

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

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ILLINOIS POLLUTION CONTROL BOARD
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5

MS. KATHLEEN CROWLEY, HEARING OFFICER

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BY: MR. ROY M. HARSCH

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On behalf of the Petitioner;

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS
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BY: MR. GERALD T. KARR

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On behalf of the Respondent.

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1 HEARING OFFICER CROWLEY: Good
2 morning. It is just a couple of minutes
3 after 9:00 on January 13th, 2009. This is a
4 hearing being conducted by the Illinois
5 Pollution Control Board in a matter captioned
6 as City of Joliet versus Illinois
7 Environmental Protection Agency, Board docket
8 09-25.

9 My name is Kathleen Crowley and
10 I'm the Board's senior attorney. I'm
11 standing in today for the assigned hearing
12 officer, Brad Halloran, who is attending a
13 family funeral.

14 The hearing today was prompted by
15 the City of Joliet's October 17th, 2008
16 petition for review of a permit decision by
17 the Illinois Environmental Protection Agency.

18 On February 16th, 2007, the
19 Illinois Environmental Protection Agency
20 denied the City's request for modification of
21 its current permit allowing for application
22 of sewage sludge from its wastewater
23 treatment plants to agricultural lands. The
24 issue in dispute is the allowable amount of

1 radium in the sludge.

2 This hearing was scheduled in
3 accordance with the Illinois Environmental
4 Protection Act and Pollution Control Board
5 Rules and Procedures. It will be conducted
6 according to the Board's procedural rules
7 found at Sections 101 and 105, Subpart B.

8 As most of you know, the Board's
9 hearing officers don't make ultimate
10 decisions in the case and the hearing
11 officers do not participate in the Board's
12 decision on the issues in the case. My job
13 today is to ensure the hearing goes smoothly
14 and rule on any evidentiary matters that may
15 arise.

16 When the hearing is finished the
17 Board will review the transcript, the record
18 and any post-hearing briefs and render its
19 decision.

20 I will note at this time, for the
21 record, that there are approximately a dozen
22 persons in the room, including myself and the
23 court reporter. And I will ask at this point
24 if all of -- is there anyone who is not

1 affiliated with the parties in this case?

2 MR. HARSCH: Everyone is affiliated
3 with Joliet, I believe.

4 HEARING OFFICER CROWLEY: Thank you,
5 kindly.

6 I will ask counsel to introduce
7 themselves for the record, please.

8 MR. HARSCH: Roy Harsch from the law
9 firm of Drinker, Biddle & Reath on behalf of
10 petitioner, City of Joliet.

11 MR. KARR: Gerald Karr, K-A-R-R,
12 Senior Assistant Attorney General on behalf
13 of the respondent, Illinois Environmental
14 Protection Agency.

15 HEARING OFFICER CROWLEY: Thank you.
16 It's my understanding that the Illinois
17 Environmental Protection Agency will not
18 present witnesses today; is that correct?

19 MR. KARR: That's correct, we will not
20 be calling any witnesses.

21 HEARING OFFICER CROWLEY: Thank you.
22 But I understand that the City of Joliet does
23 have some witness testimony to present, so I
24 will turn it over to you, Mr. Harsch.

1 MR. HARSCH: Thank you. Yes, we will
2 be calling four witnesses today. We have
3 previously filed written testimony and
4 provided copies of that written testimony to
5 the Board, pursuant to the hearing officer's
6 order, and to Mr. Karr.

7 I will be requesting that as we
8 call each witness and they have identified
9 their written testimony, that that -- given
10 the fact there are no members of the public
11 present, that that testimony be incorporated
12 into the record as though read.

13 MR. KARR: I have no objection to
14 proceeding that way.

15 HEARING OFFICER CROWLEY: No
16 objection?

17 MR. KARR: Yes.

18 HEARING OFFICER CROWLEY: Thank you.

19 MR. HARSCH: One correction, the
20 appeal is actually with respect to a
21 condition number two in the sludge disposal
22 permit that had been granted by the Illinois
23 Environmental Protection Agency to Joliet.

