

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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IN THE MATTER OF:)
4 AMENDMENTS TO 35 ILL. ADM.) R00-17
5 CODE PART 617)

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11 THE ILLINOIS POLLUTION CONTROL BOARD

12 HEARING held in the above-entitled matter, taken

13 stenographically by Angela M. Jones, CSR-RPR, a

14 Notary Public in and for the State of Illinois,

15 before Catherine F. Glenn, Hearing Officer, at

16 Peoria County Courthouse, in the City of Peoria,

17 County of Peoria, and State of Illinois, on the

18 9th day of May, A.D. 2000, commencing at

19 11:00 a.m.

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1 APPEARANCES:

2

HEARING TAKEN BEFORE:

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ILLINOIS POLLUTION CONTROL BOARD

4 100 West Randolph Street

Suite 11-500

5 Chicago, Illinois 60601

(312) 814-6923

6 BY: CATHERINE F. GLENN

7

ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

8

Ronald C. Flegal

9 Elena Z. Kezelis

10

ILLINOIS POLLUTION CONTROL STAFF PRESENT:

11

Erin Conley

12 Amy L. Jackson

Anand Rao

13 Joel Sternstein

Marie Tipsord

14

15 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
PRESENT:

16

Richard Cobb

17 Stephen Ewart

Roger Kanerva

18 Joey Logan-Wilkey

19

ALSO PRESENT:

20

Bill Compton, Caterpillar Inc.

21 Harry R. Walton, Environmental Risk Management

Consultant
 22 Randy Schick, Illinois Department of
 Transportation
 23 Wm. Anthony Dulka, IEPA
 Amy L. Hacker, IEPA
 24

1	INDEX	
2		Page
3	GREETING BY HEARING OFFICER	4
	TESTIMONY BY BILL COMTPON	9
4	TESTIMONY BY RICK COBB.....	20
	QUESTION & ANSWER SESSION	43
5	CLOSING COMMENTS BY HEARING OFFICER	101
6		
7		
8		
	EXHIBITS:	
9		
10	EXHIBIT 1	15
	Comments on Behalf of the Central Regional	
11	Groundwater Protection Planning Committee	
12	EXHIBIT 2	55
	Map	
13		
	EXHIBIT 3	69
14	Map	
15		
16		
17		
18		

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1 HEARING OFFICER: Good morning. My name is
2 Catherine Glenn, and I'm the hearing officer in
3 this proceeding. I would like to welcome you to
4 this hearing held by the Illinois Pollution
5 Control Board in the proposed regulated recharge
6 area for Pleasant Valley Public Water District
7 proposed amendments to 35 Illinois Administrative
8 Code Part 617.

9 Present today on behalf of the Illinois
10 Pollution Control Board and seated to my right is
11 Dr. Ronald Flemal, and seated to my left is Board
12 Member Elena Kezelis. In the back or at the table
13 in the back, I have placed notice and service list
14 sign-up sheets. Please note that if your name is
15 on the notice list, you will only receive copies
16 of the Board's opinions and orders and all hearing

17 officer orders. If your name is on the service
18 list, in addition to these items, you will also
19 receive copies of the documents filed by all
20 persons on the service list. If your name is on
21 the service list, you are also required to serve
22 all persons on the service list with all documents
23 that you file with the Board. Copies of the
24 Board's May 2nd, 2000, order and the hearing

1 officer order of March 15th, 2000, are also
2 included in the handouts at the table.

3 Before we get started, I would also like
4 to mention there are additional members of the
5 Board staff here this morning, starting with Marie
6 Tipsord, Erin Conley, Anand Rao, Amy Jackson, and
7 Joel Sternstein.

8 On February 14th, 2000, the Illinois
9 Environmental Protection Agency filed this
10 proposal for rulemaking to amend 35 Illinois
11 Administrative Code Part 617 for purposes of
12 creating the state's first regulated recharge area
13 for the Pleasant Valley Public Water District. At

14 today's hearing, the Board will hear testimony of
15 the agency and any other interested persons. This
16 rulemaking is also being held to address the
17 Board's request pursuant to Section 27(b)(1) of
18 the Illinois Environmental Protection Act that the
19 Department of Commerce and Community Affairs
20 conduct an economic impact study for this
21 rulemaking.

22 On March 10, 2000, DCCA notified the
23 Board that they would not be conducting an
24 economic impact study for this rule due to the

1 lack of staff and financial resources. Copies of
2 the Board's letter to DCCA and DCCA's response
3 letter have also been provided at the table at the
4 back. So, therefore, the Board holds this hearing
5 for the public comment on DCCA's explanation for
6 not conducting an economic impact study in this
7 rulemaking and also for the purposes of presenting
8 testimony, documents, and comments by the agency
9 and other affected entities and interested
10 parties.

11 This hearing will be continued on the

12 record from day to day if necessary until it is
13 completed. This hearing will be governed by the
14 Board's procedural rules for regulatory
15 proceedings. All information which is relevant
16 and not repetitious or privileged will be
17 admitted. All witnesses will be sworn and subject
18 to cross-questioning.

19 The agency will present any testimony it
20 may have regarding its proposal, and subsequently
21 we will follow with questions that the Board
22 members have of the agency regarding its
23 testimony. And after that, if any members of the
24 public have questions of the agency, they may ask

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1 them then. I would prefer that during the
2 question period all persons with questions raise
3 their hands and wait for me to acknowledge them.
4 When I acknowledge you, please state your name and
5 organization that you represent, if any.

6 Additionally, since we're in sort of a
7 large room here this morning and there are no
8 microphones, please do your best to speak up so

9 those of us up here and the court reporter can
10 hear you. If we can't hear you, we'll let you
11 know.

12 At this time, I would like to ask Board
13 Member Flemal if he has anything else he would
14 like to add.

15 MR. FLEMAL: I would like to welcome you all
16 to this Board hearing. Usually, at this stage, I
17 give a short overview of how the Board proceeds
18 when it has a rulemaking before it. Seeing,
19 however, that so many of the faces here are
20 familiar and are familiar with the process, I'll
21 forego the long story there and simply note that
22 the Board is composed of seven members, Board
23 Member Kezelis and I present. Board Member Melas,
24 a third board member, is attempting to fly down

1 from Chicago; and we hope that he will make it
2 here shortly. Then the other four board members
3 who will not be in attendance today will, of
4 course, participate in the decision that the Board
5 ultimately makes on this proposal before it, the
6 ultimate disposition being made by the full

7 board. We will be taking the record that's
8 developed today, plus the record that we already
9 have on hand in terms of the pre-filed
10 information, any information that's filed
11 subsequent to this hearing, weigh all that
12 information, then come to the ultimate decision as
13 to where this proposal ends henceforth. Thank
14 you.

15 HEARING OFFICER: Board Member Kezelis, would
16 you like to add anything?

17 MS. KEZELIS: No, thank you. I welcome
18 everyone here, and I look forward to hearing the
19 testimony and questions. Thank you.

20 HEARING OFFICER: Before we get started with
21 the testimony, there is one matter currently
22 pending before the Board. The agency has filed a
23 motion to substitute. It was filed on April 14th
24 of 2000, and the motion would basically replace

1 the language -- the proposed language that the
2 agency originally proposed on February 14th. This
3 would replace that language entirely. There are

4 copies of the motion at the table if someone needs
5 them. At this time, I will grant the motion; so
6 all of the language we will be discussing here
7 today is the language contained in the motion to
8 substitute.

9 Before I turn to the agency, I believe
10 there's a statement that Bill Compton from the
11 Groundwater Protection Committee, Central Planning
12 Region, would like to make.

13 Mr. Compton, if you would, please be
14 sworn in and give your statement.

15 (Witness sworn.)

16 MR. COMPTON: "My name is Bill Compton. I'm
17 here today representing Central Regional
18 Groundwater Protection Planning Committee. I'm a
19 business/citizen member of the Central Regional
20 Groundwater Protection Planning Committee and have
21 served as its chairman since its inception in
22 April 1991. I'm a business/citizen member of the
23 Governor's Groundwater Advisory Council appointed
24 by the governor in 1996 and have been its chair

1 for the last three years. I am a trustee of

2 Groveland Township Water District and Tazewell
3 County since its formation in 1981 and have served
4 as the chairman of its board of trustees since
5 1986.

6 "In addition, I've been with Caterpillar
7 Inc. for 25 years and am a staff member of
8 Corporate Environmental Affairs and Corporate
9 Auditing and Compliance Division. One of my
10 responsibilities in that capacity is the oversight
11 of Caterpillar facilities worldwide that are
12 classified as nontransient, noncommunity public
13 water supplies.

14 "The members of the Central Regional
15 Groundwater Protection Planning Committee have
16 asked me to submit this statement to the Board on
17 their behalf.

18 "The Central Region is comprised of
19 Mason, Peoria, Tazewell, and Woodford Counties.
20 Members of the Central Regional Committee
21 represent different local and regional interests
22 including environmental, business, agricultural,
23 regional planning, water well drilling, public
24 water supplies, and local government. The

1 responsibilities of the committee are stated in
2 Section 17.2 of the Illinois Groundwater
3 Protection Act. Each regional committee is
4 responsible for identification of and advocacy for
5 region-specific groundwater protection matters,
6 monitoring and reporting the progress made within
7 the region regarding implementation of protection
8 for groundwater, maintaining a registry of
9 instances where the agency has issued an advisory
10 of groundwater contamination hazard within the
11 region, facilitating informational and educational
12 activities related to groundwater protection
13 within the region, and -- the reason we're here
14 today -- recommending to the agency whether there
15 is a need for regional protection pursuant to
16 Section 17.3 of the Illinois Groundwater
17 Protection Act.

18 "Prior to making any recommendation, the
19 Act requires the Regional Planning Committee to
20 provide an opportunity for public comment by
21 holding one or more public meetings with at least
22 30-day notice at a location within the region.

23 "The Central Committee became aware of
24 Pleasant Valley Public Water District's situation

1 when its executive director was appointed as a
2 charter member of the committee. The executive
3 director had engaged since the late 1980's in
4 attempts to find a mechanism to reduce the
5 potential for contamination of the groundwater
6 withdrawn by the district. When the IGPA
7 established provisions for regulated recharge
8 areas, the district, as part of the requirements,
9 conducted a groundwater protection needs
10 assessment funded by the Illinois EPA/US EPA. The
11 assessment demonstrated the need for protection.
12 The district turned to Peoria County for
13 assistance in establishing the recharge area, but
14 Peoria County felt that it did not have the
15 authority to develop a regulated recharge area
16 regulation for Pleasant Valley.
17 "Pleasant Valley then turned to Section
18 17.3 of the IGPA to continue their efforts. Two
19 mechanisms exist. Section 17.3(a) provides that
20 the agency can propose to the Board a regulation
21 establishing the boundary for a regulated recharge
22 area if the agency determines a completed
23 groundwater protection needs assessment

24 demonstrates a need for regional protection.

1 Section 17.3(b) provides that the agency can
2 propose to the Board a regulation establishing the
3 boundary for a regulated recharge area if a
4 regional planning committee files a petition
5 requesting and justifying such action.

6 "The Pleasant Valley situation had
7 become a popular issue with the Central Committee.
8 The committee, Pleasant Valley, and the agency
9 discussed the merits of an agency proposal or
10 committee petition. Since a Pleasant Valley
11 proposal would, in all probability, be the first
12 brought before the Board, we agreed that the
13 petition route would provide the means for a
14 greater degree of local and statewide public
15 participation and input from those directly
16 affected by the proposed regulated recharge area.

17 "Given its broad responsibilities under
18 the IGPA, the Central Committee, at the request of
19 the Board of Trustees of Pleasant Valley Public
20 Water District, decided to pursue the petition

21 process provided in Section 17.3(b). Rather than
22 attempt to reiterate the petitioning process and
23 the results of the Central Committee activities, I
24 respectfully direct the Board's attention to the

14

1 pre-filed testimony of the agency witness in this
2 matter, Mr. Richard P. Cobb, and the agency
3 exhibits submitted as support for the proposed
4 regulation. The agency exhibits describe in
5 detail the committee efforts leading to this
6 proposal.

7 "Subsequent to the petitioning process,
8 the Central Committee has been active in
9 participating in the draft regulatory proposal
10 public participation and review process that the
11 agency instituted. Additional public meetings
12 were held to assure that interested parties
13 statewide had an opportunity to participate.

