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BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

IN THE MATTER OF:)
REVISIONS TO)
ANTIDEGRADATION RULES:)R01-13
35 ILL. ADM. CODE 302.105,)
303.205, 303.206, AND)
102.800-102.830,)

 The following is a transcript of proceedings
from the hearing held in the above-entitled matter,
taken stenographically by ROSEMARIE LAMANTIA, CSR, a
notary public within and for the County of Cook and
State of Illinois, before MARIE TIPSORD, Hearing
Officer, at 160 North LaSalle Street, Room N-502,
Chicago, Illinois, on the 24th day of August 2001, A.D.,
scheduled to commence at the hour of 9:30 a.m.

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A P P E A R A N C E S :

HEARING TAKEN BEFORE:

ILLINOIS POLLUTION CONTROL BOARD,
160 North LaSalle Street
Room N-502
Chicago, Illinois 60601

BY: MARIE TIPSORD, HEARING OFFICER

MEMBERS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AS WELL AS OTHER INTERESTED ENTITIES AND AUDIENCE
MEMBERS WERE PRESENT AT THE HEARING, BUT NOT LISTED ON
THIS APPEARANCE PAGE.

1 HEARING OFFICER TIPSORD: On the record.

2 Good morning. My name is Marie Tipsord. I've
3 been appointed by the board to serve as a hearing
4 officer in this proceeding entitled, in the matter of:
5 Revisions to Antidegradation Rules, Citation 35 Ill.
6 Admin. Code 302.105, 303.205, 303.206 and now it's 102,
7 I think they changed the caption. This rulemaking was
8 published for first notice in the Illinois Registra on
9 July 13, 2000. As you know, the board has issued a
10 substantive first notice opinion and order in June.

11 To my left is Dr. G. Tanner Girard, the lead
12 board member assigned to this matter. Also present to
13 my far right is Dr. -- is Mr. Nick Melas. Next to him
14 is Dr. Ronald Flemal. They've also been assigned to
15 this rulemaking. And it's my pleasure to say to Dr.
16 Girard's left is Tom Johnson, one of our newest board
17 members and I believe his first. . .Rulemaking.

18 MR. JOHNSON: It is.

19 HEARING OFFICER TIPSORD: With me also to my
20 immediate right is Anand Rao, head of our technical
21 unit. And to Mr. Johnson's left is Ms. Liu, also a
22 member of our technical unit. In the back of the room
23 also is Kathy Glen, who is Dr. Flemal's assistant.

24 As you know, this is the fourth hearing we've

1 held in this proceeding.

2 Today, we have to do two things at this hearing.
3 In addition to prefiled testimony, we also are required
4 by statute to notify the Department of Commerce and
5 Community Affairs of all rulemakings and request an
6 economic impact statement to be performed on those.
7 Since the law has passed, the Department of Commerce and
8 Community Affairs has notified, at the beginning of each
9 fiscal year the board they have money to complete these
10 studies. We are holding the hearing today on their
11 inability or they're not -- choosing not to do a DCCA
12 study on this, so if anyone wants to comment on that, we
13 will take comments on the DCCA's decision not to do ECIS
14 at the close of prefiled testimony.

15 Secondly, we're going to devote today's hearing
16 to the prefiled testimony. We'll take the testifiers in
17 the order that the testimony actually came into the
18 board's office.

19 The first group that came in was the Illinois
20 Regulatory Group. Follow that with the environmental
21 groups and then finally with the Illinois Environmental
22 Protection Agency.

23 I would note that the EPA's testimony was
24 actually marked August 13th, which was beyond the August

1 10th date deadline for prefilings, but I will accept
2 that testimony and we'll take it last.

3 We'll take the testimony as if read and enter it
4 as an exhibit and attach it to the back of the
5 transcript. We'll allow you to do a brief summary of
6 your testimony if you'd like. I also understand we have
7 a slide show today and we'll mark -- I believe, Mr.
8 Moore, brought color prints of that to put in the record
9 as an exhibit.

10 At this time, I would like to ask Dr. Girard if
11 he has anything he would like to add?

12 DR. GIRARD: Yes.

13 Thank you.

14 On behalf of the board, I'd like to welcome
15 everyone to this hearing this morning. We appreciate
16 your attendance. We understand that your time is
17 valuable and we are grateful that you're here this
18 morning.

19 I'd also like to express my appreciation for the
20 quality of the comments and testimony we've gotten from
21 groups and from individuals in this rulemaking. It's
22 helped us do our job better and we look forward to a
23 good hearing this morning.

24 Thank you.

1 HEARING OFFICER TIPSORD: Anyone may ask a
2 question, however I do ask that you raise your hand,
3 wait until you're recognized, after I acknowledge you,
4 identify yourself for the court reporter and please
5 speak one at a time because the court reporter can't get
6 everybody if they're talking over one another.

7 Please note that any question asked by the board
8 member or staff is intended to help build a complete
9 record for the board's decision and not to express any
10 preconceived notion or bias.

11 At the back of the room there are sign up sheets
12 to be placed on the notice and the service list, in
13 addition there are copies of the current notice and
14 service list. I also have a copy of the board's first
15 notice opinion and order, if anyone doesn't have one and
16 would like to look at it and there are also copies of
17 DCCA's letter.

18 If there are any -- if there aren't any
19 questions, we'll begin.

20 Are there any questions?

21 Seeing none, we'll start with the Illinois
22 Environmental Regulatory Group.

23 Also, if you have extra copies of your prefiled
24 testimony, if you can give one to the court reporter, we

1 would appreciate that.

2 Go ahead and have the witnesses sworn. I
3 believe it is one witness, right?

4 MS. HODGE: We're going to do two.

5 (Witnesses sworn.)

6 MS. HODGE: Good morning.

7 My name is Katherine Hodge and I'm with the law
8 firm of Hodge, Dwyer, Zeman in Springfield. And here
9 today for the Illinois Environmental Regulatory Group
10 and our primary witness today is Ms. Deirdre Hirner, she
11 is the executive director of IERG, but we have also
12 asked Jeff Smith, who is with Abbott Laboratories, to be
13 available for some questions on technical issues.

14 Also with us are -- is Robert Messina, who is
15 in-house counsel at IERG and with that -- okay.

16 MS. HIRNER: Thank you, Kathy.

17 Good morning. I would first like to say that
18 IERG and its members are pleased with many of the
19 regulatory provisions proposed by the board in its
20 opinion and we thank the board for its diligent
21 attention to the information presented by all parties
22 prior to issuing this first notice opinion and order.

23 I thank you for the opportunity to speak on
24 behalf of IERG and its member companies today.

1 And if it pleases the board, I would like to
2 just offer a summary of my prefiled testimony and to
3 supplement it with some additional information in regard
4 to an issue which has come to light subsequent to our
5 file.

6 While IERG concurs with and can support a
7 majority of the provisions in the board's proposal, we
8 do believe there is some need for additional revision.

9 IERG has submitted as Exhibit A proposed
10 regulatory language reflecting these revisions. And I
11 with like to take this time to address IERG's proposal.

12 First, we believe that revisions are needed to
13 reach the stated goal of flexibility in the
14 antidegradation assessment process.

15 All parties to the proceeding, including the
16 board, agree that all increase in loading should not be
17 subject to the same level of antidegradation review by
18 the agency. And IERG has offered several alternatives
19 to afford such flexibility. These included originally a
20 significance determination, a de minimis exemption and
21 several other exemptions from further antidegradation
22 review, which the board chose not to adopt.

23 IERG would respectfully request that the board

24 reconsider certain of these alternatives.

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1 The board in its first notice opinion and order
2 properly recognized that IERG's concern that some
3 degree of certainty as to how the agency would implement
4 the antidegradation regulations is necessary and that
5 the agency's resources be targeted to those loadings
6 that are truly significant. However, of equal or
7 perhaps greater importance to IERG is the assurance that
8 the agency has the flexibility to assess each increase
9 on a case-by-case basis and to determine the depth and
10 degree of antidegradation review needed for each
11 individual loading. IERG had proposed a significance
12 determination as a tool to help the agency achieve its
13 desired flexibility. The board rejected IERG's proposal
14 and identified its concerns in its first notice opinion
15 and order. I have addressed each of the board's
16 concerns in my prefiled testimony, but rather than going
17 into those issues in detail today, I would refer you to
18 pages 3 and 4 of my prefiled testimony.

19 IERG continues to believe that its significance
20 determination process is a viable means of giving the
21 agency the flexibility to conduct a level of review that
22 depends on the relative significance of the increase in
23 loading, however IERG is willing to concede its proposed

24 significance determination process if it can be clearly

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1 demonstrated that the board's proposed antidegradation
2 review criteria indeed provides the agency the
3 flexibility to perform the appropriate level of review
4 on a case-by-case basis.

5 IERG maintains that, as written, the board's
6 proposed regulatory language does not afford the agency
7 such flexibility and to that end we will offer some
8 revisions.

9 One of the revisions that we ask you to -- one
10 of the matters that we ask you to reconsider is that of
11 a de minimis. We think that it offers an optimum means
12 to avoid delay in processing NPDES permits and avoiding
13 the uncertainty of the need to make a projected socio
14 and economic decision but only for a very few of our
15 industrial members, to those members who believe they
16 could use a de minimis, and we do understand that the
17 tests that we're suggesting that it meet 10 percent of
18 assimilative capacity and that it be based on the
19 reasonable potential test does apply only in the GLI
20 area but to those industries that can provide the de
21 minimis information. It is very important, we think it
22 would be a very few industries, it would be on a very

23 few water segments, and we believe that if an applicant
24 does choose to use the de minimis, the burden should be

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1 upon the applicant to provide the agency the information
2 it needs to establish that it meets the de minimis
3 criteria.

4 Having said that, I would again like to return
5 to the issue of flexibility.

6 We stress that IERG very much agrees with the
7 board's recognition that all proposed increase in
8 pollutants loading should not require the same level of
9 review to demonstrate compliance with proposed
10 antidegradation standard, but, again, we would point out
11 that we disagree that the language of 302.105(c) (2) as
12 written affords that flexibility.

13 We do appreciate the board's adoption of the
14 proposed Section 302.105(c) (2) (B), which expands the
15 universe of information on which the agency may rely in
16 making antidegradation assessment. However, we believe
17 that the remaining language of 302.105(c) is drafted in
18 such manner as to place undue restrictions on the
19 agency's ability to exercise flexibility in the review
20 process.

21 Accordingly, IERG offers the following revision
22 to proposed Section 302.105(c) (2), and you can see this

23 in Exhibit A, but we would ask that the language be
24 changed to reflect that the agency must, on a

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1 case-by-case basis and to the extent that it deems
2 necessary, assess any proposed increase in pollutant
3 loading and so on. Again, I refer you to Exhibit A.

4 We believe that adoption of this proposed
5 clarification language offers the regulated community
6 some degree of comfort in that we are conceding the need
7 for a significance determination process.

8 To further our contention that time and
9 resources not be devoted to analysis of activities that
10 lack any real potential for environmental degradation,
11 IERG requested the board reconsiders certain of the
12 provisions we had earlier proposed for exemption for
13 further antidegradation review.

14 First, we would ask, again, that the words,
15 without additives, be removed from the exemption
16 pertaining to non-contact cooling water found at
17 302.105(d)(5). We suggest that an antidegradation
18 analysis is, in essence, undertaken at the time the
19 agency approves the additive and to re-review the
20 additive in the context of the increase in the amount of
21 discharge of non-contact cooling water containing an

22 approved additive would be duplicative.

23 Second, we ask that the board reconsider its
24 decision not to include an exemption for increased

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1 stormwater discharges at a site regulated by an
2 industrial facility individual NPDES permit through the
3 facility's stormwater prevention pollution plan. We
4 contend that the language we have proposed as noted at
5 302.105(d) (8) in our Exhibit A avoids the need for
6 duplicative review each time changes are made on site,
7 as future site developments and modifications would have
8 been taken into account at the time the stormwater
9 pollution prevention plan was initially developed.

10 Next, IERG would, again, ask that the board
11 consider an exemption for discharges authorized outside
12 of normal permitting procedures. Namely, those
13 authorized by site specific regulation adjusted standard
14 or variance that has been issued by the board or by a
15 decree entered by a court of competent jurisdiction.

16 We believe that the language we have proposed at
17 Section 302.105(d) (9) in our attached Exhibit A
18 clarifies any potential ambiguity in this regard. The
19 agency has said the reason not to include these
20 exemptions is because antidegradation would not apply
21 anyway. We believe that if it doesn't apply anyway,

22 there is no harm in specifically stating it in the
23 regulation for clarification purposes.

