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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R02-019
AMMONIA NITROGEN STANDARDS) (Rulemaking-water)
35 ILL. ADM. CODE 302.212,)
302.313 and 304.122)

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said hearing was taken on the 23rd day of April A.D., 2002, commencing at 10:30 o'clock a.m. at the Illinois Pollution Control Board Hearing Room, Room 403, 600 South Second Street, Springfield, Illinois.

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APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(312) 814-6923
By: Ms. Catherine F. Glenn, Hearing Officer

BOARD MEMBERS PRESENT:
Ronald C. Flemal, Ph.D
Michael Tristano
G. Tanner Girard, Ph.D.
Anand Rao

Gardner, Carton & Douglas
Quaker Tower
321 North Clark Street
Chicago, Illinois 60610-4795
By: Richard J. Kissel, Esq. and Roy M. Harsch, Esq.
Co-counsel on behalf of the Illinois Association
of Wastewater Agencies

Exhibit Number 10, marked for identification and
admitted into evidence -- Page 7

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1 HEARING OFFICER GLENN: Good morning. My
2 name is Cathy Glenn, and I have been appointed by the
3 Board to serve as hearing officer in this proceeding
4 entitled, In the Matter of Proposed Amendments to
5 Ammonia Nitrogen Standards 35 Illinois Administrative
6 Code 302.212, 302.213 and 304.122, Docket Number
7 R02-019.

8 Seated to my right is Dr. Ronald Flemal,
9 the lead board member assigned to this matter. To
10 Dr. Flemal's right is Board Member Michael Tristano.
11 And to my left is Dr. Tanner Girard, and to his left is
12 Anand Rao. Dr. Girard and Member Tristano are also
13 assigned to this rule making today.

14 Also in the back of the room, staff with
15 the Board are Alecia Liu of the Board's technical unit,
16 and Erin Conley who is the board's rule making
17 coordinator.

18 Today's hearing will begin with a
19 presentation of testimony and comments that were not
20 presented at the first hearing. After the testimony of
21 each, we will allow that questions be asked of the
22 witnesses, and we will also have the witnesses read
23 their testimony into the record because it is short
24 testimony.

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1 Anyone may ask a question after the
2 witnesses have testified. I do ask that if you have a
3 question, that you raise your hand, wait for me to
4 recognize you and please state your name and what group
5 you are with.

6 Speak clearly please for the benefit of the
7 court reporter, and if you could speak loudly, she would
8 appreciate that also. If we can't hear you, we will ask
9 you to speak up. Please note that any question that
10 might be asked by any of the Board's board members or
11 board staff are intended to help build a complete record
12 in this matter and are not meant to express any
13 preconceived notion or bias.

14 In addition to the prefilled testimony
15 today, we will allow anyone else who wishes to testify
16 the opportunity to do so. And I have placed at the side
17 of the room a sign-up sheet if indeed you do wish to
18 testify. Also at the side of the room on the table,
19 there are the most recent copies of the Board's notice
20 list and service list in this matter. If you wish to
21 receive copies of the Board's opinions and orders and
22 hearing officer orders, you may sign up for the notice
23 list. If you would like to receive copies of those
24 items as well as anything else that is filed with the

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1 Board in this matter, you may sign up to be on the
2 Board's service list.

3 Prior to filing any further documents in
4 this case, if you intend to file anything, please call
5 me or the clerk's office in Chicago so that we may get
6 you the most recent copy of the service list. And I
7 think that is all we had.

8 Did anyone have any questions before we get
9 started? Can you all hear me okay? Okay, wonderful.

10 At this time, I would ask Dr. Flemal if he
11 wishes to say anything.

12 BOARD MEMBER FLEMAL: On behalf of the
13 Board, I'd like to, again, to invite you -- it's my
14 appreciation to invite you to join in with us on the
15 proceeding that we're here for.

16 At the last session, I ran through what the
17 Board's procedure is as we develop the record and
18 ultimately go to a decision on this proposal. I won't,
19 since most of the faces here are familiar, go through
20 that whole series of events again, but let me just note
21 for the people who are perhaps coming here for the first
22 time, that once the Board develops this record
23 completely, and we should do that with the completion of
24 a post-hearing comment period, the Board will deliberate

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1 collectively on the proposal before us and decide what
2 the disposition of the proposal will be. We would hope
3 that will be in a relatively short time following the
4 closing of today's activities.

5 HEARING OFFICER GLENN: Thank you,
6 Dr. Flemal.

7 Would anyone else like to say anything?
8 Dr. Girard or Mr. Tristano?

9 DR. GIRARD: Just good morning.

10 HEARING OFFICER GLENN: All right. With
11 that, let's get started. Mr. Kissel?

12 MR. KISSEL: We have two witnesses today.
13 You have the prefile testimony of them.

14 We have also filed a revised proposed rule,
15 and my suggestion is that we make that an exhibit to
16 this proceeding at this time.

17 HEARING OFFICER GLENN: Let's make that an
18 exhibit. If there are no objections, I would like to
19 admit at this time the IAWA's proposed rule, which
20 includes corrected appendices from last Friday. They
21 should have served all of you on the service list with a
22 copy of the two append -- appendixes, I believe, (c)(2)
23 and (c)(3). I think that's correct.

24

So we will admit at this time, if there are

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1 no objections, as Exhibit Number 10, the amended
2 proposal.

3 [Whereupon Exhibit Number 10 was
4 marked for identification and admitted
5 into evidence.]

6 MR. KISSEL: For the record, that proposal
7 was filed with the Board on April 3, 2002 with the
8 notice of filing.

9 HEARING OFFICER GLENN: Thank you.

10 MR. KISSEL: That's Exhibit Number 10; is
11 that right?

12 HEARING OFFICER GLENN: That's correct.

13 MR. HARSCH: Roy Harsch. I'll briefly
14 explain the principal changes in the amended proposal.

15 That following up on some suggestions from
16 the Board, we added the word "water" when referencing
17 temperature, or in a number of places, following the
18 suggestion that we were defining summer and winter
19 differently than commonly understood. We used the early
20 life stage present to refer to summer in a number of
21 places throughout the rule.

22 Following up on a comment from Mr. Mosher,

23 in 302.212 (c) (3), we talked about the sub-chronic
24 standard being evaluated over a four consecutive day

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1 period. And those are the principal changes.

