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APPEARANCES

Board Members present:

Chairman G. Tanner Girard
Board Member Andrea S. Moore
Board Member Thomas E. Johnson
Board Member Shundar Lin

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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On behalf of the Illinois EPA

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On behalf of IERG

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1 PROCEEDINGS

2 (April 28, 2009; 2:04 p.m.)

3 HEARING OFFICER FOX: I want to greet
4 everyone with a good afternoon and welcome you to this
5 Illinois Pollution Control Board hearing. My name is Tim
6 Fox, and I am the hearing officer for this rulemaking
7 proceeding, which is entitled "In the Matter of: Air
8 Quality Standards Clean-Up: Amendments to 35 Illinois
9 Administrative Code Part 243." The board docket number
10 for this rulemaking is R09-19. The Illinois
11 Environmental Protection Agency filed this proposal on
12 December 1, 2008, and the Board accepted it for hearing
13 in an order dated December 18 of 2008. I do note that on
14 January 20 of 2009 the Agency filed a motion to amend its
15 rulemaking proposal, and in an order dated February 19 of
16 2009, the Board granted the motion and accepted the
17 Agency's amendments into its proposal. I also note that
18 on April 14 of 2009 the Agency filed its first errata
19 sheet, which proposed, I recall, six specific amendments
20 to the text of the proposed rule.

21 Today we are, for the record, holding the second
22 hearing in this rulemaking. The first hearing took place
23 on March 10, 2009, in Chicago. The hearing dates in this
24 case have been rescheduled pursuant to the Agency's

1 motion to reschedule which the Agency filed on January
2 20, 2009, and pursuant also to a hearing officer order
3 dated on January 30 of 2009.

4 I want to take a moment to introduce those
5 persons who are present here from the Board. At my
6 immediate left is Board Member Andrea S. Moore, who is
7 the board member -- the lead board member assigned to
8 this rulemaking, and at her left is Dr. G. Tanner Girard,
9 who is the acting chairman, of course, of the Illinois
10 Pollution Control Board. At my immediate right is Board
11 Member Thomas E. Johnson, and at his right is Board
12 Member Dr. Shundar Lin.

13 This proceeding is governed by the Board's
14 procedural rules and pursuant to 35 Illinois
15 Administrative Code 102.1 -- pardon me -- .416. All
16 information that is relevant and that is not repetitious
17 or privileged will be admitted into the record. Please
18 note that any questions today that are posed by the board
19 members or by the Board's staff are intended solely to
20 help develop a clear and complete record for the Board's
21 decision and are not intended to reflect any prejudgment
22 or conclusions on the proposal and its merits.

23 For this hearing, the second, of course, the
24 Board received one set of prefiled testimony from

1 Mr. David J. Kolaz, K-O-L-A-Z, on behalf of the Illinois
2 Environmental Regulatory Group, often referred to as
3 IERG. On April 14, 2009, those were filed by Mr. Kolaz.
4 If any other participants do wish to testify, there is a
5 signup sheet just inside the door next to the court
6 reporter's position. Like any other witnesses, those who
7 have not prefiled but would wish to testify today will be
8 sworn and will be asked questions about the substance of
9 that testimony. Is there anyone here who was not aware
10 of that sheet and would like to indicate that they wish
11 to testify?

12 Seeing no indication that there is anyone who
13 wishes to do so, we will begin with the testimony of
14 Mr. Kolaz. He may wish to offer a brief introduction or
15 summary of his comments, and that will be followed by
16 questions that other participants, including the Illinois
17 Environmental Protection Agency and any of the board
18 members, may have for him on the basis of that testimony,
19 and then we will proceed with the testimony of any other
20 person who may later wish to offer testimony.

21 For the court reporter -- Knowing that many of
22 you have been through a lot of these hearings, for the
23 court reporter, please speak as loudly as you can so that
24 she has the easiest possible job. We don't have the

1 benefit of any sound amplification, but I think based on
2 the number of people here in the room that we should have
3 no problem making one another pretty clear to one
4 another. Any questions about procedures before we get
5 underway?

6 Mr. Davis, it looks like -- Seeing no indication
7 that there are any questions, Mr. Davis, it looks like
8 we're prepared for the testimony on behalf of IERG.
9 Would it be your wish to have the court reporter go ahead
10 and swear Mr. Kolaz in so that he could begin with his
11 testimony and the questions based on it?

12 MR. DAVIS: I'd like to -- Sure, we can do
13 that now, and then I can introduce him.

14 HEARING OFFICER FOX: Perfect. Why don't we
15 go ahead with swearing Mr. Kolaz in at this point, then.

16 (Witness sworn.)

17 HEARING OFFICER FOX: Mr. Davis, for you.

18 MR. DAVIS: Thank you, Mr. Fox, members of
19 the Board. My name is Alec Davis. I'm the general
20 counsel of the Illinois Environmental Regulatory Group,
21 or IERG. On behalf of IERG, I'd like to thank the Board
22 for providing us the opportunity to participate in
23 today's hearing. With me today and also representing
24 IERG is Monica Rios of the law firm of Hodge Dwyer &

1 Driver. Also with me, as you said, is Mr. Dave Kolaz,
2 and as you mentioned, we prefiled his testimony on
3 April 14. Before I turn it over to Mr. Kolaz, I'd like
4 to move to enter as exhibits the following documents to
5 which Mr. Kolaz refers in his statement.

