

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
Volume II

IN THE MATTER OF: )  
 )  
CONFORMING AMENDMENTS FOR THE ) R97-25  
GREAT LAKES INITIATIVE: 35 ILL. ) (Rulemaking-Water)  
ADM. CODE 302.101; 302.105; )  
302. SUBPART E; 303.443 )  
AND 304.222 )

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Kim M. Howells, CSR, a notary public within and for the County of Cook and State of Illinois, before Marie Tipsord, Hearing Officer, at 55 South Harbor Place, Waukegan, Illinois, on the 28th day of July 1997, A.D., commencing at the hour of 10:00 a.m.

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

2

HEARING TAKEN BEFORE :

3

ILLINOIS POLLUTION CONTROL BOARD,  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
(312) 814-4925  
BY: MS. MARIE TIPSORD

7

ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

8

Mr. Joseph Yi

9

Ms. Cynthia I. Ervin

10

Dr. Tanner Girard

11

Mr. Anand Rao

12

Ms. Amy C. Hoogasian

13

14

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS  
PRESENT:

15

16 Mr. Richard C. Warrington, Jr.

17 Mr. Toby Frevert

18 Mr. Robert G. Mosher

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1 MS. TIPSORD: Good morning. My name is Marie  
2 Tipsord, and I've been appointed by the board to  
3 serve as the hearing officer in this proceeding  
4 entitled in the matter of conforming amendments for  
5 the Great Lakes Initiative, amendments to 35 Ill.  
6 Adm. Code 302.101; 302.105, 302 Subpart E; 303.443,  
7 304.222. This is document No. R97-25.

8 To my right side is Dr. Tanner Girard.  
9 He's the lead board member in this proceeding, and  
10 on the end of the table is Board Member Joseph Yi  
11 who is also an attending board member in this  
12 rulemaking.

13 In addition, we have Cindy Ervin who is  
14 Chairman Manning's assistant. Chairman Manning is  
15 unable to be with us today. She is also an  
16 attending board member. To my immediate left is  
17 Anand Rao of our technical division and to his left  
18 is Amy Hoogasian also Chairman Manning's assistant.  
19 In addition, we have K.C. Doyle who is Board Member  
20 Ted Meyer's assistant.

21 This is the second hearing in this  
22 proceeding which was filed on March 21, 1997, by the  
23 Illinois Environmental Protection Agency. Along  
24 with the proposal, the agency filed a certification

1 pursuant to Section 28.2 of the Environmental  
2 Protection Act that the amendments were federally  
3 required.

4           Section 28.2(a) of the act provides that a  
5 required rule means a rule that is needed to meet  
6 the requirements of the Clean Water Act, Safe  
7 Drinking Water Act, Clean Air Act, or Resource  
8 Conservation and Recovery Act other than an  
9 identical and substance rulemaking.

10           Section 28.2(b) requires the board to  
11 either accept or reject the certification filed by  
12 the agency and to reference that certification in  
13 the first notice proposal published in the Illinois  
14 Register.

15           On April 3rd, 1997, the board accepted the  
16 certification and accepted this proposal. On  
17 June 19, 1997, the board adopted a first notice  
18 opinion and order in this procedure. The first  
19 notice was published in the Illinois Register on  
20 July 11, 1997.

21           I have here sign up sheets for both the  
22 notice and service list. If you wish to be on the  
23 service list, you would receive all pleadings and  
24 prefiled testimony in this proceeding.

1           I would note, however, at this time we are  
2 not anticipating a second hearing -- a third  
3 hearing, I'm sorry, so I would not anticipate there  
4 will be any additional prefiled testimony, but there  
5 may be additional pleadings.

6           If you're on the notice list, you will  
7 receive copies of the board's opinions and orders  
8 and all hearing officer orders. If you have any  
9 questions about which list you should appropriately  
10 be on, please see me at a break, and I'll try and  
11 talk you through it a little.

12           There are also copies of the current  
13 service and notice list over to the left along with  
14 copies of the board's opinion and order -- the first  
15 notice of opinion and order. I understand the  
16 Illinois Environmental Regulatory Group has copies  
17 of their testimony, and the agency has copies of  
18 their testimony as well back there.

19           The board received prefiled testimony from  
20 those two groups, the agency and the Illinois  
21 Environmental Regulatory Group, and we will begin  
22 today with the agency's testimony, and we will then  
23 allow for questioning of the agency and follow with  
24 testimony by the Illinois Environmental Regulatory

1 Group.

2           If we have time at the end of the day, we  
3 will allow any person who has not prefiled and who  
4 may wish to testify to testify. At this time, I  
5 would like to ask if there is anyone in that  
6 category at this time, someone who did not prefile,  
7 but who would like to testify today.

8           At this time, I don't see anyone, but we  
9 will check with that periodically throughout the  
10 day.

11           Okay. Before we begin, Dr. Girard or  
12 Mr. Yi, do you have anything you'd like to add?

13       DR. GIRARD: Well, I'd just like to welcome  
14 everyone here this morning and thank all the people  
15 who have been working very hard on this rulemaking.  
16 I look forward to a very good efficient hearing  
17 today.

18           Thank you.

19       MS. TIPSORD: Mr. Yi?

20       MR. YI: I echo Mr. Girard.

21       MS. TIPSORD: Thank you.

22           All right. Then let's begin with the  
23 Illinois Environmental Protection Agency.

24       MR. WARRINGTON: Thank you. My name is Rich

1 Warrington. I'm the associate counsel for the  
2 Bureau of Water with the Illinois Environmental  
3 Protection Agency. On behalf of our director, Mary  
4 Gade, I'd like to welcome you all to our second  
5 hearing for this important rulemaking.

6 By way of background, I think someone can  
7 refer to our testimony at this first hearing, but in  
8 summary, there is a problem with toxic substances in  
9 the Great Lakes Basin and the United States  
10 Environmental Protection Agency and the government  
11 of Canada have been working for several years to  
12 reach a common set of water quality criteria,  
13 antidegradation provisions and implementation  
14 provisions so that all the Great Lakes states and  
15 their tributaries can be on the same page.

16 These rules have been promulgated by the  
17 United States Environmental Protection Agency and  
18 have a deadline for adoption of March 23rd of this  
19 year. So we are technically a bit late. We have  
20 been working with the United States Environmental  
21 Protection Agency to adopt these in an expedient  
22 manner, and we appreciate the efforts of the board  
23 to have a schedule for their adoption and for your  
24 interest and your time that you've spent so far in



1 reaching a speedy decision.

2           We have filed prefiled testimony for  
3 today. We have brought two witnesses to present  
4 it. One is Robert Mosher, who will talk about the  
5 derivation procedures for lead, and we have  
6 Dr. Clark Olson, who will be talking about the  
7 existing concentrations of substances in Lake  
8 Michigan, and a report on the prior implementation  
9 of the board's 35 Illinois Administrative Code,  
10 Part 302, Subpart E, which were the toxic  
11 regulations adopted on a statewide basis by the  
12 board just a few years ago.

13           If there aren't any questions, I think we  
14 can introduce Mr. Mosher and talk about the  
15 derivation process for the chemical substance lead.

16       MS. TIPSORD: Could we have Mr. Mosher come up  
17 here? I think it will be a little easier for Kim to  
18 hear him speak.

19           Also, Mr. Warrington, along with your  
20 prefiled testimony, there are several attachments?

21       MR. WARRINGTON: That's correct.

22       MS. TIPSORD: Will you be moving those as  
23 exhibits?

24       MR. WARRINGTON: Yes, we will.

1 MS. TIPSORD: Okay.

2 MR. WARRINGTON: We can do it now, or we can do  
3 at the close of Mr. Mosher's testimony.

4 MS. TIPSORD: Whichever you're most comfortable  
5 with.

6 MR. WARRINGTON: We will do it at the close of  
7 Mr. Mosher's testimony.

8 MS. TIPSORD: Great. Thanks. Could you swear  
9 Mr. Mosher?

10 (Witness sworn.)

11 WHEREUPON:

12 R O B E R T G. M O S H E R ,  
13 called as a witness herein, having been first duly  
14 sworn, deposeeth and saith as follows:

15 MR. MOSHER: We provided some information in  
16 response to a inquiry by Dr. Rao at the last  
17 hearing.

18 MR. RAO: Mr. Rao.

19 MR. MOSHER: Mr. Rao. I'm sorry.

20 MR. RAO: I don't mind.

21 MR. MOSHER: And his question concerned the  
22 origin of the proposed standard for lead, and I  
23 believe we presubmitted some information; is that  
24 right, Rich?

1       MR. WARRINGTON: That's right. We supplied two  
2 documents. One is the memo from Mr. Pepin dated --  
3 well, it's received on November 18th, 1996; and,  
4 secondly, a document that is a scientific study by  
5 Mr. Larry Brooke for a U.S. EPA contract dated  
6 March 22, 1995, and that relates to the report of  
7 Acute Toxicity of Lead to the Annelid,  
8 A-n-n-e-l-i-d, I think it may be -- I'm just trying  
9 to read the Latin name. It's basically a worm and a  
10 frog.

11               Those are the two documents we'll later  
12 introduce as an exhibit.

13       MR. MOSHER: Okay. Mr. Pepin from the U.S. EPA  
14 oversees something called the Great Lakes Water  
15 Quality Initiative Clearinghouse, and that is a  
16 place where data can be accumulated. The various  
17 states can go to the Clearinghouse to see what data  
18 is available, and really all the states are  
19 cooperating, and once data is discovered and made  
20 known to the Clearinghouse, calculations can be made  
21 to derive water quality criteria, and that's what's  
22 happened with lead.

23               This more recent data was acquired by the  
24 Clearinghouse. The calculations to derive lead

1 standards in this case were made using that new data  
2 plus all the existing data on the toxicity of lead  
3 to aquatic life, and the method used was the  
4 standard U.S. EPA derivation procedure.

5           And I could summarize as we said here that  
6 the more important species are listed that went into  
7 this derivation, and that's how we got our composed  
8 lead standards. If there's any specific questions,  
9 I can try to answer them.

10       MS. TIPSORD: Why don't we go ahead and do all  
11 the agency's testimony, and then that way if there  
12 are questions that you can better answer and  
13 vice versa, we'll let you and Clark answer them  
14 together.

15           Okay?

16       MR. MOSHER: Okay.

17       MS. TIPSORD: If that's okay with you, Rich?

18       MR. WARRINGTON: That's fine with us.

19           So our next witness would be Dr. Clark  
20 Olson, and he'll be testifying in support of a  
21 report that we made and submitted to the board as  
22 part of our prefiled testimony on the existing  
23 concentrations of substances in Lake Michigan, and  
24 that should be in the prefiled testimony of

1 July 11th.

2 Dr. Olson?

3 (Witness sworn.)

4 WHEREUPON:

5 C L A R K O L S O N ,

6 called as a witness herein, having been first duly  
7 sworn, deposeth and saith as follows:

8 DR. OLSON: I don't have any written testimony  
9 other than the table, and I think the table speaks  
10 for itself pretty well. Although I'd like to note  
11 that there are a number of substances because of --  
12 mostly because of detection limit problems.

13 We have apparently existing concentrations  
14 in the lake which exceed these criteria. Now, that  
15 may be strictly a detection limit problem, and the  
16 actual concentrations may not exceed -- we have  
17 other people in the room who probably can speak to  
18 this as well as I can, but maybe I can just open it  
19 up to questions for reading this table. You may  
20 have some problems figuring out some of the  
21 notations of the table.

22 MS. TIPSORD: Okay. Before we open it up to  
23 questions, let's go ahead and move these in as  
24 exhibits.

1 MR. WARRINGTON: Okay. Sure. May we do them  
2 all at once?

3 MS. TIPSORD: Yeah. And let me just note that  
4 that would be the memorandum by Robert Pepin and the  
5 attached materials which includes the draft Great  
6 Lakes Water Quality Initiative Clearinghouse  
7 information, correct?

8 MR. WARRINGTON: Correct, No. 1.  
9 (Hearing Exhibit Nos. 3 - 5  
10 marked for identification,  
11 7/28/97.)

12 MS. TIPSORD: Exhibit 4 is the report by Larry  
13 Brooke, and we'll mark as Exhibit 5 the report on  
14 concentrations of substances in Lake Michigan from  
15 Clark Olson.

16 MR. WARRINGTON: Okay. And we have one more as  
17 long as we're marking these up. We have a -- after  
18 the report on concentrations, there should be a  
19 document entitled Review of Application of 35  
20 Illinois Administrative Code 302, Subpart F.

21 MS. TIPSORD: Okay. I'll mark that as  
22 Exhibit 6.

23

24

1 (Hearing Exhibit No. 6  
2 marked for identification,  
3 7/28/97.)

