.

14 In any case, it would go to the weight
15 and not the admissibility. This is something for
16 the Board to decide, I think. I believe that it is
17 a business record. It is not hearsay.

18 HEARING OFFICER FRANK: I am going to
19 allow it. You cited our Board rule. As you know,
20 it is very liberal in allowing business records.
21 This qualifies under the Board rule, so it is going
22 to be admitted.

23 MS. ARCHER: Thank you.

24 HEARING OFFICER FRANK: The memo from Bob

1 Smet to Bonnie Sawyer, dated April 15th, 1997, is
2 marked as Respondent's Exhibit Number 2.

3 (Whereupon said document was
4 duly marked for purposes of
5 identification and entered into
6 evidence as Respondent's
7 Exhibit 2 as of this date.)

8 Q (By Ms. Archer) Mr. Smet, are you aware
9 if Swenson Spreader can use powder coatings for its
10 operations?

11 A Yes.

12 Q Does the adjusted standard petition
13 address the use of powder coatings?

14 A Yes, it does.

15 Q What does the petition state, to the best
16 of your knowledge?

17 A Well, they seem to be saying that it was
18 too cost prohibitive to use one.

19 Q Does the petition state what percentage
20 of coating Swenson can use powder coating for in
21 its petition?

22 A I recall 70 percent.

23 Q Okay. Do you know what Swenson
24 Spreader's historical VOM emission levels have been

1 for the past couple of years, as stated in the
2 petition? I can refer you to page 5 of
3 Petitioner's Exhibit 1, if that will help refresh
4 your recollection.

5 A Sure. As stated in the petition, they
6 range as low as 23.3 tons in 1992, to 43.3 in 1995,
7 tons per year.

8 Q 1995 was the greatest --

9 A Yes, it was.

10 Q -- year with 43 tons?

11 A Uh-huh.

12 Q Okay. Based on the historical highest
13 levels of VOM emissions being at 43 tons, do you
14 know what percentage of products Swenson would have
15 to coat with powder coatings to keep their
16 emissions under the 25 ton per year applicability
17 level?

18 A If you want to reduce emissions from
19 43 -- well, 43 tons per year down to 24.5, just
20 below 25, you would have to powder coat only 43
21 percent or let's say replace the 43 percent of the
22 coatings with powder coating.

23 Q What is your recollection of what
24 percentage Swenson can powder coat?

1 A 70 percent.

2 Q 70 percent. As a Permit Analyst for the
3 Illinois EPA, do you have an opinion on the
4 advantages of a source using powder coatings?

5 A They range from economic advantages,
6 because it is cheaper to coat relative to wet
7 coatings. It saves space. From a regulatory
8 standpoint, they can reduce their emissions to
9 below 25, which means they can use noncompliant
10 coatings under our rules. They could avoid Title 5
11 applicability. I mean, there is many advantages.

12 Q Okay. Does the Permit Section of the
13 Illinois EPA provide comments on adjusted standard
14 petitions --

15 A Yes.

16 Q -- in your investigation?

17 A Uh-huh.

18 Q Who do you provide those comments to?

19 A We provide them to our Compliance and
20 Systems Management Group as well as I give them
21 directly to the lead attorney.

22 Q Did you provide comments on Swenson
23 Spreader's adjusted standard to CASM?

24 A Yes, I did.

1 Q What was the gist of those comments?
2 A That I felt that we should reject the
3 petition.
4 Q Based on the inconsistencies you have
5 seen --
6 A Yes.
7 Q -- in your investigation?
8 A Yes.
9 Q Okay. Mr. Smet, I am showing you what
10 has previously been marked as Respondent's Exhibit
11 Number 1. Could you please review that document.
12 A (Witness complied.)
13 Q Are you familiar with that document?
14 A No, I am not.
15 Q Do you know what that document purports
16 to be?
17 A I believe this was John Stefan's -- it
18 looks to be John Stefan's opinion about the
19 petition that he wanted to provide to Bonnie.
20 Q Are Illinois EPA Permit Section comments
21 included in that document?
22 A Not that I see.
23 Q Do you know what happened to Permit's --
24 A No.

1 Q -- comments on the adjusted standard
2 petition?

3 A No, I do not.

4 MS. ARCHER: I have nothing further at
5 this time.

6 HEARING OFFICER FRANK: Mr. Meason?

7 CROSS EXAMINATION

8 BY MR. MEASON:

9 Q You stated you worked for a company
10 called S-Cubed?

11 A S-Cubed.

12 Q What kind of company is that?

13 A We were contracted to do simulations of
14 underground nuclear explosions for the Nevada Test
15 Site.

16 Q Were you a full-time employee there?

17 A Yes, I was.

18 Q For how long?

19 A A year and two months.

20 Q I would like to draw your attention to
21 Petitioner's Exhibit 1, item D2. On direct
22 examination you were asked to read certain
23 sentences from a portion of D2, but you were not
24 asked to read from the MSDS sheet accompanying D2.

1 I would like for you to do that.

2 If you could turn to -- it is marked on
3 the fax page two at the top under D2. It is the
4 second page of the MSDS sheet.

5 A Right.

6 Q If you could read the bottom right-hand
7 corner, the VOC as packaged?

8 A Right.

9 Q What does that state?

10 A It says 4.3.

11 Q And is that paint that was speced out in
12 the -- in IDOT's RFP?

13 A It is the DuPont 1021A.

14 Q And isn't that the same as the MSDS
15 sheet?

16 A Well, the MSDS sheet talks about the
17 DuPont. The specs state the DuPont or equal.

18 Q I didn't ask you that question. I asked
19 you what is the MSDS sheet, what paint number is on
20 the MSDS sheet?

21 A That is the DuPont 1021A.

22 Q And is that the same as in the RFP for
23 IDOT?

24 A Yes, it is.

1 Q Thank you. That is above Illinois 3.5
2 regulatory standard, is it not?

3 A Yes.

4 Q Thank you. I would like you to turn to
5 Petitioner's Exhibit 1, item D1.

6 A (Witness complied.)

7 Q On direct examination you were asked to
8 read certain sentences from the RFP. I would like
9 you to direct your attention to the MSDS sheet.
10 Isn't it true that the MSDS sheet is the same paint
11 that is speced out in the RFP under D1, that is,
12 DuPont 6847?

13 A Yes.

14 Q And isn't it true that the VOCs in pounds
15 per gallon is 4.3 pounds per gallon for that paint?

16 A For that paint it is 4.3.

17 Q Is 4.3 higher than Illinois regulatory
18 standard?

19 A Yes, it is.

20 Q Thank you. I would like to draw your
21 attention to Respondent's Exhibit 2.

22 HEARING OFFICER FRANK: Here, I have got
23 it.

24 MR. MEASON: I don't have a copy.

1 MS. ARCHER: Here you go.

2 MR. MEASON: This is for me?

3 MS. ARCHER: Yes.

4 MR. MEASON: Okay. Thank you.

5 Q (By Mr. Meason) If you could take a look
6 at that document, please?

7 A Uh-huh.

8 Q Are all of these companies considered to
9 be in the miscellaneous metal parts and products
10 industry category?

11 A Most of them are.

12 Q So that means you have included in this
13 memo companies that are not in the miscellaneous
14 metal parts and products category; isn't that
15 correct?

16 A Correct.

17 Q Are you aware that the U.S. EPA has
18 promulgated a control techniques guidelines
19 document for miscellaneous metal parts and
20 products? Yes or no?

21 A No.

22 Q I would like to draw your attention to
23 Petitioner's Exhibit 1 -- excuse me. It is the
24 updated. It is Petitioner's Exhibit 16, item T

1 under 16. Could you read the title of that
2 document?

3 A Control of volatile organic emissions
4 from existing stationary sources, volume six,
5 surface coating miscellaneous metal parts and
6 products.

7 HEARING OFFICER FRANK: You need to slow
8 down and talk up for our court reporter.

9 THE WITNESS: I apologize. I have seen
10 this. It has been awhile.

11 Q (By Mr. Meason) Okay. I would like to
12 direct your attention to roman numeral four, page
13 four, the first paragraph. Could you read the
14 first two sentences, please?

15 A The miscellaneous metal parts and product
16 category includes hundreds of small to medium sized
17 industries for which writing individual guideline
18 documents would be impractical. After reviewing
19 these industries, the EPA prepared this report to
20 assist local agencies in determining the level of
21 VOC control that represents the presumptive norm
22 that can be achieved through the application of
23 Reasonably Available Control Technology or RACT,
24 R-A-C-T.

1 Q Thank you. I would like to direct your
2 attention to pages 1-1 of that same document,
3 beginning with the last paragraph on page 1-1, if
4 you could read the first sentence, please?

5 A Of the last paragraph?

6 Q Correct?

7 A There are far more dissimilarities than
8 similarities between both the many plants and
9 various industries represented by this category.

10 Q Thank you. I would like you to turn to
11 page 1-3, beginning with the first full sentence in
12 the partial top paragraph.

13 A Within --

14 Q Yes, if you could read the remainder of
15 the paragraph, beginning with "within?"

16 A Within some industries, large variations
17 in manufacturing techniques and procedures exist.
18 Some facilities manufacture and coat metal parts
19 then assemble them to form a final product to be
20 sold directly for retail. Others, often called job
21 shops, manufacture and coat products under
22 contract. Specifications differ from product to
23 product.

24 The metal parts are then shipped to the

1 final product manufacture to be assembled with
2 other parts to produce some product. Such
3 facilities are often located in the vicinity of the
4 manufacturers for whom they perform this service.

5 Q Okay. Could you read the first two
6 sentences of the next paragraph?

7 A The size of metal coating facilities and
8 their mode of operation varies not only between
9 industries but also within each industry. Two
10 facilities coating the same product may apply
11 different coatings using completely different
12 application methods.

13 Q If you could now skip to the first
14 sentence of the next paragraph?

15 A The coatings are a critical constituent
16 of the metal coating industry.

17 Q And continue for the next two sentences?

18 MS. ARCHER: I would object to this line
19 of questioning as far as relevance and where Mr.
20 Meason is trying to go, having Mr. Smet read into
21 the record a portion of an exhibit that the
22 Illinois EPA has just been aware of since yesterday
23 afternoon. But my objection is relevance.

24 HEARING OFFICER FRANK: Mr. Meason?

1 MR. MEASON: First, it is a little late
2 to object. The objection is supposed to be
3 timely. Notwithstanding that fact, they have
4 introduced, over my objection, an exhibit that
5 lists by Dr. Smet's own admissions, companies that
6 do not -- are not even part of the miscellaneous
7 metal parts and products category.

8 I have referred his attention to an
9 official U.S. EPA document that discusses
10 miscellaneous metal parts and products, and it will
11 be very relevant, if I will be allowed to continue
12 along this line of questioning.

13 HEARING OFFICER FRANK: All right. Mr.
14 Meason, I think you have made your point, and this
15 document does speak for itself, and it is in the
16 record. If you want to ask specific questions
17 relating to the information, you can ask the
18 witness to read certain -- you know, we can go off
19 the record and give him a chance to read a couple
20 of pages, and then you can ask him questions about
21 it. But we don't need to read the entire document
22 into the record. The Board has it.

23 MR. MEASON: Okay.

24 Q (By Mr. Meason) I would like to draw your

1 attention to one last page in this document, roman
2 numeral five. There is a chart there, a flow
3 diagram. It is roman numeral five.

4 MS. SAWYER: It is up from the front of
5 the document.

6 MR. MEASON: Of Exhibit T.

7 THE WITNESS: All right.

8 Q (By Mr. Meason) If you look at the third
9 box from the right on the bottom row, isn't it true
10 that there is listed 3.5 pounds per gallon for the
11 metal parts and the products category? It is the
12 third box from the left.

13 A Outdoor harsh exposure or extreme
14 performance characteristics.

15 Q What does the standard state?

16 A 3.5 pounds per gallon.

17 Q Thank you. You stated on -- I will take
18 that back from you. You stated on direct
19 examination, that you urged rejection of the
20 adjusted standard because of, quote, unquote,
21 inconsistencies. But you have failed to mention
22 what those inconsistencies were.

23 A One was the issue about the bid
24 specification, which I mentioned earlier. Another

1 was --

2 Q The bid specification?

3 A Yes.

4 Q What was inconsistent about the bid
5 specification?

6 A That upon speaking with these three
7 entities, they are saying that color was the only
8 thing that they considered important in a bid
9 specification. And I asked them if they -- do they
10 care about the pre-application properties of the
11 coating, like the VOC content. They said we don't
12 care. We just care about color.

13 Q Did the Illinois DOT issue an RFP
14 specifying a particular paint? I will refer your
15 attention to Petitioner's Exhibit 1, item D2. You
16 earlier --

17 A In their specification they said color.
18 They mentioned color.

19 Q Does the MSDS sheet -- well, we have
20 already gone over this. Doesn't the MSDS sheet
21 match up exactly with IDOT's paint request in the
22 RFP?

23 A You asked about the --

24 Q Yes or no, Dr. Smet?

1 MS. ARCHER: I would object. The
2 question has been asked and answered. Mr. Meason,
3 by his own admission, has already said we have
4 already been over this ground.

5 MR. MEASON: Dr. Smet is attempting to
6 change his answer over what he just --

7 MS. ARCHER: No, I don't believe that he
8 is.

9 MR. MEASON: -- specified in
10 cross-examination.

11 HEARING OFFICER FRANK: I am sorry. Can
12 you re-read Mr. Meason's question?

13 (Whereupon the requested
14 portion of the record was read
15 back by the Reporter.)

16 HEARING OFFICER FRANK: Okay. That
17 question has been asked and answered.

18 MR. MEASON: Prior to that he was --
19 let's go off the record.

20 HEARING OFFICER FRANK: No, let's not go
21 off the record.

22 MR. MEASON: Okay. Prior to that he
23 stated that they had -- that the Agency had no
24 interest in anything but color, but they --

1 MS. ARCHER: Based on --

2 MR. MEASON: But they have issued an RFP,
3 and he has already testified on cross that the MSDS
4 sheet for that exact paint, that exact
5 manufacturer, is above Illinois' regulatory
6 standard.

7 MS. ARCHER: Mr. Smet testified on
8 cross-examination that the VOM content, as
9 specified in the MSDS sheet, was consistent with
10 what was specified on the bid sheet. He did not
11 say that it was the same.

12 Furthermore, Mr. Smet is not qualified to
13 answer this question. We are going to have a
14 witness from the Illinois Department of
15 Transportation coming up who will be more than
16 willing to answer Mr. Meason's questions.

17 MR. MEASON: Mr. Smet was deemed
18 qualified by the Agency to develop a listing of
19 companies that aren't even in the same industrial
20 categories, and to allege that they are in
21 compliance with various Illinois standards --

22 HEARING OFFICER FRANK: This is a
23 separate issue from the question that you asked. I
24 believe the question that you asked, that was read

1 back for us, has already been asked and answered.
2 So if you want to continue with more questions,
3 that's fine.

4 MR. MEASON: Okay.

5 Q (By Mr. Meason) Isn't it true that --
6 well, what, if any, other inconsistencies did you
7 allege in Swenson's adjusted standard petition?

8 A That Swenson wanted an adjusted standard,
9 a broadly based adjusted standard, to cover the
10 complete -- 100 percent of their coatings.
11 Whereas, only a percentage of the coatings were
12 noncompliant.

13 So it was inconsistent, from our Agency's
14 standpoint, to say that we should give a standard
15 to cover 100 percent of the coatings at the site.
16 Another inconsistency was --

17 Q Did you suggest to Swenson Spreader that
18 there --

19 A Another inconsistency was --

20 HEARING OFFICER FRANK: Excuse me. Mr.
21 Smet, you need to answer the questions that are
22 asked of you and limit your answers to that.

23 THE WITNESS: Okay.

24 Q (By Mr. Meason) Did you suggest to

1 Swenson Spreader that there might be an alternative
2 to their listing of a 5.0, 5.25 standard?

3 MS. ARCHER: Objection. That is not Mr.
4 Smet's duty to inform Swenson of inconsistencies
5 Mr. Smet sees. Mr. Smet provides his technical
6 permitting analysis to the Agency, who can form the
7 final recommendation. It is not Mr. Smet's
8 responsibility to inform --

9 HEARING OFFICER FRANK: Whether or not it
10 is his responsibility, the question was whether or
11 not he did. So I am going to allow it.

12 THE WITNESS: No.

13 Q (By Mr. Meason) Dr. Smet, have you ever
14 worked in the paint industry?

15 A No.

16 Q Dr. Smet, have you ever worked in the
17 manufacturing industry?

18 A No, I have not.

19 Q Dr. Smet, I am going to show you a
20 document that I received at a little before 5:00 in
21 the afternoon yesterday as part of the discovery
22 from the Agency.

23 HEARING OFFICER FRANK: Okay. Let's stop
24 here for just a minute. You have made it very

1 clear that you have received everything at a little
2 bit before 5:00. That was what my order required,
3 was that they get it to you by 5:00.

4 If you need additional time -- I told the
5 Agency that they could ask for additional time, and
6 I have told you that you may ask for additional
7 time, too. This goes back to the civility. I
8 think it is time to move on from that point.

9 Q (By Mr. Meason) I would like to show you
10 a document.

11 A All right.

12 MR. MEASON: I will show it to Ms. Archer
13 and Ms. Sawyer.

14 I will also show it to the Hearing
15 Officer.

16 Q (By Mr. Meason) Dr. Smet, I will now show
17 you this document. Do you recognize that document?

18 A Yes, I do.

19 Q Is that in your handwriting?

20 A Uh-huh.

21 Q Okay. I would like you to read the line
22 that is underlined, I believe in your own
23 handwriting?

24 A This one right here?

1 Q Correct.

2 A "No interest in the environment."

3 Q On what basis did you make that notation?

4 A Can I see this again? Okay. These were
5 notes I took when we had a meeting with Swenson and
6 some of the representatives here at the Agency.
7 And I took notes of some of the things that were
8 stated in there. And one of the notes I took was
9 that I felt that I -- Swenson took a very
10 adversarial role from the very beginning in this
11 adjusted standard petition, and showed no interest
12 in cooperating with the Agency, and seemed to have
13 no interest in the environment.

14 Q Isn't it true, Dr. Smet, that --

15 A It was just a personal opinion.

16 Q Isn't it true, Dr. Smet, that there was
17 no adversarial role until the Agency filed its
18 formal response recommending denial of the petition
19 in February?

