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1 HEARING OFFICER MC CAMBRIDGE: Let's go on the  
2 record.

3 Let the record show that it's now 10:10. This is the  
4 public hearing in Board Docket No. R96-18. It's a  
5 regulatory hearing entitled "In the Matter of Amendments  
6 to 35 Illinois Administrative Code Subtitle F, Parts 601  
7 through 620."

8 I'm the Hearing Officer. My name is Mike  
9 McCambridge. Seated at my right is Board Member --  
10 Attending Board Member Ronald C. Flemal.

11 This matter is before the Board on a petition for  
12 rulemaking of the Illinois Environmental Protection  
13 Agency. The agency has requested that the Board amend a  
14 number of parts to the Subtitle F Public Water Supplies  
15 regulations.

16 In starting, I would like to read a segment of the  
17 Board order of September 19th, 1996, which sets forth  
18 what the proceeding is about and sort of circumscribes  
19 the scope of what occurs here today.

20 The Agency's rulemaking petition requests a number  
21 of amendments to the existing text of Parts 601 through  
22 620 of the Board's Public Water Supplies regulations,  
23 including amendments to the public water supply, Safe  
24 Drinking Water Act, groundwater protection and

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1 groundwater quality rules.

2           The requested amendments basically fall into three  
3 categories: 1. amendments to update and correct several  
4 provisions throughout the text; 2., amendments that would  
5 allow the Agency to issue construction permits  
6 notwithstanding the fact that a supply is listed on  
7 restricted status for a violation of the radium MCL; and  
8 3., revision of the authority note for the groundwater  
9 quality regulations to reflect that it was adopted  
10 pursuant to the Act.

11           The hearings will be strictly limited in scope to  
12 the subject matter before the Board. The Hearing Officer  
13 will not allow testimony, exhibits and questions into the  
14 record that are not relevant to the Board's consideration  
15 of the Agency's rulemaking petition.

16           Further, Section 17.6 of the Environmental  
17 Protection Act prohibits the Board from exhibiting the  
18 merits of any maximum contaminant level, MCL, for radium  
19 and from considering any other than that set by U.S.  
20 EPA.

21           The Hearing Officer, accordingly, shall not allow  
22 testimony as to the merits of the existing MCL, any  
23 medically proposed MCL or any other proposed radium  
24 level.

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1           Having read that, Ms. Tonsor, could you --

2           MEMBER FLEMAL: I just want to welcome everybody to  
3 this Board rulemaking proceeding.

4           Since at least some of you in the audience perhaps  
5 are not familiar with the way environmental governance is  
6 structured in the State of Illinois, I thought it might  
7 perhaps be worthwhile to just make a few opening  
8 statements on that issue so as to help guide you through  
9 the exercise we're undertaking today.

10           Environmental governance in the State of Illinois  
11 has a division among authorities that's different than  
12 what one encounters not only in environmental governance  
13 in many other areas but different from the kind of model  
14 that many of you have been exposed to with other  
15 administrative agency duties.

16           The State Environmental Protection Agency, which is  
17 the Agency that almost all of you deal with in your  
18 day-to-day management of environmental matters, is the  
19 executive agency for environmental governance in the  
20 State of Illinois.

21           My Agency, the Illinois Pollution Control Board, has  
22 responsibility for the adjudicatory actions and the  
23 legislative actions.

24           Some of you in attendance I know have participated

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1 or have been part of Board adjudicatory actions in the  
2 past, particularly, I believe, in the area of seeking and  
3 having judgments made on your petitions for variance from  
4 regulation. Those hearings and those processes were  
5 conducted all in an adjudicatory mode basically as  
6 trials.

7 It's the Board's duty to adjudicate quite a wide  
8 range of environmental disputes, the variance being only  
9 one of a list of almost 20 different kinds of duties in  
10 that general area that we're charged with.

11 The Board also has a responsibility for adopting the  
12 environmental standards for the State of Illinois, and  
13 those are done as a legislative function. That's the  
14 activity that we're engaged in today where we have before  
15 us a proposal to set or change or alter standards upon --  
16 or environmental standards in the State of Illinois.

17 My Board will gather the record, make the ultimate  
18 judgment as to where we go with this particular  
19 procedure.

20 The Pollution Control Board consists of seven  
21 members. I'm one of those seven. My fellow Board  
22 members are all out doing similar kinds of things today.  
23 We have to spread ourselves, in terms of actual hearings,  
24 sometimes thinner certainly than we would like.

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1           The record that we develop collectively today will  
2 be reviewed by not only myself but my six fellow Board  
3 members and our staff, and on the basis of that we will  
4 take some action.

5           We have three choices of action in any rulemaking  
6 that comes before us. We can proceed towards the  
7 adoption of the rulemaking exactly as proposed to us.

8           We can proceed towards the adoption of the  
9 rulemaking in some amended way; that is, we might find,  
10 for example, as a result of information we gather today,  
11 to proceed with this proposal but then perhaps in an  
12 amended form, not to say we will.

13           The third option we have as a Board is to not  
14 proceed at all, to set the rulemaking aside and not move  
15 forward.

16           If we do decide to move forward on the rulemaking,  
17 it's a fairly specific process that's set forth by  
18 Illinois statute. We have to first make a public first  
19 notice of the proposal. It's published in various  
20 government organs. There is an opportunity for comment  
21 after that.

22           We review it a second time for second notice. That  
23 second notice is reviewed again in this case by a  
24 subcommittee of the State General Assembly.

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1           Then only after that is done and everything is  
2           satisfactorily tied up would we go to third notice or  
3           final notice, and that effectively promulgates the rules.

4           This is not necessarily a speedy process. It's not  
5           meant to be a speedy process. It's meant to be a rebus,  
6           well thought out, well considered process.

7           I assure you from my perspective, however, I will  
8           try to move this rulemaking along as expeditiously as  
9           possible under the assumption that we do go forward, but  
10          it still is likely to extend over a period of several  
11          months as we go through these mandatory stages of review.

12          We hope that all of you in attendance, either today  
13          or during public comment periods which will follow, will  
14          share your perspective on these proposals with us.

15          It's only because we hear from people who are  
16          knowledgeable about the nature of rules that we have an  
17          opportunity to do the best possible job of rulemaking.  
18          That's what we want to do. So we encourage your  
19          participation.

20                 HEARING OFFICER MC CAMBRIDGE: Thanks, Ron.

21                 There are a couple preliminaries that I overlooked.  
22                 We have two motions filed by the Agency that are  
23                 outstanding at this time, both filed October 16th.

24                 The first is a motion to file the prefiled testimony

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1 instanter. That I hereby grant.

2 The second is a motion to file a second amended  
3 petition. I will refer that motion to the Agency, but I  
4 will allow testimony in support or against the additional  
5 matters in that second amended petition -- or I'm sorry.  
6 I will refer the motion to the Board.

7 With that, Ms. Tonsor, could you introduce yourself  
8 and the persons you wish to identify for the record for  
9 the Agency.

10 MS. TONSOR: Thank you, Mr. McCambridge, Board  
11 Member. I'm Connie Tonsor. I'm an attorney who works  
12 with the Illinois Environmental Protection Agency for the  
13 Division of Public Water Supplies.

14 I have with me Susan Konzelmann, who is a paralegal  
15 and will be summarizing her testimony first. Susan has  
16 worked, also, with us.

17 Also here is Lynn Dunaway, who is our groundwater  
18 witness today; Don Dillenburg, who is the acting permits  
19 manager for the Division of Public Water Supplies.

20 Tracey Virgin is here to testify. She's been  
21 following the Federal proposal and is a toxicologist with  
22 the Agency; and, finally, Charles Bell, who is our Field  
23 Operations Section manager and who deals, also, with the  
24 regulations and policy matters for the Division.

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1           HEARING OFFICER MC CAMBRIDGE: Is there anyone here  
2 for the Children of DeKalb?

3           Let the record show that no one has identified  
4 themselves.

5           Is there anyone here for the City of Joliet?

6           Let the record show that no one has identified  
7 themselves.

8           Okay, Ms. Tonsor. Would you care to begin?

9           MS. TONSOR: I do have a few opening remarks.

10          First of all, by way of background, in early 1995  
11 the Agency began a review of its regulations, the Agency  
12 rules pertaining to public water supplies and, also, the  
13 Board regulations pertaining to public water supplies.

14          These regulations hadn't been reviewed in a general  
15 fashion for quite some time. Many of them had not been  
16 assessed since their original adoption, and we wanted to  
17 look at the Public Water Supplies regulations as a whole.

18          As a result, we reviewed the regulations for  
19 grammar, typographical errors, accuracy of citation as  
20 well as to update them generally.

21          The result of the review was a somewhat lengthy list  
22 of proposals which originally were submitted to the Board  
23 in a letter in March this year.

24          I want to thank the Board for its addressing as many

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1 of those issues as it could in the Docket R95-17 and for  
2 offering the Agency an opportunity to move forward with  
3 this rulemaking in an expeditious fashion.

4 Basically the items that are left in this  
5 rulemaking, as you summarized, are the amendments to  
6 update the textual provisions, amendments to allow the  
7 Agency to issue permits for supplies which are exceeding  
8 the radium MCL and, also, a proposal that we have that  
9 the Board use this rulemaking as an opportunity to  
10 clarify the authority note for 620.

11 Susan Konzelmann will be presenting a summary on the  
12 citations. She reviewed the various citations and then  
13 correlated them to their Illinois Compiled Statute  
14 format.

15 Lynn Dunaway will talk about -- summarize  
16 corrections that were necessary for the 615, 616 and Part  
17 620 rules that he noted in his review of them as a  
18 groundwater person.

19 Don Dillenburg, who is our Permits acting manager,  
20 reviewed the permits regulations specifically and will  
21 propose -- or be available for questions on the permit  
22 issues which arose.

23 Tracey Virgin, as I noted, has been following the  
24 Federal proposal which set forth a radium MCL out at the

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1 20 picoCurie standard, which greatly increases the MCL  
2 from the existing 5 standard, and will talk about her  
3 following of the Federal proposal.

4 Charlie Bell's testimony will involve various items  
5 within the regulations that need to be updated from 601  
6 definitional sections through 607 emergency operations.

7 He'll also discuss the Agency's proposal to  
8 eliminate the dilemma which is caused by many supplies  
9 due to the fact that under the Standards of Issuance, we  
10 cannot grant permits to supplies that exceed the radium  
11 MCL.

12 This Federal delay in adopting the final proposal  
13 which it made in 1991 has in effect engendered delay and  
14 cost to the community since, in order for us to be able  
15 to permit new constructions, they have to seek variances  
16 from the Board.

17 We feel that if we can amend the regulations or  
18 propose an amendment to take those supplies out of this  
19 situation until a Federal -- the Federal proposal is  
20 final, that this will effect a benefit to all the  
21 communities involved.

22 Finally, we don't have any witnesses here today to  
23 discuss the authority note for Part 620; but if I may,  
24 I'll briefly outline why we wish the Board would address

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1 it in this rulemaking.

2 Part 620, in its authority note, states that it was  
3 authorized by the Groundwater Protection Act. As the  
4 Board is aware, the authority note doesn't limit the  
5 authority of the Agency to act, nor does it expand the  
6 authority of the Agency to act, and it's not considered a  
7 part of the rule, according to the Secretary of State's  
8 Rules on Rules.

9 However, an argument has arisen that the Board in  
10 fact did not adopt those rules pursuant to Section 27 of  
11 the Act because the authority note says it just adopted  
12 them pursuant to Section 8 of the Groundwater Protection  
13 Act.

14 The Groundwater Protection Act does not have  
15 independent enforcement provisions, and the Agency has  
16 been forced with making the argument of read the Rules on  
17 Rules and going through the legal analysis for every one  
18 to have them check through that the groundwater  
19 regulations are actually enforceable pursuant to the Act.

20 So we would like the Board to use this rulemaking as  
21 an opportunity to address this question and to add that  
22 the Part 620 was also adopted pursuant to its authority  
23 in the Illinois Environmental Protection Act.

24 Basically we're ready to present Susan.

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1 HEARING OFFICER MC CAMBRIDGE: Why don't we swear  
2 the Agency witnesses together.

