

PIMA COUNTY AIR QUALITY HEARING BOARD  
PUBLIC HEARING

Southwest Soils Remediation, Inc.: Appeal of Pima County Department of Environmental Quality's air quality permit.

Minutes of July 29, 1997, Hearing

Docket No. 96-001

Members Present

Dr. Barry A. Friedman  
Dr. Caryl Brailsford  
Ms. Linda McNulty  
Mr. Raúl Piña

Members Absent

Mr. James A. Mather

Others Present

Chris Straub, Deputy County Attorney  
Richard Grimaldi, Environmental Planning Manager, PDEQ  
Richard Lemon, Civil Engineer, PDEQ  
Doug LaGrange, Sr. Air Quality Analyst  
Natalie Barnes, Volunteer, PDEQ  
Frances Dominguez, Env. Specialist, PDEQ  
Vicki Bennie, Hearing Board Secretary  
Marco and Michelle Gamez  
Kathy Kay Bell  
Barbara Weatherwax  
Daniel and Debra Flanagan, Jr.  
Kathy Ramo Rizk  
Barbara and Joe McMurray  
Paul and Matt Schepper  
Eric and Teresa Mayou  
Tony Gale  
Mary Ann and Robert Cleveland  
Anita and James St. John  
Toni Simmons  
Dorothy F. Jasiiecki  
Sheila Wilson  
Janice Lewis  
Marilyn and John Ries  
Luis and Patricia Nosiglia  
Shirley Pawlowski  
Pam Little  
John Smith

Kathi Bauer, Appellant  
Junesse Farley  
Nancy L Borboa  
Jae Chang, Southwest Soil Remediation  
Karen Potts, Streich Lang, Council for SSR  
Al Wiruth, Appellant  
Betty Hentrich  
David Barraza, City of Tucson  
Len Becker, Board of Supervisors  
Margie Hildebrand  
Mitch Herriges  
Shirley Scott, City Council  
Michael McCrory  
Raymond Carroll, Board of Supervisors  
Mr. Simmons  
Bill Browder  
Patricia Pena, Principal, Desert Willow  
Terri Thorton  
Margie Hildebrand

I. Call to Order

A public hearing by the Pima County Air Quality Hearing Board was held on Tuesday, July 29, 1997. The hearing was called to order at 2:10 p.m. by Dr. Friedman. Ms. Bennie called roll and a quorum was established.

II. Approval of the Minutes of January 9, 1991, for Lockheed Aeromod and October 5, 1992, for Recycling Sciences International, Inc.

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Dr. Friedman: I would also now submit to the members of the hearing board, the minutes of the previous meeting and entertain a motion to accept as written or be modified for changes as necessary.

Mr. Piña: Dr. Friedman, I make a motion to approve the minutes.

Dr. Friedman: Motion is made. Second?

Ms. McNulty: I'll second it.

Dr. Friedman: Motion to second and it was seconded. Any further discussion? (no response) All those in favor of accepting the minutes as written, signify by saying Aye.

Board Members: AYE, AYE, AYE.

Dr. Friedman: There are three ayes. No nays, the minutes are accepted as written. Today we're here in the matter appeals I-39 regarding significant revisions of the air quality operating permit number (inaudible - someone coughed) No. 03336 issued to Southwest Soil Remediation, Incorporated. Docket No. 97-001 First, the presentation today will be an overview by the PDEQ staff.

Mr. Grimaldi: Thank you Dr. Friedman. My name is Richard Grimaldi. I'm the Technical Services Manager with the Pima County Department of Environmental Quality. I'm here today on behalf of Mr. Esposito. First of all, I would like to thank all the members of the board for finding the time in their schedule to be here today. We've had quite a bit of difficulty scheduling this meeting. There's been a lot of conflicts. Unfortunately, due to some of the problems in scheduling the meeting, Mr. Esposito could not be here today. He had previous commitments that he couldn't change. I would like to just give a brief overview today, but before I begin, I just wanted to talk about a hearing board package real quick and then I'll give a short overview and then Chris Straub with the County Attorney's Office will discuss some of the motions and some of the next agenda items. First of all there's a two volume Hearing Board package that may be referred to today during the course of today's proceedings. Volume I, the really, really thick book, contains the appeals that were submitted to the Board. In response to those appeals, the department has formulated an answer and that's also contained in Volume I, Southwest Soil Remediation or SSR - they're going to be trying to make a motion to intervene in their meeting today and they prepared a response also to the appeals. The existing permit, the sort of proposed permits that were put out for public comment are also included in that first volume. There's also public comments response to those comments and a transcript of public hearing that was held. In book two are hearing board rules as well as the air quality rules for Pima County which is Pima County Code 17. There's also some additional information in their the application for the revision. There's also public notices. As I give to you this overview, I just thought I would mention that while this source has only been around a short time and has a very complicated history and I'd like to take several minutes to review the history of permitting this source, hoping to clarify some of the issues. Starting off with the initial permit. The existing Southwest Soil permit which has previously been issued. They applied for their initial permit in the summer of 1995. This was for a new source or a facility. It is required by state law to draft and furnish a counter application, it went to public comment in the fall of 1995. A public hearing was requested and we conducted one. In November of 1995, we took comments, responded to those comments, made changes to the permit and issued the permit in January of 1996. That permit that was issued was only for the storing of petroleum contaminated soils. It prohibited

taking hazardous waste and prohibited pesticide contaminated waste. It also prohibited treatment of those contaminated soils at the site. Basically, in the spring of 1996, an appeal was filed after the issuance of the permit by two residence in the Rita Ranch Neighborhood which is in the general area of the SSR facility. In March, 1996, the Hearing Board convened to hear this matter. After the initial meeting with the hearing board, the directed environment to facilitate discussions between the appellants and the source to try to reach a compromise on the issues that were brought up. At that time the parties were unable to reach a compromise position and the Hearing Board requested that each party propose a solution and submit them to the Board for their consideration. The Board made a ruling in May of 1996 on that initial permanent appeal. The board sustained and affirmed the department's issuance of the permit, but the Board also added additional conditions. Those conditions simply required testing of the material called Biosolve, prior to it being used at the site. Biosolve is a material that was being proposed to be sprayed on the soil piles to reduce the emissions while they were being stored. After the Board made their findings and the appellants filed a motion for rehearing regarding the Board's decision, that motion was denied. Pursuant to state law, the appellants could have filed a request for judicial review with the Court, but that was not done. At that time the permit that was issued by the Department and modified by the Hearing Board, was in effect. I'd like to briefly go into the significant permit revision now. This basically started in the spring of 1996. This was during the time that the initial permit was being appealed. SSR indicated at the time they wanted to modify the permit even though their initial permit was being appealed. They believe their permit was going to be upheld, also, because of the review priorities within the Department, they wanted to begin the process. The revision they requested consisted of modifying the existing permit to allow for increased emissions from their state-permitted portable treatment units, which at the time of the initial permit issuance was prohibited. It was being prohibited not because of a loss specifically, but because of the way the permit was written initially, and the permit was initially written to reflect the emissions only from the storage piles. The revision that was developed and processed consisted of two main points. The first point, or first part of the provision consisted of modifying the emission cap, specifically the permit revision slightly raised the emission cap to include the emission from the state-permitted portable treatment units. The rise in emission is allowed under law and they still remained under the various written (inaudible) thresholds for hazardous air pollutants as well as criteria pollutants. The second key point of the revision was the development of an alternative operating scenario that insures a new portable treatment plan that was designed to operate at the site in that specific criteria. These criterias include that the units must have valid state or county issue air quality permits. The units must have permits that the emission caps can ensure compliance with the overall emission cap at the site and they cannot process any material that they are not allowed to store. Specifically hazardous waste, pesticide contaminated waste. The proposed permit revision falls into a category - a regulatory category called "significant permit revision". This is modeled after the state equivalent - the equivalent found in state regulations and there are a number of specific processes that must be undergone in order to process this revision. One of the key things is that the permit division must be put out for public comment and the comments must be responded to. There must be a Notice of Intent issued by the agency when they reach a decision and that decision may be appealed to the Air Quality Hearing Board. The Department developed a draft written response to this revision and that went to public comment November of 1996. There was a request for a public hearing that the Department could take additional comment. A hearing was initiated... was initially scheduled for December, 1996, but due to logistical problems it was rescheduled to January, 1997. During the public comment period, the Department received several hundred comments covering approximately 100 issues. Based upon the public comment that was received, the department made several minor changes to the permit and

issued a Notice of Intent to issue the permit in April, 1997. The Department then issued the permit. This process begins a thirty day period during which a commentator . . . or someone made a comment during a public comment period can appeal. There were several appeals received at that time. During the thirty day period the Department was informed that several commentators were not given this Notice of Intent. The Department went back and reviewed all the notices that went out and found approximately 40 commentators who were not notified of the Department's action. As required by law, we sent out a notice giving these 40 people additional time to appeal the permit decision. At this time all the decisions and all the appeals had been received. There were approximately 35 parties appealing this permit and they cover approximately 52 issues. Currently, the activities of Southwest Soil Remediation at their site consists primarily of their offices and as well as some maintenance of a portable unit. They are not storing soil at this time and they're not processing any materials at this time. They are allowed to do maintenance under their state permit on these units. At this time I would like to turn it over to Chris Straub and he's going to move onto the next issue which are several motions that are before the board at this time.

Mr. Straub: Thank you Dr. Friedman, Members of the Board. My name is Christopher Straub. I'm Deputy County Attorney. I represent the Air Quality Control District and Control Officer, Dave Esposito. The next item on your agenda are preliminary motions in this matter and I thought prior to (inaudible) if you (inaudible) leave here just to make some preliminary comments as to those motions and help things along. So with your indulgence we will proceed. Basically the motions before you are: 1) SSR's motion to intervene as a party in this action, as a party in this action to be heard and its appeal. 2) The Board may wish to consolidate the appeals on its own motion. It has the ability to do so under Rule 14 of its Rules of Procedure. Lastly, SSR has some motions to dismiss and perhaps exclude testimony, and Miss Karen Potts, who represents SSR, will be presenting those motions. I suggest that we take them in the order that's suggested, although it certainly your prerogative to do otherwise. I have some initial comments with regard to intervention.

Dr. Friedman: Do you want to make those comments now?

Mr. Straub: If it please the Board, yes.

Dr. Friedman: Okay.

Mr. Straub: As to the intervention, the rules provide that when an applicant's claim of defense and the main proceedings have a question of law and fact in common, the Board may (inaudible) that applicant to intervene, provided that they provide notice to the other parties as provided in Rule 12(B). It is the Chairman's decision and the Chairman shall consider whether such an intervention is in the interest of justice and whether it will unduly delay or prejudice the adjudication of the proceedings. It is our position that certainly that SSR as an applicant, would have a common question of law like that in their presence here to facilitate the proceedings. It may wish to solicit from SSR and from the appellants in this case as it intervention.

Dr. Friedman: I think then we'll ask SSR to present their Motion to Intervene.

Ms. Potts: My name is Karen Potts. I'm an attorney with the law firm of Streich Lang and I represent Southwest Soil Remediation Inc. We filed a Motion to Intervene on behalf of SSR and for obvious

reasons are the applicant in this case. The permit revision was issued to them by PDEQ. We would like to present testimony in this matter. We filed a motion to intervene. We served it on all parties. We have filed a witness and exhibit list of notice of what evidence we'd like to present today. We have also filed a response to the Notices of Appeal which are the only documents we received and filed by the appellants. And I have also filed a Motion to Dismiss, certain of the issues on appeal.

Dr. Friedman: Do we need to vote on the Motion or to...?

Mr. Straub: Dr. Friedman, I don't know if any of the appellants wish to be heard on the motion, they should be given an opportunity, but I believe rules provide that it's the chairman's prerogative to grant the motion.

Dr. Friedman: That being the case then, we'll grant the motion and move on to, do we need to present motion, the discussion now, or do we want to move to the second issue of Rule 14?

Dr. Friedman: I think we should proceed with Rule 14, if it please the Board.

Dr. Friedman: Okay.

Mr. Straub: That rule provides that on order of the Chairman separate proceedings involved in common question of law and fact may be consolidated for hearing of any and all matters and issue in separate proceedings where such consolidation would tend to avoid unnecessary costs of delay. In this case, validity of permit revision certain presents commons question of fact and law as to all of the appeals. In fact many of the individual applicants actually share the same issues and if you suggest that such a consolidation would provide for a more efficient hearing, discuss the matter with Ms. Cleveland and appellants, and I think she's in agreement with the proceeding. I believe she has a proposal along those lines.

Dr. Friedman: Okay. Proceed.

Ms. Cleveland: I would like to.. we have ten speakers from our ...

Dr. Friedman: State your name, I'm sorry.

Ms. Cleveland: Oh, I'm sorry. I'm Mary Ann Cleveland and I'm a resident of Rita Ranch. Can I just read my opening statement? Dr. Friedman and Members of the Board, I would like to thank you for your valuable time you have taken today to hear our appeals. I am here today together with residents of Rita Ranch because we are deeply concerned about the health and welfare of our community. SSR will be emitting both caps and VOC's into the air which seems to be a reasonable expectation that these air pollutants will be coming into our neighborhood. We have a brand new elementary school with over 800 students now in attendance, less than a mile from the site of SSR. There are two other school sites in the area waiting to be built. At the moment there are about 2300 homes occupied and another 2,000 claimed for the Rita Ranch area. All these people may be impacted by these hazardous pollutants. We have residents who have sold their homes because of their concern and it is clear others will be leaving as a result of similar concerns. These concerns also go to the possible loss of property values if the general public view SSR as a large negative to living here.

We are a lay people trying to deal with the very complex technical issue, and we feel that we are at a serious disadvantage in these proceedings. I hope that you will bear with us as we try to express our concerns and make our case. We have lined up ten speakers who are qualified through the appeals process to speak to you today. There may be others who are not recognized on this list who may want to be heard as well. I have a list of those people and I only made one copy, but if you would like to have that, we'll be happy to get it to you.

Dr. Friedman: Please. That way we can call people in an orderly fashion.

Ms. Cleveland: Since I'm first on the list, I'd like to continue.

Mr. Straub: Excuse me, Dr. Friedman.

Ms. Cleveland: We're just... okay. Thank you.

Mr. Straub: If the appellants have anything to say with regard to Rule 14 specifically, are you gonna, Ms. Cleveland, speak.. present an opening statement on behalf of the eleven appellants in this matter?

Ms. Cleveland: Yeah. I thought I already did that.

Mr. Straub: Okay. I didn't know if you had ..... that's okay.

Dr. Friedman: Now is it my option to accept it or deny?

Mr. Straub: I believe so.

Dr. Friedman: Okay. Let me just query the rest of the board members. Do you have any (inaudible) present? Okay. We'll accept the Rule 14 and then proceed to SSR wants to discuss also about the dismissal?

Ms. Potts: Yes Dr. Friedman. I will be brief because I know you have a lot of papers delivered to you yesterday and I don't know how long any of you have had to look over these papers or read this motion. Essentially this is the issue. There were over 30 appeals filed in this matter. Many are in the form of questions or comments or statements of concern and they are not... many of them are not very focused or very clear. We also did not receive any witness or exhibit list filed by any of the appellants, and as you know under the rules they have to file such a witness and exhibit list ten days prior to the hearing. In the notice that we received of this appeal proceeding, it stated that if witness and exhibit lists had not been filed, then the Board would not hear that testimony. So frankly, we do not know what to expect today. We have just been informed I guess this moment that there are going to be ten witnesses on behalf of the appellants. We do not know who they are. We have never been provided notice with that, and on behalf of SSR, I move that they be excluded for not having complied with the rules. Our Motion to Dismiss is similar. We believe there are many issues that are in common, and are repeated by the appellants in their notices of appeal that we believe fall outside of the legal standard which would govern whether or not this board should reverse the decision of the Pima County Department of Environmental Quality or affirm that decision. It doesn't make a lot of sense to me as I sit here today, to argue the substance of that motion. I think what does make sense, because we have until, it's my understanding, until 5:00 or 6:00 today, I'm not sure which is the right time, but some time this afternoon to proceed forward.

What I would like to do on behalf of SSR is to reserve that Motion to Dismiss and to allow you to consider it after the close of the hearing. And I make that motion I think for practical considerations. SSR is very interested in being able to continue and move forward with its business. It does not want to delay any further. In fact, we appear before you without the founder of the company here, Trevor Johanson, who is out of state at this time. Even though he is not here now, he wanted to be here, he is out of state. He wanted to move forward so that we could get this matter resolved as quickly as possible. So, rather than taking up the limited time we have this afternoon arguing issue by issue, the motion to dismiss, I have submitted it. I would rather reserve the motion until later. We can argue it then if we have time or we can just submit it on paper.

Dr. Friedman: Would that depend on the.. any of the others...for your Motion to Dismiss, would that depend on any of the other discussions that occur or motions that might have happened on behalf of the Board? Dismissal would be the last thing if everything else fails, it seems to me.

Ms. Potts: No. We believe that some of the issues that are stated in the appeal fall outside the scope of the legal standard of review. We believe that issues are raised that are not within the jurisdiction of either PDEQ or the Board to consider whether deciding whether to issue or deny a permit, so we have filed a motion so that we could take the many issues on appeal which PDEQ has tried to organize in some fashion that come up with about 51 issues on appeal. We have gone through those lists of 51 issues. We have identified those that we think fall pretty clearly outside the scope of review and ask that they be dismissed. So, it's not a dismissal in terms of an evidentiary thing to form a legal argument (inaudible). But again, in terms of the timing of this, we would rather use the time to proceed for the Board to take whatever there is going to be offered today and then consider at the end whether or not that evidence really did fall outside of the legal standards or was relative to the appeal to make a decision at that point. We don't want to be in a position of spending the day arguing the motion, then run out of time and have to go back.

Board

Member: I would move that we defer our decision on whether to dismiss until the close of the hearing.

Dr. Friedman: Okay, what we'd like to do just...my own thoughts right now, I hope this will work, is how long can I ask you does the PDEQ presentation anticipate to take?

Mr. Grimaldi: We had anticipated the appellants making their position presentation first primarily so that we could respond to some of the specific issues they may raise. There are no.... We went through all the appeals and responded to what we thought were the issues. There were approximately 52 of them. Our presentation would be approximately 15 to 20 minutes.

Dr. Friedman: Okay. And appellants, how long do you think you could?

Ms. Cleveland: Umm. We really didn't time ourselves as far as a time limit. I would say that probably about a half an hour to an hour. I think everyone has just a few pages that they'd like to read.

Dr. Friedman: And. . .

Ms. Potts: I think we're probably somewhere around 30 minutes, as well.

Dr. Friedman: Okay. Let's proceed now with the appellants' presentation now and we kind of keep an eye on the clock, we realize everyone have time constraints and try to keep this to a minimum amount of time. Being affected by time, so why don't you proceed.

Ms. Cleveland: I have a few concerns that I'd like to review tonight... I did it on a one-by-one. First of all, the Hearing Board met on March 19, 1996, to hear the appeals for Permit 0336, which at that time only included the storage and handling of the petroleum contaminated soil stored at the facility site. As the day grew long the Hearing Board asked the PDEQ, if Permit #336 were granted, what would SSR do with the soil? It was stated by PDEQ that SSR could not do anything with the soil until they appealed for and were granted a revision to the permit for the processing of this soil. The Board concluded that the people would probably return to appeal such a revision. Subsequently, the Board granted the permit. What was not known to the people at that time is that once the permit was issued, we were never allowed to address anything that pertained to the storage and handling of the soil again. Only issues with remediation were allowed to be addressed. My question to the Board is, at that time, did you know about this rule? And my question to PDEQ is, why didn't they make this known at the hearing that this in fact would happen? That's the question that I have. Would you like me to just read everything that I have and then go back to these issues?

