

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
Registration of Smaller ) DOCKET R12-10  
Sources (ROSS): New 35 Ill. ) (Rulemaking-Air)  
Adm. Code 201.175 )  
 )

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**STATE OF ILLINOIS  
Pollution Control Board**

Hearing held, pursuant to notice, on Wednesday,  
October 5, 2011, at the hour of 1:00 p.m., at 1021  
N. Grand Ave. East, Springfield, Illinois, before  
TIMOTHY J. FOX, duly appointed Hearing Officer.

L.A. REPORTING SERVICE  
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REPORTER: LAUREL A. PATKES, CSR #084-001340

1 BOARD MEMBERS:

2 ANDREA S. MOORE  
3 JENNIFER BURKE

4 APPEARANCES:

5 RACHEL DOCTORS  
6 Assistant Counsel  
7 IEPA  
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1 HEARING OFFICER FOX: The time of  
2 1 o'clock having arrived, we'll go on the record and  
3 begin this proceeding.

4 Good afternoon to everyone and  
5 welcome to this Illinois Pollution Control Board.  
6 My name is Tim Fox, and I'm the hearing officer for  
7 this rulemaking that's entitled In the Matter of:  
8 Registration of Smaller Sources (ROSS): New 35  
9 Illinois Administrative Code 201.175.

10 Also present today from the  
11 Pollution Control Board are at my left Board Member  
12 Andrea S. Moore who is the lead board member for  
13 this rulemaking and to my right Board Member  
14 Jennifer A. Burke.

15 The Board docket number for  
16 this rulemaking is R12-10. The Illinois  
17 Environmental Protection Agency filed this  
18 rulemaking proposal on August 15, 2011. The  
19 Agency's proposal also included in the same package  
20 the prefiled testimony by Mr. Jim Ross and Mr. Edwin  
21 Bakowski, both of whom are present with us here  
22 today.

23 In an order dated August 18,  
24 2011, the Board accepted the Agency's proposal for

1 hearing and directed the clerk to publish the  
2 proposal for public comment, and that proposal  
3 appeared in the Illinois Register on September 2,  
4 2011 at 35 Illinois Register page 14616.

5 On August 18, 2011, a hearing  
6 officer scheduled two hearings, the first of which  
7 is taking place today, October 5, 2011, and in  
8 Springfield, and the second to be held on  
9 October 27, 2011 in Chicago.

10 The order also set a deadline  
11 of September 21, 2011 to prefile testimony for this  
12 first hearing. The order noted that the Agency had  
13 already prefiled testimony and indicated that the  
14 Agency need not refile it unless they wished to  
15 amend it or supplement it.

16 The Agency has not filed  
17 amended or supplemental testimony and no other  
18 participant has prefiled testimony for this hearing  
19 today.

20 We will begin this hearing  
21 with Mr. Ross's and Mr. Bakowski's prefiled  
22 testimony on behalf of the Agency under  
23 Section 102.242(f) of the Board's procedural rules.  
24 That testimony which has been posted to the Board's

1 web page since filing will be entered into the  
2 record as if read, and then we can proceed to the  
3 questions that the participants may have on the  
4 basis of that testimony although if the Agency  
5 wishes to begin with a brief summary or introduction  
6 to clarify, that certainly would be appropriate.

7 After those questions of the  
8 Agency on its testimony, we can turn to any witness  
9 who did not prefile testimony but who would like to  
10 testify here today. There is a sheet just inside  
11 the door at which any person can indicate that  
12 although they did not prefile testimony they would  
13 like to offer sworn testimony today.

14 As time allows after testimony  
15 and questions, participants may be allowed to offer  
16 public comments.

17 This proceeding is, of course,  
18 governed by the Board's procedural rules. All  
19 information that is relevant and that is not  
20 repetitious or privileged will be admitted into the  
21 record. Please note that any questions on the part  
22 of the Board or the Board staff are intended solely  
23 to develop a complete and clear record and do not  
24 reveal or indicate any prejudgment on the proposal

1 that the Agency has filed.

2 For the court reporter today,  
3 I would ask you speak clearly. I don't think we'll  
4 have any issue being heard but I'm sure she'll  
5 appreciate clear answers, and please avoid speaking  
6 at the same time as any other person.

7 Do we have any questions about  
8 our procedure or about our order today?

9 Neither seeing nor hearing  
10 any, Ms. Doctors, I think it's time under that order  
11 of proceeding to turn to the Agency and have the  
12 witnesses sworn so that they may answer questions.

13 MS. DOCTORS: Okay. Let's have  
14 Mr. Ross and Mr. Bakowski sworn, please.

15 (Whereupon the witnesses were  
16 sworn by the reporter.)

17 MS. DOCTORS: As previously  
18 mentioned, my name is Rachel Doctors, and I'm  
19 representing the Illinois EPA in this matter.

20 Just a little background. On  
21 July 12, 2001, the Illinois Environmental Protection  
22 Act was amended to include new Section 9.14 which  
23 authorized the Illinois EPA to propose and the board  
24 to adopt rules for the registration of very small

1 sources, and on August 15th, the Agency submitted  
2 the proposal for ROSS, which is acronym for  
3 registration of smaller sources.

4 As part of the proposal as  
5 noted by the hearing officer, we included the  
6 testimony of Mr. Ross and Mr. Bakowski which I'd  
7 like to have marked as -- would you like me to enter  
8 these as Hearing Exhibits 1 and 2 or are they  
9 already in the record?

10 HEARING OFFICER FOX: They are in  
11 the Board's docket, but as hearing exhibits, it  
12 would be helpful, Ms. Doctors, if we may have a copy  
13 to introduce to file as hearing exhibits.

14 MS. DOCTORS: Okay. I have a copy  
15 for the stenographer and a copy for each one of you.

16 HEARING OFFICER FOX: I think one  
17 will be perfectly okay, Ms. Doctors. Thank you.

18 Do you by any chance have  
19 copies you might share with some of the other  
20 entities that are present?

21 MS. DOCTORS: Let's mark the  
22 testimony of Jim Ross as Hearing Exhibit 1 and the  
23 testimony of Edwin Bakowski as Hearing Exhibit No.  
24 2.



1 (Whereupon Hearing Exhibits 1 and  
2 2 were marked for identification  
3 as of this date.)