6 HEARING OFFICER FOX: Very good. If you
7 have copies, Mr. Davis, we can get that process started.

8 MR. DAVIS: I do, and I think I've got
9 enough for everyone here, though it might be a close
10 call. First, I have some select pages from the 2007
11 Illinois Annual Air Quality Report, which was published
12 by the Illinois EPA in December of 2008.

13 HEARING OFFICER FOX: Before entertaining a
14 motion, Mr. Davis, why don't we note that as Exhibit
15 No. 2 since we've already introduced sections from the
16 Code of Federal Regulations as Exhibit 1 in this case.

17 MR. DAVIS: Fine. Thank you. How many
18 copies would you require?

19 HEARING OFFICER FOX: At the very least one,
20 and a couple would be great. Perfect. Thank you.

21 MR. DAVIS: And the rest. Next I have a
22 document titled "Summary of Pekin Sulfur Dioxide Data
23 from USEPA's Air Data System," and finally, a document
24 titled, "Example Standard Language for Sulfur Oxides,

1 Carbon Monoxide and Nitrogen Dioxide."

2 HEARING OFFICER FOX: Mr. Davis, thanks for
3 distributing copies of those. It looks like they have
4 made their way around the room and that everyone has had
5 a chance to look at them. Did you have a motion with
6 regard to those three documents, which I have marked
7 preliminarily Exhibits 2, 3 and 4?

8 MR. DAVIS: Yeah. I'd move that they be
9 admitted as exhibits.

10 HEARING OFFICER FOX: Very good. I'm sure
11 everyone has heard the motion by Mr. Davis to admit the
12 three documents that he has circulated as Exhibits No. 2,
13 3 and 4 in this proceeding. Did anyone wish to be heard
14 on the motion to admit those? Neither seeing nor hearing
15 any, Mr. Davis, the motion will be granted. And for the
16 record, Exhibit No. 2 is the 2007 Illinois Annual Air
17 Quality Report; Exhibit No. 3 is the, quote, "Summary of
18 Pekin Sulfur Dioxide Data from USEPA's Air Data System,"
19 closed quote, and Exhibit No. 4 is entitled, "Example
20 Standard Language for Sulfur Oxides, Carbon Monoxide and
21 Nitrogen Dioxide." Mr. Davis, thank you again.

22 MR. DAVIS: Thank you. That being done,
23 Mr. Kolaz, if you would.

24 MR. KOLAZ: Okay. My name is David Kolaz,

1 and I'm here today on behalf of the Illinois
2 Environmental Regulatory Group in the matter of air
3 quality standards clean-up proposed by the Agency. IERG
4 appreciates the efforts of the Board to provide this
5 opportunity to participate in this hearing and have
6 convenient access to all pertinent documents filed in
7 this regard.

8 IERG supports the efforts of the Agency to update
9 and otherwise clean up the state air quality standards
10 contained in Part 243 of the Board's regulations. We see
11 from the first errata sheet filed by the Agency for
12 today's hearing that the Agency is proposing changes that
13 appear to better conform the Agency's proposed revisions
14 to the USEPA's national ambient air quality standards in
15 order to ensure that such standards are identical in
16 substance. However, as stated more fully in my
17 testimony, IERG believes that changes also need to be
18 made to the State's air quality standards for sulfur
19 oxides, carbon monoxide and nitrogen dioxide. These
20 changes are needed to avoid any possible confusion as to
21 the level and interpretation of these standards.

22 A potential problem of interpretation is not
23 solely theoretical in nature. It has already occurred in
24 regard to the interpretation of the State's sulfur oxides

1 air quality standard, as I will now more fully explain.
2 The current wording of the averaging period in the
3 State's sulfur oxides air quality standard in
4 Section 243.122 simply states, "A maximum 24-hour
5 concentration not to be exceeded more than once per
6 year." As stated in my prefiled testimony, this wording
7 does not adequately convey the notion that the 24-hour
8 period must use the block averaging convention that the
9 USEPA states has always been intended for use with these
10 standards.

11 In Table 1, titled, "Summary of National and
12 Illinois Ambient Air Quality Standards," contained on
13 page 6 of its 2007 Illinois Annual Air Quality Report,
14 which has been admitted as Exhibit 2, the Illinois EPA
15 shows both the state and federal standards for sulfur
16 dioxide, giving the impression they are the same, as we
17 believe is the intent. However, in this same 2007
18 Illinois Annual Air Quality Report, the Illinois EPA
19 reports two exceedances of the State's 24-hour sulfur
20 oxide standard at its Pekin monitoring site based on
21 running averages rather than block averages. Two
22 exceedances represent a violation of both the state and
23 federal air quality standards. Now, these exceedances
24 are noted in Table B8 on page 62 of that same report, the

1 2007 Illinois Annual Air Quality Report, again which is
2 part of Exhibit 2.

