

1 IN THE MATTER OF:)
)
 2 WATER QUALITY STANDARDS AND)
 EFFLUENT LIMITATIONS FOR THE) No. R08-9
 3 CHICAGO AREA WATERWAY SYSTEM)
 AND THE LOWER DES PLAINES RIVER:)
 4 PROPOSED AMENDMENTS TO 35 ILL.)
 ADM. Code Parts 301, 302, 303)
 5 and 304.)

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8 TRANSCRIPT OF PROCEEDINGS held in the
 9 above-entitled cause before Hearing Officer Marie
 10 Tipsord, taken before Tamara Manganiello, RPR, at
 11 100 West Randolph Street, Room 9-040, Chicago,
 12 Illinois, on the 25th day of September, A.D., 2008,
 13 commencing at 9:08 a.m.

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1 APPEARANCES

2 ILLINOIS POLLUTION CONTROL BOARD:
3 Ms. Marie Tipsord, Hearing Officer
4 Ms. Alisa Liu, P.E., Environmental Scientist
5 Mr. Anand Rao, Senior Environmental Scientist
6 Mr. Tanner Girard, Acting Chairman
7 Mr. Nicholas Melas
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35 Water Reclamation District of Greater
36 Chicago

1 HEARING OFFICER TIPSORD: Good
2 morning. My name is Marie Tipsord and I am
3 the Board's hearing officer in these
4 proceedings entitled Water Quality Standards
5 and Effluent Limitations for the Chicago Area
6 Waterway System and Lower Des Plaines River,
7 Proposed Amendments to 35 Ill. Admin. Code
8 301, 302, 303 and 304. This is docket number
9 R08-9.

10 To my immediate right is
11 Dr. Tanner Girard, the presiding Board member
12 on this matter. To his immediate right is
13 Board member Nicholas J. Melas and Board
14 member Andrea Moore will be joining us.

15 To my far left is Board member
16 Thomas Johnson. To my immediate left, Anand
17 Rao, and to his left, Alisa Liu from our
18 technical staff.

19 This is the third day in our fifth
20 set, which someone tells me is day 17 -- is
21 that correct -- of this hearing. We will
22 continue today hearing the testimony from the
23 District and we will begin with Adrienne
24 Nemura, who has been sworn in already.

1 MR. ANDES: And, Ms. Tipsord, if I can
2 add a couple of things for the record to
3 respond to issues raised yesterday?

4 HEARING OFFICER TIPSORD: Please.

5 MR. ANDES: We're in the process of
6 compiling and copying materials responsive to
7 a number of the information requests
8 yesterday. Some of them may be available
9 later today and we will have those for the
10 parties.

11 Two things that we do have now,
12 one question was asked concerning the
13 Chesapeake Bay and the specific UAA factors
14 that were used there. And we have -- the
15 Chesapeake Bay documents are voluminous. We
16 can say -- I do have a link to the Chesapeake
17 Bay documents for the UAA.

18 It does make clear that the two
19 factors that were addressed there were
20 natural conditions that may prevent
21 attainment of current designated uses as well
22 as human cause conditions that cannot be
23 remedied which appear to prevent attainment
24 of current designated uses. And I have

1 copies of the link for that voluminous
2 document.

3 Also, one of the issues that I
4 know we ended with some confusion about was
5 the precise difference between data and
6 estimates and how those terms were used in
7 attachment four to Dr. Rijal's testimony.

8 And to assist in explaining how
9 data and estimates were derived, we had
10 Dr. Dennison generate a very brief and fairly
11 simple explanation of that analytical
12 process, which we can provide for the record.
13 And he can be available for cross examination
14 regarding this document. It has as
15 attachments to it Figure 2 and Figure 3 from
16 Attachment 4 because it references those two
17 attachments.

18 HEARING OFFICER TIPSORD: Let's first
19 mark the link as Exhibit 118, if there's no
20 objection. Seeing none, it's Exhibit 118.

21 Can someone close that door?

22 Thanks, Cecil.

23 Two pages each?

24 MR. ANDES: Yes. And then two

1 attachments.

2 (Document tendered to the
3 Hearing Officer.)

4 HEARING OFFICER TIPSORD: Two pages
5 and then two attachments.

6 I'm going to take the statement
7 which begins, "please refer to report number
8 05-15 for figures and table numbers," and the
9 second page I was handed begins, "the
10 difference between the wet weather fecal
11 coliform."

12 And then figure two and figure
13 three we will mark all of those as
14 Exhibit 119, if there's no objection. Seeing
15 none, those are Exhibit 119.

16 And then are we ready to go?
17 Ms. Williams, please.

18 MS. WILLIAMS: Good morning,
19 Ms. Nemura. Thank you for joining us again.

20 For the record, my name is Debbie
21 Williams. I'm here on behalf of the Illinois
22 EPA. And since your counsel has been so good
23 at providing handouts, I think I will start
24 with my pre-filed question 30. In question

1 30 I ask, in attachment three to your
2 testimony you cite a letter from US EPA as US
3 EPA, paren, 2008, could you please provide a
4 copy of this letter?

5 MR. ANDES: We will provide a copy. I
6 thought I had a copy. I don't have it with
7 us, but we will submit that later this
8 afternoon.

9 MS. WILLIAMS: Thanks. In reviewing
10 the questions, I believe I skipped over
11 question six yesterday as I was skipping over
12 questions that I thought were aquatic life
13 related.

14 So question six asked could you
15 please elaborate on your role for NACWA,
16 N-A-C-W-A, which I believe stands for
17 National Association of Clean Water Agencies.

18 THE WITNESS: Yes. I served on an
19 expert panel where I assisted NACWA's expert
20 in the case in preparing for her testimony
21 and also in advising NACWA's counsel on
22 negotiating a settlement agreement.

23 MS. WILLIAMS: Can you please be a
24 little more specific about what areas or

1 subject matters that advice was centered on?

2 THE WITNESS: Specifically, I reviewed
3 EPA's critical past science plan and the
4 associated studies that they included in that
5 plan that they were going to perform or had
6 performed to inform the development of new
7 primary contact recreation criteria as well
8 as their schedule.

9 And having participated in the
10 February 2008 stakeholder meeting, I
11 identified a number of important aspects that
12 would allow informed decision making with
13 full participation of scientific experts as
14 well as affected stake holders.

15 MS. WILLIAMS: I think it may be
16 logical to move on to question 15 next then
17 which states that Page 4, paragraph two of
18 your testimony states, quote, there has been
19 long-standing concern as well as confusion
20 over the validity and implementation of US
21 EPA's 1986 bacteria criteria. Can you talk
22 to us about what you mean here about the
23 concerns?

24 THE WITNESS: Well, that statement was

1 intended to be a general statement about the
2 fact that the E. coli criteria from 1986
3 are -- don't offer the scientific certainty
4 that many would like to see. So it was more
5 of a general statement as opposed to anything
6 specific. But if you'd like me to talk about
7 the specific concerns --

8 MS. WILLIAMS: Why don't you just
9 briefly do that? We've talked in some detail
10 about some specifics, but I would appreciate
11 your sort of big picture look at that.

12 THE WITNESS: Well, the biggest
13 problem associated with the '86 criteria is
14 that some of the epidemiological studies that
15 were used to formulate the numeric criteria
16 were not statistically significant and they
17 were studies that were conducted quite a
18 while ago. And today's epidemiological
19 studies are following much more rigorous
20 protocols.

21 The other big concern is that EPA
22 struggled over many years trying to provide
23 information on how those criteria should be
24 implemented. They went through numerous

1 drafts of their implementation guidance and
2 had sort of conflicting statements throughout
3 and could never finalize that implementation
4 guidance.

5 And it wasn't until the Beach Act
6 where EPA did a thorough review of the
7 scientific basis for the '86 criteria and
8 actually came out with two fact sheets that
9 addressed some serious implementation
10 problems having to do with how the geometric
11 means should be applied and how the single
12 sample maximum should be used in regulatory
13 programs and decisions about, say, beach
14 closures.

15 MS. WILLIAMS: Is it your
16 understanding that they ended up revoking
17 some of their guidance as a result of
18 problems? I'm not sure if I'm stating this
19 accurately or not. You probably understand
20 better what action they took as a result.

21 THE WITNESS: Well, they had developed
22 two drafts of the implementation guidance
23 which remain draft, and one is actually not
24 accessible on their website, although it's

1 widely circulated in the community.

2 So I wouldn't say that they
3 revoked anything, it's more that they failed
4 to issue those guidance documents. But they
5 did issue those two fact sheets, which I
6 recommended, which I think were valuable for
7 everybody that's involved in evaluating
8 recreational use criteria.

9 MS. WILLIAMS: When you -- in the
10 statement that I read as part of this
11 question, you point to confusion, you say
12 there's been long-standing concern as well as
13 confusion. Does your answer explain the
14 confusion or did you mean something else by
15 confusion?

16 THE WITNESS: Well, what I meant by
17 confusion is when the '86 criteria were
18 promulgated by EPA, many states decided to
19 adopt those federal criteria. Some states
20 interpreted the single sample maximum as a
21 value that should never be exceeded, for
22 example, Indiana.

23 Other states said, you know, we're
24 going to have a difficult time switching to

1 E. Coli criteria so they kept their fecal
2 coliform criteria.

3 And there's also confusion about
4 how the geometric means should be applied.
5 The epidemiological studies that the '86
6 criteria were based on looked at a geometric
7 mean across an entire recreation season. So,
8 for example, when Missouri just recently
9 adopted the E. Coli criteria, they adopted it
10 for the entire recreation season. So you
11 average all of the samples from May through
12 October to calculate your geometric mean and
13 then you assess whether that exceeds the '86
14 criteria or not.

15 Other states said, well, no, we're
16 going to apply the geometric mean on a
17 monthly basis, and other states said, no,
18 we're going to apply it on an every 30-day
19 period, so, you know, May 1 through May 30
20 might be one period, May 2nd through June 1st
21 would be another period and so forth.

22 MS. WILLIAMS: Would you agree that
23 once US EPA is able to develop a revised
24 criteria document for bacteria pathogens,

1 whatever it turns out to be, that there would
2 be a need for guidance on implementation from
3 US EPA, as well?

4 THE WITNESS: Yes. And they have
5 agreed to include that in their schedule for
6 development of the criteria.

7 MR. ETTINGER: Excuse me, it's Albert
8 Ettinger. Can I just follow-up on your last
9 answer? You talked about averages and the
10 geometric mean over certain periods. What
11 was that -- what's that specifically for,
12 assessing whether the waters impair under
13 303D or what would you -- what are you
14 talking about there in terms of how to apply
15 it?

16 THE WITNESS: With the geometric mean
17 criterion that would be written into a
18 state's water quality standards, the state
19 would then need to use that in their 305B and
20 303D listing process or their 305B assessment
21 and 303 listing process.

22 The geometric would also be used
23 to calculate TMDLs as the target for the
24 total maximum daily load. And the geometric

1 mean would also be used as an instream
2 criterion that a -- when the state goes to
3 write an NPDS permit would have to assure
4 that that criterion would not be violated by
5 that discharge.

6 MR. ETTINGER: Now the mean over a
7 period, that wouldn't be used to decide
8 whether it was safe to be on a beach on a
9 particular day, would it?

10 THE WITNESS: The -- in order to make
11 an assessment of whether a beach should
12 remain open for contact recreation or a beach
13 should stay closed and not be used for
14 contact recreation, there needs to be a
15 measurement that can be taken. And as part
16 of this lawsuit on the Beach Act, the concern
17 was specifically people want to know if I go
18 to a beach, is it safe.

19 In EPA's fact sheet on the single
20 sample maximum, they clarified that that
21 single sample maximum is appropriate for
22 decisions about closing beaches.

23 MR. ETTINGER: It wouldn't be much
24 comfort for me to know that, on average, it's

1 safe to swim on a beach if the day I'm
2 intending to swim it's got a very high level
3 of pathogens or indicators; is that correct?

4 THE WITNESS: I'm sorry?

5 MR. ETTINGER: It wouldn't be much
6 comfort to me to know that, on average, it's
7 safe to swim on a beach if on the particular
8 day I was going to swim, it wasn't safe?

9 THE WITNESS: That is why you have a
10 value that you make for decisions about beach
11 closure or not.

12 MR. ETTINGER: And that's based on a
13 single sample maximum?

14 THE WITNESS: It depends on which --
15 well, in EPA's '86 criteria they suggest that
16 that single sample maximum is the appropriate
17 value for making decisions. How a particular
18 beach manager applies that single sample
19 maximum may vary.