3 MS. TONSOR: Fine.

4 (The witnesses were thereupon duly sworn.)

5 HEARING OFFICER MC CAMBRIDGE: Now the testimony  
6 will be entered into the record as if read, and your  
7 witnesses will summarize it here today. The attachments  
8 such as -- well, resumes or C.V.s will be put into the  
9 record as exhibits.

10 Does anyone here want any additional copies of the  
11 Agency's prefiled testimony? I understand that the  
12 Agency did bring some.

13 Could you give what you can to the people who have  
14 raised their hands. I have an additional copy here if  
15 it's needed.

16 MS. TONSOR: I think we have enough.

17 I have two other items. They are basically on  
18 witness availability. Mr. Bell is available all day  
19 today, but on October 30th he will be returning from a  
20 seminar which U.S. EPA scheduled after these hearings  
21 were set. He may be unavailable for the morning session,  
22 but he will be available for the afternoon session.

23 Secondly, Mr. Dillenburg has a dental appointment on  
24 the 30th; and with the Board's permission, we'll allow

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1 him to leave for the dental appointment, and then he'll  
2 come back for the balance of the hearing on the 30th.

3 HEARING OFFICER MC CAMBRIDGE: Let the record show,  
4 too, that another Board Member, Ms. Marili McFawn, has  
5 just entered.

6 MEMBER MC FAWN: Thank you.

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

9 (There followed a discussion outside the  
10 record.)

11 HEARING OFFICER MC CAMBRIDGE: Back on the record.  
12 Mr. Tonsor, you may proceed.

13 MS. TONSOR: Ms. Konzelmann.

14 (The following testimony was entered into the  
15 record as if read.)

16 TESTIMONY OF SUSAN KONZELMANN

17 I. Qualifications

18 My name is Susan Konzelmann, and I am a legal  
19 investigator with the Division of Legal Counsel, DLC, of  
20 the Illinois Environmental Protection Agency ("Illinois  
21 EPA").

22 I work with attorneys who represent the Division of  
23 Public Water Supplies in the Bureau of Water. I have  
24 been a legal investigator with the Illinois EPA for three

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1 and one-half years and have worked with the Illinois EPA  
2 for approximately twelve years.

3 II. Introduction

4 The Illinois General Assembly, under the provisions  
5 of Public Act 86-523, effective September 1, 1989,  
6 directed the Legislative Reference Bureau to develop a  
7 plan for the comprehensive and systematic codification of  
8 the Illinois Revised Statutes.

9 The plan was submitted and ultimately resulted in  
10 the promulgation of the Illinois Compiled Statutes under  
11 Public Act 87-1005. Public Act 87-1005 directed that the  
12 new compilation take effect January 1, 1993.

13 As part of my duties, I reviewed the internal  
14 statutory citations in 35 Ill. Adm. Code Parts 601, 602,  
15 603, 607, 615, 616, 617, 620 of the Illinois Pollution  
16 Control Board ("Board") regulations governing public  
17 water supplies ("Board regulations").

18 I compared the Illinois Revised Statutes citations  
19 to the new Illinois Compiled Statutes citations and  
20 verified the accuracy of the Illinois Compiled Statutes  
21 reference.

22 Additionally, in several sections I verified the  
23 names of the acts that were cross-referenced in the  
24 Board's regulations. I corrected these references where

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1 necessary.

2 A section-by-section summary of the results of my  
3 review follows.

4 III. Regulatory Sections

5 Initially, the testimony will attempt to group  
6 sections of the regulations that contain the same  
7 modification.

8 In Sections 601.101, 601.105, 602.105(a), 615.102,  
9 616.101, 617.101, and 620.110 of the Board's regulations,  
10 I verified that the reference to the Illinois  
11 Environmental Protection Act, Ill. Rev. Stat. 1981, ch.  
12 111 1/2, pars. 1001 et seq., corresponds to 415 ILCS 5.

13 In Sections 601.105, 602.115(b) of the Board's  
14 regulations, the reference to the Illinois Administrative  
15 Procedure Act, Ill. Rev. Stat. 1989, ch. 127, pars. 1001  
16 et seq., corresponds to 5 ILCS 100.

17 In Section 602.105(c) of the Board's regulations, I  
18 verified that the reference to the Illinois Architecture  
19 Practice Act, Ill. Rev. Stat. 1981, ch. 111, pars. 1201  
20 et seq., corresponds to 225 ILCS 305.

21 The reference to the Illinois Professional  
22 Engineering Practice Act, Ill. Rev. Stat. 1981, ch. 111,  
23 pars. 5101 et seq., corresponds to 225 ILCS 325.

24 The reference to the Illinois Structural Engineering

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1 Licensing Act, Ill. Rev. Stat. 1981, ch. 111, pars. 6501  
2 et seq., corresponds to 225 ILCS 340.

3 In Section 603.102 of the Board regulations, the  
4 Board references "An Act to regulate the operating of a  
5 public water supply." I have verified that the short  
6 name of this act is the "Public Water Supply Operations  
7 Act."

8 I have also confirmed that the citation, Ill. Rev.  
9 Stat. 1981, ch. 111 1/2, pars. 501 et seq., corresponds  
10 to 415 ILCS 45. Therefore, the proposed amendment  
11 changes the short name of the Act and corrects the  
12 statutory reference.

13 In Section 603.103(a) of the Board regulations, I  
14 confirmed that "Water Supply Operator Certification Law"  
15 corresponds to "Public Water Supply Operations Act."

16 In Section 603.104(c) the reference to "Water Supply  
17 Operator Certification Law" was changed to "Public Water  
18 Supply Operations Act."

19 In Section 615.102 of the Board's regulations, the  
20 reference to the Illinois Groundwater Protection Act,  
21 Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 7451 et seq.,  
22 corresponds to 415 ILCS 55; and the reference to the  
23 Water Well and Pump Installation Contractor's License  
24 Act, Ill. Rev. Stat. 1989, ch. 111, pars. 7101 et seq.,

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1 corresponds to 225 ILCS 345.

2 In Section 615.102 of the Board's regulations in the  
3 definition of "Registered land surveyor," the reference  
4 to the Illinois Land Surveyors Act has been modified to  
5 its short name, "Illinois Professional Land Surveyors Act  
6 of 1989."

7 I verified that the statutory reference for the Act,  
8 Ill. Rev. Stat. 1989, ch. 111, pars. 3201 et seq.,  
9 corresponds to 225 ILCS 330/1.

10 In the definition of "Registered Professional  
11 Engineer," the reference to the Illinois Professional  
12 Engineering Act has been modified to its short name, the  
13 "Professional Engineering Practice Act of 1989."

14 I verified that the statutory reference for the Act,  
15 Ill. Rev. Stat. 1989, ch. 111, pars. 5101, corresponds to  
16 225 ILCS 325.

17 In Section 615.204(b)(1), (b)(2) of the Board's  
18 regulations, the citations for the Illinois Water Well  
19 Construction Code, Ill. Rev. Stat. 1989, ch. 111 1/2,  
20 pars. 116.111 et seq., correspond to 415 ILCS 30.

21 In Section 616.102 of the Board's regulations, the  
22 statutory reference to the Illinois Groundwater  
23 Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, pars.  
24 7451 et seq., corresponds to 415 ILCS 55. The citation

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1 to the Private Sewage Disposal Licensing Act, Ill. Rev.  
2 Stat. 1989, ch. 111 1/2, pars. 116.301 et seq.,  
3 corresponds to 225 ILCS 225/1.

4 In Section 617.102 of the Board's regulations, the  
5 reference to the Illinois Groundwater Protection Act,  
6 Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 7451 et seq.,  
7 corresponds to 415 ILCS 55.

8 In Section 620.110 of the Board's regulations, the  
9 references to the Illinois Groundwater Protection Act,  
10 Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 7451, correspond  
11 to 415 ILCS 55.

12 In the definition of "Cumulative impact area," the  
13 reference to the Surface Coal Mining Land Conservation  
14 Act" has been modified to its short name, the "Surface  
15 Coal Mining Land Conservation and Reclamation Act." The  
16 citation for the Act, Ill. Rev. Stat. 1989, ch. 96 1/2,  
17 pars. 7901.01 et seq., corresponds to 225 ILCS 720.

18 A typographical error occurred in the reference to  
19 the Private Sewage Disposal Act, which is part of the  
20 definition of "Potential Secondary Source."

21 The current statutory citation, Ill. Rev. Stat.  
22 1989, ch. 111 1/2, 16.301 et seq., should be Ill. Rev.  
23 Stat. 1989, ch. 111 1/2, pars. 116.301 et seq. The  
24 correct reference corresponds to 225 ILCS 225.

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1           In the Board note, the reference to the Surface Coal  
2 Mining Land Conservation Act has been modified to its  
3 correct short name, the "Surface Coal Mining Land  
4 Conservation and Reclamation Act." The statutory  
5 reference for this Act, Ill. Rev. Stat. 1989, ch. 96 1/2,  
6 pars. 7901.1 et seq., corresponds to 225 ILCS 720/1.01.

7           In Section 620.230(b)(4) of the Board's regulations,  
8 the reference to the Illinois Natural Areas Preservation  
9 Act, Ill. Rev. Stat. 1989, ch. 105, pars. 701 et seq.,  
10 corresponds to 525 ILCS 30/1.

11           In Section 620.260(k)(2) of the Board's regulations,  
12 the reference to the Illinois Endangered Species  
13 Protection Act, Ill. Rev. Stat. 1991, ch. 8, par. 331 et  
14 seq., is cross-referenced in the Secretary of State file  
15 rules to 415 ILCS 10. The correct corresponding Illinois  
16 Compiled Statutes citation is 520 ILCS 10.

17           In Section 620.301(c) of the Board's regulations,  
18 the reference to "An Act in relation to oil, gas, coal  
19 and other surface and underground resources and to repeal  
20 an Act herein named" has been modified to its short name,  
21 the "Illinois Oil and Gas Act." The statutory citation  
22 for the Act, Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 5401  
23 et seq., corresponds to 225 ILCS 725.

24           In Section 620.420(b)(2) of the Board's regulations,

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1 the citation to the Illinois Pesticide Act, Ill. Rev.  
2 Stat. 1989, ch. 5, pars. 801 et seq., corresponds to 415  
3 ILCS 60.

4 In Section 620.450(b)(1) of the Board's regulations,  
5 the citation to the Surface Coal Mining Land Conservation  
6 and Reclamation Act, Ill. Rev. Stat. 1989, ch. 96 1/2,  
7 pars. 7901.1 et seq., corresponds to 225 ILCS 720.

8 In Section 620.505(a)(5)(A) and (a)(5)(B) of the  
9 Board's regulations, the citations to the Illinois Water  
10 Well Construction Code, Ill. Rev. Stat. 1989, ch. 111  
11 1/2, pars. 116.111 et seq., corresponds to 415 ILCS 30.

12 IV. Conclusion

13 I will be happy to answer any questions at this  
14 time.

15 MS. KONZELMANN: My name is Susan Konzelmann,  
16 K-o-n-z-e-l-m-a-n-n. I am a legal investigator for the  
17 Illinois Environmental Protection Agency, and I've been  
18 in this position for three and a half years, and I work  
19 with attorneys who represent the Division of Public Water  
20 Supplies in the Bureau of Water.

21 I'm testifying at this hearing today to my role in  
22 reviewing the statutory citations in 35 Illinois  
23 Administrative Code Parts 601, 602, 603, 607, 615, 616,  
24 617 and 620. The purpose -- these are in the Illinois

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1 Pollution Control Board's regulations governing public  
2 water supplies.

3 The purpose of my review was to compare and verify  
4 the updates to the authority notes and citations that  
5 were contained in these parts.

6 I accomplished this by examining the Illinois  
7 Revised Statutes citations and compared them to the new  
8 Illinois Compiled Statutes citations and verified the  
9 accuracy of the Illinois Compiled Statutes reference.

10 Additionally, in several sections I verified the  
11 names of the acts that were cross-referenced in the  
12 Board's regulations and corrected these references where  
13 necessary.

