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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS))	
Complainant,)	
vs)	No. PCB 97-20
BENTRONICS CORPORATION)	(Enforcement-Water)
Respondent.)	

The following is the transcript of a hearing held in the above-entitled matter taken stenographically by MICHELE J. LOSURDO, CSR, a notary public within and for the County of DuPage and State of Illinois, before BRADLEY P. HALLORAN, Hearing Officer, at 404 North Wood Dale Road, Wood Dale, Illinois, on the 1st day of May, 2002, A.D., commencing at 9:05 a.m.

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APPEARANCES:

HEARING TAKEN BEFORE:

ILLINOIS POLLUTION CONTROL BOARD
BY: MR. BRADLEY P. HALLORAN
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(312) 814-8914

ASSISTANT ATTORNEY GENERAL
BY: MR. ZEMEHERET BEREKET-AB
100 West Randolph Street
11th Floor
Chicago, Illinois 60601
(312) 814-3816

Appeared on behalf of Complainant;

CHUHAK & TECSON, P.C.
BY: MR. MICHAEL N. RIPANI
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606
(312) 444-9300

Appeared on behalf of Respondent.

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I N D E X

WITNESS:	PAGE:
James Mrugacz.....	9
Daniel Rosenwinkel.....	18
Jim Clark.....	20

1 HEARING OFFICER HALLORAN: Good morning. My name
2 is Bradley Halloran. I'm a hearing officer with the
3 Illinois Pollution Control Board. I'm assigned to this
4 matter PCB 97-20 entitled People versus Bentronics
5 Corporation. This is an enforcement action under the
6 Board's water pollution regulation.

7 It's approximately 9:05 on May 1st in the year
8 2002. I want to note for the record that there are no
9 members of the public here, but if there were, they
10 would be allowed to testify subject to
11 cross-examination. We're going to run this hearing
12 pursuant to section 103.212 and section 101 subpart F
13 under the Board's general provisions.

14 I note that this hearing is intended to develop a
15 record for review for the Illinois Pollution Control
16 Board. I will not be making the ultimate decision in
17 the case. That decision will be left to the seven
18 esteem members of the Pollution Control Board. They'll
19 review the transcript of this proceeding and the
20 remainder of the record and render a decision in the
21 matter.

22 My job is to ensure an orderly hearing and a
23 clear record and to rule on any evidentiary matters that
24 may arise. After the hearing, the Board -- excuse me --

1 the parties will have an opportunity to submit
2 posthearing briefs. These, too, will be considered by
3 the Board.

4 I note that the Board granted complainant's
5 motion for summary judgment against the respondents on
6 April 19, 2001, and directed that this hearing be held
7 on the issues of penalties. To that end, the parties
8 are only to present testimony and evidence that are
9 relevant to the factors and cause that are set forth in
10 sections 33C, 42F and 42H of the act.

11 With that said, we have an attorney that has
12 appeared at this hearing on behalf of Bentronics
13 Corporation, a Mr. Ripani, and if you would like to make
14 a statement, you may.

15 MR. RIPANI: Yes, sir, again, I'm appearing here
16 for Bentronics Corporation and actually at the request
17 of Dan Biederman who has an appearance on file with the
18 Illinois Pollution Control Board. Bentronics
19 Corporation has been a defunct corporation for quite a
20 number of years. As such, we have no authority to
21 proceed in this matter and I just wanted to come here to
22 explain to Your Honor as a courtesy as well as the
23 agency.

24 HEARING OFFICER HALLORAN: I appreciate that,

1 sir, and the Board appreciates it. If you want to leave
2 now, you may. What we'll do is we'll just proceed.
3 Basically, this is somewhat more of a line of default
4 under section 101.608, but you do have your statement on
5 record and I will be taking it with the record to the
6 Board. Thank you very much, sir.

7 MR. RIPANI: Thank you.

8 (Whereupon, Mr. Ripani exits the proceedings.)