20 MR. ETTINGER: How would it vary?

21 THE WITNESS: It depends on sampling
22 protocol. If you go out to a particular spot
23 and you take a single sample, the E. Coli
24 that you would measure in that particular

1 sample may not be representative of, say, the
2 E. Coli over at this location, so you may
3 decide that you want to take multiple samples
4 at your beach and average them together and
5 then compare that to the single sample
6 maximum.

7 MR. ETTINGER: Okay. But nobody is
8 saying that you should take an average over
9 some monthly period in determining whether or
10 not it's safe to be on a beach in a
11 particular day?

12 THE WITNESS: Not on a particular day.
13 But in terms of -- in terms of whether a
14 particular recreational area is violating the
15 criteria, then the geometric mean is applied.

16 A good example of that is if you
17 look at the Great Lakes beaches, the
18 governors are thrilled when they can say this
19 beach was only closed for ten days. And
20 in -- because of just reality of bacteria in
21 our environment, it exists, okay, whether
22 it's from anthropogenic sources or
23 non-anthropogenic sources such as wildlife.

24 So if you have a beach that's

1 closed for just ten days and that's viewed as
2 achieving our water quality goals. You have
3 a beach that's closed, say, 50 percent of the
4 recreation season, that obviously has a
5 chronic issue. So we have to consider that
6 in how we view the recreational use criteria.

7 MR. ETTINGER: I'm a little confused
8 then. I thought yesterday you said we needed
9 wet weather standards. But let's say we had
10 a beach that was perfectly safe 350 days a
11 year, but because of wet weather conditions
12 15 days a year it had high pathogen levels.
13 Do we have a problem or not?

14 THE WITNESS: When I refer to wet
15 weather standards, I was referring
16 specifically to the Chicago Area Waterways,
17 which is not a beach.

18 And under a use-attainability
19 analysis, you need to assess what the highest
20 attainable use is. And the fact that we have
21 wet weather discharges to the Chicago Area
22 Waterways, the fact that it is intentionally
23 managed to deal with getting the storm water
24 out of the city under rainfall conditions so

1 that the city doesn't flood, and you have all
2 the accompanying problems with that, that in
3 setting -- in doing the UAA and establishing
4 what the highest attainable use is, my point
5 is that under dry weather conditions the
6 highest attainable use is maybe different
7 than what the highest attainable use is under
8 wet weather conditions because you can't make
9 those wet weather problems go away.

10 MR. ETTINGER: Well, you might not be
11 able to make them -- the wet weather problems
12 go away in my hypothetical beach. Would you
13 have a wet weather standard for that beach?

14 THE WITNESS: It's such a hypothetical
15 question, I'm not clear how to answer it.

16 MR. ETTINGER: Well, let's make it
17 less hypothetical. There are beaches on Lake
18 Michigan which are occasionally closed
19 because of wet weather events; are you aware
20 of that?

21 THE WITNESS: Yes.

22 MR. ETTINGER: Okay. Do you believe
23 we need a wet weather standard for those
24 beaches on Lake Michigan?

1 THE WITNESS: You would have to look
2 at that beach. You would have to look at the
3 reasons that the beach is being closed and
4 then you would have to assess whether you
5 could remedy those causes. You would have to
6 do a use attainability analysis for that
7 beach and I don't have the information on
8 what the sources are.

9 It's also quite possible that the
10 reason the beach is being closed is because
11 of bacteria that's in the sand that gets
12 resuspended because of, you know, wild foul
13 that is, you know, on the beach and, you
14 know, causing problems. So whether you need
15 a wet weather standard for that beach, I
16 can't answer that.

17 MR. ETTINGER: Let us take a
18 hypothetical example, it has nothing to do
19 with our situation necessarily. Let's say we
20 had beaches which were periodically closed in
21 part because of a necessity of opening locks
22 on a certain large lake to avoid flooding in
23 a certain large municipal area.

24 MR. ANDES: This has no relevance to

1 this situation?

2 MR. ETTINGER: I'm asking a
3 hypothetical question. Under those
4 circumstances, might you consider wet weather
5 standards for those beaches?

6 THE WITNESS: As I said before, you
7 would have to do a use-attainability analysis
8 for that beach and look at whether those
9 problems could be remedied.

10 MR. ETTINGER: So I guess the answer
11 to my question is, yes, you might want to
12 consider doing a use-attainability analysis
13 to decide whether you needed a wet weather
14 standard for that beach?

15 THE WITNESS: Yes.

16 MR. ETTINGER: Thank you.

17 MS. WILLIAMS: When you just testified
18 that the highest attainable use in wet
19 weather may be different than dry weather,
20 might it be different in light rain weather?
21 Is it just these two categories? Could it be
22 that the highest attainable use was different
23 in the light rain than in no rain?

24 THE WITNESS: How would you define

1 light rain?

2 MS. WILLIAMS: As it was defined in
3 the District's reports that we talked about
4 yesterday.

5 HEARING OFFICER TIPSORD: Deb, we're
6 getting -- we have trains going by and when
7 you drop your voice, we can't hear you.

8 MS. WILLIAMS: Do you need me to
9 repeat the last question?

10 HEARING OFFICER TIPSORD: I didn't get
11 that whole last question.

12 MS. WILLIAMS: I would define light
13 rain similarly to Dr. Rijal's definition
14 yesterday. Do you have it, Fred, to show
15 her?

16 MR. ANDES: I'm looking.

17 HEARING OFFICER TIPSORD: I believe
18 she defined light rain as rain that
19 occurred -- she classified light rain events
20 as rain that occurred one day before -- one
21 of the two days before --

22 MR. ANDES: Or the day of.

23 HEARING OFFICER TIPSORD: -- or the
24 day or the day after, but only one of the

1 three sample days, I believe. I'm getting a
2 nod from the audience. Dr. Rijal is with us
3 and she is sworn in. Dr. Rijal, could you
4 fill him in?

5 DR. RIJAL: (Inaudible.)

6 THE COURT REPORTER: I can't hear her.

7 DR. RIJAL: A light rain was defined
8 as any measurable rainfall that occurred on
9 the same day or on one or two days prior to
10 routine fecal coliform sampling from
11 monitoring station.

12 HEARING OFFICER TIPSORD: Thank you,
13 Dr. Rijal.

14 DR. RIJAL: And usually in a light
15 rain we have ranges between .1 to .4 inches
16 of rain.

17 MS. WILLIAMS: I'm ready.

18 THE WITNESS: You could look at
19 differences between light rains and heavy
20 rains, but if we go back to my basic
21 testimony, which is the Agency didn't
22 consider the wet weather impacts in proposing
23 the revised designated uses without the
24 numeric criterion and that the Agency

1 basically said that it's clear that as a
2 result of CSOs during wet weather that any
3 recreational activity in waterway was
4 unhealthy during periods when raw sewage was
5 present. I don't know how --

6 MS. WILLIAMS: Right. That
7 statement --

8 THE WITNESS: So I don't really know
9 how to address your question.

10 MS. WILLIAMS: Okay. I will explain.
11 That statement refers specifically to
12 something I would consider heavy rain or
13 clearly wet weather, right, we don't have CSO
14 overflows into the system in that example.

15 And I'm trying to understand based
16 on your recommendation how many categories of
17 things do you think we have failed to
18 consider and would one of them be light rain
19 that wouldn't be covered by a statement like
20 that?

21 THE WITNESS: Well, I think the
22 specific question was -- that is relevant is
23 does that light rain cause a wet weather
24 discharge?

1 MS. WILLIAMS: Okay. And by wet
2 weather discharge, we mean from the CSOs?

3 THE WITNESS: It could apply to the
4 CSOs. It could also apply to municipal storm
5 water discharge that will also contribute
6 pathogens to the waterways.

7 MS. WILLIAMS: Could it apply to just
8 runoff from the bank?

9 THE WITNESS: I haven't looked at the
10 non-point source runoff issues, so I can't
11 address that. I was specifically addressing
12 point sources which include CSOs and
13 municipal storm water.

14 MS. WILLIAMS: And are those the
15 specific sources you're suggesting need to be
16 considered?

17 THE WITNESS: Yes.

18 MS. WILLIAMS: Those are the universe
19 of sources, sources designated as point
20 sources under the Clean Water Act as opposed
21 to non-point sources?

22 THE WITNESS: In terms of dealing with
23 whether -- it's my recommendation that wet
24 weather conditions need to be considered in

1 setting uses and criteria for the waterways.

2 MS. WILLIAMS: I'm trying to
3 understand what those are to you, those wet
4 weather conditions.

5 Are they when non-point sources as
6 well as point sources are impacting or just
7 when rain is heavy enough to have point
8 source discharges to the waterways?

9 THE WITNESS: I haven't specifically
10 assessed that.

11 MS. WILLIAMS: I think she answered.
12 That's fine.

13 HEARING OFFICER TIPSORD: Mr. Harley,
14 you have a follow-up?

15 MR. HARLEY: Good morning. Keith
16 Harley. Could you have a wet weather event
17 which did not cause any CSO overflows?

18 THE WITNESS: I haven't -- I'm not
19 familiar enough with the correlation between
20 rainfall and CSO discharges to answer that
21 question.

22 MR. HARLEY: In light of the answer
23 that you just gave, what would be the basis
24 for a wet weather standard in the absence of

1 knowing whether or not it would cause a CSO
2 overflow in the first place?

3 THE WITNESS: I'm confused by the
4 question. There is information that is out
5 there about rainfall, when CSOs occur, that
6 could be used to form the development of a
7 wet weather standard. And I can't
8 specifically address, you know, what that
9 would look like because I haven't evaluated
10 it in any level of detail.

11 MR. HARLEY: But the factor of CSO
12 overflow would be relevant to that
13 determination as well as just the level of
14 precipitation?

15 THE WITNESS: It could be, yes.

16 MR. HARLEY: May I continue with a
17 couple more questions, please?

18 HEARING OFFICER TIPSORD: Sure.

19 MR. HARLEY: In terms of controlling
20 combine sewer overflows, combined sewer
21 overflows are subject to a regulatory system;
22 is that correct?

23 THE WITNESS: Yes.

24 MR. HARLEY: And part of that

1 regulatory system is designed to minimize
2 combined sewer overflows; is that correct?

3 THE WITNESS: The regulatory system
4 is -- was established in 1994 as the combined
5 sewer overflow policy recognizing that
6 combined sewer systems were, by nature,
7 designed to overflow under some conditions.

8 The CSO policy indicates that CSO
9 controls should be based on a number of
10 factors, including attainment of water
11 quality standards, including cost
12 effectiveness and including issues associated
13 with financial capability.

14 So to say that the CSO policy is
15 as simple to just minimize CSOs I think
16 misses the reason that we have a CSO policy.

17 MR. HARLEY: Would your answer change
18 in light of the obligation of CSO operators
19 to have long term control plans?

20 THE WITNESS: No.

21 MR. HARLEY: So, in your opinion, it
22 is not the goal of CSO regulations to
23 minimize CSO overflow events?

24 THE WITNESS: As I said before, there

1 are a number of objectives of the CSO policy
2 and all of those objectives need to be
3 considered in how a community develops their
4 long-term control plan.

5 MR. HARLEY: So as you testified here
6 today, you are not prepared to testify that
7 the goal of CSO regulations is to minimize
8 overflow events?

9 THE WITNESS: Are you familiar with
10 the concept of knee-of-the-curve?

11 MR. HARLEY: I'm not testifying. I
12 can't testify.

13 THE WITNESS: As I said before,
14 there's a number of goals that the CSO policy
15 was design to meet. And to just simplify it
16 down to say that the goal of the CSO policy
17 is to minimize CSOs is not accurate.

18 MR. ANDES: We'd be glad to provide a
19 copy of that policy, if necessary.

20 MR. HARLEY: I've got as far as
21 I've --

22 MS. WILLIAMS: Ms. Nemura, have you
23 heard of the nine minimum controls?

24 THE WITNESS: Yes.

1 MS. WILLIAMS: Is there a requirement
2 in the nine minimum controls that CSO
3 communities attempt to minimize CSO
4 discharges?

5 THE WITNESS: The nine minimum
6 controls are technology-based controls. And
7 one of the nine minimum controls is to, say,
8 maximize treatment at the wastewater
9 treatment plant.

10 So you could say that in the
11 extent that you can do that, you are helping
12 to minimize the combined sewer overflow
13 discharge.

14 When you say apply a low-cost
15 technology at a CSO if you can raise the weir
16 height to get more of that CSO to the
17 treatment plant, that is an attempt to
18 minimize that individual CSO.

19 But if you were to interpret the
20 CSO policy as the objective is to -- that the
21 single --

22 MS. WILLIAMS: I didn't ask that.
23 That wasn't my question. Thanks.

24 HEARING OFFICER TIPSORD: Off the

1 record for just a second.

2 (Whereupon, a discussion
3 was had off the record.)

