

1 APPEARANCES:

2

Board Members Present:

3

Board Member G. Tanner Girard, Ph.D.

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Board Member Nicholas J. Melas

Board Member Lynne P. Padovan

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Board Staff Members Present:

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Ms. Alisa Liu, P.E.

8

Mr. Anand Rao

9

10

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

11

BY: Ms. Joey Logan-Wilkey and

Mr. Stephen C. Ewart

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Springfield, Illinois 62794-9276

On behalf of the Illinois EPA

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EXHIBITS

NUMBER	MARKED FOR I.D.	ENTERED
Hearing Exhibit 2	8	8
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1 HEARING OFFICER MCGILL: Good afternoon, and
2 welcome to the Illinois Pollution Control Board.
3 My name is Richard McGill. I'm the hearing officer
4 for this board rulemaking.

5 The board is considering the Illinois
6 Environmental Protection Agency's proposal to amend
7 the board's permitting rules for public water
8 supplies. The board has captioned this rulemaking:
9 In the Matter of Amendments 35 Illinois
10 Administrative Code 602.105, 602.106, 602.108, and
11 602.115. The docket number is R03-21.

12 On April 17th of this year, the board accepted
13 this proposal for hearing. Today is our second
14 hearing. We had a hearing last week in Springfield
15 at the board's offices. And the transcript for the
16 first hearing has been on our Web site since
17 Monday. And I've got some hard copies there at the
18 back of the room of that hearing transcript. At
19 this point there are no further hearings scheduled
20 in this rulemaking.

21 Also present on behalf of the board on my far
22 left is member Nicholas Melas. On my immediate
23 left is member Lynne Padovan. She's the lead board
24 member on this rulemaking. And on my right is a

1 scientist from our technical unit, Alisa Liu.

2 Today's proceeding will be governed by the
3 board's procedural rules. All evidence that is
4 relevant and not repetitious or privileged will be
5 admitted into the record.

6 We will begin with the agency's testimony.
7 After that, we're expecting to hear testimony from
8 the city of West Chicago, city of Joliet, and
9 Mr. Roy Harsch of the law firm of Gardner, Carton, &
10 Douglas. Following that, anyone else will have an
11 opportunity to testify, time permitting. And I
12 don't anticipate that being a problem.

13 Can we just go off the record for one moment?

14 (Discussion had off the record.)

15 HEARING OFFICER MCGILL: Back on the record,
16 please.

17 I just wanted to note for the record that
18 we've been joined by member Tanner Gerard.

19 As far as the order of things, I'll just
20 reiterate we're going to start off with the
21 agency's testimony. There will be an opportunity
22 for questions of the agency's witnesses. Anyone
23 can ask questions: The board, anyone in the
24 audience.

1 After that, as I mentioned, we're excepting to
2 hear testimony from the cities of West Chicago and
3 Joliet and the testimony of Mr. Roy Harsch of
4 Gardner, Carton, & Douglas. After each of those
5 individuals testify, there will be an opportunity
6 for questioning as well. All persons who testify
7 are sworn in and, as I indicated, may be asked
8 questions.

9 Finally, we'll take up, as we are required to
10 under the Environmental Protection Act, the
11 Department of Commerce and Community Affairs, the
12 economic impact study issue -- the Department of
13 Commerce and Community Affairs, or DCCA, did not
14 conduct an economic impact study on this
15 rulemaking, and their explanation for not
16 conducting one will be the subject of one of the
17 last portions of our hearing today. I'll note the
18 name change of DCCA when we get to that eventful
19 point of the hearing.

20 I will finish up with a few procedural items,
21 including setting a first notice public comment
22 filing deadline.

23 I'd ask everyone who's testifying or asking
24 questions if they would please speak up for the

1 court reporter, and we'll try not to talk over each
2 other so our transcript can be accurate.

3 Any questions about the procedures we'll
4 follow today?

5 (No audible response.)

6 HEARING OFFICER MCGILL: Seeing none, I would
7 ask the court reporter if you would go ahead and
8 swear in the agency's witnesses...

9 (Witnesses sworn.)

10 HEARING OFFICER MCGILL: If the agency would
11 begin their presentation...

12 MS. LOGAN-WILKEY: Yes. My name is Joey
13 Logan-Wilkey. I'm an assistant counsel with the
14 Illinois EPA. And with me today to my immediate
15 left is Mike Crumly. He's the manager of the
16 drinking water compliance unit with the Bureau of
17 Water at the Illinois EPA. And to his left is
18 Jerry Kuhn. He is the manager of the permit
19 section of the division of public water supplies at
20 the Illinois EPA. And to my far left is Steve
21 Ewart, and he is deputy counsel of the Illinois
22 EPA.

