

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
 )  
vs. ) No. PCB 01-155  
 )  
 )  
ALLOY ENGINEERING AND )  
CASTING COMPANY, )  
 )  
Respondent. )

THE POLLUTION CONTROL BOARD HEARING, taken  
before me, Angela M. Jones, CSR-RPR, a Notary Public in and  
for the State of Illinois, at 102 North Neil Street, in the  
City of Champaign, County of Champaign, and State of  
Illinois, on the 25th day of March, A.D. 2003, commencing  
at 10:10 a.m.

1 APPEARANCES:

2

3 HEARING OFFICER:

4 ILLINOIS POLLUTION CONTROL BOARD  
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8

9 THE STATE OF ILLINOIS  
10 OFFICE OF THE ATTORNEY GENERAL  
11 BY: THOMAS DAVIS, ESQUIRE  
12 Assistant Attorney General  
13 Environmental Bureau  
14 500 South Second Street  
15 Springfield, Illinois 62706  
16 On Behalf of the State of Illinois.

13

14

15 THOMAS, MAMER & HAUGHEY  
16 BY: DAVID E. KRCHAK, ESQUIRE  
17 and  
18 CHARLES A. LeFEBVRE, ESQUIRE  
19 Attorneys at Law  
20 P.O. Box 560  
21 Champaign, Illinois 61824  
22 (217) 351-1500  
23 On Behalf of Alloy Engineering and  
24 Casting Company.

22 ALSO PRESENT:

23 MARK CHANDLER, President, Alloy  
24 MEMBERS OF PUBLIC

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1                   HEARING OFFICER: Good morning, everybody. My  
2 name is Carol Sudman. I'm a hearing officer with the  
3 Pollution Control Board. This is PCB 01-155, People of the  
4 State of Illinois v. Alloy Engineering and Casting Company.  
5 It is Tuesday, March 25th, and we are beginning at 10 a.m.  
6 This hearing was noticed pursuant to the Environmental  
7 Protection Act and the Board's rules and will be conducted  
8 pursuant to Sections 101.600 through 101.632 of the Board's  
9 procedural rules.

10                   I will note for the record that there are quite  
11 a few members of the public present today. Thank you,  
12 everyone, for coming. The subject matter of this hearing  
13 is the stipulation and settlement agreement that the  
14 parties in this matter have proposed to the Board. Upon  
15 consideration of the proposed settlement agreement, the  
16 hearing record, and any written public comment, the Board  
17 may accept the settlement, it may suggest revisions, or it  
18 may reject the settlement.

19                   I will briefly describe what will happen today  
20 and after the hearing. You should know that it is the  
21 Pollution Control Board and not me that will make the final  
22 decision in this case. My purpose is to conduct the  
23 hearing in a neutral and orderly manner so that we have a  
24 clear record of the proceedings. I will also assess the

1 credibility of any person giving a sworn statement on the  
2 record at the end of the hearing. We will first begin with  
3 a summary of the proposed settlement, and we will then take  
4 questions or comments from the public.

5           Members of the public have three options here  
6 today. First, you may make a sworn statement under oath  
7 that is subject to cross-examination; or, second, you may  
8 make a public comment which is not sworn under oath and  
9 which is not subject to cross-examination. The Board will  
10 consider both forms of statement, although the sworn  
11 statement will carry somewhat greater weight. Third, you  
12 may choose not to speak at hearing and, instead, submit  
13 written public comment to the Board. Written public  
14 comment will carry the same weight as oral public comment.  
15 Both written and oral public comment may address the nature  
16 of the alleged violation, the impact on the environment,  
17 and any views on the proposed settlement agreement.

18           At this time, I would like to ask the parties  
19 to please make their appearances on the record.

20           MR. DAVIS: My name is Thomas Davis. I'm an  
21 assistant attorney general representing the Illinois EPA  
22 and the People of the State of Illinois.

23           MR. KRCHAK: My name is David Krchak, and I'm  
24 attorney for Alloy Engineering and Casting Company.

1                   HEARING OFFICER: Thank you. Mr. Davis, would  
2 you please take the lead in summarizing the proposed  
3 settlement agreement?

4                   MR. DAVIS: Certainly. Good morning,  
5 everybody. The settlement is the result of negotiation  
6 between the parties. The case began, however, when the  
7 Illinois EPA investigated some citizen complaints regarding  
8 emissions of particulate matter at the facility. In its  
9 investigation, the Illinois EPA determined that in its view  
10 the permits that had been issued to Alloy were not being  
11 strictly complied with. There were other issues that came  
12 up during the course of the EPA's investigation, and that  
13 led to an enforcement referral to the attorney general's  
14 office.

15                   In May of 2001, we filed a complaint before the  
16 Pollution Control Board. The agency's investigation  
17 continued, and additional problems were discovered and an  
18 amended complaint was subsequently filed. I have an extra  
19 copy of this document if anybody would like to see it.  
20 Once the attorney general's office became involved, we  
21 picked up where the EPA had essentially been at that point  
22 in time, which is in discussion with the company regarding  
23 the compliance problems and the alleged violations. So it  
24 became a more formal discussion at that point in time. We

1 advised the company that we would be taking enforcement  
2 action. We were very interested in making sure that the  
3 compliance issues were addressed and resolved; and in fact,  
4 by the time we became involved, those issues were being  
5 timely addressed by the company.

6           Through the course of the negotiations, our  
7 objective was the same, that is, to assure the compliance  
8 with not only the permits but also whatever applicable  
9 regulations would be at issue was obtained and then  
10 assured. At this point in time -- in fact, many months  
11 ago, the Illinois EPA has advised our office that  
12 compliance has been obtained. So the objective of this  
13 document, the stipulation of proposal for settlement, which  
14 I have also an extra copy, is to move forward from here to  
15 assure the compliance, once obtained, is maintained.

16           Now, the terms and conditions of the settlement  
17 are fairly typical for an enforcement action, but I'm going  
18 to assume that many of you folks do not participate in  
19 enforcement actions; so I'll take a little bit more time  
20 and tell you about the process that the Pollution Control  
21 Board will follow.

22           The document has been filed with the Pollution  
23 Control Board. They have probably not analyzed it in any

24 depth. In fact, I think you should know, backing up even

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1 further, that the Pollution Control Board is a body of  
2 seven members with a chairperson. Presently, the  
3 chairperson is Tim Johnson and is from this area.

4 HEARING OFFICER: Tom.

5 MR. DAVIS: Tom Johnson. I'm sorry. Brother  
6 Tim is from this area as well.

7 And the chairperson of the Board, Mr. Johnson,  
8 will essentially make sure that his Board analyzes this  
9 document at the proper time. At that time, in this case,  
10 it will be only after the public comment has been  
11 concluded, this hearing will be transcribed, and a  
12 transcript will be available on the Pollution Control  
13 Board's website. The members of the Board will schedule  
14 this case for deliberation on a certain date, and we expect  
15 the Board will approve the settlement.

16 Now, that's their process. But in analyzing  
17 the settlement, the Board is going to have to ensure that  
18 the parties, and especially the attorney general's office  
19 and the Illinois EPA, have adequately addressed certain  
20 required criteria. And I'm speaking now about Section 33  
21 of the Environmental Protection Act. This requires that  
22 the Board take into consideration all facts and  
23 circumstances bearing upon the reasonableness of the



24 settlement in this instance, including, first, the

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1 character and degree of injury to or interference with the  
2 protection of the health, general welfare, physical  
3 property of the people; secondly, the social and economic  
4 value of the pollution source; thirdly, the suitability or  
5 unsuitability of the pollution source to the area in which  
6 it is located, including the question of priority of  
7 location in the area involved; fourthly, the technical  
8 practicability and economic reasonableness of reducing or  
9 eliminating the emissions, discharges, or deposits  
10 resulting from such pollution source; and, lastly, any  
11 subsequent compliance.

12 On behalf of the People of the State of  
13 Illinois, my office has addressed those issues; and the  
14 company has stipulated or agreed to what we've said. So  
15 let me go through -- since this is fairly much the crux of  
16 the matter this morning, let me go through those in detail.

17 As to the first criterion, we contend, the  
18 State contends, that the injury to or interference with the  
19 protection of the health, general welfare, and physical  
20 property would be characterized as a potential for air,  
21 land, and water pollution; and the degree of injury would  
22 be dependent upon the extent of the pollution and the

23 degree of exposure to that pollution.

24 Now, as to the air pollution violations, we

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1 believe that this situation did cause negative impacts upon  
2 neighboring residents. However, those emissions were  
3 episodic, and they were limited in time; and we believe  
4 that they have been adequately addressed and future  
5 occurrence substantially mitigated and hopefully totally  
6 prevented.

7 Secondly, the parties agree that the facility  
8 is of social and economic benefit. Thirdly, the facility  
9 is located at a site that has been used for the operation  
10 of a manufacturing facility for nearly 60 years. We  
11 contend that the facility has been found suitable for use  
12 at that location.

13 Lastly, the parties, that is, the State and the  
14 Company, do agree that complying with the Act and the  
15 regulations is both technically practicable and  
16 economically reasonable. In fact, as I mentioned before,  
17 the company has come into compliance. And, lastly, the  
18 company has implemented control measures subsequent to the  
19 allegations of violation and has satisfied the concerns of  
20 the Illinois EPA regarding the air emissions, the land  
21 deposits, and the water discharges.

22 Now, as to the terms -- that's the process.

23 We've looked at those criteria. As to the terms and  
24 conditions of the settlement, the company will pay a

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1 penalty of \$75,000; and this penalty will be paid to the  
2 Environmental Protection Trust Fund, and those monies will  
3 be used by certain state entities, including the Department  
4 of Natural Resources; the Pollution Control Board; my  
5 office, the attorney general's office; and the Illinois  
6 EPA.

7           Now, compliance having been achieved, what  
8 we've done with this settlement, which is becoming more  
9 typical but is still a little bit unusual, is we've  
10 required through the concurrence of the company the  
11 performance of Supplemental Environmental Projects. These  
12 are commonly referred to as SEPs. The reason that this is  
13 such a good thing to do in settlements is that having  
14 resolved violations, having achieved compliance through the  
15 negotiation and settlement of an enforcement action, the  
16 State has the opportunity to encourage a company such as  
17 Alloy to go beyond compliance to supplement, if you will,  
18 their compliance performance.

19           So the Supplemental Environmental Projects can  
20 range from, as in this case, additional evaluation and  
21 controls at the company's facility in order to further

22 reduce emissions, to further ensure environmental  
23 compliance and the protection of the public health. In  
24 other situations, a defendant in an enforcement action may

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1 provide funding to the State for the purchase of lands or  
2 habitat restoration, so it's quite a wide range of  
3 acceptable projects either involving the noncompliance  
4 issues that led to the enforcement or going beyond and  
5 simply doing something that's a good idea for which funding  
6 might not be available or adequate at the given time.

7           So, in this case, the company has agreed to do  
8 some Supplemental Environmental Projects, the first of  
9 which is to improve the pulsing cleaning system of the  
10 emission control devices; and this will greatly reduce the  
11 air consumption and energy consumption, thereby conserving  
12 energy and reducing the potential for particulate  
13 emissions.

14           The second SEP or Supplemental Environmental  
15 Project involves the repair and replacement of emissions  
16 controlled ducting, that is, the duct work within the  
17 facility. And the last SEP would be to install broken bag  
18 detectors in the exhaust stacks of the emission control  
19 devices. All of these things will cost approximately  
20 \$85,000 for the company; and it will, as I mentioned,  
21 greatly enhance the environmental controls.

22                   So, in essence, those are the three components  
23 of the enforcement resolution, the settlement agreement,  
24 the assurance of compliance, a civil penalty and

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1 Supplemental Environmental Projects.

2                   That concludes my remarks. Thank you, Miss  
3 Hearing Officer.

4                   HEARING OFFICER: Thank you.

5                   Mr. Krchak, would you care to add anything to  
6 that?

7                   MR. KRCHAK: No, Miss Sudman.

8                   HEARING OFFICER: Thank you.

9                   Before we get to your comments, does anyone  
10 simply have any questions about what was just said here  
11 earlier?

12                   Okay. Would you please come forward? Could  
13 you please have a seat and state your name for the court  
14 reporter?

15                   MS. EHRHART: Deborah Ehrhart, E-h-r-h-a-r-t.

16                   HEARING OFFICER: Thank you.

17                   MS. EHRHART: What is compliance?

18                   MR. DAVIS: Well, compliance is a concept and a  
19 word that we use quite a bit. What it means depends upon  
20 the case or the context. In this case, we have a

21 manufacturing facility that has to comply with a variety of  
22 regulatory schemes; specifically, it has emission sources  
23 at the facility. So those sources have to ensure that the  
24 contaminants being emitted are greatly reduced and

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1 controlled.

2 Secondly --

3 MS. EHRHART: Not stopped but controlled?

4 MR. DAVIS: Right. The second issue was  
5 hazardous waste management, and hazardous wastes are  
6 typically generated by industrial facilities. That's not  
7 wrong; but you have to manage them, store them, and dispose  
8 of them properly. So that's compliance.

9 Thirdly, there were water issues here, and the  
10 Illinois EPA determined in its investigation that  
11 contaminants were being discharged through a storm sewer  
12 that should not have been. And those have been halted and  
13 permits have now issued for the industrial processed water  
14 as well as storm water.

15 So compliance in each of those contexts would  
16 be to ensure that pollution is not caused, to speak most  
17 simplistically, and more specifically as to reduce to the  
18 extent practicable. You can't -- for instance, you can't  
19 put a plug in a smoke stack or a plug in a pipe, and you  
20 can't force a facility to hold onto all of the waste that

21 it generates. What you can do is to ensure that the stacks  
22 are not emitting excessive amounts, and that's a  
23 qualitative way of looking at things.

24 What we've done -- I say "we." What the

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1 environmental regulatory schemes have achieved over the  
2 years is essentially reducing the thick clouds of smoke,  
3 the nasty unnaturally colored wastewater spewing out pipes,  
4 and the barrels -- I'm speaking very generally now -- the  
5 barrels of hazardous waste that are just thrown in the  
6 landfill. So, over time, we've come up with better ways of  
7 managing those wastes and reducing emissions and  
8 discharges. So compliance is always a dynamic thing.

9 MS. EHRHART: It's relative?

10 MR. DAVIS: It's relative.

11 MS. EHRHART: It's subjective to preset  
12 articles and ideas, right?

13 MR. DAVIS: Yeah. It's a concept that you  
14 strive for.

15 MS. EHRHART: I guess what I want to know:  
16 Have they cleaned up the things that they've damaged and  
17 polluted?

18 MR. DAVIS: We believe so.

19 MS. EHRHART: So that means -- when you say

20 within reason, the limits are, like the air or the water or  
21 whatever, what does that mean? There's still pollutants  
22 being spewed out, correct?

23 MR. DAVIS: Yes. There's emissions of  
24 contaminants. There's discharges of contaminants. There's

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1 wastes being disposed of, but the word "compliance" would  
2 also have not just a technical aspect but most  
3 importantly -- and this is the only way you can control  
4 it -- a legal aspect. The statutes do utilize the terms  
5 economic reasonableness, technical practicability. Those  
6 things change over time, too. It has become much more  
7 practicable and reasonable to control things more and more  
8 and more.

9 So I believe with this facility we have gotten  
10 to the point where not only are they in compliance with  
11 those standards, but they will also go beyond compliance  
12 through the Supplemental Environmental Projects and to  
13 mitigate the potential for further problems.

14 MS. EHRHART: Okay. Either what the EPA or  
15 your office has done, do we know what's coming out, what's  
16 still being released into the environment?

17 MR. DAVIS: The Illinois EPA has an air permit  
18 that controls emissions, limits emissions, mandates  
19 monitoring and reporting, mandates certain procedures to be



20 followed in dealing with problems as they come up. The  
21 water permit has now even ensured that the processed  
22 wastewater is going to a treatment plant, and the storm  
23 water runoff, which can contain contaminants -- think of it  
24 this way. You've got a parking lot at a gas station. It

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1 rains. You see the storm water with the sheen on it.  
2 That's contamination. So storm water is not just  
3 rainwater. If it comes into contact with an industrial  
4 facility, it's going to pick up some contaminants.

5 So that permit has limitations on it, reporting  
6 requirements, and it has to be renewed. The company has to  
7 provide written assurances which can be checked and  
8 validated.

9 The last issue, the hazardous waste, that's a  
10 very rigorous control program. Essentially, you have to --  
11 if you qualify, if you meet certain criteria -- and Alloy  
12 apparently does -- you have to store things, things, that  
13 is, hazardous waste. You have to analyze it and  
14 characterize it so that you know what types of hazardous  
15 waste, contaminants are involved. You have to essentially  
16 maintain a paper trail and document not only the generation  
17 but the storage, the containment, the labeling, the  
18 transport off site -- that's called the manifest -- and

19 then disposal at a licensed facility.

20                   If a barrel or container of their waste ends up  
21 at the wrong place, they're responsible. So that system,  
22 too, is a very good way of regulating from cradle to  
23 grave -- perhaps you've heard that described that way -- of  
24 the hazardous wastes that are generated.

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1                   MS. EHRHART: I guess I understand the best of  
2 your ability to explain that, but I guess I'll leave my  
3 other comments when I get to make them. Thank you.

4                   HEARING OFFICER: Thank you.

5                   Do you have a question, sir?

6                   MR. HERENDEEN: Yes.

7                   HEARING OFFICER: Would you please come  
8 forward?

9                   MR. HERENDEEN: My name is Robert Herendeen,  
10 H-e-r-e-n-d-e-e-n. This is also about compliance, about  
11 air pollution only. When you talk about standards and so  
12 on, are you talking about emission standards at the stack,  
13 are you talking about ambient standards up in the  
14 community, or are you talking about adherence to particular  
15 protocols, procedures and use of certain equipment? I  
16 think people call that best available technology or  
17 something like that. Which ones of those are applicable  
18 here?

19 MR. DAVIS: I would say all of them in a  
20 general sense. The State, through the EPA, does not do a  
21 lot of ambient monitoring; but the permit is probably the  
22 best way to achieve overall compliance because it imposes  
23 the burden on the emission source, for instance, to do  
24 stack testing, to provide the technical and detailed

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1 information through the permit process, to tell the agency  
2 what is going on at the facility, what controls are being  
3 implemented and so forth. And if there are problems, then  
4 the burden is on the emission source to report those  
5 problems.

6 So you have to -- you can't just wait until the  
7 inspector shows up. And, perhaps, I didn't address all  
8 three --

9 MR. HERENDEEN: No. That's fine. Let me just  
10 follow through on that then. So we're asking -- sorry.  
11 That requires that Alloy monitor concentrations of certain  
12 things in emission streams?

13 MR. DAVIS: Right.

14 MR. HERENDEEN: And that's measured in grams  
15 per liter or something like that?

16 MR. DAVIS: Could be.

17 MR. HERENDEEN: What are those materials? Just

18 the standard criteria pollutants?

19 MR. DAVIS: I would say basically they are.  
20 Every facility even within an industry can have different,  
21 unique challenges. We know that the particulate matter  
22 contained what we expected it to contain, that is,  
23 constituents of the foundry sand and other metallic  
24 substances.

