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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOLUME VI

IN THE MATTER OF: )  
EMISSIONS REDUCTION MARKET ) R97-13  
SYSTEM ADOPTION OF 35 ILL. ) (RULEMAKING)  
ADM. CODE 205 AND AMENDMENTS )  
TO 35 ILL. ADM. CODE 106. )

The following is the continued transcript  
of a rulemaking hearing held in the above-entitled  
matter taken stenographically by Michelle M. Dose,  
C.S.R., a Notary Public within and for the County of  
Cook and State of Illinois, before Hearing Officer  
Charles M. Feinen at 100 West Randolph Street, Room  
9-040, Chicago, Illinois, on the 11th day of  
February, 1997, commencing at the hour of 9:00 a.m.

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

HEARING TAKEN BEFORE:

ILLINOIS POLLUTION CONTROL BOARD,  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
(312) 814-3473

BY: MR. CHUCK FEINEN,  
HEARING OFFICER,

THE ILLINOIS POLLUTION CONTROL BOARD MEMBERS  
PRESENT:

- MS. ELIZABETH ANN
- MR. KEVIN DESHARNAIS
- MS. KATHLEEN M. HENNESSEY
- MS. MARILI MCFAWN
- MR. JOSEPH YI

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS  
PRESENT:

- MR. RICHARD FORBES
- MR. ROGER KANERVA
- MR. DAVID KOLAZ
- MR. BHARAT MATHUR
- MR. GALE NEWTON
- MR. CHRISTOPHER ROMAINE
- MR. DONALD SUTTON
- MS. BONNIE SAWYER

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

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I N D E X

Testimony was heard from the following Board Members  
of the Illinois Environmental Protection Agency in no  
specific order:

- MR. RICHARD FORBES
- MR. ROGER KANERVA
- MR. DAVID KOLAZ
- MR. BHARAT MATHUR
- MR. GALE NEWTON
- MR. CHRISTOPHER ROMAINE
- MR. DONALD SUTTON
- MS. BONNIE SAWYER

NO EXHIBITS MARKED

1           THE HEARING OFFICER: Good morning. It's the  
2 second day of this week's hearing for February,  
3 February 11th. Yesterday we talked about having --  
4 or actually setting hearings for the 10th and 11th of  
5 March for more questioning and presentation of  
6 economic testimony. We are going to set hearings for  
7 April 21st and then reserve the 22nd, 23rd, and 24th  
8 if needed for the presentation of testimony from  
9 other participants besides the Agency and questioning  
10 of that, which by doing that means that I am  
11 scheduling for prefiled testimony.

12                       We are looking at prefiled testimony  
13 coming in on April 4th and prefiled questions coming  
14 in on April 14th.

15                       Now, I am going to explain a little bit  
16 more of the summer schedule. We will close the  
17 public comment period on May 16th, which means most  
18 likely the Board will go to first notice on June 19th  
19 at the Board meeting scheduled for that date. It  
20 will get published most likely in the Illinois  
21 Register on July 3rd because July 4th is a holiday.  
22 Forty-five days from the July 3rd date roughly brings  
23 us to August 22nd -- or 21st for a second notice to  
24 be adopted by the Board.

1 MR. FORCADE: August?

2 THE HEARING OFFICER: August 21st, which  
3 45 days brings us to October, and the first available  
4 Board meeting to go final will be October 16th.  
5 However, if Jaycar gets to it sooner and we can adopt  
6 a final notice sooner, we'll move that date up  
7 accordingly.

8 One of the big problems is that the 45  
9 days starts from when it gets published in the  
10 Illinois Register; and even though the Board can  
11 adopt it on a Thursday, it takes roughly 10 or so  
12 days before it gets published in the Illinois  
13 Register, and that's why we have like a 55-day if not  
14 larger gap between first and second notice. We're  
15 kind of hamstrung there with that, and there's  
16 nothing we can do about it. It's just dead time.  
17 We just file it, send it in, and it takes them that  
18 long to publish it.

19 I'll probably follow-up next week when I  
20 get back with a Hearing Officer order that will set  
21 all this stuff -- will set out the March 10th and  
22 11th and all the other hearings and dates we just  
23 talked about.

24 Are there any questions at this time?

1 MS. MIHELIC: When do you think the transcript  
2 from the March 10th hearing will be done?

3 HEARING OFFICER: I'm going to do expedited  
4 transcripts on that. Hopefully that means we'll get  
5 them, depending how many days we use, Monday the  
6 17th, which is St. Patrick's Day, of March. Of  
7 course, you will have the transcripts from the other  
8 proceedings already at that time. So the only part  
9 of the transcript you won't have or only part of the  
10 record hopefully will just be the economic section.

11 Any other questions?

12 MR. WAKEMAN: Are we starting at 9:00?

13 THE HEARING OFFICER: Yes. Thank you.

14 I'm going to start those on March 10th  
15 and 11th at 9:00, and I'll start the 21st at 9:00  
16 also.

17 And hopefully I will remember to continue  
18 all this on the record so we don't have to do any  
19 noticing because if we do noticing, that kicks it  
20 another 45 days. So this will all be continued on  
21 the record.

22 Any other questions?

23 MS. MCFAWN: I would just note for the record  
24 that the Board had a more ambitious record because

1 when this rulemaking was first filed, there was a  
2 motion for expedited consideration which we were  
3 going to grant in essence. We were expediting this  
4 rulemaking. We've run into a lot more testimony and  
5 a lot more questions than we normally do in the  
6 rulemaking. So even though we had to allow for some  
7 slippage, we couldn't allow -- the slippage right now  
8 I think is basically because the economic testimony  
9 is being put off a month longer than initially  
10 anticipated. So that puts -- that explains the  
11 reason that we are a month behind or a month and a  
12 half behind our original schedule, which was to  
13 accommodate the Agency's moving this matter into a  
14 SIP process. I just wanted that noted on the record.

15 THE HEARING OFFICER: Any other questions about  
16 the schedule or comments?

17 Okay. Let's go off the record for a  
18 second.

19 (Discussion had off  
20 the record.)

21 THE HEARING OFFICER: We'll set out for  
22 Tenneco's question No. 33.

23 MR. FORCADE: Good morning. Bill Forcade from  
24 Jenner & Block representing Tenneco Plastics Company.

1 With me is Jim Wakeman. We are asking questions  
2 pertaining to Section 205.405 from our January 27th  
3 submittal. We are on Question 33.

4 THE HEARING OFFICER: If I could quickly  
5 interrupt, we have a new court reporter. Please  
6 state your name again and who you are with; and when  
7 you are reading your questions, speak a little bit  
8 slowly. And when you are referring to CAAPP  
9 permitting, please use permitting; if you are  
10 referring to CAAPP, just say CAAPP so that we can  
11 Be clear on the record. Thank you.

12 MR. FORCADE: Okay. Question 33, referring to  
13 Sections 205.405(b) and (d) and the definition for  
14 BAT in Section 205.130, the Agency will need to  
15 determine BAT for emission units on a case-by-case  
16 basis using factors listed in the definition.

17 For how many of the 4,105 emission units  
18 identified in Table 7 titled Analysis of ERMS  
19 Participating Sources, of the Exhibits of the  
20 Illinois EPA's Air Quality Strategy Presentation  
21 (Table 7) will the Agency need to make a BAT  
22 determination?

23 MR. ROMAINE: We don't know. The BAT exclusion  
24 is an option that we have made available to



1 participating sources. We can only speculate how  
2 many of the 200 to 250 participating sources decide  
3 to pursue this option.

4 MR. FORCADE: For how many of these 4,105  
5 emission units does the Agency anticipate that the  
6 Pollution Control Board will be required to hear  
7 appeals?

8 MS. SAWYER: Objection; speculative.

9 MR. FORCADE: Is it true that the Board then  
10 will be required in appeals to evaluate the factors  
11 listed in the definition in order to determine BAT  
12 for each emission unit?

13 MS. SAWYER: This question calls for a legal  
14 interpretation.

15 MS. MCFAWN: Well, I'm kind of curious. Is  
16 that the Agency's intention? Maybe you should answer  
17 it, Bonnie.

18 MR. ROMAINE: I guess I'm the witness.

19 MS. MCFAWN: Okay. If you would, Mr. Romaine.

20 MR. ROMAINE: The Board would obviously have to  
21 review the Agency's determination based on the record  
22 before it.

23 MR. FORCADE: For the RACT/BACT/LAER analysis,  
24 regulated sources can use U.S. EPA's database for

1 such determinations in order to follow U.S. EPA's  
2 decisions on permitted units.

3                   Where will regulated sources look in  
4 order to follow the Agency's and the Board's  
5 determinations on BAT? Will the Agency maintain a  
6 similar database?

7           MR. ROMAINE: Well, the determinations on BAT  
8 will be reflected in the draft and the final Title 5  
9 permits issued to the participating source.

10           MR. FORCADE: I'm sorry. That's not really  
11 responsive to the question.

12                   Will the Agency maintain a single unified  
13 database where sources in the state can go to  
14 determine what decisions the Agency has made that  
15 sources do or do not qualify for BAT?

16           MR. SUTTON: Well, if I could just interject  
17 for a second.

18                   The problem is going to be that all these  
19 people have to do this prior to January 1998. So, in  
20 effect, they will all be doing them simultaneously.  
21 Our review will be 120 days after they are  
22 submitted. So our determinations, in fact, won't be  
23 made in the large part until after all the  
24 applications are submitted.

1                   So where do you see the benefit?

2           MR. FORCADE: You have a new and undefined term  
3 that the Board will have to on appeal evaluate.

4                   Should any appeals arise, it would be  
5 helpful to know what decisions the Agency has reached  
6 on BAT in order to present those decisions to the  
7 Board on appeal.

8           MR. SUTTON: Well, I think we can accommodate  
9 that. I was just saying that the timing is such  
10 that -- and I don't think we have a great objection  
11 to a bulletin board -- but it is the access to the  
12 data at the time you need it.

13           MR. FORCADE: Will the Title 5 ERMS permit  
14 include any BAT determinations made by the Agency;  
15 and if not, how will other sources track the Agency's  
16 BAT determinations?

17           MR. ROMAINE: As I said, the BAT determinations  
18 will all be reflected in a source's Title 5 permits.

19           THE HEARING OFFICER: Let the record reflect  
20 that he was responding to question No. 34 from  
21 Tenneco.

22                   Moving along on the outline read by the  
23 Agency the other day, we are up to Sonnenschein's  
24 Questions 9(a), (b), (c) and (d) from their January

1 16th filing.

2 MS. FAUR: Good morning. I am Cindy Faur from  
3 Sonnenschein.

4 Question 9(a) we are withdrawing. That  
5 has been effectively asked and answered.

6 Question 9(b), I believe the first part  
7 of it has been answered; but I would like to clarify  
8 that response and then ask the second.

9 Mr. Romaine, I believe in your testimony  
10 yesterday you testified that if a source had BAT, the  
11 facility was overall BAT, that that source would be  
12 exempt from reductions under the ERMS rule?

13 MR. ROMAINE: That is correct. The source  
14 would be exempt from the 12 percent reduction  
15 requirement.

16 MS. FAUR: If an exempt source requested a  
17 permit limit based upon maximum reduction capacity in  
18 its CAAPP permit application, may that source operate  
19 under that permit limit if it is recognized in its  
20 permit, that maximum permit limit?

21 MR. ROMAINE: Yes.

22 MS. FAUR: Thank you.

23 Questions 9(c) and (d) we also withdraw.  
24 I think that they both have been effectively asked

1 and answered.

2 THE HEARING OFFICER: Thank you.

3 We enter Dart Containers' Questions 24,  
4 25, 26, 27, 31, 32, 33, and 34.

5 MR. NEWCOMB: This is Christopher Newcomb for  
6 Dart Container, N-e-w-c-o-m-b.

7 Question No. 24 has been asked and  
8 answered.

9 Question No. 25 has been asked and  
10 answered.

11 Question Nos. 26, 27, and 28 have been  
12 asked and answered as well.

13 Question No. 29, can you identify and  
14 describe any examples of a participating source not  
15 able to reduce emissions further because it would not  
16 be economically feasible?

17 THE HEARING OFFICER: I know this one has  
18 not -- this was not included in the outline, but it  
19 does --

20 MS. SAWYER: Yes. It must have been something  
21 that we missed.

22 THE HEARING OFFICER: But it does appear to go  
23 along with the line of questioning. So if the Agency  
24 wants to take a minute to prepare to answer, that

1 would be great.

2                   Let's go off the record for a second  
3 while they are getting ready.

4   (A short recess was taken.)

5           MR. ROMAINE: As I have said, we have not  
6 identified particular emissions at this point that  
7 would qualify for the best available technology  
8 exclusion.

9                   We could simply come up with a  
10 hypothetical example and have an emission unit that  
11 is already very well controlled so that further  
12 process changes to change emissions would be very  
13 expensive, and so that application of add-on control  
14 technology to that unit would be very expensive. So  
15 that would be one sort of example where the sources  
16 relying on process changes to reduce its emissions or  
17 control its emissions such that further measures to  
18 reduce emissions would be expensive.

19                   The other example would be in a unit that  
20 is used applying add-on controlled features that  
21 controls emissions and would already be doing very  
22 well in controlling emissions so that pulling that  
23 current control device out and replacing it with a  
24 slightly more efficient control device would also be

1 extraordinarily expensive.

2 MR. NEWCOMB: As a point of clarification, when  
3 you say extraordinarily expensive, would the Agency  
4 strongly consider the fact that a source may have to  
5 shut down because of the ERMS 12 percent reduction  
6 that might be required?

7 In other words, if they didn't get the  
8 BAT determination and they were forced to do further  
9 reduction because of that, they would decide to close  
10 that facility?

11 MS. SAWYER: I think this question would be  
12 better asked during the economic portion.

13 MR. NEWCOMB: This is a determination of fact.  
14 I don't think that was an economic determination  
15 underlying the entire rulemaking.

16 MR. ROMAINE: No. The best available  
17 technology determination is not able to factor in the  
18 specific choices a company might make in light of the  
19 cost of particular control measures.

20 MR. NEWCOMB: I also notice on the outline that  
21 my Question No. 30 -- 29 and 30 wasn't included as  
22 well.

23 MS. SAWYER: No.

24 MR. NEWCOMB: But --

1 MS. SAWYER: Sorry. Go ahead.

2 MR. NEWCOMB: But it doesn't really matter  
3 because that was asked and answered, so I withdraw it  
4 anyhow.

5 THE HEARING OFFICER: Chris, can you speak up?

6 MR. NEWCOMB: I'm sorry. That was already  
7 asked and answered, so I withdraw it anyhow, even  
8 though it wasn't included on the outline.

9 Question No. 31 has been asked and  
10 answered.

11 Question No. 32, if a participating  
12 source has implemented the technological control that  
13 has been accepted as MACT or LAER in a different  
14 state or jurisdiction, will the Agency presume that  
15 this technology meets the BAT standard for purposes  
16 of the ERMS?

17 MR. ROMAINE: No, it would not. That  
18 information would be suggestive, however, that they  
19 are possibly meeting the best available technology.

20 MR. NEWCOMB: Question No. 33, if a  
21 participating source has obtained a RACT adjusted  
22 standard based upon the Agency's prior determination  
23 that the source of these using the greatest emissions  
24 controls shown to be technologically feasible for



1 that type of source, that further control technology  
2 would not be economically feasible for the source and  
3 that the technology has been accepted as MACT or LAER  
4 in a different state or jurisdiction with the source  
5 being the proposed BAT standard?

6 MR. ROMAINE: Again, that would not be  
7 sufficient by itself. It would be a strong  
8 indication as has been described that that emission  
9 might, in fact, be in line with the best available  
10 technology, and it would have to be reviewed.

11 One of the questions certainly would be  
12 how long ago was that adjusted standard process and  
13 does that still reflect the current situation.

14 MR. NEWCOMB: Question No. 34 I believe was  
15 actually asked and answered by the Hearing Officer,  
16 so I withdraw that one.

17 THE HEARING OFFICER: I hope I didn't answer  
18 it.

19 MR. NEWCOMB: Actually, no. You asked it.

20 THE HEARING OFFICER: Okay. Let's move on then  
21 to questions from Mr. Trepanier, Questions 23, 24,  
22 29, 31, 32, and 33. And there's some more there.  
23 Let's start with those, though.

24 MR. TREPANIER: Good morning. This is Lionel

1 Trepanier.

2 Question No. 23, will the Agency subject  
3 a facility to an emission reductions that operates a  
4 BACT unit?

5 MR. ROMAINE: The program as established would  
6 not subject these emissions to the 12 percent  
7 reduction in establishing their allotment of ATUs. I  
8 assume you are referring to BAT, not BACT.

9 MR. TREPANIER: And did I understand correctly  
10 from a previous question that you don't know how many  
11 units you may have applications for not subject to  
12 the emissions reductions?

13 MR. ROMAINE: That's correct.

14 MR. TREPANIER: Question 24, would then these  
15 units be expected to have emissions equal to or  
16 higher than their previous year's emissions? I'm  
17 referring to these units in question 23, BAT units.

18 MS. SAWYER: Could you clarify that question a  
19 little bit? I'm not sure what you are asking.

20 MR. TREPANIER: I think that maybe that the  
21 answer is so obvious, that the question is not making  
22 sense.

23 I'm asking you if the limit that the  
24 Agency will set for these BAT units would be expected

1 to be equal to or higher than what that unit emitted  
2 in the previous year?

3 MR. ROMAINE: Well, you are referring to the  
4 amount of ATUs that would be allotted for that  
5 particular emission unit. All I could say is that  
6 that amount would be different than the previous year  
7 because emission baselines are determined as the  
8 average of two years.

9 MR. TREPANIER: But then maybe the question  
10 does make sense.

11 Is it reasonable to expect that that  
12 baseline then would be equal or higher than the  
13 previous year? Is it reasonable to -- is that a  
14 reasonable expectation?

15 MR. ROMAINE: Well, since the emission baseline  
16 is determined as the average of two years, that half  
17 of the time it would be higher, half of the time it  
18 would be lower.

19 MR. TREPANIER: When you say that the baseline  
20 is a determination of two years, is that mandatory  
21 that it's the certain two years previous or does the  
22 emitter have a choice of two years?

23 MR. ROMAINE: The emitter has a choice of two  
24 years.

1           MR. TREPANIER: Do you expect that some  
2 emitters may choose their lower numbers to submit for  
3 their baseline determination?

4           MR. ROMAINE: That would be highly unlikely. I  
5 would expect all emitters will seek seasons with the  
6 higher emissions.

7           MR. TREPANIER: So then would it be an  
8 incorrect statement to say that some of the baselines  
9 would be -- that you would expect some baselines to  
10 come in being lower than the average emission year,  
11 the previous year?

12          MR. ROMAINE: No.

13          MR. TREPANIER: Would it be reasonable to  
14 expect that the limit set for those units in Question  
15 No. 23 would be equal to or higher than the average  
16 of the three years, the previous years?

17          MR. ROMAINE: Yes.

18          MR. TREPANIER: Question 29, on Page 25 of  
19 Mr. Romaine's testimony, there was a reference to a  
20 fuel burning device.

21                   My question is, what type of fuel is  
22 referenced by that? What type of fuel is referred to  
23 in that reference?

24          MR. ROMAINE: There is no particular

1 restriction on the type of fuel.

2 MR. TREPANIER: Does this include the operation  
3 of Avery kilns?

4 MR. ROMAINE: No, it would not. Avery kilns do  
5 burn fuel, but they also dry and process aggregate.  
6 So those are process emission units where there may  
7 be emissions attributable to action processing the  
8 aggregate; therefore, they would not qualify for an  
9 exclusion as we propose in this rulemaking.

10 MR. TREPANIER: Does this include the burning  
11 of refused dry fuels?

12 MR. ROMAINE: Refused dry fuels -- well, I  
13 don't know if you'd call those a fuel. Refused dry  
14 fuels are burned in incinerators. Incinerators are  
15 not processed emission units as we included in this  
16 particular exemption.

17 MR. TREPANIER: Does this include the flares  
18 that oil refineries operate in heavy rain?

19 MR. ROMAINE: No, it would not include flares.  
20 Flares are control systems designed to treat and  
21 safely dispose of process gases. They are not  
22 covered within this exclusion.

23 MR. TREPANIER: Referring to Mr. Romaine's  
24 testimony under the top-down BACT process, how long

1 could this scrutinizing in actual operation take?

2 THE HEARING OFFICER: Let the record reflect  
3 this is Question 31.

4 MR. ROMAINE: Well, what I was referring to  
5 in my testimony was the action of reviewing an  
6 application. Depending on the degree of difficulty  
7 and the extent of material provided in the  
8 application, this could be a relatively  
9 straight-forward matter taking a couple hours; if  
10 it's a complicated matter, it could take a couple  
11 of days to review the information that's presented  
12 by the applicant. That might not all occur at one  
13 time. It might occur over a series of days as we  
14 obtain additional information and we conduct other  
15 independent evaluations of the material that's been  
16 provided by the applicant.

17 MR. TREPANIER: Is the Agency going to actually  
18 scrutinize the operations?

19 MR. ROMAINE: By that, do you mean visit the  
20 operation, stand by it?

21 MR. TREPANIER: That's what I understood from  
22 your testimony.

23 MR. ROMAINE: I'm sorry for that  
24 misunderstanding. I was referring to scrutinizing in

1 the sense of scrutinizing an application, reviewing  
2 the paperwork that has been submitted by the  
3 applicant where they are attempting to demonstrate  
4 that a particular emission unit should be considered  
5 to have best available technology.

6 MR. TREPANIER: Question 32, how would the  
7 analysis of various circumstances of BAT units, these  
8 similar units, be coordinated?

9 MR. ROMAINE: Could you please repeat the  
10 question?

11 MR. TREPANIER: How will the analysis of the  
12 various circumstances of the BAT units, the similar  
13 units, be coordinated?

14 MR. ROMAINE: The obligation that's first on  
15 the applicant is to provide information so they would  
16 come up with a list of potentially similar sources  
17 and then try to highlight and differentiate those  
18 sources that they believe should be considered  
19 relevant precedents for the BAT determination versus  
20 ones they think can be, in fact, distinguished.

21 We would then review the information that  
22 the applicant has provided and see whether we agree  
23 with them or we, in fact, think that they are  
24 improperly distinguishing units that we think are

1 similar.

2                   We would also conduct our own independent  
3 review to see if there are other similar units that  
4 we know of that should also be considered for the  
5 evaluation.

6           MR. TREPANIER: What diversity of units is  
7 expected?

8           MR. ROMAINE: Are you asking diversity of units  
9 for a particular evaluation or in general for all  
10 evaluations?

11           MR. TREPANIER: I am looking for the diversity  
12 as that would refer to the units that could be  
13 referred to as similar units. So I am looking for  
14 the diversity of those units.

15                   So when I have a unit and I'm looking for  
16 if there's a similar unit, how many of those base --  
17 how many different types of these base units do you  
18 anticipate?

19           MR. ROMAINE: It would depend on the particular  
20 type of unit. For some types of operations, there  
21 are a handful of similar units to look at. It's a  
22 fairly narrow industry, and there are a few  
23 precedents that have to be considered.

24                   For others, there may be many more units;



1 but, again, you may be able to focus in on several  
2 particular units that are reflective of a better  
3 level of control and focus your analysis on those  
4 particular units. So it really depends on the  
5 particular circumstances, but there certainly can be  
6 some diversity in the particular units that are being  
7 examined.

8 MR. TREPANIER: The units -- If the units were  
9 separated into categories by type, how many  
10 categories would there be? How many categories would  
11 there be?

12 MR. ROMAINE: I guess we haven't really thought  
13 about separating them into categories. We are  
14 thinking about coming up with a compilation of  
15 particularly similar units that would be relevant to  
16 look at as a precedent for a particular best  
17 available technology determination and then to  
18 further evaluate those certain particular units and  
19 refine that population to come up with a key unit or  
20 a group of key units that should be examined as the  
21 other similar units that would be governing in a  
22 particular evaluation.

23 MR. TREPANIER: What would qualify Agency  
24 personnel to process BAT exclusion applications?

1           MR. ROMAINE: Well, what a permit analyst needs  
2 or other Agency personnel need is experience in  
3 making technology determinations, reviewing  
4 application information. So we would expect that  
5 this task would require somebody that the Agency used  
6 to have several years of experience and has as part  
7 of that experience in reviewing applications  
8 previously made these sort of technology  
9 determinations.

10           MR. TREPANIER: How long do you expect the  
11 process would take for an application of a complex  
12 source? I almost feel like I've asked this question.  
13 I don't know if you've answered it.

14           MR. ROMAINE: I think I have.

15           MS. SAWYER: I think we have.

16           MR. ROMAINE: Conceivably, it could take  
17 several weeks in total before that evaluation or it  
18 can take longer. We are hopeful that such constant  
19 complex sources would be few and far between, and we  
20 would be pleased if there were none of them.

21           MR. TREPANIER: How many complex sources are  
22 expected to apply for BAT exemptions?

23           MR. ROMAINE: As we have said, we don't know  
24 how many sources in total will apply for BAT

1 exclusions there; therefore, we can't further  
2 speculate on what those particular sources might be.

3 MR. TREPANIER: Question 33, most of this has  
4 been answered except for the last sentence. Oh, and  
5 that's also answered.

6 THE HEARING OFFICER: I believe there's a  
7 couple more questions, Mr. Trepanier; the questions  
8 that were directed to Mr. Sutton.

9 MR. TREPANIER: I will strike my questions from  
10 Mr. Sutton. Most of the questions have been answered  
11 but for near the end of these long questions where it  
12 says with the exclusion determination process  
13 occurred during the determination of the emission  
14 baseline itself.

15 MR. ROMAINE: Yes, it would. It's an inherent  
16 part of the determination of a source's allotment.

17 MR. TREPANIER: And, finally, my question on  
18 this section comes from my last page of my prefiled  
19 questions handwritten.

20 The first question on the last page, will  
21 Sections 205.405 sub (a), sub (b), sub (c), allow any  
22 unit to get an exclusion as long as it achieves the  
23 maximum degree of reduction for which it was  
24 designed?

1 MR. ROMAINE: No, it would not.

2 MR. TREPANIER: What would be necessary in  
3 addition? What's necessary for that exclusion in  
4 addition to achieving the maximum degree of reduction  
5 for which it was designed?

6 MR. ROMAINE: That goes through -- back through  
7 the entire best available technology determination.  
8 We'd be looking at emission levels and control  
9 technology used at other similar sources in all  
10 cases. If the emission unit is not doing as well as  
11 other similar sources or similar emission units, then  
12 presumably that emission unit will not have best  
13 available technology. If it does do as well as other  
14 similar emission units, but there are further control  
15 measures that still could be applied to that unit and  
16 the costs associated with those are not  
17 extraordinary, then those additional control measures  
18 would be necessary before we determine that that  
19 emission unit would qualify with best available  
20 technology.

21 MR. TREPANIER: Thank you.

22 THE HEARING OFFICER: Any follow-up?

23 MR. SAINES: Rich Saines, S-a-i-n-e-s, with the  
24 ERMS Coalition.

1 I just have one follow-up from  
2 yesterday's questioning.

3 THE HEARING OFFICER: Yesterday's questioning?

4 MR. SAINES: Yes. It didn't deal with the  
5 MACT. It dealt with -- well, it deals with the MACT,  
6 but that was --

7 THE HEARING OFFICER: But it's still on this  
8 section?

9 MR. SAINES: It's on this section, yes.

10 THE HEARING OFFICER: Okay.

11 MR. SAINES: During the testimony, one of the  
12 examples presented -- I believe it is example --  
13 Question No. 28, and it is 28(c), Mr. Forcade asked  
14 whether if a MACT standard were promulgated in  
15 February of 1998 for which MACT has no controls, he  
16 asked whether or not the particular unit that was  
17 subject to those no controls MACT would meet Section  
18 205.405.(a)(1). And I believe the answer was yes,  
19 the individual could make a supplemental showing in  
20 his ERMS application; and as the Agency was reviewing  
21 that, they could go back and that would be considered  
22 sufficient to meet the exclusions.

23 MR. ROMAINE: Yes, that was my answer.

24 People are under an obligation to update

1 their Title 5 applications. And certainly if we have  
2 the information on MACT when the MACT standard was  
3 proposed, that they would be required or obligated  
4 to update their application. And if it came in  
5 within a month after January 1, 1998, I doubt we  
6 would have finalized the baseline emission  
7 determination.

8 MR. SAINES: So there's not a specific timeline  
9 you are saying after January 1, 1998. It's just when  
10 the Agency is in the process of reviewing the CAAPP  
11 application which the ERMS application is a part of  
12 until such time there is due information; and,  
13 hypothetically, a MACT standard comes in in that  
14 interim, then a supplemental application could be  
15 filed?

16 MR. ROMAINE: We don't expect that circumstance  
17 to come up that often. We expect generally for MACT  
18 to be adopted and done with, but it is conceivable  
19 there may be circumstances where there is a posed  
20 standard that hasn't been finalized yet, and the  
21 finalization could occur while the application is  
22 still pending with us.

23 MR. SAINES: And if the finalization occurs  
24 after the application is completed, does that change

1 the analysis?

2 MR. SUTTON: Well, I guess where Chris is  
3 heading is the actual baseline determination will  
4 show up in the CAAPP permit; and up until that point  
5 in time, that we would appreciate earlier than later,  
6 that it is still subject to debate up until the time  
7 the draft permit is going out until notice. So if  
8 something comes up, historically, we would deal with  
9 that as it comes up. Again, I don't think it's going  
10 to be highly likely that it happens. And the MACT  
11 standards themselves have a very long history.  
12 People know where they are headed before they  
13 actually hit the street.

14 MR. SAINES: Okay. Thank you.

15 MS. MIHELIC: Just one follow-up question on  
16 the BAT issue.

17 Just to clarify that MACT applies to  
18 sources of half emissions, correct?

19 MR. ROMAINE: That's correct.

20 MS. MIHELIC: And that BAT will apply to VOM  
21 emission sources, correct?

22 MR. ROMAINE: That is correct.

23 MS. MIHELIC: Okay. So what is MACT for a  
24 source that has half emissions may not necessarily be

1 BAT from a VOM emission source, correct?

2 MR. ROMAINE: That's correct.

3 MS. MIHELIC: And, in fact, even if the sources  
4 are similar but have different pollutants, could BAT  
5 be less stringent than what MACT is for half the  
6 sources?

7 MR. ROMAINE: That is conceivable.

8 THE HEARING OFFICER: Moving on then to Section  
9 205.410, participating source shutdowns, questions of  
10 Tenneco, 35, 36, 37, 38, 39, and 40.

11 MR. FORCADE: Thank you.

12 These questions relate in large part to  
13 the definition of shutdown.

14 Please define shutdown. Does shutdown  
15 mean nearly ceasing operations?

16 MR. ROMAINE: Shutdown does not mean nearly  
17 ceasing operations. As discussed in Section 205.410,  
18 shutdown means the withdrawal or expiration of a  
19 permit so that there is no longer a permitted source.

20 MR. FORCADE: If a facility dismantles all of  
21 its equipment but does not relinquish its permit, is  
22 that facility's emissions unit shutdown?

23 MR. ROMAINE: No. The facility would not be  
24 shut down until its permit is withdrawn or expires.



1           MR. FORCADE: Can the Agency mandate that a  
2 unit be deemed shutdown as opposed to simply inactive  
3 if the facility wishes to maintain its permit for  
4 that unit?

5           MR. ROMAINE: Conceivably, at the time of  
6 permit renewal if we find out that all the equipment  
7 is, in fact, dismantled and removed, we may get  
8 hard-pressed to go forth and renew a permit for a  
9 non-existing source. But if, in fact, the plant is  
10 still intact, the equipment is there, I think we'd be  
11 hard-pressed to deem a source shutdown if it pursues  
12 renewal of the permit.

13          MR. FORCADE: If I could, I'd like to explore a  
14 little bit more about what would qualify the  
15 Agency -- what set of factual circumstances would  
16 justify the Agency deeming a unit shutdown short of  
17 removal of all of the equipment.

18                       Are there any incapacity to operate  
19 scenarios or partial equipment removals or anything  
20 more that you could elaborate on as to what  
21 circumstances would authorize the Agency to deem a  
22 unit shutdown when a facility wishes to continue its  
23 permit?

24          MR. ROMAINE: I guess I apologize. I glanced

1 over the point of unit.

2                   We are, again, looking at an entire  
3 source shutdown. The fact that a unit or two is no  
4 longer present would not be a relevant factor in  
5 evaluating whether a source is shut down. So the  
6 scenario I was discussing was a circumstance where  
7 somebody is attempting to renew a permit for a plant.  
8 And, in fact, all of the operations, all the  
9 equipment at the facility, have been physically  
10 removed. There is absolutely nothing there, and we  
11 would just be permitting a shell of a building as if  
12 the plant were still there.

