

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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5 IN THE MATTER OF:

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7 TIERED APPROACH TO CORRECTIVE No. R97-12(B)

8 ACTION OBJECTIVES: AMENDMENTS R97-12(C)

9 TO 35 ILL. ADM. CODE 742 (Rulemaking - Land)

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14 Proceedings held on January 12, 1998, at 1:30

15 p.m., at 600 South Second Street, Third Floor

16 Conference Room, Springfield, Illinois, before the

17 Honorable Amy Muran Felton, Hearing Officer.

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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

(January 12, 1998; 1:30 p.m.)

HEARING OFFICER FELTON: Good afternoon. My name is Amy Muran Felton, and I am the hearing officer in this proceeding. I would like to welcome you to this hearing entitled In The Matter of: Tiered Approach to Corrective Action Objectives, Amendments to 35 Illinois Administrative Code 742, docketed by the Board as R97-12(C).

Present today on behalf of the Pollution Control Board and seated to my right is Board Member Joseph Yi. Seated to the right of Board Member Yi is John Knittle, Attorney Assistant to Board Member Yi. Seated to my left is Anand Rao of the Board's technical unit.

In the back I have placed notice list and service list sign up sheets. Please note that if your name is on the notice list, you will receive copies of the Board's opinions and orders. If your name is on the service list you will receive copies of all documents filed by all parties to the service list in this proceeding.

Keep in mind that if your name is on the service list you are also required to provide copies of all documents you file with the Board to all parties on

1 the service list. You are not precluded from
2 presenting testimony or questions if your name is not
3 on either of those lists. If you have any additional
4 questions about that please contact me after this
5 proceeding.

6 The hearing will be governed by the Board's
7 procedural rules for regulatory proceedings. All
8 information which is relevant and not repetitious or
9 privileged will be admitted pursuant to 35 Illinois
10 Administrative Code 102.282. All witnesses will be
11 sworn and subject to cross-questioning.

12 The proposed amendments to Part 742 were adopted
13 by the Board on December 4, 1997. They are intended
14 to fulfill the mandates of Title 17 of the
15 Environmental Protection Act. Title 17 was added to
16 the Act by Public Act 89431 which was signed and
17 became effective on December 15, 1995.

18 The original TACO rules were adopted in Docket A
19 on June 5, 1997, and became effective on July 1,
20 1997. Docket B was opened on May 1, 1997, and adopted
21 on December 4, 1997. Docket B addressed a single
22 issue relating to mixtures of similar acting
23 carcinogens and noncarcinogens in soil and groundwater
24 at Tiers 1, 2 and 3.

25 The Board subsequently opened Docket C on December

1 4, 1997, to amend certain sections of Part 742. On
2 December 3, 1997, in Docket R97-12(B) the Site
3 Remediation Advisory Committee and the Environmental
4 Protection Agency filed a joint motion to correct
5 Appendix A, Table H, entitled Chemicals Whose Tier 1
6 Class Groundwater Remediation Objective Exceeds the 1
7 in 1,000,000 cancer risk concentration.

8 In the joint motion the SRAC and the Agency
9 request that the Board make a correction to Table H at
10 final notice under Docket B of that rulemaking. In
11 the joint motion the SRAC and the Agency state that
12 upon reviewing the numeric contaminant levels set
13 forth under the 1 in 1,000,000 cancer risk
14 concentration included within Table H, they have
15 concluded that the numeric contaminant levels are
16 based on a 70-year exposure duration. The SRAC and
17 the Agency maintain that use of a 70-year exposure
18 duration rather than a 30-year exposure duration as a
19 basis for those Table H levels was not intended. It
20 is technically inconsistent with other aspects of Part
21 742 which are based on a 30-year exposure duration.

22 At that point, however, in the Docket B rulemaking
23 process the Board could not correct Table H consistent
24 with the Illinois Administrative Procedural Act.
25 Accordingly, the Board adopted Docket B as final on

1 December 4 and opened a new Docket C on December 4.
2 The purpose of this Docket C is to consider the merits
3 of the joint motion and any evidence in support
4 thereof.

