

1 STATE OF ILLINOIS)
)SS
2 COUNTY OF JO DAVIESS)

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5 In the Matter of the Petition

6 of

7 Rentech Energy Midwest Corporation,
 Jo Daviess County, Illinois

8

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10 Testimony of Witnesses
 Produced, Sworn and
11 Examined on this 28th day
 of February A.D. 2007
12 before the Jo Daviess County
 Zoning Board of Appeals

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16 Present:

17 Tom Heidenreich

 Nick Tranel

18 William Tonne

 Susan Davis

19 David Jansen

 Melvin Gratton, Chairman

20

 Linda Delvaux, Zoning Administrator

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1 MR. GRATTON: All right. Good evening
2 everyone and welcome to this evening's
3 proceedings. This is our regularly-scheduled
4 meeting of the Jo Daviess County Zoning Board of
5 Appeals Planning Commission. I'm going to start
6 by establishing a roll and a quorum, so we'll
7 call the roll, so Melissa, could you do that.

8 (Roll call was taken and all
9 members were present.)

10 MR. GRATTON: We have a quorum so we will
11 proceed. I'd like to, first of all, consider
12 the minutes of the January meeting for approval.
13 Has everyone had an opportunity to review those?

14 MS. DAVIS: Yes, I move we accept them.

15 MR. TONNE: Second.

16 MR. GRATTON: We have a motion by Susie

17 and a second by Bill to accept the minutes. All
18 those in favor signify by aye.

19 (All members simultaneously
20 responded affirmatively.)

21 MR. GRATTON: And let the record indicate
22 that I abstained from that. I was not at that
23 meeting. We're going to move into the business
24 at hand this evening. We have one item on our

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1 agenda and that is a continuation of a hearing
2 for Rentech Energy Midwest Corporation. They
3 have applied for a Special Use in AG District as
4 a basic industry. Their location is 16675 US
5 Route 20 in East Dubuque. We have had two
6 hearings to date regarding this where we have
7 heard the Petitioner's testimony and testimony
8 of others who wish to present. From that we
9 have been able to have staff who has worked with
10 our legal counsel, Chris Zibart and our -- and
11 URS who is also working with staff and

12 consulting as far as establishing the findings
13 of fact and making sure that all of the
14 information is correct and technically accurate.
15 We have asked them to put that information
16 together for us and what they have done -- let
17 me back up just a little bit. We've taken
18 testimony. We have heard I think all the
19 testimony that we probably need to hear. Public
20 testimony has been closed and at this point what
21 we would like to do this evening is to consider
22 the findings which have been presented and make
23 sure that they've been presented accurately and
24 that we are looking at them in the -- in the

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1 correct light. So I think we will do probably
2 about three or four things in order to
3 accomplish this goal tonight. First of all,
4 like I said, we will review the finding of fact.
5 We will make sure that the Special Use standards

6 have been met or not met, whichever the case may
7 be. We'll probably look at this in context with
8 the Comprehensive Plan and then we will try to
9 put this into a format which we can present to
10 the County Board for them to consider at their
11 next regularly-scheduled meeting which is the
12 second Tuesday of March. So does anyone have a
13 question as far as proceedings this evening?
14 We're -- we're going to just continue where we
15 left off and I think basically it's a
16 continuation of the discussion that we were
17 having with the findings in front of us. So
18 does anyone have anything extra to add before we
19 begin that?

20 MR. HEATON: Mr. Chairman, there's a few
21 issues that we would like to discuss with you as
22 you go through them and would it be appropriate
23 for us to raise our hand at that time and --

24 MR. GRATTON: I think so, Jock. Let's --

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1 let's go through the process and we'll go
2 through it I think very quickly. There's a lot
3 of verbiage here. We're not going to go through
4 it word for word because everyone has had an
5 opportunity to look at it ahead of time, but we
6 will make sure that anybody's concerns or
7 questions along the way are answered, so -- and
8 that will include any from Rentech.

9 MR. HEATON: Thank you.

10 MR. GRATTON: Let's begin with the Special
11 Use findings. I'm looking at the Special Use
12 findings of fact and recommendation. Does
13 everyone have that in front of them? These are
14 draft copies now, so remember that they, you
15 know, are subject to revision. They're just as
16 we think they should exist at this time. So
17 let's go through that. Basically it starts out
18 with the site information which we're aware of,
19 the legal description, the site findings. It
20 goes on to describe the -- the topography and
21 the conditions and what exists in the area that
22 we're looking at, the property involved, what
23 Rentech is trying to accomplish, what the
24 purpose of the Special Use is and the ongoing

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1 operations of the existing plant, the proposed
2 needs, acreage requirements, the conversion
3 process. It spells out what will happen in
4 Phase 1, Phase 1A and Phase 2 and what impact
5 this might have and then we get into analyzing
6 standards. Is there -- first of all, is there a
7 question on any of this preliminary information
8 which has been presented on the first two or
9 three pages of this plan?

10 MR. HEATON: I think, Mr. Chairman, on
11 Page 1 in the first paragraph, the fourth line
12 at the end it says which consists of
13 approximately 207 on my draft and I think that
14 should be 280 acres. That's the combination of
15 what Rentech owns, what it is acquiring from
16 Newt -- what we call the Newt property and the
17 Hilby property and I think later on -- and I
18 mentioned this to Mr. Zibart before the meeting

19 started this evening that maybe after the 280
20 acres we should put in parentheses the subject
21 property, end parentheses, because later on we
22 refer to the subject property.

23 MR. GRATTON: Okay. If that's acceptable
24 with Chris why we will insert that change, so

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1 let the record indicate that. Staff or
2 committee members, are there questions regarding
3 the basic background information that we're
4 looking at? I think it's all been presented in
5 testimony.

6 Okay. So let's move over to Page 4 and
7 start the analysis of the six standards that we
8 look at for a Special Use. The first one being
9 that the establishment, maintenance and
10 operation of a Special Use will not be
11 detrimental or endanger the public welfare,
12 health or safety, morals or comfort of the
13 general public. And we have there the basis for

14 that standard. The staff indicates that they're
15 comfortable with that standard being met and I
16 want to make sure that committee members have
17 that same thumbprint. It's incumbent upon all
18 of us to make that decision. Anything anybody
19 would add or take away? All right. Standard --

20 MR. TONNE: I'm sorry, Mel. Just to be
21 clear, we are asked here to approve both
22 Phase 1, 1A and Phase 2, so when we're
23 considering the six standards one by one we're
24 thinking, are we not, of all the project -- all

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1 phases and reading ahead here I see we're going
2 to come to the question of the Special Permit --
3 the Special Use Permit granted for Phase 1 and
4 1A and Phase 2 on the condition that the size
5 and scope of Phase 2 construction and operation
6 is limited to that set forth in permittee's
7 testimony. So my question as we go through the

8 standards is what -- how shall we define
9 permittee's testimony? Is that what we have in
10 the findings of fact here or is that, in fact,
11 all the testimony? That's what it says, so I'm
12 just asking as we consider these standards --

13 MR. GRATTON: You want us to define that?

14 MR. TONNE: Yeah, if we could, because
15 we've heard a lot of good testimony, a lot of
16 good testimony. Some of it may be marginally
17 misspoken or something but was later corrected,
18 so I think we need to define what testimony
19 we're talking about especially with Phase 2. I
20 think we understand the EPA is involved in this
21 heavily and as we go through these standards
22 we'll be thinking of that and knowing that, but
23 their testimony about Phase 2 is what?

