

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

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY: MR. CHUCK FEINEN,
9 HEARING OFFICER.

10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

11 Ms. Elizabeth Ann
12 Mr. Kevin Desharnais
13 Ms. Kathleen Hennessey
14 Mr. Richard McGill
15 Ms. Marili McFawn
16 Mr. Joseph Yi

17 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
18 PRESENT:

19 Ms. Bonnie Sawyer
20 Mr. Richard Forbes
21 Mr. Bharat Mathur

22 OTHER AUDIENCE MEMBERS WERE PRESENT AT THE HEARING,
23 BUT NOT LISTED ON THIS APPEARANCE PAGE.

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18
19
20
21
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23
24

I N D E X

PAGES

GREETING BY HEARING OFFICER.....425 - 432

TESTIMONY OF CHRISTOPHER ROMAINE.....432 - 478

TESTIMONY OF DONALD SUTTON.....478 - 483

TESTIMONY OF DAVID KOLAZ.....483 - 493

TESTIMONY OF GALE NEWTON.....493 - 495

TESTIMONY OF ROGER KANERVA.....496 - 501

QUESTION AND ANSWER SESSION.....503 - 631

CLOSING COMMENTS BY HEARING OFFICER.....631 - 633

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E X H I B I T S

Marked for
Identification 15

Hearing Exhibit No. 31.....473

Hearing Exhibit No. 32.....477

Hearing Exhibit No. 33.....492

Hearing Exhibit No. 34.....492

Hearing Exhibit No. 35.....495

Hearing Exhibit No. 36.....502

1 THE HEARING OFFICER: I think we are going to
2 go on the record and we'll start the proceedings this
3 morning.

4 Good morning. My name is Chuck Feinen.
5 I'm the assigned hearing officer to this matter,
6 which is docketed R97-13, in the Matter of Emissions
7 Reduction Market System, Adoption of 35 Illinois
8 Administrative Code 205 and Amendments to 35 Illinois
9 Administrative Code 106.

10 I issued an officer order the
11 earlier part last week. Hopefully, everyone got it.
12 If not, I will make copies available at lunch or
13 after lunch.

14 In that hearing officer order, I tried
15 to schedule what we were going to do today and
16 tomorrow and also noticed that we we're going to
17 continue the hearings most likely on the 10th and
18 11th of next week also.

19 The room for the 10th and 11th has not
20 been totally clarified to me. I believe it's in this 21
building again, but I don't believe it's in this
22 room. I think it's on the second floor in the CMS
23 offices, if you've ever been there before for other
24 hearings.

1 This morning, we're going to start out
2 with the testimony of the agency's witnesses, Chris
3 Romaine and, I guess, Richard Forbes, dealing with
4 the section-by-section workings of the proposal.

5 After we get done with the testimony of
6 the agency's witnesses this morning, we will start
7 into the questioning of the agency on the sections
8 that they have testified to.

9 In an attempt to make the record clear,
10 what I'm going to try to do is have you ask your
11 prefiled questions by section. In other words, we
12 will start at the beginning and go all the way
13 through.

14 Most people filed their questions in
15 that order, at least from what I could figure out,
16 and I am going to attempt to follow that order and
17 ask for those who really didn't state what section
18 it goes to, and where I didn't have time to figure
19 it out, I will ask if there are any more questions
20 for that section and you will be allowed to ask those 21
prefiled questions at that time. After that, if
22 there are any questions from the audience, we will
23 get to that time permitting.

24 With me today board member-wise, to my

1 right, is Joseph Yi, Kathleen Hennessey.

2 MS. HENNESSEY: Good morning.

3 THE HEARING OFFICER: To my left is Marili
4 McFawn.

5 MS. McFAWN: Good morning.

6 THE HEARING OFFICER: Also, to my left, is
7 Marili McFawn's attorney assistant, Kevin Desharnais.
8 To my right is Elizabeth Ann, technical unit. To
9 Ms. Hennessey's right is her assistant, Richard
10 McGill. I see no other members of the staff or the
11 board with us here today.

12 With that, I guess we will start with
13 the agency unless there is something prior to that.

14 MR. ROSEN: Good morning. I'm Whitney Rosen
15 from the Illinois Environmental Regulatory Group.

16 We have a statement or a comment to make 17
17 in response to your hearing officer order. I don't
18 know if you would believe it appropriate to make it
19 now or if there would be some time later in the next
20 two days that we could address it.

21 THE HEARING OFFICER: Does it pertain to
22 today's proceedings?

23 MR. ROSEN: It pertains to the video
24 teleconference.

1 THE HEARING OFFICER: Why don't we wait until
2 tomorrow?

3 MR. ROSEN: Okay. Thank you.

4 THE HEARING OFFICER: Are there any other
5 questions or things before we go on?

6 One other comment I should make for
7 those who are new with us today is in the back, on
8 the table, there should be a notice list and service
9 list signup sheet plus extra copies of the most
10 recent service and notice list. If you are not on
11 the service and notice list and you would like to be
12 on the notice list or service list, please sign your
13 name and we will get that stuff to you.

14 If there isn't anything else, I guess
15 we will start with the agency.

16 MS. SAWYER: Okay. There are a couple
17 matters that I wanted to raise before we proceed into 18
our testimony.

19 First of all, for the schedule of
20 tomorrow, there are a couple things in your order
21 where we wanted to do the testimony a little bit
22 differently in terms of who is going to testify
23 tomorrow.

24 It was our intention to take

1 Mr. Compton, Mr. Ziesmann and Mr. Jerik as a panel
2 since they are all the business members of the
3 design team. I realize that people probably haven't
4 received copies of the prefiled testimony of
5 Mr. Ziesmann and Mr. Jerik, which we did file on
6 Friday, and there are copies available on the
7 table back there, but we will just have them read
8 their testimony into the record. It is not very
9 long and then we would just take those three
10 witnesses together tomorrow. That's one matter.

11 Another matter is the testimony of
12 Mr. Beckstead. Mr. Beckstead primarily prepared
13 testimony on the technical feasibility of the
14 proposal and he really doesn't need to be scheduled
15 with the economic portion. So we would like to
16 present his testimony tomorrow also.

17 Is there any comment on that?

18 THE HEARING OFFICER: Is there anything
19 else?

20 MS. SAWYER: Well, I have a couple other
21 things, but that's it with --

22 THE HEARING OFFICER: Pertaining to the
23 testimony tomorrow, that's it?

24 MS. SAWYER: I think that's it, yes.

1 THE HEARING OFFICER: Well, in response
2 to the request of having Mr. Jerik testify tomorrow
3 along with Mr. Compton, one of the reasons why we
4 scheduled Mr. Compton tomorrow is because his
5 prefiled testimony indicated that he would like
6 to testify tomorrow. If Mr. Compton -- Mr. Compton
7 is here with us today in the audience.

8 Mr. Compton, is there a problem with
9 you not testifying tomorrow? I mean, would you have
10 a problem testifying on the 10th or the 11th?

11 MR. COMPTON: I may be able to arrange that.

12 THE HEARING OFFICER: Okay. My -- the reason 13
I ask is because I really would hate to have people
14 forced to do their questioning of Mr. Jerik and
15 Mr. Zeismann with one day's worth of looking at the
16 testimony. I really want to give participants the
17 opportunity to raise their questions and have time
18 to do that.

19 If you can make it tomorrow, I think
20 I will still have you testify tomorrow and just have
21 Mr. Jerik testify at a later date. Is there any
22 time you can figure out within the course of today,
23 tomorrow, or tonight?

24 MR. COMPTON: At the break, I will let you

1 know.

2 THE HEARING OFFICER: All right. Great. So
3 why don't we just hold that off until we can find out
4 if Mr. Compton can rearrange his schedule for us.

5 MS. SAWYER: Okay.

6 THE HEARING OFFICER: That's appreciated if
7 you can do that.

8 Now, as far as Mr. Beckstead, if he is
9 ready to go tomorrow, I think everyone has already
10 seen his testimony for a while now. I think that
11 will be fine unless there are any comments about
12 having Mr. Beckstead testify tomorrow from the
13 participants.

14 Seeing none, I think that will be okay.
15 We will look at the things at the break and figure
16 out tomorrow's schedule after I talk to Mr. Compton.

17 MS. SAWYER: Okay. I just want to clarify
18 something that you said at the beginning of this
19 proceeding.

20 It wasn't clear to me if we were
21 intending at this point to definitely continue the
22 hearing on the 10th or 11th or just determine if
23 there is a need for both or follow-up days.

24 THE HEARING OFFICER: Well, let me just

1 clarify that. If we need those dates, we will
2 continue them. We have a room reserved. I just
3 wanted everyone aware of that. I'm personally
4 thinking that we'll end up doing that. Now, if
5 all miracles of miracles happen and we get through
6 today and tomorrow, surely, we will not go over to
7 the 10th and 11th. Unfortunately, I haven't seen
8 too many miracles lately.

9 MS. SAWYER: Okay. I just wanted to clarify
10 that's what you were saying with that.

11 I have some comments about questions.
12 Should I hold that off until this afternoon?

13 THE HEARING OFFICER: Why don't we wait until 14
we get to the question part.

15 MS. SAWYER: Okay. With that, I would like
16 to call the agency's first witness, Christopher
17 Romaine.

18 THE HEARING OFFICER: Would you swear in the
19 witness, please?

20 (Witness sworn.)

21 WHEREUPON:

22 C H R I S T O P H E R R O M A I N E ,
23 called as a witness herein, having been first duly
24 sworn, deposeth and saith as follows:

1 MS. SAWYER: Please proceed, Mr. Romaine.

2 MR. ROMAINE: Good morning. I want to give
3 you a brief summary of my background. I'm employed
4 as the manager of the New Source Review Unit in the
5 Permit Section in the Division of Air Pollution
6 Control.

7 I have a bachelor of science degree in
8 engineering and I have also completed course work
9 towards my master's degree in environmental
10 engineering.

11 As manager of the New Source Review
12 Unit, I have programmatic responsibility for
13 permitting activities relating to certain federal or
14 federally arrived rules for new or modified sources.
15 These include things like federal prevention of
16 significant deterioration programs.

17 As part of my duties with the agency,
18 I also assist in certain program development
19 activities. I have been involved in various
20 regulatory proceedings dealing with the new source
21 review program.

22 I have dealt with regulations involving
23 organic material. I was involved in the group that
24 worked on developing Illinois' Title 5 program.

1 Not surprisingly, I've also gotten
2 involved in the development of this Emissions
3 Reduction Market System.

4 My testimony covers a number of topics.
5 In logical order, they are a discussion of affected
6 sources under the proposed Emissions Reduction Market
7 System, or ERMS, a review of the Non-Attainment
8 New Source Review Program, as it is necessary to
9 understand the context, at least in certain regards,
10 in which the ERMS is being proposed.

11 I spent a fair amount of time talking
12 about how baseline emissions will be determined and
13 how the allocation of allotment trading units or ATUs 14
will be made to incumbent sources.

15 This also touches on the exclusion from
16 the 12 percent reduction that affects the difference
17 between somebody's baseline emissions and what they
18 had received in the allocation of ATUs.

19 Probably the exclusion that is of the
20 most interest is the case-by-case exclusion for best
21 available technology.

22 I also touched briefly on quantification 23
methods for VOM emissions.

24 The next topic I talk about is the

1 emission reduction generator concept. This is a
2 process whereby emissions reductions of
3 non-participating sources can result in ATU.

4 The final topic in my testimony is
5 really a discussion of the issues concerning
6 permanent shutdown of sources as touched on in the
7 trading program.

8 Applicability has generally been
9 discussed by a number of agency witnesses. Clearly,
10 it's very important that sources understand what they 11
will be required to hold as to ATUs for their
12 seasonal emissions under the proposed programs.

13 There are basically three criteria that
14 have been discussed. You have to be a source in the
15 nonattainment area. You have to be a Title 5 source. 16
You have to have volatile organic material emissions
17 in the season of at least ten tons.

18 There are various provisions for other
19 sources and individuals to participate in certain
20 respects in the program, but this does not extend or
21 require them to hold ATUs.

22 Now, depending on when a source begins
23 operation, the sources that will be affected by the
24 trading program are considered either participating

1 sources or new participating sources. The proposal
2 at this break point is whether a source is operating
3 as of May 1, 1999.

4 The sources that are operating before
5 this point are considered participating sources.
6 Those are the encumbents that will receive allotments
7 of ATUs determined from their baseline emissions.

8 New participating sources are sources
9 that come along later that are not encumbents.

10 There are several categories of
11 participating sources. There are participating
12 sources that meet the criteria as of program
13 startoff. There are some that may later enter the
14 program. They are operating now, but they do not
15 currently meet the emissions criteria. They would
16 be brought into the program when they trigger
17 applicability. There may also be some people that
18 have applicability in the future as a result of the
19 major modification under nonattainment new source
20 review.

21 There are different provisions that
22 address how the allotments will be made for each of
23 those sources. All three of those categories are
24 participating sources.

1 In addition, those participating sources
2 have two exemption options available to them. One
3 option is to limit their emissions of less than 15
4 tons per season.

5 The other option is to commit to an 18
6 percent reduction in emissions from the baseline
7 level and that would reduce their involvement in the
8 trading program as has already been discussed by a
9 number of people.

10 In terms of new participating sources,
11 there are also two categories. There are people who
12 enter the program in the future that do not do it as
13 a result of a major modification and then there are
14 folks who enter the program as a result of a major
15 modification. Again, they get treated slightly
16 differently. These folks again have option in terms 17
of the trading program pursuing an exemption based
18 on a 15-ton per year limit on emissions.

19 Now, as discussed briefly, all
20 participating -- new participating sources will be
21 Title 5 sources. That means that the provisions
22 of the program can be implemented or at least the
23 allocation provisions of the program and the
24 applicability provisions can be implemented through

1 the Title 5 permit processes or in some cases, the
2 new sources, as a combination of a construction
3 permit followed by a Title 5 permit.

4 Our review of the information suggests
5 there are probably about 250 sources that could be
6 participating sources on the order of 4,000 emission
7 units. Approximately 20 percent of these, maybe 50,
8 could pursue the 15-ton exemption. That means that
9 there certainly is a good population of about 200
10 sources and several thousand emission units that will 11
be participating in the proposed program.

12 The next topic, again, was new source
13 review. The new source review program is a program
14 that is key for construction and modification of
15 emission units.

16 In general purposes, its purpose is to
17 make sure that construction or modification of major
18 new sources or major modifications does not interfere 19
with reasonable further progress.

20 In other words, it states plans to
21 achieve attainment to make reasonable further
22 progression in reducing emissions. The plans that
23 states prepare can address existing sources.

24 We also set rules for existing sources.

1 We also accommodate minor growth through various
2 growth projections, but the Clean Air Act provides
3 that there have to be additional provisions to
4 safeguard any potential negative impact from major
5 projects on attainment or reasonable further
6 progress.

7 As a result, major projects have some
8 additional hurdles or requirements they have to make
9 before they could go forward. The first requirement
10 the major project has to meet is a case-by-case
11 determination of an appropriate emission limit,
12 control technology.

13 For a major project in a nonattainment
14 area, this is determined as the lowest achievable
15 emission rate. This is a very stringent emission
16 rate reflecting the most stringent emission
17 limitation required in any other jurisdiction or
18 the most stringent emission limitation, which is
19 achievable, which is even more stringent.

20 So they have a very stringent control
21 requirement. You don't simply go back and look at
22 RACT rules or MACT rules or other emissions standards 23
that have been set by the regulatory process.

24 There has to be a case-by-case

1 determination of permitting that the most stringent
2 control will be used.

3 The next obligation for a major project
4 would have to be emission offsets. Emission offsets
5 are reductions of emissions in existing sources
6 willing to make room for the new source coming into
7 the area.

8 The presumption that the Clean Air Act
9 establishes is that the attainment plan or rate of
10 progress plan does not account for major sources.
11 Therefore, major sources have to make their own
12 space. They have to provide emissions reductions
13 from other existing sources in the area that haven't
14 already been relied upon under specific surplus
15 reductions and present those as part of the
16 permitting process.

17 Because Chicago is in a severe ozone
18 nonattainment area, emission offsets in the Chicago
19 area have to be presented at a ratio of 1.3 to one.
20 So for each ton of emissions, a new major project is
21 being permitted for. They have to provide at least
22 1.3 tons of reduction from existing sources in the
23 area that we haven't already identified and relied
24 upon in our attainment planning.

1 A new major source also has to go
2 through analysis of alternatives to demonstrate that
3 the selection of control technology and location is
4 warranted, that the environmental impacts of the
5 project are balanced out by the benefit to society.

6 Finally, a major source has to certify
7 that they have their existing sources in compliance.
8 A person cannot go ahead with a major new project in
9 the nonattainment area if they have existing major
10 sources that are out of compliance or not on an
11 appropriate compliance schedule.

12 What this means is that new major
13 projects have fairly stringent major requirements
14 they have to meet before they can go forward with
15 construction.

16 What is a major project in the Chicago
17 area, in the severe ozone nonattainment area? A
18 major project is one with a potential limit of 25
19 tons per year of volatile organic material. It can
20 also be a project that results in a net increase of
21 25 tons per year and that determination has to be
22 made with other contemporaneous increases and
23 decreases of emissions over the last five years.

24 The consequence of nonattainment area

1 and new source review at this point, at least, is
2 that there have been very few major projects in the
3 Chicago area. That's one thing.

4 The other thing is that there is a
5 definite force in place that encourages people
6 proposing projects to do what is necessary in terms
7 of designing the size of the project and selecting
8 a control means to avoid status as a major project.

9 The significance for the trading program
10 is that there is an overlap between the emission
11 offset requirement under the new source review
12 program and the general concept under the trading
13 program that people must hold allowance trading units 14
for their season emissions.

15 Both are designed to make sure that
16 sources count for their operation consistent with
17 the overall attainment plan and rate of progress
18 plan.

19 So one of our thoughts in the
20 development of the trading program is could we
21 develop a program where the trading program can
22 satisfy the offset requirement of the new source
23 review?

24 When we examined the Clean Air Act, we

1 found out there isn't any requirement that emission
2 offsets be provided on an annual basis, but the Clean
3 Air Act says that there have to be sufficient offsets
4 to assure continued reasonable further progress.

5 In fact, reasonable further progress is
6 evaluated on a summary basis. Therefore, it would be
7 consistent with our reading of the Clean Air Act that
8 the offset requirement be satisfied on a seasonal
9 basis using the ATU -- the trading program.

10 So if we've identified a major source
11 that has to provide offsets instead of providing
12 simply one ATU for each unit of emissions, it could
13 provide 1.3 ATUs for each unit of emissions.

14 That would certainly simplify the offset 15
requirement under the current circumstances where
16 there isn't really any structure or system out there
17 to assist new sources considering locating in the
18 area in meeting their offset requirements. Now, the
19 other point of this is that the applicability system
20 that we have discussed for the Nonattainment Area
21 New Source Review Program does not adapt itself to
22 coordination with the emissions trading program.

23 Really, the applicability system for the 24
nonattainment area and new source review is specified

1 by the Clean Air Act, the provisions, as I've said,
2 where the major source is one with the potential to
3 emit 25 tons per year, major modification of
4 emissions of 25 tons per year.

5 There are various provisions that
6 address how a termination of modification is made and
7 we are not proposing to do anything to change the
8 applicability structure of the new source review as
9 part of the trading program. All we would be
10 affecting would be how the offset requirement might
11 be satisfied.

12 Another broad issue that relates to new
13 source review is how we deal with projects that have
14 undergone new source review is how we deal with the
15 process of allocation of ATUs to incumbent sources.

16 The issue that we are really facing is we 17
will not have an instantaneous transition where on
18 one day, sources can go out and get a construction
19 permit, and then on the next day, sources can go out
20 and operate under the trading program to satisfy
21 their obligation.

22 What we have is a situation where we
23 have certain pending projects that are currently
24 under development with construction permits. They

1 can proceed at present with the construction of
2 those projects as they received the construction
3 permit, but the trading program is not in a place to
4 allow them to obtain trading units for these pending
5 projects.

6 The approach that we have taken in our
7 proposal is really to treat these pending projects as
8 incumbents to allow these pending projects when it's
9 kind of the demarcation point we have come up with
10 is projects that are proceeding pursuant to a
11 construction permit that has been issued prior to
12 January 1, 1998.

13 To treat them as incumbents and allow
14 sources with a pending project to account for the
15 project after the project has been operational for
16 three complete seasons.

17 Basically, we are trying to treat these
18 pending projects to the extent possible like other
19 incumbent sources. So we would allow these pending
20 projects to complete the construction projects, to
21 start operation, and wait until we go through the
22 allotment process until we have three complete
23 seasons from data from them.

24 These sources could then use two seasons

1 with the highest view of emissions and thereafter,
2 within the fourth season, the source would have to
3 account for the project's emissions with ATUs.
4 Until that point, the sources would not have to hold
5 ATUs for the pending project.

6 The next topic -- probably the most
7 complicated part, and certainly one of the most
8 critical part of the rule -- deals with the
9 termination of baseline emissions.

10 It has been indicated, everybody
11 understands now, that baseline emissions will be
12 the means by which the allotment of ATUs to incumbent 13
sources is made. There are several
14 parts to that process. It involves selecting a
15 representative period of time.

16 What are the appropriate seasons to
17 make that determination of baseline emissions in?
18 It involves certain adjustments to the emission
19 rate to account for noncompliance or voluntary
20 over-compliance.

21 I have some examples that I will run
22 through on that. It also deals with certain
23 exclusions for particular emission units that will
24 not be required to provide 12 percent -- particular

1 emission units whose allotment would not incorporate
2 a 12 percent reduction for the baseline emission
3 levels, and finally, certainly, quantification of
4 emissions is a relevant aspect to the baseline
5 determination.

6 The first part of the baseline
7 determination, as has been explained, is selection of
8 appropriate seasons. What is the appropriate period
9 of time to look at to determine some of these
10 baseline emissions?

11 The general presumptions that we have
12 established in the proposal is that sources would
13 select two seasons out of 1994, 1995 or 1996. They
14 would select the two seasons with the highest
15 emissions. Those seasons would be their basis for
16 their allotment.

17 We do allow sources to substitute other
18 seasons if non-representative conditions exist for
19 1994, 1995 and 1996. That substitution would be made 20
on a complete season-by-season basis.

21 Sources would not be allowed to pick and 22
choose different seasons for different emission units 23 at
the source. I think the questions go to what is
24 representative; how do you make that distinction?

1 Certainly, we would consider
2 representative to the -- actually, we would discuss
3 the way the rule has been proposed if there are
4 non-representative conditions for 1994, 1995 and
5 1996, you can go to other seasons.

6 So we expect a source, in their
7 application, to come into the program, to demonstrate
8 to us with appropriate supporting information that
9 there have been unusual situations in 1994, 1995,
10 1996, such as a strike, a fire, an unusual equipment
11 outage, one of your customers had a strike or an
12 outage so you were having an unusual slump in
13 business conditions.

14 If that sort of a demonstration could
15 be made, then, we would allow the source or the
16 rules would allow the source to substitute another
17 representative season in place of the
18 non-representative season.

19 The next point is when you get your
20 season selected. How do you determine your baseline
21 emissions? I think the first point is you don't
22 have to worry about insignificant emissions.

23 Insignificant emission units is a
24 concept from the Title 5 program. Insignificant

1 emission units are ones that are not put through
2 the entire rigor of the Title 5 program and we would
3 not include insignificant emissions in the baseline
4 determination.

5 Likewise, a source would not be expected
6 to hold ATU insignificant emissions. Basically, it's
7 out of the program going in, out of the program as it
8 operates.

9 Once you have gotten rid of your
10 insignificant units, which you probably may not have
11 any data for, that's probably the reason they are
12 insignificant, you have to get your significant
13 units.

14 The way or the conception either
15 that the trading program approaches emissions really
16 is in two pieces; production or activity level times
17 an emission rate.

18 The purposes of the selection of the
19 season is to come up primarily with a representative
20 production or an activity level. However, the
21 emission rate in that representative season may not
22 be the appropriate emission rate for the baseline.

23 Certainly, one adjustment that has to be 24
made is for noncompliance. We expect sources to be

1 in compliance. Our 15 percent rate of progress plan
2 relies on sources being in compliance.

3 So if a source is out of compliance,
4 their actual emissions must be adjusted for the
5 emission rate that would have been achieved if they
6 were in compliance.

7 Related to that, we are not going to
8 account for emissions during startup, malfunction,
9 and breakdown. Those emissions are really outside
10 of what is allowed as well. Even if a source has
11 authorization and their permit has emissions during
12 startup, malfunction, and breakdown, the general
13 expectation is that is an unusual provision and all
14 reasonable steps have to be made to minimize those
15 emissions.

16 Those emissions really can't be
17 characterized as allowable in a strict sense either.
18 Again, those sort of emissions have to be excluded.
19 I think those are pretty straight-forward. Then, you 20
get to the most difficult adjustment, which is the
21 adjustment for voluntary over-compliance.