5 The SRAC and the Agency also identified three
6 other tables besides Appendix A, Table H, that
7 required correction as a result of the correction to
8 Table H. Those tables are Appendix B, Table C;
9 Appendix B, Table D, and Appendix C, Table I. The
10 Board at that time on December 4, 1997, also opened
11 additional sections in 742 in order to make some
12 nonsubstantive, grammatical, typographical, mechanical
13 changes. Those sections are identified as Section
14 742.210, 742.310, and 742.900.

15 At first notice in Docket C the Board also opened
16 Section 742.415, 742.510, 742.810, and 742.1015 to
17 make what it had determined were nonsubstantive,
18 grammatical, typographical, and mechanical changes.
19 Upon speaking with the Joint Committee on
20 Administrative Rules, however, it was determined that
21 those changes had already been reflected in JCAR's
22 version of the rules. Consequently, it was
23 unnecessary to amend those sections already open.
24 Therefore, these sections will not be considered by
25 the Board in Docket C.

1 The purpose of today's hearing is to allow the
2 Agency to present testimony in support of this
3 proposal and to allow questioning of the Agency. We
4 will then allow for any additional testimony regarding
5 these proposed amendments as well as any further
6 questioning of any witnesses. We have received one
7 prefiled testimony from Tracey Virgin of the Agency.
8 Prefiled testimony was due on January 5, 1998.
9 However, the Agency filed its testimony on January 6,
10 1998, with a motion for leave to file its late
11 prefiled testimony. The Board grants the Agency's
12 motion.

13 Afterwards we will allow for the Agency to present
14 any supplemental testimony they may have regarding the
15 proposal. Subsequently, we will allow for questioning
16 of the Agency. I prefer that during the questioning
17 period you please raise your hand and identify
18 yourself and the organization that you represent, if
19 any.

20 Other than that, if there is no other questions we
21 will proceed with the Agency's testimony at this
22 time. Seeing that there is none, I will turn it over
23 to the Agency if you would like to proceed.

24 MS. ROBINSON: Good afternoon. My name is
25 Kimberly Robinson. I am an attorney for the Illinois

1 Environmental Protection Agency. With me today to my
2 immediate left I have Gary King, and to my right,
3 Tracey Virgin and Tom Hornshaw.

4 At this time I would like to turn it over to
5 Tracey Virgin Hurley, her married name, for her
6 summary of testimony.

7 (Whereupon the witness was sworn by the Notary
8 Public.)

9 T R A C E Y E. V I R G I N H U R L E Y,
10 having been first duly sworn by the Notary Public,
11 saith as follows:

12 MS. VIRGIN-HURLEY: Good afternoon. My name is
13 Tracey Virgin. I am an Environmental Toxicologist
14 with the Office of Chemical Safety of the Illinois
15 Environmental Protection Agency. I have been with the
16 Agency for nine years. I have a Master of Public
17 Health Degree with a specialization in Environmental
18 Health and a Bachelor of Science Degree with a major
19 in Biology.

20 I am going to summarize the Agency's proposed
21 corrections to 742. Today the Agency is proposing
22 some housekeeping changes to the 742 rules in the form
23 of updating some information, correcting some numbers,
24 and clarifying some language. The Agency has two
25 corrections to make to Appendix A, Table H. First,

9

1 when the Agency originally calculated the 1 in
2 1,000,000 cancer risk concentrations in Table H, an
3 incorrect exposure duration of 70 years was used.

4 The values listed in today's amendments are based
5 on the correct exposure duration of 30 years, which is
6 the value specified in Appendix C, Table D, for
7 equation R25. Both ASTM guidance and the U.S. EPA's
8 SSL guidance specify a residential exposure duration
9 of 30 years, and the Agency had intended to use an
10 exposure duration of 30 years.

11 Second, when we changed these values, we noticed
12 that there were three chemicals listed in Table H that
13 no longer had Tier 1, Class 1 groundwater remediation
14 objectives exceeding the 1 in 1,000,000 cancer risk
15 concentrations. The Agency proposes deleting those
16 chemicals from Appendix A, Table H. The proposed
17 amendments to 742.805 (C) and (D) are the direct
18 result of a conversation that I had with Marc
19 Marszalek of Andrews Engineering.

