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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

REVISION OF THE BOARD'S PROCEDURAL RULES:
35 ILLINOIS ADMINISTRATIVE CODE 101-130
No. RO3-010

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said proceeding was taken on the 12th day of December A.D., 2002, commencing at 1:00 o'clock p.m. at 600 South Second Street, Room 403, Springfield, Illinois.

APPEARANCES: ILLINOIS POLLUTION CONTROL BOARD, 600 South Second Street, Suite 402, Springfield, Illinois 62704, By: Carol Sudman, Hearing Officer, and Claire Manning, Chairman of Illinois Pollution Control Board, and Illinois Pollution Control Board Member G. Tanner Girard, Ph.D., and Illinois Pollution Control Board Member Thomas E. Johnson, Esq.

1 HEARING OFFICER SUDMAN: Good afternoon.
2 My name is Carol Sudman. I'm the hearing officer in
3 this proceeding, which is entitled, In the Matter of the
4 Revision of the Board's Procedural Rules 35 Illinois
5 Administrative Code 101 to 130, which the Board docketed
6 as R03-10.

7 Pursuant to the Board's procedural rules
8 and Section 27 and 28 of the Environmental Protection
9 Act, the Board opened this docket to amend its
10 procedural rules. The proposed rules implement the
11 Board's new electronic case management system. The
12 Department of Commerce and Community Affairs has
13 declined to do an economic impact study on this rule,
14 and we will take any testimony if anyone wishes to
15 discuss that.

16 I would like to introduce Chairman Claire
17 Manning.

18 CHAIRMAN MANNING: Good afternoon,
19 everybody.

20 HEARING OFFICER SUDMAN: And Board Members
21 Johnson and Girard.

22 MR. JOHNSON: Hi.

23 DR. GIRARD: Good afternoon.

24 HEARING OFFICER SUDMAN: We also have some

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1 staff present here. We have Erin Conley, our rule
2 making coordinator; Connie Newman, our public
3 information officer; and Bill Wilson, who is our
4 technical support person, our Web master.

5 Chairman Manning, would you like to make
6 any opening remarks before we begin?

7 CHAIRMAN MANNING: I would. First of all,
8 I'd just like to welcome everybody here. There's
9 another person we need to introduce, another two people
10 that we need to introduce here today, in the event you
11 have any questions that need to be answered.

12 Connie, would you like to introduce your
13 computer consultant? These are the guys that we hired
14 to actually develop the COOL process for us, and they've
15 done a fine job, and they're here to answer any
16 questions any of the members that are here from the
17 public might have for them today.

18 Connie, go ahead.

19 MS. NEWMAN: This is Doug Davison, and
20 Tony -- I can't pronounce his name. Valencia?

21 MR. VENEZIA: Venezia.

22 HEARING OFFICER SUDMAN: Would you like to
23 spell that for the court reporter please.

24 MR. VENEZIA: V-e-n-e-z-i-a.

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1 CHAIRMAN MANNING: Thank you.

2 HEARING OFFICER SUDMAN: Do either of the
3 board members have any opening remarks you'd like to
4 make at this time?

5 MR. JOHNSON: No.

6 DR. GIRARD: No.

7 HEARING OFFICER SUDMAN: Okay. Well,
8 today's hearing will proceed as follows: First,
9 Chairman Manning will present the new clerk's office
10 on-line program. And the images that are shown in
11 conjunction with this presentation will be entered into
12 the record as Exhibit 1. So they will be -- they will
13 appear on our Web site.

14 After the presentation, we will take any
15 questions you may have.

16 CHAIRMAN MANNING: And any comments that
17 anybody would like to offer in terms of tweaking the
18 program to help better serve all of the needs out there,
19 so.

20 HEARING OFFICER SUDMAN: Thank you.

21 Chairman, would you like to begin the
22 presentation.

23 CHAIRMAN MANNING: This is going to be a
24 rather unique rule making for the board, in that we get

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1 to actually use a power point presentation. We've never
2 done this before, so bear with me. But we're going to
3 actually show you what some of the Web pages are, you
4 know, how it's going to work.

