

COOK PUBLIC HEARING TRANSCRIPTS

APRIL 28, 1994
SAUKVILLE VILLAGE HALL

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Good evening ladies and gentlemen. My name's Peter Flaherty. I'm an attorney with the Wisconsin Department of Natural Resources and I've been assigned to preside at this evening's hearing. The subject of the hearing before the Department tonight is as follows: Cook Composites and Polymers Co. or CCP of Saukville, Wisconsin is currently under an environmental protection agency, that is a US environmental protection agency, corrective action consent order issued pursuant to section 3000(8)(h) of the Resource Conservation and Recovery Act. That's also known as RCRA. You'll hear a lot of acronyms and if at any point these acronyms, like RCRA or EPA or DNR, or any other terms that you might hear, RFI or anything like that, don't make sense to you or cause some confusion please don't hesitate to raise your hand and I'm sure we'll be happy to explain what those terms are. Those of us who work in this area regularly get use to using them as shorthand and we sometimes forget that they aren't good English so don't hesitate to ask for an explanation if the terms don't make sense to you. In any event, this consent order that the company is currently subject to, thank you, is a corrective action consent order and corrective action is a term of art, it's a special part of the law governing hazardous wastes. We'll talk more about that a little later in the hearing to explain what corrective action is all about. But this order requires CCP to investigate potential soil and ground water contamination on it's property as well as any surrounding property that might have been effected. Due to delays associated with the company obtaining US EPA approval to begin it's investigations, the Wisconsin Department of Natural Resources or the DNR, has sent a letter to EPA on December 18, 1992 requesting that this corrective action project be implemented under the authority of state hazardous waste law section 144.735 of the Wisconsin Statutes. In a May 25, 1993 letter EPA authorized the DNR to implement corrective action at the company through a modification of the DNR approved plan of operation for the company's hazardous waste incinerator. On August 30, 1993 the company formally requested that it's plan of operation be modified to incorporate these corrective action provisions. And on November 30, 1993 DNR issued a draft plan approval modification that would impose these state equivalent corrective action requirements. Now once this plan approval modification takes effect, DNR would become the regulatory agency that is responsible for enforcement and oversight of the corrective action requirements at the company in lieu of EPA being the regulatory agency. On January 20, 1994 the WDNR distributed and published a notice of it's intent to modify the hazardous waste incinerator plan of operation for the company in order to incorporate these corrective action provisions. In response to that public notice the Department received a request from the Village for a public informational hearing and that's what we're here for tonight. This hearing is being held pursuant to section 144.62, sub. 15, of the Wisconsin Statutes and today is Thursday, April 28, 1994. We're being, we're located here in the community room of the Saukville Village Hall, 639 E. Green Bay Ave., Saukville, WI. Now the plan of operation approval for the incinerator, the DNR draft modification of that approval, the original EPA corrective action consent order, and other related documents have been available for public inspection and review at several locations. They've been available at the DNR headquarters office in Madison, at 101 S. Webster St., at the Bureau of Solid and Hazardous Waste Management. They've been available also at the DNR Southeast District Headquarters Annex at 4041 N. Richards St. in Milwaukee. The purpose of the informational hearing tonight is to receive additional public comments regarding the proposed transfer of authority from EPA to DNR regarding corrective action at the company's facility. Persons who wish to comment on this matter are invited to do so by presenting either oral or written comments at this hearing. Written comments will be given the same weight and affect as oral comments received tonight. As the presiding officer, I will conduct this

informational hearing in accordance with section NR 2.135 of the Wis. Adm. Code and I will afford all interested persons or their representatives the opportunity to present facts, opinions, or arguments relative to the proposal. As the presiding officer, however, I may place time limits on any individual presentation or oral statement in order to insure an opportunity for everyone to comment as well as to prevent undue repetition. Now that basically is the paraphrasing of the hearing notice that was signed by Secretary George Meyer of the DNR on the 22nd of March, 1994. Now the procedure that I plan to follow tonight involves the following: after my little spiel here, I'm going to call on a DNR representative to come up to the lectern and she will elaborate on the corrective action process, the proposal that is before us tonight and the companies situation. Following her presentation I believe we'll have an informal question and answer session. At that time if anybody here would like to ask a question, please just raise your hand, I'll call on you and I'll try to answer your question. If I can't answer your question, my job tonight is more or less to act as traffic cop here, I will direct your question to one of the other DNR people here tonight. We also have a couple of representatives for US EPA, Region 5, Chicago and we also have a representative of the company and an attorney for the company. In addition, of course we have officials from the Village of Saukville so I'm sure we'll all try and answer questions as appropriate. Following the informal question and answer session I will then go through this list of appearances which right now is fairly short and anyone who has indicated that they wish to make an oral statement, I would ask at that time when I call your name to come up to the lectern and give your oral statement and then I call the next person and so on and so forth. Now, tonight the nature of this hearing is like a legislative hearing, it's not like court trial. Nobody is going to be under oath. Nobody is going to be subject to cross examination except perhaps by me. I reserve that right to ask clarify questions and I also have the right if someone in the audience has a question of a clarifying nature that you'd wish to ask of someone who's made a formal comment, I may allow that question but basically I would request that you direct your comments and questions to me as the official Department representative here tonight. Now following this hearing, all the comments that we receive, whether they are oral or written, will be reviewed by the Department of Natural Resources Hazardous Waste Management staff. We will summarize all significant comments and we will prepare written responses to those comments. That document, the comment and the responses, will be taken into consideration by the DNR when it makes it's final decision on this matter and it will become a part of the administrative record that the decision is based upon. Those are all public documents and anyone who wishes may obtain a copy of our comment responsiveness memo as well as receive a copy of our final decision when it is made. I'm not sure how long it will take for us to make our final decision because that in part is a function of how many comments we receive and how long it takes us to prepare written responses to those. Now in preparing written responses I want to understand that we will not be mailing those out to each individual who made the comment but rather those responses are for the public record and for anyone who is interested in reviewing the public record. They are really for our own use in going through the decision making process but as members of the public, these are open records and you're entitled to copies of them, you're entitled to review the file at any time as you have been from the beginning in this matter. Now before we proceed are there any questions at this time about the nature of the hearing tonight or how I intend to conduct it? Ok, at this time I'd like to introduce Jill Fermanich who is a hydrogeologist with the

Department of Natural Resources in our central office in Madison. Jill, if you'd like to proceed.

Thank you. Well, as Mr. Flaherty said my name is Jill Fermanich and I'm a hydrogeologist with the Wisconsin Department of Natural Resources. As part of my duties, I'm responsible for technical review of any reports or plan submittals that are submitted to us on behalf of Cook Composites and Polymers. And also as Mr. Flaherty stated the proposal we are here to discuss tonight regards the Wisconsin Department of Natural Resources intent to modify the plan of operation approval to enable the transfer of oversight for correction action requirements of Cook Composites and Polymers in Saukville from US EPA to WDNR in accordance with section NR 680.075(b) of the Wis. Adm. Code. The transfer will take place when corrective action requirements are made part of the companies WDNR plan of operation approval and US EPA concurrently withdraws it's corrective action consent order. In order to help you understand why this proposal has come about, I'd like to give you some background on the issue and then explain where Cook is in this process. In 1976 Congress passed the Resource Conservation and Recovery Act also known as RCRA which set forth the initial regulatory framework for managing hazardous waste. This legislation was significantly modified in 1984 in order to expand the existing authority and correct a number of problems with implementing the original law. As part of the 1984 amendments US EPA was given the authority to issue administrative orders under section 3008(h) of RCRA to require corrective action at a facility when there is evidence that a release of hazardous waste has occurred into the environment. These corrective action orders typically require the facility to preform an investigation to determine the degree and extent of contamination and then to develop and implement a plan for cleanup. The orders may be issued unilaterally by US EPA or as a consent order between the regulating agency or agencies and the regulated facility. When Congress enacted RCRA it intended that each individual state would eventually assume responsibility for administrating RCRA within their own state with oversight from US EPA. The rational for this was that states are more familiar with the regulated community and are in a better position to administer the programs and respond to specific state and local needs most effectively. The process that a state must undergo to obtain the responsibility for implementing RCRA is called "Authorization" and it involves developing a state hazardous waste program that meets with US EPA's approval. In order for a state to receive authorization it's program must be fully equivalent to no less stringent than and consistent with the federal program. However, federal law allows states to impose requirements that are more stringent than the federal requirements. Now how does the Cook facility in Saukville fit into this? On October 21, 1987 a consent order was signed by representatives of WDNR, US EPA Region 5, and Freeman and as you all know the Cook facility was formally owned by Freeman. The order required continuing corrective measures and cleanup at the facility. On April 24, 1992, US EPA authorized the State of Wisconsin to implement the RCRA corrective action program to address releases from facilities in Wisconsin which require a hazardous waste managing license. On December 18, 1992, WDNR sent a letter to US EPA that requested that funding be provided to allow WDNR to impose state equivalent corrective action at Cook in order to move the project forward in a timely manner. This request was also made for a number of other facilities in Wisconsin at the same time. On May 25, 1993, US EPA responded to the December 18, letter and indicated that WDNR could use state authority to impose correction action by modifying Cook's plan of operation approval for the companies hazardous waste incinerator. On August 30, 1993 Cook formally