24 I would like to point out that in proposing

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1 these exemptions, IERG is not suggesting that any of the
2 covered activities be exempt from the antidegradation
3 standard, rather as the agency has suggested throughout
4 the proceeding, we believe they are essentially subject
5 to similar types of review under other authorities and
6 that a separate demonstration would be an unnecessary
7 redundancy.

8 The next issue I would like to address deals
9 with clarification of the trigger for an antidegradation
10 assessment.

11 We would ask the board to make clear in its
12 proposed regulation that the requirement applies only to
13 increases in pollutant loading that necessitates a new,
14 renewed or modified NPDES permit with a new or increased
15 permit limit.

16 The board included the language with a new or
17 increased permit limit in proposed 302.105(f) regarding
18 the procedures by which the agency is to conduct
19 antidegradation assessment, but it did not include the
20 proviso in its proposed 302.105(c)(2). We believe that

21 this is probably a typographical omission because, as we
22 understand, this accurately reflects the agency's intent
23 and I believe that is substantiated by the agency's use
24 of the proviso with an increased permit limit in the

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1 recommended language on page 7 of Ms. Tonzor's prefiled
2 comment of the Illinois EPA.

3 Now, before my discussion of outstanding
4 resource waters, I would like to thank the board for
5 including the agency's procedures for conducting
6 antidegradation assessments in its proposed rules, as we
7 believe the antidegradation standard and the procedure
8 by which the agency conducts the review are inextricably
9 linked. We have suggested some minor substantive
10 revisions to clarify the language of the agency's
11 procedural regulations and those are included in our
12 Exhibit A.

13 And now I'd like to turn to the discussion of
14 the ORW.

15 IERG had proposed two general changes to the
16 agency's proposal submitted.

17 First, that the designation of an ORW take place
18 through an adjusted standard or other adjudicatory
19 proceeding.

20 And second that the board clarify the process by

21 which ORW designations take place.

22 We still believe that an adjudicatory proceeding
23 would be advantageous, however, we acknowledge and
24 respect the board's argument favoring a rulemaking

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1 proceeding and will concede our request for
2 consideration of an adjudicatory process but with one
3 caveat, because of the potential ramifications for
4 future growth or development and restrictions on land
5 use associated with ORW designation, IERG strongly
6 believes that the notification of the ORW should be
7 broader than that required for a standard rulemaking
8 procedure. We contend it would strongly urge the board
9 to consider providing notice, not only to the agency,
10 the Department of Natural Resources and the attorney
11 general, but also to the state's attorney, county board
12 and legislatures for the area and for the NPDES permit
13 holders and permit applicants for the waterbody of which
14 ORW designation is being sought.

15 We also would particularly like to ask that the
16 board consider giving notice to the potentially impacted
17 property owner adjacent to and in the watershed of the
18 waterbody segments being proposed for ORW designation.
19 Such broader notification requirements have been

20 approved by the board in the notice of petition to
21 designate a special resource groundwater and it has been
22 favorably looked upon by the board in a community
23 outreach program proposed by the Citizens for a Better
24 Environment in the 740 rulemaking currently pending

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1 before the board as RD0129 and which IERG has gone on
2 record as supporting.

3 Second, IERG is concerned that it must be clear
4 that the proponent for a proposal to create, amend or
5 repeal an ORW designation has the burden in the
6 proceeding. Accordingly, we have proposed a
7 modification of the board's proposed Section 102.830(b),
8 which states the board must designate a waterbody
9 segment as an ORW if certain criteria are met. To the
10 listing of those criteria we would add the language, if
11 the board finds that the proponent of the designation
12 has established that those criteria are met, and for our
13 specific recommendation on the language, I would refer
14 you to 103.830(b) in our Exhibit A.

15 Some of the remaining issues are small
16 clarification matters.

17 The first involves Section 302.105(b) (1) (B) that
18 provides an exception for existing site stormwater
19 discharges.

20 IERG presumes that this provision was included
21 to allow the continued operation of facilities that were
22 cited prior to the time a water segment was designated
23 an ORW. Therefore, we would recommend the following
24 language clarification. Rather than capital B of

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1 302.105(b) (1) stating existing site stormwater
2 discharges that comply, we would recommend that the
3 language be changed to, stormwater discharges at
4 existing sites that comply.

5 Secondly, I would refer you to 302.105(b) (3) (B) .
6 This Section requires that short-term temporary activity
7 and stormwater discharges allowed under 302.105(b) (1)
8 may be allowed only if they also are necessary for an
9 activity that will improve water quality in the ORW.

10 To us the provision doesn't make sense.
11 According to Mr. Frevert's testimony, the Section was
12 structured to parallel federal guidance to allow load
13 increase in an ORW only in very few and very limited
14 circumstances. By placing the added burden of requiring
15 that the exceptions also improve water quality, as we
16 have done in this language, practically assures that
17 these exceptions will never be available for use by the
18 facility located on the ORW. Therefore, we would ask

19 that that section be deleted.

20 Next, I would refer to you 302.105(d) (6), which
21 creates an exception from further antidegradation review
22 for those discharges permitted under current general
23 NPDES permit. We find the word current confusing. It
24 could be interpreted to mean a general permit currently

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1 in the possession of the permittee or the agency's
2 current general permit. IERG presumes that the board
3 means this exemption to apply to those discharges for
4 which a general permit has been adopted by the agency
5 and is in effect. Accordingly, IERG recommends deleting
6 the word current from this exception, we think it will
7 just clarify the matter.

8 Next, I would turn your attention to Section
9 302.105(d) (6), again, and it also includes a provision
10 that requires the agency to assure that individual
11 permit or certification are required prior to all new
12 pollutant loadings or hydrological modifications that
13 necessitate a new, renewed or modified NPDES permit, a
14 Clean Water Act, Section 401 certification that affects
15 waters of particular biological significance.

16 First, I would say that we're somewhat uncertain
17 of the meaning of the entire provision as we do not
18 recall it having been discussed during the course of the

19 agency's workgroup meeting.

20 Further, however, and perhaps more important,
21 we're a bit uncertain of the definition of the phrase,
22 waters of particular biological significance, unless, as
23 we believe, this is a reference to outstanding resource
24 water. We would respectfully request that the board

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1 clarify that issue.

2 Next, I would turn your attention to Section
3 302.105(f) (1) (F), which provides that a permit
4 application subject to an antidegradation demonstration
5 must include, if necessary, any of the information
6 sources identified in subsection 302.105(d) (3), we think
7 this is a typographical error that simply was missed in
8 transposing the numbers for the board's ruling. We
9 assume that the board meant to refer to subsection
10 302.105(c) (2) (B), and we have made that change in our
11 Exhibit A.

12 We have proposed some other very minor
13 non-substantive revisions to the board's proposed
14 regulatory language meant to clarify what we believe to
15 be the board's intent and those clarifications appear in
16 our Exhibit A.

17 And finally, to supplement my prefiled

18 testimony, in light of my review of Mr. Ettinger's and
19 Mr. Moore's testimony regarding their recommendation for
20 affording the Illinois Department of Natural Resources a
21 greater role in the antidegradation review and
22 assessment procedure, I would like to say that IERG
23 believes that the Illinois general assembly has not
24 authorized a role for the Illinois Department of Natural

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1 Resources in establishing water quality standards. To
2 grant the DNR authority in the rulemaking proceeding,
3 IERG would contend is inappropriate. If the IDNR is to
4 have a greater presence in influencing the
5 antidegradation water quality standard, that authority
6 should derive from the general assembly and with that I
7 would conclude my testimony and offer to answer any
8 questions that you might have.

9 HEARING OFFICER TIPSORD: Thank you, Ms.
10 Hirner.

11 At this time, if there is no objection, I will
12 admit the prefiled testimony of Deirdre Hirner as
13 Exhibit No. 33. Is there any objection? Seeing none,
14 we'll admit it as Exhibit No. 33.

15 Are there any questions for Ms. Hirner?

16 There is one.

17 Mr. Moore, you need to introduce yourself for

18 the court reporter.

19 MR. MOORE: Robert Moore, executive director for
20 Prairie Rivers Network.

21 Under your proposed language for Section
22 102.810, revision requirements for outstanding resource
23 water designation, there is a rather -- page 1, Exhibit
24 A, you propose a rather extensive list of entities that

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1 must be notified of the petition and receive copies of
2 the petition.

3 Is IERG in support of a similar list, extensive
4 list? In other words, people to be notified for public
5 notice of NPDES permits?

6 MS. HIRNER: In the instance, the reason that
7 IERG suggests this list of persons for notification, is
8 that throughout the antidegradation hearings and
9 proceedings, the agency has consistently maintained that
10 the ratifications of designating a water an outstanding
11 resource water has far broader implications than either
12 an NPDES permit or even a special ground -- special
13 resource groundwater.

14 If this has broader implications than either of
15 those and if the special resource groundwater contains
16 similar notification requirements, we do believe it is

17 appropriate that it contains the same degree of
18 notification in the case -- in the outstanding resource
19 water.

20 MR. MOORE: So that would be a no?

21 MS. HIRNER: That would be what I said is just
22 what I said.

23 MR. MOORE: And I assume you don't support
24 similar public notification for other activities that

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1 lower water quality site specific standards and
2 variances?

3 MS. HIRNER: Well, Mr. Moore, you know what
4 assume means.

5 MR. MOORE: Would the same answer stand for
6 site specific standards under the rules?

7 MS. HIRNER: I understand that in both of those
8 there is a requirement for -- in the board's rules for
9 publication in the newspaper.

10 MR. MOORE: On page 9 of Exhibit A, under
11 302.105(b)(2)(B) or (c)(2)(B), excuse me, high quality
12 waters, you propose some language there that states, in
13 the case of all other discharges, subject to review
14 under this subsection, to the extent that it deems
15 necessary on a case-by-case basis, some or all of the
16 following will be examined.

17 If you had to choose just one of those, which
18 would be the some that you would adhere to for
19 implementing antidegradation?

20 MS. HIRNER: I believe that -- that the some
21 speaks to the case-by-case basis, and that that decision
22 would appropriately be made by the agency based upon the
23 characters receiving water and the pollutants being
24 discharged.

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1 MR. MOORE: So with this language the agency
2 could be authorized to exclude the impacts to existing
3 uses from its decision-making process under the
4 antidegradation review?

5 MS. HIRNER: The agency has said throughout the
6 proceeding that it needs to look again on each of the
7 discharges on a case-by-case basis and the depth and
8 degree to which they look at each of the issues will
9 depend on the discharge. This gives them, I believe,
10 the flexibility to consider the depth and degree of
11 study of each of the provisions which the agency deems
12 appropriate.

13 HEARING OFFICER TIPSORD: Excuse me, can you
14 keep facing this way? The court reporter is losing you.

15 MS. HIRNER: Sorry.

16 HEARING OFFICER TIPSORD: Apologize for
17 interrupting.

18 MS. HIRNER: Oh, that's okay.

19 MR. MOORE: But under this language, they
20 certainly -- they would have the option of not doing 1,
21 2, 3 and 4, they could do 1, 3 and 4 or 1, 2 and 3 or 1
22 and 4 or just 4?

23 MS. HIRNER: The agency has the ability to look
24 at what it believes it needs to look at on a

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1 case-by-case basis under this provision.

2 MR. MOORE: Under your page 10, proposed D5,
3 are you proposing an exemption for cooling water that
4 has additives that have been previously approved by the
5 agency? Do some of these additives have effluent limits
6 in their permits, some of these additives --

7 MS. HIRNER: Can I ask you to speak to that,
8 Jeff, that is a technical matter?

9 MR. SMITH: Yes.

10 In many cases they do. To -- I guess the
11 rationale behind the change that we're proposing to this
12 particular provision is, as it reads now, it really is
13 of very limited practical usefulness to the regulatory
14 community because virtually all non-contact cooling
15 waters have some type of additives, whether it be

16 chlorine or some type of corrosion inhibitor, whatever.
17 When the permit is applied for to allow the discharge of
18 these types of non-contact cooling waters, the agency
19 goes through and specifically asks for what kind of
20 cooling -- what additives would be involved and
21 incorporates into the permit appropriate requirements to
22 insure that those level -- that those parameters are
23 kept at a safe level, either through an effluent
24 limitation such as on a total residual chlorine

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1 parameter or on toxicity or just a requirement that if
2 anything changes to the permittee to make a notification
3 to the agency that they are, in fact, making a change.
4 We think that those protections are sufficient so that
5 if a facility is increasing the amount of non-contact
6 cooling water but not using anything different in terms
7 of cooling water additive that the existing protections
8 that are already incorporated into the permit are
9 sufficient to provide protection to the environment.

