

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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IN THE MATTER OF: )  
4 ) R00-20  
)  
5 REVISION OF THE BOARD'S ) (Rulemaking-  
PROCEDURAL RULES: 35 ILL. ) Procedural)  
6 ADM. CODE 101-130 )

7

VOLUME II

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10 The following is a transcript taken  
11 stenographically before TERRY A. STRONER, CSR, a  
12 notary public within and for the County of Cook and  
13 State of Illinois, at Suite 9-040, 100 West Randolph  
14 Street, Chicago, Illinois, on the 4th day of May,  
15 A.D., 2000, scheduled to commence at 1:30 o'clock  
16 p.m., commencing at 1:35 o'clock p.m.

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1 APPEARANCES:

2

3 HEARING TAKEN BEFORE:

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5 ILLINOIS POLLUTION CONTROL BOARD,  
6 600 South Second Street  
7 Suite 402  
8 Springfield, Illinois 62704  
9 (217) 524-8507  
10 BY: MS. AMY L. JACKSON, HEARING OFFICER

11 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

12 Nicholas Melas  
13 Samuel T. Lawton, Jr.  
14 T. Tanner Girard  
15 Claire A. Manning  
16 Elena Kezelis  
17 Marili McFawn  
18 Ronald C. Flegal  
19 Marie Tipsord  
20 Kathleen Crowley  
21 Richard McGill  
22

23 ALSO PRESENT:

24 Elizabeth Harvey  
25 Joel Sternstein  
26 Anand Rao  
27 Katy Khayyat  
28 Mike Maher  
29 James Harrington  
30 Deidre Hirner  
31 Kathy Glenn  
32 Albert Ettinger  
33 Lisa Moreno  
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1 HEARING OFFICER JACKSON: I want to wish you  
2 all a good afternoon and thank you for coming to  
3 this -- the second hearing on the Board's first  
4 notice proposal of our new procedural rules.

5 The new procedural rules, as you know,  
6 will be located at 35 Illinois Administrative Code,  
7 Parts 101 through 130. The Board has assigned  
8 Docket No. R00-20 to this proceeding.

9 My name is Amy Jackson and for today, I  
10 will be acting as the hearing officer in this  
11 proceeding. However, the actual hearing officer is  
12 Carol Sudman and, unfortunately, she is not able to  
13 be with us today due to a death in her family. So  
14 just for today, I will be acting in her place.

15 For those of you who may need additional  
16 copies of our first notice proposal, copies have  
17 been set out on the table over -- or I guess the  
18 desk over here to my right, and because of the  
19 length of the opinion and order, we've only put out  
20 a limited number of copies today. If you do need an

21 extra hard copy, please feel free to see me after  
22 the hearing and we can arrange for that, or I would  
23 also note that the opinion and order, as well as all  
24 public comments and transcripts in this proceeding,

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1 are available on the Board's web site. If you need  
2 the address of the Board's web site, please see me  
3 after the hearing as well and I'll be glad to give  
4 that to you.

5 Also set out on the same desk are sign-up  
6 sheets for the notice and service list. We are not  
7 using the previous notice and service list that were  
8 used for the 1996 proposal for public comment. So  
9 if you wish to be on the notice and the service  
10 list, you must sign up anew for those. For those of  
11 you who aren't aware, the notice list entitles you  
12 to receive copies of Board opinions and orders as  
13 well as hearing officer orders, whereas the service  
14 list allows you to receive copies of the Board  
15 orders and opinions as well as copies of other  
16 public comments that are filed by other persons on  
17 the service list.

18       The purpose of today's hearing is to  
19 provide you with an opportunity to ask questions and  
20 offer comments about any of the proposed procedural  
21 rules. Commentors will not be sworn or subject to  
22 cross-examination. However, Board members may  
23 choose to ask questions of the commentors in order  
24 to better understand the nature of their question or

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1 comment.

2       Any suggestions made today regarding a  
3 substantive change or a language change in the  
4 proposed rules will not be decided today, rather the  
5 Board will consider all comments and suggestions in  
6 its deliberations and will respond to all of them  
7 accordingly at a later date.

