

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

2 ILLINOIS POLLUTION CONTROL BOARD,
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4 Suite 402
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6 (217) 782-2615
7 BY: MR. STEVEN C. LANGHOFF, HEARING OFFICER

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10 Chicago, Illinois
11 (312) 357-1313
12 BY: MS. BETH A. HARVEY and
13 MS. CAROLYN S. HESSE

14 Appeared on behalf of the City of
15 Streator,

16 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
17 1021 North Grand Avenue
18 Springfield, Illinois 62794
19 (217) 782-5544
20 BY: MS. DEBORAH J. WILLIAMS

21 Appeared on behalf of the IEPA.

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23
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1 HEARING OFFICER LANGHOFF: Good
2 morning everybody. We're back on the record. This
3 is the second day of hearing for PCB 02-4, City of
4 Streator versus Illinois Environmental Protection
5 Agency. It's November 15th, 2001, at 9:10 in the
6 morning. Welcome back.

7 Again, I'd like to reiterate that
8 members of the public are encouraged and allowed to
9 provide statements and public comment if they so
10 choose at Board hearings, and we'll get back to
11 Ms. Williams with your case-in-chief. I think you
12 can call your next witness.

13 MS. WILLIAMS: I would call Charles
14 Corley to the stand.

15 (Witness sworn.)

16 WHEREUPON:

17 C H A R L E S C O R L E Y,
18 called as a witness herein, having been first duly
19 sworn, deposeth and saith as follows:

20 D I R E C T E X A M I N A T I O N

21 by Ms. Williams

22 Q. Good morning.

23 A. Good morning.

24 Q. Could you state your name and title

1 for us?

2 A. Charles E. Corley, I'm an
3 environmental protection specialist with the Bureau
4 of Water, water pollution control, field operations
5 section in Rockford.

6 Q. That's a long title.

7 And how long have you held that
8 position?

9 A. I've been in the Rockford field office
10 since 1976 and I've been with the Agency since its
11 inception and prior to that I worked for the health
12 department, Bureau of Water, since 19 -- from 1968.
13 I've got to get these numbers straight.

14 Q. Could you tell us a little bit about
15 your educational background?

16 A. I have a degree from Elmhurst College,
17 a bachelor's degree in biology with a minor in
18 chemistry.

19 Q. And could you tell us what a field
20 inspector's job entails?

21 A. Yes. There are seven field offices
22 in the state of Illinois Environmental Protection
23 Agency and we are called the field operations

24 section and working with the water pollution control

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1 division we are sort of the eyes, ears and field
2 inspectors if you want to call it that for the
3 Agency. We visit wastewater treatment plants, do
4 stream monitoring, biological monitoring, I also
5 coordinate statewide an operator assistance program
6 which involves training of wastewater operators and
7 evaluation of wastewater treatment systems,
8 including the operation and the financial management
9 and so forth.

10 Q. Did you review Streator's petition for
11 variance?

12 A. Yes, I did.

13 Q. And did you contribute to the Illinois
14 EPA's technical investigation and recommendation?

15 A. Somewhat.

16 Q. Have your duties in the Rockford field
17 office brought you into contact with the city of
18 Streator's wastewater treatment facility?

19 A. Yes.

20 Q. And when was -- going how far back
21 have you had --

22 A. Since the summer of 1976, actually

23 before I moved to Rockford, I was assigned to -- I
24 was eventually going to move to Rockford, still work

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1 out of the Chicago office, but I have been visiting
2 Streator since that time, the city wastewater
3 treatment plant, industries in the town and so
4 forth.

5 Q. Are you at all familiar with the
6 consent decree that the city of Streator entered
7 into or the events that led up to that?

8 A. Yes.

9 Q. Could you tell us a little bit about
10 technically what was going on in the city at that
11 time?

12 A. Well, I don't know the exact years of
13 the consent decree and the amendments, however, at
14 the time and before Streator had a lot of bypassing
15 from the combined sewer system not only into the
16 area streams, the major creeks, but also to the
17 Vermilion River.

18 In addition, there were discharges
19 to the mines and the total typical waste load from
20 the city and all the users in the city including the
21 industries, the commercial, the residential was not

22 reaching the treatment plant.

23 In addition, the treatment plant
24 was very, very old and needed to be expanded. The

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1 major tributary sewers, large interceptor sewers,
2 were old and in some cases collapsed. There were
3 several bypasses -- numerous bypasses on the major
4 interceptors.

5 So there was a great deal of work
6 that needed to be done and the city began the design
7 and eventual construction of not only interceptors,
8 but a new treatment plant, which included the
9 collection of first flush combined sewage treatment
10 -- collection system and then in one case, a coal
11 run sewer. There's also a collection and treatment
12 system for the first flush of the combined sewage.

13 Q. Well, I guess to complete that aspect
14 of your testimony, prior to -- you stated that the
15 untreated sewage was not reaching the treatment
16 plant, can you explain a little bit about where it
17 was ending up?

18 A. At various locations throughout the
19 sewer system there were direct discharges into the
20 mines that underide the city. It was -- there were

21 shallow coal mines underneath the city that go back
22 well over 100 years it's my understanding. They had
23 not been used since perhaps the '20s or '30s
24 commercially and in some cases there were, I guess,

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1 groups of citizens that continued to take some coal
2 out, but nevertheless, they're mines which had
3 become sort of one of the standard ways of disposing
4 of one's waste whether it was from an industry or a
5 commercial establishment or a home by just drilling
6 holes into the mines and dumping everything into the
7 mines. Those discharges to the mines were utilized
8 by just about every different type of group in the
9 city.

10 Q. You mean -- by that you mean
11 industrial and --

12 A. Industrial, the city sewer system, the
13 commercial establishments, citizens on their own
14 putting holes into the mines.

15 Q. Thank you.

16 Now, I would like to draw your
17 attention to the exhibits we've had, Petitioner's
18 Exhibits 4 and 5, which were identified as an aerial
19 shot and a diagram of the city's treatment plant and

20 I would like you now to give us a description of the
21 plant and how it works.

22 A. Yesterday the various units of the
23 treatment plant were described by Mr. Good and the
24 plant site not only includes the headworks, the

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1 pumps, the activated sludge treatment system, which
2 is a process originally developed and sold by
3 Envirex Corporation (phonetic), also clarifiers, at
4 the two ends of the treatment plant, the south end
5 and the north end downstream and the upstream areas
6 of the treatment plant are two excess flow lagoons,
7 first flush lagoons. The south one serves the Kent
8 Street interceptor, the north one serves the Prairie
9 Creek interceptor. There's a control building and
10 also depicted on the map is the Vermilion River,
11 which flows generally from a southerly direction to
12 a northerly direction and also included in the
13 treatment plant are the converted original aeration
14 tanks and final clarifiers, which have also been
15 converted to treatment units.

16 Q. When was the last time you inspected
17 this facility?

18 A. The last compliance evaluation

19 inspection as we call them was done earlier in the
20 year, perhaps early summer, late spring. I've been
21 on the ground since then.

22 Q. Do you have any information regarding
23 sludge removal at the facility?

24 A. Yes. I've been aware of by various

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1 means the manner and the timing which sludge has
2 been removed from the plant.

3 Q. Can you describe to us a little bit
4 about how that works?

5 A. The current process and I think has
6 also been described is that there's a contractor to
7 operate the treatment system and then the city
8 administers a separate contract for the removal and
9 utilization of sludge on agricultural land and to
10 the best of my knowledge up to this point, the
11 sludge, which is lime stabilized and concentrated
12 somewhat to remove as much water as possible, has
13 all been used on agricultural land.

14 Metro-Ag is the contractor that
15 has been hired to do that and in the past it's been
16 my impression that the removal of the sludge has
17 been pretty much at the schedule of the contractor

18 as opposed to the actual plant needs and the need to
19 get out the sludge at the appropriate time.

20 Q. Can you give us any example of your
21 impression?

22 A. During some years and it seemed to the
23 citizens that it was -- coincided with some holiday
24 event, but sludge was stored and there's odor

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1 problems at the treatment plant, which were
2 attributed to the lack of hauling sludge from the
3 site at the appropriate time.

4 Also, some of the odors that the
5 citizens were complaining about were attributed to
6 the fact that the lime -- the mixing and the amount
7 of lime and the uniformity of the lime mixing was
8 maybe not adequate. That, to some extent, has been
9 corrected.

10 Q. Are you aware of the last time sludge
11 was scheduled to be removed from this facility?

12 A. During the plant visit in -- I believe
13 it was October, I had talked to the superintendent
14 and as I had understood, in addition to meeting with
15 the city, when we talked in Springfield that October
16 15th the sludge hauling contractor was to be on site

17 to begin removing sludge. I asked the
18 superintendent to let me know when it actually was
19 being hauled and removed from the plant and that --
20 he did call me in early November -- earlier this
21 month, the exact date, I don't recall.

22 Q. Have you had reason to inspect other
23 sites in Streator recently?

24 A. Yes. I've been to different locations

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1 in Streator, including the Carriage House Companies.

2 Q. Why don't we save the Carriage House
3 for a little bit later and talk about some of the
4 other sites you've been to.

5 A. Well, I visited -- not within the last
6 year, but over the course of the years, I visited
7 many of the industries. I have visited the sludge
8 utilization sites just outside of town in Livingston
9 County. I have also responded to complaints of
10 various natures, odors, sewer back up, the sewage
11 that's in the tiles in the northwest part of
12 Streator in the Bruce Township area, also to the
13 various subdivisions around town that have had
14 problems with either tiles or sewage-related
15 problems of other sorts.

16 Q. Have you had an opportunity to inspect
17 any of the new development in the city?

18 A. The new development? I have visited
19 the Kroger site including the new strip mall, yes,
20 I've been there.

21 Q. How about the site of the new Super 8
22 Motel?

23 A. Yes.

24 Q. Can you tell us a little bit about

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1 what you saw when you visited that site?

2 A. Well, I've actually been there twice,
3 once in the middle -- well, I don't remember the
4 exact dates. I was also there most recently on the
5 9th of October and I have reports from both visits.

6 Q. Do you need to look at those?

7 A. Sure, that would help.

8 Q. Do you have them in your file or
9 should I get them from mine?

10 A. I don't have anything here.

11 Q. We can rely on your memory. I trust
12 your memory if that's okay with you.

13 A. Sure.

14 Q. Why don't we talk about what you

15 recall from your first visit to the Super 8 site?

16 A. Again, I don't recall exactly the
17 date, but we were sent -- I don't remember exactly
18 where it came from, but anyway, we were sent an
19 article from the Streater newspaper as I recall
20 which indicated that there were --

21 Q. I'm sorry, I found them. Okay.

22 Are these your inspection reports
23 or no?

24 A. Yes. These are my inspection reports,

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1 copies.

2 Q. Do they refresh your recollection
3 about the date of your first visit to the Super 8
4 site?

5 A. Yes. Quite a bit, especially
6 concerning the date.

7 Q. What was the date of that?

8 A. July 26th of this year.

9 Q. All right. Now, why don't you tell us
10 about what occurred that date?

11 A. Well, on that particular day I was
12 there actually for several different things, one of
13 which was to visit the site of a couple construction

14 projects which were underway and as I said, we were
15 informed when we received a letter that some --
16 construction of a new gas station, car wash, Super 8
17 Motel and other development were underway, including
18 the addition to the building project at the Kroger
19 station, the small strip mall area.

20 Getting back to the motel however,
21 it was -- construction was underway, first floor
22 framing seemed to be for the most part finished and
23 they were starting on the second floor.

24 Also, it was obvious from the

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1 street that there had been saw cuts into Bloomington
2 Street and near a manhole -- as a matter of fact, in
3 line with the manhole. So it looked as if some
4 sewer work had been -- sewer service installation
5 work had been done and I was also aware that, in our
6 office anyway, we had not been notified of any
7 permit application or for that matter issued a
8 permit for that project.

9 So I took some pictures -- it was
10 just before noon as I recall or sometime during the
11 noon hour. I took pictures and then intended to go
12 to the city hall or the public works department to

13 talk to them about it and on that particular day and
14 for that matter I don't know if they have a new
15 public works director or not, but on that particular
16 day they did not have a public works director so I
17 went to the city manager's office after lunch and we
18 talked about some other things, including this and I
19 asked at that time if someone from the public works
20 department could accompany me to the site and I
21 wanted to take a dye test to see if, in fact, the
22 sewer service had been completed from the street to
23 the building and the mayor volunteered to go with me
24 and I did have dye in the car and so after we talked

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1 about several other things, including sewer and
2 interceptor projects, which the city had planned to
3 build towards the northwest area, he and I went to
4 the motel and we contacted one of the workers who I
5 believe may be identified in the report, I don't
6 recall right now, but he gave us permission to check
7 the sewer.

8 Q. Can you explain what a dye test is for
9 us?

10 A. Yeah. First of all, in order to find
11 the continuity in a pipe from an upstream area to a

12 downstream area or, in fact, to see if the pipe has
13 been completed, we have fluorescein dye that's a
14 very commonly used material and that mixed with
15 water when it's poured into a pipe since you can't
16 see it underground, you can pour it into one area
17 and see if it comes out in a downstream area to show
18 that, in fact, it is intact. The dye is very
19 readily visible. It's not harmful to anybody, but
20 it is readily visible.

21 But anyway, the worker on the site
22 allowed us to check and I explained to him by myself
23 and I think the mayor at the same time that we
24 wanted to check to see if the pipe had been

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1 completed, the sewer service connection. So I
2 poured the dye into the -- there's a small stand
3 pipe next to the building and I poured it into there
4 and within two to three minutes, in that time frame,
5 we went to the manhole in the street and it was very
6 obvious that the dye came out there indicating that
7 the sewer connection had been completed to the
8 building.