9 HEARING OFFICER HALLORAN: Mr. Ripani is now
10 leaving. Thank you very much, sir.

11 People, would you like to introduce themselves?

12 MR. BEREKET-AB: Good morning. Zemeheret
13 Bereket-Ab, my first name is Z-e-m-e-h-e-r-e-t. My last
14 name is B-e-r-e-k-e-t hyphen A-b. I am the assistant
15 attorney general representing the complainant, People of
16 the state of Illinois in this enforcement action.

17 On April 19, 2001, the Board ruled in favor of
18 the complainant's motion for summary judgment and found
19 that there are no general issues of material fact
20 because respondent admitted all the facts by failing to
21 respond to complainant's request for admission of facts.
22 In other words, the issue of liability has already been
23 determined by the Board. The only issue remaining is
24 the question of penalty.

1 The purpose of today's hearing is for the People
2 to present evidence to help the Board in making this
3 penalty determination. The State will present four
4 witnesses. The first two witnesses Mr. Mrugacz and
5 Mr. Ahlgard will testify about their investigation and
6 findings regarding respondent's discharge of processed
7 wastewater into Bensenville's sanitary through a slop
8 sink in the process area of the plant.

9 Respondent, which is Bentronics, made these
10 discharges after all the discharge points inside the
11 plant had already been capped off. These witnesses will
12 support the State's position that respondent discharged
13 contaminants such as copper and lead into the village of
14 Bensenville's sanitary sewers in violation of the act of
15 the Board's water pollution regulations.

16 The other two witnesses Mr. Rosenwinkel and
17 Mr. Clark will testify about their investigation and
18 findings regarding the release of toxic chemicals such
19 as copper and lead from Bensenville's facility onto the
20 parking lot and the bank of an adjacent creek. Again,
21 their testimony will support the State's position that
22 respondent violated the act and the Board's violations.

23 Before I call my witnesses, Mr. Hearing Officer,
24 I have several exhibits that I would like to introduce

1 into evidence. These exhibits are marked A through H.
2 Instead of making a piecemeal presentation, I will
3 explain the content of each exhibit and present them all
4 at once.

5 Exhibit A is the Board's April 19, 2001, order
6 granting our motion for summary judgment. Exhibit B is
7 an August 18, 1992, letter by Bentronics to the village
8 of Bensenville which states that as of July 1, 1992,
9 Bentronics no longer discharges any processed water to
10 the sanitary sewer system. Exhibit C is a village of
11 Bensenville letter to Bentronics dated September 2,
12 1992, which says that the village had inspected the
13 facility and found all process points to be capped off.

14 Exhibit D is the inspection report of March 26,
15 1993, prepared by village of Bensenville Inspectors
16 Mrugacz and Ahlgard. Exhibit E is an analysis and
17 comparison of the samples taken at the manhole just
18 upstream and downstream of Bentronics. Exhibit F is a
19 copy of the criminal charge against Bentronics and the
20 decision of the 18th Judicial Circuit Court dated
21 April 27, '93.

22 Exhibit G is an Illinois EPA chain of custody of
23 three samples collected on June 13, 1993, from the pond
24 of waste in the back of the parking lot from the

1 accumulation tank and from the bank of the creek of the
2 discharge point. Exhibit H is a report of the physical
3 conditions of the parking lot, the accumulation tank and
4 the bank of the creek at the discharge point and the
5 last exhibit, Exhibit I, is the laboratory analysis of
6 the samples collected from the pond of waste of the back
7 parking lot, lab analysis of the waste from the
8 accumulation tank and lab analysis from the bank of
9 creek at discharge points.

