

1 38011

2 STATE OF ILLINOIS)
3 COUNTY OF KANE) SS.

4 BEFORE THE ILLINOIS
5 POLLUTION CONTROL BOARD

6 OLIVE STREIT and LISA STREIT,)
7 Complainants,)
8 vs.) PCB 95-122
9 OBERWEIS DAIRY, INC., RICHARD)
10 J. FETZER and JOHNNIE W. WARD,)
11 d/b/a Serve-N-Save, and)
12 RICHARD J. FETZER, Individually,)
13 AMOCO OIL COMPANY, and MOBIL)
14 OIL CORPORATION,)
15 Respondents.)

14 CONTINUED REPORT OF PROCEEDINGS had at the
15 hearing of the above-entitled matter, before Mr. Michael
16 L. Wallace, Hearing Officer, taken at the Old Kane County
17 Courthouse, 100 South Third Street, Geneva, Illinois, on
18 the 22nd day of January, A.D. 1997, at the hour of 9:30
19 a.m.

21 PRESENT:

22 LAW OFFICES OF MURPHY & MURPHY, P.C., by
23 MR. J. ROBERT MURPHY,
24 340 North Lake Street
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1 Aurora, IL 60507
2 (630) 896-9711

3 appeared on behalf of Complainant;

4 ALTHEIMER & GRAY, by
5 MR. SAMUEL T. LAWTON, JR., and
6 MR. MYLES D. BERMAN,
7 Suite 4000
8 10 South Wacker Drive
9 Chicago, IL 60606
10 (312) 715-4000

11 and

12 DREYER, FOOTE, STREIT, FURGASON & SLOCUM, P.A., by
13 MR. RICHARD C. SLOCUM,
14 900 North Lake Street
15 Aurora, IL 60507
16 (630) 897-8764

17 appeared on behalf of Respondent Oberweis
18 Dairy, Inc.;

19 TYLER & HUGHES, P.A., by
20 MR. LLOYD J. TYLER,
21 320 East Indian Trail
22 Aurora, IL 60505
23 (630) 897-0559

24 appeared on behalf of Respondent Richard J.
Fetzer;

MOHAN, ALEWELT, PRILLAMAN & ADAMI, by
MS. BECKY S. MC CRAY,
Suite 325, First of America Center
1 North Old Capitol Plaza
Springfield, IL 62701-1323
(217) 528-2517

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appeared on behalf of Respondent Amoco Oil
Company; and

HODGE & DWYER, by
MS. JENNIFER M. CRAIN,
808 South Second Street
Springfield, IL 62704
(217) 523-4900

appeared on behalf of Respondent Mobil Oil
Corporation.

1 HEARING OFFICER WALLACE: All right. Pursuant to
2 the direction of the Illinois Pollution Control Board, I
3 now call Docket No. PCB 95-122.

4 This is in the matter of Olive Streit and Lisa
5 Streit versus Oberweis Dairy, Inc., Richard J. Fetzer and
6 Johnnie W. Ward, d/b/a Serve-N-Save, and Richard J.
7 Fetzer, Individually, Amoco Oil Company, and Mobil Oil
8 Corporation.

9 May I have appearances for the record, please,
10 starting with the Complainant?

11 MR. MURPHY: For Complainant Olive Streit and Lisa
12 Streit, J. Robert Murphy, Law Firm of Murphy & Murphy,
13 P.C., Box 460, Aurora, 60507. We represent the
14 Complainant.

15 HEARING OFFICER WALLACE: For Oberweis Dairy?

16 MR. LAWTON: Your Honor, Samuel T. Lawton, Jr.,
17 representing Oberweis Dairy, Rick Slocum, Myles Berman.
18 Lawton and Berman are from Altheimer & Gray.

19 MR. SLOCUM: Dreyer, Foote, Streit, Furgason &
20 Slocum, P.A., 900 North Lake Street, Aurora, Illinois,
21 60506.

22 HEARING OFFICER WALLACE: For Richard Fetzer?

23 MR. TYLER: Lloyd Tyler, your Honor, Tyler and
24 Hughes, P.O. Box 4425, Aurora, Illinois, 60507.

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1 HEARING OFFICER WALLACE: Amoco Oil?

2 MS. MC CRAY: Becky McCray of Mohan, Alewelt,
3 Prillaman & Adami for Respondent Amoco Oil Company.

4 HEARING OFFICER WALLACE: Mobil Oil?

5 MS. CRAIN: Jennifer Crain, Hodge & Dwyer, for
6 Mobil Oil Company.

7 HEARING OFFICER WALLACE: Thank you.

8 Let the record reflect there are no other
9 appearances at today's hearing.

10 My name is Michael Wallace. I'm the Chief Hearing
11 Officer of the Board. I have taken over this case,
12 albeit quite some time ago.

13 I guess preliminarily let's take any matters up that
14 we need to discuss. I'm under the impression that there
15 is further discovery. We probably need to set up some
16 kind of schedule.

17 First of all, are there any preliminary matters that
18 any of the parties want to bring up right now?

19 MR. MURPHY: I think probably under the heading of
20 "housekeeping" we have a number of preliminary matters.

21 One of them is what you've already touched on; that
22 is, that there, I think, on all sides is probably a
23 requirement of updating at least the existing discovery.
24 Whether it extends to add any new fields or areas of

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1 discovery I don't know, but I think everybody is
2 obligated at this point to update the discovery that they
3 have already provided to each other.

