

1 A P P E A R A N C E S:

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY MS. AMY MURAN FELTON

9
10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

11 Ms. Kathleen M. Hennessey
12 Mr. Richard McGill
13 Mr. Anand Rao

14
15 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
16 PRESENT:

17 Ms. Laurel Kroack
18 Mr. Christopher Romaine

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1 THE HEARING OFFICER: On the record. Good
2 morning. My name is Amy Muran Felton, and I am the
3 hearing officer in this proceeding. I would like to
4 welcome you to this hearing being held by Illinois
5 Pollution Control Board in the matter of Major
6 Stationary Sources Construction and Modification
7 Rules, also known as the New Source Review rules
8 amendments to 35 Ill. Adm. Code 203 docketed by the
9 board as R98-10.

10 Present today on behalf of the Illinois
11 Pollution Control Board and seated to my left is
12 board member Kathleen Hennessey, the board member
13 coordinating this rulemaking.

14 MS. HENNESSEY: Good morning.

15 THE HEARING OFFICER: Also present with us and
16 seated to my right is Richard McGill, attorney
17 assistant to board member Kathleen Hennessey.

18 MR. MCGILL: Good morning.

19 THE HEARING OFFICER: Also present and seated
20 to the left of board member Kathleen Hennessey is
21 Anand Rao of the board's technical unit.

22 MR. RAO: Good morning.

23 THE HEARING OFFICER: In the back, I have
24 placed notice lists and service list sign-up

1 sheets. Please note that if your name is on the
2 notice list, you will receive copies of the board's
3 opinions and orders, as well as any hearing officer
4 orders.

5 If your name is on the service list, you
6 will not only receive copies of the board's opinions
7 and orders, but you will receive copies of all
8 documents filed by all persons on the service list
9 in this proceeding.

10 Keep in mind that if your name is on the
11 service list, you are also required to serve all
12 persons on the service list with all the documents
13 you file with the board. You are not precluded from
14 presenting testimony or questions at this hearing if
15 your name is not on either of the notice or service
16 lists.

17 Also in the back are copies of the board's
18 September 4th, 1997, proposed rule and the prefiled
19 testimony of Christopher Romaine of the Illinois
20 Environmental Protection Agency. There are also a
21 few other documents, including a U.S. EPA letter, as
22 well as a New Source Review Workshop Manual.

23 On September 2nd, 1997, the Illinois
24 Environmental Protection Agency filed this proposal

1 for rulemaking to amend 35 Ill. Adm. Code 203, also
2 known as the New Source Review rule.

3 On September 4th, 1997, the board adopted
4 for first notice amendments to the New Source Review
5 rule as proposed by the agency. This proposal was
6 published in the Illinois Register on September
7 19th, 1997, at 21 Illinois Register 12823.

8 This rulemaking proposes to revise
9 particular sections in 35 Ill. Adm. Code 203 so that
10 the language more closely reflects the terminology
11 used in Sections 182 (c) 7 and 8 of the Clean Air
12 Act.

13 The proposal will affect existing sources
14 in ozone nonattainment areas that are subject to the
15 special rules for modifications found at Sections
16 182 (c) 7 and 8 of the Clean Air Act; that is,
17 existing sources making major modifications at
18 sources in severe and serious ozone nonattainment
19 areas. This would, as a practical matter, currently
20 affect only the Chicago ozone nonattainment area.

21 This proposal was filed pursuant to
22 Section 28.5 of the Act entitled Clean Air Act
23 Rules, Fast Track Procedures. Pursuant to the
24 provisions of that section, the board is required to

1 proceed within set timeframes toward the adoption of
2 this regulation.

3 As stated in the board's September 4th,
4 1997, order, the board has no discretion to adjust
5 these timeframes under any circumstances.

6 Also, pursuant to Section 28.5 of the Act,
7 the board scheduled three hearings. As announced in
8 the hearing officer order dated September 4th, 1997,
9 today's hearing is confined to testimony by and of
10 the agency witnesses concerning the scope,
11 applicability, and basis of the rule.

12 Pursuant to the section, this hearing will
13 be continued on the record from day-to-day, if
14 necessary, until completed. Within seven days after
15 close of this hearing, any person may request that
16 the second hearing be held.

17 If after those seven days the agency and
18 effected entities are in agreement upon the rule,
19 the U.S. EPA has not informed the board of any
20 unresolved objections, and no other interested
21 parties contest the rule or asks for an opportunity
22 to present additional evidence, the board may cancel
23 the additional two hearings.