23 First, I would like to make a motion to admit
24 errata sheet number 1 as Exhibit Number 2.

1 HEARING OFFICER MCGILL: I have a copy of the
2 agency's errata sheet. It has proposed amended
3 language to the agency's original proposal. Is
4 there any objection to entering this errata sheet
5 in the record as a hearing exhibit?

6 (No audible response.)

7 HEARING OFFICER MCGILL: Seeing none, I will
8 mark this as hearing Exhibit Number 2 and enter it
9 into the record. Thank you.

10 MS. LOGAN-WILKEY: In response to questions
11 posed by the board at the May 8th hearing, the
12 Illinois EPA is submitting this errata sheet to add
13 the following language at the end of sections
14 602.105 (d) and 602.106 (d). The language reads as
15 follows: This subsection applies until December 8th,
16 2008.

17 The Illinois EPA is proposing the December 8th,
18 2008, date for ending this provision because it
19 will allow all of the public water supplies who
20 currently are out of compliance with radionuclide
21 standard to complete construction and achieve
22 compliance with that standard.

23 In response to a request by the board, I would
24 also like to now make a motion to admit the list of

1 potential candidates for restricted status as
2 Exhibit Number 3.

3 HEARING OFFICER MCGILL: Okay. I've got a
4 copy. It's a two-page document entitled Potential
5 Candidates for Restricted Status.

6 Is there any objection to admitting this
7 document into the record as a hearing exhibit?

8 MR. HARSCH: Are there extra copies?

9 HEARING OFFICER MCGILL: Yes. In fact, I'll
10 note for the record that we have extra copies of
11 both the errata sheet and the list of potential
12 restricted status water supplies.

13 And let me just make clear, is there any
14 objection to entering the list of potential
15 candidates for restricted status as a hearing
16 exhibit?

17 (No audible response.)

18 HEARING OFFICER MCGILL: Seeing none, I'll
19 mark that as Hearing Exhibit 3. And if we could
20 just go off the record for a moment, I'll put these
21 extra copies out of the two hearing exhibits that
22 were just admitted.

23 (Discussion had off the record.)

24 HEARING OFFICER MCGILL: We're back on the

1 record. Go ahead.

2 MS. LOGAN-WILKEY: I would now ask that Mike
3 Crumly explain how we compiled this list of
4 candidates for restricted status.

5 HEARING OFFICER MCGILL: Okay. Thank you.

6 MR. CRUMLY: Basically what we did is we went
7 back and evaluated all the water systems that are
8 currently exceeding standard, radionuclide
9 standard. Our second thing was, from that group,
10 look at what treatment water systems proposed as
11 their -- to meet the MCLs. And the treatment that
12 they had chosen usually requires construction and
13 operating permits.

14 So then our next steps since we know -- you
15 know, the permit process is at least 90 days. We
16 looked to see which ones haven't submitted any
17 permits yet and that -- we feel that the ones that
18 have not shown substantial progress towards
19 compliance to our proposed -- the treatment
20 construction that we felt that they're not going to
21 be able to meet the December 8th compliance
22 deadline. So we came up with 54, I think, 53 water
23 systems meeting that criteria. And we do have ten
24 of them that have already started to fall out into

1 the enforcement process, either waiving section 31
2 or starting the section 31 enforcement process.

3 MS. LOGAN-WILKEY: That's all we have today.

4 HEARING OFFICER MCGILL: Thank you.

5 I'd like to open it up for any questions
6 anyone might have of the agency's witnesses.
7 Before the board proceeds with any questions it may
8 have, I'll open it up to the audience and just ask
9 that if you have a question, just get my attention
10 first and then give your name, title, and who
11 you're representing today.

12 Are there any questions for any of the
13 agency's witnesses?

14 BOARD MEMBER PADOVAN: I want to make sure I
15 understand this list correctly. What you did to
16 compile this list is go through your records and
17 those water districts or whatever that had not
18 either applied for a permit yet or were not even in
19 the process yet made this list, as well as people
20 who might be in the process but...

21 MR. CRUMLY: Have not applied for a permit
22 because we feel that usually it takes -- it's a
23 90-day turnaround. Most of these systems, the
24 treatment they -- the treatment they propose

1 requires permits. And if a permit would come in
2 today, it takes probably at least three months for
3 us to get through it, so that would put you at
4 August, September. And then you have the whole
5 construction process, and usually construction
6 takes more than 30 days or so; 30, 60 days.

