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ILLINOIS POLLUTION CONTROL BOARD

June 14th, 2006

IN THE MATTER OF:)
)
REVISIONS TO WATER QUALITY)
STANDARDS FOR TOTAL DISSOLVED) R06-24
SOLIDS IN THE LOWER DES PLAINES)
RIVER EXXONMOBIL OIL)
CORPORATION: PROPOSED 35 ILL. ADM.)
CODE 303.445.)

TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause on the 14th day of June, A.D.
2006, at 9:30 a.m.

BEFORE: MR. JOHN KNITTLE, Hearing Officer,
MR. THOMAS E. JOHNSON, Board Member
MR. ANAND RAO, Technical Support.

1 APPEARANCES:

2

3 SONNENSCHNEIN, NATH & ROSENTHAL, LLP,

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5 233 South Wacker Drive

6 Chicago, Illinois 60606

7 312-876-7934

8 MR. JEFFREY C. FORT,

9 MS. ELIZABETH LEIFEL,

10 appeared on behalf of the Petitioner;

11

12 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

13 1021 North Grand Avenue East

14 P.O. Box 19276

15 Springfield, Illinois 62794-9276

16 217-558-2012

17 MR. TOM ANDRYK,

18 appeared on behalf of the Respondent.

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1 ALSO PRESENT:

2

3 MS. ALEXANDRA HOLT, Summer Intern;

4 MS. STACEY FORD, NSR Consent Decree Coordinator;

5 MR. ROBERT G. MOSHER,

6 MR. SCOTT TWAIT,

7 MS. SAMANTHA HUFNAGEL,

8 MR. DAN MOSHER, Bureau of Water;

9 MR. JAMES E. HUFF, P.E., Consultant.

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23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

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1 (WHEREUPON, certain documents were
2 marked Petitioner Exhibit Nos. 2-10
3 for identification, as of 6/14/06.)

4 (WHEREUPON, certain documents were
5 marked Respondent Exhibits A-F, for
6 identification, as of 6/14/06.)

7 THE HEARING OFFICER: My name is John
8 Knittle, I'm the hearing officer for this
9 rulemaking proceeding for the Illinois
10 Pollution Control Board. The rulemaking
11 proceeding is entitled Revisions To Water
12 Quality Standards For Total Dissolved Solids
13 in the Lower Des Plaines River ExxonMobil Oil
14 Corporation Proposed: 35 Illinois
15 Administrative Code 303.445.

16 Present with me today is board
17 member Tom Johnson and soon to be present
18 with me is technical support staff Anand Rao.
19 I'd like to introduce board member Tom
20 Johnson, he's the board member coordinating
21 this rulemaking proceeding for the Board.

22 Mr. Johnson, do you have any
23 remarks you'd like to make?

24 MR. JOHNSON: No, I sure don't.

1 THE HEARING OFFICER: I'm going to
2 give a little background on the proposal,
3 generally I do for members of the public that
4 are here. Of course, I want to note for the
5 record, that there are no members of the
6 public here. But some of them, from time to
7 time, may read the transcript, so I'm going
8 to say that right away.

9 (WHEREUPON, Mr. Rao enters.)

10 THE HEARING OFFICER: I also want to
11 note for the record that Anand Rao is now
12 present.

13 MR. RAO: Sorry for being late.

14 THE HEARING OFFICER: That is not a
15 problem. Traffic around here is pretty
16 horrendous.

17 MR. RAO: Parking.

18 THE HEARING OFFICER: ExxonMobil is
19 seeking a site-specific rule to authorize
20 discharges of total dissolved solids from the
21 Joliet Refinery during the months of November
22 through April. The discharge from the Joliet
23 Refinery is located at Interstate 55 and
24 Arsenal Road in Will County.

1 And on March 2nd, 2006, the Board
2 issued an order granting a motion for
3 expedited review and accepting this
4 rulemaking for hearing. We also sent the
5 proposal to the first notice without a
6 decision being reached on the merits of the
7 proposal, and granted the motion for
8 expedited review.

9 That's the only summary I'm going
10 to give. If Mr. Fort would like to give one
11 later on, he's more than welcome to do so.

12 I do want to know that this
13 rulemaking is also being held to comply with
14 the requirements of Section 27.5 of the
15 Illinois Environmental Protection Act that
16 requires that the Board asks that the
17 Department of Commerce and Community Affairs,
18 which I am just going to refer to as DCEO
19 from here on out, conduct an economic impact
20 study on certain proposed rules prior to the
21 adoption of those rules. This is one of
22 those rules.

23 If they choose to conduct the
24 economic impact study, the DCEO has 30 to

1 45 days after such a request to produce a
2 study of the economic impact of the proposed
3 rules. The Board -- we, us -- then must make
4 the economic impact study or the explanation
5 for not conducting this study available to
6 the public at least 20 days before public
7 hearing on the economic impact of the
8 proposed rules is held.

9 In this particular case, we
10 requested by letter dated March 2nd, 2006,
11 that the Department of Commerce and Economic
12 Opportunity conduct an economic impact study
13 for the above rulemaking. This rulemaking,
14 the ExxonMobil rulemaking, R0626.

15 In that letter, the Board asked
16 that the DCEO provide a decision by
17 April 1st, 2006. No response to that letter
18 was received.

19 Based on this lack of a response
20 and the DCEO's past assertion that it does
21 not have the financial resources to perform
22 an impact study in these matters, the Board
23 considers that the DCEO decided, on April
24 1st, not to conduct a study. The Board's

1 letter and the documents consisting of the
2 DCEO's response have been available to the
3 public for more than 20 days prior to this
4 hearing.

5 And so, this hearing is now being
6 held to see if anyone has any comment on that
7 particular aspect of the economic impact
8 study and DCEO's decision not to conduct such
9 a study. Does anyone have such comment?

10 I see none, so we are moving on,
11 having fulfilled our requirements under
12 Section 27.27B of the Act.

13 I also want to note that the Board
14 maintains a notice and service list on
15 rulemaking proceedings. Those on a notice
16 list will receive board opinions and orders
17 and hearing officer orders. Those on the
18 service list, will receive these documents
19 plus certain other filings, public comments.

20 These lists are periodically
21 updated and everyone here is on the list.
22 But if anyone reading the transcript at a
23 later point in time wants to be added to the
24 list, please contact me at the Board's

1 offices in Champaign, Urbana.

2 Of course, besides witnesses for
3 the parties, anybody can testify, they're
4 able to do so at a rulemaking proceeding.
5 And fortunately, as I've noted already, there
6 are no members of the public here today. And
7 so, we will not be having anybody else
8 testify.

9 There will also be a written
10 public comment period, if anyone here does
11 not wish to testify or anyone at a later
12 point wishes to testify, but -- that didn't
13 make any sense. If anybody who is not here
14 and cannot testify wishes to provide public
15 comment, they can do so via the written
16 public comment avenue.

17 Part 102 of the Board's procedural
18 rules governing this hearing, all information
19 is relevant, not repetitious. The privilege
20 will be admitted and all witnesses will be
21 sworn.

22 Anyone here can ask a question of
23 any witness, just let's try to do it in an
24 orderly fashion, especially you interns. And

1 For the Agency?

2 MR. ANDRYK: My name is Tom Andryk,
3 I'm with the division of legal counsel with
4 the Illinois EPA. And I have here with me
5 today Scott Twait, T-W-A-I-T, who is an
6 environmental protection engineer in the
7 standards unit of Division of Water Pollution
8 Control within the Bureau of Water and
9 Illinois EPA.

10 Scott will be our witness today,
11 and I have also available for questions by
12 the Board Scott's supervisor, Bob Mosher, who
13 is also an environmental protection engineer
14 in the standards unit.

15 I may need to ask perhaps one or
16 two questions to Bob to lay the foundation
17 for the Agency's Exhibit F. But primarily,
18 it will be Scott Twait testifying today from
19 our agency.