10 At this time, I would like to present these into
11 evidence.

12 HEARING OFFICER HALLORAN: So you have Exhibits A
13 though I not A through H as indicated?

14 MR. BEREKET-AB: A through I, yes.

15 HEARING OFFICER HALLORAN: And are those exhibits
16 marked?

17 MR. BEREKET-AB: Yes.

18 HEARING OFFICER HALLORAN: Because I was ready
19 for you this week, Mr. Bereket-Ab, with the exhibit
20 stickers.

21 MR. BEREKET-AB: I have marked them this time.

22 HEARING OFFICER HALLORAN: There being no
23 objection, the Exhibits A through I are admitted.

24 You may proceed.

1 MR. BEREKET-AB: I would like to call my first
2 witness, Chief Mrugacz.

3 HEARING OFFICER HALLORAN: Just step up and raise
4 your right hand and the court reporter will swear you
5 in, please.

6 JAMES MRUGACZ,
7 having been first duly sworn, was examined and testified
8 as follows:

9 EXAMINATION
10 by Mr. Bereket-Ab

11 Q. Please state your name for the record and spell
12 it.

13 A. James, last name M-r-u-g-a-c-z.

14 Q. Where are you employed, Mr. Mrugacz?

15 A. Village of Bensenville.

16 Q. What do you do with the village of Bensenville?

17 A. Pretreatment inspector.

18 Q. How long have you been with the village of
19 Bensenville?

20 A. Sixteen years.

21 Q. And what are your duties there as an inspector?
22 As a pretreatment inspector, what do you do?

23 A. We monitor industries, take samples, follow-up,
24 make sure everyone -- all industries stay within

1 compliance.

2 Q. Are you familiar with a firm formerly known as
3 Bentronics Corporation?

4 A. Yes.

5 Q. Did the village of Bensenville at one time issue
6 wastewater discharge permits to Bentronics?

7 A. Yes, we did.

8 Q. Do you recall when?

9 A. July of 1991.

10 Q. And did Bentronics at any time request the
11 village to terminate its wastewater discharge permit?

12 A. Yes.

13 Q. Do you recall when?

14 A. That would be July of '92.

15 Q. Why did Bentronics make such a request?

16 A. They were having troubles meeting their limits
17 particularly for copper and lead for what's the limits
18 on their permit, so they felt it would be easier to
19 recycle all their water not discharge it.

20 Q. Recycle it in?

21 A. In house and not discharge to water sewer.

22 Q. How did they propose to recycle it in house?

23 A. They put in a closed loop filter system to reuse
24 the water that they were using and put it back into

1 their process.

2 Q. So when the permit was terminated, that means
3 they no longer were allowed to discharge into the
4 village sanitary sewer system and they just treat the
5 water?

6 A. They could only discharge bathrooms and regular
7 domestic water not any processed water.

8 Q. And what happened to all the processed discharge
9 points at the facility?

10 A. They capped them all off. They were sealed.

11 Q. They were sealed?

12 A. Yes.

13 Q. Did the village verify that these discharge
14 points were sealed?

15 A. Yes, they did.

16 Q. How did you verify that?

17 A. The village plumbing inspector went over and did
18 an inspection.

19 Q. Did he write a report?

20 A. Yes, he did.

21 Q. When do you recall that all this happened?

22 A. The plumbing inspector did his inspection in
23 August of 1992.

24 Q. Does the village regularly take samples from the

1 raw influents of the treatment plant?

2 A. Yes, every day.

3 Q. Every day?

4 A. Uh-huh.

5 Q. Did the village in February of '93 detect high
6 levels of copper and lead at the raw influents?

7 A. Yes, they did.

8 Q. What did you do when you found such high levels
9 of copper and lead?

10 A. We began a -- us pretreatment inspectors, we
11 began to sample -- all the permitted per the circuit
12 board companies that we were monitoring quarterly, we
13 began to sample them every day to see the source of
14 where the high copper was coming from.

15 Q. So how did you arrive at Bentronics? How did you
16 feel it was Bentronics?

17 A. Well, by sampling every day at these other
18 companies, we were not getting any numbers high enough
19 to tell us that they would be the source of numbers that
20 were that high to cause such an impact at the plant
21 where we received the samples or got the samples in our
22 raw influent. So we decided, well, maybe even though
23 Bentronics is not a permitted industry anymore, maybe
24 they're discharging waste that they shouldn't be.

1 Q. So what did you do next?

2 A. So not me personally, my partner Jack pulled a
3 sample just downstream of Bentronics shortly after we
4 started sampling the other companies and found high
5 levels of copper and lead in that sample.

6 Q. Did you also check the water usage?

7 A. Yes. Our supervisor at the time pulled up the
8 water usage for Bentronics and checked it, yes.

9 Q. So when you collected the samples, you took
10 upstream and downstream. Did you compare the upstream
11 and downstream samples?

