

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 SETBACK ZONE FOR FAYETTE)
 WATER COMPANY COMMUNITY WATER)
 SUPPLY: AMENDMENTS TO 35 ILL.)
 ADM. CODE 618.)

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 STATE OF ILLINOIS
 Pollution Control Board

TRANSCRIPT FROM THE PROCEEDINGS
 taken before the HEARING OFFICER TIMOTHY J. FOX
 by LORI ANN ASAUSKAS, CSR, RPR, a notary public
 within and for the County of Cook and State of
 Illinois, at the Fayette County Courthouse, 221
 South 7th Street, Vandalia, Illinois, on the 27th
 day of July 2011, A.D., at 9:00 o'clock a.m.

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

2

3 ILLINOIS POLLUTION CONTROL BOARD,

4 100 West Randolph Street

5 Suite 11-500

6 Chicago, Illinois 60601

7 (312) 814-6983

8 BY: MR. TIMOTHY J. FOX,

9

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11

12 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

13

14 Ms. Andrea S. Moore, Board Member

15

16 ILLINOIS ENVIRONMENT PROTECTION AGENCY,

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17 P.O. Box 19276

Springfield, Illinois 62794-9276

18 (217) 782-5544

BY: MS. JOANNE M. OLSON.

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1 A P P E A R A N C E S: (Continued)

2

Ms. Rachel Morgan, Student Worker, IEPA

3 Mr. Richard Cobb, IEPA

Mr. Darrell Schaal, Fayette County Board Member

4 Mr. Matt Stroud, Fayette County Health Department

Mr. Michael Casey, Fayette Water Company

5 Mr. Mark Mitchell, Illinois Rural Water Association

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1 HEARING OFFICER FOX: Good morning
2 and welcome to this Illinois Pollution Control
3 Board hearing. My name is Tim Fox and I am the
4 hearing officer for this rulemaking entitled,
5 "In The Matter Of: Setback Zone For Fayette
6 Company Community Water Supply: Amendments to
7 35 Illinois Administrative Code 618."

8 Also present today from the
9 Board at my right is Board Member Andrea Moore
10 who is the lead board member assigned to this
11 proceeding. The Board's docket number
12 for this rulemaking is R11-25.

13 The Illinois Environmental
14 Protection Agency filed this rulemaking proposal
15 on April 21st of 2011 and in an order dated
16 May 5th of 2011, the Board accepted the Agency's
17 proposal for hearing. The next day, May 6, 2011,
18 a hearing officer order scheduled for today,
19 Wednesday, July 27th, and that order also set a
20 deadline of June 8, 2011, to pre-file testimony
21 for this hearing.

22 On June 6, 2011, the Board
23 did receive the testimony of Mr. Richard Cobb
24 on behalf of the IEPA and in order to expedite

1 this hearing, the original hearing officer
2 order had also set a deadline of June 29, 2011,
3 to pre-file questions based upon it. However,
4 no participant has pre-filed any questions
5 based upon Mr. Cobb's testimony.

6 This proceeding is governed
7 by the Board's procedural rules. Under Section
8 104.426 of those rules, all information that
9 is relevant and that is not repetitious or
10 privileged will be admitted into the record.

11 Please note that any questions
12 today posed either by Board Member Moore or by
13 me are intended solely to assist in developing
14 a clear and complete record and do not reflect
15 any pre-determination or prejudgment on the
16 proposal.

17 As we discussed off the record
18 before beginning the hearing and addressing some
19 procedural details, we will begin this hearing
20 with, of course, Mr. Cobb's pre-filed testimony
21 on behalf of the IEPA under Section 102.424(f)
22 of the Board's procedural rules. That testimony
23 is entered into the record as if actually read
24 and we will be able to proceed after perhaps a

1 brief statement or introduction to questions
2 that any of you may have based on his testimony.

3 After those questions, we can
4 turn to any witness who did not pre-file any
5 testimony, but would like to testify here today.
6 There is a sheet right inside the door of this
7 room with a pen on which you can indicate that
8 you did not pre-file written testimony, but
9 would like to offer oral testimony today.

10 For the benefit of our court
11 reporter, I think we will not have any problems
12 with making one another heard, but please speak
13 clearly and avoid talking at the same time as
14 any other person so that she can make a clear
15 transcript of this hearing.

16 Are there any questions about
17 our procedures before we get underway?

18 Very good. Why don't we
19 establish quickly, though, for the record that
20 we do have some participants here today. I
21 think only in the order of your arrival, we
22 have Mr. Mike Casey, who is here on behalf of
23 the Fayette Water Company. We have
24 Mr. Mark Mitchell. Mark was the correct first

1 name? Did I get that right?

2 MR. MITCHELL: Yes.

3 HEARING OFFICER FOX: Very good.

4 Who is representing the Illinois Rural Water
5 Association, I believe.

6 MR. MITCHELL: Correct.

7 HEARING OFFICER FOX: Very good.

8 We also have Mr. Darrell Schaal, who is a member
9 of the Fayette County Board here this morning
10 and Mr. Matt Stroud, did I remember correctly?

11 MR. STROUD: Yes.

12 HEARING OFFICER FOX: Great.

13 Representing the Fayette County Health Department
14 and it's worth repeating and worth stressing,
15 gentlemen, that if you have any questions, please
16 just indicate that you do and I will recognize
17 you so that we can air those and get the responses
18 that you would like.

19 Why don't we, Ms. Olson, then,
20 turn right to Mr. Cobb's pre-filed testimony.
21 Why don't we first have our court reporter
22 swear him in so we can begin with his comments
23 and with his answers. If you have any motions --
24 preliminary motions you would like to bring up

1 as soon as he is sworn in, we can turn to those
2 then. Does that make sense?

3 MS. OLSON: Yes.

4 HEARING OFFICER FOX: Very good.
5 Let's go.

6 (Mr. Cobb sworn.)

7 HEARING OFFICER FOX: Very good.
8 And Ms. Olson, if you do have any preliminary
9 motions, I'd be happy to field those.

