



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

2 HEARING TAKEN BEFORE :

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

10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT :

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

16 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS  
17 PRESENT :

18 Ms. Bonnie Sawyer  
19 Mr. Bharat Mathur  
20 Mr. Roger Kanerva

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

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46  
47  
48  
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50

1 I N D E X

2 PAGES

3 GREETING BY HEARING OFFICER..... 5-6

4 OPENING STATEMENT OF WHITNEY ROSEN..... 6-7

5 TESTIMONY OF SIDNEY MARDER..... 7-17

6 TESTIMONY OF JERRY STARKEY..... 19-25

7 TESTIMONY OF BOB ELVERT..... 26-34

8 QUESTION AND ANSWER SESSION..... 35-51

9 TESTIMONY OF ROY COBB..... 52-59

10 QUESTION AND ANSWER SESSION..... 61-79

11 OPENING STATEMENT OF RICHARD SAINES..... 82-83

12 OPENING STATEMENT OF TRACEY MIHELIC..... 83-83

13 TESTIMONY OF JAMES SKALON..... 84-86

14 TESTIMONY OF RALPH FASANO..... 87-96

15 QUESTION AND ANSWER SESSION..... 99-121

16 TESTIMONY OF RON BURKE..... 122-140

17 QUESTION AND ANSWER SESSION..... 141-153

18 CLOSING COMMENTS BY HEARING OFFICER..... 153-153

19 E X H I B I T S

20 Marked for  
Identification

21 Hearing Exhibit No. 59..... 18

22 Hearing Exhibit No. 60..... 19

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1           MR. FEINEN: Good morning. This is continuing  
2 on the record from the last hearing date being April  
3 21st at 10:00 o'clock.

4           I just want to thank the court reporter for  
5 coming. I guess it was my fault for not sending on  
6 the message that we would start a little bit  
7 earlier. I just want to make that clear so  
8 everybody knows it's not the court reporter's  
9 fault.

10           Before we start with today's schedule for  
11 testimony from the ERMS Coalition and some other  
12 parties, Ron Burke from the American Lung  
13 Association, Roy Cobb from Jefferson Smurfit, before  
14 we start that, there's a couple of motions that came  
15 in prior to today and this morning. One motion that  
16 came in to the Board's office on April 18th was for  
17 Mr. Trepanier requesting the hearing officer  
18 reconsider the order previously dealing with a  
19 motion for an extension of time.

20           I'm going to hold or reserve ruling on that  
21 until later today to see if Mr. Trepanier comes  
22 up -- shows up I should say to the hearing.

23           The other motion that was presented this  
24 morning was from the ERMS Coalition, and I'm

1 wondering if we need to rule on that now or if we  
2 can wait until they testify and we get into the  
3 questioning.

4 Does anyone have a problem if we just wait  
5 for that?

6 MR. SAINES: That's fine.

7 MR. FEINEN: Okay. Well, then with that out of  
8 the way, I want to quickly talk about the schedule.  
9 I've talked about this off the record. So I just  
10 want to put it on the record.

11 I'm looking at closing the public comments  
12 on May 16th, and then we'll go from there. Most  
13 likely, the Board will go to first notice sometime  
14 in June, most likely June 19th, and we'll go from  
15 there. I don't think I need to go through the rest  
16 of the schedule. August most likely the second  
17 notice and final in October, time permitting, and  
18 we'll see how things go.

19 With that, I think I'll turn it over to  
20 IERG to present their witnesses and go from there.

21 MS. ROSEN: Good morning. I'm Whitney Rosen  
22 with the Illinois Environmental Regulatory Group.  
23 Today we have -- we will be presenting testimony by  
24 Mr. Sid Marder who is the executive director of



1 Marder. I am the executive director of the Illinois  
2 Environmental Regulatory Group, IERG. I also serve  
3 as environmental consultant to the Illinois State  
4 Chamber of Commerce.

5 I appreciate the opportunity to present  
6 testimony before the Board on this matter.

7 Today IERG will be presenting a panel of  
8 witnesses who will cover differing aspects of IERG's  
9 and the Illinois Chamber's involvement in  
10 development of the Emissions Reduction Market System  
11 proposal, ERMS.

12 While our testimony will demonstrate the  
13 level of effort that IERG members put into the  
14 development of the proposal, which is before the  
15 Board today, it's important to understand that all  
16 of such efforts were, in essence, preliminary to  
17 this Board proceeding.

18 It is, in fact, the Board proceeding which  
19 is the formal open public rulemaking process from  
20 which a legally binding regulation can result.

21 We also recognize it is appropriate and  
22 proper that any issues resolved prior to formal  
23 rulemaking are open to review and scrutiny by any  
24 and all participants at the Board regulatory



1 hearings.

2           The primary purpose of my testimony will be  
3 to present the broad policy decisions which faced  
4 IERG members as well -- early in the process and  
5 IERG's staff's role in analyzing the impact of these  
6 issues and conveying the same to the full  
7 membership.

8           Additionally, I will offer IERG's  
9 perspective of the legislative intent behind Section  
10 9.8 of the Environmental Protection Act. I will  
11 also identify where IERG believes that improvements  
12 to the proposed rules are still needed.

13           I'll be summarizing my testimony. The  
14 Board has the prefiled full text. This regards  
15 broad policy decisions. It was very early in this  
16 process of determining the percentage reductions  
17 which would be required for each category of  
18 volatile organic material emitters, very early in  
19 that process, the Agency proposed that an emission  
20 trading system would be put in place for the point  
21 source category.

22           Quite frankly, the members of IERG accepted  
23 the fact that whether equitable or not, the reality  
24 was that point sources would be asked to make

1 additional reductions.

2           That being the case, IERG began to analyze  
3 the various draft ERMS proposals to determine the  
4 real effect they would have on our members.

5           From this analysis, two broad policy shifts  
6 became very clear. First, the proposal shifts our  
7 regulatory obligation from an allowable basis to an  
8 actual basis. The severity of the amount of VOM  
9 emission reductions, while significant and difficult  
10 to achieve, pale next to the effect of determining  
11 the sources baseline by using actual rather than  
12 allowable emissions.

13           Under the existing system, a facility has  
14 the right to emit as many tons of VOM as it wishes  
15 so long as it complies with applicable emission  
16 standards.

17           Under the ERMS proposal, a facility would  
18 be prohibited from adding even one additional ton of  
19 VOM emissions unless an offsetting ton could be  
20 generated internally or purchased on the market.

21           While our members ultimately accepted this  
22 concept, it was one of the driving issues that  
23 motivated IERG to aggressively argue for provisions  
24 in both the legislation and the proposed

1 regulations.

2           The Board should be aware that the ERMS's  
3 cap and allocate provision will result in a large  
4 contribution towards attainment and maintenance of  
5 the national ambient air quality standard for ozone.

6           To my knowledge, no other proposal for the  
7 area or mobile source categories in Illinois  
8 includes the emission cap concept. Rather,  
9 traditional command and control options are being  
10 considered, which by their very nature, allow for  
11 unlimited growth.

12           The second major issue is that the proposal  
13 shifts the regulatory burden from the regulators to  
14 the regulated. In the past, for point sources, and  
15 in the present for both area and mobile sources, the  
16 burden of defining and supporting the validity of a  
17 regulation falls on the Agency.

18           For example, in the case of a RACT rule,  
19 the Agency would identify the source and/or emission  
20 units which would be affected as well as the type  
21 and nature of the controls to be implemented.

22           Further, the Agency had the burden to  
23 demonstrate that the proposed rules were technically  
24 feasible and economically reasonable to the extent

1 required by the Act.

