

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED NEW 35 ILL. ADM.

CODE 204, PREVENTION OF Docket R19-1

SIGNIFICANT DETERIORATION,

AMENDMENTS TO 35 ILL. ADM.

CODE PARTS 101, 105, 203,

211, AND 215.

TRANSCRIPT OF PROCEEDINGS at the
hearing of the above-entitled cause, held at
100 West Randolph Street, Chicago, Illinois on
February 26, 2019, at the hour of 10:00 a.m.

MS. TETYANA RABCZAK,

Hearing Officer

REPORTED BY: CHERYL L. SANDECKI, CSR, RPR
LICENSE NO.: 084-03710
JOB NO.: 23979

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APPEARANCES:

BOARD MEMBERS:

MS. CARRIE ZALEWSKI
MS. KATIE PAPADIMITRUI

ALSO PRESENT:

MR. ANAND RAO
MS. ALISA LIU
MR. DANIEL PAULEY
MS. NATALIE WINQUIST
MS. MARIE TIPSORD

FOR ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

MS. SALLY CARTER
MR. CHRIS ROMAINE
MR. JASON SCHNEPP
MR. JEFF SPRAGUE

FOR CITIZENS AGAINST RUINING THE ENVIRONMENT:

MR. DARYL D. GRABLE

FOR ILLINOIS ENVIRONMENTAL REGULATORY GROUP:

MS. LaDONNA DRIVER
MR. DANIEL L. SEIGFRIED
MR. ALEC DAVIS

1 HEARING OFFICER RABCZAK: Good morning
2 everybody and welcome to the Illinois Pollution
3 Control Board. This is the second hearing in
4 the rulemaking Proceeding R19-1 on Illinois
5 Environmental Protection Agency's proposal to
6 add new Part 204, Prevention of Significant
7 Deterioration to the Board's rules and to amend
8 Parts 101, 105, 203, 211 and 215.

9 My name is Tetyana Rabczak and I am the
10 Hearing Officer for the proceeding. Also
11 present today from the Board are the lead board
12 members in this proceeding, Carrie Zalewski and
13 Katie Papadimitriu, who is also the chairman of
14 the Board. They are present in Chicago.

15 I also have board member Brenda Carter,
16 she is here with me in Springfield.

17 Also from the staff I see Anand Rao and
18 Alisa Liu who are the Board's technical unit.

19 I don't see anyone else, but I don't
20 see the whole room. I don't know if I'm missing
21 anyone. Is there anyone else from the Board?

22 MR. PAULEY: Daniel Pauley.

23 MS. WINQUIST: Natalie Winquist.

24 MS. PAPADIMITRIU: And Marie Tipsord.

1 HEARING OFFICER RABCZAK: Okay. I don't see
2 the rest of the room.

3 This hearing is covered by the Board's
4 procedural rules. All information in
5 this proceeding that is relevant and not
6 repetitive or privilege will be admitted into
7 the record.

8 Please bear in mind that any question
9 posed today by the Board or staff are intended
10 solely to help develop a clear and complete
11 record for the Board's decision and not to
12 reflect any prejudgment on any testimony,
13 comment, or question.

14 In front of the room, both in Chicago
15 and Springfield, we have a signup sheet for any
16 member of the public who wished to testify or
17 write comments and I will be keeping an eye on
18 it. We will allow public comments at the end of
19 the hearing if we have time, at about three
20 minutes each. And I will check whether we have
21 anybody signing up.

22 The court reporter is present in the
23 Chicago office, so I would ask you to speak up
24 and spelling your name for the court reporter,

1 which you already did, so I think we are okay if
2 you just state your name and who you represent
3 and speak up.

4 A little bit about this proceeding, on
5 July 2, 2018, the Illinois Environmental
6 Protection Agency, which I will refer to as
7 Agency, filed a proposal in this rulemaking to
8 amend the Board's air pollution regulations.

9 The proposal seeks to establish a state
10 prevention of significant deterioration or, as
11 we will refer to, PSD, permanent program in
12 Illinois and the procedures for that program.

13 On August 23, 2018, the Board accepted
14 the Agency's proposal for public comment without
15 sending it to first notice. The first hearing
16 in this proceeding was held on November 27,
17 2018.

18 The second hearing was initially
19 scheduled on January 15th, but it was
20 rescheduled to February 26th based on the
21 agreement of the participants.

22 Today we begin the second hearing that
23 is scheduled to continue until tomorrow, if
24 necessary. The Board published notice of this

1 hearing in December 2018.

2 The Board and Hearing Officer invited
3 interested parties to prefile their comments and
4 testimony and also prefile their questions and
5 answers and to contact the Hearing Officer and
6 the Board's clerk to be added to the docket's
7 notice list.

8 Because this hearing is held by video
9 conference, the Board rules require that any
10 document that participants want to use during
11 the hearing as exhibits need to be prefiled 24
12 hours before the Board hearing schedule day. If
13 not prefiled, the documents will not be allowed
14 at the hearing as an exhibit but may be filed as
15 public comments after the hearing.

16 This hearing will be dedicated to
17 testimony, prefiled and follow-up questions of
18 any participants, and any public comment if we
19 have anybody wishing to provide so.

20 First, we will give the floor to the
21 Agency, if they want to make any opening
22 statements, and then we will open it up to
23 anybody else who wants to provide an opening
24 statement. Then we will introduce and swear in

1 the witnesses and admit the prefiled questions.
2 And then we will open the floor to the questions
3 in the order they were received.

4 Does anybody have any questions about
5 the procedure or the purpose of today's meeting?

6 MS. DRIVER: No.

7 MS. CARTER: No.

8 HEARING OFFICER RABCZAK: So let's proceed
9 with the Agency's statement. Would the Agency's
10 attorney please introduce themselves and their
11 witnesses and provide the names to the court
12 reporter. If you would like to make an opening
13 statement, you are free to do so.

14 MS. CARTER: It will just be a brief opening
15 statement. Again, my name is Sally Carter,
16 assistant counsel. To my left, I have Jason
17 Schnepf. To my right, I have Chris Romaine.
18 And behind me I do have Jeff Sprague.

19 The Illinois EPA will be responding to
20 all prefiled questions, including all legal
21 prefiled questions, at today's hearing. While
22 Agency witnesses will be providing its response
23 to a number of legal questions, to make this
24 hearing as productive as possible, the Agency's

1 witnesses are not testifying to legal matters.

2 Any follow-up questions, the Agency's
3 legal responses will be appropriately addressed
4 in the Agency's post-hearing comments. Agency
5 counsel will indicate whether it considers the
6 particular question legal prior to the Agency
7 witness reading its response into the record.

8 Thank you.

9 HEARING OFFICER RABCZAK: Could you please
10 swear in the witnesses.

11 THE COURT REPORTER: Please raise your right
12 hand.

13 (Witnesses administered an
14 oath.)

15 HEARING OFFICER RABCZAK: Would anyone else
16 want to make an opening statement here in
17 Chicago -- I mean here in Springfield or in
18 Chicago? I see none.

19 We have not received any testimony, so
20 we only have the testimony filed by the Agency.
21 We did receive prefilled questions. And I would
22 like to start with admitting the prefilled
23 questions as exhibits.

24 On February 15, 2019, at 11:08 a.m.,

1 the Board received prefiled questions from the
2 Citizens Against Ruining the Environment, which
3 we will refer to as CARE, filed by Daryl Grable
4 from Chicago Legal Clinic. For the convenience
5 of citation, if there is no objections, we will
6 accept it as Exhibit 6.

7 And then again on February 15, 2019, at
8 about 4:00 p.m., we received prefiled questions
9 of the Illinois Environmental Regulatory Group,
10 which we'll refer to as IERG in this hearing
11 filed by Hepler Broom's attorney LaDonna Driver
12 and we are going to accept it as Exhibit 7.

13 We can proceed to the questions. And
14 as I know that CARE's questions were filed
15 first, so I will open the floor to CARE.

16 Again, please state -- if Mr. Daryl
17 Grable is in the room in Chicago. I want to
18 remind everybody, who is speaking, if you want
19 to make a statement, you might need to be sworn
20 in, if you want your statement to be treated by
21 the Board as substantive information rather than
22 a question. So be mindful of that and with that
23 I'm opening the Board to your questions.

24 MR. GRABLE: I'm Daryl Grable, the attorney

1 on behalf of Citizens Against Ruining the
2 Environment, also known as CARE.

3 And just as a preface, I inadvertently
4 left a citation to an outside source off of my
5 questions and they can be filed as the written.
6 So for Questions 5, 6, and 9, I will be
7 submitting the outside source in the record
8 under post-hearing comments for everybody to
9 consider. I do have hard copies in here if
10 anybody wanted to look at them during the
11 hearing. Okay.

12 MS. ZALEWSKI: I'll take a copy if you have
13 it and we can share up here.

14 MR. GRABLE: So this is the Illinois EPA
15 Office of General Counsel memo that I will
16 reference. And this is an Environmental Appeals
17 Board decision that I will reference.

18 HEARING OFFICER RABCZAK: Can I ask you to
19 file these as soon as you can after the hearing
20 so that people here in Springfield can get
21 access to them after the hearing?

22 MR. GRABLE: Yes, I can do that.

23 HEARING OFFICER RABCZAK: Because of the
24 24-hour rule, we can't accept them as exhibits,

1 but you can file them as an attachment to your
2 post-hearing comments or just without the
3 comments, just file them into the record. I'm
4 not sure if Agency has access to those
5 documents.

6 MS. CARTER: I don't know what documents he
7 is referring to at this point in time, so I
8 can't answer that question.

9 HEARING OFFICER RABCZAK: Can you state which
10 documents you are going to be referencing?

11 MR. GRABLE: One is a memorandum issued by US
12 EPA's general counsel from the office of general
13 counsel of -- year 2000 guidance document titled
14 EPA Statutory and Regulatory Authorities Under
15 Which Environmental Justice Issues May Be
16 Addressed.

17 And then the second document that I
18 will be submitting is an Environmental Appeals
19 Board decision. The case is in re Chemical
20 Waste Management of Indiana, Incorporated,
21 Volume 6, EAD. It begins on page 66 and that is
22 an Environmental Appeals Board decision from
23 1995.

24 HEARING OFFICER RABCZAK: Are these both

1 referred to your Question 5?

2 MR. GRABLE: So 5 and 6, my Questions 5 and 6
3 will be referencing the Environmental Appeals
4 Board decision, while Question 9 will reference
5 the US EPA guidance document.

6 HEARING OFFICER RABCZAK: Okay. Thank you.
7 Proceed.

8 MR. GRABLE: Thank you.

9 So Question 1, Chapter 415, Title 5,
10 Section 9.1(c) in the Illinois Compiled Statutes
11 provides that "the Board may adopt more
12 stringent or additional provisions to the extent
13 that it deems appropriate." It further states
14 that "Nothing in this subsection shall be
15 construed to limit the authority of the Board to
16 adopt elements of a PSD permit program that are
17 more stringent than those contained in 40 CFR
18 52.21." Thus, it is abundantly clear that the
19 Board may adopt more stringent or additional
20 provisions to the extent that it deems
21 appropriate.

22 Does the Illinois EPA agree with the
23 above characterization; if not, could it explain
24 why?

1 MS. CARTER: While this question raises legal
2 issues, Mr. Romaine will be reading the Agency's
3 response.

4 MR. ROMAINE: The Illinois EPA already
5 addressed this issue in the Agency's
6 post-hearing comments filed on January 24th,
7 2019, which will hereafter be referred to as the
8 Agency's first comments.

9 The Agency will direct the parties to
10 its response to CARE's Question 2.f-2 where the
11 Agency previously stated that "Board is also
12 authorized to adopt more stringent or additional
13 provisions to the extent that it deems
14 appropriate."

15 HEARING OFFICER RABCZAK: I just want to
16 clarify for the record that the Agency response
17 was submitted into the record as Public Comment
18 Number One, so it will be cited as PC-1 for the
19 ease of --

20 MS. CARTER: So I'm clear, the first
21 post-hearing comments we filed on January 25th
22 is PC-1?

23 HEARING OFFICER RABCZAK: PC-1. That's how
24 it is referred in the record.

1 MR. GRABLE: Question 1.b, can Illinois EPA
2 point to any similarly clear plain language
3 statutory authority that directs or even
4 contemplates the Board adopting less stringent
5 provisions than contained in 40 CFR 52.21 or
6 omit provisions contained therein entirely,
7 specifically as it pertains to 40 CFR
8 52.21(o)(3)?

9 MS. CARTER: Again, this question raises
10 legal issues, but Mr. Romaine will be reading
11 the Agency's response.

12 MR. ROMAINE: As discussed in the Agency's
13 first comments, the appropriate interpretation
14 of Section 9.1(c) of the Act is that the Board
15 rules must be modeled on 40 CFR 52.21. Section
16 3.363 of the Act established a new definition of
17 PSD permit to mean a permit or a portion of a
18 permit for a new major source or major
19 modification that is issued by the Illinois EPA
20 under Section 9.1(c) of the Act that has been
21 approved by US EPA and incorporated into the
22 Illinois SIP Section 165 of the Clean Air Act
23 and 40 CFR 51.166.