20 I was trying to walk Marc through 742.805 to
21 clarify how to assess mixtures of similarly acting
22 chemicals and how to use the values in Appendix A,
23 Table H, when we realized that 742.805, as currently
24 written, was not clear on this issue and should be
25 re-written. So the intent of the proposed amendments

1 is to make it clear that the equation given in 742.805
2 (C) should be used for noncarcinogenic contaminants of
3 concern. The proposed amendments to 742.805 (D)
4 specify that the equation that is given in (C) with
5 some modifications and Appendix A, Table H, should be
6 used for carcinogenic contaminants of concern.

7 The Agency would like to take this opportunity to
8 update a reference, also. The SW846 reference in
9 742.210 has been updated by the formal adoption of
10 update three, dated December 1996 in the Federal
11 Register on June 13, 1997, Volume 62, page 32452.
12 SW846 is a dynamic document that changes when new data
13 and advances in analytical techniques are incorporated
14 into the manual in the form of new or revised
15 methods. In SW846, the update process consists of
16 insertion of new methods, replacement of updated
17 methods, and occasionally deletions of methods. An
18 entirely new document is not printed, just the
19 revisions.

20 By publishing the announcement in the Federal
21 Register, the U.S. EPA has made update three
22 officially part of SW846. Update three method should
23 be used in place of earlier versions of SW846.
24 Therefore, the reference in 742.210 should be changed
25 to test methods for evaluating solid waste, physical

1 chemical methods, SW846, third edition, final update
2 three, December 1996.

3 That concludes my statement.

4 MS. ROBINSON: Ms. Hearing Officer, I have a copy
5 of that document, the front page of it, if you need
6 that for reference purposes.

7 HEARING OFFICER FELTON: Okay. Thank you very
8 much. At this time are there any questions of the
9 Agency?

10 MR. MARSZALEK: I have a question.

11 HEARING OFFICER FELTON: Please proceed. State
12 your name.

13 MR. MARSZALEK: My name is Marc Marszalek, with
14 Andrews Environmental Engineering. I represent the
15 National Solid Waste Association on the SRAC
16 Committee.

17 Ms. Virgin, to clarify a typographical error on
18 Table H, Appendix A, Table H, it is my understanding
19 that benzopyrene should be .000012 instead of the way
20 it was recorded in the Subdocket B. In other words,
21 they forgot to slash out basically one zero in the
22 requirement. As it is currently listed there are five
23 zeros and a one 12, instead of four zeros and a 12.

24 MS. VIRGIN-HURLEY: It appears that you are
25 correct. The Board's copy does have five zeros in it.

12

1 MR. MARSZALEK: I think it is just a typographical
2 error.

3 HEARING OFFICER FELTON: Any further questions,
4 Mr. Marszalek?

5 MR. MARSZALEK: That's all I have.

6 HEARING OFFICER FELTON: Are there any other
7 questions right now?

8 I had a couple of questions of Ms. Virgin related
9 to Appendix B, Table C. It is our understanding that
10 the Agency requests a value be changed for
11 2,4,6-Trichlorophenol. Could you explain why that
12 change is necessary?

13 MS. ROBINSON: Excuse me. Would it be okay to
14 answer in panel format? I think that Dr. Hornshaw
15 might be --

16 HEARING OFFICER FELTON: As long as Dr. Hornshaw
17 is sworn in, that would be fine.

18 MS. ROBINSON: Okay. Would you swear Dr. Hornshaw
19 in, please.

20 (Whereupon the witness was sworn by the Notary
21 Public.)

22 DR. HORNSHAW: I believe that is just a correction
23 of a typo that was in the earlier version.

24 HEARING OFFICER FELTON: Okay. Yes. State your
25 name, please.

1 MS. ROSEN: I am Whitney Rosen with the Illinois
2 Environmental Regulatory Group. I just wanted to
3 clarify, for the record, that you are talking about
4 the 2,4,6-Trichlorophenol and then the change from .26
5 to the .29?

6 HEARING OFFICER FELTON: Correct.

7 MS. ROSEN: Okay. I wasn't sure if it was clear
8 for the record.

9 HEARING OFFICER FELTON: Thank you.

10 MS. ROSEN: We were just trying to -- is that
11 correct?

12 HEARING OFFICER FELTON: Yes. Thank you.
13 Appendix B, Table C. Are there any further questions
14 regarding Appendix B, Table C?