20 THE HEARING OFFICER: Thank you, sir.

21 Mr. Fort, do you want to proceed
22 with your case?

23 MR. FORT: Yes, thank you. As you've
24 noted, this is a site-specific rule request

1 on behalf of ExxonMobil. This is occasioned
2 by a consent decree that ExxonMobil entered
3 into with the USEPA, State of Illinois and a
4 couple of other states to make substantial
5 improvements in their emission control
6 technology, in particular, for this matter,
7 the Joliet Refinery.

8 This is going to have a
9 substantial reduction in emissions from the
10 refinery. Of course, we have to deal with
11 everything that results from that. And due
12 to other causes in the Illinois River of
13 elevated total dissolved solids and
14 conversations with the Agency, it was
15 determined that we needed to have regulatory
16 relief for ExxonMobil.

17 The testimony here today comes
18 from a result of an extended dialogue and
19 discussions that ExxonMobil has had with
20 Illinois EPA. We'd like to acknowledge that
21 input and discussions, and in particular, the
22 work that Illinois EPA has been doing over
23 many years on total dissolved solids. That
24 evidence is going to be brought before you

1 today -- the Board today, to show there is no
2 adverse effect on water quality, water biota,
3 as a result of the change that is being
4 requested here.

5 We also appreciate the Board
6 scheduling this on an expedited schedule. We
7 will have a couple of questions to Ms. Ford
8 to elaborate on her prepared testimony about
9 the schedule and about how -- what time
10 pressures ExxonMobil is under in order to
11 meet the consent decree.

12 We very much appreciate everything
13 the Agency has done and the Board has done in
14 moving this process forward. And really, as
15 using the rulemaking process in a way that
16 probably before -- not very many months ago,
17 I would have said it has to be a variance for
18 an adjusted standard.

19 But dealing with the USEPA
20 approval process, has led us to today. So I
21 think that that covers what I would like to
22 say today.

23 We look forward to answering any
24 questions that the Board may have, and we

1 appreciate everybody's participation in
2 getting this project done on time.

3 THE HEARING OFFICER: Thank your, sir.

4 Do you want to swear in your
5 witness?

6 MR. FORT: Sure. Our witnesses are
7 Stacey Ford and Jim Huff. So can you swear
8 the witnesses please?

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1 (WHEREUPON, the witnesses were duly
2 sworn.)

3 MR. FORT: Okay. Mr. Hearing officer,
4 we have prepared testimony that's been
5 prefiled on behalf of Ms. Ford and Mr. Huff.
6 We would like -- we would propose that that
7 testimony be entered into the transcript as
8 if read. And I'm not sure you need to have
9 these marked as exhibits.

10 THE HEARING OFFICER: We don't. But
11 let's do it anyway. We generally do it.

12 Can we make them Petitioner's
13 Exhibits 11 and 12?

14 MR. FORT: That would be fine.

15 THE HEARING OFFICER: And, Mr. Andryk,
16 do you have any objection as to having those
17 read?

18 MR. ANDRYK: No objection.

19 THE HEARING OFFICER: The Board will
20 accept those as if read into the record.

21 (WHEREUPON, certain documents were
22 marked Petitioner's Exhibit
23 Nos. 11, 12 for identification, as
24 of 6/14/06.)

1 will be marked as Exhibit No. 12?

2 A. That's correct.

3 Q. And is that testimony true and correct
4 to the best of your knowledge and belief?

5 A. Yes, sir.

6 THE HEARING OFFICER: We will accept
7 that as testimony in those exhibits.

8 Well, Mr. Andryk, do you have any
9 objection to the admission of Petitioner's
10 Exhibits 11 & 12?

11 MR. ANDRYK: No.

12 THE HEARING OFFICER: Those will be
13 admitted, as well.

14 (WHEREUPON, said document,
15 previously marked Petitioner's
16 Exhibit Nos. 11-12, for
17 identification, was offered and
18 received in evidence.)

19 MR. FORT: Let me just talk, if I may
20 about the exhibits that -- other exhibits, 1
21 through 10. The exhibits, 1 through 8,
22 correspond to the exhibits attached to our
23 petition.

24 Exhibit No. 1 to our petition was

1 the consent decree with USEPA. We filed that
2 with the Board with leave not to file ten
3 copies of it because of its extensive length.
4 And we would like to have the exhibit, one,
5 to the petition considered as Exhibit 1 to
6 this proceeding, as well.

7 Exhibit Nos. 2, 3 and 4 are
8 referenced in Ms. Ford's testimony. And
9 again, those exhibits are identical to what
10 are with the petition.

11 Exhibit No. 5 is revised from the
12 exhibit that we had attached to the petition.

13 BY MR. FORT:

14 Q. And Ms. Ford, I am going to show you
15 what we have marked as revised Exhibit 5 and ask if
16 you if you can identify that document.

17 A. Yes. Actually, it is our waste
18 treatment plant schematic.

19 Q. And why is that revised in this
20 exhibit today from the exhibit that we submitted
21 with the petition however many months ago?

22 A. It incorporates changes we will be
23 doing to meet the consent decree requirements by the
24 EPA.

1 Q. So basically, you've made a proposal
2 to USEPA, and as a result of the discussions under
3 the consent decree, the exact layout of the waste
4 water treatment plant has been modified?

5 A. Yes. And it is identified here in
6 Exhibit 5.

7 MR. FORT: Thank you.

8 With respect to Exhibit 6 for the
9 hearing today, it's the same as the petition
10 Exhibit 6. Exhibit 6A, 6B and 6C, however,
11 are new. It is updated information that is
12 part of Mr. Huff's testimony.

13 BY MR. FORT:

14 Q. Mr. Huff, can you describe for us why
15 you have done Exhibits 6A, 6B and 6C?

16 A. Yes, I can.

17 Exhibit 6A includes the water
18 quality and effluent data collected by the
19 ExxonMobil refinery. This was in the original
20 petition as Exhibit 6, and it's just been updated
21 with additional sampling data since the time of
22 submission of the original petition.

23 Q. Thank you.

24 How about Exhibit 6B?

1 A. Exhibit 6B is new information that was
2 provided by the Metropolitan Water Reclamation
3 District on the Chicago Sanitary and Ship Canal.
4 They have continued to monitor for chlorides and
5 total dissolved solid, not sulphates at Lemont.

6 So I've included that data as
7 additional data that I didn't have previously.

8 Q. What Exhibit 6C?

9 A. Exhibit 6C is material balance on what
10 the predicted TDS levels will be at the beginning of
11 the Illinois River under, basically, worst case
12 assumptions, low flow conditions on all streams and
13 maximum TDS levels in all of those streams.

14 Q. And does that document include
15 estimates of the increased discharges from the Citgo
16 Refinery?

17 A. It does indeed. And so, it takes into
18 account both ExxonMobil's contribution and Citgo's.

19 Q. Thank you.

20 Exhibits 7 and 8 today are the
21 same as Exhibits 7 and 8 to the petition. Exhibit 9
22 is part of Mr. Huff's testimony, and it is,
23 essentially, his curriculum vitae.

24 Exhibit 10 today is the corrected

1 version of the exhibit that we filed in prefiled
2 testimony. It is simply for ease of reference.

3 The language proposed for first
4 notice by the Board in the Board's order. And as of
5 that, we have had a discussion previously that,
6 apparently, there was some editorial changes made by
7 the time it got into the Illinois register. But we
8 will assume that everybody can figure out those
9 editorial changes.

10 So I think that covers our
11 exhibits. Have those been entered then?

12 THE HEARING OFFICER: No. Do you want
13 to -- you've already addressed about
14 Petitioner's 11 and 12. You addressed and
15 that's the testimony. Those have been
16 admitted.

17 But Petitioner's Exhibits 2
18 through 10, are you offering those now?

19 MR. FORT: Yes.

20 THE HEARING OFFICER: Mr. Andryk, do
21 you have any objection to those?

22 MR. ANDRYK: No objection.

23 THE HEARING OFFICER: Those will all
24 be admitted, Petitioner's Exhibits 2-6, 6A, B

1 and C and 7-10.