2 HEARING OFFICER GLENN: Thank you,
3 Mr. Harsch.

4 MR. KISSEL: We have two witnesses. I
5 think the first will be Mr. Callahan. They have been
6 previously sworn.

7 HEARING OFFICER GLENN: They have?

8 MR. KISSEL: Yes.

9 HEARING OFFICER GLENN: Wonderful.

10 MR. KISSEL: You understand, Mr. Callahan,
11 you're still under oath?

12 MR. CALLAHAN: I believe I understand
13 that.

14 HEARING OFFICER GLENN: Thank you.

15 MR. CALLAHAN: Good morning. I'd like to
16 read from my prepared testimony, which is prefiled, and
17 then I have a page or two of follow-up that I'd like to
18 expand.

19 My name is Michael Callahan. I previously
20 filed testimony on behalf of the Illinois Association of
21 Wastewater Agencies, IAWA, to explain the proposed rule

22 making. I am here on behalf of the IAWA to explain the
23 revisions that were made to the proposed rule, which
24 were filed on April 2, 2002.

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1 The proposed rule was revised to include
2 all of the suggested revisions specified in the prior
3 testimony of Robert Mosher on behalf of the Illinois
4 Environmental Protection Agency, which was presented at
5 the first hearing.

6 In addition, the revised proposed rule
7 changed several provisions to address certain comments
8 by Board Member Flemal put forth at the first hearing in
9 this matter. The suggestions included revising the
10 terms "summer" and "winter." These terms were changed
11 to "early life stage present" and "early life stage
12 absent," which correspond with the time periods intended
13 to be covered with the prior terms. See section
14 302.212(b) (2) and (e). No changes to the time periods
15 have been made.

16 In addition, IAWA added a definition of
17 "early life stage," which is taken from the ORSANCO
18 rule. This change is consistent with the analysis IAWA
19 undertook in preparation for this rule making.

20 Dr. Robert Sheehan will address this change in further

21 detail.

22 IAWA also made other minor changes for the
23 purpose of clarification. IAWA added the word "water"
24 before temperature throughout the rule, and clarified

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1 Section 302.212 (c) (3) to address the sampling required
2 to evaluate attainment.

3 Okay. And it would be at this time that
4 I'd like to expand on my testimony a little bit, if I
5 may.

6 I'd like to address a situation in this
7 proceeding which has developed since the first hearing.
8 On April 12, 2002, post-hearing comments on Board Docket
9 R02-19 Triennial Review were filed with the Board by
10 Mr. Albert Ettinger, who is thereby representing the
11 Environmental Law and Policy Center, Prairie Rivers
12 Network and the Sierra Club.

13 Mr. Ettinger's comments were in response to
14 the lack of implementation rules filed by the Illinois
15 Environmental Protection Agency in docket R02-11. In
16 his comments, Mr. Ettinger referred to my testimony in
17 these proceedings and referenced a bitterness or
18 acrimony associated with the IAWA's approach in
19 advocating the ammonia water quality standard we are

20 discussing today. Further, Mr. Ettinger alleges that
21 this bitterness was in response to the fact that IAWA
22 came away from the RA-94 proceedings without a likely
23 understanding of what the implementation rules were
24 going to be for -- of the effluent modified water

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1 concept. I reference page three of his filing in that
2 regard.

3 I believe that a terrible misunderstanding
4 of the IAWA's position with regard to both RA-94 and
5 these proceedings exists, and I would like to clear the
6 record of this misunderstanding at this time.

7 This misunderstanding lies in the fact that
8 the exact opposite of Mr. Ettinger's allegations in his
9 April 12, 2002 comments occurred regarding
10 implementation rules. Further, any bitterness detected
11 on behalf of IAWA or me is certainly not directed
12 towards the Board or the Agency.

13 Let me explain. As I indicated in my
14 testimony during the first hearing, the primary tenet
15 regarding the ammonia water quality standard and the EMW
16 concept, developed as a result of R94-1, was that there
17 existed no impairment of aquatic life statewide
18 attributable to ammonia nitrogen below NPDES outfalls,

19 that they were complying with monthly average ammonia
20 limits of 1.5 milligrams per liter, summer, and 4.0
21 milligrams per liter, winter.

22 Consequently, dischargers located on
23 receiving streams, where pH and water temperature
24 conditions would require monthly average ammonia permit

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1 limits less than 1.5 milligrams per liter summer and 4.0
2 milligrams per liter winter, would receive permits,
3 permit limits equal to those two values. The duration
4 of the receiving stream below such a permitted outfall
5 would be classified as EMW until the ammonia water
6 quality standard was obtained through the natural
7 ammonia assimilation capability of the stream itself.

8 This was the interpretation of the R94-1
9 rule making by IAWA. I believe that this is also the
10 understanding of the Agency, in as much as the NPDES
11 permits shortly written after the Board issued its final
12 opinion and order were in keeping with such an
13 interpretation. I further believe that this
14 interpretation was also in keeping with the Board's
15 intent and its final opinion and order. Region 5 USEPA
16 did not object to any of the components of the Agency's
17 advocated position in R94-1 prior to that action before

18 the Board. The IEPA has indicated and presented the
19 Region 5 with the proposed rule and discussed that
20 proposal with Region 5.

21 On November 13, 1997, a 168 notice of
22 intent to sue USEPA on behalf of the Environmental Law
23 and Policy Center, the Sierra Club Citizens For a Better
24 Environment, McHenry County Defenders and Trout

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1 Unlimited was filed. The intent of this suit, or the
2 intent, rather, was based on the allegation or on the
3 alleged lack of implementation of rules 44, R94-1, and
4 the alleged failure of USEPA to publish anti-degradation
5 rules for Illinois, since the then existing rules of
6 Illinois were alleged to be inadequate. These actions
7 resulted in USEPA Region 5 changing its position
8 regarding the concept of EMW, thereby forcing the Agency
9 to adopt to develop the current useless EMW concept.

10 The IAWA felt that the implementation
11 procedures of R94-1 were perfectly adequate for the
12 needs of the State. IAWA felt that the Board, the
13 Agency, the regulated community and initially the
14 activists' community had agreed upon a viable mechanism
15 in EMW to implement a scientifically questionable and
16 technically and feasible water quality standard.

