

1 ILLINOIS POLLUTION CONTROL BOARD

2

3

4 IN THE MATTER OF:)

5)

6 CITY OF ROCK ISLAND,)

7)

8 Petitioner,)

9)

10 vs.) Case No. PCB 00-073

11)

12 ILLINOIS ENVIRONMENTAL)

13 PROTECTION AGENCY,)

14)

15 Respondent.)

16)

17

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22

23 The following is the transcript of a hearing

24 held in the above-entitled matter, taken

 stenographically by Gale G. Everhart, CSR-RPR, a notary

 public within and for the County of Peoria and State of

 Illinois, before John C. Knittle, Hearing Officer, at

 21 1504 Third Avenue, Rock Island, Illinois, on the 22nd

 22 day of March, A.D. 2000, commencing at approximately

 23 3:30 p.m.

24

1 PRESENT:

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 1504 Third Avenue
5 Rock Island, Illinois
6 (312) 814-3473 61201
7 BY: MR. JOHN C. KNITTLE

8

9

10 APPEARANCES:

11 GARDNER, CARTON & DOUGLAS
12 BY: ROY M. HARSCH, ESQUIRE
13 Attorney at Law
14 321 North Clark Street
15 Chicago, Illinois 61610-4795
16 (312) 644-3000
17 On Behalf of the Petitioner.

18

19 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
20 BY: RICHARD C. WARRINGTON, JR., ESQUIRE
21 Attorney at Law
22 1021 North Grand Avenue East
23 Springfield, Illinois 62794-9276
24 (217) 782-9849
25 On Behalf of the Respondent.

26

27

28 ALSO PRESENT:

29 James E. Huff
30 Robert T. Hawes
31 Dale Howard
32 Edward T. Manning, Jr.
33 Timothy Ridder

Scott L. Kammerman
22 James E. Kammueler
Thomas G. McSwiggin
23 Paul Wesley Rust

24

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1
HEARING OFFICER KNITTLE: Hello. We are on the
2
record. My name is John Knittle. I'm the hearing
3
officer for the Illinois Pollution Control Board. Also
4
the hearing officer assigned to this hearing which is
5
PCB200073 otherwise known as the City of Rock Island
6
versus the IEPA. It is a permit appeal. This hearing
7
was noticed to commence at 9:30 a.m. today and is
8
following directly on the heels of a related hearing,
9
PCB98-164, a variance involving the same parties.
10
As before, there are no members of the public
11
present. If they do show up, we will give them a chance
12
to comment on the record if they so choose. They will
13
be subject to cross-examination by each of the parties.
14

15 This hearing, as was the last, will be
16 conducted according to sections 103.202 and 203 of the
17 board's procedures. I have already informed everybody
18 here that I will not make the ultimate decision on this
19 case. It will be made instead by the Pollution Control
20 Board.

21 Let's have the attorneys introduce themselves
22 again.

23 MR. HARSCH: My name is Roy Harsch. I am with the
24 law firm of Gardner, Carton & Douglas. I do
environmental work for the City of Rock Island.

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1 MR. WARRINGTON: My name is Richard Warrington.
2 I'm associate counsel with the Illinois Environmental
3 Protection Agency, representing the Illinois EPA in this
4 proceeding.

5 HEARING OFFICER KNITTLE: Thank you. I just want
6 to note for the record that it is now 3:30 p.m. on
7 Wednesday, March 22nd.

8 Do we have some preliminary matters,
9 Mr. Harsch, you want to address before we get to the
10 hearing?

11 MR. HARSCH: I would like to clarify, the permit
12 appeal petition and the exhibits as well as, I guess,
13 the agency record that was filed on or about February
14 15th of this year are included in the record as
15 evidence.

16 HEARING OFFICER KNITTLE: Mr. Warrington?

17 MR. WARRINGTON: So agreed.

18 HEARING OFFICER KNITTLE: Okay. That is noted for
19 the record. One thing I wanted to note, and I forgot to
20 do it this when I started off, is, there was a motion to
21 compel documents filed by the petitioner in this case in
22 response to the motion of all involved documents which
23 the IEPA, after a little while, sent a copy for me to
24 review in camera.

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1 I just want it noted for the record that I am
2 going to return that copy to the IEPA so the board will
3 no longer have that. I want it also noted that the
4 motion to compel was never ruled upon. Both parties had
5 decided that it was not fruitful to rule on it at that
6 time.

7 So, that being said, Mr. Harsch, do you have

8 any other additional matters?

9 MR. HARSCH: Yes. I think this -- first of all, I
10 would like to make a brief opening statement and then
11 that will lead into my comments if I could.

12 HEARING OFFICER KNITTLE: Yeah. We can do the
13 openings first.

14 MR. HARSCH: This is a permit appeal in which Rock
15 Island seeks to challenge three provisions to its
16 permit. One has to do with the modification to the
17 language of the main treatment plan discharge that
18 changes the historical provision in the permit that Rock
19 Island was required to treat the maximum flow practical
20 prior to utilizing this CSO or bypass discharge.

21 The second issue has to do with respect to
22 Rock Island's request that outfall 007 be properly
23 designated as something other than a sanitary sewer
24 overflow.

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1 The third issue has to do with what should be
2 appropriate chlorine residual limitations for the new
3 storm treatment basin outfalls O11 and O12. And we have

4 endeavored to reach some stipulations with respect to
5 those issues.

6 MR. WARRINGTON: That is correct.

7 MR. HARSCH: And I would be happy to go into those
8 if I can now.

9 HEARING OFFICER KNITTLE: Let's try to get them on
10 the record.

11 MR. HARSCH: One is that we would like to stipulate
12 that testimony and the exhibits in the variance case
13 that we just concluded be incorporated in this record.

14 HEARING OFFICER KNITTLE: Mr. Warrington?

15 MR. WARRINGTON: So agreed.

16 HEARING OFFICER KNITTLE: Okay. That will be done.
17 The testimony and the exhibits, is that what you said,
18 Mr. Harsch?