14 The reason for the verifications and the  
15 cross-references were due to a provision under Public Act  
16 86-523 where the Illinois General Assembly directed the  
17 Legislative Reference Bureau to develop a plan for the  
18 comprehensive and systematic codifications of the  
19 Illinois Revised Statutes.

20 The plan was submitted and ultimately resulted in  
21 the promulgation of the Illinois Compiled Statutes, which  
22 were under Public Act 87-1005, and Public Act 87-1005  
23 directed that the new compilation take effect January 1st  
24 of 1993.

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1 I'd be happy to answer any questions at this time.

2 HEARING OFFICER MC CAMBRIDGE: Let the record show  
3 that there are no questions at this time.

4 The next witness, Ms. Tonsor.

5 MS. TONSOR: The next witness we have is Mr. Lynn  
6 Dunaway.

7 (The following testimony was entered into the  
8 record as if read.)

9 TESTIMONY OF LYNN E. DUNAWAY

10 I. Qualifications

11 My name is Lynn E. Dunaway, and I work in the  
12 Hydrogeology and Compliance Unit of the Groundwater  
13 Section of the Illinois Environmental Protection Agency's  
14 ("Illinois EPA") Division of Public Water Supplies in the  
15 Bureau of Water. A copy of my curriculum vitae is  
16 enclosed in Attachment I.

17 II. Introduction

18 The purpose of this testimony is to explain the  
19 reasons behind the Illinois EPA's proposed amendments of  
20 35 Ill. Adm. Code 615, 616 and 620 and to explain the  
21 process by which the Illinois EPA determined that  
22 portions of the groundwater regulations needed amendment.

23 My duties in the Hydrogeology and Compliance Unit of  
24 the Groundwater Section of the Illinois EPA's Division of

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1 Public Water Supplies include reviewing the Board's  
2 regulations pertaining to groundwater protection.

3 My review focused upon any substantive issues that  
4 might arise, grammatical changes and typographical  
5 errors. I will discuss the results of the review and the  
6 proposed amendments in the next section of this  
7 testimony.

8 III. Regulatory Sections

9 Section 14.4(b) and 14.4(d) of the Illinois  
10 Environmental Protection Act (415 ILCS 5/14.4(b);  
11 5/14.4(d)) require that the Illinois EPA propose and the  
12 Illinois Pollution Control Board ("Board") promulgate  
13 regulations prescribing standards and requirements for  
14 certain activities within setback zones and regulated  
15 recharge areas.

16 The affected activities are generally those that  
17 pose a significant potential for producing groundwater  
18 contamination.

19 Parts 615, 616, and 617 of the Board regulations (35  
20 Ill. Adm. Code 615, 616, 617; "Technical Regulations")  
21 address activities within setback zones and regulated  
22 recharge areas.

23 Section 615.462 of the Board regulations addresses  
24 closure requirements for onsite waste piles. The section

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1 states that a waste pile is deemed to be a landfill and  
2 subject to the closure requirements of Subpart E unless  
3 the operator can demonstrate certain conditions to the  
4 Illinois EPA.

5 Subpart E addresses onsite land treatment units, not  
6 landfills. Subpart D of the regulations addresses onsite  
7 landfills.

8 Therefore, the section states that an onsite waste  
9 pile is deemed to be a landfill and subject to the  
10 closure requirements of onsite land treatment units.

11 This was not the intent of the Illinois EPA in  
12 proposing the regulation. Read in context, the reference  
13 to Subpart E in Section 615.462 of the Board regulations  
14 is an error, and the correct reference is to Subpart D.

15 Section 616.447 is misnamed "Subpart 616.447." This  
16 is a transcription error that should be amended for  
17 clarity.

18 Section 8(a) of the Illinois Groundwater Protection  
19 Act (415 ILCS 55/8(a)) required the Agency to propose and  
20 the Board to adopt comprehensive water quality standards  
21 for the protection of groundwater. Those standards are  
22 contained in 35 Ill. Adm. Code 620. The proposed  
23 amendments to 35 Ill. Adm. Code 620 are necessary to make  
24 corrections of typographical errors currently in 35 Ill.

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1 Adm. Code 620.

2 Section 620.420(b)(1) lists the compound  
3 dichloromethane twice in the Class II Numerical Standards  
4 Table. This is an apparent typographical error, and the  
5 listing of dichloromethane as a noncarcinogen should be  
6 deleted.

7 In "In the Matter of: Groundwater Protection:  
8 Amendment to Groundwater Quality Standards" (R93-27;  
9 August 11, 1994), the Board amended the groundwater  
10 quality standards and added several new constituents,  
11 including dichloromethane, to 35 Ill. Adm. Code 620.

12 The impetus for the amendment of the groundwater  
13 quality standards was the addition of new constituents to  
14 the National Primary Drinking Water Standards by the  
15 United States Environmental Protection Agency ("U.S.  
16 EPA"; 57 Fed. Reg. 31,776).

17 In the federal rulemaking that provided the  
18 technical basis for R93-27, U.S. EPA states that it  
19 considers dichloromethane a Class B2 carcinogen (57 Fed.  
20 Reg. 31,789-31,790 (July 17, 1992)).

21 However, dichloromethane is denoted as a carcinogen  
22 once and as a noncarcinogen once in Section 620.420(b)(1)  
23 of the Board's regulations.

24 The table lists the same numerical standard (0.05

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1 milligrams per liter) for dichloromethane each time.  
2 Therefore, the listing of dichloromethane as a carcinogen  
3 in 620.420(b)(1) should be maintained with the current  
4 Class II numerical standard of 0.05 milligrams per liter.

5 The listing of dichloromethane as a noncarcinogen  
6 should be deleted along with its associated Class II  
7 numerical standard.

8 Section 620.450(b)(2) of the Board's regulations  
9 contains cross-references to Sections 620.420(a) and (e)  
10 of the Board's regulations.

11 There is no Section 620.420(e) of the Board's  
12 regulations. The correct cross-references should be  
13 Section 620.420(a) and (d) of the Board's regulations.  
14 In context, the typographical error is obvious.

15 Section 620.450(b)(2) of the Board's regulations is  
16 referring to the inapplicability of standards for  
17 inorganic constituents and pH prior to completion of  
18 reclamation at a coal mine.

19 Section 620.420(a) of the Board's regulations  
20 contains the Class II standards for inorganic  
21 constituents. Section 620.420(d) of the Board's  
22 regulations contains the Class II standard for pH.

23 IV. Conclusion

24 I will be happy to answer any questions at this

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1 time.

2 MR. DUNAWAY: I'm going to read a summary of my  
3 testimony.

4 My name is Lynn, L-y-n-n, E. Dunaway, D-u-n-a-w-a-y.  
5 I work in the Hydrogeology and Compliance Unit of the  
6 Groundwater Section of the Illinois Environmental  
7 Protection Agency's Division of Public Water Supplies in  
8 the Bureau of Water.

9 My duties in the Hydrogeology and Compliance Unit  
10 include reviewing the Board's regulations pertaining to  
11 groundwater protection, interpretation of the Board  
12 regulations in conjunction with my supervisors, and  
13 application of the regulations in site specific  
14 circumstances.

15 The purpose of my testimony is to explain the  
16 reasons behind the Illinois EPA's proposed amendments to  
17 35 Illinois Administrative Code 615, 616 and 620.

18 Section 14.4(b) and 14.4(d) of the Illinois  
19 Environmental Protection Act require that the Illinois  
20 EPA propose and the Board promulgate regulations  
21 prescribing standards and requirements for certain  
22 activities within setback zones and regulated recharge  
23 areas.

24 Parts 615, 616 and 617 of the Board regulations

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1 address activities within setback zones and regulated  
2 recharge areas.

3 Subpart G, Section 615.462 of the Board regulations  
4 addresses closure requirements for onsite waste piles.  
5 This section currently states that a waste pile is deemed  
6 to be a landfill and subject to the closure requirements  
7 of Subpart E unless the operator can demonstrate certain  
8 conditions to the Illinois EPA.

9 However, Subpart E addresses onsite land treatment  
10 units, not landfills. Subpart D of the regulations  
11 addresses onsite landfills.

12 As it now reads, the section states that an onsite  
13 waste pile is deemed to be a landfill and subject to the  
14 closure requirements of onsite land treatment units.

15 The Board regulations make more sense than Subpart  
16 G, Section 615.462, if onsite waste piles that are  
17 allowed to accumulate and therefore be considered  
18 landfills are required to follow the closure requirements  
19 of landfills in Subpart D.

20 Therefore, in Subpart G, Section 615.462, the  
21 reference to Subpart E should be changed to reference  
22 Subpart D.

23 Section 616.447 is misnamed Subpart 616.447. It is  
24 clear from the document layout of Part 616 that 616.447

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1 is a section within Subpart F. This is a transcription  
2 error that should be amended for clarity.

3 Section 8 of the Illinois Groundwater Protection Act  
4 required the Agency to propose and the Board to adopt  
5 comprehensive water quality standards for the protection  
6 of groundwater.

7 The proposed amendments to 35 Illinois  
8 Administrative Code 620 are necessary to make corrections  
9 of typographical errors currently in Part 620.

10 Section 620.420(b)(1) contains the Class II  
11 Numerical Standards Table with the compound  
12 dichloromethane listed twice. Dichloromethane was added  
13 to Part 620 by rulemaking R93-27. However,  
14 dichloromethane is listed in the table as both a  
15 carcinogen and as a noncarcinogen.

16 The table lists the same numerical standard of 0.05  
17 milligrams per liter for dichloromethane each time. The  
18 57 Federal Register of July 17, 1992, provided the  
19 technical basis for most of R93-37. At 57 Federal  
20 Register 31789 and 31790 the U.S. EPA states that they  
21 consider dichloromethane a B2 carcinogen.

22 Section 620.110 defines carcinogen, for the purposes  
23 of Part 620, as a chemical that has been listed by the  
24 U.S. Environmental Protection Agency in Group A, B1 or

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1 B2.

2 Therefore, the listing of dichloromethane as a  
3 carcinogen in 620.420(b)(1) should be maintained with the  
4 current Class II numerical standard of 0.05 milligrams  
5 per liter. The listing of dichloromethane as a  
6 noncarcinogen should be deleted along with its associated  
7 Class II numerical standard.

8 Section 620.450(b)(2) contains a reference to  
9 620.420(a) and (e). The typographical error is obvious  
10 since there is no Section 620.420(e).

11 Section 620.450(b)(2) is referring to the  
12 inapplicability of inorganic constituents and pH prior to  
13 the completion of reclamation at a coal mine.

14 Section 620.420(a) contains the numerical Class II  
15 standards for inorganic constituents, and Section  
16 620.420(d) contains the numerical Class II standard for  
17 pH. Therefore, it is clear that the correct reference  
18 should be Section 620.420(a) and (d).

19 I'd be happy to answer any questions.

20 HEARING OFFICER MC CAMBRIDGE: Could we have a copy  
21 of your summary?

22 MR. DUNAWAY: Certainly.

23 HEARING OFFICER MC CAMBRIDGE: Attached to the  
24 Agency's prefiled testimony for Mr. Dunaway is a copy of

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1 his resume. I'm marking it as Exhibit 1 in this  
2 proceeding.

3 (The document was thereupon marked Exhibit No.  
4 1 for identification as of October 25, 1996.)

5 Are there any objections to its admission?

6 Seeing none, his resume is Exhibit 1 in this  
7 proceeding.

8 Any questions of anyone in the room for the witness?

9 Seeing none, thank you.

10 MS. TONSOR: The next witness we have available is  
11 Mr. Don Dillenburg.

12 (The following testimony was entered into the  
13 record as if read.)

14 TESTIMONY OF DONALD E. DILLENBURG

15 I. Qualifications

16 My name is Donald E. Dillenburg, and I am Acting  
17 Manager of the Permits Section of the Illinois  
18 Environmental Protection Agency's ("Illinois EPA")  
19 Division of Public Water Supplies in the Bureau of Water.  
20 A copy of my education and work experience is enclosed in  
21 Attachment I.