4 HEARING OFFICER TIPSORD: Let's go
5 back on the record.

6 MS. WILLIAMS: In question 14 I ask,
7 you testify on Page 4, quote, if no
8 regulatory target is provided to address wet
9 weather conditions, the public will not know
10 when the water is safe for recreation and
11 when it is not.

12 Can you explain how numeric
13 bacteria criteria would address this concern?

14 THE WITNESS: The numeric criteria are
15 needed to define what the acceptable level of
16 bacteria is in the waterways that would still
17 protect the designated use.

18 MS. WILLIAMS: How would a wet weather
19 exception from a numeric bacteria criteria
20 help the public know when it's unsafe to use
21 the CAWS?

22 THE WITNESS: If the water quality
23 standards show that the proposed uses are not
24 attainable under wet weather conditions, then

1 it's clear to the public that the water body
2 is not suitable for that use under those
3 conditions.

4 So if I go to the water quality
5 standard and I see incidental contact
6 recreation and I don't see anything that
7 says, by the way, there is, you know, a
8 variance or a special CSO impacted category,
9 then I would interpret that as I can use the
10 waterways for incidental contact recreation
11 under all conditions.

12 MS. WILLIAMS: Do you understand what
13 the current recreational use designation and
14 criteria are for the CAWS?

15 THE WITNESS: My focus was
16 specifically on the proposed standards.

17 MS. WILLIAMS: Do you know whether or
18 not -- well, do you know what it is?

19 (Whereupon, a discussion
20 was had off the record.)

21 THE WITNESS: I haven't gone into any
22 analysis of the proposed standards -- or the
23 current standards, sorry.

24 MS. WILLIAMS: Thanks, Fred.

1 MR. ANDES: You're welcome.

2 MS. WILLIAMS: What I'm trying to
3 understand is if you would have the same
4 concern today based on the level of
5 recreation in the CAWS and based on the
6 current designation of these waters? Do you
7 know that today or are you not able to answer
8 that question?

9 THE WITNESS: Well, my concern is that
10 if you're going to change the standard, that
11 you do it right.

12 MS. WILLIAMS: So you're not concerned
13 if the current standard doesn't provide the
14 public information about knowing whether the
15 current level of recreation is safe?

16 THE WITNESS: I haven't looked at
17 that.

18 MS. WILLIAMS: Okay.

19 MR. ETTINGER: Well, hypothetically,
20 let's assume that under the current standard
21 the use is not being met much of the time;
22 what would you say should be done?

23 THE WITNESS: What do you mean by much
24 of the time?

1 MR. ETTINGER: Well, I'd rather leave
2 it hypothetical. So let's say 251 days a
3 year.

4 THE WITNESS: Due to what factors?

5 MR. ETTINGER: Discharges from sewage
6 treatment plants, CSOs, other factors.

7 THE WITNESS: If a use is not being
8 met, then it would be appropriate to assess
9 why the use is not being met and what is
10 attainable, which is the UAA.

11 MR. ETTINGER: Okay. I'm going to use
12 an aquatic life example here, but this is to
13 make a general -- raise a general question as
14 to what the witness feels is appropriate as
15 to a water use designation.

16 HEARING OFFICER TIPSORD:
17 Mr. Ettinger, we're having the same problem,
18 when the trains go by, we can't hear you.

19 MR. ETTINGER: Okay. The people next
20 to me should probably use ear plugs then.

21 My example is going to be one of
22 an aquatic life use designation, but it is to
23 raise a question regarding appropriate
24 designation of waterways in general.

1 So let's assume, hypothetically,
2 that under a current dissolved oxygen
3 standard, dissolved oxygen is not supposed to
4 go under 3.0 milligrams per liter but at
5 times it goes well below that. Is that
6 something that a regulatory agency should
7 look at and consider as needing a potential
8 use re-designation?

9 THE WITNESS: The Agency would need to
10 understand why that criterion is not being
11 met. And if it was a simple fix to meet that
12 criterion, the Agency could say these are the
13 actions that need to be taken to meet that
14 default criterion. They could do a total
15 maximum daily load, they could, you know,
16 look at NPDS discharges and do waste load
17 allocations.

18 However, if that default
19 criterion -- if it's not easy to fix those
20 other sources, then the Agency would more
21 than likely choose to do a use attainability
22 analysis and would need to look at all the
23 factors.

24 MR. ETTINGER: Would it be tolerable

1 for the agency to simply issue permits to
2 dischargers that allow them to cause or
3 contribute to violations of the existing use
4 designation and the criteria applicable to
5 it?

6 THE WITNESS: A permit is supposed to
7 ensure that water quality standards are met.
8 It depends on the particular language in the
9 permit. For combined sewer overflows, those
10 are specifically allowed to be permitted
11 under the CSO policy with the nine minimum
12 controls and the long-term control plan.

13 MR. ETTINGER: I thought you said
14 earlier, however, that the CSO policy
15 requires compliance with designated uses?

16 THE WITNESS: I don't know that I said
17 that. I said that under the CSO policy the
18 attainment of water quality standards,
19 whether they are current or revised water
20 quality standards, is a factor that needs to
21 be considered in development of the long-term
22 control plan.

23 MR. ETTINGER: So one can now grant a
24 permit for a CSO discharge which will allow

1 for the non-attainment of the current
2 designated use?

3 THE WITNESS: As I said, with the CSO
4 policy, which is now part of the Clean Water
5 Act, the CSOs are allowed to be permitted,
6 they are not considered to be the same as
7 waste water treatment plants. And under the
8 CSO policy you are supposed to assess whether
9 the current water quality standards can be
10 attained.

11 And if you can't attain them, then
12 you are to revise the water quality standards
13 so that the long-term control plan, when
14 implemented, will not result in violations of
15 the appropriate water quality standard.

16 MR. ETTINGER: So to get back to my
17 hypothetical, if hypothetically an agency was
18 faced with a situation in which its currently
19 designated uses were not being attained, it
20 would be necessary for it to do something,
21 consider TMDLs, look at a use attainability
22 analysis or pursue enforcement action, but it
23 couldn't simply wash its hand of the matter
24 and walk away?

1 THE WITNESS: I can't testify about
2 washing hands or enforcement actions.

3 MS. WILLIAMS: We've had a lot of
4 testimony about washing hands I think in
5 these hearings.

6 THE WITNESS: But what I can say is
7 that under EPA guidance, you can do a number
8 of options like you talked about, TMDLs, the
9 watershed approach, revising the water
10 quality standards, those are all available.

11 MR. ETTINGER: But is simply leaving
12 the current standards in place an option
13 available?

14 THE WITNESS: It could be.

15 MR. ETTINGER: Under what
16 circumstances could it be?

17 THE WITNESS: You could issue a
18 variance where the current standard stays in
19 place, but a variance exists and the public
20 knows that the variance exists. You could do
21 that.

22 MR. ETTINGER: Thank you.

23 HEARING OFFICER TIPSORD: Mr. Harley,
24 you had a follow-up?

1 MR. HARLEY: It was very helpful the
2 way that you just testified about some of the
3 measures which an agency could take.

4 Is one of the measures that an
5 agency could take to develop a
6 technology-based standard for a source which
7 causes or contributes to a pollutant being in
8 waters in excess of a water quality standard?

9 THE WITNESS: There are
10 technology-based standards for, say,
11 industries, like a particular category of
12 industry, dry cleaner discharge or whatever.

13 In terms of municipal discharges
14 for combined sewer overflows, the nine
15 minimum controls are the technology-based
16 standards. And the long-term control plan is
17 the water quality based standard.

18 MR. HARLEY: You testified earlier
19 that one of the objectives of the regulation
20 of CSOs was to create a system in which
21 during wet weather events more water is
22 directed towards centralized treatment
23 facilities and less water overflows; is that
24 a correct characterization of your testimony?

1 THE WITNESS: No.

2 MR. HARLEY: Could you describe during
3 wet weather events what the role of CSOs are
4 in relationship to wastewater treatment
5 facilities?

6 THE WITNESS: When combined sewer
7 systems were constructed, they were
8 constructed with a common sewer to intercept
9 runoff from the streets as well as to accept
10 the dry weather sanitary sewage and the idea
11 was to get all of that to the treatment
12 plant, which in many ways helps improve water
13 quality because you're getting some of that
14 storm water runoff, which is not clean, and
15 you're treating it at the treatment plant.

16 So the combined sewer system, by
17 nature, is -- includes the sewers, the pump
18 stations and the operation of the treatment
19 plant during wet weather. I don't know if
20 that answers your question.

21 MR. HARLEY: The idea is to get all
22 that to the treatment plant?

23 THE WITNESS: The idea is to get as
24 much as you can to the treatment plant.

1 MR. HARLEY: And so if you have a
2 technology-based standard requiring
3 disinfection at that treatment plant and you
4 have a well-functioning combined sewer
5 system, then during wet weather events in a
6 good system more of that wet weather will be
7 directed toward a sewage treatment plant?

8 THE WITNESS: I think your question
9 had two parts.

10 MR. HARLEY: Please, I'd be interested
11 in your opinion on both.

12 THE WITNESS: Under the CSO policy,
13 there is a presumptive approach where one of
14 the objectives under that presumptive
15 approach to show that you believe that you
16 will -- you will attain water quality
17 standards is, say, 85 percent capture of the
18 combined sewage. So that -- so capture and
19 treatment at your treatment plant.

20 MS. WILLIAMS: Does the presumptive
21 approach also include limitation on a certain
22 number of overflows per year?

23 THE WITNESS: It's an option.

24 MS. WILLIAMS: Can you explain what

1 that option would be?

2 THE WITNESS: Well, there's basically
3 three options under the presumptive air
4 approach. There's 85 percent capture of the
5 volume of combined sewage, there's 85 percent
6 capture of the mass loading of a pollutant
7 and then there is four to six overflows per
8 year plus an additional few at the agency's
9 discretion.

10 But the permittee is supposed to
11 evaluate a range of alternatives. And in
12 some communities we found that in terms of
13 water quality impacts, that that range may be
14 higher than four to six overflows per year.

15 MS. WILLIAMS: Are you familiar with
16 what's relied on in the District's long-term
17 control plan under the presumptive approach?

18 THE WITNESS: No.

19 MS. WILLIAMS: Did you hear me?

20 HEARING OFFICER TIPSORD: Yes, barely.

21 MS. WILLIAMS: So you don't know? You
22 don't know if they have an approved long-term
23 control plan and what approach they used?

24 THE WITNESS: It's my understanding in

1 the mid 1990s that TARP, the Tunnel and
2 Reservoir Project, was approved as a
3 long-term control plan.

4 MS. WILLIAMS: And you're not aware if
5 that approval was based on a number of
6 overflows per year?

7 THE WITNESS: I am not.

8 MS. WILLIAMS: Question 16 -- let me
9 know when you're ready. Are you ready?

10 THE WITNESS: (Witness nodding.)

11 MS. WILLIAMS: Page 6, Paragraph 2 of
12 your testimony states, IEPA did not document
13 that it considered the need to establish
14 realistic attainable targets for wet weather
15 conditions in its proposed rulemaking.

16 Can you tell me where
17 documentation of this information is
18 required?

19 THE WITNESS: That's a legal question
20 that I can't answer.

21 MS. WILLIAMS: Okay.

22 THE WITNESS: But I would say that,
23 you know, if you're going to do a UAA, the
24 purpose of doing that UAA is to establish the

1 highest attainable use. And if you know that
2 you can't achieve that use during wet
3 weather, then you should consider that.

4 MS. WILLIAMS: Can you repeat that
5 part, "if you know"? If you want the court
6 reporter to read it back, I can try that,
7 too.

8 THE WITNESS: If you know that the
9 proposed use is not attainable under wet
10 weather conditions, then you need to consider
11 that when you establish what the criteria
12 should be and the designated use should be.

13 MR. HARLEY: May I ask a question?

14 MS. WILLIAMS: Yes.

15 MR. HARLEY: If there is a wet weather
16 event but there is no CSO overflow, why
17 should there be a wet weather exemption
18 during that period?

19 THE WITNESS: Because of the unique
20 nature of the waterways where it's used for
21 flood control and conveyance of a lot of the
22 city's storm water to prevent flooding, such
23 as occurred with Ike, you might need to
24 consider wet weather events whether or not

1 there are CSOs.

2 MR. HARLEY: Even if all of the
3 precipitation derived from that wet weather
4 event were successfully confined within the
5 system without an overflow, you would still
6 need a wet weather exemption.

7 THE WITNESS: That's not what I'm
8 saying.

9 MR. HARLEY: Okay.

10 MS. WILLIAMS: Ms. Nemura, have you
11 reviewed the Chicago Area Waterway System UAA
12 document, it's Attachment B to the Agency's
13 Statement of Reasons?