20 A I can't speak for some of the other
21 people at the Agency, but I would say no.

22 HEARING OFFICER FRANK: No, that is not
23 true? Is that what you mean to say?

24 THE WITNESS: I want to say that there

1 was an adversarial point of view with Swenson
2 before we recommended that the petition be denied.

3 Q (By Mr. Meason) And why was there an
4 adversarial -- excuse me. Was there an adversarial
5 attitude on behalf of the Agency?

6 A Well, I can speak for myself only. But I
7 felt that Swenson was taking a hard-line approach.

8 Q Did you ever personally speak with any
9 Swenson representatives outside of that meeting?

10 A Well, only in prior conversations over
11 the last two or three years.

12 Q Prior to the filing of an adjusted
13 standard?

14 A Yes, uh-huh.

15 Q You stated, on direct examination, that
16 you called at least a few governmental agencies
17 with regard to their soliciting bids for the types
18 of products that Swenson Spreader makes?

19 A Not what -- I wanted to find out more if,
20 in fact, they required the certain paints and VOC
21 contents. It was --

22 Q Did you mention Swenson Spreader's name
23 when you went to those companies?

24 A I didn't have to, because when I was

1 asking about a company, they make spreaders, they
2 pretty much said, oh, we know who you are talking
3 about. I didn't want to use Swenson. I wanted to
4 just talk generally. I didn't have to mention
5 Swenson.

6 Q And did you admit on the phone that it
7 was with regard to Swenson Spreader that you were
8 inquiring?

9 A I was interested in finding out --

10 Q Did you admit to these agencies that it
11 was --

12 A Yes.

13 Q Thank you.

14 A Yes.

15 Q Do you recall at that meeting, Dr. Smet,
16 that the company handed out a letter from Terry
17 Rielly to Tom Wallin, dated October 4th, 1995? Do
18 you recall that letter?

19 A No.

20 Q Do you recall a letter regarding Swenson
21 Spreader's approaching Mr. Wallin at the Illinois
22 EPA with regard to the predicament that Swenson
23 found itself in with regard to government contracts
24 requesting paints that are above the 3.5 pounds per

1 gallon limit?

2 A Not specifically. I knew Tom was dealing
3 with Swenson, but I didn't know the details, or
4 what led up to it.

5 Q Dr. Smet, do you recall that I personally
6 walked around the table and handed out this letter
7 to all those in attendance at that meeting?

8 A You may have.

9 Q Is that a no or a yes?

10 A I don't recall seeing that specific one.
11 So I don't recall.

12 Q Were you aware that Swenson Spreader
13 requested Mr. Wallin to keep this matter in the
14 quote, unquote strictest possible confidence?

15 MS. SAWYER: Objection. Relevance.

16 HEARING OFFICER FRANK: Mr. Meason, how
17 is this relevant?

18 MR. MEASON: This is relevant to show in
19 conjunction with his note of "no interest in the
20 environment," that after that point in time Dr.
21 Smet went and called these various governmental
22 agencies, that are the clients of Swenson Spreader,
23 used or did not deny the name of Swenson Spreader,
24 and seriously jeopardized Swenson Spreader's

1 ability, purposely, to do business with these
2 clients in the future.

3 HEARING OFFICER FRANK: How is that
4 relevant to the adjusted standard proceeding?

5 MR. MEASON: It shows that Dr. Smet has
6 been bias against Swenson Spreader in this
7 proceeding and, therefore, goes to the basis for
8 his testimony today.

9 HEARING OFFICER FRANK: Okay.

10 MS. SAWYER: I don't see how a letter
11 dated October 4, 1995, when the adjusted standard
12 was filed early in October of 1996, does anything
13 to establish bias on the part of Dr. Smet.

14 HEARING OFFICER FRANK: Okay. I am going
15 to allow it, because you are moving forward with
16 other -- I am guessing other questions relating to
17 this.

18 But you are going to have to read back
19 the question for this witness.

20 (Whereupon the requested
21 portion of the record was read
22 back by the Reporter.)

23 THE WITNESS: No.

24 Q (By Mr. Meason) Okay. Dr. Smet, isn't it

1 true that you were the permit reviewer that denied
2 Swenson Spreader's permit application?

3 A Yes, I was.

4 Q Roughly, when was that?

5 A Late 1993, early 1994.

6 Q And isn't it true that one of the basis
7 for your denial was Swenson's inability to
8 demonstrate compliance with the 3.5 pounds per
9 gallon standard?

10 MS. SAWYER: Objection. Relevance.

11 MR. MEASON: Again, it goes to the bias
12 against Swenson Spreader, long-standing bias.

13 MS. SAWYER: I fail to see how Mr. Smet's
14 responsibilities as a Permit Analyst, or his
15 responsibilities in investigating the adjusted
16 standard, go to bias.

17 HEARING OFFICER FRANK: All right. Mr.
18 Meason?

19 MR. MEASON: We have his early
20 involvement with Swenson Spreader, direct
21 involvement, where he denied the permit with the
22 regulation at issue in this adjusted standard
23 proceeding, and one of the basis for the
24 enforcement action. We have a note in his

1 handwriting, underscored, "no interest in the
2 environment." We have his going to Swenson
3 Spreader's clients and either explicitly stating or
4 not denying that Swenson Spreader was at the root
5 of his call, and wanting to know basically why they
6 were requesting paints above the regulatory
7 standard.

8 John Stefan testified that Dr. Smet is
9 involved in the enforcement action. Dr. Smet also
10 testified that he recommended this adjusted
11 standard not be granted because of, quote, unquote,
12 inconsistencies in Swenson's application, but has
13 yet failed to articulate --

14 MS. SAWYER: I am not sure what the
15 purpose of reiterating the entire testimony here
16 is. I mean, in terms of that note that you have
17 there, that is one issue. I don't see where
18 linking it with Dr. Smet's responsibility as a
19 permit reviewer or his investigation, which the
20 Agency has a regulatory duty to investigate the
21 adjusted standard petitions, I just don't see --

22 MR. MEASON: The regulatory duty --

23 MS. SAWYER: -- that there has been any
24 sort of tie.

1 HEARING OFFICER FRANK: Okay. Stop, both
2 of you. I am going to allow it. It is going to be
3 up to the Board whether or not they want to link
4 this to any type of bias. That's for the Board to
5 decide.

6 So, Mr. Meason, please continue with your
7 questioning.

8 MR. MEASON: Well --

9 HEARING OFFICER FRANK: I believe you
10 were asking about the permit denial point.

11 MR. MEASON: Yes. Could you --

12 HEARING OFFICER FRANK: Could you read it
13 back, please.

14 MR. MEASON: Yes, please. I am sorry
15 about that.

16 (Whereupon the requested
17 portion of the record was read
18 back by the Reporter.)

19 THE WITNESS: That is one of the bases,
20 yes.

21 Q (By Mr. Meason) Have you been consulted
22 in any way, whatsoever, with regard to the
23 enforcement action initiated by the Agency and
24 being handled by the Attorney's General office?

1 A Yes.

2 MR. MEASON: I have nothing further.

3 HEARING OFFICER FRANK: Ms. Archer?

4 MS. ARCHER: One second, please.

5 HEARING OFFICER FRANK: Let's go off the

6 record.

7 (Discussion off the record.)

8 HEARING OFFICER FRANK: Back on the

9 record.

10 MS. ARCHER: Thank you.

11 REDIRECT EXAMINATION

12 BY MS. ARCHER:

13 Q Dr. Smet, you testified regarding the

14 Respondent's Exhibit Number 2. Do you still have

15 that in front of you?

16 A Yes.

17 Q Okay. Are there other source categories

18 besides miscellaneous metal parts that are subject

19 to the extreme performance standard?

20 A Yes.

21 Q What source categories would those be?

22 A You find, I believe, heavy-duty,

23 off-highway vehicle products. It would be

24 off-highway vehicle products. So this collection,

1 this is the listing of those that meet the extreme
2 performance. So it is not just miscellaneous metal
3 parts of which a large number of those do meet
4 that.

5 Q Swenson Spreader does -- is subject to
6 the extreme performance standard?

7 A Yes, they are.

8 Q Dr. Smet, you had testified you did, as
9 part of your job duties, review Swenson Spreader's
10 prior permit application in approximately 1993?

11 A It has been awhile, that is right.

12 Q Okay. And you have been involved in the
13 adjusted standard proceeding as part of your job
14 duties?

15 A Yes.

16 Q Did you investigate that petition?

17 A Yes, I did.

18 Q And you were also involved in the
19 enforcement proceedings?

20 A Yes.

21 Q What is your involvement in the
22 enforcement proceedings?

23 A It is very little at this point. It
24 is -- I just let the enforcement attorney in on any

1 information I knew of from the prior application.

2 Q Have any of these activities that are
3 part of your job duties biased you toward or
4 against Swenson Spreader?

5 A No.

6 MS. ARCHER: Thank you.

7 HEARING OFFICER FRANK: Mr. Meason?

8 MR. MEASON: Yes.

9 RE CROSS EXAMINATION

10 BY MR. MEASON:

11 Q Isn't it true that the extreme
12 performance standard is not set at 3.5 pounds per
13 gallon across the board?

14 A I want to say that the extreme
15 performance is set at 3.5 pounds per gallon.

16 Q Isn't it true that there are higher
17 pounds per gallon limitations?

18 A For extreme performance?

19 Q For extreme performance.

20 A I don't believe there are.

21 Q Do you have a copy of the regs?

22 HEARING OFFICER FRANK: I have them.

23 MR. MEASON: Thanks.

24 THE WITNESS: Those were for 3.5 pounds

1 per gallon extreme performance.

2 HEARING OFFICER FRANK: By "these" you
3 were referring to Exhibit 2, Respondent's Exhibit
4 2?

5 THE WITNESS: Yes.

6 Q (By Mr. Meason) So, therefore, there are
7 other extreme performance at a higher VOM rate?

8 A I don't believe there are.

9 HEARING OFFICER FRANK: Off the record.

10 (Discussion off the record.)

11 HEARING OFFICER FRANK: Why don't we take
12 a five minute break.

13 (Whereupon a short recess was
14 taken.)

15 HEARING OFFICER FRANK: Back on the
16 record.

17 Mr. Meason, we had left off with you
18 finding the standard.

19 MR. MEASON: Yes. Thank you.

20 Q (By Mr. Meason) Dr. Smet, I am going to
21 hand you a copy of the Illinois EPA regulations. I
22 would like to direct your attention to 215.204,
23 K2. Isn't it true that the standard for that
24 extreme performance coating is 4.3 pounds per

1 gallon?

2 A For the extreme performance for the top
3 coat air dried it is 4.3.

4 Q Thank you. I direct your attention to
5 215.204 M2. Isn't it true that the extreme
6 performance top coat air dried is 4.3 pounds per
7 gallon?

8 A Yes, with the top coat air dried.

9 Q Thank you.

10 MS. SAWYER: May I look at that for a
11 second?

12 HEARING OFFICER FRANK: For the record, I
13 would like to note that this is the March 1994
14 publication. It doesn't have all the updates in
15 there.

16 MS. SAWYER: I actually don't think those
17 standards have changed, though.

18 HEARING OFFICER FRANK: You would know
19 better than I would. I know there have been things
20 that have changed in there, and I just don't have
21 them in there.

22 MS. SAWYER: Okay. Go ahead. I am
23 sorry.

24 MR. MEASON: Okay.

1 Q (By Mr. Meason) Dr. Smet, I would like to
2 refer you to Respondent's Exhibit 2. I have a copy
3 here. Do you still have it?

4 A Yes.

5 Q Isn't it true that few, if none of those,
6 companies actually have to match paint color for
7 their sales force?

8 A I couldn't tell you.

9 Q So you didn't ask that question, did
10 you? You didn't ask that question when you put
11 together this list, did you?

12 A Well, this was just a compilation of
13 permitted facilities that meet the 3.5.

14 Q Okay. So there is no distinction between
15 companies having to meet bid specifications as far
16 as paint coatings, is there?

17 A Right.

18 Q Thank you. Dr. Smet, isn't it true that
19 you are aware that Swenson Spreader has approached
20 paint companies to reformulate their paints?

21 A Yes.

22 Q Why would Swenson Spreader approach paint
23 companies if, according to your note, they have "no
24 interest in the environment"?

1 MS. ARCHER: I would object to that
2 question. Dr. Smet has no personal knowledge of
3 why Swenson Spreader would or would not contact
4 paint suppliers.

5 MR. MEASON: He already testified that he
6 knows that they did contact paint suppliers. There
7 is much testimony on the record. I don't think it
8 is beyond dispute that Swenson has gone to paint
9 suppliers. Dr. Smet has admitted, a few minutes
10 ago, that they have done that. This is nothing
11 new.

12 MS. ARCHER: You are asking Dr. Smet to
13 speculate as to the motives of Swenson Spreader in
14 this question.

15 MR. MEASON: No, I am asking him
16 basically for why he feels that Swenson Spreader
17 has no interest in the environment, when they have
18 gone to paint companies to reformulate their
19 paints.

20 HEARING OFFICER FRANK: That's a
21 different question than the question you asked.

22 MR. MEASON: Okay.

23 HEARING OFFICER FRANK: If you want to
24 ask that one, please do.

1 MR. MEASON: Okay. I will ask that
2 question.

3 Q (By Mr. Meason) Dr. Smet, in that you
4 have a written note here in your own handwriting
5 that is underscored "no interest in the
6 environment" if that is your belief, how can you
7 explain Swenson Spreader's paint reformulation
8 attempts?

9 MS. ARCHER: I would also object to that
10 question, as a handwritten note based on Dr. Smet's
11 personal opinion at the time of one, I believe it
12 was a conference call, and extrapolates -- it calls
13 for speculation, extrapolating that to apply for
14 Swenson's efforts at reformulation.

15 HEARING OFFICER FRANK: I am going to
16 allow the question.

17 Do you remember it?

18 THE WITNESS: I think I have a good
19 idea.

20 HEARING OFFICER FRANK: Okay.

21 THE WITNESS: Certainly, the interest in
22 reformulating paints is a positive step forward.
23 But my opinion about the no interest in the
24 environment was based on the appearance that

1 Swenson did not want to -- they wanted a standard
2 that was comfortable to them at about 5.0 pounds
3 per gallon standard, and didn't seem interested in
4 trying to meet the 3.5 and work with the Agency.

5 Q (By Mr. Meason) Isn't it true that the
6 company approached paint companies to reformulate
7 the paints? Yes or no?

8 A Some of the paints, yes, I am sure.

9 HEARING OFFICER FRANK: Do you know
10 that?

11 THE WITNESS: As I gathered from the
12 information available to me, I had that impression.

13 Q (By Mr. Meason) Is that a yes?

14 A Yes.

15 Q Isn't it true that Swenson Spreader
16 traveled down to Springfield for that meeting that
17 you participated in last fall?

18 MS. ARCHER: Objection as to relevance.

19 HEARING OFFICER FRANK: Mr. Meason, how
20 is this relevant?

21 MR. MEASON: Dr. Smet has implied that
22 the company has "no interest in the environment"
23 and took a hard-line approach in the adjusted
24 standard. The company, at his request, went down

1 to Springfield to hold the meeting, has held at
2 least one teleconference with all parties since
3 that time in an attempt to meet the concerns of the
4 Agency.

5 THE WITNESS: In the interest of the
6 Agency --

7 HEARING OFFICER FRANK: Mr. Smet, I am
8 ruling on the objection.

9 I am going to go ahead and allow the
10 question. But we are going to have to have it read
11 back, because you are answering a different
12 question now.

13 (Whereupon the requested
14 portion of the record was read
15 back by the Reporter.)

16 THE WITNESS: Swenson wanted to --

17 MR. MEASON: Please answer the question.

18 THE WITNESS: Yes.

19 Q (By Mr. Meason) Isn't it true that Jim
20 Schula (spelled phonetically) the president of
21 Meyer Products, attended that meeting, all the way
22 from Ohio?

23 A Yes.

24 Q Isn't it true that Bob Schultz, the

1 General Counsel of Louis Berkman Company traveled
2 to Springfield from Pittsburgh?

3 A Yes.

4 Q Isn't it true that the rest of the
5 Swenson personnel traveled down from the Rockford
6 area?

7 A Yes.

8 MR. MEASON: Thank you. I have nothing
9 further.

10 HEARING OFFICER FRANK: Ms. Archer?

11 FURTHER REDIRECT EXAMINATION

12 BY MS. ARCHER:

13 Q Dr. Smet, you testified that Swenson
14 Spreader did come down last fall for a meeting with
15 the Agency in Springfield?

16 A Yes.

17 Q When did you contact the Illinois
18 Department of Transportation, the Kansas Department
19 of Transportation, and the Sangamon County --

20 A It was prior to that meeting.

21 Q Why did you contact those entities?

22 A Because based on the first draft of the
23 petition, which I read through, that was when I
24 noted the inconsistencies or things that I wanted

1 to investigate and went ahead and called up IDOT
2 and KDOT.

3 Q Mr. Meason referred you to Section
4 215.204 K and M, I believe. If I can show you
5 that, could you read what source categories
6 those -- what is K for?

7 A K is for heavy off-highway vehicle
8 products.

9 Q What is the VOM limits for extreme
10 performance prime coat?

11 A For prime coat it is 3.5.

12 Q Okay. Under M, what is that subcategory
13 for?

14 A That is existing diesel electric
15 locomotive coating lines in Cook County.

16 Q What is the VOM limit for extreme
17 performance prime coat under that?

18 A It is 3.5.

19 Q Is it your understanding that Swenson
20 Spreader's operations are similar to those
21 categories for extreme performance prime coat
22 operations?

23 A Yes.

24 MS. ARCHER: Thank you. I have nothing

1 further.

2 HEARING OFFICER FRANK: Mr. Meason?

3 MR. MEASON: I have nothing further.

4 HEARING OFFICER FRANK: Okay. Then let's
5 go off the record and take a lunch break.

6 (Whereupon a lunch recess was
7 taken from 12:45 p.m. to 1:50
8 p.m.)

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AFTERNOON SESSION

(May 21, 1997; 1:50 p.m.)

HEARING OFFICER FRANK: Back on the record.