8       It is my understanding that we have  
9 persons here today who may not wish to give  
10 substantive comments, but rather might wish to  
11 request a third hearing on the record or wish to  
12 request that the Board extend its deadline for  
13 submission of written comments, and what I would ask  
14 would be that those persons maybe reserve their  
15 comments until we're finished accepting the

16 substantive comments. If there's -- hopefully, that  
17 will make the proceeding run a little bit more  
18 smoothly.

19 Before we move on to the testimony portion  
20 of this proceeding, I would like to introduce the  
21 Board members that are present today. To my  
22 immediate right is Board Chairman, Claire Manning.

23 MS. MANNING: Hello.

24 HEARING OFFICER JACKSON: Also present today

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1 are Board members, Tanner Girard.

2 MR. GERARD: Good afternoon.

3 HEARING OFFICER JACKSON: Samuel Lawton, and  
4 then to my left Elena Kezelis.

5 MS. KEZELIS: Hello.

6 HEARING OFFICER JACKSON: Marili McFawn and  
7 Ronald Flemal.

8 At this time, Chairman Manning, would you  
9 like to make any comments?

10 MS. MANNING: Just a couple of things. Thank  
11 you, Hearing Officer Jackson. I just wanted to  
12 introduce for you the three people sitting up here,

13 too, and tell you a little bit about how the Board's  
14 process has worked thus far.

15       We've spent a lot of time internally with  
16 the Board with these rules since we put them out for  
17 public comment several years ago. The people to my  
18 right here, Richard McGill, Kathleen Crowley and  
19 Marie Tipsord along with Amy Jackson and Carol  
20 Sudman have constituted our internal procedural  
21 rules committee, and they've worked substantially  
22 with us as a Board and with us individually and with  
23 the comments that we have received from public  
24 commentors in the first docket that we had in this

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1 proceeding.

2       So we appreciate all of the help that  
3 they've given us and if we don't understand some of  
4 your comments, we may ask them to ask you questions  
5 to fully understand what's going on. We hope to  
6 make this process, as we did in Springfield, as easy  
7 as possible for everyone, as publically visible as  
8 possible for everyone, and we hope that these rules  
9 are as streamlined as we possibly can make them for  
10 everyone. So to that end, all I really need to say

11 is we welcome the comments and the participation of  
12 everybody. Thank you.

13 HEARING OFFICER JACKSON: Thank you, Madam  
14 Chairman.

15 Do any of the other Board members have  
16 statements they'd like to make at this time? Okay.

17 Hearing none, I do want to mention that  
18 since Carol Sudman has been out of the office for a  
19 couple days, some of you may have attempted to  
20 contact her in the past couple days to advise her  
21 that you do want to make comments today.

22 Did anyone try to reach her and was  
23 unable? Okay.

24 Why don't we move on then. I'm going to

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1 ask if any members here would like to give a comment  
2 today, if you could, please, identify yourselves for  
3 the court reporter and indicate who you're  
4 representing today. Yes.

5 MS. MORENO: Lisa Moreno, Illinois EPA.

6 HEARING OFFICER JACKSON: Anyone else wish to  
7 give comment today?



8 MS. HIRNER: Deidre Hirner with the Illinois  
9 Environmental Regulatory Group.

10 HEARING OFFICER JACKSON: Okay. Anyone else?  
11 Okay. And I would also note that we've just been  
12 joined by Board member, Nicholas Melas.

13 I think we're ready to proceed with  
14 comments and questions. Ms. Moreno, would you like  
15 to begin and if you'd like to just step forward to  
16 the table in front, it's easier for the Board  
17 members to hear the comments.

18 MS. MORENO: I notice that the chairs today  
19 have no wheels.

20 MS. MANNING: We have rugs on them in our  
21 Springfield office.

22 MS. MORENO: Actually, somebody asked me, does  
23 it say in the transcript that you fell?  
24 Madam Hearing Officer, Madman Chairman,

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1 Members of the Board, I would just like to make a  
2 few brief general comments to reiterate some of the  
3 things that the Agency said last time.

4 HEARING OFFICER JACKSON: If you'd like to sit  
5 down --

6 MS. MORENO: I'm sorry?

7 HEARING OFFICER JACKSON: If you'd like to sit  
8 down.

9 MS. MORENO: Oh, I can, sure.

10 As I mentioned the last time, I am the  
11 coordinator of the Agency comments and I've received  
12 most of the comments now and I'm in the process of  
13 compiling them, and I must say that there are -- the  
14 Agency will have very few comments. We were very  
15 gratified to see that the Board looked carefully at  
16 the comments, which we -- fairly voluminous  
17 comments, in fact, which we offered in the first  
18 round and in many instances, the Board agreed with  
19 us, for which we're grateful, and other reasons the  
20 Board didn't, but the Board's reasoning is clearly  
21 theirs so that, you know, at least the comments were  
22 addressed.