14 THE WITNESS: Yes.

15 MS. WILLIAMS: Can you tell us whether
16 your company bid on the contract for that
17 project?

18 THE WITNESS: I don't know.

19 MS. WILLIAMS: You don't know?

20 MR. ANDES: Is there evidence you're
21 planning to produce on that?

22 MS. WILLIAMS: I want to get at a
23 specific point, which is what would you have
24 done differently had you received a contract

1 for the Chicago Area Waterway System UAA
2 study? I think that's a fair question.
3 That's the only point I'm trying to get at by
4 pointing this out. So if you can answer the
5 second question, we can skip --

6 MR. ANDES: Are you pointing something
7 out?

8 MS. WILLIAMS: What?

9 MR. ANDES: Are you pointing something
10 out?

11 HEARING OFFICER TIPSORD: I think
12 there's a question on the table and I don't
13 think that she -- I don't think she said,
14 your company did, didn't they? She asked if
15 her company did. I don't think she's
16 offering evidence in that question.

17 And I think the question now is
18 you've reviewed the UAA, what would you have
19 done differently. Irregardless of whether or
20 not you got a contract, what would you have
21 done differently under the UAA?

22 THE WITNESS: Given that my testimony
23 is directed at the appropriateness of wet
24 weather standards in this situation, I'd like

1 to limit my answer to that.

2 MS. WILLIAMS: That's fine.

3 THE WITNESS: Okay. I would have
4 ensured that there was attention given in the
5 use attainability analysis that could have
6 been used in the formulation of an
7 appropriate wet weather water quality
8 standard for this system.

9 MS. WILLIAMS: When you say attention,
10 can you be more specific?

11 THE WITNESS: I would have
12 specifically tried to evaluate how conditions
13 in the waterways were different under wet
14 weather conditions and what the factors were
15 that either -- that prevented the default
16 recreational uses from being attained.

17 MS. WILLIAMS: Can you just explain
18 for everyone else what you mean by default
19 recreational uses?

20 THE WITNESS: Default recreational use
21 is how we end up in the situation we're in
22 where we need to talk about wet weather
23 standards. It's the presumption that either
24 primary contact recreation -- which I think

1 the use attainability analysis indicated that
2 there was stakeholder agreement that primary
3 contact recreation was not appropriate.

4 So in this case, the default
5 recreational use might be some sort of
6 secondary contact recreation or some sort of
7 class of secondary contact recreation.

8 MS. WILLIAMS: Based on stakeholder
9 agreement, the default would change?

10 THE WITNESS: What I'm saying is
11 that -- what I'm saying is when you look at
12 standards and designated uses, the
13 presumption is generally if we agree that
14 this is an appropriate use, the presumption
15 is typically we can attain that use under all
16 conditions.

17 Combined sewer overflows and other
18 wet weather discharges as well as other
19 factors can make that use not attainable
20 under certain conditions. And so when I say
21 a default use, I'm referring to the broad
22 applicability of that use everywhere and all
23 the time.

24 MS. WILLIAMS: Is another way -- I

1 believe the way the Agency has tried to use
2 the terminology for what I think is the same
3 concept, Clean Water Act goal, recreational
4 use; would you say that terminology is the
5 same as you're using default use?

6 THE WITNESS: (Witness shaking head.)

7 MS. WILLIAMS: No?

8 THE WITNESS: No, I'm not.

9 MS. WILLIAMS: Then --

10 THE WITNESS: What I'm talking about
11 is when I say default, I mean, you know, can
12 you achieve whatever use you're designating
13 everywhere all the time? That's what I'm
14 referring to as default.

15 And what I'm saying in this case,
16 during the UAA process, you know, it was
17 agreed that primary contact recreation was
18 not the use that was going to be considered.

19 MS. WILLIAMS: So you don't think the
20 default use in the CAWS UAA was primary
21 contact?

22 THE WITNESS: I'm not saying that.

23 MS. WILLIAMS: You think -- would you
24 say the reverse, the default use in the CAWS

1 UAA was primary contact?

2 THE WITNESS: No.

3 MS. WILLIAMS: What was the default
4 use then?

5 THE WITNESS: I'm not saying that the
6 UAA established a default use. I'm using the
7 term default to refer to whatever use that
8 was considered to be attainable. Under the
9 UAA process, there was the presumption that
10 use would apply everywhere all the time.

11 MR. ANDES: So you're not using --
12 sometimes the term default is it construed to
13 mean the fishable, swimmable uses under the
14 water act; you are not using default in a
15 that way?

16 THE WITNESS: No.

17 MS. WILLIAMS: I'm glad Fred agrees
18 with me that sometimes it's used that way.

19 MR. ANDES: It is. She wasn't doing
20 it.

21 MS. WILLIAMS: I guess it's time to
22 get into some of the other states that you've
23 talked about in your testimony.

24 Question 17 is targeted at a quote

1 about Indiana. You testified that Indiana
2 allows for temporary suspension of the
3 recreational uses if CSO discharges are in
4 accordance with an approved long-term control
5 plan and a UAA.

6 The first part of the question
7 asks for the citations, which we did get
8 citations yesterday as Exhibit 117. And I
9 reviewed what you provided and it appears to
10 me that the citations provided under Indiana
11 are just generally the water quality
12 standards and permitting requirements under
13 their rules; would you agree with that?

14 THE WITNESS: Right. What happened
15 was that under Indiana's process they
16 established rules that establish a process
17 under which the state will change the water
18 quality standards for CSO communities when
19 they submit a long-term control plan and a
20 UAA.

21 MS. WILLIAMS: Okay. Can you provide
22 any more specific information about any
23 existing approved UAA long-term control plans
24 in Indiana that have been approved by Indiana

1 and US EPA at this point?

2 THE WITNESS: Many of the CSO
3 communities are in the process of completing
4 their long-term control plans and the UAAs.
5 Indianapolis is the first community that has
6 submitted a long-term control plan and a UAA
7 to the Indiana Department of Environmental
8 Management for approval. There is rulemaking
9 that is in the process of being done for
10 Indianapolis.

11 MR. ETTINGER: Excuse me, I have some
12 documents relating to those proceedings that
13 might be helpful to Ms. Williams and to the
14 witness. And I don't know whether I should
15 just mark them now or whether you would like
16 me to pass them out and let you look at them.

17 These are the specific rules and
18 other things that were, I believe, referenced
19 by Ms. Williams' question. How do you want
20 to handle that? I have questions on that,
21 too. Do you want to wait or do you want to
22 have the documents now?

23 HEARING OFFICER TIPSORD: If you think
24 they'll be helpful to answer the questions

1 now, we might as well go ahead and enter the
2 documents.

3 MR. ETTINGER: Okay. What are we up
4 to in terms of numbers?

5 HEARING OFFICER TIPSORD: 119, so
6 you're going to be number 120.

7 MR. ETTINGER: All right. 120 is a
8 March 17, 208 (sic) letter -- March 17, 2008
9 letter from Bruno Pigott to Tinka Hyde
10 regarding CSO rulemaking. What number did
11 you say these were?

12 MR. ANDES: That was 120.

13 HEARING OFFICER TIPSORD: Albert, if
14 you're going to hand out multiples, you need
15 to give them to me.

16 MR. ETTINGER: Yeah, why don't I give
17 them to you. 121 is a letter from Bharat
18 Mathur, acting regional administrator, to
19 Bruno Pigott dated June 9, 2008, approving
20 the Indiana submission.

21 And then that's probably enough
22 for now.

23 HEARING OFFICER TIPSORD: For the
24 record, if there's no objection, we will mark

1 as exhibit 120 the letter to Ms. Tinka Hyde
2 at US EPA from Bruno Pigott at Indiana
3 Department of Environmental Management as
4 Exhibit 120. Seeing none, that's
5 Exhibit 120.

6 And the two documents from Bharat
7 Mathur to Mr. Pigott dated June 9th, 2008,
8 will be marked as Exhibit 121, if there's no
9 objection. Seeing none, it's Exhibit 121.

10 MR. ANDES: I would just clarify for
11 the record that we had earlier agreed to
12 produce documents responsive to one of the
13 earlier requests to Ms. Nemura and those were
14 the documents we were going to produce. So
15 those were also responsive.

16 MS. WILLIAMS: All of them or which
17 ones?

18 MR. ANDES: I believe the issue was
19 regarding EPA's approval of the rulemaking in
20 Indiana. That was the document I was
21 planning to produce, which is now, I believe,
22 121.

23 MS. WILLIAMS: Thank you. Is there a
24 question pending?

1 HEARING OFFICER TIPSORD: No, I -- I'm
2 not sure actually.

3 MR. ANDES: I think Mr. Ettinger was
4 going toward a question maybe.

5 MR. ETTINGER: Well, actually,
6 Mr. Andes may have answered my question
7 inadvertently. Have you seen these documents
8 before?

9 THE WITNESS: Yes.

10 MR. ETTINGER: And are these the
11 submissions from the State of Indiana and the
12 rules enacted by the State of Indiana that
13 you were referring to in your prior
14 testimony?

15 THE WITNESS: Yes.

16 MR. ETTINGER: Okay. Now I'll let
17 Ms. Williams continue, if she wishes.

18 MS. WILLIAMS: That's fine. So is the
19 answer there are no -- Indiana doesn't have
20 any finalized water quality standard changes
21 under this provision that we're talking about
22 at this point?

23 THE WITNESS: Correct.

24 MS. WILLIAMS: And when you describe

1 in the quote that I read earlier, Indiana
2 allows for temporary suspension of
3 recreational uses if CSO discharges are in
4 accordance with an approved long-term control
5 plan and a UAA, please explain "in accordance
6 with an approved long-term control plan."

7 THE WITNESS: That means that you
8 develop your plan which says we're going to
9 undertake these specific projects over this
10 time period, and at the completion of those
11 projects that the system will be operated the
12 way the plan was written.

13 And that plan can change over
14 time. And then you're in -- once you've
15 implemented that, then you will be in
16 compliance with the water quality standards
17 because the water quality standards have been
18 modified to reflect what the target was in
19 the plan.

20 MS. WILLIAMS: So as we sit here today
21 would the discharges from the District's CSOs
22 be in accordance with the long-term control
23 plan as that term is used or would it have to
24 be fully implemented for the discharges to be

1 in accordance with the plan?

2 THE WITNESS: Well, I'm confused
3 because we're talking about Indiana and this
4 is Chicago.

5 MS. WILLIAMS: You talked about
6 Indiana in your testimony and, you're
7 correct, this is Chicago, I think. But I
8 don't know why you're confused.

9 THE WITNESS: But there's nothing in
10 Illinois' rules that apply to Chicago in
11 terms of wet weather and long-term control
12 plans.

13 MS. WILLIAMS: Right.

14 THE WITNESS: So I'm confused by your
15 question.

16 MS. WILLIAMS: Let's say that Indiana
17 took over Chicago, can you answer the
18 question then? How is that?

19 MR. ANDES: A very hypothetical
20 question.

21 THE WITNESS: If that were the case,
22 then the -- and I can't tell you what the
23 specifics are in Chicago's plan because I
24 haven't dealt with that.

1 MS. WILLIAMS: I understand.

2 THE WITNESS: But Chicago would
3 continue to construct projects to achieve
4 what the plan said was to be achieved.

5 And then under Indiana's rules, if
6 the both the long-term control plan and the
7 use attainability analysis, which would have
8 had I'd been hired to do it, included an
9 analysis of what would be attainable once the
10 plan was implemented, then Chicago would be
11 in compliance with Indiana's water quality
12 standards specific to the Chicago Area
13 Waterways. Because when Indiana changes
14 their rules, it's specific to that particular
15 CSO community, that CSO community's long-term
16 control plan and that CSO community -- or the
17 use attainability analysis which applies to
18 that water body.

19 MS. WILLIAMS: Do you have to be
20 finished taking the actions under your
21 long-term control plan for the discharges to
22 be considered in accordance with the plan?
23 Does that make sense?

24 THE WITNESS: Can you repeat the

1 question.

2 MS. WILLIAMS: I'm just trying to
3 understand the very basic point in the
4 terminology about whether you have to be
5 finished constructing, doing whatever you've
6 agreed to do in your long-term control plan
7 in order for the resulting discharges to be
8 in accordance with an approved plan?

9 THE WITNESS: You submit the long-term
10 control plan, you submit the UAA, you have
11 the change in the water quality standards
12 that specifically references the Chicago Area
13 Waterways. The long-term control plan has to
14 be fully implemented for those standards to
15 take effect.

16 As the community is building their
17 controls, that is all dealt with through
18 compliance schedules and the permit. So it's
19 all sort of one big package.