24 And special condition number two

1 does not limit the amount of radium in the
2 sludge, but it limits the increase in soil
3 that would theoretically occur from the
4 application of sludge containing radium to
5 agricultural lands.

6 HEARING OFFICER CROWLEY: Thank you,
7 Mr. Harsch. Yes, I acknowledge that I did
8 misstate that.

9 MR. HARSCH: My first witness at this
10 point would be Harold Harty.

11 (Witness sworn.)

12 WHEREUPON:

13 HAROLD HARTY

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Harsch

18 Q. Mr. Harty, have you prepared written
19 testimony for presentation in this proceeding?

20 A. Yes, I have.

21 Q. And the book that is before you marked
22 as Exhibit 1, is this a copy of your written
23 testimony that you prepared?

24 A. Yes, it is.

1 Q. And the only change from your written
2 testimony would be the inclusion of the references
3 to the exhibit numbers?

4 A. Yes, sir.

5 Q. And that's a true and accurate copy of
6 your written testimony?

7 A. Yes, it is.

8 MR. HARSCH: At this point in time I
9 would move that the written testimony of
10 Mr. Harty be included into the record as
11 though read.

12 MR. KARR: I have no objection.

13 HEARING OFFICER CROWLEY: That motion
14 is granted. And you have -- you will be
15 asking us to introduce as Joliet's Exhibit
16 No. 1 the narrative testimony of Harold Harty
17 of the City of Joliet?

18 MR. HARSCH: In addition, to be
19 included in the transcript as though read.

20 HEARING OFFICER CROWLEY: Yes.

21 MR. HARSCH: And I would move at this
22 point for the admission of Exhibit 1.

23 HEARING OFFICER CROWLEY: Admitted.

24

1 (Whereupon, Exhibit No. 1
2 was received in
3 evidence.)

4 BY MR. HARSCH:

5 Q. And, Mr. Harty, did you request
6 Joliet's agronomist, Mr. Fiedler, to prepare a
7 letter for submission to the Pollution Control Board
8 in this proceeding?

9 A. Yes, I did.

10 Q. If I direct you to what has been
11 marked as Exhibit 2, is this a letter that
12 Mr. Fiedler prepared?

13 A. Yes, it is.

14 Q. And it's a true and accurate copy of
15 the letter?

16 A. Yes, it is.

17 MR. HARSCH: I would move for the
18 admission of Exhibit 2.

19 MR. KARR: I have no objection.

20 HEARING OFFICER CROWLEY: That's
21 admitted.

22 (Whereupon, Exhibit No. 2
23 was received in
24 evidence.)

1 HEARING OFFICER CROWLEY: And I would
2 like to make clear for the record, Mr. Karr,
3 you did receive copies of all of this
4 material in advance of hearing; is that
5 correct?

6 MR. KARR: That is correct.

7 HEARING OFFICER CROWLEY: Thank you.

8 BY MR. HARSCH:

9 Q. Mr. Harty, drawing your attention to
10 Exhibit 3 in this proceeding, this is a copy of the
11 permit appeal that we filed on behalf of the City of
12 Joliet; is that correct?

13 A. Yes, it is.

14 Q. And attached to Exhibit 3 would be a
15 copy of the permit that we're seeking to challenge
16 in this proceeding?

17 A. Yes, it is.

18 MR. HARSCH: I would move for the
19 acceptance of Exhibit 3 into the record at
20 this time.

21 MR. KARR: It's a Board filing. I
22 don't know that it needs to be an exhibit,
23 but no objection.

24 HEARING OFFICER CROWLEY: Thank you.

1 I agree, it's unnecessary, but there's no
2 problem with admitting it. It's admitted.

3 (Whereupon, Exhibit No. 3
4 was received in
5 evidence.)

