

ILLINOIS POLLUTION CONTROL BOARD

AMERICAN BOTTOMS CONSERVANCY,

Petitioner,

vs.

PCB 06-171
(Third Party NPDES
Permit Appeal)

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY and UNITED STATES STEEL
CORPORATION and GRANITE CITY WORKS,

Respondents.

Proceedings held on November 20th,
2006, at 1 p.m. at the Madison County
Administration Building, County Board Room 203,
Edwardsville, Illinois, before Carol Webb, Chief
Hearing Officer.

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1 HEARING OFFICER WEBB: Good afternoon.
2 My name is Carol Webb. I'm a hearing officer
3 with the Pollution Control Board. This is PCB
4 06-171, American Bottom Conservancy v. IEPA and
5 US Steel-Granite City Works.

6 It is November 20th, 2006. We are
7 beginning at 1 p.m. At issue in this case is
8 whether the Agency improperly denied the request
9 for public hearing before issuing an NPDES permit
10 to US Steel for it's steelmaking facility in
11 Granite City, Madison County. The decision
12 deadline is January 18th, 2007.

13 You should know that it is the
14 Pollution Control Board and not me that will make
15 the final decision in this case. My purpose is
16 to conduct the hearing in a neutral and orderly
17 manner so that we have a clear record of the
18 proceedings. I will also assess the credibility
19 of any witnesses on the record at the end of the
20 hearing.

21 I will note for the record that there
22 are some members of public present. If there is
23 time at the end of this hearing, I will allow
24 members of the public to give comments or

1 testimony. If we run out of time, you may still
2 submit written comments to the Board, and I will
3 be happy to answer any questions about this
4 during a break or after the hearing. And I do
5 understand that petitioners are agreeable to
6 allowing some public comment today.

7 This hearing was noticed pursuant to
8 the Act and the Board's rules and will be
9 conducted pursuant to Section 101.600 through
10 101.632 of the Board's procedural rules.

11 At this time I'd like to ask the
12 parties to please make their appearance on the
13 record, beginning with petitioner, please.

14 MR. HEISEL: Edward J. Heisel for
15 petitioner, American Bottoms Conservancy.

16 MS. MUSHILL: Elizabeth A. Mushill for
17 petitioner, American Bottoms Conservancy.

18 MR. SOFAT: Sanjay Sofat for Illinois
19 EPA.

20 MS. HESSE: Carolyn Hesse for US
21 Steel-Granite City Works.

22 MR. BAKER: C. Daniel Baker, US Steel.

23 MR. BALLARD: David Ballard, US Steel.

24 HEARING OFFICER WEBB: Thank you very

1 much. We do have some preliminary matters to
2 discuss. First, would the petitioner like to
3 withdraw the Motion to Compel filed on November
4 6th?

5 MR. HEISEL: Yes, we are agreeable to
6 withdraw that.

7 HEARING OFFICER WEBB: Okay. Great.
8 Also, on November 6th the petitioner filed a
9 second motion to supplement the record and
10 respondents have no objection; is that correct?

11 MR. SOFAT: Yes.

12 HEARING OFFICER WEBB: All right.
13 Okay, then that motion is granted. Would
14 petitioner like to make an opening statement?

15 MS. MUSHILL: Yes, we would. The
16 Pollution Control Board regulation on public
17 hearings provides that a public hearing on NPDES
18 permits shall be held when the IEPA determines
19 that there is a significant degree of public
20 interest. Further, if the IEPA has any doubt
21 that a significant degree of public interest
22 exists, again it shall hold the public hearing.

23 Today American Bottoms Conservancy
24 will present testimony from five witnesses, each

1 of whom will describe their personal interests in
2 Horseshoe Lake and the NPDES permit at issue
3 here. Also, based on their knowledge of
4 Horseshoe Lake, they will describe a significant
5 interest of the public at large.

6 ABC will show today that the record
7 before the IEPA reflected this significant public
8 interest. Through the materials and the record,
9 ABC will show that, one, the IEPA had knowledge
10 that Horseshoe Lake is used recreationally by
11 many individuals and that many people consume
12 fish from the lake as part of their daily diet.
13 Two, the IEPA had knowledge that several large
14 organizations expressed an interest in the US
15 Steel permit and the long-term health of
16 Horseshoe Lake. Three, the IEPA had knowledge
17 that there was substantive problems with the
18 permit that the agency had the ability to
19 correct, and the IEPA neither followed up on the
20 issue raised nor held a public hearing in which
21 it could have acquired more information. And
22 four, lastly, the IEPA had knowledge that the
23 public had serious questions and concerns about
24 the permit that they would have like to have

1 addressed in the public forum.

2 ABC's witness here will describe
3 Horseshoe Lake is a place that they, and the
4 members of the organizations they represent, care
5 deeply about. Each of the witnesses will
6 describe their own experiences at Horseshoe Lake
7 and each will describe what they do to conserve
8 and protect it.

9 All of the witnesses, each of them a
10 member of the public, will express their
11 significant interests in Horseshoe Lake and the
12 permit that allows pollutants to be discharged
13 into it. It will be the testimony today ABC
14 presents a factual basis why a public hearing is
15 necessary here. And we reserve our legal
16 arguments for our brief. Thank you.

17 HEARING OFFICER WEBB: Thank you.
18 Would the Agency like to make an opening
19 statement?

20 MR. SOFAT: Yes. Good afternoon, I am
21 Sanjay Sofat. I represent the Illinois
22 Environmental Agency in the American Bottoms
23 Conservancy vs. Illinois EPA and US Steel, PCB
24 06-171.

1 The sole issue before the Board is
2 whether the written comments received prior to
3 the close of the comment period on January 18,
4 2005, constituted "a significant degree of public
5 interest in the draft permit" as required by
6 Section 309.115 of the Board of the regulations.

7 Petitioner, American Bottoms
8 Conservancy (ABC), brought this suit under
9 Section 40(e) of the Act. Under Section 40(e) of
10 the Act, ABC has the burden of proof. Thus, ABC
11 must prove that the Agency record as of January
12 18, 2005, contained substantial evidence to show
13 that a "significant degree of public interest
14 existed in the proposed permit" and that Agency
15 clearly erred or abused its discretion in
16 deciding not to hold a public hearing "on the
17 basis of the requests" it received during the
18 comment period.

19 At the close of the comment period on
20 January 18, 2005, the Agency had received two
21 comment letters dated January 17 and 18 of 2005.
22 The contents of these two letters alone
23 constitute all of the information the Agency had
24 before it to decide whether or not to hold a

1 public hearing in this case. The contents of
2 these letters thus must constitute a significant
3 degree of public interest in the proposed permit.
4 Any issues or information raised in these comment
5 letters that do not pertain to the proposed
6 permit are thus irrelevant and are not part of
7 the determination regarding whether a significant
8 degree of public interest existed in the proposed
9 permit.

10 The decision to hold a hearing under
11 Section 309.115 of the Board regulations is
12 "largely discretionary." The Agency's decision
13 to not hold a public hearing was based on the two
14 letters dated January 17 and 18th of 2005 and not
15 based on what is being said -- may be said here
16 today.

17 In this case, the Agency found that
18 there was not a significant degree of public
19 interest in the proposed permit and instead chose
20 to respond to the comment letters in writing. As
21 the Agency's decision to not hold a public
22 hearing is consistent with the requirements of
23 309.115, the Agency requests the Board to affirm
24 the Agency's decision. Thank you.

1 HEARING OFFICER WEBB: Thank you.

2 MS. HESSE: Carolyn Hesse for US
3 Steel. First of all, I'd like to concur with the
4 Agency's comments and add some additional
5 comments of our own.

6 Under Section 39(a) of the Illinois
7 Environmental Protection Act, when an operating
8 permit is required for a facility, the applicant,
9 in this case US Steel, must apply to the Agency
10 for the permit, "and it shall be the duty of the
11 Agency to issue such a permit upon proof by the
12 applicant that the facility will not cause a
13 violation of the Illinois Environmental
14 Protection Act or regulations hereunder."

15 US Steel-Granite City Works timely
16 filed for a permit in Madison County.
17 Accordingly, the Agency was required under
18 Section 39(a) to issue the permit because the
19 permit it discharges would not cause a violation
20 of the Act for regulations.

21 During the public comment period on
22 the draft permit, a total of three letters were
23 submitted to the Agency providing comments on the
24 draft permit. One was from US Steel, and it did

1 not request a hearing. One letter was from a
2 single environmental organization, that's the
3 January 17th letter. It did not appeal the
4 Agency's decision. The third letter was
5 allegedly from several environmental
6 organizations but only one of them, ABC, was
7 interested enough to appeal the permit under
8 Section 40(e) of the Act.

9 At this point there is only one
10 remaining issue in this case, whether the Agency
11 abused its discretion by not holding a public
12 hearing before issuing the permit. The decision
13 whether to hold a hearing is within the Agency's
14 discretion. And there are two elements to this
15 question. One, is whether there's significant
16 degree of public interest; and two, whether the
17 interest is in the proposed permit.

18 ABC is the party challenging the
19 Agency's discretionary decision and has the
20 burden of proof that there was a significant
21 degree of public interest in the permit to
22 warrant a hearing. Further, that this must be
23 evident to IEPA when the Agency decided to issue
24 the permit and at the close of the public comment

1 period, which was January of 2005.

2 Pursuant to Section 40(e)(2)(a), only
3 public comments received during the public
4 comment period, which ended on January 18th,
5 2005, may be considered by the Board when
6 reviewing the Agency's decision to issue the
7 permit without holding a public hearing. As I
8 mentioned, there are two parts to the question,
9 one, is what is the public interest.

10 There is no case law interpreting what
11 exactly public interest means so the regulation
12 should be applied according to explain terms.
13 Merriam-Websters dictionary defines "public" as
14 meaning "of, relating to, or affecting all the
15 people or the whole area of a nation or state."
16 So the question is whether ABC sufficiently
17 demonstrated at the time that the Agency
18 determined that it would proceed to issue the
19 permit based on the information at the close of
20 the public comment period that, one, there was a
21 significant degree of interest in the permit from
22 the whole body of people who use or live near
23 Horseshoe Lake; two, whether the interest was
24 evident to IEPA officials responsible for issuing

1 the permit; and three, whether IEPA misjudged the
2 degree of interest in the permit and on that
3 basis abused its discretion by failing to hold a
4 public hearing on the permit.

5 Under the Act and regulations the
6 Agency has discretion over whether a public
7 hearing is held or not because the Board is
8 reviewing a discretionary decision by the Agency,
9 the Board is constrained to give deference to the
10 Agency and uphold the Agency decision unless ABC
11 proves that the Agency abused its discretion.

12 Clearly the Board should refrain from
13 substituting its judgment for the Agency. The
14 abuse of discretion requires that ABC demonstrate
15 by compelling evidence that the Agency made the
16 wrong choice.

17 What we believe the evidence will show
18 is that there's basis of appeal of essentially
19 one letter from ABC dated January 18th, 2005.
20 You're likely to hear from witnesses during this
21 hearing that are going to testify about use of
22 Horseshoe Lake and some of them in the comment
23 letter did not even see the letter until a few
24 weeks before this hearing.

1 The second prong of this is the
2 interest has to be in the proposed permit. As
3 mentioned before, there are two elements that ABC
4 must prove, not only must ABC show there's a
5 public interest, ABC must show that that interest
6 is specifically in the proposed permit.

7 The letter of January 18 does not list
8 one individual or organization who will be
9 adversely affected by the Granite City Works'
10 discharge permit. The letter does not claim or
11 allege that any water quality standards will be
12 violated by issuing the permit. Rather, the
13 letter only states there is concern for Horseshoe
14 Lake, that Horseshoe Lake is impaired for certain
15 pollutants and that there may have been some
16 non-compliance issues with the previous permit.

17 Issues related to impairment of
18 Horseshoe Lake are properly addressed through the
19 Clean Water Act Section 303(d) process and Ms.
20 Andria and ABC properly participated in that
21 process. Any non-compliance issues are properly
22 addressed through a different forum which is the
23 Agency's enforcement procedures and the
24 procedures under the Act, neither of these issues

1 are relevant to whether this permit should have
2 been issued, but there's no demonstration that
3 there was any interest in proposed permit for
4 Granite City Works.

5 In the end, ABC's evidence will be
6 insufficient to demonstrate that IEPA abused its
7 discretion proceeding to issue the permit without
8 conceding to Ms. Andria's request for a public
9 hearing. Thank you.

10 HEARING OFFICER WEBB: Thank you.
11 Petitioner may call its first witness.

12 MR. BALLARD: Before we call
13 witnesses, US Steel would move to exclude any
14 non-party witnesses from Ms. Andria's testimony
15 of other witnesses.

16 HEARING OFFICER WEBB: Why?

17 MR. BALLARD: Well, on the basis that
18 the other witnesses will -- will see the
19 testimony, involve the other witnesses and will
20 testify consistently with that. US Steel and
21 IEPA are entitled to testimony that is not
22 changed or altered by witnesses here observing
23 the other witness's testimony.

24 HEARING OFFICER WEBB: We -- we don't

1 do that because of the public nature of these
2 proceedings and generally what they entail. So
3 I'm not going to, you know, I'm not -- I'm going
4 to allow the witnesses to remain in the room, if
5 they so cheese.

6 MR. BALLARD: Okay.

7 MR. HEISEL: If we could deal with one
8 evidentiary matter beforehand, we would like to
9 submit as evidence IEPA's response to our
10 discovery request into the record.

11 HEARING OFFICER WEBB: Is that -- is
12 there any objection to that?

13 MR. SOFAT: No.

14 HEARING OFFICER WEBB: Have you seen
15 it?

16 MR. HEISEL: I have copies. They were
17 served on all the parties.

18 MR. BAKER: Can we have an opportunity
19 to examine those before we proceed?

20 HEARING OFFICER WEBB: Absolutely.

21 MR. BAKER: If we could take a brief
22 break to do that.

23 HEARING OFFICER WEBB: We can go off
24 the record for a few minutes, but I'd rather not

1 lose the people quite yet.

2 MR. BAKER: Thank you.

3 HEARING OFFICER WEBB: Okay. We'll go
4 off the record.

5 (A discussion was held off the
6 record.)

7 HEARING OFFICER WEBB: We're back on
8 the record. We just had gone off the record to
9 give all the parties a chance to examine some
10 exhibits.

11 MS. HESSE: We object to supplementing
12 the record with these documents for the reason
13 that, first of all, this is discovery
14 information. The scope of discovery, as you
15 know, is beyond the scope of what can be allowed
16 at hearing. Furthermore, there's names of Agency
17 employees in here that there's not going to be an
18 opportunity to question them or cross-examine
19 them or give further clarification of what some
20 of the responses to the questions are.

21 The purpose of this is discovery to
22 get information. If ABC had wanted this
23 information from the employees at IEPA, they
24 could have called them as adverse witnesses.

1 They did not do so. So we object to including
2 these in the record. And further, there's no
3 foundation for providing these documents since
4 it's ABC that wants to include them.

5 HEARING OFFICER WEBB: May I see a
6 copy of what we're talking about?

7 MR. HEISEL: Certainly. These are the
8 originals and there were two amended responses
9 which are these. I think that's my only other
10 copy so --

11 HEARING OFFICER WEBB: Okay.

12 MS. HESSE: Furthermore, because the
13 people aren't here, this would be considered
14 hearsay.

15 HEARING OFFICER WEBB: Do you have any
16 response to their objection?

17 MR. HEISEL: Well, these responses
18 were provided in the due course of discovery
19 pursuant to our discovery schedule that was
20 agreed on here. We would contend that they are
21 admissions of the party opponents and, therefore,
22 are admissible here. The purpose of some of
23 these discovery requests, for example, the
24 request to admit, is actually to narrow the

1 issues that could be brought up in this hearing.

2 In terms of the record, you know, at
3 one point the Agency did not object to these
4 answers on the grounds -- or they stated their
5 objections. They didn't object to many of them
6 on the grounds that these were not relevant to
7 the record. In fact, they objected to that at
8 one point and then changed their answers later
9 after we had moved to compel. And so apparently
10 it's the Agency's position now that these are
11 sort of items that are in the record and these
12 are statements to clarify what is in the record,
13 and they are admissions on behalf of IEPA.

14 MS. HESSE: We further, in the
15 response to the comments, is that if we were
16 going to come in and say we want to add
17 additional information to the record and here's
18 our affidavit, we don't think that would be
19 proper -- a proper thing to do. The record on
20 this matter is closed and has been closed, and
21 all that is relevant here is whether IEPA should
22 have held a hearing, and the only information
23 relevant to that is anything that was submitted
24 to IEPA before January 18, 2005. So we --

1 there's a lot of information in here that is
2 relevant. I'm not sure there is anything in here
3 that is relevant to the issue of this hearing.

4 HEARING OFFICER WEBB: Well, I --
5 looking at this, you're right. I can't tell if
6 it's relevant or if it includes evidence that's
7 already part of the record or should be part of
8 the record. I'm not going to admit it, but if
9 you'd like me to take it as an offer of proof,
10 I'm willing to do that, and you can make an
11 argument to the board that it should be admitted.