17 Regrettably such was not the case.

18 The IAWA member agencies must deal with the
19 harsh realities of engineering, chemical and biological
20 principles. The semantics of oratory in context
21 realistically accomplished nothing in terms of actual
22 water quality improvement. Science and engineering are,
23 by necessity, the tools with which our society addresses
24 our present water quality needs. Consequently, the

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1 limits of our science and engineering become -- the
2 abilities become the limits of our ability to address
3 water quality problems. No amount of discussion,
4 oratory or legal action, can realize water quality
5 improvement beyond the cost benefit limits of our
6 science and engineering.

7 Any bitterness or acrimony detected on
8 behalf of the IAWA or me during these proceedings is
9 probably directed toward two issues and certainly not
10 the Board or the Agency. The first of these issues is
11 the preconceived fallacy that more plentiful and
12 stringent water quality regulations automatically result
13 in water quality improvements. This concept is absurd.
14 It is the extent of our society's scientific and
15 engineering capability, not our legal regulatory

16 structure that will dictate the extent to which we can
17 realize water quality improvement. We do not live in a
18 perfect world and we cannot have all that we want.

19 The IAWA felt that the final disposition of
20 R94-1 was the result of a maneuvering to achieve
21 unattainable regulatory requirements by special interest
22 groups. The absolute frustration on behalf of IAWA is
23 worn out today as we attempt to do the un-bad
24 regulation.

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1 The second issue responsible for perceived
2 acrimony concerns a federal agency, which in conduct of
3 its normal review responsibilities, fails in one or both
4 of two assigned duties. If indeed the EMW concept in
5 its intended implementation was not in keeping with the
6 Clean Water Act requirements, Region 5 should have so
7 indicated before the issue was brought before this
8 Board. The necessary accommodations could have been
9 made, such that the Board was able to act in a
10 thoroughly informed manner on an acceptable proposal.
11 Such advisement was apparently not given by Region 5 in
12 R94-1.

13 The second concern IAWA has regarding the
14 Region 5 action in R94 relies in the reluctance of

15 Region 5 to stand by its apparent original approval of
16 the R94-1 proposal. Why should the threat of a lawsuit
17 be of more significant provocation to USEPA than the
18 adoption of a realistic and justified water quality
19 standard? The IAWA presumes that Region 5 USEPA is in
20 the business of protecting our nation's waters with a
21 sound cost benefit stewardship, not in the business of
22 avoiding lawsuits.

23 The IAWA and I have always felt that we
24 could receive a very fair hearing on environmental

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1 issues before this Board. This Board has developed a
2 reputation within the IAWA membership of being an
3 authority where we can take contention issues, and while
4 not always winning, at least receive a just and fair
5 hearing, while we guarantee that our concerns will be
6 heard by both the Board and the public.

7 On the other hand, the Agency has always
8 presented a regulated community with an unquestionable
9 outline of the goals of the nation and the state for
10 realizing water quality improvements and maintenance.
11 However, the Agency has graciously been cognizant of the
12 inherent difficulties of such goals on a site-by-site
13 basis and has allowed latitude where it could, so that

14 technical reality and financial stewardship have been
15 considered to the fullest extent possible.

16 Together, the Board, the Agency and the
17 IAWA membership have been profoundly successful in
18 restoring water quality to our state and improving the
19 quality of wastewater effluence. We have been very
20 successful.

21 In conclusion, I wish to restate that IAWA,
22 nor I, are bitter or acrimonious toward either the Board
23 or the Agency. We solidly feel that we are all partners
24 in addressing our mandate to protect and enhance the

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1 quality of our state's waters. Regrettably, at times,
2 some very frustrating situations appeared to be
3 inevitable. Thank you.

4 HEARING OFFICER GLENN: Thank you,
5 Mr. Callahan.

6 Dr. Sheehan?

7 MR. KISSEL: Do you have any questions for
8 him?

9 HEARING OFFICER GLENN: I prefer, if no one
10 objects, we'll go ahead and hear from Dr. Sheehan.
11 We'll take questions subsequent to that.

12 MR. KISSEL: Dr. Sheehan, you understand

13 you're still under oath?

14 DR. SHEEHAN: Yes, I do.

15 MR. KISSEL: Go ahead.

16 DR. SHEEHAN: I will read from the prefilled
17 testimony.

18 I am Robert J. Sheehan, professor of
19 fisheries in zoology, and assistant director of the
20 Fisheries and Illinois Aquaculture Center, Southern
21 Illinois University Carbondale.

22 I am commenting today on the revised
23 proposed rule filed by the Illinois Association of
24 Wastewater Agencies, IAWA, and specifically issues

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1 relating to the database of spawning dates of fish that
2 I prepared in connection with this rule making. I
3 testified in detail on this subject at the first hearing
4 to address the proposed rule filed by IAWA.

5 The revised proposed rule adds a definition
6 for early life stage at section 302.100. This
7 definition is consistent with my work in this matter.
8 Because the U.S. Environmental Protection Agency's
9 national criteria document, "Ambient Water Quality
10 Criteria for Ammonia", 1999, on which this rule making
11 is based, does not define "early life stage,"

12 representatives of IAWA and myself looked to other
13 sources for a concise definition.

14 The ORSANCO rule making contained the
15 following definition:

16 Early life stages of fish means the
17 pre-hatch embryonic period, the post-hatch free embryo
18 or yolk-sac fry and the larval period, during which the
19 organism feeds. Juvenile fish, which are anatomically
20 rather similar to adults, are not considered an early
21 life stage.

22 I believe this definition is concise and
23 accurate. I used this definition in my determination of
24 when the "early life history stages present" water

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1 quality criteria should be applied in Illinois.

2 At the first hearing in this matter, Board
3 Member Flemal also inquired about the word "indigenous"
4 in describing the fish that are considered in connection
5 with the water quality standard before the Board. I
6 believe that it is not necessary to add "indigenous,"
7 and it would unnecessarily complicate this issue.
8 Certain species stocked by the Illinois Department of
9 Natural Resources, such as the striped bass or muskie,
10 may not be indigenous to Illinois waters, but it might

11 still be appropriate to consider the early life stages
12 of these species in deriving water quality standards. I
13 believe that the limitation to fishes that are not
14 salmonids adequately addresses the fish species to be
15 considered. No reproducing salmonid populations are
16 found in Illinois waters that receive NPDES point source
17 discharges. Thank you.

18 HEARING OFFICER GLENN: Thank you,
19 Dr. Sheehan.

20 We will turn now to any questions that
21 anyone has of either Mr. Callahan or Dr. Sheehan. Do
22 any members of the public have any questions? We'll
23 start with you all and go from there. I see no
24 questions. If any come up, please just raise your

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1 hand.