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1 But I think -- I'm sure you shouldn't be misled  
2 in thinking that every emission source has a real-time  
3 monitor on, say, the stack where you can look at a computer  
4 and see exactly what's going on. Most emission sources do  
5 stack testing on an occasional basis, a periodic basis; and  
6 then, if you have a representative operating conditions,  
7 for instance, the normal temperature range, the normal  
8 through-put, the normal energy consumption, just the normal  
9 process, then you can extrapolate from those data and  
10 ensure that it's a representative snapshot of conditions.

11 Now, some companies do have continuous emission  
12 monitors, CEMs, C-E-Ms, and those are the best available  
13 monitoring technology. But you've also said something,  
14 sir, about best available control technology. That  
15 requirement is not always applicable; and it gets very,  
16 very complicated. The federal government has just issued  
17 new source review rules that, in the view of Attorney

18 General Madigan and also the Illinois EPA, greatly hamper  
19 the ability of States to control emission sources through  
20 the permitting process. The NSR rule is being challenged  
21 by several states, including Illinois, and that gets us way  
22 far afield here, sir. But I did want to touch on that best  
23 available control technology issue.

24 MR. HERENDEEN: Just one last question.

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1 MR. McMAHON: Some of the people in the back  
2 can't hear what Mr. Davis is saying.

3 HEARING OFFICER: I'm sorry. The microphone  
4 isn't on. I could hear him just fine. I apologize.

5 MR. HERENDEEN: So, specifically, noncompliance  
6 would be the emission of certain pollutants specified now  
7 on the permit list and only those; is that correct?

8 MR. DAVIS: No. No. Speaking generally, if  
9 you were emitting something -- if a company were emitting  
10 something that was not covered by a permit and it was  
11 causing or threatening injury or nuisance, then that would  
12 not be compliance.

13 MR. HERENDEEN: Nuisance I understand. But how  
14 do you know about that other impact if it's something new?

15 MR. DAVIS: Well, everything is a matter of  
16 degree, and we're now talking about essentially unregulated

17 contaminants, that is, something outside of the specific  
18 permit. That would be a very unusual situation.

19 MR. HERENDEEN: Well, I'm not familiar with  
20 this entire list; but there's a certain number of things on  
21 these lists, particulates, VOCs, sulfur dioxide and so on.  
22 I suppose there's some element, muriaticum, which I don't  
23 think is on this list. But whatever's coming out and if  
24 it's not violating any law, why would EPA act?

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1 MR. DAVIS: Well, we're getting very  
2 speculative here. If it were not violating any law, then  
3 it would not be threatening pollution, and there would be  
4 no reason to act.

5 MR. HERENDEEN: Okay. Thank you.

6 HEARING OFFICER: Thank you.

7 Just a question, sir?

8 MR. EHRHART: My name is Dana Ehrhart,  
9 E-h-r-h-a-r-t. My question was: You mentioned that the  
10 Board needs to take care of the people and the health and  
11 the property. What does that mean? I'd just like to know.

12 MR. DAVIS: Specifically, I think what I was  
13 referring to -- I'm sure it is -- is one of the criteria  
14 listed in Section 33, and this says -- and I'll just read  
15 it again -- "The character and degree of injury to or  
16 interference with the protection of the health, general

17 welfare, and physical property of the people."

18                   Now, in this case, sir, I know that there are  
19 concerns and, in fact, there's a pending lawsuit regarding  
20 property damage and health impacts. So we are cognizant of  
21 that. What we can achieve in our enforcement action is  
22 compliance and assurance of compliance going forward. So a  
23 property having been allegedly damaged, you know, certainly  
24 I have no ability myself to investigate that since I am in

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1 the role that I am, that is, I'm the lawyer rather than the  
2 investigator. But I have relied upon the Illinois EPA  
3 inspections and their reports, and I do have a valid  
4 factually based view of the problems that were caused. So  
5 I'm not trying to say they didn't happen. Okay? But my  
6 objective on behalf of the attorney general is to make sure  
7 that the problems have ceased and that they will be  
8 prevented.

9                   MR. EHRHART: I just wondered how far the State  
10 goes along on things, and it's kind of a learning process.  
11 Thank you.

12                   MR. DAVIS: Certainly.

13                   HEARING OFFICER: Thank you.

14                   First, can I ask if there are any questions by  
15 anyone who has not signed up on the sign-up sheet?

16 Because, if not, maybe it might be more expedient if we  
17 just went ahead and proceeded with the commenters as  
18 they've signed in. When you come up to give your comments,  
19 you certainly have an opportunity to ask questions as part  
20 of that as well. But I would like to make sure -- first,  
21 does anyone here want to give a sworn statement which is,  
22 as I said, is given under oath which would be subject to  
23 cross-examination of the parties? Any sworn statements?

24 You'd like to give a sworn statement? Both of

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24

1 you? Well, Mr. Ehrhart, do you want to come down and  
2 finish? You'd like to give a sworn statement rather than a  
3 public comment?

4 MR. EHRHART: Yeah. Sworn statement is fine.  
5 Do you want me to go first?

6 HEARING OFFICER: Well, I'd like to do the  
7 sworn statements before we get to the public comments. You  
8 don't have to go first if you don't want.

9 Would you like to go first, sir?

10 MR. HERENDEEN: If you're under oath, can you  
11 still ask questions?

12 HEARING OFFICER: Yes.

13 MS. EHRHART: I have a question also about  
14 procedure. If you do the sworn statement, can you still  
15 make a comment later or at that time?



16 HEARING OFFICER: There's really no reason to  
17 give both a sworn statement and a public comment. Really,  
18 the difference is the degree of weight that the Board will  
19 afford them in terms of, you know, they'll afford more  
20 weight to the sworn statement than they would just the  
21 public comment. That's not to say that the public comments  
22 aren't important to the record as well, but the sworn  
23 statements will carry more weight just because they're  
24 under oath. So, if you've given a sworn statement, there

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1 really would be no reason to give a public comment. It's  
2 just that some people don't feel comfortable giving a sworn  
3 statement or being subject to cross-examination by the  
4 parties.

5 MS. EHRHART: I guess my question is: The  
6 sworn statement, we still get to voice our concerns?

7 HEARING OFFICER: Absolutely. Absolutely. The  
8 same thing as the public comment, you'd just be under oath  
9 and the parties would be able to ask you questions as well.

10 Does everyone understand the difference between  
11 the sworn statement and the public comment? Under the  
12 public comment, they would not ask you any questions. But  
13 you could still ask them questions as well as explain the  
14 impact on the environment, discuss the nature of the

15 alleged violation, your opinion on the proposed settlement  
16 agreement or anything else.

17 So, having said all that, now, at this point,  
18 may I see by a show of hands who would like to give a sworn  
19 statement? Okay. Same two gentlemen.

20 Mr. Herendeen, was it?

21 MR. HERENDEEN: Yes.

22 HEARING OFFICER: Would you like to come  
23 forward?

24 (Witness sworn.)

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1 ROBERT HERENDEEN,  
2 after being first duly sworn, testified upon his oath as  
3 follows:  
4 MR. HERENDEEN: Thank you. My name is Robert  
5 Herendeen. I live at 1618 West Church Street, Champaign.  
6 I've lived there since the 12th of August of 1995. That  
7 location is approximately one tenth of a mile due south of  
8 Alloy. Alloy is not a good neighbor to me. In everyday  
9 operation, Alloy is the source of objectionable odors and  
10 noise. I have been keeping personal records of odor since  
11 January of 2000. Since July of 2000, I've differentiated  
12 between Humco, Kraft smells and Alloy smells. I don't seek  
13 these odors out. I just record them when I encounter them  
14 in my coming and going. I ride a bicycle repeatedly, so

15 perhaps I'm more likely to smell them than in a car.

16                   Whether I encounter them or not depends  
17 strongly on wind direction. I haven't analyzed all these  
18 records, but I did analyze some up through October '01; and  
19 at that time, I found that on about 10 percent of all the  
20 days -- and this covered a period of a year ending October  
21 '01 -- I could smell Alloy at some time during the day.  
22 About 5 percent of all days, I could smell Alloy in my yard  
23 or in my house.

24                   During the episode period, late '99 to mid

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1 2000, Alloy released especially large amounts of silica  
2 sand, iron particles, associated trace metals and so on.  
3 The document that covers this hearing, PCB 01-155, tells  
4 how this happened and how Alloy neglected to monitor it,  
5 fix it, and stop it. This material caused property damage  
6 and unknown health effects.

7                   Alloy has denied responsibility, for example,  
8 in their ad in the News Gazette of 10 June '01, but the  
9 evidence seems unambiguous. Emissions tests done by ARI  
10 Environmental, Inc., on 17 August '01 occurred two days  
11 after the problems that caused the large emission episodes  
12 were fixed. The tests covered best case on routine  
13 conditions at Alloy and not the atypical conditions that

14 led to the large releases in late '99 to mid '00.

15                   The tests did show that dangerous materials  
16 were emitted during the test; although, surprisingly, iron  
17 wasn't covered. Therefore, I would personally expect that  
18 more of these materials would be released during those  
19 episodes which were atypical.

20                   As an affected citizen, I am unhappy with the  
21 idea that Alloy could do this to us over that period of  
22 time. The proposed settlement is a small fraction of  
23 Alloy's annual sales. Alloy's payroll, plus local taxes  
24 total approximately \$9 million per year according to their

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1 advertisement in the News Gazette. I don't know what the  
2 gross is, but I can estimate it knowing that they have 300  
3 workers which was also stated in that advertisement. I  
4 wouldn't be surprised if it grosses 20 million a year, but  
5 it will certainly be more than 9 because that's their  
6 payroll plus their taxes.

7                   The proposed settlement of \$75,000 is,  
8 therefore, something on the order of eight tenths of 1  
9 percent of their annual gross. And further -- let me go  
10 on. Therefore, I think the proposed settlement is too  
11 small. The fall-out from these releases have literally  
12 settled, but long-term health effects and property damages  
13 is still undetermined.

14 I request that the people of Illinois not  
15 settle for this minor amount which sends a weak wrist slap  
16 to industry about poisoning us. Best would be to continue  
17 the case pending more information, otherwise increase the  
18 penalty to an amount that delivers a strong message. For  
19 that I recommend \$1 million. Thank you.

20 HEARING OFFICER: Thank you.

21 Do the parties have any question on the sworn  
22 statement just provided?

23 MR. DAVIS: No. I do not.

24 MR. KRCHAK: I have a couple.

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1 HEARING OFFICER: Would you please --

2 MR. KRCHAK: Would you like me to come forward?

3 HEARING OFFICER: Yes. I can't hear you very  
4 well over there.

5 MR. McMAHON: Madam, Hearing Officer?

6 HEARING OFFICER: Yes.

7 MR. McMAHON: Just so I know, Mr. Herendeen is  
8 my client in the related case. Am I allowed to advise my  
9 client or object to any of Mr. Krchak's questions not being  
10 an attorney of record in this case?

11 HEARING OFFICER: You may advise him, but you  
12 may not object. And Mr. Krchak's questions will be limited

13 to what Mr. Herendeen has just testified to.

14 MR. KRCHAK: Okay.

15 CROSS-EXAMINATION

16 BY MR. KRCHAK:

17 Q Do you have any information regarding any  
18 health effects caused by any emissions from Alloy?

19 A No.

20 Q Do you have any information that leads you to  
21 believe that Alloy has been involved in anything you  
22 described as poisoning?

23 A I may have to retract that word. What I smell  
24 is objectionable, even sickening, but I do not know if it

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1 causes health effects.

2 MR. KRCHAK: That's all I have. Thank you.

3 HEARING OFFICER: Thank you.

4 Mr. Ehrhart?

5 (Witness sworn.)

6 DANA EHRHART,

7 after being first duly sworn, testified upon his oath as

8 follows:

9 MR. EHRHART: My name is Dana Ehrhart, spelled  
10 E-h-r-h-a-r-t. I live at 1609 West Church in Champaign,  
11 which is about two and a half blocks from the Alloy  
12 company.

13 I also keep a record and try to call the EPA,  
14 Darwin Fields, Bob Stortzum. I know them by name. These  
15 people I call when I smell things or notice things that  
16 seem to be unusual. And I appreciate that we have an EPA  
17 and that we have an attorney general and that we have a  
18 Pollution Control Board. I feel without these kinds of  
19 agencies I can see we would have a lot more troubles, as  
20 the assistant here mentioned, because years ago things were  
21 a lot worse, and things are a little better now. As a  
22 taxpayer, I'm glad funding is provided by our State to  
23 provide these agencies with the help that we need. I'm  
24 sure, like anything, certain protocols can come into play

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1 before anything happens; and as a citizen, we feel good  
2 when problems are taken care of quickly.

3 For example, a few years back, I parked my car  
4 over at the university, and they were apparently spraying  
5 paint on the building, and it got on my car. I called the  
6 university, and they said, "Bring the car in right away,"  
7 and they took care of it. You know, we appreciate when  
8 things are done quickly and taken care of. The reason is  
9 our lives are busy. I had to take off work today to come  
10 here. I don't get paid vacations. I don't get paid  
11 holiday on this type of work that I do through the week.

12 So it is an expense. We have family. We have elderly  
13 parents, children in school, we're working, trying to  
14 maintain our homes, our cars, paying bills; you know how it  
15 goes.

16 As a taxpayer and a citizen, if I were to  
17 impose my freedoms, were it to cause problems and damage to  
18 my neighbors, I'd be in a lot of trouble, wouldn't I? On  
19 top of that, I'd be found guilty of doing things out of my  
20 home -- if I was found guilty of doing things out of my  
21 home without permits that contributed to the problems, no  
22 doubt I would be fined, I would be jailed, and I would have  
23 to perform community service. My question is: Why is it  
24 that the victim is made to feel guilty in making things

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1 right?

2 An example, from the News Gazette of Friday,  
3 February 8th, 2002, concerning the lawyer for Alloy, he  
4 made statements of this sort about how "a reasonable person  
5 would have known that Alloy operates, releases certain  
6 emissions into the air and, therefore, they can't sue over  
7 the emissions. Plaintiffs were negligent and didn't  
8 mitigate their damages and that they failed to shut their  
9 windows, doors, failed to wash their property. Once they  
10 noticed dust, sand, or iron oxide had collected on it,  
11 failed to cover or bring inside their outdoor personal



12 property."

13                   You know, this really makes me feel sad. I  
14 can't feel angry. It's just pathetic. You know, we don't  
15 have central air-conditioning in our home. We couldn't  
16 afford it at the time. We have to open our windows to get  
17 some air flow, but we can't. We have to close them. We  
18 have to leave the area at some points just to breathe.  
19 When the winds are coming the wrong way, it just makes you  
20 sick.

21                   It's been quite an ordeal these past few years  
22 trying to figure out how to handle things when they come  
23 up. It's a learning experience; and no doubt it causes a  
24 lot of work and expense on the part of the EPA, the

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1 attorney general, the Pollution Control Board, and even the  
2 City of Champaign. No doubt more time's going to be spent  
3 trying to figure out how to take care of these problems.

4                   That's not all. I have a sister from the  
5 suburbs of Philadelphia, and she sent me a fax the other  
6 day concerning this; and she wanted to voice her thoughts  
7 on this because she couldn't be here. She said, "A few  
8 years ago when I was visiting my brother" --

9                   MR. KRCHAK: I object to this, Madam Hearing  
10 Officer, to his sworn testimony including some written

11 statement of someone else.

12 HEARING OFFICER: I'm going to allow him to  
13 continue making his statement. This is a public hearing.  
14 This is an opportunity for him to express what he wants to  
15 express related to this matter.

16 MR. EHRHART: Thank you.

17 HEARING OFFICER: Please, continue.

18 MR. EHRHART: Okay. It says, "A few years ago  
19 when I was visiting my brother Dana Ehrhart and his family  
20 I became aware of a very disturbing situation. He showed  
21 me the pit marks on the finishes of his car, lawn  
22 furniture, trim of his house. Dana lives about three  
23 blocks from Alloy. He went for a drive" -- "we went for a  
24 drive around the neighborhood. I got very upset at what I

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1 saw. All the homes that were in a several-block radius of  
2 Alloy had the same rust color pit marks in their sidings,  
3 on their cars, outdoor furniture. Some that were closer to  
4 Alloy were more pitted, much more severe than others. The  
5 worst part of this whole thing is the kind of damage that's  
6 being done in the neighborhood is from air pollution, the  
7 same air that they are all breathing. If it can pit the  
8 paint on siding and cars, what's it doing to all these  
9 people's lungs and skin? I hope and pray that you as an  
10 agency that is supposed to protect the people and the

11 environment will not allow this situation to continue. I  
12 already have a terrible fear that in years down the road my  
13 brother and his family and others in the neighborhood will  
14 develop serious health problems because of the exposure  
15 that they already had. There's no amount of money that  
16 will replace these people's health. Please keep the  
17 priorities straight before making any settlement with this  
18 company. There's no excuse for this pollution with the  
19 technology that's out there today. They were doing things  
20 the cheap way as long as they could get away with it. I  
21 think it's unforgivable of this company to run such a  
22 sweatshop-type operation in a residential area, and I hope  
23 you will not allow them to get away with this."

24 This was her comment, and I feel the same way.

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1 When seeing the damages to our cars, our homes, the  
2 particulate matter that caused teeny orange spots on  
3 visible surfaces, you might begin to think: What's it  
4 doing to me? We live there. None of -- you here,  
5 including them, do not. Talking -- again thinking, What  
6 should I do? You get stressed out sometimes. Sometimes  
7 you have things that happen and you go see a doctor and you  
8 tell your doctor about, "Well, what do you think about  
9 this?" He says, "Well, if it makes you feel better, I'll

10 tell you what. Why don't you go in for an x-ray, and then  
11 we'll go in and take a lung function test." So I do those  
12 things.

13                   To my surprise -- this was not too long back.  
14 To my surprise, the findings showed that my levels were  
15 below normal. They were not normal. So maybe the sick  
16 feeling you get when you breathe in not only the  
17 particulates but the smells that are causing the metallic  
18 taste in your mouth has some merit. I don't know. We know  
19 the samples taken from the dust collection bags at the  
20 plant exceeds limits for lead and selenium, and I do  
21 believe studies reveal high levels of lead can cause  
22 serious neurological damage leading to learning  
23 disabilities in children. So, you know, I think about my  
24 son. I think about the other children in the neighborhood

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1 that I see. What's going to happen down time?

2                   You're thinking about imposing fines. Well,  
3 you might think about this. This was an article I read out  
4 of the Chicago Sun Times dated February 15th, 2002. The  
5 city of Chicago has a Department of Environmental,  
6 Environmental Department. They ordered for this company to  
7 install pollution and odor control mechanisms, including  
8 thermal oxidizer systems, intended to drastically reduce  
9 the foul smells emanating from the 60-year old facility.

10 The acting commissioner of the Environmental Department  
11 said, "The company faces fines up to \$5,000 a day if it  
12 misses the deadlines." The assistant commissioner said,  
13 "We don't care what it costs the company. They've been  
14 irresponsible, and they will have to spend whatever they  
15 have to spend."