13           MR. FORCADE: But as far as it pertains to a  
14 single emissions unit, are there any factual  
15 scenarios where the Agency would refuse to issue a  
16 permit for that emissions unit or deem that unit  
17 shutdown even if the facility wanted to continue?

18           MR. ROMAINE: There are circumstances that  
19 could exist in terms of the context of Title 5 that  
20 we would presumably refuse to include for conditions  
21 that had no practical purpose. However, that  
22 circumstance for the Title 5 permit would have no  
23 relationship as to what would be considered a source  
24 shutdown under the training program.

1 MR. FORCADE: Okay. Then for purposes of the  
2 source shutdown under the ERMS trading program, if a  
3 facility wishes to continue its permit for that  
4 emissions unit, is there any circumstance in which  
5 the Agency would deem that emissions unit shutdown?

6 MS. SAWYER: I mean, is that a question?

7 MR. ROMAINE: Yes, we could deem that emission  
8 unit shutdown, but we have no indications for a  
9 trading program.

10 MR. FORCADE: Okay. Maybe we can address it in  
11 the remaining questions here. Go on to Question 30.

12 THE HEARING OFFICER: Before we move on, for  
13 the record, 35(c) was withdrawn for asked and  
14 answered, I would assume?

15 MR. FORCADE: Yes.

16 THE HEARING OFFICER: And 35(d) was just  
17 withdrawn?

18 MR. FORCADE: Will the Agency add a definition  
19 of shutdown?

20 MR. ROMAINE: No. We believe it's adequately  
21 described in Section 205.405.

22 THE HEARING OFFICER: Thank you.

23 MR. ROMAINE: 410, 410. Sorry.

24 MR. FORCADE: We are going to move on to 36,

1 but I am going to slightly modify the language to  
2 reflect your answers.

3           Consider the following scenario: Up  
4 until 1997, Facility A emitted over 10 tons of VOM  
5 per season and was subject to the CAAPP program.  
6 Facility A discontinues one of its emissions units  
7 operations, dismantles the equipment, and ships it  
8 off site, but does not relinquish the permit.  
9 Facility A did not yet submit its ERMS application,  
10 and Facility B is a participating source that wishes  
11 to obtain facility A's ATUs.

12           Does Section 205.410(a) apply to Facility  
13 A which discontinued emissions in January 1977 --  
14 1997?

15           MR. ROMAINE: No, but the Facility A isn't a  
16 participating source.

17           MR. FORCADE: Simply because it did not submit  
18 an ERMS application?

19           MR. ROMAINE: You have described a situation  
20 where they are not pursuing an ERMS application.  
21 They are not continuing into the program as a  
22 participating source.

23           MR. FORCADE: So the sole reason why they would  
24 not be subject to 205.410(a) is because they did not

1 submit an ERMS application as part of the CAAPP  
2 permit?

3 MR. ROMAINE: Well no. And the further thing  
4 is that you haven't shown that this facility has shut  
5 down. All you have described is one particular  
6 emission unit has left. There is still a source  
7 there. In that circumstance, the source would still  
8 be considered an operating source. It would not be  
9 considered a shutdown source.

10 MR. FORCADE: Can facility A's emissions  
11 reductions be credited towards Facility B in forms of  
12 ATUs?

13 MR. ROMAINE: Yes, but Facility A would have to  
14 go through the emission reduction generator process  
15 to accomplish that.

16 MR. FORCADE: I think I would like to rephrase  
17 Question C then.

18 Is there any mechanism for Facility A to  
19 transfer emission credits to Facility B prior to the  
20 ERMS regulations being approved by the Board?

21 MR. ROMAINE: If you are talking about somebody  
22 transferring emission reductions, there can certainly  
23 be some mechanism whereby an arrangement between  
24 Facility A and Facility B can be reached for transfer

1 of credits between them that might ultimately be  
2 recognized at some point in terms of allowing its  
3 trading units.

4 MR. FORCADE: If I could slightly rephrase the  
5 example based on the responses I've received from  
6 you.

7 Assume that Facility A had over 10 tons  
8 of emissions, assume that Facility A discontinues its  
9 emissions of VOM from the emissions unit that emitted  
10 VOM, and assume that Facility A decided nonetheless  
11 to submit an ERMS application, even though at that  
12 point it had no emissions unit which emitted VOM, but  
13 it did not withdraw its permit application or revoke  
14 its existing permit for the VOM emissions unit. In  
15 that circumstance, would Section 205.410(a) apply to  
16 Facility A?

17 MR. ROMAINE: No. The facility would have had  
18 a permit. It would not be operating without a  
19 permit. It would not be permitless.

20 MR. FORCADE: Okay. Can Facility A then  
21 receive ATUs based on its baseline emissions and  
22 sell those ATUs even though the emissions unit has  
23 been dismantled and shipped off-site?

24 MR. ROMAINE: Yes. You have described a

1 circumstance where Facility A continues through the  
2 baseline determination process and becomes a  
3 participating source, and you've further described a  
4 situation where that Facility A has not been shut  
5 down.

6 MR. SUTTON: If I can interject, the purpose of  
7 an operating permit and especially a Title 5 permit  
8 is to explain what operational conditions exist if  
9 and when you elect to operate something. It doesn't  
10 mandate that you operate anything; but it says when  
11 you decide to operate, it will then control that  
12 operation.

13 MR. FORCADE: What is the current permit fee  
14 for a ton of VOC in the Chicago's non-attainment area  
15 for a major source?

16 MR. SUTTON: A permit fee is \$13.50 a ton  
17 allowable --

18 MR. FORCADE: \$13.50 allowable.

19 MR. SUTTON: -- on an annual basis.

20 MR. FORCADE: With the cost of a permit fee of  
21 \$13.50 per ton allowable and the anticipated cost of  
22 an ATU up to \$10,000 a ton, what motivation would a  
23 facility have to shut down as opposed to simply  
24 discontinuing operations of an emissionship?

1           MR. ROMAINE: I don't think that those two  
2 factors would be relevant. By that, I mean that  
3 certainly the permit fee would not be a major  
4 consideration in that determination.

5           MR. FORCADE: Assume the Agency accepts a  
6 proposal pursuant to which a participating source  
7 will receive five ATUs from the shutdown of another  
8 source. The shutdown source will stop all operations  
9 on January 1, 2000.

10                   Is it correct that the participating  
11 source will receive five ATUs dated year 2000 from  
12 the shutdown?

13           MS. SAWYER: This is Question 39?

14           MR. FORCADE: Yes.

15           THE HEARING OFFICER: Let the record reflect  
16 this is Question 39.

17                   And if you could when we are done go back  
18 and tell us what happened, which questions you asked,  
19 which have been answered, which are withdrawn,  
20 changed.

21           MR. FORCADE: I'm sorry. Questions 37 and 38  
22 have been asked and answered.

23           THE HEARING OFFICER: Thank you.

24           MR. ROMAINE: You have described this as a



1 situation where we are apparently at an accepted ERG  
2 proposal. You alluded that this shutdown does create  
3 ATUs that we can recognize; and, accordingly, the  
4 participating source could receive five ATUs.

5 MR. FORCADE: And would it receive five ATUs in  
6 the year 2001?

7 MR. ROMAINE: If there is agreement for a  
8 stream of ATUs, yes, it would.

9 MR. FORCADE: And that would run continuously  
10 if there's an agreement?

11 MR. ROMAINE: Yes, it would.

12 MR. FORCADE: What form of agreement must the  
13 applicant submit to verify the permanent nature of  
14 the agreement?

15 MR. KOLAZ: Well, you know, first of all,  
16 regarding Rule 205.410, it explains that in Part C in  
17 the situation you described, the receiver of the  
18 allotment would need to modify the permit the next  
19 time it was revoked into renewal. But the way we  
20 would execute that particular arrangement would be  
21 through a multi-year transfer agreement initially.  
22 And then when you came in to reopen or modify your  
23 permit, we would then issue the -- you know, make the  
24 change to your permit so that multi-year transfer

1 agreements would not be necessary from that point  
2 onward.

3 MR. FORCADE: Question 40 has been asked and  
4 answered.

5 THE HEARING OFFICER: Moving on then to Dart  
6 Container Questions 15, 16, 17, and 18.

7 MR. NEWCOMB: No. 15 has been asked and  
8 answered.

9 No. 16 is, therefore, irrelevant.

10 No. 17 has been asked and answered as  
11 well.

12 And 18 is withdrawn.

13 THE HEARING OFFICER: Any follow-up on that  
14 section?

15 MR. SAINES: Yes. We do have some, and Tracey  
16 momentarily stepped out. She'll be back in a  
17 second. I don't know. She went to make a phone call  
18 or something. I know she had some questions she  
19 wanted to ask. I don't personally have any  
20 questions.

21 THE HEARING OFFICER: Well, let's move on.  
22 Subpart E, Alternative ATU Generation, Section  
23 205.480, Emissions Reduction Generated, Tenneco's  
24 Questions 41, 42, 43, 44, 45, and 46.

1 MR. SAINES: I'll raise a question here.

2 Are we going to be able to ask the  
3 questions when Tracey returns?

4 THE HEARING OFFICER: We'll see.

5 MR. SAINES: Thank you.

6 MR. FORCADE: Question 41, is a VOM-emitting  
7 source which is exempted under 205.205(a) because it  
8 emits under 15 tons per season eligible to be an  
9 emissions reduction generator?

10 MR. ROMAINE: Yes, it is.

11 MR. FORCADE: If yes, how will this reduction  
12 be calculated?

13 MR. ROMAINE: It could be calculated as --  
14 emissions reductions can be calculated for other  
15 emissions reduction generators and as described in  
16 our proposals. Obviously, in this case, the source  
17 could never generate more than 15 tons per season  
18 emissions reductions.

19 MR. FORCADE: Will the emissions reduction be  
20 calculated based on excess available emissions from  
21 15 tons or from past actuals?

22 MR. ROMAINE: It can be calculated from past  
23 actuals as emissions reductions from -- emissions  
24 reduction generators are generally calculated from

1 past actuals.

2 MR. FORCADE: If an emissions reduction  
3 generator had baseline emissions that would have  
4 brought it within the ERMS program during the  
5 baseline years and elected to request a 15-ton  
6 limitation because of some process change going on  
7 and subsequently was subject to 205.205(a), would its  
8 baseline emissions be the baseline emissions during  
9 1994, '95, and '96, or would it be the baseline  
10 emissions after they had instituted the changes which  
11 allowed them to accept the 15-ton reduction  
12 limitation?

13 MR. ROMAINE: You are asking the question  
14 whether somebody who has pursued this exemption then  
15 decides to abandon the exemption?

16 MR. FORCADE: No. I am positing a scenario in  
17 which a facility had hypothetically 15 tons of  
18 seasonal emissions through '94, '95, and '96 in lieu  
19 of submitting an application for ERMS on January 1st  
20 of 1998 seeking a 15-ton baseline, it implemented  
21 some process change to reduce its emissions to below  
22 15 tons per season; subsequently, it institutes  
23 additional process changes to generate additional  
24 potentially to use.

1 I am trying to determine whether the  
2 baseline for calculating the ATUs that that emissions  
3 reduction generator would have for sale would be its  
4 1994, '95, '96 baseline of 15 tons or its 1998  
5 baseline of something less than 15 or 15 tons itself?

6 MR. ROMAINE: It could be higher than the  
7 15-ton limit. You'd have to look at what the actual  
8 emission level was before those changes were made,  
9 before the second set of changes were made.

10 MR. FORCADE: But it could be the 15-ton limit?

11 MR. SUTTON: In your particular case, the  
12 applicant could go into the -- file an ERMS  
13 application, use his 15-ton, and take advantage of  
14 that during the trading program as a normal trading  
15 partner. Right?

16 MR. ROMAINE: Yes.

17 MR. FORCADE: Okay. No. 42, is a VOM emitting  
18 source which is exempted under 205.205(b) because it  
19 reduced its emissions by 18 percent eligible to be an  
20 emissions reduction generator?

21 MR. ROMAINE: Yes.

22 MR. FORCADE: Question 43, is it true that a  
23 Non-Clean Air Act permit source can be an emissions  
24 reduction generator?

1 MR. ROMAINE: Yes.

2 MR. FORCADE: Assume that such a source emits 8  
3 tons of VOM per season and then reduces to 4 tons.  
4 The source wants to sell this reduction to another  
5 facility. What procedure must this emissions  
6 reduction generator follow? Is the emissions  
7 reduction generator required to obtain a Clean Air  
8 Act permit?

9 MR. ROMAINE: No. The facility is not required  
10 to obtain a Clean Air Act permit. In fact, it may  
11 not be required to amend its permit at all. It's  
12 really its choice. What it does have to do is submit  
13 an emissions reduction generator proposal to the  
14 Agency that reviews and describes the nature of the  
15 emission reduction, explains how the amount of  
16 emission reduction has been calculated.

17 Then the choice that the facility has to  
18 make is whether they want to then operate on a  
19 season-by-season basis to have emission reductions  
20 reflected as they occur or whether they want to, in  
21 fact, have the permit amended to actually include  
22 limits that make a 4-ton reduction enforceable in  
23 which case they would have a stream of allowance  
24 trading units that could be used in the future.

1 MR. FORCADE: I'm sorry. A stream?

2 MR. ROMAINE: A stream.

3 MR. FORCADE: Okay. I think that's answered  
4 the subsections under 43.

5 No. 44 --

6 MR. ROMAINE: I just want to make it clear in  
7 the last question, one of the requirements for an  
8 emission reductions generator is that they must be  
9 permitted sources. They don't necessarily have a  
10 CAAPP permit, but they must have at least a state  
11 permit.

12 MR. FORCADE: So they must have at least some  
13 form of existing state permit in order to be in the  
14 RMS generation?

15 MR. ROMAINE: To be an ERG generator.

16 MR. FORCADE: Emissions reduction generator?

17 MR. ROMAINE: Right. Otherwise, it would be  
18 going through the intersector path to generate  
19 emissions reductions.

20 MR. FORCADE: Consider the following -- this is  
21 Question 44 -- consider the following scenario:  
22 Until January 1997, Facility A emitted over 10 tons  
23 per season and was subject to the Clean Air Act  
24 Permit Program.

1                   Let me take a second and see if I want to  
2 explain this.

3                   I think this question was asked and  
4 answered in the questions related to shutdown.

5                   Question No. 45, assume that the  
6 Agency accepts an emissions reduction generated  
7 proposal pursuant to which a participating source  
8 will receive five ATUs from an emissions reduction  
9 generator. The emissions reduction generator will  
10 stop its permitted operations on January 1st, the  
11 year 2000.

12                   Is it correct that the participating  
13 source will receive five ATUs dated year 2000 from  
14 the emissions reduction generator?

15                   MR. ROMAINE: Yes. It would receive five ATUs  
16 for the year 2000 season.

17                   MR. FORCADE: Okay. And would it continue to  
18 receive five ATUs per year thereafter if the transfer  
19 agreement so provided?

20                   MR. ROMAINE: Yes, it would.

21                   MR. FORCADE: Question 46 has been answered.

22                   THE HEARING OFFICER: I guess we'll turn  
23 to Sonnenschein's questions from their January 16th  
24 filing, Question No. 10.



1 MS. FAUR: Question No. 10, it appears that the  
2 only way to be an emissions reduction generator is to  
3 modify sources operating the permit or submit a  
4 program, but the operating permit you are discussing  
5 appears to be a state operating permit, not a Title 5  
6 or a CAAPP permit.

7 If so, why can't a Title 5 permit holder  
8 be an emissions reduction generator?

9 MR. ROMAINE: A Title 5 source could be an  
10 emissions reduction generator if it wasn't a  
11 participating source.

12 MS. FAUR: What about a party holding an  
13 environmental management systems agreement or a  
14 project excel agreement?

15 MR. ROMAINE: Nothing in our proposal would  
16 prohibit a party with an environmental management  
17 system agreement or an excel agreement from being an  
18 emissions reduction generator. Any additional  
19 requirements for creation of ATU by such sources  
20 would have to be established in that particular  
21 agreement.

22 MS. FAUR: Thank you.

23 And there were two other questions listed  
24 here from our January 31st filing.

1 THE HEARING OFFICER: Yes.

2 MS. FAUR: Question 2 we withdraw, and  
3 Questions 3(b) and (c) have already been answered.

4 THE HEARING OFFICER: Thank you.

5 Moving on to ERMS Coalition, Questions 1,  
6 2, 3, 4, and 5.

7 MR. SAINES: Thank you. Rick Saines.

8 Question No. 1, pertaining to  
9 Section 205.408, Subpart (f), why is a source only  
10 given 15 days to appeal a denial of an emissions  
11 reduction generator proposal when most other sources  
12 are provided 35 days to appeal Agency decisions?

13 MR. ROMAINE: The key point is that this rule  
14 would provide an accelerated track for emission  
15 reduction generators. We are doing that to  
16 facilitate the participation of emissions reduction  
17 generators in the program in the season which  
18 emission reductions occur so we have a much tighter  
19 time frame for review of a proposal. Likewise, a  
20 source has a much shorter time frame to decide  
21 whether they are going to appeal our decision.

22 We believe that 15 days certainly should  
23 allow sufficient time to file an appeal if somebody  
24 doesn't like what we have done when we propose it.

1 MR. SAINES: Thank you.

2 Question 2, could the review and appeal  
3 of emissions reduction generator proposal extend  
4 beyond the reconciliation period?

5 MR. ROMAINE: Yes, it could. Certainly if a  
6 source wants to make sure that these matters get  
7 taken care of in a timely manner, what they need to  
8 do is apply early, provide sufficient lead time for  
9 whatever eventualities happen.

10 MR. SAINES: Question 3, if so -- and I guess  
11 the answer is yes -- will the source be given amnesty  
12 for excess emissions excursions pending the appeal?

13 MR. ROMAINE: We wouldn't expect that to  
14 occur. Sources should not rely on allowance trading  
15 units from an emission reduction generator proposal  
16 until it's been approved.

17 MR. SAINES: So the answer to that would be no  
18 then?

19 MR. ROMAINE: No.

20 MR. SAINES: I'm sorry. Did you answer that?

21 MR. ROMAINE: No.

22 MR. SAINES: No. Okay. Thank you.

23 MR. ROMAINE: The answer is no.

24 MR. SAINES: Okay. Thank you.

1                   Question 4 -- I'll ask it anyway -- will  
2 the source be provided an opportunity to hear any  
3 excess emission excursions if the source loses the  
4 appeal?

5           MR. ROMAINE: No such cure provision is  
6 provided in the rule.

7           MR. SAINES: So Question 5, how does the source  
8 cure in this instance?

9           MR. ROMAINE: First of all, primarily, don't  
10 rely on them. And then if you get into a situation  
11 where you have ATUs, you are going to have to pursue  
12 another alternative means for the ATUs for that  
13 season.

14          MS. MIHELIC: Is it correct at that time after  
15 the December -- if after the December 31st  
16 reconciliation period, you'd have to go to the ACMA;  
17 you would actually -- you probably would have to be  
18 given a notice of excursion, whatever it's called,  
19 and then do the relief pursuant to that, which would  
20 be going to the ACMA and obtaining 1.21 or some  
21 offset, 1.31 emission?

22          MR. ROMAINE: I think that's certainly the  
23 worst case scenario. A source could go to the  
24 marketplace to obtain ATUs. They could obtain ATUs

1 from the ACMA prior to the proposed reconciliation  
2 period.

3 MS. MIHELIC: But if it's after the  
4 reconciliation period and it appealed its refusal for  
5 its emission reduction generator, it was refused by  
6 the Agency, they appealed it, and they lost an  
7 appeal.

8 After the reconciliation period, can the  
9 source go to the market at that time?

10 MR. ROMAINE: No.

11 MS. MIHELIC: So the only option is to  
12 basically go to the ACMA and handle that as an  
13 emissions excursion?

14 MR. ROMAINE: In that circumstance, yes. Let  
15 me stress here, this is a voluntary element of the  
16 trading program to allow non-participating sources to  
17 be recognized for emission reductions.

18 In those circumstances, participating  
19 sources should not count their chickens before they  
20 are actually hatched.

21 THE HEARING OFFICER: Moving on then to Section  
22 205.490, Inter-Sector Transaction, ERMS Coalition's  
23 questions on Page 19 of the filing under Section 16.

24 It seems that you have more questions

1 than what the Agency listed. You deferred a whole  
2 bunch of them. I don't know if you plan on asking  
3 all of the ones you deferred on an earlier date or  
4 how you want to handle that?

5 MR. SAINES: You are talking about Section 490?

6

7 THE HEARING OFFICER: Yes.

8 MR. SAINES: Yes.

9 THE HEARING OFFICER: You want to ask them now?

10 MR. SAINES: Now is the time if that's what we  
11 want to do.

12 Okay. Is the Agency ready?

13 MS. SAWYER: Yes.

14 MR. SAINES: Question No. 1, to what standard  
15 of review is the Agency held in conducting its review  
16 of the transaction?

17 MS. SAWYER: Hold on a second. Maybe not this  
18 one.

19 MR. SAINES: It's under the introduction  
20 section.

21 MS. SAWYER: Yes. Those questions call for a  
22 legal interpretation.

23 MS. MIHELIC: Will they be answered by written  
24 comments then?

1 MS. SAWYER: Yes. We can answer them by  
2 written comments.

3 MS. MIHELIC: That would be 1 and 2(a)(1) and  
4 (2)?

5 MS. SAWYER: Yes.

6 MR. SAINES: Okay. We'll proceed with Section  
7 205.490(a), which would be Question 1 under B.

8 Why does the Agency need 45 days to  
9 review a transaction proposal?

10 MR. KOLAZ: Well, we thought 60 days would be  
11 too much time and 30 days too little for one. There  
12 really isn't a compromise. We certainly feel that  
13 some proposals will be able to be reviewed quicker  
14 than others, but it provides a time where the Agency  
15 feels it can commit to and assure that we've had  
16 ample time to do an adequate review, and that's how  
17 we chose 45 days.

18 MR. SAINES: Question 2, will this length of  
19 review time cause some sources to be unable to  
20 reconcile ATUs with their actual emissions by the end  
21 of the reconciliation period?

22 MR. KOLAZ: Well, I think that the correct  
23 answer to that is it's not the length of time that  
24 would cause a difficulty. I believe it would be the

1 failure to plan ahead because the length of time  
2 required to conduct a review is 45 days as stated in  
3 the regulations. So any planning that the source  
4 needs to do to acquire these ATUs in sufficient time  
5 to reconcile the emissions needs to be based on that  
6 45-day review period. In other words, I don't think  
7 there's a review period that could absolutely assure  
8 that the circumstance you described here would not  
9 occur, whether that was 15 days or 5 days.

10 MR. SAINES: True. I guess the question really  
11 relates to the fact that emission units on sources  
12 with 10 units or more are not required to submit  
13 their data until November 30th under the curtain  
14 rules, so that only provides 31 days of a time period  
15 where all the data will be out there for sources to  
16 start trying to reconcile as opposed to 90 days or  
17 whatever.

18 MR. KOLAZ: Well, first of all, I think  
19 there's two ways to look at the situation as  
20 described. November 30th is the deadline, but  
21 there's certainly nothing that compels you to wait  
22 until November 30th.

23 Secondly, the inter-sector transaction  
24 proposal itself may not necessarily have a bearing or



1 be affected by your seasonal report.

2 MR. SAINES: Can you just explain the last part  
3 of that answer a little bit?

4 MR. KOLAZ: Yes. For example, it might be that  
5 you choose to acquire ATUs through some type of car  
6 scrappage program, but there's two ways you may be  
7 viewing this. You may view the desire to do this  
8 because you feel you'll need ATUs, and I think your  
9 point is you won't absolutely know that you need ATUs  
10 until maybe November 30th.

11 However, I don't think that it would be  
12 prudent under any circumstance to wait that long  
13 until you have made all the arrangements necessary to  
14 make sure that you could actually carry through with  
15 that scrappage program.

16 So even if we were, for example, saying  
17 that we could do the review in 15 days, if you wait  
18 until November 30th to institute the actions you need  
19 to make the commitment to us to convince us that you  
20 are really fully able to carry through, there just  
21 wouldn't be enough time.

22 So I think under any scenario, it's going  
23 to require planning well -- probably well before the  
24 end of this season allotment period to accomplish

1 that.

2 MR. SAINES: Thank you.

3 Question 3, if the Agency disapproves the  
4 transaction proposal, will the source acquiring ATUs  
5 be provided an opportunity to purchase ATUs from  
6 another source or from the ACMA?

7 MR. KOLAZ: Let me ensure that my answer really  
8 fits with what you're getting at.

9 I assume you're talking about the ability  
10 to reconcile the previous season's emissions with  
11 ATUs that you now find you don't have a sufficient  
12 number because the transaction proposal was not  
13 approved; is that correct?

14 MR. SAINES: That's correct.

15 MR. KOLAZ: Only if it's prior to  
16 December 31st. There are no provisions to allow you  
17 to purchase ATUs after the reconciliation period  
18 specifically because a transaction proposal has been  
19 disapproved. There are, as now in the rule, emission  
20 excursion compensation periods which you would be  
21 subject to.

22 THE HEARING OFFICER: Any follow-up?

23 MS. MIHELIC: I have a quick follow-up to this  
24 section of questioning.

1 Tracey Mihelic.

2 Is it possible that neither the ERMS  
3 participating sources or the Agency will know whether  
4 there are any ATUs in the market available for sale  
5 until November 30th when all sources are required to  
6 submit their seasonal emissions reports?

7 MR. KOLAZ: Could you read back that question  
8 to make sure I understand it?

9 (Record read as requested.)

10 MR. KOLAZ: You know in earlier questions, we  
11 mentioned how -- what techniques would be available  
12 for people to post the fact that they either have  
13 ATUs for sale or that a company is in the market to  
14 buy ATUs.

15 I don't believe that November 30th itself  
16 has any specific significance to the availability for  
17 the sale of ATUs.

18 But to specifically answer your question,  
19 I think at any point in time, the Agency is not  
20 really able to ensure that there are ATUs for sale  
21 other than what might be available in the ACMA.

22 So to continue further just for a moment,  
23 I would suggest that anyone who anticipates they are  
24 in the market for ATUs needs to use the bulletin

1 board that we are going to establish to publish that,  
2 that desire to purchase ATUs. And certainly as part  
3 of the record keeping and reporting necessary for  
4 this program, a person should be compiling their  
5 seasonal VOM emissions as they continue through the  
6 season. They should not be waiting until the end of  
7 the season.

8           So my point is, this program does require  
9 very careful planning, very careful record keeping,  
10 for everyone involved to work properly so that at the  
11 end there are no surprises.

12           MS. MIHELIC: Right. But isn't it possible if  
13 a source who may have exceeded their allotment has  
14 kept careful planning who is aware that it's exceeded  
15 its allotment, that sources who haven't exceeded  
16 their allotments and may have excessive emissions,  
17 they are not required to report what their emissions  
18 are until November 30th; so there may be no  
19 information available until November 30th what other  
20 sources may have additionally to use?

21           MR. KOLAZ: That's correct.

22           THE HEARING OFFICER: Moving on.

23           MR. SAINES: Well, we have questions pertaining  
24 to Section 490(e).

1 THE HEARING OFFICER: Right. Moving on to  
2 Section 205.490(e), Denial of Inter-Sector  
3 Transaction, ERMS Coalition Questions 1, 2, 3, 4,  
4 which is on Page 19 of their prefiled questions.

5 MR. SAINES: Thank you.

6 Question No. 1, if a source appeals the  
7 denial of an inter-sector transaction proposal, how  
8 will the Agency allot ATUs to the source during the  
9 appeal process?

10 MR. KOLAZ: Well, Section 205.490(c) specifies  
11 that the Agency may not issue ATUs until a proposal  
12 has been approved, so there will be no allotment of  
13 ATUs.

14 MR. SAINES: Question No. 2 has been asked and  
15 answered. I will withdraw that.

16 Question No. 3 will also be withdrawn for  
17 the same reason.

18 But we'd like to ask Question No. 4.

19 Will the source be given amnesty for any  
20 excess emissions excursions pending the appeal and an  
21 opportunity to cure any access emissions excursions  
22 if the source loses an appeal?

23 MR. KOLAZ: No.

24 MS. MIHELIC: I guess I would like to ask a

1 clarifying question.

2                   If a source has appealed an inter-sector  
3 transaction proposal, okay, because it wants to gain  
4 emissions from some outside source, a source outside  
5 of the program, it appeals this transaction, this  
6 appeal process takes longer or extends beyond  
7 December 31st and could extend, let's say, into March  
8 or April of the following year, will this source be  
9 considered out of compliance with the ERMS programs  
10 during that time, during that appeal process?

11           MR. KOLAZ: Well, let me give a little bit more  
12 of a complete answer. Excuse me for just a moment.

13                   The situation you described I assume is  
14 one where you do not have sufficient ATUs to  
15 reconcile your emissions and need the ATUs from the  
16 inter-sector transaction proposal to have sufficient  
17 ATUs by December 31st; is that correct?

18           MS. MIHELIC: Yes.

19           MR. KOLAZ: My answer really was directed at  
20 the rule the way it's written, which means it does  
21 not have any specific provision that allows ATUs to  
22 be issued until the actual proposal has been  
23 approved. It does, as you well know, under  
24 205.490(e) allow for a, you know, petition to the

1 Board, you know, to review the Agency's decision.

2                   We will expect and we will issue the  
3 emissions excursions compensation notices after  
4 December 31st to a source that does not hold  
5 sufficient ATUs even if they have filed such a  
6 request for review to the Board.

7                   It is possible that the Board as  
8 part of their decision -- assuming that they do  
9 not agree with the Agency and uphold the request  
10 for review by the source -- I assume it's possible  
11 that the Board as part of their decision-making  
12 could enter into some type of decision that would  
13 allow for a special circumstance.

14           MS. MIHELIC: So are you saying if a source  
15 wins on appeal or wins the review and the Board says  
16 you should be allowed to have this inter-sector  
17 transaction and you should be given the ATUs  
18 generated from that inter-sector transaction, that  
19 would not necessarily cure any of its emissions  
20 excursions from the previous season if it's after  
21 December 31st?

22           MS. KOLAZ: That's correct.

23           MS. MIHELIC: Further action has to be taken by  
24 the Board to say, well, this notice you got, now, it

1 is, you know, accurate and correct, but now we have  
2 to do something else with respect to the notice?

3 MR. KOLAZ: No. I think I must have confused  
4 you on that. Let's just say that you appeal the  
5 Agency's decision and the Board rules in favor of the  
6 Agency. At that particular point in time, you would  
7 have undoubtedly already received an excursion  
8 compensation notice, and the Agency would expect you  
9 to compensate for those excess emissions in  
10 accordance with the way the rule is written right  
11 now.

12 What I am saying is, hypothetically, if  
13 the Board ruled in your favor, it is conceivable that  
14 as part of their decision, they would establish a  
15 remedy in which those ATUs from your inter-sector  
16 transaction proposal were issued to you in such a way  
17 that it would compensate for your pre-season  
18 emissions excursions.

19 MS. MIHELIC: But the Board has to make that  
20 determination?

21 MR. KOLAZ: That's correct. That is my opinion  
22 that that is how it would have to be resolved because  
23 there is nothing specifically in the rule to address  
24 the situation you are talking about to allow you to



1 compensate for those excess emissions outside of  
2 what's already been provided through the excursion  
3 compensation notice process.

4 MS. MIHELIC: If there were a provision  
5 allowing for a stay, perhaps, of any determination of  
6 an excess emissions excursion until that appeal is  
7 determined by the Board, would that then provide an  
8 opportunity that if the source wins -- let's say that  
9 the Board rules in favor of the source, the source  
10 would not be issued an emissions excursion notice?

11 MS. SAWYER: Objection; speculative.

12 THE HEARING OFFICER: I think we are really  
13 getting into some kind of legal questions here, which  
14 I don't know if his opinions will help the Board in  
15 deciding these matters. So it might be better that  
16 these be put on in public commenting, if that's  
17 okay. I'd like to move on then.

18 MS. MCFAWN: You can also provide testimony if  
19 that's something your group could advocate.

20 THE HEARING OFFICER: Moving on to Subpart (f),  
21 Market Transaction.

22 I think you were out of the room,  
23 Ms. Mihelic, and you had some follow-up questions.

24 MS. MIHELIC: I just had two quick --

1 THE HEARING OFFICER: I was hoping that maybe  
2 you could save those until we do your 320 questions,  
3 your 205.320 questions, just so you know you'll have  
4 the opportunity to do it.

5 Subpart (f), Market Transactions then.

6 MR. TREPANIER: I had a follow-up question to  
7 Tenneco's first question under Subpart (e). We moved  
8 real quickly from that first section.

9 THE HEARING OFFICER: Why don't you ask that  
10 then.

11 MR. TREPANIER: Thank you.

12 And following up Tenneco's Question No.  
13 41, was it -- is it the Agency's testimony that a  
14 source that had received the exemption under  
15 205.205(a), that it becomes an emission reduction  
16 generator could produce 15 tons of ATUs, generate  
17 those 15 tons of reductions?