2 In the meantime, do any of the board
3 members or, Anand, of the technical unit, have any
4 questions?

5 BOARD MEMBER FLEMAL: I wanted to thank
6 both of you for the way you have addressed some of the
7 concerns that I expressed at the first hearing in this
8 matter. I think you've done it really quite
9 successfully.

9 this is based on the anatomical similarity between the
10 juvenile fish and the adult. And as fish grow, they
11 change what we call their body confirmation. So that
12 even adults, as they get older, will look different from
13 the way they looked when they had, for example, newly
14 became sexually mature. There are shape changes. So
15 it's very difficult to pin down the exact anatomical
16 confirmation of the fish because it changes through
17 time. And I think that similarly, by saying it's
18 anatomically similar to adults, that may be the clearest
19 way to express this idea.

20 BOARD MEMBER FLEMAL: Thank you. We'll
21 take that into consideration. That's the only question
22 I have.

23 HEARING OFFICER GLENN: Thank you.

24 BOARD MEMBER GIRARD: I have a similar

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1 question then. Does that mean that juvenile fish, which
2 are not anatomically similar to adults, would possibly
3 be considered an early life stage?

4 DR. SHEEHAN: In my opinion, if they had
5 not gone through the last transformation whereupon they
6 would become similar to adults, I believe you're
7 correct. They could still -- may well still be

8 considered an early life history stage.

9 BOARD MEMBER GIRARD: Thank you.

10 BOARD MEMBER FLEMAL: Who would make that
11 determination?

12 DR. SHEEHAN: I imagine people like
13 myself.

14 When I originally prepared the spawning
15 dates table and defined when the "early life history
16 stage present" occurred, I -- at about a month on after
17 hatching, because based on my knowledge of the species
18 in Illinois that are under consideration here, they will
19 hatch, undergo a couple of transformations, really, and
20 actually become similar in appearance to adults within
21 two to three weeks after hatching. So I added on
22 another week just to be more protective, and determined
23 that for our species in Illinois, a month after
24 hatching, you pretty much had an animal that was similar

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1 to the adults with all the species that I'm aware of.

2 BOARD MEMBER FLEMAL: The way the early
3 life stage present and absent periods are set up, in
4 effect -- and that's already been taken into
5 consideration -- in that there's a determination here
6 that it is during that period of time when the stages

7 are present and you don't have to do a site-by-site
8 determination or species-by-species determination
9 necessarily?

10 DR. SHEEHAN: I'm not sure I follow you.

11 BOARD MEMBER FLEMAL: My concern here is
12 whether this becomes a decision that has to be made
13 regularly perhaps associated with each permit, or at
14 least each reach of stream, or whether, in effect, it's
15 already built into the operation of the rule. And my
16 sense is that it's really the latter, rather than the
17 former.

18 DR. SHEEHAN: It's built into the operation
19 of the rule, because you have to remember that the
20 standards are based on sensitivity of these species.
21 And for periods when the early life history stages are
22 present, the standards are based on toxicity tests with
23 what we call larval fishes, which is essentially a
24 specimen that's several weeks younger than what we call

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1 a juvenile fish. And it's pretty well understood that
2 as species -- as fish get older, they become, for the
3 most part, less sensitive to toxic substance.

4 The other consideration here is that fish
5 will spawn at a given temperature, and it's really

6 temperature that dictates how rapidly an individual fish
7 proceeds to that juvenile stage. That's pretty much
8 set.

9 Now, spawning will occur earlier in the
10 southern half of the state, but at a temperature which
11 we can get a predictable developmental rate. And so if
12 we get spawning in the southern half of the state, we
13 can pretty well be sure that in two to three weeks, it
14 will have undergone a transformation in this juvenile
15 stage. In the northern part of the state, spawning will
16 come later, but at the same temperature, such that we
17 still get the same developmental rate. So I don't think
18 we need to look at this on a site-by-site basis.

19 MR. HARSCH: I might respond, Dr. Flemal,
20 to your question.

21 There is the latitude open to the Agency
22 that we discussed at the first hearing under 302 (e),
23 where the Agency, I believe, could make a determination
24 that another period might be appropriate.

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1 BOARD MEMBER FLEMAL: I understand. My
2 question really went to when we have that situation,
3 where is the determination made that the juvenile stage
4 is or is not also part of the early life stage?

5 MR. HARSCH: Well, I think, again, it would
6 be in accordance with the explanation at the first
7 hearing. It would be done at the time the Agency was
8 probably converting the water quality standards,
9 effluent limitations, and looking at a given discharge
10 and the impact on the receiving stream that that
11 discharge would have, and might encounter another
12 situation where the prescribed periods in the rule are
13 not adequate.

14 It does provide them some latitude where
15 it's necessary, correct, Mr. Callahan? You testified to
16 that.

17 MR. CALLAHAN: Yeah, that was our intention
18 of leaving a sentence in that paragraph.

19 And as I understand the question, the
20 consideration has already been made and recommended by
21 Dr. Sheehan, and it would be adopted by the Board that
22 the early life stage would exist beginning in March. So
23 there would subsequently not have to be initial review
24 every time you have a permit issued. There would be

1 something agreed upon here before the Board. And this
2 paragraph just gives more latitude if the events and
3 circumstances should evolve.

4 HEARING OFFICER GLENN: If I might
5 interject here. Mr. Harsch was sworn in at the first
6 hearing. So he's still under oath.

7 MR. HARSCH: Correct.

8 BOARD MEMBER RAO: I've got a couple of
9 questions.

10 I was looking at Section 302.212 (c) (2)
11 where we talk about the 30-day average concentration
12 nitrogen, how that standard is obtained. Could you
13 clarify as to what it means to, you know, take at least
14 four consecutive samples to meet a 30-day average
15 concentration? You know, does the rule intend that if
16 you take an average of four consecutive samples, that
17 represents a 30-day average?

18 MR. CALLAHAN: In discussion about this and
19 with the Agency, as we began development with this last
20 summer -- and I certainly stand for Mr. Mosher to
21 interject anything here he'd care to -- the Agency was
22 concerned in trying to assess a 30-day compliance period
23 initially from the standpoint of devoting resources to
24 30 consecutive days of sampling, in the event they

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1 needed data for enforcement action. So we agreed that
2 perhaps a four-day sampling of four samples collected

3 within a four -- or a 30-day period, that were
4 representative of the 24 hours within which they were
5 collected, would be adequate to determine that number.

