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APPEARANCES

Board Members present:

Board Member Thomas E. Johnson  
Board Member Andrea S. Moore

Board Staff Members present:

Alisa Liu, Environmental Scientist

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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ILLINOIS ENVIRONMENTAL REGULATORY GROUP

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PROCEEDINGS

(July 16, 2008; 10:03 a.m.)

HEARING OFFICER MCGILL: Good morning. I'd like to welcome everyone to this Illinois Pollution Control Board hearing in Springfield. My name is Richard McGill. I'm the assigned hearing officer for this rulemaking proceeding. It is docketed as R08-18 and is captioned "In the Matter of Proposed Amendments to Groundwater Quality Standards, 35 Illinois Administrative Code 620."

On February 19, 2008, the Board received a rulemaking proposal from the Illinois Environmental Protection Agency to amend the Board's Part 620 groundwater quality standards. Today is the second hearing. No additional hearings are presently scheduled. We held the first hearing in Chicago on June 18, 2008.

Also present today on behalf of the Board is Board Member Thomas Johnson -- he's the lead board member for this rulemaking -- Board Member Andrea Moore, and from the Board's technical unit, Alisa Liu. Would any of the board members present like to make any remarks at this time? We'll go off the record for a moment.

(Off the record.)

HEARING OFFICER MCGILL: Let me go back on

1 the record. Today's proceeding is governed by the  
2 Board's procedural rules. All information that is  
3 relevant and not repetitious or privileged will be  
4 admitted into the record. We will begin with the  
5 Agency's testimony, followed by any questions the Board  
6 or members of the public may have for the Agency's  
7 witnesses. We will then proceed with the testimony of  
8 the Illinois Environmental Regulatory Group, followed by  
9 questions for IERG's witness. After that, anyone else  
10 who did not prefile testimony may testify as time  
11 permits. All those testifying will be sworn in and may  
12 be asked questions about their testimony. For those who  
13 wish to testify but who did not prefile testimony, we  
14 have a witness sign-up sheet located at the back of the  
15 room.

16           Toward the conclusion of today's hearing, we will  
17 take up the Agency's motion to correct the first  
18 hearing's transcript. I would ask for the benefit of the  
19 court reporter transcribing today's hearing that everyone  
20 please speak up and try not to speak too quickly or talk  
21 over one another so we have a clear transcript for the  
22 Board to consider.

23           Are there any questions about our procedures  
24 today? Seeing none, I would ask the court reporter to

1 swear in the Agency's witnesses collectively.

2 (Witnesses sworn.)

3 HEARING OFFICER MCGILL: Thank you. And now  
4 I ask Agency Attorney Kim Geving to begin the Agency's  
5 presentation.

6 MS. GEVING: Good morning. With me today to  
7 my immediate left is Gary King; to my right, Rick Cobb  
8 and Tom Hornshaw. They will be providing summaries of  
9 the testimony that we prefiled, but as an initial matter,  
10 at the last hearing, Mr. Davis had requested two missing  
11 pieces out of our testimony that were actually meant to  
12 be exhibits, and I have those today. There are also  
13 copies of those exhibits in the back on the table as well  
14 as our prefiled testimony and errata sheet number 3.  
15 This morning I'm going to have Mr. King start off with a  
16 summary of the issue on solubility.

17 HEARING OFFICER MCGILL: Could I just  
18 interrupt for moment? Do you want to go ahead and make  
19 these hearing exhibits?

20 MS. GEVING: Yes, please.

21 HEARING OFFICER MCGILL: Just real quickly,  
22 the first document is entitled "CWS Facilities Currently  
23 Exceeding the New Arsenic MCL of 0.010 milligrams per  
24 liter." That would be Exhibit 4. Is there any objection

1 to entering this document as a hearing exhibit? Seeing  
2 none, that will be Exhibit 4. The second document,  
3 entitled "Distribution of Arsenic in the Mahomet Aquifer  
4 of Central Illinois, USA," would be Hearing Exhibit 5.  
5 Any objection to entering this document as a hearing  
6 exhibit? Seeing none, that will be Hearing Exhibit 5.  
7 Thank you.

8 MS. GEVING: Mr. King, if you would like to  
9 proceed with your summary.

10 MR. KING: Certainly. I'm confining my  
11 comments specifically to the request number 8, which was  
12 a request that really was focused on water solubility as  
13 the basis for class I and class II standards. My name's  
14 Gary King, and my position is I am acting bureau chief  
15 for the Bureau of Land. I've testified in many board  
16 proceedings, regulatory proceedings over the years, and  
17 one area I've particularly done a lot of testimony has  
18 been relative to -- I'm going to use the term TACO, which  
19 stands for tiered approach to corrective action  
20 objectives. The Agency has been administering TACO since  
21 1998. It's been a very effective rule in terms of  
22 allowing clean-ups within the state to move forward.  
23 There's a number of principles that are really key to  
24 making that work. One of the key principles is the fact

1 that it functions on a -- with a risk-based methodology.