Dr. Friedman: You're welcome to read or even summarize it, if you can. (Everyone laughing)

Ms. Cleveland: This is a summarization. Since monitoring is a big part of this permit, I would like to know where Pima County monitors are located around the area where SSR's potentially going to operate. Do we have a base line established before SSR opens? How can PDEQ prove the accuracy of the emission numbers if they can't measure the air quality before and after. In section one of the documents prepared by Streich Lang, page 6(D)(3), the unit may not operate for over 180 days in any 300 consecutive day period at any single gasoline or BTEX contaminated soil site. Southwest soil remediation can apply for 180 days extension if this specific site meets the annual Arizona ambient air quality guidelines for Benzene, if the extension can be approved. First question is how does PDEQ arrive at the levels of Benzene in the area, and how can they prove the extension without knowing the air levels of the Benzene. I am somewhat confused about the information provided to the Hearing Board by Streich Lang and I have a few questions. Section one is the operating permit for the Gem 1000. We were told by PDEQ that SSR would not be allowed to use the Gem 1000 because of the potential emissions to emit would put SSR into a major source. PDEQ also told us that SSR would be using the four foot stack portable unit at the Old Vail Road site. According to these documents it seems like the SSR is planning to use the GEM 1000 and we would like some clarification on this. Section three, the memorandum from inventory guidelines in the evaluation section, subject VOC emissions from leaking underground storage tanks which is also called LUST, by.. in by.. tanks, in by opinion has no relevance to the soil that is stored above ground. If any of these formulas were used, the results could be grossly inaccurate. PDEQ has told me personally that we cannot compare underground soil with soil stored above ground. It's totally two different things. And why were these formulas used. On Section three, page 1, documented prepared by Southwest Soil Remediation, says total VOC's from 75,000 tons of soil should be 2.5313 tons per year. Total VOC's emissions from soil storage and handling activities at 23.58 tons per year, and total emissions storage, handling and remediation VOC's at 3.71 or five tons per year. My questions are, if SSR's calculations only require 3.71 tons per year, why is PDEQ allowing emissions to 86.494 tons of VOC's per year? I'm really confused about that and I would like some clarifications. If they're only asking for 3.710, then why are we allowing 86.494? That's a vast

difference. Section 3, worse case emissions, page 5. Comparison of facilities to service stations. Service stations through-puts in Tucson range from one million to twelve million gallons a year. The chart on page 5 indicates only small to medium size stations. There is no reference to large gas stations for comparison. Again, this is kind of confusing to me. Although SSR's emissions estimate appear to meet PDEQ's requirements, it is highly not likely that each and every shipment of fuel contaminated soil will contain less than the maximum allowable levels indicated in this permit. There is insufficient testing required to insure public safety. It is obvious to me, and to a researcher from the University of Arizona, that SSR used the maximum amount of emissions to back calculate the amount of petroleum contained in the soil which they will treat at their facility. This may be legal, but this may be a legal... this may be legal to estimate emissions, but it is misleading, somewhat deceitful in justifying bad engineering practices. Amazing how each and every criteria pollutant falls at or just below the maximum of all the levels permitted by PDEQ. Even if SSR is completely legitimate and compliant with the law, we cannot know with certainty that each and every shipment of contaminated soil will meet this criteria. It is likely that some of the soil will contain toxic substance unrecorded in the emissions estimates. What will SSR...

Dr. Friedman: Excuse me one second. Just... we have a question.

Board

Member: Could you, or maybe Mr. Grimaldi, could tell the Members of the Board where the document is in our packet that's she's citing to, so that we have in front of us.

Ms. Cleveland: It's the report that SSR gave to all of us to...

Mr. Grimaldi: That should be in the first book. It should be tab number 2.

Board

Member: Thank you.

Mr. Grimaldi: There's a number of different documents in tab number 2, so a specific document that Maryann is referring to, I don't know specifically where it's going to fall in, but those are the cited documents.

Ms. Cleveland: Well it's Section 3. Put Section 3 so it will be easy to find. Section 3, page 1 is the total VOC's that they plan on emitting. Did you find it? The beginning part of Section 3, it has the inventory and evaluation section, and umm, I think that's where they got the formulas from this... and then their charts show their emissions from the, plant: total emissions, storage, handling, remediation is on page 2.

Dr. Friedman: Go ahead.

Ms. Cleveland: Okay, what if SSR unwittingly accepts soil exceeding the criteria set in the permit? How will SSR know? How will we know? How many people will become ill before we discover the mistake. Although Pima County considers this permit a minor air pollution source, it is a potential major source to the surrounding neighborhoods. This soil should be handled as hazardous material and should not be stored and treated in such close proximities to schools and residential areas. I just have one brief note on the procedures from PDEQ. I'd like to just read that. It is my understanding that PDEQ is a Department under the Board of Supervisors and they are responsible for enforcing

Title 17 and its context and writing and issuing permits. I assume that well qualified people were hired for these positions and that some of their qualifications and background experience would have to be in air quality and permit write. Therefore, I felt they would be more of an expert in this field than, of course, someone like me. I was very surprised after the first appeal meeting back in 1995, when many people who attended the meeting brought up facts and questions concerning Permit 0336 and members of PDEQ came back with answers like, we didn't know that. Or my background is in something other than air quality and I didn't know that. It was at that time I and many others lost face in PDEQ and their technical knowledge and professional abilities regarding the subject. As a result of the input from our people, the permit was changed several times to reflect errors and omissions that we found. The revision Permit 336 was submitted to PDEQ on February 14, 1996. Public notice appeared November 1, of the attempt to issue the revised permit and open a 30 day comment period. During the period from February to November a lot of people, including myself, talked to members of PDEQ many, many times. The reason for such time lapse it was told to me was SRR's attorney and PDEQ could not agree on the formulas that were to be used in the calculations of these emissions. At first I was told PDEQ's used formulas and results put SSR over the minor source and into a major source. The dispute between SSR and PDEQ over formulas and the treat of a lawsuit from SSR to PDEQ, the formulas were re-negotiated and we were informed the new formulas would put the permit back to a minor source. The public hearing was held on December 5, 1996 in the library of Desert Willow Elementary School which held less than 100 people, even though we informed PDEQ that 300 to 400 people were expected to attend. Since that, in deed happened, the public hearing had to be extended to January 15, 1997, and PDEQ acquired a larger facility to accommodate 400 people that did attend that hearing. There were approximately 115 written and verbal comments made during the comment period. PDEQ stated over and over again that only comments that related to the revision or underlining parts of the permit could be addressed at this time. We were not permitted to address the storage and handling of the soil, nor anything about the area or anything else for that matter. The people still had a lot of questions that were not being answered. If you read the response to comments received regarding proposed SSR permit revision, you will see that PDEQ dismissed most of the concerns and vaguely responded to others. Some of the appeals and comments were made by qualified people who have a great deal of knowledge in this area. The changes in the permit resulted in errors by PDEQ concerning reference numbers from Title 17. Nothing of any substance will change. PDEQ did, however, change the odor emissions, P.C. 1716030, to reflect the so-called new ordinance, but according to my copy of Title 17, the ordinance was in effect the time the permit was written. The new ordinance, in my opinion, is less stringent than that original. than the original one that was put into the permit, and the question comes to mind is to why it was not put in correctly the first time, and why, since this was not a part of the revision, it was allowed to be changed. The 30-day appeal notice was sent out supposedly to everyone on all of my list. There was quite a lot of people complaining to me that they did not receive their package and I informed PDEQ of this matter. It wasn't until I had a conversation with Steve Brittle of Beltway, Arizona, they found out he did not receive a package either. It was his letter dated May 16, 1997, to PDEQ addressing this matter, threatening discrimination, failure to allow public participation, as required by the Clean Air Act, that PDEQ finally responded to and extended the comment period an additional 30 days.

Dr. Friedman: Excuse me Ms. Cleveland, is this really pertinent to the issues that you're presenting.

Ms. Cleveland: Well, I'm trying to prove that PDEQ mumbled this whole thing from the very beginning.

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Dr. Friedman: We're willing to hear facts, information and what the appeal process is. I'm not sure that this really, and I queried the Board as you were discussing this and we all agree that this may not be pertinent to providing information that we need to make a decision on.

Ms. Cleveland: If allowed, I would just like to read like the last paragraph.

Dr. Friedman: Okay.

Ms. Cleveland: Thank you. In the minutes of the hearing on March 19th, one of the Board members had asked Mr. Lemon about why SSR wanted to store the soil and not treated and why this was not covered under one permit. He quoted, "Mr. Lemon stated that it was SSR's intent to operate the portable units. Staff knew this, but did not realize it was a mistake until after the permit was published. So what has happened here is, that because they made two separate issues out of this, and we were not allowed to address the whole thing as a whole. And our comment, why I say that Dr. Friedman and Members of the Board, was a huge mistake by PDEQ to separate storage from operation, we were only allowed to address these items one at a time and not the added effects of the individual items. The time of permitting the storage, we could only look at that. Now we cannot look at operations and forbid from looking at what communities effects of what this operation has on our community. I feel PDEQ has denied us due process in because of this error we have been seriously handicapped in making the complete case of our position. That we further point out that the most significant part of this permit has to do with the operations of this plant and not the storage. How can a significant part of the permit be considered a revision and not alone, and not stand alone for its own permit process. I feel PDEQ has blundered from the beginning and not served the citizens well in this whole process. It appears to me there that is an ample.. there is ample evidence to reject this permit and I ask that you do that. (applause)

Dr. Friedman: Any questions or comments from members of the Board? Would you like to make a statement now PDEQ, or wait til.. to summarize?

Mr. Straub: Well Dr. Friedman, before we proceed, I would like to at least make one point as a matter of procedure and... concerning the standard of review, if we could at this point. I will not address the substantive issues raised by the appellants at this time. I reserve my right to do so with the Board's permission and have staff people answer the technical questions but, I notice in Ms. Cleveland's presentation, that she had some questions to the Board, and I think it should be clear that at this point the permit revision has been granted, and therefore the burden on appeal is on the appellants. It's not on the staff. It's not on SSR. The burden that is on the appellants in this case is to show that the permit is issued in violation of ARS §49-481, and Pima County Code Section 17.12; 1882. Furthermore, I know that the point the appellants made that they feel somehow that they feel they were treated unfairly. But, it doesn't matter. Administrative law, administrative rest do cecity that the former decision to issue the permit to SSR regarding its storage facility is not an issue in this case. They had an opportunity to further appeal this board's decision. They chose not to do so, so that matter has been decided and therefore, the only thing before the Board is the effect of the revision of the permit and does that revision.. does the permit as revised, still meet the standards of §49-481? That is that the Control Officer shall deny a permit or revision if the applicant does not show that every such source so designed, controlled or equipped with such air pollution control equipment that it might it may be expected to operate without emitting or causing to be emitted air contaminants in violation of provisions of this article over the rules adopted by the Board of

Supervisors. So their burden, according to your rules, their burden is one to present evidence to you that the Control Officer erred. It is standard proof that they have needs clear and convincing evidence. So it's not a question of us being up here answering their question. The question is... the issue they must present or the evidence they must present is to show that in fact, we have violated those standards of the issuance in the revision of this program. Thank you.

Dr. Friedman: Any questions or comments from the Board? Okay, Mr. Wiruth.

Mr. Wiruth: For expediency sir, I would like Mr. Smith to take.... to go. I can comment later on but because of the time constraints, I think he has a little bit more presentation more in line with what the county attorney just indicated.

Dr. Friedman Okay. Mr. Smith.

Mr. Smith: Dr. Friedman and Members of the Board. I'd like to thank you for your valuable time and with the opportunity for me to make this presentation. My name is John Smith. I've been a Rita Ranch resident just over 5 years. My comments this afternoon are covered in my letter of May the 7th, 1997, to Pima County Department of Environmental Quality. Page Number Appeal 65-67. I have covered numerous areas of concern, some of which may be addressed by other speakers this afternoon. Therefore, I'll limit my comments to three specific areas. However, I would like the entire contents of my letter considered by the Board. First, I'd like to... Dr. Friedman if you have a question, please stop me and ask me a question if I start rambling on, but first it appears to me that the proposed revision should have been a request for a treatment permit at the Rita Ranch site. Not a revision to the storage permit. I reviewed permit 336 several times and I have yet to find any mention of remediation or treatment of PACS at the Rita Ranch site. Therefore, my question is how a permit process that does not exist can be revised. Any revision or modification of the existing permit pertaining to Rita Ranch site should address storage operation, not remediation or treatment operation. Title 17.12.260 allows for a significant revision. However, I don't feel that it is the intent of 17.12.260 to allow a complete new process as long... a complete new process by revision. Title 17 defines process as "one or more operations, including equipment technology used in the production of goods or services or the control of bi-products or waste." The remediation is a separate operation and any permit for remediation of the treatment at the Rita Ranch site should be afforded the same process as did the storage permit. I don't feel this has been done. My next paragraph I'm going to be summarizing something that Ms. Cleveland just covered. During the public hearings held on December 5th and January the 15th, participant comments were limited to a select portion of the existing storage permit by PDEQ. It appears that portions of the existing permit for storage was approved by PDEQ for remediation prior to the public hearing. I've been unable to find any reference in Title 17 that limits or strict comments by participants in a public hearing. Secondly, it appears to me that Southwest Soil is required to determine the contaminant concentration levels in accordance with underground storage tank rules. However, the permit revision does not limit the remediation for underground storage tank contaminated soil only. Of particular concern here, is an exclusion by 40CFR, part 2514, which states, and I quote: "the following solid waste is not a hazardous waste. Petroleum contaminated media and debris that failed to test the proximity characteristic of 261.4, hazardous waste code DO18 through DO43 only, and are subject to the corrective action regulation under part 280 of this chapter". Part 280 covers underground storage tanks. Therefore, it appears that Southwest Soil will be allowed to rededicate soil including surface spills, storage tanks that are not regulated and spills caused by incident that

failed the test for toxicity of 26 characteristic waste which include Benzene, methal Ethel petrog., benechloric fenal, paradyne pychloral etheline and Biofloride, just to name a few. One foot note is that this permit does limit Benzene EPA Waste Code B018 to a maximum concentration of 150 parts per million. I want to point out that this is 300 times greater than the maximum concentration listed in 40CFR, part 261-24 that would make PACS from any source other than underground storage tanks a hazardous waste. Finally, I want to express my concern for the compatibility of Southwest Soil Remediation and Air Liquide. I've addressed this concern in all my letters and comments to PDEQ and the response on the page exhibit B-213, paragraph 42, and I quote, "if PDEQ has no authority to consider the allegation that SSR may be incompatible with Air Liquide. If PDEQ doesn't have the authority to consider environmental safety factors involved in issuing a permit, then their authority to issue permits should be reviewed. I suggest they review Title 17.04.030. Specifically 17.040.30, and 17.04.030B, along with Arizona Revised Statutes Section 49-401 which I believe gives them this authority. Arizona Revised Statute Section 49-401 is quite specific concerning the health and safety and general welfare of all citizens of the state, and I should think that PDEQ should share that concern for the resident of Pima County. Health, safety and welfare of the Pima County residents should be the primary concern prior to issuing any permits until the decision of the control officer to issue this revision to be reversed on this merit alone. I tell you this is a disaster waiting to happen and I would, at the very least, like a commitment from PDEQ that I'm wrong. I understand that permit 336 for storage at the Rita Ranch site has been approved. I don't agree with it, that it was a correct decision, but I understand the permit is final. However, the remediation process under cover as a revision to the storage process is in your hands. Based on the information presented today, I beg you to reverse and prolong the decision to issue the permit revision. Southwest Soil has a portable unit and it can rededicate soil at the site of the contamination. Evidently, that was their intent when they their original permit application requested a storage permit only at the Rita Ranch site. There are many open areas in Arizona away from schools and residential areas suitable for this operation, and I feel with little cooperation between PDEQ and Southwest Soil this problem could be resolved in a manner suitable to not only Pima County and Southwest Soil, but the residence of Rita Ranch, as well. I thank you for your time. (applause)

Dr. Friedman: Could I ask that we kind of stay a little less editorializing and a little more information that you are trying to get us to listen to address the issue or we're going to run out of time. That's what my concern is. Next speaker is Ms. Farley.

Ms. Farley: Chairman of the Board, Members. My name is Junesse Farley. I'm a resident of Rita Ranch. I've been a resident for only about a year now. I'm the mother of two. That's one of the major reasons why I am concerned with this permit. I also have a Bachelor of Science degree and Masters in Science degree in Biology. When I was reviewing the information for the appeals and particularly the information trying to deny any of the appeals covering health issues, I found that very ironic. Basically, if the PDEQ exists to insure the health, safety and welfare of the public, they are there to protect the public interest from people or corporations whose interests lie elsewhere, that it is the very tenant upon which this Title 17 was based, the very tenant for its existence of PDEQ to protect the public in from the interest of others whose priorities do not fall with people. They say that they are protecting the health interests of the public by sending notice, but they didn't want you to consider health limits that is worse, do not want to examine what basis those limits were set upon. Those limits were set upon scientific research, but research is not the static thing. Research continues, and just a brief overview of current literature shows that there may be some consideration

that needs to be done for lowering those limits. The EPA currently recognizes that these limits need to be reviewed. That's one of the reasons why they have currently lowered the limits for air emissions, and that's under contention right now because there are a lot of people out there who do not want to lower their limits because they have other interests...aside from the public health and welfare. The limits that they stand were based upon the effects of these toxics on adult males. The community is not made up solely of adult males. These limits were based on each of the toxins taken in isolation. During public hearing I submitted four articles which showed that these toxins had synergistic effects which enhanced their health risks to people. During the hearing I also submitted evidence to show that the overt health, that there are other effects other than overt health. There are underlying effects that need to be pursued. For instance, Toluene, I submitted four articles that shows that they have that Toluene causes (inaudible) behavioral disorders. Xylene, one article that shows the same. I submitted two articles that Toluene, one that Xylene and three articles that lead caused learning and retardation. I submitted one article and, that Xylene along with (inaudible) impairs hearing, I submitted two articles that Toluene and one article that Xylene effect vision. These are not overt health risks, these are the (inaudible) risks. And no matter how much Southwest Soil wants to ignore that, there is an elementary school less than a mile away from the source. It's just too near the elementary school. Particularly Benzene is of great concern. I submitted three articles that show that even though the limits for Benzene meet the regulations, that Benzene levels inside the point source emissions can actually be higher than external levels of Benzene. I submitted five article that dealt with carcinogen effects of Benzene. Particularly one which stated that the cancer risk for Benzene is more than likely very underestimated because they only look at the cancer overall. They do not consider the fact that acute myeloid leukemia rates.. if you look at them particularly, the risk levels of Benzene is much higher. And that if you consider just the increase in the rate of acute myeloid leukemia, that the limits for Benzene emission need to be set lower. If you...you may not be aware of the fact that leukemia is the most common form of cancer in children. I submitted two articles that stated that the reason why Benzene is such a hazardous substance is because it attacks stem cells. It actually does genetic damage to the stem cells. Those are the stem cells that form all the blood products. I currently do research at a blood facility. We use stem cells.. I identified stem cells to treat cancers. But if you destroy those stem cells, you can't treat other forms of cancer as well. If you don't believe the things that I'm saying, again, look at the fact that the EPA wants to lower the regulations for emissions. Thank you.

Dr. Friedman: Thank you. Umm.. what I think we're going to do is try to limit this to another thirty minutes for the appeals because we are going to run out of time. I ask you to be brief and to the point so that we can really hear everybody who wants to be heard. Uhh, can I actually stop for a second to make telephone calls. Can we stop for a second? (Brief recess) Okay, next speaker. Umm...

Mr. Simmons: I will be very brief with you. My concern in the letter that was submitted to them is the effect of lead contamination. We're gonna be a mile away from the school from this facility and lead is an element that our body has no use for. It accumulates over a period of time. One of the reasons that lead (inaudible) can have with the fuel (inaudible) to the cars that we drive is because the effects that it has on children and adults. The biggest problem we have is that we have a community. We have kids that will be playing in dirt and it gets on their hands and it's ingested that way. It is for that reason that we don't want to have it solely there. I believe the limits now that they're talking about is six pounds per year. Communities, I believe you're gonna find a health problem like you have down at Davis Monthan, like you have down at Hughes Aircraft thing. Thank you.

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Dr. Friedman: Thank you. Yes.

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Member: Dr. Friedman, I did not get that gentleman's name.