6 Now, that would simply be my understanding
7 of it. And, again, I defer to Bob here for some
8 clarification. That would principally be the method by
9 which the Agency would initially determine compliance or
10 noncompliance water quality standards in the field.

11 What we would look at is dischargers and
12 would be our daily monitoring of our effluence in
13 setting the permit limits appropriate to that particular
14 receiving stream. We would go into that in a much more
15 rigorous detail than just four days.

16 BOARD MEMBER RAO: If you're going to ask
17 this question, as in the national criteria
18 document - 1999 update in the recommendations, they cite
19 or recommend that, you know, they use a 30-day average
20 concentration to show compliance with the chronic
21 standard. And then it says use the highest four-day
22 average concentration to show compliance with the
23 sub-chronic standard. So the language that's been
24 proposed deviates from what's recommended in the

1 criteria document.

2 So that's the reason I was asking this
3 question, so we can have some clarification about how
4 these two standards are, you know, complied with by
5 dischargers.

6 MR. CALLAHAN: Well, the four consecutive
7 day sampling for compliance with the sub-chronic
8 standard by our intent with what we are proposing would
9 be any four consecutive days. It could be the highest
10 of the 30, most definitely. And, again, I believe that
11 this would be particularly on zero low flow streams.
12 This would principally be an effluent, a historically
13 effluent analysis that would be the basis for the
14 setting of those limits.

15 In terms of major compliance in the stream
16 itself, sub-chronic is any four consecutive days
17 regardless of whether they were the highest or not.
18 It's just we hypothetically would begin to sample on
19 Wednesday and proceed through Saturday, and if that was
20 in compliance with the sub-chronic level, fine.

21 Again, we go back to the 30-day average,
22 which was brought up, and this was in response to the
23 Agency having concern about being able to actually be on
24 site at a given water body for 30 consecutive days and

1 sample to determine compliance.

2 Would you care to speak to that, Bob?

3 HEARING OFFICER GLENN: I'm sorry,

4 Mr. Mosher. Could you identify yourself.

5 MR. MOSHER: Yeah. My name is Robert
6 Mosher. I work for the Illinois Environmental
7 Protection Agency, and I believe I was sworn earlier.

8 HEARING OFFICER GLENN: Thank you.

9 MR. MOSHER: There's always two issues, and
10 I guess I've said this a lot lately, but we use water
11 quality standards to set permit limits. That's one
12 function. The other function is to simply tell if our
13 waters are meeting the standards, and whether, you know,
14 we have attainment. That's the other function.

15 And ammonia is different in that, number
16 one, we've got a new construct of a standard called the
17 sub-chronic, and that by definition in the national
18 criteria document, is an average over a four-day
19 period.

20 And then another new thing about the
21 ammonia national criterion is that instead of looking at
22 the chronic over a four-day period, they say it has to
23 be looked at over a longer period, and they gave 30
24 days. So that's why you see differences here compared

1 to the metals, water quality standards, for example.

2 We are very much concerned, and I think we
3 have satisfied ourselves at the Agency that these draft
4 rules are adequate to do both those jobs, allow us to
5 set permits' limits and allow us to assess compliance
6 with the water quality standards. We've spent quite
7 awhile looking at that, and we think this language is
8 adequate for our purposes.

9 BOARD MEMBER RAO: Thank you.

10 BOARD MEMBER FLEMAL: I would ask both of
11 you perhaps to have a look at this language to see
12 whether it accomplishes what I think I've heard both of
13 you say it should do. It seems to me that you want our
14 four consecutive daily samples -- that "daily" is not in
15 there, and when you say over at least 30 days, could it
16 be over 130 days or 300 days? Don't you mean within 30
17 days or something?

18 MR. MOSHER: No, we don't mean that at
19 all. Again, look at the metals. There we say at least
20 four days, and that could be one sample each day for
21 four consecutive days. It could be one sample every six
22 weeks for a long -- much longer time period. That's
23 because our agency's routine ambient monitoring is done
24 on a cycle usually of six weeks.

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1 So for, let's say, our 305 V report to
2 Congress, we have to tell the U.S. Congress what shape
3 the waters of Illinois are in. And we are limited by
4 our monitoring that work to provide the data and compare
5 our monitoring data to the standards. So that's why we
6 specifically, for the metals and for ammonia, wanted
7 language that would allow a routine representative
8 sampling period that shadows what we actually do, what
9 we actually collect.

10 BOARD MEMBER FLEMAL: I think I understand
11 how you operate some of the constraints that that
12 impeaches on your ability to collect data that would
13 somehow support a conclusion like whether or not the
14 sub-chronic standard is being met here. But I'm still a
15 little bit concerned whether this language that I see
16 before me is doing what at least I thought Mr. Callahan
17 was saying, in that we're looking at four consecutive
18 days. Those four days would not be consecutive?

19 MR. CALLAHAN: For the sub-chronic, they
20 are consecutive. For the monthly standard, they don't
21 necessarily have to be.

22 BOARD MEMBER FLEMAL: In the chronic, it
23 says four consecutive samples collected over a period of
24 at least 30 days. That could be four consecutive

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1 samples, which are 20 days apart or a hundred days
2 apart? And the total time period could be anything
3 greater than 30 days. That's the way I read it. Am I
4 entirely wrong?

5 MR. MOSHER: There's some confusion here, I
6 think. If we look at the -- and I don't even know.
7 You've got the new handout?

8 BOARD MEMBER FLEMAL: Yes, I do. And on
9 the bottom of page two, going on to the rest of the
10 sentence on the top of page three.

11 MR. MOSHER: Okay. So the bottom of page
12 two (c) (2).

13 BOARD MEMBER FLEMAL: Yes.

14 MR. MOSHER: This is the chronic standard.
15 This says that there has to be at least four samples
16 collected consecutively over a period of at least 30
17 days. That would allow us to use our ambient monitoring
18 network, collect the sample once every six weeks, we
19 take any four consecutive of those samples, average it,
20 according to the instructions in (d), and we'd be able
21 to assess attainment of the chronic standard.

22 And then number three, we've got the
23 sub-chronic standard. That requires a daily sample for
24 four consecutive days, and that is also averaged

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1 according to part B for assessment of the sub-chronic
2 standards.