2 We've always had a close nexus between TACO and  
3 the Part 620 standards. The TACO groundwater remediation  
4 objectives, which are contained in Appendix B, Table E of  
5 TACO, were really -- they were either taken directly from  
6 Part 620 or were developed using the 620 methodologies.  
7 This -- We are certainly anticipating that this  
8 regulatory proceeding is going to result in changes in  
9 the Part 620 standards. In due course, because of that  
10 nexus between TACO and Part 620, we will be going about  
11 amending TACO to incorporate changes in the -- these  
12 rules. Currently we're working on an amendatory proposal  
13 to TACO, which we are intending to file with the Board  
14 later this summer. That proposal's going to include a  
15 new pathway and it's going to update many of -- many  
16 changes in the tier 1 remediation objectives. It's our  
17 intention that that proposal will reflect the changes in  
18 this proceeding.

19 As we've gone through the development of these  
20 TACO amendments, we have an advisory committee, the Site  
21 Remediation Advisory Committee, that advises us on --  
22 with regards to our TACO proposals, and they brought to  
23 our attention -- and it's always -- we always have found  
24 that to be an excellent forum for us as we're developing

1 TACO regulations. They -- We get a lot of really, really  
2 excellent input from that group, and we received it in  
3 this case as well because they brought to our attention  
4 that some of the changes in Part 620 could have some  
5 unintended consequences as to the way the TACO  
6 remediation objectives are structured, and as we looked  
7 at it further, that it became pretty clear to me that  
8 there were going to be those kind of unintended  
9 consequences and that if we continued to use a  
10 contaminant solubility rather than contaminant health  
11 risks, we were going to have the TACO groundwater and  
12 soil remediation objectives for those categories not  
13 following a risk-based approach.

14 So in the written testimony, I gave an example of  
15 what that impact would be with regards to one of the  
16 contaminants. I won't go through the numbers on that,  
17 but the bottom-line conclusion was that we think that  
18 TACO should continue the risk-based approaches followed  
19 to date and thus have recommended that we make some  
20 changes to Part 620 numbers for certain compounds that  
21 have used solubility. That concludes my summary.

22 MS. GEVING: Thank you, Mr. King.  
23 Mr. Hearing Officer, would you like to proceed right to  
24 Mr. Cobb's summary? That's fine with me.

1 HEARING OFFICER MCGILL: Well, I understand  
2 Mr. King may need to leave early. I -- But you can stick  
3 around for --

4 MR. KING: Yeah, I --

5 HEARING OFFICER MCGILL: When did you need  
6 to leave?

7 MR. KING: I would like to leave by noon  
8 because I -- my director --

9 HEARING OFFICER MCGILL: I don't anticipate  
10 that being a problem, but just -- does anyone at this  
11 point in time have any questions specific to Mr. King?  
12 Seeing none, we'll move on with the Agency's next  
13 witness, but if -- Mr. King, if you wouldn't mind  
14 sticking around in case something comes up.

15 MR. KING: Yeah, sure.

16 HEARING OFFICER MCGILL: Thanks.

17 MS. GEVING: Mr. Cobb has actually prepared  
18 a summary in writing that he's going to read, so at this  
19 time I'd like to present that to the Board for the record  
20 as an exhibit and then let him go ahead and read it into  
21 the record, if that's acceptable.

22 HEARING OFFICER MCGILL: Sure.

23 MS. GEVING: Mr. Cobb's summary is intended  
24 to directly address a couple of the issues that were

1 raised in Mr. Martin's testimony, so with that, Mr. Cobb,  
2 if you'd go ahead.

3 MR. COBB: I thank you very much. The  
4 main -- There are three kind of areas that I just wanted  
5 to touch upon just because of maybe some slightly  
6 different viewpoints on a couple of statements. The  
7 first issue that was brought up was in regard to the --  
8 using "commonly detected," which is one of the factors,  
9 among several, that the Board must consider in developing  
10 groundwater quality standards, and correctly stated,  
11 they're part of how we came up with some of the proposed  
12 standards, was as stated in Mr. Martin's testimony.  
13 Our -- In regards to the concept of commonly detected, we  
14 have kind of a slightly different viewpoint and maybe a  
15 kind of a bigger picture. We also -- We informed IERG  
16 that we -- from a historical context --

17 HEARING OFFICER MCGILL: I'm sorry. If we  
18 could just interrupt for a moment. Mr. Davis?

19 MR. DAVIS: I have two points, first being  
20 I -- could I please get a copy of his --

21 MS. GEVING: You bet.

22 MR. DAVIS: And the second being, are we  
23 summarizing the prefiled testimony or are we adding  
24 additional substance to the discussion?

1 HEARING OFFICER MCGILL: This is additional  
2 substance. This would not be a summary of prefiled  
3 testimony, which I'm still expecting to hear, but I think  
4 they can provide new testimony. I don't think we're  
5 going to run out of time.