Dr. Friedman: His name is Thomas Simmons. Kathy Bower

Ms. Bower: Dr. Friedman, ladies and gentlemen of the Board, I would like to introduce myself. My name is Kathy Bower. I'm a representative of Rita Ranch and I've lived in Tucson in the Tucson area for an enjoyable last thirty years. The first thing I would like to do is set the record straight regarding the first issue of my appeal filed with PDEQ. When PDEQ compiled exhibit B1, they altered the wording enough that it gives a very different meaning to my statement. Their wording was, "misrepresentation of emission SSR will operate its major source". I just want it for the record that I never did state SSR would operate its major source and again, this is referred to in the appeal. I would like to refer to comment number eighty from the appeals which says, "the permit for SSR requires that they stay under 24.52 tons per year of HAP. If they exceed 25 tons per year, they become a major source. The difference between the two numbers is only .02%, which I believe is much to small a difference" If you refer back to my appeal and the response that PDEQ had given me to my statements, their response to the above comment was the exact same that I received from the January 15th hearing. That is, "in fact, if SSR were to cross over the major source of threshold for HAP, there would be no additional requirements for air pollution control at this time". I hope the hearing board can understand how it can be reasonably concluded that there is a real possibility that PDEQ could, for practical application, allow SSR to operate as a major source within the permit revision. I'd also like to...draw, it might help, I'm going to come up, it has information on it that we're discussing. I'd like to draw attention to the term PACS in the source specific permit condition, permit Number 0336, Part B1, 1(A) paragraph 2. It states, "For the purpose of this permit, PACS shall mean any soil containing concentrations exceeding 100 parts per million by weight of total petroleum hydro carbon TPH. 0.130 parts per million by weight - Benzene, 68 per million by weight Ethel benzene, or 4.4 parts per million by weight of Xylene. While reviewing materials on the PDEQ Dialogue on page 8, dated July, 1996, I discovered that petroleum contaminated soil or PCS, is excavated soil that has petroleum based material as a component of the soil. The State of Arizona Best Management Practices for petroleum contaminated soil, Arizona Administrative Code R18(A), 1601 to 1614, identifies three categories for this type of soil. Special waste PCS, solid waste PCS, and unregulated soil. Contaminated soil may also be classified as a hazardous waste if it contains a listed waste or if it meets the characteristics of hazardous waste based on contaminant concentrations. For PCS is not a hazardous waste, the following categories apply, and in the interest of time, it states up there on that... I believe you will see where it reviews the limitations. In this instance I believe that you will find that the milligrams per kilograms is interchangeable with parts per million by weight. This being the case and comparing information from the permit revision with the information from PDEQ dialogue, I find that the soil being stored and processed falls specifically into a special waste PCS category. I do not understand why this term was not used in the permit and an abbreviated term was created in its place. Based on this information, the soil is without a doubt special waste PCS, so let's call it that in the permit. In this instance, the storage portion of the permit cannot be separated from the remediation revision since a special waste PCS is the same material to be stored and processed. Also from the dialogue, under the heading remember, it states: (1) the Arizona special waste PCS rules are not cleanup standards. They only apply to treatments storage and disposal of PCS; (2) Conduct a waste determination to

identify (a) if the soil is hazardous waste, (b) which category of PCS it falls under, and/or (c) whether an explanation...excuse me, an exemption applies to the waste, conducts sample in accordance with Arizona Best Management Practices. (5) contact ADEQ at - and it give the number and extension - for information on the nearest permitted special waste disposal facility. I believe in fairness to the community, this facility should be recognized for what it is, a special waste disposal facility. Throughout the course... the portion of the permit process that I've been involved with, I do not recall PDEQ ever mentioning special waste PCS. The State of Arizona Best Management Practices for petroleum contaminated soil or Arizona Specialist PCS rules, and I'd like to know why. PDEQ's response to my appeal for the granting of this permit revision would create a situation which would be in violation of Title 17.16.030 would simply, "PDEQ has no reason at this time to believe that a proposed permit revision will cause violation of the other standard". I would suggest that we replace the word air pollution, with the definition, provided in Title 17, and it will read as follows: "No person shall emit gaseous or overt materials from equipment, operations of premises, under his control in such quantities or concentrations as to cause the presence in the outdoor atmosphere of one or more air contaminants or a combination thereof in sufficient quantities, either alone...which either alone or connection with other substances by reason of their concentration and duration, are or tend to be dangerous to human, plant or animal life, or causes damage to property or unreasonably interferes with the enjoyment of life or property of a substantial part of the community or obscures visibility, or, which in any way, brings the quality of ambient air below the standards established by the Board of Supervisors. My understanding of the permit would be valid for five years, and I think I can safely say that for a minimum of five years and an unknown maximum amount of years, the residence, may of whom are children, will be exposed to Benzene, Toluene, Ethel Benzene, Xylene and (inaudible) emissions on a fairly consistent basis. From PDQ's own literature, I quote, "Air pollution affects the health of all of us and causes a loss of lung capacity. Air pollution contributes to the development of diseases, including bronchitis, emphysema and possibly cancer. Air pollution is a serious threat to our health. Those especially at risk include, children under 14, those over 65, pregnant women out for exercises and individuals with lung and heart ailments. The long term exposure to moderate levels of air pollution can damage even healthy people's lungs. I don't know about PDEQ's dictionary, but mine defines moderate as (1) within reasonable limits, avoiding excess or extremes, temperate. I would offer that regardless of which numbers one would choose to use - PDEQ's current allowances, or SSR's projected actual emissions for Rita Ranch Community, particularly, Desert Willow School will be routinely exposed to, at the very least, a moderate dosage of HAP's and VOC's. I consider this community an active community with the school in session, with multi tracks, joggers, and families that regularly walk with infants in strollers, roller bladders with a large number of swimmers and a recently competed car pool. I find it insulting and disturbing that PDEQ distributes literature that includes statements emphasizing serious and potentially fatal health problems and then wants not only to issue this permit revision, but apparently expects the community to believe that our children, spouses, and our friends well-being are not at risk. Our health will be a risk and that in fact does violate Title 17.16.030.

Dr. Friedman: Okay. Sheila Wilson.

Ms. Wilson: I'm going to make you happy. Mine is going to be 30 seconds or less. Dr. Friedman and members of the Hearing Board, the coverage of the contaminated soil being transported to SSR is addressed in Rule 17.16.00 of part B(2) of the final permit. The wording is vague and leaves a broad interpretation of acceptable coverings. Wetting down the soil should not be an acceptable covering.

The way the wind in and around Tucson blows, and depending on how far the soil is being transported, the soil could dry and blow into the air. Covering the contaminated soil will give some assurance that the soil will not blow into the Tucson community. The permit should state that the only acceptable method is covering the soil in a way that will prevent the soil from blowing into the air. Also, the permit states that even in the absence of complaints, PDEQ will inspect SSR's facility at least annually. Even with no complaint, PDEQ should inspect SSR's facility at least three times yearly due to the fact that SSR is very close to an elementary school and residential area. Thank you.

Dr. Friedman: Patricia Pena and Calvin Baker.

Ms. Cleveland: May I just say something. Uhh, Calvin Baker is one of the appellants, and in his place he asked Patricia, who is the principle at the Desert Willow Elementary School, to speak.

Dr. Friedman: Okay.

Ms. Hildengrad: Ms. Pena is not here; she's the Principle of Desert Willow. I'm Margie Hildengrad. I'm a governing Board Member. First of all, I'd like to thank you for your time today. I know this is a really complicated issue and as Mrs. Cleveland had mentioned at one time, we are lay people. We do not contend to understand all of the rules and regulations or formulas that have been presented to us in all of the issues, but we do have a few things that do concern us. First of all, let me state that there are five elementary school sites. Five school sites in Rita Ranch, not three. The nearest one is Desert Willow. At this present time there are more than 800 students that attend Desert Willow, K-8; another 90 that are pre-school and after care and before care facility. We have over 300 7th and 8th graders that live in the Rita Ranch area; another 300 plus high school students. We are opening a charter school right now at the Arizona International University. That is within 500 feet of SSR. So is the University, so is the Hughes employees and the other employees that visit that facility and work there. We are on year-round right now, so that means there's no break in the summer. The children can't go home when the SSR is operating in the summer time. They will be exposed to this year round. The City of Tucson strives to have clean air. We suggest that only certain plants be planted in Tucson. We don't expect people to have grass here. We would rather have more of a desert environment, unlike our neighbors to the north. Our neighbors to the north did not let SSR locate there. Why are we letting them locate so close to residence and schools? I know that some of the meetings I've attended, and I've been attended these meetings over the years, not just the recent ones, but when they first gave the appeal to you. They talk about checking them out. When we asked PDEQ about checking them out, it was very vague about when they would be checked, how often they would be checked, and the opportunity... there really are not many people that do the checking, so will they ever really be checked? You know, there are a number of people that live here because of the quality of air. If we're gonna damage the quality of air and make it not desirable, why do people come? Why do they want to be here? Safety is a big issue. We are not an Indian reservation at Rita Ranch. We are part of the City of Tucson. We don't want to wait and see what's going to happen. We would like this not to happen at all. Thank you.

Dr. Friedman: Terry Thorton.

Ms. Thorton: First of all, I'd like to submit this on behalf of Pam Little in essence of time here. She could not

be here because of the illness. Good afternoon Dr. Friedman and members of the Board. My name is Terry Thorton, and I've been a resident of Rita Ranch Community for five years. My concern regarding the operation of SSR in Rita Ranch is the effect that it will have on the public health of the residents of Rita Ranch as well as the City of Tucson. I've endeavored to find any relevant studies regarding this issue. Finally, I did come across congressional testimony regarding the health impact of incineration that had been conducted early 1994. Even though this isn't quite the same technique that SSR is using, there are some key points that I felt applied whether you're cleaning the soil by incineration or thermal absorption. Both methods cause air pollution. This.. the testimony was given by Barry L. Johnson, Ph.D. He's the assistant administrator for the Agency for Toxic Substances and Disease Registry. I only have a couple of points here and I will let you go. The selection of specific location of an incinerator or other waste disposal facilities should be influenced by the demographics of the proposed location. The development of a comprehensive health oriented demographic profile to include population density and social economic indicators proposed seating location, siting location is therefore needed. This was not done. In fact they didn't even realize that there was as many residents out there as it there was. They did not realize the school was going to be as close to that site as it was. None of this was done. My other point is then, the health monitoring is as important as facility monitoring, the conduct of a well designed health monitoring system studies before, during and after operation of the facility should be an intricate component of an overall project. As far as I know, to this date, none of this has been done. We've been saying this all along. Nobody knows what the effects of this is going to be on our health and we're the people who live out there. Not PDEQ, not SSR. And then the third point of mine is community participation in each aspect of the overall project is critical. Involving communities creates an overall awareness and an opportunity for productive information exchange among all parties involved. This was not done prior to the issuing of that soil storage permit. We were not aware of this. Putting a little 2 x 2 public notice in the newspaper may be legal, but is it morally right? How many people get the newspaper? How many people read the newspaper nowadays? Finally, in conclusion, I feel that by issuing this permit to SSR, that the residents of Rita Ranch and the citizens of Tucson are going to be a so-called science experiment. The residents of the Love Canal back in New York had no idea what was going on in their community until 20 years down the road - until they started screaming. We don't want to wait 20 years down the road, that's why we're here now. We want somebody to listen to us. We live there. Thank you.

Dr. Friedman: Our next speaker is Janice Lewis.

Janice Lewis: My name is Janice Lewis. I've lived at Rita Ranch for nine years, and I do have a comment to the Board and to our fellow Tucsonans. Certainly, there is a need to clean up our environment. However, the reason petroleum contaminated soil is removed from its original spot is because of the potential emissions in the air or its potential to contaminate groundwater. In some cases it is a law that, once contaminants are found in the soil, EPA will make them...owner clean up these contaminants. It is mind boggling to allow the people as to why this contaminated soil would then be brought to a clean air for processing. Title 17.04.020 is specifically intended to progressively reduce the levels of air pollutants in areas which exceed one or more health related or welfare related standards, and to prevent the levels of air pollutants from exceeding anogolous standards where the air is already clean. PDEQ has told us they are not concerned with areas as a whole, but only with this permit for this particular site. There are many times in Title 17 that areas are addressed. Why doesn't PDEQ look at the whole picture? It says, "all portable units are permitted by ADEQ or if someone calls PDEQ or if PDEQ visits SSR site for a general inspection and finds

any violation with the portable units. They cannot cite them for the violation. They have to call ADEQ and ADEQ will then send someone from Phoenix to inspect the unit. If the portable units are in permit issued by PDEQ, then why can't PDEQ issue violations? Not only is the air quality at the Rita Ranch community at stake, the City of Tucson is at risk as well. Thank you.

Dr. Friedman: One other brief comment. State your name please and come up.

Tricia Pena: My name is Tricia Pena and I am the Principal of Desert Willow Elementary School. Dr. Friedman and members of the Board. As principal of Desert Willow Elementary School located in the Rita Ranch community, and as a parent of a child attending Desert Willow, I am in full support of the Rita Ranch community with their concern for the health and safety of our children in the community. The children living within Rita Ranch could be exposed to emissions from the Southwest Soil Remediation plant that can cause great health risks. I urge all agencies involved to seek solutions that it will result in the operation to be placed in a less populated area and not be placed within the proximity of current or future school sites. I thank you for allowing me to speak.

Dr. Friedman: Thank you.

Ms. Cleveland: Dr. Friedman.. I.. we did pass up Al to let some of the others talk first. He would still like to have his comments.. and we left one person off, he has just a brief comments.... he has just a brief comment he would like to address the Board with.

Dr. Friedman: Okay.

Ms. Cleveland: They will be fast.

Dr. Friedman: Okay, that's fine.

Tony Gale: My comment...

Dr. Friedman: State your name.

Tony Gale: I'm sorry, my name is Tony Gale.

Dr. Friedman: What is your name?

Tony Gale: Gale. G-a-l-e.

Dr. Friedman: Okay.

Tony Gale: I am one of the appellants on this permit. Umm.. my comments have to do with the total hazardous materials put into... I'm trying to supplement this. That's why I'm not reading it. Put into the air. SSR submitted to us in their information, the actual real amounts that they're planning on doing and I'm saying that's irrelevant. It doesn't matter. The permit calls out other limits and it's those limits that we need to address. If SSR is really going to put out some more amount, we need to change the permit. Drop those limits down to where they belong to where SSR is saying they are going to actually be functioning. Also, with the limits set where PDEQ has set them is so close to the

limits of an actual major source that many of the residences of Pima County have felt that monitoring by PDEQ needs to be implemented. PDEQ claims they don't have the staffing, nor the legal rights to do that; monitor pursuant to Arizona Revised Statute §49-476.01. And on the very top part of it says, the control officer, who is PDEQ, may require any source, not major sources, not minor sources, any source of air contaminants to monitor. Sample, or perform other studies to quantify emissions of air contaminants they have. I would advise you to look at Arizona Revised Statute §49-476.01 in its entirety, we don't have the time to read it. It changed the program to require a monitor so that we can see exactly what it is and the quantities that we put into the air can be measured. Thank you.

Dr. Friedman: Thank you. We're gonna.. Did you want to say something?

Al Wiruth: Yes sir. I've got a little statement. I'll try not to read it. I can give it to you as a handout, but I would like to try to summarize it. I would like to take the opportunity thank you and the Board members for coming here. I was one of the original appellants, almost a year ago before this Board. I know that you heard about SSR at that time and you took it under advisement. I also understand your options. I'm a realist. I understand what your options are, and based on that I would like to just make a couple of fast comments on the permit. Please keep in mind that PDEQ... we're talking about gasoline vapors or petroleum vapors... if PDEQ is the same operation that intends to request you buy... everybody in this room to pay more money for gasoline by having the gasoline companies request a Stage II Vapor Recovery Act on the recovery system on the gas stations.. and we fought that to try to help clean our area. At the same time, they're authorizing this permit. Uhh, Keith Bagwell, an Arizona Star, the Arizona Star article on the 20th of July of this year, said that there's a new federal study on air particulates. This is the first time that the air particulates pollution in infant deaths have been identified in association. Of the study of 86 cities, Tucson was 15th in that. PDEQ's response raised at the January... questions raised at the January hearing, they said that particulate emissions from Southwest Soil was well controlled. The City of Tucson Special Operations Department has data on infant deaths. Children under 1-years old. We are averaging 10.2 infants dying per thousand. San Diego, which is a City three times as large, has only got 8, and Phoenix is 10.9. So what is well controlled when we put particulate emissions next to residential? I would also... some of the comments... questions I had on appeals, I asked why we were using a daily average of 70 degrees. The response from PDEQ is that they don't prepare the calculations. That came from PDEQ. ADEQ is the one who drafted and approved the permit that's in front of you. They're the one's that put down the calculation and I think they ought to at least take the time to verify the calculations and figure out what city they're in as far as when they are doing this. I also asked about soil samples and loaded trucks, because if you look at the processing of the storage, I said the one sample of a truck coming from any generator is not enough. Mr. Johanson agreed, and after the hearing in January, he faxed me a draft letter saying that he would agree to doing more sampling. He also agreed that his machines do handle hazardous waste in other operations at other sites. Not at this one. And, one of the comments was, we asked for official extra cleaning and we want it in the permit. PDEQ said it's not in. They don't.. Southwest Soil doesn't handle hazardous waste. So I don't think they know what the equipment is used for. Unfortunately, I do acknowledge Mr. Johanson did later have to send me a letter stating that he had to rescind to his agreements based on legal reasons and also because of PDEQ's questioning. We did ask one thing. The wind does blow in and it has to do with the process. The wind blows according to PDEQ downtown. We asked that we have wind checks. There haven't been. I know you can request a modification of the permit. Mr. Johanson has said previously that he is willing

to make some concessions as long as it was not unreasonable and not expensive, and I know he's not here, but his representative are. I would like to ask that we have a wind sock put on his processing plant or to be put on his building that he plans to put the soil. If the wind blows downtown and you authorize this permit, then fine. Then process. But, if the wind's blowing towards our school. If the wind's blowing towards our neighborhood, then he doesn't process. It's a very simple thing. The nearest neighbor, Air Liquide, has a wind sock for protection of their representatives so they know which way that the wind is blowing in case, God forbid, they had an accident. So I didn't think that that would be to unreasonable. The odor emission problem that was taken out of the original permit, you authorized back in May of '96, a permit and it had odor emissions in part 2(b) section A(1)(a). A month later, PDEQ with the supervise (inaudible), changed that section. When major revision came to us for public notice there was no major revision changed in that permit, and not until we brought it up about the odors and saying that we're glad that we had that in there, did PDEQ seven months later, before.... just before it comes to you, did they come in and say, "oh, we're changing the permit". I say they had their... they have according to Title 17.. the permit comes up every 17 ye... five years, if PDEQ wants to change the permit, then they can change it in five years. I don't think that just because they changed it after you approved it, after they approved it, that they ought to be to arbitrarily just go in and wipe out entire paragraphs that you think may or may not help the residence or businesses. Again, the lead problem is followed by Mr. Simmons'... one of the problems we had is that the processed soil will have lead on it. It will be put on the ground. PDEQ says it will not. I have a copy of the map.. the overview of Mr. Johanson's system. He's going to put the processed soil with lead on unprotected soil and then later they will double check the processed soil, to my understanding, to make sure that it met... meets all these sterilized commitments. If it does, then it gets reprocessed. And I have a concern so we are putting the lead back under the soil again. And I have a concern with the permit in that the Arizona legislature of 1995, directed ADEQ to develop a risk base soil remediation standard by August 1, of this year. I haven't seen anything on the standards, and my concern is based on the standards that ADEQ will come out, if PDEQ's hands are tied by law, does that mean that the permit is going to change arbitrarily again, without us having a public notice? And I think we need to make sure.. the Board needs to make sure from ADEQ what are the standards on this risk base soil remediation that they're supposed to put out in two days? In Title 17.12.160(E)(5), page 80 of Title 17 might help you on that. It says that if a source wishes to voluntarily enter into emissions limitation control or other requirement pursuant to other sections to Title 17, the source shall describe the limitations, etc. etc. Since Mr. Johanson and his council here have shown that they don't intent to 117 tons, but are only saying that they're going to emit 3-1/2 to 4 tons, I think then that the Board has that opportunity.. that that is a voluntary emission to me that he's already saying he's going to make a limitation and to me, I think that that ought to be changed in the permit. Down from the 117 tons that we're looking at by PDEQ's calculation to the 4--1/2 tons that SSR says they're gonna have. So based on that Title, if that is your choice.. the decision that you grant the permit, I would like to at least have it modified. You have that authority to do that. Also, please note that in page 24 of PDEQ's letter dated April 21st of this year, in which they responded to all the appellants, there is a chart and the first two reflect what SSR figures that they will emit, so therefore again, I ask you for that. There is one thing I would like to ask again on the lead, and I may not be able to get an answer right now, but one thing Mr. Esposito had told us when we were going through this was that PDEQ would conduct ambient tests at our elementary school before Southwest Soil started up its operation as a measurement of life contamination so we would have a before and after view, and I would like today to ask PDEQ when they decide when are they going to do these ambient air test cause we're now at the final hearing

and I'd like to have them set a date they can tell the Principle of Desert Willow Elementary that date to set up their monitoring systems. Again, I would like to thank you for taking the time to listen to our comments. We understand your options. We know what your options are. Hopefully you will agree that the processing of petroleum contamination soil in our community is stayed and deny the permit and I do want to say that it's supposed to be petroleum contaminated soil and not like the counsel says, primarily petroleum contaminated, which means it's a lot bigger. It's my understanding that this is only talking about petroleum contaminated soil. Thank you very much.