15 I have another question relating to Appendix B,
16 Table D and, again, for the chemical
17 2,4,6-Trichlorophenol. There are six calculations
18 that are proposed to be changed beginning under the
19 first column for pH 4.5 to 4.74. That change is
20 requested to be made as 1.9, of 1.9 value.

21 The next column is pH 4.75 to 5.24, and the
22 requested change is that the value be changed to 1.8.
23 The next column is pH 5.25 to 5.74, and the requested
24 change is that the change of the value be made so it
25 reflects a 1.7 value. Then the fourth change is in

14

1 column pH 5.75 to 6.24, and that requested change is
2 that the value read 1.4. The next column is pH 6.25
3 to 6.64, and the requested change is that the value
4 read 1.0. The final change is pH 6.65 to 6.89, and
5 the requested change is that the value read .77.

6 Can you explain why these changes are necessary?

7 DR. HORNSHAW: These changes were necessary to
8 account for how the Agency in the past has derived the
9 equivalent of a health advisory for Class 2
10 groundwater. For the most part we have been making
11 the decision on the equivalent of a health advisory
12 for Class 2 groundwater based on how mobile the
13 chemical is in the soil. We have been basing this
14 decision on whether a chemical is mobile or not mobile
15 with the comparison against a benchmark chemical,
16 ethyl benzene and comparing the organic carbon
17 partition coefficient of the chemical of concern
18 against that of ethyl benzene.

19 In the case of ionizing compounds like
20 2,4,6-Trichlorophenol where the organic carbon
21 partition coefficient changes with pH, the decision on
22 whether to multiply the Class 1 health advisory by
23 five times or one time depending on whether it is not
24 mobile in soil or mobile in soil, there is a break
25 point between pH 6.65 and 6.9 that crosses over that

1 threshold of where we compare against the organic
2 carbon partition coefficient for ethyl benzene.

3 That change was pointed out to us by Mr. Marszalek
4 and we agreed with him that the pH or the organic
5 carbon partition coefficient changed from lower than
6 that of ethyl benzene to higher than that of ethyl
7 benzene at this point, so we multiply the previous
8 value by five at that point. That's why this change
9 was made.

10 HEARING OFFICER FELTON: Thank you. Turning now
11 to Appendix C, Table I, there are four requested
12 changes for Dinoseb, starting with pH 4.5. The
13 changes that this reads 3.00 e plus 04. The next
14 change for Dinoseb, pH 4.6 reads 2.71 e plus 04. The
15 next change is for pH 4.7 for Dinoseb that it read
16 2.41 e plus 04. The last change requested is for pH
17 4.8 for Dinoseb that it read 2.12 e plus 04.

18 Again, can you explain why these changes are
19 necessary?

20 DR. HORNSHAW: These were typos that we didn't
21 catch the first time through.

22 HEARING OFFICER FELTON: Thank you. With regard
23 to the requested change at 742.210 regarding the SW846
24 reference, can you explain whether or not this
25 reference will be continually updated and if so how

1 often, if you can speculate?

2 DR. HORNSHAW: It is updated as necessary. The
3 U.S. EPA puts out updates on this at irregular
4 intervals depending on advances in analytical
5 chemistry. At the current time there are no proposed
6 updates.

7 HEARING OFFICER FELTON: Thank you. I just need
8 to take one minute, please.

9 (Discussion off the record.)

10 HEARING OFFICER FELTON: All right. Back on the
11 record.

12 I have one other question now regarding the
13 proposed changes at Section 742.805 C and 805 D. As
14 you currently know, those sections are not open right
15 now in this docket and the Board will have to assess
16 whether or not this is possible to do. But just to
17 kind of make this record complete, I wondered if you
18 could explain to us what is the effect for the
19 practitioner if these changes are not made and the
20 rule continues to read as it does at this section?

21 MS. VIRGIN-HURLEY: The effect would be that --
22 well, the language as it stands now is just a little
23 vague. The effect would be that there would be some
24 confusion as to how to assess mixtures and how to use
25 Appendix A, Table H.