4 HEARING OFFICER FOX: And,  
5 Ms. Doctors, I'll construe that as a motion to admit  
6 those, Mr. Ross's prefiled testimony as Hearing  
7 Exhibit No. 1 and Mr. Bakowski's, a motion to admit  
8 his prefiled testimony as Exhibit No. 2.

9 Is there any objection to the  
10 motion to introduce those two documents under those  
11 exhibit numbers?

12 Neither seeing nor hearing  
13 any, Ms. Doctors, they'll be so marked, entered into  
14 the record of hearing under those two exhibit  
15 numbers.

16 (Whereupon Hearing Exhibits 1 and  
17 2 were admitted into evidence at  
18 this time.)

19 HEARING OFFICER FOX: Thank you  
20 very much for supplying those.

21 MS. DOCTORS: Thank you.

22 And then at this time I'd ask  
23 Mr. Ross or Mr. Bakowski, would either one of you  
24 like to make a brief statement or would you like to

1 go directly to questions?

2 MR. ROSS: Directly to questions.

3 MR. BAKOWSKI: Directly to  
4 questions.

5 MS. DOCTORS: Our preference is  
6 just to go directly to questions.

7 HEARING OFFICER FOX: All right.  
8 That makes good sense, Ms. Doctors.

9 If anyone has any questions of  
10 Mr. Ross or Mr. Bakowski and would like to be  
11 recognized to pose those, please raise your hand so  
12 that I may recognize you.

13 When I do so for the first  
14 time, if you would pronounce your name clearly for  
15 the court reporter and name any organization or  
16 group you may represent, that would be very helpful  
17 and appreciated.

18 Why don't we open up the floor  
19 for questions to Mr. Ross and Mr. Bakowski on the  
20 basis of their testimony.

21 MR. GRANT: I'll start.

22 HEARING OFFICER FOX: Sir, please  
23 go ahead, and if you'd tell us your name, please.

24 MR. GRANT: My name is Mark Grant.

1 I represent the National Federation of Independent  
2 Business.

3 Here's the first question I  
4 have.

5 The ROSS program is just one  
6 part of the permit streamlining initiatives  
7 contained in Public Act 97-0095 authorizing its  
8 creation. Among other things, the Act also provides  
9 for more efficient and convenient electronic filing  
10 of fees and permits.

11 Will ROSS facilities be  
12 eligible to register, renew, pay fees, and notify  
13 the Agency of changes electronically?

14 MR. ROSS: I can answer that.  
15 Again, this is Jim Ross.

16 Initially I believe we  
17 currently don't have the mechanisms in place where  
18 you will be able to electronically pay the fees,  
19 submit the registration form, etc., etc.

20 However, we have discussed  
21 that, and we are currently working on both  
22 electronic form submittal and the electronic payment  
23 of fees for the registration program. In fact, we  
24 have a meeting scheduled tomorrow with the treasurer

1 to discuss the electronic payment of such fees and  
2 what it all would entail and how we can work with  
3 them to make that happen so we'll know a lot more  
4 about as far as the timing of electronic fee  
5 payment.

6 On the forms, as you know and  
7 others know, we're working closely with industry as  
8 a result of the legislation to improve our website  
9 and the forms that we offer, make them more user  
10 friendly, and with that in mind, we are in the  
11 process of developing a user friendly form for the  
12 registration program that will initially be  
13 available on our website and then hopefully sometime  
14 in the future, now, this may be farther off, our IT  
15 people have identified some obstacles that need to  
16 be overcome before this can happen, but sometime in  
17 the future, it's our intent that eligible sources  
18 will be able to submit their registration form  
19 electronically to us.

20 So, you know, just kind of to  
21 sum it up, we're going in that direction, and we  
22 think these services are a benefit to both industry  
23 and ourselves so we hope to get to where we need to  
24 go as soon as possible.

1 MR. HENRIKSEN: Could I ask a  
2 follow-up question?

3 HEARING OFFICER FOX: Go ahead.

4 MR. HENRIKSEN: Again, John  
5 Henriksen, Illinois Association of Aggregate  
6 Producers.

7 Again, we appreciate you all  
8 considering this.

9 Will you all consider amending  
10 your current rules to provide a mechanism for  
11 electronic permit and fee submittal in the event  
12 that your IT folks get this worked out?

13 MR. ROSS: Yeah, I think we're  
14 willing to take all suggestions back, and we have  
15 already discussed that whatever questions and issues  
16 that come up today at the hearing that we're going  
17 to have several meetings to discuss where we can  
18 revise the rule appropriately and what we can do to  
19 address the comments and concerns raised here today.

20 MR. HENRIKSEN: Thank you.

21 MR. GRANT: I have a second  
22 question that's kind of a two-parter.

23 What is the penalty for those  
24 who fail to timely register under the ROSS program?



1 previously avoided registration fees or permit fees  
2 such as construction or operating fees?

3 MR. ROSS: Again, that's somewhat  
4 up to our Compliance and Enforcement Section. They  
5 take these case by case. You know, they also take  
6 into account was there intent involved, you know,  
7 and I don't want to speak for our legal department,  
8 but the harm to the environment and all these things  
9 are taken into account in regard to whether there is  
10 a penalty or any kind of enforcement action.

11 Both the last question and  
12 that question are very good questions, but I guess I  
13 can't emphasize enough that that certainly is not  
14 the intent of this program to go out there and seek  
15 and identify people who aren't appropriately  
16 permitted or who need to register or are under  
17 threat of some penalty.

18 Our intent is, as I stated  
19 before, is to ease the regulatory burden of these  
20 sources and allow us to better use our resources.

21 We will do a level of outreach  
22 that involves trying to identify sources that are  
23 eligible for the registration program and sending  
24 them a letter, a postcard. We're in the process of

1 developing that. We've had a couple drafts that we  
2 reviewed, but that's the extent so to say of our  
3 efforts in this regard is trying to identify  
4 sources.

5 We're identifying sources in  
6 regards to notifying them that they're eligible to  
7 register. We're not seeking to identify sources to  
8 pursue some kind of enforcement action or penalty  
9 for having not registered or obtained a permit.

10 MR. GRANT: Thank you.

11 MR. ADKISSON: Jeff Adkisson. I'm  
12 the executive vice president with Grain and Feed  
13 Association of Illinois.

14 We appreciate the Agency's  
15 willingness to work on this and to develop a simpler  
16 program or one that is an ease of our regulatory  
17 burden.