10 MR. RAO: Can I ask a follow-up question?

11 You know, you mentioned that -- that you are
12 suggesting that if there is an increase in discharge of
13 non-cooling water and -- but if the agency has already
14 approved the additive that is being used, then that

15 discharge should not go through the antidegradation
16 review process?

17 MR. SMITH: Right.

18 MR. RAO: When the discharging increases, will
19 there be also an increase in the amount of additives
20 being discharged, too?

21 MR. SMITH: It may very well be an increase in
22 the amount of additives used, however, in terms of the
23 impact on the environment due to the controls that would
24 be written into the permit, the impact on the

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1 environment should really not be of an issue, due to,
2 for example, an effluent limitation, if chlorine is
3 used, for example, which is probably the most common
4 additive used, the permits typically have a
5 concentration based limit set at detection level of
6 chlorine, total. . .Chlorine, and what most companies
7 have to do is to use a dechlorination type process to
8 remove that chlorine to meet that limit. That is not
9 really going to change if more chlorine or if more
10 cooling water is being discharged. You're still going
11 to have to meet that very, very stringent chlorine
12 residual discharge limit. And that's why we don't think
13 that the language, as we propose it, is really having a
14 significant detrimental effect to the concept of

15 antidegradation. That still provides the protections
16 designed under the antidegradation rules.

17 MR. RAO: Okay. Thank you.

18 DR. GIRARD: I have a related question also.

19 To your knowledge, does the agency now have an
20 approved list of additives?

21 MR. SMITH: I guess I'd rather defer that to the
22 agency.

23 I know additives that we use seem to be approved
24 but I don't know if there is a designated list that they

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1 refer to.

2 DR. GIRARD: So there is some working knowledge
3 among the industrial communities there is -- there are
4 certain kinds of additives that will -- less scrutiny
5 than others, is that sort of where we are now?

6 MR. SMITH: That's my understanding. Yes.

7 DR. GIRARD: Now, if -- you know, if we pass
8 some language like this, would that then require the
9 agency to come up with a more formal process for forming
10 a list and adding chemicals to the list and taking
11 chemicals off the list, sort of like we do now where
12 bioaccumulative chemicals are concerned?

13 MR. SMITH: I guess what I'm -- to respond to

14 your question, I'm not aware of any list that exists. I
15 think that certainly the agency in the permitting
16 process looks at every particular usage of cooling water
17 additive for the site specific ramifications to
18 determine what, in fact, would be appropriate conditions
19 to include in the permit. So, because of that I'm not
20 sure whether they could ultimately develop a list of,
21 okay, anything on this list is never a problem, it may,
22 in fact, always be a site specific consideration. But,
23 again, I would defer that to the agency in terms of how
24 they would feel best about approving cooling water

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1 additives.

2 All I can say is, is that by the time that
3 cooling water additive is allowed and written into the
4 permit for that particular facility, it's already gone
5 through those types of reviews by the agency and for
6 that particular application it's deemed to be acceptable
7 in terms of effects on the receivable waters.

8 DR. GIRARD: Thank you.

9 MR. RAO: As a follow-up, when you say an
10 additive approved by the agency, are you referring to a
11 specific permit in which the agency has approved
12 additive?

13 MR. SMITH: Yes. What we're referring to is

14 that just in the context of going through the normal
15 permitting process and including a description of the
16 cooling water additive in the permit application, that
17 that would be -- and then the issuance of the NPDES
18 permit, that would be the agency's approval of the use
19 of that cooling water additive.

20 MR. RAO: So, in effect, if Abbott has a permit
21 to discharge non-contact cooling water with an approved
22 additive, some other discharger cannot say it has been
23 approved by the agency for Abbott so we don't have to go
24 through this process?

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1 MR. SMITH: That's correct. It's specifically
2 approved for that permittee. Yes.

3 MR. RAO: Thank you.

4 MR. MELAS: Just one other follow-up question.

5 HEARING OFFICER TIPSORD: Excuse me.

6 MR. MELAS: I didn't follow that. You said for
7 that permittee. I think Anand was questioning whether
8 some other applicant -- is that what you meant?

9 MR. RAO: Yes. I asked the question and the
10 answer was does not apply to another discharger.

11 MR. MELAS: Would only apply to the specific
12 permittee, not to the guy next door?

13 MR. SMITH: That's correct.
14 MR. MELAS: Who is putting the same stuff in?
15 MR. SMITH: That's correct.
16 HEARING OFFICER TIPSORD: Go ahead.
17 MR. MOORE: I guess as an extension of that
18 same question, if these pollutants were being discharged
19 in a waste stream other than non-contact cooling water,
20 they would not be exempted from an antidegradation
21 review, is that correct?
22 MR. SMITH: That's correct.
23 This deals with non-contact cooling water.
24 And, again, I would like to emphasize to the

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1 board that as it's proposed, it really will be of very
2 limited usefulness to the regulated community because
3 the vast majority of non-contact cooling waters have
4 some type of additive even if it is just chlorine, just
5 to prevent corrosion and things of that nature. It's
6 almost imperative that these additives be used.
7 HEARING OFFICER TIPSORD: Anything further, Mr.
8 Moore?
9 MR. MOORE: No. Thank you.
10 HEARING OFFICER TIPSORD: Anyone else have any
11 questions?
12 MR. DARIN: My name is Jack Darin. I'm the

13 director of the Sierra Club, Illinois Chapter.

14 And I just wanted to ask a question about a
15 section Mr. Moore was asking about previously on page 9,
16 Section 302.105(c) (2) (B) of your -- of IERG's exhibit,
17 I'm trying to envision the kinds of situations that you
18 may be envisioning where not all of these criteria might
19 need to be applied.

20 Can I assume that IERG is envisioning some
21 situations where each of these four criteria are not
22 relevant to new or increased discharges?

23 MS. HIRNER: No.

24 MR. DARIN: Are there situations that you can

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1 envision where you would think it would not be advisable
2 for the agency to determine with regard to a new or
3 increased discharge that water quality standards would
4 not be exceeded?

5 MS. HIRNER: You can never exceed the water
6 quality standard. You cannot exceed the water
7 qualities.

8 MR. DARIN: Right, but the -- I think part of
9 the purpose of this -- I think the purpose of this
10 section as drafted in the -- as proposed by the board
11 for the agency to make sure that that is not going to

12 happen, but it seems like in -- by making the some or
13 all rather than assure that these four criteria are met,
14 there are some situations where I think the agency would
15 not have to make that determination.

16 I'm just trying to find in my mind what kind of
17 situation where it would not be advisable for the agency
18 to assure that the water quality standard would not be
19 exceeded?

20 MS. HIRNER: IERG's attempt at revising this
21 section was the attempt to address the issue that the
22 agency raised on numerous occasions throughout the
23 proceedings and which the board also raised in its first
24 notice opinion and order that the agency would have the

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1 flexibility to address on a case-by-case basis the level
2 of review necessary for each and every individual
3 discharger. This was our attempt to reflect that stated
4 intent, that stated goal, that stated philosophy in
5 regulatory language.

6 If you have many questions about our intent,
7 then perhaps we haven't stated it as well as we could
8 and we would welcome the opportunity to work with you
9 and the agency to clarify the language so that the issue
10 gives you some degree of comfort.

11 MR. DARIN: Okay. And I guess, similarly,

12 would it be the same answer for -- do you envision
13 situations where it would not be advisable for the
14 agency to insure that all existing uses will end?

15 MS. HIRNER: That is a given, in the
16 antidegradation standard itself, that all existing uses.
17 . . .

18 MR. DARIN: It doesn't appear to be a given in
19 the way that you've phrased this Section B. You don't
20 require them to -- the rules, as you've drafted them, do
21 not require them to insure that. So your position is
22 that that is provided for in other sections of the act?

23 MS. HIRNER: No, that is not our position. As I
24 just stated, our intent in writing the language of this

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1 section was to give the agency the flexibility that was
2 stated in the board's first opinion order and notice and
3 which was stated by the agency on numerous occasions
4 during the proceedings.

5 If this language does not do that, again, we
6 will be more than comfortable to work with you and the
7 agency to clarify the language.

8 MR. DARIN: I guess one final way to rephrase it
9 is, would you agree that this as drafted would give the
10 agency the flexibility not to insure that all existing

11 uses will be protected by a new or increased discharge?

12 MS. HIRNER: Absolutely not. The agency must
13 always assure and we wholeheartedly support and concur
14 that all existing uses must be fully protected.

15 MR. DARIN: Well, I think we're reading your
16 language in Section B differently then.

17 That's my question. Thank you.

18 MR. FREVERT: Toby Frevert, Illinois EPA.

19 I wanted to go back for a minute to the
20 recommended change in language for cooling water with. .
21 .I want to make sure I understand the intent of the
22 language.

23 Essentially, you're saying any load increase or
24 any additional additive to a cooling water stream that

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1 has previously been approved for an additive should not
2 be subject to antidegradation. . .I guess my concern is,
3 is the intent to encompass increased feed rate or shifts
4 to other additives or any other operational practices
5 that may deviate from the particular approval you
6 received earlier?

7 MR. SMITH: Well, what we're proposing in our
8 language is that any changes, any new additive or any
9 different application rates, anything of that nature,
10 different than what was originally approved by the

11 agency, would not qualify for this exemption, but if the
12 facility is using an additive that the agency had
13 reviewed in the initial permit for that application, it
14 now has additional non-contact cooling water that would
15 use that same water additive than that would not have
16 to -- that would be exempt from the antidegradation
17 review is what we're proposing.

18 MR. FREVERT: Sounds to me like what you're
19 saying is an increase in an additive that is
20 proportional to the increase in the amount of cooling
21 water?

22 MR. SMITH: That is correct.

23 MR. FREVERT: But I don't -- I believe this
24 language may allow a lot more than that.

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1 I would suggest this language may even allow
2 shift to a different additive, certainly a higher feed
3 rate and that is not your intent? Maybe it's a wording
4 issue. But that is a concern I have, combination of a
5 question and combination of. . .

6 MR. SMITH: I would just like to state that is
7 not our intent, and, again, as D.K. Had said earlier,
8 we'd be happy to work with the board and the agency to
9 come up with -- the environmental community to come up

10 with some language that reflects that.

11 I think that D.K.'s comments do a pretty good
12 job of describing what we're trying to achieve, and
13 maybe this language as proposed doesn't quite get there,
14 but that is what we're trying to accomplish.

15 HEARING OFFICER TIPSORD: Anything further?

16 MR. FREVERT: I have no further comments. I
17 think there are other ways to accommodate his concern
18 that may or may not require changes to the language. It
19 may or may not require changes to the language like we
20 first noted.

21 HEARING OFFICER TIPSORD: Any questions for the
22 Illinois Department of Regulatory?

23 MS. SKRUDKRUD: Cindy Skrudkrud,
24 S-K-R-U-D-K-R-U-D, Friends of the Fox River.

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1 I have a question on page 8, that would be
2 Section 302.105(b)(1)(B), you propose some change to the
3 language in this section. The change would be -- change
4 the wording from existing site stormwater discharges to
5 stormwater discharges at existing sites.

6 And I wonder if you would agree that the results
7 of your proposed change in language would mean that you
8 could have an additional stormwater discharge from an
9 existing site?

10 MS. HIRNER: We believe, and we think it has
11 not been clearly established, but when we read the
12 language, and when we read the intent of outstanding
13 resource water designation, we believe that the -- this
14 exemption or this section was drafted to allow
15 facilities that were in operation prior to the
16 designation of a waterbody segment as an outstanding
17 resource water to continue to operate, and if indeed we
18 are correct in our presumption, then stormwater
19 discharges at existing sites better reflect the intent
20 of allowing the continued operation of a pre-existing,
21 if you would, facility, than existing site stormwater
22 discharges. And so that is why we have proposed this
23 language because we are presuming the intent of the
24 exception, and we're asking the board to, in essence,

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1 clarify that for us.

2 HEARING OFFICER TIPSORD: Mr. Moore I think has
3 a follow-up to that.

4 MR. MOORE: Yes. On the same language, I guess
5 I'm questioning what the usefulness of moving that
6 language around. Is that to distinguish stormwater
7 discharges at existing sites from stormwater discharges
8 not -- at non-existing sites?