3 Illinois' 2007 air quality data has been
4 submitted to the USEPA's Office of Air Quality Planning
5 and Standards pursuant to ongoing commitments in that
6 regard. I would draw your attention to the exhibit
7 titled, "Summary of Pekin's Sulfur Dioxide Data from
8 USEPA'S Air Data System," which has been admitted as
9 Exhibit 3. Instead of two exceedances of the 24-hour
10 sulfur dioxide standard as tabulated by the Illinois EPA,
11 the USEPA summarized the same data using block averages
12 and concluded there was only one exceedance. Since one
13 exceedance does not constitute a violation according to
14 both the federal and state sulfur oxide air quality
15 standard, the USEPA concluded that the sulfur oxide
16 standard was not violated in Pekin. This differs from
17 the Illinois EPA's conclusion that there was a violation
18 of the state air quality standard based on the two
19 exceedances it tabulated using the running averages.
20 Furthermore, the three-hour averages reported by the
21 USEPA and Illinois EPA do not match. Again, this is
22 because of the discrepancy between block averages and
23 running averages.

24 The final discrepancy I wish to point out is in

1 regard to the annual average reported by the Agency and
2 the USEPA. The Illinois EPA reports a value of 0.004
3 parts per million for the annual average at its Pekin
4 monitoring location, as shown on page 63 of its 2007 air
5 quality report. The USEPA using the same data provided
6 by the Illinois EPA reports a value of 0.005 parts per
7 million. This difference could be due to a transcription
8 error in the Agency's report, or it might possibly be due
9 to a difference in rounding convention. In Exhibit 3,
10 USEPA reports the annual average value as 0.0048 parts
11 per million and then rounds it to 0.005 parts per
12 million. The rounding convention in the USEPA rule
13 clearly illustrates how this is to be done, and no such
14 convention exists in the current rule for sulfur oxides,
15 nitrogen dioxide or carbon monoxide.

16 In summary, IERG encourages the Board to
17 adopt changes to the Part 243 air quality standards that
18 will remove any possible ambiguity, thereby ensuring that
19 the state standards are the same as the USEPA standards,
20 as is the stated intent of the Agency. The Exhibit No. 4
21 that's been admitted contains examples -- an example of
22 language that IERG believes addresses those concerns.
23 Thank you for your attention, and I welcome the
24 opportunity to answer any questions regarding this

1 matter.

2 HEARING OFFICER FOX: Mr. Kolaz, thank you
3 for your testimony and your statement, and as you've
4 indicated, we've reached the point where questions would
5 be in order, whether -- Mr. Matoesian on behalf of the
6 Agency or any of the other participants, if you would
7 like to pose any questions, please begin to do so.

8 MR. MATOESIAN: Thank you, sir.

9 HEARING OFFICER FOX: Sure.

10 EXAMINATION OF DAVE KOLAZ

11 BY MR. MATOESIAN:

12 Q. I have a few questions for Mr. Kolaz. In --
13 You mentioned in your prefiled testimony that you were
14 employed at the IEPA for a while. Weren't you the
15 manager of the air monitoring section at one point?

16 A. Yes, I was.

17 Q. And approximately when did you become
18 manager of that section?

19 A. Oh, it was I think somewhere near 1980. I
20 don't recall exactly.

21 Q. And how long were you the manager of that
22 section?

23 A. A long time, I know that, but -- I was in
24 the air monitoring section for sixteen years and I think

1 I was the manager for probably ten or twelve of those
2 years.

3 Q. Thank you. And what was your position in
4 the IEPA prior to that?

5 A. I worked -- I initially started off working
6 in compiling the emission inventory for the first state
7 implementation plan, and then I worked in a section
8 called -- after that I worked in a section called the
9 variance section. Variances still exist but they're now
10 handled a different way, so there's not a variance
11 section. I worked in the permit section for a while
12 after that, and then I worked in what's now -- it was
13 called then, I think, the air planning or air monitoring
14 section, worked in the data analysis unit, then
15 ultimately became manager of the air monitoring section.

16 Q. Okay. Thank you. Now, in those positions,
17 were you responsible or was your staff responsible for
18 interpreting monitored SO2 data for compliance with the
19 air quality standards?

20 A. Yes.

21 Q. And how did the Agency interpret monitored
22 SO2 data for determining compliance with the air quality
23 standards?

24 A. Are you talking about all the standards or

1 are you talking specifically on sulfur dioxide?

2 Q. SO2.

3 A. It was interpreted for a long time as a
4 running 24-hour average.

5 Q. Okay. Thank you. And how long has the
6 Agency used running averages to interpret the SO2
7 standard?

8 A. You know, I don't have an exact date for
9 you, but I would answer that by saying that initially the
10 monitoring method for sulfur dioxide only allowed in
11 essence a block average because it was a sample
12 collection method that pulled air through a solution, a
13 saline solution, for 24 hours, so there was no
14 opportunity to gather anything other than a 24-hour
15 sample.