9 Q. Can you tell us what happened next?

10 A. Well, I did take a picture of it and

11 there -- in addition to the mayor, there was also a
12 public works person, Larry Overrocker (phonetic), I
13 believe, I'm not positive of the spelling of his
14 last name, but we all observed it, confirmed that
15 yeah, it was there, we covered the manhole, and I
16 asked the mayor if we could go back to his office,
17 which we did. First of all, I think, I'm not sure
18 exactly how long it took, but we did go back to his
19 office and I asked him if he was aware if there was
20 any kind of records that were kept that they
21 required the contractors to, you know, pay a fee or
22 make a connection and he said yes, that he would
23 check with the office staff, someone in the staff,
24 and I don't know exactly who he checked with, but he

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1 did check and he came back and he said yes, in fact,
2 that the contractor or the developer, one, I don't
3 remember which because I did not see the paperwork
4 had, in fact, made an application and paid a fee to
5 make the connection from the -- for the building to
6 the sewer system.

7 Q. Was that sewer connection initially
8 capped?

9 A. To my understanding it was capped,

10 exactly when, I don't know, but it was represented
11 by the developer, Janko, that it was capped in the
12 outlet from the sewer service connection to the
13 manhole in the street. I have not seen it, but that
14 was the representation that they made.

15 Q. I'd like to ask you a few questions
16 now about the Carriage House facility. Can you tell
17 us how long it has been that you've gone to that
18 facility?

19 A. I don't remember the first visit to
20 Carriage House, but sometime during the '80s we did
21 a sewer system survey of the wastewater discharges
22 for several reasons, one of which was to find out
23 what was being discharged or what wastewaters were
24 being produced by the industries, many different

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1 industries, including Sunstar, which it was called
2 at that time, I believe, but also to find out where
3 they discharged and in most of the cases, many of
4 the cases anyway, they discharged to mines, they did
5 not discharge to the sewer system or if they did
6 discharge to the sewer system, it was only part of
7 the discharge and there were several high volume and
8 several high waste strength discharges that went to

9 mines or part to the sewer, part to the mines.

10 In the case of Carriage -- what is
11 now Carriage House, they have a concentrated -- they
12 had so many products it's hard to describe it, but
13 as has probably has been mentioned before, they make
14 concentrated drink mixes such -- you know, the ones
15 you might find in a bar or a liquor department of a
16 store, they also make syrups, barbecue sauces, honey
17 products for honey and food products of that type.
18 They are obviously a high waste strength discharge.

19 Q. Can you explain what that means a
20 little bit?

21 A. Well, in relationship to BOD or
22 biological oxygen demand, your typical domestic
23 sewage from residential population would be on the
24 order of, say, 150 to 200 milligrams per liter of

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1 BOD or biological oxygen demand.

2 Sugar, which is a very
3 concentrated carbohydrate, by comparison would be
4 very many magnitudes higher than that and in the
5 case of Sunstar Foods originally when they got their
6 discharge permit to the sewer system or at least the
7 last revision of that, they purported to have a

8 discharge waste strength in the BOD measurement of
9 3,500 milligrams per liter. So that's several times
10 higher. The actual discharge which has been
11 measured by the plant superintendent through deposit
12 sampling and analyzed by the treatment plant lab at
13 Streator, it has even gone several times higher than
14 that.

15 So it's -- the measurement would
16 be from the biological oxygen demand and it's the
17 amount of oxygen it takes to fully treat the waste.

18 Q. Can you explain a little bit about the
19 relationship between the hydraulic loading that goes
20 to the plant from Carriage House and the organic
21 loading?

22 A. Right. There would be those two
23 factors, the amount of water by the volume and the
24 amount of waste load for the high BOD or it can also

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1 be measured in pounds of BOD and relatively
2 speaking, Carriage House has a low hydraulic load to
3 the treatment plant, hundreds or perhaps thousands
4 of gallons. On the other side, however, their waste
5 is so strong or such a high concentration of the
6 sugar products that that they, in fact, could

7 represent the biological load or the pound load of
8 BOD which could be -- could approach and perhaps
9 exceed the entire load that the treatment plant
10 could treat and I think some of those grafts
11 yesterday were presented by Mr. Good point that out.

12 Q. When was the last time you visited the
13 Red Wing Carriage House plant?

14 A. That was on the 9th of October.

15 Q. Can you tell us a little bit about
16 what had changed since your last visit?

17 A. Well, since the last time I was there
18 they did expand the building, they added a new
19 product line. In addition, part of the reason for
20 going was I got a phone call from the Illinois
21 division manager for Carriage House, I don't know if
22 he actually works at the building or if he's from
23 some other site, Mr. Haller, I believe and I did
24 make an appointment with the plant engineer, Gary

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1 Raliegth (phonetic), I don't remember exactly the
2 name, I have a report on that also, but anyway,
3 one of the reasons was to look at the tanks which
4 they are using to collect some of the intermediate
5 products because the production line works on sort

6 of a continuous basis. The material is produced, it
7 goes through a heating unit and then goes into
8 another tank and then it goes through a filling
9 operation and goes into the bottle. Well, as they
10 change from one product to another, they have some
11 material that they can't bottle, it may be a mixture
12 of syrups, it may be a mixture of barbecue sauces or
13 something like that they can't keep, so what they do
14 is they discharge that to the sewer system, which
15 accounts for some of the load or the waste I should
16 say.

17 During that transition period,
18 they wanted to put it into portable tanks and then
19 collect it in the tanks which were 550 gallon tanks
20 and then on the weekends to assist the treatment
21 plant so that they would not have these high spikes
22 during the week, they would then drain it at a much
23 slower rate over the two-day weekend period when
24 there's purportedly no one working there, they would

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1 drain it to the sewer system and that way take off
2 some of the high loads from the week and put those
3 into the sewer system on the weekend.

4 Q. How did they drain it?

5 A. Well, there is -- I did ask to find
6 out if they had some written procedure or if they
7 actually kept records of this and they do not keep
8 records, there was no procedure for this and there
9 was no one in particular that it was represented to
10 me that actually was in charge of the operation.
11 Instead, they left it up to the people who were
12 running the various lines to bring the tanks over
13 to the production line, fill the tank and then on
14 the weekend move it to a drain area and open the
15 valve in the bottom of the tank and drain it slowly
16 out and into the sewer system.

17 Q. Are you aware of whether this is a
18 permanent change in their method of production or
19 whether it's interim, experimental?

20 A. I can't speak for the company for long
21 term, but on the day that I was there it was
22 represented as part of a test phase under the --
23 I guess guidance of a consulting firm they were
24 testing whether or not this would be an effective

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1 means. There is nothing installed permanently and
2 it was still represented as a test, but there wasn't
3 any representation that it would necessarily

4 continue nor was there a representation that it
5 would not continue.

6 Q. Do you have any information about
7 which aspects of Carriage House's production produce
8 greater amounts of BOD discharge than others?

9 A. Only what was told to me. It was
10 indicated by the plant engineer that the newest
11 line, the Mrs. Butter Worth's line, I think they
12 referred to it, is newer equipment and has a single
13 product, therefore, proportionately it has fewer
14 problems and less waste is generated from the newer
15 line.

16 The original line, which is on the
17 south side of the building inside the original
18 building, was described as having more problems
19 because it had many different products, not
20 consistent product at all, and had it a filling
21 operation which had also to be utilized for
22 different types of products, therefore, it caused
23 the production people -- it caused the generation of
24 waste material to be higher in proportion to the

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1 newer line, which was the Mrs. Butter Worth's.

2 Q. Do you have an opinion on whether

3 elimination of the Mrs. Butter Worth's line would
4 have -- what kind of impact that would have on the
5 loading to Streator's plant?

6 A. Well, I have not taken samples of that
7 so it would only be what was reported to me, the
8 description of the amount of waste generated so if
9 that were a correct evaluation by the plant engineer
10 then the original line still causes the most amount
11 of wastewater.

12 MS. WILLIAMS: All right. Thank you
13 very much. I don't have any other questions.

14 HEARING OFFICER LANGHOFF: Thank you.
15 Ms. Hesse or Ms. Harvey?

16 MS. HESSE: We just need a second to
17 consolidate our thoughts.

18 C R O S S - E X A M I N A T I O N

19 by Ms. Harvey

20 Q. Since you were just talking about the
21 Red Wing facility, do you know which line the Log
22 Cabin production -- is that an old or new line?

23 A. By that name no, the newer line on the
24 north side of the building was described to me as

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1 the Mrs. Butter Worth's line and I don't know

2 exactly where Log Cabin syrup would be made.

3 Q. Did they -- when you described the two
4 different product lines you referred to them as old
5 or new and you described the Mrs. Butter Worth's as
6 the new line?

7 A. Right.

8 Q. What are the other products that are
9 made in the old line?

10 A. That's the one that I had originally
11 visited, it's on the south side of the building in
12 the original building and that's the one that makes
13 concentrated drink mixes, this is how it's been
14 represented to me, it also makes the barbecue
15 sauces, it also makes some syrups, but not those
16 which are, you know, the Mrs. Butter Worth's
17 products. It makes several different types of
18 products, not just one similar type like a syrup.

19 Q. Okay. So there are some syrup
20 manufacturings going on in the old line?

21 A. That's my understanding. It was not
22 Mrs. Butter Worth's line of syrups. It was also
23 indicated to me that the company that they do the
24 work for actually owns the equipment in the

1 Mrs. Butter Worth's area. That is not owned by
2 Carriage House. It's owned by the company that
3 they do the work for.

4 Q. Did they give you the name of that
5 company?

6 A. Well, they kept referring it to
7 Mrs. Butter Worth's, that's the way I understand
8 it's commonly referred to in the plant.

9 Q. Are you aware of whether or not they
10 will continue to manufacture that syrup for
11 Mrs. Butter Worth's?

12 A. No. It's not in my report, but it was
13 mentioned by the plant manager that apparently it's
14 up for some sort of decision one way or another
15 whether or not it will continue there, but I'm not
16 independently aware of it, no.

17 Q. When you were there doing your visit
18 the plant manager or the plant engineer, whoever was
19 showing you through the line, mentioned something
20 about the contract being -- a decision being made
21 regarding that contract?

22 A. That's correct, he did say that there
23 was going to be a decision made. I don't believe it
24 was this year. I believe it was next year in 2002.

1 Q. And the date of your visit was October
2 9th?

3 A. Right.

4 Q. Okay. When you were describing the
5 process to make syrup you referred to something
6 called a heat exchanger?

7 A. Right.

8 Q. When you were there, did they give you
9 any indication that they were going to be installing
10 new equipment regarding -- relating to that heat
11 exchanger and what it does?

12 A. No, they did not indicate that and I
13 did not ask that, however, I did ask where the waste
14 seemed to be generated the most, in other words,
15 what step and this is common with almost all
16 manufacturing, one step or another does generate
17 more waste than the other and it was indicated by
18 the plant manager that it was the filling operation,
19 the actual filling of the bottles was where they
20 generated a lot of their wastewater -- or a lot of
21 their waste.

22 Q. When you were discussing earlier you
23 mentioned the heat exchanger as being part of the
24 process?

1 A. Yes.

2 Q. What part of the process is that heat
3 exchanger and what role does it play?

4 A. Well, as I understand it that's how
5 they cook the product, heat it up to a certain
6 level, but I'm not in that business so I don't know
7 a lot of details about making the product.

8 Q. Okay. But there is some waste
9 associated with that step of the process, the heat
10 exchanger step?

11 A. Yeah, there very well could be, yes.

12 Q. Okay. Thank you.

13 Earlier you testified about -- I
14 think it was also on October 9th that you visited
15 the motel?

16 A. Yes.

17 Q. Super 8 Motel?

18 A. Yes.

19 Q. And you testified that you did a dye
20 test to confirm the connection, is that correct?

21 A. That was in July -- the dye test was
22 performed in July.

23 Q. I'm sorry. July you performed a dye
24 test to confirm the connection?

1 A. Right.

2 Q. Did you witness the installation of
3 that line?

4 A. No, I did not.

5 Q. Do you know who did the connection --
6 made that connection?

7 A. The exact person, no. The contractor
8 however, Janko, indicated that they, in fact, put in
9 that service connection.

10 Q. Okay. Is Janko the contractor that's
11 building the motel?

12 A. To the best of my knowledge, but I
13 don't know the exact business arrangement there.

14 Q. Do you know or did you have any
15 discussions with the owner of the motel?

16 A. Not at that time, no.

17 Q. Do you know who the owner of the motel
18 is?

19 A. I am not sure that I could totally
20 testify to it. I know the person who -- I know of
21 the person and I met the person, Sam Patel
22 (phonetic) he says that he's the owner.

23 Q. Okay. He has represented himself to
24 you as the owner of the motel?

1 A. That was my understanding from the way
2 he represented it, yes.

3 Q. Okay. Thank you.

4 When you were there doing the dye
5 test and you confirmed the connection, I think you
6 testified that the motel was in a state of
7 construction, is that correct?

8 A. That's correct.

9 Q. It was being constructed at that time?

10 A. That's correct.

11 Q. And the state of construction was
12 framing?

13 A. That's correct.

14 Q. So there weren't any walls, it was
15 just a frame?

16 A. Frame walled, there were no completed
17 walls, no.

18 Q. So the motel was not occupied at that
19 time?

20 A. No.

21 Q. So there was a sewer connection, but
22 the motel wasn't occupied, therefore, there wasn't
23 any discharge through that connection, is that
24 correct?