4 MS. TIPSORD: So again running those Exhibits,  
5 No. 3 is the memorandum, Exhibit 4 is the report by  
6 Larry Brooke, Exhibit 5 is the table of Mr. Olson,  
7 and Exhibit 6 is the review of application of 35  
8 Illinois Adm. Code 302, Subpart F.

9 Is there any objection? Seeing none, those  
10 exhibits will be marked.

11 MR. WARRINGTON: Okay. Would you prefer that  
12 Dr. Olson read the review of application into the  
13 record?

14 MS. TIPSORD: Could we go off the record for  
15 just a second?

16 (Discussion had off  
17 the record.)

18 MR. WARRINGTON: Okay. We'll answer any  
19 questions that the public may have or the board may  
20 have on those exhibits.

21 MS. TIPSORD: Okay. Are there any questions for  
22 Mr. Olson or Mr. Mosher at this time?

23 DR. GIRARD: I have a question.

24 MS. TIPSORD: Okay. Go ahead, Dr. Girard.

1 DR. GIRARD: Dr. Olson, you're talking about  
2 concentrations of substances in Lake Michigan,  
3 right?

4 DR. OLSON: That's right.

5 DR. GIRARD: I just wondered if you could go  
6 through that table from top to bottom and just  
7 indicate to us the substances where it appears that  
8 the reported concentrations are possibly higher than  
9 the standards that are being proposed and give us  
10 your professional opinion on whether or not it may  
11 be a detection limit problem or whether we actually  
12 have a lake concentration which is higher than the  
13 proposed standard.

14 DR. OLSON: Well, I'll ask Bob Mosher to help  
15 out on this --

16 DR. GIRARD: Okay.

17 DR. OLSON: -- since he's sitting here.

18 Cadmium --

19 MR. MOSHER: And we should note the table  
20 indicates that we've never detected cadmium in the  
21 lake water. The range is given as less than five  
22 parts per billion to less than ten parts per  
23 billion.

24 When you get a result that says less than



1 ten parts per billion, you may very well have  
2 something over the standard. You just don't know.  
3 You're kind of blinded by the method. It doesn't  
4 appear that there's any large problem at least with  
5 cadmium because only five out of 206 samples did  
6 we -- well, doesn't that mean detection?

7 DR. OLSON: Yeah.

8 MR. MOSHER: Well, something must be wrong with  
9 the table then.

10 DR. OLSON: Well, these were obtained from the  
11 Lake Michigan Water Quality Report some years ago,  
12 and we weren't involved in the production of that  
13 report. So there are some details that mostly  
14 relate to laboratory technique and detection and so  
15 on.

16 MR. MOSHER: Well, in any case, very few samples  
17 are detected, and we'll try to track down why all  
18 the results are indicated as being a less than  
19 because that's in contradiction to our report of the  
20 number of detections versus the number of samples  
21 taken, but in any case, it's very low.

22 DR. GIRARD: Let me ask a quick question then.  
23 So in other words, if you took an average of -- if  
24 you have 206 sampling events, and you average the

1 five places where there was some detection, the  
2 amount of cadmium is still very low.

3 DR. OLSON: It's around the standard level,  
4 right, roughly, I mean, as well as it can be.

5 DR. GIRARD: Thank you.

6 What's next?

7 DR. OLSON: Copper is the next one, and, again,  
8 the detection levels are apparently -- where there  
9 are detection levels, it is around the standard  
10 level. So there are -- well, that's about 16  
11 percent or 15 to 20 percent detection, and those  
12 were at about the standard level.

13 Cyanide, there were very few detections.  
14 Again, they were at about the standard level.  
15 Selenium, we don't really have any results. This  
16 was from a paper which is documented at the end of  
17 the table, and this was just -- we don't know --  
18 again, we don't know the details of that, but it  
19 shows that it was at least sometimes close to the  
20 detection level at about the standard level.

21 And, finally, the last inorganic substance  
22 is zinc. There are over a tenth detection rate, and  
23 the detection level can get significantly higher  
24 than the standard level.

1       MR. MOSHER: About all you can say on some of  
2 these is that we've taken a good number of samples,  
3 and whenever you send several hundred samples to a  
4 laboratory, there's always a chance that a few of  
5 those could come out as what we might call a  
6 laboratory anomaly where we have kind of a feeling  
7 that something went wrong at the lab, a sample got  
8 contaminated or someone had a transposition error  
9 because it's a little hard to fathom how we can have  
10 258 micrograms per liter in Lake Michigan when  
11 normally we always get a nondetect. We usually get  
12 a nondetect.

13               So there's no real way of telling that as  
14 with all data. I guess our experience is we would  
15 doubt some of these. At least for some of these  
16 substances we would doubt some of these high values  
17 are really valid, but that's what the data says, so  
18 we presented it.

19       DR. OLSON: Well, for the organics, you'll  
20 notice that most of bioaccumulative substances, the  
21 traditional persistent bioaccumulative substances,  
22 do apparently appear at levels higher than the  
23 standard, but in this case, actually, there are not  
24 too many detections that actually have been above

1 the detection limit. Clordane, they're worth three  
2 over 84 above detection, and detection limit is  
3 significantly higher than the human health or  
4 wildlife standard.

5           And then again also for DDT, and then I  
6 don't know whether you want me to enumerate all the  
7 list. Seven out of the 14 do apparently show higher  
8 than -- well, but don't actually -- they aren't  
9 actually above the detection limits, just that the  
10 detection limit is so high compared to the standard  
11 that we don't know.

12       DR. GIRARD: Well, on DDT, my table shows zero  
13 samples had -- you know, found the detection limit.

14       DR. OLSON: Right. But the detection limit is  
15 so much higher than the standard that we can't say.  
16 The standard is in picograms per liter, and the  
17 concentration level in the lake, which is the  
18 detection level, are micrograms. So that's six  
19 orders of magnitude difference.

20       MR. MOSHER: One more substance we might want to  
21 mention from that chart is mercury. We've had a few  
22 detections. I want to point out that as the  
23 footnote would indicate mercury is a very difficult  
24 substance to work with. There's a good chance that

1 sample collection vehicles or laboratories could be  
2 contaminated with mercury, and we've traced problems  
3 of this sort in the past.

4           So when I see a -- like the high end of the  
5 range for mercury samples in lake water of 0.2  
6 micrograms per liter, I generally would think that  
7 would be a contaminated sample given that the vast  
8 majority of samples from lake water are nondetects.

9           Again, in this particular case, we haven't  
10 traced a contamination problem anywhere, but it just  
11 looks like one.

12       DR. OLSON: So does that answer your question?

13       DR. GIRARD: Yes. Thank you.

14       MS. TIPSORD: Anything else?

15       MR. RAO: I have a follow-up question to what  
16 Dr. Girard was asking right now.

17           Have you made any analysis in terms of the  
18 18 or so distorted that you have mentioned earlier?  
19 Now, could they have any problems in complying with  
20 these proposed standards?

21       MR. MOSHER: Most of these things aren't  
22 regulated in any Lake Michigan dischargers' permit,  
23 and that's because we don't have any knowledge that  
24 they are present in the effluent.

1           So your question was would any of the Lake  
2 Michigan dischargers have difficulty meeting these?  
3 There's some here present that might want to chime  
4 in, but I don't know of any instances where they  
5 would have a problem myself.

6       MR. RAO: So you have looked at the existing  
7 permits?

8       MR. MOSHER: Right. The existing permits by and  
9 large don't regulate most of these things. There  
10 may be a couple here and there. But from our  
11 process of regulation an NPDES permit, we look to  
12 see what might be in an effluent. We do monitoring  
13 of that effluent to see what's in there.

14           If there's nothing going on at that  
15 facility and we don't find anything in effluent, we  
16 usually make the decision not to regulate, and  
17 that's the case for most of these.

18       MR. FREVERT: If I might add something to what  
19 Bob said.

20       MS. TIPSORD: If we could have you sworn again,  
21 please.

22                           (Witness sworn.)

23

24

1 WHEREUPON:

2 T O B Y F R E V E R T ,  
3 called as a witness herein, having been first duly  
4 sworn, deposeeth and saith as follows:

5 MR. FREVERT: Just to follow up a little on what  
6 Bob said, in addition to these water quality  
7 criteria the Great Lakes Guidance that U.S. EPA  
8 adopted a couple of years ago requires some new  
9 upgraded committee procedures with a specialized  
10 statistical process to go through to assess point  
11 source of discharge, quality, chemical makeup  
12 discharges against their potential to exceed these  
13 water qualities, and it does accommodate provisions  
14 for dispelling outwire data and some checks on the  
15 quality of the effluent data we use and then a  
16 statistical application on the frequency and the  
17 character of those substances occurring on the  
18 discharge over time, so you can analyze whether or  
19 not there appears to be any reasonable potential  
20 warranted permit limits, and in those cases where a  
21 permit limit may not be warranted, there still may  
22 be justification for some monitoring to look over  
23 time and see that that trend continues.

24 We have not applied that specific procedure

1 to any permits to date. Those permit rules will be  
2 agency rules subject to adoption through the  
3 Administrative Procedures Act, and that's  
4 essentially the underlying basis for this whole  
5 Great Lakes Initiative; No. 1, set protective water  
6 quality criteria for the lake, No. 2, procedures for  
7 how you assess point sources potential to impact  
8 that water quality and then what you do about it in  
9 terms of permit limits or other factors.

10 Our indication today is we don't see  
11 anything that jumps out in front of us as  
12 problematic parameters, but I can't guarantee that  
13 there wouldn't be some. I would assume over the  
14 course of time somewhere there should be some;  
15 otherwise, why have a program if there isn't some  
16 protection that you need to regulate sources.

17 MR. RAO: Yeah. I wanted to get some ideas  
18 about the economic impact of the rules. I know you  
19 had said it would be minimal, but I just wanted to  
20 get something specific.

21 MR. FREVERT: I'd say throughout the Great Lakes  
22 Basin sent and other states in particular there may  
23 be concerns over the parameter market. Mercury is a  
24 major problem. There dozens, even hundreds, of fish



1 consumption advisories through Wisconsin and  
2 southern Michigan based on mercury both in Lake  
3 Michigan water and in a lot of inland lakes.

4           And we know that mercury has been used a  
5 lot in our own society, in batteries, in electrical  
6 elements, in pharmaceuticals, and things of that  
7 nature. So there is concern that over the course of  
8 time we may encounter a problem with mercury, and  
9 then the challenge is to figure out what to do with  
10 that because end-of-pipe treatment for mercury is  
11 probably not cost effective.

12       MS. TIPSORD: Go ahead.

13       MR. SMITH: I just wanted to further address the  
14 question that you raised.

15       MS. TIPSORD: Or if you want to wait and do it  
16 as a part your testimony.

17       MR. SMITH: Yeah, that would be fine.

18       MS. TIPSORD: Because I think we plan on asking  
19 the same questions as you guys do.

20       MR. SMITH: No problem. I'll try to remember  
21 the answer.

22       DR. OLSON: Excuse me. If they're finished with  
23 all the questions and so on, I have one other  
24 concluding remark about the table.

1 MS. TIPSORD: Okay. We actually have one more  
2 question to make, but it's not about the table, so  
3 if you want to conclude on the table.

4 DR. OLSON: Okay. I just wanted to say that I  
5 have a collection of papers, and I have database a  
6 bibliography and so on, and I've looked through all  
7 of this and we've looked around the agency, and I  
8 didn't put a formal statement of how deep a  
9 literature search I did for this table. But really  
10 all we came up with was our own Lake Michigan  
11 reports.

12 So if anybody is aware of data, especially  
13 for these other substances, which if you'll notice  
14 at the end of the table there are some substances  
15 that weren't in the data, so we just didn't put them  
16 in the table. So I will gladly incorporate it. And  
17 most of the papers that are available were  
18 repetitive. They were redundant. They were on PCBs  
19 and things for which we already have the  
20 information.

21 MS. TIPSORD: Go ahead.

22 MR. COHEN: Your Honor, my name is Rob Cohen,  
23 C-o-h-e-n. I represent Commonwealth Edison  
24 Company. I have a -- as you know, our testimony

1 concerns in some parts -- the IERG testimony  
2 concerns in some part BCCs, and since the date is  
3 about to conclude I wondered if I could ask a few  
4 questions now of Mr. Frevert concerning that topic.

5 MS. TIPSORD: Let's wait. Did you have -- there  
6 was a question behind you. Did you have something  
7 on the table itself?

8 MS. BUCKO: Yes.

9 MS. TIPSORD: Let's go ahead and ask that.

10 MS. BUCKO: My name is Christine Bucko,  
11 B-u-c-k-o. I'm the assistant attorney general for  
12 the state of Illinois.