10 MS. OLSON: At this time we would
11 like to move for the admission of Mr. Cobb's
12 testimony as Exhibit 1.

13 HEARING OFFICER FOX: Very good.
14 Ms. Olson, of course, as you've heard, has moved
15 that the pre-filed testimony dating back to
16 June 6th filed by Mr. Richard Cobb on behalf of
17 the Illinois Environmental Protection Agency be
18 entered as an exhibit at this hearing.

19 I believe, Ms. Olson, you have
20 provided copies of that testimony to the
21 participants here.

22 Is there any objection to the
23 motion to admit that as a hearing exhibit here
24 this morning?

1 Neither seeing nor hearing any,
2 Ms. Olson, I will mark that as you had requested
3 as Exhibit No. 1 and make that a part of the record
4 at the hearing this morning. Thank you very much.

5 (Document marked as
6 Hearing Exhibit No. 1
7 for identification,
8 07-27-2011.)
9 (Exhibit 1 admitted
10 into evidence.)

11 MS. OLSON: Additionally, the Agency
12 has put together a written reply to the Board's
13 asked questions, which were filed on July 14, 2011,
14 and at this time would, we would like to move for
15 the admission of the written response.

16 HEARING OFFICER FOX: Very good,
17 Ms. Olson, and I should clarify the record, and
18 I apologize that I neglected to mention this in
19 my opening remarks. The Board did, on July 17th,
20 issue a hearing officer order that directed the
21 Agency to be prepared to answer, I believe, about
22 12 to 14 specific questions.

23 Going above and beyond the call
24 of duty, Mr. Cobb and the Agency have prepared

1 written responses to those and the exhibit --
2 the proposed exhibit that Ms. Olson has referred
3 to is the set of written answers and other
4 information responding to the Board's order.

5 Again, Ms. Olson, I recall
6 that you had provided copies of that document
7 to the other participants here. So let me turn
8 to the motion and that was to introduce those
9 written responses into the record as Hearing
10 Exhibit No. 2.

11 Is there any opposition to
12 the motion to do so?

13 Neither seeing nor hearing any,
14 Ms. Olson, I will mark that as Exhibit No. 2 in
15 this proceeding and enter it into the record as
16 that exhibit number.

17 (Document marked as
18 Hearing Exhibit No. 2
19 for identification,
20 07-27-2011.)

21 (Exhibit 1 admitted
22 into evidence.)

23 HEARING OFFICER FOX: Any further
24 motions on the part of the Agency, Ms. Olson?

1 MS. OLSON: Not at this time.

2 HEARING OFFICER FOX: Very good.

3 Why don't we turn, then, if you have no other
4 preliminaries to take care of to Mr. Cobb.

5 Mr. Cobb, thank you for your
6 pre-filed testimony and the responses that you
7 are submitting here today and Exhibit No. 2.

8 If you have any kind of
9 introduction or summary that you would like to
10 offer, please go ahead and do so.

11 MR. COBB: I will keep it very brief.
12 You know, I'm happy to be here today to answer any
13 additional questions about this proposal to expand
14 Fayette Water Company's minimum setback zones that
15 are established by statute to one of our other tools
16 of protecting community water supplies and that is
17 a maximum setback zone.

18 It's an important proposal and
19 it will afford the total resource groundwater
20 used by the soil fields and additional protection
21 in the event of any releases and also for some
22 certain citing restrictions prohibitions.

23 So with that, I don't have any
24 additional beyond my written testimony, but I

1 would be happy to proceed either with going
2 through the Board's questions or answering
3 any other types of questions that you might
4 have for me.

5 HEARING OFFICER FOX: Mr. Cobb,
6 thanks for your willingness to do this. What I
7 would like to do is first, turn to any questions
8 that other gentlemen and the other participants
9 or organizations here may have and give them every
10 opportunity to do so.

11 Did any of the four of you have
12 any questions that you wished to pose to Mr. Cobb?

13 Not seeing or hearing any
14 indication that there are questions that they have,
15 Mr. Cobb, what I would propose to do is this simply,
16 I appreciate your efforts and time in preparing
17 the written responses, but since they have not been
18 previously filed in the Board's record and to
19 enable the participants who have not seen them
20 before this morning and to help clarify the record,
21 what I'd like to do is just run through the
22 questions. If you wouldn't mind offering a summary
23 or brief response to help clarify our record, I
24 would greatly appreciate that.

1 MR. COBB: I would be happy to do
2 that.

3 HEARING OFFICER FOX: Why don't we
4 begin, then, with number one. This is a Board
5 staff question drawn from your statement of reasons
6 effectively the original rulemaking proposal filed
7 in April.

8 On Page 7, "The Agency states
9 that a petroleum pipeline runs through the well
10 field." That is, of course, the subject of this
11 proceeding.

12 Page 10 of that statement of
13 reason, the Agency states that, "While neither
14 the minimum nor maximum setback zone prohibit
15 or regulate pipelines, a maximum setback zone
16 will afford the Fayette Water Company wells an
17 additional measure of protection if a release
18 occurs."

19 The first Question A under
20 that was a request to clarify whether that was
21 aboveground or underground well running in the
22 vicinity of Fayette Water Company's well field.
23 Can you address that for us, please?

24 MR. COBB: It's an existing

1 underground pipeline. In our written response,
2 we also prepared Attachment A, which shows the
3 location of the existing pipeline and also
4 shows the Fayette Water Company's well field
5 and also the boundary of the principal aquifer
6 that I referenced in my pre-filed testimony.

7 I don't know if it's down into
8 the saturated zone. I think we heard that it
9 might -- I don't think we know the exact, but
10 if anything, it's -- it may be in the unsaturated
11 zone above the top of the water table.

12 In personal communications
13 with the Fayette Water Company, we found that
14 the underground pipe is either eight or ten
15 inches. Fayette Water Company indicated to us
16 via personal communication that the pipeline
17 was there when they bought the property. They
18 didn't know it was there.