5 HEARING OFFICER SUDMAN: Chairman, would
6 you like the lights off?

7 CHAIRMAN MANNING: Yeah, why don't we.
8 Erin will take care of that.

9 We've rather uniquely and nicely, I think,
10 dubbed this program COOL. The Board's cool now with the
11 clerk's office on-line.

12 The components of COOL -- there's three of
13 them, actually. The first is that there will be
14 electronic access to all filings made before the Board
15 in both of our contested cases and our rule makings, and
16 they'll be through the Board's Web site.

17 To the extent to which the public doesn't
18 want to file something electronically, you don't have
19 to, but it will be scanned in. Our filings will be
20 scanned in through our scanning equipment in the Chicago
21 clerk's office and will be available so that the public
22 can view the pleadings that are filed.

23 The second component of the COOL, of
24 course, is to actually allow for the electronic filing

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1 of all documents before the Board.

2 And the third component is actually to
3 allow for the electronic payment of any fees that might
4 be incurred. You can -- you know, later we'll get into
5 the details of that, but it will allow for electronic
6 payment for the filing fees as well. Right when you
7 file something, if a filing fee is required, you know,
8 it's a \$75 filing fee for various different kinds of
9 cases under the Act, and those will be earmarked, and
10 you won't be able to file unless the \$75 is attached.

11 The features of COOL will provide on-line
12 access information to general case information, filing
13 fee and fee payment capabilities, case activities, daily
14 and weekly filing reports, notification of changes in
15 case activity, hearing information, dates, locations and
16 transcripts.

17 As you know, we've spent a lot of time in
18 the last several years trying to on our Web site,
19 utilize our Web site to the best advantage of the public
20 and its users before the Board, so that you have a lot
21 of information. We have already for several years now
22 had transcripts of all the Board hearings. We've had
23 all the Board opinions and this kind of thing.

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1 further in that you'll actually get docket information.
2 We have no docket information on the Board's Web site
3 now, but you'll actually be able to go into a case and
4 find out what's going on with the case, what's been
5 docketed, whether something has been filed and that kind
6 of thing in each and every case that's before the
7 Board.

8 The particular process for filing
9 will -- involves a structure called the public key
10 infrastructure, which is PKI. This is really -- it's a
11 state envisioned and state designed structure that
12 allows for integrity of signatures before the Board.

13 This is really a technological feature that
14 the State has created that you'll go to a specific Web
15 site that's indicated on the Web site, and you'll be
16 able to put your driver's license information, and that
17 kind of thing, and the information. And they will know
18 then when you file something with us, you will be
19 identified as that particular filer. So it's basically
20 the security component of the COOL process. And it is a
21 state feature. You will be able to utilize that number
22 and that, you know, that particular identification for

23 other -- whatever other kinds of files you might want to
24 do with the State of Illinois.

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1 It really has allowed us kind of to move
2 forward that the State has done this, because it would
3 have been really expensive for the Board to design this
4 kind of security function on our own, but to sort of
5 link up with the state security function has been a real
6 boon for us to be able to do that and help us move this
7 process forward.

8 At this point, we have no size limit for
9 documents filed for COOL, but we're looking at that in
10 terms of whether the large documents electronically
11 received, if there's going to be any size limitations on
12 those particular documents.

13 Revisions right now that we have to think
14 through are some of the permit record issues that we
15 might get from the agency.

16 So if the agency, Susan Schroeder, here
17 today, if you have any information for us later in terms
18 of the agency might be contemplating in terms of your
19 permit records, we'd like to talk through some of those
20 issues.

21 The third aspect of the filings through

22 COOL is that the fees may be paid with Master Card or
23 Visa. So all those industry fees out there, those
24 people who are paying fees are going to have to use

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1 Master Card or Visa if they want to.

2 Of course, you don't have to file
3 electronically. You can do it in paper just like you
4 normally do it in paper, and send in the normal check
5 and that kind of thing.