2           Conversely, the ERMS program allows the  
3 Agency to identify a broad class of affected  
4 industry selected solely by level of emissions and  
5 to assign a mandatory reduction level. The decision  
6 of how to achieve this reduction is left to the  
7 emitter, and the burden of proving equity is removed  
8 from the Agency's shoulders.

9           Those are two major issues in shifts in  
10 this policy which we essentially have agreed to, but  
11 they drove our thinking in the process.

12           In light of these broad policy shifts, the  
13 membership believed that it was important to include  
14 certain protections in the ERMS enabling  
15 legislation. Therefore, the membership discussed  
16 two approaches to legislative development. Number  
17 one, would be a very specific and detailed language  
18 that established -- that would establish the general  
19 provisions of the program or number two, the second  
20 approach would be generic language authorizing the  
21 Agency to develop an ERMS program for submittal to  
22 the Board with certain guiding principles.

23           The membership included that generic  
24 legislation with certain protections was the

1 preferred option. To protect against the continuous  
2 ratcheting down of the cap, the membership believed  
3 it was important to ensure that one, emission  
4 reductions would not be required unless necessary  
5 for the attainment and maintenance of the national  
6 ambient air quality standard for ozone.

7 Two, that any emissions reductions would  
8 not be imposed until after full rulemaking under  
9 Section 27 of the Act.

10 Three, that stationary sources would not be  
11 required to reduce emissions to an extent which  
12 exceeds their proportionate share.

13 Four, the program must be as cost-effective  
14 as traditional command and control. And five, the  
15 cost-effectiveness of other types of controls on  
16 other sources must be considered as part of any  
17 future reductions.

18 The intent of the above five factors was to  
19 ensure that a complete review of all control options  
20 for all categories be considered and evaluated prior  
21 to simply ratcheting down stationary sources under  
22 the ERMS program.

23 With regard to the proportionate share  
24 concern, Section 9.7(C)(3) of the Act was included

1 to assure that the three emission sectors, point,  
2 area, and mobile would reduce emissions roughly  
3 proportionately.

4           The measure of proportionality would cover  
5 the entire time frame in which the sectors made  
6 reductions or were to make reductions as required to  
7 meet their obligations under the Act.

8           Now, although IERG has expended  
9 considerable time and energy in attempting to  
10 resolve all of the issues inherent in the ERMS  
11 program, there are still four issues which we  
12 believe if resolved differently would allow for a  
13 more equitable and fair program.

14           Generally, IERG's concerns are as follows:  
15 First, the proposal should allow participants until  
16 the end of the year 2000 seasonal allotment period  
17 to operate pursuant to an allotment.

18           Secondly, the ERMS database should provide  
19 information on the cost of ATUs purchased to the  
20 extent feasible.

21           Third, as with regards to the cost of an  
22 ATU under the ACMA throughout the discussions of  
23 this program, IERG has continuously opposed the  
24 imposition of a set price for obtaining an ATU under

1 the regular access to the ACMA.

2 IERG believes that due to the uncertainties  
3 and the fact that the ACMA will in all likelihood be  
4 sought only after other attempts to generate or  
5 purchase ATUs has been exhausted, the price should  
6 be only nominally above the established market  
7 price.

8 Accordingly, we would recommend that the  
9 multiple for regular access to the ACMA be 1.1 times  
10 the market price and the multiple for special access  
11 be 1.2 times the market price.

12 Four, the proposal as it's drafted right  
13 now, fails to provide for the inclusion of  
14 previously acquired emission reduction credits in  
15 the source's baseline emission determination.

16 For example, in 1996, one of our member  
17 companies acquired emission reduction credits for  
18 use as New Source Review offsets for a future  
19 expansion project.

20 However, due to the expansion project  
21 schedule, a state construction permit will not be  
22 issued by the Agency prior to the January 1st, 1998,  
23 date that's included in the regulation now in  
24 proposed Section 205.320(f).

1           We believe that proposed Section 205.320(f)  
2 will not apply to this situation. Moreover, as  
3 indicated by Mr. Romaine at the February 10th, 1997,  
4 hearing in this matter, the Agency's current  
5 proposal does not address this situation.

6           Thus, there is no mechanism by which such  
7 emission reduction credits will be incorporated into  
8 the source's ERMS baseline. The result is that a  
9 company who diligently engaged in early planning  
10 activities, for example, planning activities prior  
11 to the implementation of the ERMS program so as to  
12 assure compliance with New Source Review offsetting  
13 requirements would be unfairly penalized.

14           As noted in my prefiled testimony, we have  
15 discussed this issue with Agency representatives,  
16 and we have reached agreement upon proposed language  
17 which addresses his concern.

18           The language proposed for inclusion at new  
19 Section 205.320 sub (g) is set forth within the  
20 document entitled Illinois Environmental Regulatory  
21 Group's proposed language, which is dated April  
22 21st, 1997.

23           IERG requests that the Board modify the  
24 current proposal to include IERG's proposed language



1 so as to allow for a transition for previously  
2 acquired emission reduction credits.

3 I appreciate the opportunity to participate  
4 in this proceeding, and I will be happy to add --  
5 answer any of your questions on my testimony, I  
6 believe, at the end of our presentation.

7 MS. ROSEN: Yes. At this time, I'd like to have  
8 Mr. Marder identify his prefiled testimony for the  
9 record.

10 MR. MARDER: That's it.

11 MS. ROSEN: Are you familiar with this  
12 document?

13 MR. MARDER: Yes, I am.

14 MS. ROSEN: Is it a true and accurate copy of  
15 the prefiled testimony that you submitted for the  
16 proceeding?

17 MR. MARDER: Yes, it is.

18 MS. ROSEN: Okay. I would like to move to have  
19 this document admitted as Exhibit -- I believe we're  
20 on 59?

21 MR. FEINEN: In your prefiled --

22 MS. ROSEN: And the attachment is included.

23 MR. FEINEN: Okay. This document includes the  
24 attachment A. Excuse me. This prefiled testimony

1 of Mr. Marder dated April 2nd, 1997. That's on Page  
2 17, and then the attachment A is dated April 7th,  
3 1995. It's to the members of the Illinois  
4 Environmental Regulatory Group, IERG, from the IERG  
5 staff. Its reason is VOM emissions trading issue  
6 paper.

7 I'll move that plus the attachment -- I'll  
8 move -- I'll mark prefiled testimony of Sidney  
9 Marder and attachment A as number 59.

10 If there's no objections, I'll just have  
11 that entered into the record. Seeing none, it'll be  
12 entered in as 59.

13 (Hearing Exhibit No. 59  
14 marked for identification,  
15 4-21-97.)

16 MS. ROSEN: Okay. And then the language that  
17 Mr. Marder referenced Illinois Environmental  
18 Regulatory Group proposed language dated April 21st,  
19 1997. If we can have that admitted as well?

20 MR. FEINEN: I'm marking as Exhibit No. 60 the  
21 Illinois Environmental Regulatory Group proposed  
22 language dated April 21st, 1997.

23 This seems to be what was passed out on the  
24 back table also. If you don't have a copy, feel

1 free to get it. That's been marked as Exhibit No.  
2 60.

3           If there's no objection, we'll enter it  
4 into the record as Exhibit No. 60. Seeing none,  
5 then I'll mark or enter into the record as Exhibit  
6 No. 60, Illinois Environmental Regulatory Group  
7 proposed language dated April 21st, 1997.

8                                 (Hearing Exhibit No. 60  
9                                 marked for identification,  
10                                4-1-97.)

11       MS. ROSEN: Okay. We would like to continue  
12 with the summary of Mr. Jerry Starkey's prefiled  
13 testimony.