Mr. Meason, I believe you had something that you wanted to discuss before we continued.

MR. MEASON: Right. I had neglected to attempt to introduce two documents that I would like to have admitted as exhibits.

The first I am showing to Ms. Archer and Ms. Sawyer right now. It is the undated, unsigned note that Dr. Smet took credit for penning, which has the one line in his handwriting underscored, "with no interest in the environment." I would move that that be admitted into evidence.

HEARING OFFICER FRANK: Is there any objection?

MS. SAWYER: No objection.

HEARING OFFICER FRANK: Okay. Then that will be marked as Petitioner's Exhibit Number 21.

(Whereupon said document was duly marked for purposes of identification and admitted into evidence as Petitioner's

1 Exhibit 21 as of this date.)

2 HEARING OFFICER FRANK: Okay. The next
3 item?

4 MR. MEASON: The other item is the
5 October 4th, 1995 letter from Terry Rielly of
6 Swenson Spreader to Tom Wallin of the Illinois EPA,
7 regarding taking exception to bids and attempting
8 to hold in strictest confidence Swenson's role in
9 bringing this situation to the Illinois EPA's
10 attention.

11 I will show that document to Bonnie and
12 to Ms. Archer.

13 HEARING OFFICER FRANK: Is there any
14 objection?

15 MS. SAWYER: No.

16 HEARING OFFICER FRANK: Then the October
17 4th, 1995, Terry Rielly letter will be marked as
18 Petitioner's Exhibit Number 22.

19 (Whereupon said document was
20 duly marked for purposes of
21 identification and entered into
22 evidence as Petitioner's
23 Exhibit 22 as of this date.)

24 HEARING OFFICER FRANK: Can we go off the

1 record for just a second.

2 (Discussion off the record.)

3 HEARING OFFICER FRANK: Let's go back on
4 the record.

5 Ms. Sawyer or Ms. Archer, whoever is
6 going to do it, will you call your next witness,
7 please.

8 MS. SAWYER: The Illinois EPA would like
9 to call Richard Hunter.

10 HEARING OFFICER FRANK: Okay. Will you
11 please swear the witness.

12 (Whereupon the witness was
13 sworn by the Notary Public.)

14 R I C H A R D W I L L I A M H U N T E R,
15 having been first duly sworn by the Notary Public,
16 saith as follows:

17 DIRECT EXAMINATION

18 BY MS. SAWYER:

19 Q Will you please state your name and spell
20 your last name.

21 A Richard William Hunter, H-U-N-T-E-R.

22 Q Mr. Hunter, where are you currently
23 employed?

24 A The Illinois Department of

1 Transportation.

2 Q And how many years have you been employed
3 by them?

4 A Just over 19 years.

5 Q What is your current position with the
6 Illinois DOT?

7 A I am the equipment engineer in the Bureau
8 of Operations, Division of Highways.

9 Q How long have you been at your current
10 position?

11 A Just short of ten years.

12 Q Would you please -- do you have a college
13 degree?

14 A Yes, I have a Bachelor of Science Degree
15 in Civil Engineering from Rose-Hulman Institute of
16 Technology.

17 Q Do you have any professional
18 certifications?

19 A I am a Licensed Professional Engineer in
20 Illinois.

21 Q Mr. Hunter, could you please describe the
22 responsibilities that you have with your current
23 position?

24 A Yeah. I am supervisor with

1 responsibility over our equipment unit, which
2 includes three somewhat distinct functions. The
3 one I think that is of interest today is the
4 equipment procurement process as it relates to
5 trucks and equipment used by our operations, forces
6 in the field.

7 In our area of responsibility we prepare
8 all of the specifications for the department's
9 needs. Those, in turn, are used by the Department
10 of Central Management Services, procurement
11 services division to solicit bids for our needs.
12 And once those bids are taken, my unit is
13 responsible for providing the technical review for
14 compliance for the specifications.

15 Q Could you please describe the previous
16 positions you have held at the Illinois DOT?

17 A Prior to my current position I was
18 Equipment Specifications and Development Engineer
19 and I held that position from 1978 until 1987.
20 That position basically was directly responsible
21 for the preparation of bid specifications and
22 renewal of bids and recommendations.

23 Q As part of your current position with the
24 Illinois Department of Transportation, are you

1 involved with the procurement process for salt
2 spreaders for spreaders of --

3 A We are involved in the procurement of all
4 types of equipment, including the salt spreaders
5 used on our highway maintenance trucks.

6 Q If the Illinois Department of
7 Transportation needs new spreaders, how are bids
8 sought?

9 A There are two ways in which we receive
10 salt spreaders. The first is through direct
11 solicitation of bids through the Procurement
12 Services Division of CMS. In that scenario
13 typically what happens is we develop an estimated
14 quantity of need for the department, we prepare or
15 update specifications for that product and forward
16 those needs to Procurement Services.

17 They, in turn, generally will develop
18 what is called a term contract where they will
19 solicit bids in order to establish a price for a
20 contract that will extend over a year. That allows
21 us to order on an as needed basis. Frequently that
22 contract contains a renewal clause that allows for,
23 with mutual agreement of both the State and the
24 vendor, to renew that for one year.

1 The other method in which spreaders are
2 obtained by the department would be in a
3 subcontract arrangement. It is typical for us to
4 purchase our trucks annually, again, on a bid basis
5 through the Department of Central Management
6 Services, in what is commonly referred to as a
7 turn-key fashion or a complete fashion, thereby the
8 prime contractor will subcontract component parts,
9 such as the spreaders. The most common method is
10 first, although some product is procured through
11 the second method.

12 Q Does this invitation for bids or term
13 contract include bid specifications?

14 A It includes bid specifications that are
15 prepared by the Department of Transportation.

16 Q After the bid period closes, do you or
17 your staff review the bids to determine if minimum
18 specifications are met?

19 A We do.

20 Q Once minimum specifications are met, what
21 guides the decision as to which company will be
22 awarded the contract?

23 A The lowest one. The low bidder in
24 compliance will be awarded the contract. I should

1 qualify that and say that with -- that assuming
2 that that bidder is qualified and meets all of the
3 other contract requirements stipulated by CMS. But
4 from our perspective, if there is compliance for
5 specifications then we would recommend award to CMS
6 based on the low bid.

7 Q Mr. Hunter, you have in front of you a
8 document that is Petitioner's Exhibit 1, I
9 believe. If you would turn to Section D2 of that
10 document. Mr. Hunter, can you identify that
11 document?

12 A It is one of our bid specifications dated
13 January of 1994. It covers our dump body mounted,
14 large hopper body type spreaders. That's basically
15 all I can tell you about it, unless you want to go
16 through it in detail.

17 Q I will ask some more detailed questions
18 on it. If you will look at the page numbered one
19 of six.

20 A Okay.

21 Q It indicates, if you will look at number
22 one under bidders quoting other than specified
23 equipment must submit their bid with written proof
24 of the following.

1 A Uh-huh.

2 Q Could you take a look at number one and
3 explain what that means in how you evaluate whether
4 they have met that requirement to supply written
5 proof?

6 A Okay. The purpose of that section of the
7 document and that particular paragraph was placed
8 in here in an effort by the department to make sure
9 that new bidders, bidders who were not known to the
10 State or known to the Department of Transportation
11 were, in fact, providing sufficient documentation
12 that we could assess that what they were supplying
13 to us did, in fact, meet all of the requirements.

14 It is basically standard, boilerplate
15 language that we use in practically all of our
16 specifications, and it applies basically to new
17 bidders, not companies that have substantially done
18 business with the State for some period of time.

19 Q If you will turn to the next page, I
20 think it is the next page that is numbered page
21 five of six.

22 A Okay.

23 Q Under general, number one, what is that
24 specification directed at?

1 A Principally it is directed at color. We
2 have for, basically to my knowledge, probably 35
3 years, the Illinois Department of Transportation
4 Division of Highways has had an orange color which,
5 again, to my knowledge is unique in the industry
6 and we -- it has always been our desire to try to
7 match that color. That's the color that we require
8 our trucks to be painted. The intent of the
9 paragraph is to get a typically manufactured
10 quality finish in that color.

11 Q At the bottom of this number one it says
12 a color sample of which will be furnished the
13 successful bidder upon request. Why does the
14 specification that IDOT will provide a color chip
15 upon request?

16 A Again, in an effort to assist the
17 successful vendor in matching the color.

18 Q Would IDOT need to supply a color chip if
19 the bidder was going to use DuPont number LF1021AM?

20 A No, they shouldn't need a color chip with
21 that reference number.

22 Q Is DuPont number LF1021AM a specific
23 color coating?

24 A We use that number as a reference match

1 to the Illinois Division of Highways orange.
2 Periodically we check with DuPont to confirm that
3 we have the current color match as a reference
4 number. At the time that this document was
5 prepared, that was the reference number that we had
6 for -- from DuPont to match our color chip or our
7 color.

8 Q What process do you follow to evaluate if
9 this specification is met?

10 A In a normal bid evaluation process, the
11 fact that the space below on the exhibit where it
12 says complies, yes or no, if the vendor checks yes,
13 we would assume that the vendor intends to comply
14 and we would expect the vendor to comply once
15 awarded the contract.

16 Q By "comply" what do you mean?

17 A Match the color.

18 Q Do you investigate the volatile organic
19 material content of the coating?

20 A We do not.

21 Q Do you attach material safety data sheets
22 to the term contract when you distribute it?

23 A No, we do not.

24 Q Do you know if you routinely accept bids

1 for which the company uses a coating other than
2 DuPont Number LF1021AM?

3 A Again, I believe that we accept many,
4 many products with coatings other than DuPont
5 coatings. Our objective is color match, and while
6 there are some specific instances, this not being
7 one of them, where we would check to clarify that
8 the coating we were getting is, in fact, the
9 coating that we asked for, in general, most of our
10 requirements simply say we want a color match, and
11 any industry painting process that delivers that is
12 acceptable to us.

13 Q So then in your evaluation of a bid, does
14 it matter if a coating is used other than DuPont
15 LF1021AM, as long as the color is the same?

16 A As long as the color is the same that's
17 fine, not a problem.

18 Q Has Swenson Spreader Company been the
19 successful bidder in the past?

20 A They have been.

21 Q Do you have reason to believe that
22 Swenson has used a coating other than DuPont
23 LF1021AM when it has been awarded a contract in the
24 past?

1 A It is possible that they could have used
2 a different coating system. We don't check that,
3 and there have been times when the color match on
4 product delivered from Swenson has been
5 questionable in terms of whether it was a perfect
6 match or not. That, in and of itself, would
7 probably lead me to question whether they were
8 actually using the DuPont product. In speculation,
9 I would say that they probably were not.

10 Q Does the fact that a bidder using a
11 coating other than DuPont LF1021AM, but uses a
12 coating that is the color specified, place that
13 company at a disadvantage in being awarded a
14 contract?

15 A It is my belief that it would not.

16 Q Mr. Hunter, looking again at the
17 specification, it is for a hopper body type
18 spreader?

19 A Uh-huh.

20 Q Is this consistent with your current bid
21 specification for this type of spreader?

22 A This particular date on this document is
23 not current. I believe our most current
24 specifications for this product and our other

1 spreaders, spreader specifications carry a 1995
2 date on them.

3 Q In all cases when you order a spreader,
4 do you specify that the spreader must be painted?

5 A No. Recently, starting in 1994 or 1995,
6 we started buying some of our spreaders,
7 particularly the larger hopper body type spreaders,
8 as described by the title in this particular case,
9 with a significant amount of the component to be
10 made out of stainless steel. So in those cases we
11 do not require the stainless to be painted and the
12 nonstainless exposed parts, of which there are a
13 few, we require to be painted black.

14 Q Do you still require that certain forms
15 of spreaders or do you still specify that certain
16 types of spreaders need to be coated or painted?

17 A What is referred to in the industry as
18 tailgate type spreaders that mount under the
19 tailgate of a dump truck, we still require those to
20 be painted the Illinois Highway Orange.

21 Q Does your current bid specification
22 include the same language as this one does under
23 one, on page five of six, essentially?

24 A I think essentially that -- the DuPont

1 reference is still the same. The M14 reference may
2 have changed. Without looking at documentation
3 with me I couldn't tell you for sure.

4 Q But in terms of the other language it
5 seems consistent with your specifications?

6 A The language is consistent with the
7 current specifications.

8 MS. SAWYER: That's all of the questions
9 I have of this witness.

10 HEARING OFFICER FRANK: Okay. Mr.
11 Meason?

12 CROSS EXAMINATION

13 BY MR. MEASON:

14 Q Mr. Hunter, you stated on direct
15 examination that your office or you review the
16 minimum specifications on bids received and,
17 generally speaking, the bids are awarded to the
18 lowest bidder in compliance with all
19 specifications; is that correct?

20 A That's correct.

21 Q Isn't it true that if a company checked
22 no with regard -- on page five of six on D2 where
23 the request for proposal talks about the coating,
24 isn't it true if they checked no, would that --

1 isn't it true that that would be not in compliance
2 with the spec?

3 A The purpose of the questionnaire and the
4 reason for the yes and no is for clarification. It
5 is not an uncommon practice for us to, if we see a
6 no answer, to inquire of the bidder as to the
7 nature of the no answer, and to make sure that both
8 parties understand the nature of the no answer in
9 terms of our requirements.

10 I could not say unequivocally that
11 checking a no box anywhere in our questionnaire
12 would necessarily lead to the bid being fully
13 rejected at that point in time without further
14 investigation.

15 Q But isn't it true that if you do check a
16 box no that that is certainly not going to help a
17 bidder's chances?

18 A I would agree.

19 Q You stated that IDOT's listing of the
20 coating specification in the RFP is quote, unquote,
21 principally directed at color; isn't that correct?

22 A That's correct.

23 Q And that there is 35 years of using a
24 particular color orange --

1 A That is correct.

2 Q -- on IDOT equipment?

3 A (Nodded head up and down.)

4 Q It is unique in the industry?

5 A Uh-huh. To my knowledge it is unique in
6 the industry.

7 Q You also stated that periodically IDOT
8 goes back to DuPont to insure that the number that
9 you list in your RFPs still corresponds to the
10 color; isn't that correct?

11 A That's correct.

12 Q When you also stated that you don't ask
13 DuPont what the VOC, the volatile organic content,
14 is on their paint formulations at any point of
15 time?

16 MS. SAWYER: I believe that misstates his
17 testimony.

18 HEARING OFFICER FRANK: Can you state
19 your question again?

20 Q (By Mr. Meason) Do you inquire of DuPont
21 of what its volatile organic material content is of
22 its coating?

23 MS. SAWYER: You are asking a new
24 question.

1 HEARING OFFICER FRANK: That's a new
2 question. That's fine.

3 THE WITNESS: Okay. On the occasions
4 when I have personally asked DuPont for a
5 confirmation of reference number I have not asked
6 for that. I cannot speak for staff on that matter.

7 Q (By Mr. Meason) Okay. Do you know what
8 Illinois EPA's regulatory standard is for VOM
9 content?

10 A I do not.

11 Q Okay. If you could turn one more page.

12 A Okay.

13 Q You will see an MSDS sheet --

14 A Okay.

15 Q -- for DuPont 1021A.

16 A Okay.

17 Q Is that the paint that is speced in
18 IDOT's RFP?

19 A The numbers are not a match. We use
20 LF1021AM. This is 1021A.

21 Q Okay. Do you know what the letters LF
22 stand for?

23 A I do not.

24 Q Do you know what the letter A stands for?

1 A I do not.

2 Q Do you know what the letter M stands for?

3 A I do not.

4 Q If you could turn one more page. At the
5 very bottom right-hand corner of the writing. --

6 A Okay.

7 Q -- you see a term VOC as packaged. What
8 is that number?

9 MS. SAWYER: Objection. Relevance.

10 MR. MEASON: It is the MSDS sheet.

11 HEARING OFFICER FRANK: I am going to
12 allow it.

13 Please answer the question.

14 THE WITNESS: It is 4.3.

15 Q (By Mr. Meason) Thank you. If you could
16 turn about five more pages, still within D2.

17 A Okay.

18 Q You will come to a second MSDS sheet.

19 A Uh-huh.

20 Q And is that number for DuPont 1021 -- is
21 that coating for DuPont 1021A Alt 2 lead free?

22 A Okay.

23 Q Is that true?

24 A I see it.

1 Q Is it true?

2 A I don't know. Maybe you need to repeat
3 the question. I am with you on the page.

4 Q I am just asking for a yes or a no. Is
5 that what it states?

6 A That's what it says.

7 Q Would you turn one more --

8 HEARING OFFICER FRANK: Let's go off the
9 record for a minute.

10 (Discussion off the record.)

11 HEARING OFFICER FRANK: Let's go ahead
12 and go back on the record.

13 MS. SAWYER: I would like to object,
14 because if that is the purpose of his question,
15 then he hasn't found a connection between this
16 document and the --

17 HEARING OFFICER FRANK: Okay. For
18 purposes of the record, we went off the record and
19 I asked Mr. Meason if he had questions on these
20 numbers for the witness or if he was just simply
21 going to have the witness read the numbers into the
22 record, because it is my feeling that the numbers
23 are already in evidence, and they have been read in
24 by two other witnesses.

1 Mr. Meason, you may respond to that.

2 MR. MEASON: This is the Illinois
3 Department of Transportation representative
4 testifying on a particular Illinois DOT request for
5 proposal for a particular DuPont coating, and we
6 have the two DuPont MSDS sheets for that coating.
7 I think it is proper to highlight the VOC content
8 of the coatings that the Illinois DOT is specifying
9 that --

10 HEARING OFFICER FRANK: Mr. Meason, you
11 are not answering my question. My question is do
12 you have specific questions about that information
13 or are you going to have him read those items into
14 the record?

15 MR. MEASON: I have a specific question.

16 HEARING OFFICER FRANK: Okay. Then I
17 would ask that you proceed with your specific
18 questions, because this information is already in
19 the record.

20 MR. MEASON: Okay.

21 Q (By Mr. Meason) On the second MSDS sheet,
22 what is the VOC content of that paint?

23 HEARING OFFICER FRANK: Mr. Meason, that
24 is exactly what I am talking about. This

1 information is in the record. This witness does
2 not need to read it in. It is already part of
3 evidence in the record.