18 My question relates to  
19 Subsection D. Under Subsection D, existing sources  
20 holding permits may register of course after the  
21 effective date of this section.

22 The first partly part of the  
23 question is, will existing air permits for the  
24 sources that choose to register under ROSS



1 automatically become inactive or what happens to  
2 those permits if someone chooses to become a part of  
3 the ROSS program?

4 MR. ROSS: We briefly discussed  
5 this in some of our meetings and I believe how we  
6 resolved it, and again, we can probably follow up to  
7 some degree on this after the hearing after we  
8 review our notes, but to the best of my  
9 recollection, once a source has registered, their  
10 requirement to hold a permit is gone, and therefore,  
11 essentially no further action would be required by  
12 the registry if that's what we want to call them,  
13 the entity holding the registration, and so with the  
14 permitting requirements gone, their need to hold a  
15 permit would be gone. No further action would be  
16 required by them, and how we treat that on our  
17 database would be something that we would need to  
18 decide.

19 I know that we're going to  
20 have a field in our database where it will say that  
21 this source is registered and therefore no longer  
22 required to have a permit. Whether it still  
23 identifies that they previously had permits, I don't  
24 know, but certainly I would think that we would

1 consider those permits no longer active or needed.  
2 I think that's the case.

3 MR. BAKOWSKI: If I could add to  
4 that, I think that is a good question and we can  
5 look into making the registration form on approval  
6 an automatic request to withdraw the previous  
7 permits.

8 MR. ADKISSON: As a follow-up to  
9 that, will the source receive a confirmation from  
10 IEPA that their registration was received?

11 MR. ROSS: We have talked about  
12 that also and it kind of ties into the original  
13 question on all this being available electronically  
14 or how much information we have available via  
15 website or other electronic means.

16 In the future, we talked about  
17 that we would hope to have all the sources that are  
18 registered listed on our website, and then fields on  
19 our website would indicate, you know, is current  
20 registration active, when do they need to renew or  
21 seek renewal, you know, just what the status of  
22 their registration is. So that will be easy to do  
23 in the future.

24 I think our initial intent was

1 to not send out a notification that they're  
2 registered but instead somehow to convey the sources  
3 that you can assume to be registered if you don't  
4 hear from us.

5 We may rethink that if that's  
6 a concern to the registered sources, but again,  
7 we're, to some extent, we're trying to minimize the  
8 paper and mailings back and forth. The company  
9 submits the registration. I mean, certainly they  
10 will know when we cash their check that we have them  
11 as registered so they could check that, but as far  
12 as did we intend to send out a mailing saying you  
13 have now been officially registered, that wasn't our  
14 intent.

15 As Ed brings up, you'll  
16 certainly know in the next billing cycle too because  
17 we'll send you a renewal a certain period of time  
18 ahead of when your registration is due to expire.

19 MR. ADKISSON: Dovetailing off of  
20 that, would that renewal notice specifically say  
21 that it was for the ROSS program?

22 MR. BAKOWSKI: Yes, the renewal  
23 notice would say that this is specifically for the  
24 ROSS program and that your annual renewal fee is

1 due.

2 MR. ADKISSON: All right. Another  
3 question under Subsection D. It's indicated that,  
4 of course, new sources shall register 90 days before  
5 commencing operation. And, kind of tying into the  
6 last question as well, will new sources receive a  
7 confirmation that the registration was received, and  
8 are sources precluded from commencing operation  
9 until the registration is confirmed?

10 MR. ROSS: As far as receiving  
11 notice that the registration was received and  
12 accepted, I refer back to an answer to my previous  
13 question. Our current intent was that, no, we were  
14 not going to send out any response mailing that  
15 we've reviewed your registration and it has been  
16 accepted.

17 If we reject it, our intent  
18 was to send out a mailing but if we accept it, our  
19 intent was not to.

20 The second part of that  
21 question, if you could repeat that.

22 MR. ADKISSON: Are sources  
23 precluded from commencing operation until the  
24 registration is confirmed or, perhaps put another

1 way, how do they know that they have been granted  
2 the registration and they can operate if they have  
3 not received a confirmation?

4 MR. ROSS: That's an excellent  
5 question.

6 One way they could find out if  
7 we've accepted their registration is they could  
8 always call. We will have certain analysts with  
9 these initial, permit analysts with these initial  
10 registrations assigned to go through them all and to  
11 log them in so that we can get the database up and  
12 running and to ensure the initial integrity of the  
13 program.

14 Again, another way they could  
15 check is, as I mentioned before, if we cash their  
16 check, I think they could reasonably assume that  
17 they've been accepted into the registration program.

18 When can they begin  
19 construction, begin operation, that's a very good  
20 question. I think we'll have to discuss that and  
21 get back to you.

22 MR. ADKISSON: Thank you.

23 MEMBER MOORE: Mr. Ross, just a  
24 question.

1                   Are you anticipating some kind  
2 of timeframe between when you might receive an  
3 application and when you might deem it unacceptable?

4                   MR. ROSS: I think it would be a  
5 very quick process reviewing these. In fact, during  
6 these initial registration applications that we get,  
7 we're going to have dedicated people reviewing those  
8 as soon as they come in the door. That's for a  
9 couple reasons, and they will be permit analysts so  
10 they'll be familiar with the rule and regulation and  
11 they'll have a list in front of them of actual  
12 emissions of these sources, and it shouldn't be any  
13 longer than a week before we would have a final  
14 determination, and that's quick for us processing  
15 applications.

16                  MEMBER MOORE: That's pretty quick.

17                  MR. ROSS: And that, in part, is  
18 due to the simplicity of the criteria. They would  
19 simply on the forms that we're preparing certify  
20 that they, in fact, are eligible and meet the  
21 criteria for registration, and that for the most  
22 part would be the extent of the check we do as long  
23 as it compares with our list that we have in our  
24 emissions database that will show, yes, we agree

1 their emissions are less than the criteria.

2 And so for those who don't  
3 jive, by don't jive, you know, they've certified  
4 that their emissions are less; our emission database  
5 may say their emissions are more. For those, the  
6 analyst would likely call the company to verify, you  
7 know, that you understand the criteria, you're  
8 certifying that you've met the criteria, and you've  
9 signed your name that you've met the criteria.