14 "The committee finds the proposal before
15 the Board acceptable in providing regulated
16 recharge area protection for the Pleasant Valley
17 Public Water District and supports adoption of the
18 agency proposal."

19 That concludes my testimony for today.

20 Thank you for your attention.

21 HEARING OFFICER: Thank you, Mr. Compton.

22 Mr. Compton, would you mind, since the Board

23 hadn't received your comments in a pre-file

24 manner, which is fine, I would just like to have

15

1 them admitted this morning as an exhibit. If you

2 wouldn't mind making a motion for me to have them

3 admitted as an exhibit, I will mark it as

4 Exhibit 1.

5 MR. COMPTON: I move the Board enter my

6 comments as an exhibit in these proceedings.

7 HEARING OFFICER: Thank you. I grant the

8 motion, and I actually have a copy already of

9 Mr. Compton's comments in front of me. I will

10 mark that as Exhibit 1.

11 MR. COMPTON: Thank you.

12 HEARING OFFICER: Thank you.

13 At this time, I would like to ask the

14 agency if you would like to make an opening

15 statement.

16 MS. LOGAN-WILKEY: Yes.

17 HEARING OFFICER: Excuse me. One moment.

18 (Pause in proceedings.)

19 MR. FLEMAL: Just to maybe keep this in

20 order, I do have a question of you, Mr. Compton.

21 It's my understanding that the Central Committee

22 has been engaged in other groundwater protection

23 efforts over its time in addition to Pleasant

24 Valley. Could you just sort of give us an

16

1 overview of some of the other kinds of efforts

2 that you folks have undertaken?

3 MR. COMPTON: There have been two regulatory

4 type of efforts over the last five years that we

5 have provided a forum for adoption.

6 Number one was with the City of Pekin.

7 As a home-rule community, they have the means of

8 adopting their own groundwater ordinances to

9 protect regional recharge areas identified within

10 the city limits. We were instrumental in pulling

11 together representatives of the City of Pekin, the

12 Illinois EPA, and Illinois American, the water

13 provider for the city of Pekin and some

14 surrounding areas. And after taking this through
15 a regulation development process, holding a series
16 of public hearings involving other local units of
17 government, the City of Pekin adopted
18 unanimously -- I think it was in 1995 -- a
19 groundwater recharge ordinance for three recharge
20 areas within their city boundaries.

21 The second effort involved Tazewell
22 County. There are unincorporated areas within
23 Tazewell County that don't have the means for
24 developing regulations for limited regional

1 recharge wells, especially smaller communities.
2 So we had asked the County Board if they would
3 form a committee, allow the formation of the
4 committee under their auspices to develop a
5 Tazewell County groundwater ordinance.

6 And this was done over a period of about
7 a year and a half where we helped coordinate the
8 efforts of an intergovernmental unit committee to
9 draw together a regional recharge regulation
10 covering these generally unincorporated areas.

11 Now these unincorporated areas within Tazewell
12 County have a means through the County Board of
13 having groundwater protection provided under
14 ordinance.

15 So those are the two that we've been
16 very active in.

17 MR. FLEMAL: Can you give us your impression
18 of the success of these ordinances now that
19 they've had some time to be in place?

20 MR. COMPTON: For the City of Pekin, I
21 considered the effort there breakneck speed
22 because it occurred within nine months of
23 inception to passage of the ordinance. We
24 attribute that primarily because of drawing the

18

1 groups together so they would have a common
2 understanding of what was being proposed.

3 Also, there were -- and perhaps the
4 agency can help me recollect, but we had two or
5 three public meetings that involved those
6 particular small businesses that would be affected
7 within the regional recharge areas. When the
8 motion was made to adopt the ordinance for the

9 City of Pekin, it was adopted unopposed with no
10 opposing comments from the public that we were
11 aware of.

12 The Tazewell County ordinance took about
13 a year and a half, a little more complicated
14 because of the number of interests that were
15 involved; and there were at least a couple of
16 board members that were attorneys that were
17 interested in wordsmithing it so that it would
18 meet their satisfaction. But that particular
19 ordinance proposal was adopted unanimously with no
20 public opposition. So we were very pleased that
21 we were able to provide this forum to bring all
22 the interested parties together and come to a
23 dialogue and resolution.

24 HEARING OFFICER: Are there any further

19

1 questions of Mr. Compton? Seeing none --

2 MR. COMPTON: Thank you.

3 HEARING OFFICER: Thank you.

4 -- let's again turn to the agency, and

5 I would like to ask you if you have a statement

6 you would like to offer this morning.

7 MS. LOGAN-WILKEY: Yes, please.

8 Good morning. I'm Joey Logan-Wilkey,
9 assistant counsel with the Illinois Environmental
10 Protection Agency. The rule that is the subject
11 for this proceeding sets forth the procedures for
12 establishing regulated recharge areas and will
13 establish a regulated recharge area for the
14 Pleasant Valley Water District.

15 In March of 1995, the Central
16 Groundwater Protection Planning Committee
17 petitioned the EPA to establish a regulated
18 recharge area for the Pleasant Valley Water
19 District. Pursuant to Section 17.3 of the
20 Environmental Protection Act, the agency is now
21 requesting that the Board amend 35 Illinois
22 Administrative Code Part 617 to establish this
23 recharge area.

24 At this time, I'd like to introduce

1 agency personnel who are in attendance. To my
2 left is Roger Kanerva, environmental policy
3 advisor. And to my right is Rick Cobb. He is the

4 manager of the Groundwater Section of the EPA.
5 And Steve Ewart is to his right. He's deputy
6 counsel for the Division of Water Supplies. Also
7 in attendance are Amy Hacker -- she is an
8 environmental protection specialist -- and also
9 Anthony Dulka who is also an environmental
10 protection specialist.

11 Illinois EPA has pre-filed written
12 testimony from Rick Cobb. He'll be reading his
13 testimony at this time, and he'll be ready to
14 answer questions from the Board.

15 HEARING OFFICER: Thank you.

16 Mr. Cobb, would you like to be sworn in
17 and proceed?

18 (Witness sworn.)

19 MR. COBB: "My name is Richard P. Cobb, and I
20 am manager of the Groundwater Section of the
21 Illinois Environmental Protection Agency, Bureau
22 of Water. For further detail on my
23 qualifications, I've enclosed a copy of my
24 curriculum vitae in Exhibit 1. This testimony,

1 the statement of reasons, and the exhibits
2 included with this testimony describe the basis
3 for the proposal of a regulated recharge area for
4 the Pleasant Valley Public Water District.

5 "Before moving on, some background
6 information is important, I think, to this
7 proceeding. Section 3 of the Illinois Groundwater
8 Protection Act of 1987 established a definition of
9 a regulated recharge area that describes 'a
10 compact geographic area as determined by the
11 Board, the geology of which renders a potable
12 resource groundwater particularly susceptible to
13 contamination.' The regional groundwater
14 protection program that emerged after intensive
15 negotiations on the development of the Illinois
16 Groundwater Protection Agency can be summed in
17 five general principles. First, local
18 involvement; second, responsible partnership;
19 third, differential protection; fourth, sound
20 technical information; and, lastly, a preference
21 for prevention.

22 "In 1992, a groundwater protection needs
23 assessment, which I'll refer to as 'needs
24 assessment,' was completed for the Pleasant Valley

1 Public Water District, which I'll refer to as 'the
2 District.' The needs assessment first delineated
3 the recharge area for the District and, secondly,
4 determined it was susceptible to groundwater
5 contamination due to the nature of the
6 hydrogeologic conditions, existing potential
7 sources of groundwater contamination, and land
8 use. The needs assessment recommended that a
9 recharge area protection program be established.
10 Following completion of the assessment, the
11 District worked with Peoria County to develop a
12 local recharge area protection program. This
13 effort led to utilizing the regulated recharge
14 area provisions under the Act, the Illinois
15 Environmental Protection Act.

16 "The District's Board of Trustees
17 adopted a formal resolution on November 4th, 1994,
18 to seek the establishment of a regulated recharge
19 area. The District Board sent this resolution and
20 requested the Central Groundwater Protection
21 Planning Committee, which I'll refer to as
22 'Committee,' to petition the Illinois EPA to
23 develop a regulated recharge proposal through
24 their authority under the Illinois Environmental

1 Protection Act.

2 "The Committee reviewed their request
3 and voted unanimously on October 19th, 1994, to
4 proceed with making such a recommendation.
5 However, before proceeding, the Act requires that
6 the Committee hold a public meeting in the area
7 potentially affected by the proposal. A notice
8 was placed in the Peoria Journal Star on
9 December 27th, 1994, announcing the public
10 meeting. The meeting was held in Pleasant Valley
11 in January 1995. The Illinois EPA's hearing
12 officer conducted the public meeting and a
13 transcript was taken. No objections were made
14 during the public meeting. The Committee
15 determined that the record supported the motion of
16 October 19th, 1994. The Committee then proceeded
17 with petitioning the Illinois EPA on March 28th,
18 1995, to develop a regulated recharge area
19 proposal to submit to the Illinois Pollution
20 Control Board for the District.

21 "After receipt of the petition, the
22 Illinois EPA began evaluation of the needs

23 assessment as required under Section 17.3(b)(2) of
24 the Act. The Illinois EPA had reviewed the

24

1 assessment prior to and after its completion in
2 1992. Illinois EPA found the needs assessment to
3 be technically adequate in response to the
4 petition received from the Committee on
5 March 28th, 1995. The Illinois EPA further
6 evaluated the modeling, groundwater modeling,
7 conducted by Clark Engineers through additional
8 work done in conjunction with a graduate
9 geohydrology program at Illinois State University
10 and the Committee. To assist with the ongoing
11 groundwater protection efforts in the Central
12 Planning Region, the Illinois EPA and the
13 Committee initiated a project with Illinois State
14 University Geohydrology Department to develop a
15 regional groundwater flow model for the entire
16 Peoria area. This modeling was completed in
17 1998. Illinois EPA has evaluated and run this
18 model subsequently to take into account multiple
19 pumping wells and new wells that have gone on-line
20 since 1992 in the vicinity of the District. The

21 modeling was performed in accordance with the
22 methodology described in a Guidance Document for
23 Conducting Groundwater Protection Needs
24 Assessments. It was prepared by the Illinois EPA,

25

1 Illinois State Water Survey, and the Illinois
2 State Geological Survey, and according to the
3 methods prescribed in Applied Groundwater Modeling
4 Simulation of Flow and Advective Transport,
5 prepared by Anderson and Woessner, 1992. As a
6 result of this effort, the recharge area for
7 Pleasant Valley in this proposal is only slightly
8 different than the original area shown in the 1992
9 needs assessment.

10 "The groundwater modeling and the needs
11 assessment conducted by Clark Engineers and the
12 new modeling conducted by Illinois EPA with
13 assistance from ISU Geohydrology Program both used
14 the United States Geological Survey public domain
15 groundwater flow models known as MODFLOW, which is
16 a modular, three-dimensional, finite-difference
17 groundwater flow model -- and a description of

18 that is published in Techniques of Water Resources
19 Investigations, 06-A1, USGS; authors are McDonald
20 and Harbaugh, published in 1988 -- and the
21 particle tracking program referred to as MODPATH,
22 which documentation of the computer programs to
23 complete and display pathlines using results from
24 the US Geological Survey modular,

1 three-dimensional, finite-difference groundwater
2 model, USGS, Open File Report 89-381; the author
3 is Pollack, and it was published in 1989. The
4 numerical, block-centered, three-dimensional
5 finite difference approach is utilized in MODFLOW
6 to approximate a solution to the 'governing
7 equation' of groundwater flow as a boundary value
8 problem. Once the groundwater head elevations
9 were simulated and calibrated according to
10 observed mass water level measurements, pumping
11 stresses associated with the community water
12 supply wells were induced in the model. MODPATH
13 is then utilized to backtrack the advective
14 movement of groundwater perpendicular to the
15 groundwater head elevations water table map

16 simulated for MODFLOW to the pumping community
17 water supply wells. These water particles are
18 then mapped to show the portion of the aquifer
19 that is actually recharging groundwater to those
20 wells.