4 I know that there has been some work done in contact
5 with the EPA by one or more of the Respondent parties.
6 Therefore, I need to update my FOIA from the EPA.

7 That, of course, is my only source of -- other than
8 the parties, that's my only source of input from the EPA
9 itself is to constantly remind them that I've got a FOIA
10 request in on each one of the parcels involved.

11 So in addition to the need for updating discovery, I
12 think we have to solve the problem of basically where we
13 are today.

14 I understand from your office that you have only
15 scheduled today, and you haven't scheduled tomorrow and
16 the next day and so on. So we're going to have to look
17 at our calendars and probably, you know, pick out some
18 future days.

19 Due to the fact that there is this problem of some
20 discovery in the interim, we have to keep that in mind
21 when we're picking future dates.

22 I think there is probably one more aspect of the
23 case that at least needs to be discussed, and it goes to
24 the question of the preferences of the Hearing Officer.

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1 Since Mr. Wallace is in effect not the same hearing
2 officer as started the hearing, I wonder if it would be
3 better, just from the standpoint of familiarizing
4 ourselves and our memories with the thing, if we treated
5 this as if we were like starting over, specifically, for
6 instance, when we broke for continuance last time, which
7 was about a year ago, Mr. Mehrens here was on the stand.

8 He had not been cross examined. We had not decided
9 whether his cross examination was going to kind of be on
10 a parcel-by-parcel basis in that we had talked mainly --
11 in his testimony mainly about one of the three sites. As
12 I recall, it was the Mobil site.

13 We had not decided and we had not even discovered
14 whether or not Mobil's Counsel wanted it or didn't want
15 it that way to, in effect, break him there and merely go
16 ahead with his work on the Mobil site, see?

17 All of these things, I think, kind of relate
18 together, and I can't put them in a priority order; but I
19 think those are the things that we have to talk about as
20 a housekeeping matter before we proceed with anything
21 else.

22 HEARING OFFICER WALLACE: Okay. Mr. Lawton?

23 MR. LAWTON: I think Mr. Murphy is certainly
24 itemizing some, if not all, of the issues that are in

1 front of the Hearing Officer at this point.

2 With respect to the matter of starting anew, which I
3 gather would be at least an alternative that Mr. Murphy
4 has suggested, I'd like to confer with my co-counsel at
5 some time before stating our position on that.

6 HEARING OFFICER WALLACE: Let me interject here.

7 It's my intention to try to pick up from December of
8 a year ago and move forward from there.

9 MR. LAWTON: Okay.

10 HEARING OFFICER WALLACE: I do regret the delay in
11 time, for which I am somewhat responsible, but the Board
12 did take quite some time in disposing of the motion for
13 summary judgment; and I did want to go another day or
14 two, but then I'm told that I couldn't get this room.

15 So then it seemed to be that this would be a perfect
16 time, since it is difficult to get dates from everyone on
17 conference calls and things like that or communication is
18 somewhat limited because there are several -- all of us
19 in this group, this would be a good opportunity to lay
20 out a future schedule and try to keep going and try to
21 wrap this up as quickly as we can, all things considered.

22 My preference from you, Mr. Murphy, is that you
23 continue with Mr. Mehrens and present your case. Unless
24 there is some other agreement between all the parties, I

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1 don't really like to break up -- do cross examination and
2 then go back to direct.

3 MR. MURPHY: All right.

4 MS. CRAIN: Mobil will object to going back and
5 revisiting Mr. Mehren's testimony regarding our site.

6 I think on Page 189 of the transcript Mr. Murphy did
7 indicate that he had rested his case with respect to the
8 Mobil site and Mr. Mehrens' testimony.

9 We will object to going back and redoing that
10 testimony over again. It's in the transcript. I don't
11 think that there is any reason to redo it.

12 HEARING OFFICER WALLACE: In terms of updating
13 discovery, do the parties have updated discovery material
14 to exchange at this time?

15 MS. MC CRAY: I would just like a clarification.

16 Are we reopening discovery or are we requiring
17 supplemental disclosures?

18 I think there has sort of been a confusion of the
19 two issues. Disclosure would be those documents that a
20 party intends to present at the hearing. Discovery would
21 be documents that perhaps a party wasn't going to use but
22 that they may owe to another party.

23 For example, we had a request for documents from
24 Oberweis that was never responded to that the prior

1 hearing officer allowed Oberweis not to respond to when
2 she closed discovery on December 18, 1995.

3 Would those types of issues be reopened? Could we
4 get discovery from among the parties? Are we only
5 allowed supplemental disclosures of documents we will use
6 at the hearing ourselves?

7 HEARING OFFICER WALLACE: It was my understanding
8 that we would just try to do supplemental disclosures.

9 I'm not aware -- are there any outstanding discovery
10 questions that have not been met?

11 MS. MC CRAY: There were requests at the time the
12 prior hearing officer closed discovery on December 18th.

13 In our request to produce documents, we had a motion
14 to compel pending, which the prior hearing officer ruled
15 something to the effect that the parties should have
16 enough documents by now. So I'm not requiring anything
17 further.