24 Given the nature of these two sets of

1 federal rules, the Illinois EPA proposed a state
2 PSD program based largely on the language of 40
3 CFR 52.21 but also ensuring that this program
4 meets the requirements for an SIP submittal to
5 US EPA in 40 CFR 51.166.

6 Moreover, as a practical matter,
7 implementation of a PSD permitting program by
8 means of an incorporated rule would be
9 challenging. At a basic level, 40 CFR 52.21 was
10 not developed by US EPA so that it can be
11 readily incorporated by a state or local
12 governmental body.

13 The difficulties incumbent on such an
14 approach were previously explored by the
15 Illinois EPA in its response to Board Question
16 2.a, the Agency's first comments.

17 The consequences of circumstances such
18 as these is that even if Illinois incorporated
19 provisions of 40 CFR 52.21 by reference, a
20 detailed state rule would still have to be
21 adopted setting forth the various adjustments to
22 the text of 40 CFR 52.21 necessary for a US
23 EPA-approved state PSD program.

24 More specifically, 40 CFR 52.21(o)(3)

1 provides the administrator with the option of
2 requiring visibility and monitoring in any
3 federal, emphasizing federal, Class I area near
4 a proposed new stationary source or major
5 notification but for such purposes and by such
6 means as necessary and appropriate. Again, I'm
7 emphasizing the words "necessary" and
8 "appropriate."

9 This provision addresses an action that
10 US EPA may have the authority to take as it is a
11 federal agency.

12 40 CFR 51.166(p) does not mandate that
13 each applicable state implementation plan
14 submitted to US EPA for review and approval
15 contain such requirement. The provision is not
16 accompanied by provisions explaining the
17 circumstances in which such monitoring would be
18 appropriate.

19 Given no Class I area exists in
20 Illinois or in close proximity to Illinois, such
21 monitoring would not be needed. Moreover, in
22 the event that the State of Illinois were to
23 redesignate the area to Class I, 40 CFR
24 52.21(o)(3) would have no relevance for such an

1 area as it would not be a federal Class I area.

2 Finally, in the event that air in
3 Illinois or in close proximity to Illinois were
4 to become a federal Class I area, the Illinois
5 EPA would review the adequacy of the state PSD
6 program at that time.

7 Incidentally, the Illinois EPA does not
8 want -- does want to correct a misstatement
9 related to Class I areas in its Agency's first
10 comments. The error is on page 51, while the
11 Forest County Potawatomi Community Reservation
12 in Wisconsin is a Class I area under the PSD
13 program, it was not redesignated Class I by the
14 State of Wisconsin; rather, the redesignation of
15 this area to Class I was actually undertaken by
16 the Forest County Potawatomi Community, the
17 Indian governing body for this Indian
18 reservation in accordance with 40 CFR
19 42.21(g)(4).

20 The US EPA then approved the Forest
21 County Potawatomi Community's proposed
22 redesignation of its reservation to a Class I
23 area as part of Wisconsin's state implementation
24 plan.

1 MR. GRABLE: Question 1.c, can Illinois EPA
2 say with absolute certainty that there will
3 never be a federal Class I area in Illinois?

4 MR. ROMAINE: No. Of course, the Illinois
5 EPA cannot state with absolute certainty that
6 the United States Congress will never adopt
7 legislation that creates a federal Class I area
8 under the PSD program in Illinois.

9 MR. GRABLE: Going to Question 2, in its
10 post-hearing comments responding to Question d.3
11 on page 6, Illinois EPA explained that "40 CFR
12 51.166(p) does not mandate that each applicable
13 state implementation plan submitted to US EPA
14 for review and approval contains such
15 requirement. Consequently, the inclusion of
16 language similar to 40 CFR 52.21(o)(3) in
17 proposed Part 204 is not necessary for US EPA
18 approval of Part 204."

19 While this statement is accurate, it
20 seems of limited import to the instant
21 proceeding. Does Illinois EPA understand that
22 states may impose requirements that go beyond
23 that which is required by federal law?

24 MS. CARTER: While this question raises legal

1 issues, Mr. Schnepf will be reading the Agency's
2 response.

3 MR. SCHNEPP: Of course the Illinois EPA
4 understands that states may impose requirements
5 to go beyond that which is required by federal
6 law. The Illinois EPA already addressed this
7 matter in the Agency's first comments.

8 The Agency would direct the parties to
9 its response to Board's Question 3.a-1 where the
10 Agency set forth in detail those requirements
11 proposed by the Illinois EPA that are more
12 stringent, admittedly only superficially, than
13 the corresponding federal requirements.

14 MR. GRABLE: Question B, does Illinois EPA
15 contend that the Board is constrained only by
16 the question of whether or not US EPA will
17 approve proposed Part 204?

18 MS. CARTER: Again, this question raises
19 legal issues. Mr. Schnepf will, again, be
20 reading the Agency's response.

21 MR. SCHNEPP: The key constraint on the Board
22 is whether US EPA will approve Part 204. In
23 addition, as touched upon in the Agency's first
24 comments, the Board's authority includes "The

1 power to do all that is reasonably necessary to
2 perform the duty conferred by the statute." Oak
3 Liquors Incorporated v. Zagel, Z-a-g-e-l, 90
4 Ill.App.3d 379 (First District 1980).

5 In performing its duty to promulgate
6 the rules, the Board possesses a "wide latitude"
7 to accomplish this objective. Freedom Oil
8 Company v. Pollution Control Board, 275
9 Ill.App.3d 508, 514 (Fourth District 1995).

10 However, the Board is constrained
11 because the rules that it adopts must be
12 "reasonable within the Agency's statutory
13 authority and adequately related to the purpose
14 of the underlying act." Strube, S-t-r-u-b-e, v.
15 Pollution Control Board, 242 Ill.App.3d 832 and
16 852 (Third district 1993) citing People ex rel
17 Charles v. Telford, 48 Ill.App.3d 928 and 931
18 (Illinois 1977).

19 Any rules promulgated by the Board
20 should be adequately related to the purpose of
21 the underlying Act.

22 MR. GRABLE: Question C, does Illinois EPA
23 recognize that the current proceeding is
24 governed by 415 ILCS, Title 5, Section 9.1(c),

1 10, 27, and 28? And that through 415 ILCS Title
2 5, Section 9.1(c), the Board is required to
3 adopt regulations that, at a minimum, meet the
4 respective requirements of Sections 165 and 173
5 of the Clean Air Act but can, within its
6 statutory authority, adopt additional or more
7 stringent provisions of law?

8 MS. CARTER: While this question again raises
9 legal issues, Mr. Schnepf will be reading the
10 Agency's response.

11 MR. SCHNEPP: The Illinois EPA submitted this
12 rulemaking to the Board pursuant to Sections
13 9.1(c), 10, 27 and 28 of the Illinois
14 Environmental Protective Act. The Illinois EPA
15 specifically indicated in its statement of
16 reasons that this rulemaking proposal is
17 intended to meet Section 9.1(c) of the Act as it
18 requires the Board to adopt regulations
19 establishing a PSD program meeting the
20 requirements of Section 165 of the Clean Air
21 Act.

22 As such, the Illinois EPA certainly
23 recognizes the cited provisions of the Act
24 govern the pending rulemaking. The Illinois EPA

1 would not only direct the participants to its
2 previously filed statement of reasons, but to
3 earlier responses in these post-hearing
4 comments.

5 It should also be clearly understood
6 that the Agency's rulemaking proposal is not
7 intended to address the permit program required
8 by Section 173 of the Clean Air Act as is also
9 addressed in Section 9.1(c) of the Act and is
10 mentioned in passing in this question.

11 The Board has already adopted rules at
12 35 IAC Part 203 to fulfill this obligation, see
13 40 CFR 52.736.

14 The Illinois EPA's proposal would add
15 two references in Part 204 in Section 203.207,
16 major notification of a source, given certain
17 provisions in this section currently referred to
18 permits issued pursuant to 40 CFR 52.21. The
19 Illinois EPA is proposing revisions to update
20 these provisions so that they address permits
21 issued under either 40 CFR 52.21, which the
22 Illinois EPA currently implements or new Part
23 204.

24 MR. GRABLE: Question D, does Illinois EPA

1 stand by its statement that "Section 9.1(c) of
2 the Act provides that the Board establish a PSD
3 program consistent with the requirements of 40
4 CFR 52.21 except for plan disapproval in 40 CFR
5 52(a)(1), public participation in 40 CFR
6 52.21(q), environmental impact statements in 40
7 CFR 52.21(s), disputed permits or redesignations
8 in 40 CFR 52.21(t) and delegation of authority
9 in 40 CFR 52.21(u)."

10 MS. CARTER: Again, this question raises
11 legal issues and Mr. Schnepf will be reading the
12 Agency's response.

13 MR. SCHNEPP: Concerning the Illinois EPA's
14 regulatory proposal, the Illinois EPA stands by
15 its statements on pages 28 through 30 -- and
16 it's added on through -- of its statement of
17 reasons filed on July 2, 2018, and as further
18 discussed in the Agency's first comments.

19 MR. GRABLE: Question E, is Illinois EPA of
20 the opinion that they met the plain language,
21 statutory mandate to establish relations
22 consistent with all requirements of 40 CFR 52.21
23 except for the five specifically enumerated
24 sections of 40 CFR 52.21?

1 MS. CARTER: Again, this question raises
2 legal issues. Mr. Schnepf will be reading the
3 Agency's response.

4 MR. SCHNEPP: The Illinois EPA's opinion is
5 that its rulemaking proposal, if adopted by the
6 Board, would satisfy Section 9.1(c) of the Act.
7 This issue has been discussed at length in the
8 Illinois EPA's statement of reasons and in the
9 Agency's first comments. The Illinois EPA would
10 direct the parties to these earlier discussions.

11 Section 9.1(c) of the Act cannot be
12 read in isolation but rather must be read in
13 light of other provisions of the Act. Given the
14 interplay between these federal and state law
15 requirements, the Illinois EPA proposed a state
16 PSD program based largely on the language of 40
17 CFR 52.21 but also ensuring that this program
18 meets the requirements for a SIP submittal to US
19 EPA in 40 CFR 51.166.

20 MR. GRABLE: Question 3, in its answer to a
21 question about the "costs" of including language
22 parallel to 52.21(o)(3) in proposed Part 204,
23 Illinois EPA opined that "There would be several
24 costs or impacts from including a parallel

1 provision to 40 CFR 52.21(o)(3) in Part 204."

2 For example, one, such a provision
3 would be confusing to applicants for PSD permits
4 as it would suggest that Illinois has Class I
5 areas. Two, such a provision would suggest that
6 the State of Illinois has determined that
7 visibility would be an air quality related value
8 in any area that it would redesignate to
9 Class I. Four, lastly, it would require the
10 Board to elaborate upon the wording of 40 CFR
11 52.21(o)(3) as it provides for monitoring for
12 visibility "for such purposes," "by such means,"
13 and "as necessary and appropriate."

14 In the first "cost" pointed out by
15 Illinois EPA, can Illinois EPA clarify why it
16 anticipates applicants for PSD permits to be
17 confused when Illinois has been administering
18 the federal PSD program, which includes 40 CFR
19 52.21(o)(3) in its relations, under a delegation
20 agreement since 1981.

21 MS. CARTER: I believe Counsel neglected to
22 read a portion of this question and please
23 correct me if I am wrong. Just for clarity, the
24 subpart three, moreover, such a provision would

1 suggest that an applicant for a PSD permit may
2 be required to conduct visibility monitoring in
3 such an area irrespective of whether the
4 applicant can obtain the necessary permit or
5 approval from the body that actually manages the
6 area in which monitoring must be required. Just
7 for clarification purposes. Okay.

8 MR. ROMAINE: Response to the first Question
9 3.a, it is appropriate to consider that the
10 federal -- and I'm emphasizing federal -- PSD
11 program has always applied in Illinois.

12 In this regard the US EPA's rules at 40
13 CFR 52.21 address a federal program that
14 initially applied in 50 states, the District of
15 Columbia, United States territories and Indian
16 reservations. As already explained in this
17 proceeding, 40 CFR 52.21 continues to apply in
18 various jurisdictions in the United States,
19 including Illinois.

20 As such, a person that recognizes the
21 federal or national nature of 40 CFR 52.21 or
22 even only that 40 CFR 52.21 is a federal rule
23 would not expect 40 CFR 52.21 to be tailored to
24 the specific circumstances of Illinois.

1 However, it is reasonable when
2 considering requirements under a state PSD
3 program established through state rulemaking,
4 such as proposed Part 204, to expect that those
5 rules were developed considering the specific
6 circumstances in that state.