14       MR. STARKEY: Good morning. Thank you for the  
15 opportunity to testify today. My name is Jerry  
16 Starkey. I am the Regional Environmental Manager  
17 for Millennium Petrochemicals Incorporated,  
18 previously known as Quantum Chemical Corporation.

19           I am also an active participant in the  
20 Illinois Environmental Regulatory Group. I served  
21 as chairman of IERG from 1995 through 1996, as  
22 chemical sector representative on IERG's executive  
23 committee from 1991 to the present, as the work  
24 group chairman for IERG's Clean Air Act work group

1 from 1991 to the present, and as a member  
2 representative of IERG's Ozone Attainment Strategy  
3 Work Group.

4 My testimony today is intended to provide  
5 historical testimony as to IERG's involvement in  
6 development of the Agency's ERMS proposal.

7 First, I'd like to provide a brief  
8 explanation of IERG's membership as an illustration  
9 of the diversity of the companies that will be  
10 impacted by the ERMS program.

11 IERG is a not-for-profit Illinois  
12 corporation comprised of some 57 member companies  
13 engaged in industry, commerce, manufacturing,  
14 agriculture, trade, transportation, or other related  
15 activities, and which persons, entities, or  
16 businesses are regulated by governmental agencies  
17 which promulgate, administer, or enforce  
18 environmental laws, regulations, or policies.

19 Of our member companies, 40 companies  
20 participate on the IERG ERMS work group. Agency  
21 data referenced in my written prefiled testimony and  
22 included in the document attached to my prefiled  
23 testimony as attachment A, VOM Emitters Subject to  
24 ERMS, that document indicates that these work group

1 member companies represent 45 facilities engaged in  
2 various types of activities.

3           The estimated VOM emissions from these  
4 facilities range from a low of ten tons per season  
5 to 1,100 tons per season. Our members' size and  
6 diversity caused us to be very careful in our  
7 deliberations regarding the ERMS proposal so as to  
8 ensure that all types and categories of sources were  
9 treated fairly and equitably.

10           The Agency's records indicate that IERG  
11 members account for 18 percent of the some of 245  
12 facilities covered by the ERMS proposal.

13           But although IERG members' facilities  
14 account for some 48 percent of the total emissions,  
15 many of the members can easily be classified as  
16 small emitters.

17           It is important for the Board to understand  
18 the context of small in this setting. A very large  
19 capitalization company may have some very small  
20 emitting facilities. Likewise, a fairly small  
21 capitalization company can have a very large  
22 emitting facility.

23           IERG members understand the dilemma faced  
24 by a small, in the sense of capitalization, company

1 when faced with capital expenditures which threaten  
2 its net worth.

3           It was incumbent upon IERG to assess the  
4 impact on both large emitters, those with multiple  
5 emission units and small emitters, those with few  
6 emission units.

7           We were strong supporters of limiting the  
8 entry level of ERMS to a ten ton per season  
9 threshold. The intent was that this approach would  
10 tend to eliminate smaller facilities from coverage  
11 under the program.

12           I would like also to provide an overview of  
13 IERG's involvement in the development of the ERMS  
14 proposal. By way of background, it should be  
15 understood that the basis for the formation of IERG  
16 as an association was to create an entity whose  
17 purpose was to be inter -- was to interact as early  
18 as professionally -- pardon me. An entity whose  
19 purpose would be to interact as early and as  
20 professionally as possible with the regulators  
21 charged with designing, drafting, and ultimately  
22 implementing regulations that affect member  
23 operations.

24           IERG is obligated to provide the Agency

1 with our best information, thoughts, and rationale  
2 as to the impacts from proposed regulations. In our  
3 opinion, it is the Agency's obligation to craft  
4 regulations that are workable.

5           Only through fulfillment of these  
6 obligations can we assure that the ultimate goal of  
7 the regulation, to enhance environmental quality, is  
8 achieved.

9           To that end, IERG engaged in a time and  
10 resource intensive effort in working with our  
11 membership, the Agency, and our sister associations  
12 to assist in crafting a workable ERMS program. The  
13 IERG members grappled with and discussed the  
14 fundamental policy issues that surround the ERMS  
15 program since the beginning of development of the  
16 ERMS concept.

17           The initial in-depth policy discussions  
18 provided the basis for the members' position that  
19 certain protection should be contained within the  
20 ERMS enabling legislation. Once those protections  
21 were afforded, the next step became ensuring that  
22 those protections were carried through to the  
23 regulations.

24           As the detailed process progressed, IERG

1 moved beyond the broad policy issues to focusing on  
2 many of the intricate and site-specific issues.  
3 Overall, IERG sought to ensure that a flexible and  
4 workable program be put into place.

5 IERG's regulatory development efforts are  
6 further detailed in my written prefiled testimony.  
7 IERG's objective in undertaking the above-mentioned  
8 process was to implement a constructive procedure  
9 for forwarding to the Agency a consensus IERG  
10 position as to the issues of concern and suggested  
11 resolutions and obtaining feedback from the Agency  
12 concerning those issues.

13 We believe the end result was beneficial to  
14 all participants. The process enabled a group  
15 affected sources that did not have the background or  
16 understanding gained from participating in the  
17 Agency's design team discussions to provide a  
18 different perspective on the proposal.

19 The Agency was able to attempt to address  
20 IERG's concerns by directing its resources in an  
21 efficient manner. However, while this process was  
22 beneficial, it was not, nor should it be, considered  
23 a substitute for the public hearing process being  
24 undertaken by the Board.



1           Once again, thank you for the opportunity  
2 to testify on this matter, and I will be available  
3 to answer any questions concerning the testimony  
4 presented. I believe the questioning will be  
5 directed to the panel as a whole at the end of the  
6 testimony.

7           MS. ROSEN: Thank you, Mr. Starkey. I'm going  
8 to hand you this document for identification. Do  
9 you recognize that document?

10          MR. STARKEY: Yes, I do.

11          MS. ROSEN: Could you identify it, please?

12          MR. STARKEY: This is the prefiled testimony  
13 that was filed on April 2nd.

14          MS. ROSEN: And that's a true and accurate  
15 copy?

16          MR. STARKEY: Yes, it is.

17          MS. ROSEN: All right. We'd like to move to  
18 have this admitted as document 61, and I would note  
19 that the attachment is included, attachment A.

20          MR. FEINEN: I'm marking as Exhibit No. 61 the  
21 prefiled testimony of Jerry Starkey, which includes  
22 attachment A entitled VOM Emitters subject to ERMS  
23 Derived from IEPA Database.

24                 If there's no objections to that being

1 entered into the record, I'll enter it into the  
2 record. Seeing no objections, that's entered into  
3 the record as Exhibit No. 61. That's the prefiled  
4 testimony of Jerry Starkey dated April 2nd, 1997.  
5 It includes the Attachment A, VOM emitters subject  
6 to ERMS Derived From IEPA Database, which is  
7 actually misspelled. It says dase. So if you have  
8 one that says dase, that's the one we're talking  
9 about.

10 (Hearing Exhibit No. 61  
11 marked for identification,  
12 4-21-97.)

13 MS. ROSEN: Thank you, Mr. Feinen.

14 We'd like to -- are you ready?

15 MR. ELVERT: Yes.

16 MS. ROSEN: Okay. We will continue now with  
17 Mr. Bob Elvert who will be reading his prefiled  
18 testimony into the record. Thank you, Bob.

19 MR. ELVERT: Thank you.

20 Good morning. My name is Bob Elvert. I'm  
21 the Midwest Region Senior State Regulatory Expert  
22 for Mobil Business Resources Corporation. I  
23 appreciate this opportunity to provide testimony on  
24 behalf of the Illinois Environmental Regulatory

1 Group and Mobil Oil Corporation before the Illinois  
2 Pollution Control Board regarding the Illinois  
3 Environmental Protection Agency's proposed Emissions  
4 Reduction Market System or ERMS program.