19 MR. HARSCH: Please.

20 HEARING OFFICER KNITTLE: Will be incorporated from
21 PCB98164 into this case.

22 MR. HARSCH: The second stipulation has to do with
23 the appropriate chlorine residual limitation for basin
24 discharges O11 and O12. I believe our agreement is that

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1 we would ask the board to remand that issue back to the
2 agency for the agency to include a chlorine residual
3 limitation of 1.0 milligrams per liter of chlorine
4 subject to the agency's ability to lower that number if
5 it's determined with use that Rock Island can meet the
6 fecal chloroform limitation and still maintain a lower
7 chlorine residual.

8 HEARING OFFICER KNITTLE: Mr. Warrington? Let's go
9 off the record for a second.

10 (Discussion off the record.)

11 HEARING OFFICER KNITTLE: Back on the record. The
12 second stipulation will be accepted as well.

13 MR. HARSCH: The third stipulation may be a little
14 more difficult. That stipulation has to do with the
15 request by Rock Island that was made during the pendency
16 of this permit renewal that the agency recognize that
17 outfall OO7 was not strictly a sanitary sewer overflow,
18 and what we are going to attempt to do is have me state
19 a number of factual stipulations that should help us in
20 the appeal today.

21 And if we can work out a basis for a remand,
22 we will submit such request at a later date before the
23 board has to rule on it. So, in other words, we
24 complete the record today based upon the factual

1 stipulations that I hope to work out on the record. And
2 if we are lucky, we will be able to work out a
3 stipulation which will request that the board remand
4 this issue back to the agency.

5 HEARING OFFICER KNITTLE: Question. If the
6 board -- or if you don't work out a stipulation
7 afterwards with the IEPA, will the board have enough
8 before it to reach a decision?

9 MR. HARSCH: Yes. Because of the factual
10 stipulations on the record and some clarifying
11 testimony.

12 HEARING OFFICER KNITTLE: Okay. And so we will
13 have everything we need to make a decision regardless of
14 whether you and Mr. Warrington come to agreement?

15 MR. HARSCH: Absolutely.

16 HEARING OFFICER KNITTLE: Mr. Warrington, do you
17 agree with that?

18 MR. WARRINGTON: We agree.

19 HEARING OFFICER KNITTLE: Do you agree with my
20 question, though?

21 MR. WARRINGTON: Further, we agree that the board
22 should have sufficient information. Moreover, even if
23 we do agree, the board can still make a determination on

24 their own.

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1 HEARING OFFICER KNITTLE: Right. I understand
2 that. I don't think the board wanted to have a -- of
3 course, I can't speak for the board -- but if you do
4 concur, my main concern is that if you two don't reach
5 an agreement, as Mr. Harsch has already asserted, that
6 the board will have enough before it to make a decision
7 on this issue.

8 MR. WARRINGTON: That is correct.

9 HEARING OFFICER KNITTLE: That's your assertion as
10 well?

11 MR. WARRINGTON: The record will give the board as
12 it presently exists.

13 HEARING OFFICER KNITTLE: Okay. Then we can
14 proceed.

15 MR. HARSCH: The factual stipulations that I would
16 propose are that the area tributary to outfall OO7 was
17 originally a combined sewer area.

18 HEARING OFFICER KNITTLE: Mr. Warrington?

19 MR. WARRINGTON: So agreed.

20 HEARING OFFICER KNITTLE: The stipulation has been

21 accepted.

22 (Off the record.)

23 HEARING OFFICER KNITTLE: We are back on the

24 record.

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1 MR. HARSCH: The second stipulation is that Rock

2 Island carried out a program to remove the public

3 sources of inflow in the 1960s and '70s, in that area.

4 MR. WARRINGTON: So agreed.

5 HEARING OFFICER KNITTLE: That one is accepted as

6 well.

7 MR. HARSCH: That after that partial separation,

8 the sewer tributary outfall O07 still conveyed a

9 significant amount of storm water.

10 MR. WARRINGTON: Agreed.

11 HEARING OFFICER KNITTLE: That stipulation is, too,

12 accepted.

13 MR. HARSCH: That the City of Rock Island agreed to

14 a municipal compliance plan -- strike that.

15 That the Illinois Environmental Protection

16 Agency suggested and Rock Island proceeded to seek a

17 variance from rule 601A and 602B of the water pollution
18 regulations which was filed and docketed as PCB80-212
19 and filed that petition on November 17, 1980.

20 That after amending the petition, the
21 Illinois Environmental Protection Agency recommended a
22 grant, and the board granted a variance in that
23 proceeding which required that Rock Island eliminate the
24 outfall designated O07 and O10 in Blackhawk Creek.

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1 HEARING OFFICER KNITTLE: Mr. Warrington?

2 MR. WARRINGTON: We agree.

3 HEARING OFFICER KNITTLE: So noted.

4 MR. HARSCH: That in that proceeding, Rock Island
5 did not, nor did the Pollution Control Board, so find
6 that outfall OO7 or O10 was a sanitary sewer overflow.

7 MR. WARRINGTON: I don't know.

8 (Discussion off the record.)

9 HEARING OFFICER KNITTLE: Let's go back on the
10 record. Mr. Harsch, do you want to rephrase?

11 MR. HARSCH: That in the petition, an amended
12 petition that Rock Island filed in PCB80-212 and
13 subsequently in the board's order granting the requested

14 variance, Rock Island did not describe the OO7 overflows
15 as a sanitary sewer overflow nor did the board so find.

16 HEARING OFFICER KNITTLE: Mr. Warrington?

17 MR. WARRINGTON: So agreed.

18 HEARING OFFICER KNITTLE: Okay. That stipulation
19 is accepted.

20 MR. HARSCH: That subsequent to the entry of the
21 board's order in PCB80-212, Rock Island prepared a
22 municipal compliance plan to address what the Illinois
23 Environmental Protection Agency told Rock Island it
24 believed to be violations.

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1 MR. WARRINGTON: Violations of what?

2 MR. HARSCH: Permit. And the board's water
3 regulation.

4 MR. WARRINGTON: Yeah. We can agree to that.

5 MR. HARSCH: As part of that municipal compliance
6 plan that was prepared, Rock Island responded to the
7 Illinois Environmental Protection Agency's position that
8 outfalls OO7 and O10 were sanitary sewer overflows in
9 the plan that it prepared.

