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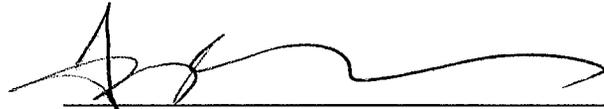
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO:)	
PUBLIC PARTICIPATION RULES IN 35)	R03-19
ILL. ADM. CODE PART 309 NPDES)	(NPDES Rulemaking)
PERMITS AND PERMITTING)	
PROCEDURES)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, March 18th, 2003, I filed with Ms. Dorothy M. Gunn, Clerk of the ILLINOIS POLLUTION CONTROL BOARD, James R. Thompson Center, 100 West Randolph Street, Suite #11-500, Chicago, IL 60601, an original and nine copies of my **STATEMENT OF PREFILED TESTIMONY REGARDING R03-19**, which document was filed by mail.

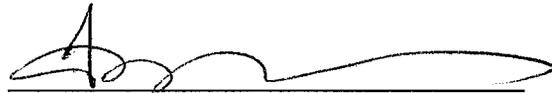


Fred L. Hubbard (Reg. No. 1275682)
Counsel for Vermilion Coal Company
415 N. Gilbert Street, PO Box 12
Danville, IL 61834

FRED L. HUBBARD
Attorney at Law
415 N. Gilbert Street
PO Box 12
Danville, IL 61834-0012
Telephone: (217) 446-0144.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the **Statement of Prefiled Testimony Regarding R03-19** filed by mail in this matter March 18, 2003, was served upon Albert F. Ettinger, Environmental Law and Policy Center, 35 E. Wacker Drive, Suite #1300, Chicago, IL 60601, and Marie E. Tipsord, Hearing Officer, Illinois Pollution Control Board, 100 W. Randolph Street, Suite #11-500, Chicago, IL 60601; by mailing a true copy of the same to the above-named persons at the above addresses on March 18th, 2003, enclosed in a sealed envelope with postage duly affixed and prepaid.



Fred L. Hubbard

FRED L. HUBBARD
Attorney at Law
415 N. Gilbert Street
PO Box 12
Danville, IL 61834-0012
Telephone: (217) 446-0144.

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ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO:)
PART 309 SUBPART A -)
35 Ill. Adm. Code 309.105, 309.7, 309.8,)
309.9, 309.10, 309.12, 309.13, 309.14,)
309.117, 309.119, 309.143, 309.147; and)
PROPOSED 35 Ill. Adm. Code 120 through)
122 - NPDES PERMITS AND PERMITTING)
PROCEDURES)

STATEMENT OF PREFILED TESTIMONY
REGARDING RO3-19

FRED L. HUBBARD, prefiles testimony regarding proposed rule changes and states:

1. I am an attorney practicing law in Danville, Vermilion County, Illinois, including environmental matters.

2. The rule changes proposed by the Environmental Law and Policy Center and Prairie Rivers Network are replete with descriptive terms that can be subjective in the following respects:

309.105 f) The term "fair" is used to describe opportunity. Who is to determine what is fair. This is likely to be a source of extended discussion, dispute and hearings.

309.105 g) The term "consistent with any applicable federal law" is subject to interpretation as to what is consistent and what law applies.

309.108 c) While statutory and regulatory provisions would certainly be a reasonable requirement, the term "appropriate" requires some subjectivity and the derivation of permit conditions requires a disclosure of all of the thought processes and backgrounds of the individual or committee establishing the conditions. As such, it is subject to interpretation as to whether or not all of the factors of derivation are included, which creates uncertainty. It is my opinion that there are already enough hearings in the procedure without re-noticing and creating additional hearings as subjected by 309.109, 309.121, and 309.122. There is a hearing provision under 35 Ill. Adm. Code

Part 105 which is a catchall review hearing which appears to have been totally ignored in the proposed drafts. If that hearing isn't available to all the issues sought by the changes in rules, perhaps it is a meaningless hearing. If it is available, then the additional hearing requested under 309.121 and 309.122 would appear to be duplicative.

309.13 5) - 9) The additions in 309.13 of 5) through 9) appear to be narrowly restrictive rather than allowing the Agency some room to maneuver their permit and fact sheet to accomplish the goal of reasonable control without constituting an unconstitutional taking. The more restrictive and specific the rules, the greater opportunity for creating additional hearings and points of contention.

309.117 Proposed change to 309.117 could be unduly broad requiring such things as school texts, news articles, professional publications, seminars, continuing education materials, and life experiences, all of which go into a decision making process. It also appears to apply only to the Agency or the applicant. If it is fair and reasonable for the Agency and applicant to provide documents and materials referred to or relied on, then a similar requirement should be imposed upon objectors.

309.120 The change to 309.120 appears to provide for an unlimited comment period. There should be some reasonable restriction on the time for the comment period in order to keep matters moving.

The preceding comments equally apply to 309.121 and 309.122. The entire premise of proposed additions 309.120 through 309.123 is that a draft permit is "significantly" modified. Significant is a subjective term leaving much argument as to how significant is significant. Rules of law and regulations should be sufficiently definite and objective that parties may govern their conduct in accordance with the rules and regulations. When terms like fair, necessary, reasonable, appropriate, significant, workable and similar terms are injected into rules and regulations, they become subjective and do not provide reasonable degrees of certainty to applicants and objectors whereby there is any certainty as to the application process or the objection process. If a permit is issued that is subject to heavy objection, the objectors can always argue that it was significantly modified if there is any change whatsoever. Likewise, an applicant seeking to sustain a permit over objection could argue that the objector's position is not tenable because there wasn't a significant modification. The entire concept is an invitation to ad hoc decisions which are generally considered to be less desirable.

The same comment applies to the proposed change to 309.143 and 309.146. They inject the term reasonable or adequate or proper or appropriate, all of which are subjective. A good

illustration of the concern which I offer to the Board is the former Illinois speed limit of "reasonable and proper" which was found by the Courts to be substantially unworkable and subjective. While that statute is still on the books, both law enforcement and vehicle operators have found it much more certain and definite to establish specific mile per hour restrictions rather than relying on the old "reasonable and proper" standard.

Respectfully submitted,



Fred L. Hubbard
Attorney at Law
415 N. Gilbert Street
PO Box 12
Danville, IL 61834-0012
Telephone: (217) 446-0144



ORIGINAL
Fred L. Hubbard
Attorney at Law
445 North Gilbert Street
P.O. Box 12
Danville, Illinois 61834-0012
217-446-0144 Fax: 217-477-0573

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March 18, 2003

Ms. Dorothy M. Gunn, Clerk of the Board
ILLINOIS POLLUTION CONTROL BOARD
James R. Thompson Center
100 West Randolph Street
Suite #11-500
Chicago, IL 60601

**Re: Proposed Amendments to Part 309
Subpart A - 35 Ill.Adm.Code, R03-19**

Dear Ms. Gunn:

Enclosed please find an original and nine copies of **Statement of Prefiled Testimony Regarding R03-19 and Notice of Filing** said Statement of Prefiled Testimony in the above matter.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Fred L. Hubbard', written in a cursive style.

Fred L. Hubbard

FLH:jml

enc:Statement of Prefiled Testimony (Original & 9 Copies)
:Notice of Filing (Original & 9 Copies)