1 A. There was no sewage going into it,
2 correct.

3 Q. Okay. Who owns the sewer line that
4 extends from the motel to the main line sewer in the
5 street?

6 A. As far as I know, the typical method
7 of doing this would be for the owner of the
8 property, the owner of the building, would be the
9 owner of the service connection. The service
10 connection generally is considered to be that
11 portion of the pipe that takes the sewage from
12 whatever building it is, commercial or industrial or
13 residential building, to the point of which it's in
14 the right of way of the street and at that point
15 from that point on it belongs to the city or the
16 owner of the sewer system.

17 So technically up to the edge of
18 the right away, from the street to the edge of the
19 right away, that would be the city's portion. From
20 that point of the edge of the right away to the
21 building would be the owner of the property's
22 portion, so they would own it.

23 Q. Thank you.

24 Do you know whether or not IEPA

1 issued a violation notice to the owner of the motel
2 for that sewer connection?

3 A. Yes, I do.

4 Q. Did they?

5 A. Yes, we did.

6 Q. Do you know the nature of that
7 violation notice -- what the violation was?

8 A. For the installation of a sewer
9 service without a permit.

10 MS. HARVEY: Okay. Thank you. That's
11 all.

12 HEARING OFFICER LANGHOFF:
13 Ms. Williams?

14 MS. WILLIAMS: I don't have anything
15 else. Thank you.

16 HEARING OFFICER LANGHOFF: Thank you,
17 Mr. Corley.

18 THE WITNESS: Thank you.

19 MS. WILLIAMS: Would you mind five
20 minutes?

21 HEARING OFFICER LANGHOFF: We'll take
22 five minutes, please.

23

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1 (Whereupon, after a short
2 break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER LANGHOFF: We are back
6 on the record. Ms. Williams, call your next
7 witness, please.

8 MS. WILLIAM: I call Al Keller.

9 WHEREUPON:

10 S. A L A N K E L L E R, P.E.,
11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 D I R E C T E X A M I N A T I O N

14 by Ms. Williams

15 Q. Will you please state your name and
16 your title for us?

17 A. My name is Alan Keller, A-l-a-n,
18 K-e-l-l-e-r. I'm the manager of the northern
19 municipal unit in the permit section.

20 Q. Of what Agency?

21 A. Of the Illinois EPA.

22 Q. Thank you.

22 and basis of designs for municipal treatment plants
23 and we also ensure that prior to approval that those
24 facilities whatever they're proposing in their

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1 engineering report will meet our design criteria
2 also. We also issue NPDES permits, National
3 Pollutant Discharge Elimination System permits,
4 which is a federal operating permit system that
5 Illinois has delegation for and we issue those --
6 review those applications and issue those permits.

7 Part of my other functions, I
8 serve as the state sludge coordinator for the state
9 of Illinois and with that position I review and keep
10 in contact with other states on potential
11 regulations that apply towards land application of
12 sludge and I was also the principal author of our
13 Agency design criteria for sludge application on
14 land.

15 I also participate in two design
16 standards committees, one with the Bureau of Water
17 Agency committee and we have about nine professional
18 engineers that write and interprets the design
19 standards for sewers, treatment plants, and lift
20 stations.

21 I also am the state designee for
22 the ten-state standards committee, which is a Great
23 Lakes upper Mississippi River base and board. They
24 also have design standards for the ten states and

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1 I'm the Illinois representative and those standards
2 are used nationwide. I'm also an Illinois
3 registered professional engineer.

4 Q. Thank you.

5 I would first like you to explain
6 a little bit about how the Agency goes about
7 approving or establishing hydraulic and organic
8 loading capacity to wastewater treatment facilities.

9 A. Okay. Basically, we don't establish
10 that. What is done usually is it is presented in an
11 engineering report what the hydraulic and organic
12 loading will be for a certain design period, that
13 design period can be anywhere from five to ten to 20
14 years for treatment plants. They basically estimate
15 what the population density will be for that town,
16 what they will be serving, what any commercial
17 services might be, what industries it might serve,
18 establish what the hydraulic loading is, the design
19 average flows for the plant, design maximum flows

20 for the treatment plant and also establish what is
21 the anticipated organic loading or the biochemical
22 oxygen demand loading on the treatment plant. Once
23 those values are established, then the engineer
24 would go through their report and provide

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1 alternatives, cost estimates for the alternatives
2 and they would pick one alternative basically,
3 usually the most cost-effective or implementible
4 alternative.

5 Q. By the engineer, do you mean the
6 engineer for the plant or for the Agency?

7 A. Consulting engineer for the village or
8 municipality and they would provide a basis of
9 design using those design parameters of hydraulic
10 and organic loading in establishing the loads and
11 the size of the treatment plant's units in that
12 report.

13 So the hydraulic and organic
14 loading would basically dictate what the sizes were
15 to be in compliance with our design criteria.

16 We do -- the Agency does review
17 those reports, like I said, and if we agree with
18 those reports basically -- they present the data for

19 that, then we would review that and make sure all
20 the design parameters are met in the engineering
21 report and basis of design and approve it or advise
22 a consultant what needs to be changed.

23 Q. What do you look to to determine
24 whether our criteria has been met?

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1 A. Basically, we look at all of the
2 different treatment plant units, pumping facilities,
3 we look at organic loadings in tanks, we look at
4 chemical feed rates, we look at sludge production
5 values for determining size of the digesters.

6 Q. Do you have a document that provides
7 you any guidance on evaluating the reports?

8 A. Yes. We have the Illinois Recommended
9 Standards for Sewage Works.

10 Q. Do you know if that document is
11 codified anywhere?

12 A. Yes. It's codified as Part 370.

13 Q. Okay. And does this -- this
14 regulation cover the design of sewers and all
15 treatment components?

16 A. Yes. It covers the design of sewers,
17 lift stations and all treatment units.

18 Q. Now, I'd like to talk to you a little
19 bit -- or I'd like you to tell us a little bit about
20 what happens if a plant decides that they would like
21 to be rated at a different level from their current
22 rating?

23 A. Basically, there's two ways to do that
24 again that requires the services of a consulting

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1 engineer for the village or a registered
2 professional engineer could be on staff too.

3 Q. And that is because?

4 A. Because of the Illinois Registered
5 Professional Engineering Act.

6 Q. Okay.

7 A. And they would provide a report like I
8 talked about that would state what the new
9 anticipated design loadings might be, the design
10 flows, and/or organic loadings of the -- for the
11 next design period and we would review that document
12 with respect to our design criteria to see if it
13 meets all the criteria. With that type of document,
14 they would usually propose the addition of new
15 treatment units, larger units usually, to handle
16 larger anticipated organic loadings.

17 Q. Would it be possible for a facility --

18 A. That was the first method. There's
19 another method.

20 Q. I'm sorry. Go ahead.

21 A. The second method to get a rerating is
22 to basically go through a complete basis of design
23 for a treatment plant -- for an existing treatment
24 plant and establish what those units can actually

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1 handle. They can provide data which shows that a
2 treatment plant may not meet everything in our
3 design criteria, but they do have to provide data
4 that shows higher loading might be acceptable for
5 approval.

6 Q. What kind of data would they need to
7 provide?

8 A. Basically, depending on the unit, they
9 have to show the successful operation of a treatment
10 plant or a particular unit that they're trying to
11 get approved and that basically would be about one
12 year's data, a plant meeting all effluent standards.

13 Q. And what effluent standards?

14 HEARING OFFICER LANGHOFF: Excuse me,
15 Ms. Williams. Mr. Keller, did the city of Streator

16 in their asking to rerate their plant use the second
17 method that you're talking about now?

18 THE WITNESS: Yes.

19 HEARING OFFICER LANGHOFF: And --

20 THE WITNESS: They used, I think, a
21 combination almost.

22 HEARING OFFICER LANGHOFF: Okay. Is
23 there anything in the regulations that state you
24 need 12 months of data?

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1 THE WITNESS: No, there is nothing
2 specific in the regulations.

3 HEARING OFFICER LANGHOFF: Do you have
4 anything in-house -- in-house documents that state
5 that you need 12 months of data?

6 THE WITNESS: No. We could require
7 more actually to prove their point. We do require
8 12 months data to handle seasonal fluctuations.
9 There are seasonal standards for ammonia nitrogen.
10 They have to be in both standards for ammonia.
11 We also want the plant to handle all conditions that
12 it may be under for however many years the design
13 period is for with respect to high flow rates due to
14 infiltration inflow in the system and be subject to

15 all conditions at the plant.

16 HEARING OFFICER LANGHOFF: In your
17 experience, how many times has this rerating process
18 happened? How many times have you been asked to
19 rerate a plant?

20 THE WITNESS: We've been asked I would
21 say in the last two years probably a half a dozen
22 times maybe.

23 HEARING OFFICER LANGHOFF: On average,
24 how long does it take you to rerate a plant once

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1 you've been given the submission of the package?

2 THE WITNESS: It can be anywhere from
3 two months to a year's time from initial submission.

4 HEARING OFFICER LANGHOFF: What's the
5 average, you know, using your best guess?

6 THE WITNESS: I would say four months.

7 HEARING OFFICER LANGHOFF: And lowest
8 would be approximately two months?

9 THE WITNESS: About two months.

10 HEARING OFFICER LANGHOFF: And the
11 longest would be?

12 THE WITNESS: Probably a year to
13 obtain adequate data.

14 HEARING OFFICER LANGHOFF: Thank you.

15 Thank you, Ms. Williams.

16 MS. WILLIAMS: You got me off track.

17 HEARING OFFICER LANGHOFF: I
18 apologize. I wanted to get that in. I think that's
19 important for the Board.

20 MS. WILLIAMS: I do too.

21 BY MS. WILLIAMS:

22 Q. Have you had an opportunity to look
23 over Streater's document that they submitted that
24 we've been referring to as the rerate proposal?

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1 A. Just cursorily with Gary Bingenheimer
2 who works for me.

3 Q. With regard to what you called the
4 second method, is it your opinion then that under
5 the second method of showing that the plant as it's
6 currently constructed can be rerated, about when
7 would you think Streater would be eligible for a
8 rerate under that type of a method?

9 A. I believe we can have our comments
10 to the city by the middle of December on their
11 report.

12 Q. Okay. I'm not sure that was my

13 question, but let's move on a little bit.

14 You stated that Streator has
15 undertaken sort of a combination of the two typical
16 methods?

17 A. Yes.

18 Q. Can you explain that a little bit more
19 for us?

20 A. Yes. When we go through a rerating, I
21 mentioned more or less two distinct methods. During
22 the rerating, we do make sure that all treatment
23 plant units either comply with our design criteria
24 or the units -- they provide the data. In this

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1 case, a portion of the plant, the activated sludge
2 portion, they are attempting to provide the data for
3 that, however, in the meantime they also are going
4 to increase their sludge handling capabilities with
5 the watering press and those are -- they're all
6 integral parts of the treatment unit to make the
7 plant design for a certain hydraulic loading and
8 certain organic loading that we have to look at.
9 So they are not wanting to build any more activated
10 sludge tankage, however, they are going to increase
11 the sludge handling capabilities to meet our

12 criteria.

13 Q. Did you review the engineering report
14 that was submitted by the engineers for the city
15 that Gary has testified he approved?

16 A. The Raymond Beling report?

17 Q. Correct.

18 A. Yes, I reviewed that with Gary.

19 Q. Would you call that report a basis of
20 design or no?

21 A. It was an engineering report which
22 included a basis of design. All engineering reports
23 must have a basis of design to shown that their
24 units are in conformance with our design criteria.

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1 Q. Can you explain for us a little bit
2 how it would work if Streater were to pursue that
3 plan in terms of being rerated to a higher capacity?

4 A. If they pursued that plan and
5 undertook all the provisions of our approval letter
6 the plant would be rerated organically increased to
7 8,100 pounds per day of BOD. The hydraulic rating
8 would stay the same at 3.3 million gallons per day.

9 Q. And how long would it take to be
10 rerated under that type of scenario in your best

11 estimate?

12 A. Well, they would have to -- to get the
13 actual rating, they would have to construct those
14 facilities and it could take anywhere from, you
15 know, 12 to 18 months to construct it probably.

16 Q. Under this course of action, would
17 there be a method of relief for new facilities
18 wishing to connect to Streator's plant in the
19 interim until the plant can be formally rerated?

20 A. We have a mechanism which we call
21 construct only permits and what that basically
22 entails is if we have issued a permit for a
23 treatment plant to expand their capacity and if
24 that -- those improvements are under contract to go

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1 forth with those improvements then we can issue what
2 we call construct only permits, which allows
3 developers of any subdivisions to put the sewers in,
4 put their infrastructure in, and they can do that at
5 the same time that the treatment plant improvements
6 are being done and then they will have some of those
7 costs and work out of way instead of waiting until
8 all of the treatment plant improvements are
9 completed, however, they would not be able to

10 operate the sewers and allow additional wastewater
11 without the treatment plant being operational.

12 Q. Are there any regulations that provide
13 guidance on implementing the construct only permit?

14 A. Yes.

15 Q. Do you know what those are?

16 A. I don't recall the number. It would
17 be verified by the --

18 Q. As Agency or Pollution Control Board
19 regulations?

20 A. I believe they're Agency regulations.

21 Q. If I said Part 393 would that sound
22 familiar at all or you don't know at all?

23 A. I haven't looked at that number --

24 Q. Okay. That's fine.

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1 A. -- recently.