13 Mr. Olson, on the table, I was unclear  
14 whether the sampling and the data that's accumulated  
15 here was based on an Illinois EPA study that was  
16 done from actual samples taken near the waters near  
17 Illinois --

18 DR. OLSON: Yes.

19 MS. BUCKO: -- or if it was a federal study?

20 DR. OLSON: I don't know. Maybe Bob Schacht  
21 could help too. This is just the Illinois Lake  
22 Michigan report for -- it's documented at the end of  
23 the table.

24 MR. SCHACHT: Yeah, it's --

1 MS. TIPSORD: Wait a minute. Could we have you  
2 identify yourself, please?

3 MR. SCHACHT: I'm Bob Schacht with the Illinois  
4 EPA.

5 MS. TIPSORD: And let's go ahead and swear you  
6 in too.

7 (Witness sworn.)

8 WHEREUPON:

9 R O B E R T S C H A C H T ,  
10 called as a witness herein, having been first duly  
11 sworn, deposeth and saith as follows:

12 MR. SCHACHT: That is state data collected by  
13 the state, an Illinois portion of Lake Michigan.

14 MS. TIPSORD: Okay. Mr. Cohen, go ahead.

15 MR. COHEN: Thank you, your Honor.

16 Mr. Frevert, if I could just ask you, can  
17 you give us a general description of how the process  
18 of adopting new bioaccumulative chemicals of concern  
19 or BCCs would operate under the proposed rule?

20 MR. FREVERT: Under the proposed rule,  
21 bioaccumulative chemicals of concern are defined by  
22 their chemical and behavioral properties, and, if  
23 indeed, a substance meets those properties behaves  
24 that way, it would be treated as a BCC and subject

1 to the antidegradation and mixing zone provisions  
2 within the other portions of the standard.

3 I believe your concern is who and how is  
4 the decision made, whether a chemical actually  
5 exhibits a bioaccumulation factor greater than 1,000  
6 and whether or not it has a persistence of longer  
7 than a specified time in the definition. In  
8 application, the way we propose the standard at the  
9 present time, we would review the scientific  
10 literature, and if the agency's technical experts  
11 deem that those two conditions were met, we would  
12 treat that substance as a BCC and apply  
13 antidegradation and mixing zone restrictions  
14 accordingly.

15 MR. COHEN: Mr. Frevert, that is correct. That  
16 is a part of my concern.

17 As a follow-up question, how would the  
18 regulated community know that IEPA had arrived at  
19 that determination?

20 MR. FREVERT: The regulated entity was asking  
21 for an increase in loading that would be subject to  
22 antidegradation is asking for that increase  
23 authority because they need authorization through a  
24 permit to do that, and in the process of reviewing

1 that permit application, we would notify that  
2 individual of our understanding that this is a BCC,  
3 and, therefore, additional information is necessary  
4 for us to process the request.

5           Subject to the verification that we've  
6 concluded it's a BCC, we would take steps to notify  
7 the rest of the world, probably in our quarterly  
8 publication, that chemical X is now due to be a BCC  
9 in addition to those substances specifically named  
10 in the definition.

11       MR. COHEN: Mr. Frevert, would it be correct to  
12 say then that until a certain point of time the BCC  
13 determination is site specific only and only as to  
14 that permittee who's seeking an increased loading?

15       MR. FREVERT: I don't believe I'd say that, no.

16       MR. COHEN: Well --

17       MR. FREVERT: A BCC is a chemical that acts a  
18 certain way consistent with the definition that that  
19 chemical behaves that way. It behaves that way  
20 whether it appears in St. Louis or Chicago.

21       MR. COHEN: So then it would be correct to say  
22 instead that once the agency has made that  
23 determination, the BCC is a BCC for the entire  
24 universe of dischargers governed by this rule; is

1 that correct?

2 MR. FREVERT: Once we've determined that an  
3 additional chemical was a BCC, we would apply those  
4 requirements throughout the Lake Michigan Basin.

5 Now, as the incident arises, I don't think  
6 we're going to encounter these things more than once  
7 in the decade, maybe I'm wrong, but the point is  
8 wherever the situation arose, we would treat it that  
9 way.

10 MR. COHEN: Okay. Let me ask you a hypothetical  
11 question if I may based on your experience and  
12 judgment in these matters.

13 What would be required of a third party,  
14 other than the agency, if that third party wished to  
15 add a BCC to the list either by review of scientific  
16 literature or through its own studies perhaps and in  
17 turn wished to enforce that definition on some  
18 discharger who isn't applying for a permit at that  
19 particular point in time?

20 MR. FREVERT: I think there would be two  
21 opportunities for a third party to bring about that  
22 concern.

23 No. 1 would be to notify the agency that  
24 certain literature and information is available that

1 substantiates the bioaccumulation factor and the  
2 persistency of this chemical, and, therefore, the  
3 agency should recognize that as a BCC and treat it  
4 that way.

5           Under such circumstances, of course, we  
6 would have to make our independent review in either  
7 corroboration or disagreement with that individual.  
8 If we agreed with them, then we would be obligated  
9 to apply antidegradation and mixing zone  
10 restrictions on that chemical the same as we would  
11 any BCC.

12           The other perhaps more -- well, I don't  
13 know that it would be more direct or not, but the  
14 other route that's certainly possible in our state  
15 regulatory structure is to petition the Pollution  
16 Control Board in a regulatory proceeding to add that  
17 chemical to the list included and the definition.

18       MR. COHEN: So, Mr. Frevert, is it your  
19 understanding that my hypothetical third party would  
20 require either your acquiescence or board adoption  
21 in order to proceed on the grounds that this new  
22 chemical is a BCC in whatever manner that third  
23 party chose to proceed?

24       MR. FREVERT: Well, certainly those two



1 options. I suppose if we disagreed with that  
2 individual and said no, this does not meet the  
3 definition, it is not a BCC and does not deserve to  
4 be treated that way through a third party permitted  
5 appeal or some other litigating fashion, they may be  
6 able to have a third bite at the apple.

7 MR. COHEN: Mr. Frevert, is it fair to say that  
8 nothing in the rule, other than the definition  
9 itself, addresses the manner in which the BAF and  
10 half-life determinations are made for new  
11 chemicals?

12 That everything you have said to me, to  
13 phrase my question a different way, is essentially  
14 based on your current interpretation of how the  
15 process would work?

16 MR. FREVERT: I'm not sure I understand your  
17 question.

18 MR. COHEN: Let me rephrase it. It wasn't well  
19 phrased.

20 Is there anything in the rule that sets  
21 forth the procedure for determining whether a new  
22 chemical is or is it not a BCC?

23 MR. FREVERT: I believe there are standardized  
24 protocols for doing bioaccumulation factor

1 measurements and things of that nature. We would  
2 have to adhere to scientific procedures in reviewing  
3 and deciding whether to accept or reject data, if  
4 that's your question?

5 MR. COHEN: Actually, the question is, is there  
6 anything in the rule that sets forth who will review  
7 any such studies to determine they were, in fact,  
8 valid?

9 You've indicated earlier that the agency  
10 would do that. My question is, is there anything in  
11 the rule that says the agency will make that  
12 ruling?

13 MR. FREVERT: No. The rules says --

14 MR. MOSHER: Could we call a time out? I'm  
15 sorry, Toby.

16 Could we have a time out to huddle a little  
17 bit?

18 MR. FREVERT: Maybe they're going to enlighten  
19 me.

20 MS. TIPSORD: Let's go off the record for a  
21 second.

22 (Discussion had off  
23 the record.)

24 MS. TIPSORD: Let's go back on the record.

1       MR. COHEN: I didn't have a chance to say let  
2 the record reflect I had no objection whatsoever to  
3 taking a break.

4               I'm not sure that -- we were almost at the  
5 answer. I'm not sure we got quite to it. Do you  
6 remember that, Mr. Frevert?

7       MR. FREVERT: Could we ask the reporter to read  
8 it back?

9       MR. COHEN: Let me just ask it again as simply  
10 as it's possible for an attorney to phrase it.

11              Does anything in the rule say that the  
12 agency shall make the final determination based on  
13 studies or otherwise that a chemical is or is not a  
14 BCC?

15       MR. FREVERT: The complication I have in  
16 answering your question is the way the regulations  
17 are drafted today. BCC is by definition not by  
18 determination.

19              I suppose a simple analogy, everything over  
20 2,000 pounds weighs a ton. If we're asked if  
21 something weighs a ton or not, we're going to say is  
22 it over 2,000 pounds?

23       MR. COHEN: One last question, I think, can you  
24 envision a situation where a permittee might

1 increase its loading of anything, but let's assume  
2 it's a BCC, without having to apply for a permit  
3 modification?

4 MR. FREVERT: Well, within the context of the  
5 permit, certainly permittees may have some  
6 nonregulated, nonpoint source flows or some storm  
7 water flows that are not subject to the permitting  
8 provisions for the Great Lakes Initiative. But  
9 within Great Lakes Initiative water quality  
10 standards and the parallel permitting procedures  
11 required in the Great Lakes Guidance, any increased  
12 loading of the BCC requires up-front approval and  
13 that would trigger antidegradation and mixing zone  
14 considerations.

15 MR. COHEN: So the answer to the question though  
16 is yes, it is possible that a person could increase  
17 loading as we understand it in the context of this  
18 rule without being required to apply for permit  
19 modification?

20 MR. FREVERT: It's possible, but not for a  
21 regulated point source discharge. That point source  
22 discharge would need prior approval for that  
23 increased level, unless, you know, they were already  
24 limited, and their discharge is below their limit.

1 They could increase up to the permitted limit, but  
2 no increase above what was previously authorized in  
3 a permit.

4 MR. COHEN: I wanted to just return for a moment  
5 to your analogy of the ton. I actually have two  
6 questions regarding that.

7 First, is it based on your experience not  
8 the case that a BAF calculation can result in  
9 variable, variable results?

10 MR. FREVERT: This is an area where there is  
11 certainly variation -- major opportunity for  
12 variation in the data, and in that regard, there may  
13 be some verification of the data and legitimacy of  
14 whatever studies are relied upon, whether they be  
15 published or otherwise.

16 And, yes, it's not that unusual for two  
17 studies to yield somewhat different results, and in  
18 that regard -- I know what you're getting at. I'll  
19 get right to the point.

20 There is some potential for our technical  
21 people to make a decision that is not agreed with  
22 perhaps even, you know, some potential that we would  
23 make the wrong decision. Under such circumstances,  
24 I think permit appeals would give the affected party

1 the right to bring that to a higher body and get it  
2 reviewed.

3 MR. COHEN: The other point I had concerning  
4 that analogy is, to carry it further, is it not  
5 typically the case when something that is regulated  
6 as measured in tons that there is also a provision  
7 for determining what shall be the official scale  
8 that weighs it.

9 MR. FREVERT: I supposed so. I don't know.  
10 Somebody might regulate scales.

11 MR. COHEN: I have nothing further at this time,  
12 your Honor.

13 MS. TIPSORD: Are there any other questions for  
14 the agency?

15 MR. RAO: I just have two clarification  
16 questions. This is to anybody on the agency's  
17 panel.

18 When the board offered the agency's  
19 proposal, we made some changes in certain sections  
20 that dealt with data requirements. One of them was  
21 in Section 02545. We deleted a reference to ASTM  
22 standards, and the reason we did that was the  
23 agency's proposal cited ASTM standards incorporated  
24 by reference, and we didn't find any standards

1 incorporated by reference. So we deleted, you know,  
2 the site.

3 I just wanted to make sure that we didn't  
4 delete something that was supposed to be in the  
5 rule.

6 MS. TIPSORD: If you'd like to double check that  
7 and get back to us in final comments on it. If we  
8 need to add something, let us know in final  
9 comments.

10 MR. WARRINGTON: If we have a loose end or  
11 something that needs to be incorporated that isn't,  
12 we will advise it during the final comment period.

13 MR. RAO: Yes, that will be fine.

14 And we had asked a question of the agency  
15 in the first hearing about U.S. EPA's current Manual  
16 of Practice, and if you could give us the name of  
17 the report so that we could incorporate that by  
18 reference. It's under Section 302.550.

19 MR. WARRINGTON: We've asked -- Rich Warrington  
20 from the agency.

21 We've asked various people if they're  
22 familiar with it and the closest thing we've come is  
23 references in other documents that discussed the  
24 various test protocols in 40 CFR 136, and in there

1 they make reference to certain EPA methods for  
2 analysis of, I believe, there's like a 900 series or  
3 1200 series, and 1100 series, but we haven't found  
4 the actual documents.

5 They seem to be cumulative with other test  
6 protocols that are set out in 40 CFR 136, but we  
7 haven't found a particular publication that's called  
8 the Manual of Practice.

9 MS. TIPSORD: Anything else?

10 MR. RAO: No.

11 MS. TIPSORD: Okay. Thank you very much, and I  
12 think we can move along to the Illinois  
13 Environmental Regulatory Group's presentation.