10 If they, in fact, say, yeah,  
11 we realize that; we realize our emissions were eight  
12 tons the previous year and this year and next year  
13 we're forecasting they'll only be 4.9 tons so we're  
14 eligible for the program, so, yeah, we knew what we  
15 were doing, Illinois EPA, and we want to register,  
16 that would essentially be the extent of the check.

17 So as far as sources that we  
18 would not let into the program, we really can't  
19 envision a case where there would be any of those.  
20 It would be only cases I believe where the company  
21 wasn't fully aware of all the criteria, didn't know  
22 what they were doing but they certified that they  
23 met the criteria.

24 So that should be few and far

1 between, if any, but if that ever happens, I think  
2 we could turn it around very, very quick, within a  
3 week, at most two weeks.

4 MEMBER MOORE: So that's something  
5 you'd want to have included?

6 MR. ROSS: Included in the rule?

7 MEMBER MOORE: Uh-huh.

8 MR. ROSS: Well, we try not to  
9 limit ourselves to time frames.

10 HEARING OFFICER FOX: And,  
11 Ms. Doctors, if I may interject.

12 Mr. Ross, you had indicated in  
13 response to Mr. Adkisson's questions I believe that  
14 there were issues relating to the acceptance of an  
15 application for registration and the need to hold an  
16 accepted registration before operating, and you did  
17 suggest, I think quite clearly, that you'd need to  
18 look at that.

19 MR. ROSS: Right.

20 HEARING OFFICER FOX: Is a response  
21 of that nature something that you can prepare for  
22 the second hearing that is on the 27th?

23 MR. ROSS: Yeah, I think that would  
24 be appropriate that we would address that further



1 and the follow-up question further.

2 HEARING OFFICER FOX: And I didn't  
3 mean to overlook Member Moore's question.

4 MEMBER MOORE: No, that's fine. We  
5 got it.

6 HEARING OFFICER FOX: In effect, a  
7 review period, a review deadline upon application.

8 MEMBER MOORE: It just sometimes  
9 makes it clearer.

10 HEARING OFFICER FOX: Ms. Doctors,  
11 I appreciate you letting me go ahead with that  
12 before I lost my thought.

13 MS. DOCTORS: Okay. I just want to  
14 ask a clarifying question.

15 Could someone call to find out  
16 what the status, if they had a new source, could  
17 they call us and find out whether we accepted it or  
18 registered it?

19 MR. ROSS: Yes, they could. They  
20 could call, and I believe I mentioned there will be  
21 specific people assigned to this. They could  
22 readily reach one of those people, and they would be  
23 able to quickly identify did we receive the  
24 registration and was it accepted and is the source

1 officially listed as registered in our database, and  
2 that's how simple the program is. There won't be  
3 anything more than that.

4                   Once they submit the  
5 application, we give it a quick review. They, of  
6 course, have certified that they meet the  
7 eligibility. It goes into our database that they're  
8 registered. Their registration form will go into a  
9 file cabinet, and that's basically the extent of the  
10 process. It's that simple.

11                   HEARING OFFICER FOX: And if I may  
12 ask a question, Mr. Ross, and I don't mean to commit  
13 the Agency to a particular course, but Mr. Grant had  
14 asked about the upcoming online permitting and  
15 payment. Is there any chance that the online data  
16 could simply demonstrate to an applicant that their  
17 registration had been accepted and that they were,  
18 in effect, invalidly registered emitter?

19                   MR. ROSS: Yeah, that would be the  
20 intent. When we get that up and running, that would  
21 have all that information that they could simply  
22 pull up the website, find their source, search for a  
23 particular source, click on a link, and it would  
24 give them all the information they need on the

1 status of their registration and payment, and we're  
2 working on that.

3 HEARING OFFICER FOX: So noted,  
4 Mr. Ross. Thanks very much.

5 Mr. Adkisson, I think we were  
6 working on questions that you had had.

7 MR. ADKISSON: That was the final  
8 question I have at this point in time.

9 HEARING OFFICER FOX: Very good.

10 MR. HENRIKSEN: And our last few  
11 questions deal with outreach.

12 HEARING OFFICER FOX: Please go  
13 ahead, Mr. Henriksen.

14 MR. HENRIKSEN: If you would,  
15 Mr. Bakowski or Mr. Ross, would you please outline  
16 the process and timing for your planned outreach to  
17 existing small sources regarding participation in  
18 the ROSS program?

19 MR. ROSS: Yes. We've discussed  
20 this intensively in our internal meetings, and our  
21 plan, which has been begun in that we have begun the  
22 work on the registration forms and the registration  
23 cover letter so to say and we've begun working on  
24 identifying eligible sources for the registration

1 program, and we're waiting to finalize in particular  
2 the forms based on the final content of the rule, so  
3 we have to wait until we have a final rule until we  
4 finalize the forms.

5                   Shortly thereafter, and by  
6 shortly I would think hopefully no later than a  
7 month, that would be our goal. We would send out a  
8 mass mailing and maybe even include some e-mails on  
9 that with a cover letter and one page registration  
10 form.

11                   We envision this to be only  
12 one page. It would simply say something to the  
13 effect that we have identified that your source is  
14 eligible for registration. Here's the basics of the  
15 registration program, and enclosed is the form  
16 should you wish to register, and we would hopefully  
17 by then be able to direct you further to a website  
18 that would provide the rule itself and additional  
19 pertinent information.

20                   MR. HENRIKSEN: Thank you.

21                   Does the IEPA also plan to  
22 work with trade associations to reach out to  
23 existing small sources regarding participation in  
24 the ROSS program?

1 MR. ROSS: Yes, we do. My previous  
2 answer when I referred to the e-mails that we would  
3 send, the intent would be to send e-mails, you know,  
4 explaining that we're doing the outreach to the  
5 trade associations: We're doing outreach, and  
6 enclosed is the content of the mailings that we're  
7 sending. You know, please feel free to share these  
8 with your members as you see fit.

9 MR. HENRIKSEN: Thank you.

10 HEARING OFFICER FOX: Mr. Henriksen,  
11 any follow-ups based on your question?

12 MR. HENRIKSEN: No. Thank you.

13 HEARING OFFICER FOX: Sure.

14 Mr. Ross, I have a question  
15 actually while we're on the subject. The statement  
16 of reasons identified, and I believe your technical  
17 support document as well, that there are  
18 approximately 3,250 smaller sources that may be  
19 expected to qualify for the ROSS program.