12 MR. HEISEL: Yes, we would like to
13 reserve that right based upon the statement
14 that's in thus far.

15 HEARING OFFICER WEBB: Okay.

16 MR. SOFAT: Can I make a general
17 objection? I stated in my opening statement that
18 the Agency decision was based on what we had
19 before us, that was the 17 and 18th letters,
20 January of 2005. Anything that may be said today
21 or anything that witnesses or any of the parties
22 may try to bring in today, was not before us. So
23 we, the Agency, I would like to say, state a
24 general objection to any of that.

1 HEARING OFFICER WEBB: Okay. Well, I
2 -- you're right. Information that was not before
3 the Agency at the time they made this decision is
4 not admissible, but I haven't seen this document
5 so I'm not admitting it. I'm just taking it as
6 an offer of proof and they can make their
7 arguments to the Board.

8 MR. SOFAT: Yes.

9 HEARING OFFICER WEBB: Okay. Go
10 ahead.

11 MS. MUSHILL: American Bottoms
12 Conservancy would like to call Ms. Kathy Andria.

13 HEARING OFFICER WEBB: Ms. Andria, if
14 you would like to come have a seat up here.

15 MS. MUSHILL: And if it's all right,
16 I'd like to hand Ms. Andria some of the items
17 that are all in the record just for reference.

18 HEARING OFFICER WEBB: Ms. Andria,
19 would you -- oh, you can bring them up. You can
20 sit right here. And the court reporter will
21 swear you in.

22 MR. BALLARD: Are those exhibits?

23 HEARING OFFICER WEBB: Yeah, they're
24 part of -- these are documents that are in the

1 record is my understanding.

2 MR. BAKER: We would like to see
3 copies of the reference -- exact copies of
4 references of things that are in the record,
5 please.

6 MS. MUSHILL: And, Ms. Webb, would you
7 like a copy as well?

8 HEARING OFFICER WEBB: Yeah. Please.

9 (The witness was sworn in by the
10 court reporter.)

11 MS. HESSE: Just a point of
12 clarification. Can we have a representation made
13 on the record that the documents that we're being
14 handed are exact and true copies of what is in
15 the record and what has been handed to the
16 witness?

17 MS. MUSHILL: Yes, they are all items
18 copied directly from the records provided to us
19 from the IEPA.

20 MR. HEISEL: Ms. Webb, if I could
21 briefly go back to the issue of the discovery
22 responses. To preserve our offer of proof, I
23 would either ask that they be somehow made
24 available to the Board or, you know, as exhibits

1 that weren't entered evidence.

2 HEARING OFFICER WEBB: Yes, that's how
3 I did it.

4 MR. HEISEL: Okay. Thank you.

5 DIRECT EXAMINATION

6 BY MS. MUSHILL:

7 Q. Could you please pronounce and spell
8 your name for the record?

9 A. Kathy Andria, K-A-T-H-Y A-N-D-R-I-A.

10 Q. Ms. Andria, did you submit a public
11 comment letter to the NPDES permit at issue in
12 this case?

13 A. Yes, I did.

14 Q. And on behalf of what organization did
15 you personally submit this letter?

16 A. American Bottoms Conservancy.

17 Q. Can you describe to me what the
18 mission of American Bottoms Conservancy is?

19 A. To protect, preserve, enhance,
20 restore, and promote the natural and cultural
21 resources of the American Bottoms flood plains
22 and to educate the public as to the importance of
23 those resources. We also work on other areas in
24 Illinois, with a special concentration on the

1 American Bottoms flood plains.

2 Q. What kind activities does ABC do to
3 promote this mission?

4 A. We monitor and participate in
5 committees and councils on air, water, land use
6 decisions in a growth group. We work with
7 various agencies, DNR, IEPA, regional councils.
8 We work with neighborhood organizations in
9 various locations. We monitor public notices in
10 the newspapers, and we review comment and make
11 comment on permits and, when necessary, the
12 NPDES.

13 Q. Where is the American Bottoms?

14 A. It's the flood plain along the
15 Mississippi River starting at the confluence with
16 the Missouri River just below Alton down to
17 Chester at the confluence with the Kaskaskia
18 River.

19 Q. Is Horseshoe Lake located within the
20 American Bottoms.

21 A. Yes, it is.

22 Q. How many members does American Bottoms
23 Conservancy have?

24 A. We have about 100.

1 Q. Do you hold any special positions
2 within the organization?

3 A. I'm president.

4 Q. What do you do as the president of
5 ABC?

6 A. In consultation with the Board, I --
7 we set the agenda. I call meetings, when
8 necessary, for -- over the phone or in person.
9 We meet generally quarterly, and I preside over
10 the meetings.

11 Q. Ms. Andria, do you ever go to
12 Horseshoe Lake?

13 A. Yes, I do.

14 Q. And what do you do when you're at the
15 lake?

16 A. Sometimes I walk. Sometimes I drive
17 through, either on the main part or down Bend
18 Road. I watch the birds. I watch -- I look to
19 see who's there. I look at the water levels. I
20 look to see what -- what is happening generally,
21 but I really truly love the site for bird
22 watching.

23 Q. How often do you go to Horseshoe Lake?

24 A. Probably average once a week.

1 Q. When was the last time you were there?

2 A. Last Wednesday or Thursday, I believe.

3 Q. You mentioned you enjoy looking at
4 birds at Horseshoe Lake. Why do you enjoy going
5 to Horseshoe Lake to do that?

6 A. They have really spectacular birds
7 there. There are the shore birds, the -- they've
8 egress and Great Blue Heron. They have Little
9 Blue Heron. They have endangered birds that are
10 on the endangered list. And you just really
11 can't see them other than going to the river, and
12 Horseshoe Lake you can.

13 Q. While you've been at Horseshoe Lake,
14 have you seen other members of the public using
15 the lake?

16 A. Yes. It's a State Park. I see public
17 there all the time.

18 Q. And what do you see them doing?

19 A. People fish. A lot -- most of the
20 time there are people fishing. They -- there are
21 people who picnic, people who play different
22 games, kids on -- walking along with their
23 parents along the lake. There's always runners
24 going through. People biking. It's -- it's a

1 general-use lake. There's always fishing, even
2 in the rain and cold weather.

3 Q. How long have you been going to
4 Horseshoe Lake?

5 A. Since I was a child.

6 Q. Do you -- do you have concerns about
7 the discharge that goes into Horseshoe Lake?

8 A. Yes, I very much do.

9 Q. How have these concerns affected how
10 you use Horseshoe Lake?

11 A. Well, I -- I had to take -- taken in
12 the course of our work, I had taken children from
13 different schools in various places to -- for
14 wetlands observation and to Horseshoe Lake.
15 Since learning more about what is in the lake, I
16 no longer can do that. I -- I used to take kids
17 fishing there, and I no longer do that. I don't
18 fish there anymore, and I certainly don't eat the
19 fish from the lake.

20 Q. Ms. Andria, how often do you write
21 comment letters to the IEPA regarding permits?

22 A. Well, it's hard to say as a definite
23 thing. I -- On water permits, I haven't
24 commented very much. I think this might have

1 been my first comment letter on the water front,
2 the -- and perhaps have done maybe five total.
3 I'm not sure of the exact number. On air
4 permits, I've commented much more. And -- and
5 then it, too, depends on how many -- how many
6 there are. I mean, as many as a dozen perhaps in
7 a year. It's really difficult to -- to say.

8 Q. Why did you decide to write a comment
9 letter on the NPDES permit issued here?

10 A. Because when I saw it, I knew that
11 Horseshoe Lake was -- was already contaminated,
12 and I was concerned about it. And it was an
13 opportunity to have input and I haven't seen it,
14 an opportunity to have input before. And it's --
15 there are various things in the -- the public
16 notice that came to my attention that I thought
17 really needed -- I needed to find more about, and
18 they were issues of concern.

19 Q. Could I have you look at the document
20 in front of you that is the record pages 537-539?

21 A. Yes.

22 Q. Could you tell me what this document
23 is?

24 A. This is the comment letter that we

1 submitted on behalf of American Bottoms
2 Conservancy, Health & Environmental Justice-St.
3 Louis, Neighborhood Law Office, Sierra Club,
4 Webster Groves Nature Study Society. It's dated
5 January 18, 2005. It is to the Bureau of Water,
6 IEPA, on the US Steel permit. And its a request
7 for hearing extension and our comments.

8 Q. And if it is all right, I'd like to
9 refer, for convenience, this document, your
10 comment letter. Ms. Andria, what was your role
11 in the creation of this document?

12 A. I wrote it in conjunction with -- in
13 consultation with others.

14 Q. And if you look at page 539 of that
15 document, did you contact the individuals listed
16 on this page about submitting a public comment
17 letter?

18 A. Yes, I did.

19 Q. And do all of these individuals
20 approve the addition of their names to this
21 letter before you sent it?

22 A. Yes, they did.

23 Q. And did all of these individuals that
24 submitted this letter review it before you sent

1 it to the IEPA?

2 A. I can't say that they all read it.
3 They -- I sent it to everyone after -- after I
4 got the final copy. I know that two of them read
5 it. I couldn't say that others did or did not.

6 Q. Did they have any input in how the
7 letter was drafted?

8 A. Yes.

9 Q. Other than this group comment letter,
10 did American Bottoms Conservancy send any other
11 written comments to the IEPA in regards to this
12 permit?

13 A. Yes, we did.

14 Q. Could I have you look at the next two
15 documents in your pile which are record pages 607
16 through 609?

17 MR. SOFAT: Objection. These letters
18 were not received prior to the close of the
19 comment period.

20 HEARING OFFICER WEBB: Are they part
21 of the record?

22 MR. SOFAT: Yes. But the issue here
23 is whether or not the Agency should have had a
24 hearing which is based on what we received prior

1 to the close of the comment period.

2 MS. HESSE: We would also like to add
3 we object as well. The Board has already ruled
4 that any issues raised after the close of the
5 public comment period are outside of the scope of
6 this petition in this appeal.

7 MS. MUSHILL: One reason these
8 documents are relevant in this appeal is to show
9 that Ms. Andria did have an interest enough that
10 she continued to follow-up and continued to seek
11 advice on this permit.

12 HEARING OFFICER WEBB: Well, since
13 this document is already part of the record, I'm
14 -- I'll let her finish her line of questioning on
15 it.

16 Q. (By Ms. Mushill) Again, these
17 documents are marked record pages 607 through 609
18 and 611 through 623. And it's IEPA Exhibit 77 in
19 the record. Ms. Andria, could you tell me what
20 these documents are?

21 A. The first one is a letter that was
22 submitted by the Washington University School of
23 Law Interdisciplinary Environmental Clinic to
24 IEPA on behalf of the American Bottoms

1 Conservancy on this, the US Steel permit. And it
2 said that it reiterated our request for a public
3 hearing. It -- it had additional information
4 that is submitted why we thought we -- there was
5 a problem and why we needed a public hearing.
6 And it says, again, that it requested a public
7 hearing, that we request a public hearing, and
8 talks about the Horseshoe Lake and it says that
9 -- that we are preparing additional comment,
10 technical comment based -- that the Wash U. Law
11 Clinic would prepare with their engineers.

12 The second -- the second is dated
13 December 9th, 2005. It's from the same
14 Washington University Clinic, the IEC. It's
15 submitted, the technical comment on our -- from
16 us, on our behalf, American Bottoms Conservancy.
17 It gives specific items that it finds flaws with
18 the permit and it, again, asks for a public
19 hearing and talks about the reasons and including
20 subsistence fishing and the -- the environmental
21 justice issues and why it's in the public
22 interest to have a public hearing.

23 Q. Ms. Andria, does the Interdisciplinary
24 Environmental Clinic have technical advisors on

1 staff?

2 A. Yes, they have engineers on staff.

3 Q. Why did you decide to send these
4 additional comments?

5 A. IEPA had not made its decision, and we
6 were told we could continue to send in comments.

7 MS. HESSE: I'm going to continue to
8 object to the inclusion of these two letters that
9 were sent outside the public comment period as
10 being beyond what the Board can consider under
11 the terms of the Illinois Environmental
12 Protection Act, Section 40(d).

13 MR. SOFAT: Th Agency agrees.

14 HEARING OFFICER WEBB: And I'm going
15 to overrule that objection for the time being.

16 MS. HESSE: I'm also going to object
17 in that she's presenting hearsay testimony as to
18 what she is claiming people said to her, after
19 the close of the public comment period on January
20 18, 2005.

21 HEARING OFFICER WEBB: Oh, okay. I
22 have to admit -- I wasn't -- I didn't notice
23 that, but let's try not to include hearsay
24 testimony. But you may proceed with your

1 questioning.

2 Q. (By Ms. Mushill) Ms. Andria, let's go
3 ahead and move on, if we may. If you could look
4 at the document in front of you that is page
5 numbered 518 through 528. Do you know what this
6 is?

7 A. This is the public notice that was
8 issued by IEPA dated December 19th, 2004, on the
9 NPDES.

10 Q. Did you look over this before you
11 drafted the group comment letter?

12 A. Yes, of course I did.

13 Q. And when you read over this permit,
14 what information jumped out at you?

15 A. Number one, that there were only a
16 couple of days before it was due when I finally
17 saw it. It was -- it was issued Christmas week
18 of 2004, and it was very close to the deadline
19 when I did see -- I did see it. I knew that
20 Granite City Steel had had violations before and
21 with regard to their water permit. I knew that
22 Horseshoe Lake was contaminated. The public
23 notice says that you may submit comment and/or
24 requests for public hearing. It says that --

1 that if they indicate a significant degree of
2 public interest, the permitting authority may, at
3 its discretion, hold a public hearing.

4 I noticed that there was some
5 information about landfills, and I knew there
6 were some problems with the landfills at the
7 Horseshoe Lake -- I mean, at Granite City Steel.
8 I looked at the -- what the pollutants were that
9 contributed to the impairment for being listed on
10 the 303(d) list of impaired waters. I saw that
11 the potential contributors did not include
12 industrial discharge, and this was for a
13 discharge into Horseshoe Lake. I looked at the
14 things that were going into the -- the lake from
15 the process wastewater. I noticed heavy metals
16 including lead, zinc. I noticed cyanide. I
17 noticed ammonia. And I know that at a previous
18 time I had submitted some comment when I -- when
19 Granite City Steel, many years ago, was seeking a
20 variance on ammonia. So I know that this been a
21 problem. And I saw that also included was
22 Naphthalene, Benzo(a)pyrene, Tetrachloroethylene
23 and Naphthalene, which I knew to be carcinogenic.
24 And I -- and I knew I needed help quickly. And

1 it says significant degree of public interest.
2 And since it was a State park, I -- I knew that
3 there would be interest. And I also thought it
4 would help to have other organizations sign onto
5 a letter or send letters to request the public
6 hearing.

7 Q. Ms. Andria, if you could look at the
8 group comment letter again.

9 A. Yes.

10 Q. And could you please read me the first
11 sentence of your second paragraph?

12 A. Horseshoe Lake is impaired.

13 Q. And what substances did you say that
14 Horseshoe Lake is impaired for?

15 A. PCBs, pH, suspended solids, excessive
16 algal growth, ammonia (unionized), nutrients,
17 phosphorus, total ammonia-N.

18 Q. Where did you get this list from?

19 A. That was the exact list of pollutants
20 on the IEPA public notice. I just copied them
21 straight from the public notice.

22 Q. So if -- if the list -- if the list
23 had included other pollutants that caused
24 contaminants, would you have listed those as

1 well?

2 A. Of course.

3 Q. Have you subsequently learned that
4 Horseshoe Lake is impaired for substances that
5 were not on list?

6 A. I've learned it's also impaired for
7 zinc which they -- the permit allows them, I
8 think, to -- to discharge some 3,000 pounds or so
9 of zinc, and I would have listed that definitely.

10 Q. What do you mean when you say that
11 Horseshoe Lake is impaired?

12 A. Well, impaired is a technical term and
13 it's also a term that the layperson uses.
14 Impaired means it doesn't meet the federal water
15 quality standards for a given -- a given entity.

16 Q. Could you now read me the second to
17 last paragraph on the bottom of this page,
18 please?

19 A. You list as potential contributors to
20 the impairment of the lake: agriculture,
21 crop-related sources, non-irrigated crop
22 production, habitat modification, stream bank
23 modification/destabilization.

24 Q. Could you read the next sentence,

1 please?

2 A. We believe industrial effluent from
3 Granite City Steel should be added to the list.

4 Q. Where did you get this list of sources
5 from?

6 A. The sources is directly copied from
7 the IEPA public notice.

8 Q. And have you subsequently learned that
9 industrial effluent has been listed as a
10 potential contributor?

11 A. Yes.

12 Q. Continuing to look at the group
13 comment letter, did you reference any scientific
14 studies?

15 A. I -- I said that Professor Richard
16 Brugam, and his students at Southern Illinois
17 University at Edwardsville, have done testing of
18 the sediment of Horseshoe Lake which is showing
19 high concentrations of lead and that Canteen
20 Lake, which is part of the same lake but
21 privately owned, has tested high in cadmium.