2 (WHEREUPON, said document,
3 previously marked Petitioner's
4 Exhibit Nos. 2-6, 6A, B, and C and
5 7-10 for identification, were
6 offered and received in evidence.)

7 THE HEARING OFFICER: And, for the
8 record, Petitioner's Exhibit 1 you didn't
9 offer because it's a voluminous record. But
10 when we refer to Petitioner's Exhibit 1 to the
11 petition, we can refer to that, and it is a
12 matter of the record already.

13 MR. FORT: Okay. I mean, we certainly
14 can have Ms. Ford identify it and go through
15 those mechanics, but I don't think it's going
16 to be relevant here.

17 THE HEARING OFFICER: That's not
18 necessary.

19 MR. FORT: Fine.

20 THE HEARING OFFICER: And I think we
21 are able to glean what we need to glean from
22 it.

23 MR. FORT: Fine. Thank you.

24 I have one other question then to

1 Ms. Ford, and that relates to the schedule
2 under the consent decree.

3 BY MR. FORT:

4 Q. Can you tell the Board and the Agency,
5 for that matter, where you stand in terms of
6 implementation of the consent decree?

7 A. Yes.

8 The project is on time, but the
9 dates are extremely challenging. We must begin
10 construction by July of '07. And before that time
11 we need an NPDS permit, a construction permit and
12 the TDS relief.

13 In order to get that, we would ask
14 that the Board make a final decision by October of
15 '06.

16 Q. And that is in order to do what?

17 A. In order to have enough time to
18 complete the necessary mechanics of getting the
19 construction permit and then revised NPDS permit for
20 the refinery.

21 Q. So you arrived at that date by looking
22 at when you need to start construction and then
23 backing up to do the permitting actions --

24 A. Yes.

1 Q. -- in advance?

2 A. Yes.

3 Q. Okay. Thank you.

4 THE HEARING OFFICER: Those permits
5 are from the Illinois Environmental
6 Protection Agency?

7 MS. FORD: That is correct.

8 MR. FORT: Thank you. I don't have
9 any other questions of these witnesses.

10 I would say, just in terms of the
11 context of what Ms. Ford has related, in
12 terms of the schedule, it is challenging. We
13 do appreciate the Board's efforts so far.

14 We hope that we can continue to
15 keep this on a fast track. And we definitely
16 appreciate the Agency's assistance in moving
17 this project forward.

18 THE HEARING OFFICER: Thank you, sir.

19 I'd like to move onto the Agency's
20 witnesses, get them sworn and get their
21 testimony. And then, we do have some
22 questions as a board that we will probably
23 want everybody sworn in and...

24 MR. RAO: That would be easier.

1 THE HEARING OFFICER: Is that all
2 right with everybody?

3 MR. FORT: That's fine with me.

4 THE HEARING OFFICER: Okay.

5 Mr. Andryk, do you want to proceed
6 with your witness?

7 MR. ANDRYK: Sure. I just want to
8 make a brief reference at the beginning here
9 that Illinois EPA supports the relief
10 requested here, but we are not a
11 co-petitioner in this matter.

12 And also, I just wish to clarify
13 that the prefiled testimony and the Illinois
14 EPA response to the Board request were
15 actually combined into one document. And
16 so -- and I just wish to clarify that Scott
17 Twait's testimony does not include the Agency
18 response to the Board's question concerning
19 the applicability of 35 Illinois
20 Administrative Code, Section 10210C. And
21 that Scott will provide his testimony based
22 on his prepared prefiled testimony.

23 Scott, can you come forward?

24 THE HEARING OFFICER: Let's go off the

1 record for a second.

2 (WHEREUPON, a recess was had.)

3 THE HEARING OFFICER: Back on the
4 record.

5 Mr. Andryk, do you want to
6 proceed?

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1 (WHEREUPON, the witness was duly
2 sworn.)

3 SCOTT TWAIT,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ANDRYK:

8 Q. Can you give us your name.

9 A. Scott Twait.

10 Q. And with whom are you employed?

11 A. Illinois EPA.

12 Q. And what is your title with Illinois
13 EPA?

14 A. I work for the water quality standard
15 section. I am an environmental protection engineer.

16 Q. And for how long have you been
17 employed with the Illinois EPA?

18 A. Just over nine and a half years.

19 Q. And have you had occasion to review
20 the petition of the petitioner in this matter,
21 requesting relief from the TDS water quality
22 standards in the form of a site-specific rule?

23 A. Yes, I have.

24 Q. And following that, did you prepare

1 testimony for filing with the Pollution Control
2 Board in this matter?

3 A. Yes, I have.

4 Q. And do you believe all that testimony
5 to be true and accurate to the best of your
6 knowledge and belief?

7 A. Yes.

8 Q. At this time, I would like you to read
9 your testimony into the record.

10 A. Okay.

11 "My name is Scott Twait, and I
12 have been employed with Illinois EPA for over nine
13 and a half years. I have been assigned to the water
14 quality standards unit for all those years.

15 And I have participated in
16 adjusted standard site-specific water quality
17 standards rulemakings and variances. I hold a BS
18 degree in civil engineering from the University of
19 Illinois where I specialized in environmental
20 engineering.

21 My testimony today will be in
22 support of the ExxonMobil Oil Corporation
23 site-specific relief from the total dissolved solids
24 secondary contact and Indigenous Aquatic Life

1 Standard, 35 IAC 302.407, and the Total Dissolved
2 Solids General Use Standard, 35 IAC 302.208G, in the
3 Des Plaines River.

4 The petitioner is adding a
5 Catalytic So2 Additive Technology, called DESOX,
6 system followed by a wet gas scrubber and a
7 Selective Catalytic Reduction, SRC, system to remove
8 SO2 and NOX from air emissions as part of a consent
9 decree with USEPA and Illinois EPA. The addition of
10 the DESOX will allow the removal of SO2 from the
11 emissions by transferring sulphur, in stable form,
12 from the generator to the reactor, where it is
13 released as hydrogen sulfide for downstream recovery
14 as elemental sulphur, thereby reducing sulfate in
15 the plant wastewater and minimizing dissolved solids
16 discharged into the Des Plaines River.

17 The DESOX, wet gas scrubber and
18 SCR system will remove 95 percent of SO2 and
19 50 percent of NOX at 130,000 and 9,800 pounds per
20 day respectively. As indicated in our November
21 15th, 2005 meeting, ExxonMobil is adding a third
22 tank into the activated sludge wastewater treatment
23 plant and will configure the process to provide an
24 anoxic zone to denitrify. Therefore, total nitrogen

1 loading to the stream will be reduced rather than
2 increased as a result of the air scrubbing.

3 Loading of sulfates and TDS will
4 be increased to the receiving stream. However,
5 sulfates will meet water quality standards after
6 mixing.

7 Total dissolved solids will not
8 always meet the water quality standards, due to
9 seasonal loading of chlorides found in road salt
10 from the Chicago metropolitan area that has affected
11 concentrations upstream of ExxonMobil. The subject
12 facility discharges to the Des Plaines River at a
13 point where 1,503.0 cfs of flow exists upstream of
14 the outfall during critical 7Q10 low-flow
15 conditions.

16 The Des Plaines River is
17 classified as secondary contact and indigenous
18 aquatic life use water at the point of discharge and
19 is a general use water downstream of the I-55
20 bridge. The Des Plaines River is rated a C stream
21 under the Agency's biological stream
22 characterization program.

23 The Des Plaines River, water body
24 segment G-24, is found on the 2004 Illinois 303(d)

1 list. The uses impaired for this segment was
2 aquatic life and fish consumption.

3 The potential causes of impairment
4 given for this segment at the time were copper,
5 sedimentation/siltation, other flow regime
6 alterations, total suspended solids, DDT, PCBs,
7 Mercury and total phosphorus. The potential sources
8 associated with the impairment are industrial point
9 sources, municipal point sources, urban runoff/storm
10 sewers, hydrologic/habitat modification, flow
11 regulation/modification, contaminated sediments and
12 source unknown. The additional constituents to be
13 discharged by ExxonMobil, sulfate and TDS, therefore
14 have no bearing on the 303(d) status of the water
15 body.