20 MS. WILLIAMS: And when you were
21 saying something about the plans change over
22 time, did you -- can you explain how that
23 would work in this context if the plan
24 changed?

1 THE WITNESS: Yeah. EPA did not --
2 US EPA did not intend for the long-term
3 control plan to necessarily be a static
4 document. There can be new technologies,
5 there can be more information that is learned
6 about how this system operates and what can
7 be done. And so a CSO community can update
8 its long-term control plan and then those
9 updates can be approved, as well.

10 MS. WILLIAMS: But they would have to
11 be approved, as well, if there was a change?

12 THE WITNESS: Yes.

13 MS. WILLIAMS: Okay.

14 MR. ETTINGER: Under the Indiana plan,
15 the CSO communities themselves do the UAAs;
16 is that correct?

17 THE WITNESS: Under -- there's no set
18 requirement that the community has to do the
19 UAA. The requirement is that the state has
20 to approve the UAA.

21 So the community could do the UAA
22 or the state could do the UAA under EPA's
23 guidance for developing long-term control
24 plans and reviewing and revising water

1 quality standards as appropriate.

2 Those two processes generally move
3 in parallel because much of the data that is
4 needed for both is gathered at the same time.

5 MR. ANDES: When you say both?

6 THE WITNESS: The long-term control
7 and the UAA.

8 MR. ETTINGER: I believe you
9 misunderstood my question. I wasn't asking
10 about the general federal regulations as to
11 who prepares the UAA. I was asking under the
12 scheme that Indiana has proposed and which
13 was approved by region five, it is the CSO
14 communities which are going to produce the
15 UAAs; is that true?

16 THE WITNESS: They prepare a document
17 that they submit that is then approved by the
18 state.

19 MR. ETTINGER: That's an important
20 clarification. So it's the communities
21 prepare the UAA proposal and then they submit
22 that to the state which then approves it or
23 disapproves it and then sends it to EPA; is
24 that correct?

1 THE WITNESS: Yes.

2 MR. ETTINGER: Thank you.

3 MS. WILLIAMS: Is there a limitation
4 in Indiana for how long following the rain
5 event the wet weather -- is there a
6 limitation in Indiana of how long following
7 the wet weather event the wet weather
8 standard or wet weather exemption can last?

9 THE WITNESS: The rules allow for the
10 period where the recreational criteria don't
11 apply to be up to four days.

12 MS. WILLIAMS: Four days would be the
13 max?

14 THE WITNESS: It will vary community
15 by community.

16 MS. WILLIAMS: And does it vary based
17 on the specifics in the long-term control
18 plan in the UAA or could it be different
19 depending on the rain event or what would be
20 the factors that would cause the number of
21 days to vary community by community?

22 THE WITNESS: Well, each -- the CSO
23 policy and subsequent rules that have been
24 established recognize that CSO problems are

1 very site specific.

2 So a particular community might
3 find that because of the nature of their
4 collection system, that if they are to apply
5 for the revision of the water quality
6 standards for some events, they would need
7 that full four days in analyzing the CSO
8 impacts for another community.

9 And LimnoTech has done this and
10 I've worked on those projects. It all
11 depends on the water body. So you might have
12 a community where they discharge a CSO and
13 the river is flowing fast enough that the
14 impacts of the CSO don't last more than, say,
15 24 hours.

16 So there might be, for that
17 community, the water quality standard might
18 say that when you have a CSO event, the
19 recreational criteria won't apply for
20 24 hours, for another community it might be
21 the full four days.

22 MS. WILLIAMS: I think you're getting
23 at the next point that I really want to
24 understand. How would that standard be

1 articulated? Would it be articulated as, you
2 know, this water shall protect for this use
3 except when this happens or this water shall
4 meet this numeric criteria except for when
5 this event happens?

6 THE WITNESS: Well, under Indiana's
7 water quality standards the recreational use
8 criteria from every CSO community is primary
9 contact recreation and it has associated
10 numeric criteria with it.

11 When the water quality standards
12 are changed for, say, the White River and
13 Fall Creek, which are the two water bodies
14 impacted by Indianapolis' water body
15 discharge, how the state chooses to revise
16 the water quality standards to allow that
17 will depend on the targets for CSO overflows
18 that Indianapolis has in their plan.

19 So if it's written to say, on
20 average, account for a reduction to, say, two
21 to four overflows per year, an option would
22 be to say, you know, for these CSO discharges
23 under this approved plan the water quality
24 standards -- the numeric criteria won't apply

1 for up to four days or up to two days as long
2 as those discharges are in accordance with
3 the long-term control plan.

4 MS. WILLIAMS: So it wouldn't
5 typically say something that describes the
6 recreation that (inaudible) --

7 THE COURT REPORTER: Should or
8 shouldn't?

9 MS. WILLIAMS: Should not. I'm sorry.
10 It wouldn't typically specifically lay out
11 recreation that shouldn't be occurring, it
12 would focus on the numeric criteria target;
13 does that sound right?

14 THE WITNESS: Yeah. The fact that you
15 can't achieve those recreational uses when
16 there are CSOs discharging are addressed in
17 the use attainability analysis.

18 MS. WILLIAMS: But it's not
19 specifically written into the regulation that
20 the department adopts? I'm really just
21 trying to get at the format. What does it
22 look like?

23 THE WITNESS: I don't know what it
24 looks like because Indiana hasn't

1 developed -- you know, fully developed the
2 rule for Indianapolis.

3 MS. WILLIAMS: But you would expect it
4 to look something like this water shall meet
5 this E. Coli standard or this fecal standard
6 except when the defined CSO condition
7 happens?

8 THE WITNESS: Right.

9 MS. WILLIAMS: And would it have an
10 alternative criteria for those situations or
11 would there be no criteria?

12 THE WITNESS: No.

13 MS. WILLIAMS: No?

14 THE WITNESS: No criteria.

15 MS. WILLIAMS: There would be just no
16 criteria?

17 HEARING OFFICER TIPSORD: Mr. Harley?

18 MR. HARLEY: Also, just in terms of
19 logistics of how this would work, if you're
20 operating a water treatment plant in
21 Indianapolis which typically disinfects;
22 during the period when you would have the CSO
23 event, would you just turn off your
24 disinfection equipment?

1 MR. ANDES: That would be illegal.

2 MR. HARLEY: So the facility would
3 still have to continue to disinfect even
4 though the ordinarily applicable fecal
5 coliform or E. Coli standard would not apply?

6 THE WITNESS: Yes. The NPDES permit
7 for Indianapolis' waste water treatment plant
8 requires disinfection. There's no -- that
9 doesn't have anything to do with the combined
10 sewer overflow discharge.

11 MS. WILLIAMS: Do you think under
12 Indiana's policy, a community that didn't
13 disinfect would be eligible for one of these
14 exceptions?

15 THE WITNESS: I don't see why not.

16 MS. WILLIAMS: Are you aware of any
17 that have tried to apply that don't
18 disinfect?

19 THE WITNESS: Well, in Indiana,
20 because all of the water bodies are
21 designated as primary contact recreation and
22 the water quality criteria that Indiana chose
23 to adopt to protect, you know, primary
24 contact recreation, it all requires

1 disinfection at waste water treatment plants.

2 MS. WILLIAMS: So everybody in Indiana
3 is already disinfecting?

4 THE WITNESS: (Inaudible.)

5 MS. WILLIAMS: Thank you.

6 THE COURT REPORTER: I didn't hear the
7 answer.

8 THE WITNESS: Yes.

9 MR. ANDES: Do we want to take a
10 break?

11 HEARING OFFICER TIPSORD: Are we done
12 with Indiana?

13 MS. WILLIAMS: I think I'm done with
14 Indiana.

15 HEARING OFFICER TIPSORD: Then let's
16 take a ten-minute break.

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

21 HEARING OFFICER TIPSORD:
22 Ms. Williams.

23 MS. WILLIAMS: Question 18 moves on to
24 Massachusetts and it states, you testify on

1 Page 7 that, quote, Massachusetts allows for
2 a partial use designation for recreational or
3 aquatic life uses with the UAA or a variance.

4 And you also quote the provision
5 as requiring that, quote, criteria may depart
6 from the criteria assigned to the class only
7 to the extent necessary to accommodate the
8 technology based treatment limitations of the
9 CSO or storm water discharges. Can you
10 explain what you mean by this?

11 THE WITNESS: My understanding of the
12 provision is that it means that if the
13 technology based treatment limitations of the
14 CSOs and the controls set forth in an
15 approved long-term control plan that are
16 based on the federal CSO policy or for storm
17 water best management practices of the
18 maximum extent practicable, that if those do
19 not result in the attainment of water quality
20 standards, then new criteria may be
21 established that results in attainment
22 following implementation of the long-term
23 control plan or the best management practice.

24 MS. WILLIAMS: Does it require a

1 specific new criteria?

2 THE WITNESS: It says it may be
3 established.

4 MS. WILLIAMS: And are there any
5 limitations on what those criteria can be,
6 how much they can vary from the designated
7 criteria?

8 THE WITNESS: I don't think there is
9 anything in the standards that specify
10 limitations on that.

11 MS. WILLIAMS: Do you know if this has
12 been done anywhere yet in Massachusetts?

13 THE WITNESS: Yes.

14 MS. WILLIAMS: And can you explain
15 that example?

16 THE WITNESS: For example, in Boston,
17 this approach was applied for the
18 Massachusetts Water Reclamation Authority.

19 MS. WILLIAMS: And did they go through
20 every stage of the process?

21 THE WITNESS: There's a long history
22 of what they went through. And for Boston
23 Harbor they adopted a CSO subcategory. And
24 for the Charles River they've issued

1 consecutive variances to get them through the
2 implementation of their long-term control
3 plan.

4 MS. WILLIAMS: So within Boston
5 there's an example of using each method?

6 THE WITNESS: Yes.

7 MS. WILLIAMS: And have those all been
8 approved by US EPA?

9 THE WITNESS: Yes.

10 MS. WILLIAMS: Do you know if there's
11 any kind of consent decree applicable there?

12 THE WITNESS: This has been
13 proceeding. As I said, it's a long history
14 going back to the decisions about the Deer
15 Island Treatment Plant, but it has been
16 occurring while MWRA has been part of the
17 consent decree.

18 MS. WILLIAMS: And is there anywhere
19 in your testimony or what we've been provided
20 so far with regard to citations that cites to
21 either Boston Harbor or the Charles River
22 documents?

23 THE WITNESS: I did provide the
24 citation for the water quality standards,

1 the --

2 MS. WILLIAMS: Right, the regulation.

3 THE WITNESS: Yeah. The record of the
4 development of the UAAs and other documents
5 associated with MWRA's discharges is
6 voluminous and I did not provide the specific
7 citations.

8 MS. WILLIAMS: Okay. Is it correct
9 that the Massachusetts regulation is limited
10 to uses that are not existing uses?

11 THE WITNESS: Well, under the Clean
12 Water Act, you cannot remove an existing use.
13 These are instances where the uses have been,
14 you know, changed, so I don't know how the
15 existing use issue applies.

16 MS. WILLIAMS: So let me see if this
17 is what you're saying. To the extent that
18 Massachusetts' regulations specifically
19 prohibit using the exemption alternative use
20 designation, whatever we're calling it, from
21 applying to existing uses, is it your
22 testimony that any state that was to use a
23 wet weather exemption would have to provide
24 that existing uses would continue to be

1 protected?

2 THE WITNESS: I was confused because
3 we covered the existing use issue with
4 respect to CSOs yesterday.

5 But in the Massachusetts case they
6 did determine that changing the uses was not
7 removing an existing use.

8 MS. WILLIAMS: What do you mean in the
9 Massachusetts case? Are you talking about in
10 the Boston case?

11 THE WITNESS: Yes.

12 MS. WILLIAMS: Okay. I'm asking much
13 more generally.

14 THE WITNESS: As well as in the water
15 quality standards they do have subcategories
16 of recreational uses that are specifically
17 designated as CSO impacted uses.

18 MS. WILLIAMS: Right.

19 THE WITNESS: So in their water
20 quality standards they are acknowledging that
21 establishing a CSO impacted use is not
22 removing an existing use.

23 MS. WILLIAMS: Okay. I don't see it
24 that way. Can you explain -- can you provide

1 a citation where they say that or what do you
2 mean by that?

3 I thought I saw it to say here's
4 an exemption that's available, here's an
5 alternative use designation that's available
6 only if you don't have an existing Clean
7 Water Act goal recreational use that you need
8 to protect.

9 THE WITNESS: Okay. As I said
10 yesterday, CSOs in this country existed
11 before 1975. There's no communities out
12 there that are building combined sewers
13 post-1975.