22 Q. Did IEPA ever contact you to get more
23 information about Professor Brugam's studies?

24 A. No.

1 Q. Again, looking at the group comment
2 letter, would you please read the third and
3 fourth sentences of the second paragraph?

4 A. We have seen fish caught at Horseshoe
5 Lake with melanoma and IDNR fish biologists
6 confirmed fish with melanoma at Horseshoe.

7 Q. Have you seen melanoma spots on fish
8 caught at Horseshoe Lake?

9 A. I have seen fish with shots. I am not
10 a scientist. I am not a biologist. But they are
11 consistent with pictures I have seen of fish with
12 melanoma.

13 Q. Why are you concerned with fish caught
14 with melanoma?

15 A. Well, for several reasons. One, it's
16 not good for fish. It's bad for the wildlife;
17 but two, and the greater concern, I'm afraid, is
18 that people are eating them.

19 Q. Did IEPA ever contact you to discuss
20 your concerns with fish or fish melanoma?

21 A. No.

22 Q. Do you know when IEPA issued the
23 permit?

24 A. When they issued the permit? March 30

1 -- well, the first time was March 8th, I think,
2 2006.

3 Q. Did IEPA respond to your comments
4 before March 8th?

5 A. Not --

6 Q. Written, I'm sorry. Did IEPA respond
7 to your comments in writing before that time?

8 A. No, they did not.

9 Q. And do you know if the permit has been
10 subsequently reissued?

11 A. Yes. They -- they did not -- they did
12 not issue the response of the summary, which I
13 think is required when they issued the permit,
14 and the clinic brought it to their attention on
15 behalf of ABC. And they withdraw it and they
16 reissued it and I think that was then reissued on
17 March 31st.

18 Q. If you could look at the document in
19 front of you that is page numbers 649 through
20 650. Do you know what this document is?

21 MR. SOFAT: The Agency objects.

22 MS. HESSE: We second the Agency's
23 objection.

24 HEARING OFFICER WEBB: Do I have this?

1 MS. MUSHILL: Sorry. You should.

2 HEARING OFFICER WEBB: I don't have a
3 copy of that one.

4 MR. SOFAT: It's March 24th.

5 MS. MUSHILL: Ms. Webb, this document
6 goes to show how the Agency responded to the
7 public's repeated request for a public hearing.
8 This is again part of the record.

9 MR. BAKER: What are we looking at
10 again, please?

11 MS. MUSHILL: Pages 649 through 650.

12 MR. BAKER: Thank you.

13 HEARING OFFICER WEBB: You're
14 objecting on relevance grounds? What was your
15 objection?

16 MR. SOFAT: My objection is the same,
17 that this was not before the Agency. We have one
18 issue only in this hearing, and that is whether
19 or not we incorrectly didn't -- not rule hearing,
20 and these comments were after the date generated,
21 January 18, 2005.

22 MS. MUSHILL: These documents are the
23 IEPA's only response for the request for the
24 public hearing, and we would like to discuss how

1 the Agency responded.

2 HEARING OFFICER WEBB: No, I -- this
3 is part of the record and I think it's relevant.
4 Go ahead.

5 Q. (By Ms. Mushill) Ms. Andria, do you
6 know what this document is?

7 A. Yes. It's a letter from IEPA to the
8 five organizations that requested the public
9 hearing, and it's a response to our comment.
10 It's dated March 24th, 2006, and addressed to me.

11 Q. Could you please read the first
12 heading of the responses?

13 A. Horseshoe Lake impairment and concern
14 over discharges of lead and ammonia by Granite
15 City Works.

16 Q. In your comment letter, Ms. Andria,
17 the group comment letter, did you mention any
18 substances other than lead and ammonia that
19 contribute to the impairment of Horseshoe Lake?

20 A. Yes, I did.

21 Q. And does this letter respond to those
22 issues that you brought up?

23 A. No, it does not.

24 Q. Were you satisfied with that answer

1 that was given to you?

2 A. No.

3 Q. Could you read the second heading,
4 please?

5 A. Compliance history of GCW.

6 Q. And why don't you just go ahead and
7 read their response, please.

8 A. Response. The Agency is aware of the
9 compliance history of the GCW facility. The
10 Agency has taken, and will continue to take, all
11 necessary and appropriate action regarding
12 compliance issues with this facility.

13 Q. And does this response satisfy your
14 concerns that it was addressing the issues you
15 brought up?

16 A. Absolutely not.

17 Q. If there had been a public hearing on
18 this permit, do you believe that you would have
19 been able to provide the IEPA with more
20 information about the issues you raised in your
21 comment letter?

22 A. Yes, I believe that we would --

23 MR. SOFAT: Objection.

24 HEARING OFFICER WEBB: Overruled. Go

1 ahead. You can finish your answer.

2 A. Yes, I believe we would have been able
3 to -- to supply more information and also get
4 more information.

5 MS. HESSE: I'm going to object to
6 this line of questioning in that the two issues
7 that are being discussed are -- do not address
8 the issue of US Steel-Granite City Works permits.
9 One goes to the nature of whether Horseshoe Lake
10 is impaired or not, and the other deals with
11 compliance issues which is not the same issue as
12 whether the permit, the draft permit, would cause
13 a violation of water quality standards.

14 MS. MUSHILL: Again, the relevance of
15 all this is to how the IEPA responded to issues
16 brought up in the group comment letter.

17 MR. SOFAT: And that is part of the
18 record. The Board can look at it. Any kind of
19 question -- and answers to those questions is
20 going to add to the record that it should not be.
21 The Board is supposed to look at whether or not
22 the letters of 17 and 18 constitute a significant
23 degree of injustice, not what the petitioners or
24 the respondent find out later on.

1 MS. MUSHILL: Well, the Board also
2 needs to consider what information IEPA had
3 before it and that they fully considered the
4 issues raised in the group comment letter. These
5 letters are going to show that the Agency did not
6 consider all the issues that were brought up.

7 MR. SOFAT: Agency just wants to make
8 a general objection to all this line and any kind
9 of document that is not before the Agency through
10 on that issue whether --

11 HEARING OFFICER WEBB: Would you like
12 to make a standing objection?

13 MR. SOFAT: Yes. Regarding the
14 documents that are filed after January 18, 2005,
15 or any questioning related to those.

16 HEARING OFFICER WEBB: So you have a
17 standing objection to any document filed after
18 the close of the public hearing?

19 MR. SOFAT: And any question. Yes,
20 and any questioning that may be coming from those
21 documents.

22 HEARING OFFICER WEBB: Would you like
23 to make the same objection?

24 MS. HESSE: Yes, yes. And further to

1 expand on that slightly, with respect to any line
2 of questioning going beyond the issue of whether
3 there was a public interest in the permit, that I
4 object to any line of questioning that goes
5 beyond whether there was an interest in the
6 comment.

7 HEARING OFFICER WEBB: Well, I'm going
8 to give the petitioner some leeway because I
9 think it's relevant. It may, you know,
10 ultimately thwart the issue. I can't say that
11 it's definitely not relevant to the arguments
12 they're planning to make with respect to the
13 public hearing. And as to the documents not
14 being during public comment period, the Board may
15 consider anything that was part of the
16 administrative record or anything that was, you
17 know, done before the final permit was issued.
18 So I will allow the petitioner some leeway with
19 this line of questioning. You can go ahead.

20 Q. (By Ms. Mushill) We're actually going
21 to move on though. Ms. Andria, if you could look
22 at the group comment letter again. And could you
23 just tell me why you believe that US Steel was
24 frequently non-compliant with its previous

1 permit?

2 A. The information I have come from
3 USEPA. I put that the ECHO site, it was updated
4 today, and they're still in -- still having
5 compliance issues. And I knew that from general
6 information from the Agency people on -- that
7 I've heard at meetings.

8 Q. And I just want to go over the pages
9 -- the page two here and the information.

10 A. I'm sorry?

11 Q. Sorry. I'd just like to go over the
12 information on page two of the group comment
13 letter. Could you explain to me what this
14 information is?

15 A. This is information that I got from
16 the ECHO site on -- that's Enforcement Compliance
17 History Online, USEPA. I also got a scorecard
18 information at the time, and I copied the
19 non-compliance and from the site I just put
20 copied and pasted into our letter. And it's got
21 the -- the different effluent violations and the
22 issues under which they violated the permit and
23 whether they were compliant in quarters.

24 Q. And could you just describe to me what

1 these percentages mean? For example, what does
2 29% mean after solid total suspended?

3 A. It's the -- the ECHO site says that
4 their effluent violations as the highest
5 percentage by which the permit limit was
6 proceeded for the quarter, so that under whatever
7 quarter it was listed --

8 MS. HESSE: I object to the
9 characterization of that answer in that I don't
10 believe Ms. Andria is been properly qualified to
11 interpret what an ECHO report says, and I also
12 believe she is, in fact, mischaracterizing what
13 is actually behind the data that went into this
14 report.

15 A. I'm sorry. I was reading from --
16 directly from the paper that was the ECHO site.
17 It was not my characterization.

18 MS. HESSE: I continue to object in
19 the way that she's reading the information is a
20 mischaracterization of what the data actually
21 shows.

22 HEARING OFFICER WEBB: Well, I -- can
23 we let this document stand on itself. I really
24 don't want to -- I'd rather not go through

1 testimony on each.

2 MS. MUSHILL: We'll move on.

3 Q. (By Ms. Mushill) Ms. Andria, could
4 you turn back to the first page of the group
5 comment letter? And could you read the third
6 sentence, please, from the first paragraph?

7 A. The third sentence of the first
8 paragraph?

9 Q. Correct.

10 A. The lake is used recreationally by
11 outdoor enthusiasts, bird watchers, nature
12 lovers, fishers, hunters and families.

13 Q. Ms. Andria, again, how do you know
14 Horseshoe Lake is used by outdoor enthusiasts,
15 bird watchers, nature lovers, fishers, hunters,
16 and families?

17 A. Both from personal observations and
18 from IDNR, Illinois Department of Natural
19 Resources, printed information and their Website.

20 Q. From your observation from being out
21 at the lake as often as you are, could you give
22 me estimates of how many people are at the lake
23 on a given day?

24 A. It can range from a few dozen, maybe

1 three or four, to well over a thousand. I think
2 there -- last year they got 358,000 people
3 attending. That's like a thousand a day. So I'm
4 sure some days there are fewer and some days
5 less. It depends on the weather.

6 Q. Could you now, please, read the fourth
7 sentence of the first paragraph?

8 A. It is also used by low income and
9 minority folks for subsistence fishing.

10 Q. How do you know that low income and
11 minority individuals use the lake or eat the fish
12 as part of their daily diet?

13 A. I have visited with people fishing and
14 talked with them, and I have worked with students
15 who have done surveys of people who fish at the
16 lake, and that's both from personal observation
17 and from the surveys that the students have
18 taken.

19 Q. Have you seen people who look like
20 they're taking their fish home with them?

21 A. Oh, yes, they have. And some of them
22 are out there every day and they have the
23 stringers or they have little coolers that they
24 put them in. There are different ways. But

1 there are definitely people who fish, and there
2 are definitely people who are eating that fish.

3 Q. Why did you mention this in your
4 comment letter?

5 A. Because it's a concern, especially
6 with heavy metals, that can bioaccumulate. In
7 fish, it's with the melanoma. I've talked to
8 people who are eating the fish and asked them if
9 they saw fish with spots and bad places, what
10 they do. Some people throw them back in. Some
11 people cut them -- cut the bad parts out. It
12 depends on whether they have enough -- have
13 caught enough fish that day and that's a concern.
14 And people who do subsistence fishing, that's
15 their main source of protein.

16 Q. Did the IEPA ever contact you to get
17 more information on these two issues that you
18 raised?

19 A. On the -- on the letter, not with
20 regard to the permit.

21 Q. In your opinion, and from your
22 observations of people using the lake, do you
23 believe that there's a significant public
24 interest in Horseshoe Lake?

1 A. Absolutely.

2 Q. Why do you think that?

3 A. Because it's used by thousands of
4 people. People are taking their children there.
5 People go there for recreational purposes. I
6 think that they would be very interested to know
7 that the lake is being discharged into and I
8 think they would -- there would be significant
9 interests in what's in the lake.

10 I don't think there's been much
11 opportunity for them to find out about it, and
12 there are no signs posting -- posted warning
13 people about fish consumption.

14 Q. Could you please read the very first
15 sentence of your comment letter?

16 A. Our organizations request that the
17 Agency hold a public hearing for the above
18 entitled permit.

19 Q. And do you reiterate this request
20 anywhere else in the group comment letter?

21 A. I think it's at the end. We ask that
22 you hold a public hearing in order to allow
23 citizens to ask questions -- questions and
24 present information and testimony.

1 Q. Before the permit was issued, did
2 anyone at IEPA ever tell you whether a public
3 hearing would be held?

4 A. They -- before --

5 MS. HESSE: Objection, hearsay.

6 MR. SOFAT: Same objection.

7 HEARING OFFICER WEBB: Sustained.

8 Q. (By Ms. Mushill) Ms. Andria, before
9 the permit was issued, did you believe there
10 would be a public hearing?

11 A. Before it was issued, did I believe
12 there would be a public hearing? Yes, I did. I
13 really had hoped there would be a public hearing.
14 I couldn't understand why it would be denied.

15 Q. And could we look back at IEPA's
16 response to your comment letter which, again, is
17 page 649 through 650? If I --

18 A. Excuse me, again.

19 Q. Page 649 through 650. And if you
20 could -- Once you find that document. Sorry.

21 A. Yes.

22 Q. If you could look through that
23 document and could you tell me whether the IEPA
24 explained in its response why it did not hold a

1 public hearing?

2 MS. HESSE: Objection, hearsay.

3 MS. MUSHILL: She can look at the
4 letter.

5 HEARING OFFICER WEBB: If she reads
6 from the letter, is that --

7 A. Why they --

8 HEARING OFFICER WEBB: She can
9 summarize, I mean, or you can rephrase the
10 question so that it avoids the hearsay.

11 MS. HESSE: The document speaks for
12 itself. It's already in the record.

13 Q. (By Ms. Mushill) Ms. Andria, after
14 the permit was issued, did you ever learn why
15 there was not a public hearing on this issue?

16 A. No.

17 Q. And does this letter give you a
18 reason?

19 A. No.

20 Q. Did the IEPA ever offer to meet with
21 you before this permit was issued?

22 A. The first time? No. The second time,
23 I mean, the reissued, they -- yes, they offered a
24 meeting.

1 Q. What was your understanding of what
2 this meeting was about?

3 A. It was issued by the environmental
4 justice office -- officer and it was a meeting on
5 subsistence fishing and --

6 MS. HESSE: Objection, hearsay.

7 Q. (By Ms. Mushill) Ms. Andria, what was
8 your understanding of what this meeting was
9 about?

10 A. About subsistence fishing and
11 environmental justice issues.

12 Q. Did you attend this meeting?

13 A. No. It was offered in Springfield and
14 it was -- I talked to the other people involved
15 in the permit and people who would be interested
16 in having a meeting, and it was just a week
17 notice. And we thought that a meeting should be
18 a public meeting, that people who would be
19 affected, stakeholders, should be allowed to come
20 to and it should be a public meeting and it
21 should be down in Granite City or somewhere near
22 Horseshoe Lake rather than -- or Frank Holten
23 because it's -- it was supposed to be on
24 subsistence fishing. And so it should have been

1 down here. And it should have been open to the
2 public. And it should not have been trying to
3 supplement -- not supplement, to take the place
4 of a public hearing. And that's what it seemed
5 to be trying to do.

6 Q. Ms. Andria, in your opinion, do you
7 believe a private meeting with the IEPA should
8 have replaced the public hearing on this permit?

9 A. No.

10 Q. Have you attended any other public
11 hearings or meetings in regard to Horseshoe Lake
12 in the last two years?

13 A. Yes.

14 Q. And what were these meetings about?

15 A. I attended a meeting in Springfield on
16 the 2006 impaired waters report in -- which
17 Horseshoe Lake was on the impaired list, so it
18 was included in that. And then I attended a
19 meeting that was held in Collinsville on the -- a
20 TMDL that was being developed by IEPA for
21 Horseshoe Lake.

22 Q. In your opinion --

23 A. Total maximum daily load, I'm sorry.

24 Q. That's all right. In your opinion,

1 did these meetings adequately replace a hearing
2 that could have been held on this NPDES permit?

3 A. No, they were -- they were other kinds
4 of meetings. They weren't on a permit at all.
5 The one was the annual -- I mean, the bi-annual
6 report -- report of the impaired waters list, and
7 it dealt with all waters in the state, and that
8 certainly would not replace it, plus it was in
9 Springfield during the day. And then the other
10 one was a very narrow focus on the watershed, the
11 entire watershed in the Horseshoe Lake -- I mean,
12 excuse me, in Cahokia Canal and the -- it also
13 included the other watershed with -- that
14 included Frank Holten State Park. And they were
15 not specific to Horseshoe Lake.