20 My request specifically is  
21 this. For the second hearing, and certainly  
22 recognizing that that's a fairly large number of  
23 sources, would you be able to prepare in a format  
24 including a DVD, spreadsheet or some other document,

1 that list of the sources, approximately 3,250  
2 sources, that you could produce as an exhibit for  
3 our second hearing on the 27th?

4 MR. ROSS: Yes, we can readily do  
5 that. In fact, we already have that list so it  
6 would be just a matter of putting it into DVD  
7 format.

8 HEARING OFFICER FOX: Excellent. I  
9 appreciate it. And what we would be interested in  
10 having are simply the names of those sources and a  
11 mailing address knowing that among those  
12 approximately 3,250 potentially affected sources are  
13 some who may not for one reason or another qualify  
14 for ROSS, and it may exclude others that prove to be  
15 eligible for it, but as a starting point, that would  
16 be very helpful for our analysis of this, and if you  
17 could bring that to the second hearing and prepare  
18 the filings in an exhibit, that would be greatly  
19 appreciated on the Board's part.

20 MR. ROSS: We will do that.

21 HEARING OFFICER FOX: Thank you  
22 very much.

23 Were there any other questions  
24 that any of the participants wish to ask of

1 Mr. Bakowski or Mr. Ross on the basis of their  
2 proposal and testimony here today?

3 I'm not seeing or hearing any  
4 at this point in time, and certainly, Mr. Ross and  
5 Mr. Bakowski, we want to thank you for your time and  
6 the information you've supplied us.

7 Before we began the hearing,  
8 we did speak off the record procedurally about the  
9 order that we would follow, and Mr. Henriksen had  
10 indicated that I believe he and Mr. Adkisson and  
11 perhaps Mr. Grant was the third one...

12 MR. GRANT: That's correct.

13 HEARING OFFICER FOX. ... had  
14 wished not to be sworn and offer testimony but  
15 simply wished to offer a public comment. Was that  
16 accurate?

17 MR. HENRIKSEN: That's accurate,  
18 yes.

19 HEARING OFFICER FOX: Okay.

20 MR. HENRIKSEN: If any of us depart  
21 into testimony, we'll be, I'm sure, glad to be sworn  
22 in if need be, but, you know, we have information to  
23 suggest to the Board and to the EPA that we would  
24 proffer as what we would consider a public comment.

1 HEARING OFFICER FOX: Very good.  
2 Why don't we clear the decks first so to speak.

3 I know that you and  
4 Mr. Adkisson had signed up, and we appreciate your  
5 making your presence known on the sheet that  
6 indicated that you wished to testify.

7 I don't see any other  
8 signatures there, but I want to make sure.

9 MR. GRANT: I went ahead and signed  
10 it.

11 HEARING OFFICER FOX: Okay.  
12 Mr. Grant was the third signature I apologize for  
13 overlooking that.

14 MR. HENRIKSEN: Just indicating in  
15 the event we are needed to be sworn in, that's fine.

16 HEARING OFFICER FOX: What I wanted  
17 to confirm was that you, in fact, did not, at least  
18 initially, wish to testify and also to make sure  
19 that none of the other participants who are here  
20 wish to be sworn and testify.

21 Was there anyone who had not  
22 prefiled testimony but wished to be sworn here for  
23 testimony today?

24 Neither seeing nor hearing



1 any, Mr. Henriksen, why don't we proceed to the  
2 comments that you wish to offer. I appreciate your  
3 willingness to be sworn. If, as you said, you  
4 swerve towards substantive testimony, we can  
5 certainly do that.

6 MR. HENRIKSEN: It's happened  
7 before.

8 HEARING OFFICER FOX: We can do  
9 that, and frankly, if the three of you had separate  
10 comments, I think we'd be very happy to follow any  
11 order of them that you would wish to go in.

12 MR. HENRIKSEN: Yes, we put  
13 together our own order. Actually, what we did,  
14 coming from Mr. Grant and Mr. Adkisson and then kind  
15 of follow-up comments on me, we have Mr. Grant's and  
16 Mr. Adkisson's comments reduced to writing so if  
17 that would be helpful, if you'd want to have these  
18 be marked and introduced, it would make the court  
19 reporter's life easier and also be helpful since  
20 these first two comments are, in fact, requesting  
21 changes in the rules.

22 HEARING OFFICER FOX: Why don't we  
23 do that.

24 You propose, Mr. Henriksen,

1 that you'd be willing to offer those, move those  
2 into the record as hearing exhibits, and if you have  
3 copies of those --

4 MR. HENRIKSEN: Yes.

5 HEARING OFFICER FOX: -- you could  
6 supply to the Board and to the Agency?

7 MR. HENRIKSEN: I don't have -- we  
8 have a total of three copies. These guys each have  
9 two that they'll refer to but...

10 MS. DOCTORS: I have a procedural  
11 question.

12 HEARING OFFICER FOX: Yes,  
13 Ms. Doctors, go ahead.

14 MS. DOCTORS: It seems like these  
15 are fairly detailed comments that they're  
16 submitting, and if I can't get a copy of them, one;  
17 and two, if I can't ask questions about them, it's  
18 like I guess they're offering them for what they're  
19 worth.

20 MR. HENRIKSEN: Then we'll be sworn  
21 in and do it that way. Be glad to do it that way.

22 MS. DOCTORS: In case we have a  
23 question, I mean, I don't want to catch anybody  
24 flatfooted but, you know, this is a proceeding.

1 HEARING OFFICER FOX:

2 Mr. Henriksen, you had expressed a willingness to be  
3 sworn.

4 MR. HENRIKSEN: Sure, all three of  
5 us.

6 MR. ADKISSON: Yes.

7 HEARING OFFICER FOX: And in order  
8 to make our record as clear as possible, if you're  
9 willing to be sworn and field questions, perhaps  
10 none from the Agency but perhaps some that they may  
11 wish to raise, that may enable us to go forward most  
12 constructively.

13 So why don't we, if you  
14 have -- and forgive me for not keeping track of the  
15 details. You have only a single copy of the written  
16 material that you were wanting to provide?