23 We will be presenting our written comments  
24 on the second or -- of June or whenever the Board

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1 actually decides to close the comment period, and  
2 we'll be happy to participate in the third hearing

3 if one is necessary.

4       And again, we appreciate very much the  
5 effort that the Board has put into this daunting  
6 task. It's always hard to go back, as I said last  
7 time, you know, with a 20 -- over 20 years of stuff  
8 and go back through it and -- but it's a good  
9 occasion to figure out what we've been doing right  
10 and what we've been doing wrong and the new things  
11 that we need to do.

12       So I'd be glad to answer any of your  
13 questions, but I can only generally at this point.

14 Thank you.

15       HEARING OFFICER JACKSON: Okay. Any questions?

16       MS. McFAWN: Yes. I had a question. Did I  
17 understand you correctly that you're going to submit  
18 your comments in writing then?

19       MS. MORENO: Yes, we will. We will submit --

20       MS. McFAWN: Just in writing or at the next --

21       MS. MORENO: At this point, just in writing.

22 The truth is, there isn't -- I'm not sure where we  
23 stand on trade secrets right now. Okay. There's  
24 some internal discussion, and I think you can

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1 appreciate that because that seems to be one of the  
2 major kind of issues, and I'm -- to be honest with  
3 you, I'm not in that group so I'm not privy to  
4 what's going on, but I know that discussions are  
5 going on at the highest levels.

6       The other issue, which we were going to  
7 address, was the -- was the tax certifications and  
8 beyond that, there's -- it's a number of specific --  
9 you know, in line 27, the Board says X, how would  
10 you like to say X plus Y? And now -- I'd be glad to  
11 present those, you know, what I have at the next  
12 hearing in an oral fashion if the Board would care  
13 to do so, but I thought, to be honest with you,  
14 since they're pretty much textural rather than  
15 philosophical or, you know, areas of interest, that  
16 it would probably be easier for the Board to follow  
17 if they were written. I mean, the truth is, the  
18 Board's done such a good job, that we don't have  
19 that much to say.

20   MS. McFAWN: Thank you.

21   MS. MANNING: Thank you.

22   HEARING OFFICER JACKSON: Thank you,

23 Ms. Moreno. Ms. Hirner?

24   MS. HIRNER: Hi. Thank you. Madam Chairman

1 and Members of the Board, my name is Deidre Hirner  
2 and I'm with the Environmental Regulatory Group.

3 You may recall that we did speak at the  
4 last hearing and had stated our general concerns  
5 with the provisions regarding trade secret.

6 As you all have mentioned and as it is  
7 very obvious, a great deal of time and effort has  
8 gone into the preparation of these new procedural  
9 rules and we feel that they are deserving of an  
10 equal amount of time if we're to make, you know,  
11 very good solid comments before the Board.

12 Therefore, we had said we would have our  
13 comments at this hearing. We were unable to  
14 complete those comments as we are still meeting with  
15 some of our members and trying to determine the best  
16 way to address some of those trade secret matters.  
17 Therefore, we think we would like a little more time  
18 if that would be possible to complete our comments  
19 and we also believe that there might be a benefit to  
20 a third hearing if would you be willing to consider  
21 that.

22 We think some of the provisions that --  
23 and changes that we will recommend to the trade  
24 secret matters do deserve and could benefit from

1 question and answer among the members of the Board  
2 and the members of the regulating community. I'll  
3 answer any questions now that you have.

4 MS. KEZELIS: What kind of time frame were you  
5 thinking of?

6 MS. HIRNER: I think what they -- the original  
7 comment period is June 1, so another month or so at  
8 max -- about a month.

9 MS. KEZELIS: Is -- do I understand that the  
10 additional time you would like would be for trade  
11 secrets only?

12 MS. HIRNER: It -- probably the major issues  
13 surround trade secret, yes.

14 MS. KEZELIS: Because I haven't discussed this  
15 with everybody, obviously, I'd really like to keep  
16 the docket moving rather than slow it down to get to  
17 understand clearly the trade secrets area where the  
18 issues may need to be flushed out in greater detail  
19 than we've had the opportunity to do so far.