16 Q. Ms. Andria, in your opinion, do you
17 think that members of the public would have
18 attended a public hearing that concerned the
19 permit?

20 A. Yes, I do. If they -- if they there
21 was a public --

22 MS. HESSE: Objection, speculation.

23 HEARING OFFICER WEBB: Well, she is
24 the head of the American Bottoms Conservancy.

1 I'll allow her to give her opinion as to the
2 degree that there might have been public interest
3 in this.

4 A. Yes.

5 MS. HESSE: Could you explain the
6 basis of her opinion?

7 HEARING OFFICER WEBB: Okay. Yeah,
8 why don't you do that.

9 A. In our -- in part -- as part of our
10 work, when there's a public hearing that we think
11 is of importance to the public, or that the
12 public might have an interest in, we try to help
13 publicize it. We send out press releases. We
14 contact appropriate community groups and people
15 who would be -- who might be impacted by some
16 things. And we would certainly have helped
17 publicize this meeting that it was available for
18 people to come and --

19 MS. HESSE: I continue my objection.

20 A. -- always some people learn about it
21 and come to meetings.

22 MS. HESSE: I'm going to make an
23 objection on the basis of speculation.

24 MS. MUSHILL: May I ask a question

1 please?

2 HEARING OFFICER WEBB: (Nods head.)

3 Q. (By Ms. Mushill) Ms. Andria, are you
4 speaking --

5 A. I'm sorry.

6 Q. Ms. Andria, have you spoken to people
7 who go to the lake?

8 A. Yes.

9 Q. And have you spoken to them about
10 issues that concern the lake?

11 A. Yes.

12 Q. And have they expressed concern about
13 the lake?

14 A. Yes.

15 Q. And this is part of the basis of your
16 opinion?

17 MS. HESSE: Objection, hearsay.

18 MS. MUSHILL: She's saying what forms
19 the basis of her opinion.

20 HEARING OFFICER WEBB: Yeah. No, I'll
21 just allow her answer to stand.

22 Q. (By Ms. Mushill) Ms. Andria, again,
23 do you believe that people who use the lake would
24 have attended a public hearing?

1 A. I don't think that --

2 MS. HESSE: Objection, hearsay.

3 A. I started to say I don't think I have
4 finished my answer yet.

5 HEARING OFFICER WEBB: I think it's
6 more speculation than hearsay. But in her
7 professional opinion, I'll allow you to give your
8 opinion on that.

9 MR. BAKER: Ms. Hearing Officer, I
10 believe this line of testimony is being offered
11 to prove the truth of what she claims people told
12 her about their use. That's clearly hearsay.
13 It's inadmissible.

14 MS. MUSHILL: That's not where we're
15 going. Ms. Andria is saying what she believes
16 what happened and that is based on her own
17 observation.

18 HEARING OFFICER WEBB: I thought she
19 had asked --

20 MR. BAKER: We disagree.

21 HEARING OFFICER WEBB: -- in her
22 opinion did she think people would have.

23 MR. BAKER: We disagree. The issue
24 before this was whether or not there, in fact,

1 was significant degree of public interest, not
2 whether or not Ms. Andria thought there might be
3 a significant degree of public interest. We have
4 to get to the truth of this, not speculation.

5 HEARING OFFICER WEBB: I'm going to
6 allow her to give her opinion and you may address
7 that issue on your cross-examination.

8 A. Could you ask your question again,
9 please?

10 Q. (By Ms. Mushill) Ms. Andria, in your
11 opinion, do you believe that members of the
12 public who use Horseshoe Lake would have attended
13 a public hearing on this permit?

14 A. I believe that some members of the
15 public who use Horseshoe Lake would have attended
16 a hearing had they known about a public hearing,
17 yes.

18 Q. And lastly, Ms. Andria, do you believe
19 that a public hearing should have been held on
20 the NPDES permit at issue here?

21 A. Do I believe a public hearing should
22 have been held? Absolutely.

23 MS. MUSHILL: That's all we have for
24 Ms. Andria. Thank you.

1 HEARING OFFICER WEBB: Do you object
2 to taking about a five-minute recess?

3 MS. HESSE: No.

4 (A short break was taken.)

5 HEARING OFFICER WEBB: Okay. Does the
6 Agency have any cross-examination for this
7 witness?

8 MR. SOFAT: No.

9 HEARING OFFICER WEBB: Okay. Ms.
10 Hesse?

11 CROSS-EXAMINATION

12 BY MS. HESSE:

13 Q. Ms. Andria, where do you live?

14 A. I live in Illinois.

15 Q. Can you be more specific?

16 A. I have chosen not to give my address,
17 my home address for various safety issues.

18 Q. Ms. Andria, if you're not willing to
19 give your address, how can the Board know if
20 where you live is situated within the proximity
21 to Horseshoe Lake or not?

22 MR. HEISEL: Ms. Webb, can we maybe
23 talk about this off the record?

24 HEARING OFFICER WEBB: This is a first

1 for me so, yes, let's discuss it off the record.

2 (A discussion was held off the
3 record.)

4 HEARING OFFICER WEBB: We've just had
5 an off-the-record discussion, which I've not had
6 before as a hearing officer with the Board, but
7 we have a witness who has some concerns regarding
8 disclosing any specific information pertaining to
9 her residential area. And I'm not going to
10 require that she disclose any specific
11 information regarding her location. And I'll --
12 we did discuss some perimeters that the
13 respondents could address with respect to that
14 issue, but I won't require her to disclose
15 specifically where she lives.

16 MS. HESSE: Also, for the record we
17 want to comment that Ms. Andria has mentioned she
18 has safety issues. We have no idea what kind of
19 safety issues she's talking about. It's not an
20 area that we've explored with her. We really
21 have no understanding of what these safety issues
22 are, so we continue to object in her refusal to
23 answer the question.

24 HEARING OFFICER WEBB: Okay. Duly

1 noted.

2 MS. HESSE: Did she answer on the
3 record?

4 HEARING OFFICER WEBB: No.

5 Q. (By Ms. Hesse) Will you give us the
6 name of the area where you live, Ms. Andria?

7 A. Yes. I live in the Metro East.

8 Q. And can you be more specific than
9 that?

10 A. The Illinois side of the Mississippi
11 River. The Mississippi River-Illinois side. The
12 Metro East.

13 Q. Ms. Andria, earlier you testified that
14 you prepared a letter dated January 18, 2005?

15 A. Correct.

16 Q. Now in that letter you allege that
17 individuals boated in Horseshoe Lake?

18 A. I'm sorry?

19 Q. In that letter you allege individuals
20 boat in Horseshoe Lake; is that correct?

21 A. Correct.

22 Q. But you did not identify any
23 particular individuals who boat there, did you?

24 A. No, I did not.

1 Q. You mentioned you saw people who
2 fished in Horseshoe Lake; correct?

3 A. Correct.

4 Q. But you did not identify by name any
5 individuals who fished there, did you?

6 A. I did not.

7 Q. Your -- in your letter you mentioned
8 that people -- let me find the letter -- you also
9 allege that the lake was used by "low income and
10 minority folks for subsistence fishing?"

11 A. Correct.

12 Q. But you did not identify any of these
13 individuals who eat fish from Horseshoe Lake, did
14 you?

15 A. That's correct.

16 Q. So you really don't know if they use
17 it for subsistence fishing, do you?

18 A. No, I do know that they do. Because I
19 didn't put their names in doesn't mean they don't
20 exist.

21 Q. But you did not -- you have not
22 witnessed any people eating fish from Horseshoe
23 Lake, have you?

24 A. Yes, I have.

1 Q. In your letters of October 2005 and
2 December 2005, you did not identify --

3 A. Excuse me. Would you tell me which
4 letters you're referring to? I didn't hear the
5 date.

6 Q. In the letters dated October 3, 2005,
7 by Washington University in St. Louis that was
8 sent on behalf of ABC --

9 A. Yes.

10 Q. -- that letter did not identify any
11 individuals who used Horseshoe Lake, did it?

12 A. I don't believe so.

13 Q. And the letter of December 9, 2005, by
14 Washington University sent on behalf of ABC to
15 Illinois EPA, that letter likewise did not
16 identify any individuals that used Horseshoe
17 Lake, did it?

18 A. I don't believe so.

19 Q. Going back to your January 18, 2005,
20 letter, did you review the permit before you sent
21 this letter?

22 A. I'm sorry?

23 Q. Did you review the draft permit before
24 you sent this letter to Illinois EPA?

1 A. I reviewed the notice, the public
2 notice and the fact sheet, the attachment. I
3 don't remember what all it was called. I
4 reviewed what was on the Website, that I could
5 download off the Website, I believe.

6 Q. Do you know if the concentration limit
7 set in the draft permit for lead percent is equal
8 to the water quality standards?

9 A. Do I know that now? Do I know --
10 Would you rephrase your question?

11 Q. The draft permit contains
12 concentration based limits for lead?

13 A. Okay. And that's on page two, is that
14 what you're talking about?

15 Q. It's on the second page. It's 519 of
16 the record.

17 A. Okay.

18 Q. Do you know if those concentration --
19 concentration based limits are based on water
20 quality standards for Horseshoe Lake?

21 A. I do not know that. I see there's a
22 reference to it, but I have not personally
23 checked that.

24 Q. You see that there's a 30-day average

1 concentration based limit for zinc?

2 A. In that same place where the lead was?

3 Q. Yes.

4 A. I see numbers. I'm not an engineer.
5 I'm not a technical expert. And that's why I
6 needed -- I needed help with this. I see that
7 there's something listed under 30-day average,
8 and I see there's something listed under daily
9 maximum average.

10 Q. Did you get help reviewing the draft
11 permit before you sent the January 18, 2005,
12 letter?

13 A. There wasn't time.

14 Q. Do you know if the zinc concentration
15 based limit of the permit is equal to the water
16 quality standard for zinc in Horseshoe Lake?

17 A. My understanding is that there's a
18 special zinc central treatment exemption, which
19 only this one company has in the whole country,
20 and it was only supposed to have been for one
21 year and they've been using it for 20 some odd
22 years. So I don't think it's -- it's based on
23 federal standards. I think there's some sort of
24 special treatment that they're getting and

1 because there's -- it's impaired for zinc, I
2 think it's wrong.

3 Q. But isn't it true that that is
4 something that if there is a central treatment
5 exemption, that is issued by USEPA?

6 A. Would you rephrase your question? Is
7 it true that that was issued by EPA?

8 Q. With EPA and it was subject to public
9 notice and comment on the federal hearing -- I'm
10 sorry, during the federal comment period on that?

11 A. I think my understanding is that --
12 that USEPA didn't know that anyone was still
13 using it, but it doesn't -- and maybe USEPA
14 doesn't know that the body is impaired for zinc,
15 Horseshoe Lake is impaired for zinc.

16 Q. Are you speculating on USEPA, you
17 believe USEPA thinks rather than your knowledge
18 what USEPA may have considered?

19 A. I'm trying to answer your questions
20 with my limited engineering expertise and what I
21 know of -- of what the lake is impaired for and
22 what the perimeters are, and I know that heavy
23 metals is a problem. So if I'm not answering
24 precisely, I apologize, but I'm trying to answer

1 with what I know about zinc and Horseshoe Lake
2 and what is allowed by the permit. But that is
3 one of the things we think is wrong of the
4 permit.

5 Q. In your January 18 comment letter, did
6 you identify in the January 18 comment letter any
7 water quality standards that would be violated by
8 issuing the permit?

9 A. I identified what it was impaired for
10 as listed by USEPA on their fact sheet. I did
11 not go to the law and cite anything. I --

12 Q. Could you just, please, answer the
13 question.

14 A. Okay. Would you ask the question
15 again?

16 Q. Because it seems like it's a pretty
17 simple question that you can answer yes or no.
18 In your January 18, 2005, letter, did you
19 identify any water quality standards that would
20 be violated by issuing the permit as it was
21 drafted?

22 A. I say that there -- that --

23 MR. HEISEL: I'm going to object
24 actually. She's calling for a sort of a legal

1 opinion about what a water quality standard is.
2 She hasn't identified or established that Ms.
3 Andria has expertise relating to these issue.

4 MS. HESSE: Excuse me, but Ms. Andria
5 is presenting quite a bit of testimony related to
6 her opinion and her ability to comment on a draft
7 permit that was issued.

8 MR. HEISEL: And I believe --

9 MS. HESSE: And accordingly, I do
10 believe that she knows what a water quality
11 standard is and should be able to identify
12 whether she identified any in her letter.

13 HEARING OFFICER WEBB: I'll allow the
14 questioning. You can answer.

15 A. Could you repeat your question,
16 please?

17 MS. HESSE: Could you read it back,
18 please?

19 (The Reporter read from the record as
20 follows: In your January 18 comment
21 letter, did you identify in the
22 January 18 comment letter any water
23 quality standards that would be
24 violated by issuing the permit?)

1 A. I did not refer to numbers. I
2 referred to -- to constituents, like ammonia.

3 Q. (By Ms. Hesse) Ms. Andria, just
4 please answer the question. Did you identify any
5 water quality standards that would be violated if
6 the permit were issued?

7 A. I don't know the answer to your
8 question because I don't know -- I don't
9 understand. Are you asking me about numbers, is
10 that the question?

11 Q. It could be about numbers.

12 A. I did not identify numbers other than
13 in my comment letter other than what it was
14 impaired for and what it was being added to. I
15 did not identify any numbers as exceedances other
16 than the violations that were listed on the ECHO
17 site.

18 Q. So the answer to my question then is
19 no, in your letter you did not identify any water
20 quality standards that would be violated if the
21 permit were issued; correct?

22 A. If that's what my answer said, then
23 that's what it is. I don't know that I said this
24 is the water quality standard. This was my very

1 first NPDES permit that I had looked at. I, at
2 the time, did not know all of the numbers, how to
3 do it. I since tried to educate myself. And I'm
4 answering as best as I could with my knowledge at
5 the time of what I had and what I could do with
6 it. And that's why we needed a public hearing to
7 be able to -- to -- to address these issues.

8 Q. As you sit here today, Ms. Andria, can
9 you identify any water quality standards as of
10 today that would be violated by this permit
11 having been issued?

12 A. I think -- I think, yes. I think that
13 there are the water quality standards that we put
14 in our comments that the engineering people at
15 Washington U. They are much more knowledgeable
16 than I and I think those are the things that
17 would violate water quality standards. And
18 you're talking about a lake that's already
19 impaired.

20 MS. HESSE: I'm going to object to
21 this answer because it calls for speculation in
22 documents that are not before the Board.

23 MR. HEISEL: She asked for her current
24 opinion, and that's what she got.

1 HEARING OFFICER WEBB: Well, I'll
2 sustain the objection. It wasn't entirely
3 responsive.

4 MS. HESSE: I'm sorry?

5 HEARING OFFICER WEBB: Sustained.

6 MS. HESSE: Can we back up a second?

7 HEARING OFFICER WEBB: Sorry.

8 MS. HESSE: You sustained his
9 objection or mine?

10 HEARING OFFICER WEBB: Yours.

11 MS. HESSE: Okay.

12 A. She objected to her question, her own
13 question or to my answer?

14 HEARING OFFICER WEBB: To your answer.

15 A. Okay.

16 Q. (By Ms. Hesse) Ms. Andria, I believe
17 you testified that you wanted a public hearing so
18 that you could ask questions about the permit,
19 about the draft permit; correct?

20 A. Among other things, yes.

21 Q. Okay. I'm going to ask you to look at
22 the first page, page 518 of the record, first
23 page, the cover sheet for the permit and the
24 third full paragraph.

1 A. I'm sorry?

2 Q. And the third full paragraph.

3 A. Full paragraph.

4 Q. Full paragraph on that page. If you
5 could read those last two sentences.

6 A. Public notice will be given 45 days
7 before a public hearing. Responses to comments
8 will be provided when the final permit is issued.
9 For further information, call -- please call Beth
10 M. Burkard at the phone number. Is that what you
11 wanted me to read?

12 Q. Yes.

13 A. Okay.

14 Q. So in the notice, Illinois EPA did
15 give you a name and a phone number for someone
16 you could contact if you had questions regarding
17 the permit; correct?

18 A. That's correct.

19 Q. Ms. Andria, in your January 18, 2005,
20 letter, you provided extensive comments on
21 Horseshoe Lake being impaired; correct?

22 A. Extensive comments?

23 Q. Well, you provided comments. I'll
24 rephrase my question.

1 A. I provided comment on Horseshoe Lake
2 being impaired, yes.

3 Q. You also mentioned that you knew of
4 some studies by Professor Brugam; correct?

5 A. Professor Brugam, yes.

6 Q. Have you read those studies at any
7 time?

8 A. I skimmed them. I don't know that I
9 read them completely through.

10 Q. Isn't it true that Professor Brugam
11 concludes that the major source of Horseshoe --
12 of lead in Horseshoe Lake is from an NL
13 Industries also called Taracorp?

14 MR. HEISEL: I'm going to object to
15 this. It's calling for information outside the
16 record. If they want to put in information
17 outside the record, we can do that and we can all
18 put in information. But Ms. Hesse is trying to
19 get information about the Brugam studies which
20 are not in the record and only do that piecemeal
21 through this witness.