7 MR. GRABLE: Question 3.b, in fact, couldn't
8 it be argued that altering or removing aspects
9 of the federal program that has been in effect
10 for the past 30-plus years in Illinois has the
11 potential to cause just as much confusion?

12 MR. ROMAINE: A person could certainly argue
13 that the fact that a state PSD program, like
14 proposed Part 204, is not identical to the
15 federal PSD program and certain respects may
16 create some confusion. However, what that
17 argument would overlook is that the appropriate
18 basis of comparison is not just the language of
19 the various provisions of the federal program.

20 In this regard, 40 CFR 52.21(o)(3) was
21 an initially adopted by the US EPA over 40 years
22 and has never been invoked for a majority
23 project in Illinois. The relevant question
24 before the Pollution Control Board in the

1 current proceeding is whether inclusion of a
2 similar provision in Illinois' PSD program is
3 warranted now.

4 This is a decision that the Board must
5 make because, as reflected in 40 CFR 51.166, the
6 US EPA does not require that a state PSD program
7 include such a provision.

8 MR. GRABLE: Question 3.c, in the fourth
9 "cost" pointed out by Illinois EPA, can Illinois
10 EPA clarify if they were attempting to say that
11 the Board lacks the technical expertise
12 necessary to "elaborate upon" the wording used
13 in 40 CFR 52.21(o)(3)?

14 MR. ROMAINE: The Illinois EPA was not
15 suggesting that the Board lacks the technical
16 expertise to elaborate on the language in 40 CFR
17 52.21(o)(3). The Illinois EPA was simply
18 stating that if a provision similar to 40 CFR
19 52.21(o)(3) were found to be appropriate in Part
20 204, the Board would have to elaborate on the
21 language of 40 CFR 25.21(o)(3) as part of this
22 rulemaking.

23 For this purpose, the Board can
24 certainly request proposed language and

1 supporting information from the Illinois EPA and
2 other parties in this rulemaking as needed to
3 accomplish this.

4 In requesting such assistance, the
5 Board could instruct the parties to consider the
6 various aspects of 40 CFR 52.21(o)(3) for which
7 elaboration would be needed to address the legal
8 policy and technical issues posed by that
9 language.

10 MR. GRABLE: Question 3.d, in the fourth
11 "cost" pointed out by Illinois EPA, can Illinois
12 EPA clarify if they were attempting to say that
13 the Board shouldn't have to take an action
14 because it would require additional effort on
15 their part? That having to "elaborate upon"
16 statutory language is something that the Board
17 should not have to do.

18 MR. ROMAINE: The Illinois EPA was not
19 suggesting that the Board should not take an
20 action because it would require additional
21 effort on its part or require elaboration on
22 statutory language. As I already explained
23 above, the Illinois EPA was only explaining that
24 the language of 40 CFR 52.21(o)(3) cannot simply

1 be transferred into Part 204.

2 MR. GRABLE: Question 3.e, beyond the
3 aforementioned "costs" of including a parallel
4 provision of 40 CFR 52.21(o)(3) in Part 204, can
5 Illinois EPA articulate any actual, financial
6 cost of including such a provision in proposed
7 Part 204?

8 MR. ROMAINE: In addition to the concerns
9 that would be presented with inclusion of a
10 provision based on 40 CFR 52.21(o)(3) in Part
11 204 as discussed above, the inclusion of such
12 provision in Part 204 would represent real
13 financial costs. However, the amounts of those
14 costs cannot be estimated at this time. Such a
15 provision would impose financial costs as it
16 would be implicit from the presence of such a
17 provision in Part 204 that its requirements
18 would be applied. That is, the Board when
19 adopting Part 204 would have to assume that
20 there will be a person that would be subject to
21 that provision. In other words, there will be a
22 person that constructs a major new stationary
23 source or major modification in Illinois that is
24 near a federal Class I area that would be

1 required to conduct visibility monitoring for
2 such area as provided for by Part 204. That
3 person would have cause for conducting such
4 visibility monitoring. However, the amount of
5 those costs cannot be estimated at this time
6 because the language of 40 CFR 52.21(o)(3) does
7 not provide any specificity or definition for
8 the nature of the visibility monitoring that
9 such person might be required to conduct.

10 MR. GRABLE: Question 4, Illinois EPA's
11 website contains the following: "The
12 environmental justice grievance procedure
13 defines the procedural and substantive standards
14 utilized by the Illinois EPA to evaluate
15 environmental justice complaints. Specifically,
16 the environmental justice grievance procedure
17 provides a process for filing a timely complaint
18 to the Illinois EPA and describes the process
19 that is used to investigate and resolve the
20 complaint. However, the procedures described
21 therein do not apply to administrative actions
22 that are being pursued in another forum (e.g. a
23 permit appeal or a civil rights complaint filed
24 with the United States Environmental Protection

1 Agency Office of Civil Rights.)"

2 Can Illinois EPA please clarify what
3 the effect of the italicized text is on the
4 opportunity for administrative review of
5 environmental justice claims?

6 MS. CARTER: This question raises legal
7 issues that Mr. Schnepf will be reading the
8 Agency's response.

9 MR. SCHNEPP: The italicized text has no
10 effect on the opportunity for administrative
11 review of EJ claims. It merely indicates that
12 the Illinois EPA's environmental justice
13 grievance procedure, as presented on the
14 Illinois EPA's website, is not relevant to any
15 administrative appeal of an action by the
16 Illinois EPA that may be available in another
17 forum before a different administrative body
18 than the Illinois EPA.

19 MR. GRABLE: 4.b, is it correct to say if the
20 regulations at hand were passed exactly how
21 Illinois EPA has imagined them, that this
22 language would not be applicable to the PSD
23 program because there would no longer be
24 "another forum" to obtain administrative review

1 of Illinois EPA's handling of environmental
2 justice consideration in the PSD permitting
3 process.

4 MS. CARTER: While this question raises legal
5 issues, Mr. Schnepf will be reading the Agency's
6 response.

7 MR. SCHNEPP: The Illinois EPA's proposal
8 would not alter the Illinois EPA's environmental
9 justice policy or its environmental justice
10 grievance procedure as presented on the Illinois
11 EPA's website. In the event that a person
12 wanted to contest the outcome of any Illinois
13 EPA grievance procedure, a complaint could
14 continue to be filed with the US EPA's Office of
15 Civil Rights. Part 7, nondiscrimination in
16 programs or activities receiving federal
17 assistance from the environmental protection
18 Agency, provides all persons with the right to
19 file complaints against the recipients of
20 federal financial assistance, 40 CFR 7.100.

21 HEARING OFFICER RABCZAK: Before we proceed
22 with Question 5, we have the copies of the
23 documents that Mr. Grable provided in Chicago.
24 And I would suggest we take a five-minute break

1 for you guys to look at them.

2 MR. GRABLE: Could I ask a quick follow-up
3 question to Question 4?

4 HEARING OFFICER RABCZAK: Go ahead.

5 MR. GRABLE: So I just wanted to clarify that
6 in the other administrative review forum that
7 your answer just referenced, you're talking
8 about the EPA's Office of Civil Rights, which as
9 of 2016 has never made a formal finding of
10 discrimination and has never denied or withdrawn
11 financial assistance from a recipient in its
12 entire history and has no mandate to demand
13 accountability within the EPA.

14 MS. CARTER: I believe Counsel should be
15 sworn in at this point in time.

16 MS. TIPSORD: He's asking a question.

17 MS. CARTER: It appears that he is making a
18 statement, for the record. I would like to
19 point that out.

20 MR. GRABLE: I was asking a question, but I
21 can be sworn in if you would like me to be sworn
22 in.

23 HEARING OFFICER RABCZAK: Would you like to
24 be sworn in?

1 MR. GRABLE: Sure.

2 (Witness administered an oath.)

3 MR. GRABLE: Yes, I do.

4 HEARING OFFICER RABCZAK: Your question,
5 please?

6 MR. GRABLE: So I just wanted to clarify that
7 what you were referring to in the other
8 administrative forum that was available was the
9 US EPA's Office of Civil Rights, which has
10 never, as of 2016, made a formal finding of
11 discrimination and has never denied or withdrawn
12 financial assistance from a recipient in its
13 entire history, which is coming from a letter of
14 transmittal from the Chair of the U.S.
15 Commission on Civil Rights to President Obama in
16 2016?

17 MS. CARTER: The Agency will respond to the
18 portion of that statement that is a question.
19 The Agency will not be responding to the portion
20 of the statement that it deems to be testimony
21 in this manner.

22 HEARING OFFICER RABCZAK: Are you responding
23 to the question now?

24 MS. CARTER: In the post-hearing comments.

1 HEARING OFFICER RABCZAK: In the post-hearing
2 comments, okay. So Question 5, as I just
3 pointed out, I distributed the documents that
4 Mr. Grable provided in Chicago. Would you like
5 to take a break and look at them or would you
6 just not refer to them and refer to them later?

7 MS. CARTER: The Agency will address them
8 appropriately in post-hearing comments, so we
9 don't need a break.

10 HEARING OFFICER RABCZAK: Okay. Let's
11 proceed.

12 MR. GRABLE: Question 5, based largely on its
13 response to Question 3.b-1 from the first public
14 hearing, it appears that Illinois EPA is of the
15 opinion that the Environmental Appeal Board's
16 historic interpretation of regulatory
17 requirements is only "directly on point and
18 relevant" to the formation of standards
19 regulating Board PSD appeals when based on
20 statutory language. For example, because
21 statutory language of Section 40.3(a)(2)(iii)
22 addressing standards of review is derived from
23 40 CFR Part 124, "the EAB's historic
24 interpretation of regulatory language in 40 CFR

1 Part 124, which largely mirrors the statutory
2 verbiage of Section 40.3(a)(2)(iii) of the Act,
3 is directly on point and relevant."

4 Is Illinois EPA still of the opinion
5 that, because statutory language of Section
6 40.3(a)(2)(iii) is derived from 40 CFR Part 124,
7 the "the EAB's historic interpretation of
8 regulatory language in 40 CFR Part 124, which
9 largely mirrors the statutory verbiage of
10 Section 40.3(a)(2)(iii) of the Act, is directly
11 on point and relevant"?

12 MS. CARTER: This question again raises legal
13 issues. Mr. Schnepf will be reading the
14 Agency's response.

15 MR. SCHNEPP: Yes, the Illinois EPA refers
16 participants to its responses in the Agency's
17 first comments.

18 MR. GRABLE: Question 5.b, in acknowledging
19 that executive order 12898 "precludes judicial
20 review of the Agency's efforts to comply with
21 the order" in the case in re Chemical Waste
22 Management of Indiana Incorporated, from the
23 Sixth Volume Environmental Appeals decision
24 starting on page 66, the Environmental Appeals

1 Board held that "it does not affect
2 implementation of the order within an Agency.
3 More specifically, it does not preclude the EAB,
4 in an appropriate circumstance, from reviewing a
5 Region's compliance with the executive order as
6 a matter of policy or exercise of discretion to
7 the relevant under Section 124.19(a)."

8 Is Illinois EPA of the opinion that the
9 IPCB is not allowed to hear environmental
10 justice concerns under the same logic used by
11 the Environmental Appeals Board, that it
12 represents an exercise of discretion or an
13 important policy consideration that the Board,
14 in its discretion, is authorized to review?

15 MS. CARTER: This question, again, raises
16 legal issues. Mr. Schnepf will be reading the
17 Agency's response. Note, that the Agency's
18 response is to Exhibit 6. And the question
19 presented therein that doesn't include the
20 citation to Chemical Waste Management of Indiana
21 that has just been offered at today's hearing.

22 MR. SCHNEPP: Without an appropriate citation
23 to the Environmental Appeals Board decision, the
24 necessarily context to appropriately respond to

1 this question has not been given.

2 However, the question of whether
3 actions to address environmental justice during
4 permitting are an important policy consideration
5 that the Board has discretion to review under
6 the Act is a matter that will have to be decided
7 by the Board because there is currently no
8 specifically state provision of state law
9 mandating its consideration.

10 MR. GRABLE: Question 6, historic
11 Environmental Appeals Board interpretation of 40
12 CFR Section 124.19(a) in the same Chemical Waste
13 Management of Indiana case referenced above has
14 found that "Section 124.19(a) authorizes the
15 Environmental Appeals Board to review any
16 condition of a permit decision (or the permit
17 decision in its entirety.) Accordingly, the
18 Environmental Appeals Board can review the
19 Region's efforts to implement the executive
20 order in the course of determining the validity
21 and appropriateness of the permit decision at
22 issue."

23 MS. CARTER: Could I stop Counsel for a
24 moment so we can respond to that portion of your

1 question, please?

2 MR. GRABLE: Yes.

3 MS. CARTER: Thank you. Again, this question
4 raises legal issues that will be addressed by
5 Mr. Romaine or will be read into the record by
6 Mr. Romaine. Again, though, we will be
7 responding to the question as posed in Exhibit 6
8 as filed with the Pollution Control Board not
9 including the citation that was just provided
10 here today.