10 MR. WARRINGTON: So agreed.

11 HEARING OFFICER KNITTLE: Mr. Warrington, you agree
12 to that?

13 MR. WARRINGTON: We agree.

14 HEARING OFFICER KNITTLE: So, the last two
15 stipulations are accepted as well.

16 MR. HARSCH: Consequently, from about that point
17 forward with the development of the municipal compliance
18 plan, Rock Island and the agency began to refer to
19 outfall OO7 as a sanitary sewer overflow.

20 MR. WARRINGTON: So agreed.

21 HEARING OFFICER KNITTLE: It's accepted.

22 MR. HARSCH: That the Illinois Environmental
23 Protection Agency and representatives of Rock Island met
24 on several occasions and discussed the potential

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1 construction of storm water storage basins on the
2 sewer's tributary outfall OO7.

3 MR. WARRINGTON: So agreed.

4 HEARING OFFICER KNITTLE: Accepted.

5 MR. HARSCH: That, in fact, Rock Island and the
6 agency reached an agreement wherein Rock Island would

7 agree to construct storm water storage basins that would
8 handle -- would store the volumetric capacity of a
9 five-year storm.

10 MR. WARRINGTON: So agreed.

11 HEARING OFFICER KNITTLE: Noted.

12 MR. HARSCH: That those storage basins were
13 subsequently permitted by the Illinois Environmental
14 Protection Agency as part of Rock Island's municipal
15 compliance plan.

16 MR. WARRINGTON: That's correct.

17 MR. HARSCH: And that Rock Island, in fact,
18 constructed those two storm water storage basins.

19 MR. WARRINGTON: So agreed.

20 HEARING OFFICER KNITTLE: Accepted.

21 MR. HARSCH: That for any storm that produced a
22 volume of water greater than a five-year storm event or
23 for any storm event that occurred when the basins were
24 full, that Rock Island and the agency understood that

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1 there would be discharges from OO7.

2 MR. WARRINGTON: May we have a moment off the

3 record?

4 HEARING OFFICER KNITTLE: Yes.

5 (Discussion off the record.)

6 HEARING OFFICER KNITTLE: Okay. We are back on the
7 record.

8 MR. HARSCH: Strike that one.

9 That Rock Island constructed the basins so that
10 they would have the ability to handle only the capacity
11 of a five-year storm volume.

12 MR. WARRINGTON: So agreed.

13 HEARING OFFICER KNITTLE: Accepted.

14 MR. HARSCH: That any storm event producing a rain
15 fall event greater than the volume of the agreed upon
16 five-year storm would result in overflow from outfall
17 O07.

18 HEARING OFFICER KNITTLE: Mr. Warrington?

19 MR. WARRINGTON: Accept.

20 HEARING OFFICER KNITTLE: We accept it as well here
21 at the board.

22 MR. HARSCH: That the basins were emptied -- were
23 designed and constructed to be emptied by pumping the
24 contents back into the sewer from which they were

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1 removed when the flows in the sewer subsided and the
2 sewer had capacity to handle the flow -- strike that.

3 That they were designed and constructed so
4 that the basins were to be emptied by gravity back into
5 the sewer when the sewer had -- after the storm had
6 subsided and the sewer had capacity to receive that
7 volume of flow.

8 MR. WARRINGTON: Yes. Agreed.

9 HEARING OFFICER KNITTLE: That's accepted.

10 MR. HARSCH: That if the basins were full or
11 partially filled and the storm water event -- a storm
12 event occurred that would result in flow -- in the
13 necessary pumping of flows into those basins, that would
14 be impossible unless the basins had been previously
15 emptied.

16 MR. WARRINGTON: Agreed.

17 HEARING OFFICER KNITTLE: Accepted.

18 MR. HARSCH: During the time period in question
19 that the applicable NPDES permit had a provision listing
20 outfalls OO7 and O10 as sanitary sewer overflows with a
21 prohibited discharge and requirement of notification
22 upon discharge.

23 MR. WARRINGTON: Agreed.

24 HEARING OFFICER KNITTLE: Accepted.

1 MR. HARSCH: That there is a regulatory definition
2 in Illinois of combined sewer, and that definition is a
3 sewer that is originally constructed to receive both
4 waste water and land run off, section 301.255.

5 MR. WARRINGTON: Is it constructed, or constructed
6 and maintained?

7 MR. HARSCH: Designed and constructed.

8 MR. WARRINGTON: So agreed.

9 HEARING OFFICER KNITTLE: Accepted.

10 MR. HARSCH: That there is a sanitary sewer
11 definition found in section 301.375 and that definition
12 states a sewer that carries wastewater together with
13 incidental land runoff.

14 MR. WARRINGTON: So agreed.

15 HEARING OFFICER KNITTLE: Accepted.

16 MR. HARSCH: That after construction of the
17 wastewater storage basins, that the sewer in question
18 carries more than incidental land runoff in terms of
19 storm water.

20 (Discussion off the record.)

21 HEARING OFFICER KNITTLE: Mr. Warrington, do you
22 concur with the last stipulation?

23 MR. WARRINGTON: Yes. We concur that it's more
24 than incidental flow at outflow 007.

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1 HEARING OFFICER KNITTLE: Is that the extent of it,
2 Mr. Harsch?

3 MR. HARSCH: No.

4 HEARING OFFICER KNITTLE: Why don't we rephrase
5 that one?

6 MR. HARSCH: That the sewer upon which outfall OO7,
7 which is a manhole is located, carries more than
8 incidental land runoff in addition to the normal
9 sanitary sewer system.

10 MR. WARRINGTON: Agreed.

11 HEARING OFFICER KNITTLE: Accepted.

12 MR. HARSCH: That beginning in 1997, Rock Island
13 embarked on a plan to convert the two storage basins to
14 treatment basins and that that was subsequently
15 permitted by the agency.

16 MR. WARRINGTON: Agreed.

17 HEARING OFFICER KNITTLE: Accepted.

18 MR. HARSCH: That Rock Island has, in fact,
19 completed construction with the exception of the

20 electronics of the storm basins.

21 HEARING OFFICER KNITTLE: Richard, you have no
22 agreement to that one?

23 MR. WARRINGTON: No agreement. We don't have
24 any --

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1 MR. HARSCH: I'll withdraw that.

