

In The Matter Of:
ILLINOIS POLLUTION CONTROL BOARD

HEARING
September 26, 2024

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ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM.) R25-17
CODE 217, NITROGEN OXIDES) (Rulemaking - Air)
EMISSIONS)

HEARING
September 26, 2024
10:00 a.m.
1021 North Grand Avenue
Springfield, IL

BOARD MEMBERS PRESENT

Michael Mankowski

BOARD STAFF PRESENT

Anupama Paruchuri, Advisor to Mr. Mankowski
Anand Rao, Chief Environmental Scientist

Reported In Person By:

Brenda L. Zeitler
CSR, License No. 084-004062
Area Wide Reporting & Video Conferencing
301 West White Street
Champaign, Illinois 61820
(800) 747-6789

1 HEARING OFFICER:

2 MR. DANIEL PAULEY
3 Illinois Pollution Control Board
4 60 East Van Buren Street, Suite 630
5 Chicago, Illinois 60605
6 (312) 814-6931
7 daniel.pauley@illinois.gov

8 FOR THE IEPA

9 MS. GINA ROCCA FORTE
10 Assistant Counsel
11 and
12 DANA VETTERHOFFER
13 Deputy General Counsel
14 1021 North Grand Avenue East
15 P.O. Box 19276
16 Springfield, Illinois 62794-9276
17 (217) 782-5544
18 gina.roccafort@illinois.gov
19 dana.vetterhoffer@illinois.gov

20 FOR THE ILLINOIS ATTORNEY GENERAL

21 MS. MALLORY MEADE
22 MS. RACHEL MEDINA
23 MS. SEETA GOYAL
24 Assistants Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
mallory.meade@ilag.gov
rachel.medina@ilag.gov
seeta.goyal@ilag.gov

FOR THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

MR. TREJAHN HUNTER
215 East Adams Street
Springfield, Illinois 62701
thunter@ierg.org

1 **ALSO PRESENT:**

2 **RORY DAVIS - Manager of the Regulatory**
3 **Development Unit in the Air**
4 **Quality Planning Section, Bureau**
5 **of Air**

6 **KYLE SOTTORIVA - Environmental**
7 **Protection Engineer 3, Regulatory**
8 **Development Unit, Air Quality**
9 **Planning Section, Bureau of Air**

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13 **I N D E X**

14 **Questions by Ms. Meade for the IEPA 7**
15 **Questions by Mr. Hunter for the IERG 14**
16 **Questions by the Board read by Mr. Davis 69**

17

18 **EXHIBITS:**

19 **EXHIBIT A 6**
20 **Witnesses' Prefiled Testimony**

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1 HEARING OFFICER PAULEY: Good morning and
2 welcome to this Illinois Pollution Control Board
3 hearing. My name is Daniel Pauley, and I'm the
4 Hearing Officer for this rulemaking proceeding
5 entitled "Amendments to 35 Illinois Administrative
6 code 217, Nitrogen Oxide Admissions. The Board docket
7 number for this rulemaking is R25-17.

8 Also present today from the Board are Board
9 Member Michael Mankowski. Board Staff present are
10 Anand Rao of the Board's Technical Unit and advisor to
11 Member Mankowski, Anu Paruchuri.

12 This hearing is governed by the Board's
13 procedural rules. All information that is relevant
14 and that is not repetitious or privileged will be
15 admitted into the record.

16 Please bear in mind that any questions posed
17 today by the Board and its staff are intended solely
18 to help develop a clear and complete record for the
19 Board's diction and do not reflect any decision on the
20 proposal, testimony, or other questions.

21 For the sake of our court reporter, please
22 speak clearly and avoid speaking at the same time as
23 another person so that we can help produce a clear
24 transcript.

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1 The Illinois Environmental Protection Agency
2 filed this rulemaking proposal with the Board on July
3 18, 2024. In early August 2024, notice was published
4 for this hearing in all 11 air regions across the
5 state. On July 30, 2024, the Hearing Officer directed
6 participants intending to testify at this hearing to
7 prefile their testimony by August 21, 2024. On that
8 date, the Board received prefiled testimony on behalf
9 of the Agency by Rory Davis. No other participants
10 prefiled testimony.

11 Since there was nobody who signed up for
12 public comment, we'll go straight into the questions.

13 would the court reporter please swear in the
14 agency witness, Mr. Davis.

15 MR. DAVIS: Can we swear in Kyle Sottoriva
16 also?

17 HEARING OFFICER PAULEY: Yes.

18 MS. VETTERHOFFER: Rory prefiled testimony,
19 but Kyle Sottoriva might be assisting Rory in some of
20 the responses.

21 HEARING OFFICER PAULEY: That sounds good.
22 Thank you.

23 (Rory Davis and Kyle Sottoriva
24 duly sworn to tell the truth.)

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1 HEARING OFFICER PAULEY: Thank you. As
2 mentioned earlier, the prefiled testimony is entered
3 into the record as if read.

4 Would the Agency like to have the witness's
5 prefiled testimony made a hearing exhibit?

6 MS. ROCCAFORTE: Yes, that's fine. We move
7 that it be entered.

8 HEARING OFFICER PAULEY: That will be
9 Exhibit A, hearing no objections. Exhibit A.

10 Does the Agency wish to offer a brief
11 introduction or summary?

12 MS. ROCCAFORTE: No, but I can introduce
13 everyone who is here, if you would like.

14 MR. PAULEY: That would be great. Thank
15 you.

16 MS. ROCCAFORTE: I'm Gina Roccaforte,
17 Assistant Counsel on behalf of the Illinois
18 Environmental Protection Agency. With me today is
19 Dana Vetterhoffer, Deputy General Counsel; Rory Davis,
20 Manager of the Regulatory Development Unit in the Air
21 Quality Planning Section in the Bureau of Air; and
22 Kyle Sottoriva, Environmental Protection Engineer 3,
23 in the Regulatory Development Unit in the Air Quality
24 Planning Section, also in the Bureau of Air.

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1 HEARING OFFICER PAULEY: Thank you very
2 much. Then if the Agency is ready, we'll proceed with
3 the questions. We'll first begin with questions from
4 the Illinois Attorney General's Office, then move to
5 the Illinois Environmental Regulatory Group, and then
6 the Board's.

7 Ms. Meade, prefiled questions are entered
8 into the record as if read. If you'd like to start
9 with your first question, we can turn to the Agency
10 for the answers.

11 MS. MEADE: All right. Good morning,
12 everyone. My name is Mallory Meade. I'm with the
13 Illinois Attorney General's Office. My plan today is
14 just to read straight through this list of questions
15 that we filed on September 19. If I speak too quickly
16 or too softly, please just let me know, and I will try
17 and course correct.

18 So if everyone is ready, I will go ahead and
19 get started.

20 IEPA's technical support document states
21 that "the current proposed revisions are intended to
22 satisfy relevant SIP obligations. To this end, the
23 proposal addresses issues raised by USEPA regarding
24 the State's current RACT rules and updates various

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1 aspects of the rules to reflect what is currently
2 considered RACT."

3 IEPA specifies several ways that its
4 proposed regulatory provisions would satisfy Illinois'
5 SIP obligations and modify unapprovable SIP
6 provisions. For instance, "The proposed amendments
7 address these issues and include reducing compliance
8 periods from an ozone season and annual basis to a
9 30-day rolling average basis. . ."

10 Do the proposed changes to Illinois
11 regulations satisfy SIP obligations in other ways that
12 are not specified in the Technical Support Document?
13 If so, please expand on how those provisions would
14 operate.

15 MR. DAVIS: USEPA previously identified
16 deficiencies in the Part 217 NO_x RACT regulations.
17 That's NO_x, and that is oxides of nitrogen. And RACT
18 is R-A-C-T. That's an acronym for Reasonably
19 Available Control Technology. Those will be coming up
20 quite a bit.

21 Specifically, USEPA indicated that an
22 emissions averaging plan is a type of economic
23 incentive program, or an EIP, covered by USEPA's
24 improving quality with economic incentive programs.

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1 That's EPA-452/R-01-001 from January of 2001, which
2 provides guideline requirements for emissions trading
3 programs.

4 USEPA noted two specific issues in Illinois'
5 emissions averaging plan requirements. One, that the
6 EIP guidelines require EIPs, including emissions
7 averaging plans, to provide for a specific emissions
8 cap or an environmental write-off of 10 percent on
9 calculated allowable emissions to generate a benefit
10 to the environment.

11 And two, EIPs for VOC -- which is Volatile
12 Organic Compounds -- or NOx sources controlled for
13 purposes of attaining the ozone standard cannot allow
14 averaging times longer than 30 days. The Agency's
15 proposal addresses these requirements.

16 USEPA also noted a few changes under the
17 record keeping and reporting requirements, including
18 the requirement that compliance records reflect the
19 30- day averaging period and the inclusion of annual
20 hours of operation of emergency or standby units in
21 nonemergency situations and provisions relating to NOx
22 allowances, including but not limited to the
23 prohibition on the use of NOx allowances to offset
24 excess emissions within a non-attainment area -- and

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1 that has an acronym also, NAA -- where such allowances
2 were generated outside of the NAA.

3 In response to USEPA's recommendation
4 regarding the applicability thresholds and emissions
5 limitations and concentrations for various emission
6 units, based upon other states RACT assessments, the
7 Agency is proposing to lower the threshold from 100
8 tons per year to 50 tons per year for all source
9 categories and to lower the unit-rated heat input
10 capacity applicability thresholds for emissions
11 limitations for industrial boilers and process heaters
12 from 100 million Btu per hour to 50 million Btu per
13 hour.

14 The Agency also proposes lowering some of
15 the emissions concentrations for stationary
16 reciprocating internal combustion engines and
17 turbines.

18 In addition, the Agency is proposing to
19 lower the emissions limitations for glass melting
20 furnaces commensurate with the emissions limitations
21 under the Federal Good Neighbor Plan.

22 Lastly, the Agency is adding a requirement
23 for annual compliance certification reports upon
24 USEPA's recommendation.

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1 MS. MEADE: All right. Question 2 is: IEPA
2 identifies several counties as part of the Chicago and
3 Metro-East non-attainment areas. Are any of these
4 counties listed below, or parts of them, considered
5 areas of environmental justice concern? If so, how
6 would emissions reductions from the proposed rules
7 affect these environmental justice communities?

8 And I'll just go ahead and read through this
9 list of areas. Then when I'm done, you can answer, if
10 that's okay.

11 MR. DAVIS: Okay.

12 MS. MEADE: In the Chicago non-attainment
13 area, we have Cook, DuPage, Kane, Lake, McHenry, and
14 Will Counties; Aux Sable and Goose Lake Townships in
15 Grundy County; Oswego Township in Kendall County. And
16 in the Metro-East non-attainment area, we have
17 Madison, Monroe, and St. Clair Counties.

18 MR. DAVIS: I do think you've identified
19 those correctly. However, the Agency will be
20 responding to these questions regarding environmental
21 justice in post hearing comments. The Agency's Office
22 of Community Relations and EJ Officer were involved in
23 the Bureau of Air's outreach efforts, and we have not
24 had sufficient time to confer with them regarding

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1 these questions.

2 The Agency will also be available at the
3 second hearing to answer any follow-up questions.

4 MS. MEADE: Okay. So that includes
5 questions 3 through 5 as well?

6 MR. DAVIS: That's correct.

7 MS. MEADE: Moving on to question number 6,
8 IEPA states --

9 HEARING OFFICER PAULEY: Excuse me one more
10 second. So you'll supply those written answers before
11 the second hearing?

