

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF C O O K )

THE ILLINOIS POLLUTION CONTROL BOARD  
JULY 26, 2011

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
 )  
TRIENNIAL REVIEW OF WATER )  
QUALITY STANDARDS FOR BORON, )  
FLUORIDE, AND MANGANESE: ) R11-18  
AMENDMENTS TO 35 ILL. ADM. )  
CODE 302, SUBPARTS B, C, E, )  
F, AND 303.312 )

REPORT OF PROCEEDINGS at the hearing of the  
above-entitled cause before the Kathleen Crowley,  
Hearing Officer, taken before Rebecca A. Graziano,  
Certified Shorthand Reporter within and for the  
County of Cook and State of Illinois, at the  
James R. Thompson Center, Room 2-025, Chicago,  
Illinois, commencing at the hour of 11:00 a.m. on  
the 26th day of July, A.D., 2011.

A P P E A R A N C E S

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THE ILLINOIS POLLUTION CONTROL BOARD:

Ms. Kathleen Crowley  
Ms. Alisa Liu  
Mr. Gary Blankenship  
Ms. Carrie Zalewski

SCHIFF HARDIN LLP,  
6600 Sears Tower  
Chicago, IL 60606  
(312) 258-4720  
BY: MS. KATHLEEN C. BASSI  
MS. AMY ANTONIOLLI

Appeared on behalf of Southern Illinois Power  
Cooperative,

ALBERT ETTINGER,  
53 West Jackson  
Suite 1664  
Chicago, Illinois 60604  
(773) 818-4825

Appeared on behalf of the Sierra Club.

1 MS. CROWLEY: Good morning. My name  
2 is Kathleen Crowley, and I am the assigned hearing  
3 officer in this proceeding. This is the second of  
4 two presently scheduled hearings being conducted by  
5 the Illinois Pollution Control Board in the matter  
6 of Triennial Review of Water Quality Standards for  
7 Boron, Fluoride, and Manganese, amendments to 35  
8 Illinois Admin Code 302, Subparts B, C, E, F and  
9 Section 303.312. This is the board's docket R  
10 11-18.

11 At today's hearing, the board will  
12 continue its receipt of testimony on the merits and  
13 economic impact of the Illinois Environmental  
14 Protection Agency's December 2nd, 2010, regulatory  
15 proposal.

16 Seated to my immediate right is  
17 board member Carrie Zalewski, who is a coordinating  
18 board member for this proceeding. Seated to her  
19 immediate right is environmental scientist Alisa  
20 Liu, and to my immediate left is board member Gary  
21 Blankenship.

22 Member Zalewski, did you have  
23 anything you wanted to say at this point?

24 MS. ZALEWSKI: Just thank you again

1 for the pre-filed comments and testimony. We  
2 appreciate it.

3 MS. CROWLEY: In the statement of  
4 reasons accompanying the proposal, the Illinois EPA  
5 stated that this is the culmination of the triennial  
6 review forum for standards required by the Federal  
7 Water Commission Control Act, or Clean Water Act.

8 The proposal includes updated  
9 water quality standards for boron, fluoride and  
10 manganese, and a handful of clean-up amendments and  
11 updates to 35 Illinois Administrative Code Part 302,  
12 as well as a repeal of Section 303.312.

13 At this point, I'd like to ask for  
14 appearances from the agency and the other  
15 participants.

16 MS. WILLIAMS: I'm Deborah Williams on  
17 behalf of Illinois EPA.

18 MR. ETTINGER: I'm Albert Ettinger on  
19 behalf of the Sierra Club.

20 MS. CROWLEY: Thank you.

21 MS. ZEMAN: Christine Zeman on behalf  
22 of the City of Springfield, CWLP.

23 MS. BASSI: Kathleen Bassi on behalf  
24 of Southern Illinois Power Cooperative.

1 MS. ANTONIOLLI: Amy Antoniolli on  
2 behalf of Southern Illinois Power Cooperative.

3 MS. CROWLEY: And I believe that's all  
4 the appearances for today.

5 Just some general introductory  
6 remarks, all hearings before the board are  
7 transcribed by the court reporter you see with us  
8 today, so we will ask that persons speak one at a  
9 time, and that you speak loudly enough to be heard.  
10 All witnesses will be sworn in by the court reporter  
11 prior to giving testimony, but you can give a public  
12 comment later in the hearing without being sworn in.