6 What is PKI? This is -- we talked about
7 this just briefly. It's the State of Illinois
8 comprehensive system to provide public key information,
9 encryption and signatures. It is going to enable us to
10 identify the identity of every user. IDs can be
11 obtained free of charge. And that's the particular Web
12 site that you won't have to remember that Web site.
13 That link will be on our Web site.

14 The case information that will be on our
15 COOL system is historical as well as current cases. You
16 all know we already have historical cases on the Web, on
17 the Web. We haven't -- we don't have them all the way
18 back to 1970, but we have had technical people working
19 now for several months, trying to get us all the way
20 back to 1970.

21 Also all of the filings that are
22 adjudicatory rule making cases will be posted on the
23 Board's Web site. And participants in rule making may
24 sign up for the services on-line and may receive service

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1 lists. So there will be actually a component where if
2 you want to be on notice and services for any rule
3 making, you just let us know on-line. You'll be
4 on-line, and the notice and services will be read out
5 there as well.

6 This is what COOL is going to look like to
7 the users out there. You can search by case number.
8 You'll be able to search by case name. You can search
9 my media type. You can search all cases. You can
10 search the status, whether they are open, closed, all
11 cases. You can search by county. Any of those features
12 also allow you to search our cases.

13 Erin's sort of given us -- we're not
14 sure -- it searches all cases obviously. She's given us
15 one to search. It's a rule making. This is what it's
16 going to look like when you're searching a case. You
17 can put that number in. And then you get the rule
18 making. It shows you that this is the case. And then
19 you double-click over here with the -- oops. I want to

20 go back. And this is what your docket information is
21 going to look like on that particular ruling.

22 And where we have the file, for example,
23 the transcript of the hearing, you can double-click if
24 you're filing that, and that will be the transcript.

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1 So the idea is that the updated exhibit
2 list, all of these things will be viewable. And you
3 just double-click to view that particular file, and
4 you'll get it.

5 I don't know if you can read all of the top
6 information. It has the case name, the board members on
7 it, the hearing officer. Typically, we have this
8 information already accessible to us internally. A lot
9 of it is not in this format, but we're actually making a
10 lot of this information available to the public as
11 well. It is literally a virtual of the office.

12 The notification feature -- actually, I
13 want to go back and show you that notifying
14 information. See, there is this little button here and
15 it says notify me? Now, if I press it --

16 MS. CONLEY: It will take you to the next
17 letter.

18 CHAIRMAN MANNING: So to notify me, the

19 COOL will allow users to sign up for automatic
20 notification of activity in either the adjudicatory and
21 regulatory cases.

22 So if you're in a particular case and you
23 want to be notified of any activity in this case, the
24 COOL system itself will do it. This isn't any work on

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1 behalf of our clerk's office. The COOL system itself
2 will notify you that there's been a filing today in this
3 particular case. It may not -- I'm not sure how
4 detailed it's going to be in terms of what the filing is
5 and that kind of thing, but I think it provides a link.
6 It's going to provide a link back to that case.

7 MR. DAVISON: Basically, it just says that
8 it locates the updated on how to --

9 THE REPORTER: I can't hear him.

10 CHAIRMAN MANNING: Would you just say that
11 a little louder?

12 MR. DAVISON: I said that it will just
13 notify that subscriber, the subscriber that the case has
14 been updated, and it will have a link to a Web site
15 where they can view that docket information.

16 CHAIRMAN MANNING: The COOL generates email
17 notification after the filing deadline for each business

18 day the notifications will be provided for all the
19 filings and case hearing dates and locations, Board
20 opinions and orders. That shows you kind of how the
21 email notification will work.

22 That's basically our COOL process. We
23 envision that it's going to carry us to a new level of
24 public access by taking a major step forward.

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1 You see the guy stepping from one -- sort
2 of from one ledge to the other, breathing renewed life
3 into the concept of public participation in state
4 environmental decision making. That's what we're
5 attempting to do with COOL. And provide the public with
6 the process that's going to really allow for public
7 participation on-line.

8 And what we're going to do now is, I'm
9 going to go back up front, and we'll be able to have our
10 consultants answer any questions you have and any kind
11 of comments anybody would like to make.