12 MR. DAVIS: Yeah. Question 2, 3, 4, and 5
13 we will submit in writing.

14 HEARING OFFICER PAULEY: Sounds good. Thank
15 you.

16 MS. MEADE: Question 6 is IEPA states that
17 the "State of Illinois is not a party to the
18 underlying Good Neighbor litigation and did not seek
19 or receive a stay."

20 Does this statement reflect that the
21 Illinois Attorney General's Office is representing the
22 State of Illinois before the U.S. Court of Appeals for
23 the D.C. Circuit, the Supreme Court of the United
24 States, other federal courts, and in regulatory

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1 proceedings and matters related to the Good Neighbor
2 Federal Implementation Plan?

3 MR. DAVIS: The Agency agrees that this
4 statement is ambiguous and ultimately should have
5 simply indicated that the State did not seek or
6 receive a stay.

7 MS. MEADE: Okay. On August 5, 2024, USEPA
8 issued a memorandum outlining how it intends to comply
9 with the U.S. Supreme Court's order staying the Good
10 Neighbor Plan pending completion of judicial review.
11 Does anything in this memorandum affect IEPA's
12 proposed regulations in this Pollution Control Board
13 rulemaking docket?

14 MR. DAVIS: No. The Agency only considered
15 some limits that were included in the Good Neighbor
16 Plan to assess what may be considered RACT for some
17 categories of units. Nothing in the memorandum
18 impacts the Agency's proposed regulations.

19 MS. MEADE: Does anything in the U.S.
20 Supreme Court's decision cited by IEPA, any other
21 court ruling concerning the Good Neighbor Plan, or any
22 USEPA Good Neighbor regulation do anything to reduce
23 the Board's authority to adopt air pollution
24 regulations in Illinois that are more stringent than

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1 the minimum requirements set by USEPA?

2 MR. DAVIS: Not to the Agency's knowledge.

3 MS. MEADE: Any follow-up questions? All
4 right. That would be it for us.

5 HEARING OFFICER PAULEY: All right. Thank
6 you very much. We'll give you guys a moment to
7 transfer with IERG to have them set up at the table.

8 Let me know when you guys are set.

9 MR. DAVIS: All set.

10 HARING OFFICER PAULEY: So if both parties
11 there are ready, then ERG, we can begin with your
12 first question.

13 MR. HUNTER: Hello. My name is Trejahn
14 Hunter, T-r-e-j-a-h-n H-u-n-t-e-r, and I am with the
15 Illinois Environmental Regulatory Group, also known as
16 IERG. I'm going to begin by asking some questions;
17 and there may be some follow-up questions, but I will
18 let you know when they're follow-up questions that are
19 separate from the questions listed in our prefiled
20 document.

21 The first area that I'd like to go through
22 is the Agency's Technical Support Document for this
23 proposal.

24 Question 1: Is it correct that USEPA

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1 defines Reasonably Available Control Technology or
2 "RACT" as "The lowest emission limitation that a
3 particular source is capable of meeting by the
4 application of control technology that is reasonably
5 available considering technological and economic
6 feasibility"?

7 MR. DAVIS: Yes.

8 MR. HUNTER: How does the Agency define "a
9 particular source" as utilized by USEPA in the above
10 definition?

11 MR. DAVIS: The Agency believes that USEPA
12 could have been referring to individual emission units
13 or an emission source with multiple emission units.
14 The Agency is not aware that it has ever attempted to
15 define a particular source.

16 MR. HUNTER: Thank you. Question 2: Is it
17 correct that, under Sections 182(b) -- as in boy --
18 (2) and 182(f) -- as in Frank -- of the Clean Air Act,
19 or "CAA," that State Implementation Plan, or SIP, RACT
20 provisions shall apply to major stationary sources of
21 oxides of nitrogen located specifically in a State's
22 non-attainment areas, or "NAAs"?

23 MR. DAVIS: Yes.

24 MR. HUNTER: Question 3: Would the Agency

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1 agree that Illinois' NOx RACT provisions to be
2 approved into Illinois' SIP, as defined by USEPA and
3 pertinent sections of the Clean Air Act must be
4 determined specifically for major stationary sources
5 of nitrogen oxide in the Chicago Metro-East
6 non-attainment areas?

7 MR. DAVIS: Yes.

8 MR. HUNTER: Following up from that, what
9 specific analysis did the Agency perform for major
10 stationary sources of nitrogen oxides in the Chicago
11 and Metro-East non-attainment areas resulting in the
12 determination that the proposed emission limits are
13 achievable by control techniques that are technically
14 feasible and economically reasonable for the
15 particular sources in the Chicago and Metro-East
16 non-attainment areas?

17 MR. DAVIS: The Agency's analyses and
18 reasoning for specific standards and limits are
19 described in the Technical Support Document included
20 in its rulemaking proposal. The Agency has also
21 conducted outreach with potentially affected sources
22 and has been in communication with particular sources
23 that have indicated that there may be a need for
24 additional flexibility in order to comply.

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1 MR. HUNTER: Question 3(b): Did the Agency
2 consider conducting source specific information
3 requests prior to drafting the proposal to better
4 understand the technical and financial impacts that
5 the proposed revisions may have on probably affected
6 sources in the Chicago and Metro-East non-attainment
7 areas?

8 MR. DAVIS: The Agency conducted a thorough
9 analysis of the information available to it about
10 potentially affected sources prior to and during the
11 drafting process for the proposed revisions. Prior to
12 filing the rulemaking proposal, the Agency conducted
13 outreach with potentially affected sources and reached
14 out to individual sources. The Agency continues to
15 discuss potential revisions with sources with which it
16 has been in communication.

17 MR. HUNTER: Question 3(c): What types of
18 information did the Agency use to understand the
19 technical and financial impacts of the proposed
20 revisions on potentially affected source in the
21 Chicago and Metro-East non-attainment areas?

22 MR. DAVIS: The agency used a wide array of
23 information available to it about potentially affected
24 sources in the non-attainment areas as well as the

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1 references documented in the Technical Support
2 Document to analyze the technical and economic impacts
3 of the proposed revisions.

4 Information about the potentially affected
5 sources included unit types, historical emissions,
6 historical unit utilizations, unit capacities,
7 emission rates, et cetera.

8 MR. HUNTER: To follow up, was that
9 information that you reviewed for units located in the
10 Chicago and Metro-East non-attainment areas
11 specifically?

12 MR. DAVIS: Yes. Yes. The analysis was
13 done on sources located in the non-attainment areas
14 and the individual units at those sources.

15 MR. HUNTER: Thank you. Question 3(d):
16 Before filing the proposal, did the Agency review
17 information regarding potentially affected sources
18 that contradicts the Agency's determination that the
19 proposed emission limits are achievable by control
20 techniques that are technically feasible and
21 economically reasonable for particular sources in the
22 Chicago and Metro-East non-attainment areas?

23 MR. DAVIS: As stated, the Agency has been
24 in communication with some individual sources that

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1 have indicated that the proposed revisions could pose
2 compliance challenges.

3 MR. HUNTER: To follow up, question 3(d)(i),
4 has the Agency amended the proposed revisions prior to
5 filing its proposal with the Board in light of any
6 information that came before filing the proposal?

7 MR. DAVIS: The Agency did amend some
8 aspects of the proposed revisions in response to
9 information received during outreach.

10 MR. HUNTER: So I would believe that your
11 answer to 3(e) would be the same, that you've spoken
12 to some sources that have indicated the potential need
13 for some compliance extensions or variance thereof,
14 right?

15 MR. DAVIS: Yes. We are in communication
16 with sources. The Agency will continue to consider
17 additional potential revisions.

18 MR. HUNTER: How has -- in Question 3(e)(i),
19 how has the Agency thereafter determined what RACT is
20 for particular sources in the Chicago and Metro-East
21 non-attainment areas in light of that new information?

22 MR. DAVIS: The Agency has not changed its
23 position on what constitutes RACT, which is the
24 definition of RACT.

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1 MR. HUNTER: But you agree that RACT is for
2 particular sources, correct?

3 MR. DAVIS: Yes. Yes. Reasonably
4 achievable.

5 MR. HUNTER: Question 4: Did the Agency
6 consider any other economic factors for potentially
7 affected sources in the Chicago and Metro-East
8 non-attainment areas beside the costs of adding
9 emission controls or implementing new control
10 strategies in its economic reasonableness analysis?

11 MR. DAVIS: Yes.

12 MR. HUNTER: Could you specify what other
13 economic factors the Agency considered?

14 MR. DAVIS: The Agency considered other
15 economic factors such as remaining useful life of
16 emission units, marginal costs of additional controls
17 over existing controls.

18 MR. HUNTER: Question 5: Is it correct
19 that, in the Agency's Appendix to the Technical
20 Support Document, there are approximately 60
21 potentially affected sources in the Chicago and
22 Metro-East non-attainment areas that the Agency has
23 identified as not having any economic impact from the
24 proposed revisions?

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1 MR. DAVIS: No. The Agency is not certain
2 what IERG is referring to with those 60 potentially
3 affected sources.

4 MR. HUNTER: Would you like clarification?

5 MR. DAVIS: Sure.

6 MR. HUNTER: We would like to follow up with
7 this question, if that's all right with you.

8 MR. DAVIS: Sure.

9 MR. HUNTER: Thank you. Question 6, can the
10 Agency define "additional emission controls" and "new
11 control strategies" as applied on pages 4 and 5 of the
12 Technical Support Document?

13 MR. DAVIS: "Additional emission controls"
14 and "new control strategies" refer to control
15 strategies and equipment not currently in place to
16 comply with existing Part 217 rules.

17 MR. HUNTER: In which specific categories
18 did the Agency determine that all subject sources
19 could achieve compliance without additional emission
20 controls?

21 MR. DAVIS: The Agency determined that
22 compliance with the proposed revisions is likely to be
23 achievable by all subject sources for glass melting
24 furnaces, cement and lime kilns, iron and steel and

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1 aluminum manufacturing, and subpart M electrical
2 generation units.

3 MR. HUNTER: Are any of those listed
4 categories -- are there sources located in the
5 Appendix of the Technical Support Document?

6 MR. DAVIS: To my knowledge, there are no
7 cement and lime kilns in the non-attainment areas.
8 Could you restate the question?

9 MR. HUNTER: Yeah. So are there any sources
10 of nitrogen oxides that are listed in the categories
11 that you answered for Question 6 that are located in
12 the Appendix to the Technical Support Document?

13 MR. DAVIS: Yes. There are glass melting
14 furnaces and sources that would fall under the iron
15 and steel and aluminum manufacturing; and to my
16 knowledge, there are no longer any subpart M
17 electrical generation units or cement and lime kilns
18 in the non-attainment areas.

19 MR. HUNTER: Now, circling back to Question
20 5 that we just recently skipped, is it correct that,
21 in the Agency's Appendix to the Technical Support
22 Document, there are sources that you have identified
23 that will have -- that will not need to implement any
24 new control strategies?

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1 MR. DAVIS: I believe we have, in our
2 analysis, identified a number of sources. I don't
3 know that there would be 60 of them, and I don't know
4 which ones you're referring to.

5 MR. HUNTER: Moving on to Question 7, what
6 specific available information regarding NOx control
7 strategies has the Agency reviewed in drafting the
8 proposal?

9 MR. DAVIS: As stated, the Agency reviewed a
10 wide array of information regarding NOx control
11 technologies that were referenced in the TSD. Those
12 are the menu of control options and a number of other
13 references in there.

14 MR. HUNTER: Thank you. Question 8, at this
15 time, how many Title V sources within the Chicago and
16 Metro-East non-attainment areas does the Agency expect
17 would be subject to the proposed revisions?