6 MR. HARSCH: Thank you. That
7 concludes my direct of Mr. Harty.

8 MR. KARR: I have a couple of
9 questions.

10 CROSS EXAMINATION

11 By Mr. Karr

12 Q. Mr. Harty, again, my name is Gerald
13 Karr. I represent the Illinois EPA in this matter.
14 On Page 2 of your narrative, the last paragraph at
15 the bottom --

16 A. Let me get down there. Yes.

17 Q. It begins, the City of Joliet's land
18 application program.

19 A. Yes.

20 Q. It says it's become a model for others
21 to follow. Do you know what others -- who else has
22 followed this, sir?

23 A. I know that the EPA has gave it out to
24 other people and they have, you know, taken it on.

1 Fox -- I don't want to misrepresent. Fox Valley or
2 Fox Metro has done it -- has seen it. I don't know
3 how much they incorporated it in their permit
4 because I did not have a look at Fox Metro's. I
5 think it's Fox Metro.

6 MR. HARSCH: Are you referring to the
7 former Aurora Sanitary District?

8 THE WITNESS: Yes.

9 MR. HARSCH: That's Fox Metro. The
10 confusion is Fox Metro is Aurora and Fox
11 River is Elgin.

12 MR. KARR: Okay.

13 HEARING OFFICER CROWLEY: Thank you.

14 BY MR. KARR:

15 Q. So you would just know -- you're just
16 familiar with this one other sanitary district that
17 may have used parts of this program?

18 A. Yes, sir.

19 Q. In that same paragraph the third line
20 begins, the only alternative would be to landfill.
21 Are you familiar with other uses of biosolids such
22 as using it for soil amendments to rehabilitate
23 brownfields properties?

24 A. No, sir, I am not.

1 Q. Have you heard that biosolids can go
2 through a nitrification or melting process where it
3 becomes a usable glass aggregate product?

4 A. I have heard that, but I've heard the
5 cost is very prohibitive. It would be very
6 expensive to do.

7 Q. But it would be another alternative to
8 landfilling?

9 A. Yes, it would be. What I was stating
10 is our alternative would be landfill.

11 Q. Now turning your attention to Page 3
12 of your testimony in the third paragraph down about
13 the middle begins, this would eventually mean that
14 more and more land would be needed to be identified
15 by our agronomist and signed up to be part of the
16 program.

17 A. And I believe that's in reference
18 to a lower radium limit, limiting the amount of
19 applications; is that correct?

20 A. Application rates, yes, sir.

21 Q. Turning back, though, on Page 2, the
22 fourth paragraph down, the second sentence begins,
23 there has always been more demand for biosolids than
24 we have ever produced.

1 A. Yes, sir. That is true, but at a rate
2 where -- farmers want it at a -- they don't want a
3 one-haul deal. If I go down to that rate, it would
4 be a one-time application to them. They would like
5 it every year on a continuous basis and at least ten
6 applications where they know they're going to get
7 it.

8 If a farmer is going to get it
9 just one time, it's very hard for the agronomist to
10 market that. And that's where it comes down to,
11 that you just have to have so much more land. But
12 it's hard to market when you can only say I'm going
13 to haul it to you, you can only get it one time and
14 that's it.

15 Q. Okay.

16 MR. KARR: That's all I have. Thank
17 you.

18 HEARING OFFICER CROWLEY: Thank you,
19 Mr. Harty.

20 THE WITNESS: Thank you.

21 MR. HARSCH: At this time I would call
22 Mr. Duffield.

23 (Witness sworn.)