6 MR. DAVIS: I just want to make sure that we  
7 were clear that this was not a summary.

8 HEARING OFFICER MCGILL: Yeah, this is not  
9 a -- as I understand it --

10 MR. COBB: No.

11 HEARING OFFICER MCGILL: -- and Ms. Geving  
12 can correct me if I'm wrong -- this is new testimony --

13 MR. COBB: That's correct.

14 HEARING OFFICER MCGILL: -- not a summary of  
15 the prefiled testimony.

16 MR. COBB: That's correct.

17 MS. GEVING: Thank you.

18 MR. COBB: So basically, the first issue  
19 raised by the Illinois Environmental Regulatory Group  
20 regarded the preference for numerical water quality  
21 standards, especially where specific contaminants have  
22 been commonly detected in groundwater, as described in  
23 the Illinois Groundwater Protection Act, 415 ILCS  
24 55/8(b)(3). The Illinois Environmental Regulatory Group

1 questioned how the Agency defined "commonly detected."  
2 The Illinois Environmental Regulatory Group subsequently  
3 learned that the meaning was established using a process  
4 by which the Illinois EPA's Bureau of Land developed a  
5 database on sampling results from solid waste and other  
6 regulated sites. IERG is uncertain that the procedure  
7 used to defined "commonly detected" is appropriate or  
8 whether it is more analogous to finding contaminants  
9 where one would expect them to be found and extrapolating  
10 that finding to the remainder of the state.

11 Illinois EPA also informed IERG that we have been  
12 from a historical context and still are directed by other  
13 provisions of the Illinois Environmental Protection Act,  
14 the Illinois Groundwater Protection Act, and specifically  
15 415 ILCS 55/8(a), in proposing groundwater standards as  
16 follows: "The Agency, after consultation with the  
17 committee and council, shall propose regulations  
18 establishing comprehensive water quality standards which  
19 are specifically for the protection of groundwater,"  
20 emphasis added on that phrase. "In preparing such  
21 regulations, the Agency shall address, to the extent  
22 feasible, those contaminants which have been found in the  
23 groundwaters of the state" -- emphasis added -- "and  
24 which are known to cause or suspected of causing cancer,

1 birth defects or any other adverse effect on human health  
2 according to nationally accepted guidelines. Such  
3 regulations shall be submitted to the Board by July 1,  
4 1989."

5 As emphasized above, the purpose of the  
6 groundwater standards, which includes non-degradation  
7 provisions, are for the protection of groundwater.  
8 Moreover, the intent of the Act, the Illinois Groundwater  
9 Protection Act, and the groundwater standards is to be --  
10 prevent -- the intent is not to wait till contaminants  
11 are widespread or commonly detected on an ambient basis.  
12 This approach would defeat the purpose of protecting the  
13 resource.

14 Furthermore, the standards are not corrective  
15 action or clean-up objectives or clean-up standards. The  
16 Illinois Pollution Control Board final order and opinion  
17 on groundwater quality standards, 35 Illinois  
18 Administrative Code Part 620, docket R89-14(B), which was  
19 adopted November 17 of 1991, indicated the following on  
20 page 25: "It's important to remember, however, that  
21 these are groundwater quality standards and not clean-up  
22 standards."

23 The second issue that I'd like to comment on is  
24 impact on coal combustion by-product use, CCB. The

1 Illinois EPA will need to have further discussions with  
2 the Agency and the Office of Mines and Minerals in regard  
3 to CCB use in mines, and I have a couple questions there  
4 for when after Brian testifies in regarding asking for  
5 some of the actual data on those. And in addition, just  
6 an additional comment here, per personal communication  
7 with Scott Fowler at the Office of Mines and Minerals,  
8 Scott -- Mr. Fowler indicated that even if the metals  
9 exceeded the ASTM standards that are required in their  
10 rules for use in mines that he could still approve that  
11 process. So that's in addition to what I have here in  
12 this written testimony.

13 The third issue is irrigation as the basis for  
14 the class II standards. IERG provided that Illinois EPA  
15 has stated that the basis for proposed class II  
16 groundwater standards for arsenic, molybdenum and  
17 vanadium is irrigation and livestock watering, from the  
18 National Academy of Sciences, 1972, Water Quality  
19 Criteria; see prefiled testimony of Richard P. Cobb in  
20 the matter of Proposed Amendments to Groundwater Quality  
21 Standards, 35 Illinois Admin Code 620, R0-18, at 14,  
22 Illinois Pollution Control Board, May 29, 2008;  
23 hereinafter, Cobb testimony. Yet the Illinois EPA has  
24 made no further explanation of the applicability or the

1 validity of that report in determining the suitability of  
2 groundwater for such uses in Illinois.