3 BOARD MEMBER FLEMAL: That clarifies it.

4 BOARD MEMBER RAO: Just on a follow-up. In
5 the criteria document when they talk about sub-chronic
6 standard, they say the highest four-day average within
7 the 30-day period should not exceed 2.5 times the
8 chronic criterion. So is there any significance to
9 that, to how that sample would be taken within the
10 30-day period?

11 DR. SHEEHAN: For the sub-chronic standard,
12 which is talking about (c) (3) here, basically it's a
13 sample taken each of four consecutive days averaged
14 together.

15 BOARD MEMBER TRISTANO: Let me ask it this
16 way. You dropped the word "highest" to four days, and
17 you didn't put the 30-day limit. So is the highest
18 4 days within 30 days? The word "highest" is dropped
19 here, and it can be any 4 days within the 30.

20 DR. SHEEHAN: Right.

21 BOARD MEMBER TRISTANO: And the 30-day
22 limit is not here. There's no 30-day reference to (c)
23 in (3). There is no 30-day reference.

24 DR. SHEEHAN: Well, in (c) (2), basically it

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1 gives the Agency the option of collecting any four
2 samples within the 30-day period or any four beyond the
3 30-day period.

4 BOARD MEMBER TRISTANO: That's correct.

5 DR. SHEEHAN: Yes.

6 BOARD MEMBER RAO: Is that consistent with
7 the criteria document?

8 MR. MOSHER: If I could interject, I think
9 that word "highest" in the national criteria document is
10 what's confusing us. They're saying highest, which is
11 fine. These rules are saying any four days must meet
12 the sub-chronic. Why they said highest? I don't think
13 it gained anything there.

14 Presumably like any other standard, you
15 name the period of averaging, and any four days in this
16 case must meet that sub-chronic standard. Whether it's
17 the highest or the second highest in a month or the
18 fourth highest in a month, it doesn't matter. They all
19 have to meet it.

20 BOARD MEMBER RAO: Yeah. The reason I ask
21 these questions were, because in the criteria document
22 where they talk about how they came up with the chronic
23 standard on page 82 of the criteria document, they say,
24 you know, based on the fact the minnow early life stage

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1 30-day averaging period, you know, the number is
2 justified with the restriction that the four -- the
3 highest four-day average within the 30 days is no
4 greater than the chronic criteria.

5 So when I read that, I thought that is some
6 kind of a language between these two standards, that you
7 have a chronic criterion standard based on the fact
8 minnow data of a 30-day average and that number is
9 justified, because you have the further restrictions
10 that you have to meet the sub-chronic standard for the
11 highest four-day average. So that's where, you know, I
12 was a little bit confused when I saw the proposed
13 language, and that's where I'm coming from. If you can
14 take a look at this, and, you know, address it in your
15 comments, that's fine.

16 MR. CALLAHAN: I always hesitate to put
17 words in Bob's mouth, but I go back again to what he was
18 saying about us trying to crack two eggs with one rock
19 here.

20 One thing we're looking at is the
21 development of NPDES permit limits, which will have a
22 daily maximum, a monthly average, and if appropriate by
23 the statistical analysis under this regulation, might

24 even have a weekly average, which would be based on the

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1 sub-chronic standard. That's one use of these formulae
2 and the data that would or -- and the data that would
3 contribute to that would undoubtedly be coming from
4 wastewater plant treatment discharges, which are very
5 regularly regulated or monitored. And that's one set of
6 criteria.

7 I think your point about the four-day
8 sub-chronic standard being used in conjunction with the
9 30-day monthly standard, chronic standard, will
10 certainly come to play in that statistical analysis in
11 determining a permit level.

12 What Bob is looking at is an overall
13 assessment of water quality compliance, using the same
14 regulation. And perhaps data is not readily available,
15 because they're monitoring that as -- and employs a
16 much, much less frequent, much lower frequency than does
17 the discharge monitoring. So the same regulation, same
18 rule mathematically has to be applicable to both.

19 And that's the problem that we've
20 encountered with the language here that I think you're
21 picking up on. And how do we write one rule that
22 addresses both sets of requirements? Is that a fair

23 statement of what you're -- Bob?

24 MR. MOSHER: Yeah, I think you said it

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1 well.

2 As the Agency, we'll very rarely be in a
3 position to collect a sample a day for four days in a
4 stream somewhere. That isn't likely to be a common
5 use. But as Mike said, in some instances, putting a
6 weekly average permit limit based on that sub-chronic
7 standard will be much more common.

8 I think the Federal EPA, when they came out
9 with this new ammonia standard, on one hand said the way
10 ammonia acts as a toxicant, we need to look at things
11 over a 30-day period. Where as before for chronic
12 standards, we only looked at a four-day period. And
13 when they did that to the chronic, we also went back and
14 said, well, are we missing something in between here?
15 Are we missing adverse effects? Probably we validate
16 that occurs over longer time periods than an acute
17 exposure, but over shorter time periods than this 30-day
18 exposure. So hence the sub-chronic standard.

19 MS. KISSEL: I think the question is, does
20 this language, is it consistent with the criteria
21 document? And it is, because you don't have to use the

22 word "highest," and that is what Mr. Mosher said.

23 If you collect four samples consecutively,
24 then those -- that's the highest, the lowest and the

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1 medium, because it's the only four samples you have in
2 that period. If you collect 8 or 10 or 12, then you
3 take the four consecutive that are the highest. That's
4 what I understand this to mean. You don't need the
5 word -- and this responds to Dr. Flemal's question and
6 yours. You don't need the word "highest" in this to
7 accomplish the same thing.

8 BOARD MEMBER RAO: But when I read the
9 criteria document, to me it seemed like you take 30
10 samples, average it to show compliance with the chronic
11 standard, and then you use the four highest based within
12 the 30 days to show compliance with the sub-chronic,
13 which is a little bit different.

14 BOARD MEMBER TRISTANO: That's my
15 understanding, too. There's a statistical difference
16 between taking 30 data points and then taking the four
17 highest and average it, as opposed to taking four data
18 points randomly in a consecutive order to average
19 those. And I just would like you to clarify that for
20 us, and I might be misreading it because I'm new.

21 MR. CALLAHAN: Well, at any rate, you would
22 like us to become a little more definitive in the
23 language in this section?