7 So, you know, like I said, a lot of these,
8 they're -- some of these are on the trail, but we
9 just feel since they haven't even started to apply
10 for the permits yet that they're not going to make
11 the deadline with complete -- get your permits and
12 get all of the construction completed by December 8th.

13 BOARD MEMBER PADOVAN: I notice that many of
14 these have very minuscule populations.

15 MR. CRUMLY: Correct.

16 BOARD MEMBER PADOVAN: So would they, in your
17 opinion, be behind because they didn't have anybody
18 on top of this or what? How are these people
19 notified that they're not going to be complying?

20 MR. CRUMLY: Well, currently as we approve
21 their compliance report, we list certain
22 milestones, and one of those is apply for
23 construction permits. But most times they -- in
24 their proposal to us, they tell us when they're

1 going to do things. And some of these are starting
2 to fall out -- like they might have said like April
3 1st get permits. Well, as of April 1st or
4 whatever, they haven't. Usually we send them a
5 letter saying, you know, you've missed the
6 deadline; you need to respond to us.

7 And then at that point usually we get a letter
8 back saying: Well, things are slipping, you know,
9 and that's when we would start the section 3
10 process if they start getting behind -- too far
11 behind on their schedule.

12 BOARD MEMBER PADOVAN: How were they
13 originally notified that they had to do something
14 about their water supply?

15 MS. LOGAN-WILKEY: Well, we went back -- in
16 the fall of 2001, the agency held meetings through
17 the state, and we invited all community water
18 systems that had a radium problem to attend. And
19 at that point we explained to them the procedure
20 that we were going to follow. And we've proceeded
21 in that manner.

22 I think also Mike's group has issued some
23 phone calls also to try to determine where the
24 systems are with their schedules when we see that

1 they haven't gotten, for example, their permit
2 application in on time.

3 BOARD MEMBER PADOVAN: Thank you.

4 HEARING OFFICER MCGILL: I'd ask if anyone
5 else has any questions for the agency's witnesses?

6 If you could just state your name and title
7 and who you're representing today...

8 MR. DUFFIELD: I'm Dennis Duffield. I'm the
9 director of public works and utilities for Joliet.

10 I'm concerned about what constitutes
11 compliance by December 8th. Does the mere fact of
12 completing construction put you in compliance, or
13 do you have to have a full year's worth of samples
14 to actually -- and the results analyzed to be in
15 compliance?

16 MR. CRUMLY: To be technically 100 percent in
17 compliance, you need a running annual average below
18 the maximum contaminant level. So to be in full
19 compliance with the standard, you need results
20 demonstrating such, not just the construction.

21 MR. DUFFIELD: Thank you.

22 HEARING OFFICER MCGILL: Mr. Harsch...

23 MR. HARSCH: In a follow-up to Mr. Duffield's,
24 if his schedule goes out to December 2008, then he

1 won't have his -- and completes his construction in
2 2008, December 2008, he won't have his one year of
3 testing available until December of 2009; is that
4 correct?

5 MR. CRUMLY: Correct. It will take a rule --
6 it takes -- the standard is based on a running
7 annual average, so until you have a whole year's
8 average that's below, then as far as my part,
9 they're still determined out of compliance and
10 would still have to continue to issue public
11 notification and so on until they demonstrated
12 compliance.

13 MS. LOGAN-WILKEY: Right. We're anticipating
14 that they would still have to issue public
15 notification, but we are not pursuing enforcement
16 against systems that meet the December 8th, 2003,
17 deadline but have not completed their annual
18 testing, average testing.

19 MR. HARSCH: I'm confused by your amendment
20 with the -- if a board enacts the rule as you've
21 proposed it, would Joliet need separate variance
22 relief beginning December of 2008 for the 2009
23 calendar year project?

24 MS. LOGAN-WILKEY: No, because the agency is

1 not considering the annual average testing in that
2 one year to be -- even though technically they may
3 be out of compliance, we are not considering that
4 year for enforcement or for restricted status.

5 MR. KUHN: For purposes of restricted status,
6 if you got the equipment installed and operating,
7 we're going to consider you in compliance for my
8 purposes of restricted status.

9 MR. CRUMLY: Yes. For his purposes they are,
10 but for my purposes they're not until they have a
11 full year for public notification.

12 MR. KUHN: If you're using conventional
13 technology to meet the radium standard, there's no
14 reason why you shouldn't be meeting it, so there
15 would be no reason to impose restricted status.

16 MR. GIRARD: May I ask a question?

17 HEARING OFFICER MCGILL: Of course.

18 MR. GIRARD: What if you had a citizens group
19 that wanted to bring enforcement action?

20 (No audible response.)