requested that it's plan of operation be modified by WDNR to incorporate the corrective action provision and on November 30, 1993, WDNR issued a draft plan approval modification to impose state equivalent corrective action requirements. A plan approval modification of this type constitutes a major modification according to section NR 680.07 of the Wis. Adm. Code and therefore requires a public participation process. The requirements of this public participation process include the following: the first is that a notice of preliminary determination be issued in a major local newspaper of general circulation in the area where the facility is located and by mailing copies of the notice to interested parties and by broadcast over local radio stations and in this case the preliminary determination was the draft plan of operation approval modification for the incinerator at Cook. The second requirement for the public participation process is to hold a 45 day written comment period beginning on the day the notice of preliminary determination is published in the newspaper. Another requirement is preparation of a fact sheet. A public informational hearing may be requested during the 45 day written comment period and if so the WDNR must hold one. Responses to comments received during the written comment period and during the hearing must be issued and lastly a final determination will be issued based upon the administrative record which will include consideration of all significant comments received during the written comment period and at any informational hearing. On January 20 of this year WDNR distributed and published a notice of it's intent to modify the hazardous waste incinerator plan of operation. In response to that notice WDNR received a request for a public informational hearing which is being held this evening.

Thank you very much. Now at this time I'd like to open it up to a general informal question and answer session. We'll try and field your questions as best we can. Sir, you had a question.

You were going to clarify statements or something.

Sure, what we'll . . .

Can we ask more than one question during this . . . ?

Yeah, I'd like for everybody to have a chance but why don't you start.

Can you give me the date that you said Wisc, er EPA, authorized WD, gave Wisconsin DNR to enact their RCRA program under state authority?

The day we received authorization from EPA?

Or, for which part? The area we are talking about tonight or?

Well, the way I heard the speech was that, and that's a key issue there is, did the EPA come to the DNR and say please enforce RCRA at a certain date?

No. Um,

Or did I hear that wrong?

I think there is a little confusion here. Ever since Congress passed the RCRA law, the objective of the legislation has been for the states, not just Wisconsin but for all of the states, to eventually have their own regulatory

programs and be responsible and the way these environmental programs work is that there are many components to them. And typically a state will adopt it's own laws and it's own rules that are similar to the federal ones a bit at a time and when we get one chunk dealing with one part of the hazardous waste program on the books we then submit an application to EPA and say look we think we're equivalent or more stringent than you are now in regard to say the regulation of landfills. What do you think, are we or aren't we? EPA reviews the application and if they agree we then become authorized for that part of the RCRA program. And so it goes on . . .

As you involve your programs . . .

piece by piece by piece. Now, as Jill explained the corrective action requirements were added to the federal hazardous waste law by Congress in 1984. Wisconsin, at the state level, did not get the state statutory authority to impose corrective action until I think it was May 3, 1988 when our state legislature passed the specific statutes that we needed for corrective action enforcement and implementation. It then took us a period of time after that to adopt the administrative rules which also have the force of law and finally put that all together into a package to show that we had adequate legal authority and the adequate staff and the financial resources submitted to EPA for them to look at it and say ok DNR we now think you are qualified to run the corrective action component of RCRA. But bare in mind that's just one part of the hazardous waste program. There are many different components and until we receive that authorization we participated in EPA's administration of the corrective action program more or less like a consultant to EPA. Our staff people would draft these consent orders that were signed by companies like Cook and others, we would draft them and send them down to Chicago. The attorneys, and the engineers, and the technical people in Chicago EPA office would put the finishing touches on them. They would take the lead in the negotiations on these orders and they would have the enforcement authority since Wisconsin was not yet legally in a position to do any enforcement. Now that has changed. We are now capable of independently operating a corrective action program. Does that res . . .

Yeah, that answers it.

Yeah, ok.

Yeah, I think it was about two, two, two years ago Wisconsin got authorized. There are six states in our Region. Illinois, Indiana. . .

I'm sorry this is Chuck _____, he is with Region 5 of EPA.

Like I said, six states, Wisconsin, Minnesota, Illinois, Indiana, Ohio and Michigan. Three out of the six states are authorized for corrective action. The Western states, Illinois, Minnesota and Wisconsin are all authorized. The most recent is Wisconsin which is two years ago.

As they get to things of course they become authorized to _____

Right, correct. Probably it was back in January of '86 when Wisconsin was _____ authorized with what is called a basic RCRA program and then they develop more rules and more requirements came in under the federal program then _____ .

Now one thing that has occurred is under this corrective action part of the hazardous waste regulatory program is that we had something like what was it seven or eight federal consent orders that were previously issued plus there were corrective action requirements in some federal licenses that had been issued to facilities in Wisconsin. There are two ways of imposing corrective action requirements, by order or by license or permit. In Wisconsin a plan approval is a document that is legally enforceable and it's sort of a precursor to a license. You get a plan approval with conditions in it for corrective action, you have to comply with those, they have the force of law, there are penalties for violating them and you can't get a license unless you have an approved plan. So, it's another vehicle or vessel for imposing corrective action. Orders are one vehicle, the licensing or permitting process is the other and one component of the permitting process or licensing process is the plan approval. What we're proposing tonight is to take what was a federal order and translate those _____ requirements into a state plan approval requirement which will eventually will become part of the license requirements for the facility. Now as it happens at Cook they have a license or plan approval rather for an incinerator. But these corrective action requirements will not apply just to the incinerator, they will apply to the entire property and even off site if there's been migration or possible migration of any contaminated material that we have jurisdiction over. And so we are just using the incinerator approval as a vehicle or a conduit. We could just as easily issued an administrative order not unlike the one that was originally issued by EPA, however, for administrative reasons we would prefer to use the regulatory process of licensing rather than the enforcement process of an order. It's a little more streamlined and it involves opportunities for public participation that aren't present in the order procedure.

Yes sir.

Mr. Flaherty I'm Village President Jeff Knight and the Monday evening we hosted another public hearing the information gathering and where the board had the opportunity to ask questions of representatives of Cook Composites and Polymers, and we were rather troubled by the process and our lack of knowledge on one the process and the proposal and I'll have a number of questions that came out of that meeting. I can tell you that the frustration level of the village board was extremely high, in particular because we have one of our wells, well number 2, that was included in the decision and the mitigation of the problems at the site and because nobody come to address these issues to the village board or the finance committee in advance of a public hearing we felt that things were moving forward without any involvement from the local community. And so we asked a number of questions, one of the things that we were satisfied with is we asked the attorneys from Cook Composites and Polymers to meet with our village attorney who is in turn has also discussed matters with DNR and EPA. But there are some procedural questions and some concerns for the community that I have to ask and one is: will there be an opportunity after tonight's hearing for additional written comments?

No.

So the closing of tonight's hearing will be the last comments.

Yes. We've already held a lengthy written comment period and tonight is the, according to the notice, the public hearing ordinarily wouldn't have been held but for the request of the village. Now . . .

And then. . .

Let me finish.

Ok.

Ok, the rules provide for the comment period to be a minimum length of 45 days and if there is merit to it I think as presiding officer I can allow an extension of the comment period by continuing the hearing. It's sort of a trick with mirrors, you know, that I have the authority to do but I'm not going to do it unless good cause is shown for the need for more time because we want to keep this process of decision making moving in an orderly manner.

We recognize that and that's what we wanted to also know is there a period of time for us to appeal these decisions, what is the appeal process and would the DNR consider an extension as we would ask for all of the parties then to come in and meet with representatives of the village board so we could get a greater understanding of what the intent is? Let me tell you why. One of the questions that came up the other night was that the process was so lengthy of getting the approval for a plan through EPA that it was extremely expensive for a Cook Composites and Polymers and that this should facilitate a quicker, less expensive process. But when we ask what then is the plan, we speed up the process but what is the actual end result of that speed up process is something that we'd like to know. For example, if all we're doing is speeding up the approval process, does that mean will mitigation and cleanup happen faster?