22 I think it's been stated several times
23 already. The purpose of this program is to get
24 further reductions after 1996 to achieve our rate of

1 progress requirement in 1999.

2 We would certainly like to establish
3 this program so that sources that have made
4 reductions that contribute to this goal receive
5 recognition of this fact in their allotment of ATUs.

6 So if there have been reductions, early
7 reductions, surplus reductions, they should get
8 credit. That's sort of a basic principal.

9 How do we determine what is voluntary
10 over-compliance? Well, first of all, they must go
11 beyond the various rules we have relied upon to get
12 the 15 percent rate of progress of 1996.

13 So we have adopted various rules.
14 Coming into compliance with those rules is not a
15 surplus reduction. We counted on it. You only get
16 recognition if you go beyond that.

17 One of the other rules that we have
18 effectively relied upon to get 15 percent rate of
19 progress in 1996 is, in fact, the Nonattainment Area
20 New Source Review Program.

21 So if the source has accepted
22 limitations in their permit that restrict their
23 operations so they can go forward with the project,
24 that would also be something you have to go beyond

1 to be recognized for voluntary over-compliance.

2 The other piece of voluntary
3 over-compliance is that the initial reduction has
4 to be instituted, has to have transpired after 1990.

5 The Clean Air Act of 1990 drew a line
6 in the sand, essentially, requiring further
7 reductions in emissions to achieve attainment. The
8 Clean Air Act doesn't provide for recognition in
9 pre-1990 reductions as contributing to rate of
10 progress requirements.

11 You have to show, in fact, not only have 12
you gone beyond what are the applicable rules that
13 have been relied upon to get a rate of progress plan
14 satisfied, but you've done this since 1999. It's new 15
reduction that has not been already factored into the 16
evaluation.

17 I think, to go through this quickly, I
18 will have some examples here with overheads. These
19 are in my prepared testimony. They are not earth
20 shaking examples, but I did want to make some
21 points.

22 The first example is how do you go
23 about determining your baseline emissions looking
24 at seasons? So I have come up with simply three

1 seasons, '94, '95 and '96, which are the presumptive
2 seasons where we expect most sources will establish
3 their baseline emissions.

4 From my simple example here, the
5 seasonal conditions in all of these three seasons
6 are all normal. We have varying rates of production.
7 The source would select the two seasons with maximum
8 reduction, maximum emissions.

9 In this case, it's 1995 and 1996, 27 and
10 a half tons per year in one season, 22 and a half in
11 the other. You take those two seasons, average them
12 together, and come up with at least at this point an
13 emission level of 25 tons prior to any emission
14 adjustments. You come with an average reduction for
15 these seasons of 50 million units.

16 The next example goes through what would 17
happen if you don't have representative conditions.

18 In this example, I have gone through and had a strike 19
in one season and an equipment outage in the other.

20 If you look at what's happened from the
21 normal season, they had 50 million units. The
22 equipment outage has reduced emissions. The strike
23 has reduced emissions. So in this case, we would
24 go back and let the source pick out other normal

1 seasons.

2 In this case, the source would probably
3 pick 1992, 50 million production units, emissions of
4 25 tons. So they take 25 tons and 25 tons, 50
5 million units and 50 million units, average those,
6 and that would be their basis for their baseline
7 emissions. The next thing that we discussed is
8 emission rate adjustments.

9 In this case, I've picked out the two
10 years. I assume they picked out 1994 and 1995 for
11 the production and these two were 50 million --

12 THE HEARING OFFICER: Hold on a second.
13 Could you state what example you are talking --

14 MR. ROMAINE: Oh, I'm sorry.

15 THE HEARING OFFICER: -- about as you go
16 through so we know on the record?

17 MR. ROMAINE: I've just completed going
18 through examples 1A and 1B. I'm now starting on
19 example 2A, which is the adjustment for
20 non-compliance.

21 In this example, we have two actual
22 emission rates; 25 tons per year in one season,
23 20 tons per year in the next. When you look at
24 the emission rate, however, and compare it to an

1 allowable emission rate, in this case, I arbitrarily
2 assumed an allowable emission rate of .008 pounds of
3 VOM per unit.

4 You can see in the first season, they
5 were out of compliance. Clearly, as I said, a source
6 should not get any recognition for out of compliance
7 emissions in its baseline determination. Therefore,
8 you would have to go in and adjust. You would have
9 to adjust downwards.

10 So you would recalculate their emissions 11
as if they had been complying with the applicable
12 rule. They would only get 20 tons in the first
13 season.

14 I'll make this a nice example. They
15 have corrected the problem if there was one. In
16 the second season, they are in compliance. They
17 also received 20 tons in that season as well. I
18 want to make a point with this example. When I say
19 noncompliance, that is, they aren't meeting the
20 applicable 1996 rule.

21 In fact, if that rule didn't have a
22 compliance date until 1995, they may have been in
23 compliance. This is just how we approach it
24 conceptually for going -- thinking of why you have

1 to adjust the emission rate.

2 Now, I want to move on to example 2B.

3 Okay. This is an adjustment for voluntary
4 over-compliance. Again, I picked the two seasons.
5 In the first season, I have this source just
6 complying with the applicable rule.

7 It has emissions of 20 tons per season.
8 This source now has made voluntary improvement in the
9 1995 season. It has reduced its emissions to .0007.
10 So it actually only had seasonal emissions of 17
11 and a half tons in 1995. The concept of voluntary
12 over-compliance would say it has made a reduction
13 it didn't have to do.

14 This will have contributed to our
15 rate of progress demonstration. We have made an
16 adjustment to increase emissions as if he had
17 continued to operate at his complying emission
18 rate, his previous emission rate.

19 Example 3B now begins -- oh, 3C.
20 3C goes to the example of where there would be no
21 adjustment because we don't have a situation, as we
22 described it in our rule, of voluntary
23 over-compliance. We have a situation of historical
24 pre-1990, 1990 over-compliance.

1 So in this example, I brought in an
2 additional piece of information showing that in the
3 1990 season, this source was already emitting at
4 an emission rate of .0007. It was already complying
5 with the applicable rules. It has not made any
6 further reductions after 1990. It is still emitting
7 at this historical emission rate of .0007.

8 So this situation would have its
9 baseline emissions determined based upon its actual
10 emissions. It would not get any adjustment. It's
11 not out of compliance, but it has not made any
12 voluntary over-compliance either.

13 The final example in this series is
14 2D. This has an adjustment for further voluntary
15 over-compliance. So I took the previous example.
16 They were achieving .0008 in 1990. That's what they
17 were doing in the 1994 season as well, but in 1995,
18 I have the source again going further.

19 They are voluntarily coming in and
20 reducing commissions below both what was being
21 achieved in 1990 and what was relied upon for rate
22 of progress plan for 1996.

23 Accordingly, this source would receive
24 an adjustment for its emissions in the 1995 season.

1 We have calculated it as if we were still at the
2 .0007 pounds per unit historical emission rate.
3 That would take it back to an emission rate of 17
4 and a half tons per season.

5 So those four examples sort of go
6 through straightforward how do you account for
7 emission rate adjustments; noncompliance, voluntary
8 over-compliance, an emission reduction that isn't
9 voluntary over-compliance because it was being
10 achieved in 1990, and then further reduction in
11 actual emission rate.

12 I will start Example 3A and this series
13 of examples deals with the implication of permit
14 conditions.

15 As I have said, permit conditions are
16 also something that we have relied upon. Not so much 17
the permit conditions, but the Nonattainment Area
18 New Source Review Program, which results in permit
19 conditions is something that we have relied upon as
20 part of our rate of progress plan.

21 So in this example, again, I still have
22 same allowable emission rate of .008, that's what the 23
rule would require, but in this source became --
24 brought in this new emission unit in 1993, it had to

1 get a construction permit.

2 To get a construction permit, it had to
3 avoid major modification. That was the choice it
4 made. It accepted limitations to make sure emissions
5 were not major. It wanted to keep it below 25 tons
6 per year.

7 We accepted limitations of 24 tons per
8 year. That was the result of a certain limit
9 production and a certain tighter emission rate that
10 it committed to. It committed to achieving an 11
emission rate of .0004 and that kept its annual 12
emissions below 24 tons.

13 That also can be converted into a
14 seasonal limitation as well. That's what you would 15
have to do for this program. What is the result of 16
transferring these annual limitations in the seasonal 17
program that we're dealing with? I assumed here it 18 was
just a straight portion of five-twelfths.

19 So the production of 120 million units 20
goes to 50 million units. The emission of it goes
21 from 24 tons to ten tons. So we now have to factor 22
that into our baseline emission determination as
23 another factor, as to whether there has been
24 voluntary over-compliance or not.

1 Well, in the example that I have given,
2 two seasons, again, I picked the two that they want
3 to use, production of 45 million units. They never
4 got up to their 50 million units they got permitted
5 at based on the 45 million units, but in fact they
6 have done better than the emission rate they have
7 committed to. They started achieving .0004. They
8 achieved .0003.

9 Then, finally, .0002. So their actual
10 emissions are well below the ten tons per season
11 that they theoretically would have achieved at 6.75
12 and 4.5.

13 So in this case, we look to the emission 14
limit established in the permit as the basis for
15 doing adjustment for voluntary over-compliance.
16 We would say that they should get credit for any
17 reductions beyond .0004.

18 That would get both of these units for
19 these seasons up to an emission rate of nine tons
20 per season. So the permit could also create
21 limitations that you have to consider as people have
22 had to accept these limitations to avoid having major 23
modifications.

24 Now, as I said, one other possibility

1 for a construction permit is a pending construction
2 permit, that they aren't operational yet so as to
3 have three complete seasons of data as of January 1,
4 1998.

5 We would then allow them to go and pick
6 or wait until they have those three complete seasons
7 of data.

8 So we have again the permit conditions
9 that have already been set of the same unit of .0004,
10 an emission rate of 24 tons per year, ten tons per
11 season, but in this example, they didn't come into
12 operation until midsummer of 1996.

13 So they don't have a complete season
14 for 1996. They have a complete season for '97, a
15 complete season for '98, and a complete season for
16 '99.

17 We will wait until we have these three
18 seasons of data, wait until the emissions unit is
19 operational for three complete seasons, and then go
20 through the baseline emission determination process.
21 In this case, they would probably pick seasons one
22 and two when they really have their production up to
23 the 45 million units.

24 We would give them credit for voluntary

1 over-compliance because they are achieving the
2 emission rate of .0003 instead of the .0004 that
3 they have committed to. They would then receive an
4 adjustment to their baseline emission adjustment,
5 their allotment, looking at nine tons of emissions
6 from this tending pending project.

7 THE HEARING OFFICER: Let the record reflect
8 that was example 3B.

9 MR. ROMAINE: Thank you, Chuck.

10 Now, this is example 3C. This is 11
probably the most complicated. I've tried to 12
simplify it because when you get involved with 13
netting, then, you have circumstances where you 14
have other commitments for emission decreases 15 and
as you can see here, I actually have three 16 tables.

17 THE HEARING OFFICER: Can you hold on a 18
second, please?

19 Off the record.

20 (Whereupon, a discussion
21 was had off the record.)

22 THE HEARING OFFICER: Let's go back on the 23
record.

24 MR. ROMAINE: This example has been
simplifiedL.A. REPORTING - (312) 419-9292

1 in several respects. The point I was trying to get
2 to is what would be the implications of having gone
3 through a netting project?

4 Okay. A netting project is where you go
5 through a project that by itself would be major, but
6 you have identified other contemporaneous emission
7 decreases that have occurred or will occur before the
8 new unit goes into operation. You look at the net
9 change in emissions.

10 So the key point I was trying to
11 make here is we have a project here which would
12 superficially appear to be a major project with
13 emissions over 36 tons. However, because they have
14 committed to a contemporaneous decrease of 12 tons,
15 the net affect of this project was only an increase
16 of 24 tons.

17 One of the simplifications I have made
18 to avoid having to go into a series of projects is
19 that this would occur with one project. In fact, if
20 our nonattainment rules are currently written, you
21 probably would have to have a series of projects that 22
22 resulted in a 36-ton accumulation. It wouldn't be
23 simply one project by itself.

24 This would only occur if, in fact, our

1 new source review rules would get revised to allow
2 projects with more than 25 tons of emissions by
3 themselves to net out of review.

4 As currently are written, our rules say
5 that if a project by itself has emissions of 25 tons
6 per year, it's considered a major modification. It
7 can't simply net out of review. It has to go through
8 some alternative route. It's called the special
9 rules for modification.

10 In any case, we have a project here.
11 They've gone through a commitment to make an emission 12
reduction. In this case, the emission reduction
13 they've made is 12 tons, the difference
14 between 36 and 12 is a net increase of 24.

15 So after netting, they are only really
16 allowed to have an increase of 24 tons. If you go
17 through the same evaluation, you look at what they
18 were permitted to emit, what they have actually have
19 been achieving, and you come up with a represented
20 production rate. You find that out after these folks 21
have completed their representative seasons of
22 operation. They would be allowed an additional 14
23 tons of baseline emissions.

24 The final point is that's really not 14

1 tons. Even though they would receive 14 tons as the
2 adjustment, they really have made a commitment to
3 reduce 12 tons already. So that 12 tons would not be
4 reflected in their emissions baseline.

5 We would only really be allowing a net
6 change of a nine-ton increase. We have already taken
7 some out ahead of time with the netting even though
8 they get an adjustment of 14. Really, the affect
9 would be adding into the program an additional 9
10 tons. So this one is probably most complicated
11 because you have to think about the fact they made a
12 commitment to reduce emissions and it's an
13 enforceable commitment. That would actually come out 14
first and, in fact, what they get is their baseline
15 emissions determination for this existing emission.

16 What that means, in fact, is even though 17
we are allowing pending projects into the program to
18 go forward and get an allotment after they have had
19 three seasons of operation, we are not allowing major 20
projects to do this. We will not have a major
21 increase. Most of this allows a non-major increase
22 looking at the overall effect.

23 The final example I have deals with
24 future adjustments for minor construction projects

1 involving a minor modification. I don't know if it's
2 that well explained in the regulations, but when you
3 have a modification, you have to consider the fact
4 that there are already some emissions from the unit.
5 There has been a change in that unit that will allow
6 more emissions.

7 Clearly, we can't give them credit twice
8 for what they are already emitted, gotten credit for
9 baseline and then give credit again after they have
10 received three complete seasons of operational data.

11 What you have to do is use that three
12 complete seasons of data to look at how you evaluate
13 what we are going to give them for increases
14 associated with the modification. So in this case,
15 the piece of information that is critical is that
16 this source already has certain emissions that have
17 been included as a baseline. It's already received a 18
baseline ten.

19 So if it can show 14 tons per year as a
20 result of conditions after the modification, we would 21
only give it an additional four tons. That would be
22 the additional appointment of emission reductions
23 entitled for the modification.

24 THE HEARING OFFICER: Let the record reflect

1 that was example 3D.

2 MR. ROMAINE: Sorry about that again.

3 That obviously is the most detailed part
4 of going through just the manipulation of how you
5 come up with somebody's baseline emission.

6 The next point is what are the
7 exclusions. One of the elements in this program is
8 that it's not appropriate to contemplate appropriate
9 reduction from certain emission units. We have
10 excluded boilers, heaters, and certain fuel-burning
11 devices from the requirement. It's 12 percent lower
12 than the baseline emissions from also excluded units
13 subjected to achieving MACT, NESHAP or LAER
14 standards.

15 Finally, there is a case-by-case
16 exclusion for emission units that are determined
17 to be complying with best available technology.
18 This is the maximum emission reduction achievable.
19 This is determined during the permitting process.
20 It's patterned back to the best available control
21 technology requirement of the BACT program, but
22 because we are dealing with existing sources existing 23
or emission units, it does require consideration of
24 the circumstances of that existing unit as it would

1 affect the ability and certainly the cost of putting
2 in further measures to reduce emissions.

3 We would expect that this process would
4 follow U.S. EPA's shutdown BACT process -- BACT is
5 best available control technology again. This is
6 a systematic approach to evaluating whether further
7 emission reductions could be achieved by applying
8 additional control techniques.

9 Quantification certainly is considered
10 for the baseline emission determination. We're
11 dealing with a variety of different types of emission 12
units. Accordingly, the appropriate quantification
13 methods will be dealt with on a case-by-case basis
14 during the processing of the Title 5 permit. That's
15 one of the things where the -- the fact that these
16 are Title 5 sources coincides nicely with the need to 17
quantify emissions.

18 The Title 5 permit allows us to tailor
19 appropriate quantification techniques to the
20 particular emission units that we're dealing with
21 and memorialize those procedures in the Title 5
22 permit.

23 Once particular procedures have been
24 established, we would expect that the source would

1 continue to use those methods received consistently
2 with that memorialized method. Any change would
3 require a revision of -- or any significant change
4 would require revision of the Title 5 permit before
5 it could be implemented and relied upon for the
6 trading program.

7 The next topic I touched on was the
8 emission reduction generator process. This is a
9 process whereby emission reductions of
10 nonparticipating sources may contribute surplus 11
emission reductions to the trading program.

12 Basically, there are two different 13
14 routes that could be used; one where there is a 14
permanent revision, in which case, the ATUs be 15
16 recognized on a season-by-season basis during
17 reconciliation period; and the other route is
18 where there is a permit revision. In that case, 18
19 we would recognize a stream of ATUs because the 19
20 revised permit would make the emission reduction 20
enforceable.

21 In either case, the first step in
22 recognizing an emission reduction generator would
23 be a proposal submitted to the agency and reviewed
24 by the agency and accepted by the agency describing

1 why ATUs should be issued for the particular
2 emission reduction and how the amount of the
3 emission reduction should be quantified.

4 The final topic of my testimony is
5 shutdowns of participating sources. The issue
6 is how do you deal with a participating resource
7 that received allotments of ATUs as an incumbent
8 when it closed its doors in seasons operation as
9 shown by the withdrawal or expiration of its permit?

10 This is one area where we did not have
11 agreement between affected sources and environmental
12 groups. Accordingly, we attempted to come up with
13 an acceptable compromise.

14 The sources said they want all of the
15 ATUs basically no change in practice. Environmental
16 groups were concerned that those ATUs from that
17 shutdown source no longer go to that shutdown source, 18
that they go either to an air quality benefit or to
19 other sources.

20 What our compromise would say is that 20 21
percent of the ATUs that would be allocated to that
22 shutdown source would go to the ACMA. It would not
23 go to the source that is shut down. Therefore, if
24 the ACMA is unused, it would, in fact, result in an

1 air quality benefit. If there, in fact, is demand
2 in the ACMA and we go to that particular emission
3 reduction, it would be available to other sources.
4 So it would not be available to the source that was
5 shut down or at least to the source that shuts down
6 once or something else, it would have to go through
7 the same process as other sources who rely on the
8 ACMA?

9 So that is what I hope to be a fairly
10 brief discussion of what was covered in my prefiled
11 testimony.

12 MS. SAWYER: Thank you, Mr. Romaine. Before
13 calling our next witness, I have a small matter that
14 I should have brought up prior to presenting our
15 testimony.

16 We have a small proposal to amend the
17 proposal. It just deals with two sections and it's
18 really just correcting things that we intended in
19 the initial proposal. I just wanted to present
20 that. I think we made copies available to everyone.

21 THE HEARING OFFICER: Let's go off the record
22 for a second.

23 (Whereupon, a discussion
24 was had off the record.)

1 THE HEARING OFFICER: Let's go back on the
2 record.

3 Were there any comments about the
4 agency's. . .anyone? What I think we're going to do
5 is have them mark that as an errata sheet and have it
6 moved -- oh, Mr. Trepanier?

7 MR. TREPANIER: Yes. I have a comment and
8 it's specifically regarding the agency's proposal
9 to add a Section B under -- to add a B under Section
10 205.610. I think that it presents -- that what the
11 agency is asking for here would be a fundamental
12 change in this program and it would -- and in fact,
13 it has been contradicted by the testimony.

14 Earlier, Mr. Goffman said that this
15 program had a provision where the bank wouldn't be
16 broken because the ATUs would expire. I believe
17 that the documentation up to this point has always
18 been that ATUs in the bank would expire. So I think
19 that this is a major change in this program to say
20 that ATUs in the bank -- now they won't expire. I
21 would like more time to respond to that.

22 THE HEARING OFFICER: Well, what we're going
23 to do today is have them mark this errata sheet as an 24
exhibit. We will have witnesses testify as to why

1 they are making these changes. Then, you will have
2 your ability to ask some questions. Then, of course,
3 you have your chance hopefully sometime in March to
4 present testimony and evidence of why you feel it's a
5 change and all of that.

6 MR. TREPANIER: Thank you.

7 THE HEARING OFFICER: So why don't we go
8 back and mark this as errata sheet number one.
9 After the agency presents testimony, I believe --
10 or maybe we should move it now since you have two
11 different people testifying on it.

12 MS. SAWYER: Okay.

13 THE HEARING OFFICER: Why don't we move this
14 as an exhibit?

15 MS. SAWYER: Okay.

16

17 (Document marked as
18 Hearing Exhibit No. 31 for
19 identification, 2/3/97.)

20 THE HEARING OFFICER: I'm going to mark this, 21
which is entitled as "Amendments to the Proposal?" I 22 will
mark it as errata sheet number one. It will be
23 marked as Exhibit No. 31.

24 If there are no objections of having

1 that entered into the record, I will do so. I
2 believe Mr. Romaine is probably the witness who will
3 testify on the changes to 205.405?

4 MS. SAWYER: That's correct.

5 THE HEARING OFFICER: If he could proceed to
6 do that, please.

7 MS. SAYWER: Chris, if you want to just go
8 ahead --

9 THE HEARING OFFICER: Oh, I'm sorry. There is
10 a question in the audience.

11 MR. ROSEN: Yes. I have just a clarifying
12 question. The actual language change -- is that
13 part of the -- are you deeming that part of the
14 exhibit?

15 THE HEARING OFFICER: Yes. I consider that
16 one whole document.

17 MR. ROSEN: Okay. So the motion is not the
18 exhibit?

19 THE HEARING OFFICER: Well, I was just going
20 to do the whole thing.

21 MR. ROSEN: Great. Thank you.

22 THE HEARING OFFICER: I'll just treat it as
23 an errata sheet.

24 MR. ROMAINE: We have filed what, I guess,

1 is now an errata sheet proposing changes to 35
2 proposed Illinois 205.405 solutions for further
3 reductions. This is because we erroneously left
4 certain provisions in our proposal.

5 As you know, this proposal has gone
6 through a long development process. In fact, in
7 an earlier version of the program, we were looking
8 for reductions phased over, I think, a six-year
9 period of time with reductions occurring in '99,
10 2000, 2001 and 2002.

11 So there would have been several 12
12 steps where a source would have been facing a 13
13 further reduction in the allotment of ATUs they
14 received. Accordingly, under that previous version 15
15 of the program, there would have been several points 16
16 along the program where a source might want to say
17 I don't have the ability to make any further
18 reductions. I should be considered now to be finally
19 achieving best available technology. However, under 20
20 the current program, based on U.S. EPA's new guidance 21
21 and policy, we are only going for one reduction to
22 achieve the rate of progress requirements for 1999.

23 We are not having this phased in a
24 series of further reductions. Therefore, there is

1 really only one opportunity to make one's case that
2 one is entitled to the best available technology
3 exclusion and that is when you come in for your
4 initial allocation.

5 So we're eliminating provisions that
6 would allow for further revisions to exclusions
7 from reductions based on changes of a source after
8 a period of time when the initial allocation is
9 made.

10 MS. SAWYER: Thank you, Mr. Romaine.

11 THE HEARING OFFICER: As far as the other
12 changes, which deal with Section 205.610, Performance 13
Accountability, Alternative Compliance Market
14 Account, we will wait for the testimony of those
15 changes to come when Mr. Kanerva, I believe, is
16 presenting testimony on the ACMA.

17 Is that correct, Bonnie?

18 MS. SAWYER: Yes, that's correct.

19 THE HEARING OFFICER: So we can proceed,
20 then, I guess, with your next witness unless you
21 want to move the testimony of Mr. Romaine?

22 MS. SAWYER: Yes. At this point, I would
23 like to move that the prefiled testimony of
24 Christopher Romaine be entered as an exhibit.

1 THE HEARING OFFICER: When you're saying
2 the prefiled testimony, you're talking about the
3 completed one, both dates that were filed?

4 MS. SAWYER: Yes, both the January 2nd and
5 January 9th and they are dated.

6 (Document marked as
7 Hearing Exhibit No. 32 for
8 identification, 2/3/97.)

9 THE HEARING OFFICER: I am marking the
10 testimony of Chris Romaine as Exhibit No. 32, which
11 was filed on two separate occasions with the board.