Dr. Friedman: Thank you. I think right now we will take a five minute break. Mr. Grimaldi, are you going to present the PDEQ or permit?

Mr. Straub: Dr. Friedman and members of the Board, I think at this point, with the Board's indulgence, with your permission, we'd like to defer to SSR. They have commitments here and in the interest of time perhaps it would be better to have them go forward at this time.

Dr. Friedman: Okay.

Karen Potts: Okay. Again, my name is Karen Potts. We would like to call as a witness, Terry Copeland. She is going to be using the tripod over there, and so she's going to have a line with a short lead on it, so we're going to have to do the best we can, but we think we worked it out. Could you please state your name?

Terry Copeland: My name is Terry Copeland.

Ms. Potts: And where are you... are you currently employed?

Ms. Copeland: I've been in practice in toxicology for 18 years and I've just left Harden and Associates, where I managed a group of toxicologists and began my own practice.

Ms. Potts: As of today?

Ms. Copeland: As of today.

Ms. Potts: Okay, why don't you give us a brief description of your educational background.

Ms. Copeland: I have a Masters of Science in Toxicology and Medical Pharmacology from the University of California, at Davis School of Medicine, and I hold a Bachelor's degree in Environmental Studies also from the University of California. I'm also a certified toxicologist with the American Board of Toxicology.

Ms. Potts: Can you could describe for us briefly, not everything, because your resume is part of the record, but some of the experience you have had in your toxicology in air emissions?

Ms. Copeland: Yes. I should say that I have about 8 years of experience in medical research. A lot of my work was used to treat infants that were critically ill, and after 8 years of conducting research in that area, I went into consulting toxicology, and my area of emphasis has been in health risk assessment and applications of toxicology in that area. I've conducted over 300 health risk assessments, specifically

to evaluate the potential for community health effects associated with the release of chemicals to air, soil and water. I should state also, that I've been very active with the regulatory agencies in California, Nevada and Arizona in assisting of a technical expert in the immigration of this particular science into rule making. I have been an invited member of the ADEQ's task force committee for the soil remediation rule that was talked about earlier, and worked as a toxicologist and risk assessment to assist in getting a very detailed and tedious procedures immigrated into the rule making.

Ms. Potts: And Ms. Copeland, you were hired by hired by SSR to assess the health impacts of the storage of handling and treatment facility at.. which will be located at the Sunbelt Industrial Center, is that right?

Ms. Copeland: Yes that's right.

Ms. Potts: Okay. Umm. because it's become such an important issue here today, what I'd like you to do is, if you could briefly describe and I know you tried during the break to start putting something on paper here, and I apologize for where the p... where the tripod is. We did the best we could. But if you could please describe for us just how it defines chemical risk?

Ms. Copeland: What I've done is to try to graph this out, but I'm afraid that what I've put on the easel, it's not gonna show the area you want.

Ms. Potts: Just put it up there and...Why don't you put it up there and then I'll move it around if you would like.

Ms. Copeland: Okay, I appreciate that. The process that I'm applying to the evaluation that Ms. Potts talked about, is the health risk assessment popular procedure that the National Academy of Science established in their early '80's. The U.S. CPA was adopted in their CERLA and RCRA programs and that state agencies across the U.S., including ADEQ and agencies outside of the U.S. have employed to evaluate the potential for health risk to the community. The risk assessment process.. when we're looking to evaluate a health risk, we're needing to understand two different components. One which is... has toxicology, as a root what I understand the toxicity of the chemical. The very first law in toxicology that any chemical can be a poison is dependent upon the dose, whether or not there's going to be an adverse health effect. For example, many of us take aspirin or advil, and we know that the appropriate dose that we're actually... the way we feel is helped by that dose. But if we were to take a bottle or two of that same chemical, we would have a level where there would be a toxic effect. Our physicians use that very same principal when they prescribe drugs to us. They understand the body weight, the blood flow, blood volume, and the way that drug acts, and that difference between the good level and the bad level they are able to establish a safe dose. In the risk assessment process, each chemical has been assigned to the State dose level based on toxicology studies, both in humans and animal model, and when it's animal model data, there very conservative extrapolations taken. I've done a lot of publishing in that area. The other component of the health risk is the exposure component. So, over here we're wanting to how bad the exposure portion of the analysis, we want to know how much because how bad is dependent on how much. So we're trying to understand what a maximum dose might be from a chemical that's been released that people might be exposed to. And there is a dose equation that EPA has set up where we use, in this case, air concentrations for each chemical, breathing rates, body weights, and usually the

assumption that you're there breathing that every day of your life for a lifetime. So basically, that's the process. I will say one more thing, the way the regulatory agencies have established the health risk characterization right now in times of toxicity and points, we separate out analysis of carcinogens from chemicals that cause the toxic effects other than cancer. (Inaudible) health risk for a specific site, gonna look at all the carcinogenic interval that come up with a total cancer risk. We will look at all the non-carcinogenic chemicals and come up with what we call a non-cancer hazard. Then those final numbers are compared to acceptable values.

Ms. Potts: Okay, Ms. Copeland, for the purpose of the remainder of the questioning, I'm going to define a couple of terms so that we can all follow along. There was a previous pre-existing, if you will, PDEQ permit that applied to the storage and handling of the soil, so that was the existing PDEQ permit and then there is the revised permit which is under appeal today. You're familiar with both of those permits?

Ms. Copeland: Yes I am.

Ms. Potts: Okay, and as a...it's labeled at tab 6 in the notebook, which is where we find the revised permit on page B(4) there are some permit limitations that have to do with air emissions, that's tab 6B(4), and you've reviewed those. Is that correct?

Ms. Copeland: Yes I have.

Ms. Potts: And we asked you to assess the risk between the difference of the existing PDEQ storage and handling permit and adding, if you will, the treatment facility to it, so that difference from where we started in the existing permit for storage and handling, going then to the addition, so that we now can include the treatment facility. That incremental increase, if you will, in emissions. We asked you to assess the health effects of that incremental increase in air emission, is that right?

Ms. Copeland: That's right.

Ms. Potts: And did you inaudible?

Ms. Copeland: Yes I did.

Ms. Potts: Tell me what you do?

Ms. Copeland: Essentially, I started out wanting to estimate what we call an upper bound dose and the reason that we do this with as an upper bound number is, we try to take up the maximum possible risk so that conservative and applicable to all members of the public.. the criteria was the same. I know Jeanine mentioned some of the work exposure based at one hour numbers, and my analysis did not use those. My analysis used the lifetime toxicity criteria that cancer slope factors and records promulgated by EPA. Those are generated to protect all members of the public, including infant children, adults, and the elderly. Going back to the dose, what I did was I took that emission rate... the emission rate for each of the chemicals of interest, Benzene, Toluene, Ethel-benzene, Xylene, Hehexene and, ah, and looked at the associated maximum off-site concentration in air for each one of those chemicals, used that concentration in the lifetime dose equation, along with the breathing rates, the volume weights, the 24-hours a day of exposure, and came up with what we call a lifetime

average daily dose, and that doesn't mean the average emissions. It means that I've averaged it over assuming that this occurs everyday of a person's life, and that's at a milligram per chemical per kilogram body weight per day or in other words, you express that for air would be micrograms in the air per unit of air. There's two ways to express that dose for air. Then what I did was I took the toxicity criteria which tells me now that I have how much. It tells me the risk per how much. It's an incremental.. It's called slope factors essentially for the cancer in point, so for every dose, I have a risk that goes with that site and we will multiply that out and that will give me what we call an incremental lifetime upper bound cancer risk.

Ms. Potts: Okay the chemical of concern would be what?

Ms. Copeland: The carcinogen here would be Benzene.

Ms. Potts: And that's the only carcinogen?

Ms. Copeland: That's the only carcinogen of petroleum mixture.

Ms. Potts: And what did you conclude as to Benzene?

Ms. Copeland: The incremental lifetime cancer risk was within what the EPA, the Federal Drug Administration, the Food and Drug Administration and most agencies define as a "deMinimus risk". This is a very, very low risk. We never see a zero value with cancer because the way these toxicity numbers are generated, you have actually some risk numbers associated with any dose above zero. And for those of you that understand about damage to DNA, that's where that comes from. It's a very conservative approach, but...so we always have some small risk, and because of that we don't target a zero risk. The FDA has done a great job of defining deMinimus risk. It's essentially a number that's so small, that it is not to be of concern for human health.

Ms. Potts: Ms. Copeland, did you also....

Ms. Copeland: This is all written up by the EPA, ASTR and FDA.

Ms. Potts: Ms. Copeland, did you also... (inaudible -- people talking) Dr. Friedman.

Dr. Friedman: Excuse me. We will allow them to have their chance please.

Ms. Potts: Thank you Dr. Friedman. Ms. Copeland, did you also do the same analysis for Benzene from the total facility? That means you would take the emission limit that is set forth in the revised permit, so that would include storage, handling and treatment?

Ms. Copeland: Yes I did. I did the combined total facility emissions and ran the same analysis, so I have higher concentrations because they would reflect the emissions both from the soil, storage and handling as well as the proposed treatment unit.

Ms. Potts: And what was your conclusion as to Benzene for the entire facility storage handling and treatment?

Ms. Copeland: That cancerous risk within the deMinimus range acceptable.

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Ms. Potts: So it was still deMinimus?

Ms. Copeland: Yes it was.

Ms. Potts: Now, for the remaining chemicals that are set forth on the revised permit; that would be Toluene, Ethel-benzene, Xylene, and so on, did you do an analysis of the health impact of those chemicals as well?

Ms. Copeland: Yes I did. And in those case, because those have non-cancer in points, I established... I used the reference dose which is the safe dose, without going into the toxicity mechanisms, there is a safe dose established for non-cancer in points, and the reference dose reflects a safe dose. Basically, what I did was to run through the upper bound air concentration for each one of those chemicals, and again that was at the maximum point of impact off site. Not the Benzene because the fence line is not necessarily the lowest concentration. We looked at the highest concentration in any area that could occur; compared that... uhh used that concentration to establish a dose; and compared that dose to an acceptable dose.

Ms. Potts: So then you're not looking at... you are not looking at what umm.. was included in the January. I believe it was January 15th. The January 15, 1997, report as the reasonable worse case scenario. You were looking at the maximum emissions limit that (both talking at same time - inaudible).

Ms. Copeland: Yes correct.

Ms. Potts: Okay. Umm... and the final question I have.. I know when you run off these analysis, it comes out in number form. You end up getting numbers in decimals.

Ms. Copeland: Yes.

Ms. Potts: Can you show us just so we can understand when you say deMinimus, can you demonstrate for us using the number?

Ms. Copeland: Yes. Definitely, the amount and type.

Ms. Potts: Alright, just so people can understand it a little bit better.

Ms. Copeland: Do we have a pen?

Ms. Potts: Is there another sheet? I don't know if you have all the (inaudible) levels with you that you could start with?

Ms. Copeland: Yeah, I have... (inaudible).

Ms. Potts: You're gonna have to repeat what you're writing.

Ms. Copeland: Yeah. I'm wondering if I should... let's move it around. I've got... if we had a cordless mike, it would be easier. For those of you who aren't used to working in scientific notation, it's when you have a lot of decimals, you need to go to scientific notations. I'll go back to the decimals. We'll

just see a lot of zeros.

Ms. Potts: I hope you don't have to use the microphone.

Ms. Copeland: The... what is called the deMinimus risk range is a range... it would be a probability of what we call incremental cancerous risk, which is above and beyond what we have just from being alive and our bodies mutating at a background level. It would be associated with a site where we're interested in specific concentration that's being generated from a source, and the acceptable incremental allowable risk ranges between a 1 in a million and a one in ten thousand, and I think the easiest way to do that... to start out with, we know that a million has six zeros. One in a million would be one divided by one million. And the way that you write that is a decimal. You'd have five zeros and a one. So that's a one in a million probability. Again, that range goes to one and a hundred thousand or ten to minus four again, one divided, one in 10,000, or that has three zeros in front of it. And a lot of agencies just like to pick the number right in between. EPA, ADEQ, is focusing a lot on this 10 to minus fifth number. To make a long story short, what our number looked like... the original number that I have for the total facility emissions which would be both the storage pile as well as the proposed treatment unit, was.. that in scientific notation two times 10 to the minus six. Two in nine. So we have five zeros with a two. And when I add... actually that'd be 2.7. When I looked at...I'm sorry that was just from the storage pile. Then when I also added in the thermal treatment, our number was seven times ten to the minus eight. So I have to come over eight and my seven comes in here. So basically what it did to the original number, and let me back up because here... here is where we're starting to say we should look at health. We should look at potential health risks. Well we start to get numbers here. We don't have a number here. We don't have a number in 10 to the minus five, but we're down to the 10 to the minus sixes. That incremental what we're adding is down to the tens to the minus eights. That's why I can call these deMinimus numbers. They're mathematically falling out. They're so tiny.. these numbers in here. So, I hope that explains.

Ms. Potts: Yeah.. Can you do the same thing for Toluene?

Ms. Copeland: Well, Toluene is not a carcinogen, so we don't look at the probability. I do have some notes here that I can show... I think it's helpful to show the difference between the safe level and the level and the level that we saw from the risk analysis. Okay.... these were the other four constituents, and by the way, the reason that I selected the Benzene which have cancer in point which we talked about, and these other chemicals is... normally what we call etex ETE & X are identified as the toxic constituents for petroleum hydrocarbon mixtures, and a number of agencies have concurred on that and that is because these are the most toxic and mobile constituents. What you have left are very, very low toxicity compounds that won't contribute to the risk. Each of these chemicals here, below Benzene, has an acceptable basically, an acceptable... and I'm trying to think.... these are in air concentrations. These are EPA pulmonary remediation goals, but they are risk based numbers that represent safe levels. So we'll just put the safe number up here, then what I did was, I took that number and divided it by our study related number so that you can see how many times we are lower than the established safe level, and I'll put those numbers in here for you. Four thousand six hundred and forty times below the safe number for Toluene. Now this is not surprising. You... these chemicals don't have the potent toxicity that the Benzene has, so you're always going to see a wide margin of safety for these chemicals. That's why toxicologists tend to look at Benzene for petroleum sites. Focused on Benzene. That's a known human carcinogen that's very potent. For Ethylbenzene -

sixty seven thousand that is three times lower than the safety level. For Xylene - 15.801 - fifteen thousand times lower than Hexene, which I just added because I did have the numbers, but we don't normally look at Hexene because it's such a very small fraction of petroleum mixture - 29.66. And I've done many, many air assessments of petroleum sites that have been approved by ADEQ, U.S.E.P.A. , Health (inaudible) EPA, Nevada DEP, and we tend to see these kinds of differences for petroleum mixture of these chemicals.

Ms. Potts: Just one more question and then we can wrap up... umm.. and I want to make sure you said this... I think you did, but I want to make sure. When you do the risk assessment, it doesn't count for.... it is not... someone earlier was talking about males. It doesn't account for infants and children and the elderly, and even sensitive persons?

Ms. Copeland: Yes. Unlike the Arizona air quality limits for the one hour, which are currently based on what are the exposure limits with an extrapolation to the general public. The toxicity criteria that I used were probably by the U.S.E.P.A. for all members of the public, including sensitive individuals, which are considered infants than the elderly to be sensitive because they... their livers don't metabolize chemicals as well as the average healthy adult.

Ms. Potts: Thank you Ms. Copeland. That's all I have.

(Inaudible- Many people speaking at once)

Mr. Straub: Excuse me, Dr. Friedman, I do believe as a matter of a point of procedure, since a witness was called, the appellants do have a right to cross-examine Ms. Copeland, if they wish.

Ms. Cleveland: We would like to do that please.

Mr. Straub: Provided that the testimony and the cross-examination questions are limited to those matters that are relevant to the proceeding.

Dr. Friedman: Okay.

Ms. Cleveland: The first question I have, is what emissions did you use? Did you use SSR emissions or the PDEQ maximum rates?

Ms. Copeland: I used the maximum allowable under the permit in both cases, the revised and the original.

Ms. Cleveland: You used SSR's... the chart that they have and then you used PDEQ too?

Ms. Copeland: No. I did not use any SSR numbers. I used permit based on numbers.

Ms. Cleveland: What... You mentioned that you had a worse case area. Could you tell me what that area would be? You had this...

Ms. Copeland: I did not know the location and modeling output and I have a modeler run that part for me, you get a series of air concentrations at various locations on a grid. Pages and pages of air concentrations, and you can request those to be listed by the highest concentration first. It's not always in the fence

line, and it's traditional air toxics to do that.. to look at the high concentration on site.

Ms. Cleveland: I would think that would be important, though to the people of Rita Ranch to know what areas would be the most concentrated of the emissions.

Ms. Copeland: That would be something that we could... look at the air modeling output from the ... and find out.

Ms. Cleveland: These emissions and your calculations for were only on the SSR plant. You didn't have... as a whole take this of what all emissions there are in the area to begin with. Your emissions would be added to the site.

Ms. Copeland: These are incremental risks to background risks. That is right.

Ms. Cleveland: .....so that maybe we'd know what the risk assessment would be for the area?

Ms. Copeland: No, I don't. I've been dealing with some of those issues for a long time. It's very difficult to establish background risks.

Ms. Cleveland: If the only thing in the permit were estimates, we don't really have actual emissions, so how can we make sure you base your analysis on just estimates... I mean that's the key word in all this stuff is estimates. I mean are there.... They base all these things on estimates, but they don't even have a comparable site. And when we ask them would they compare them to a site something like SSR, PDEQ states that they don't have a site that they can compare it to, so all there you are doing an paper is estimated numbers, and that's what scares the people the most. We're doing this on estimates and you just gave me an analysis on an estimates.

Ms. Copeland: When health risk assessment depends on estimates, the estimates must represent an upper bound number, because...

Ms. Cleveland: But we don't know the exact number. We don't have any actual emissions. This permit is based on estimates.

Ms. Copeland: Yeah. Ah, the permit will teach them numbers, so I'm assuming that they come from some engineering factors, that is my understanding they did come from the EPA emission factors. Yeah. They're EPA emission factors, for specifically for stockpiled soil.

Unidentified

Male: Yes, ma'am. I just have one question and that there are 39 toxicity characteristic wastes, and you only have one listed up there. Did you do them on the others or...?

Ms. Copeland: Yeah. The toxicity characteristically leaching potential actually doesn't take into account cancer and non-cancer points at all. It's kind of an unfortunate terminology. It specifically addresses the leachability of the chemical, which comes back to mobility, so it doesn't correlate at all to a cancer slow factor or potency of a chemical in terms of human health.

Unidentified

Male: None of the thirty-nine.

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Ms. Copeland: No. Corrosivity and leachability and PH and...

Unidentified

Male: No. I'm talking about barium carbontrachloride.

Ms. Copeland: And you have specific numbers, right? For each?

Unidentified

Male: Yes. And mainly these in my presentation. I don't see any of those up there. Did you do a risk assessment on 3018 through 3043?

Ms. Copeland: I think there are two questions going on here. The chemicals I addressed that are representative of the petroleum mixture, is that one of your questions? I addressed chemicals at EPA and health agencies considered to be the toxic and mobile constituents. This is standard practice. I would not assume that 39 chemicals were in a mixture they were not needed to be in. Number one. Number two, those chemicals that you're reading then are considered to have toxicity characteristics - what I'm telling you is that where toxicity is based on other criteria including leachate, ph, corrosivity, those are not human health in points, so it's an unfortunate terminology. Obviously, I think they should be based on a health risk criteria.

Unidentified

Male: Well, my point is that EPA listed in its toxicity characteristics and have recently added that these are 3018 which does include Benzene...