3           The Board's final order and opinion on  
4 groundwater quality standards at 35 Illinois Admin Code  
5 620, docket R89-14(B), adopted November 17 of 1991,  
6 indicated the following on the bottom of page 9 [sic] and  
7 the top of page 20: "Section 620.420 establishes  
8 standards for Class II: General Resource Groundwaters.  
9 Because groundwaters are placed in class II because they  
10 are quality-limited, quantity-limited or both (see  
11 Subpart B discussion above), it is necessary that the  
12 standards that apply to these waters reflect a range of  
13 possible attributes. Among the factors considered in  
14 determining the class II numbers are the capabilities of  
15 treatment technologies to bring class II waters to  
16 qualities suitable for use (R3 at 75). Thus, many class  
17 II standards are based on MCLs as modified to reflect  
18 treatment capabilities. For some parameters, the class  
19 II standards are based on support of a use other than  
20 potability (e.g., livestock watering, irrigation,  
21 industrial use) where a different use requires a more  
22 stringent standard, (R3 114-8)."

23           The current class II standards adopted by the  
24 Board for arsenic, beryllium, boron, cadmium, chromium,

1 cobalt, lead, manganese, mercury, nickel, nitrate and  
2 zinc were based on livestock or irrigation factors using  
3 the 1972 Water Quality Criteria. The Board found this  
4 approach to have merit. Therefore, the class II  
5 groundwater standards for arsenic, molybdenum and  
6 vanadium were also based on the protection of irrigation  
7 and livestock. And that concludes my supplemental  
8 testimony.

9 HEARING OFFICER MCGILL: Would you like to  
10 have this written summary entered into the record as a  
11 hearing exhibit?

12 MS. GEVING: I would.

13 HEARING OFFICER MCGILL: That would be  
14 Hearing Exhibit 6. Are there any objections? No  
15 objection. That will be entered as Hearing Exhibit 6 as  
16 a response to IERG comments. Do you have an additional  
17 summary of the prefiled testimony to provide or --

18 MS. GEVING: We do not. We thought at this  
19 point we'd open it up for questions.

20 HEARING OFFICER MCGILL: Okay. Why don't we  
21 go off the record for a moment.

22 (Discussion held off the record.)

23 (Brief recess taken.)

24 HEARING OFFICER MCGILL: Ms. Geving, the

1 Agency at this point has concluded its presentation?

2 MS. GEVING: We have.

3 HEARING OFFICER MCGILL: Thank you. Why  
4 don't we at this point move on to questions for the  
5 Agency's witnesses. I would ask if you are a member of  
6 the public and have a question if you would signal me,  
7 and after I acknowledge you, state your name and, if  
8 applicable, your title and any organization you're  
9 representing here today. Before the Board proceeds with  
10 its questions, does anyone else have any questions for  
11 any of the Agency's witnesses? Go ahead. Your name?

12 MR. HOPKINS: My name is Leonard Hopkins.  
13 I'm with the Southern Illinois Power Cooperative. I  
14 guess I have a question regarding the last witness, just  
15 brief. In his discussion with Scott Fowler of Illinois  
16 Department of Natural Resources, he said Mr. Fowler  
17 claimed that he could grant a permit for mine reclamation  
18 irregardless of the ASTM limits. I wondered how the EPA  
19 would handle that. I mean, if the rule is still the  
20 rule, how will a grant or permit by IDNR make any  
21 difference in the EPA's enforcement of that rule?

22 MR. COBB: Well, the Act, on that particular  
23 matter, the issue flows from being an EPA jurisdiction to  
24 a DNR jurisdiction, and it's their rules that dictate and

1 how they operate it dictate the findings, and so we don't  
2 really have input on that other than how we normally deal  
3 with mines and minerals on groundwater protection issues  
4 relative to mining and that sort of thing, so it would  
5 ultimately be Mr. Fowler's -- you know, for example, he's  
6 going to look at a surface coal mine or an open pit mine  
7 that's already been mined, and placing this material in  
8 there, he would have probably already made determinations  
9 for any of the other metals in understanding the  
10 environmental fate and transport. It's really going to  
11 take very little, then, molybdenum, arsenic and these  
12 other things, not being much different than the other  
13 metals that may have already had a determination for CCB,  
14 because those are going in the mine right now. What  
15 he'll be looking at is, you know, is that going to affect  
16 any off-site groundwater outside of that permitted area,  
17 and many of these are class IV groundwaters. That may  
18 not mean anything to you, but that's kind of a different  
19 set of standards for coal mining separate from class I or  
20 class II or class III standards, so --

21 HEARING OFFICER MCGILL: Ms. Geving?

22 MS. GEVING: Just a question for purposes of  
23 clarification. Mr. Cobb, when you were referencing the  
24 Act in shifting the jurisdiction over to the Department

1 of Natural Resources, were you referring to  
2 Section 3.135, which is the definition of coal combustion  
3 by-products, specifically Subsection B?