24

1 WHEREUPON:

2 DENNIS DUFFIELD

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Harsch

7 Q. Mr. Duffield, did you prepare written
8 testimony for this proceeding?

9 A. Yes, I did.

10 Q. If I draw your attention to what has
11 been marked as Exhibit 4, is that a copy of your
12 written testimony?

13 A. Yes, it is.

14 Q. Is it a true and accurate copy?

15 A. Yes, it is.

16 Q. And the only changes to that testimony
17 would be the inclusion of the reference to the
18 various exhibits?

19 A. That's correct.

20 MR. HARSCH: At this point in time I
21 guess I would move that the testimony be
22 included as though read into the record and
23 that Exhibit 4 be accepted.

24 MR. KARR: No objection.

1 HEARING OFFICER CROWLEY: It's agreed.
2 (Whereupon, Exhibit No. 4
3 was received in
4 evidence.)

5 BY MR. HARSCH:

6 Q. Mr. Duffield, in summary, do you have
7 an opinion as to whether or not the Illinois --
8 based on the various meetings that we've had with
9 the Illinois Environmental Protection Agency that
10 are referenced in the permit record that they accept
11 the ten millirem dose resulting from the application
12 of Joliet sludge to farm fields?

13 A. Yes. At the meeting of January 24th,
14 2007, the meeting notes from Jeff Hutton of the
15 Illinois EPA that are in the record, it said all
16 parties at the meeting agreed to ten millirems.

17 Q. And is it your understanding then that
18 IEMA, Illinois Department of Nuclear Safety, accepts
19 the ten millirem dose?

20 A. Based on that note, yes, it is.

21 Q. And is it the ten millirem dose
22 acceptance that allowed the Illinois Environmental
23 Protection Agency to increase the allowable
24 concentration in Joliet's original sludge

1 application permit from 0.1 to the subsequent ones
2 at 0.4?

3 A. Yes. At that same meeting IEMA did
4 some calculations and came up with the 0.4 as a
5 revision to the permit.

6 Q. Again, in summary, do you believe
7 that -- can you characterize what appears to be the
8 sole controversy in this proceeding?

9 A. The sole controversy appears to be
10 that IEMA does not accept that topsoil is stripped
11 before homes are built and they're calculating the
12 dose with topsoil underneath a house and it's not --
13 that is not allowed by most building codes, all
14 building codes I've been able to track down, and
15 it's not a normal practice.

16 Q. And why is that?

17 A. Because topsoil is not a structural
18 material.

19 Q. Based on your years of service at
20 Joliet as the director of public works and your
21 experience as an environmental consultant since
22 you've retired from Joliet are you generally
23 familiar with the Board's tiered approach to
24 corrective action regulations or TACO regulations?

1 A. I understand the concept.

2 Q. Do these regulations rely on various
3 engineering controls such as the use of three feet
4 of cover or pavement?

5 A. Yes, they do.

6 Q. Do these rules also rely upon, at
7 times, local ordinances that prohibit the use of
8 groundwater, for example?

9 A. Yes, they do.

10 Q. Is the concept of requiring the
11 removal of topsoil prior to building a house, in
12 your opinion, similar to those types of --

13 A. Yes. It's the same type of control.

14 Q. And, in fact, did you not recommend
15 that to the Illinois EPA as part of your report
16 that's contained in this record?

17 A. Yes, I did.

18 Q. And that would be for inclusion as a
19 condition to any permit that was granted relying on
20 that assumption?

21 A. That's correct.

22 Q. Can you summarize for the record where
23 Joliet is in terms of the construction of facilities
24 to comply with the drinking water radium standard?

1 A. Joliet has completed the construction
2 of all their treatment facilities. Those facilities
3 rely upon discharge of the treatment residuals to
4 the sanitary sewer and ultimately ending up in the
5 sludge.

6 Joliet's invested over \$50 million
7 in a water program to comply with the drinking water
8 standard for radium and now it appears that the
9 problem has translated over in a land problem.

10 When I was director of public
11 works in Joliet in 2004 I had the first
12 communications with Illinois EPA that indicated that
13 decisions need to be made about what the appropriate
14 disposal of radium -- sludge containing radium was
15 because a lot of communities were making decisions
16 about discharge of residuals and treatment and here
17 we are 2009 and we still don't have it resolved.

