

SENATOR MORRISSEY: Okay, my problem is we go directly to the Supreme Court now. That is a trial on the record. So there is a question that I...let's just use an example. There are some springs up in Boyd County that a lot of people feel that the questions haven't been answered, so figure, let's say we have got some geologists up there working on that, private geologists. DEC is confident that there is no connection there. They license the facility. The developer didn't address that question. DEC is comfortable with that. Somebody says...and the license is granted. Then these private geologists come up with studies that say, gosh, there is a connection to these springs and they do flow under this site, and so when we go to the Supreme Court under the present system, and we have...even though we have evidence that is proved that this facility now, this should be considered in the evidence, under the present language, can we consider that?

SENATOR LANDIS: Trial de novo on the record means the existing record. I think we should search for if there are any exceptions to that, but I do not know of any. I think what you do is you go back to the original action and, basically, seek in the administrative agency a rehearing or file a collateral attack of some kind at that point. That is what I would guess would be the appropriate procedure for new information.

SENATOR MORRISSEY: Okay, thank you, and my concern is that we are not allowing that, that we are restricting, and like I said, I am wading in waters that are very unfamiliar to me, but those of you that do know about this, are we restricting the ability to enter new information that may come up after the fact? Maybe the things that we see up there now are things that we consider not a question, as in the springs, the developer doesn't even look at them, says they are not a problem. The DEC is comfortable with that, but later we come up and say, gosh, there is a direct connection there, through...and we have hard scientific evidence that says something like this could happen. The way this is written now, the way I understand it, we are not allowing anyone to consider that. It is, basically, tough luck, we are going straight to the Supreme Court, so we can expedite it, and because we are doing that, we can't consider any information now. I had no intent on plowing brand new ground and starting hearings in the Supreme Court that allowed new information to be entered, and if that is the case and no new information can be entered in the Supreme Court in any way, then we shouldn't be there right away. We should give one more