1 MS. ROBINSON: May I ask a question?

2 HEARING OFFICER FELTON: Sure.

3 MS. ROBINSON: How many calls would you say that
4 the Office of Chemical Safety has received on this
5 issue for clarification?

6 MS. VIRGIN-HURLEY: Maybe half a dozen.

7 MS. ROBINSON: Do you anticipate a lot more calls
8 if the change is not made?

9 MS. VIRGIN-HURLEY: Yes.

10 MR. RAO: I just had a question on 805 Subsection
11 D, where the proposed language says that they could
12 use the equation in 805, Subsection C, to demonstrate
13 the cumulative risk does not exceed 1 in 10,000. Was
14 this discussed in the TACO Docket A, that it is
15 acceptable to use the equation?

16 MS. VIRGIN-HURLEY: We believe that it is in
17 Docket B.

18 MR. RAO: Okay. Docket B. So if JCAR has some
19 questions we can at least point to them that it was
20 discussed before, for the record. Thanks.

21 HEARING OFFICER FELTON: I just had one other
22 clarification at Section 742.310 (b) (1) (a). As I
23 mentioned, the Board, on its own motion, opened
24 additional sections in Docket C to make some
25 clarification and nonsubstantive changes. I just

18

1 wanted to ask whether or not Dr. Hornshaw or Ms.
2 Virgin had any objection to adding the proposed
3 "within ten feet of," that phrase, in Subsection (a)
4 (1) (a) in the two places within this section where it
5 is reflected?

6 MS. VIRGIN-HURLEY: No, we have no objections. It
7 was the Agency's intent.

8 HEARING OFFICER FELTON: For clarification, that
9 was actually Subsection (b) (1) (a). Excuse me.
10 Thank you.

11 Okay. Are there any other questions at this time
12 for either of the Agency's witnesses? Seeing that
13 there are no further questions or if there are we will
14 entertain them at this time, otherwise we will proceed
15 to adjourn this meeting. Are there any other
16 questions?

17 MS. ROSEN: Yes.

18 HEARING OFFICER FELTON: Yes, Ms. Rosen.

19 MS. ROSEN: Whitney Rosen, from the Illinois
20 Environmental Regulatory Group. We don't have
21 questions, per se, but with me today are Harry Walton
22 and Marc Marszalek that are members of the Site
23 Remediation Advisory Committee, and we were wondering
24 if it would be possible for them to make some brief
25 statements.

1 HEARING OFFICER FELTON: That would be fine.

2 MS. ROSEN: Okay.

3 HEARING OFFICER FELTON: If either one of them
4 would like to proceed once they are sworn, that is
5 fine.

6 (Whereupon the witnesses were sworn by the Notary
7 Public.)

8 MS. ROSEN: I think Harry will begin.

9 H A R R Y W A L T O N,
10 having been first duly sworn by the Notary Public,
11 saith as follows:

12 MR. WALTON: My name is Harry Walton. I am the
13 Chairman of the Site Remediation Advisory Committee on
14 behalf of the Illinois State Chamber, and I am on
15 retainer to the Illinois Environmental Regulatory
16 Group. My statement would basically -- I am aware of
17 a number of different discussions, dialogue going on
18 between one of the SRAC members, Marc Marszalek, and
19 the Agency about the correctness of some of the
20 formulas and some other issues and the potential
21 typos.

22 I only request that we take the appropriate amount
23 of time to get these reconciled before we proceed to
24 second notice and finalize this docket so that we
25 don't have to revisit this again, Docket D, E, F, so

20

1 hopefully we can take the appropriate amount of time
2 to resolve this. With that, I will hand off to Mr.
3 Marszalek.

4 HEARING OFFICER FELTON: Thank you.

5 MS. ROBINSON: I have one question.

6 HEARING OFFICER FELTON: Please proceed.

7 MS. ROBINSON: Mr. Walton, are you talking about
8 the amendments that are proposed here or potential
9 additional amendments?