4 MR. COBB: Yes.

5 MS. GEVING: Thank you.

6 HEARING OFFICER MCGILL: Thank you. Is  
7 the -- Does the Agency know if DNR's Office of Mines and  
8 Minerals has promulgated rules concerning these  
9 beneficial use determinations?

10 MR. COBB: I believe they have, yeah,  
11 because they -- I mean, they do it all the time. I mean,  
12 this is something that is happening ongoing.

13 HEARING OFFICER MCGILL: Is that something  
14 that the Agency can just provide a citation to the Board?

15 MR. COBB: Absolutely. Scott is a member of  
16 our interagency coordinating committee on groundwater,  
17 and so that's how we have that contact and interaction.  
18 We'd be happy to get that from Scott, pass it on to the  
19 Board.

20 HEARING OFFICER MCGILL: Thank you.

21 MS. GEVING: It's also our intent to talk  
22 with Mr. Fowler to perhaps do a public comment on this  
23 issue at the end of the rulemaking.

24 HEARING OFFICER MCGILL: Great. Thank you.

1 Any further questions for the Agency's witnesses? The  
2 Board has some additional questions we'd like to pose.  
3 Member Moore?

4 BOARD MEMBER MOORE: Well, I just was  
5 looking at one of the exhibits that you presented, and  
6 this is the summary of the "Distribution of Arsenic in  
7 the Mahomet Aquifer," and as I was looking through, I was  
8 curious, because in this summary it doesn't really say  
9 where these high concentrations of arsenic are proposed  
10 to come from, and I wondered if they are assumed to be  
11 naturally occurring or is there -- where does the -- what  
12 causes this high concentration of arsenic in this  
13 aquifer?

14 MR. COBB: For the most part, it's naturally  
15 occurring. It's a geochemical reaction that has a lot to  
16 do with the oxidation reduction state of the groundwater,  
17 which obviously -- well, I shouldn't say that -- strike  
18 that -- which is a factor of in some cases pumping in the  
19 area. For example, a community well may be right next to  
20 a private well. The community pulls in or captures  
21 larger quantities of groundwater, and that may be more  
22 oxygen rich, whereas right next door in the same aquifer  
23 you may have a private well that pumps much less quantity  
24 of water. It may not have the same oxygen rich. It may

1 be more of a reducing environment. And so you can have  
2 much higher concentrations not because of the depths but  
3 just because of that geochemical reaction between  
4 oxidation and reduction in the very same aquifer, and  
5 that's what all the research is showing thus far. At the  
6 point of time that this was done, some of those answers  
7 weren't even available when we first did this joint  
8 publication, but since that time there have been several  
9 publications on that.

10 BOARD MEMBER MOORE: Have any other studies  
11 been done anywhere else in the state?

12 MR. COBB: Other than the --

13 BOARD MEMBER MOORE: Similar to this.

14 MR. COBB: -- Mahomet?

15 BOARD MEMBER MOORE: Uh-huh.

16 MR. COBB: I'm not sure. I'd have to go  
17 back and look at that.

18 BOARD MEMBER MOORE: Thank you.

19 MR. COBB: But the reaction should be very  
20 similar in the same -- not necessarily just specific to  
21 this aquifer, though. I mean, it's -- if they're in a  
22 sand and gravel aquifer, the same geochemical reaction  
23 could happen wherever it was located. So we always base  
24 the inorganic standards, the number except due to natural

1 causes, so --

2 BOARD MEMBER MOORE: Thank you.

3 HEARING OFFICER MCGILL: Why don't we go off  
4 the record for a moment.

5 (Off the record.)

6 HEARING OFFICER MCGILL: We'll go back on  
7 the record.

8 MS. LIU: Good morning. This question is  
9 probably best for either Mr. Hornshaw or Mr. Cobb. In  
10 the discussion of chloroform on page 2 of your prefiled  
11 testimony, the Agency refers to USEPA's maximum  
12 contaminant level goal, or MCLG, of 0.07 milligrams per  
13 liter in the Stage 2 Disinfectants and Disinfectants  
14 By-products Rule. We were wondering if the Agency could  
15 please provide a Federal Register citation for the USEPA  
16 rule.

17 MR. COBB: We can get that, yeah.

18 MS. LIU: Okay. Great. And there's a part  
19 two to this question, also with respect to chloroform.  
20 Other than the fact that 0.07 milligrams per liter, that  
21 value was taken from a promulgated federal rule, is there  
22 any other reason that the Agency is proposing that value  
23 over the lower value of 0.0027 milligrams per liter?

24 MR. HORNSHAW: Yes. In that rule, the EPA

1 states that the MCLG is protective against both cancer  
2 and non-cancer health effects. They use the -- I believe  
3 they did not develop the cancer slope factor, but I think  
4 they are treating it as if it was a non-carcinogen; in  
5 other words, it has some kind of a threshold below which  
6 you don't see the carcinogenic activity. So our  
7 reasoning in preferring the MCLG is that we are being  
8 protective of cancer, if you believe EPA's promulgated  
9 rule, so that it's not necessary to go to the lower  
10 value, which comes from a California EPA cancer slope  
11 factor.