19 Enbridge Pipeline Company has
20 proposed installing the pipeline in the same
21 right-of-way as the existing pipeline. What we
22 found when we contacted Enbridge as of last week,
23 they have actually bought the property and this
24 says the pipeline is abandoned, but maybe a more

1 accurate status is that it's inactive.

2 Enbridge, as I said, is proposing
3 to install a pipeline in the same right-of-way, but
4 they also own that existing pipeline.

5 HEARING OFFICER FOX: If I could ask
6 a follow-up question.

7 MR. COBB: Sure.

8 HEARING OFFICER FOX: You have
9 distinguished abandoned from inactive. Is that
10 the difference perhaps between an abandoned pipeline
11 that is unlikely or certain never to be used again
12 and an inactive pipeline that may fairly easily be
13 put back in use?

14 MR. COBB: That's my interpretation
15 of it. Since they bought that and they themselves
16 have called it inactive, that they may be looking
17 at in using that again versus only buying the
18 right-of-way. So, yes, that's my interpretation.

19 HEARING OFFICER FOX: So they may have
20 actually chosen their words carefully?

21 MR. COBB: Yes.

22 HEARING OFFICER FOX: Mr. Cobb, are
23 you aware of any pipeline regulations that provide
24 legal definitions to terms such as abandoned or

1 inactive or are you relying on a more technical
2 sense in that?

3 MR. COBB: I'm relaying on just a
4 verbal communication with Enbridge. I can't say I
5 looked at the Pipeline Safety Regulations or the
6 Illinois Commerce Commission Regulations. I didn't
7 look at those definitions.

8 HEARING OFFICER FOX: Very good.
9 And the sub -- the Question 1(a), there was a quick
10 follow-up, if underground -- and, of course, it's
11 been your testimony this morning that the pipeline
12 is underground -- does the pipeline run through the
13 "principal sand and gravel aquifer" used by the
14 Fayette Water Company wells, and it appears -- can
15 you explain how the map that you described as an
16 Attachment No. 1 addresses that question?

17 MR. COBB: Yes. Attachment No. 1
18 shows that the pipeline, as I'm holding up a copy
19 of the map (indicating), the stifle pattern on the
20 map shows the boundary of the principal sand and
21 gravel aquifer, which I defined in my pre-filed
22 testimony, and you can see that the existing
23 pipeline also runs through the existing minimum
24 setback zones of 400 feet and also within the

1 proposed 1,000-foot maximum setback zone proposal.

2 So it is, indeed, within or on
3 top of the recharge area of the principal sand and
4 gravel aquifer and within the setback zones -- the
5 minimum setback zones of the well.

6 HEARING OFFICER FOX: Very good.

7 Thank you, Mr. Cobb.

8 In Question 1(b), the Board
9 had asked you to comment on whether the existing
10 pipeline poses a significant threat of contamination
11 and your concise response is no, the existing
12 pipeline is not being used, and does not pose
13 significant risk. Is there any elaboration on
14 that that you would like to offer?

15 MR. COBB: Obviously, if it were
16 being used and there was a release given the
17 proximity to the well field, that's when I would
18 jump to using the word significant threat.

19 In fact, if it was a little
20 bit of a distance away from the well, we could
21 use the word threat or it may jump to cause and
22 allowed paralleling the language under Section 12(a)
23 of the act. So depending on where the release is
24 within that area that I showed you on Attachment 1,

1 what I referred to as an Attachment 1, it could
2 be considered a significant threat.

3 Or If it was right on top of a
4 well field and contaminated the well and it would
5 have caused a contamination of that well, so that
6 would even be beyond a significant threat.

7 HEARING OFFICER FOX: And your
8 reference to Section 12(a) of the act refers, of
9 course, to the Environmental Protection Act and
10 the provision addressing water pollution?

11 MR. COBB: The Illinois Environmental
12 Protection Act, Section 12(a), correct.

13 HEARING OFFICER FOX: Thank you,
14 Mr. Cobb.

15 Turning to Question 1(c), the
16 Board had asked to clarify whether the pipeline
17 is within the existing setback zones and perhaps
18 it makes the most sense just to have you address
19 quickly how the map that you had submitted as
20 Attachment 1 clarifies that.

21 MR. COBB: We actually have -- in
22 addition to Attachment 1, we have Attachment 2,
23 which is zoomed in closer relative to the pipeline,
24 the existing minimum setback zones and the proposed

1 maximum setback zones.

2 So that shows very clearly the
3 proximity spatially with respect to the wells and
4 the minimum setbacks and the proposed maximum zones
5 and if you want me to go further with explanation
6 of what the maximum zone provides in terms of
7 additional protection, the Board's Tiered Approach
8 for Corrective Action objectives actually required
9 more stringent remediation objectives.

10 So if there were to be a release,
11 and depending on where it is, if it was in this
12 area that's now beyond the minimum, but within
13 the maximum, we would have expanded the authority
14 or applicability of the TACO rules, the Tiered
15 Approach for Corrective Action objectives and a
16 more stringent cleanup is required both in the
17 minimum and the maximum setbacks zone. So there
18 is definitely that.

19 There is also the fact that
20 you are proposing or prohibiting any new potential
21 primary sources.

22 HEARING OFFICER FOX: That there
23 would be a wider geographical area in which those
24 sources would be prohibited?

1 MR. COBB: Correct.

2 HEARING OFFICER FOX: Very good.

3 And just to clarify, although I'm sure that I
4 understood you correctly, the Attachment 2 is
5 based on Attachment 1, it is simply a magnified
6 portion of that first attachment?

7 MR. COBB: That's correct. It's
8 zoomed in. It's a smaller scale, more magnified
9 version. Attachment 1 was brought out a little
10 bit so that you could see the boundary of the
11 aquifer here. It focuses to show the setback zone
12 existing proposed more clearly with respect to
13 the pipeline.