2 MR. WARRINGTON: -- personal experience of how much
3 it's been constructed.

4 HEARING OFFICER KNITTLE: Thank you.

5 MR. HARSCH: That in requesting that the agency
6 modify or change the characterization of outfall OO7,
7 Rock Island represented to the agency that at the
8 completion of the construction and placing into
9 operation of these two treatment basins and their repair
10 and replacement of the Blackhawk sewer, that it did not
11 anticipate any discharges, overflows from outfall OO7 to
12 continue.

13 MR. WARRINGTON: Agreed.

14 HEARING OFFICER KNITTLE: Accepted.

15 MR. HARSCH: Can we go off the record?

16 HEARING OFFICER KNITTLE: Yes.
17 (Discussion off the record.)
18 HEARING OFFICER KNITTLE: Back on the record.
19 MR. HARSCH: That subsequent to the construction
20 and placing the storage basins on-line and their use,
21 the number of overflows from OO7 decreased.
22 MR. WARRINGTON: So agreed.
23 HEARING OFFICER KNITTLE: Accepted.
24 MR. HARSCH: And that until -- and it remained

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1 relatively constant until what, in retrospect, was
2 the -- how would you describe it -- the blockage of
3 Blackhawk sewer which was discovered in 1998.
4 MR. WARRINGTON: How necessary is it to even bring
5 in the Blackhawk sewer blockage, or whatever? Does it
6 advance resolution of the permit appeal? Is it like
7 cumulative with the otherwise beneficial effects of the
8 storage basins?
9 MR. HARSCH: Strike that. Okay. Strike that. I
10 will remove that one.
11 HEARING OFFICER KNITTLE: Stricken.
12 MR. HARSCH: Off the record.

13 HEARING OFFICER KNITTLE: Off the record.
14 (Discussion off the record.)
15 MR. HARSCH: Another stipulation. That in the past
16 notice of noncompliance advisory letter dated July 2nd,
17 1997, which is Petitioner's Exhibit 6 in the variance
18 petition which was issued as a result of
19 Mr. Kammuller's February 10, 1997, inspection, that the
20 agency advised the City of Rock Island that, quote,
21 "sanitary sewer overflow, SSO," close quote, "needs to
22 be controlled in Blackhawk State Park area such that at
23 least flows received during a five-year storm event are
24 given complete treatment," close quote.

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1 MR. WARRINGTON: So agreed.
2 HEARING OFFICER KNITTLE: Accepted.
3 MR. HARSCH: That in the December 21, 1998, letter
4 to the City of Rock Island regarding the facility plan
5 review, the agency states that in paragraph 7 that,
6 quote, "maximum flow possible," paren, "first flush at
7 10 times," close paren, "should be conveyed to the
8 proposed new lift station prior to the diversion to the

9 Franciscan and Saukie basins to help ensure compliance
10 with water quality standards. The lift station should
11 be designed to handle this flow volume," close quote,
12 "or the planning should provide justification for the
13 use of another capacity," close quote.

14 MR. WARRINGTON: Agreed.

15 HEARING OFFICER KNITTLE: Accepted.

16 MR. HARSCH: That references to first flush 10
17 times dry weather flows are references to rules that
18 apply to combined sewer overflows not sanitary sewer
19 overflows.

20 MR. WARRINGTON: So agreed.

21 HEARING OFFICER KNITTLE: Accepted.

22 MR. HARSCH: That's it. That's the end of the
23 factual stipulations.

24 HEARING OFFICER KNITTLE: Okay. Let's take a short

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1 five-minute recess here.

2 (Discussion off the record.)

3 (A break was taken in the proceedings.)

4 HEARING OFFICER KNITTLE: All right. Let's go back
5 on the record for another stipulation.

6 MR. HARSCH: I would propose an additional
7 stipulation, a necessary change to the permit. This has
8 to do with the issue of the replacement of maximum
9 practical flow with the prohibition on discharging.

10 As I understand and have read the U.S. EPA
11 objection letter and the letters transmitting the
12 changes to the permit that have been submitted by the
13 agency to Rock Island and comparing the statements in
14 the U.S. EPA's letter, the transmittal letter from the
15 IEPA and the actual language in the permit, there are
16 differences in the wording.

17 MR. WARRINGTON: Agreed.

18 MR. HARSCH: And that there is the possibility of
19 confusion of what was intended by the language "is
20 treating 16 million gallons per day." And that
21 confusion centers upon whether or not that Rock Island
22 would be required to physically treat 16 million gallons
23 of wastewater on any day that it has a bypass as a
24 quantity.

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1 HEARING OFFICER KNITTLE: Mr. Warrington, do you

2 agree to that?

3 MR. WARRINGTON: We agree.

4 MR. HARSCH: And that further that that was

5 not -- strike that.

6 And that was not the agency's intent in
7 opposing writing the permit in that manner, but rather
8 it was the agency's intent that Rock Island would have
9 to be providing treatment for a flow rate of 16 million
10 gallons per day before it would have a bypass allowed
11 under the permit.

12 (Pause in proceedings.)

13 HEARING OFFICER KNITTLE: Can you read that back?

14 COURT REPORTER: Certainly. And that further that
15 that was not -- strike that.

16 And that was not the agency's intent in
17 opposing writing the permit in that manner, but rather
18 it was the agency's intent that Rock Island would have
19 to be providing treatment for a flow rate of 16 million
20 gallons per day before it would have a bypass allowed
21 under the permit.

22 MR. HARSCH: Strike that.

23 That was not the agency's intent but rather
24 it was the agency's intent in putting this language in

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1 the permit that Rock Island would have to be providing a
2 treatment of a flow rate of 16 million gallons per day
3 before it would be allowed to use the bypass.

4 MR. WARRINGTON: We agree.

5 HEARING OFFICER KNITTLE: Accepted. Is that the
6 end of the stipulations, Mr. Harsch?

7 MR. HARSCH: Yes.

8 HEARING OFFICER KNITTLE: Have you completed your
9 opening statement?

10 MR. HARSCH: Yes, I have.

11 HEARING OFFICER KNITTLE: Mr. Warrington, do you
12 have an opening statement?

13 MR. WARRINGTON: No. We will waive opening
14 statement.

15 HEARING OFFICER KNITTLE: Mr. Harsch, you can call
16 your first witness.

17 MR. HARSCH: Mr. Hawes.

18 (Witness sworn.)