12 We're really very excited about this
13 process obviously. The consultants have done a nice job
14 from Luster Software. We've been able to do this
15 within -- taking our process a little step forward in
16 terms of our technical capabilities. We hope to work

17 well with the agency in terms of what their technical
18 capabilities are. But the idea is to allow easy public
19 access to the Board's processes.

20 Okay. It's cool? Is that what I heard
21 somebody say?

22 HEARING OFFICER SUDMAN: Thank you,
23 Chairman.

24 At this time, I will open the floor for any

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1 questions or comments anyone may have.

2 CHAIRMAN MANNING: Go ahead, Susan.

3 HEARING OFFICER SUDMAN: Would you please
4 state your name and employer for the court reporter
5 please.

6 MS. SCHROEDER: Yes. Susan Schroeder,
7 Illinois Environmental Protection Agency.

8 I have some questions. I had people submit
9 to me questions from the various bureaus.

10 CHAIRMAN MANNING: Could we just have
11 Connie and Doug come up here, too, to answer these
12 questions so that --

13 MS. SCHROEDER: They're not really computer
14 in nature.

15 CHAIRMAN MANNING: Oh, they're not? Okay.

16 MS. SCHROADER: I think they're more legal
17 in nature. And we wanted to get an idea of what you
18 thought, your specific thoughts on some of the general
19 language that's in here.

20 According to the -- according to your new
21 rules, Section 200 E, 10200 E, there's the new
22 legislation came in where we have to describe any
23 published study or research in developing rules. Are
24 you envisioning anything different than you are already

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1 getting from the agency as far as study, study name,
2 author, date, where it's published? Not thinking of
3 anything other than what you would normally get in
4 regulatory packages?

5 HEARING OFFICER SUDMAN: That language was
6 based on a recent statutory amendment.

7 MS. SCHROEDER: Right.

8 HEARING OFFICER SUDMAN: And I believe that
9 language that you're talking about was quoted. I'm
10 sorry. What was that? 102 what?

11 MS. SCHROEDER: 10200. It's actually in a
12 couple places. Right now whatever study the agency uses
13 in a rule making will identify the name of the study,
14 the authors, the date, publication, where it may be

15 viewed as far as internet sites or whatever. And I was
16 wondering if you were envisioning anything different
17 than what you are already getting for that. I think
18 that's the first sentence.

19 CHAIRMAN MANNING: Right. We may have to
20 answer that particular question in the opinion.
21 Obviously that accompanies the rule making, but we'll
22 take that under advisement. But I would indicate to
23 you, Ms. Schroeder, that this is identical language to
24 the statutory change.

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1 I mean, one of the things that we did was
2 in addition to the rules contemplating the new COOL
3 process, these rules also implement all of the changes
4 that have been made to the Illinois Environmental
5 Protection Act as a result of those changes that were
6 agreed to by the Illinois Environmental Regulatory
7 Review Commission. So that's what this particular
8 change is.

9 HEARING OFFICER SUDMAN: This is also in
10 the Administrative Procedures Act, so.

11 MS. SCHROEDER: Then we would just like to
12 know if there's anything besides what you normally get
13 from us if there's a change.

14 CHAIRMAN MANNING: And we'll look at that
15 for you and provide you an answer either at the next
16 hearing in Chicago, or more preferably probably in
17 writing when we write the opinion accompanying the
18 ultimate ruling.

19 MS. SCHROEDER: That would be fine.

20 Regarding the second sentence. The Bureau
21 of Land does not perform studies necessarily, but the
22 Bureau of Water does. They do have contractors, and the
23 studies can be quite extensive and the data can be also
24 quite extensive. And this second sentence says that we

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1 have to provide, make the underlying data available to
2 members of the public.

3 The question here was, would availability
4 on a Web site be adequate? Would availability in our
5 library be adequate?