24 All persons on the notice list will be

1 advised of the cancellation of those following two
2 hearings by way of the hearing officer order. The
3 second hearing is scheduled for Monday, May 24th,
4 1997, at 10:00 a.m.

5 MS. HENNESSEY: November.

6 THE HEARING OFFICER: Strike that. November
7 24th, 1997 at 10:00 a.m. at the same location and
8 will be devoted to the presentation of testimony,
9 documents, and comments by effected entities and all
10 other interested parties.

11 The third hearing is currently scheduled
12 for Tuesday, December 9th, 1997, at 10:00 a.m., and
13 that will be devoted solely to any agency response
14 to the materials submitted at that second hearing.

15 The board will proceed to adopt a second
16 notice rule proposal for review by the joint
17 committee on administrative rules on or before
18 January 10th, 1997, if that third hearing is
19 canceled and on or before January 30th, 199 --
20 strike that.

21 The board will adopt a second notice on or
22 before January 10th, 1998, if the third hearing is
23 canceled and on or before January 30th, 1998, if the
24 third hearing is held.

1 The board will proceed to final adoption
2 of the rules 21 days after the receipt of no
3 objection from the joint committee on administrative
4 rules.

5 This hearing will be governed by the
6 board's procedural rules for regulatory
7 proceedings. All the information which is relevant
8 and not repetitious or privileged will be admitted.
9 All witnesses will be sworn and subject to cross
10 questioning.

11 Again, the purpose of today's hearing is
12 to allow the agency to present testimony in support
13 of this proposal and to allow questioning of the
14 agency.

15 The agency will present any testimony it
16 may have regarding its proposal. Subsequently, we
17 will allow further questioning.

18 I prefer that during the question period
19 all persons with questions raise their hands and
20 wait for me to acknowledge them.

21 After being acknowledged, please state
22 your name and your organization you represent, if
23 any.

24 Are there any questions with regard to the

1 procedures we will proceed with today?

2 Seeing none, I at this time would ask
3 Board Member Hennessey if she has any additional
4 comments she would like to add.

5 MS. HENNESSEY: No thank you.

6 THE HEARING OFFICER: Before we begin with the
7 agency's testimony, there is one matter that I would
8 like to address.

9 On September 2nd, 1997, in the agency's
10 proposal for rulemaking, it filed a motion for
11 waiver of requirements pertaining to submittal of
12 copies of the proposal to the Attorney General and
13 the Department of National Resources and that the
14 agency submit copies to the board of all documents
15 upon which it relied in drafting this proposal.

16 I hereby grant the agency's motion for
17 waiver of these aforementioned requirements.

18 At this time, I would ask the agency if it
19 would like to make an opening statement.

20 MS. KROACK: Yes, we would.

21 THE HEARING OFFICER: Please proceed.

22 MS. KROACK: My name is Laurel Kroack. Good
23 morning. I'm here today representing the Illinois
24 EPA in this rulemaking docketed as 98-10.

1 This rulemaking is being submitted
2 consistent with Illinois' obligation to submit a
3 state of limitation plan or SIP revision that
4 includes provisions for the construction of new or
5 modified stationary sources in ozone nonattainment
6 areas consistent with Sections 172 (c) 5 and 173 of
7 the Clean Air Act.

8 Additionally, the proposal and anticipated
9 adoption of rules to implement the Emissions
10 Reduction Market System or ERMS docketed by the
11 board as R97-13 focused attention on the
12 interpretation of the so-called special rules as
13 related to sources baseline emissions and
14 allocations of allotment trading units or ATUs under
15 the ERMS program.

16 The current provisions of Part 203 that
17 address the special rules act trigger New Source
18 Review requirements for certain projects that are
19 major by themselves irrespective of contemporaneous
20 credible decreases elsewhere at the source.

21 So that emission decreases at the source
22 are consumed at a ratio of 1.3:1, the current
23 provisions in Part 203 thereby reduce the amount of
24 voluntary over-compliance available to certain

1 sources during the calculation of their baseline
2 emissions, and this impacts the ERMS program. As
3 such, they are components of the ERMS program, if
4 adopted.

5 The ERMS program, I would like to note, is
6 an essential element of Illinois' nine percent Rate
7 of Progress Plan required pursuant to
8 Section 182 (c) of the Clean Air Act. This section
9 requires states to submit a rate of progress plan or
10 ROP plan obtaining a nine percent reduction in the
11 VOC emissions within six years of the enactment of
12 the Clean Air Act.