12 A. Yes. The samples that we pulled upstream showed
13 very little copper and lead, nothing more than would be
14 regular city water where downstream we were getting
15 higher, much higher numbers.

16 Q. When we're saying downstream, it's downstream of
17 Bentronics?

18 A. Downstream of Bentronics, correct.

19 Q. That appeared to be very high?

20 A. Those were high. Upstream were low.

21 Q. So what did you do with the samples that you
22 collected?

23 A. We had them analyzed at the lab.

24 Q. And what were the results of the lab analysis?

1 A. Exact numbers?

2 Q. No, just general figures.

3 A. They were much higher than what should have been
4 in regular city water which is all that should have been
5 in there because they were not supposed to be
6 discharging anything to the sewer.

7 Q. What was found?

8 A. Copper and lead.

9 Q. Did you go on to the Bentronics facility itself,
10 physical plant, to make further inspections after you
11 found these results?

12 A. After we got high numbers downstream and low
13 numbers upstream, we determined that they were the most
14 likely source, so we did go and do an inspection inside.

15 Q. Inside the facility?

16 A. Yes.

17 Q. What did you find?

18 A. We found that they were discharging processed
19 waters to Bensenville through a floor drain, cooling
20 water and water from a developer, and we also found a
21 slop sink that was corroded and discolored and the drain
22 had been corroded. It was leaking. It looked like a
23 lot of stuff was being dumped into that sink.

24 Q. What would be the indication? What gives you an

1 indication that something has been going down the slop
2 sink?

3 A. Just by the way it was discolored and corroded.
4 The drain was leaking and that was basically our
5 determination of it. It wasn't -- it looked like it was
6 more than just water being used for washing their hands
7 and stuff like that.

8 Q. This was after all the discharge points had been
9 capped off in '92?

10 A. All the discharge points were still capped and
11 sealed off at this time when we went in there, yes.

12 Q. When was this inspection that when you went onto
13 the premises?

14 A. This was in March of 1993.

15 Q. 1993?

16 A. Yes, 24th I believe.

17 Q. Did you talk to anybody at the facility?

18 A. We talked to the operations manager Andy
19 Tragerrio (phonetic).

20 Q. And what did he say or what did you talk about?

21 A. We asked him why he was discharging processed
22 waters to the floor drain and told him he was not
23 supposed to be doing that according to not having a
24 permit. He admitted he was not supposed to be doing

1 that and that he was wrong.

2 Q. And did he promise to do anything else?

3 A. He said that he would do whatever we asked him to
4 do and we then asked him to seal up all the floor
5 drains. There was a sump pit cover that we wanted
6 sealed up and the sink where we were speculating that
7 they were dumping into the sink, we told him that we
8 wanted the sink removed and the drain line permanently
9 sealed off and he said that he would do that.

10 MR. BEREKET-AB: Thank you. That's all I have
11 for now.

12 HEARING OFFICER HALLORAN: Thank you. You may
13 step down. Thank you, sir.

14 MR. BEREKET-AB: Can I have a minute off the
15 record?

16 HEARING OFFICER HALLORAN: Sure. Off the record.

17 (Discussion had off the record.)

18 HEARING OFFICER HALLORAN: We're back on the
19 record.

20 MR. BEREKET-AB: I'll call the Illinois -- the
21 other inspector from Bensenville, Mr. Rosenwinkel.

22 HEARING OFFICER HALLORAN: Step up, sir, and
23 raise your right hand and the court reporter will swear
24 you in.

1 DANIEL ROSENWINKEL,
2 having been first duly sworn, was examined and testified
3 as follows:

4 EXAMINATION

5 by Mr. Bereket-Ab.

6 Q. Would you please state your name and spell it for
7 the record?

8 A. Daniel Rosenwinkel, R-o-s-e-n-w-i-n-k-e-l.

9 Q. Where are you employed, Mr. Rosenwinkel?

10 A. The village of Bensenville.

11 Q. What do you do with the village of Bensenville?

12 A. Currently I'm the wastewater division supervisor.

13 Q. What are your functions? What does that entail?

14 A. Supervision of the wastewater treatment facility,
15 collection system, laboratory, maintenance, operations
16 and pretreatment.