18 MR. ROMAINE: That is conceivable if at some  
19 point it had increased its emissions to be exactly at  
20 15 tons, and then it comes up with some new process  
21 that allows it to conduct its business without any  
22 emissions.

23 MR. TREPANIER: And does that include emitters  
24 who in 1990 and in 1996 had emissions of under 15

1 tons or even at 10 tons when they came into the  
2 program, that they can later generate 15 tons of  
3 reduction?

4 MR. ROMAINE: In that hypothetical situation,  
5 that would be the case. But, again, that's a very  
6 hypothetical situation that we are addressing.

7 All we said was that when you calculate  
8 the emission reductions from such a source, the most  
9 they would ever be entitled would be 15 tons per  
10 season because they have pursued the exemption under  
11 Section 205.205.

12 MR. TREPANIER: And just to be certain, they  
13 can generate those 15 tons of exemptions even if when  
14 the baselines and the CAAPP for this program were  
15 established, they were a 10-ton emitter?

16 MR. ROMAINE: Yes.

17 THE HEARING OFFICER: Okay. Moving on then to  
18 Subpart F, Market Transaction, Section 205, I  
19 believe, 500, ERMS database. That's ERMS database.  
20 Tenneco's Questions 47, 48, 49, 50, 51.

21 MR. FORCADE: Our Question No. 47 has been  
22 asked and answered; 48, asked and answered; 49, 50,  
23 and 51 have been asked and answered.

24 Ready for 52?

1 THE HEARING OFFICER: Let's hear 52.

2 MR. FORCADE: I'm sorry. Is that a yes?

3 THE HEARING OFFICER: Hold on. Let me clarify  
4 the record, Mr. Forcade.

5 Then moving on since those have been  
6 asked and answered to Section 205.520, Application  
7 for Transaction Account, Questions 52, 53, 54, 55,  
8 and 56.

9 MR. FORCADE: All right. Question 52, why do  
10 participating sources need to apply for an account?  
11 Will the Agency revise this requirement so that all  
12 participating sources automatically receive a  
13 transaction account when they apply for an -- submit  
14 an ERMS application?

15 MR. KOLAZ: The rule of 510 that describes the  
16 process for applying for a transaction account has  
17 several requirements that are not a part of the ERMS  
18 application process, although they could be made to  
19 be part of the process.

20 However, the part that I think is on our  
21 mind in establishing the rule the way we did is that  
22 part of the transaction account application process  
23 is the need to designate an account officer. Our  
24 feeling is that at the time the ERMS application is

1 required, a source may not have an account officer in  
2 mind. They may need time to make special  
3 arrangements. So that's why we do not -- that's one  
4 of the reasons why we do not make the ERMS  
5 application process and the process of applying for  
6 the transaction account one in the same.

7 MR. FORCADE: Are participating sources  
8 required to re-apply for a transactional account  
9 every year?

10 MR. KOLAZ: No.

11 MR. FORCADE: Is it a one time only  
12 application?

13 MR. KOLAZ: That's correct.

14 MR. FORCADE: Are there restrictions for --  
15 this is -- Question 53 I just finished, and I'm doing  
16 Question 54 -- are there any restrictions or  
17 requirements which will determine who is eligible to  
18 be a special participant?

19 MR. KOLAZ: No.

20 MR. FORCADE: Will the identities of special  
21 participants be made available to the public?

22 MR. KOLAZ: Yes. A list of special  
23 participants will be included on the electronic  
24 bulletin board portion of the ERMS database.

1           MR. FORCADE:  When the Agency -- this is  
2 Question 55 -- when the Agency issues ATUs to a  
3 participating source, are the ATUs issued to the  
4 source's transactional account or does the source  
5 have to put its ATUs in its transactional account?

6           MR. KOLAZ:  They would be issued directly to  
7 the transactional account.

8           MR. FORCADE:  Are all of -- this is Question  
9 56 -- are all of the source's past, present, and  
10 future ATUs always kept in the account or is the  
11 transactional account only used for transferring ATUs  
12 between participants?

13          MR. KOLAZ:  I believe there's probably several  
14 ways to view this, but I'm trying to understand what  
15 your question's really getting at.

16                    Let me just say that by looking at your  
17 transactional account, you will be able to see a  
18 record of all of the past transactions and all of the  
19 ATUs that have been issued to your account, those  
20 that are retired and those that have expired.

21                    My point being in the design of a  
22 database, they may not actually be in your database;  
23 but by accessing your transactional account, you will  
24 have access to view the type of information that you

1 have listed in your question.

2 THE HEARING OFFICER: Before we go on, I have a  
3 quick question.

4 At a couple hearings ago, I think Mr.  
5 Mathur testified about this database and the  
6 contracting for a designer.

7 Has there been any more movement since  
8 the last time we have heard testimony on  
9 interrogation of this database, the program?

10 MR. MATHUR: I think Mr. Kolaz can answer that.

11 MR. KOLAZ: Well, there has been some  
12 progress. We received approval from Central  
13 Management Services to proceed with our RFT process,  
14 which is a necessary step in the process. So that's  
15 been progress. And we have an internal draft that's  
16 being reviewed, an internal request for proposal  
17 draft. So we have made progress since the last  
18 hearing.

19 THE HEARING OFFICER: Thank you.

20 MR. NEWCOMB: On that point, how does one  
21 become aware of the RFT when it's finalized and how  
22 does the Agency go about announcing the RFT?

23 MR. KOLAZ: Well, there's a process where  
24 there's advertisings that must be provided in

1 newspapers within Illinois, and we are also -- as we  
2 become aware of people who we believe either would be  
3 good candidates to bid on the project, we can add  
4 them to a list to ensure they receive the proposal.  
5 People who may hear about the proposal either through  
6 the newspaper notice or some other means can also let  
7 us know their interest. We have had some inquiries  
8 along that line already. So we are building a list  
9 of people who have to receive the ERF.

10 THE HEARING OFFICER: Then moving on to Section  
11 205.520, account officer. Hold on.

12 MR. SAINES: We have questions that we have  
13 organized as pertaining to Mr. Kolaz's testimony,  
14 prefiled testimony, and not specific to a section,  
15 but it appears that it is relevant here. We've asked  
16 some of them already when we were going through our  
17 original questioning about the database. I think it  
18 is probably a good time now to ask these questions  
19 here.

20 THE HEARING OFFICER: Could you -- what page  
21 are you on?

22 MS. MIHELIC: We are on Page 22 -- really, Page  
23 23 because the ones that are specific to this ATU  
24 account is starting on page -- or Questions 4 through



1 7.

2 MS. SAWYER: You didn't ask those questions?

3 MS. MIHELIC: We did not ask those questions  
4 yet. We asked 8 on.

5 MR. SAINES: Yes. We started at 8.

6 MS. SAWYER: Why didn't you ask them? Did we  
7 defer them? I don't think we deferred them.

8 MS. MIHELIC: Yes, we did because they were to  
9 be asked during the specific section in which they  
10 pertained to.

11 MS. MCFAWN: These are relevant to --

12 MS. MIHELIC: Questions 4 through 7 go to the  
13 transaction account. Questions 1 through 4 are just  
14 general questions, but Questions 4 through 7 do go  
15 specifically to the transaction account. We can  
16 defer these until later.

17 MS. SAWYER: We should just do them.

18 THE HEARING OFFICER: Why don't we just take  
19 them now then, if the Agency --

20 Let's go off the record for a second.

21 (A short recess was taken.)

22 THE HEARING OFFICER: Nos. 5, 6, and 7 on  
23 Page 23 of the ERMS Coalition's prefiled questions.

24 MS. MIHELIC: Tracey Mihelic. Should all --

1 Sorry. Strike that.

2                   No. 5, where in the proposed rule does it  
3 state that if a discrepancy exists between the Agency  
4 and a participating source regarding that source's  
5 transaction account, quote, the account officer may  
6 petition the Agency to take appropriate action, close  
7 quote?

8           MR. KOLAZ: Well, the place in the rule is on  
9 205.530(d)(2). And I think the key thing that would  
10 clarify this is -- the proper word would be request  
11 in place of the word petition, and it says, a request  
12 for correction, you know, may be made instead of a  
13 petition.

14           MS. MIHELIC: So you are saying a source that  
15 does not petition the Agency can only request the  
16 Agency?

17           MR. KOLAZ: It requests the Agency. I mean, it  
18 says directly, any discrepancies found by the  
19 account officer shall be reported to the Agency or  
20 its designee along with a request for correction.

21           MS. MIHELIC: And how does one go about  
22 requesting this correction?

23           MR. KOLAZ: Well, I mean, in a simpler sense,  
24 you could write a letter describing your request.

1 But when we establish the database, we do intend on  
2 having an E-mail type of capability, and I would  
3 assume that your account officer could E-mail the  
4 Agency and describe the correction. I think a lot of  
5 this would depend upon the nature of the correction.

6           For example, if you were simply updating  
7 the account officer's new telephone number, I would  
8 think that would not require the same level of  
9 attention that maybe a more serious type of  
10 correction would require.

11           MS. MIHELIC: Withdrawing specifically  
12 section -- question -- the first question in 6, if I  
13 could modify it since we don't have to petition; you  
14 simply have to request the Agency; if the discrepancy  
15 is with respect to the amount of ATUs held by the  
16 source, what are basically the specific requirements  
17 regarding the ability of a source to request the  
18 Agency to take appropriate action?

19           MR. KOLAZ: Well, let me answer that question  
20 in two ways. One is I think that particular type of  
21 error is extremely unlikely because of the checks and  
22 balances that we will build into the system. But as  
23 all of you are probably thinking, no system is  
24 perfect. And it is possible, although I think very

1 remotely possible, that there could be a difference  
2 of opinion.

3 I would say that the account officer  
4 should just assemble the facts known them much like  
5 you would do if you had a discrepancy in your  
6 checking account or savings account and make that  
7 information known to the Agency.

8 MS. MIHELIC: Withdrawing -- or saying 6(b) has  
9 already been answered; withdrawing 6(c).

10 6(d) is, how many days does the Agency  
11 have to respond to such a petition now being changed  
12 to request?

13 MR. KOLAZ: Well, there is nothing specifically  
14 in the rule, but our intention is to respond to all  
15 of these within seven days.

16 MS. MIHELIC: And what if -- I'm going to  
17 Question (e) -- what happens if the Agency denies  
18 such a petition or request? And this goes to -- is  
19 with respect to changing the amount of ATUs or  
20 disagrees with the amount of ATUs that should be  
21 in a transaction account. What is a source able to  
22 do?

23 MR. KOLAZ: Just a moment.

24 Well, there is nothing specifically in

1 the rule to address that, so the finding of the  
2 Agency as far as the Agency's concerned is final.

3 MS. MIHELIC: It's a final Agency decision?

4 MR. KOLAZ: Right.

5 MS. MIHELIC: And is that decision appealable?

6 MR. KOLAZ: I think that's --

7 MS. SAWYER: A legal interpretation.

8 MS. MIHELIC: Will that be answered then in  
9 written comments?

10 MS. SAWYER: Do you want us to answer it right  
11 now?

12 THE HEARING OFFICER: Sure.

13 (A brief pause.)

14 MS. MIHELIC: So that's a yes; it will be  
15 answered in written comments?

16 THE HEARING OFFICER: Yes, I hope.

17 MS. MIHELIC: And we withdraw Question No. 7.

18 THE HEARING OFFICER: Thank you.

19 Going back then to questions from  
20 Tenneco, Section 205.520, Question 57.

21 MR. FORCADE: Question 57, under Section  
22 203.420(b), the account officers must complete the  
23 training program.

24 Is a potential account officer merely

1 required to attend a training program or must he or  
2 she also pass the program?

3 MR. NEWTON: He must only attend the programs  
4 day through day. There would be no examination or  
5 anything.

6 MR. FORCADE: Will the account officer receive  
7 any certification of having attended or passed the  
8 training program?

9 MR. NEWTON: Yes. We don't have it made up  
10 yet, but we will do something, yes.

11 MR. FORCADE: Will the Agency -- or will the  
12 account officer receive any certification that the  
13 Agency has approved of this account officer?

14 MR. NEWTON: Yes.

15 MR. FORCADE: Will these be the same document?

16 MR. NEWTON: Probably, yes.

17 MR. FORCADE: Will the Agency conduct the  
18 training program; and if so, where?

19 MR. NEWTON: We will conduct it, but we haven't  
20 decided where yet.

21 MR. FORCADE: Have you decided whether it will  
22 be in Chicago or Springfield?

23 MR. NEWTON: We haven't but I would assume it  
24 would be -- I would assume at least part of it will

1 be in Chicago.

2 THE HEARING OFFICER: Any follow-ups to those  
3 questions, Section 520?

4 MR. NEWCOMB: Yes.

5 Will there be a fee for that training?

6 MR. NEWTON: No, there will not.

7 THE HEARING OFFICER: Moving to Section  
8 205.530, ATU transaction procedures, Tenneco's  
9 Questions 58, 59, 60, and 61.

10 MR. FORCADE: Question 58, what is the meaning  
11 of the term recognized in the phrase recognized sales  
12 and purchases in the opening sentence of this  
13 section? Are there any sales or purchases which  
14 would not be recognized; and if yes, please list all  
15 sales or purchases which the Agency would not  
16 recognize?

17 MR. KOLAZ: Okay. The term recognize means  
18 sales and purchases which the Agency ultimately  
19 validates and authorizes. And the Agency will not  
20 validate or authorize a transaction which does not  
21 include signed transfer agreements between both  
22 parties, for example, both the buyer and the seller.

23 And we also will not authorize transfer  
24 agreements which either include expired or retired

1 ATUs or that involves a sale of ATUs from a special  
2 participant is another example; involves immediate  
3 transfers of ATUs from an amount greater than that  
4 held by the seller; that would not be a valid  
5 transaction. There's probably other examples, but  
6 another one might be a multi-year transfer agreement  
7 in which the seller does not hold an allotment level  
8 plus credit-type transfer agreements sufficient to  
9 equal or exceed the debit-type transfer agreement  
10 that's being contemplated.

11 MR. FORCADE: You make reference to a transfer  
12 agreement. Do you have a copy of such a transfer  
13 agreement?

14 MR. KOLAZ: Not at this point.

15 MR. FORCADE: Can you describe what the minimum  
16 requirements for a transfer agreement would be?

17 MR. KOLAZ: Well, I believe the minimum  
18 requirements certainly would include information  
19 describing both the seller and the buyer in terms of  
20 name, address, account officers. It would include  
21 the amount of the transaction that's contemplated,  
22 the number of ATUs, for example, being sold, and the  
23 amount of ATUs being bought by the person receiving  
24 the ATUs.



1                   There may be a few other things, but I  
2 think that probably captures 80 to 90 percent of what  
3 we would contemplate would be in a transaction  
4 agreement, transfer agreement, that is.

5           MR. FORCADE: Is it your intention that these  
6 signed original transfer agreements would be mailed  
7 to the Agency?

8           MR. KOLAZ: Yes, at some point. Now, we do  
9 believe -- we do intend on having this automated as  
10 part of the database, the ERMS database, that is; but  
11 we do want to work out a means whereby we do have  
12 some type of signed agreement between both parties.

13          MR. FORCADE: Would it be correct that the  
14 Agency will not transfer ATUs until they receive the  
15 original signed transfer agreement?

16          MR. KOLAZ: Yes. That is possible. Again,  
17 time is of the essence, and we know that, so we are  
18 going to work out whatever mechanism we can to  
19 expedite that; but we do want to be sure that both  
20 the buyer and the seller are in agreement with the  
21 amount of ATUs being transferred, that is both being  
22 bought and sold.

23          MR. FORCADE: Assuming that the deadline is  
24 December 31st of a particular year for

1 reconciliation, would a transfer agreement signed on  
2 December 31st and received at the Agency on January  
3 2nd satisfy the requirements for having a balanced  
4 account?

5 MR. KOLAZ: You know, we've really never gone  
6 into that level of detail; but let me just say, we  
7 will establish a system of mechanisms similar to the  
8 April 15th postmark date of the -- that the IRS is  
9 using, so I'm sure we will work out some scheme that  
10 will allow last-minute agreements to be entered into  
11 with the final processing and validation of the  
12 transaction occurring after December 31st. So I am  
13 presuming that the situation you described would be  
14 allowed.

15 MR. FORCADE: So there would be some situation  
16 to allow the conclusion of the transaction to be the  
17 binding date for reconciliation of accounts as  
18 contemplated in the ERMS rules?

19 MR. KOLAZ: That's correct.

20 MR. FORCADE: Moving on to Question No. 59,  
21 Section 205.530(a)(2)(b), Authorizes multi-season  
22 transfer agreements, for how long will the Agency  
23 issue ATUs to participating sources under the ERMS  
24 proposal?

1 MR. KOLAZ: There is nothing in the ERMS  
2 proposal that has a final date where ATUs not be  
3 issued, so the answer is indefinitely.

4 MR. FORCADE: Is it true that a facility can  
5 purchase ATUs from another facility through a  
6 multi-year transfer agreement between those  
7 facilities?

8 MR. KOLAZ: Yes.

9 MR. FORCADE: And the Agency has not proposed  
10 any specific requirements other than those that you  
11 previously described for such transfer agreements?

12 MR. KOLAZ: That's correct.

13 MR. FORCADE: Will advance Agency approval be  
14 required for multi-season transfer agreements?

15 MR. KOLAZ: When I use the term multi-year  
16 transfer agreement, I am talking about a transfer  
17 agreement that is submitted to the Agency that  
18 recognizes an agreement between two parties, a buyer  
19 and a seller. And those would have to be -- those  
20 would have to be received by the Agency and approved  
21 before we recognized that transfer agreement and  
22 before we would actually transfer ATUs from one  
23 account to another.

24 However, there's nothing in the rule that

1 prohibits two companies from reaching agreement in  
2 some form themselves and not transferring that  
3 information to the Agency.

4           For example, one, Company A could enter  
5 into a multi-year option agreement maybe, you know,  
6 for some type of consideration, some price per ATU  
7 for the option to buy in future years; those would  
8 not have to be received by the Agency. The only  
9 requirements before the Agency will transfer ATUs  
10 from one account to another, we have to have a  
11 transfer agreement between both parties.

12           MR. FORCADE: Would the multi-year transfer  
13 agreement under this section be effectively the same  
14 document as the single-year multi -- single-year  
15 transfer agreement, but with the addition of each  
16 year's transfer described therein?

17           MR. KOLAZ: Yes.

18           MR. FORCADE: This agreement would also have to  
19 be filed with the Agency; is that true?

20           MR. KOLAZ: Yes.

21           MR. FORCADE: Are there any other record  
22 keeping requirements with respect to the multi-year  
23 transfer agreements? And this is down through  
24 Subsection (e) of Question 59.

1           MR. KOLAZ: No. There's no other record  
2 keeping agreements that the multi-year transfer  
3 agreements bring about in and of themselves, you  
4 know, that's not already described in the rule.

5           MR. FORCADE: Is there any limit to the number  
6 of years for a multi-year agreement to transfer ATUs  
7 from one source to another?

8           MR. KOLAZ: No.

9           MR. FORCADE: If two sources enter into an  
10 agreement to transfer ATUs over a 10-year period,  
11 will the Agency give any assurance that the existing  
12 program will continue unmodified for that period of  
13 time?

14          MR. KOLAZ: No.

15          MR. FORCADE: Let me sort of restate that.

16                    I understand the Agency can impose  
17 additional programs beyond this; but is there any  
18 assurance the Agency can give that this program will  
19 remain unchanged for any length of time?

20          MR. KOLAZ: No, no. There is no assurance that  
21 there won't be changes.

22          MR. ROMAINE: Let me just --

23          MR. FORCADE: Somebody better do something.

24          MR. ROMAINE: This is a proposal program that's

1 being put in place by rulemaking. Certainly, any  
2 further changes would require a rulemaking. These  
3 would not be simply actions that the Agency would be  
4 back before this body again explaining why we are  
5 proposing -- answering questions.

6 MR. FORCADE: Let me amend the question  
7 slightly.

8 Assume that a facility was attempting to  
9 secure 10 years worth of ATUs, that facility could  
10 reasonably expect there may be additional control  
11 programs in the future, but may wish to count on the  
12 continued operation of this program as part of its  
13 evaluation of what price to assign to those ATUs  
14 it's going to purchase.

15 What assurance, if any, can such a  
16 participating source receive from the Agency to  
17 assist in making good economic decisions as to what  
18 the value of an ATU is in the future?

19 MS. SAWYER: I tend to think that this  
20 question is better asked during the economic  
21 portion, Mr. Forcade. And, actually, that was your  
22 final question in this whole package, and that's  
23 what -- we think it's more of an economic question.

24 MR. FORCADE: Well, yes, just as long as we get

1 to it sometime.

2                   Moving to Question 60, Section 205.530(d)  
3 requires account officers to report the purchase  
4 price of all ATU transfers.

5                   What documentation must an account  
6 officer keep to verify the purchase price of an ATU?

7           MR. KOLAZ: Well, there is none currently  
8 specified by the rule, and I think that -- I just  
9 think that whatever documentation -- whatever  
10 agreements were entered into between the two parties  
11 would be such documentation.

12           MR. FORCADE: Does this documentation need to  
13 be submitted to the Agency?

14           MR. KOLAZ: We are not anticipating that it  
15 does, but it would need to be available for Agency  
16 review.

17           MR. FORCADE: If this purchase price were  
18 specified in a contract or other legal document,  
19 would the document need to be filed with the Agency?

20           MR. KOLAZ: We are not anticipating it needs to  
21 be filed; but as I mentioned previously, it would  
22 need to be available for Agency review.

23           MR. FORCADE: Is it your intention that the  
24 purchase price would be just one blank on the

1 transfer agreement or something like that?

2 MR. KOLAZ: We haven't actually worked that out  
3 in detail, but I don't think it would be necessarily  
4 just one blank because there's other considerations  
5 that could go into the value of an ATU other than  
6 simply a numerical value.

7 MR. FORCADE: Has the Agency decided how it  
8 will value ATU transfers which are not made  
9 primarily on a dollar basis?

10 MR. KOLAZ: We have discussed that, but we  
11 haven't come up with anything definitive at this  
12 time; but we are aware that that is a consideration  
13 in establishing the market price.

14 MR. FORCADE: Is there a penalty for  
15 inaccurately reporting to the Agency the purchase  
16 price of an ATU?

17 MR. KOLAZ: There's none that's specified  
18 specifically in the ERMS rule.

19 MR. FORCADE: And our last question in this  
20 Section is Question 61.

21 Under Section 205.530(d)(3), what is the  
22 deadline for an account officer to specify to the  
23 Agency the order in which ATUs shall be retired?

24 MR. KOLAZ: It would be in the close of



1 business on December 31st.

2 THE HEARING OFFICER: Are there any follow-up  
3 questions? I think we'll take a 10-minute break at  
4 this point. The next set of questions deal with the  
5 alternative compliance market account.

6 (A short recess was taken  
7 whereupon Hearing Officer  
8 Feinen dismissed himself  
9 and Mr. Kevin Desharnais  
10 sat in his place for the  
11 remainder of the hearing.)

12 MR. DESHARNAIS: My name is Kevin Desharnais.  
13 I am going to be filling in for Chuck for the  
14 remainder of today's hearing.

15 We are going to continue on with the  
16 questions that the Agency has put together in their  
17 lists beginning with the questions for Subpart (g),  
18 Performance Accountability. And we will turn to the  
19 questions of Tenneco.

20 Mr. Forcade?

21 MS. SAWYER: Just one thing. Mr. Kanerva does  
22 have a little diagram to explain certain portions of  
23 the ACMA in response to a specific question. I don't  
24 know if you wanted to go through that first or just

1 wait until the question is asked.

2 THE HEARING OFFICER: We'll wait for the  
3 question so that the questioning will proceed in  
4 order.

5 MS. SAWYER: Okay.

6 MR. FORCADE: Okay. This will be Question  
7 No. 62.

8 Do the provisions for special access to  
9 the ACMA, Section 205.610(d)(1) authorize the Agency  
10 to deposit 1 percent of the next seasonal allotment  
11 for all sources?

12 MR. KANERVA: Well, it authorizes up to  
13 1 percent of the allotments for all the sources.

14 MR. FORCADE: Would that include 1 percent of  
15 the sources that are not participating in the special  
16 access to the ACMA?

17 MR. KANERVA: Yes. It's the entire pool of  
18 participating sources irrespective of whether or not  
19 they were asking for access.

20 MR. FORCADE: Okay. Question No. 63, under the  
21 provisions for special access to the ACMA, Section  
22 205.610(d)(1), is a participating source limited to  
23 purchasing 1 percent of its own next seasonal  
24 allotment or 1 percent of the next seasonal allotment

1 of all sources?

2 MR. KANERVA: All the sources.

3 MR. FORCADE: Under the provisions -- this is  
4 Question 64 -- under the provisions for special  
5 access to the ACMA, Section 205.610(e)(2), may the  
6 Agency impose additional emissions reductions beyond  
7 the initial 12 percent reduction on all  
8 participating sources?

9 MR. KANERVA: No.

10 MR. FORCADE: Question No. 65, under the  
11 provisions for special access to the ACMA, Section  
12 205.610(h), please list all possible bases for the  
13 Agency to deny special access to the ACMA?

14 MR. KANERVA: There are three reasons for a  
15 denial. One would be that a source submitted its  
16 written request for regular access either before or  
17 after the reconciliation period. In other words,  
18 that's the initial qualifier to give somebody access  
19 into the ACMA is that they file during the  
20 reconciliation period.

21 A second reason that gets more to or  
22 directly to the special access is that the source  
23 fails to show that it could not get ATUs in the  
24 market.

1                   And a third reason would be that the  
2 actual seasonal emissions are less than the ATUs held  
3 by the source.

4           MR. FORCADE: I'm sorry. And the third reason  
5 was?

6           MR. KANERVA: The third reason is their actual  
7 emissions are less than their allotment of actual  
8 ATUs.

9                   The importance of that is that for  
10 regular access, when there's a positive balance, it  
11 doesn't matter whether the source is going to need  
12 those additional ATUs for compliance or not. They  
13 can purchase them if they are available if they are  
14 willing to pay the appropriate fee. But when you get  
15 into special access, that's reserved for those  
16 situations where a source actually has more emissions  
17 than allotment and needs to have them for compliance.

18           MR. FORCADE: Question 66, in the statement of  
19 reasons, the Agency states that the amount of \$1,000  
20 for ATU from the ACMA, quote, represents the maximum  
21 exposure for any source under the ERMS, close quote.  
22 What is the maximum exposure for any source under the  
23 ERMS?

24           MR. KANERVA: The first thing you need to

1 remember is that the ACMA is intended to be used as a  
2 secondary source of ATUs. It's the system's safety  
3 net, if you will, and it is not intended to be used  
4 in direct competition with the open marketplace.

5           Given this setup, the purchase price for  
6 ATUs from the ACMA is purposely designed to be higher  
7 than what we would expect to find in the normal  
8 marketplace. So the cost that someone paid for their  
9 purchases from ACMA would represent the greatest  
10 expense a source would see in order to come into  
11 compliance since ACMA is designed purposely to be  
12 higher than the projected marketplace.

13           The reference to the \$1,000 rate is  
14 appropriate for regular access and actually advises  
15 to \$1,100 per ATU for special access.

16           MR. FORCADE: I think Subsection (b) has been  
17 answered.

18           Subsection (c), what is the maximum  
19 financial exposure to a source which opted at the  
20 beginning of the year to purchase ATUs for the coming  
21 season; and at the end of the year, there are no ATUs  
22 available in the ACMA or on the market?

23           MR. KANERVA: The way I'm going to answer  
24 this -- and this is not what you intended to clarify

1 for me -- but I'm assuming that special access is not  
2 available here.

3 MR. FORCADE: Right.

4 MR. KANERVA: That is also used up. And if  
5 that's the case, then what's applicable is excursion  
6 compensation at 1.2 times the amount of the excess  
7 emissions to be taken from the next seasonal  
8 allotment. That's what the consequence is.

9 MR. FORCADE: And that 1.2 times would be 1.2  
10 times either the current market rate or \$1,000 per  
11 ATU or \$1,100 per ATU depending upon how you were  
12 able to achieve the ATUs?

13 MR. KANERVA: No.

14 MR. FORCADE: No?

15 MR. KANERVA: It's just a draw down with the  
16 20 percent surcharge directly from the ATUs that  
17 would have been allotted to that source.

18 Ultimately because those ATUs do have a  
19 market value, the source can figure out what that was  
20 worth that they didn't get, but it isn't actually  
21 something financial that they directly have to incur.

22 MR. FORCADE: Question 67, if a facility is  
23 required to determine at the beginning of the year  
24 whether to implement control technology in order to

1 comply with this ATU allotment, may such a facility  
2 make an economically reasonable decision if it will  
3 not know the cost of purchasing extra ATUs until the  
4 end of the year; and if so, how?

5 MR. KANERVA: The response to that involves a  
6 couple of things. First of all, the last section of  
7 the rule talks about the performance review report,  
8 the annual performance review report. It's 205.660.  
9 And that's required to be completed and made publicly  
10 available by May 15th of each year. And that will  
11 include information -- that's No. 8 there -- on the  
12 average market price for the transactions from a  
13 previous period.

14 So going into an ozone season, the  
15 participants will have a public document that  
16 describes what the market forces generated just  
17 prior.

18 The second thing that's going to be  
19 available to any source obviously is to interact with  
20 other sources. If something -- conditions are going  
21 to change for the current season that would influence  
22 that market price up or down, that's the kind of  
23 thing you'll learn from talking to some of the other  
24 participating sources and people that you might want

1 to buy or sell to. Everybody's free to have all  
2 those interactions they want. They don't need to get  
3 anything from the Agency on that.

4 MR. FORCADE: All right. If I could follow up,  
5 those responses seem appropriate for the periods of  
6 time after the year 2000, but for the decisions that  
7 will have to be made in the 1999 calendar year when  
8 the 206.600(g) report will not be prepared and when  
9 the available emission ATUs for the existing  
10 facilities will not be known, how would a source at  
11 the beginning of 1999 make a reformed decision over  
12 whether to install controlled technology or to pursue  
13 the purchase of ATUs?

14 MR. KANERVA: I think a wise course of action  
15 would be for that source to have some of those  
16 communications with other participants in the  
17 market. There will be people going into the start-up  
18 of the system that will be interested in being  
19 sellers. It doesn't do you much good to be a seller  
20 unless you can find some buyers.

21 And so people's compliance strategy work,  
22 I think, will clearly lead them to have some of these  
23 interactions, although there won't be a public  
24 presentation of how the first year operated, but



1 there will be plenty of reasons for interactions to  
2 occur where people could get a sense of what their  
3 compliance cost would be.

4 MR. FORCADE: Is it the Agency's intention to  
5 have the bulletin board system or that section of the  
6 bulletin board system which will advertise ATUs for  
7 sale fully operational by January 1st of 1999?

8 MR. KANERVA: I think that was an order from  
9 the Bureau Chief of Air that we make sure that  
10 happens.

11 MR. FORCADE: Does that mean yes?

12 MR. KANERVA: Yes.

13 MR. FORCADE: I believe Question No. 68 has  
14 been asked and answered.

15 Question No. 69, how will the Agency  
16 calculate the market values of ATUs? I can either  
17 go to the individual subsections or allow you to.

18 MR. KANERVA: What we will utilize is to  
19 just do an arithmetic average basically are the  
20 transactions, monetary consideration involved, the  
21 transactions that take place for the most current  
22 year.

23 And you said you want me to just go  
24 through this sequence?

1           MR. FORCADE: I didn't know whether your  
2 initial answer would be broader and cover the  
3 question.

4                       How will the Agency account for  
5 transfers between facilities owned by the same  
6 parent corporation?

7           MR. KANERVA: If no dollar is involved, if  
8 they simply have exchanged the units in order to  
9 achieve their compliance, then we wouldn't utilize  
10 that transaction in the average.

11           MR. FORCADE: So the Agency intends to put in  
12 some procedure to subtract from the average those  
13 transactions which have a common parent corporation  
14 or which have a value of zero, which?

15           MR. KANERVA: No. They wouldn't put a value of  
16 zero in. You'd have a subset of transactions that  
17 were truly a monetary exchange back and forth. If a  
18 company just exchanged -- physically transferred the  
19 units without a charge associated with them between  
20 another part of the company, we would just separate  
21 that out and not consider it part of the pool that we  
22 would utilize for the average. If you start putting  
23 in bunches of zeros in there, you are going to  
24 obviously have an arbitrary impact on the average

1 calculation.

2 MR. FORCADE: How will the Agency account for  
3 transfers for the consideration of ATUs as not money?

4 MR. KANERVA: As I have just mentioned, they  
5 would be excluded from the averaging process unless  
6 we are able to find some way of giving a  
7 representative value to that transaction. And there  
8 may be information that can be provided to us that  
9 would enable us to do that; but, otherwise, it would  
10 be left out.