14 MS. ROSEN: Could we take one moment off the  
15 record?

16 MS. TIPSORD: Sure. Let's go off the record.

17 (Discussion had off  
18 the record.)

19 MS. TIPSORD: Let's go back on the record.

20 At this time, we're ready to begin with the  
21 Environmental Regulatory Group, and Ms. Rosen?

22 MS. ROSEN: Good morning. My name is Whitney  
23 Rosen. I am legal counsel for the Illinois  
24 Environmental Regulatory Group. Our membership is



1 made up of 59 companies which are impacted by  
2 today's proceeding.

3 With me today are a number of those members  
4 but also specifically Mr. Jeffrey Smith from  
5 Commonwealth Edison and Mr. Rob Cohen who's counsel  
6 for Commonwealth Edison. Jeff will be providing our  
7 testimony.

8 Prior to him beginning though, I would like  
9 to just make an oral motion, which I will follow up  
10 with a written document to the board requesting that  
11 the board move the procedures in Section 302.530  
12 regarding supplemental mixing provisions for  
13 bioaccumulative chemicals of concern.

14 If they could move these provision into a  
15 subdocket for further proceedings. These are  
16 provisions that Jeff will explain in the testimony  
17 were the subject of a federal lawsuit and the  
18 federal courts have found that they should be struck  
19 from the GLI provisions.

20 Jeff will testify further on this matter,  
21 but we believe that they could be effectively  
22 resolved in a subdocket, and I believe that the  
23 agency would concur in this request.

24 Thank you.

1 MS. TIPSORD: Thank you. Could we have  
2 Mr. Smith sworn?

3 (Witness sworn.)

4 WHEREUPON:

5 J E F F R E Y P. S M I T H ,  
6 called as a witness herein, having been first duly  
7 sworn, deposeeth and saith as follows:

8 MS. TIPSORD: Go ahead.

9 MR. SMITH: Good morning. My name is Jeffrey P.  
10 Smith, and I'm the general supervisor of water  
11 quality in Commonwealth Edison's environmental  
12 services department.

13 My testimony this morning is provided on  
14 behalf of the Illinois Environmental Regulatory  
15 Group, or IERG, and carries Commonwealth Edison's  
16 full support.

17 I've been employed with Commonwealth Edison  
18 for the past 21 years. I've held my current  
19 position since 1989. I hold a bachelor's degree in  
20 civil engineering and a master's degree in sanitary  
21 engineering both from Georgia Tech and an MBA from  
22 the University of Chicago.

23 In my position as supervisor of water  
24 quality, I oversee corporate environmental

1 compliance activities involving water quality issues  
2 for Commonwealth Edison's 16 generating stations and  
3 for other company facilities throughout our service  
4 territory.

5           One of my key responsibilities is following  
6 and participating in regulatory initiatives like the  
7 Great Lakes Initiative, or GLI, to advocate for the  
8 adoption of regulations that are technically sound,  
9 economically reasonably and environmentally cost  
10 effective --

11       MS. TIPSORD: Excuse me, Mr. Smith. Can you  
12 hear in the back?

13           Okay. If you have a problem let me know.  
14 Sorry. Go ahead.

15       MR. SMITH: Sure.

16           I am the chairman of the IERG Work Group  
17 that focuses its attention on the state of Illinois'  
18 water regulations. As part of its efforts, the IERG  
19 Work Group has participated in numerous discussions  
20 with the Illinois Environmental Protection Agency,  
21 or agency, regarding the state of Illinois' efforts  
22 to implement federal GLI regulations. IERG's  
23 interest in this proceeding is two-fold.

24           First, IERG members are among the

1 dischargers to Lake Michigan who will be immediately  
2 impacted by the adoption of the proposed  
3 regulations.

4           Second, IERG's involvement in development  
5 of the regulations is important given the potential  
6 precedent which may be set by the regulations after  
7 adoption.

8           Before getting to the substantive points of  
9 my testimony, I want to commend the agency for its  
10 openness and cooperation in considering comments  
11 from the regulated community as it drafted the  
12 proposal now before the Pollution Control Board, or  
13 board.

14           Agency personnel spent considerable time  
15 meeting with us, responding to our comments, and  
16 revising working drafts to create GLI regulation  
17 that we believe, except to the extent discussed  
18 below, are consistent with the federal GLI guidance  
19 and developed to fit into the board's existing  
20 regulatory framework.

21           As I'm sure the board already realizes,  
22 federal law requires each of the eight Great Lake  
23 states to incorporate the federal GLI guidance into  
24 their own regulatory programs within two years from

1 the United States Environmental Protection Agency's,  
2 or U.S. EPA's, promulgation of the GLI guidance.

3           This two-year deadline passed March 23rd,  
4 1997. Accordingly, Illinois along with several  
5 other Great Lake states that also missed this  
6 deadline currently are at risk of having U.S. EPA  
7 assume federal control over the implementation of  
8 their GLI programs unless the state moves promptly  
9 to complete adoption of the regulations.

10           Indeed, on this past July 1st, the National  
11 Wildlife Federation filed suite against U.S. EPA to  
12 achieve precisely this outcome. IERG believes the  
13 agency has come a long way in developing workable  
14 GLI regulations for Illinois. We do not want to see  
15 that effort wasted.

16           Therefore, we urge the board to move  
17 forward with this rulemaking as expeditiously as  
18 possible so that Illinois will have GLI regulations  
19 in place before the end of this year.

20           Issues of concern, the IERG Work Group and  
21 the agency were able to achieve consensus regarding  
22 many of the issues which surfaced in the development  
23 of the Illinois GLI regulations. To that end, IERG  
24 supports the agency's proposal.

1           The primary purpose of my testimony will be  
2   to identify issues of concern which warrant  
3   additional consideration by the board and where IERG  
4   believes that improvements to the proposal rule are  
5   still needed.

6           Changes to the proposed regulations to  
7   comply with the federal court GLI decision, the  
8   federal GLI regulation upon which the Illinois GLI  
9   proposal is based was challenged in Federal Court in  
10   Washington, D.C. On June 6, 1997, the D.C. Circuit  
11   Court of Appeals issued its opinion in the case,  
12   American Iron and Steel Institute vs. EPA,  
13   No. 95-1348 and consolidated cases.

14           In that decision, the court vacated several  
15   provisions of the federal rule. In order to be  
16   consistent with the court's ruling, there are  
17   several changes that this board should make to the  
18   proposed Illinois GLI regulations.

19           Mixing zones, which are discussed in  
20   proposed Section 302.530, the first change which the  
21   board should make in response to the court decision  
22   relates to mixing zones. The court vacated the ban  
23   on mixing zones for bioaccumulative chemicals of  
24   concern, or BCCs, because U.S. EPA had not properly

1 considered the enormous cost that would be imposed  
2 on discharges because of the ban.

3           As a result, U.S. EPA will have to  
4 reconsider whether to impose the ban after  
5 determining that the ban is cost justified. While  
6 U.S. EPA is going through the rulemaking process to  
7 make that decision, the board should remove the  
8 invalidated mixing zone ban from its proposed rule,  
9 and Ms. Rosen pointed out, we will be filing a  
10 motion with the board asking that this aspect of the  
11 proposed rule be separated -- put into a separate  
12 docket for further rulemaking.

13           This may be accomplished by striking  
14 proposed Section 302.530 in its entirety and any  
15 other references to Section 302.530 throughout the  
16 proposed regulations.

17           Once the federal rulemaking process has  
18 been completed, U.S. EPA will have to decide among  
19 the following choices; No. 1, reinstate the ban,  
20 mixing zone ban; No. 2, leave the mixing zone ban  
21 out of the federal rule; No. 3, adopt a modified  
22 version of the mixing zone ban; or, four, adopt a  
23 different restriction on mixing zones instead of the  
24 ban.

1           After U.S. EPA has made that choice, the  
2   date can then implement the U.S. EPA determination  
3   in a new board rule.

4           The next issue, polychlorinated biphenyls,  
5   or PCBs, which are discussed in proposed Section  
6   302.504(d), the second change in the board rule that  
7   is needed due to the court's decision relates to the  
8   water quality criteria for PCBs. U.S. EPA has  
9   admitted that it made errors in calculating the  
10   criteria for PCBs and has announced its intention to  
11   revise the criteria.

12           As a result, the court vacated both the  
13   human health and the wildlife criteria and sent them  
14   back to U.S. EPA to reconsider in a new rulemaking.  
15   Based on the court's ruling, the board should remove  
16   the PCB standards from the Illinois regulations.

17           This may be accomplished by striking the  
18   PCB standards proposed at Section 302.504(d). When  
19   U.S. EPA has included its new rulemaking as to those  
20   criteria, the state can implement the final U.S. EPA  
21   criteria in a new board regulation.

22           I want to point out that the IERG Work  
23   Group has been meeting quite recently with the  
24   agency on this particular issue, and further



1 discussions are planned, and it is conceivable that  
2 some agreement may come out of those discussions,  
3 and we would be providing comments to the board to  
4 incorporate some mutually agreeable resolution of  
5 this issue.

6           The next issue is mercury criteria which is  
7 proposed in Section 302.504(d).

8           The final change to the proposed GLI  
9 regulations based on the court's decision concerns  
10 the water quality standard for mercury. In the  
11 federal litigation, the position has raised several  
12 challenges to U.S. EPA's mercury criteria. One of  
13 those challenges related to U.S. EPA's use of an  
14 outdated reference dose, or referred to as the  
15 acronym RfD, in calculating the human health  
16 criterion.

17           In developing the criterion, which is 1.8  
18 nanograms per liter, U.S. EPA had used a reference  
19 dose of 0.6 micrograms per kilogram per day.  
20 However, shortly after issuing the rule, U.S. EPA  
21 had determined that the proper RfD was actually not  
22 0.6 but 1.0 micrograms per kilogram per day.

23           That would change the criterion from 1.8 to  
24 3.1 nanograms per liter. Based on claimed time

1 constraints, U.S. EPA used the old RfD in issuing  
2 the GLI rule, but U.S. EPA later issued guidance  
3 stating that a state could choose to use the new RfD  
4 in developing the state GLI program.

5           The court upheld U.S. EPA's decision to use  
6 the old RfD since the administrative process cannot  
7 stop whenever new evidence is gathered, but the  
8 court also held that U.S. EPA does have an  
9 obligation to deal with the newly acquired evidence  
10 in some reasonable fashion. By allowing the states  
11 to base their criteria on the new RfD, U.S. EPA had  
12 met the procedural requirement.

13           Since the court's decision, U.S. EPA has  
14 reaffirmed that the states are free to use the new  
15 RfD to adopt a mercury human health criterion of 3.1  
16 nanograms per liter. U.S. EPA's reaffirmation was  
17 made in the draft Mercury Permitting Strategy  
18 document that was issued on June 6, 1997.

19           Since U.S. EPA has acknowledged that the  
20 new RfD is more appropriate than the old RfD,  
21 Illinois should base its human health criterion for  
22 mercury on the new RfD and adopt a criterion of 3.1  
23 nanograms per liter. Any other course of action  
24 would result in issuance of a criterion that is

1 based on data that U.S. EPA has conceded is  
2 outdated.

3 IERG has additional general concerns  
4 regarding the proposed mercury criteria for both  
5 human health and wildlife which I will discuss at  
6 this time.

7 The extremely stringent mercury criteria  
8 for the protection of human health and wildlife,  
9 which Illinois has proposed at 1.8 nanograms per  
10 liter and 1.3 nanograms per liter, respectively, are  
11 some of the most controversial provisions of the  
12 federal GLI guidance.

13 I just wish to point out that one nanogram  
14 per liter is equivalent to one part per trillion.

15 Since mercury is ubiquitous in the  
16 environment, many water bodies in the Great Lakes  
17 Basin already exceed the GLI's human health and  
18 wildlife mercury criteria. It is unlikely that even  
19 rain water will comply with either criterion.

20 These situations are expected to result in  
21 many discharges being required to meet the mercury  
22 standards at the end-of-pipe, and the treatment cost  
23 for mercury can be substantial. For example, a  
24 recent study conducted for the Ohio EPA by the

1 Foster and Wheeler Environmental Services Company  
2 estimated that the annualized cost, including  
3 capital costs and operations and maintain expenses  
4 for an electric utility power plant to comply with  
5 the GLI mercury limits, would range up to \$157  
6 million per year. That would equate to an annual  
7 cost of up to \$132 million to remove one pound of  
8 mercury.

9           Realization of mercury as a significant GLI  
10 cost driver has prompted some Great Lake states to  
11 consider various options to the mercury dilemma.  
12 Ohio, for example, has incorporated into its  
13 proposed GLI regulations a statewide mercury  
14 variance provision that would be granted to  
15 dischargers provided certain minimum discharged  
16 performance standards are achieved.