21 MR. GIRARD: I guess I'm not getting an
22 answer.

23 MS. LOGAN-WILKEY: Well, the agency -- I guess
24 my answer to that is that the agency does not want

1 to pursue enforcement cases against systems that
2 have completed construction and are operating at a
3 level and giving water to their consumers that is
4 below the radionuclide standard. If December 9th
5 comes, I'm not sure -- Mike maybe can answer when
6 we will get a first round of samples in. If we see
7 a problem with those samples --

8 MR. CRUMLY: They monitor quarterly, so I
9 would suppose -- like if a system is supposed to be
10 in compliance December 8th, 2003, and they get
11 their treatment installed December 8th or whatever,
12 they should take their first quarterly sample
13 December 10th. That would be for October through
14 December quarter. Then you've got the next
15 quarter, January through March. So each quarter
16 they're collecting samples and we're knowing the
17 results, and most likely those systems that are
18 installing treatment, you know, like reverse
19 osmosis, something you're going to see a level
20 drastically be reduced. That's just one single
21 sample.

22 So, I mean, the water that's being outputted
23 is meeting the standard, but the way the rule is
24 written, you need four consecutive quarters to

1 demonstrate full compliance.

2 MS. LOGAN-WILKEY: So I'm not sure there would
3 be any basis for a citizen suit. If on December 8th
4 or December 9th they take a sample and that water
5 is in compliance with the radionuclide standard,
6 I'm not sure that there would really be any relief
7 that could be granted to a citizens group if they
8 are in compliance at that point.

9 HEARING OFFICER MCGILL: I was just going to
10 ask a follow-up question. You touched on this at
11 the hearing last week a little bit, but could you
12 just explain in terms of your rulemaking proposal,
13 you're proposing an exemption from restricted
14 status and not from the radionuclide MCL; is that
15 correct?

16 MR. CRUMLY: Yes, you're correct. So anything
17 that falls out in addition to the restricted status
18 like public notification, the system would still be
19 required to issue notification. And as part of
20 that process, they give an update to their
21 customers on where they stand at today.

22 In that notification, they could say our most
23 current result or most current single result is
24 below the maximum contaminant level; however, our

1 running annual average is not yet, if that makes
2 sense...

3 HEARING OFFICER MCGILL: And just one other
4 question: To come within the agency's proposed
5 exemption from restricted status, the public water
6 supply -- is it correct that the public water
7 supply has to be under a compliance commitment
8 agreement or an enforceable court order?

9 MR. CRUMLY: Correct.

10 MS. LOGAN-WILKEY: Yes.

11 HEARING OFFICER MCGILL: Thank you.

12 Mr. Harsch...

13 MR. HARSCH: Again, as follow-up, Joliet is
14 the longest schedule that you're currently aware
15 of, correct?

16 MS. LOGAN-WILKEY: Correct.

17 MR. HARSCH: And you chose the December 2008
18 date to accommodate Joliet, correct?

19 MS. LOGAN-WILKEY: Correct. We chose the date
20 that would accommodate all of the public water
21 systems that we are currently aware of having a
22 violation of the radionuclide standard.

23 MR. HARSCH: So the proposed amendment of
24 December 2008 was done in response to the board's

1 suggestion for a sunset provision in the rule at
2 the same time providing relief that would protect
3 Joliet as well, correct?

4 MS. LOGAN-WILKEY: Yes.

5 MR. HARSCH: Would the agency consider
6 extending that sunset provision to December 2009 to
7 make it clear that Joliet has variance relief while
8 it demonstrates compliance with the standard while
9 it collects the four consecutive samples?

10 MS. LOGAN-WILKEY: Yes. We would be -- we
11 would consider that.

12 HEARING OFFICER MCGILL: Okay. So the record
13 is clear, is the agency indicating that it will
14 consider changing -- what was moved and entered
15 today as Exhibit Number 2, changing the sunset
16 provision date? You're going to consider that, or
17 are you moving to simply have me amend it on this
18 hearing exhibit right now?

19 MS. LOGAN-WILKEY: I would make a motion to
20 have you amend it at this time to December 9th --
21 or December 8th, 2009.

22 HEARING OFFICER MCGILL: Okay. Just so I'm
23 clear, we're referring to Hearing Exhibit 2, the
24 agency's errata sheet that was admitted as a

1 hearing exhibit earlier in this proceeding today.
2 That proposes a language change to the agency's
3 original proposed rule language dealing with two
4 sections, sections 602.105 (d) and 602.106 (d).
5 Each of those sections has added to it a sentence
6 that reads: This subsection applies until
7 December 8th, 2008, and right now the agency has
8 made a motion to change that date in each of those
9 sections to December 9th, 2000 -- I'm sorry --
10 December 8th, 2009. So one year later.