21 "The basic assumption of groundwater
22 modeling is Darcy's Law, which states that the
23 flow of water through a porous material is
24 proportional to the gradient of the hydraulic

1 head. The hydraulic head is the level to which
2 water would rise in a non-pumping well. Darcy's
3 Law, combined with the water balance equation,
4 inflow minus outflow equals the change in storage,
5 yields a governing equation that must be satisfied
6 by the hydraulic head everywhere within the
7 water-saturated porous medium. The solution to
8 this equation satisfies the governing equation,
9 not only within the model domain but also along
10 the various boundaries of the model. Once the
11 high head values throughout the system are known,
12 flowlines and capture zones for water flowing

13 through the system can be delineated.
14 "Except for a few very simple
15 hydrogeologic systems, exact solutions for
16 boundary value problems cannot be found. However,
17 numerical modeling techniques such as the
18 finite-difference method can be used to find
19 approximate solutions. In the finite-difference
20 method, the model domain is separated into an
21 assemblage of cells. The solution consists of
22 single values of hydraulic head that best
23 characterize each cell.
24 "The study area in Pleasant Valley

1 consists of Pennsylvanian-aged bedrock covered by
2 glacial drift of up to 300 feet. Much of this
3 glacial drift within the study area consists of
4 the Sankoty Sand, which varies in thickness from
5 50 to 150 feet. Bedrock highs exist along the
6 western edge of the Illinois River, while the
7 Pekin-Sankoty Bedrock Valley, 2 to 3 miles wide,
8 is filled with deposits of the Sankoty Sand. The
9 Sankoty Sand, of which the aquifer from which
10 Pleasant Valley wells pump, is made of fine- to

11 medium-grained quartz grains. The Sankoty Sand is
12 missing along portions of the Illinois River near
13 Peoria and East Peoria and along the bedrock
14 uplands in the study area.

15 "The modeling grid and subsequent
16 recharge area delineations for the community water
17 supply wells were based on digitizing the well
18 locations off of USGS, 1 to 24,000 or 1 inch
19 equals 2,000 feet, topographic quadrangle maps.
20 Thus the modeling grid was tied to real-world
21 coordinates. The wells were located and mapped in
22 the field using 1 inch equals 400 foot aerial
23 photographic maps. The aerial photos were then
24 used to locate the wells on the USGS maps. The

1 locations of the wells and the associated recharge
2 area delineations have a locational accuracy that
3 complies with the United States National Map
4 Accuracy Standards as described in Exhibit 2.

5 "The lambert x and y coordinates for the
6 southeast corner of the model are 2,948,072 and
7 2,774,340 respectively. In order to incorporate

8 all of the municipal wells and any boundary
9 conditions that may affect the results of the
10 modeling, the model area extends 4,500 feet to the
11 east and 3,600 feet to the north, approximately 58
12 square miles." Excuse me. I want to strike one
13 thing that I said and repeat part of what I
14 intended to say. "In order to incorporate all of
15 the municipal wells and any boundary conditions
16 that may affect the results of the modeling, the
17 modeling area extends" -- strike 4,500 feet,
18 replace that with 45,000 feet -- "to the east and
19 36,000 feet to the north, approximately 58 square
20 miles. Input for the model consists of an initial
21 grid of 169 rows and 210 columns representing the
22 study area. Layer one of the model consists of an
23 unconfined aquifer of glacial till with low
24 hydraulic conductivity. Cells where the glacial

1 till is thin or absent are made inactive in layer
2 one, and that's illustrated in Figure 1 in this
3 testimony. Layer one overlies the Sankoty Sand
4 and the aquifer forming layer two. In layer two,
5 the bottom glacial outwash along the Illinois

6 River is modeled as part of the Sankoty Aquifer
7 also. Cells not containing the Sankoty Sand or
8 glacial outwash are designated as inactive in
9 layer two, and that's further illustrated in
10 Figure 2 in my testimony.

11 "Due to its relative impermeability
12 compared to the above layers, the Pennsylvanian
13 bedrock represents the no-flow base of the model.
14 Bedrock highs along the western and southeastern
15 edges of the model are assigned as no-flow
16 boundaries also as they are considered to have no
17 hydraulic connection with the Sankoty. The
18 eastern, northwestern, and southwestern edges of
19 the model are designated as general head
20 boundaries which allow some flow through the
21 boundary. Kickapoo Creek is simulated in the top
22 layer using MODFLOW's river package. The Illinois
23 River, impounded by a dam south of the study area,
24 is modeled as a general head boundary in the top

1 aquifer with a constant head value of 440 feet and
2 a lake bottom elevation of 435 feet. All of the

3 municipal wells are conceptualized as being
4 screened in the bottom Sankoty Aquifer. All of
5 the wells are also located in separate cells of
6 the grid. Hydraulic conductivity values were
7 developed for the Sankoty Aquifer for values
8 presented in Schicht in a publication entitled
9 Groundwater Investigation in Peoria, Illinois:
10 Central Well Field Area, Illinois State Water
11 Survey Contract Report 537. These values are
12 extrapolated from the nearest data point in areas
13 where data is scarce as referenced in Boateng,
14 1998, Well head protection area delineation for
15 Pleasant Valley/Peoria/West Peoria community water
16 supply facilities, Illinois State University
17 report for the Illinois Environmental Protection
18 Agency, unpublished. The value for layer one is
19 20 feet per day while values for layer two range
20 from 38 to 3,300 feet per day in one location.
21 Recharge to the top of the system is 0.00055 feet
22 per day.
23 "Model calibration was conducted to
24 field-measured data from a previous study

1 conducted by Burch and Kelly, prepared in 1993
2 entitled Peoria-Pekin Groundwater Quality
3 Assessment, Illinois State Geological Survey,
4 Research Report, 124. Results of a sensitivity
5 analysis show the average hydraulic head values to
6 be the same with an increase or decrease of 0.5
7 feet per day in the hydraulic conductivity. This
8 shows that the model is not overly sensitive to
9 changes in conductivity values.

10 "After model calibration was completed,
11 MODPATH was used to generate water particle
12 pathlines, travel times, and capture zones. The
13 porosity for layer one is set at 0.2 and for layer
14 two, 0.25.

15 "Further, the Illinois EPA considered
16 the types of potential sources that are present in
17 the Pleasant Valley Public Water District to
18 develop this proposal. The potential sources were
19 evaluated in relation to statewide definitions of
20 potential sources and potential routes of
21 groundwater contamination, setback prohibitions,
22 data from 1,200 well site survey reports from
23 community water supply wells, Part 255
24 agricultural containment rules, Part 257

1 cooperative groundwater program rules for
2 agrichemical facilities, Board's technology
3 control regulation for existing and new activity
4 in setback zones and regulated recharge areas,
5 Resource Conservation and Recovery Act, and the
6 Illinois Chemical Safety Act.

7 "The analysis of existing regulatory
8 programs in relation to the types of potential
9 sources located in the District's well field
10 determined that there are gaps at the
11 site-specific level to protect Pleasant Valley's
12 well field recharge area.

13 "Following the technical evaluation, the
14 Illinois EPA began developing a draft discussion
15 document for the purpose of getting public input
16 on the proposed regulatory management options. A
17 draft discussion document was developed to obtain
18 input from the Groundwater Advisory Council and
19 the regional groundwater protection planning
20 committees established by the Illinois Groundwater
21 Protection Act. The nine-member Groundwater
22 Advisory Council is designated by the governor and
23 is comprised of nine members that represent
24 different statewide interests including

1 environmental, business, agricultural, regional
2 planning, water well drilling, public water
3 supplies, and local government. The regional
4 planning committees have a similar composition but
5 are comprised of 75 local stakeholders who are
6 designated by the Director of Illinois EPA. The
7 Illinois EPA worked with these groups to sponsor a
8 public workshop that was held in Peoria on
9 June 7th of 1996. Good input was obtained at this
10 workshop that helped move from discussion document
11 options to a draft regulatory proposal.

12 "Numerous draft regulatory proposals
13 were developed and provided to the Groundwater
14 Advisory Council, the Interagency Coordinating
15 Council on Groundwater, and the Regional Planning
16 Committees for comment and input. Following these
17 efforts, a second public workshop was held on
18 August 6th, 1998, to obtain input on the draft
19 regulatory proposal that have been developed since
20 the workshop held in Peoria on June 7th of 1996.
21 The input received at the workshop indicated that
22 this was a sound proposal.

23 "On September 14th, 1998, the ICCG,
24 Interagency Coordinating Committee on Groundwater,

35

1 and Groundwater Advisory Council held a joint
2 meeting and discussed the results of the public
3 workshop. The Groundwater Advisory Council and
4 members of the Interagency Coordinating Committee
5 on Groundwater, including the Illinois Department
6 of Agriculture, Illinois Department of Natural
7 Resources, Illinois Emergency Management Agency,
8 Office of the State Fire Marshal, Illinois
9 Department of Nuclear Safety, and Illinois
10 Department of Commerce and Community Affairs were
11 provided with two more weeks to review and provide
12 input on the draft. No comments were received.

13 "Pursuant to Section 17.3(c) of the Act,
14 the Illinois EPA then proceeded on November 14th,
15 1998, to publish a press release and notify each
16 affected county, municipality, township, and soil
17 and water conservation district of the intent of
18 proposing a regulated recharge area for the
19 District. Sixty days notice was provided to the

20 stakeholders described above before this proposal
21 was submitted to the Board.

22 "The Illinois EPA's regulated recharge
23 area proposal is broken out into two sections.

24 Subpart A contains general provisions that we are

36

1 proposing apply in any delineated recharge area
2 adopted by the Board. Subpart B contains proposed
3 requirements that only apply in the District's
4 delineated recharge area.

5 "Subpart A, Definitions: There are
6 three key definitions that have been developed for
7 this proposal as follows: Chemical substance,
8 potential tertiary source with a differentiation
9 of existing versus new, and major potential
10 source. The definition of 'chemical substance'
11 incorporates a 100 pound threshold and includes
12 extremely hazardous and hazardous substances. The
13 chemical substance definition also clearly
14 excludes these chemical substances if they are
15 utilized exclusively for personal, family, or
16 household use.

17 "Potential tertiary sources are defined

18 in this proposal as existing or new units at a
19 facility or site that store or accumulate chemical
20 substances. In addition, the third key definition
21 is a 'major potential source.' Major potential
22 source is defined in this proposal as a unit at a
23 facility or site that stores, accumulates,
24 land-fills or land-treats waste. This definition

1 further specifies that the waste be generated on
2 the site and has the potential for contaminating
3 groundwater.

4 "Prohibitions: After careful
5 evaluation, the Illinois EPA believes there are
6 certain types of new potential sources that should
7 not be located in the regulated recharge area of a
8 community water supply. The Illinois EPA is
9 proposing to prohibit the following new potential
10 sources from locating within a regulated recharge
11 area adopted by the Board: low-level radioactive
12 waste site, Class V underground injection wells,
13 municipal waste landfills, and special or
14 hazardous waste landfills.

15 "Recharge Area Suitability Assessment:
16 The purpose of the Recharge Area Suitability
17 Assessment is to establish a means of assessing
18 the risk of a new major potential source before
19 commencing construction. Additionally, the intent
20 of this section is to provide an incentive for
21 implementing best management practices before
22 locating in a regulated recharge area adopted by
23 the Board. The Recharge Area Suitability
24 Assessment process evaluates the protective

1 measures and management systems being proposed by
2 any new major potential source and further
3 analyzes the potential environmental impacts.
4 Public input is also part of this proposed
5 process.

6 "Technology Control Regulations: This
7 proposal expands the area of applicability of the
8 Board's existing regulations at 35 Illinois
9 Administrative Code 615 and 616 that apply to
10 existing and new activities located within setback
11 zones and regulated recharge areas. Additionally,
12 this proposed section also expands the area of

13 applicability to any existing or agrichemical
14 facility subject to 8 Illinois Administrative Code
15 257 or 77 Illinois Administrative Code 830.
16 "Abandoned and Improperly Plugged Well
17 Assistance Program: This section of the proposed
18 regulation was developed with the intent of
19 implementing an improperly abandoned well
20 education and assistance program within highly
21 sensitive delineated regulated recharge areas.
22 Improperly abandoned wells can provide a direct
23 conduit for contamination of the groundwater. The
24 public input received through the development of

1 this proposal has emphasized the need for the
2 provision to help protect the groundwater used by
3 the community water supplies.
4 "Road Sign Posting: Signage is an
5 approach that's been used by local governments and
6 European countries as a form of education. Use of
7 signs along roadways or at public facilities
8 increases awareness of where recharge protection
9 areas or where watersheds are located. Signs also

10 serve to educate individuals and also provide a
11 mechanism for notification in cases of an
12 accidental contaminant release. Therefore,
13 signage may lessen or prevent impacts associated
14 with contaminant spills. This section of the
15 proposal before the Board is intended to demarcate
16 the entrance and exit of state and interstate
17 roads that cross recharge areas delineated by the
18 Board.