9 MS. HIRNER: That is to distinguish -- no, that
10 is to clarify the fact that the exception applies to
11 stormwater discharges on sites that were existing prior
12 to the time the outstanding state resource water
13 designation came into play. So a site that was existing
14 prior to. That is our attempt, again, our attempt to
15 clarify that meaning and if we haven't done it well,
16 then we're willing to work on the language.

17 HEARING OFFICER TIPSORD: Mr. Johnson.

18 MR. JOHNSON: I probably should listen to my
19 grandfather who warned me that it is oftentimes better
20 to keep your mouth shut and have people think you're an
21 idiot rather than open it up and confirm the fact.

22 But going back to the language on the increased
23 discharge of non-cooling waters, I'm just trying to
24 think through this logically, if that -- if you're going

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1 to increase the discharge and that non-cooling water has
2 some sort of additive in it, aren't you by necessity
3 going to increase the amount of additive and I guess my
4 question is, is it your position then that as long as
5 that additive is proportional, that even if you increase
6 the volume, it's not going to have an environmental
7 impact?

8 MR. SMITH: That's correct. That's correct.

9 HEARING OFFICER TIPSORD: Did you have --

10 MR. FREVERT: Maybe I can help with this. A lot
11 of my concern is the use of the word site. I'm
12 presuming IERG means the site or the existing condition
13 of development versus the non-developed site that could
14 be developed in the future, both have stormwaters,
15 characteristics of the stormwater is going to change if
16 it goes from a (inaudible) to a railroad yard. And I
17 don't know what the answer is. I'm just trying to help
18 you clarify the discussion here so we can focus on what
19 their intent is.

20 MS. HIRNER: I think that what we're getting at
21 here is an existing site. We're looking at, let's say
22 site is factory A, factory A, which produces widgets and
23 we are not referring to because that site was an
24 industrial site prior to designation that it can always

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1 be an industrial site per se and switch from a widget
2 factory to a railroad yard to something else through the
3 course of time. Where we are looking at a site, an
4 industrial site which produces widgets, and which let's
5 say goes in and makes either a modification to its
6 parking lot or it adds a sidewalk and during the course
7 of adding a sidewalk at that site, there may be some

8 increase in stormwater discharge, that -- that is what
9 we are thinking of.

10 Did I make it --

11 MR. FREVERT: I was merely trying to clarify
12 your intent. I believe the record has some testimony
13 regarding things like conditions of parking lots and
14 sidewalks to the existing developed property. This
15 language may not focus on retaining the current use of
16 that site so much as even allowing major shift in the
17 use of that site, which could drastically change the
18 characteristics of the stormwater.

19 MS. LIU: Along the same lines of your
20 hypothetical situation where you have an industry and
21 perhaps in the future it might change to something else.
22 Say, for instance, the previous NPDES permit before the
23 ORW is designated allowing so much of the discharge of
24 pollutant A, and the new industry would like to be able

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1 to continue just discharging that same amount of
2 pollutant A, but they'll have to apply for a new permit,
3 would the ORW designation be able to allow that or once
4 that first industry closes, they lost that right to
5 discharge pollutant A?

6 MR. SMITH: I guess the answer to that is, if I
7 can jump in, if that new facility or that new industry

8 would have to apply for brand new permit, NPDES permit,
9 which would mean they would have to reestablish that
10 site as being a new facility, and, therefore, they
11 wouldn't be able to piggyback on the old permit,
12 stormwater pollution prevention plan, so, no, it
13 wouldn't apply to them.

14 HEARING OFFICER TIPSORD: Toby has some
15 follow-up. Why don't we go ahead and get you sworn in.

16 (Witness sworn.)

17 MR. FREVERT: In a situation like that, this day
18 in age, there is just continual turnover in ownership of
19 facilities all across the country, probably all across
20 the world. A significant part of our workload is
21 transferring existing permits to new owners, shifting,
22 and unless that permit is actually surrendered or
23 expires, that is an authorized load, that that owner can
24 transfer to a new owner. Modifications of the NPDES,

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1 that would not be viewed as a new load, viewed as a
2 continuation of an existing load under a new owner.

3 Thank you.

4 MR. SMITH: If I could just explain what I was
5 saying, though. I answered your question to mean that
6 it would be a totally different type of operation in

7 which case what Toby was saying would not apply, you
8 couldn't just shift it to the new owner. You would have
9 to be -- new permit that was issued for that changed
10 operation.

11 MR. FREVERT: If we're going to clear that land
12 and construct some entirely different process and ask
13 for entirely new discharge, you're correct. And you
14 don't even have to change ownership for that to be -- if
15 you go from, I don't know what, a subdivision to a
16 slaughterhouse, you're going to need a different kind of
17 permit.

18 HEARING OFFICER TIPSORD: Anything further?

19 Did you have something further, Cindy?

20 MS. SKRUDKRUD: No.

21 HEARING OFFICER TIPSORD: I just have a couple
22 of minor clarifications that I wanted to ask about.

23 On page 11 of your Exhibit A, that is attached
24 to Exhibit No. 33, at number 10, you cite to 301.231, I

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1 assume that is supposed to be 302.

2 Secondly, I have a question concerning your
3 proposed language on the outstanding resource water
4 designation. And I understand your concern about
5 putting the burden of proof, so to speak. My concern is
6 in the -- in board rulemaking action as you're aware,

7 the board makes its decision based on an entire record.
8 And, for example, in this case, the record does not just
9 consist of proponent IEPA's information, but it also
10 consists of hearings, the massive amount of stuff we've
11 got from environmental groups on this situation.

12 My concern with your proposed language is that
13 you have proposed language that says the board makes its
14 findings that the proponent, it's on page 3, I'm sorry,
15 that the proponent of the designation has established,
16 not that the record has established but that the
17 proponent.

18 So it seems to me that you're limiting the
19 ability of, for example, if Joe Smith came in with a
20 proposal for an ORW and DNR said, hey, we have all of
21 this information, let's put it in there, this language
22 would seem to say, well, that doesn't really matter, the
23 proponent is the one that has to put it in there.

24 I would like to comment on that, if that is your

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1 intent or if it isn't your intent that it should be the
2 record overall that supports proceedings.

3 MS. HIRNER: When we put this language in here,
4 it wasn't intended to limit what the board could
5 consider in forming its record. And we recognize that

6 the board can take all of these other factors into
7 consideration.

8 What we're trying to, I guess, foster is the
9 thought that the proponent for the designation or the
10 amendment or even the repeat of if someone were to want
11 to, you know, be the proponent to appeal, has some
12 minimum burden to prove up that it should be designated,
13 amended or appealed, other than, in essence, showing up
14 with the petition that says I think waterbody segment A
15 should be an outstanding state resource water, and then
16 leave it up to everybody else to provide the information
17 to make that happen. We think something other than this
18 should be it and this is why I think it needs to be an
19 outstanding resource water or if it needs to be
20 appealed, if I'm a proponent of either side of that
21 issue, there should be some minimum burden on me to
22 demonstrate to the board the reasoning behind that or
23 why that is warranted.

24 HEARING OFFICER TIPSORD: And you don't feel the

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1 current petition requirements do that?

2 I mean, you can't just come in with a petition
3 that says the Mackinaw River should be ORW, period. I
4 mean, we have petition requirements in our proposal that
5 require a certain amount of information before the board

6 even will accept a petition.

7 MS. HIRNER: Well, there were some -- if I
8 recall, you know, there are the listed things that have
9 to be addressed, and it is a statement regarding A, B,
10 C, D and E, F, and I can't recollect exactly off the top
11 of my head what they are, but they kind of go to the
12 point where it says, you know, I'm going to submit a
13 petition and a statement about each one of these things.
14 And so I guess our concern goes to what constitutes a
15 statement because we had, you know, in our first, I
16 guess first proposal made some recommendation of not
17 just a statement that, but a detailed description
18 justifying why, and with -- you know, that there be some
19 detailed description justifying why, because if you come
20 down to parsing words, you know, a statement can be I
21 think river A should be an outstanding resource water
22 because it is the most unique recreational water in the
23 State of Illinois. I have made a statement of that and
24 why it should be, but I've really done nothing to prove

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1 to you beyond that why it should be done. So ours
2 really kind of goes to that, you know, you'd have to
3 have all of these criteria, but you also have to kind of
4 prove them up a little bit, and that applies whether I'm

5 designating one or whether I would be repealing one, the
6 same burden to come up with justification is there. I
7 don't think it speaks to the justification by the
8 proponent as opposed to limiting the board or, you know,
9 any of those things.

10 HEARING OFFICER TIPSORD: I guess my question
11 then would be the board's rulemaking, again, is based on
12 the record that comes before it and the board doesn't
13 really necessarily recognize a burden of proof per se.

14 If the petition is insufficient and we hold
15 hearings, the board won't proceed. I guess I've -- it
16 seems to me this would be adding an extra level that is
17 not in this other board rulemaking proceeding. And my
18 question is why do you think it is necessary here if
19 it's not necessary in a site specific rule to allow
20 increased discharges?

21 MS. HIRNER: Again, you will recall initially
22 we had requested an adjudicatory proceeding in this
23 based specifically on this issue of the burden. And we
24 had requested that because, again, whenever -- for

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1 example, whenever industry comes in for an adjusted
2 standard, the burden is clearly upon industry to prove
3 why we should have that adjusted standard. And as has
4 been stated many times by the agency in this proceeding,

5 the ramification of designating an ORW is broader than
6 an adjusted standard. It's broader than a special
7 resource water because designating a waterbody segment
8 as an ORW can, in effect, preclude any further
9 development on that waterbody segment but also on the
10 upstream segment and the watershed because as we all
11 know what happens in the river just doesn't happen in
12 the river, it's there and upstream.

13 So, that is why we said, you know, okay, we're
14 willing, we understand the importance and respect the
15 importance that the board has placed on the rulemaking
16 and we can concede our argument for this adjudicatory
17 standard or adjudicatory proceeding, if we have some
18 special -- or if we have some additional assurances that
19 the burden is there. And IERG indeed has in the past
20 gone on the record in various other rulemaking
21 proceedings before the board arguing for a greater
22 burden of proof to be put on the proponent in a
23 rulemaking proceeding.

24 So this is, in essence, it is, it's a little bit

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1 extra in the rulemaking proceeding and we recognize
2 that.

3 HEARING OFFICER TIPSORD: Just one more question

4 on that area of the burden of proof.

5 Changing the water quality standard would have
6 much the same effect and yet there is -- you know, you
7 understand what I'm saying? In those kind of rulemaking
8 here is still nothing there. Would IERG like to see
9 something in -- similar which would require the agency
10 to meet a certain level of burden of proof in a
11 rulemaking on changing water quality standards?

12 MS. HIRNER: I have to ask because I'm not as
13 familiar with the rulemaking.

14 MS. HODGE: I would like to respond to that and
15 if I can do so on a legal issue, I'm not sure if you
16 want to have me sworn.

17 HEARING OFFICER TIPSORD: It's probably best.

18 (Witness sworn.)

19 MS. HODGE: Just to follow-up on what D.K. had
20 said, and I hope in response to your question, it has
21 long been IERG's position in a number of regulatory
22 proceedings before the board that the proponent, usually
23 the agency, does have some kind of minimum burden in
24 moving forward with a regulatory proposal, and maybe it

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1 goes more to an informational aspect than actually, you
2 know, the demonstration, but in response to your
3 question as to just a general water quality standard,

4 yes, I think IERG's position is that the agency should
5 present sufficient information to demonstrate the need,
6 you know, for the change and the impact itself and I
7 think, as we've said, you know, for many years, you
8 know, we've come in to comment on those kind of issues.

9 HEARING OFFICER TIPSORD: Thank you.

10 DR. GIRARD: I have a question. What I'm
11 hearing is that you have a problem with the word
12 statement, that you see a statement as being a rather
13 narrow term that someone just comes forward and
14 advocates a position on one of these petitions and it
15 does not include supporting evidence. And is that -- is
16 that what you'd like included, some term that says, you
17 know, not just a statement, but a body should be
18 designated but it includes all of the supporting
19 evidence?

20 MS. HIRNER: Yes, Dr. Girard, that is kind of
21 what we're getting at because that term statement can,
22 you know, mean many different things to many people and
23 without some assurance that you have everything there to
24 back up your statement is -- would offer -- would be

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1 very acceptable.