18 I think the prior hearing officer did confuse the
19 disclosure versus the discovery.

20 HEARING OFFICER WALLACE: Now I'm confused.

21 Discovery has been closed, and all motions have been
22 ruled on in discovery, and your requests have been denied
23 for further discovery production; is that correct?

24 MS. MC CRAY: Right, but we would move that we be

1 allowed to -- perhaps not to file new discovery requests
2 but that the ones that were out there that were closed on
3 December 18th, 1995, be responded to at this point.

4 Those were detailed in our motion to compel to the
5 hearing officer in December '95.

6 HEARING OFFICER WALLACE: I do confess I thought
7 discovery was closed.

8 My only point in bringing it up is if there were any
9 supplemental issues that had come up in the year
10 intervening since the last hearing.

11 MS. CRAIN: Amoco would agree, also, that
12 supplemental disclosure be allowed.

13 HEARING OFFICER WALLACE: You're telling me that
14 discovery -- that even though discovery was closed,
15 you're saying you didn't get what you wanted?

16 MS. MC CRAY: Correct. We had a motion.

17 HEARING OFFICER WALLACE: But the Hearing Officer
18 ruled that you weren't entitled to it?

19 MS. MC CRAY: She ruled her stack of documents was
20 high enough, and she didn't want to see anything further.

21 MR. LAWTON: I don't know if we would characterize
22 it quite that way.

23 I think that has been ruled on; and reopening it,
24 which is one of the Hearing Officer's privileges, is

1 something we'd object to. I think that's been
2 adjudicated already.

3 What is wanted by supplemental disclosure at this
4 point I can't respond to because I don't know what is
5 sought. I think we have to reserve judgment on that.

6 Obviously, the parties can make such submission as
7 they care to. We're not in a position to agree at this
8 point, and we would object to a vacation of the order of
9 the previous hearing officer with respect to closing
10 discovery.

11 HEARING OFFICER WALLACE: I'm not going to reopen
12 total discovery. We're only going to go on any
13 supplemental disclosures.

14 I thought that we had some out there ready to be
15 turned over or requested, but is that not the case?

16 MS. MC CRAY: When we're talking about disclosures,
17 the prior hearing officer's order was that we disclose
18 the documents we ourselves intend to use, not that other
19 parties request disclosure.

20 My difference in the characterization there is what
21 the parties request among themselves. When we say
22 "supplemental disclosures," are you allowing Amoco to --

23 HEARING OFFICER WALLACE: No, no. Just a minute.

24 I don't want to reopen the entire discovery process,

1 but I do understand that we have not met for a year and a
2 month.

3 If there is anything in that intervening time frame
4 that, you know, one of the parties thinks is necessary
5 and relevant, then certainly bring it up, but I'm not
6 going -- notwithstanding whether the stack is high enough
7 or not, I don't want to reopen the entire discovery
8 process, just for the purpose of whether over the past
9 year and a month something has come up that the parties
10 want to bring forward or we need to address.

11 Is there such a thing? If there is not, then we can
12 move on. This isn't -- I'm not trying to make it a
13 moving target. I'm just trying to get started again.

14 MS. MC CRAY: Amoco would like to make supplemental
15 disclosures, documents in addition to those we disclosed
16 prior to the December '95 hearing that we intend to use
17 at the continued hearing of this matter.

18 MS. CRAIN: I think Mobil will, too. We're trying
19 to put together some documentation.

20 HEARING OFFICER WALLACE: So we're clear, will
21 these disclosures be disclosures of material to be used
22 in your case?

23 MR. LAWTON: You're making reference to matters
24 that have been generated since our last meeting that will

1 be used in the course of the hearing that have not been
2 previously disclosed?

3 Is that the breadth of the disclosure that's sought?

4 HEARING OFFICER WALLACE: Well, if everyone -- as
5 of last December of '95, if everyone was ready to go to
6 hearing at that point, then all disclosures have been
7 made; is that correct?

8 MS. MC CRAY: Could we also, besides new
9 information generated since the last hearing, if there is
10 information we may want to disclose in response to new
11 issues raised by the parties in pleadings filed during
12 the past year?

13 HEARING OFFICER WALLACE: Any objection to that?

14 MR. LAWTON: No. It's limited to those that have
15 been generated since the last hearing. It's not a
16 reopening. It's a supplementation based on what's
17 occurred since we were last together.

18 HEARING OFFICER WALLACE: All right.

19 MR. LAWTON: I want to be sure I understand. I'm
20 not basically objecting to the concept. I want to make
21 sure I understand it.

22 HEARING OFFICER WALLACE: Ms. McCray, would you
23 take a stab at saying all that again?

24 MS. MC CRAY: I think what we have agreed to allow

1 as supplemental disclosures are documents that we or each
2 party will use in their own case generated since the last
3 hearing or to address issues raised in the pleadings
4 since the last hearing began.

5 MR. LAWTON: I'm not quite sure what the last
6 element related to.

7 Could you possibly amplify it?

8 HEARING OFFICER WALLACE: I assume there is -- is
9 there something in the motion for summary judgment?

10 I think that's about the only thing that's been
11 generated that has raised new issues for Amoco.

12 MR. MURPHY: If it please the Court, I'm not sure
13 what is meant by the term "generated" in the passage of
14 time since the last hearing, but I would want it to be
15 clear that they are not only allowed to update and
16 supplement their discovery that has already been
17 terminated with matters that have been generated in that
18 interim, but I think that it should be at the same time
19 required, not just allowed, but it should be required
20 that any interim generating of facts be disclosed to all
21 the other parties, particularly the Complainant.