10 MR. WALTON: I would have to defer to Mr.
11 Marszalek.

12 MS. ROBINSON: Okay.

13 M A R C M A R S Z A L E K,
14 having been first duly sworn by the Notary Public,
15 saith as follows:

16 MR. MARSZALEK: I am Marc Marszalek with Andrews
17 Environmental Engineering. I represent the National
18 Solid Waste Association on the SRAC committee.

19 During my calculations -- and I will introduce
20 Rhon Hasenyager in the back. We got into the Table H
21 and started to look at the -- we have, basically, a
22 computer program that takes a look at how the
23 functioning of these numbers are produced via the
24 table. In that we found out the duration factor from
25 70 to 30 years was the Table H correction, and that

1 was basically made in this subdocket.

2 And then since that even the mere typo of
3 benzopyrene drew some concerns from us on how many
4 other typos or a slip of a decimal point or something
5 else in some of the tables had occurred. So we
6 started to back calculate all the items off of Table H
7 and looking at all of the things that were brought up
8 under subdocket D and C as far as the add mixture rule
9 and how that would affect, because a lot of these
10 chemicals are in the add mixture rule.

11 As an example, I will use 2-Chlorophenol in
12 Appendix B, Table A, 2-Chlorophenol. That is a
13 cumulative effect in the reproductive system. So when
14 we looked at that, if you look at that table, the
15 Class 2 clean-up objective, 2-Chlorophenol is listed
16 as 4 and it should really be a 20, is what the correct
17 answer is. Again, I believe it was just a typo and a
18 carry over, because if you go to the other Appendix B,
19 Table B, which is the same item, 2-Chlorophenol, it
20 does have a 20 in the Class 2 groundwater standard.

21 So it is just a mere -- you know, there is
22 thousands and literally hundreds of thousands of
23 numbers here that are plugged in via someone typing
24 into these charts that there are going to be
25 mistakes. And so in that light, really the

1 2-Chlorophenol, the Class 2 groundwater standards, or
2 the Class 2 soil component standard in Appendix B,
3 Table A should be 20.

4 Another example of that would be Heptachlor which
5 is also on Table H. We went back and realized to get
6 to these numbers you use a series of formulas, 26
7 formulas, 28 formulas. All these formulas are inner
8 linked and all the numbers are inner linked into the
9 formulas. So just to change one item on Table H,
10 there is greater ramifications in how you got to that
11 number.

12 We got into Heptachlor in Appendix B, Table B, and
13 the industrial commercial ingestion number for
14 Heptachlor is 1, and it should really be 1.3. The
15 inhalation number under the industrial commercial
16 column is 11, and it should really be .22. The
17 construction worker inhalation number for Heptachlor
18 is listed as 16, and it should really be .3. And,
19 again, these are all just calculations that are just
20 typos in the charts. And those are the ones that we
21 have found currently and would just like to portray to
22 you that those should be changed so that they
23 represent the correct clean-up objectives in the
24 tables.

25 HEARING OFFICER FELTON: Are there any questions

1 for either Mr. Walton or Mr. Marszalek?

2 I actually had one question, Mr. Marszalek. Have
3 you, other than these -- just to clarify, are there
4 any other changes that you have noticed? Is there
5 anything else that you would like to put forth today?

6 MR. MARSZALEK: Not at this time. I mean, there
7 is a couple of other concerns we have. Again, it is
8 just clarification items. Pentachlorophenol in the
9 table has a sub item known as E and J.

10 HEARING OFFICER FELTON: What table are you
11 referring to?

12 MR. MARSZALEK: As an example, it would be
13 Appendix B, Table B, page 138, Pentachlorophenol, you
14 notice that the inhalation ingestion numbers have an E
15 and a J designated behind it which says that basically
16 your calculation is cut in half upon generation of
17 your answer. However, when you go to a Tier 2
18 calculation in the written text and how you are
19 supposed to calculate a Tier 2 equation, there is no
20 discussion about cutting the answer in half at the
21 conclusion of the calculation.

22 In Tier 1 you are picking a number off the table,
23 and it tells you how they arrived at that number. But
24 at Tier 2 the question should we or should we not cut
25 the number in half once you calculate it through the

1 formulas of Tier 2, and I believe that it would
2 probably have the same designator, E or J, and I
3 believe it is the J designator but, again, in actual
4 Tier 2 written wordage of how to do the calculations,
5 it does not tell you to do that. Again, just a
6 typographical, minor oversight.