2 Q. Okay. In response to Board questions
3 about the amount of data required for demonstration
4 consisting compliance, you stated 12 months,
5 correct?

6 A. Correct.

7 Q. Is that a strict time frame?

8 A. Well, we feel it's a minimum time

9 frame in this particular case because the plant
10 has to nitrify and meet ammonia nitrogen effluent
11 limits in their NPDES permit. The limits are
12 different and nitrification occurs differently under
13 different weather conditions. They have an ammonia
14 number they have to meet in the summertime and the
15 wintertime. So we want to make sure they would meet
16 both conditions really.

17 Q. Could there be a case where you might
18 require less data, not from Streator, but from a
19 different facility possibly?

20 A. There could be a case if it did not
21 have to nitrify.

22 Q. But typically you would look for at
23 least 12 months?

24 A. Right. We would, again, look at worse

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1 case conditions so if somebody presented data during
2 the wintertime or what we felt was a worst case
3 condition, then we may consider less.

4 Q. Thank you.

5 I just have one more question --
6 one more area of questioning and that's in regards
7 to the construction permit that had been applied for

8 for the belt filter press. Are you familiar at all
9 with that application?

10 A. Yes.

11 Q. Can you tell us a little bit about
12 what additional information the Agency has requested
13 of the applicant?

14 A. We requested that the applicant submit
15 I believe two different application forms and we
16 requested some additional technical information
17 about the actual sizing of the unit and about -- I
18 believe some polymer feed equipment. I think there
19 was four items. We have received three of the items
20 and we are now awaiting a Schedule G, which was
21 alluded to earlier, which is an application form we
22 have for sludge disposal.

23 Q. There was some testimony yesterday
24 that Streator was caught in a bit of a catch 22

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1 where they couldn't fill out Schedule G until they'd
2 already built the belt filter press, but they
3 couldn't build the belt filter press until they
4 filled out Schedule G. Could you explain -- well,
5 did you have any conversations with the engineers
6 about that issue?

7 A. I don't know if I specifically did,
8 however, I think there may have been some
9 miscommunication on that form, they want the name of
10 the landfill and their general operating permit
11 number. From that number we will go to our Bureau
12 of Land people and see what the restrictions are for
13 that permit to see if there are additional permits,
14 that is -- additional permits required. That is the
15 minimal information we need on that.

16 Q. So the name of the landfill?

17 A. The name of the landfill and if they
18 have a general operating permit.

19 Q. The landfill?

20 A. Right, if the landfill has a general
21 permit we can see what that permit does allow with
22 respect to them receiving additional waste and if
23 the permit does allow that they can receive sludges,
24 which some permits do, then there would be no other

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1 permits needed. If there is no provisions in that
2 permit that they can take any sludge and they will
3 need a supplemental to that, we could probably still
4 issue a permit for the belt filter press with the
5 condition that they do pursue that and require

6 submission of that at a later time -- proof of that.

7 MS. WILLIAMS: Thank you. I don't
8 have anything else.

9 HEARING OFFICER LANGHOFF: Thank you.
10 Ms. Hesse?

11 C R O S S - E X A M I N A T I O N

12 by Ms. Hesse

13 Q. Mr. Keller, you were just testifying
14 that Illinois EPA could issue a construction permit
15 for the belt filter press with conditions that
16 additional information be obtained after the belt
17 filter press is operating to help in the
18 determination of land disposal, is that correct?

19 A. That's correct.

20 Q. Has --

21 A. As long as the landfill is identified
22 in Schedule G, correct.

23 Q. Okay. As long as the name of the
24 landfill is identified?

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1 A. Correct.

2 Q. Have you communicated this now to the
3 engineers for the city of Streator this is what they
4 need to do?

5 A. No. I did have a conversation with
6 Mr. Good, he's one of the city's consultants, but
7 not with Mr. Kouba, I believe.

8 THE REPORTER: Ma'am, could you speak
9 up a little bit for me?

10 MS. HESSE: Oh, okay. Sure.

11 THE REPORTER: Thank you.

12 BY MS. HESSE:

13 Q. Is it your understanding that Streator
14 either has or will very soon be providing Illinois
15 EPA with that information?

16 A. I believe so.

17 Q. Earlier when you were questioned about
18 how long it would take if the city of Streator were
19 to go ahead and construct a package that had been
20 included in the basis of design report that Raymond
21 Beling prepared, I believe you said 12 to
22 18 months for construction. Would there also be
23 additional time for the detailed design to go in and
24 be prepared before the construction could begin?

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1 A. Maybe with the 12-month time frame,
2 not with the 18-month time frame.

3 Q. Does this time frame also include IEPA

4 review and comments on the construction permits that
5 will be issued in order to build the VLR?

6 A. Yes.

7 Q. And that would be the 18-month time
8 frame or the 12-month?

9 A. That would be the 18-month time frame.

10 Q. Does Illinois -- and that's assuming
11 the actual construction would be 12 months?

12 A. Correct.

13 Q. If it is constructed, how long would
14 it take IEPA to review what is submitted to IEPA at
15 the completion of construction before Illinois EPA
16 would rerate the plant?

17 A. If we receive word from the city that
18 the work had been completed, we would contact our
19 field office and see when they're going out there
20 the next time to confirm that and we try and do it,
21 you know, as soon as possible within the schedules.

22 Q. So it could be within a month?

23 A. Yes.

24 Q. Or might it take longer?

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1 A. I guess we'd have to determine the
2 need with our priorities and everything. I think

3 it would be within a month really that we can commit
4 to that.

5 Q. You mentioned that you're familiar
6 with the organic loading and hydraulic loading to
7 the Streator wastewater treatment plant. Do you
8 believe that an additional eight pounds of BOD load
9 and an additional 5,000 gallons of volume flow to
10 the plant would have a significant impact on the
11 plant?

12 A. On the existing load, I don't believe
13 it would be measurable to much really what the load
14 was.

15 MS. HESSE: Thank you. I have no
16 further questions.

17 HEARING OFFICER LANGHOFF: Thank you.
18 Ms. Williams, anything further, redirect?

19 R E D I R E C T E X A M I N A T I O N

20 by Ms. Williams

21 Q. Can you just give us your opinion for
22 the record on whether you believe that there's
23 environmental impact from the operation of the plant
24 as it currently exists -- adverse environmental

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1 impact?

2 A. I think -- I don't know if I'm the
3 correct individual to answer that question to be
4 honest. It would take -- it could take numerous
5 studies to really determine that with respect to
6 doing a stream survey. I don't think I'm qualified
7 to answer that question.

8 MS. WILLIAMS: Okay. I don't have
9 anything.

10 MS. HESSE: Nothing further.

11 HEARING OFFICER LANGHOFF: Thank you,
12 Mr. Keller.

13 HEARING OFFICER LANGHOFF: Anyone
14 further?

15 MS. WILLIAMS: No, we're finished.

16 MS. HESSE: I would like to present
17 Mr. Nicholson as a rebuttal witness to some of the
18 issues the Agency raised.

19 HEARING OFFICER LANGHOFF: I was going
20 to ask for your case in rebuttal. I'm sorry.

21 MS. HESSE: Yes.

22 HEARING OFFICER LANGHOFF: You have a
23 request?

24 MS. HESSE: Yes. I would like to

1 present Paul Nicholson as a rebuttal witness.

2 HEARING OFFICER LANGHOFF: Yes, fine,
3 I thought you had something else.

4 MS. HESSE: No. I was just going to
5 say, could we have five minutes to get set up?

6 HEARING OFFICER LANGHOFF: Yes,
7 certainly, five minutes, please.

8 (Whereupon, after a short
9 break was had, the
10 following proceedings
11 were held accordingly.)

12 HEARING OFFICER LANGHOFF:
13 Mr. Nicholson, I'm going to remind you that you're
14 under oath.

15 THE WITNESS: Yes, sir.

16 D I R E C T E X A M I N A T I O N
17 by Ms. Hesse

18 Q. Mr. Nicholson, you presented some
19 testimony yesterday. I have some follow-up
20 questions for you.

21 MS. WILLIAMS: Objection, I would --
22 and I don't want to be a pain, but I just want to be
23 clear this is rebuttal testimony, right, this is
24 not --

1 MS. HESSE: This is rebuttal
2 testimony.

3 MS. WILLIAMS: Not follow-up?

4 HEARING OFFICER LANGHOFF: You can
5 withdraw your objection.

6 MS. WILLIAMS: Yes, I will withdraw my
7 objection.

8 HEARING OFFICER LANGHOFF: Thank you.

9 BY MS. HESSE:

10 Q. Earlier today Mr. Corley testified
11 that he had some discussions and he had inspected
12 the Red Wing Plant, have you also had discussions
13 with Red Wing?

14 A. Yes.

15 Q. Were some of those discussions with
16 respect to what Red Wing anticipates to be happening
17 in the future?

18 A. Yes.

19 Q. And what did you learn from the
20 discussions with Red Wing?

21 A. It is my understanding that Red Wing
22 is presently involved in both short term and longer
23 term actions relative to their discharge of waste
24 to the city of Streator's sewer system.

1 Q. And what are some of those things that
2 they're contemplating?

3 A. More specifically it is the city's
4 understanding that Red Wing is presently involved
5 in and/or has made operational changes which have
6 included modifications or changes relative to their
7 filling operations, they have modified and/or
8 replaced various valves and that they are also
9 and have been for several weeks in the process of
10 a manual recovery of spillage and waste, which is
11 stored on a temporary basis and then manually
12 released principally on weekends in what I would
13 call nonproduction or downtime by their personnel in
14 an attempt to equalize particularly weekend flows
15 in the hope or the anticipation that it would
16 mitigate the statistical spike that occurs relative
17 to load coming into the plant on Monday with the
18 beginning of production.

19 They are also involved with longer
20 term actions or strategies. They have retained as
21 Mr. Corley indicated an independent consultant
22 engineer, I believe it's Burns & McDonnell, who are
23 presently consulting to them on a technical
24 engineering basis relative to the need for

1 equalization.

2 In addition, they are presently
3 evaluating whether or not to modify or replace an
4 existing filling machine, one of the filling
5 machines which Red Wing has represented to the city
6 as being a major contributor to spillage and/or
7 waste.

8 It is also my understanding that
9 the corporate decision has been made to replace an
10 existing heat exchanger which is utilized for the
11 pasteurization and cooling of I believe syrup
12 product or product and is also at this point in time
13 a contributor to what the company believes are
14 higher than acceptable waste loads.

15 Q. Are there any other activities you're
16 aware of at Red Wing?

17 A. The only other activity that I'm aware
18 of is that there is a major business decision that
19 has been made or is in the process of occurring and
20 that is with respect to a major contract that the
21 company has with a company by -- whose name is
22 Aurora Foods for the production of table syrup.
23 That is a contract which will expire in June of
24 2002.

1 Q. Is that a contract to produce more
2 than just Mrs. Butter Worth's syrup?

3 A. I do not know the answer to that
4 question. It's to produce syrup, which includes
5 Mrs. Butter Worth's as I understand it.

6 Q. Do you know if it also includes the
7 Log Cabin brands?

8 A. I believe it does, but to continue,
9 that contract -- the loss of that contract and the
10 resulting loss of production will significantly
11 reduce the volume of concentrated waste from Red
12 Wing to the city's sewer system according to Red
13 Wing representatives and to quantify that, I believe
14 their estimates range that their waste loading will
15 be reduced by something in the range of 30 to 48
16 percent when that production ceases in 2002.

17 Q. This morning you heard Mr. Keller
18 testify as to the time frame to construct
19 considering times with Illinois EPA approval and
20 review approval of construction permits as being a
21 minimum of 18 months. If Streator were, as a
22 municipality, to follow a municipality's traditional
23 protocol for soliciting bids -- putting out requests
24 for proposals, soliciting bids, evaluating those

1 bids, hiring an engineer, negotiating the contract
2 and then doing the construction, what type of time
3 frame are we talking about?

4 A. Our estimates to pursue a by-the-book
5 selection of engineer through bidding process, award
6 of contract, financing of the construction and then
7 the actual construction at a minimum, 18 to 24
8 months.

9 Q. And that's just to finance it, that's
10 not the construction itself you said?

11 A. No. I said construction at a minimum
12 it is -- it would be -- it would be our estimate
13 that to move through a standard RFP process to
14 select the engineer, then to establish the contract
15 with the engineer and move through the design phase
16 simultaneously obviously we would be moving with
17 bond counsel to set in place the financing and then
18 thereafter bid the process, bid the project, issue
19 the bonds and so forth, we would judge that that
20 would take in the range of 12 to 18 months alone.

21 Q. Okay. Just to issue the bonds?

22 A. Right.

23 Q. So that doesn't include the actual

24 construction?

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1 A. No.

2 Q. So that would be in addition to the 18
3 months that we heard about this morning?

4 A. Yes.

5 Q. Why did Streator separate construction
6 of the belt filter press from the rest of the
7 projects that Illinois EPA approved that were
8 listed in the basis of design report prepared by
9 Raymond Beling?

10 A. We did it in order to expedite the
11 construction installation and operation of the belt
12 filter press for increase sludge handling capacity
13 at the plant.

14 Q. Did Streator also expedite the process
15 for approving bonds?

16 A. Yes, we did.

17 Q. Did Streator also expedite the process
18 for selecting an engineer to construct the belt
19 filter press?

20 A. Yes.

21 Q. So from the time that Streator
22 received approval to construct the belt filter press

23 and the basis of design report until the anticipated
24 completion date of constructing the belt filter

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1 press, what kind of time frame period is that?