11 MR. FORCADE: Will the Agency include all  
12 transactions in calculating the market value or will  
13 the Agency limit its calculations to a particular  
14 period of time?

15 For example, which transactions will the  
16 Agency include when computing the market value in the  
17 year 2010? Will they use transactions from 1999 to  
18 2010 or some other period?

19 MR. KANERVA: Our intent is to use the  
20 transactions from that current year. So when we get  
21 to the reconciliation period -- I mean the start of  
22 it, October 1st, early in October we would calculate  
23 the average from the transactions of 2010 that were  
24 available. So that a source trying to decide whether

1 or not to -- what is the best course for them during  
2 that three-month reconciliation period would have  
3 that information available.

4 MR. FORCADE: For that particular year only?

5 MR. KANERVA: Right.

6 MR. FORCADE: Historic data would be maintained  
7 in someplace too?

8 MR. KANERVA: Well, the historic data would be  
9 documented in each year's annual performance report.

10 If for some reason -- and I would say  
11 this is a very extreme situation -- but if for some  
12 reason there were just hardly any usable transactions  
13 in the current year, then I think we could simply  
14 rely on the last year's average.

15 MR. FORCADE: Will the Agency verify the  
16 information it receives from account officers on the  
17 amount of the cost of the transfer of ATUs?

18 MR. KANERVA: Well, the information on the  
19 price and what have you is part of the source's  
20 compliance master file, and that is subject to review  
21 by the Agency, that is subject to a good  
22 documentation practice, and it's something we can  
23 enforce if there was a problem with it, just like  
24 anything else.

1           MR. FORCADE: Does the Agency have any plans  
2 for routine inspections of ATU files in order to  
3 verify the cost of transaction amounts?

4           MR. KANERVA: For accountability of the system,  
5 we will obviously set up some kind of on-site review  
6 process. I don't think we have sorted through  
7 exactly how many facilities ought to be looked at in  
8 any particular year and what have you. That's  
9 something that will come along later on. There's not  
10 that much difference in the compliance plans that the  
11 Bureau of Air has now to go out and inspect sources  
12 for compliance.

13          MR. FORCADE: Are there any specific documents  
14 relating to the transfer of an ATU that the facility  
15 must maintain on-site?

16          MR. KANERVA: Could you repeat that, please?

17          MR. FORCADE: Are there any specific documents  
18 relative to the transfer of ATUs that the facility  
19 must keep on-site or contractual documents the  
20 facility must keep on-site?

21          MR. KANERVA: I think the real answer to that  
22 question is sort of good business practice. I mean,  
23 good accounting procedures would call for you to be  
24 able to back up what went into putting a contractual

1 relationship into place, and corporations, companies,  
2 have their own audits and accountability process. So  
3 I think we expect that there would be suitable  
4 documentation available.

5 MR. DESHARNAIS: Moving on to the prefiled  
6 questions from Sonnenschein filed January 16th,  
7 Question 3.

8 MS. FAUR: Question 3, I'd like to ask this  
9 question in a different manner so as to clarify it.

10 Mr. Kanerva, when determining the \$10,000  
11 per ton develop price for the ACMA, did you examine  
12 market transactions involving emission reduction  
13 credits in either the Chicago nonattainment area or  
14 other severe nonattainment areas?

15 MR. KANERVA: No, we didn't.

16 MS. FAUR: And why weren't these considered?

17 MR. KANERVA: Because the basis for that value  
18 is derived a whole different way.

19 The basis is really control cost. And we  
20 did consider control cost information from the  
21 Chicago nonattainment area in designing and arriving  
22 at that particular dollar amount.

23 In the last RACT rulemakings, the upper  
24 end of the cost per ton for the rules that were put

1 on the books was about \$7,000 a ton. Of course, we  
2 are looking in the future mode here to 1999. And in  
3 projecting sort of forward, our feeling was that we  
4 should be at about the \$10,000 a ton level to get --  
5 to put ACMA in this secondary source mode.

6 MS. FAUR: Thank you.

7 MR. DESHARNAIS: Okay. I believe that there  
8 were some remaining questions from the ERMS Coalition  
9 there, Section 19, Questions 20 and 21.

10 MS. MIHELIC: You mean pages 20 and 21?

11 MR. DESHARNAIS: Pages 20 and 21.

12 MR. SAINES: Thank you. I'm Rick Saines with  
13 ERMS Coalition.

14 This question is question A, pertaining  
15 to Section 205.610(b).

16 Does the Agency intend to reduce a  
17 participating source's emissions by 1 percent each  
18 year to replenish the ACMA?

19 MR. KANERVA: Yes.

20 MS. MIHELIC: A quick follow-up question to  
21 that.

22 So each year, a source's allotment will  
23 be reduced by 1 percent so that in 2001, the source's  
24 allotment will reduce by 1 percent, in 2002 by 1

1 percent, and in 2003 by 1 percent?

2 MR. KANERVA: No. The initial compliance  
3 reduction, if you will, is the 12 percent that  
4 sources are going to have to achieve, and the 1  
5 percent for ACMA is part of that 12 percent. So  
6 that just carries through, carries forward, from  
7 there on. It would be sort of silly to give the 1  
8 percent back each year and take it, so it's just  
9 committed for the ACMA.

10 MS. MIHELIC: Thank you.

11 MR. SAINES: This pertains to Section  
12 205.610(c).

13 Question No. 1, what is the standard for  
14 obtaining regular access to the ACMA?

15 MR. KANERVA: That it's a participating source  
16 or a new participating source and that they apply  
17 during the reconciliation period.

18 MR. SAINES: Question No. 2, must a source  
19 demonstrate that the source has not been able to  
20 attain ATUs in the market prior to obtaining regular  
21 access to the ACMA?

22 MR. KANERVA: No.

23 MR. SAINES: That would be no. Okay.

24 Question No. 3, is special access to the



1 ACMA always available?

2 MR. KANERVA: It's available provided the  
3 source qualifies by the criteria that are listed  
4 there, and it's available up to the extent of 1  
5 percent of the next season's allotment, 1 percent per  
6 next year.

7 MR. SAINES: Okay. Question 4, what is market  
8 price?

9 MR. KANERVA: It's the price of the  
10 transactions that take place for trading of the  
11 allotment that was used.

12 MR. SAINES: And we are going to withdraw  
13 Question Nos. 5 and 6 as being asked and answered.

14 Question No. 7 -- and this is really a  
15 clarification of an earlier question asked by  
16 Tenneco -- when must transactions have occurred in  
17 order to be considered in the Agency's determination  
18 of the market price?

19 MR. KANERVA: During that calendar year.

20 MR. SAINES: So the previous season; same  
21 season?

22 MR. KANERVA: Same season; same calendar year.

23 MR. SAINES: Same calendar year.

24 I guess this is -- well, I'll just ask

1 it. Question No. 8, is it not inherent that the  
2 market will determine the market price?

3 MR. KANERVA: Yes.

4 MR. SAINES: We will withdraw Question No. 9.

5 Question No. 10, what does the  
6 Agency mean by, quote, ATUs shall only be available  
7 at two times the market price if sufficient single  
8 season ATU transfers have occurred with a purchase  
9 price that fully reflects the consideration involved  
10 in the transfer to establish an average market price,  
11 end quote?

12 MR. KANERVA: Well, I think we have described  
13 that, but that's a qualifier to ensure that we'll be  
14 able to truly calculate a meaningful average. And we  
15 need to have transactions where representative  
16 monetary exchange takes place. And if it's a  
17 nonmonetary consideration such as the questions posed  
18 by Mr. Forcade, we wouldn't really be able to  
19 calculate a valid average.

20 MR. SAINES: All right. Question No. 11, what  
21 are sufficient single transfers?

22 MR. KANERVA: Well, if you really want to get  
23 mathematical, it takes two to average. So we have to  
24 have at least two transactions with monetary

1 exchange. If there's any question about those,  
2 obviously our preference would probably be to have  
3 many more than that, and there probably will be, but  
4 ...

5 MR. SAINES: Would the two transfers alone be  
6 sufficient for the Agency to determine their market  
7 price?

8 MR. KANERVA: Sure.

9 MR. SAINES: Question No. 12, why must the  
10 Agency consider whether the purchase price in the  
11 market, quote, fully reflects the consideration  
12 involved in the transfer, end quote, to establish an  
13 average market price?

14 MS. SAWYER: I think we've already explained  
15 this one.

16 MR. SAINES: The question really is, since this  
17 is a market-based program, isn't whatever the sources  
18 are able to get for their ATUs, isn't that ultimately  
19 the market price?

20 MR. KANERVA: And the answer to that is the  
21 example question Mr. Forcade asked; and that is, a  
22 company internally itself may simply decide to shift  
23 ATUs from one part of the company to another and  
24 leave the cost inherent in how it works out. It's

1 accounting. And we would have no idea what the value  
2 or the true market representation of that exchange  
3 was.

4 MS. MIHELIC: But you said earlier that those  
5 would not be considered in determining the market  
6 price; that those would be excluded.

7 So in determining the market price, then  
8 you would only consider transactions that have a  
9 monetary value; is that right?

10 MR. KANERVA: Or that we can figure out in  
11 monetary terms what their value was, if there are  
12 ways -- if there's other documentation that will help  
13 us do that. But the simplest criteria is simply the  
14 ones where there's a buyer, seller, and an actual  
15 exchange of money.

16 MR. SAINES: Okay. Then we will withdraw  
17 Question No. 13 as being asked and answered.

18 Question No. 14, why isn't the Agency  
19 required to provide written notification allowing or  
20 denying regular access to the market as set forth in  
21 Section 205.610(d)(4)?

22 MR. KANERVA: You know, for the special acts,  
23 I'm going to back into that as the prerogative of the  
24 testifier here.

1                   For the special acts in part since that  
2 does involve the possibility of appeal, we put in  
3 there a written notification provision. I think the  
4 practice we would use for regular access is the same  
5 thing. We would notify in writing so there would be  
6 a record of it. If that's a clarification that needs  
7 to be made, it's not a problem.

8           MR. SAINES: Is that to mean that you can  
9 appeal determination of a denial of regular access?

10          MR. KANERVA: No. I said special access. I  
11 backed in this and explained special access and then  
12 answered your question about regular access.

13          MR. SAINES: So for purposes of regular access,  
14 you cannot appeal the Agency's determination?

15          MR. KANERVA: What's there to appeal?

16          MR. SAINES: Well, if it's denied. I mean --

17          MR. KANERVA: The only criteria are if you're  
18 either in the reconciliation period or not, and I  
19 think we can keep track of the calendar. The other  
20 is if you're a participating source or not, and  
21 that's cut and dry. You got a transaction to count,  
22 and then you are in the system. If we figure out  
23 something to appeal in that situation, we've got our  
24 wires crossed.

1           MR. SAINES: I suppose the reason there would  
2 be a need for it to appeal would be that the source  
3 believes in good faith that they were unable to  
4 attain ATUs based on the market price, and they were  
5 looking first for a regular access.

6           MR. KANERVA: That's special access.

7                   Regular access, they just got to be a  
8 player and they've got to file the reconciliation,  
9 and they got it.

10                   You only have the additional tests, two  
11 additional criteria, if you are into a negative  
12 balance situation and we have run the account down to  
13 zero. I mean, we remove, really, any hurdles to  
14 getting the ATUs if there's a positive balance.

15           MR. SAINES: Okay. One more follow-up.

16                   Can you appeal a market price  
17 determination, an Agency's market price  
18 determination?

19           MR. KANERVA: The way the rule is structured,  
20 that's not -- it's not structured to provide for  
21 contesting the Agency's decision on that. The appeal  
22 is really linked to a specific access request  
23 action.

24           MR. SAINES: Okay. Moving along to questions

1 pertaining to Section 205.610(d), which is special  
2 access.

3                   Question No. 1, will insufficient ATUs  
4 in the ACMA ever be a basis for requiring further  
5 reductions from participating sources?

6           MR. KANERVA: No.

7           MR. SAINES: Question No. 2, how does one  
8 demonstrate that it has been unable to obtain ATUs in  
9 the market?

10           MR. KANERVA: Normal business practice  
11 documentation; providing us copies of written offers  
12 to buy, and they can take whatever form. I mean, it  
13 might be sort of a contractual type of arrangement.  
14 A lot of other offers are made back and forth between  
15 businesses to enable transactions to take place, and  
16 whatever accounting they would normally use is fine.

17           MR. SAINES: Does the Agency have any idea as  
18 to how many showings there needs to be; how many  
19 records of attempts to attain ATUs? Is one denial of  
20 ATUs sufficient? Is it two, three, or is this just  
21 something that is going to be worked on in a  
22 case-by-case base?

23           MR. KANERVA: 4.5.

24           MR. SAINES: 4.5. The answer is obviously

1 more than one because that's not much of a good faith  
2 effort to really go look for something. I think  
3 probably in the vicinity of two or three legitimate,  
4 you know, attempts to seek a seller.

5 MR. SAINES: Question No. 3 -- and if it  
6 doesn't come out clearly, I'll be happy to try and  
7 explain it -- why is there a greater increase in the  
8 multiple of the market price, that is, 2.02.5 than  
9 the increase of the ATU price, that is, \$1,000 to  
10 \$1,100, between regular access and special access to  
11 the ACMA?

12 MR. KANERVA: You must have worked a long time  
13 on that question.

14 MR. SAINES: I'm very proud of that question.

15 MR. KANERVA: That's good. It's the one I  
16 liked.

17 No. I think it's comprehensible, I  
18 think.

19 We obviously expect a market price side  
20 of this to be much lower than the fixed rate side of  
21 it. And that being the case, if we didn't have a  
22 higher multiplier in going from the regular to  
23 special, we'd, in effect, be skewing all the results  
24 over to the market price side, and it's just to sort



1 of keep a balance between those two as the market  
2 price starts to go up.

3 Now, is that as clear as your question?  
4 Almost?

5 MR. SAINES: I think that's about as good as we  
6 can get.

7 MR. KANERVA: Good.

8 MR. SAINES: It doesn't mean that I understand  
9 it, of course.

10 Moving to Sections 205.610(e) and (f),  
11 Replenishing the ACMA.

12 Question, how does the Agency intend to  
13 obtain ATUs to replenish the ACMA? It may be  
14 answered already.

15 MR. KANERVA: Well, there's at least four major  
16 ways that it might be done. One is for us to  
17 actually go out and implement emission reduction  
18 projects, such as old vehicle scrapping projects to  
19 get dirty cars off the road. Another might be to  
20 work with emission reduction generators, small  
21 generators, and work with them to get controlled  
22 technologies put on.

23 And don't forget, we've got -- I mean,  
24 the ACMA account is actually -- it's a monetary

1 fund. We have legislative authority to operate that  
2 fund and to go out and make purchases in order to  
3 drive reductions to happen.

4                 Shutdowns is another avenue that we have  
5 a 20 percent split off from the shutdown allotment  
6 portion that would come to the account. And we think  
7 there would be contributions. People will actually  
8 voluntarily contribute portions of their allotments  
9 into the account for reasons that are, you know,  
10 specific to that company, to each company.

11                 MR. SAINES: Thank you.

12                 Questions pertaining to Sections  
13 205.610(g) and (h), Limitations on the Operation of  
14 ACMA.

15                 Question No. 1, why is access to the ACMA  
16 limited to 50 percent to new participating sources if  
17 no other sources require access?

18                 MR. KANERVA: Well, there's two parts to that.  
19 First of all, there's a 2002 cut-off point in which  
20 any sort of limitation on new sources versus existing  
21 goes away. It's wide open to anybody.

22                 In the first several years, we felt it  
23 was important to put that sort of ceiling on the new  
24 sources because the majority of the activity and the

1 majority of the responsibility to achieve compliance  
2 and get the system functioning will be the existing  
3 sources. They are the ones that need to have the  
4 insurance pool and the safety valve. And they need  
5 the assurance that a portion of the ACMA is sort of  
6 reserved for them, at least for the first couple of  
7 years until we get the system fully functioning and  
8 everyone comfortable with it.

9 MR. SAINES: Question No. 2, may a new  
10 participating source appeal the denial of the access  
11 to the ACMA?

12 MR. KANERVA: If they are at the point that  
13 they are seeking special access.

14 MR. SAINES: Okay. And this is Question  
15 No. 3.

16 What does in the aggregate mean? It's  
17 related to language that's --

18 MR. KANERVA: It means all the new sources that  
19 might request access.

20 MR. SAINES: Okay. That's it. Thank you.

21 MR. DESHARNAIS: Any additional questions on  
22 205.610?

23 Ms. Hodge?

24 MS. HODGE: Yes. I have a few questions.

1                   Katherine Hodge with the firm of  
2 Hodge & Dwyer representing the Illinois Environmental  
3 Regulatory Group. And these are from our prefiled  
4 questions dated January 14th.

5                   Starting at Question No. 25 on Page 11,  
6 Question No. 25 has been asked and answered, so we  
7 will withdraw it.

8                   Question No. 26 -- and I apologize.  
9 There is a typo in this question, so I will read it  
10 with the correct citation.

11                  Section 205.610(d)(1) states the Agency  
12 shall credit the ACMA with up to 1 percent of ATUs  
13 from this season allotment for the next seasonal  
14 allotment period as an advance to provide assistance  
15 for special access to be granted.

16                  Does this mean that the Agency will run a  
17 1 percent negative balance based on the overall  
18 number of ATUs that will be issued in the next season  
19 allotment period and apply it to the ACMA?

20                  MR. KANERVA: Basically, yes. But the way we  
21 look at it is it's a credit, you know. It's like  
22 having a draw down on an account where you could use  
23 funds in advance of actually providing the cash.  
24 But, yes, we are borrowing from next year.

1 MS. HODGE: Thank you.

2 Question No. 27, I think the first part  
3 of this has been asked and answered, so I will just  
4 ask the second part.

5 Is it correct that Section 205.610(d)(1)  
6 will not require the imposition of a further  
7 reduction beyond the voluntary 18 percent reduction  
8 for exempt sources? I believe Mr. Forcade had asked  
9 the 12 percent for participating sources question.

10 MR. KANERVA: That's correct.

11 MS. HODGE: Question No. 28, that has been  
12 asked and answered. We will withdraw it.

13 Question 29, what did you mean,  
14 Mr. Kanerva, when you made the following statements  
15 in your prefiled testimony; and we are looking at  
16 Page 5 and Page 7 of your testimony, and these are  
17 quotes. The first one is, the simplest way to avoid  
18 these adverse consequences is to borrow the needed  
19 ATUs from the next year and pay them back as other  
20 emission reductions are generated or deduct them from  
21 allotments to participating sources.

22 And in particular, we are concerned about  
23 that last phrase, or deduct them from allotments to  
24 participating sources.

1                   And the other quote that fits in with  
2 that is the system that is brought into balance the  
3 next year by adjusting the allotments to reflect the  
4 borrowed amount of ATUs.

5           MR. KANERVA: The way I'd like to answer this  
6 question is with my infamous example that I've been  
7 waiting patiently to provide, and, hopefully, this  
8 will get the question you are really asking here. I  
9 think we have copies of this available.

10                   What I'd like to do is actually run  
11 through how the sequence of events would work to show  
12 how these component parts come into play, at what  
13 time, and that will wind up answering your question.

14                   I have set this example to assume that  
15 1,100 ATUs, which represents about 110 tons, it's the  
16 1 percent of the allotments, would be available in  
17 the year 2000 and 1,100 ATUs again in 2001.

18                   And I'm saying here that sources  
19 request -- during their reconciliation period, they  
20 request the entire amount, the entire 1,100 ATUs. So  
21 we wind up with a balance of zero at that point.

22                   And then we have near the end of the  
23 reconciliation period more qualified sources request  
24 ATUs; another 550 ATUs.

1                   That's probably a little more readable;  
2 technical difficulties.

3                   We have another 550 ATUs requested. The  
4 balance is at zero, so we are into the special access  
5 situation.

6                   And here's where we would do the  
7 advance. We would credit the ACMA with 550 ATUs to  
8 satisfy these requests with an advance from 2001, and  
9 then the sources could go ahead and purchase those  
10 for the applicable price. That still leaves us 550  
11 ATUs that will be available when we get to 2001 for  
12 the ACMA.

13                   Now, in terms of the emission reductions  
14 that would be happening here, the ACMA provisions say  
15 that we are supposed to generate -- attempt to  
16 generate emission reductions to cover any deficit  
17 situation like this.

18                   So I'll just arbitrarily come up with as  
19 an example that we find 30 tons of reductions out  
20 there, which would be 300 ATUs, and we do that as we  
21 head into the new year. We keep trying to get the  
22 reductions and to balance out the account. And in  
23 this case, that's all we are able to generate, so  
24 that leaves a 250 shortfall by the time we are at the

1 end of that next season. So when you balance that  
2 all out, we had 550 ATUs available and 250 they've  
3 got that we found in reductions.

4           So, basically, there were still 300 ATUs  
5 that are available for purchase. So it's kind of a  
6 sequence of steps that the draw down of the -- up to  
7 the 1 percent is a bookkeeping action that creates  
8 sort of the safety valve. But then we don't actually  
9 take that away as available for sources until we have  
10 exhausted our efforts to try and get the emission  
11 reductions underway. And it may not be even -- maybe  
12 my testimony wasn't as artful as it should have been,  
13 but it's that sequence of events that the rule sets  
14 up.

15           MS. HODGE: So then what you are saying is that  
16 the Agency does not intend to deduct the shortfall  
17 from allotments issued to participating sources?

18           MR. KANERVA: Not as an additional deduction,  
19 no. The most it would ever be is the same 1 percent  
20 that would have been taken anyway. It was already  
21 part of the 12 percent and what have you. It's not  
22 an increment on top of that. It's just whether or  
23 not the portion size of ACMA remains for purchase  
24 because of how we regenerate reductions or it



1 doesn't.

2 MR. DESHARNAIS: Thank you.

3 Okay. Could the record please reflect  
4 that the Agency has been referring to an overhead  
5 projection entitled Example for ACMA Access prepared  
6 by Roger Kanerva for ERMS hearing, February 3, 1997.

7 Does the Agency wish to have this  
8 admitted as an exhibit?

9 MS. SAWYER: Yes.

10 MR. DESHARNAIS: Can we go off the record for a  
11 second?

12 (Discussion had off the  
13 record.)

14 MR. DESHARNAIS: Okay. The Agency has moved to  
15 have this admitted into evidence.

16 Is there any objection?

17 Okay. The document entitled Example for  
18 ACMA Access prepared by Roger Kanerva for ERMS  
19 hearing, February 3, 1997 will be admitted as Exhibit  
20 No. 47.

21 MS. MCFAWN: I would just note that  
22 Mr. Kanerva thought he would see us sooner since  
23 it's dated February 3rd and today is February 11th.

24 MR. KANERVA: That was not a subtle hint.

1 MS. MCFAWN: We would have loved to have had  
2 you on the 3rd.

3 MR. DESHARNAIS: Okay. Are there any  
4 additional questions on 205.610?

5 MR. WAKEMAN: I have one question on the  
6 exhibit that we just entered. Mr. Wakeman from  
7 Tenneco.

8 The 30 tons that you mentioned that you  
9 are going to go out and find as a further reduction,  
10 can you give me an example of what that is if it's  
11 not going to be deducted from somebody's account?

12 MR. KANERVA: I gave that answer to their  
13 questions about how you replenish the ACMA; for  
14 instance, going out and doing a car scrapping  
15 project.

16 MR. WAKEMAN: Okay. Thank you.

17 MR. DESHARNAIS: Additional questions?

18 Mr. Trepanier?

19 MR. TREPANIER: Yes, clarification of the  
20 question asked by the ERMS Coalition on how does the  
21 Agency intend to obtain ATUs to replenish the ACMA.

22 My question is, in your response that the  
23 ACMA would be replenished through the 20 percent  
24 take-away from shutdowns, is it your belief that

1 this -- is it your belief that there will be -- that  
2 during shutdowns, there will be some allotments yet  
3 available to subtract 20 percent from -- given Chris  
4 Romaine's testimony that participating sources may  
5 simply -- that these provisions for shutdown of  
6 participating sources may simply encourage sources  
7 to divest themselves in surplus ATUs as part of a  
8 process of downsizing in closing a plant?

9 MR. KANERVA: Well, there's no inconsistency  
10 between those provisions. What he was getting at  
11 was a source may make some arrangement to essentially  
12 turn their whole allotment over to some party.  
13 but in the course of doing that, because it was  
14 originally from a shutdown, 20 percent of that  
15 would have to be taken off to be placed in the  
16 ACMA.

17 So the new source for getting the  
18 transfer would be getting 80 percent of what the  
19 shutdown source's allotment would have been, which  
20 still may be something they want to do.

21 MR. TREPANIER: Are you suggesting that when  
22 a long-term transfer of ATUs occurs prior to a  
23 shutdown, that there will be a 20 percent reduction  
24 that will go to the ACMA?

1           MR. KANERVA: No. I'm looking to my example to  
2 where there's actually a source that stops operating  
3 and surrenders its permits and shuts down.

4           I think Chris was talking about a  
5 sequence of events where someone decides in advance  
6 of shutting down to enter into a transfer agreement  
7 and make their allotment available to somebody. And,  
8 yes, they could do that. They could make that  
9 arrangement in advance.

10          MR. TREPANIER: Is it fair to say that given  
11 Chris Romaine's understanding that the provision for  
12 shutdown may simply encourage sources to divest  
13 themselves in surplus ATUs as part of the process of  
14 downsizing and closing a plant, that this 20 percent  
15 that you spoke of replenishing the ACMA may not  
16 be available?

17          MS. SAWYER: I don't think Mr. Kanerva can  
18 testify as to Mr. Romaine's understanding.

19          MR. TREPANIER: I'm asking if that given the  
20 testimony of Mr. Romaine, that these provisions  
21 encourage, simply encourage, sources to divest  
22 themselves of surplus ATUs as part of the process of  
23 downsizing and closing a plant, is it fair to say  
24 that that 20 percent that Roger testified that would

1 be available to replenish the ACMA may not be  
2 available?

3 MR. KANERVA: Well, to put this in context, I  
4 did not hear all of Chris Romaine's testimony, and  
5 that may be one statement out of a whole sequence of  
6 discussions.

7 I mentioned shutdowns as one possibility.  
8 That's not the only way to replenish the ACMA. I  
9 mentioned at least three other approaches. For  
10 instance, the car scrapping type of project where we  
11 actually go out and sponsor something and do it;  
12 generating from other smaller stationary sources in  
13 addition to the reduction generator category; or for  
14 that matter, contributions from the Agency. I mean,  
15 there's multiple ways.

16 The other one is the 6 percent surplus  
17 reduction for a source that decides to opt out in the  
18 beginning of the system. That's the one that takes  
19 the 18 percent reduction approach. There's another 6  
20 percent difference or more that could come under  
21 ACMA.

22 MR. TREPANIER: Do you also acknowledge that  
23 the provisions of this proposal may simply encourage  
24 sources to divest themselves in surplus ATUs as part

1 of a process of downsizing and closing a plant?

2 MR. KANERVA: No, I don't. And I think there's  
3 so many other economic aspects to making a decision  
4 like that that I don't think what we are doing with  
5 this rule is going to drive the process one way or  
6 another.

7 MR. TREPANIER: What advantage do you see?  
8 What force is that that you believe that would  
9 encourage the emitter to ask for the permit to be  
10 rescinded prior to transferring away their ATUs?

11 What force do you believe would be to --  
12 that would encourage the emitters to have 20 percent  
13 of their allotment set in the ACMA rather than having  
14 it available for themselves to sell it?

15 MR. KANERVA: The economics of their shutdown  
16 might be so overwhelming compared to the size and the  
17 economic value of their allotment that it really  
18 doesn't make any difference to them one way or the  
19 other.

20 MR. TREPANIER: In which case it would be kind  
21 of an oversight, an economic oversight?

22 MR. KANERVA: It would be something they  
23 wouldn't pay enough attention to to bother one way or  
24 another.

1 MR. TREPANIER: All right. So you said that  
2 the ACMA may be replenished through donations from  
3 sources?

4 MR. KANERVA: Contributions is the term I used,  
5 but either one is probably fine.

6 MR. TREPANIER: What do you believe will  
7 motivate an emitter to make a contribution to the  
8 ACMA?

9 MS. SAWYER: I actually think he already  
10 answered that question in response when he responded  
11 to that question initially. He did answer that.

12 MR. DESHARNAIS: Mr. Kanerva, do you have any  
13 additional responses?

14 MR. KANERVA: Let me elaborate a little bit.

15 We already have examples of that sort of  
16 situation taking place. A major manufacturing  
17 company here in the Chicago area contributed I think  
18 it was 300 tons of emissions that were generated from  
19 them accepting reduced limitations in their permit or  
20 more stringent control level in their permits to the  
21 City of Chicago for their banking approach, emissions  
22 credit banking approach.

23 Public image, their concern for the  
24 economic vitality of the area, being a good guy

1 company, there's a lot of possibilities. Maybe the  
2 deduction would result in some kind of a tax  
3 advantage for them. That's perfectly fair too.

4 MR. TREPANIER: Do you believe that a donation  
5 to the ACMA would be tax deductible?

6 MR. KANERVA: It all depends on the individual  
7 tax circumstances for a company. I don't think I  
8 could make a generalized projection one way or  
9 another. I think it's a possibility. I sure hope it  
10 is anyway.

11 MR. TREPANIER: Thank you.

12 MR. DESHARNAIS: I believe there's a question  
13 from Ms. Elizabeth Ann.

14 MS. ANN: Yes, just a quick question on  
15 clarifying your example on the bottom.

16 Where you say it's a credit of 550, that  
17 means a credit -- that the 550 ATUs that was credited  
18 to the year 2000 from the year 2001 allotment, and  
19 then you are subtracting 300 ATUs from the new  
20 reduction, so that the 250 ATU shortfall means that  
21 in the year 2001 allotment, there's 250 ATUs less  
22 than before; and so that there are 750 ATUs available  
23 for the 2001 allotment, and you need  
24 to -- 850 ATUs available for 2001?



1           MR. KANERVA: Well, actually, it's not that way  
2 because you are down to 550 because we needed to use  
3 that to actually address the needs for special  
4 access. Okay. So that sort of becomes the maximum  
5 you can get back.

6                     And to the extent we can go out and get  
7 that 550 back, that's the difference. So it's always  
8 what we can generate minus the amount left. And so  
9 you are going to wind up with 300 instead, so it's a  
10 deduction. You don't add it on to the 550.

11                    Now, I could have made this example come  
12 out like you are saying if we'd have generated three  
13 times as many reductions as this, we could have  
14 actually gotten back up to the full amount.

15           MS. MCFAWN: Maybe I misunderstand this. You  
16 needed to draw 550 from the next season, and that  
17 left you with 550, didn't it?

18           MR. KANERVA: Right.

19           MS. MCFAWN: So after you have taken that  
20 advance, you are left with 550; you found 300. So  
21 why isn't it 550 plus 300?

22           MR. KANERVA: I knew this example would turn  
23 into a problem. Let's see. What's the best way to  
24 explain this?

1                   The 550 -- the simplest way to do this  
2 is let me clarify the example and we'll just refile  
3 it because I think what I actually need to do is  
4 explain this a little more carefully. Is that  
5 appropriate?

6                   I mean, the main point I was trying to  
7 make here to answer Kathy Hodge's question was, when  
8 does the 1 percent draw-down happen relative to us  
9 going out and trying to take care of it through  
10 reductions so the sources don't lose it.

11                  MS. ANN: All right. So I understand that just  
12 basically because you've used all of the allotments  
13 through 2000 through regular access, for special  
14 access, you just took 550 allotments from the next  
15 year, so that you wanted to make up that next year,  
16 so you went out and did extra reductions someplace  
17 else. So you got extra reductions, 300 ATUs; so that  
18 in the year 2000, you have 850 ATUs available; and if  
19 you wanted to get it back up to the number that it  
20 was before, you could find 250 ATUs.

21                  MR. KANERVA: Yes.

22                  MS. MCFAWN: As far as correcting it on the  
23 record, I think that summarized it correctly. And  
24 maybe what you want to do is submit another example

1 on a revised sheet.

2 MR. DESHARNAIS: Okay. Any additional  
3 questions on 205.610? Just to clarify, we are  
4 intending to go on to about 1:00. We'll see how far  
5 we get by then. We will take lunch at 1:00.

6 Okay. The next section is 206.620,  
7 Emissions Excursion Compensation. We will begin with  
8 questions from the ERMS Coalition.

9 MS. SAWYER: Just one moment. We have to get  
10 the right witnesses up.

11 MS. MIHELIC: Tracey Mihilic on behalf of the  
12 ERMS Coalition. I am asking questions from Page 22  
13 of our prefiled questions, Section 20(a) with respect  
14 to Section 205.620.

15 When must a source file a petition  
16 contesting the findings of the Agency in seeking  
17 review by the Board of an emissions excursion notice?

