

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:

PROPOSED AMENDMENTS TO: R03-19
PUBLIC PARTICIPATION RULES IN 35 (NPDES Rulemaking)
ILL. ADM. CODE PART 309 NPDES
PERMITS AND PERMITTING
PROCEDURES.

Proceedings held on April 2nd, 2003, at 10 a.m., at the
offices of the Illinois Pollution Control Board, 600 South Second
Street, Suite 403, Springfield, Illinois, before Marie Tipsord,
Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR
CSR License No.: 084-004316

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Belleville, IL 62226

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A P P E A R A N C E S

HEARING TAKEN BEFORE:

Illinois Pollution Control Board
600 South Second Street
Suite 403
Springfield, Illinois

ILLINOIS POLLUTION CONTROL BOARD MEMBERS:

Mr. G. Tanner Girard, Ph.D.
Mr. Michael Tristano
Mr. Thomas E. Johnson
Ms. Doris C. Karpel
Ms. Lynne P. Padovan

ALSO PRESENT:

Mr. Fredric P. Andes
Mr. Roy M. Harsch
Mr. Toby Frevert
Mr. Albert Ettinger
Mr. Frederick D. Keady
Mr. Fred L. Hubbard
Mr. Mark Miller
Ms. Margaret Mitchell
Ms. Wendy Butler

NOTE: Various public participants also present
but not duly identified in the record.

I N D E X

OPENING STATEMENTS

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PRE-FILED TESTIMONY

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(Note: Exhibits not tendered for inclusion into deposition transcript.)

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1 HEARING OFFICER TIPSORD: Good morning. My name is Marie
2 Tipsord, and I have been appointed by the Board to serve as
3 hearing officer in the proceeding entitled In the Matter of
4 Proposed Amendments Public Participation Rules in 35 Ill. Adm.
5 Code Part 309 NPDES Permits and Permitting Procedures. The
6 Docket No. is R03-19.

7 To my right is Dr. Tanner Girard the lead board member
8 assigned to this matter. Also present to my left is Board Member
9 Michael Tristano and Board Member Doris Karpiel will be joining
10 us shortly. They have also been assigned to this matter. In
11 addition to Dr. Girard's right is Board Member Lynne Padovan and
12 to Member Tristano's left is Chairman Tom Johnson. In addition,
13 I believe, Chairman Johnson's assistant will be joining us as
14 well.

15 MR. JOHNSON: He will.

16 HEARING OFFICER TIPSORD: Before we begin, I have a couple
17 of preliminary matters I'd like to address. I have two minor
18 motions before us. First on March 27th the Board received a
19 Motion to Substitute the Comments of the Illinois Coal
20 Association. That motion is granted. The second motion on the
21 same date we filed a motion -- we received a motion to file
22 instanter pre-filed testimony of Roy M. Harsch, and we also grant
23 that motion.

24 Also pending before the Board is a motion for a third

1 hearing filed by the Illinois Environmental Regulatory Group as
2 that motion is not currently ripe. We will not be -- I will not
3 be ruling on that motion. The Board will be ruling on that
4 motion in its meeting two weeks from tomorrow. Everyone has 14
5 days to respond to that motion in writing to the Board.

6 This is the second hearing to be held in this proceeding.
7 The purpose of today's hearing is to hear the testimony pre-filed
8 for today's hearing and to allow questions of the testifier.

9 If anyone here would like to testify and did not pre-file,
10 we will allow you to testify if time allows. There is a sign-up
11 sheet on the table to the left of the room if you wish to testify
12 but have not pre-filed.

13 The order in which we will hear the testimony was
14 determined by the receipt of testimony of the board's offices.
15 The first testifier will be Fredrick L. Hubbard, second Fredric
16 P. Andes, third Toby Frevert, fourth Mark L. Johnson and fifth
17 Roy M. Harsch. We will take the testimony as it's read.

18 Anyone may ask a question; however, I do ask you to raise
19 your hand, wait for me to acknowledge you, after I have
20 acknowledged you, please state your name and who you represent
21 before you begin your questions. Please speak one at a time. If
22 you are speaking over each other, the court reporter will not be
23 able to get your questions on the record. Please note any
24 questions asked by a board member or staff are intended to help

1 build a complete record for the board's decision and not to
2 express any preconceived notion or bias to the Board.

3 To the left of the room there are sign-up sheets for the
4 notice and service list. If you wish to be on the service list,
5 you will receive all pleadings and pre-filed testimony in this
6 proceeding. In addition, you must serve all of your filings on
7 the persons on the service list. If you wish to be on the notice
8 list, you will receive all Board and hearing officer order's in
9 the rulemaking. If you have any questions which list you wish to
10 be placed on, please see me at a break. There are also copies of
11 the current service and notice list inside of the room.
12 Dr. Girard.

13 MR. GIRARD: Good morning. Welcome to the second hearing
14 in this rulemaking proceeding to consider changes in the public
15 participation requirements for issuance of NPDES permits. We
16 appreciate the efforts of several organizations that filed
17 pre-filed testimony or public comments prior to this hearing
18 including Vermilion Coal Company, Illinois Coal Association,
19 Illinois-American Water Company, Illinois EPA and Illinois
20 Association of Waste Water Agencies. We look forward to your
21 testimony and questions today. Thank you.

22 HEARING OFFICER TIPSORD: Anyone else? Mr. Tristano?

23 MR. TRISTANO: (Shakes head.)

24 HEARING OFFICER TIPSORD: All right. With that then, let's

1 begin if there's no other preliminary issues. Okay. Then we'll
2 start with Mr. Hubbard. Can we have you sworn in please.

3 WHEREUPON:

4 FREDERICK L. HUBBARD,
5 called as a witness herein, having been first duly sworn,
6 deposeeth and saith as follows:

7 HEARING OFFICER TIPSORD: And if there's no objection we'll
8 enter Mr. Hubbard's testimony as Exhibit No. 3 -- or No. 2, I'm
9 sorry. Seeing none, that would be admitted as Exhibit No. 2. If
10 you like to summarize your testimony, please, go ahead.

11 MR. HUBBARD: Please. My name is Fred, F-R-E-D, middle
12 initial L, Hubbard is H-U-B-B-A-R-D, like the lady famous in the
13 nursery rhyme. I represent Vermilion Coal Company. We were a
14 participant as amicus in the Prairie Rivers, Black Beauty case
15 that appears to have precipitated the request for rule changes.

16 It's my understanding that that decision on leave to appeal
17 was supposed to be filed at nine o'clock this morning with the
18 Illinois Supreme Court. In addition to what we filed, we would
19 like to suggest that the owner of property be considered as a
20 party in the permitting process. In the case of the Black Beauty
21 Coal Company permit, we have an owner with somewhere in excess of
22 10 million dollars worth of coal who was required to remain as an
23 amicus in the permitting process. Since this could materially
24 reduce the value of the coal owner's coal to nothing if the

1 permit is not allowed, we think consideration should be given to
2 permitting the owner to participate as a party.

3 We are an advocate of an efficient proceeding. We don't
4 want to see the permitting process get too long, too bogged down
5 or too technical, but we certainly have no objection with the
6 ultimate goal of clean water and I don't know how anybody could
7 object to that. We'd like to suggest that if documents, reports
8 or tables are to be attached to the petition for the permit and
9 to be attached to the draft permit or made a part of the draft
10 permit, that a similar requirement be imposed upon any objector.

11 Now the objections appear to be in two types. The NIMBY
12 objection which is the emotional plea. Typically most sincerely
13 heartfelt but it's more emotional than logic. So a logical
14 objection says that the permit doesn't meet a certain technical
15 requirement or it exceeds a certain limit or whatever, I would
16 suggest that the rules would include a requirement that the
17 objector also attach any documents, reports, tables, references
18 upon which they rely.

19 One of the significant things that I have included in my
20 comments on the proposed rules is a suggestion that the modifiers
21 be deleted where it's like significant, reasonable. My basis for
22 that comes on 40 years of being a practical, downstate,
23 country-type lawyer. I don't say that you shouldn't use those
24 standards. Obviously you want to have a reasonable ruling. You

1 obviously want to make sure everything is significant, you want
2 to make sure it's admissible. But when you start putting those
3 terms into the rules themselves, you then create a possibility of
4 difference of opinion. What I regard as reasonable, someone else
5 might not regard as reasonable and somebody else might still have
6 a third opinion, and once you put that in there, you create a
7 basis for objections.

8 Yeah, your decision was right, but it wasn't reasonable,
9 no. I think those things should be completely taken out and the
10 rule should be written fair square but interpreted with the
11 modifiers.

12 It's our opinions that these rules will be probably slanted
13 toward the objectors if they are approved as written, and this
14 relates to my previous comment. All the objectors has got to do
15 is say, you don't meet the test, you don't meet the rules, you
16 can't have your project. So these rules appear to attempt to
17 shift that burden over onto the petitioner completely, and we
18 think that the statute clearly provides that when an objector
19 raises an objection, has a burden of proof on appeal, the statute
20 still controls. It's a general rule, and I'm sure you're all
21 aware of it. That your rules have to be in accordance with the
22 enabling statute adopted by the legislature, and I don't think
23 you should deviate from that intent.

24 Lastly, with regard to the third hearing, my client would

1 have no objection to a third hearing. I'm done. Any questions?

2 HEARING OFFICER TIPSORD: Thank you. Are there any
3 requests of Mr. Hubbard?

4 EXAMINATION

5 BY MR. ETTINGER:

6 Q. I'm Albert Ettinger. I represent the Prairie Rivers
7 Network, Yellow PC and a number of other petitioners. You're a
8 practicing lawyer for a long time obviously?

9 A. 40 years, sir.

10 Q. 40 years, sir. How do you feel about the fourth
11 amendment to the United States Constitution?

12 A. I'm in favor of it.

13 Q. Okay. So I assume you don't think that the guys who
14 wrote that were wrong when they put in unreasonable search and
15 seizure, do you?