4 MR. MEASON: All right. I thought you
5 wanted me to ask the question.

6 HEARING OFFICER FRANK: No. I want you
7 to move on. If you have specific questions about
8 IDOT or how it relates to this that's fine, but
9 this witness does not need to reread this evidence
10 into the record.

11 Q (By Mr. Meason) Mr. Hunter, have you ever
12 heard the term Centaury (spelled phonetically)?

13 A Yes.

14 Q Do you know what Centaury means?

15 A It is a trade name, I believe, for DuPont
16 I have seen the trade name in reference to one of
17 their coating lines.

18 Q Isn't it true that this paint is a
19 Centaury, a DuPont Centaury?

20 A I do not know that.

21 Q Isn't it true that when you issue your
22 request for proposals you do not attach a material
23 safety data sheet for the paint you are specifying
24 in your RFP?

1 MS. SAWYER: Asked and answered.

2 HEARING OFFICER FRANK: Sustained. That
3 was asked on direct. The answer was yes.

4 Q (By Mr. Meason) You stated that your
5 office is basically only interested that the color
6 matches?

7 A That's correct.

8 Q You also mentioned that in the past you
9 seem to recall that some of Swenson's colors were
10 not quite what the department had expected?

11 A That is correct.

12 Q If Swenson's paints flaked off very
13 quickly in the field, would that be a concern to
14 the Department?

15 A It could be a concern.

16 Q If Swenson's products rusted very quickly
17 in the field, would that be a concern to the
18 Department?

19 A It could be a concern.

20 Q Isn't it true that coatings entail not
21 only a color but also various hardening and drying
22 and durability components in a coating?

23 A As I understand industrial coatings, yes,
24 I would say those were all factors. They are not a

1 consideration of our specifications.

2 Q Isn't it true that you have never gone to
3 DuPont with regard to this particular paint and
4 told it to delete all the other data in the
5 coating, I will call it a number, to simply have
6 the color code instead of all of the other
7 components listed?

8 A I am not sure I follow the question.

9 Q Earlier I asked you whether you knew what
10 the letter L and F stood for.

11 A (Nodded head up and down.)

12 Q You stated you did not know?

13 A I did not, that's correct.

14 Q I asked you if you knew what the letter A
15 stood for and you said you did not know?

16 A Correct.

17 Q I asked you what the letter M stood for
18 and you did not know?

19 A Correct.

20 Q Did you or the Department ever ask DuPont
21 what those meant?

22 A I personally did not ask DuPont what
23 those meant. I cannot speak for staff who may have
24 inquired of DuPont at other times.

1 MR. MEASON: I have nothing further.

2 HEARING OFFICER FRANK: Ms. Sawyer?

3 MS. SAWYER: No redirect.

4 HEARING OFFICER FRANK: Okay. Thank you
5 very much. Thank you for being so patient this
6 morning.

7 (The witness left the stand.)

8 MR. MEASON: May I take a brief break?

9 HEARING OFFICER FRANK: Sure. Let's take
10 a five minute break.

11 (Whereupon a short recess was
12 taken.)

13 HEARING OFFICER FRANK: Back on the
14 record.

15 All right. Will the Agency call its next
16 witness?

17 MS. SAWYER: The Agency calls Dr. John
18 Reed.

19 HEARING OFFICER FRANK: Will you please
20 swear the witness.

21 (Whereupon the witness was
22 sworn by the Notary Public.)

23 J O H N C H A R L E S R E E D,
24 having been first duly sworn by the Notary Public,

1 saith as follows:

2 DIRECT EXAMINATION

3 BY MS. SAWYER:

4 Q Dr. Reed, would you please state your
5 name and spell your last name?

6 A John Charles Reed, R-E-E-D.

7 MS. SAWYER: I have a document that I
8 would like to introduce.

9 HEARING OFFICER FRANK: Okay. Could we
10 go off the record for just a minute.

11 (Discussion off the record.)

12 HEARING OFFICER FRANK: Let's go back on
13 the record.

14 MS. SAWYER: I will present this document
15 to Mr. Meason for his review.

16 MR. MEASON: Is this the same one I got
17 yesterday.

18 MS. SAWYER: Yes.

19 MR. MEASON: Okay.

20 MS. SAWYER: Did you want to see it, Ms.
21 Frank?

22 HEARING OFFICER FRANK: Yes. I am sure
23 you know what it is.

24 THE WITNESS: Yes, it is a resume of my

1 background.

2 HEARING OFFICER FRANK: Ms. Sawyer, did
3 you want to move for its admission?

4 MS. SAWYER: Yes. Could I admit the
5 resume of Dr. Reed into evidence.

6 HEARING OFFICER FRANK: Okay. Is there
7 any objection?

8 MR. MEASON: No.

9 HEARING OFFICER FRANK: Then it is
10 admitted as Respondent's Exhibit Number 3.

11 (Whereupon said document was
12 duly marked for purposes of
13 identification and admitted
14 into evidence as Respondent's
15 Exhibit 3 as of this date.)

16 Q (By Ms. Sawyer) Dr. Reed, I am just going
17 to go through a couple of points on the resume that
18 are included on the resume.

19 Could you please explain your educational
20 background?

21 A I have a Bachelors Degree in chemical
22 engineering, a Master's Degree in chemical
23 engineering, and a Doctorate Degree in chemical
24 engineering. I have also taken additional work at

1 the University of Tulsa and at Lincoln Land
2 Community College.

3 Q Dr. Reed, do you have any professional
4 certifications?

5 A Yes, I am a Professional Engineer in both
6 Illinois and Oklahoma.

7 Q Dr. Reed, where are you currently
8 employed?

9 A At the Illinois Environmental Protection
10 Agency.

11 Q How long have you been employed by the
12 Illinois EPA?

13 A Since December of 1971, approximately 25
14 and a half years.

15 Q What is your current position with the
16 Illinois EPA?

17 A I am a Senior Public Service
18 Administrator that reports to the Bureau of Air
19 Manager.

20 Q And how many years have you been at that
21 position, about?

22 A Since just about six and a half years.

23 Q What positions have you held previous to
24 that position?

1 A Before that I was in the -- as a
2 supervisor in the Technical Support Unit, the
3 Petroleum and Chemicals Manufacturing Unit. Then I
4 was in the Permit Unit before that, the Permit
5 Review Unit.

6 Q Dr. Reed, did you participate in the
7 Illinois EPA's investigation of Swenson Spreader's
8 adjusted standard petition?

9 A Yes, I did.

10 Q Have you participated in investigations
11 of adjusted standards in the past at the Illinois
12 EPA?

13 A Yes, I have.

14 Q Have you participated in various
15 rulemaking proceedings before the Board in terms of
16 technical support?

17 A That's correct. I have participated in
18 all of the rulemakings concerned with the volatile
19 organic material standards since about 1977.

20 Q What specific areas did you investigate
21 in relation to Swenson Spreader's adjusted standard
22 petition?

23 A Their cost estimates of control equipment
24 and also the availability of powder coatings.

1 Q Are you aware that Swenson has provided a
2 quote for a 32,000 standard cubic feet per minute
3 afterburner?

4 A That's correct, yes.

5 Q And is it your understanding that Swenson
6 suggests that this size is needed based on the
7 downdraft of the coating booth?

8 A That's correct, yes.

9 Q Can you explain a little bit about the
10 downdraft of the coating booth?

11 A Well, they have an open topped coating
12 booth that actually draws air in from the top down
13 through the booth and through the floor of it.

14 Q Do you know how many fans are in the
15 booth?

16 A Two.

17 Q Do you know the -- do you recall what the
18 SCFM rating for those are?

19 A Each of them are 16,000 SCFM, or CFM,
20 rather.

21 Q Dr. Reed, what is your understanding as
22 to when this coating booth was installed?

23 A In the early 1980s, I believe.

24 Q Is the airflow in a coating booth

1 typically designed to keep the air in the booth
2 below the lower explosive limit?

3 A It is, yes.

4 Q Is the lower explosive limit one of the
5 major factors typically considered in designing the
6 airflow of the coating booth?

7 A It is.

8 Q Does the VOM content of the coatings that
9 will be used in the booth effect the lower
10 explosive limit?

11 A It does.

12 Q If higher VOM content coatings are used
13 will the airflow in the coating booth need to be
14 higher to remain below the lower explosive limit?

15 A It would have to be higher.

16 Q If lower VOM content coatings are used,
17 will the airflow in the coating booth need to be
18 lower than if higher VOM content coatings were
19 used?

20 A It could be lower. It would need to be
21 lower.

22 Q Oh, I see. From 1981 to the present,
23 would you estimate the VOM content of coatings
24 reduced?

1 A I would say it is approximately a 50
2 percent reduction in amount of VOM generally in the
3 coatings that are used.

4 Q Based on a lower VOM content of coatings
5 used today, is it your opinion that a 32,000 SCFM
6 airflow would be needed at Swenson to keep the air
7 below the lower explosive limit in the coating
8 booth?

9 A I think you could use approximately half
10 the amount of air nowadays.

11 Q Are you aware of any OSHA standards that
12 may specify the level of airflow that is needed in
13 a coating booth?

14 A The OSHA standards in general are
15 concerned with the concentration of the -- to the
16 workers in the booth rather than the actual airflow
17 directly.

18 Q Does the airflow in the booth affect
19 the -- possibly affect the safety of the workers in
20 the coating booth?

21 A That is correct, yes.

22 Q In your opinion, is it technically
23 feasible for Swenson to modify the downdraft fan on
24 its coating booth?

1 A I believe it is possible, yes.

2 Q Can you give some examples of how Swenson
3 may accomplish this?

4 A One way would be simply to use one fan
5 rather than two fans. Another possibility would be
6 to have some recirculation in the booths so that
7 you wouldn't actually have to discharge as much air
8 from the booth.

9 Q And would --

10 A And use partitions, perhaps.

11 Q If there was an OSHA standard to address
12 the airflow in the coating booth would any of these
13 modifications possibly address the concerns of OSHA
14 also?

15 A They could be. They definitely are
16 designed to have done that, yes.

17 Q I believe you stated that as part of your
18 investigation you looked into powder coating
19 operations?

20 A Yes, I have.

21 Q Could you explain what you did in terms
22 of investigating powder coating systems?

23 A I contacted individuals that were
24 supplying these types of booths and had some

1 experience in what was required to actually have a
2 powder coating system.

3 Q During your investigation did you discuss
4 the types of products that could be used in a
5 powder coating system?

6 A Yes, I did.

7 Q What are some of the types of products
8 that are suitable for powder coating?

9 A They had a large number. I think there
10 was even a list of them in one of the documents
11 that described the kinds of things that were being
12 coated by powder nowadays.

13 Q Is the document that you are referring to
14 Powder Coating Technology Update?

15 A That is correct, yes.

16 Q Do you recall any of the types of uses
17 that were listed for powder coating operations?

18 A Not without seeing the document itself.

19 Q If I show you the document could that
20 perhaps refresh your recollection?

21 A That's correct.

22 Q Could you take a look at that document,
23 Dr. Reed?

24 A Yes.

1 Q And could you just describe several of
2 the different types of uses for powder coating?

3 A Yes. It mentions a large number of uses
4 including such things as tractors, vending
5 machines, water tanks, transformers, aluminum
6 doors, and I think lawn mowers.

7 Q Thank you, Dr. Reed. I just wanted to
8 get a list.

9 A There is a large list that it mentions in
10 there.

11 Q Okay. Is it your understanding that
12 large items can be coated in powder coating
13 systems?

14 A That is correct.

15 Q Are you aware of any size limitations on
16 the items that can be coated in powder coatings
17 systems?

18 A No, there is no specific limitations on
19 the size.

20 Q Is it your understanding that the cost of
21 the systems vary greatly based on the size of items
22 that will be coated?

23 A No, not directly, since they can usually
24 make a system to coat large items. It is not

1 necessarily much larger than the smaller items.

2 Q Can plastic parts be coated in powder
3 coating systems?

4 A Yes, they can.

5 Q Is there any limitations that you are
6 aware of on the ability of a powder coating system
7 to coat plastic parts?

8 A The plastic has to have a melting point
9 that is sufficiently above the temperature, curing
10 temperature of the powder. Now, there are low cure
11 temperature powders available now that can -- that
12 are below those melting points.

13 Q Do you know what these melting points
14 are?

15 A I had it in my memo. I don't have that
16 before me.

17 Q Perhaps if you had looked at your memo,
18 could you --

19 A Yes, I could tell you from that.

20 Q Dr. Reed, is this the memo that you were
21 referring to?

22 A Yes, that's the memo I was referring to.
23 Low cure powders are at about 250 degrees
24 Fahrenheit. So the plastic melting point, if it is

1 above 350 to 400, it could be coated in a powder
2 coating operation.

3 Q And why is there a limitation on the
4 ability of powder coating systems to coat plastic
5 parts?

6 A Simply you have to have the temperature
7 such that it doesn't harm the plastic in the curing
8 process for the powder.

9 Q Can motors be coated in a powder coating
10 system?

11 A Yes, they can, if they use a poxy that
12 has working temperatures above 500 or 600 degrees
13 Fahrenheit. Most powders will cure at 275 to 375,
14 so that they could be coated in a powder system.

15 Q And why -- is the issue with motors also
16 the curing temperature?

17 A That is correct, yes, to make certain
18 that the motor lining, the insulation is not harmed
19 by the curing temperature of the powder.

20 Q Okay. Dr. Reed, you stated that you were
21 involved with the rulemakings on a number of VOC
22 rules that the Illinois EPA has proposed in the
23 past and that the Board has subsequently adopted?

24 A That's correct, yes.

1 Q And were some of these rulemakings, did
2 they involve coating regulations?

3 A That's correct.

4 Q What was the nature of your support in
5 these rulemakings?

6 A To provide testimony as to the technical
7 availability and the reasonableness of the
8 regulations.

9 Q Sir, do you have some understanding of
10 painting processes based on your involvement in the
11 rulemakings that deal with coatings?

12 A That's correct, yes.

13 Q And do you have some understanding of the
14 preparation processes that goes into -- the
15 preparation prior to coating materials?

16 A That's correct, yes.

17 Q Such as if a metal part is coated is
18 there usually some preparation that goes on before
19 that part is coated?

20 A Yes, there usually is, that's correct.

21 Q And is part of this preparation that the
22 part is cleaned?

23 A Yes, it is.

24 Q If the part that you are coating is

1 greasy or oily or otherwise dirty, do high VOM
2 coatings work better than lower VOM coatings?

3 A They do, yes.

4 Q Why is that?

5 A Because the higher VOM has more of a
6 solventizing ability on grease and other material
7 that might be on the part.

8 Q Are there any advantages that you are
9 aware of to coating dirty parts?

10 A No.

11 Q And it is your understanding and actually
12 you have knowledge that metal parts can be cleaned
13 prior to coating?

14 A That's correct, yes.

15 Q Is there any reason that a part that is
16 oily or greasy cannot be cleaned prior to coating?

17 A No, there is no reason it could not be
18 cleaned.

19 Q If metal parts are cleaned sufficiently,
20 can lower VOM content coatings be used?

21 A They could be used, yes.

22 Q Dr. Reed, I am going to show you an
23 exhibit.

24 A Okay.

1 MS. SAWYER: Do you know what exhibit
2 this is?

3 HEARING OFFICER FRANK: If you turn it
4 over, the number is on it there.

5 MS. SAWYER: Thank you.

6 Q (By Ms. Sawyer) This is Petitioner's
7 Exhibit Number 2. Please take a look at that
8 exhibit.

9 A (Witness complied.)

10 HEARING OFFICER FRANK: For the record,
11 it is one of the metal bars from the exhibits from
12 last hearing.

13 Q (By Ms. Sawyer) Dr. Reed, are you aware
14 of any reason why this part cannot be cleaned prior
15 to coating?

16 A I do not see any reason it could not be
17 cleaned prior to coating.

18 Q There is no features of this part that
19 distinguish it from --

20 A This looks very similar to other parts
21 that I have seen that have been cleaned.

22 Q Are you aware of any reason why this
23 part, that is Exhibit 2, cannot be coated with
24 coatings using -- with a VOM content of 3.5 pounds

1 per gallon, if cleaned properly?

2 A I think it could be cleaned with -- it
3 could be cleaned with a lower VOM content, such as
4 3.5 pounds per gallon if it was properly cleaned.

5 Q If it was not properly cleaned, could it
6 possibly present a problem in coating it with a
7 coating that has a VOM content of 3.5 pounds per
8 gallon?

9 MR. MEASON: Objection to the
10 characterization of "properly cleaned."

11 MS. SAWYER: Sufficiently, can I change
12 it to that?

13 HEARING OFFICER FRANK: Yes, I will allow
14 that.

15 MS. SAWYER: Do you remember the
16 question?

17 THE WITNESS: Could you repeat the
18 question, please?

19 HEARING OFFICER FRANK: Could you read
20 the question back, please.

21 (Whereupon the reporter
22 inadvertently read back the
23 question found on page 230,
24 line 22, instead of the correct

1 question found on page 231,
2 line 5.)

3 MS. SAWYER: Of course, "properly" should
4 be changed to "sufficiently."

5 THE WITNESS: I am not aware of any
6 reason it could not be cleaned. I mean, it could
7 not be coated. I guess that was the question.

8 Q (By Ms. Sawyer) What type of cleaning --
9 are metal parts that are being prepped for coating
10 typically cleaned with products containing VOM?

11 A Not normally, no.

12 Q What type of coating process is typically
13 employed to prep metal parts for coating?

14 A Many of your processes involving --

15 MS. SAWYER: Excuse me. Could I withdraw
16 that question and rephrase it? I believe I stated
17 it incorrectly.

18 HEARING OFFICER FRANK: Sure.

19 Q (By Ms. Sawyer) What type of cleaning
20 process is typically employed to prep model parts
21 for coating?

22 A Processes usually use an acid bath
23 perhaps with other materials in it to passivate the
24 surface for the coating.

1 Q Are you aware of any difficulties
2 associated with coating hot rolled steel with low
3 VOM content coatings?

4 A Would you please repeat that?

5 Q Are you aware of any difficulties with
6 coating hot rolled steel with low VOM content
7 coatings?

8 A Not if it is properly cleaned.

9 Q Could there be a problem with coating hot
10 rolled steel with low VOM coatings if it is not
11 properly cleaned?

12 A Yes, there could be.

13 Q And this is because?

14 A Of the rust and other material that might
15 be left on the surface.

16 Q In the process of your investigation of
17 Swenson Spreader's petition, have you become aware
18 of an operation that Swenson has where they prime
19 coat only as applied to a product?