24 MR. GRATTON: Let me try to, you know,

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1 just take a stab at this and staff can help me
2 if I don't get it quite right. My understanding

3 is that Phase 2 is -- is being considered as
4 part of this application and that we will apply
5 these standards to Phase 1, 1A and Phase 2.
6 Now, what we did was ask Petitioner to define at
7 our last meeting what Phase 2 actually was so
8 that we didn't have any misunderstanding about
9 what was included in Phase 2. Since that time
10 -- and I think you can look back on Page 2 and
11 3, the preceding two pages, if you look at
12 No. 9 and No. 10 there they do spell out what
13 will be involved in each of these phases with
14 the only -- I think there's one or two
15 differences there and that was in -- let me make
16 sure I get this correct. The second -- the
17 first phase -- Phase 1 and Phase 2 (sic) will be
18 to help maintain the present fertilizer
19 production facility and that will be their main
20 emphasis with some production of clean fuels
21 from that and Phase 2 I believe will -- if you
22 look at the chart there it brings us up to more
23 of this Fischer-Tropsch liquid fuel production
24 and you can see the number of barrels and the

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1 increase there. That will be what happens with
2 the production of Phase 2, so -- but to get to
3 that production level -- and gentlemen, help me
4 if I'm misstating -- to get to that production
5 level it will require the addition of another
6 gasifier and essentially the same process as
7 we're adding in 1 and 2, is that --

8 MR. DIESCH: It's basic duplication of --
9 other than modifications to the ammonia plant --
10 Phase 1 and 1A is modifications to the ammonia
11 process to -- to integrate the new source of
12 synthesis gas for the production. Phase 2 would
13 be a duplicate of gasification, the synthesis
14 gas cleanup, sulfuric acid and coal handling --
15 additional coal handling and then additional
16 production of Fischer-Tropsch liquids or fuels
17 and that's what's spelled out. If you look at
18 the Phase 1 the difference -- the biggest
19 difference was there's -- it doesn't talk about
20 any modifications to an ammonia plant in Phase

21 2.
22 MR. GRATTON: Then Bill, in answer to the
23 rest of your question as far as how do we spell
24 this out, it's spelled out briefly here and I

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1 think it relies on the testimony that has been
2 presented in this application that we can go
3 back and utilize that testimony as to what --
4 MR. TONNE: Well, if I might, I think what
5 you're saying is quite -- suffices my question,
6 but my concern is that the findings of fact and
7 recommendation of the Jo Daviess County Zoning
8 Board of Appeals as drafted here is their
9 testimony -- in other words, this chart, Phase 1
10 is \$810,000,000, Phase 2 not yet determined,
11 etcetera, on Page 3. That is their testimony?

12 MR. ZIBART: I think it's consistent with
13 their testimony. Their testimony -- you know,
14 what they actually presented to the Board on --
15 I guess on the second night -- well, on both of

16 the nights of hearing, but in particular I think
17 we all remember that in the -- on the second
18 night of hearings the question was put pretty
19 directly to Mr. Diesch, you know, could you
20 describe in more detail what Phase 2 entails and
21 he went through and said it and I think that we
22 all sort of understood it then. So I guess our
23 thought was that when we talk about the
24 permittee's testimony we're really talking about

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1 what was spoken at those hearings as Mel just
2 said and that's captured in the verbatim,
3 word-for-word transcript that was kept, you
4 know, of those -- of those hearings.

5 MR. TONNE: Okay, so then their testimony
6 includes all of the verbatim testimony as
7 captured in the transcripts?

8 MR. ZIBART: Right, and I would say what
9 we got here in the findings is a summary of it,

10 the key elements, right. It is what it is.

11 MR. TONNE: Somewhere I saw a reference to
12 Table 1. Is that in here in our resolution
13 eventually?

14 MS. DELVAUX: It's the last page.

15 MR. ZIBART: Table 1 is a table of
16 permits.

17 MR. TONNE: Yeah, right, and wouldn't you
18 know I can't find my copy of that all of the
19 sudden, but in there toward the middle of --
20 here we go -- it refers to -- it happens to be
21 in the center column of Table 1 about the fourth
22 line -- fourth paragraph down and it says
23 project as proposed will net out of PSD. The
24 project as proposed in this table is Phase 1, 1A

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1 and Phase 2 or is it 1 and 1A?

2 MR. ZIBART: No. I'll tell you, Bill,
3 we'd be jumping ahead a little bit, but one of
4 the suggestions that staff and Rentech agreed on

5 was that maybe these -- the middle column and
6 the right column probably ought to be knocked
7 off of this table. We ought to concentrate on
8 that first column which is the -- which is the
9 permits that they might potentially need. I
10 think some of this other stuff which was really
11 -- we took this from their consultant's --

12 MR. TONNE: Yeah, I think I might agree
13 with you.

14 MR. ZIBART: This is sort of giving a
15 little bit of a status report on where they're
16 at on them and I'm not sure that's really
17 necessary for what we're doing. We're really
18 looking for the list of what it is they're
19 planning to get.

20 MR. DIESCH: What you're seeing in that
21 table is we get monthly reports from them on the
22 status of each one of the permits and this is a
23 snapshot of a status report at the end of
24 December on what's happening with each one of

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1 those permits, so those are comments --
2 everything -- the very left column lists the
3 permits and everything to the right of this is
4 status and comment on where things are at on
5 that particular -- the progress of going through
6 that permitting process, so --

7 MR. TONNE: So as such this really
8 wouldn't include Phase 2?

9 MR. DIESCH: No, that's the status of
10 existing permits. What you need to look at is
11 whatever permit requirements we have in Phase 1
12 and 1A, we'll have to meet those permitting
13 requirements and that's why -- so that table
14 will be different in the final --

15 MR. GRATTON: My understanding is this is
16 just an addendum to identify those permits that
17 may be required; is that correct?

18 STAFF MEMBER: All you need is the column
19 on the left.

20 MR. HEIDENREICH: And they'll -- currently
21 they'll run under their existing permits until
22 -- while the old plant still operates and once

23 construction is under -- until the switchover
24 and then the new permits will take effect, okay.

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1 I have one other question, Mel, and this is
2 probably for Chris. In this Standard 1 that
3 we're looking at it talks about public health
4 and safety and I know we referred to the EPA for
5 those permits and levels of emission. There
6 actually was no testimony from anyone that said
7 those levels are healthy levels. Does the EPA
8 actually say that?

9 MR. ZIBART: That's an interesting
10 question. Certainly what the EPA is tasked to
11 do -- I'm not sure if they come out and say it,
12 but they probably do. I mean, when they do
13 rulemakings to decide what the levels -- what --
14 how they're going to set those levels they set
15 them at levels that they think are -- are
16 sufficient to protect public health. Do you
17 have anything to add to that, Patty?

18 MR. HEIDENREICH: So through the
19 permitting process we're actually meeting them.

20 STAFF MEMBER: They're risk-based numbers
21 based on human health risk assessments.

22 MR. GRATTON: Thank you. Are we ready to
23 move on to Standard No. 2? All right. Standard
24 No. 2 indicates that Special Use will not be

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1 injurious to the use and enjoyment of other
2 property in the immediate vicinity for the
3 purposes already permitted or substantially
4 diminish and impair values within the
5 neighborhood. We've heard fairly extensive
6 testimony along these lines. Are there any
7 additional concerns in that area? Okay. So the
8 Board feels that that standard is met then; is
9 that correct?

10 (All members simultaneously
11 responded affirmatively.)

12 MR. GRATTON: Let's move on to Standard
13 No. 3. The establishment of the Special Use
14 will not impede the normal and orderly
15 development and improvement of property -- of
16 surrounding property for uses permitted in the
17 district.

18 MR. HEIDENREICH: I feel that standard is
19 met.

20 MR. GRATTON: Okay. We'll let the record
21 indicate that the Zoning Board feels that
22 standard also is met. And No. 4) That adequate
23 utilities, access roads, drainage and other
24 necessary facilities have been or are being

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1 provided.

2 MR. HEIDENREICH: I feel that is met also.

3 MR. GRATTON: That's met. There was --

4 one of the nice things there is there was an

5 existing infrastructure in place which is --

6 MR. HEIDENREICH: And the Comp Plan likes

7 that.