22 What I'm talking about could be given -- as an
23 example, if you will, let's suppose that one of the
24 parties has been further acting in response to EPA

1 requirements.

2 Let's suppose that they have in the interim done
3 something that the EPA asked them to do or that they have
4 filed something with the EPA showing work that they have
5 done and that this filing has occurred in the interim.

6 I ought to be entitled to know about that, and the
7 fact that it didn't exist at the time discovery was
8 closed has very little to do with it. It's something
9 that I'm entitled to know.

10 Therefore, if we're talking about supplementing the
11 closed discovery with things that have been done in the
12 interim or generated in the interim, all I'm saying is it
13 should be required, not merely allowed.

14 MR. LAWTON: I think it's premature to ask for an
15 order in that regard.

16 I think if there is to be any submission for just
17 material or activities, that we be entitled to make our
18 agreement or objection when we know what that is.

19 I don't think there should be an omnibus statement
20 at this point that requires everything that was done to
21 be submitted without knowing exactly what is being
22 referred to and without the opportunity to make
23 objection.

24 MR. MURPHY: Nobody is talking about making

1 objections. All we're saying is --

2 MR. LAWTON: You're talking about a requirement.

3 HEARING OFFICER WALLACE: Mr. Lawton, were you
4 finished with your statement?

5 MR. LAWTON: Just in response to what I understood
6 Mr. Murphy is stating, if something is to be required,
7 that presupposes that there would be an order at this
8 point.

9 We would like to be in a position to object or make
10 our observations on what's being sought rather than have
11 an omnibus order, which seems to be what Mr. Murphy is
12 suggesting at this point, without an opportunity to --

13 HEARING OFFICER WALLACE: Short of reopening
14 discovery to take care of this, I understand Mr. Murphy's
15 position to be that certain events may have occurred in
16 the last 13 months that he wishes to be made aware of.

17 He does not currently know of all those from all the
18 other parties, and that's basically his request to be
19 added on to what we've said already.

20 I think that that either would or would not bring an
21 objection from the Respondents. I don't know.

22 MR. TYLER: It seems to me Mr. Murphy's request --
23 I'm not objecting -- broadens the whole disclosure from
24 documents to be used in the hearing to documents that

1 were generated since the hearing. There is a big
2 difference between those two things.

3 HEARING OFFICER WALLACE: I think you're right, Mr.
4 Tyler, but that's Mr. Murphy's request at this time.

5 So is there -- that would expand it to -- but again,
6 only you guys can tell me how much has been generated in
7 the last 13 months, whether or not it's a significant
8 amount.

9 Do you want Mr. Murphy to make a specific request
10 for actions that the four Respondents may have taken?

11 MS. MC CRAY: Your Honor --

12 HEARING OFFICER WALLACE: Ms. McCray?

13 MS. MC CRAY: It seems to me that what Mr. Murphy
14 wants is an oral request for production of documents.

15 Amoco, as you may know, was not a party to the
16 Circuit Court action that went on for several years
17 before this action began.

18 Because of that, we had the requests to produce
19 documents out to Oberweis and to Streit. The ones that
20 we talked about before, those two requests were subjects
21 of our motion to compel, some deficiencies in the Streit
22 production, the nonproduction by Oberweis.

23 Amoco would request that if Mr. Murphy be allowed to
24 supplement or have a request to produce orally, that

1 Amoco also be allowed to get the documents it sought that
2 we have not been allowed to get.

3 There could be documents that we've requested for
4 the same purposes that Mr. Murphy wants his. We've never
5 gotten ours because we weren't a party to the Circuit
6 Court action.

7 HEARING OFFICER WALLACE: I understand that.

8 But there is a fairly major distinction in that
9 you're wanting to go back to documents that may have
10 existed prior to December of 1995. Mr. Murphy wants
11 documents that may have been generated since December of
12 1995.

13 MS. MC CRAY: Right.

14 HEARING OFFICER WALLACE: Discovery was closed, and
15 this is not reopening discovery. It's just updating
16 what's happened in the past 13 months.

17 MS. MC CRAY: My point is just that if there were
18 incriminating documents, which seems to be what Mr.
19 Murphy wants, perhaps an incriminating document,
20 something that we may not disclose, we wouldn't use in
21 our own case in chief, he wouldn't have that yet.

22 I would like to make the distinction that Amoco has
23 not had an opportunity to obtain those documents from
24 Oberweis or Streit because of the discovery order cutting

1 off discovery on December 18th of '95.

2 MR. LAWTON: If the Court please, I think that
3 what's being sought here is a reopening of discovery. I
4 think that's not appropriate. Discovery has been closed.