19 "Subpart B: Subpart B of the proposed
20 regulation is being proposed specifically for the
21 District, and it contains four specific provisions
22 as follows: registration procedure for potential
23 sources and potential routes of groundwater
24 contamination, information and registration

1 meeting, proposes management systems for existing
2 and new potential tertiary sources, and proposes a
3 training program for the same potential tertiary
4 sources.

5 "Subpart B also includes two
6 appendices. Appendix I illustrates the recharge
7 area delineated for the District. Appendix II

8 contains the proposed potential source and
9 potential route registration form. Additionally,
10 the map in Appendix I shows the delineated
11 recharge areas with respect to county boundaries,
12 township, range and section boundaries, and the
13 USGS digital line graph roads coverage. The DLG
14 roads coverage are at a scale of 1 to 100,000.

15 "Registration: This proposed provision
16 requires a registration process for all categories
17 of potential sources and routes of groundwater
18 contamination. The registration process will
19 assist the Illinois EPA with a proposed
20 informational and training program. In addition,
21 this will assist with determining compliance with
22 the adopted regulation in lieu of a complex permit
23 system that EPA does not believe is appropriate
24 for the types of businesses in the District.

1 "Information and Registration Meeting:
2 Illinois EPA is proposing that we hold an
3 informational and registration meeting within the
4 District to assist persons with meeting

5 registration and other regulatory requirements in
6 this proposal. The intent of the meeting is to
7 assist the small businesses with protecting the
8 groundwater within the delineated area in the
9 District.

10 "Management Systems: Management system
11 requirements are being proposed for potential
12 tertiary sources located within the District's
13 delineated recharge area to prevent contamination
14 from chemical substances. The Illinois EPA is
15 proposing performance-based requirements for
16 existing and new potential tertiary sources and
17 secondary containment provisions for new potential
18 tertiary sources. These provisions have been
19 developed specifically with small businesses in
20 mind. The requirements also make provisions for
21 acknowledging where management systems are being
22 used and also accepts that prefabricated
23 containment structures can be used for new
24 potential tertiary sources.

1 "Training Programs: Subpart B is
2 proposing a training program to be offered by the

3 Illinois EPA to provide technical assistance to
4 the small businesses in the District's delineated
5 recharge area. Further, this training program is
6 intended to provide for awareness regarding the
7 sensitivity of the recharge area, meeting the
8 requirements in the regulation, and for providing
9 assistance with pollution prevention and Clean
10 Break Program opportunities.

11 "This concludes my testimony, and I'll
12 be happy to address any questions."

13 HEARING OFFICER: Thank you, Mr. Cobb.

14 Preliminarily, I would like to note that
15 Mr. Cobb's testimony was filed under a motion to
16 file testimony in exhibits. The Board grants that
17 motion at this time.

18 Before getting into any questions for
19 Mr. Cobb, is there anything else the agency would
20 like to present today to support the proposal?

21 MS. LOGAN-WILKEY: Not at this time.

22 HEARING OFFICER: Thank you. At this time
23 then, if there are questions of Mr. Cobb, I would
24 like to first take those questions from the board

1 members and board staff that are present; and then
2 following those questions, if other interested
3 parties have questions of Mr. Cobb, we will take
4 those then.

5 Before we get to the questions, I would
6 like to announce Board Member Melas will not be
7 coming to the hearing this morning. There were
8 problems with his airplane in Chicago. I don't
9 believe it was his airplane. It was a commercial
10 airplane, just for the record.

11 Do members, then, of the Board and staff
12 have questions of the agency?

13 Board Member Flemal?

14 MR. FLEMAL: First off, I want to thank
15 Mr. Cobb for a very nice presentation, both
16 informative and well presented.

17 As I look back over all of this stuff
18 that you've submitted and, in fact, having been
19 around through much of the developmental history
20 that's associated with the Groundwater Protection
21 Act itself leading to here, I sit back and I ask
22 myself the question: Why Pleasant Valley? Why is
23 this an area for which a regulated recharge area
24 proposal is appropriate? And it seems to me the

1 answer that I would offer at the present time is
2 that because we're dealing here with a
3 particularly valuable resource in an area that is
4 particularly susceptible to contamination. If
5 that, in fact, was a statement I made, how close
6 to right would I be?

7 MR. COBB: I would say you'd be very, very
8 accurate. It's a sole source supply in that
9 particular area, too. I think the needs
10 assessment conducted by Clark Engineers pretty
11 well pointed out that that was also kind of a sole
12 source of a resource in that particular area.

13 MR. FLEMAL: By that, you mean that if for
14 some reason they lost their current well field
15 area due to contamination or some other -- where
16 else can they go?

17 MR. COBB: Their potential would be probably
18 limited on their own because of the compact
19 geographic nature of where they're located in the
20 valley, and they would probably ultimately have to
21 hook up to another supply.

22 MR. FLEMAL: There is no source within the
23 District now in spite of the fact it has a
24 substantial extension to the west of where these

1 wells are located, and that's because of the
2 geology?

3 MR. COBB: Primarily, it's driven by the
4 geology, the limitations. We have bluffs on
5 either side, and it's a very restricted kind of an
6 area in terms of the geology.

7 MR. FLEMAL: Again, in this very simple
8 overlook, one of the real reasons this is valuable
9 is because this is what they've got; there's no
10 second choices? And it's a good resource on top
11 of it, but it's the only one?

12 MR. COBB: That is correct.

13 MR. FLEMAL: Why is this particularly
14 susceptible? Again, in some kind of general
15 overview, what makes this a potential problem
16 area?

17 MR. COBB: In very general terms, these wells
18 are pretty shallow, less than 100 feet deep. The
19 overlying materials are comprised of sands and
20 gravels down to the well screen in which
21 groundwater is being drawn in. So any release in

22 the surface or the subsurface in this area would
23 make these -- makes this setting very susceptible
24 to any type of a contamination release.

46

1 In addition, you would fall within the
2 contributing recharge area of these wells. So the
3 migration and transport -- there really are no
4 natural geologic protection barriers present, and
5 then that's further exacerbated by the fact that
6 this is a contributing recharge area for the
7 wells, so there's percolation through the sands
8 and gravel with relatively little impediment and
9 flow right into the well screens.

10 MR. FLEMAL: If I were uninformed and poured
11 something out in my backyard -- I drained the
12 gasoline out of my snowblower and poured it on the
13 ground -- some places I might get away with that a
14 little bit easier than I would in terms of causing
15 problems if I were in the Pleasant Valley setback
16 area?

17 MR. COBB: Dealing with the type of scenario
18 you laid out, that may or may not have an impact;
19 but this is, overall, a more sensitive area. That

20 quantity of material may or may not be a problem.

21 MR. FLEMAL: I have a big snowblower.

22 MR. COBB: I think the thing to note with

23 acknowledgment, the training program, the

24 registration, the demarcation with the road signs,

1 it doesn't specifically go in and regulate that

2 type of activity; but, however, it would build a

3 general awareness within the community that this

4 is a sensitive area. So people probably would be

5 more careful under that particular scenario even

6 though there's no specific sort of requirements.

7 MR. FLEMAL: Part of the task that is

8 assigned to the Board in any rulemaking is to look

9 at the economic impact, consider the economic

10 impact of any rule that we potentially move

11 forward. You have provided as part of the

12 original petition a short statement regarding the

13 economics; but as we look at that, we wonder if

14 it's possible to go any further than that in terms

15 of determining what kinds of costs might be

16 associated with, say, first off, members of the

17 public who live within the regulated recharge
18 area, businesses, whatever. Is there going to be
19 a cost that will flow to them as a result of what
20 we might do today?

21 MR. COBB: I think that, you know, there will
22 be -- it's one of the things we really try to
23 consider in this proposal, was the fact many of
24 these were small businesses. So we tried to build

48

1 in -- if they're already doing these
2 performance-based measures, then we'll acknowledge
3 that. If they're not, then let's minimize the
4 cost impact to them by having a registration
5 meeting, and let's have a training program to
6 minimize that cost. There probably will be small
7 costs involved if they don't have such things.
8 However, we had to compare that with the cost to
9 contaminating groundwater and the subsequent costs
10 and economic impact to the community.

11 MR. FLEMAL: Do you know how many small
12 businesses, for example, will be affected by this
13 rule?

14 MR. COBB: Actually, one of the exhibits is

15 probably the best, if I may get up.

16 HEARING OFFICER: Certainly. Please
17 demonstrate the exhibits that you filed with your
18 testimony. Correct?

19 MR. COBB: Yes, although there's some
20 limitations just because of size in relation to
21 answering this question about the number of small
22 businesses that are out there. It really requires
23 kind of a poster-size map. But, yes, there is a
24 map as part of the exhibits and, particularly, I

49

1 think with the statement of reasons.

2 These are the types, different types of
3 potential sources that are out there. Some of
4 these fall outside of the proposed recharge area
5 boundary. But we have on the upwards of 20 to 30
6 small businesses that fall within that. The
7 numbers represent the locations of the small
8 businesses, and then there's a key over here on
9 the side that lists the name --

10 HEARING OFFICER: Mr. Cobb, for the record,
11 what you're pointing to, which exhibit does that

12 represent in what you filed in front of the
13 Board?

14 MR. COBB: Let me go back to my --

15 (Discussion off the record.)

16 HEARING OFFICER: Mr. Cobb, when we left off,
17 you were going to tell us which exhibit, what you
18 were pointing to represented in your filing.

19 MR. COBB: It's found in Exhibit 2 associated
20 with the exhibits that were submitted with the
21 testimony. And if you go to Exhibit 2, there is a
22 table that's similar to the larger poster-size
23 exhibit that we went through that lists some of
24 the types of businesses that are located within

50

1 the recharge area. And, subsequently, then those
2 are numbered on the map so you can kind of see
3 where they fall with respect to the wells.

4 HEARING OFFICER: So, in your previous
5 testimony when you were pointing to numbers on the
6 exhibit that represents Exhibit 2, those numbers
7 represent businesses that are affected by this
8 recharge area, correct?

9 MR. COBB: That's correct.

10 HEARING OFFICER: And those are significant
11 then because those are the businesses that would
12 have to comply with what you've presented here
13 today?

14 MR. COBB: That is correct.

15 MR. FLEMAL: We don't, though, have any
16 information that would say for this facility or
17 this type of facility the cost will be 5, 10, 100,
18 or whatever number of dollars?

19 MR. COBB: No. But one thing we could do is
20 probably go back and take one of these and run
21 through an example. I mean, I have it in my mind
22 that we could go back and pick out one of these,
23 and I think the costs will be minimal in my mind.
24 But we could run through one as an example.

1 MR. FLEMAL: I think that would, indeed, be
2 very useful, not only for the Board in its
3 deliberations but my expectation is this question
4 is going to be asked down the line as we go to
5 first and second notice as well; and if we're
6 armed with some kind of data, we can probably

7 better address that type of question than we might
8 otherwise.

9 That's all the questions I have to ask
10 specifically about the economics, but I'd gladly
11 yield to any other members of the Board just to
12 keep that topic together in the record if they
13 want to pursue economic questions.

14 MS. KEZELIS: Actually, I'd like to pursue
15 the exhibit for a moment which we talked about.

16 Mr. Cobb, can you discuss for me the
17 exhibit that we have facing us, the demonstrative
18 exhibit here, and what each of the colors
19 reflect? Start at the beginning with this map.

20 MR. COBB: Okay. Can I go back up?

21 MS. KEZELIS: Please, do. Thank you.

22 HEARING OFFICER: Mr. Cobb, since Exhibit 2
23 you've submitted also doesn't have any colors,
24 could we ask that this be admitted today as an

1 additional exhibit?

2 MR. COBB: Yes, ma'am.

3 HEARING OFFICER: Thank you.

4 MR. COBB: There are two illustrations on

5 this particular poster before the Board. The
6 first map that you see, if you look at the
7 statement of reasons and my testimony, there's
8 referral in there on development of what is called
9 appropriate recharge area mapping. This
10 appropriate recharge area mapping was really done
11 for the basis of setting up the regional planning
12 program and was done at that scale. But for this
13 purpose, it makes a nice illustration to show the
14 respective potential for aquifer recharge relative
15 to this proposed recharge area.