12 MS. LIU: Thank you very much.

13 MR. HORNSHAW: Thanks.

14 HEARING OFFICER MCGILL: This is a question  
15 I have for IERG later, but since the Agency's been  
16 testifying on the beneficial use determinations, I just  
17 wanted to ask for the Agency what the informational  
18 requirements are for receiving a beneficial use  
19 determination. Are those in rules or policy or --

20 MS. GEVING: We're going to have to get back  
21 to you on that one.

22 HEARING OFFICER MCGILL: Okay. Thank you.  
23 Are there any other questions for any of the Agency's  
24 witnesses? Seeing none, I'd like to thank you all for

1 participating today, and we will move on with the  
2 testimony of the Illinois Environmental Regulatory Group.  
3 I would ask the court reporter to go ahead and swear in  
4 IERG's witness.

5 (Witness sworn.)

6 HEARING OFFICER MCGILL: At this point I'd  
7 like to turn it over to counsel for IERG, Alec Davis.

8 MR. DAVIS: I'd like to offer the prefiled  
9 testimony of Brian H. Martin on behalf of IERG.

10 HEARING OFFICER MCGILL: Thank you. Is  
11 there any objection to entering as a hearing exhibit the  
12 prefiled testimony of Brian Martin? Seeing none, that  
13 will be entered as Hearing Exhibit 7. Thank you. Go  
14 ahead.

15 MR. DAVIS: Brian, if you'd like to present  
16 your summary.

17 MR. MARTIN: Okay. Good morning. My name's  
18 Brian Martin. I'm employed by Ameren Services in  
19 St. Louis, Missouri. I'm also chairman of the Corrective  
20 Action Workgroup within the Illinois Environmental  
21 Regulatory Group and chairman of the Illinois Site  
22 Remediation Advisory Committee. My testimony reflects  
23 the opinions of both IERG and SRAC in this matter.

24 I just -- I want to again commend the IEPA and

1 the Board for its flexibility and willingness to accept  
2 for consideration our issues with respect to the  
3 solubility issue in the 620 regulations. We know it was  
4 a kind of a late notice issue and we appreciate everyone  
5 working with us in the resolution of that issue.

6 We had requested some other information to  
7 support some of the determinations in the proposed rules  
8 with respect to the issue of commonly occurring  
9 chemicals. We had submitted a Freedom of Information Act  
10 request to the IEPA last week to obtain the database that  
11 was used to make that determination. The response was  
12 due to us today, so we haven't seen that information, nor  
13 have we seen Mr. Cobb's testimony that was entered today,  
14 so we're not in a position to respond to that testimony  
15 today. We'd like the opportunity to follow up in writing  
16 for those issues. That's -- I guess that's it for my  
17 summary. I'd be glad to answer questions.

18 HEARING OFFICER MCGILL: Thanks. Does  
19 anyone have any questions for Mr. Martin?

20 MS. GEVING: I have one.

21 HEARING OFFICER MCGILL: Miss Geving?

22 MS. GEVING: On page 5 of your testimony,  
23 Mr. Martin, you're talking about it coming to IERG's  
24 attention that leachate from coal combustion by-product

1 has potential to exceed the proposed class I groundwater  
2 standards for molybdenum and potentially exceed the class  
3 I groundwater standards for other metals, and I was just  
4 wondering if you have a list of sites around the state  
5 that you could provide to us with any data.

6 MR. MARTIN: We don't have anything readily  
7 available. This was provided by input from our members,  
8 and I don't know if it's anecdotal information or if  
9 there is specific analytical data that's available, but  
10 we'll go back to members and put together what we have  
11 for you.

12 MS. GEVING: We would appreciate that.  
13 That's all I have.

14 HEARING OFFICER MCGILL: Any further  
15 questions for this witness? Okay. The Board has just a  
16 few questions.

17 MS. GEVING: I'm sorry. We have one more  
18 question. Mr. Cobb would like to ask a question.

19 HEARING OFFICER MCGILL: Go ahead.

20 MR. COBB: Mr. Martin, in -- on your  
21 testimony on page 3 at the top there, that top paragraph,  
22 last sentence where it's stating, "IERG is uncertain that  
23 the procedure used to define 'commonly detected' is  
24 appropriate or whether it's more analogous to finding

1 contaminants where one would expect them to be found,"  
2 can you respond to what do you mean by finding  
3 contaminants where one would expect them to be found?

4 MR. MARTIN: Well, we were -- this is a  
5 follow-up to our discussion at the meeting with SRAC --  
6 and we did that last week -- and it goes back to our  
7 curiosity about the database that was used to make the  
8 determination. We're curious as to whether your database  
9 looks at contaminated sites such as mines, landfills,  
10 remediation sites, UST sites, things like that, or if the  
11 suggestion that these compounds are commonly occurring is  
12 suggestive that it somehow represents groundwater in the  
13 state and this is a wider-spread issue. We don't know  
14 the answer to this. That's why we were looking to obtain  
15 the database for review.