6 You may not be able to answer this one
7 either, but take it under advisement that the agency
8 would be, I think, hard pressed to send out reams and
9 reams of data to people. Some of these rule makings are
10 quite contentious. There are quite a few people that
11 are interested or would be interested in the data. And
12 we would like a little guidance there as to what you

13 folks would envision in a particularly voluminous study.

14 CHAIRMAN MANNING: What may be helpful for
15 us, too, is if you have any information that, you know,
16 once you -- if you talked to all your divisions, make
17 sure the agency puts on the record whatever concerns it
18 may have, you know, in public comments following this
19 proceeding as well.

20 Make sure you're covering then all of the
21 concerns from all of the divisions so that we can
22 appropriately answer that question, because that will be
23 a serious issue, particularly since this language comes
24 from the Administrative Procedures Act. And we all know

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1 that the Administrative Procedures Act doesn't always
2 provide a nice fit with our procedures under the
3 Environmental Protection Act. So we'll try to do
4 whatever we can, you know, in helping make that segue.

5 Do any of the board members wish to comment
6 at this point in time about what we might want to do
7 with that?

8 DR. GIRARD: Well, actually, I have a
9 question of the agency. And that is, do you currently
10 charge members of the public a cost per page if they ask
11 you for some document that you have?

12 MS. SCHROEDER: You're talking about FOIA
13 requests here?

14 DR. GIRARD: Well, any kind of requests for
15 documents.

16 MS. SCHROEDER: Generally they request
17 for -- public documents come in as FOIA requests. And
18 we do have a schedule of how much we would charge,
19 depending on if it's paper or CD or video or whatever.
20 I think right now there's 400 free pages, and anything
21 after that is 25 cents a page for paper. I believe
22 that's in Illinois Administrative Code 1828.

23 This was not, I don't think, designed to be
24 a FOIA request. So that also presents problems if we

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1 have a lot of reproduction with no ability to charge for
2 it.

3 CHAIRMAN MANNING: But to the extent to
4 which the agency actually is relying on a study to
5 propose a rule, which I think this particular language
6 contemplates, one would guess that that information will
7 be put into the rule making itself anyway.

8 MS. SCHROEDER: Yes, but this says that the
9 agency must make it available. I guess it's a good
10 question whether you're going to make it available or

11 whether they're going to be calling us, and we're going
12 to be trying to make it available. But as I caution
13 you, that some of this can be quite voluminous.

14 MR. JOHNSON: Just to let you know, the
15 Board has considered, in particular, voluminous filings;
16 in particular, our concern about allowing for the
17 electronic filing of documents and then us having to
18 reproduce those documents, and specifically in landfill
19 siting cases where you can get boxes and boxes of
20 records. So we wrote in to protect the Board from
21 having to reproduce documents to an enormous extent, an
22 "out," if you will, so that we can order the parties to
23 provide the nine copies that they have in the past.

24 And I would suggest that people are

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1 sensitive -- and I certainly can't speak for the entire
2 Board -- sensitive to this, and we'll give it due
3 consideration.

4 MS. SCHROADER: We do have a library that
5 is accessible to the public. And our headquarters are
6 here in Springfield.

7 MR. JOHNSON: Haven't you in the past, and
8 I think in the water triennial review, didn't the
9 agency -- individuals just identify where these

10 documents could be found and then leave it up to the
11 individuals? I mean, it certainly didn't copy them and
12 send them out to everybody that was at the hearing
13 then.

14 MS. SCHROEDER: Yeah. It really presents a
15 problem where we are actually doing the study, the
16 agency. If it's a USEPA document, you know, that's
17 available to the public in many different places. But
18 when it's a study that we are actually paying for, the
19 agency, and we are the only ones that have the data,
20 then it becomes a problem as to how we're going to get
21 that data to members of the public in a very cost
22 effective and time effective manner. So that's
23 something for you just to consider there.

24 CHAIRMAN MANNING: If it's filed in our

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1 rule making, though, as justification for the rule, it
2 will be part of the public record, because it will be
3 scanned in through our COOL process. And it would seem
4 to me that the obligation has been met, but that's
5 just -- --.