16 That's getting things done. Maybe that's why  
17 the City of Chicago has an Environmental Department. I  
18 don't know. I just read this in the paper, thought it was  
19 interesting.

20 Certainly we need to think about things that  
21 are going to help the community out, help the State out.  
22 Certainly what happens here is going to affect a lot of  
23 other companies in the state of Illinois. This may set a  
24 precedent. I don't know. As a taxpayer, we've heard of

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1 Governor Blagojevich complaining of waste of tax money; and  
2 I certainly, certainly hope your agency will be found  
3 responsible for imposing fines that will move the -- that  
4 will compensate the taxpayers of this state. Your time  
5 from the EPA down to the attorney general's office to the  
6 Pollution Control Board, all of this is expensive. It  
7 takes time, it takes money to get people out in the field,  
8 to get the pollution control monitors out. To do all of

9 these sort of things takes a lot of money. I doubt it if  
10 \$75,000 is going to do that. I agree with Mr. Herendeen.  
11 His figure of about \$1 million probably is right. But  
12 there again, I'm no expert on the matter. You people are  
13 supposed to be.

14 As far as, I guess, the neighbors, it still  
15 sounds like we're having to stand up for ourselves; and  
16 that's why we hired a lawyer. You know, you just hate to  
17 have to hire a lawyer. You hate to get involved in losses  
18 because they take time. You know, we have our things to  
19 do, our jobs and so forth to do. So that's why we rely on  
20 you people that we pay to help us out. I mean, things  
21 aren't getting any easier in the world, and we certainly  
22 see that around us.

23 But I wish to thank you for listening. I  
24 really appreciate the efforts of the EPA, Darwin Fields and

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1 Bob Stortzum for listening to people, to the people of  
2 Champaign who have been patient with me. I thank you for  
3 your time.

4 HEARING OFFICER: Thank you.

5 Mr. Davis, do you have any --

6 MR. DAVIS: No. I have no questions of this  
7 gentleman.

8 HEARING OFFICER: Mr. Krchak?

9 MR. KRCHAK: Just have a couple.

10 CROSS-EXAMINATION

11 BY MR. KRCHAK:

12 Q Now, you stated after you finished reading your  
13 sister's letter that you adopt everything that she says in  
14 her letter; is that what you're saying now?

15 A Which particular part were you assessing here  
16 that you were wondering about?

17 Q Well, I'm just asking about the letter in its  
18 entirety. Because we don't have her here to  
19 cross-examine --

20 A I agree with what she's stating here. I think  
21 she hit things pretty much on the dot here on a lot of  
22 things. She's no expert on pollution and things of that  
23 sort, but common sense kind of tells a lot of this here.

24 Q So, when she says that she thinks Alloy has not

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1 spent much money on environmental controls, do you agree  
2 with that?

3 A Well, according to what I read from the City of  
4 Chicago, have they put in thermal oxidizer systems. Have  
5 they put in other things -- I just need to be educated. Do  
6 you know what they've put in?

7 Q Sure.

8 A Can you tell me what they've put in?

9 Q No. Do you know how much they've spent over  
10 the past few years and how much they're spending this year  
11 on environmental control?

12 A What is the exact dollar amount? I don't know.

13 Q You don't know?

14 A Not the exact dollar amount.

15 Q About how much --

16 A Mr. Herendeen mentioned a figure there, I  
17 believe.

18 Q Okay. You said something about medical tests  
19 that were done on you. I think you concluded that you  
20 don't know whether this has anything to do with Alloy or  
21 not?

22 A No. I can't blame Alloy, no.

23 MR. KRCHAK: Thanks. I don't have anything  
24 else.

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1 HEARING OFFICER: Thank you.

2 I would like to clarify for both the parties  
3 and the people present that the public policy purpose of  
4 this hearing is to provide members of the public with an  
5 opportunity to testify and give their comments on this  
6 case. So that is why we did allow you to read that letter  
7 into the record and read the article in there. We are



8 giving more leeway to the public than we would normally see  
9 in a regular adjudicatory case because that's really the  
10 policy purpose behind this whole hearing provision in the  
11 Environmental Protection Act. Thank you.

12 MR. EHRHART: Thank you very much.

13 HEARING OFFICER: Would anyone else care to  
14 give a sworn statement before we move on to our public  
15 comments?

16 Okay. Seeing no hands, I would like to call  
17 Beth Wentzel from the Prairie Rivers Network.

18 MS. WENTZEL: Thank you. My name is Beth  
19 Wentzel; and I am the watershed scientist for Prairie  
20 Rivers Network, a state-wide river conservation  
21 organization and the Illinois affiliate of National  
22 Wildlife Federation. Prairie Rivers is very interested in  
23 the violations related to water pollution and unpermitted  
24 discharges to the Copper Slough by way of a city storm

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1 sewer. I certainly appreciate this opportunity to ask a  
2 few questions and offer a few comments on the proposed  
3 settlement agreement.

4 First, a couple of questions, Mr. Davis. You  
5 did mention some of the actions that have been taken  
6 regarding the unpermitted discharges to the storm sewer,

7 and I just wanted some clarification there. Did you say  
8 that a permit has been issued?

9 MR. DAVIS: I may have said that. I know that  
10 a permit application was filed with the Illinois EPA, and I  
11 believe that at the time that we signed the settlement -- I  
12 know that a permit application was filed with the Illinois  
13 EPA, and I believe that at the time that we signed the  
14 settlement I was assured that either a permit had been  
15 issued or would be issued. The settlement does not  
16 affect -- I mean, it really doesn't make a difference  
17 because the settlement doesn't affect or diminish the  
18 company's responsibility to comply with the permit. If it  
19 hasn't been effective at the time that it is effective,  
20 they'll have to comply.

21 But the key thing is that the processed  
22 wastewater is not being discharged through the storm sewer  
23 any longer, and the other key thing is that the storm water  
24 permit requirement that is applicable to Alloy is being

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1 complied with.

2 MS. WENTZEL: You indicated that that processed  
3 wastewater is now being routed to a wastewater treatment  
4 plant?

5 MR. DAVIS: Yes.

6 MS. WENTZEL: Well, Part 8 of the settlement

7 agreement goes through the terms of that agreement, and it  
8 appeared to me that the only terms of the settlement which  
9 addresses Alloy's need to address violations associated  
10 with wastewater discharges to the Copper Slough are in Term  
11 C. My concern there is that Term C is a little bit general  
12 and vague. I would ask that more detail be provided in the  
13 settlement agreement regarding the means by which the  
14 respondent shall comply with the law as required by Term C  
15 of the agreement.

16                 Because the respondent denied and continues to  
17 deny that it acted out of compliance with many and perhaps  
18 all of these provisions of the law, there is clearly  
19 disagreement between the State and Alloy regarding the  
20 meaning of compliance with these provisions. That the  
21 respondent feels that it never acted out of compliance with  
22 the law in the first place suggests that Term C requires  
23 nothing of them. I don't know if I misunderstand that.

24                 Mr. Davis, I know you certainly enumerated a

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1 number of means through which the respondent will be  
2 complying with these various provisions of the law,  
3 including the requirement to now discharge wastewater to a  
4 sewage treatment plant rather than into the storm sewer;  
5 but it's not spelled out, nor are any of the other

6 provisions spelled out specifically. And I'm wondering  
7 what Term C actually does require specifically, if  
8 anything.

9 MR. DAVIS: Okay. Term C, as we're calling it,  
10 essentially says that Alloy shall at all times meet its  
11 obligations under the Act to comply with Sections 9(a) and  
12 9(b) -- that deals with air -- 12(a), 12(b), 12(f) -- that  
13 deals with water -- and then Section 21(e), (f), and (i)  
14 dealing with waste disposal.

15 Now, Miss Wentzel, you said that in your view  
16 this is vague and general. I don't disagree with that, but  
17 my view is that it's broad and inclusive, which is good.  
18 12(a), (b), and (f) essentially prohibit water pollution.  
19 They prohibit discharges without a permit. So, in our  
20 view, this hits it right on the head, hits the nail right  
21 on the head. Regardless of any disagreement over what  
22 happened or the impacts moving forward, this company has a  
23 continuing obligation to ensure that any discharges do not  
24 violate the broad statutory prohibitions.

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1 So we -- you know, it's a matter of  
2 perspective. This is what I do and have done for a very  
3 long time; and I've got to step back and say, "Well, does  
4 this make any sense to you folks?" And I can see where,  
5 you know, just by reciting the statutory provisions that it

6 might not be explanatory; and that's why we have this  
7 hearing.

8 MS. WENTZEL: Right. I guess my bigger concern  
9 is not that, you know -- I can certainly look up these  
10 provisions and read them myself, but what concerns me is  
11 that Alloy Engineering does not feel that any of its past  
12 actions were not in compliance with these provisions. So,  
13 you know, is there anything about this term that Alloy  
14 understands it has obligations in the future that are  
15 somehow different from how they've been acting in the past?

16 MR. DAVIS: I think the key concept -- and not  
17 to put any words in the other party's mouth; but as far as  
18 their understanding, it has been demonstrated by the  
19 halting the processed wastewater discharge which was  
20 improper. Has to go through treatment and then getting a  
21 storm water permit to control those discharges. So the  
22 understanding, to my mind, has been demonstrated by their  
23 actions.

24 Now, moving forward, as long as the processed

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1 wastewater is going through the treatment plant and does  
2 not contain anything that it shouldn't, then there's going  
3 to be no problem. So that's the key thing here. The  
4 understanding of the company, I think, is very evident by

5 the fact that they've gotten the proper permits and they're  
6 being monitored by their own people as well as the EPA.  
7 So, you know, you can't predict the future, but the  
8 assurance -- the protocols and methods for assuring future  
9 compliance are in effect.

10 MS. WENTZEL: So you feel that Alloy  
11 understands that discharges of processed wastewater to a  
12 storm sewer without a permit for that discharge are  
13 improper? You feel that that's an understanding even  
14 though they've denied that that was a violation in the  
15 past?

16 MR. DAVIS: Yes. To address what you're  
17 focusing on as in this settlement, the company did not  
18 admit the violations. That's not unusual for a company not  
19 to admit violations. It's not unusual for us in a  
20 settlement to not insist upon admissions. It really  
21 doesn't matter to us. If, in the future, they have  
22 problems which are unanticipated and result in enforcement,  
23 then this settlement can be held against them as a  
24 previously adjudicated violation. Right now they have no

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1 previous adjudicated violations. As far as formal  
2 enforcement, they have only this on their record.

3 MS. WENTZEL: Okay. Like the previous  
4 testifiers, I had some question regarding the derivation of

5 the penalty figure; and I do think additional information  
6 should be provided regarding how that figure was derived.  
7 The penalties certainly should reflect full costs of all  
8 damages resulting from all of the violations in order to  
9 properly take into account the gravity of the violations.  
10 If it has not already been conducted, a natural resources  
11 damage assessment should be conducted to determine the  
12 costs of preparing and mitigating lost value over the time  
13 period during which the facility was out of compliance with  
14 the law.

15 A portion of that, I feel, should be an  
16 assessment of damages to the Copper Slough. I see actually  
17 that you have a report that I've also seen a copy of in  
18 which there have been studies done on the Copper Slough in  
19 the past, and some of the researchers have certainly found  
20 high levels of metals in the sediments that they have  
21 attributed to processed waste from Alloy. These damages  
22 should be assessed and costs of mediation should be  
23 incorporated into the penalty, and that penalty money  
24 should then be used for a Supplemental Environmental

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1 Project to restore the Copper Slough.

2 I also feel that the \$77,501 penalty reduction  
3 for the prescribed Supplemental Environmental Projects is

4 questionable. As you indicated, Mr. Davis, the  
5 Supplemental Environmental Projects are defined by US-EPA  
6 as environmental beneficial projects that a defendant in an  
7 environmental enforcement action agrees to undertake as  
8 part of a settlement but which the respondent is not  
9 otherwise legally required to perform. As I'm looking at  
10 these projects that are described, I feel that to varying  
11 degrees these Supplemental Environmental Projects appear to  
12 be necessary for ensuring compliance with the law in the  
13 future. And, of course, if they are required in order to  
14 comply with the law in the future, they do not represent  
15 true Supplemental Environmental Projects; and the monetary  
16 penalty should not be reduced for these projects.

17                   Again, perhaps specification of what is  
18 required under Term C of the settlement agreement might  
19 clarify that regarding what is going to be required to  
20 continue to comply with all clean air violations. I know  
21 you described the past violations as episodic in nature and  
22 limited in time, but it sounds from some of the testimony  
23 we've heard already that these may not be episodic. It may  
24 not be completely addressed at this time. More appropriate

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1 Supplemental Environmental Projects might include  
2 reparation of damages that have resulted from these water  
3 and air discharges. These reparations should be included



4 in the settlement agreement. Thank you.

5 HEARING OFFICER: Thank you.

6 Mr. McMahon?

7 MR. McMAHON: Good morning. I'm John McMahon,  
8 M-c-M-a-h-o-n. I'm an attorney here in Champaign. I am  
9 the attorney for 80 plaintiffs in a separate civil lawsuit  
10 filed here in Champaign County in Circuit Court. That's  
11 the case of Livengood, et al. v. Alloy Engineering and  
12 Casting, 2001-L-53.

13 I am not an attorney of record in this case.  
14 I'm here today just making public comments; but the public  
15 comments are made on behalf of my clients, the plaintiffs  
16 in the other case. Many of them are here today. You've  
17 already heard from two of them. I'm not sure how many more  
18 of them intend to speak, but I certainly encourage them to  
19 do so. Many of them were simply not able to be here today  
20 because of work schedules or other commitments; and to that  
21 extent, I believe they will be trusting and relying on the  
22 comments that I will make on their behalf.

23 I do have some documents here which I intend to  
24 submit as exhibits to be included with my comments today.

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1 HEARING OFFICER: Okay.

2 MR. McMAHON: The civil lawsuit pending right

3 now is based on airborne emissions from Alloy, so the count  
4 of the complaint in this case most pertinent to that case  
5 is Count I, having to do with the fugitive dust emissions.  
6 So most of my comments will deal with that part of the  
7 Pollution Control Board case.

8           Real quickly, though, commenting on something  
9 Mr. Davis just said in response to Miss Wentzel, it's a bit  
10 disconcerting to me that Illinois EPA would be assuring him  
11 that the MPDS storm water permit is going to be issued. As  
12 far as I know, there has yet to be a public comment period  
13 on that permit. Certainly the point of a public comment  
14 period is to allow for public comments, and certainly those  
15 comments should be considered before any decision on  
16 issuance of any permit should be made. So, to say that  
17 they've already assured him the permit's going to be issued  
18 suggests it's a foregone conclusion regardless of what any  
19 of the public comments might be. And that doesn't sound  
20 like the process working the way it's supposed to work. I  
21 certainly hope that the Pollution Control Board will not  
22 take that approach with respect to public comments offered  
23 in this case.

24           The emissions from Alloy starting sometime in

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1 late 1999 and continuing into 2000 have left a clear trail  
2 of physical evidence in the form mostly of small rust spots

3 all over property in that neighborhood to the south and  
4 east of Alloy. These rust spots are on surfaces that  
5 cannot possibly be rusting on their own. They're on  
6 plastic. They're on wood. They're on rubber. They're on  
7 glass. Those things don't rust. Iron rusts. Iron is a  
8 component of steel. Steel is something they use at Alloy.

9           Now, Alloy will attempt to point out that,  
10 "We're a stainless steel foundry. Stainless steel doesn't  
11 rust." But what Alloy does use is steel shot to -- part of  
12 the process in manufacturing these stainless steel parts.  
13 Steel shot does rust, as any number of witnesses have  
14 already testified to in the civil case, and there is no  
15 conceivable source anywhere in that part of Champaign for  
16 ferrous particles, iron oxide particles, to be falling all  
17 over that neighborhood except for Alloy.

18           So the evidence is clear. The attorneys for  
19 Alloy have taken a walking tour of that neighborhood with  
20 me. Mr. Davis has done the same thing. The attorneys for  
21 Alloy, of course, have acknowledged nothing to me because  
22 they represent their client. Mr. Davis has acknowledged to  
23 me that yes, indeed, the physical evidence seems to be  
24 clear that emissions from Alloy have, indeed, landed in

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1 this neighborhood and have, indeed, caused that property

2 damage.

3                   Mr. Davis's predecessor on this case, Elizabeth  
4 Pitrolo, has told me the same thing and that as far as she  
5 was concerned, there was no doubt the attorney general  
6 would be able to prove its case if this case went to a  
7 contested hearing. So I, frankly, don't understand the  
8 rush to settle this case. Settlement is usually what  
9 happens when one or both parties perceive weaknesses in  
10 their case, and it's comprised to get rid of the  
11 uncertainty. In this case, there is no uncertainty that  
12 Alloy caused at least property damage in the adjoining  
13 neighborhood, and Alloy has failed to take responsibility  
14 for that and they're being let off the hook with a very  
15 minor penalty and a settlement with very favorable terms in  
16 spite of that.

17                   This is an enforcement proceeding under the  
18 Illinois Environmental Protection Act. The point of an  
19 enforcement proceeding is to assure compliance with the  
20 Act, not just for the respondent in this case, but for any  
21 other potential polluters in the state of Illinois who  
22 might be looking to this case to see how the Pollution  
23 Control Board treats these situations. If any potential  
24 polluter in the state of Illinois can see that the

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1 consequences of violating the Illinois Environmental

2 Protection Act will be fairly minimal, then there's not a  
3 lot of incentive to spend the money or to take the actions  
4 necessary to make sure that the Environmental Protection  
5 Act is not violated.

6           And there is plenty of case law in Illinois,  
7 public case law which supports that proposition; and I,  
8 frankly, don't think that the attorney general would even  
9 dispute that proposition anyway. This settlement is too  
10 easy. This settlement is doing nothing to create a  
11 disincentive to Alloy or anyone else to violate the Act in  
12 the future.

13           We do have a jury trial scheduled in the  
14 separate civil case for this September; and because of  
15 that, quite frankly, that has to be where my efforts and  
16 the efforts of my co-counsel, Mr. Kevin Ward, have to be  
17 focused. We can't do anything in this case to jeopardize  
18 our ability to conduct an effective jury trial on behalf of  
19 our clients later in the year. For that reason, I'm not  
20 going to get into a lot of evidence today that I could get  
21 into, but I will make reference to a few things just mainly  
22 to make the point that there is a lot of evidence that the  
23 attorney general hasn't gotten into either and that the  
24 attorney general, quite frankly, should have gotten into

1 before rushing to settle this case. I do want to emphasize  
2 again that I'm here today because I represent 80 plaintiffs  
3 in a separate but related lawsuit.

4           One of the documents that I handed out is a map  
5 of the neighborhood, not the entire neighborhood but as  
6 much as I could get on one 11-by-17 sheet of paper. On  
7 that map -- and unfortunately my north arrow got cut off  
8 when I was copying it -- but Alloy is in the upper  
9 left-hand corner of the map marked with the word "Alloy."  
10 The neighborhood where my clients live would be south and  
11 east of there. Most of them are within a couple of blocks,  
12 but there are a few that are farther away. The plaintiffs  
13 I represent probably represent, perhaps, 35 or so of the  
14 city lots identified there. It's rather obvious that  
15 there's a great deal more lots there than that.

