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P U B L I C H E A R I N G

THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENT TO TITLE 35, ENVIRONMENTAL PROTECTION, SUBTITLE C, WATER POLLUTION, CHAPTER 1, POLLUTION CONTROL, BOARD (STARCHEVICH, EFFLUENT REVISIONS AND NPDES)	)	Nos. R82-5 and R82-10 Consolidated

Held on Tuesday, July 20, 1982, commencing at the hour of 1:30 o'clock p.m. at the Pollution Control Board offices, 309 West Washington Street, Chicago, Illinois, Hearing Officer Lee Cunningham presiding.

PRESENT:

Members of the Board:

Mr. Jacob Dumelle, Chairman

ALSO PRESENT:

Mr. Gary King, Attorney
Enforcement Programs
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

appeared on behalf of the Illinois Environmental Protection Agency.

I N D E X

E X H I B I T S

Exhibit Nos.	For Identification	In Evidence
1	8	8
2	12	12

HEARING OFFICER CUNNINGHAM: I will call this hearing to order. I am now calling to order the matter of the amendment to Title 35, Environmental Protection, Subtitle C, Water Pollution, Chapter 1, Pollution Control Board, and in parentheses Starchevich, Effluent Revisions and NPDES, permit R82-5 and R82-10 consolidated.

I will try to explain for the record just what this proceeding consists of at this point.

On April 7th of 1980 the Agency made a proposal docketed as R80-6 to amend certain definitions of Chapter 3, which is now Subtitle C under Codification, and to limit the Starchevick as it interprets Rule 951(b)2, which is now Section 309.202(b)2.

The definitions which were proposed to be amended in R80-6 were actually amended under Docket R77-12, Docket A. Those are definitions of publicly-owned and publicly-regulated treatment works.

Since that has already been accomplished, all that remained of R80-6 was the amendment to

Rule 952(b)1 regarding Starchevich, and the Board decided that that should be consolidated with R82-5 by an opinion and order dated April 29th of 1982.

This aspect of this proceeding has had an economic impact study done on it already by the now Department of Energy and Natural Resources, and that was filed with the Board on December 11 of 1981.

Next, on December 3rd of 1981 the Board adopted Subtitle C amended in R76-21. There was a motion for reconsideration by the Agency on February 17th of 1982 -- let's change that a little. On February 17th of 1982 the Board denied reconsideration.

On April 1st of 1982 the Board proposed the deletion of Rule 412, which is now Section 304.142,concerning new source performance standards, and the amendment of Rule 702, which is now Section 307.103, concerning mercury discharges.

This proposal was in substantial conformity with the Agency's comments and the Agency's motion for

reconsideration, and in effect this aspect of this proceeding is a reconsideration of 76-21.

Then on May 13th of 1982 the Board adopted underground injection control regulations in Docket R81-32, which are not yet effective.

The Board also proposed in Docket 82-10 to modify old Rule 901, which is now Section 309.102, to delete the part from 309 which requires NPDES permits under certain circumstances all requirements applicable to wells, thus, hopefully avoiding a potential for dual permits being needed for wells under the underground injection control program and the NPDES program.

After that it was consolidated with R82-5 for the purposes of hearing. That's what we are doing here today.

I suppose for the record I ought to say that I am Lee Cunningham, the Hearing Officer. To my left is Jacob Dumelle.

We have two members of the Agency here, Gary King From the enforcement programs, and Toby Frevert -- what's your title?

MR. FREVERT: I am an engineer with the Technical Standards Unit of the Water Pollution Control Division.

HEARING OFFICER CUNNINGHAM: No one else is present.

CHAIRMAN DUMELLE: Let me interject, I think you said on the record that part of this action is a reconsideration of 76-21. It is not the entire proceeding. It is just on the part that deals with mercury, am I correct?

HEARING OFFICER CUNNINGHAM: Mercury and the new source performance standards, and it is in effect reconsideration. I think technically it would be a reconsideration just of those two rules.

So at this point I will turn it over to Gary King.

MR. KING: We do not have very much in the way of comments. We are in essential agreement with the proposals as they have appeared in the Board's order of April 29, 1982, concerning the changes to Rule 951, and we are also in agreement with the

May 13th proposal, R82-10. We do have a couple additional comments.