16 The Illinois Department of Natural
17 Resources was contacted on November 17, 2005 with
18 regard to the presence of any threatened or
19 endangered species that may be impacted by the
20 standards change. IDNR terminated the consultation
21 process on December 19th, 2005 with a finding of no
22 threatened and endangered species or natural areas
23 effected.

24 The Agency cannot grant mixing for

1 a discharge if the receiving stream is not meeting
2 the water quality standard. Since the necessary
3 NPDES permit would require the recognition of mixing
4 in the Des Plaines River and the Des Plaines River
5 has occasionally violated water quality standards
6 for TDS, the Agency cannot issue an NPDES permit
7 that will accommodate this new ExxonMobil discharge.
8 Mixing for sulfate is allowable, however, and will
9 extend into the general use portion of the river.

10 The petitioners have demonstrated
11 that TDS is not toxic to aquatic life at the
12 concentrations that will be found in the river,
13 provided that sulfate is a predominant anion.
14 Toxicity test results on TDS with chloride to
15 sulfate ratio that will result from the proposed
16 discharge indicate that even the most sensitive
17 species tested can easily tolerate the levels likely
18 to be found in the receiving waters.

19 In the petition for the
20 site-specific rulemaking, the petitioner discussed
21 compliance alternatives that were all rejected due
22 to costs and/or technical feasibility. We believe
23 that the petitioners have shown that there are no
24 cost-effective compliance alternative.

1 The Agency is in the process of
2 proposing to change the general use water quality
3 standard for sulfates and eliminate the general use
4 standard for TDS, but has not yet filed its petition
5 before the Board. New aquatic life toxicity data
6 indicates the level of sulfate that sensitive
7 species tolerate.

8 This information was not available
9 when the original water quality standards were
10 adopted for sulfate and TDS. Our new understanding
11 of you sulfate toxicity can be coupled with the
12 existing chloride standard to predict a protective
13 level of TDS.

14 Given the hardness of 205
15 milligrams per liter as calcium carbonate and the
16 maximum chloride concentration of 450 milligrams per
17 liter known for the Des Plaines River, the proposed
18 water quality standard, based on the aquatic life
19 toxicity of sulfate, is 1,138 milligrams per liter.
20 If we add up the major anions, we get 450 plus 1,138
21 is equal to 1,588 milligrams per liter of TDS.

22 Adding in the major cations, a
23 total dissolved solids concentration of about 3,000
24 milligram per liter is protective. Therefore, it

1 has been demonstrated that the 1,686 milligrams per
2 liter TDS requested as relief by ExxonMobil is well
3 within the TDS toxicity threshold.

4 The 1,686 milligrams per liter TDS
5 in the stream in this case consists of chloride and
6 sulfate, plus adding in the sodium, magnesium,
7 calcium, and all the minor ions. This site-specific
8 rulemaking will not result in aquatic life toxicity.
9 For the above conclusions we relied on the studies,
10 listed as Exhibit A, B, C, D and E.

11 Q. Just a question here real quick.

12 I put before you what has been
13 marked as Exhibits A through E. Can you just
14 briefly look through those.

15 Are those the studies you're
16 referring to?

17 A. Yes.

18 Q. Go on.

19 A. "This site-specific rulemaking
20 consisting of new calculations of the protective
21 level of TDS is consistent with 40 CFR
22 131.11(b)(1)(ii). Specifically a federal
23 site-specific water quality criterion would be
24 allowed in this case because sensitive species of

1 aquatic life have been demonstrated to be protected
2 by the new standard through laboratory test toxicity
3 tests. USEPA Region 5 has given preliminary
4 approval of the ExxonMobil site-specific standard
5 under its obligation to review state water quality
6 standards under the Clean Water Act.

7 The Agency is currently reviewing
8 the secondary contact and indigenous aquatic life,
9 water quality standards for the lower Des Plaines
10 River, through the use attainability analysis
11 process. This site-specific rulemaking should
12 remain in effect if the water quality standard for
13 TDS is not revised to at least 1,686 milligrams per
14 liter for the lower Des Plaines River under the use
15 attainability analysis.

16 There are no other existing
17 discharges in this stretch of the river, which have
18 elevated discharges of TDS. The Channahon
19 wastewater treatment facility, BASF, ExxonMobil tank
20 farm, Loder Cronkiaan and Dow Chemical polystyrene
21 plant are the Des Plaines River dischargers
22 downstream of the subject facility.

23 Channahon is the only municipal
24 discharger and TDS expected in an STP discharge

1 would be expected to be 500 to 600 milligrams per
2 liter. So, in effect, they are diluted.

3 The BASF plant, visible from the
4 I-55 bridge, discharges process water and storm
5 water which are not expected to have elevated TDS.
6 There is also another ExxonMobil facility that is a
7 tank farm and/or pipeline terminus. They have
8 boiler blowdown, but this would be minor in size and
9 not likely to have extremely high TDS wastewater.
10 Loder Cronkiaan makes vegetable oil products and has
11 no likelihood for high TDS wastewater.

12 Finally, a Dow Chemical
13 polystyrene plant, which has cooling and sanitary
14 wastewater, has no potential for high TDS waste
15 waters of significant size. None of these
16 industries is categorized by the IEPA as a major
17 discharger. None of these dischargers exhibit a
18 need for water quality based effluent limits past or
19 present. Regardless of the dischargers to this
20 section of the Des Plaines River, the water quality
21 standard that is proposed is more stringent than
22 what the Agency believes is protective of aquatic
23 life.

24 This site-specific rulemaking,

1 will not result in aquatic toxicity. There are no
2 economical or technically feasible alternatives and
3 it is approvable by USEPA. I recommend that the
4 Illinois Pollution Control Board support the
5 petitioner's request for site-specific rulemaking
6 for relief from the water quality standards for TDS
7 at 35 IAC 302.208(g) and 302.407 as written in the
8 petition."

9 Q. Thank you, Scott.

10 Scott, are these true and accurate
11 copies of the studies that EPA relied on, Exhibits A
12 through E?

13 A. Yes.

14 MR. ANDRYK: At this time I'd like to
15 move Exhibits A through E into the record?

16 THE HEARING OFFICER: Mr. Fort?

17 MR. FORT: No objection.

18 THE HEARING OFFICER: Those will be
19 admitted into the record.

20 (WHEREUPON, said document,
21 previously marked Respondent's
22 Exhibits A-E, for identification,
23 was offered and received in
24 evidence.)

1 MR. ANDRYK: Thanks, Scott. I believe
2 I'm done with this witness, unless Mr. Fort
3 has questions.

4 MR. FORT: I have no questions. As
5 long as you're going to introduce Exhibit F,
6 that's --

7 MR. ANDRYK: Yes. I was going to -- I
8 need to lay foundation on that, so I thought
9 I'd call my next witness just to ask two
10 questions -- or a couple questions.

11 THE HEARING OFFICER: You may proceed.
12 But let's -- you want to swear him
13 in; right?

14 MR. ANDRYK: Yes.
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1 (WHEREUPON, the witness was duly
2 sworn.)

3 ROBERT MOSHER,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. ANDRYK:

8 Q. Could you state your name for the
9 record?

10 A. Robert Mosher.

11 Q. And what is your current title with
12 the Agency?

13 A. I'm the manager of the Water Quality
14 Standards Unit within the Division of Water
15 Pollution Control, Bureau of Water.

16 Q. Within Illinois EPA?

17 A. Yes.

18 Q. And how long have you been employed
19 with the EPA?

20 A. About 20 and a half years.

21 Q. And have you had occasion to review
22 the petition of the petitioner in this matter
23 requesting relief from TDS water quality standards
24 in the form of site-specific rule?

1 A. Yes.

2 Q. And did you also have occasion to
3 discuss the request of relief with USEPA?

4 A. Yes, I did.

5 Q. And can you identify this document
6 that's been marked as Exhibit F?

7 A. Yes. This is a letter from Linda
8 Holst, who is the manager of the USEPA Region 5
9 water quality standards branch. And this is a
10 letter giving tentative USEPA approval to the
11 site-specific rule.