13 Since both the New Source Review rules
14 themselves and the nine percent ROP plan are
15 mandated by the Clean Air Act and sanctions apply
16 for states' failure to adopt such rules, this
17 proposal was submitted to the board pursuant to
18 Section 28.5 of the Illinois Environmental
19 Protection Act.

20 Specifically, the amendments we propose
21 today will modify Sections 203.206, 203.207, and
22 203.301 as they affect the so-called special rules
23 for the construction of major modifications in
24 serious or severe ozone nonattainment areas. At

1 this time, as Ms. Felton pointed out, that is only
2 the Chicago severe ozone nonattainment area.

3 With respect to outreach, the Illinois
4 EPA's intention to submit this rulemaking was
5 discussed during the public hearings on the ERMS
6 proposal, as well as discussed with individual
7 sources during the ERMS rulemaking process. We also
8 announced our intention to file these rules in our
9 comments that we filed in the ERMS hearing before
10 first notice was published in that rulemaking. We
11 have informally contacted U.S. EPA Region 5 and
12 informed them of our intent to file this rulemaking
13 proposal.

14 With me today is Christopher Romaine. He
15 is manager of our New Source Review Unit in the
16 Bureau of Air, Permit Section. He is here to answer
17 any questions you may have. Mr. Romaine submitted
18 prefiled testimony with the filing of this
19 proposal.

20 At this time, I would move the board to
21 accept Mr. Romaine's prefiled testimony as if it
22 were read in the record and ask that Mr. Romaine be
23 sworn in.

24 THE HEARING OFFICER: Are there any objections

1 to the admittance of Mr. Romaine's testimony?

2 Seeing none, Mr. Romaine's testimony will
3 be entered into evidence as Exhibit 1.

4 MS. KROACK: Finally, I have one other matter.
5 We were to include an exhibit in our statement of
6 reasons that were filed with the rulemaking
7 proposal, and apparently it was omitted. At this
8 time, I would like to submit that and ask that it be
9 put in the record. There are additional copies on
10 the table back here. That's the letter from
11 U.S. EPA, Val Adamkus to Mary Gade, discussing the
12 need to implement rules for our nine percent ROP
13 plan within an 18-month deadline.

14 THE HEARING OFFICER: Are there any objections
15 to the admittance of this U.S. EPA letter dated
16 July 2nd, 1996, to Mary Gade?

17 Seeing that there are no objections, we
18 will admit this U.S. EPA letter dated July 2nd,
19 1996, to Mary Gade as Exhibit 2.

20 Will you please swear in
21 Mr. Romaine?

22 (Witness sworn.)

23 THE HEARING OFFICER: You may proceed,
24 Mr. Romaine. Would you like to give any other brief

1 statement?

2 MR. ROMAINE: I wasn't planning to, unless you
3 would like one.

4 THE HEARING OFFICER: Okay. All right. As
5 such, we will rely on Mr. Romaine's testimony, and
6 we will proceed with any questions for
7 Mr. Romaine. Are there any questions at this time
8 for Mr. Romaine?

9 Will you please state your name?

10 MR. HOMER: Sure. I'm Mark Homer with the
11 Chemical Industry Council of Illinois.

12 Mr. Romaine, do these amendments from the
13 agency's perspective in any way increase any
14 requirements that currently are in the regulations
15 for new sources or modified sources in the Chicago
16 nonattainment area?

17 MR. ROMAINE: No, they do not. These proposals
18 reduce the stringency of the current requirements.

19 MR. HOMER: And related to the ERMS hearings,
20 is it the agency's intent that these amendments
21 resolve all of the questions related to the
22 differences between the federal and state
23 regulations relating to those types of sources?

24 MR. ROMAINE: As you have posed it in very

1 general terms, what I would say is it revolves the
2 difference between the historical interpretation of
3 the Illinois -- of the special rules for
4 modification and what U.S. EPA put forth in its
5 proposal for revised New Source Review rules that
6 address the 1990 Clean Air Act amendments.

7 MR. HOMER: No other questions. Thanks.

8 THE HEARING OFFICER: Thank you.

9 Are there any other questions for
10 Mr. Romaine at this time?

11 Seeing as there are none, I will proceed
12 with a few questions the board has for Mr. Romaine.

13 I would like to reference the proposed
14 rule specifically and the first area being
15 Section 203.207 (a). In that Subsection (a), the
16 sentence begins with "except as provided in
17 Subsection (c), (d), or (f)." Should that read (c),
18 (d), or (e) as proposed?