Ms. Copeland: Well, if vinyl chloride is a very toxic chemical, it's not constituent on regular carbon fuel.

Unidentified

Male: But no risk assessment was done on any of (inaudible).

Ms. Copeland: No. I have no emissions data. Those were not... let me go back and talk about the four steps of the risk assessment process. The first step is hazard identification, which goes through and looks at the product to make sure and identifies those chemicals that will go through process. Vinyl chloride was not a chemical that was in the petroleum mixture of the chemicals of concern. I think that is probably a different issue. Neither was chloroform, neither was barium. They're not chemicals that are components of the mixture that were addressing in this situation.

Unidentified

Male: My point being that some of the soil may have some of this stuff in it.

Ms. Copeland: All soil has almost every metal you can think of. They're background metals. And they're...

Unidentified

Male: And I think that needs to be determined. That is my concern. None of these..

Ms. Copeland: That actually would not be considered part of the site's specific risk. It would be considered as part of the background risk. Again, (inaudible).

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- Ms. Farley: Yes. I just have a couple of questions. First of all, I picked up a survey of the recent literature and recent studies that have been put out. A survey studying just briefly over the last five years. One of those studies showed that Benzene concentrates in buildings actually showed almost two fold concentrations inside to those levels of outside. What would that do to your health risk.
- Ms. Copeland: It would probably double it. We'd go from two in a million to four in a million and we'd still be within that minimum risk level.
- Ms. Farley: So, secondly, to get (inaudible) did you look at all of the risks for all cancers or did you work with specific cancer and acute myeloid leukemia? Recent studies show that if you looked at that particular risk because of the target organ of that Benzene effects, primarily the stem cells. The risk for that is actually much higher than the estimated risks for cancers overall.
- Ms. Copeland: I did not develop my own toxicity criteria. I used the U.S.E.P.A. promulgated cancer slope factor for Benzene which is published and given a profile in the integrated risk information system (IRIS). And not...
- Ms. Farley: And that would not be used....
- Ms. Copeland: Oh no. I didn't generate any of the toxicity criteria. That's not standard for a risk assessment like this. I used the EPA's peer reviewed slope factor for Benzene which is based on a limited multi-staged small dose extrapolation of (inaudible).
- Ms. Farley: So basically, you did not take into consideration the recent studies put out by other toxicologists?
- Ms. Copeland: Uhh. No I did not. I just did a straight U.S.E.P.A. inventory evaluation. which is what EPA would use to make a decision as to whether or not homes should be built on contaminated soil.
- Ms. Farley: True, but if you are not the one or four or ten in a million, it wouldn't matter to you, would it. (inaudible - too many people speaking at the same time).
- Ms. Copeland: Those are natural risks. Those are upper bounds theoretical risks based on multi-staged generated number which has been reviewed extensively by the National Academy of Sciences, the CIIT and U.S.E.P.A. - overestimated cancer (inaudible).
- Ms. Farley: Okay. Also, when you look at the health hazards, did you take into consideration the subtle effects of the other ... (inaudible) that's Toluene, Benzene, Xylene and Hexane, which you take consideration again synergistic effects? And those components in conjunction with each other, which increase their toxicity, again, I put in, that's in your recent literature?
- Ms. Copeland: No, I didn't generate any independent toxic criteria. I used the EPA's (inaudible) reference doses which use a no observable adverse effect level and which takes the most subtle effect which indicates that those particular solvents have usually CNS neurological or behavioral endpoints. The most subtle effect take a no effect level from that and bring that down between a thousand and ten thousand (inaudible), that's how those records just are evaluated, so that the subtle effects of (inaudible) carcinogens can be dealt with that's all explained in EPA's risk assessment guidance document.

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Ms. Farley: Thank you.

Dr. Friedman: Okay.

Ms. Cleveland: I just have one more question.

Dr. Friedman: One more.

Ms. Cleveland: Please. Somebody wanted to know how long your worked for SSR?

Ms. Copeland: A couple of weeks. A couple of hours. I mean first talked to Karen a couple of weeks ago, but I basically just did this in a day's time.

Ms. Cleveland: Have you visited the site at all?

Ms. Copeland: No, I have not.

Ms. Cleveland: Did... do you use your statistics..umm... did you arrive at room temperature and wind factors? Would that be a factor at all?

Ms. Copeland: No. I used the emission factors that were already established based on the default assumptions for those parameters.

Ms. Cleveland: Did you...was there a temperature involved in....?

Ms. Copeland: There's no temperature involved in the risk calculations. No.

Ms. Cleveland: And no wind factor?

Ms. Copeland: No.

Ms. Cleveland: Thank you.

Unidentified

Female: Just one quick question, and that was a personal thing and that is, would you be willing to have your child there? Would you be willing to evaluate storage - (inaudible) it's just a personal issue?

Ms. Copeland: That's a very good question. I am a mother, and I would live there. Yes.

Unidentified

Female: Yes, but you don't.

Dr. Friedman: Okay, continue with the discussion.

Ms. Potts: Yes. We were going to call next Mr. Jay Chang. Would you state your name please?

Mr. Chang: My name is Jay Chang.

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- Ms. Potts: And where are you currently employed?
- Mr. Chang: I'm employed with Southwest Oil Remediation.
- Ms. Potts: Can you give us just briefly your educational background?
- Mr. Chang: Yes. I have a Bachelor of Science in engineering from the University of Arizona.
- Ms. Potts: And how long have you been with SSR?
- Mr. Chang: I've been with Southwest Soil for two years.
- Ms. Potts: And what do you do for them?
- Mr. Chang: I basically prepare the air quality permit applications and issue help with the writing for (inaudible).
- Ms. Potts: I see. And did you prepare the permit of revision application in this case?
- Mr. Chang: Yes I did.
- Ms. Potts: And have you prepared air permit applications for out-of- state?
- Mr. Chang: Yes I have.
- Ms. Potts: And does SSR do business out-of-state?
- Mr. Chang: Yes. Most of our accounts are usually out-of-state, actually.
- Ms. Potts: And you have other air permits in other states. Is that right?
- Mr. Chang: Yes we do.
- Ms. Potts: Can you describe briefly the process by which SSR treats or cleans the soil?
- Mr. Chang: Yes. Southwest Soil Remediation owns portable units. They can be assembled on site or permanently. Basically, heating up the soil where contaminants are coming off the soil into the air stream, which then constantly go through a series of air control devices so that it will have air emission which will meet regulatory guidelines.
- Ms. Potts: And does this process allow somewhat of vast contaminated soil on the premises to essentially clean the soil to acceptable standards, rather than land filling the soil?
- Mr. Chang: That's correct.
- Ms. Potts: So it eliminates the contamination within the soil within the regulatory standards, correct?
- Mr. Chang: That's correct.

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- Ms. Potts: Now, the permit revision that we are talking about here, includes a thermal treatment unit which is one of the remediation units that already has a permit. Is that right?
- Mr. Chang: Correct.
- Ms. Potts: And there was one unit that qualifies under this revised statute to operate at this location in Tucson?
- Mr. Chang: That's correct. And I'd like to also clarify to Ms. Cleveland that it's ten in one thousand or (inaudible). They're actually the same one, so....
- Ms. Potts: But the permit... that unit is permitted by PDEQ?
- Mr. Chang: Correct.
- Ms. Potts: Okay. That's permit 4167-95?
- Mr. Chang: That's right.
- Ms. Potts: And that is the only one at this time that qualifies covering the Tucson location under the revised permit?
- Mr. Chang: Yes.
- Ms. Potts: Okay. Under tab... I believe it is 2, there is a report that we discussed off and on today. It's kind of in the middle of the tab. It is dated January 15, 1997, correct?
- Mr. Chang: Yes.
- Ms. Potts: It's kind of... for the purpose of the Hearing Board, it's kind of halfway in the middle of tab 2, and it's entitled "natural worse case emissions in ambient air quality impact from SSR's recycling facility". It's dated January 15th. You prepared this report, Mr. Chang?
- Mr. Chang: Yes I did.
- Ms. Potts: And what is the purpose the report?
- Mr. Chang: To compare actual reasonable worse case emission that we are expecting and we were trying to show how conservative PDEQ was they were estimating the emissions for us.
- Ms. Potts: And you were also trying to show that you would be well within the permit limitations. Correct?
- Mr. Chang: That's correct.
- Ms. Potts: And I think the tables that are most important to us are table 1, which is actually exhibit 1, on page 2, entitled "reasonable worse case actual admissions". Can you just tell us what is reflected in the three columns, one is soil handling, storage front soil treatment and one is total? What are those numbers?

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Mr. Chang: The first column of soil handling storage basically comes from EPA memorandum which states how to report emissions from gas station remediation sites. The table basically has soil types similar to how we would have it, so I used that number to arrive at soil handling and storage numbers, and soil treatment conditions came from our test data and also from our ADEQ permit, or those were added in the third column for total emissions.

Ms. Potts: Okay, so of soil handling of storage, then you used the EPA criteria to generate the number?

Mr. Chang: Correct.

Ms. Potts: And in the second column, soil treatment used the actual air testing from SSR's remediation?

Mr. Chang: That and ADEQ numbers.

Ms. Potts: Okay. And then you totaled them, and then see charts, Page 4, there is another table that is called Exhibit 4. Is that where those total emission numbers were carried over there?

Mr. Chang: That's correct.

Ms. Potts: And then what are (inaudible) for that table?

Mr. Chang: They're compared to what PDEQ set for us as permit revisions

Ms. Potts: And this is in a revised permit?

Mr. Chang: Correct.

Ms. Potts: Okay. And what was your conclusion after preparing those two figures all the way down?

Mr. Chang: That our principle worse case emissions would be much below permit revisions.

Ms. Potts: So, you believe that the SSR treatment facility and the storage and handling facility can operate at one location within the PDEQ permit limitation?

Mr. Chang: Correct.

Ms. Potts: And you believe PDEQ's permit limitation is reasonable?

Mr. Chang: They're very conservative (inaudible).

Ms. Potts: Okay. And why do you think they're reasonable.

Mr. Chang: Well, I think they're reasonable because they actually. They conservatively estimated their soil conditions, so they are comfortable with having brought in and that's why I think it's reasonable.

Ms. Potts: Okay. Now, someone brought up something about groundwater, it's unrelated, but I want to clarify the point. Umm... At the SSR facility, is there a liner under which the soil is stored?

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- Mr. Chang: Well, right now we don't have anything cause the City has not given us building permits, but ADEQ has given us the approval to go ahead and build a facility which will have a liner and a concrete foundation, so we already have approval which already dealt with hydrology and the geology portion of that facility and which is ADEQ's jurisdiction.
- Ms. Potts: Okay. And so, it will have a lining. You just have to get building permit.
- Mr. Chang: Not yet.
- Ms. Potts: No other questions.
- Dr. Friedman: Okay. Cross-examination.
- Mr. Wiruth: Dr. Friedman. I do have one question I was going to ask about the soil. When you have the processed soil and it's gone through a conveyor belt, is that going on a lined area, or is it going on to an unprocessed, uncovered area?
- Mr. Chang: That is already addressed by the approval of ADEQ approval... and you will be going on a concrete pad actually, so...
- Mr. Wiruth: The processed soil?
- Mr. Chang: Yes.
- Mr. Wiruth: Okay. That is different than your drawings that you did provide.
- Mr. Chang: Well, I invite you to look at it again.
- Mr. Wiruth: I will do that.
- Mr. Chang: I have a question. The gem thousand. Okay. You say it's a four footer, so your six footer is a gem one thousand; your five foot... you have three different types of gem one thousand?
- Mr. Chang: No sir, we do not. Ten one thousand is the name of the four foot plant that was entirely used before we started using the four foot plant name.
- Mr. Wiruth: Okay, and what is your largest... your largest is what?
- Mr. Chang: The six foot plant.
- Mr. Wiruth: It's just called a six foot plant or ?
- Mr. Chang: Nope.
- Mr. Wiruth: That's what it's just called, six foot plant?
- Mr. Chang: Yes sir.

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Mr. Wiruth: Okay. Uhh... I have a question. Do your machines in the other states, do they process hazardous waste at those sites?

Mr. Chang: Sometimes yes.

Mr. Wiruth: And then after we've done some cleaning, you do bring them back here for maintenance, correct?

Mr. Chang: Correct.

Mr. Wiruth: Okay, and have you had any violations in any other states that you have not followed preventative guidance that you have... and you violated air quality standards in those states?

Mr. Chang: We had minor violations.

Mr. Wiruth: How many? One or just a couple or..?

Mr. Chang: I can recall one where the cars pulled off the stock pile, so we had to cover them. That type of deal.

Mr. Wiruth: Okay. Thank you.

Ms. Cleveland: I just have a few questions, too. Ummm. the six foot plant, would they... would that unit be allowed to operate on that site?

Mr. Chang: No, it would not.

Ms. Cleveland: Why?

Mr. Chang: Because something... if I understand correctly, Mr. Johanson agreed not to use on that site.

Ms. Cleveland: Well, if there's a difference as to whether he agrees to it and whether it's allowed to operate.

Mr. Chang: It's not allowed at this time.

Ms. Cleveland: That's what I mean. My question is why is it not allowed?

Mr. Chang: Well, it's not permitted right now because it's emissions as written right now, is not acceptable level.

Ms. Cleveland: It would be over the amount then?

Mr. Chang: Yes it would.

Ms. Cleveland: Well, what my... what I'm so confused about is the emission that you said that were would be actual emissions that you would be emitting?

Mr. Chang: Correct.

Ms. Cleveland: It's so much lower. You're talking about 3. something when the permit from PDEQ gave you 86

tons. Your talking 3 tons. And now you're trying to tell me that the six foot unit would not be allowed to operate there cause it would put you over. If you're saying that..

Mr. Chang: Right, but that plant is capable of operating much more. You know. That's ....

Ms. Cleveland: Your saying then that total capacity of storing, handling and the operations of that four foot unit would equal 3 tons, and if you operated the big unit, it would put you over the top. Now, you've already got 86 tons. So now you're saying from 3 tons to 86 tons... that unit.. if you operate that unit, would put you over the tonage?

Mr. Chang: Well a six foot plant it would, yes. Because that plant is capable of operating a lot more (both talking at same time - inaudible).

Ms. Cleveland: Sir, let me ask you something. When they go from the four foot unit to the six foot unit, your talking that much tonnage over. That is really hard to believe.

Mr. Chang: Well, depending on the size, it's one globe unit which is (inaudible) nine unit.

Ms. Potts: But that's a big difference, sir, from 3 tons to 86 tons.

Dr. Friedman: Is there a question for the witness?

Ms. Potts: Yeah. I think if you just answer as best you can. I think he had given you the best answer he can give you.

Mr. Lemon: I can answer that question for you.

Dr. Friedman: Please.

Mr. Lemon: The reason is... my name is Dick Lemon. We put an allowable, maximum allowable emissions in the permit. We're not gonna.. if he were to operate the larger source in there, it wouldn't go up over 86. It would not fit into the emission budget that we wrote for this permit revision. In other words, if we allow a maximum of 5,694.. whatever the number is - total tons per year of VOC's and that's based on a maximum pounds per hour. The unit.. the larger unit is permitted at a higher rate by ADEQ and would not meet the requirements to operate at that... at this location. Does that make sense? We're not talking about altering any other emissions. It just simply wouldn't meet the criteria for operating at the site.

Dr. Friedman: Any other questions?

Ms. Cleveland: Could we just have a minute to just talk for a second?

Dr. Friedman: While you're doing that, they're going to ask a question from the audience.

Unidentified

Female: I am one of the appellants of Rita Ranch. In the future, does SSR have plans to bring in contaminated soil from out-of-state because there is a railroad line going through the back of that

property?

Mr. Chang: We will not be using the railroad.

Unidentified  
Female: I mean..no..but, are they...well it's by railroad, by truck, whatever. Are they going to be bringing in other sources of contaminated soil from outside the City of Tucson and state of Arizona.

Mr. Chang: Well...

Unidentified  
Female: I mean are we going to be cleaning the soil out there for the rest of the state that you have operations in?

Ms. Potts: Mr. Hearing Officer, we're getting way far from the issues here.

Unidentified  
Female: It's a valid question.

Ms. Potts: I disagree. I think it doesn't fall within the perimeters of ARS 49-41 - whether or not the emissions will violate the county rules. That is the issue before us.

Dr. Friedman: Why don't we hear what (inaudible) says. Do you have any other questions?

Unidentified  
Person: (Inaudible) no.

Dr. Friedman: Okay. Thank you. Let's have.. Did any member of the Board have questions?

Dr. Brailsford: I have a couple of questions, but I'm not sure if this is the best time to ask them or not, or if I should wait til Pima County has done there's, but I'm a little uncertain as to why this permit was a revision of the original approved permit and not a separate or different permit, since it seems substantially different from storing soil, which was the original permit, to storing remediated soil?

Mr. Chang: Well, our understanding first when we got started with permitting from ADEQ and Pima DEQ was, that we would need a permit for the soil storage portion, but then later was told that this remediation portion also needed to be addressed, and that's why we're here today and also a sort of related activity where you just can't really have a storage and not rededicate, which doesn't make any sense at all.

Ms. Potts: Well I think I can answer the question. I think Mr. Grimaldi can answer it as well. You want to take a crack at it and then I'll try it.

Mr. Grimaldi: Go ahead.

Ms. Potts: Go ahead. Okay. The treatment unit is permitted by ADEQ as a portable source and that means it can move around the state and treat anywhere within the state. So PDEQ really doesn't regulate the portable source because it already has a permit and it's already... that permit is already enforced, and

put in the sole jurisdiction of ADEQ. See, what has happened is because by bringing that source onto this property which had a pre-existing permit, the emissions would increase. What they did was, they increased the caps by just adding the small percentage that had increased by the treatment, but ADEQ still had jurisdiction over the portable source. It has not ceased being a portable source. For it to cease being a portable source, and I think that is right, but I haven't read it in a while, I think it has to remain at one location for the duration of the permit. And I think the portable source permits are five years. So, I think we have to stay in one place for five years to be a stationary source and then it would come under the jurisdiction completely of PDEQ if it was here in Pima County.. but again, it does have a pre-existing permit. So Pima County didn't really permit the treatment unit, they just allowed for the additional emissions because it was going to be on that same site where they already are. Does that make sense? Would SSR conflict... frankly, they weren't... they didn't think originally.. we didn't think that they needed a permit revision at all. But to be on the safe side we contacted both ADEQ and PDEQ and inform them that there should be a permit provision.. umm.. because of the pre-existing...

Dr. Brailsford: Um... I think I understand that, but maybe a better question might be for new policies. If, supposing it wasn't a temporary source. If holding the contaminated soil and having a permanent source there was all in one permit instead of the way it is now, if it were a permanent source. How would that change what the permit looks like today? I mean.. I guess the reason I'm asking that question is why was it done the way it was... it does... it would have put it in a different category if it were done differently?

Mr. Grimaldi: Well there's sort of two parts to that. The first part is sort of why it was done this way. One of the things that happened early on in the process was this issue regarding jurisdiction regarding portable and stationary sources as Karen discussed. One of things the agency was doing when we were looking at emissions when it was decided that we were going to have a stationary source, was aggravating under the regulatory framework, various emissions. Half emissions hazards air pollutants vs. criteria pollutants VOC's. One of the things... the way the emissions are aggravated are different in the regulations.. how you look at halves and how you look at criteria. At the time, the half emissions weren't being counted with both the portable and stationary unit, and they should have been. It was in the middle of the... when we about to do the public notice, that the agency realized this, there were two options that were open. One is that the whole process starts all over again, or the others just be limited to the storage facility. Now, Mr. Johanson at that time, indicated that he would care just to have the stationary.. the storage permit issued, and that he said he could operate using just storage and didn't necessarily have to treat the soil right away, but his intention was to treat the soil at that site. We don't have any real regulation that says we can't. We then have to say no, you can't do that and stop processing the permit. Additionally, discussing this issue with the county attorneys, since the revision that would take place in the permit would constitute a significant revision, which is what we're dealing with today. It goes through all the public notice requirements, appeal procedures, so that in no way is the general public precluded from commenting on that issue. The source decided to go ahead then and get the stationary storage permit. My understanding, I'm not speaking for Southwest Soil's, but my understanding is there were issues revolving at their office where there were other things and didn't get building permits and that's why they wanted that issued..uhh, permit issued right away. The second part of the question is, if this can come in together and was just a site... one site.. was not portable units, would this permit look different? A lot of that is going to depend on the operational procedures of the source. If they were choosing to operate what they're proposing now, the permit would look the same. If they were

looking at operating larger units, and having greater throughput and more storage and other contaminants, then it wouldn't look the same. But under these parameters it would look fairly similar. We can get into specifics if you want. I mean, it's kind of hard with so many different options that are open.