6 MS. SCHROEDER: Well, you had mentioned
7 that you wanted a continuing dialogue on the permit
8 records, the administrative records for permits. This

9 could be as voluminous, if not more. So I don't know
10 what your capability is of holding that kind of
11 information.

12 DR. GIRARD: And so let me just see if I
13 have this straight.

14 Your concern then is for all the data,
15 which many times we see sort of summarized in terms of a
16 proposal or something of that sort. And so you've got
17 all this voluminous data. And really what it comes down
18 to is what we mean by make copies available.

19 MS. SCHROEDER: Correct.

20 DR. GIRARD: And we have to discuss that in
21 the opinion. But, you know, it doesn't say to me that
22 the language requires you to give a copy to the members
23 of the public. It just says make copies available.

24 So it may be that, you know, notifying the

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1 public that the copies -- you have a copy of the
2 underlying data that they can actually look at in your
3 library in Springfield would be sufficient in some
4 cases. So that's something we certainly have to
5 discuss.

6 MS. SCHROEDER: And that will be very
7 doable for us to make it accessible in our library, for

8 instance.

9 CHAIRMAN MANNING: And as I said, if we
10 have any further information, we'll impart it at either
11 the next hearing or in the opinion.

12 MS. SCHROADER: In the section 101.1010, it
13 states that service is deemed complete on the day of
14 successful electronic transmission.

15 Is there a way for the sender to tell if it
16 was a successful transmission? Is there going to be any
17 confirmation coming back from the COOL system saying
18 that they've received the transmission?

19 CHAIRMAN MANNING: Doug, I'm going to let
20 you and Connie answer that one.

21 MR. DAVISON: We had spoke about that issue
22 previously just internally, and that's something that's
23 very difficult to do, to get the receipt to come back to
24 you that someone actually has received it. Yes, we can

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1 verify that we have sent the document and that it passed
2 through all of the servers that are under our control.
3 Right now, there is no way to guarantee that they will
4 then send us a receipt back saying they got it.

5 There are some software packages you can
6 get that will allow you to request a receipt, but

7 there's many ways that they can block that. And some
8 other email reading programs will just completely ignore
9 that request for receipt altogether as well. So we
10 really don't have a way to ensure that it reached them
11 directly and they've actually read it or anything.

12 MS. NEWMAN: (Inaudible.)

13 MS. SCHROEDER: Pardon me?

14 MS. NEWMAN: We will send out receipt when
15 we in the clerk's office receive it? We will send it
16 back to the person we've received it?

17 MS. DAVISON: Yes. We will notify them
18 that we've received documents. It's basically when we
19 send documents out, that there's no way we can get a
20 guarantee of receipt from them that they received it.

21 MS. SCHROEDER: But you're envisioning that
22 service is complete once you have received it?

23 CHAIRMAN MANNING: Yes, I think that's
24 correct, yes.

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1 One of the ways of knowing that we've
2 received it, it's going to be right up on the Web page.
3 You're going to see it.

4 MS. SCHROEDER: If the COOL system fails,
5 is there going to be -- for any number of reasons; say,

6 electric outage, that the system isn't perfect, and it's
7 just electrical obviously, what is your thoughts on
8 protocol from there?

9 If the agency, for instance, were relying
10 on an electronic transmission to you, and we couldn't
11 get it to you, or, say, not our system, but your system
12 fails, is there going to be more time to file things?
13 What is your thought on that?

14 Because at that point, if we're expecting
15 that we can just electronically file to you, and all of
16 a sudden we have to rely on paper, and, say, make so
17 many copies and get it in the mail and get it to you by
18 a certain date, there may be a filing deadline failure
19 there.

20 HEARING OFFICER SUDMAN: Well, that may be
21 one instance.

22 As you know, the clerk's office, the board
23 members, the hearing officer can all authorize parties
24 to file by facsimile in certain cases like that. We can

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1 introduce that again more fully in our second notice
2 opinion. But if we know that there's a problem and we
3 know that you're trying to get something to us
4 immediately, I don't know why we wouldn't be able to

5 accept it by facsimile.