19 MR. ROMAINE: It should definitely read
20 Subsection (f).

21 THE HEARING OFFICER: Okay.

22 MS. HENNESSEY: Would you provide an
23 explanation?

24 MR. ROMAINE: Okay. Subsection (f) is a

1 special provision for modifications -- management
2 modifications that would apply in the event there
3 were an extreme ozone nonattainment area declared in
4 Illinois, so that's clearly an alternative to the
5 general provisions that are otherwise specified in
6 Section 203.207.

7 Subsection (d) also provides the general
8 provision that applies for a serious or severe ozone
9 nonattainment area, so that is also certainly
10 applicable. If anything were to be added, I would
11 suggest you might also add (d) -- or (c), (d), (e),
12 or (f).

13 THE HEARING OFFICER: Thank you.

14 To follow-up, in that same section,
15 207 (d), there seem to be in the proposal right now
16 two references to what is an increase in net
17 emissions; however, it's phrased in two ways here.
18 One is phrased as increase in the net emissions, and
19 the other way is phrased as net increase in
20 emissions. I wondered if there was one more
21 appropriate way -- one of those ways is more
22 appropriate than the other to refer to net increase
23 in net emissions.

24 MR. ROMAINE: Not that I know of that. That

1 language is adopted essentially verbatim from the
2 Clean Air Act, Section 182 (c) 6.

3 MR. RAO: I have a clarification on the same
4 subsection, 207 (d). You referred to stationary
5 source located in the area. Should that be a major
6 stationary source, or can it be any stationary
7 source?

8 MR. ROMAINE: It can be any stationary source.
9 In severe or serious ozone nonattainment areas,
10 there is no requirement that a source first be major
11 for having a major modification. An increase of 25
12 tons at a non-major source would also trigger status
13 as a major modification.

14 MR. RAO: Was what you stated now true before
15 you made this change because I was looking at this
16 stricken language in the Subsection (d) where you
17 used the term major stationary source?

18 MR. ROMAINE: You are referring to this
19 Subsection (d)?

20 MR. RAO: Yes, the same Subsection (d), the
21 language that's shown is stricken out language.

22 MS. HENNESSY: What is now Subsection (e)?

23 MR. RAO: I'm looking at the board's first
24 notice order on Page 8 of Subsection (d). There is

1 a part of it that's stricken, and part of it is
2 underlined. In the stricken out section, you know,
3 contained emission is with reference to a major
4 stationary source, and I was just curious how does
5 that relate to the new language here proposed?

6 MR. ROMAINE: The language that was stricken in
7 the previous Subsection (d) was the special rule for
8 modifications from 182 (c) 7 of the Clean Air Act,
9 and that specific provision dealt with sources
10 emitting less than 100 tons.

11 MR. RAO: Okay. Now it makes sense. That
12 language shows up in Subsection (e), right, on the
13 proposed rule now?

14 MR. ROMAINE: That's correct.

15 MR. RAO: Okay.

16 MR. ROMAINE: I guess I could make a general
17 comment. We are not suggesting this language is
18 entirely consistent and that there may be slight
19 differences in the wording, but it is, in fact,
20 trying to be exactly word for word as close to the
21 language of the Clean Air Act as possible to carry
22 whatever intent or meaning the Congress intended to
23 be required for New Source Review programs in
24 serious or severe nonattainment ozone areas.

1 So to the extent that there are different
2 terminologies in terms of net increase as compared
3 to increase in net emissions, if there is a
4 difference, we have the difference. If they are the
5 same, they are the same.

6 THE HEARING OFFICER: Thank you.

7 I have a couple more questions just for
8 clarification sake.

9 I am now referencing Section 203.301 (c).
10 Would it be appropriate to add at the beginning of
11 this Subsection (c) the phrase "except as provided
12 in Subsections (e) and (f)," and if not or if so,
13 why?

14 MR. ROMAINE: Based on a quick review, it does
15 appear that Sections (e) and (f) would provide an
16 alternative to what is generally specified in
17 Subsection (c).

18 THE HEARING OFFICER: Thank you.

19 Now, turning to Section 203.301 (e), I
20 have a couple of questions on that in that area.
21 There is a reference in this proposed Subsection (e)
22 to Section 203.207 (d). Should that be 207 (e)?