24 BOARD MEMBER RAO: Yes. I know it's very

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1 difficult to meet both your objectives with the proposed
2 language, and if there's any way you can ratify the
3 language to make it easier for the Agency and for the
4 dischargers, you know, that would be helpful.

5 MR. HARSCH: We will respond -- attempt to
6 respond in writing to that.

7 MR. MOSHER: Maybe a quick example here
8 would be useful.

9 Let's say the Agency goes to Salt Creek,
10 and, heck, we go every Tuesday in May and take a
11 sample. We then have -- let's say there's four Tuesdays
12 in May. We then have enough samples to average together
13 to assess attainment of the chronic standard, okay?
14 Because we need at least four over at least a 30-day
15 period. We have that. We can average that. We can say
16 is this stream meeting the chronic ammonia standard or
17 not.

18 Those four samples are not useful for
19 evaluating the sub-chronic because they did not come on

20 four consecutive days. So we can't speak to the
21 sub-chronic standard, given that data set.

22 We can, of course, speak to the acute
23 standard, because each of those would be evaluated
24 separately for the acute. Like I mentioned before, it

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1 would be very rare that we would get our samplers out on
2 those four consecutive days to evaluate the
3 sub-chronic. That's just, you know, very possibly the
4 type of sampling we probably would never do.

5 But let's say a spill occurred or a hog lot
6 lagoon overflowed. There's an instance where we might
7 want to get our samplers out there on Monday, Tuesday,
8 Wednesday and Thursday, in, you know, the same week to
9 get a sample. And then we could average those four
10 together and assess compliance or attainment with the
11 sub-chronic. That's how we intend it to work and --

12 DR. SHEEHAN: We originally proposed the
13 exact language, but to make it easier on Illinois EPA to
14 enforce, we change the language a little bit.

15 BOARD MEMBER GIRARD: I just have one
16 clarifying question then. On (c)(3) here, where we talk
17 about the sub-chronic standard, it sounds to me like
18 what you're saying is the wording there should be any

19 four-day average concentration in total ammonia
20 nitrogen, rather than three.

21 MR. CALLAHAN: That would be our objective.

22 BOARD MEMBER GIRARD: If you have four days
23 of points, or the other example that Dick gave where
24 maybe you've done it over eight days, you would have

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1 different sets of combinations, but it would be any four
2 consecutive days.

3 MR. CALLAHAN: That's precisely our
4 intent.

5 BOARD MEMBER RAO: I just had one more.
6 It's a follow-up to a question I asked at the first
7 hearing about effluent permit limits.

8 On this proposal and revision, do you
9 envision any permits will be set, you know, at levels
10 more than 1.5 milligrams per liter for summer and 4.5
11 milligrams either for winter?

12 MR. CALLAHAN: Theoretically, that could
13 happen. And the reason that I say theoretically is
14 because I do not know what the discharge limits are for
15 all permits in the state. By and large, I would imagine
16 85, 90 percent of the permits issued in Illinois have
17 1.5 or had 1.5 milligrams per liter as a summer monthly

18 average, and 4.0 as a winter monthly average. For those
19 permits, anti-backslide considerations will prevent
20 those dischargers getting a higher limit if they are in
21 compliance with those limits. And it's our
22 understanding that most people are in compliance with
23 those limits.

24 So while these would -- this standard may

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1 well indicate that there could be higher permit limits
2 acceptable across the state, most dischargers will, in
3 all likelihood, be constrained by their existing permit
4 limits as a result of anti-backsliding consideration.

5 BOARD MEMBER RAO: What about new
6 dischargers who, you know, come in and want a new
7 permit, and they end up with levels higher than 1.5 and
8 4.5? New --

9 MR. CALLAHAN: What regulation --

10 BOARD MEMBER RAO: I asked, you know, if
11 you would go back and take a look to see if there's a
12 need for a permit for effluent standard in this rule
13 under 304, because in the earlier regulation for
14 effluent modified waters -- water, we had those
15 limitations in place. So I would ask you to see if
16 there's a need for those effluent limits to be

17 retained.

18 MR. HARSCH: We don't believe so. We now
19 have the revised degradation rules that would apply,
20 that the new source would comply with. There would have
21 to be appropriations made, as Mr. Mosher testified in
22 the first proceeding.

23 So we think that the -- if the discharger
24 can demonstrate the combination of the application of

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1 the anti-degradation rules and whatever the appropriate
2 water quality based effluent limitation from these
3 proposed rules, that should be the appropriate permit
4 limitation.

5 BOARD MEMBER RAO: Because those -- the
6 permit limits I talked about, 1.5 and 4.5 milligrams per
7 liter, they are in the Agency's implementation draft
8 right now. So that's the reason I ask the question,
9 whether it should be in the Board regulations and not
10 the Agency's implementation draft.

11 MR. HARSCH: That was the point Mr. Mosher
12 and the Agency was going to address at some point.

13 MR. MOSHER: Yeah, we need to try to
14 clarify that.

15 That agency rule, which is part 355, was

16 adopted I believe in 1999 after long, long negotiations
17 between Illinois EPA, USEPA and environmental groups.

18 And the environmental groups were very
19 adamant that those levels of 1.5 and 4 were achievable
20 by all nitrifying discharges, nitrifying treatment plant
21 discharges. And they did not want to see levels in
22 effluent limits rise above 1.5 and 4.

23 And we explained what Mr. Callahan just
24 explained, that there's a federal regulation called

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1 anti-backsliding that generally prevents those, but they
2 brought up the same issue that you're bringing up. What
3 about new dischargers?

4 And the compromise -- I guess you could
5 call it -- reached was that if we use 50th percentile pH
6 and derives water quality based effluent limits for
7 ammonia on one of these new discharges, that we would
8 not allow the water quality base calculation to rise
9 above 1.5 or 4. That doesn't happen very often. We
10 don't have to invoke that part of our rule very often.
11 But it's there, and it provides a water quality based
12 cap on the permit limit.

13 What could still happen, given that rule is
14 in the 75th percentile pH was used in this calculation,

15 that the limits could go as high as the standard allowed
16 them to go. There would be no cap using 75th
17 percentile. So that's the history of that part of the
18 regulation.

19 It's, you know, one of those things that
20 comes from extensive negotiations. And we would intend
21 to keep it that way, because I think doing anything else
22 would make some of the players in that negotiation
23 unhappy. But by and large, it doesn't matter. It
24 doesn't have an influence very often in our setting of

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1 permits.