2 DR. GIRARD: Thank you.

3 HEARING OFFICER TIPSORD: Anything further?

4 Thank you very much.

5 MS. HODGE: Thank you.

6 HEARING OFFICER TIPSORD: We'll proceed then, I
7 think we can go ahead with the environmental groups.
8 All three sworn in.

9 (Witnesses sworn.)

10 HEARING OFFICER TIPSORD: And if it's okay,
11 we'll go Mr. Darin, then with you and save you for last.
12 We'll take a short break before we start the slide
13 presentation because we have to move. Is that okay?

14 MR. DARIN: My name is Jack Darin. D-A-R-I-N.
15 I'm the director of the Sierra Club, Illinois Chapter.
16 And I'd just like to submit my prefiled testimony as
17 read, as if read.

18 HEARING OFFICER TIPSORD: If there is no
19 objection, we'll enter Mr. Darin's testimony as Exhibit
20 No. 34. Seeing none, Mr. Darin's testimony is admitted
21 as Exhibit 34.

22 Are there any questions for Mr. Darin? Seeing
23 none, we'll move onto Ms. Cindy Skrudkrud. And would
24 you like to summarize or just submit it?

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1 MS. SKRUDKRUD: Yes, if I could just summarize,
2 that would be -- that would be useful.

3 I'm -- my name is Cindy Skrudkrud. I'm
4 president of Friends of the Fox River.

5 Just to kind of generalize our comments on the
6 board's proposed rule first notice that the Friends of
7 the Fox believe that the amendment that the Pollution
8 Control Board has made will satisfy the Federal Clean
9 Water Act requirements for the state to implement the
10 concept of antidegradation and outstanding resource
11 waters.

12 We support the board's decision to reject
13 changes suggested, including the de minimis exemption
14 and the significance determination.

15 We believe that the agency's proposal to subject
16 all increases in pollution loading to a case-by-case
17 antidegradation would be a -- is appropriate.

18 We're also in favor of a number of the changes
19 that the board did make to the amendments proposed by
20 the agency. We support the board's proposal to make the
21 service petition for outstanding resource waters
22 consistent with other rule -- with those required of
23 other rulemaking.

24 We also support the decision that removes the

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1 language that suggested that 07Q10 flow streams would

2 not be eligible for ORW designation.

3 We support the language which directs the agency
4 to require individual permits or certifications for
5 waters of particular biological significance and a Rob
6 Moore will be speaking more on that.

7 We support the board's decision to place the
8 procedures for implementing the antidegradation policy
9 into the rules.

10 And I also wanted to make some comments on some
11 of the proposals that were made in IERG's prefiled
12 testimony.

13 I would -- really my comments fall into two
14 categories.

15 I just want to make the board aware of my
16 concern that at least -- that two of the changes
17 proposed, I think, make very significant changes to the
18 rule that the board itself proposed.

19 The first was at Section 102.830(b) where the
20 designation of an ORW, where the word -- where the
21 suggested wording is changed from the board may -- must
22 designate a waterbody as an ORW if certain conditions
23 are met to the word from -- changed from the word must
24 to may. I think that is a significant change in your

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1 proposal.

2 Also, as we -- as we had much discussion
3 earlier, the changes that IERG put forward for Section
4 302.105(c) (2) (B) where the wording was changed from
5 assure the following and then there is a list of 4
6 criteria that changed to assure some or all of the
7 following, I think is a substantial change in what you
8 proposed and Friends of the Fox would support the
9 language as it was in the board's proposed rule.

10 Also, in Section 302.105(d), activities not
11 subject to a further antidegradation assessment, IERG
12 proposed changes in Section 5, non-contact cooling
13 water, which we had much discussion on, but also
14 proposed the additions of Sections 8 and 9 that refer to
15 sites stormwater discharges and permits that --
16 incorporating discharges authorized by site specific
17 regulation adjusted standard, et cetera.

18 I believe by -- these changes can all establish
19 situations where activities that may increase pollutant
20 loading are exempt from an antidegradation assessment.
21 And Friends of the Fox wouldn't support that. We
22 believe that that -- situations where there is a
23 potential increase in pollutant should be -- it should
24 be subject to an antidegradation assessment.

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1 So we -- we would prefer the language that was
2 in the board's proposed rule.

3 Thank you.

4 HEARING OFFICER TIPSORD: Are there any
5 questions?

6 MR. MELAS: I understand your concern that
7 you've mentioned on these particular languages.

8 One -- a little while ago, we were debating the
9 meaning of the word statement, not the word is, in this
10 case.

11 Do you agree that there should be some
12 tightening up as suggested by IERG on the statement to
13 indicate that the proponent rather than just making a
14 blanket statement, yes, the day is great, you know, have
15 some specificity in their quote, statements, unquote?

16 MS. SKRUDKRUD: So you're referring to the --
17 well, to the suggestion that I -- where I mentioned the
18 change in the word from must to may? The additional
19 language that they propose?

20 MR. MELAS: I'm not questioning that at all.
21 What I'm going back to page 1, where they talk about the
22 petition contents, and it keeps -- as Dr. Girard said a
23 little while ago the word statement keeps reappearing.
24 Statement, statement, statement.

1 HEARING OFFICER TIPSORD: Excuse me. If I can
2 clarify that? That is exhibit -- that is page 1 of
3 Exhibit No. 33.

4 MR. MELAS: Yes. Okay.

5 And do you see that?

6 HEARING OFFICER TIPSORD: And it is the 102.820
7 proposal, list of things to be included in ORW?

8 MR. MELAS: Yes, 102.820, petition contents was
9 the title. Page 1 of their Exhibit A.

10 MS. SKRUDKRUD: Okay.

11 HEARING OFFICER TIPSORD: I think he is
12 referring to all of 820, the board's proposal says a
13 statement of each.

14 MR. MELAS: Continuing on, on the next page as
15 well.

16 MS. SKRUDKRUD: So just the word, use of the
17 word statement throughout?

18 MR. MELAS: Yes. I think IERG's concern, as I
19 understood what they were saying, is that somebody can
20 just make a blanket statement without submitting
21 evidence or facts to back up what they're saying in that
22 statement or in the petition and this would apply in any
23 petition for a rulemaking there has got to be, you know,
24 something tangible, something substantial in the

1 statement to back up the statement.

2 MS. SKRUDKRUD: Isn't the word statement
3 something that is used often in the board's rules and --
4 and that this is the language that -- that you had
5 proposed, the board had proposed, isn't that consistent
6 with your use of the word statement in other --

7 HEARING OFFICER TIPSORD: I believe so.

8 MR. MELAS: Probably. But this is really the
9 first time I've heard it questioned.

10 MS. SKRUDKRUD: Yes.

11 I think, you know, I guess my reading would be
12 that you would -- that we are asking the proponent to do
13 a reasonable job to address the issues that it is asked
14 to -- they are asked to address.

15 MR. MELAS: Okay. That's fine.

16 HEARING OFFICER TIPSORD: Anything further?

17 Thank you very much.

18 Mr. Moore, do you want to summarize your
19 testimony and then we'll go to the slide show?

20 MR. MOORE: I'd like to read it into the
21 record, if it is okay with the board.

22 MR. MELAS: Sure.

23 MR. MOORE: My name is Robert J. Moore and I am
24 the executive director of Prairie Rivers Network, a

1 position I have held since April, 1997. I represent
2 Prairie Rivers Network at public meetings, hearings and
3 discussions of issues dealing with water quality policy
4 and river conservation in the State of Illinois. My
5 responsibilities include reviewing, commenting, and
6 testifying on NPDES permits issued in Illinois and also
7 reviewing and participating in discussions concerning
8 water quality standards in Illinois. I am currently a
9 member of the Illinois Department of Public Health's
10 on-site wastewater disposal commission, the Illinois
11 Department of Agricultural's Nutrient Management Task
12 Force, and also serve on several Illinois EPA workgroups
13 including ones addressing the DesPlaines River use
14 attainable analysis and the impending modifications of
15 Illinois's Subtitle D regulations, which address water
16 pollution from mining activities. In addition, I
17 represented Prairie Rivers on the antideregulation
18 workgroup convened by Illinois EPA whose efforts have
19 led to the matter now before the board.

20 The mission of Prairie Rivers Network is to
21 protect and preserve the rivers and streams of Illinois
22 and to promote the lasting health and beauty of the
23 state's watershed communities. Founded in 1967, Prairie
24 Rivers Network is a statewide organization that works on

1 river conservation issues. Our organization is
2 concerned about the protection of high quality waters
3 throughout Illinois and the restoration of those waters
4 whose quality has been degraded.

5 We'd like to provide some comments on the June
6 21st opinion of the board and then offer some additional
7 feedback on the proposed language that was issued in the
8 order.

9 Prairie Rivers Network and others who value
10 clean water and healthy lakes and streams would like to
11 acknowledge the board for their careful consideration of
12 this important matter.

13 Judging from the number of public comments
14 received by the board on this matter, this issue is,
15 obviously, a priority for members of the public who
16 value the state's rivers.

17 Today Prairie Rivers would like to provide some
18 specific comments on the board's June 21st opinion and
19 order.

20 The board's decision to not adopt a significance
21 determination is one which Prairie Rivers Network fully
22 supports.

23 The proposals put forth for determining the
24 significance of a discharge would have limited the

1 agency's ability to review alternatives that might
2 reduce or eliminate a proposed discharge and been more
3 burdensome, time consuming and costly to the agency and
4 the discharger than conducting an antideregulation
5 review.

6 Adoption of a significance determination would
7 have led to the deterioration of water quality in
8 Illinois' waters.

9 The board's decision to not adopt a significance
10 test allows the agency to determine the appropriate
11 level of antideregulation review, with suitable input
12 from the permittee and other interested parties. This
13 is the best approach to take.

14 By not adopting the proposed language for a de
15 minimis exception the board has preserved the scope and
16 intent of the Clean Water Act, as well as the enabling
17 federal regulations that specifically address the issue
18 of antideregulation.

19 De minimis provisions undermine the intent of
20 antideregulation by allowing increases of pollutants
21 into waters of the United States without any review and
22 without any consideration of the necessity of that
23 pollution. The board correctly pointed out that the
24 proposed de minimis exception would have allowed

1 discharges of bioaccumulative or persistent chemicals
2 without an agency review and would allow discharges of
3 pollutants which may not be advisable in certain
4 waterbodies.

5 Prairie Rivers would also like to point out that
6 the use of a de minimis provision, like the proposed
7 significance test, could be more burdensome than an
8 antideregulation review and could lead to the
9 degradation of Illinois' waters. To determine if a
10 discharge is indeed de minimis, the discharger and the
11 agency must determine the assimilative capacity of the
12 receiving waters and the impact the proposed discharge
13 would have relative to other dischargers in the
14 vicinity. In effect, the discharger would have to
15 develop a total matching level just to get an NPDES
16 permit. Given the rapid, I use that term factiously,
17 haste of (inaudible) development in the state of
18 Illinois I don't think any dischargers in the state
19 could be prepared to wait over 30 years for an NPDES
20 permit, continuing to express concern about
21 antidegradation unnecessarily holding up a permit
22 receipt.

23 Prairie Rivers Network also agrees with the
24 board's decision to make the process of designating

1 outstanding resource waters, ORW, consistent with the
2 scope and procedural requirements of the other board
3 proceedings.

4 By simplifying the requirements for filing the
5 petition and public notice, the board has made the
6 process for designation more accessible to
7 non-governmental organizations and has also made the
8 procedures for ORW designations consistent with similar
9 proceedings that the board administers.

10 Prairie Rivers agrees with the board's decision
11 to include the agency's proposed implementation rules as
12 part of the board's rulemaking. There is a serious need
13 to have documented procedures for conducting
14 antideregulation reviews in place at the time of the
15 final rule's adoption. This will enable the agency to
16 immediately implement the final rule as it reviews
17 pending and future applications for NPDES permits and
18 401 water quality certifications.

19 Prairie Rivers also appreciates the board's
20 recognition of the potential ecological significance of
21 streams with 7Q10 flows of zero.

22 As pointed out by Dr. David Thomas and Kevin
23 Cummings of the Illinois Natural History Survey, there
24 is little, if any, reason to exclude these low flow

1 streams from consideration as ORWs. As the board
2 observed, three of the four streams recommended for
3 immediate designation as ORWs have 7Q10 flows of zero.
4 The board correctly struck the proposed language, which
5 made designation of a zero or low flow stream as an ORW
6 more difficult.