14 HEARING OFFICER FOX: Very good.
15 Thank you, Mr. Cobb.

16 Has any of Mr. Cobb's responses
17 raised questions on the part of the other gentleman
18 here?

19 Not seeing any indication,
20 Mr. Cobb, that they do have questions, why don't
21 we forge ahead.

22 Question 1(d), the Board had
23 asked you to comment more specifically on the
24 status of the apparent proposed pipeline and you

1 at least generally addressed that situation.

2 Was there anything that you
3 wished to offer as an elaboration or clarification
4 of that?

5 MR. COBB: Let me read our response
6 into the record on this one.

7 "On August 16, 2007, Enbridge
8 Pipeline filed an application with the Illinois
9 Commerce Commission, Case No. 07-0446, for a
10 certificate of good standing authorizing Enbridge
11 Pipeline to operate as a common carrier by pipeline
12 pursuant to 220 ILCS 5/15-401. The project is a
13 part of the Southern Access Extension Pipeline
14 Project, and would extend the Enbridge crude oil
15 mainline from Pontiac, Illinois to a major petroleum
16 hub to Patoka, Illinois. The pipe to be installed
17 is 36-inches in diameter, with an initial capacity
18 of 400,000 barrels per day and the possibility of
19 expanding to 800,000 barrels per day. Enbridge's
20 proposed route placed this petroleum pipeline
21 through Fayette Water Company's well field following
22 the same right-of-way as seen in Attachments 1 and
23 2.

24 Numerous individual property

1 owners and interested members of the public
2 intervened, including Fayette Water Company.
3 On January 4, 2008, the affidavit of Randy Wolf,
4 manager of Fayette Water Company, was filed in
5 the Illinois Commerce Commission case. See
6 Attachment 3. On January 9, 2008, the Commission
7 asked Enbridge Pipeline to respond to questions
8 about the Fayette Water Company well field.
9 Enbridge's response is attached. See Attachment 4.

10 A hearing was held on July 8,
11 2008. The Illinois Commerce Commission entered a
12 final order in this case on July 8, 2009. (The
13 footnote of that order is below.) The commission
14 granted Enbridge a certificate in good standing
15 to construct, operate and maintain the proposed
16 pipeline along the route Enbridge proposed. The
17 Commission's order did not address Fayette Water
18 Company's concerns.

19 The case was appealed to the
20 Illinois Court of Appeals, Fourth District,
21 which affirmed on October 25, 2010. See Pliura
22 Intervenors versus Illinois Commerce Commission,
23 405 Ill. App. 3d 199 (2010). The Illinois Supreme
24 Court denied the appellants' petition to appeal

1 (239 Ill 2d 589) and the appellate court issued
2 its mandate on March 8, 2011.

3 The Agency contacted Enbridge
4 Pipeline on July 22, 2011. Enbridge Pipeline
5 indicated that the new pipeline has not yet been
6 installed in the Fayette Water Company's well field.
7 The south access extension is currently on hold,
8 with no planned start date for construction.

9 HEARING OFFICER FOX: Mr. Cobb, do
10 you happen to have, on the basis of your experience,
11 any estimate, assuming today that they wished to
12 begin construction how long it might take for them
13 to have an operating pipeline in business?

14 MR. COBB: I do not. I do not know
15 if they were to construct a new one, I'm not sure
16 exactly how long that would take.

17 HEARING OFFICER FOX: A lot of factors
18 involved in that?

19 MR. COBB: I would think so, yes.

20 HEARING OFFICER FOX: Very good.
21 Thanks for that summary and for the information that
22 you submitted. Did I cut you off, though, Mr. Cobb?
23 Did you have something left?

24 MR. COBB: No.

1 HEARING OFFICER FOX: Okay. Great.
2 Any questions at all on the part of the other
3 gentleman on the basis of that summary or that
4 response? Great.

5 Why don't we go forward. I see
6 Mr. Cobb, of course, that you prepared a response
7 to Question 1(e). There is quite a bit of
8 information on specific federal or state regulations
9 other than the Board's setback regulations at
10 Part 618 that might address pipeline safety
11 specifically in terms of groundwater protection.

12 Is there a summary or
13 clarification that you would like to offer on
14 that question?

15 MR. COBB: Yes. In the state, it's
16 covered by the common carrier pipeline law, but at
17 the federal level, it's regulated under the Federal
18 Department of Transportation, the Office of Pipeline
19 Safety, and they do consider -- and well, protection
20 areas using the same safe drinking water act
21 definition, which we have also incorporated as a
22 definition in Part 611 of the Board's drinking --
23 primary drinking water regulations and protection
24 definitions too.

1 From what I am seeing there,
2 it's mainly special performance standards,
3 technology controls, enhanced emergency responses
4 that apply in this particularly sensitive area
5 under the federal regulations.

6 HEARING OFFICER FOX: Very good.
7 Under Question 1, finally there is a sub (f) --
8 Subsection (f), which it simply requested you to
9 identify and provide contact information.

10 First of all, for the owner of
11 the pipeline, and I think it's quite clear in your
12 written responses, and thank you for that, there
13 was also a request that you provide the Board a
14 map identifying the location of the pipeline and
15 that appears to be addressed in Attachments 1 and 2,
16 of course, the magnified version.

17 MR. COBB: Yes.

18 HEARING OFFICER FOX: Finally, there
19 was a question of whether you had discussed this
20 proposal with them and I believe that was for all
21 intents and purposes fully addressed in your earlier
22 comments on that project.

23 MR. COBB: Yes.

24 HEARING OFFICER FOX: Very good. Then

1 why don't we -- unless there were any questions,
2 I certainly don't want to cut those off if any of
3 you gentlemen have any questions?

4 Not seeing any, why don't we go
5 to Question No. 2, still referring to your -- the
6 statement of reasons filed by the Agency in April.
7 That question is that on Page 7, the Agency states
8 Fayette Water Company determined the lateral area
9 of influence, or LAI, of its well and requested the
10 Agency to review and confirm the technical adequacy
11 of the Fayette Water Company's determination. The
12 Board specifically had asked the Agency to submit
13 the original determination by Fayette Water Company
14 along with the Agency's confirmation into the record
15 and you have indicated clearly that Attachment 5
16 responds to that and provides the requested
17 documents.