18 Q. That's what, in essence, this appeal
19 is all about?

20 A. That's right.

21 MR. HARSCH: I have no further
22 questions.

23 MR. KARR: I have no questions.

24 HEARING OFFICER CROWLEY: Thank you,

1 very much, Mr. Duffield.

2 MR. HARSCH: At this time I would call
3 Mr. Port, please.

4 (Witness sworn.)

5 WHEREUPON:

6 ELI PORT

7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Harsch

11 Q. Mr. Port, I would like you to review
12 what has been marked as Exhibit 8 that's before you.
13 Is this a true and accurate copy of the written
14 testimony that you prepared for this proceeding?

15 A. It is.

16 MR. HARSCH: At this point in time I
17 would move that the testimony be accepted
18 into the record as though read and that
19 Exhibit 8 be accepted.

20 MR. KARR: No objection.

21 HEARING OFFICER CROWLEY: So admitted.

22 (Whereupon, Exhibit No. 8
23 was received in
24 evidence.)

1 BY MR. HARSCH:

2 Q. Mr. Port, I guess in summary follow-up
3 do you have an opinion as to whether based on our
4 various meetings that we've had that are detailed
5 into the record as well as your individual meetings
6 with IEMA, the Department of Nuclear Safety staff
7 that are also referenced in the record, that both
8 IEPA and IEMA accept the ten millirem dose as being
9 an acceptable number?

10 A. Yes.

11 Q. And can you characterize what appears
12 to be the sole point of dispute in this matter?

13 A. The issue that we have discussed
14 repeatedly has been whether it is reasonable to
15 assume that houses will be built as required by code
16 or follow conventional building practices or whether
17 the non-conforming homeowner, someone who builds a
18 home that's in non-conformance with either building
19 practices or code should be protected should he
20 choose to build a home on uncompacted topsoil.

21 Q. Have you evaluated the RESRAD modeling
22 work done by IEMA?

23 A. To some extent, yes.

24 Q. And have you looked at that modeling

1 to see how it compares to the modeling that you
2 performed?

3 A. Yes.

4 Q. And if IEMA were to have accepted the
5 assumptions, the removal of topsoil, could you tell
6 us what the result would be, if you know?

7 A. I believe that when they ran the
8 RESRAD model, which is a computer code, with topsoil
9 removed, because they used some input parameters
10 that were different from ours, we used -- they used
11 default values and we used values supplied by the
12 City of Joliet, they, at one picocurie per gram
13 increased loading of the soil at under six millirem
14 and we have about nine millirem.

15 HEARING OFFICER CROWLEY: If we can go
16 off the record for a minute.

17 (Whereupon, a discussion
18 was had off the record.)

19 HEARING OFFICER CROWLEY: Back on the
20 record when you're ready, Mr. Harsch.

21 BY MR. HARSCH:

22 Q. In our initial discussions with
23 Illinois EPA and IEMA, Rich Allen was present and
24 involved in this matter for IEMA; is that correct?

1 A. Yes.

2 Q. Is he a health physicist?

3 A. He is.

4 Q. Do you have continued involvement with
5 IEMA, Department of Nuclear Safety, on an ongoing
6 basis?

7 A. I do.

8 Q. With Mr. Allen's departure, are any of
9 the other gentlemen, who have been identified in the
10 record at IEMA, health physicists?

11 A. I believe not. The two people I know
12 involved with this project are not. They are
13 engineers.

14 Q. Can you perhaps place into perspective
15 what the difference in dose is from the assumption
16 of removing topsoil or not removing the topsoil?

17 A. Yes. And, frequently, in explaining
18 load doses it's difficult to assign any significance
19 to the doses other than to compare them with other
20 sources of comparable dose.