16 In terms of the color scale, the light
17 red has a higher potential for recharge than, say,
18 the light green which has a low potential for
19 recharge. In fact, the recharge area actually
20 goes under this area here of --

21 HEARING OFFICER: For the record, "the area
22 here" that you're --

23 MR. COBB: To the north of the well recharge
24 area.

1 HEARING OFFICER: Thank you.

2 MR. COBB: The other thing that this shows is
3 then sort of a regional perspective. Over on the
4 inset map, you see the recharge area with respect
5 to the regional size of this area to show that
6 it's a pretty compact area.

7 MS. KEZELIS: The testimony you provided a
8 few moments ago suggested that the 1992 recharge
9 area in the needs assessment was somewhat
10 different in boundary than the area being proposed
11 by the agency today. Can you identify for me the
12 differences and the basis for those changes?

13 MR. COBB: Yes. I'll need to go back to my
14 chair.

15 In my testimony, the exhibits that were
16 filed, you'll find Exhibit 1 is a copy of the
17 groundwater protection needs assessment conducted
18 by Clark Engineers for the Water District; and
19 you'll find that on page 28 is a copy of the
20 delineated area.

21 In addition then, if you would -- prior
22 to the motion for substitution in the agency's
23 proposal, we included as Appendix A, Section 617,
24 Subpart B, Appendix A, the boundary. You can

1 visually then compare the newly delineated area
2 with the area delineated by Clark Engineers. And
3 visually, in effect, electronically, when you
4 overlay these, there's not much of a difference.

5 The second part of your question came to
6 why is it different. And it's primarily a result
7 of the regional scale model that was done for
8 further evaluation and the addition of new wells
9 and pumping centers that had gone in after the
10 original modeling was done that's slightly changed
11 the delineation. But the significance between the
12 areas is not all that different. You can kind of
13 see visually that the areas look pretty similar.

14 MS. KEZELIS: Thank you. That does help,
15 Mr. Cobb.

16 Looking back at the demonstrative
17 exhibit before us, is the area the agency proposes
18 to be covered as a regulated recharge area, is it
19 the orange?

20 MR. COBB: Yes.

21 MS. KEZELIS: All right. And looking at the
22 1992 Clark Engineers' map in Exhibit 1 of the
23 original submissions by the agency, Clark
24 Engineers would have encompassed a slightly larger

1 area? Or smaller? Or different?

2 MR. COBB: It's -- I -- the geometry of it is
3 different. On the demonstrative exhibit --

4 HEARING OFFICER: Excuse me, Mr. Cobb. Just
5 for the record, could we get this admitted now?
6 We'll give it an exhibit number, and the
7 demonstrative exhibit will have a label. If you
8 could move to admit this, please.

9 MR. COBB: I would move to admit this
10 illustration as an exhibit.

11 HEARING OFFICER: The motion is granted. I
12 will label the demonstrative exhibit as Exhibit 2;
13 and for clarity, the reference Member Kezelis made
14 to the orange portion just a few moments ago
15 refers to the top map of Exhibit 2.

16 Please, continue.

17 MR. COBB: The geometry is just slightly
18 different. If anything, I would say that the new
19 area might be slightly larger than -- and only
20 slightly -- than the prior delineation done by
21 Clark Engineers. It's a little more radial in
22 nature. It encompasses the minimum and maximum
23 setback zones that are the circular areas

24 surrounding the wells.

56

1 One of the things that we could do is
2 calculate the area for both and provide that to
3 the Board if that would be beneficial.

4 MS. KEZELIS: I would like that, yes, because
5 I do want -- given it's the Board's obligation to
6 determine the actual boundaries, I want to be very
7 comfortable with respect to the boundaries that
8 we're talking about and the basis for them.

9 Do you know; what is the rough square
10 mile area of the orange in the upper portion of
11 Exhibit 2?

12 MR. COBB: Once again, I would want to go
13 back and verify this more precisely, but just a
14 thumbnail -- and I could be off on this; but I
15 calculated about 182 acres, total area. The
16 radial area out to 1,000 feet, that is 72 acres;
17 and we have three wells, and I know that the
18 recharge area outside of those thousand-foot
19 radial areas is approximately 22 acres. So it's a
20 summation of those acres. And we will verify that
21 more precisely in comments.

22 MS. KEZELIS: Thank you. With respect to the
23 businesses identified in Exhibit 2 of the original
24 attachments submitted together with the agency's

57

1 submission in April, is that the universe of
2 businesses as known by the agency within the
3 proposed regulated recharge area?

4 MR. COBB: In fact, you kind of have to walk
5 through the numbers. You'll see that if you look
6 at the map portion of the exhibit, you'll notice
7 that some of the numbers fall outside of the
8 delineated area. So it's something less than 46.
9 I haven't subtracted the total numbers, but
10 visually you can see the numbers that fall in. I
11 don't have them totaled for you there, but it
12 looks like maybe a dozen or more fall outside; and
13 that would represent about 34, approximately,
14 businesses that fall within the boundary.

15 MS. KEZELIS: And those that fall outside,
16 even though they may be listed on this exhibit,
17 they would have no registration complications?

18 MR. COBB: That is correct.

19 MS. KEZELIS: And the same for the second
20 picture and the legend for land use zoning?

21 MR. COBB: That is correct.

22 HEARING OFFICER: Excuse me. In Exhibit 2?

23 MS. KEZELIS: In Exhibit 2.

24 HEARING OFFICER: Thank you.

58

1 MR. COBB: That is correct.

2 MS. KEZELIS: How many residences are in that
3 area, if any?

4 MR. COBB: I might have to use Exhibit 2
5 to -- I don't know the number of residences, but
6 what we do have is an overlay of the land use
7 zoning so that you know the area that may have
8 potential residences in it. In the key here,
9 residential is the light green. Business is light
10 red. Commercial is sort of the light yellow, and
11 industrial is sort of the grayish-tan on the lower
12 map of Exhibit Number 2.

13 I don't have the exact number of
14 residences, but you can see that a portion of the
15 recharge area is zoned locally residential.

16 MS. KEZELIS: Thank you, Mr. Cobb.

17 MR. FLEMAL: In a similar vein, in terms of
18 the similarity being exactly where the boundary of
19 the proposed regulated recharge area is, it's my
20 understanding that at present you offered to us as
21 part of the proposal, specifically Appendix A, a
22 map that the intent of which is to determine where
23 the boundary is. Am I correct, first, on that
24 premise?

59

1 MR. COBB: Yes, you are, Dr. Flemal.

2 MR. FLEMAL: It occurs to me as we look at
3 this that there is at least a potential difficulty
4 for a landowner located near the boundary of the
5 proposed regulated recharge area to determine
6 whether they are in or outside the regulated
7 recharge area. It would seem to me the difficulty
8 also lies with you in this sense that as you're
9 following up and whatnot, you are going to have to
10 make decisions as to who is in or out yourself.

11 Is there something we could do that
12 would provide greater specificity, particularly
13 along the border areas, to determine whether or

14 not particular properties lie within or outside
15 the regulated recharge area?
16 MR. COBB: Yes. I think there is. I think
17 we could -- as you can see kind of on the eastern
18 side in Appendix A to the proposal -- north is to
19 the top of the page, south is to the bottom. West
20 is to the left, and east is to the right as I'm
21 facing you. On the eastern side, we see a couple
22 of roads; and I think this may be where your
23 questions are emanating from. We could go out and
24 make some determinations and further label those

60

1 roads as sort of inside or outside of the
2 boundary. We could do some other things then like
3 that to more specifically take this scientifically
4 determined boundary and then relate it to some
5 local geographic features that may have more
6 significance.

7 MR. FLEMAL: It seems to me that might be a
8 very useful exercise. I don't know if we can come
9 up with the answer here today as to what the best
10 information would be, but if you could think about
11 that one further. It did occur to us, the Board,

12 one of the markers that might be useful is house
13 or lot numbers or some such division so we would
14 know that up to such a house number on Farmington
15 Road, for example, you were in or outside the
16 area. I offer that simply as a thought.

17 MR. COBB: Dr. Flemal, one other thing that
18 we could potentially make utilization of here, if
19 you were calling groundwater standards discussion,
20 we talked about tax parcels because there is a tax
21 parcel system that's out there. That may help
22 further tie down and be integrated with the
23 scientific boundary. So we'll investigate that.

24 MR. FLEMAL: I appreciate that. Thank you.

61

1 I would like to go to a couple of
2 specific provisions within the proposal, and I
3 know we have from the Board a variety of questions
4 regarding specific proposals; but let me open up
5 that part first by looking at Section 617.215
6 which is the information and registration
7 meeting.

8 As a part of that section, specifically

9 at Subsection (a), you propose that you, in
10 cooperation with Pleasant Valley, notify owners
11 and operators of known potential sources and then
12 specify two ways in which this is to be done.
13 Placing a notice containing the information in the
14 Environmental Register and, second, attempting to
15 contact the impacted owners or operators.

16 I would note regarding the first of
17 those two, which is the Subsection (a)(1), that we
18 have some experience with the Environmental
19 Register being a very useful tool for, in effect,
20 the plugged-in people, the people who are deeply
21 involved and well understand the environmental
22 regulatory process. But for the owner and
23 operator of a gas station or some facility that
24 might be involved here, it's not a very effective

1 way to reach them. So we were wondering whether
2 there are other mechanisms that could be put in
3 here, not necessarily as prescriptions that they
4 shall be the method but at least be considered as
5 options. I don't have any exhaustive list of
6 possibilities there. We have talked about

7 possibilities such as an Internet site, mailings
8 along with bills -- I don't know. Do districts do
9 their own billing, for example?

10 MR. COBB: Yes, they do.

11 MR. FLEMAL: Would it be possible to consider
12 that? That seems to me to, at least on its face,
13 have the prospect of reaching everybody in ways
14 that Internet and environmental registers might
15 not.

16 MR. COBB: We will -- right now, I don't have
17 an exhaustive kind of list of alternatives, but we
18 will certainly go back and evaluate the things you
19 indicated as well as if we can think of any other
20 effective means of doing that, proposing to do
21 that.

22 MS. KEZELIS: I have a question of
23 clarification with respect to Subpart A and
24 Subpart B of the specifics of the proposal before

1 us. Can you rephrase for me what the agency's
2 pleasure would be with respect to the distinctions
3 between the two?

4 MR. COBB: Subpart A, once again, we felt
5 that whenever we're before the Board in another
6 proceeding of this manner, we thought there ought
7 to be just sort of some general concepts that
8 would apply in any regulated recharge area and
9 that that ought to be kind of up front but that
10 those wouldn't be applicable until a specific
11 rulemaking would occur and then that Subpart B
12 then would be customized and further tailored for
13 any other specific requirements or needs within a
14 particular recharge area.

15 We do have other, certainly, potential
16 areas out there that are made up of, you know,
17 other types of land uses and potential sources and
18 may have different needs than Pleasant Valley.
19 However, we felt that Subpart A was pretty
20 universal. We've thought about that a lot and
21 thought that ought to be kind of a real easy
22 front-end thing that ought to apply. But, once
23 again, it would not apply -- it's not a rule of
24 statewide applicability. It would still be site

2 of time.

3 MS. KEZELIS: Mr. Cobb, then your expectation
4 would be, assuming another area was considered at
5 some point in the future for designation as a
6 regulated recharge area presented by the agency,
7 that would then become a Subpart C?

8 MR. COBB: Yes.

9 MS. KEZELIS: All right. Thank you for that
10 clarification.

11 HEARING OFFICER: Members of the Board,
12 staff, turning to you all, any questions regarding
13 today's proposal and Mr. Cobb's testimony?

14 MR. RAO: I had a follow-up question to one
15 of Dr. Flemal's questions about the facility that
16 will be affected by this rule.

17 In Exhibit 2, you have a list of 46
18 facilities. Is that a comprehensive list of all
19 affected facilities?

20 MR. COBB: We actually went out -- I would
21 view those as comprehensive, yes, because we went
22 out and actually -- we've been out there several
23 times, obviously, but those were actually field
24 located and wasn't done in the office or any kind

1 of paper search. It was actually going out there

2 and walking through the area and --

3 MR. RAO: Do you have any additional

4 information about those facilities in terms of

5 which ones are potential primary sources, which

6 ones are secondary sources?