18 MR. KOLAZ: That would be within 30 days of the  
19 notice. Although that's not specifically stated in  
20 the rule, that is the time frame we intend to give a  
21 source to either compensate for the excursion or to  
22 file a petition with the Board.

23 MS. MIHELIC: Do you intend to modify any of  
24 the rules to set forth that time frame or will that

1 simply be set forth in the notice?

2 MR. KOLAZ: That's something we'll discuss.

3 MS. MIHELIC: Question (b), if a source  
4 complies with the requirements of an emissions  
5 excursion notice, may the state, federal government  
6 or citizens groups bring an enforcement action for  
7 violation of the source's CAAPP permit?

8 MR. KOLAZ: Well, the rule itself addresses  
9 that, in that it states I think pretty clearly in  
10 205.620(f) that no action can be taken for the  
11 emission excursion itself. However, if there is a  
12 violation of the permit, a fundamental rule or  
13 regulation, maybe it's a VOM content limit, then  
14 there could be an action taken in that regard.

15 MS. MIHELIC: Okay. And will it not -- the  
16 follow-up question is, won't the allotment that a  
17 source gets be set forth in its Title 5 permit as a  
18 seasonal allotment?

19 MR. KOLAZ: The seasonal allotment will be  
20 listed in the permit, but primarily for informational  
21 purposes. It will not be a restriction.

22 MS. MIHELIC: It will not be a condition of the  
23 Title 5 permit that the source have only this amount  
24 of emissions or this allotment each season?

1           MR. KOLAZ: That's correct. A source can hold  
2 any number of ATUs that it can acquire.

3           MS. MIHELIC: So it will not be an enforceable  
4 condition by either the state, federal government or  
5 any citizen group?

6           MR. KOLAZ: That's correct.

7           MS. MIHELIC: So a follow-up question to that  
8 would be Question (c); does this section provide  
9 complete immunity from enforcement by the state,  
10 citizens, and the federal government and to clarify  
11 that in the instance where a source has complied with  
12 the emissions excursion notice?

13          MR. KOLAZ: Let me give you an answer and then  
14 qualify it.

15                    If the only violation a source had was  
16 that it exceeded -- it emitted volatile organic  
17 material in the preceding season in excess of the  
18 number of ATUs that it had available to compensate,  
19 then there would be no further action it could have  
20 taken on the basis of Rule 205.620(f).

21                    But, again, if there were another  
22 violation, an emission limit violation that's  
23 contained in the permit, then that is not protected  
24 under that Paragraph (f).

1 MS. MIHELIC: And what would be other -- I  
2 think you said other violations of other permit  
3 conditions. What would be examples of those?

4 MR. KOLAZ: Well, the existing rules and  
5 regulations still are in force. So, again, a simple  
6 example would be a coating limit that the company was  
7 subject to. In fact, there's any number of  
8 conceivable scenarios we could come up with.

9 There could be a situation where a  
10 company does not have any ATU exceedance. In fact,  
11 it could be that they are well within the allotment  
12 that's issued them in their permit; yet, if they use  
13 coatings in excess of the limitations that would be  
14 applicable to them, then they would be subject to  
15 enforcement action.

16 But in the situation where they hold  
17 enough ATUs, even if it comes about as part of the  
18 excursion compensation notice process, then they  
19 would not be in violation of the ERMS rule that  
20 requires them to hold enough ATUs to cover the  
21 volatile organic material with emissions from the  
22 preceding season.

23 MS. MIHELIC: And a follow-up question to that  
24 is, why if the Agency has decided at this time to set

1 CAAPPS, basically a CAAPP on all the emission sources  
2 in the Chicago area, an area-wide CAAPP basically by  
3 this market program, why then does a source still  
4 have to comply with a pound-per-gallon limitation if  
5 it is complying with its ATU allotment or it is  
6 obtaining ATUs from other sources within the area?

7 MS. SAWYER: Could you repeat the question or  
8 have it read back?

9 (Record read as requested.)

10 MR. FORBES: I'll try to answer that.

11 Mr. Forbes.

12 The Agency and the State is still  
13 obligated to comply with all federal requirements.  
14 And in complying with RACT requirements is one of the  
15 requirements contained in the Federal Clean Air Act.  
16 So we are still obligated to meet all of those  
17 various requirements as well as those requirements  
18 contained in our state adaptation plan that we have  
19 relied on.

20 MR. DESHARNAIS: Moving on to the questions  
21 filed by Tenneco, Questions 70, 71, and 72.

22 MR. FORCADE: Thank you.

23 Question 70, does Section 205.620  
24 authorize the Agency to issue excursion compensation

1 notices when a source was unable despite diligent  
2 efforts to purchase ATUs on the market or because no  
3 ATUs were available in the ACMA account for that  
4 source?

5 MR. KOLAZ: Yes, it does.

6 MR. FORCADE: If a participating source  
7 appeals an excursion compensation notice to the  
8 Board, is the Board authorized to vacate the notice  
9 or the source was unable despite diligent efforts to  
10 purchase ATUs from the market or because no ATUs were  
11 available in ACMA to that source?

12 MS. SAWYER: I suggest this is a legal  
13 interpretation. We could provide a written response  
14 to this question if that's suitable.

15 MR. FORCADE: Sure.

16 Question 27, if a source has attempted to  
17 purchase ATUs, but no ATUs were available on the  
18 market and no ATUs were available in the ACMA to that  
19 source, then is the source's maximum exposure \$1,000  
20 for the ATU?

21 MR. KOLAZ: No.

22 MR. FORCADE: The Agency has repeatedly stated  
23 that the maximum exposure is \$1,000 per ATU. Would  
24 the Agency be willing to place a \$1,000 per ATU limit



1 in the regulations and provide that as a defense to  
2 a compensation excursion notice?

3 MR. KOLAZ: I think the maximum exposure phrase  
4 that you use I think is taken out of the context of  
5 the question which you have now framed. The Rule 620  
6 I think clearly explains that in an excursion  
7 compensation notice period, your liability is for 1.2  
8 or 1.5 times the number of ATUs from next year's  
9 allotment, and that comes directly out of your  
10 allotment.

11 So your exposure really is on the basis  
12 of the market value of the ATUs in the next season,  
13 which, you know, is really unpredictable. It could  
14 be on the low side. It could be much less than  
15 \$1,000. On the other hand, it's conceivable that you  
16 could have sold those ATUs for more than \$1,000; and  
17 it's also conceivable that in that next year, there  
18 were not ATUs available in the ACMA at \$1,000, but  
19 maybe available in the special access part at \$1,100.

20 So it's difficult to say that under all  
21 circumstances your exposure is at \$1,000 per ATU,  
22 again, in the way that you have framed your  
23 particular question.

24 MR. DESHARNAIS: Okay. Moving on to the

1 prefilled questions from Mr. Trepanier, prefilled  
2 questions, Page 12, Question No. 9. Anyone know  
3 where that is?

4 MR. TREPANIER: I did look for that. I  
5 couldn't identify which question it was, so I suggest  
6 that I review that with the Agency at lunch.

7 MS. SAWYER: Okay.

8 MR. TREPANIER: But I did have a follow-up  
9 question, just one, to the ERMS Coalition earlier.

10 MR. DESHARNAIS: Okay.

11 MR. TREPANIER: And that regards your example  
12 of the camcorders, still following the rules when  
13 it's a pounds per gallon rule. I understand that's a  
14 RACT rule.

15 Are there least achievable emission rate  
16 rules that will not still be followed when the ERMS  
17 program is operating?

18 MR. SUTTON: Well, one of the things that will  
19 be carried forward in a Title 5 permit are  
20 restrictions that are taken to either comply with or  
21 avoid a new source review in the Chicagoland area,  
22 and those will still exist at the source and still  
23 will have to be complied with, if that's what you  
24 mean by least achievable.

1                   If they had to have put in LAER, for  
2 example, L-A-E-R, they would continue that forward in  
3 their Title 5 permit and compliance with that would  
4 have to be carried forward in the future.

5           MR. TREPANIER: Is there any other existing  
6 restrictions such as that pounds per gallon  
7 requirement for amount of emissions per unit produced  
8 that currently exist that will be eliminated when and  
9 if the ERMS program is found?

10          MR. SUTTON: It will not eliminate any current  
11 SIP requirement.

12          MR. TREPANIER: So just to make sure I have  
13 gotten the answer, if someone currently has some type  
14 of a restriction where they have an emissions per  
15 unit produced, if in the future their pollution  
16 control equipment starts to break down, some very  
17 expensive pollution control equipment breaks down,  
18 and they no longer are producing their products at  
19 that required level of emissions per unit, they will  
20 not be able to purchase allotments to make up that  
21 difference?

22          MR. SUTTON: Let me answer that in two parts.

23                   One, if they are in violation of the  
24 permit that forces that pollution control device to

1 work at a certain level, then there would be  
2 enforcement action to show that violation. It won't  
3 be an automatic relaxation. So they would be in  
4 violation of the underlying permit condition.

5           They may also because of that exceedance  
6 not have enough ATUs to satisfy their allotment  
7 needs and they would have to, I presume, purchase  
8 those.

9           MR. KOLAZ: That's correct.

10          MR. TREPANIER: So in that case, is purchasing  
11 the allotments obviating that discussion?

12          MR. SUTTON: No. I think it's fair to say that  
13 the ERMS rule actually establishes another level of  
14 requirements. It does not replace any of their  
15 non-existence.

16          MS. MCFAWN: So in his example, would they have  
17 to seek a permit obligation to continue operating  
18 absent their control equipment so that they are not  
19 in violation of their permit?

20          MR. SUTTON: Once they are out of compliance,  
21 they have to come into compliance. Either they can  
22 shut down or they can seek legal forbearance or a few  
23 other vehicles available possibly to solve that; but  
24 once out of compliance, then the enforcement action

1 starts.

2 MS. MCFAWN: All right. So purchasing the  
3 ATUs -- because we have talked this rule in the  
4 context that this will alleviate the need for  
5 variances and that type of thing because now there  
6 will be alternative methods of compliance.

7 But if in their permit, which is a permit  
8 to operate, there's a requirement that they have  
9 control equipment, which is a normal plan, they  
10 suffer a malfunction which is maybe due to a  
11 breakdown. Do they then have to modify their permit  
12 so that they don't face an enforcement action? How  
13 do they avoid the enforcement action assuming they  
14 are willing to buy the ATUs?

15 MR. SUTTON: I guess the easiest way to say it  
16 is it's the same as it is today.

17 MS. MCFAWN: Which is?

18 MR. SUTTON: They will either be shut down,  
19 seek provisional variance.

20 MS. MCFAWN: But that's only for 45 days?

21 MR. SUTTON: Yes. I mean, that's the option  
22 available. This does not change that particular  
23 status.

24 MR. MCFAWN: All right.

1           MR. KOLAZ: You know, maybe one thing -- I mean  
2 we could come up with other examples; but in the  
3 Chicago area, there are some sources, for example,  
4 that are required to control their emissions by 81  
5 percent. Many people you know, have chosen to use  
6 thermal oxidizers or afterburners. They will still  
7 need to do that after this rule is in place.

8           So let's just say there was an explosion  
9 or some type of problem, let's just say it breaks  
10 down, they certainly will need to buy ATUs to  
11 compensate for their excess emissions or else they  
12 are going to be in violation of the ERMS rule. But  
13 depending on the circumstances, they would be in  
14 violation of the 81 percent control requirement.

15          MR. DESHARNAIS: Ms. Mihelic, did you have a  
16 question?

17          MS. MIHELIC: Right. I mean, I guess going  
18 back to this obviating the need for variances, this  
19 rule is only eliminating the need for a variance or  
20 adjusted standard from further reduction. It is not  
21 eliminating the need for variances or adjusted  
22 standards from the current applicable rules.

23          MR. KOLAZ: That's correct.

24          MS. MIHELIC: And you just stated that if a

1 person has a breakdown of a control device, it's not  
2 in compliance with this permit or the RACT rule. Are  
3 there not provisions for breakdowns?

4 MR. KOLAZ: Yes. And that's the thing that Mr.  
5 Sutton and I were just talking about.

6 There are provisions within permits for a  
7 start-up, shutdown, malfunctions. There's even  
8 provisions in the ERMS rule for emergency  
9 conditions. So let's simplify it by saying it's a  
10 situation that does not fit any of those categories,  
11 the equipment has gotten old, the company hasn't  
12 maintained, they are not actually able to take any of  
13 the protections that are offered under the permit,  
14 and they cannot choose under Mr. Trepanier's  
15 explanation -- they cannot decide that instead of  
16 controlling at 81 percent, they are just going to buy  
17 ATUs.

18 But, again, I want to point out, they are  
19 in violation of the 81 percent provision, and they  
20 are in violation of the ERMS rule if they do not buy  
21 the ATUs. So they are really forced to do both.

22 If they buy -- an example we've been  
23 talking about and that questions have been asked --  
24 if they buy the ATUs, then they are protected from

1 enforcement for that provision of ERMS rule, but they  
2 are not ever protected for violation of the 81  
3 percent reduction requirement I had talked about.  
4 And that's covered by 205.640 under Enforcement  
5 Authority.

6 MR. DESHARNAIS: Any additional questions on  
7 205.620?

8 MS. SAWYER: I figured out what question we  
9 are referring to in Mr. Trepanier's prefiled  
10 questions when we refer to Question 9. The question  
11 begins -- or the question reads, is there a penalty  
12 available for claiming invalid ATUs. That's the  
13 question we had stuck in that section.

14 MR. TREPANIER: Okay. I'll ask that question  
15 now.

16 MS. SAWYER: Okay. Before we answer the  
17 question, could you clarify it? What do you mean by  
18 invalid ATUs?

19 MR. TREPANIER: Well, an invalid ATU would be  
20 one for which the person claiming it isn't deserving.

21 MR. KOLAZ: There is a penalty. And let me  
22 state my assumptions to answer the question to make  
23 sure it's getting at your point.

24 There might be a person that somehow some



1 way in reviewing their transaction account thought  
2 they had enough ATUs. But as a question that was  
3 asked earlier today, they will be able to look at  
4 their expired ATUs, they'll be able to look at the  
5 retired ATUs, and somehow they get confused and think  
6 they have enough to cover it.

7                   But when low and behold in maybe about  
8 the middle of January they get an excursion  
9 compensation notice from them and then they realize  
10 their mistake.

11                   Well, the penalty in that case or if they  
12 try to claim that an expired or retired ATU is to be  
13 used for compensation during that preceding season,  
14 their penalty will really be the excursion  
15 compensation requirement of 1.2 or 1.5 times the next  
16 season's allotment of ATUs.

17                   MR. TREPANIER: Now, in your example, if that  
18 person who was mistaken further was mistaken and sold  
19 and attempted to sell, entered into a contract to  
20 sell those ATUs that didn't exist or they were  
21 mistaken that they existed, then would there be a  
22 penalty in that situation and where would the penalty  
23 fall?

24                   MR. KOLAZ: Well, first of all -- in fact, a

1 similar, not identical, but a similar question was  
2 answered -- or was asked earlier today about the  
3 process that we are going to use to ensure that that  
4 doesn't happen. I don't think it can happen because  
5 the Agency is going to be validating every  
6 transaction, and we will be reviewing the accounts of  
7 the people buying as well as the ones selling and we  
8 will require transfer agreements from both. So you  
9 really should have three sets of eyes or more looking  
10 at that. I mean, the buyer should ensure that they  
11 have the ATUs to sell, the buyer should be sure that  
12 they have -- that the person that they are buying  
13 from actually has them, and the Agency would be  
14 looking at both to make sure that there are actually  
15 valid ATUs to enter into the agreement. And this  
16 won't be so much a manual process, I mean, although  
17 that will be part of it, but we will build into the  
18 database systems and capabilities to ensure that that  
19 doesn't happen.

20                   And as Mr. Forcade asked earlier, there  
21 would be identification numbers on the ATUs that  
22 will provide information as to the date and their  
23 status so we will be able to see if they expired. So  
24 there would be a number of checks and balances to

1 ensure that that did not happen.

2 MR. TREPANIER: Would a buyer be able to check  
3 in the database to see if the ATU numbers being  
4 offered to them are valid ATUs?

5 MR. KOLAZ: Yes. And that's actually part of  
6 the rule. In fact, the public can do that as well;  
7 although, I will point out they won't actually be  
8 looking in the transaction account. But under  
9 205.500, Paragraph (a), we are required through the  
10 bulletin board access to provide information on the  
11 status of ATUs in each account, that is, whether they  
12 are available for use, the date retired, the date  
13 expired. There will be a lot of checks and balances  
14 to ensure that that doesn't happen.

15 But another way of answering your  
16 question is if somehow someone tries to enter into a  
17 transaction agreement, we do not intend on penalizing  
18 them; but we will be able to ensure that that  
19 transaction is not carried through.

20 MR. TREPANIER: So what I am understanding is  
21 that in this case, it would be a buyer beware; that  
22 the buyer needs to check that the ATUs that they are  
23 purchasing are valid because this they turn them in  
24 on the last day and it turns out that they are

1 invalid, there would be a penalty. Does that  
2 penalty then fall upon the person who purchased the  
3 invalid ATUs?

4 MR. KOLAZ: Well, I don't think that's correct  
5 the way you stated that. I mean, certainly the buyer  
6 should always be aware and sure that they know what  
7 they are buying; but I'm saying that we would never  
8 authorize a transaction in which the seller did not  
9 hold the ATUs that they were selling. And by holding  
10 them, we will ensure they are not expired, they are  
11 not retired.

12 But your point is well taken. I mean,  
13 it's conceivable that someone could buy ATUs on  
14 December 1st that are set to expire December 31st,  
15 and they somehow are confused and intend on using  
16 them in the next seasonal allotment period. So it is  
17 conceivable that someone could get confused, and we  
18 would authorize that sale if we had a transfer  
19 agreement from both parties and the ATUs were valid  
20 and unexpired at the time the transfer agreement went  
21 into place.

22 But, again, buyer beware; it's January,  
23 and suddenly the person looks into their account and  
24 view their 100 ATUs and all of a sudden see expired

1 next to each of them, they will be probably great  
2 greatly disappointed.

3 MR. TREPANIER: Now, will there be a penalty in  
4 the case that someone turns in their -- they try to  
5 balance their account and they are doing it on the  
6 last day if that's December 31st and they don't --  
7 their account doesn't balance because the transfer  
8 doesn't go through because who sold it to them didn't  
9 actually have those valid ATUs, now, does that person  
10 who submitted those on December 31st suffer a  
11 penalty?

12 MR. KOLAZ: The penalty is through the  
13 excursion compensation notice provisions of 205.620  
14 where they won't be required to pay a 20 percent or  
15 50 percent penalty depending if this is the first  
16 time or second time in a row that occurred. That is  
17 the penalty.

18 MR. TREPANIER: Thank you.

19 MR. DESHARNAIS: Okay. We'll take a break for  
20 lunch now. We'll meet back here in an hour at five  
21 after 2:00. Thank you.

22 (A lunch recess was taken.)

23 MR. DESHARNAIS: Okay. We are going to  
24 continue with the questions that were set out in the

1 list filed out by the committee.

2                   What we are hoping to accomplish this  
3 afternoon is to complete this list and complete the  
4 additional prefiled questions that were received.

5                   Currently, we are up to Section 205.640,  
6 I believe, and that would be the question of the ERMS  
7 Coalition, Questions (a), (b), and (c).

8           MS. MIHELIC: At this point, we want to  
9 withdraw those questions, but ask in its place just a  
10 follow-up question because these questions deal with  
11 the assumption that the CAAPP permit would contain a  
12 condition requiring you to have a certain allotment  
13 of ATUs. And to clarify that is to say that is not  
14 correct.

15                   So just as a follow-up question and to  
16 clarify what was testified to earlier, is it correct  
17 then that if a source meets all of its permit  
18 requirements, but exceeds its ATU allotment, goes  
19 out, and then satisfies the requirements of any  
20 emissions excursion notice, that there is no  
21 enforcement -- there can be no enforcement by the  
22 federal government or other citizens groups?

23           MR. KOLAZ: The provision of 205.620 addresses  
24 that, although we certainly -- I don't believe that

1 we can -- this may be a question answered by the U.S.  
2 EPA. I guess they approve the rules. But, actually,  
3 maybe that's a confusing way to answer it.

4 I think the strict answer is yes because,  
5 really, the only rule under the conditions that you  
6 specified, the only plausible violation would be a  
7 violation to the ERMS rule; and, therefore, the only  
8 rule the U.S. EPA could enforce against would be the  
9 ERMS rule. And the provision of the ERMS rule under  
10 205.620(f) says that under the circumstance you  
11 described, there would be no violation to enforce  
12 against.

13 MS. MIHELIC: I have no further questions.

14 MR. DESHARNAIS: Any additional questions on  
15 205.640?

16 Mr. Forcade?

17 MR. FORCADE: Just as a follow-up on that one,  
18 will you provide a notice to facilities that they  
19 have satisfied their emissions excursion  
20 compensation?

21 MR. KOLAZ: Yes. That is something that we  
22 will do, yes.

23 MR. DESHARNAIS: Mr. Newcomb?

24 MR. NEWCOMB: And as a follow-up to that, is

1 the language that will be provided in the Title 5  
2 permit going to somehow account for this type --  
3 detention-type of enforcement that Tracey has brought  
4 up here?

5                   And if I may clarify, that if the  
6 language in the permit says something along the lines  
7 of thou shalt not exceed the number of ATUs allotted  
8 during your season and you go ahead and do that and  
9 go through the excursion compensation provisions,  
10 technically -- and I do mean this only as a  
11 technicality -- a citizen group can say you violated  
12 a permit provision?

13                   MR. SUTTON: Well, as a point of  
14 clarification, the Title 5 permit will obviously  
15 define what permit provisions apply to the source  
16 based on the SIP requirements. It will identify the  
17 ATUs allotted to the company. It will also identify  
18 that at the end of the season, you have to have in  
19 your possession enough ATUs to match your actual  
20 emission; but it doesn't mean it has to be  
21 necessarily assigned to you.

22                   So it will be basically dovetailing to  
23 the rule, which you have the obligation to hold at  
24 the end of the season the number of ATUs that match



1 your actual emissions.

2                   The ATUs that you allotted in front is  
3 basically just telling you how much the State of  
4 Illinois has allocated to your company.

5           MR. NEWCOMB: Exactly.

6                   And then the follow-up would be that the  
7 ERMS provisions should be exclusively enforced by  
8 Illinois?

9           MR. SUTTON: My lawyer is motioning.

10                   I think I've already stated it this way;  
11 but basically the permit will indicate that at the  
12 end of the season, you either hold the necessary ATUs  
13 to match your actual emissions or you can go through  
14 the surging process to solve that.

15           MS. MIHELIC: Okay. I have a follow-up  
16 question.

17           MR. DESHARNAIS: Ms. Mihelic?

18           MS. MIHELIC: Previously you just said or I  
19 guess in response to Mr. Newcomb's question was that  
20 it would be in a condition that you had to hold ATUs  
21 sufficient -- or in a sufficient amount to meet your  
22 allotment by the end of the reconciliation period.  
23 So now you are saying no, that's not how -- I'm  
24 trying to figure out how it's going to be in a

1 permit that's not going to be a condition that you  
2 must have sufficient ATUs at the end of the  
3 reconciliation period whereby then a citizens group  
4 or user then can't come in and enforce against that  
5 because you don't have it?

6 MR. SUTTON: One more time, the Title 5 permit  
7 would reflect that at the time of the reconciliation  
8 period, you hold enough ATUs to match what your  
9 actual emissions were or you can go through the  
10 excursion process to satisfy that need.

11 MS. MIHELIC: So it will have that language in  
12 it?

13 MR. SUTTON: Yes.

14 MS. MIHELIC: Okay. I understand.

15 MR. DESHARNAIS: Mr. Newcomb?

16 MR. NEWCOMB: And then to address that from a  
17 different tactic, if I may, that it is only Illinois  
18 which is going to be authorized to enforce this  
19 provision; you do not intend to create a citizens  
20 suit authorization for ERMS types of exceedances?

21 MS. MCFAWN: Perhaps that's a legal question  
22 that the Agency better address by their legal staff.

23 MR. NEWCOMB: If they agree to go ahead and  
24 answer that question in writing, that would be fine

1 with me.

2 MS. SAWYER: Well, could you repeat the  
3 question?

4 MR. NEWCOMB: Is it the Agency's intention to  
5 provide citizens with any enforcement authority under  
6 the ERMS program at all?

7 MS. MCFAWN: You know, maybe we can clear this  
8 up. It seems to me that the Act provides the  
9 citizens' suit provisions. I don't know that the  
10 Agency can or cannot create a citizens right to bring  
11 an enforcement action.

12 MR. NEWCOMB: Which Act do you mean?

13 MS. MCFAWN: Environmental Protection Act.

14 So while I could say to the Agency please  
15 answer this in writing and that may clear that up, I  
16 believe the answer is contained in the Act.

17 MR. NEWCOMB: Inasmuch as this has been  
18 described as an overlay to all the other pre-existing  
19 permit provisions, I think that maybe if the Agency  
20 could address it only in terms of the ERMS program, I  
21 would appreciate that.

22 MS. MCFAWN: Well, what I am wondering,  
23 Mr. Newcomb -- and this is lawyer to lawyer here --  
24 is how the Agency could possibly create a citizen

1 enforcement action that's not authorized under the  
2 Environmental Protection Act or take it away if it is  
3 authorized under the Environmental Protection Act.  
4 They've already said to you we are not going to do it  
5 by permit language. They've made that clear. They  
6 are not going to do it by the language contained in  
7 the Title 5 permit.

8 MR. NEWCOMB: In other words, so the language  
9 is going to be written so that in ERMS -- that  
10 violating the ERMS program is not a permit  
11 violation; is that --

12 MS. MCFAWN: Maybe I should have Mr. Sutton  
13 explain it again.

14 MR. KOLAZ: Well, I think maybe we could do it  
15 in two parts.

16 MR. SUTTON: Go ahead.

17 MR. KOLAZ: Mr. Sutton can answer part of it.  
18 But the requirement to hold sufficient ATUs is in the  
19 ERMS proposed Rule 205.150(c) and 150(c). And the  
20 excursion compensation notice provision is in the  
21 205.620. And those are the requirements that really  
22 apply to a company and requires them to hold  
23 sufficient ATUs.

24 Now, what Mr. Sutton has to answer is

1 whether or not those will specifically be restated  
2 within the Title 5 application itself. And the  
3 question as to what rights it gives a citizen to  
4 enforce with is, you know, a legal opinion that I  
5 can't say.

6                   So what I am saying is that I don't know  
7 whether the conclusion of that in the permit  
8 increases or changes that right or not, but that is a  
9 specific provision that we are referring to when we  
10 talk about providing some level of immunity against a  
11 source as long as they comply with 205.150(c), (d),  
12 or 620.

13           MR. SUTTON: And I guess my intent would be  
14 actually to put that right in the permit.

15           MR. DESHARNAIS: Mr. Forcade?

16           MR. NEWCOMB: That's wonderful. Thanks.  
17 That's what I needed to hear.

18           MR. FORCADE: I'd like to sort of refresh one  
19 of the questions we had in our pre-submitted  
20 testimony and reiterate it again.

21                   We ask at one point in our pre-submitted  
22 questions if the Agency had prepared or would be  
23 willing to prepare a draft Title 5 permit for a very  
24 simple source that would contain the ERMS language so

1 that we can evaluate it.

2                   At the time, I believe the response was  
3 no, we have not and no, we do not intend to do so.  
4 This particular conflict essentially re-invigorates  
5 that question because unless we have access to the  
6 actual language that the Agency intends to place in a  
7 permit as well as knowledge of whether the Agency  
8 intends to place it in the federally enforceable  
9 provisions, state enforceable provisions or not, we  
10 wouldn't have any idea.

11                   And with respect, Mr. Sutton has said the  
12 permit would reflect, well, I don't know whether that  
13 means it would be a permit condition that or it would  
14 be language in the part of the permit that is not  
15 enforceable.

16                   So I think there's a substantial amount  
17 of ambiguity here, and I would like to at this point  
18 reinstate my question requesting the Agency to  
19 provide sample ERMS language so that we can clearly  
20 understand in a written format what will be included  
21 in Title 5 permits relating to the ERMS provisions  
22 and conditions so we can tell from our own legal  
23 interpretation whether we believe they would be  
24 enforceable by U.S. EPA or citizens.

1           MR. SUTTON: Well, I guess in response to that,  
2 we have not prepared that. I am not saying that we  
3 won't; but, first of all, our historic practice has  
4 been to provide under the Title 5 permit an advance  
5 copy to the company in prior notice to assure that we  
6 are on the same wavelength as you will.

7           And during the notice period itself, you  
8 still have the ability to bring it to our attention  
9 changes that you would like to see in the Title 5  
10 permit if, in fact, you think they are based on law.  
11 So there is an opportunity for the company to address  
12 those even prior to the permit issuance; and if we  
13 still continue to be obstinate, you then have a right  
14 to appeal to the Board if you think that we have not,  
15 in fact, complied with the law.

16           So I think there will be an opportunity  
17 for you to see this permit language in advance of it  
18 becoming a final permit.

19           MR. FORCADE: I would stand with my question  
20 and ask the Hearing Officer to request the Agency to  
21 provide sample language that would be included in the  
22 Title 5 permit reflecting the ERMS conditions because  
23 the alternative could be the potential for 20 or 30  
24 permit appeals if that language does not reflect --

1           MR. DESHARNAIS: Mr. Mathur, do you have a  
2 response?

3           MR. MATHUR: Yes. Let me respond to the few  
4 sentences I heard when I came in.

5                   I think as far as the Agency is  
6 concerned, the ERMS rule is an alternative to a  
7 command and control VOC regulation. As we have  
8 stated previously, this rule will be submitted to EPA  
9 as a subprovision. So as far as I am concerned, the  
10 whole ERMS rule and process and permit conditions  
11 based on the ERMS rule should be considered as having  
12 the same status as if we had picked select sources  
13 and come up with specific command and control rules.  
14 So I don't see why this is such an issue.

15                   The treatment of this program in a Title  
16 5 should be seen as exactly the same as any other  
17 rule which would be in a SIP, is federally  
18 enforceable, and is in a permit that contain all of  
19 the opportunities that we, the U.S. EPA or anybody  
20 else has.

21                   So your insistence that the Agency show  
22 you what a permit would look like, I just don't  
23 particularly understand.

24           MR. FORCADE: Perhaps it's my confusion, but I



1 thought I heard statements from the Panel that these  
2 terms and conditions would not be federally  
3 enforceable, and I believe I may have heard some  
4 recanting of that from you just now; is that correct?

5 MS. SAWYER: That isn't what we said.

6 MR. MATHUR: I don't recall what the Panel  
7 said, but I am -- and maybe we need to confer with  
8 each other before we give a final answer -- it's my  
9 understanding that permit conditions in a Title 5  
10 permit based on the ERMS rule will be federally  
11 enforceable. This rule will be federally enforceable  
12 through a SIP. It will be submitted to the EPA in  
13 its entirety as a subprovision. This is the State of  
14 Illinois' response to further reductions as opposed  
15 to category-by-category command and control. And  
16 once it's in a Title 5 permit, it affords all parties  
17 the same opportunities as other SIP-based federally  
18 enforceable provisions do.

19 MR. FORCADE: But at this point, I still have  
20 no idea what that term and condition and the permit  
21 that will be federally enforceable will say.

22 MR. ROMAINE: Well, I guess what that provision  
23 will say is what the rules require; and what the  
24 rules require is that you hold ATUs or you go through

1 the excursion compensation process. If you do either  
2 A or B, there is no violation; there is no  
3 opportunity for enforcement by us, U.S. EPA, or a  
4 citizen for failure to comply of that provision under  
5 the ERMS.

6 MR. DESHARNAIS: Okay. We understand that the  
7 Agency at this point does not have language developed  
8 in response to -- or language that would address  
9 Mr. Forcade's concern. If the Agency would take that  
10 suggestion under advisement, we can address it at a  
11 later time.

12 MR. KOLAZ: One thing I might clarify is the  
13 Panel never made any statement about these terms and  
14 conditions being a state enforcement. Mr. Newcomb as  
15 he was framing one of his questions did refer to the  
16 state enforceable portion of the permit.

17 MR. DESHARNAIS: At this time, I think we will  
18 move on.

19 Before we do go on to the next question,  
20 I would just ask people when asking a question, if  
21 they could identify themselves for the benefit of the  
22 court reporter.

23 The next section that we have is Section  
24 205.650, Emergency Conditions, questions from the

1 ERMS Coalition.

2 MS. MIHELIC: Tracey Mihelic.

3 Our questions are set forth on Page 22 of  
4 our prefiled questions. We withdraw Question (a) in  
5 Section 22 at this time.

6 Question (b) is when must a source submit  
7 a final report?

8 MR. ROMAINE: A proposal provides for the  
9 source to have up to 10 days after the conclusion of  
10 the emergency to file its final report.