11 Any objection or response to the agency's
12 motion?

13 (No audible response.)

14 HEARING OFFICER MCGILL: Seeing none, I'll
15 grant that motion and I will mark Hearing Exhibit 2
16 changing the date to December 8th, 2009.

17 Are there any other questions for the agency's
18 witnesses today?

19 If you would state your name and title and who
20 you're representing, please...

21 MR. PERSONS: Allen Persons, director of
22 public works for the village of Plainfield...

23 Related to the exhibit that was provided on
24 the potential restricted status candidates, as a

1 clarification, is it the agency's intent to place
2 some or all of these communities on restricted
3 status before the end of this year?

4 MS. LOGAN-WILKEY: No. It is not the agency's
5 intent to place the communities on restricted
6 status before the end of the year. We hope to have
7 the rule adopted and be seeking consent orders or
8 have entered into compliance agreements with the
9 facilities who will not be able to meet the
10 December 8th, 2003, deadline.

11 MR. PERSONS: A follow-up question to the
12 previous question posed by Joliet on compliance and
13 sampling: If a community receives a water source
14 from an outside source that has a known record of
15 compliance, is it then recalculated and compliance
16 based on the first sample and past performance of
17 the other utility that's providing water, or does
18 the community have to go through the consecutive
19 quarterly sampling to demonstrate compliance?

20 MR. CRUMLY: Normally how we -- if a system is
21 going to start buying water -- if they buy it from
22 like a surface water source that has never had a
23 history of radionuclide problems -- it's been well
24 established that the radionuclides become a problem

1 at deep aquifers, so a system that buys purchase
2 water, no, we don't make them wait a year before
3 they have four consecutive quarters.

4 But if they're purchasing water from another
5 groundwater source that has a problem, we will
6 make -- we'll wait until the parent supply
7 demonstrates four consecutive quarters before both
8 systems are deemed in compliance.

9 Did that answer your question?

10 MR. PERSONS: Thank you. That answered my
11 question.

12 HEARING OFFICER MCGILL: Any further questions
13 for the agency's witnesses?

14 (No audible response.)

15 HEARING OFFICER MCGILL: Seeing none, I'll ask
16 the agency if they had any additional testimony you
17 wanted to provide at this point.

18 MS. LOGAN-WILKEY: No. Thank you.

19 HEARING OFFICER MCGILL: Okay. Thank you.

20 Why don't we go off the record for a moment?

21 (Discussion had off the record.)

22 HEARING OFFICER MCGILL: Back on the record.

23 At this point we have testimony from Mr. David
24 English, the city of West Chicago. I would just --

1 ask you to -- if you don't mind just testifying
2 from where you're sitting, I think we'll be able to
3 hear just fine.

4 If you would go ahead and swear in the
5 witness, please...

6 (The witness was duly sworn.)

7 HEARING OFFICER MCGILL: Mr. English, if you
8 could just for the record go ahead and state your
9 full name, title, and who you're representing
10 today...

11 MR. ENGLISH: David J. English, water utility
12 superintendent with the city of West Chicago,
13 Illinois.

14 HEARING OFFICER MCGILL: You may proceed.
15 Thank you.

16 MR. ENGLISH: I wanted to talk a little bit
17 about impacts to the city of West Chicago from the
18 standpoint of variance preparation costs associated
19 to the city, as well as an economic impact if we
20 were to be placed on restricted status.

21 First of all, just a brief summary of our
22 experience in past variances -- and we've been
23 through two to this point...

24 Just in legal preparation fees, the city faces

1 a cost somewhere in the range of 7 to \$10,000 in
2 outside attorneys' fees to prepare the documents
3 and to move us forward in that regard. In this
4 case going forward, we would expect those costs to
5 be a little bit higher just because it's five years
6 later and costs rise accordingly.

7 More importantly, I wanted to stress the
8 impact -- economic impact to the city of West
9 Chicago if we were to be placed on restricted
10 status.

11 Currently, we are adding approximately 300
12 homes to our system on an annual basis. And that's
13 averaged over the last four to five years; also, a
14 number of multi-family, commercial, industrial
15 businesses as well. West Chicago relies very
16 heavily on its industrial base.

17 We anticipate that in lost fees, connection
18 fees, permits associated with this type of
19 construction well in excess of \$1 million in lost
20 revenues to the city per year if we were to be
21 placed on restricted status.