12 If there are no objections, I'm moving
13 that into the record?

14 Ms. Mihelic?

15 MS. MIHELIC: Are you marking Exhibit 2 as
16 the latest version of Chris Romaine's testimony or --

17 THE HEARING OFFICER: I'm marking what is
18 exhibit -- well, okay. I will mark it as Exhibit
19 32-A, which will be the January 2, 1997, testimony
20 and, 32-B will be the January 9, 1997, testimony.

21 MS. MIHELIC: Thank you.

22 THE HEARING OFFICER: If there are no
23 objections to that, I will have those entered into
24 the record.

1 fact, the Title 5 permit.

2 The Title 5 permit, as you know for
3 those people who have had to file one, obligated
4 the source to identify all affected units as their
5 source and had to identify all the regulations,
6 both state and federal, that affect those units.

7 The source had to identify the current
8 compliance status of those units. The source also
9 had to identify what monitoring reporting recording
10 that they would undertake to assure future compliance 11
of those units through the life of the Title 5
12 permit.

13 My job is to take that application and
14 in a sense convert what was given to me, confirm the
15 accuracy of that, and produce a Title 5 permit. So
16 we already have 800 Title 5 permits filed. All of
17 the people that will be affected by this particular
18 program are -- have already or have filed a Title 5
19 permit so those are currently in possession of the
20 agency and have been deemed complete.

21 The Title 5 permit again will require
22 that there be year-round compliance with those
23 particular sources. So we will identify those
24 sources and the units in what requirements will keep

1 those units in compliance.

2 After we have done that, basically, we
3 will then take the ERMS provisions and incorporate
4 that into the Title 5 also. The ERMS did not vacate
5 or underwrite any underlying provision, but in a
6 sense, add an additional obligation on top of that.

7 We, as part of our job, will go ahead
8 and review the Title 5 permits we have up until the
9 point we can determine their current status and then
10 await the ERMS application.

11 Because the Title 5 permit has to go
12 out for public notice and have review by U.S. EPA
13 and because the ERMS portion of itself will be
14 significant modification to that permit, we're not
15 going to take those particular applications out to
16 those phases until after the ERMS applications are
17 received and incorporated into the Title 5 permits.

18 The permit section will be responsible
19 for doing the baseline determinations. We will have
20 to do that within 120 days of receipt. We plan on
21 doing that in two phases. We plan on doing the
22 initial screening once the application is received
23 to pick out any obvious inconsistencies between
24 that application and the previously submitted CAAPP

1 application.

2 Then, we plan on conducting a more
3 detailed review during that 120-day period to then
4 correlate the information in that baseline
5 determination with the CAAPP application.

6 So, you see, we already have a very
7 good working base of knowledge about these particular
8 sources because of the fact that the CAAPP
9 applications have already been submitted and the
10 ERMS application will have to either mirror the
11 CAAPP application or somehow there will have to be
12 a merging of those two documents.

13 So the same units that will be affected
14 by the Title 5 will also be covered by the ERMS
15 portion. So there will be a marriage of those two
16 processes.

17 After we issue Title 5 permits and the
18 Title 5 permits will identify what ATUs are available 19
to the source, it will also identify what process
20 the source will use to determine their actual VOM
21 emissions during the season.

22 That determination method should be very 23
similar to the determination method they used to
24 establish their baseline determination. So there

1 shouldn't be a difference between how you go about
2 historically to identify what your actual emissions
3 were for your baseline determination and what you are
4 going to carry in the future into the permit as your
5 ongoing determination as those actual emissions.

6 After the Title 5 permit is issued,
7 there will be modifications to those permits.
8 Sources will want to add new units, take out units,
9 and so the permit section will have an ongoing
10 responsibility to assure the Title 5 permit stays
11 current and the ERMS are modified as appropriate.

12 I guess, finally, as we did in the
13 Title 5 program, as far as getting initial outreach
14 and completeness determinations, we plan on having
15 very open communication with the source.

16 As soon as we identify a problem,
17 historically, we got on the phone and sought
18 additional information. We plan on carrying that
19 out into the future. We hope to have the actual ERMS 20
application forms available by July so people can
21 start on those as soon as possible.

22 We will assist them as best we can in
23 filing those applications so that once they are
24 filed, it makes my job easier as far as incorporating

1 them into the Title 5 permit.

2 That's all I have.

3 MS. SAWYER: Thank you, Mr. Sutton.

4 The agency would like to call its next
5 witness, David Kolaz.

6 THE HEARING OFFICER: Would you swear in the
7 witness, please?

8 (Witness sworn.)

9 WHEREUPON:

10 D A V I D K O L A Z ,
11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 MR. KOLAZ: My name is Dave Kolaz. I'm
14 manager of the Bureau of Air in the Compliance and
15 Assistance Management Section. I have a Bachelor's
16 of Science degree in aeronautical and astronautical
17 engineering and a master's of science degree in
18 environmental engineering. My bachelor's of science
19 degree is from the University of Illinois and my
20 master's degree is from Southern Illinois
21 University.

22 I've been employed by the Illinois EPA
23 since June of 1971 and 16 years of that time has been 24
spent in the Air Monitoring Program and the last four

1 or five years in the Compliance Program.

2 My responsibility in the Compliance and
3 Systems Management Section has been to develop and
4 maintain the Bureau of Air's information management
5 systems to maintain and evaluate the emissions
6 information that we received from annual emission
7 reports and also to direct and manage the activities
8 that are associated with the air pollution and
9 compliance program.

10 I am here right now to provide a summary 11
of my prefiled testimony. I want to point out that
12 the purpose of my testimony is to provide some
13 insight into the implementation aspects of the ERMS
14 rules regarding both market operations and
15 performance accountability.

16 My intent isn't really to provide an
17 exhaustive and unaudible blueprint of the entire
18 market operations or performance accountability
19 process, but to simply illustrate certain concepts
20 and likely approaches for various components of
21 the rule. These market operations components include 22
ATU allotments, market transactions and the ERMS
23 database itself.

24 My description of the performance

1 accountability aspects of the rule includes
2 compliance accounting, excursion resolution
3 enforcement, and market system evaluation.

4 Now, regarding ATU allotments, as has
5 been mentioned by the other people who have
6 testified, the baseline will be determined from data
7 that's provided in the ERMS application and both the
8 baseline and allotment will be specified in the
9 CAAPP permit. I believe Mr. Sutton just spoke to
10 that affect.

11 The allotment will be issued to excluded 12
12 units without the 12 percent reduction. We are
13 planning on issuing -- making the first distribution
14 of ATUs by April 1, 1999. Each ATU will be uniquely
15 numbered and that numbering system will contain
16 within itself a variety of information important
17 to tracking market operations.

18 ATUs will expire on December 31st, two
19 years after issued, unless retired earlier through
20 emissions reconciliation or by a special participant. 21
21 As you heard recently, our plans are to make special
22 provisions for ATUs held within the ACMA itself.
23 The first ATUs issued, therefore, will expire at the
24 close of business on December 31st in the year 2000.

1 The agency may issue ATUs to transaction
2 accounts for multiple years, but in any circumstance,
3 multiple year transfer agreements will be permitted.

4 Following the close of the
5 reconciliation period on December 31st, the agency
6 will review all accounts to ensure sufficient ATUs
7 are held for the prior season reconciliation.

8 Also, expired ATUs will be transferred
9 to the ACMA for special access, if necessary, and
10 excursion compensation notices will be issued as
11 necessary and a heightened level of review of the
12 seasonal allotment period reports will begin.

13 Now, regarding market transactions,
14 some points I want to illustrate is that account
15 officers may buy, sell, trade or transfer ATUs to
16 any other participant. We are going to require
17 that account officers from both the holder and the
18 receiver of ATUs must authorize each transaction.

19 The agency will have an accounts
20 administrator that will then authorize a transaction
21 after its validity has been verified. We plan on
22 using both a debit and a credit entry system to the
23 transaction database and this is a term we've
24 referred to as double entry.

1 Selling price information must be
2 provided with each transaction. The buyer and
3 seller will assume all responsibility for resolving
4 conflicts involving obligations, financial or
5 otherwise, which arise from execution of a properly
6 authorized transaction.

7 ATUs obtained in transactions occurring
8 after December 31st of each year cannot be used to
9 reconcile emissions from the prior seasonal allotment
10 period. Account officers will be able check
11 transaction accounts at any time.

12 I wanted to point out that if a
13 discrepancy is found, the account officer can request 14
the agency to take corrective action. Now, regarding 15 the
ERMS database, this is a term we have used to
16 broadly cover a variety of things that will be part
17 of the market system.

18 The ERMS database will consist of
19 multiple components which includes an electronic
20 bulletin board and transaction account component.
21 The ERMS database will be designed and developed
22 under a contract to be awarded through an open and
23 competitive business process.

24 We plan on having a 24-hour electronic

1 access with suitable security features in place to
2 ensure the integrity of the system. The system is
3 intended to have the look and feel of modern banking
4 and market systems in use today that many of you may
5 be already familiar with.

6 We're anticipating that the ERMS
7 application component will be fully operational
8 by January 1, 1998, and that the transaction account
9 portion will be fully tested and available by January
10 1, 1999. My prefiled testimony listed some of 11
the requirements that are expected to be in the 12
final design of the system.

13 Now, concerning performance
14 accountability, I want to talk especially about the 15
compliance accounting part. The rule specifies that 16
there will become a compliance master file that will 17
contain the seasonal component of the annual
18 emissions report, information supporting the
19 seasonal actual VOM determination, copies of all
20 ATU transfer agreements, and purchase price data.

21 Compliance master file reviews are
22 expected to begin by the agency after the 1999
23 seasonal allotment period. The rule points out that 24
after the agency conducts a review of a compliance

1 master file, we are required to prepare a report of
2 our findings and provide this to the participant.

3 I want to point out regarding compliance
4 accounting one aspect concerning our determination
5 of the likely participants in the ERMS program.
6 We intend to use the -- VOM, the volatile organic
7 material -- allowable limit that are in the CAAPP
8 applications that have already been filed to identify
9 those sources requiring an ERMS application or an
10 exemption request.

11 Sources who have requested an annual
12 allowable limit of 15 tons per year or less would
13 be exempted from the program by virtue of the
14 certified CAAPP application that they have already
15 filed.

16 By February 1, 1998, this would be one
17 month after the January 1, 1998, ERMS application
18 deadline, the agency intends to notify sources
19 from whom it expected, but did not receive, an ERMS
20 application.

21 The excursion resolution process is the
22 next topic that I will cover. The reconciliation
23 period as described by the rule covers the time from
24 October 1st through December 31st.

1 The reconciliation reports will be
2 reviewed for completeness and fundamental accuracy
3 upon receipt by the agency. By fundamental accuracy,
4 what I mean is that we intend on conducting a much
5 more detailed review at a later date, but that we
6 will be checking certain components of the
7 reconciliation report to ensure again that the
8 method -- determination method is proper and that
9 all the proper units have been accounted for.

10 We will then issue an obligation equal
11 to the number of ATUs necessary to reconcile the past 12
season's VOM emissions and we will post those to the
13 participant's account.

14 After December 31st, excursion
15 compensation notices will be issued to those
16 participants that do not hold sufficient ATUs
17 for the prior season.

18 These participants will be required to
19 compensate for the access VOM emissions by either
20 acquiring ATUs from the ACMA or by providing a
21 portion of their next season's allotment to reconcile 22
those emissions.

23 Now, enforcement is a portion of the
24 rule that we intend on addressing very seriously

1 and effectively. I want to point out that the rule
2 provides that sources will not be subject to
3 enforcement action for violations of the ERMS rule
4 if they hold ATUs sufficient to cover their
5 emissions.

6 Sources will be subject to enforcement
7 for violations of state or federal regulations or
8 permit requirements limiting their emissions or
9 establishing other requirements such as record
10 keeping or reporting. In other words, the existing
11 obligations that companies have to date will still be 12
enforced.

13 Now, the last point is market system
14 evaluation. The rule provides for annual performance 15
review with the first report due by May 15th of the
16 year 2000. We feel this is an extremely important
17 and valuable part of the rule. The annual review,
18 which is described in more detail in the rule, is
19 intended to include various components which
20 collectively will contribute to a full understanding
21 of the workings and the impact of the ERMS rule.
22 It will help us to make an assessment of its
23 effectiveness.

24 With that, that concludes the summary of

1 my prefiled testimony. Thank you.

2 MS. SAWYER: At this time I would like
3 to mark Donald Sutton and Dave Kolaz's testimony as
4 exhibits. This is their prefiled written testimony.

5 THE HEARING OFFICER: I'll be marking the
6 testimony of Donald Sutton, dated January 2, 1997,
7 as Exhibit No. 33.

8 (Document marked as
9 Hearing Exhibit No. 33 for
10 identification, 2/3/97.)

11 THE HEARING OFFICER: Are there any objections 12
to having this entered into the record?

13 Seeing none, that's entered into the
14 record, Donald Sutton's testimony dated January 2,
15 1997, as Exhibit 33.

16 I am now marking as Exhibit 34 the
17 testimony of David Kolaz, which is dated January 2,
18 1997.

19 (Document marked as
20 Hearing Exhibit No. 34 for
21 identification, 2/3/97.)

22 THE HEARING OFFICER: Are there any objections 23
to entering the testimony of Mr. Kolaz?

24 Seeing none, that will be entered into

1 the record as Exhibit 34, the testimony of David
2 Kolaz dated January 2, 1997.

3 MS. SAWYER: Just as a quick matter, I
4 thought you entered Mr. Romaine's testimony as two
5 exhibits. You just made it one?

6 THE HEARING OFFICER: It was 32-A and 32-B.

7 MS. SAWYER: Oh, okay. Thank you,
8 Mr. Kolaz.

9 At this point the agency would like to
10 call its next witness, Gale Newton.

11 THE HEARING OFFICER: Would you swear in the
12 witness, please?

13 (Witness sworn.)

14 WHEREUPON:

15 G A L E N E W T O N ,
16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

18 MS. SAWYER: Please proceed, Mr. Newton.
19 Can you tell us a little bit about your background?

20 MR. NEWTON: Okay. My name is Gale Newton.
21 I'm an environmental policy analyst with the IEPA
22 in the Office of Environmental Policy.

23 I have a bachelor's and master's degree
24 in environmental science.

1 I submitted two short pieces of
2 testimony. One was about vehicle scrappage as it
3 would be a possible inter-sector transaction that
4 could be made through the regulatory base part of the
5 ERMS proposal.

6 My other short piece of testimony was
7 about account officer training. It is required under
8 the rule.

9 My testimony explains the rationale for
10 their requiring training and when we plan to conduct
11 the training and a little bit about what we intend to
12 include in the training.

13 MS. SAWYER: Thank you, Mr. Newton. That
14 concludes his testimony.

15 At this point I would like to move
16 Mr. Newton's prefiled written testimony into
17 evidence.

18 THE HEARING OFFICER: I'm marking as Exhibit
19 No. 35 the testimony of Gale Newton, dated January 2, 20
20 1997.

21 (Document marked as
22 Hearing Exhibit
23 No. 35 for
24 identification, 2/3/97.)

1 THE HEARING OFFICER: Just so there is
2 clarification for the record, I believe Mr. Newton
3 talked about submitting two different testimonies
4 as actually just applying different sections within
5 the piece of testimony he submitted.

6 MS. SAWYER: Okay. The agency would like to
7 call its next witness.

8 THE HEARING OFFICER: If there are no
9 objections, I will admit this into the record.

10 MS. SAWYER: Oh, I'm sorry.

11 THE HEARING OFFICER: Seeing none, the
12 testimony of Mr. Gale Newton, which is Exhibit No.
13 35, dated January 2, 1997, will be admitted into the
14 record.

15 MS. SAWYER: At this point, the agency would
16 like to call Roger Kanerva. Just to clarify
17 something, earlier, Mr. Kanerva testified on an
18 overview of the rule. The testimony Mr. Kanerva
19 will be presenting today is specific to the
20 alternative compliance market account.

21 THE HEARING OFFICER: At the conclusion of
22 Mr. Kanerva's testimony, he will provide testimony
23 as to errata sheet number one?

24 MS. SAWYER: At some point during his

1 testimony, yes.

2 THE HEARING OFFICER: You can swear in the
3 witness, please.

4 (Witness sworn.)

5 WHEREUPON:

6 R O G E R K A N E R V A ,
7 called as a witness herein, having been first duly
8 sworn, deposeth and saith as follows:

9 MR. KANERVA: I gave an explanation of my
10 background and involvement with the agency the first
11 time I testified. I assume there is no need to
12 repeat that?

13 THE HEARING OFFICER: No.

14 MR. KANERVA: Good. As I mentioned in
15 presenting the general layout for the system, one
16 of the things that I was going to go into in more
17 detail and which I have prepared testimony on is
18 the alternative compliance market account.

19 That account was developed as a response 20
to some current concerns on the part of potential
21 participating sources about perhaps or having trouble 22
getting access to allotment trading units at
23 particular points in the operation of the market.

24 I guess our feeling was that that

1 wouldn't necessarily be a problem, but we would
2 design some kind of a safety net that people could
3 use if they find that they have trouble getting
4 the trading units from the market.

5 The alternative account is supported
6 by a one percent set aside from each year's allotment
7 that then becomes available during the reconciliation
8 period each year -- i.e., from October 1st to
9 December 31st -- for sources to come to the agency
10 and take advantage of the trading units that are
11 available in that account.

12 There is an explanation in the
13 testimony, and I suspect in the question and answer
14 process, we will get into more explanation of
15 exactly some of the rationale behind how the pricing
16 provisions are set up, but essentially, the ACMA is
17 supposed to be a secondary source of supply. It is
18 not supposed to be competing with the market itself.

19 We came up with the rationale for
20 setting the purchase price at the upper end of the
21 expected control cost that people were going to be
22 experiencing as we proceed with these emission
23 reductions.

24 Again, just for clarification for

1 people, I would ask to keep in mind that it's the
2 control cost structure, not some representation of
3 market conditions that was the basis for picking
4 the \$1,000 percent ATU.

5 It really came from data that was
6 available from our last round of RACT rulemakings
7 where the upper end of control costs was in the
8 vicinity of \$7,000 a ton.

9 Of course, this program is going into
10 place in 1999, several years hence. By the time you
11 sort of round that up to account for the additional
12 time period, we really felt that \$10,000 per ton was
13 a good figure to use.

14 We actually added the market price --
15 the average market price alternative in response to
16 comments that we got from one of the business
17 groups. We can describe this in more detail later.

18 We're referring to this as an amendment??

19 MS. SAWYER: An errata.

20 MR. KANERVA: The errata change relating to
21 the alternative account is really designed to not
22 wind up penalizing the participating sources for
23 their annual one percent contribution to the
24 account.

1 The idea is to have what's contributed
2 to that account available for people to use later
3 on if the need should be there and if three years
4 down the road is when the need occurs, then, the
5 contributions in the account that have reached that
6 two-year age, the way it is now, would have been
7 lost and not even available to use which is, in our
8 view, really kind of a penalty situation.

9 So this language puts back in what was,
10 in fact, the language on Page 4 of this. It puts
11 back in a provision that was in the fourth draft
12 that we distributed to everybody of the rules as
13 we were developing it and essentially keeps the
14 time clock -- stops the time clock while the ATUs
15 are still part of ACMA, but as soon as somebody
16 accesses it, and they are issued out to somebody or
17 they are purchased by somebody, then, the two-year
18 lifetime would start so that a source would have
19 the time frame -- the regular time frame to use it.

20 One other thing I want to clarify in
21 the testimony, and this is just to make sure the
22 record is clear, the provision regarding the split
23 in purchase between new sources, new participating
24 sources, and existing sources needs clarification

1 in terms of how I presented the testimony.

2 The rule actually has a split-up until
3 2002 where only 30 percent of the balance of the
4 ACMA is accessible unless all other participating --
5 existing participating sources don't access the
6 account and then it can go up to 50 percent.

7 After 2002, there is no split. Any
8 source, new or existing, can access whatever amount
9 they are after.

10 My testimony had indicated that they --
11 there was a 30 percent limit until 2002 and then 50
12 percent limit after that, which was an earlier
13 version. So I did a disconnect. The current one
14 would have no split like that after 2002.

15 I have already prepared an example here, 16
but I think we can wait for the questioning process.
17 An example that I think will show how all of these
18 access procedures work rather than just go through a
19 word explanation again, it was obvious from the
20 questions that we kind of needed to go through a
21 set of numbers and see how the process of starting
22 off with regular access and then going to special
23 access and how that would affect each of the seasons
24 involved would probably be a more clear way to do

1 it.

2 So during the question period, I will
3 present that example and we can have more discussion
4 of that. I think we will answer a number of
5 questions that various people have about exactly
6 how does the one percent work and when does it apply,
7 et cetera.

8 That's it.

9 MS. SAWYER: Thank you, Mr. Kanerva.

10 THE HEARING OFFICER: Is it possible,
11 Mr. Kanerva, for you to go to Page 8 of your prefiled 12
testimony and tell us exactly what you want taken out 13 that
reflects the wrong information?

14 MR. KANERVA: Yes. On Page 7 and continuing
15 on 8, Subsection G, that's the provision that was --
16 that I did not explain correctly in the written
17 testimony that I have re-explained now.

18 THE HEARING OFFICER: Okay.

19 MS. SAWYER: At this point I would like to
20 move Mr. Kanerva's prefiled written testimony into
21 evidence.

22 THE HEARING OFFICER: I'm marking as Exhibit
23 No. 36, Mr. Kanerva's prefiled testimony dated
24 January 2, 1997.

1 (Document marked as
2 Hearing Exhibit No. 36 for
3 identification, 2/3/97.)

4 THE HEARING OFFICER: Are there any objections
5 if that is entered into the record?

6 Seeing none, we will enter that into the
7 record as Exhibit 36, which is the testimony of Roger
8 Kanerva dated January 2, 1997.

9 MS. SAWYER: At this point that concludes
10 the witnesses that the agency is presenting today.
11 I don't know if you want to take a break or what.

12 THE HEARING OFFICER: Okay. Let's go off the 13
record.

14 (Whereupon, after a short
15 break was had, the
16 following proceedings were
17 held accordingly.)

18 THE HEARING OFFICER: I think we are going
19 to go back on the record.

20 As we start this afternoon, I want to
21 explain a little bit what we are going to try
22 to do. We are going to try to go through
23 section-by-section of the proposal and have those
24 prefiled questions which address those sections

1 asked.

2 Some of the participants filed their questions in
3 that manner.

4 They set what section they are for. We
5 will go through those. Hopefully, we will ask those
6 and for those who didn't organize their filings that
7 way, they will ask their questions as it pertains to
8 that section.

9 So let's have a little work on both
10 parts of the groups here. The prefiled questions,
11 people will have to keep up, and try to organize
12 their stuff as we go. Obviously, we will always
13 allow questions to be asked if they get missed.

14 The reason I like doing this, and I
15 think the board has slowly adopted the same process,
16 is to keep all of those questions for a particular
17 section one part of the record so that we don't
18 have on Page 1, a question on 110, and then on Page
19 300, another question on 110.

20 So with that connotation, I will
21 attempt -- I have put some people's questions
22 together in sections and I will acknowledge as we
23 go through this, what I would like to do is if
24 they can, get the prefiled questions out and when

1 I acknowledge the first question, which I see is
2 on Section 205.110(c) by the coalition, Section 3
3 of their prefiled testimony from the first
4 prefiling.

5 Now, I think one question is withdrawn
6 and one question was already asked in the previous
7 hearing, however, but that's how I will try to
8 acknowledge it if you could state that on page
9 such-and-such in my prefiling section, such-and-such
10 question number, that will help us and help the
11 agency know which question is being asked and they
12 can respond.

13 MS. MIHELIC: We also have a revised
14 version -- we already gave it to the agency -- of
15 the questions and we kind of took out questions we
16 asked.

17 THE HEARING OFFICER: As we go along --

18 MS. MIHELIC: We have copies if anybody wants
19 them. So we will put them there. That may make it
20 easier to follow along.

21 THE HEARING OFFICER: Okay. Why don't you get 22
those copies out. As we go along, could you tell us
23 you withdrew that question or revised it or something 24
like that?

1 MS. MIHELIC: Right. Do you want us to just
2 ask 205.110(c) first? We have one question that we
3 are going to put back on the record.

4 THE HEARING OFFICER: The one with the A?

5 MS. MIHELIC: A(1).

6 THE HEARING OFFICER: Okay. Wait a minute.
7 Off the record.

8 (Whereupon, a discussion
9 was had off the record.)

10 THE HEARING OFFICER: We will start out with
11 the coalition's questions.

12 MS. MIHELIC: Members of the coalition met
13 with the agency last week and that's -- that has
14 caused us to revise some of our questions based
15 upon that meeting. I just think I want to state
16 for the record, and I think Ms. Sawyer will agree,
17 that section number one, "Traditional Forms of
18 Regulatory Relief", A., the agency and the coalition
19 have agreed those are to be answered by written
20 responses by the agency rather than addressed during
21 the hearing.

