

1 approve an application for hazardous waste
2 facility installation permit unless the
3 Applicant demonstrates sufficient
4 reliability, expertise, competency to
5 operate a hazardous waste facility.

6 As Dr. Pinto indicated, credibility
7 is the issue here. Credibility not only in
8 terms of the Applicant's ability to operate
9 its facility safely but also credibility in
10 terms of all the statements made by the
11 applicants and the consultants hired by the
12 Applicant.

13 Ohio law provides that it is the
14 Applicant who has the burden of proof. This
15 fact does not change because the Greene
16 Environmental Coalition decided to
17 participate in this proceeding or decided to
18 participate in only portions of this
19 proceeding.

20 Unless the Applicant can demonstrate
21 that it meets each and every one of the
22 criteria, this Board is under an obligation
23 to deny the permit application.

24 Southdown has failed to prove that

1 its facility represents the minimum risk of
2 environmental impacts and it has failed to
3 prove that the facility has met each and
4 every one of the criteria, and it has also
5 failed to prove that it's competent to
6 operate a dangerous facility or potentially
7 dangerous facility that could affect members
8 of the community and the environment.

9 Before I outline some of these
10 deficiencies, I'd like to point out that the
11 Board has three possible options with
12 respect to this permit application.

13 First, the Board can approve and
14 issue the permit, but the Board can only do
15 that if it finds that Southdown has met its
16 burden of proof with respect to each and
17 every one of those criteria.

18 Second, the Board can disapprove the
19 permit. If the Board finds that Southdown
20 failed to meet any one of these criteria,
21 then the Board is under an obligation to
22 disapprove this permit application..

23 Finally, the third option that's set
24 forth in the rules is to remand to the

1 hearing panel to take additional testimony.

2 No where -- it's important for the
3 Board to know that no where in the rules
4 does it allow a delay in this matter -- is
5 the Board allowed to consider a delay in
6 this matter with respect to Southdown.

7 The Board's rules provide that the
8 public's health and safety is above the
9 issue of Southdown -- delay caused by
10 Southdown -- to Southdown by this facility.

11 So over the past few months, the
12 Board Staff has done a commendable job of
13 reviewing the record in this case and
14 pointing out and identifying some of the
15 serious deficiencies and unanswered
16 questions regarding Southdown's permit
17 application.

18 As Mr. Shapiro mentioned, it's the
19 State's obligation to conduct a rigorous
20 review of these permit applications and the
21 Staff should be complimented for its review
22 of this matter.

23 Now, as a lawyer, I have to admit
24 that I didn't understand all of the issues

1 that Mr. Brown was discussing during his
2 presentation, but some things stick out in
3 my mind as being terribly significant about
4 the Board's decision.

5 Basically, my understanding is that
6 Southdown has failed to adequately
7 demonstrate that its facility represents a
8 a minimum risk in the event of a fire.

9 Now, Southdown has stated that while
10 that shouldn't matter, that shouldn't matter
11 because there's not going to be a fire.
12 Well, members of the Board, we're all human
13 beings and we all make mistakes; and, in
14 fact, if Southdown's risk assessment is any
15 indication, we can anticipate that Southdown
16 will be making a lot of these mistakes in
17 the future.

1a So by simply saying that it intends
19 to not allow a fire to happen does not
20 satisfy the siting criteria identified by
21 the Board. No matter how hard we work at
22 this, we have to recognize that we're human
23 beings and we do make errors. Even the best
24 scientists working on the Challenger made

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1 errors and that resulted in the deaths of
2 six people.

3 The Board needs to make sure to the
4 best of its ability that further injuries
5 and problems to the environment aren't
6 caused by this facility.

7 Just to recount some of the points
8 raised by Mr. Brown, a twofold difference
9 between the figures that Southdown used and
10 the Staff with respect to fire risks.

11 Sarah Foster indicated that risk
12 assessments aren't perfect tools and there
13 might be a possible magnitude of order
14 difference in the calculations.

15 What we see with respect to DREs in
16 this case, destruction and removal
17 efficiencies, is not one order of magnitude
18 but 360 orders of magnitude.

19 Finally, we see 1000-fold error in
20 the concentrations used by Southdown to
21 determine the effect of a spill in Beaver
22 Creek.

23 As I said, I'm not a scientist, so I
24 think that I'm not going to spend a lot of

1 time addressing the issues that were gone
2 over by the Staff and raised in this matter,
3 but I would like to address some of the
4 other deficiencies in Southdown's permit
5 application.

6 The Staff noted in its request for
7 comments and clarifications that the pipe
8 that went from the tanks to the kiln
9 traversed an unlined open ditch. In fact,
10 the date when the site view took place,
11 there was actually surface water ponded in
12 that open ditch.

13 As a result of this deficiency,
14 Southdown's design cannot possibly be the
15 one that presents the minimum risk of
16 contamination to surface water and
17 groundwater.

18 Now, I also would note that
19 Southdown has complained that their entire
20 facility is going to be contained. That's
21 not true. There's a possibility that a leak
22 will take place outside of the storage area
23 and outside of the truck parking area. That
24 could take place by a leak in this pipe that

1 goes from the tanks to the kiln. That can
2 also take place in other ways.

3 Now, the Staff asked Southdown
4 whether the pumping of hazardous wastes to
5 the kiln would automatically stop if a leak
6 was detected.

7 Southdown never really answered that
8 question in its response, but it's important
9 to point out that on page E22 of its permit
10 application, it indicates that there's not
11 an automatic cutoff. It indicates that it
12 relies upon human beings who can make errors
13 to detect those leaks and to turn off a
14 valve in the event that there is a problem.

15 Now, Southdown in its response also
16 conceded that it was willing to make some
17 changes. It conceded that it was willing to
18 add a double-walled pipe over the portion
19 that traversed the ditch.

20 I question whether this solution by
21 Southdown is even going to make things
22 better or worse. If there's a double-lined
23 wall, won't it be more difficult to detect
24 leaks in?

1 Wouldn't it be easier to reroute the
2 drainage ditch to make sure that it doesn't
3 go beneath the pipe? Is it possible for
4 Southdown to line the drainage ditch?

5 These are all unanswered questions;
6 and unless the Board has the answer to these
7 questions, it cannot determine that
8 Southdown has met its burden of proof to
9 show minimum risk of contamination of ground
10 or surface water.

11 The problem with the pipe is
12 particularly troublesome in light of the
13 geology of this area. Again, Southdown
14 claims that because there's going to be a
15 containment, the geology isn't so important,
16 just like Southdown claims because we're
17 going to prevent a fire, the risk assessment
18 isn't so important.

19 But in reality, there is a chance
20 that these hazardous wastes will get into
21 the groundwater. The Staff apparently
22 recognized that there's a substantial risk
23 of this and asked for comments regarding
24 monitoring wells.