Mr. Lemon: I would like to make one statement, that it would look a different and the reason it would look different is because we would be permitting a specific unit and therefore it would include the operating parameters, the model number, and basically the same things that are in the state permit that would operate at that site. Technically we would pull into our permit. That's the only part that would look different. Another thing...

Unidentified Person: And the emissions, then would change?

Mr. Lemon: Excuse me.

Unidentified Person: The emissions.

Mr. Lemon: No. I haven't see no reason at all why that would change.

Unidentified Person: So the only thing that would change would be just the model number, whatever...

Mr. Lemon: Well, that's really not changing. Basically, if there's only one permit the state has issued that qualifies to operate in our allowance, that data is in that permit. We did not try to narrow it down to permit one unit. This gives the operator some flexibility to bring in any unit that qualifies to basically the budget. An emission budget, you can have something that's federal enforceable permitted... you can bring it in under our conditions.

Unidentified Person: So the total maximum amount of emissions wouldn't change whether it was portable or permanent then?

Mr. Lemon: No. That would not change.

Mr. Grimaldi: Again, we're choosing the same operating center. Again, they own different units. If they want to bring in the large unit and have greater throughput, that would be a completely different story. If they choose to handle other materials such as hazardous waste and pesticides, which are precluded now, it would be a different... a different permit, too. But under the same operational scenario that they depicted, it's basically combining the state permit and our permit into one permit as opposed to having two different permits, so the conditions would basically be the same.

Dr. Friedman: One last question. Question.

Dr. Brailsford: Yes. What I was wondering... It's not clear to me.. Is that.. I wonder would it be any different because we're talking about essentially with all three the units are portable. The location is

permanent. Okay. So, it's a facility and would it be any different if it were classified as a special waste disposal facility? Would that go through another... would it go through strictly ADEQ or what would the differences be? And that's why I'm questioning as to why it didn't proceed that way and through.. because that... I get the impression that would have taken care of the whole permit as one situation?

Mr. Grimaldi: Unfortunately, the way environmental regulations are set up, you do not get one environmental permit which would incorporate say, solid waste issues, ground water, runoff, air quality hazardous waste. Each program.. this is designed by the state of Arizona. Each program develops their own permit. Now the solid waste people came up with specific regulations regarding the handling of solid waste which they define as special waste, and that's what you're referring to. So if they were going to come in.. if this source was going to come into the county and not be portable, it'd be a fixed site. It would still have to go through the same state review regarding solid waste issues - special waste aspects. And I believe they've gone through that. I mean I can't speak to that specific issue, but they have gone through minor changes. They have gone through a solid waste review and they've gotten a special permit through from solid waste division of Arizona DEQ. At one of the public meetings we had approximately a year and a half ago or two years, the City of Tucson.. was actually a woman who came down from the solid waste division specifically to talk those issues for the permit they issued. It dealt with issues like ground water contamination, where the cement slab was going to be runoff.

Dr. Friedman: Okay. If there's no more from Mrs. (inaudible), we will... Oh, I'm sorry. There are two more questioners.

Dr. Brailsford: One is for Mr. Chang. Could you review for me.. when the soil is remediated through the processor.. the organic materials are removed, what happens to the lead? Does it go out in the remediated soil, or is it somehow removed through the process?

Mr. Chang: Right. Most inorganic lead will stay in the soil itself. There are no organic lead that will (inaudible) will go through the same catalytic conversion, like your automobile type of process which will also get rid of some.

Dr. Brailsford: So is the soil... do you have an idea for what the levels of lead would be in the remediated.. a fixed soil and what's going to happen to that soil? is it going to be on the site.

Mr. Chang: Well the level of lead in the soil would be approximately the same as it what it first came in as. And if it's such a level then it would be (inaudible), then hazardous waste.

Dr. Brailsford: Any my other question I think is for you, again in Pima County. There was a discussion on the difference between PCS and different categories of PCS and I don't really know if I understood where that whole discussion was going. If it was not considered PCS, is it.. are there different regulations and rules?

Mr. Grimaldi: Yes. Exactly.

Dr. Brailsford: What are those? Just, could you explain that a little bit to us?

Mr. Grimaldi: The concept of the PCS petroleum contaminated soil that was being referenced earlier by the appellants, had to do with remediation, actually cleaning up the site. Say, there's a auto wrecking yard. Over the years the cars leaked oil and gasoline, other materials onto the ground - petroleum based products. Now they have to clean that up. What was being referred to as regulations that one, would require the landowner to clean it up, and two how they would dispose of that material, and within that regulatory framework they came up with some very specific definitions and some very specific levels. What we did in our permit is, we came up with a term "contaminated petroleum" ..uhh. "liquid contaminated soil" so that there was a way to define what was being stored at the site that was contaminated and what had been processed potentially and could be cleaned. So what that definition is doing is setting the lower threshold. Anything... I can see eyes moving back in people's heads... we had a standard of 100. Anything above that would be considered contaminated. With 100 PPM by weight of total petrohydrocarbons is one of the criteria. Anything above that, if it came out of the unit, it would be considered contaminated from the air quality standpoint. It had to be put back into the storage area. It had to be covered. Now, that follows very closely to the solid waste regulations as to if that's still contaminated and whether or not it needs to be cleaned up anymore. So, someone takes material - it's contaminated - they have to clean it up. They bring it to this facility. It's loaded with (inaudible) petroleum hydrocarbons. They put it through, say a treatment unit. It comes out the other end. They test it. Now there has to be something to determine whether it's clean or not and that's really what our permit is doing. It's trying to mirror state regulations because there is no specific air quality regulation, so we try to mirror the same regulatory approach that the Southwest people did so that they actually sort of match up. If it's dirty....if it's contaminated under one set of regulations, we would consider it contaminated under ours.

Dr. Brailsford: So there aren't any other guidelines for you to use?

Mr. Grimaldi: No.

Ms. McNulty: Can I ask a follow-up question? While we're on the subject. Is there any distinction on this permit... the revision to the permit in what can be brought to the site?

Mr. Grimaldi: No. There still no provisions that prohibited certain materials from being at the site may not change. And the same thing with the definition of what's contaminated oil. None of that was...

Ms. McNulty: Are there any distinctions in the operating room regards with respect to the siting except for operating requirements that are applicable to portable, and for operating requirements that pertain what to do with the soil when it comes out of the port?

Mr. Grimaldi: Unfortunately, if I understand your question correctly, the three regulatory frameworks there you're referring to, have different standards and operating requirements, depending on where they are. Meaning that the solid waste portion has a separate set of definitions and operating requirements than the requirements of a state portable unit and then our requirements. And what we did to address that situation, is impose our requirements on those units when they are on the site, so that our requirements take precedent. But there's a higher standard where they're able to accept other materials through other permits when they come at the Rita Road site, that stops and that they are then forced to only deal with those things that we limited it to. For example, if they were allowed to take hazardous waste under one of their portable treatment unit permits, they may begin with

hazardous waste all over Arizona that they process through that unit. There's going to be an air quality permit that regulates that. There's probably going to be a solid waste unit... a hazardous waste permit under RCRA that regulates how they decontaminate the unit and stuff like that, through another regulatory scheme, but when they come over to our... to under our jurisdiction at this site, all those stop and they are prohibited from taking hazardous waste, from processing hazardous waste. Our permit limitations take precedent.

Ms. McNulty: So ADEQ has operating requirements. Your's are stricter than those and they apply to the site...

Mr. Grimaldi: Yes.

Ms. McNulty: Number one. And number two, the operating requirements that we have approved to the permit before with respect to soil storage, haven't changed?

Mr. Grimaldi: Correct.

Ms. McNulty: Except maybe to the extent that you're putting soil from the portables on to that site, if it's still contaminated.

Mr. Grimaldi: That sounds correct.

Mr. Wiruth: Dr. Friedman. I have one question.

Dr. Friedman: One last question.

Mr. Wiruth: If Ms. McNulty did mention.. nothing's changed from the previous permit, the odor emissions was changed from what you originally approved...uhh, but Mr. Chang, I have questions for you as a follow-up from Dr. Brailsford the lead that has been processed, goes on the belt to processing, because all the other stuff has been cleaned up. Does that not make that lead concentration a higher concentration in that it is what's called sterilized dirt, so now is a higher level than what originally was received in because of all the other emissions having been gone?

Mr. Chang: Well, a lot of lead has not changed, and also we will rehydrate, so in effect the concentration probably will not change.

Mr. Wiruth: It probably would not, but you're not sure whether the... because of the concentration it may change a bit.. I'm not saying it's into a hazardous, but it could possibly change to be considered more lead in that soil...

Mr. Chang: No, they'll be the same amount of lead in there.

Dr. Friedman: Okay. Could we proceed with the Department's presentation.

Dr. Friedman: But first, time for a telephone call.

Mr. Straub: Dr. Friedman and Members of the Board, PDEQ is going to divide its response between me and Mr. Grimaldi and I'm going to just start out again with some basic legal concepts that are part of the

appeal and Mr. Grimaldi can address a number of the issues that have been raised in a very general fashion. I think that we've been fairly specific. Issues have been raised and addressed in our (inaudible) and to the extent that we have an answer to your questions, we'll be happy to answer some more at the conclusion of our presentation. Again, the issue here is whether this revision permit meets the requirements 49-481(A), and the question of that the Board needs to answer is as the Control Officer properly issued the permit in that does the permit show that every source is so designed and controlled for equipment, such air pollution control equipment that it may be expected to operate without any (inaudible) air contaminants in violation of provision of Title 49 or rules adopted by the Board of Supervisors. Similarly, P.C. Section 17.12.180(2), also provides that a permit, including a revised permit must contain "enforceable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance and those that have been voluntarily accepted pursuant to Section 17.12.220. Also in that section, subsection A(2)(a), little (a), also, the permit has to identify... the requirements state law to identify the particular authority each permit provision that we have to include any provisions that we are revising or we're adding to the revised permit. We are required by state law to identify what it is that is our authority. I know there were some comments, and I'll (inaudible) briefly, with regard to additional conditions that the appellants would like to see imposed on the permit, but they have not demonstrated to us what specific authority it is that we have to add to those provisions. For example, Mr. Wiruth had indicated something about, you know... only operating the equipment when the wind is blowing in the direction of the City of Tucson and not at the vicinity of the Rita Ranch subdivision. While I can appreciate Mr. Wiruth's concern, the point is that there is no specific provision allowing us to impose such a permanent condition, and I say this, by the way, of an example. The (inaudible) comes in also considered the original permit and I can understand the Board's concern about how this was done. Perhaps in a two-step fashion rather than a singular fashion. Again, I reiterate Mr. Grimaldi's comments, and that is that we can properly use this procedure by way of significant permit provision because it goes through all of the same hearing requirements by the EPA and the State of Arizona, so essentially, while it's inconvenient for you and all of us to go through this process twice, the point is, it is permitted.. the point is that the appellants are given an opportunity for due process whether they feel that they received due process is another matter, but the point is that the procedures are the same. Now with that... those are the brief comments I'd like to turn the mike over to Mr. Grimaldi will give the department's general decision with regard to this permit.

Mr. Grimaldi: I'd just like to make a few quick comments. First of all, I think there's been a number of issues and questions as well as just general comments that were made today regarding different aspects of environmental protection. We even touched upon things such as hazardous waste regulations and solid waste regulations. We skirted around the issue of zoning where matters been brought up regarding the proximity to the school and some of the land uses. We've also talked a great deal at length about general air pollution control. The issue of ambient air quality impacts, motor vehicles and other sources and how do you deal with all these things. I'd like to say that with regard to many of these issues, the department does agree with.. disagree with what the appellants have brought up. Unfortunately, this just doesn't appear to be the proper format for this. There is a rule making process that is undertaken both at the state legislature and as well as through the Pima County Board of Supervisors to address those large policy global issues. What we see before the Board today... what we tried to frame for the Board today is this specific issue of whether the proposed revision meets the regulations. In your book we put together what we felt was a response... we're trying to consolidate all these issues, trying to respond to them, but yet not lose track of really what's in front

of the Board and what their role is. We specifically believe that the permit revision went through all the required public participation aspects. I think that's evident by the sheer volume of comments that we got on this permit revision. If we had tried to skirt any of those or tried to hide any of those, I don't think we would have gotten the number of comments we did. Whether those public participation requirements are adequate or not, that I think is a different issue and again falls within the rule making realm, that we clearly follow the rules regarding public participation. Due to a large number of interested parties in this process, a number... people we got phone calls from, letters, we had the hearing, we went and talked to some of the groups individually, this public participation process that's lined out in the regulations is very difficult to manage. There's specific requirements that had to be undertaken. But, it did not go as smoothly as we anticipated. We did have some trouble scheduling rooms... running into holidays. We had difficulties keeping track of all the comments that came in as well as all the commenters. We actually hired outside assistance to try to track all this. I think at the end, though, we succeeded. This process might not have gone as smoothly as we hoped, but we did get through it, and most importantly, I don't think that anyone was precluded from participating, nor was anyone's right to appeal diminished. Specifically with regards to the revision itself, Pima County code and state law requires that the department cites specific authority for each provision. Unfortunately, this type of activity does not have a nice category like many other activities that we regulate, such as rock crushers or sand gravel operations, which have several pages of specific requirements. This type of activity falls under a group where we just really look at the total overall emissions. And it's saying those requirements we look at provide mechanisms, primarily record keeping to insure we are meeting those emission CAPS that are set for the site. There were several comments made up... brought up regarding specific revisions of the county code, also these, unfortunately, are general provisions. One example is 17.04.020, which is the purpose of the code. Well that seems to have some pretty broad authority the way it's interpreted and the way the rest of the regulations are constructed, we don't really have that big a degree of flexibility that I think people believe we have. The entire code is what really governs what we can put in permits. Finally, I would just like to point out that one of the main issues here is the operation of the portable treatment units, and those are under the jurisdiction of the Arizona Department of Environmental Quality, primarily because they operate all over the state. Our authority doesn't exceed the county boundaries, so as soon as they left the county, we would have no ability to regulate that and the state legislature felt that in order to provide flexibilities to these units, that they were able to get a state permit that would supersede all jurisdictions so that they wouldn't have to go from county to county to county to county getting permits. While we may not necessarily like that or agree with it, or like the permits that are issued by the state, that is the situation we have here. At the state level there is an equivalent air quality hearing board in which the members are appointed by the governor to hear issues regarding state issued permits and that unfortunately that comes out of Phoenix, that is something that is available to the public if they wish to challenge state issued permits. So again, I'd just like to summarize by stating that we may not necessarily disagree with all the comments that we've heard through this entire process, but when it comes down to what the revision's about, the rules that govern us and how we write the permit, we believe that we have met the requirements. Thank you.

Dr. Friedman: Thank you. Any comments?

Ms. Potts: Yes, Dr. Friedman. Karen Potts, on behalf of SSR, three or four spare minutes to close, if I may?

Dr. Friedman: Yeah.

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- Ms. Potts: I promise it will be three or four. I just want to urge the Board to focusing on 49-481, which is the standard. Really the question here today is whether SSR's facility is designed or.....
- Dr. Friedman: Actually, could I interrupt you.. I'm sorry. Let me, before you finish what you were gonna say, ask if there's anyone of the public who wants to question our Members of the Board, do you want to ask questions of PDEQ?
- Ms. Cleveland: Yes, I just have one or two. Since record keeping is almost the biggest thing, because we said we don't have any other way of doing this, that is really an important factor, but the record keeping is going to be done by SSR, so it's themselves that are keeping records of their own thing and there's no way of proving that those records are correct.
- Mr. Grimaldi: Unfortunately, the way the regulations are set up, that is the only mechanism we have. We have, do have authority, but I don't think that there's an agency in this country that could sit outside every single facility observing the facility. There is penalties for not keeping records, but unfortunately that is true.
- Ms. Cleveland: Just one other thing. The board recognizes the fact that... there is...since they brought up by the city well.. or well issue, that there is a city well adjacent to this property. You mentioned that umm... there is no way to.. other than record keeping to monitor what's going on and I stated to you a Arizona revised statute that allows you to require an (inaudible), and there are devises that can be installed to monitor what's coming out of this facility. Therefore, it would not be self-ordering, it would be maintained and watched...maintained by PDEQ. It would be an approximate record of what's going on, not a spot check, which would be far more (inaudible).
- Mr. Grimaldi: That's correct you pointed out that provision. In state law it talks about monitoring. If you read through the rest of the revision it talks about some very key points, so some of the things that have to be brought out is that the monitorings necessary to determine the effects of the facility on levels of air pollution. We're looking at the regulated pollutants. In this case, the agents treating the, excuse me, the source has quantified their emissions and they've done it through standard engineering practices in the air pollution control arena, using emission factors, using estimates, using mass balance type equations, so with regards to quantifying the emissions, we feel that we have actually grossly over-estimated those emissions so that monitoring wouldn't necessarily fall under that requirement. Additionally, there is provisions that talk about violations of air quality standards. Well unfortunately, there isn't any in the regulations, any air quality standards for which we can go out and measure against like there is in water. For example, in water quality there is a drinking water standard like 5 parts per billion for TCE to come up and take a sample and you are either above or below it. Unfortunately, in air quality there is not an equivalent. They're looking at regulating mass emissions. Usually in the time per year range through work practice standards and emission limitations. That is the nature of the air quality regulations that were developed by EPA and past on through the state and down to the county level. Initially, in that provision, 47601, with specific references to state requirement - to adopt those specific standards that are previously mentioned. And at this time the state has not adopted those and we've been anxiously waiting for adoptions of those standards. As a matter of fact, in the 1995 Air Quality Rule Revisions, the department initially proposed the summer of '95, we had proposed to adopt into rule the Arizona Ambient Air Quality Guidelines for which the state was using as policy. We wanted to have that enforceable as a rule just for that provision. We were.. received numerous comments from businesses

objecting to them. We also received comments from state agencies and there not appropriate for regulatory scheme at this time. So, while we try to address that specific issue, we just don't have the mechanism.

Mr. Lemon: Calculate efficiencies and I believe other things. Here's a copy of a permit or the permit (inaudible) qualifying unit. In addition, I think even more importantly, the answer to Gale's question, the emission rates of the state's permit are substantiated by the fact that it is a requirement of all the state permits that I'm aware of. Plus, additional monitoring that they are required to submit the results of which is to the state.

Mr. Gale: My concern is when PDEQ set the limits so high from what SSR was saying that they're actually going to permit. By SSR saying we're only now put this much. Therefore, there's such a wide difference there to avoid having to install monitoring equipment. There's no requirement in the permit that stops them from the day after the Board approves this permit, installing some other... I don't know how they would do it, but somehow increasing the threwwput on their machines, or whatever, to bring the output right up to what the permit is allowing, therefore they are so close to the limit and so close to being a maximum source, that we need... we don't... we can't look at what the machines and what SSR is saying they're gonna do. We have to look at what the permit says the maximum is. And we have to monitor based on what the permit says. Otherwise we need to bring the requirements of the permit down to where there really won't be damage.

Mr. Grimaldi: There is two parts to that issue. The first part has to do with the emission rotations in the county permit. One of the things that has been very controversial, I think, with all the parties involved is the method we use to calculate emissions for storage pile. We believe that we grossly over-estimated the emissions in. I take that back. We don't believe we necessarily grossly over-estimated, but we took a conservative approach to estimating the emissions. The source I know, believes we personally over-estimated the emissions. That is significantly reduced the budgeted emission that they were be able to bring the portable units under. I don't know if you want to get into the whole realm of the emission calculations. They were sort of... that was one of the issues that were brought up earlier. With regards to the second part of that being the state emission caps that are put in the permit. Unfortunately, those are beyond our jurisdiction, though we do have a gentleman from Arizona PDEQ who could speak to that if the Hearing Board so chooses.

Dr. Friedman: If it's pertinent.