16           The damage that is the basis of the lawsuit is  
17 airborne emissions. Now, I think it should be a fairly  
18 obvious fact that airborne emissions do not respect lot  
19 lines; so, if they've fallen on the properties of the  
20 plaintiffs in the civil lawsuit, they've also fallen all  
21 over that neighborhood. Alloy seems to be trying to paint  
22 my clients as a bunch of noisy malcontents who are  
23 complaining about something that doesn't make much  
24 difference to anybody else.

1                   One of the other documents that I've provided  
2 to you is a petition that was sent to General Motors and  
3 with a cover letter that went with that petition by an Amy  
4 Kronenberg. Miss Kronenberg is not one of the plaintiffs  
5 in the civil lawsuit. And that petition is signed, if I  
6 counted right, by, I believe, 369 people, so approximately  
7 at least 300 people more than are the plaintiffs in the  
8 civil lawsuit. So certainly there are a great deal more  
9 people in that neighborhood who have concerns with Alloy  
10 than the plaintiffs in the pending civil lawsuit.

11                   There are all kinds of reasons people don't get  
12 involved in lawsuits. I've talked to some people who,  
13 frankly, wanted to be a part of this suit but they're not  
14 because this is a long, protracted litigation. It's been  
15 going on -- our suit itself was filed a few weeks before  
16 the attorney general's case was filed. We filed ours March  
17 1st, 2001. I believe the attorney general's original  
18 complaint was filed on May 16th of 2001.

19                   Prior to that, I had been retained for at least  
20 six months. We spent that six months doing our best to try  
21 to negotiate a settlement with Alloy so it would never be  
22 necessary to file a lawsuit. Unfortunately, that came to  
23 nothing. Prior to my being retained, the people in the  
24 neighborhood themselves spent several months trying to work

1 out something directly with Alloy. That also came to  
2 nothing.

3           In spite of the clear physical evidence that  
4 Alloy, at least at a minimum, caused a great deal of  
5 property damage in that neighborhood and in spite of the  
6 clear evidence that nobody else did it, Alloy did it,  
7 Alloy, rather than attempting to deal honestly and  
8 straightforwardly with its neighbors prior to the time they  
9 ever hired an attorney or certainly since the time they did  
10 hire an attorney, Alloy has embarked on a strategy of  
11 denying everything. They've still continued to deny that  
12 they're responsible for the property damage in that  
13 neighborhood.

14           What's worse than that, not only are they  
15 denying their own responsibility, they are shamelessly  
16 pointing the finger at everyone else they can think of.  
17 That list would include at least Kraft, Humko, the Illinois  
18 Concrete Company, some road construction on Glen Park  
19 Drive, the demolition of a Chinese restaurant somewhere  
20 west of Mattis Avenue, Tapman's Auto Body shop which is  
21 located a bit west of the intersection of Bradley Avenue  
22 and Mattis in Champaign which would be probably at least a  
23 half mile northwest of this area.

24           There's at least been references in the form of



1 some questions that have been asked in depositions that  
2 maybe this was caused by some guy doing auto body work in  
3 his driveway or even by one of the plaintiffs using a  
4 grinder in his garage. All of these suggestions are, quite  
5 frankly, ludicrous. Most of them ignore the fact that  
6 anything that might be coming from any of those sources  
7 certainly did not include ferrous particulate matter and  
8 nothing that would have been coming from any of those  
9 sources would have been causing the physical property  
10 damage in that neighborhood.

11           So Alloy's conduct to this point has simply  
12 been one of, "Deny we did it even though we know we did  
13 it," or certainly I have to believe they must know they did  
14 it because no one can be -- not to be disrespectful, but no  
15 one can be stupid enough to believe anything else. The  
16 evidence doesn't allow for any other conclusions. So, not  
17 only are they not taking responsibility for their own  
18 actions, they're trying to blame other people that they  
19 know perfectly well did not cause this damage.

20           Also, at the same time they're doing that, they  
21 did, in the summer of 2001, take out two full-page ads in  
22 the Champaign-Urbana News Gazette, copies of which I  
23 provided to you, and some reference was made to these ads,  
24 I think, by the earlier speakers. These are certainly not

1 the kinds of ads you would normally see a business taking  
2 out. They're not trying to sell a product that they have.  
3 Clearly, these are ads designed to convince the readers of  
4 the News Gazette that Alloy is a good neighbor and that  
5 Alloy cares about the environment. It's, quite frankly,  
6 not honest to be trying to convince anyone of that message  
7 at the same time they are so deliberately trying to shift  
8 blame for damage that they know they caused themselves.

9           And I believe that -- I honestly don't remember  
10 right now whether it was Mr. Davis or Miss Pitrolo before  
11 him, did make the comment to me that, "Yes, I've seen those  
12 ads; and yes, I agree they are deceptive." And deception,  
13 quite frankly, has been what Alloy has been all about since  
14 at least December of 2000.

15           The point has been made to me several times  
16 both by the attorney general's office and also by counsel  
17 for Illinois EPA that the Illinois Environmental Protection  
18 Act does not provide for restitution even if we know that  
19 Alloy caused property damage in that neighborhood or any  
20 other kind of damage. The Act simply doesn't provide us  
21 the means to do anything about it. That's why they have a  
22 civil remedy. That's why they can hire an attorney of  
23 their own and file a lawsuit.

24           Well, I certainly don't suggest that the Act

1 does provide for restitution. I know it doesn't. But  
2 that's not the point. The point is the fact that Alloy has  
3 not made restitution as part of their conduct of denying  
4 everything and not taking responsibility, not doing right  
5 by its neighbors, not doing the right thing, what they  
6 ought to be doing if they truly were good neighbors or a  
7 good neighbor to the people in that neighborhood.

8               So, no, the Pollution Control Board cannot  
9 require Alloy to make restitution; but in deciding what the  
10 appropriate penalty is or in deciding on whether this case  
11 should even be settled at all, the attorney -- the  
12 Pollution Control Board should certainly be taking into  
13 account the conduct of the respondent in this case; and the  
14 conduct of the respondent in this case has, quite frankly,  
15 been deplorable.

16               And I say that even assuming, for the sake of  
17 argument, that they're in compliance with the Act now. I  
18 don't know if they are or not. We haven't been provided  
19 the information that we need to know whether that's the  
20 case or not; but even if they are, they haven't taken  
21 responsibility for what they did back in '99 and 2000.

22               They did a great deal of damage. The property  
23 damage is rather obvious. If we just talk about  
24 automobiles, if we talk about nothing else, the sheer

1 number of automobiles in that case, fixing the paint jobs  
2 on all those automobiles is going to cost more than the  
3 penalty in this case. That's not to mention the fact that  
4 there's similar damage on the houses and the outdoor  
5 personal property. Mr. Ehrhart made the point earlier that  
6 he thought it was ridiculous that anybody should be  
7 expected to bring their outdoor personal property inside  
8 their house. Well, I certainly agree with that point.

9           Now, while the property damage is bad enough,  
10 there is more at stake here than that. The emissions from  
11 Alloy contain a lot of things. Mr. Davis mentioned that  
12 they contain sand. It should be pointed out that this sand  
13 is silica sand. Silica sand is carcinogenic. Silica sand  
14 causes silicosis. Probably can't cause silicosis in the  
15 exposures that anyone in this neighborhood has been exposed  
16 to it.

17           (Mr. Davis temporarily exits the hearing.)

18           MR. McMAHON: However, the US-EPA and I think  
19 generally the environmental regulatory community accepts  
20 that carcinogenic substances do not have a safe threshold  
21 level for exposure. That's a position taken to protect  
22 human health. So what that means is that the assumption is  
23 that any exposure to a carcinogenic substance can cause  
24 cancer. Silica causes lung cancer. The physical evidence

1 in the neighborhood suggests the people that live in that  
2 neighborhood have been exposed to silica.

3 In addition to silica, there are several  
4 hazardous air pollutants. There's at least chromium,  
5 nickel, probably lead, probably selenium, probably antimony  
6 that are all in the emissions coming from Alloy. They're  
7 hazardous air pollutants because they've been defined that  
8 way under the Federal Clean Air Act because they at least  
9 represent a potential for a threat to human health.

10 That doesn't seem to have been taken into  
11 account. And, quite frankly, it's rather offensive that  
12 Alloy is taking the position that it should be up to, for  
13 instance, Mr. Herendeen or Mr. Ehrhart to have to prove  
14 that the emissions from Alloy have done anything to them.  
15 It shouldn't be their burden to have to prove that. They  
16 didn't asked to be exposed to this stuff in the first  
17 place; and, indeed, they shouldn't have been exposed to  
18 this stuff in the first place. So it's a rather cavalier  
19 attitude to expose an entire neighborhood to hazardous air  
20 pollutants and to silica and to iron oxide and then take  
21 the attitude that, "What's the big deal? You can't prove  
22 it's going to hurt you." They shouldn't have done it in  
23 the first place.

24 Now, accidents do happen, and I'm not

1 suggesting that they spewed this stuff into the  
2 neighborhood deliberately. It was an accident in the  
3 beginning. The relevant section of this foundry started  
4 making exhaust manifolds for General Motors in 1999. New  
5 equipment was installed for that process. One of the  
6 pieces of new equipment was a particular bag house which  
7 I'll describe as the CSI north bag house. That bag house  
8 had had original equipment manufacturer problems with it  
9 from the day it went in service which apparently was  
10 sometime in December of 1999. The problems with that bag  
11 house allowed some part of the dirty air coming into the  
12 bag house from this section of the foundry to pass back out  
13 of the bag house still dirty because it wasn't functioning  
14 properly. How much of the dirty air went out? How much of  
15 the emissions that should have been collected in the bag  
16 house but were not collected? We don't know. And there's  
17 apparently no way to quantify that now. It's too late. I  
18 mean, the emissions are gone now. The bag house has been  
19 fixed now. So we'll never know how much was emitted.

20 The point is Alloy didn't know how much was  
21 emitted at the time they were doing it, but they were  
22 certainly emitting something. If, in fact, the amount of  
23 those emissions was not sufficient to have endangered  
24 anyone's health, that's only because Alloy got lucky. It's

1 not because they knew that they were emitting safe levels.  
2 Certainly, a safe level would have been presumably  
3 something closer to what would have been emitted when the  
4 bag house was actually working the way it was supposed to  
5 work. So it was something far more than that. Maybe it  
6 was a safe level, maybe it wasn't, but it certainly  
7 shouldn't fall on these neighborhood residents to have to  
8 prove that it wasn't a safe level because they shouldn't  
9 have been exposed to it in the first place.

10 (Mr. Krchak temporarily exits the hearing.)

11 MR. McMAHON: Further, I'm not sure if it was  
12 Mr. Ehrhart or Mr. Herendeen, but one of them made the  
13 rather sensible, common-sense observation that, "Anything  
14 that's doing this to my car or doing this to my picnic  
15 table or whatever probably isn't good for my lungs either."  
16 Maybe that's not very scientific, but it does make sense;  
17 and certainly the bag house was not designed to let out  
18 particulate matter in heavy enough concentrations to do  
19 this type of property damage. It wasn't designed to let  
20 out those amount of emissions. So, if it was letting out  
21 far more than it should have been letting out, from a  
22 property damage standpoint, it probably was letting out far  
23 more than it should have been letting out from a health  
24 standpoint as well. And we simply don't know how big that

1 health risk presented from those emissions is.

2                   There are things that could be done to at least  
3 try to answer the question, and we've asked the attorney  
4 general to do them. We've asked the attorney general to  
5 take soil samples in the neighborhood, to see what's been  
6 deposited there. That seems to me a prudent thing to do.

7                   (Mr. Davis and Mr. Krchak return to the  
8 hearing.)

9                   MR. McMAHON: There's a lot of children that  
10 live in that neighborhood. Children play outside. They  
11 roll around on the grass. They kick up the dust. They  
12 breathe in the dust. What would be wrong with doing some  
13 soil samples just to make sure that there isn't a bigger  
14 health risk out there than everybody seems to be assuming  
15 exists? Why wouldn't that be a prudent thing to do before  
16 rushing to a settlement in this case?

17                   I at least want to mention Mr. Davis and I have  
18 had several discussions on the subject ISO 14001, if not  
19 certification, at least conformance by Alloy. Now, for the  
20 benefit of the people here today, which probably would be  
21 most people, who have no idea what I'm referring to when I  
22 say ISO 14001, briefly that is a standard set up for the  
23 International Organization for Standardization which  
24 requires someone with that certification to have in place



1 an environmental management system. Basically, the idea of  
2 an environmental management system is some type of a system  
3 in place to track a company's environmental performance so  
4 that they know what they're doing from an environmental  
5 standpoint, so they have some way to know whether what  
6 they're doing is causing environmental impacts on others  
7 outside their own facility.

8 I thought that that was supposed to be a term  
9 of this settlement. I see that it isn't. But, quite  
10 frankly, even if it was, I don't think it would make much  
11 difference because Alloy has now taken the step of  
12 self-declaring itself to be in conformance with the  
13 ISO 14001 standard. This means no outside auditor has come  
14 in and looked at their environmental management system.  
15 They've simply looked at it themselves, done their own  
16 internal audit, and checked off all the boxes that say,  
17 "Yes, we meet the standard," and sign the form that  
18 declares they're in conformance with the standard.

19 ISO's self-declaration of conformance to the  
20 ISO 14001 standard is a joke, pure and simple. And I know  
21 that because of discovery that's been conducted which I  
22 can't get into any further than that because of a  
23 protective order that's been entered into the civil lawsuit

24 which stops me from doing that. But that would be one

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1 other thing that I would suggest that the attorney  
2 general's office ought to look into a little bit deeper.

3           To my knowledge, there's been no discovery  
4 conducted in this case. The attorney general did send out  
5 some interrogatories, I see; but no sooner did they go out  
6 there was an agreement that responding to them to be  
7 continued pending settlement negotiations. So they never  
8 have been answered. I don't think there's been any  
9 depositions conducted in this case. I know that I have  
10 personally suggested to the attorney general's office any  
11 number of individuals who used to work at Alloy but don't  
12 work there anymore who have relevant information and that  
13 should be talked to. I don't think any of those people  
14 have been talked to. I've certainly made it clear to the  
15 attorney general's office that I would cooperate in any way  
16 with making the plaintiffs in the civil lawsuit available  
17 to be interviewed by the attorney general. I have not been  
18 advised by any of my clients that any of them have been  
19 interviewed.

20           And, further, there are current employees of  
21 Alloy and other witnesses of Alloy who I am also not free  
22 to share what they may have said; but, again, Alloy is free  
23 to pass that information on to the attorney general. The

24 attorney general is free to ask about it; and as far as I

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1 know, that hasn't happened either.

2           To sum it up, there is a great deal more  
3 information that could have been learned in this case that  
4 has never been learned and, therefore, is not part of the  
5 administrative record that will be before the Board when it  
6 makes this decision on this settlement, and that  
7 information ought to be on the record because there's a  
8 great deal of relevant information that plays into the  
9 factors under Section 33 of the Act and under Section 42 of  
10 the Act; and the Board simply doesn't have that  
11 information, and they're not going to have that information  
12 unless additional discovery and investigation generally is  
13 conducted.

14           So, at a minimum, this settlement or any  
15 decision on this settlement should be continued pending  
16 further investigation, pending, perhaps, a full evidentiary  
17 hearing somewhere down the road.

18           I would note, just in passing, Illinois EPA did  
19 require stack tests to be done as part of its  
20 investigation. For whatever reason -- I don't know why --  
21 the stack tests for metals were done of the Griffin bag  
22 house, not the CSI north bag house. The Griffin bag house

23 isn't the bag house that there was a problem with anyhow.  
24 So, in addition to the fact that the stack tests were done

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1 on the normally functioning bag house, the stack test for  
2 metals wasn't done on the right bag house anyhow. So I  
3 don't know why that was; but it seems like, perhaps, if  
4 there was any point in doing stack tests at all, then there  
5 would certainly seem to be a point in doing a stack test on  
6 the bag house that was actually malfunctioning back in 1999  
7 and 2000.

8 I believe I probably I already touched on this  
9 in the comments I've already made; but just looking real  
10 quickly at the criteria under Section 33(c) of the Act,  
11 first one, "character and degree of the injury to or  
12 interference with the protection of the health, general  
13 welfare, or physical property of the people," I believe  
14 Mr. Davis made a comment earlier today that physical  
15 property damage was not the concern of the attorney  
16 general's office. I'm not sure why that would be the case  
17 since it says right there that physical property of the  
18 people is, indeed, one of the criteria that's supposed to  
19 be considered; and that one thing alone, as I've already  
20 said, would justify a far greater penalty than what's being  
21 assessed in this case.

22 Criteria two, "social and economic value of the

23 pollution source," sure, I'll accept that a properly  
24 functioning foundry provides a social and economic value in

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1 this community. People have jobs. They pay into -- they  
2 pay tax dollars. That's self-evident. But there's a  
3 difference between whether a properly functioning foundry  
4 is of social and economic value and whether a  
5 malfunctioning foundry is of social and economic value.  
6 Any foundry that is malfunctioning to the extent that it  
7 caused the type of damage that was caused in that  
8 neighborhood, I think that it's self-evident that that  
9 damage was not valuable to that community at least.

10           Likewise, for criteria number 3, "suitability  
11 or unsuitability to the pollution source to the area in  
12 which it is located," sure, a properly functioning foundry,  
13 let's assume for the sake of argument, is suitable for that  
14 location; but this foundry was not properly functioning in  
15 '99 and 2000.

16           Likewise, including the question of priority of  
17 location, Alloy, in its full-page ads and in numerous other  
18 places, makes a big deal about the fact that they've been  
19 there since the 1940s. Well, that's great, but our  
20 complaint doesn't have anything to do with the mere  
21 presence of the foundry. Our complaint has to do with

22 malfunctioning equipment in '99 and 2000 and a lot of  
23 damage that resulted therefrom.

24 Criteria number 4, sure, it's technically

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1 practical and economically reasonable to reduce those  
2 emissions because, presumably anyhow, that, in fact, has  
3 been done now. So I don't think there's any argument there  
4 except I would only make the point that if it's technically  
5 practical and economically reasonable to do it now, the  
6 same thing was true back in 1999. They should have done it  
7 then.

8 Now, I would only go further on that point  
9 that, again, accidents do happen. Alloy cannot be held to  
10 a standard of being perfect; but if they had a  
11 malfunctioning bag house and they knew they had a  
12 malfunctioning bag house and they continued to operate for  
13 several months with that knowledge and with the knowledge  
14 that property damage was being caused by it, well, that's a  
15 little bit different story. And they certainly should have  
16 fixed the problem sooner. They shouldn't have let it go on  
17 for so long.

18 Looking at section Roman numeral 6 of the  
19 proposed settlement, in paragraph 1 after the listing of  
20 the Section 33 criteria, reference is made there to the  
21 tort action alleging nuisance and trespass which, of

22 course, is the tort action in which I'm the plaintiffs'  
23 attorney; but I'm not sure I even see the point there.  
24 Yeah, a tort action is pending, but how does the fact that

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1 that tort action is pending address anything that the  
2 Pollution Control Board ought to be looking at? That tort  
3 action is still pending. There's been no resolution of it  
4 yet; and, furthermore, there shouldn't even be any need for  
5 that tort action. If Alloy would do the right thing, we  
6 would have never needed to file suit in the first place.