18 MR. DAVIS: So the Technical Support
19 Document has an appendix, and I believe there are --
20 I'm not certain as to the total number. I did have my
21 people run those sources, and 66 of them are Title V
22 sources.

23 MR. HUNTER: Next, I'd like to move on to
24 the proposed amendments to Part 217.150 concerning

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1 applicability.

2 Question 9, is it correct that lowering the
3 applicability threshold from 100 tons per year to 50
4 tons per year is not federally required at this time
5 but is instead intended to proactively address
6 potential future Clean Air Act requirements?

7 MR. DAVIS: Yes.

8 MR. HUNTER: Is it correct that the Agency
9 -- excuse me. Question 9(a), is it correct that the
10 Agency cannot produce estimates for how many
11 newly subject sources there will be nor estimates for
12 the impact to NOx emission reductions that these newly
13 subject sources will have?

14 MR. DAVIS: The Agency's Appendix includes
15 sources that are potentially newly subject to the
16 rule. It's difficult to estimate emission reductions
17 from the newly subject sources for the same reason
18 given in response to -- yeah, we'll have to pull out a
19 -- we didn't know which was going to go first, but we
20 kind of wrote this for the Boards.

21 So estimates of actual emission reductions
22 from the proposed revisions is difficult to provide,
23 because the proposed rules contain a number of
24 compliance flexibilities and options for sources to

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1 limit source-wide and unit-specific emissions below
2 applicability thresholds. Thus, it would be difficult
3 to estimate actual emission reductions rather than
4 potential or allowable emission reductions.

5 At a given source, the Agency may be able to
6 evaluate what potential compliance options are
7 available or likely, but an attempt to aggregate
8 estimates of actual emission reductions from all the
9 potentially subject sources would involve a high
10 degree of uncertainty.

11 MR. HUNTER: So in the Agency's opinion, are
12 these sources listed in the Appendix to the Technical
13 Support Document an exhaustive or comprehensive list
14 of the sources that the Agency believes will be
15 subject to the proposed revisions?

16 MR. DAVIS: Based on our analysis, we
17 believe so. I can give you some idea of how these
18 analyses went. We have all of the sources in the
19 non-attainment areas that emit NOx. We then have
20 their emission units and their historical emissions,
21 what may be in permits as allowable emissions.

22 So there were quite a few sources that, in
23 our database, may have said, you know, their allowable
24 emissions may have been 120 tons or 75 tons. When you

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1 look at their actual emissions over the last few
2 years, they may have had zero emissions over the last
3 three years, so probably not potentially subject; or
4 they could have been in the range of 8 to 10 or 12
5 tons per year.

6 I think that the potentially affected
7 sources that the Agency provided in the Appendix was
8 probably more than we think may be actually subject.
9 So while it may not be exhaustive, I think we are
10 probably being conservative in the number that would
11 be subject.

12 MR. HUNTER: Just to follow up from your
13 response, would you say that, although you believe
14 that you have been -- you've probably been
15 conservative in your estimate, would you say that
16 there's still a potential for there to be sources that
17 were not included that may be subject to the newly
18 proposed revisions?

19 MR. DAVIS: I would say it would be very
20 unlikely.

21 MR. HUNTER: Okay. Thank you.

22 MR. DAVIS: Unless, of course, we've just
23 missed something for another reason. But the
24 methodology behind our analysis should prevent

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1 something like that happening.

2 MR. HUNTER: Okay. Thank you. Question
3 9(b), I'd like to know how the Agency weighed the
4 interests of preemptively lowering the applicability
5 threshold from 100 tons per year to 50 tons per year
6 against the unknown compliance capabilities by May 1
7 of 2025 and for what seems to be an unknown number of
8 potentially affected sources.

9 MR. DAVIS: The Agency conducted outreach
10 and reached out to individual sources that it
11 determined may have -- and is this Question 9(b)?

12 MR. HUNTER: Correct.

13 MR. DAVIS: So we did conduct outreach and
14 two individual sources that it determined may have
15 compliance issues to assess compliance capabilities
16 and to discuss potential compliance flexibilities with
17 those individual sources.

18 MR. HUNTER: Thank you. I'm going to just
19 restate this question and see if it helps to get a
20 different response. I'm interested in hearing how the
21 Agency weighed the interests here of wanting to
22 preemptively lower the applicability threshold,
23 considering a potential bump-up to serious
24 non-attainment versus these unknown compliance

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1 capabilities and unknown potentially affected sources.
2 Does that question help?

3 MR. DAVIS: Yeah. I don't know that I fully
4 understand. Well, I can say I'm not the Agency; and
5 so I don't know how the Agency would fully have
6 weighed those.

7 Certainly, the lowering of the applicability
8 threshold from 100 to 50 tons per year on a
9 source-wide basis was proposed because we believe that
10 both non-attainment areas will become serious possibly
11 as early as November this year. So in that case, we
12 would be back with another rulemaking quite shortly to
13 meet those federal requirements.

14 And then in weighing that against the
15 unknown compliance capabilities, I don't believe that
16 we do have unknown compliance capabilities. I think
17 we did do a fairly thorough analysis of which sources
18 we thought are newly -- would possibly be newly
19 subject and made an effort to assess their compliance
20 abilities.

21 So I don't know if they were unknown
22 compliance capabilities. I think we did make efforts
23 to communicate with those sources that we thought may
24 be caught between.

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1 MR. HUNTER: To follow up from your
2 response, Rory, you mentioned that the bump-up to
3 serious non-attainment could be as early as November,
4 has there been any USEPA action on this, or is it
5 possible that the bump-up could occur later, perhaps
6 in 2025?

7 MR. DAVIS: Yeah. I should have caveated
8 that. That was something I heard from yesterday from
9 USEPA, as early as November.

10 Our attainment date was in August of this
11 year. When I have spoken to -- well, whoever I go
12 speaking to in groups and whatnot, when I get the
13 question of when do we expect it, generally USEPA
14 takes six months to do anything. So November would be
15 early, but I think they are kind of trying to get
16 ahead of things.

17 The last bump-up -- and when I say
18 "bump-up," I mean reclassification from. That would
19 have been from marginal non-attainment to moderate,
20 and this would have be a reclassification from
21 moderate to serious. The previous reclassification
22 that we had, the attainment date was in August. It
23 was a full year to the next August, and the
24 reclassification happened in October of that following

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1 year. So that was over a year.

2 I do know that certain groups are unhappy
3 about that; so I think USEPA is making an effort to
4 get those published in a more timely manner. So, yes,
5 it could be well after November. The short answer to
6 the long explanation is we don't know how long it will
7 take for USEPA to publish the reclassification.

8 MR. HUNTER: Thank you for my next question,
9 I'd like to draw your attention to Part 217.152 of the
10 proposed amendments concerning the compliance date and
11 the 30-day rolling average basis.

12 Question 10, has the Agency had any
13 communications with potentially affected sources who
14 have conveyed that they will need additional time for
15 capital planning, expenditures, permitting, installing
16 additional emission controls or testing devices,
17 resulting in the Agency's determination that an
18 extension from the May 1, 2025, compliance date is
19 appropriate?

20 MR. DAVIS: Yes, we have.

21 MR. HUNTER: Will the opportunity to request
22 a compliance date extension be available for other
23 potentially affected sources?

24 MR. DAVIS: Yes. However, anyone requesting

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1 a later compliance deadline will need to sufficiently
2 demonstrate that necessity.

3 MR. HUNTER: How can sources take advantage
4 of this opportunity and demonstrate that sufficient
5 necessity?

6 MR. DAVIS: I think, in a number of cases,
7 sources that we've been in communication with have
8 already been doing just that. Generally, it would be
9 explaining what a capital project would look like,
10 what that would result in, emission reductions that
11 would result from those, the amount of time that may
12 take, and also possible revisions to the proposed
13 language that we have before the Board now.

14 Q. Thank you. Question 10(b), outside of --

15 HEARING OFFICER PAULEY: Mr. Hunter, we have
16 a follow-up here.

17 MR. RAO: You just mentioned circumstances
18 under which the compliance state may be extended, and
19 you did say there may be revisions to the rule. When
20 would those revisions be proposed? Would that be part
21 of this rulemaking, or is it a different rulemaking?

22 MR. DAVIS: The Agency anticipates within
23 this rulemaking. We have been working on language.
24 We were actually hoping to get it filed with the Board

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1 prior to this hearing, and then, you know, we have
2 been working on responses to the comments that came in
3 last Thursday. But we think we are relatively close
4 to having something to file soon.

5 MR. RAO: Before the second hearing?

6 MR. DAVIS: Yes. Yes.

7 MR. RAO: Thank you.

8 MR. DAVIS: And I can say that the Agency
9 again -- say again that the Agency will be available
10 for testimony and questions at the second hearing.

11 HEARING OFFICER PAULEY: Mr. Hunter, go
12 ahead.

13 MR. HUNTER: In the proposed revisions that
14 you just spoke of in your follow-up response, does the
15 Agency plan on including any other alternative
16 compliance options for potentially affected sources
17 who will need additional time from the May 1, 2025,
18 compliance date?

19 MR. DAVIS: The agency is willing to
20 consider other alternative compliance options for
21 sources on a case-by-case basis.

22 MR. HUNTER: Thank you. For my next
23 question, I'd like to draw your attention to Part
24 217.157 of the proposed amendments for testing and

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1 monitoring.

2 Question 11, is the Agency willing to revise
3 Section 217.157 to include that representative pair
4 testing is allowed where a source has identical
5 emission units during the normal five-year testing
6 interval?

7 MR. DAVIS: The Agency is willing to
8 consider language for such testing if it is provided.

9 MR. HUNTER: Question 12, will the Agency
10 require sources to specify in testing protocols and
11 subsequent testing reports whether testing was
12 performed at maximal operator capacity or normal
13 maximum load in accordance with Sections 217.157(a) --
14 as in apple -- (8) upper case (A) -- as in apple --
15 and upper case (B) -- as in boy?

16 MR. DAVIS: The Agency intended for the
17 testing protocols to remain unchanged from existing
18 part 217 rules.

19 MR. HUNTER: To specify this question, will
20 sources be required to specify in their testing
21 protocols and in their testing reports whether the
22 testing was performed at those particular levels?

23 MR. DAVIS: Well, as I said, the Agency
24 intends for those protocols or that language to remain

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1 the same. I do believe there's other possible ways
2 that have already been submitted to the Agency. They
3 involve alternatives that could possibly be approved
4 with Agency authorization, written Agency approval, as
5 we have in other parts of that same section.

6 MR. HUNTER: Moving on to Question 13, is
7 the Agency willing to revise and clarify Section
8 217.157(a) -- as in apple -- (4) to state that owners
9 or operators with emission units subject to the
10 proposed rule have two options, to either install a
11 CEMS following 40 CFR 60 subpart A and appendix B,
12 Performance Specifications 2 and 3, and appendix F,
13 Quality Assurance Procedures, or conduct a performance
14 test?

15 MR. DAVIS: The Agency believes that these
16 options are available to affected sources as currently
17 proposed in Sections 217.157(a)(4) and 217.157(a)(6).

18 MR. HUNTER: Is the Agency willing to
19 include in Section 217.157(a)(4) the alternative
20 option of performing or conducting a performance test
21 that's found in (a)(6) and (a)(4), please?

22 MR. DAVIS: When we were discussing the
23 response to this question, I think what we landed on
24 was we think that what is in the question is currently

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1 the intent of the Agency, to allow for that, and that
2 -- and I'm forgetting exactly how that language looks,
3 but we do believe that the question refers to
4 something that the Agency intended to be a
5 possibility; and if that's not clear, then certainly
6 we'd consider any language that would clarify that.