17           Beyond the above discussion, ERG is not  
18 prepared to challenge the agency's proposed mercury  
19 wildlife and human health numeric standards at this  
20 time, rather we urge that the board base its human  
21 health criterion for mercury on the new RfD and  
22 adopt a criterion of 3.1 nanograms per liter.

23           We further urge the board to take note of  
24 the heavy compliance cost burdens that the proposed

1 mercury criteria may impose on the regulated  
2 community and the various strategies other Great  
3 Lake states are devising to deal with this  
4 situation.

5           We would hope that the board is sensitive  
6 to this matter in the event sometime in the future  
7 an Illinois discharger finds itself before the board  
8 in need of regulatory relief because of a mercury  
9 compliance problem.

10           IERG urges the board to consider the above  
11 discussion and incorporate the noted revisions in  
12 the adopted rule.

13           We had recent discussions with the agency,  
14 and I wish to point out to the board that it's our  
15 understanding that the agency does agree that the  
16 human health criterion should be revised to the 3.1  
17 nanograms per liter level that we're proposing.

18           Appropriate compliance determination for  
19 GLI human health standards which are proposed in  
20 Section 302.504(c). IERG has concerns regarding the  
21 manner in which the agency has incorporated GLI  
22 human health standards into the proposed regulations  
23 and the manner in which compliance with the  
24 standards will be determined.

1            Subsection C of Section 302.504 of the  
2   proposed rule contains numeric water quality  
3   standards that apply to the open waters of Lake  
4   Michigan. These standards are an assemblage of  
5   standards currently contained in Subparts C and E of  
6   the board's existing water pollution regulations as  
7   well as human health standards appearing in Table 3  
8   of the federal GLI guidance.

9            As proposed, compliance with all the  
10   standards in Subsection C must be met in each  
11   individual sample taken at any time. For the GLI  
12   human health standards, this individual sample  
13   approach is inconsistent with the basis on which the  
14   standards were developed.

15           The purpose of the GLI human health  
16   standards is to protect individuals against unsafe  
17   exposure to chemicals in drinking water supplies and  
18   throughout fish consumption over long-term or  
19   chronic exposure periods.

20           Therefore -- excuse me. This purpose is  
21   why Section 302.540(d) specifies that the human  
22   health threshold criterion or values are developed  
23   as an arithmetic average of four samples collected  
24   over four different days.

1           With respect to the chemicals listed in  
2   Subsection 302.504(c), the GLI human health  
3   standards are the last nine chemicals listed  
4   beginning with benzene, b-e-n-z-e-n-e. IERG urges  
5   the board to list these standards in a separate  
6   subsection with a heading stating that these are  
7   human health standards that apply to the open waters  
8   of Lake Michigan and shall not be exceeded by the  
9   arithmetic average of at least four consecutive  
10   samples collected over a period of at least four  
11   days.

12           In Mr. Mosher's written testimony, he  
13   acknowledges that under the GLI, compliance with the  
14   human health standards is intended on an average  
15   basis, such as if water samples are averaged over a  
16   period of four days. But because these standards  
17   are intended to protect drinking water supplies, he  
18   further states the agency's belief that such  
19   standard should be applied as never to be exceeded  
20   values.

21           In fact, however, the GLI's human health  
22   criteria methodology already takes into account  
23   chronic chemical exposures in protecting drinking  
24   water supplies. Applying the GLI human health

1 standards as instantaneous values therefore seems  
2 extreme and unnecessary, and it surpasses the level  
3 of protection planned by all of the other Great Lake  
4 states.

5           Moreover, a sample found to be exceeding  
6 the GLI's human health standards perhaps due to a  
7 localized spill or an erroneous laboratory result  
8 could render all of the Illinois portion of Lake  
9 Michigan as a nonattainment water for any of these  
10 nine chemicals.

11           This could create havoc in the NPDES  
12 permitting process by triggering overly stringent  
13 water quality base permit limits. Averaging  
14 samplings over a four-day period greatly minimizes  
15 chances of this happening. IERG believes the  
16 marginal convenience of determining compliance with  
17 single samples are far outweighed by the importance  
18 of applying the GLI's human health standards as  
19 intended in the federal GLI guidance.

20           For this reason, we urge the board to list  
21 these standards in a separate subsection under  
22 Section 302.504 and specify that the standard should  
23 not be exceeded by the arithmetic average of at  
24 least four consecutive samples collected over a



1 period of at least four days.

2           Application of GLI wildlife criteria  
3 derivation procedure to non-BCCs, and this is  
4 proposed in Section 302.575, throughout the  
5 regulatory development process, IERG questioned the  
6 agency's proposed application of the GLI Wildlife  
7 Criteria Derivation Procedures to non-BCCs which are  
8 proposed in Section 302.575.

9           Following discussion, IERG and the agency  
10 had tentatively reached an agreement on the matter  
11 in which the derivation procedures should be  
12 modified for appropriate application to non-BCCs.

13           And I'll depart from the prefiled testimony  
14 to indicate that earlier this morning the agency's  
15 counsel spoke with our counsel and whereas we  
16 thought we had reached agreement on the rewording of  
17 this Section 575, it appears that the agency wants  
18 to further amend that language, and we plan on  
19 having further discussions with the agency to come  
20 to -- hopefully, come to an agreement on how that  
21 language should be further modified to address our  
22 concerns as to how the GLI's wildlife criteria  
23 derivation methodology should be applied to non-BCC  
24 chemicals.

1           Nonetheless, I will go ahead and read the  
2 suggested -- the language that we had agreed upon  
3 that now will be subject to revision. It again  
4 pertains to Section 302.575 and it read as follows,  
5 this method shall also be used for non-BCCs as  
6 appropriately modified based upon consideration of  
7 the following factors, colon, selection of  
8 scientifically justified target species, semicolon,  
9 fate and relevant routes of chemical exposure,  
10 semicolon, and pertinent toxicity endpoints.

11           Designation of bioaccumulative chemicals of  
12 concern, IERG questions whether the manner in which  
13 the agency is proposing to address the designation  
14 of BCCs and the application of BCC provisions  
15 comports with Illinois law.

16           The objectional provisions include the  
17 definition of BCCs proposed at Section 302.501 and  
18 proposed Sections 302.520, 302.530, and 302.595.

19           MS. ROSEN: I'd just like to note for the record  
20 that Mr. Smith will -- is going to present some  
21 testimony on bioaccumulative chemicals of concern.  
22 Copies of that language are available in the piles  
23 of the language over there for people in the  
24 audience. The board and the hearing officer,

1 attorneys present have been given copies of them,  
2 and following Mr. Smith's presentation, we'll move  
3 them into the record.

4 MS. TIPSORD: Thank you.

5 MR. COHEN: Your Honor, would you like Mr. Smith  
6 to record this verbatim into the record, or would  
7 you prefer just a summary of the high points?

8 MS. TIPSORD: You know, why don't we go ahead  
9 and give it an exhibit number, and let's also do the  
10 same with the previous language.

11 The previous language that Mr. Smith read  
12 of what the agency and IERG is still talking  
13 regarding Section 302.575 will also be entered as an  
14 exhibit, if there's no objection.

15 MR. WARRINGTON: No objection.

16 MS. TIPSORD: Seeing none, we'll mark that as  
17 Exhibit 7, and the title on the top of that document  
18 is the Illinois Environmental Regulatory Group  
19 suggested revisions to proposed Section 302.575.

20 (Hearing Exhibit No. 7  
21 marked for identification,  
22 7/28/97.)

23 MS. TIPSORD: And then the language that is  
24 marked the Illinois Environmental Regulatory Group's

1 Proposed Procedures for BAF Verification and BCC  
2 Designation, we'll mark as Exhibit 8, if there's no  
3 objection.

4 MR. WARRINGTON: No objection.

5 THE COURT: Seeing none, we'll mark that as  
6 Exhibit 8.

7 (Hearing Exhibit No. 8  
8 marked for identification,  
9 7/28/97.)

10 MS. ROSEN: Marie, at this time -- Madam Hearing  
11 Officer, at this time, did you wish us to also admit  
12 for the record this copy of the American Iron and  
13 Steel Institute decision?

14 MS. TIPSORD: Yes. Let's go ahead and take care  
15 of that. That's the circuit court case also cited  
16 in Mr. Smith's testimony, American Iron and Steel  
17 Institute vs. Environmental Protection Agency,  
18 et al.

19 The circuit court case number is  
20 Nos. 95-1348, et cetera. I won't list all of them,  
21 and we'll mark that as Exhibit No. 9, if there's no  
22 objection. Seeing none -- I'm sorry, district court  
23 opinion.

24 (Hearing Exhibit No. 9

1                               marked for identification,  
2                               7/28/97.)

3           MS. ROSEN:   Just one more brief explanation of  
4   Mr. Smith's testimony here, he is going to provide  
5   some background on a proposal that we have reached  
6   conceptual agreement with the agency on, and we hope  
7   that our discussions will continue, and we will  
8   reach total sign-off.

9                       In the event that that does not occur, ERG  
10   does intent to proceed with motioning the board for  
11   an opportunity to provide legal briefs on this  
12   issue.

13                      Thank you.

14           THE COURT:   Mr. Smith, continue, thank you for  
15   your patience.

16           MR. SMITH:   Thank you.

17                      This past Friday, the IERG Work Group met  
18   with the agency to discuss this proposed section on  
19   the procedures for verification of bioaccumulation  
20   factors and for designating a chemical as a BCC.  
21   And just in summarizing, the concept of what we  
22   discussed that I think I can represent consensually  
23   the agency agrees to although the actual details of  
24   language we're still discussing with the agency.

1           It basically involves a process whereby the  
2 agency will publish in the Illinois Register the  
3 name of any chemical or chemicals that it believes  
4 should be treated as a -- as a BCC because it may  
5 have a bioaccumulation factor greater than 1,000.

6           Once it does that, the agency also can  
7 elect to propose to the board that the board  
8 consider designating that chemical as a BCC based on  
9 a showing that the bioaccumulation factor, in fact,  
10 is greater than 1,000. What that first step does is  
11 it allows members of the public and the regulated  
12 community to come in and meet with the agency to  
13 review the data to perhaps determine that maybe the  
14 data does not suggest that a chemical should be  
15 treated as a BCC or, in fact, verify that it, in  
16 fact, does qualify as a BCC. But it does give the  
17 public an opportunity to get involved in that BCC  
18 determination process.

19           However, once the agency decides to go  
20 forward with a petition to the board that the board  
21 make the determination that the chemical should be  
22 treated as a BCC based on having a bioaccumulation  
23 factor greater than 1,000, the implications of that  
24 in terms of the permitting that may take place in

1 that intervening period are such that the chemical  
2 for all practical purposes will be treated as if it  
3 is a BCC.

4           Therefore, there will not be any allowed  
5 increase in the discharge of that chemical in a  
6 facilities permit unless, in fact, it is a BCC. A  
7 showing is made that increase is necessary based on  
8 economic benefits to the area.

9           In addition, a facility could, in fact, go  
10 ahead and increase the loading of the particular  
11 chemical that's subject to this verification process  
12 if, in fact, it agrees to comply with all of the  
13 normal regulations that would apply if, in fact,  
14 that chemical was a BCC. And, therefore, it  
15 basically allows a process whereby the board will  
16 determine whether or not a chemical should be a BCC,  
17 but at the same time during this intervening process  
18 for all practical purposes that chemical will be  
19 treated as a BCC until that determination is made.

20           And, therefore, we believe that it fully  
21 satisfies the federal GLI requirement in terms of  
22 how a potential chemical that appears to be a BCC  
23 should be restricted for discharge purposes.

24           Two further points, one is that at the

1 agency's suggestion, there also is a provision added  
2 that would basically kick in this process even if  
3 the agency does not formally petition the board for  
4 verification as a BCC for a period of 60 days, and  
5 this allows a hold on the process of increasing  
6 loadings of potential BCCs while the agency has time  
7 to put together a petition to the board for this  
8 determination to be made. So that's also a  
9 provision in this exhibit that we will be submitting  
10 as an exhibit.

11           The other aspect of this addresses those  
12 situations that we feel could result in a loading --  
13 in an increase in loading a BCC that would otherwise  
14 not be covered under the normal permitting process,  
15 and this basically includes a provision that would  
16 also hold a facility or a discharge that would  
17 perhaps be able to increase the loading, the  
18 discharge loading, of this candid BCC and treat that  
19 discharged as a BCC as long as the facility agrees  
20 to abide by all of the BCC restrictions that would  
21 normally apply until the board makes a determination  
22 as to whether or not it's a BCC.

23           MR. COHEN: Yes, and that nonpermit holder also  
24 is prohibited from engaging in any activity that



1 might not require a permit in the same way that a  
2 permit applicant would be, by that being triggered  
3 by either a letter from the agency or a petition to  
4 the board. So it covers permitted and nonpermitted  
5 activities.