22 My duties include directing and coordinating the  
23 activities of the Permit Section, recommending and  
24 determining policies and procedures involving advanced

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1 technical expertise and supervising a staff of engineers  
2 who are responsible for the statewide issuance of  
3 permits.

4 II. Introduction

5 As part of my duties as Acting Permits Unit Manager,  
6 I reviewed the Illinois Pollution Control Board's  
7 ("Board") regulations pertaining to 35 Ill. Adm. Code  
8 602.108, 602.109, 602.110, 602.114, 602.115 and 602.120.

9 The Division of Public Water Supplies had initiated  
10 a general review of the Board's regulations pertaining to  
11 public water supplies.

12 One of the goals of the review was to assess the  
13 regulations in light of the current statutory and  
14 regulatory framework and to suggest an update of the  
15 regulations, which would eliminate typographical and  
16 grammatical errors.

17 Another goal of the review was to update the  
18 regulations to reflect changes that have occurred in  
19 governmental agency names and duties.

20 These changes, which have occurred primarily due to  
21 actions of the Governor's office, are not yet reflected  
22 in the Board's regulations.

23 The purpose of this testimony is to set forth the  
24 reasons behind the Illinois EPA's proposed amendments of

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1 35 Ill. Adm. Code 602.108, 602.109, 602.110, 602.114,  
2 602.115 and 602.120 and to explain the process by which  
3 the Illinois EPA concluded the regulations should be  
4 amended.

5 I have provided a detailed summary of the results of  
6 the review and the proposed amendments in the next  
7 section of this testimony.

8 III. Regulatory Sections

9 Section 602.108 sets forth a listing of the  
10 information and documents that should be included in an  
11 application for a construction permit. Currently the  
12 subcategories of information are punctuated by periods.

13 The additions of semicolons in subsections (a)  
14 through (g) and the addition of the conjunction "and"  
15 between subsections (f) and (g) are minor editorial  
16 changes which the Illinois EPA is proposing to render 35  
17 Ill. Adm. Code 602.108 more grammatically correct.

18 Currently Section 602.108(f) references Section  
19 602.105(b) requirements. This is in error. Section  
20 602.105(c) imposes a requirement that construction  
21 documents be prepared by a properly licensed individual.

22 Section 602.108 is intended to require that the  
23 permittees show compliance with Section 602.105(c) by  
24 affixing a professional seal to the construction

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1 documents.

2 Section 602.105(b) provides that the Illinois EPA  
3 may not grant a permit unless the applicant submits proof  
4 that the public water supply facility conforms to design  
5 criteria.

6 Therefore, the reference in Section 602.108(f) to  
7 Section 602.105(b) is an apparent typographical or  
8 transcription error. The correct reference should be to  
9 Section 602.105(c).

10 Section 602.109 sets out required information for  
11 operating permit applications. Section 602.109(a) states  
12 that the application shall contain the name and  
13 certificate number of the certified operator or the name  
14 and registration number of the "register person" in  
15 responsible charge of the supply.

16 The Board's regulations at Section 603.103 require  
17 that each public water supply be under the operational  
18 control of a properly certified operator, unless exempted  
19 under Section 603.104.

20 Section 603.104 of the Board's regulations describes  
21 the requirements for a "Registered Person in Responsible  
22 Charge." The Illinois EPA intended that Section  
23 602.109(a) include a reference to the Section 603.104 of  
24 the Board's regulations requirement.

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1           Therefore, the term "register person" is an apparent  
2 typographic or transcription error and should read  
3 "registered person."

4           Section 602.110(c) of the Board's regulations also  
5 contains a minor omission in the drafting of the  
6 regulation. Section 602.110 states the required  
7 information for algicide permit applications.

8           In 35 Ill. Adm. Code 302.210(g) the Board's  
9 regulations establish a requirement that a permit be  
10 obtained from the Agency before application of an aquatic  
11 pesticide to waters affecting public water supplies.

12           The Board's regulations governing public water  
13 supplies at 35 Ill. Adm. Code 602.110(c) contains more  
14 detailed requirements for algicide permits.

15           Algicides are a subclass of the group of materials  
16 known as aquatic pesticides. Section 602.110(c) advises  
17 permittees that an additional aquatic pesticide permit is  
18 not needed if an algicide permit has been issued by the  
19 Agency.

20           The word "the" should be added between the words  
21 "exempt" and "permittee" in Section 602.110(c) to correct  
22 an apparent omission in the original drafting of the  
23 rule.

24           Section 602.114 provides that the Illinois EPA may

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1 add additional conditions in permits. The section begins  
2 with an introductory phrase. Commas are ordinarily used  
3 to separate an introductory clause or phrase from the  
4 main clause in the sentence. Thus, the first sentence in  
5 the section should have a comma after the word "Part."  
6 This is not a substantive change but is necessary for  
7 grammatical correctness.

8 Permits issued by the Illinois EPA pursuant to 35  
9 Ill. Adm. Code 602 satisfy the requirements of the  
10 Environmental Protection Act and the Board's regulations.

11 Section 602.120 is included in Part 602 to emphasize  
12 this fact and to indicate that permits issued pursuant to  
13 Part 620 do not supersede, negate, override or otherwise  
14 modify permit requirements of other governmental agencies  
15 operating under the authority of other statutes.

16 Section 602.120 currently states "Any permit issued  
17 under the Part..." Usage of the article "the" connotes  
18 that the noun it modifies has been previously recognized  
19 in the regulations.

20 However, here the Section is discussing permits  
21 issued under other regulations and through the authority  
22 of other agencies. Therefore, usage of the phrase "the  
23 Part" might lead to some confusion.

24 The pronoun "this" means "the person or fact about

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1 to be mentioned." The Illinois EPA believes that usage  
2 of the pronoun "this" is more grammatically correct in  
3 Section 602.120 than usage of the pronoun "the."

4 Section 602.120 also provides a list of agencies  
5 that issued permits at the time the regulations were  
6 adopted. Over time these agencies have changed. When  
7 the regulations were drafted and adopted, the Department  
8 of Mines and Minerals, Division of Oil and Gas, issued  
9 permits for water well drilling.

10 The Department of Public Health administers the  
11 Water Well Construction Code (415 ILCS 30). However, the  
12 Water Well Construction Code does not permit wells  
13 drilled for community public water supplies.

14 In 1995 Governor James Edgar indicated that the  
15 functions of several executive agencies would be  
16 combined. The former Division of Water Resource  
17 Management of the Department of Transportation was  
18 renamed the Office of Water Resources and moved to the  
19 Department of Natural Resources.

20 The Office of Water Resources is responsible for  
21 implementing the Rivers, Lakes and Streams Act (615 ILCS  
22 5) and issues permits for the construction of dams and  
23 for construction in floodplains and public waterways. It  
24 is also responsible for Lake Michigan allocations.

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1           Thus, under the "Agency" heading in 35 Ill. Adm.  
2           Code 602.120, the Department of Mines and Minerals,  
3           Division of Oil and Gas, and the Department of  
4           Transportation, Division of Water Resource Management,  
5           need to be deleted. The Department of Natural Resources,  
6           Office of Water Resources, needs to be added. Under the  
7           "Permit Description" heading, "well drilling" needs to be  
8           deleted.

9           IV. Conclusion

10           I will be happy to answer any questions at this  
11           time.

12           MR. DILLENBURG: I'd like to give a brief summary  
13           of my testimony at this time.

14           My name is Donald Dillenburg. I'm the acting  
15           manager of the Permits Section of the Agency's Water  
16           Supply Division. I'm an Illinois registered professional  
17           engineer. I have a degree in air and water resources  
18           engineering, which I earned in 1972 from the University  
19           of Illinois.

20           Since 1972 I have worked for both the Environmental  
21           Protection Agency and the State's Department of  
22           Conservation. During that time I've held a variety of  
23           jobs in technical managerial engineering and in field  
24           engineering. My present duties include direction in

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1 coordinating of the Agency's Permits Section.

2 The Illinois Pollution Control Board has by  
3 regulation required that new public water supplies and  
4 most modifications to existing water supplies be done in  
5 accordance with the construction permit issued by the  
6 Agency. My section processes and issues those permits.

7 My testimony today concerns in the main minor  
8 changes in Part 602 of the Board's regulations. These  
9 changes by and large are minor grammatical changes to  
10 correspond to correct English usage.

11 There is an incorrect reference in one of those  
12 regulations to the requirement for professional  
13 engineers' seals on construction documents, and we  
14 correct that by making the minor change.

15 There is also in Part 602 a listing of other  
16 agencies and their permit requirements. Since that was  
17 written, there have been some changes in restructuring  
18 the government and some changes in those agencies' names  
19 and the permits that they require, and my testimony also  
20 corrects those and brings those up to date.

21 That is the end of my summary, and I would be happy  
22 to answer questions at this time.

23 HEARING OFFICER MC CAMBRIDGE: Are there any  
24 questions of this witness?

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1           Seeing none, I note that attached to the Agency's  
2       prefiled testimony for Mr. Dillenburg was a copy of his  
3       resume. I'm marking that as Exhibit 2.

4                       (The document was thereupon marked Exhibit No.  
5                       2 for identification as of October 25, 1996.)

6           HEARING OFFICER MC CAMBRIDGE: Are there any  
7       objections to the admission of this exhibit?

8           Seeing none, Mr. Dillenburg's resume is Exhibit 2 in  
9       this proceeding.

10          Thank you, Mr. Dillenburg.

11          MR. DILLENBURG: Thank you.

12          MS. TONSOR: Our next witness that we have is Ms.  
13       Tracey Virgin.

14                       (The following testimony was entered into the  
15                       record as if read.)

16                               TESTIMONY OF TRACEY VIRGIN

17           I. Qualifications

18           My name is Tracey Virgin. I am an environmental  
19       toxicologist with the Toxicity Assessment Unit within the  
20       Office of Chemical Safety of the Illinois Environmental  
21       Protection Agency ("Illinois EPA"). I have been with the  
22       Illinois EPA for nine years providing expertise to the  
23       Agency in the area of environmental toxicology.

24           My responsibilities include development and use of

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1 procedures for human and environmental exposure  
2 assessments and risk assessments; review of toxicological  
3 data and hazard information in support of Illinois EPA  
4 programs and actions; and review of remedial  
5 investigation and risk assessment documents submitted to  
6 the Illinois EPA.

7 I received a Master of Public Health degree,  
8 specialization in environmental health, from Yale  
9 University in 1986 and a Bachelor of Science in biology  
10 from Southern Illinois University at Edwardsville in  
11 1984.

12 I have kept up with the developments in the  
13 literature on radium and with the United States  
14 Environmental Protection Agency's ("U.S. EPA") actions.  
15 The following testimony provides a summary of U.S. EPA's  
16 proposed radionuclides rule.

## 17 II. History of the Radium Proposal

18 On July 18, 1991, U.S. EPA proposed new Maximum  
19 Contaminant Levels ("MCL") for radium-226 of 20 pCi/L and  
20 radium-228 of 20 pCi/L, along with five other  
21 radionuclides including radon.

22 The MCL currently in effect is 5 pCi/L for  
23 radium-226 and radium-228 combined and was established in  
24 1976. This proposal was the result of more data and a

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1 better understanding of the risks posed to human health  
2 by radium.

3 Radium is a naturally occurring radioactive metal  
4 that can exist in several forms called isotopes.  
5 Radium-226 is formed when uranium undergoes radioactive  
6 decay in the environment, and radium-228 is formed from  
7 the decay of thorium.

8 Radium has been found at low levels in soil, water,  
9 rocks, coal, plants, and food. For example, a typical  
10 amount might be one picogram of radium per gram of soil  
11 or rock. This would be about one part of radium per one  
12 trillion parts of soil or rock.

13 Because radium is naturally present at low levels in  
14 the environment, we are constantly exposed to it and the  
15 small amounts of radiation being released from its decay.

16 I have spoken with several people at U.S. EPA  
17 involved with the proposed radium MCL. The risk estimate  
18 for radium was reassessed after the public comment period  
19 for the proposed MCL. The risk estimate remains the  
20 same, and the proposed MCL value is not being changed.