19 ROBERT T. HAWES,

20 called as a witness, after being first duly sworn, was

21 examined and testified upon his oath as follows:

22 DIRECT EXAMINATION

23 BY MR. HARSCH:

24 Q Mr. Hawes, what is the current status of the

1 construction of converting the Saukie and Franciscan
2 storm water treatment basins -- storage basins to
3 treatment basins?

4 A The majority of the physical construction is
5 done. The SCADA system has not been installed, and the
6 current schedule would bring the entire system fully
7 online in mid May.

8 Q Will you spell SCADA for the record?

9 A S-c-a-d-a, all capitals.

10 Q And is the SCADA system the electronic
11 control system?

12 A Yes.

13 Q What is the current project schedule for the
14 replacement of Blackhawk sewer?

15 A We are trying to work out our easement
16 agreement with the State of Illinois. Assuming we can
17 get that done in the next month, construction will start
18 probably in May or June and be done by wintertime.

19 Q At the completion of construction of that
20 replacement of that sewer, is it Rock Island's belief
21 that there will be no overflows from OO7?

22 A That's correct.
23 MR. HARSCH: That would complete my direct
24 questions.

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1 HEARING OFFICER KNITTLE: Mr. Warrington, do you
2 have questions?

3 MR. WARRINGTON: No cross.

4 HEARING OFFICER KNITTLE: Sir, you can step down.

5 Thank you.

6 Next witness, Mr. Harsch?

7 MR. HARSCH: At this time I would like to call

8 Mr. McSwiggin.

9 (Witness sworn.)

10 THOMAS G. McSWIGGIN,
11 called as a witness, after being first duly sworn, was
12 examined and testified upon his oath as follows:

13 HEARING OFFICER KNITTLE: Mr. Harsch, your witness.

14 DIRECT EXAMINATION

15 BY MR. HARSCH:

16 Q Mr. McSwiggin, as the manager of the permit
17 section of the Illinois EPA -- I think you maybe
18 testified about this earlier today -- you serve on the

19 National Sanitary Sewer Regulatory Development Committee

20 with U.S. EPA?

21 A Yes, I did.

22 Q What is that?

23 A It's a federal advisory committee on sanitary

24 sewer overflow. That's a committee created under the

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1 Federal Advisory Committee Act. These are committees --

2 advisory, as the act indicates -- to federal agencies.

3 You are appointed for a term to solve or review a

4 problem. The term in this particular case was five

5 years. The committee last met probably for its last

6 meeting in October of 1999.

7 Q Is U.S. EPA in the process of coming out with

8 an announcement -- coming out with a policy on possibly

9 regulations on sanitary sewer overflows?

10 A U.S. EPA is currently drafting a regulation

11 on sanitary sewer overflows which they hope to put into

12 public notice status sometime in May of 2000.

13 Q And is it your understanding that once that

14 regulation is promulgated that U.S. EPA and the states

15 will deal with sanitary sewer overflows prohibitions

16 that will be proposed in that rule?

17 A My understanding is the rules will have a

18 significant impact on how the states will regulate

19 sanitary sewer overflows through the permits and

20 additionally through enforcement.

21 Q Is it anticipated that there will be a

22 considerable amount of work required by municipalities

23 to comply with those rules?

24 A My reading of the advisory committee's

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1 recommendation and the communications I have had with

2 the U.S. EPA headquarter's staff since the last meeting

3 gives me a reading that there will be considerably more

4 work required on the part of municipalities to maintain

5 their sanitary sewer system with the objective to

6 prevent overflows.

7 Q And is it your understanding that -- strike

8 that.

9 Has Illinois permitted other storm water

10 treatment basins similar to the Saukie and Franciscan

11 basins for other municipalities in Illinois?

12 A Yes, we have.

13 Q And is this a common means of dealing with
14 storm water in sewers?

15 A Most of the basins we have permitted are at
16 the sewage treatment plant itself. On system basins
17 such as we have here in Rock Island, they are not that
18 common, but this is not unique either.

19 Q Moving to the issue of change to the permit
20 that U.S. EPA requested for the use of the bypass, CSO
21 bypass facilities. I think earlier you testified that
22 the prior permit was the way that Illinois routinely
23 handled and wrote permits for municipalities with CSO
24 discharges?

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1 A Yes, I did.

2 Q And is it your understanding that -- strike
3 that.

4 MR. HARSCH: I have no further questions.

5 HEARING OFFICER KNITTLE: Mr. Warrington, do you
6 have cross-examination?

7 MR. WARRINGTON: No, we do not.

8 HEARING OFFICER KNITTLE: Thank you, sir. You can
9 step down.

10 MR. HARSCH: Can I ask one more follow-up question?

11 I'm sorry.

12 HEARING OFFICER KNITTLE: Mr. Warrington, any
13 objection?

14 MR. WARRINGTON: No objection.

15 HEARING OFFICER KNITTLE: Yes.

16 BY MR. HARSCH:

17 Q Mr. McSwiggin, you are familiar with the U.S.
18 EPA web site and the publication on that web site of
19 the -- strike that. Just forget it. Never mind. Thank
20 you.

21 HEARING OFFICER KNITTLE: Sir, you can step down.

22 Next witness, Mr. Harsch?

23 MR. HARSCH: Mr. Huff.

24 HEARING OFFICER KNITTLE: Mr. Huff, if you could

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1 have a seat. We will swear you in again.

2 (Witness sworn.)

3 JAMES E. HUFF,

4 called as a witness, after being first duly sworn, was

5 examined and testified upon his oath as follows:

6 DIRECT EXAMINATION

7 BY MR. HARSCH:

8 Q Mr. Huff, you have proposed to Rock Island

9 that they consider converting the two basins to

10 treatment basins, did you not?

11 A Yes, sir.

12 Q Did you design that project?

13 A Yes, sir.

14 Q Have you had discussions with the consultants

15 that Rock Island is utilizing to prepare the data

16 necessary for the construction permit relative to the

17 flows in the sewers tributary to Blackhawk street sewer

18 and outfall OO7?

19 A On a limited basis, yes.

20 Q Do you have an opinion as to whether or not

21 prior -- as the sewers were constructed storage basins

22 in place, Rock Island provided capture of up to 10 times

23 dry weather flow of the flows and that sort?

24 A Yes, sir.

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1 Q What is that opinion?