22 HEARING OFFICER WEBB: Do you have a
23 response to that?

24 MS. HESSE: Yes. In -- in Ms.

1 Andria's letter, she references Brugam studies.
2 She references that the studies have shown high
3 concentrations of lead. She's trying to imply
4 that's related to US Steel. Professor Brugam's
5 studies clearly attribute the high concentration
6 to NL Industries such as the lead smelters and it
7 has been located --

8 MR. HEISEL: Yeah, I'm going object to
9 this. Counsel is testifying about what these
10 studies contain.

11 HEARING OFFICER WEBB: I'm looking at
12 the letter quickly here.

13 MR. HEISEL: And I would ask that be
14 struck from the record.

15 HEARING OFFICER WEBB: Well, I'm going
16 to allow it in, that she does reference this
17 material in her letter that refers to the request
18 for hearing. So I think it -- it's relevant to
19 the background of what -- what you may have been
20 considering at that time. So go ahead.

21 Q. (By Ms. Hesse) Ms. Andria, isn't it
22 true that Professor Brugam concluded that the
23 major source of lead into Horseshoe Lake were the
24 lead smelters located in the area of Horseshoe

1 Lake?

2 A. I don't know that Professor Brugam --
3 and I don't believe he concluded that entirely.
4 I think that there was still open. I think he
5 was still studying it. And I know that one of
6 the spots that he -- he said that it was
7 declining in other areas, but the area that was
8 closest to the Granite City Steel discharge is
9 not getting less than it was as the other sites
10 were, so National Lead has been closed for a long
11 time and not contributing. I don't know why that
12 spot would then not lessen. So I think that the
13 study is not definitive. I don't think that
14 there's -- I think -- That's it.

15 Q. But you cited for a specific purpose
16 in your letter about lead in Horseshoe Lake. And
17 isn't it true that NL Industries, also called
18 Taracorp, is a Superfund site in Granite City?

19 A. Are you asking me if National Lead is
20 -- Taracorp was a Superfund site, yes.

21 Q. And wasn't it because it was a
22 Superfund site because of lead contamination?

23 MR. HEISEL: Objection. Can I just
24 have a running objection to all of these

1 questions?

2 HEARING OFFICER WEBB: Yes. You want
3 me to issue a standing objection at this time?

4 MR. HEISEL: Yeah, it's outside the
5 record. She's trying to introduce bits and
6 pieces of these studies, which are not in the
7 record, through this witness and, therefore,
8 potentially mischaracterizing these studies which
9 are not before the Board.

10 HEARING OFFICER WEBB: Okay. Well,
11 I'm going to allow it because the letter may
12 give, one, the implication that this study
13 pertained to this permit in question. So I think
14 it -- she's somewhat opened the door to this line
15 of questioning by referencing the study. So I'll
16 let you finish your line.

17 Q. (By Ms. Hesse) Do you believe, Ms.
18 Andria, when I deposed you and I had you read a
19 conclusion of one of Professor Brugam's studies?

20 A. I recall when you deposed me and that
21 you had me read some things. I don't know that
22 it was the conclusion.

23 MR. HEISEL: I would ask that I be
24 provided a copy of anything Ms. Hesse is

1 providing with regard to the deposition. These
2 were taken two weeks ago. I might point out,
3 just for the record, I don't believe Ms. Andria
4 had a chance to read hers yet. I don't know
5 there's anything wrong in it, but I would just
6 like to ask that be reflected in the record.

7 HEARING OFFICER WEBB: Okay.

8 Q. (By Ms. Hesse) Okay. Ms. Andria --
9 If I may approach her?

10 HEARING OFFICER WEBB: Please.

11 Q. (By Ms. Hesse) I'm afraid we only
12 have one copy. We have to share. Do you
13 remember I had you read from one of Professor
14 Brugam's papers, from a couple of his papers
15 during your deposition?

16 A. Yes.

17 Q. And did I not ask you to read an
18 excerpt from one of the pages in his papers and
19 ask you to read in the answer -- the question,
20 which if you wish to read more to be comfortable
21 with it, I was having you read from one of his
22 papers.

23 A. There is a sentence that you asked me
24 to -- to read that I read. But without the

1 document and not being familiar with the studies,
2 I have no idea what I'm supposed to be saying
3 that I'm reading, or that I read at the time.
4 And since I didn't have familiarity enough with
5 the documents and I'm not an engineer, it's
6 unfair for you to imply that I was saying
7 something that was expert testimony.

8 Q. All I asked you to do was read two
9 sentences from this paper. That's all I'm asking
10 you to do now, is to read those two sentences
11 again.

12 MR. HEISEL: Yeah, I just continue to
13 object to this. You know, they're taking bits
14 and pieces now from a deposition transcript of
15 these studies. There are actually three studies,
16 voluminous studies. They have numerous
17 conclusions. And trying to introduce, you know,
18 bits and pieces that they may feel help them with
19 the witness. She hasn't tried to use this to
20 impeach this witness or she hasn't stated that's
21 what she's doing with this transcript. So I
22 don't -- it's just very prejudicial to us to
23 introduce bits and pieces without the entire
24 study.

1 MS. HESSE: I'm trying to refresh her
2 memory by showing her her previous deposition
3 testimony which was taken under sworn oath.

4 HEARING OFFICER WEBB: I don't have a
5 problem with that, and I do want to give you some
6 leeway. I have to say at this point I'm not sure
7 where this is all going. I just don't want to
8 get too far off track. If you promise me we're
9 not going to get too far off track, I'll let you
10 continue.

11 MS. HESSE: I'm not planning to get
12 too far off track.

13 HEARING OFFICER WEBB: Okay, okay.

14 A. Okay. What I'm reading is from the
15 deposition page 11, you've got circled or
16 indicated that I am to read the question from you
17 is, yes, could you read the first two sentences,
18 please. And my answer, I assume this is mine, it
19 is clear that most of the lead in the sediment
20 from 1900 to the present represents anthropogenic
21 input. We believe that the major source of this
22 lead was the National Lead Industry smelter in
23 Granite City. And I can say this -- the end of
24 that, that I am saying, all that is is you asked

1 me to read one little part of a big study.

2 Q. (By Ms. Hesse) But yet in your
3 comment letter, you're relying on Professor
4 Brugam's studies to make one of your points, so
5 it's only fair that we have you look at the whole
6 issue and not to present misleading information
7 in your comment letter.

8 MR. HEISEL: Yeah, I'm going to object
9 to that characterization. Her comment letter did
10 not say that. It points out that Professor
11 Brugam has done these studies and that IEPA
12 should probably look into it.

13 HEARING OFFICER WEBB: Well, I'd like
14 to -- we'll try to save all characterizations for
15 our closing briefs or closing arguments or
16 post-hearing briefs, but -- but does that
17 conclude your questioning on that line or --

18 MS. HESSE: On this line. Not all --
19 all my questions.

20 HEARING OFFICER WEBB: Pardon me?

21 MS. HESSE: Not all my questions. But
22 this line of questioning.

23 HEARING OFFICER WEBB: Okay.

24 Q. (By Ms. Hesse) Going back to your

1 January 18 letter, you mentioned that Horseshoe
2 Lake is impaired?

3 A. Yes.

4 Q. You also testified earlier that you
5 participated in the 303(d) public hearing and
6 comment period for impaired waters; correct?

7 A. That's correct.

8 Q. So you had that forum to deal with the
9 issues of Horseshoe Lake impairment; correct?

10 A. No. No, that was -- that was the
11 whole -- I mean, are you talking about just
12 impairments or all of these issues? It was a big
13 hearing on all the waters.

14 Q. But it included Horseshoe Lake, did it
15 not?

16 A. Yes, it did.

17 Q. But you had an opportunity in that
18 forum to comment and give information to the
19 Agency on impairment of Horseshoe Lake; correct?

20 MR. HEISEL: I'm going to object
21 again. Just to be consistent, I mean, we've
22 heard lots of objections about the relevant time
23 frames, and once again, they're seeking to get
24 information that's later in time. We might be

1 okay with putting lots of stuff in the record
2 about what happened later but it doesn't appear
3 we're going to do that and here we have more
4 testimony about things that happened later.

5 HEARING OFFICER WEBB: What was the
6 date of the hearing you're talking about?

7 MS. HESSE: The public meeting on the
8 impaired waters was on June 29, 2006.

9 MR. HEISEL: After the permit was
10 issued.

11 HEARING OFFICER WEBB: Could you ask
12 your question again.

13 MS. HESSE: Sure.

14 Q. (By Ms. Hesse) Ms. Andria, in your
15 January 18, 2005, comment letter you make comment
16 on Horseshoe Lake being impaired; correct?

17 A. Correct.

18 Q. There was another forum presented for
19 you to provide comments on impairment of
20 Horseshoe Lake; correct? That being the public
21 meeting in 2006?

22 A. There was an opportunity to present
23 comment on Horseshoe Lake impairment at that
24 meeting, is that your question?

1 Q. Yes.

2 A. Yes.

3 Q. And you did participate and provide
4 comments; correct?

5 A. Yes.

6 Q. So you did have a forum provided to
7 you to discuss impairment of Horseshoe Lake;
8 correct?

9 HEARING OFFICER WEBB: This is after
10 the permit was issued; is that correct? Am I
11 understanding that correctly? Yeah, I don't
12 think that's relevant to this proceeding, the
13 comments that she made on Horseshoe Lake after
14 the permit was issued. Sorry, it took me a while
15 to get those time frames together.

16 MS. HESSE: Ms. Hearing Officer, I
17 understand your concerns about relevant time
18 frame, but it's relevant to the extent that it
19 shows that there was a forum and a proper forum
20 for discussing impairment of Horseshoe Lake, if
21 that was Ms. Andria's concern. That the proper
22 forum for discussing the impairment of Horseshoe
23 Lake is not in the context of US Steel's permit.
24 It's something that is separate from the context

1 of whether the permit should have been issued or
2 not. There is a number of potential causes and a
3 number of potential sources for impairment into
4 Horseshoe Lake. They were identified. And our
5 position is that, including that within the
6 context of US Steel's draft permit, was not
7 relevant to the draft permit and whether the
8 draft permit would violate water quality
9 standards.

10 HEARING OFFICER WEBB: Well, I'm still
11 going to sustain their objection on that because
12 I think that I'm just not sure it's relevant with
13 respect to this request for public hearing
14 because the meeting occurred after the -- after
15 the hearing -- after the permit was issued.

16 MS. HESSE: Well, the reason we're
17 here today is to -- to determine whether a public
18 hearing should have been held on the permit. And
19 one of my questions is: If ABC prevails today?
20 What is the remedy? What is the remedy they
21 would seek? If the remedy they would seek would
22 be a hearing, a public hearing on the permit that
23 has already been issued, then the issues she's
24 raised with respect to the impairment, she's

1 already had a forum on and it was last June.

2 MR. HEISEL: Yeah. And I'll continue
3 my previous objection and say that if they want
4 to make some legal argument about the relevance
5 of the use of the permit, they are free to do
6 that in a brief.

7 HEARING OFFICER WEBB: I will allow
8 you to make an offer of proof. How's that?

9 MS. HESSE: Can we go off the record a
10 second?

11 HEARING OFFICER WEBB: Sure.

12 (A discussion was held off the
13 record.)

14 HEARING OFFICER WEBB: Let's go back
15 on the record.

16 Q. (By Ms. Hesse) Ms. Andria, at the
17 public meeting last June you had the opportunity
18 to raise all your issues and concerns with
19 respect to -- or raise issues and concerns --
20 rephrase the question -- with respect to the
21 impairment of Horseshoe Lake?

22 MR. HEISEL: I'll object again on the
23 grounds of relevance and outside the record.

24 HEARING OFFICER WEBB: Well, I'll see

1 where you're going.

2 Q. (By Ms. Hesse) You may answer the
3 question. This is part of the offer of proof.

4 HEARING OFFICER WEBB: Okay. If this
5 is part of the offer -- if this is an offer of
6 proof, then go ahead. You can answer the
7 question.

8 A. Did we have an opportunity to raise
9 all our issues, no. Did we raise some of our
10 issues, yes, to a very limited extent. But it
11 was a big hearing, I mean, it was covering a lot
12 of issues. It was not specific to Horseshoe
13 Lake.

14 Q. (By Ms. Hesse) Isn't it true that
15 written comments were submitted on behalf of ABC
16 with respect to Horseshoe Lake?

17 A. That's correct.

18 Q. Isn't it true that those comments were
19 submitted at your request or on behalf of ABC?

20 A. They were submitted on behalf of ABC
21 and they were very narrowly limited.

22 Q. Was the limitation on your ability to
23 comment placed upon you by the Agency?

24 A. No. I don't know -- understand

1 exactly what you mean.

2 Q. You're saying -- you said that there
3 was a limitation placed on your ability to
4 comment.

5 A. No, I didn't say there was a
6 limitation on our ability. I'm saying that the
7 scope of our comment was narrow. It did not
8 address all of the things that might have been --
9 had been commented on had it been about Horseshoe
10 Lake and been specific to Horseshoe Lake, and it
11 hadn't been addressed with regard to our finding
12 out and asking questions on the specific permit
13 that we're here for.

14 Q. When you were giving the comments on
15 Horseshoe Lake -- I mean, the hearing did cover
16 Horseshoe Lake, right, the 2006? Horseshoe Lake
17 was --

18 A. Was among the -- the impaired waters,
19 yes.

20 MR. HEISEL: I'm going to object. I'm
21 not sure they're talking about the same hearing
22 or meeting here to be honest. We had one --

23 HEARING OFFICER WEBB: Okay. Can we
24 clarify?

1 MS. HESSE: Yes.

2 Q. (By Ms. Hesse) On January 29, 2006 --

3 MR. BAKER: June.

4 Q. (By Ms. Hesse) I'm sorry, June. June
5 29, 2006, did you attend a public meeting in
6 Collinsville to discuss the Cahokia
7 Canal-Horseshoe Lake watershed?

8 A. You're talking about a totally
9 different meeting? I've been answering --

10 Q. Did you --

11 A. Excuse me --

12 Q. Did you attend that meeting?

13 A. I've been answering questions assuming
14 you were asking about the impaired waters hearing
15 in Springfield so --

16 Q. And I understand that, those are two
17 separate ones. Did you attend the June 29, 2006,
18 meeting?

19 A. Yes. I don't know the specific date
20 that I attended the meeting that was held at IDOT
21 in Collinsville on the TMDL.

22 Q. Did you also attend a public hearing
23 on impaired waters?

24 A. Yes, I did.

1 Q. And when was that?

2 MR. HEISEL: Is this still the offer
3 of proof?

4 HEARING OFFICER WEBB: Yes.

5 Q. (By Ms. Hesse) And where was that
6 located?

7 A. The TM --

8 Q. The TMDL hearing?

9 A. The TMDL was not a hearing. No -- no
10 record was taken, that I know of, because we
11 tried to -- to look at it. And that was held in
12 IDOT in Collinsville. The impaired waters has a
13 transcript, and that was held in Springfield and
14 that was on all the waters. The other one was
15 just on watersheds in this area, not specific to
16 Horseshoe Lake.

17 Q. Okay. At the meeting in Springfield,
18 when there was a transcript, you attended;
19 correct?

20 A. Yes.

21 Q. You asked questions; correct?

22 A. Yes.

23 Q. You had an opportunity to ask
24 questions regarding the impairment of Horseshoe

1 Lake; correct?

2 A. Did I ask --

3 Q. No, did you have --

4 A. Did I have an opportunity --

5 Q. Did you have opportunity to ask
6 questions?

7 A. To ask questions about Horseshoe Lake,
8 yes.

9 Q. So there was a forum provided for you
10 in terms of both the meeting in Collinsville as
11 well as the public hearing in Springfield to
12 discuss your concerns with respect to the
13 impairment of the Horseshoe Lake; correct?

14 A. There was an opportunity, but it was
15 -- they weren't -- it wasn't all about Horseshoe
16 Lake so you had to --

17 Q. I don't care if it wasn't all about
18 Horseshoe Lake. Did you have the opportunity to
19 discuss Horseshoe Lake?

20 A. Yes. And I -- there was also a
21 problem with regard to getting answers and having
22 people talk because we had -- we were apparently
23 in an adversarial position having requested the
24 public hearing. There were -- it was not a

1 Horseshoe Lake meeting in Springfield. And it
2 could not, did not, would not ever could not take
3 the place of a public hearing on this specific
4 Horseshoe Lake and the people's right to know
5 about Horseshoe Lake and comment on the permit.

6 Q. Ms. Andria, I'm confused by your
7 answer because you just said that you attended a
8 meeting in Collinsville, you attended a hearing
9 in Springfield. You had an opportunity to
10 provide comment on the impairment of Horseshoe
11 Lake. So there is a forum and was a forum
12 available for you to deal with the impairment
13 issues raised in your January 18, 2005, letter;
14 correct?

15 A. I do not feel that that was the
16 appropriate place and I -- there was an
17 opportunity to talk about certain issues, but
18 this was not a substitute. It couldn't be used
19 as a substitute. And I really don't think that
20 the way you're characterizing it is fair.