21 However, this rulemaking is on hold for two main  
22 reasons: Budget constraints and the cost for complying  
23 with radon is still being evaluated. There is no time  
24 frame for the final MCL for radium. U.S. EPA's Safe

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1 Drinking Water Hotline indicated that a schedule for  
2 finalization of the proposed MCLs will be announced on  
3 October 21, 1996.

4 III. Conclusion

5 I will be happy to answer any questions that you may  
6 have.

7 MS. VIRGIN: My name is Tracey Virgin, V-i-r-g-i-n.  
8 I am an environmental toxicologist with the Office of  
9 Chemical Safety of the Illinois Environmental Protection  
10 Agency. Part of my duties include reviewing human health  
11 risk assessment and toxicological data.

12 I have been tracking U.S. EPA actions to the  
13 proposed MCLs for radium, and the U.S. has indicated that  
14 they would come up with a schedule for finalization of  
15 the proposed MCLs on October 21st of this year.

16 I spoke with them. I called the Safe Drinking Water  
17 Hotline on Monday, October 21st. They indicated that  
18 they had received a month extension, and they would be  
19 coming up with a schedule for finalization of the  
20 proposed MCLs on or about November 21st of this year.

21 That concludes my summary for the developments of my  
22 prefiled testimony, and I'll answer any questions.

23 MEMBER FLEMAL: Have they given us any indication  
24 of what kind of schedule they might be proposing?

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1 MS. VIRGIN: As far as their actions?

2 MEMBER FLEMAL: Yes, on the MCL.

3 MS. VIRGIN: I haven't heard anything official. I  
4 know they are considering several actions, but I haven't  
5 heard anything official as to what they are going to do  
6 or when they are going to do it.

7 MEMBER FLEMAL: It's certainly been an  
8 extraordinarily frustrating process for everybody who has  
9 been involved in this radium.

10 I know the Agency has been under a constant gun  
11 trying to administer a rule that is so nebulous and  
12 uncertain in its development. We had the Board face much  
13 of the same problems, and I know it's been an enormous  
14 burden oftentimes on the regulating community,  
15 uncertainty in fact.

16 The history well reveals it's not only uncertainty  
17 at the moment, but it's been a long history of  
18 uncertainty of change. I think all of us would just love  
19 to have some closure on this.

20 I don't know if we have any prospect at all of  
21 influencing the U.S. EPA to do something and remove this  
22 uncertainty from us; but if any of you have inspirations  
23 as to how to make U.S. EPA do something other than tell  
24 us that next month they are going to tell us what they

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1 are going to do, that would be very nice indeed.

2 HEARING OFFICER MC CAMBRIDGE: Are there any  
3 further questions of this witness?

4 Seeing none, thank you.

5 MS. TONSOR: The final witness that we have ready  
6 this morning is Mr. Charles Bell.

7 (The following testimony was entered into the  
8 record as if read.)

9 TESTIMONY OF CHARLES BELL

10 1. Qualifications

11 My name is Charles Bell, and I am manager of the  
12 Field Operations Section ("FOS") of the Illinois  
13 Environmental Protection Agency's ("Illinois EPA")  
14 Division of Public Water Supplies in the Bureau of Water.

15 A copy of my education and work experience is  
16 enclosed in Attachment I. My duties include supervision  
17 of a staff of 19 technical field persons responsible for  
18 inspecting public water supplies, providing technical  
19 assistance, responding to emergencies and consumer  
20 complaints and providing field data to the headquarters  
21 staff. I am also responsible for reviewing and  
22 commenting on proposed new regulations, policy and  
23 guidance.

24 II. Introduction

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1           As one of my duties as manager of the FOS, I  
2 reviewed the Illinois Pollution Control Board's ("Board")  
3 regulations pertaining to public water supplies.

4           In 1995 the Division of Public Water Supplies  
5 initiated a general review of the Board's regulations  
6 pertaining to public water supplies. One of the goals of  
7 the review was to assess the regulations in light of the  
8 current statutory and regulatory framework and to suggest  
9 an update of the regulations, which would eliminate  
10 typographical and grammatical errors.

11           Another goal of the review was to address concerns  
12 that had developed with respect to the adequacy of  
13 responses to microbiological contamination when the  
14 contamination did not involve bacteriological organisms.

15           Another concern was that the regulations provide  
16 clear information about the type of resampling that  
17 should occur in certain circumstances.

18           Finally, the Illinois EPA wanted to address the  
19 dilemma of many public water supplies ("supplies") in the  
20 State that seek permits to expand their systems. These  
21 supplies are in violation of 35 Ill. Adm. Code 330.

22           However, the supplies are not in violation of a  
23 proposed new standard for radium. The State must adopt  
24 this standard when it is finally promulgated by the

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1 United States Environmental Protection Agency ("U.S.  
2 EPA").

3 The adoption of the proposed standard has been  
4 repeatedly delayed for reasons unrelated to the proposed  
5 radium levels. While the federal action is pending, the  
6 Illinois EPA may not issue permits to construct new water  
7 mains that would expand the distribution system of the  
8 affected supplies.

9 The supplies must seek variances from the restricted  
10 status provisions of the Board's regulations. These  
11 factors create a situation in which supplies seeking to  
12 obtain permits must obtain variances from the Standards  
13 of Issuance regulations. Variances involve a formal  
14 procedure before the Board.

15 Delay and unnecessary expenditures have been created  
16 by the failure of the U.S. EPA to act in a timely  
17 fashion.

18 The purpose of this testimony is to set forth the  
19 reasons behind the Illinois EPA's proposed amendments of  
20 35 Ill. Adm. Code 601.101, 602.105, 602.106, 603.103,  
21 603.104, 607.103 and 607.104 and to explain the process  
22 by which the Illinois EPA concluded the regulations  
23 should be amended.

24 My testimony will provide a detailed summary of the

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1 results of the review and the proposed amendments in the  
2 next section.

3 III. Regulatory Sections

4 Section 601.105 - Definitions

5 In reviewing the regulations, the Illinois EPA  
6 determined that several definitions needed slight  
7 modification to reflect the current concerns in  
8 protection of public water supplies.

9 The first area of concern is demonstrated by the  
10 definition of "Boil Order." A supply issues a boil water  
11 order when circumstances are such that the supply is,  
12 based on microbiological samples, contaminated or when  
13 the conditions are such that the supply is subject to  
14 microbiological contamination that will be killed by  
15 boiling the potable water for a specific length of time.  
16 Thus, the purpose of the "Boil Order" is to protect the  
17 consumers from known and potential contamination.

18 Currently the definition of "Boil Order" applies  
19 only to supplies that have become contaminated with  
20 "bacteriological" organisms.

21 Contamination with microbiological organisms other  
22 than bacteriological organisms should also trigger a boil  
23 order. Cryptosporidium, giardia lamblia and viruses are  
24 examples of microorganisms that may be killed by boiling

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1 water and that are not bacterial in nature.

2 In recent years incidents of contamination with  
3 cryptosporidium and giardia, outside of the State of  
4 Illinois, have raised the awareness of the public, public  
5 water supplies, and the regulating agencies to the risks  
6 associated with nonbacteriological contamination of  
7 potable water.

8 A first-line emergency measure is to boil the water  
9 for five minutes prior to use for drinking and domestic  
10 purposes when contamination has been found. This  
11 practice is currently being followed in Illinois.

12 Clarifying that boiling water is effective for more  
13 than bacterial contamination and that it will kill  
14 microbes such as viruses, amoebas and parasites will  
15 provide a more accurate description of the circumstances  
16 under which a boil order should be issued.

17 As written, the definition of "Boil Order" only  
18 applies to "bacteriological" organisms. The scope of  
19 this definition should be expanded to include all  
20 "microbiological" organisms. The term "microbiological"  
21 includes bacteriological organisms as well as other  
22 nonbacteriological microorganisms that may enter a water  
23 supply.

24 A second definition that needs revising is the

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1 definition of "persistent contamination." Persistent  
2 contamination exists in a supply when the supply  
3 initially analyzes a set of routine samples, those  
4 samples are coliform positive and three or more  
5 subsequent sampling events reveal that the potable water  
6 in the supply still contains contamination.

7 The subsequent sampling events are not routine  
8 samples taken during the time periods required in the  
9 regulations but are samples taken to confirm the  
10 continued existence of contamination.

11 The term "check sample," as is currently used in the  
12 definition of "persistent contamination," is a term that  
13 was used to indicate follow-up samples taken to confirm  
14 contamination used in the original coliform regulations.

15 When the new total coliform regulations were adopted  
16 in R88-26, the term used to define samples used to  
17 confirm contamination was changed to "repeat".

18 The method of collecting repeat samples was also  
19 changed to provide data that is statistically more  
20 significant. There are no longer any bacteriological  
21 samples that are defined as "check."

22 Modification of the definition of "persistent  
23 contamination" by changing the term "check samples" to  
24 "repeat samples" will be consistent with currently used

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1 terminology and will verify that the system is  
2 contaminated on an ongoing or persistent basis.

3       When coliform contamination persists in a supply,  
4 the supply must initiate a boil water order. Under the  
5 provisions of 35 Ill. Adm. Code 607.103, the boil order  
6 must remain in effect until the supply can demonstrate  
7 that the water is safe for domestic use.

8       Under the provisions of Section 17(b) of the  
9 Illinois Environmental Protection Act ("Act"; 415 ILCS  
10 5/17(b)), a supply that has a history of persistent  
11 contamination is not eligible for an exemption from the  
12 requirement that the supply chlorinate its potable water.

13       Under the provisions of Section 653.607 of the  
14 Illinois EPA's rules governing public water supplies, the  
15 decision to grant an exemption is based in part upon the  
16 determination that a supply is not subject to persistent  
17 contamination.

18       Under provisions of Section 653.608, a supply which  
19 has an exemption from mandatory chlorination must have  
20 that exemption revoked should persistent contamination  
21 develop.

22       Additionally, the terminology change will make the  
23 definition match the definition in 35 Ill. Adm. Code 611.  
24 The total coliform rules refer to a "repeat sample" to

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1 confirm contamination.

2       The effect of the clarification will be to simplify  
3 the regulations by eliminating old terminology and  
4 adopting terminology consistent with that utilized by the  
5 U.S. EPA.

6       Though the Board is not required to utilize  
7 consistent terminology in 35 Ill. Adm. Code 601 through  
8 607 and 35 Ill. Adm. Code 611, consistency in definitions  
9 will aid the regulated community in utilizing the  
10 regulations and the Illinois EPA in implementing the  
11 regulations.

12       A third definitional concern is found in the scope  
13 of the definition of "Certified Laboratory." The  
14 definition of "Certified Laboratory" does not include all  
15 of the State agencies that certify laboratories.

16       When the Board adopted the definition of "Certified  
17 Laboratory" in 35 Ill. Adm. Code 601.105, the  
18 radiological laboratory certification program was  
19 administered by the Illinois Department of Public Health.

20       Subsequently, the Illinois Department of Nuclear  
21 Safety was created and, pursuant to a Memorandum of  
22 Agreement between it and the Illinois EPA, given the  
23 authority to certify laboratories for analyses of  
24 radionuclides in drinking water.

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1           The definition of "Certified Laboratory" should be  
2 updated to include all of the State agencies that certify  
3 laboratories.

4           A fourth definition that should be reviewed is the  
5 definition of "Recurring Contamination." Recurring  
6 contamination occurs when a supply has total coliform  
7 positive analyses results in one or more samples in a  
8 routine sampling set during four or more sampling periods  
9 in a calendar year.

10           A determination that a supply is subject to  
11 recurring contamination may be used as the basis to  
12 revoke a chlorination exemption or to refuse to issue an  
13 exemption from mandatory chlorination (415 ILCS 5/17; 35  
14 Ill. Adm. Code 653.607).

15           A determination that a supply is subject to  
16 recurring contamination is distinct from a determination  
17 that a supply is subject to persistent contamination.  
18 During routine sampling, a supply may have coliform  
19 negative sample sets intermixed with coliform positive  
20 sample sets through the year.

21           As the definition of "Recurring Contamination" is  
22 written, it provides an opportunity for uneven  
23 application of a determination of recurring  
24 contamination.