13 Any person may ask questions of  
14 any witness giving testimony, but please wait until  
15 I call on you, either vocally or by gesture, before  
16 you start speaking. Questions asked by the board  
17 and staff are not intended to indicate any  
18 prejudgment of the merits of the testimony or of the  
19 proposal. They are asked to make sure there is a  
20 full and complete record for a deliberation by the  
21 three other board members not present today.

22 We'll begin with the -- excuse me.  
23 We'll begin with testimony on behalf of the Southern  
24 Illinois Power Cooperative, and that is because, to

1 streamline the hearing, I issued a hearing officer's  
2 order on May 3rd and June 14th. The orders ask  
3 persons to pre-file testimony. The only testimony  
4 filed in response to these orders was the testimony  
5 of Leonard Hopkins filed July 5th, 2011, on behalf  
6 of SIPC.

7                   Following the completion of  
8 Mr. Hopkins' testimony, we will receive testimony of  
9 any other person who wishes to present testimony or  
10 comments. And then also before the close of the  
11 hearing today, we will ask the Agency if they have  
12 any -- compiled any information in response to some  
13 questions we asked at the last hearing. Is that all  
14 reasonably clear? Mr. Ettinger.

15                   MR. ETTINGER: I would appreciate if  
16 public comments went after we heard from the IEPA  
17 responses to questions posed at the last hearing if  
18 that's okay.

19                   MS. WILLIAMS: It was not my intention  
20 to present the responses before the comment period.  
21 I mean, we certainly can discuss how to arrange for  
22 the timing of those things if there are things  
23 that --

24                   MR. ETTINGER: I'm sorry. I thought I

1 understood the hearing officer to say you were going  
2 to present --

3 MS. WILLIAMS: She did. That was the  
4 first I heard of it though.

5 MR. ETTINGER: So if you're not, then  
6 that changes everything.

7 MS. CROWLEY: I'm sorry. I thought  
8 that you were going to be bringing us answers to  
9 those questions at this hearing, so I guess I'm  
10 wrong too.

11 MS. WILLIAMS: Well, I apologize. I  
12 may have -- it may have been my mistake.

13 MS. CROWLEY: Okay. Thank you. So  
14 Ms. Bassi?

15 MS. BASSI: Thank you, Madam Hearing  
16 Officer. As I stated earlier, I am Kathleen Bassi  
17 at Schiff Hardin on behalf of Southern Illinois  
18 Power Cooperative. Today Leonard Hopkins is here on  
19 behalf of SIPC, and I would like to have his  
20 pre-filed testimony entered as an exhibit in this  
21 record.

22 Mr. Hopkins, is this a copy of the  
23 testimony that we filed on your behalf?

24 MR. HOPKINS: Yes, it certainly

1 appears to be.

2 MS. BASSI: Thank you. And Madam  
3 Hearing Officer, I would like to have this entered  
4 into the record.

5 MS. CROWLEY: Thank you. My next  
6 exhibit number is Exhibit 8, so we will --

7 MS. BASSI: I'm sorry. Exhibit?

8 MS. CROWLEY: My next exhibit number  
9 is Exhibit Number 8, so we'll mark it and save this  
10 pre-filed testimony, and the testimony includes the  
11 attachment of the board's opinion in the order  
12 AS 92-10 I had -- in answer to Ms. Bassi's question,  
13 I had asked that it be made a single exhibit for  
14 everyone's convenience. Thank you.

15 MS. BASSI: Thank you. Mr. Hopkins  
16 has a summary of his testimony to present today, and  
17 then we'll be available for questions.

18 (Witness sworn.)

19 MR. HOPKINS: Good morning, Madam  
20 Hearing Officer, members of the Illinois Pollution  
21 Control Board, and technical staff. My name is  
22 Leonard Hopkins, and I thank you for allowing me the  
23 opportunity to submit testimony on behalf of  
24 Southern Illinois Power Cooperative.



1 I am the environmental and fuel  
2 manager at SIPC's Marion plant, located south of  
3 Marion, Illinois, in Williamson county. I am  
4 responsible for environmental compliance and fuel  
5 procurement at Marion Station. I've work for SIPC  
6 for 18 years, with the last four being in my current  
7 position.

8 In my pre-filed testimony, I  
9 explain that IEPA's proposed rulemaking, part of  
10 which amend the boron water quality standard for  
11 aquatic life, caught SIPC's attention. The reason  
12 is that SIPC's Marion Station currently operates  
13 under an adjusted standard for the boron rules, yet  
14 IEPA's proposal on Page 31 of the statement of  
15 reasons identify Marion Station as a facility that  
16 would no longer require such relief.