11 MR. DESHARNAIS: The next prefiled question on  
12 205.650 is from Mr. Trepanier. It's Question 9.

13 MS. SAWYER: Actually, this is a question we  
14 took earlier.

15 MR. DESHARNAIS: Oh, okay. That was the one  
16 that was last --

17 MS. SAWYER: Right. It was somewhat out of  
18 order in our list.

19 MR. DESHARNAIS: Any additional questions on  
20 205.650?

21 Mr. Trepanier, did you agree with the  
22 Agency that this question was adequately addressed?

23 MR. TREPANIER: I apologize. Since coming back  
24 from lunch, I haven't located my questions. Which

1 one was that?

2 MS. SAWYER: It's the one, is there a penalty  
3 available for claiming invalid ATUs.

4 MR. TREPANIER: Yes, that one was answered.

5 MR. DESHARNAIS: Moving on, we are up to  
6 questions on the TSD. The first questions are from  
7 Tenneco.

8 Mr. Forcade?

9 MR. FORCADE: Right.

10 Referring to Page 45, Question 1,  
11 referring to column four of Appendix E of the  
12 technical support document, quote, facility  
13 emissions, slash, TPY, quote, from which specific  
14 air emissions reports or other data did the Agency  
15 compile facility emissions TPY?

16 MR. FORBES: The Agency utilized the annual  
17 emissions report submitted by sources for calendar  
18 year 1994 to compile this data.

19 MR. FORCADE: Did the Agency convert any of  
20 this source reported data to the numbers in the chart  
21 in any manner?

22 MR. FORBES: This data were reported directly  
23 by the source in their AER.

24 MR. FORCADE: Did the Agency make any

1 adjustments or changes to the source reported data?

2 MR. FORBES: In general, the Agency relied on  
3 the annual emissions data reported by the source  
4 without any conversion or adjustment. However, the  
5 Agency did perform a basic quality control review of  
6 the data and did correct for any mathematical errors  
7 which it found. The Agency relied upon the source's  
8 individual emission unit data in carrying out this  
9 review.

10 MR. FORCADE: And was this for the year 1994  
11 only?

12 MR. FORBES: Yes.

13 MR. FORCADE: Question 2, referring to column  
14 three of Appendix E of the technical support  
15 document, facility emissions ERMS TPS, from which  
16 specific sources did the Agency compile these  
17 figures?

18 MR. FORBES: The specific sources that the  
19 Agency compiled this data for in Appendix E are  
20 CAAPP'd sources which have seasonal emissions of 10  
21 tons per season or greater. The Agency relied on  
22 the data contained in the source's 1994 AER to  
23 compile the figures.

24 MR. FORCADE: How did the Agency convert any

1 source reported data to the numbers in this chart?

2 MR. FORBES: In general, these figures were  
3 calculated by multiplying the source's total facility  
4 annual actual emissions by one-third of the spring  
5 throughput, plus the annual actual emissions  
6 multiplied by the summer throughput, plus the annual  
7 actual emissions multiplied by one-third of the fall  
8 throughput.

9 MR. FORCADE: And this was for year 1994 again?

10 MR. FORBES: This was for 1994.

11 MR. FORCADE: Question No. 3, referring to  
12 Appendix E of the technical support document, does  
13 facility emissions under column three or column four  
14 include both point source and fugitive emissions?

15 MR. FORBES: The emissions reported under  
16 columns three and four reflect total emissions  
17 reported by the source. To the extent that sources  
18 reported fugitive emissions, they are included in the  
19 emissions reported in columns three and four.

20 MR. FORCADE: Question No. 4, referring to  
21 column seven of Appendix C of the technical support  
22 document, Source Description, do any of the source  
23 descriptions reflect fugitive emissions?

24 MR. FORBES: Yes.

1           MR. FORCADE:  And how did the Agency compile  
2 this information?

3           MR. FORBES:  This information is based on the  
4 information provided by the source in its 1994 AER.

5           MR. FORCADE:  Okay.  Question No. 5, referring  
6 to column eight of Appendix E of the technical  
7 support document, unit emissions, slash, ERMS TPS,  
8 from which sources did the Agency compile this data?

9           MR. FORBES:  The specific sources that the  
10 Agency compiled this data for in Appendix E are  
11 CAAPP'd sources which have seasonal emissions of 10  
12 tons per season or greater, excluding those emission  
13 units identified in Section 205.405, which are exempt  
14 from further reduction.  The Agency relied on the  
15 data contained in the source's 1994 AER to compile  
16 the figures.

17          MR. FORCADE:  And did the Agency convert the  
18 source's data in anyway through this chart?

19          MR. FORBES:  Okay.  I think you missed Subpart  
20 A.

21          MR. FORCADE:  I thought you had already  
22 answered Subpart A, but I'll ask it again.

23          MR. FORBES:  Okay.

24          MR. FORCADE:  Please explain how the Agency

1 calculated these figures.

2 MR. FORBES: In general, these figures are  
3 calculated by multiplying the source's annual actual  
4 emissions for the specific emissions unit by  
5 one-third of the spring throughput plus annual actual  
6 emissions multiplied by the summer throughput plus  
7 the annual actual emissions for the unit multiplied  
8 by one-third of the fall throughput.

9 MR. FORCADE: And did the Agency make any other  
10 adjustments or changes to that data?

11 MR. FORBES: Calculations were carried out as  
12 previously described utilizing the source's data. In  
13 general, the Agency relied upon the annual emissions  
14 data reported by the source without any conversion or  
15 adjustment. However, the Agency did perform a basic  
16 quality control review of the data and did correct  
17 for any mathematical errors for which it found. The  
18 Agency relied upon the source's individual emissions  
19 unit data when carrying out that review.

20 MR. FORCADE: And this would be for the year  
21 1994 also?

22 MR. FORBES: Yes.

23 MR. FORCADE: Question No. 6, referring to  
24 column nine of that same Appendix E of the technical



1 support document, unit emissions TPD, from which  
2 sources did the Agency compile this data?

3 MR. FORBES: The specific sources that the  
4 Agency compiled this data for in Appendix E are  
5 CAAPP'd sources which have seasonal emissions of 10  
6 tons per season or greater, excluding those emission  
7 units identified in Section 205.405. The Agency  
8 relied on the data contained in the source's 1994 AER  
9 to compile the figures.

10 MR. FORCADE: And please explain how the  
11 Agency calculated these figures.

12 MR. FORBES: The Agency calculated this data by  
13 utilizing the source's hourly emissions multiplied by  
14 the hours of operation per day multiplied by the  
15 ratio of the summer throughput percent to 25 percent  
16 and converted that into tons per day to represent the  
17 typical ozone season weekday emission level in tons  
18 per day.

19 MR. FORCADE: Did the Agency make any  
20 adjustments?

21 MR. FORBES: The calculations were carried out  
22 as described utilizing the source's data. In  
23 general, the Agency did rely on the emissions data  
24 reported by the source without any adjustment or

1 conversion; however, a quality control review of the  
2 data was performed and any mathematical errors were  
3 corrected.

4           The Agency relied upon the source's  
5 individual emission unit data when carrying out that  
6 review.

7           MR. FORCADE: And this would be for year 1994  
8 again?

9           MR. FORBES: Yes.

10          MR. FORCADE: Thank you.

11           The last question is No. 7, referring to  
12 column 10 of Appendix E of the technical support  
13 document, unit emissions TPD~~AW~~, slash, RE, from which  
14 sources did the Agency compile this data?

15          MR. FORBES: The specific sources that the  
16 Agency compiled this data for in Appendix E are  
17 CAAPP'd sources which have seasonal emissions of 10  
18 tons per season or greater, excluding those emission  
19 units identified in Section 205.405 which are exempt  
20 from further reduction. The Agency relied on the  
21 data contained in the source's 1994 AER to compile  
22 the figures.

23          MR. FORCADE: And please explain how the Agency  
24 calculated these figures.

1           MR. FORBES: The Agency calculated this data by  
2 utilizing the source's ozone season weekday emissions  
3 calculated as previously described and then adjusted  
4 for the rule effectiveness or RE based on that value  
5 which was used for the source in the 1990 SIP  
6 inventory to represent the typical ozone weekday  
7 emissions level adjusted for rule effectiveness and  
8 expressed in tons per day of emissions.

9           MR. FORCADE: As a point of clarification,  
10 could you explain what rule effectiveness means?

11          MR. FORBES: Rule effectiveness is an inventory  
12 term defined and required by U.S. EPA to represent  
13 the effectiveness of the inventory in general for  
14 meeting particular control estimates and control  
15 requirements.

16          MR. FORCADE: Would this be somewhat similar to  
17 the capture and construction efficiency of control  
18 equipment?

19          MR. FORBES: It really goes more to the  
20 effectiveness of all of the sources complying with  
21 that stated captured control requirement.

22          MR. FORCADE: And for which years did the  
23 Agency use the facility emissions reports?

24          MR. FORBES: 1994.

1 MR. FORCADE: Thank you.

2 MR. DESHARNAIS: Next prefiled question is from  
3 Sonnenschein.

4 MS. FAUR: Cindy Faur from Sonnenschein.

5 Mr. Forbes, in response to one of  
6 Mr. Forcade's questions, you noted that the emission  
7 data included in Appendix E was based on 1994 annual  
8 emission reports.

9 Could you please clarify as to whether  
10 this data was included merely to illustrate the  
11 number of affected sources and not as a determinative  
12 of their baseline numbers?

13 MR. FORBES: The purpose of Appendix E was to  
14 reflect potentially affected sources and was based  
15 upon the sources' reported emissions in their 1994  
16 annual emission report.

17 MS. FAUR: That was Question 7(a) for the  
18 record.

19 Question 7(b) I am going to ask in a  
20 slightly different manner to clarify it.

21 To what extent does the Agency anticipate  
22 that there will be a variation in the number of  
23 sources that will be affected by the ERMS program and  
24 the number of sources that were major and for

1 purposes of the 1996 rate of progress plan?

2 MR. FORBES: I guess to the best of our  
3 knowledge, we would not anticipate that there would  
4 be a great deal of difference between those two sets  
5 of data or with respect to whether they would be  
6 major or not to answer your question.

7 MS. FAUR: Thank you.

8 MR. DESHARNAIS: The next question is from  
9 Dart.

10 Mr. Newcomb, Question 10.

11 MR. NEWCOMB: That's right. This question  
12 has been asked and answered; however, based on  
13 Mr. Forbes' testimony in response to Mr. Forcade's  
14 question, a point of clarification because this is  
15 basically the same question that Mr. Forcade asked.

16 You said that the sources from Appendix E  
17 were identified as CAAPP permit sources. Excluding  
18 those, you said that it excluded those that met the  
19 exclusion under 205.405.

20 Just a point of clarification, this does  
21 not include any source that might be or you expect it  
22 to be a BAT exclusion; correct?

23 MR. FORBES: That's correct.

24 MR. NEWCOMB: Thank you. No further questions.

1 MR. DESHARNAIS: The next questions are from  
2 Mr. Trepanier, Questions 12(c), 20, 21, and 22.

3 MR. TREPANIER: I am going to withdraw Question  
4 12(c). I can't make sense out of that question right  
5 now myself.

6 Question 20, what percentage of the point  
7 source emissions subject to this rule are expected to  
8 somehow opt out by some exemption; for example, BAT,  
9 BATC 15-ton limit, FESOP, LAER, et cetera?

10 MR. FORBES: The percentage of emissions  
11 expected to opt out in further reductions under the  
12 MACT and LAER, FESOP and fuel combustion emission  
13 unit exemption of 205.405 is about 4 percent of the  
14 total point source emissions. And that's based on  
15 the 1994 annual emission report data. The Agency has  
16 estimated that of this 4 percent, about 3.7 percent  
17 is due to MACT, FESOP, and LAER sources, and  
18 approximately .45 percent is due to fuel combustion  
19 emission sources.

20 MR. TREPANIER: Okay. Have you addressed the  
21 BAT exemptions?

22 MR. FORBES: The number and identity of sources  
23 which will seek BAT exemptions is not known at this  
24 time and cannot be estimated.

1           MR. TREPANIER: And how about the number of --  
2 the amount of sources or the percentage of the total  
3 emissions that's going to seek that exemption of the  
4 15-ton limit?

5           MR. FORBES: Okay. It is not known at this  
6 time the number or identity of sources who will seek  
7 that exemption under the 15-ton per day option; but  
8 the Agency identified on Page 75 of the TSD that  
9 using the conservative assumption that all 75 sources  
10 between 10 tons per season and 20 tons per season who  
11 possibly would choose this option, the maximum loss  
12 of reductions by those sources opting out and not  
13 staying in the ERMS program is estimated at .75 tons  
14 per day.

15          MR. FORCADE: And did you just say that with  
16 regard to those between 10 and 20? Did you mean  
17 between 10 and 15?

18          MR. FORBES: No. At the time we did the  
19 analysis, we weren't sure, again, who would choose  
20 this option. And at the time that we put the option  
21 in, the discussion was that there may be some sources  
22 who are just over that -- the 10-ton requirement who  
23 might choose to do something to try and opt out of  
24 the program, and that was part of the reasoning for

1 us putting in the 15-ton per season option. So we  
2 considered the possibility that in that range, that  
3 any of those might be interested in choosing an  
4 option, so we wanted to be a little more conservative  
5 and look at the entire group, larger group.

6 MR. TREPANIER: An emitter at a 20-ton level,  
7 if they reduce to 15 tons, they have more than  
8 exceeded the 18 percent exemption which they could  
9 have sought?

10 MR. FORBES: At the high end that's true; but  
11 if there happen to be some that were 16 tons, 17  
12 tons, then that percentage would not be exceeded. So  
13 there's a whole range of sources, and I am not -- I  
14 don't recall what the distribution is.

15 But, again, we had comments during our  
16 outreach meetings that sources might be interested in  
17 taking an option to get out of the program and avoid  
18 all the various complications. And so that had to be  
19 considered when we looked at this option.

20 MR. TREPANIER: On Page 75, does that reflect  
21 how much emissions the Agency's expecting will seek  
22 that 15-ton? How many sources are going to seek that  
23 15-ton limit?

24 MR. FORBES: No. As I answered just a few



1 minutes ago, we do not know exactly who will seek  
2 that. In that range, there are 75 sources between 10  
3 and 20 tons per season. It's possible that all or  
4 none of those may choose that option.

5 MR. TREPANIER: And that goes to Question  
6 21, if you can answer this question.

7 Based upon your answer to No. 20, what is  
8 the total current emissions from these sources that  
9 would not be subject to the 12 percent reduction now  
10 proposed?

11 MR. FORBES: Okay. The total current emissions  
12 from the reduction exempt units that I earlier gave  
13 percentages for is 9.73 tons per day.

14 And just to clarify, that's the total  
15 current emissions as you asked the question.

16 MR. TREPANIER: And those are the -- and those  
17 are the emissions for those who the Agency expects to  
18 seek an exemption under 205.405?

19 MR. FORBES: Correct; except that for BAT, we  
20 have no idea as to the number or emission level for  
21 those. It includes -- that estimate includes our  
22 estimate for fuel combustion, exempt, MACT, FESOP,  
23 and LAER sources.

24 MR. TREPANIER: What would be the -- what would

1 be the greatest amount of emissions that could be  
2 exempted from the reductions given the exemptions  
3 that are provided in the proposal?

4 MR. FORBES: Well, as I said, we really have no  
5 idea in terms of BAT at this point who might choose  
6 that route, so I can't answer that. We do not have a  
7 number for that. We do know that the total  
8 emissions, as I just stated, 9.73, would be from  
9 sources that seemed to currently meet the provisions  
10 of the exemption part of the ERMS rule.

11 MR. TREPANIER: Okay. Moving on to Question  
12 22, for sources that opt to accept the voluntary  
13 15-ton limit, what's the potential pollution increase  
14 over current emissions that these sources in  
15 aggregate could make without purchasing a single ATU?

16 MR. FORBES: Okay. The potential increase over  
17 current emissions from all 75 of these sources  
18 choosing this option would be .69 tons per day.

19 MR. TREPANIER: How has this been factored into  
20 the Agency's projection or analysis that the program  
21 will reduce emissions to allow the 1999 ROP to be  
22 met?

23 MR. FORBES: As previously stated, the Agency  
24 is determined that the maximum loss to ERMS from all

1 75 sources relying on this option is .75 tons per  
2 day. A small amount of contingency of reductions has  
3 been included in the program between three to four  
4 tons per day to account for some of the  
5 uncertainties in the projection such as the degree of  
6 participation by sources with this option.

7 MR. TREPANIER: Okay. And to follow up on  
8 that, is it then your estimate that it could be an  
9 increase in .75 tons per day contingent on a scenario  
10 that some 20-ton emitters are going to opt for a  
11 15-ton limit?

12 MR. FORBES: Right. If we are talking  
13 emissions, not emission reductions, that was an  
14 increase of .75 -- or, no .69 -- excuse me -- for all  
15 of the sources participating in the program.

16 MR. TREPANIER: What would you anticipate --  
17 what would be the -- what's the potential increase  
18 over current emissions if none of the emitters who  
19 currently exceed 15 were to choose to go below 15?  
20 What if just the emitters that are under 15 chose to  
21 take the 15 CAAPP and then emitted at the 15 CAAPP?

22 MR. FORBES: In other words, not taking the  
23 full range of 10 to 20, but simply looking at 10 to  
24 15?

1 MR. TREPANIER: Yes.

2 MR. FORBES: I don't recall the exact number,  
3 but it was not much different than, as I said, .69  
4 tons per day increase. It was -- about 90 percent of  
5 that number would reflect the 10- to 15-ton per  
6 season group.

7 MR. TREPANIER: A 90 percent greater number?

8 MR. FORBES: Yes. The emissions from those  
9 sources, okay, over the current emission level would  
10 be about 90 percent of the .69 number, and 90 percent  
11 of .69 would represent that group between 10 and 15  
12 tons per season.

13 MR. DESHARNAIS: Does the Agency have any  
14 additional response?

15 MR. FORBES: No, I don't think so.

16 MR. TREPANIER: Did you say that there were  
17 53 emitters between 10 and 15 tons?

18 MR. FORBES: I didn't say the specific number.  
19 There's 75 in total between 10 and 20. And I don't  
20 recall exactly how many were between 10 and 15, but  
21 the majority were within that range, you know. That  
22 was not specifically -- that was not specifically  
23 asked in the prefiled questions, so I didn't retain  
24 that particular number; but the majority of the

1 sources were between the 10- and 15-ton level.

2 MR. TREPANIER: I think a fair reading of my  
3 Question No. 22, the first question, is that that's  
4 the information that's sought. The question asks for  
5 sources that opt to accept the voluntary 15-ton  
6 limit; what is the potential pollution increase over  
7 the current emission that these sources in aggregate  
8 could make without purchasing a single ATU?

9 And the number that you gave me was one  
10 that assumed that somebody that was emitting at 20  
11 tons is now going to accept what amounts to a 25  
12 percent reduction when this program offers them to  
13 accept an 18 percent reduction and opt up.

14 MR. FORBES: You know, we could re-figure  
15 that. I think there's two points here.

16 First of all, there's a lot of  
17 uncertainty as to what sources are going to choose.  
18 We have no idea what a particular decision is by a  
19 source, whether they will participate or they won't.  
20 We've had sources in the small range say they will  
21 participate, and they won't choose the 15. We've had  
22 others that are slightly higher than that that say  
23 they will participate. So it's a matter of  
24 trying to choose, you know, a conservative approach.

1 We thought we were choosing a conservative approach.  
2 We could re-calculate it.

3           The point is the loss of productions from  
4 not including those sources is at a maximum around  
5 .75 and .8 tons per day. That's very small in  
6 comparison to the total reduction that we are getting  
7 of 12.64, I believe, which was in the TSD.

8           MR. TREPANIER: Okay. My question is going to  
9 what is the potential pollution increase over current  
10 emissions that these sources in aggregate could make  
11 without purchasing a single ATU? They are not  
12 polluting at 15 tons now. They may be polluting at  
13 10, and they may increase their pollution level by 15  
14 percent by selecting that without purchasing a single  
15 ATU. So I think the question actually, you know, is  
16 very clear, you know.

17           The information that I am seeking is, you  
18 know, how much total could these sources that opt for  
19 this exemption increase their pollution?

20           MR. FORBES: I think I was answering your  
21 question, but the range I used was 10 to 20. If your  
22 question is from 10 to 15, we can provide that  
23 information. I don't have that broken out that way,  
24 so I can't tell you what that number is. But, again,

1 I will just restate that the pollution increase,  
2 potential increase, over current emissions from all  
3 of those sources choosing that option we calculated  
4 to be .69 tons per day without getting a single ATU.

5 MR. TREPANIER: And that includes some type of  
6 a -- you are figuring in some type of reduction  
7 pollution at the same time, are you not, in that  
8 figure from the 20-ton emitter reducing their  
9 pollution 15-tons?

10 MR. FORBES: Correct. From the 15 to the 20,  
11 they would be going down. So there's a slight  
12 decrease. But, as I mentioned, what I recall the  
13 numbers to be, the majority of it, was an increase,  
14 that is, a .69 ton increase was a majority from 10 to  
15 15. But to get that specific, that narrow range,  
16 I'll have to re-calculate those numbers for you.

17 MR. TREPANIER: And is there any reason to  
18 believe that a polluter with -- a 20-ton polluter  
19 would accept a 15-ton limit rather than doing the 18  
20 percent reduction?

21 MR. FORBES: Well, as I have already stated,  
22 during the course of our outreach meetings, there  
23 were sources in that size range who indicated they  
24 would prefer to opt out of the program to take that

1 kind of reduction to avoid the complications of the  
2 trading system. So we have to believe that there are  
3 sources that will do that.

4 MR. TREPANIER: And just shortly, maybe if you  
5 could explain in what way is it easier for that  
6 person who takes a 15-ton limit rather than an 18  
7 percent reduction?

8 MR. FORBES: I can't answer that. I'm not sure  
9 that it would be easier one way or another. I think  
10 it would depend on the sources' situations as to  
11 which they would prefer.

12 MR. TREPANIER: Is either of them actually  
13 opting out of the program, either of these  
14 exemptions?

15 MR. FORBES: Well, yes, both. Either one would  
16 be opting out of the options that are contained in  
17 the ERMS rule.

18 MR. TREPANIER: And both are comparable in  
19 opting out; they both opt out in a comparable way?

20 MR. FORBES: I believe so.

21 MR. TREPANIER: So there would be no reason for  
22 someone to take the lower limit than the 18 percent?

23 MS. SAWYER: Objection; argumentative.

24 MR. SUTTON: I think I got an answer to his



1 question, if you want to give it a shot.

2                   The person is somewhere between 15 and  
3 20 tons who just comes in as part of his baseline  
4 determination says I am going to accept a 15-ton  
5 limit, he doesn't have to go back and look at what  
6 his actuals were to do his 18 percent reduction. He  
7 just basically says I am willing to live with a 15  
8 percent reduction. If that's a level of work he  
9 wants to take, he could do that.

10                   And then we will incorporate that in his  
11 Title 5 permit and make him live with that 15-ton  
12 limit; but in the alternate, he would have to go back  
13 and determine what his baseline was and then show  
14 the 18 percent reduction was achieved and then go  
15 forward. So there's a difference in level of the  
16 flexibility of his application.

17                   MR. TREPANIER: I would like if the Agency  
18 would provide that information that I think Question  
19 22 sought, and that's for those who could -- who have  
20 emissions under 15-ton who opt into this program and  
21 if they emit at their maximum level, what would be  
22 the total increase then?

23                   MR. DESHARNAIS: Mr. Forbes, would you be able  
24 to provide that information?

1 MR. FORBES: Yes.

2 MR. DESHARNAIS: Thank you.

3 MR. TREPANIER: That was Question 22.

4 MR. DESHARNAIS: Moving on to the next set of  
5 pretrial questions, we have, again, from Mr.  
6 Trepanier, your prefiled questions, handwritten pages  
7 -- Page 11, Questions 1, 2, and 3. Have these been  
8 previously addressed?

9 MR. TREPANIER: Okay. Taking my question from  
10 the second to the last page of my prefiled questions,  
11 regarding Exhibit 6, which also is referred to as  
12 Table 4-4, Page 35 of the technical support document,  
13 does the Agency's projection of 105 tons per day in  
14 line one reflect the number of sources that would  
15 variously opt out the exclusions?

16 MS. SAWYER: We already answered that.

17 MR. DESHARNAIS: Yes. I had asked the  
18 question, have these already been asked and  
19 answered. I have them marked.

20 MS. MCFAWN: Did you ask these yesterday? We  
21 are looking at No. 6 yesterday.

22 MR. TREPANIER: I believe I asked about these,  
23 and they were deferred to the technical support  
24 document until we deal with the technical support

1 document. I had asked some questions earlier, and  
2 they started to lead to this point, and then they  
3 were deferred.

4 MR. FORBES: I'll just answer the question.

5 The projection of 105 tons per day of  
6 emissions for ERMS represents only those  
7 participating sources and their emission units  
8 subject to the reduction program. It does not  
9 include -- the 105 number does not include MACT,  
10 LAER, FESOP, or fuel combustion units excluded per  
11 the ERMS rule.

12 MR. TREPANIER: And does the 105 -- does that  
13 represent that no sources would accept the 15-ton  
14 limit or exemption?

15 MR. FORBES: That's correct.

16 MR. TREPANIER: Second question, does the  
17 92-ton per day figure in line one assume that every  
18 source subject to the rules will reduce their  
19 emissions in aggregate above 12 percent?

20 MR. FORBES: It assumes that the group of  
21 participating sources in aggregate will reduce the  
22 total emissions by 12 percent. It makes no  
23 assumptions as to who specifically will reduce their  
24 emissions by 12 percent, who will reduce in excess of

1 the 12 percent, and who will not reduce the purchased  
2 ATUs from the market.

3 MR. TREPANIER: In clarification, earlier when  
4 you mentioned the .69, the numbers that were  
5 developed regarding expectation on the 15-ton limit  
6 per day, that number is not reflected in the 92?

7 MR. FORBES: That's correct.

8 MR. TREPANIER: So for your best -- to your  
9 best knowledge, that number would properly be at 91?

10 MR. FORBES: Would it probably be 91?

11 MR. TREPANIER: Properly be 91 given your  
12 expectation at a .69-ton per day, reduction is not  
13 going to occur because of the 15-ton exemption?

14 MR. FORBES: I would say no. We don't know  
15 what that number is going to be just like we are not  
16 sure who is going to choose 18 percent reductions,  
17 which would be in excess of the 12 percent that we  
18 are asking for in the ERMS rule, which would provide  
19 even greater reductions than what we have included  
20 here.

21 So those two options are options that  
22 exist, and it's really not possible to identify  
23 which ones or who is interested or will choose them.  
24 On the aggregate or the whole, we don't believe it

1 typically changes the estimates that we have included  
2 here.

3 MR. TREPANIER: Would it be true that even if  
4 one 10-ton -- even if one emitter between 10 and 15  
5 tons were to take the 15-ton exemption, then that 92  
6 number would be smaller?

7 MR. FORBES: It would be slightly, very  
8 slightly smaller.

9 MR. TREPANIER: And for each emitter that  
10 further selects that exemption, that number would  
11 also become smaller again? Or that number would  
12 become larger, actually, wouldn't it, that 92?

13 MR. FORBES: Because the reductions would be  
14 less, we would see less reduction. It would go down  
15 slightly because that's the emissions from sources  
16 that would be subject to the ERMS program, the  
17 participating sources excluding emission units  
18 excluded under the provisions of the ERMS rule. So  
19 if they opted out, then that would -- the reduction  
20 for them would be very slight. It would be 12  
21 percent of a very small number, which would go down  
22 very small.

23 MR. TREPANIER: Does the 160 under the 1999  
24 calling for point sources, does that number reflect

1 the potential for those who accept the 15-ton limit  
2 exemption to emit at 15 tons?

3 MR. FORBES: Could you be specific as to what  
4 table you are referring to and what --

5 MR. TREPANIER: This is Table 4-4 on page 35 of  
6 the TSD and was entered as Exhibit No. 6.

7 MR. FORBES: Okay. So you are referring to the  
8 point source sector, the 190 tons per day under the  
9 1999 year?

10 MR. TREPANIER: Yes. My chart says 160 under  
11 1999.

12 MR. FORBES: Right. It's 160 for the year 1999  
13 and it's for point sources?

14 MR. TREPANIER: Yes.

15 MR. FORBES: Could you ask me your question  
16 again?

17 MR. TREPANIER: Does that number 160 reflect  
18 the potential emissions from those sources that can  
19 opt in for the 15-ton limit?

20 MR. FORBES: Yes. This includes all point  
21 sources.

22 MR. TREPANIER: Does it include their actual  
23 emissions and what year?

24 MR. FORBES: It's our estimate of those

1 emissions in 1999.

2 MR. TREPANIER: And when you are estimating  
3 emissions in 1999, is that your best estimate as to  
4 what you believe their emissions will be or the  
5 potential that they could be given their 15-ton  
6 limit?

7 MR. FORBES: It's our best projection of what  
8 actual emissions will be for those sources in 1999,  
9 actual emissions.

10 MR. TREPANIER: So I understand that if those  
11 with a 15-ton limit were to in great number emit at  
12 an amount higher than they do now and even up to  
13 their 15-ton limit, that 160, that that number would  
14 climb?

15 MR. FORBES: Well, no. There is already  
16 applied in that category some growth we discussed the  
17 other day for growth and emissions between 1996 and  
18 1999.

19 MR. TREPANIER: The Agency said they were going  
20 to provide that information. Have you made progress  
21 on that?

22 MR. FORBES: As a matter of fact, I looked last  
23 night; and what we have included between 1996 and  
24 1999 is approximately three tons per day of emissions

1 growth over and above existing emission levels.

2 MR. TREPANIER: The three tons per day, what's  
3 that as a percentage of the total emissions from  
4 this?

5 MR. FORBES: Total emissions of point  
6 sources --

7 MR. TREPANIER: Yes.

8 MR. FORBES: -- total emissions of  
9 nonattainment areas?

10 MR. TREPANIER: What is the number of the total  
11 emissions from point sources than in 1999?

12 MR. FORBES: It's 160 tons per day as shown in  
13 the chart.

14 MR. TREPANIER: And then three tons per day of  
15 growth, is that where the Agency has made allowances  
16 for the likelihood, the eventuality, that as the  
17 emitters select their highest polluting years, the  
18 highest two of the past three, and receive allotments  
19 greater than their average pollution, is that where  
20 the Agency is accounting for that in that three tons  
21 per day growth?

22 MR. FORBES: That number that we have included  
23 is a typical inventory required element in all SIP  
24 inventories. You have to account for expected growth



1 in the area. And so that number is our best estimate  
2 for growth in stationary sources in the Chicago  
3 nonattainment area, and that's a quantity that we  
4 have estimated that that will amount to. And it  
5 could be for minor source growth; it could be for  
6 non-major modifications; it can be for all sorts of  
7 things that would tend to increase emissions. That's  
8 what that estimate represents.

9 MR. TREPANIER: Okay. I have a question that  
10 earlier was missing that's specifically on this issue  
11 on that growth, and that was Question 18. I don't  
12 believe that's been reflected in the outline, but I  
13 would like to ask that question.

14 MS. SAWYER: Question 18 from what?

15 MR. TREPANIER: My prefiled questions.

16 MR. DESHARNAIS: I'm sorry, Mr. Trepanier.  
17 Have you asked the questions that were listed? Did  
18 you get through Question 3? I lost track.

19 MR. TREPANIER: I think there is just one  
20 question remaining there on Page 13.

21 MR. DESHARNAIS: So you wish to go back to  
22 this question before we go on to that?

23 MR. TREPANIER: Well --

24 MS. SAWYER: You already asked No. 18.

1 MR. TREPANIER: As you would have me, I am  
2 willing to. I don't believe that No. 18 has been  
3 asked nor answered.

4 MS. SAWYER: You asked it.

5 MR. TREPANIER: I think that the Agency just  
6 now gave that information regarding the answer we  
7 just received regarding the three tons per day of  
8 growth. I don't know how Question 18 could have been  
9 answered when that -- when the three tons per day  
10 answer wasn't available previously.

11 MS. SAWYER: The question doesn't even ask  
12 that.

13 MR. DESHARNAIS: Mr. Trepanier, before we go  
14 on, could we finish the questions that are on the  
15 list, and then we will take any remaining questions  
16 on the section that are not reflected on the list.  
17 So we would finish out your Question 3 on Page 11 and  
18 then move on to your Question 10 on Page 12. Okay.  
19 Then we will take any remaining questions at that  
20 time that have not yet been addressed.

21 MR. TREPANIER: Okay.

22 Okay. Does the 105 tons per day  
23 accurately reflect each source selecting their worst  
24 polluting years as baseline?

1           MR. FORBES: Well, I think we provided an  
2 answer yesterday. You asked this question, but let  
3 me try to answer it again.