2 A. It is approximately a six-month time
3 frame.

4 Q. So Streator has worked really hard to
5 try to construct this one piece of equipment that
6 Illinois EPA asked them to construct, is that right?

7 A. That's correct. The city of Streator
8 has been extremely diligent.

9 Q. With respect to construction of the
10 vertical loop reactor and additional oxidation
11 capacity, what are you planning to recommend to the
12 city council?

13 MS. WILLIAMS: Objection.

14 HEARING OFFICER LANGHOFF: On what
15 grounds?

16 MS. WILLIAMS: I don't know what this
17 line of questioning will be rebutting.

18 MS. HESSE: I think this is very
19 relevant to the Board's questions with respect to
20 what Streator anticipates to -- when Streator
21 anticipates to perform certain activities. It was

22 one of the questions that the technical staff member
23 had yesterday.

24 HEARING OFFICER LANGHOFF: Anything

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1 further, Ms. Williams?

2 MS. WILLIAMS: I think we talked about
3 this with Mr. Nicholson yesterday, we had an
4 opportunity to hear that testimony when he was on
5 the stand. I don't know that it's rebutting -- I
6 don't think we've contradicted any of his testimony
7 with regard to the city's plans.

8 MS. HESSE: It was one of the
9 questions that the technical staff be provided by
10 the city of Streator to help the Board in its
11 decision.

12 HEARING OFFICER LANGHOFF: I am going
13 to overrule your objection at this time for this
14 question. Can you answer the question,
15 Mr. Nicholson?

16 BY THE WITNESS:

17 A. Would you repeat the question,
18 Ms. Hesse, please?

19 Q. Sure.

20 What do you plan to recommend to

21 the city council with respect to constructing the
22 vertical loop reactor and adding additional capacity
23 at the wastewater treatment plant -- additional
24 oxidation capacity at the wastewater treatment

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1 plant?

2 A. As a city of Streator city manager, I
3 anticipate and plan to recommend the ultimate
4 construction of the vertical loop reactor system to
5 the city of Streator wastewater treatment plant.

6 Q. Is this a recommendation you plan to
7 make in the relatively near future?

8 A. Yes.

9 Q. Yesterday we had testimony with
10 respect to a development called Kimberkell. Showing
11 you a document here, could you identify what that
12 is?

13 A. The document that is placed in front
14 of me is a single sheet, it is sheet number one from
15 a document entitled construction plans for Build
16 Illinois grant number A 2000, unsewered area 15,
17 wastewater collection system, Streator wastewater
18 utility, dated May 2000 and signed by the city's
19 consulting engineer, Jerry Andrew (phonetic) on

20 August 18th, 2000.

21 Q. Is this a document that Streator would
22 have as part of its business records?

23 A. Yes, it would.

24 MS. HESSE: I would like to have this

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1 marked as an exhibit.

2 HEARING OFFICER LANGHOFF: It's been
3 marked as Exhibit 14. Would the record reflect that
4 the Agency is reviewing the document, Exhibit 14?

5 MS. WILLIAMS: Will you provide a copy
6 of this after the hearing?

7 MS. HESSE: Yes. The original is
8 going with the reporter. We'll provide you a copy.

9 MS. WILLIAMS: That's fine.

10 BY MS. HESSE:

11 Q. Mr. Nicholson, showing you what's been
12 marked as Exhibit No. 14, could you indicate what
13 the exhibit shows?

14 A. This exhibit is a partial map of the
15 incorporated limits of the city of Streator and
16 more specifically it's identified as a location map
17 depicting the project location for construction of a
18 wastewater collection system to serve unsewered area

19 15.

20 Q. Is unsewered area 15 part of the area
21 covered under the consent order?

22 A. It is.

23 Q. In the restricted status letter that
24 you received, did that exempt from the requirement

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1 or allow the addition of constructing sewers in area
2 15?

3 A. It did.

4 Q. Does that also include extending a
5 sewer line along Main Street?

6 A. It did.

7 Q. And does that sewer line extend out
8 for some distance?

9 A. It does.

10 Q. Does that sewer line extend adjacent
11 to the Kimberkell Estates property?

12 A. Yes, it does.

13 Q. Is it your -- could you indicate on
14 this map where Kimberkell is?

15 A. On the exhibit to which I'm pointing
16 the Kimberkell --

17 Q. You can mark it with your pen.

18 A. -- the Kimberkell subdivision, a
19 residential subdivision, is located generally east
20 and north of the sanitary sewer connection that was
21 just referred to in testimony, generally located at
22 the northwest corner of the intersection of State
23 Route No. 18 and Airport Road.

24 Q. Is it your understanding that

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1 construction of the sewer line is allowed under the
2 restricted status letter as Kimberkell was unnamed
3 at the time that letter was prepared?

4 A. It is, yes.

5 Q. I should have asked as a basis, was
6 Kimberkell named at the time that letter was
7 prepared?

8 A. No. The name Kimberkell had not been
9 assigned to the subdivision at that time.

10 Q. So what is your understanding with
11 respect to Kimberkell and the restricted status
12 letter?

13 A. It is my understanding and the city of
14 Streator's understanding that those homes within
15 phase one of that subdivision, which was in the
16 approval process at the time the restricted status

17 letter was issued, were included in language in the
18 restricted status letter referring to unnamed or
19 unspecified single family residences.

20 Q. Thank you.

21 Yesterday and today as well you
22 heard testimony from Illinois EPA witnesses
23 regarding construction of the Super 8 Motel.

24 When did you first learn that the

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1 Super 8 Motel had been connected to the city sewer?

2 A. On the day that Mr. Corley arrived to
3 meet with Mayor Schmitt and I and following his
4 inspection in the field with Mayor Schmitt which
5 identified that connection at that time on that date
6 and I don't remember -- July, I guess it was.

7 Q. Who did you learn -- who was it you
8 learned from that the motel had been connected?

9 A. Mayor Schmitt.

10 Q. Are you aware of how Mayor Schmitt
11 learned?

12 A. Mayor Schmitt learned it by being
13 present at the time the dye test was conducted by
14 Mr. Corley.

15 Q. Did Streator construct the sewer line

16 for the motel?

17 A. No.

18 Q. Was there already an existing sewer
19 line in the street near the motel?

20 A. Yes.

21 Q. Did you ever meet with the developer
22 for the motel?

23 A. Yes.

24 Q. Did you or did you ever hear anyone

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1 for the city of Streator tell the motel developer
2 that they could go ahead and connect and that
3 Streator would take care of the problem?

4 A. No, I did not.

5 Q. Is that something you would have said?

6 A. No.

7 MS. HESSE: Nothing further for
8 Mr. Nicholson.

9 HEARING OFFICER LANGHOFF: Thank you.
10 Ms. Williams?

11 C R O S S - E X A M I N A T I O N

12 by Ms. Williams

13 Q. Mr. Nicholson, did you ever review the
14 IEPA permit application that was submitted by

15 Kimberkell Estates?

16 A. I did not personally review it, no,
17 ma'am.

18 Q. Do you know who did?

19 A. Yes. I believe I do know who reviewed
20 it.

21 Q. Who is that?

22 A. It would have been reviewed by former
23 director of public works, Dick Fish, and/or if in
24 his judgment it was necessary, the city's consulting

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1 engineer, Chamlin & Associates, but Dick Fish would
2 have had primary responsibility at that time for
3 reviewing that document.

4 Q. And what time are we talking about?

5 A. This was summer, fall of 2000. You
6 said Kimberkell, correct?

7 Q. I did.

8 A. Yes.

9 Q. I was just trying to process your
10 answer. But that application was not submitted to
11 Illinois EPA until last month, was it, the permit
12 application for extending the sewer to Kimberkell?

13 A. I'm sorry. I misunderstood. I

14 thought you were referring to the construction of
15 the unsewered area 15 and the extension of the main
16 along east Main Street to the edge of the property.

17 Q. No.

18 A. Okay. Then let me correct myself.

19 With respect to the application
20 for a permit for Kimberkell that was -- you're
21 correct, that was submitted, I believe, last month.
22 That was executed, I believe, by Mayor Schmitt.
23 I believe it was also reviewed by the city's
24 engineering technician and/or the city's consulting

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1 engineer, the engineering technician being Mr. Ralph
2 Herman and/or Mr. -- either Mr. Yendro and/or
3 Mr. Good. The application itself was submitted by
4 the developer's consulting engineer.

5 Q. Okay. Are you aware if that map or
6 one like it was attached to that application?

7 A. I am not.

8 Q. Are you aware of whether any
9 information was attached to the application
10 identifying this project as one that was exempted
11 from restricted status?

12 A. To the application, no, I am not

13 aware.

14 Q. I believe yesterday you testified that
15 the Kimberkell Estates previously was called Rinker?

16 A. Yes, correct, R-i-n-k-e-r.

17 Q. It was referred to that previously?

18 A. That's correct. The name of the owner
19 of the property who was the petitioner for the
20 annexation -- the annexation agreement and the
21 subdivision.

22 Q. And during what time period was it
23 referred to by that?

24 A. It was -- it had been referred to it

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1 for a period of approximately two years. As I
2 understand it, that particular petition, it was
3 pending in the city manager's office at the time I
4 assumed the manager's job duties on May 8th of 2000
5 and it continued in terms of that designation
6 through the preliminary plat approval process, the
7 annexation and it was, as my memory serves me, only
8 at the time the final plat was presented for
9 approval to the planning commission and the city
10 council that the name Kimberkell was assigned to the
11 development.

12 Q. But prior then -- but prior to that it
13 was referred to as Rinker by the city?

14 A. Yes, ma'am.

15 Q. Thank you.

16 Did you attend the meetings with
17 the Illinois EPA when discussions were held
18 regarding which properties would be exempted from
19 restricted status?

20 A. I attended one face-to-face meeting
21 with IEPA in Springfield, I believe, within the
22 first four or five weeks of my tenure as city
23 manager and the general status of the wastewater
24 treatment plant, the city's compliance record, et

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1 cetera, was discussed. I don't recall as to the
2 level of specificity that was given to any
3 discussion of exempting properties or projects from
4 any restricted status letter which at that time as I
5 understood it arguably for the first time was being
6 considered by IEPA.

7 Q. So you don't have personal knowledge
8 of exactly which sites were considered unnamed sites
9 at that time as part of that letter?

10 A. At the date of that meeting, no, I do

11 not.

12 Q. You have testified that you plan to
13 recommend to the city to construct the VLR in the
14 near future?

15 A. Yes, I have.

16 Q. And you have testified to that?

17 A. Yes.

18 Q. Can you tell us when you plan to make
19 that recommendation?

20 A. It would be my anticipation that I
21 would make a recommendation shortly after the sludge
22 management project is completed after the Agency
23 completes its review of the city's application for
24 rerating and the city is in receipt of all other

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1 data up to and including any engineering studies
2 that Red Wing, Carriage House, may submit through
3 their consultants for evaluation. So that I would
4 anticipate that that would occur sometime during the
5 third or fourth quarter of calendar year 2002.

6 Q. When you say Carriage, are you
7 referring to the Burns & McDonnell study?

8 A. Correct.

9 Q. Have you received a report from Burns

10 & McDonnell yet?

11 A. No.

12 Q. Do you know when you will be receiving
13 a final report from them?

14 A. No, I do not.

15 Q. Are you familiar with their
16 preliminary reports?

17 A. No, ma'am, I am not.

18 Q. Can you explain to us a little bit
19 what you base your recommendation to the city to
20 construct the VLR on?

21 A. My recommendation will be based
22 principally on a basis of design report as prepared
23 by the city's consultants, Raymond Beling or the
24 Raymond Professional Group, submitted to IEPA,

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1 IEPA's approval and subsequent comments regarding
2 the necessity for the increased oxidation capacity
3 in the form of that -- in the form of the VLR system
4 as well as the Agency's comments and/or responses
5 yet to be received in the current rerating review
6 process that's ongoing.

7 Q. Do you anticipate recommending that
8 the city pursue a similar expedited process for

9 constructing that piece of equipment that you
10 recommended for the belt filter press?

11 A. It is my judgment that the city would
12 continue to pursue an aggressive and expedited
13 approval process in order to implement all required
14 phases of improvements to that plant as soon as we
15 possibly can.

16 Q. You testified a little bit about your
17 discussions with Red Wing and you described some of
18 the operational changes that they've indicated to
19 you that they made including you said manual
20 recovery of spillage. Can you explain to us what
21 that is?

22 A. What I referred to or testified to in
23 the manual recovery is the utilization of portable
24 barrels previously testified to by

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1 Mr. Corley which are utilized to collect spillage
2 and clean out from lines, as I said, which is
3 manually collected, stored temporarily and then
4 through the utilization of their personnel is
5 manually discharged in some fashion into the city's
6 sewer system over the course of a weekend during
7 nonproduction or downtime as I testified to.

8 Q. Are you aware of what kind of records
9 they keep of this process?

10 A. No, I am not.

11 Q. You also testified that Red Wing has
12 represented to you that if they lose the Aurora
13 Foods contract this would result in something like
14 a final waste loading reduction of 30 to 48 percent?

15 A. Yes, ma'am.

16 Q. Do you have any idea what those
17 figures are based on?

18 A. Those would be based on internal data
19 that Red Wing has generated through their technical
20 staff.

21 Q. But you realize that Red Wing does not
22 keep data specific to which lines cause what amount
23 of discharge, correct?

24 A. I'm not aware that they don't. I'm

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1 not aware of their recordkeeping system for any of
2 their production and/or maintenance operations at
3 that plant.

4 Q. It's true, isn't it, that Streator
5 keeps data of the influent loading that comes from
6 Red Wing at the plant, is that true?