16 A. No.

17 Q. No. And that's because you can't define in advance all
18 the conditions in which a search and seizure might be reasonable?

19 A. I think that's somewhat different than these rules.

20 Q. Okay. How about the other cases -- Well, how about the
21 terms here that you refer to fair, are you -- you're not opposed
22 to fairness, are you?

23 A. Not opposed to fair.

24 Q. Okay. How about if the Board has already used fair in a

1 portion of its rules, do you believe they should be stricken?

2 A. Not necessarily.

3 Q. But it gives -- it gives cause for appeal; right?

4 A. It could give cause for appeal.

5 Q. I see. Well, how about compliance with federal law, you

6 don't think that we shouldn't comply with federal law, do you?

7 A. I'm not quite sure where you're going with that. No,

8 I'm not against with complying with federal law. It may not be

9 applicable, however.

10 Q. Okay. But if it were applicable, you believe that our

11 conduct at the Illinois Pollution Control Board and the Illinois

12 Environmental Agency should be consistent with federal law?

13 A. Yeah, if it's a procedure to do that.

14 Q. Right. Do you believe that the language in the existing

15 rules that requires the agency in many instances to act

16 consistently with federal law should be stricken?

17 A. Negative.

18 Q. You do not?

19 A. I do not.

20 Q. But you're opposed to that in this particular case?

21 A. In that particular context.

22 Q. And why is that?

23 A. Because it can create uncertainty.

24 Q. And you don't believe there's uncertainty in the other

1 places that it's located?

2 A. It's been there long enough. I think it's been

3 interpreted and, therefore, it's become more solidified.

4 Q. You think that it's so clear what federal law is in all

5 these cases --

6 A. Oh, no.

7 Q. -- the agency knows what its doing?

8 A. I know the agency knows what it's doing, but I'm not

9 sure if federal law is correct.

10 Q. I have a question about your objection with 35 Illinois

11 Administrative Code, Part 105, could you just describe that

12 section?

13 A. I didn't memorize it, sir. Which one did you ask about,

14 Al?

15 Q. Actually I'm anxious to see if -- It's the last sentence

16 of your pre-filed testimony.

17 HEARING OFFICER TIPSORD: The last sentence of the

18 pre-field testimony?

19 MR. TRISTANO: The last sentence on page 1?

20 A. The last sentence on page 2.

21 Q. (By Mr. Ettinger) Right. There is a hearing provision

22 under 35 Illinois Administrative Code Part 105 which is a

23 catchall review hearing which appears to have been totally

24 ignored in the proposed drafts?

1 A. Okay.

2 Q. I just wanted to ask you what that's about?

3 A. That's about the review hearing procedure that you and I

4 and others went through in the Prairie Rivers' objection to the

5 Black Beauty Coal in which your position before the Board was

6 that nothing that took place in that hearing was in the record

7 for review and, indeed, that's the way the procedure is set up.

8 That that hearing has not heard any new evidence to be

9 considered. And I'm suggesting that if that hearing is, in fact,

10 meaningless, it be abolished and if that hearing is to have any

11 meaning, that whatever takes place in the hearing, will be a part

12 of the record for consideration by the Board.

13 Q. So now 105 is the appeal?

14 A. Yes, sir.

15 Q. Okay. So what you're saying then is that the Board

16 should be willing to hear new evidence in the appeal proceedings?

17 A. What I'm saying is that perhaps in lieu of a third

18 hearing on any changes in the permit, that hearing could be more

19 meaningful if it did permit additional evidence, yes.

20 Q. Are you aware that the Board as pursuant to state law as

21 to what evidence it may hear in the appeal proceeding?

22 A. Completely.

23 Q. Sir, are you suggesting a change in state law or are you

24 suggesting that the Board should disobey state law?

1 A. No, I'm -- I don't have -- not disobeying state law.
2 I'm suggesting if in that hearing is, in fact, meaningless
3 because state law makes it meaningless, that it be considered to
4 be admitted.

5 Q. Okay. So your proposal is to actually to drop the
6 hearing in the appeals rather than --

7 A. Particularly if the third hearing is allowed on any
8 significant changes.

9 Q. Okay. Do you -- You speak about fair and reasonable for
10 the agency and the applicants provide documents and materials,
11 did you construe a petition as saying that parties who are
12 objecting to the permit would not be required to put materials
13 into the record but could still use those materials later in
14 appeal?

15 A. It's my understanding that the proposed new rules are
16 going to require additional filings from an applicant. Because
17 part of what is proposed and part of what we ran into in the
18 Black Beauty case, was that what needs to be attached to the
19 application in order to meet all the requirements. In this
20 process, as I learned very early in my legal career, is kind of
21 like a bowl of jello. You don't really know what you need until
22 something else happens and then that something else happens and
23 then you need something to respond that vice versa and that's the
24 way the evidence works.

1 And it seems to me it's obvious that if an applicant hasn't
2 attached to something and an objection, should be attached, they
3 ought to have the opportunity to amend and attach it. Likewise,
4 if an objector comes up with something that maybe is raised
5 later, I don't have a problem with an objector raising something
6 later, but it seems to me we ought to get as close to the battle
7 as early as we can with as much ammunition as we can to keep this
8 process moving rapidly and efficiently and get to a fair and
9 reasonable result.

10 Q. But you don't have a problem with the rule that requires
11 applicants to get their information in within 30 days after the
12 public hearing?

13 A. That seems reasonable to me.

14 MR. ETTINGER: That's all I have.

15 HEARING OFFICER TIPSORD: Anyone else? Thank you very
16 much. Next we'll move on to Fredric Andes.

17 MR. ETTINGER: Excuse me. Can we go off the record?

18 HEARING OFFICER TIPSORD: Sure.

19 (A discussion was held off the record.)

20 HEARING OFFICER TIPSORD: There's no objection. We will
21 admit the -- Oh, wait. First you have to be sworn in.

22 WHEREUPON:

23 FREDRIC ANDES,

24 called as a witness herein, having been first duly sworn,

1 deposeth and saith as follows:

2 HEARING OFFICER TIPSORD: There's no objection. We'll
3 admit the pre-filed testimony of Fredric P. Andes as Exhibit No.
4 3. Seeing none, so admitted. I am pronouncing your last name
5 correct, aren't I?

6 MR. ANDES: That's correct.

7 HEARING OFFICER TIPSORD: Thank you.

8 MR. ANDES: I'm Fred Andes. I'm here on behalf of the
9 Illinois Coal Association. I'm with the law firm of Barnes &
10 Thornburg and as noted we pre-filed testimony. I'll summarize
11 that very briefly. The Association believes that the current
12 public participation procedures for the permitting process are
13 adequate. We believe that the proposed rule, and we've laid out
14 our concerns in the testimony, would have a series of problems.
15 We think overall it would introduce unnecessary complexity into
16 the process, slow the permitting process down substantially in
17 many circumstances and create costly delays for Illinois business
18 which would also discourage companies from locating or expanding
19 in this state.

20 However, we're open to working with the other stakeholders
21 to discuss these concerns, try to resolve them. We understand
22 that from the pre-filed testimony submitted by Illinois EPA that
23 the Agency is interested in doing that and perhaps modifying the
24 proposal. We look forward to working with the other stakeholders

1 to try to get a resolution that's acceptable to everyone.

2 HEARING OFFICER TIPSORD: Thank you. Are there any
3 questions?

4 EXAMINATION

5 BY MR. ETTINGER:

6 Q. I guess I have -- I guess I have a couple. You claim
7 your concern that in your pre-filed testimony that the appeals
8 regarding fairness might hold up the issuance of permits, is that
9 a concern of yours?

10 A. When you say appeals based on fairness?

11 Q. Claims that the proceedings and the Agency, the way this
12 would come up as I envision it, is that the Agency would grant
13 the permit but the third party would appeal to the Board based on
14 the claim that the permit was granted using unfair procedures,
15 are you concerned that that would lead to holding up a permit?

16 A. Yes, because of provisions like the one that says the
17 permit can't be issued unless the public has a fair opportunity
18 to comment. We're not sure as to what that kind of term means.
19 Does that mean only what the current procedures say in terms of
20 opportunity and comment? In this case we're not sure why it's
21 needed or does it mean something else, which then raises the
22 issue of some kind of subjective fairness concept of coming into
23 the process.

24 Q. Well, it says proposed, and according to your testimony,

1 proposed revision would simply add an additional basis for
2 challenging a permit by the Agency, is that your concern?

3 A. Yes.

4 Q. What's your understanding of what happens when a permit
5 has been issued by the Agency or somebody appeals it, what's the
6 legal affect of the permit?

7 A. The legal affect of the permit during the appeal
8 process?

9 Q. Correct?

10 A. Well, are you talking in terms of a third party appeal
11 or a discharge appeal?

12 Q. Well, if a third party appeal would be most important in
13 this case?

14 A. Well, let me ask you a question. It doesn't seem to me
15 that this process deals with that issue in terms of whether
16 permits condition are stayed or whether permits in fact; right?

17 Q. Exactly. So my point is is your concern sake that we
18 will be holding up permits and discouraging businesses from going
19 forward, is it not true unless the Board stays the permit that
20 the business can go forward with its valid permit that was issued
21 by the Agency?

22 A. Oh, I see the point. While it's true the permit would
23 be stayed, the discharge would be taking a risk that later in the
24 process that permit could end up being either modified or even --

1 or even revoked. So it's hard to go forward building your
2 facility or expanding or changing your discharge not knowing
3 whether at the end of the process things will be changed enough
4 to take down what you've put up.

5 Q. That's only if they think there's a danger that the
6 third party will actually win and prove to this Board that the
7 procedure that issued the permit was, in fact, unfair?

8 A. And true. And we believe that's why we're concerned is
9 that we believe this set of procedures gives new ground or could
10 be read to give new grounds for overturning a permit based on
11 various objective -- based on a very subjective basis. So
12 there's an increased likelihood that you will get a permit and
13 then it will be overturned on permit.