17 Q. Are you familiar with Bentronics Corporation?

18 A. Yes.

19 Q. How did you become familiar with this
20 corporation?

21 A. Back when -- in 19 -- when Bentronics came in, I
22 was a pretreatment inspector for the village at that
23 time and dealing with the inspections and permitting.

24 Q. Do you recall what happened sometime in June of

1 '93?

2 A. Yes.

3 Q. Would you tell us what happened then?

4 A. I was contacted by the communications center for
5 the village of Bensenville. The fire department was
6 requesting my assistance to a spill which happened on
7 the -- at the creek on Bryn Mawr.

8 Q. Where is that creek located?

9 A. It's probably about one quarter block east of
10 Route 83.

11 Q. Is it close to Bentronics or is it far from
12 Bentronics?

13 A. The creek is adjacent to the west end of the
14 property of Bentronics.

15 Q. And what was the nature of the call that you
16 received?

17 A. It was for hazardous materials that was being
18 released into the creek.

19 Q. How was it being released into the creek?

20 A. When I arrived to the call, I was informed by the
21 lieutenant that was one of the first that responded to
22 the scene, he had said that they had a hose running out
23 of the back of the building across the parking lot and
24 draining towards the creek.

1 Q. Draining it towards the creek?

2 A. Yes.

3 Q. So when -- what time do you think you arrived at
4 the site when you first went to the call?

5 A. It was somewhere between 3:30 and 4:00 o'clock in
6 the afternoon. It was a Sunday afternoon.

7 Q. What did you do when you arrived at the site?

8 A. Got the information that I needed from the
9 various people from the fire department. At that time,
10 the building was closed up. Then I proceeded to do what
11 our normal procedures to notify Illinois EPA in
12 Springfield.

13 Q. What did the fire department tell you about their
14 observations, what they saw there?

15 A. They told me that that Sunday afternoon when they
16 arrived to the call, the doors to the building were
17 open. The overhead doors were open. When they were
18 walking up to the building, the front door was closed.
19 Somebody walked out the back of the building and drug
20 the hose across the parking lot and back into the
21 building and then shut the rear overhead door.

22 Q. So did they say where that -- so the hose was
23 coming out from the inside of the building?

24 A. Yes.

1 Q. And being discharged into the creek?

2 A. Yes.

3 Q. So when you arrived at the site, you said you
4 called the Illinois EPA?

5 A. Yes.

6 MR. BEREKET-AB: I think this is up to this point
7 I need your testimony. I'll go from -- the Illinois EPA
8 will take over. Thank you, Mr. Rosenwinkel.

9 HEARING OFFICER HALLORAN: Thank you. You may
10 step down.

11 MR. BEREKET-AB: I'd like to call my third
12 witness, Mr. Jim Clark.

13 HEARING OFFICER HALLORAN: Mr. Clark, raise your
14 right hand and the court reporter will swear you in.

15 JIM CLARK,
16 having been first duly sworn, was examined and testified
17 as follows:

18 EXAMINATION

19 by Mr. Bereket-Ab

20 Q. Would you please state your name for the record
21 and spell it?

22 A. Jim Clark, common name C-l-a-r-k.

23 Q. Where are you employed, Mr. Clark?

24 A. I'm employed by the Illinois EPA.

1 Q. What do you do with the Illinois EPA?

2 A. I am an emergency responder with the emergency
3 operations unit.

4 Q. Do you have any particular expertise or education
5 that qualifies you to do that work?

6 A. I have a bachelor's degree in biochemistry. I
7 have a master's degree in business. I'm also a
8 certified hazardous materials manager.

9 Q. How long have you been with the Illinois EPA?

10 A. June 15th of 1990 was when I was first hired.

11 Q. Are you familiar with Bentronics Corporation?

12 A. Yes, I am.

13 Q. How did you become familiar with that company?

14 A. I was on call that week and I received a call
15 from my duty officer Jim O'Brien stating that the
16 village of Bensenville was seeking assistance with a
17 problem in Bensenville and I was asked to respond.