7 A. That's correct.

8 Q. Is that the data that's used to
9 calculate the fees to Red Wing?

10 A. That is -- to my understanding, that
11 is at least part of the data that is used to
12 determine the monthly charge or user charge to Red
13 Wing, yes, ma'am.

14 Q. Are you aware of whether Red Wing
15 submits any type of monthly data to the city?

16 A. It is my understanding that there is
17 at least one report from that particular facility
18 that is generated. I am not sure whether or not Red
19 Wing generates that with in-house or if that is a
20 report that is generated by U.S. Filter as a result
21 of collection of the data.

22 Q. So you have no way really of
23 confirming what amount of waste loading would be
24 affected by any type of operational changes at the

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1 plant, correct?

2 A. Do I personally?

3 Q. Yes, you personally.

4 A. At this point in time I am relying
5 only on the information and the data that has been

6 presented to me by plant personnel and through their
7 general manager, Mr. Haller.

8 Q. Thank you.

9 Are you aware of whether the -- I
10 can't remember the Kel --

11 A. Kimberkell.

12 Q. Kimberkell, thank you.

13 Are you aware of whether they've
14 been annexed into the city limits?

15 A. Yes, I am.

16 Q. Have they been?

17 A. Yes, they have.

18 Q. Do you recall when that was done?

19 A. My recollection it was approximately
20 September of 2000.

21 Q. Do you recall whether it was before or
22 after the restricted status determination?

23 A. Not specifically, however, if it was
24 September or later depending on the date of the

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1 restricted status letter it could have been
2 immediately thereafter.

3 MS. WILLIAMS: I don't think I have
4 any other questions.

5 HEARING OFFICER LANGHOFF: Thank you,
6 Ms. Williams. Ms. Hesse, anything on redirect?

7 MS. HESSE: Nothing further.

8 HEARING OFFICER LANGHOFF: Thank you,
9 Mr. Nicholson.

10 THE WITNESS: Thank you.

11 HEARING OFFICER LANGHOFF: Do you have
12 anyone else?

13 MS. HESSE: Yes. I'd like to call
14 Mayor Schmitt. Could I have a few minutes?

15 HEARING OFFICER LANGHOFF: We're going
16 to take five minutes. Be back at 11:20.

17 (Whereupon, after a short
18 break was had, the
19 following proceedings
20 were held accordingly.)

21 HEARING OFFICER LANGHOFF: We're back
22 on the record. Mayor Schmitt, let me remind you
23 that you're still under oath.

24

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1 D I R E C T E X A M I N A T I O N

2 by Ms. Hesse

3 Q. Mayor Schmitt, both yesterday and

4 earlier today you heard testimony from Illinois EPA
5 with respect to what they witnessed at the Super 8
6 Motel, is that correct?

7 A. Yes.

8 Q. When did you first learn that the
9 Super 8 Motel had been connected to the city's
10 sewer?

11 A. The first I learned of it was when
12 Mr. Corley come in my office and he had a couple of
13 complaints from residents, one was from outside the
14 city and the other issue was on a storm water
15 problem on West Third Street.

16 Q. And what did Mr. Corley tell you about
17 the motel?

18 A. Mr. Corley had asked me if he would
19 like to go out and look at the motel and I said I
20 would be more willing to go with him. We did go out
21 to the site. We did check the site over and he said
22 he was going to dye test it, so I called -- told him
23 I would call the police department to stop the
24 traffic. We got ahold of public works to come out

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1 and pull the manhole cover. We did have the police
2 department out there to stop traffic while the

3 public works pulled the manhole cover. He did dye
4 test it and the dye did come out into the city's
5 sewer.

6 Q. Did you have any knowledge before that
7 that the city -- that the motel had constructed --
8 strike that.

9 Did you have any knowledge before
10 that that the motel had constructed the sewer line?

11 A. Prior to that, no, I did not.

12 Q. Did Streator construct the motel?

13 A. No.

14 Q. Did Streator construct the sewer line
15 for the motel?

16 A. No.

17 Q. Once you learned that this improper
18 sewer line had been connected, what did you do?

19 A. I had told Mr. Corley at that time
20 that I would have the sewer line capped off. The
21 next morning at 8:30 we had the fire department and
22 our public works department and had the fire
23 department monitor the hole while we had the public
24 works department go in and seal it off and at that

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1 time I also told the developer that it would not be

2 open up until one of two things happened, either we
3 got a variance from the Illinois Pollution Control
4 Board or we were taken off restricted status.

5 Q. Have you had other meetings with the
6 developer for the motel?

7 A. No.

8 Q. Did you or did you ever hear anyone
9 from the city of Streator tell the motel developer
10 that they could go ahead and connect and that
11 Streator would take care of the problem?

12 A. No, I did not. I knew better.

13 Q. Were you at some of the meetings with
14 Illinois EPA when discussions were underway before
15 issuance of the restricted status letter?

16 A. Yes, I was.

17 Q. Were you present at those discussions
18 where you were talking about areas that were unnamed
19 that were near or adjacent to other areas?

20 A. Yes, I did.

21 Q. Did you also discuss areas that were
22 covered under the consent order?

23 A. Yes, we did.

24 Q. Were the discussions that those were

1 areas that were exempted or would be exempted in the
2 restricted status determination?

3 A. Yes.

4 Q. I would like you to look at the map
5 that has been entered as Exhibit No. 14.

6 HEARING OFFICER LANGHOFF: Actually,
7 it hasn't been entered.

8 BY MS. HESSE:

9 Q. Has been proposed as Exhibit No. 14.

10 MS. HESSE: Thank you.

11 BY THE WITNESS:

12 A. Yes, I recognize it.

13 BY MS. HESSE:

14 Q. Does this map show as part of
15 unsewered area 15 an extension of the sewer line
16 along Main Street?

17 A. Yes, it does.

18 Q. Does the sewer line extension go in
19 the direction of Kimberkell?

20 A. Yes, it is.

21 Q. Was the work that was performed part
22 of the work for area 15 under the consent order?

23 A. Yes, it was.

24 Q. Is it your belief and understanding

1 that this work was done as an exception to the
2 restricted status letter?

3 A. To the best of my knowledge it was.

4 MS. HESSE: Okay. Thank you. No
5 further questions.

6 HEARING OFFICER LANGHOFF:

7 Ms. Williams?

8 C R O S S - E X A M I N A T I O N

9 by Ms. Williams

10 Q. Mr. Mayor, could you tell us if the
11 Super 8 project was discussed at the city council
12 meeting?

13 A. Not to my knowledge it wasn't.
14 Pertaining to what?

15 Q. Anything about it.

16 A. Other than going through the proper
17 zoning and special use permit for screening and
18 stuff like that.

19 Q. So it was discussed at the meeting --
20 at the city council -- the project itself was
21 discussed at the city council meeting?

22 A. The project itself basically. I think
23 when Mr. Fish was there he was our former public
24 works director was very knowledgeable about

1 development and the project as such, yes, but at
2 the council meeting no, I don't think it ever was.

3 I don't attend the planning
4 commission meetings. It was probably discussed
5 there, but I, myself, prefer to keep in touch with a
6 lot of the stuff that goes through the planning
7 commission because that's -- I feel that is some of
8 my responsibility. But to be there, per se, I stay
9 away from those as much as I possibly can due to the
10 fact there possibly may be conflict of interest or
11 something that people might think. So it's better
12 if you stay away from those meetings.

13 Q. Did Mr. Fish ever indicate anything to
14 you about the need for an IEPA permit for the Super
15 8 project?

16 A. No, no, he did not.

17 Q. You stated that you were unaware of
18 the connection that the Super 8 contractor had built
19 from the property out, correct?

20 A. Yes.

21 Q. Were you aware that a stub had been
22 put in from the main line?

23 A. I'll go back to what I said before is
24 in all the projects that we have done it is a wise

1 idea for you to stub and we have done that off our
2 mains up to the property line so you don't have to
3 go back in and tear a complete new street out which
4 is being resurfaced which I think everybody realizes
5 that would be common sense to do, however, there was
6 nobody more surprised than I was that that pipe was
7 hooked up that's why I had it immediately sealed the
8 next morning and I don't know if you've got
9 documents to prove that. In fact, I think I talked
10 to some of your people about it.

11 Q. Yeah. I don't think that's in dispute
12 at all. I just wanted to be clear that my
13 understanding is you were aware that the stub had
14 made from the main line to the property line, but
15 just not that it had been connected to the new
16 building?

17 A. I was aware that the stub was put in
18 to it when Mr. Corley come in and that's when I was
19 aware --

20 Q. That's how you learned of it?

21 A. That we had a permit in June sometime
22 to do that unaware of me. Since that time we have
23 taken steps that that won't happen again because the
24 only ones that are issued is either the city manager

1 signs it or I sign it.

2 Q. And did the city pay for any portion
3 of that project?

4 A. Not to my knowledge. I think it was
5 wise for the developer to stub it out of there so we
6 didn't have to go back and tear up the street,
7 however, it was not wise for him to connect it.

8 Q. By wise, do you mean in compliance
9 with applicable regulations or economically so?

10 A. When you're looking at hindsight it
11 wasn't wise either way.

12 Q. It was wise either way or was not
13 wise?

14 A. It was not.

15 Q. Okay. Thank you.

16 When you had discussions with the
17 Agency about what projects would be exempted from
18 the restricted status determination, do you recall
19 if that name Rinker was used for the property that
20 is now referred to as Kimberkell?

21 A. I had anticipated in our discussions I
22 think with Mr. Keller, Bingenheimer and I don't
23 think Mr. Corley was there, there was
24 Mr. Bingenheimer and Keller and maybe Mr. Calloway

1 might have been there, I don't recall. I'm sure if
2 I look at my notes I'll have who was at the meeting
3 that to the best of our knowledge that was a -- at
4 that time was not subdivided out as a huge
5 subdivision or anything that according to the
6 restricted status it had in there that additional
7 homes that was not in -- was not in the area 15
8 project that sewer line has been extended in the
9 area where it's at and that is a -- the sewer line
10 that runs there will have to be extended at the
11 owner's cost to extend it on further. If we do
12 extend that sewer line, it will be at the
13 developer's cost or the city's.

14 Q. I believe on exhibit -- proposed
15 Exhibit 14 Mr. Nicholson made a purple line
16 indicating -- I'm guessing -- the extension of the
17 sewer main out to the Kimberkell Estates area, is
18 that correct?

19 A. The extension of the sewer main is not
20 directly extended --

21 Q. Would you first say that that line
22 represents -- can we agree that that's what that
23 line represents, the sewer main or do you think it
24 represents a road?

1 MS. HESSE: I'm going to object to
2 that question because it requires for speculation.
3 The mayor did not draw that line. Mr. Nicholson
4 drew that line.

5 HEARING OFFICER LANGHOFF: Overruled.

6 BY THE WITNESS:

7 A. I would imagine that that line that
8 Mr. Nicholson has got drawn on there is the Route 18
9 and Airport Road line.

10 BY MS. WILLIAMS:

11 Q. Are Route 18 and Airport Road the same
12 thing -- the same road or are they two separate
13 roads?

14 A. They're two separate roads. One runs
15 north and south and the other runs east and west.

16 Q. Okay. Can you with this green
17 highlighter I'm handing you make a mark indicating
18 where Airport Road and Route 18 connect?

19 A. The line is there already -- the
20 purple line.

21 Q. So this would be -- where there's a
22 right angle is where they connect?

23 A. Yeah, right there (indicating).

24 Q. And is that the location of the

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1 Kimberkell Estates?

2 A. The Kimberkell Estates location is to
3 the northwest of that.

4 Q. Would you mind making a circle in my
5 green highlighter about the location approximately
6 of that? Thank you. Let the record reflect that
7 the mayor marked a green square on exhibit --
8 proposed Exhibit 14.

9 HEARING OFFICER LANGHOFF: It will so
10 reflect.

11 Mr. Mayor is the Airport Road you
12 referred to also known as Fuller Avenue or is there
13 another name?

14 THE WITNESS: No. That is a mile --
15 that is a mile back in the town.

16 HEARING OFFICER LANGHOFF: Thank you.
17 BY MS. WILLIAMS:

18 Q. And with regard to this area, are
19 these existing homes or planned homes?

20 A. No, it's planned homes. There is
21 nothing there.

22 Q. But isn't it true with regard to

23 unnamed existing homes -- isn't it true that the
24 restricted status letter refers to the exemption of

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1 unnamed existing properties?

2 A. Would you reword that?

3 Q. I will in just a moment.

4 (Brief pause.)

5 BY MS. WILLIAMS:

6 Q. I would like to refer your attention
7 to Exhibit B of the city's petition -- amended
8 petition for variance, which is the Agency's
9 notification of restricted status determination.

10 A. Uh-huh.

11 Q. Could you explain to me which of the
12 three exemptions listed under there is the one you
13 believed included the Kimberkell Estates work?

14 A. The installation of sanitary sewers to
15 serve the --

16 THE REPORTER: I'm sorry, sir, could
17 you slow down and -- I didn't understand
18 you?

19 BY MS. WILLIAMS:

20 Q. Are you reading from number one?

21 A. Yes. The installation of sanitary

22 sewers to serve the East Main Street area under the
23 consent decree. This will include existing
24 dwellings, three churches, which the one church is

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1 directly across the street from Kimberkell, a
2 retirement center expansion and several proposed
3 single family lots.