First of all, there were some comments that we had submitted when this proceeding was still docketed 80-6 that I transmitted to the Board last month.

Are you in receipt of those comments?

HEARING OFFICER CUNNINGHAM: Go off the record for a second.

(Discussion had off the record.)

HEARING OFFICER CUNNINGHAM: Okay. Back on the record.

MR. KING: I would like to offer as an exhibit agency comments that were sent to the Board earlier during the month of June. Apparently it did not reach the Board. I will submit a copy for the record at this time.

HEARING OFFICER CUNNINGHAM: We will mark this as Exhibit No. 1 under R82-5 and that will be accepted.

(Whereupon the document above referred to was marked Exhibit No. 1 for identification and received in evidence.)

MR. KING: The comments there involved that basically with the Starchevic amendment, there arose a concern as to whether septic tank systems that were subject to licensing under the Department of Public Health would then be required to have permits by the Agency, and we felt we should add another subsection to 951(b) to clarify that point.

We are also proposing some language to Rule 951(c), which would provide as part of the pretreatment program approval, which the Agency is required to engage in, an opportunity for the Agency not to require potential permittees who would otherwise be subject to a dual permit requirement to have to obtain a permit from the Agency.

I have one other clerical suggestion related to the order of April 29th, and that's as to Rule 951(c)1.

There's a reference in (c)1 to 40 CFR, Part 403. There have been substantial debates

before Congress concerning amendments to the Clean Water Act relative to pretreatment program.

It may very well be that the USEPA will adopt additional regulations that would be comprised in another part.

I thought for the sake of not having to amend the Board's regulations, just to put in a new part number, leaving reference to regulations promulgated to Section 307, and that's Part 403.

HEARING OFFICER CUNNINGHAM: Anything else?

MR. KING: I think Mr. Frevert had a couple of comments related to Rule 702, just to amplify for the record some of our concerns as to why we have made that suggested amendment.

(Witness sworn.)

TOBY FREVERT,

having been first duly sworn, testified narratively as follows:

THE WITNESS: In preparing our motion to re-consider Part 702 that was adopted as part of our 76-21, our concern was that an exemption mechanism therein as applicable to people discharging to publicly-owned treatment facilities that had already

been accorded an exception from the Agency for that public facility's discharge as part of the exception to the municipality or the publicly-owned system, they would have in place a surveillance and inspection program, local ordinances to control mercury use by the sewer users of that system; therein, the individual sewer user would not only have to deal with the public treatment authority, but also the Illinois Environmental Protection Agency to get a relaxation of the mercury discharge level above the half a part per billion or microgram per liter level.

At this time it is really impossible to say how many individual sewer users could be affected. We have estimated that to be in the hundreds, and that is based in part upon mercury use studies conducted by the Metropolitan Sanitary District of Greater Chicago in the era of 1971 through 1975.

The report they prepared as part of that study indicated in that study period they had identified 368 individual dischargers to their

collection system that at one time or another exceeded the .0005 milligram per liter standard.

That was the basic study of Rule 702. That was not an exhaustive study, but it certainly indicates even within the metropolitan Chicago area that there are hundreds of facilities who might have need for relaxation of that standard from a half a part up to the three full parts or somewhere in that range.

HEARING OFFICER CUNNINGHAM: Do you want to have that entered as an exhibit?

THE WITNESS: Well, I got that particular section of the report copied that I can leave with you. I only have one copy of the full report. I think this might already be in the record of some other proceeding.

Does that look familiar?

HEARING OFFICER CUNNINGHAM: Is there any reason to have anything more than just that part?

THE WITNESS: I don't believe so.

MR. KING: I propose, Mr. Hearing Officer, that we just submit the copy of parts of that larger

document for the record as Exhibit 2.

HEARING OFFICER CUNNINGHAM: This is still part of 82-5. Okay. So it is Exhibit No. 2, R82-5. It has been marked and will be accepted, and it is a report by the Metropolitan Sanitation District of Greater Chicago, Report No. 77-1 from December of 1976.