17 SIPC contacted IEPA, and we  
18 discussed the proposed rule. SIPC's operating  
19 conditions at the Marion Station, and the fact that  
20 although SIPC would comply with the proposal chronic  
21 standard of 7.6 milligrams per liter most of the  
22 time, there still would be exceedances. Therefore,  
23 I expressed SIPC's preference to continue to operate  
24 under the terms of the adjusted standard.

1                   IEPA has since recognized SIPC's  
2 preference and did not include SIPC's Marion Station  
3 in the list of sources it presented to the board at  
4 the last hearing, whose relief would either become  
5 moot or no longer be necessary. I asked the board  
6 also recognize the continued effectiveness of SIPC's  
7 relief by either noting it in the board's opinion  
8 and order, or at a minimum, not categorizing SIPC as  
9 a source for whom relief should no longer be  
10 necessary.

11                   Again, thank you for the  
12 opportunity to be able to explain our situation and  
13 SIPC's position, and I am happy to answer any  
14 questions.

15                   MR. ETTINGER: Hello. I am Albert  
16 Ettinger. As I mentioned, I represent the Sierra  
17 Club in this proceeding. I just have a few  
18 questions as to what isn't here.

19                   Do you have any information  
20 regarding the biology that suggests that a standard  
21 higher than 7.6 milligrams per liter as a chronic  
22 standard is too strong?

23                   MR. HOPKINS: We would have what was  
24 in the original adjusted standard.

1                   MR. ETTINGER: Okay. So you have  
2 what's in the original adjusted standard. You're  
3 not, in this proceeding, putting in any additional  
4 information regarding the biology of the effects of  
5 boron?

6                   MR. HOPKINS: We did not do an  
7 additional test or study.

8                   MR. ETTINGER: And as I understand  
9 your problem, over a long run, you are under an  
10 average of 7.6 milligrams per liter of boron, but  
11 that there are monthly averages in which you would  
12 violate it. Is that correct?

13                   MR. HOPKINS: That is correct.

14                   MR. ETTINGER: Thank you. That's all  
15 I have.

16                   MS. CROWLEY: Thank you. Are there  
17 other questions for this witness? There don't seem  
18 to be.

19                                 We very much appreciate that  
20 you're explaining your situation and putting it on  
21 the record what you feel would solve your particular  
22 problem. That's always very helpful.

23                   MR. HOPKINS: Thank you very much.

24                   MS. CROWLEY: Is there anyone else who

1 would care to make a public comment or present  
2 testimony?

3 MR. ETTINGER: I guess it's a public  
4 comment. I just have some -- this is Albert  
5 Ettinger again on behalf of the Sierra Club.

6 MS. CROWLEY: And since it is a public  
7 comment, we are not swearing in this individual, and  
8 public comments receive different testimony --

9 MR. ETTINGER: Well, my comments are  
10 really questions.

11 MS. CROWLEY: That's fine.

12 MR. ETTINGER: So there's no  
13 information content here. In any case, we were told  
14 or it is stated in the Agency's papers, it's our  
15 understanding that the reason -- a reason why it was  
16 thought all right to raise the drinking water  
17 standard for manganese was that drinking water  
18 suppliers can easily remove manganese from their  
19 water supplies.

20 Our question that we hope will be  
21 answered in the transcript is: Is there a cost  
22 associated with this removal? Perhaps that's one of  
23 the questions the board also already asked, or it  
24 was answered in some document we haven't seen or in

1 another proceeding, but that is a question we would  
2 like answered.

3 MS. CROWLEY: If we can just go off  
4 the record a second.

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

7 MS. CROWLEY: We'll go back on the  
8 record now. If the Agency cares to address that, I  
9 would appreciate it if the Agency addresses it in  
10 written comments specifically. We have have had the  
11 issue addressed somewhat, but additional input in  
12 response to this specific request, as well as any  
13 other questions we may get. Mr. Ettinger, please.

14 MR. ETTINGER: Also, I guess this is  
15 another question. Boron and fluoride, it was  
16 apparently our understanding elected to keep the  
17 Lake Michigan standards for boron and fluoride as to  
18 drinking water supplies. And as to manganese, the  
19 Lake Michigan standards were kept for manganese.  
20 However, we raised the manganese drinking water  
21 standard.