14 Q. And increased likelihood?

15 A. Yes.

16 Q. Are you familiar with the current regulations regarding
17 public hearings on NPDES application?

18 A. Okay.

19 Q. Okay. Are you aware that that clause requires that a
20 hearing be held which is stale?

21 A. Yes.

22 Q. Have there been a lot of appeals based on that?

23 A. Not to date.

24 Q. And you think new appeals will be based on a broad

1 clause that will require the overall proceeding to be fair?

2 A. Well, they think that -- there are a number of changes
3 that are in the proposal that would give new grounds for appeal
4 and make it more likely that there would be significant permit
5 appeals in the future.

6 Q. If we were to change that fair opportunity to appeal
7 language or fair opportunity comment language to something that
8 was, shall we say, a little stiffer on a burden on appeal, would
9 that meet any of your concerns?

10 A. Well, it's hard to say without reviewing actual
11 language. As I said, we're certainly willing to sit down and
12 talk about those all these issues and see if there are ways to
13 resolve our concerns.

14 Q. Are you concerned about the proposal that issues -- that
15 permits not be issued if the procedures is used in issuing them
16 are not consistent with federal law?

17 A. Well, I think our -- our take on that, and in our
18 testimony, is that we believe that's redundant since currently
19 the permits cannot be issued if they're inconsistent with federal
20 law, so we're not sure why that was needed as part of the
21 regulation.

22 Q. So it's your belief that currently a permit could not be
23 issued if the procedures used to formulate it were inconsistent
24 with federal law?

1 A. Well, if the procedures -- the procedures that the State
2 has were issued and the State was given delegation by Illinois --
3 by USEPA, which I don't believe has been withdrawn, so the
4 judgment by USEPA has been that the procedures they say are
5 consistent with Federal law and USEPA has not vetoed any permit
6 on the basis that they're inconsistent with federal law, so I
7 don't think on that basis that we have an issue.

8 Q. So it's your position that State rules, once approved by
9 USEPA, could never be found later by Federal United States
10 Environmental Protection Agency as being misconstrued or
11 construed so that they're longer consistent with federal law?

12 A. No, it's possible that USEPA could determine that the
13 requirements are not consistent with federal law. I'm not sure
14 to what extent they would say, well, the rule itself in language
15 is consistent with the way -- the way it is being applied is not.
16 I'm not sure that's something that the EPA would instill.

17 Q. I'm sorry. I need to grab something. Okay. Is it your
18 belief now that, let's say, a third party brought in appeal and
19 they wanted to make an argument based on federal law that the
20 procedures that had been used by the Agency in issuing the permit
21 be improper, would that be a valid argument?

22 A. I think that's an argument to be brought to the USEPA.
23 I think the issue is if one believes that the State's procedures
24 are not consistent with federal law, USEPA has an opportunity to

1 require changes if it believes that's the case. But to -- to put
2 that into a State process and the State ought to be making an
3 independent determination of that, you know, irrespective of what
4 the Federal Government believes I'm not sure it's appropriate.

5 Q. Okay. So you're telling me I should file a
6 de-delegation position instead of going to the Illinois Pollution
7 Control Board with this problem?

8 A. I think the proper issue is whether USEPA has taken a
9 position that the Illinois procedures are not consistent with
10 federal law, that if that's the case, that the issue needs to be
11 discussed and resolved, but I don't think that the State
12 permitting process, individual permitting proceedings, I don't
13 believe are the proper venue for that issue of the validity of
14 the overall procedures.

15 Q. I think I'm clear, but just to be clear, let us imagine
16 that as applied or misinterpreted by the Agency someone were to
17 do something which was inconsistent with federal procedures for
18 issuing NPDES permits, it's your view that the only thing the
19 applicant -- or sorry, that the third party can do about it would
20 be to run to Region 5 and try and get an immediate de-delegation
21 of this State program in order to permit that permit from being
22 issued?

23 A. I think there are a number of options that involve
24 because I think there's a belief that State procedures or

1 application then is not consistent with federal law, and I
2 believe there are other options short of the delegation. But I
3 think that it's proper to say that's not an issue in the
4 particular meetings of individual permitting procedures in the
5 State, but rather if there is an issue whether of the procedures
6 or the application case that that's dealt with the matter in
7 federal law.

8 Q. Are you aware in numerous portions in the existing rule
9 which things are required to be consistent with federal law, do
10 you believe that was a drafting mistake?

11 A. No. As I said, we believe that adding this additional
12 condition, we're not certain to add it. If -- if it is already
13 in as it is settled in provisions that were not sure what to add
14 to that. If it is intended to add something to that, then we're
15 concerned about what that thing is.

16 Q. With regard to the language that is proposed in the
17 petition, which it's verbatim federal regulation, do you agree
18 that they properly quoted the federal regulations?

19 A. In the places where it is stated a provision of federal
20 regulations, I believe that's so.

21 Q. And so do you see any harm in putting it in the Illinois
22 rules other than the extra inc perhaps used in the --

23 A. Well, I think we had two issues with regard to that.
24 One, was in some areas simply means redundant. Seems to be

1 unnecessary. And then I think our second question is if it's not
2 redundant, if it's not a necessary interest, is there some
3 concerns that are being raised that's intended to be addressed by
4 this language. What we ought to be talking about is figuring out
5 more directive ways of the issues and how could it be addressed.
6 We're not sure why adding federal language has much of a benefit.

7 (Ms. Karpel enters the room.)

8 Q. Well, are you confident in every case that current rules
9 require the Agency to act consistently with federal law, that
10 we've covered all of the areas in which we would want them to act
11 consistently with federal law?

12 A. Well, my impression has been, and I think the testimony
13 from the last hearing, it indicated that there are a number of
14 areas where the petitioner asks for federal language to be stored
15 and the testimony of the Agency was, well, we already do it that
16 way. We have done it that way. So we're not sure -- so my
17 question is then, well, is there a real need for us to add that
18 requirement when that's already what the Agency does, which goes
19 to the redundant or unnecessary issue.

20 Q. Well, I've paid my income tax, do you think there's a
21 law that's necessary for us to have a law that requires me to
22 continue paying my income tax or should we just go ahead and
23 abolish that law?

24 A. I think there are always plenty of requirements which

1 are responsible for people to pay their income tax.

2 MR. ETTINGER: I don't have any further questions.

3 HEARING OFFICER TIPSORD: Are there any other questions of
4 Mr. Andes?

5 MR. TRISTANO: In your conclusion you said the proponents
6 made the proposal would not improve opportunities for effective
7 public participation in the Illinois NPDES permitting, and then
8 you suggest that die-hard opponents of projects requiring NPDES
9 permits will delay those permits through uncommon administrative
10 appeals, could you just summarize why think those two things?

11 MR. ANDES: Well, we think that there are opportunities
12 right now for interested parties with legitimate concerns to
13 raise those and get them addressed in the permitting process.
14 Our concern was that the proposed changes would introduce
15 substantial additional subjectiveness and subjectivity into the
16 process and would provide some rounds for objection that no one
17 would really know right now how they would be interpreted. And
18 then it confuses a lot of uncertainty into the planning process
19 for companies who want to locate or expand not -- simply not
20 knowing whether based on some of that fairly ambiguous language
21 their project could be stopped for years or even denied. That's
22 our concern and, you know, that's what we want to try to address.

23 HEARING OFFICER TIPSORD: Anything further. Thank you very
24 much, Mr. Andes. Next we will proceed with the testimony of Toby

1 Frevert, IEPA.

2 WHEREUPON:

3 TOBY FREVERT,

4 called as a witness herein, having been first duly sworn,

5 depose and saith as follows:

6 HEARING OFFICER TIPSORD: If there's no objection we'll
7 admit Mr. Frevert's testimony as Exhibit No. 4. Seeing none, it
8 will be marked as Exhibit No. 4. Toby, if you'd like to
9 summarize.

10 MR. FREVERT: Okay. As stated at the last hearing it's the
11 Agency's objective to work through this petition and the proposed
12 amendments to Part 9 rules in detail in confrontation with the
13 various interested parties and stakeholders. I personally want
14 to make it clear we're trying to identify those areas of
15 disagreement and distance between the various parties and see
16 what role we can play in helping minimize or reduce those
17 distances and ultimately produce what we believe would be the
18 Agency recommendation on what is an appropriate modification of
19 the State Part 9 Regulation that makes the program manageable,
20 and it's at the same time accomplishes the legal objectives of
21 the program.

22 In moving in that direction we've -- since the last
23 hearing, we've had meetings with the proponents. We've had
24 face-to-face meetings with the representative of Illinois

1 Environmental Regulatory Group, the Illinois Association of Waste
2 Water Agencies. We had a conference telephone call with the
3 Illinois Coal Association. And our intent is to work with those
4 parties and any other parties who are interested in trying to
5 find the language of this petition -- to modify the language in
6 this petition to minimize potential conflicts and disagreements,
7 and that would be an Agency recommendation to the Board on how to
8 deal with this matter.

9 Several parties have indicated a desire to continue with
10 working with us after this hearing. I think personally the
11 hearing in and of itself is going to be constructive and helpful
12 to the Agency in hearing the various perspectives and the degree
13 of difference between the parties. And our attempts to fully
14 understand those differences and try to minimize those
15 differences to the extent we can minimize or eliminate those
16 differences, at least understand them well enough, that we can
17 make a specific recommendation on the Board as to how to deal
18 with that. And that's essentially a summary of where we are on
19 the process of my pre-filed testimony.

20 HEARING OFFICER TIPSORD: Any questions.

21 E X A M I N A T I O N

22 BY MR. ETTINGER:

23 Q. Just a couple. Over the years how long HAS IEPA had the
24 NPDES -- how long has IEPA been running the NPDES program in

1 Illinois?

2 A. Approximately since the mid '80s.

3 Q. What overall has been the trend of the public
4 participation on the permit hearing or on these permits?

5 A. There was a minimal participation in the air -- there
6 was minimal participation in terms of public interaction in the
7 early days. It has progressively gotten better in I'd say the
8 last six or seven years. I took a little stint and moved my
9 career from water pollution to air pollution from '91 to
10 approximately '97. When I came back in '97 I noticed a major
11 shift in the way the NPDES was functioned and the extent of
12 public comment and public interaction and the need for more staff
13 time to address it, so it's a significant increase.