14 So the fact that you had a CSO
15 pre-1975 and that the recreational use was
16 established such that water quality was being
17 impacted by those CSOs, the concept of
18 existing uses when you go to apply for the
19 provisions in Massachusetts, the whole
20 existing use concept is irrelevant.

21 MS. WILLIAMS: I understand that's
22 your testimony and that we went over that
23 yesterday and I really didn't want to go back
24 over that today if I didn't have to.

1 But I thought you just testified
2 that it says that in the Massachusetts
3 regulations, that it says in the
4 Massachusetts regulations that CSOs are
5 recognized as existing uses. I know that's
6 probably not an accurate paraphrase of what
7 you just said.

8 But does it say that somewhere in
9 the Massachusetts regulations or does it just
10 say that you must -- existing uses and the
11 level of water quality necessary to protect
12 the existing uses shall be maintained and
13 protected?

14 THE WITNESS: What I said was the
15 water quality standards in Massachusetts,
16 they adopted a subcategory of recreational
17 uses that specifically recognizes that you
18 may have a CSO impacted recreational use.
19 Okay? That is in the water quality
20 standards.

21 MS. WILLIAMS: Okay.

22 THE WITNESS: I also said that because
23 EPA has -- US EPA has approved what occurred,
24 say, in Boston with the variances and with

1 the designation of a particular water body as
2 a Class B CSO use, that by that approval EPA
3 is saying that the state by granting the
4 special CSO class and the variance is not
5 removing an existing use.

6 MS. WILLIAMS: And I just wanted to
7 make sure it was clear that that was an
8 inference that we were taking from US EPA
9 approval from your understanding of the Clean
10 Water Act, not from the language of the
11 provision, correct?

12 THE WITNESS: Yes.

13 MS. WILLIAMS: Okay. That's all I
14 have about Massachusetts. Does anyone else
15 want to ask about Massachusetts?

16 MR. ETTINGER: Well, I wanted to ask a
17 little bit about Massachusetts. What uses do
18 they have wet weather designations for, is it
19 aquatic, is it recreational, what do they
20 specify?

21 THE WITNESS: The way the
22 Massachusetts regulation has been applied has
23 been specifically directed at recreational
24 uses. But there's nothing within the

1 Massachusetts regulation that would prevent
2 development of a special category for aquatic
3 life uses that were impacted by CSOs or storm
4 water discharges.

5 MR. ETTINGER: So the Charles River
6 doesn't have a wet weather designation
7 pertaining to the dissolved oxygen levels or
8 does it?

9 THE WITNESS: The UAA was
10 specifically, if I recall correctly, directed
11 at recreational uses.

12 MR. ETTINGER: And so how did -- how
13 did they vary that on the basis of
14 recreational uses, was it a number of days
15 after a rainfall or how did it -- did they
16 specify their wet weather standard?

17 THE WITNESS: For the Class B waters,
18 I'm not aware that there was necessarily --
19 you're asking how the Class B CSO waters are
20 different than the Class B Waters?

21 MR. ETTINGER: No. My question is
22 really much simpler than that. You're
23 testifying that something was done in
24 Massachusetts that you're using relative to

1 your wet weather testimony here. I'm just
2 trying to ask what that thing was.

3 What have they done in Boston that
4 makes it possible to attain the standard that
5 wouldn't have been if they hadn't made this
6 allowance for wet weather conditions?

7 THE WITNESS: Well, they completed
8 their use attainability analysis. And I'm
9 not specific with the exact language in that
10 use attainability analysis.

11 But by granting the Class B CSO
12 category for, say, the Boston Harbor, there
13 was an acknowledgment that the standards
14 couldn't be met a certain percentage of the
15 time. And by acknowledging that it is a CSO
16 impacted water, then the standards reflect
17 that a certain percentage of the time you're
18 not going to be attaining the default Class B
19 criteria.

20 MR. ETTINGER: And the default Class B
21 criteria are specified using an E. Coli or
22 enterococci standard?

23 THE WITNESS: I'm not sure which
24 applies, but an indicator bacteria criterion.

1 MR. ETTINGER: So there's an indicator
2 bacteria that applies to Boston Harbor most
3 of the time, but during wet weather
4 conditions they vary from that, they allow a
5 variance from that criteria?

6 THE WITNESS: They vary, yeah.

7 MR. ETTINGER: There's a distinction
8 that's being made there that I don't quite
9 understand. What happens during wet weather
10 to the criteria?

11 THE WITNESS: I don't understand that
12 question.

13 MR. ETTINGER: All I'm asking -- I'm
14 really not trying to be cute here. I'm just
15 asking what is it that they did that allows
16 the designated use to be different during wet
17 weather periods?

18 THE WITNESS: Well, in Massachusetts'
19 standards they say that we have these Class B
20 CSO criteria which recognizes that in
21 accordance with the UAA that the recreational
22 designated use and the associated criteria
23 don't apply during approved CSO events.
24 Okay?

1 On the Charles River it's
2 different, it was handled through variances.
3 So the use and the criteria remain in place,
4 but the discharges are not considered in
5 violation of those criteria because they have
6 a variance.

7 MR. ETTINGER: Okay. So do the sewage
8 treatment plants and the Charles River
9 normally disinfect or discharge into the
10 Charles River normally disinfect?

11 THE WITNESS: They do disinfect.

12 MR. ETTINGER: They do disinfect. And
13 so that -- the normal standard is applicable
14 for -- do you know what measurement they use
15 fecal or enterococci or E. Coli, they used
16 one of those indicators. You have to speak
17 rather than just nod your head.

18 THE WITNESS: I don't know.

19 MR. ETTINGER: You don't know?

20 THE WITNESS: They use an indicator.

21 MR. ETTINGER: Thank you. So those
22 indicators apply to the Charles River during
23 dry weather conditions; is that correct?

24 THE WITNESS: They apply all the time.

1 MR. ETTINGER: The criteria apply all
2 the time, but there's a variance applicable
3 to the CSOs?

4 THE WITNESS: Yes.

5 MR. ETTINGER: As to wet weather
6 periods?

7 THE WITNESS: Yes.

8 MR. ETTINGER: Does the variance also
9 apply to the sewage treatment plants?

10 THE WITNESS: No.

11 MR. RAO: Is this variance some kind
12 of a permanent relief or is it only during
13 the time the plan is being implemented?

14 THE WITNESS: It's during the plan
15 implementation. And the agreement that was
16 reached between US EPA, the Massachusetts
17 Department of Environmental Protection and
18 the Massachusetts Water Resources Authority
19 was that by a certain date MWRA will have
20 fully implemented its long-term control plan.

21 And it is at that point in time
22 Massachusetts' DEP may need to revisit the
23 UAA for the Charles River because there are
24 other sources that are impacting the Charles,

1 mainly municipal storm water.

2 And the distinction between the
3 Charles and the harbor was that for the
4 Charles River, they believe that the primary
5 contact recreation use will ultimately be
6 attained through implementation of MWRA's
7 long-term control plan and control on storm
8 water discharges.

9 MR. RAO: Thank you.

10 MR. ETTINGER: Do you know if
11 Massachusetts distinguishes between bathing
12 waters an non-bathing waters?

13 THE WITNESS: Their recreational
14 classifications are not entirely clear. When
15 I read these standards, the distinction --
16 they have two classes that are of interest in
17 the example of MWRA. These are Class B
18 waters which are supposed to be suitable for
19 primary contact recreation or secondary
20 contact recreation.

21 Massachusetts also has a Class A
22 which says shall be suitable for primary and
23 secondary contact recreation. But the
24 distinction between A and B seems to be

1 hinged on the public water supply use. Did
2 that answer your question?

3 MR. ETTINGER: If it's the best you
4 can do, I'm going to have to settle for it.

5 What was your role specifically
6 with regard to the work in Massachusetts?

7 THE WITNESS: None whatsoever.

8 MR. ETTINGER: So you're just -- your
9 firm and you did not work on Massachusetts,
10 you're just citing that as an example of some
11 place that something was done?

12 THE WITNESS: Right. I did not work
13 on Massachusetts. I can't say for sure that
14 our firm never worked on Massachusetts.

15 MR. ETTINGER: Okay. Thank you.
16 That's it for Massachusetts as far as I'm
17 concerned.

18 HEARING OFFICER TIPSORD: Mr. Harley,
19 I could tell by the look in your eye.

20 MR. HARLEY: Before we move on to
21 other states which are in EPA's questions,
22 first of all, I want to thank the District
23 for putting forward a witness who can talk
24 about what's going on in other states on some

1 of the same issues that we're dealing with
2 here.

3 I've often found that in
4 rulemaking activity good composers borrow and
5 great composers steal. And I think this
6 gives us a good opportunity to think about
7 how we might steal some ideas from other
8 states.

9 An with that as kind of a prelude
10 to my question, my question is as a District
11 witness of the different states that you've
12 reviewed as part of preparing your pre-filed
13 testimony, is there one that you're
14 recommending as being the best basis for what
15 we might do in Illinois?

16 THE WITNESS: I wish I could. The
17 Chicago Area Waterways is very unique given
18 its operation as, you know, storm water
19 conveyance and flood control and all of that.

20 The other issue, as I said
21 earlier, has to deal with the distinct
22 conditions between dry weather and wet
23 weather. And I'm currently working for a
24 community in a state where this hasn't -- let

1 me back up.

2 In these other states the waste
3 water treatment plants disinfect. So the
4 issue about dry weather compliance and what
5 the appropriate dry weather use and
6 associated criteria has been dealt with in
7 other ways.

8 The waterways -- so when the
9 states have looked at, you know, how do we
10 craft a wet weather exemption, they haven't
11 had to deal with that issue.

12 In this example you have a unique
13 situation where the stakeholders, you know,
14 have agreed that the waterways should not be
15 used for primary contact recreation. So the
16 question becomes, well, what do we do under
17 dry weather conditions?

18 And the problem that we have is
19 that we have an incomplete use attainability
20 analysis because more information is being
21 generated to deal with what is the
22 appropriate criteria to protect for a
23 designated use that is more in line with
24 secondary contact recreation. We don't have

1 criteria for that and we need criteria for
2 that.

3 There also -- we also have the
4 challenge that even though the UAA was done,
5 and I would have done it differently, we
6 don't have stakeholder consensus. And
7 LimnoTech has worked on research on doing use
8 attainability analysis where stakeholder
9 consensus is important.

10 And we also have some of the best
11 experts in the country that have tried to
12 assist the District with, well, if you were
13 going to adopt the criteria, what should that
14 look like.

15 And the other thing we have is we
16 have US EPA doing a lot of research and now,
17 with the settlement of the Beach Act,
18 acknowledging that they will consider other
19 research across the country. So everything
20 is in flux.

21 And so my professional opinion
22 based on my experience is that more time is
23 needed to sort through all of these issues.

24 So I agree that you have the

1 benefit of drawing upon these other examples,
2 but you also have to appreciate the unique
3 situation that we have for the waterways here
4 in Chicago.

5 MR. HARLEY: Mindful of the fact that
6 the thing is upon us and that despite the
7 fact that there are many moving parts, as I'm
8 sure there were in Indiana, as I'm sure there
9 were in Massachusetts, California and Maine,
10 the thing is upon us; is there any one of the
11 state programs that you've identified or
12 programs by units of local government that
13 you think represents the best practice or the
14 best standard that is presently available?

15 THE WITNESS: No. I -- you have to
16 look at all of the options and all of the
17 factors affecting the decision.

18 MS. WILLIAMS: Ms. Nemura, can you
19 explain for us a little bit about the scope
20 of your retainment by the District in this
21 regard?

22 MR. ANDES: I'm sorry?

23 MS. WILLIAMS: Have you been retained
24 to give a recommendation about what the

1 appropriate uses should be?

2 THE WITNESS: No.

3 MS. WILLIAMS: What have you been
4 retained to do? What has LimnoTech been
5 retain by the District to do?

6 THE WITNESS: In this instance?

7 MS. WILLIAMS: In general, actually,
8 as far as you're aware in any contracts that
9 you currently have pending with the District.

10 THE WITNESS: We are providing support
11 on the testimony and we are conducting a
12 habitat study of the waterways and we are
13 also assisting the District in evaluating the
14 integration of various technologies on what
15 could be achieved in terms of meeting any
16 future proposed dissolved oxygen criteria.

17 MS. WILLIAMS: Thank you.

18 MR. ETTINGER: Can I follow-up on
19 that? First of all, I want to make a
20 statement which is just I don't want to sit
21 here and have you give that testimony and
22 have no mention made if there was ever a
23 consensus in the stakeholder process that
24 none of the water would be designated primary

1 contact, that's hereby withdrawn.

2 Second, my question is have you
3 specifically studied the cost of controlling
4 CSOs in the Chicago Area Waterway System?