6 MR. SMITH: I wish to put out that we learned  
7 this morning that the National Wildlife Federation  
8 had submitted recently some comments to the board on  
9 this rulemaking, and it had addressed this BCC issue  
10 that I've just discussed.

11 We haven't really had an opportunity to  
12 thoroughly review National Wildlife Federation's  
13 comments, but based on a brief review that we've  
14 done, we feel that the approach that I've just  
15 outlined is consistent with what National Wildlife  
16 Federation has stated in their comments.

17 MS. ROSEN: And thank you very much. I believe  
18 that's all Mr. Smith has today.

19 MR. SMITH: No, I'm not done yet.

20 MS. ROSEN: I'm sorry.

21 MR. SMITH: There's more.

22 MS. ROSEN: He's right.

23 MR. SMITH: Just a few minor points that I wish  
24 to alert the board to pertaining to the first notice

1 that appeared, IERG has gone through the proposed  
2 rule and has identified a few minor issues that we  
3 plan to discuss with the agency to maybe have some  
4 language changes that are relatively minor, but I  
5 thought I would bring it to the board's attention at  
6 this point.

7           The first appears on Page 26 --

8           MS. TIPSORD: Let the record reflect that  
9 Mr. Smith is referring to Page 26 of the board's  
10 first notice opinion and order.

11          MR. SMITH: Thank you.

12           And it just pertains to the title heading  
13 for that section, which is 302.507, existing sources  
14 on January 1, 1971. We would be suggesting that  
15 some connection to the fact that this is a thermal  
16 standard be included in the title for Section 507,  
17 and the same type of change be made to Section  
18 302.508, which appears on Page 27.

19           And let me just read a change that would  
20 satisfy the comment that we have. For  
21 Section 302.507, it could be stated thermal  
22 standards/existing sources on January 1, 1971,  
23 Section 302.508 could be entitled thermal  
24 standards/sources under construction but not in

1 operation on January 1, 1971.

2           Okay. The next comment that we would be  
3 submitting pertains to Page 29, and that's  
4 Section 302.520, Subsection A, and in reviewing the  
5 rule, proposed rule, we identified a situation where  
6 if a -- if the ambient concentration of the BCC  
7 exceeds the standard, then no increase in loading of  
8 that BCC is allowed. That's under Subsection 1.

9           And then in No. 2, there's a situation  
10 where the ambient concentration is below the water  
11 quality standard, and so as a result, there's kind  
12 of an area that's not addressed if it's at the  
13 standard. And we've had discussions just this  
14 morning with the agency in terms of maybe modifying  
15 the language in Subsection 2 to reword it to be  
16 where ambient concentrations of a BCC are at or  
17 below the applicable water quality criteria.

18           That would address that hole that now  
19 exists in how that language is stated. And as I  
20 mentioned, we're still discussing that point with  
21 the agency, and we will be submitting comments as to  
22 how we would propose that.

23           And then the last point pertains to -- this  
24 is on Page 57. This pertains to Section 303.443,

1   which is the definition of waters of Lake Michigan  
2   Basin, and we would want to propose that word  
3   switching be done to Subsection B which is the  
4   definition of waters that are not considered open  
5   waters of Lake Michigan, and these changes would be  
6   along the lines of getting that definition closer to  
7   the definition in Subsection A in terms of it  
8   pertaining to the Illinois jurisdiction of these  
9   waters and so on and so forth, and we will be  
10   discussing this issue with the agency and would be,  
11   hopefully, proposing some mutually agreeable  
12   language to the board shortly on that definition  
13   change.

14               That concludes my testimony.

15       MS. TIPSORD:   Thank you, Mr. Smith.

16               Did you have any other?

17       MS. ROSEN:   No, I don't, although Mr. Smith is  
18   available for any questions at this time.

19       MS. TIPSORD:   Okay.   Are there any questions for  
20   Mr. Smith?

21       DR. GIRARD:   I have some questions.

22               The first question concerns something on  
23   Pages 6 and 7 of your testimony under the mercury  
24   subheading.   On Page 6, you've discussed a U.S. EPA

1 draft Mercury Permitting Strategy that was issued on  
2 June 6, 1997. Have you entered that into the  
3 record?

4 MS. ROSEN: No, we have not. We can make that  
5 available.

6 DR. GIRARD: Would that be possible to do so?  
7 Thank you.

8 And the second is a very similar question.  
9 On Page 7, you discussed a study conducted for the  
10 Iowa EPA, I think you said by Foster and Wheeling --

11 MR. SMITH: Wheeler.

12 DR. GIRARD: Wheeler. (Continuing.) -- on the  
13 costs of mercury control.

14 Would it be possible to introduce a copy of  
15 that study into the record?

16 MR. COHEN: The only thing I wish to point out,  
17 I don't know if you want to be off the record on  
18 this, but that study is about yea thick  
19 (indicating).

20 So, you know, if you want all that, I guess  
21 we could do that, but the pertinent sections are  
22 relatively brief and we can perhaps --

23 DR. GIRARD: Well, if you could certainly  
24 introduce the pertinent sections, that would be very

1 helpful. Thank you.

2 MR. COHEN: Your Honor, do you want me to  
3 introduce this permitting strategy now?

4 MS. TIPSORD: If you have a copy, that would be  
5 fine.

6 MR. COHEN: Your Honor, I move to introduce this  
7 exhibit next in order June 9, 1997, document from  
8 the United States Environmental Protection Agency  
9 addressed to Dear Great Lakes Stakeholder, the title  
10 of the document or the cover of that letter is Water  
11 Quality Guidance for the Great Lakes System Draft  
12 Mercury Permitting strategy, June 19, 1997.

13 I submit a true and correct copy to you.

14 MS. TIPSORD: Is there any objection to this  
15 being marked as Exhibit No. 10?

16 MR. WARRINGTON: No objection.

17 MS. TIPSORD: Seeing none, we will mark this as  
18 Exhibit No. 10.

19 (Hearing Exhibit No. 10  
20 marked for identification,  
21 7/28/97.)

22 DR. GIRARD: Thank you.

23 MR. COHEN: I do not have the Foster and  
24 Wheeling study with me.

1 MR. SMITH: Wheeler.

2 MR. COHEN: Wheeler, or that.

3 MS. TIPSORD: If you could present that in your  
4 final comments, we'd appreciate that.

5 MR. COHEN: Yes, your Honor.

6 DR. GIRARD: Could I ask another question?

7 MS. TIPSORD: Sure.

8 DR. GIRARD: I have a question about this  
9 verification process that you're proposing for new  
10 chemicals added to the BCC list.

11 Presently in the proposal, we have a  
12 definition of BCC at 302.501 which includes both an  
13 operational definition which you can apply to a  
14 chemical to see if it should be added to the list,  
15 and then we have also had a list of chemicals which  
16 have been determined at this point in time to be  
17 BCCs.

18 And it seems to me that what you're asking  
19 for in this verification process is a board  
20 rulemaking, and I'd just like to find out if that's  
21 exactly what you're looking for because you're  
22 asking for public notice, you're asking for possibly  
23 a public hearing with a chance to present public  
24 comments and testimony. So you're really looking at

1 a board rulemaking process.

2 Now, why do we need a new name for a  
3 process instead of just calling it a rulemaking  
4 process to add a new chemical to the list of BCCs?

5 MR. COHEN: Madam Hearing Officer, can we go off  
6 the record for a minute?

7 MS. TIPSORD: Sure.

8 (Discussion had off  
9 the record.)

10 MS. TIPSORD: Let's have Mr. Cohen sworn now.

11 (Witness sworn.)

12 WHEREUPON:

13 R O B E R T A. C O H E N ,  
14 called as a witness herein, having been first duly  
15 sworn, deposeth and saith as follows:

16 MR. COHEN: Dr. Tanner, I'm going to attempt to  
17 answer your question at least from a legal point of  
18 view as best I can.

19 First, let me make certain I fully  
20 understood it. The first question is why do we need  
21 a new procedure at all if what ERG is proposing is  
22 essentially rulemaking, and -- is that the entirety  
23 of your question, sir?

24 DR. GIRARD: That's the general framework, yes.



1       MR. COHEN: We looked at this issue long and  
2 hard from a legal point of view. We were driven  
3 initially by the fact that the U.S. EPA guidance  
4 asks for a self-implementing definition as we all  
5 know.

6           And I would say there's one thing I think  
7 we neglected to read into the record. We are also  
8 proposing in our revision to strike the words "but  
9 are not limited to" from the definition that appears  
10 on BCCs for the reasons I will now explain.

11          We believe that in the state of Illinois  
12 only the board has the power to determine standards  
13 of general applicability. In fact, I don't think  
14 there's any real dispute about that. The Great  
15 Lakes case, the Illinois Supreme Court Great Lakes  
16 case makes that -- I'm sorry, Granite City Steel  
17 case makes that point very clearly, and, frankly, we  
18 expended a lot of effort to try to find a way we  
19 could create a new procedure that would allow the  
20 agency to honor what we felt U.S. EPA wanted and not  
21 intrude on that statutory or constitutional division  
22 of authority. We could not we are convinced, and  
23 our legal briefs will elaborate in more detail.

24          That simply cannot be done. The Illinois

1 Environmental Protection Agency cannot adopt the  
2 standard of general applicability under Illinois  
3 law. Therefore, we could easily have simply stated  
4 that all new BCCs will be subject to board  
5 rulemaking and, indeed, there would be no reason  
6 from new language, but we were also driven in the  
7 process, and when I say "we," I mean both the agency  
8 and ERG, to find a way to accommodate IEPA's  
9 concerns, which they can address better than I, and  
10 also U.S. EPA's concerns.

11           And that's why we created a new procedure  
12 which the endpoint of which is a rulemaking  
13 consistent with Illinois law, but the intermediate  
14 points of which address the concerns that have been  
15 raised by U.S. EPA, by the National Wildlife  
16 Federation, and by IEPA. And it is for that reason,  
17 the reason to be consistent with Illinois law and  
18 also to be consistent with the federal GLI that  
19 we've created this new procedure.

20           And I would like also to point out,  
21 commissioner, that you are correct. The process we  
22 envisioned would be the same as any board rulemaking  
23 except for the desire to have it moved as  
24 expeditiously as possible. And I'll intrude



1       MR. COHEN:  Ms. Rosen has correctly pointed out  
2   to me that our proposal does not in any way affect  
3   rulemaking, nor is it intended as an implied or  
4   direct indictment of the rulemaking process.  It  
5   really addresses what happens before a rulemaking  
6   process occurs.

7       MS. TIPSORD:  Can I -- excuse me, Dr. Girard.

8               Can I ask a question to see if I  
9   understand, and maybe this might help some of us.

10              Does this language envision that the agency  
11   would first publish something in the Illinois  
12   Register and then petition the board for a  
13   rulemaking, they may then petition the board for a  
14   full-blown rulemaking, and you would expect the two  
15   hearings, the 45-day subject comment period, and all  
16   of that under Title VII?

17       MR. COHEN:  Your Honor, actually it may well be  
18   yes, except that it may be the case that it would be  
19   in one location given the --

20       MS. TIPSORD:  That you're going to need to check  
21   on legal authority for.

22       MR. COHEN:  Yes.  I think we would have to.  
23   That comment was based on the assumption that only  
24   one location would be affected, but that's not the

1 case. Then, yes, that is what we envisioned, and  
2 the direct answer is yes.

3 MR. SMITH: But what this process attempts to do  
4 is to during that intervening period while that  
5 board rulemaking is going on for that particular  
6 candid BCC chemical, from the standpoint of  
7 increased dischargers or loadings of that candid  
8 chemical, it would still treat that as if it were a  
9 BCC, so that there wouldn't be this lag period that  
10 would set in until the board makes that  
11 determination, and we gather that that's a very  
12 critical issue that U.S. EPA has in terms of whether  
13 or not it will even approve the Illinois program for  
14 the treatment in listing new BCC chemicals.

15 So that's why that process is in there in  
16 terms of having the chemical still treated as if it  
17 were a BCC while the board rulemaking process goes  
18 forward.

19 DR. GIRARD: So you see the major difference  
20 between this and what we would consider one of our  
21 more normal rulemakings is that from the time the  
22 agency publishes in the Illinois Register the name  
23 of this chemical, that chemical will be treated like  
24 a BCC as the board rulemaking process goes forward

1 added to the definition?

2 MR. SMITH: No, that's not exactly right. It  
3 would be -- there's actually a two-step process.

4 The first step is where the agency would  
5 publish in the Illinois Register its intent perhaps  
6 to go forward with that second step, which would be  
7 the rulemaking, but the agency may decide not to do  
8 that. For example, if in that intervening period  
9 third parties or affected may meet with the agency  
10 and discuss the data that the agency has available  
11 and they mutually agree that maybe the data is not  
12 relevant or not genuine to warrant going forward  
13 with a proposal to the board to add that as a BCC  
14 chemical.