21 MR. HEISEL: How long are we going to
22 go on with this?

23 HEARING OFFICER WEBB: How much more
24 do you have?

1 Q. (By Ms. Hesse) Ms. Andria, you
2 mentioned a few minutes ago that you felt like
3 there were some kind of limitations on your
4 ability to submit comments?

5 HEARING OFFICER WEBB: Is -- is this
6 still part of your offer?

7 MS. HESSE: This is still part of the
8 offer of proof.

9 Q. (By Ms. Hesse) -- to submit comment
10 with respect to the 2006 meeting and 2006 hearing
11 on the impairment of Horseshoe Lake; is that
12 correct?

13 A. I don't think I said that -- that
14 exactly. I said that that there were certain --
15 I didn't feel that we could -- we could have an
16 honest and open discussion about the permit, and
17 I didn't feel that we could address all of the
18 issues that were of concern to us at that time.

19 Q. But you did have an opportunity to
20 discuss the issues for which Horseshoe Lake was
21 listed as impaired, for example, reading from
22 your letter PCB, pH, suspended solids, excessive
23 algal growth, etc.; correct?

24 A. I did have -- I'm sorry. I -- your

1 question is: Did I have an opportunity to talk
2 about those issues?

3 Q. Yes.

4 A. Yes.

5 Q. Was there any limitations placed upon
6 you in terms of written comments that you could
7 have submitted with respect to the hearing or the
8 meeting on the impairment of Horseshoe Lake?

9 A. I don't know that there were. I
10 assume that we had to go by what was the forum,
11 which was the impaired waters list, what was
12 listed and what needed to be changed. And I
13 thought that was what -- what we were talking
14 about, not -- I mean, I thought that was a very
15 limited scope of what we -- what the public
16 comment period was about, I mean, what the public
17 comment on that was.

18 MS. HESSE: That's all we needed to do
19 on the offer of proof.

20 HEARING OFFICER WEBB: That concludes
21 the offer of proof. Do you have further
22 questions?

23 MS. HESSE: Hopefully just a few.

24 HEARING OFFICER WEBB: Okay.

1 Q. (By Ms. Hesse) In your January 18,
2 2005, letter there's four names listed in
3 addition to your name?

4 A. Yes.

5 Q. Which of those individuals, if any of
6 them, assisted you in drafting the letter?

7 A. I talked to Kathleen Logan-Smith,
8 Kathleen O'Keefe, Jack Norman and Yvonne Homeyer.
9 I believe that all of them, except Ms. Homeyer,
10 made comments on what we should talk about in the
11 comment letter in asking for a public hearing.

12 Q. Of those individuals, are any of them
13 members of ABC?

14 A. All but Mrs. Homeyer is a member of
15 ABC.

16 Q. Of the organizations listed there,
17 health & Environmental Justice-St. Louis did not
18 join ABC in appealing the permit, did they?

19 A. No.

20 Q. Neighborhood Law Office did not join
21 ABC in appealing the permit?

22 A. No.

23 Q. The Sierra Club did not join ABC in
24 appealing the permit, did it?

1 A. No.

2 Q. Webster Groves Nature Society did not
3 join ABC in appealing the permit?

4 A. No.

5 Q. Ms. Andria Smith --

6 A. I'm sorry.

7 Q. Ms. Andria, Illinois EPA offered to
8 meet with you; correct?

9 A. Yes.

10 Q. But you declined to meet with them;
11 correct?

12 A. We declined to -- to meet with them at
13 -- at that time for the purposes of this permit.

14 MS. HESSE: Okay. No further
15 questions.

16 HEARING OFFICER WEBB: Redirect?

17 MR. HEISEL: Can we have just two
18 minutes?

19 HEARING OFFICER WEBB: Sure. Go off
20 the record for two minutes.

21 (A discussion was held off the
22 record.)

23 HEARING OFFICER WEBB: All right.

24 We'll go back on the record. Petitioner may

1 redirect the witness.

2 REDIRECT EXAMINATION

3 BY MR. HEISEL:

4 Q. Ms. Andria, Ms. Hesse referred to the
5 Richard Brugam studies in her examination of you
6 just a moment ago. Are you generally familiar
7 with those studies?

8 A. I'm somewhat familiar.

9 Q. Do you know if the Brugam studies
10 ruled out any sources of the contaminants in the
11 sediment in Horseshoe Lake?

12 A. Ruled out? No, I don't believe they
13 did.

14 Q. Did the Brugam studies identify other
15 pollutants --

16 A. I'm sorry. You have to speak louder.

17 Q. Did the Brugam studies identify other
18 pollutants beyond lead in the sediment of
19 Horseshoe Lake?

20 A. I think they refer to several other
21 metals, including zinc.

22 Q. Do you know if the Brugam studies
23 identified the source of these other pollutants
24 in the sediment at Horseshoe Lake?

1 A. I know that he had -- I -- I don't.
2 My brain is getting very foggy right now.

3 MR. HEISEL: Okay. That's all I have.

4 HEARING OFFICER WEBB: Recross?

5 RE CROSS-EXAMINATION

6 BY MS. HESSE:

7 Q. Ms. Andria, isn't it true that the
8 Brugam studies focused on the sediments in
9 Horseshoe Lake and not on the quality of water?

10 A. That's my understanding, yes.

11 MS. HESSE: Thank you. We would like
12 to reserve the right to call Ms. Andria for
13 further questions after the other witnesses have
14 testified in this hearing.

15 HEARING OFFICER WEBB: Okay. There's
16 no further questions?

17 MR. HEISEL: No.

18 HEARING OFFICER WEBB: Thank you. Ms.
19 Andria, you may step down. We may need you later
20 at the hearing.

21 MR. HEISEL: There's two members of
22 the public who have very brief comments.

23 HEARING OFFICER WEBB: Do you need to
24 take a break?

1 MS. HESSE: We would like a
2 five-minute break.

3 HEARING OFFICER WEBB: We'll take a
4 five-minute break.

5 (A short break was taken.)

6 HEARING OFFICER WEBB: We'll go back
7 on the record. We are taking some public comment
8 between witnesses because I understand we have a
9 couple of people here who would like to give
10 public comment and will not be able to attend
11 tomorrow. So all parties agree this acceptable.
12 We have a gentleman here, Mr. Robert Johnson, and
13 he would like to give sworn testimony. So the
14 court reporter will swear you in.

15 (The witness was sworn in by the
16 court reporter.)

17 MR. JOHNSON: My name is Robert
18 Johnson. I'm a senior environmental consultant.
19 I have my own business, Johnson Consulting. One
20 of my clients is Canteen Lake Duck Club
21 Incorporated. They were the entity that bought
22 Canteen Lake about three years ago. I haven't
23 spoken to them since that time. However, just
24 recently Kathy Andria sent me some information

1 regarding this hearing. And I indicated to her,
2 that based on the information I had, that I
3 thought that the Duck Club would be very
4 interested in participating in a public hearing,
5 but that since I wasn't aware of it, I doubt they
6 would.

7 The Duck Club is actually -- has their
8 offices outside of Staunton, Illinois. So what I
9 would do, now that I have this information, I
10 would give him a call and see if he was
11 interested. And I think he would be, in that the
12 Canteen Lake is adjoining to Horseshoe Lake, and
13 they're very interested as to what's going into
14 the Horseshoe Lake. So I think a special offer
15 needs to be made that a hearing be made open to
16 the public, especially people who have property
17 adjoining Horseshoe Lake.

18 HEARING OFFICER WEBB: Are you
19 finished?

20 MR. JOHNSON: That's my comment.

21 HEARING OFFICER WEBB: Any questions
22 for the witness?

23 MS. MUSHILL: Petitioner has no
24 questions of this witness.

1 HEARING OFFICER WEBB: Agency?

2 MR. SOFAT: No.

3 MR. BALLARD: US Steel has questions.

4 HEARING OFFICER WEBB: Okay.

5 CROSS-EXAMINATION

6 BY MR. BALLARD:

7 Q. Mr. Johnson, you stated that you were
8 contacted by Ms. Andria --

9 A. That's correct.

10 Q. -- with regards to this? Did you talk
11 with Ms. Andria about what you would be doing
12 today?

13 A. She asked me if I would interested in
14 coming to this meeting. I said I would.

15 Q. Okay. And did you talk with her at
16 all about what you would say at the hearing
17 today?

18 A. Not particularly, no.

19 Q. Okay. Did you talk with any attorneys
20 about what you would say today?

21 A. No.

22 Q. Did you talk with anybody at American
23 Bottoms Conservancy regarding what you would say
24 today?

1 A. No.

2 Q. Okay. Did you talk with anybody at
3 any -- well, did you talk with anybody in
4 preparation for today's hearing?

5 A. I just spoke to Kathy. And I
6 indicated that I was -- when I got the
7 information from her, I indicated that I was
8 aware of the -- of the Canteen Lake situation.
9 And I told her that I had knowledge about it and
10 I thought that the owner would be interested in a
11 public hearing. That's about as far as it went.

12 Q. Okay. And would you yourself be
13 interested in a public hearing on Horseshoe Lake?

14 A. Yes.

15 Q. When did you have that conversation
16 with Ms. Andria?

17 A. It would have been just yesterday or
18 the day before.

19 Q. Okay. And obviously you didn't submit
20 any comments on the rulemaking for the permit for
21 Granite City Works?

22 A. No, this is the first I've heard of
23 any type of permit actually.

24 Q. And can you tell me where you can be

1 contacted? How can you be contacted about any
2 comments you might have about this permit?

3 A. Address or --

4 Q. What's the name of your company, the
5 address and contact phone number?

6 A. My company is Johnson Consulting.
7 It's at 8 Cypress Point, Collinsville, Illinois,
8 62234. And telephone number there is
9 (618) 530-6604.

10 Q. And you stated earlier that, sorry, I
11 didn't make notes quick enough, but there was --
12 was there another -- not Johnson Consultation --
13 Consultants --

14 A. Johnson Consulting?

15 Q. Yes, consulting. Yeah, there was
16 another entity named duck something, what was the
17 name of that?

18 A. The owner of the Canteen Lake that
19 adjoins Horseshoe Lake, the owner of that is
20 Canteen Lake Duck Club Incorporated.

21 Q. Okay. And you stated that you think
22 they would be interested in commenting at the
23 public hearing on the Granite City Works?

24 A. I would think they would be

1 interested, yes.

2 Q. Did you talk with them about that?

3 A. No, I haven't had time to.

4 Q. So you haven't actually had a
5 conversation with someone that said I would be
6 interested in a public hearing on the Granite
7 City Works hearing?

8 A. That's correct.

9 MR. BALLARD: I have nothing further.

10 A. I would like to add just one more
11 thing to my comment, that I use the park
12 regularly as a -- I use the bike trail that runs
13 through the discharge over from Granite City
14 Steel. Whether I have concerns, I would be
15 interested to see what's in that discharge. As
16 an environmental consultant, I would be
17 interested as to what -- why it's open to the
18 public now. I'm not sure too many people really
19 understand what's going on there. I would be
20 interested just from a curiosity standpoint as to
21 what's going on there.

22 MR. BALLARD: Can I follow-up on that
23 just real quick?

24 HEARING OFFICER WEBB: Uh-huh.

1 Q. (By Mr. Ballard) Have you seen the
2 proposed -- proposed permit or -- I guess it
3 would be a proposed permit for the Granite City
4 Works?

5 A. Only very briefly.

6 Q. Did you see whether there was a
7 contact number for somebody at IEPA who would be
8 contacted about questions regarding the --

9 A. I didn't look at it that close yet.

10 MR. BALLARD: That's all I have.

11 HEARING OFFICER WEBB: Do you have any
12 questions?

13 MR. HEISEL: No.

14 HEARING OFFICER WEBB: Okay. Thank
15 you, Mr. Johnson. Would our next individual
16 please come down.

17 MS. COPLEY: Yes. And I would like to
18 make a public comment, please.

19 HEARING OFFICER WEBB: Okay.

20 MS. COPLEY: My name is Cathy Copley.
21 I'm a resident of Madison County. I'm a visitor
22 to the lake.

23 HEARING OFFICER WEBB: Why don't you
24 come -- would you mind sitting here and spell --

1 if you could spell your name, please.

2 MS. COPLEY: Cathy, C-A-T-H-Y, Copley,
3 C-O-P-L-E-Y. I'm a resident of Madison County.
4 I'm a visitor to the lake that now I understand
5 is used as an outfall. I know of others who
6 visit the lake. I want to thank Ms. Webb, IEPA
7 and all the attendees here for my opportunity to
8 state my interest in the lake, the NPDES permit
9 now and earlier in 2005. I stand in support of a
10 future public hearing. And I would respectfully
11 encourage everyone's reconsideration. Thank you
12 very much.

13 MS. HESSE: Can we have the
14 opportunity to ask questions?

15 MR. BAKER: She gave public comment.

16 HEARING OFFICER WEBB: Yeah, she just
17 gave public comment. There is no one further who
18 would like to give a public comment today; is
19 that correct?

20 MS. MUSHILL: Not here currently.

21 HEARING OFFICER WEBB: Well, let's
22 continue with petitioner's case, please.

23 MS. MUSHILL: Petitioner calls Ms.
24 Yvonne Homeyer. Petitioner is giving Ms. Homeyer

1 a copy of the group comment letter which, again,
2 is pages 537 and 539 in the administrative
3 record.

4 HEARING OFFICER WEBB: Can we swear
5 the witness, please.

6 (The witness was sworn in by the
7 court reporter.)

8 DIRECT EXAMINATION

9 BY MS. MUSHILL:

10 Q. Hi, Ms. Homeyer.

11 A. Hello.

12 Q. Did you include your name on a public
13 comment letter for the NPDES permit at issue in
14 this case?

15 A. Yes. I was president and conservation
16 chair of Webster Grove Nature Study Society. And
17 I gave Kathy Andria permission to sign Webster
18 Grove Nature Study Society onto the letter.

19 Q. And for convenience sake, while we're
20 talking about this, is there a way to shorten the
21 pronunciation of Webster Grove Nature Study
22 Society?

23 A. Yes. We pronounce it WGNSS,
24 W-G-N-S-S, with no periods. Just capital

1 letters, W-G-N-S-S. Webster Grove Nature Study
2 Society, WGNSS,

3 Q. And, Ms. Homyer, how many members does
4 WGNSS have?

5 A. We over 400 member. We have
6 individual and family members. And we don't
7 track the number of people in the family, but we
8 have about 400 family addresses on our mailing
9 newsletter list.

10 Q. How long has WGNSS been around?

11 A. Continuously since 1920.

12 Q. And if you don't mind stating again,
13 do you hold any special positions within WGNSS
14 currently?

15 A. Yes. Now I am conservation chair.

16 Q. And in 2005, when you signed this
17 comment letter, what position did you hold at
18 that time?

19 A. I continue to hold conservation chair,
20 and I was also the presidents.

21 Q. Does WGNSS submit public comment
22 letters on environmental permits?

23 A. Yes, we have.

24 Q. And, in general, what kinds of

1 situations does WGNSS send public comment
2 letters?

3 A. If there is an issue related to
4 habitat.

5 Q. If I could have you look at the
6 document that we handed to you, which is a group
7 comment letter.

8 A. Yes.

9 Q. And do you recognize this?

10 A. Yes.

11 Q. And you did -- did you agree to have
12 your name and WGNSS's included on this letter?

13 A. Yes, I did.

14 Q. Ms. Homeyer, what is WGNSS's interest
15 in Horseshoe Lake and this NPDES permit?

16 A. Our members go to Horseshoe Lake
17 almost daily. And sometimes it's an individual
18 who's there, sometimes it's a group, but as far
19 as the birding people in WGNSS, the bird watching
20 people, Horseshoe Lake is considered one of the
21 most outstanding areas in the St. Louis area for
22 birds.

23 Q. And are there members of WGNSS that go
24 to Horseshoe Lake for reasons other than bird

1 watching?

2 A. Yes, some of us are also interested
3 in butterflies. And several people will be over
4 there from time to time throughout the summer
5 when the butterflies are flying.

6 Q. How often do the WGNSS bird groups go
7 to Horseshoe Lake?

8 A. We have three birding groups every
9 week. The Thursday group is led by Jackie Chain,
10 and the Thursday birding group has there been 23
11 times in about the last 15 months. The Saturday
12 group is led by David Becher between September
13 and May of every year. I don't know how many
14 times in the last year they've been there, but
15 they do stop in frequently during the fall and
16 winter for ducks and in the spring for shore
17 birds and gulls too in the winter. And the
18 Sunday bird walking -- bird watching walks are on
19 a less frequent basis and maybe they might go
20 there twice a year.

21 Q. Do you personally go to Horseshoe
22 Lake?

23 A. I go there quite a lot.

24 Q. And what do you do when you go to

1 Horseshoe Lake?

2 A. Sometimes I'm there just for the
3 birds, if it's winter and there aren't any
4 butterflies. Other times I'm there primarily for
5 butterflies, but I'm also looking at the birds.