7 MR. COBB: Yes. We would have that. We

8 could provide additional information.

9 MR. RAO: Also, when you did the field

10 survey, did you also try to get any information as

11 to what these facilities will have to do to comply

12 with these rules, especially the tertiary ones?

13 MR. COBB: Some of those questions might have

14 to be answered with an on-site inspection versus a

15 survey as to whether they actually have any

16 chemical substances present. Some may not, but I

17 would say this is kind of the universe that we

18 look at as potentially following under this

19 regulation.

20 MR. RAO: Okay. Any information you have

21 that would also tie in with the economic impact

22 information would be helpful.

23 MR. COBB: One of the things that we thought

24 during the information and registration process

1 and that process of going out and doing that, we
2 thought that would be useful.

3 Another thing that I should probably
4 mention -- and I can't recall if it was described
5 in the statement of reasons. It certainly wasn't
6 in my testimony. But one of the things we did
7 with the Central Regional Planning Committee and
8 with the Pleasant Valley Water District is that we
9 had the opportunity to have a graduate
10 environmental engineering student that was doing a
11 pollution prevention internship, and one of the
12 projects that he worked on was to go around to
13 each of these sites. So we also have -- may have
14 some of that information that may be useful.

15 MR. RAO: So this person will assist these
16 facilities in trying to comply with their
17 requirements, or is it just --

18 MR. COBB: This is past tense. We've already
19 done this.

20 MR. RAO: Oh, you've already done this?

21 MR. COBB: Yeah. This is an internship
22 program that I think we probably did two or three
23 years ago, maybe longer. But that was one of the

24 goals. We went with the supervisor of the Water

67

1 District; and they went kind of business to
2 business, door to door, and had some pollution
3 prevention materials and also offered assistance
4 in terms of doing pollution prevention audits and
5 any other kind of pollution prevention sort of
6 best management practices that may have been
7 available. So we could go back and certainly see
8 what we have on that.

9 MR. RAO: We have a bunch of questions on
10 different provisions of the rule --

11 MR. STERNSTEIN: I have one other follow-up
12 question. When that pollution prevention intern
13 was going door to door, did he or she let these
14 businesses know that they were under or would
15 potentially be under a certain type of specialized
16 regulation, in other words, a possible or future
17 potential regulated recharge area?

18 MR. COBB: That was something that was kind
19 of -- number one, they had a public meeting or
20 hearing that happened for that as part of this

21 rulemaking. That occurred before that. That was
22 published in the newspaper; and the locals there
23 tried to get out and notify as many businesses,
24 kind of knocked door to door. All that happened

68

1 before this intern was ever out there.

2 So I think the answer would be I don't
3 recall if the intern himself brought it up, but it
4 would have been of general knowledge in the
5 district.

6 MR. RAO: So, when we go through these
7 questions section by section in the rules, we'll
8 keep most of the concerns regarding each section
9 together.

10 HEARING OFFICER: Before we get there, could
11 we go off the record for five minutes, take a
12 little break?

13 (Recess in proceedings from 12:40 to
14 12:45.)

15 HEARING OFFICER: Okay. We are back on the
16 record. It's about 12:46.

17 Before we get back to Mr. Rao's
18 questions, Mr. Cobb, are there any further

19 exhibits you would like to move to have admitted
20 today?

21 MR. COBB: Yes. I'd like to make a motion to
22 also have the second poster that was developed by
23 the agency admitted as an exhibit. It essentially
24 shows the proposed recharge area map on the

69

1 bottom; and on top, it shows the delineated
2 recharge area with respect to the groundwater
3 modeling that was used.

4 HEARING OFFICER: We will grant the motion to
5 admit the poster that Mr. Cobb has been referring
6 to. We will mark that as Exhibit 3.

7 Is there anything else you wanted to
8 have admitted today?

9 MR. COBB: No, ma'am.

10 HEARING OFFICER: If anything comes up,
11 please let us know. Otherwise, we'll send the
12 questioning back over to Mr. Rao.

13 MR. RAO: Miss Conley and me --

14 MS. CONLEY: Actually, I'll go with the first
15 question starting with the definition section of

16 Subpart A. Under "new potential secondary
17 source," you have --
18 HEARING OFFICER: Could you speak up please,
19 Miss Conley?
20 MS. CONLEY: Sorry. Under "new potential
21 secondary source," you've got your three
22 subsections; and then there's an "except for
23 agrichemical facilities." I just want to clarify,
24 you do mean to exempt agrichemical facilities from

1 this definition? Was that your intention with
2 that definition?
3 MR. COBB: My intention was to simply include
4 the statutory definition as it currently stands in
5 the Illinois Compiled Statutes which includes the
6 except-for clause.
7 MS. CONLEY: Would you have any -- would
8 there be a problem with us maybe moving that
9 language a little bit so it reads a little more
10 smoothly?
11 MS. LOGAN-WILKEY: That's fine.
12 MR. RAO: I kind of had a clarification
13 question on definition of new potential tertiaries

14 of groundwater contamination. Under
15 Subsection (3), you have reconstruction means.
16 Should reconstruction occur after the effective
17 date on the regulations? Is that an oversight?

18 MR. COBB: That's probably a good --

19 MR. RAO: Were there a couple other places
20 where you have -- I think in other definitions
21 where the effective-date phrase is missing; so, if
22 you intend to have that in, we can add that in.

23 MR. COBB: I think that's a good suggestion.

24 MR. RAO: Okay.

1 My next question is in Section

2 617.125 --

3 HEARING OFFICER: Excuse me, Mr. Rao. Before
4 we leave the definition section, I believe Board
5 Member Kezelis has a question.

6 MS. KEZELIS: Another question with respect
7 to the definition section, and that is under "new
8 potential primary source." Are those dates, the
9 January 1, 1988, Sub (i) and Sub -- actually Sub
10 (1) and Sub (2), are those intended to be 1988?

11 MS. LOGAN-WILKEY: Yes. That's a statutory
12 definition.

13 MS. KEZELIS: I wanted to make sure you
14 intended to maintain that for purposes of this as
15 well. Thank you.

16 Mr. Rao, I relinquish to you.

17 MR. RAO: Going back to 617.125, Subsection
18 (k), the provision says, "Operation of the
19 facility may only commence after issuance of the
20 final statement." And in Subsection (a), it
21 requires owners or operators of new major
22 potential sources to file a recharge suitability
23 assessment prior to construction. So could you
24 clarify whether a facility can start constructing

1 once they file the assessment and wait for you to
2 issue your final statement before they commence
3 operation, or should they just wait until you
4 issue your final statement to construct and
5 operate?

6 MR. COBB: Our intent is to wait for the
7 final statement.

8 MR. RAO: So construction cannot begin until

9 you issue a final statement?

10 MR. COBB: Unless they wanted to proceed at
11 their own risk under that not knowing what our
12 final statement was going to be.

13 MR. RAO: So they're not prohibited by the
14 rule to start construction if they take their own
15 chances?

16 MR. COBB: Correct.

17 MR. RAO: I had another question on
18 Subsection (i) which is -- I'm sorry. Subsection
19 (j), "The agency shall issue a final statement no
20 later than 30 days after the receipt of the
21 response" from the owner or operator, I assume.
22 Will the agency always issue a final statement
23 whether they get a response from the owner or
24 operator?

1 MS. TIPSORD: If I may, perhaps this might
2 help. In reading all of (h), (i), (j), it seems
3 that the agency has set up a system here where
4 within 90 days after filing of this assessment or
5 120 days, the agency's going to do one of three

6 things under (h). Then you say, "The owner has 30
7 days to respond." Then you say, "We'll issue our
8 final statement 30 days after the response." But
9 if the owner chooses not to file a response or,
10 for example, if you say the assessment is
11 adequate, is that your final statement or -- I
12 mean, it's a little confusing in reading all of
13 that, and maybe you could help us understand a
14 little more clearly how those subsections should
15 all be read together.

16 MR. COBB: I think you did kind of a good
17 job, actually. I mean, if it meets our
18 expectations, sort of a positive written
19 response -- I think in any case we would always
20 be -- probably behoove us to issue a written
21 response whether positive or negative.

22 MS. TIPSORD: If the owner/operator chooses
23 not to respond, you would give them the 30 days;
24 and then within 30 days after that, you would

1 issue a final statement?

2 MR. COBB: Some cases, we may not have all
3 the information; but we may just say that this

4 particular --

5 MS. TIPSORD: Is inadequate?

6 MR. COBB: Is inadequate due to a lack of
7 information that's called for by the proposal.

8 MS. JACKSON: I have a quick follow-up then,
9 too. If the final statement is that the proposed
10 facility is inadequate, can the operation of the
11 facility still commence under Sub (k)?

12 MR. COBB: Yes. The answer is yes. We
13 didn't make this a prohibition. It's really there
14 to involve the public on what some of the risks
15 might be, as well as engage the party in the
16 thinking process. However, what we have heard
17 primarily from some of the representatives on the
18 groundwater advisory council of the planning and
19 zoning issues is they will certainly utilize this
20 type of information in making their decision, in
21 their local decisions. In that case, they may
22 decide to prohibit.

23 The title -- it's an assessment process
24 that is intended to engage the party in thinking

1 through safe designs and being aware of the
2 sensitive area that they're in and also involve
3 the public in that dialogue and discussion
4 simultaneous. It's not intended to be a
5 prohibition. We prohibited the things that we
6 felt we could prohibit without question, sort of
7 almost no-brainers in terms of things that
8 shouldn't be in a recharge area.

9 MS. JACKSON: So do you envision, then, any
10 type of an appeal procedure from a final statement
11 in this regard?

12 MR. COBB: In (l), Subsection (l), there may
13 be -- I think that's why it would always behoove
14 us to make a statement and base that on either
15 what we have or don't have because we may get an
16 appeal of the agency's final statement.

17 MS. JACKSON: I did read that. I guess my
18 question was more geared toward whether you
19 envision this to proceed before the Board like a
20 permit appeal would. Or is this just an appeal
21 directly to the agency to reconsider?

22 MR. COBB: It's to the Board.

23 MS. TIPSORD: Would you envision like a
24 permit appeal where we would require a filing fee

1 and that type of thing?

2 MR. COBB: Interesting question.

3 MS. TIPSORD: As a follow-up to that as well,

4 I notice that Subsection (l) says "on or before

5 the 30th day of the issuance." Traditionally, the

6 Board allows 35 days to appeal an agency

7 decision. I believe the EPA also allows 35 days.

8 MR. COBB: Let's go back and look at that

9 question before answering that. I think what

10 you're getting at is kind of that fee to cover

11 some of the administrative costs of the Board.

12 And also the day is slightly different than --

13 under similar but not exact conditions.

14 MS. TIPSORD: I do point you to the Board's

15 new procedural rules that are a little more broad

16 in Part 105, so you may want to take a look at

17 those and see if there's something more

18 appropriate in the new procedural rules.

19 MR. COBB: We will evaluate that.

20 MS. KEZELIS: Mr. Cobb, along those same

21 lines, what is the agency's intention with respect

22 to the owner or operator of a new major potential

23 source who goes ahead and commences construction

24 without having first filed suitability assessment

1 as proposed in 125, Sub (a)? What would the
2 consequences be?

3 MR. COBB: I think our intent there is we
4 would go ahead and make a statement that we had
5 inadequate information as required by this
6 suitability assessment. Make that information
7 available to the public as the process is laid out
8 here.

9 MS. KEZELIS: Would the agency contemplate
10 initiating any kind of an action against --

11 MR. COBB: Since it is a Board regulation, we
12 could enforce this, or I guess any member of the
13 public could enforce that provision.

14 MS. KEZELIS: Okay. Thank you.

15 MS. CONLEY: After those hard-hitting
16 questions, in Section 125, Subsection (a), I just
17 have a question about your cross-reference to 35
18 Code 501, Section 403(e). Is that -- the rules
19 that we have existing right now for 403 do not go
20 to (e). We've only got a (c), I think, so if you
21 could change that cross-reference.

22 MR. COBB: I think we blew it on the number,

23 I believe, as Section 501.404. We can double
24 check that.

78

1 MS. CONLEY: Whenever is fine. I can look at
2 that one, too. That was it for me.

3 MR. RAO: The next is Section 617.135,
4 "Abandoned and Improperly Plugged Well Assistance
5 Program." Taking a look at these provisions that
6 you propose here, how do you work with these
7 school districts or school systems in developing
8 these educational programs? Could you explain a
9 little bit more, give us more background how the
10 agency works with school districts?