5           My predecessor and I have been active  
6 participants on Mobil's behalf in the ERMS work  
7 group process from its inception. In addition, I've  
8 coordinated input from the petroleum sector of  
9 IERG's members on this issue.

10           Throughout the entire process, all parties  
11 have been open to constructive ideas on how Illinois  
12 can adopt a compliance program that will meet the  
13 Clean Air Act volatile organic materials or VOM  
14 reduction requirements while being flexible and  
15 agency/industry friendly.

16           In addition to the Joliet Refinery, which  
17 is a large source of VOM emissions within the area,  
18 Mobil Oil Corporation also owns and operates two  
19 marketing terminals and a crude product pipeline  
20 breakout facility. This pipeline facility is an  
21 additional source identified since the prefiled  
22 comments, and these are smaller sources of VOM  
23 emissions that will be directly affected by the  
24 proposed rule.

1           These four facilities jointly produce and  
2 supply automotive gasoline and distillate fuel  
3 through branded retail outlets in the Chicago  
4 metropolitan area and throughout the midwest  
5 region. Therefore, we have great interest in any  
6 proposed regulation that would affect the daily  
7 operations and compliance options of these  
8 facilities.

9           I am here today to discuss our reasons for  
10 accepting the ERMS program as the most viable  
11 alternative to historical command and control  
12 compliance requirements.

13           Let me begin by saying that Mobil supports  
14 cost-effective clean air programs. As corporate  
15 citizens in Illinois, we share the IEPA's commitment  
16 to a healthy environment. Midwest operations of  
17 Mobil's affiliates are supported by over 700  
18 employees who are committed to protecting the  
19 environment and operating these facilities safely  
20 and efficiently while providing quality goods and  
21 services to the public.

22           As Mobil has already made considerable  
23 capital investments to implement previous federal  
24 and state Clean Air Act requirements, a program such

1 as ERMS that allows emission source flexibility,  
2 while still obtaining compliance, is very  
3 attractive.

4           In order to understand the complexity of  
5 refinery operations and why a flexible compliance  
6 program like ERMS is beneficial, let me give you an  
7 overall picture of typical operations and the types  
8 of emission units of which they are comprised.

9           Mobil's Joliet refinery, like many other  
10 refineries, is constructed of several large  
11 production units including a distillation unit,  
12 catalytic crackers, thermal cracker, catalytic  
13 reformer and hydrotreaters, an alkylation unit,  
14 product blending facilities, and supporting utility  
15 units that together process crude oil into many  
16 usable products.

17           These products range from gasoline and  
18 liquefied petroleum gas or LPG on the light side to  
19 fuel oils, asphalt, and coke on the heavy side. It  
20 should be noted that the production units I have  
21 mentioned above include additional individual  
22 emission sources such as fuel combustion devices,  
23 boilers, process units, storage tanks, wastewater  
24 facilities and other miscellaneous units that can

1 amount to over 100 individual emission units.

2           Refineries, like many other large point  
3 sources, have made significant reductions of VOM  
4 emission in the past as part of various federal and  
5 state regulatory requirements such as New Source  
6 Performance Standards, National Emission Standards  
7 for Hazardous Air Pollutants and Rate of Progress  
8 Regulations, RACT controls, and reformulated  
9 gasoline standards.

10           For the Joliet refinery, we have reduced  
11 VOM emissions through control equipment  
12 installations or operation changes related to  
13 reformulated gasoline production, wharf loading  
14 restrictions, wastewater handling, and fugitive  
15 emissions component monitoring inspection and  
16 maintenance.

17           To date, the cost to implement these  
18 controls at Joliet has been estimated to be more  
19 than \$5 million with an additional -- annual cost of  
20 \$100,000 to ensure compliance.

21           From the pro-active side, Mobil has already  
22 spent over \$350,000 voluntarily in the past seven  
23 years to reduce tank emission losses in some of our  
24 tanks in Joliet through seal improvements. These

1 improvements alone have reduced the VOM emissions by  
2 approximately 100 tons during the summer ozone  
3 season.

4           It should be pointed out the ERMS program  
5 and its 12 percent VOM emission reduction  
6 requirements will only apply to three of the six  
7 refineries in the state of Illinois. The other  
8 three are located in areas of the state which --  
9 where emission reduction is not required and the  
10 ERMS program will not apply.

11           In addition, a fourth refinery is located  
12 just beyond the Chicago metropolitan ozone  
13 nonattainment area across the state border in  
14 Indiana. As a result, Mobil is very interested in a  
15 program such as ERMS, which will allow for the  
16 managing of future control costs, especially in the  
17 very competitive midwest fuels market.

18           This leads to why Mobil accepts the ERMS  
19 program. We recognize that the Clean Air Act  
20 mandates further reductions from stationary sources  
21 located in severe ozone nonattainment areas, and  
22 that the flexibility provided within the ERMS  
23 program allows each facility, whether it be large,  
24 medium, or small, to decide how they choose to

1 obtain compliance through the year 2000.

2           While the required 12 percent VOM reduction  
3 from a source's baseline will not be easy, it will  
4 provide certainty for the purposes of long-term  
5 planning, an important factor in any competitive  
6 market.

7           From a refinery industry perspective, the  
8 proposed 12 percent VOM fixed reduction allows for  
9 such planning. Should further reduction be  
10 necessary, approval from the Illinois Pollution  
11 Control Board will be necessary.

12           The ERMS program will provide equity for  
13 all affected VOM sources within the Chicago  
14 metropolitan ozone nonattainment area, not only from  
15 a VOM emission reduction standpoint, but also for  
16 providing equal flexibility to comply.

17           The Joliet refinery and the other sources  
18 that have pro-actively over complied with the  
19 federal VOM emission rule will be able to obtain  
20 such credits for the proactive steps taken at the  
21 facilities to reduce emissions prior to the  
22 additional ERMS requirements being imposed.

23           However, it should be pointed out that not  
24 all pro-active compliance will be credited. For



1 example, Mobil will not be able to take credit for  
2 pro-active steps taken on a number of tank seal  
3 upgrades completed prior to 1990 because of the set  
4 1990 baseline.

5           The ERMS program will provide flexibility  
6 for all facilities that need to find future  
7 reductions. Within Mobil's midwest region  
8 operations, while the refinery has achieved some  
9 early reduction credits to offset part of the  
10 pending ERMS 12 percent VOM reduction, our two  
11 terminals and pipeline facility have not.

12           As a result, these facilities like any  
13 other affected source, can take advantage of the  
14 compliance flexibility provided within the program.  
15 They can curtail production, buy credits from the  
16 market, or install further controls.

17           Finally, the program recognizes that  
18 certain elements must exist that will allow for the  
19 flexible operation of a facility. The program  
20 contains such elements that will allow the continued  
21 flexible operation of these ERMS facilities by one,  
22 allowing the purchase and transfer of long-term  
23 amount ATUs; two, allowing the use of ATUs as  
24 offsets for purposes of New Source Review; three,

1 exempting insignificant sources; four, recognizing  
2 the need to retain the startup and  
3 malfunction/breakdown provisions.

4           In closing, Mobil accepts the proposed ERMS  
5 program as we believe it is the most viable solution  
6 to meeting the Clean Air Act objective of improving  
7 air quality while balancing the cost of compliance.

8           I appreciate this opportunity to  
9 participate in these proceedings. I will be happy  
10 to answer questions that pertain to this testimony.