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1           A supply that has three instances of contamination  
2           occurring late in the calendar year would be allowed to  
3           start over with a "clean" slate for purposes of a  
4           recurring contamination determination in the new calendar  
5           year.

6           The Illinois EPA could not make a determination of  
7           recurring contamination until the supply had incurred  
8           potentially up to seven sets of coliform positive routine  
9           samples.

10           The use of the term "calendar year" in the  
11           definition, thus, provides for uneven protection of  
12           public health by allowing varying lengths of time that  
13           contamination may exist before a supply must follow the  
14           provisions of 35 Ill. Adm. Code 607.103, would be subject  
15           to the loss of any chlorination exemption or would have  
16           an exemption request denied by the Illinois EPA.

17           By substituting the timeframe "twelve consecutive  
18           month period" for calendar year, the Board will increase  
19           protection to public health and equalize application of  
20           the regulations to community water suppliers.

21           The final definition that the Illinois EPA proposes  
22           that the Board amend is the definition of "resell water."  
23           The Illinois EPA proposes modifying the definition of  
24           "resell water" to "sell water."

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1           Amendment of the definition of "resell water" to  
2 "sell water" will provide identity between the  
3 definitions of 35 Ill. Adm. Code 601.105 and the  
4 terminology of 35 Ill. Adm. Code 611.100.

5           In 35 Ill. Adm. Code 611.100, the Board has provided  
6 that certain supplies are exempt from the water quality  
7 regulations if the supplies meet the exemption criteria  
8 in 35 Ill. Adm. Code 611.100.

9           One of those criteria is that the supply not sell  
10 water. The regulations do not define the term "sell  
11 water." The Illinois EPA proposes modifying the  
12 definition of "resell water" to "sell water" to reduce  
13 confusion and to provide identity between the terminology  
14 of 35 Ill. Adm. Code 611 and 35 Ill. Adm. Code 601.

15           The result of this amendment should be to simplify  
16 application of the provisions of 35 Ill. Adm. Code 611 by  
17 clarifying when systems meet its applicability  
18 requirements.

19           35 Ill. Adm. Code 602.105 Standards of Issuance and  
20 35 Ill. Adm. Code 602.106 Restricted Status

21           The dilemma of the supplies that exceed the current  
22 radium standard but that do not exceed the federally  
23 proposed radium standard and must obtain variance from  
24 the Standards of Issuance regulations prior to obtaining

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1 construction permits has been previously mentioned. A  
2 brief review of the interaction of the permit process and  
3 explanation of the delay may be helpful.

4 The Illinois EPA proposes amendment of 35 Ill. Adm.  
5 Code 602.105 and 602.106 to exempt supplies exceeding the  
6 radium maximum contaminant levels ("MCL") from the  
7 restricted status and the Standard of Issuance  
8 requirements of the above regulations.

9 Section 15 of the Act (415 ILCS 5/15) provides that  
10 an owner of a public water supply must submit plans and  
11 specifications to the Illinois EPA and receive permits  
12 prior to construction, additions or changes to the public  
13 water supply ("supply").

14 Section 602.105 of the Board regulations governing  
15 public water supplies provides that the Illinois EPA  
16 shall not grant construction or operating permits to a  
17 supply, unless the applicant can provide proof that the  
18 supply will be constructed, operated or modified so as to  
19 not cause a violation of the Act or the regulations (35  
20 Ill. Adm. Code 602.105).

21 Section 602.106 of the Board regulations governing  
22 public water supplies states that restricted status is an  
23 Illinois EPA determination that a supply can no longer be  
24 issued a construction permit without causing a violation

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1 of the Act (35 Ill. Adm. Code 602.106.)

2 Section 611.330 of the Board regulations governing  
3 public water supplies (35 Ill. Adm. Code 611.330)  
4 provides that the combined MCL for radium-226 and  
5 radium-228 is 5 picoCuries per liter ("pCi/L"; 35 Ill.  
6 Adm. Code 611.330(a)) and 15 pCi/L for gross alpha  
7 particle activity (35 Ill. Adm. Code 611.330(b)).

8 This standard is based upon the National Primary  
9 Drinking Water Standard for radium adopted pursuant to  
10 the Safe Drinking Water Act ("SDWA"; 42 U.S.C. 300f et  
11 seq.).

12 Under the terms of Section 17.5 of the act (415 ILCS  
13 5/17.5), the Board shall adopt regulations that are  
14 identical in substance to federal National Primary  
15 Drinking Water Standards adopted pursuant to the SDWA.

16 Section 17.6 of the Act (415 ILCS 5/17.6) requires  
17 the Board to adopt the enforceable standards for  
18 radium-226, radium-228 and gross alpha particle activity  
19 as promulgated by the U.S. EPA.

20 Therefore, Illinois must adopt the federal radium  
21 and gross alpha particle activity standards as  
22 promulgated by U.S. EPA.

23 On July 18, 1991, the U.S. EPA proposed amendment of  
24 the radiological National Primary Drinking Water

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1 Standards for drinking water supplies (56 Fed. Reg.  
2 33,050 (July 18, 1991)).

3 The proposal acknowledged that scientific analysis  
4 of the health effects of radium that formed the basis for  
5 the 5 pCi/L standard were very conservative.

6 The proposal noted that the health effects of radium  
7 in drinking water justified increasing the standard for  
8 radium-226 to 20 pCi/L and for radium-228 to 20 pCi/L.  
9 Subsequent studies also indicate justification for the  
10 increased standard.

11 Public hearings on the proposed standard began on  
12 September 6, 1991. Originally, the Illinois EPA  
13 anticipated that a new National Primary Drinking Water  
14 Standard for radiological contamination would be adopted  
15 in September 1995.

16 In an amended consent order in "Miller v. Browner,"  
17 No. 89-6328HO (D.C. Or., 1990, amended order February 22,  
18 1994), the Federal District Court for Oregon ordered the  
19 U.S. EPA to take final action on the radiological rule  
20 with respect to the radium-226 and radium-228 standards  
21 no later than April 30, 1995.

22 However, Congress prohibited funding, during fiscal  
23 years 1994 and 1995, necessary for promulgation of a  
24 radon standard. Since radon was part of the radionuclide

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1 proposal, no standards for radium-226 and radium-228 were  
2 adopted.

3 U.S. EPA proposed a modification of the Miller  
4 consent order. The modification extended the deadline  
5 for issuance of final rules until September 15, 1995.

6 U.S. EPA has not yet committed to a time for  
7 developing a new promulgation schedule. Currently U.S.  
8 EPA indicates that a complete review of the rule is  
9 necessary to update the proposal. It intends to set a  
10 schedule in October 1996.

11 Since 1991 the Illinois EPA has taken formal  
12 enforcement action against all supplies which exceed the  
13 combined radium-226, radium-228 and adjusted gross alpha  
14 particle activity standards above the proposed levels.

15 Those supplies that exceed the 5 pCi/L combined  
16 level or 15 pCi/L gross alpha particle MCL but that do  
17 not exceed the proposed levels (35 Ill. Adm. Code  
18 611.330) have been placed on restricted status pursuant  
19 to Section 602.106 of the Board regulations governing  
20 public water supplies (35 Ill. Adm. Code 602.106).

21 The Illinois EPA has placed 69 water utilities on  
22 restricted status because of the radium MCL violation.  
23 Restricted status prevents a supply from receiving a  
24 permit from the Illinois EPA to expand its system.

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1           However, a supply may petition the Board for a  
2           variance from restricted status (415 ILCS 5/35). Of the  
3           69 water utilities in violation of the current standard,  
4           34 have variances from restricted status.

5           The variance procedure is costly for the public  
6           water supplies, expends resources the supplies could  
7           utilize to further other water supply purposes, expends  
8           Illinois EPA resources, and expends Board resources.

9           This rulemaking proposes exempting from the  
10          restricted status regulations those facilities that  
11          currently exceed radium or gross alpha particle activity  
12          MCLs but whose levels of contaminant are in compliance  
13          with proposed federal radium MCLs.

14          This exemption would be for a limited time and  
15          alleviate some of the regulatory burden placed upon  
16          supplies that are waiting for federal action on the  
17          proposed radium MCL.

18          Exemption of certain supplies from the provisions of  
19          35 Ill. Adm. Code 602.105, Standards of Issuance, and 35  
20          Ill. Adm. Code 602.106, Restricted Status, provides a  
21          common sense approach to alleviating the financial and  
22          regulatory burden placed upon supplies by the failure of  
23          the U.S. EPA to adopt the proposed radium and gross alpha  
24          particle standards in a timely fashion.

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1           Public water supplies whose radium levels exceed the  
2    5 pCi/L or whose gross alpha particle levels exceed 15  
3    pCi/L but do not exceed the proposed level of 20 pCi/L  
4    for radium-226, 20 pCi/L for radium-228, or 15 pCi/L for  
5    adjusted gross alpha particle activity are placed in a  
6    position in which their allocation of resources and  
7    community development is being hampered by a federal and  
8    state drinking water standard that will be increased.

9           The variance process is not without cost to the  
10   communities. Prior to this hearing, I compiled  
11   information on variances based upon restricted status  
12   determinations stemming from violations of 35 Ill. Adm.  
13   Code 611.330. Since 1977 the Board has issued 134  
14   variances from restricted status for 83 supplies that  
15   exceeded the 5 pCi/L combined radium standard.

16           Thirty-five (26%) of these water supplies have  
17   received more than one variance. Of the 34 supplies that  
18   currently have variances, 14 (41%) are small systems  
19   serving 3,300 persons or less; 11 (32%) serve populations  
20   ranging from 3,301 to 10,000; and 9 (27%) serve  
21   populations above 10,000.

22           Many of the 34 supplies that currently have  
23   variances from restricted status must periodically renew  
24   their variances. None of the supplies that have a

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1 variance from restricted status exceed the proposed  
2 levels for radium.

3         The variance process is costly for the regulated  
4 community and expends Illinois EPA and Board resources.  
5 The proposed amendments to 35 Ill. Adm. Code 602.105 and  
6 602.106 provide the supplies with permanent relief from  
7 restricted status and the Standards of Issuance  
8 requirements until U.S. EPA adopts new standards for  
9 radium-226, radium-228, and adjusted gross alpha particle  
10 activity.

11         If the Board adopts the amendments to 35 Ill. Adm.  
12 Code 602.105 and 602.106 as proposed, the Board will  
13 alleviate the hardship upon supplies that must seek  
14 renewal of their variances in this matter every few  
15 years.

16         However, the amendments of 35 Ill. Adm. Code  
17 602.105(a) Standards of Issuance and 35 Ill. Adm. Code  
18 602.106(b) Restricted Status will not impact the  
19 supply's responsibility to comply with the notice  
20 requirements of the regulation.

21         Additionally, the supply remains subject to  
22 enforcement for the National Primary Drinking Water  
23 Standard violation. Therefore, the State of Illinois is  
24 not subject to loss of its primary enforcement

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1 responsibility under the SDWA.

2 Section 607.103

3 Section 607.103 of the Board regulations addresses  
4 emergency operations. The Illinois EPA proposes  
5 amendment of 35 Ill. Adm. Code 607.103(a) to clarify the  
6 amount of time consumers should boil water prior to its  
7 consumption in order to kill possible microbiological  
8 contamination.

9 The Illinois EPA believed that absent the  
10 clarification, the language could be interpreted that the  
11 consumer should boil water indefinitely until instructed  
12 that the water was safe.

13 Even absent such an interpretation, the language  
14 does not clearly indicate to the supplies the length of  
15 time that consumers should boil water to kill  
16 microbiological organisms.

17 For the same reasons stated in the discussion of the  
18 definition of boil order, the Illinois EPA believes  
19 modifying the term "bacteriological" to "microbiological"  
20 in 35 Ill. Adm. Code 607.103 will provide greater  
21 protection to consumers.

22 The purpose of the amendments of 35 Ill. Adm. Code  
23 607.103(b) is to clarify that all three conditions must  
24 be met to relieve the supply from issuance of a boil

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1 order when potable water falls below 20 pounds per square  
2 inch ("psi") in pressure. When water pressure drops  
3 below 20 psi, contaminants may be drawn into the supply.