8 MR. GRATTON: We like that. No. 5) That
9 adequate measures have been or will be taken to
10 provide ingress and egress designed to minimize
11 traffic congestion in the public streets.

12 MR. TRANEL: Agreed.

13 MR. GRATTON: We have one access road
14 abutting a four-lane highway and we'll have --

15 MR. TONNE: A study to come.

16 MR. GRATTON: -- a finding regarding the
17 study here going forward. And No. 6) The
18 Special Use shall in all other respects conform
19 to the applicable regulations of the district in
20 which it is located except as such regulations
21 may in each instance be modified by the County
22 Board pursuant to the recommendation of the
23 Planning Commission.

24 MR. HEIDENREICH: I believe those are met.

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1 MR. GRATTON: This is the standard that
2 can be met in the AG district. Then staff has
3 developed as part of the standards and
4 recommendations some items here to be considered
5 as part of a motion, but before we get into that
6 why don't we look at the rest of the findings
7 and see if we can tie all this together because
8 it does address some of the issues and this will
9 be Appendix 3, findings of fact and
10 recommendations on this application. Does
11 everybody have that?

12 MS. DAVIS: Yes, sir.

13 MR. GRATTON: Well, these were part of the
14 34 pages which were given to us and the page
15 numbers on each document don't correspond with
16 the ones -- this was the third part of that
17 section. The piece in the middle of the
18 sandwich was the staff findings that were
19 presented earlier and then these were the
20 findings which came from the testimony and the
21 discussion which we heard at our last meeting.
22 Is everybody down here ready to go?

23 MR. TONNE: Do you have another copy?

24 MS. DELVAUX: I'm sorry?

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1 MR. TONNE: Do you got another copy,
2 Melissa?

3 MS. SOPPE: No.

4 MR. GRATTON: Okay. We have some
5 discussion points here and Chris, maybe -- how
6 do your findings that you came up with -- do
7 they fit exactly with these?

8 MR. ZIBART: They do. Although it -- I
9 think we've got eight -- eight of the findings
10 and those match up with some of the conditions
11 or other statements that go at the end of the --
12 of the main document. But as you said, Mel,
13 there's a number of sort of numbered paragraphs
14 here that correspond to the particular issues
15 that the Board took up at the end of this last
16 meeting and we tried to capture those -- capture
17 the Board's discussion and put those into
18 findings. Subsequent to that we had some
19 discussions with Rentech about what those

20 findings might be and came up with some
21 alternative language for some of these that we
22 felt the Board should consider and most of these
23 are ones that staff and Rentech I believe are in
24 agreement that the wording would be appropriate.

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1 As it turns out, this -- the first one of the
2 ones in your package here, the one about the
3 extension of time -- of the time period to start
4 construction, would be the one that staff and
5 Rentech probably aren't -- aren't in agreement
6 on, so we can tell you what the points of
7 disagreement are and the Board can certainly
8 discuss it. You may recall that at the last
9 hearing we talked about this extension of the
10 time period to start construction and that the
11 normal time period is one year. Rentech
12 initially asked for that to be extended to five
13 years to start construction and the Board would

14 up I think voting that three years would be
15 reasonable. There was also a discussion about
16 whether some -- some things should stop the time
17 from running at least temporarily, what we call
18 tolling. Tolling the time so that the three
19 years would stop running, for example, in the
20 case of maybe a lawsuit that challenged the
21 Board's Special Use ordinance and that when the
22 -- when the lawsuit was resolved then the time
23 would start running again until the rest of the
24 three years was out. One of the things that we

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1 talked about at the last hearing was whether
2 delays in getting the permits should also cause
3 a -- cause the three years to temporarily stop
4 running and we haven't been able to agree with
5 Rentech on appropriate language for that. And
6 let me try to give you my rationale for why
7 that's a problem for me as the County's lawyer.
8 I would like to have any starting and stopping

9 of the three-year period to be a definite
10 action, a definite thing that starts it and
11 stops it so that anybody can look at what's
12 going on and tell where we are in the three
13 years and we know the exact day that the three
14 years runs out and that Rentech would know
15 exactly when the three years runs out and then
16 they can either hurry up and start their
17 construction or they can come into the Board and
18 ask for an extension of time or whatever, but we
19 all know exactly where we are. And with a
20 lawsuit I have no problem with that, the lawsuit
21 starts on a particular day and it ends on a
22 particular day and we can say, okay, we're
23 carving that out. When we talk about a delay in
24 obtaining government permits it's just not clear

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1 to me when you say that that delay starts
2 compared to when you were -- you know, the

3 normal amount of time it takes to get a permit
4 and when that would -- would stop the -- stop
5 the process from running again -- or start it
6 running again. So that is a problem for staff
7 and, you know, unless Rentech has any other
8 suggestions for you my feeling would be to just
9 keep it with the -- an appeal or some kind of a
10 challenge to the County's granting of the
11 Special Use or some kind of a lawsuit that -- to
12 the same effect that that would toll the time,
13 but the permitting would just have to be done
14 within the three years and if they have a
15 problem with it they could come back and seek an
16 extension. I don't know if you want to hear
17 from maybe Mr. Heaton or someone else or --

18 MR. GRATTON: Let me ask Patricia a
19 question. Normally with this permitting process
20 can it take place and can it happen in that type
21 of a time frame, a three-year period?

22 STAFF MEMBER: Yes.

23 MR. GRATTON: That's not an unreasonable
24 expectation?

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1 STAFF MEMBER: No.

2 MR. GRATTON: Okay. Do you have comments

3 or --

4 MR. HEATON: Well, at the last hearing

5 when we discussed this we said that -- we asked

6 for five and you came back with three and we

7 said we could live with that as long as it would

8 be tolled if we get into a permitting problem or

9 a lawsuit and several of the Board members --

10 I'm quoting -- said I think that's reasonable

11 and agreed. Hopefully we won't have permitting

12 problems, but -- and maybe John can address

13 this. We don't know what could happen with

14 federal EPA in the next year. I mean, what if

15 they decided that there was going to be a delay

16 in all permits for some reason. We don't know

17 what the administration might do and we're

18 talking about not insignificant delays. We're

19 talking about if we run into a significant delay

20 in the permitting process then we don't have to

21 -- we don't want to have to come back here with

22 a whole new Zoning Board of Appeals and a County
23 Board presumably two and a half years down the
24 road and go through all this again, so while we

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1 don't expect it we have to build in a
2 contingency plan and John, do you want to
3 address that further? I don't really see how --
4 I don't mean to sound flip about this, but I
5 don't see how the County could be hurt if we did
6 run into a significant permitting problem and we
7 had that discussion with Linda and her staff and
8 said we want to keep you apprised of what's
9 going on and if you didn't think it was
10 significant, you know, we would have to get into
11 some agreement what would be significant or we'd
12 have to let it be resolved by somebody else, but
13 John -- and this is an important issue and we're
14 not asking for it for no reason at all.

15 MR. DIESCH: Not all the permitting has

16 been defined yet because we don't know yet --
17 because again, the engineering is not complete.
18 I'll just throw an example out. At the present
19 time we're looking at a water supply from our
20 wells. If we find that we don't -- aren't going
21 to be able to get the capacity or there's some
22 other effect when we do an analysis and do --
23 you know, go through the process of evaluating
24 wells we -- if we can't get the water there

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1 we'll have to draft from the river. When you do
2 something in the river that opens up a whole new
3 regulatory requirement and it puts you into
4 federal with the Corps of Engineers, fish and
5 wildlife. Let me throw something as an example,
6 Higgins Eye clam. My understanding is when they
7 built the Wisconsin bridge when they did their
8 evaluation of Higgins Eye clam, that shut that
9 project down for a number of years. That's my
10 understanding. If they find that we have -- we

11 want to build the structure for the intakes and
12 they find Higgins Eye clam then that will slow
13 the project down. I don't know how long. We
14 may have to transplant the clams, I don't know
15 and we're just -- so those are the types of
16 things that are really unknown at the present
17 time and it's difficult to put a time line on
18 it. That's what our concern is.