22 There may be other questions that we
23 have asked throughout, but that's going to be the
24 responses, I believe, that are going to be answered

1 in writing rather than at this hearing based upon
2 the fact that some of them are questions that were
3 asked.

4 So starting with Section III, A., 1.,
5 I believe we did withdraw this question previously,
6 but we would like to put it back into the record
7 with the slightly revised question being how is
8 the agency and the board able to comply with the
9 requirement of Section 9.8(c) of the act, that they
10 take into account the findings of the national ozone
11 transport assessment being coordinated by the
12 Environmental Council of States when this council
13 has neither published nor completed these findings?

14 MS. SAWYER: I'm lost. Which one are you on?

15 MS. MIHELIC: III, A., 1., Page 7 -- Page 6.
16 Sorry. Page 7 since she's got a different version.
17 Page 7 is your version.

18 MS. SAWYER: Okay. Well, first of all, I
19 would like to suggest that that question has been
20 asked and that we answered it.

21 MS. McFAWN: And this would be Question III,
22 A., 1.?

23 MS. SAWYER: Yes.

24 MS. McFAWN: I show that that was withdrawn.

1 Perhaps Mr. Forbes said something about it? Is that
2 what you are referring to?

3 MS. SAWYER: Well, we answered that question,
4 maybe not specifically in response to her's, but we
5 have been over that in detail. We answered numerous
6 questions on it.

7 MS. McFAWN: That's possibly why they withdrew
8 it originally?

9 MS. MIHELIC: This specific question was not
10 specifically -- I don't recall being specifically
11 addressed and I have reviewed some of the transcript
12 from the last hearings and this specific question
13 was not addressed.

14 MS. SAWYER: Okay.

15 MR. MATHUR: I think I'll answer the
16 question.

17 MS. MIHELIC: Thank you.

18 MR. MATHUR: As I indicated in my testimony
19 and in answer to a previous question, the current
20 level of reductions that the agency is seeking via
21 the ERMS rule is not a level of reduction aimed at
22 attainment of the ozone standard. Therefore, at this 23
time, it is not necessary in the wake of the results
24 of the OTAG process.

1 The OTAG process will become an issue
2 when the agency is seeking sufficient reductions
3 that will be necessary to show attainment.

4 The other aspect of my testimony that
5 I would like to remind you is in going through
6 a base air quality presentation, I was trying to make
7 the point that even with the best reduction, that we
8 would find potentially available the background ozone
9 concentration as a result of reductions that are
10 likely to come out of the OTAG process, that we
11 would need to seek enough reductions in VOC in
12 Chicago, satisfy the ROP requirement through 2002.
13 With this process, we are only seeking reductions
14 at the moment through 1999.

15 MS. MIHELIC: That's the only question that
16 I have to that specific section.

17 THE HEARING OFFICER: Are there any other
18 questions that would pertain to Section 110(c)?

19 Mr. Newcomb, I see you have a question
20 in 9.8 of the act. Does that fall into this section
21 also?

22 MR. NEWCOMB: That does fall into this
23 section. There are two questions on that that I
24 have. These may have been partially answered by

1 prior testimony where there have been questions
2 asked and answered.

3 However, to be certain that they were
4 asked and answered, my questions are why are point
5 sources the only sources upon which the proposed
6 ERMS regulations imposed mandatory requirements?

7 MS. SAWYER: Could you -- which page are you
8 referring to?

9 THE HEARING OFFICER: Page 1, Question 1 of
10 the January filing.

11 MS. SAWYER: Page 1, Question 1?

12 THE HEARING OFFICER: Yes.

13 MR. NEWCOMB: This is in my prefiled 14
questions, the very first question.

14 MR. FORBES: I will answer that question.

15 The ERMS rule is a specific rule
16 intended for reducing stationary source emissions. 18
The market-based aspects of the rule are intended 19 to
provide more flexibility to stationary sources 20 in
meeting reduction requirements of the rule.

21 Other rules have been proposed to
22 reduce emissions from area and the mobile source
23 sectors such as the agency's proposed cold cleaning

24 degreaser regulations for area sources
and federalL.A. REPORTING - (312) 419-9292

1 off-road engine standards for mobile sources.

2 These rules will impact the sources
3 in these sectors just as the ERMS rule impacts
4 stationary sources. Only the market-based provisions
5 of ERMS is incorporated into the regulatory program
6 of ERMS, not into the other programs.

7 MR. NEWCOMB: The second question was has
8 the agency conducted an analysis of whether the
9 statutory obligations imposed upon the agency by
10 Section 9.8(c)(3) of the act have been satisfied
11 where the agency has imposed obligations only on
12 one of the three major categories of sources set
13 forth in the statute?

14 MR. FORBES: Yes.

15 MR. NEWCOMB: May I sort of deviate if there
16 is a follow-up?

17 THE HEARING OFFICER: Could you explain the
18 answer yes? I will allow that.

19 MR. FORBES: The agency does not interpret
20 Section 9.8(c)(3) to require the emissions -- the
21 emissions trading rule to include reduction
22 requirements for all three sectors, that is, point
23 area and mobile in the trading rule.

24 As we see it, the agency interprets that

1 provisions of the act requires that the rule assure
2 that sources subject to ERMS are not required to
3 reduce beyond their proportionate shares of
4 reductions required for each sector in achieving
5 attainment.

6 The agency is seeking further reductions
7 from area sources through its proposed cold cleaning
8 degreasing rule and its reliance on federal off-road
9 and on-road engine standards to achieve mobile source
10 reductions.

11 The agency staff has already testified
12 as to what these shares are and as to what the
13 reductions from these control programs provide to
14 the degree possible. Proportional reduction shares
15 are consistent with the intent of Section 9.8(c)(3).

16 MR. NEWCOMB: Why has the agency chosen to
17 allow sources other than point sources to
18 participants, then, on only a voluntary basis?

19 MR. FORBES: The proposed ERMS rule is
20 a rule regulating emissions from stationary sources,
21 separate regulations that apply to area mobile
22 sources which they must comply with and which
23 stationary sources are not required to comply with.

24 To the extent that mobile and area

1 sources over-comply with their own specific
2 regulations, we have allowed that they may
3 participate in the ERMS program to assist stationary
4 sources in complying with their ERMS requirements.

5 MR. NEWCOMB: In the event the OTAG study
6 concludes that Clean Air Act Permitting Program
7 sources, the CAAPP sources, is outside of the Chicago
8 nonattainment area significantly contributes to ozone
9 within the nonattainment area, does the agency expect
10 to expand the scope of ERMS to require participation
11 from additional sources outside the nonattainment
12 area?

13 MS. SAWYER: I'm going to object to that
14 question. It requires a great deal of speculation
15 on what we are going to do. We have already
16 testified we are awaiting our -- certain modeling
17 results before we make our final attainment
18 assessment.

19 THE HEARING OFFICER: Mr. Newcomb, do you
20 withdraw that question or --

21 MR. NEWCOMB: What's that?

22 THE HEARING OFFICER: Will you withdraw the
23 question?

24 MR. NEWCOMB: Yes. I don't have an objection

1 to withdrawing that specific question.

2 THE HEARING OFFICER: Should we go back,
3 then, to 110(d) for the coalition or have you
4 withdrawn those questions?

5 MS. MIHELIC: No. We have withdrawn those
6 questions, but after meeting with the agency, we are
7 requesting that we be able to ask them and have them
8 answer those questions, which were previously
9 withdrawn, which were, I believe, one, four, five,
10 six, seven or -- yes, seven and eight.

11 We had already asked a couple of the 12
questions, specifically, Questions 2, 3 and 8.

13 It was eight, I think, in the prefiled questions. 14
I would like to go forward and ask questions that 15 we
have withdrawn at this time.

16 Under B., 1., it's under the same
17 page that we previously asked the questions on C. 18
What does proportionate share mean in Section
19 205.110(d)?

20 MS. SAWYER: We just answered that question 21
in response to Mr. Newcomb's question.

22 MS. MIHELIC: I don't believe you answered 23
what the term proportionate share means.

24 MS. SAWYER: I think we did. Let me find

1 the answer. Specifically, we said -- in response
2 to Mr. Newcomb's question -- the agency interprets
3 that provision of the act to require that the rule
4 assure that sources subject to the ERMS are not
5 required to reduce beyond their proportionate share
6 of reductions required of each sector in achieving
7 attainment.

8 MS. MIHELIC: Right. And I'm trying to figure
9 out what the term proportionate share means.

10 MS. SAWYER: Well, if you're going beyond
11 that, I'm not exactly sure what you are getting at.
12 I think we just described what we think that means.

13 MS. MIHELIC: I'm not asking what the actual
14 statute says. I'm just trying to find out what the
15 term proportionate means.

16 MS. SAWYER: Are you looking for the
17 numerical --

18 MS. MIHELIC: We asked later what is the
19 actual proportionate share of three tons of emission
20 for mobile and area source is.

21 THE HEARING OFFICER: How does the -- let
22 me --

23 MS. MIHELIC: Is it defined anywhere?
24 Is the term proportionate share defined?

1 MS. SAWYER: No.

2 THE HEARING OFFICER: What is the agency's
3 interpretation of a proportionate share as used
4 in the act? This is the question that --

5 MS. SAWYER: Well, we did answer this question
6 last time on the record and in response to numerous
7 questions from Ms. Mihelic and I think it's on
8 page -- if you refer to the transcript around Page
9 160 something. . .

10 MS. MIHELIC: I'm not trying to find out how
11 the determination was made. I actually want to know
12 what --

13 MS. SAWYER: Can I suggest --

14 THE HEARING OFFICER: One person at a time.

15 MS. MIHELIC: I'm trying to find out what
16 the actual term proportionate share means. It's
17 not defined in the statute. It's not defined in
18 the regulations. I want to know what the term
19 proportionate share means and what the agency is --
20 how the agency interprets that -- those two words.

21 MS. SAWYER: There is no definition provided. 22
I would suggest that she is requesting a legal
23 interpretation.

24 We could answer -- you know, we could

1 clarify our answer that we have already given to
2 this question in our written comments.

3 MS. McFAWN: Can I just ask why don't you go
4 on to the second part of her question, does it
5 reflect one-third from stationary, area, and mobile
6 sources? Maybe that will help clear up the record
7 on how you are using this term.

8 MR. FORBES: The answer is no.

9 MS. MIHELIC: As a follow-up question,
10 does it reflect one-third reduction from 1990
11 emissions from stationary, area, and mobile sources
12 respectively?

13 MR. FORBES: The answer is no. We don't
14 think that one-third reductions are what is
15 intended by that section of the legislation in
16 the act.

17 MS. MIHELIC: What are the emissions --
18 looking at what was question five previously,
19 what are the emission reductions in terms of
20 tons per season required of mobile and area
21 sources from 1996 to 1999? Is that set forth
22 in the exhibit?

23 MS. SAWYER: It's set forth in the exhibit and 24
we answered it before. If you look at page -- it

1 starts at around Page 159 of the transcript and it
2 goes on to Page 163 or 164. I think it goes even
3 beyond that.

4 MS. MIHELIC: Page 159?

5 MS. SAWYER: We start talking about questions
6 on proportionate share.

7 MS. MIHELIC: I'm trying to tell -- there
8 were percentages that were given that we talked about
9 during the last hearing. I'm trying to find out what
10 the actual amount in tons of emissions is for mobile
11 sources or area sources.

12 MS. SAWYER: Well, that is something that you 13
could look at on the table and it demonstrates that.

14 THE HEARING OFFICER: Let's go off the record
15 for a second.

16 (Whereupon, a discussion
17 was had off the record.)

18 MS. MIHELIC: Okay. Starting from the
19 beginning of our prefiled questions, Section I, A.,
20 we met with the agency last week and agreed that
21 these could be answered by written comments because
22 they are legal questions. So we have at this point
23 agreed not to ask them during the hearing, Section I, 24
A.

1 Section I, B., we have already asked
2 and those questions have been answered.

3 Section II, I believe --

4 MR. ROSEN: I'm sorry to interrupt. At what
5 date does the agency intend to provide a written
6 answer to the legal questions?

7 MS. SAWYER: It was our intention after --
8 we were hoping to do it after the conclusion of this
9 set of hearings, but prior to the time that the other
10 hearings were held.

11 MR. ROSEN: Okay.

12 MS. McFAWN: You mean the March hearings?

13 MS. SAWYER: Yes, whenever the next dates
14 are set up.

15 MS. McFAWN: You don't mean you'll have the
16 questions answered by next week?

17 MS. SAWYER: That wasn't our intention
18 initially. We had just talked about doing it prior
19 to the next set of hearings where other people were
20 going to be allowed to testify and stuff like that.

21 MS. ROSEN: Given that, will an opportunity
22 be made for additional -- I don't know -- requiring
23 them to answer additional questions if there are
24 follow-up questions to legal conclusions that may be

1 provided?

2 MS. SAWYER: That really wasn't our
3 intention. I mean, we were just going to give our
4 answers to those questions essentially in writing.

5 MS. ROSEN: Well, I will kind of make the
6 same objection that was made earlier as to whether
7 or not that will be sufficient for an effective
8 cross-examination if we find that the answers either
9 raise additional issues or don't fully answer the
10 question.

11 THE HEARING OFFICER: Well, at some point
12 in the hearing process, we're going to have to stop.
13 In all hearing processes, there are going to be
14 questions left unasked unfortunately and that's
15 where public comments and other filings can come
16 in.

17 I think at this point we are going to
18 go through and we are going to defer the question.
19 We will try to come up with a time -- I don't think
20 we will be done the 10th or 11th either. I think
21 there will be another day of the agency testifying.
22 I think that with another day, hopefully, the agency
23 will be able to have those questions answered.

24 Hopefully, at that point, if there are

1 some additional -- that will be the last point. We
2 cannot continue to have hearings because of the
3 questioning because there are always going to be
4 questions coming up. Even at the close of this,
5 there are going to be questions coming up.

6 I would like to start with those
7 prefiled questions and get through as many prefiled
8 questions as we can and deal with the deferred
9 questions at a later time.

10 So Ms. Mihelic can start her prefiled
11 questions from the prefiled questions that were filed 12
in the middle of January.

13 MS. MIHELIC: Section II is regarding the
14 economic impact analysis. I don't believe this is
15 an appropriate time to ask those questions.

16 We have also significantly revised
17 those questions based on the meeting with the agency
18 last week. I guess at this time I would like to
19 make a motion we would be allowed to resubmit these
20 revised questions based upon that meeting to the
21 board we have them with us today.

22 I think it would make it simpler.
23 The agency has agreed to allow it and we have reached 24
an agreement that we could revise them. They

1 clarified a lot of the questions previously asked.

2 MS. McFAWN: Do you think a good time to
3 ask these questions would be when you hear from their
4 economic experts?

5 THE HEARING OFFICER: Go ahead and put it in
6 a motion.

7 MS. MIHELIC: Would you like for us to make a
8 formal written motion?

9 THE HEARING OFFICER: Make a written motion.

10 MS. MIHELIC: Okay. You'll have that
11 tomorrow.

12 In Section III, we've asked some and
13 have deferred others.

14 MS. McFAWN: Ms. Mihelic, before you go on,
15 can I just get a point of clarification?

16 MS. MIHELIC: Sure.

17 MS. McFAWN: These revised questions that you
18 have for this Section II, are those reflected in this 19
document that you have?

20 MS. MIHELIC: That I have passed out today,
21 yes.

22 MS. McFAWN: Okay. Just be mindful that the
23 the board does not have a copy of that document --

24 MS. MIHELIC: Okay. I apologize for that.

1 MS. McFAWN: -- but the rest of you do. So
2 you will have them presumably in time to prepare for
3 next week's meeting.

4 MS. MIHELIC: Okay. And we will submit
5 additional copies. We will bring copies tomorrow and
6 submit nine copies to the board.

7 MS. McFAWN: Thank you.

8 MS. MIHELIC: Going on to Section IV, then,
9 which we talk about definitions, Section 205.130,
10 Definitions, Best Available Technology. Question A., 11
what is the maximum degree of reduction or what is
12 maximum degree of reduction?

13 MR. ROMAINE: Presumably, the maximum degree
14 of reduction is 100 percent. What it's really
15 referring to is the maximum degree of reduction that
16 is achievable.

17 As qualified with the concept of
18 achievable, the technical feasibility and economic
19 impact of -- must be considered to determine whether
20 a particular very stringent level of reduction is,
21 in fact, achievable for a particular unit. So it's
22 achievability that is the key thing here.

23 MS. MIHELIC: Okay. So you have answered
24 in that -- by that answer also Question B., which

1 was -- is the technical feasibility of installing BAT
2 at existing operations a factor the agency must
3 consider making a case-by-case determination of BAT?

4

5 Based upon your previous answer of yes,
6 it will be considered technical feasibility?

7 MS. SAWYER: I think we would like to clarify
8 that further.

9 MR. ROMAINE: Assuming technical feasibility
10 is considered when making a BAT determination,
11 technical feasibility goes to general engineering
12 principals. It may not be something that focuses
13 on whether a particular control measure is feasible
14 for that particular unit? So it may not address the
15 retrofit issues, which is what I think you were
16 focusing in on. The retrofit issues, though, would
17 be addressed as part of the economic impact analysis. 18
So you have a technology or control method that is
19 generally considered feasibility and that has been
20 used elsewhere. There are no fundamental flaws in
21 applying it, but then you would have to go to that
22 next step and ask because of this particular emission 23
unit, is it an economically viable approach given
24 additional costs that might be necessary to apply it

1 to the particular emission unit.

2 MS. MIHELIC: How will the agency factor in
3 the economic impact component in a BAT determination?
4 This is elaborating on your previous answer, I
5 guess.

6 MR. ROMAINE: Well, elaborating on my
7 testimony or maybe summarizing my testimony, we
8 would consider the capital and operating costs
9 of particular control measures to evaluate the
10 economic impact.

11 MS. MIHELIC: In determining an emission level 12
12 that is achievable, is the agency or will the agency
13 consider the application of production
14 processes at -- we're withdrawing -- this is D and
15 there are several subparts. We are withdrawing D.,
16 1., because that has been answered.

17 But are you going to consider similar
18 units of the same type of sources in the Chicagoland
19 area?

20 MR. ROMAINE: Well, when you are looking at
21 other sources, you are not making a determination
22 of BAT for those sources, but you are asking are
23 those similar sources that you would have to be aware 24
24 of potentially to make the BAT determination for the

1 source of the emission unit in question.

2 In general, the answer is yes, you have
3 to look at other similar units and I'm not prepared
4 at that point to put a limitation on it. I would say
5 yes to two through seven.

6 At the same time, this evaluation of
7 other similar emission units, we are not looking for
8 a necessarily comprehensive or exhaustive search for
9 every conceivable or similar emission unit.

10 We sort of expect from our experience
11 of doing best available control determinations under
12 PSD that there are certain areas that you look at,
13 certain well-known precedence that you look at to go
14 to the RACT, BACT, LAER clearinghouse to look, and at 15
some point you have looked at enough units and you
16 come to a general conclusion no, nobody is doing
17 anything better. Then, you move on to the next part
18 of the analytical evaluation of best available
19 technology.

20 MS. MIHELIC: Question 3, similar units at
21 dissimilar sources in the Chicagoland area?

22 MR. ROMAINE: Well, as I said, you may have
23 to look at those. If there is some key source out
24 there that has a very good control that we know of,

1 that would have to be considered.

2 MS. MIHELIC: I believe four has been
3 answered. You would be looking at it throughout
4 Illinois and not just in the Chicagoland area?

5 MR. ROMAINE: That is certainly correct.

6 MS. MIHELIC: Again, dissimilar sources
7 throughout Illinois and not just in the Chicagoland
8 area?

9 MR. ROMAINE: That's right.

10 MS. MIHELIC: And similar units at the same
11 type of sources in all the 50 states?

12 MR. ROMAINE: I wouldn't necessarily say in -13
again, in each of the 50 states, we would be looking
14 for the obvious precedence where they are likely to
15 be, similar units, where those similar units are most 16
likely to have very good controls.

17 In general, if we're talking about VOC,
18 the state we usually talk about is California, the
19 jurisdiction we usually talk about is Los Angeles.

20 MS. MIHELIC: And then that answers seven
21 also, which talks about similar units at dissimilar
22 sources in the 50 states.

23 Going on to E., how is BAT different
24 than LAER?

1 MR. ROMAINE: Well, the lowest achievable
2 emission rate is -- as I said, a very stringent
3 emission limit is the lowest achievable emission
4 rate.

5 That is determined looking at a class
6 or a category of source. The lowest achievable
7 emission rate allows for very limited consideration
8 of economics.

9 As a result, LAER, or the determination
10 of the lowest achievable emission rate, could result
11 in a finding that may, in fact, be prohibited. It
12 is particularly expensive as applied to the project
13 under review.

14 MS. MIHELIC: All right. And you're saying
15 under BAT, you would consider whether it was
16 prohibitively expensive in determining that what they 17
had was BAT or not where you could not make that
18 determination under LAER?

19 You would be forced to look at really
20 what was achievable and not necessarily the economics 21
under LAER, but you could under BAT?

22 MR. ROMAINE: I just covered a lot of ground.
23 Certainly, economics can be considered on a
24 case-by-case basis on a best available technology

1 determination.

2 MS. MIHELIC: How is BAT different than MACT?

3 MR. ROMAINE: Okay. BAT applies to VOM
4 emissions. MACT is determined by U.S. EPA through
5 a rulemaking for a category of emission units. BAT
6 is determined on a case-by-case basis for particular
7 emission units by the Illinois EPA with opportunity
8 for board review. MACT requires a minimum level of
9 stringency looking at the sources that are in the
10 category. There is a concept of a ceiling for MACT
11 determinations. There is no such concept present
12 for BAT.

13 MS. MIHELIC: How is BAT different than BACT?
14 I guess qualifying my answer, BACT applying to new
15 sources and BAT applying to existing sources, how
16 else would it be different?

17 MR. ROMAINE: Well, I think that's the major
18 difference that the BAT definition specifically
19 indicates that you have to do an evaluation of the
20 control processes or the production processes and
21 control methods that are already applied to the
22 emissions.

23 MS. MIHELIC: I'm just asking a follow-up
24 question. If you had to determine what was the

1 most stringent level of control to the least
2 stringent under LAER, MACT, BACT and BAT, where
3 would BAT fall?

4 MR. ROMAINE: I would -- it would be --
5 again, in some cases these distinctions get
6 compressed, so it turns out there is no difference.
7 But if there is a situation where there is a nice
8 range, you put the LAER at this end (indicating)
9 and you probably have BACT and then you have BAT.

10 MS. MIHELIC: Okay. Is the agency required
11 to look at a minimum number of units with the
12 best control of VOM emissions when making a BAT
13 determination as required when U.S. EPA is developing 14
a MACT or BACT standard? That's question H.

15 MR. ROMAINE: Well, the answer is -- first, to 16
clarify, that there was no requirement to look at any 17
particular number of units when making a case-by-case 18 BACT
determination. We will use the appropriate ones 19 to get
the relevant precedence.

20 There is no requirement under the MACT
21 standard to set a ceiling for BAT. So we have the
22 flexibility to really tailor the extent of the
23 scrutiny of existing sources as appropriate under the 24
circumstance.

1 It's also appropriate to keep in mind
2 that the source must request the BAT exclusion and
3 it really falls on the source to submit sufficient
4 information to justify that exclusion.

5 We may, in fact, do some -- we will do
6 some of our own investigation and review, but there
7 is no specific criteria that says you have to look
8 at five emission units or 50 emission units.

9 MS. MIHELIC: Question I., is the language
10 "which the agency. . . determines" intended to give
11 the agency unfettered discretion making BAT
12 determinations? Basically, just allowing the agency
13 in and of itself to make the determination without
14 any oversight by any other agency such as U.S. EPA?

15 MR. ROMAINE: I don't believe so, no. I think
16 the language is trying to -- does state that BAT is
17 determined on a case-by-case basis in the context
18 of permitting much like the context for BACT and
19 LAER determinations.

20 Of course, whatever determination the
21 agency might make would be subject to review by the
22 board in the context of a permit appeal.

23 I think that's probably a legal opinion
24 as to whether we think this language is acceptable,

1 as you have phrased it, but I don't find any problem
2 with the language.

3 MS. MIHELIC: I was going to withdraw that
4 second part.

5 Part of Title 5 would also be reviewed
6 by U.S. EPA, the BAT determination? Would that not
7 be incorporated into the Title 5 permit?

8 MR. ROMAINE: That is correct. It would be
9 subject to if the U.S. EPA has the chance to opt
10 as part of the review of the Title 5 permit.

11 Presumably, if the U.S. EPA thinks there is some key
12 emission unit that has been overlooked, they would
13 call it to our attention if they think we've done an
14 erroneous economic evaluation, they would also call
15 it to our attention.