11 MR. ROMAINE: And following up on that, with
12 regard to that overall statement, it does not
13 oppose a question to the Illinois EPA and it's
14 not accompanied by an appropriate citation to
15 the relevant EAB decision. Consequently, the
16 statement does not afford the Illinois EPA with
17 the necessary context to assess validity of the
18 statement.

19 HEARING OFFICER RABCZAK: Can I ask you if
20 you will be answering those questions in the
21 post-hearing comments now that you have quotes?

22 MS. CARTER: Again, to the extent that there
23 are questions, yes, we will.

24 MR. GRABLE: Yes, I was going to Question 6.a

1 next.

2 Although the State of Illinois does not
3 have an executive order from which to derive the
4 consideration of environmental justice concerns
5 in a state PSD permitting appeal, it has
6 something more persuasive - legislation. In
7 2011, the General Assembly passed the Illinois
8 Environmental Justice Act. Through this Act,
9 the state memorialized its legislative finding
10 that "the principle of environmental justice
11 requires that no segment of the population,
12 regardless of race, national origin, age, or
13 income, should bear disproportionately high or
14 adverse effects of environmental pollution" and
15 that "certain communities in the state may
16 suffer disproportionately from environmental
17 hazards related to facilities with permits
18 approved by the State."

19 Much like Executive Order 12898, the
20 Illinois Environmental Justice Act does not
21 purport to create a cause of action, but rather
22 establishes a state policy that Illinois is to
23 implement state-wide. This is demonstrated
24 through the Act's simultaneous creation of the

1 Environmental Justice Commission, which is
2 charged with evaluating the State's handling of
3 environmental justice issues and recommending
4 improvements. Thus, the State of Illinois has a
5 clear, legislative policy recognizing and
6 promoting environmental justice.

7 Is Illinois EPA of the opinion that the
8 Board, like the Environmental Appeals Board, in
9 its discretion, should be permitted to hear
10 environmental justice-related claims in a PSD
11 permit appeal under the theory that "the
12 implementation of the environmental justice
13 policy within an Agency" represents an important
14 policy consideration that the Board should
15 review as was found by the Environmental Appeals
16 Board?

17 MS. CARTER: Counsel would just like to point
18 out that 6.a is simply a statement. It does not
19 pose a question to the Illinois EPA.

20 With regard to 6.b, this question
21 raises legal issue that Mr. Romaine will be
22 reading the Agency's response. And, again, to
23 the extent that the Agency is offering a
24 response at this time, it's offering a response

1 to the question as prefiled in Exhibit 6.

2 MR. ROMAINE: While the legislature did find
3 in the Illinois Environmental Justice Act that
4 the principle of environmental justice requires
5 that no segment of the population should bear
6 disproportionately high or adverse effects of
7 environmental pollution and establish the
8 Commission on Environmental Justice in Illinois,
9 the Illinois Environmental Justice Act did not
10 mandate certain responsibilities on state
11 agencies as Executive Order 12898 did on federal
12 agencies.

13 Executive order 12898 expressly
14 provided as follows. And I'm quoting from
15 Section 1-101 Agency responsibilities. "To the
16 greatest extent practical and permitted by law
17 and consistent with the principles set forth in
18 the report on national performance review, each
19 federal agency shall make achieving
20 environmental justice part of its mission by
21 identifying and addressing, as appropriate,
22 disproportionately high and adverse human health
23 or environmental effects on its programs,
24 policies, and activities on minority populations

1 and low-income populations, United States and
2 its territories and possessions, the District of
3 Columbia, the Commonwealth of Puerto Rico, and
4 the Commonwealth of the Mariana Islands."

5 Review of environmental justice
6 considerations are clearly warranted in a
7 federal PSD permit appeal because of language
8 such as this in Executive Order 12898. However,
9 this does not mean that review of environmental
10 justice considerations are likewise authorized
11 by applicable law in the context of a state
12 approved PSD program when similar language does
13 not currently exist. And as relevant to
14 Illinois, we're talking about whether it exists
15 in 415 ILCS 155/5 or elsewhere.

16 The question also does not support a
17 conclusion that addressing implementation of
18 environmental justice through a state-based
19 permit appeal process where it lacks the basis
20 in applicable state law is more practical than
21 the approach currently undertaken in Illinois
22 which involves the EJ grievance procedure and
23 the Office of Civil Rights.

24 Regardless, whether implementation of

1 environmental justice is an important policy
2 consideration that the Board should review, it's
3 the decision that the Board must ultimately make
4 because, as reflected in the applicable state
5 law, there is currently no state provision
6 mandating such obligation.

7 MR. GRABLE: Question 6.c, if Illinois EPA
8 does not agree with this theory, can Illinois
9 EPA articulate a reason why we should not rely
10 on the "EAB's history interpretation of
11 regulatory language in 40 CFR 124, which largely
12 mirrors the statutory verbiage of Section
13 40.3(a)(2)(iii) of the Act"?

14 MS. CARTER: Again, this question raises
15 legal issues. Mr. Romaine will be reading the
16 Agency's response.

17 MR. ROMAINE: The Illinois EPA already
18 addressed this issue in the Agency's first
19 comments, notably its response to CARE's
20 Question 3.b. This is because the rationale
21 offered by the comment for the proposed standard
22 of review is distinctly different from the
23 rationale relied upon by the EAB concerning EJ;
24 namely, US EPA's mandate to implement federal

1 Executive Order 12898. As just explained, this
2 does not mean that review of environmental
3 justice considerations are likewise authorized
4 by applicable state law in the context of a
5 state approved PSD program where similar
6 language currently does not exist in 415 ILCS
7 155/5 or elsewhere in state law.

8 MR. GRABLE: Question 6.d, similarly Illinois
9 EPA's website provides the following: "In
10 compliance with 40 CFR Parts 5 and 7, Section
11 7.90(a), Illinois EPA has established a
12 grievance procedure to ensure prompt and fair
13 resolution of complaints alleging violations of
14 the Title VI, Section 601 of the 1964 Civil
15 Rights Act and/or the Illinois EPA's
16 environmental justice policy, in the
17 administration of the Illinois EPA's programs
18 and activities."

19 Is Illinois EPA of the opinion that the
20 implementation of this policy within the Agency
21 represents an important policy consideration
22 that the Board, like the Environmental Appeals
23 Board, in its discretion, should be permitted to
24 hear pursuant to historic Environmental Appeals

1 Board precedent, why or why not?

2 MS. CARTER: Again, this question raises
3 legal issues. Mr. Romaine will be reading the
4 Agency's response.

5 MR. ROMAINE: As clearly articulated by the
6 Illinois EPA's EJ grievance procedure, this
7 procedure "defines the procedural and
8 substantive standards utilized by the Illinois
9 EPA to evaluate EJ complaints. Specifically,
10 the EJ grievance procedure provides a process
11 for filing a timely complaint to the Illinois
12 EPA and describes the process that is used to
13 investigate and resolve the complaint."

14 In the event that a person wants to
15 contest the outcome, a separate complaint could
16 be filed with US EPA's Office of Civil Rights.
17 Part 7, nondiscrimination programs or activities
18 receiving federal assistance from the
19 Environmental Protection Agency, provides all
20 persons with the right to file complaints
21 against recipients of federal financial
22 assistance. That's in 40 CFR 7.100.

23 Any administrative review of the
24 Illinois EPA's implementation of its EJ

1 grievance procedure by US EPA's Office of Civil
2 Rights is separate and distinct from any
3 administrative review or permit action by the
4 Board.

5 Any potential failure by the Illinois
6 EPA to implement in its environmental justice
7 policy should not then be presented as an
8 important policy consideration, but the Board in
9 its discretion should review given Part 7,
10 nondiscrimination in programs or activities
11 receiving federal assistance from the
12 Environmental Protection Agency dictates such
13 review is to be undertaken by the US EPA's
14 Office of Civil Rights. In other words, it
15 would be appropriate for the Board to review the
16 program it created, emphasizing created, PSD
17 permits but would not be appropriate for the
18 Board to review the program it did not create,
19 i.e., the environmental justice policy.

20 MR. GRABLE: Question 6.e, if Illinois EPA is
21 of the opinion that neither the statutory
22 language from the Illinois Environmental Justice
23 Act, nor the established Illinois EPA
24 environmental justice policy individually rise

1 to the level of creating a state policy, the
2 implementation of which, within the agency,
3 represents an important policy consideration
4 that the Board should have the discretion to
5 review under EAB precedent, does the cumulative
6 impact of these sources do so?

7 HEARING OFFICER RABCZAK: Again, this
8 question raises legal issues. Mr. Romaine will
9 be reading the Agency's response.

10 MR. ROMAINE: As previously used whether
11 environmental justice is an important policy
12 consideration that the Board should review in a
13 decision -- should review is a decision that the
14 Board must make because, as reflected in
15 applicable state law, there is currently no
16 state provision mandating such actions by
17 agencies of the State of Illinois.

18 Again, the language from the Illinois
19 Environmental Justice Act did not mandate
20 certain responsibilities on state agencies as
21 Executive Order 12898 did on federal agencies.
22 Rather, the Illinois Environmental Justice Act
23 merely recognized that the principle of
24 environmental justice requires that no segment

1 of the population should bear a
2 disproportionately high or adverse effects of
3 environmental pollution and established
4 commission on environmental justice in Illinois.

5 Finally, the right of review of
6 Illinois EPA's environmental justice policy does
7 not rest with the Board. A separate grievance
8 procedure exists and has been disseminated on
9 the Illinois EPA's website. In the event that a
10 person wanted to contest the outcome of any
11 grievance filed with the Illinois EPA, a
12 complaint could be filed with the US EPA's
13 Office of Civil Rights.

14 MR. GRABLE: Question 7, in discussing the
15 impact of the federal Executive Order in
16 post-hearing comments on page 10, Illinois EPA
17 asserted that "no similar state authority or
18 statutory or regulatory framework recognizing
19 environment justice in the context of
20 environmental permitting exists in Illinois."
21 Given the legislative text found in the Illinois
22 Environmental Justice Act, does Illinois EPA
23 still stand by its statement that no state
24 authority or statutory framework that recognizes

1 environmental justice in the context of
2 environmental permitting exists in Illinois?

3 MS. CARTER: Again, this question raises
4 legal issues. Mr. Schnepf will be reading the
5 Agency's response.

6 MR. SCHNEPP: The Illinois EPA directs the
7 participants to its earlier response to CARE's
8 Question 6.b.

9 MR. GRABLE: Question 8, further, in answers
10 to prefiled Question 3.d on page 10, Illinois
11 EPA asserted that it had not been established
12 that environmental justice considerations are
13 "authorized by applicable law in the context of
14 a state-approved PSD program."

15 Given the explicit statutory
16 authorization that "the Board may adopt more
17 stringent or additional provisions to the extent
18 it deems appropriate," state legislation
19 declaring support for the principles of
20 environmental justice, regulatory mandate to
21 establish a grievance procedure to ensure prompt
22 and fair resolution of complaints alleging
23 discrimination on the basis of race, color,
24 national origin, or income, and the fact that

1 Illinois EPA has adopted its own environmental
2 justice policy, is Illinois EPA satisfied that
3 it has been established that environmental
4 justice considerations are authorized by
5 applicable law in the context of a
6 state-approved PSD program?

7 MS. CARTER: Again, this question raises
8 legal issues. Mr. Schnepf will be reading the
9 Agency's response.

10 MR. SCHNEPP: Yes, the Illinois EPA is
11 satisfied that it may take actions during
12 permitting to address environmental justice, as
13 discussed in its EJ policy. However, the
14 provisions cited in this question are generally
15 not relevant to whether it is appropriate for
16 the Board to review EJ concerns in the context
17 of a state-approved PSD program.

18 While the Illinois Environmental
19 Justice Act did find that the principle of
20 environmental justice requires that no segment
21 of the population should bear disproportionately
22 high or adverse effects of environmental
23 pollution and established the commission on
24 environmental justice in Illinois, this Act did

1 not impose substantive obligations on state
2 agencies.

3 Second, 40 CFR Section 7.90 does
4 require a grievance procedure for programs or
5 activities receiving federal assistance from the
6 US EPA. And in response to this mandate the
7 Illinois EPA adopted its own EJ policy.

8 However, this federal mandate is a distinct
9 federal requirement and has no bearing on
10 whether environmental justice consideration are
11 authorized by state law. The Illinois EPA's EJ
12 policy is a formal statement as required by 40
13 CFR Part 7 concerning the Agency's internal
14 management (i.e., directing resources towards
15 achieving recognized goals of nondiscrimination
16 and environmental justice).

17 The EJ policy is not a rule developed
18 from a statutory or regulatory enactment that,
19 as related to air quality, establishes
20 additional emission standards or requirements
21 for control of emissions.