20 So just for the record, I'd be comfortable  
21 with extending the time for written comments for  
22 trade secrets only, but not for the rest of the

23 procedural rules, and I would be comfortable with  
24 going on and setting a third hearing date for trade

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1 secrets alone again in a relatively short future,  
2 but that would be -- your group would still be able  
3 to submit its written comments pursuant to our  
4 current deadline with respect to the rest of --

5 MS. HIRNER: Yes.

6 MS. KEZELIS: -- the rules. Thank you for that  
7 clarification.

8 MS. MANNING: So just that I understand,  
9 everything but trade secrets you're prepared to  
10 comment by June 1st?

11 MS. HIRNER: Yes.

12 MS. CROWLEY: I'm sorry. I'm just not quite  
13 clear. Were you anticipating filing comments in  
14 advance of a third hearing if we hold one or did you  
15 want to have the third hearing and then file the  
16 trade secret comments?

17 MS. HIRNER: I think probably what our  
18 preference would be is that we file them ahead of  
19 time so that the Board would have -- and the staff

20 would have the opportunity to read through those  
21 comments and then when the questions were asked, you  
22 would have had some time to prepare so that we have  
23 a meaningful interchange of information.  
24 MS. MANNING: I think that's probably

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1 appropriate too in that we're delving really into  
2 public issues that we really haven't aired before in  
3 terms of some of the trade secret issues that you  
4 sort of alluded to at the last hearing. It would  
5 seem to me that we're going to have to make sure  
6 that whatever comments and issues you bring forward,  
7 they're brought forward publically and not just like  
8 on the last day of the comment period.

9 MS. HIRNER: Right.

10 MS. MANNING: So that there's a sufficient  
11 amount of time for the public to air their concerns  
12 and that we can hear everyone's concerns on those  
13 issues.

14 So it would seem to me appropriate that we  
15 break from the tradition we've had thus far and  
16 actually request, you know, your position in advance  
17 of that hearing so we could have a full exchange. I



18 appreciate that you -- that that would be your  
19 position.  
20 MS. HIRNER: We'd be more -- yeah, more than  
21 willing. I think that's probably a good idea. We  
22 have met among ourselves and we've met with our  
23 members and have begun discussions and we've  
24 proposed some language and are getting comments back

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1 so we've been very active in this area.  
2 HEARING OFFICER JACKSON: Are there any more  
3 questions for Ms. Hirner?  
4 MS. KEZELIS: I have another question.  
5 Ms. Moreno also suggested a tax certification.  
6 Your -- the entity that you represent doesn't have  
7 as much of a concern with tax certification at this  
8 time. It really -- your issues really are devoted  
9 to trade secrets at this point in terms of  
10 contention and --  
11 MS. HIRNER: Yes.  
12 MS. KEZELIS: All right. Thank you.  
13 MR. MCGILL: I just wanted to clarify. You  
14 would need the current public comment deadline of

15 June 1. You would want until the end of June then  
16 or July 1 to file public comment on trade secrets?  
17 MS. HIRNER: Actually, I think we could  
18 probably get our comments to you, you know, if they  
19 were -- if we were to comment ahead of time, I'm  
20 pretty comfortable we could get our comments to you  
21 by June 1, but then have the hearing subsequent to  
22 that.  
23 So I mean if you wanted to have the  
24 hearing by June 1, then that would back us up to,

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1 you know, like the middle of May to get the comments  
2 together, but if -- I'm pretty comfortable we could  
3 get the comments to you, you know, ahead of time to  
4 review by June 1.  
5 MR. MCGILL: By June 1. Okay. Thank you.  
6 HEARING OFFICER JACKSON: Are there any other  
7 questions?  
8 MS. MANNING: I just have a question for  
9 Ms. Moreno. Would the agency be able to get their  
10 comments completed by June 1, do you think, or did  
11 you maybe anticipate a later time and you're  
12 concerned about the June 1 deadline as a general

13 matter for --

14 MS. MORENO: The thing is that the Agency

15 obviously is very interested in the whole trade

16 secret issue and there -- what's going on

17 essentially is the coordination among divisions

18 because different divisions have different issues.