2 A That the pumping capacity that they had at
3 that lift station in Blackhawk plus the two pump
4 stations at Franciscan and Saukie readily exceed 10
5 times the dry weather flow in that sewer.

6 Q What do you understand the dry weather flow
7 to be?

8 A I believe it's slightly over 100 gallons per
9 minute.

10 Q And do you have an opinion as to whether or
11 not the sewer system with the storage basins in place,
12 that you provided capture of first flush?

13 A Yes, sir, I do.

14 Q And what is that opinion?

15 A My opinion is that they readily capture first
16 flush as well.

17 Q And why is that?

18 A The experience on the overflow has been that
19 so long as Franciscan and Saukie are pumping in and
20 before they are filled, the city has not experienced
21 overflows out of OO7 or O10 previously. And the time of
22 travel is such that one would expect first collection to
23 occur in that basin somewhere in approximately an hour's
24 time, maybe 75 minutes; and it takes over two and a half

1 hours to fill those basins. So, you are well beyond
2 what would be first flush.

3 Q Do you agree with Mr. KammueLLer's testified
4 assertion that the Rock Island main sewage treatment
5 plant has the capability of handling flows in excess of
6 12 million gallons per day and still complying with its
7 NPDES permit limits?

8 A I'm not sure that Mr. KammueLLer said that.
9 I think Mr. KammueLLer identified that the solids that
10 are maintained in the activated sludge system are the
11 primary limitation on flow -- maximum flow capacity
12 through the treatment plant.

13 Q Is it your testimony that Rock Island did not
14 have the capability to treat flows in excess of 12
15 million gallons a day?

16 A At 12 million gallons a day, they are
17 exceeding the design standards promulgated the Illinois
18 recommended design standards. And certainly that's my
19 understanding, that solid washouts begin to occur around
20 12 million gallons a day which I would attribute to the
21 insufficient clarifier surface area.

22 MR. HARSH: No further questions.

23 HEARING OFFICER KNITTLE: Mr. Warrington,
24 cross-exam?

1 CROSS-EXAMINATION

2 BY MR. WARRINGTON:

3 Q When you talk about the pumps being sized to
4 deal with 100 gallons per minute, I believe, for the dry
5 weather flow?

6 A The dry weather flow?

7 Q Right.

8 A Yes.

9 Q How does that relate to the number of homes
10 that might be tributary to that pump?

11 A Well, 100 gallons a minute would be, roughly
12 150,000 gallons per day. So, that would be the
13 population equivalent of 1500 people.

14 Q Do you recall the percentage of the city's
15 flow that might go through those pumps?

16 A No, sir, I don't. I suspect that 100 gallons
17 a minute is an error. My guess is that number is
18 probably closer to 400 to 500 gallons per minute.

19 MR. WARRINGTON: No further questions.

20 HEARING OFFICER KNITTLE: Redirect, Mr. Harsch?

21 MR. HARSCH: No.
22 HEARING OFFICER KNITTLE: Thank you, sir.
23 Any further witnesses, Mr. Harsch?
24 MR. HARSCH: No.

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1 HEARING OFFICER KNITTLE: Mr. Warrington, do you
2 have any witnesses for the respondent?
3 MR. WARRINGTON: If we go off the record, we may be
4 able to simplify that a bit.
5 (Discussion off the record.)
6 HEARING OFFICER KNITTLE: Back on the record.
7 Mr. Warrington, your case in chief, please. First, you
8 would reserve your opening statement. Do you still want
9 to make one or do you want to press on?
10 MR. WARRINGTON: I think we will waive our opening
11 statement.
12 HEARING OFFICER KNITTLE: Understood.
13 MR. WARRINGTON: In lieu of briefing if necessary.
14 HEARING OFFICER KNITTLE: Okay. Do you have any
15 witnesses, or do you have --
16 MR. WARRINGTON: We have one witness. We may be
17 able to dispense with his actual testimony based on an

18 off-the-record stipulation by counsel for the city. And
19 that basically is that the agency would like to
20 introduce to supplement the record. On page 41 you
21 might notice that there is a sheet referring to
22 oversized plan sheets.

23 HEARING OFFICER KNITTLE: Page 41 of what?

24 MR. WARRINGTON: Forty-one of the permit appeal

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1 record which is date stamped. By way of background
2 Mr. Rust would otherwise testify to was that pursuant to
3 a request by the City to review the sewer separation
4 study, the City submitted plans and documentation. The
5 plans were in the form of standard 2 by 3 foot plan
6 sheets which would be somewhat inconvenient for the
7 board to file. We have taken the liberty of copying
8 certain sections of those plan sheets that Mr. Rust
9 personally reviewed and are marked in colored pencil
10 where the sewer separation occurred. For the board we
11 have six copies of so reduced and colored plan sheets
12 submitted by the City to supplement the agency record at
13 the page date-stamped 41.

14 HEARING OFFICER KNITTLE: Mr. Harsch, do you agree
15 to this?

16 MR. HARSCH: I have no objection to that,
17 Mr. Hearing Officer, because at the time I was provided
18 a copy of the record by Mr. Warrington that page was
19 contained in the record, and I believe Mr. Warrington
20 pointed out to me that he would be supplementing it; and
21 I so agreed.

22 HEARING OFFICER KNITTLE: Okay. And you still do?

23 MR. HARSCH: Yes.

24 HEARING OFFICER KNITTLE: Okay. We will accept

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1 this. I am going to call this Respondent's Number 1.

2 MR. WARRINGTON: This is a new Respondent's
3 Number 1?

4 HEARING OFFICER KNITTLE: Right. This is
5 Respondent's Number 1 for PCBOO73, and I'm noting that
6 it's accepted with no objection from the petitioner.

7 MR. HARSCH: And we further have a stipulation so I
8 don't have to call Mr. Rust which I was anticipating.
9 And that stipulation is that permit record that
10 Mr. Warrington has filed in this proceeding does not

11 contain any construction grant conditions.

12 HEARING OFFICER KNITTLE: Mr. Warrington, do you

13 agree with that stipulation or are you so stipulating?

14 MR. WARRINGTON: Off the record for just a minute.

15 (Discussion off the record.)

16 HEARING OFFICER KNITTLE: Back on the record.

17 Mr. Warrington, you do now have a witness?

18 MR. WARRINGTON: We have one witness to testify to

19 a limited point.