5 HEARING OFFICER WALLACE: I'm sorry. Are you
6 characterizing Mr. Murphy as reopening or Ms. McCray?

7 MR. LAWTON: Ms. McCray's case.

8 MS. MC CRAY: I'm going to characterize Mr. Murphy
9 also as reopening discovery.

10 MR. MURPHY: May I only add that I have no
11 intention of incriminating any party.

12 HEARING OFFICER WALLACE: At least not very much.

13 MR. LAWTON: I guess let's adjourn.

14 HEARING OFFICER WALLACE: Well, for the record, if
15 Mr. Murphy is making a request for what I would
16 characterize as additional reports that may have been
17 generated by any of the Respondents to the Illinois EPA
18 during the last 13 months, are there any objections to
19 voluntarily producing those from any of the Respondents?

20 MS. MC CRAY: Just things -- documents that have
21 been submitted to EPA? Is that your limitation?

22 HEARING OFFICER WALLACE: Yes.

23 MS. MC CRAY: We would agree.

24 MS. CRAIN: No objection.

1 MS. MC CRAY: That would simply -- he would not
2 have to FOIA. We'd give him what he was seeking.

3 HEARING OFFICER WALLACE: It would be quicker than
4 doing a FOIA request.

5 MS. MC CRAY: Amoco would agree to do that.

6 MR. MURPHY: That's some help.

7 HEARING OFFICER WALLACE: Any objection from
8 Oberweis?

9 MR. LAWTON: Can we confer just a minute to discuss
10 that?

11 MS. CRAIN: Mr. Hearing Officer, what Mobil would
12 ask -- I'm not sure that the Complainants have generated
13 anything in that time period. I don't know if Mr.
14 Mehrens has done any additional reports.

15 We would request to be provided with that
16 information as well if there is anything out there.

17 MR. MURPHY: I've written a lot of letters to the
18 EPA. I'll give you those.

19 HEARING OFFICER WALLACE: Have Mr. Fetzer or Mr.
20 Ward generated any reports at all?

21 MR. TYLER: No, your Honor, though I think we would
22 like to see something in writing here before we object or
23 agree.

24 I agree with the Counsel Lawton -- is that his name?

1 I agree with Mr. Lawton we should see something in black
2 and white.

3 MR. MURPHY: I'm not sure what --

4 HEARING OFFICER WALLACE: I don't really see any
5 need to generate anything else.

6 Mr. Murphy has made an oral request for any reports
7 submitted to the EPA, and I'm directing that -- you know,
8 if there is an objection, I'll deal with it. Otherwise,
9 I want those produced to Mr. Murphy.

10 MR. LAWTON: We would like to make an objection and
11 reserve on that determination as to just what it is
12 that's being sought.

13 HEARING OFFICER WALLACE: Any reports sent by the
14 Respondents to the EPA.

15 MR. LAWTON: Reports; is that the term?

16 HEARING OFFICER WALLACE: Reports.

17 MR. MURPHY: Reports.

18 In the devious approaches of all the parties here to
19 what discovery is and isn't, I certainly would have to
20 say that if the Hearing Officer says "reports," they're
21 going to say unless the title "Report" was up at the top,
22 that's not a page that they have to produce to me.

23 I'm saying what we want is any communications that
24 have gone to the EPA and back from the EPA to a party or

1 their Counsel.

2 HEARING OFFICER WALLACE: All right.

3 MR. LAWTON: We would object to that omnibus
4 requirement. Reports we would not object to.

5 MR. MURPHY: I wouldn't think so.

6 HEARING OFFICER WALLACE: Your objection is noted.
7 Any other objections?

8 My ruling is that any communications, reports,
9 engineering documentation submitted to the EPA in the
10 past 13 months are to be exchanged.

11 MS. MC CRAY: And received from EPA?

12 HEARING OFFICER WALLACE: And received from EPA.
13 Actually, that includes all parties.

14 Mr. Murphy, if you have any --

15 MR. MURPHY: Certainly.

16 HEARING OFFICER WALLACE: -- please exchange them
17 with the others. That is in addition to our supplemental
18 disclosures of documents.

19 MR. LAWTON: Supplemental disclosure relates to
20 what will be used by the parties in the hearing --

21 HEARING OFFICER WALLACE: Yes.

22 MR. LAWTON: -- in addition to what has already
23 been submitted?

24 HEARING OFFICER WALLACE: We actually have two

1 different items now.

2 MR. LAWTON: Right.

3 MR. SLOCUM: Rich Slocum for Oberweis.

4 Just to understand, it's a prong. Those are
5 documents that have been created since that date; but if
6 they could have or should have been generated before that
7 date, then those are not able to be disclosed.

8 In other words, if some party just elects to have a
9 report generated in June of '96 as opposed to September
10 of '95 and that could have been done and completed,
11 that's not within those supplemental disclosures?

12 HEARING OFFICER WALLACE: Yes, it would be.

13 MR. SLOCUM: So anything that a party wants to
14 generate after that date, they could say that's been
15 generated and that would be in the supplemental
16 disclosure?

17 HEARING OFFICER WALLACE: Yes. If it's not written
18 until September of '96, then it's part, you know, of the
19 supplemental disclosure aspect that you're going to --
20 that needs to be disclosed.

21 MR. LAWTON: If it's to be used in the hearing.

22 HEARING OFFICER WALLACE: Yes.

23 MR. SLOCUM: That seems to tear open that discovery
24 order substantially, your Honor.

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1 HEARING OFFICER WALLACE: No, it doesn't, Mr.