18 Is there any elaboration or
19 clarification on that that you would like to offer?

20 MR. COBB: Those contain the LAI,
21 technical adequacy applications, as well as the
22 Agency confirmation and attachment files. So...

23 HEARING OFFICER FOX: And were there
24 any questions on the basis of those documents that

1 Mr. Cobb has submitted into our record this morning?

2 Neither seeing nor hearing any,
3 let's turn Mr. Cobb specifically to the pre-filed
4 testimony that you had submitted to the Board in
5 June.

6 The first question on the basis
7 of that pre-filed testimony is that on Page 4, you
8 indicate that the well record from the Fayette
9 Water Company well field confirms that the bedrock
10 is composed of Pennsylvanian aged deposit and asked
11 that you provide the well logs for the six Fayette
12 Water Company public water supply wells covered by
13 the Agency's proposal.

14 Your response is that there is
15 an Attachment 6 to your written responses that
16 is entitled well logs and construction logs, of
17 course.

18 Was there any elaboration or
19 clarification that you wish to offer on the record?

20 MR. COBB: No. Those logs show the
21 deposits and the aquifer materials that are being
22 used. We actually have geologic logs that were
23 treated for several of the wells and construction
24 well logs, which also tell us the type of aquifer

1 that it's in and it also has a sand and gravel
2 pack with a screen, which is only used for sand
3 and gravel type well design. Wells that go into
4 the bedrock are typically open hole. They don't
5 have a screen. They don't have a gravel pack.

6 In addition, one of the sources
7 of information that we also have is the map that
8 was in my pre-filed testimony as an Attachment D
9 developed by the Illinois State Geological Survey
10 and that map shows the -- is labeled bond formation.
11 That is actually Pennsylvanian aged deposit. So
12 that spatially also shows the Pennsylvanian is the
13 top bedrock and bond formation within the
14 Pennsylvanian bedrock is the top formation.

15 As we said, it's very poor in
16 this part of the state in terms of the resource,
17 low yield and high dissolve solids.

18 HEARING OFFICER FOX: And I apologize
19 for making you repeat this, Mr. Cobb. You had
20 referred to Attachment D, as in David, to your
21 pre-filed testimony in June?

22 MR. COBB: Correct.

23 HEARING OFFICER FOX: Thank you for
24 clarifying that for me. I want to make sure I heard

1 you correctly.

2 MR. COBB: That's correct.

3 HEARING OFFICER COBB: Were there
4 any questions on the well records or Mr. Cobb's
5 response here this morning?

6 Not seeing or hearing any, why
7 don't we turn to Question No. 2, Mr. Cobb? You
8 had, on Page 7, stated that the principal sand and
9 gravel aquifer used by Fayette Water Company had
10 an intrinsically high vulnerability to groundwater
11 contamination, and to quote from the question,
12 since the prohibition under Section 14.3(e) of
13 the Act does not address potential secondary
14 sources or potential routes, please comment on
15 the merits of expanding the proposed prohibition
16 at Section 618.115 to include new potential
17 secondary sources or potential routes.

18 MR. COBB: I think the Board raises
19 a very good question and it most certainly merits
20 the expanding that prohibition under new potential
21 secondary sources and new routes along with other
22 things. The prohibition of the new secondary
23 source within the maximum zones prohibits the
24 placement of any unit below ground that accumulates

1 more than 500 gallons of petroleum, including
2 crude oil and the other sources that would be
3 prohibited are described within the definition
4 of potential secondary source in the Environmental
5 Protection Act at 415 ILCS 5/3.355.

6 So we, unlike Section 14.3,
7 which indicates that local governments are --
8 can be consistent with the, if not more stringent,
9 the Board certainly is not restrictive in that
10 matter, so we think that's a very good question.

11 HEARING OFFICER FOX: And let me
12 elaborate on that if I could, Mr. Cobb. Assuming
13 hypothetically that there was no legal barrier,
14 statutory or regulatory barrier to the Board
15 expanding that, does the Agency have a position
16 on the possibility of including that protection?

17 MR. COBB: Absolutely.

18 HEARING OFFICER FOX: Thanks for
19 including that. I thought that was the tenor of
20 your response. I appreciate the tenor of your
21 response. I appreciate the clarification.

22 MR. COBB: Absolutely.

23 HEARING OFFICER FOX: Any follow-up
24 questions at this point based on Mr. Cobb's

1 responses?

2 Not seeing or hearing any,
3 Mr. Cobb, if you have nothing further to add on
4 Question 2, why don't we turn to Question 3,
5 Section 14.3(f), as in Frank, of the Environmental
6 Protection Act provides that the boundaries of a
7 maximum setback zone adopted by ordinance may
8 extend up to 2,500 feet from the wellhead under
9 certain conditions.

10 I'll quote just from the written
11 question, "Are any of the Fayette Water Company
12 wells withdrawing groundwater from alluvial deposits
13 and located within 1,000 feet of public waters
14 such that the maximum setback zone could potentially
15 be established at 2,500 feet from the wellhead?"

16 MR. COBB: We appreciate the Board
17 asking that question as well. Most definitely
18 the Fayette Water Company's wells are within
19 1,000 feet of the hydrologic boundary of the
20 Kaskaskia River.

21 I'm just going to say that
22 none of the wells appear to be within 1,000 feet
23 of the public waterway, but let me explain that.
24 What we have cited there is the public waterway

1 definition in the Rivers, Lakes and Stream Act,
2 which is very broad in our reading of it and
3 then -- but what we have historically done is
4 we have relied on the delineated public water
5 bodies of the Illinois Department of Natural
6 Resources -- Office of Water Resources as is
7 published in 17 Illinois Administrative Code
8 3704, Appendix A.