14 Q. And that to your knowledge picked up in like the last
15 five years, last five or six years?

16 A. As I said I noticed my early years in water pollution
17 was significantly less active public participation role in
18 permitting process than it was in my last six years in
19 involvement with it.

20 Q. When did you -- when did you leave and when did you come
21 back, I'm sorry?

22 A. I believe February of 1991 I moved to the Division of
23 Air Pollution, and I believe I came back in 1996, perhaps 1997.

24 MR. ETTINGER: Okay. I'm just going -- I only brought, you

1 know, I brought three. I didn't have -- have any idea how many
2 to bring so I have an exhibit. Should I present this to you
3 or --

4 HEARING OFFICER TIPSORD: Me.

5 MR. ETTINGER: I will identify this on the record as a
6 letter dated December 27, 2002, from Renee Cipriano to Thomas
7 Skinner with an attached annual performance partnership -- I'm
8 sorry, Annual Performance Report for FY02 Performance Partnership
9 Grant. I just had a couple of questions on this.

10 HEARING OFFICER TIPSORD: Before we proceed, let's go ahead
11 and admit it as an exhibit if there's no objection. Erin, could
12 you get us some copies made? We'll get copies to everyone else.
13 If there's no objection, I'll admit that as Exhibit No. 5.
14 Seeing none, that will be marked as Exhibit No. 5 and we'll have
15 copies for everyone in just a minute. Go ahead.

16 Q. (By Mr. Ettinger) Okay. On page 29 of the report it
17 states in the center here a Program Output 10: Status of all
18 delegates NPDES programs with regard to adoption for applicable
19 regulations and legal requirements (Source: End-of-year report).
20 Results: All regulations for delegated NPDES programs are
21 current as Illinois law allows direct application of federal
22 regulations. Did you have a lull in granting this language?

23 A. I honestly can't remember. I certainly had a role in
24 the document. That specific sentence I can't remember.

1 Q. I got way ahead of myself. What is this document?

2 A. These are the program commitments that the Agency makes
3 to submit to the EPA on an annual basis which is the basis for
4 our federal operating grants.

5 Q. Okay. And so the statement made the USEPA was that in
6 the view of this document, at least, that current Illinois law
7 allows direct application of federal regulation?

8 A. That's certainly been my operating premise.

9 MS. TONSOR: I think that -- I'm Connie Tonsor. I'm an
10 attorney with the agency and I have an appearance on file in this
11 matter. I am familiar with that language and perhaps would be a
12 better person to have that question addressed to than Toby.

13 HEARING OFFICER TIPSORD: In which case we'll have you
14 sworn in, please.

15 WHEREUPON:

16 CONNIE TONSOR,
17 called as a witness herein, having been first duly sworn,
18 deposeth and saith as follows:

19 MS. TONSOR: Essentially Section 39B provides that the
20 Agency can fold into permits affluent limitations and other such
21 requirements of the federal rule changes before we actually have
22 them actually folded into our regulatory set up here in Illinois
23 through a Board making or otherwise. Because we can fold in the
24 affluent limitations and the other requirements from USEPA, we

1 are, in fact, consistent with the requirements. Some of the
2 requirements that we are here dealing with aren't required of the
3 State. And there's a distinction between that which is required,
4 for instance, a change in categorical affluent limitations, and
5 that which is a additional item for public participation. So I
6 am familiar with the language and that was run through me first;
7 and secondly, that's how that language derives.

8 MR. ETTINGER: Okay. That's been helpful. My question now
9 is those do you interpret that rule as applying to all of the
10 requirements of the NPDES program -- all the requirement of the
11 NPDES program or just affluent limitations?

12 MS. TONSOR: I think if you look at the specific language
13 in 39B, it gives us permission to fold in the affluent and other
14 changes that are required, and the other changes that are
15 required language it has to be a requirement.

16 HEARING OFFICER TIPSORD: And for the record, excuse me, if
17 I could clarify the Section 39B of the Illinois Environmental
18 Protection Act?

19 MS. TONSOR: Of the Illinois Environmental Protection Act.
20 I'm sorry.

21 MR. ETTINGER: So is it -- is it the Agency's view that all
22 federal regulations regarding the NPDES program are directly
23 applied to State permitting under current law?

24 MS. TONSOR: It is the Agency's view that the NPDES program

1 with the grand delegation has been determined to comply with
2 federal law, so a federal law is a living thing. And since the
3 early 1980s when the program was delegated, many types of
4 affluent limitations and many types of regulations have changed.
5 We recently had concentrated animal feeding operations. We can
6 regulate those operations because they're, in many aspects, a
7 definitional change of point source prior to actually having the
8 Board rulemaking on the books and that, I think, is what the
9 Agency means by that.

10 Q. (By Mr. Ettinger) Turning now to page 45. It's stated
11 here on Community Relations. Number of and description then it
12 gives result NPDES-5. Is that the number of public hearings that
13 were held on NPDES permits and FY-2002?

14 A. That's certainly it's intern report the tracking of
15 those hearings that our mine -- It's certainly the point here is
16 to report on the NPDES permit hearings that the Agency held
17 consistent with the community relations tracking and
18 participation in those agencies.

19 Q. So that's the order of magnitude that we're talking
20 about, a number of hearings that we had had in recent years on
21 NPDES permits?

22 A. I believe that's correct.

23 Q. I -- did -- Has the Agency in your past re-noticed
24 permits when they felt a change had to be made from what they had

1 first publicly noticed?

2 A. Yes, we believe we have the authority to go back to
3 another round of public notice if it is appropriate. And on a
4 few instances in the past we have actually done that.

5 Q. There's more than a few instances, aren't there?

6 A. It's certainly more than zero. And your point is do we
7 when we feel it is appropriate, yes, we do?

8 Q. Yes, sir.

9 MR. HARSCH: Roy Harsch on behalf of the Illinois
10 Association of Waste Water Agencies. Following up on Albert's
11 questions regarding the number of public hearings. Could you
12 please provide for the record the number of requested public
13 hearings, the number of public hearings, actually requests
14 granted themselves and held, the total cost for the public
15 hearings, expense of engineers, attorneys fees, court reporter,
16 travel, public notice for the last four physical years you
17 previously have discussed with the county.

18 MS. TONSOR: The Agency doesn't have any problem with
19 putting this information together and then submitting it on the
20 record. It will take a little bit of time to gather all of the
21 cost information. I think we can gather the information on
22 hearings held fairly quickly because I keep that information.
23 However, we have -- we'll have to go through files because we get
24 requests for hearings that are often on a number of permits all

1 in the same letter, so we'll just have to go through and just
2 look at the permits that we've noticed and gather together that
3 information, so we have no problem putting this information
4 together. It may take us a couple weeks to get it together.

5 MR. HARSCH: Following up again on an earlier question, if
6 USEPA were to amend the minimal public hearing requirements, for
7 example, to require a 90-day public notice period, would that be
8 a kind of change that you feel you could incorporate through
9 Section 39A?

10 MS. TONSOR: We would attempt to incorporate that if it's
11 required of the State to do so.

12 MR. HARSCH: Understand.

13 MS. TONSOR: It could have to be required of the State to
14 do so, and we also go for required rulemaking with the record.

15 MR. HARSCH: In the interim you would attempt to utilize
16 Section 39 if that was a direct legal requirement that a state
17 would have to give that kind of public notice?

18 MS. TONSOR: Yes. The time lines that we have now are
19 consistent with the required time lines for federal regulations
20 on State. And if the federal regulation changes to expand the
21 time line, we can expand the time line.

22 C R O S S E X A M I N A T I O N

23 BY MR. HARSCH:

24 Q. Can you or Toby explain on the record are you aware of

1 any notices of deficiency from the United States Environmental
2 Protection Agency regarding the public notice public
3 participation provision of the NPDES permit program as
4 administered in Illinois?

5 A. At this time I'm not aware that anybody has alleged
6 deficiencies. My interaction in working with USEPA Regional 5
7 permitting staff and legal counsel leaves me with a great degree
8 of comfort that they feel our public participation program is
9 adequate and consistent with federal laws.

10 Q. You would be aware of any such notices of deficiencies
11 if they noticed?

12 A. Well, if the notice of deficiency from USEPA, yes. If
13 it's an allegation from an outside party to USEPA, typically if
14 that's written communication, I see it either directly from that
15 individual or Region 5 would forward that to the Agency.

16 Q. And that would occur in one of your monthly over-site
17 discussions?

18 A. That would occur in some kind of an interaction
19 communication with IEPA, yes.

20 Q. Is it fair simplistic recital of the federal
21 requirements for public participation in the State's NPDES
22 program that you have the opportunity to provide public
23 assistance -- to have an opportunity to provide public comment on
24 a proposed permit and the opportunity to request a public hearing

1 to show the degree of public interest, and it is up to the
2 individual state director to make a determination as to whether
3 or not a significant degree of public interest warrants holding
4 the public hearing?

5 MS. TONSOR: Yes, there is discretion in whether you have
6 to hold a public hearing. There's no requirement that the public
7 hearing be held on each permit. The language that's used, I
8 believe, in both the federal and our state regulation is a
9 significant degree of interest. Significant can be one request.
10 Significant can be 1,000 requests. It just depends on the nature
11 of the request, and to some extent it depends upon the nature of
12 the permit which is up on notice, so there's no federal
13 requirement. There's currently not a state requirement that you
14 automatically go to hearing. There's a requirement that you have
15 comments. At our hearings we usually allow questions. Federal
16 hearings allow comments only. So there's a little bit of
17 distinction at that point.

18 Q. (By Mr. Harsch) There currently is an ongoing
19 discussion as well as actually legislation that's been proposed
20 to step up immediate V stricter in Illinois be present?