16 Q. I'm sorry. Were you talking -- Are you
17 talking back in the 1970s?

18 A. Yes.

19 Q. Okay. Didn't the EPA in fact prefer running
20 averages back in the 1970s?

21 A. Well, ultimately they did, but there was no
22 opportunity to do running averages when the sample -- the
23 initial sample only collected a 24-hour block average.
24 So much like the high-volume sample or particulate

1 samples that we're familiar with, it pulls the -- in that
2 case the air is pulled through a filter for 24 hours, so
3 there is no opportunity to look at anything less than a
4 24-hour average, but as time went on, the monitoring
5 technology improved and became much more sophisticated
6 and the opportunity presented itself to actually collect
7 one-hour samples and even smaller averaging times if so
8 desired, and at that time when those hourly samples were
9 collected, they were interpreted as running 24-hour
10 samples, and there's no question about that.

11 Q. And when did that occur with the --

12 A. It was in the '70s.

13 Q. Okay.

14 A. I mean, as you stated, it was somewhere mid
15 to late '70s.

16 Q. So your proposal would actually change the
17 way Illinois interprets the SO2 standards, to use only
18 block averages and not running averages.

19 A. Yes, that's right. It changed their past
20 practice.

21 Q. And in your opinion, when determining
22 compliance with the air quality standards, is the use of
23 running averages more stringent than block averages?

24 A. Yes, it's more stringent.

1 Q. And I have a question -- you stated in your
2 opening statement today that the federal EPA says that
3 you must use block averages; is that correct?

4 A. Yes.

5 Q. Isn't a state free under Section 116 of the
6 Clean Air Act to use a stricter standard than the EPA
7 suggests?

8 A. Yes. Oh, yes, they are.

9 Q. So in other words, states aren't required
10 to.

11 A. They are not.

12 Q. It's just a suggestion by EPA.

13 A. That's correct.

14 Q. Okay. Thank you.

15 A. Well, it's not a suggestion. I shouldn't
16 have answered that so quickly. I mean, that is the
17 federal standard, is a block average standard.

18 Q. But states are free to do otherwise so long
19 as it's not less --

20 A. As long as it's not less stringent, states
21 can do what they want.

22 Q. And you agree that by using running
23 averages, Illinois is being more stringent than the
24 federal --

1 A. Yes.

2 Q. Okay. Thank you.

3 A. Oh, yes.

4 Q. So your proposal, then, would represent a
5 relaxation of the current state standard.

6 A. It would -- I do not -- I think in one sense
7 I would disagree with what you're saying. It represents
8 a change in the Agency's past practice, but the standard
9 the way it's written is so vague, it's difficult to
10 determine how to compute those averages.

11 Q. I'm sorry. Is it vague or is it just
12 flexible?

13 A. Oh, it's vague. It's very vague.

14 Q. Does it not just allow you to use whichever
15 method?

16 A. The way the standards are written is there
17 is tremendous what you call flexibility. For example,
18 when it comes to the annual average, the federal
19 government says it's a calendar average. The State just
20 says it's an annual average. So does that mean it's a
21 rolling annual average that you run from February to next
22 February? It is not -- It's just not very specific, and
23 the reason, you know, we're proposing what we're
24 proposing is the Agency has testified and stated that

1 their intent is to have the same state standards as the
2 federal standards and hasn't presented any testimony to
3 show why those standards should be more stringent.

4 Q. When -- You're saying the Illinois EPA
5 stated that?

6 A. Yes.

7 Q. And when did this statement occur?

8 A. Well, it was with the statement of reasons
9 that were filed in this matter, and it was also brought
10 out at the first hearing through questions that were
11 asked of Mr. Kaleel.

12 Q. Weren't in fact the statement of reasons
13 suggesting that there were several changes as well as
14 general clean-up for certain standards such as PM2.5? It
15 was not a general statement that all should be the same.

16 A. I'd have to look at exactly how it was
17 worded. The implication, the way I took it, was that
18 they were all expected to be the same as the federal
19 and --

20 Q. So that was just your interpretation.

21 A. Yeah. Yes, that is.

22 Q. And if -- in the first hearing, didn't
23 Mr. Kaleel say affirmatively, we do not intend to change
24 certain standards, such as the SO2, carbon monoxide and

1 nitrogen oxides, I believe?

2 A. Yes, he did say that. That's why I'm here.

3 Q. What would be the benefit to Illinois to use
4 only the parts per million and not the micrograms per
5 cubic meter? Oh, I'm sorry. I had the wrong question.
6 Your second recommendation regarding SO2 is to state the
7 standards in terms of parts per million and not also in
8 micrograms per cubic meter, correct?

9 A. Yes.

10 Q. Okay. And don't the current state air
11 quality standards use both units?

12 A. Yes.

13 Q. And, now, if you'll -- sorry I jumped ahead.
14 What would be the benefit to Illinois to use only parts
15 per million and not micrograms per cubic meter?