9 So using that historical
10 definition, the eastern part of the area is
11 approximately one-half of a mile to the west
12 of the Fayette Water Company wells. So we're
13 saying is it doesn't appear that Section 14.3(f)
14 of the Act is applicable, but once again, there
15 are two ways to look at how you define public
16 waters we have historically done it that way
17 according to the more narrow delineated boundaries,
18 but once again, the definition itself is very
19 broad.

20 HEARING OFFICER FOX: Let me ask
21 you this Mr. Cobb. The delineated water body
22 delineated appear by the Department of Natural
23 Resources does appear to place this approximately
24 2,500 feet from what's defined as a public

1 waterway.

2 Do you have any reason to
3 think that the more general definition in the
4 Rivers, Lakes and Streams Act would lead to a
5 different conclusion, it might actually bring
6 the wells within that 1000-foot radius?

7 MR. COBB: I think that's open
8 to interpretation, yes. That's what I was
9 kind of trying to allude to was the comparison
10 of the two in looking at the broader definition,
11 at least with eyes with respect to maximum setback
12 zones, it would -- in looking at the definition,
13 it would certainly seem to be broader than the
14 delineated waterways the DNR has delineated.

15 BOARD MEMBER MOORE: Is the area the
16 DNR is -- that would fall into the DNR definition
17 a wetland area?

18 MR. COBB: No. It's the actual
19 main segment of the Kaskaskia.

20 BOARD MEMBER MOORE: It is?

21 MR. COBB: If you look at one of the,
22 maps, it's the -- let me see if I can find it for
23 you. Yes. Let's look at Attachment A and --

24 BOARD MEMBER MOORE: A or Attachment

1 1?

2 MR. COBB: Attachment 1. I'm sorry.
3 I apologize. It's an Attachment 1. You see the
4 well label for Well 3?

5 MS. MOORE: Yes.

6 MR. COBB: And the Kaskaskia goes
7 straight to the left or -- and then it goes straight
8 south. Right there where it takes the right angle
9 turn to the east is where the delineated portion
10 stops right there (indicated) --

11 BOARD MEMBER MOORE: Okay.

12 MR. COBB: -- before that right angle
13 turn. And so, no, it's on the main stem, but I'm
14 not sure why it stops there.

15 HEARING OFFICER FOX: And in any
16 event, it's -- forgive me if I'm stating this
17 incorrectly, your sense or your opinion is that
18 wetlands, backwaters, slues, for instance, may
19 conceivably bring the public waterway within
20 1000 feet?

21 MR. COBB: This part of the Kaskaskia,
22 I would think -- I mean, it flows into -- so I'm not
23 sure why it stops at that right angle.

24 HEARING OFFICER FOX: And just to

1 be clear -- forgive me for asking a background
2 question -- the Kaskaskia flows north to south
3 here, from the top of the map to the bottom?

4 MR. COBB: Yes.

5 HEARING OFFICER FOX: Thank you.

6 MR. COBB: The top of the watershed
7 is to the northeast flowing to the southwest,
8 correct.

9 HEARING OFFICER FOX: Mr. Cobb, are
10 you aware of any maps or other data that might
11 clarify that question about the proximity of the
12 wetland, backwater or slue to the well?

13 MR. COBB: Well, the end connected
14 part is really -- we weren't so much looking at
15 the slues or backwaters, but the -- or that are
16 connected with or discharged waters into is -- you
17 know, we're not sure why the rest of the Kaskaskia
18 beyond that is not, which, you know, the stream is
19 still going to the northeast here (indicating) along
20 the backwaters and the slues.

21 I'm not sure if the broader
22 definition or interpretation to the statutory
23 definition would cause any negative impact onto
24 DNR, but because this is for a different purpose.

1 MS. MOORE: Are these all farm fields
2 around here?

3 MR. COBB: Yes.

4 MS. MOORE: It's conceivable that
5 they have all been drained, those farm fields, so
6 that does kind of change the hydrology of the area,
7 wouldn't you agree?

8 MR. COBB: Yes. You may have tile
9 drainage and that sort of thing into the mainstream,
10 but, you know, once again, we're just looking at the
11 mainstream of the Kaskaskia --

12 BOARD MEMBER MOORE: Right.

13 MR COBB: -- and not so much what is
14 happening in the wetlands or the slues or backwater
15 areas.

16 HEARING OFFICER FOX: Anything further
17 to offer on that point, Mr. Cobb?

18 MR. COBB: No.

19 HEARING OFFICER FOX: Thanks very
20 much.

21 Any questions on the part of the
22 other gentlemen here?

23 MR. CASEY: I have a comment.

24 I believe that the question was --

1 HEARING OFFICER FOX: Sir, could you
2 identify yourself, please?

3 MR. CASEY: My name is Mike Casey from
4 Fayette Water Company.

5 HEARING OFFICER FOX: And I'm sorry to
6 interrupt. Please go ahead, Mr. Casey.

7 MR. CASEY: Was the question of
8 whether or not the slues have been drained by tile
9 or ditches?

10 BOARD MEMBER MOORE: Well, I just --
11 it was mentioned that there were farm fields in the
12 area and it was likely that they had been drained.

13 MR. CASEY: No. As a matter of fact,
14 today there are slues full of water within 600 feet
15 of the wells.

16 BOARD MEMBER MOORE: Thank you.

17 MR. CASEY: Perhaps at some time in
18 the past, an attempt was made to drain them, but
19 it has not been successful. So there are slues
20 standing full of water today.

21 HEARING OFFICER FOX: And just to
22 clarify, Mr. Casey, it was your estimate that
23 those slues were 600 feet of the wells themselves,
24 did I hear you correctly?

1 MR. CASEY: Well, as you can see on
2 the map, the wells are not together.

3 HEARING OFFICER FOX: Correct.

4 MR. CASEY: One slue is within ten
5 feet of Well No. 6 and we actually built the well
6 in a slue and so there is water within 30 feet of
7 that well.