22 Finally, while Section 9.1(c) of the
23 Act provides that "the Board may adopt more
24 stringent or additional provisions to the extent

1 that it deems appropriate," the Illinois EPA is
2 not aware of statutory authority supporting the
3 Board's review of environmental justice in the
4 context of a state-approved PSD program.

5 MR. GRABLE: Question 8.b, can Illinois EPA
6 points to any existing source of law that
7 indicates that it would be unauthorized for the
8 Board to hear environmental justice
9 considerations in PSD permitting appeals?

10 MS. CARTER: Again, this question raises
11 legal issues. Mr. Schnepf will be reading the
12 Agency's response.

13 MR. SCHNEPP: As previously discussed, the
14 Illinois EPA cannot point to any existing source
15 of state law that indicates that the Board would
16 currently have the authority to hear appeals
17 related to environmental justice as part of PSD
18 permit appeals.

19 MR. GRABLE: Can I clarify or ask a follow-up
20 for that?

21 HEARING OFFICER RABCZAK: Go ahead.

22 MR. GRABLE: So can you point to any source
23 of law that indicates that it would be -- the
24 Board would be unauthorized to hear

1 environmental justice considerations, rather
2 than what you, I feel, was pointing to that you
3 can't find anything that it would be authorized?

4 MS. CARTER: The Agency believes it responded
5 to the question that has just been asked. But
6 the Agency will, again, look at the question in
7 its response to post-hearing comments.

8 MR. GRABLE: Thank you.

9 Question 8.c, is Illinois EPA of the
10 opinion that the Board would be physically,
11 technically, economically, or in any other way
12 unable to adjudicate claims relating to Illinois
13 EPA's implementation of its environmental
14 justice policy or its adherence to the policy
15 established in Chapter 415, Title 155, Section
16 5(i) and (ii) of the Illinois Compiled Statutes?

17 MS. CARTER: Again, this question raises
18 legal issues. Mr. Schnepf will be reading the
19 Agency's response.

20 MR. SCHNEPP: Currently, the Board would not
21 have the legal authority to adjudicate claim
22 relating to Illinois EPA's implementation of its
23 environmental justice policy. Again, the
24 Illinois EPA has a grievance procedure as

1 required under 40 CFR Section 7.90. This
2 procedure can address claims of discrimination
3 or disparate impact as a result of Agency action
4 in the context of Agency decision-making that
5 necessarily includes PSD permitting decisions.

6 In the event that a person wanted to
7 contest the outcome of Illinois -- of any
8 Illinois EPA grievance procedure, a complaint
9 could be filed with the US EPA's Office of Civil
10 Rights. Part 7, nondiscrimination in programs
11 or activities receiving federal assistance from
12 the Environmental Protection Agency, dictates
13 such review is to be undertaken by US EPA's
14 Office of Civil Rights, 40 CFR Part 7. Any
15 administrative review of the Illinois EPA's
16 implementation of its EJ grievance procedure by
17 US EPA's Office of Civil Rights is separate and
18 distinct from any administrative review
19 contemplated by the Board, nor would the Board
20 currently have the legal authority to review any
21 claims relating to the Illinois EPA's adherence
22 to the "policy established in 415 ILCS 155/5(i),
23 (ii)."

24 As previously indicated, Section 5(i)

1 and (ii) did not mandate any action by state
2 agencies; rather, the General Assembly found
3 that the principle of environmental justice
4 requires that no segment of the population
5 should bear disproportionately high or adverse
6 effects of environmental pollution and that
7 certain communities in the state may suffer
8 disproportionately from environmental hazards
9 related to facilities with state-issued permits.

10 MR. GRABLE: So I just want to point out that
11 my next question, Question 9, is the one that's
12 referring to the second document that will be
13 submitted in post-hearing comments, the
14 memorandum.

15 So Question 9, as far back as 2000, in
16 a memorandum available on US EPA's website
17 titled EPA Statutory and Regulatory Authorities
18 under which environmental justice issues may be
19 addressed, US EPA issued guidance documents
20 expressing its understanding that environmental
21 justice considerations were properly within the
22 scope of issues to be addressed by a permitting
23 Agency and, thus, reviewable by an
24 administrative appeals process for multiple

1 reasons.

2 First, then US EPA's general counsel at
3 the Office of General Counsel found that
4 environmental justice issues constituted "other
5 appropriate considerations" that could properly
6 be raised as part of the public hearing process
7 required by Section 165(a)(2), 42 USC Section
8 7475(a)(2) of the Clean Air Act.

9 Does Illinois EPA agree with the former
10 general counsel of US EPA that "this authority
11 could allow EPA to take action to address the
12 proper role of environmental justice
13 considerations in PSD and NSR permitting"?

14 MS. CARTER: Again, this question raises
15 legal issues. Mr. Romaine will be reading the
16 Agency's response. And that being said, the
17 Agency is generally responding to the question
18 that was submitted to the Board on February 15th
19 in Exhibit 6.

20 MR. ROMAINE: Consistent with Executive Order
21 12898, the Illinois EPA is satisfied that US EPA
22 may take action during permitting to address
23 environmental justice. In this regard we were
24 aware of this memorandum that was cited, but we

1 did not consider it in the way that it has now
2 been raised.

3 Considering this guidance document
4 referenced in this question, US EPA stated as
5 follows: Section 165(a)(2) provides that a PSD
6 permit may be issued only after an opportunity
7 for a public hearing at which the public can
8 appear and provide comment on the proposed
9 source, including alternatives thereto and other
10 appropriate considerations.

11 This authority could allow EPA to take
12 actions to address the proper role of
13 environmental justice considerations. And
14 that's a quote from a memorandum from Gary S.
15 Guzy, G-u-z-y, General Counsel, Office of
16 General Counsel to the US EPA, to Steven A.
17 Herman, H-e-r-m-a-n, who was assistant
18 administrator of the Office of Enforcement and
19 Community Assistance of the US EPA and other
20 parties regarding EPA's statutory and regulatory
21 authority under which environmental justice
22 issues may be addressed in permitting from
23 December 1st, 2000.

24 In fact, this memorandum further goes

1 on to caution that "the use of the EPA's
2 statutory authorities as discussed in herein may
3 in some cases involve new legal and policy
4 interpretations that could require agency
5 regulatory or interpretive actions... Again,
6 referring to this memorandum, this memorandum
7 does not suggest...that there are not important
8 considerations of legal risk that would need to
9 be evaluated."

10 MR. GRABLE: Question 9.b, second, after a
11 1993 Environmental Appeals Board case found that
12 environmental justice considerations were not
13 allowed in Clean Air Act permitting decisions,
14 US EPA intervened by filing a motion for
15 clarification. The Office of General Counsel
16 pointed out that "the Clean Air Act requirement
17 to consider alternatives to the proposed source,
18 and the broad statutory definition of 'best
19 available control technology,' provided ample
20 opportunity for consideration of environmental
21 justice in PSD permitting." The Environmental
22 Appeals Board was persuaded by the Office's
23 reasoning enough to issue an amended opinion and
24 order that deleted the language declaring

1 environmental justice considerations to be
2 inappropriate.

3 Does Illinois EPA agree with the Office
4 of General Counsel's determination that the
5 broad statutory definition of best available
6 control technology provides ample opportunity
7 for consideration of environmental justice in
8 PSD permitting? Why or why not?

9 MS. CARTER: Again, this question raises
10 legal issues. Mr. Romaine will be reading the
11 Agency's response.

12 MR. ROMAINE: In September 1993 decision in
13 Genesee Power, the EAB stated that the Clean Air
14 Act did not allow for consideration of
15 environmental justice in setting issues in PSD
16 permitting decisions.

17 In response, the Office of General
18 Counsel, OGC, filed a motion for clarification.
19 While US EPA summarized OGC's arguments in its
20 2000 guidance document discussed above, that's
21 the Guzy memorandum, the Illinois EPA has not
22 been able to locate a copy of the OGC's memo for
23 clarification. However, the EAB's order on
24 motion for clarification makes clear that the

1 OGC merely requests that the EAB amend its
2 reasoning but not the outcome of its decision.

3 And this is in the matter of Genesee
4 Power Station Limited Partnership 1993 EAB.

5 MS. CARTER: EPA.

6 MR. ROMAINE: EPA app. Alexis 23; 4 EAD 832
7 dated October 22, 1992. And it's an order on
8 motion for clarification.

9 In fact, it was Genesee that proposed
10 in this -- that the motion be resolved by simply
11 exercising the appropriate portion of the
12 decision -- oh, simply excising the appropriate
13 portion of the decision. Again, that's what
14 appears in the explanation of the order on
15 motion for clarification.

16 Then the EAB went on to find as follows
17 in this order "that said we are adopting
18 Genesee's recommendation because we agree that
19 the motion for clarification raises issues of
20 national importance that need not be decided now
21 and because the motion for clarification
22 provides a poor vehicle for giving such issues
23 the attention they deserve. We, therefore,
24 believe that rather than deciding such issues

1 now in this context, the better course is simply
2 to delete the challenge to rationale from the
3 Genesee opinion. Accordingly, we are reissuing
4 the Genesee opinion to reflect such deletions
5 and to make minor rhetorical changes
6 necessitated by such deletions. In doing so, we
7 take no position on the merits of the rationales
8 proffered by OGC in the motion for
9 clarification."

10 This is, again, in the EAB's order on
11 motion for clarification. Consistent with EAB's
12 order on the motion for clarification in its
13 October 22, 1993, opinion and order, the EAB
14 deleted the language at issue but not -- did not
15 address whether it was permissible to address
16 environmental justice in the PSD permitting
17 program. This is in re Genesee Power Station
18 Limited Partnership 4 EAD 832, October 22, 1993.

19 To the best of the Illinois EPA's
20 knowledge, these issues have not yet been
21 considered by the EAB given shortly thereafter
22 President William Clinton issued Executive Order
23 12898 on February 11, 1994. This Executive
24 Order mandated action with regard to

1 environmental justice by each federal agency,
2 including US EPA.

3 Subsequent decisions by the EAB discuss
4 EJ in the context of this executive order. For
5 example, you can see in re Puerto Rico
6 Electronic Power Authority. That's the
7 Cambalach, C-a-m-b-a-l-a-c-h, Combustion Turbine
8 Project, 6 EAD 253, December 11, 1995, and also
9 look at in re Eco Electrical, that's E-c-o
10 E-l-e-c-t-r-i-c-a-l, LP, 7 EAD 56, April 8,
11 1997, and in re Knauf, K-n-a-u-f, Fiberglass
12 GmbH, 8 EAD 121, February 4, 1999. There is
13 another quote in re Knauf Fiberglass GmbH, 9 EAD
14 1, March 14, 2000. And the last citation is in
15 re Pio Pico, two words, P-i-o P-i-c-o, Energy
16 Center, 16 EAD 56, August 2, 2013.

17 MR. GRABLE: Finally, Question 9.c, assuming,
18 arguendo, that Illinois EPA agrees with the
19 reasoning offered by US EPA Office of General
20 Counsel and accepted by the Environmental
21 Appeals Board, because proposed Part 204 based
22 its best available control technically
23 definition off of federal regulatory found in 40
24 CFR 52.21(b)(12), and statutory, found in 42 USC

1 Section 7479(3), definition of best available
2 control technically, is there any reason why a
3 similarly broad interpretation of best available
4 control technology shouldn't be given to the
5 term as it applies in the state program,
6 rendering environmental justice considerations
7 relevant to the PSD permitting process and
8 reviewable upon appeal?

9 MS. CARTER: Again, this question raises
10 legal issues. Mr. Romaine will be reading the
11 Agency's response.

12 MR. ROMAINE: The Illinois EPA would direct
13 participants and the Board to its earlier
14 responses.

15 It is not clear to the Illinois EPA
16 that the EAB accepted the reasoning of the
17 Office of General Counsel in *Genesee Power*, as
18 the EAB merely deleted the controversial
19 language as suggested by the permit apps in that
20 case. EAB did not decide whether it was
21 permissible to address environmental justice
22 considerations under the federal definition of
23 best available control technology, at 40 CFR
24 52.21(b)(12).

1 And then this is referring back to in
2 re Genesee Power Station Limited Partnership, 4
3 EAD 832, and its order on reconsideration,
4 October 22, 1993.

5 HEARING OFFICER RABCZAK: Does anybody have
6 any follow-up questions?

7 MS. DRIVER: Madam, I would like five minutes
8 to confer with my client on that.

9 HEARING OFFICER RABCZAK: I have some
10 follow-up questions and then come back. I would
11 like the Board to be asking questions after
12 everybody finishes. So five-minute break.

13 MS. DRIVER: Thank you.

14 HEARING OFFICER RABCZAK: 11:35.

15 (Short recess taken.)

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

18 Does anybody have any follow-up
19 questions?

20 MS. DRIVER: IERG does not have any at this
21 time.

22 HEARING OFFICER RABCZAK: Does anybody have
23 any questions in Chicago? No.

24 I have a few follow-up questions. And

1 as you know, you will respond to some of CARE's
2 questions in your post-hearing comments because
3 of the citation we are provided -- the documents
4 provided today.