Yeah, I guess I can respond a little bit to that and maybe Mark, you might want to comment a bit on it too because it deals in general with the process. It's our hope that we'll be able to devote more staff time and more resources, both DNR central office and in our district office in Milwaukee to this specific case then EPA has been able to devote in the past. In fact, it looks like under the new federal budget, EPA may have even fewer resources than it has been able to devote in the past. So, we're hoping that we can, well the other thing is of course we just have the business of Wisconsin to concern ourselves with, not six states. So, we have I think probably a little more resources to begin with to devote to the regulation of hazardous waste facilities. But we're quite concerned about this facility and others that we have asked for the authority to take the lead on and it's our expectation that the quality of the decision making will be every bit as good or even better than what you would experience under EPA's jurisdiction. What will change is the turnaround time because we'll be able to devote more resources, more people, more time. In part, because EPA will not be working on it they'll be able, we hope, to send some grant money our way to better fund our efforts in addition to the staff time we already have available to commit to this process.

So it's more than just the speeding up of the approval. There will actually be action as well because why change jurisdiction just to get an approval if there's no action?

Well, the object that we're approving is a plan for action and once it's approved there will be enforceable schedules, milestones by which progress can be measured and discreet events that have to be done and so once an approval has been granted barring some sort of appeal or other problem that might halt the process and delay things, then yeah, an approval means go ahead, begin or continue.

Ok. Some of the other questions that came up and one that has us somewhat troubled because the question was raised to me by an employee of Cook Composites and Polymers and I think maybe with representatives from EPA and DNR here could help respond and I know that Jerry has been meeting with the attorneys and to be honest with you Jerry has reported back and it is many of their impressions that in fact the village would be better served under the action then they were in the past. So we have received that report back and we've taken that under advisement but the one burning question that the board had based on that employee's comments was, if in fact Cook Composites and Polymers decides to operate in the Village of Sauk, whether it be through bankruptcy or some other failure within the company or they leave, would the Village of Saukville be better served with jurisdiction by EPA or with jurisdiction by DNR in the event the cleanup would have to occur without the presence of Cook Composites and Polymers and that is a very troubling question to the board and to the residents who live in the immediate area and the current employees because there have been projects we thought were going to stay in Wisconsin when in fact have left after word from Cook that they would stay.

Well there are two components to the answer that I would give you on that question. First of all, both under the federal order that is in place now and under state statute, anybody who is subject to corrective action requirements has to provide what is called proof of financial responsibility and what this is, is something like either a cash deposit, a bond, a letter of credit, or they have to demonstrate that their net worth is great enough that their not likely to just go out of business. And they have to do this on a reoccurring basis so the financial responsibility proof mechanism is mandatory under state law and is also then routinely incorporated into the federal order. So, there is not going to be a situation that we would expect to arise where there would be a company that would go out of business without assets being available to the state or if we don't go ahead with this decision assets being available to EPA with which it could pay for the work that needs to be done.

There were concerns raised the other night that the current amount allocated for that wasn't adequate. Can you give us comments on that?

Yeah, all I can say about that is I'm not sure what the current amount is because the real financial bite that correction action takes out of the companies economic hide occurs later on in the process. At this point, what they are paying for are the preparation of plans and some investigation work. The real economic burden comes when methods of cleaning up the environment, cleaning up any contamination, have been selected and it's time to implement those things. That's where the big bucks are. And that's when it becomes particularly important to have proof of financial responsibility. Some sort of financial guarantee in place like a trust fund or like I said, a letter of credit or something where the DNR or the EPA, whoever is the regulatory agency in charge, has the right to draw upon that and the sum is by everybody estimate, sufficient for the purpose. So, initially we may not require proof

of financial responsibility because when you analyze the corrective action process and it's roughly divided into three or four stages. The first stage is an investigative stage, where one just try's to define the nature, the degree and extent of potential contamination. That does cost money and it does have to be done according to an approved plan. The next stage though is after you figure out what kind of contamination you have, where it's located, is a study to determine what alternative remedies might exist for cleaning it up or correcting it or confining it or dealing with it to prevent it from getting worse and ideally to remove it and protect the environment, restore the environment. That's basically a study process. There isn't a lot of field work in that stage. It's the third stage where you implement the measures that you've selected in the second stage that the financial costs really begin to climb because that's when you might invoke a requirement for example the treatment of contaminated ground water where a company might have to pump contaminated ground water out of the ground and treat it in order to remove contaminants from it or they might have to come up with a method of removing contamination from soils and we don't know the extent of the contamination so we don't know at this early stage how wide spread those types of cleanup measures might be. But the further along we go the more precise we can make our estimates of the remaining costs of corrective action and adjustments are usually made at periodic stages to the amount of financial responsibility that the company has to provide.

So the financial responsibility is covered for the operation and. . .

Particularly for the far end.

Will we, the municipality, have an active role in any those negotiations and let me tell you why I ask that. In the past when Freeman came to us and were seeking the establishment of an incinerator to burn at 99.99% and they worked with us to explain their whole process and to negotiate with the village of why this could be helpful for their prosperity and to keep employment in the Village of Saukville and then in turn when we were convinced it was in the best interest of not only Cook Composites and Polymers but the Village of Saukville we then in turn testified in behalf of the community for that type of support.

I think I presided at that hearing.

Will this process provide us that same type of opportunity for discussions in advance with Cook Composites and Polymers so we as a community can wholly understand because there are more than just what's in the ground here. We've got issues related to the incinerator and all I can remember when we were discussing the sighting of an incinerator there had been DNR support for that incinerator to take on products from other firms and we insisted that only products from Cook Composites could be burned because of the concerns from the neighbors. With DNR jurisdiction occurring will there be a push to bring in outside products again or will the municipality have an opportunity to be involved in the final discussions.

With respect to the incinerator, there is no proposal at this time to change any of the restrictions that apply to the incinerator. We're merely using the plan approval as a vehicle to impose requirements on the rest of the property.

And no legal recourse can occur to that

There's really no proposal, no one has asked for any changes in the operating parameters or where the materials come from or anything like that. The incinerator is really, it's almost fair to say that it's not even involved in this issue but it is involved because it's the one unit on the property that is subject to hazardous waste licensing and so we're using that licensing process as a doorway to all of the other possible sites on the property where there might have been a release of hazardous wastes or hazardous constituents which under corrective action have to be investigated and potentially would be subject to some sort of cleanup action later.

That could include production status as well as. . .

Well, it could include any solid waste management unit. Now, if you had something like a product storage tank I don't believe that a release from a product storage tank would qualify that tank as a solid waste management unit but our jurisdiction is pretty broad under correction action and the Department does have other authority if there is contamination discovered to deal with that contamination. We're not just going to ignore it.

Maybe you could help clarify a little farther because I'm not sure I heard my question answered.

Sure.

Will you process of approvals follow this format or will there in fact be a process where we the village because we are maintaining wells in _____ and the property is within our corporate boundaries, are we going to be brought to the table to discuss the plan prior to another public hearing process so that we've got to come chasing you to find out what's going on?

The proposed changes or modifications to the plan of operation that are the subject of tonight's hearing are not for the full three stages. What were talking about, correct me if I'm wrong, is for the investigative stage and the selection of the corrective measures. But the third stage, the implementation of the remedies would be the subject of another plan modification and so it would be a major modification and it would be subject to public notice, radio announcement, newspaper notice, written comment period, and like this, another opportunity for a public hearing. Now that's the minimum required by federal law, that's what we have in our state rules as well, for any kind of major modification of a license or plan approval. Now, in addition, the Department has the authority to hold a hearing on any matter regarding hazardous waste, law or it's regulation of hazardous waste activities at any time. I got the law changed a couple of years ago to make sure that we could do that without anybody questioning it. It would be the type of hearing like we're holding now or it could be a more formal investigative type hearing where people could be subpoenaed and compelled to testify under oath, also like a John Doe. We've never had to hold such a hearing that I know of but as far as what is automatically provided for, it would be the final stage of the corrective action process would be procedurally a lot like what we're going through right now. But other than that there isn't any special procedure for involving the local municipality that I'm aware of. Mark is there anything I should have covered that I didn't?

My name is Mark Gordon and I'm an environmental engineer supervisor with the DNR in Madison. The only other thing I wanted to mention is that, while maybe

a couple of things, one is that as part of the _____ plan that Cook needs to . . .

Oh, that's right, yes, sorry.

. . . an investigation at the site. There is a requirement to do a community relations plan and that is more something between the facility and the effected municipality as opposed to DNR being directly involved with it. But that is a formal document where they would set forth how they're going to keep the community involved as far as what's going on. The other item is that in a number of other facilities there is, you know we've held more informal meetings to talk about as we get to certain you know parts of the process that the community is interested in. We might just have a more informal meeting to, either us or the facility or their consultant do a presentation, kind of go over where everything is and field questions at that time. It may not be as formal as tonight's process but by the same token it provides for a good information exchange.

If we the village and the DNR would decide and the EPA to make the transfer, can that authority transfer be predicated on greater involvement by the municipality in advance of public hearings? Cause I know that when you're talking about the public relations component of the plan but I understand some of these plans have been with EPA for three years and we haven't seen those so I know we asked the other night for copies of those. Have we received those Jerry?