23 MR. ROMAINE: You got us. Yes.

24 THE HEARING OFFICER: Thank you. I'm not

1 trying to get you. Thank you.

2 Also, in Subsection (e) of Section
3 203.301, would it be appropriate in that first line
4 which begins "if the owner or operator of a major
5 source," would it be appropriate to add major and
6 then add the word stationary source?

7 MR. ROMAINE: That would be fine. I noticed
8 that is in the Clean Air Act.

9 THE HEARING OFFICER: Thank you.

10 Then one additional question. Again, in
11 Subsection (e), the last sentence refers to the fact
12 that the Best Available Control Technology or BACT
13 shall be determined in accordance with the policies
14 and procedures published by U.S. EPA. Can you
15 explain to us what are these policies and procedures
16 and where are they published by U.S. EPA?

17 MR. ROMAINE: The most authoritative
18 publication of U.S. EPA's procedures for
19 determination of Best Available Control Technology
20 or BACT is U.S. EPA's New Source Review Workshop
21 Manual that they prepared in October 1990. Even
22 though it is a draft document, it's never been
23 finalized, it is widely relied upon as the
24 authoritative statement of how to determine Best

1 Available Control Technology.

2 As evidence of the reliance on this
3 document as common practice is a document that the
4 U.S. EPA's Environmental Appeals Board relies upon
5 when determining or acting on appeals that relate to
6 Best Available Control Technology.

7 THE HEARING OFFICER: I would ask would the
8 agency like to admit this manual into evidence?

9 MS. KROACK: We would be happy to. We move to
10 admit the New Source Review Workshop Manual
11 published by U.S. EPA noted draft October 1990 into
12 evidence in this record.

13 THE HEARING OFFICER: Are there any objections
14 to admitting the U.S. EPA draft New Source Review
15 Workshop Manual into evidence as Exhibit 3?

16 Seeing that there are no objections, we
17 will admit the New Source Review Workshop Manual
18 published by U.S. EPA as Exhibit Number 3.

19 MR. RAO: I have a question concerning your
20 example for how this interpretation of special rules
21 affect the ERMS baseline, and I'm referring to
22 Attachment 1 of Exhibit 1.

23 In the first table under baseline
24 situation with the historical interpretation of the

1 special rules, can you explain now how you are using
2 the reductions for Source B? You know, you have
3 listed it as 50 tons per year decrease, and based on
4 that, you have a permit limitation of 11 tons per
5 year. Could you just go through this example and
6 explain how you got this?

7 MR. ROMAINE: Certainly.

8 The purpose of the example in Attachment 1
9 to my testimony was to explain what the effect of
10 the special rules for modifications is under the
11 baseline for the emission reduction market system.

12 The first example goes through a situation
13 with our historical interpretation. This source is
14 proposing a new project, the Project A. This
15 project has VOM emissions of 30 tons per year, and
16 they want to have a permit that allows them to emit
17 up to 30 tons per year. As this project, let's say,
18 a new brass coating line, some particular entity is
19 greater than 25 tons per year, a discreet unit
20 operation or other emitting activity which by itself
21 is over 25 tons per year, so it would be considered
22 a major modification. Therefore, it would trigger
23 New Source Review.

24 The special rules would provide, however,

1 that if it were accompanied by internal offsets, it
2 would not have to fulfill all requirements of New
3 Source Review. Conceivably, it would be excluded
4 from LAER and all other requirements if it were at a
5 small source emitting less than 100 tons per year.

6 If it were a source emitting 100 tons per
7 year or more, it would be subject to other
8 requirements but LAER if it had internal offsets.

9 So to provide internal offsets for this
10 project that has emissions of 30 tons, they would
11 have to have made offsets at a ratio of 1.3:1. They
12 would need 39 tons of offsets.

13 So to take benefit of the special rules,
14 they would have to commit to eliminating at least 39
15 tons per year from their existing operations. That
16 would mean that Operation B, which is providing
17 these reductions, could at most emit 11 tons per
18 year.

19 MR. RAO: So are you saying that Operation B to
20 start with, it should have some emission rate for
21 Operation B?

22 MR. ROMAINE: That's correct. In this example,
23 the other existing operation source has actual
24 emissions of 50 tons per year. It is going to make

1 a contemporaneous decrease to provide an internal
2 offset for proposed Operation A, so its emissions go
3 from 50 to no more than 11 to provide the 39 tons of
4 internal offsets that are required.