17 MR. ADKISSON: I have a copy.

18 MR. GRANT: I have a copy that I  
19 could provide.

20 HEARING OFFICER FOX: Why don't we  
21 do this, Ms. Doctors, to try to address your  
22 concern.

23 If you gentlemen have a copy  
24 that immediately you might share with her to give

1 her a moment to look at, we can always make  
2 available copies both to place in the Board's record  
3 and so that the Agency may have one, but if --

4 MR. HENRIKSEN: That's Mr. Grant's  
5 comments, and that is Mr. Adkisson's comment.

6 MS. DOCTORS: I've been given two  
7 sheets of paper.

8 MR. HENRIKSEN: One has two pages  
9 and one is one page.

10 (Pause)

11 HEARING OFFICER FOX: Mr. Messina?

12 MR. MESSINA: I'm just wondering if  
13 these witnesses are going to make themselves  
14 available for a second hearing in case there are  
15 follow-up questions after all the parties and maybe  
16 even those parties who aren't here today have had an  
17 opportunity to review the requested change so they  
18 might be able to pose questions.

19 HEARING OFFICER FOX:  
20 Mr. Henriksen, that's a question you would probably  
21 best answer.

22 MS. DOCTORS: Can we just break for  
23 a second?

24 HEARING OFFICER FOX: Let's go off

1 the record for just a moment.

2 (Whereupon an off-the-record  
3 discussion transpired at this  
4 time.)

5 (Recess taken.)

6 HEARING OFFICER FOX: Back on the  
7 record.

8 In going off the record, we  
9 discussed with the participants our order of  
10 hearing.

11 At this point we have  
12 exhausted...we will give a chance to folks to ask a  
13 question later, but at this point, we appear to have  
14 exhausted all questions of the Agency's witnesses  
15 Mr. Ross and Mr. Bakowski.

16 In discussing our order of  
17 hearings, our procedure at this point, Mr. Henriksen  
18 indicated that he, Mr. Grant on behalf of the NFIB,  
19 and Mr. Adkisson on behalf of the grain association,  
20 the full title of which I can't recall.

21 MR. ADKISSON: It's Grain and Feed  
22 Association.

23 HEARING OFFICER FOX: Thank you,  
24 Mr. Adkisson.

1                   Each have public comments that  
2           they simply wish to submit into the record, and at  
3           this point, Mr. Henriksen, we can proceed with  
4           whichever of the three of you would like to offer  
5           your comment first.

6                   MR. HENRIKSEN: Mr. Grant.

7                   HEARING OFFICER FOX: Mr. Grant,  
8           why don't you go ahead and begin, sir. Thanks.

9                   MR. GRANT: Thank you.

10                  MR. HENRIKSEN: Did you want to  
11           mark them as exhibits?

12                  HEARING OFFICER FOX: Yes, because  
13           you've expressed an interest in introducing those as  
14           hearing exhibits.

15                    You do have copies of those,  
16           and if I may ask you to distribute those as well,  
17           Mr. Henriksen, just to make sure that we are all  
18           literally on the same page.

19                    (Whereupon documents are being  
20                    distributed.)

21                  HEARING OFFICER FOX: Mr. Henriksen,  
22           thank you for distributing these.

23                    The chief difference between  
24           the two documents you have handed me is that one

1 begins "First..." and one begins "Second...", and if  
2 you could connect those two different documents with  
3 the gentleman who is offering the comment that's  
4 written.

5 MR. HENRIKSEN: There should be  
6 page 3 and 4 is actually what you should have.

7 HEARING OFFICER FOX: Very good.  
8 And the document that it extends from page 3 to page  
9 4 is the comment of which gentleman?

10 MR. HENRIKSEN: Mr. Grant. He has  
11 comments that go into two pages so if you want to  
12 mark it -- how about NFIB 1?

13 HEARING OFFICER FOX: And that  
14 comment, pages 3 and 4 beginning "First..." is  
15 attributable to Mr. Grant?

16 MR. HENRIKSEN: Correct.

17 HEARING OFFICER FOX: I will for  
18 the time being merely mark that as Exhibit No. 3.

19 Before I turn to the second  
20 document marked page number 5, and that is the  
21 document attributable to which gentleman, sir?

22 MR. ADKISSON: Mr. Adkisson.

23 HEARING OFFICER FOX: And,  
24 Mr. Henriksen, what I'd like to do is I will

1 construe your distribution of these as a motion to  
2 admit them as hearing exhibits. Is that accurate?

3 MR. HENRIKSEN: Yes, you may.

4 HEARING OFFICER FOX: I have marked  
5 as Exhibit No. 3 the comment of Mr. Grant by the  
6 NFIB and marked as Exhibit No. 4 the comment of  
7 Mr. Adkisson.

8 Is there any objection to  
9 admitting them into the record as hearing exhibits  
10 here today?

11 Neither seeing nor hearing  
12 any, they are so marked and will be admitted into  
13 the record.

14 (Whereupon Hearing Exhibits 3 and  
15 4 were marked for identification  
16 and admitted into the record at  
17 this time.)

18 HEARING OFFICER FOX: Mr. Henriksen,  
19 thank you for submitting those.

20 MR. HENRIKSEN: Thank you.

21 HEARING OFFICER FOX: Which of the  
22 gentleman would you like to begin offering comments,  
23 sir?

24 MR. HENRIKSEN: Mr. Grant.



1 HEARING OFFICER FOX: Mr. Grant,  
2 thank you for letting me interrupt you.

3 MR. GRANT: Certainly. Thank you.

4 I'll preface my comments real  
5 quickly just by saying that the National Federation  
6 of Independent Business represents small businesses,  
7 most of them very small businesses in Illinois,  
8 sometimes five or ten employees, and as such, those  
9 folks who run those businesses are basically doing  
10 everything that needs to be done in the business,  
11 and therefore, any kind of regulatory issues that  
12 come their way add more difficulty to their ability  
13 to just operate a business, be profitable and employ  
14 people.

15 The Agency states that the  
16 intent of ROSS is to lessen the regulatory  
17 administrative recordkeeping and reporting burdens  
18 and as well as financial burdens on the smaller  
19 sources while at the same time providing a great  
20 benefit to the Agency in the reduction of permitted  
21 sources and associated workload.