11         MS. ROSEN: Thank you. We will not be moving to  
12 have Mr. Elvert's prefiled testimony entered as an  
13 exhibit since he did read it for the record if  
14 that's okay.

15           Prior to proceeding to answer any  
16 questions, I want to correct one reference that Mr.  
17 Marder made in his summary, and it is included in  
18 his prefiled testimony. He cited to -- in his  
19 summary, he cited section, let's see, 9.5 or  
20 something, 9.5(c)(3) of the Act. That should have  
21 been 9.8(c)(3), and also on Page 11 of his prefiled  
22 testimony, he cites to Section 9.5, and that as well  
23 should have been Section 9.8. Thank you.

24         MR. FEINEN: I will mark the change on Page 11

1 of Exhibit 59 to reflect that the cite should be 9.8  
2 (c) did you say?

3 MS. ROSEN: Yes.

4 MR. FEINEN: Thank you. At this time, I guess  
5 we'll turn to the prefiled questions for IERG  
6 prepared by the Agency.

7 MS. SAWYER: Bonnie Sawyer with the Illinois  
8 Environmental Protection Agency. Good morning, Mr.  
9 Marder. The questions that the Illinois  
10 Environmental Protection Agency filed are in  
11 reference to the testimony of Sidney Marder, and the  
12 first three questions are in reference to point 1  
13 raised, and that's found on Pages 12 through 13.

14 The Illinois Environmental Regulatory  
15 Group, IERG, suggests that the rule require volatile  
16 organic material emission reductions first in 2000  
17 rather than in 1999 as the proposed rule currently  
18 requires.

19 Did the September 15th, 1995, draft  
20 Emissions Reduction Market System, ERMS, rule  
21 referred to in your testimony provide for VOM  
22 emission reductions phased in over time through 2007  
23 as a full attainment strategy?

24 MR. MARDER: Yes, it did. I think that was

1 proposed Rule 205.200.

2 MS. SAWYER: Did the September 15th, 1995, draft  
3 ERMS rule referred to in your testimony include a  
4 specific VOM emissions reduction target or  
5 percentage such as the 12 percent reduction  
6 contained in the proposed rule?

7 MR. MARDER: No, it did not. As the rule was  
8 then proposed, the reduction would have been  
9 determined by the Agency.

10 MS. SAWYER: Is it your understanding that the  
11 proposed ERMS rule requires reductions in 1999 to  
12 meet the three percent a year rate of progress  
13 requirement of Section 182 (c) of the Clean Air Act  
14 for the first three-year period, which is by 1999?

15 MR. MARDER: It's my understanding that the  
16 ERMS's rules intended to provide for a portion of  
17 the first state of the ROP requirements, and that  
18 the other portions would be required from area and  
19 mobile sources and would, in part, actually -- those  
20 reductions would, in part, actually occur later than  
21 the first-year period, although some portion of them  
22 would be credited back to the first period.

23 As a general answer, this is intended --  
24 the ERMS program is intended to meet the first

1 three-year period. I do agree with that.

2 MS. SAWYER: Mr. Marder, you refer to some  
3 reductions from the area and mobile source sector  
4 that you believe are to occur after 1999, but be  
5 credited in 1999. Can you identify those particular  
6 reductions?

7 MR. MARDER: My understanding from the  
8 preliminary discussions we had were that some of the  
9 programs, whether it be small engine reductions or  
10 the consumer product reductions that the U.S. EPA  
11 may have been late in adopting or would be  
12 implemented over a time frame would get implemented  
13 later, but still would be credited towards the first  
14 period even though because they were enacted, but  
15 not adopted -- but not implemented yet similar to  
16 the original proposal of ERMS that allowed until the  
17 year 2000 for some of the emissions, but really it  
18 was part of the first three-year period.

19 MS. SAWYER: Mr. Mathur has some questions also.

20 MR. MATHUR: Mr. Marder, is it not true that  
21 some of these area source measures that you  
22 mentioned while being implemented after this rule  
23 was in place, however, would be implemented by 1999,  
24 which is the date that the Agency is required to

1 demonstrate its first nine percent ROP?

2 MR. MARDER: Some of them would, and some of  
3 them wouldn't, and that's -- as I answered, I think  
4 part of them would apply and some part of them would  
5 come in a little later. That's my understanding of  
6 them.

7 MR. MATHUR: Is it not also true that in the  
8 Agency's testimony -- excuse me. Strike that.

9 Are you familiar with the exhibit in the  
10 Agency's testimony that showed where and from what  
11 sector the Agency was getting its nine percent ROP  
12 reductions?

13 MR. MARDER: I've seen that months and months  
14 ago. I can't say I'm thoroughly familiar with it,  
15 but I do recall the document you're talking about.

16 MR. MATHUR: So would you agree that the target  
17 levels that the Agency needs meet the ROP  
18 requirement it needs to meet by 1999?

19 MR. MARDER: I'm not sure if I agree with that.  
20 I think that there is a certain amount of  
21 flexibility that allows you to have programs in  
22 place and commitments to make certain reductions by  
23 certain times, but that there is some latitude in  
24 that, and one of the reasons I say that is because I

1 don't recall the numbers.

2 I'd have to go back and review them, but  
3 the numbers from the reductions that will occur by  
4 1999, I'm not sure if they're going to add up to the  
5 full nine percent.

6 Again, I'd have to go back and review the  
7 document.

8 MR. MATHUR: I don't have anything else.

9 MS. SAWYER: Okay the next four questions that  
10 the Illinois EPA has are in reference to point two  
11 found at Pages 14 through 15. IERG suggests that  
12 the price pay for each ATU transferred be posted to  
13 the public access bulletin Board.

14 Is IERG suggesting that the price paid per  
15 each ATU transfer be posted to the public access  
16 bulletin Board, or are you suggesting that an  
17 average of ATU transfer prices be posted  
18 periodically?

19 MR. MARDER: We're suggesting that the price  
20 paid for each transfer be posted on the bulletin  
21 Board. However, long-term transfers would not have  
22 to be included in that. We believe that the  
23 short-term transfers are akin to a spot market, and  
24 in a spot market, the prices need to be known as

1 soon as possible.

2 MS. SAWYER: Is it your position that the  
3 companies that are IERG members want the prices  
4 associated with their ATU transfers posted to the  
5 public access bulletin Board?

6 MR. MARDER: Well, we've obviously discussed  
7 this, and it is not necessary that a posting of who  
8 pays or receives what price be included on the  
9 bulletin Board. That's not important, and it's not  
10 necessary.

11 What is important is a knowledge of the  
12 price that's paid for an ATU. For example, if I  
13 want to buy a hundred shares of IBM stock or Mobil  
14 stock or anybody's stock, I want to know the price  
15 of the stock. I don't necessarily care who the  
16 seller was and who the buyer was.

17 So those two issues can be disconnected.  
18 What we're talking about is as early as possible and  
19 as soon as possible an identification of the actual  
20 price paid. It's our feeling that's what makes a  
21 market work.

22 MS. SAWYER: Do you believe in general -- do you  
23 believe companies in general involved in ATU  
24 transfers will want the price associated with their



1 transfer posted to the public access bulletin  
2 Board?

3 MR. MARDER: I think the same answer. It's not  
4 necessary to tie the identity to the price.

5 MS. SAWYER: The fourth question I believe  
6 you've already answered, so we will not ask it.

7 The next four questions are referenced to  
8 point three found at Pages 15 through 16. IERG  
9 suggests a lower price for ATUs from the Alternative  
10 Compliance Market Account or ACMA account.

11 Is it your understanding that the ACMA is  
12 intended to be a secondary source of ATUs.

13 MR. MARDER: Yes, that is my understanding.

14 MS. SAWYER: Wouldn't the trading aspect of the  
15 proposed rule be more successful than active market  
16 exists for ATUs?