7 MR. HUNTER: Thank you.

8 MR. DAVIS: If necessary.

9 MR. HUNTER: Question 14, is the Agency
10 willing to add a new subsection that would be (a)(8)
11 to Section 217.157 with language that provides owners
12 or operators with emission units subject to the
13 proposed rule the opportunity to submit alternative
14 monitoring plans where installing monitoring or
15 testing facilities for individual emission units is
16 not possible and those units further demonstrate
17 unique monitoring and performance testing situations?

18 MR. DAVIS: The Agency is willing to
19 consider language that would allow for alternative
20 monitoring plans with prior written approval by the
21 Agency.

22 MR. HUNTER: Thank you. Question 15, is the
23 Agency willing to revise the performance test
24 operating level under Section 217.157(a) -- as in

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1 apple -- (7) upper case (A) -- as in apple -- of the
2 proposed rule to be consistent with the operating
3 level requirement for CEMS relative accuracy test
4 audits, or RATAS, which, under 40 CFR 60 Appendix B,
5 Performance Specification 2, Section 8.4.1 requires
6 operators of emission units equipped with CEMS to
7 conduct a RATA annually at a level greater than 50% of
8 normal load?

9 MR. DAVIS: The Agency does not agree that
10 the requirements for a RATA are equivalent to
11 requirements to perform emissions testing at maximum
12 operating capacity load or normal maximum load.
13 Emissions tests pursuant to Section 217.157(a)(8)(A)
14 -- capital A for the last A -- are for units not being
15 monitored by CEMS.

16 A RATA functions to ensure that the CEMS is
17 accurately monitoring NOx emissions at various
18 capacity factors and has no connection to the load
19 threshold required for emissions testing.

20 Emissions testing, in general, is always
21 performed at or near maximum capacity to measure
22 potential worst case emission scenarios.

23 MR. HUNTER: Thank you. Question 16, is the
24 Agency willing to revise Section 217.157(d) of the

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1 proposed rule to provide similar flexibility for
2 multiple heaters venting to a common stack relying on
3 a performance test? More specifically, is the Agency
4 willing to revise Section 217.157(d) of the proposed
5 rule to include that:

6 "If two or more emission units
7 subject to Subpart E, F, G, H, I, M,
8 or Q of this Part are served by a
9 common stack and the owner or
10 operator of such emission units is
11 conducting a performance test, the
12 owner or operator may, with written
13 approval from the Agency, utilize a
14 single performance test for the
15 combination of emission units
16 subject to Subpart E, F, G, H, I, M,
17 or Q of this Part that share the
18 common stack, provided such emission
19 units are subject to an emissions
20 averaging plan under this Part."

21 MR. DAVIS: The Agency is still considering
22 this revision.

23 MR. HUNTER: Question 17, is the Agency
24 willing to revise Section 217.157 of the proposed rule

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1 to provide for a reduction in the reporting burden in
2 such scenarios where a facility with emission units
3 that are individually compliant with the emission
4 limits but are using a common stack and thus subject
5 to subsection (d), which implies the requirement of
6 using an emission averaging plan and thus the
7 reporting requirements that come from using an
8 emission averaging plan?

9 MR. DAVIS: The Agency is also still
10 considering that revision. And the next question to
11 answer is the same.

12 MR. HUNTER: Question 18 is the same?

13 MR. DAVIS: 17(a), the follow-up.

14 MR. HUNTER: Thank you. If it's all right
15 with the Hearing Officer, I'd like to ask a question
16 that came in after the prefiled questions deadline.

17 HEARING OFFICER PAULEY: Yeah, that's fine.

18 MR. HUNTER: Thank you. This is still for
19 the same section concerning testing and monitoring,
20 Part 217.157.

21 Can the Agency clarify the compliance and
22 reporting requirements for units that may take months
23 or even years to produce 30 operating days to
24 calculate actual emission units where these units are

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1 not emergency or standby units?

2 MR. DAVIS: So the question is can we
3 clarify how an emissions averaging period would be
4 defined if it were to take multiple months or years in
5 order to have 30 operating days to have in the
6 averaging period?

7 MR. HUNTER: Correct.

8 MR. DAVIS: I think we can respond to that
9 in writing and give that some consideration in the
10 language. Certainly, like I said, we have had these
11 kinds of provisions or averaging periods in other
12 rules.

13 My first thought on it is, if we weren't
14 getting 30 operating days within a year, it would be
15 unlikely that the units that I have been looking at
16 would emit greater than 15 tons in a year, if we're
17 talked about a boiler or process heater. If we're
18 talking about engines, turbines, then I think we'd
19 have to consider how we could clarify that.

20 MR. HUNTER: Okay. I'd like to move forward
21 to Question 18, where I'll draw your attention to part
22 217.158 of the proposed amendments concerning emission
23 averaging plans.

24 Question 18, how many entities comply with

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1 the current part 217 by using the emission averaging
2 provisions in Section 217.154?

3 MR. DAVIS: The Agency is aware of four
4 sources that currently comply using emissions
5 averaging.

6 MR. HUNTER: How many entities currently
7 conduct emission averaging amongst emission units
8 within a single facility, or "intra-site"?

9 MR. DAVIS: All four of those.

10 MR. HUNTER: So Question 20, how many
11 entities currently conduct emission averaging amongst
12 emission units situated at multiple facilities, or
13 "intra-site"?

14 MR. DAVIS: Currently none that we are aware
15 of.

16 MR. HUNTER: Question 21, USEPA indicated
17 that an emission averaging plan is a type of Economic
18 Incentive Program, correct?

19 MR. DAVIS: Yes.

20 MR. HUNTER: Question 21(a), did the Agency
21 consider proposing the alternative EIP option of
22 requiring source specific emission caps as opposed to
23 the environmental write-off of 10 percent on
24 calculated allowable emissions?

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1 MR. DAVIS: The Agency did not consider
2 emission caps instead of a write-off of 10 percent.

3 MR. HUNTER: Can the Agency clarify why not?

4 MR. DAVIS: Well, I believe the EIPs call
5 for -- and I think this came up in a previous
6 question. The EIP guidance calls for a 10 percent --
7 you call it a write-off. Could be called an
8 environmental benefit, factor, something like that --
9 but a 10 percent environmental benefit in averaging
10 plans that are set for emission caps or for emissions
11 averaging.

12 To clarify, an emission cap based on
13 historical average emissions would be an EIP as much
14 as an emissions averaging plan would be an EIP.

15 MR. HUNTER: Is the alternative EIP option
16 of requiring source specific emission caps a viable
17 option?

18 MR. DAVIS: The Agency believes that
19 emission caps could be an acceptable compliance option
20 and would consider suggested language that would be
21 approvable in a State implementation plan revision.

22 MR. HUNTER: Is the Agency willing to
23 explain how a source specific emissions cap would
24 work?

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1 MR. DAVIS: We are considering at least two
2 suggested cap methodologies that have been -- that
3 we've gotten through communications with sources. And
4 so I can't explain exactly how those calculations
5 would be performed to come to a cap, but we are
6 considering emissions caps as something to put in
7 front of the USEPA as far as what would be approvable.
8 And like I said, hopefully we'll be able to have
9 something to the Board soon, if we can work something
10 like that out.

11 MR. HUNTER: Regarding the 10 percent
12 environmental write-off or environmental benefit for
13 emission averaging, does that provision apply to
14 intra-site averaging, inter-site averaging, or both?

15 MR. DAVIS: It applies to both. The draft
16 USEPA guidance for EIPs and USEPA Region 5 staff both
17 indicate that a 10% environmental benefit factor is
18 required for both types of averaging plans. The
19 Agency is in agreement. And any SIP provision not
20 following the guidance is unlikely to be approved by
21 USEPA.

22 MR. HUNTER: Thank you. Question 21(d), the
23 Agency reviewed NOx RACT rules of other states in
24 formulating its proposal, including Ohio and

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1 Wisconsin, correct?

2 MR. DAVIS: Yes.

3 MR. HUNTER: Did the Agency review emission-
4 averaging provisions from other states?

5 MR. DAVIS: Yes.

6 MR. HUNTER: If so, which states?

7 MR. DAVIS: We did review Ohio, Wisconsin, I
8 believe Michigan, among others. We looked at quite a
9 few states.

10 MR. HUNTER: For which reviewed states do
11 the emission-averaging provisions include 10%
12 write-off, and for which do they not include a 10%
13 write-off?

14 MR. DAVIS: So Ohio requires emissions-
15 averaging plans to be submitted to and approved by
16 USEPA as a SIP provision.

17 USEPA Region 5 has indicated that it will
18 not be approving emissions-averaging plans from Ohio
19 that don't include a 10% environmental benefit. So in
20 the Ohio regulations themselves -- sorry. In those
21 regulations, they do not include that; but USEPA has
22 said, in the approval process, that will apply.

23 Wisconsin includes a 10% factor for
24 intersource averaging plans. It does not include a

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1 10% factor for single-source averaging plans.
2 However, USEPA Region 5 has conveyed to the Agency
3 that Wisconsin's NOx RACT rules have not been approved
4 for the 2015 ozone standard and that their averaging
5 plans will need to include a 10% environmental benefit
6 to be approved as RACT.

7 MR. HUNTER: In the Agency's opinion, has
8 the 10% environmental benefit been applied
9 consistently in SIPs approved since the EIP was issued
10 in 2001?

11 MR. DAVIS: Perhaps not. And Illinois
12 sources may have benefited from less stringent
13 requirements under the existing Part 217 rules, but
14 the Agency believes that it will be applied
15 consistently going forward.

16 MR. HUNTER: Thank you. Question 22, is the
17 Agency amenable to revising the proposal to include
18 alternative emission rates or plans for sources with
19 varying emission rates between normal operations and
20 unit down time operations during routine control
21 device maintenance?

22 MR. DAVIS: The Agency is amenable to
23 alternatives that would constitute RACT, are
24 sufficiently tailored, and would be approvable as a

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1 SIP provision.

2 MR. HUNTER: Is this another situation where
3 you would like language to be proposed?

4 MR. DAVIS: Suggested language is always
5 helpful as a starting point if sources have specific
6 alternatives in mind.

7 MR. HUNTER: Question 23, is it correct
8 that, during the Agency's pre-proposal outreach, IERG
9 submitted comments to the Agency on the pre-proposal
10 draft revisions where IERG encouraged the Agency to
11 keep essential petroleum refinery maintenance
12 turnaround, or "TA," exclusions in Sections 217.158(h)
13 and (j) rather than eliminate them?

14 MR. DAVIS: Yes.

15 MR. HUNTER: What was the Agency's reasoning
16 for not granting this request?

17 MR. DAVIS: These provisions allowed for
18 periods during which no emission limits apply.
19 Illinois EPA proposed and the Board has recently
20 adopted revisions to remove these types of start up,
21 shut down, malfunction exceptions. Illinois EPA
22 proposed to remove these per USEPA direction.

23 MR. HUNTER: When first adopted, what was
24 the original need and justification for including

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1 these TA provisions?

2 MR. DAVIS: The need for these provisions is
3 due to a scenario in which some units with lower
4 emission rates with respect to unit-specific RACT
5 emission limits in an averaging plan could be out of
6 operation during turnaround periods. Compliance
7 calculations for the averaging plan would then result
8 in higher emission rates on a pound per million Btu
9 basis.

10 MR. HUNTER: Since their adoption, have
11 these TA provisions been used by regulated petroleum
12 refineries?

13 MR. DAVIS: Yes, I believe so.

14 MR. HUNTER: And I believe that you've
15 sufficiently answered subquestion (d); so I'm going to
16 move on to part 217.170 of the proposed amendments
17 concerning industrial boiler applicability exemptions.