18 Q. And did you go to that -- to the site?

19 A. Yes, I did.

20 Q. What did you observe when you arrived at the
21 site?

22 A. When I arrived at the site, there was the fire
23 department. There were village individuals around
24 waiting for me and then I went and looked at the

1 facility.

2 Q. What did you observe?

3 A. What I observed was there was a pool of bluish
4 liquid on the north end of the property and this
5 material I observed it flowing westward into a creek
6 which was on the west side of the property.

7 Q. And did you take samples -- so you looked at this
8 bluish liquid on the north side of the property and on
9 the west side flowing into the creek?

10 A. Yes.

11 Q. And also you said at the accumulation tank?

12 A. I did observe an accumulation tank there as well.

13 Q. Did you take samples from these three different
14 sites?

15 A. Yes, I did.

16 Q. And what did you do with the samples?

17 A. What I did was there was another individual, Mike
18 Samaglio (phonetic), and he and I worked together to get
19 the samples.

20 We took samples from the accumulation tank. We
21 took a sample from the pooled liquid that was laying on
22 the ground on the north side of the property and then we
23 took a sample right at the point where it was entering
24 the creek.

1 Q. And were these samples analyzed by a laboratory?

2 A. Yes, they were.

3 Q. What were the results of the lab analysis, if you
4 recall?

5 A. They tested positive for copper in all three of
6 the samples and then the sample right by the creek also
7 tested positive for lead.

8 Q. One of the sample results shows a 277 milligrams
9 per liter of copper and one by the creek shows 279
10 milligrams per liter. Are these harmful to soil or
11 water?

12 A. Yes, they are. Yes, they are. The discharge
13 limits I believe are in the neighborhood of .5
14 milligrams per liter.

15 Q. Point 5 for copper, is it?

16 A. Yes, .5 for copper. Lead is much, much lower.
17 It's I believe in the range of .0075 milligrams.

18 Q. And the lead sample was 8.38 milligrams per
19 liter?

20 A. That is correct.

21 Q. So that would be in your opinion --

22 A. Considerably higher than the discharge limits.

23 Q. How many times do you estimate it would be, way
24 above?

1 A. I'm guessing like 1600 times over the limit based
2 on that information.

3 Q. And the copper too?

4 A. Well, at the point of discharge, if we're talking
5 280 milligrams, it would be approximately 560 times the
6 level.

7 Q. Also you took also samples from the accumulation
8 tank?

9 A. Yes, I did.

10 Q. Where is the creek located we're hearing about?

11 A. The creek is located on the west side of the
12 property and it flows south.

13 Q. And you collected the samples right at --

14 A. It was at the northwest corner of the property.
15 The material flowed west across the north end of the
16 property and drained in at the creek at the northwest
17 corner.

18 Q. So these high levels at this amount 279, 277 and
19 8.35 of lead is all in your opinion dangerous to the
20 environment and to humans?

21 A. Yes, they are.

22 Q. And also they could pose a potential water --
23 groundwater pollution problems?

24 A. In my opinion, yes.

1 MR. BEREKET-AB: I think that's what I have for
2 Mr. Clark. Thank you very much.

3 HEARING OFFICER HALLORAN: Thank you, you may
4 step down, Mr. Clark. Thank you.

5 MR. BEREKET-AB: I think I covered all my
6 witnesses.

7 HEARING OFFICER HALLORAN: Let's go off the
8 record for a minute.

9 (Discussion had off the record.)

10 HEARING OFFICER HALLORAN: We're back on the
11 record.

12 MR. BEREKET-AB: Thank you, Mr. Hearing Officer.
13 In making this penalty determination, the Board takes
14 into account the factors under section 33C and 42H of
15 the act and considers, among other things, the
16 reasonableness of the discharges for deposits involved,
17 the impact of the discharges on the health and general
18 welfare of the environment, the practicability of
19 eliminating these discharges or deposits, the duration
20 and gravity of violation, the presence or absence of due
21 diligence, any economic benefit of noncompliance, the
22 presence of previously adjudicated violations by the
23 respondent, the amount of the monetary penalty which
24 will serve to defer further violations by the respondent

1 and other persons subject to the act and under section
2 42F of the act for the purpose of awarding costs whether
3 the violation was committed in a willful, knowing or
4 repeated manner.