19 I -- the Agency would welcome, to be

20 honest with you, a little extra time to deal with

21 trade secrets because -- again, I mean, I apologize,

22 but I'm not part of that group and I suspect there

23 may be the outreach to, you know, people outside the

24 Agency on that issue.

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1 MS. MANNING: I guess what my question -- I

2 intended my question to be more in the line of,

3 would the Agency -- but for trade secrets, would the

4 Agency be willing -- be able to comment on

5 everything else by June 1st?

6 MS. MORENO: Yes, yes, but for trade secrets,

7 we -- as a matter of fact, my deadline is -- my

8 deadline -- internal deadline is next week so --

9 MS. MANNING: Okay. Is there anybody out there

10 in the public that thinks that we need more -- but  
11 for the issue of trade secrets, whatever those  
12 issues may be that are going to deserve public  
13 airing, that June 1st is too short of a deadline for  
14 any general public comments on the rest of the  
15 procedural rules?

16 HEARING OFFICER JACKSON: Sir, could you  
17 identify yourself for the record?

18 MR. MAHER: Yes. My name is Mike Maher.  
19 Actually, I wasn't expecting to make any comments,  
20 but I saw an issue that I think I'm going to want to  
21 address and, frankly, it would be very quick, but  
22 it's going to -- really more in the line of seeking  
23 a matter of clarification for the Board and,  
24 therefore, you --

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1 THE REPORTER: Can he please step up?

2 HEARING OFFICER JACKSON: Could you step up to  
3 the front, please?

4 MR. MAHER: I'm sorry. And, therefore, you  
5 maybe want to hear what I have to say on that issue  
6 to determine whether or not the Board needs more  
7 time or not.

8 I'm just going to ask as a matter of  
9 clarification on a very precise procedural question  
10 and then maybe you'll need more time or maybe you  
11 won't, but I'm just really raising my hand now on  
12 that issue so you're aware there may be that issue  
13 on your end.

14 HEARING OFFICER JACKSON: Okay. Do we have any  
15 more questions for Ms. Hirner at this time? If not,  
16 we'll have Mr. Maher step forward.

17 MS. MANNING: Thank you.

18 HEARING OFFICER JACKSON: Thank you.

19 MR. MAHER: Good afternoon. My name is Mike  
20 Maher. First, let me apologize to the chair and  
21 ladies and gentlemen of the Board for my casual  
22 attire. I wasn't expecting to make any comments.

23 The only issue that I have concerns the  
24 proposed rules with regard to request for admissions

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1 in fact. As a matter of litigation, requests for  
2 admissions in fact is a powerful procedural tool  
3 that very significantly narrows the factual issues  
4 and, therefore, has the opportunity to significantly

5 shorten a hearing. For instance, in a complicated  
6 UST or groundwater case, ultimately the question may  
7 be simply, were the contaminants identified in  
8 excess of a specified level, and all the other  
9 issues, frankly, can be resolved by a request to  
10 admit, were you the owner? Did you actually do this  
11 sort of activity and that type of thing?

12       The reason that I'm taking your time is  
13 as follows: The applicability section in the  
14 proposed rules refer to the Illinois Code of Civil  
15 Procedure and the Supreme Court rules. The language  
16 on the request for admission to fact closely  
17 parallels the language of the Illinois Code of Civil  
18 Procedure. That's the good news.

19       The bad news is that we have several  
20 appellate districts in the state of Illinois and  
21 they all interpret their request for admission of  
22 fact -- well, basically there's two camps. One of  
23 those camps is if you don't have an answer within 20  
24 days, then it's automatically deemed admitted,

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1 that's it, you're done, and that fact is now  
2 determined by the failure to admit.

3           The other districts of which the first  
4 district which is here in Chicago would hold is  
5 exactly the contrary, that the -- a party who fails  
6 to respond to a request for admission of fact within  
7 20 days does not admit those facts.

8           So I point out to the Board that the  
9 language that you have closely tracks the Code of  
10 Civil Procedure. The appellate decisions  
11 interpreting that particular provision, which I  
12 think is extremely powerful, are sort of black and  
13 white, and I ask the Board whether or not you want  
14 to consider where it is you want to be on this  
15 because the first time it comes up, you're going to  
16 get cases cited from the third, fourth and fifth  
17 district that say yes, it's deemed admitted and the  
18 first and second that say no, it's not.