16 MS. MIHELIC: Going on to Section V of our --

17 MR. SAINES: Just let the record reflect that 18
when Mr. Romaine was describing the level of
19 stringency with respect to LAER, BACT --

20 THE HEARING OFFICER: Is this a question or
21 is this testimony?

22 MR. SAINES: This is just a clarification
23 for the record because Mr. Romaine indicated with
24 hand gestures the level of stringency and it was not

1 explained verbally.

2 MS. McFAWN: I had the same question, but I
3 think it read okay.

4 THE HEARING OFFICER: Chris, why don't you
5 redescribe that verbally, please.

6 MR. ROMAINE: I apologize for that. I thought
7 we had the TV camera going.

8 What I indicated was if there is, in
9 fact, a complete spectrum of control of a particular
10 unit, the most stringent level of control would be
11 LAER. The next stringent level would be best
12 available control technology. The least stringent
13 level would be BAT.

14 MR. FORCADE: There were four of them in the
15 question and that's three.

16 MS. MIHELIC: He only talked about three.

17 THE HEARING OFFICER: MACT, BACT, LAER and
18 BAT.

19 MS. McFAWN: You left out MACT.

20 MS. SAWYER: Of course, he's using his hand
21 when he's clarifying his answer.

22 MR. ROMAINE: I have a hard time fitting MACT
23 into that categorization because it is a regulatory
24 determination by U.S. EPA and there a the ceiling.

1 I would expect accordingly, MACT probably
2 comes up to the level of LAER. Where it falls
3 between BACT and BAT may, in fact, be the
4 least stringent of all because it is a regulatory
5 determination going for a category or class of
6 operations.

7 So it has to accommodate some
8 variability in that class or category. It cannot
9 be set for the most ideal unit. It cannot be done
10 on a case-by-case basis like BAT. That's off the
11 top of my head since I overlooked that part of your
12 question.

13 MS. MIHELIC: Going on to Section V., A.,
14 you have already answered, Question A. was asked
15 and answered, Question A., 1.

16 Section B, which is talking about
17 Section 205.104(b)(2), new participating sources,
18 Question No. 1, has the agency conducted any
19 analysis as to how the ERMS rules will impact new
20 business entering into the Chicagoland area?

21 I actually at this point will say that
22 these questions are probably better addressed after
23 the economic impact statements since they do go
24 back to the economic impacts of this program unless

1 someone is able to answer these questions today.

2 MR. ROMAINE: I can give an answer, but I
3 think your question is that it goes to the scope of
4 the economic impact analysis.

5 MS. MIHELIC: I guess at this point, I would
6 request that we defer these questions and they may
7 be answered throughout the economic impact study
8 testimony.

9 MS. McFAWN: These are all of the questions on
10 this section?

11 MS. MIHELIC: On Section B, 1 through 5.
12 Oh, actually, 1 through 4. I am asking Question 5
13 now.

14 Does not allotting ATUs to new
15 participating sources, including those with less
16 than 25 tons per year of VOM emissions, make the
17 ERMS rules more stringent than the current new source
18 review permit program set forth in Part 203 for
19 minor sources?

20 MR. ROMAINE: I don't believe so. The ERMS
21 applies to new sources that will have seasonal
22 emissions of ten tons or more who are required to get
23 a Title 5 permit.

24 In most, if not all circumstances, a

1 description will be made up of new major sources.
2 New major sources would be required to get offsets.
3 Furthermore, new minor sources, if there are any in
4 this circumstance, will be faced with command and
5 control requirements if this trading program were
6 not implemented.

7 Therefore, the treatment of these new
8 minor sources under the trading program is not more
9 restrictive than would otherwise be the case.

10 I think the final point would be
11 that whatever growth occurs has to be accommodated
12 somewhere. If it isn't accommodated or dealt with
13 by the source that is coming into the area, then,
14 the existing sources in the area would have to make
15 further reductions to make room for that resource
16 and still maintain our ROP, rate of progress plan.

17 MS. MIHELIC: I guess I want to clarify this. 18
18 I don't understand part of your answer or I just
19 missed it when you were talking about it.

20 Currently, under the new source review
21 permit program, a new source would come in and accept 22
22 a limit of up to 25 tons and not be subject to new
23 source review, correct?

24 MR. ROMAINE: That's correct.

1 MS. MIHELIC: Under this program, can a new
2 source come in and not be subject to the -- take a
3 limit of less than 25 tons and not be subject to
4 the ERMS program?

5 MR. ROMAINE: Yes. They would have to accept
6 a limit to stay below ten tons per season, which is
7 roughly equivalent to say it will not be a major
8 source on an annual basis.

9 MS. MIHELIC: So a minor source could come
10 into the Chicagoland area?

11 MR. ROMAINE: Yes.

12 MS. MIHELIC: Going to Section C., this is
13 with respect to market transactions under Section
14 205.140(d). Does a provision that each transaction
15 account will be managed by a designated account
16 officer refer to an account officer at the agency
17 or at the source?

18 MR. NEWTON: At the source.

19 MS. MIHELIC: Then, I withdraw the rest of
20 that question.

21 Section VI, 205.150, emissions
22 management periods, Section A., refers to Section
23 205.150(b), reconciliation period. Rick Saines
24 is going to set forth the questions on this

1 section.

2 MR. SAINES: Good afternoon. The first
3 question is how is a source supposed to know
4 what other participating sources have ATUs
5 for sale prior to the reconciliation period?

6 MS. SAWYER: Could you please reask the
7 question?

8 MR. SAINES: Sure. How is a source supposed
9 to know what other participating sources have ATUs
10 for sale?

11 MR. KOLAZ: Let me answer that question.
12 In Section 205.500 of the rule in Part A, the ERMS
13 database, it states that the agency is required to
14 maintain a bulletin board database.

15 As part of that electronic bulletin
16 board, public information and notices can be
17 posted and it allows participants to post ATUs
18 available for purchase or wanted for purchase and
19 that's the mechanism we believe will fill that
20 particular requirement.

21 MR. SAINES: Under that requirement, it's a
22 voluntary provision? In other words, sources, if
23 they choose, can post ATUs for sale?

24 MR. KOLAZ: That's correct.

1 MR. SAINES: We will withdraw Question 2.

2 Proceeding to Question 3, what is the
3 purpose of ending the reconciliation period on
4 December 31?

5 MR. KOLAZ: Again, in the rule, the
6 reconciliation period is really defined as a time
7 for the participant to accomplish a number of
8 things such as computing their actual emissions
9 from the preceding season and to also ensure
10 they have adequate numbers of ATUs to reconcile
11 those emissions.

12 In that sense, the reconciliation
13 period ends December 31st. Following that period,
14 it's a time of activity on the part of the agency
15 to actually evaluate these reconciliation reports
16 more fully, to issue excursion compensation notices,
17 and basically to really complete that part of the
18 reconciliation process that began in the October 1st
19 through December 31st period.

20 MS. SAWYER: One moment. We have a little bit 21
more on that answer.

22 MR. KANERVA: I'm Roger Kanerva. I want to
23 elaborate on that a little bit because we spent a
24 tremendous amount of time discussing this particular

1 provision and the coordination of the overall
2 compliance process with all of the folks that
3 interacted with us under the development of this
4 rule.

5 Providing a three-month window on
6 the end of a season to work out whatever compliance
7 issues or trading that somebody would need is a
8 very generous approach. It's a large amount of
9 time. It doesn't come to fruition and true up in
10 30 days or some very short type time frame, which
11 was suggested by certain commentators early on in
12 our rule process.

13 We felt that was extreme, but if we
14 went much beyond a three-month period, in a sense,
15 we would run out of time to resolve all of the
16 compliance issues that come up and you would start
17 to have unanswered compliance issues running from
18 one season into the next. Then, you have lost the
19 integrity of the whole system.

20 By the time we get to the next season,
21 we want to have cleared the books and got to a
22 system made whole one way or another and then start a 23
new season.

24 MR. SAINES: Let me follow-up.

1 Mr. Kanerva, you have just indicated 2
that you felt that 30 days was an extreme period 3 of
time or too short a period of time for this
4 reconciliation process to occur?

5 MR. KANERVA: Right.

6 MR. SAINES: Isn't it true that under the 7
rules, sources with ten units or more are not
8 required to submit their data until November 30th 9
of each year?

10 MR. KANERVA: Right. That's just an outside 11
date to give them a little extra time for their
12 reports. There is no reason they couldn't submit
13 them earlier than that if they want to. We just
14 gave them a little extra time because they felt
15 it was more complicated.

16 MR. SAINES: But given that it's not required, 17
if sources do --

18 MR. KANERVA: Well, that's their choice.
19 That gives them 30 days after that to try and close 20
their books, but they still have a total of 90 full 21 days
to make the whole system come home.

22 MR. SAINES: We will withdraw Question 3.

23 MS. MIHELIC: I have a follow-up question,
24 though.

1 You stated the purpose of ending the
2 reconciliation period on the 31st was to allow the
3 agency sufficient time to resolve all emissions by
4 the next ozone period.

5 Why can't sources still be negotiating
6 transactions if they know what their emissions are,
7 if they know what they need, while at the same time
8 the agency, perhaps even for an extra month, is
9 coming up with exactly what sources may need --
10 additional ATUs they may need, or may be subject to
11 emissions excursions if a transaction occurs within
12 that month pursuant to the rules? I believe it
13 should be in the database within five days or
14 something.

15 So why can't that -- December 31st, we
16 think, could be restrictive. Why couldn't it be
17 extended for perhaps just one more month period of
18 time? With December 31st being the end of the year,
19 the end of perhaps some vacations, which companies
20 give their employees during the month of December,
21 you know, two to three weeks off, the following
22 year --

23 MS. SAWYER: This question is getting close to 24
testimony here.

1 MS. MIHELIC: I just wondered why it can't be
2 extended into the following year?

3 MS. SAWYER: I mean, go ahead and answer that,
4 Dave.

5 MR. KOLAZ: Well, I think we spoke to why
6 we felt that time period would be adequate. To
7 embellish on that a little bit, we are anticipating
8 that part of the record keeping and reporting
9 requirements this system will bring back to the
10 CAAPP permit is that people will be computing their
11 emissions month-by-month and maybe week-by-week or
12 day-by-day throughout the season.

13 So the actual period of time to complete 14
their calculations for actual emissions should be
15 very minimal. It's during that time and maybe even
16 prior to the season that people should be making --
17 taking the steps necessary to acquire the ATUs
18 sufficient to cover their emissions.

19 December 31st, you know, does come at
20 a bad time of the year for us as well because we
21 have people on vacation and we have the annual
22 emission reporting process beginning in earnest
23 at about that time, but we really feel that's a
24 reasonable target. It's more than a target. I think

1 it does allow ample time.

2 January 31st would really limit us in
3 terms of doing the work that we feel has to be done.
4 I think part of the requirements to really make this
5 system work well is to really be on top of the
6 emissions, be on top of the market requirements, and
7 to compensate for you remissions.

8 Therefore, I think it's in everyone's
9 interest to hold that reconciliation period to as
10 tight a time as we think is reasonable to accomplish
11 the task.

12 MR. SAINES: Okay. Section B. --

13 MS. McFAWN: For the record, could we just
14 note that you had asked Question 3 and then you noted 15
that you were going to withdraw it.

16 Do you mean you were going to withdraw
17 Question 4?

18 MR. SAINES: Yes, I did. Thank you.

19 We are also going to withdraw Question 5 20
and Question 6.

21 Continuing to Subsection B.,
22 205.150(c)(1), under exempt units, 1., why didn't
23 the agency include in the list of units for which
24 a source need not hold ATUs at the end of the

1 reconciliation period units which have MACT and 2
LAER control?

3 MR. ROMAINE: Under the proposed trading 4
program, sources would be required to hold ATUs 5
for such units.

6 MS. MIHELIC: As a follow-up, is it true that 7
they are just exempt from the 12 percent reduction
8 requirement? They are not exempt from holding ATUs
9 in emissions, they just don't have to reduce
10 emissions from those type of units by 12 percent?

11 MR. ROMAINE: That's correct.

12 MR. SAINES: Okay.

13 MS. MIHELIC: I'm going to go forward with the 14
questions on new major sources and major
15 modifications.

16 Sections 205.150(c) and (d), Question 1, 17
if a participating source commences operation of a
18 major modification after May 1, 1999, and holds ATUs 19
in the amount of 1.3. times its seasonal emissions
20 attributable to this major modification, is the
21 source in full compliance with all of the new source 22
review regulations set forth in Part 203?

23 MR. ROMAINE: No, it would not necessarily
24 be in full compliance. The source will still be

1 required to have obtained a construction permit and
2 comply with lowest achievable emissions rate as
3 specified in that construction permit.

4 MS. MIHELIC: Are there any exemptions to
5 having to comply with LAER requirements in the new
6 source review rules?

7 MS. SAWYER: This question is not prefiled?

8 MS. MIHELIC: No. It's a follow-up question
9 to his answer regarding LAER.

10 To be more specific, I guess, is
11 there an exemption that if a source obtains 1.3 to
12 one reduction, it may not have to have to do LAER?

13 MR. ROMAINE: That's correct. What you're
14 referring to, Tracey, is special rules modifications
15 under 182(c)(7) and (c)(8) of the Clean Air Act.

16 There are provisions in the Clean Air
17 Act, which say that if a particular change resulted
18 in increased emissions other than xx diminimus
19 increase, it is considered major modification.

20 Those rules go on further to say that
21 if the source provides internal offsets for that
22 otherwise major modification, may be excused from
23 the requirement for lowest achievable emission
24 rate.

1 MS. MIHELIC: Would the offsets under this
2 program be sufficient to meet that exemption if all
3 the other conditions applied?

4 MR. ROMAINE: No, they would not.

5 MS. MIHELIC: Why wouldn't they be?

6 MR. ROMAINE: Because this system would not
7 assure that those offsets or those ATUs were, in
8 fact, internal ATUs.

9 MS. MIHELIC: We will withdraw Question 2
10 because the answer was no.

11 In modifying that question, does the
12 agency intend to modify through new source review
13 regulations to reflect the ERMS rules that 1.3 to
14 one offsets during the season would suffice to
15 meet the offset requirement under new source review
16 rules?

17 MR. ROMAINE: We haven't contemplated that
18 modification. We have only contemplated a provision
19 whereby this program would satisfy the general
20 requirement to obtain offsets where offsets could
21 come from any source.

22 MS. MIHELIC: Question 3, isn't it true that
23 under the federal regulations, all sources my net
24 out of new source review if reductions in emissions

1 exceed increases in emissions during the five-year
2 period of time preceding the pending change?

3 MS. SAWYER: I would like to object to this
4 question on the relevance of this question to the
5 proposed ERMS rule. It isn't clear to me.

6 MS. MIHELIC: He is talking about how these
7 rules may satisfy some of the new source review rule
8 requirements, but these rules require 1.3 to one
9 offset where under the new source review rules, you
10 can actually net out.

11 I guess I'm getting to the fact that
12 it's coming -- the question is you are not going
13 to be able to net out under the ERMS rules.

14 MS. SAWYER: Well, I think the question is a
15 little bit -- well, go ahead and answer that.

16 MR. ROMAINE: Well, back up a bit.

17 MS. SAWYER: Yes. That's what I was going to
18 say.

19 MR. ROMAINE: I believe the federal
20 regulations you are referring to are, in fact,
21 proposed federal regulations.

22 At this time the guidance that we have
23 to comply with for our Nonattainment Area New Source
24 Review Program is, in fact, the provisions of the

1 Clean Air Act.

2 MS. MIHELIC: And don't those provisions
3 currently allow a source, though, to net out of
4 new source review if it comes up with sufficient
5 reductions that exceed emissions increases during
6 a contemporaneous period of time that therefore,
7 they avoid the applicability of new source review by
8 netting out?

9 MS. SAWYER: Again, I'm going to object to
10 this because I think Mr. Romaine already explained
11 that that aspect is not the aspect of offsets that
12 we were referring to under this program, that it's
13 a different provision that applies to offsets that
14 that program is coordinated with new source review.

15 MS. MIHELIC: I believe it's a relevant
16 question here because we're trying to find out if
17 ERMS truly is more restrictive than the new source
18 review rules. It's going to underline what are the
19 new source review regulations and what will the ERMS
20 regulations be?

21 MS. SAWYER: Okay. Fine. I'll withdraw my
22 objection.

23 MR. ROMAINE: I won't answer the question
24 anyway because you are asking me to do a legal

1 interpretation on the meaning of the specific
2 provisions of the Clean Air Act.

3 MS. MIHELIC: So you're saying you're not
4 answering my question because of the legal
5 interpretation?

6 MR. ROMAINE: Yes.

7 MS. SAWYER: So I'll object to the question
8 because you're asking a technical witness to do a
9 legal interpretation.

10 MS. MIHELIC: Do Illinois rules allow services 11
to net out of new source review in the Chicagoland
12 area?

13 MR. ROMAINE: Yes, they do.

14 MS. MIHELIC: Do they allow all sources to net 15
out?

16 MR. ROMAINE: As I mentioned, our rules
17 include the special rules for modifications and as
18 currently written, we would require that a particular 19
project, which by itself is major, would be
20 considered a major modification unless it is
21 accompanied by internal offsets at a ratio of 1.3 to
22 one.

23 If, in fact, it were accompanied by
24 internal offsets at a ratio of 1.3 to one and the

1 potential emit of the source is less than 100 tons
2 per year, then, it would, in fact, cease to be major
3 modification. If it were more than 100 tons per
4 year, then, it would only be excused from the LAER
5 requirement.

6 MS. MIHELIC: Do the federal rules allow
7 sources that are major in that individual
8 modification over 25 tons could still net out of
9 new source review?

10 I thought you were saying that Illinois' 11
11 rules do not allow that source to net out and they
12 have to come up with this 1.3 to one offsets. Is
13 that different than the federal rules?

14 MR. ROMAINE: Yes. There are no federal rules 15
15 that address the requirements of the 1990 Clean Air
16 Act amendments of new source review. So I said the
17 U.S. EPA is in the process of proposing those rules.
18 That's why we have to go back to the actual statute
19 and that is what our rules, I believe, when they were 20
20 adopted by the board attempted to reflect.

21 MS. MIHELIC: But they don't reflect the exact 22
22 language of the Clean Air Act statute?

23 MR. ROMAINE: No, they don't.

24 MS. MIHELIC: Does the agency ever intend to

1 modify Illinois' rules to reflect the federal
2 language of the statute?

3 THE HEARING OFFICER: Ms. Mihelic, is this
4 Question 5?

5 MS. MIHELIC: Yes, and have the ability to
6 allow sources to net out of new source review,
7 those sources you talked about before?

8 MR. ROMAINE: The agency has contemplated
9 proposing revisions to the nonattainment area and
10 new source review rules to the board to more closely
11 match language of the the Clean Air Act.

12 MS. MIHELIC: I guess you have contemplated -13
When have you contemplated, I guess is my follow-up
14 question?

15 MS. SAWYER: I think we've answered -- okay.
16 I'm sorry. What was that? Could you that repeat
17 that?

18 MS. MIHELIC: He says they contemplated it.
19 I'm trying to figure out what they decided.

20 MS. SAWYER: Well, first of all, I think
21 this line of questioning is irrelevant and I think
22 Mr. Romaine's answer is sufficient. That's the
23 answer.

24 MS. MIHELIC: I think it's relevant because

1 the current ERMS rules limit the amount of emissions
2 a source may get by limits in the new source review
3 permit. Some sources may have taken new source --
4 taken limitations in a new source review permit
5 because they could not have netted out. So they took
6 a lower basically emission limit, let's say, 24.5-ton
7 emission limit.

8 I'm trying to find out if they have
9 modified their rules, those permits could also be
10 modified to increase any permit limit, thereby,
11 increase any source's allotment of ATUs.

12 I'm trying to figure out if they are
13 contemplating doing that or not, what do you mean
14 by contemplating in order to provide some sources to
15 perhaps increase some of their baselines?

16 MS. SAWYER: Well, right now, we're dealing
17 with a proposed federal regulation. That's what we
18 mean by contemplating.

19 THE HEARING OFFICER: I think we need to have
20 Chris answer the question, first of all.

21 Chris, by contemplating, you just
22 thought about it and that's your answer? If that's
23 your answer, that's your answer.

24 MR. ROMAINE: We have thought about it. We

1 thought about whether it is possible to do this
2 rulemaking at this time with just the Clean Air Act,
3 if it's appropriate to do it to match the language
4 of the Clean Air Act. I'm not aware that a final
5 decision has been made so that I could report to you
6 and say yes, we have committed to this change.

7 MS. MIHELIC: Going on to Question 6, under
8 the ERMS rules, if a participating source makes a
9 non-major modification, will it have to obtain ATUs
10 in an amount equal to seasonal emissions attributable 11
to this non-major modification?

12 MR. ROMAINE: I assume this situation involves 13
a non-major modification occurring of January 1,
14 1998. So it's not brought in as a pending project.

15 In that case, the answer would be yes.
16 It wouldn't have to operate with ATUs for whatever
17 emission units are present at its source other than
18 insignificant activities.

19 MS. MIHELIC: Question 7, if so, isn't the
20 source being required to offset emissions from a
21 non-major modification to offset emissions at any
22 ratio?

23 MR. ROMAINE: No, as I said, ATUs are used
24 for seasonal emissions.

1 MS. MIHELIC: Will the source be given ATUs
2 for that non-major modification in addition to what
3 allotment it already holds?

4 MR. ROMAINE: No. It would be considered an
5 incumbent or a part of that incumbent source's
6 baseline operations. It would be something that
7 the source would have to address either through the
8 initial allocation that's already received or changes
9 to its operation or going to the marketplace.

10 MS. MIHELIC: So it has to come up with some
11 type of decrease somewhere else in order to increase
12 those emissions from that new source unless it has
13 sufficient ATUs to cover the emissions -- what I'm
14 trying to say is if you install a new source, you
15 can't just install the new source and not have to
16 somehow come up with emissions -- ATUs for the
17 emissions from that source? You are not given them
18 by the agency? You will actually have to reconcile
19 them by the end of the year?

20 MR. ROMAINE: That's correct, I believe.
21 The source would be held responsible for its
22 emissions and any increase in emissions would have
23 to be accompanied by the appropriate number of ATUs
24 on a seasonal basis.

1 MS. MIHELIC: Going on to Question 8, isn't
2 it true that Illinois' current regulations do not
3 require sources making non-major modifications to
4 offset emissions at any ratio?

5 MR. ROMAINE: Well, I think that's again
6 simplifying it.

7 There may be circumstances where
8 you are involved in netting which do require
9 compensation at the source. Maybe not in the sense
10 of formal offsets, but on the other hand, whenever a
11 source makes an increase in emissions in the
12 nonattainment area, it has to be accounted for
13 under the current program.

14 In the current program, however, that
15 existing source may not be held accountable, but
16 other existing sources, as addressed by the rate of
17 progress plan, will be held accountable and somebody
18 has to make up for that increase.

19 MS. MIHELIC: I'm going to defer Questions
20 8(a) and (b) until after the economic impact study
21 analysis testimony.

22 Going on to Section D., which refers
23 to Section 205.150(e), don't Sections 203.302(a),
24 203.602 and 203.701 of Illinois' current air

1 pollution regulations require offsets on an annual
2 basis?

3 MR. ROMAINE: I don't believe so.

4 MS. MIHELIC: Does the agency currently issue
5 permits to acquire offsets on an annual basis?

6 MR. ROMAINE: That has been our historical
7 practice under the current program.

8 MS. MIHELIC: Is there any state which issues
9 new source review permits that has nonattainment
10 areas -- severe nonattainment areas that require
11 offsets on a seasonal basis and not on an annual
12 basis?

13 MS. SAWYER: This is not part of your prefiled 14
questions again?

15 MS. MIHELIC: No. I'm sorry. I'm just kind
16 of following up on the question of the annual basis.

17 MR. ROMAINE: I'm not aware of any such
18 state.

19 MS. MIHELIC: I will withdraw Question 2.
20 I'm modifying Question 3 because I say
21 the agency is amending Sections 203.302(a), 203.602,
22 and 203.701 regulations to reflect the language set
23 forth in the ERMS rules requiring seasonal emissions
24 offsets only. I guess my question is does the agency

1 feel that such an amendment is necessary?

2 MR. ROMAINE: No, we don't. We think that
3 the ERMS rule will certainly govern indicating that
4 seasonal offsets in terms of ATUs will be sufficient
5 to satisfy any offset requirement under Part 203.

6 MS. MIHELIC: We will withdraw Question 4
7 since it has already been answered.

8 Going on to Question VII, A., we are
9 talking about 205.200, Participating Source.
10 Question 1, this is going to the specific language
11 of the rule. So I don't know. It might be difficult 12
13 on the record, but does the phrase, "the requirements 13 of
14 this part" include the 12 percent reduction
15 requirement of Section 205.400(c)? I'm talking
16 about in the language in the beginning of that
17 section.