20 A I believe they have that process, yes.

21 Q And is it your understanding that some of
22 these products are stored outside prior to being
23 top coated?

24 A That's correct, yes.

1 Q Are you aware of any reason why low VOM
2 primer coatings could not be used for this type of
3 operation?

4 A I am not aware of any reason that they
5 could not be used if the material is properly
6 prepared first for coating.

7 Q What types of primer coats could possibly
8 be used for this type of operation?

9 A Both the high solid material or a water
10 based material could be used.

11 Q In your opinion, has Swenson Spreader
12 established that low VOM coatings are not available
13 for this operation?

14 A In my opinion they have not established
15 that fact.

16 Q And in your opinion what type of actions
17 does Swenson need to take to establish that
18 compliant coatings are not available for this type
19 of operation?

20 A In the past I have prepared a memo on
21 that subject of what I felt was necessary to be --
22 to be done in order to establish that fact. If I
23 could have that memo I will be glad to look at it
24 and refer to it and mention those things.

1 Q Okay. Give me a moment. I thought it
2 was right here in this package.

3 Dr. Reed, is this the memo that you were
4 referring to?

5 A Yes. It was prepared some time ago for
6 another case, but I think it refers to -- it gives
7 you a good idea of really what has to be done if
8 you are going to establish what kinds of things
9 need to be done in order to actually prove that
10 there are no suitable coatings available.

11 Q And by prove -- by assessing what needs
12 to be done and to prove what needs to be done, are
13 you referring to prove for satisfaction of the
14 Agency's recommendation or response in a matter?

15 A That's correct, and also for what we feel
16 that ultimately has to be shown to the United
17 States Environmental Protection Agency and the
18 record to support the Board's opinions in case they
19 feel that that information is needed.

20 Q Why is it your understanding that these
21 types of things would be needed or important for
22 purposes of the U.S. EPA's approval?

23 A Well, this has been discussed in the
24 Federal Register some time ago. I had a Federal

1 Register cite if you wish to have that.

2 Q Could you read that Federal Register
3 cited?

4 A Yes, it is 53 FR, 45103 to 45106,
5 November 8th, 1988.

6 MS. SAWYER: I would like to move to have
7 this document admitted as an exhibit.

8 HEARING OFFICER FRANK: Is there any
9 objection?

10 MR. MEASON: No.

11 MS. SAWYER: I am sorry. Did I show it
12 to you?

13 MR. MEASON: You gave me a copy
14 yesterday.

15 MS. SAWYER: Okay.

16 HEARING OFFICER FRANK: Okay. Then the
17 memo dated November 23rd, 1988, to Jim O'Donnell
18 and Barb Sharp from John Reed is admitted as
19 Respondent's Exhibit Number 4.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification and admitted
23 into evidence as Respondent's
24 Exhibit 4 as of this date.)

1 Q (By Ms. Sawyer) Dr. Reed, from
2 investigating Swenson Spreader's petition and the
3 information provided in support of that petition,
4 do you believe that Swenson Spreader has taken the
5 necessary steps to establish that compliant
6 coatings are not available?

7 A I do not. I feel that they have not
8 taken most of the steps that I have mentioned
9 here.

10 Q Could you elaborate some of the steps
11 that are included in that memo?

12 A First of all, to contact a number of
13 suppliers. I say suppliers here, to determine if
14 they have compliant coatings. Also, using the
15 current edition of the Paint Red Book. Secondly,
16 contacting trade associations to find out if they
17 know of any compliant coatings.

18 Third, reviewing trade publications
19 concerning compliant coatings. Finally, placing
20 advertisements in three of the leading paint trade
21 journals. I do not believe they have really done
22 any of those steps.

23 Q By contacting several vendors or
24 suppliers of coatings, how many do you think that

1 that refers to?

2 A I think it would refer to at least three
3 or four.

4 Q Okay. Dr. Reed, you refer to a Red
5 Book. Could you describe in greater detail what you
6 are referring to there?

7 A Well, it is a publication that is put out
8 by Communications Channels, Incorporated of
9 Atlanta, Georgia. I believe you have a copy of it
10 there.

11 Q What sort of information is contained in
12 this document?

13 A This gives a listing of all of the paint
14 suppliers in the United States and a description of
15 the type of materials that they have available.

16 Q By contacting several vendors, are you
17 just referring to a simple call and asking them if
18 they have compliant coatings?

19 A I think it would probably include more
20 than that. You would have to give them the
21 specifications as well as the information about the
22 particular kinds of products and so forth that you
23 are intending to coat. In fact, I note in there,
24 and one of the things that I mention from time to

1 time, is that in dealing with coatings one of the
2 things you should really do is think seriously
3 about having a person that is a consultant work
4 with you on this, because many times the -- a
5 coating is not just something that you put in
6 directly, but it is part of a system. So you have
7 to have both the material that you are coating and
8 the coating itself together with any preparation
9 steps considered as a system rather than as a
10 separate thing. So you have to have a much more
11 complete description than just asking, hey, do you
12 have a coating. You have to really go into some
13 detail about it.

14 Q By specifications, would a specification
15 be the color of a coating?

16 A It would be mostly the particular things
17 that you have to meet in using this coating. Color
18 might be one thing. Durability would be another.
19 Certainly thickness is another thing that you have
20 to be concerned about.

21 Q Dr. Reed, I believe you stated initially
22 that part of your investigation of this adjusted
23 standard petition was about the cost of control
24 equipment?

1 A That's correct, yes.

2 Q And did you investigate the cost of using
3 add-on control equipment at Swenson?

4 A Yes, I did.

5 Q Did you calculate a control cost for
6 add-on control equipment at Swenson?

7 A Yes, I did.

8 Q And what dollar per ton cost figure did
9 you calculate?

10 A Approximately \$11,000.00 per ton.

11 Q And how did you come to that calculation?

12 A That was using their full rate of 32,000
13 CFM.

14 Q And in --

15 A And using a standard methodology in the
16 U.S. EPA Cost Control Manual.

17 Q In coming up with a dollar per ton cost
18 figure, did you also calculate the cost of control
19 for Swenson based upon the use of lower SCFM
20 afterburners?

21 A That's correct.

22 Q And do you recall what the dollar per ton
23 cost figures you calculated were based on those
24 different rates?

1 A I have it in a memo. As I recall, it is
2 about 35 percent less if you drop the cost of --
3 sorry -- if you drop the CFM from 32,000 to
4 16,000.

5 Q You don't recall what those cost figures
6 were?

7 A Not exact figures. Perhaps if you want
8 to give me the memo I can tell you.

9 Q Okay. Is this the memo you are referring
10 to, Dr. Reed?

11 A That's correct. For the 32,000 CFM it
12 was \$11,000.00 per ton and for a 16,000 CFM it was
13 \$7,300.00 per ton.

14 Q If you look at the one -- the cost
15 calculation that you have there for a 32,000 SCFM
16 afterburner, what was the dollar amount that you
17 concluded?

18 A About \$11,000.00 per ton.

19 Q And is that amount consistent with the
20 amount that the Board had relied upon in adopting
21 Part 215 or Section 215.204 J?

22 A Yes, that's true. It was a range from
23 something like \$6,000.00 to \$10,000.00 at that
24 time. And that was in 1982, I think. So if you

1 look at the cost elevation, it would be above
2 \$11,000.00 probably today.

3 Q That was the cost of estimation for using
4 add-on control as an alternative for using
5 compliant coatings?

6 A That's correct, yes.

7 MR. MEASON: What was that cost again? I
8 am sorry.

9 THE WITNESS: \$11,000.00.

10 MR. MEASON: Okay. Thank you.

11 Q (By Ms. Sawyer) Do you recall what the
12 cost was that the Board relied upon in adopting the
13 rule?

14 THE WITNESS: Only in rough terms. I
15 don't have the memo or whatever, the document,
16 before me.

17 Q What is your recollection of what that
18 cost was?

19 A My recollection is up to \$10,000.00 per
20 ton was possible for add-on control equipment.

21 MS. SAWYER: I have a document that I
22 will show to Mr. Meason. I think you have a copy
23 of this.

24 MR. MEASON: (Nodded head up and down.)

1 HEARING OFFICER FRANK: That's fine.

2 Q (By Ms. Sawyer) Dr. Reed, could you read
3 the title of that document?

4 A It is "The Effect of RACT II
5 Environmental Controls in Illinois, R80-5. It is
6 document number 81/28.

7 Q And was this document relied upon by the
8 Board in adopting surface coating limitations for
9 miscellaneous metal parts and products category?

10 A Yes, this is what I believe we called the
11 economic impact statement that was part of the
12 record for that proceeding.

13 Q Dr. Reed, could you turn to page, I
14 believe it is 65.

15 A Let's see here.

16 Q Wait a second. Could you turn to page
17 53.

18 A 53. Okay. Here it is, 53.

19 Q And on page 53, does a chapter begin
20 addressing surface coating of metal products?

21 A That's correct.

22 Q All right. If you could turn to page
23 63.

24 A Okay. Yes.

1 Q There are costs listed in table 3.11?
2 A Yes.
3 Q There are costs listed for incineration?
4 A I am trying to see where that is at.
5 Yes, I see incineration costs here.
6 Q There are different costs listed for
7 small, medium and large facilities?
8 A Right, uh-huh.
9 Q If you look to the Column C, titled
10 Annual Cost, and in parens \$1,000.00, in a medium
11 sized facility under incineration, is that the cost
12 that you were referring to as the annual cost in
13 coming up with your estimate that it was about
14 \$10,000.00?
15 A I don't recall, but it looks like it come
16 out at about that figure. It has that -- it is
17 just about that value, I think.
18 Q Dr. Reed, if you will turn to page 61 of
19 this document. --
20 A Uh-huh.
21 Q -- to Table 3.10.
22 A Okay.
23 Q If you look at the bottom of this table
24 there is an A, B and C?

1 A Yes.

2 Q B describes medium, what they are
3 referring to by medium sources?

4 A Uh-huh.

5 Q Could you read what they are describing
6 as a medium source?

7 A Greater than 25 and less than 100 tons
8 per year.

9 Q Do you know what they mean, greater than
10 25 and less than 100 tons per year? What is that
11 referring to?

12 A That's the amount of emissions from the
13 source.

14 Q Dr. Reed, in your capacity at the Agency
15 in evaluating VOM content or VOM regulations, have
16 you had the opportunity to review material safety
17 data sheets?

18 A Yes, I have.

19 Q Would you say you are somewhat familiar
20 with material safety data sheets?

21 A Yes, I am.

22 Q What is the purpose of an MSDS sheet?

23 A The primary purpose is to provide
24 information concerning the safety of the materials.

1 Q Are MSDS sheets needed for coatings?

2 A Yes, they are needed for coatings.

3 Q Do some MSDS sheets list the VOM content
4 of coatings?

5 A They sometimes do and they sometimes
6 don't.

7 Q If the MSDS sheet lists the VOM content
8 of a coating, why is this information included?

9 A It is just auxiliary information. It is
10 not really needed as part of the safety
11 information. It is just an additional section,
12 usually at the beginning, that they put the
13 information about the VOM content.

14 Q Can the information contained in MSDS
15 sheets about VOM contents, can this information be
16 relied upon by sources to demonstrate compliance
17 with the Board's coating regulations?

18 A No, it cannot. The Board's requirements
19 are that they test by Method 24.

20 Q Dr. Reed, what is Method 24?

21 A It is a method that is used by the U.S.
22 EPA. It is published by the U.S. EPA for
23 determining the solvent content of coatings and is
24 part of the Board regulations.

1 MS. SAWYER: At this time I would like to
2 move to admit the document that Dr. Reed is holding
3 there, "The Effect of RACT II Environmental
4 Controls in Illinois" into evidence.

5 HEARING OFFICER FRANK: Is there any
6 objection?

7 MR. MEASON: No.

8 HEARING OFFICER FRANK: Okay. Then that
9 is marked as Exhibit 5 for the Respondent, and it
10 is admitted.

11 (Whereupon said document was
12 duly marked for purposes of
13 identification and admitted
14 into evidence as Respondent's
15 Exhibit 5 as of this date.)

16 MS. SAWYER: That's all of the questions
17 I have for Dr. Reed at this time.

18 HEARING OFFICER FRANK: Okay. I would
19 like to take a five minute break.

20 (Whereupon a short recess was
21 taken.)

22 HEARING OFFICER FRANK: Back on the
23 record.

24 Ms. Sawyer, I believe you were done with

1 your direct?

2 MS. SAWYER: Yes.

3 HEARING OFFICER FRANK: Okay. Mr.
4 Meason?

5 MR. MEASON: Yes.

6 HEARING OFFICER FRANK: Please start with
7 your cross.

8 CROSS EXAMINATION

9 BY MR. MEASON:

10 Q Mr. Reed, isn't it true that the lower
11 explosive limit is only one of the major design
12 factors to take into consideration in the paint
13 booth design?

14 A It is one of the major ones. There are
15 other factors.

16 Q Are those other factors based in
17 regulation?

18 A There is an OSHA -- I don't know if it is
19 an OSHA. There are other standards that are
20 sometimes used for paint booths or required for
21 paint booths.

22 Q Isn't it true that there is an OSHA
23 regulation that requires a minimum of 100 feet per
24 minute velocity through a paint booth for hand-held

1 spray guns or automatic spray guns?

2 A I don't think that applies to automatic
3 spray guns, but it does apply to hand-held ones.

4 MR. MEASON: Can I see Petitioner's
5 Exhibit 20, I believe?

6 HEARING OFFICER FRANK: I believe it is
7 in front of you.

8 MR. MEASON: Okay.

9 HEARING OFFICER FRANK: It would be a
10 yellow sticker because it is from today.

11 MR. MEASON: Okay.

12 Q Mr. Reed, I am handing you a document
13 that has been entered into evidence as Petitioner's
14 Exhibit 20. It is a copy of the Occupational
15 Safety & Health Administration Regulations,
16 particularly it is 29 CFR 1910.94 C6, Table G-10.
17 If you could examine that, please.

18 I would like to direct your attention
19 down to the bottom where the Table G-10 is.

20 A Okay. I see that, yes.

21 Q If you look in the design column?

22 A Uh-huh.

23 Q What is the minimum design standard in
24 OSHA regulations for air operated guns, manual or

1 automatic?

2 A It ranges from 75 to 125.

3 Q That's the range. If you look at the
4 design column, what does the design column state?

5 A It says 100 for small booth and 100 for
6 wide booth, large booth.

7 Q Thank you very much.

8 THE WITNESS: Okay. Well, I would like
9 to explain my --

10 HEARING OFFICER FRANK: Mr. Reed, that is
11 up to your attorney.

12 THE WITNESS: Okay. Forget it.

13 Q (By Mr. Meason) Mr. Reed, you stated that
14 plastic components could be powder coated depending
15 upon the melting temperature of the plastic part
16 and, I believe, the curing temperature of the
17 powder paint; is that correct?

18 A That's correct.

19 Q Did you ever call any of Swenson
20 Spreader's component suppliers to determine the
21 particular plastics supplied to Swenson Spreader?

22 A No.

23 Q Did you ever call Swenson Spreader's
24 motor suppliers to determine the types of motors

1 supplied to the company?

2 A No.

3 Q Dr. Reed, are you aware that Swenson
4 Spreader has approached Tioga, Sherwin-Williams and
5 DuPont to reformulate paints?

6 A I am aware of Tioga, but I am not aware
7 of the others.

8 Q Did you call Tioga to confirm whether
9 Swenson Spreader had approached it to reformulate
10 paints?

11 A No.

12 Q Finally, just so that it is clear in the
13 record, I believe you stated on direct that
14 coatings entail three basic properties; color,
15 durability, and thickness. Was that correct?

16 A The record will have to speak for
17 itself.

18 Q Is color a component of a coating?

19 A It can be.

20 Q Is durability -- can durability be a
21 component of a coating?

22 A Yes.

23 Q Can thickness be a component of a
24 coating?

1 A Yes.

2 MR. MEASON: Thank you. No further

3 questions.

4 HEARING OFFICER FRANK: All right. Ms.

5 Sawyer?

6 MS. SAWYER: I don't have anything else.

7 HEARING OFFICER FRANK: Okay. Thank you

8 very much, Dr. Reed.

9 (The witness left the stand.)

10 HEARING OFFICER FRANK: Are we done with

11 this witness? Can he go home?

12 THE WITNESS: I am in process of going.

13 HEARING OFFICER FRANK: Is that okay?

14 MS. SAWYER: Yes. Thank you very much.

15 HEARING OFFICER FRANK: Let's go off the

16 record.

17 (Discussion off the record.)

18 HEARING OFFICER FRANK: Back on the

19 record.

20 I believe you called Gary Beckstead as

21 your next witness?

22 MS. SAWYER: Yes.

23 HEARING OFFICER FRANK: Would the court

24 reporter please swear the witness.

1 (Whereupon the witness was
2 sworn by the Notary Public.)

3 G A R Y B E C K S T E A D,
4 having been first duly sworn by the Notary Public,
5 saith as follows:

6 DIRECT EXAMINATION

7 BY MS. SAWYER:

8 Q Will you please state and spell your
9 name.

10 A My name is Gary Beckstead,
11 B-E-C-K-S-T-E-A-D.

12 Q Mr. Beckstead, could you -- do you have a
13 college degree?

14 A Yes, I have two of them. I have a
15 Bachelor's Degree in Ceramic Engineering from
16 Georgia Tech and a Master's Degree in Metallurgical
17 Engineering from Stanford.

18 Q Mr. Beckstead, where are you currently
19 employed?

20 A I am employed with the Illinois EPA in
21 the Bureau of Air, in the Air Quality Planning
22 Section, in the Ozone Unit.

23 Q And how many years have you been employed
24 by the Illinois EPA?

1 A I am into my seventh year with them.

2 Q And what is your current position?

3 A I am an Environmental Protection Engineer
4 III, in the Ozone Unit.

5 Q How many years have you been in that
6 position?

7 A My entire career with the Illinois EPA,
8 seven.

9 Q As part of your responsibilities
10 associated with that position, do you provide
11 technical support in rulemakings that the Agency is
12 involved in?