7 Now, Alloy hasn't done the right thing; and,  
8 therefore, we do have a lawsuit filed; and, therefore,  
9 apparently we're going to have to have a jury trial because  
10 they persist in denying responsibility for what they did.  
11 So the mere reference to the pendency of a tort action, I  
12 just don't see the point of it there.

13 Section 7 of the proposed settlement goes into  
14 the penalty factors under Section 42(h) of the Act.  
15 Frankly, I think at least in substance they largely overlap  
16 the same considerations laid out in Section 33 of the Act,  
17 so I'm not going to spend a lot of time on that and also  
18 because the size of the penalty in this case is not really  
19 the focus of my comments today anyhow.

20 We just don't think that this settlement should

21 be approved, period, because we don't think the Pollution  
22 Control Board has a complete record based on the incomplete  
23 investigation that's been done to this point. So I think  
24 it's premature to even be talking about the appropriate

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1 penalty. But if, indeed, the settlement was to be  
2 approved, then, yeah, I agree with the prior speakers that  
3 the penalty that's been agreed to is way too low. It  
4 doesn't cover even the property damage in this case; and to  
5 the extent that Alloy's been given a credit for these three  
6 SEPs, those are just things that Alloy would need to do to  
7 be complying with the Act anyhow. So I don't see why they  
8 are giving any credit for doing those things.

9           Finally, as I mentioned, a number of my clients  
10 have -- they're not here today because they simply couldn't  
11 be here today. One of them did e-mail me his comments  
12 today and asked that I read them into the record, so I'm  
13 going to ask Madam Hearing Officer: Is it okay if I do  
14 that?

15           HEARING OFFICER: This is the appropriate forum  
16 to do that. Yes, please.

17           MR. McMAHON: This is an e-mail to me from a  
18 Mr. Chris Prom who lives at 325 North Fair Street; and he  
19 is also one of the plaintiffs in the pending separate civil  
20 lawsuit.



21 "I live at 325 North Fair Street,  
22 approximately one half block from the Alloy plant and  
23 regret that I am unable to attend the hearing today. For  
24 the past three years, I have experienced firsthand the

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1 effects of Alloy's negligence in failing to comply with  
2 appropriate environmental safeguards. I would like to  
3 thank the Illinois EPA and attorney general for taking  
4 steps which led Alloy to improve its environmental  
5 controls. For the past year, the effects of their efforts  
6 have been apparent in a decreased number and intensity of  
7 incidents where particulate matter has fallen on my  
8 property; although I cannot be guaranteed that such  
9 incidents have completely ended. Nevertheless, I strongly  
10 urge the Pollution Control Board to reject this proposed  
11 settlement of the attorney general's case against Alloy.  
12 The reason is simple. Alloy has not taken responsibility  
13 for the original incidents which caused harm to the  
14 neighborhood and people of West Champaign. Alloy has not  
15 provided compensation to those whose property they damaged  
16 and, indeed, continues to deny that they caused any damages  
17 in spite of overwhelming evidence to the contrary. The  
18 involvement of the Illinois EPA and attorney general in  
19 this case only took place after the neighbors, myself

20 included, requested such involvement and exercised ongoing  
21 pressure on Illinois EPA to assure that appropriate steps  
22 were taken to continue such involvement. It would be a  
23 betrayal of public interest for the State of Illinois to  
24 settle this case until the neighbors' just claims are met

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1 since we are the ones who have been affected by Alloy's  
2 negligence. At the present, it seems relatively easy for  
3 Alloy to keep its pollution control systems operating  
4 properly due to the fact that Alloy is running a reduced  
5 production schedule. But what will happen when production  
6 is running around the clock, which was the situation when  
7 the damage was done to my property? If the Pollution  
8 Control Board accepts this proposed settlement, one of  
9 Alloy's biggest inducements to keep compliant with  
10 environmental safeguards will have been removed. What will  
11 keep Alloy from relaxing its controls? Very little, I  
12 fear. For Alloy has shown no desire to meet its regulatory  
13 obligations short of pressure from Illinois EPA and the  
14 attorney general. They and their insurer continue to treat  
15 the claims of the neighborhood dismissedly. For these  
16 reasons, I urge the Pollution Control Board to reject the  
17 settlement until such time as Alloy has met its neighbors'  
18 claims and shows it is able to meet its corporate  
19 responsibilities."

20 I do have enough copies of this that I can --

21 HEARING OFFICER: Thank you. Would you like to  
22 add it to the packet that I've already labeled as  
23 Exhibit 1?

24 MR. McMAHON: Yes, please. Thank you, and that

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1 concludes my comments.

2 HEARING OFFICER: Hold on, Mr. McMahon. I will  
3 admit the packet that I've labeled as Exhibit 1 that you've  
4 handed to me. Would you please just summarize again -- I  
5 know you've gone through it in your statement, but what  
6 exactly is included in this?

7 MR. McMAHON: Sure. It's a petition that had  
8 been signed by approximately 370 residents of that  
9 neighborhood and sent to General Motors along with a cover  
10 letter by an Amy Kronenberg; a photocopy of a map of the  
11 neighborhood copied from a Sidwel (phonetic) atlas; two  
12 full-page ads from the News Gazette, one of them on  
13 July 15th, 2001, the other one on June 10th of 2001. I  
14 think that was it.

15 HEARING OFFICER: Okay. Thank you very much.

16 Again, I would like to reiterate what I've  
17 already said. We are allowing more lenient standards of  
18 what we're allowing as testimony here today based on the

19 public policy purpose of this hearing which is to provide  
20 the public with an opportunity to comment on the proposed  
21 settlement which is why we are allowing evidence to be  
22 presented which might not normally be presented at a  
23 typical adjudicatory hearing.

24 Before we recess for lunch, is there anyone

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1 here who would like to speak who would not be able to come  
2 back after lunch? Is that okay with you, Mr. Davis?

3 MR. DAVIS: That's fine.

4 HEARING OFFICER: Let's first call on the  
5 people who absolutely would not be able to come back after  
6 a lunch recess.

7 Sir?

8 MR. BULLARD: I did write out my testimony; so,  
9 if you would rather me just very briefly summarize it, I  
10 set a copy there and can give you a copy of it.

11 HEARING OFFICER: Yeah, if you want to give me  
12 a copy and go ahead and summarize it.

13 MR. BULLARD: I'm Clark Bullard. I've lived in  
14 Urbana/Champaign since 1962 except for 1977 to '80 when I  
15 lived in Washington. Reason I mention this is because I've  
16 had extensive experience with regulatory policy, and my  
17 comments today relate to the policy aspects of this.

18 I'm a professor of mechanical engineering at

19 the U of I, and I have read over the filing and the  
20 complaint and the proposed settlement. For twelve years at  
21 the university, I've directed the University Research  
22 Center Industry funded by more than 30 companies who we are  
23 helping to comply with environmental and energy  
24 regulations. And I also serve on the board of Prairie

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1 River's network, the national wildlife affiliate. I've  
2 served 14 years during the Thompson and Edgar years on the  
3 Central Midwest Interstate Compact Commission for Low-Level  
4 Radioactive Waste Management. So I'm familiar with that  
5 type of regulation, and I've had responsibility for  
6 developing and implementing these types of regulations.

7           So what surprised me about this was that when I  
8 tried to get more factual information about the basis for  
9 the proposed settlement, I was told by EPA that such  
10 information used to arrive at this proposed penalty is  
11 secret and it will remain secret until the Board accepts  
12 the proposed settlement. So it puzzles me as to how  
13 citizens like myself are supposed to comment on the  
14 adequacy of a proposed settlement if EPA refuses to provide  
15 the input data that they used to put into the public domain  
16 computer model that is used to estimate the economic  
17 benefit of noncompliance which is one of the statutory --

18 or the elements of the -- supposed to be the basis for the  
19 proposed settlement.

20                   Since -- I couldn't even find evidence that the  
21 State has made a serious attempt to assess and quantify the  
22 extent of damages to property, humans, or ecosystems. And  
23 in the absence of such evidence, I don't see how a  
24 settlement can be set because it seems clear that the State

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1 has found that a violation has occurred and it seems  
2 logical that the fine ought to be set at a level sufficient  
3 to cover the costs of assessing the damages, much less  
4 compensating them but at least the cost of assessing them  
5 in a credible, scientifically reproducible manner; and that  
6 information ought to be available before a public hearing  
7 like this.

8                   Like was said earlier, I'm puzzled as to why  
9 the proposed settlement even refers to a parallel tort  
10 case. Think of the tobacco industry settlement. I mean,  
11 there was a fine -- penalties levied on the tobacco  
12 industry for damages done to the public at large, not just  
13 those people who had the money to hire lawyers to sue  
14 tobacco companies. So it seems like that whole aspect of  
15 it is missing from here, and the proposed settlement  
16 presents the tort case as almost a substitute for having  
17 put enforcement on the part of the State.

18 I guess my comments on the four or five 33(c)  
19 elements are similar enough to what's been said earlier  
20 that I won't go over them again. I raised a couple of  
21 technical issues. I think someone mentioned earlier that  
22 one of the pollutants is a suspected or proven carcinogen;  
23 and in that case, like some metals as well, you have a  
24 linear dose response curve with a zero threshold. And in

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1 those cases, like radioactivity that I'm more familiar  
2 with, you have the same expected number of deaths from  
3 exposing all hundred thousand people in this community to X  
4 parts per million as you would expect from exposing 100  
5 people in the immediate neighborhood to a thousand X parts  
6 per million. The probabilities multiply out; and you  
7 expect the same damages city-wide, for example, as you  
8 would in the neighborhood. And that seems to be missing  
9 from this case. And the State should at least assess that  
10 and use that as a basis for arriving at a settlement, but  
11 there's no way that EPA will reveal the basis for the  
12 settlement, so I don't know whether that's been considered.

13 Similar questions about the Clean Water Act, I  
14 did have conversations with Crystal Myers-Wilkins and Tom  
15 Davis -- I can't remember which one told me about the water  
16 pollution -- that, yes, there's evidence ten years ago of

17 foundry sands in the water. And there's the one  
18 observation while EPA inspector was there that somebody was  
19 flushing something without a permit; but I don't know  
20 whether anybody has gone out and checked to see whether  
21 these sediments, the pollution flushed down under the eyes  
22 of the EPA inspector or any prior pollution represents a  
23 risk to the environment when the drainage district goes in  
24 there periodically, turns up the sediment to drudge out the

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1 stream. Is that going to cause problems downstream?

2 My main comment has to do with the adequacy of  
3 the penalty, and I think the -- I would suggest an approach  
4 that would say levy a fine right now of 500,000 to a  
5 million dollars to deter Alloy and other companies from  
6 similar violations. And then, because apparently from the  
7 tone of the settlement, the focus has been on the economic  
8 benefit of noncompliance being equal to -- I think it says  
9 this exactly -- being equal to the capital and operating  
10 savings associated with what they would have spent in order  
11 to comply for those years. Reading the documentation of  
12 the model that's used, that's what I gathered from it. But  
13 that's only a lower bound on the benefits of noncompliance.

14 Think of it from the perspective of the  
15 industry. If I'm going to get caught with being out of  
16 compliance, not fixing something when I know it's broken or



17 not shutting it down when it's operating improperly, I know  
18 that I'm also going to incur bad publicity costs which I'm  
19 going to have to compensate for with full-page ads or  
20 advertising. I don't see whether those kinds of costs --  
21 which are also the costs of noncompliance -- you know,  
22 companies wouldn't break the law if they knew they wouldn't  
23 have a lot of messes to clean up afterwards. It's not just  
24 the cost of repairing what they didn't comply with, but

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1 it's also the cost of repairing their reputation.  
2                   And the biggy, I think, also includes the  
3 opportunity cost of the investment in compliance that would  
4 have been required. So, if I don't invest in good  
5 pollution control equipment, if I buy it from a cheap  
6 vendor and it doesn't work as well as it was supposed to  
7 and I save money by doing that, then I wouldn't have --  
8 then -- that means I didn't spend that money on an  
9 alternative investment; or if I refuse to invest for a  
10 while or refuse to invest in a more workable system, I have  
11 money which now I can use to undercut my competitors and  
12 maybe drive them out of business inflicting social and  
13 economic costs on other communities. So I just don't know  
14 whether that kind of analysis has been conducted. It's not  
15 on the public record yet, and I would hope it would be

16 conducted as part of this case.

17                   So the Supplemental Environmental Projects  
18 almost seems like the public is cost-sharing by -- reducing  
19 the amount of every dollar that that fine is reduced means  
20 that our tax dollars have to pay for EPA's enforcement  
21 costs and mitigation costs out there. So these  
22 Supplemental Environmental Projects are proposed to be  
23 spent from funds that ought to go to the State for  
24 enforcement.

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1                   And I don't understand from the description as  
2 to this mechanical engineer -- these Supplemental  
3 Environmental Projects appear to be simply a part of the  
4 cost of compliance. They don't seem to improve the air  
5 quality. At least there's no statement to that effect.  
6 With this, the air quality's going to be better. It just  
7 seems like these are capital costs that are going to reduce  
8 the company's cost of monitoring and maintenance. So that  
9 ought to be a decision that's left up to the company. The  
10 company ought to decide when it invests in something, "Do I  
11 get one that I'm going to have to fix every few days, or do  
12 I invest in something that's going to be much more  
13 reliable?"

14                   I can't call that capital cost difference a  
15 Supplemental Environmental Project. I would think that

16 if -- the public interest should be in ensuring compliance,  
17 and let the company decide what kind of hardware it's going  
18 to install and how reliably it's going to operate it. And  
19 I would think, given the track record in this case, there  
20 ought to be more unannounced inspections or perhaps even  
21 continuous monitoring. Perhaps the Pollution Control Board  
22 or the proposed settlement should include a requirement  
23 that a third party, bonded third party do the monitoring on  
24 the installed continuous monitoring equipment to ensure

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1 that this equipment operates continuously and up to specs  
2 instead of leaving it up to residents to notice rust spots  
3 or smells or other things.

4           So I would suggest that basically by setting  
5 penalties so low we are -- the State of Illinois is  
6 basically inviting people to -- and then only charging them  
7 for the costs they would have spent, the State is inviting  
8 companies to pollute and to violate the law and to try to  
9 get away with it. So I think the penalties ought to be  
10 higher. And if you have to base it on guess, which this  
11 penalty is apparently based on a guess because the facts  
12 are not presented, I would suggest guessing high and  
13 refunding the difference if an assessment shows that the  
14 damages were indeed lower. But at least the cost of the

15 assessment ought to be part of the cost -- part of the  
16 fine.

17 I'm sorry. I have to leave, but I did make  
18 about a dozen copies.

19 HEARING OFFICER: Do you have three copies of  
20 that letter?

21 MR. BULLARD: Sure.

22 HEARING OFFICER: I'll take one, and we'll give  
23 Mr. Davis and Mr. Krchak one; and I will label that as  
24 Exhibit 2 which will be basically your statement.

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1 We're going to take a brief recess. Let's say  
2 about five minutes.

3 (Recess in proceedings.)

4 HEARING OFFICER: I'd like to call on Richard  
5 Cahill from the Illinois State Geological Survey.

6 MR. CAHILL: I guess I'll give you a little  
7 background. I'm a senior chemist at the Illinois State  
8 Geological Survey. I've worked on sediment contamination  
9 issues since 1975. I did the first systematic study of  
10 Lake Michigan, including the entire lake. I've worked on  
11 Lake Depew. I've worked on the west branch of Calumet  
12 River.

13 In 1993, Bruce Rhoads approached me with the  
14 idea that, "Let's study an urban stream system, and why not

15 Champaign-Urbana?" I said to him, "To me, that's not  
16 urban." But Bruce was very convincing, so off we went.

17 In June of '94, we started sampling near  
18 Bradley Avenue, and it's kind of fun to try to find the  
19 origin of the Copper Slough. It's somewhere near the water  
20 treatment -- Northern Illinois Water Company.

21 I'm not sure if you have this document, Tom.

22 MR. DAVIS: No, sir, I don't.

23 MR. CAHILL: I only have one copy, but I can  
24 give you that later.

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1 HEARING OFFICER: If you want, why don't you go  
2 ahead and file that with the Pollution Control Board's  
3 clerk office as part of your public comment. Then we can  
4 make sure the parties receive copies of that, and copies  
5 will be available to everyone as well.

6 MR. CAHILL: The thesis Tom is looking at is  
7 based on my work.

8 MR. DAVIS: Right.

9 MR. CAHILL: I would like to put in the record  
10 what my work was and why we started it. We began at  
11 Bradley Avenue, Heritage Park, and we were collecting --  
12 streams are interesting animals. Sometimes they deposit.  
13 Sometimes they erode. Bruce is an expert on geomorphology.

14 Too often Illinois EPA, when they sample, just go here and  
15 there and collect a sample in the middle of the stream and  
16 go on down. Well, that's not where sediment contaminants  
17 collect.

18 So we started at Bradley Avenue and went down  
19 where I-72 crosses near Church Street, University,  
20 McCoughlin Park area, went on down Springfield Avenue,  
21 eventually went to where the Kaskaskia joins the Copper  
22 Slough which is downstream from the sewer treatment plants.  
23 We were looking in those. We expected in an urban  
24 environment to see things like lead, maybe zinc, a little

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1 bit of copper, hence the name Copper Slough.

2 Analytical project, you collect the data, wait  
3 a few months, data starts coming back. Having 25 years of  
4 experience looking at sediment quality data, you know what  
5 to expect. Suddenly an element pops up that you don't  
6 usually see, and that's zirconium. It was concentrated at  
7 an outfall between Church Street and University. Usually  
8 we see a few hundred parts per million. There was 10-,  
9 20-, 30,000 parts per million. Clearly some source was  
10 upstream from that outfall.

11 We then say, "Okay. Let's find" -- we followed  
12 it downstream. I talked to one of my colleagues, Jack  
13 Masters. I said, "Well, Jack, what would be using zircon?"

14 But then we were able to say it was a fine size fraction,  
15 the sand particle. And we figured it was a zirconium  
16 silica oxide. It came back ten minutes later, put it under  
17 a microscope. "Well, that's zircon sand. Probably came  
18 from Australia." "Well, who would use it, Jack?" "Well,  
19 probably came from a foundry."

20 At that point, our project was about over. We  
21 had a two-year study, and we had a stretch of the river  
22 that had high levels of zircon. That's not really a major  
23 issue, but there's other stuff along with the zirconium.  
24 There's chrome and nickel. When you look under a

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1 microscope, there were chards of stainless steel.

2 We completed the contract, wrote an article  
3 that I will submit. It was a journal article, Applied  
4 Geochemistry, 1999.

5 Subsequent to that work, Roberta Farrell used  
6 some of my data and wrote a master's thesis. She was the  
7 one that traced where the storm sewers went and the  
8 different land use practices.