2 Slocum, because discovery was closed December of '95.

3 If I were to reopen discovery, I would let Amoco go
4 back prior to December of 1995. That's what I would
5 consider reopening discovery.

6 I understand it's -- you know, the way things have
7 gone, we have had this lapse; and if there is any new
8 information, newly-generated information, you know, I
9 think that if it's relevant and has any bearing on this
10 case and it's one of those things that the supplemental
11 disclosure is for, I don't see how it's reopening any
12 discovery.

13 MR. SLOCUM: There is no limit on that?

14 In other words, that's a moving target as far as
15 that can continue to be done now through whenever there
16 is a hearing date?

17 HEARING OFFICER WALLACE: If it's going to be used,
18 yes.

19 MR. LAWTON: Since the last hearing that we had? I
20 mean, I'm trying to get a cutoff date.

21 HEARING OFFICER WALLACE: December 22, 1995.

22 Ms. McCray, did you say the cutoff date was December
23 18th?

24 MS. MC CRAY: Right.

1 HEARING OFFICER WALLACE: I'm going from December
2 22, 1995.

3 There will be two issues. One is the disclosure of
4 any reports, communications, et cetera, between the
5 Illinois EPA and the parties -- both to the EPA and from
6 the EPA for all parties.

7 And secondly, supplemental disclosures of any
8 information to be used in the parties' case from December
9 22, 1995.

10 Ms. McCray?

11 MS. MC CRAY: Just to clarify, the disclosure of
12 documents that we will use in our case, can that include
13 documents that weren't generated after December 22, 1995,
14 but that at that time we didn't anticipate using in our
15 case but now -- because of allegations or issues raised
16 by the pleadings subsequent to the hearing, we may now
17 anticipate adding to documents for just the reason --

18 HEARING OFFICER WALLACE: No.

19 MR. LAWTON: That nullifies the previous order.

20 MS. MC CRAY: Okay.

21 HEARING OFFICER WALLACE: All right. Moving right
22 along, Mr. Murphy, how many additional witnesses do you
23 plan to call?

24 MR. MURPHY: I will continue with Mr. Mehrens.

1 That's one.

2 I will want the presence and testimony of Ms.
3 Oberweis as an adverse witness. I will in all likelihood
4 have one additional witness. I may also need the adverse
5 testimony of Mr. Fetzer.

6 HEARING OFFICER WALLACE: Would the one additional
7 witness be the fellow from EPA?

8 MR. MURPHY: That's definitely -- yes, that is one.
9 Then there is a possible in addition to him.

10 HEARING OFFICER WALLACE: All right.

11 Mr. Lawton, has Oberweis given any thought as to how
12 many witnesses it may call?

13 MR. LAWTON: We'll advise you of that in the course
14 of today's hearing, if we could. I'm not prepared at the
15 moment to give a definitive statement on that.

16 HEARING OFFICER WALLACE: Ms. Crain, for Mobil?

17 MS. CRAIN: If we could, your Honor, I would like
18 the opportunity to consult with my consultant here before
19 providing you with that.

20 HEARING OFFICER WALLACE: Ms. McCray?

21 MS. MC CRAY: The parties have previously submitted
22 witness lists. Amoco has identified six witnesses on
23 that list.

24 We would like to be allowed to amend the list. We

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1 have had people leave positions and other people take
2 their place. We anticipate at this time seven witnesses.
3 We had identified six, but one man who left has been
4 replaced by two different people.

5 HEARING OFFICER WALLACE: Leave is granted to amend
6 your witness list.

7 MR. TYLER: We are riding on the shoulders of
8 Oberweis, as I've stated to Mr. Slocum before. I don't
9 anticipate any witnesses other than possibly my client,
10 depending on what Oberweis does.

11 HEARING OFFICER WALLACE: Are there any
12 stipulations or agreements to exhibits that we can take
13 at this time?

14 Mr. Murphy?

15 MR. MURPHY: Frankly, I have been drowned in
16 exhibits; and I wouldn't even be able to tell you, other
17 than the Kinkos box that has got my Bates-numbered
18 exhibits, what all the other exhibits may or may not be
19 at this time.

20 I'm sorry, but I don't know that there would be
21 anything that I could offer to be stipulated to.

22 HEARING OFFICER WALLACE: We have no present
23 stipulations or agreements on any exhibits?

24 MR. MURPHY: I don't believe so, no.

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1 HEARING OFFICER WALLACE: All right. Mr. Murphy,
2 when would be the earliest opportunity for you to
3 continue with your case in terms of scheduling?

4 MR. MURPHY: Other than today?

5 HEARING OFFICER WALLACE: Other than today.

6 MR. MURPHY: I'll have to get my calendar out.

7 HEARING OFFICER WALLACE: Let's go off the record.

8 (There followed a discussion outside the
9 record.)

10 HEARING OFFICER WALLACE: Back on the record.

11 After much nashing of calendars, we'll set the dates
12 for April 1st, 2nd, 3rd and 4th. We'll try to start at
13 9:30, and we'll have to determine a room at a later date.
14 I don't know the availability of this courthouse, but we
15 at least have four days to get started.

16 All right. Are there any other matters that anyone
17 wants to bring up at this time that we need to discuss?

18 Ms. McCray?

19 MS. MC CRAY: The prior hearing officer allowed
20 supplemental disclosures by January of '96. Amoco
21 disclosed a copy of the U.S. "T" list from the Fire
22 Marshall's Office and for the City of Aurora and a copy
23 of the LUST list.