16 A. Well, I think there's several components to
17 my answer. One is the State has never used micrograms
18 per cubic meter for the standard. I shouldn't say never.
19 Let me just say in as far back as I can recall -- and
20 I'll refer to sulfur dioxide just as one example of one
21 of the standards. The standard for 24 hours is 365
22 micrograms per cubic meter, but that's never been used as
23 the standard. A problem that USEPA had run into -- and
24 so had the Illinois EPA -- is that when the standard is

1 stated as 365 micrograms per cubic meter with the parts
2 per million parenthetically, then it's interpreted that
3 the standard is 365 micrograms per cubic meter. One of
4 the big problems is that in mathematical interpretation,
5 then, the first exceedance of that standard would be at
6 366. Since it's 365 and not 365.0, then you would have
7 your first exceedance at 366. However, 366 micrograms
8 per cubic meter is less than 0.14 parts per million.
9 It's something -- I'd have to check. It's something like
10 0.137, 0.138, so it's a lesser standard.

11 So it's caused confusion in interpretation.
12 That's why when USEPA has changed their standards,
13 they've done away for sulfur oxides with the microgram
14 per cubic meter. That -- This came out, by the way,
15 these standards, back in the early '70s when there was
16 a -- for those who were around then, a big push to do
17 everything metrically, and that's why they did it, but
18 now they're just stating it as parts per million. Now,
19 there are some of the older -- some of the standards that
20 have not undergone revision in the last few years, like
21 carbon monoxide, nitrogen dioxide, where they still have
22 kept that, but it's clear that for ozone it's just parts
23 per million, for sulfur oxides it's parts per million.
24 Certainly for the particulate, lead and PM2.5, that is

1 done in weight, in micrograms per cubic meter.

2 Q. Now, but isn't it true for modeling purposes
3 as may be needed for preparing attainment demonstration
4 that micrograms per cubic meter are used?

5 A. Well, yeah, that would be the case, and
6 which situation the comparison, if you're comparing it to
7 a federal standard, would be to the microgram per cubic
8 meter equivalent of 0.14 part per million, not -- you
9 know, not 137, so you shouldn't use -- if you're going to
10 do that, which the Agency does, they should be using
11 something like 370, 373, and not 365.

12 Q. 365 is the published value, correct?

13 A. Not for the federal standard. The federal
14 standard for sulfur oxides, it's 0.14.

15 Q. But the state standard, I'm saying.

16 A. Oh, yes, the state standard is 365.

17 Q. And so -- And you're saying that the first
18 exceedance of the standard using parts per million would
19 be at 0.15 parts per million, correct?

20 A. Yes.

21 Q. And what does that convert into in
22 micrograms per cubic meter?

23 A. 0.15?

24 Q. Yes.

1 A. Well, I did not bring my calculator.

2 Q. But it -- would it be above 365?

3 A. Yes, it would, but -- and this is where --
4 again where there's an element of the standard that needs
5 to be considered, and that is that according to the USEPA
6 standard, the first exceedance would occur at 0.145.
7 0.144 would be rounded down to 0.14, would equal the
8 standard but not exceed it. When you would hit 0.145, it
9 would be rounded up to 0.15; that would be an exceedance.
10 You'll see in Exhibit 3 we passed out that USEPA
11 generally carries to three decimal places. So does the
12 Illinois EPA. So in Exhibit 3, to kind of point this
13 out, is if you look at the bottom part of that sheet, the
14 middle row, if you go over about to the middle, you'll
15 see "observation count." It says OBS CNT, 365. That
16 signifies 365 days' worth of sample. There were 8,696
17 hourly samples, and, see, they have a max value occurring
18 on March 2 of 0.168. So even then, USEPA generally
19 carries to three places, so there would not be an
20 exceedance until you got to 0.145. 0.142 would not be
21 over. So the microgram per cubic meter equivalent would
22 be halfway between 0.14 and 0.15.

23 Q. So the Illinois standard would be stricter
24 than the federal standard.

1 A. Yes, yes.

2 Q. And again, under Section 116 of the Clean
3 Air Act, states are free to make stricter standards than
4 the federal government.

5 A. Yes.

6 Q. Okay. Thank you. Is there a company in
7 Illinois named Aventine?

8 A. Right now there is.

9 Q. And where is Aventine located?

10 A. Pekin.

11 Q. And isn't Aventine a member of the Illinois
12 Environmental Regulatory Group that you represent?

13 A. Yes, they are.

14 Q. And have there been any recent violations of
15 the state SO2 air quality standards at the monitoring
16 site in Pekin?

17 A. The State says there has.

18 Q. And state's what we're here about today.

19 A. Right.

20 Q. Are you aware that the Agency's been in
21 discussions with Aventine about the measured SO2
22 exceedances?

23 A. Yes.

24 Q. And if the Agency were to interpret SO2

1 standards in the way that you have proposed, would it
2 affect the determination of whether or not the SO2
3 standard was violated in Pekin?

4 A. Yes.

5 Q. Okay. And wouldn't this at the same time
6 have the effect of relaxing the SO2 standard for all
7 other affected sources in Illinois by changing to the
8 proposal?