18 Question 24, is it correct that, during the
19 Agency's preproposal outreach, IERG submitted comments
20 to the Agency on the pre-proposal draft amendment
21 revisions where IERG encouraged the Agency to keep
22 essential back-up fuel exemptions?

23 MR. DAVIS: Yes.

24 MR. HUNTER: What was the Agency's reasoning

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1 for not granting this request?

2 MR. DAVIS: The Agency has not foreclosed
3 the possibility of including such a provision. The
4 Agency is considering suggested language provided by a
5 potentially affected source currently.

6 MR. HUNTER: Thank you. I'll now draw your
7 attention to Part 217.390 of the proposed amendments
8 concerning stationary reciprocating internal
9 combustion engines and turbines emissions averaging
10 plans.

11 Is it correct that, during the Agency's
12 pre-proposal outreach, IERG submitted comments to the
13 Agency on the pre-proposal draft amendment revisions
14 where IERG encouraged the Agency to allow for the use
15 of emission equations in Section 217.390 which are
16 already in place and required under 40 CFR Part 75 for
17 sources that already fall under those reporting
18 requirements?

19 MR. DAVIS: Yes.

20 MR. HUNTER: What was the Agency's reason
21 for not granting this request?

22 MR. DAVIS: Again, the Agency has not
23 foreclosed on the possibility of including such
24 provisions and would consider specific language to

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1 allow for alternative emission equations.

2 MR. HUNTER: Thank you. Hearing officer, if
3 it's all right, I'd like to ask another question that
4 was filed with us after the prefiled questions
5 deadline.

6 HEARING OFFICER PAULEY: I think that's
7 okay.

8 MR. HUNTER: This is still concerning
9 stationary RICE and turbines. The question is: Is
10 the Agency amenable to adding a new subsection under
11 subpart (q) Section 217.386 A-52 upper case (C) --
12 this would be the new subsection -- for the
13 applicability of stationary RICE and turbines
14 providing that an emission unit emits 15 tons or more
15 of NOx to the atmosphere per calendar year, which is
16 identical to the applicability language found in
17 subsection 217.150 (a) -- as in apple -- (2) upper
18 case (B) -- as in boy -- for subparts E, F, G, H, I,
19 and M?

20 MR. DAVIS: I believe the answer would be
21 the Agency would consider it. And again, suggested
22 language would be helpful. And in that case, I think
23 the Agency would also have to consult with Region 5 to
24 see if that would be approvable as a SIP.

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1 MR. HUNTER: Okay. Thank you. I'll draw
2 your attention to Subpart (U), NOx control and trading
3 program for specified NOx generating units in the
4 proposed amendments.

5 Is it correct that, during the Agency's
6 pre-proposal outreach, IERG submitted comments to the
7 Agency on the pre-proposal draft amendment revisions
8 where IERG encouraged the Agency to revise the
9 requirements in Subpart (U) to incorporate additional
10 monitoring and reporting flexibility provided five
11 years ago by USEPA for non-electric generating units,
12 or "non-EGUs," with design heat input greater than 250
13 mmBtu per hour?

14 MR. DAVIS: Yes.

15 MR. HUNTER: What was the Agency's reasoning
16 for not granting this request?

17 MR. DAVIS: The Agency discussed the
18 inclusion of this amendments with USEPA, and by way of
19 -- well, we were informed that, while these kind of
20 revisions would not necessarily be unapprovable, it
21 would be better for us to submit our SIP -- sorry --
22 submit the NOx rules on their own as a SIP provision.

23 By way of background, in 1998, USEPA
24 finalized the NOx SIP Call, which addressed interstate

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1 transport obligations for the 1979 one-hour ozone
2 NAAQS. NAAQS is the National Ambient Air Quantity
3 Standards. The NOx Sip Call created a NOx budget
4 trading program for both EGUs and non-EGUs.

5 Since 1998, USEPA has moved to progressively
6 more stringent trading programs for progressively more
7 stringent ozone NAAQS.

8 After the NOx Sip Call, USEPA promulgated
9 the Clean Air Interstate Rule, or "CARE," and the
10 Cross State Air Pollution Rule and, most recently, the
11 Good Neighbor Plan.

12 The newer programs have replaced much but
13 not all of the older programs. Although some programs
14 like CARE no longer exist and although USEPA no longer
15 implements the NOx Budget Trading Program that was
16 originally part of the NOx SIP CALL, the requirements
17 of the NOx Sip Call continue to apply to these
18 non-EGUs. Basically, states must ensure that the
19 non-EGUs stay within the previous emissions budgets.

20 The NOx Sip Call requirements have included
21 requirements for Part 75 continuous monitoring CEMS,
22 continuous emissions monitoring systems, as years ago,
23 this data was needed for the NOx Budget Trading
24 Program.

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1 Upon discontinuation of the NOx Budget
2 Trading Program, there was no longer any use for
3 continuous data, and sources began pointing out to
4 USEPA that they were still being required to implement
5 relatively more expensive monitoring processes even
6 though the continuous data was no longer being used.

7 In 2019, USEPA revised the national SIP Call
8 Rule to allow states to revise their NOx SIP Call
9 rules and submit to USEPA for approval into their SIP
10 and to allow alternative monitoring approaches such as
11 40 CFR Part 60 that are generally less costly.

12 USEPA encourages Illinois to work with
13 Region 5 to revise the state's NOx SIP Call rules and
14 rescind the CARE rules, as other Region 5 states are
15 currently doing.

16 USEPA informed the Agency that, while the
17 Part 217 proposal is currently before the Board, the
18 NOx SIP Call obligations are different requirements
19 from the NOx RACT requirements, and there may be
20 additional delays in attempting to combine such
21 proposals given that any Subpart (U) amendments would
22 require approval from headquarters, USEPA
23 headquarters, in addition to the Clean Air Markets
24 Division.

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1 Accordingly, given that USEPA has taken
2 final action that Illinois has failed to submit SIP
3 revisions for the NOx RACT requirements, to avoid any
4 additional risk and delays by addressing NOx SIP Call
5 requirements in conjunction with the current
6 rulemaking addressing the RACT requirements, the
7 Agency decided to move forward with just the NOx RACT
8 requirements at this time.

9 MR. HUNTER: Thank you. To follow up, how
10 would the Agency encourage sources who are still
11 looking to incorporate this additional monitoring of
12 reporting flexibility into the rulemaking or into a
13 subsequent rulemaking -- how would those sources go
14 about that?

15 MR. DAVIS: So it's possible that the Agency
16 would propose a new rulemaking, and then there is
17 always the ability for individual sources or groups of
18 sources to propose their own rulemakings to the Board.

19 MR. HUNTER: Thank you. The last section of
20 questions is not related to any specific section of
21 the proposal. These are general questions. Then if
22 it's all right with the hearing officer, I'd like a
23 moment just to confer with my co-counsel and my
24 clients just to see if there's any additional

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1 follow-ups.

2 HEARING OFFICER PAULEY: Sounds good.

3 MR. HUNTER: Question 27: Is it correct
4 that Illinois EPA became aware of Illinois' NOx RACT
5 SIP submittal deficiencies as early as 2011 and,
6 thereafter, withdrew the submittals?

7 MR. DAVIS: Yes.

8 MR. HUNTER: Is it correct that the Chicago
9 and St. Louis redesignations to moderate
10 non-attainment for the 2015 ozone standards were based
11 on air monitoring data from the 2018 to 2020 calendar
12 years?

13 MR. DAVIS: Yes.

14 MR. HUNTER: What factors have led to the
15 Agency's Part 217 NOx RACT revisions being proposed
16 now, in 2024, rather than at an earlier date?

17 MR. DAVIS: The Agency has been working on a
18 proposal for several years. The proposal was delayed
19 due to a number of factors, including staff attrition,
20 available resources, and other state implementation
21 planning requirements in recent years.

22 Also, during certain periods, the Agency had
23 NOx RACT waivers that temporarily eliminated the
24 requirement to submit NOx RACT provisions.

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1 MR. HUNTER: Thank you. Can the Agency
2 provide Illinois' regulated community guidance and
3 assurance about its intentions to timely consider
4 construct outreach, and propose future federally
5 required air rulemakings?

6 MR. DAVIS: Yes. The Agency is committed to
7 outreach and cooperation with all stakeholders,
8 including the regulated community, in timely manner
9 for future federally required rulemakings. In fact,
10 the Agency's current proposal lowers the applicability
11 threshold to help ensure future Clean Air Act
12 requirements for serious non-attainment areas are met
13 in a timely manner.

14 MR. HUNTER: Thank you. Hearing officer,
15 could we go off the record for a moment?

16 HEARING OFFICER PAULEY: Yes.

17 (Discussion held off the record.)

18 HEARING OFFICER PAULEY: Back on the record.
19 So we were just discussing procedurally if we were
20 going to take a quick little break so they could
21 discuss with their clients. We'll come back on the
22 record at 11:20. That's seven minutes from now. And
23 we'll see everybody then. Thanks.

24 (Recess in proceedings.)

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1 HEARING OFFICER PAULEY: Back on the record.
2 Mr. Hunter, did you guys have any additional questions
3 to ask?

4 MR. HUNTER: Yes, we do. We've got a
5 handful of questions we'd like to ask.

6 HEARING OFFICER PAULEY: Go ahead.

7 MR. HUNTER: Under Section 217.150
8 concerning the applicability threshold for 15 tons per
9 year, can you move in and out of being subject to this
10 applicability from year to year?

11 MR. DAVIS: I may need some clarification on
12 in what way you might be moving in and out, but 150(B)
13 does seem to be a once-in-always-in provision that
14 would say, if you have emitted greater than 15 tons
15 per year and were subject to this, that you would
16 continue to be subject to it.

17 MR. HUNTER: Does that subsection you just
18 mentioned, 150(B), specifically state that, once you
19 are subject to the rule, you will always be subject to
20 the rule; or is there a possibility that one year you
21 may be subject to this applicability threshold,
22 producing 15 tons or more of NOx, and then the
23 subsequent year you may be below that?

24 MR. DAVIS: Generally, the Agency has read

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1 that as -- and the wording is, If a source ceases to
2 fulfill the emissions criteria of Subsection A of this
3 subsection, the requirements of a number of subparts
4 there continue to apply to any emission unit that was
5 ever subject to the provisions of any of those
6 subparts.

7 So subparts E, F, G, H, I, and M are the
8 subparts that contain the emission limits. So you
9 would be subject to those emission limits, and they
10 would continue to apply to any emission unit that was
11 ever subject to the provisions of any of those
12 individual emission limit subparts.

13 MR. HUNTER: For units that are below this
14 15 ton per year applicability threshold, do those need
15 to be federally enforceable?

16 MR. DAVIS: Do you mean that, in order to
17 not be subject, that the limits would have to be
18 specified in a federally enforceable permit prior to
19 not being subject?

20 MR. HUNTER: Correct.

21 MR. DAVIS: I don't believe that's how it
22 works, or I don't believe that's how the Agency would
23 interpret that.

24 For instance, if a unit at a source that, on

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1 a source-wide basis, was greater than the 50 ton per
2 year applicability threshold for the source, if they
3 had a unit that was historically emitting, say, 7 tons
4 per year and continues to do about that and doesn't
5 exceed that 15 tons per year, I don't think it would
6 be necessary for that unit, in order to not be
7 subject, to have a federally enforceable limit of 15
8 tons per year in its permit.