7 HEARING OFFICER FELTON: When you are referring to
8 the changes at Appendix B, Table --

9 MR. MARSZALEK: At Appendix A, Table A -- excuse
10 me -- Appendix B, Table A, or Appendix B, Table B,
11 either one, both have Pentachlorophenol on it, which
12 would both have the same designator.

13 HEARING OFFICER FELTON: When you are looking at
14 those, you are looking at changes from Docket A,
15 right?

16 MR. MARSZALEK: Well, A, B or C. It is on
17 basically all of them. It is the same -- well, it is
18 not really a change. It is in the tables.

19 HEARING OFFICER FELTON: Mr. Marszalek, are you --
20 are you and Andrews, are you actually proceeding
21 through with some sort of an organized study to
22 confirm these numeric values throughout the whole TACO
23 regulations, or are you just sort of --

24 MR. MARSZALEK: We are trying, but it is extremely
25 time consuming. I will be honest with you, we

1 wouldn't have found this if it wasn't for having a
2 system to actually do it. It is literally that
3 complicated. I have got to admit, all the work that
4 has gone into this, from the Agency and SRAC and
5 everybody else, when you look at the complexity of
6 this regulation, the amount of formulas and the
7 calculations in here, these are extremely minor
8 changes.

9 Again, they are changes that should be done to
10 make the answers to the point of accuracy even better,
11 but there is literally hundreds of thousands of
12 combinations here, and when we added the add mixture
13 rule to the Tier 1 or basically calculated Tier 2, it
14 really complicated how you are going to have to come
15 up with those numbers.

16 HEARING OFFICER FELTON: Okay.

17 MR. MARSZALEK: We are working on it. I don't
18 know where we sit.

19 How far are we along, Rhon?

20 MR. HASENYAGER: Just through Table H.

21 MR. MARSZALEK: Probably 1 percent of 100,000
22 equations that are run or something. I mean, there is
23 literally that many. We probably would never get them
24 all, but as we are running them we are finding a few
25 here and there like I have shown today. Again, they

1 are minor, but they should be corrected.

2 HEARING OFFICER FELTON: Sir, in the back, I am
3 sorry, you answered that question. Your name is?

4 MR. HASENYAGER: My name is Rhon Hasenyager. I am
5 with Andrews Environmental Engineering.

6 HEARING OFFICER FELTON: Thank you.

7 MR. RAO: So this goes back to what Mr. Walton
8 said about the Board waiting until we get all these
9 typos and corrections in before we move on this? It
10 seems like this is kind of an indefinite process.

11 MR. WALTON: I said I think we should take the
12 sufficient time to allow this to be discussed. In my
13 experience, at most of the sites that are being --
14 that TACO is being utilized at, these issues are not
15 relevant. These are exceptions rather than the rules
16 for 99.9 percent of the sites. They will not even go
17 to this part of the regulation.

18 So most of the regulation, in my opinion, is
19 intact, it is workable, it is operating very
20 functional. But there are some aspects that we may
21 not be technically correct on select constituents.
22 The mixture rule, as we discussed in subdocket B,
23 confused many issues. This is the extension of that.
24 This is one of the reasons that we were -- that SRAC
25 was against the adoption of the mixture rule, because

1 of these issues. But the rule itself is intact and it
2 is functioning.

3 MR. RAO: So it would make more sense to have a
4 correction docket that is open for like a period of a
5 year or something like that which you can have all
6 these typos and minor corrections in and then the
7 Board can deal with it in one shot rather than doing
8 this over and over with different A, B, C, D dockets.

9 MS. ROBINSON: From the Agency's standpoint, I
10 already have a running list, a file that I am keeping
11 for possible amendments, not only to the appendices
12 but also to different parts of the text throughout the
13 rule that don't make it nonfunctional to keep
14 continuing with the rule as it has been adopted, but
15 are things that we were anticipating amending later
16 anyway. This, to me, sounds like we could continue to
17 work with the outside group and keep this file going
18 until such time as we come to a conclusion that we
19 have something of substance to give you.