16 MR. COBB: Well, let me -- just a follow-up  
17 on finding contaminants where one would expect them to be  
18 found. Are contaminants of that type expected to be  
19 found in waters of the state? I mean, are they naturally  
20 occurring or anthropogenic?

21 MR. MARTIN: They could be both, and the  
22 issue is -- our interest -- like I say, we don't have an  
23 answer. We're just curious at this point. We'd like to  
24 get more information from the IEPA. For example, you

1 might expect to find some of these metals in landfill  
2 leachate, but it may not necessarily be a state-wide  
3 groundwater issue. That's the distinction we're trying  
4 to make.

5 MR. COBB: At those sites, are -- is -- are  
6 the -- is the groundwater underlying those sites waters  
7 of the state or is it water somehow specifically  
8 designated for a landfill with the leachate?

9 MR. DAVIS: Are you asking him to --

10 MR. COBB: Yeah, I'm asking the question --

11 MR. DAVIS: -- define what the statute  
12 considers to be waters of the state?

13 MR. COBB: I'm asking him if -- you know,  
14 once again, finding contaminants where one would expect  
15 them to be found --

16 MR. MARTIN: I would presume that some of  
17 these locations will -- there'll be a range of  
18 conditions. Some of them perhaps may be class IV  
19 groundwater all the way up to at least class II, and  
20 until we obtain the information, we don't know what we're  
21 looking at.

22 MR. COBB: All right.

23 HEARING OFFICER MCGILL: I had a question --  
24 a related question, Mr. Martin. Does IERG at this point

1 have any recommendations on additional or alternative  
2 criteria for identifying commonly detected chemical  
3 constituents on a state-wide basis?

4 MR. MARTIN: I think it's our hope that  
5 we'll be able to provide some sort of a recommendation,  
6 and we're hoping to obtain the database to review what  
7 they did so we can see what we would believe to be  
8 reasonable.

9 HEARING OFFICER MCGILL: Thank you.

10 MS. LIU: Good morning, Mr. Martin.

11 MR. MARTIN: Good morning.

12 MS. LIU: Miss Geving's earlier question  
13 started to get into this and I kind of wanted to follow  
14 through with it more. On pages 5 and 6 of your prefiled  
15 testimony you talk about the leachate from the CCB or the  
16 coal combustion by-products having the potential to  
17 exceed the proposed class I groundwater standards for  
18 molybdenum and other metals. Additionally, then you also  
19 state, quote, "If, after further investigation, this  
20 potential is found to demonstrate the reality of the  
21 situation, the potential to put such CCB to beneficial  
22 use may be severely restricted," end quote. I was  
23 wondering if you could please clarify whether IERG or any  
24 of IERG's members are currently conducting an

1 investigation to evaluate the implications of the  
2 proposed groundwater standards on the beneficial use of  
3 CCB and, if so, to describe those studies and perhaps if  
4 the results of those studies might be available within  
5 the time period of the rulemaking.

6 MR. MARTIN: I'm not aware of any such  
7 studies. I'm certain that they -- that many members have  
8 looked at the proposed standards, and as I mentioned --  
9 as I explained to Ms. Geving, either anecdotally or  
10 perhaps with data, they know that their CCB may exceed  
11 for one or more of these compounds or these metals. I  
12 don't know that it's gone any farther than that. We'll  
13 find out and provide written comments to that effect.

14 MS. LIU: When you do, it would also be  
15 helpful if you could discuss what those other metals  
16 might be as well. Thank you very much.

17 MR. MARTIN: You're welcome.

18 HEARING OFFICER MCGILL: That was the  
19 reference to molybdenum and other metals concerned.  
20 Thank you. Mr. Martin, on page 6 of your prefiled  
21 testimony you acknowledge that when coal combustion waste  
22 does not meet the statutorily required class I  
23 groundwater standards, the Environmental Protection Act  
24 provides the opportunity for beneficial use determination

1 by either the Agency or the Office of Mines and Minerals  
2 within DNR depending on the specific beneficial use being  
3 proposed. You also state that IERG is concerned that  
4 such approvals, which you indicate require detailed  
5 site-specific analyses, may reduce the incentive to put  
6 coal combustion waste to beneficial use. I was wondering  
7 if you could provide any testimony on the Agency's or the  
8 DNR's informational requirements for demonstrating -- the  
9 necessary demonstration or informational requirements for  
10 receiving a beneficial use determination.

11 MR. MARTIN: I don't know specifically what  
12 the informational requirements are. We'll put those  
13 together and get them to you.

14 MR. DAVIS: I -- Is it then also similar to  
15 the request that they provide the statutory basis for  
16 making beneficial use determinations?