5 We have considered these factors in light of the
6 testimony and documentary evidence presented this
7 morning. Bentronics had discharged contaminants into
8 the environment from the fall of 1992 through June of
9 1993. From the testimony we heard this morning, the
10 first occasion was in late '92 or early '93 when
11 Bentronics discharged processed wastewater into the
12 village's sanitary sewer system and the second occasion
13 was in June 1993 when it dumped waste chemicals
14 containing very high levels of copper and lead onto its
15 property and at the bank of the adjacent creek.

16 As to the first occasion, the evidence presented
17 shows that respondent was not able to meet the village
18 of Bensenville's discharge limits for copper and lead
19 and in August '92, it asked the village to terminate the
20 discharge permit. Bentronics proposed to treat this
21 processed wastewater on its facility in a closed loop
22 system and eliminate the need to discharge into the
23 village's sanitary sewer system.

24 Respondent did, in fact, construct the closed

1 loop system on its premises to treat the processed
2 wastewater and by letter dated August 18, 1992, it
3 informed the village that as of July 1, '92, it no
4 longer discharged any processed wastewater through the
5 sanitary sewer system.

6 On August 25, 1992, the village inspected the
7 facility and verified that such a system was, indeed,
8 installed and that all processed discharge points had
9 been plugged or capped off. However, after all the
10 discharge points had been plugged, thinking that no one
11 will ever find out about these illegal discharges,
12 respondent in secret began discharging its processed
13 wastewater containing high levels of copper and lead
14 directly into the village's sanitary sewer system
15 through a slop sink on the floor of its process area.

16 Unfortunately for Bentronics but fortunately for
17 the people and the environment, as evidence has clearly
18 shown, the village through its systematic investigation
19 and analysis traced the unusually high levels of copper
20 and lead in the sewer system to Bentronics and
21 discovered that Bentronics was the source of the illegal
22 discharge.

23 As the testimony showed, the village did go onto
24 the premises and did discover that all the processed

1 plants were actually capped, but still Bentrionics was
2 discharging through this slop sink. The publicly owned
3 treatment works is not designed to handle such high
4 levels of copper and lead. These high levels of copper
5 and lead were found in the raw influent at the village's
6 south treatment plant.

7 Pollutants like copper and lead that pass through
8 the publicly owned treatment works can cause
9 considerable damage to the treatment plant and also to
10 aquatic life in the waters of the state into which they
11 eventually discharge. This deliberate, willful
12 discharge was unreasonable, not the kind of behavior to
13 be expected from a responsible corporate citizen and the
14 discharge of such toxic contaminants such as copper and
15 lead has great negative long-term impact on the health
16 of the people and the general welfare of the
17 environment.

18 The testimony we heard this morning indicated
19 that the amount of copper and lead discharged is very
20 high and extremely toxic. Jim Clark from the Illinois
21 EPA testified that the allowable limit for lead is .0075
22 milligrams per liter, but the amount found at the bank
23 of the creek was 8.38 milligrams per liter. That is
24 more than 1,600 times the allowable limit.

1 The limit for copper, as we heard this morning,
2 was .05 I believe, but the lab analysis found 270
3 milligrams per liter of copper which is about 560 times
4 the allowable limit. These are extremely dangerous
5 levels to the environment and to the people who live in
6 that area and cause substantial damage and threat to the
7 groundwater contamination.

8 Bentronics had actually put into place a
9 practical and efficient means of treating the waste and
10 it was practicable and reasonable for it to eliminate
11 such a discharge through the closed loop system it
12 erected or it could even contract through a third party
13 disposal service; however, in spite of the fact that it
14 had a system in place, Bentronics chose to follow the
15 unreasonable, illegal and extremely harmful method of
16 disposing of its waste.

17 The second deliberate discharge of chemical waste
18 occurred in June of 1993. Bentronics through the use of
19 a hose as we heard this morning that was running through
20 the back door of the facility deliberately and purposely
21 discharged its chemical waste from the waste
22 accumulation tank and from some source inside the
23 building and dumped them on the ground on the parking
24 lot and at the bank of the creek adjacent to the

1 facility. The village of Bensenville was contacted by
2 the Bensenville fire department and the village in turn
3 contacted the Illinois EPA emergency response team which
4 came out to the site to investigate.