20 HEARING OFFICER KNITTLE: Okay. Call your first

21 witness, please.

22 MR. WARRINGTON: Mr. Rust. Would you take the

23 stand, a chair closer to the court reporter?

24 HEARING OFFICER KNITTLE: Will you give us your

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1 full name, sir?

2 THE WITNESS: Paul Wesley Rust. R-u-s-t.

3 (Witness sworn.)

4 (Discussion off the record.)

5 HEARING OFFICER KNITTLE: Mr. Warrington, I take it

6 pursuant to an off-the-record discussion you want to

7 tender this witness to the other side?

8 MR. WARRINGTON: We would tender Mr. Rust to the
9 City.

10 MR. HARSCH: Mr. Rust, this will be very brief.

11 THE WITNESS: Okay.

12 PAUL WESLEY RUST,
13 called as a witness, after being first duly sworn, was
14 examined and testified upon his oath as follows:

15 CROSS-EXAMINATION

16 BY MR. HARSCH:

17 Q The permit, written permit record that has
18 been provided by Mr. Warrington and filed in this
19 proceeding, are you familiar with that record?

20 A Yes.

21 Q Does this permit record contain any document
22 which contains any construction permit -- excuse
23 me -- construction grant limitations, or are there any
24 documents in this record that are construction grant

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1 documents that you are aware of?

2 A The only grant in that record was done under
3 the municipal compliance plan.

4 Q And are there any specific -- what I am
5 trying to establish is are there any documents in this
6 record that are from that construction grant?

7 A I'm really not certain.

8 MR. HARSCH: Mr. Warrington, will you stipulate
9 that there are no documents in this record from any
10 construction grant?

11 MR. WARRINGTON: We don't have the permit in there,
12 is it?

13 THE WITNESS: No.

14 MR. WARRINGTON: The construction grant and the
15 permit weren't included in this record because they
16 weren't part of this NPDES permit application and
17 documentation.

18 MR. HARSCH: So, is the answer -- will you
19 stipulate that there is nothing in this permit record,
20 any document from a construction grant?

21 MR. WARRINGTON: If you limit -- we will stipulate
22 that there is no document related to the construction of
23 the Saukie and Franciscan basins in that record.

24 MR. HARSCH: Can we go off the record?

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1 (Discussion off the record.)

2 HEARING OFFICER KNITTLE: We are back on the
3 record.

4 MR. HARSCH: Off the record we have tried to
5 clarify the point I am trying to raise. The point I am
6 trying to raise is that there are two agency decisions
7 that have been appealed. The first has to do with the
8 treating 16 MGD issue, and the second has to do with the
9 reclassification or dealing with discharge OO7.

10 It is my understanding that the part of the
11 agency's decision for refusing to make the request to
12 Rock Island is raised is that those changes would
13 jeopardize and be inconsistent with prior grant funding
14 requirements.

15 THE WITNESS: That's correct.

16 MR. HARSCH: Can we stipulate to that?

17 MR. WARRINGTON: That is correct.

18 MR. HARSCH: Further, that the physical record that
19 has been filed by Mr. Warrington in this proceeding does
20 not contain any document from any construction grant
21 that has -- period.

22 THE WITNESS: There is no document in the record
23 from the agency delineating a penalty towards the grant
24 money that was applied to Franciscan and Saukie basin

1 construction.

2 BY MR. HARSCH:

3 Q So, again, as I understand it, there are no
4 actual documents specifically relating to a construction
5 grant requirement apart from the MCP documents in this
6 record?

7 A That's still broad. There is nothing from
8 the agency that specifically stated that the funding of
9 the construction of those basins would be in jeopardy by
10 modifications. Is that what you want to know?

11 MR. HARSCH: It looks like that's all I'm going to
12 get.

13 HEARING OFFICER KNITTLE: Any further questions,
14 Mr. Harsch?

15 MR. HARSCH: I have one more.

16 (Discussion off the record.)

17 HEARING OFFICER KNITTLE: Back on the record. You
18 have no further questions, Mr. Harsch?

19 MR. HARSCH: That's correct.

20 HEARING OFFICER KNITTLE: Mr. Warrington --

21 MR. WARRINGTON: Rehabilitation, I think is what
22 you called it?

23 HEARING OFFICER KNITTLE: Actually I didn't call it

24 anything. This was you guys' concoction. I just want

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1 you to acknowledge that you tendered this witness to
2 Mr. Harsch for cross-examination, but there was no
3 direct examination.

4 So, technically, everything was beyond the
5 scope of direct examination, but you waive your
6 objection to that, correct?

7 MR. WARRINGTON: Well, I did reserve the ability to
8 rehabilitate him.

9 HEARING OFFICER KNITTLE: Correct. But you waived
10 your objection to Mr. Harsch examining this witness
11 before you conducted direct examination?

12 MR. HARSCH: I might point out that we had reached
13 a factual stipulation that would have then otherwise
14 required him to testify.

15 HEARING OFFICER KNITTLE: That's fine. I am just
16 talking procedurally. I am well aware that you could
17 always call him on rebuttal if you needed to so I don't
18 think it's a big issue. I just want to make sure that
19 we don't have any problems down the road.

20 Mr. Warrington, you did not object to that,
21 correct?
22 MR. WARRINGTON: That is correct.
23 HEARING OFFICER KNITTLE: And you can now ask
24 questions if you have any rehabilitation.

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1 DIRECT EXAMINATION

2 BY MR. WARRINGTON:

3 Q Mr. Rust, referring back to page 1 of the
4 agency record, denial point 4, did you author this
5 record or author this page in whole or in part?

6 A Yes.

7 Q And when you refer to the reclassification of
8 the outfalls as leaving the agency without justification
9 for dispersion of grant moneys, where did that concept
10 come from?

11 A The concept comes from the fact that the
12 municipal compliance plan was a grant given to the City
13 to build structures required to comply with the permit
14 treating OO7 as a sanitary overflow.

15 Q Did you inquire with anyone of our
16 grant -- of the agency grant section as to whether this

17 was a problem or not?

18 MR. HARSCH: Mr. Hearing Officer, I will object to
19 this question. The agency is required to provide the
20 permit record upon which its decisions are based. And
21 there is nothing in this permit record relating to any
22 communication regarding this issue, nor is there any
23 document that's been relevant to that issue.