17 HEARING OFFICER MCGILL: Yes. The statutory  
18 basis -- at least in terms of the Environmental  
19 Protection Act, the CCB definition -- I in particular was  
20 wondering about any DNR or Agency rules or policies with  
21 respect to the application process.

22 MR. DAVIS: Did you not ask Mr. Cobb to  
23 provide a reference to the rulemaking by the Office of  
24 Mines and Minerals specifying how they make

1 determinations of beneficial use?

2 HEARING OFFICER MCGILL: Correct.

3 MR. DAVIS: Okay.

4 HEARING OFFICER MCGILL: Correct.

5 MR. DAVIS: So this is the same thing?

6 HEARING OFFICER MCGILL: Well, I'm more  
7 concerned about IERG and its members, and you're  
8 indicating that it's a detailed process, so if you could  
9 give an indication of how much it costs to put an  
10 application together --

11 MR. DAVIS: I see. Okay.

12 HEARING OFFICER MCGILL: -- you know, the  
13 economic and technical difficulties that you might face  
14 in trying to obtain a beneficial use determination, and  
15 also any experience in obtaining them or being denied --

16 MR. DAVIS: Okay.

17 HEARING OFFICER MCGILL: -- with either the  
18 Agency or DNR.

19 MR. DAVIS: We'll get that to you.

20 HEARING OFFICER MCGILL: Thank you. Are  
21 there any other questions for IERG's witness? Seeing  
22 none, I'd like to thank IERG's witness, Mr. Davis for  
23 their participation today, and why don't we go off the  
24 record for a moment.

1 (Off the record.)

2 HEARING OFFICER MCGILL: Is there anyone  
3 else who wishes to testify today? I believe there was  
4 a Mr. Morgan, Jack Morgan I thought I saw on the  
5 witness --

6 MR. NORMAN: You probably saw Jack Norman.

7 HEARING OFFICER MCGILL: I apologize.

8 MR. NORMAN: Scribbled, maybe.

9 HEARING OFFICER MCGILL: Okay. Sir, if you  
10 would have the court -- would you like to testify?

11 MR. NORMAN: I think I can pass. Thank you.

12 HEARING OFFICER MCGILL: Okay. Fair enough.  
13 Anyone else interested in testifying today? Okay.  
14 Seeing no response, I'll move on to a few procedural  
15 issues before we adjourn.

16 Anyone may file written public comments on this  
17 rulemaking with the clerk of the Board up to at least 45  
18 days after any first notice proposal is public in the  
19 Illinois Register. However, to ensure that your public  
20 comment is considered by the Board in any first notice  
21 decision, I am setting a pre-first notice public comment  
22 filing deadline of September 12, 2008. Public comments  
23 may be filed with the clerk in paper or through the  
24 Board's Web-based Clerk's Office On-Line, known as COOL.

1 Please note that all filings with the clerk of the Board  
2 must also be served on the hearing officer and on those  
3 persons on the service list for this rulemaking. For  
4 that pre-first notice public comment filing deadline, the  
5 mailbox rule will not apply, which means that the clerk's  
6 office must have the public comment in hand no later than  
7 September 12.

8 Copies of the transcript of today's hearing  
9 should be available on the Board's Web site by July 28.

10 Let me go off the record for a moment.

11 (Discussion held off the record.)

12 HEARING OFFICER MCGILL: Lastly, the Agency  
13 on July 11, 2008, filed a motion to correct the first  
14 hearing's transcript. Is there any objection to granting  
15 that motion? I see no objection, and in the interest of  
16 public commenters knowing how the first hearing's  
17 transcript should correctly read, I grant the Agency's  
18 motion now before the expiration of the 14-day response  
19 period.

20 In addition, there's a change that I would like  
21 to mention. It's, again, in the first hearing  
22 transcript, page 65, line 7. For context, the transcript  
23 reads, "On March 26, 2008, the Board accepts DCEO's  
24 request to conduct an EcIS on the Agency's rulemaking

1 proposal." That should read, "On March 26, 2008, the  
2 Board sent DCEO a request to conduct an EcIS on the  
3 Agency's rulemaking proposal." That's in lines 6 through  
4 8 on page 65. Is there any objection to making that  
5 correction? Seeing none, that line of the transcript  
6 will be corrected.

7 Are there any other matters that need to be  
8 addressed at this time? Seeing none, I would like to  
9 thank everyone for participating today, and this hearing  
10 is adjourned.

11 (Hearing adjourned.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF BOND )

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4 I, KAREN WAUGH, a Notary Public and Certified  
5 Shorthand Reporter in and for the County of Bond, State  
6 of Illinois, DO HEREBY CERTIFY that I was present at the  
7 Illinois Pollution Control Board, Springfield, Illinois,  
8 on July 16, 2008, and did record the aforesaid Hearing;  
9 that same was taken down in shorthand by me and  
10 afterwards transcribed, and that the above and foregoing  
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand  
13 and affixed my Notarial Seal this 27th day of July, 2008.

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Notary Public--CSR

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