15 So -- well, let me just stop right there.

16 MS. ROSEN: I might be able to ask Mr. Smith a  
17 question to clarify that first component.

18 Is it the intent of Subsection A(1) that  
19 references the agency's receipt of information which  
20 may -- that some person has determined may have a  
21 bioaccumulation factor of over 1,000 that they would  
22 then publish that information to put the regulated  
23 community on notice that this is in the pipe works  
24 so that they could start looking for their effluence

1 and seeing if this might be something that a  
2 chemical of concern for their facility would put  
3 them on notice to start thinking that this -- that  
4 down the road a petition before the board might be  
5 forwarded in this issue?

6 Is that part of the intent of that  
7 provision?

8 MR. SMITH: That's exactly correct.

9 MS. ROSEN: And, in fact, that the agency  
10 publishing the notice that it had received that  
11 information was not -- does not trigger the  
12 components of Subsection B, that the agency would  
13 have to formally make a petition to the board to  
14 verify the BAF before a discharger would either have  
15 to treat its discharge like a BCC or not take action  
16 to increase loading of a BCC?

17 MR. SMITH: That's correct. However, there is  
18 that additional provision that would achieve that  
19 same outcome if the agency indicates its intention  
20 to go forward with that petition for verification  
21 within a 60-day period.

22 MR. ROSEN: Okay. Thank you.

23 DR. GIRARD: So you want a chance to interact  
24 with the agency before they file a formal rulemaking

1 with the board for a particular claim adding them to  
2 the list of BCCs?

3 MR. COHEN: That's correct.

4 In answering your question, commissioner,  
5 that's correct. It basically gives a regulated  
6 community and other interested persons an  
7 opportunity to review the data that the agency has  
8 available and various studies.

9 It's interesting to point out that in  
10 proposed GLI regulation, the U.S. EPA had intended  
11 to include additional chemicals as BCCs, and in  
12 reviewing the studies that they had relied upon to  
13 make that initial determination, they decided that  
14 some candid of BCCs, in fact, should not be treated  
15 as BCCs.

16 So it's not a perfect science, and this  
17 would give interested parties a chance to meet with  
18 the agency to review whether or not they agree with  
19 the agency's determination perhaps to change the  
20 agency's intention to proceed with the rulemaking,  
21 and that's what this process provides for.

22 DR. GIRARD: Thank you.

23 MR. RAO: You know, just a follow up, you talked  
24 about this, you know, allowing time for the agency



1 and other affected entities to review the data and,  
2 you know, maybe discuss and decide whether the  
3 agency needs to go forward with this verification  
4 process, but in the proposed language, you don't  
5 have any time frame for that.

6 Under Subsection A(2), you say the agency  
7 may have any time after the publication to petition  
8 the board to verify. So do you need to have certain  
9 time frames for you to, you know, go through this  
10 review process, or can the agency just go ahead and  
11 do -- you know, petition the board on its own  
12 without giving the affected entities any time  
13 frame?

14 MR. SMITH: If I understand your question,  
15 basically the agency's intention to treat a new  
16 chemical as a BCC does not have any regulatory  
17 implications until it goes with the petition to the  
18 board to verify it as a BCC or submits a notice of  
19 its intent to petition the board for inclusion of  
20 that chemical as a BCC.

21 Does that answer your question?

22 MR. RAO: No. What I wanted to know was where  
23 is the time frame built in for this review process  
24 to take place?

1       MR. SMITH: It's totally at the agency's  
2 discretion. There's no limitation on that time  
3 period.

4       MR. RAO: Okay.

5       MR. COHEN: Mr. Rao, the only limitation is  
6 where they have sent what we call a 60-day letter to  
7 a permittee. They have to make the call within 60  
8 days at that time, but, otherwise, it can sit for as  
9 long as the agency allows it to sit.

10             It could never go a verification petition,  
11 or it could go in a year.

12       MR. RAO: That, I understand. But should there  
13 be a minimum time frame for the review process to  
14 take place?

15       MR. COHEN: Oh, a minimum time frame?

16       MR. RAO: Yeah. Because the way it's proposed  
17 now, the agency at any time can petition the board  
18 after the publication.

19       MR. SMITH: We didn't envision a need for that  
20 time period because we can participate during the  
21 board rulemaking process.

22       MS. TIPSORD: You had a question (indicating).

23       MS. BUCKO: Yes. Christine Bucko again.

24             I'm wondering -- I know that my office gets

1 formal notice when there's a rulemaking. However,  
2 the procedure that you are envisioning really has no  
3 provisions for that, and I'm sure that some of the  
4 technical people in my office would be very  
5 interested in having some input.

6           So I'm not sure how best to deal with that  
7 situation since we wouldn't be discharged or  
8 anything, but I'm sure we'd like to get some type of  
9 notice.

10       MS. ROSEN: Could I address that because it  
11 really relates to a drafting issue?

12       MS. TIPSORD: Sure.

13       MS. ROSEN: I believe your office would -- one,  
14 you'd get the Illinois Register, and they would be  
15 able to see that the agency had received this  
16 information, but our reference in Subsection A(2) of  
17 the provision references Title VII of the act, and  
18 that, as the board has obviously realized, is the  
19 rulemaking provisions of the act, and those  
20 rulemaking provisions are those very same rulemaking  
21 provisions which allow you guys to get notice -- the  
22 attorney general's office to receive notice.

23           So the same sort of notice -- it was  
24 intended that some notice would come forth through

1 this process.

2 MS. TIPSORD: Anything else?

3 DR. GIRARD: Could I ask, does the agency have  
4 any comments to make at this time on this process?

5 MR. WARRINGTON: We have some comments, Rich  
6 Warrington. We might defer to Toby or we might  
7 defer to after lunch depending on your pleasure.

8 A general summary is that it's a complex  
9 definition. You're right that it has an operable  
10 feature and a list feature. That's not all that  
11 unusual given that it is written by the United  
12 States Environmental Protection Agency, and they do  
13 intend to do that in other rules that the board has  
14 adopted on a past-due basis, rules such as the  
15 hazardous waste -- being a hazardous waste by a list  
16 or by definition or by characteristics or by  
17 criteria.

18 There are also complex definitions in the  
19 air toxic program, but we generally believe that the  
20 board does have the authority to adopt a definition  
21 such as this that has enough standards and criteria  
22 and is clear enough, although complex, for the  
23 agency to imply it in a particular situation.

24 The scenario of the IERG proposal is that

1 we would still get the benefit of an immediate  
2 application once upon publication, and we would then  
3 have the benefit of more publicity of that  
4 determination by publishing it in the Illinois  
5 Register and bringing it to the board as a  
6 rulemaking.

7           We haven't, you know, completely signed off  
8 on the proposal. It's intriguing, and it provides a  
9 positive benefit in that publicity and increased  
10 opportunities for participation. The downside, of  
11 course, is that it's another hoop for both of us to  
12 go through, but if Toby would like to supplement  
13 that any.

14       MR. FREVERT: Yeah, I'd be happy to.

15       MS. TIPSORD: Toby, before you begin, I do have  
16 a couple of questions I would like to also ask to be  
17 considered as you're looking at the language here  
18 and also to be addressed to us, and it can wait  
19 until final comments for that.

20           One of those issues is you provide for  
21 publication in the Illinois Register. My concern is  
22 that the Illinois Register sometimes has very  
23 limited space. It also has very limited things that  
24 it may publish, and I would like to know if you have

1 checked to be sure that this would be something the  
2 Illinois Register would be willing to publish.

3           Also, I would suggest that perhaps you  
4 consider not only the Illinois Register but perhaps  
5 the Environmental Register similar to what is done  
6 with the restricted status lists and those types of  
7 things appear in both places that sometimes gives  
8 more attention to people in the environmental  
9 community.

10           And then as a general question, the  
11 references to Section 301.XXX, are those to the  
12 agency's rules that are imposed?

13       MS. ROSEN: No.

14       MR. COHEN: The board ruling, your Honor.

15       MS. ROSEN: We can clarify. We did not know  
16 where within the rule this language should take  
17 place, and we just meant 35 Illinois Administrative  
18 Code somewhere in the 300s here that we are dealing  
19 with.

20       MS. TIPSORD: Okay.

21       MS. ROSEN: Thank you.

22       MR. COHEN: And to respond to your first  
23 question no, and to your suggestion, we will  
24 certainly take a look at that as soon as. . .

1 MS. TIPSORD: Okay. Then let's go off the  
2 record.

3 (Discussion had off  
4 the record.)

5 MS. TIPSORD: And before Mr. Frevert starts, I  
6 believe there's one more question.

7 MS. ERVIN: I have a question. Maybe you can  
8 answer this in your comments.

9 If the board were to strike the "but are  
10 not limited to" words in the definition for the BCC  
11 as IERG proposes, what is the agency's position on  
12 whether the board will be adopting regulations that  
13 are, quote, unquote, consistent with the guidance?

14 MR. FREVERT: That's a good question. That's  
15 where I was going to start.

16 If you look at the Great Lakes Guidance  
17 which was published in the Federal Register on  
18 March 23rd of '95, on Page 15388 amongst the  
19 definitions, there's bioaccumulative chemical of  
20 concern, and at the top, oh, about four inches down  
21 in the first column clearly has the "but are not  
22 limited to" language.

23 I've been assured in no uncertain terms by  
24 region five staff that state the program would not

1 be acceptable if it does not have that operational  
2 component to the definition.

3           That being said, this is the most  
4 challenging issue we've dealt with here in Illinois,  
5 and I think we have reached a conceptual agreement  
6 with ERG and the business community of a way to make  
7 our regulations consistent with the Great Lakes  
8 Guidance and at the same time accommodate my  
9 operational needs with the agency for the permit  
10 program and the business community's needs and  
11 desires to have proper notice and the opportunity to  
12 entertain some discussion if they think a chemical  
13 is being considered for inclusion in that definition  
14 on suspect data.

15           This is a relatively new area. I think we  
16 all agree that there is opportunity to challenge the  
17 data, and there may be the opportunity to make wrong  
18 decisions. And in that regard, we're working on,  
19 and I think we've reached a conceptual agreement on  
20 how we would like to deal with it, but at the same  
21 time won't accomplish federal approval.

22           This thing is triggered primarily by  
23 requests for increased loading, a permit decision, a  
24 mixing zone decision, and a antidegradation



1 decision. So we're really not ever going to  
2 encounter until and unless some applicant, some  
3 regulated entity, requests one of those authorities  
4 to do something or take advantage of one of those  
5 opportunities.

6           In such case, the agency has to have the  
7 ability to deal with it now. We can't go to  
8 rulemaking. The conceptual agreement we have  
9 reached is if that circumstance comes up, the first  
10 thing we're going to do is notify the applicants  
11 that we have reason to believe this thing may be a  
12 BCC, and we feel strongly enough about it. We're  
13 going to take the impetus upon ourselves to elevate  
14 this matter to the board to verify that.

15           And under those circumstances, you have  
16 either the option of waiting until that verification  
17 is complete, or if you don't want to wait for that  
18 rulemaking or whatever the process is, you can treat  
19 the chemical as it is a BCC. You can go through the  
20 antidegradation demonstration. You can go through  
21 the mixing zone demonstration. You can do whatever  
22 administrative options are available to you to let  
23 your program go forward.

24           If you don't want to do that, then we will

1 agree to Pollution Control Board verification of our  
2 opinion that this really is a BCC, and it's subject  
3 to that. Rather than put the onus on you through a  
4 permit denial, we're going to put the onus on  
5 ourselves saying we're willing to proceed with the  
6 petition to the board to verify that this substance  
7 meets the definition and add it to the list  
8 accomplishing that broadened discussion of the  
9 technical substances and accomplishing their other  
10 objective of allowing the entire world to  
11 participate in that decision, not just the permit  
12 applicant. I think that's the concept we have  
13 agreed to.

14           With that said, I appreciate the discussion  
15 this morning, but I'm not sure I have an opinion to  
16 entertain the specific language that was presented  
17 to you in an exhibit. I saw it myself just this  
18 morning, and there were some numbers and things in  
19 there. The language is a little confusing. So I  
20 kind of turned it off, and we'll work with the  
21 regulated community to try to find language that  
22 accomplishes that.

23           Bear in mind what we're trying to do is  
24 just bring the whole thing out in public and say

1 this is a suspect chemical. These things have  
2 incredibly negative impacts particular in the Great  
3 Lakes system. They don't go away. They come back  
4 at you. They don't flush out of the system. They  
5 bioaccumulate. So pollution isn't the problem, but  
6 things like mercury and PCBs, the kind of things  
7 that create our existing problem, we don't want to  
8 make mistakes in the future.