4           As stated in the TSD, an accurate ERMS  
5 emissions baseline will not be known until all  
6 participating sources have filed their ERMS  
7 applications and have the baselines established  
8 accounting for the variables of the program.

9           The Agency believes that the estimates it  
10 has made are sufficiently accurate to demonstrate the  
11 benefits of the program and to show that ERMS along  
12 with the other reduction measures proposed for the 3  
13 percent ROP plan in the first ROP target level for  
14 1999. The Agency has afforded some contingency in  
15 its plans to account for the uncertainty in its  
16 baseline estimates, but we believe these are  
17 representative emissions for what baselines will be.

18          MR. TREPANIER: And that contingency, is that  
19 the three tons per day?

20          MR. FORBES: No. The contingency that I am  
21 referring to is the small additional amount of  
22 reduction over and above what is absolutely needed to  
23 meet the ROP target level. I think we stated that  
24 between 4 and 5 tons per day if we achieve all of the

1 reductions from all the various point area and local  
2 source reduction measures.

3 MR. TREPANIER: Is the 4 to 5 tons per day  
4 contingency, that's on top of the 3 tons per day that  
5 you have already estimated for growth?

6 MR. FORBES: Yes.

7 MR. TREPANIER: And that 4 to 5 tons per day,  
8 is that contingency contained in that the Agency is  
9 seeking a 12 percent reduction?

10 MR. FORBES: Yes.

11 MR. TREPANIER: Since 1 percent is going to the  
12 ACMA, does that mean that the 2 percent is -- that  
13 2 percent of the reductions is 4 to 5 tons per day?

14 MR. FORBES: I'm sorry. I didn't hear the last  
15 part of that, that 2 percent is --

16 MR. TREPANIER: Since the proposal seeks a 12  
17 percent reduction, the ROP is for 9 percent, 1  
18 percent is going into ACMA, does that mean the 2  
19 percent -- does that reflect -- is that the 4 to 5  
20 tons per day?

21 MR. FORBES: Okay. I think -- yes. I think  
22 that would reflect that.

23 MR. DESHARNAIS: Okay. We are not addressing  
24 the final questions on the technical support document

1 from Mr. Trepanier.

2                   As an advance notice, I am just letting  
3 you know, we are going to change the order of the  
4 questions somewhat. Before going on to the questions  
5 on proportionate share and the general questions  
6 listed on the Agency's sheet, we are going to go back  
7 and finish up the questions on Section 205.320 that  
8 were held over from yesterday. So this will be after  
9 we finish Mr. Trepanier's questions.

10                   Mr. Trepanier, I believe you were on your  
11 Question 3. Was there anything additional on that or  
12 have we finished up your Question 3?

13                   MR. TREPANIER: Which question did we leave off  
14 on?

15                   MR. DESHARNAIS: I believe we were up to your  
16 prefiled question handwritten Page 11, No. 3.

17                   MS. SAWYER: We went past No. 3. We are on  
18 10, right?

19                   MR. DESHARNAIS: Okay. We finished 3. We are  
20 up to 10; is that your understanding?

21                   MR. TREPANIER: Was the answer to the question  
22 regarding the 105 aggregate by the source's slightly  
23 worse polluting baseline; was that a no?

24                   MR. FORBES: Well, I answered the question. I

1 think the answer -- the best answer I could give is  
2 if you want a yes or no would be yes. We believe  
3 that 105 reasonably represents the emissions for  
4 baseline considering the fact that we don't know what  
5 the baseline is and will not know until the ERMS  
6 applications are submitted.

7 MR. TREPANIER: So that the No. 105 -- just to  
8 be clear because this information is important for  
9 the case, for the presentation that I want to make,  
10 this 105 does not account for the fact that the  
11 emitters are directed to choose their worst polluting  
12 years; is that right?

13 MR. FORBES: 105 represents our best  
14 calculation of what emissions will be from those  
15 participants.

16 MR. TREPANIER: That's from 1996, right?  
17 That's current levels of emissions?

18 MR. FORBES: Yes.

19 MR. TREPANIER: And 105 actually is -- that's  
20 emissions from sources that are subject to this rule?

21 MR. FORBES: That's correct.

22 MR. TREPANIER: So where does a projection get  
23 made? Where is the uncertainty that you are bringing  
24 into that number? From where arises the uncertainty?

1 MR. FORBES: I think you asked the question  
2 regarding uncertainty of your concern for selecting  
3 their worst polluting years as baseline.

4 MR. TREPANIER: So does the 105 reflect current  
5 emission levels for those affected sources?

6 MR. FORBES: 105 tons per day reflects our  
7 estimate of what ERMS participating sources  
8 emissions, actual emissions, would be in 1996.

9 MR. TREPANIER: Okay. I am finished with that  
10 question.

11 MR. DESHARNAIS: That was Question 3?

12 MR. TREPANIER: That was Question 3.

13 MS. MCFAWN: Mr. Trepanier, you have to speak  
14 up. We have the el going behind us.

15 MR. TREPANIER: Okay. That was Question 3.

16 MR. DESHARNAIS: Also, just before we go on, as  
17 a general matter, because we are running short on  
18 time, it may be necessary today to limit follow-up  
19 questions in order to enable us to get through the  
20 questions that have been prefiled which are entitled  
21 to priority. So if I do limit questions, that's the  
22 reason because we are going to try to get through the  
23 pretrial questions today, if possible.

24 Mr. Trepanier, your Question 10 on your

1 Page 12, please.

2 MR. TREPANIER: What assurance is there that  
3 the target level of VOM emissions from point sources  
4 will be met if the cap is not known?

5 MR. FORBES: As in the case with historical  
6 conventional tool based SIP plans such as the 15  
7 percent progress plan, there is no assurance or  
8 guarantee that the target level of emissions will be  
9 reached. However, the Agency's analysis is shown  
10 that point source emissions have continued to  
11 decrease from 1970 through 1990 and beyond.

12 Since baselines must reflect recent  
13 actual emissions adjusted to represent the latest  
14 emissions through 1996, emission baselines will  
15 not -- are not expected to exceed the actual  
16 emissions. Again, the Agency has afforded some  
17 contingency in its plan to account for the  
18 uncertainties in its baseline estimates.

19 MR. TREPANIER: Did you just say you expect  
20 that the baseline is not going to exceed the actual  
21 emissions?

22 MR. FORBES: It's our estimate that it would  
23 not. But as I also said, that there are  
24 uncertainties in all of the various provisions of the



1 rule. So to the best of our ability, that's what our  
2 firm hopes it will be.

3 MR. TREPANIER: See, your summary of attainment  
4 scenario, that scenario doesn't figure in BAT  
5 exemptions, does it?

6 MS. SAWYER: We answered that.

7 MR. SUTTON: BAT.

8 MR. FORBES: Right. It does not take into  
9 account BAT, B-A-T.

10 MR. TREPANIER: Should I go back and pick up  
11 Question 18 regarding that modeling of growth?

12 MS. SAWYER: Okay. Didn't you ask that  
13 question yesterday?

14 MR. TREPANIER: Yesterday, we did -- I asked  
15 Question No. 17 yesterday.

16 MS. SAWYER: And then you went on to ask 18.

17 MS. MCFAWN: Did Mr. Romaine answer that  
18 question yesterday?

19 MS. SAWYER: Yes, Mr. Romaine did.

20 MS. MCFAWN: Could he give a brief synopsis?

21 Thank you, Mr. Romaine.

22 MR. DESHARNAIS: Mr. Trepanier, could you  
23 please read the question into the record before  
24 Mr. Romaine's summary?

1           MR. TREPANIER: Okay. Question 18 is a  
2 continuation of Question 17.

3           No. 17 asks, does the Agency believe that  
4 no new sources subject to the proposed rule will be  
5 cited in Chicago prior to the year 2003 and what is  
6 the basis of this belief?

7           I go on to Question 18. If your belief  
8 is based upon an analytical model, why do you believe  
9 this model reliably can forecast the citing of VOC  
10 emitting facilities?

11          MR. ROMAINE: My belief is not based on a  
12 model. My belief is based on my experience.

13          MR. TREPANIER: In your experience, has there  
14 been a situation -- I am modifying my question -- has  
15 there been a circumstance where a sellable right  
16 might be granted for a facility that's cited after  
17 the rule is adopted?

18          MR. ROMAINE: I think that's obvious. We are  
19 discussing a program where ATUs are a commodity and  
20 ATUs may be transferred between sources. And the  
21 most common way to transfer things in our economy is  
22 by selling them and buying them.

23          MR. TREPANIER: My question is going to --  
24 since your belief is not based on a model, but on

1 your own experience, has your experience included a  
2 situation, a circumstance, such as this where a  
3 sellable right might be granted for a facility done  
4 after the rule is adopted?

5 MR. ROMAINE: Well, I don't have any experience  
6 after the rule is adopted. The rule isn't adopted.

7 MR. TREPANIER: What I'm talking about here  
8 when I say a rule is adopted, I am speaking to those  
9 experiences that you are speaking of. I am referring  
10 to your experiences, in your experience, when you  
11 built up, you know, your experience in forecasting  
12 these citing of VOC emitting facilities.

13 MR. ROMAINE: Well, my experience is extended  
14 to today's date.

15 Under the historical program resource  
16 review, there is conceivably circumstances where  
17 emission offset credits could be transferred between  
18 facilities, yes. That has not been a common case. I  
19 don't know that it's ever occurred with an actual new  
20 source review project coming forward with the  
21 construction permit where they actually had to rely  
22 on those offsets that they attained from another  
23 party.

24 MR. DESHARNAIS: Okay. We are going to move on

1 at this point.

2                   The next question that we are going to  
3 address in order to finish up the questions directed  
4 to particular sections, I believe that the ERMS  
5 Coalition had questions deferred from yesterday on  
6 Section 205.320.

7           MS. MIHELIC: Correct. And could we go off the  
8 record for a second?

9   (Discussion had off the  
10   record.)

11           MS. MIHELIC: Tracey Mihelic with the ERMS  
12 Coalition.

13                   Question No. 1 in our questions that were  
14 filed yesterday on February 10th, if in December 1995  
15 a facility removed a piece of equipment which had 55  
16 tons of actual emissions per ozone season during 1994  
17 and 1995 with new equipment which has 40-ton  
18 potential annual emissions which by 1999 had three  
19 years of actual emissions data which were for 7 tons  
20 on average per ozone season, how would this source  
21 calculate its baseline allotment emissions?

22                   And I guess a clarifying question that  
23 we have discussed is, would the source be given  
24 ATUs based upon 55 tons, 7 tons or both?

1           MR. ROMAINE: Well, you have described a  
2 circumstance where I believe this new emission would  
3 be considered a pending project. I think you are  
4 suggesting that this new unit received its  
5 construction permit prior to January 1, 1998. As a  
6 pending project, the new unit would receive an  
7 allotment based on its emissions after it had been  
8 operational for three complete ozone seasons. It  
9 would have a permit that would limit it to 24 and a  
10 half tons. On an annual basis, that would convert to  
11 some seasonal equivalent limit. If you did it simply  
12 on a straight proportion, it would be 10.2 tons per  
13 season. So at most, a new emission would receive  
14 baseline emissions of 10.2 tons per season. And the  
15 actual amount of baseline emissions would be  
16 determined on how it operates during the first three  
17 years.

18           As we have set up the proposal, there is  
19 no requirement in this case to adjust the emissions  
20 from the existing emission unit. You have described  
21 the existing emission unit as having 55 tons of  
22 actual emissions, so the baseline emissions would be  
23 at least 55 tons converted -- no -- 55 tons. I don't  
24 know if we have described yet whether there is

1 voluntary over compliance involved yet.

2 MS. MIHELIC: That would be under question --

3 MR. ROMAINE: If there were voluntary over  
4 compliance, then the number would be higher than 55  
5 tons.

6 MS. MIHELIC: Which takes us into Question  
7 (b).

8 If the old piece of equipment controlled  
9 emissions beyond that required by applicable rules in  
10 1996 so that it would have emitted 65 tons on average  
11 per ozone season, then simply complied with the rules  
12 and the over-controlled was achieved after 1990,  
13 could the source obtain ATUs based upon this 65 tons  
14 per season from the old equipment?

15 MR. ROMAINE: Yes. Assuming that there is, in  
16 fact, voluntary over compliance that there was an  
17 improvement made to that existing emission unit since  
18 1990 that has resulted in an emission level that  
19 goes beyond the applicable rules effective in 1996.

20 MS. MIHELIC: Question (c), what if the new  
21 equipment also over-controlled emissions so that  
22 actual emissions at 1996 RACT levels and the same  
23 level production would be  
24 65 tons per season?

1                   And to clarify this question, could it  
2 receive ATUs based upon 65 tons per season?

3           MR. ROMAINE: No, it could not.

4           MS. MIHELIC: Why not?

5           MR. ROMAINE: As I have explained, it is  
6 constrained by the construction permit; and the  
7 construction permit effectively imposes a seasonal  
8 limit on the emissions of the new unit to make sure  
9 that that new unit would not constitute a major  
10 modification.

11          MS. MIHELIC: So it would be constrained to the  
12 10.5 tons we talked about earlier if that were truly  
13 the seasonal emission allotted?

14          MR. ROMAINE: That's correct. It would be  
15 constrained -- I think it was to 10.2 tons per season  
16 at most as the baseline emissions from that unit.

17          MS. MIHELIC: Going on to Question (d), if the  
18 same facility also removed similar equipment in 1997  
19 which had ozone seasonal emissions of 35 tons,  
20 replaced it with new equipment -- and for the purpose  
21 of this question, replaced it and rebuilt the new  
22 equipment in 1997 -- which in 2000 has 6 tons average  
23 ozone seasonal emissions and has potential annual  
24 emissions of 40 tons per year; and in order to avoid

1 new source review, took a construction and operating  
2 permit limit of 24.5 tons per year, how would this  
3 permit emission limitation affect the source's  
4 baseline allotment, if at all?

5 MR. ROMAINE: Okay. I think we have to look at  
6 this example a little bit more closely. You are  
7 describing a circumstance where the facility  
8 originally had a construction permit for one more  
9 unit that allowed it to emit 24 and a half tons.  
10 It's now coming with a second new unit also allowed  
11 to emit 24 and a half tons or which it's pursuing a  
12 24 and a half ton limit. The combination of those  
13 two projects would be a total of 49 tons per year.  
14 You have described those two projects so that they  
15 are contemporaneous.

16 So the simple, I guess, thing that  
17 becomes apparent is that the source would not have  
18 received this construction permit simply to emit 24  
19 and a half tons per year. It would have had to rely  
20 upon netting. It would have had to provide some  
21 contemporaneous decreases in emissions at the source  
22 so that the net increase in emissions, just these two  
23 projects, would be less than 25 tons per year. My  
24 assumption would be that, in fact, they did rely on



1 netting based on the emission or the equipment that  
2 they removed in 1997, which has been described as  
3 having seasonal emissions of 35 tons.

4           If I go through the netting exercise, 24  
5 and a half tons of annual emissions is equivalent to  
6 10.2 tons of seasonal emissions. Presumably then  
7 this source committed to reducing the emissions from  
8 the similar equipment by at least 10.2 tons. That is  
9 necessary to get the permit to use this equipment, so  
10 it would not be entitled to the full 35 tons of  
11 emissions from existing unit as baseline.

12           Playing with those numbers, it would only  
13 be entitled to 24.8 tons of seasonal emissions. So  
14 it will receive 24.8 tons of seasonal emissions as  
15 the baseline for that existing piece of equipment  
16 that has been replaced. Then it would, again, go  
17 through the pending project analysis for the new  
18 unit. At most, the new unit would receive baseline  
19 emissions of 10.2 tons. That's the seasonal  
20 equivalent assuming that's the production, 24 and a  
21 half tons per year.

22           MS. MIHELIC: So I guess (e) is answered in the  
23 sense that the source would lose some ATUs from the  
24 removal of the old equipment under the netting

1 exercise?

2 MR. ROMAINE: I think in the way you are  
3 looking at it, yes. The fact that they come in with  
4 a new project that relies upon netting does have  
5 consequences for the baseline emissions from the  
6 existing emission that would not be entitled to  
7 receive the full historical emissions from that  
8 equipment that has been eliminated if, in fact, you  
9 have accepted a commitment pursuant to the new source  
10 review to reduce some or all of these emissions.

11 MS. MIHELIC: Can I ask one quick follow-up  
12 question to his answer?

13 MR. DESHARNAIS: Go on.

14 MS. MIHELIC: What if the source's baseline  
15 emissions from the old unit were 40 tons considering  
16 any over compliance of that unit with applicable  
17 rules in 1996, would the source get credit for the 5  
18 tons of over-compliance in its allotment?

19 MR. ROMAINE: In the scenario you've  
20 described, I would say no; that effectively the new  
21 source review netting exercise resets or establishes  
22 a new level of emissions that is required for that  
23 existing unit. It would not be possible at that  
24 point in time to try to pick up voluntary

1 over-compliance. It's no longer recognized as a  
2 consequence of a new source review.

3 MS. MIHELIC: Question (f), if a source  
4 replaces equipment after 1996 with new equipment  
5 which emits significantly less emissions per season,  
6 will the source lose 20 percent of emissions from  
7 the replacement of the old equipment?

8 MR. ROMAINE: Because you have mentioned 20  
9 percent, I assume you are asking a question  
10 concerning the shutdown provision?

11 MS. MIHELIC: Right. Is this considered a  
12 shutdown, I guess Question (a), even if the change in  
13 equipment is a true replacement project?

14 MR. ROMAINE: No.

15 MS. MIHELIC: So it would not lose the 20  
16 percent?

17 MR. ROMAINE: The shutdown provision would not  
18 be relevant.

19 MS. MIHELIC: And just Question (g), when the  
20 rules refer to source shutdowns, is the Agency  
21 referring to the facility as a whole or individual  
22 emission units?

23 MR. ROMAINE: We are referring to the facility  
24 as a whole.

1 MS. SAWYER: Are we now moving to the  
2 questions that you held over for Dave Kolaz?

3 MS. MIHELIC: No, not to my understanding.

4 Are we?

5 MR. DESHARNAIS: Let's go off the record for a  
6 minute.

7 (Discussion had off the  
8 record.)

9 MR. DESHARNAIS: Ms. Mihelic?

10 MS. MIHELIC: Yesterday I was asking questions  
11 regarding permit limitations for major new sources.  
12 In attempts to clarify my questions and not put in  
13 specific numbers, I am trying to ask more general  
14 questions today.

15 With respect to the questions deferred  
16 from yesterday, if a participating source has made a  
17 major modification at its facility and has taken an  
18 annual plant-wide emissions CAAPP in a new source  
19 review permit to avoid LAER having internally offset  
20 the emissions from the new unit, will the Agency  
21 convert this annual limit to a seasonal limit when  
22 issuing ATUs?

23 MR. ROMAINE: You have described a situation  
24 where the new source review permit establishes a

1 constraint on the operation of the plant. It would  
2 be a 1996 effective requirement. It would have to be  
3 addressed and established on the baseline emission.

4 MS. MIHELIC: And how will the Agency conduct  
5 this conversion or how will it be done?

6 MR. ROMAINE: The conversion would have to  
7 consider, first, what limits are placed in the  
8 permit, whether there are, in fact, any limits that  
9 exist on a monthly basis. If there are not limits on  
10 a monthly basis, then the question would be what is  
11 the distribution of emissions between the ozone  
12 season and the non-ozone season. We are assuming  
13 that to be determined by looking at the emissions  
14 and the plant as generally provided for the baseline  
15 emissions determination.

16 MS. MIHELIC: If a source has monthly limits  
17 due to new source review -- due to the new source  
18 review permit rules, will the Agency be willing to  
19 convert monthly permit limits issued in new source  
20 review permits to seasonal limits; to clarify the  
21 question, to be more consistent with the ATU seasonal  
22 emission allotment?

23 MR. ROMAINE: I think the simple answer is no.  
24 That we will consider changes for new source review

1 purposes as related to what is necessary for federal  
2 enforceability of potential emit requirements for the  
3 construction permit, but we have not contemplated  
4 simply changes for purposes of simplifying operation  
5 in the ERMS.

6 MR. SUTTON: And going along with that,  
7 historically, the U.S. EPA has not accepted the year  
8 limits as source review, and they have been at a  
9 minimum monthly. So you probably add and will  
10 continue to see monthly limits if not more  
11 frequently.

12 MS. MIHELIC: With respect to the questions we  
13 just asked about permit limits, they were with  
14 respect to offsetting, internally offsetting.

15 If a source took similar limits because  
16 it netted out a new source review, would the answers  
17 be the same, that we took a plant-wide emissions  
18 CAAPP because you netted out; that would be converted  
19 to seasonal emissions?

20 MR. ROMAINE: Yes.

21 MS. MIHELIC: Would allowing the source to  
22 internally offset emissions as required or as allowed  
23 in Section 203.301 on a seasonal basis be consistent  
24 with the Agency's position that offsets under other

1 sections of the new source review rules need only be  
2 on a seasonal basis?

3 MR. ROMAINE: It would be consistent with the  
4 general interpretation we have been taking to the  
5 Clean Air Act. However, that is not something we  
6 have discussed with the U.S. EPA, so we are not sure  
7 how they would respond.

8 MS. MIHELIC: If a source has obtained in  
9 internal offsets to avoid LAER or has taken  
10 reductions in emissions for netting purposes from  
11 specific individual units at the facility, could the  
12 source have separate permit limits for the units from  
13 which the reductions were obtained in the new  
14 source -- let's refer that as a group A source --  
15 and a separate limit for other units at the facility,  
16 group B sources?

17 MR. ROMAINE: That's a possibility. It really  
18 depends how the new source review permit was actually  
19 crafted. My experience at least in terms of offset  
20 type permits is that the offset permits that we have  
21 dealt with, the ones that specifically come to mind,  
22 did address total plant emissions. I am not quite as  
23 familiar with netting permits. There are more of  
24 them, and there may be more of a variety of those the

1 way those have been prepared.

2 MS. MIHELIC: And if a source had these types  
3 of permit limits, one for the group I was calling the  
4 group A sources and one for the group B sources,  
5 could a source obtain separate allotments for these  
6 separate groups of sources?

7 MR. ROMAINE: We haven't contemplated a system  
8 where there would be any distinction made between  
9 allotment trading units from different sources or  
10 different emission units. We are simply saying  
11 allotment trading is allotment trading.

12 MS. MIHELIC: So if this source -- if the group  
13 A sources, which are the sources from which the  
14 reductions are obtained in the new source, that it  
15 met its permit limit, but the group B sources  
16 exceeded their -- exceed the allotment of ATUs for  
17 the facility or something as a whole -- I'm trying to  
18 separate out that if you had an allotment for one  
19 source and an allotment for another source, the new  
20 source review type units met their emission limits,  
21 but the other sources exceeded, I guess, their  
22 emission limits or exceeded their allotment, could  
23 they go purchase ATUs and be considered in  
24 compliance?



1           MR. ROMAINE: In the hypothetical situation  
2 explained, yes. If they instruct that, we could  
3 carry that through.

4           MR. SUTTON: I think as a point of  
5 clarification, the whole facility will assign ATUs.  
6 There will be various ways that you have to show your  
7 actual emissions for all the units, but you can use  
8 the ATUs assigned you in any fashion that you want.  
9 So you don't have to carve them from group A to group  
10 B.

11                       So, in your example, if your group A  
12 group had less emissions than they needed, actually  
13 projected, and your group B had higher ones, but were  
14 still within the permit limits, they could in  
15 combination be resolved with the ATUs assigned to  
16 you.

17           MS. MIHELIC: May a source net out of resource  
18 review by netting its seasonal emissions only?

19           MR. ROMAINE: No.

20           MS. MIHELIC: Why not?

21           MR. ROMAINE: The procedures for netting are  
22 specified by the Clean Air Act in terms of tons per  
23 year. There are also specific U.S. EPA regulations  
24 that establish what is credible or not credible. The

1 provisions deal with contemporaneous time periods.  
2 We do not believe it's going to be possible to try to  
3 convert the provisions for netting that apparently  
4 explicitly set forth in federal regulations on a  
5 seasonal basis.

6 MS. MIHELIC: And have you discussed this issue  
7 with U.S. EPA?

8 MR. ROMAINE: U.S. EPA Has discussed this issue  
9 with me. They expressed concern that the  
10 applicability provisions for new source review not be  
11 changed as a consequence of the emission reduction  
12 market system.

13 MS. MIHELIC: No further questions. Thank you.

14 MR. DESHARNAIS: Thank you.

15 Okay. The next questions that we are  
16 going to address are questions for Mr. Kolaz which  
17 are due to our understanding that he will not be here  
18 for the next set of hearings.

19 Is that correct?

20 MS. SAWYER: We weren't planning him to be  
21 here.

22 MR. DESHARNAIS: We are going to start with  
23 questions from Ms. Elizabeth Ann from the Board  
24 staff.

1 MS. ANN: I was just wondering if you could  
2 tell me the difference between lapsed, retired,  
3 pending, and expired ATUs.

4 MR. KOLAZ: Well, an expired ATU is one in  
5 which its life has come and gone and has not been  
6 used to retire excess emissions from a seasonal  
7 allotment period.

8 As stated in the regulations, the normal  
9 age of an ATU is two seasons. So in that particular  
10 circumstance, if a source or a participant does not  
11 choose to retire that ATU, then it will expire. It  
12 will no longer be available.

13 And a lapsed ATU -- and maybe a  
14 clarifying question would be, are you referring to a  
15 specific part of my testimony?

16 MS. ANN: Yes. On Page 8, you reference lapsed  
17 ATUs, so I was just wondering what they were.

18 MR. KOLAZ: Let's see. Give me just a moment  
19 to refresh my memory here.

20 That particular term is not used in the  
21 rule specifically; but in the part of the rule  
22 dealing with the ACMA, it does allow -- it does allow  
23 the Agency to enter into transactions that are not  
24 allowed by normal participants.

1                   For example, we can use expired ATUs to  
2 reconcile withdrawals of ATUs from the special access  
3 component of the ACMA. And that term lapsed is the  
4 term that we really use to apply to expired ATUs.

5           MS. ANN: That you are going to use when you  
6 need more ATUs in the ACMA for special access?

7           MR. KOLAZ: Right.

8           MS. ANN: So then are retired ATUs just ones  
9 that anyone, either a company or facility has or  
10 someone purchases, either an environmental group or  
11 school or something, and they just decide those are  
12 not to be used anymore?

13          MR. KOLAZ: That's correct.

14          MS. ANN: And then pending ATUs?

15          MR. KOLAZ: Well, pending ATUS would be an ATU  
16 that has been designated as one that is going to be  
17 the subject of a transfer agreement. So, in other  
18 words, two parties have entered into a buying and a  
19 selling arrangement. Prior to the time that that  
20 transaction actually occurs, we will flag ATUs as  
21 pending the actual transfer so they are not the  
22 subject of any other transfer agreement.

23          MR. DESHARNAIS: Okay. My understanding now  
24 is that the ERMS Coalition also had questions

1 specifically refiled and directed to Mr. Kolaz.

2 MR. SAINES: That's correct.

3 MR. DESHARNAIS: We will address those now.

4 MR. SAINES: These questions are in Section 23,  
5 testimony of Agency members, and they start right at  
6 the bottom of Page 22.

7 MS. MCFAWN: Before you begin, my notes  
8 indicate that Questions 5 through 11 have been  
9 answered.

10 MS. SAWYER: Questions 5 through 12.

11 MR. SAINES: That is correct. And, in fact, we  
12 are going to be withdrawing Questions 2 and 3, so we  
13 are really asking Questions 1(a) and (b) and  
14 Questions 13 through 16 here.

15 Okay. Question 1, where in the proposed  
16 regulations is the, quote, account reconciliation  
17 elapsed period from January 1 through March 31 of  
18 each year, end quote; define or explain?

19 MR. KOLAZ: That term is not defined or  
20 explained in the regulations.

21 MR. SAINES: Okay. Then that leaves me to sub  
22 (a), if not, define or explain in the proposed rules,  
23 what is it?

24 MR. KOLAZ: Well, that's a term that I used in

1 my testimony to describe the period of time that  
2 immediately follows the reconciliation period where  
3 no further transactions are allowed to reconcile  
4 emissions from the previous season, and it's the time  
5 that the Agency will be working to issue excursion  
6 compensation notices and entering into -- validating  
7 transactions that occurred late in December as we  
8 discussed earlier today.

9           The Agency will allow transfer agreements  
10 up through the end of the day on December 31st, so we  
11 will be reconciling those transaction agreements.

12           MR. SAINES: Okay. Sub (b), does the Agency  
13 intend to amend the proposed rules to include a  
14 definition or explanation of the, quote, account  
15 reconciliation lapsed period, end quote?

16           MR. KOLAZ: I don't believe that any  
17 modification is needed.

18           MR. SAINES: Okay. As I stated earlier, we  
19 are going to withdraw Question Nos. 2 and 3. In  
20 addition, we'd like to withdraw Question No. 4, and  
21 we will proceed to Question No. 13 of Page 24.

22           On Page 7 of your testimony under the  
23 Section entitled, quote, baseline allotment  
24 allocation, end quote, what is an, quote, emission

1 rate for each component year?

2 MR. KOLAZ: That phrase was intended to refer  
3 to the specific amount of emissions from each of the  
4 years that are used to establish the baseline. So  
5 each of those years is referred to a component year,  
6 that is, a component of the baseline.

7 MR. SAINES: Okay. Question 14, on Page 10 of  
8 the testimony under the section entitled, quote, ACMA  
9 account, end quote, is direct access equivalent to  
10 regular access as defined in Section 205.610(b) of  
11 the proposed rules?

12 MR. KOLAZ: Yes.

13 MR. SAINES: Question No. 15, what are the,  
14 quote, designated sources, end quote, mentioned in  
15 the above section?

16 MR. KOLAZ: Those are sources that have been  
17 given approval to have regular access to the ACMA  
18 account.

19 MR. SAINES: Question 16 on Page 9 of the  
20 testimony under the section entitled, quote, account  
21 officers, end quote, what is an expedited tracking  
22 plan?

23 MR. KOLAZ: In the Section 205.520 of the  
24 rules, there is a provision that allows a source to

1 request an expedited processing of an application for  
2 an account officer, and it's our intention to flag  
3 those situations where a source is asking us to  
4 expedite our approval of an account officer.

5 MR. SAINES: Just a quick clarification, when  
6 you say flag, what do you mean by flag?

7 MR. KOLAZ: Some type of indication that this  
8 particular application request has been asked to be  
9 expedited.

10 MR. SAINES: Okay. Thank you.

11 MR. KOLAZ: I'll mention maybe to provide a  
12 little clarification that the expedited provision is  
13 under 205.520 paragraph (d), and that might explain  
14 it a little bit more in detail.

15 MR. SAINES: Thank you.

16 MR. DESHARNAIS: Okay. That concludes the  
17 remaining questions directed to Mr. Kolaz. We will  
18 now go back to the Agency's list of prefiled  
19 questions, those questions concerning proportionate  
20 share beginning with questions from Tenneco.

21 Mr. Forcade?

22 MR. FORCADE: Yes. Thank you.

23 Question No. 1 on Page 37 of our January  
24 27th submission, does the emission data in Table I



1 titled 1970 to 2000 Chicago VOM Emissions Summary of  
2 the Exhibits for the Illinois EPA's Air Quality  
3 Strategy Presentation Table 1 include only sources  
4 within the Chicago nonattainment area or does Table I  
5 include all sources within 25 miles of the Chicago  
6 nonattainment area?

7 MR. FORBES: Table I includes only  
8 anthropogenic VOM emissions within the Chicago ozone  
9 nonattainment area.

10 MR. FORCADE: It includes none outside of the  
11 Chicago ozone nonattainment area?

12 MR. FORBES: None.

13 MR. FORCADE: I would strike Question 2, strike  
14 Question 3, strike Question 4, strike Question 5,  
15 strike Question 6.

16 On Question 7, I would ask the question  
17 itself, but not the subparts.

18 What are the 1990 emissions from non-ERMS  
19 participating point sources?

20 MR. FORBES: The 1990 emissions for non-ERMS  
21 participating point sources is 112.

22 MR. FORCADE: One one two?

23 MR. FORBES: One one two tons per day.

24 MR. FORCADE: Tons per day. And I would strike

1 the remainder and go to Question 8.

2                   What are the 1990 emissions from ERMS  
3 participating point sources?

4           MR. FORBES: 201.

5           MR. FORCADE: 201 tons per day?

6           MR. FORBES: Tons per day.

7           MR. FORCADE: I would strike the remainder of  
8 Question 9 -- excuse me -- of Question 8.

9                   And Question 9, what were the 1970 and  
10 1990 emissions and 1996, '99, and 2007 emissions  
11 generated by direct combustion units designed and  
12 used for comfort heating purposes, fuel combustion  
13 emission units, and internal combustion engines in  
14 the Chicago nonattainment area?