4 Q. So it's one of the proposed single
5 family lots?

6 A. There is presently one house that is
7 available on that lot that has been built. Their
8 engineers have submitted a permit to the IEPA, the
9 one that I had signed, and I received that across
10 my desk approximately two weeks ago that it was
11 denied. I have always been up front as much as I
12 possibly can with the IEPA. I contacted Mr. Tom
13 McSwiggin and talked to him about it, asked him to
14 take a look at the Agency's restricted status, he
15 would get back with me. Later that day he did get
16 back with me and it was his interpretation that it
17 was in that consent decree that we would be able to
18 hook that one home. I did, therefore, get ahold of
19 their engineers and tell them to resubmit the one
20 that I signed to go back to the IEPA for approval

21 for the one home.

22 Q. He indicated to you that that would be
23 approved if it was resubmitted?

24 A. He indicated to me that when he read

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1 the restricted status saying that the several homes
2 and family lots would involve that.

3 Q. Did he tell you that he would have his
4 engineers check their maps to determine whether it
5 matched up with the maps they had?

6 A. I called him in the morning and he got
7 back with me later on that afternoon, the same as I
8 had done with Mr. Keller on several occasions.

9 MS. WILLIAMS: Thank you. I don't
10 think I have any other questions for the mayor.

11 HEARING OFFICER LANGHOFF: Ms. Hesse?

12 MS. HESSE: No further questions.

13 HEARING OFFICER LANGHOFF: Thank you,
14 Mayor Schmitt.

15 THE WITNESS: Thank you.

16 MS. HESSE: I would like to offer what
17 was marked as Exhibit No. 14 into evidence.

18 HEARING OFFICER LANGHOFF: Any
19 objections?

20 MS. WILLIAMS: No objections as long
21 as we can obtain a copy.

22 HEARING OFFICER LANGHOFF: No problem.
23 Exhibit 14 will be admitted. Anything further?

24 MS. HESSE: Nothing further.

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1 HEARING OFFICER LANGHOFF: At this
2 time, again, I'd like to offer an opportunity for
3 interested citizens to give statements in accordance
4 with Section 101.628 of the Board's procedural
5 rules. Are there any members of the public here
6 today that wish to give any oral statements? I see
7 none. Are there any members of the public wishing
8 to give any written statements? I see none.

9 Before we get to any possible
10 closing arguments, I'd like to go off the record for
11 a moment to briefly discuss a briefing schedule and
12 the availability of the transcript.

13 (Whereupon, a discussion
14 was had off the record.)

15 HEARING OFFICER LANGHOFF: Okay.
16 Thank you. We have just had an off-the-record
17 discussion regarding the filing of post-hearing
18 briefs. The parties have agreed to a briefing

19 schedule and before we get to any closing arguments,
20 I will go ahead and read that schedule into the
21 record.

22 For the record, the city of
23 Streator has waived the decision deadline for two
24 days to January 10th, 2002, and will be filing a

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1 written waiver of decision deadline shortly, is that
2 correct, Ms. Hesse?

3 MS. HESSE: Yes, that's correct.

4 HEARING OFFICER LANGHOFF: The
5 transcript of these proceedings will be available
6 from the reporter by November 30th. I will
7 establish a short public comment period of seven
8 days. The parties know to talk to the court
9 reporter following the hearing regarding the
10 availability of the transcript. Streator's brief
11 will be due by December 6th. The mailbox rule will
12 not apply. The Agency's brief will be due by
13 December 13th and the mailbox rule will not apply.

14 The transcript is usually put on
15 Board's web site within a few days of its
16 availability, however, in this case I will try to
17 get it on the day that the Board receives the

18 transcript. That might be a little difficult with
19 the length of the transcript, but I'm sure we will
20 do our best. I would just like to note that our web
21 site address is [www.ipcb, for Illinois Pollution](http://www.ipcb.state.il.us)
22 [Control Board, .state.il.us.](http://www.ipcb.state.il.us)

23 Any post-hearing public comments
24 must be filed in accordance with Section 101.628(c)

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1 of the Board's procedural rules. Public comments
2 must be filed, as I stated, within seven days.
3 Public comments must be filed by November 23rd of
4 this year. The mailbox rules set forth at 35 Ill.
5 Admin. Code 101.102(b) and 101.144(c) will apply to
6 any post-hearing public comments.

7 Is there anything further from
8 either of the parties before we get to closing
9 arguments?

10 MS. HESSE: No.

11 HEARING OFFICER LANGHOFF: At this
12 time I want to ask again, are there any members of
13 the public present that want to make statements on
14 the record? Seeing none, I am required to make a
15 statement as to the credibility of witnesses
16 testifying during this hearing. This statement is

17 to be based on my legal judgment and experience and
18 accordingly I state that I found all of the
19 witnesses testifying to be credible. Credibility
20 should not be an issue for the Board to consider in
21 rendering its decision in this case.

22 At this time I would like to offer
23 the city of Streator a chance for closing arguments.
24 Ms. Hesse?

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1 MS. HESSE: Yes, thank you.

2 Streator is requesting the Board
3 to do one of two things, to either grant a variance
4 to allow Streator to accept up to 18 -- up to 8,100
5 pounds per day of CBOD loading to the plant and I
6 will put a time frame on that or to order a revision
7 under Section 392.401(d) to remove Streator from
8 restricted status.

9 Streator is planning to move
10 forward with the rest of the projects that IEPA has
11 already approved. Mr. Nicholson testified to that.
12 This would include the VLR and increased oxidation.

13 Streator has acted expeditiously
14 to separate the belt filter press so that it could
15 be built quicker than the other projects.

16 Streator wants the order removing
17 restricted status or if a variance granted the
18 variance to last until the VLR and additional
19 oxidation capacity are added to the sewage treatment
20 plant and the plant is rerated. At this point,
21 Streator can't promise exactly when that will be
22 done. One of the reasons Streator can't promise
23 that is because part of this whole process includes
24 IEPA's reviewing and approving construction permits

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1 and reviewing and approving the construction that's
2 done so that the plant is rerated.

3 Streator does recognize that the
4 Board cannot grant variances indefinitely,
5 therefore, Streator has put the maximum -- the cap
6 on a maximum of five years. Streator certainly
7 hopes that the variance itself would not last any
8 more than one and a half to two years until the work
9 can be done and the plant can be rerated by IEPA.

10 Streator does not have a lengthy
11 history of noncompliance. There has been testimony
12 by witnesses on both sides that there have been no
13 carbonaceous BOD excursions or violations even when
14 the plant has been receiving CBOD influent at levels

15 in the range of 15,000 or more pounds per day. This
16 is even though the plant is rated at 5,000 pounds
17 per day on organic loading.

18 Streator's plant has had one
19 incident of an excursion of total suspended solids.
20 This was an isolated incident. It was due to a
21 common combination of vents due in large part to bad
22 weather, early winter, that we had last year.
23 Because of the early winter and early heavy snow
24 fall, Streator's contract was not able to get in

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1 there and to remove the sludge so that Streator went
2 into the winter with a higher sludge capacity than
3 they wanted and then in January there was a sudden
4 thaw along with a heavy rain that melted snow and
5 caused an increased volume in the water flowing
6 through the plant which caused the TSS excursion.

7 Streator is spending about
8 \$900,000 to make sure this never happens again.
9 They're constructing a sludge belt filter press to
10 give Streator the option to be able to landfill
11 sludge instead of having to rely on just land
12 application to dispose of the sludge.

13 Streator has testified that

14 construction of the sludge belt filter press is
15 ahead of schedule. Streator also recognizes that it
16 cannot be completed until IEPA issues the
17 construction permit and that the sludge belt filter
18 press can be properly and legally installed and
19 connected.

20 Streator has not tried to hide
21 that it has had some past ammonia violations.
22 Streator has been very up front about this and
23 according to testimony on both sides, this is a
24 fairly recent event. Streator has responded to

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1 these ammonia excursions by doing a number of
2 things, they're adding manufactured nitrifying
3 bacteria to the sewage treatment plant to increase
4 the ability of the plant to nitrify ammonia waste.
5 The plant is returning high PH, high ammonia decant
6 liquid from the sludge storage tanks to the
7 headworks of the plant to allow more time for that
8 to be treated.

9 Streator, also at Illinois EPA's
10 suggestion, is increasing the frequency of sludge
11 removal so that sludge storage does not exceed 90
12 percent of the plant's capacity to store sludge.

13 Streator is also constructing the belt filter press
14 which in addition to removing solids in inventory
15 will help address the ammonia issue. Larry Good,
16 Streator's consultant, testified that there appears
17 to be a relationship with mixed suspended solids and
18 the ammonia violation. Streator has also been
19 talking to its largest industrial contributor, Red
20 Wing or Carriage House as it's also known, about
21 equalizing its flow and it's Streator's
22 understanding that Red Wing, Carriage House, has
23 begun to do that and the data presented by Larry
24 Good confirms that.

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1 We also heard Larry Good testify
2 that he is currently working with the wastewater
3 treatment facility operator at Streator to
4 investigate additional measures to help control the
5 ammonia. They are investigating whether nitrogen
6 needs to be added as a food source to sustain the
7 population of nitrifiers or whether they need to do
8 some additional nitrification on the sludge tank
9 decant. He testified that it's going to take about
10 three or four months to complete this investigation
11 before he can make a recommendation to the city. At

11 both from Mr. Corley as well as from the city of
12 Streator about the reasons for the 1989 consent
13 order and the 1992 amendment to the consent order.
14 The main purpose as Mr. Corley testified to is that
15 Streator is underlined with a number of coal mines
16 and that sewers and septic systems have been
17 discharging directly to those mines. The mines
18 beneath Streator are shallow. Streator is not a
19 good place to install septic systems.

20 Streator has also made efforts to
21 connect all areas under the original decree to the
22 wastewater treatment plant so that the sewage can be
23 treated. Streator is continuing to work to add the
24 additional areas required by the consent orders.

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1 Streator is not a large town.
2 There are only 14,200 people in Streator. Streator
3 has recently authorized the raising of four million
4 dollars in municipal bonds to pay for the
5 improvements to the sewage treatment plant and the
6 sewer system to collect sewage. This is difficult
7 in a town this small where about half the population
8 is age 55 or older and on fixed incomes. The mayor
9 also testified that of those people still working,

10 many of them are earning minimum wage. When you
11 compare a four million dollar bond issue to a
12 population of 14,200 people, that comes out to only
13 almost \$3,000 per person to pay for this. It's not
14 per household, it's per person. Streater needs
15 businesses obviously to help pay for these
16 improvements. The citizens cannot do this alone.

17 We also heard testimony from Larry
18 Good who evaluated the data. He testified -- and
19 this would be the data on the effluent in the sewage
20 treatment plant. He testified that the COB levels
21 have always been excellent. He testified about the
22 measures that Streater has taken whenever there has
23 been a problem with either TSS, total suspended
24 solids or ammonia.

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1 He also testified that Streater is
2 making a number of other improvements to the plant
3 to increase its loading. He testified that it's his
4 engineering judgment that Streater could be rerated
5 at the present time at the 8,100 pounds that
6 Streater is requesting in the variance.

7 He also testified that the pending
8 developments, the motel, the Kroger strip small and

9 a few other projects would only add eight pounds per
10 day to the organic loading of the plant and about
11 5,000 gallons per day in hydraulic loading. He
12 testified that this is minimal loading to the plant
13 and would not have a significant impact on the
14 plant. Mr. Keller also testified that he believed
15 that this would not have a significant impact on the
16 plant.

17 We heard Paul Nicholson testify to
18 Streator's efforts to encourage economic development
19 to create an economic base and to create jobs for
20 the citizens of Streator. This is necessary for the
21 viability of the town. This is also necessary
22 because Streator needs some businesses to help pay
23 for the infrastructure. They need some businesses
24 to help pay for the improvements to the wastewater

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1 treatment plant and the sewer connections that they
2 wish to do.

3 He also testified that he has been
4 working with the Department of Commerce and
5 Community Affairs to help attract businesses to
6 Streator. Streator is hoping as well as DECCA,
7 Department of Commerce and Community Affairs, to

8 bring a Fortune 500 company to Streator. If that
9 happens, that would bring 75 to 200 more jobs to
10 Streator. This is in a town that needs the jobs.

11 Streator is here to request relief
12 from the Pollution Control Board. Streator has been
13 trying to work with Illinois EPA, but at this point
14 Streator understands from discussions with Illinois
15 EPA that Illinois EPA feels bound by its regulations
16 which is why Streator has come to the Board to
17 request a variance from those regulations and to
18 request either a variance from or an order revising
19 Streator's restricted status.

20 We heard testimony from an IEPA
21 witness -- two IEPA witnesses regarding an improper
22 connection of the Super 8 Motel to the Streator
23 sewer line. This was work that was done by the
24 motel. This was not done by the city of Streator.

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1 We also heard testimony with
2 respect to the Kimberkell Estates and that it's
3 Streator's understanding that the Kimberkell Estates
4 is part of the areas exempted from the restricted
5 status letter.

6 In determining whether to grant a

7 variance the Board typically looks at a number of
8 factors and we will be briefing these factors as
9 well. One, is the length of time that the
10 petitioner has been out of compliance and what
11 actions and activities the petitioner has
12 undertaken to address those issues. Streator has
13 taken a number of steps to improve its ammonia
14 handling and has addressed the single TSS excursion
15 with a \$900,000 project.

16 Streator has never had a problem
17 with the CBOD loading and Streator has seriously
18 considered all of IEPA's suggestions.

19 Streator has authorized the four
20 million dollars in bonds and has constructed the
21 belt filter press in mere months after approval of
22 that project by IEPA.

23 Streator has hired Chamberlin
24 (sic) & Associates to advise Streator as to what, if

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1 any, additional actions need to be taken. This was
2 done even before IEPA could make those suggestions.