22 Given the sources are very  
23 small and cumulatively account for less than one  
24 percent of all emissions, Subsection (b) (2) (A) & (B)

1 and Subsection (e)(3) & (4) should be amended as  
2 follows to allow some additional flexibility for  
3 these small sources in their recordkeeping and  
4 reporting:

5 2) Annual renewal of  
6 registration:

7 A) For the purposes of  
8 determining continued eligibility under Subsection  
9 (a)(1)(C) of this section, the owner or operator  
10 must certify the sum of all actual emissions from  
11 all units associated with the source for the prior  
12 calendar year.

13 And, if I could ask, do I need  
14 to finish reading that whole thing?

15 HEARING OFFICER FOX: No,  
16 Mr. Grant. That's in the record as part of the  
17 Agency's proposal, please go ahead.

18 MR. GRANT: I'll skip down to the  
19 next paragraph B. For the purposes of determining  
20 continued eligibility with Subsections (a)(1)(D),  
21 (a)(1)(E) and (a)(1)(F) of this section, the owner  
22 or operator must certify the sum of all actual  
23 emissions from all units at the source for the prior  
24 calendar year. These again are to allow more and

1 greater flexibility for the small sources.

2 Next page. e) The following  
3 records shall be kept and available for inspection  
4 by the Agency for at least five calendar years. If  
5 we could skip down to No. 3. Documentation  
6 supporting that source is eligible for ROSS pursuant  
7 to the criteria in Subsections (a) and (b) of this  
8 section. And then we would add, this may include  
9 but are not limited to annual material usage, annual  
10 throughput, purchase records, emissions rates, etc.;  
11 and

12 4) A copy of the source's  
13 initial registration, and again, we would add,  
14 including documentation of the source's actual  
15 emissions and calculations demonstrating that the  
16 source is eligible for ROSS pursuant to the criteria  
17 in Subsections (a) and (b) of this section and  
18 annual renewal of registration.

19 Do you want me to continue  
20 with that?

21 HEARING OFFICER FOX: If you have  
22 additional comment to offer, Mr. Grant, please go  
23 ahead.

24 MR. GRANT: Okay. Previously,

1 sources were required to do annual calculations and  
2 submit their annual emissions reports to the Agency  
3 to be included in the emissions inventory. The  
4 Agency has stated that participation in the ROSS  
5 program will alleviate this burden.

6 Modification to the language  
7 as we've noted above could reduce a facility's  
8 recordkeeping and reporting burden as it would  
9 provide the flexibility for those sources with no  
10 significant change in operation or increase in  
11 production from having to conduct annual  
12 calculations and then have them on file.

13 In addition, the ROSS program  
14 targets a large variety of small sources and some of  
15 the less complex source categories or industries may  
16 be able to determine compliance easily through  
17 standard throughputs or usage thresholds.

18 Modification of the language above would not  
19 preclude the Agency from requesting additional  
20 information from a facility including calculation of  
21 actual emissions as certified under (b) (2) (A) and  
22 (B).

23 Thank you.

24 HEARING OFFICER FOX: Mr. Grant, if

1 that concludes your comment, we have, of course,  
2 admitted in the record as Exhibit 4 Mr. Adkisson's  
3 comment as well, and if you are prepared,  
4 Mr. Adkisson, we can turn to you at this point.

5 (Whereupon Hearing Exhibit 4 was  
6 admitted into evidence at this  
7 time.)

8 MR. ADKISSON: Thank you, Mr. Fox  
9 and members of the Pollution Control Board. I'm  
10 Jeff Adkisson, executive vice president with Grain  
11 and Feed Association of Illinois. Our members are  
12 grain elevators and feed dealers throughout the  
13 state and, as such, probably encompass one of the  
14 largest number of similar sources in EPA's emissions  
15 inventory, and we're pleased to offer the following  
16 comments.

17 The Agency again has stated  
18 that the intention of the ROSS program is to lighten  
19 the administrative burden on the Agency due to a  
20 conversion of approximately 3,200 sources to  
21 registrations versus permits. The Agency  
22 anticipates that approximately half of all the  
23 permitted sources in Illinois are eligible for the  
24 program.

1                   As most eligible permitted  
2 sources, and there again, a lot of our members, are  
3 under the lifetime or the general lifetime permits  
4 which already afford some flexibility to avoid the  
5 construction fees, we see limited value and perhaps  
6 negative financial impact to the withdrawal of an  
7 existing permit in favor of registration as there's  
8 the possibility that that facility may be forced to  
9 reacquire a permit by future regulation or business  
10 changes.

11                   To encourage participation in  
12 the ROSS program, we believe that the Agency should  
13 consider the addition of the following language  
14 under Subsection (g) to encourage existing sources  
15 to convert to the ROSS program and remove the  
16 disincentive of potential duplicative construction  
17 fees which are estimated in the 1,000 to 1,500  
18 dollar range for the same emissions units at a  
19 facility.

20                   We would propose the following  
21 language be inserted:

22                   (G) (4). Emissions units  
23 previously covered by a lifetime operating permit or  
24 by a lifetime general operating permit that are no

1 longer eligible for ROSS pursuant to Subsection (a)  
2 and (b) of this section may reinstate such permits  
3 if these emission units:

4 (A) still comply with the  
5 terms and conditions of their previously held  
6 permits; and

7 (B) submit the requisite  
8 annual permit fees to the agencies.

9 We would also add (g) (5).

10 Emission units participating in the ROSS program who  
11 have not previously held a lifetime operating permit  
12 or a lifetime general operating permit that are no  
13 longer eligible for ROSS pursuant to Subsection (a)  
14 and (b) of this section shall not be charged fees  
15 for submitting a construction permit application.  
16 However, they shall submit the requisite annual  
17 permit fees to the Agency.

18 Thank you for allowing us to  
19 make these public comments, and that concludes my  
20 comments.

21 HEARING OFFICER FOX: Mr. Adkisson,  
22 thank you.

23 And, Mr. Henriksen, you had  
24 indicated that you had a public comment to offer as

1 well, is that correct?

2 MR. HENRIKSEN: Yes, I did.

3 HEARING OFFICER FOX: And we've  
4 come to the point where we're ready for that.  
5 Mr. Henriksen, please go ahead.

6 MR. HENRIKSEN: Again, John  
7 Henriksen with the Illinois Association of Aggregate  
8 Producers. My members mine and produce crushed  
9 stone, sand and gravel, and we also have coal  
10 located at our facility's many readymix plants. So  
11 along with the Grain and Feed Association folks, we  
12 are a very large sector of the industries impacted  
13 by these proposed ROSS rules.