9 A. Well, let me answer that -- I think there's
10 a couple ways to answer that. Reading the air quality
11 standard the way it exists right now, the standard, as
12 I've said before, can be interpreted a variety of ways.
13 When you look at how the Illinois EPA has interpreted
14 that standard for a number of years, they've interpreted
15 it as rolling averages. There hasn't been any situations
16 in a long number of years where that's been an issue, so
17 it hasn't come to the forefront. I don't know that I
18 would agree if what you're saying is the air quality
19 standard the way the Illinois EPA has interpreted it is a
20 proper interpretation of the Illinois air quality
21 standard. The reason is is when the Illinois EPA came
22 forth to propose that standard, just like they have on
23 these new standards they're proposing now, they said, we
24 are not presenting any testimony to support any standard

1 other than the federal standard. In essence, they didn't
2 present any health information, nothing else. They
3 simply presented that they were adopting the federal
4 standards, so --

5 Q. And I'm sorry. When was this occurring?

6 A. This is back when the standards were
7 first --

8 Q. Is this what the federal standard was at
9 that time?

10 A. The federal standard has not changed,
11 according to USEPA.

12 Q. What I'm suggesting is this happened in
13 the '70s or '80s. Since then, the USEPA has changed
14 their interpretation.

15 A. They have not. The USEPA has said they have
16 not changed it, and in my testimony, my prefiled
17 testimony, I gave some citations. In fact, we brought
18 the Federal Register with us today where USEPA said that
19 is not a different interpretation.

20 Q. And which Federal Register --

21 A. So my point is, I would agree that Illinois
22 EPA has interpreted it that way. I would not agree that
23 if someone was to oppose Illinois EPA's interpretation, I
24 suspect they would go back to the board hearing where

1 that was adopted and show that the intent was to have the
2 standard be identical to USEPA standard, and that USEPA
3 standard requires a block average.

4 Q. Okay. Moving on to NO₂, then, your first
5 recommendation in your prefiled testimony regarding NO₂
6 is to state the standard in terms of parts per million
7 and not micrograms per cubic meter, correct?

8 A. Yes.

9 Q. And doesn't the current federal air quality
10 standard use both units?

11 A. Yes, it does.

12 Q. What would be the benefit to Illinois to use
13 only parts per million and not micrograms per cubic
14 meter?

15 A. Well, in this case it would actually
16 represent what they do, because in Exhibit 2, you'll see
17 on the second page under the cover page it lists the air
18 quality standards in Illinois, and nitrogen dioxide is
19 listed as 0.053, which is neither micrograms per cubic
20 meter or -- nor the standard of 0.05 which is in the
21 board regulation, so it's something else entirely, and
22 what it is is the federal standard of 053.

23 Q. Now, for modeling purposes, isn't it true
24 that micrograms per cubic meter are used in situations

1 like preparing attainment demonstrations? Again, this is
2 for modeling purposes.

3 A. Well, sure. Yeah, that's correct.

4 Q. So the use of PPM only combined with the
5 rounding conventions you described in your testimony
6 would be less stringent than the current form of the
7 state standard.

8 A. Yes, it would be.

9 Q. Okay. Thank you.

10 A. But it's not different than what the
11 Illinois EPA is using for the standard.

12 Q. Now, then going on to carbon monoxide, your
13 first recommendation regarding carbon monoxide is to
14 state the standard in terms of parts per million and not
15 milligrams per cubic meter, correct?

16 A. Right.

17 Q. And don't the current air quality standards
18 use both units?

19 A. Yeah, but they reversed them. The primary
20 standard is in parts per million.

21 Q. And what would be the benefit to Illinois to
22 use only parts per million and not milligrams per cubic
23 meter?

24 A. To remove any ambiguity, to be clear on what

1 the standard is.

2 Q. And isn't it true that for modeling purposes
3 as may be needed for preparing attainment demonstrations,
4 micrograms per cubic meter are used?

5 A. Yes, but I don't think that really has
6 anything to do with the standard since compliance with
7 the standard is determined by monitoring, and monitoring
8 uses parts per million.

9 Q. So the use of only parts per million
10 combined with the rounding convention that you described
11 in your testimony would be less stringent than the
12 current form of the standard in Illinois.

13 A. Yes.

14 Q. And here you're actually asking for the
15 Agency to deviate from the federal standard, aren't you?

16 A. Yes. Right.

17 Q. And the same for NO₂, I believe, correct?

18 A. Right, right.

19 Q. Okay. So you're asking us to deviate on
20 those two but not on SO₂.

21 A. Right, right, a very specific deviation, as
22 there's no benefit to listing both parts per million and
23 micrograms per cubic meter, or in the case of carbon
24 monoxide, milligrams, because again, when it comes to

1 monitoring and measuring compliance with the standard,
2 it's all done in parts per million.