3 Streator has developed a plan for
4 the long-term compliance and is requesting this --
5 either a variance or to be removed from restricted

6 status from the Board and that request was made
7 within nine months of first being placed on
8 restricted status. So Streator has not dowed in what
9 its attempted to do.

10 The second factor that the Board
11 considers is what is the hardship to the community.
12 Streator has presented evidence that it has had a
13 significant loss of good paying jobs. To the extent
14 jobs have been replaced, they have been minimum wage
15 jobs in large measure. Streator needs more jobs to
16 thrive and businesses to help pay the cost to
17 improve its infrastructure. As I mentioned before,
18 \$3,000 per person is rather significant. The
19 citizens cannot afford to pay for the improvements
20 to the wastewater treatment plant alone. They need
21 help.

22 If Streator continues on
23 restricted status and has to condition telling
24 developers that they cannot connect to the

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1 wastewater treatment plant, Streator's ability to
2 develop will be hindered. Streator's committee will
3 be stifled. If it happens, it may take five or more
4 years for Streator to recover economically.

5 In determining whether to grant a
6 variance, the Board also considers whether there
7 will be harm to the environment. The current
8 pending project that Streator has would add only
9 eight pounds per day to the wastewater treatment
10 plant and five gallons per day. This would not
11 result in a harm to the wastewater treatment plant.
12 This amount is so small the plant won't even notice
13 it was there. It will not result, according to
14 testimony by Larry Good, in any harm to the
15 Vermilion River.

16 IEPA has presented no evidence in
17 this case that this increased loading would result
18 in an increased harm to the environment. Larry
19 Good, as I mentioned, did testify that he believes
20 that the plant can currently be rerated at 8,100
21 pounds per day of CBOD loading and Streator has
22 asked IEPA to rerate the plant at that level.

23 In conclusion, Streator is
24 requesting that the Board either issue an order to

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1 revise its restricted status in order to take
2 Streator off restricted status or to grant Streator
3 a variance to allow Streator to operate at up to the

4 8,100 pounds per day of BOD loading until Streator
5 can get the VLR constructed at oxidation capacity to
6 the plant and do whatever other measures Streator
7 believes are appropriate and until IEPA can rerate a
8 plant so that Streator is off restricted status.

9 As I mentioned before, Streator
10 hopes that it can get the VLR and other work done
11 within two years, but we cannot guarantee that at
12 this point because there's a number of additional
13 factors, thus Streator's request that a variance --
14 or if the variance is granted go until the plant is
15 rerated or restricted status is lifted or five
16 years, whichever happens first.

17 HEARING OFFICER LANGHOFF: Thank you,
18 Ms. Hesse. Ms. Williams?

19 MS. WILLIAMS: Thank you.

20 Under Section 35 of the
21 Environmental Protection Act, the Board may grant
22 individual variances beyond the limitations
23 prescribed in this Act whenever it is found upon
24 presentation of adequate proof that compliance with

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1 any rule or regulation, requirement or order of the
2 Board would impose an arbitrary or unreasonable

3 hardship.

4 The Illinois EPA believes, as we
5 stated in our opening, that the petitioner has
6 failed to prove to the Board that the Agency's
7 restricted status determination poses an arbitrary
8 or unreasonable hardship on the petitioner.

9 Streator has shown neither that
10 the hardship claimed is arbitrary. The evidence
11 clearly shows the Agency followed its normal
12 procedures and requirements of Illinois regulations
13 when replacing Streator on restricted status.

14 Additionally, Streator has failed
15 to demonstrate that the hardship claimed is
16 unreasonable. It appears that the hardship claimed
17 is an economic one and though some additional
18 factual information regarding the level of economic
19 hardship has been provided in this hearing, the
20 Agency's investigation was unable to take any
21 consideration, any quantified figures with regard to
22 economic hardship and cannot base the recommendation
23 to the Board on any of the new facts presented.

24 However, it does seem clear that

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1 the type of hardship presented is that contemplated

2 by the restricted status regulation. Admittedly,
3 these regulations present the potential for a
4 serious economic hardship on communities that are
5 placed on restricted status and it's for that reason
6 that it's the Agency's policy to meet with all
7 communities prior to restricted status determination
8 and discuss with them what projects are in the
9 pipelines so that any investment expectations in the
10 economy can be allowed for.

11 In this case there are economic
12 expectations in the community that are -- should
13 have taken into account the status of the current
14 treatment plant when those expectations were
15 formed.

16 In addition, the Board has
17 consistently held that hardship as provided by the
18 Environmental Protection Act cannot be of
19 self-imposed nature.

20 In fact, you heard Mayor Schmitt
21 testify yesterday that partially some of it's our
22 fault, but yet it's not and that has consistently
23 been the response from Streater in this case, while
24 they've worked with the Agency to try and avoid

1 restricted status and to try and bring themselves
2 off restricted status they have not truly taken
3 responsibility for the aspects of this situation
4 they find themselves in which were caused by the
5 actions taken by the city itself.

6 It's the Agency's duty in this
7 situation to weigh the hardship presented by the
8 petitioner against the potential environmental
9 impact that would result.

10 In this case, the Agency has
11 presented evidence of a number of aspects of
12 environmental impact. The Agency demonstrated
13 that Streator's treatment plant has had several
14 violations of its permit limit. It should be
15 assumed that when there's a violation of a permit
16 limit there is harm to receiving waters, in this
17 case the Vermilion River.

18 In addition, when considering the
19 environmental impact the Agency looks at
20 environmental impact relative to a well-run plant,
21 to a current plant in comparing the requested
22 variance. We have not looked at it in terms of what
23 the requested variance alone would do to the plant.
24 It's true that eight pounds of BOD per day, which is

1 what has been presented as discharge from two
2 specific projects, would have a relatively small
3 harm. The Board case law and case law that has gone
4 up on similar cases to the Appellate Court level has
5 held that a line must be drawn in the sand somewhere
6 to allow one additional connection to an already
7 overloaded plant must be regarded as a significant
8 environmental harm even in and of itself.

9 In addition, the relief requested
10 by Streator in no way is limited to these eight
11 pounds per day.

12 Streator has requested a variance
13 from the restricted status regulations as a whole
14 which would -- rather than take Streator off the
15 Agency's restricted status, this would still allow
16 connections to the plant even though capacity is
17 being exceeded at that plant.

18 As requested, the variance would
19 allow an unlimited number of additional connections
20 to be made to Streator's plant. Even the limitation
21 provided by petitioner in their closing of 8,100
22 pounds per day as a level to which they would like
23 to be related to would not in any way limit the
24 number of connections -- new connections that could

1 be made to the plant. In fact, currently today that
2 8,100 pound capacity is often exceeded.

3 Additionally, Board regulations
4 require the petitioner to provide a compliance
5 plan -- a detailed compliance plan with schedules of
6 compliance of all aspects of the projects to be
7 undertaken and while at the hearing the petitioner
8 has indicated intent to proceed with most and
9 possibly all of the aspects of the plan for
10 compliance with the restricted status determination
11 that the Agency approve, they have provided no dates
12 by which any of these activities will be undertaken,
13 they have not committed to a date for putting out
14 bids, completing the contracts, beginning
15 construction, completing construction, all the
16 normal things that you would find in a compliance
17 plan presented to the Board. And I believe it's
18 somewhat illusory for Streator now to claim that
19 they are going to do all of these requirements
20 without committing to dates in which any of them
21 will be undertaken.

22 Although Streator has stated that
23 there will be economic hardship resulting from the
24 amount of money required to implement the project

1 that the Agency approved, your heard testimony from
2 the city manager that that amount of money has
3 already been -- bonds for the full amount of the
4 project have already been approved by the city
5 council and could be issued and implemented.

6 In addition to not meeting its
7 burden under the Act, the Agency feels that
8 petitioner is seeking to use this forum to avoid
9 other forms. It is the Agency's opinion that
10 petitioner seeks to -- seeks forgiveness from past
11 violations of the restricted status determination
12 through the Board's decision in this matter. It is
13 also the Agency's opinion that this variance is
14 being brought as a substitute for an appeal of the
15 restricted status determination by the Agency.
16 I believe Mr. Nicholson testified to that fact
17 himself yesterday that in his mind this is an appeal
18 of the restricted status determination that was made
19 in September of 2000. We are now at November of
20 2001 and this is not a timely forum in which to
21 bring an appeal of that determination.

22 Finally, it's the Agency's belief
23 that Streater is seeking to avoid the Agency's role
24 in rating the capacity of treatment plants through

1 this proceeding. The Agency has attempted to
2 explain for the Board the detailed process by which
3 Agency staff go about approving capacity limits both
4 for hydraulic and organic loading to wastewater
5 treatment plants and it is very complicated and an
6 important aspect of the Agency's function which will
7 build up technical expertise that the Board should
8 not attempt to substitute its judgment for.

9 The Agency has every reason to
10 believe that Streator's plant will at some point be
11 rerated. The testimony from the Agency witnesses I
12 believe as shown that it is inappropriate to rerate
13 Streator's plant immediately and it would not be
14 appropriate for the Board to do so in its order
15 either.

16 We heard lots of testimony from
17 both sides these last two days about the operation
18 of Streator's wastewater treatment plant. In fact,
19 even with all that testimony, there's a lot we don't
20 know about what's going on at that plant. We were
21 not able to hear from the operator of that plant or
22 from the major industrial user, Carriage House.

23 Although both Streator and the
24 Agency have worked hard to determine exactly what's

24

MS. HESSE: Yes. Just a couple

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1 comments.

2 HEARING OFFICER LANGHOFF: A short
3 rebuttal argument?

4 MS. HESSE: Yes.

5 Streator disagrees with Illinois EPA's
6 interpretation of the case law out there. There's
7 quite a volume of case law that the state has chosen
8 to ignore in this situation. These are cases that
9 support the granting of variances when a variance is
10 needed by a municipality to allow economic
11 development to allow jobs. These variances are
12 granted when there is minimal environmental harm.
13 Streator has shown its request will result in
14 minimal environmental harm and I anticipate that
15 both sides will be briefing those in more detail in
16 their post-hearing briefs.

17 THE REPORTER: I'm sorry. You need to
18 speak up.

19 MS. HESSE: Okay.

20 Streator's request does not allow
21 unlimited connection. Streator has proposed a cap
22 on the amount of additional loading to the plant.

23 Streater has also testified as to what it's aware of
24 that is planned and the amount of loading from those

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1 projects is minimal.

2 Streater disagrees that Streater
3 has not acted expeditiously to seek relief from the
4 Board. Streater has asked the Board and the Board
5 has granted an expedited decision date, expedited
6 hearings in this matter. Streater also worked
7 quickly to get a plan in place and then filed its
8 petition for the variance.

9 With respect to IEPA's
10 characterization that Streater is trying to
11 substitute this hearing process as a forum for
12 Streater's past violations, that is not the case.
13 It was IEPA that raised the issue regarding the
14 motel and regarding the Kimberkell Estates, the two
15 things that IEPA is saying is a violation of
16 Streater's restricted status. Streater did not
17 raise those in its cases in chief, IEPA raised
18 those. Streater was not trying to use this as a
19 forum for those two disputes with the Agency. IEPA
20 also raised the issue that IEPA was not able to
21 question Carriage House with respect to Carriage

22 House's activities. There's nothing that prevents
23 IEPA from calling Carriage House as a witness. IEPA
24 could have done that and did not.

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1 Streator concedes that at this
2 point with some of the issues neither party knows
3 exactly what's going on with respect to ammonia in
4 the plant and this would be the ammonia in the
5 effluent of the plant, that's why Streator hired
6 Chamberlin & Associates to help them figure that
7 out. That's why Streator needs a little bit more
8 time to evaluate that to determine the best course
9 of action. That is why Streator needs the variance.

10 And I would like to also thank the
11 Board for its careful consideration and its time and
12 all the efforts that the Board is putting forward in
13 assisting Streator with trying to do this in an
14 expedited dated manner.

15 HEARING OFFICER LANGHOFF: Okay.
16 Thank you, Ms. Hesse.

17 Again, I'd just like the record to
18 reflect that Exhibits 1 through 14 have been offered
19 and admitted with the exception of Exhibit 2. I am
20 treating Exhibit 2 as a filed public comment under

21 101.628(c). Also, I'd like the record to reflect
22 that the Agency has offered and it has been admitted
23 Exhibit A. I'd also, again, like the record to
24 reflect the parties entered into a written

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1 stipulation and that has been accepted on day one.

2 Is there anything further.

3 MS. HESSE: It was pointed out to me
4 that I misspoke. The city has hired Chamlin &
5 Associates, not Chamberlin.

6 HEARING OFFICER LANGHOFF: Would you
7 spell that for the reporter?

8 MS. HESSE: C-h-a-m-l-i-n.

9 HEARING OFFICER LANGHOFF: Thank you.
10 At this time I will conclude the proceedings. It is
11 Thursday, November 15th, 2001 at approximately 12:37
12 in the afternoon and we stand adjourned. I want to
13 thank everyone for their time and their
14 professionalism and everyone have a good day and a
15 safe drive home.

16 (Whereupon, the proceedings were
17 concluded.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4
5

6 I, TERRY A. STRONER, CSR, do
7 hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook, and
9 State of Illinois; that I reported by means of
10 machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

14
15
16
17
18

Terry A. Stroner, CSR
Notary Public, Cook County, Illinois

19

20 SUBSCRIBED AND SWORN TO
before me this ___ day
21 of _____, A.D., 2001.

22

23 _____
Notary Public

24

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