21 I did a quick investigation of the
22 doses -- the difference in doses of a person who
23 lives in a wooden structure versus a brick or
24 masonry structure. And the ranges -- in the United

1 States the estimates are the difference between wood
2 and brick. This is the EPA's estimate from its
3 website, 77 millirem. The University of Iowa
4 Healthcare System has an estimate of 75 millirem for
5 the difference between a wooden house and a brick
6 house. The European Nuclear Society has difference
7 that ranges up to about 200 millirem for a
8 difference between living in a wooden structure and
9 living in a brick and cement structure.

10 Q. So that's on the low end then of those
11 exposures for a masonry structure is what basically
12 the increase in dose we're talking about?

13 A. Yes, it is.

14 MR. HARSCH: No further questions.

15 MR. KARR: I just have a couple.

16 CROSS EXAMINATION

17 By Mr. Karr

18 Q. Mr. Port, in your prepared testimony
19 on the second page, fifth paragraph down --

20 HEARING OFFICER CROWLEY: And we're
21 looking at Exhibit 8, just so it's clear.

22 BY MR. KARR:

23 Q. Exhibit 8, Page 2, it begins, the
24 radium concentration in the Joliet water supply.

1 That last sentence of that paragraph, the
2 application of the sludge to land adds the radium in
3 the sludge to the radium naturally in the soil or
4 resulting from prior applications of phosphate
5 fertilizer.

6 So I guess what I'm trying to
7 understand is through these land applications of
8 these biosolids or sludges, the radium content is
9 increased or the radium concentration?

10 A. Over what might already be a larger
11 number that's in soil, yes.

12 Q. And the hazard associated with the
13 radium is the concentration; is that correct?

14 A. If we assume that the risk is linear,
15 which is a controversial assumption, then if we
16 double the concentration, we double the risk.

17 MR. KARR: I have nothing further.

18 REDIRECT EXAMINATION

19 By Mr. Harsch

20 Q. I neglected to ask if Exhibit 9 is the
21 document you have referenced in your written
22 testimony?

23 A. Yes.

24 MR. HARSCH: And I would move for the

1 inclusion of Exhibit 9 into the record.

2 RE CROSS EXAMINATION

3 By Mr. Karr

4 Q. Before I say one way or another, I was
5 just trying to find that quote. It seems that
6 that's a quote from Exhibit 9 that you put into your
7 testimony. Somehow maybe I missed it or I'm not
8 reading Exhibit 9 accurately.

9 A. On what page is the quote?

10 Q. This would be on Page 4 where it
11 references Exhibit 9, the third paragraph down.

12 HEARING OFFICER CROWLEY: We're
13 looking at Exhibit 8.

14 BY MR. KARR:

15 Q. Page 4 of Exhibit 8, third paragraph
16 references Exhibit 9. It appears there's a quote
17 from Exhibit 9 in Exhibit 8 and I was trying to find
18 that quote in Exhibit 9.

19 A. Page 2 of Exhibit 9.

20 Q. I just found it. I'm sorry. I found
21 it.

22 A. Page 2.

23 Q. Yeah.

24 MR. KARR: I have no objection.

1 HEARING OFFICER CROWLEY: Thank you.

2 So admitted.

3 (Whereupon, Exhibit No. 9
4 was received in
5 evidence.)

6 MR. HARSCH: Nothing further.

7 HEARING OFFICER CROWLEY: Thank you,
8 Mr. Port.

9 MR. HARSCH: At this time I would call
10 Dr. Richard Toohey.

11 (Witness sworn.)

12 WHEREUPON:

13 RICHARD TOOHEY

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Harsch

18 Q. Dr. Toohey, did you prepare written
19 testimony for this proceeding?

20 A. Yes, I did.

21 Q. And if I ask you to look at what's
22 been marked as Exhibit 10 before you, is this a copy
23 of your written testimony?