24 We would ask for leave to substitute the current

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1 lists -- certified copies of the current lists instead of
2 the list in effect in January '95.

3 HEARING OFFICER WALLACE: Any particular reason for
4 wanting to substitute the list?

5 MS. MC CRAY: More up-to-date information for the
6 Board's consideration.

7 HEARING OFFICER WALLACE: Any objection?

8 MR. MURPHY: I have no objection.

9 MR. LAWTON: Could I ask the court reporter to read
10 that comment back, please?

11 HEARING OFFICER WALLACE: We'll go ahead and read
12 it back.

13 Restate your request.

14 MS. MC CRAY: We disclosed the LUST list and U.S.
15 "T" list as supplemental disclosures allowed by the
16 hearing officer after the last hearing by January 1995 --
17 someday in '96.

18 All we want to do is substitute the current list for
19 the list we previously disclosed.

20 MR. LAWTON: LUST list --

21 MS. MC CRAY: City of Aurora.

22 MR. LAWTON: -- of Instances in the City of Aurora
23 or locations? I have no objection.

24 HEARING OFFICER WALLACE: All right. Leave is

1 granted to file.

2 What date would that have on it?

3 MS. MC CRAY: The one that we have today has got a
4 date. It's their current list today, but I could get
5 current as close as you'd like to the hearing.

6 HEARING OFFICER WALLACE: Whatever. The current
7 list as of January of '97 from the LUST list for the City
8 of Aurora.

9 MS. MC CRAY: Amoco only has one other preliminary
10 matter. That would be -- I don't know if you want to
11 wait to do this until we're actually having testimony. I
12 don't know if we're having testimony today, but it would
13 be to move the request to admit and the responses to the
14 request to admit from the Streits and the Board's order
15 declaring the request to admit be admitted into the
16 record.

17 The request was made previously, especially as to
18 the Streits' response, and the prior hearing officer
19 indicated that the record includes everything on file at
20 the Clerk's office, and there was not a need to move
21 those into evidence.

22 Amoco would like a clarification of what is exactly
23 in the record; and then if the request to admit are not,
24 we would like those documents moved into evidence.

1 HEARING OFFICER WALLACE: Have you marked the
2 request, and were there answers or no answers?

3 MS. MC CRAY: There were answers from the Streits,
4 no answers from Oberweis.

5 I do not have them marked.

6 HEARING OFFICER WALLACE: We will mark those as
7 exhibits.

8 MR. SLOCUM: For the record, there were answers
9 filed on behalf of Oberweis, your Honor.

10 HEARING OFFICER WALLACE: I understand that. I
11 think the Board disposed of those, if I'm not mistaken.

12 MS. MC CRAY: Your Honor, I don't have a copy that
13 doesn't have markings on it.

14 HEARING OFFICER WALLACE: Then at some time in the
15 future, please obtain a clean copy of those for both
16 Oberweis and the Streits; and we will mark those as
17 exhibits, and they will be admitted into evidence.

18 MS. MC CRAY: Thank you, your Honor.

19 HEARING OFFICER WALLACE: All right. Anything
20 further?

21 MR. BERMAN: One request raised by my client; that
22 is, that given the amount of testimony that we're likely
23 to have in this matter and given the calendar congestion
24 we've encountered, does it make sense to look for a

1 couple of more days so that we don't find ourselves in
2 April looking at July?

3 HEARING OFFICER WALLACE: Very good point, Mr.
4 Berman.

5 MR. BERMAN: It's actually Ms. Oberweis' point, but
6 I simply made it for her.

7 HEARING OFFICER WALLACE: Let's go off the record
8 again.

9 (There followed a discussion outside the
10 record.)

11 HEARING OFFICER WALLACE: Back on the record.

12 Thanks to Mr. Berman's suggestion, we'll add April
13 7th and 8th to the hearing schedule.

14 MR. LAWTON: Your Honor, I want to be completely
15 clear. We originally at one point talked about some
16 early March dates.

17 HEARING OFFICER WALLACE: It sounded like there was
18 no agreement until the 1st of April.

19 Just to reiterate, we have currently scheduled April
20 1st, 2nd, 3rd, 4th, 7th and 8th.

21 The Streits will go forward, and then we will go
22 with Oberweis Dairy, Amoco Oil and Mobil Oil, in that
23 order; and since the Oberweises are carrying Mr. Fetzer,
24 I guess we'll fit him in somewhere there, if necessary.

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1 MS. MC CRAY: Is there a deadline for the
2 supplemental disclosures?

3 HEARING OFFICER WALLACE: 45 days.

4 MR. MURPHY: All right.

5 MR. TYLER: I would prefer to have a date, Judge.

6 HEARING OFFICER WALLACE: Let's make them due March
7 the 7th, then.

8 MR. BERMAN: Again, for clarification, are we
9 talking about only the exchange of supplemental
10 disclosures?

11 HEARING OFFICER WALLACE: Everything. Let's get
12 everything out of the way by March 7th.

13 Secondly, while I'm thinking of it, I assume that --
14 I'm trying to think of a date as to when everyone can
15 update their witness list and give us an idea of who
16 their witnesses are going to be. I'm thinking in terms
17 of March 7th, we might as well do it all on that date.