11 MR. COBB: Well, here, too, we were really
12 envisioning the Department of Public Health and
13 Department of Natural Resources, and that's kind
14 of -- although this is a specialized case, they
15 have a lot of experience in working with us on
16 implementing groundwater educational programs. In
17 fact, the Groundwater Protection Act itself called
18 for the formation of a groundwater education
19 subcommittee as part of the Interagency
20 Coordinating Committee on Groundwater. Since

21 about 1988, we have worked through that
22 subcommittee of the interagency committee to
23 implement a statewide groundwater educational
24 program and also specific educational programs for

79

1 middle schools, for example. And that was
2 implemented in middle school areas within these
3 priority regional planning areas.

4 So, in fact, the Pleasant Valley School
5 District, I think, we probably already have them
6 engaged in a similar process. In fact, in all of
7 the local -- Mr. Compton referred to the well head
8 protection effort in Pekin, for example; and all
9 of the others that we've worked with regional
10 planning committees on a local level, we always
11 involve an educator and try to integrate the
12 school children into the process because we find
13 that's a very effective way of bringing the
14 information back home to the parents who
15 oftentimes may be running these businesses or may
16 just be citizens in the area.

17 So, kind of a long explanation, but the

18 long and short of it is that DNR, working with
19 Public Health and ourselves, has a lot of
20 experience in doing this, although this is kind of
21 a focused special effort here for this sensitive
22 area.

23 MR. FLEMAL: Would there be any merits for
24 specifying the groundwater coordinating committee

80

1 as opposed to these two departments in here? I'm
2 thinking of one practical thing to begin with.
3 It's been known in state government, when one
4 department says another department shall do
5 something, that sometimes back skids up; and I
6 don't know that there's any potential of that
7 concern here. But if, in fact, it is the
8 groundwater coordinating committee that would have
9 these responsibilities, we might --

10 MR. COBB: This is something that each of
11 those -- we had that same concern, too; and I
12 think that's why we ran this by these parties
13 several times, to kind of get their input. Is
14 there a problem? Is this going to shake anybody
15 up with listing these agencies? And we really

16 didn't get any negative feedback. I think the
17 Public Health and DNR thought this was kind of a
18 nice thing to include them in this.

19 MR. FLEMAL: Even with the word "shall" stuck
20 in there, "they shall do this" and --

21 MR. COBB: Yeah. They saw the words.

22 HEARING OFFICER: It is your intention,
23 Mr. Cobb -- in the first sentence of 617.135, you
24 use the word "may." So that seems to suggest that

81

1 these departments have the option of developing an
2 assistance program; and if they do, they then must
3 follow a through deed? That is exactly as you
4 intended?

5 MR. COBB: Madam Hearing Officer, that is
6 correct. The lead-in actually says "may"; but
7 then, if they're engaged in this process, then
8 they shall kind of follow the prescribed
9 procedures. So that's probably the word that
10 relieves some of that potential tension with
11 respect to your question, Dr. Flemal.

12 HEARING OFFICER: Is there funding for this

13 to your knowledge, Mr. Cobb, or will this require
14 monies be requested by these departments to
15 implement these programs? Or could you find out
16 the answer to that if you don't know?

17 MR. COBB: Well, I think the answer is that
18 there's already funding to do this kind of on a
19 general statewide basis, and many of the materials
20 are out there already. But this is sort of a
21 site-specific application of that, so I don't
22 envision it's going to require much of anything.
23 I think it's just a matter of doing it.

24 It's part of what's somewhat required on

1 a statewide basis, but this focuses in on this
2 particularly sensitive area and brings focus to
3 it. It's not necessarily a new mandate, per se.
4 I mean, they could probably get to this area under
5 a statewide program and not realize it was in the
6 sensitive area; but in this case, it points them
7 to this.

8 HEARING OFFICER: Thank you. In (d), you
9 refer to a school system. Did you intend school
10 district, or is school system somehow different

11 from school district?

12 MR. COBB: Tell you what. Let me go back and
13 look at that. I think that -- I'll have to go
14 back and look at my notes on that. I think that
15 may have been a comment that we got from DNR to
16 suggest school system in that the district is
17 broader; whereas, the system may be more focused
18 in this particular area. But let me confirm that,
19 and we can follow up.

20 HEARING OFFICER: Thank you.

21 MR. RAO: I had a couple more questions. One
22 on the Applicability section under Subpart (b),
23 617.205. You have listed a number of different
24 types of facilities that will be covered by this

1 Subpart (b), and I just wanted to know whether we
2 should include potential primary sources and
3 potential secondary sources under the
4 Applicability section since those sources are
5 required to be -- to go through the registration
6 process. Just to make it consistent, don't want
7 any confusion.

8 MR. COBB: Yeah. Let us take a look at
9 that. That could be a potentially good
10 suggestion.

11 MR. RAO: And in Section 617.225, "Training
12 Program for Potential Tertiary Sources," one of
13 the things you have listed under Subsection (a),
14 (a)(1)(E), Clean Break Program opportunities.
15 Could you give a little bit more background about
16 what's going on with a Clean Break Program at
17 present now? Because we had heard some things
18 about how the agency had either backed off from
19 taking the lead role in the Clean Break Program or
20 some changes occurred in '97-'98. Is this program
21 still in place and running? Could you tell us
22 more about it?

23 MR. COBB: Dr. Rao, I think that's a good
24 question. We'll follow up with that, Dr. Rao, and

1 go back and evaluate what you said; and it may be
2 that -- that may have to be a little bit more
3 generic in nature possibly.

4 MR. RAO: Okay.

5 MS. CONLEY: I have a question first with

6 Section 225, and then I'd like to go back a

7 section.

8 Your training program, is this going to
9 be something that you're requiring of owners or
10 operators in this area, or is this just going to
11 be something the agency's offering as part of your
12 outreach educational approach that you seem to be
13 taking in here? Or do you actually want people to
14 come in and do this certification?

15 MR. COBB: We really want people to come in
16 and do the certification. The front-end
17 opportunity, the informational registration
18 process is there; and we want to encourage people
19 to do that. But we really want --

20 MS. CONLEY: So this would be under the
21 guidelines of strongly encouraged, not required?

22 MR. COBB: We really envisioned this to be
23 part of the chemical management plan, up a few
24 sections.

1 MS. CONLEY: Actually takes me back then to
2 my other questions. But then you're not

3 envisioning this as a requirement, or is this --
4 with those plans, are you going to require people
5 to take this training? And if you are requiring
6 the training, is there going to be a fee for this;
7 or is this something the agency's sponsoring so
8 that it's going to be --

9 MR. COBB: We're envisioning sponsoring this
10 similar to the ERMS-type training. And, yes, I
11 mean, we wanted this as a requirement for these
12 types of potential sources; and we envisioned that
13 to be a key component of the management plan.

14 MS. CONLEY: Which takes me then back to the
15 management plan, Section 220. What sort of agency
16 oversight is there going to be for these plans?
17 Are you going to be reviewing them, maintaining
18 copies of these? Are these requirements you want
19 to include with the plans?

20 MR. COBB: That was our intent, that we would
21 review these plans and maintain copies of these.

22 MS. TIPSORD: I have a follow-up on that just
23 to be clear. The agency will maintain copies so
24 they'll be available for public inspection?

1 MR. COBB: It could be an on-site type of
2 evaluation, too, where that information is
3 available on site for a public inspection or
4 agency inspection.

5 MS. TIPSORD: I'm sorry.

6 MR. STERNSTEIN: So it will be either/or, or
7 you'll decide whether the reports will be on site
8 or with the agency?

9 MR. COBB: Reflecting back on this and the
10 types of potential sources that we're dealing with
11 and getting to the cost question, we want to make
12 this as simple and as low-cost as possible. So,
13 really, probably the latter, where they could keep
14 these on site -- it's not an either/or -- and
15 would be available for inspection. And it's our
16 intent then to certainly inspect those and that
17 those would be maintained on site such that they
18 would be available for any type of other public
19 inspection.

20 MS. TIPSORD: Would it be possible for the
21 agency to prepare some additional language that
22 would specify to the regulated community that you
23 will expect them to maintain these on site and set
24 out those requirements so that they know in this

1 rule what you're going to expect of them?

2 MR. COBB: Sure.

3 MS. CONLEY: If I could add to that, if you

4 were intending them to be open for public

5 inspection on site -- is that the intention here?

6 MR. COBB: Yes. We will consider those and

7 come up with some proposed language, make that

8 clear because that really was the intent. It's

9 actually something that came up during the

10 development of this.

11 MS. JACKSON: Before we leave 617.220, I just

12 want to clarify. If you look at 617.220(a)(4),

13 that talks about the suitable training as provided

14 by the agency. It references 617.245. Should

15 that be 617.225?

16 MR. COBB: Yes, it is. One other thing where

17 I think we blew a number like that is in Section

18 617.210(b). Should be a cross-reference to

19 617.215, not 115, just while we're there. The

20 numbering scheme for this changed several times,

21 and we saw some remnants of that.

22 HEARING OFFICER: Mr. Cobb, under Section

23 617.225 -- I apologize for not bringing this

24 question up earlier when Mr. Rao was asking you

1 about the Clean Break Program. But in Section
2 (a)(2), Subsection (a)(2), you talk about the
3 Chemical Substances Management System Training
4 Program will be offered at least once. I was
5 wondering if you could provide greater
6 clarification. At least once a year? I wasn't
7 understanding what you meant by "just once."

8 MR. COBB: That's what we were envisioning,
9 kind of -- that would be a one-time event.
10 However, if we had new sources that came in and
11 they weren't prohibited, then we would need to
12 offer additional opportunities.

13 HEARING OFFICER: Okay. Thank you.
14 Mr. Cobb, in the definition section under the
15 definition of "chemical substance," you have a
16 citation there at the very end to 415 ILCS 45/3.
17 Was your intention 430 ILCS?

18 MR. COBB: Counsel has indicated that should
19 be 430 ILCS 45/3.

20 HEARING OFFICER: Thank you. Additionally,
21 in the definition section, I notice right off you
22 define the agency. Would you object to us adding

23 a definition of the Pollution Control Board there

24 also since the rule does contain numerous

89

1 references to "the Board"?

2 MR. COBB: No, Madam Hearing Officer.

3 HEARING OFFICER: Wonderful. Thank you.

4 MS. KEZELIS: Mr. Cobb, perhaps you can help

5 me. I can't locate it at the moment. I think I

6 recall a section in the proposed rule that

7 addresses deicing. Where is that?

8 MR. COBB: I believe that would be in the

9 definitions section. That's one place, because

10 it's part of the statutory definition of a

11 potential secondary source. Further, it's also in

12 the existing Board regulations, 35 Illinois

13 Administrative Code Part 615 and 616 also referred

14 to as technical standards or technology control

15 regulations. That is an activity that is

16 currently regulated under those -- under the

17 Board's existing regulations, as well as, if it is

18 a new potential secondary source, it is prohibited

19 by the minimum setback zone established under the

20 Illinois Groundwater Protection Act.

21 MS. KEZELIS: In addition, at Section 130,
22 technology control regulations, Subsection (d),
23 storage and related handling of road oils and
24 deicing agents at a central location, based on the

90

1 Exhibit 2 listing of potential sources, it doesn't
2 appear that there is any storage at this time
3 within the proposed regulated recharge area. Is
4 that correct?

5 MR. COBB: That is correct.

6 MS. KEZELIS: Related handling has a
7 potential meaning that extends beyond simple
8 storage. What is the agency's intention with
9 respect to related handling? Does that mean, for
10 example, that deicing agents are not to be used?

11 MR. COBB: No. No.

12 MS. KEZELIS: Okay.

13 MR. COBB: We actually have a court case on
14 deicing agents with respect to setback
15 prohibitions. I think it was People of the State
16 of Illinois v. Stonehedge, Inc. And in that,
17 we're really talking about a unit or a storage.

18 We're not talking about transportation down the
19 road or application of it on a roadway.

20 MS. KEZELIS: Or use.

21 MR. COBB: We're talking about where it's
22 greater than -- you have to really go back to the
23 definition that further clarifies. If you go back
24 to potential secondary source, "stores or

1 accumulates at any time more than 50,000 pounds of
2 a deicing agent." So, really, that is the driving
3 definition. That's a large pile of deicing agent.