Received a copy of the consent order, yes.

Yeah, do you know at what stage that plan is required offhand?

The community relations plan?

Yeah.

It's part of the first stage of the process and as far as making that a part of this whole process, I mean I think that can be a formal comment if you want.

You can request that it be done.

Well, this phase should have had a community relations phase is what you're telling me.

This is part of it, what's going on right now.

You know you've got to start somewhere. Ok. And to the extent that the village or it's officials feel that they have been excluded or should have been more involved, I regret that that's the case. You know, I think the sort of thing where the Department wants to take your concerns into consideration but eventually, ultimately it is a matter that the legislature has delegated to the DNR as the regulatory agency but you know nobody acts in a vacuum and we are required and we want to have local input. Especially since it does directly effect you, not just jurisdictionally but from the standpoint of being responsible for the quality of water in your distribution system and things of that nature. So, I would suggest that in your public comments you

would make a request or recommend to the DNR that the community participation plan specifically include some sort of measures such as those you've just described. You know that would give us a legal basis within the administrative record of decision to consider imposing such requirements and indeed if we decide not to we would have to explain in our responsiveness memo why we're choosing not to do that and I don't think that's likely. If there's a good rationale for it besides being the local government and having responsibility for a water supply whose potential quality may be effected here, you know there may be other reasons that you can articulate that would support such a request.

Well just as maybe one more follow up I mean I guess between us we've been involved in a number of different cleanups around the state and you know we do get those requests from time to time from either concerned citizens, effecting municipalities or both where they want to be involved, they want to have regular meetings, they want to have information transferred back and forth in a more public setting and you know that's something we do on a fairly routine basis. It just depends on the individual site and the individual request.

There's variation in level of interests from community to community, believe me. Some what to be very actively involved, others are content with just the minimum participation that the law provides for and still others don't even attend those hearings.

Peter, as the hearing officer you yourself are very knowledgeable about how active and involved the Village of Saukville has been in this entire process from the beginning.

Well, it's been a few years since I've been here, but I remember.

I think that it's and we felt and I think we took a lot of steps forward the other night with the new management of Cook Composites and Polymers and there are preliminary indications that a cooperative spirit will be reenacted between the board and the management of Cook Composites and Polymers but I want to go back to some of the questions that were raised and posed that we have a concern on and that is the first step is that the jurisdiction would then change from EPA to DNR. All the processes should be the same at that point in time with the current mitigation cleanup plan that is on the books with EPA.

If anything they may be more stringent.

There are three proposals apparently in front of somebody and I believe it's EPA for modifications in those plans, is that correct?

You want _____ addressing is the fact that the Policy Assurance Project Plan, Corrective Measures Study and Field Sampling Plan have been submitted for review. Those are the three pieces _____.

Ok and that process again if we request our open meetings portion to have community relations meetings say on a quarterly basis in the Village of Saukville, where the village board could actually have representatives from DNR and Cook Composites and Polymers update us on a regular basis both in advance and after they are the type of things in fact have been enacted in the past.

Yeah, they have and in some cases it's maybe not that formal. It's maybe on an as needed basis. In other cases it may have been that formal. In other cases it may have been more frequent. It may have been, I was involved in some meetings down in Germantown where for a while there it seemed like we were meeting every several weeks and then after a while things spaced out a little bit more. It's certainly possible to set it up.

Ok. I want to be careful to not leave you with the impression that we are opposed or non-opposed . . .

Right, just asking to be kept informed . . .

We've kind of been kept in the dark and we don't know how we feel about it.

No, I understand what you're asking for here is whether there is a way to institutionalize or make a regular process for participation and information exchange that involves the village and the answer is yes there is. We also have done this sort of thing before on a less formal basis where I mean if you in your official capacity called the Department up and said could you meet with us at our board meeting in a couple of weeks and give us a status report will certainly do our best to have some knowledgeable staff do that. I mean that's part of our job.

Can be also in the public comment portion, not only request the community relations component of the plan, there was one in the previous one and I think there's some portions of that, that perhaps weren't met. When we go into that process could be also ask potentially for a two week delay in the decision while we continue to educate ourselves in the process so we might speak rather than for information only but for in favor or in opposition?

Well, um yeah. You can certainly request that. As I mentioned earlier I think what you're asking for is an extension of the comment period here. And frankly the deadlines that are set for comment periods are for the convenience and the regular administration of government. If there's a good reason for extending a comment period and there isn't any legal prohibition against extending the comment period I think that we can do that. I can do it by, as a presiding officer I'm authorized by DNR rule to continue or extend this hearing and I can do that for the specific purpose of receiving additional comments if I'm persuaded that it's necessary or reasonable to do that.

That takes me back to the kind of dumb first question I asked. All of us kind of on the board and the public that was in the _____ just didn't quite understand and that was transferring jurisdiction from the EPA to DNR and we've now been advised that it probably is in the best interest of the Village of Saukville and the neighbors and Cook Composites and all interested parties. Is it just done to take jurisdiction over what is currently a cleanup plan that we heard the other night has 250 compliance issues to respond to and every one they were in compliance with so obviously Cook Composites has not been in violation of the mitigation and remediation plan that they have on file with the EPA. So the purpose of changing jurisdiction then is to facilitate a faster process on the three plans that are being submitted for further action at the plant and those are kind of the issues that I'd like somebody to brief me a little bit, I'm not exactly the deepest technical person in the world but I'd like to know what those plans effect. Do any effect the incinerator, do any effect stack emissions, or do they all effect

only the groundwater issues? Because we're not just changing jurisdiction to get a plan approval. There has to be something that will need changing and I'd like to hear what are in those plans that are being proposed for change.

Mark.

Well I think a couple of things. Generally I think it's our intent to take the plans that have been submitted thus far which basically are for further definition of extended contamination out there, primarily with the soil contamination and also then along with that the quality insurance procedures to make sure that the data that is generated is accurate and correct. And to take those plans, have Cook modify them to be in compliance with DNR requirements as well and then DNR would presumably if the plans are submitted are good plans, we would issue them a formal DNR approval to implement the investigation up there. Primarily to better define better extended contamination of the soils. And from that, that kicks off the process of ok we've got the groundwater contamination fairly well defined I think up there. And you all could go into a little more detail on that but our intent here was to get the soil contamination better defined and then start looking at what remedies need to be implemented out there to get the contamination under control. Both from a soil and groundwater standpoint and you realize there is some interim systems that the facility's put in to deal with the contamination that was already out there. We need to have an evaluation of those systems and make a determination is that adequate or does something else need to be done to control the situation.

On a short term . . .

So we're looking at moving from a plan of what to do, giving an approval of that plan and implement the plan, submit the data back to us and then determine ok from there where do we do next as far as cleanup goes.

So rather than the explanation we heard the other night that EPA's nonresponse in that expanse to submit and not receive a response, this is more related to a speed up of the cleanup process.

We'd like to think so.

From DNR's prospective, I guess what we're looking at, at this facility and several others is to try and put the resources that we have available and actually in fact EPA has given us some resources to do this, to put those resources towards some of these, what we view as more important projects, to get them moving forward. To get some data, to start to make some decisions, to get on with the ultimate cleanup. That's our goal at this facility. It's our goal with some of the others we asked to take the lead back on.

Some of these facilities, you know, everybody knew right from the beginning that certain things could be done very quickly to help contain or prevent the spread of contamination and those interim measures exist. There are some at this facility and at other facilities that in addition to investigating the degree and extent of contamination and then selecting your long term remedies and then implementing those long term remedies, somewhere in there you may actually have requirements for these, what we call interim measures and it may be something as simple as digging a ditch to intercept groundwater from flowing off of the property and preventing it from contaminating the adjacent

property and so you dig a ditch, you collect that groundwater, you treat it to remove the contamination before it leaves the property and in doing that you may really cut down on your long term expenses if you had let that stuff migrate off site.

So the three plans that will be heard by DNR only relate to groundwater?

Right, there is nothing associated with anything on stack emissions or the incinerator. It all pertains to soil and groundwater.

Soil and groundwater contamination.

Ok.

Yes sir.

You had mentioned that financial responsibility will be determined by a letter of credit or . . .

There is several mechanisms.

. . .by several different ways. If you've got, Cook Composites is kind of a complicated animal. It's got a parent company that's international. Would the DNR decide how that escrow would be held or would it determine if there would be an actual escrow rather than a letter of credit?