9 But if that source were to have a permitting
10 transaction in the future, say a cap or Title V permit
11 renewal, I'm sure that the permit section at the
12 Agency may want to talk to the source about putting in
13 a nonapplicability provision in the permit on a
14 case-by-case basis. I can't say that we would
15 absolutely require it to go into a permit.

16 MR. HUNTER: Concerning technical
17 feasibility and economic reasonableness, is timing
18 taken into consideration for what is technically
19 feasible or what's economically reasonable?

20 MR. DAVIS: Yes.

21 MR. HUNTER: In what way?

22 MR. DAVIS: So the Agency would acknowledge
23 that, you know, some things may be technically
24 feasible for a source to apply control technology and

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1 that that technology could be absolutely economically
2 reasonable, but perhaps not by a certain date that
3 could really impose additional costs.

4 Also, technical feasibility may include the
5 time it takes to conduct engineering studies, to get a
6 construction permit before the Agency, and then the
7 time to construct those -- you know, if there were
8 capital projects that were required, the timing would
9 definitely play into the technical feasibility.

10 And for the same reason, everybody can --
11 with unlimited resources, everybody could work around
12 the clock and get a lot of things done, but the timing
13 would also play with the economic reasonableness also.

14 MR. HUNTER: As a follow-up to our
15 discussion in the technical support document, you
16 mentioned that there were some sources that you were
17 in communications with where you've identified that
18 there was a potential need for extensions or some sort
19 of alternative compliance plan.

20 What number of sources or what percentage or
21 what quantity of sources would the Agency need to
22 analyze in order to determine that the NOx
23 requirements are too stringent or that the level of --
24 that the NOx RACT is not actually NOx for the

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1 stationary sources, major stationary sources, in
2 Chicago and Metro-East non-attainment areas?

3 MR. DAVIS: I think what you mean was
4 actually RACT.

5 MR. HUNTER: What did I say?

6 MR. DAVIS: "Actually NOx."

7 I don't believe that we would come up with
8 some kind of percentage proportion or tipping point
9 where there was a number of sources that had issues
10 with what we had proposed as RACT, that we would
11 change our determination of what constitutes RACT. I
12 think that's where you're going.

13 So the RACT requirements -- and again, I
14 should say that we are looking at several sources on a
15 case-by-case basis to determine that, you know,
16 whatever revisions may be necessary actually
17 constitute RACT and that they are reasonable.

18 And so I don't think we can -- I don't think
19 there's a proportion of sources or a number of sources
20 that would make us reconsider what we believe to be
21 RACT as far as the emission limits. As far as the
22 timing, I think there are case-by-case, I guess,
23 material that sources could provide us.

24 I can say that the Agency has not wanted to

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1 revise the compliance date that it's given, and that
2 is for SIP approvability. As far as specific dates
3 that could be extended, we would like to keep that on
4 a case-by-case basis also because USEPA will not be
5 able to act on our SIP submittal until the compliance
6 dates, the general compliance date, for the proposal
7 has passed.

8 MR. HUNTER: Thank you. For newly subject
9 sources that are going to come into the rule from the
10 lower applicability threshold, from 100 tons per year
11 to 50 tons per year, preemptively for the future
12 bump-up or redesignation to serious non-attainment,
13 will those sources be subject to the rule starting
14 May 1, 2025?

15 MR. DAVIS: As proposed, yes.

16 MR. HUNTER: Are you considering any changes
17 at this time?

18 MR. DAVIS: We have been in communication
19 with some newly subject sources. And so, yeah, we are
20 considering potentially alternative compliance dates
21 for specific units.

22 MR. HUNTER: Thank you. Concerning other
23 states' SIP submittal deficiencies, have Ohio or
24 Wisconsin received any deficiency letters similar to

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1 what Illinois received in 2011?

2 MR. DAVIS: In 2011?

3 MR. HUNTER: Correct.

4 MR. DAVIS: That I don't know. I would only
5 be speculating. I don't know that they have.

6 MR. HUNTER: Concerning the maintenance
7 turnaround provision, you mentioned in your response
8 that this was SSM tied; however, here obviously this
9 is a NOx RACT rulemaking.

10 I'm wondering: Did the SSM SIP Call say
11 anything -- or excuse me -- did the SIP Call for NOx
12 refer to anything about the turnaround provision
13 language as a deficiency, leaving that in as a
14 deficiency, or something that needed to be removed for
15 SIP submittal approval?

16 MR. DAVIS: No. The deficiencies that were
17 pointed out in that letter predated the SSM SIP Call;
18 so they would not have been in there.

19 MR. HUNTER: Is the removal of the
20 turnaround provision in the NOx RACT proposal a
21 request from USEPA?

22 MR. DAVIS: Was it a request from USEPA?

23 MR. HUNTER: Is it a request from USEPA for
24 this NOx RACT SIP submittal?

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1 MR. DAVIS: Yes. Do you have that in
2 writing? Is there something that you can provide the
3 public demonstrating that this was a requirement of
4 the NOx RACT SIP submittal?

5 MR. DAVIS: We'd have to check whether that
6 would have been written or in an email or maybe a
7 comment to a draft that we informally gave to them.
8 I don't know in what form that guidance, that advice,
9 their input on those provisions came, but we can check
10 into that.

11 MR. HUNTER: Yeah. Would it be appropriate
12 or would you be open to sharing what USEPA has
13 requested concerning the maintenance turnaround
14 provisions similar to how you shared the other
15 deficiencies for the SIP submittal?

16 MR. DAVIS: Yeah. What we have, if we have
17 something in writing to that effect, we should be able
18 to produce or give when we do our other responses in
19 writing to this hearing.

20 MR. HUNTER: Under Subpart U, can the Agency
21 submit two SIP submittals within one rulemaking?

22 MS. VETTERHOFFER: Could you state that
23 again?

24 MR. HUNTER: Yeah. While the Agency is

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1 conducting one rulemaking, is it possible for the
2 Agency to submit two separate SIP submittals to USEPA?

3 MS. VETTERHOFFER: Could you clarify what
4 you mean by that?

5 MR. HUNTER: Yes. So in the event that the
6 Agency is working on a rulemaking and there are two --
7 there's one body of information that they'd like to
8 submit for SIP approval and there is another body that
9 is still being teased out and they would like to later
10 submit as part of their SIP submittal, is that
11 possible?

12 MR. DAVIS: You mean could we submit certain
13 portions of the rule in a submittal for NOx RACT
14 requirements --

15 MR. HUNTER: Correct.

16 MR. DAVIS: -- and then possibly have other
17 parts of 217 be revised that we would not be
18 submitting as a SIP submittal and then later submit
19 that as a SIP submittal for those, for instance,
20 monitoring requirements?

21 MR. HUNTER: Correct.

22 MR. DAVIS: I think we would have to check
23 into the impact that would have on whether lessening
24 -- and I think I know where this is going -- lessening

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1 the stringency of monitoring requirements for some of
2 the non-EGUs would be seen as a whole package, because
3 we need to submit all of 217 as far as our NOx RACT.
4 And then would the USEPA ignore those specific
5 provisions for the time being? I don't know. I'm not
6 certain about that; but I think I get the gist of your
7 question, and it's something we can look into.

8 At this point, I would say it's not
9 something we've done before. And we have submitted
10 specific sections of rules, not in 2017, but I can
11 think of Part 225 where we kind of picked and chose
12 which sections we were submitting as a SIP. But I
13 don't know that they would see that kind of -- you
14 know, choosing only certain provisions would be
15 acceptable to them. But we can consider that.

16 MR. HUNTER: Okay. Thank you. Just a few
17 more questions.

18 Does the Technical Support Document, the
19 Appendix, listing potentially affected sources include
20 a list of all sources, including those that have
21 historically had actual emissions less than 15 tons
22 per year but the potential to emit 15 tons per year?

23 MR. DAVIS: The appendix is based on, I
24 believe, three-year average of the last three years;

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1 and generally, we were evaluating those sources
2 against the source-wide average -- or not average --
3 the source-wide applicability threshold of 50 tons.
4 And I think, in the Chicago non-attainment area, we go
5 down to about 25 tons.

6 So the question was?

7 MR. HUNTER: Does the Technical Support
8 Document or that appendix list those sources?

9 MR. DAVIS: Going down to?

10 MR. HUNTER: Actual emissions of less than
11 15 tons per year but potential to emit 15 tons per
12 year.

13 MR. DAVIS: Well, like I said, the unit
14 applicability is the 15. Certainly -- so no, if there
15 were a source, for instance, that were a single-unit
16 source and they emitted 15 tons per year or greater,
17 say 20, that would not be included here because we
18 would not expect for them to be subject because they
19 are below the source applicability threshold of 50
20 tons per year.

21 MR. HUNTER: To follow up, are there sources
22 listed in that list that have actual emissions of less
23 than 15 tons per year but the potential to emit 50
24 tons per year or more?

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1 MR. DAVIS: There are.

2 MR. HUNTER: Thank you. Question 2 or
3 really like 30, has IEPA reached out to all
4 potentially affected sources at this time?

5 MR. DAVIS: We believe so. I don't know
6 that -- the question is about all potentially affected
7 sources?

8 MR. HUNTER: Yeah. To get to where I'm
9 going with this question -- please ignore my previous
10 question.

11 Have you reached out to potentially affected
12 sources with the potential to emit 15 tons per year
13 but historically have had actual emissions less than
14 10 tons per year?

15 MR. DAVIS: We likely have not reached out
16 on an individual basis.

17 MR. HUNTER: I'm sorry. Could you repeat
18 that?

19 MR. DAVIS: We likely have not done outreach
20 on a source-specific basis to those sources. There
21 are a great number of sources. You know, certainly
22 the Board does outreach and does public notice for the
23 rulemakings.

24 MR. HUNTER: If a source has historical

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1 actual emissions less than 15 tons per year, if, in a
2 future year, emissions exceeds that 15 tons per year,
3 when would a source first be required to comply with
4 unit-specific emissions standards?

5 MR. DAVIS: And I think I should go back to
6 what I was saying about a source and 15. That's not
7 where the applicability threshold is. It's 50. So is
8 that the question? Are we asking about 50, or are we
9 asking about 15 being the unit at a source that has
10 emitted 50? Is this a once-in-always-in question?

11 MR. HUNTER: Just a specific unit.

12 MR. DAVIS: So not at 15 tons, but yes, I
13 believe that, if a source were to be subject based on
14 the 50 ton per year applicability threshold, that they
15 again would be subject in the future.

16 MR. HUNTER: And when would they become
17 subject?

18 MR. DAVIS: For newly subject sources that
19 had not previously been part of 150(A), I believe that
20 was -- and then (B) would apply to sources that had
21 been subject and will remain subject. So I believe
22 they would begin being subject on May 1 of 2025.

23 MR. HUNTER: So in a hypothetical situation
24 where a source begins to emit 15 tons per year -- or a

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1 particular unit begins to emit 15 tons per year or
2 more, let's say, in 2026, at what point would that
3 particular unit become subject to the rule? Would it
4 be immediate, or would there be some time thereafter
5 where that source becomes subject to the rule?

6 MR. DAVIS: I think we may have to confer to
7 see what the Agency's interpretation of that would be.
8 I don't think that we have an ironclad answer for you
9 as we sit here.

10 But to clarify, you're talking now about a
11 specific unit starting in 2025. So that would be 15
12 tons per year would make you subject. And I believe
13 that the way that the rule is written is you are
14 subject in the year that you emit 15 tons.

15 MR. HUNTER: All right. Just a few more
16 questions on the maintenance turnaround provisions, if
17 that's all right. Then we will wrap up our questions.

18 You referred to the maintenance turnaround
19 provisions as being similar to SSM provisions. Was
20 the maintenance turnaround provision in Part 217
21 addressed in the SSM SIP Call?