18 That's the introduction paragraph.
19 Just for the record, it reads, "the requirement of
20 this part shall apply to any participating source."

21 MR. ROMAINE: Well, that's my understanding,
22 yes.

23 MS. MIHELIC: If so, if the source that is
24 operating prior to 1999, but is not subject to the
ERMS program increases emissions after 1999 so

1 that it becomes subject to the ERMS program, will
2 the source have to reduce emissions by 12 percent?

3 MR. ROMAINE: Yes. A further quantification
4 is whether there are excluded emission units there.

5 MS. MIHELIC: Which emissions will the source
6 need to reduce by 12 percent; total emissions or
7 only those emissions which caused the source to
8 become subject to the ERMS regulations.

9 MR. ROMAINE: It would be the total emissions,
10 as I said, except for excluded emission units.

11 MS. MIHELIC: Where in the proposed
12 regulations is this 12 percent reduction set forth?

13 MR. ROMAINE: I think it's apparent in the
14 allotment process described in Section 205.400(c).

15 MS. MIHELIC: If a source which was
16 previously not subject to the ERMS rules increases
17 emissions, but the increase is not attributable to
18 a change in operation, will the source have to
19 offset any emissions?

20 MS. SAWYER: You're just referring to under
21 the ERMS program essentially?

22 MS. MIHELIC: Yes. There is no change.
23 An example would be an increase in production.

24 MR. ROMAINE: I guess we need to break that

1 down. You are describing a situation where there
2 is a source who is not currently a participating
3 source and undergoes a change, becomes a
4 participating source and --

5 MS. MIHELIC: It increases production so it
6 now goes to Title 5.

7 MR. ROMAINE: Since it's not undergoing a
8 major modification under the new source review, it
9 would not trigger any offset requirement. It would
10 simply have to hold ATUs for its annual emissions
11 at a ratio of one ATU for each 20 pounds of seasonal
12 emissions.

13 MS. MIHELIC: And if it was an existing
14 source, would it be given ATUs -- if it was an
15 existing source as of May 1995, as we stated earlier, 16
would it be given ATUs?

17 MR. ROMAINE: Yes. If it was an existing
18 source, it would be a participating source.
19 Participating sources are incumbents. There is a
20 process for giving participating sources of this
21 type an allotment of ATUs.

22 MS. MIHELIC: We are now going to Section
23 VIII, Section 205.205, which talks about exempt
24 sources. Now, Section A., Section 205.205(a),

1 Question No. 1., what does the agency mean when
2 it states in the statement of reasons that sources
3 which limit VOM emissions to 15 tons or less per
4 seasonal allotment period in a CAAPP permit will
5 not be able to exceed the 15 ton seasonal level? ?
6 This is set forth in Page 26.

7 MR. SUTTON: If a source selects to take the
8 15-ton level to avoid the ERMS process, that will
9 become a CAAPP condition and it will be in the
10 permit.

11 MS. MIHELIC: What is the penalty if the 12
source exceeds this 15-ton limit?

13 MR. KOLAZ: Well, if it does exceed the
14 limit, of course, it is mentioned that's a violation 15
of a condition of the CAAPP permit and what the
16 source subjects itself to is possible enforcement
17 action.

18 I would just state that opens a lot of 19
possibilities as part of the process of trying to
20 reconcile and reach some agreement of that particular 21
violation. So there could be a financial penalty or 22
there could be any number of things that could occur 23 as
a result of that violation.

24 MS. MIHELIC: I have a follow-up question to

1 that. If a source realized during the season that
2 it might violate that 15-ton emission limit, would
3 the agency give it an opportunity to modify its CAAPP
4 permit and be put into the ERMS program?

5 MR. KOLAZ: Well, that's a very hypothetical
6 situation. I think the situation in the simplest
7 form is if it violates the condition of its existing
8 CAAPP permit, the violation has already occurred.

9 Now, naturally, if there is an adequate
10 amount of time where the source can foresee that and
11 make the modifications before the violation occurs,
12 then, of course, no violation occurred.

13 MS. MIHELIC: I guess if the source took the
14 15-ton exemption and decided later it didn't want it
15 and it wanted to increase emissions and come up
16 with the reductions, it would have the opportunity
17 to do that? It would not be forever forbidden or
18 prohibiting from entering the ERMS program?

19 MR. KOLAZ: I think, generally, that's
20 correct. You know, Don, should really maybe add
21 to this. Certainly, modifications to a CAAPP permit
22 are possible. ?

23 MR. SUTTON: I guess I would like to add
24 that I would take this 15-ton limit very seriously

1 because I would suggest that trying to go beyond
2 that back into the ERMS program would be considered
3 a significant modification to your CAAPP permit and
4 invoke probably at least six months worth of the
5 processing to get that changed. Again, I wouldn't
6 take that lightly.

7 MR. MATHUR: Tracey, let me add to that
8 question. I think it's our intent at the moment
9 that a source would do this evaluation very
10 carefully prior to deciding if it wants to seek
11 an exemption under that provision. While allowing
12 it to come into the ERMS process is a possibility,
13 I don't think that's guaranteed.

14 MS. MIHELIC: Okay.

15 MS. SAWYER: Just as a quick matter,
16 Mr. Forbes and Mr. Mathur were sworn in at the
17 previous proceeding, but they should probably
18 be sworn in or if they were sworn in at the previous
19 proceeding, is that okay?

20 MS. McFAWN: Sure.

21 THE HEARING OFFICER: Yes.

22 MS. SAWYER: Okay.

23 MS. MIHELIC: All right. Going to Question 3
24 under Section VIII, is exceedance of 15-ton limit an

1 emission excursion governed by Section 200.620(f) or
2 is such excess considered an independent violation
3 of the source's CAAPP permit? I know it's an
4 independent violation of the source permit, but
5 I guess, is it also considered an emission excursion?

6 MR. KOLAZ: No, not in the sense of 620(f).

7 MS. MIHELIC: Section B's question, and that
8 goes to Section 205(b), the 18 percent exemption, in
9 this section, does the agency intend to exempt
10 sources that reduce baseline emissions by 18 percent
11 before 1999? I withdraw the question because it has
12 been answered numerous times.

13 Number 2, can a company that achieves
14 greater than 18 percent reductions be exempt, but
15 still sell ATUs available due to reductions beyond
16 18 percent?

17 MR. ROMAINE: Yes. It could create ATU
18 pursuant to the ERG process if it makes further
19 emissions productions.

20 MS. MIHELIC: Section IX, we withdraw the
21 question as it has been answered throughout the
22 proceedings.

23 Section X, I would request at this
24 point that I could ask my revised question because

1 it's much simpler than my question that is written
2 in here. I have discussed it with the agency.
3 It's my understanding that they have an answer.

4 THE HEARING OFFICER: Well, why don't we go
5 off the record for a second.

6 (Whereupon, a discussion
7 was had off the record.)

8 THE HEARING OFFICER: Let's go back on the
9 record.

10 MS. MIHELIC: I'm going to defer Section X
11 since it has been significantly revised. I will
12 ask it at the end of the prefilled questions.

13 Section XI, baseline emissions, Section
14 A of my question, Section 205.320(a), which goes to
15 representative conditions, the agency states that
16 it has used the 1990 emissions level to calculate
17 the reductions necessary to attain the ROP for 1999.
18 Why then can't the source calculate its baseline
19 emissions using any seasonal allotment period from
20 1990 based upon 1996 applicable rules regardless
21 of whether the years of 1994 through 1996 are
22 representative?

23 MR. ROMAINE: The answer to this question
24 lies in the basic purpose of the trading program.

1 The basic purpose of the trading program is to get
2 further reductions of VOM emissions beyond those
3 required in 1996 for the 15 percent rate of progress
4 plan.

5 Accordingly, the program has developed
6 base allotments to the incumbent sources on VOM
7 emissions levels that would generally be
8 representative of 1996.

9 The principal of using the two-year
10 average of emissions to set a representative emission 11
level is present in the current new source review
12 rules to build a little more flexibility into the
13 program up front to assure that sources receive
14 allotments based on representative operation. The
15 program was developed allowing sources to freely
16 select the two seasons out of 1994, 1995, and 1996
17 with the greatest VOM emissions as the basis for
18 their allocation.

19 Now, coincidentally, these three years
20 also have a period of time when sources probably
21 have had the best emission data they ever had. This
22 is a consequence of the more rigorous annual emission 23
program as well as preparation for the Title 5
24 permitting process. So hopefully, this will be

1 suitable for most sources. At the same time, we do
2 realize these three seasons may not be sufficient for
3 certain sources due to non-representative conditions.
4 Accordingly, the trading program was developed to
5 allow substitution of other years if needed to set a
6 representative baseline emission.

7 That would only be based or due to a
8 case-by-case showing and this is also a principal
9 that is present in the current New Source Review
10 Program that you can go outside of the presumptive
11 period of time if there is a case-by-case showing
12 that that would not provide a representative
13 determination of actual emissions.

14 MS. MIHELIC: We are going to at this point
15 withdraw Questions 2, 3 and 4. We have prefiled
16 questions of Mr. Romaine's testimony, which I assume
17 we will be allowed to ask after everybody has gone
18 through their other prefiled questions that addresses 19
these questions, is that correct?

20 We will have additional time to ask
21 Chris --

22 THE HEARING OFFICER: Specific to Chris?

23 MS. MIHELIC: Excuse me?

24 THE HEARING OFFICER: Specific to Chris?

1 MS. MIHELIC: Right.

2 THE HEARING OFFICER: Why don't we just do
3 them now if you have them?

4 MS. SAWYER: Well, they're on a different
5 piece of paper. I think there is a later filing is
6 what she is suggesting. So she'll go through this
7 and then do the next one.

8 THE HEARING OFFICER: Chris, are you ready
9 to ask the question that she specifically prefiled
10 to you?

11 MR. ROMAINE: Are you talking about XI, A.,
12 2., 3., and 4?

13 MS. SAWYER: Yes.

14 MS. MIHELIC: Well, actually, we are talking
15 about what we filed on January 27, 1997. There are
16 four questions -- two questions having two subparts.
17 So I guess a total of eight questions that we
18 specifically filed to Chris Romaine's testimony
19 since he had answered some of our previous
20 questions.

21 MS. McFAWN: So you're willing to substitute
22 those questions in lieu of 2, 3 and 4?

23 MR. ROMAINE: Oh, these questions. I have
24 these questions.

1 MS. MIHELIC: Okay. Going to the questions
2 that we filed on January 27, 1997, is it okay to go
3 forward on these questions at this time?

4 THE HEARING OFFICER: Yes.

5 MS. MIHELIC: Question No. 1., are the
6 examples provided on Pages 2 and 3 of the testimony
7 to show the presence of abnormal conditions merely
8 examples and not intended to be the only conditions
9 by which the agency will agree that
10 non-representative conditions exist?

11 MR. ROMAINE: That is correct.

12 MS. MIHELIC: All right. Question 2, on top
13 of Page 3 of your testimony, what does significantly
14 lesser extent mean in the statement that if
15 non-representative conditions are present, abnormal
16 conditions must exist to a significantly lesser
17 extent than the seasons proposed substitutes that
18 1994, 1995, or 1996?

19 MR. ROMAINE: Well, actually, the entire
20 statement that I made was that the
21 non-representatives are not present at all in such
22 substitute seasons or present to a significantly
23 lesser extent.

24 So I was really qualifying it to

1 say the substitute season does not have to be a
2 perfect representative season. It just has to
3 be better than the one it's substituting for.
4 Simply explained by example, strikes as a good
5 example. You can have a strike in '94/'95 that
6 makes it non-representative. You could also have a
7 strike in a substitute season.

8 Hopefully, to show it's
9 non-representative, you shouldn't have three months
10 of strikes in both seasons. Presumably, you would
11 have fewer strikes impacting the more representative
12 time period than the non-representative time period.

13 MS. MIHELIC: I guess you just gave an
14 example. My Question 3 is what are some examples
15 when abnormal conditions exist to a significantly
16 lesser extent?

17 MR. ROMAINE: I believe so, yes.

18 MR. MIHELIC: In Question A there, is the
19 agency vested with unfettered discretion in
20 determining what constitutes a significantly lesser
21 extent?

22 MR. ROMAINE: No.

23 MS. MIHELIC: Who else may determine what
24 constitutes a significantly lesser extent?

1 MR. ROMAINE: First of all, the concept of
2 significantly lesser extent is not language from the
3 rules. The language from the rules says there are
4 non-representative conditions in '94, '95 and '96
5 to justify the substitution.

6 I was trying to explain in my testimony
7 one of the things as a practical matter people might
8 think about. It also means that if you come up with
9 something -- going back to my example, if you find
10 out you have three months in both the substitute and
11 the supposed non-representative season, it still may
12 be non-representative, but you're probably focusing
13 on the wrong factor.

14 You want to show why the difference.
15 What circumstances existed here that weren't there so 16
16 that the two seasons can be distinguished as one
17 being more representative than the other.

18 MS. MIHELIC: And is this determination to be
19 made on a case-by-case basis?

20 MR. ROMAINE: Yes, it is.

21 MS. MIHELIC: Question 3(b), for a source
22 attempting to show that an emissions baseline limited 23
23 to 1994, 1995, and 1996 would not account for normal
24 variation in that source's activity or reduction,

1 what is meant by "a source would be expected to show
2 that the level of activity or mix of production has
3 consistently been higher in seasons other than 1994,
4 1995 and 1996?"

5 MR. ROMAINE: Again, I was trying to give a
6 further explanation of some of the things that we
7 might run across and I was specifically thinking
8 about a circumstance where we wouldn't necessarily
9 consider one season, particularly an only season, to
10 be representative if it is perhaps a spike and no
11 longer representative of the present condition of
12 a source.

13 So, for example, you have a source
14 that, let's say, emitted 50 tons in the 1990 season
15 and it fluctuated between 25 in '91, '92 and '93 and
16 in '94, '95 and '96, it fluctuates between 25 tons.
17 In 1991, a department was shut down. Then, we
18 certainly wouldn't take the position that you would
19 go back and pick up 1990 simply because it has the
20 highest level of production you can come up with.

21 In fact, the department has been shut
22 down. There are six seasons that reflect the lack
23 of that department. That is a more typical condition 24
than if that department was there.

1 MS. MIHELIC: How many years of emissions data
2 would be required to show that a source has
3 consistently been higher in other years in '94 to
4 '95? Could it just be one year or does it need to
5 be for more than one year?

6 MR. ROMAINE: There is nothing in the rules
7 that specifies any particular number of years.
8 All you need is to provide justification. It is a
9 case-by-case determination. In fact, all the rule
10 talks about is production level, a mix, and levels
11 of production. It doesn't even mention emission
12 date.

13 MS. MIHELIC: Question No. 4, the following
14 sentence in the testimony states, in your testimony,
15 again, it would be necessary to show that the higher
16 substitute levels of production will likely be
17 experienced in the future and that the lower levels
18 during 1994 to 1996 are not the result of some
19 permanent change in the activity level source.

20 The standard for a source to show
21 that an emission baseline limited to '94 to '96
22 would not account for normal variations in that
23 source's activity or recent production?

24 MR. ROMAINE: No. The standard is stated

1 in the rule Section 205.318(a)(2) that there are
2 non-representative conditions in 1994, 1995 and
3 1996.

4 Again, I was trying to provide some
5 further explanation of how the agency would expect
6 some situations to be dealt with.

7 MS. MIHELIC: If the source has simply had a
8 reduction in emissions due to a decrease in customer
9 orders, but expects that to increase, how can it
10 show that it is not the result of some permanent
11 change?

12 MR. ROMAINE: Well, that's a brainstorm thing
13 about what sources might come up with. What is the
14 reason it's lower now, but wasn't in the past? It
15 probably won't be in the future. It may be unusual
16 conditions for the customers, an overall slump in
17 the customer market, some gap between customers where 18
there is normally transition where you go from one
19 customer to another with transition periods.

20 Maybe there is a particular cause like
21 there was some outdated equipment that was going
22 downhill and now it's been replaced, an old manager
23 has been rehired or a labor contract renegotiated.

24 It's case-by-case determination. We

1 are open to what other information the company can
2 come forward and show the particular season should
3 not be representative or there were
4 non-representative conditions present.

5 MS. MIHELIC: Those are all the questions
6 from the prefiled questions of January 27th.

7 Going back to Section XI, going on to
8 B., Section 205.302(b), existing non-ERMS sources,
9 Question 1, that has been asked and answered. We
10 will withdraw the question. Asked and answered
11 as to Question 2. It's already been asked and
12 answered.

13 Question 3, why is a participating
14 source which makes a major modification limited
15 to an allotment of its actual emissions before
16 the change requiring an offset of all emissions
17 from the change constituting a major modification?

18 MR. ROMAINE: This is a consequence of the
19 nonattainment new source review rules where you
20 haven't made your modification and a source is
21 expected to obtain offsets from other existing
22 sources in the area to make room for those additional 23
emissions.

24 MS. MIHELIC: Okay.

1 MR. ROMAINE: It would be inconsistent with
2 the principals of new source review to then allocate
3 ATU to satisfy that offset obligation.

4 MS. MIHELIC: Following question is why is the
5 source referenced in the question above not allotted
6 ATUs for all of the emissions preceding the change
7 and the amount of emissions by which it could
8 increase without becoming a major modification then
9 being required only to offset those emissions above
10 the major modification threshold?

11 MR. ROMAINE: Again, that's a consequence of
12 nonattainment area new source review. When a major
13 project comes in, it is responsible for offsetting
14 all of the emissions from that major project. It
15 doesn't simply offset that portion of the increase
16 that is greater than the major threshold. So if a
17 project comes in with 30 tons per year of emissions
18 or 30 tons per season, it needs to offset that entire 19
amount. It doesn't offset the increment of 25 tons
20 in terms of the annual basis.

21 MS. MIHELIC: As far as the questions set
22 forth in Section C. relating to Section 205.320(d),
23 I will withdraw Question 1 since it was answered
24 during his testimony earlier today.

1 Going on to Question 2, does the 2
language -- and I'm going to cite the above
3 question -- that occurred after 1990 mean that 4
a source that installed add-on controls prior 5 to
1990 with an overall control beyond that
6 required by the regulations, i.e., beyond controlled 7
emissions by 90 percent, but is only required to
8 achieve 81 percent, and continues to use this control 9
after 1990 will not be given credit in its emission
10 baseline for this voluntary over-compliance?

11 This, I believe, has been asked and
12 answered today by your testimony. The answer
13 is yes, correct?

14 MR. ROMAINE: There are some double negatives 15
there, but yes.

16 MS. MIHELIC: Since this is correct, isn't
17 it true that a source which installed control and
18 achieved reductions in emissions greater than that
19 required thereby assisting the state in meeting its 20
ROP goals being penalized now for reducing emissions 21
early?

22 MS. SAWYER: Could you hold on just a moment?

23 This question should probably be asked 24
of Mr. Forbes.

1 MR. FORBES: The answer to your question 2
is no. Sources making such reductions have been 3
accounted for in the original Clean Air Act
4 baseline which was established based on 1990
5 actual emissions.

6 These reductions had the effect of 7
lowering the actual baseline and thus reducing
8 the reduction required to meet post-1990 ROP
9 requirements.

10 MS. MIHELIC: But if a source's post-1990
11 ROP requirements up until this ERMS rule never
12 changed, for example, it had an 81 percent control 13
requirement, but still has an 81 percent overall
14 control requirement, is it not being penalized for 15
reaching an 86 percent before, let's say, 1990 than 16
after 1990 because if it had done it after 1990, it 17
would actually get credit of ATUs for the difference 18 in
overall control?

19 MR. FORBES: We don't believe those sources 20
really are being penalized, but being treated
21 consistently with the ROP requirements that are
22 contained in the Clean Air Act.

23 MR. SAINES: As a follow-up, your testimony --

24 you're stating basically that sources
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1 over-control pre-1990 are benefiting from the
2 fact that based on that over-control, there is less
3 percentage of reduction that is currently needed
4 under these rules?

5 Is that what you are basically saying?
6 That's how they are benefiting?

7 MR. FORBES: That's correct. Actually, the
8 Clean Air Act requires that states use 1990 as their
9 base year to establish all future ROP requirements
10 from that base. So whatever controls that were
11 contained on those sources are reflected on the total 12
emissions for 1990.

13 MR. SAINES: It's also true that those
14 individual sources -- I mean, everybody is going to
15 be required under this ERMS rule to reduce the same
16 percentage, all sources, those that control pre-1990
17 and those that decided not to control pre-1990,
18 correct? It's a 12 percent reduction from all
19 sources?

20 MR. FORBES: Right, except for whatever is
21 excluded in the exclusion parts of the rule.

22 MR. SAINES: So compared to the other sources
23 affected by the program, they are being treated --
24 they are not being given credit relative to the other

1 sources for the excess reductions that they have 2
achieved prior to 1990?

3 MR. FORBES: They are simply required to
4 meet the provisions of the Clean Air Act and the 5
act established in 1990 as a base irregardless of 6
what prior control existed. The actual emissions 7
that existed is the basis for establishing all
8 future ROP requirements.

9 MR. SAINES: But we are discussing ERMS
10 rulemaking, not the Clean Air Act. I mean, all
11 sources are required to comply with the Clean Air 12
Act. We are talking about the ERMS rulemaking and 13 how
the ERMS rulemaking affects particular sources.

14 Our question is sources that
15 over-control. Pre-1990 are not being given credit 16
in terms of ATU allotments for that control.

17 MS. MIHELIC: Whereas sources after who did 18
it later are getting the credit.

19 MR. MATHUR: Let me answer that. The
20 Clean Air Act leveled the playing field in 1990. The 21
starting point for post-1990 air pollution strategies 22
starts with that presumption.

23 So a source that made -- that thinks it
24 made extra reductions prior to 1990 by the passage

1 of the Clean Air Act lost any benefits that they may
2 have claimed. The starting point is 1990.

3 MS. MIHELIC: I understand the starting point
4 is 1990, but some sources who reduced early are not
5 given credit under this program whereas their
6 competitors may be given credit and additional ATUs
7 because they basically achieved the same amount of
8 control later, perhaps five to ten years later.

9 MS. SAWYER: Is that a question?

10 MS. MIHELIC: Yes. I'm asking you, is that
11 correct?

12 MR. MATHUR: I --

13 MS. SAWYER: We don't know about any
14 individual source's competitors.

15 MR. MATHUR: I don't think we want to debate
16 the issue. Any source that made more reductions
17 than it needed to for 1990 started off 1990 with
18 its actual emissions. That was how the Clean Air
19 Act was written.

20 The presumption on the part of the
21 agency is that all sources were meeting at least
22 the required level of reductions and brought in
23 compliance when they estimated the baseline in
24 1990.

1 There are a few that are not. We shall
2 handle them through an enforcement action. So the
3 ERMS rule cannot accommodate what the Clean Air Act
4 would not allow.

5 MS. MIHELIC: Now, I'm trying to figure out
6 when you estimated emissions, did you assume they met
7 only the required control or that they were actually
8 meeting the over-control in determining the year
9 1999?

10 MR. FORBES: The 1990 baseline is based on
11 actual emissions. So whatever control was in place
12 and however they were operating is represented in
13 that actual baseline of the 1990 emissions.

14 MS. MIHELIC: Question B. has been asked
15 and answered by the previous questions and answers.

16 Question C. is withdrawn because it
17 also has been asked and answered by the previous
18 questions.

19 Going on to Question 3., if prior to
20 1996 a source has voluntarily reduced emissions
21 by upgrading equipment, but accepted limitations
22 in construction and operating permits to avoid
23 triggering new source review applicability under
24 Part 203, will the source's reduction credits in

1 its baseline emissions determination be limited
2 by the permit limit in the new source review
3 permit?

4 MR. ROMAINE: Yes. The baseline emissions
5 determination would have to address the new source
6 review permit.

7 MS. MIHELIC: Will the source receive full
8 credit in its baseline emission determination for
9 all the reductions in emissions at the facility
10 due to the upgrade?

11 MR. ROMAINE: That's really a case-by-case
12 question. It's pretty hard to answer it yes or no.
13 Certainly, there are circumstances where it assumes
14 all or gets all credit. There may be circumstances
15 where it does not get all of the credit due to the
16 way the construction permit was or the implication
17 in the nonattainment area for the new source review.

18 MS. MIHELIC: I guess, but if it has a new
19 source review permit with limited emissions, it
20 will only get up to the new source review permit?

21 MR. ROMAINE: That's the general concept,
22 yes.

23 MS. MIHELIC: I'm going to withdraw the
24 examples set forth in Section I at this point in

1 time because in the revised questions, there were 2
some -- there were revised examples given. I'll 3 ask
that after all of the prefiled questions have 4 been
asked.