5 When this transaction is completed, then
6 each source would have permits that allowed it to
7 emit up to 30 tons for Project A and no more than 11
8 tons for Project B for a total of 41 tons. Those
9 numbers would then transplay into the baseline
10 allowed under the Emission Reduction Market System.

11 MR. RAO: I have a question on the last column
12 of the table called allotment. For Source A, you
13 have a number of 8.34, and the footnote says the
14 allotment reflects 100 percent of the seasonal
15 baseline as operation subject to LAER. I just want
16 you to clarify whether the sources would be subject
17 to LAER since they're providing for an internal
18 offset in this example.

19 MR. ROMAINE: I don't think it would be subject
20 to LAER, you are right. I think perhaps what I was
21 trying to make the point is certainly this new
22 operation would be subject to Best Available
23 Technology since it was put in facing the Emission
24 Reduction Market System. So presumably, it would be

1 installed in such a manner that it would probably
2 not be subject to the 88 percent reduction. So I
3 wanted to give them the best possible allotment
4 going into the program, but I think you are correct
5 that it should not indicate that Project A has those
6 achievable emissions.

7 MS. HENNESSEY: So in the footnote would you
8 substitute BACT for LAER?

9 MR. ROMAINE: I would substitute Best Available
10 Technology, BAT, yes.

11 MS. HENNESSEY: Okay.

12 I also was wondering for Source A -- just
13 so I understand this completely, how did you arrive
14 at 20 as the annual ERMS baseline for A? Is that a
15 given, or is that actually reflected in a
16 calculation?

17 MR. ROMAINE: That is, in fact, a given simply
18 recognizing that the source -- or this project may
19 not, in fact, operate at its permitted emissions
20 during its first three years of operation.

21 MS. HENNESSEY: Okay.

22 THE HEARING OFFICER: Yes, Mr. Homer.

23 MR. HOMER: Yes, Mr. Romaine, now you are going
24 to have to clarify this for me. I thought that

1 because Project A did not obtain the 1.3:1 offset
2 obviously because the net evaluation or permit
3 limitations were 30, not 39, that it was subject to
4 LAER. I thought it would only avoid LAER if it
5 obtained 1.3:1.

6 MR. ROMAINE: In fact, in this example, I have
7 them obtaining 1.3:1 internal offsets from
8 Project B.

9 MR. HOMER: Oh. I thought you were referring
10 only to the Line A, and that would be without
11 Project B.

12 MR. ROMAINE: No.

13 MR. HOMER: Okay. Thank you.

14 MS. HENNESSY: The source in this example does
15 have total emissions of over 100 tons per year?

16 MR. ROMAINE: That isn't really critical.
17 Either way it would be excused from the LAER
18 requirement if it had internal offsets of a ratio of
19 1.3:1.

20 The question is if it were over 100 tons
21 per year, it would still be subject to other
22 requirements of New Source Review, including an
23 analysis of alternatives and having had compliance
24 as existing sources. If it were a source that's

1 less than 100 tons per year, it would not be subject
2 to any of the requirements in the New Source Review
3 if it provided the internal offsets.

4 MR. RAO: These other requirements you just
5 mentioned, does that include any external offsets
6 that they have provided, or no? You were talking
7 about other requirements. Do those requirements
8 include providing any other external offsets for
9 this Source A?

10 MR. ROMAINE: In this example they would not
11 because this source can fully offset Project A
12 internally, so this source can provide a full 39
13 tons per year reduction in Project B or Operation B
14 to make room for the construction of the proposed
15 Project A.

16 MS. HENNESSEY: Even under the historical
17 rules?

18 MR. ROMAINE: That is correct.

19 I guess to continue, the most important
20 part of the example, though, is the comparison with
21 what happens with the proposed interpretation.
22 Under the proposed interpretation, the source would
23 still be proposing a Project A that would like to
24 have permitted for 30 tons per year. However, we

1 would determine whether it was subject to New Source
2 Review simply looking at the overall change in
3 emissions of the source and asking the question will
4 this have an increase in more than 25 tons per
5 year.

6 To compensate for Project A in that
7 circumstance, it would only have to have sufficient
8 reductions to bring the net change to below 25 tons
9 or a 24.9 ton per year increase. That means it
10 would only need 5.1 tons of decrease for Project B.