22 MR. DAVIS: It was not.

23 MR. HUNTER: Would IEPA consider an entire
24 turnaround event as being a startup, shutdown, or

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1 malfunction?

2 MR. DAVIS: I don't think that we would call
3 it a startup or possibly a shutdown. It's a shutdown
4 and then a startup. But it is an event in which there
5 are exceptions to limits that apply at all times.

6 MR. HUNTER: Is the request to remove the
7 turnaround provisions from USEPA, and is there
8 anything -- we already asked that. Excuse me.

9 Did the recent DC court opinion addressing
10 SSM events have any bearing on removing the
11 maintenance turnaround provisions from this NOx RACT?

12 MR. DAVIS: The most recent decision?

13 MR. HUNTER: Yes, the DC court opinion, the
14 most recent.

15 MR. DAVIS: It did not.

16 MR. HUNTER: That's all of our questions.

17 HEARING OFFICER PAULEY: Okay. Thank you
18 very much.

19 So Mr. Davis, are we good to move to the
20 Board's questions now?

21 MR. DAVIS: I believe so.

22 HEARING OFFICER PAULEY: All right. So
23 Mr. Davis has agreed to help us out by reading the
24 questions into the record as we go. I know there are

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1 a large chunk of them that are nonsubstantive, and we
2 can kind of just group those together as one. Don't
3 have to read them all. But whenever you would like to
4 start, start with Number 1, please.

5 MR. DAVIS: Okay. So Question 1 from the
6 Board regards Section 217.150(a)(2). Please comment
7 on whether it would be acceptable after Subparts E, F,
8 G, H, I, and M to strike the phrase "of this Part."

9 And the Agency finds the Board's proposed
10 changes acceptable.

11 So here we get into somewhat of the
12 substantive part. Regarding Section 217.150(d) -- as
13 in dog -- please explain what the phrase "good air
14 pollution control practice" means in the context of
15 Part 217, Subparts E, F, G, H, I, or M.

16 So the response is: In general, this means
17 that, at all times, the owners or operators must, to
18 the extent practicable, maintain and operate any
19 affected unit, including associated air pollution
20 control equipment, in a manner consistent with good
21 air pollution control practice for minimizing
22 emissions. Such practices or procedures may include
23 but are not limited to monitoring results, opacity
24 observations, review of operating and maintenance

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1 procedures, and inspection of the source.

2 For example, the good air pollution control
3 practice requirements in the general provisions of the
4 new source performance standards at 40 CFR -- that's
5 Code of Federal Regulations -- CFR 60.11(D) and
6 national emissions standards for hazardous air
7 pollutants at 40 CFR 63.6(E).

8 Question 3 from the Board was "Also, please
9 comment on whether subsection (d) should apply to
10 emission units covered under other subparts such as
11 Subparts Q and T.

12 The response is: The Agency does not object
13 to the Board amending Subpart Q to include a similar
14 provision under Section 217.386 by adding a new
15 subsection (f) because Subpart Q is included in
16 satisfying NOx RACT requirements under Sections 172
17 and 182 of the Clean Air Act.

18 However, the Agency does not support
19 amending Subpart T. Subpart T was adopted by the
20 Board to satisfy the NOx SIP Call finding of
21 significant contribution and rulemaking for certain
22 states in the Ozone Transport Assessment Group regions
23 for purpose of reducing regional transport of ozone.
24 And that's at Volume 63 of the Federal Register 57356

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1 from October 27, 1998.

2 Then I do believe that we are going to admit
3 all of these questions from the Board as read.

4 HEARING OFFICER PAULEY: Yes. Correct.

5 MR. DAVIS: So for questions 4 through 61,
6 the Agency finds the Board's proposed changes
7 acceptable.

8 HEARING OFFICER PAULEY: Thank you.

9 MR. DAVIS: So I'm going to say we don't
10 need to read 4 through 61.

11 HEARING OFFICER PAULEY: Correct. Yes.
12 That will be entered as if read.

13 MR. DAVIS: Then I will jump ahead.

14 Okay. Question 62 regards the technical
15 support document, or the TSD. At page 3, under
16 "Potentially Affected Source Description," the TSD
17 states that "Some sources may be unaffected if they
18 have no units that will be subject to Part 217
19 emission limits or if they were to limit source NOx
20 emissions to less than the applicability threshold of
21 50 tons per year."

22 Question 62 is: Please clarify whether a
23 source with PTE -- or potential to emit -- of 50 tons
24 per year that limits the actual emissions to less than

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1 15 tons per year would also be unaffected by the
2 proposed rules.

3 So the response is: To clarify, by an
4 "emission source," the Agency means a facility that
5 could include multiple emission units. So at a source
6 with the potential to emit 50 tons or more, a unit
7 that emits less than 15 tons per year would not be
8 subject to the proposed rules.

9 Further, if a source has a potential to emit
10 that is less than 50 tons per year, no units at that
11 source are subject to the proposed rule.

12 Okay. 63 has a preface. At pages 3 and 4
13 under "Environmental Impact," the TSD states that
14 there will be" no -- I'm sorry -- "there will be NOx
15 emission reductions in both non-attainment areas due
16 to the proposed revisions, but the Agency does not
17 provide any estimates of emission reductions.

18 So Question 63 is: Although additional data
19 and source-specific information may not be available
20 at this time, would it be possible for the Agency to
21 provide an estimate of emissions reduction that would
22 be achieved by implementing the proposed amendments
23 compared to existing requirements?

24 And I did read at least a portion of this

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1 response with IERG's questions. I think some of the
2 follow-up questions get to, kind of, the difficulties
3 in determining exactly which sources and which units
4 will be actually subject to limits that we would
5 expect actual emission reductions from.

6 So the answer is: An estimate of actual
7 emission reductions from the proposed revisions is
8 difficult to provide because the proposed rules
9 contain a number of compliance flexibilities and
10 options for sources to limit source-wide and
11 unit-specific emissions below those applicability
12 thresholds.

13 Thus, it would be difficult to estimate
14 actual emission reductions rather than potential
15 allowable emission reductions. At a single given
16 source, the Agency may be able to evaluate what
17 potential compliance options are available or likely;
18 but an attempt to aggregate estimates of actual
19 emission reductions from all of the potential subject
20 sources would involve a high degree of uncertainty.

21 MR. RAO: Can I ask a follow-up?

22 HEARING OFFICER PAULEY: Yes, we have a
23 follow-up question here.

24 MR. RAO: Were they conducting any modeling

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1 in the future to show how these requirements may give
2 back (word unintelligible) for the 2015 standard?

3 MR. DAVIS: So you're asking whether an
4 attainment demonstration or some kind of other part of
5 the SIP will require modeling that would include these
6 reductions?

7 MR. RAO: Yes.

8 MR. DAVIS: No. No. The NOx RACT
9 requirements and having rules on the books that do
10 reflect RACT are a requirement of the moderate SIP.
11 The Agency is not going to try to quantify reductions
12 that we project from these regulations, mainly because
13 those projections would be for 2023 in the current
14 attainment demonstration. Those years have elapsed.

15 So the quantification of the emission
16 reductions from this will not be necessary in any
17 modeling. The modeling for the attainment
18 demonstration that we'll be filing shortly, hopefully,
19 or submitting to the USEPA was conducted in previous
20 years, and I don't believe that they included
21 anticipated reductions. And I'm almost certain they
22 didn't include anticipated reductions from a NOx RACT
23 rulemaking.

24 MR. RAO: Thank you.

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1 MR. DAVIS: Okay. The next question also
2 has a preface. At pages 4 and 5 under "Technical
3 Feasibility and Economic Reasonableness," the TSD
4 states that "detailed cost-effectiveness estimates for
5 specific control technologies are not provided because
6 no sources in Illinois are likely to implement any new
7 control strategies in order to comply with the
8 proposed revisions.

9 Question 64 is: Please clarify whether none
10 of the potentially affected sources would need to
11 implement additional emission controls to achieve
12 compliance with the proposed amendments.

13 The Agency response is: The Agency did not
14 intend to indicate that no sources would need to
15 implement additional control measures. The TSD
16 precedes the above quote with "In some of those cases"
17 and then "detailed cost effectiveness estimates." And
18 the quote continues there.

19 By this, the Agency means that, for some
20 specific categories of emission units, all such units
21 in both non-attainment areas would not likely require
22 any change in operations to comply with the proposed
23 NOx RACT limits.

24 Additionally, there are no cement kilns or

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1 lime kilns or coal-fired EGUs remaining in the
2 non-attainment areas. For these specific categories
3 of emissions, the Agency did not provide detailed
4 estimates.

5 Question 65, if not, please comment on
6 whether some of the affected sources will be relying
7 on existing control strategies that have been
8 previously found by the Board to be technically
9 feasible for NOx control.

10 So the response: Many sources will be able
11 to rely on their existing control strategies. The
12 emission limits for the most common types of emission
13 units, industrial boilers and process heaters, were
14 not changed in the proposal.

15 Question 66, please provide examples of
16 existing control strategies that may be used to
17 achieve compliance with the proposed amendments.

18 Response: There are a number of
19 pre-combustion, combustion, and post combustion
20 control measures available as detailed in the TSD.
21 Some examples include low NOx burners, flue gas
22 recirculation -- and then there's three acronyms here
23 -- SCR, SNCR, NSCR, et cetera. I'd be happy to expand
24 on those if you'd like.

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1 Question 67, also, please comment on whether
2 implementation of the proposed RACT rules will bring
3 both non-attainment areas into attainment with the
4 2015 ozone NAAQS.

5 Response: The RACT rules are a required
6 element of a state implementation plan to bring the
7 areas into attainment of the NAAQS. The proposed RACT
8 rules will not bring the areas into attainment on
9 their own.

10 There's another preface here by the Board.
11 At page 5 under Section 217.150, "Applicability," the
12 TSD states that it is likely that both NAAs considered
13 in this proceeding will be reclassified as serious
14 NAAs after the next attainment date of August 3, 2024.

15 Question 68, please comment on whether USEPA
16 has taken any formal action to reclassify the NAAs
17 since the August 3 attainment date.

18 We did discuss this a bit in the last
19 question set. But to date, USEPA has not taken any
20 formal action to reclassify either NAA.

21 The Board states: At page 6 under Sections
22 217.152, "Compliance Date and 30-Day Rolling Average
23 Basis," the TSD states that this updated averaging
24 period may increase the effectiveness of the proposed

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1 emission limits in contributing to the prevention of
2 ozone monitoring exceedances throughout the year.

3 Question 69 is: Please comment on whether
4 the Agency can provide any examples of using emissions
5 data from existing sources to show how the change in
6 averaging period improves the effectiveness of the
7 proposed emission limits.

8 The response is: Shorter averaging periods
9 minimize large fluctuations in emissions. So in a
10 case where a source is allowed to average over a
11 five-month ozone season or an annual average,
12 relatively large quantities of emissions could occur
13 on a short-term basis -- for instance, days or weeks
14 -- that could impact ozone concentrations during those
15 periods and without posing any compliance concerns for
16 that source. Shorter averaging periods decrease the
17 likelihood of these large fluctuations.

18 The Board states: At page 6 under Section
19 217.158 "Emissions Averaging Plans," the TSD notes
20 that IEPA proposes that all emission averaging plans,
21 or EAPs, calculations must be done on a 30-day rolling
22 average basis instead of the ozone season (May 1
23 through September 30) and calendar year (January 1
24 through December 31) under the existing regulations.

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1 Question 70 is: Please comment on whether
2 this proposed change would require any affected
3 sources to significantly modify their EAPs or require
4 them to implement additional control strategies to
5 demonstrate compliance.