13 A Yes, I do.

14 Q And what is the nature of that technical
15 support?

16 A My responsibilities are the assessment of
17 Reasonably Available Control Technology. I
18 technically support proposed rules or current rules
19 as they are interpreted in proceedings such as
20 this, adjusted standards and variances, I am
21 sometimes called upon.

22 My general responsibilities are also in
23 the area of stationary point source emissions
24 inventories, quality control assurance.

1 Q Mr. Beckstead, have you ever been
2 involved in any rulemakings involving volatile
3 organic material regulations?

4 A Yes. I was involved in the geographic
5 expansion of RACT, Reasonably Available Control
6 Technology, for Grundy and Kendall Counties. I was
7 involved in the major source of RACT regulations.
8 I was also involved in the tightening of coating
9 standards in our 15 percent ROP plan. I have
10 recently been involved in the emissions reduction
11 marketing system rules presently before the Board.

12 Q You referred to 15 percent ROP coating
13 tightening -- or tightening of the coating
14 standards for 15 percent ROP. Where do those rules
15 apply?

16 A In the severe nonattainment area of
17 Chicago, which are the six counties and two
18 townships, two townships in the Kendall and Grundy
19 Counties.

20 Q In connection with that rulemaking, did
21 you evaluate or did you -- in connection with that
22 rulemaking, was the standard for miscellaneous
23 metal parts and products tightened?

24 A Yes, it was.

1 Q Did you provide technical support for
2 that --

3 A Yes, I did.

4 Q -- aspect of the rulemaking? As part of
5 your functions at the Illinois EPA, do you
6 investigate adjusted standard petitions?

7 A Yes, I do.

8 Q Do you investigate other site specific
9 proceedings, such as variances or site specific
10 rules?

11 A Yes, I did.

12 Q Did you participate in the Illinois EPA's
13 investigation of Swenson Spreader's adjusted
14 standard petition?

15 A Yes, I did.

16 Q What specific areas did you investigate?

17 A I was called on to assess the Reasonably
18 Available Control Technology for Swenson as well as
19 stack testing, cost, primarily economic factors.

20 Q Are you -- could you please -- could we
21 get him a copy of Exhibit 1?

22 HEARING OFFICER FRANK: I have got it
23 right here.

24 THE WITNESS: Exhibit I or Exhibit 1?

1 Q (By Ms. Sawyer) Well, the whole document
2 is Exhibit 1?

3 A Oh, okay. Excuse me.

4 Q You can turn -- I think Exhibit I might
5 be the right spot, though, as it turns out. Is
6 that the section on the Brule --

7 A Yes.

8 Q As part of your investigation, did you --
9 are you familiar with a quote provided by Swenson
10 in its adjusted standard petition from Brule?

11 A Yes, I have seen two from Brule,
12 different dates, but the same company, yes.

13 Q Okay. You said you have seen two. Was
14 one of them attached to the adjusted standard
15 petition?

16 A Yes.

17 Q And is that the quote that you looked at
18 that you are looking at now in Exhibit 1?

19 A Yes, I am.

20 Q What type of system is this quote for?

21 A This is a recuperative thermal oxidizer.
22 Brule calls it Model FB1270.

23 Q In Swenson's adjusted standard petition,
24 did they provide a calculation for controlled costs

1 based on this cost estimate?

2 A Yes, they did.

3 Q And was that included in the body of the
4 petition rather than an attachment?

5 A Yes, it is.

6 Q In the calculation -- I am not certain
7 what page it is on. I am on page 19, but I am not
8 certain this is the final amended version --

9 A These pages are not numbered here.

10 Q -- of the actual petition. I will point
11 you to the right spot in the front part on page
12 19.

13 MR. MEASON: What does your start with?

14 MS. SAWYER: We can start there. Page
15 19. Okay.

16 MR. MEASON: That's the old 19.

17 HEARING OFFICER FRANK: Well, it is
18 Exhibit 1.

19 MS. SAWYER: Okay.

20 Q (By Ms. Sawyer) On Exhibit 1, did they
21 provide -- or I should say in their original
22 adjusted standard petition, that is Exhibit 1, that
23 has been introduced as Exhibit 1, did they provide
24 a cost for stack testing?

1 A Yes.

2 Q And what does the cost include?

3 A It says \$100,000.00 for stack test, with
4 two in parenthesis.

5 MR. MEASON: Objection. We have
6 introduced into evidence the fourth amendment to
7 the petition as Exhibit 16. These pages --

8 HEARING OFFICER FRANK: And you can ask
9 him questions about that if you wish to. I am not
10 going to permit Ms. Sawyer from asking questions
11 about the amended -- well, it is the third amended
12 petition. If you don't believe that that
13 adequately represents Swenson's position, then you
14 can ask him questions about the fourth amended
15 petition on cross.

16 MR. MEASON: All right.

17 HEARING OFFICER FRANK: Ms. Sawyer,
18 please continue.

19 Q (By Ms. Sawyer) Okay. So just to kind of
20 retrace the steps, you said that it included two
21 stack tests at 50,000? Is that what it indicated?

22 A That would be correct, yes.

23 Q So the total amount included for stack
24 tests was \$100,000.00?

1 A That's correct.

2 Q Did you investigate the cost of stack
3 tests?

4 A Yes, I did.

5 Q In this part of your investigation of
6 this petition?

7 A (Nodded head up and down.)

8 Q And what did you learn about the cost of
9 stack tests?

10 A I haven't revisited that memo lately, but
11 as I recall, the stack test costs were in the
12 neighborhood of -- from four vendors was in the
13 range of \$7,500.00 to \$15,000.00.

14 Q Mr. Beckstead, I am going to hand you a
15 document.

16 I can show it to Mr. Meason quickly.
17 This is the Response of the Illinois Environmental
18 Protection Agency in this matter.

19 MR. MEASON: This is what --

20 MS. SAWYER: Yes.

21 MR. MEASON: Okay.

22 HEARING OFFICER FRANK: This has not been
23 marked as an exhibit, but it is part of the
24 record.

1 MS. SAWYER: It is part of the record, so
2 we don't --

3 HEARING OFFICER FRANK: Right.

4 MS. SAWYER: -- have to worry about doing
5 that? Okay.

6 Q (By Ms. Sawyer) Mr. Beckstead, attached
7 to the Agency's response was an affidavit of yours,
8 and it provided information on what you had learned
9 about stack test costs.

10 Could you just read a little bit of that
11 information, the costs that you found out in your
12 inquiry?

13 A I contacted four firms. Grace Tech
14 Systems estimated their cost for stack testing to
15 be in the range of \$7,000.00 to \$10,000.00. ENSR
16 estimated their costs to be in the range of
17 \$8,000.00 to \$9,500.00. Hayden estimated their
18 costs to be in the range of \$7,500.00 to
19 \$10,000.00. Clean Air Engineering just gave me one
20 estimate and they said \$15,000.00. There are
21 numbers and also the personnel that I talked to
22 listed there also. I didn't read those, but they
23 are present.

24 MR. SAWYER: May I see a copy of, I

1 believe it is Exhibit Number 5?

2 MR. MEASON: Our Exhibit 5?

3 MS. SAWYER: Yes.

4 HEARING OFFICER FRANK: It would have a
5 green sticker.

6 MS. SAWYER: This is it.

7 Q (By Ms. Sawyer) I am showing you a copy
8 of Petitioner's Exhibit Number 5. Can you take a
9 look at that exhibit?

10 Does that exhibit include stack test
11 prices or stack test costs, that you can determine?

12 A I see nothing in regards to stack
13 testing.

14 Q Okay. Now I am showing you a copy of
15 Petitioner's Exhibit 16. If you could review the
16 last paragraph on page 19, and then the information
17 continuing over to page 20.

18 A (Witness complied.)

19 Q Do you see anywhere in that document
20 where the costs for stack tests is included?

21 A No, I do not.

22 Q As part of your investigation of Swenson
23 Spreader's adjusted standard petition, did you
24 calculate a cost of control for Swenson Spreader

1 based on the Brule cost estimate that was attached
2 to that petition?

3 A Yes, I did.

4 Q If you would look again to the response,
5 the Agency's response, I think if you just flip a
6 couple of pages.

7 A Okay.

8 Q Was this cost attached to the Agency's
9 response?

10 A Yes.

11 Q How is it identified?

12 A Table 1 is the capital cost for thermal
13 oxidizer at Swenson Spreader. Table 2 is the
14 annual cost for a thermal oxidizer at Swenson
15 Spreader.

16 Q Could you please explain how you prepared
17 this cost calculation?

18 A It is based on methodology proposed and
19 presented by the U.S. EPA in their OAQPS Control
20 Cost Manual of January 1990. It is taken from
21 Table 3-9. Basically, the costs, the capital costs
22 were calculated from the purchase price of
23 equipment, which Brule did provide. If there is
24 any auxiliary equipment, there is an allotment for

1 that.

2 Also added in is instrumentation at ten
3 percent of the purchased equipment cost. The sales
4 tax, which is .0725 here in Illinois, as part of
5 the -- as applied to the purchased equipment cost,
6 and a freight factor of .05 of the purchase
7 equipment cost, which gives you a grand total of,
8 in this particular instance, starting with
9 \$203,720.00, which was the given cost from the
10 Brule quote, I have a purchase equipment cost of
11 \$249,048.00.

12 From there we go to a direct installation
13 cost, which are based on a percentage of the
14 purchased equipment cost, which I have included in
15 this submittal. Foundation support is 800 percent
16 of that. Handling erection is 14 percent of that.
17 Electrical was four percent. Piping was two
18 percent. Installation was one percent. Painting
19 was one percent. Which would give a direct
20 installation cost of \$74,714.00.

21 Brule also mentioned that there would be
22 some building modifications necessary, and they
23 quoted a number of \$30,000.00, so I included that.
24 Which gave a direct -- a total direct cost of

1 capital equipment of \$353,762.00.

2 Also included in the estimate is the
3 indirect cost, which is, again, based on the
4 purchased equipment cost, B. Engineering was ten
5 percent of B. Construction and field expenses,
6 five percent of B. Contractor fees are ten percent
7 of B. Startup is two percent of B. Performance
8 tests are one percent of B. Contingencies are
9 three percent of B. Giving a total indirect cost
10 of \$77,205.00. Adding the direct costs and the
11 indirect costs gave a total capital investment,
12 which is referred to as TCI, of \$430,967.00.

13 Q Did you calculate a dollar per ton figure
14 based on that cost?

15 A Yes. Again, I relied on the U.S. EPA's
16 Control Cost Manual, and Table 2 represents the
17 calculations for that. I started with a direct
18 annual cost for the operating labor, which was
19 calculated on a \$17.24 an hour, and that one half
20 hour per shift would be necessary in handling the
21 afterburner, which is approximately \$4,310.00 a
22 year.

23 Also included is supervisor cost, which
24 was 15 percent of the operator, which is another

1 additional \$647.00. I added labor costs for
2 maintenance at a half an hour per shift at \$18.97
3 per hour, which is \$4,743.00.

4 The material item was given by Brule in
5 their quote, which they said was \$800.00 per year.
6 The utility costs, natural gas, was also given by
7 Brule in their quote at 25 cents per therm, was
8 \$5,200.00. Which gave direct annual cost of
9 \$15,699.00.

10 Indirect costs, overhead, was calculated
11 per U.S. EPA methodology to be 60 percent of the
12 sum of the operating, supervisor, maintenance,
13 material and labors, labor costs, which calculates
14 out to be about \$6,299.00. Administrative charges
15 are based upon on the total capital investment,
16 which was on Table 1, of \$430,967.00. It was two
17 percent of that. Property taxes is one percent of
18 the TCI. Insurance is one percent of TCI, and then
19 the --

20 Q Mr. Beckstead, could you just skip ahead
21 a bit and just provide your --

22 A Okay.

23 Q -- dollar per ton calculation that you
24 figured?

1 A My control cost, based on 95 percent
2 destruction, which is what Brule said this thermal
3 recuperative -- recuperative thermal oxidizer would
4 perform at, and based on 32.4 tons per year of VOM
5 emissions, which is the emission limit that I had
6 available, we were controlling 30.8 tons per year
7 at a cost of \$109,398.00 or a control cost of
8 \$3,552.00 per ton.

9 Q Do you know what this control cost per
10 ton figure would be if 81 percent was used rather
11 than 95 percent?

12 A No, but I could calculate it for you
13 right quick. The total annual cost wouldn't
14 change.

15 HEARING OFFICER FRANK: Mr. Beckstead,
16 the --

17 MS. SAWYER: Can he calculate it?

18 HEARING OFFICER FRANK: That is fine if
19 you want him to, but the question was do you know,
20 so it is either a yes or no.

21 THE WITNESS: I don't know right know but
22 I can tell you.

23 Q (By Ms. Sawyer) Mr. Beckstead, could you
24 calculate that number?

1 HEARING OFFICER FRANK: Do you need a
2 couple minutes?

3 THE WITNESS: It shouldn't take but a
4 couple of minutes.

5 HEARING OFFICER FRANK: Let's go off the
6 record.

7 (Discussion off the record.)

8 HEARING OFFICER FRANK: Back on the
9 record.

10 HEARING OFFICER FRANK: Let's go back on
11 the record.

12 All right. Your calculations for 81
13 percent?

14 THE WITNESS: I calculate that if 81
15 percent was used the cost per ton would be
16 \$4,168.50.

17 Q (By Ms. Sawyer) Since you are pretty
18 quick with this calculator, could you also
19 calculate a number based on an 85 percent reduction
20 in emissions?

21 A Okay. I arrive at \$3,972.00.

22 Q Is your calculation based on the use of a
23 32,000 standard cubic feet per minute -- well, I
24 don't know what that is, actually -- SCFM oxidizer?

1 A Yes, it is.

2 Q Okay. Is it your estimate that the cost
3 of control equipment would change if a lower SCFM
4 oxidizer were used?

5 A Yes, it would.

6 Q How would the costs change?

7 A It would decrease as the required
8 standard cubic feet per minute would decrease.

9 Q Did you calculate changes in the control
10 costs based on the use of lower SCFM equipment?

11 A Yes, I did.

12 Q And was this attached to the Agency's
13 response?

14 A Yes, in Table 3 of that response.

15 Q What is the estimated amount if a 16,000
16 SCFM oxidizer were used?

17 A From the chart it is just a little over
18 \$2,600.00 per ton.

19 Q That, again, would be based on 95 percent
20 control?

21 A Yes.

22 Q Are you familiar with the quote provided
23 by Brule -- or the quote from Brule provided by
24 Swenson at the hearing on April 17th, 1997?

1 A Yes, I do recall it.

2 Q I believe that is exhibit --

3 HEARING OFFICER FRANK: Are you talking

4 about the March 6, 1997?

5 MS. SAWYER: Yes, that would be it.

6 HEARING OFFICER FRANK: Or are you

7 talking about this one?

8 MS. SAWYER: Could you hand them both to

9 me.

10 Q (By Ms. Sawyer) Is Exhibit 6 the quote

11 that you had a chance to take a look at?

12 A Where does it say the Exhibit Number?

13 HEARING OFFICER FRANK: Right here.

14 That's Exhibit 4.

15 MS. SAWYER: Exhibit 4. I apologize.

16 THE WITNESS: Yes, I have reviewed

17 Exhibit 4.

18 Q (By Ms. Sawyer) In that exhibit is there

19 any change in the fuel usage figures provided from

20 the original cost by Brule?

21 A This does not reference fuel costs. It

22 relays -- Exhibit 4 just mentions that there is a

23 change in the FOB costs of the basic unit from

24 \$203,000.00 down to \$168,000.00.

1 Q Okay.

2 A But it mentions nothing about fuel usage
3 or costs in their quote.

4 Q But the original Brule quote did
5 reference a fuel cost?

6 A Yes, it did.

7 Q That's what you based your calculation
8 on?

9 A Yes, I did.

10 Q Could you look at Exhibit 5 for a
11 moment? What is the fuel cost provided in that
12 exhibit?

13 A It is \$200,000.00.

14 Q What was the fuel cost provided in the
15 original cost calculation from Brule?

16 A Brule estimated \$5,200.00 for natural
17 gas.

18 Q Looking again at Exhibit 5, what is the
19 capital cost for control equipment that is used as
20 the starting number?

21 A They use a purchasing price of
22 \$315,780.00.

23 Q Looking to Exhibit 4, what does that
24 price include?

1 A There is an additional auxiliary heat
2 exchanger.

3 Q By "additional" what do you mean?

4 A From my reading of the U.S. EPA Control
5 Cost Manual, it is normal for a vendor to provide
6 not only the cost of the basic recuperative thermal
7 oxidizer, but also to include an additional system
8 if the buyer would like to use secondary heat for
9 in-plant usage, such as maybe heating hot water or
10 for heating their building. It is secondary heat
11 and if it is economically reasonable, it is
12 sometimes advantageous for the vendor to buy that
13 second heat exchanger.

14 Q Is there a cost or a capital cost
15 provided by Brule that does not include this heat
16 exchanger?

17 A The original one was used -- well, both
18 quotes have the secondary heat exchanger mentioned
19 but the original, the original quote estimate, in
20 my understanding, I was not to use the additional
21 from talking with Swenson, that they just wanted
22 the basic recuperative thermal oxidizer to be used.

23 Q Looking at Exhibit 5 or 4, does it
24 provide a cost without the exchanger as the only

1 capital cost provided, include a heat exchanger?

2 A I am sorry. I don't understand that
3 question.

4 Q Is there just one capital cost provided
5 there?

6 A There is one for the basic unit model
7 FB1270 oxidizer. It is \$168,965.00.

8 HEARING OFFICER FRANK: Mr. Beckstead,
9 you need to slow down a little bit.

10 THE WITNESS: Okay. Sorry.

11 Q (By Ms. Sawyer) Does that include a heat
12 exchanger?

13 A Well, a recuperative thermal oxidizer has
14 a preheat system, which is a heat exchanger, in
15 essence.

16 Q But does it include an add-on heat
17 exchanger?

18 A No, no.

19 Q And the amount used in the calculations
20 in Exhibit 5, does that include the heat exchanger?

21 A Yes, it does.

22 Q The add-on heat exchanger?

23 A Yes.

24 Q Are you aware that Dr. Reed calculated

1 different control costs, came up with different
2 numbers?