21 A. I'm somewhat familiar with that.

22 Q. More than somewhat I think probably is accurate. The
23 original request was for 27 million, was it not?

24 A. Our estimate of the revenue that would be generated by

1 the fee structure in the original language that was sent at that
2 time Bill 1060 was approximately 26 plus million dollars.

3 Q. That would be in addition to the six million dollars
4 that the Agency would currently utilize under the State's
5 revolving loan plan?

6 A. That would be the revenue generated under that bill
7 independent of other sources of revenue.

8 Q. But that does not eliminate the continued use of the six
9 million dollars that the Agency would continue to utilize under
10 the State's revolving loan plan?

11 A. I don't believe that bill addressed other sources of
12 revenue at all and utilization thereof.

13 Q. Have the vast number of comments on NPDES permits and
14 request for public hearings originated from the proponents from
15 this proceeding for the last two years?

16 A. I'm sorry. I'm not sure I understand your question.

17 Q. In terms of the request for public comment on NPDES
18 permits and request for public hearings on permits that you're
19 familiar with, have those originated from the proponents in this
20 proceeding?

21 A. A significant amount of the public participation we get
22 in NPDES programs comes from organizations and individuals who
23 are either proponents or related to the proponents of this
24 proceeding, yes.

1 MR. HARSCH: Okay. No further questions.

2 HEARING OFFICER TIPSORD: Anything else? Could you state
3 your name and who you identify for the record, please?

4 MR. KEADY: I'm Frederick Keady. I'm president of the
5 Vermilion Coal Company.

6 C R O S S E X A M I N A T I O N

7 BY MR. KEADY:

8 Q. I only have one question. If a draft permit as issued
9 in compliance with the State and Federal Clean Water Act is
10 subjected to public hearings and then is modified in a way that
11 is favorable to the comments that were received at the public
12 hearing, what benefit can possibly accrue from having additional
13 hearings?

14 A. Well, I don't know how to speculate on that, but I guess
15 my response would be to the extent that there is a significant
16 public interest and we decide that the public participation needs
17 to progress to the state of a hearing, it's obvious we're looking
18 for additional information, additional basis to reassess any
19 challenged or questioned conditions in terms of that permit and
20 as a result permit conditions do change. To the extent that
21 they're viewed in favor by one party or another is not objective.
22 Our objective is to get the permit right and apply the
23 regulations that are applicable, at least, the best way we have
24 to do that.

1 Q. Let me ask the question again in the form of an example.
2 The Agency issues a draft permit which is in compliance with the
3 law, you get two comments both of them from objectors, you
4 implement one comment and you don't implement the other one?

5 A. Okay.

6 Q. What in the world benefit can come from having an
7 additional hearing? Name one?

8 A. Well, in your example my response, again recognizing how
9 the system works and how we operate, we bring in all the
10 information, all the requests, we digest them, we prepare a
11 written summary of those evaluations that explain how we react
12 and what our decision is to the extent that either party felt
13 like they didn't get what they needed, they may want to have
14 another opportunity to influence that permit. From my
15 perspective the proper way for that to be is, under Illinois law,
16 is to proceed to the next step which would be the appeal step,
17 not go back and do the prior step again.

18 Q. That's what this is all about, isn't it? It's about
19 another bite at the apple? Somebody's sore because they didn't
20 get their way or they only got their way partly, they don't want
21 to take their ball and go home or go to appeal step?

22 A. What this is about to me is to get public participation
23 procedures updated, clearly defined so that everybody
24 understands, particularly myself and my staff, what the operating

1 rules are and how we proceed in a fair and proper manner so
2 nobody's rights are tarnished.

3 Q. So with all do respect, the Agency is funded by the
4 taxpayers, the objectives for the most part are sloshing around
5 in foundation money, most of the people sitting in this room
6 here --

7 HEARING OFFICER TIPSORD: Excuse me. You're testifying
8 now. I need to have you sworn in or put it in the form of a
9 question.

10 MR. KEADY: Okay.

11 Q. (By Mr. Keady) If this rule is implemented, doesn't it
12 seem to be to get a process whereby we approach an option that
13 sympotically (phonetic).

14 A. We'll, you're speaking to a rule --

15 Q. If the objector gets half their wishes granted here,
16 they will never be satisfied?

17 A. Again, my ultimate responsibility is not whether any
18 particular individual is satisfied that the Agency allowed
19 appropriate, proper, open to public participation and ultimately
20 took an action that was legally correct and sensible and also
21 functional. I mean, in addition to our -- my first objective is
22 to comply with the law. My second objective is to make the
23 program work.

24 Q. Yes.

1 A. And that's my objective here today. These public
2 participation rules have been proposed for some updating and
3 modification. I'm not opposed to updating and modification and
4 modernization of that. But I'm not yet ready to say there's a
5 specific set of words that I think that the Agency should support
6 to make that happen. I'm saying there is a concept here, this
7 hearing in particular, is going help us at the Agency to
8 understand everybody's perspective better and to help the Board
9 get right this kind of speculation.

10 MR. KEADY: You have my sympathy.

11 HEARING OFFICER TIPSORD: Any additional questions?

12 C R O S S E X A M I N A T I O N

13 BY MR. CALLAHAN:

14 Q. Mike Callahan and two quick questions. First, I believe
15 appropriate to Connie considering her discussion, you indicated
16 that the current Federal Clean Water Act as well as state
17 regulation do not mandate public hearings but they do direct the
18 director to call for one if significant requests is extended, is
19 that correct?

20 MS. TONSOR: Correct.

21 MR. CALLAHAN: What is the criteria currently used by the
22 Agency to grant a public hearing?

23 MS. TONSOR: I think the Agency looks as whether the
24 questions are, in fact, something that is addressable through the

1 permit process, the comments at least due to the request for
2 public hearing. And secondly, we do look at the nature of the
3 permit, whether it is a controversial permit. And third, we'll
4 look at the number and the nature of the request. Although you
5 cannot say that one hearing request isn't a significant request,
6 there have been cases where we've had one of the requests of an
7 organization representing many, so those are the basic rules of
8 thumb but they are -- it is discretionary with the director.

9 MR. FREVERT: Let me follow-up on that if I could. Just
10 give you a specific example. I'm aware of one permit in the
11 northern part of the state where there was a multitude of
12 requests for a public hearing. In reality my perspective and
13 staff's perspective was that comments and questions to a great
14 extent came from misunderstanding of the permitting process and
15 what was being authorized in that case in lieu of honoring their
16 request for a public hearing. We deterred that action and
17 scheduled a public meeting which is less burdensome to us.

18 We still had to put the same number of people in vehicles
19 and send them up there and go through the process but the
20 follow-up work was not as burdensome. In that case it was sort
21 of extended public comment, public outreach. We identified those
22 issues so we can deal with them and actually help accomplish some
23 of their objectives external to the permitting process
24 themselves. Ultimately we got many of those people to withdraw

1 their request for hearings, so the issue to withdraw for those
2 who did not have a hearing request. But we don't automatically
3 pursue hearings in every instance, but I would offer that more
4 than half the time if there is a -- most of the time if there's a
5 credible issue at stake, we will honor the request for a hearing
6 or follow that some other fashion that will lead to clarification
7 and we'll withdraw that request for a hearing.

8 Q. (By Mr. Callahan) I'd like to ask one other question
9 then also. Goes back to the statement that you made under
10 Albert's questioning a little earlier. That there's much, much
11 more public involvement in the process within the last five years
12 than there was presumably during the first 25 years. This Clean
13 Water Act is 30 years old, that's what essentially what you said;
14 right?

15 A. That's my general perception, yes.

16 Q. And you were involved in water pollution control, as I
17 recall pretty extensively, before you transferred here; is that
18 correct?

19 A. I spent approximately 20 years doing water work before I
20 did air work.

21 Q. Those first 20 years were fine. During those 20 years
22 don't you think we saw a tremendous water quality in this state
23 along with the activities in for funding the extensive grass
24 program, cutting requirements, the enforcement of requirements

1 under the Clean Water Act?

2 A. If you're asking for a comment on the general assessment
3 of the overall program, yes, I'm proud to say we've done a lot in
4 that period.

5 Q. I would agree. I would agree. And it would appear that
6 NPDES permitting procedures are in place then afforded that, did
7 they not?

8 A. They were certainly a piece and component of the program
9 that had a lot of waste water treated or eliminated, yes.

10 Q. And then if we were to turn around and look at
11 improvements and such things as parameter compliance issues, such
12 of that in the last 5 or 10 years, how much relatively speaking
13 would you see then as compared to the first 20?

14 A. Compliance rates, I cannot give you statistics. I can
15 sort of tell you kind of perceptually that the level of
16 professionalism in terms of treatment plant operators and people
17 out on the street that make these things work has greatly
18 increased. Staffing of that industry is probably increased
19 compliance in that.

20 Q. How many backlog permits do you currently have?

21 A. I checked on that approximately a month ago. We have --
22 Individual permits we have over 2,000.

23 Q. Over 2000 backlogged permits?

24 A. No, no, no let me finish, Mike. There is a total

1 population of 2,000 and about 50 to 2,100 to individual entities
2 covered by individual permits covered in Illinois. There are
3 another 650 entities covered by general permits not counting
4 storm water permits. In terms of application, either for renewal
5 of permits or some kind of a modification of that permit, the
6 last I checked three or four weeks ago there were approximately
7 1,000 applications logged in that had not been processed yet.

8 Q. Would it be safe to say that process in of these permits
9 has occurred as a result of a lack of resources available?

10 A. We sure would like to. I sure would like to see NPDES,
11 if that's what you're offering.

12 Q. No, that's no -- I'm worried about -- I'm sure you
13 would. Regrettably I don't know that my constituents would see
14 that. The point I'm trying to make here is that these permits
15 obviously would have been issued if you had the staff time and
16 resource time to undertake them?