5 So my questions follow along the
6 questioning of CARE. And if you can't answer
7 them today, please provide an answer in your
8 follow-up responses.

9 I would like to just clarify. So what
10 is the Agency's position as to when the
11 environmental justice concerns would be
12 considered under the proposed Illinois PSD
13 program by IEPA and by the Board?

14 What I heard today is that there is no
15 real procedure for EPA to consider that, but
16 there is a grievance procedure at IEPA level.
17 Could you please clarify how that would work in
18 terms of PSD permitting? And then the second
19 part will be for the Board.

20 MR. ROMAINE: Obviously, we'll provide a
21 detailed response in writing. But I think we
22 need to make absolutely clear, as the Illinois
23 EPA, we implement the state PSD program. We
24 would be required to follow our EJ policy and EJ

1 grievance procedure. EJ would be addressed
2 during PSD permitting as it's addressed
3 routinely as part of other permit programs that
4 we administer.

5 HEARING OFFICER RABCZAK: Would you please
6 provide details in your answer how it routinely
7 works?

8 MS. CARTER: How it routinely works with PSD?

9 HEARING OFFICER RABCZAK: How it would work
10 with PSD and how you do it in other procedures.
11 Do I understand that correctly?

12 MS. CARTER: Yes, we can do that. I want to
13 make sure we understand the question on our end.
14 Yes.

15 HEARING OFFICER RABCZAK: So as you just
16 answered it, you do have a process in other
17 permitting procedures that you would apply to
18 PSD permitting, do I understand correctly?

19 MR. ROMAINE: That is correct.

20 HEARING OFFICER RABCZAK: Okay. If you can
21 detail how that usually works and how that would
22 work in PSD permitting.

23 And the second part of my question, how
24 does IEPA see the Board taking the EJ

1 considerations into context?

2 I heard you say discretion of the Board
3 might allow the Board to decide how to address
4 it, those concerns. But it would be helpful to
5 see what the Agency thinks properly in terms of
6 what consideration and how the Board can take
7 into account when the Board hears the case under
8 the PSD permitting.

9 THE COURT REPORTER: Can you repeat the last
10 part, please? You dropped off.

11 HEARING OFFICER RABCZAK: Second part of my
12 question is it would be helpful to say the
13 Agency's position on how the Board should take
14 into consideration the EJ concerns while hearing
15 the PSD permit appeals.

16 MS. CARTER: Yes, we understand your
17 question.

18 HEARING OFFICER RABCZAK: You will be
19 answering --

20 MS. CARTER: Yes, I apologize. We will be
21 answering it in post-hearing comments. Thank
22 you.

23 HEARING OFFICER RABCZAK: And I invite
24 anybody else, among the participants, to answer

1 those questions if they feel appropriate.

2 Another follow-up from that, could you
3 also explain how the grievance procedure
4 would -- the EJ grievance procedure worked in
5 that regard, if that's a second layer for EJ
6 concerns? As far as I understand -- and I'm
7 sorry if I'm incorrect, that after the decision
8 is made, after the PSD decision is made, then
9 there is a second layer of EJ consideration
10 through the grievance procedure.

11 MS. CARTER: The Agency will be addressing
12 that in post-hearing comments.

13 HEARING OFFICER RABCZAK: And another
14 question I have is, what does the Agency see
15 appropriate in terms of the Board taking into
16 account the Environmental Appeals Board
17 decisions when making the Board's decision, how
18 should the Board take into account the EAB past
19 decisions and what weight, if any, it should
20 give to any precedential decision that EAB made
21 under the federal rules, 40 CFR 52.21 and 40 CFR
22 51.166.

23 MS. CARTER: The Agency will address that in
24 post-hearing comments.

1 HEARING OFFICER RABCZAK: And a similar
2 question is, what weight should the Board give
3 to the US EPA's interpretation of 40 CFR 52.21
4 and 40 CFR 51.166? And the second part of that
5 question, what level of decision should the
6 Agency -- should the Board take into account,
7 should that be US EPA guidance, US EPA general
8 counsel decisions? What kind of -- what type of
9 documents should the Board pay attention to when
10 interpreting the federal rules?

11 MS. CARTER: Is that in the context of EJ
12 again? Is that question in the context of EJ?

13 HEARING OFFICER RABCZAK: No. This is
14 separate.

15 So those questions with respect to the
16 Environmental Appeals Board and the US EPA's
17 interpretation the rules. They are more
18 general.

19 MS. CARTER: Broader. I understand.

20 HEARING OFFICER RABCZAK: In EJ and outside
21 of EJ, when the Board hears an appeal, what
22 weight should the Board give to Environmental
23 Appeals Board decisions and US EPA
24 interpretation of those. And, for instance, in

1 paying attention to the US EPA, whether it
2 should be just US EPA guidance, official
3 documents issued by US EPA or documents
4 referenced today like general counsel statement
5 or motions or decisions made by some part of the
6 US EPA.

7 MS. CARTER: The Agency will address that
8 legal question in post-hearing comments.

9 HEARING OFFICER RABCZAK: Thank you.

10 We are ready to either proceed to
11 IERG's questions or take a break early and come
12 back and go after the break. What would you
13 like to do? Are you ready to start now?

14 MS. CARTER: The Agency believes we can get
15 through this in fairly short order if that's
16 fine with everybody else.

17 HEARING OFFICER RABCZAK: You may proceed
18 with IERG's questions. Can you state your name
19 and who you represent.

20 MS. DRIVER: This is LaDonna Driver with
21 Hepler Broom, outside counsel for IERG. Thank
22 you, Illinois EPA.

23 Question 1, at page 6 of its comments
24 in response to Question 2.d-2, the Agency states

1 that "it should be understood that one
2 consequence of a state PSD program is that the
3 Board rulemaking will likely be required in the
4 future to revise the state program. When such
5 changes are warranted, the Illinois EPA will
6 appropriately initiate a needed rulemaking
7 proceeding."

8 Please provide further information on
9 what specific criteria the Agency will apply
10 when determining when changes to the rules are
11 warranted and with what frequency it will
12 conduct reviews.

13 MS. CARTER: This question raises legal
14 issues. Mr. Romaine will be reading the
15 Agency's response.

16 MR. ROMAINE: To the extent that US EPA were
17 to adopt changes to the PSD program, updating
18 the federal program to address recent court
19 decisions regarding this program, as have
20 already been memorialized in Agency's proposal,
21 the Illinois EPA would not need to initiate a
22 rulemaking before the Board. For instance, this
23 could include the changes already proposed by
24 the Illinois EPA to appropriately address recent

1 court decisions regarding the permitting of
2 greenhouse gases under the PSD program or how
3 the term "federally enforceable" should be read
4 in the context of the definition of potential to
5 emit.

6 This could also include any federal
7 changes to remove definitions that are currently
8 subject to a federal stay. For example, there
9 are the definitions of functionally equivalent
10 components, fixed capital costs, and total
11 capital investment. Nor would the Illinois EPA
12 necessarily initiate a rulemaking proceeding if
13 US EPA adopts transitional provisions to the
14 federal PSD program that are not relevant to
15 Illinois.

16 On the other hand, the Illinois EPA
17 would necessarily have to conduct reviews as to
18 the adequacy of the State PSD program whenever
19 changes are made to 40 CFR 51.166 and/or 52.21.

20 Finally, to the extent that any other
21 party believed changes to the State PSD program
22 were appropriate and the Illinois EPA did not
23 propose changes, such parties would be able to
24 propose such changes to the Board to the extent

1 that the Illinois EPA did not do that.

2 MS. DRIVER: Thank you, Mr. Romaine.

3 As a follow-up to that, what -- when
4 the Agency is evaluating proposing to update the
5 rule to reflect federal revisions, what kind of
6 criteria will the Agency be looking at?

7 MS. CARTER: The Agency will address that in
8 our post-hearing comments.

9 MS. DRIVER: Thank you.

10 And just one other follow-up on this
11 question, does the Agency envision that if a new
12 federal Class I area is designated that would
13 impact permitting in Illinois, that the Agency
14 would need to propose a revision to Part 204 to
15 address that?

16 MR. ROMAINE: That's a legal question.

17 MS. CARTER: The Agency will address that in
18 post-hearing comments.

19 MS. DRIVER: Thank you.

20 MR. ROMAINE: Repeat the question, please.

21 MS. CLARK: Could we have the court reporter
22 read the question so we are clear on the
23 question just to make sure we understand it?

24

1 (Whereupon, the record was read
2 as requested.)

3 MS. CARTER: Thank you.

4 MS. DRIVER: Question 2, at page 14 of its
5 comments in response to IERG's Question 6 asking
6 about a separate rulemaking to amend 35 Illinois
7 Administrative Code Part 252, the Agency states
8 that "it intends to propose Agency regulations
9 addressing a state-based PSD program. While a
10 specific schedule has not yet been developed,
11 the Illinois EPA tentatively plans to have
12 revisions to Part 252 finalized shortly after
13 the completion of this Board rulemaking."

14 IERG notes that proposed new Section
15 105.612, the Agency record, includes references
16 in proposed new subsection 105.612(b)(v) to 35
17 Illinois Administrative Code 252.208 and 252.210
18 which do not currently exist in Part 252. Would
19 it be advisable for the Agency to time the
20 adoption of those particular new sections in
21 parallel with this proceeding so that the
22 references in new subsection 105.612(b)(v) will
23 be accurate immediately upon promulgation?

24 MS. CARTER: This question raises legal

1 issues. The Agency's response will be read by
2 Mr. Schnepf.

3 MR. SCHNEPP: The Illinois EPA has taken this
4 comment under advisement in the related Agency
5 proceeding pertaining to revisions to the
6 existing Agency regulations at 35 Illinois
7 Administrative Code Part 252, public
8 participation in the air pollution control
9 permit program.

10 HEARING OFFICER RABCZAK: Just clarify
11 whether this proceeding is currently under some
12 stages close to completion or is it at the very
13 early stage?

14 MS. CARTER: The proposal -- I can't testify.
15 The Agency will be responding to this in
16 post-hearing comments.

17 HEARING OFFICER RABCZAK: If you have a draft
18 of those two sections, Section 252.208, 252.210,
19 would you please file them into this record so
20 we have at least an understanding of what these
21 sections envision.

22 MS. CARTER: To the extent that the Board is
23 requesting those provisions solely to see what
24 those provisions would envision, the Agency will

1 offer that to the Board. Obviously, this is a
2 separate Agency rulemaking proceeding and I just
3 want to condition our submittal to the Board.

4 HEARING OFFICER RABCZAK: Yes.

5 MS. CARTER: Okay. Thank you.

6 MS. DRIVER: Thank you.

7 Question 3, at page 19 of its comments
8 in response to the Board Question 2.b, the
9 Agency addresses newly proposed Section 204.1310
10 and states: To address an administrative action
11 by the Agency that is to accompany the
12 processing of PSD permit applications pursuant
13 to Section 165(d)(1) of the Clean Air Act and 40
14 CFR 51.166(p), the Illinois EPA is proposing
15 language in Section 204.1310 requiring the
16 Agency to provide to the US EPA a copy of each
17 application for a PSD permit that it receives.
18 Such a requirement is not present in 40 CFR
19 52.21.

20 IERG notes that 40 CFR 51.166(p) is
21 entitled Sources Impacting Federal Class I Areas
22 - Additional Requirements. Given that 40 CFR
23 51.166(p) is applicable only to sources
24 impacting federal Class I areas, should proposed

1 new Section 204.1310 also be applicable only to
2 permit applications for sources impacting
3 federal Class I areas?

4 MR. ROMAINE: The further scrutiny of 40 CFR
5 51.166(p) page triggered by this question has
6 confirmed that 40 CFR 51.166(P) is, in fact,
7 entitled "Sources of Impacting Federal Class I
8 Areas - additional requirements."

9 Based on this heading, the requirement
10 that permitting authority submit a copy of each
11 PSD permit application to the US EPA would
12 appear only applicable to sources impacting
13 federal Class I areas.

14 While SIP approval would potentially
15 only require mirroring the language of 40 CFR
16 51.166(p) in proposed Section 204.1310, US EPA
17 Region 5 has explained that its position is that
18 the Illinois EPA should provide it with a copy
19 of each application for a PSD permit regardless
20 of whether the proposed project would impact the
21 federal Class I area.

22 The Illinois EPA is prepared to
23 continue this practice. The Illinois EPA
24 currently carries out this practice under the

1 delegation agreement with the US EPA. For this
2 purpose, copies of PSD applications are
3 typically provided to US EPA at the start of the
4 public comment period. Accordingly, the
5 Illinois EPA is not proposing to change this
6 aspect of its proposal.

7 MS. DRIVER: Thank you.

8 As a follow-up answer to that question
9 regarding the request that Region 5 has given to
10 Illinois EPA to provide each PSD application to
11 them, are you aware, is this the practice with
12 other Region 5 states as well?