18 I was trying to recall if everyone has exchanged
19 witness lists already.

20 MR. LAWTON: Yes, March 7th would be fine.

21 HEARING OFFICER WALLACE: If there is any, an
22 updated witness list by March 7th would be good.

23 All right. Was there anything else left hanging
24 that anyone wants to bring up at this time? I can't

1 remember if there was or not. No?

2 MR. MURPHY: Not from me.

3 HEARING OFFICER WALLACE: All right. Do you want
4 to call Mr. Mehrens back to the stand today?

5 MR. MURPHY: I would like a brief recess first,
6 please.

7 HEARING OFFICER WALLACE: That will be fine. Let's
8 take a five-minute recess.

9 MR. MURPHY: Maybe ten.

10 HEARING OFFICER WALLACE: Ten.
11 Off the record.

12 (Whereupon, a recess was had, after which the
13 hearing was resumed as follows:)

14 HEARING OFFICER WALLACE: Let's go back on the
15 record.

16 Mr. Murphy?

17 MR. MURPHY: The Complainant would like the record
18 to show that we have reached an agreement with the
19 Respondents Mobil and Amoco and that on that basis, it
20 would appear to be necessary that an order be entered by
21 the Board.

22 We would like, therefore, to ask that we continue
23 today's hearing over to a future date and allow the
24 presentation of a motion to the Board to dismiss Amoco

1 and Mobil.

2 HEARING OFFICER WALLACE: All right, then.

3 MR. MURPHY: I would not feel that we need to
4 change any of the pending dates that have already been
5 established as to further hearings and the discovery
6 items and so on. I think those dates would still be
7 perfectly acceptable.

8 HEARING OFFICER WALLACE: Well, Mr. Murphy, then
9 your next course would be to file a written motion to the
10 Board voluntarily dismissing Amoco Oil and Mobil Oil.

11 MR. MURPHY: Right.

12 HEARING OFFICER WALLACE: The Board will take it
13 from there on that, but I would anticipate keeping the
14 same schedule.

15 MR. MURPHY: All right. Yes. That's my motion,
16 your Honor.

17 HEARING OFFICER WALLACE: Okay. Any comments?

18 MR. LAWTON: The motion is to have the hearing
19 continued, then, to the dates that were set in April; is
20 that right?

21 MR. MURPHY: Yes.

22 HEARING OFFICER WALLACE: Any objection to that?

23 I mean, you don't want to proceed with Mr. Mehrens,
24 in any event, on anything else today?

1 MR. MURPHY: No, I don't.

2 MR. LAWTON: No objection by Oberweis.

3 HEARING OFFICER WALLACE: All right. Respondents
4 Mobil and Amoco, Mr. Murphy summarized your position
5 correctly, I guess?

6 MS. MC CRAY: Yes.

7 MS. CRAIN: Yes.

8 HEARING OFFICER WALLACE: Then we will -- I would
9 note for the record that the Board prefers that you file
10 a motion simply dismissing the two Respondents as opposed
11 to saying we've reached a settlement and want the
12 settlement approved.

13 MR. MURPHY: No, we don't, just dismissed.

14 HEARING OFFICER WALLACE: Otherwise, we have to
15 have a hearing on the settlement.

16 MR. TYLER: The other defendants would like the
17 terms of the settlement disclosed, your Honor.

18 MS. CRAIN: No.

19 MR. MURPHY: We can't provide that.

20 MR. SLOCUM: The other settlements were disclosed.

21 MR. MURPHY: There were no other settlements.

22 HEARING OFFICER WALLACE: We're all on the record,
23 so don't speak at once.

24 I'm merely procedurally commenting that if the

1 Respondents Mobil and Amoco are dismissed by the
2 Complainant, that is one avenue.

3 If there is a motion presented to the Board that
4 there is a settlement, then the Board may very well
5 remand it back to me to have a hearing on the settlement.
6 There have been a couple of cases in the past few months
7 that have played procedurally with that.

8 In any event, your motion should be addressed to the
9 Board.

10 Anything further today?

11 MR. LAWTON: I trust we'll get copies of your
12 motion?

13 MR. MURPHY: Certainly.

14 HEARING OFFICER WALLACE: All right. Nothing
15 further today, we will stand adjourned until April the
16 1st. I will notify everyone of the location. Hopefully,
17 we will be in this building.

18 Thank you.

19 (Whereupon, the hearing was
20 continued to April 1, 1997, at the
21 hour of 9:30 a.m.)

22

23

24

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

3

4 I, Jean S. Busse, Certified Shorthand Reporter
5 No. 84-1860, Registered Professional Reporter, a Notary
6 Public in and for the County of DuPage, State of
7 Illinois, do hereby certify that I reported in shorthand
8 the proceedings had in the above-entitled matter and that
9 the foregoing is a true, correct and complete transcript
10 of my shorthand notes so taken as aforesaid.

11 IN TESTIMONY WHEREOF I have hereunto set my
12 hand and affixed my notarial seal this _____ day of
13 _____, A.D. 1997.

14

15

16 _____
Notary Public

17

18 My Commission Expires
19 June 3, 1997.

20

21

22

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