4 MR. FLEMAL: My recollection is -- perhaps
5 you share it -- is we went to some depth to define
6 what central location is.

7 MR. COBB: Yes, we did.

8 MR. FLEMAL: And this is referring to storage
9 at a central location and handling at a central
10 location?

11 MR. COBB: That is correct.

12 MR. FLEMAL: Which, on its face, would say if
13 you're driving down the road away from it, you're
14 not --

15 MR. COBB: We have numerous times, during the
16 implementation of a groundwater protection
17 program, had decisions regarding non-regulated
18 mobile units which is what that could be.

19 MS. KEZELIS: Thank you.

20 MS. TIPSORD: I'm sorry to bother you again.

21 On 125(l), you use the phrase "any effective
22 person may appeal the agency's final decision."
23 And having worked on the Board's proposed
24 procedural rules, phrases like "effective person"

1 jump right out at me. I just ask that you maybe
2 take a look at the way the Board has defined it in
3 our proposed procedural rules and be sure you're
4 using it here consistent with that.

5 I believe under our new procedural
6 rules -- and I don't have them in front of me --
7 our proposed rules, this would mean that anyone
8 within the District could potentially appeal the
9 agency's decision. I just would ask you take a
10 look and see if you want to, perhaps, define the
11 term here or use another term.

12 MR. COBB: We will take a look at that. I

13 have looked at the procedural rules, but we'll
14 have to coordinate with counsel on that question.
15 HEARING OFFICER: Do any other members of the
16 board staff or board members present here today
17 have any other questions of Mr. Cobb?
18 Seeing that no one has further
19 questions, does anyone else in attendance here
20 today have any questions of the agency's
21 proposal?
22 Yes. Could you please identify yourself
23 for the record and state your question, please?
24 MR. EDWARDS: My name is Ron L. Edwards.

1 And, Mr. Cobb, my question dealt with the
2 definitions as well and the major potential
3 source. That seems very broad, and I just
4 wondered if you could discuss that. It talks in
5 here that anyone that would store or accumulate
6 waste generated on site would be a major potential
7 source. That seems to include in my mind the
8 universe. The only thing I could see that might
9 alter that is that it could cause contamination of

10 groundwater. Could you speak a little bit on
11 that?

12 MR. COBB: The other key definition that
13 plugs into that is at the end of the definitions
14 section, and that's the definition of waste. So
15 that is also prescriptive in terms of the types of
16 wastes that are included under the definition of
17 major potential source.

18 So that does limit the scope to what
19 we're talking about in that waste definition.

20 MR. EDWARDS: Except it includes garbage,
21 which all facilities would generate garbage. Also
22 just parts cleaners, for example, would be a
23 regulated waste stream potentially. Any kind of
24 clean-out of drainage systems, anything of that

1 nature is going to fall within the purview of this
2 waste definition. So I was just wondering -- it
3 seems to me the key then would be that could
4 potentially cause contamination of groundwater,
5 and that's the issue really.

6 MR. COBB: That's right. That's the issue at
7 hand.

8 MR. EDWARDS: That's somewhat subjective.

9 How would facilities know whether or not they
10 would fall under that major potential definition?

11 MR. COBB: Well, I think, once again, that's
12 one of the purposes of the registration and
13 informational meeting. This is a brand new -- if
14 this were adopted as is, it's brand new; and I
15 think we would certainly go through the types of
16 examples like that that we've experienced over
17 sort of the past --

18 MR. EDWARDS: Is there a way you can further
19 define that, or have you looked at any thresholds
20 as an example for people to get a better
21 understanding if they would be regulated?

22 MR. COBB: Well, we did look at certain
23 thresholds with respect to the Livestock
24 Management of Facilities Act where wastes at those

1 facilities -- we did make specifications and
2 thresholds with respect to those types of
3 operations. This certainly is something we can go
4 back and discuss. I have a feeling that it's what

5 the definition -- although it does make a
6 judgment. We've had a lot of experiences with
7 making similar judgments, and we can do that here
8 as well.

9 The key thing would be to, in the
10 educational informational meeting, come up with as
11 many examples as we could to make it clear-cut for
12 the locals.

13 MR. EDWARDS: You know, obviously, if you
14 have a container of refuse, then you would get
15 into the situation, Could that cause
16 contamination? Well, if the refuse was on the
17 ground, certainly it could. But if it's
18 contained, which would be the best practice, is
19 that the kind of things you're looking at?

20 MR. COBB: Right.

21 MR. EDWARDS: If you did, indeed, get into
22 this situation, ways of disposing of DMPs, not
23 just secondary storage and these kinds of
24 things --

1 MR. COBB: Once again, remember the ROSSA
2 process doesn't prohibit anything. It gives an

3 opportunity to discuss the types of management
4 processes, et cetera, that are -- you know, if the
5 waste is in a garbage can and is contained -- it
6 really provides a means of thinking before you
7 begin to undertake certain things similar to
8 Dr. Flemal's earlier question about emptying your
9 fuel out on the ground. It's really not intended
10 to prohibit so much as it is to engage in the
11 thinking process before dealing with your waste
12 and the sensitive recharge area.

13 MR. EDWARDS: Thanks.

14 HEARING OFFICER: Further questions, please.

15 MR. SCHICK: I'm Randy Schick. I'm assistant
16 chief counsel for the Illinois Department of
17 Transportation. Miss Kezelis was raising the
18 issue with the deicing agents a moment ago, and I
19 wanted to discuss that for a moment as well with
20 you and road oil also because they're both
21 specifically mentioned.

22 I know from talking to you earlier and
23 from what you said a moment ago in your testimony
24 that you don't intend to regulate deicing agents.

1 Would this rule -- I would also take it -- road
2 oil, application to roads as well. I don't know
3 if any township roads or whatever use road oil on
4 their surface.

5 MR. COBB: Once again, Randy, in response to
6 your question, I think the key thing is to go back
7 to the definition of potential secondary source
8 from which these terms flow.

9 MR. SCHICK: Right.

10 MR. COBB: And if you go to essentially that
11 definition, you'll see that the term "road oils
12 for purposes" -- and this gets into what
13 Dr. Flemal was discussing also with our definition
14 of a central location in the Board's existing
15 regulations. "Road oils for the purposes of
16 commercial application or for distribution to
17 retail sales outlets." So I think it's pretty
18 clear that it's prior to application on a road.
19 It's a storage tank or -- above or below ground.

20 MR. SCHICK: I'm just an old country lawyer.

21 MR. COBB: No. It's a good question.

22 MR. SCHICK: Maybe just old. I was able to
23 obtain a copy of the rules this morning. I asked
24 for one and hadn't received it yet. It maybe just

1 doesn't hit me over the head, but you're not
2 regulating the application of salt or oil. Do you
3 think you could clarify that?

4 MR. COBB: For 12 years, these definitions
5 that you see here have been implemented across the
6 state of Illinois. These are not new
7 definitions. These were definitions that were
8 part of the Illinois Groundwater Protection Act
9 that was adopted in 1987 and --

10 MR. SCHICK: I understand you haven't
11 regulated that in those areas, but I was wondering
12 if you are going to have a public education effort
13 here if the public would be concerned if they saw
14 us putting deicing agent on Route 116 in this
15 area. Like you said, anybody can bring an action
16 before the Board, not just you. If I could work
17 with Mr. Ewart to clarify that in the rule, I'd
18 appreciate that. I know I'd sleep better at night
19 and maybe the chief counsel might as well.

20 MR. COBB: I think that can be done because,
21 like, for the deicing agents, "the storage or
22 accumulation at any time of more than 50,000
23 pounds deicing agent," would be a pretty large
24 pile in the middle of a road. Like I said, we

1 have a case that we recently completed up in
2 McHenry County, and 50,000 pounds -- we have a
3 video of that, by the way -- is a pretty large
4 pile. In fact, in that particular case, the
5 person owning the pile was blaming it on the
6 application of deicing agent to the road.

7 In that case, there was no engineering
8 calculation that I could do to ever see where
9 you'd have more than 50,000 pounds, stored or
10 accumulated, at any time spread out on the road in
11 the form of a deicing agent.

12 I think also these are statutory
13 definitions, so we might want to -- if it's our
14 intent to modify statutory definitions here. It's
15 something we can look at. We've had no problem
16 with it during the implementation of the program.

17 MR. SCHICK: Thank you.

18 HEARING OFFICER: Mr. Cobb, you mentioned in
19 response to Mr. Schick's question that you
20 recently completed a case.

21 MR. COBB: Yes.

22 HEARING OFFICER: Could we get a copy of
23 whatever court order is relevant if it's been
24 adjudicated? I presume it's not on appeal; is

100

1 that correct?

2 MR. COBB: Not to my knowledge, no.

3 HEARING OFFICER: If we could get a copy of
4 the final court order just for our records, that
5 would be helpful.

6 MR. COBB: In my curriculum vitae -- we can
7 follow up -- I think there is a citation to the
8 case. We can provide that.

9 HEARING OFFICER: Thank you.

10 MS. KEZELIS: Mr. Cobb, we talked much
11 earlier today about Subpart A and Subpart B and
12 the agency's desire with respect to the
13 application of those provisions. In your
14 definition section, Subpart A, potentially general
15 applicability, you also include a definition for
16 "sinkhole." I assume that would be subsidence,
17 mine subsidence?

18 MR. COBB: Not necessarily. For example, in
19 Monroe County, St. Clair County in Illinois, we

20 have a substantial area there, the Illinois
21 sinkhole plain, where you have -- it's a natural
22 geologic feature where the -- you have a windblown
23 silt on top of a limestone or dolomite, and
24 subsequently we have collapse in the formation of

101

1 sinkholes. So that was our intent, to also
2 include that in the definition.

3 MS. KEZELIS: Is there any geologic
4 predilection for sinkholes or subsidence in the
5 vicinity of the regulated recharge area being
6 proposed today?

7 MR. COBB: No.

8 MS. KEZELIS: Thank you. That's all I needed
9 to know.

10 HEARING OFFICER: Are there any further
11 questions from anyone present here today?

12 Seeing that there are no questions, I
13 would just like to ask on the record if there is
14 anybody here today who is affiliated in any way
15 with the Pleasant Valley Public Water District
16 itself or representing it.

17 There is no response. Okay. Thank
18 you. That will conclude the proceedings here
19 today. There will be a transcript created and
20 available. You can order the transcript from the
21 Board at a cost of 75 cents per page, or you could
22 download it from the Board's website for free.
23 The Board's website is www.ipcb.state.il.us. We
24 anticipate the transcript will be available

102

1 approximately eight days from today's date; and
2 then once it is available, our public comment time
3 will begin. If anyone wishes to submit written
4 comments prior to the Board's proceeding to first
5 notice, please do so. Typically, we ask for those
6 comments within 14 days of the Board's receipt of
7 the transcript. However, the Board certainly
8 would not object if anyone here today needs more
9 than 14 days from that date. If the agency would
10 want more time, we could certainly accommodate
11 that; or if anybody else would want more than 14
12 days, we'd be happy to accommodate that also.
13 MS. LOGAN-WILKEY: No. That's fine.
14 HEARING OFFICER: Then we would ask that 14

15 days from the date of the Board's receipt of the
16 transcript, we would ask you to submit the public
17 comments. We'll have the mailbox rule apply, so
18 please feel free to put that in the mail on the
19 last day.

20 Are there any other matters that need to
21 be addressed at this time?

22 Seeing that there are no other matters,
23 on behalf of the Board, I would like to thank all
24 of you for coming today and listening and

103

1 participating to our proceedings and thank you
2 very much for your attendance and have safe drives
3 home. Thank you.

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6 THE HEARING CONCLUDED AT 1:35 P.M.

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1 COUNTY OF TAZEWELL)
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2 STATE OF ILLINOIS)

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6 CERTIFICATE OF REPORTER

7

8 I, ANGELA M. JONES, CSR-RPR, Notary

9 Public in and for the State of Illinois, do hereby

10 certify that the foregoing transcript consisting
11 of Pages 1 through 103, both inclusive,
12 constitutes a true and accurate transcript of the
13 original stenographic notes recorded by me of the
14 foregoing proceedings had before the Illinois
15 Pollution Control Board on the 9th day of May,
16 2000.

17 Dated this day of , 2000.

18

19

20

21

22 Angela M. Jones, CSR-RPR
23 Notary Public,
24 CSR #084-003482