12 Q. And was that based on the language as
13 outlined in the petition filed in this matter?

14 A. Yes. We will have to submit the
15 Board's adopted rule back to USEPA Region 5 for
16 their final approval under the Clean Water Act.

17 Q. Is this -- a copy of this letter and
18 the e-mail attached to it, are these true and
19 accurate copies of the letter and its attachment
20 that were sent to you from USEPA in this matter?

21 A. Yes. Yes, it is.

22 MR. ANDRYK: At this time I'd like to
23 offer Agency's Exhibit F into the record.

24 THE HEARING OFFICER: Mr. Ford?

1 MR. FORT: I support that motion.

2 THE HEARING OFFICER: That will be
3 admitted then. Thank you.

4 (WHEREUPON, said document,
5 previously marked Respondent's
6 Exhibit F, for identification, was
7 offered and received in evidence.)

8 MR. ANDRYK: Okay.

9 THE HEARING OFFICER: Anything
10 further, Mr. Andryk?

11 MR. ANDRYK: No. Other than I'd like
12 to reserve the right for posthearing
13 comments.

14 THE HEARING OFFICER: Okay. Yeah, we
15 can address whether or not we want to do that
16 after the hearing. We will go off the record
17 and decide whether you guys want to submit
18 anything like that.

19 MR. ANDRYK: Okay.

20 THE HEARING OFFICER: Does anybody
21 from the Petitioner or the Agency have
22 questions for any of the other side's
23 witnesses?

24 MR. HUFF: No.

1 MR. FORT: No, sir.

2 THE HEARING OFFICER: We do have some
3 questions. Everybody has been sworn in, and
4 I think as long as nobody has any objection,
5 we're just going to ask them to the room at
6 large and let people answer as they see fit.

7 MR. RAO: That's fine.

8 THE HEARING OFFICER: Generally,
9 Mr. Rao has been asking these questions, but
10 Member Johnson and I may chime in as we see
11 fit.

12 MR. JOHNSON: I'll give you all the
13 caveat we typically have on here for
14 45 minutes before the hearing so we can run
15 what are stupid questions by him and he can
16 wave this off. So we might have questions
17 that don't appear to come from a scientist,
18 because they are not coming from a scientist.

19 MR. RAO: And most of the time they're
20 not stupid, so...

21 THE HEARING OFFICER: He's just saying
22 that because he was late.

23 MR. JOHNSON: This is a stupid
24 question.

1 I read in here somewhere about
2 grass roots refinery. What the heck is a
3 grass roots refinery?

4 MS. FORD: It's a brand new refinery
5 made on an empty lot. So there have not been
6 any grass root refineries, I think, in
7 30 years --

8 MR. JOHNSON: Okay.

9 MS. FORD: -- built in the U.S.

10 MR. JOHNSON: So this was the last of
11 the --

12 MS. FORD: This is the second last,
13 actually --

14 MR. JOHNSON: Thank you.

15 MS. FORD: -- I believe.

16 MR. HUFF: In Washington.

17 MS. FORD: Right.

18 MR. JOHNSON: Thanks. Go ahead,
19 Anand.

20 MR. RAO: Okay.

21 I have a few questions, some of
22 them are clarifications, and some may require
23 some information from ExxonMobil.

24 In the ExxonMobil's proposed TDS

1 standard for the lower Des Plaines River, the
2 proposal identifies portions of the stream
3 subject to the amended standards that you're
4 proposing. But the petition that was filed
5 with the Board did not include any maps of
6 the region.

7 I didn't find a location of the
8 refinery along with a discharge point
9 Interstate 55 bridge and the confluence of
10 Des Plaines River with the Kankakee River.
11 It will be helpful to the Board if you can
12 submit a map showing some of the pertinent
13 locations on this map along with your
14 comment.

15 MR. FORT: You're just talking about a
16 map that will give a general geography
17 description of where things are?

18 MR. RAO: Yeah.

19 MR. FORT: A visual piece.

20 THE HEARING OFFICER: As opposed to
21 coordinates.

22 MR. RAO: Yeah. The coordinates are
23 fine, but it would be good to see where the
24 refinery is and how it impacts the river

1 body.

2 MR. FORT: Okay.

3 MR. RAO: And talking about the
4 coordinates that you have provided for the
5 outfall, we noticed that there was a
6 one-second difference in the longitude in the
7 Agency's permit system and what you had
8 provided. And just take a look and let us
9 know which one to use.

10 MR. ANDRYK: Okay.

11 MR. FORT: Okay.

12 MR. RAO: In your petition you had
13 noted that the crude oil processing
14 capability of the refinery was approximately
15 240,000 barrels per day?

16 MS. FORD: That's correct.

17 MR. RAO: Okay. And in a previous
18 rulemaking docketed as R9728, the refinery
19 had indicated a capacity of 200,000 barrels
20 of crude oil per day -- that was a while ago.

21 So in light of this, could you
22 please comment on how the production rate is
23 projected to change in the future and if that
24 change will have an impact on the amount of

1 TDS discharged?

2 MS. FORD: We are considering several
3 possible refinery expansions. To be combined
4 with those expansions, obviously, we would
5 insure that all proper permitting would be
6 completed with the EPA and the Illinois EPA
7 and meeting all new source review
8 requirements.

9 None of those potential expansions
10 would lead to an increase of the TDS into the
11 river.

12 MR. RAO: Would you care to comment on
13 any of those proposed expansions, or is it
14 something that's confidential at this moment,
15 in terms of just the barrels relate, you
16 know.

17 MS. FORD: I'm not certain on the
18 exact details of those expansions, but the
19 USEPA has been working with us to ensure that
20 we have the capability to possibly expand
21 some of our crude units in the future.

22 THE HEARING OFFICER: And this would
23 be something, as I think about it here, that
24 you ought to be more concerned about than we

1 are. I mean, because if the TDS increases,
2 you're going to have a site-specific rule
3 that it can't meet.

4 MS. FORD: The reason we will not have
5 an increased TDS is that our FCC has plenty
6 of capacity to actually process the -- any
7 additional through-puts that our crude unit
8 will be able to provide.

9 THE HEARING OFFICER: Okay. I don't
10 know what that means, but Anand agrees.

11 MR. HUFF: If I can interject, the FCC
12 is a fluid catalytic cracker.

13 THE HEARING OFFICER: Okay.

14 MR. HUFF: That is the unit that the
15 wet gas scrubber is associated with. So the
16 design loadings that are part of the petition
17 here reflect the ability of the FCC, its
18 design capacity.

19 And what Ms. Ford was saying is
20 that the design capacity of that unit is not
21 part of the expansion plans.

22 THE HEARING OFFICER: Thank you. I
23 understand that.

24 MR. RAO: Okay. At Page 9 of the

1 petition, the petition, you know, mentions
2 that DESOX from the catalytic SO2 additive
3 technology. And it states that this DESOX
4 system uses SO2 emissions by converting
5 sulphur to a stable form and recovering it
6 downstream and sulphur that is recovered will
7 not enter the wastewater stream.

8 It states that it's converted to
9 an elemental sulphur. This is just a
10 question, you know, we had, it's nothing to
11 do with this TDS issue, but we just wanted to
12 know what do you do with the recovered
13 sulphur?

14 MS. FORD: We actually send and sell
15 sulphur as a product from our sulphur plant.

16 THE HEARING OFFICER: Can I jump in?

17 MR. RAO: Okay.

18 THE HEARING OFFICER: In Exhibit 6,
19 and that was the report prepared by James
20 Huff with the water quality impact, he
21 provides the water quality protection is not
22 only for the ExxonMobil facility refinery,
23 but for the Citgo Lemont Refinery. I think
24 we addressed this in one of -- 6A, B or C.

1 Am I correct in saying that -- you
2 know, that record is not incorporated with
3 the Citgo Lemont case, the PCB 0585 -- but
4 you've now identified the contribution from
5 all the facilities; correct, the incremental
6 increase of TDS?