7 Some of our specific comments relating to the
8 June 21st order of the board proposed regulations.

9 Proposed 102.820(e). Prairie Rivers does not
10 object to inclusion of a statement of the scope
11 described in 102.820(e), given that it is consistent
12 with similar board proceedings. However, the more
13 detailed requirements described in subparagraphs 1 - 4
14 will be extremely difficult to provide to the board. An
15 analysis of these factors is difficult, if not
16 impossible, to complete with data that would be
17 reasonably available to members of the public or
18 government agencies for that matter.

19 Proposed 102.830(b), the use of the phrase,
20 uniquely high biological or recreational quality, in
21 102.830(b)(1), raises some questions as to what is meant
22 by water being unique. This could be interpreted to
23 mean that the waterbody is individually unique, or one
24 of a kind, in its biological or recreational value. We

1 suggest that more general language be used that is
2 consistent with federal regulation on outstanding
3 national resource waters found at 40CFR131.12(a)(3),
4 which states that ORWs be of exceptional recreational or
5 ecological significance.

6 We are also uncertain of how the board will be
7 able to judge the criteria described by 102.830(b)(2).
8 The provision can be read to say that the board will
9 designate or not designate a water as an ORW based on
10 the relative future environmental benefits of
11 designation against the future economic benefits that
12 would be lost as a result of designation.

13 The board will make this decision based on
14 information supplied by the petitioner under the
15 proposed 102.820(e) as well as evidence entered into the
16 record by other interested parties.

17 As we stated earlier, this type of regional
18 economic analysis is inherently difficult. In
19 addition, it is exceedingly difficult to weigh the
20 environmental impacts against economic impacts.

21 Dr. David Thomas of the Illinois Natural History
22 Survey stated, I have a particular concern because I'm
23 not sure that ecological functioning has ever been taken
24 into account economically. Obviously, weighing the

1 future environmental impacts against the future economic
2 impacts is even more difficult.

3 In order to make a decision based on this
4 criteria, the board must somehow forecast the future
5 environmental and economic conditions in the area
6 proposed for ORW designation. This type of
7 prognostication is very difficult to do on a regional
8 scale.

9 Moreover, the federal regulations indicate the
10 designation of an ORW is to be based solely on a water's
11 ecological and/or recreational significance. There is
12 no mention of the economic impacts of ORW designation.
13 Prairie Rivers does see the value of including a
14 statement on the economic impacts in the petition in
15 order to make the ORW designation proceedings consistent
16 with similar board proceedings. We believe the decision
17 of ORW designation should not be tied to a balance
18 between uncertain future economic forecasts and the
19 benefits of water quality and habitat protection.

20 Proposed 302.105(b) (1) (B). It is unclear why
21 degradation of an ORW is allowable as long as it is
22 caused by an existing site stormwater discharge that
23 meets state or federal stormwater regulations and does
24 not violate any water quality standards.

1 The proposed antideregulation rule itself is a
2 water quality standard, so the proposed language of
3 302.105(b) (1) (B) is circular in its logic.

4 The proposed 302.105(b) (1) (B) allows degradation
5 of an ORW as long as it does not violate the
6 antideregulation water quality standard, which does not
7 allow degradation of an ORW, unless, of course, the
8 degradation is caused by stormwater discharge that would
9 not violate a water quality standard. This is a bit
10 confusing.

11 It is also unclear why existing stormwater
12 discharges should be allowed to contribute to the
13 degradation of an ORW, if stormwater quality
14 deteriorates over a period of time to the point that it
15 causes or threatens to cause the extirpation of a rare
16 aquatic species or elimination of an existing use in an
17 ORW, why should that degradation be allowable? Just
18 because the degradation is caused by an existing
19 stormwater discharge does not mean that the degradation
20 is better or worse than degradation caused by any other
21 source of pollution.

22 The purpose of designating ORW is to protect and
23 preserve waters of exceptional ecological or

24 recreational values, not to protect those waters from

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1 all sources of pollution except stormwater.

2 We, therefore, requests that 302.105(b)(1)(B) be
3 struck. It is inconsistent with the concept of an ORW.
4 It is inconsistent with the intent of the proposed
5 302.105 and it is inconsistent with the federal
6 antideregulation requirements found at
7 40CFR131.12(a)(3).

8 Proposed 302.105(d)(6). We agree with the
9 board's inclusion of language that activities covered by
10 general permits or a general Clean Water Act, Section
11 401 certification in waters of particular biological
12 significance should not be exempted from an
13 antideregulation review. For purposes of clarification,
14 it may be helpful to define better what is to be
15 interpreted as a water of particular biological
16 significance.

17 Prairie Rivers Network suggests the following
18 language.

19 6. Discharge permitted under a current general
20 NPDES permit as provided by 415 ILCS, 5/39(b) or a
21 general Clean Water Act, Section 401 certification are
22 not subject to facility-specific antideregulation
23 review, however, the agency must assure that individual

24 permits or certifications are required prior to all new

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1 pollutant loadings or hydrological modifications that
2 necessitate a new, renewed, or modified NPDES permit, or
3 Clean Water Act, Section 401 certifications that affect
4 water of particular biological significance, which
5 include waters identified by the Illinois Department of
6 Natural Resources to be biologically significant, waters
7 known to contain state or federally listed threatened or
8 endangered species or waters identified as having high
9 levels of biodiversity or this proposed amendment would
10 give more specific direction to the agency about what is
11 considered to be a biological significant waterbody.

12 General comment. In some parts of the proposed
13 rule there is reference to a Clean Water Act, Section
14 401 certification, but in other parts of the proposed
15 rule the comma has been dropped. To maintain
16 consistency, this should be corrected.

17 As we mentioned before, we do have a selection
18 of slides that we would like to share with the board,
19 illustrates some of the beautiful streams that Illinois
20 has to offer in case some board members don't get out on
21 our rivers and lakes and whatnot as often as they like,
22 we'd like to share some of these natural wonders with

23 you as well as some of the existing uses that are in use
24 of these streams as well.

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1 I would like to deviate from my testimony during
2 the slide presentation, I promised to bring five
3 pictures but there is just so much wonderful scenery in
4 this state I brought 15. I assure you it will not take
5 more than 10 or 15 minutes.

6 HEARING OFFICER TIPSORD: And you have color
7 representations of those?

8 MR. MOORE: Of almost all of them. I have one
9 black and white and then there were two other slides,
10 which, unfortunately, I do not have digitized copies of.

11 HEARING OFFICER TIPSORD: If you can get those
12 to us --

13 MR. MOORE: I will make every attempt to do so.

14 HEARING OFFICER TIPSORD: And let's go ahead and
15 admit the colored copies that you have as Exhibit No.
16 36, if there is no objection. Seeing none, we'll admit
17 that as Exhibit No. 36. We'll take a short break.

18 (Off the record.)

19 MR. MOORE: I'd like to thank the board for
20 indulging our desire to share with it some pictures of
21 Illinois rivers and some of the aquatic life and some of
22 the other uses that are made of our streams.

23 Illinois really is blessed with some beautiful
24 rivers. I'd just like to kind of go through these

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1 without saying too much about any of them but I'd like
2 to start off with some of the pictures of a small
3 sampling of the streams, which the Illinois Natural
4 History Survey had put on its long list of waters that
5 it felt would meet the ecological significance criterion
6 for ORW designation just to show you what some of those
7 streams do look like and then move into a couple of
8 pictures of just some waters that I guess under this
9 policy would be considered high quality waters, not
10 necessarily ORW, but certainly waters of very high water
11 quality and certainly still heavily utilized for
12 recreational and esthetic purposes and then show you
13 some of the animals and critters and the way Illinois
14 residents use our waters.

15 This first picture is a picture of the middle
16 fork of the Vermilion River, this was one of the rivers
17 which the Natural History Survey identified as an ORW
18 candidate. As I'm sure most people in the room realize,
19 this is Illinois only national wild and scenic route.
20 If you ever get a chance to get a canoe out and go
21 floating, this is a wonderful place to go. It's also a

22 real nice place to go bass fishing.

23 This is a small creek called Jordan Creek, which
24 is a tributary to the Salt Fork of the Vermilion in

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1 Vermilion County, Illinois, down near Prairie Rivers'
2 office. It's a really wonderful little stream, very,
3 very high water quality. You can see it has a very
4 intact riparian corridor along its banks, and this is
5 home to a lot of interesting fish and mussel species.
6 In fact, we -- some volunteers from Prairie Rivers DNR
7 research team did mussel surveys on this stream just a
8 few weeks ago. Real fascinating. If you ever get a
9 chance to go out there, I'd highly recommend it.

10 And this is a picture of the Salt Fork River.
11 Board Member Johnson and I were just discussing the Salt
12 Fork River, having been residents of this area. This is
13 our hometown-stream, the one that flows through our
14 backyard. And it is really a beautiful stream and one
15 that is being increasingly utilized for recreational
16 purposes in the state of Illinois. Wonderful small
17 mouth fishery, if you like catching Bluegill, it's a
18 great place to go out there and catch some of those
19 little guys. It's also really used by local residents
20 for kayaking and canoeing. And as you can see, it's
21 probably one of the most beautiful rivers in east

22 central Illinois, as this picture shows.

23 And this is probably one of the most unique
24 waterbodies in Illinois. This is Horseshoe Lake, again,

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1 another stream which was identified by the Natural
2 History Survey as ORW candidate. This is one of the
3 most northerly cypress swamps in the United States.
4 It's a really amazing place down in Shawnee National
5 Forest, down in southern Illinois.

6 This also, combined with the Cache River area,
7 which looks very similar, it's one of only 50, I
8 believe, sites designated by the United Nations as a
9 wetland of international significance. This is
10 definitely a body of water that is worthy of ORW status
11 in the state of Illinois. It is one of the 50 most
12 significant waterbodies in the world.

13 There are also streams like the Apple River
14 pictured here, which is difficult for anybody, I think,
15 to dispute the scenic beauty of a scene like this.

16 And then, of course, this is my favorite place I
17 think on the entire planet, Bell Smith Springs, also
18 down in Shawnee National Forest of southern Illinois,
19 with Bay Creek flowing through it. This is a formation
20 of rocks known as Devil's Backbone.

21 But, again, these are the types of waterbodies
22 that we're really talking about protecting when we are
23 sitting here debating this antidegradation policy.

24 The goal of the Clean Water Act is not just to

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1 count the concentration of specific chemicals in our
2 waters, the goal of the act spelled out very clearly and
3 concisely in Section 101 was to restore and maintain
4 chemical, physical and biological integrity of the
5 nations waters, not just keep the chemicals down to the
6 levels we were prepared to tolerate but maintain that
7 high quality where it existed, such as the streams I've
8 already shared with you here today and many other
9 streams throughout the state of Illinois.

10 And there is a lot of life that depends on these
11 rivers. I'm sure everybody in the room has been graced
12 with the presence of a great Blue Heron on occasion or
13 has been surprised as they walk along a pond or a lake
14 or river by the leap of a leopard frog. And among
15 the -- not only Illinois, but the nation's most imperial
16 forms of life, animal life, fresh water mussel in
17 Illinois, over half of our fresh water mussels are
18 listed as threatened, endangered or completely
19 extricated from the state of Illinois. And according to
20 Illinois DNR's most recent critical trends assessment

21 program report those trends are continuing. What does
22 that tell us? That tells us that we have degradation of
23 existing use continuing to this day. This is exactly
24 the kind of degradation this policy is geared towards

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1 staving off.

2 We also have continued degradation of our
3 aquatic life, fish species. This is a picture of the
4 Iowa Darter. This was once a common fish in the early
5 part of the century throughout the Northern part of
6 Illinois. It is now restricted to a smaller range in
7 Northern Illinois. You can see this is not a fish that
8 people would typically think of when you point out fresh
9 water fish. This is a really beautiful animal. It's
10 got very colorful dorsal fins. This is something that
11 is not just a crappie or a carp, as most people think
12 the fresh water fish resemble, but this is really an
13 interesting fish and it is a fish that is really
14 imperial in the state of Illinois.

15 I'd like to show you one of the clients of this
16 antideg policy because there it is right there.

17 A not so funny story, this is the Blue Head
18 Shiner, which used to be a fish species that you would
19 have found in southern Illinois. This is a fish, as you

20 can see, also a very beautiful animal, not a very big
21 animal, albeit, it's not going to -- nobody is going to
22 get scared of this or marvel at it probably like the
23 Timber Wolf but this is a beautiful animal nonetheless
24 and one that the antidegradation would be designed to

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1 protect, if this fish existed in the state of Illinois.
2 It has eradicated from this state because of water
3 pollution.