(Whereupon, the document above referred to was marked Exhibit No. 2 for identification and received in evidence.)

THE WITNESS: You might indicate which pages of that report are included.

HEARING OFFICER CUNNINGHAM: All right. Since this is a portion of that report, it is Pages 69 through 72.

THE WITNESS: As indicated in that exhibit, the types of industry and the types of discharges that have a mercury problem covers quite a broad spectrum.

It doesn't appear in that low concentration range it can be limited to just a few industrial

categories.

In addition to that, as part of the pre-treatment program, trying to get it off the ground the Agency conducted a questionnaire-type survey of industries in Illinois. We sent out approximately 50,000 questionnaires to industries, basically surveying their knowledge of the types of material they would have in their waste water.

Of those 50,000 questionnaires, approximately 21,000 were completed and returned.

Based on that information we reviewed those questionnaires to get the count of industries that are aware or suspect that they have mercury in their waste water.

The total count statewide was only 70, which is much less than what's indicated by the MSD document. I think that indicates a general lack of knowledge, even on the part of the discharger, whether or not mercury is involved in their operation or as an impurity in their waste water or raw materials.

That's basically why I am telling you at

this point in time we really don't have a good guess as to how many facilities may be affected by this change. But it appears from our best judgment that it's a sizable number; and as the pretreatment program gets moving and collects more data, we can identify more individuals that could benefit from the proposed changes in R82-5 without sacrificing any environmental protection insofar as the safeguards are still in, the basic requirements for an inspection and surveillance program by the public facility.

HEARING OFFICER CUNNINGHAM: Anything else?

MR. KING: I would like to add it is clear from the Board in Rule 411 that local POTWs are not going to be pre-empted from adopting anything more stringent if they so desire.

They have the opportunity under that rule to adopt something more stringent as far as mercury control if the need be necessary.

THE WITNESS: I do have one more comment. It's very minor. Just as a point of clarification, I've got a suggested change in terminology on your

proposed paragraph 702 which states, "No person shall cause or allow any discharge of mercury to a publicly-owned or publicly-regulated system which alone or in combination with other sewers causes a violation by the sewer treatment plant discharge of the water quality standard of Part 302 for mercury applicable in their receiving stream."

My concern is the word "sewer" there and "sewer treatment plant." Perhaps a more accurate term would be sewage or waste water.

It's a small point, but --

HEARING OFFICER CUNNINGHAM: What is the problem?

THE WITNESS: The facility doesn't treat sewers. It treats sewage.

HEARING OFFICER CUNNINGHAM: Okay. Anything, Jake?

CHAIRMAN DUMELLE: Do you have any comment as to in general whether the Board itself should retain the half a part per billion mercury sewer standard or whether we should completely drop it and leave these kinds of things either to the Agency as part of its pretreatment procedures or to the local station?

THE WITNESS: I think there's some value in retaining regulatory language and regulatory attitude which conveys the seriousness of mercury as a toxicant.

From everything I am aware of, a half a part per billion is not achievable consistently through treatment technology. The only way to achieve that would be through limiting the mercury handled in the process through the impurities in the operation.

For facilities that don't have that availability of eliminating mercury from their operation, there is treatment technology that will achieve discharge ranges in that category of three parts per billion. But the half a part per billion is simply out of the question at the present time.

CHAIRMAN DUMELLE: Just as a comment -- I am sure Mr. Frevert knows it -- but the half a part per billion came originally as the minimum detectable level of mercury at the time we passed the standards back in 1972, short of going to neuron activation.

That's where that number came from, because I was the principal witness at the time and presented it to the Board.

HEARING OFFICER CUNNINGHAM: Do you have any other questions?

CHAIRMAN DUMELLE: No.

HEARING OFFICER CUNNINGHAM: I have a few.

You talked about the benefits to be achieved by affected industries through the change to Rule 702. What do you see as the costs there imposed by the present rule?

THE WITNESS: As I see the exemption procedure that's contained in the present rule, in order to get that relief from the half a part to the three full parts per billion when needed and when justified, that sewer user would not only have to justify his operations to the public treatment facility, but would also have to basically bring his information forth and make his request to the agency that's entitled to that exemption, have that information and that request reviewed by the agency and respond.