2 MR. CALLAHAN: May I speak to the issue a
3 moment?

4 I think the 1.5 and 4 that you're
5 referencing in 355, 304, principally are two numbers
6 which have been recognized as best available technology
7 numbers. That's why they were codified as they were.

8 I speak from our own experience at our
9 treatment plant in Bloomington and Normal. For decades
10 we have sampled our receiving stream daily along with
11 our effluent. And by using that site-specific water
12 quality data, we're able to have numbers significantly
13 higher than 1.5 under the existing regulation in the

14 summer and also higher than 4 in the winter. And the
15 difference is temperature, stream pH, a variety of
16 things, but site-specific data, a lot of site-specific
17 data has allowed that.

18 So 1.5 and 4 are not across-the-board
19 blanket numbers at this point. They were recognized in
20 the discussions Bob has described as being levels of
21 attainability.

22 There are situations such as ours, which I
23 think are probably not too common, where there are
24 numbers that are in excess of those monthly averages.

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1 Our limit is based on each month. Each month has an
2 individual limit based upon the volume of data that we
3 have. So I believe June is 1.6 and September is 2.2.
4 So those are higher than the 1.5 that we're talking
5 about here.

6 BOARD MEMBER RAO: My concern was when I
7 saw that language in the Agency draft, I thought a new
8 discharger could come and make an argument
9 that -- saying where's the authority for the Agency to
10 enforce these caps? I mean, it's not giving the board
11 regulations. So that's the reason I asked that
12 question.

13 HEARING OFFICER GLENN: Yes?

14 MS. WILLIAMS: I'm Ms. Deborah Williams,
15 counsel for Environmental Protection Agency. I don't
16 believe I have been sworn.

17 [Whereupon Ms. Williams was duly sworn.]

18 MS. WILLIAMS: I just think I wanted to
19 make one legal point that touches on the question
20 Mr. Rao raised at this time and last time.

21 It's our position that the language you're
22 referring to in part 2, it says shall not exceed 1.5. I
23 mean, 355 is not an effluent limit in any way, per se.
24 It's a procedure by which the Agency determines whether

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1 or not the 50th percentile is available to be used in
2 setting a permit limit or not. It's just a procedure
3 for determining whether we look at 75th percentile or
4 50th percentile pH in setting a permit limit. It's not
5 any kind of effluent limit or any kind of cap that
6 was -- although the issue of what was achievable maybe
7 was discussed in those negotiations, it hasn't been the
8 Agency's position that we looked at that, and set some
9 kind of effluent limit cap. It's just a procedure for
10 setting permit limits.

11 Does that help at all?

11 and 4 is only when we use the 50th percentile pH. If we
12 use the 75th percentile pH, it can be above that.

13 BOARD MEMBER RAO: Thank you.

14 HEARING OFFICER GLENN: Are there any
15 further questions?

16 THE REPORTER: Would you mind repeating
17 your name?

18 MR. TWAIT: Scott Twait, T-w-a-i-t.

19 HEARING OFFICER GLENN: Thank you.

20 Let's go off the record for just a moment
21 please.

22 [Off-the-record discussion.]

23 HEARING OFFICER GLENN: Back on the
24 record.

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1 BOARD MEMBER RAO: It's just a
2 clarification for the record.

3 We talked a lot about, you know, pH, and,
4 you know, 50th percentile, 75th percentile. Would it be
5 possible for the Agency to introduce into the record the
6 typical pH in, you know, Illinois streams, if you have
7 that information?

8 MR. MOSHER: Well, we certainly have that
9 information.

10 BOARD MEMBER RAO: Then we can make some
11 calculations and see where these numbers come out.

12 MR. MOSHER: Are you asking for what is the
13 typical 50th percentile and 75th percentile? Because
14 pH, just by nature, is spread over a wide range,
15 depending on season, weather conditions, flow
16 conditions.

17 BOARD MEMBER RAO: Just the general range,
18 you know, for some major Illinois streams.

19 MR. MOSHER: Okay. We can easily do that,
20 yes.

21 BOARD MEMBER RAO: Thank you very much.

22 HEARING OFFICER GLENN: Thank you. Are
23 there any further questions or comments here this
24 morning? Seeing none, I would like to set a date for

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1 the filing of the public comments.

2 It is anticipated that the Board will
3 receive the transcript in this matter in a week. We
4 will post it on our Web site within a few days of
5 receipt of the transcript. Assuming the Board gets the
6 transcript on or about May 1st, I will set the public
7 comment filing date then as May 15th.

8 The mailbox rule will apply. So if you put

9 your comment in the mail on May 15th, the Board will
10 consider it timely filed. We would appreciate any
11 comments that anyone cares to make.

12 And I believe that is all we have this
13 morning.

14 I want to thank everyone on behalf of the
15 Board for your attendance and participation here this
16 morning. And I will put a hearing officer order out at
17 the conclusion of the hearing to firm up that public
18 comment date, but it will be May 15th.

19 Yes, Mr. Kissel?

20 MR. KISSEL: Just as a matter of course or
21 comment here, because of the potential impact of this
22 regulation on the dischargers, we would hope -- and
23 we're trying to act as expeditiously as we can. We hope
24 the Board would do that. I know you will, but I'll just

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1 throw -- you know, put that comment in, so we
2 can -- anything we can do to expedite it, we would be
3 happy to do it.

4 HEARING OFFICER GLENN: Thank you,
5 Mr. Kissel.

6 Okay. That brings this matter to
7 conclusion. Thank you all for coming this morning.

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[End of hearing.]

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COURT REPORTER'S CERTIFICATION

I, Ann Marie Hollo, Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter of the State of Illinois and Notary Public, do hereby certify that said hearing before the Illinois Pollution Control Board, took place on the 23rd day of April, A.D., 2002, and held at the Illinois Pollution Control Board, 600 South Second Street, Room 403, Springfield, Illinois.

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I do hereby certify that I did take stenographic notes of the proceedings and that said notes were reduced to typewritten form under my direction and supervision.

I do further certify that the attached and foregoing is a true, correct and complete copy of my notes and that said testimony is now herewith returned.

I do further certify that I am not related in any way to any of the parties involved in this action and have no interest in the outcome thereof.

Dated at Litchfield, Illinois, this 26th day of April, A.D. 2002 and given under my hand and seal. My commission expires April 5, 2006.

Ann Marie Hollo, CSR, RPR, RMR