24 A. Yes, it is.

1 Q. I believe before the hearing you
2 indicated that you had found one item that you
3 wanted to correct?

4 A. Yes, that is true. In rereading this
5 I noticed I had inadvertently omitted a component of
6 the average medical dose. So if you go to Page 3 of
7 the exhibit, first paragraph, fourth line, the
8 written testimony says, in addition the average US
9 resident receives another 240 millirem from man-made
10 sources, primarily medical uses. The correct figure
11 is 320 millirem. I had neglected to include 80
12 millirem from nuclear medicine procedures.

13 And with that increase, then the
14 total dose instead of being 540 millirem is actually
15 620 millirem. I apologize for that omission.

16 MR. HARSCH: With those two
17 corrections, as explained by Dr. Toohey, I
18 would move for the inclusion of Dr. Toohey's
19 testimony as though read into the record and
20 acceptance of Exhibit 10.

21 MR. KARR: I have no objection.

22 HEARING OFFICER CROWLEY: Thank you.
23 I have handmade the corrections in the
24 exhibit that will be presented to the Board.

1 I will ask that you just double check that I
2 did that correctly and then I'll initial it.

3 Thank you.

4 (Whereupon, Exhibit
5 No. 10 was received in
6 evidence.)

7 BY MR. HARSCH:

8 Q. Dr. Toohey, your written testimony is
9 based upon the information contained in the record
10 of the permit appeal in this proceeding that was
11 provided to you?

12 A. That is correct.

13 Q. And is the sum of your testimony
14 intended to guide the Board as to what is or is not
15 a safe decision?

16 A. Yes. I believe that would be the
17 thrust of it.

18 Q. And can you briefly summarize your
19 conclusion?

20 A. My conclusion is based on the record
21 from Joliet and also existing federal regulations
22 that a dose of ten millirem a year from a man-made
23 source of radiation is considered to be a safe level
24 and is below the standard that every federal agency

1 applies in various federal regulations.

2 Q. So you would support the Pollution
3 Control Board's determination that the Illinois
4 Environmental Protection Agency's permit decision
5 should be reversed in this matter?

6 A. Yes, I would because as others have
7 noted, if the topsoil is removed before a house
8 would be built on soil to which radium has been
9 added up to one picocurie per gram, the dose from
10 radon would be negligible and the total dose would
11 then be about seven millirem and less than the ten
12 millirem limit.

13 MR. HARSCH: I have no further
14 questions.

15 MR. KARR: I just have one or two
16 questions here, Dr. Toohey.

17 CROSS EXAMINATION

18 By Mr. Karr

19 Q. Page 2 of your testimony, right about
20 the middle there's a sentence that says, the
21 important thing to note is that the limits are for
22 dose because potential risks to human health from
23 radiation exposure are assumed to be directly
24 proportional to the radiation dose received.

1 And the question I have is if
2 there is an increase in the concentration of the --
3 I guess in this case radium, does that lead to a
4 greater dose or exposure?

5 A. Yes. An increase in radium would lead
6 to greater dose. The question is does a slight
7 increase in dose really cause an increase in risk?
8 We assume it does for regulatory purposes, but
9 there's no convincing scientific evidence of these
10 levels of dose that it actually does increase the
11 risk in any measurable fashion.

12 MR. KARR: Thank you. That's all I
13 have.

14 MR. HARSCH: Thank you, Dr. Toohey.

15 HEARING OFFICER CROWLEY: Thank you,
16 sir.

17 MR. HARSCH: I did not move for the
18 introduction of several of the other
19 pleadings that were referenced in Dennis
20 Duffield's testimony. That would be Exhibits
21 6, 7 and 8. They are all pleadings that were
22 filed in this proceeding.

23 I can move for the acceptance just
24 because they referenced in the testimony as

1 exhibits is probably the only reason.

2 MR. KARR: You know, again, it's the
3 same thing, these are prior petitions for
4 review, they're part of the Board's public
5 records. I think the Board can take notice
6 of them.