19          So I suggest to you you're going to face  
20 it sooner or later and maybe that's the kind of  
21 thing you want to face up front. I can't tell you  
22 the feds -- the federal rules are that that means  
23 what it says, but the first and the second district,  
24 at least here in Illinois, have a different view of

1 that.

2 So that may be something that you want to  
3 review and take a look at in terms of your proposed  
4 rule, but I'm pretty sure you're going to probably  
5 face that pretty quick because most litigators like  
6 to use the request for admissions of fact as a means  
7 of simplifying the hearing.

8 HEARING OFFICER JACKSON: Thank you. Do we  
9 have any questions?

10 MS. CROWLEY: And for the record, that was  
11 Section 101.618?

12 MR. MAHER: Yes, it is.

13 MS. CROWLEY: Thank you.

14 MR. MAHER: Thank you very much.

15 MS. MANNING: Thank you for pointing that out.

16 HEARING OFFICER JACKSON: Do we have any  
17 persons wishing to give comment today? Are there  
18 any other questions from members of the Board or the  
19 committee?

20 MS. McFAWN: I have a question, Mr. Maher. I'm  
21 sorry. It took me a few seconds to think of it.

22 You mentioned that the districts are not  
23 aligned on this issue and I wonder if you would  
24 submit the list of cases you are referring to. I



1 know we could do our own research to find out -- to  
2 make sure we're on the same page, but that would be  
3 appreciated.

4 MR. MAHER: That will teach me, yes. I think  
5 we can get that together. Thank you.

6 MS. KEZELIS: But we're jealous of your casual  
7 attire.

8 HEARING OFFICER JACKSON: Okay. Since there  
9 are no comments or questions, at this time I think  
10 we need to take a short moment off the record to  
11 consider some of the comments that have been made  
12 today and see if we'll be able to give you any  
13 answers today on time. Okay. So we'll go off the  
14 record.

15 (Whereupon, a discussion  
16 was had off the record.)

17 HEARING OFFICER JACKSON: I will note that the  
18 Board members have now had a chance to consult their  
19 calendars and their schedules and have been  
20 discussing the procedural matters involved with  
21 scheduling a third hearing and extending the comment  
22 period, and what we've got right now looks like  
23 keeping the June 1st deadline for written public  
24 comments for Parts 101 through 125, extending the

1 written comment period for Part 130, trade secret  
2 information, to June 15th. This is not as long as  
3 was requested by Ms. Hirner, but we're attempting to  
4 accommodate your request and at the same time keep  
5 this docket moving along as expeditiously as  
6 possible.

7 A third -- the June 15th date would also  
8 be a deadline not only for written public comments,  
9 but also for prefiled testimony and any suggested  
10 language changes for the Part 130 items.

11 The third hearing would then be scheduled  
12 on Monday, July 10th, in Springfield at 10:00 a.m.  
13 The prefiled testimony in anticipation of that July  
14 10th hearing would need to be filed with the Board  
15 on June 15th.

16 Is any of that unclear? Yes.

17 MR. HARRINGTON: A point of clarification --

18 HEARING OFFICER JACKSON: Mr. Harrington, could  
19 you identify yourself?

20 MR. HARRINGTON: Yes. James Harrington from  
21 Ross & Hardies, the Illinois Steel Group.

22 HEARING OFFICER JACKSON: Thank you.  
23 MR. HARRINGTON: A point of clarification, can  
24 the July 10th hearing address any other issues that

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1 arise from filed comments before the Board?  
2 HEARING OFFICER JACKSON: Madam Chairman?  
3 MS. MANNING: We were going to cross that  
4 bridge when we came it to. I guess we're coming to  
5 it now.  
6 I would assume if there's anything out  
7 there that needs to be -- continue to be addressed,  
8 the Board will continue to address it. Right now,  
9 we don't see anything but trade secrets. I doubt  
10 that we would foreclose public comments on any of  
11 concerns that arise later.  
12 MR. HARRINGTON: I raise it as obviously the  
13 Agency and the Board haven't seen the comments we  
14 proposed to file that will retract what I said at  
15 the last hearing. We haven't seen the Agency  
16 comments. There may be room for some response or  
17 comment on it that would be helpful for the Board at  
18 that time.  
19 MS. MANNING: I think you're probably right

20 that it would probably be helpful to the Board to

21 hear those kinds of comments.

