



Issue No. 5 - What sanctions, if any, should be imposed as a result of affirmative finds on any of the above issues."

The evidentiary hearing was for the purpose of providing the Board with an opportunity to inquire into various allegations raised during an earlier Midland suspension proceeding. Following extensive discovery including many depositions, 14 witnesses were called to testify as Board witnesses, subject to interrogation or cross-examination by all parties. An extensive documentar, record was compiled at the hearing. At the direction of the Board, copies of all transcripts of testimony, exhibits and other papers were contemporaneously supplied to the Intervenors Other Than Dow by mail to their counsel, Myron M. Cherry, Esq., One IBM Plaza, Chicago, Illinois.

At the conclusion of the hearing, briefs and proposed findings of fact and conclusions of law were filed by Dow (October 15, 1979), the Staff (October 15, 1979) and Consumers (October 16, 1979). Reply briefs were filed by all parties except the Staff on November 5, 1979. Copies of all filings were promptly served upon Mr. Cherry, but no briefs or proposed findings have been filed by him or h's clients in this phase of the proceeding although they were given an opportunity to do so.

On January 11, 1980, Mr. Cherry wrote a detailed five-page letter to the Board, with copies to all parties. This letter stated in part that "...if, in our judgement, a decision rendered by the Licensing Board in this proceeding is not supported by the evidence

and neglects to deal with the issues fairly and appropriately, we, of course, reserve our right to appeal." The letter then set forth the views and arguments of Mr. Cherry regarding the matters in controversy.

In evaluating the record developed in this remand proceeding, the Board wishes to be fully advised as to the facts and law by all parties. However, it is unfair to allow Mr. Cherry or his clients to make unverified statements and arguments without record citations, or any effort to participate directly in the instant inquiry. Nor can we consider "reopening the record if necessary" unless a substantial showing of good cause is made and a reasonable description of overlooked but available evidence is tendered.

Under ordinary circumstances, Mr. Cherry's arguments would be disregarded as neither necessary nor appropriate at this late date. However, the remanded questions are unusual if not unprecedented under our practice. We note also that some of the documents and information were forthcoming as a result of this counsel's probing in the former hearing. Consequently, the public interest would be served by requiring the Intervenors Other Than Dow to take the responsibility of analyzing the record, including the exhibits and transcripts of testimony. This Intervenor and Mr. Cherry as its counsel will be given to and including December 29, 1980, to file written briefs and proposed findings which cite the record with specificity in support of the conclusions and arguments set forth in their letter dated January 11, 1980. If further evidence or

testimony is regarded as necessary, it shall be identified and appropriately described in making a showing of good cause.

If Mr. Cherry files such documents, the other parties shall be given 30 days after their receipt to respond if they so desire. After all filings have been made, the Board will consider whether it would be helpful to hear oral arguments of counsel. Such arguments, if granted, would be held at a time and place convenient for counsel.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

Marshall E. Miller  
Marshall E. Miller, Chairman

Dated at Bethesda, Maryland  
this 14th day of November 1980.