13 MR. ROMAINE: I am not aware whether it is or
14 not.

15 MS. DRIVER: Can you address that in
16 post-hearing?

17 MR. ROMAINE: We can certainly pose the
18 question to US EPA.

19 MS. DRIVER: Thank you.

20 Question 4, at pages 33 to 34 of its
21 comments in response to Board Question 5 wherein
22 the Board asks "what types of benchmarks are
23 used as 'reference levels' if pollutants being
24 assessed do not have air quality standards," the

1 Agency states "for human health impacts,
2 benchmarks can include US EPA's Acute Exposure
3 Guideline Levels, The Agency For Toxic
4 Substances and Disease Registry (ATSDR) Minimal
5 Risk Levels, and, alternatively, occupational
6 exposure standards."

7 The Agency also notes that "for
8 ecological impacts benchmarks are screening
9 concentration values for air, surface water,
10 soil, sediment, and vegetation obtained from US
11 EPA publications or reference documents and/or
12 from the peer-reviewed literature."

13 Please provide further information as
14 to the circumstances in which, and the processes
15 by which, those reference levels would be
16 evaluated and applied in the PSD permitting
17 context.

18 MR. SPRAGUE: Under the PSD program, as has
19 been discussed, reference levels for acceptable
20 or unacceptable concentrations of pollutants in
21 the ambient air must generally be evaluated when
22 conducting air quality impact analyses for
23 certain regulated NSR pollutants for which the
24 national ambient air quality standards are not

1 available to identify unacceptable ambient
2 concentrations.

3 Examples of these pollutants for which
4 there are no national ambient air quality
5 standards include reduced sulfur compounds
6 (including hydrogen sulfide), fluorides and
7 sulfuric mist. In addition, reference levels
8 for concentrations and depositional loading of
9 pollutants must be evaluated when conducting
10 additional impact analyses as potential impacts
11 of emissions on vegetation and soils must
12 specifically be addressed.

13 The evaluation of reference levels
14 entails review of publically available documents
15 (including published literature) to identify
16 available benchmarks that are appropriate for
17 the specific pollutant and type of impact
18 (impact on human health, vegetation, or soil).

19 Benchmarks that reflect newer work by
20 more authoritative sources are preferred to
21 those that are older and from less authoritative
22 sources. Benchmarks that better address the
23 conditions in the area in which a proposed
24 project will be constructed also garner

1 preference over more generic benchmarks.

2 Preference is also generally given, at least
3 initially, to more conservative values.

4 Once appropriate reference levels are
5 identified, the relevant and maximum
6 concentrations or rates of deposition of
7 pollutants predicted by the air quality impact
8 or additional impacts analyses are compared with
9 those reference levels. If the impacts that are
10 initially predicted from a proposed project are
11 higher than the reference levels, further
12 analysis or evaluation would be conducted to
13 determine if the predicted impacts are truly
14 excessive.

15 For consideration, as an example,
16 hydrogen sulfide, H₂S is a regulated NSR
17 pollutant for which there is not a national
18 ambient air quality standard. There are a
19 variety of reference levels that can be
20 considered for human health impacts due to
21 hydrogen sulfide in air and a few are identified
22 here.

23 The United States Agency for Toxic
24 Substances and Disease Registries acute (1 to 14

1 days) inhalation, minimal risk level for
2 hydrogen sulfide is currently 0.07 parts per
3 million. This is an estimate of the daily
4 exposure that is likely to be without
5 appreciable risk of adverse health effects.

6 US EPA has published acute exposure
7 guideline levels for pollutants, including
8 hydrogen sulfide, which reflect levels of
9 exposure above which it is predicted that the
10 general population, including susceptible
11 individuals, could experience irreversible or
12 other serious long-lasting adverse health
13 effects or be incapacitated due to a single
14 nonrepetitive exposure.

15 For hydrogen sulfide these levels are
16 41 parts per million (10-minute exposure),
17 32 parts per million (30-minute exposure),
18 27 parts per million (one-hour exposure), 20
19 parts per million (four-hour exposure), and
20 17 parts per million (eight-hour exposure).

21 The National Institute for Occupational
22 Safety and Health has a recommended exposure
23 limit of 10 parts per million over a ten-minute
24 period. It is generally not necessary to

1 address all reference levels and their
2 associated averaging times in air quality impact
3 analyses.

4 The evaluation of reference levels for
5 hydrogen sulfide would focus on selection of
6 reference levels to address both acute and
7 chronic impacts, i.e. impacts due to short-term
8 and long-term exposures, favoring those
9 reference levels that best serve to protect
10 human and ecosystem health from ambient
11 exposures due to emissions from a proposed
12 project.

13 MS. DRIVER: Thank you, Mr. Sprague.

14 Just as follow-up on that question, can
15 you describe the types of modeling and impacts
16 analysis that you're referring to in your
17 answer?

18 MR. SPRAGUE: So, basically, it boils down to
19 two things; first of all, determining ambient
20 concentrations as the -- which is the typical
21 mode that we operate the model in. And the
22 other aspect would be to determine depositional
23 loadings.

24 MS. DRIVER: And in determining the ambient

1 concentration, that is what we typically look at
2 for preconstruction modeling, correct?

3 MR. SPRAGUE: Preconstruction modeling?

4 MS. DRIVER: For the regulated pollutants at
5 issue.

6 MR. SPRAGUE: Uh-huh. Yes. Excuse me.

7 MS. DRIVER: And those are typically compared
8 to the national ambient air quality standards?

9 MR. SPRAGUE: Correct.

10 MS. DRIVER: And would not be compared to
11 other reference levels?

12 MR. SPRAGUE: No. What we have identified
13 here is that we would be using ambient
14 concentrations in conjunction with these other
15 reference levels in the absence of national
16 ambient air quality standards.

17 MS. DRIVER: And the additional impacts
18 analysis?

19 MR. SPRAGUE: Well, yes, it is in the
20 additional impacts analysis.

21 But, alternatively, in addressing PSD
22 pollutants that are not covered by the NACS, it
23 falls into that realm which isn't strictly the
24 additional impacts analysis. But you're not

1 addressing the national ambient air quality
2 standards. So it's kind of this intermediate
3 realm where you're having to address a PSD
4 pollutant that isn't addressed by NACS.

5 The additional impacts analysis
6 technically focuses on soil and vegetation.
7 Okay? And we're saying that, okay, we -- we
8 have to address these pollutants but not
9 necessarily within the additional impact
10 analysis of soils and vegetation.

11 MS. DRIVER: And that's the intermediate
12 realm that you refer to?

13 MR. SPRAGUE: Yes. Those are my words.
14 Obviously, that's not regulatory language. But
15 it would be addressing the impacts to human
16 health.

17 MS. DRIVER: One more follow-up, Mr. Sprague.
18 You talked about the different types of
19 benchmarks and reference levels and certain
20 preferences you would give to more conservative
21 values, more recent literature and that sort of
22 thing.

23 Is there also a preference involved in
24 your consideration for studies or conclusions

1 about those benchmark reference levels that have
2 been peer reviewed in some kind of respected
3 group versus non-peer reviewed literature?

4 MR. SPRAGUE: To the extent that we're aware
5 that and I think in my response that I read
6 here, we did kind of convey that, that we have a
7 preference for more authoritative sources.

8 MS. DRIVER: Thank you.

9 MR. SPRAGUE: Sure.

10 MS. DRIVER: Question 5, at pages 46 through
11 48 of its comments in response to Board Question
12 15, the Agency provides a detailed assessment of
13 the standard of review and established precedent
14 applied by the US EPA's Environmental Appeals
15 Board (EAB) when it reviews PSD permit appeals.
16 Is it the Agency's intent that the Board apply
17 the same standard of review and adherence to
18 precedent as the EAB applies in reviewing PSD
19 permit appeals?

20 MS. CARTER: This question presents legal
21 issues. The Agency's response will be provided
22 by Mr. Schnepp.

23 MR. SCHNEPP: It is the Illinois EPA's
24 position that Section 40.3 of the Act, 415 ILCS

1 5/40.3, embodies the same standard of review and
2 adherence to precedents as the EAB currently
3 applies in reviewing PSD permit appeals.

4 MS. DRIVER: Thank you.

5 Question 6, also at pages 46 through 48
6 of its comments in response to Board Question
7 15, the Agency addresses the Board's question
8 about the meaning of "technical decisions
9 contained therein reflect considered judgment by
10 the Agency" as set forth in proposed new Section
11 105.614, which reads in part as follows:

12 Except as provided by in subsections A
13 and B, the Board will conduct a public hearing
14 in accordance with 35 Illinois Administrative
15 Code 101, Subpart F, upon an appropriately filed
16 petition for review under this subpart. The
17 hearing and decision of the Board will be based
18 exclusively on the Agency record at the time the
19 permit or decision was issued, unless the
20 parties agree to supplement the Agency record.
21 Any PSD permit issued by the Agency shall be
22 upheld by the Board if the technical decisions
23 contained therein reflect considered judgment by
24 the Agency.

1 IERG notes that the Illinois
2 Environmental Protection Act Section 40.3(d)(1)
3 provides as follows: In reviewing the denial or
4 any condition of a PSD permit issued by the
5 Agency pursuant to rules adopted under
6 Subsection C of Section 9.1 of this Act, the
7 decision of the Board shall be based exclusively
8 on the record before the Agency unless the
9 parties agree to supplement the record.

10 The final sentence in proposed Section
11 105.614 ("any PSD permit issued by the Agency
12 shall be upheld by the Board if the technical
13 decisions contained therein reflect considered
14 judgment by the Agency") is in addition to
15 Section 40.3(d)(1) of the Act.

16 Please provide further information
17 regarding the type of technical decisions that
18 would be subject to the Agency's considered
19 judgment under this provision, including but not
20 limited to the following: Single stationary
21 source, potential to emit, legally and
22 practicably enforceable limits, assessment of
23 fugitive emissions, routine maintenance repair
24 and replacement exclusion, replacement unit,

1 baseline actual emissions and projected actual
2 emissions, net emissions increase calculation,
3 physical change and BACT applicability,
4 determining BACT, air quality impacts
5 demonstration and the preconstruction ambient
6 air quality analysis, additional impacts
7 analysis.

8 MS. CARTER: This question raises legal
9 issues. Mr. Romaine will be reading the
10 Agency's response.

11 MR. ROMAINE: When acting on the PSD permit
12 application, the types of technical decisions of
13 the Agency would include the above-listed types
14 of actions and any others that the EAB has
15 historically upheld if the actual decisions that
16 were made by the US EPA or the permitting
17 authority and that are being challenged reflect
18 considered judgment by the US EPA or permitting
19 authority as demonstrated in the permit record.

20 MS. DRIVER: Just as a follow-up then to
21 that, Mr. Romaine, you stated that the list we
22 had in our question would be things that would
23 be considered technical considered judgment and
24 then you referenced other items that the EAB has

1 historically upheld in that same vein.

2 In your post-hearing comments, can you
3 address what those other topics would be?

4 MS. CARTER: The Agency will endeavor to
5 provide a response to that question. However,
6 the Agency is not going to review every decision
7 that the EAB has undertaken in the past 30
8 years.

9 MS. DRIVER: That's understood. We simply
10 want to understand the difference that's being
11 proposed in the regulatory language for the
12 Agency's considered judgment.

13 MS. CARTER: We understand the question.

14 MS. DRIVER: Thank you.

15 Could I have just a moment, Madam
16 Hearing Officer?

17 HEARING OFFICER RABCZAK: Uh-huh.

18 (Short pause in proceedings.)

19 MS. DRIVER: Thank you, Madam Hearing
20 Officer. We have nothing further.

21 HEARING OFFICER RABCZAK: Does anybody else
22 have any follow-up questions? I don't see any
23 in Springfield. Nobody in Chicago?

24 MS. PAPADIMITRIU: No.

1 HEARING OFFICER RABCZAK: I do. I have just
2 a few clarifying questions.

3 On page 39 and 45 of the PC-1, the
4 Agency's response to the first hearing
5 questions.

6 MS. CARTER: I'm sorry, what page did you
7 say?

8 HEARING OFFICER RABCZAK: Page 39. Agency's
9 response to questions from the first hearing
10 document PC-1, page 39, Question 13, the Agency
11 in this -- in response to this question, and I
12 refer to Questions A through P, so that would be
13 pages 39 through 45.

14 The Agency acknowledged that records
15 with respect to PSD proceeding is broad -- it's
16 much broader than record during the public
17 commentary; is that correct?

18 MR. ROMAINE: I think that's correct.
19 Obviously, if that is incorrect, we will correct
20 ourselves in the post-hearing submittal.

21 HEARING OFFICER RABCZAK: So the question I
22 have is that the way the proposed rule is
23 phrased in Section 105.608(b)(4), the four
24 proposed deleting the phrase where the

1 participant -- well, the applicant -- sorry,
2 petitioner was required to cite to any relevant
3 page numbers in the public comments submitted to
4 the Agency record, the Board was suggesting to
5 delete -- sorry.