24 HEARING OFFICER KNITTLE: Mr. Warrington.

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1 MR. WARRINGTON: The requirement for the agency to
2 provide a record for the board consists of the
3 application, correspondence and other documents
4 generated as part of this permit application.

5 The question posed to Mr. Rust will elicit
6 the answer that he didn't generate any documents as part
7 of this permit application and that the information was
8 communicated entirely orally between him and other
9 personnel at the agency.

10 HEARING OFFICER KNITTLE: Okay. I'm going to
11 overrule the objection, but it will be noted for the
12 record. You can answer the question, sir. Do you

13 recall the question?

14 THE WITNESS: No, I don't.

15 HEARING OFFICER KNITTLE: Mr. Warrington, do you

16 want to repeat it or should I have the court reporter

17 read it back?

18 MR. WARRINGTON: I think you should have the court

19 reporter read it back.

20 HEARING OFFICER KNITTLE: Can you find it?

21 COURT REPORTER: Did you inquire with anyone of our

22 grant -- of the agency grant section as to whether this

23 was a problem or not?

24 HEARING OFFICER KNITTLE: Was that the question?

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1 MR. WARRINGTON: That was the question.

2 HEARING OFFICER KNITTLE: Do you recall the

3 question now, sir?

4 THE WITNESS: Yes.

5 HEARING OFFICER KNITTLE: And you are able to

6 answer it?

7 A Yes. I did confer with our grant section

8 information -- or infrastructure financial existent

9 section currently.

10 Q And their answer was?

11 A Their answer was that it would not. The
12 conversion of the storage basins to excess flow would
13 not jeopardize the grant money.

14 Q Nonetheless, the permit had the language
15 saying that it would?

16 A The letter you are referring to said that an
17 agency decision to reclassify OO7 as a combined sewer
18 overflow might.

19 Q And did you confer with anyone else in the
20 agency regarding the reclassification becoming a grant
21 problem?

22 A No, I did not. I only talked to the unit
23 manager, Dean Studer.

24 Q Did you make any written memorandum of these

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1 conversations?

2 A No.

3 MR. WARRINGTON: No further questions.

4 HEARING OFFICER KNITTLE: Mr. Harsch, I don't know
5 what this would be called, but do you have any questions

6 for this witness?

7 MR. HARSCH: No further questions.

8 HEARING OFFICER KNITTLE: Sir, thank you. You can
9 step down.

10 Mr. Warrington, do you have any other
11 witnesses?

12 MR. WARRINGTON: No, we do not.

13 HEARING OFFICER KNITTLE: You are closing your case
14 in chief?

15 MR. WARRINGTON: We will close our case in chief.

16 HEARING OFFICER KNITTLE: Mr. Harsch, do you have
17 any rebuttal witnesses?

18 MR. HARSCH: No, sir.

19 HEARING OFFICER KNITTLE: Okay. Let's go off the
20 record for a second.

21 (Discussion off the record.)

22 HEARING OFFICER KNITTLE: Mr. Harsch, you indicated
23 you had no rebuttal witnesses. Do you have any closing
24 arguments?

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1 MR. HARSCH: No, sir. I will waive closing
2 arguments.

3 HEARING OFFICER KNITTLE: Mr. Warrington?
4 MR. WARRINGTON: We waive closing arguments.
5 HEARING OFFICER KNITTLE: Let me note for the
6 record one last time that there are no members from the
7 public here. As I have informed everybody else, I,
8 actually, am going to be here tomorrow at 9:30 a.m.
9 again in order to make sure that there are no members of
10 the public who wish to provide public comment due to the
11 unusual circumstances involving these two cases. We
12 will probably go on the record for about an hour just to
13 see and then click off if nobody shows up. The parties
14 have the right to come or not come as you see fit.

15 You have indicated off the record that we are
16 going to hold off on setting a closing posthearing brief
17 schedule until Monday afternoon as a telephone
18 conference call; is that correct, Mr. Harsch?

19 MR. HARSCH: Yes, sir.

20 HEARING OFFICER KNITTLE: Is that correct,
21 Mr. Warrington?

22 MR. WARRINGTON: That's correct.

23 HEARING OFFICER KNITTLE: Are there any motions we
24 have to entertain before we wrap this up? Mr. Harsch?

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1 MR. HARSCH: No, sir. I would like to thank, on
2 the record, Mr. McSwiggin for appearing as, I guess, an
3 adverse witness in these two proceedings.

4 HEARING OFFICER KNITTLE: Duly noted.

5 Mr. Warrington, do you have any motions?

6 MR. WARRINGTON: We have a motion pending to accept
7 four copies of the record rather than the normal nine, I
8 believe. Pending the motion, I believe, the final stand
9 here.

10 HEARING OFFICER KNITTLE: On the --

11 MR. WARRINGTON: On the permit --

12 HEARING OFFICER KNITTLE: On the permit appeal?

13 MR. WARRINGTON: Right.

14 HEARING OFFICER KNITTLE: Okay. That escaped me.

15 My apologies. I will grant that motion right now. Is
16 there an objection to that, Mr. Harsch?

17 MR. HARSCH: No.

18 HEARING OFFICER KNITTLE: Then that will be
19 granted.

20 Once again, I have a credibility
21 determination to make. Based on my legal experience and
22 time as a hearing officer, I find that there are no
23 credibility issues with any of the witnesses, and all
24 the witnesses are credible.

1 Thank you for your time, and I will put out a
2 hearing report summarizing these events next week.

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6 (Whereupon, the hearing concluded at

7 5:05 p.m.)

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

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5 CERTIFICATE OF REPORTER

6

7

8 I, GALE G. EVERHART, CSR-RPR, Notary Public
9 in and for the County of Peoria, State of Illinois, do
10 hereby certify that the foregoing transcript, consisting
11 of pages 1 through 48, both inclusive, constitutes a
12 true and accurate transcript of the original
13 stenographic notes recorded by me of the foregoing
14 proceedings had before Hearing Officer John C. Knittle,
15 in Rock Island, Illinois, on the 22nd of March, A.D.
16 2000.

17

18

19 Dated this 30th day of March, A.D. 2000.

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21

22

23

24

GALE G. EVERHART, CSR-RPR
Illinois License No. 084-004217

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