19 MR. HEATON: And I think it's a situation
20 -- obviously the tolling benefits us, so I
21 think, you know, we would have every reason to
22 come back to the County and say, you know, we
23 have run into a problem. This isn't something
24 we're going to come up later and tell you, oh,

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1 by the way, the three years -- we didn't start
2 our construction and now we're three years and a
3 day and by the way, we had a significant
4 permitting problems. It makes sense that we

5 tell Linda this as we go along, so --

6 MR. GRATTON: If we're going to add the

7 permitting process to our language here as far

8 as our findings I think we're going to have to

9 add some additional definitions then as to, you

10 know, what constitutes a delay and what doesn't.

11 I'm quite hopeful that -- I think three years is

12 a reasonable time frame. I'm just speaking for

13 myself and I understand the processes you have

14 to go through. But I can't believe that three

15 years from now if you run into some kind of a

16 delay like that that there would be an

17 insensitive group of people sitting here who

18 weren't reasonable enough to, you know, address

19 it that way. We've had multiple times when

20 people come back and ask for extensions for

21 Special Uses and unless there's, again, you

22 know, a significant -- unless there's

23 significant problems, you know, usually those

24 extensions are granted. On the other end of the

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1 spectrum, you know, if we get into five years,
2 well, five years is good, why not six years and
3 I do think we have to define some of this
4 somehow and I think we'd like to err on the side
5 of what's reasonable. I think that's what we
6 talked about at our last meeting and I think we
7 came to the consensus that three years was a
8 reasonable time and if we start tolling some of
9 the things that can happen in here that
10 certainly opens a window for a greater time
11 frame. Thoughts on that anybody?

12 MR. HEIDENREICH: I hear what Chris is
13 saying about it and I think he makes a valid
14 point. On the other hand, I heard what -- what
15 you were saying and I would assume that -- well,
16 take your example of the well. You're telling
17 us you're going to drill wells and not get it
18 out of the river. Well, as soon as you know you
19 can't make those wells work wouldn't that make
20 the clock stop and you go wait a minute, we're
21 not doing what we said, so I don't know why we
22 can't do what both of you want to do here or if
23 you apply for a permit and you get something

24 that says this permit was denied and you go the

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1 clock stops or I assume you do. If you don't
2 get an acceptance back you get something that
3 says you need to resubmit or --
4 MR. DIESCH: Typically what they'll do is
5 they'll come back and say you need to do --
6 normally you don't just get a denial. What
7 you'll get is this is what you need to do in
8 order to meet the requirements. They'll give
9 you a path to go down and -- and -- when you
10 deal with the federal government to get -- some
11 of it it's just going through the process to get
12 -- you submit something and you wait and you
13 don't know how long that's going to take.
14 That's the concern we have and how many
15 different -- how many different levels, where
16 does it have to go when you deal with like fish
17 and wildlife and I can't answer, you know, the

18 detail. I just don't know at this point in
19 time.

20 MR. HEIDENREICH: I don't either. I'm
21 just trying to make something that's workable.

22 MR. ZIBART: I can tell you, Tom, we can
23 try harder I suppose, but Rentech's lawyers and
24 I have put our heads together and so far haven't

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1 been able to come up with just that formulation
2 of what you're talking about. It's kind of
3 difficult -- it's difficult to write in words.

4 MR. TONNE: At one point we saw a time
5 line of the permitting processes and they were
6 multiple stretching through many years even
7 beyond the start of construction which is what
8 we're talking about here, so how many permits,
9 half a dozen, a dozen between now and the start
10 of construction or is it two or three?

11 MR. DIESCH: Well, there's that list in
12 the back and not all of them will apply, but

13 they potentially apply, so you have to evaluate
14 which ones will.

15 MR. TONNE: We're talking about the
16 extension of time period to start construction.
17 From the County's point of view, which I'm sure
18 you're aware of, we don't want to leave it so
19 open-ended. If you're applying for a half a
20 dozen permits and it's going to take a while you
21 could start (sic) the clock because of a "permit
22 delay" when actually you've got other reasons
23 you might want to toll and -- and that might not
24 be in the interests of the County in somewhat

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1 obvious ways because we are not setting a finite
2 time for a Special Use to get to commence. I
3 mean, that's really contrary to what our
4 ordinance would stipulate, so --

5 MR. HEATON: I wish we could look in our
6 crystal ball and say we know this permit could

7 be a problem. We don't know at this point. I
8 think what we're asking for is just a little
9 give and take here. If -- if -- worst case
10 scenario is if we thought it was significant and
11 you didn't, you know, then we're going to have
12 to come back here probably short of a lawsuit
13 and say -- try to convince you it's a
14 significant delay. Again, I don't see how the
15 -- in a project like this the County is --
16 again, I don't mean to be flip. I don't think
17 that the County's hurt if indeed the County
18 feels it's a good idea to grant the Special Use
19 whether it was -- construction started within
20 three years or three years and three months
21 because of a significant delay. We're still
22 going to get to the point where everyone wants
23 to be, so --

24 MR. TONNE: I'm going to actually turn

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1 that argument and support my side of the

2 question and say, you know, a future Board,
3 these five or five different or whatever and
4 County Board different would probably see the
5 Special Use request in a very similar light --

6 MR. HEATON: We hope they would.

7 MR. TONNE: -- if not identical. Unless
8 something has changed with the EPA requirements
9 or your engineering or -- you know, which is --
10 we're talking about extension of time period to
11 start construction here which could be in 2007,
12 correct?

13 MR. HEATON: Yeah, if the permits come
14 through they're going to start right away.

15 MR. TONNE: It could be, I mean, when you
16 start a structure, not just moving dirt, but a
17 structure. I don't see how we can put a time on
18 permits and permitting, that process just as you
19 stated initially and then yet that could be
20 abused and fly in the face of ordinance which
21 really wants one year for Special Uses. This is
22 a big project, a very important, significant
23 project and we know that, but we can't go to
24 infinity.

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1 MR. HEATON: Right. When we originally
2 asked we thought if we had five then that would
3 cover everything and then you had a legitimate
4 concern, that's a long time. So when you cut it
5 back to three that's why we said that's fine as
6 long as it can be tolled for permitting or
7 lawsuit concerns and if Chris and I could come
8 up with a better word than significant we would.

9 MS. DAVIS: You know, I'm sitting here
10 thinking nobody wants this to shut down,
11 certainly you don't want it to shut down and
12 certainly we don't want it to shut down, so
13 everybody is going to try their darnedest to
14 keep it moving. I don't -- he's right, if
15 there's one thing that's going to shut it down
16 it will be the Willy worm or whatever is out
17 there, but -- but you know, I don't -- I
18 personally don't see that that's a problem
19 because everybody wants this to go forward, so

20 if you can't get a permit you're certainly not
21 going to sit on it for a year and decide what to
22 do next, you're going to pursue the next --

23 MR. HEATON: Well, we're going to push for
24 the permits and we'll do whatever is reasonably

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1 necessary to get the permits.

2 MS. DAVIS: You're not going to sit back
3 and drag your feet. You know, it's going to --
4 so I don't see -- I guess I don't see the big
5 problem that other people see with this.

6 MR. GRATTON: Well, I like what it says.
7 I mean it takes the time frame out of the
8 equation here if we have legal action or
9 lawsuits or significant delays for governmental
10 permitting.