22 MS. KEZELIS: I think so.

23 MS. MANNING: So I think we should allow for

24 that type of comment.

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1 MR. HARRINGTON: Thank you.

2 MS. MANNING: Does anybody else have any

3 position on that?

4 MS. KEZELIS: No. I agree with you, Madam

5 Chairman. I think the more comments and the better

6 focused all of our rules are, the better off

7 everyone will be. So I would be in favor of

8 permitting comments at that third hearing on

9 materials filed up to that time -- up to the

10 deadline we were talking about.

11 MR. GERARD: I would like to make one request

12 and that is, if possible, in the June 1st comments,

13 if you could outline those areas that you think need

14 additional time in the third hearing. That would be

15 very helpful to us and, of course, the other parties

16 who will be reading your comments also.

17 MR. HARRINGTON: There's -- the problem will be  
18 I know what I've said and I put people on notice of  
19 my concerns, I don't know whether people will agree  
20 or respond or object. So I would like to address  
21 them if there's debate on it, but otherwise, I'll be  
22 satisfied. Until I see the other comments, I really  
23 don't know whether we're going to have any  
24 disagreement. There's a very good chance we don't.

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1 Hopefully, we won't.

2 MS. McFAWN: Perhaps if you do and you think  
3 you're going to want to comment at the July 10th  
4 hearing, you could inform the hearing officer --

5 MR. HARRINGTON: Certainly.

6 MS. McFAWN: -- or you could send something in  
7 by June 15th to that effect.

8 MR. HARRINGTON: Certainly.

9 MS. McFAWN: It doesn't have to be formal  
10 prefiled testimony, but some of the questions you  
11 think you might have would be helpful for the Board  
12 and the other participants.

13 MS. MANNING: It would be really nice to draw  
14 this whole process to a close around about this

15 summer -- at the end of this summer, July. I know  
16 that the Board spent a lot of time with this  
17 process, but there was a lot of work, as you all  
18 noted, that we've done during this period of time so  
19 we do want to draw it to some closure, but we don't  
20 want to do that without fully airing all issues that  
21 may be out there.

22 So as Member McFawn pointed out, it would  
23 be helpful that if you do have things that you're  
24 planning on testifying about that are different from

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1 what we're expecting, that it would be nice to point  
2 those out prior to the hearing.

3 MR. HARRINGTON: I certainly will do that.

4 Thank you.

5 MS. MANNING: Thank you.

6 HEARING OFFICER JACKSON: Any other questions  
7 at this time? I will note that a hearing officer  
8 order will be issued within a day or two setting  
9 forth all of these new deadlines and revised  
10 schedules and that will be sent to everyone on the  
11 notice and service list. If you need a copy of

12 that, it will also be available on the Board's web  
13 site.

14 If there are no other comments or  
15 questions at this time, I'll let you also know that  
16 we've requested an expedited transcript or at least  
17 if we haven't, we will be, and it will be posted on  
18 the Board's web site as soon as possible. We're in  
19 a little bit of a lag time with our web master, but  
20 you should expect to see the transcript on there  
21 within a couple of days of our receiving it in the  
22 Board's office.

23 If you need a copy -- a hard copy of the  
24 transcript and do not have access to the web, please

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1 give our clerk's office a call and a copy can be  
2 provided to you at 75 cents a page.

3 Before adjourning, any closing remarks?

4 Okay. All right. I think we're done. We'll stand  
5 adjourned. Thank you all very much.

6 MS. MANNING: Thank you.

7 MS. KEZELIS: Thank you.

8 (Whereupon, no further  
9 proceedings were had in the

10                   above-entitled matter.)

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1 STATE OF ILLINOIS )

2                   ) SS.

3 COUNTY OF C O O K )

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6                   I, TERRY A. STRONER, CSR, do



7 hereby state that I am a court reporter doing  
8 business in the City of Chicago, County of Cook, and  
9 State of Illinois; that I reported by means of  
10 machine shorthand the proceedings held in the  
11 foregoing cause, and that the foregoing is a true  
12 and correct transcript of my shorthand notes so  
13 taken as aforesaid.

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Terry A. Stroner, CSR  
Notary Public, Cook County, Illinois