As far as the extent of the benefit, it might take a half a day to prepare such an application. I would have no idea. I am sure it would vary from discharger to discharger, depending upon the complexities of his operation and how much information he has already assembled and discussed with the public treatment works people.

As far as the burden upon the Agency, I would think as an absolute minimum for us it would take a couple of hours to process such a request and respond to it.

HEARING OFFICER CUNNINGHAM: You said that it wasn't clear how many such people there would be coming in with these requests, but these would be five-year permits, right, in general?

THE WITNESS: Well, no. These people do not have discharge permits because they are not direct dischargers to the environment.

HEARING OFFICER CUNNINGHAM: It would be just an initial determination then?

THE WITNESS: Right.

HEARING OFFICER CUNNINGHAM: Okay. Were you

planning anything further on the other aspects?

MR. KING: No.

HEARING OFFICER CUNNINGHAM: Let me ask you a couple other questions then.

Have there be any problems that have actually arisen due to the Starchevich decision?

MR. KING: There have been problems in the context of -- I don't think as far as our implementation as far as the rule, as far as we know of. What might have happened is people have gone ahead and relied on that Starchevich decision and done something which would have been otherwise illegal.

HEARING OFFICER CUNNINGHAM: And that you wouldn't necessarily know about?

MR. KING: We wouldn't necessarily know about it.

HEARING OFFICER CUNNINGHAM: You haven't learned of any people who are relying on Starchevich since the decision?

MR. KING: We have had at least one instance where a litigant in a variance proceeding before the

Board has relied on the Starchevich proceeding as a basis for saying that a permit was not required. Our contention was that even under the decision of Starchevich, that permit was still required in that situation, and the Board's decision essentially upheld the Agency with regard to that case.

HEARING OFFICER CUNNINGHAM: I think what I am trying to get at is how necessary do you feel it is to make this rule change? You do think it is something that's needed?

MR. KING: It is necessary in that you can have -- you can have escalating problems. What it essentially allows is wildcat sewers to go forward where one person would tap on and the next person would tap on. YOu end up with a situation where you don't know who owns what sewer, and if you want -- if some public health problem arises, you don't know who to take any enforcement action against to try to get the problem corrected.

So from that standpoint it is significant.

HEARING OFFICER CUNNINGHAM: Certainly it has a lot of theoretical significance.

MR. KING: It does. It also has significance in the situation of a developer who would be trying to pull a fast one as far as avoiding state regulations, going ahead with the development and figuring out all the loopholes to get around -- to use the Starchevich decision to their utmost, and there are ways that that could be done.

HEARING OFFICER CUNNINGHAM: Okay. Under the R82-10 aspect of the UIC, I take it you agree there is the potential of a dual permitting system if we don't make that change?

MR. KING: Yes, I would agree with that. I think it is advisable to eliminate that potential as you have done here.

HEARING OFFICER CUNNINGHAM: The only other thing that I can think of that I wanted to discuss is that we do have a hodgepodge. I kind of call this my omnibus or the Board's omnibus regulation, and we have had earlier proceedings that have been incorporated into this docket, and I would appreciate it if you could indicate at our next hearing what portions of any other dockets might be

applicable to a Board decision in the present docket and perhaps a listing of comments that you have sent in that you might want either made exhibits or incorporated into the record here.

Do you have anything else?

CHAIRMAN DUMELLE: Getting back to the mercury proposal, if you could check with the Illinois Department of Conservation and perhaps the Food and Drug Administration, and just see if they have done any mercury testing on Illinois fish in the river system of Illinois; if so, what they found, I think the Board would be interested in knowing whether or not there's a mercury problem now on fish in the Illinois rivers.

THE WITNESS: I can check that. I might point out there definitely is mercury around in the environment. It is available in the household products. Certainly there is low level concentrations of mercury not restricted to industrial, commercial activities, and I suspect there is some mercury buildup in some organs and fish tissue possibly.

I will check on it. I don't believe there

is any major problem. What mercury there is, I don't think would lead to the conclusion that it is from poor industrial operations or wholesale misuse of mercury. It is just that trace low level that's available everywhere, including in the soil.