9           So we don't want to grant -- we don't want  
10 to be in a position to have to grant increased  
11 loading or allow these things to go up until we're  
12 certain that they're safe. That's what the whole  
13 concept is about.

14           That's basically what the Great Lakes  
15 Initiative intends to accomplish and will require  
16 from the various states, but I think we have found a  
17 way -- hopefully through not too much more time --  
18 to work out language that will accomplish that,  
19 satisfy both my administrative needs, the regulated  
20 environmental community's needs to make sure we make  
21 the right decision, and at the same time, I think  
22 we'll accomplish what the environmental activist  
23 rule as well as honor the Great Lakes Initiative.

24           I thought I'd also respond to the other

1 comments in Jeff's testimony just to try to wrap  
2 things up and keep things going.

3 MR. RAO: Can I ask a follow up, or do you want  
4 to do it?

5 MS. ERVIN: I can do it.

6 Do you know how other states are dealing  
7 with this issue?

8 MR. FREVERT: Wisconsin has an operational  
9 definition. It's my understanding that Michigan had  
10 an operational definition, then at the last minute  
11 they modified it somewhat. My discussions with  
12 region five suggests they have not seen that, but if  
13 it was changed the way it's explained to me, it's  
14 been changed. They're liable to go back to  
15 rulemaking. It's what they thought Michigan had  
16 done by going only to a list with nonapprovable.

17 The state of Minnesota, who is probably the  
18 slowest of the eight states and probably the most in  
19 danger of having the federal program invoked upon  
20 them, at this point is looking towards a list. I  
21 believe Indiana has an operational definition, and I  
22 can't remember what Ohio, New York, and Pennsylvania  
23 are doing at this point.

24 But it's a bit of a mix. It doesn't

1 surprise me that it's a big issue not just in  
2 Illinois but in other states as well. It's one of  
3 the more challenging issues in the whole package, I  
4 think. Nevertheless, I feel like we're on the verge  
5 of having a solution.

6 MS. TIPSORD: I have an additional question  
7 along with that. We've heard a lot of discussion  
8 how the agency and IERG are involved in discussions  
9 on coming up with a definition.

10 The board does have before it a public  
11 comment from the National Wildlife Federation that  
12 indicates they're very interested in the subject as  
13 well.

14 Are they included in these discussions?  
15 Have they been? Does the agency intend to include  
16 them, other environmental groups?

17 MR. FREVERT: I had discussions with them. I've  
18 been working with National Wildlife Federation, and  
19 they were aware of this issue. I suspect that's the  
20 impetus for the comment from the National Wildlife.  
21 They're grilling me on what the issues are in  
22 Illinois. I've got a pretty good back and forth  
23 with them as well.

24 I haven't seen their comments yet, but I

1 feel comfortable that I can find a way to  
2 accommodate everybody. I think we can honor the  
3 intent of the Great Lakes Initiative and satisfy  
4 ERG's concern that we may be making a bad decision  
5 and we should elevate it to you and the science as  
6 early as it is in this case.

7 MS. TIPSORD: Thank you.

8 MR. FREVERT: Mixing zones, Jeff recommended  
9 that the mixing zone issue for BCCs be pulled out of  
10 this proceeding and put in a second docket held in  
11 advance for some period of time.

12 I concur with that. That was an area that  
13 was vacated or remanded in the federal court order  
14 that backed EPA. Based on some economic data that  
15 EPA believes was a misinterpretation of the material  
16 presented to the court, and they intend to proceed  
17 with rectifying the matter one way or another.

18 It's my understanding the issue was alive  
19 and well, and I would hate to drop it entirely and  
20 have to open a whole new document. I think in the  
21 short-term, EPA will act and will have enough  
22 direction to pick that thing up and keep the  
23 rulemaking going and honor the schedule of Great  
24 Lakes Initiative as best we can.

1           So I agree that can be put on a back  
2 burner, but let's put it in a docket. Let's don't  
3 just throw it out.

4           PCBs, it's our understanding that the PCB  
5 values that we proposed in this rulemaking with  
6 current proposal are consistent with what will  
7 ultimately be acceptable to EPA, and it does fit  
8 current correct science and correct mathematical  
9 calculations, and there's probably no need, in my  
10 opinion, to put that on the back burner or delay  
11 it.

12           EPA is publicly stating what their intent  
13 is, what's acceptable, what's approvable. It's them  
14 getting through their administrative adoption  
15 process. Based on Jeff's comments, we'll be happy  
16 to go back one more time and reverify that with the  
17 board and let you know, but that's our position.

18           Mercury criteria, we agree with raising the  
19 1.8 to 3.1 on the human health criteria, and I  
20 believe that will be reflected in our written  
21 comments.

22           MR. RAO: Regarding mercury, do you have any  
23 comments on Mr. Smith's statement about some other  
24 states having a built-in process for granting

1 variances and things like that, or do you think what  
2 we have in existence is adequate?

3 MR. FREVERT: My understanding of what Mr. Smith  
4 is referring to were some allowance for cooling  
5 water that has some small -- very small minute  
6 quantity of mercury, and I think it's present in the  
7 intake water, and it's not at all attributable to  
8 the operations of the cooling units themselves.

9 That being the case, I believe throughout,  
10 the permitting procedures we're developing and the  
11 existing authority for intake pollutants and board  
12 regulations that that's accommodating, and I don't  
13 anticipate we're going to be in a situation where  
14 we're pursuing absurd costly treatment programs for  
15 mercury reduction.

16 Some parts of the Great Lakes area where  
17 particularly municipal discharges have mercury  
18 problems even exceeding the criteria. They're  
19 focusing on different approaches. They're trying to  
20 go with pollution prevention programs within the  
21 community. They're gearing up their pretreatment  
22 programs to find the stuff and keep it out of the  
23 collection system, rather than end-of-pipe treatment  
24 which is what makes those cost numbers look so



1 high.

2 I think the benefit of it is mercury is a  
3 real problem, and if we have a tight mercury  
4 standard, it's going to hold everybody accountable,  
5 including my agency, to go beyond merely operating  
6 the permit program and attack other sources. Maybe  
7 we don't do it as simply as writing a permit, but  
8 we're going to have to find ways to address nonpoint  
9 sources.

10 Based on water quality needs and the  
11 protective level, the mercury standard is  
12 appropriate. The issue is how do we get to it?

13 Were there two other comments you had that  
14 I have to respond to?

15 MR. COHEN: Just wildlife and BCC, I think.

16 MR. FREVERT: I'm not familiar with whatever  
17 discussions took place, but I believe we have a  
18 conceptual agreement on what we want to do with  
19 regard to applying wildlife criteria and non-BCCs.

20 Maybe it's a matter of sitting down and  
21 making sure everybody is comfortable with the  
22 language, but that's another area where we can reach  
23 agreement, and anybody else that -- you know, even  
24 though it's not a hearing environment, anybody else

1 that wants to interact in the process, I'm always  
2 willing to accommodate.

3 If National Wildlife has an issue, I'll  
4 make sure they know what's going on.

5 The three editorial or errata comments Jeff  
6 mentioned at the end of his testimony, we concur  
7 with all three of those. It seems to be no big  
8 deal. It's just good rule writing or a little bit  
9 of cleanup.

10 That's all I can think of.

11 MS. TIPSORD: Any more questions?

12 Okay. Thank you, Mr. Frevert.

13 MR. FREVERT: Okay.

14 MS. TIPSORD: Mr. Warrington, you had some  
15 additional --

16 MR. WARRINGTON: As we indicated in our prefiled  
17 testimony, we did anticipate talking a little bit  
18 about these amendments to the water quality  
19 standards as proposed and as raised by Mr. Smith.

20 One other question that was raised by  
21 Mr. Rao was the source of the definitions for, I  
22 believe, particulate organic carbon or POC, and I  
23 believe dissolved organic carbon or DOC, and we'd  
24 like to introduce Dr. Olson for a very short

1 explanation of the source of those definitions.

2 DR. OLSON: I'll just go ahead and read this  
3 brief statement that I have here, and they show two  
4 references.

5 The U.S. EPA and the Federal Register and  
6 in the bioaccumulation factor of technical support  
7 document, which is EPA 820-B- 95-005, March 19,  
8 1995, does not provide a formal definition of  
9 dissolved organic carbon, DOC, or particulate  
10 organic carbon, POC.

11 The Technical Support Document or TSD  
12 refers to papers by ED, et al. of the Noah Great  
13 Lake Research Laboratory, Ann Arbor.

14 ED, et al., 1992, Great Lakes Research,  
15 Volume 18, Page 91, and I don't have the last page  
16 on that reference, refers to the use of a Gelman,  
17 g-e-l-m-a-n -- capital, g-e-l-m-a-n, AE, quote,  
18 unquote, filter from the 1993, 1994 Fischer  
19 Scientific Catalog Page 732, the Gelman AE filter  
20 contains one micrometer of particles.

21 And the copies of the first page -- the  
22 first two pages of the ED paper, including the  
23 methods section, which is just a very brief  
24 preference to what kind of filter they use without

1 any explanation, and the catalog page from Fischer  
2 catalog are included, and I don't think we have that  
3 prepared as an exhibit exactly. I only have this  
4 one copy with me.

5 MR. WARRINGTON: If the board wants a copy of  
6 the actual technical article and the copy out of the  
7 scientific catalog, we can provide them.

8 MS. TIPSORD: That probably would be best.

9 MR. WARRINGTON: Okay.

10 DR. OLSON: Do you want me to enter into the  
11 record what Fischer Scientific Company is?

12 MS. TIPSORD: No. I think if you provide the  
13 articles, that will be fine. Any questions?

14 Thank you, Dr. Olson.

15 MR. WARRINGTON: And for the final issue, as  
16 Mr. Smith indicated in his testimony, the threat of  
17 a citizen suit lawsuit, particularly the National  
18 Wildlife Federation has reached fruition on July 1st  
19 of this year by their filing a citizen suit to  
20 compel the United States Environmental Protection  
21 Agency to promulgate the Great Lakes regulations for  
22 the Great Lake states.

23 It's a little bit less than 30 days since  
24 it's been filed. So there's no particular answer

1 that has been filed by the United States  
2 Environmental Protection Agency, but for the board's  
3 information, we have five copies -- four copies to  
4 enter as an exhibit.

5 MS. TIPSORD: Okay. Is there any objection to  
6 entering this as an exhibit?

7 Seeing none, we'll mark that as Exhibit  
8 No. 11.

9 (Hearing Exhibit No. 11  
10 marked for identification,  
11 7/28/97.)

12 MR. WARRINGTON: And that concludes the agency's  
13 direct testimony today. As always, we're always  
14 willing to respond to questions or comments.

15 MS. TIPSORD: Are there any more questions for  
16 the agency?

17 Okay. Seeing none, was there anyone else  
18 here today who wanted to provide testimony who did  
19 not prefile the testimony?

20 Okay. Was there anyone from U.S. EPA here  
21 today that might want to comment on any of this? We  
22 had someone testify at the first hearing. I don't  
23 see them.

24 Could we go off the record for just a

1 moment?

2 (Discussion had off  
3 the record.)

4 MS. TIPSORD: Seeing that there's no one else to  
5 testify, and it seems that we've answered all the  
6 questions that have been proposed today, I'd like to  
7 set a schedule for final comments to be submitted.  
8 I will also do a hearing officer order echoing this,  
9 but I want to put it on the record.

10 First of all, I would like to ask and  
11 direct that any language changes that may be  
12 suggested to the board be provided to the board no  
13 later than August 28th and be served on the service  
14 list by that date as well. We will then allow all  
15 final comments to be due by September 4th, and all  
16 final comments should also be served on the service  
17 list.

18 I would also note that there's been a  
19 motion made by Ms. Rosen on behalf of IERG.  
20 Obviously, that is a motion to the board. She's  
21 indicated she will submit that in writing and,  
22 obviously, that everyone will have an opportunity to  
23 respond to that.

24 Ms. Rosen, I would not anticipate the board

1 would rule on that prior to the final opinion and  
2 order -- I'm sorry, the second notice opinion and  
3 order.

4 MS. ROSEN: Thank you.

5 MS. TIPSORD: I'm moving too fast, the second  
6 notice opinion and order.

7 And I would also like to thank the Waukegan  
8 Port District for letting us use the space. It was  
9 very nice of them to do so, and they were kind  
10 enough to provide coffee.

11 Is there anything else?

12 Did you have anything final you'd like to  
13 say, Dr. Girard?

14 DR. GIRARD: No, just thank you for all the hard  
15 work, and the board will work on this as  
16 expeditiously as possible, and we will try to meet  
17 the very short time frame we've set before us.

18 Thank you.

19 MS. TIPSORD: Thank you very. We're adjourned.

20 (Whereupon, the hearing was  
21 adjourned at 2:00 p.m.)  
22  
23  
24