5 In Question B. there, it's withdrawn 6
based upon the previous answer.

7 THE HEARING OFFICER: Let's take a
8 five-minute break at this point.

9 (Whereupon, after a short
10 break was had, the
11 following proceedings were
12 held accordingly.)

13 THE HEARING OFFICER: Let's go back on the
14 record and we can continue with the questioning from 15
the coalition. Whenever Ms. Mihelic is ready, we
16 will start again.

17 MS. MIHELIC: Mr. Saines is going to continue 18
with your questioning now.

19 MR. SAINES: She needs a break.

20 Okay. Picking up at Section XII,
21 pertaining to Section 205.400, seasonal emissions
22 allotment, A., 1., pertaining to the life of ATUs, 23
this question, for the record, involves a
24 hypothetical so bear with me.

1 May a source designate that its ATUs
2 remaining from the preceding year be applied first
3 to its current year's emissions, for example, in
4 1999, Company A had 40 ATUs remaining, in 200,
5 may Company A apply the 40 ATUs from 1999 to its
6 emissions in 2000, resulting in Company A having
7 perhaps 80 ATUs remaining at the end of 2000 for
8 use in 2001 and so on?

9 MR. KOLAZ: The direct answer is yes, but
10 maybe a good reference would be Rule 205.530(b)(3).
11 What it specifies is that the agency will retire
12 ATUs in order of issuance. So it would not be
13 necessary for a participant to request that to be
14 done. That would be our normal procedure. It's
15 actually the opposite if the account officer for
16 the participant wishes to retire ATUs in some
17 different order. Then, they would have to request
18 that to occur by writing to the agency.

19 MR. SAINES: Okay. Section B. is pertaining
20 to Section 205.400(c) regarding 12 percent further
21 reductions. We will withdraw Question No. 1 as being 22
asked and answered.

23 Question No. 2, has the agency assessed
24 the amount of reductions that may be needed based

1 upon 1994 or 1995 actual emissions?

2 MR. FORBES: The answer is no.

3 MR. SAINES: We can withdraw (a) as being
4 irrelevant.

5 Moving to question (b), if not, why
6 not?

7 MR. FORBES: 1996 is the relevant year from
8 which to assess reductions for the purposes of the
9 three percent rate of progress plan.

10 MR. SAINES: I just have a clarifying 11
question. Isn't the actual emissions that you 12
are requiring reductions from based on 1990
13 actual emissions as opposed to 1996?

14 MR. FORBES: Well, the procedure for rate
15 of progress is to start with 1990 as the base year. 16
From that, you would determine the requirements
17 for the 15 percent rate of progress plan. That
18 establishes the reductions needed by 1996. For
19 the remainder of the three percent plan, then,
20 its reductions from that point continue on making the 21
necessary ROP demonstration.

22 MR. SAINES: Isn't it possible that the
23 Chicagoland area has already achieved the 12 percent 24
reduction of VOM emissions needed by over-complying

1 with the regulation?

2 MR. FORBES: It is possible although we don't
3 believe that that is likely.

4 MR. SAINES: Isn't it possible that a lower
5 amount of reductions is actually needed based upon
6 actual emissions from 1994 to 1996?

7 MR. FORBES: Again, it might be possible. We
8 haven't determined that.

9 MR. SAINES: We will defer Question No. 5
10 until the economic impact testimony.

11 We will strike Question No. 6.

12 Question No. 7, if a source becomes a
13 "participating source" after 1999, does the language
14 "shall be reduced by 12 percent in 1999" preclude
15 the agency from reducing such source's baseline
16 emissions by 12 percent, that is, a Section
17 205.320(b) source?

18 MS. SAWYER: I believe we already answered
19 that question. Mr. Romaine answered it. This is
20 someone who becomes a participating source after
21 1999?

22 MR. SAINES: Correct.

23 MS. MIHELIC: The clarifying question was
24 in 1999, does it preclude the agency from reducing

1 the new sources emissions by 12 percent?

2 MR. FORBES: No, not in our opinion.

3 MR. SAINES: Moving to C. pertaining to
4 Section 205.400(d), further reductions beyond 12
5 percent, we withdraw Questions 1, 2, 3 and 4. They
6 have already been asked and answered.

7 Question 5, if the agency determines
8 that further reductions are necessary, will the
9 agency be required to conduct a separate economic
10 impact analysis to assure that compliance with the
11 ERMS rule be as "cost effective" as the traditional
12 regulatory requirements in Illinois?

13 MR. MATHUR: Let me answer that this way.
14 In the opinion of the agency, we will have made a
15 demonstration that a trading program is economically
16 superior to a command and control approach at the
17 end of this proceeding.

18 While I cannot speculate what our
19 approach will be the next time, I do not believe
20 that it should be necessary for the agency to make
21 that showing again. On the other hand, will it be
22 required? I don't know. I don't know who will do
23 the requiring.

24 MS. MIHELIC: Is it true -- I mean, as a

1 follow-up question, you're saying -- strike that.

2 Isn't it correct that the economic
3 impact analysis was conducted based on a 12 percent
4 reduction and not on a, per se, 16 percent, 18
5 percent, or 20 percent reduction?

6 MR. MATHUR: At this time, that is true.
7 The agency will expect to provide a technical
8 and economical reasonableness and feasibility for
9 the additional reduction. I don't believe it should
10 be necessary to do an economic analysis again of
11 the trading approach versus a command and control
12 approach.

13 MR. SAINES: Okay. We will strike Question
14 A.

15 Going to Question B., will the agency
16 only be assessing the economic impact of achieving
17 the difference from 12 percent to a higher reduction
18 percentage?

19 MS. SAWYER: I'll object to that question.
20 I think it calls for speculation. When we come
21 back and do this kind of stuff, we will make that
22 determination.

23 THE HEARING OFFICER: Any response?

24 MR. SAINES: Question C., doesn't Section

1 9.8(c)(1) of the act require the agency to conduct
2 the same economic impact analysis using the higher
3 percentage of reduction figure in place of the 12
4 percent reduction -- further reduction figure?

5 MS. SAWYER: I'll object to this question.
6 It calls for a legal interpretation of Section 9.8.

7 MS. MIHELIC: I guess directing our --
8 speaking to the objection, there has been testimony
9 here of how this rule complies with Section 9.8 and
10 what the requirements of Section 9.8 are.

11 I guess we're asking based upon the 12
involvement by personnel at the agency in both
13 drafting that statute and adopting rules that
14 apply with that statute, I don't believe it's a 15
legal interpretation. It's just saying does
16 Section 9.8 -- would it require an economic
17 analysis to be done at a higher percentage figure 18
than 12 percent?

19 MS. SAWYER: Okay. Then, I'll object. It 20
requires speculation.

21 MS. MIHELIC: I don't believe it requires 22
speculation because it's saying if in the future
23 you reduce further, would you have to do an economic

1 MS. SAWYER: It's making a lot of
2 presumptions --

3 MS. MIHELIC: -- it's just asking does the
4 act currently require that a separate economic
5 analysis have to be done replacing the 12 percent
6 figure with the higher percentage figure?

7 THE HEARING OFFICER: Let me jump in here.

8 Are you asking that in the future,
9 the agency has to reduce more than 12 percent if
10 they have to come back and do an economic impact?

11 MS. MIHELIC: Yes.

12 THE HEARING OFFICER: Hasn't that already been 13
answered by Bharat saying that at that time,
14 we would have to come back and do technical
15 feasibility and economic impact?

16 MS. MIHELIC: He wasn't sure if he would do
17 an economic impact. He stated he wasn't sure, I
18 believe, if that would be required and I'm asking
19 does Section 9.8 require that or not.

20 MS. SAWYER: I think that's a legal
21 interpretation. I think that that objection is
22 valid.

23 MS. McFAWN: Well, would you like -- the
24 original questions that were all agreed upon were

1 legal questions, do you want to answer this in
2 writing then?

3 Mr. Mathur, do you want to answer that
4 now?

5 MR. MATHUR: I'll answer it.

6 MS. McFAWN: Great.

7 MR. MATHUR: First of all, what I answered
8 earlier, Tracey, was I do not believe that the
9 agency should be required to do an economic impact
10 analysis on a trading approach versus a command 11
and control approach.

12 The second part of my answer, which 13
I shall repeat, was when the agency comes back 14 for
additional reductions through a separate
15 rulemaking, we will imply the provisions of the 16
requirement of the Environmental Protection Act 17
under which the agency will propose in the next 18
round of rulemakings.

19 MS. MIHELIC: Okay. Going back to that 20
answer, then, you said that you don't believe it
21 should be required. Does Section 9.8(c)(1) require
22 you to do an economic impact analysis at any further
23 reduction rate as compared to the command and control 24
process?

1 MS. SAWYER: Mr. Mathur went on to say that
2 we will do whatever economic -- we will do what's
3 required by the Environmental Protection Act. If
4 you are asking for something more, you are asking
5 for a legal interpretation.

6 MS. MIHELIC: I'm asking if the act currently
7 requires that?

8 MS. SAWYER: I object. That's a legal
9 interpretation.

10 THE HEARING OFFICER: I think -- I'm losing
11 the question again, but I think what you are asking
12 is if there is further reduction beyond 12 percent,
13 which is required currently by the rules, if there
14 is a further requirement, does the agency have to
15 come back to adopt -- in my mind, do they have to
16 come back and adopt rules that require further
17 reduction pursuant to 9.8(c)(1)?

18 MS. SAWYER: Is that the question?

19 MS. MIHELIC: Well, I'm asking if at that
20 time their economic impact analysis would have to
21 include a comparison basically of the command
22 and control requirements and that an 18 percent
23 reduction amount, not just a 12 percent -- assuming
24 it's an 18 percent reduction amount and not just a

1 12 percent reduction amount -- so they have to come
2 back and do the economic impact analysis they did
3 here, not at the 12 percent figure, but an 18 percent
4 figure?

5 MS. SAWYER: Has anyone ruled on my objection
6 here? I mean, I think this is a legal
7 interpretation.

8 THE HEARING OFFICER: Bonnie, I'm trying to
9 figure out what the question is --

10 MS. SAWYER: Okay.

11 THE HEARING OFFICER: -- so I can real whether 12
or not it is a legal interpretation.

13 MS. SAWYER: Okay.

14 THE HEARING OFFICER: So the question, I
15 think, has been if there are further reductions above 16
12 percent, 18 percent, do they have to do an
17 economic impact and a feasibility presentation and I
18 think the answer is -- and Bharat's answer was that I 19
don't think we have to come back and show the trading 20
program is not economically reasonable at the 12
21 percent reduction and then he went on to say, correct 22
me if I'm wrong, that we have to come back for
23 another rule for the board for further reductions
24 beyond 12 percent. I think the answer -- the final

1 answer was that they would require a rulemaking for
2 them to show economic impact and technical
3 feasibility.

4 MS. MIHELIC: I understand all of that.

5 THE HEARING OFFICER: So you're asking
6 whether or not the additional reduction based on
7 the 12 percent that would have to be done in the
8 rulemaking before the board would require an
9 economic impact and technical feasibility
10 presentation?

11 MS. MIHELIC: No. I guess I'm assuming that
12 it would. I'm assuming that it would have to have
13 an economical and technical feasibility impact.

14 I'm asking in the economic impact
15 analysis, what would they have to demonstrate that
16 it was the difference between 12 percent and whatever 17
further reductions were or the 1996 figure to
18 whatever the further reductions are.

19 THE HEARING OFFICER: Then, I think I'm going
20 to agree with Bonnie that it's going to be a legal
21 interpretation of how much they have to demonstrate
22 to the board to demonstrate economic impact and
23 technical feasibility. I don't know what that would
24 be at this point. I don't think that Mr. Mathur can

1 testify what the legal interpretation of that would
2 be and what the board would rule that would be
3 sufficient.

4 MS. MIHELIC: In one follow-up question,
5 Mr. Mathur, I believe, and Mr. Kanerva were involved
6 in the drafting of this statute. I guess the proper
7 question would be was it the intent at that time when
8 they were drafting the statute to do such an
9 economic -- or what was their intent with regards
10 to the economic impact analysis that would be
11 required later or was that just not considered
12 because at that time it wasn't a phased approach?

13 MR. MATHUR: That is correct.

14 MS. MIHELIC: It wasn't considered because
15 it was not a phased approach at that time?

16 MR. MATHUR: At the time that the legislation
17 was worked out, the feeling was that the agency would
18 come in with a degree of reductions sufficient to
19 show attainment.

20 Now that we have come in with partial
21 reduction for the reasons explained before and having
22 done an economic comparison of the trading approach
23 versus command and control approach, it is our
24 opinion that that particular analysis should not

1 be necessary again.

2 MR. SAINES: Moving right along, Section D.,
3 pertaining to Section 205.400(f), regarding new
4 participating sources, we will withdraw Question
5 Nos. 1, 2 and 3. Those have been asked and
6 answered.

7 Question No. 4, is a new participating
8 source which commences operation between 1996 and
9 1999 subject to 1.3 to 1 offset requirement and not
10 the 12 percent reduction requirement?

11 MS. SAWYER: The question makes a couple
12 presumptions. I don't know. Maybe, Chris, you can
13 clean up some of those things.

14 MR. ROMAINE: The initial problem that we have 15
is that we have to find new participating sources as
16 sources that begin operation after May of 1999.

17 MS. MIHELIC: So it would be a participating
18 source that increases emissions?

19 MR. ROMAINE: It appears that you are
20 discussing something that is a participating source.
21 Participating sources are existing sources that are
22 incumbents. They would be expected to operate under
23 the current new source review rules.

24 If this involves a major new source or

1 a major modification, they would have to address the
2 offset requirement as it would be on the present and
3 they have to have a low emission rate and that would
4 address their operation. They would then go through
5 the allotment process and end up with an allocation
6 of ATUs.

7 MR. SAINES: Question No. 5, is new
8 participating source, which commences operation after
9 1999, subject to the 1.3 to one offset requirement
10 and not the 12 percent reduction requirement?

11 MR. ROMAINE: Again, I need to clarify -- I
12 understand the question to be asking would this be
13 a new participating source? It would -- presumably,
14 you are dealing with a major modification here.
15 Presumably, we would have an obligation for a
16 major new source.

17 They do have offsets that would be
18 satisfied through the trading program. They would be 19
required to hold 1.3 ATUs for each 200 pounds of new
20 emissions rather than a one to one ratio. Because
21 they would be obtaining their ATUs on the market, the 22
12 percent reduction isn't relevant.

23 MR. SAINES: Okay. Section E., pertaining to
24 Section 205.400(g), related to existing non-ERMS

1 sources making major modifications, the question is,
2 will the agency reduce baseline emissions for these
3 sources by 12 percent?

4 MR. ROMAINE: The answer is yes. These are
5 existing sources. They are incumbents. In general,
6 they are baseline emissions that would be reduced 12
7 percent beginning their allotment unless -- to the
8 extent that there are excluded emissions.

9 MR. SAINES: Section XIII, pertaining to
10 Section 205.405, exclusions from further reductions,
11 Section 205.405(a), NESHAP, MACT, LAER and direct
12 combustion units, Question 1, an existing source
13 applies for and receives a case-by-case determination 14
that it's unit complies with a MACT standard and not
15 with a promulgated MACT standard, will this unit be
16 exempt from further reductions requirement?

17 MR. ROMAINE: I really need clarification.
18 What is this mechanism or process for a source to
19 receive a case-by-case determination that complies
20 with MACT that you are referring to?

21 MR. SAINES: For instance, under the Title 5
22 permit, non-categorical MACT standard.

23 MR. ROMAINE: I'm not familiar enough with
24 the MACT program to answer it in those terms. I

1 think the answer I would have to say is the simplest
2 approach for this source to be pursued is the best
3 available technology determination.

4 MS. MIHELIC: Following up on that question,
5 that could be more stringent than a MACT standard
6 that you testified to earlier, isn't that correct?

7 I guess it underlies -- just to clarify
8 it, an underlying assumption is that MACT sources are
9 exempt in the 12 percent further reduction
10 requirement, correct? Units have to comply with the
11 MACT standard?

12 MR. ROMAINE: That's correct. I guess
13 I'm not familiar enough with the case-by-case
14 determination of MACT standards, but where a
15 case-by-case determination of MACT would seem to be
16 getting back to the case-by-case determination of
17 best available technology, this is very speculative
18 how this would end up being treated.

19 MS. MIHELIC: To clarify the question, under
20 MACT, you either have MACT promulgated -- under the
21 MACT standards, if a deadline is approaching by which 22
a MACT standard is being promulgated for a specific
23 source, let's say, in 1990 -- let's use the 2002
24 year, that's the year that you have to have a MACT

1 standard, and this source wants to comply with a
2 MACT standard early, but there isn't one, so it goes
3 in and gets a case-by-case determination, it seeks
4 a case-by-case determination from the state, if it
5 complies with that case-by-case determination that
6 the state agrees that -- gives it this case-by-case
7 determination, would that unit, then, be exempt from
8 the 12 percent further reduction required? ?

9 MR. SUTTON: My personal reaction is that it's
10 a little bit farfetched that somebody would pursue
11 that. The primary reason you would have to have a
12 MACT determination is if you have a major expansion
13 under 112(g) and you have to have an individual MACT
14 determination.

15 Under 112(j), you would if the U.S. EPA
16 failed to, and even in that case, they failed to in
17 having come up with a -- their own pre-MACT as a
18 guideline, then, a source would have to do that. I'm 19
not sure why they would on their own voluntarily come 20 in
with a MACT determination. If not, why wouldn't
21 they just come in and ask for a BAT determination?
22 I don't know the relevance.

23 MS. SAWYER: Yes. I think Don's -- I mean,
24 the way you depicted a case-by-case MACT

1 determination is not the Clear Air Act's version
2 or what we do under permitting. I think that's
3 what Don is clarifying.

4 MS. MIHELIC: So you would never have a
5 source that came in under a -- asking for a
6 MACT determination? You would not give them a
7 case-by-case MACT determination? ?

8 MR. SUTTON: Well, Tracey, I'm having trouble
9 ascertaining why somebody would want to do that.

10 MS. SAWYER: There are only certain situations 11
where they can do that.

12 MR. MATHUR: Let me answer that, Tracey.

13 There are several circumstances in which 14
a company would come in and get a MACT determination
15 early or in the absence of the federal MACT, the
16 state could provide the MACT. Circumstances are laid 17
out in our CAAPP program.

18 I think the important thing to remember
19 is however that occurs, there has to be a formal
20 determination of MACT. I don't believe a company can 21
come in and say that I know that in 2010, the EPA is
22 going to come out with a MACT for me that says X and
23 I'm going to do X now.

24 Should there be a formal determination

1 of MACT either by the U.S. EPA or by us under the
2 various provisions provided and the company elects
3 to have that determination done early, the agency
4 does it, there is a formal MACT determination, then,
5 I would say that particular unit has met the test.

6 MR. SAINES: Question 2, when must the
7 source comply with the NESHAP, MACT, or LAER standard
8 to obtain this exemption?

9 MR. ROMAINE: Prior to the baseline emission
10 determination.

11 MR. SAINES: If a unit complies with a MACT
12 standard in 1996, but this standard changes before
13 1999 and this source does not comply with the new
14 standard, will this unit still be exempt from the
15 further reductions?

16 MS. SAWYER: I think that the scenario is too
17 hypothetical.

18 MR. SAINES: I don't.

19 MS. SAWYER: Well, we aren't prepared to
20 answer it.

21 THE HEARING OFFICER: Can --

22 MS. MIHELIC: I guess the question would be
23 when would you be prepared to answer it?

24 MS. SAWYER: Can you make it more specific?

1 MS. MIHELIC: If a company currently has
2 control on a unit that meets the current MACT
3 standard, but additional control develops because
4 of new technology and that technology is developed
5 before 1999, let's say, it was a MACT standard
6 promulgated a year or two ago, and so basically,
7 it doesn't comply with the new standard?

8 MS. SAWYER: I guess my question is has this
9 happened? I mean, is this something that --

10 MS. MIHELIC: It could happen.

11 MS. SAWYER: Well, then, it seems kind of --

12 MS. MIHELIC: I guess the question is would
13 this unit still be exempt from further reductions
14 requirements?

15 MR. ROMAINE: Well, I guess, are you
16 suggesting that the U.S. EPA will have reopened
17 its original MACT determination and established
18 a new refined MACT standard?

19 MS. MIHELIC: Yes.

20 MR. ROMAINE: I think that would not be a
21 factor. They will have MACT at the time of the
22 baseline emissions determination -- the subsequent
23 MACT determination. The refined rulemaking is
24 down the road and post -- after the baseline emission

1 determination point. I'm not sure why U.S. EPA would
2 reopen a MACT determination that shortly after having
3 made it. ?

4 MR. SUTTON: And in any event, you have three
5 years to comply once they do, in most cases.

6 MR. SAINES: We withdraw Question 2(b) and
7 2(c).

8 I'm asking to ask 2(c). If the standard
9 changes after 1999 and the unit no longer meets the
10 new standard, will the source lose this exemption?

11 MR. ROMAINE: We have given them the
12 exclusion. We won't anticipate they are going to
13 lose it. I would suggest that they probably do want
14 to comply with that new standard or they are in
15 violation.

16 MS. MIHELIC: You are not saying they would
17 lose their exemption from 12 percent?

18 MR. ROMAINE: I'm not saying they would lose
19 there exclusion from 12 percent.

20 MS. MIHELIC: They would?

21 MR. ROMAINE: I'm not saying that they would
22 lose their exclusion from 12 percent.

23 MR. SAINES: We will withdraw Question No. 3.
24 Question 4, is it true that

1 Based upon the language of Section 205.405(a), the
2 replacement unit does not need to be in operation
3 prior to 1999 to be excluded from further
4 reductions?

5 MR. ROMAINE: That particular provision is
6 one of the artifacts left in the proposal from the
7 previous version that we deleted in our errata
8 earlier today.

9 MR. SAINES: Okay. A follow-up question is
10 that question answered based upon the changes in
11 your --

12 MS. MIHELIC: That's deleted, right, that
13 section?

14 MR. ROMAINE: Yes.

15 MR. SAINES: Okay. In that case, we will
16 withdraw Questions 5 and 6. Section B., is
17 pertaining to Section 205.405(c), agency's
18 determination of exclusion, Question No. 1, if
19 a source loses an appeal of denial of a BAT
20 determination and as a result, the source exceeds
21 its ATU allotment from previous years, will this
22 exceedance be considered an emission excursion?

23 MS. SAWYER: This question, I believe, is
24 the same as a question that we deferred earlier.

1 I would hope we could defer this one also. I think
2 you asked us essentially the same question earlier
3 and we deferred it. So we will answer this one at
4 the same time.

5 MR. SAINES: Okay.

6 MS. MIHELIC: So why don't we say that you
7 will answer 2 and 3 following?

8 MS. SAWYER: Yes.

9 MS. MIHELIC: That will be deferred too?

10 MS. SAWYER: Yes, okay.

11 MR. SAINES: Okay. Our Section XIV,
12 pertaining to Section 205.410, participating source
13 shutdowns, we will withdraw Question A.

14 Question B. is if the 12 percent further 15
reduction is all that is necessary for the agency to
16 meet the purpose of implementing these rules, why is
17 a source which already reduced emissions by 12
18 percent only allotted 80 percent of its ATUs when it
19 shuts down?

20 MR. ROMAINE: As explained, that was a
21 comprise between the divergent viewpoints of affected 22
sources and environmental groups.

23 MR. SAINES: Our Section XV is pertaining
24 to Section 205.480, emissions reduction generator.

1 Question A., why is an emission reduction generator
2 limited to the Chicago ozone nonattainment area,
3 particularly if the agency is considering the
4 findings of the ozone transportation assessment
5 group, OTAG, in developing these ERMS rules?

6 MR. MATHUR: I think I have answered this
7 question about six times, but I'll do it one more
8 time.

9 MR. SAINES: Okay. We'll withdraw this
10 question.

11 MR. MATHUR: Okay.

12 MR. SAINES: Okay. We will withdraw Question
13 B(1) as being asked and answered.

14 Question No. 2, why does the agency
15 prohibit sources from obtaining credits from
16 sources which shut down all or part of their
17 operations prior to 1996 particularly since
18 the agency is basing this program on 1990 data?

19 MR. FORBES: I'll answer that question.
20 The agency has relayed in its 15 percent rate of
21 progress plan on shutdown sources as helping to meet
22 the state's requirements under that 15 percent plan.

23 Also, the agency is not basing this
24 program or any reductions from it on 1990 emissions.

1 It's basing it on the impact of those 15 percent
2 measures of 1996 emissions levels and three percent
3 ROP requirements from that point.

4 MS. MIHELIC: I have a question there. How
5 did the agency come up with the number of sources
6 that were shut down?

7 MR. FORBES: How did we come up with the
8 number of sources that were shut down?

9 MS. MIHELIC: That were shut down by 1996?
10 You said you relied upon that in your 1996 --

11 MR. FORBES: What we had at the time that
12 we prepared the 15 percent plan is we indicated that
13 that was one element of the plan just as the various
14 other stationary source control requirements were
15 and other measures.