7 MR. FORT: I believe Exhibit 6C
8 addresses both refineries --

9 THE HEARING OFFICER: Okay.

10 MR. FORT: -- at the allowed capacity
11 of TDS; is that correct?

12 MR. HUFF: It's partially correct.
13 Exhibit 6C incorporates both Citgo and
14 ExxonMobil at the beginning of the Illinois
15 River. Throughout our -- my testimony and
16 the water quality memo that I prepared, which
17 was Exhibit --

18 MR. FORT: 6.

19 MR. HUFF: -- 6 -- this was Exhibit 6,
20 Citgo was included in there completely
21 through there.

22 So all of the analysis that has
23 been done on behalf of ExxonMobil,
24 incorporates in Citgo's proposed loadings

1 that have been approved by the Board, plus
2 ExxonMobil's requested relief.

3 THE HEARING OFFICER: Do we now have
4 specifically a Joliet contribution?

5 MR. RAO: I don't think so.

6 THE HEARING OFFICER: Would it be
7 possible to identify that contribution from
8 only the Joliet Refinery?

9 MR. FORT: Only the ExxonMobil
10 Refinery?

11 THE HEARING OFFICER: Right. I'm
12 sorry. I'm saying Joliet, but...

13 MR. HUFF: I believe that's in there.
14 If you look at Exhibit 6 C at the beginning
15 of the Illinois River, I've broken Citgo out
16 with that 19 milligrams per liter that was
17 there.

18 So all you have to do is back out
19 the 19 milligrams per liter that's associated
20 with Citgo. And then in my testimony also, I
21 talk about what the incremental increase
22 would be from ExxonMobil at the edge of their
23 mixing zone.

24 MR. RAO: I think we were looking at

1 the I-55 bridge.

2 THE HEARING OFFICER: Specifically the
3 I-55 bridge? Especially during, you know,
4 low flow conditions, so...

5 That's the concern that we
6 identified. And Anand, you can correct me if
7 I am wrong.

8 MR. RAO: No --

9 MR. FORT: I think the issue here gets
10 back to the mixing zone analysis and what the
11 concentrations would be at the edge of the
12 ExxonMobil mixing zone from the refinery. So
13 I think -- and that mixing zone, as I
14 understand it, is very near or underneath the
15 I-55 bridge.

16 MR. HUFF: It passes under it.

17 MR. RAO: Yeah. That's our next
18 question about the mixing zone.

19 THE HEARING OFFICER: Right.

20 MS. FORD: So you would like to see
21 that mixing study without the Citgo
22 contribution; is that correct?

23 THE HEARING OFFICER: Well, possibly.
24 We'd also like to know where the edge of the

1 mixing zone is. You know, that might
2 alleviate some of the questions that we have.

3 MR. RAO: The reason we had this
4 question was the mixing zone study was
5 submitted as part of the other rulemaking in
6 R9728, which is not incorporated --

7 MR. FORT: Okay.

8 MR. RAO: -- in this rulemaking. So
9 that's not part of the record.

10 So, you know, it would be helpful
11 if you could define where the edge of the
12 mixing zone is and how many feet, miles or
13 downstream is the edge of the mixing zone
14 from the outfall --

15 MR. FORT: Okay.

16 MR. RAO: -- in this record.

17 MR. FORT: You'd like to get the
18 mixing zone into this record?

19 MR. RAO: Yes.

20 MR. FORT: Okay.

21 THE HEARING OFFICER: And the location
22 of it --

23 MR. RAO: Yes.

24 THE HEARING OFFICER: And I think that

1 would probably resolve the questions we had
2 earlier --

3 MR. RAO: Yes.

4 THE HEARING OFFICER: -- about, you
5 know, about what's happening at the I-55
6 bridge. Would it -- well, that's in the
7 record of R9728?

8 MR. RAO: Yes. The mixing zone study
9 is in there.

10 THE HEARING OFFICER: You could also
11 incorporate that into the record. I suppose
12 that's a pretty voluminous record.

13 So whatever you think is the best
14 way to approach that, Mr. Fort.

15 MR. FORT: Okay. Thank you.

16 MR. JOHNSON: That's why that map --
17 and I know from experience that other board
18 members like to look at maps.

19 MR. FORT: Okay.

20 MR. JOHNSON: And they want to see
21 where the discharge is. And the way I
22 picture it now, you've got the confluence of
23 the Kankakee and the Des Plaines about five
24 miles below that; right?

1 And then a question I couldn't
2 find answered anywhere in here, how far then
3 from that confluence is it to the Illinois.
4 If you're talking about --

5 MR. HUFF: That is the beginning of
6 the Illinois, same answer, approximately five
7 miles.

8 MR. JOHNSON: Okay.

9 MR. HUFF: But if I could go back and
10 just answer, in general terms, your specific
11 question on ExxonMobil's contribution.

12 In my testimony, the incremental
13 change in TDS at low flow from the combined
14 was 43 milligrams per liter. ExxonMobil's
15 contribution to that is on the order of about
16 35 percent of that, so --

17 MR. RAO: Okay.

18 MR. HUFF: -- roughly 15 milligrams
19 per liter, in that range, 15 to 20.

20 MR. RAO: Okay. That helps.

21 Yeah, that's why we noticed that
22 you had the combined impact of both the
23 refineries and we just wanted to get an idea
24 as to what the ExxonMobil refinery...

1 And we have a few questions for
2 Mr. Twait, you know, depending on who wants
3 to answer this.

4 Mr. Twait, on Page 2 of your
5 prefiled testimony, you stated that the
6 Des Plaines River is rated as a C -- it's
7 alphabet C stream under the Agency's
8 biological stream characterization program.
9 Could you please explain for the record what
10 C rating means in the present context?

11 MR. TWAIT: The biological stream
12 characterization, BSC, ratings go from A
13 to --

14 MR. MOSHER: E.

15 MR. TWAIT: -- E. And the A-rated
16 streams are high quality streams, and the
17 E streams are low quality streams. So it's
18 right about in the middle.

19 MR. MOSHER: That rating system is
20 based on the fish population. It's a system
21 that, for years, has been a cooperative
22 effort between Illinois Department of Natural
23 Resources and Illinois EPA.

24 Mostly it's IDNR biologists that

1 do the fish surveys, collect the data. And
2 then the two agencies sit down and analyze
3 the data and then put the alphabetical rating
4 on the stream.

5 You may have heard of the index of
6 biotic integrity, IBI, that's numerical
7 values that are obtained from this fish
8 sampling. And then those numeric values and
9 other considerations go into the A, B, C, D,
10 E rating.

11 So the C-rated stream is a fair
12 quality.

13 THE HEARING OFFICER: Okay. You do
14 that for lakes, too?

15 MR. MOSHER: No, just for streams.

16 MR. RAO: With this rating, should we
17 be more or less concerned about any change in
18 water quality standards with the stream?

19 MR. MOSHER: Probably it's not of
20 great consequence. What we are finding with
21 our investigations of total dissolved solids
22 is that fish are not sensitive.

23 It's the invertebrate organisms in
24 the waters that are really sensitive. And

1 those constitute the most sensitive species.
2 So things like daphnids, and other
3 crustaceans called hyalella, those turned out
4 to be sensitive organisms.

5 MR. RAO: Okay.

6 Mr. Twait, on the same page you
7 note that IDNR made a finding of no
8 threatened and endangered species or natural
9 areas affected by the proposed water quality
10 standard. Could you please identify whether
11 IDNR made any written finding on species in
12 natural areas?

13 If so, would it be possible for
14 the Agency to submit a copy of the IDNR into
15 the record?

16 MR. TWAIT: Yes, we got a written
17 correspondence back from them on the 19th of
18 December, 2005. They indicated that no
19 threatened or endangered species or natural
20 areas are present in the vicinity of this
21 action.

22 And they circled no under the
23 question could the proposed action adversely
24 affect the endangered or threatened species

1 or the natural area. And for the question is
2 consultation terminated, they indicated yes.