22 We also have several high profile projects;
23 for instance, the DuPage High Tech Park that is
24 being proposed by Speaker Hastert in West Chicago.

1 Our first tenant is slated to be Argonne National
2 Laboratories. These are very big industrial
3 customers that are relying on our water supply. If
4 we were placed on restricted status, that would
5 certainly impact our ability to provide them with
6 water.

7 DuPage Airport resides in West Chicago, and
8 they have several expansion projects that are
9 either on the books or in the near future. We
10 would be impacted by that as well to not be able to
11 extend services to them.

12 A couple of car dealerships in town that we
13 have on the books as well, that could impact us in
14 the range of 3 to \$400,000 per year in tax revenue
15 if we're not able to extend services to these
16 folks.

17 We also have a large number of infrastructure
18 improvement projects that, if placed on restricted
19 status and we were not able to obtain permits,
20 would greatly impact well over \$1 million worth of
21 scheduled projects over the next few years to
22 improve our system infrastructure.

23 So I really want to point out it's very clear
24 that it would have a huge impact on the city of

1 West Chicago; its employees. With that amount of
2 lost revenue to the city, we would more than likely
3 be facing layoffs and things of that nature as
4 well. So it affects our people. And these are
5 very important issues to us.

6 So my hope was to just give you a quick
7 snapshot of some of the more obvious impacts that
8 it would have on the city of West Chicago.

9 HEARING OFFICER MCGILL: Thank you.

10 Are there any questions for Mr. English?

11 (No audible response.)

12 HEARING OFFICER MCGILL: Seeing none, I thank
13 you very much for coming today.

14 MR. ENGLISH: You're welcome.

15 HEARING OFFICER MCGILL: And we'll move on
16 with the testimony of Mr. Dennis Duffield for the
17 city of Joliet. If would you go ahead and swear in
18 the witness, please...

19 (The witness was duly sworn.)

20 HEARING OFFICER MCGILL: Go ahead.

21 MR. DUFFIELD: My name is Dennis Duffield.
22 I'm the director of public works and utilities for
23 the city of Joliet. My business address is
24 921 East Washington Street, Joliet, Illinois.

1 The city of Joliet is a public water supply
2 that serves a population of 106,000. Joliet is a
3 community that will be impacted by the standards of
4 issuance and restricted status provisions that are
5 the subject of this rulemaking.

6 Joliet operates 14 wells that produce water
7 with a radium concentration greater than the
8 maximum contaminant level of five picocuries per
9 liter. Joliet has developed a plan to provide
10 compliance with the five picocuries per liter
11 standard. This plan has a cost in excess of
12 \$80 million and an implementation schedule that
13 does not provide compliance until 2008.

14 Joliet notified the Illinois Environmental
15 Protection Agency in early 2002 that compliance by
16 the December 3rd -- December 2003 date would not be
17 possible. The IEPA has referred Joliet's
18 compliance issue to the Illinois Attorney General
19 for the development of a consent order to control
20 the completion of Joliet's project. Upon the
21 approval of the consent order, Joliet would be
22 eligible for the relief from the standards of
23 issuance and restricted status proposed by this
24 rulemaking.

1 The continued extension of water supply mains
2 within Joliet is necessary to allow Joliet to
3 continue to grow. Joliet is currently growing by
4 3,000 to 4,000 people per year. This community
5 growth has only been possible because of the rule
6 that will expire in December 2003. The inability
7 to extend the water supply system would stop the
8 growth of the community with a resulting major
9 adverse impact on the community and the residents
10 of the community.

11 Joliet supports the rulemaking proposed by the
12 Illinois Environmental Protection Agency that will
13 allow continued extension of the water supply
14 systems during the period of time necessary for the
15 design, permitting, and construction of the
16 facilities necessary for compliance. This will
17 allow Joliet to continue to grow and extend the
18 public water supply.

19 It is my opinion that the approval of the
20 proposed rulemaking will not cause any significant
21 harm to the environment or to the people served by
22 the potential water main extensions that will be
23 allowed if this rulemaking is granted.

24 People served by the water main extensions

1 during the period of time from December 2003 to
2 December 2008 will be the only users impacted by
3 the approval of this rule. This is much too short
4 a time frame for any measurable effect of the
5 radium on the population. This is consistent with
6 the specific health effects language previously
7 approved in variances that there is no immediate
8 health hazard. The rest of Joliet's population
9 will continue to draw water from Joliet's existing
10 system until the compliance project is completed
11 independent of the final determination of this
12 rulemaking.