17 A. Sure. I don't -- I don't want to belittle the issue.
18 Backlog is one of the biggest headaches we have in the program in
19 NPDES. I think the reality program itself is much more
20 comprehensive and complex than it was 25 years ago. Public
21 participation does demand more time and attention than it did
22 before. I personally don't think that's a bad thing except
23 people that do our analysis and write our permits are great
24 engineers and scientists, and sometimes their writing and

1 communication skill results in things slowing down. People have
2 to learn as they come along. Don't characterize the Agency as in
3 anyway trying to avoid full and open public participation.
4 That's not our objective.

5 Q. Oh, no, I would never make that -- But your inclination
6 then is that the permit backlog is principally a function of --

7 A. New program requirements, both state and federal
8 requirements are much more comprehensive. State affluence
9 standards, federal categorical treatment standards, you got
10 requirements to do water quality analysis and determine potential
11 to proceed water quality standards and follow-up on permit
12 limitations to avoid that.

13 For new and expanded things we're doing a more
14 comprehensive, more sophisticated post anti-degradation issues.
15 Public participation does indeed require more time and effort and
16 sophistication so there's a whole cadre of things that lead to
17 the fact that NPDES program is a bigger workload than it has ever
18 been with the same population than we indeed would serve.

19 HEARING OFFICER TIPSORD: Anything else?

20 MR. ANDES: I just have one quick question.

21 C R O S S E X A M I N A T I O N

22 BY MR. ANDES:

23 Q. Toby, the question with regard to a particular provision
24 in the petition which is a change in 309.146, it would be a new

1 Section A5 concerning monitoring requirements?

2 A. Okay. If I look for it, I'll answer the question.

3 Q. Is it your understanding that that language is verbatim
4 from the federal regulations?

5 A. 309.146 A6.

6 Q. A5.

7 A. A5. It's possible. I can't -- I can't honestly say I
8 remember that exact language on particular CFR but I'm not saying
9 -- I'm telling you I don't.

10 Q. I believe it is. But my question is, concerning how
11 this would affect current Agency policy, as I understand current
12 Agency policy, tell me if this is correct, there are some
13 situations where the Agency, rather than putting detail
14 monitoring requirements into a permit, will instead require the
15 discharger to submit a monitoring plan; is that correct?

16 A. That is to allow a monitoring plan or some kind of a
17 special study that would seem to a follow-up the treatment
18 requirements on reporting. I believe you'll find some testimony
19 on my behalf to that effect in the prior year.

20 Q. Would it be your understanding that inserting this
21 language would change that practice or would you still be able to
22 do that?

23 A. I don't believe this ties our hands and specifies the
24 date of permit issuance. We cannot include a condition that

1 requires some study or action that would ultimately lead to
2 another condition or requirement within the operation of that
3 permit. It's certainly my hope that's the intent. The program
4 cannot function if there wasn't that latitude to use of the NPDES
5 program to actually derives studying, planning, design,
6 construction activities, other things appearing about future
7 improvements.

8 MR. ANDES: Thank you. That's all I have.

9 HEARING OFFICER TIPSORD: Anything else?

10 R E C R O S S E X A M I N A T I O N

11 BY MR. ETTINGER:

12 Q. I have one question. With regard to the situation in
13 which the Agency decides if further studies or something is
14 necessary that is tied on the monitoring, does the Agency then
15 allow the public to comment on monitoring the proposed as a
16 result of those further studies?

17 A. That probably depends on the nature of those things.
18 This particular requirement and provisions I know in some
19 instances we have done that. I would say instances typically
20 where, for instance, we require a compliance schedules, and
21 design and installation of hardware or specific information to
22 get to that point of compliance that date of the future.

23 We don't make those design plans as -- we do not make those
24 plans and specs and designs and other documentation showing that

1 the technical details of how you're going to eliminate a plant
2 sewer overflow, for instance, within 18 months and things of that
3 nature.

4 Q. You do not make that subject to public review now?

5 A. At the present time we do not. Now in some limited
6 instances -- For instance, Metropolitan Water Reclamation
7 District we reissued their permits possibly a year and-a-half go.
8 There was a requirement in there that they develop a public
9 notification program to somehow notify interested parties upon
10 the rainfall that resulted in overflow so people understand that
11 there were overflows taking place.

12 We specifically require that they go to a public outreach
13 and public participation component themselves, and that's why
14 they had to do that before the plan was viewed and finalized and
15 submitted.

16 Q. Without regard to how you and I may construe this
17 federal provision, the 122.4A, Requirements for Reporting and
18 Recording -- 122.4A the requirements for recording and reporting
19 of monitoring results applicable to State programs, regardless of
20 how you and I may differ in our construction of that, provisions
21 you agree that that's currently something that the agency is
22 attempting to comply with?

23 A. I think so, yes, if I understand your question
24 correctly.

1 MR. ETTINGER: That's it.

2 MR. ANDES: Can I ask one follow-up question on that?

3 Toby, in instances where the Agency, for example, on a CSO issue
4 requires various studies to be submitted as part of a compliance
5 schedule, are those studies put in the permit file and available
6 for public review?

7 A. Yeah, after the fact. I should mention that all the
8 information is available for public inspection, sure.

9 MR. ANDES: Thank you.

10 MR. GIRARD: I have one question for Toby. How much time
11 do you need to complete your consultation with the various groups
12 involving this rulemaking and then put together comments that you
13 file with the Board?

14 A. Well, my lawyers may shoot me but I'm willing. Yeah,
15 my intention is to have it done in three weeks or less. We don't
16 have any desire to drag this out. We've got other workload in
17 addition to this. We like to hone in what the real issues are,
18 get them resolved as best we can and get a recommendation to you
19 in less than a month hopefully, three weeks.

20 MR. GIRARD: Thank you.

21 HEARING OFFICER TIPSORD: Anything else?

22 MS. PADOVAN: Am I allowed to ask a question of someone
23 who's already testified?

24 HEARING OFFICER TIPSORD: Absolutely.

1 MS. PADOVAN: I have question for the first gentleman who
2 testified. I believe that was Mr. Hubbard.

3 MR. HUBBARD: Yes, ma'am.

4 MS. PADOVAN: You mentioned in your comment the word NIMBY
5 and anybody who has been around this business for very long that
6 NIMBY conjures up different meanings to different persons, would
7 you define what you mean?

8 MR. HUBBARD: NIMBY, not in my back yard, and basically
9 that is the type of objection that frequently is not a technical
10 objection. It's not based on output. It's simply if we don't
11 want this project, it's frequently characterized by such things
12 as a personal fear for family and the individual's health,
13 property values, but it's a very difficult kind of objection to
14 quantify other than that and that's what I mean by NIMBY.

15 MS. PADOVAN: Thank you.

16 MR. HUBBARD: You're welcome.

17 HEARING OFFICER TIPSORD: All right. Let's take about a
18 10-minute break. Be back on at 11:30. Get everyone a little
19 chance to stretch their legs. Thank you.

20 (A short break was taken.)

21 HEARING OFFICER TIPSORD: Okay. We're going to start next
22 with Illinois-American Water Company. Mr. Mark Johnson. Can we
23 have you sworn in, please.

24 WHEREUPON:

1 MARK JOHNSON,
2 called as a witness herein, having been first duly sworn,
3 depose and saith as follows:

4 HEARING OFFICER TIPSORD: If there's no objection, we'll
5 enter Mr. Johnson's testimony as Exhibit No. 6. Seeing none,
6 we'll mark that as Exhibit No. 6. Thank you. If you would like
7 to come around.

8 MR. JOHNSON: Yes, my name is Mark Johnson. I'm vice
9 president of engineering for Illinois-American Water Company, and
10 I have with me today Mary Sullivan who is our associate corporate
11 counsel. Illinois-American Water Company provides water and
12 waste water service to 27,000 water customers and 30,000 waste
13 water customers in 124 communities in Illinois from Cairo to
14 Chicago.

15 As mentioned other detail comments have been provided and
16 I'll just summarize the major points in our comments.

17 We believe that administrative proposals are generally
18 acceptable. I guess our major concern is that in some of the
19 proposals there are no definitive end points of time lines
20 specifically with comment periods and we would like to see some
21 more definitive end points to the proposed comment periods.
22 Suggesting maybe the initial comment period be 60 days, and if
23 the record needs to be reopened, perhaps the comment period
24 should be set at 30 days.

1 The way the proposed rules are written they seem to be
2 fairly open-ended. Our business involves the collection,
3 treatment and distribution of codable drinking water and the
4 collection and treatment of domestic waste water, and it's the
5 treatment portion of our business that is of concern.

6 Whenever we build a new water or waste water treatment
7 facility, these facilities generate waste and we have defined
8 solutions to get rid of the waste, and we obviously believe in
9 the public participation process. In fact, we have a prime
10 example where public participation resulted in a unique solution
11 to the discharge of waste from a water treatment facility and
12 that has to do with our Alton Treatment Facility where we came up
13 with the suspended solid straightening program which is now being
14 adopted by USEPA as a model. That would not happen if we did not
15 have public participation.

16 But a lot of times we are in a position where we need to
17 get these facilities in service quickly to solve public health
18 situations. And it would be desirable to have, you know,
19 definitive time lines for NPDES process to work its way through
20 so that's why we're suggesting that maybe the comment period
21 needs to be extended a little bit to allow that to happen and
22 that essentially concludes our comment.

23 HEARING OFFICER TIPSORD: Thank you. Any questions?

24 E X A M I N A T I O N

1 BY MR. ETTINGER:

2 Q. I really don't have much. I just have a question. You
3 said if the record must be reopened, the extended comment period
4 should be for 30 days, is it your understanding that under
5 current procedures IEPA can reopen the records?

6 A. Well, it was our interpretation of what was proposed
7 there was an open-ended reopening period, but I'm not certain
8 what the existing rule is for the existing rules for the Agency.

9 MR. ETTINGER: Thank you. That's all.

10 HEARING OFFICER TIPSORD: Anything further. Thank you very
11 much. Next we have Roy M. Harsch. Could we have you sworn in
12 please. And if there's no objection we will mark Mr. Harsch's
13 testimony as Exhibit No. 7. Seeing none, will be marked as
14 Exhibit No. 7. Go ahead.