3 MR. ANDRYK: Do you have an extra
4 copy?

5 MR. TWAIT: I do not have an extra
6 copy.

7 MR. ANDRYK: Perhaps we can make a
8 copy here and submit it today.

9 THE HEARING OFFICER: You can file it
10 with the posthearing comments, if you'd like.

11 MR. ANDRYK: Okay.

12 MR. RAO: Whichever is convenient.

13 (WHEREUPON, discussion was had
14 off the record.)

15 MR. RAO: Could you clarify whether
16 the proposed change in water quality standard
17 for TDS would be generally applicable to
18 identify threats of the Des Plaines River and
19 not limited as it relates only to TDS
20 discharge from the ExxonMobil Joliet
21 Refinery --

22 THE HEARING OFFICER: Does that make
23 sense?

24 MR. RAO: -- if the Board adopts the

1 change in water quality standards?

2 MR. TWAIT: The change in water
3 quality standard that will be proposed is
4 currently under consideration for the general
5 use section, which is all downstream of I-55.

6 MR. RAO: So, in effect, any
7 discharger of the river, it will be subject
8 to the proposed water quality standard?

9 MR. TWAIT: Oh, yes. Yes.

10 MR. RAO: Okay.

11 MR. TWAIT: As -- let me clarify that.
12 They would be subject to the water quality
13 standard of 1,686, as long as the water
14 quality standard is still met in the Illinois
15 River, which goes back to the 1,000
16 milligrams per liter.

17 MR. RAO: Okay. So if there's any
18 other discharger existing or someone new
19 comes in, they have to show -- you know, just
20 like Exxon has submitted its report here --
21 that they would comply with 1,000 milligrams
22 per liter downstream and the confluence of
23 the Kankakee River and the Des Plaines River?

24 MR. TWAIT: Yes. I do not believe

1 you comment on the implications of the change
2 in the standards on the Citgo variance?
3 You're familiar with the Citgo variance;
4 right? Because that includes a number of
5 conditions based on a TDS standard of 1,000
6 milligrams per liter.

7 MR. HUFF: Can we just clarify the
8 proposed changes? You're talking about
9 ExxonMobil's request or the one that the
10 Agency is about to submit to the Board, just
11 for clarification.

12 MR. RAO: We are talking about the
13 proposed change in this rulemaking.

14 MR. HUFF: Thank you.

15 THE HEARING OFFICER: Right.

16 MR. RAO: I think with the Citgo
17 variance, there are a number of conditions in
18 the variance that are tied to complying with
19 the 1,000 milligram per liter standard at the
20 I-55 bridge.

21 MR. JOHNSON: Sampling and monitoring.

22 THE HEARING OFFICER: Yes.

23 MR. RAO: And now we are going to
24 change that standard. So we are just

1 interested to hear from the Agency or you as
2 to the implications from that change on the
3 Citgo variance.

4 THE HEARING OFFICER: We're interested
5 in hearing from the Agency and you, if you
6 desire.

7 MR. RAO: Yes.

8 THE HEARING OFFICER: But definitely
9 from the Agency. Because I know it doesn't
10 concern you.

11 MR. TWAIT: I hadn't considered that
12 aspect of it. But just off the top of my
13 head, that since the water quality standard
14 is changing for this stretch of the river,
15 that we would make their compliance point the
16 1,686 at the I-55 bridge and 1,000 milligrams
17 per liter for the Illinois River.

18 MR. RAO: Would that result in any
19 changes that have to --

20 THE HEARING OFFICER: Are we going to
21 have to revise the Citgo variance at all?

22 MR. HUFF: If I could just interject.

23 The Citgo is also subject to the
24 1,500 milligram per liter TDS water quality

1 standard on the secondary contact. And that
2 would still apply up to the point of
3 ExxonMobil's discharge.

4 The 2001 -- there were several
5 exceedances of that 1,500 number. So in the
6 variance that Citgo received -- they are to
7 start this winter, I believe November 1st,
8 with sampling three times a week at the I-55
9 bridge.

10 So I think that would have to
11 proceed, because they're going to either have
12 to make a demonstration that they now comply
13 with both the 1,500 and the 1,686 or proceed
14 with their variance. And I think, right now,
15 there's not sufficient data available to
16 conclude they're going to meet the 1,500
17 milligram per liter on that stretch of the
18 river, based on data from 2001.

19 But maybe after a couple years of
20 intensive monitoring, that data may be
21 sufficient to say that they no longer need
22 that variance.

23 THE HEARING OFFICER: What about the
24 Agency, do you think they are going to have

1 to come in at some point and revise it, or
2 will it be necessary to revise that variance?

3 MR. TWAIT: I would have to take a
4 look at the language of the rulemaking.

5 THE HEARING OFFICER: We will have
6 some time after the hearing and public
7 comment period if you guys could do that
8 then?

9 MR. TWAIT: Yeah.

10 MR. ANDRYK: Sure. We can address it.

11 MR. RAO: That would be helpful.

12 MR. JOHNSON: Maybe that's a good
13 segue into -- all through this there's the
14 intimation that the Agency may soon propose
15 the elimination of TDS water quality
16 standards altogether. And I was wondering,
17 from your perspective, whether or not you
18 would want to include some language in this
19 rule that would take that potentiality, or
20 that potential elimination, into effect.

21 Either -- because you're asking
22 for 1,686, and all of a sudden, you know, you
23 don't have even that. You might want to
24 address that.

1 MR. FORT: Well, I think I can speak
2 for the petitioner here, that if that were a
3 realistic scenario to happen on the schedule
4 that they have with the consent decree, we
5 would embrace that. But right now -- you
6 know, and after the extensive consultation
7 that Illinois EPA has had with USEPA, I'm
8 reluctant to suggest any tweaks to the
9 language here in this rulemaking.

10 THE HEARING OFFICER: Understanding
11 that you may have to come in later if they
12 get rid of the TDS water quality standards --

13 MR. FORT: Right.

14 THE HEARING OFFICER: -- and those
15 would be applicable, your rule will still be
16 applicable regardless of what happens to the
17 TDS water quality.

18 MR. FORT: If we get to the scenario
19 that ExxonMobil has a tighter limit in the
20 lower Des Plaines than does everybody else --

21 MR. JOHNSON: Right. That's what
22 would --

23 MR. FORT: Yeah. I think the company
24 will figure out what it needs to do.

1 And whether or not it feels it
2 needs to change the lower Des Plaines or the
3 Agency decides to change the lower
4 Des Plaines --

5 THE HEARING OFFICER: But in light of
6 the situation with the USEPA right now, you
7 don't want to do any tweaking to the language
8 to address that potentiality.

9 MR. FORT: I very much agree with the
10 concept, but I think we need to stay on our
11 schedule.

12 THE HEARING OFFICER: Okay. We just
13 want to hear from you on that.

14 MR. FORT: Thank you for the question,
15 but I think we really need to stay on our
16 schedule.

17 MR. HUFF: And wouldn't it really be
18 as part of the Agency's petition to the
19 Board, they would address the elimination of
20 that 1,686 as you would propose to change the
21 1,000 milligram per liter number, as well? I
22 mean, that would make sense.

23 THE HEARING OFFICER: Well, it may or
24 may not.

1 Go ahead Mr. Mosher.

2 MR. MOSHER: We assumed that
3 ExxonMobil would participate in that
4 rulemaking and say, "Hey, if you're going to
5 do this, then take ours back." But --

6 THE HEARING OFFICER: That's all
7 speculation at this point.

8 MR. MOSHER: Yeah. Technically, we're
9 ready to go with that proposed -- those
10 proposed changes. We are waiting for agency
11 policy decisions and the preparation of the
12 petition.

13 But I'm guessing that within a
14 month, the Agency will be filing that
15 petition. And that will be to change sulfate
16 total dissolved solids, standards for general
17 use waters, among some other housekeeping
18 things.

19 It's a shame that we weren't a
20 year ahead of ourselves in doing that, and
21 we -- this proceeding here today would be a
22 lot simpler. We also expect to change the
23 secondary contact water quality standard for
24 total dissolved solids.