8 MR. COBB: On Attachment 2, I think
9 you can see those slues.

10 BOARD MEMBER MOORE: Right.

11 MR. CASEY: There is also some
12 backwater in places that is holding water now and
13 those would be within 600 feet of the well.

14 HEARING OFFICER FOX: Can you be a
15 little more specific, Mr. Casey? I can see that
16 you have the attachment, too, there in front of
17 you. Can you indicate other wells where you
18 believe that slues or standing water would come
19 within that proximity of the wells? You've referred
20 already to Well No. 6.

21 MR. CASEY: Okay. On Well No. 5,
22 there is a slue 600 feet of that particular well.
23 That's Well No. 5. On Well No. 1, it shows --
24 what we call Well, No. 1, it's called Well No. 2

1 on this map, there is standing water within 500 or
2 600 feet of that well.

3 HEARING OFFICER FOX: Thank you for
4 providing that specific information, Mr. Casey.

5 Were there others that were in
6 similar circumstances or conditions?

7 MR. CASEY: Well, these wells are
8 all within -- Wells Nos. 2, 3, 4 and 6 are all
9 within 500 feet of one another. So that standing
10 water is quite close to all of the wells.

11 MR. COBB: Also, on Attachment 2,
12 you will note that the main stem of the Kaskaskia
13 is within 400 feet relative to Well 7 and Well 5 and
14 not much over 400 feet relative to Wells 2, 3, 6 and
15 4. It's well within 1,000 feet, which is delineated
16 as the red boundary on Attachment 2.

17 HEARING OFFICER FOX: Very good.
18 Mr. Casey, forgive me. I'm going to have to take
19 something out of order. I am confident that the
20 Board would like to rely upon your testimony and
21 your responses. If we could have the court reporter
22 swear you in so that the Board may do so, I would
23 appreciate it.

24 (Mr. Casey sworn.)

1 HEARING OFFICER FOX: Mr. Casey, I'm
2 sorry for taking that a bit out of order. I
3 appreciate your flexibility on that.

4 Was there anyone else who
5 wished to address the proximity of what may be
6 public waterways to the existing wells? Any
7 further questions?

8 Mr. Cobb, any further
9 clarification on that before we move on? Very
10 Good.

11 MR. COBB: No. We are glad you asked
12 the question.

13 HEARING OFFICER FOX: We appreciate
14 your responses, both in writing and here today,
15 Mr. Cobb.

16 That brings us to question
17 No. 4, based upon your pre-filed testimony. You
18 had noted on Page 7 that there was a specific rate
19 of daily pumpage from the Fayette Water Company
20 wells, but the statement of reasons appears to
21 provide a different volume for the same measure.
22 If you could explain that to us, we appreciate it.

23 MR. COBB: I went to our engineers
24 evaluation report to get the specific answer here.

1 The 494,830 gallons average daily pumpage and our
2 engineers have 864,000 gallons as the maximum daily
3 average. So both values were collect. They just
4 mean different things.

5 HEARING OFFICER FOX: Slightly
6 different terms?

7 MR. COBB: Slightly different terms,
8 yes.

9 HEARING OFFICER FOX: Very good. Any
10 questions on that at all, gentlemen? Why don't we
11 turn then, if we could, to the single question.

12 BOARD MEMBER MOORE: I have a
13 question.

14 HEARING OFFICER FOX: Oh, I'm sorry.
15 I cut off Board Member Moore.

16 BOARD MEMBER MOORE: I have just one
17 question on the -- do you know what the uses are
18 for the water? Is it for only consumption or is it
19 for irrigation?

20 MR. COBB: I don't know about
21 irrigation. As far as I know, it's mainly public
22 water consumption.

23 MR. CASEY: Public water supply.

24 BOARD MEMBER MOORE: Okay. Great.

1 Thank you.

2 HEARING OFFICER FOX: Okay. We will
3 now turn to the last question with two subparts,
4 Mr. Cobb, and that addresses the proposed amendments
5 to Section 618.110. Of course, the Agency in the
6 statement of reasons had indicated that the proposed
7 new Section 618.110, "Provides that the groundwater
8 rules of Section 14.4 of the Act and corresponding
9 Board regulations will apply to any activities,
10 facilities and units within the maximum setback
11 zones established by this part of the Act."

12 The Board had asked to clarify
13 whether those "activities, facilities or units"
14 were referred to in this proposed language are the
15 same as those that are regulated under parts 615
16 and 616 of the Board's regulations?

17 MR. COBB: They are, indeed, and we
18 think a cross-reference would be appropriate.

19 HEARING OFFICER FOX: And you are
20 addressing, of course, Subsection B of that
21 question, and it seems to be your position that that
22 specific question --

23 MR. COBB: We have that referenced
24 and did restructuring and generalize that, yes,

1 it would be appropriate to put that cross-reference
2 back in.

3 HEARING OFFICER FOX: Very good. We
4 will certainly take that under advisement.

5 That comes to the end of the
6 questions that the Board had prepared in advance
7 and for which Mr. Cobb prepared written responses.
8 Again, thanks for those, Mr. Cobb.

9 MR. COBB: Absolutely.

10 HEARING OFFICER FOX: We certainly
11 will not move on unless the gentleman here
12 representing the Fayette Water Company or other
13 entities have posed all the questions that they
14 wish to ask.

15 Do any of you on any of the
16 issues raised in the within testimony on the
17 hearing exhibits today have any questions you
18 would like to ask Mr. Cobb as the representative
19 of the IEPA?

20 MR. SCHAAL: I have a couple.

21 HEARING OFFICER FOX: Mr. Schaal, if
22 you would please identify yourself?

23 MR. SCHAAL: Okay. I am Darrell
24 Schaal with Fayette County Board. Just for my

1 clarification, if we increase the setback to the
2 maximum level, does that mean that Enbridge cannot
3 put a pipeline within that maximum setback?