3 A Yes, I am.

4 Q What is the basis of the difference in
5 the cost between what you calculated and Dr. Reed?

6 A Dr. Reed also used the U.S. EPA
7 methodology, as I did. However, Dr. Reed was given
8 only the information that it would be 32,000 SCFM,
9 so he has essentially given calculations which
10 would be all default numbers, if you will. His
11 calculations would be -- are larger than mine,
12 because I am -- I employed -- any time I had data
13 from the vendor, I employed exact data, where Dr.
14 Reed did not. He did not use Brule's estimate for
15 natural gas usage. He did not use Brule's estimate
16 for maintenance costs.

17 He just plugged in 32,000 in a U.S. EPA
18 spread sheet and turned the crank, so to speak. So
19 his numbers come out on the conservative side,
20 which you would naturally expect from an estimate
21 of that nature.

22 Q Mr. Beckstead, are you familiar with cost
23 information pertaining to surface coating of metal
24 products presented in this study, which is I

1 believe Respondent's Exhibit Number 3, "Effect of
2 RACT II Environmental Controls in Illinois." Did I
3 lose that one again?

4 HEARING OFFICER FRANK: There we go.

5 MR. MEASON: Is that 3 or 5?

6 HEARING OFFICER FRANK: It should be 5.

7 MR. MEASON: Okay.

8 HEARING OFFICER FRANK: For the record,
9 Mr. Beckstead is looking at Respondent's Exhibit
10 Number 5.

11 THE WITNESS: I have reviewed that
12 document, yes.

13 Q (By Ms. Sawyer) Is it your understanding
14 that the Board relied on this study for the cost of
15 control information in adopting 35 Illinois
16 Administrative Code, Section 215.204 J?

17 A Yes, it is.

18 Q On page 53 of this document does it
19 discuss surface coating of metal products?

20 A Yes, it does.

21 Q On page 66 of this document, Table 3.12,
22 what was the total control cost estimated for the
23 metal product surface coating category?

24 A \$1,032.00 for the attainment counties.

1 Q And what is the basis of this total
2 control cost?

3 A From my review of the document, we found
4 in the State of Illinois that 93 percent of the
5 sources would be able to switch to high solids or
6 water borne compliance coatings, whereas 7 percent
7 would have to use thermal incineration. So that
8 number, \$1,032.00, is a composite of -- from that
9 assumption of the sources effected by this
10 regulation.

11 Q Where is this explained in the exhibit?

12 A On page 65. The last paragraph of page
13 65 it references those numbers.

14 Q If you would please look to page 63.

15 A (Witness complied.)

16 Q If you would just concentrate on the
17 costs associated under the heading of control
18 technology, the costs associated with incineration
19 and look at the costs for a medium operation.

20 A Yes.

21 Q And if you would look to Column B.

22 A Yes.

23 Q What is the capital cost that is listed
24 in here?

1 A It would be \$1,172,300.00.

2 Q What is the annual cost in Column C?

3 A \$384,400.00.

4 Q And in Column D it refers to emission

5 reductions. What were the emission reductions in

6 tons per year that they were figuring in this

7 category?

8 A 37.7 tons per year.

9 Q Could you calculate a cost per ton figure

10 based on that information?

11 A Yes, I could.

12 Q How will do that?

13 A I will take Column C, \$384,400.00 and I

14 will divide that by 37.7, which is Column D, the

15 emissions. Wait a minute. I will do that again.

16 It is \$10,196.00. That's dollars per ton.

17 Q Mr. Beckstead, would you please turn to

18 page 64 of this document?

19 A Uh-huh.

20 Q Could you look at D on page 64?

21 A Uh-huh.

22 Q What type of reduction percentage is that

23 37.7 emission reductions in Table 3.11 based on?

24 A 85 percent for incineration.

1 Q Is that for all types of incineration?

2 A It just says incineration. I would
3 assume all types, yes.

4 Q Could you read beginning with 85 percent?

5 A 85 percent for incineration.

6 Q Dash --

7 A Dash, spray 80 percent for water borne
8 and flow and 90 percent for incineration dip and
9 flow.

10 Q Mr. Beckstead, have you had any
11 involvement in an enforcement proceeding involving
12 Swenson Spreader?

13 A Yes, I was called upon.

14 Q What was the nature of that involvement?

15 A Ms. Barancik, in the Legal Section, asked
16 for costs for abatement for Swenson Spreader, what
17 my best estimate was for cost for abatement.

18 Q Approximately when did Ms. Barancik --
19 and just for clarification, her name is now Ms.
20 Bernoteit.

21 A Oh, excuse me.

22 Q When did she contact you for that
23 information?

24 A The exact date I can't pinpoint, but it

1 would be some time in the time frame between the
2 latter part of January and mid March, I would say
3 in that vicinity, when we were talking about this
4 sort of thing.

5 Q Did she contact you after you had
6 provided your technical response for the Swenson
7 Spreader adjusted standard petition?

8 A Yes.

9 Q It is your recollection that she
10 contacted you, you said, somewhere between January
11 and March. The Agency's response was filed at the
12 end of February. Do you recall if it was before
13 that date or after that date?

14 A I would think it would have been after,
15 yes. I don't know for sure. I can't be positive.

16 Q Is that your sole involvement in the
17 enforcement proceedings?

18 A That's all I was called on to provide.

19 Q Mr. Beckstead, I would like to show you
20 Respondent's Exhibit Number 1. Do you recognize
21 that document?

22 A It has been awhile since I read it, but I
23 do recognize that document.

24 Q And what is that document?

1 A It is a memorandum from John Stefan to
2 you in regards to the Swenson Spreader adjusted
3 standard petition.

4 Q Did you -- did you compile a technical
5 recommendation for the Swenson Spreader adjusted
6 standard?

7 A Yes, I did.

8 Q And did you -- was that technical
9 recommendation reviewed by your supervisor?

10 A Yes, it was.

11 Q And who is your supervisor that reviewed
12 it?

13 A Dick Forbes.

14 Q Did Forbes sign-off on your technical
15 recommendation?

16 A Yes, he did.

17 Q Did you provide your technical
18 recommendation to John Stefan?

19 A Yes, we did.

20 Q Could you take a look at that document in
21 front of you?

22 A (Witness complied.)

23 Q Do you believe the comments from your
24 technical recommendation are incorporated in that

1 document?

2 A I see nowhere where my cost numbers are
3 at all, and I see no place of our recommendation,
4 as I recall, in this document.

5 Q Is there any explanation in there why
6 your technical recommendation was not incorporated?

7 A I see none.

8 MS. SAWYER: Thank you, Mr. Beckstead.
9 That's all of the questions I have.

10 HEARING OFFICER FRANK: Okay. Mr.
11 Meason?

12 CROSS EXAMINATION

13 BY MR. MEASON:

14 Q Did I understand you correctly, Mr.
15 Beckstead, that your entire career has been spent
16 with the Illinois EPA?

17 A Not my entire career, no, just my working
18 in the Environmental Protection has been strictly
19 with the Illinois Ozone Unit.

20 Q Okay. Did I understand you correctly, in
21 your preliminary or opening remarks, that you are
22 involved somehow in determining RACT or analyzing
23 RACT?

24 A I am called on for technical support in

1 the assessment of what is Reasonably Available
2 Control Technology, yes.

3 Q Okay. What does RACT technology -- well,
4 isn't it true that RACT technology only applies to
5 sources in nonattainment areas or sources that
6 would affect the nonattainment status of areas?

7 A I am -- this is the first time I have
8 been involved in an attainment. All I can say is I
9 have applied it mostly in nonattainment areas.

10 Q So you don't know whether RACT applies in
11 attainment areas?

12 A (Shook head from side to side.)

13 HEARING OFFICER FRANK: You need to
14 answer out loud.

15 THE WITNESS: No. No, I don't, to be
16 honest with you.

17 Q (By Mr. Meason) And, yet, your job with
18 the Illinois EPA has much to do with determining
19 RACT?

20 A Yes, it is. I assess it. I don't tell
21 how to apply it. That's a legal matter, how it is
22 applied.

23 Q I would like to refer you to Respondent's
24 Exhibit 5. If you could look at page number roman

1 numeral four, which is the first couple of pages.

2 A (Witness complied.)

3 Q Is there an underlined sentence on that
4 copy of the page?

5 A Yes, there is.

6 Q Could you read that sentence, please?

7 A "We note that there will be no benefit in
8 applying RACT II as proposed to sources located in
9 attainment areas within the State."

10 Q Thank you. Isn't it true, Mr. Beckstead,
11 that the Illinois regulation is based upon the U.S.
12 EPA's Miscellaneous Metal Parts and Products
13 Control Technology Guidance Document of June 1978?

14 A Yes, it is.

15 Q And isn't it true that the U.S. EPA
16 lumped hundreds of small and medium sized
17 industries together in the miscellaneous metal
18 parts and products category?

19 A Yes, they did.

20 Q Isn't it true that the U.S. EPA stated in
21 that document that the standard derived was a,
22 quote, unquote, presumptive norm across all those
23 hundreds of industries lumped together in that
24 miscellaneous metal parts and products industry?

1 A Well, I am not that intimately familiar
2 with the document, but generally that's normally
3 what the U.S. EPA will say about it. A presumptive
4 norm will span several categories of sources.

5 Q I would like to direct your attention to
6 Exhibit 16, Petitioner's Exhibit 16.

7 MS. ARCHER: What page are you on?

8 MR. MEASON: Item T, page number roman
9 numeral four.

10 Q The entire first line of that paragraph,
11 beginning with miscellaneous metal parts and
12 products category, could you read that first
13 sentence, please?

14 A "Miscellaneous metal parts and products
15 category includes hundreds of small to medium sized
16 industries for which writing individual guideline
17 documents would be impractical. After reviewing
18 these industries, the EPA prepared this report to
19 assist local agencies in determining the level of
20 VOC control that represents the presumptive norm
21 that can be achieved through the application of
22 Reasonably Available Control Technology, RACT.

23 Q Mr. Stefan, I will ask you again, does
24 the standard that was suggested in the U.S. EPA's

1 miscellaneous metal parts and products control
2 techniques guideline document provide a, quote,
3 unquote, presumptive norm for the hundreds of small
4 to medium sized industries covered by that
5 document?

6 A You addressed that question to Mr.
7 Stefan. Am I supposed to answer that?

8 Q Excuse me. Mr. Beckstead.

9 A Yes.

10 Q Isn't it true, Mr. Beckstead, that the 15
11 percent ROP rulemaking only applied to severe
12 nonattainment areas?

13 MS. SAWYER: Asked and answered.

14 HEARING OFFICER FRANK: I will allow the
15 question.

16 MR. MEASON: You will allow it?

17 HEARING OFFICER FRANK: Yes.

18 THE WITNESS: The question again was?

19 Q (By Mr. Meason) Isn't it true that the 15
20 percent ROP rulemaking only applied to severe
21 nonattainment areas?

22 A Yes, it did.

23 Q Is Ogle County a severe nonattainment
24 area?

1 A Not to my knowledge.

2 Q Is Ogle County an attainment area?

3 A Yes, it is.

4 Q To your knowledge, has Ogle County ever
5 been a nonattainment area for ozone?

6 A I can't honestly answer that. Since I
7 have been in the Agency, it has always been
8 classified as attainment.

9 Q Mr. Beckstead, I am going to show you a
10 document that was provided in discovery.

11 A All right.

12 MR. MEASON: I will show it to Ms. Archer
13 and Ms. Sawyer first.

14 Q (By Mr. Meason) Before I show this to you
15 and before we change gears, I would like to ask you
16 one more question along the lines that we were
17 moving along.

18 Did the Illinois EPA, to your knowledge,
19 ever examine Swenson Spreader's particular industry
20 providing spreader components, spreader boxes for
21 the public works industry?

22 A Not that I am familiar with.

23 Q Did the Illinois EPA ever examine
24 industries that must meet coating specifications

1 for its client base?

2 A I guess I don't understand that question.

3 Q I will rephrase it. Isn't it true that
4 the Illinois EPA has never examined an industry
5 that its clients require it to meet differing and
6 particular coating specifications for every sale?

7 A I don't know. I can't answer that
8 question either. I have no idea if that's been
9 done. A lot of people have to meet varying
10 requirements.

11 Q You don't know if the Illinois EPA has
12 ever done it?

13 A If they have ever evaluated that kind of
14 a -- that sounds pretty specialized. I don't think
15 so. I don't know. I can't answer that.

16 Q I am now going to hand you a document
17 that I have already showed to Ms. Archer and Ms.
18 Sawyer.

19 I will first hand it to the Hearing
20 Officer.

21 If you would, please read the first full
22 sentence of paragraph two. Well, first, excuse me,
23 could you identify that document first, please?

24 A It is a memorandum that I wrote to John

1 Stefan on November 21st of 1996, with copies to
2 Dick Forbes and Karen -- what is her new name?

3 MS. SAWYER: Bernoteit.

4 THE WITNESS: Bernoteit, and Bonnie
5 Sawyer.

6 Q (By Mr. Meason) That is your memo?

7 A Yes. It is in regards to the adjusted
8 standard petition for Swenson Spreader.

9 Q Could you read the first full sentence of
10 the second paragraph?

11 A "Swenson's rebuttal that in reality if a
12 vendor deviates from the requested specification
13 they generally lose the bid is difficult to
14 refute."

15 Q Thank you. Mr. Beckstead, I am going to
16 show you a document.

17 A Okay.

18 MR. MEASON: First I will show it to Ms.
19 Archer and Ms. Sawyer. This is a document we
20 received in discovery.

21 I will show it to the Hearing Officer
22 next.

23 Q (By Mr. Meason) If you could examine that
24 document, please. Do you recognize it?

1 A Yes, I do. I wrote this to my file just
2 so I would have a document, the information in the
3 file.

4 Q Okay. Could you summarize what that
5 document contains?

6 A I had been talking to John Reed in regard
7 to the size, the design criteria of 32,000 cubic
8 feet per minute as being appropriate, and John
9 determined that because today's paints have solvent
10 contents of 30 to 40 percent of what they did in
11 1981, when the design criteria of 32,000 was used,
12 that realistically we felt 16,000 cubic feet per
13 minute would be an appropriate size for the paint
14 booth, and the cost would be in the range of
15 \$2,600.00 per ton based on that design criteria.

16 Q Isn't it true that the minimum design
17 standard for a paint booth, pursuant to OSHA
18 regulations, is 100 feet per minute?

19 MS. SAWYER: Objection. Beyond the scope
20 of direct. Mr. Beckstead provided no testimony on
21 the size of the afterburner. Besides what the
22 basis of his quote was, he didn't provide technical
23 information on --

24 MR. MEASON: I believe you opened the

1 door by addressing the afterburners.

2 MS. SAWYER: I think this is testimony
3 that you have gone over with a number of witnesses
4 and Mr. Beckstead did not provide direct testimony
5 on this issue. I think it is repetitive and beyond
6 the scope of direct.

7 MR. MEASON: It is Mr. Beckstead's
8 document.

9 HEARING OFFICER FRANK: I am going to --

10 MS. SAWYER: Mr. Beckstead's document is
11 simply relaying information that Dr. Reed came up
12 with.

13 HEARING OFFICER FRANK: I am going to
14 allow it, although I do agree with Ms. Sawyer that
15 we are getting close to hearing this several times
16 from several witnesses. If this is one or two
17 questions that's fine. I don't want to go on and
18 on about it.

19 MR. MEASON: All right. Do you need the
20 question read back?

21 THE WITNESS: Yes.

22 (Whereupon the requested
23 portion of the record was read
24 back by the Reporter.)

1 THE WITNESS: I am not familiar with the
2 OSHA regulations. I heard it today for the first
3 time that I have seen it. We deal with lower
4 explosive limits in designing things.

5 Q (By Mr. Meason) Thank you. On direct
6 examination you had testified that the calculations
7 that Dr. Reed provided were all for 32,000 cubic
8 feet a minute; is that correct?

9 A Well, he provided other -- the only
10 criteria he started on was the standard cubic feet
11 per minute. That was the only thing he used. He
12 defaulted everything. When I contacted Dr. Reed I
13 was after a couple of things. I only had one quote
14 from Swenson Spreader. I wanted a comparative
15 quote based on U.S. EPA methodology and I also
16 wanted varying sizes to make that quote.

17 HEARING OFFICER FRANK: Mr. Beckstead,
18 please slow down.

19 THE WITNESS: Okay.

20 MR. MEASON: For someone that went to
21 Georgia Tech, you talk awful fast.

22 HEARING OFFICER FRANK: Please continue,
23 though. I didn't mean to cut you off.

24 THE WITNESS: So I needed Dr. Reed's

1 input for two reasons, as I stated. What does the
2 design flow rate do to cost and what does the U.S.
3 EPA, using strictly default numbers, what number
4 would they come up with for the cost of abatement
5 for Swenson Spreader.

6 Q Okay.

7 A That's what I got from him.

8 Q I am going to show you a document. I
9 don't recall if it is entered in evidence or not.
10 It is a January 15th, 1997 memo from John Reed to
11 Gary Beckstead and John Stefan, providing four
12 different -- is that in evidence some place?

13 MS. SAWYER: I don't think so. We just
14 used it to --

15 MS. ARCHER: We used it to refresh Dr.
16 Reed's recollection.

17 MR. MEASON: All right.

18 HEARING OFFICER FRANK: There is a
19 November 23rd memo from Dr. Reed that is in
20 evidence.

21 MR. MEASON: Okay. This is January 15th,
22 so this is not. Okay. I will show this document
23 to Ms. Archer and Ms. Sawyer. I received it in
24 discovery.

1 MS. SAWYER: Okay.

2 MR. MEASON: I will show it to the
3 Hearing Officer.

4 HEARING OFFICER FRANK: I saw it.

5 Q (By Mr. Meason) Mr. Beckstead, are there
6 four columns of calculations provided by Dr. Reed?

7 A Yes, there are.

8 Q And what is the -- what is the size of
9 the first, the size or capacity of the first
10 calculation?

11 A Case 1 is 32,000.

12 Q What is case -- what is the next column?

13 A It is 24,000.

14 Q What is the third column?

15 A It is 16,000.

16 Q And what is the fourth column?

17 A It is 10,000.

18 Q Thank you. Now, you testified on direct
19 about stack tests, that you received quotes from a
20 number of private companies and that the quotes
21 ranged from \$7,500.00 to \$15,000.00 for a stack
22 test; isn't that correct?