7 HEARING OFFICER CROWLEY: Thank you.
8 Mr. Karr. We have accepted Joliet's Exhibits
9 1 through 10 as presented today just to make
10 sure the record is clear.

11 MR. HARSCH: Thank you. That rests
12 the direct case of Joliet in this matter.

13 HEARING OFFICER CROWLEY: Thank you.
14 Mr. Karr?

15 MR. KARR: And the respondent has no
16 witnesses to call. That would conclude our
17 side of the case.

18 HEARING OFFICER CROWLEY: I'm sorry?

19 MR. KARR: Respondent, Illinois EPA,
20 has no witnesses to call. That would
21 conclude our case in chief.

22 HEARING OFFICER CROWLEY: Thank you.
23 Do either of you have any closing remarks you
24 want to make on the record?

1 MR. HARSCH: I just find it a little
2 remarkable that there's no one here from
3 Illinois Environmental Protection Agency, no
4 one here from IEMA. The record was -- as
5 stated in the record on Page 3, that was a
6 concern that we've raised in our last meeting
7 with IEPA.

8 So I guess their absence does
9 speak perhaps some volumes to the issue at
10 hand for the Board and the Board can take
11 whatever conclusion it wants to.

12 HEARING OFFICER CROWLEY: Thank you.
13 Mr. Karr?

14 MR. KARR: And I would just counter
15 that the Agency's record speaks for itself.
16 There's certainly sufficient evidence
17 contained in the record for support of the
18 Agency's decision to deny this modification
19 to the permit. We'd ask that the Board
20 uphold that decision.

21 HEARING OFFICER CROWLEY: Thank you.
22 I assume that you would each like to file
23 closing briefs?

24 MR. KARR: I think that would be the

1 best way to go.

2 MR. HARSCH: Yes.

3 HEARING OFFICER CROWLEY: Can we go
4 off the record and come up with some
5 agreeable dates for that?

6 (Whereupon, a discussion
7 was had off the record.)

8 HEARING OFFICER CROWLEY: We're back
9 on the record. We've had a brief discussion
10 of briefing. The current Board decision
11 deadline is April 2nd. The Board prefers to
12 have at least 30 days of time to deliberate
13 and draft its opinion and order. We have
14 asked that the final brief be filed no later
15 than February 27th.

16 The court reporter indicates that
17 the Board will receive the transcript on or
18 before January 27th. Based on that receipt
19 date, the parties' initial and simultaneous
20 filings are due in the Board's office on
21 February 20th and any response they may have
22 to the other's filings will be due in the
23 Board's office on February 27th.

24 Again, this briefing schedule is

1 based on the April 2nd deadline. If there
2 are difficulties producing the transcript or
3 complying with the schedule, Hearing Officer
4 Halloran can extend them, provided that the
5 City is willing to extend the decision
6 deadline. If the City is not, then we'll
7 need to keep to this original schedule.

8 MR. HARSCH: Understand. Thank you
9 very much.

10 MR. KARR: Thank you.

11 HEARING OFFICER CROWLEY: Thank you.

12 MR. HARSCH: Thanks, Counselor, for
13 agreeing to the inclusion of the testimony as
14 though read.

15 HEARING OFFICER CROWLEY: Thank you.

16 (Which were all the proceedings
17 had in the above-entitled cause
18 on this date.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF WILL)

3

4 I, Tamara Manganiello, CSR, RPR, do hereby
5 certify that I reported in shorthand the proceedings
6 held in the foregoing cause, and that the foregoing
7 is a true, complete and correct transcript of the
8 proceedings as appears from my stenographic notes so
9 taken and transcribed under my personal direction.

10

11

TAMARA MANGANIELLO, CSR, RPR
License No. 084-004560

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20 SUBSCRIBED AND SWORN TO
before me this ____ day
21 of _____, A.D., 2009.

21

22 _____
Notary Public

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