11 They would then end up with a combination
12 of permits that allow them the full 30 tons from
13 Project A. They would have a permit that allowed
14 them up to 44.9 tons from Project B. Their permit
15 would allow much greater emissions because they have
16 not had to offset all of Project A, and they haven't
17 had to provide those offsets at a 1.3:1 ratio. All
18 they have to do is provide sufficient emission
19 decreases so that there wasn't a significant
20 contemporaneous increase in the source.

21 MS. HENNESSEY: I have one other question. In
22 the statement of reasons and I think in your
23 testimony you state that this interpretation of
24 Section 182 of the Clean Air Act was explained by

1 U.S. EPA in its Federal Register notice of
2 July 23rd, 1996, which is in Volume 61 of the
3 Federal Register beginning on Page 38249. Would it
4 be possible for you to pinpoint this rather lengthy
5 notice where these specific issues are discussed,
6 either now or if you need some time to do that, in a
7 public comment?

8 MR. ROMAINE: Do you have a version of the
9 Federal Register publication?

10 MS. HENNESSEY: I do.

11 MR. ROMAINE: We could provide it to you
12 later. Unfortunately, I have a TTN version on plain
13 paper, so I could not correlate the new version.

14 MS. HENNESSEY: Okay. That's fine. Thank
15 you.

16 MR. MCGILL: I just had a question regarding
17 the proposed Section 203.301 (f). I guess we are
18 talking about major stationary sources that emit or
19 have potential to emit 100 tons per year or more.
20 Under this provision, is it correct that they can
21 avoid LAER requirements if they provide the 1.3:1
22 internal offset ratio?

23 MR. ROMAINE: Yes, it is.

24 MR. MCGILL: And would that still be considered

1 a major modification?

2 MR. ROMAINE: For those particular operations
3 or units for which they provide the internal offsets
4 at a ratio of 1.3:1, they would not be considered a
5 major modification. Presumably, there would be
6 other discreet operations or units at the source
7 that they were unable to provide internal offsets
8 for, so there might be something else as part of the
9 project that would still qualify for some major
10 modification.

11 MR. MCGILL: Thank you.

12 THE HEARING OFFICER: Just one moment. We are
13 going to go off the record just for a second.

14 (Whereupon, a discussion was
15 held off the record.)

16 THE HEARING OFFICER: Let's go back on the
17 record.

18 MR. RAO: It would be helpful if you could
19 explain how Section 203.301 (f) works in the context
20 of if the source provides the offsets in the ratio
21 of 1.3:1 and gets out of meeting LAER, would it be
22 still considered as a major modification and what
23 requirements the source will have to meet?

24 MR. ROMAINE: Okay. Yes, it still would be

1 considered a major modification. If you look at the
2 four requirements under New Source Review, it
3 wouldn't be subject to LAER. It would have provided
4 offsets internally. It would still have to go
5 through an analysis of alternatives to a particular
6 project or particular emission unit, and it would
7 also have to show compliance in other existing major
8 stationary sources in the state.

9 MR. MCGILL: Would it have to provide external
10 emission offsets at 1.3:1?

11 MR. ROMAINE: No, it would not. No, it
12 wouldn't.

13 MR. RAO: Let me just refer you to Section
14 203.302, maintenance of reasonable further progress
15 and emission offsets. Subsection A requires the
16 owner or operator of any new major source or
17 modification to provide emission offsets equal to or
18 greater than the allowable emissions, and it goes on
19 to list in what ratios the offsets have to be
20 provided. For a severe nonattainment area, it
21 requires offsets to be provided in the ratio of
22 1.3:1, so I guess the question is is this
23 requirement the same as the offset requirement under
24 203.301?

1 MR. ROMAINÉ: Are you asking would the offset
2 requirement under --

3 MR. RAO: 203.302

4 MR. ROMAINÉ: 203.301 is the same offset
5 requirement as --

6 MR. RAO: 203.302.

7 MR. ROMAINÉ: Yes, it is. The way I have
8 explained it is if by chance you explain the
9 general -- or satisfy the general offset requirement
10 of 203.302 by this particular means, then you get an
11 added benefit in terms of being excused from the
12 requirement of LAER.

13 MR. RAO: All right.

14 THE HEARING OFFICER: I just have one
15 clarification under Section 301 (f). The reason why
16 the owner or operator would be able -- would not be
17 able to -- or strike that -- would not be considered
18 a major modification is because it has emissions
19 that exceed 100 tons per year; is that correct?