4 MR. COBB: Well, that might depend
5 on what the Board does in terms of their proposal.
6 There were some lines of questioning to expand that
7 potentially looks at what would be the merit of
8 expanding that. So those were some questions that
9 were, you know, discussed today. So I can't give
10 you a precise answer. On the one hand, if the
11 prohibition as expanded as they suggested by the
12 questions, it would expand that prohibition area
13 for any new pipeline outside of that area, whatever
14 that might be. So yes, potentially.

15 MR. SCHAAL: Thank you.

16 HEARING OFFICER FOX: Mr. Cobb, could
17 you -- I'm sorry. Ms. Olson?

18 MS. OLSON: Go ahead.

19 HEARING OFFICER FOX: Mr. Cobb, could
20 you expand on that and explain precisely which
21 act -- potential actions by the Board might have
22 the affect that Mr. Schaal had described of
23 forbidding the installation of a new pipeline?

24 MR. COBB: If we expand the

1 prohibitions to include potential secondary
2 sources or potential routes in addition to
3 potential primary sources, that would -- and
4 given that definition of accumulated 500 gallons
5 or more below ground a unit or side, which we
6 assume is the pipeline, that would expand that
7 area of applicability of the prohibition.

8 HEARING OFFICER FOX: A pipeline
9 containing that volume of petroleum product would
10 meet the definition of the potential secondary
11 source --

12 MR. COBB: Correct.

13 HEARING OFFICER FOX: --- that
14 could potentially be forbidden if the proposal
15 was expanded to include that in addition to
16 the potential primary sources?

17 MR. COBB: That's correct. In
18 addition to the requirements that would apply
19 within the Tiered Approach for Corrective Action
20 objectives.

21 MS. OLSON: I just want to clarify
22 when he says that definition, are you referring to
23 the definition of a secondary source found in the
24 act?

1 MR. COBB: Yes. The definition
2 of potential secondary source under the Illinois
3 Environmental Protection Act. That's Section
4 3.355; is that correct? I'm asking myself. I
5 just want to make sure I am giving you the right
6 thing.

7 MS. OLSON: That's Section 3.355.
8 I have just one more follow-up question. To your
9 knowledge, does that definition specifically refer
10 to pipelines?

11 MR. COBB: No.

12 MS. OLSON: It refers to a unit; is
13 that right?

14 MR. COBB: It refers to a unit at
15 a site that at any time is below ground that
16 could accumulate 500 gallons or more. In our
17 interpretation, that could be a pipeline meeting
18 that definition. Pipelines aren't specifically
19 referred to, but certainly depending upon the
20 diameter of the pipeline and the distance of the
21 pipeline, I think it would easily meet the
22 accumulating 500 gallons below ground definition.

23 MS. OLSON: And further, one more
24 follow-up question, would the definition for the

1 unit at a site, would the site be considered the
2 setback zone area?

3 MR. COBB: I think in that case,
4 the parcels and the area within the delineated
5 boundary would be, yes.

6 MS. OLSON: And the unit, in your
7 interpretation, would be the pipeline?

8 MR. COBB: Correct.

9 HEARING OFFICER FOX: Ms. Olson,
10 anything further?

11 MS. OLSON: I just wanted to clarify
12 that. Thank you.

13 HEARING OFFICER FOX: Much
14 appreciated, but, Mr. Schall, we had moved on from
15 your question and I wanted to make sure you had
16 been --

17 MR. SCHAAL: That answered my
18 question. Thank you.

19 MR. COBB: You're welcome.

20 HEARING OFFICER FOX: Were there
21 any other -- Mr. Schaal, thank you for your
22 question. Were there any other issues that the
23 rest of you wished to raise either pertaining to
24 that or anything else in Mr. Cobb's testimony?

1 Not seeing or hearing any,
2 why don't we go off the record, if we could and
3 address some procedural issues fairly quickly.

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

6 HEARING OFFICER FOX: Going off
7 the record briefly to discuss procedural issues,
8 the participants addressed the issue of scheduling
9 a second hearing. Tentatively, that hearing will
10 take place on Wednesday, September 7th at 1:00
11 p.m. in the Board's offices in Chicago and would
12 tentatively have a deadline for pre-filing testimony
13 of Wednesday, August 24th. However, the Agency's
14 proponent has indicated that it would like to verify
15 the availability of the appropriate witness for that
16 hearing. I assume that they will contact the Board
17 by Monday and let the Board know whether that works.

18 The Board would expect to receive
19 the transcript of this hearing within three business
20 days and/or before next Monday, August 1st. As
21 soon as we receive that, we do post it to the
22 clerk's office online where all of our filings
23 ultimately are posted. It can be viewed through
24 the Board's website under Docket R11-25. If

1 anyone has more specific questions about how to
2 use that online resource, I can certainly try to
3 help with those questions.

4 I do want to stress that any
5 person, whether they've submitted testimony or
6 participated in hearing today may file written
7 public comments on this rulemaking with the
8 clerk of the Board and those can also be filed
9 electronically through COOL through the online
10 resource that I mentioned.

11 If anyone has questions about
12 the procedural aspects of this rulemaking, the
13 Board's website includes my contact information,
14 phone number, and email address and you are
15 welcome to contact me through those with those
16 procedural questions.

17 Are there any other matters or
18 issues that we need to address here this morning?
19 I don't see or hear any indication that we do.
20 I want to thank everyone for participating and
21 for your written responses, specifically Mr. Cobb.
22 Those were very helpful.

23 Our first meeting today is
24 adjourned. Travel safely everyone. Thank you.

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(Whereupon, the above-entitled
proceedings were adjourned,
to be continued on September
7, 2011, at 1:00 o'clock
p.m.)

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

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

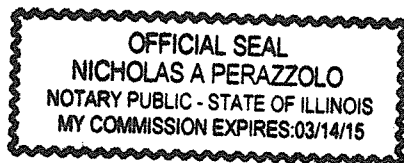
14
15
16 

17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
19

20 SUBSCRIBED AND SWORN TO
21 before me this 1st day
22 of August, A.D., 2011.

23 
Notary Public



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