15 WHEREUPON:

16 ROY M. HARSCH,
17 called as a witness herein, having been first duly sworn,
18 deposeth and saith as follows:

19 MR. HARSCH: And brief summary, the Illinois Association of
20 Waste Water Agency is an association made up of sanitary
21 districts and municipalities that operate publically on treatment
22 works and some privately owned treatment works throughout the
23 state of Illinois.

24 Essentially IW -- IAWA believes that the proponents have

1 not carried their burden of showing why this rule change is
2 necessary. We've heard testimony today that, in fact, there are
3 no notices of inadequacies by USEPA. We are concerned about the
4 re-write of a number of the regulations that seem to add a new
5 level of bureaucratic requirements to permit issuance that will
6 translate in additional time delay, additional staff demands, and
7 additional cost. We are also concerned about the -- what amounts
8 to under the regulation -- draft regulation as written, the
9 opportunity for essentially a never-ending set of public comment
10 on opportunity for public hearing.

11 We are thankful that the Illinois Environmental Protection
12 Agency has agreed to step in and attempt to re-write the
13 regulations incorporating what we all have -- members have been
14 experiencing for the past 25 years of the Agency permit issuance,
15 and we have, in fact, met with representatives of the Agency and
16 reviewed the initial draft and will be doing so in the next
17 several weeks.

18 We look forward to working with the Agency, the other
19 stakeholders and the other proponents in attempting to come up
20 with hopefully a workable draft that will eliminate some of these
21 unnecessary burdens, bureaucratic burdens that we think are in
22 the present draft and eliminate the essentially second and third
23 bite of the apple for public additional -- public comment and
24 public hearings that we don't think are necessary.

1 This is all coming at a time when Illinois has a budget
2 crisis. We're looking at requests that would mean substantial
3 amount of fees if enacted by the legislature for these publicly
4 owned treatment works. 27 million dollars is a figure that Toby
5 mentioned this morning. A good portion of that would have to be
6 paid by the municipal dischargers that are required to obtain
7 NPDES permits, so we believe that the proponents of this
8 regulation have done an admirable job of raising their public
9 comments, and we've seen more and more involvement.

10 We're not opposed to that involvement under permits where
11 they truly have points to raise and questions be made on NPDES
12 permits or draft permits. Sometimes we question the tactic that
13 this seems they're making public comments and slowing down permit
14 issuance because they maybe, in fact -- individuals may be
15 opposed to new growth in an area. But -- And that's really what
16 the part is the genesis for some of our objections to adding
17 additional procedural and hearing requirements that appear to be
18 -- have no boundaries, and we're hoping -- the draft that I've
19 seen from the Agency cures some of those problems and we're
20 hopeful that final draft will as well. Thank you.

21 HEARING OFFICER TIPSORD: Any questions.

22 E X A M I N A T I O N

23 BY MR. ETTINGER:

24 Q. I just have a couple. That will be useful to all of us

1 have a -- You have a lot of back ground in working on these
2 regulations don't you, Mr. Harsch? I'm sorry?

3 A. Yes, I've been involved since the inception and current
4 draft of the -- of what are the current NPDES regulations that
5 are in issue in this proceeding.

6 Q. When were those written?

7 A. They were originally drafted as a re-draft of the
8 proposals that were filed by the Illinois Environmental
9 Protection Agency. They were re-drafted in the summer, spring,
10 late summer of late 1974 and ultimately adopted by the Board in
11 -- August 29th and September 5th of '74.

12 Q. When were they last substantially revised?

13 A. They basically haven't been. I would be --

14 MR. ETTINGER: Thanks. I have no more questions.

15 A. And we have no objection to the -- if the Agency feels
16 that if a re-write of the regulations modernizing them are in
17 order, we just question the current proposal.

18 MR. HUBBARD: One question to, Mr. Harsch, the fact that
19 rules haven't been rewritten for 10, 20, 30 years, does that
20 necessarily make them bad rules in any way?

21 MR. HARSCH: No, it does not.

22 MR. ETTINGER: And you agree to the fourth amendment?

23 (Laughter.)

24 HEARING OFFICER TIPSORD: Anything further? Thank you,

1 Mr. Harsch. At this time could we go off the record for just a
2 second.

3 (A discussion was held off the record.)

4 HEARING OFFICER TIPSORD: We have four people who have
5 signed up to testify. Fredric Keady, president of the Vermilion
6 Coal Company. We'll start with you. Can we have you sworn in,
7 I'm sorry.

8 WHEREUPON:

9 FREDRIC KEADY,
10 called as a witness herein, having been first duly sworn,
11 deposeeth and saith as follows:

12 MR. KEADY: My name is Fredric Keady. I'm the president of
13 Vermilion Coal Company and chairman and chief executive officer
14 of Iron Carbide Technologies which is the apparent company of
15 Vermilion. The Vermilion Coal Company is the principal lessor to
16 Black Beauty Coal Company in the matter of the Vermilion growth
17 permit which was the subject of the -- which led to this hearing.

18 Our company is -- owns in excess of 200 million tons of
19 coal in Illinois. Outright we have 100 billion cubic feet of
20 natural gas in application. We have 3,000 acre feet of fresh
21 water in Illinois underground, and we own the intellectual
22 property rights to the Iron Carbide process. What we do is we're
23 project developers. All of our projects are given, in one sense
24 or another, in attempt to respond to and improve environmental

1 values. The body of coal that's subject to the Vermilion growth
2 permit, and the previous permit, was the Viola mine. Both were
3 acquired and promoted by us and developed to comply with the acid
4 rain rule of the Clean Air Act Amendments of 1990, and they have,
5 in fact, fit that market as well.

6 We're disappointed in expending a great deal of money and
7 effort to respond to this perceived environmental need to
8 essentially have these permits held up by what appeared to us to
9 be technicalities. Other projects that we have under development
10 include the projected underground hydroelectric storage program,
11 also in Vermilion County, which could have the capability to
12 store energy from winds or other unconventional projects so that
13 it could be sold at higher than the kinds of prices we want to
14 receive.

15 One of the problems with wind power, it gives you power
16 when you don't need it and it doesn't give you power when you do
17 need it. The potential capacity of this problem is about 4,000
18 megawatts, so about equal to four nuclear power plants.

19 Let's talk what we're here today to talk about these
20 proposed regulations. I've been accused of being a lawyer in the
21 past but I'm not. I'm just a business man. So what we try to do
22 is put these projects together with investors in a way so that
23 they will appeal to some perceived demand, again, all of which I
24 said are environmentally driven and hopefully make some money in

1 the end.

2 I believe that we all know that if we were to rank the
3 sources of water pollution in Illinois today, agriculture is at
4 the top of the list generating most of the water pollution.
5 Second is municipalities, mining, oil and gas and manufacturing
6 generate a relatively small fraction of total water pollution.
7 We can argue about what that fraction is but I don't think anyone
8 can disagree with these rankings. Nevertheless, because mining
9 and manufacturing are primarily point sources, they tend to be
10 the most heavily regulated and that's not -- that's not in itself
11 bad. Point sources tend to be easier to regulate and more
12 cost-effective than distributing sources.

13 However, what we have now is the point where most of the
14 regulatory attention is being paid to a relatively tiny fraction
15 of the total emissions water pollution. Where it needs to be
16 paid is to some of the larger contributors primarily agriculture.

17 Now the petitioner for this rule change Prairie Rivers in
18 the late '90s correctly identified agriculture as a major
19 contributor to water pollutants. They mounted a vigorous
20 campaign and appeared to drop it like a hot potato when they took
21 up to attack our lessee, Black Beauty, which I don't understand
22 why they did that, but it was very puzzling.

23 I have some proposed -- I have one more comment. We can
24 discuss the cost of delay and uncertainty. Yes, when a permit is

1 being disputed, the permit holder may go ahead and discharge
2 pursuant to the permit that was lawfully issued by the Agency.
3 However, the fact is that most of these projects are funded by
4 some sort of data project financing, and to the extent that a
5 final permit is not in hand can adversely affect the ability of a
6 project developer to implement his project.

7 So to the extent an intervenor group has an agenda which is
8 larger than the particular permit that's being disputed and we
9 can't, you know, I think we need to recognize here that there are
10 a lot of people that think coal is a bad thing, but we're not
11 here to talk about global warming. We're not here to talk about
12 acid rain. We're not here to talk about other things. But the
13 people who are belaboring us with these constant rule changes in
14 appeals are here for that purpose. They have a larger agenda.
15 Our agenda is transparent.

16 I have some specific comments. One, during the unfolding
17 of the Prairie Rivers matter, I was very troubled by the ex parte
18 contact that had existed between the intervenors and the agencies
19 and other government bodies that provide that. Therefore, I
20 believe all ex parte contact between the applicant, the
21 intervenors, the Agency and other involved government entities
22 should be logged, and any documents that arise from that and
23 notes of those contacts should be made part of the public file.

24 Second, along the lines of the questions I had to

1 Mr. Frevert, when a permit -- when a draft permit is issued and
2 public comments are taken and that permit is modified in
3 accordance with questions raised at those public comments in a
4 direction that is favorable to the objectors, those changes
5 should be exempt from any further comment requirements that might
6 arise out of this proposed rulemaking, otherwise what we're going
7 to get is an acetonic approach, a never-ending approach towards
8 an outcome and there never will be an outcome.

9 The only way we're going to get an outcome in a situation
10 like that, is for everybody to be so exhausted that they just
11 quit fighting. And those of us who have a business to pursue,
12 customers to satisfy, financing to raise are also going to get
13 discouraged and we're going to do something else.

14 My company was denied standing by the Illinois Pollution
15 Control Board in the Prairie Rivers appeal. We had at least as
16 much writing on it as the applicant in financial terms. The
17 mineral leasing acting provides that federal coal and minerals
18 have all the same rights and standings as the owner of the
19 surface property or fee simple property.