14 I first want to commend the  
15 IEPA for their outreach to our industries  
16 previously. They've met with us on more than one  
17 occasion to try to figure out the parameters of the  
18 legislation, and they've been extremely open to  
19 concerns we've expressed previously, and we are  
20 confident that this rulemaking as it proceeds will  
21 again help address our concerns but we just wanted  
22 to put that in the record.

23 I also want to put in the  
24 record that we support the comments made by FIB and



1 the Grain and Feed Association. We share their  
2 concerns and strongly suggest that the Board take a  
3 close look at the proposed language that has been  
4 offered and made part of the record.

5 Last but not least, I want to  
6 just proffer some final comments on what we've heard  
7 today based on a response to our questions.

8 We strongly feel that ROSS  
9 facilities should be able to register, renew, pay  
10 fees and notify the Agency of changes  
11 electronically. We do applaud the fact that the  
12 IEPA is talking about this. We think that the  
13 opportunity for us should be in the rules so that  
14 the Agency has strong impetus to work with us and  
15 get this done.

16 Secondly, we feel that the  
17 companies who fail to timely register on the ROSS  
18 program should not be penalized by being precluded  
19 from participating in the ROSS program and being  
20 forced to obtain a permit, thereby subject to  
21 additional fees.

22 We heard that this is up to  
23 legal counsel, and we appreciate that response from  
24 the gentleman who testified in the permit grants of

1 the IEPA, but we believe that the rules, to  
2 encourage people to become part of this ROSS  
3 program, should have some sort of grandfathering  
4 clause or some sort of flexibility in there to not  
5 only penalize what are minimally small sources for  
6 an inadvertent failure to register.

7 Third, existing air permits  
8 for the sources that choose to register under ROSS  
9 should receive confirmation from the EPA that the  
10 registration was received and that their current  
11 permits have become inactive. Again, we've heard  
12 them testify that it's being discussed.

13 This should be in the rules.  
14 We are, my people, the aggregate producers are in a  
15 heavily regulated industry. We don't want to be in  
16 the position to have someone come on our property  
17 and ask for a permit and say, well, we submitted it  
18 and they've cashed our checks but we have no  
19 confirmation that we, in fact, are operating  
20 legally. That's very important to us.

21 We think that because the EPA  
22 is developing a series of forums and are creating a  
23 new program from the ground up, they could as part  
24 of this process have e-mails be used for them to

1 communicate with us and us to communicate back with  
2 them. An e-mail from the EPA that we've registered  
3 or that they got our registration would seem a very  
4 small burden to put on the Agency, and it's a very  
5 important thing for us to know that we're legal  
6 every minute we're in operation.

7 So we would ask the rules be  
8 modified to require some sort of confirmation. It  
9 doesn't have to be by letter. We don't expect them  
10 to drop that in the mail, but an e-mail is a very  
11 inexpensive way to let us know we're in compliance  
12 with the law.

13 And fourth, new sources that  
14 register with the IEPA should receive immediate  
15 confirmation. Again, how are folks, they can't  
16 operate for 90 days but they don't know when the  
17 90-day period begins unless they have confirmation.

18 The confirmation by the EPA  
19 that we are legal, whether we're an existing source  
20 or new, that should be taken care of in the rules  
21 and should be explicit that they tell us, they  
22 confirm us that we have that, that we can legally  
23 operate or, the case of a new source, the 90-day  
24 period begins to run.



1 heard, Mr. Ross and Mr. Bakowski, do you have an  
2 understanding of where the comments are coming from?

3 MR. ROSS: Yes.

4 MS. DOCTORS: Can you state your  
5 response?

6 MR. BAKOWSKI: Yes, I understand  
7 too.

8 MS. DOCTORS: All right. Then the  
9 Agency has no further questions.

10 HEARING OFFICER FOX: So noted,  
11 Ms. Doctors. I appreciate that clarifying question.

12 Why don't we verify once again  
13 that there is not anyone -- certainly if anyone is  
14 interested in providing testimony, we have not  
15 adjourned and would be able to turn to that. Is  
16 there anyone who did not prefile that wishes to  
17 testify today?

18 I neither see nor hear any  
19 indication that there is interest in doing so.

20 Is there any participant who  
21 wishes to offer an additional public comment such as  
22 those three, four persons offered here today?

23 Neither seeing nor hearing any  
24 interest in that, why don't we briefly go off the

1 record and address a couple of quick procedural  
2 issues.

3 (Whereupon an off-the-record  
4 discussion transpired at this  
5 time.)

6 HEARING OFFICER FOX: Why don't we  
7 go back on the record.

8 Copies of the transcript of  
9 today's hearing are expected to be available to the  
10 Board before the close of business on Friday,  
11 October 7, 2011, and the Board will very soon after  
12 receiving the transcript place it on its website  
13 under the clerk's office online, of course under  
14 this Docket No. R12-10.

15 The second hearing in this  
16 docket is now scheduled to take place Thursday,  
17 October 27, 2011 at 1 p.m. in the Board's offices in  
18 Chicago with a deadline of Thursday, October 13th,  
19 2011, for prefiling testimony.

20 Because that is only 14 days  
21 before the date of the hearing, the "mailbox rule"  
22 at Section 101.300 of the Board's procedural rules  
23 will not apply, and the clerk's office must receive  
24 any prefiled testimony on or before the close of

1 business on Thursday, October 13th.

2 The Board may receive written  
3 public comments as well, and those may be filed  
4 electronically through the clerk's office online,  
5 questions about which may certainly be directed to  
6 the clerk's office.

7 If there are questions about  
8 procedural aspects of this rulemaking, my own  
9 contact information is listed on the Board's  
10 website.

11 Are there any other issues to  
12 address before we adjourn for today?

13 Neither seeing nor hearing  
14 any, thank you all for your participation, and we  
15 will see many, if not all of you I suspect on  
16 October 27th.

17 (Adjournment at 2:17 p.m.)

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1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF SANGAMON)

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4

CERTIFICATE

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I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

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14

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

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Laurel Patkes  
Certified Shorthand Reporter



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