22 We have a question as to why  
23 there's -- how we would justify the difference in  
24 handling of manganese versus boron and fluoride

1 vis-a-vis the Lake Michigan standards and the  
2 drinking water standards. That, again, is a  
3 question that perhaps was already raised, and I  
4 apologize, but that was another question we have.

5 The last one is with regard to the  
6 clarification of the method to be used to determine  
7 cyanide, what percentage typically of WAD -- I'm  
8 trying to remember what that stands for -- what is  
9 the typical percentage of WAD of total cyanide, what  
10 percentage typically of -- is it week available?  
11 Week associable -- what percentage typically is  
12 available cyanide of total cyanide, and what measure  
13 of cyanide is used in toxicity testing.

14 My final question would be to  
15 whether the agency is now looking at the most recent  
16 detection methods for cyanide.

17 MS. CROWLEY: I'm sorry. I didn't  
18 hear the last word.

19 MR. ETTINGER: I'm sorry. Is the  
20 Agency now using the latest USEPA approved detection  
21 method for cyanide.

22 MS. CROWLEY: Thank you.

23 MR. ETTINGER: That's all my  
24 questions.

1 MS. WILLIAMS: And one thing -- I  
2 mean, I just -- to update for the record for the  
3 board, that was one of the issues that the board  
4 raised about how we had come up with the methods for  
5 cyanide, and that's something we're developing a  
6 more detailed response that may involve --  
7 suggesting to change our original portfolio on that.

8 But we were trying to get all the  
9 responses put together. Most of them we are  
10 gathering data and citations for the board, and we  
11 should be done with them soon.

12 MR. ETTINGER: And having been part of  
13 some long PCB proceedings, I don't wish to  
14 necessarily delay this, but we will read their  
15 responses, and if questions are raised by that, we  
16 may request some further proceedings. I'm not  
17 saying that's going to happen. I just don't want  
18 anyone to express shock later when we do -- if we  
19 do.

20 MS. CROWLEY: Are there any other  
21 questions or comments at this point? It does not  
22 appear that there are, so we now get into the "what  
23 happens next" phase of this.

24 Today we need to set a date for

1 the closing of post hearing comments. Following the  
2 close of the comment period, the board will make a  
3 decision as to whether and how the proposal will  
4 proceed.

5 As we've explained earlier in this  
6 proceeding, the board must follow the rulemaking  
7 steps under the Environmental Protection Act and  
8 under the Illinois Administrative Procedure Act, the  
9 APA requires that the board publish proposed rules  
10 in the Illinois register and receive public comment  
11 periods for at least 35 days after publication.

12 So the board will consider  
13 everything that is produced as a result of the  
14 questions asked at the last hearing, today's  
15 hearing, and will then publish an order of some  
16 sort. The typical post hearing comment period is  
17 14 days, and transcripts are due to the board from  
18 the court reporter by the eighth business day after  
19 a hearing.

20 We'll go off the record for a  
21 moment.

22 (Whereupon, a discussion was had  
23 off the record.)

24 MS. CROWLEY: We'll go back on the



1 record.

2 We've had a little bit of a  
3 discussion as to what would be agreeable public  
4 comment dates. The Agency has stated that it  
5 believes it can get its responses to questions asked  
6 at both hearings and anything else it may wish to  
7 say in by August 19th, and any person's responses to  
8 the Agency's statements or questions or responsive  
9 comments would be due August 9th.

10 MR. ETTINGER: September.

11 MS. CROWLEY: September 9th. Thank  
12 you. And if there is nothing else, then the hearing  
13 is adjourned. Thank you all very much.

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1 STATE OF ILLINOIS )  
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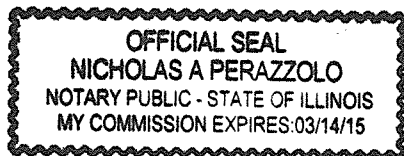
24

REBECCA A. GRAZIANO, being first  
duly sworn on oath, says that she is a court  
reporter doing business in the City of Chicago, that  
she reported in shorthand the proceedings given at  
the taking of said hearing, and that the foregoing  
is a true and correct transcript of her shorthand  
notes so taken as aforesaid, and contains all the  
proceedings given at said hearing.

*Rebecca Graziano*  
REBECCA A. GRAZIANO, CSR  
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Chicago, Illinois 60603  
License No.: 084-004659

SUBSCRIBED AND SWORN TO  
before me this 2nd day  
of August, A.D., 2011.

*Nicholas Perazzo*  
Notary Public



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