15           MR. FORBES: The 1990 emissions from such units  
16 in the entire Chicago nonattainment area is 5.17 tons  
17 per day. The '96 emissions are estimated to be 5.50  
18 tons per day. The 1999 emissions are estimated to  
19 be 5.62 tons per day. The 2007 emissions are  
20 estimated to be 5.94 tons per day. And data is not  
21 available for us to determine the 1970 emissions from  
22 those units.

23           MR. FORCADE: Fine. Thank you.

24                   Did the Agency perform -- this is

1 Question 10 -- did the Agency perform an analysis of  
2 the proportionate share of direct combustion units  
3 designed to be used for comfort heating purposes,  
4 fuel combustion emission units, and internal  
5 combustion engines?

6 MR. FORBES: No, we did not.

7 MR. DESHARNAIS: Okay. The next prefiled  
8 questions concerning proportionate share comes from  
9 the ERMS Coalition, Questions 2, 3, 4, 5, 6, 7, 8,  
10 and 9.

11 MS. MIHELIC: At this time, I'd also like to  
12 ask Question 1 because that question was deferred.

13 MS. SAWYER: No, that question was objected  
14 to, and the objection was sustained.

15 MS. MIHELIC: On Page 394 of the transcript  
16 from the first two days --

17 MS. SAWYER: But then when you asked it again,  
18 we objected and it was sustained.

19 MS. MIHELIC: As to what does proportionate  
20 share mean?

21 MS. SAWYER: Yes.

22 MS. MIHELIC: I have in here that it was  
23 directed to Mr. Mathur.

24 MS. SAWYER: You asked the question on -- I am

1 trying to think of the date -- the 2nd or 3rd -- or  
2 3rd or 4th, and it was objected to, and the objection  
3 was sustained. We answered the question, and you  
4 were asking it again and again. And it was --

5 MR. DESHARNAIS: Okay. Let's see.

6 MS. MCFAWN: Are you talking about --

7 MR. DESHARNAIS: Is this Question 1, general  
8 concerns, sub (a), traditional forms of regulatory  
9 relief, Question 1?

10 MS. MIHELIC: No.

11 MR. DESHARNAIS: Okay. What's the page number?

12 MS. MIHELIC: This is on Page 7, Section (b).  
13 It's in Section 4(b), Question 1 -- or 3(b) -- I'm  
14 sorry, I was looking down the row -- 3(b), Page 7,  
15 (b)1.

16 MS. MCFAWN: Can we just go off the record for  
17 a minute?

18 (Discussion had off the  
19 record.)

20 MS. MIHELIC: These are not our prefiled  
21 questions. These are the questions that have been  
22 revised, so they are Questions 2 through 9 in  
23 Section -- that have been modified in Section (b),  
24 3(b).

1                   Question No. 2, did the Agency calculate  
2 proportionate share based upon a level of zero  
3 controls on all sectors, the controls existing at  
4 stationary sources in 1996 or some other baseline  
5 year?

6           MR. FORBES:  The Agency based its calculation  
7 of the proportionate share on the level of emissions  
8 for sectors, all sectors, in 1996, inclusive of all  
9 projected controls required through 1996.

10          MS. MIHELIC:  Can you read back that answer?  
11 I'm not sure I understand it.

12                                 (Record read as requested.)

13          MS. MIHELIC:  To clarify your answer, so the  
14 proportionate share was based on 1996 forward, not  
15 1994 forward; correct?  The proportionate share  
16 numbers you have given in the past were based upon  
17 1996 controls forward?

18          MR. FORBES:  1996.

19          MS. MIHELIC:  Question No. 3 has been asked and  
20 answered.

21                   Question No. 4, what are the emission  
22 reductions in terms of ton per season required in  
23 immobile area sources from 1996 to 1999?

24          MR. FORBES:  Okay.  The Agency has not

1 calculated immobile area source emissions on a tons  
2 per season basis since their quality in the Clean Air  
3 Act rate of progress requirements are based on ozone  
4 season weekday emission units expressed in tons per  
5 day.

6           The ERMS program is unique in its use of  
7 a seasonal control period. Consequently, the Agency  
8 has converted the ERMS program reductions to a tons  
9 per day basis to evaluate and demonstrate that ROP  
10 requirements are being met.

11           On that basis, the area immobile source  
12 reductions called for in the ROP plan are 13 and 34  
13 tons per day respectively from 1996 through 1999.

14           MS. MIHELIC: What is the proportionate share  
15 of immobile sources for meeting the 1999 goals in  
16 terms of tons per season? That's Question No. 5.

17           MR. FORBES: As stated, we have not calculated  
18 the emissions on a tons per season basis; but on the  
19 basis of tons per day, the proportionate share for  
20 immobile sources based on the 1990 rate of progress  
21 goal is 31 tons per day.

22           MS. MIHELIC: And if you just multiplied that  
23 out by the days in the season, would you get a tons  
24 per season number?

1 MR. FORBES: No.

2 MS. MIHELIC: Why not?

3 MR. FORBES: Because mobile sources don't  
4 act uniformly from hour-to-hour, day-to-day,  
5 season-to-season.

6 MS. MIHELIC: Question No. 6, your answer would  
7 be the same as 4 and 5, is that correct?

8 MR. FORBES: No. 6?

9 MS. MIHELIC: Uh-huh.

10 MR. FORBES: With respect to tons per season,  
11 that's correct; but as previously answered by Mr.  
12 Mathur on I think it was Page 157 of the January 21st  
13 transcript, the Agency does not know what the  
14 attainment target is yet. Once the Agency has an  
15 overall target, it will be able to determine what the  
16 strategy for attainment should be and thus determine  
17 the proportionate share for attainment.

18 MS. MIHELIC: We submit that Questions 7 and 8  
19 have been answered by Mr. Forbes' previous answers.

20 Question No. 9, how would the Agency  
21 assure that stationary sources will not be required  
22 to reduce emissions to an extent that exceeds their  
23 proportionate share?

24 MR. FORBES: The Agency believes that by

1 design, the ERMS rule will only require a 12 percent  
2 reduction from stationary sources. As previously  
3 stated, the ERMS source's contribution to -- well,  
4 actually because we changed questions, I should say  
5 the ERMS source's contribution to regional  
6 nonattainment contributions is over 13 percent;  
7 therefore, the 12 percent reduction required in the  
8 rule, the ERMS rule, along with the Agency's  
9 demonstration of the proportionality of the  
10 reduction, we believe it provides this assurance.

11 MS. MIHELIC: And this assurance is only for  
12 the 1999 goals; it is not the assurance for the  
13 attainment; is that correct?

14 MR. FORBES: That's correct.

15 MS. MIHELIC: And so how will the Agency assure  
16 that stationary sources will not be required to  
17 reduce emissions to an extent that it exceeds the  
18 proportionate share to attain the national ambient  
19 air quality standard for ozone?

20 MR. FORBES: At the time that the Agency  
21 completes its attainment demonstration, that whatever  
22 requirements, whatever further reductions are  
23 proposed will be reviewed with respect to  
24 proportionate share to assure that that is met at



1 that time.

2 MR. DESHARNAIS: We'll go off the record for a  
3 minute.

4 (Discussion had off the  
5 record.)

6 MR. DESHARNAIS: Ms. Mihelic, you indicated you  
7 wished to ask your Question No. 1. What we are going  
8 to do is let you ask that the Agency give your  
9 response, and that will be the end of it. No further  
10 follow-up, and we'll put the question to rest.

11 MS. MIHELIC: Okay. What does proportionate  
12 share mean?

13 MS. MCFAWN: Can you read those two questions  
14 together?

15 MS. MIHELIC: What does proportionate share  
16 mean? And then a follow-up question to that was,  
17 does it reflect one-third reductions from stationary  
18 area immobile sources respectively?

19 MR. FORBES: I'll answer that.

20 The Agency believes this to mean the  
21 amount of reduction needed from each emission sector  
22 based on each sector's percent contribution,  
23 projected emissions, and the reductions being sought  
24 from those emissions. It does not mean equal shares

1 of reductions or one-third and one-third and  
2 one-third for point area immobile source sectors  
3 respectively.

4           Further in context of Section 9.8(c) of  
5 the Act, the Agency believes that proportionate share  
6 should not reduce emissions for ERMS participants to  
7 an extent greater than their relative contribution  
8 for nonattainment area emissions needed for  
9 attainment.

10           The relative contribution of ERMS  
11 participating sources for a total 1996 emissions is  
12 13.4 percent. The ERMS rule which is not being  
13 sought for attainment purposes, but only for the  
14 first 3 percent rate of progress period, requires a  
15 12 percent reduction from ERMS participating sources.

16           MR. DESHARNAIS: Ms. Mihelic, if you have any  
17 further follow-up on that question, if you are  
18 unhappy with it, you can address it further in  
19 testimony or in subsequent comments.

20           MS. MIHELIC: I have no further questions at  
21 this time.

22           MR. DESHARNAIS: Thank you.

23           We'll go on to the general questions  
24 beginning with questions from Tenneco, questions 1

1 through 14.

2 MR. FORCADE: Right. We would move to strike 1  
3 through 5. I think they have been answered.

4 No. 6, there are state rules in other  
5 parts of the country addressing area sources. Why is  
6 the Agency not attempting to adopt similar rules in  
7 conjunction with ERMS?

8 MR. FORBES: I'll answer that. Actually, the  
9 Agency is seeking to adopt additional area source  
10 regulations. We have filed a rule that will control  
11 emissions from cold cleaner greasing operations, and  
12 those are our area sources.

13 MR. FORCADE: Why have you not proposed more  
14 than just the one area source regulation?

15 MR. FORBES: As stated in our technical support  
16 document, we have reviewed various categories of  
17 emissions that we believe would be available for  
18 control; and considering the fact of those that have  
19 already been controlled either in the 15 percent rate  
20 of progress plan or those that are currently being  
21 controlled through federal regulations programs, we  
22 could identify only this particular -- that is the  
23 cold cleaning greaser rule as being the only readily  
24 available category for reductions at this time.

1 MR. FORCADE: We'd like to strike Question 7  
2 and slightly modify Question 8.

3 Mr. Kanerva stated that the ERMS program  
4 is set up such that the facilities know exactly what  
5 the strategy is and where they stand. And I'm going  
6 to break this into three parts.

7 Am I correct that a few days ago, the  
8 U.S. EPA published a notice in the federal register  
9 announcing that the results of the OTAG group would  
10 not be available in their term in recommending some  
11 action that U.S. EPA was going to take on future  
12 reduction in states?

13 MR. MATHUR: Your understanding is correct.

14 MR. FORCADE: All right. Rather than me  
15 attempting to read it, can you briefly summarize what  
16 you believe is stated?

17 MR. MATHUR: I think it will help Mr. Forcade  
18 and the Board if I explain the relationship between  
19 OTAG and ERMS because from the questions you have  
20 withdrawn from other questions, it is becoming  
21 apparent that there's a lot of misunderstanding and  
22 misconceptions about OTAG.

23 As I explained in my testimony on the  
24 first day of these proceedings, OTAG is an off-shoot

1 of a realization in the Chicago area and elsewhere  
2 that there is substantial transport of pollution into  
3 nonattainment areas. Therefore, nonattainment areas  
4 by themselves are not in a position to provide the  
5 necessary level of emission reductions to demonstrate  
6 attainment.

7                   Consequently, a national air quality  
8 controlled strategy that is evolving is that to  
9 demonstrate attainment for ozone, there would have to  
10 be a combination of regional pollution reductions and  
11 reductions of emissions within the nonattainment  
12 areas.

13                   OTAG is the process that is being  
14 utilized nationally to determine what might be the  
15 strategy that can be put into place on a regional  
16 basis. After there is some understanding of what can  
17 or cannot be accomplished by OTAG, the Agency will  
18 then re-evaluate the degree of emission reductions  
19 still necessary in the Chicago nonattainment area.

20                   As I have also testified previously, the  
21 only pollutant that we believe will provide ozone  
22 reductions in the Chicago area is VOCs, VOMs.

23                   So the bottom line really is once OTAG  
24 makes its recommendations, we will be in the position

1 to determine how much VOC reduction is necessary in  
2 Chicago.

3           Depending on federal policy, it is our  
4 strategy that once we have established the levels of  
5 reductions and their impact in Illinois, we will  
6 assume that those reductions will go into place based  
7 on either state or federal action and will then focus  
8 our attention on the remaining VOC reductions  
9 necessary in Chicago.

10           What EPA has done in the last several  
11 weeks is to inform states that they intend to send  
12 states SIP call notices which is essentially a letter  
13 to the state telling the state that their ozone  
14 attainment plan is deficient; and that based on OTAG  
15 and any other information that EPA has, they will be  
16 requiring of states the necessary reductions to  
17 achieve the regional pollutant reduction strategies  
18 that hopefully are the ones that have been developed  
19 by OTAG.

20           So what Mr. Forcade referred to was an  
21 EPA advance notice of proposed rulemaking that is  
22 providing the states with notice that such SIP calls  
23 should be expected in the future.

24           MR. FORCADE: Do you have any information as to

1 what U.S. EPA's intentions are in the SIP call letter  
2 with respect to the amount of VOC reductions that  
3 will be required in the Chicago ozone nonattainment  
4 area or any other area nationally?

5 MR. MATHUR: Mr. Forcade, as I explained, the  
6 SIP calls would be for the purposes of addressing  
7 regional emission reductions and reduce boundary  
8 ozone. What needs to be done in the Chicago  
9 nonattainment area will not be a part of that SIP  
10 call. It will be left for the state to determine  
11 after it has understood the impact of these regional  
12 reductions.

13 MR. FORCADE: Do you have any indication from  
14 U.S. EPA in any form whatsoever as to the nature of  
15 the VOC reductions that would be necessary and the  
16 boundary areas?

17 MR. MATHUR: No.

18 MR. FORCADE: Are there any written documents  
19 describing what is going to be in the SIP call letter  
20 that you are aware of except those contained in the  
21 federal register notice?

22 MR. MATHUR: No.

23 MR. FORCADE: Do you have any guidance from  
24 U.S. EPA on what states can do to achieve whatever

1 reductions are likely to be predicated or described  
2 in the SIP call letter?

3 MR. MATHUR: No.

4 MR. FORCADE: Is there any additional  
5 information circulating within OTAG to help explain  
6 how this policy that U.S. EPA has announced will be  
7 implemented?

8 MR. MATHUR: No. Those policies will come  
9 from.

10 MR. FORCADE: But as of now, there are no  
11 written documents that you are aware of?

12 MR. MATHUR: That's correct.

13 MR. FORCADE: Okay. We would like to strike 9  
14 through 14 and have our final question next.

15 MS. SAWYER: Your final question --

16 MR. FORCADE: It's called final question.

17 MS. MCFAWN: On Page 14 of his prefiled  
18 questions.

19 MS. SAWYER: We didn't include that because we  
20 thought it had an economic spin to it, and we wanted  
21 to hold it over for the economic testimony.

22 MR. FORCADE: Fine.

23 MR. DESHARNAIS: We'll move on to the prefiled  
24 questions from Dart, Questions 4, 6, and 11.



1 MR. NEWCOMB: Mr. Newcomb on behalf of Dart.  
2 Questions 4, 6, and 11 have either  
3 been asked and answered or I am going to voluntarily  
4 actually withdraw Question No. 6 for the Agency's  
5 benefit.

6 MR. DESHARNAIS: Thank you.  
7 Okay. Continuing with the Agency's list  
8 of prefiled questions, we have the questions from  
9 Mr. Trepanier, Questions 1, 2, 3(c), 4, 5, 6, 20.

10 MR. TREPANIER: Okay. I am going to withdraw  
11 Question No. 26 and those two that follow that, and  
12 I'll ask 1, 2, 3(c), 4, 5 and 6.

13 Question 1, did the Agency hold a general  
14 public meeting during the development of this  
15 proposal to invite public environmental concerns  
16 regarding this proposal; if not, why not?

17 MR. ROMAINE: As explained by Mr. Kanerva,  
18 during the development of the training program  
19 within the last several years, the Agency has met  
20 with various interested persons and groups at  
21 different times in different forums.

22 Over the last year while we were  
23 developing our rules, we distributed drafts of the  
24 proposal to the interested parties. These activities

1 were part of the Agency's outreach efforts on the  
2 emission reduction market system, and they were  
3 focused on obtaining feedback and suggestions on the  
4 proposal. These activities did not include holding a  
5 general meeting at which the Agency would be present  
6 to hear public comments on the Agency's draft  
7 proposal. This was because the Agency's outreach is  
8 not the same as rulemaking.

9           Rulemaking is what the Board is doing  
10 with the Agency's proposal. They are formal  
11 requirements for the public participation activities  
12 associated with rulemaking, including specific  
13 requirements for notice, holding of hearings,  
14 scheduling of comment periods. These activities are  
15 mandated by state and board rules.

16           Agency outreach, on the other hand, is a  
17 less formal process of seeking input and feedback on  
18 a proposed Agency action.

19           MR. TREPANIER: The Agency provided various  
20 interested groups. How did the Agency describe  
21 these?

22           MR. ROMAINE: We have compiled lists as part of  
23 our Clean Air Act forum of people that were  
24 interested in ozone attainment planning in this area.

1           MR. TREPANIER: And besides the list for the  
2 Clean Air Act forum, is there another mailing list  
3 developed for this proposal?

4           MR. ROMAINE: I am not specifically sure how  
5 the outreach mailing list was developed. That is the  
6 outreach mailing list for initial distribution for  
7 the proposal to interested parties.

8           MR. TREPANIER: Earlier in the proceeding, the  
9 Agency was asked to bring forward the mailing lists  
10 that were developed during the rulemaking. Has that  
11 been accomplished?

12          MS. SAWYER: I don't remember agreeing to  
13 that. I remember it coming up, but I don't remember  
14 the actual resolution of the issue.

15          MR. TREPANIER: My recollection is the first  
16 days of hearing, the Board member of the forum asked  
17 that the Agency would bring forward these mailing  
18 lists to resolve the question of what mailing list  
19 was used.

20          MS. MCFAWN: Well, I don't have the transcript  
21 here with me. Let me interject here.

22                       Does the Agency have an objection to  
23 bringing those mailing lists to this proceeding?

24          MS. SAWYER: We don't have an objection. I'm

1 not sure that it's particularly relevant.

2 MS. MCFAWN: I question the relevancy of it  
3 too, but maybe you would just like to supply it to  
4 Mr. Trepanier.

5 MS. SAWYER: Okay. That's fine.

6 MS. MCFAWN: Would that be satisfactory?

7 MR. TREPANIER: Thank you.

8 Question 2, is it Agency policy to notify  
9 those who request notice during the development of a  
10 certain proposed regulation when and if the proposal  
11 is presented to the Pollution Control Board; if not,  
12 what is the Agency's policy upon public involvement  
13 and rulemaking?

14 MR. ROMAINE: As a procedural matter, we are  
15 not required to notify people when we file a  
16 repertory proposal with the Board. This is because  
17 the Board's formal procedures serve to notify people  
18 that the Board has taken on work on a regulatory  
19 proposal. However, if individuals specifically ask  
20 the Agency to notify them when we file the proposed  
21 rule with the Board, we will attempt to accommodate  
22 them. This will be done as a common courtesy.  
23 However, such a request would be a special request.  
24 By that, I mean that there may not be a specific

1 notice list like the service list for the Board's  
2 rulemaking. Instead, the Agency will be relying on a  
3 list or lists really of names put together by  
4 individual staff members.

5           Because of this, to minimize a possible  
6 misunderstanding, I would certainly recommend that  
7 individuals who do ask to be notified of a filing of  
8 a proposed rulemaking make that request in writing to  
9 the Agency.

10           MR. TREPANIER: In Question 3, did the Agency  
11 follow their policy of common courtesy for myself,  
12 Lionel Trepanier, in this case; if not, why not?

13           MR. ROMAINE: I don't know. By your question,  
14 apparently you were notified by the Agency when we  
15 filed the proposal. I don't know whether you asked  
16 in writing to be notified.

17           In any event, I apologize if we  
18 overlooked a particular request and you weren't  
19 notified and you asked to be notified.

20           MR. TREPANIER: Question 3(b), did the Agency  
21 distribute a fourth draft honor of this proposal on  
22 or about July 23rd to whom was the ERMS mailing list  
23 notified?

24           MR. ROMAINE: Yes, we did. We distributed --

1 or it's my understanding that we distributed the  
2 fourth draft to a list of companies, trade  
3 associations, environmental groups, and it provided  
4 detailed feedback where it otherwise demonstrated  
5 significant interests in the proposal. We did not,  
6 however, notify the total outreach mailing list.

7 MR. TREPANIER: Question 4, does the Agency's  
8 supporting documentation filed with the proposal  
9 state that environmental groups are, quote,  
10 substantially in agreement with the Agency, unquote,  
11 on this proposal?

12 MR. ROMAINE: I think that's what could be read  
13 into the supporting documentation. I think I'd have  
14 to clarify that we are not necessarily saying that  
15 they are in agreement with all the details.

16 For example, as notified in my -- as  
17 noted in my own testimony, certainly there is not  
18 agreement on the concept of shutdowns and how those  
19 would be dealt with. I think, however, that we would  
20 believe that there is general agreement that the  
21 emission reduction market system does provide a  
22 viable approach to further reduce VOM emissions and  
23 that it cannot be used to relax or undo existing  
24 control requirements.

1 MR. TREPANIER: Thank you.

2 Question 5, what organizations are these?

3 MR. ROMAINE: The ones that come to mind for me  
4 that I definitely know were involved were the  
5 Environmental Defense Fund. They were involved in  
6 the design team. And I also believe there have been  
7 ongoing discussions with the American Lung  
8 Association.

9 MR. TREPANIER: Following up, is that the  
10 environmental group referred to that was  
11 substantially in agreement with the Agency on the  
12 proposal?

13 MR. ROMAINE: I think those were the two  
14 specific groups that we were referring to. Citizens  
15 for a Better Environment I think was involved as  
16 well. I don't think they played as significant a  
17 role in the discussion as those two groups.

18 MR. TREPANIER: Did Citizens for a Better  
19 Environment give a comment on the proposal?

20 MR. ROMAINE: I don't remember seeing written  
21 comments from them.

22 MR. TREPANIER: Okay. I'll withdraw Question  
23 No. 6. That's not necessary. Thank you.

24 MR. DESHARNAIS: Mr. Trepanier, it also lists

1 Question 26. Has that been addressed?

2 MS. SAWYER: Yes. He just withdrew that.

3 MR. DESHARNAIS: Oh, I thought that was No. 6.

4 MR. SUTTON: He withdrew that earlier.

5 MS. SAWYER: Earlier.

6 But there was another question that -- or  
7 two other questions we have here from Mr. Trepanier.  
8 One is, I believe, starts in your testimony on Page  
9 7.

10 MR. TREPANIER: I withdraw that question.

11 MS. SAWYER: Okay. Then the final one we have  
12 is I think from handwritten questions. There is a  
13 question, where is Appendix A.

14 MR. TREPANIER: What I could do, I could maybe  
15 address that off the record because I'd like to get a  
16 copy of it.

17 MS. MCFAWN: Maybe at the close.

18 MR. TREPANIER: Yes.

19 MS. SAWYER: I do have a revised copy of  
20 Mr. Kanerva's example.

21 MR. DESHARNAIS: You want to substitute this  
22 for the previous?

23 MS. SAWYER: Yes, that would be fine.

24 MR. DESHARNAIS: Is there any objection to



1 substituting the revised version of Mr. Kanerva's  
2 testimony for example -- for Exhibit 47?

3           Okay. We will make that substitution.

4           Are there any other matters that need to  
5 be addressed at this time?

6           Okay.

7           MR. FORCADE: Is there going to be a revised  
8 errata sheet? I understood the errata sheet had some  
9 minor corrections.

10          MS. SAWYER: Yes, there is going to be one. We  
11 had a little difficulty with the computer.

12          MR. DESHARNAIS: Okay. I believe that there  
13 are some additional questions for the Agency's  
14 witness from Elizabeth Ann.

15          MS. ANN: Just a couple questions.

16                 For the 1999 target level, how are you  
17 going to know if you've met that level considering  
18 that most of the emissions from facilities are in  
19 tons per season when target levels are tons per day?  
20 Are you just going to add up the tons per day with  
21 rule effectiveness or without as is listed in  
22 Appendix E? Does that make sense?

23          MR. FORBES: Yes. I think the answer to your  
24 question is we would -- stationary sources in the

1 ERMS program, not all point sources will be in the  
2 ERMS program; but for those that are participating,  
3 we will as in Index E convert their emissions from  
4 tons per day and take the rest of the emissions of  
5 the stationary's point source category in tons per  
6 day along with mobile source estimates for 1999 and  
7 areas estimates for 1999.

8                   We will be required to carry out a new  
9 inventory. Part of the Clean Air Act requirements  
10 are that the states do milestone demonstrations to  
11 demonstrate that they do, in fact, meet their target  
12 levels. What EPA has typically been requiring is  
13 that states have somewhere between a year and a half  
14 to two years after the end of the target year to  
15 compile that new inventory and then demonstrate that  
16 they have achieved their target level. So that's  
17 what we would anticipate.

18           MS. ANN: So you are just going to add up the  
19 tons per day to get the tons per season to get in the  
20 target level?

21           MR. FORBES: Right.

22           MS. ANN: Okay. Let's say you've met the 1999  
23 target level, figured out that you've met that level,  
24 so then to meet the target level that was calculated

1 for 2002, would you then have to reduce again  
2 baseline emissions?

3 MR. FORBES: What you are asking really is more  
4 to the solution to the attainment demonstration  
5 requirement.

6 Once we do know all of the things that  
7 Mr. Mathur described as needing to be done with  
8 regard to OTAG background levels, the final  
9 determinations for attainment for Chicago, we will  
10 have to re-assess what that target -- well, the  
11 target level essentially is set, but we will have to  
12 re-assess what emissions are and what the remaining  
13 reduction requirements will be at that time and  
14 develop a new submittal that will include all the  
15 necessary further reductions needed.

16 MS. ANN: Okay. Also, Mr. Kolaz, when I was  
17 talking about lapsed ATUs, you said that they  
18 referred to possibly using expired ATUs for special  
19 access into ACMA.

20 When would you use expired ATUs for a  
21 special access?

22 MR. KOLAZ: Well, in my testimony -- I don't  
23 have the page number in front of me -- but in my  
24 testimony, I mentioned that at the end of each ozone

1 season, we would transfer expired ATUs into the  
2 ACMA. And under the proposed rule under -- on Page  
3 51, it's 205.610(e) -- Section E generally, but  
4 paragraph (e)(1) specifically, it mentions that one  
5 of the options the Agency has to offset ATUs  
6 forwarded from the following seasonal allotment is to  
7 offset these by crediting expired ATUs.

8           So in the example that Mr. Kanerva gave,  
9 he gave an example of finding 30 tons of new  
10 reductions. But, for example, if we found at the end  
11 of the reconciliation period that there were the  
12 equivalent of 30 tons of expired ATUs that were not  
13 used to retire ATUs, we could also offset that credit  
14 amount by those expired ATUs.

15           MS. ANN: Okay. I think I'm a little confused.

16           MR. KOLAZ: Okay. Let's use Mr. Kanerva's  
17 example where we had requests for special access to  
18 the ACMA, and the circumstance, let's assume, is one  
19 where everyone met -- the person met their criteria.  
20 I mean, they showed that they needed these to  
21 reconcile their emissions from the preceding year,  
22 they made all the proper showings, and they asked for  
23 a credit of 550 ATUs. We would advance those 550  
24 ATUs from the following seasonal allotment.

1 MS. ANN: Okay.

2 MR. KOLAZ: Under that Section (e)(1) I  
3 mentioned to you, it says we can offset these ATUs by  
4 crediting any expired ATUs from the transaction  
5 account from all ERMS participants to the ACMA after  
6 the end of the reconciliation period.

7 So there might be a company who had ATUs  
8 that would expire December 31st if not otherwise  
9 retired. So what we are going to do is take all  
10 these expired ATUs after December 31st and use those  
11 to offset any advances to this ACMA under the special  
12 access provision, if you see what I mean.

13 MS. ANN: Okay. So instead of looking for a  
14 new way to reducing emissions someplace else as in  
15 Mr. Kanerva's example, you would have just taken 300  
16 ATUs that were expired and put them for special  
17 access for the following year that you took the ATUs  
18 from?

19 MR. KOLAZ: That's correct.

20 MR. ROMAINE: If I may interject, that that act  
21 should be sufficient to make the special access to  
22 restore the system so that it isn't necessary to  
23 debit the next year's allotment to the ACMA. You  
24 would still be under a general obligation to take

1 whatever funds we got from special access to also  
2 take those funds and also acquire additional emission  
3 reductions. That note would excuse us from the  
4 obligation to use whatever funds were required.

5 MS. ANN: So if you went and took all the  
6 monies from ACMA and you couldn't find any ways to  
7 reduce emissions elsewhere, then you would use the  
8 expired ATUs to, let's say, replenish the amount for  
9 regular access for the following year that you took  
10 out for special access for the prior year?

11 MR. KOLAZ: You know, I think actually that  
12 confuses two things. There could be a situation --  
13 and several of the questions over the last day or two  
14 talk about this -- there could be a situation where a  
15 company chooses for whatever reason not to sell their  
16 excess ATUs. The situation I use, I mean, the more  
17 ideal situation would be that the company with the  
18 300 excess ATUs would sell them to that person that  
19 needed them to reconcile their emissions. One of the  
20 provisions of acquiring the special access to the  
21 ACMA is that the company demonstrate that they could  
22 not acquire them on the market.

23 So certainly one of the things we would  
24 do would be to look to the electronic bulletin board

1 of the ACMA, and we might even choose to actually put  
2 out a notice that, you know, here's a company that  
3 needs 300 ATUs; is someone willing to sell them. So  
4 hopefully that would be enough to get those ATUs  
5 before they would expire.

6                   But my point is if a company for whatever  
7 reason chooses not to sell, but at the end of the  
8 season we have forwarded the equivalent of 300 ATUs  
9 from the following season, I mean, the season coming  
10 up, then we would take those expired ATUs that a  
11 company could have sold to that company, put them  
12 into the ACMA, and sell them ourselves to this person  
13 who needed them.

14               MS. ANN: Okay. When a company at the end of  
15 the season, you know, says we have 100 ATUs, and it  
16 reconciles with their emissions, those ATUs are then  
17 expired?

18               MR. KOLAZ: They are retired.

19               MS. ANN: They are retired?

20               MR. KOLAZ: They are retired.

21               MS. ANN: Okay. So any ATUs that are used are  
22 retired?

23               MR. KOLAZ: Yes.

24               MS. ANN: And ATUs that are expired are never

1 used?

2 MR. KOLAZ: Those are the ones that have gone  
3 unused.

4 MS. ANN: Okay.

5 MR. DESHARNAIS: Any additional matters at this  
6 time?

7 Okay. This hearing will be continued on  
8 the record until March 10th at 9:00 a.m. That  
9 hearing is expected to continue also on March 11th.  
10 This will be for the purposes of the Agency's  
11 presentation of its economic presentation.

12 Additionally, hearings are anticipated to  
13 be scheduled for beginning April 21st for other  
14 participants to present their testimony as  
15 anticipated at the comment period, and these hearings  
16 will extend through May 16th.

17 And there are no other matters?

18 Ms. Mihelic?

19 MS. MIHELIC: There are a lot of questions that  
20 the Agency has stated it will answer in written  
21 comments, and I'm not sure if we ever decided upon a  
22 date by which those would be submitted.

23 MS. SAWYER: I don't think we did.

24 I'm just looking for my calendar.



1                   Is it your preference that it's done so  
2 before the next hearing?

3           MR. FORCADE:   Yes.

4           MS. SAWYER:   How about Friday the 21st of  
5 February?

6           MS. MIHELIC:   That's fine with me.

7           MR. FORCADE:   Yes.

8           THE HEARING OFFICER:   Okay.   Thank you.

9                   There are no other matters?

10                   This hearing is continued on the record  
11 until March 10th, 9:00 a.m.   Thank you.

12

13                                   (Which were all the proceedings  
14                                   had at this time.)

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

3 I, MICHELLE M. DOSE, C.S.R., a Notary  
4 Public in and for the County of Cook and State of  
5 Illinois, do hereby certify that the testimony then  
6 given by all participants of the rulemaking hearing  
7 was by me reduced to writing by means of machine  
8 shorthand and afterwards transcribed upon a computer,  
9 and the foregoing is a true and correct transcript.

10 I further certify that I am not counsel  
11 for nor in any way related to any of the parties to  
12 this procedure, nor am I in any way interested in the  
13 outcome thereof.

14 In testimony whereof, I have hereunto set  
15 my hand and affixed my notarial seal this 24th day of  
16 February, 1997.

17 \_\_\_\_\_  
18 Certified Shorthand Reporter  
19 Notary Public, Cook County, Illinois  
C.S.R. License No. 084-003420

20 SUBSCRIBED AND SWORN to  
21 before me this 24th day  
22 of February, 1997.

23 \_\_\_\_\_  
Notary Public

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