13 Joliet also supports the Illinois
14 Environmental Protection Agency proposal as it
15 would no longer require Joliet to apply for a
16 variance from the standards of issuance and
17 restricted status. The various procedure requires
18 expenditure of substantial resources of the city of
19 Joliet, as well as the resources of the
20 Environmental Protection Agency and the Illinois
21 Pollution Control Board.

22 In addition, the expedited approval of the
23 Illinois Environmental Protection Agency proposal
24 will prevent unnecessary board filings by public

1 water supplies. If the decision on this matter is
2 delayed, public water supplies will have to proceed
3 with filings of individual variances to allow
4 continued extension of the water supply mains in
5 their systems.

6 Thank you.

7 HEARING OFFICER MCGILL: Thank you.

8 Are there any questions for Mr. Duffield?

9 (No audible response.)

10 HEARING OFFICER MCGILL: Seeing none, I thank
11 you for your testimony.

12 And I'd ask if Mr. Roy Harsch of Gardner,
13 Carton, & Douglas would proceed with his testimony
14 after being sworn in.

15 (The witness was duly sworn.)

16 MR. HARSCH: My name is Roy Harsch. I'm a
17 principal in the law firm of Gardner, Carton, &
18 Douglas. I'm here today on behalf of Yorkville,
19 one of the clients for which I have previously
20 filed variance petitions before the Pollution
21 Control Board from the restricted status rules with
22 respect to radium.

23 I've also previously filed and obtained
24 variances for Elburn, St. Charles, Geneva, Batavia,

1 North Aurora, Lockport, and other municipalities in
2 Illinois.

3 I've participated in the rulemaking
4 proceedings that gave rise to the current
5 exemption. I've assisted in the formation of the
6 Illinois Water -- excuse me -- the Kane County
7 Water Association and have been an active
8 participant at a number of the meetings that the
9 agency has testified to today that they've held in
10 terms of public outreach around the state with
11 respect to the development of the new rules.

12 My client, Yorkville, as well as myself
13 personally support the proposal that is pending
14 before the Pollution Control Board, and we urge
15 that the board enact the rule as it has been
16 amended today by the agency. It would obviate the
17 need for the public water supply system to come to
18 the board for variances from restricted status. It
19 does not provide any shield from prosecution, and
20 it would be a condition to obtain the relief that
21 these public water supply systems that are not in
22 compliance by end of this year be on an enforceable
23 schedule to be eligible for the relief.

24 The sunset provision that the agency has

1 proposed today I think is a reasonable one. It
2 will accommodate the longest schedule that the
3 agency is aware of; namely, that of Joliet. So it
4 will address the needs and interests of the board
5 that were -- was evidenced from the first hearing.
6 And it will eliminate what really is an unnecessary
7 cost to prosecute and file a number of variance
8 requests before the board.

9 I think it was correctly noted a number of the
10 systems are very, very small water supply systems.
11 They cannot afford to proceed with variance
12 petitions before the board. The handful of larger
13 systems and the medium size systems that could
14 afford to apply for such a variance should not be
15 made to do so. It's just a waste of funds. The
16 \$10,000 estimate is probably a reasonable
17 estimate. The cost is totally dependent upon
18 whether or not a member of the public would file an
19 objection which would mandate a hearing that costs
20 could go up dramatically if a hearing would be
21 necessary on the petition.

22 With respect to Yorkville, it, too, is a very
23 rapidly growing community. It needs the relief for
24 all the same reasons that West Chicago and Joliet

1 have testified to. It has a number of projects
2 underway that it is using to finance the
3 improvements that will result in its achievement of
4 compliance with the radium standards. And, in
5 fact, some of the developer projects will be the
6 actual projects by which it does provide compliant
7 water to its citizens, and they could be impacted
8 by restricted status if the rule is not enacted.

9 There is another reason that we're worried
10 about this rule, and that's a delay by the board in
11 enacting the rule. If the rule does not get
12 enacted fast enough this year, developers and
13 commercial interests will see a chilling effect and
14 there will be some pressure by developers and
15 business interests to have municipalities proceed
16 to file variance petitions if it's not clear that
17 the board will, in fact, enact the rule and have it
18 effective in time so that the projects will not be
19 held up.

20 So we are hopeful that the board will move
21 expeditiously to adopt this rule well in advance of
22 the December cutoff date.

23 Thank you very much.

24 HEARING OFFICER MCGILL: Thank you.

1 Are there any questions for Mr. Harsch?

2 (No audible response.)

