

1 In our response to this, we
2 discovered new evidence that shows that, in
3 fact, the surface, the geologic layer just
4 below the surface, which is called the sugar
5 rock formation, is itself an important
6 drinking water aquifer.

7 Now, the hearing panel in rendering
8 its decision relied upon testimony from
9 Elizabeth Anderson. She said if a spill
10 occurred outside the containment area, no
11 measurable impact on groundwater immediately
12 below the site could be found.

13 This testimony cannot be reconciled
14 with the fact that that geologic formation
15 right at the surface below Southdown's
16 facility is itself an important drinking
17 water aquifer that was recognized by Pantera
18 in its wellhead protection **rep'ort** .

19 It simply does not make sense to say
20 that no contamination will take place if you
21 drop hazardous wastes right onto an aquifer.

22 In addition to that, this new report
23 indicates that hazardous wastes may migrate
24 through interconnected fractures, as well as

1 the bulk porosity of this formation to other
2 aquifers in the area.

3 In conclusion, the General Assembly
4 has recognized the need to thoroughly
5 scrutinize hazardous waste facilities in
6 this site. The General Assembly created
7 this Board to fulfill the important and
8 sensitive function.

9 The Staff has done an excellent job
10 in this case of ensuring that this takes
11 place. From my perspective, it seems pretty
12 obvious that the EPA's reasonable review or
13 assessment of the verification was not
14 nearly in-depth and did not fulfill the
15 function that the General Assembly required
16 to ensure that these facilities are safely
17 sited and constructed in a manner that
18 protects the public health and welfare.

19 The issues raised in the Staff's
20 request and comment which -- requests for
21 comments, along with the presentation that
22 we've seen today, demonstrates that
23 Southdown has not met its burden of prove.

24 Southdown has not proven by a

1 preponderance of the evidence that its
2 facility represents the minimum risk of
3 groundwater and surface water contamination.
4 It has not proved by a preponderance of the
5 evidence that its facility represents the
6 minimum risk of fires and explosions.

7 It has not proved by a preponderance
8 of the evidence that its facility represents
9 minimum impact on public health and safety.
10 And perhaps most importantly, Southdown has
11 not proved by a preponderance of the
12 evidence that its facility -- that it
13 demonstrates, quote, sufficient reliability,
14 expertise and competency to operate a
15 hazardous waste facility.

16 Since Southdown has not met its
17 burden of proof, the Board has two options.
18 Option number one, disapprove the permit;
19 option number two, remand the permit.

20 Now, I would urge the Board to
21 accept the first option. If the Board does
22 not accept the first option, the Board ends
23 up sending out a signal to hazardous waste
24 facilities in this state that they can

1 submit applications that are not conducted
2 in a thorough manner.

3 It sends out the message to submit
4 an application and then we'll work our way
5 through the slow and long process; and if
6 the Staff happens to pick up on something,
7 then we'll fix it; but if the Staff misses
8 it, then we'll get away with it.

9 The Board needs to reject the permit
10 application for two reasons. Number one,
11 Southdown hasn't proved by a preponderance
12 of the evidence that it met the criteria;
13 and number two, it can't remand this case
14 because it will send the wrong message to
15 future applicants who want to operate
16 hazardous waste facilities in the state.

17 Although I'm not a technical person,
18 I would be happy to entertain any questions
19 from the Board at this time.

20 DR. PINTO: Are there any questions
21 from the Board?

22 Mr. Chairman.

23 CHAIRMAN IOANNIDES: I have one.
24 You had spoken about your concern in regard

1 to the groundwater protection and
2 specifically the containment area.

3 MR. KODISH: Yes.

4 CHAIRMAN IOANNIDES: And the
5 Applicant is required under the statute to
6 provide to the Board about protecting an
7 aquifer, and usually we have certain
8 standards, like tenth of a negative seventh
9 permeability factors. Do you feel that
10 those factors were ignored by the Applicant?

11 MR. KODISH: I feel from my
12 review -- again, let me preface this by
13 saying I'm not a geologist. I have
14 consulted with an expert geologist in this
15 matter, but my feeling is that the Board
16 failed to demonstrate that on the record.

17 CHAIRMAN IOANNIDES: The Board?

18 MR. KODISH: I'm sorry. Southdown.
19 Excuse me.

20 CHAIRMAN IOANNIDES: Thank you.

21 MR. KODISH: Any other questions?

22 DR. PINTO: Thank you very much.

23 I will now hand the meeting over to
24 the Chairman.

1 Mr. Chairman.

2 CHAIRMAN IOANNIDES: Thank you, Dr.
3 Pinto, for your presentation.

4 Unless I have objections from the
5 Board, at this time I wish to move away from
6 straight parliamentary procedure and
7 entertain Board member discussions. Dr.
8 Pinto has been the expert and the appointed
9 individual that will lead and begin the
10 discussions.

11 DR. PINTO: Due to the amount of
12 information I've had to process, could I
13 request about a ten-minute recess so I can
14 marshal my thoughts? Would that be
15 appropriate?

16 CHAIRMAN IOANNIDES: Such recess
17 granted.

18 (Short recess taken.)

19 CHAIRMAN IOANNIDES: We're back on
20 the record.

21 MR. MERRILL: Mr. Chairman, can I
22 make a statement on the record?

23 Prior to Applicant's statement, the
24 Board gave the opportunity to the Applicant

1 whether they would want to, I guess,
2 reconvene or adjourn and discuss or respond
3 to certain questions raised by the Board
4 today with respect to the risk assessment
5 and the fire explosions scenario.

6 At that time the Applicant felt that
7 the questions would be adequately answered
8 in their response with Ms. Sarah Foster.
9 However, it appears that the questions are
10 much more detailed than the applicant
11 expected. They go into kinetics,
12 thermodynamics.

13 I'm not trained in those areas, nor
14 is anyone here from the Applicant. The
15 individual that works with Ms. Foster is
16 Paul Krasowski (phonetic). He really would
17 be the person to address this.

18 Given the nature of the questions,
19 the Applicant would like to now take
20 advantage of the Board's offer to either
21 remand the matter back for an adjudication
22 hearing on this issue, adjourn and respond
23 to the specific questions, or in any form or
24 manner that the Board would like.

1 I believe that that will allow the
2 Board members the information to determine
3 whether they agree or disagree with the
4 different discussions that have occurred to
5 date.

6 CHAIRMAN IOANNIDES: Well, my
7 comments to that, sir, are that we have
8 moved far along right now. We're at the
9 stage of the hearings that this Board needs
10 to proceed and take a vote shortly. So I'm
11 going to have to deny your request.

12 MR. MERRILL: Thank you.

13 CHAIRMAN IOANNIDES: We have a
14 little change of agenda. Instead of Dr.
15 Pinto proceeding, Dr. Bair requested that
16 Dr. Pinto yield a little bit of his time and
17 let Dr. Bair begin.

18 DR. BAIR: I have some discussion
19 that I'd like to initiate concerning the
20 geology and hydrogeology of the site.

21 In one of the clarifications that
22 the Board posed, the comment was made about
23 the installation of monitoring wells at the
24 site. I've received, as the other Board