Yes. The state statutes say's they have to provide proof of financial responsibility in a form satisfactory to the Department and we have several methods of financial responsibility proof that are used in other situations. For example when this incinerator eventually is reached the end of it's useful life it will have to go through what is called closure and that's a process where you remove it, you decontaminate everything and you make sure that the site is clean and that it's all back the way it use to be and that closure process, there are several mechanisms where you have to provide, you can choose the company can choose among several or use a combination of mechanisms to demonstrate that it has the resources it needs to properly close that incinerator when the time comes to close it. And those are the type of mechanisms that we would look at here for proving that they have the resources to carry out corrective action. But it's a little bit iffy at this point because we're early in the process. We don't know how extensive the contamination is so we take it a step at a time and the proof mechanisms are subject to periodic reevaluation and adjustment either up or down.

One of the _____ that Cook has shown that it's willing to you know to make every effort to clean to mitigate here, however, I mean what the concern is, what the worse case scenario I guess for the village is what would happen if Cook Composite did leave as Jeff had mention and if those funds somehow because we don't know how that company is held by it's parent company nor you know so would you have the clout to go after the parent, have you every had to go out of state after a parent company to enforce, make issue since you'd see you just now gotten authority right from the EPA to govern this type of thing.

Right. Under correction action authority, no we've never had anybody walk out on their comments so the issue hasn't come up. Everybody's pretty much at the beginning stage. That's one of the reasons we'd like to take the lead on all

of these projects is because they haven't moved along as quickly as we'd like otherwise they might be further along and we might have had an opportunity to see where things are but as an attorney I'm satisfied that state law give the DNR and the Attorney General of the State sufficient authority to reach whatever assets might be available of a responsible party. They cannot, as far as I know, successfully anticipate walking away from a contaminated site except possibly through bankruptcy. And in that case the state has another program for cleaning up sites where there is no longer a responsible party. That's the spill program or the environmental repair program and there are and that is a program that I don't work in and I'm not really comfortable trying to explain it but suffice it to say that sites all over the state that have contamination are evaluated and ranked and barring an emergency cleanup they are eventually the subject of a state hired contractor who comes in and consultant evaluates the site and . . . END OF SIDE A

SIDE B

...before corrective action law ever got adopted at either state or federal level. Or where the contamination was not caused by waste but by releases of product or raw materials. And so it fell under the authority of a different law, and in those cases the state has, ah, had some success in getting assets out of the bankrupts estate, although, you know, you can't get blood out of a turnip, we've occasionally had the attorney general look at the assets of the private individuals who ran the company or who owned it, but again, usually, they're pretty much shot too. And so it often ends up to using these state funds which for the most part now come from the generators of hazardous wastes having to pay fees and from money that's set aside for this purpose by the state legislature.

Barring phase three of the first we're determining what's got to be cleaned up then we're going to determine how we're going to clean it up and then the third and final phase is how much it might cost

The third phase is doing it.

is actually doing it and at that time, someone would come up with an estimate of how much it might cost.

If not sooner.

And who, would that be the DNR? Or is that negotiated with the company and the DNR? Or does the company ... who decides?

Mark will..

Well, the way it typically works is with the second phase where we're evaluating alternatives is we have them provide we have the company provide a preliminary cost estimate as far as what it's going to cost to do the different alternatives that they've identified that....

So the company would have that information before you would.

They would be required to develop it and submit it to use for our review as part of the final implementation phase when they actually pick a round _____ maybe you pick a couple where you have detailed information on you know _____ exactly what we're going to do, then they can make the cost a lot more detailed, and but they have to submit documentation of how they came up with the costs, and that would be subject to DNR review. Now, typically what we do for these cost estimates is we take a look at what they're proposing and look at what other facilities are proposing and look at a range of costs to make sure....

That it's fair, but the company comes up with the costs first.

They propose it...

Basically.

...subject to DNR review and approval.

And then it's the DNR that determines how the whether it's a letter of credit or a bond or an actual escrow, or who determines how that money is held.

Several alternatives are equally acceptable, but the company ordinarily would be the one to propose it, and they meet the tests and the law for showing that they can ...

meet the proposal

they're supposed to be equally secure financially, and I suppose experts might debate that it that nothing beats cash in hand. Very few people actually do that. It's fairly common to see a letter of credit used, where a major lending institution issues the letter of credit, and that's a, an irrevocable letter of credit that's not allowed to expire once it's issued unless it's replaced with another one of equal or greater value

does it survive the bankruptcy?

Well, yeah, that's the whole point...

Oh, it does?

...it's the banks money at that point, you see, so if the company goes out that's the whole purpose of the proof of financial responsibility, is if the company either refuses or is unable to follow up on the cleanup, we've got the letter of credit to draw upon, or we've got a cash deposit, or we've got some other financial mechanism, or the company has demonstrated that it has so much assets, like IBM or some other major company that it's highly unlikely that in the course of a year they're going to run themselves into red ink so deeply that there won't be any assets to do this site. I mean there's a test a percentage of their net worth versus the cost of the cleanup has to be a certain ratio in order for the net worth method to be acceptable. These are things...

You'll propose the method and if they meet the criteria then...

then yeah. And they might use a combination of methods where they might use a letter of credit in part and the net worth, you know. The law was designed to make it fairly flexible here in terms of choices of proof mechanisms.

Mark, I have a couple foul questions from before that I still am concerned about and the first mitigation plan when they broke through the ground, some of the contaminants got into our well number one, and prior to their breaking through we had negotiated a settlement where our well number two would be dedicated to drawing water to bring the plume of influence back into the site that would help with the mitigation of the groundwater. Well they broke through some of that boater got into our well number one and the residents called me had to shut well number one down. The testing showed that the level of contaminants in that well were very very low, in fact substantially low, lower than two well actually a number of wells in surrounding municipalities that had 19 times more the contaminants than this one did. So, however, because of the issue of the effect that this project may have on the drinking water in the village of Saukville in our wells, will any potential plan adopted for cleanup of the water not affect our wells and if so, will it hold the taxpayers of the village of Saukville harmless in any changes that may occur to the other three wells that are currently in operation.

I wish I had a crystal ball. Whether their cleanup proposals will somehow affect your wells in something that it's I think too early to predict at this point. They're still at the stage of defining the nature and extent of contamination as Mark mentioned or I think somebody mentioned, anyhow, the extent of the groundwater contamination has been fairly defined, but the soil contamination is still being looked at. Now, the thing is, soil contamination when it rains can become groundwater contamination, as the contaminants are flushed through the soil by precipitation, the patterns of contamination can change. So, I guess it's kind of hard to say, I don't know Jill if you want to comment on whether the municipal wells are likely to be part of any remedial plan are likely to be impacted by a remedial plan based on what we know at this early stage.

Well, right now Cook has a high capacity well on their property that successfully draws, reverses the groundwater flow gradients so that water flows toward the facility and that protects the outlying municipal wells. Also, Cook quarterly samples the municipal wells as you know, and there's also a sampling program that has to be reported to DNR and EPA for the Clean, for the Drinking Water Standard. As far as any future remediation, I think that, that it's unlikely that the wells will be impacted, you know, we keep a pretty, I mean that's the purpose of review, with any proposed cleanup mechanism, but I think that's highly unlikely, really, and any kind of, you know, quarterly monitoring would give us, would give us an indication that there might be a problem anyway.

As far as being held harmless is concerned, there isn't any mechanism that would provide that, however, if activities at the company were to cause economic injury to the municipality, it would be no different than any other action where one party injures another, I would assume that you would have legal counsel advise you on what rights and remedies you have, but that would be independent of the DNR, there's nothing in the hazardous waste law or in specifically in the corrective action law that I know of that gives you any additional or special remedies that you don't already have.

Immediately across the railroad tracks from the Cook Composite site, is an old contaminated encasement well that is apparently was pretty hot, and you look at all the various other contaminants in the area, and there was previous owners of that site that are no longer operating in the state of Wisconsin as I understand it. Will the transfer of authority to DNR from EPA make that site more likely or less likely to be cleaned up quickly in both the parties that were responsible, responsible for that site?

As I understand it that's not, not in any way traceable to releases from Cook, you're saying that this is an independent site it's just happens to be nearby?

Site across it's part of the groundwater mitigation I think that Cook Composites and formerly Freeman in their efforts to clean up the groundwater have been very proactive in not only cleaning up their site but contaminants that may have, I say may because I don't think it's ever been determined exactly who the perpetrator of that site has been, may have been involved, so they took it upon themselves to clean up all the area. Now, if DNR takes over the responsibility rather than EPA, are we more likely or less likely to be able to go after that site...

I'd say there'd be no change but it's, Doug what would you like to, to...