1 But that is in another -- what do
2 you call it -- it's in a UAA, use attainable
3 analysis, right now. So that's kind of got a
4 life of its own and it will probably take
5 longer to resolve, certainly, than our
6 proposed petition a month from now.

7 MR. TWAIT: Yes.

8 MR. RAO: Actually, that was our next
9 question about the UAA process as to what the
10 status of that process is.

11 MR. TWAIT: We have been doing a use
12 attainability analysis for the lower
13 Des Plaines River and the Chicago area
14 waterway system, which encompasses all of the
15 secondary contact. And we are hoping to
16 upgrade those water quality standards.

17 Most of the outreach and the
18 reports have been done, the Agency is working
19 on proposed language and a few outstanding
20 issues yet.

21 MR. RAO: Is that analysis that's
22 being done with the Metropolitan Water
23 Reclamation District?

24 MR. TWAIT: Yes. They are part of the

1 monitoring provisions provided for during
2 permitting process, since this proposed
3 site-specific rule don't carry such
4 conditions?

5 MR. TWAIT: Could you ask that again?

6 THE HEARING OFFICER: Was that not
7 clear?

8 This proposed site-specific rule
9 doesn't carry any conditions, like monitoring
10 requirements to planning for temporary
11 storage, things like that. Will those
12 provisions be provided for during the
13 permitting process, the Agency permitting
14 process?

15 MR. TWAIT: I would think that we will
16 have just limits in the permit to ensure
17 compliance outside of the mixing zone.

18 THE HEARING OFFICER: Okay.

19 Is that okay with you, Anand?

20 MR. RAO: Yeah.

21 I see missed some questions
22 regarding temporary storage. This is for
23 ExxonMobil.

24 At Page 16, the statement of

1 reasons states that short-term episodic
2 storage is neither economically feasible or
3 economically reasonable?

4 MS. FORD: Right.

5 MR. RAO: The petition notes that the
6 refinery has a relatively small footprint,
7 and the refinery would need to remove one or
8 two existing -- to replace them with new
9 200,000 barrel storage facilities.

10 MS. FORD: Right.

11 MR. RAO: In the record we didn't see
12 a map of the facility or a -- of what area it
13 occupies. Would it be possible for you to
14 provide, you know, a schematic?

15 MS. FORD: Absolutely. And if I had a
16 map right now, I would be able to point out
17 the area of these facilities and why we are
18 limited in one tankage. And two, why we do
19 not have space to build the tank in any
20 feasible area.

21 We do have some land near the
22 Medaywin Prairie (phonetic). That land is
23 not feasible to install or to build a storage
24 tank.

1 MR. RAO: Okay. Can you explain how
2 ExxonMobil estimated the amount of episodic
3 storage to be 200,000 barrels?

4 MS. FORD: We took the number of weeks
5 that we would have to hold of our purge
6 treatment stream that comes from the wet gas
7 scrubber, I believe it was a four-week
8 period. So we determined the 200,000 barrels
9 by the amount of water we would have to hold
10 during what we know now to be worse case of
11 TDS in the river in order to meet the water
12 quality standards.

13 MR. RAO: Thank you.

14 And going back to this use
15 attainable analysis issue, the Agency noted
16 on Page 4 of your profile, testimony that the
17 site-specific rulemaking should remain in
18 effect if water quality standards for TDS is
19 not revised to at least 1,686 milligrams per
20 liter for lower Des Plaines River under the
21 UAA. Could you explain why the site-specific
22 rule should remain in effect, especially if
23 the Agency moves to eliminate the TDS
24 standard?

1 MR. TWAIT: The reason I put that in
2 there is I just wanted to make it clear that,
3 regardless of what happens for the use
4 attainability analysis, this site-specific
5 standard should stay, should remain in
6 effect. If the Agency removes the TDS
7 standard, then I would think that we would
8 also remove language for this at some point.

9 MR. MOSHER: He meant if the Board
10 removes the TDS standard.

11 MR. TWAIT: I'm sorry.

12 MR. RAO: And regarding this potential
13 elimination of the TDS standard for general
14 use water, is the Agency also considering
15 elimination of the TDS standard for secondary
16 contact and changes in the secondary class
17 waters?

18 MR. MOSHER: We are. But since
19 there's this existing long ongoing use
20 attainability analysis, our management
21 decided that we shouldn't go in and change
22 the secondary -- or ask you to change the
23 secondary contact standard now.

24 We should let that process unfold

1 all by itself as one rulemaking, and not go
2 in twice.

3 MR. RAO: Okay.

4 MR. MOSHER: So that was the direction
5 our management gave us. It's going to be the
6 same justification for either.

7 The same toxicity test analysis on
8 aquatic life will be valid for both types of
9 waters. But we just -- we're trying not to
10 confuse the issue any more than we have to.

11 THE HEARING OFFICER: Anything else?

12 MR. JOHNSON: I don't think so.

13 Although I was curious, your -- Stacey, your
14 prefiled testimony indicates that when you're
15 lauding the wet gas scrubber technology, that
16 high reliability with over 200 years of
17 operating experience. And I just -- I
18 pictured it back in the early 1800s, just
19 scrubbing away, but...

20 MS. FORD: Cumulative.

21 MR. JOHNSON: Thank you.

22 MS. FORD: That's ExxonMobil
23 technology.

24 THE HEARING OFFICER: Okay. Now, is

1 there any other questions from any of the
2 witnesses from anybody here?

3 I see none. I want to note that
4 there are still no members of the public here
5 to ask questions.

6 So let's go off the record
7 momentarily and talk about transcript
8 availability.

9 (WHEREUPON, a recess was had.)

10 THE HEARING OFFICER: We are back on
11 the record.

12 After an off-the-record
13 discussion, we have determined that a
14 transcript of the hearing should be available
15 by June 26th, and copies of the transcript
16 will be available shortly thereafter on the
17 Board's website at www.ipcb.state.il.us. A
18 previous board and hearing officer order
19 should also be available on that site.

20 Also we have set a comment period.
21 Public comments will be due by July 11th in
22 the Board's offices. No mailbox rule applies
23 here, Mr. Andryk.

24 MR. ANDRYK: No mailbox rule?

1 THE HEARING OFFICER: We take that
2 with all due seriousness. So get it into the
3 office by July 11th.

4 If you need to fax it in, I give
5 you, hereby, advanced permission to fax it
6 in, and you can also file on the Board's
7 website, which is the clerk's office online.
8 So are there any other issues?

9 Do we have closings we want to
10 make or anything like that, Mr. Fort or
11 Mr. Andryk?

12 MR. FORT: I don't have any closing.

13 I think, you know, there's a lot
14 of effort that's been made here, we're making
15 good progress and we appreciate everybody's
16 questions and input and attention.

17 THE HEARING OFFICER: Mr. Andryk, do
18 you have anything further? You wanted to
19 reserve your right for a comment at the end
20 here.

21 MR. ANDRYK: Oh, I've already said
22 everything I need to say.

23 THE HEARING OFFICER: Okay.

24 MR. ANDRYK: I just wanted to have the

1 opportunity to submit posthearing comments.

2 Thank you for your attention and
3 consideration.

4 THE HEARING OFFICER: Sure.

5 July 11th.

6 Mr. Johnson, do you have anything
7 further?

8 MR. JOHNSON: No.

9 THE HEARING OFFICER: Mr. Rao?

10 MR. RAO: No.

11 THE HEARING OFFICER: All right.

12 Thank you very much. I'd like to thank
13 everyone.

14 And this hearing is adjourned.

15 MR. FORT: Thank you.

16 MR. ANDRYK: Thank you.

17 (WHICH WERE all the matters heard
18 in the above-entitled cause this
19 date.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at
7 the hearing aforesaid, and that the foregoing is a
8 true, complete and correct transcript of the
9 proceedings of said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 16th day of
14 June, 2006.

15

16

Sharon Berkery
Certified Shorthand Reporter

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19 C.S.R. Certificate No. 84-4327.

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