Mr. Mohad: Dr. Friedman and Members of the Board. My name is Sumi Mohad and I'm with the Arizona Department of Environmental Quality. The document that I'm looking at right now is the formula number 4167-95, which I understand is the only machine that can be allowed to operate at the Rita Road site and there are some restrictions here. We have an attachment C, which is called the efficient sources maximum allowable emissions rates form, and basically the permit says in the initial portion of her.. that stack testing will have to be done to (inaudible) the levels of contaminants are lesser than those which are under attachment C. So when a stack test is done, which is required to be done, then... and when the stack test is done, then an officer from Arizona Department of Environmental Quality Air present, to develop, we do make sure that somebody does observe the test and when the test results come out then you come to know whether the source is complying with this permit conditions or not, and the numbers that I'm seeing here look like... just for example, looks like for the gem stack unit for say particulate matter is 1.512 tons per year; but for carbon monoxide

it is 01.54 tons per year; for lead it is 0.0025 tons per year and then that's okay... and also for cadmium, it is 3.6 (inaudible) minus 6 tons per year; for hydrogen chloride is .72 tons per year; for Benzene it is 0.0.4 tons per year; Toluene .252 tons per year; Ethel Benzene 0.0.4 tons per year; Xylene .299 tons per year, and (inaudible) I can read just a little bit of the language from the permit itself that's in front of me which says.. which defines all the emissions of SSR and basically...(inaudible) for two more different pieces of equipment. One is the real gem unit, and the other is a piece of (inaudible). Right now what we're missing on the gem unit, was just the main point of consideration. It says that basically that two (inaudible) are very important. One is that any excess emission shall be defined... I'm looking at condition 2(C) of attachment B of the... which are special conditions for operating permit number 4167-95 and (C)(1) says: that excess emission shall be defined as any consecutive six minute period as measured by EPA Method 9 which exceeds an average of (inaudible) 20%, and (C)(2) defines SSR emission as any average of three, one hour (inaudible) source tests runs during which the average emissions of critical (inaudible), carbon monoxide, lead, Benzene Toluene, Xylene and Ethyl Benzene (inaudible) of Hydrogen Fluoride exceeds the maximum measurements set for each element in attachment C. And the numbers I read to you earlier were the numbers of on attachment C, so there are restrictions. I (inaudible) or emissions reading, so that is why the ADEQ (inaudible) .

Mr. Gale: I'm sorry. One more question from me. I am confused. Everyone keeps telling us that the four foot unit is the only unit allowed to process at this site. I haven't see that in the permit. Where it specifically says: this is the only type of unit that can be used.

Mr. Mohad: Thanks. I would like to give the floor to Dick Lemon at this time because the permits that I'm familiar with more are the ADEQ portable source permits. We have issued a bunch of them and looks like this particular unit will be the only one to operate at this particular site and Dick Lemon will probably answer a little bit more about it.

Mr. Lemon: Basically, we wrote the permit to give the source flexibility so it would not restrict them to a single unit. There was really no reason to do that. In fact we're running into scenarios all the time now and basically significant or even minor permit provisions where other types of industries are wanting to bring in portable type devises to operate at their base, such as sand and gravel operations for example. We wrote the permit conditions based on basically a budget of emissions and a scenario which describes that, and it's as simple as that.

Mr. Gale: You're telling me.. I forgot his name.. this gentleman told us that based on the state permit for that unit, we cannot exceed the limits. Now you're telling us he's not required to use that unit. He can bring in whatever unit. Therefore the requirement is gone.

Mr. Grimaldi: That's... let me clarify that. Each unit that is permitted by the state has specific permit conditions attached to it that Arizona PDEQ has developed. What the permit revision here does is establish criteria that as long as the permit conditions in the state permit meet that.. those criteria.. basically their emissions are low enough.. they can operate at this location. At this point and time, there is only one unit to our knowledge that meets that requirement. This does not mean that in the future the facility doesn't buy another unit and have it permitted at lower enough levels that (inaudible) that it revises one of its existing permits lowering its emissions so that it can operate there. There's a couple of different options to it. The biggest reason the agency wrote it that way... that's what the facility requested and we don't have the authority to prohibit them from operating those at this site.

That's something that's laid out in the state law.

Mr. Gale: So what you're saying.. when or if that would happen, under state law, we can't prevent them from bringing this new piece of equipment in to operate and let's say just for safety safe, it brings it right up to the limit that's on the permit. Therefore, their... your basis on the requirement... you require...the county.. PDEQ is required to prove that there are sufficient precautions have been made to prevent them from exceeding the permit, but yet by not calling out.. when this new unit comes in, if it comes up to the limits, all of a sudden you have not met that requirement.

Mr. Grimaldi: No..I, we believe that's incorrect. I think that's a matter that's before the Hearing Board today and I think that's a good point to bring out. The way the regulations are set up there's a general policy statement. The policy statement is then backed up through specific regulations - specific source regulations, specific regulations on how permits are to be written. The content of the permit format also regarding regulations on public participation. One of the important things is that there's the ability for someone to contest the agency's decision, whether it be, in this case people in the area effected, or, and which is more typically the case, the source that the agency tries to put in permanent conditions through which there is no underlying authority, they can appeal to the same Board, the Hearing Board here today as a way of arbitration I guess, for lack of a better word. The agency believes that the emission limitations that are set for the site and then are further backed up through specific requirements of the soil piles, how much soil can be stored there, the contamination of the soil, what happens when they break into the soil, uncover it, to make sure they meet those emission limitations, the agency also believes the emission limitations that are put in the portable treatment unit, being operational parameters that have to be in the state permit. They have to have a state permit. The state permit has to have emission caps that we specify in our permit. They have to be valid permits. There are several other criterias. There's a whole list to insures that any source that operates here meets those criteria to demonstrate compliance with the emission limitation. If they don't meet those requirements, they cannot operate there.

Mr. Wiruth: Can I ask one question (inaudible)?

Dr. Friedman: Are we getting down to the really pertinent questions? (Laughter from audience).

Mr. Wiruth: I think this affects what your decision is going to be. And that you have a chance to modify this permit. That is one of your options, is my understanding. If Southwest Soil comes in and they tell you such as on the April 21st letter, that they're only going to emit five times a year based on the VOC's, the Benzene and everything, and on the third line it says: soil storage for PDEQ is 80 tons, it goes on. My question would be is PDEQ possibly to tell you... if you brought down that.. you have the opportunity to break down the tonage, then why didn't PDEQ, when this information was given to them back in April, sit down with Southwest Soil and possibly come up to a compromise that...Mr. Esposito says that the permit can be changed with a compromise between PDEQ and Southwest Soil. Maybe that's something you all need to ask is, you know, the emissions...we're talking a difference of almost 76 ton difference from what Mr. Chang has provided you - counsel for Southwest Soil vs. what PDEQ has given. Maybe the question that needs to be asked, you know, can you bring that down and modify the permit, still keeping both of these groups as handouts. If it comes down, that may be a solution, and I you need to, I think, ask for (inaudible). Thank you.

Mr. Grimaldi: When a source comes in, especially a new source, there is a base line on what their anticipated... in

this case, what's going to be what they anticipate to store at the site. The regulatory framework doesn't prohibit practices. It doesn't prohibit specific levels of anything. It's basically set up that the more pollutants you emit, generally the more steps you go through and the more conditions you get in that permit. In this case with the source, where you establish the emission limitation is pretty much up to the source to decide. There is no requirement that the agency's saying that actually levels...projected actual levels and in fact the legislature has written laws governing how permits are to be written, so that there is optimal flexibility for sources to make changes in their business practice as long as they still comply with the requirements that are established. In this case, the source determined that in order for it to operate it, in the 80 ton range. There was quite a bit of discussion regarding how we calculated those emission factors. They actually wanted a much higher through put, they had projected initially a much greater storage area. The storage area shrank considerably because of the approach we took with our initial calculations which they felt grossly over-estimated the emissions. That's kind of the way the process works. It's sort of a give and take. We established the emission cap that we felt was enforceable...that gave, which we believe the most protection to citizens in Pima County and was within the authority that the Department and the County had.

Mr. Wiruth: But since they've come in with something much less, have you... did PDEQ and Southwest Soil discuss this major difference of 87 tons to the 4 tons.

Ms. Cleveland: You're 29 times higher from than what they need. Twenty-nine times higher than what they need.

Mr. Wiruth: I'm just curious so the Board would know whether you sat down and asked them... gee, you came in and.. you put this in the response. There's such a disparity. Did you guys talk?

Mr. Chang: Well, one thing I'd like to say to you on that matter is, because the emission level comes down does not mean that we cannot operate a lower capacity because our emission level is still based upon the same amount of soil that's brought in, so I don't see the advantage of doing it either way because all the emissions are basically monitored by analysis, how much soil is brought in, how well it's covered, etc., and it has already been quantified, so you know, it's what we estimated based on what EPA's saying what regular gas stations do when they have their stock pile. That's how I estimated it, but they conservatively estimated an amount so that we can bring in (inaudible) a lot less. So in fact by keeping that image up there, it's to your advantage.

Mr. Wiruth: Then let me ask you... you're saying that yours is based on 75 thousand tons through put?

Mr. Chang: Correct.

Mr. Wiruth: Then if they keep it at 80, you could conceivably submit or have submitted another modification to PDEQ based on your calculations to have a more through put, let's say 150 thousand... I'm not saying you did.. I said there is that possibility, so that you're saying that you're still within the cap of the 80 tons that they would have to then process. Is that a correct statement?

Mr. Chang: Well anything is possible....

Mr. Wiruth: Okay. I want the Board to realize it because...

- Mr. Grimaldi: I'd like to respond to that real quickly. One of the things that the agency has to deal with when it's making a permit decision is that one, the decision that is made can ultimately be appealed to this body today; two, decisions this body makes can go to superior court if the appeal is continued. When we make a decision to take action, we feel that we have to be prepared to defend the department's position in superior court. In looking at estimating emissions, like in this case, the example that Mr. Wiruth has brought up. We feel that we reached a way of calculating emissions that we could withstand a challenge from either the source or the public. We feel that the emission calculations that we used in that methodology we could go to court if the source felt that... or continued to push that we were grossly over-estimating the emissions. At the same time we felt we could go to court and defend those calculations if the public felt that we were grossly under-estimating those emissions. While a source is free to submit any type of revision it chooses to the department, I find it very unlikely that we would change the approach we took with the emission calculations. It was a very long drawn out process, I think if you look at some of the time frames in this whole matter. This is something that didn't happen quickly or over night.
- Dr. Friedman: Well, let me ask the question. Taken just... what I think I'm hearing. What would have happened if the board and wisdom, or lack of same, said we're going to go for 40 tons and would that meet... in other words I'm just making up that number, say between 80 and 3, and you put in the permit at 40, and they were satisfied with 40 and you were satisfied with 40 as a maximum output, and yet, and I don't know what SSR would say about that. Would that meet permitting to needs to your satisfaction, their needs?
- Mr. Grimaldi: Well, let me just... the way we estimated our calculations... our emissions...if the source felt comfortable in reducing the amount of soil that was stored on site, you know, it doesn't effect us. Like I said, it would be up to the source.
- Ms. Cleveland: Dr. Friedman, just one question. Do you feel then that your calculations would be more accurate than the one's that SSR submitted?
- Mr. Grimaldi: Yes.
- Dr. Friedman: Mr. Lemon, you disagree?
- Mr. Lemon: No. I don't think they would be more accurate. They're higher.
- Mr. Wiruth: I'm sorry.
- Ms. Cleveland: But you're dealing with the same tonnage, so there's some... there has to be something wrong...two sets of calculations.
- Dr. Friedman: Mr. Grimaldi?
- Mr. Grimaldi: I think the Department's position is that they are more accurate than I think they over estimate. They're more accurate than the source of emissions. They're more conservative than I feel more accurate.
- Dr. Friedman: Two percent? ten percent?

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Mr. Grimaldi: I have no idea.

Dr. Friedman: Okay.

Mr. Grimaldi: (Inaudible) that the source comes up with these (inaudible).

Dr. Friedman: Any other questions? One last question.

Ms. Bauer: A question for PDEQ. You did say sometimes in written permits that in fact that if SSR were a positive major source special for HAP that there would be no additional requirements for air pollution control at this time, given the fact that you... the expression with a budget emissions you were working with and the possibility, I mean.. it's a business. A healthy business needs to grow. Okay. Reality check. They submit a revision, would be fine. However, what is going to be the extent and limit of that budget of emissions? In other words you're saying in that statement they can cross over to a major source and essentially not have to do much of anything else. Is that going to be the limitation? Well, where exactly is the limitation of the process we have to go through...wondering how high the emissions are actually going to be out there.

Mr. Grimaldi: Well, there's a number of different factors to that issue. First of all, it depends on the pollutant that you're looking at. With regards to the VOC's for example, there's a number of variables in that equation right now. At this point in time they cross the 100 ton threshold. There is a, there isn't too much more.... the biggest change is going to be how things in the permit are federally enforced. Now, if they get above 250 tons a year, that's crossing.. for VOC's... that's crossing an area called prevention of significant deterioration. At that point in time they have to do some specific modeling. They have to look at the impact they're gonna have on the entire air quality of that region. They have to look at additional controls... best available control technology. We have to be... would have to be put on the source. What we will be looking at that point though is primarily the soil piles, though there's a whole slew of variables with what happens with the portable treatment units. So, the other pollutants of concern when you're talking about increases of hazardous air pollutants.. at this point in time, under federal regulations there isn't again, too much that's going to happen. If they go above the 25 ton limit for all of the hazardous air pollutants combined, however, if they go over in the next few years, EPA may revise the federal regulations regarding that. There's a possibility they may have to go through specific analysis - something called (inaudible) control technology. There can be possibilities in case by case determinations, but those are up in the air right now and they would come from their level down. Any revision like that or all revisions like that would have to be processed as significant revisions. That means that the entire revision has to go to the public dissertation process. It has to be publicly noticed. There's abilities for hearing, there's abilities to appeal those decisions.. that the agency makes to this board. After this Board there is the ability to go to Superior Court.

Ms. Bauer: Can I just... to conclude that, could I ask you.. does that and what I am hearing then is that there is a real possibility for a healthy growth in any business... and that's what's to be expected. But there is no possibility that we could end up even with all the due process and public hearings, of having a major source sitting out there near that school. Is that what I'm hearing?

Mr. Grimaldi: There is nothing to prevent a major source from buying the lot next to them. Being a major source of PM10 or any other pollutant.

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Ms. Cleveland: We're still dealing with this permit. You have to answer the question. (inaudible)

Mr. Grimaldi: Yeah, there's always. There's nothing in the regulations that prohibit anyone from expanding their business as long as they go through the proper...

Dr. Friedman: Let's... let's cease for a second and I think Ms. Potts said ...

Ms. Potts: I did, and I will make it even briefer. I just wanted to say a couple of things. I wanted to get back to standard of 49-481. I haven't heard anything today... I've heard a lot of questions and concerns, but I have not heard anything today that indicates that SSR will operate or maintain or has designed this facility in a way that will violate the county code as it relates to air pollution. We appreciate the concerns of the citizens. That is why SSR retained a toxicologist, in an effort to relay some of those concerns so that they would know there were no... going to be no adverse health impacts from this facility. I also want to address things we've been talking about in the last couple of minutes, just briefly. The limitations on the VOC's... the total limitation in the revised permit is not a fudge factor. You have a portable source that has a pre-existing permit that has a very stringent limitation in it. No portable source can come in there and operate in excess of those stringent limitations. So even though there is only one that meets that criteria, that's SSR now, they could not, the day after the permit was granted or firm, come in and somehow make up that difference in VOC's. That is not a fudge factor because they are governed by the ADEQ permit. I want to make sure that's understood. In terms of coming up with some compromise. I apologize, Mr. Johanson is not here. I could not make that kind of a deal, if you will, on VOC's without Mr. Johanson's approval. If you would like, he is supposed to be back on Thursday and if you will give us to next Tuesday and if there is something that can be worked out, we will file something formally by Tuesday, and if there's not, we won't. I mean, I think that makes sense to have that period of time to at least make that offer to Mr. Johanson, cause I frankly don't know the answer to it. So, we haven't had time to consider it because it wasn't an issue. And that's really all I wanted to say. Thank you for your time, I appreciate it.

Unidentified

Male: Can I make a quick closing comment?

Dr. Friedman: Real quick and real closing. It's just a real quick review. I want to make sure you understand the concern I have and since SSR brought it up again, as well, I think maybe you do understand a little bit. My concern is that I don't think PDEQ has proven that this permit is enforceable because if they stamp their enforcement on the state (inaudible) based on specific portable remediation we get in the permit, they have not thought out if that unit is the only unit allowed. Therefore, as she mentioned, if another one were to come in, they would move the limits up. They're whole basis for trying to prove that they are so far away from the limits is gone because there is another portable unit there, different state limits that would then be closer and possibly even half the limit close enough that the (inaudible) that PDEQ is talking about no longer exists, therefore they have not proven that it's enforceable.

Dr. Friedman: Good point. The very frantic person.

Ms. Thornton: Okay. The question I asked earlier before I just want to clarify and if it's not going to be answered, that's fine, but when I asked was the soil be coming from out-of-state, if it did come in from out-of-

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state, then how would we know what was in that soil? I mean when would the regulation kick in? It is too late to know what is in the soil.

Mr. Chang: Well, it would be available for a Pima DEQ because they require us to keep records of all incoming soil. It's public record and any day when they're open... I don't know what else to say about that.

Ms. Cleveland: They're going to have a count of every day of what you??

Dr. Friedman: Excuse me, excuse me. Mr. Grimaldi.

Mr. Grimaldi: I'd just like to add to that provision specifically the existing permit there's requirements that SSR record the point of origin of all the materials they take in... they have to record sampling results.. uhh, the site investigation on how they determine what the sample... they have to keep this record for five years, so it's not just within Pima County or the State of Arizona, it's any material they take at this site. With regards to limiting the ability for the county to, excuse me, for the county to limit materials or the point of origin of materials - I'd like to turn it over to Mr. Straub.

Chris Straub: Another point with regard to this.. my understanding from just talking to Mr. Mohad is that's a condition also in the state's operating permit for the portable remediation unit.. that they have to keep records with regard to that. As far as the general prohibition of receiving out of state waste, that involves some issues with regard to the commerce laws, etc., and our ability to be able to regulate. I do know that the county has an ability... has in fact the ability to regulate the waste importation that from disposal of waste and we have done so in the past. But our ability to regulate this commercial enterprise would impact the commerce laws, so I don't want to get into constitutional theories about that.

Dr. Friedman: I know members of the Board might have question/answer period now, so it's the Board's turn.

Mr. Pifia: Richard, maybe you can help me here. Now under the existing permit, and I wanna use an example we have, there are a lot of emissions of 2.424 benzene a year, times per year. We're on section 6, page 32.

Mr. Grimaldi: Can you refer the page number it's on. We have a couple of different permits.

Mr. Pifia: (B)(2). Does it say "Public health right next to it?"

Ms. Potts: Section Six? B.2.

Mr. Grimaldi: Yes.

Mr. Pifia: That's under the existing permit that they have for storage, right?

Mr. Grimaldi: Yes. That's a total allowable emissions from the storage and handling of petroleum contaminated soil.

Mr. Pifia: Then the revision is going to allow them to (inaudible) remediation to increase that to .49, is that right?

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Mr. Grimaldi: Correct.

Mr. Piña: Now that increase is related to what they're expecting to rededicate on the soil treatment. This is their table one, page... - .076? Is that (inaudible)?

Mr. Grimaldi: No. The increase is coming from the state allowable permit limitation, but also the source wanted to be below the aggregate for the hazardous air pollutants, which you can see there is 24.52.

Mr. Piña: Okay now. What is the allowable emissions as far as the state's permit for Benzene? Is it .054?

Mr. Mohad: That's the state purpose is.. that's what the state's purpose is?

Mr. Piña: So then.. so then if you have a portable unit in the middle of nowhere, the Benzene limitation would be .054 discharge per unit? Is that right?

Mr. Grimaldi: Yes.

Mr. Piña: But in this permit because you're combining the storage and treatment, they're allowed to go to 2.49.

Mr. Grimaldi: They would still not be able to exceed the state permit threshold.

Mr. Piña: But your permit will allow them to go to 2.49, is that?

Mr. Mohad: Anytime that the source exceeds the state limits, then violation with us, so they won't be able to go above the limits that the state permit allows.

Mr. Piña: Well, but only for the portable unit because the state does not rededicate the storage.