HEARING OFFICER CUNNINGHAM: If the Agency were to find that -- and it obviously has to have some kind of check on the direct discharger of the plant in terms of whether he is carrying through on the programs that he has to carry through on to have the relaxed standard.

If the Agency were to find that there is a mercury problem in a particular area and find that the problem was a result of an indirect discharger that discharges to the direct discharger, would the Agency take action then -- how would the process go? What type of enforcement mechanism would we have there?

I think that's what I am getting at.

THE WITNESS: Well, I think we would take whatever steps were necessary to resolve the issue.

HEARING OFFICER CUNNINGHAM: Would the action

be taken?

THE WITNESS: I don't think that would necessarily require enforcement. We would begin negotiations and communications with both the public facility and that individual sewer user to identify the scope of the problem and potential solutions and impact of those solutions.

HEARING OFFICER CUNNINGHAM: Okay. But let's say these discussions didn't work out and you do get into where you have to go to an enforcement proceeding, either the Circuit Court or before the Board. Do you think you would be able to take action against the indirect discharger as well as the direct discharger or do you foresee going against the direct discharger and letting him worry about the indirect discharger?

THE WITNESS: As long as Rule 702 is in place, even with three parts per billion, we would have an available mechanism to go directly to the source with the public treatment facility. If they are creating a water quality problem, we could enforce on that basis, and if they were not honoring the

conditions of their exemption to the three parts, we could consider revoking that exemption. Ultimately that would probably lead to litigation, also.

Depending on the situations there are ways to do it, and as long as we have requirements for both the primary discharger and the sewer user, we can go directly to the source.

HEARING OFFICER CUNNINGHAM: So you don't feel you would really be losing any type of enforcement tool?

MR. KING: No. Section 12(a) of the Act is very broad in the proscription of violation of the Board's water pollution regulations, and any person who is causing or allowing a violation -- and in this context, the person causing or allowing a violation of a discharge standard, that in itself would be a violation and it would be an enforceable violation.

HEARING OFFICER CUNNINGHAM: Anything else?

(No response.)

HEARING OFFICER CUNNINGHAM: Okay. This hearing is adjourned.

(Which were all the proceedings had in the above-entitled matter on the day and date herein.)

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

WANDA L. BARNES hereby certifies that she is a Certified Shorthand Reporter who reported in shorthand the proceedings had in the above-entitled matter, and that the foregoing is a true and correct transcript of said proceedings.

Wanda L. Barnes
Certified Shorthand Reporter

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AUG 27 1982
POLLUTION CONTROL BOARD

PUBLIC HEARING

THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENT TO TITLE 35	)	
ENVIRONMENTAL PROTECTION,	)	
SUBTITLE C, WATER POLLUTION,	)	Nos. R82-5 and
CHAPTER 1, POLLUTION CONTROL,	)	R82-10
BOARD (STARCHEVICH, EFFLUENT	)	Consolidated
REVISIONS AND NPDES)	)	

Continued hearing held on August 3, 1982, commencing at the hour of 11:00 o'clock a.m., at City Hall, Council Chambers, 435 East State Street, Rockford, Illinois, Hearing Officer Lee Cunningham presiding.

PRESENT:

Members of the Board:

Mr. Jacob Dumelle, Chairman

LONGORIA & GOLDSTINE
CERTIFIED REPORTERS
176 West Adams Street
Suite 2010
Chicago, Illinois 60603
(312) 236-1030

HEARING OFFICER CUNNINGHAM: All right, I will call this hearing to order. I am Lee Cunningham, the Hear ng Officer. In attendance are Jacob Dumelle, Jesse Longoria, and nobody else. Therefore, I will adjourn this hearing, unless you want to say something.

Let the record show the hearing was set for eleven a.m., and it is now 11:28. The hearing is adjourned.

HEARING ADJOURNED

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

Jesse A. Longoria hereby certifies that he is the Certified Shorthand Reporter who reported in shorthand the proceedings had in the above-entitled matter, and that the foregoing is a true and correct transcript of said proceedings.

Jesse A. Longoria
Certified Shorthand Reporter.