20 MR. ROMAINÉ: No.

21 THE HEARING OFFICER: Okay.

22 MR. ROMAINÉ: All 203.302 (f) does is excuse
23 somebody who has a more than diminimous change from
24 having to meet the LAER requirement if he is able to

1 and decides to provide internal offsets. This
2 provision then would apply to those particular
3 discreet units or operations for which he proposes
4 to provide these internal offsets.

5 THE HEARING OFFICER: Thank you.

6 MS. HENNESSY: So under 203.302, you can use
7 either internal offsets at the same source or
8 contain offsets from an external source to satisfy
9 203.302?

10 MR. ROMAINE: To the extent you have internal
11 offsets, the first thing you would want to do would
12 be use that to show that you don't have any
13 contemporaneous significant increase at the source.

14 What U.S. EPA is approaching, say, is a
15 concept or -- I'm sorry -- a situation where
16 somebody does not have sufficient internal offsets
17 or emission reductions to avoid having a
18 contemporaneous emissions increase, but they do have
19 some emission decreases at the source, and they
20 would then use those contemporaneous decreases to
21 provide internal offsets for specific discreet unit
22 operation emitting activities, so have a relaxed --
23 relaxed requirements of New Source Review of those
24 particular discreet units or operations.

1 MS. HENNESSEY: Okay. That makes sense. Thank
2 you.

3 THE HEARING OFFICER: Are there any other
4 further questions for Mr. Romaine?

5 Seeing that there are no further
6 questions, I would like to just remind you all of a
7 few matters.

8 Please note that the second hearing is
9 scheduled for Monday, November 24th, 1997, here at
10 the James Thompson Center in Suite 9-040 at
11 10:00 a.m.

12 The third hearing is currently scheduled
13 for Tuesday, December 9th, 1997, and that is
14 scheduled to take place in the board's conference
15 room in Suite 11-500 of the Thompson Center.

16 I remind you if after seven days following
17 the close of this hearing there is no request for an
18 additional hearing, the board may cancel that second
19 and that third hearing.

20 In that event, all persons, as I
21 previously mentioned, on the notice list will
22 receive a hearing officer order indicating that the
23 cancellation of the hearings has occurred.

24 If the board cancels the next two

1 hearings, the record in this matter will close 14
2 days after the availability of the transcript.

3 Consequently, if no additional hearings
4 are held, we anticipate that the public comment
5 period after the first hearing will close on
6 approximately November 6th, 1997. Therefore, all
7 further public comments must be received at the
8 board's Chicago office on or before November 7th at
9 4:30 p.m.

10 The mailbox rule as set forth in 35 Ill.
11 Adm. Code 101.102 (d) will not apply to these
12 filings.

13 Incidentally, the board will post the
14 transcript from this hearing on its Web site, and
15 our Web site address is WWW.STATE.IL.US\PCB\.

16 Are there any other matters which need to
17 be addressed at this time?

18 Seeing that there are no further matters
19 to be addressed, this hearing in this matter is
20 hereby adjourned. Thank you for your attendance and
21 participation at this hearing.

22 MS. DONELAN: I would like to make one comment,
23 if I could. I'm sorry.

24 THE HEARING OFFICER: I'm sorry. Would you

1 like to make one?

2 MS. DONELAN: Sure. My name is Cassandra
3 Donelan. I'm the project manager for the Illinois
4 Environmental Regulatory Group or ERP.

5 ERP has reviewed and does support the
6 proposed amendments to 35 Ill. Adm. Code 203 in the
7 matter of major stationary sources construction and
8 modification.

9 As included within the board's first
10 notice opinion and order dated September 4th, 1997,
11 ERP believes that the amendments do fulfill the
12 purposes noted within the agency's statement of
13 reasons and Chris Romaine's prefiled testimony dated
14 July 1997, and ERP would also be happy to respond to
15 any questions in its final comments. Thank you.

16 THE HEARING OFFICER: Thank you, Ms. Donelan.

17 Are there any other further matters to be
18 addressed?

19 Thank you again for your participation and
20 attendance at this hearing. This matter is hereby
21 adjourned.

22 (Whereupon, the hearing was adjourned
23 at 10:55 a.m.)

24

1 STATE OF ILLINOIS)
)
2 COUNTY OF C O O K)

3

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

12

13

14 _____
CARYL L. HARDY, CSR
Notary Public, Cook County, IL

15

16

SUBSCRIBED AND SWORN TO
17 before me this _____ day
18 of _____, A.D., 1997.

19

Notary Public

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