4 The intent of this section is to protect the  
5 consumers from the effects of consuming contaminated  
6 water. Therefore, all of the following conditions must  
7 be met prior to waiving the boil order requirement.

8 The supply must issue a boil water order unless:  
9 (1) there is a historical record of adequate chlorine  
10 residual and approved turbidity levels in the area during  
11 the last twelve monthly readings; (2) samples are taken  
12 in the area of the low pressure immediately and twelve  
13 hours later; and (3) chlorine residuals and turbidity are  
14 monitored on an hourly basis for several hours and do not  
15 vary significantly.

16 Under the current punctuation of the subsection, an  
17 interpretation could be raised that any of the Subsection  
18 (b)(3) conditions could justify waiver of the boil order.  
19 The Illinois EPA did not intend that this interpretation  
20 of the criteria for nonissuance of a boil order be  
21 available.

22 The Illinois EPA intended to provide an exemption  
23 from the boil order requirement only when an assurance  
24 could be provided that the water had not become

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1 contaminated by the effect of a drop in water pressure.  
2 Reductions in water pressure may act to pull contaminants  
3 into the system.

4 The effect of this clarification will be to further  
5 protect the public in situations where contaminants may  
6 enter the system. It will not add any burden on supplies  
7 which are currently following all three criteria.

8 Section 607.104

9 Section 607.104(e) of the Board's regulations needs  
10 to be amended to conform to the current regulatory  
11 format. The regulatory cross-references within the  
12 section are no longer valid.

13 Currently 607.104(e) provides that supplies which  
14 have exemptions from chlorination and operator  
15 certification requirements must provide educational  
16 programs regarding cross-connections for consumers.

17 Section 604.402 of the Board regulations, which is  
18 cross-referenced in Section 607.104(e), was repealed.  
19 The cross-reference to Section 603.103 of the Board's  
20 regulations is inaccurate.

21 Section 603.103 of the Board's regulations refers to  
22 operator requirements and references 35 Ill. Adm. Code  
23 603.104 for the exemption. Therefore, the  
24 cross-reference to 35 Ill. Adm. Code 603.103 is in error

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1 and should be replaced with 35 Ill. Adm. Code 607.104.  
2 The chlorination exemption currently cross-referenced as  
3 35 Ill. Adm. Code 604.402 is found in Section 17(b) of  
4 the Act (415 ILCS 5/17(b)).

5 IV. Conclusion

6 I will be happy to answer any questions at this  
7 time.

8 MR. BELL: Good morning. My name is Charles Bell.  
9 I'm the manager of the Field Operations Section of the  
10 Bureau of Water, Illinois Environmental Protection  
11 Agency.

12 Part of my duties include supervision of the field  
13 staff, which consists of 19 technical persons in six  
14 regional offices throughout the State. I'm also  
15 responsible for reviewing and commenting on rules,  
16 regulations, policy and guidance.

17 As part of the process that Connie described earlier  
18 that we went through in reviewing the rules, we  
19 determined that there were several areas in there that  
20 could benefit from clarification.

21 So today I would like to give our reasons for the  
22 changes to some of the definitions in the area of  
23 restricted status and in the area of emergency  
24 operations.

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1           First, in the definitions, one of the definitions in  
2 the rules is for a boil order. The boil order is listed  
3 as being specifically for bacteriological contamination.  
4 A boil order can also be used for other microbiological  
5 contamination.

6           Since the events in Milwaukee, there has been, of  
7 course, quite a concern for cryptosporidium. So boil  
8 orders can be effective in health protection from not  
9 only bacteriological contamination but also viral or  
10 protozoan contamination.

11           Therefore, we're recommending that the reference be  
12 to microbiological contamination rather than  
13 bacteriological contamination.

14           In the definition of persistent contamination, the  
15 definition refers to check samples. In the older version  
16 of the coliform regulations, samples taken to confirm  
17 contamination were called check samples.

18           After the adoption of the new total coliform  
19 regulations, samples taken to confirm contamination are  
20 now called repeat samples.

21           There are some slight differences in the way they  
22 are taken. Check samples were taken on two consecutive  
23 days at the same location. Repeat samples are taken on  
24 the same day with one sample being taken upstream, one at

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1 the same location and one downstream.

2 But to have the definition of persistent  
3 contamination agree with the total coliform regs that are  
4 now in compliance, we recommend that check samples be  
5 changed to refer to repeat samples.

6 The next area is certified laboratory. When the  
7 rules were first adopted, laboratory certification was  
8 the responsibility of the Illinois Environmental  
9 Protection Agency and the Illinois Department of Public  
10 Health. At that time the nuclear or radiological  
11 laboratory was under the Department of Public Health.

12 After the formation of the Department of Nuclear  
13 Safety, that laboratory and their equipment was moved to  
14 the Department of Nuclear Safety.

15 That's where the expertise now lies, and, therefore,  
16 we recommend that the Department of Nuclear Safety be  
17 added to the lab certifying because we use their  
18 expertise for certain radiological labs.

19 Another term is recurring contamination. Recurring  
20 contamination is different from persistent contamination.  
21 Persistent contamination means that there is  
22 contamination that is verified to be there over a certain  
23 period of time. Recurring refers to an intermittent type  
24 contamination that seems to come and go.

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1           The intent on this was that -- this applies  
2 primarily to the area of exemptions from the chlorination  
3 regulations. The intent was that if a supply had  
4 recurring contamination four or more times during the  
5 year, they should not have a chlorination exemption.

6           However, with the current reference to a calendar  
7 year, a supply could conceivably have six contaminations  
8 in a six-month period and still not exceed the four in  
9 one calendar year.

10           So for benefit of consistent application, we're  
11 recommending that calendar year be changed to  
12 12-consecutive-month period.

13           The next one is the definition of "resell water."  
14 We're recommending that the term be changed to "sell  
15 water" instead.

16           In 611.101, I think it is, there is a reference to  
17 supplies that are exempt from the requirements of Section  
18 611. One of these requirements is that the supply not  
19 sell water to anyone.

20           There is no definition of sell water. However, the  
21 definition of resell water is the definition that was  
22 intended there, and so we would like to change that to  
23 "sell water" rather than "resell water."

24           Okay. In the restricted status area for radium-226

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1 and 228, the intent, of course, is that supplies be put  
2 on restricted status if they exceed one of the Board's  
3 maximum contaminant levels.

4 However, in the area of radium, there is currently a  
5 5-picoCurie-per-liter standard. There is also a U.S. EPA  
6 proposal that those standards be changed so that the  
7 standard for radium-226 be 20 picoCuries per liter and  
8 228 also be 20 picoCuries per liter.

9 This has put a number of water supplies in the State  
10 in question. They have levels of radium that lie between  
11 the current standard and the proposed one. Therefore,  
12 through our regulations we must put them on restricted  
13 status, which keeps them from extending their service.

14 Just a little history, and this is different than in  
15 my prefiled testimony. This is an update of that. There  
16 are currently 78 public water supplies exceeding the  
17 radiological standards. Of these 46 are on restricted  
18 status, and 32 have a variance from restricted status.

19 Over the past ten years or so there have been 134  
20 variances from restricted status for radium and gross  
21 alpha issued. This affected 83 public water supplies  
22 with 35 of these water supplies having more than one  
23 variance.

24 What we are proposing is that the water supplies

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1 which exceed the current radiological standard but do not  
2 exceed the proposed standard not be placed on restricted  
3 status until U.S. EPA publishes a final standard in this  
4 area.

5 The next area is emergency operation. Under the  
6 current requirement for boil orders, there is no time  
7 specified for the time that water needs to be boiled to  
8 make it safe. So we would like to add a time of five  
9 minutes to this.

10 The way it's currently written, it could be  
11 interpreted that you have to boil continuously until the  
12 boil order is lifted.

13 There is another area there that is an exemption  
14 from issuing a boil order for a loss of pressure. We  
15 recommended some changes to that in punctuation to make  
16 it clear that all three of the criteria must be met, not  
17 just any one of them.

18 The last area I'd like to address is water supplies  
19 that are exempt from educational programs. In there  
20 there is a reference to Section 603.103. This reference  
21 should be corrected to read 603.104.

22 There is also a reference to Section 604.402. That  
23 section has been repealed, and the reference should be  
24 changed to Section 17(b) of the Act.

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1           That concludes my summary.  If there are any  
2           questions, I'd be happy to answer them.

3           MEMBER FLEMAL:  Thank you, Charlie.

4           Aside from the restricted status provision that you  
5           address, is it your understanding that all of the other  
6           amendments that you're proposing today are basically in  
7           the nature of housekeeping?

8           They would not change requirements applicable to  
9           anybody but simply clarify a practice that's currently in  
10          effect?

11          MR. BELL:  That's correct.  They would clarify the  
12          terminology or practices that we're currently following  
13          already.

14          MEMBER FLEMAL:  I'd like to note, again, from our  
15          perspective -- and I can speak for the Board fully in  
16          this case -- the regulations develop over long periods of  
17          time, and things change just by evolution sometimes.  
18          Former language goes out of date or references go out of  
19          date.

20          We really appreciate the effort that the Public  
21          Water Supplies Division has invested in this kind of  
22          housekeeping attention to our regulations.  It makes  
23          ultimately for better government if we have regulations  
24          that are in fact clean and up to date, and we appreciate

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1 the effort you've done.

2 We're hoping that ultimately all of the Board's  
3 regulations see this kind of scrutiny; and, again, if  
4 there are any missionaries out there who want to talk to  
5 other divisions and bureaus in the Agency to do the same  
6 sort of thing, I'm sure the Board would love to see this  
7 kind of attention to the rules. It's just a good idea.

8 HEARING OFFICER MC CAMBRIDGE: I have a question.

9 You cite a Federal District Court case from Oregon,  
10 "Miller versus Browner."

11 Do you have copies of the orders in that?

12 MR. BELL: I don't personally.

13 Do you, Connie?

14 MS. TONSOR: I have copies. They are referenced in  
15 all the Federal publications, too. We can get you copies  
16 of orders.

17 I believe that they are -- I believe "Miller versus  
18 Browner" is an attachment. Let me check to make sure.  
19 As a matter of fact, it's Attachment C to the proposal  
20 which we filed with you on September -- I believe it was  
21 filed September 1st or 4th, the amended proposal.

22 There is recently an update to "Miller versus  
23 Browner," I think, and I can get that.

24 HEARING OFFICER MC CAMBRIDGE: Thank you.

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1 I will note that attached to the Agency's prefiled  
2 testimony for Mr. Bell is a copy of his personal  
3 resume -- professional resume. I'm marking that as  
4 Exhibit 3.

5 (The document was thereupon marked Exhibit No.  
6 3 for identification as of October 25, 1996.)

7 Are there any objections to its admission to the  
8 record?

9 Seeing none, it is Exhibit 3 in this proceeding.  
10 Any further questions of the witness?

11 Seeing none, thank you, Mr. Bell.

12 I have a question for the Agency, just a matter for  
13 clarity here: I note that Page 3 of your motion to file  
14 your second amended petition cites that the amendments to  
15 Section 620.420(b)(1) and 620.450(b)(2) are the only  
16 amendments in your second amended petition, the only new  
17 matter that was introduced?

18 MS. TONSOR: Those are the only new matters.

19 HEARING OFFICER MC CAMBRIDGE: Thank you.

20 While we have the Agency witnesses, is there anyone  
21 here that wishes to ask any questions of the Agency  
22 witnesses?

23 Seeing no one, is there anyone that has a question  
24 of a general nature regarding this proceeding to direct

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1 to the Agency, meaning Ms. Tonsor?

2 Seeing none, that's all I have, Ms. Tonsor.

3 MS. TONSOR: That's all the Agency has.

4 HEARING OFFICER MC CAMBRIDGE: Very good.

5 I asked earlier and I am asking again at this time:

6 Is there anyone here from the Children of DeKalb?

7 Is Miss Doriane Berg here? I see no response.

8 The Children of DeKalb, under the signature of  
9 Doriane Berg, submitted a prefiled testimony in this  
10 proceeding. She is not present to admit this testimony  
11 into the record as testimony, so we cannot do that.