9 I have a lot of questions about sediment  
10 quality. That stuff is still there. What's going to  
11 happen if it gets moved? Has the Illinois EPA adequately  
12 addressed sampling and testing the contamination that we've

13 noted? Why in the sediment -- the SEPs, whatever you call  
14 them, is there nowhere to better characterize that  
15 structure river? Why is the Copper Slough from that point  
16 to reach the Phinney Branch in the Pierre River? Why is  
17 there no study of natural resource data based on this  
18 stretch of river?

19 That's my comments, and I'll send this to the  
20 appropriate --

21 HEARING OFFICER: I'll give you the address at  
22 our next break, but I'll also read it into the record at  
23 the end of the hearing. It needs -- attach a cover letter  
24 to that, say, you know, that that's part of your public

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1 comment and send that to the Clerk of the Pollution Control  
2 Board in our Chicago office. Let me get -- the address  
3 is -- and I will also read this again later in the  
4 record -- 100 West Randolph Street, Suite 11-500, Chicago,  
5 Illinois, 60601. And that will also be the same address  
6 that anyone submitting written public comment will send  
7 their comments to. Thank you.

8 Miss Patel, were you one of the people who  
9 needed to testify now?

10 MS. PATEL: Am I supposed to tell my name?

11 HEARING OFFICER: I'm sorry. Not testify, give  
12 public comment. Yes, please tell your name to the court



13 reporter.

14 MS. PATEL: Shilpa Patel, S-h-i-l-p-a, last  
15 name, P-a-t-e-l. I'm here on behalf of the Environmental  
16 Law Society at the University of Illinois College of Law.  
17 I am here submitting an amicus brief. I have copies.

18 HEARING OFFICER: Actually, I can just go ahead  
19 and accept this as an exhibit, Exhibit 3, and then you  
20 don't have to worry about filing it with the clerk's  
21 office. I'll send it up there.

22 MS. PATEL: Okay. What we are mostly concerned  
23 with is the application of the 42(h) factors on the penalty  
24 grounds, specifically factor 4 which states the amount of

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1 monetary penalty which will serve to deter other violations  
2 by the violator and to otherwise aid in enhancing voluntary  
3 compliance with this Act by the violator or other persons  
4 similarly subject to the Act.

5 We are concerned with the insufficient  
6 deterrent effects that the current terms element will have  
7 in dissuading Alloy and other similar industries for  
8 continuing to violate EPA regulations. In addition to  
9 imposing penalties to punish those who have committed  
10 violations, penalties serve the purpose of deterring those  
11 who have not violated regulations but are contemplating it.

12 The penalties previously imposed on violators serve as a  
13 measuring stick for those planning on violating the Act in  
14 determining whether or not they can afford to do so.

15 We ask this Board to reconsider the settlement  
16 amount arrived at between Alloy and the State. Greater  
17 weight should be given to Alloy's absence of due diligence  
18 and, specifically, general deterrence.

19 HEARING OFFICER: Thank you very much.

20 MS. PATEL: Thank you.

21 HEARING OFFICER: Was there one other person  
22 who needed to -- Mr. Pankau, is it?

23 MR. PANKAU: Very good. Steve Pankau,  
24 P-a-n-k-a-u. I live at 311 North Fair, approximately one

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1 block away from Alloy.

2 First, a question. The stack monitors earlier  
3 that you mentioned, I believe, Mr. Davis, if those are  
4 something that's in place now or going to be put in place  
5 in the future, I assume they monitor the pollution coming  
6 out of the exhaust stacks. Is that something that the  
7 personnel from Alloy runs completely, or at their leisure  
8 they turn those on and off? Can they feasibly just turn  
9 the equipment down to low and say, "No pollution. It's a  
10 miracle"? Or is that something where the EPA is there  
11 monitoring that with them? And if not, why? Because of

12 the circumstances we've had in the past with this.

13 MR. DAVIS: When I spoke earlier about the  
14 different methods of monitoring, I referred to a continuous  
15 emissions monitor. That's a device that's in place on a  
16 stack. Alloy doesn't have that. What they've done is what  
17 most facilities do which is perfectly acceptable; that's  
18 periodic stack testing. And I have that information. It  
19 was as Mr. McMahon indicated. It tested what is known as  
20 the Griffin bag house. This was done August 7 through 10,  
21 2001. It also tested the CSI south bag house and the CSI  
22 north bag house and Pangborn wet collector.

23 To make sure that I don't confuse anything, I  
24 think what Mr. McMahon has said is why didn't they test the

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1 Griffin bag house. The EPA requested the testing be done  
2 and approved the plan; and of those four bag houses, the  
3 Griffin bag house was not tested. So what was tested was  
4 the south bag house, the north bag house.

5 MR. EHRHART: I think that's backwards.

6 HEARING OFFICER: Mr. McMahon, would you like  
7 to --

8 MR. McMAHON: What I said was the Griffin CSI  
9 north bag house was not tested for metals.

10 MR. DAVIS: Oh, okay. Okay. Stack test

11 reports are a snapshot in time. As I indicated earlier,  
12 there's concern that when the testing is done, so that you  
13 don't waste your time and money and have to redo it, that  
14 the operating conditions are representative. We believe  
15 that -- or rather the agency was satisfied that the stack  
16 testing was done properly.

17 MR. PANKAU: Are they there at the testing?

18 MR. DAVIS: No. This is something that's done.  
19 It's not a device that's installed. You go out and you  
20 employ the equipment and you do the testing, and then you  
21 go back home and you write up the report. So it's not a  
22 continuous monitoring.

23 But Mr. McMahon raised the point that metals  
24 weren't tested and so forth. What was tested was

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1 particulates. The constituents within those particles was  
2 not a concern of the Illinois EPA. What was demonstrated  
3 by the stack testing was that in each case the emissions  
4 were less than one pound per hour, and that's a perfectly  
5 acceptable rate; and that's all the stack test was intended  
6 to show, was just the rate of mass and quantity per unit of  
7 time. That's all it was intended to show.

8 MR. PANKAU: So it's just an isolated time; one  
9 time you picked a day out of the blue, and you took a test?  
10 Or were they forewarned about this?

11                   MR. DAVIS: No. This testing was done by the  
12 company at the agency's insistence because it was necessary  
13 to get a permit. So all of these requirements come into  
14 play. The State doesn't spend its money. The company  
15 spends its money, does the testing. The Illinois EPA can  
16 say, "Hey, you did it wrong. You have to do it again." It  
17 was done properly, and it showed in that instance it  
18 validated that the particulates were being adequately  
19 controlled; and that's all it was intending to show.

20                   MR. PANKAU: Okay. That's fine.

21                   MR. DAVIS: I've got it here. There's been a  
22 suggestion that the agency has withheld information. The  
23 agency will provide information when there's a Freedom of  
24 Information Act request. It happens all the time. You

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1 don't need that with me today. I've got it right here.

2 So, if anyone wants to see it, it's right here.

3                   MR. PANKAU: That's the end of the question  
4 then.

5                   With regards to today, been quite a bit of talk  
6 about compliance, which compliance is great. That's good  
7 that Alloy is making progress with that, and hopefully we  
8 won't have these situations in the future. The real reason  
9 today for the hearing is to propose a fine or punishment

10 for what happened back in '99 and 2000 when they were not  
11 in compliance. If this was just an isolated case, one day  
12 this happened, that fine may be fine. But this happened  
13 time after time after time. They knew it was happening.  
14 They did nothing about it. Instead of shutting down  
15 operations for a few days trying to solve the problem, they  
16 kept doing it. So I do not feel the \$75,000 fine is  
17 adequate in any way.

18 I'm a small business owner myself. Ten years  
19 from now if I'm considerably larger or anybody that I work  
20 with -- I work with many other companies. They're small  
21 companies now; and, if many years from now are larger  
22 companies, what does that show me? And I break the law and  
23 blatantly do it; I'm going to think back to this day and  
24 think, "No big deal. It's just a slap on the hand. It

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1 won't matter. If you need to break the law, do it. It's  
2 no big deal. Larger companies do it all the time." This  
3 is reverting back to 40, 50 years ago when they plainly did  
4 it. That's why we had to incorporate pollution control  
5 boards because it was happening so often, and there was no  
6 fines. If anything, it was very little.

7 So we need larger fines for these blatant  
8 disregard for our pollution, air and land. It's going to  
9 disappear if this keeps happening. So I'm completely

10 against the \$75,000 proposed fine. And thank you.

11 HEARING OFFICER: Thank you very much. I'd  
12 like to go off the record.

13 (Discussion off the record.)

14 HEARING OFFICER: We've just went off the  
15 record and decided that we will take one more comment  
16 before we take a lunch break.

17 Ma'am, in the back, would you please step  
18 forward and state your name and spell your name for the  
19 court reporter, please?

20 MS. BROCK: My name is Jane Brock, B-r-o-c-k.  
21 And I live just directly east of Alloy, probably,  
22 size-wise, less than a block. And so I get a lot of those  
23 west winds, you know, and get a lot of activity there. And  
24 my main concern is -- I mean, like in the last two weeks, I

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1 have still had the strong metal smell, the burning metal  
2 smell. You still get that on occasion. I would just like  
3 to go on the record asking that before a settlement is  
4 reached that it is actually fixed, that they're -- that  
5 it's not settled, but they're still doing it because they  
6 are. That's all I had.

7 HEARING OFFICER: Thank you very much. I think  
8 we'll take a one-hour lunch recess and meet back here. It

9 is 12:45 right now. Meet back here at 1:45.

10 (Recess in proceedings.)

11 HEARING OFFICER: Are you ready to go, Miss  
12 Ehrhart?

13 Oh, would you like to go? I'm sorry.

14 MS. CLAPPER: My name is Patsy J. Clapper, and  
15 I live at 1204 West Clark Street in Champaign. I'm here  
16 because I live about five and a half blocks southeast of  
17 the Alloy plant and became concerned when I had a white  
18 plate sitting on my deck, which is on the south side of the  
19 house, and it was all covered with rust particles. And so  
20 I started closing all the windows on that side of the house  
21 which meant that I had the air on more often. I'm not  
22 happy with the \$75,000 fine. And I didn't use my backyard,  
23 open my back windows most of the year of 2000 because of  
24 the rust particles that were coming down. I didn't want to

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1 breathe them in. And it needs to be stopped and made sure  
2 that it's stopped and that we are compensated for the  
3 damages to my car, to whatever else. And I just want to go  
4 on record that I'm not happy with the 75,000 and that it  
5 has done damage to my house and that it did keep me inside  
6 more than I normally would have that year. That's all I  
7 have.

8 HEARING OFFICER: Thank you very much.



9 MS. EHRHART: I'm Deborah Ehrhart. Do I need  
10 to spell it again?

11 THE REPORTER: No.

12 MS. EHRHART: I live at 1609 West Church. It's  
13 about two and a half blocks from south -- directly south of  
14 Alloy. First of all, I do want to say that I appreciate we  
15 have government agencies trying to help keep us safe  
16 because without them we know that there would be a bigger  
17 mess.

18 Just a little background. First of all, I'll  
19 tell you how it makes me feel. The smell as I describe it  
20 is a burning metal smell, almost like hot wires but not  
21 quite. Kind of a cross between that and if you've ever  
22 been around anybody doing any welding where metal is really  
23 burning. What it does to me is it makes me feel sick. I  
24 get headaches immediately. Within ten, fifteen minutes

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1 being outside, I start getting a sore throat. I start  
2 getting a cough that starts down here, and I just keep  
3 coughing, keep coughing until I finally get to the point  
4 where my mouth is tingling because I'm not getting the  
5 proper oxygen I need. And then I have to go and get my  
6 inhaler. I am not, per se, asthmatic. I am borderline, is  
7 what my doctor has told me. It usually -- I hardly ever

8 use my inhaler unless I've been affected by something that  
9 is an outright irritant.

10                   Whenever that smell is heavy and coming  
11 straight to my house or if there is no wind, which we often  
12 get in the summer, and it's just lingering in the wind as  
13 it were or lingering in the air, I cannot be outside. I  
14 cannot keep my windows open, which is a shame; and I have  
15 noticed this smell not just in my own home but also  
16 throughout the city, as far downtown as even the Illinois  
17 Terminal Center which is where the trains and buses are.

18                   I work outside. Of course, at that distance,  
19 it's not as thick. I am moving, the wind's blowing, so it  
20 doesn't make me feel as bad as if I'm right next to it or  
21 near it at all times like at home. Granted, as several  
22 have already mentioned, it does depend on the direction of  
23 the air. If it's blowing out of the south, I'm not going  
24 to notice it in my home; but that doesn't mean it's not

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1 affecting other people. It doesn't mean others aren't  
2 being affected, made to feel bad or harmed by it. We don't  
3 know. That hasn't been determined yet.

4                   But what we're trying to do here is determine  
5 what we feel is appropriate to assess as a penalty for what  
6 has been done. I know that the different government  
7 agencies are trying to make sure that Alloy is in

8 compliance with these set laws and limits. I know also  
9 that we can't have someone there 24 hours a day watching  
10 them, so we're going to have to trust that they're going to  
11 be on their good behavior. Unfortunately, though, they  
12 have not always shown themselves to be honest or  
13 conscientious in their dealings with us or with anyone.

14           Personally, as a conscientious person, if I  
15 knew that something that I was doing or something I had in  
16 my possession was causing harm or could cause harm to  
17 someone else, I wouldn't need someone else to come up to me  
18 and hit me in the head and say, "Hey, you need to do what's  
19 right." I would be trying to make sure I was doing what  
20 was right anyways. And if somebody did say, "Hey, you  
21 know, that could be a problem," then I adjust, make  
22 changes, try to make sure what I do is responsible, not  
23 only to myself but to others and those around me.

24           And Alloy has not done that. Point-blank, in

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1 several articles in the newspaper, statements have been  
2 made quoting their lawyers and quoting different ones from  
3 that company that Alloy has always been in compliance with  
4 the air emissions. Well, we know that's not true. That's  
5 been proven, that there was problems with the stack and  
6 with the different design of this one particular bag that

7 was letting things go in the air.

8                   Also, I am concerned about the property damage;  
9 but my main concern is the things we cannot see, the damage  
10 it could be doing to a person's health. Now, short-term  
11 damage, that we don't understand what's going on.  
12 Long-term damage, we definitely won't understand for some  
13 time what's going on. Because I have a 14-year-old son --  
14 he's not here, he's in school. But he often also has said  
15 that it makes him feel upset to his stomach, gives him  
16 headaches. I worry about the fact that -- what is this  
17 possibly doing to him?

18                   Also, in some of the different statements that  
19 have been made -- and some of them have been alluded to  
20 already throughout the day -- I know that my immediate  
21 reaction to some of them were anger, and I don't like to be  
22 angry. But when someone point-blank says that they're  
23 doing nothing wrong and it's not them and that it's our  
24 responsibility to close our windows and doors and not go

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1 outside and enjoy what God has given us to enjoy, I get  
2 angry. I think that that's unfair. I think they're not  
3 being very responsible, and I believe that they are not  
4 good neighbors. They have not shown themselves to be good  
5 neighbors to any of us in this city because I really don't  
6 feel that it's only isolated to our small neighborhood

7 because air doesn't work that way, and the particles are so  
8 small they don't work that way.

9           Also, I feel that if we continue to allow  
10 them -- and I do realize it is the practice that companies  
11 do their own testing. Don't know that I agree with that,  
12 but I do realize that is the practice. But to me, that's  
13 kind of like handing my child a bag full of candy and  
14 telling him that he gets to decide when he can eat it  
15 regardless if it makes him sick or not. I think that there  
16 needs to be more responsibility since we have different  
17 agencies, and I do realize -- I saw in the news not too  
18 long ago the EPA was saying they don't have enough people  
19 to cover what needs to be covered, and I realize that.  
20 It's too bad we have to have them doing that. It's too bad  
21 that companies are not taking responsibility for  
22 themselves, but they don't.

23           What they understand is the dollar and what  
24 it's going to get them and how to save it. And I do not

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1 feel that the \$75,000 fine and giving them a break for  
2 doing things they should have been doing anyways as far as  
3 pollution control and all that, I don't think that that's  
4 fair. I think it's like a slap on the hand.

5           As a parent, if you have several children and

6 one of them does something wrong and you go up to them and  
7 you go, "Now, you know that's not right" and you smack  
8 their hand, what are your other children going to do?  
9 They're going to look and say, "Mom's a pushover. She's  
10 easy. We can do whatever we want. We're going to get a  
11 slap on the hand, and that's it." Well, you guys are the  
12 parents of the companies you're trying to regulate. If all  
13 you did is slap their hand, all of the other companies in  
14 the state are going to go, "Well, we can feign we've done  
15 this and say, 'Well, you know, sorry. It was a mistake.'"   
16 Well, maybe it was a mistake or an accident at first, but  
17 you don't continue to allow something like that to go on  
18 and be able to claim that it was an accident. At that  
19 point, it's with full knowledge, and that makes them  
20 responsible. If you only slap them with a small fine, then  
21 other companies are going to be -- they're going to be  
22 looking at that and it's going to set a precedent that I  
23 don't think we want to set in this state.

24 Illinois is a very beautiful state. It has a

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1 lot of good people and a lot of good resources, but we  
2 don't want to become a state that's known for allowing  
3 companies to come in and do what they want at the cost of  
4 its citizens.

5 Alloy has denied time and again any culpability

6 in this. They have said that it wasn't their fault, that  
7 they've not done anything, that they've always complied.  
8 Well, the reason I asked what compliance was earlier was  
9 for the reason that I still get the same smells in my  
10 house. I still get the same response, the same feelings of  
11 sickness that I got two, three years ago. So, to me, it  
12 doesn't appear from the health standpoint that things have  
13 changed. I don't know if I may be more sensitive than  
14 others or what, but the thing is it's still affecting me  
15 and it's affecting me personally.

16 Now, I did have a couple questions I wanted to  
17 clarify or ask. I know that -- Mr. Davis, correct?

18 MR. DAVIS: Yes.

19 MS. EHRHART: That you had said there are  
20 certain things that are permitted to be released, correct?

21 MR. DAVIS: Right.

22 MS. EHRHART: There are certain emissions or  
23 standards that have to be met. I realize it may be asking  
24 a bit much to ask that there be zero. That might be --

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1 maybe that's not reasonable on my part. But what are the  
2 things that are permitted?

3 MR. DAVIS: The permit limitations?

4 MS. EHRHART: What are the emissions that are

5 permitted out of the stacks, into the air or into the  
6 water?

7 MR. DAVIS: Well, let's focus on the  
8 particulate matter. The stack testing that I mentioned  
9 before we broke for lunch, there was a level of allowable  
10 particulate emissions in pounds per hour. For the south  
11 bag house -- and it's all based upon size and so forth --  
12 8.47 pounds per hour. During the time that the stack  
13 testing was being performed, the highest reading apparently  
14 was .92, so they were well within that.

15 MS. EHRHART: You're saying that 8.47 pounds is  
16 what is allowable?

17 MR. DAVIS: That looks like it from what I'm  
18 reading here from the Illinois EPA. This is their report.

19 I should mention, ma'am, that the stack testing  
20 was performed by a company hired by Alloy, but it was  
21 performed under the supervision of the Illinois EPA. They  
22 were there. They were watching to make sure that the  
23 operating parameters were typical and so forth.