11 MR. HEATON: That's fine with us.

12 MR. GRATTON: That's what it says. That's
13 what's in front of us and I think Chris can work
14 with Rentech.

15 MR. ZIBART: Right. Staff does not --
16 we're putting that in front of you because
17 Rentech -- that's what Rentech is asking for.

18 MR. GRATTON: That's not your -- I thought
19 maybe I was hearing you say that this was
20 something that was agreed upon.

21 MR. ZIBART: Nope.

22 MR. GRATTON: What part -- the lawsuit
23 portion of this is agreed upon?

24 MR. ZIBART: That's correct, yep.

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1 MR. GRATTON: It's the significant delay
2 in obtaining permits that's the question mark?

3 MR. ZIBART: That's right.

4 MR. GRATTON: Okay.

5 MR. HEIDENREICH: Well, you guys are
6 attorneys, why can't you find the legal language
7 to make it work?

8 MS. DAVIS: Significant to one may not be

9 significant to another, so we could sit here all
10 night and discuss this.
11 MR. GRATTON: Susie, could we just
12 interject into the testimony this evening and
13 see if we all concur with this that, you know,
14 significant delays may be, you know, some
15 unforeseen environmental concern which none of
16 us have control over. If, on the other hand,
17 you're lax in some -- you know, submitting the
18 -- something you need for a permit, that's not
19 significant, not in our minds, and if you don't
20 do your homework and --

21 MR. HEATON: Well, we could put in after
22 significant delay (for reasons, you know, not
23 due to Rentech). We don't have a problem with
24 that. We don't think we should get a

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1 significant delay just for sitting around doing
2 nothing.

3 MR. GRATTON: We agree there, so --

4 MR. HEIDENREICH: Can you work together
5 and define significant delay?

6 MS. DAVIS: That's what they've been
7 trying to do.

8 MR. ZIBART: Yeah.

9 MR. HEATON: John just said for
10 significant delays outside of something we
11 caused or --

12 MR. DIESCH: Outside of Rentech's control.

13 MR. HEATON: We can certainly put that
14 language in. I don't know if that does what
15 Chris wants.

16 MR. ZIBART: Well, they say -- one of my
17 interests is in having certainty, having a date
18 certain so that there isn't any argument and,
19 you know, Jock mentioned the possibility of, you
20 know, having a lawsuit to decide what's a
21 significant delay and so on and that is exactly
22 the kind of thing that I would like to keep the
23 County out of. You know, we're looking for
24 something that's -- that's sure and anybody can

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1 look at the words and say, okay, I know what
2 that means and we can figure out what day the --
3 what day the Special Use permit has to be
4 complied with and I guess my problem with all of
5 the -- whether -- whose fault it is and whether
6 they were lax and so on, that all sort of spits
7 back into that you're not going to know, you're
8 not going to know just looking at it and I think
9 -- I think that frankly there's some sort of
10 risk for the County in that that I'm not happy
11 with, but to your question can we try some more?
12 We can, although trying takes time and I hate to
13 do that.

14 MR. DIESCH: I have a question. What is
15 the risk to the County? The County is not
16 putting any funds up in any part of the project.
17 Is there -- it can't be financial. Is it just
18 uncertainty? What is the risk to the County?

19 MR. ZIBART: The risk to the County is
20 that the County gets sued because they have a
21 different interpretation of significant delay

22 than somebody else.

23 MR. DIESCH: From a third party?

24 MR. ZIBART: You, one of your neighbors.

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1 You know, the County says, well, Rentech it
2 looks like it's been three years and you guys
3 say wait, wait, wait, we're still working on our
4 Willy worm permit and we say, well, you know,
5 I'm sorry, that wasn't -- you know, you hadn't
6 worked on that hard enough and then we have a
7 dispute and I'm trying to get rid of those ahead
8 of time so we have that cut and dry.

9 MR. HEATON: But --

10 MR. TONNE: Your question is still there
11 in part which is why is the County concerned
12 about a type limit, because the County is
13 concerned about zoning. We can't just say a lot
14 of years is just fine. Things may change such
15 as technology, such as air standards, such as
16 perhaps even the use of land in that

17 neighborhood and it is consistent with zoning
18 ordinances I'm sure across this country.
19 Special Uses have a time certain for beginning
20 them.

21 MR. HEATON: Right, and I will tell you --
22 you know, you weren't aware of the history on
23 this, but we pushed Chris and his -- his fellow
24 partners pretty hard that rather than having us

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1 go through a Special Use Permit it made more
2 sense we thought to rezone this property as
3 industrial and then we don't have any of these
4 concerns whether it runs with the land and how
5 long it lasts and the County said -- or Chris
6 said, listen, this is the way -- we would prefer
7 to do a Special Use, so we backed off and --

8 MR. TONNE: That's probably for control
9 too, but you know, it's our County --

10 MR. HEATON: It is.

11 MR. TONNE: -- and you're part of it,
12 so --
13 MR. GRATTON: Well, if we have to err on
14 this I would just as soon err with the opinion
15 of our own legal counsel and there's nothing in
16 here to me that seems like it's unreasonable and
17 I don't think it would seem unreasonable to any
18 future people sitting here. There's not --
19 everybody can move forward in good faith.

20 MR. HEATON: So the or other significant
21 delay in obtaining governmental permits, your
22 feeling is that should stay in -- I mean that
23 should come out? Excuse me.

24 MR. TONNE: Correct, should be stricken.

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1 MR. HEATON: Okay. Can I just -- and I
2 don't mean to confuse you. I was a little
3 confused myself. Chris and I talked about maybe
4 -- on that first paragraph there were some other
5 minor changes to the language and Chris, do you

6 want me to recite that or --

7 MR. ZIBART: Sure, why don't you recite
8 that.

9 MR. HEATON: Okay, and I'm looking at --

10 MR. GRATTON: Are we still talking about
11 the same one?

12 MR. HEATON: Yes, same one. I think the
13 language says should a lawsuit or an appeal of
14 the County ordinance, it starts out that way in
15 the third sentence and we were -- we suggested
16 after the word should it would say should a
17 court challenge to the ordinance granting the
18 Special Use or other lawsuit delay the start of
19 construction the time for commencing
20 construction under the Special Use Permit shall
21 be tolled and the next sentence just refers -- I
22 take that back. The next sentence would be
23 correct if we take out the language about the
24 significant delay in permitting, so that's the

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1 only change.

2 MR. ZIBART: That sounds fine.

3 MR. HEATON: That's where we're going to
4 go it looks like if we insert that and probably
5 back up to the second line where it says
6 construction on the property, again, we would
7 define that as consisting of 20 acres. Is that
8 all right, Chris?

9 MR. ZIBART: Sure.

10 MR. HEATON: All right. Thank you.

11 MR. GRATTON: So you do concur with that;
12 is that correct?

13 MR. ZIBART: Yes, I think that's the --
14 basically the same meaning as what we have here
15 but perhaps a little clearer and therefore I
16 think it's a good idea.

17 MS. DAVIS: Could you read that back?

18 MR. ZIBART: Should a court challenge to
19 the ordinance granting the Special Use or other
20 lawsuit delay the start of construction the time
21 for commencing construction under the Special
22 Use permit shall be tolled.

23 MS. DAVIS: Thank you.

24 MR. ZIBART: That sounds fine to me.

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1 MR. HEATON: So just -- so when I call --
2 when we talk about this with Rentech and John's
3 superiors that the -- the concern you have again
4 for the significant delay is you don't want to
5 get into a lawsuit over it, that's your concern.
6 Okay. I think we understand then.

7 MR. GRATTON: All right. Are we ready to
8 move forward? We skipped over the first one,
9 transferability of the Special Use. I think we
10 were in agreement on that; is that correct?

11 MR. ZIBART: That's right, Mr. Chairman.

12 MR. GRATTON: No issues there?

13 MR. ZIBART: That's right, and so we tried
14 to capture the Board's discussion on that and as
15 far as I know Rentech thought we did fine
16 capturing that and if the Board agrees then I
17 don't think there's anything that we need to do
18 with that.