6 Response: It is possible that a shorter
7 averaging period will result in sources that use
8 averaging plans employing different or additional
9 control strategies.

10 The Board states: At page 7 under Section
11 217.164 "Emission Limitations," the TSD notes that the
12 number of boilers affected by the proposed rules is
13 "four to eight units in both NAAs total."

14 Question 71 is: Please clarify whether
15 there is a wide range in the number of affected --
16 please clarify why there is a wide range in the number
17 of affected boilers.

18 Response: The Agency would not characterize
19 this range of four to eight as a wide range in the
20 number of affected boilers; rather, those numbers
21 reflect relatively few boilers in the NAAs.

22 Further, this range also reflects the extent
23 to which certain sources or units may or may not be
24 subject to the Part 217 limits if a source were to

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1 limit emissions below an applicability threshold.

2 The Agency analyzed several recent years
3 emissions of units of this capacity. Some of them are
4 close to the 15 ton per year threshold and may or may
5 not choose to limit their emissions to less than that
6 threshold.

7 So there were eight boilers in that capacity
8 range, but the Agency anticipates that one or more,
9 possibly four of them, which would resolve that
10 difference, may choose to limit their emissions to
11 less than 15 tons per year.

12 Question 72: Also, please clarify whether
13 all affected boilers use non-solid fuel.

14 Response: Based on information available to
15 the Agency, no subject boilers in the NAAs combust
16 solid fuels. The Agency therefore does not anticipate
17 that any solid fuel boilers will be impacted by the
18 proposed revisions.

19 Question 73. Also, please comment on how
20 many of them currently have pre-combustion controls
21 such as low NOx burners, flue gas recirculation (FGR),
22 or a combination of the two.

23 Response: The Agency does not have detailed
24 data regarding which of these boilers may use either

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1 of those control measures. In general, permits for
2 sources do not require those specific measures, and
3 those measures can result in a range of emission
4 rates.

5 So the Board states: At page 8, under
6 Section 217.184, "Emissions Limitations," the TSD
7 states that the number of heaters affected by the
8 proposed rules is "two to six units in both NAAs
9 total."

10 Question 74 is: Please clarify why there's
11 a wide range in the number of heaters.

12 So again, the Agency would not characterize
13 that range, from two to six, as a wide range; rather,
14 those numbers reflect relatively few units in the
15 NAAs.

16 The same explanation for the range in the
17 number affected boilers the Agency provided in
18 response to Question 71 applies to the range in the
19 number of affected heaters or process heaters.

20 So where there were process heaters that
21 were close, there were certainly some in there that
22 may or may not want to limit their emissions to less
23 than 15 tons to avoid applicability. So that kind of
24 explains that range.

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1 Question 75: Also, please comment on the
2 type of controls, if any, that the affected heaters
3 currently have.

4 And again, the Agency does not have detailed
5 data regarding which specific control measures are
6 used by each unit.

7 Question 76: If they do not have any
8 controls, please comment on whether they will rely on
9 EAPs to comply with the applicable limitations.

10 Response: It appears that at least two of
11 the units are located at a source currently using an
12 averaging plan.

13 The Board states: At page 9 under Section
14 217.184 "Emission Limitations," the TSD states that
15 "the existing Part 217 limits for process heaters are
16 more stringent than those in Michigan and Wisconsin
17 for all categories of process heater designs with
18 emission limits under Subpart F."

19 Question 77 is: Please comment on how the
20 Part 217 process heater limits compare with those in
21 Ohio.

22 Response: It does not appear that Ohio has
23 RACT limits for process heaters as a category. The
24 Ohio rules contain general limits for boilers,

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1 engines, and turbines; and beyond that, there are
2 limits directed at specific units at specific sources.
3 Then there are also requirements for stationary
4 sources to conduct a RACT study.

5 So in Ohio, they don't define process heater
6 and apply a specific limit to it.

7 The Board states: At page 9 under Section
8 217.204 "Emissions Limitations," the TSD states that
9 one of the two affected glass melting sources "is
10 subject to a consent decree that requires
11 significantly lower NOx emissions limits than the
12 proposed limits, and the other subject source is
13 currently in the process of negotiating a consent
14 decree."

15 Question 78 is: What are the NOx limits of
16 the affected source operating under the consent
17 decree?

18 Response: The affected furnace must not
19 exceed the emission rate 30-day rolling average of 1.3
20 pounds of NOx per ton of glass produced as measured
21 using a NOx CEMS where available.

22 And that is in the consent decree United
23 States of America and Commonwealth of Massachusetts
24 versus Saint-Gobain Containers, Incorporated,

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1 #C10-121 Z, Western District, Washington, May 7, 2010.

2 Question 79: Regarding the second affected
3 source, is the Agency involved in negotiating a
4 consent decree?

5 Response: A consent order has been entered.
6 See consent order People of the State of Illinois
7 versus Gerresheimer Glass, Inc., #2024-CH-000384,
8 Circuit Court Cook County, September 18, 2024 -- so
9 very recently. The Agency can provide the document if
10 requested by the Board.

11 HEARING OFFICER PAULEY: Yeah, if you could
12 submit that.

13 MR. DAVIS: Okay.

14 Question 80: If so, has the Agency
15 recommended NOx limits?

16 Response: No. The consent order requires
17 compliance with the NOx emission limits set forth in
18 the sources permit. So no new NOx limits.

19 Question 81: Also, please comment on
20 whether Subpart G, NOx limits, should be lowered to be
21 consistent with the source operating under the consent
22 decree.

23 Response: No. The Subpart G, NOx limits,
24 represent RACT. The current emission limitation for

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1 container glass is 5.0 pounds per ton of glass
2 produced, and the Agency is proposing to lower that
3 limit to 4.0 pounds per ton of glass produced, as set
4 forth under the Federal Good Neighbor Plan for the
5 2015 Ozone National Ambient Air Quality Standards.
6 And that can be found at Volume 88 of the Federal
7 Register 36654, June 5, 2023.

8 The Board states: At page 9, under Section
9 217.244 "Emission Limitations," the TSD states that
10 "any new units in this source category would be
11 subject to the requirements to obtain a construction
12 permit. It is unlikely that any new sources would be
13 authorized to construct in either NAA without being
14 subject to a standard that would be more stringent
15 than RACT."

16 Question 82 from the Board is: Please
17 explain the rationale.

18 Response: A new source applying for a
19 permit to construct a cement or lime kiln in a
20 non-attainment area would be subject to non-attainment
21 new source review. This would involve the source
22 meeting lowest achievable emission rate, or LAER,
23 which is generally the most stringent emission
24 limitation for a given category.

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1 The Board states: At page 15 under "RACT
2 Determination," the TSD notes proposal in Section
3 217.388(a)(1)(D) to lower the emission limit "from 660
4 to 210 ppm for all diesel engines that are constructed
5 on and after May 1, 2025." The TSD also states that
6 "the current limit for the category has been
7 determined by the Agency to be RACT for existing
8 engines." However, the changes proposed to Section
9 217.388(a)(1)(D) do not reflect this proposed intent
10 for existing engines.

11 Question 83: Please comment on this
12 proposed subsection and, if necessary, propose rule
13 language clearly reflecting that existing diesel
14 engines are subject to a limit of 660 ppmv after
15 May 1, 2015.

16 Response: It was the intent that existing
17 units would be subject to a limit of 660 ppmv before
18 and after May 1, 2025, and that new engines on and
19 after May 1, 2025, be subject to a limit of 210 ppmv.

20 The Agency proposes that Section
21 217.388(a)(1)(D) be amended to read as follows. And
22 we can submit this language if it doesn't end up being
23 clear in the record, because there are underlines and
24 strike-throughs that may or may not be clear.

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1 So in capital D: Before May 1, 2025, 660
2 ppmv (corrected to 15% O2 on a dry basis) for diesel
3 engines; on and after May 1, 2025, 660 ppm (corrected
4 to 15% O2 on a dry basis) for diesel engines other
5 than those constructed on and after May 1, 2025; on
6 and after May 1, 2025, 210 ppmv (corrected to 15% O2
7 on a dry basis for diesel engines that are constructed
8 on and after May 1, 2025.

9 So we can send you that language. But yes,
10 the Board is correct in the Agency's intent, and we
11 will revise as necessary.

12 HEARING OFFICER PAULEY: Thank you.

13 MR. DAVIS: The Board states: At page 16 of
14 the TSD under "Low-Usage Units," the TSD states that
15 the Agency proposes to sunset Section 217.388(a)(3)(A)
16 because "using aggregate source-wide NOx potential to
17 emit from all engines and turbines combined at a
18 source . . . is an inappropriate threshold for
19 determining what constitutes low-usage units."

20 The TSD notes that, after adopting the
21 Agency's proposal, the source-wide applicability of 50
22 tons per year in proposed Section 217.386(a-5) would
23 apply.

24 Question 84: Please comment on whether

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1 Section 217.388(a)(3)(A) should include language
2 similar to proposed Section 217.390(a)(1)(A)(ii),
3 numerette 2 or little i little i, to clarify that, on
4 or after May 1, 2025, the threshold would be a
5 potential to emit of 50 tons per year of NOx.

6 Response: No. The Agency does not intend
7 for the provision under Section 217.388(a)(3)(A) to be
8 in effect on and after May 1, 2025.

9 HEARING OFFICER PAULEY: That concludes the
10 Board's questions. For the record, does anyone else
11 have any questions for the Agency before we get
12 towards the end of things?

13 (No response.)

14 HEARING OFFICER PAULEY: Thank you.
15 Checking one more time, is there anyone there that was
16 wanting to provide a public comment?

17 (No response.)

18 HEARING OFFICER PAULEY: Okay. Not hearing
19 any, let me take a moment to address the issue of an
20 economic impact statement. Section 27B of the
21 Environment Protection Act provides that the Board
22 must request that the Department of Commerce and
23 Economic Opportunity conduct an economic impact study
24 of proposed rules before the Board adopts the rules.

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1 The Board must make either the economic
2 impact study or the Department's explanation for not
3 conducting one available to the public at least 20
4 days before a public hearing.

5 In a letter dated July 11, 2024, the Board's
6 chair, Barbara Flynn Currie, requested that the DCEO
7 conduct an economic impact study of this rulemaking
8 proposal. On August 28, 2024, DCEO declined the
9 request, stating they do not have the industrial
10 engineering expertise to meaningfully participate in
11 estoppel.

12 Is there anyone present today who would like
13 to testify regarding the Board's request for a study
14 and DCEO's response?

15 (No response.)

16 HEARING OFFICER PAULEY: Not hearing any,
17 can we go off record for a moment to discuss
18 procedural dates?

19 (Discussion held off the record.)

20 HEARING OFFICER PAULEY: Jumping back on the
21 record, we were discussing procedural issues. So the
22 Agency has agreed to file the answers and any
23 amendments to proposal or new proposal by October 17,
24 2024. The prefiled deadline for testimony is October

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1 31 for the November 21, 2024, second hearing. And we
2 do have a November 14 deadline for prefiled questions.

3 Copies of the transcript of today's hearing
4 are expected to be available no later than Thursday,
5 October 3, 2024. Promptly after the Board receives a
6 transcript, it will be posted to COOL, our online
7 system, from which it can be viewed and printed.

8 Are there any other matters that need to be
9 addressed at this time?

10 (No response.)

11 HEARING OFFICER PAULEY: Not hearing any,
12 I'd like to thank everyone for participating today and
13 thanks to the Edwardsville Madison County Courthouse
14 for hosting us here.

15 The first hearing is adjourned.

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17 (Hearing adjourned at 12:35 p.m.)

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