Yeah, I'd like to add a comment, my name is Doug McClan, and I'm a lawyer for CCP. The company you're talking about we think we've tracked them down, we think that the company that originally caused this other contamination is presently, well the successor company is Bauders Instruments in Minnesota, and we've collected long series of documents that we think prove that that company purchased large quantities of a chlorinated solvent called trichloroethylene, which I will refer to as TCE. We think we can prove that that company disposed of that material in what's called the Wobbinstein Well, which was, have I got that right, yeah. We think that we can prove that all of the TCE that's in the groundwater came from this other company, and want to strongly encourage WDNR to go after that company, because as you suggest, we are presently paying for the entire cost of the cleanup, when the evidence seems to show pretty clearly that there's this other company that's gotten away scot-free so far. And our company posture so far has been to spend all the money on cleanup, and not frankly on lawyers' fees, trying to go after this other company. So anything we could do to persuade WDNR to go after Bauders Instruments, we would strongly encourage you to do so, we would be happy to provide you with a packet of documented evidence showing test results for TCE, showing the purchase of TCE, showing statements under oath to EPA, that they disposed of TCE...

Do you know when that disposal occurred?

I think it occurred during the 1970's primarily.

OK. One of the concerns we would have is that our hazardous waste program really only was adopted in about 1981. So if it was disposed of prior to that time, we have a couple of legal concerns, one is we wouldn't have hazardous waste jurisdiction, we'd have to take it under our solid waste authority which goes back to the early 1970's. The other concern might be the statute of limitations problem, but that's an issue for the Attorney General's office to sort out, and one very powerful argument is that when it comes to environmental contamination, you have to look to the time that the

contamination is discovered rather than the time that the disposal or the illegal activity occurred, for purposes of any statute of limitations, but yes, if you have that information and can make it available to the Department, we'll certainly review it and if it appears that there were violations then or that there's still liability now, under current law, I'm confident that the Department would follow up with the request that...see, the DNR can't go to court itself, in environmental matters, we have to ask the Attorney General to represent us. And so they make an independent decision in every case whether it's in the best interest of the state of Wisconsin to bring a lawsuit or not. So, we refer cases to the Attorney General and then they either file a civil or criminal case, whatever's appropriate, or they send the case back and say we're not going to take any action here for whatever reasons. But what, what you've described sounds like the sort of situation where even if there isn't necessarily a cause of action that the state could bring against this company, there may nonetheless be a basis for the state to take some sort of effort towards cleanup as opposed to your company.

We'd be happy to put that information together and also have you send a copy to those.

Yeah, I think that would be a good idea.

Is it all up to ... I guess my question was will you be more likely or less likely to go after the site for cleanup based on your experience of under EPA jurisdiction and DNR's jurisdiction?

Well I

EPA have more jurisdiction to go after this site if it remains _____.

Yeah. Right I'm at a bit they have a disadvantage legally because I don't have all the facts as to what was dumped, when it was dumped that sort of thing. But I'd say as a general rule the state is fairly aggressive in bringing and enforcing action against the violators. I know I review cases that come out of this part. The DNR has the state divided into six districts for administrative purposes and all of the civil and criminal hazardous waste cases that come from this southeast district cross my desk for legal review and I can say that it's my opinion that the state is pretty aggressive. Both the DNR and the Attorney General's office are pretty aggressive in pursuing violators, especially where you have the kind of conduct that's been described here where there's been what sounds like deliberate dumping and deliberate contamination as opposed to an accidental release. But the problem is it sounds like it's fairly remote in time. Now maybe what the state would seek is not so much penalties for past violations but rather an injunction that requires this company to shoulder its share of the responsibility for cleanup. Either by doing it or by contributing financially to the cleanup. Not a punishment but participation in the cleanup.

They're out of state.

Yeah, I think Minnesota he said which would have been one of the six states that you cover so would it be easier to bring your company to handle stuff out of state or would it be easier for DNR?

Under our superfund program is where this would be handled as opposed to hazardous waste. We certainly you know could go against out of state companies. I'm not sure what the legal process in Wisconsin is.

Yeah, either the federal government of course can bring an action anywhere even outside of the United States in certain circumstances in other countries and it does do that. The state of Wisconsin can do the same thing. If the wrong is committed within our borders it doesn't matter if you're over in Minnesota.

I think we'd be more likely to be able to file suit than with DNR than with EPA.

Yeah, and with all due respect to the gentlemen from EPA, EPA has known about this for a decade and hasn't done anything against the other company because we've been voluntarily paying for the cleanup. So I think, you know, we would like to

Yeah, see your company also has the opportunity to seek reimbursement for contribution in a private lawsuit, as you know against the other company based on the evidence you've already gathered without involving the government, either state or federal. But obviously there may be a broader interest here that would suggest that the state or the federal government ought to be involved in this thing. But I think we're getting a little bit off the topic and I'd like to return to the subject of tonight's hearing which is really Cook and the proposal that the DNR take the lead in the corrective action process. Are there some other questions? Yes sir.

The notification for these meetings are you said were 45 days long for written comment, she said it was newspaper or radio? What?

It's both.

OK. Which one do they normally use?

Both.

But which paper?

Oh, I think probably the Milwaukee Journal, the Milwaukee Sentinel although we usually try to get it into a local a paper of local circulation. The problem is many smaller communities only have a weekly and if it's only published once it's pretty easy to miss it. So the I think the legal requirement is that we try to put it in a newspaper of general circulation in the area and our usual practice is in this part of the state is the Milwaukee Journal, Milwaukee Sentinel. It would probably appear in the classified section. Sometimes depending on the level of interest we also issue a press release which is not required by our rule but we do it just to better inform the public. And that's picked up by papers or radio stations or TVs as a news item if they think it's news worthy. And they may then make an announcement or something like that but we don't pay for that. That's a press release as opposed to a paid advertisement for a notice. Mark.

Um, is Um for the specific public notice for our initial intent to modify the approval. Um that was published on January 20th of this year in the Milwaukee

Sentinel and the Ozaukee Press. We also had a radio announcement broadcast twice on that day. I think was once in the morning and once in the afternoon during peak drive times on WGLV AM Port Washington.

We also mail notices to local municipalities, thus village, town, county, that sort of thing as I recall.

And in this case I think we sent it to the City of Port Washington, the Village of Saukville, and the two local libraries and then a number of interested parties as well.

OK. Yes sir.

A few quick questions. Mr. _____ had mentioned the fact sheets? Is there some reason why fact sheets weren't prepared for this particular meeting this action.

Ah, the fact sheet would have been prepared earlier and this is the tail end of the procedure.

OK, were they available earlier and you just didn't bring a copy additional copies for people who haven't got one?

I can answer that.

OK.

The fact sheet was submitted at a later date to the libraries. Most of the information provided in the fact sheet was also provided in the public notification which is available.

It really didn't go much beyond what I read at the beginning of the hearing.

I than that information was then forwarded to the libraries and districts for public availability.

Second question. Southeast District, how much involvement are they going to have or is it all going to be handled out of Madison?

Well, I think on corrective action matters the Central Office in Madison has the primary lead on issues like this but we rely a great deal on our District hazardous waste staff because they're out there on routine basis responding to citizen concerns and doing routine inspection.

Yeah I think you know for the purposes of doing the plan review the documents as far as investigation or mediation, that would be done in the Central Office out of Madison. I think as far as Southeast District goes though especially when facilities in the process of doing remediation work. The districts whether it be Southeastern or any of the other DNR districts, tend to be the ones who are out there more often doing the inspections to make sure that what's actually being implemented in the field as well as approved. We are also under grant commitments with EPA to do a certain number of oversight inspections on these types of projects and so those can either be done by the district or by Central Office and in some cases they're done by both. It just really depends on what peoples time and availability.

Oh, OK. Then the last question is access to the information, it sounds as though all the really up to date problems are going to be only in Madison. So for someone to the public to have access to the information they have to go to Madison or what's going to be made available in the Southeast District office?

Well, under the requirements we have as far as submittal of information, I mean copies of any reports, plans, correspondence, not only go to Madison but they also go to the District Office and in some cases, where there are area offices in the district, they go there too. So the facilities required to submit copies both to Madison and to the District. Any correspondence that goes back and forth is also sent to the District. But the District initiates say write up of an inspection, they would copy the Central Office. So ideally there would be complete files in both.

There might be a brief time lag for mail to get from one location to the other but subject to that the files should be relatively similar.

OK, so saying ideally that isn't suppose to make us worry. In real life it does better much up to date between Southeast District and Madison.

I think it depends on the facilities. Some facilities are handled solely by the District and a lot of those cases correspondence may not come to the Central Office at all or we may only get limited information. But for these large investigations and cleanup cases the intent is and I think for all practical purposes the files and the amount of information is the same.

So if we went to Southeast District office tomorrow the files there are pretty up to date right now?

They should be.

A view of all the draft documents?

As far as, you know when you say draft documents,

Like the draft corrective action plan that you were mentioning?

The one that was submitted by Cook?

Right.

I would assume that it is there.

OK.

You're assuming so that you have no way of knowing?