24 Now, on one of the other emission sources, the

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1 allowable particulate was 5.46 pounds per hour, and the  
2 highest reading looks to me like .69.

3 MS. EHRHART: Okay. But what were they?

4 MR. DAVIS: During the stack test, which is



5 really the only data we have from recent years, they were  
6 well within the permit limitations.

7 MS. EHRHART: Okay. I guess you're not  
8 understanding what I'm saying.

9 MR. DAVIS: What's in the particulates?

10 MS. EHRHART: What are the particulates?

11 MR. DAVIS: Well, I would imagine that it would  
12 be some of the silica compounds we've heard about with  
13 traces of metals.

14 MS. EHRHART: Well, I would imagine that, too.  
15 But you do not know? I guess what I'm getting at is you're  
16 supposed to be responsible for making sure they're  
17 behaving, and you don't know what's coming out of the  
18 stacks? To me, that's negligence on your part or on  
19 whoever's part that's supposed to be taking care of that  
20 because I know what comes out of my house.

21 You know, that's like saying to a child, "Do  
22 what you want as long as you don't get in trouble." Well,  
23 no. You have to know what's coming out; you have to know  
24 what's being done in your home. Illinois is our home. And

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1 this is your baby. This is your responsibility. You've  
2 been given it, handed it; I don't know what. But it's  
3 yours. Why don't you know what's coming out of it?

4 MR. DAVIS: I can only tell you what the data  
5 showed to me. And what was tested was not the analytical  
6 constituents of the particulates.

7 MS. EHRHART: Why not? I don't understand why  
8 they weren't tested.

9 MR. DAVIS: Well, it just was not the purpose  
10 of the stack test. It's like testing --

11 MS. EHRHART: Why aren't there other tests?

12 MR. DAVIS: It's like testing the water and  
13 then somebody saying, "Well, what was the temperature?"  
14 You know, they weren't testing the water for the  
15 temperature.

16 MS. EHRHART: Well -- but they were testing for  
17 what was coming out of the stacks.

18 MR. DAVIS: As far as the particulate matter,  
19 which is presumed and determined by the types of materials  
20 you're utilizing. You know, that's where you get the  
21 particulates from. They're not manufacturing particulates.

22 MS. EHRHART: Right. But I guess what I'm  
23 saying is -- okay. To me, it's not a very conclusive test  
24 if all you're doing is finding out how much came out and

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1 not knowing what. I mean, what if there's something in  
2 there that's very dangerous?

3 MR. DAVIS: It's a quantitative test, not a

4 qualitative test.

5 MS. EHRHART: So why not do both?

6 MR. DAVIS: They didn't.

7 MS. EHRHART: I understand that they didn't.

8 MR. DAVIS: You're asking me why they didn't?

9 MS. EHRHART: Right. Because you are trying to  
10 make a deal with Alloy based on very inconclusive and  
11 very -- not very well-done statistics, and you're asking us  
12 to accept this when we're the ones that live there?

13 MR. DAVIS: No. I'm not asking you to do that.

14 MS. EHRHART: Okay. We have a difference of  
15 opinion of that because that's what this hearing is. It's  
16 us telling you, "Yes, we accept it; or no, we don't  
17 appreciate it." You guys have come to this agreement  
18 already. Yes, it's not been finalized, but you've come to  
19 this agreement. And I guess what I'm concerned about is  
20 how much of -- how much of the thinking about the people  
21 involved in this case was given to this and how much was,  
22 "Okay, you do this, and we'll do that. Okay, have a good  
23 evening, Joe." I hate to say that because it doesn't sound  
24 very nice or very flattering, but that's what it appears to

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1 me.

2 And, you know, I already feel defensive because

3 I've been told, "Move." I've been told to close my doors.  
4 I've been told, you know, "It's your fault you live here.  
5 Well, you know, things happen." We live where we do, but  
6 that doesn't mean we should be dumped on because of it. I  
7 know you're trying to look up something.

8 MR. DAVIS: But I am listening.

9 MS. EHRHART: Okay. I don't feel that a very  
10 accurate decision can be made at this point because not  
11 enough information has been gathered. Yes, the EPA has  
12 done what they can, and I know their hands are tied, too;  
13 but I think it's very discouraging from my point of view  
14 when I call them up and I get their voice mail or I get,  
15 "Well, we'll look into it." You know, it's just the same  
16 old stuff they always do. I've had that statement made to  
17 me, "Well, they're just running and doing the same things  
18 they always do."

19 "Does that mean they're still not in  
20 compliance?"

21 "Well, nobody told me."

22 If it's bothering me, something is still wrong.  
23 I've never heard of -- if something affects you, there's  
24 got to be a reason why. And I know that smells in

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1 themselves are not inert. There's got to be some  
2 particulate, some thing, some gas, whatever, that's being

3 put off by these emissions that at least is affecting me.  
4 I don't know if it affects other people the same way or  
5 differently, but it is of concern to me.

6           And I don't think that not knowing what the  
7 particulates are or what the emissions are is very  
8 responsible on the EPA's or the attorney general's part.  
9 That makes me sad because I always thought that these  
10 government agencies were there to help me and protect me.  
11 And I know there's only so much you can do, but I don't  
12 feel protected or helped in this at all. Just knowing how  
13 much of something there is doesn't matter. Things build up  
14 after a while depending on the substance. Because of how  
15 we're made up, we all have a little bit of arsenic in us.  
16 Over the years, if you keep adding to that, you're going to  
17 die. Well, the same could be true of some of these other  
18 chemicals and things being spewed out into the air. I  
19 don't want to take that chance.

20           I don't think we should take that chance with  
21 our city or with our community. If they truly can clean up  
22 their act, good, I'm for that. I don't want them to close  
23 if they can really do it right. There has to be some  
24 foundries in the country that do it right, that put all the

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1 scrubbers, put what they need on there that are responsible

2 and don't make people sick and don't make there be a  
3 question as to whether it could make people sick.

4 I feel as if when they are told to test the  
5 stacks or keep track of their own things that we're  
6 allowing them to police themselves. That may be the way  
7 it's done, but you know what? We have police officers that  
8 make sure we put on our seat belts, that we obey the speed  
9 limit laws. We all know what's right, and we choose  
10 whether to do it or not.

11 I think that we need to put more responsibility  
12 on the company and make them feel it where they're going to  
13 feel it, and that's in the pocketbook. I hate to do that  
14 because I don't think that's where responsibility should  
15 come. I think it should come from the heart. I think it  
16 should come from a sense of right and wrong; but,  
17 unfortunately, it isn't always that way.

18 MR. DAVIS: Now, I found some information.  
19 This is a report from an independent laboratory regarding  
20 samples collected by the Illinois EPA in June of 2000.  
21 There were six different samples, and basically they were  
22 collected in your neighborhood. What I can make sense of  
23 is that it was generally silica sand or quartz sand and  
24 that the various particles were tested and determined to be

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1 mostly iron oxide with traces of other metals including

2 copper, chromium, zinc, manganese, not anything that you  
3 wouldn't expect.

4 MS. EHRHART: Okay. But it doesn't go on to  
5 say which of those are corrosive or could be dangerous? Of  
6 course, we've heard that some of these are. We know that  
7 in the metallic form most of these are not healthy for us.

8 MR. DAVIS: We do have some other information,  
9 and I wanted to touch on it at some point and now is as  
10 good a time as any. This is the Copper Slough  
11 investigation by Roberta Farrell. I want to call it an  
12 investigation, although the title says Assessment because  
13 we were talking about natural resource damages -- or damage  
14 rather. There has been no assessment of that, but there's  
15 been an investigation.

16 But the reason I'm referring to this now is  
17 that it does address a concern of yours, that being  
18 basically are these metals harmful; and some of the metals  
19 are regulated as toxic pollutants. They're heavy metals.  
20 Lead, as we all know, can be very injurious. So can nickel  
21 and zinc, chromium and copper.

22 MS. EHRHART: What's going to be done to take  
23 care of those things?

24 MR. DAVIS: Well, these -- I guess I can just

1 focus on the sediments in Copper Slough which was the  
2 subject of this report -- or I think it's better to call it  
3 a master's thesis. The sedimentation was analyzed up and  
4 down Copper Slough, and the various sampling points  
5 included a point near the Alloy storm sewer discharge. I  
6 can go through these very quickly.

7           Zinc -- first of all, when you're testing for  
8 something in the environment, it's always good to try to  
9 have a base line or determine background concentration  
10 levels. All of these metals occur naturally in the  
11 environment. They're elements. Some places have more of  
12 them than others, so you're trying to -- you're trying to  
13 collect data that you can then interpret and have it mean  
14 something to you. In this case, the focus was to assess or  
15 investigate, I think is a better term, the sediment  
16 contamination.

17           So the background levels for these five heavy  
18 metals or trace metals, as they're called -- zinc, the  
19 highest level was slightly over three times the background  
20 level. Chromium, about five and a half times the  
21 background level. Lead, lead was all over the board on the  
22 tests. It looks like from the report the highest level was  
23 five times greater than background. Nickel, looks like  
24 four times greater than background. Have we covered all



1 five? I think we have.

2 MS. EHRHART: Copper?

3 MR. DAVIS: Copper Slough.

4 MS. EHRHART: Or iron, was it on there?

5 MR. DAVIS: No. We're looking at the heavy  
6 metals. Here's copper. I'm sorry. Copper, yeah, five and  
7 a half times background. Now, this is a slough. This is  
8 not a surface water supply. This is, as Mr. Bullard put  
9 it, an urban stream. You should read the report. Have you  
10 read it?

11 MS. EHRHART: No. I have not read that one.  
12 But what's being done about it?

13 MR. DAVIS: Just to give you some context -- I  
14 wasn't really prepared to give a report on this property,  
15 but part of this was a historical investigation of the  
16 various land uses. In fact, the real focus of this is, I  
17 guess, watershed management from a land view's perspective.

18 This part of the city, your part of the city,  
19 has been fairly heavily industrialized for quite a while.  
20 We know that Alloy has been there in some form since 1941.  
21 Copper Slough is not that long an area or size. There have  
22 been numerous releases, that is, things that have been  
23 reported to the authorities that have been documented,  
24 anything from diesel fuel and gasoline spills, two gallons

1 of PCBs from Illinois Power transformer at 1411 Honeysuckle  
2 Lane in 1989. We've got Kraft, which has been the site of  
3 many accidental releases reported to the EPA including  
4 ammonia, gasoline, fuel oil. We've had fish kills result,  
5 resulting from certain releases. Accidental release of 50  
6 gallons of diesel fuel at 206 West Bradley in 1993. You've  
7 got storm sewers draining a fairly sizable portion of the  
8 area. So the surface runoff, you know, leaded gasoline was  
9 very pervasive.

10 MS. EHRHART: That's why we don't have it  
11 anymore.

12 MR. DAVIS: That's right. Asbestos from brake  
13 linings or -- you know, any highway or city streets,  
14 depending upon the traffic levels and the length of time,  
15 you're going to get a lot of contaminants from just runoff.

16 But I want to focus just on a few more -- here  
17 we have Humko has released hydrochloric and phosphoric  
18 acids. I should have highlighted this, but I wanted to  
19 keep a clean copy. It goes on and on. As you see, I'm  
20 turning numerous pages. Accidental release of crude corn  
21 oil and diesel fuel at Country Fair Drive and I-72, 1989.

22 MS. EHRHART: I think we all understand what  
23 you're trying to say --

24 MR. DAVIS: Accidental release of

1 perchloroethylene at the dry cleaners at Springfield and  
2 Mattis in 1981.

3 MS. EHRHART: And I hope that all those  
4 instances were taken care of. I hope that people were  
5 talked to and things were taken care of. Were they?

6 MR. DAVIS: I don't know. I'm just telling you  
7 what this report says.

8 MS. EHRHART: I understand that. I think we  
9 all understand that things do happen, but an accidental  
10 thing here and there is not the same as continuously doing  
11 something over a long period of time. And, you know,  
12 you're right; Copper Slough is a -- very small area that it  
13 covers but -- and it's not leading, as far as we know,  
14 right into our drinking water or a lot of groundwater. But  
15 in my estimation, any of our environment that's damaged  
16 needs to be taken care of, and it needs to be protected.

17 And more importantly, people need to be  
18 protected. Do we have any of this Copper Slough that's  
19 open and people go and play in and walk in? If so, are  
20 they being affected by this? Who knows?

21 MR. DAVIS: I've never seen Copper Slough.  
22 Have you?

23 MS. EHRHART: I know where it runs off into.  
24 I've seen little bits of it. Yes. You know, I think the

1 important thing is that we understand that things do happen  
2 but that we own up for the responsibility of it. You know,  
3 if I spilled something or dumped a chemical illegally in my  
4 garbage can, I should be fined for that. I should be made  
5 to be responsible, whatever is necessary to keep me from  
6 doing it again. And that's our question and that's what  
7 the thought is here. Are they going to stop -- are they  
8 going to continue to be in compliance?

9           With that thought, I have concerns about that  
10 because all throughout the last several years they have  
11 absolutely denied any responsibility, said that they have  
12 not done anything wrong, and then they -- you know, we know  
13 that isn't true because you're here. You have reports, and  
14 they're being fined. Something was wrong. And yet, if  
15 they don't have that feeling of conscience that's going to  
16 make a person try to do what's right anyways, how do we  
17 know they're going to be responsible and continue to do  
18 what they have to do?

19           I know the EPA and I know the attorney general  
20 doesn't have the manpower to constantly check up on them.  
21 It's not going to happen. How do we know they're going to  
22 do what is responsible and do it right? Giving them a slap  
23 on the hand and sending them away isn't going to do it. If  
24 we break a law like in speeding or wearing our seat belts,

1 we get a fine. For most of us, that fine is an annoyance,  
2 but it doesn't hit us hard in the pocketbook. When it does  
3 hit us hard, then we make sure we're in compliance, most of  
4 us do.

5                   That's what we're asking, is you not settle on  
6 a small little slap on the hand because I don't want to  
7 have to be back here when another company and more  
8 companies in the community or in the state are doing  
9 similar things because they know they can get away with it.  
10 And that's my plain purpose in being here, is because I do  
11 care about this community. I care about the standard of  
12 life that all of us should have; and if it's being affected  
13 even a little bit, that's what we should think about. I  
14 thank you.

15                   HEARING OFFICER: Thank you very much.

16                   Mr. Davis, what was that report that you were  
17 citing from? I'm not sure that I've seen that. I don't  
18 know if the Board needs that to make its determination in  
19 this. Could you read the title of that? I'm not familiar  
20 with what that was.

21                   MR. DAVIS: Certainly. The author is Roberta  
22 J. Farrell. This was a master's project for the Department  
23 of Urban and Regional Planning at the University of  
24 Illinois. The title is "An Assessment of Potential

1 Contaminant Sources in the Copper Slough Watershed and  
2 Recommendations for the City of Champaign, Illinois." The  
3 date of publication or presentation is 1998.

4 HEARING OFFICER: Thank you.

5 Is Kathleen Marshall still here?

6 Or Nancy Peterson?

7 Sorry we didn't get the opportunity.

8 Does anyone else -- did you have another  
9 comment that you wanted to make?

10 MR. HERENDEEN: A question.

11 HEARING OFFICER: Come back up. I'm sorry. I  
12 can't remember your name.

13 MR. HERENDEEN: I'm Robert Herendeen, 1618 West  
14 Church.

15 Just listening to the last discussion has  
16 stimulated this question, which I actually started with way  
17 back when. We can't measure everything and we can't remove  
18 all of anything; so, finally, we make a deal. We specify  
19 certain things that supposedly satisfy both the people who  
20 might be affected by pollution and the people who produce  
21 it. That becomes law or regulations, and that becomes what  
22 we enforce.

23 In listening to what I just heard, isn't it so  
24 there are only a certain number of pollutants that are

1 regulated for which they are specified a numerical  
2 quantification of how much can be released and what way,  
3 and those are the ones that most you deal with when you  
4 talk about those tests? If we're talking about air  
5 pollution, I'm no expert, but I thought there were only  
6 about five or so of them. Maybe there's some heavy metals  
7 and all that. But, basically, the idea is that you should  
8 be trying to cover chemical X, for which there's now a  
9 standard, although maybe I'd like you to, you're not  
10 required to and, therefore, you don't; is that correct?

11 MR. DAVIS: Pretty much. What I would add to  
12 that is to emphasize what I think you said, categories --  
13 you used that word, I think, or perhaps I was thinking --

14 MR. HERENDEEN: Okay. I can't remember.

15 MR. DAVIS: In that context, particulate matter  
16 is a category which will differ from facility to facility.  
17 If you're processing grain, it's going to be a lot  
18 different than a foundry, but it's particulate matter.

19 MR. HERENDEEN: But the law doesn't require  
20 that you differentiate?

21 MR. DAVIS: Well, the law requires that you  
22 control it. If you can control the particulate matter --

23 MR. HERENDEEN: A gram of one type is  
24 equivalent to a gram of another from the standpoint of

1 control, isn't it?

2 MR. DAVIS: Oh, no. Apples and oranges, fruits  
3 and vegetables, no. You can have thermal oxidizers that  
4 can work okay --

5 MR. HERENDEEN: That's a control technology.  
6 But in terms of what's emitted, a gram of particulate could  
7 be largely wheat dust, or it could be coal?

8 MR. DAVIS: Sure.

9 MR. HERENDEEN: From the standpoint of the reg,  
10 is there any difference?

11 MR. DAVIS: No, not if you're focusing on size,  
12 which is the primary focus. Another category is VOCs,  
13 volatile organic chemicals. Those are going to differ. If  
14 you're processing soy beans, you're going to be using  
15 hexane. And oil refinery, you're going to be dealing with  
16 a whole other group of VOCs; but it's all regulated as  
17 VOCs.

18 MR. HERENDEEN: Then just a comment. What I  
19 hear is people here are concerned that the particles, which  
20 are allowed to be emitted to some standard, might have a  
21 significant fraction of their weight in lead or chromium or  
22 they might not. That might be a different import to us;  
23 but from the standpoint of saying standards and enforcing  
24 them, sounds like there's no difference. That's what I'm



1 hearing.

2 MR. DAVIS: I don't think that's correct. You  
3 always -- I mean, you've got site-specific limitations  
4 imposed by permit for that facility that may be within a  
5 range allowable under certain regulations, for instance.  
6 But if you're dealing with something that could have  
7 harmful effects, then the concern level's always going to  
8 be higher.

9 MR. HERENDEEN: Maybe I sometimes have sympathy  
10 for industry. Let's put it that way. Ultimately they have  
11 to run; so, sooner or later, somebody has to say to them,  
12 "Here are the hurdles you must jump, and those are going to  
13 be affected for the next X years. After that, we may  
14 revisit them; but for the moment, you have some kind of  
15 predictability and stability about what you need to do to  
16 be good citizens. And it can't cover everything, and it's  
17 a finite list; and we go with it."

18 What I'm hearing you say, for example,  
19 regarding particulates, you're not supposed to emit more  
20 than a certain amount, whatever that is. But a particulate  
21 could have a different chemical composition depending on  
22 where it comes from. In terms of the regs, it doesn't  
23 matter what that chemical composition is because all you're  
24 measuring is weight in a certain size class; is that right?