3 MR. MATOESIAN: Okay. Thank you. Could you
4 give us a moment?

5 HEARING OFFICER FOX: Yes, absolutely,
6 Mr. Matoesian.

7 MR. MATOESIAN: Okay. Thank you. That's
8 all the questions we have, then. Thank you, sir.

9 HEARING OFFICER FOX: Mr. Matoesian, thank
10 you. You've indicated that the Agency has concluded with
11 its questions for Mr. Kolaz. That is the one witness who
12 has prefiled testimony. I suspect I know the answer, but
13 it's important to ask whether there was anyone else who
14 wished to ask any questions for Mr. Kolaz on the basis of
15 his testimony. I'm seeing no indication that there is.
16 Were members of the Board wishing to pose a question to
17 Mr. Kolaz?

18 MR. DAVIS: If we can have a minute.

19 HEARING OFFICER FOX: Absolutely so, and if
20 we could just go off the record for a moment. Thanks.

21 (Off the record.)

22 HEARING OFFICER FOX: To recap, if we're
23 back on the record, Mr. Matoesian, I think you had
24 indicated that the Agency's questions for Mr. Kolaz on

1 behalf of IERG were complete; is that correct?

2 MR. MATOESIAN: Yes.

3 HEARING OFFICER FOX: I had asked for a show
4 of hands or other indication that there were questions,
5 and I did not see any. If we can return to you,
6 Mr. Davis, you've given me a signal you might like to
7 speak.

8 MR. DAVIS: Yes. I actually do have one
9 final question for Mr. Kolaz.

10 HEARING OFFICER FOX: Sure.

11 EXAMINATION OF DAVE KOLAZ

12 BY MR. DAVIS:

13 Q. Mr. Kolaz, as you explained, you had a
14 lengthy history in working developing regulations as an
15 employee of the Illinois EPA. Can you tell me, in your
16 experience, was it ever the intent, to your knowledge, of
17 the Illinois EPA to have standards in place in the state
18 of Illinois that differed from the federal standards?

19 A. Well, going back to the time when the
20 standards were first adopted, as I mentioned a little bit
21 earlier, the Agency had never provided testimony showing
22 why the standards should be more stringent than the
23 federal government but, more than that, had always sought
24 to adopt the federal standards. It is true that as time

1 went by and monitoring technology evolved, the
2 interpretation of those standards changed a little bit,
3 and the Agency had never gone back to clarify the
4 standard, although the USEPA had done so in several of
5 their standards.

6 The standard, of course, that we're really
7 focusing on right now in today's hearing is sulfur
8 oxides, and that is probably one of the most complex
9 ones. There is a very complex litigation history having
10 to do with the sulfur oxides, which we could provide
11 later maybe through comments, but it was a lot of
12 litigation over that standard, over the whole idea of
13 block averaging versus rolling averages, and this is part
14 of what's caused the confusion, and during that time the
15 Illinois EPA and many other states chose to interpret it
16 using running averages, but the fact of the matter is
17 there was never, ever a -- an effort to codify that in
18 the form of stating that this is the state standard, and
19 I think if the situation exists now where the Agency is
20 saying, well, we're attempting to have the Illinois
21 standards be identical to the federal standards except
22 for these here, then I believe they should present
23 testimony as to why they should be more stringent.
24 Simply saying they're more stringent and that's good is

1 not necessarily adequate.

2 So my point is that I think that we got to where
3 we are not by planning purpose but by happenstance, and
4 that's why as we ask questions, as Mr. Davis asked
5 questions at the first hearing regarding the Agency's
6 intent, we really tried to bring out whether or not the
7 Agency intended to purposefully have standards more
8 stringent, and hearing that that wasn't the case, that's
9 why we came forth today, presenting those other clean-up
10 changes that would be needed to avoid any type of
11 confusion.

12 And I'll add that while, you know, questions were
13 asked of me about the stringency of a, say, carbon
14 monoxide milligram versus PPM and which is more
15 stringent, it is because they are different units using
16 different significant digits that make them not directly
17 compatible, but the fact is the Agency uses the part per
18 million intention, and so what is the point of having the
19 milligrams or the micrograms, and so the Agency isn't
20 using the carbon monoxide and nitrogen dioxide standards
21 to be more stringent, although they're appearing to claim
22 that the sulfur oxide standard is purposefully more
23 stringent, but it's not.

24 And again, I'll repeat something I said earlier.

1 It's nowhere better demonstrated than when you look at
2 the annual air quality report and look at the list of
3 state standards and see the Agency lists the state
4 standard as 0.053, but you can look at the state
5 standard. It's not 0.053, but whose standard is 0.053?
6 The federal standard is. So it shows that that is their
7 intent, I think in this -- except in this one selected
8 case for sulfur oxides where they are choosing to use a
9 different interpretation.

10 It's for all those reasons why we think that we
11 should just be straightforward and clarify this all now,
12 whichever way we go. If the Agency intends sulfur
13 dioxide to be more stringent, it should be more
14 stringent, but even then, even if that was the case,
15 there are many aspects of that standard that need to be
16 clarified; is it an annual calendar average or is it
17 rolling average, what's the significant digits. You'll
18 note in the Exhibit 4 that we gave, the USEPA even says
19 how many hourly values you have to have to compute a
20 twenty-four-hour average or a three-hour average.
21 There's many things in that standard that has to be
22 changed to avoid any confusion, and that's what we're
23 trying to say today.