I don't know, I'd haven't personally gone through and looked at the file. But if it wasn't there that's something that we would likely ask the company to send in another copy so that we do have a complete.

And in any case you know under the open records law you can obtain a copy of that from the Department ah pretty quick turnaround time.

Is there any way to make a provision to get some of these bigger, more useful documents put in the local libraries here? I know they do that for the superfund program.

Yes. Um.

I don't know if there's a way to make a provision for that purposes.

There's usually enough paper work here to crush this desk.

That's why I didn't say all that I said more of the pertinent ones.

I guess it's kind of a judgement call as to which ones you vs. me might think are pertinent. But yes, I think that as part of the public participation plan we might provide for some submittals to be made in addition to going to DNR or EPA that a copy be submitted to the local library for to more than one local library for public inspection but you know you've got to wonder whether the librarians are all that keen to have that stuff on hand either. They don't always know what to do with it.

I know there's been some cases where the concerned municipality for example will ask the facility directly to provide copies of all major plan submittals reports, drawing engineer drawings, whatever, whether it be to the local library or to the Village Hall or Town Hall or City Hall, whatever. That seems at least in the cases I've been involved with seems to have worked out OK where the company simply when they submit a copy of the report to us they provide a copy to the _____.

Some in some cases the local government has their own consultant. Environmental consultant and they have them you know working more less over our shoulders and over the company's shoulder because they're concerned, their involved, they have their own interests at stake. And I'm not recommending it or anything I'm just pointing that out. It's sometimes that's the case in which case the local government clearly would want copies of all pertinent correspondence and submittals so that its consultant can do that. But often the consultant is going to be located in Madison or Milwaukee and can go right to the DNR office and see all that stuff and more. Plus it has the advantage of being able to talk to the reviewer who is working on the case for DNR or to talk to the company's consultant or something like that.

Yes sir.

You'll be hearing in my testimony that that request cause we will be requesting those documents and in including briefings so that we have a better understanding of what those documents mean.

The other thing that we've done is for we have requests from time to time for any correspondence that the DNR generates any plan approvals, any immediate general letters things like that to copy certain individuals in the village or as interested citizens which we don't. I mean that is something that we have direct control over and that's something that we can very easily do.

Let me ask the question to EPA to follow up on this because I know that the information related to the public hearing is available, is really small compared to the plans that apparently have been submitted. One of which was

submitted 3 years ago. Isn't it, is it Craig correct me if I'm wrong that apparently you have 1 of those plans submitted quite a long time ago.

The Quality Assurance _____ Plan was originally submitted _____ that has to be redone and then there was some lag time on review and there was change in staff which I'm sure EPA has mentioned a few times this evening. Then when we had met with, WDNR had met with us in Chicago as well as with EPA, we then had to submit it under a different model which was the current model at the time and eventually got to the point that now this combination of 3 plans has been submitted for DNR to review at this point, but yes to your question there was a plan that was submitted in. Required changes and _____ due to I think communication as to what was required in the document, staffing considerations, things like that.

Monday evening we requested those documents and that is what had us somewhat troubled and upset, this long lengthy process had been going on without any communications with the municipality and more importantly it would be very helpful to find out if in fact there has been any violations that have occurred in relationship to their application proposals and their ability to get a speedy response and approval from EPA.

I think the gentleman from the EPA can tell you there have been no violations.

I believe that is the case. The individual next _____

Yeah, um, this actually has been very complex sort of process from day 1. But you know we had the order in '87 and we had work plan, conditional approvals, fairly quickly but our quality assurance plan which guarantees the quality of the chemical analysis was a problem and I would say we were probably within weeks of approval which would make the whole project go forward when Freeman had released their previous contractor which was Hatcher-Sayer. So we basically went back to square 1 again. So if we talk about plans that are sitting around, we basically have had some plans sitting there since R&P took over and it's a kind of complex sort of thing, it's a, certain plans aren't things that are so generic that you can take from 1 lab and go to another and which when the first contractor was relieved of his duties we like I said started off at square 1 again. And part of that, we realized that the initial corrective action order had lacked certain amount _____ such as the investigation of soils, so we added some more requirements into that and yes those plans probably, what '92, 1992 were probably submitted to US EPA.

This corrective action order was I think 1 of the first ones that was issued in Wisconsin or negotiated in Wisconsin. Later on EPA developed a national model sort of a boiler plate plan that had standard terms and conditions and it made it much easier at every step of the process to negotiate and enter into a corrective action order because you know as EPA gained experience and DNR gained experience working with EPA we became more sophisticated in these things but early on there were some fairly significant things that probably should have been covered. In hind sight we wish we had but didn't, like a soils investigation. Now you know you couldn't imagine not having an order without such a requirement in it. But, 7 years ago it was a different matter. Are there other questions? Well I'll tell you what, why don't we take about a 5 minute break and then I'll call appearance slips for those folks who have indicated that they'd like to testify and offer formal comments. If there are any other appearance slips at this time please bring them up to me know

because when we reconvene in 5 minutes that's the stage of the hearing we'll be at. This hearing is now in recess.

Turn on my tape recorder and our first appearance and so far our only appearance is Jeffrey Knight representing the Village of Saukville as it's President. Mr. Knight.

First of all, thank you Mr. Flaherty. Let me just start out by saying that on behalf of the Village Board we are extremely frustrated at the process that led up to this evenings public hearing. We felt that a lot of the information was not free flowing and that as in the past when we have been proactive and involved in helping resolve issues within the community this seemed to keep us outside of that process. We want to point out to you that we think it's critical that if the approval is granted by the Department of Natural Resources they understand that Cook Composites & Polymers has lacked meeting the previous agreed upon community relations plan for groundwater mitigation with the Village of Saukville. So it is important that we request that there is a commitment to a new community relations program that we are allowed to negotiate with the parties as to the scope and the depth and the breath of that program. We would also request that an institutionalized process of including the village in it's planning and approval process and further that the DNR come and meet with us on a regular basis to update us on the process and approvals involved in any mitigation of the soil at the site and also request that the documents, that the pertinent documents be shared with the Village of Saukville on a regular basis and that we have access to those files here in the village. But more importantly, after voicing my frustration and hearing the other night to a new commitment to attempt to work together to resolve some of these differences and having further discussed that with some of the management of Cook Composites & Polymers here tonight, we feel that it is in the best interest of the Village of Saukville for the transfer of the responsibility for managing the plans submitted by Cook Composites & Polymers be made to the Department of Natural Resources. We further request that the Department of Natural Resources investigate any delays that may have occurred of the submittals from Cook Composites & Polymers to EPA and determine and report back to us why that process was delayed as long as it was and why Cook Composites & Polymers was not provided the opportunity to move forward with the plans that they have submitted for remediation of the parcel and to help cleanup the environment in the Village of Saukville and with that I would like to thank you Mr. Flaherty for your time.

Sir, before you leave, during our informal question and answer session, you mentioned that you may request an extension or continuation of 2 weeks for the purpose of submitting written comments. Do you want to make that request at this time or do you feel that it's not necessary in light of your testimony?

I, in our question we asked if that process would be available to us, we're not sure that would be helpful in the process any longer. I think that a lot of the information that was shared with us tonight has been helpful and as long as we are included in the community relations plan and negotiations and the other requests that we have made then we would not ask for any delay in that process.

Now I wonder, just so there isn't any misunderstanding, if you could explain for my benefit what you mean when you say the community, I keep forgetting the word, when you use the term negotiations, with respect to the community

relations plan you said negotiations. Now ordinarily there aren't negotiations. The company proposes a plan. DNR reviews it and if we find it satisfactory or roughly satisfactory we approve it or conditionally approve it. If it's no good we disapprove it and expect them to make another submittal of a better plan. There isn't a negotiation per say. If there are some specific components that you would like to see incorporated into the community relations plan by DNR, through it's approval process, I'd recommend that you articulate those for our benefit now so that we know just what it is you would like. Now you've mentioned that copies of all significant documents be available here in the village. Would you like those sent specifically to the village government or would it be enough if their put in the library? Can you be more specific on these type of issues for us.

We request that you send them to the attention of our Village Administrator for his review and then he may in fact keep them here at the Village Hall or pass those on to our library.

Ok.