6 Q. Could you describe WGNSS's role in
7 cataloging the birds at Horseshoe Lake?

8 A. Yes. Two of our members Jim Ziebol
9 and Frank Holmes maintain an official list of all
10 the bird species that have been seen at Horseshoe
11 Lake?

12 Q. Why -- why do WGNSS members go to
13 Horseshoe Lake so often for bird watching?

14 A. More bird species have shown up at
15 Horseshoe Lake than at any other location in the
16 St. Louis area. It is a fantastic place for all
17 different types of birds because it has a variety
18 of habitat. 308 species of birds have been
19 reported at Horseshoe Lake. The lake itself
20 attracts gulls, terns, ducks and shore birds.
21 And the presence of wetlands the open fields
22 attract different kinds of birds and then the
23 woods there attract even more birds. So it's the
24 diversity of habitat. Also, it's extremely easy

1 to get to. It's got roads throughout it. It's
2 got the 203 side. It's got the 111 side. And
3 it's just easy to negotiate and navigate.

4 Q. And you've mentioned you've been to
5 Horseshoe Lake to look at butterflies. Why is
6 Horseshoe Lake a good place to look at
7 butterflies?

8 A. It's a good place to look at
9 butterflies, for the same reason it's got a
10 diversity of habitat, and it has some unusual
11 butterfly species there that are not found
12 frequently or even at all at other locations.
13 And part of that reason is because it's -- it's
14 not been used or developed, and I would call it
15 old habitat. It just hasn't been -- it hasn't
16 been used and it's pretty much in the same state
17 it has been for a long time. So the butterflies
18 haven't been disturbed.

19 Q. What do you mean when you say that
20 there are butterflies at Horseshoe Lake that
21 haven't been seen anywhere at all?

22 A. Well, this June we found a colony of
23 Broad-winged Skippers. It's a type of butterfly.

24 Q. Why is that a rare thing to see?

1 A. Well, we never knew Broad-winged
2 Skippers were in the St. Louis area, but it's
3 host plant is at Horseshoe Lake. And this year
4 we just happened to be there at the right time at
5 the right place and we saw several of them
6 flying. And we went back to confirm on several
7 other days that there were a number of them
8 there. So we know it's a breeding colony.

9 Q. Do you know of any member of WGNSS
10 that go to Horseshoe Lake more often than the
11 WGNSS organized trips go there?

12 A. Yes. One of them our members, Frank
13 Holmes, lives in Granite City and he is there, if
14 not daily, then almost every day throughout the
15 year. Jim Ziebol lives in South St. Louis. Jim
16 is there several times a week.

17 Q. Ms. Homeyer, why do you believe that
18 Horseshoe Lake is such an important habitat?

19 A. It's an important habitat because
20 we're losing so much habitat, and Horseshoe Lake
21 is a large area. It has a number of bird
22 species, a number of butterfly species and it's
23 the diversity of habitat and the fact that it's
24 in close proximity to a lot of people living in

1 the bi-state metropolitan St. Louis area.

2 Q. In your opinion, do you believe that
3 the discharge into the Horseshoe Lake affects
4 this habitat?

5 A. Certainly. The discharge into the
6 water is affecting the birds. The birds eat food
7 that is in the lake. It might be grasses. It
8 might be fish. It might be amphibians. It might
9 be reptiles. It might be small crustaceans, but
10 the birds are definitely feeding on whatever is
11 in the water. And what is in the water is
12 affecting the quality of the food that these
13 birds are consuming.

14 Q. Would you say then that WGNSS has an
15 interest in any permit that affects the discharge
16 into Horseshoe Lake?

17 A. We do.

18 Q. And if there had been a public hearing
19 on this NPDES permit, do you think members of
20 WGNSS would have attended?

21 A. Definitely.

22 MS. MUSHILL: Thank you. Nothing
23 else.

24 HEARING OFFICER WEBB: Thank you.

1 Does the Agency have any questions?

2 MR. SOFAT: No questions.

3 HEARING OFFICER WEBB: Ms. Hesse?

4 MS. HESSE: We have a few questions.

5 CROSS-EXAMINATION

6 BY MS. HESSE:

7 Q. WGNSS did not appeal -- join with ABC
8 in appealing the NPDES permit, did it?

9 A. We are not a party to the appeal.

10 Q. And just for clarification, Webster
11 Groves -- Webster Groves Nature Study, Webster
12 Groves is in Missouri, isn't it?

13 A. Webster Groves is a suburb of
14 Missouri, but our members live throughout the
15 metropolitan bi-state region both in Missouri and
16 Illinois. We have members in 12 other states
17 too.

18 Q. Did you review the draft permit that
19 -- before January 18, 2005?

20 A. I've never seen the permit.

21 Q. Do you know if one of the -- you had
22 testified a few minutes ago about Horseshoe Lake
23 being a unique location because there really had
24 not been habitat destruction and things like

1 that. Do you know if the NPDES permit had
2 anything to do with proposing to destroy habitat
3 at Horseshoe Lake?

4 A. I don't think it has anything to do
5 with destroying habitat. I think it's about
6 water discharge into the lake.

7 Q. You also mentioned in your testimony
8 that there are numerous species of wildlife that
9 inhabit the lake and, in fact, some unique
10 species of butterflies and things like that.

11 A. Uh-huh.

12 Q. Is that not an indication that habitat
13 there is healthy?

14 A. Well, it's not completely healthy.
15 Every location has stresses on it. It's -- it's
16 a good location for what it is. But, of course,
17 there are issues there.

18 Q. But isn't it true that the
19 biodiversity that is there is an indication that
20 that the habitat there is healthy for those
21 species for it --

22 A. No, it's not completely healthy. It's
23 the fact that they're hanging on, that's what's
24 happening. As other habitat gets destroyed, this

1 is like an oasis or an island of habitat that's
2 left, and we're interested in doing whatever it
3 takes to preserve that.

4 Q. So your main concern is minimizing
5 habitat destruction; correct?

6 A. Well, the lake is part of that
7 habitat. It's not just destruction. It's
8 preservation of the habitat. The lake is an
9 integral piece of the habitat at Horseshoe Lake.

10 Q. Did you participate in drafting the
11 January 18, 2005, letter?

12 A. No.

13 Q. Did you review that letter before it
14 was sent to Illinois EPA?

15 A. I reviewed it before I told Kathy
16 Andria that WGNSS would sign onto it.

17 Q. Do you have any independent knowledge
18 of the substance of the comment in the January
19 18, 2005, letter?

20 A. Not about the water issues.

21 Q. Your participation was essentially
22 that Kathy Andria asked you if she could add your
23 name to the letter and you agreed?

24 A. Our participation is that we think a

1 public hearing is necessary to develop a full
2 record before the IEPA makes a decision about
3 this permit.

4 Q. Okay. I believe my question was with
5 respect to your participation in drafting the
6 letter of January 18?

7 A. I didn't participate in drafting it.
8 I signed onto it. We signed onto the request for
9 public hearing. We think it's very important and
10 critical that the public hearing be held on this
11 permit.

12 Q. In the comment letter that you signed
13 onto, the comment letter does not allege that you
14 or anyone else's ability to use Horseshoe Lake
15 would be prevented by the permit being issued; is
16 that correct?

17 A. I don't think the permit is trying to
18 keep us from using it. I think the question is
19 quality of the water from the discharge that
20 Horseshoe -- that the Granite City Steel wants to
21 discharge into the lake.

22 Q. Do you have any independent
23 information with respect to the quality of the
24 water to be discharged into Horseshoe Lake under

1 the terms of the permit?

2 A. No.

3 Q. Do you know whether the limits place
4 concentration based limits or any other limits
5 written into the permit for the US Steel-Granite
6 City Works are based on water quality standards
7 or other regulation?

8 A. I don't know.

9 Q. So as you sit here, even though you're
10 objecting to the quality of the water being
11 discharged into the Horseshoe Lake, you do not
12 know whether that water meets water quality
13 standards for Horseshoe Lake or not, do you?

14 A. I think the issue is whether there
15 should be a public hearing to determine what's
16 best for the lake and develop a further record
17 before the IEPA makes its decision.

18 Q. Okay. You just commented about a
19 hearing for what's best for Horseshoe Lake. Did
20 you participate in the 303(d) process for
21 impaired waters with respect to Horseshoe Lake?

22 MR. HEISEL: I'll object to that also
23 as outside the record. Same objection as the
24 other witnesses.

1 HEARING OFFICER WEBB: Was that the
2 2006 hearing?

3 MS. HESSE: That's the 2006 hearing.
4 The witness just testified, and you can please
5 read back her testimony, that she was interested
6 in the water quality of the Horseshoe Lake. And
7 the purpose of the question is to ask if she took
8 the opportunity to participate in the procedure
9 that's set up to address water quality of
10 Horseshoe Lake from whatever sources.

11 HEARING OFFICER WEBB: Is that the
12 only question you're going to ask on that, or is
13 there a line?

14 MS. HESSE: I hope it's the only one.

15 HEARING OFFICER WEBB: Then I'll allow
16 you to answer that, if you participated in any
17 of --

18 A. I wasn't aware of it.

19 MS. HESSE: No further questions.

20 HEARING OFFICER WEBB: Redirect?

21 MR. HEISEL: Just a couple.

22 REDIRECT EXAMINATION

23 BY MR. HEISEL:

24 Q. Ms. Homeyer, of the bird species that

1 you observed at Horseshoe Lake, do you know are
2 any of those migratory birds?

3 A. Quite a number are.

4 Q. So just roughly how long would any of
5 those birds spend at Horseshoe Lake?

6 A. Well, spring migration and fall
7 migration go on for months, and the migration
8 pattern for each species is different. So some
9 species overlap their migration and others are
10 first, others are middle, others are end. So
11 between the spring and the fall there is quite a
12 -- quite a lot of time when some species are
13 migrating through. Is that what you meant?

14 Q. For any given species, roughly how
15 long would a migratory bird spend at the lake?

16 A. An individual bird?

17 Q. Sure.

18 A. Well, an individual bird might just
19 spend one night, feed the next day and take off
20 the following night. Sometimes some birds will a
21 hang around for a couple of days. But if it's
22 migration and there's a good bird there, you're
23 best to get there the day you hear about it.

24 MR. HEISEL: That's all I have.

1 MS. HESSE: No further questions.

2 HEARING OFFICER WEBB: Thank you, Ms.
3 Homeyer.

4 MS. MUSHILL: Any other parties plan
5 to call Ms. Homeyer? Again, she needs to leave.

6 MS. HESSE: No.

7 MR. SOFAT: No.

8 HEARING OFFICER WEBB: You may be
9 excused. I will let you call your next witness
10 obviously, but I just want to let you know, if
11 you're right in the middle of something, it is
12 very likely we will be kicked out at 4:30. So
13 with that, you may call your next witness.

14 MS. MUSHILL: Petitioner would like to
15 call Ms. Christine Favilla.

16 HEARING OFFICER WEBB: Is this
17 somebody on your witness list?

18 MS. MUSHILL: She has been added. We
19 amended our witness list.

20 HEARING OFFICER WEBB: Oh, okay. So
21 you were aware of that?

22 MR. BALLARD: No objection.

23 (The witness was sworn in by the
24 court reporter.)

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DIRECT EXAMINATION

BY MS. MUSHILL:

Q. Hi, Ms. Favilla. Could you tell me who your employer is?

A. I work for the Sierra Club.

Q. What is your position with the Sierra Club?

A. I'm the three rivers project coordinator.

Q. How long have you been working for the Sierra Club in this position?

A. Five and-a-half years.

Q. And in the course of working with the Sierra Club, have you been to Horseshoe Lake?

A. Yes, I have.

Q. What kind of activities do you participate in at Horseshoe Lake?

A. We do cleanups, litter and debris cleanups at the lake.

Q. Could you describe these cleanups to me, please?

A. Yes. On average we have about 30 participants in an annual and sometimes semiannual cleanup. We work with the Department

1 of Natural Resources and Madison County Storm
2 Water Office, and often the sheriff's work
3 alterative program as volunteers. We clean out
4 canals that lead into the lake and we also clean
5 up around the lake. We clean up camp sites near
6 the lake and the roads that lead to the lake.

7 Q. When was the most recent cleanup?

8 A. We had one October 20th of this year.

9 Q. And how long have you been conducting
10 these cleanups?

11 A. For two and-a-half possibly three
12 years.

13 Q. Why did Sierra Club choose Horseshoe
14 Lake as a place to do these cleanups?

15 A. There is a -- an overflow discharge
16 area for several communities that actually leads
17 back to the lake. So on high water times debris
18 and litter from these communities floats into
19 this area. And when the water lowers, it leaves
20 it behind in the wooded area. And so not only is
21 litter and debris highly prevalent, but we -- we
22 enjoy the habitat and we feel this is an area
23 that definitely needs to be taken care of.

24 Q. How many members does your branch of

1 the Sierra Club have?

2 A. We have 26,000 in Illinois. And my
3 group has roughly 650 members.

4 Q. And how many members does Sierra Club
5 have nationwide?

6 A. 750,000.

7 MS. MUSHILL: No further questions.
8 Thank you.

9 HEARING OFFICER WEBB: Thank you.

10 MR. SOFAT: The Agency has no
11 questions.

12 HEARING OFFICER WEBB: Okay.

13 MR. BALLARD: I would move to -- I
14 would object and move to strike the entire
15 testimony. That was entirely outside of the
16 administrative record, entirely outside of the
17 January 18, 2005, letter or any letter to the
18 administrative record. I don't see it has any
19 relevance to this case.

20 MR. HEISEL: Sierra Club signed onto
21 the letter. Her testimony is like the other
22 testimony we heard today in that it expounds on
23 or illustrates that the interest of the
24 organization signed onto the letter.

1 MR. SOFAT: The Agency agrees with US
2 Steel.

3 MR. BALLARD: Except for the fact that
4 Ms. Favilla did not sign the letter. She did not
5 contribute to the letter. They haven't said that
6 she did anything to the letter. Everybody who
7 has testified so far today has signed the letter,
8 has said they put input into what the letter was
9 and that is in the administrative record. Here
10 we hear about nothing relating to what's in the
11 administrative records before IEPA.

12 MR. HEISEL: They can ask those
13 questions on cross. I mean, she said what she
14 said. If they want to clarify her involvement in
15 the permit, they can follow-up.

16 HEARING OFFICER WEBB: Would you like
17 to do any cross-examination regarding her
18 involvement?

19 MR. BALLARD: If it's going to be
20 overruled, I'll definitely cross-examine her.

21 HEARING OFFICER WEBB: Yes.

22 MR. BALLARD: Okay.

23 HEARING OFFICER WEBB: Please do.

24 CROSS-EXAMINATION

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BY MR. BALLARD:

Q. You're aware that a letter was submitted on behalf of Sierra Club in this case during the public comment period?

A. Yes, I am.

Q. And that was on January 18th?

A. Of 2005, yes.

Q. And the Sierra Club is part -- as part of that letter, there was a request for public hearing; correct?

A. Correct.

Q. And that -- and as alleged by ABC and Sierra Club, that request was never granted; correct?

A. Correct.

Q. Sierra Club did not appeal that denial of the public hearing request; is that correct?

A. That's correct.

Q. And Sierra Club is not a party to this litigation?

A. Correct.

Q. And do you -- you don't know whether Sierra Club actually filed a petition for administrative review in this case, do you?

1 A. I'm not aware of that.

2 Q. And in the January 18, 2005, letter
3 Jack Norman was the signer on behalf of Sierra
4 Club?

5 A. Yes, he was.

6 Q. Okay. And you did not sign the
7 letter; is that correct?

8 A. Correct.

9 Q. And Jack Norman is a member of the
10 Kaskaskia; is that right?

11 A. Kaskaskia.

12 Q. Kaskaskia, excuse me, group of the
13 Sierra Club; is that correct?

14 A. Yes. And of the Illinois chapter,
15 which I work for.

16 Q. Okay. And that group is part of --
17 that handles the southern region of Illinois; is
18 that correct?

19 A. They handle St. Clair County and below
20 we handle Madison County. And we have eight
21 counties. I don't know how many Kaskaskia has.

22 Q. Is Jack Norman on the executive
23 committee of the Sierra Club?

24 A. I'm not aware right now that he is.

1 Q. So you don't know whether he's on the
2 executive committee?

3 A. No, I do not.

4 Q. And you're not on the executive
5 committee; is that correct?

6 A. Staff persons cannot be.

7 Q. Okay. And you've been substituted in
8 this case as a procedural matter along the way,
9 you were substituted for Mr. Norman; is that
10 correct?

11 A. Yes, it is.

12 Q. And Mr. Norman -- you were substituted
13 because Mr. Norman couldn't appear at his
14 deposition; is that correct?

15 A. I do not know the reason.

16 Q. Okay. And he didn't appear at his
17 deposition; is that correct?

18 MR. HEISEL: I'll object to that.
19 There was no deposition noticed -- well, either
20 there was no deposition of Mr. Norman noticed or
21 it was substituted by agreement of the parties.
22 So I just don't want an implication that he
23 didn't show.