6 MS. SCHROEDER: Thanks.

7 Also, if you could think about how you
8 would handle a very large filing coming in by fax,
9 because some of this will be a lot more voluminous than
10 others.

11 CHAIRMAN MANNING: I didn't understand that
12 question, Ms. Schroeder.

13 MS. SCHROEDER: For instance, if we have a
14 RCRA permit appeal --

15 CHAIRMAN MANNING: Right.

16 MS. SCHROEDER: -- of the administrative
17 record, there's been a failure of the system, and you
18 are requesting us to fax 700 pages to meet a filing
19 deadline, it may not be appropriate or whatever for you,
20 but in that instance, that would really tie up our
21 equipment quite a bit.

22 CHAIRMAN MANNING: Right. Well, we're all
23 reasonable people here, too. One would assume that a
24 phone call, as you would know, to either the hearing

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1 officer -- that's the hearing officer in the permit
2 appeal -- certainly if there's a problem where we can't
3 do an electronic transmission, then the hearing officer

4 will be able to deal with that issue.

5 HEARING OFFICER SUDMAN: Right. Usually if
6 there is an instance like that, we can ask -- usually we
7 won't need all 700 pages of information right away. We
8 may only need the first five pages. We can -- you know,
9 and then the rest could be sent via regular mail. But I
10 think certainly we have the flexibility through the
11 board members, the clerk's office and the hearing
12 officers to make sure there won't be any problem.

13 CHAIRMAN MANNING: Is the agency
14 contemplating the ability immediately to be able to file
15 permit records electronically anyway? Because my
16 understanding was that the agency really -- are you
17 already capable of filing a 700-page RCRA permit record
18 electronically with us anyway right now?

19 MS. SCHROEDER: I can't answer that
20 question, but I know that the agency is going to be
21 moving in that direction. I mean, we're moving in the
22 same direction that you are obviously. We don't have
23 the capacity to hold the paper. It's a lot more
24 efficient if we do it electronically.

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1 So I can't really speak for the different
2 bureaus and where exactly they are electronically. You

3 know, their electronic capability. But we're going to
4 be moving in the direction of using this system as much
5 as possible.

6 CHAIRMAN MANNING: Okay.

7 MS. SCHROEDER: Okay. Section 100.10004 B
8 states the receipt is no way an indication of the
9 documents legal sufficiency.

10 We would like a little clarification on
11 that. Are the documents electronically filed not
12 considered legally equivalent to documents filed on
13 paper? Is it a -- I guess this goes to the same
14 question. Once we send it to you, is that considered
15 legally sufficient notice?

16 HEARING OFFICER SUDMAN: It just means that
17 it doesn't -- because you get that receipt doesn't mean
18 the clerk's office has looked at it yet to make sure
19 that everything is there. You may still get a phone
20 call saying we're missing such and such. That's all
21 that means. Just initially no one's -- you know, the
22 fact that you've sent it and you got the receipt doesn't
23 necessarily mean we have everything we need.

24 MS. SCHROEDER: So that goes to substance?

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1 You're not commenting on the substance? You're just

2 commenting on the fact that you've received the paper?

3 HEARING OFFICER SUDMAN: Right.

4 CHAIRMAN MANNING: That's correct. That's
5 pretty much our process now, Ms. Schroeder. That just
6 because we receive something and date stamp it in the
7 clerk's office doesn't mean it's legally sufficient.
8 It's not legally sufficient until we have a board order
9 saying this is fine. This is particularly true in
10 variance requests, you know, and those kinds of issues.

11 MS. SCHROEDER: I think that's all for
12 now. I'm going to see what other people ask, and I may
13 have another follow-up for you.

14 CHAIRMAN MANNING: You recognize we have
15 another hearing in Chicago, and we will have open public
16 comments that will follow that hearing?

17 MS. SCHROEDER: Right.

18 HEARING OFFICER SUDMAN: Thank you very
19 much.

20 Does anyone else have any questions or
21 comments? Okay.

22 CHAIRMAN MANNING: Mr. Messina, you're
23 here. Do you have any comments or questions?

24 MR. MESSINA: Actually, I do have one

1 question.