5 THE WITNESS: I participated in a
6 development of a technical memorandum that
7 evaluated the cost of disinfecting -- the
8 feasibility and cost at a certain level of
9 disinfecting combined sewer overflows.

10 MR. ANDES: I believe that memorandum
11 has been submitted for the record.

12 MR. ETTINGER: Have you specifically
13 considered whether higher levels of control
14 are -- I forgot the term of the regulation,
15 but whether it would cause widespread
16 economic socio-omic (sic) disruption in the
17 area or whatever the term is?

18 THE WITNESS: No.

19 MR. ETTINGER: You have not? You
20 mentioned as one of the reasons why you were
21 hesitant to apply other models from other
22 states to the Chicago Area Waterway System
23 situation between primary and secondary
24 contact. Have other states that you've

1 worked on adopted standards for secondary
2 contact or boating use of waters?

3 THE WITNESS: Many of the states where
4 I've worked on projects have secondary
5 contact recreation uses and associated
6 criteria with those uses.

7 MR. ETTINGER: What criteria are used?

8 THE WITNESS: It varies. It's
9 typically between five to ten times the
10 primary contact criterion.

11 MR. ETTINGER: What specific states or
12 projects have you used -- have you
13 participated in in which they used such
14 criteria?

15 THE WITNESS: The projects that I've
16 worked on in Ohio have dealt with some
17 secondary contact recreation criteria.

18 There are numeric criteria, but
19 the basis for those criteria is not -- it was
20 based on more of a policy decision by, you
21 know, various committees responsible for
22 assessing uses and setting criteria.

23 MR. ETTINGER: Okay. So they were in
24 Ohio. Were there others in addition to Ohio

1 in which they adopted such criteria based on
2 policy consideration or anything else?

3 THE WITNESS: Yeah, Missouri.

4 MR. ETTINGER: Missouri. And what did
5 they use, E. Coli, enterococci; do you
6 recall?

7 THE WITNESS: They used E. Coli.

8 MR. ETTINGER: E. Coli. And they used
9 a multiple of the primary use E. Coli
10 standard?

11 THE WITNESS: I'm not sure how they
12 derived it. But in Missouri the whole body
13 contact A criterion is 126 and the secondary
14 contact recreation criterion is 1,134.

15 MR. ETTINGER: Okay.

16 THE WITNESS: Approximately ten times.

17 MR. ETTINGER: Would you happen to
18 know the numbers for Ohio?

19 THE WITNESS: I believe it's 2,000
20 fecal coliform.

21 MR. ETTINGER: Ohio uses fecal rather
22 than E. Coli?

23 THE WITNESS: They use both.

24 MR. ETTINGER: Now when we say Ohio,

1 do you mean the whole state of Ohio or some
2 cities in Ohio or ORSANCO?

3 THE WITNESS: This is specifically
4 related to water bodies within Ohio because
5 it's in Ohio's water quality standards.

6 The Ohio River, which the criteria
7 is set by ORSANCO are -- do not have
8 secondary contact recreation.

9 MR. ETTINGER: Okay. Are there any
10 other states that have secondary contact
11 criteria that you have worked on other than
12 Missouri and Ohio?

13 THE WITNESS: I worked in so many
14 states, I can't recall.

15 MR. ETTINGER: Okay.

16 MR. ANDES: If I can follow-up on
17 that? I wonder if you could talk a little
18 bit about what's the current state of the
19 science in terms of evaluation of the
20 technical basis for secondary contact
21 criteria?

22 THE WITNESS: There's agreement that
23 this five to ten times which states have
24 adopted and EPA has approved, that that is --

1 has no epidemiological basis.

2 The study -- there's ongoing
3 research that will provide that information
4 and you might be able to supplement it with
5 information from across the world. But I
6 haven't particularly taken it upon myself to
7 study how to develop secondary contact
8 recreation criteria. I haven't needed to do
9 that.

10 MR. ETTINGER: Have you studied the
11 basis for primary contact criteria?

12 THE WITNESS: I am familiar with the
13 history of the development of that criteria.

14 MR. ETTINGER: Do you believe the
15 primary contact criteria are scientifically
16 valid?

17 THE WITNESS: That is part -- that is
18 why EPA is redoing or coming up with new
19 recreational use criteria. The E. Coli
20 criteria and the enterococci criteria that
21 came out with the 1986 criteria, some of
22 those studies, the epidemiological data was
23 statistically insignificant.

24 MR. ETTINGER: Is there any valid

1 criteria for primary contact anywhere in the
2 country?

3 THE WITNESS: Criteria that are out
4 are -- that have been adopted and have been
5 approved is what's being used. And EPA
6 recognizes the deficiencies associated with
7 the existing criteria which is why they are
8 reevaluating.

9 MR. ETTINGER: I didn't ask what EPA
10 was doing. I'm asking what you are doing.

11 Do you believe that any of the
12 primary contact criteria being used anywhere
13 in the country are valid?

14 THE WITNESS: They're valid in so much
15 as they are in the water quality standards
16 and that is what we have to apply when we
17 make decisions about the acceptable amount of
18 bacteria that is allowed in the waters. I
19 mean, it is what it is.

20 MR. ETTINGER: I understand that that
21 is what it is in the sense of the law. I'm
22 saying are they scientifically valid?

23 THE WITNESS: Okay. The current
24 criteria, which are what they are, is what we

1 have to use. Can they be improved, should
2 they be improved, yes.

3 So in my 24 years of experience --
4 and I started out at the Virginia Water
5 Control Board -- you apply what is in the
6 standards. And if -- and that's what you do.

7 So it's not my place to address
8 whether those criteria are valid or not.
9 That's not a term that I deal with.

10 MR. ETTINGER: Okay. So you're just
11 following orders. Whatever the criteria are
12 that EPA has then adopted, that's what you
13 apply?

14 THE WITNESS: Whatever is in the state
15 water quality standards is what I have to use
16 in my job.

17 MR. ETTINGER: Okay. But it's no part
18 of your job to consider whether the numbers
19 that are in the state water quality standards
20 are scientifically valid for protecting uses?

21 THE WITNESS: It is my job if a
22 criteria -- if a criteria that's in the
23 standards is not appropriate for the water
24 body, okay, because of site specific

1 conditions, that is my job to assess whether
2 that criteria should apply to that particular
3 water body.

4 In this case I can't offer what an
5 alternative numeric criteria would be to
6 protect a primary contact recreation use
7 because I don't have any science upon which
8 to base that recommendation. That science is
9 in the process of being developed. That's
10 why EPA and others are conducting all this
11 epidemiological research.

12 MR. ETTINGER: Okay.

13 MR. ANDES: Next state?

14 MS. WILLIAMS: Question 19, you state
15 on Page 7 that, quote, Maine allows for a CSO
16 subcategory where recreational and aquatic
17 life uses may be temporarily suspended. For
18 how long may the use be suspended?

19 THE WITNESS: That depends on an
20 individual community. There's no -- nothing
21 in the standards that specify that it be for
22 a certain period of time.

23 MS. WILLIAMS: Okay. The standards,
24 do they specify that it needs to be temporary

1 as you've stated here or may it be permanent?

2 MR. ANDES: Are you talking about
3 temporary in terms of duration of a rain
4 event or a number of years?

5 MS. WILLIAMS: I'm talking about
6 temporarily as it's used in her statement.

7 THE WITNESS: The standards
8 specifically say they -- the standards
9 specifically allow for temporary removal of
10 designated uses, which involves use
11 attainability analysis and creation of
12 subcategories of uses for combined sewer
13 overflows.

14 MS. WILLIAMS: So how do you --

15 THE WITNESS: The regulations say that
16 the board may temporarily remove designated
17 uses that are not existing uses and create a
18 temporary combined sewer overflow category
19 referred to as a CSO category.

20 MS. WILLIAMS: It sounds like it uses
21 temporary a couple of different times and
22 maybe in different ways. Do we know if it
23 defines the word temporary anywhere?

24 THE WITNESS: I do not believe it

1 defines the word temporary.

2 MR. ANDES: We did provide the
3 citations to these regulations.

4 MS. WILLIAMS: We did or we will?

5 MR. ANDES: We did. I believe they're
6 on the list.

7 MS. WILLIAMS: I didn't -- I was
8 trying to hear --

9 THE WITNESS: The concept was that you
10 would have a CSO community. Under the
11 long-term control plan, you would define the
12 area of the water body that is affected by
13 the combined sewer overflows and what those
14 impacts looked like, that the community would
15 do a long-term control plan and there would
16 be a UAA and you could sort of define the
17 area that is affected by the CSOs that would
18 remain under the long-term control plan and
19 sort of how long those impacts would last.

20 And then that would get -- that
21 would be incorporated into the decision about
22 what this temporary CSO class would look
23 like.

24 MS. WILLIAMS: And does Maine

1 require -- with regard to the physical area
2 of impact, does Maine require that you define
3 the smallest possible area?

4 THE WITNESS: It does say CSO
5 subcategory uses are suspended only in the
6 smallest area possible for the shortest
7 duration practicable.

8 MS. WILLIAMS: And do you agree that
9 these two concepts -- these two sort of
10 independent but combined concepts would be an
11 important component of a similar regulation
12 in other states?

13 THE WITNESS: It depends on how the
14 state decides to address their own standards.

15 MS. WILLIAMS: So you don't think it
16 would be important to address?

17 MR. ANDES: Are you asking whether
18 that precise language would be needed in
19 another state?

20 MS. WILLIAMS: No, the concept of
21 keeping any exemptions or alternative use
22 designations confined to the smallest area
23 and the shortest time necessary.

24 THE WITNESS: Because CSO impacts are

1 so site specific, in some situations that may
2 be important.

3 For example, if you have a
4 community that has primary contact recreation
5 that occurs up and down the river, you know,
6 most of the recreation season, then that
7 concept might be really important.

8 In another community where the
9 water bodies are inaccessible or are unsafe,
10 that particular language may not be
11 important.

12 MS. WILLIAMS: And I think you already
13 answered my question through reading the
14 language, but the language does also, as in
15 Massachusetts, limit its applicability to
16 uses that are not existing uses, correct?

17 THE WITNESS: You can't remove an
18 existing use.

19 MS. WILLIAMS: Yes. I mean, the
20 answer is yes then to my question?

21 THE WITNESS: Yes.

22 MS. WILLIAMS: Have any use changes
23 been approved by the Citizen Board and US EPA
24 under this provision in Maine?

1 THE WITNESS: Not to my knowledge.

2 MS. WILLIAMS: Do you know whether
3 there's any requirement to go to the
4 legislature as well in Maine? Do you
5 understand that piece of it?

6 THE WITNESS: I cannot specifically
7 speak to that.

8 MS. WILLIAMS: So you're not sure if
9 maybe part of the temporary approval refers
10 to submitting it to the legislature for
11 permanent approval? And that's a question I
12 don't know.

13 THE WITNESS: Well, if it's temporary,
14 how can it be permanent?

15 MR. ANDES: I think the language is
16 what it is. Are you asking her to read it
17 and summarize it?

18 MS. WILLIAMS: No.

19 MR. ANDES: Okay.

20 MS. WILLIAMS: I was asking her if she
21 knows if the legislature also has to approve
22 any of the changes made in Maine?

23 THE WITNESS: I don't know.

24 MS. WILLIAMS: If she doesn't know,

1 that's fine.

2 Is anyone else interested in
3 Maine? I went there for vacation this
4 summer. It's very nice.

5 I'm skipping question 20 because
6 that seems clearly aquatic-life based.

7 Question 21 I don't think refers
8 to a specific state. You testify on Page 8
9 that several UAAs have also been conducted
10 that allow for suspension of recreational
11 uses due to wet weather discharges. I guess
12 I'll ask the question first. Was this
13 statement referring to specific states or
14 just generally nationwide?

15 THE WITNESS: General.

16 MS. WILLIAMS: How many UAAs like this
17 are you aware of and how many have resulted
18 in standards changes approved by US EPA?

19 THE WITNESS: Well we have 39 water
20 bodies in California, and Indianapolis,
21 Boston.

22 MS. WILLIAMS: Were those all the ones
23 you can think of?

24 THE WITNESS: Yes.

1 MR. ANDES: You're talking there in
2 terms of UAAs that have been done. Do you
3 understand that a number of others are being
4 prepared in various states around the
5 country?

6 THE WITNESS: Yes.

7 MS. WILLIAMS: The next piece of this
8 question asks how long are the recreational
9 uses suspended for in these UAAs? I don't
10 know, we may have covered some of this
11 already.

12 THE WITNESS: Well, as I've said
13 previously, it depends on the -- as it
14 should, the unique nature of the water body
15 that is being evaluated in the use
16 attainability analysis.