24 MR. DAVIS: Thank you.

1 HEARING OFFICER FOX: Any further questions
2 on your part, Mr. Davis?

3 MR. DAVIS. No, I think that's it.

4 HEARING OFFICER FOX: Very good.
5 Mr. Matoesian, any questions for --

6 MR. MATOESIAN: Just briefly.

7 FURTHER EXAMINATION OF DAVE KOLAZ

8 BY MR. MATOESIAN:

9 Q. Didn't you in answer to a question earlier
10 note that the Agency has been using running averages
11 since the 1970s?

12 A. Yes.

13 Q. So the Agency's position has never changed.

14 A. No.

15 MR. MATOESIAN: Okay. That's fine. Thank
16 you.

17 HEARING OFFICER FOX: Very good. It's
18 appropriate to ask once more if anyone else had questions
19 for Mr. Kolaz based on his testimony or his response.
20 Seeing none and knowing, of course, that no other witness
21 had prefiled testimony, if the record could reflect that
22 I did check the sheet on which prospective witnesses
23 could indicate that they wished to testify. It is empty.
24 Was there anyone who had not signed this that wishes to

1 testify? Seeing no response, we have come to the end
2 both of the prefiled testimony on the part of Mr. Kolaz
3 and the questions based upon it and consequently of all
4 of the testimony in this proceeding.

5 Let me turn quickly, then, to the issue of the
6 economic impact study. Since -- I'm sure many of you
7 know since 1998, Section 27(b), as in boy, of the
8 Environmental Protection Act has required that the Board
9 request that the department now known as the Department
10 of Commerce and Economic Opportunity conduct an economic
11 impact study of proposed rules before the Board adopts
12 rules. The Board must make either the economic impact
13 study or the Department's explanation for not conducting
14 one available to the public at least 20 days before a
15 public hearing, and in a letter dated December 19, 2008,
16 the Board, specifically Acting Chairman Dr. G. Tanner
17 Girard, requested that the Department of Commerce and
18 Economic Opportunity conduct an economic impact study on
19 this specific rulemaking proposal, and to date, the Board
20 has received nothing from DCEO responding to that
21 request. Is there anyone who would wish to testify
22 regarding to the request from the Board on December 19,
23 2008, to DCEO?

24 Neither seeing nor hearing any indication that

1 anyone would like to do so, what I'd like to do, with the
2 court reporter's help, is go off the record just for a
3 few moments and discuss one or two quick procedural
4 issues.

5 (Discussion held off the record.)

6 HEARING OFFICER FOX: In going off the
7 record, the participants discussed the procedural issue
8 related specifically to the filing of post-hearing
9 comments. Consequently, before it takes action on the
10 Agency's amended proposal, the Board will hold open a
11 post-hearing comment period ending 30 days after May 8,
12 2009, when the Board expects to receive the transcript of
13 this hearing, with that comment period thus ending on
14 Monday, June 9 of 2009. I have to correct myself. It's
15 Monday, June 8 rather than the 9th, is the due date for
16 the post-hearing comments.

17 As I mentioned, copies of the transcript are
18 expected to be available at the Board by Friday, May 8,
19 and once it is filed with the Board, the transcript
20 should be available very quickly on the Board's Web site,
21 and to set that post-hearing comment deadline as clearly
22 as possible, I will issue a quick hearing officer order
23 once the Board does receive that transcript, and as I'm
24 sure that I said, even if we receive the transcript a

1 couple of days in advance of when we expect it, I'll go
2 ahead and reflect the June 9 deadline so that we all
3 have --

4 BOARD MEMBER MOORE: June 8.

5 HEARING OFFICER FOX: I'm sorry. June 8. I
6 need to be corrected once again.

7 BOARD MEMBER MOORE: I'm sorry. It's just
8 the record's going.

9 HEARING OFFICER FOX: Well deserved. So
10 that we can maintain the same expectation on the
11 deadline. In addition, anyone of course may file written
12 public comments in the rulemaking with the clerk of the
13 board. Those may be filed electronically, and questions
14 about the process of electronic filing should be directed
15 to the clerk's office. As you all know, the filings with
16 the Board, whether paper or electronic, must also be
17 served on the hearing officer and the service list, and
18 you may always check the status of the service list and
19 the names on it with the clerk's office in Chicago. If
20 anyone has any questions, my contact information is
21 listed on the Board's Web site. We of course have no
22 other hearings now scheduled in this rulemaking.

23 Are there any other issues or questions that we
24 should address before we adjourn? Neither seeing nor

1 hearing any, we can adjourn, and I thank you, both IERG
2 and the Agency, for your time and your preparation for
3 the hearing. Safe travels.

4 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at
7 Illinois Pollution Control Board, Springfield, Illinois,
8 on April 28, 2009, and did record the aforesaid Hearing;
9 that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 7th day of May, 2009.

14

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Notary Public--CSR

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#084-003688

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