2 HEARING OFFICER SUDMAN: Could you please
3 identify yourself for the court reporter.

4 MR. MESSINA: Alec (sp) Messina,
5 M-e-s-s-i-n-a, with the Illinois Environmental
6 Regulatory Group.

7 It was just kind of a follow-up to one of
8 the questions that Ms. Schroeder had asked.

9 One of the things that I had noticed when
10 looking through the proposal was that failure of the
11 service would not limit the responsibility of the filer
12 to still timely file.

13 And the only thing that jumped out to me
14 was that oftentimes hearing officers will say that the
15 mailbox rule is not in effect for certain kinds of
16 filings. And obviously if you have a very large filing,
17 my comment really does not change things, but I would
18 just ask that perhaps the mailbox rule would solve some
19 of those problems where there was a system failure, and
20 there still would be time during that day to
21 make -- there still would be time.

22 CHAIRMAN MANNING: My understanding is the
23 rules contemplate that if you can't make the electronic
24 filing, as long as you get it in the mail that day,

1 you're fine.

2 MR. MESSINA: Is that right?

3 CHAIRMAN MANNING: That's what my
4 understanding of it is. We'll check that out, but I'm
5 almost positive that the rules contemplated that
6 process. That if you don't get it -- if you can't file
7 it by our deadline, that as long as you get it in the
8 mail by that date, you're going to be fine.

9 MR. MESSINA: Okay, great.

10 CHAIRMAN MANNING: I think we're redoing
11 the mail box rule. And what we're doing is the date of
12 filing is the date you get it in the mail.

13 MR. MESSINA: Well, it really looks very
14 impressive. It really does.

15 CHAIRMAN MANNING: Thank you.

16 HEARING OFFICER SUDMAN: Any other
17 questions or comments from anyone?

18 Okay. Seeing none, I would just like to
19 make a few closing remarks.

20 I would like to let people know that the
21 transcript of this hearing will be available or should
22 be filed in this office by next Wednesday and should be
23 on the Web shortly thereafter. Copies are also
24 available from the clerk's office for 75 cents a page.

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1 The next hearing will be December 19th.
2 That's next Thursday at 1:00 p.m. in Chicago in Room
3 9-40 of the Thompson Center at 100 West Randolph
4 Street. And the format of that hearing will be the same
5 as today's presentation followed by questions and
6 comments.

7 The Board will accept written comments
8 until January 21st of 2003, and that deadline may be
9 extended if necessary. All comments will be posted on
10 the Board's Web site.

11 Chairman Manning, do you have any closing
12 comments?

13 CHAIRMAN MANNING: No. Just thank you all
14 for your attention, and we look forward to working with
15 you and with those issues.

16 HEARING OFFICER SUDMAN: Board Members
17 Johnson and Girard, do you have any closing comments
18 you'd like to make?

19 MR. JOHNSON: No.

20 DR. GIRARD: No thank you.

21 HEARING OFFICER SUDMAN: Well, thank you
22 very much for coming today. And if there are no other
23 comments, we will adjourn this hearing.

24 [End of proceeding.]

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COURT REPORTER'S CERTIFICATION

I, Ann Marie Hollo, Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter of the State of Illinois and Notary Public, do hereby certify that said proceeding before the Illinois Pollution Control Board and Illinois Pollution Control Board Hearing Officer Carol Sudman, took place on the 12th day of December A.D., 2002, and held at 600 South Second Street, Suite 403, Springfield, Illinois.

I do hereby certify that I did take stenographic notes of the proceedings and that said notes were reduced to typewritten form under my direction and supervision.

I do further certify that the attached and foregoing is a true, correct and complete copy of my notes and that said testimony is now herewith returned.

I do further certify that I am not related in any way to any of the parties involved in this action and have no interest in the outcome thereof.

Dated at Litchfield, Illinois, this 12th day of December, A.D. 2002 and given under my hand and seal. My commission expires April 5, 2006.

Ann Marie Hollo, CSR, RPR, RMR