19 MR. HEATON: And what issue is that, I'm
20 sorry, Chris?

21 MR. ZIBART: The transferability of the
22 permit.

23 MR. HEATON: Okay. Can I just raise one
24 thing, I -- when we were here last time you

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1 indicated I think that it was your understanding
2 that the -- that a Special Use -- it's been your
3 experience and your intent that such a Special
4 Use runs with the land. I think that was the
5 language you used and Chris came up with --
6 prefers not to have that language, but rather
7 say it's transferable to a third party in the
8 future and as long as we understand we're
9 talking about the same thing that
10 transferability is acceptable to us.

11 MR. GRATTON: So on the Appendix 3 I'm
12 looking at Item No. 1 there, the finding and

13 that's the language we're going to use; is that
14 correct? I believe that's acceptable to
15 everyone.

16 MR. HEIDENREICH: Uh-huh.

17 MR. TONNE: These are recommendations
18 which we refer to here as Appendix 3, but in
19 fact, the motion is as drafted -- I'm looking at
20 Page 8, so just to say what is the language
21 maybe we should look at this because that's
22 eventually our motion perhaps.

23 MR. ZIBART: And I think -- I think they
24 track, Bill.

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1 MR. TONNE: I think they do, but he was
2 referring to one -- I think we really should
3 refer to Page 8 here of the draft rather --
4 which has it all.

5 MR. ZIBART: There are a couple -- they do
6 track and where -- I guess in the -- in the
7 Appendix 3 where there's a discussion and a

8 finding sometimes that finding is such that
9 maybe on some of air pollution issues where the
10 Board decided not to put any special condition
11 on the permit where that -- it doesn't result in
12 any special condition going on the permit, so
13 there is nothing that corresponds to it further
14 up in the document. We'll get to a couple of
15 those as we look through them.

16 MR. TONNE: Okay. I'll follow along. If
17 I'm not okay I'll let you know.

18 MR. GRATTON: Okay, and it's good to keep
19 double-checking.

20 MR. ZIBART: Right.

21 MR. GRATTON: All right. Are we ready to
22 move along to Section 3 then which is the
23 approval of Phase 2 at the same time as 1 and
24 1A? This is what I think you alluded to

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1 earlier, Bill.

2 MR. TONNE: Yeah.

3 MR. GRATTON: Is there additional

4 discussion there?

5 MR. ZIBART: This was one that in terms of

6 the change from what you saw late last week

7 after some further discussion we decided rather

8 than using the phrase construction and operation

9 of Phase 2 is limited to that set forth in the

10 permittee's testimony, that it might make more

11 sense to say that the Phase 2 would be

12 consistent with the permittee's testimony, so

13 that's the change we're suggesting there.

14 MR. GRATTON: Does everybody have the

15 correct verbiage there? Instead of limited to

16 it's consistent with.

17 MR. TONNE: Why is -- is there -- what's

18 the need for consistent rather than limited?

19 MR. REESE: Because limited is a

20 limitation. Consistent means that it follows

21 and tracks what they said that they would do.

22 It's a difference in semantics.

23 MR. ZIBART: When Mr. Diesch went through

24 his discussion of what Phase 2 entailed he

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1 didn't mention every lug nut and every pipe and
2 so on. He told us what it was -- you know, what
3 it was going to be. If we say that it's limited
4 to what he said in his testimony I guess there
5 would be a worry on Rentech's part maybe that if
6 he left out a particular pipe or whatever that
7 they wouldn't be able to build that pipe and
8 that's not what we meant. As long as it's
9 consistent with what he said that's what we're
10 talking about, so that's why we put that like
11 that.

12 MR. JANSEN: And you did check the
13 testimony?

14 MR. ZIBART: Uh-huh, oh yeah.

15 MR. JANSEN: Mr. Chairman, the only thing
16 I want to mark in the testimony is just the
17 cover page that says County of Ogle on the front
18 and if we could change that.

19 MR. GRATTON: Oh, the court reporter
20 put --

21 MR. JANSEN: It's pretty close, but those
22 are the kinds of things that come back and bite
23 you.

24 MR. GRATTON: Good catch. All right. Are

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1 we ready to move on then to Section 4 and this
2 is -- make sure we're -- 4 is not the same on
3 both of these.

4 MR. ZIBART: Right, we had two -- I
5 mentioned the air pollution permitting. We have
6 two changes to the findings -- two changes in
7 the wording of the findings. As I say, these
8 don't result in any changes to the conditions or
9 statements at the end of the findings of fact
10 themselves, but these are just sort of
11 rewordings. It's -- I think the meaning is
12 pretty similar and these were suggested by
13 Rentech and staff has no problem with them.

14 MR. GRATTON: So we're looking at the

15 color changes then in that document?

16 MR. ZIBART: That's right, and if the
17 Board agrees with those we would make those --
18 make those changes in the findings.

19 MR. GRATTON: This is on the air pollution
20 permitting?

21 MR. HEATON: Chris, they're looking at
22 what you prepared today?

23 MR. ZIBART: That's right.

24 MR. HEATON: Okay.

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1 MR. GRATTON: Are there any concerns with
2 the language?

3 MR. HEIDENREICH: No.

4 MR. TONNE: No.

5 MR. GRATTON: Okay. We can move on then
6 to unplanned releases, Section 5.

7 MR. ZIBART: This is the same type of
8 thing.

9 MR. GRATTON: Again, we have some changes.

10 It makes it more clear, but doesn't change the
11 intent or the meaning; is that correct?

12 MR. ZIBART: That's right.

13 MR. GRATTON: Is everybody comfortable
14 with that? We're ready to move on to noise
15 then.

16 MR. ZIBART: This is another one where we
17 tried to work on the language to correctly
18 reflect what the Board's discussion was when you
19 last met and so we reworked that sentence a
20 little bit from what we wrote last week to try
21 to correctly reflect that. One thing that I
22 would like the Board to discuss, if you would,
23 is this definition of normal working hours.
24 What we had sketched out and honestly I don't

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1 think this is based on anything in the testimony
2 or in the transcript, but just based on maybe
3 what lawyers think normal working hours are. We

4 had put down 7 a.m. to 5 p.m. Rentech has asked
5 if that could be extended an hour in each
6 direction, 6 a.m. to 6 p.m. My -- my only -- my
7 worry on that is on the -- is on the morning
8 side, not the evening side. Most city
9 ordinances that -- most cities that have a noise
10 ordinance it usually kicks in at 7 a.m. or ends
11 at 7 a.m. The Pollution Control Board
12 regulations which we heard about at the
13 hearings, those go from 10 p.m. to 7 a.m., so
14 sort of focussing in on when people are
15 typically asleep. But in both of those, you
16 know, it would be 7 a.m. To me starting the
17 heavy duty construction noise at 6 a.m. seems a
18 little early, so that was our -- that was our
19 sense, but it's not based on anything --
20 anything more or less than that. At my house if
21 stuff started going on at 6:15, that would be
22 unwelcome.

23 MR. TONNE: That's a pretty good point to
24 be consistent with some of the other regulations

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1 and 6 a.m. is a little early. Perhaps not in
2 June, but most other months. I don't know how
3 you feel, other Board members, but 7 to 6 p.m.
4 or 7 to 8 p.m. I think would be acceptable,
5 7 a.m. to 8 p.m., I don't know.

6 MR. HEIDENREICH: If we get into distance
7 to the closest residence, wasn't it a mile? Are
8 we really going to, you know, bother somebody at
9 6 a.m. a mile away with a bulldozer?