17 MR. MARDER: Yes, it would be.

18 MS. SAWYER: If the price of ATUs in the ACMA  
19 are comparable to the price for ATUs in the market,  
20 isn't it possible that sources will turn to the ACMA  
21 as a first resort to locate ATUs because it may be  
22 considered a more convenient source of ATUs?

23 MR. MARDER: Well, I think anything is possible,  
24 but it's doubtful. If the market is efficient, that

1 would mean that an ample supply of ATUs is available  
2 and any difference in price just like in the  
3 market -- the stock market, any difference in price  
4 will draw buyers to the lowest possible cost option  
5 buying those ATUs.

6           If the market is not efficient, we will  
7 need all avenues available and we should not be  
8 penalized, in our opinion, for using an available  
9 option.

10       MS. SAWYER: I think you essentially answered  
11 the fourth question in your answer to question two,  
12 so I won't ask that question also.

13           Well, that concludes our questions of the  
14 IERG witnesses.

15       MS. ROSEN: Thank you.

16       MR. FEINEN: Are there any other questions of  
17 the IERG witnesses from the audience? Any  
18 questions?

19       MS. HENNESSEY: I have a question. Just  
20 following up on Ms. Sawyer's last question, whether  
21 buyers will turn to the ACMA market versus trying to  
22 negotiate private transactions for purchase and sale  
23 of ATUs will depend, I guess, on the extent of the  
24 transaction cost in negotiating a private deal,

1 correct?

2 MR. MARDER: Generally, that's correct.

3 MS. HENNESSEY: And you think the 1.1 ratio  
4 will -- I guess I'm wondering won't it be easier, in  
5 fact, to buy things from the Agency rather than  
6 having to negotiate a deal privately?

7 MR. MARDER: Well, one would hope not. I mean,  
8 this is -- the entire premise of this is that it's a  
9 market base system, and that there's going to be a  
10 market, and there's going to be enough ATUs  
11 available. It's -- when we discussed this with our  
12 membership, our presumption is that most business  
13 people who realize that they are going to need a  
14 stream of ATUs are going to enter into a long-term  
15 contract for those ATUs, and that's not what the  
16 ACMA is for.

17 So Mr. Starkey may go to Mr. Elvert and  
18 then go into -- come up with some kind of an  
19 agreement to buy a long-term stream. What we're  
20 talking about is, if you will, the spot market where  
21 an order comes in. That is what this market is  
22 for.

23 If the bulletin Board is effective, if  
24 the -- if people know what's available, we're

1 talking about 232 companies, I would think the  
2 market would prevail. That's just our general  
3 feeling. The issue becomes if the market is not  
4 effective, how much of a penalty should we have to  
5 pay for using an alternative?

6 MS. HENNESSEY: I suppose that the market price  
7 should reflect any transaction cost that --

8 MR. MARDER: Uh-huh, yes.

9 MS. HENNESSEY: -- results in private  
10 transactions?

11 And why does IERG not favor including price  
12 of the long-term transactions in the database?

13 MR. MARDER: I don't think they're that  
14 relevant. In the case of a long-term transaction,  
15 there are probably going to be other considerations  
16 involved.

17 In some cases, it's going to be  
18 intercompany transfers where Plant A in one area  
19 will shut something down and give it or sell it to  
20 another plant.

21 There are going to be so many factors and  
22 so many different combinations and permutations that  
23 we don't believe that the selling price is going to  
24 be truly representative of what the next deal is

1 going to look like.

2           Whereas, the spot market is truly an  
3 instantaneous market, and in that case, you're going  
4 to have more representative pricing.

5           MS. HENNESSEY: I have a question which is  
6 really beyond the scope of your testimony, but if  
7 you -- I'd invite you to comment on it.

8           We've had one comment from the American  
9 Lung Association in their prefiled testimony which  
10 they've raised the possibility that this program  
11 doesn't adequately account for the possibility that  
12 hot spots could develop.

13           For example, one source in an area may buy  
14 up a lot of ATUs and be able to omit a lot VOMs in a  
15 particular area that might present something  
16 hazardous as far as an environmental factor. I  
17 don't know if you've had a chance to think about the  
18 issue, but if you have any comment, I'd like to hear  
19 it.

20           MR. MARDER: Anything is possible. I don't  
21 think people are going to buy up ATUs simply to  
22 expand. If people are going to expand, they would  
23 be expanding or attempting to expand with or without  
24 the ERMS program.

1           Without the ERMS program, if one of our  
2 members or anybody wants to expand in the Chicago  
3 area, they can do that. They can do it today. All  
4 they have to do is go through the New Source Review  
5 provisions and meet that.

6           So the emission levels can go up simply by  
7 buying at 1.3 to 1 offsets. This is an alternate  
8 way to get to the same result. I don't think that  
9 the existence or the lack of existence of the ERMS  
10 program is going to drive decisions to expand  
11 facilities.

12         MS. HENNESSEY: Okay. That's it. Nothing else  
13 from me.

14         MR. FEINEN: I've got a couple of questions. I  
15 guess the first one is directed to Mr. Marder.

16           You stated that 9.8 topic on proportionate,  
17 I don't want to say liability, proportionate aspect  
18 of 9.8 it's supposed to be met in a time frame, and  
19 I was wondering if you had an idea of what that time  
20 frame was?

21         MR. MARDER: I think our discussions were fairly  
22 flexible on that. That goes to a little bit of what  
23 I was saying before. Nobody really insisted that  
24 every year or every three year increment all of the

1 sources would contribute proportionately, but rather  
2 over the entire period from today until attainment  
3 is reached, whenever that is, there would be some  
4 degree of proportionality.

5           It doesn't mean that it has to be exactly  
6 one to one, but it means that we should all, of the  
7 regulated and the regulators, take a hard look at  
8 what can be done and what time frames are feasible  
9 and try to level it out over the broader time scale.

10       MR. FEINEN: And, Mr. Starkey, excuse me, I'm  
11 still dealing with a cold. You were talking about  
12 the difference between small capitalization and  
13 large capitalization in defining the IERG membership  
14 and talking about what is a large and small company,  
15 that when you started talking about the  
16 applicability of the rule and talking, between, like  
17 a large person and a small person you started using  
18 emissions and tonnage.

19           Does the tonnage of emissions always run  
20 with the capitalization, or is there sometimes when  
21 you have a large emitter with low capitalization?

22       MR. STARKEY: Well, I think the best way to  
23 describe that or to shed some light on it is that  
24 you can have a company that has a large capital

1 investment with multiple plants across the country  
2 and whereas they may be viewed as a leading  
3 manufacturer in the country because of their size,  
4 the individual installation that they may have in  
5 Illinois could be quite small with very limited  
6 emissions.

7           The converse of that is that you could have  
8 a very small operation, a mom and pop operation if  
9 you will, that could be engaged in an activity that  
10 results in significant emissions.

11           What we're saying is the differentiation  
12 between the large company and the small company  
13 based upon the total assets of the facility looking  
14 at their annual report is not necessarily an  
15 indication of their emission rates.

16           What we're saying is that in terms of this  
17 program, you need to look at the individual source  
18 that is subject to the emission requirements, take a  
19 look at their emissions, and determine their  
20 applicability, and what we're saying is that for  
21 locations that have less than ten tons, we think  
22 that it is not cost effective for those small  
23 emission sources to be subject to the emission  
24 control requirements.