5 The Illinois EPA came and took samples from the
6 pond of waste at the parking lot, the waste accumulation
7 tank and from the bank of the creek adjacent to the
8 property. There was discoloration of the ground and the
9 inspector found blue, greenish liquid solids on the
10 ground.

11 The samples were analyzed and they came back with
12 high levels of lead and copper. There was 8.38
13 milligrams per liter of lead and 279 milligrams per
14 liter of copper at the bank of the creek and these are
15 extremely high levels. This discharge had a direct
16 negative impact on the environment. Chemical wastes
17 which should have been placed in an accumulation tank
18 until they were properly disposed of by a licensed waste
19 holder were allowed to be directly dumped on the ground
20 and caused potential groundwater contamination.

21 This second discharge is very troubling given the
22 fact that earlier in April of 27, 1993, Bentronics was
23 found guilty by the Circuit Court of DuPage County for
24 knowingly discharging polluted wastewater containing

1 copper and lead into the village's sanitary sewer.
2 Bentronics was fined for \$10,000; however, a few weeks
3 later, Bentronics is at it again discharging more
4 dangerous contaminants like copper and lead onto its
5 property and the adjacent creek. This is, indeed, a
6 very grave violation.

7 Bentronics has shown no diligence whatsoever. To
8 the contrary, it has exhibited a disturbing pattern of
9 content for the law and utter disregard for the
10 environment and health of persons who live adjacent to
11 the property. It can reasonably be assumed that
12 Bentronics asked for its discharge to be disconnected
13 from the village of Bensenville's system to avoid
14 continuing to pay users fees to Bensenville. By sending
15 the processed wastewater down the sink drain, Bentronics
16 avoided not only paying the user fees to Bensenville,
17 but also the fees to a third-party holder by directly
18 discharging to the sink onto the ground.

19 The testimony and documentary evidence presented
20 this morning has established that Bentronics violated
21 sections 12A and 12D of the act and the Board's water
22 pollution regulations. Section 42A of the act
23 authorizes the Board to impose \$50,000 for each
24 violation of the act and \$10,000 a day for each day of

1 violation. If we do not even calculate the \$10,000 a
2 day but just take the \$50,000 for the two violations
3 that have been clearly established for section 12A and D
4 of the violation, the Board must impose the minimum of
5 \$50,000 for each violation which is \$100,000 plus
6 attorneys fees and costs under section 42F because the
7 violation was committed knowingly and repeatedly and
8 with this, I conclude my presentation. Thank you.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Bereket-Ab. Before I forget, I'm supposed to make a
11 credibility determination on the witnesses and based on
12 my legal judgment and experience, I find that there is
13 no credibility issues with any of the witnesses that
14 testified here today.

15 We were off the record earlier and we discussed
16 posthearing briefing schedule and we've agreed to the
17 following schedule: Complainant's posthearing brief is
18 due June 14th, 2002. Respondent's brief, posthearing
19 brief, if any, is due June 28th, 2002, although based on
20 what Mr. Ripani said earlier, it doesn't look like
21 they're going to have a posthearing brief, but if that's
22 the case and they do file one, complainant's reply is
23 due on or before July 8th and I'm also going to set
24 public comment period. The due date is May 24th, 2002,

1 and I note that there are no members of the public here
2 today.

3 With that said, this concludes the hearing and
4 have a great day, everyone. Thank you.

5 (End of proceeding.)

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1 STATE OF ILLINOIS)
2 COUNTY OF DUPAGE) SS:

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4 I, Michele J. Losurdo, Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at the
7 taking of said hearing, and that the foregoing is a
8 true, complete, and accurate transcript of the
9 proceedings at said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction and signed this _____ day of
12 _____, 2002.

13

14

15

16 Notary Public, DuPage County, Illinois
17 CSR No. 084-004285
Expiration Date: May 31, 2003.

18

19

20

21 SUBSCRIBED AND SWORN TO
before me this _____ day
22 of _____, A.D., 2002.

22

23 _____
Notary Public

24