20 MR. RAO: Yes, because right now we have only a
21 few sections open in this proceeding.

22 MS. ROBINSON: I think that the testimony you have
23 heard today are necessary changes to occur at this
24 time, but I think that if we come in through an
25 amendment rulemaking later with the rest of these that

1 would be a really good idea. Does anybody have --

2 MR. MARSZALEK: The only thing I can say is when
3 you are doing this, whenever you catch an item off of
4 Table H and you get into the add mixture rule, when
5 you come up with those clean-up objectives and if you
6 are not bouncing them against correct numbers in the
7 remediation objectives table, you may end up doing
8 more or less remediation depending on how your answers
9 fall out.

10 So to make the changes as quickly as possible is
11 important because it will impact when you are -- an
12 example, Heptachlor, when you go from 11 to .3, that
13 is a tremendous change. That's a tremendous change.
14 Again, I don't think Heptachlor -- I agree with Mr.
15 Walton, it is not running clean-up objectives or sites
16 here in the state, but other items such as what I
17 point out, benzopyrene is a very common constituent
18 and some of these others do. So it is important
19 trying to do it as quickly as possible, but leaving
20 the docket open maybe is the only answer. It is
21 easier just to change the add mix rule.

22 HEARING OFFICER FELTON: Are there any other
23 further questions for Mr. Walton or for Mr.
24 Marszalek? Are there any further questions now either
25 for any of the witnesses who have testified today?

29

1 I just wanted to clarify one thing, that as the
2 Board has accepted Ms. Virgin's prefiled testimony as
3 read, we would like that to be entered into the record
4 as if read if that is okay.

5 MS. ROBINSON: That's acceptable. Thank you.

6 HEARING OFFICER FELTON: I just have one follow-up
7 comment. If Mr. Marszalek or anyone present today has
8 any additional changes such as the ones Mr. Marszalek
9 identified, subsequent to the Agency's testimony, if
10 he or anyone else would like to provide written
11 comments identifying those changes with a little, you
12 know, information in support of those requested
13 changes I think the Board would appreciate that and
14 possibly consider it as a second notice in this
15 matter.

16 Yes, Ms. Rosen?

17 MS. ROSEN: Yes. Are you intending to schedule a
18 second hearing in this matter, and what is the time
19 frame for that?

20 HEARING OFFICER FELTON: At this time we haven't
21 considered that. Initially we intended that there
22 would be only one hearing although the Board has not
23 addressed that question again, in light of some of
24 this information. Since the first notice publication
25 occurred in Docket C on December 26, 1997, the first

1 notice period should end on February 9th. So what I
2 wanted to identify to all of you is that we would
3 request that any other public comments be sent to us
4 to the Board by that date. The mailbox rule will
5 apply to those filings. The Board will consider all
6 this information and proceed thereafter.

7 Prior to that, though, if another hearing is -- I
8 don't know -- requested or the Board deems necessary
9 they will do that, but that would need to be done
10 during the first notice period which, like I
11 identified, would end on February 9th.

12 MS. ROBINSON: You said the mailbox rule does
13 apply?

14 HEARING OFFICER FELTON: Yes. Are there any other
15 matters that need to be discussed at this time?
16 Seeing that there are no further matters, I would like
17 to thank everyone for their attendance and
18 participation. This hearing is hereby adjourned.
19 Thank you.

20 (The prefiled testimony of Tracey E. Virgin
21 Hurley, M.P.H., is attached to this transcript.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3

4 C E R T I F I C A T E

5

6 I, DARLENE M. NIEMEYER, a Notary Public in and for
7 the County of Montgomery, State of Illinois, DO HEREBY
8 CERTIFY that the foregoing 31 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 12th of January A.D., 1998, at 600 South
11 Second Street, Springfield, Illinois, In the Matter
12 of: Tiered Approach to Corrective Action Objectives:
13 Amendments to 35 Illinois Administrative Code 742, in
14 proceedings held before the Honorable Amy Muran
15 Felton, Hearing Officer, and recorded in machine
16 shorthand by me.

17 IN WITNESS WHEREOF I have hereunto set my hand and
18 affixed my Notarial Seal this 19th day of January
19 A.D., 1998.

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

25