6 Once again, Section 105.608(b)(4), the
7 Board suggested deleting the public comments
8 period from requirement to, quote, to the issues
9 phrased in the record. The reason for that was
10 because the Act in Section 40.3(a)(2) requires
11 the participant to cite to the record, not to
12 the record during public comments period. And
13 the question the Board asked was, does Agency
14 consider that requiring the petitioner to cite
15 to the record during the public comment period
16 is narrowing the requirements of the Act because
17 the Act requires to cite to the record. And the
18 Agency admitted that record is broader than the
19 record during public comment period.

20 So the question that is raised is, if
21 the participant wants to raise issues that were
22 raised during the record -- I mean, they are in
23 the record but not during the public comment
24 period, would that be not appropriate?

1 MS. CARTER: The Agency will respond to that
2 question in post-hearing comments. That's a
3 legal question.

4 HEARING OFFICER RABCZAK: And another part of
5 that question, if the petitioner raises the
6 question in the petition that was raised by
7 someone else during the public comment period or
8 before or after public comment period that
9 wasn't raised by the petitioner itself, would
10 that still be appropriate?

11 MS. CARTER: And the Agency will address that
12 in post-hearing comments.

13 HEARING OFFICER RABCZAK: All right. Thank
14 you.

15 Question 26, page 58, PC-1.

16 MS. CARTER: You said 51 or --

17 HEARING OFFICER RABCZAK: Page 58, Question
18 Number 26. The Agency -- I'm sorry, the Board
19 was asking if in Section 204.560 it would be
20 appropriate to replace "by a state or lawful air
21 pollution agency" with "agency." And the
22 Agency's response pretty much was that it's not
23 appropriate to make such replacement.

24 Could you please clarify what other

1 state or local air pollution control agencies
2 would be included except for the Agency?

3 MS. CARTER: The Agency can do that, Madam
4 Hearing Officer. I believe that the Agency did
5 that at the first hearing, but I can be mistaken
6 on my recollection. But we can endeavor to do
7 that again.

8 HEARING OFFICER RABCZAK: That's when you
9 mentioned the City of Chicago example. Can you
10 please list who else you think would be covered
11 by this statement?

12 MS. CARTER: We can endeavor to do that.

13 HEARING OFFICER RABCZAK: Thank you.

14 Page 61, Question 34, so I just want to
15 clarify that the complete notification that the
16 Agency sends to the applicant, as far as I
17 understand, and please correct me, within 30
18 days of receipt of an application, the Agency
19 has to notify the applicant that either the
20 application is complete or identify the
21 deficiency; is that correct?

22 MR. ROMAINE: Yes, that's what's provided
23 for.

24 HEARING OFFICER RABCZAK: So in case there

1 are deficiencies, the applicant submits
2 requested documents. Is there a second notice
3 to the applicant that the application is
4 complete that would start the one -- that the
5 one-year agency -- the one-year deadline for the
6 Agency?

7 MR. ROMAINE: Yes. If an applicant
8 supplements its application, we then determine
9 that the application is complete, there would be
10 a 30-day time period for us to notify the
11 applicant that its updated application is
12 complete. Or, alternatively, if the application
13 is not complete after the additional material,
14 notify them that it's still deficient.

15 HEARING OFFICER RABCZAK: Okay. So the
16 scenario will be that the applicant submits
17 application, within 30 days the Agency notifies
18 them. Let's say it's incomplete. Then they
19 have time to submit documents, then you would
20 calculate another 30 days from when they submit
21 the required documents to give them a second
22 notice?

23 MR. ROMAINE: That is correct.

24 HEARING OFFICER RABCZAK: And then, again, if

1 it's not complete and they submit documents,
2 then it will be another 30-day period and a
3 third notice of completeness or deficiency?

4 MR. ROMAINE: That is correct.

5 HEARING OFFICER RABCZAK: Page 69, Question
6 38.b.1-2, so during the first hearing, the
7 question I was asking is when the Agency makes
8 -- uses its discretion to help grant the PAL,
9 could the Agency identify some reasons or some
10 criteria it will take into account to not grant
11 the PAL. And the Agency pointed in the response
12 to that, to the response to previous question.
13 And in that question, which is i-1, the Agency
14 did not provide any additional criteria it might
15 use while exercising its discretion not to use
16 PAL.

17 So I will just ask the Agency to update
18 that question one more time.

19 The question is, again, as was
20 established through the answers that Agency does
21 have a discretion to not grant PAL even when the
22 applicant complies with all the requirements.
23 The question I have is, while exercising the
24 discretion not to grant, are there any criteria

1 that the Agency knows of, any reasoning that the
2 Agency has in mind at this point that it will be
3 used to not grant PALs while exercising its
4 discretion.

5 MR. ROMAINE: We will provide a further
6 response in our written post-hearing comments.
7 However, I call your attention to the last
8 paragraph in our response to the i-1 where we
9 state that the Illinois EPA would not object to
10 alternative wording that would require action on
11 an application for a PAL permit. The Illinois
12 EPA does not expect that this would prevent SIP
13 approval as any PAL permit that would be issued
14 would be required to comply with the relevant
15 requirements for PAL permits.

16 HEARING OFFICER RABCZAK: I don't have any
17 more follow-up questions. Does anybody else?

18 MS. DRIVER: Madam Hearing Officer, just one
19 follow-up to the question that you raised about
20 the completeness notification, the Agency has
21 talked about Section 204.1300, which is the
22 notification of completeness or of deficiency
23 and then 204.1330 which states "that within one
24 year after receipt of a complete application a

1 permit shall be granted or denied by the
2 Illinois EPA."

3 If the Agency does not issue a
4 completeness determination or notification of
5 deficiency within 30 days of submittal, what is
6 the Agency's position on the start date for the
7 one-year clock in 204.1330?

8 HEARING OFFICER RABCZAK: You're talking
9 about Question 34, correct, on page 61?

10 MS. DRIVER: Correct.

11 MS. CARTER: The Agency will respond to this
12 in post-hearing comments, although I would like
13 to point out that I believe that the Agency has
14 already addressed this question in PC number 1
15 in its response to Question 49.

16 But the Agency to the extent it has not
17 answered that question will respond. But like I
18 said, I believe we previously responded to this
19 question by Ms. Driver.

20 MS. DRIVER: And, Ms. Carter, I see the
21 answer to Question 49 addresses the absence of a
22 notification if the application is patently
23 incomplete. I guess my question is also
24 considering the opposite circumstance where

1 there is no such obvious incompleteness.

2 MS. CARTER: And as I said before, to the
3 extent that we have not answered that question,
4 we will address it in post-hearing comments.

5 MS. DRIVER: Thank you.

6 HEARING OFFICER RABCZAK: Question 49, I just
7 want to clarify, when the Agency receives an
8 application whether it's patently complete or
9 patently incomplete, doesn't that trigger a
10 30-day response requirement?

11 MR. ROMAINE: That is asking a legal
12 question. We will respond to it in our written
13 response.

14 The position that we would like to
15 fully evaluate is whether or not the application
16 that is patently incomplete triggers that
17 obligation. One of the circumstances that
18 commonly occurs with PSD applications is that
19 the air quality modeling, an essential part of
20 the PSD application, does not accompany the
21 additional submittal.

22 In those circumstances, we're
23 questioning whether there is a need to go
24 through the formality of preparing a formal

1 notice of completeness when it is patently
2 obvious on the face of the application that an
3 essential element has not been provided and it
4 is proposed to be forthcoming.

5 HEARING OFFICER RABCZAK: And that -- why
6 wouldn't that be addressed by the notice
7 indicating the deficiencies? Can't you just
8 note the deficiencies in your response for the
9 30 days saying the essential part is missing?

10 MR. ROMAINE: When looking at it, it's more
11 complicated than that because it also affects
12 the timing of the original application if it
13 takes, for example, six months before the air
14 quality modeling is submitted, it may mean that
15 the material that was initially submitted was
16 deficient.

17 So it is not as simple as saying, well,
18 you haven't provided the modeling. There might
19 be other aspects of the application that are
20 incomplete. And the timing of that deficiency,
21 that determination, is more appropriately tied
22 to when the applicant thinks that they have
23 provided an application that they believe is
24 complete.

1 HEARING OFFICER RABCZAK: Wouldn't you agree
2 that the applicant 30 days not receiving any
3 information from the Agency would consider that
4 to be a violation of Agency obligations to
5 respond and provide notice?

6 MS. CARTER: That is a legal question and we
7 will respond to that in post-hearing comments.

8 HEARING OFFICER RABCZAK: Would the Agency
9 like to propose any additional language to
10 address this particular circumstance when
11 the application is patently incomplete and
12 provide some criteria for that?

13 MR. ROMAINE: We'll address that in
14 post-hearing comments.

15 HEARING OFFICER RABCZAK: It's 12:37. And
16 does anybody else have any questions or
17 comments?

18 Does anybody have any questions or
19 comments in Chicago?

20 MS. PAPADIMITRIU: No.

21 HEARING OFFICER RABCZAK: In Springfield?

22 This pretty much concludes our hearing
23 today. And we will not be -- we will not meet
24 tomorrow.

1 There are a couple of questions that
2 the Agency agreed to respond to in the
3 post-hearing comments. If any of the
4 participants feels like we need another hearing
5 to address those, we can certainly have your
6 comments in the motions.

7 Other than that, we only have two
8 hearings, one for this proceeding. And without
9 any further requests, this completes our hearing
10 process.

11 And now the next step will be to file
12 your post-hearing comments. Typically we
13 provide two weeks for that. But I just want to
14 open it up for you to decide whether that's
15 appropriate, whether that's enough time.

16 MS. CARTER: As an initial matter, the Agency
17 would ask how long it's going to take to get the
18 transcript.

19 HEARING OFFICER RABCZAK: The transcript
20 usually comes within five business days. So we
21 would expect it to be available next Wednesday.

22 THE COURT REPORTER: Yes.

23 MS. CARTER: Given the fact that there is no
24 statutory deadline associated with this

1 rulemaking and given the fact that the staff
2 that is here on behalf of the Agency is not
3 regulatory staff but has permitting work that
4 has to get done as well for this Agency, two
5 weeks is not a sufficient amount of time for the
6 Agency at this point in time.

7 HEARING OFFICER RABCZAK: Okay. How much
8 time would you expect you would need?

9 MS. CARTER: Assuming that the Agency gets
10 the transcript on or about March 6th, we are
11 looking at Friday, April 5th.

12 HEARING OFFICER RABCZAK: Does anybody have
13 any objections to that?

14 MS. DRIVER: IERG does not, Madam Hearing
15 Officer. Just so we understand what our
16 obligations and opportunities are, IERG would
17 also have the same deadline for its post-hearing
18 comments as well. That should be fine.

19 We would, however, like to have the
20 opportunity to be able to respond, if necessary,
21 after April 5th to whatever the Agency files on
22 that day and that doesn't have to be a long
23 period of time. And I don't even know that we
24 would exercise that option, but I just want to

1 provide for it if needed.

2 HEARING OFFICER RABCZAK: Would two weeks
3 before that be appropriate?

4 MS. DRIVER: I believe so.

5 HEARING OFFICER RABCZAK: What about Chicago,
6 any comments, any objections?

7 MS. PAPADIMITRIU: No.

8 HEARING OFFICER RABCZAK: Let's set
9 April 5th, we will set it as a deadline for the
10 first round of post-hearing comments from both
11 the participants. And then two weeks from then,
12 which is April 15th, will be the deadline for
13 the response post-hearing comments.

14 MS. DRIVER: Thank you.

15 HEARING OFFICER RABCZAK: And I will issue
16 the hearing officer order indicating those
17 dates.

18 And on that, I would like to thank
19 everybody for participating today. And as I
20 mentioned on the record, the record will be
21 available in five business days -- the
22 transcript will be available in five business
23 days on the website.

24 Questions or public comments will also

1 be available online.

2 And do we have any other matters that
3 need to be addressed at this point?

4 MS. PAPADIMITRIU: No.

5 HEARING OFFICER RABCZAK: With that, I would
6 like to adjourn this hearing and thank
7 everybody.

8 (End of hearing.)

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1 STATE OF ILLINOIS)
2 COUNTY OF LAKE) SS:

3 I, Cheryl L. Sandeck, a Notary Public
4 within and for the County of Lake and State of
5 Illinois, and a Certified Shorthand Reporter of
6 the State of Illinois, do hereby certify that I
7 reported in shorthand the proceedings had at the
8 taking of said hearing and that the foregoing is
9 a true, complete, and correct transcript of my
10 shorthand notes so taken as aforesaid, and
11 contains all the proceedings given at said
12 hearing.

13
14
15 _____
16 Illinois Notary Public, Lake County,
17 C.S.R. License No. 084-03710
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19
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