1           MR. FEINEN: I have one last question for Mr.  
2 Elvert to get all the panel. You talked about  
3 Mobil's agreement with the ERMS program, and you've  
4 used the 12 percent. I was wondering if Mobil would  
5 still agree with an ERMS-type program if it was a  
6 different starting point, let's say, a 14 percent  
7 reduction off the top or a 16 point reduction.  
8 Would Mobil still consider ERMS the best approach  
9 versus the command and control method?

10          MR. ELVERT: Yes, we would, but we feel from a  
11 12 percent we feel is with the nine percent ROP that  
12 is required and relative being excessive, this gives  
13 us -- gives a facility and a corporation an idea of  
14 long-term findings rather than having excessive  
15 amounts of reduction.

16          MR. MARDER: Can I comment on that?

17          MR. ELVERT: Sure.

18          MR. MARDER: Because it's an overall IERG policy  
19 question. I think I'd agree with Bob that if it  
20 were determined that additional reductions were  
21 needed from the point source sector, we would  
22 probably, all things being equal, opt for the ERMS  
23 approach rather than another approach.

24                   That's a separate question from whether we

1 believe that a higher threshold is appropriate, and  
2 that's one of the reasons that when we work with the  
3 Agency, they agree that revisiting the threshold  
4 would be yet another full broad rulemaking.

5 MS. HENNESSEY: Just to follow up on that, one  
6 of the reasons for that is that once you have a  
7 given cap allowing the ERMS program allows an  
8 individual source to either control emissions or  
9 purchase ATUs and use whatever is the lowest cost  
10 method, and the traditional control and command --  
11 command and control regulation doesn't allow that?

12 MR. MARDER: Well, the reason for requesting thr  
13 full rulemaking to go from 12 percent to 12 plus, I  
14 assume plus X rather than minus X, is really  
15 twofold.

16 Number one is to test the thesis against  
17 the requirements of Section 9.8 of the Act to see if  
18 proportionality is really there, and, quite frankly,  
19 this is easy. I mean, if I'm in my friend  
20 Mr. Mathur's chair and I have to make additional  
21 reductions and I have to either go fight with the  
22 automobile companies or fight with the coating  
23 companies or simply say let's go to 20 percent, I'm  
24 going to go to 20 percent.



1 testify.

2 He prefiled his testimony on April 4. With  
3 that, I guess we'll have the witness sworn in.

4 MR. COBB: Could you swear both of us?

5 MR. FEINEN: Oh. Could you introduce  
6 yourselves?

7 MR. COBB: Okay. I'm Roy Cobb, and this is Al  
8 Chiaruttini who is environmental manager for our  
9 folding carton division, and I was going to present  
10 an abbreviated form of my testimony, and then Al  
11 will be here to help me answer any questions that  
12 the Board or others might have.

13 MR. FEINEN: Okay. Well, let's swear both of  
14 you in so when you answer, you're telling the truth  
15 and all that.

16 (Witnesses sworn.)

17 WHEREUPON:

18 R O Y C. C O B B, JR.,  
19 A L B E R T W. C H I A R U T T I N I,  
20 called as witnesses herein, having been first duly  
21 sworn, depose and saith as follows:

22 MR. COBB: My name is Roy Cobb. I'm the senior  
23 environmental counsel for Jefferson Smurfit  
24 Corporation. I work for the corporate environmental

1 affairs department, and I assist our plants  
2 throughout the country in complying with  
3 environmental requirements.

4           Jefferson Smurfit is one of the largest  
5 paperboard packaging companies in the United States  
6 and the largest recycler of waste paper. We have  
7 over 150 facilities scattered throughout the United  
8 States. We have 17 facilities in Illinois with over  
9 2400 employees. We have three facilities in the  
10 Chicago area that will be participating sources  
11 under the ERMS program.

12           These are a folding carton plant that is  
13 located in Carol Stream, Illinois. Folding cartons  
14 are the -- typically, the type of carton you would  
15 see in a grocery store or other retail establishment  
16 such as soap boxes, cereal boxes, containers such as  
17 that.

18           We have a flexible packaging plant that's  
19 located in Schaumburg. It produces flexible  
20 packages of various material. One of the big things  
21 that we're involved in a few years back was making  
22 the MREs for operation Desert Storm. That's the  
23 type of product that they produce, and then we have  
24 a paper label plant in St. Charles, Illinois, that

1 produces paper labels for bottles and various  
2 applications.

3 All of our plants produce to customer  
4 order. We don't decide on a product and then  
5 produce it and try to sell it. Basically, we have  
6 to be able to compete for orders for specific  
7 product and be able to produce it on a competitive  
8 basis and within the time requirements of the  
9 customer, especially with respect to our flexible  
10 packaging plant and our folding carton plant.

11 There is a great variety in terms of the  
12 complexity and sophistication of the products that  
13 we produce. Generally speaking, and, you know, any  
14 generalization is, you know, not universally true,  
15 the more sophisticated the product, the higher the  
16 value added, the higher the revenue from that  
17 product and also because of the sophisticated  
18 demands typically the higher amount of VOM that we  
19 have to use in producing the product.

20 There is some very simple boxes that don't  
21 require any special coating and require very limited  
22 printing that can be produced with little or no  
23 VOM. On the more or less opposite extreme, if  
24 you're looking at folded cartons, it would be a soap

1 box, which because it has to be able to meet  
2 customer specifications and in-use requirements. In  
3 particular, it has to have multiple barriers so that  
4 water vapor doesn't penetrate the box even if it  
5 spends a long period of time in a laundry room or  
6 other environment where it's exposed to humid air  
7 and heat also combined with the fact that typically  
8 you want graphics that have, you know, fluorescent  
9 colors and other such features and also have to have  
10 certain -- meet certain requirements in terms of the  
11 glossiness of the surface, whether it will slip if  
12 it's stacked, other requirements.

13           Such cartons as that require a very high  
14 amount of VOM to produce. So that's the amount of  
15 VOM used and therefore emitted at our facilities  
16 depends very much upon the product mix, which, in  
17 turn, is customer driven. Our preference, simply  
18 because of the nature of the marketplace, typically,  
19 is to get the high-end range of business, which, in  
20 turn, means more VOM used and emitted.

21           Obviously, you know, we're competing with  
22 other facilities, and we may or may not get as much  
23 of that business as we would like. So based upon  
24 business conditions, our VOM emissions will vary.

1           Because of the nature of our business, we  
2 feel that it's very important that whatever  
3 regulations are adopted provide the maximum  
4 flexibility for businesses such as ours to  
5 accommodate customer demand because we don't have  
6 the flexibility, for example, of telling a customer  
7 that we'll produce soap boxes for them October  
8 through April, but, you know, May through September  
9 they have to get them from someone else.

10           So we have to be able to respond with a  
11 product the customer wants when the customer wants  
12 it or else we're not going to get the orders, and so  
13 we feel that if we have to forgo the high end of our  
14 business for any portion of a year, this will have a  
15 very definite effect on the viability of our  
16 facilities in the Chicago area.

17           So in my testimony, I touched upon four  
18 areas in the prefiled testimony of where I felt that  
19 in order to protect a business such as ours from  
20 undue injury and also to comply with the  
21 requirements of Section 9.8 of the Illinois  
22 Environmental Protection Act, that there needed to  
23 be flexibility in four areas.

24           The first of these relates to the proposal



1 that the baseline would be determined by averaging  
2 two years in the period 1994 to 1996. We believe  
3 that the Board should provide the maximum  
4 flexibility and choice of baseline and allow  
5 facilities to choose years between 1990 and 1997,  
6 that being the overall window that the Agency has  
7 selected without a special showing that the years  
8 1994 to 1996 were unrepresentative or that years  
9 outside that three-year window were more  
10 representative.