24 HEARING OFFICER WEBB: Thank you for

1 the clarification.

2 Q. (By Mr. Ballard) Mr. Norman will not
3 be testifying in this case; is that correct?

4 A. I do not know.

5 Q. Okay. And you don't know whether he
6 will be testifying about comments that he made in
7 the January 18th letter?

8 A. I do not know.

9 Q. Okay. And you were not involved in
10 drafting the January 18th letter; is that
11 correct?

12 A. That is correct.

13 Q. Okay. The first time you actually saw
14 the letter was the week before your deposition,
15 which was taken on November 6 of 2006; is that
16 correct?

17 A. Yes.

18 Q. And the first time you read the letter
19 was in preparation for testifying in this case a
20 week before November 6th; is that correct?

21 A. Correct.

22 Q. And in the -- in the January 18th
23 letter, you have reviewed that letter; correct?

24 A. Yes.

1 Q. Okay. And in that letter it
2 identifies that the lake is used by outdoor
3 enthusiasts, bird watchers, nature lovers,
4 fishers, hunters, and families, do you recall
5 that?

6 A. Yes.

7 Q. Okay. And it also states that it is
8 used by low income and minority folks for
9 subsistence fishing?

10 A. Yes.

11 Q. The letter does not identify any
12 outdoor enthusiasts by name; is that correct?

13 A. That's correct.

14 Q. It does not identify any bird watchers
15 by name?

16 A. Correct.

17 Q. The letter does not identify any
18 nature lovers, fishers, hunters, or families by
19 name; is that correct?

20 A. Yes.

21 Q. It doesn't identify by name any of
22 those outdoor enthusiasts, bird watchers, nature
23 lovers, fishers, hunters, or families, it doesn't
24 identify any of those that would be interested in

1 public hearing; is that correct.

2 A. It does not state by name who would
3 show up at public hearing, no.

4 Q. Okay. And the letter also doesn't
5 identify any low income or minority folks who use
6 Horseshoe Lake for subsistence fishing; is that
7 correct?

8 A. Correct.

9 Q. The letter does not identify any
10 individual by name who would be adversely
11 affected by the NPDES permit being issued to
12 Granite City Works; is that correct?

13 A. It is signed by several persons, but I
14 don't know how it was stated in the letter --

15 Q. Okay.

16 A. -- that they would be adversely
17 affected.

18 Q. Would you like to look at the letter?

19 A. Yes. Is this the letter?

20 Q. Yes.

21 A. Thank you.

22 Q. The is letter 537, page 537, at the
23 bottom.

24 A. Okay.

1 Q. In the letter, as you're looking at
2 it, it doesn't identify by name any individuals
3 who would be adversely affected by an NPDES
4 permit being issued for Horseshoe Lake; is that
5 correct?

6 A. Just a moment. Correct.

7 Q. Okay. And you testify in this case,
8 you do not know much about the Sierra Club's
9 interest in Granite City Works' discharge of
10 pollutants in Horseshoe Lake; is that correct?

11 A. Other than we would like to have a
12 public hearing on it, no.

13 Q. And other than the fact that Sierra
14 Club was involved in the letter -- comment letter
15 of January 18, there's nothing else you can tell
16 me about the Sierra Club's interest in Granite
17 City Works' discharge of pollutants in the
18 Horseshoe Lake; is that correct?

19 A. Other than our concerns represented in
20 the letter, no.

21 Q. Other than reading over the January
22 18, 2005, letter and looking over the NPDES
23 permit for Granite City Works, you do not have
24 any knowledge as to the need of a public hearing;

1 is that correct?

2 A. We believe that if there are permits
3 that are looking at projecting to -- if there are
4 permits that are going to project effluents into
5 a body of water up through 2011, we believe a
6 public hearing should be called, yes.

7 Q. Okay. So you're stating here today
8 that more so he than the January 18, 2005,
9 letter, are you stating that in addition to the
10 comments in the January 18th letter, you're
11 testifying today there is more concern that you
12 have for a public hearing on the permit?

13 A. Could you rephrase the question? I
14 didn't understand it.

15 Q. I asked you earlier, other than
16 reading the January 18th letter and looking over
17 the permit for Granite City Works, you do not
18 have any knowledge as to the need for a public
19 hearing and you stated -- it seems to me you were
20 stating that was incorrect, you had more
21 knowledge than that than just looking at the
22 permit and just looking at the letter?

23 A. Right. Well, with our activities out
24 at the lake with Sierra Club led bike trips

1 through the trails around the lake, we do
2 definitely have a concern about the habitat and
3 water quality of the lake. That may not have
4 been represented within the letter.

5 Q. Okay. Do you recall me taking your
6 deposition in this case on November 6?

7 A. Yes.

8 Q. And you were sworn under oath to tell
9 the truth?

10 A. Yes.

11 Q. You did tell the truth?

12 A. Yes.

13 Q. Do you recall me asking you questions,
14 you giving the answer of: What can you tell me
15 on behalf of Sierra Club? What is the need for a
16 public hearing in this case? And you answered:
17 Other than reading the letter and looking over
18 the permit, I do not have any further knowledge
19 of that. Do you recall giving that answer?

20 A. No. But if I said it, then I don't
21 have any further knowledge of the effluents that
22 are put into the lake -- I don't have any extra
23 knowledge of any effluents that are put into the
24 lake. I only have knowledge that we would like

1 to have a public hearing.

2 Q. And looking at the January 18, 2005,
3 letter, that letter does not state that issuing a
4 permit will cause a violation of any statute,
5 regulation or law; is that correct?

6 A. It does not state --

7 MR. HEISEL: I'll object the letter
8 speaks for itself. I don't know what it helps to
9 have her characterize what it says.

10 HEARING OFFICER WEBB: I'll sustain
11 that.

12 Q. (By Mr. Ballard) The January 18
13 letter does not state that any water quality
14 standards will be violated by issuing the permit;
15 is that correct?

16 MR. HEISEL: Same objection.

17 HEARING OFFICER WEBB: Well --

18 MR. BALLARD: I mean, we've had people
19 testifying to this letter all day.

20 HEARING OFFICER WEBB: You're right.
21 We have, we have. I'm going to allow it as to
22 her understanding of the letter that was
23 submitted in part of the Sierra Club. So you may
24 repeat your question.

1 MR. BALLARD: Can I repeat the last
2 question?

3 HEARING OFFICER WEBB: Yes.

4 Q. (By Mr. Ballard) The January 18
5 letter does not state that issuing a permit would
6 cause a violation of any statute, regulation or
7 law; is that correct?

8 A. That's correct.

9 Q. And the January 18 letter does not
10 state that any water quality standard would be
11 violated by issuing the permit; is that correct?

12 A. It does not state that, no.

13 MR. BALLARD: That's all I have.

14 HEARING OFFICER WEBB: Anything
15 further?

16 MR. HEISEL: We have no questions.

17 HEARING OFFICER WEBB: Okay. All
18 right. Thank you very much. Do you want to
19 start another witness, or do you want to wait?

20 MR. HEISEL: I understand there's
21 another member of the public here --

22 HEARING OFFICER WEBB: All right.

23 MR. HEISEL: -- If we can fit him in.

24 HEARING OFFICER WEBB: Okay. Let's

1 take one more public comment. Who? You, okay.
2 Did you hear my earlier description of the
3 difference between public comment and sworn
4 testimony?

5 MR. WARNER: No, I wasn't here
6 earlier.

7 HEARING OFFICER WEBB: You may either
8 give sworn testimony, which is subject to
9 cross-examination by the attorneys here, or you
10 may make a public comment, which is not subject
11 to any questioning by the attorneys. The
12 difference would be just as to the weight of the
13 evidence, but the Board certainly does consider
14 public comment important as well. Why don't you
15 come down here so we can all hear you and take a
16 seat over here. Would you like to give sworn
17 testimony or public comment?

18 MR. WARNER: Just public comment.

19 HEARING OFFICER WEBB: Public comment.
20 You may begin.

21 MR. WARNER: Hi, my name is Jason
22 Warner. I'm with the Sierra Club. And I'm an
23 avid bike rider who uses the trails along the
24 Horseshoe Lake.

1 The Sierra Club is a not-for-profit
2 organization with 25,000 members in the State of
3 Illinois. Sierra Club members are very concerned
4 about water quality and believe, as Congress
5 believed when it passed the Clean Water Act, that
6 discharges of pollutants should be minimized to
7 the extent possible and eventually eliminated.

8 We urge that Illinois Pollution
9 Control Board to assure that members of the
10 public be able to fully participate in the
11 National Pollutant Discharge Elimination System
12 permits process. Opportunity for active public
13 participation in the process is required by the
14 Clean Water Act and is necessary for the system
15 to work properly.

16 The Board should require that the
17 Agency hold a hearing, whenever organizations
18 with numerous members that may be affected by a
19 discharge, request one. The time frame now
20 allowed for public comments is not long and
21 requests for time extensions are often denied.
22 The decision to request a public hearing almost
23 always must be made with very limited information
24 being available to the public. It cannot

1 reasonably be expected that comment letters and
2 requests for public hearing will articulate all
3 of the issues potentially raised by the permit or
4 will articulate problems perfectly.

5 Further, it is not good policy to
6 force people who have only received the initial
7 public notice to generate large numbers of
8 objection letters and requests for a hearing if a
9 hearing is to be held. By doing this, the Agency
10 is practically ordering people who care about the
11 environment to send out mass alerts and go to the
12 press without having had a real opportunity to
13 determine the extent to which the proposed action
14 will affect human health or other parts of the
15 environment.

16 There may be dischargers and Agency
17 officials who think that forcing environmental
18 groups and neighborhood organizations to react
19 quickly with little information saves time and
20 resources. In a few cases it will be possible
21 this way -- possible this way to slam through a
22 permit that might otherwise have required more
23 debate. However, the people who want to slam
24 through permits without giving people a realistic

1 chance to learn about them may learn that the
2 results of forcing people to act in a few days on
3 the basis of very limited information are not
4 good in the long run.

5 If the Board and the Agency wish to
6 serve the interests of the environment and
7 effective government, they should assure members
8 of the public that they will have an opportunity
9 to learn about proposed permits and will be able
10 to object later if the explanations offered by
11 the discharger and the Agency are not
12 satisfactory.

13 HEARING OFFICER WEBB: Thank you. Any
14 more public comments today? Okay. Well, it's
15 4:15. Would you like to start -- How many more
16 witnesses are you calling in the whole case?

17 MR. HEISEL: I realize we only have
18 14, but can we have a minute or two to confer?

19 HEARING OFFICER WEBB: Yeah, yeah.
20 Sure.

21 MS. MUSHILL: Kathleen Logan-Smith is
22 who we're calling.

23 HEARING OFFICER WEBB: Okay. The
24 court reporter will swear you in.

1 (The witness was sworn in by the
2 court reporter.)

3 DIRECT EXAMINATION

4 BY MS. MUSHILL:

5 Q. Hi, Ms. Logan. What is your current
6 job position?

7 A. I'm the executive director of the
8 Missouri Coalition for the environment.

9 Q. Did you submit any public comment
10 letters for the NPDES permit at issue in this
11 case?

12 A. Yes, way back when.

13 Q. And on behalf of what organization did
14 you submit a comment letter?

15 A. From Health & Environmental
16 Justice-St. Louis.

17 Q. What is Health & Environmental
18 Justice's mission?

19 A. Health & Environmental Justice is
20 committed to environmental justice issues in the
21 metro region.

22 Q. How many members does Health &
23 Environment Justice have?

24 A. Our mailing list is 400 or 500.

1 MS. MUSHILL: That's all we'd like to
2 ask this witness at this time.

3 HEARING OFFICER WEBB: Okay.

4 MR. SOFAT: Agency has no questions.

5 HEARING OFFICER WEBB: US Steel?

6 MR. BALLARD: Yeah, we have questions.

7 CROSS-EXAMINATION

8 BY MR. BALLARD:

9 Q. Ms. Logan-Smith, you submitted a
10 letter -- you, in fact, submitted two letters?

11 A. We submitted one letter and signed
12 onto another one.

13 Q. And the letter that you submitted was
14 the January 17 letter on behalf of HEJ?

15 A. Correct.

16 Q. In that letter you -- you stated that
17 a public hearing would give the citizens an
18 opportunity to ask questions about the permit,
19 voice concerns or hear explanations, do you
20 recall that letter stating that?

21 A. Correct.

22 Q. And the letter does not identify any
23 individual citizens who would voice concerns, ask
24 about the permit or hear explanations; is that

1 correct?

2 A. Correct.

3 Q. And the January 17th letter didn't
4 identify any individuals by name who have been
5 adversely affected by Granite City Works' permit
6 being an issue; is that correct?

7 A. Correct. Those people would have come
8 to a hearing.

9 Q. And the January 18th letter, you did
10 not draft that letter?

11 A. No, I didn't draft it.

12 Q. And you did not draft any portion of
13 that letter?

14 A. No. I submitted my letter and --
15 first.

16 Q. And other than putting your name on
17 the January 18th letter on the signature line on
18 behalf of HEJ, you did not contribute anything to
19 the January 18th letter; is that correct?

20 A. Well, I had already submitted my
21 letter. So Kathy had seen my letter. So she
22 knew what my concern -- my chief concerns were
23 based on my knowledge.

24 Q. But as to the January 18th concern --

1 as to your concern -- strike that.

2 A. So Kathy wrote it with my input
3 because she had gotten my other letter.

4 Q. Okay. HEJ made a request for public
5 hearing in the January 18th and January 17th
6 letter; is that correct?

7 A. Correct. There are a lot of people
8 who would comment on something like this at a
9 public hearing that are intimidated by the
10 process of writing a letter to the Agency.

11 Q. Okay. But HEJ does not appeal the
12 denial -- what it thinks its denial was at a
13 public hearing request; is that correct?

14 A. Correct.

15 Q. HEJ did not file a petition for
16 administrative review in this case?

17 A. Correct.

18 Q. The January 17th letter did not state
19 that issuing a permit would cause a violation of
20 any statute, regulation or law; is that correct?

21 A. It wasn't that level of detailed
22 analysis.

23 Q. But it doesn't state that there were
24 any violations; is that correct?

1 A. Correct. But it asked for a public
2 hearing because we could ask that question
3 directly then.

4 MR. BALLARD: Nothing further.

5 HEARING OFFICER WEBB: Anything
6 further?

7 MR. HEISEL: No.

8 HEARING OFFICER WEBB: Thank you, Ms.
9 Logan-Smith.

10 MR. HEISEL: We'll rest our case.

11 HEARING OFFICER WEBB: Oh, you're
12 resting now?

13 MR. HEISEL: Yes.

14 HEARING OFFICER WEBB: Okay. Are we
15 still coming back tomorrow? Do you have any --
16 Are you still planning to call --

17 MS. HESSE: Do they have any other
18 witnesses?

19 MR. BAKER: They rested.

20 MR. HEISEL: We rest.

21 MR. BALLARD: If we are going to call
22 any other witnesses, we're not going to do it
23 today, so can we use the last five minutes to
24 discuss it?

1 HEARING OFFICER WEBB: Sure, sure.

2 (A discussion was held off the
3 record.)

4 MS. HESSE: We're finished.

5 HEARING OFFICER WEBB: Okay. You're
6 sure? We got the room booked for tomorrow if
7 anybody -- I guess we won't need it.

8 MS. HESSE: I think we're concluding
9 the hearing now.

10 HEARING OFFICER WEBB: Both parties
11 have rested their case. We're reserving -- is
12 everyone reserving their closing argument for the
13 post-hearing brief?

14 MS. HESSE: Yes.

15 MR. SOFAT: Yes.

16 MR. HEISEL: Yes, yes.

17 HEARING OFFICER WEBB: Or did anyone
18 want to make a closing argument. All right. Let
19 me read into the record the briefing schedule
20 that we've already discussed. The expedited
21 transcript of these proceedings will be available
22 from the court reporter by November 28th and will
23 be posted on the Board's website. The public
24 comment deadline will be December 18th. Public

1 comment must be filed in accordance with Section
2 101.628 of the Board's procedural rule. The
3 petitioner's brief is due by December 8th,
4 respondents' briefs are due by December 18th.
5 The mailbox rule will not apply, although I think
6 you're all filing electronically at this point,
7 which is good.

8 At this time I will ask again if there
9 are any members of public who want to make a
10 comment? And seeing none, I will proceed to make
11 a statement as to the credibility of witnesses
12 testifying during this hearing. Based on my
13 legal judgment and experience, I find all of the
14 witnesses testifying to be credible. At this
15 time I will conclude the proceedings. We stand
16 adjourned, and I thank you all for your
17 participation.

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 150 pages comprise a true, complete and correct transcript of the proceedings held on November 20th, 2006, at the Madison County Administration Building, County Board Room 203, Edwardsville, Illinois, Illinois, in the case of American Bottoms Conservancy versus IEPA and United States Steel Corporation and Granite City Works, in proceedings held before Hearing Officer Carol Webb, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 21st day of November, 2006.

Beverly S. Hopkins, CSR, RPR
CSR License No. 084-004316