1 MR. DAVIS: That's primarily right.

2 MR. HERENDEEN: Thank you.

3 HEARING OFFICER: Are there any more public  
4 comments or questions?

5 Seeing no hands, I would like to proceed to  
6 make a statement as to the credibility of the individuals  
7 who gave sworn statements. Based on my legal judgment and  
8 experience, I find those individuals to be credible.

9 I would now like to offer the parties an  
10 opportunity to make closing statements beginning with  
11 Mr. Davis.

12 MR. DAVIS: I'd like to address very briefly a  
13 few important points that came up during the public comment  
14 or testimony, and they're in no particular order except how  
15 I wrote them down. I don't think it really matters, so let  
16 me just have at it.

17 We've heard a lot of concern that the penalty's  
18 too low. The penalty is based upon a negotiated amount  
19 that, first of all, began with a recommendation by the  
20 Illinois EPA for the types of violations at issue. One of  
21 the factors that the EPA evaluated was economic benefit.  
22 My agency calling -- was contacted but denied to release  
23 that information. I can represent that the economic  
24 benefit calculated by the Illinois EPA was \$2,501. That's

1 only one of five criteria listed under what we call Section  
2 42(h). The other ones include due diligence and subsequent  
3 compliance.

4 In this case, we, from the State's perspective,  
5 considered those to be factors somewhat in mitigation  
6 because, as you recall, the premise of this settlement is  
7 that the company is now and has been for some time in  
8 compliance, whatever that word means.

9 The other criterion that was very important  
10 here was gravity, the severity of the violation. We  
11 figured this to be in aggravation because it did cause  
12 property damage. So we did consider the statutory  
13 criteria. The mitigation of that penalty by the  
14 Supplemental Environmental Projects was a valid exercise of  
15 our discretion. The penalty that they're paying is 75,000.  
16 The penalty that we calculated, and that was the basis of  
17 our settlement, was 152,000. So, when you've told the  
18 Board that you're not happy with the \$75,000 penalty, in  
19 our view, that is only the payment portion. The monies --  
20 the \$75,000 will be paid to the Environmental Protection  
21 Trust Fund. The company will spend an additional 85,000 to  
22 mitigate the rest of the penalty.

23 In our view, the Supplemental Environmental

24 Projects are a good idea. They're something beyond what is

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1 required, what the law mandates. None of those three  
2 projects the Illinois EPA could have put in a permit and  
3 said, "You've got to do this." Yes, they're going to help  
4 ensure compliance. That's why we wanted the company to do  
5 them.

6 Another issue that I think we've already  
7 touched on, the natural resource damage of this urban  
8 stream was investigated, not by the State, but it was  
9 investigated. It was not a formal assessment, nor is  
10 there, objectively speaking, a lot of grounds for someone  
11 to spend money for a formal natural resource damage  
12 assessment. The reason I say this is, yes, there are  
13 contaminants in the sediments, but the report that I've  
14 relied upon and the Illinois EPA has relied upon in giving  
15 us insight does not suggest that there's any immediate  
16 hazard. It is simply a report investigating what was  
17 thought to be and probably very well is a typical urban  
18 watershed. It ain't good news, but that's the way it is.  
19 The typicality of this is probably very discouraging. Any  
20 time you've got industrial activity, any time you've got  
21 urban activity, you're going to have contamination.

22 Now, it was only within the past three decades  
23 that we've had environmental regulation. Before that, you

24 could throw it out the door, you could throw it right into

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1 the creek, you could burn it, and that was typical and that  
2 was the way life was. Not good, but certainly typical.  
3 So, to say there's a natural resource damage, first of all,  
4 I think you're misusing the term because it is a term of  
5 art, but I know what you mean.

6 And, yes, your environment is contaminated to a  
7 certain extent; but this Copper Slough or this typical  
8 urban stream is not something you folks are going to have a  
9 lot of direct contact with. It's something your kids are  
10 not going to have a lot of direct contact with. When I was  
11 a kid, I got into all sorts of muck just being a kid; and  
12 sure, you know, it could have been dangerous, but muck  
13 washes off.

14 The issuance of the storm water permit is a  
15 foregone conclusion? I don't think so. It hasn't gone out  
16 to public notice yet. The fact that a permit will be  
17 issued, yes, that's what we all want, you, me, and the  
18 company. That's what's required under the law for them to  
19 have a permit. The shape or the form of that permit is  
20 pretty standard. I don't think that when it is issued it's  
21 going to have anything out of the ordinary, but it's going  
22 to be a method of control.

23                   Processed wastewater, I misspoke this morning.  
24 I believe I said that all processed wastewater was being

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1   diverted to a treatment system. I was being too general.  
2   First of all, the processed wastewater is actually not a  
3   single thing but, rather, there's different waste streams;  
4   and some of them need to be regulated much more stringently  
5   than others. In this instance, the waste streams are  
6   generated by furnaces, hydro-testing, settling pits,  
7   maintenance floor drains, roof drains, building drain  
8   tiles. Those are just the sources of the waste stream.  
9   But the contents which can legitimately be discharged to  
10  surface water along with storm water can include things  
11  such as non-contact cooling water and contact cooling water  
12  and so forth. So it really just depends.

13                   In this case, the Illinois EPA is ensuring that  
14  the waste streams of the processed wastewaters that need  
15  further treatment are getting further treatment.

16                   There's been a suggestion that we're rushing to  
17  a settlement. This case has been pending for almost two  
18  years. Prior to the referral to the attorney general's  
19  office, the Illinois EPA had investigated for approximately  
20  a year. I would note that under the law, Section 31 of the  
21  Act, until there's a referral by the Illinois EPA to the  
22  attorney general's office, we can't generally get involved.

23 In fact, there's a statutory provision that prohibits the  
24 attorney general's office or the state's attorney from

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1 attending certain meetings called by the Illinois EPA  
2 involving a company thought to be in violation. If you  
3 don't like that law, I would suggest you contact your  
4 legislators. But that's the way it is. That's the  
5 parameters within which we do our enforcement.

6 As far as the timeliness of our action, we got  
7 the case. We filed it. We've been negotiating. When we  
8 decided that negotiations for some reason had not yet been  
9 successful, we did serve what lawyers call discovery or  
10 requests for information. Coincidentally or as a direct  
11 result -- it doesn't matter -- but negotiations resumed and  
12 became more productive and more focused, and we got this  
13 settlement which we think is a good idea.

14 I've considered everything you've said this  
15 morning, and you've got legitimate concerns. You live  
16 here. I don't. But this is what I do and have done for  
17 many years, environmental enforcement. \$75,000 payment  
18 plus the 85,000 in SEPs is an adequate sanction. You  
19 disagree. That's fine. Reasonable people can disagree.  
20 But as far as rushing to a settlement and disregarding the  
21 information that we've got in our files that we got either

22 voluntarily from the company or through the EPA's  
23 investigation or through third parties, for instance, the  
24 assessment of potential contaminant sources in Copper

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1 Slough -- I forget who gave this to me. But when I got it,  
2 I read it and I considered it.

3 So the fact that we've minimized our costs of  
4 litigation and negotiated a settlement is good.

5 Yes, sir?

6 MR. EHRHART: Can I come up?

7 HEARING OFFICER: Yes, please. This is  
8 Mr. Ehrhart speaking.

9 MR. EHRHART: Yeah. It seems like money is  
10 what's the concern right now. The settlement is such a big  
11 topic, I guess. You know, it should be to a degree. My  
12 question is: If you were to take all this work the past  
13 two years, all the efforts by your departments, calculate  
14 the expense, brought it into the governor's office to talk  
15 to Governor -- the governor there, how would you -- we're  
16 all accountable. I work for the University of Illinois.  
17 Our departments are accountable. How would you show  
18 accountability for your department that you are not causing  
19 the taxpayers a big bill? I mean, I don't know how much  
20 this is costing the taxpayers. I'm just curious. You  
21 know, we haven't even talked about that. You know, I don't



22 know what your salaries are. I have no idea. But time is  
23 money.

24 This has gone on, like you said, for two years.

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1 It's certainly -- I agree, it doesn't need to go on any  
2 longer because it's going to cost more. It sounds like  
3 it's going to cost you guys more in the long run. What it  
4 sounds like to me is you're going to be shooting yourself  
5 in the foot when other things come up later on because of  
6 what you're doing here.

7 That's why I say, if you took this into the  
8 governor's office, you showed him, how could you convince  
9 him that what you've spent on this project you're giving  
10 back to the taxpayers? That's all. Is that a good thing  
11 since the State's in a deficit? I'm just asking. I'm not  
12 trying to put you on the spot, you know. A little bit,  
13 yes. But, you know, we all get put on the spot. You know,  
14 if I don't pay my taxes to the state or to the government,  
15 I'd be put on the spot. You know, we're all accountable.  
16 I just want to see accountability done right here, and  
17 everything should be fair.

18 HEARING OFFICER: Mr. Ehrhart, may I jump in  
19 for a moment?

20 MR. EHRHART: Sure.

21 HEARING OFFICER: If you have additional  
22 comments to make -- I let you come up because I thought  
23 you just had a quick question about something. If you have  
24 additional comments to make, please submit written public

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1 comments. The Board will be more than happy to consider  
2 that. I would like to give the parties an opportunity to  
3 make their responses.

4 MR. EHRHART: Sure. I'd like to hear it.

5 HEARING OFFICER: Thank you very much.

6 MR. DAVIS: That's a very legitimate inquiry.  
7 It's something that I've been thinking about. As I've said  
8 here today, you know, this is a pretty good vantage point  
9 for me because I'm in a position to hear some of you folks  
10 say white and others say black. Okay? I don't know that  
11 if you've been listening to yourselves you would have that  
12 perspective. But I've heard that we should, on the one  
13 hand, have investigated everything, have left no stone  
14 unturned, have litigated this case and not settled it. But  
15 then, on the other hand, there's your concern and mine that  
16 we be accountable, we be efficient, we get the job done,  
17 and we not waste time, effort, and money. I'm just  
18 paraphrasing. I'm not trying to put words in your mouth.

19 I've sat here thinking, well, we don't have to  
20 do this because usually we just file a settlement. We

21 don't have a public hearing. Boy, do I have a lot of work  
22 on my desk back in my office in Springfield. But then, on  
23 the other hand, I'm telling myself this is very good, to  
24 get this feedback because settlements are compromises.

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1 I've heard it said that a good settlement, everybody's  
2 happy. Well, here we've got a good settlement, and it  
3 seems like nobody's happy. But that's okay.

4           So the public comment, you're the public. You  
5 know, I can't do anything other than say, "This is a good  
6 settlement" -- say to you that this is a good settlement  
7 and try to explain and defend that settlement without  
8 hopefully being too defensive about it because I do want to  
9 focus on just a few more facts to ensure you folks that  
10 when there have been previous suggestions today that we  
11 didn't look at this, we didn't look at that, how could we  
12 neglect these things, that's not really true.

13           You know, we may have looked at in our view  
14 everything we needed to. In your view, we should have  
15 focused upon things that we thought, well, it's not really  
16 relevant. It's relevant to you, and that's your  
17 perspective. But the factual information, the data,  
18 whether qualitative or quantitative, you know, it all fits  
19 together. I'm not saying I made all these decisions. What

20 I am telling you is that the Illinois EPA has a lot of  
21 expertise, not just in interpreting technical information  
22 but in regulating industries, and that this industry, when  
23 it was found -- when it came under investigation,  
24 cooperated, and that during the course of this enforcement

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1 action, they've come into compliance.

2           And everything that we thought the Pollution  
3 Control Board needed to know we put into this settlement  
4 document. It reads like a settlement document for a very  
5 good reason; we have a standard format, "we" being the  
6 Illinois EPA and my office. We've learned from previous  
7 cases that certain language is more important than others.

8           As I mentioned this morning, it's not important  
9 to me that a violator admit the violations because if there  
10 is a subsequent case we can still use it against him  
11 whether they admit it or not. There had been no prior case  
12 against this company, and that is important to us. They've  
13 been there since 1941. They've been under regulations for  
14 the past three decades like everybody else, and this is the  
15 first time that they've come to the scrutiny of none of the  
16 regulators but of the enforcers. That's not a bad track  
17 record.

18           We have dealt with a lot of specific companies  
19 over the years where it seems like they're always under

20 enforcement. We've taken a lot of cases to the Board or to  
21 the courts where the violator was still in violation when  
22 we were doing the trial. That's not this situation, but  
23 that is a typical situation when you talk about the Board  
24 imposing penalties. The Board always considers the

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1 statutory factors, and one of them is the subsequent  
2 compliance. If they're not in compliance, then it's going  
3 to be held against them. If they are in compliance, it's  
4 going to mitigate the penalty.

5 I'm winding down. I swear I am.

6 What I said a minute ago about putting  
7 everything in the settlement document that we thought the  
8 Board needed to know, we did mention your case, the pending  
9 tort action; and we've caught some flack about that today.  
10 I don't see, on the one hand, there can be a suggestion  
11 that information is being concealed when, on the other  
12 hand, we're explicitly advising the Board of a pending  
13 action. And we did that in the context of the potential  
14 impact on you, the neighbors, and your property. So, to  
15 us, it's just a fact. It was relevant enough to mention in  
16 passing.

17 Lastly, I would thank you for your confidence  
18 in us. As you can tell and as someone said this morning,

19 it's a learning experience. The people -- the companies,  
20 rather, that we enforce against, they do learn from their  
21 mistakes. We're not necessarily here to teach them; but if  
22 they don't learn from their mistakes, we will be giving  
23 remedial instruction. Once we close a file, it doesn't  
24 mean that we forget about somebody. And once one problem

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1 is addressed, it doesn't mean that the other problems that  
2 heretofore had not yet been addressed can be looked at.

3           You folks are sophisticated enough to know that  
4 there are different ways of getting your messages and  
5 concerns across; and I think that if you're concerned about  
6 Copper Slough, you should complain to the authorities and  
7 send them copies of this report. But as far as this case,  
8 I, as the assistant attorney general, asked the agency in a  
9 letter from March of last year, I said, "There is a pending  
10 storm water permit application that may contain information  
11 on the surface deposition of metals within the fence line.  
12 Please check. Alloy's discharges may have resulted in  
13 sediment contamination within Copper Slough," and I asked  
14 if the agency wanted to do soil sampling.

15           I got a response, and I rely upon the agency's  
16 expertise; and they said the metals involved were not  
17 considered to pose a health threat at the time. So that's  
18 where that stands. If you're concerned about that issue,

19 then I would say let's address it comprehensively, but I  
20 don't think it's fair to point the finger at just one party  
21 here, just because you've had other problems with Alloy.  
22 You can't really blame Alloy for the contamination of  
23 Copper Slough because it's a contaminated urban stream. I  
24 know -- yes, sir?

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1 MR. EHRHART: I didn't talk about the Copper  
2 Slough. I think most of us were talking about the air.  
3 That's what I was kind of concerned about.

4 MR. DAVIS: I'm done.

5 MR. EHRHART: I'm concerned about that, too.

6 MR. DAVIS: I'm sorry if I appeared defensive  
7 or rambling. I've talked a lot more today than I thought I  
8 would have.

9 MR. CHANDLER: I'd like to make a statement if  
10 I can.

11 HEARING OFFICER: Yes, please. Can you come to  
12 one of the microphones so we can all hear you a little  
13 better?

14 MR. CHANDLER: I'm Mark Chandler. I'm the  
15 president of Alloy Engineering and Casting Company. I  
16 would like to thank both the Illinois Environmental  
17 Protection Agency, which I would like to refer to as IEPA

18 from this point on, and the Illinois State Attorney  
19 General's Office for their support and fairness during the  
20 investigation. We fully support the IEPA and their  
21 policies and regulations.

22 Alloy Engineering and Casting Company has been  
23 a cornerstone of Champaign County manufacturing since 1941  
24 contributing millions of dollars to the local economy

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1 through payroll and taxes. Alloy is a producer of  
2 high-quality stainless steel castings for use in industrial  
3 and automotive applications. We employ 170 individuals in  
4 stable, good-paying jobs. Many of our employees have been  
5 with Alloy for over 20 years.

6 Alloy's top priorities are the environment and  
7 the health and safety of our employees and the community.  
8 Alloy uses the most current technology in its systems and  
9 processes to ensure compliance with all environmental  
10 regulations and requirements. The IEPA and the Illinois  
11 State Attorney General's Office both agree that Alloy fully  
12 cooperated with the IEPA's investigation, and Alloy has  
13 followed all recommendations. Most of the alleged IEPA  
14 violations imply shortcomings in Alloy's record-keeping,  
15 not any risk to the environment or personal health and  
16 safety. Alloy is now fully compliant with IEPA  
17 regulations. Although the alleged violations were based on



18 disputed facts, Alloy has agreed to a settlement to  
19 demonstrate our cooperation with the IEPA and to eliminate  
20 additional costs that would have been incurred if the  
21 alleged violations were contested. We feel that the money  
22 spent on further litigation can be better spent on  
23 improving and upgrading our environmental initiatives.

24                   During the five years prior to this

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1 investigation, Alloy spent \$1,697,357 on improvements to  
2 our environmental management systems. In addition, since  
3 the investigation began, Alloy either has spent or plans to  
4 spend \$1,095,408 for continuous improvements to our  
5 environmental management system within the next five years.  
6 Alloy Engineering and Casting Company is committed to the  
7 protection of the environment and continues improvements  
8 necessary to remain an economically viable member of the  
9 community. Thank you.

10                   HEARING OFFICER: Thank you very much. I'll go  
11 off the record.

12                   (Discussion off the record.)

13                   HEARING OFFICER: We went off the record to  
14 discuss a possible briefing schedule. The parties  
15 indicated that that would not be necessary.

16                   I would like to mention that the transcript in

17 this matter should be available by around April 1st or so.  
18 We will try to get this on the Pollution Control Board's  
19 website as soon as possible, hopefully by Friday, April  
20 4th. Our web address is [www.ipcb.state.il.us](http://www.ipcb.state.il.us). The  
21 deadline for filing written public comment with the Board  
22 is going to be April 25th, one month from today.

23 Public comment must be postmarked by that date.  
24 If you've already given oral public comment at this hearing

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1 and you have some additional thoughts, please feel free to  
2 file written public comment. Also, anyone who was not at  
3 this hearing may also file written public comment. Public  
4 comment must be sent to the Clerk of the Board at 100 West  
5 Randolph Street, Suite 11-500, Chicago, Illinois, 60601.

6 I thank all of you for your participation here  
7 today, and we are now adjourned.

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HEARING ADJOURNED AT 3:00 P.M.

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1 COUNTY OF TAZEWELL )  
 ) SS  
2 STATE OF ILLINOIS )

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CERTIFICATE OF REPORTER

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I, ANGELA M. JONES, CSR-RPR, Notary Public in

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and for the State of Illinois, do hereby certify that the

9

foregoing transcript consisting of Pages 1 through 136,

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both inclusive, constitutes a true and accurate transcript

11

of the original stenographic notes recorded by me of the

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foregoing proceedings had before Hearing Officer Carol

13

Sudman, on the 25th day of March, 2003.

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16 Dated this day of , 2003.

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Angela M. Jones, CSR-RPR  
Notary Public, CSR #084-003482

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