23 A That's what I did testify. As I recall,
24 when Ms. Sawyer handed me the document, I believe

1 there was a \$7,000.00, though. It was really
2 \$7,000.00 to \$15,000.00, if I could correct the
3 record on that.

4 Q Okay. I am going to show you a document
5 that I received in discovery?

6 A Okay.

7 MR. MEASON: I will show it to Ms. Archer
8 and Ms. Sawyer first.

9 Now I will show it to the Hearing
10 Officer.

11 HEARING OFFICER FRANK: Okay.

12 Q (By Mr. Meason) Could you examine that
13 document, Mr. Beckstead?

14 A (Witness complied.)

15 Q Do you recognize that document?

16 A Yes, these are my notes used to prepare
17 the information that was submitted.

18 Q Isn't it true that instead of \$7,500.00
19 to \$15,000.00 your notes actually range from
20 \$7,000.00 to \$25,000.00?

21 MS. SAWYER: Objection. Hearsay.

22 HEARING OFFICER FRANK: It is Mr.
23 Beckstead's --

24 MS. SAWYER: It is still hearsay. It is

1 his document, but it is still hearsay.

2 HEARING OFFICER FRANK: I am going to
3 allow it.

4 THE WITNESS: I don't recall this
5 \$25,000.00 number at all. It may say that on the
6 document, but I --

7 Q (By Mr. Meason) Is that your handwriting?

8 A It appears to be.

9 Q Thank you.

10 MR. MEASON: I would like to move this
11 document into evidence.

12 HEARING OFFICER FRANK: Is there any
13 objection?

14 MS. SAWYER: I object to its admission
15 because it is hearsay.

16 HEARING OFFICER FRANK: I am going to a
17 allow it under the business records. It is part of
18 what Mr. Beckstead used to prepare information for
19 this adjusted standard and it is under the Board's
20 rules.

21 It will be marked as Petitioner's Exhibit
22 Number 23.

23 (Whereupon said document was
24 duly marked for purposes of

1 identification and admitted
2 into evidence as Petitioner's
3 Exhibit 23 as of this date.)

4 Q (By Mr. Meason) Mr. Beckstead, isn't it
5 true that you supplied an affidavit to the Board
6 regarding stack testing estimated costs?

7 A Yes, I did.

8 Q And isn't it true that those estimated
9 costs in your affidavit range from \$7,000.00 to
10 \$15,000.00?

11 A Yes, I did.

12 Q You neglected to include the \$25,000.00
13 cost?

14 A I did because of statistical reasons.
15 That piece of data was thrown out because everyone
16 else was in the range of the \$7,000.00 to
17 \$10,000.00 except for one firm who went from
18 \$15,000.00 to \$25,000.00 and I thought it
19 statistically didn't fit into the rest of the data.

20 Q So you took it upon yourself just to not
21 include a cost that you received in your -- in the
22 process of determining from these companies what
23 they would charge?

24 A I made an engineering judgment, sir.

1 Q You made an engineering judgment that the
2 cost of one company was too high to include in a
3 sworn affidavit to the Board?

4 A I took the data that I had and analyzed
5 it to the best engineering ability I had and
6 submitted what I thought was realistic numbers for
7 the costs.

8 Q And then you didn't provide the
9 \$25,000.00 -- you purposely did not provide the
10 \$25,000.00 figure --

11 HEARING OFFICER FRANK: Mr. Meason, now
12 you are badgering the witness. You have asked him
13 the same question three times. Please move on.

14 MR. MEASON: Okay. At this point I would
15 like to move into evidence Mr. Beckstead's
16 affidavit that was attached to the Illinois EPA's
17 recommendation to the Board to deny Swenson
18 Spreader's adjusted standard application.

19 HEARING OFFICER FRANK: Let's go off the
20 record.

21 (Discussion off the record.)

22 HEARING OFFICER FRANK: Back on the
23 record.

24 Mr. Meason was moving an exhibit that has

1 already been admitted as Petitioner's Exhibit
2 Number 9. You may go ahead and ask questions
3 relating to that if you wish.

4 Q (By Mr. Meason) On direct examination,
5 Mr. Beckstead, you stated that Dick Forbes wrote a
6 technical recommendation with regard to Swenson
7 Spreader's adjusted standard petition?

8 A No, he did not. I wrote it. He just
9 reviewed it. I wrote it.

10 Q Under whose name did it go out under?

11 A Under his, but I wrote it.

12 Q But you wrote it?

13 A (Nodded head up and down.)

14 MR. MEASON: I have nothing further.

15 HEARING OFFICER FRANK: Okay. Before you
16 do redirect, I would like to go off the record.

17 (Discussion off the record.)

18 HEARING OFFICER FRANK: Back on the
19 record.

20 Let's continue with Mr. Beckstead. I
21 believe, Ms. Sawyer, it is your turn.

22 REDIRECT EXAMINATION

23 BY MS. SAWYER:

24 Q Mr. Beckstead, as part of your

1 investigation of Swenson's adjusted standard
2 petition, did you personally investigate bid
3 specifications from governmental entities?

4 A I reviewed them. I looked at the
5 documents. I didn't really do much investigation
6 on the bids themselves, no.

7 Q Did you contact anyone from any of the
8 governmental entities?

9 A No, I didn't personally, no.

10 MS. SAWYER: Okay. That's all I have.

11 HEARING OFFICER FRANK: Mr. Meason?

12 MR. MEASON: Nothing further.

13 HEARING OFFICER FRANK: Thank you, Mr.
14 Beckstead.

15 (The witness left the stand.)

16 HEARING OFFICER FRANK: Let's go off the
17 record.

18 (Discussion off the record.)

19 HEARING OFFICER FRANK: Back on the
20 record.

21 MS. SAWYER: I would like to enter this
22 document into evidence, and I would like you to
23 take official notice of it.

24 HEARING OFFICER FRANK: All right.

1 MS. SAWYER: It is a document that has
2 been filed with the Board.

3 HEARING OFFICER FRANK: Okay. Mr.
4 Meason, I am guessing you know what it is since you
5 filed the status report. You are welcome to look
6 at it.

7 Do you have any objection? I will give
8 you a minute to read it and see what it is.

9 MR. MEASON: Was this provided in
10 discovery yesterday? I don't believe so.

11 MS. SAWYER: No, I don't believe so. It
12 is something in relation to the enforcement
13 proceeding. It is a document filed by the Board.
14 It is --

15 HEARING OFFICER FRANK: Filed with the
16 Board by Swenson.

17 MS. SAWYER: Right.

18 MR. MEASON: It is a copy of -- are we on
19 the record now?

20 HEARING OFFICER FRANK: Yes.

21 MR. MEASON: It is a copy of a document
22 that Swenson Spreader filed with the Board. I
23 would object to its admission for a few reasons.
24 It was not disclosed in discovery pursuant to the

1 Hearing Officer's order. It is was not provided
2 when the Agency provided the other documents that
3 all were generated by Swenson Spreader. At this
4 late date, I think that the Agency has to start
5 playing by the normal rules that apply in legal
6 proceedings.

7 HEARING OFFICER FRANK: Ms. Sawyer?

8 MS. SAWYER: We didn't present this
9 document as part of the discovery request because
10 it doesn't specifically pertain to the adjusted
11 standard proceeding. It is a document that was
12 filed in the context of the enforcement
13 proceeding.

14 That is not to say that we think it has
15 some relevance in this proceeding. That's the
16 reason that we did not submit it with the discovery
17 request. I don't see where there is any prejudice
18 to Petitioner possible in this document. It is a
19 document that the Petitioner -- the Counsel for
20 Petitioner has submitted to the Board in a
21 proceeding. It is the typical stuff that official
22 notice would be taken of.

23 MR. MEASON: May I make just one other
24 comment before you make your ruling?

1 HEARING OFFICER FRANK: Yes, Mr. Meason.

2 MR. MEASON: I would just like to note on
3 the record that the Agency has provided, in its
4 original discovery to me, similar documents from
5 the enforcement proceeding and chose not to include
6 this one this time.

7 HEARING OFFICER FRANK: Okay. It is my
8 belief that this is something that the Agency
9 should have provided in discovery if it was used in
10 conjunction with the adjusted standard proceeding
11 which, obviously, it was by the Agency. However, I
12 don't believe there is any prejudice to Swenson.
13 It is a document that is on file with the Board and
14 it is a public document.

15 My concern at the first hearing was that
16 nothing from the enforcement action come in that
17 would unfairly prejudice Swenson as far as
18 enforcement proceedings. I didn't want you to be
19 admitting anything that could be used against you
20 in the enforcement proceeding.

21 This document is a status report that
22 Swenson itself filed. So I am going to go ahead
23 and allow it. I believe it is relevant to this
24 proceeding.

1 But I do want to note that the Agency
2 needs to be forthcoming with its discovery. And
3 the Agency, in this proceeding, has attempted to
4 withhold information until the last minute. For
5 whatever reason, it has construed the discovery
6 request very narrowly in a way that I have never
7 seen in the past. I would expect if we end up
8 having an additional day of hearing or if this
9 proceeding does not close immediately, that if
10 there is additional information that the Agency
11 will timely supplement.

12 Okay. If we could go ahead and
13 continue.

14 MS. SAWYER: The Agency would like to
15 call David Kolaz as its next witness.

16 HEARING OFFICER FRANK: Okay. For the
17 record, this document is PCB 97-101. It is a
18 status report filed by the Respondent on February
19 28, 1997, and it will be marked as Respondent's
20 Exhibit 6.

21 (Whereupon said document was
22 duly marked for purposes of
23 identification and admitted
24 into evidence as Respondent's

1 Exhibit 6 as of this date.)

2 MR. MEASON: I would object to Mr. Kolaz
3 testifying in this matter. The Agency did not
4 disclose him as either a fact or opinion witness in
5 its answers to my interrogatories.

6 MS. SAWYER: The Agency is calling Mr.
7 Kolaz as a rebuttal witness. The need to call Mr.
8 Kolaz did not arise until testimony presented
9 earlier today from Mr. Stefan.

10 HEARING OFFICER FRANK: Okay. I am going
11 to allow the testimony. Please proceed.

12 Would you swear the witness, please.

13 (Whereupon the witness was
14 sworn by the Notary Public.)

15 D A V I D K O L A Z,
16 having been first duly sworn by the Notary Public,
17 saith as follows:

18 DIRECT EXAMINATION

19 BY MS. SAWYER:

20 Q Would you please state your name and
21 spell your last name.

22 A My name is David Kolaz. That's
23 K-O-L-A-Z.

24 Q Mr. Kolaz, where are you currently

1 employed?

2 A I am employed by the Illinois
3 Environmental Protection Agency in the Bureau of
4 Air Pollution Control.

5 Q What is your position with the Illinois
6 EPA?

7 A I am the Manager of the Compliance and
8 Systems Management Section.

9 Q And how long have you been employed with
10 the Illinois EPA?

11 A I have been employed since June of 1971.

12 Q And for how long have you been at your
13 current position?

14 A I would say about six years.

15 Q What was your position prior to that
16 time?

17 A I was Manager of the Air Monitoring
18 Section prior to that time.

19 Q As part of your functions as the Manager
20 of the Compliance -- I will call it CASM, just to
21 use the acronym -- as part of your duties as
22 Manager of CASM, are you responsible for all
23 personnel in that section?

24 A Yes, I am.

1 Q Do the people in that section report to
2 you either directly or indirectly?

3 A It is either directly or indirectly, yes.

4 Q And by indirectly, who else would they
5 report to?

6 A Angela Tin is the manager of the
7 Compliance Unit in the Section, and she has a
8 number of employees who report directly to her. In
9 the Systems Management Unit, there is currently not
10 a manager and a number of those people report
11 directly to me.

12 Q Mr. Kolaz, do you recall if you assigned
13 an adjusted standard petition for the Agency to
14 review an adjusted standard petition to John
15 Stefan?

16 A Yes, I did. First, though, the petition
17 had been assigned to Gary Yeric, and due to the
18 fact that he had to take time off for a paternity
19 leave, I reassigned it to John Stefan.

20 Q Just for clarification, that is Swenson
21 Spreader's adjusted standard petition?

22 A That's correct.

23 Q Mr. Kolaz, do you have the authority to
24 make final decisions for the Agency with respect to

1 its response in adjusted standard petitions?

2 A I have the authority for the Bureau of
3 Air to sign-off on the recommendations, the
4 Agency's recommendation for adjusted standards.

5 Q Mr. Kolaz, did you sign-off on the
6 Agency's response to Swenson Spreader's adjusted
7 standard petition?

8 A Yes, I did.

9 Q And by signing off on this response, does
10 that indicate your agreement with the response?

11 A It does.

12 Q And the positions taken within that
13 response?

14 A Was that the request for the adjusted
15 standard should be denied.

16 Q So in signing off on it, you were in
17 agreement with that position?

18 A Yes, that was my position, yes.

19 MR. SAWYER: Thank you, Mr. Kolaz.

20 HEARING OFFICER FRANK: All right. Mr.
21 Meason?

22 MR. MEASON: May I have a few seconds,
23 please.

24 HEARING OFFICER FRANK: Okay.

1 CROSS EXAMINATION

2 BY MR. MEASON:

3 Q Mr. Kolaz, were you ever consulted by
4 Agency personnel regarding Swenson Spreader's
5 adjusted standard petition?

6 A Yes.

7 Q Mr. Kolaz, are you aware that the
8 Agency's official position was that you were not
9 consulted during the consideration of Swenson
10 Spreader's adjusted standard petition?

11 MS. SAWYER: Objection. What is the
12 basis of that?

13 MR. MEASON: The basis is your answer to
14 my interrogatory. You failed to list Mr. Kolaz in
15 your answer to interrogatory. So either you --

16 MS. ARCHER: Which interrogatory?

17 MR. MEASON: Number 5, identify every
18 person consulted, either directly or indirectly
19 during IEPA's consideration of Swenson Spreader's
20 adjusted standard petition.

21 HEARING OFFICER FRANK: Please proceed,
22 Mr. Meason.

23 Mr. Kolaz, do you remember the question?

24 THE WITNESS: Yes. I think it might be a

1 matter of terminology. My --

2 Q (By Mr. Meason) Did you state you were
3 consulted, correct?

4 A Yes, but I think the --

5 Q Thank you.

6 HEARING OFFICER FRANK: Mr. Meason, I am
7 going to allow him to explain what the context of
8 being consulted was.

9 Please continue.

10 THE WITNESS: Well, the context I took it
11 in was in a very broad sense that I had
12 discussions, you know, with people involved with
13 Swenson's. My role, though, was in the actual
14 final decision making. It was not in a consulting
15 type of role. So, actually, I think it would be
16 more proper to say that I consulted people in
17 making the final decision as opposed to me being
18 consulted by the people.

19 HEARING OFFICER FRANK: Okay. Mr.
20 Meason, please continue.

21 MR. MEASON: May I have a moment,
22 please.

23 HEARING OFFICER FRANK: Off the record.

24 (Discussion off the record.)

1 MR. MEASON: I have nothing further.

2 HEARING OFFICER FRANK: Let's go off the
3 record.

4 (Discussion off the record.)

5 HEARING OFFICER FRANK: Back on the
6 record.

7 Before we address the briefing schedule,
8 I need to again make a witness creditability
9 statement that I found all the witnesses to be
10 credible.

11 We have had a discussion off the record
12 about the date for the response to the fourth
13 amended petition and when that will be due. The
14 Agency has agreed to file that on or before June
15 20th, with the understanding that mail is filed for
16 Board purposes but that the document either needs
17 to be faxed or overnighted no later than 5:00 on
18 the 20th to Mr. Meason so that he has it in order
19 to prepare his brief. I guess it can be after 5:00
20 on the 20th as long as it is going to arrive the
21 next day at a reasonable time.

22 MS. SAWYER: Yes.

23 HEARING OFFICER FRANK: Not at 5:00 the
24 next day, one of the earlier Federal Express

1 options.

2 Mr. Meason's brief will be due on behalf
3 of Swenson on July 7th.

4 Ms. Sawyer and/or Ms. Archer's response
5 brief will be due on July 21st on behalf of the
6 IEPA.

7 The reply brief from Swenson will be due
8 on July 28th. Again, the brief from Swenson on
9 July 7th needs to be overnighted or faxed to the
10 Agency representatives, and the brief on the 21st
11 also so that all parties have it as quickly as
12 possible because we have such a quick turn around
13 time.

14 The record will officially close on July
15 28th. If Swenson decides to waive its reply brief
16 due July 28th, then the record will close on July
17 21st and the Board can begin deliberation.

18 If any members of the public wish to file
19 written public comment they may do so up until June
20 20th. They will be accepted up to that date. That
21 gives the parties a chance to address them in their
22 briefs.

23 I also need to state on the record that
24 we -- the Agency has decided at this time that it

1 does not believe it will need a third hearing and
2 so we have not continued on the record for a third
3 hearing. The option is open. If the Agency
4 decides that it needs to file a motion for a third
5 hearing date it will have to explain why and
6 Swenson will get a chance to respond at that time.

7 Is there anything further on the record?

8 MS. SAWYER: No.

9 MR. MEASON: No.

10 HEARING OFFICER FRANK: Okay. Then this
11 hearing is closed. Thank you.

12 (Petitioner's Exhibits 1
13 through 23 and Respondent's
14 Exhibits 1 through 6 retained
15 by Hearing Officer Frank.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 312
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 21st of
9 May, A.D., 1997, at 600 South Second Street, Suite
10 402, Springfield, Illinois, in the matter of the
11 Petition of the Louis Berkman Company, d/b/a the
12 Swenson Spreader Company, for an Adjusted Standard
13 from 35 Illinois Administrative Code, Part 215,
14 Subpart F, in proceedings held before the Honorable
15 Deborah L. Frank, Hearing Officer, and recorded in
16 machine shorthand by me.

17 IN WITNESS WHEREOF I have hereunto set my
18 hand and affixed my Notarial Seal this 2nd day of
19 June A.D., 1997.

20

21

22 Notary Public and
23 Certified Shorthand Reporter and
Registered Professional Reporter

24 CSR License No. 084-003677
My Commission Expires: 03-02-99