4 We want to make sure that the policies that the
5 board finally adopts and the agency is tasked with
6 enforcing does not lead to the extrication, but more
7 interesting and wonderful creatures like this, and rob
8 Illinois' future generation of the opportunity to study
9 and have their lives enriched by these types of life
10 forms.

11 And, of course, there is the human uses of our
12 rivers, too, which are just as rewarding, if not more
13 rewarding. Our rivers and streams in Illinois are
14 increasingly used for paddling, an outdoor recreation.
15 Fishing is something that continues to be a popular
16 sport and people are increasingly getting out on our
17 rivers. Fishing used to be something in Illinois that
18 most people were content to go to our impoundments and
19 reservoirs to do, where then they can get the big bass

20 boats out. But more people are realizing, gosh, it's a
21 lot of fun to kind of go by yourself without the roar of
22 a 200 horsepower speed boat engine behind you and just
23 enjoy a day like this gentleman here is with the
24 spinning cast rods, just hooking fish out of the river.

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1 So I just want to point out, again, that our
2 rivers also have a tremendous amount of scenic beauty,
3 scenic beauty, which even most Illinoisians probably
4 wouldn't recognize as being in their home state. It is
5 not just all corn and soybeans here.

6 We are really blessed with some natural wonders
7 like the Vermilion River. Some people would call this
8 the other Vermilion River. This is the one that is
9 tributary to the Illinois, not the one that is tributary
10 to the Wabash, always confusing for people. I don't
11 know why we have two of these. We also have two Little
12 Vermilion Rivers. I guess the other ones were so nice
13 we had the name left over for another one.

14 And, finally, just to leave you with a message
15 that we really appreciate the board's consideration of
16 this matter and we'd like to remind the board that this
17 is a water quality standard that is in dire need of
18 being updated in the state.

19 We'd like to congratulate the agency for its
20 hard work, not only on its own, but also working with
21 the various state holders and groups that work with it
22 on the antidegradation workgroups to bring the proposal,
23 which the board now has before it.

24 There are black and white copies of these photos

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1 on the back. Again, I apologize for not having
2 digitized images of the Iowa Darter and Blue Head
3 Shiner, but I'll attempt to get those to the board in
4 due time.

5 Thank you.

6 HEARING OFFICER TIPSORD: Thank you.

7 Does anyone have any questions for Mr. Moore?

8 Seeing none, we'll move to the agency's
9 testimony --

10 DR. FLEMAL: You had suggested language that
11 would clarify biological significance, that term, and
12 referred us to DNR's identification of waters as
13 biologically significant.

14 Do they actually have a list that uses that
15 term, identifies waters as biologically significant?

16 MR. MOORE: They do. I believe Dr. Thomas might
17 have submitted that as an exhibit to the board when he
18 gave his testimony, its a report. I believe the title

19 is, biologically significant Illinois streams, which
20 includes not only waters identified jointly by the
21 agency and DNR as Class A and Class B streams under the
22 biological stream classification system, but also
23 identifies those waters which the Natural History Survey
24 knows from its extensive historical research and current

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1 research where areas of high diversity of fish species,
2 high diversity of mussel species, as well as populations
3 of threatened endangered fish mussels, cray fish and
4 aquatic plant species exist and those are termed as
5 biologically significant.

6 DR. FLEMAL: What I'm trying to get at is how
7 formal that characterization is and, in fact, whether or
8 not there is a definition that DNR uses perhaps to look
9 at stream segments, characterize them as biologically
10 significant or not?

11 MR. MOORE: I would refer you back to the
12 introduction of that report but my belief is that the
13 definition I gave you is consistent with the definition
14 that DNR used for purposes of drafting that report.

15 HEARING OFFICER TIPSORD: We have in our record
16 as Exhibit No. 15, Biological Stream Characterization,
17 1989, IEPA publication. Is that what you're speaking of

18 or --

19 MR. MOORE: No. There is a larger report,
20 biologically significant Illinois -- if that report has
21 not been entered into the record by the Natural History
22 Survey itself, we would be happy to enter one for you.

23 HEARING OFFICER TIPSORD: I don't see it on the
24 current exhibit list.

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1 DR. FLEMAL: I'm too cold on the matter to
2 recall whether that is there or not. Where I'm trying
3 to go with this, if we, in fact, we have trouble with
4 the term biological significance and our fellow state
5 agency, Department of Natural Resources has somehow
6 codified what that is, maybe we might consider relying
7 upon their definition or characterization or lists,
8 whatever -- that sort of thing might exist. And if you
9 can point us in that direction, that might be useful.

10 MR. MOORE: We'll mail a copy of that report to
11 the board at our earliest possible --

12 HEARING OFFICER TIPSORD: Thank you.

13 Anything further?

14 MS. HODGE: I would just ask a favor of Mr.
15 Moore, when you submit that to the board, can you let
16 the other participants on the service list know? You
17 don't have to --

18 MR. MOORE: The report has a cost of \$20, so if
19 you want a full copy, I would suggest getting one.

20 MS. HODGE: -- just the cover so we know.

21 MR. MOORE: Certainly.

22 MS. HODGE: Thank you.

23 HEARING OFFICER TIPSORD: Anything more?

24 All right. Then let's proceed with the agency's

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1 prefiled testimony.

2 MS. TONSOR: Connie Tonsor, attorney with the
3 agency and I have with me Tony Frevert's prefiled
4 testimony in this matter.

5 MR. FREVERT: Good morning.

6 HEARING OFFICER TIPSORD: Mr. Frevert, you just
7 want to submit your testimony or do you want to
8 summarize it?

9 MR. FREVERT: I think it would be adequate to
10 submit the testimony as is. I don't know that it even
11 necessitates a summarization.

12 There are, I think, 2 or 3 points I'd like to
13 make at this time and that is about it.

14 HEARING OFFICER TIPSORD: All right. If there
15 is no objection, we'll admit Mr. Frevert's testimony as
16 Exhibit 38.

17 That does not include the comments that were
18 attached to the back of that. Those will be entered as
19 a public comment as will the comments that were in front
20 of the environmental group's testimony.

21 There were some comments by Mr. Ettinger. Those
22 will be submitted as public comments rather than as
23 prefiled testimony.

24 With that, I'll admit the testimony of Mr.

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1 Frevert.

2 Go ahead.

3 MR. FREVERT: I think there are, oh, 3 points,
4 off the top of my head I'd like to make now.

5 Generally speaking, we were pleased to believe
6 that the first notice of the standard itself as drafted
7 was very good and we've -- there is one exception I
8 think to the. . .We also recognize and accept the desire
9 for implementation procedures, at least part of those
10 implementation procedures to be adopted by the board as
11 part of this docket.

12 We recommend that those procedures really
13 address the permitting activities and in that regard we
14 think those procedures should be moved for housekeeping
15 purposes, probably Part 9, subtitle C rather than. .
16 .Water quality standard themselves.

17 So throughout this process, we -- from the
18 initiation of formal rulemaking before the board, we've
19 attended several hearings, we've participated very
20 heavily in the hearings and outside of the hearings,
21 scrutinizing the language of the standard itself, and we
22 believe that has resulted in the standard that has been
23 looked at very clearly and, indeed, is in good shape at
24 this point.

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1 We didn't give the same level of attention to
2 the implementation procedures. Now, that it is clear
3 the board intends to adopt those implementation
4 procedures, we believe we'd like to go back and look at
5 those a little closer and make sure the language defined
6 in that. . .We recommend our best recommendation to you.
7 We intend to do that as rapidly as possible. I
8 specifically did not want to do that before today's
9 hearing, an opportunity to hear the testimony of the
10 other parties. But we are indeed committed to do that
11 in the file. . .With you what we think is appropriate
12 language and even the proper place to house that
13 language.

14 And the one point I wanted to get at, which I
15 believe is substantive, got some attention this morning,

16 is the concept of biological significance in terms of
17 the exception. This was another area that got some
18 testimony at the last hearing, maybe the last two
19 hearings, essentially qualifies concept that we don't
20 intend to do major individual antidegradation reviews on
21 typically small generic type actions that we best manage
22 with general permits or nation-wide permits in the case
23 of 404 permit program in the state of water quality
24 certification program.

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1 With that being said, I believe I did come in on
2 testimony that in individual circumstances where -- what
3 appears to be generic matter has some local peculiarity
4 to it, we would refrain from covering that facility
5 under a general permit and issue a specific permit to
6 make sure things got the proper attention to them. I am
7 consistent with that concept. We had agreed to the
8 notion that we would even specify that we would not
9 apply general permits in areas which we thought there
10 was a particular biological significance of the stream
11 that warranted individual attention. And we are
12 committed to that. If indeed that concept of biological
13 significance takes on such definition that it covers a
14 significant portion of the state and the state waters, I
15 think it would be. . .Working on. And I think that

16 would force us to apply limited resources and attach to
17 areas that are relatively benign action.

18 In the case of national. . .Section 404 permit.
19 . .Certification, things, licenses, things of that
20 nature, we are indeed a state partner in federal program
21 with federal -- federal action is indeed the permitter
22 license. And in that regard, we need to work out review
23 in administrative procedures in concert with those
24 federal agencies. . .And vast majority of actions, corps

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1 of engineers, probably covered by national-wide permit.
2 Every township bridge that gets rebuilt, every sewer or
3 water main that crosses a small stream, and God knows
4 what other additional routine, small activities are
5 subject to a 404 permit. Typically, there are
6 standardized engineering practices, construction
7 practices and environmental protections that we and the
8 corps require. . .Sufficient to cover them. I don't
9 believe we can deviate too far from the nation-wide
10 permit approach. Corps of engineers, plain and simply,
11 doesn't have and will not probably allow administrative
12 resources to design their permit program, individually
13 fit every one of the 50 states. So we have to work with
14 them and develop a program where we can identify truly

15 which of those streams in the state that we are not
16 granting a general certification to and will not hold
17 that individual. . .I believe that list became too
18 large, corps of engineers may just walk on and. . .These
19 issues, 404. . .Is not going to happen, hopefully.

20 But the point I'm trying to drive home is there
21 is an administrative consideration, balance that
22 administrative consideration against the nature and the
23 type of activities that requires permit licenses.

24 That being said, we are committed to helping out

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1 those that are truly exceptional streams and treating
2 them differently and not having our general
3 certifications apply to them, becomes exceedingly
4 burdensome, I'm afraid, even higher certification
5 program. . .

6 That's about it for today, folks.

7 MR. JOHNSON: I would note that you've already
8 changed from unique to exception, your description of
9 it.

10 MR. FREVERT: My recollection is we did our
11 testimony, identify our intent all along, we were not
12 going to indiscriminately allow a general permit or a
13 general certification apply to a source we truly thought
14 was different enough from the general population that it

15 warrants being treated different. We are committed to
16 that. My recollection is. . .Offered testimony that
17 suggested that language at the last hearing. And in the
18 spirit of cooperation and to verify our commitment to
19 that, we recognized that kind of a language and we
20 would. . .That language, if you feel it is necessary to
21 give that specific definition of that language, I'm just
22 trying to give you a heads up that causes me a little
23 heartburn when we need to think about it long and hard.

24 HEARING OFFICER TIPSORD: Mr. Moore, did you

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1 have a question?

2 MR. MOORE: Well, I guess it is, is a question,
3 I'd also like to just make a statement, perhaps to the
4 issue of how much department resources would really be
5 spent reviewing general permits on streams that are
6 defined as biologically significant.

7 I guess the statement would be in our earlier
8 testimony that we provided to the board during the -- I
9 believe the second and third hearings, the Illinois
10 Natural History Survey, Biologically Significant
11 Illinois Streams report identifies an amazingly small
12 percentage of waters in Illinois as being biologically
13 significant, that is the extent of degradation that has

14 occurred in the state's rivers in the last century or
15 two.

16 I believe that report only acknowledged about
17 1,000 miles of Illinois streams as meeting their
18 definition of biologically significant. That, I
19 believe, somebody please correct me if I'm wrong, is
20 less than 3 percent of the total stream miles in the
21 state of Illinois. That would mean a relative increase
22 on general permits of -- they were distributed equally
23 throughout the state, which they're not because many of
24 those biological streams are in the federal. . .Shawnee

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1 National Forest. We're looking at less than 3 percent
2 of the general permits would actually be impacted by the
3 proposed language that the board has put forward and the
4 amendment through the definition, biologically
5 significant, which Prairie Rivers put forward.