I think that if you are asking for the detailed community relations plan to be submitted at this time then we would in fact ask for a delay in the process while we had the opportunity to develop our detailed community relations plan for your submittal. But I can tell you conceptually what we're looking for. We would like to have at a minimum quarterly meetings with the management of Cook Composites & Polymers to brief us on the updates of what they've done in the past quarter and what their plans are for the next quarter. That was part of our previous plan. They were pretty successful until about 3 years ago. We've have not had unless we've specifically requested a formal presentation and we would like to formal that. We would also like the management of Cook Composites & Polymers to commit to some sort of annual open house, where the citizens and the neighbors of the plant would have the opportunity to see first hand what's going on at the plant and what sort of long range goals and the progress they've had related to the groundwater mitigation. I think that more importantly identifying a single point of contact within the plant or within the company and that we'd like to have a phone accessible at the plant when there are complaints raised related to operations. That we'll have a responsible party responding to those concerns. We would also I think it appropriate to begin proactive discussion on long range plans. We'd like briefings on what are the plans that have been submitted to the agencies, the regulatory agencies so we can better understand what is the potential impact on our water in the Village of Saukville including our wells and the groundwater. And I think that I can just conceptually give you is a first cut. I'm sure that we could draft something with our legal counsel and village administrator and perhaps submit that but my proposal had been to sit down with the management of Cook Composites & Polymers and the Village and to hammer out what they might think would be helpful, what we might think would be helpful and submit that to you together as what would be a good community relations plan that would at least get us talking now on how we break out of the past of them doing something or us indicating to you what's best and that we would have the opportunity to negotiate together what that community relations plan would look like. If we reach an impasse I would certainly be willing to have the, you or another responsible party from the DNR mediate that and determine which proposal is best or pick and choose from the 2 proposals as what you might include.

Doug, would the company be willing to meet with the village officials to discuss the community relations plan before. . .

Yes, absolutely. I think we can make a commitment that we would be happy to sit down and either conference call or in person discuss what an appropriate community relations plan would be before we submit one to WDNR _____ authority.

Ok. Can the 2 of you at this point give me a time frame within which you might anticipate being able to make a submittal so that I can set a deadline for closing the record on this matter?

Honestly, I don't think we can make a submittal unless you get authority from EPA. We can't make a submittal to you if you don't have the authority to run the program so I think you're jumping ahead of the process.

No, we're acting under state law. We don't need, we could issue a corrective action plan approval to you irrespective of what EPA does. The only thing is you might be whip sawed between EPA's order and the state's plan approval. What we're trying to do is make a transition so that our's phases in as their's phases out. But there's no prerequisite that their's be phased out frankly. I mean that's something that obviously is important to you and everybody wants to see that done in an orderly transition.

Can I make a comment.

Sure Mark.

I guess, as far as the way we've got this thing set up right now I mean the community relations plan I'd think would be that we're looking for would be drafted and submitted as part of the this revised work plan that Cook would need to submit under the terms of the plan modification. So I think that if the village and Cook are agreeing to talk about and develop this community relations plan now, there would be enough lead time for them to hopefully come to an agreement so what gets submitted to us which would be 60 days after the effective date of the plan modification . . .

Should be ample time.

. . . should be ample time.

So we really don't need to extend the record here. All we have to do is you know based on the testimony and comments we've received from on the companies concurrence here when we take final action assuming that we make the plan modification we could include in that a condition that the company develop it's community relations plan in consultation with the village. Would that be satisfactory?

I, sure. Sure, I think that is satisfactory to the village.

Is that . . .

Again, our commitment is that we would not submit anything to WDNR without first talking with village officials about what is appropriate for the community relations plan.

Ok.

And I would just like to reaffirm that 3 night ago, Monday evening when the village hosted a meeting with members of Cook Composites & Polymers and the neighbors, one of the things that was pledged is to develop a much closer working relationship so this type of thing that has occurred where our concerns have to even be raised, where we're not out here proactively supporting our industry would never occur again.

Yeah, all I'm talking about is the DNR's decision including a term or a condition that would make mandatory what you've just agreed to do anyhow and that is to work together to develop a community relations plan.

And my only question was if we even needed to do that if there's commitment between the parties to do that. I mean our requirement is that there be a community relations plan.

Yeah, yeah, you're right from that standpoint you know it isn't necessary unless it's requested that it be made a condition...

We are requesting that. We definitely are requesting that the community relations plan be a condition of our recommendation for _____

Well, there will be a community relations plan. The question is whether the condition mandate that the company consult with the village in the development of its plan or whether they just do that voluntarily. It's up to you if you...

I think we want them and I think that we've all agreed to that and we'd like to move forward with had proposed and we've asked that you consider that as one of the conditions.

Alright, I just wanted to clarify that.

Do we have any other questions on our institutionalized process and planning approval with the Department of Natural Resources I know that it was volunteered during our question and answer period as something that will be considered in the process as well.

You might want to elaborate on that a bit if you...

Well, we'd like to as was raised in the question and answer we think it would be extremely helpful if the process of DNR's approval of all the submittals will include a meeting of the Village of Saukville officials to bring some sort of level of proficiency and knowledge to us so that we can pass on to our citizens why this is a good plan and why we support it. It's going to help your job, it's going to help _____ job, it makes our job a lot easier. I think all we're suggesting is the process will provide a greater level of knowledge to the community so they understand why we support good composites of polymers to be a viable industry here.

Would it be, in your opinion, sufficient if we decide to accept that recommendation to schedule such meetings through the village government or would you recommend that we do it through the public media?

I think that all our village meetings are published and publicly noticed. We would have no objections if you would expand that public notice to other medias but we would like to have it as an official function of our village board meeting.

Okay.

And that a representative or two would come from DNR to review with us the process so we just have a better understanding.

Yeah, I think just for the record I'd like to state that I think that the Department would make its best efforts to provide the staff necessary to respond to any questions that the village might have at any time either informally or in the context of some sort of public meeting upon request as opposed to say some regularly scheduled we would be amenable to both here in the interest of public participation.

I think that that's a commitment that we're pleased to hear and would be happy to facilitate those meetings and when you could make yourselves available and plan around everybody's schedule to make sure that that can happen in an orderly fashion. The last concern we raised and I certainly hope you'll take to heart and ask that in process that a review does occur so that we can have a better understanding of the Village of Saukville why the lengthy delays by EPA in approving some of the plans that have been submitted because certainly we wouldn't be here tonight had there been a timely review and approval process and certainly my concern is for the residents of the Village of Saukville and _____ composite some polymers moving forward a program that could help all the residents and that was delayed by an approval process that may not have met with federal or state laws that we would certainly like to know that and to be briefed as to what were the causes of those delays and why in fact were these proposals not moved forward in a quicker fashion.

I just might say that I'm not sure it's the most appropriate thing for DNR to be explaining or attempting to explain the inner workings of EPA but we'll take your request under consideration as part of the public comment at this hearing.

Perhaps you could get back to us and then we could determine whether it would make sense for some other body to review that process.

You may wish to make that inquiry directly of EPA, I don't know.

The other request that I apologize but I had not included in my earlier testimony I would like to suggest to you at this point in time is that we would ask that the DNR, if in fact they do take over jurisdiction of the cleanup _____ composites and polymers look quickly to determine who is the responsible parties involved in the off site hot spot and to take quick action to help clean that area up as it is close to our deep well that they're using on site and the potential for contamination of the groundwater and our drinking water could occur that earliest you can get moving on that the better.

Mark, I'm going to ask that you follow up with Mark Giesfeldt on that particular well site if you would.

I think if _____ can provide us with the information that we have available as far as followup on name of the facility, information as far as waste or other products that were discharged, all that kind of information, that would be what we would need to get the action moving on it.

Do you have you're business card? You'll have it next week?

I can give it to you when we're done here. But I think that if we can get that information we can probably determine that right away if we're looking at a state response action versus a hazardous waste action depending on the dates as far as when the _____ is disposed of and then get it to the proper section.

We're kind of specialized within agency and there are different units that handle different types of environmental problems and this may not be a hazardous waste problem but rather a hazardous substance problem. It's a legal distinction but also an administrative one.

Let me just wrap up if I could if you don't have any other questions and thanking you in particular for your format earlier of allowing the questions that we had. I think that it was very worthwhile and I think that we all learned quite a bit. I would just suggest that maybe to _____ into further processes at our preliminary meetings within the communities in advance of public hearings might actually be more helpful in that it's something that perhaps the Department should consider for future actions such as this.

We have occasionally in the past where there was a high level of controversy or where we knew that there was a broader public interest in a particular matter not just in this program but in other programs I know like in air pollution the Department has held informational meetings prior to formal hearings such as this one where like maybe a few days or a week before the hearing we have technical people go out and do a question and answer session, have a panel presentation of the issues and things like that. I haven't been involved in as many of those lately because we're getting spread pretty thin but that's ideally the sort of thing we would like to do, too, because it shortens our hearings later.

Okay, thanks.

Thank you very much for your comments.

Is there anyone else at this time who would like to make any public comments for the record. If not I'd like to remind you that this will be the close of the DNR's formal record on this particular matter and we will take into account the comments received at the hearing tonight as well as any written comments that I get before I walk out the door if you want to write anything down and any comments that we've received prior to this time during the official comment when we make our final decision on this proposed plan modification. Hearing nothing further I wish to thank you all for attending tonight's hearing and this hearing is now closed.

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