3 HEARING OFFICER MCGILL: Seeing none, thank
4 you for being here today and providing that
5 testimony.

6 Is there anyone else who wishes to testify
7 today?

8 (No audible response.)

9 HEARING OFFICER MCGILL: Seeing no response,
10 I'd like to go off the record for a moment.

11 (Discussion had off the record.)

12 HEARING OFFICER MCGILL: Back on the record.

13 At this point, we'll move on to discuss the
14 economic impact study issue I mentioned earlier.

15 Since 1998, section 27 (b) of the
16 Environmental Protection Act has required the board
17 to request that the Department of Commerce and
18 Community Affairs, or DCCA, I guess now known as --

19 BOARD MEMBER PADOVAN: Department of Commerce
20 and Economic Opportunity.

21 HEARING OFFICER MCGILL: Thank you.

22 -- (continuing) conduct an economic impact
23 study on proposed rules before the board adopts the
24 rules. The board must make the economic impact

1 study or DCCA's explanation for not conducting one
2 available to the public at least 20 days before a
3 public hearing.

4 The board requested the economic impact study
5 on this rulemaking, and DCCA, or the DCEO, stated
6 in an April 17th, 2003, letter that it lacks the
7 staff and financial resources to prepare the
8 study.

9 Is there anyone who would like to testify
10 today regarding DCCA's or DCEO's explanation for
11 not conducting an economic impact study on this
12 proposed rulemaking?

13 (No audible response.)

14 HEARING OFFICER MCGILL: Seeing no response,
15 I'll move on to a few procedural issues before we
16 adjourn.

17 The transcript for today's hearing should be
18 available by next week May 20th, which is Tuesday,
19 or May 21st, which is Wednesday. We will post that
20 on the board's Web site right away. The Web site
21 is www.ipcb.state.il.us. On the Web site you'll
22 also find the agency's rulemaking proposal, the
23 board's orders throughout this proceeding. And I
24 plan to have the errata sheet also posted on the

1 Web site, which was Hearing Exhibit Number 2
2 admitted earlier today.

3 Let's go off the record just for a minute.

4 (Discussion had off the record.)

5 HEARING OFFICER MCGILL: Back on the record.

6 We just discussed a possible deadline for
7 filing public comments. To ensure your comments
8 are considered for a first notice opinion and order
9 of the board, the date we arrived at is June 6th,
10 which is a Friday. First of all, anyone may file a
11 public comment with the clerk of the board. And to
12 ensure that your public comment is considered for
13 the first notice opinion and order of the board,
14 you would need to file your public comment by
15 June 6th, which means if you're mailing it in on
16 June 6th, you just need to make sure you've got it
17 postmarked no later than June 6th.

18 You'll be able to provide public comments
19 throughout the proceeding up until the end of the
20 first notice public comment period, which is a
21 minimum of 45 days after the first notice appears
22 in the Illinois Register. This June 6th deadline
23 is just to ensure that your comment is considered
24 for the board's first notice opinion and order.

1 I'll note that at the front of the room the
2 current notice and service lists are there. We
3 have copies. Feel free to take one.

4 If you file a public comment, you'll need to
5 also serve that public comment -- a copy of that
6 public comment on those persons who are on the
7 service list. People on the notice list get board
8 orders and hearing officer orders only. People on
9 the service list also receive -- in addition to
10 those orders, they also receive other filings such
11 as public comments.

12 At this point it's a fairly short service
13 list. If you would like to be added to either of
14 those lists, you can contact me. My phone number
15 is (312) 814-6983, and my e-mail address is
16 mcgillr@ipbc.state.il.us. And I have a number of
17 my cards there at the back of the room. Also, if
18 you go to R03-21 on our Web site, my contact
19 information is there as well.

20 Please check with me before you file a public
21 comment just to ensure you have the current service
22 list because people are being added to it all the
23 time.

24 Any other items that anybody wants to address

1 at this point?

2 (No audible response.)

3 HEARING OFFICER MCGILL: Seeing no response, I
4 would like to thank everyone for participating
5 today. And this hearing is adjourned. Thank you.

6 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 I, CARYL L. HARDY, a Certified Shorthand
4 Reporter doing business in the County of Cook and
5 State of Illinois, do hereby certify that I
6 reported in machine shorthand the proceedings at
7 the hearing of the above-entitled cause.

8 I further certify that the foregoing is a true
9 and correct transcript of said proceedings as
10 appears from the stenographic notes so taken and
11 transcribed by me.

12
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14
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16 CSR No. 084-003896

17

18 Subscribed to and sworn to
19 before me this ____ day
of _____, 2003.

20 _____
Notary Public

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24