6 MR. FREVERT: That's a fine comment.

7 Once again, I want to say I'm a little cautious
8 about committing to something that may take as many as
9 500 or a thousand per year routine, relatively
10 environmentally benign activities outside of an existing
11 permitting process, particularly the 404 permitting
12 process, but also the NPDES permitting process and
13 require not only my agency but other agencies to develop

14 a whole new administrative process. It's a significant
15 issue.

16 HEARING OFFICER TIPSORD: Any other questions?

17 I just have a question that sort of occurred to
18 me during IERG's testimony and one that I invite all of
19 you to comment on but specifically to the agency.

20 IERG has suggested that we add all NPDES holders
21 and any applicant for NPDES permit to the notice
22 requirement or to note -- be put on notice that a
23 segment of a stream is going to be nominated as an ORW.

24 My question is, since the agency has that

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1 information pretty much readily available, would the
2 agency be willing to take on that effect, I really can't
3 think of anything other than duty or burden, or would
4 the agency consider doing that if they received notice
5 that an ORW petition has been submitted, would they be
6 willing to forward that notice onto NPDES permit where
7 there is an applicant for that segment? And you don't
8 necessarily have to answer me today, if you want to
9 think about it.

10 MR. FREVERT: I'll do both.

11 Once a petition is filed and that petition has
12 been scrutinized by the board to the extent the board

13 can conclude whether or not there is enough merit there
14 to proceed with a hearing, to actually accept it, put it
15 on a docket and proceed with a hearing, we would
16 certainly be committed at that point to do whatever we
17 can to help you identify potentially effective parties,
18 and, you know, either giving you current permit holders
19 within that effected area mailing address or perhaps
20 even agree to do a mailing for you or for someone.

21 My general recollection is that there are
22 roughly 2500 NPDES permit holders in the state of
23 Illinois in the traditional sense, as we're getting into
24 stormwater permit, that 2500 could easily go to 5 or

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1 10,000. And it's not a big deal. If the targeted
2 waterbody is a typical, internal small, medium sized
3 river that may only have 5 or 10 existing permit
4 holders. If somebody suggested the Mississippi River as
5 an outstanding resource water, you're going to have a
6 mailing list of 25 -- well, probably 5,000.

7 HEARING OFFICER TIPSORD: We'll have to contact
8 Iowa as well. Missouri.

9 MR. FREVERT: Our belief is that it is not just
10 adjusting a standard, it's designating an entirely new
11 use, an entirely new use concept. In that regard, it
12 does have the potential significantly to effect people

13 and change in the chemical standard wouldn't effect.
14 And in that regard, we also want the process to go
15 forward and have everybody accessible to the process,
16 whatever we can do to encourage you and assist you and
17 make sure anybody that is potentially effected, at
18 least realize the issues on the table, we're committed
19 to helping you do that.

20 HEARING OFFICER TIPSORD: Thank you.

21 Anything further?

22 MR. FREVERT: Depends what my lawyer tells me.

23 We could do mailings or a publication or the
24 Website, personally I'm an old guy, so I think mailings

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1 would be a greater sense of confidence than throwing it
2 on the Website and expecting every individual that might
3 be effected to have enough sense to look.

4 HEARING OFFICER TIPSORD: Anything further?

5 Was there anyone else who wanted to testify on
6 the substance of the rule today?

7 MR.L DAUGHERTY: I'd like to.

8 HEARING OFFICER TIPSORD: Can we have you sworn
9 in and can you identify yourself, please?

10 (Witness sworn.)

11 MR. DAUGHERTY: My name is James Daugherty. I

12 am the district manager of the Thornton Creek Basin
13 Sanitary District located in Chicago Heights, Illinois.
14 I'm also currently serving as the president of the
15 Illinois Association of Wastewater Agencies.

16 Take this opportunity to make some very general
17 comments about the post-regulation in this matter.

18 The designation of an outstanding resource water
19 as proposed is a very powerful tool to protect unique
20 streams and lakes in Illinois. It's a powerful tool for
21 protection but ORW designation also has major social and
22 economic impacts on the land owners and dischargers,
23 both along the designated waterbody segment and also on
24 all dischargers and land owners upstream of the

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1 designated segment.

2 The criteria that the board has proposed in its
3 first notice found at 102.803(b) is a very important
4 criteria and we feel that we support that criteria
5 studying a proper criteria for determining when streams
6 should be designated as outstanding resource waters.
7 Calls for both streams and lake segments to be uniquely
8 high in biological and recreational quality and also
9 requires consideration of both present and future social
10 and economic impacts. It's important that this analysis
11 be done carefully and that the board and the petitioners

12 thoroughly investigate all of these impacts before a
13 stream is designated an outstanding resource water.

14 As I said, the impacts are major but the
15 protection is very strong and it should be used
16 appropriately.

17 Second comment concerns the lack of economic
18 analysis on the current proposal. We are concerned
19 about this and find that that lack is a major defect in
20 the current proceeding. Certainly, the economic and
21 social impacts of the new regulation should be
22 considered by the board. The inability to get that done
23 is certainly a negative in this case. We would hope
24 that the board remedy that in some way.

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1 That's my comments.

2 HEARING OFFICER TIPSORD: Thank you.

3 Does anyone have any questions for Mr.
4 Daugherty?

5 Thank you, Mr. Daugherty.

6 Does anyone else wish to testify regarding the
7 substance of this rule?

8 How about testimony on the economic, on DCCA's
9 decision regarding the impact study?

10 Seeing none -- I'm sorry. Mr. Moore.

11 MR. MOORE: I find it interesting that DCCA, a
12 well-funded government agency, did not have the
13 resources to do an economic impact study on this rule
14 but the rule itself is going to require similar economic
15 impact studies. I'd just like to point out that little
16 tidbit.

17 HEARING OFFICER TIPSORD: Thank you.

18 MR. CALLAHAN: I would like to also comment on
19 that.

20 HEARING OFFICER TIPSORD: Give us your name.

21 MR. CALLAHAN: My name is Michael Callahan. I'm
22 the executive director of the Bloomington and Normal
23 Water Reclamation District.

24 (Witness sworn.)

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1 MR. CALLAHAN: I think this -- echo my
2 sentiments of Jim. I believe this is a powerful tool,
3 projection of a number of our aquatic resources, our
4 treasures, and as such is certainly long overdue.

5 However, it also has a profound effect with
6 designation of ORW on the economic vitality of certain
7 areas of the state. The list I bring to you, just a
8 paradox that I've encountered with our own district.
9 One of the waters that were nominated by Dr. Thomas'
10 testimony back in January as a potential candidate for

11 an outstanding resource water is our receiving stream,
12 and somewhat less than 10 miles above that stretch
13 nominated as an outstanding resource water, the stream
14 is listed on the 303(d) list for non-use attainment. So
15 there is a very interesting paradox as we're currently
16 looking at this just as it applies to me locally and in
17 our district. These are the kind of problems that we're
18 going to encounter, I'm sure, as the tenants of this
19 antidegradation regulation are implemented in terms of
20 the permitting process or any expansion of loads to any
21 of the river basins. Consequently, I feel that it is
22 imperative that we have DCCAs on this. I think this is
23 probably one of the most far reaching water quality
24 programs that has come before this board in recent years

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1 in terms of economic impact and to not have such a
2 statement seems to be woefully inadequate to me in this
3 regard, particularly given the kind of paradox that I've
4 just presented to you.

5 So, that would conclude what I have to say.

6 HEARING OFFICER TIPSORD: Mr. Callahan, can you
7 tell us what your receiving stream is?

8 MR. CALLAHAN: Sugar Creek in the Sangamon River
9 basin, I believe Dr. Thomas listed it as upper stream --

10 up stream limit rather being the McClain County, Logan
11 County line, proceeding down to Illinois Route 121,
12 slightly north of Lincoln, Illinois. And that stretch
13 begins, as you might measure it on the map with a ruler,
14 about 10 miles below the city limits of Bloomington, you
15 know, it could be 8, it could be 12 stream miles. I
16 don't have the exact stream distances but that would
17 seem to be a distance. What we're seeing is -- what the
18 agency has recognized as a non-use attainment situation
19 existing in Bloomington, and we have a designated,
20 potentially designated recommended outstanding resource
21 water located 10 miles below the implementation of that
22 outstanding resource water would inhibit activities much
23 less detrimental than the alleged 303 determination that
24 presently exists in the -- on our stretch right now. So

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1 there is a paradox there. I think we're not at all
2 opposed to the outstanding resource water but I think a
3 rather capricious or perhaps light-hearted application
4 of that concept across the state that has some far
5 reaching impacts. And, furthermore, that strengthens my
6 desire to see some economic consideration given to this.

7 HEARING OFFICER TIPSORD: I would just point out
8 that the testimony you're referring to was admitted as
9 Exhibit No. 32 from -- I believe it was February 6th

10 hearing in this matter.

11 I also would just like to clarify that this
12 rulemaking is not proposing nor designating any
13 outstanding resource waters.

14 MR. CALLAHAN: I understand that. Right. But
15 my point is --

16 HEARING OFFICER TIPSORD: We're just putting the
17 procedure in place to do so at which point economic
18 factors are currently proposed to be up for
19 consideration.

20 MR. CALLAHAN: I bring that up to address my
21 request for a DCCA on this.

22 MR. FREVERT: We had indeed considered economics
23 throughout our entire design, I believe, of this
24 proceeding.

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1 I guess the first point I want to make is this
2 is a federally mandated component of the state's water
3 quality standards and my agency put together a workgroup
4 with virtually every constituency group we can identify
5 to sit down and walk through substance, the nature of
6 the standard itself, and how we would actually
7 administer that standard in our day-to-day operating
8 practices, with one of the various and significant

9 underlying notions being we need to make it work. We
10 need to make it as resource efficient and as staff
11 burdenless as possible, and in that regard I believe we
12 identified language for standard and we have identified
13 an approach to an implementation procedure, indeed
14 considered economics in accomplishing, the cheapest way
15 I as a manager of the division of water pollution and
16 control manage.

17 The other substantive thing I want to say is
18 from day one we strongly recommended that this
19 proceeding deal with the administrative approach and
20 procedural process for entertaining requests for a use
21 designation shift to an outstanding resource water and
22 avoid any consideration of actual application of waters
23 within that category until the category was decided
24 because the individual economics and social

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1 ramifications were so significant they need to be dealt
2 with in more specificity, individual applications than
3 they could in process to create how we're going to go
4 about entertaining individual requests. And in that
5 regard, I don't believe supplemental economic studies
6 are necessary to testify what we're considering today.
7 I believe we designed a program where the economics will
8 get addressed with individual applications in much more

9 detail than we can ever consider in state-wide
10 rulemaking.

11 HEARING OFFICER TIPSORD: Okay. Anything
12 further?

13 All right.

14 I'd like to go off the record for a few minutes
15 to talk about public comments.

16 (Off the record.)

17 HEARING OFFICER TIPSORD: At this time, I would
18 like to thank everyone for their participation.

19 Once again, I believe the comments and the
20 discussion that we received today have been some of the
21 finest I've seen in a rulemaking in my 10 plus years of
22 the board and I appreciate all of your attending and
23 being here.

24 Dr. Girard, is there anything you'd like to add

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1 at this time?

2 DR. GIRARD: Just thank you for your time and we
3 look forward to the final comments and the board will
4 work diligently to get to the next stage.

5 Thank you.

6 HEARING OFFICER TIPSORD: At this time, I will
7 close the final comments 30 days from the date the

8 hearing -- or the hearing transcript is received by the
9 board. If additional time is necessary, a motion may be
10 filed with the hearing officer and served on the persons
11 on the service list and we'll rule on those as they come
12 in, if they come in. Otherwise, we'll look forward to
13 your comments 30 days after the transcript comes in.

14 And if there is nothing further, I thank you all
15 for your time and attention. It's been a pleasure.

16 We're adjourned.

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1 STATE OF ILLINOIS)
)SS:
2 COUNTY OF DU PAGE)

3 I, ROSEMARIE LA MANTIA, being first duly sworn,
4 on oath says that she is a court reporter doing business
5 in the City of Chicago; that she reported in shorthand
6 the proceedings given at the taking of said hearing, and
7 that the foregoing is a true and correct transcript of

8 her shorthand notes so taken as aforesaid, and contains
9 all the proceedings given at said hearing.

10

11

12

ROSEMARIE LA MANTIA, CSR
License No. 84 - 2661

13

14

Subscribed and sworn to before me
this day of , 2001.

15

16

Notary Public

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