10 MR. GRATTON: Well, what we're saying is
11 that we're going to comply with the Pollution
12 Control Board's noise levels and I think Rentech
13 has agreed to abide by them no matter what time
14 of day it is, but certainly if there are noises
15 that, oh -- you know, repetitive noises that
16 might fall within the guidelines let's say that
17 might cause you to, you know, lose sleep if they
18 were carried on during, you know, overnight
19 hours as compared to daytime hours, I think
20 that's what our intent was to try to limit those
21 types of activities whether it's the bulldozer
22 or the pile driver or whatever it is to normal

23 waking hours for people versus -- there's going
24 to be noise during construction and operation.

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1 I think we all agree on that and the noise is
2 going to be limited to the control board's
3 levels. However, we don't stick a thorn in
4 people's side even though it's within those
5 guidelines by doing it all night if we don't
6 have to. I think that was the intent of our
7 discussion.

8 MR. ZIBART: We talked about the Pollution
9 Control Board regulations and a lot of that --
10 that first sentence there, remember, is not
11 talking about construction so much as, you know,
12 operation, you know, and we were saying, well,
13 there's some regulations out there, you ought to
14 comply with them. One of the Board members --
15 was it you, Bill -- or one of the Board members
16 at the last hearing said, well, what about

17 construction noise, isn't there going to be
18 construction noise and there was a discussion
19 about that and that they ought to try to sort of
20 schedule themselves to try to focus the
21 construction noise in during the -- some of the
22 daylight hours or the working hours or whatever
23 you want to call them, so that's what -- we were
24 trying to work that second sentence, so now

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1 we're just hung up on the hours of the day. I
2 suppose we could knock the parenthetical out
3 altogether and just leave normal working hours
4 undefined.

5 MR. HEATON: Maybe we can solve this.
6 John just mentioned that -- I think you said
7 Pollution Control is 7 to 10 normal working
8 hours. We're going to be working at 12-hour
9 shifts, so John said that if you're concerned
10 about 6 a.m. like Chris would be, make it 7 to 7
11 then.

12 MR. GRATTON: Is that when your shift
13 starts, John, 7 to 7 or --

14 MR. DIESCH: I don't -- a typical shift
15 will probably start 6:30, but you know, by the
16 time you do safety meetings and that stuff the
17 heavy work won't get started until 7 o'clock.

18 MR. JANSEN: Is that normal operations
19 you're defining?

20 MR. DIESCH: No, this is construction.
21 I'm just talking -- this time is all related to
22 construction. In normal operations things don't
23 -- I mean, noise levels don't change day and
24 night.

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1 MR. HEATON: This will keep us three hours
2 under the Pollution Control Board's concern but
3 at least it gives us a 12-hour shift.

4 MR. GRATTON: Okay. I think what I'm
5 hearing everybody say is 7 a.m. to 7 p.m. is

6 acceptable; is that correct? Okay. We can move
7 on. Anything else on the noise? Okay. Did we
8 have anything additional under water use that we
9 need to say other than we have to comply with
10 the -- with the regulations? Okay. Next is
11 traffic -- traffic impact.

12 MR. ZIBART: This again is a rewording
13 that mainly is trying to I think more closely
14 track what we said in the testimony, but the
15 idea is that -- what we had drafted last week I
16 think maybe made it seem as if Rentech was going
17 to be performing the study and probably IDOT
18 performs the study and Rentech does whatever
19 they need to to cooperate with that, so we've
20 changed that to say that.

21 MR. GRATTON: That sounds agreeable. I
22 think that was the intent. Okay. Lighting is
23 the next item and I think there was a suggestion
24 to insert a phrase in there which -- we talked

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1 about utilizing downward and inward facing
2 lighting wherever possible wherever such
3 lighting may be safely used.

4 MR. ZIBART: Right. The wherever possible
5 -- I guess we're dealing with engineers at
6 Rentech and engineers think anything is
7 possible, so we -- if we would say inward facing
8 lighting wherever possible they think that means
9 all the time and that's not what we meant, so
10 this more correctly reflects what we were trying
11 to go to is when it can be safely they should do
12 it that way.

13 MR. GRATTON: That was our intent I
14 believe. All right.

15 MR. DIESCH: Was that put in the record --
16 I'm just curious -- that comment? Yes, it was.

17 MR. GRATTON: Then we have other
18 environmental permits and were there any changes
19 there?

20 MR. ZIBART: Right. The only change here
21 -- again, we talked about this briefly before
22 which was to delete those two columns of the
23 table so that the table would just list off the
24 permits as opposed to these comments and the

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1 phrase that we've added there is just to make
2 clear that if -- this list is not absolutely
3 definitive, that maybe some of these permits
4 that you would -- you know, you might need it,
5 but upon dealing with the agency and you know,
6 doing your study it turns out that you don't
7 need that kind of permit then you don't need
8 that permit, so we just added the phrase saying
9 they need to get it so long as it -- so long as
10 it's applicable.

11 MR. GRATTON: Part of language there that
12 Table 1 will be attached and we will be looking
13 at just that first column of that table; is that
14 understood?

15 MR. HEIDENREICH: Uh-huh.

16 MR. GRATTON: Any concerns or questions?
17 All right. That brings us to the end of that
18 segment. There was some discussion in here

19 under staff findings regarding the Comprehensive
20 Plan and I think the report was that this does
21 indeed comply with many aspects of the
22 Comprehensive Plan. I know, Tom, you had -- you
23 wanted to maybe discuss that more. Did you have
24 any other --

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1 MR. HEIDENREICH: No, I think it's
2 covered.

3 MR. GRATTON: Any additional --

4 MR. HEIDENREICH: No.

5 MR. GRATTON: -- things on the
6 Comprehensive Plan?

7 MR. HEIDENREICH: Not for me.

8 MR. GRATTON: I'm at the end of my list.
9 Are there other things we need to cover?

10 MR. ZIBART: Not for the staff.

11 MR. HEATON: Can I just raise one other --
12 this is the lawyer thing. Right now the plant
13 has a Special Use so it can operate under what's

14 called the basic condition Special Use and if
15 for some reason we don't get our permits or for
16 whatever reason the plant doesn't go forward
17 even though we're asking for this new Special
18 Use for the existing land that we're operating
19 on and this new land that we're acquiring from
20 Newt and Hilby that -- that if we -- you know,
21 it wouldn't take away our Special Use for the
22 existing plant, I think that we all understand
23 that. Okay, so I think we've covered all the
24 issues we wanted to.

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1 MR. GRATTON: That's your understanding,
2 isn't it, Linda?

3 MS. DELVAUX: Yes, uh-huh.

4 MR. ZIBART: I'm not sure -- I'm sorry.
5 I'm not sure I heard that.

6 MR. HEIDENREICH: You do take away the
7 existing use once the use is stopped, ceased for

8 a period of time?

9 MR. REESE: No. The question was if for
10 whatever reason the plant doesn't get built the
11 new -- the new operations do not get built so
12 that the Special Use Permit lapses by the
13 three-year period then the existing plant is
14 continuing to operate all this time, then just
15 because we're asking for a Special Use Permit
16 for the new land and to encompass the existing
17 land as well within this new Special use Permit
18 then that does not eliminate the Special Use
19 Permit under which the existing plant is
20 operating now, I would be able to continue to
21 operate as before even though the three years
22 have gone by, so --

23 MS. DELVAUX: Right. The continuing
24 operation -- if this should not proceed the

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1 continuing operation can continue as it -- as it
2 has under its current status.

3 MR. HEIDENREICH: My only point was that
4 if you shut the plant down you may use --

5 MR. REESE: Well, yeah, that's a different
6 question. There is something in your zoning
7 ordinance that addresses that too, so --

8 MR. HEIDENREICH: Okay.

9 MR. GRATTON: I just have one further
10 thought and we didn't talk about it. There was
11 some CRP land in the land being acquired. Will
12 any of that be utilized for the expansion or
13 will that remain --

14 MR. DIESCH: Yes, we're going to -- we'll
15 have to buy that back.

16 MR. GRATTON: Okay, so --

17 MR. DIESCH: It's just a few acres.

18 MR. GRATTON: Let's just put it in the
19 record then that you understand that that will
20 have to be bought back on the CPR contract that
21 exists.