20 Therefore, I would like to propose, and this may or may not
21 be in connection with these proposed rule changes, that the owner
22 of leased coal minerals, oil and gas subject to draft -- any
23 draft permit that's disputed should automatically be granted in
24 standing appeals.

1 We had already mapped a path if the outcome had been any
2 different than it had been for a federal appeals through the
3 federal courts along the lines of Telesol (phonetic) versus Road
4 Island, because what we had would have been serious regulatory
5 taking amounting in the 10s of millions of dollars for our
6 company. Those are the extent of my comments. Thank you.

7 HEARING OFFICER TIPSORD: Thank you. Are there any
8 questions? Thank you very much. Next we have Mr. Miller from
9 the Prairie Rivers Network.

10 MR. MILLER: At this point I'm interested in making a
11 public comment and not testimony. I would be willing to make
12 time appropriate.

13 HEARING OFFICER TIPSORD: All right. Margaret Mitchell?

14 MS. MITCHELL: The same for me.

15 HEARING OFFICER TIPSORD: And Wendy Butler?

16 MS. BUTLER: The same.

17 HEARING OFFICER TIPSORD: Is there anyone else wishing to
18 testify?

19 MR. HARSCH: I have question. Are these organizations in
20 which they're speaking are they proponents in this?

21 HEARING OFFICER TIPSORD: But are you speaking on behalf of
22 your organization or are you speaking on your own behalf?

23 MR. HARSCH: I would be speaking on my organization.

24 HEARING OFFICER TIPSORD: So you will be speaking on behalf

1 of the organization?

2 MR. HARSCH: Yes.

3 HEARING OFFICER TIPSORD: Go ahead.

4 MR. HARSH: Who are the proponents of this proceeding?

5 MR. ETTINGER: Prairie River is Illinois -- I don't believe

6 is --

7 MR. HARSCH: I thought you identified him earlier.

8 MR. ETTINGER: I'm sorry. I should know my clients. You

9 know, frankly I have this problem. Somebody had a copy of the --

10 HEARING OFFICER TIPSORD: I have the -- I'm sorry, the

11 Statement of Reasons before me list the Environmental Law and

12 Policy, Sierra Club, Prairie Rivers Network and 225 individuals.

13 MR. ETTINGER: Right. Thank you.

14 HEARING OFFICER TIPSORD: You're welcome.

15 MR. ETTINGER: So the only groups are Sierra Club, Prairie

16 Rivers Network and the guys that -- the last of the petitioners

17 is ELPC, Environmental Law and Policy.

18 HEARING OFFICER TIPSORD: Mr. Harsch?

19 MR. HARSCH: It would seem to me that the proponent should

20 testify rather than make a comment.

21 MR. ETTINGER: Well, actually the proponents did testify at

22 the last hearing. Mark, I don't -- You can either testify or

23 maybe we'll just drop it. What do you want to?

24 MR. MILLER: Well, it seems to be an issue. I'll decline

1 to make a comment.

2 MR. ETTINGER: Beth was here for Prairie Rivers at the
3 first hearing and didn't testify.

4 HEARING OFFICER TIPSORD: That's correct. Mr. Miller could
5 make a statement on behalf of himself, I think.

6 MR. HARSCH: That would be fine.

7 HEARING OFFICER TIPSORD: Would you like to do that?

8 MR. MILLER: I will do that.

9 HEARING OFFICER TIPSORD: Do you have any objections to the
10 others? Mr. Miller, this is not sworn testimony. This is on
11 behalf of Mr. Miller himself and will not be subject to
12 cross-examination.

13 MR. MILLER: Thank you, Board. I have been working for the
14 proponent for four years, and as a person I would say the
15 observation about the Clean Water Act and participation is that
16 it's critical to meet the goals of Clean Water Act. Those goals
17 are clean, healthy, fishable, unchemicaled waters. Often our
18 members, members of the public, who live in an area of proposed
19 or expanded discharge have raised issues and observations.

20 Those observations are critical for the Illinois EPA to
21 hear because they cannot be present to be knowing of what the
22 conditions are in a water pod, stream, lake, whatever. The
23 proposed rules will ensure that the public will have a fair
24 opportunity for involvement. The public should also fully

1 understand how they can participate as members of the public.
2 This is something that is difficult to do without -- without some
3 guidance. And all the information that is necessary to ensure
4 that the permit is protective of water quality in their local
5 stream or water bodies is also difficult to ascertain without
6 some type of stated information. This is what we believe that
7 the proponents are seeking.

8 I'd like to add that behind the first three rows of
9 professional suits there are some interesting individuals who
10 might find this fairly intimidating to come up and make a public
11 comment. There are a number of people who are interested in
12 becoming involved and making sure that their waters are clean and
13 healthy to use for drinking water, to fish or swim in, to paddle
14 or canoe. It is difficult for them to attend a time of day like
15 this a subtle -- a subtle change of the proceedings but makes it
16 difficult for normal people to voice the opinions. And I really
17 appreciate the opportunity that I have to be here to represent
18 some of those people. Thank you very much.

19 HEARING OFFICER TIPSORD: Thank you. Ms. Mitchell.

20 MS. MITCHELL: Margaret Mitchell. I want to thank you for
21 the opportunity to speak. As a citizen, American citizen, born
22 here in the state of Illinois, living in the state of Illinois,
23 I'm proud of my state. And we heard in this room today that
24 public influence makes a difference and kind of what we're

1 talking about here. And how it makes a difference one way or the
2 other, who wins, loses, whatever in cases of public hearings,
3 it's important that the public is heard. We do make a
4 difference, but we need a channel and opportunity to speak. And
5 thank you for letting me speak today.

6 HEARING OFFICER TIPSORD: Thank you. Ms. Butler; is that
7 correct, B-U-T-L-E-R?

8 MS. BUTLER: Yes. I'm Wendy Butler and I'm with Illinois
9 Environmental counsel. I just wanted to make a statement that
10 our organization places great importance on public participation
11 in the permit process, and we do believe that public
12 participation is essential to open -- to an open process which
13 provides critical information to the public and allows the
14 response concerned in affected citizens to respond to proposed
15 permit actions.

16 THE COURT: Thank you. Is there anyone else who would like
17 to make a comment on the record. Mr. Callahan?

18 MR. CALLAHAN: Well, I've been in involved in this business
19 for approximately 30 years. And as Toby and I indicated, this
20 morning he and I jointly have seen quite an improvement in the
21 water quality of -- of our state.

22 One of the things that I would certainly want to dispel
23 here this morning is the fact that there is any reservation about
24 involvement of public in these proceedings. As example, on

1 behalf of myself representing the counties of Bloomington and
2 Normal, I get no pay bonus and I get no annual benefit. I get no
3 compensation whatsoever over minimizing the extent of our
4 regulation in terms of bringing in the plant without any
5 compliance problems. I work for the public in my community and I
6 think that's an issue that is frequently mentioned in proceedings
7 such as this.

8 The people that I represent are the public. There are many
9 venues for this public to comment, not the least of which is
10 frequently overlooked. At this level is the fact that we have
11 monthly Board meetings in our community. There is an opportunity
12 for concerned people in the area to appear and express their
13 concern to our Board members appointed which there's probably an
14 opportunity to get a lot more done with a great deal less
15 litigation than there is in this venue.

16 What we're concerned about is a streamlined permit issuing
17 procedure whereby we protect the waters of the State as we're
18 required but that we're not needlessly wasting Agency personnel
19 time for hearings that may or may not be appropriate under a
20 given issue.

21 As I sat here this morning and questioned, I didn't get a
22 set of criteria that the Agency is using to determining whether
23 or not a request is valid, and I only heard of one hearing
24 request that had been turned down and that had been turned into a

1 public hearing. It's an issue of public money, of cost and of
2 expediency in doing our business, and I share concerns with the
3 gentleman from the coal company. What's your name, sir?

4 MR. KEADY: Keady.

5 MR. CALLAHAN: Of additional agenda that may not be
6 associated with some of these hearing requests. That's basically
7 the extent of the comments I have.

8 HEARING OFFICER TIPSORD: Thank you, Mr. Callahan. If we
9 could go off the record for just a second.

10 (A discussion was held off the record.)

11 HEARING OFFICER TIPSORD: I want to thank everyone for
12 attending today. As you know there's a pending motion for the
13 Pollution Control Board to set a third hearing, so at this time I
14 would ask that within the next week if all interested parties
15 submit to me either by E-mail or phone or personally a list of
16 potential days for a third hearing, if the Board orders a third
17 hearing, or in the alternative potential dates for closing of a
18 comment period in this rulemaking. Mr. Harsch?

19 MR. HARSCH: I have a question. What type of advance
20 notice length of time would you be required in your hearing
21 officer order?

22 HEARING OFFICER TIPSORD: We'll need at least 30 days to
23 notice the hearing. Actually a little bit more than that. We
24 will have to publish, 45 days. 45 days before we can at best

1 properly schedule a hearing after that meeting so at least two
2 weeks before we rule on it. Anything further?

3 MR. GIRARD: I just like to thank everyone for all the time
4 and effort that they vested in this rulemaking proceeding so far
5 and the Board does appreciate that and we will look at everything
6 very carefully and look forward to seeing where we go from here.
7 Thank you.

8 THE COURT: Thank you very much. I appreciate your time
9 and, as I say, you're welcome to use this room for as long as you
10 need. Thank you very much. We're off the record.

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 69 pages comprise a true, complete and correct transcript of the proceedings held on the 2nd of April, A.D., 2003, at the Illinois Pollution Control Board, 600 South Second Street, Suite 403, Springfield, Illinois, In The Matter of: Proposed Amendments to: Public Participation Rules in 35 ILL. Adm. Code Part 309 NPDES Permits and Permitting Procedures, in proceedings held before Hearing Officer Marie Tipsord, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 8th day of April, A.D., 2003.



Beverly S. Hopkins

Beverly S. Hopkins
Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

CSR License No. 084-004316

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