17 MS. WILLIAMS: Are you aware of any
18 UAAs in that list that you've given that
19 allow for the suspension of aquatic life
20 uses?

21 THE WITNESS: No. But there's nothing
22 in EPA's guidance that would prohibit a
23 community from pursuing that for aquatic
24 life.

1 MS. WILLIAMS: So we would be breaking
2 new ground in Illinois as far as you know?

3 THE WITNESS: Not necessarily. There
4 have been lots of UAAs that have been done
5 for aquatic life uses. And although those
6 may not have been specifically done for wet
7 weather discharges, there certainly is
8 approaches and concepts that have been used
9 in those UAAs that Illinois could -- what was
10 the composer analogy?

11 MS. WILLIAMS: Steal?

12 THE WITNESS: Steal or borrow from.

13 MS. WILLIAMS: I have more questions
14 on this, but I think it makes sense to defer
15 them to the next time we see you again.

16 Question 22 asks do you agree that
17 states are required by the Clean Water Act to
18 designate existing uses as attainable uses?
19 I think you previously said yes to this
20 question; is that correct?

21 THE WITNESS: I'm sorry, I didn't
22 understand your question.

23 MS. WILLIAMS: Let me ask again. Do
24 you agree that states are required by the

1 Clean Water Act to designate existing uses as
2 attainable uses? It's just a yes or no
3 question and I think you've already answered
4 it yes but...

5 THE WITNESS: Well, existing uses are
6 required to be part of the designated uses
7 and the existing use is as in how it's
8 defined in the Clean Water Act.

9 MS. WILLIAMS: Okay.

10 MR. ETTINGER: You haven't personally
11 studied how the CSOs might have varied in the
12 Chicago Area Waterways since 1975?

13 THE WITNESS: How the CSOs might have
14 varied? What do you mean by --

15 MR. ETTINGER: Is it possible, for
16 example, that some portion of the Chicago
17 Area Waterway System was getting different
18 CSO impacts in 1975 from what it's getting
19 now?

20 THE WITNESS: I haven't studied that.

21 MR. ETTINGER: Thank you.

22 MS. WILLIAMS: Question 23 says are
23 you testifying to the contents of the Alp --
24 Mr. Alp report attached to your testimony,

1 and if not, who is the best witness to ask
2 about that report?

3 THE WITNESS: I am not testifying to
4 the contents of Dr. Alp's report.
5 Dr. Melching would be the best to testify.

6 MR. ANDES: Do we want to take a break
7 sometime soon?

8 MS. WILLIAMS: My watch broke again so
9 I don't know what time it is.

10 HEARING OFFICER TIPSORD: It's a
11 little after 12:00. We've only been back at
12 it for about a 50 minutes, but, yeah,
13 let's -- how many more questions do you have?

14 MS. WILLIAMS: I don't have a ton, but
15 it may take another 20 minutes or so.

16 HEARING OFFICER TIPSORD: Let's go
17 ahead 20 minutes. We can finish with you
18 before lunch then.

19 MS. WILLIAMS: Okay. Let's just look
20 at question 24. I'm trying to figure out if
21 that's appropriate for you or Dr. Melching
22 and you can just tell me if you'd rather it
23 be deferred.

24 You testify on Page 2 of

1 Attachment 2 that defective CSO and pump
2 station dischargers can increase ambient
3 bacteria levels for three to five days.
4 Would you prefer I ask him about that?

5 THE WITNESS: No.

6 MS. WILLIAMS: Okay. How long are you
7 recommending that a wet weather recreational
8 use exemption last after a storm event?

9 THE WITNESS: I'm not making a
10 recommendation. Again, you have to look at
11 the unique characteristics of the water body,
12 the controls that can be put in place to make
13 any decision about the length of time.

14 MS. WILLIAMS: Do you know if it's
15 closer to three days, closer to five days?
16 Where does the -- the three to five days,
17 does that come from Dr. Melching's work?

18 THE WITNESS: Yes. That's a general
19 statement based on Model Alp, but maybe we
20 should refer to the chart.

21 MS. WILLIAMS: It's a general
22 statement, but it's specific to the CAWS,
23 right?

24 THE WITNESS: Correct.

1 MS. WILLIAMS: I'm sure we'll have
2 plenty of questions for him about this. I
3 don't think we need to get into this with
4 this witness.

5 MR. ANDES: I don't know if we have a
6 chart on that, but I don't know that we need
7 to get into it. We can certainly certainly get
8 into more detail with Dr. Melching.

9 MS. WILLIAMS: The only question that
10 I have for this witness is just to explain
11 why she felt that the storm events -- why she
12 called them representative in her testimony?
13 What about them made them representative?

14 THE WITNESS: The water quality model
15 that Dr. Melching, Dr. Alp and others worked
16 on was simulated for periods in 1998, 1999,
17 2001 and 2002 for fecal coliform.

18 I picked two storms to try to keep
19 information concise. And the ones that I
20 selected were the two largest storms during
21 2001 and 2002. And I used those to show how
22 the system responded to large rainfall events
23 because that would provide a conservative
24 representation of the impact of the CSOs.

1 MS. WILLIAMS: So would you agree that
2 what they're representative of is worst case
3 conditions?

4 THE WITNESS: Worst case could mean a
5 lot of different things.

6 MS. WILLIAMS: But they weren't trying
7 to be representative of a typical storm?

8 THE WITNESS: I was trying to show if
9 you had a large volume of CSO discharge, what
10 would the maximum concentrations look like
11 and how long would it take for those to
12 decline.

13 MS. WILLIAMS: But you understand when
14 most people say representative, they mean to
15 say then that you picked the largest two?

16 THE WITNESS: They were representative
17 of how CSOs can impact the waterways.

18 MS. WILLIAMS: From a large storm
19 event, correct?

20 THE WITNESS: Right. That's generally
21 when CSO impacts are the worst.

22 MS. WILLIAMS: So you haven't picked a
23 worst case scenario? You wouldn't describe
24 it that way?

1 THE WITNESS: No.

2 HEARING OFFICER TIPSORD: You mean
3 like last week?

4 MS. WILLIAMS: Right. Yeah, I guess
5 can you just off the top of your head tell us
6 what the storm events were in terms of amount
7 of rainfall that you chose?

8 THE WITNESS: The July 25th, 2001
9 event was 2.45 inches of rain.

10 MS. WILLIAMS: Okay.

11 THE WITNESS: The August 2, 2001 event
12 was 3.58 inches of rain. How the combined
13 sewer system responds to a storm depends on
14 not only the total volume of rain, but the
15 duration of that rain event. So it varies
16 storm to storm.

17 MS. WILLIAMS: Question 26 asks do you
18 think a wet weather recreational exemption
19 would belong in the use designation itself or
20 in the water quality standard?

21 And in this question, by water
22 quality standard, I'm using that term as it's
23 commonly used in Illinois to refer to a
24 numeric criteria that protects the designated

1 use.

2 THE WITNESS: Well, because water
3 quality standards --

4 MS. WILLIAMS: I understand under the
5 federal system it has a definition.

6 In Illinois we often commonly use
7 the term water quality standard as an
8 substitute for a numeric criteria. So this
9 question is asking whether it belongs in the
10 use designation description or in the numeric
11 criteria?

12 THE WITNESS: It needs to be in both.

13 MS. WILLIAMS: Okay. Thank you.
14 Question 27, you testify that ORSANCO allows
15 for alternative criteria when a long-term
16 control plan and UAA is developed by the CSO
17 community and asks does this involve a change
18 in uses?

19 THE WITNESS: Yes. The standard reads
20 the approved long-term control plan and UAA
21 will identify the conditions at or above
22 which the contact recreation use and
23 associated bacteria criteria cannot be
24 achieved and will identify alternative

1 bacteria criteria that can be approached.
2 The alternative bacteria criteria shall apply
3 for the period during which conditions exist.

4 MS. WILLIAMS: Can you tell us what
5 the alternative criteria is?

6 THE WITNESS: The standards do not
7 specify what that alternative criteria are.
8 That would be based on the long-term control
9 planned and the UAA.

10 MS. WILLIAMS: So the standards don't
11 specify a number of above which it cannot
12 exceed?

13 THE WITNESS: We're talking about the
14 alternative criteria?

15 MS. WILLIAMS: Yes.

16 THE WITNESS: The standards -- the
17 language does not.

18 MS. WILLIAMS: I was thinking -- and I
19 could be wrong, so that's why I'm asking
20 you -- that it said the alternative criteria
21 can't exceed 2,000 fecal coliform per 100
22 milliliters; is that correct or no?

23 THE WITNESS: It shall not exceed
24 2,000 fecal coliform as a monthly geometric

1 mean for the protection of public water
2 supplies.

3 MS. WILLIAMS: And is the Ohio River
4 designated for public water supply
5 protection?

6 THE WITNESS: Yes.

7 MS. WILLIAMS: Okay. And this
8 provision hasn't been used yet, right? I
9 think you testified that it hasn't been used
10 yet?

11 THE WITNESS: Correct.

12 MS. WILLIAMS: Question 28 asks -- I'm
13 sorry, moving on to question 29 because
14 Question 28 is directed to aquatic life uses.

15 Question 29 you testify there are
16 examples in California of suspending
17 recreational uses during high flows and it
18 asks have any been completed and formally
19 approved?

20 THE WITNESS: Yes.

21 MS. WILLIAMS: Can you name them if
22 that's the easiest way? I know you referred
23 to 39.

24 THE WITNESS: There's 39 water bodies.

1 MS. WILLIAMS: Would all of those meet
2 this description, suspending recreational
3 uses during high flows, all 39?

4 THE WITNESS: Yes.

5 MS. WILLIAMS: Okay. Explain what you
6 mean by high flow suspension of recreational
7 uses for Ballona, B-A-L-L-O-N-A, Creek.

8 THE WITNESS: The suspension applies
9 under flow conditions where there's a half
10 inch of rainfall or more and it applies for
11 24 hours after the rainfall ceases.

12 MS. WILLIAMS: How long?

13 THE WITNESS: Twenty-four hours.
14 That's because the water bodies are very
15 flashy and quickly convey the storm water
16 flow after a rain event ends. So the rain
17 event ends and within 24 hours that water is
18 gone.

19 MS. WILLIAMS: Okay. And what are the
20 bacteria criteria that are applicable?

21 THE WITNESS: Specifically, I don't
22 know.

23 MS. WILLIAMS: And is this --

24 MR. ANDES: I'm sure we can provide

1 that information.

2 MS. WILLIAMS: That would be helpful.

3 THE WITNESS: Geometric mean E. Coli
4 126, fecal coliform geometric mean 200,
5 single sample maximum limits E. Coli of 576.

6 MS. WILLIAMS: And so those limits do
7 not apply for 24 hours after the high flow
8 event you described; is that your
9 understanding?

10 THE WITNESS: Correct.

11 MS. WILLIAMS: And is recreation
12 prohibited in Ballona Creek during these high
13 flow periods?

14 THE WITNESS: There is the -- there's
15 a policy in place that those -- that the
16 access to those water bodies in Ballona Creek
17 is prohibited because there's fences and
18 gates that are locked down.

19 MS. WILLIAMS: And who owns those
20 fences and gates?

21 THE WITNESS: I don't know.

22 MS. WILLIAMS: But it's not part of
23 the state regulations to prohibit the
24 recreational activity, that's a management

1 decision by the owner?

2 THE WITNESS: I can't --

3 MR. ANDES: By the owner of the creek?

4 MS. WILLIAMS: The owner of the access
5 points.

6 THE WITNESS: I can't testify to that.

7 MS. WILLIAMS: You don't know? Did
8 they look in Ballona Creek at whether
9 recreation was actually occurring during
10 these periods?

11 THE WITNESS: I believe they had
12 cameras installed to evaluate.

13 MS. WILLIAMS: Do you know what they
14 concluded?

15 THE WITNESS: I can't recall.

16 MS. WILLIAMS: So you don't know if
17 the cameras actually found people recreating
18 during the storm events and for 24 hours
19 after?

20 THE WITNESS: I can't recall. I'd
21 have to reread the UAA.

22 MS. WILLIAMS: Do you know if there's
23 a TMDL in place for this water body, as well?

24 THE WITNESS: I can't recall.

1 MS. WILLIAMS: I may be done, if you
2 can just give me a second.

3 (Brief pause.)

4 MS. WILLIAMS: Since I have no one
5 left to consult with, I must be done.

6 HEARING OFFICER TIPSORD: In that case
7 let's go ahead and take lunch. In one hour,
8 please.

9 (Whereupon, the hearing
10 of the above-entitled
11 cause was adjourned for
12 lunch, to be reconvened
13 at 1:20 p.m.)

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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
of _____, A.D., 2008.

21

22 Notary Public

23

24