22 MR. DIESCH: Yes.

23 MR. GRATTON: One other just kind of an
24 informational question I had. What happens to a

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1 plant such as yours if operations did cease to
2 exist?

3 MR. DIESCH: If operations cease to exist?

4 MR. GRATTON: Yeah, if --

5 MR. DIESCH: If the plant quit running?

6 MR. GRATTON: If it becomes not
7 economically viable to continue with a plant
8 such as that is there a cleanup or a reclamation
9 that can be done to --

10 MR. DIESCH: Well, it would be the
11 responsibility of whoever owns it at that time
12 to -- you know, if it was going to be razed to
13 the ground, you know and cleared off, yeah, I
14 mean there's responsibility and whatever, you
15 know, sampling if there's some contamination in
16 the soil or something, whoever owns it would
17 have to clean that up. My expectations would be
18 if the plant would shut down it would probably
19 still operate as a terminal because it still has
20 access to water where you could bring products

21 in and ship out similar to what you see, you
22 know, at some of the other terminals in town.
23 That's my -- if it ceased to operate as a
24 manufacturing plant that would be my

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1 visualization.

2 MR. HEIDENREICH: I think you posed a good
3 question, probably something we didn't touch on.

4 MR. GRATTON: Well, unfortunately when a
5 plant such as yours or any other plant if it
6 doesn't exist anymore it's probably because it's
7 unprofitable or because the company went into
8 bankruptcy or something like that. Sometimes
9 funds are not available to -- for reclamation or
10 cleanup and my question is just, you know, is
11 the County then -- you know, do we sit here with
12 some liability as far as what do we do with
13 this?

14 MR. HEATON: I think Chris would have to
15 answer that.

16 MR. REESE: You know, I can tell you that
17 in Sterling, Illinois when the Northwestern
18 Steel & Wire Company plant went out of business
19 it went out of business because the company
20 filed bankruptcy, so there obviously was no
21 money available to do any cleanup and that land
22 had been contaminated to a great degree over the
23 hundred and twenty years that it operated there
24 and what is happening down there now is that the

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1 USEPA and the Illinois EPA have in conjunction
2 with the City of Sterling come out and awarded
3 several grants to first assess the circumstances
4 there and then also provide funds to clean it
5 up. But you know, there's no money in the -- in
6 the company's coffers because it went bankrupt,
7 so --
8 MR. DIESCH: There's a superfund program,
9 Jim, you want to explain the superfund program

10 where products -- it's for doing -- cleaning up
11 the --
12 STAFF MEMBER: For abandoned properties
13 there's --
14 MR. GRATTON: We're familiar with that,
15 that's why we have questions.
16 STAFF MEMBER: You're talking about an
17 IEPA grant as well that could be available to
18 help clean up properties, but the County would
19 not be fully liable. I guess he would have to
20 answer that.
21 MR. GRATTON: Needless to say one of the
22 reasons we're going through these proceedings is
23 to in the hope -- is in the hope that this will
24 not become an issue and we go into this with you

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1 in good faith I think if we vote in the
2 affirmative that this will be a viable operation
3 going forward. We're I think at this point
4 ready to put this into the form of a motion.

5 MR. TONNE: Did we exhaust that question
6 then about reclamation?

7 MR. GRATTON: I don't think there's an
8 answer.

9 MR. TONNE: No answer, okay.

10 MR. GRATTON: I didn't hear one or it's --
11 not to say it's not an issue. It's just an
12 issue that doesn't have a --

13 MR. HEIDENREICH: Doesn't have an answer
14 as of right now. I know when we do quarries
15 which are Special Uses we do make provisions for
16 reclamation of those quarries when they are no
17 longer operational.

18 MR. TRANEL: This is pretty tough to put
19 down.

20 MR. HEIDENREICH: That's pretty tough and
21 that's something that wasn't brought up at the
22 hearings either.

23 MR. ZIBART: Right. My observation would
24 be based on the description of the operations

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1 and the profitability or lack thereof today it
2 seems like the risk would be greater just
3 letting it -- letting it go as now versus giving
4 the Applicant the opportunity to try to
5 redevelop it into something more profitable.

6 MR. GRATTON: I think that's my point in
7 stating that, but we did that with the wind
8 towers too. You know, there's enough steel in
9 the wind towers to reclaim it. I'm not sure how
10 much steel or salvageable material there is in a
11 chemical plant, but anyway I think we're ready
12 then if there are no other comments or concerns
13 on any of the findings or the standards or the
14 Comp Plan or any other issue to put this in the
15 form of a motion either to -- you know, I think
16 we should put an affirmative motion and then we
17 can address it as such. Do we have some
18 language here to help us?

19 MR. TONNE: I can make a motion to approve
20 the petition by Rentech based on the conditions
21 we've been talking about just previous to this
22 which are well delineated and before us and have

23 all been cited. I'm not going to repeat them
24 because there have been a dozen in number not

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1 the least of which is the Comprehensive Plan, so
2 that's my motion.

3 MR. HEIDENREICH: Second.

4 MR. GRATTON: Okay. We have a motion to
5 approve this request and a second. Motion by
6 Bill, second by Tom. With all those
7 contingencies built into here especially those
8 which have been identified under the standards,
9 findings of fact and compliance with the
10 Comprehensive Plan.

11 MR. TONNE: And I'm speaking to the
12 language that's been agreed to tonight here with
13 regard to those --

14 MR. TRANEL: And the new concept in the
15 new --

16 MR. GRATTON: Except for --

17 MR. TRANEL: -- with the corrections --

18 with the corrections made.

19 MR. GRATTON: Okay. Is there a further

20 discussion on this motion? Anyone? Okay.

21 Hearing none we will call for the question.

22 Melissa, would you poll the members?

23 MS. SOPPE: Tom Heidenreich?

24 MR. HEIDENREICH: Aye.

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1 MS. SOPPE: Nick Tranel?

2 MR. TRANEL: Aye.

3 MS. SOPPE: Bill Tonne?

4 MR. TONNE: Aye.

5 MS. SOPPE: Susie Davis?

6 MS. DAVIS: Aye.

7 MS. SOPPE: Mel Gratton?

8 MR. GRATTON: Aye.

9 (By voice vote five ayes.)

10 MR. GRATTON: Okay. Based on the result

11 of our findings and our vote we will forward

12 this to the County Board with the conditions
13 attached for their approval or disapproval or
14 consideration at their next regularly-scheduled
15 meeting. I want to say, gentlemen, that I thank
16 you for your time and this has been a proceeding
17 where we've covered a lot of territory and we've
18 done it in a very, I think fruitful and
19 educational way for all of us and I think the
20 fact that there was no negative testimony
21 regarding the chemical plant speaks well of your
22 ongoing operation and I think you've been a good
23 corporate citizen and I hope that we can
24 continue to operate like that in the future, so

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1 good luck with your process.

2 MR. DIESCH: Thank you very much. I
3 certainly appreciate your help in this process.

4 MR. HEATON: Thank you.

5 MR. REESE: Thank you.

6 MR. GRATTON: That concludes our

7 regularly-scheduled business for this evening.

8 (Whereupon the zoning hearing was

9 concluded regarding Rentech

10 Energy Midwest Corporation at

11 8:20 p.m. Further public

12 comment took place regarding

13 Black Water gun range.)

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1 Now on this 28th day of February, A.D.
2 2007, I do signify that the foregoing testimony was
3 given before the Jo Daviess County Zoning Board of
4 Appeals.

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Melvin Gratton, Chairman

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Linda Delvaux,
Zoning Administrator

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