12 However, I will -- if she shows up at the October  
13 30th hearing, she is free to seek its admission as  
14 testimony.

15 However, I am going to submit it into the record as  
16 a public comment. I cannot assign that a public comment  
17 number here, but I will submit it to the Clerk of the  
18 Board to enter the record as a public comment.

19 I asked earlier, I'm asking again: Is Jeffrey S.  
20 Plyman or anyone from the City of Joliet present?

21 I see no response.

22 The Board received a prefiled testimony in the form  
23 of an affidavit of Mr. Plyman. Mr. Plyman is not here,  
24 so that it cannot be admitted into the record as if read.

1           Therefore, again, Mr. Plyman is free to attend the  
2           October 30th hearing and seek its admission. I will  
3           submit it to the Clerk of the Board as a public comment.

4           Now, is there any other person here that wishes to  
5           participate on the record?

6           Yes, sir. Could you step forward and be sworn and  
7           identify yourself.

8                         (The witness was thereupon duly sworn.)

9           MR. ZIMMERMAN: My name is Matthew Zimmerman,  
10          Z-i-m-m-e-r-m-a-n. I'm the Village administrator for the  
11          Village of Elburn in Kane County, Illinois, address 301  
12          East North Street, Elburn, Illinois, 60119. I am here on  
13          behalf of the Village Board of the Village of Elburn  
14          regarding this hearing.

15          We are one of the communities that are currently on  
16          restricted status. We currently have a variance. We had  
17          one initially in 1988, a temporary one I should state.

18          We were granted one in 1990 subject to starting to  
19          take actions towards meeting the standards that currently  
20          are in place at 5 picoCuries per liter, which we have  
21          done so.

22          We were granted another variance in 1995 as well  
23          since we had proven we had taken steps towards trying to  
24          meet the standards under 5 picoCuries per liter.

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1           We currently -- we do our testing as required on a  
2           quarterly basis. Currently our water supply is operating  
3           somewhere between 15 and 20 picoCuries per liter. It  
4           obviously varies each time we do the testing.

5           I'd like to testify in support of the petition by  
6           the Illinois Environmental Protection Agency specifically  
7           pertaining to their proposal to not place water supplies  
8           on restricted status until the new rules are promulgated.

9           The reason why I state that is, first of all,  
10          obviously, they've done a lot of research in this  
11          particular matter. They seem to be comfortable that the  
12          new standards may be promulgated. Clearly our water  
13          supply is under what is the proposed promulgated rules.

14          Meanwhile, in an effort to meet the standards, the  
15          Village has had to take a lot of time and money to do so.  
16          In 1990, as part of the efforts to be brought into  
17          compliance, we issued \$975,000 in bonds in order to sink  
18          a new well in an effort to get water which has lower  
19          radium in it than from the one well that we have -- or  
20          had at that time in operation.

21          We have also designed plans for a facility, which we  
22          have not yet had to construct, to bring it into  
23          compliance.

24          To give you a comparison, we issued \$975,000 in

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1 bonds, which will take us 20 years to pay off. This year  
2 we have adopted a \$2 million budget. So you can see that  
3 this is a very onerous standard right now, 5 picoCuries  
4 per liter.

5 It will probably take us at least another \$2 million  
6 to be brought into compliance of 5 picoCuries per liter.  
7 We don't know the exact figure yet because by the time we  
8 actually build it, prices will change. We feel at this  
9 point \$2 million is probably a fairly reasonable guess if  
10 it were to be built sometime in the near future.

11 In addition, we are on restricted status. Our  
12 community is small right now, approximately 1,800 people.  
13 It's the Village's desire to see some moderate growth in  
14 order to provide additional services to our residents,  
15 both by bringing in some additional commercial accounts,  
16 which will then have more services for our residents.

17 In addition, that will generate more tax revenue,  
18 which will then allow the local government to provide  
19 additional services, police, fire, public works, those  
20 kinds of things.

21 Under the restricted status, I get calls all the  
22 time -- as the administrator, I'm in charge of overseeing  
23 review of all new development. I get calls all the time  
24 from developers saying: Can we build in your town? Can

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1 we expand? We see you're on the restricted status.

2 I explain to them that we have a variance and that  
3 we presume that we will be allowed to do so subject to  
4 the IEPA granting permits. However, that may change.

5 If we -- if our variance, when it expires in the  
6 year 2,000, is not renewed or the standards are not  
7 changed, it will be very -- basically there is no way  
8 we're going to get down to 3 to 5 picoCuries per liter  
9 unless we build this \$2 million worth of equipment.  
10 That's going to strangle growth in our community. That  
11 is a real concern to the Village Board of the Village of  
12 Elburn.

13 Lastly, because we are on restricted status, the  
14 Pollution Control Board has issued conditions, which I'm  
15 sure they do for all the communities, in terms of  
16 notification requirements which we comply with.

17 However, that also is somewhat onerous on an  
18 organization our size. We currently only have twelve  
19 full-time employees; and in order to meet the  
20 notification requirements, that takes us approximately 25  
21 manhours each year to do that, which equates to about  
22 \$2,500, again, out of our budget.

23 Plus, we have approximately \$1,000 a year in  
24 out-of-pocket costs. Our notice requirements, besides

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1 printing our current radium numbers on our water bills,  
2 we're required to send notices to all of our water  
3 customers, to all local doctors, day care centers, so on  
4 and so forth. To do so requires the preparing, the  
5 copying, getting it all typeset, postage, so on and so  
6 forth. That costs approximately \$1,000 out of our  
7 budget.

8 Again, out of a small budget -- we have  
9 approximately a \$900,000 operating budget this year.  
10 \$1,000 isn't a lot, but it does take its effect in order  
11 to meet a very onerous standard.

12 We support this petition and would encourage the  
13 Pollution Control Board to adopt them. I'll be glad to  
14 answer any questions if you have them.

15 HEARING OFFICER MC CAMBRIDGE: Are there any  
16 questions of the witness? Dr. Flemal?

17 MEMBER FLEMAL: Mr. Zimmerman, you make note of  
18 some of the requirements that flow from the Board's order  
19 in which the variance was granted.

20 Some of those requirements are expressed in the  
21 Board's order but have either regulatory or statutory  
22 bases beyond what is being proposed to us today.

23 I'm starting off addressing this to you. Perhaps  
24 maybe it's the Agency who could enlighten both of us on

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1 this matter.

2 To what extent, in the kind of standard order that's  
3 been evolved in the radium variances, would a supplier  
4 who is in excess of 5 picoCuries per liter still be  
5 required to comply if this action was in fact taken?

6 MS. TONSOR: I'll let Mr. Bell address any parts of  
7 the question that I can't answer for you.

8 The proposal today will not affect the obligation of  
9 a community to provide notice to its consumers. So they  
10 will still need to provide public notice of exceeding the  
11 5-picoCurie-per-liter standard.

12 Inasmuch as that is incorporated in, I believe, all  
13 of the variances as a condition, we would still, even  
14 outside of the variance, be requiring the systems to  
15 provide notice to their consumers.

16 MEMBER FLEMAL: That is because there is a Federal  
17 requirement that controls here for a notice of that sort?

18 MS. TONSOR: Yes, sir. There is both a Federal and  
19 a State requirement that provides note that one must  
20 provide public notice of an exceedance of the MCL.

21 Mr. Bell, are you aware of other variance  
22 conditions?

23 MR. BELL: Yes. Usually in the variance we -- or  
24 the Board requires that the water supplies notify their

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1 consumers or that they have a variance from restricted  
2 status.

3 Of course, if they didn't have to have a variance,  
4 they would not have to make that particular notice.

5 MEMBER FLEMAL: Communities also have reporting  
6 requirements, that is, a periodic report that flows to  
7 the IEPA.

8 I assume that, again, if we took the action here  
9 proposed to us, that requirement would still stay as long  
10 as anybody was above the MCL; is that correct?

11 MR. BELL: That is correct.

12 MEMBER FLEMAL: Again, because that flows from the  
13 combination of Federal and State requirements that any  
14 exceedances trigger the report requirement?

15 MS. TONSOR: Correct.

16 The focus of our proposal today deals specifically  
17 with the Standards of Issuance and restricted status.  
18 It's not intended in any way as an Agency effort to  
19 remove or change or alter the MCL or any of the  
20 requirements for reporting and notification which would  
21 go along with an MCL violation or exceedance.

22 HEARING OFFICER MC CAMBRIDGE: Any further  
23 questions?

24 I have one: Do you have any idea how much it costs

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1 the Village to obtain your variances?

2 MR. ZIMMERMAN: We did have to have the Village  
3 engineer, which we contract out with, prepare the next  
4 report.

5 I would estimate somewhere around \$1,000, but it was  
6 approximately a year and a half ago. So that figure  
7 doesn't come to mind off the top of my head, but probably  
8 somewhere around \$1,000 is a pretty good estimate, I  
9 would say.

10 HEARING OFFICER MC CAMBRIDGE: Thank you.

11 Are there any further questions of this witness?

12 Thank you, Mr. Zimmerman.

13 MR. ZIMMERMAN: Thank you.

14 HEARING OFFICER MC CAMBRIDGE: That question I  
15 would also turn to the Agency.

16 If the Agency could, at some point in this  
17 proceeding, submit some estimate of what it costs for you  
18 to participate in a variance proceeding, I think it would  
19 be helpful.

20 MS. TONSOR: A specific dollar cost might be hard  
21 to obtain. However, as Exhibit G of the proposal -- I  
22 believe it's Exhibit G -- there was attached an hourly  
23 estimate of time expenditure. I don't find it as exhibit  
24 G. However, we have attached and we will supplement our

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1 proposal with information on time.

2           Additionally, the Agency has contacted several  
3 members of the regulated community and is conducting an  
4 informal survey, if you will, and asking them to  
5 participate by providing to the Board estimates of what  
6 their cost is for the variance procedure.

7           In a large community the cost may be more. If the  
8 variance is not objected to, it will be less.

9           We have received one response and are planning on  
10 filing all of those responses as a comment with the Board  
11 when we receive them.

12           HEARING OFFICER MC CAMBRIDGE: Is there any other  
13 person present wishing to participate on the record?

14           I see no one.

15           Before we continue this, I will announce that the  
16 next scheduled public hearing in this matter is scheduled  
17 for Wednesday, October 30th, at 10:00 AM at 201 Municipal  
18 Center West, Council Chambers, on the third floor at 7th  
19 Street and Monroe in Springfield.

20           Yes, sir?

21           MR. KONEN: The Board's page on the Internet was  
22 saying it was going to be at 10:00 o'clock here next  
23 Wednesday.

24           THE NOTARY: May I have your name, please?

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1 MR. KONEN: Tom Konen with the Village of North  
2 Aurora.

3 HEARING OFFICER MC CAMBRIDGE: The Board's Internet  
4 page?

5 MR. KONEN: Yes, Illinois Pollution Control Board.

6 HEARING OFFICER MC CAMBRIDGE: That's incorrect.  
7 It is scheduled for hearing in Springfield.

8 MEMBER MC FAWN: Thank you for pointing that out to  
9 us.

10 HEARING OFFICER MC CAMBRIDGE: With that, there is  
11 no one here who has anything for the record? Going once,  
12 twice, three times.

13 We will continue this until next Wednesday, 10:00 AM  
14 in Springfield.

15 (Which were all of the proceedings had in the  
16 above-entitled matter, adjourning at 11:15  
17 a.m.)

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1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF DU PAGE )

3

4 I, Jean S. Busse, Certified Shorthand Reporter  
5 No. 84-1860, Registered Professional Reporter, a Notary  
6 Public in and for the County of DuPage, State of  
7 Illinois, do hereby certify that I reported in shorthand  
8 the proceedings had in the above-entitled matter and that  
9 the foregoing is a true, correct and complete transcript  
10 of my shorthand notes so taken as aforesaid.

11 IN TESTIMONY WHEREOF I have hereunto set my  
12 hand and affixed my notarial seal this \_\_\_\_\_ day of  
13 \_\_\_\_\_, A.D. 1996.

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\_\_\_\_\_  
Notary Public

17

18 My Commission Expires

19 June 3, 1997.

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