16 We have had an estimate at the time
17 that we prepared that plan as to the number of
18 shutdown facilities and we quantified that number
19 based upon the permits that had been withdrawn at
20 that time. Since that time we have identified
21 those through the permit withdraw procedure.

22 MS. MIHELIC: What if sources still haven't
23 withdrawn their permits to date that they shut down?
24 Would they be considered?

1 MR. FORBES: If the source itself is not
2 officially withdrawn and it's a permit from the
3 agency, we presume that it is still operating.

4 MS. MIHELIC: So that -- could that source
5 still participate in the ERMS program even if it's
6 no longer actually conducting operations at that
7 facility?

8 MR. FORBES: Possibly. I think we would have
9 to review the circumstances.

10 MS. MIHELIC: What circumstances would allow
11 a source to participate in the ERMS program?

12 MR. FORBES: I'm sorry. Would you repeat your 13
question?

14 MS. MIHELIC: You said that it could
15 possibly -- you had to review the circumstances and
16 I'm trying to find out what circumstances would
17 allow such a source to get credit under the ERMS
18 program to actually participate or come up with the
19 12 percent reduction and be able to sell all of
20 their other ATUs.

21 MR. FORBES: Well, to be honest, I haven't
22 actually thought of that circumstance. So I'm not
23 sure of all of the particulars of each one to
24 consider. I think we would have to look to be sure

1 that it had not been already included and to
2 be sure that it wasn't already withdrawn for some
3 reason.

4 MS. MIHELIC: Do you have a list of sources
5 that had permits withdrawn that you relied upon in
6 your 1996 goals?

7 MR. FORBES: I'm sorry. I missed the first
8 part of your question.

9 MS. MIHELIC: Do you have a list of sources
10 that had withdrawn their permits and upon which you
11 relied upon that withdrawal for your 1996 goals so
12 a source could find out if it was actually relied
13 upon?

14 MR. FORBES: Yes.

15 MS. MIHELIC: You do?

16 MR. FORBES: At least we could prepare those.
17 We have those identified.

18 MR. SAINES: We will withdraw Question Nos. 3, 19
4, and 5.

20 Question No. 6, what if a source
21 curtails the seasonal production prior to 1999 with
22 a received credit for actual emission reductions in
23 1999 and thereafter?

24 MS. MIHELIC: This goes with specific language

1 of the rule.

2 MS. SAWYER: Could you give us a moment
3 on this? I want to look over this provision.

4 MR. SAINES: Sure.

5 MR. FORBES: Okay. I think that would be only
6 if the curtailment continues through 1999 and beyond
7 and that curtailment would be from the production
8 level for the two seasonal allotment periods prior
9 to the year of curtailment.

10 MS. MIHELIC: Could you state that last part
11 again or could she read it back?

12 MR. FORBES: The year of -- the curtailment
13 would be based on the average production level for
14 the two seasonal allotment periods prior to the year
15 of curtailment.

16 MR. SAINES: Our Section C. is pertaining
17 to 205.408(f), agency determination, Question 1,
18 why is the source only given 15 days to appeal a
19 denial of an emissions reduction generator proposal
20 when most other sources are provided 35 days to
21 appeal the agency's decisions?

22 MS. SAWYER: I would like to request that
23 we could defer that question or actually, 1 through
24 5, C., 1 through 5.

1 MS. MIHELIC: To a later date?

2 MS. SAWYER: Yes.

3 MR. SAINES: Section D. is pertaining to
4 Section 205.480(g), life of emissions reduction
5 generator's ATUs, Question 1, why are ATUs generated
6 from emission reduction generators valid only for
7 one year in Section 205.480(g)(6)?

8 MR. ROMAINE: This particular provision
9 deals with emission reductions that are not made
10 enforceable by a permit. These are simply reductions 11
11 that appear at the end of a season. Accordingly,
12 this may be a one-time event if we cannot be assured
13 that it's permanent or have any sort of certainty of
14 how long it would continue.

15 The general feeling was that the reason
16 we have gone for a two-year life for ATUs relates to
17 the philosophy for banking. It encourages people to
18 make extra reductions because it creates more value
19 for any emission reductions.

20 However, if a source proceeding on a --
21 or a non-participating source is only proceeding on
22 a season-by-season basis, it is not necessarily
23 subject to any incentive to provide any reduction.
24 It may simply be taking advantage of an emission

1 reduction that occurs.

2 It doesn't really fit into the banking
3 type scenario. It was for that reason that we
4 limited the worth or the lifetime of those type of
5 ATUs to a single season.

6 MR. SAINES: Question 2, may a source
7 designate the use of the ATUs from the emissions
8 reduction generator towards its reconciliation of
9 ATUs prior to the use of its own ATUs?

10 MR. ROMAINE: It certainly could.

11 THE HEARING OFFICER: Before we go on, just
12 point out to the agency, is your Section 480 letter
13 correct? I think there are two Ds in there.

14 MS. SAWYER: You're right.

15 THE HEARING OFFICER: You can take care
16 of that at a later date. Just don't forget about
17 it.

18 MS. SAWYER: Yes.

19 THE HEARING OFFICER: Thank you.

20 MR. SAINES: Our Section XVI, pertaining to
21 Section 205.490, inter-sector transaction, Question
22 A., 1., to what standard of review is the agency
23 held in conducting its review of the transaction?

24 MS. SAWYER: Hold on one second. Can we

1 withhold that question or defer that question?

2 MS. MIHELIC: And A., 2.?

3 MS. SAWYER: And A., 2.?

4 MR. SAINES: Sure.

5 Is it appropriate to continue asking
6 questions in the absence of Mr. Romaine?

7 MS. SAWYER: I didn't even notice that he
8 stepped out.

9 THE HEARING OFFICER: It's 4:00 o'clock right
10 now. I was hoping to go about 4:30 today and see
11 how far we got. Maybe we can just go off the record
12 for a second while Chris is gone.

13 (Whereupon, a discussion
14 was had off the record.)

15 THE HEARING OFFICER: Let's go back on the
16 record and continue.

17 MR. SAINES: Okay. Continuing on to
18 Section B., pertaining to Section 205.490(a),
19 regulatory based proposal, Question 1., why does
20 the agency need 45 days to review a transaction
21 proposal?

22 MS. SAWYER: Maybe I didn't make this clear.
23 I was hoping that we could defer A., B., and C.

24 MR. SAINES: Oh, my apologies. We can agree

1 to that.

2 MS. MIHELIC: Actually, at that point, then,
3 we have questions relating to David Kolaz's testimony
4 at the end of our prefiled questions in Section --

5 THE HEARING OFFICER: Section XXIII, Page 22?

6 MS. MIHELIC: Section XXIII, specifically
7 XXIII, B., and there are some questions --
8 specifically questions 8 through 12 that deal
9 with ERMS database.

10 Would it be appropriate to ask those
11 questions at this point because it would fit into
12 this section?

13 THE HEARING OFFICER: Sure. Let's do that.

14 MS. SAWYER: Which section are we at?

15 MS. MIHELIC: We're at XXIII, B., dealing
16 with questions of Dave Kolaz's testimony.
17 Specifically, I'm talking about Questions 8 through
18 12 only at this time.

19 MR. SAINES: Question No. 8, is a functioning
20 ERMS database critical to the successful
21 implementation of the ERMS rules?

22 MR. KOLAZ: I would say the answer is yes.

23 MR. SAINES: Question 9, if the ERMS database, 24
as discussed on Pages 5 through 10, does not

1 currently exist nor will such database exist at the
2 time of the promulgation of these proposed rules,
3 how can the ERMS rules be promulgated?

4 MR. KOLAZ: Well, I don't think the -- I
5 think the implementation of the ERMS rules will
6 depend upon the ERMS database, but I don't believe
7 the promulgation of the ERMS rules requires that
8 there be a database already in place.

9 In fact, to a large extent, the finally
10 promulgated ERMS rules defines the scope and
11 functionality of the ERMS database. So it would be
12 premature to have the database in operation or under
13 construction at this point.

14 MR. SAINES: As a follow-up to that, in your
15 opinion, how long will it take the agency and its
16 outside contractor to start from scratch and create
17 a database once it's determined that the rules are
18 promulgated in their final form?

19 MR. KOLAZ: Well, there are several components 20
to the database, not all of which need to be on-line
21 at one time.

22 For example, the ERMS application
23 portion needs to be in place by January 1, 1998,
24 and we are confident that that will be in place.

1 We anticipate having the transaction
2 account database fully tested and functional by
3 January 1, 1999, which will be adequate time.
4 But our estimates from talking with people who
5 are experienced with this is that once the contract
6 is issued, it should take about one year to have
7 everything tested and operational.

8 MR. SAINES: We will withdraw Question 10
9 as being asked and answered.

10 Question 11, shouldn't the adoption
11 of the ERMS rule be contingent upon the completion
12 of the functioning ERMS database?

13 MR. KOLAZ: I would say no.

14 MS. MIHELIC: Why not if it's critical to
15 successful implementation of the ERMS rules?

16 MR. KOLAZ: Well, again, I think the purpose
17 of the ERMS database is to serve the rule, not the
18 opposite. So I think it's more important that the
19 ERMS rule be promulgated and then the ERMS database
20 be developed. I think the ERMS database should
21 mimic the rule and not vice-versa.

22 MR. SAINES: Question 12, how will
23 information contained in the ERMS database be
24 protected from outside sources; for example, computer

1 hackers, competitors, citizen groups?

2 MR. KOLAZ: There are several ways to answer
3 that question. Maybe I should actually ask for a
4 clarification of the question.

5 Rather than do that, I think everyone
6 who has read the rule can see that there are
7 components of the rules that define the ERMS
8 database and describe the data that needs to be
9 available to public groups and to various other
10 entities.

11 I'm taking your question to mean how
12 can we protect the actual transaction account from
13 a manipulation or a damage. The answer to that is
14 that right now, there are banking and marketing
15 firms and mutual funds, for example, that do allow
16 on-line access to transaction accounts and there
17 are means available to protect those accounts.

18 I mean, there are various levels
19 and types of security. We haven't -- we have not
20 specifically arrived at the particular security
21 scheme that we will use, but we do intend on using
22 a very intensive level of security to protect the
23 actual account from any tampering.

24 Now, there are, as I mentioned, several

1 pieces of data that we will be in the transaction
2 account that is accessible to various people
3 according to the rule.

4 Our intent there is to actually provide
5 sort of an interface between the transaction account
6 and the public part of the database so that people
7 who are accessing information emissions data will not
8 actually be going into a transaction account.

9 It will be contained in a different
10 part of the data system. Account officers will
11 have -- be the only ones other than the agency to
12 actually be able to go into the transaction accounts
13 to manipulate data.

14 MS. MIHELIC: Will participating sources be
15 given an opportunity to review the proposed database?

16 MR. KOLAZ: That's our intent, yes. I mean,
17 maybe not -- I'm not sure that we will allow -- be
18 able to allow every participating source to have an
19 opportunity to review, but to the extent that we
20 have allowed, you know, outreach and other different
21 types of groups to work with us and design the rule,
22 we intend on continuing with that same line of
23 reasoning in designing the database.

24 MR. SAINES: I have one follow-up question.

1 You alluded to the rule providing for certain types
2 of information to be available and open to the
3 public generally. Could you elaborate what types
4 of information?

5 MR. KOLAZ: Well, I could do that, but it
6 would be easiest by just reading from the rule.

7 MS. MIHELIC: Just refer us to a section and
8 that will be fine.

9 MR. KOLAZ: If you would, just give me a
10 moment.

11 MS. MIHELIC: Okay.

12 MR. KOLAZ: Okay. In Subpart F, market
13 transaction, under Section 205.500, ERMS database,
14 Section A describes the types of information that
15 are available on the database to the public
16 actually.

17 MR. SAINES: Okay. So now we are going
18 go back to the section or questions pertaining
19 to the specific section that was following where
20 we were at, which I think were all for --

21 MS. McFAWN: Were the remainder to the
22 questions for Mr. Kolaz deferred?

23 MS. MIHELIC: They are because they don't
24 relate to this specific question. They relate

1 more to his general testimony that was prefiled.

2 MR. SAINES: Okay. This is on Page 20 of
3 our -- I'm sorry. Section XVII, account officer,
4 has the agency established an account officer
5 training program?

6 MR. NEWTON: We have not.

7 MR. SAINES: When will the agency establish
8 such a program?

9 MR. NEWTON: We have already begun. We are
10 in the process of developing it now.

11 MR. SAINES: In your opinion, do you have
12 a projected time when that will be completed or
13 an estimated time of completion?

14 MR. NEWTON: I would say in six months, we
15 will have the -- we will have most of what we need
16 to do that. We probably won't start giving actual
17 training in six months, but we will in advance of
18 the first season.

19 MR. SAINES: We will withdraw C., Letter C.

20 Pertaining to Section 205.530, ATU
21 transaction procedures, as it pertains to Section
22 205.530(a)(5), prohibition of the use of ATU
23 transfers after December 31st --

24 MS. MIHELIC: I believe this is going to

1 be deferred. It's a long the same lines as all the
2 other questions being deferred.

3 MS. SAWYER: I think we are prepared to answer
4 this one.

5 MR. SAINES: Is there an exception to
6 this rule for a source who has petitioned for a
7 inter-sector transaction proposal approval and is
8 denied and/or who has appealed an agency decision
9 to provide an opportunity of this source to obtain
10 ATUs for the previous year's emissions which were
11 the subject of such procedure?

12 MR. KOLAZ: The answer to that is the rule
13 does not contain an exception.

14 MS. MIHELIC: So in essence, that means if
15 a source thought they had an intersecting transaction 16
that would be approved and it is denied at the end
17 of a season, there is no cure other than perhaps it
18 goes with the emissions excursion?

19 MR. KOLAZ: Could you repeat the question.

20 MS. MIHELIC: I can clarify the question if
21 you want.

22 MR. KOLAZ: Well, I don't need a
23 clarification. I just thought maybe the court
24 reporter could read it back.

1 (Whereupon, the requested
2 portion of the record was
3 read accordingly.)

4 MR. KOLAZ: The rule, as I mentioned, does
5 not contain provisions for an exception, but the
6 inter-sector transfer part of the rule that has
7 been deferred, or at least questions regarding
8 that that have been deferred, really allows for
9 a time frame under which people should anticipate
10 the need to obtain approval.

11 In other words, it's a fixed time
12 frame. You should be able to plan for these types
13 of things, but the way the rule is written is a
14 source will be expected to hold ATUs at the end of
15 the reconciliation period sufficient to cover the
16 emissions for that year.

17 Now, I suppose there are any number of
18 hypothetical situations that could be envisioned
19 that might tend to either support the agency's view
20 that you need to hold ATUs or maybe in some extreme
21 examples, might even cause the agency to favor the
22 type of relief that you seem to be alluding to, but
23 I believe the agency's view is during the process
24 of petitioning the board for reconsideration, that

1 would be the most adequate time to determine that
2 there is some type of relief that is needed. I think
3 we feel it's difficult to anticipate this in such a
4 fashion that it could be appropriately defined in the
5 rule.

6 MS. MIHELIC: So you're saying that a source
7 could perhaps look toward a variance or something or
8 an adjusted standard from its --

9 MR. KOLAZ: Well, I'm not really anticipating
10 that precise type of relief, but I think that would
11 be the most opportune way and best way to handle
12 specific types of situations through that process.

13 MS. MIHELIC: In a sense, if a source can't
14 get a variance or an adjusted standard and it's going
15 through the appeal process, but an appeal is not
16 heard before the next season, I guess what happens
17 to that source?

18 What if it has to reduce its emissions
19 by 30 percent under the new emission excursion
20 program?

21 MR. KOLAZ: Well, I think that that's the
22 point. The way the rule is written right now, the
23 source will be required to hold ATUs equivalent to
24 its VOM emissions in the season. Therefore, it's

1 going to have to determine that those ATUs are
2 actually valid and in place.

3 So to the extent that they are relying
4 upon, let's say, an inter-sector transfer that has
5 not been approved, then, those ATUs are not
6 available.

7 MS. MIHELIC: Right. But you are allowed to
8 appeal that determination --

9 MR. KOLAZ: That's correct.

10 MS. MIHELIC: -- pursuant to the rules?

11 MR. KOLAZ: Right.

12 MS. MIHELIC: What I'm saying is what if you
13 win that appeal, you would win that appeal a year
14 or a year and a half later?

15 MR. KOLAZ: Yes, or you could win the appeal
16 before the season when you need it.

17 MS. MIHELIC: Right. But if you don't win the 18
18 appeal and it's still pending before the next season
19 and you take away that source's ATUs, would you give
20 them back if that person wins the appeal?

21 MS. McFAWN: Would you even issue ATUs is what 22
22 she's saying.

23 MR. KOLAZ: ATUs would not be issued until
24 they were resolved. I mean, that's why I mentioned

1 any number of hypothetical situations could be
2 developed that -- and the difficult thing is that
3 we are trying to maintain, you know, some integrity
4 to the market that ensure that the ATUs issued are
5 actually real.

6 So the process we have chosen is that
7 we have defined a time frame for having inter-sector
8 transfers approved. Again, until it's actually
9 approved, you cannot count on those ATUs for years.

10 MS. MIHELIC: I understand that. So you go
11 into this emission excursion program and they take
12 away 30 percent of your ATUs for the next season
13 from that specific unit and you win your appeal.
14 The board says I believe that intersection
15 transaction could have occurred. Will the agency
16 give back those ATUs that they took away and say
17 you didn't have an emission excursion?

18 MR. KOLAZ: You're talking about a specific
19 situation where you have waited past the
20 reconciliation period.

21 MS. MIHELIC: You appealed a decision made
22 and that, just by the way that the appeal procedures
23 work, it is going to go beyond the reconciliation
24 period more likely than not. It's going to take

1 more than 90 days to appeal that to the board.

2 What I'm saying is if you have
3 your -- therefore, you don't have sufficient ATUs
4 to cover because you are thinking this was a valid
5 transaction. What I'm saying is the agency doesn't
6 believe that. So you are telling me what they are
7 going to do is probably put you under the emission
8 excursion program, take away some of your ATUs, and
9 I'm saying if you win your appeal to the board and
10 the board says that transaction was valid, you
11 wouldn't have had an emission excursion, would
12 the source be given back any ATUs taken away?

13 MR. KOLAZ: Well, under the specific situation 14
14 that you have described where you do not have
15 sufficient ATUs and we issue an excursion
16 compensation report, there is a provision of the rule 17
17 that addresses specifically the situation that you
18 are talking about.

19 That's in -- just give me a moment --
20 Section 205.620. That describes that situation.
21 Specifically, in 205.620(e), it describes how the
22 ATUs shall be withheld until the board issues
23 a final order and then it describes what the
24 consequences are if the source should prevail.

1 So that really --

2 MS. MIHELIC: So a source would have to appeal
3 both the inter-sector transaction and the emissions
4 excursion?

5 MR. KOLAZ: In the hypothetical situation
6 that you have described, that is the case.

7 MS. MIHELIC: But I guess a follow-up question
8 would be is the source, then, going to be withheld
9 in addition -- I have to read the rule -- in addition
10 to what its emission excursion is to one point --
11 again, an additional amount of that?

12 MS. SAWYER: I don't follow that question.

13 MS. McFAWN: Why don't you take a minute and
14 read the rule? That might be help. I meant that
15 kindly.

16 MS. MIHELIC: I know.

17 (Whereupon, a discussion
18 was had off the record.)

19 THE HEARING OFFICER: Okay. We're back on the 20
record.

21 MS. MIHELIC: Section 205.610(e) states
22 that the agency shall withhold ATUs in the amount
23 equivalent to 1.2 times or the required 1.5 times
24 the amount of the alleged emissions excursion.

1 I will withdraw my question. I have
2 answered it.

3 MS. McFAWN: Let the record reflect I think
4 she is reading 620, 205.620.

5 THE HEARING OFFICER: I think there is one
6 question left in this section. Let's ask that and
7 call it a day, unless you want to withdraw it.

8 MR. SAINES: I'll ask it. This pertains
9 to 205.530(d)(1), official record of transaction.
10 The question is when will the agency know what
11 sources have access ATUs available to sell?

12 MS. SAWYER: I don't think we will
13 necessarily. Okay. I'm not testifying go ahead.

14 MR. KOLAZ: She's right. Actually, see,
15 there is not -- it's hard to describe or define
16 when a source might have excess ATUs because there
17 is nothing in the system we're going to design
18 that would prevent source from selling all of
19 their ATUs even if they needed them to have, by
20 the end of a year -- a super example is if an
21 October source really thought the market was
22 great and sold ATUs to the point where they
23 couldn't reconcile their emissions, that's not
24 a problem for the agency as long as by December

1 31st, they come up with a way of holding those
2 emissions.

3 It is conceivable, since we are coming
4 up with so many hypothetical situations, that a
5 source decides that they would just assume -- get
6 the emissions excursion compensation, sell them in
7 October, give up 1.2 of their a allotment next year
8 because they have come up with some way of operating
9 their business in a way that allows that to happen.

10 So there are any number of possibilites. 11
To answer your question, it's not going to be
12 possible to know what specific ATUs are on the
13 market until they are posted on the bulletin board
14 or through some other fashion, a source offers to
15 sell its ATUs.

16 THE HEARING OFFICER: Seeing no further
17 follow-up to that, let's go off the record.

18 (Whereupon, a discussion
19 was had off the record.)

20 THE HEARING OFFICER: Tomorrow, we will
21 start at 9:00 o'clock in this room again, which
22 is 9-040.

23 We will start out with the testimony
24 from EDF, The Environmental Defense Fund, from

1 Mr. Goffman, if he has any testimony, or if it's
2 just the questioning of Mr. Trepanier.

3 Then, we will have the testimony of
4 Gary Beckstead of the agency. Then, we will have
5 the panel join in the questioning. We will start
6 out with Irv and go through the list and so forth.

7 It's really important that if there
8 is any way that we can clear up these questions
9 and discuss that before we start at 9:00 o'clock,
10 I would really appreciate that. I will be here --
11 well, I get here at 6:30 in the morning, but I will
12 be in this room at 8:00 o'clock.

13 There is a question in the back.

14 MR. NEWCOMB: If a question that somebody
15 else is going to ask is significantly similar to
16 yours, but you don't think it really hits on exactly
17 the same point, but you don't want to come back days
18 later and sort of reask the question just because
19 it's a fraction off perhaps, may we perhaps interrupt 20
and say this is similar to my question and here is
21 why it's a minor modification?

22 I don't know if that might just upset
23 the proceedings more than expedite them, but I can
24 identify already a couple of my questions which

1 close, but not exactly on the same point.

2 THE HEARING OFFICER: Yes. I was really
3 hoping to be able to do that today. It's up to
4 the agency and whether or not they are prepared
5 to handle it that way.

6 MS. SAWYER: I guess I don't know how it
7 will go. I mean, if it happens with almost every
8 question, then, it would probably would be more
9 difficult getting through everything. It's just
10 an occasional question where someone is asking
11 for a slight variation, it may make sense to just 12
take it then.

13 MR. NEWCOMB: So we'll just do it on a hit 14
or miss basis?

15 THE HEARING OFFICER: Well, let's try to 16
do it, but when we are doing it, we ought to be 17 able
to have the page number and the question
18 for the agency so they have an easier time finding 19
their pre-written answer, so to speak. That's so 20 they
are not having to look for everything on their 21 own.

22 MR. NEWCOMB: Okay.

23 THE HEARING OFFICER: Is there anything else 24
at this time?

1 MS. SAWYER: No.

2 THE HEARING OFFICER: Well, thank you for
3 your indulgence. We will continue this tomorrow at
4 9:00 o'clock.

5

6 (Whereupon, the proceedings in
7 the above-entitled cause were
8 adjourned until February 4, 1997,
9 at 9:00 o'clock a.m. pursuant to
10 agreement.)

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) SS.
2 COUNTY OF C O O K)

3 I, LORI ANN ASAUSKAS, CSR, RPR, notary
4 public within and for the County of Cook and State
5 of Illinois, do hereby certify that the testimony
6 then given by all participants of the rulemaking
7 hearing was by me reduced to writing by means of
8 machine shorthand and afterwards transcribed upon
9 a computer, and the foregoing is a true and correct
10 transcript.

11 I further certify that I am not counsel
12 for nor in any way related to any of the parties to
13 this procedure, nor am I in any way interested in the 14
outcome thereof.

15 In testimony whereof I have hereunto set 16
my hand and affixed my notarial seal this 17th day of 17
February, A.D., 1997.

18 _____
19 Lori Ann Asauskas, CSR, RPR
20 Notary Public, Cook County, IL
Illinois License No. 084-002890

21 SUBSCRIBED AND SWORN
before me this 18th
22 day of February, 1997.

23 _____
24 Notary PublicL.A.
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