Mr. Grimaldi: Right.

Mr. Piña: So if they were operating in conjunction, they could go as high as 2.49, is that right?

Mr. Grimaldi: The way that's written is that the....there may be situations where the facility gets a new permit, they may have a slightly higher emission rate for Benzene, but lower emission rates for other contaminants such as Toluene or Xylene, so that they're adjusted. They can make that up within the state permit. They can't violate the state permit requirement and they can't violate our emission cap, so if the state permit is more restrictive than this emission cap, it still cannot go above the state permit.

Mr. Piña: But the state permit only reflects the portable unit?

Mr. Grimaldi: Correct. Right. That's the only emissions that we're talking about here.

Mr. Piña: And your permit regulates a combination, is that right?

Mr. Grimaldi: That is correct. And if you look back on page (B)(2) you'll see that we go back to the original 2.42 pounds for the emissions from the storage unit. So we're not increasing.. an emission increase

cannot be in the storage unit. It can only be in the portable unit.

Mr. Piña: Okay, now one of the things that we discussed today was that the actual emission that they came up with, is far less than the permit allows, that's what we're talking about?

Mr. Grimaldi: Yes.

Mr. Piña: So you were to say that you're going to allow them to bring in a portable unit, but not exceed the current emissions requirements they have and not increase it, is that something that is possible?

Mr. Grimaldi: They can bring in.. well let me state one thing. By having a conservative estimate on emissions, what it does is it raises the overall site emissions which brings them up closer to the regulatory threshold to the various pollutants. What that does, is it strictly..... it severely limits their ability to bring in multiple units. The way this is written is the increment is small enough that they can really just bring in one unit. If you lower the emissions say to what they were estimating, it would then provide a bigger buffer that they may then want to try to take up with multiple units at the site.

Mr. Piña: In other words, if you don't increase their emission, allowable emissions, if you leave the permit the way it is for now. If you allow them to bring in the portable unit, what happens?

Mr. Grimaldi: Okay. The way the initial permit's written right now... I guess... are we talking about the revision?

Mr. Piña: Yeah.

Mr. Grimaldi: Okay. The way that the...let's put it this way. The existing permit that was written.

Mr. Piña: Before it got revised you say they could bring the portable unit in.

Mr. Grimaldi: You could not bring the portable unit in. Before it was revised, the portable unit was not allowed to be brought on the site.

Mr. Piña: But then you're altering the portable unit in the new permit, but you don't increase the emissions for the site?

Mr. Grimaldi: I guess at this point I can't really see how we could write that type of permit without altering the methodology we use to come up with the emission limitation overall for the site, or the other thing is to restrict, using the same methodology, the amount of storage at the site. Right now they're allowed up to 75 thousand tons. So if we kept the same methodology, the only way that we could keep the overall site cap the same would be to reduce the storage material.

Ms. Potts: Dr. Friedman... Dr. Friedman, just so you're clear on this. On (B)(9), paragraph 9, there can only be one soil remediation at a time.

Dr. Friedman: I understand that.

Ms. Potts: You understand that... okay.

Ms. McNulty: I just have two questions... the way they recalculated the emission standard was something like to determine what the minor source cap is and then go back from there? Is that sort of what you did?

Mr. Grimaldi: That's, yeah... that's probably a regeneralization. There's a lot of debate right now where we can establish a cap. The industry seems to think we can peg it right at the level, say 25.000, other people think we need a buffer, which would generally go up to 24 if the limit's 25, you know it depends on large number of degrees, how you estimate emissions, how comfortable you are with record keeping, uhh, those type of provisions. We ran this permit through EPA before we released it for public comment. They felt comfortable that the emission...the methodology of the emissions were conservative enough that being so close to the cap was acceptable.

Ms. McNulty: And does the cap mean... is the cap the point at which (inaudible) regulations changes to one hundredth... one (inaudible) to another? So that... let me state it a different way. If SSR permits pollutants in any range up to this emission standard that you now set, you're regulating it one way. If they see that the major source (inaudible) classification and deregulated some different way, so that.. you just tell me when I'm astray here, if we change the emission standard, for example, to make it lower, to be more in line with what you're saying they're actually emitting, if they subsequently came back with another permit revision to bring them back up to where your proposal to put them now, they would still be subject to the same regulation and you would be in a position where you would be no... the regulation that you would impose on them would not change? Is that right or is that wrong?

Mr. Grimaldi: That's...

Mr. Piña: Up to the minor source cap so we don't..

Mr. Grimaldi: Right. If, for example, if you were at... say they're at 70 tons right now and this revision put them up to 80 tons. There's nothing to prevent them to go for another revision to bring them up to 85 tons, but the big difference is that each one of those revisions is going to be classified as a significant revision because your changing the emission cap. Significant revision... the key to that is that it has to go through the public comment. There are other revisions that are available... like a minor permit revision that do not go through a public participation process. They are just made by the agency and that was created by state law. This type of revision or any revision like that would have to go through public participation.

Ms. McNulty: Other than the public participation criteria, the agency's regulatory requirements and the operational requirements that the monitoring requirements or lack of monitoring requirements would not change til you get to that thresholds. Is that correct?

Mr. Grimaldi: That's a, I think, a very good generalization.

Dr. Feldman: Any other questions for the board? Alright. Are there any motions from members of the Board about how to resolve this issue? We have one other question.

Mr. Piña: The question is to the. . . Can you live with the emissions requirements that you have in the existing permit and not increase? In other words instead of going to 86 tons per year you stick to 80? You can use a portable unit with all those limitations, but you can't increase the emissions.

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Ms. Potts: I don't understand the question.

Mr. Piña: Well, the way that I understand it is you have certain emission requirements from the existing permit.

Ms. Potts: Correct.

Mr. Piña: And you're allowed to bring in the portable unit, those are going to increase slightly, but they're going to increase?

Ms. Potts: Okay.

Mr. Piña: By about 3%.

Ms. Potts: Okay.

Mr. Piña: Now, can you live with the existing emission requirements and still bring the portable unit in to use or do you have to reduce your storage?

Ms. Potts: I'm not sure I can answer that without consulting with Mr. Johanson.

Dr. Friedman: Would that meet the public's concern satisfaction?

Ms. Cleveland: I think that would have to depend on how much lower, cause what's gonna happen with that is if use their formulas, they would have to lower the tonage cause we...

Dr. Friedman: Well that wasn't the question. The question was if the company could agree to meet the pre-existing levels, emissions...

Ms. Cleveland: But you're talking significant, just a small smidgen under what it is.. what the revision is..

Dr. Friedman: Well, but they have that already. But they have that.

Ms. Cleveland: You see, that's what's in question here. Whether or not.. that was our problem is that we felt.. we feel that this should be two separate things so that we could... we weren't allowed to address anything that...

Dr. Friedman: But I think.. right now that's not what we're here to address, whether you think it should have been or shouldn't have been. That's not the issue right now.

Ms. Potts: You're talking about just taking the existing PDEQ permit without the pre-existing permit and then the ADEQ permit and adding those together.

Mr. Piña: I'm talking that the existing emissions requirements that you have don't change.

Dr. Friedman: That's the... In other words that would be the max.

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- Mr. Piffa: They don't increase. They stay the same?
- Ms. Potts: And no adjustment is made for the treatment facility?
- Dr. Friedman: Right. Which would, you know just here unless, of course, trading it says...
- Ms. Potts: Yeah, I understand.
- Dr. Friedman: Well, maybe that means 75 tons becomes 70 tons of storage.
- Ms. Potts: Yeah... I don't.. I cannot answer that without my client's. . .
- Dr. Friedman: I don't even want to get into that unless the public says well, our mission, that is what we wanted anyhow.
- Ms. Cleveland: I feel that this..we're just a small portion of what the group is that was the accomplice. I don't know that we could make that decision now. We also need a little bit of time to think about that and come up with an answer for you. Could we also have the same time.
- Dr. Friedman: We already have that permit in place. That's a given. It's going to be pre-judged up to that point. But we could add the remediation facility and they would, you know, maybe store a little less material or increase the efficiency of the machinery or... and the next thing you know you've got the same levels that...
- Ms. Cleveland: I understand where the Board is coming from, but I...
- Dr. Friedman: I don't know if that is where the Board is coming from . . .
- Ms. Cleveland: Okay, that's what we...(laughter) Yeah, I think we are definitely going to need to talk it over. We still feel that the emissions from the.. even the storage and the handling of this soil is way too much for the air to handle.
- Dr. Friedman: That is not an issue.
- Ms. Cleveland: I understand that, but you still have the.. you still have the authority to deny this permit which is a combination, so that.. the revision.. which would not completely wipe off the other permit because it is a revision. So, if you have the authority to say... to make that adjustment even lower than what they're asking...
- Dr. Friedman: I don't think that will knock out the other permit is if we deny the revision.
- Ms. Cleveland: Let's ask PDEQ what would happen to PDEQ if they denied this permit?
- Dr. Friedman: The revision?
- Ms. Cleveland: The revision.

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- Mr. Grimaldi: If they deny the permit revision, the source cannot operate the portable units at this site. The previously issued permit remains in effect. They can store material. There are, I believe, certain avenues that the source may pursue regarding whether the decision is valid, blah, blah, blah.
- Dr. Friedman: Right. But in terms of the previous permit.. that's still in existence.
- Ms. Cleveland: But sir..but, but.. if you deny the permit, then they can only store the soil which they will not do because what are they going to do with that soil once it gets to that site? So, I mean that's why this is such an important revision. That's why we felt it should be two separate permits.
- Dr. Friedman: But that's not the issue.
- Ms. Cleveland: Okay, but I would still ask the board to please consider denying the permit.
- Dr. Friedman: Any other comments for the Board?
- Ms. McNulty: I do have one comment. I think that our job is to look at whether the permit revision contains enforceable emissions limitations and standards, including operational requirements and limitations to ensure compliance with Pima County Code, Section 5. We need to focus on that particular issue and not this issue.
- Dr. Friedman: The question was asked, I don't want to have secrets from anyone up here. That's all I need. The question was asked. The question was asked if we make a motion to the effect that we were talking about earlier, to limit the maximum emissions to the pre-existing.. the already existing level, what happens... can they agree to that? I think the answer to that is they already said they don't know if they can agree with that right now or not. Because Mr. Johanson's not here.
- Ms. Potts: Yeah. I simply cannot make that decision on behalf of my client without discussing.. .
- Dr. Friedman: We could.. on the other hand, my guess is we could also pass that motion and they could either accept it or not accept it.
- Ms. Potts: Well, as I said before...I can talk to him. He get's back Thursday and I could file something on Tuesday. That answers that question, and then you could consider at that time whether or not you want to make a modification or just affirm, or deny it.
- Dr. Friedman: I don't want to come back.
- Ms. Potts: I don't see that you would need to come back.
- Dr. Friedman: Richard.
- Mr. Grimaldi: Dr. Friedman and members of the Board, there are I guess, a couple of options that are available to the Board. The first one being that matter.. that action is taken today to either issue or deny the permit, other options include a future date having an executive decision.. excuse me, executive session to discuss this whole issue and then take action there; or you can continue the hearing and

take additional testimonies at some future date; you can also take action in which you direct staff and the parties, like the previous Board motion, to the direct staff of the parties to look at these issues, to examine them; whether the source could or would accept lowering emission limitations; whether the appellants would accept that from the regulatory standard point; making sure that could be done, and then again, you would have to reconvene at a future date to then take action based on that response.

Dr. Friedman: If we did the latter, though, wouldn't then have to open it up to the public again? Delay 30, 60, 90 more days? Whereas..

Mr. Straub: Dr. Friedman and members of the Board, I don't think that.... in other words what it would be is just a continuation of the public hearing. You don't have to re-open the hearing and renotice and go through that process.

Dr. Friedman: Well, we will try another rocket spin. If someone made a motion to whatever it happens to be and it modified the revised permit request now, instead of voting on it, if we decide it be tabled, then we could just start all over again without having.. after the talking with the parties involved?

Mr. Straub: Yes, that is correct. You could do that if you wanted to.. umm.. if you wanted to make a motion and then.. well...

(both talking at the same time - inaudible).

Dr. Friedman: If someone says... on the other hand, if there's a motion that's made and there's a vote on the motion and it passes, one way or the other then it's fairly complete. On the other hand, request particularly could be done if nobody seems to like the motion, and then table it, then come back to it later on after discussions.

Mr. Straub: Provided a substitute motion is offered.

Dr. Friedman: Right.

Mr. Straub: Yeah.

Ms. Potts: Dr. Friedman, you could also take the matter under advisement. At the end of additional briefing you could ask each of the parties to submit one brief - one by appellants, one by us, one by PDEQ, regarding the initial limitations. Then you could close the hearing after submission of those briefs and make a decision based upon what is filed and what is in writing before you. Then all you would have to do is convene to discuss and tell us your decision.

Dr. Brailsford: I mean we generally kind of like that idea, but I don't want to add more... I don't want to start taking a completely different track, but to start that completely different track .. laughter .. is it possible to get information from you folks from Pima County with regards to the possibility of any other standards such as... what I'm thinking of is the lead issue kind of bothers me and I'm wondering if there's some applicable standards..more soil sampling or something in the area that would apply to this circumstance... would there be legal ground work to enforce any kind of lead monitoring of the soil and the air around it. And I realize that's more an air quality issue, that's

why it doesn't have any business commenting on, but I see it as something that would compromise to at least maybe reassure the people there isn't something being deposited there in the air.

Mr. Chang: If I may. That issue is already addressed in ADEQ approval for Southwest.

Dr. Brailsford: Yeah, I understand that, but I... under air testing?

Mr. Chang: Well, that could be done.

Dr. Friedman: Can I hear a motion from anybody on the Board?

Mr. Piña: Dr. Friedman I would like to make a motion. The motion is going to be that we approve the permit.. Revised permit, with the exception that we keep the existing emissions limitations that we have, that already exists. If that is acceptable to. . .

Dr. Friedman: There's a motion on the floor. Do I hear a second? Uhh.. let me. Is there.... do I hear a second? There being no second, the motion dies for lack of a second.

Mr. Wiruth: Dr. Friedman, can I ask a question. Dr. Bailsford had asked a question of PDEQ and I don't think they ever answered you, and I think they possibly should - it had to do with that lead monitor. Mr. Chang I think answered for his stack and I think you had a question directed at PDEQ and I think they should answer you directly.

Mr. Grimaldi: I was about to answer and then someone made a motion. With regards to your question. Good news, bad news... the good news is I think the Hearing Board, if it chooses to, could make a motion directing the agency to go do, conduct ambient air quality monitoring in the area right now with the commitment that Mr. Esposito had made...this could reaffirm that commitment and we could begin that right away. If you were also requesting that the agency put requirements on lead emissions from the stack, I don't believe at this point we could do that because the admissions... those admissions would be regulated under ADEQ jurisdiction. We could have overall site emissions, but we couldn't necessarily have stack emissions. I guess I'll ask Sumi, does those existing permits have lead emissions standards in them?

Mr. Mohad: Yeah. I just checked on them once again and we (inaudible). The permit... emissions levels that I see on the permit, the ADEQ permit, there are conditions... there were conditions for lead and the number's I see here are 0.0007 pounds per hour and 0.0025 tons per year over there. And then again, conditions 2(C)(2) (inaudible) of the operating permit asks for source test to be done for lead, also. So when the source test is done we would..... the department would have numbers for the amount of lead that is being emitted and their emission levels and their of the permit.

Dr. Brailsford: Can I ask a question with regard to that. I'm trying to imagine if there would be something analogous to that which we would be comfortable with regard to the whole site. I don't know if there is something legal there that could be formed into a standard or not.

Mr. Straub: Dr. Friedman, Ms. Brailsford, are you addressing issues with regard to soil contaminants? Is that your concern? Because those right now are subject ADEQ regulations as far as interim soil remediation standards and those standards are in the process of being revised to a point where. . .

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So, again, I think we did touch on that.. and that is.. with all due respect to the board, that is beyond your jurisdiction as an intermediate.

Dr. Friedman: One of the nice things about being the Chairman is that you don't have to make a motion. You ask other Board members.

Ms. Cleveland: Dr. Friedman can I just ask something of the Board?

Dr. Friedman: While they're making up their minds.

Ms. Cleveland: Does the Board feel that even with the cap of 80.80 BOC's and 23,432 of hazardous caps is still an allowable condition for this site close to this school...

Dr. Friedman: It's already permitted.

Ms. Cleveland: But...if you deny this permit, then they don't have any.

Dr. Friedman: That's not what's being presented here. It's not a hearing to deny or approve previously existing permit.

Ms. Cleveland: Not the previous..

Dr. Friedman: Only further revisions.

Ms. Cleveland: But if you deny that revision, you will also handicap them from doing this storage and everything because they do not have the storage of the soil unless they can bring their units in to use them. Does the Board feel that this is higher than what you would like for your children...

Dr. Friedman: I really think that's kind of irrelevant to what we're here for. Sorry. I know what you're asking...

Ms. McNulty: Dr. Friedman, can I make a stab at a motion?

Dr. Friedman: Sure.

Ms. McNulty: I would move that request each of the parties and PDEQ provide us with a memorandum concerning.. a brief memorandum concerning whether any common ground can be reached on a standard that is higher than the actual emissions but lower than the standard proposed in the permit revision. And that we would take that under advisement and then render a decision.

Dr. Friedman: There's a motion on the floor. Is there a second.

Mr. Pifa: I second it.

Dr. Friedman: Motion is seconded. Any further discussion from the Board members?

Ms. Cleveland: Could you clarify that one more time...what you're asking...what your saying to make the motion?

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Ms. McNulty: Okay, the motion is that each party, including PDEQ would submit a brief to us on the question of whether there is some kind of agreement.. some agreement that can be reached between the appellant and SSR; if it's acceptable to PDEQ that sets a standard that is higher than the anticipated actual emissions, but is lower than the emissions proposed in this permit that pertains to the issue before us which is the permit revision. And that we would upon reviewing those briefs, make a decision.

Ms. Cleveland: Thank you.

Dr. Friedman: There is a motion and it's been seconded. Any further discussion?

Dr. Brailsford: The only discussion that I would reiterate is that PDEQ do the ambient air quality testing that you mentioned earlier. That be part of the inaudible.

Dr. Friedman: Could that be an amendment that or do you want to just add it to your motion?

Ms. McNulty: Amendment.

Dr. Friedman: Then we need to vote on the amendment. The amendment is seconded.

Ms. McNulty: Second

Dr. Friedman: Seconded. Voted to add that amendment by PDEQ if that's okay. All those in favor of the amendment say aye.

Hearing Board: Aye.

Dr. Friedman: Everybody agreed. Are we ready to vote on the motion itself. Why don't we do a role call for the motion.

Ms. Bennie: Dr. Friedman?

Dr. Friedman: Actually, the chairman doesn't vote.

Ms. Bennie: Dr. Bailsford?

Dr. Brailsford: I would... we're voting on whether to accept your motion? Yes.

Ms. Bennie: Ms. McNulty?

Ms. McNulty: Aye.

Ms. Bennie: Mr. Pina?

Mr. Pifa: Aye.

Ms. Bennie: Unanimous.

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Dr. Friedman: Since it's unanimous and the motion is stated, and I guess that concludes this issue. Are there any other issues that, old business, new business that we. . .

Ms. Potts: We need a date for this submission.

Dr. Friedman: Fifteen days. Okay. Any other Board action that needs to be addressed today.

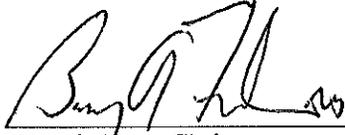
Mr. Straub: Mr. Chairman, just a matter of procedure. I'll try to be keep it real brief. There is a matter of the open meeting law and since the conflict between your rules which would allow you to reach a decision among yourselves vs. what is required by the open meeting law and since you are a public body I would think that you... if you're going to deliberate you need to do so in an executive session... we can schedule an executive session and you need to deliver your decision publicly. So we would have to reconvene another meeting. It could be for that limited purpose...

Dr. Friedman: We had so much fun we'll do it again. Okay, I'll speak to the Board. I would entertain a motion for adjournment.

Ms. McNulty: So moved.

Mr. Piffa: Seconded.

Dr. Friedman: Move and has been seconded and everybody is in favor. I thank the public. Thank all the parties, the Board, PDEQ. Thanks.



Dr. Friedman, Chairman



Vicki Bennie, Secretary