11 We think that would involve the Agency in  
12 making basically business determinations relating to  
13 what is representative for a particular business.  
14 One of the things that was suggested was that if you  
15 had had a high business demand in an earlier period  
16 and you didn't have it now, you would have to make  
17 some sort of demonstration that you expected the  
18 demand to return. That's really a business decision  
19 that we don't think is something that the  
20 Environmental Protection Agency would be  
21 particularly expert at, and that is, for example,  
22 something that would affect, I think, our folding  
23 carton plant, which due to business conditions in, I  
24 think, '92, '93 were operating seven days a week.

1           Now, we're operating five days or slightly  
2 less a week. That has a big impact on what the  
3 emissions are, and we don't think any decision  
4 should be made that, in effect, said well, now that  
5 you're going to five days, there's going to be some  
6 special hurdle that we to have overcome in order to  
7 go back to a higher rate of production.

8           The second area that we felt there needed  
9 to be flexibility and this -- it's-- I wouldn't say  
10 that this is foreclosed in the current proposal is  
11 that especially since in the years before just the  
12 last few facilities by and large were not tracking  
13 VOM emissions on a seasonal basis, that facilities  
14 be allowed to demonstrate what their seasonal  
15 emissions were by use of reasonable estimation  
16 techniques so they would still have to demonstrate  
17 what its emissions were during the ozone season, but  
18 that there be at least some flexibility for that to  
19 be done by measures other than actually having  
20 directly measured the VOM emissions during the ozone  
21 season.

22           The third area and, as we read it, we think  
23 the Agency's proposal does take this into account is  
24 the provision excluding from the required 12 percent

1 reduction existing emission units that have best  
2 available control technology, and it would be our  
3 understanding that best available control technology  
4 could include use of low VOM materials and not  
5 necessarily add on control technology.

6           So that is an area that we think is  
7 addressed in the IEPA proposal and we think that  
8 that is an important feature of it.

9           The fourth provision is that full credit be  
10 given for prior voluntary reductions. Here again,  
11 the Agency has provided for this. I have merely  
12 noted, and I'm not a student of Section 9.8 or its  
13 history that the Act doesn't say anything about a  
14 1990 cutoff in terms of allowing for voluntary  
15 reductions, and that is in the Agency proposal, and  
16 I understand the reason why it's there, and we're  
17 not objecting to -- you know, our company is not  
18 objecting to the 1999 cutoff. That was just an  
19 issue that I raised.

20           Anyway, that was -- there's -- my prefiled  
21 testimony then added some additional language  
22 inscription about why we feel that this flexibility  
23 is needed, but I think that would conclude my oral  
24 testimony this morning.

1 MR. FEINEN: Before we move on, I have a couple  
2 of questions. On your prefiled testimony, if you  
3 could look at the copy that you're going to enter in  
4 as an exhibit?

5 MR. COBB: Yes.

6 MR. FEINEN: You have bolded point one, which  
7 reads the final ERMS rule adopted by the Board  
8 should allow the maximum possible flexibility in  
9 selection of baseline.

10 MR. COBB: Yes.

11 MR. FEINEN: And then a point two comes later  
12 on, like, on page --

13 MR. COBB: Right.

14 MR. FEINEN: Where is that at? Page 12 near the  
15 end, and then I had a Page 13 at the end. Is that  
16 all? There's no -- there's no point four -- three  
17 or four to go along with the other things you've  
18 mentioned this morning?

19 MR. COBB: No. As I had indicated when I talked  
20 with you, I was -- you know, the time was limited,  
21 and there were four points we made. I was saying  
22 that I thought the Agency had addressed points three  
23 and four, so I omitted that from the subsequent.

24 MR. FEINEN: But you do mention that was on Page

1 4 of the prefiled testimony?

2 MR. COBB: Yes.

3 MR. FEINEN: Okay. I just wanted to make sure I  
4 have it.

5 MR. COBB: No, no. You've got the complete --

6 MR. FEINEN: Why don't you hand me that, and  
7 I'll mark it as Exhibit No. 62?

8 MR. COBB: Okay.

9 MR. FEINEN: I'm marking as Exhibit No. 62 the  
10 prefiled testimony of Mr. Cobb from Jefferson  
11 Smurfit, which is dated April 4.

12 If there is no objections, I'll enter that  
13 into the record. Seeing none, I'll enter that as  
14 Exhibit No. 62.

15 I'm going to open the floor up to  
16 questioning. Is there any questions from the  
17 participants?

18 (Hearing Exhibit No. 62  
19 marked for identification,  
20 4-21-97.)

21 MS. SAWYER: We have some -- the Illinois  
22 Environmental Protection Agency has some prefiled  
23 questions from Mr. Cobb's testimony. It's on Page  
24 10 of our prefiled questions.

1 MR. FEINEN: Okay. I'm sorry I missed that. I  
2 just got a little -- we'll start with the Agency's  
3 questions. Sorry about that.

4 MS. SAWYER: Question number one, does Jefferson  
5 Smurfit Corporation currently incorporate the cost  
6 of compliance with environmental requirements in the  
7 price of its products?

8 MR. COBB: The answer to that is yes. We have  
9 to incorporate all of our costs in how we price our  
10 products.

11 MS. SAWYER: Since the answer to number one is  
12 yes, would Jefferson Smurfit be forced to increase  
13 its price to cover the cost of complying with the  
14 command and control rule as an alternative to the  
15 proposed ERMS rule?

16 MR. COBB: It would depend, as I said, whatever,  
17 whether it's command and control or ERMS, we'll have  
18 to incorporate whatever the cost of control is.

19 In order to determine the impact of command  
20 and control versus ERMS, it would really be  
21 necessary to know the specifics of the command and  
22 control rule, and the one reason for that, and I  
23 mean, it's something that it's possible under the  
24 ERMS proposal, but it's unclear if you actually go

1 through the baseline setting process, is that if the  
2 command and control rule were adopted, for example,  
3 that established a level of control that while it  
4 was significantly higher than what the current RACT  
5 requires is something that you could meet with your  
6 existing control equipment or with minor  
7 modifications thereto you might not have any  
8 additional costs.

9           So it would -- you'd really have to know  
10 what the command and control rule was that you were  
11 looking at.

12       MS. SAWYER: Is it your understanding that under  
13 the current proposed ERMS rule if your control level  
14 is currently above what is required by rules that  
15 you would receive credit for that in your baseline  
16 calculation?

17       MR. COBB: It's -- there is a provision for  
18 that. It's not clear to me how that will be  
19 applied, and, in particular, like, for example,  
20 packaging work reviewer such as we have at Carol  
21 Stream, the current requirement is a 65 percent  
22 overall reduction.

23           It's not that clear to me that, let's say,  
24 if you tested and you've shown 85 percent whether

1 you get full credit for that or whether the Agency  
2 would, in fact, say that well, in order to meet 65,  
3 you would need to have met some number better than  
4 this anyway.

5           So I don't know as to exactly how that's  
6 going to be applied in practice as to how much  
7 credit you're going to get under ERMS for over  
8 control.

9           MS. SAWYER: But there is a provision that  
10 allows for that?

11          MR. COBB: Yes.

12          MS. SAWYER: I just have one more follow up on  
13 that. If there was a command and control rule in  
14 place that required Jefferson Smurfit to reduce  
15 emissions below current levels, is it likely that  
16 the cost of compliance with that rule would be  
17 included in the cost of -- the price of your  
18 products?

19          MR. COBB: Like I said, any -- whatever the  
20 nature of the rule, if there's a compliance cost,  
21 that does have to be incorporated.

22                    Could Mr. Chiaruttini add something?

23          MR. CHIARUTTINI: I'd like to add something to  
24 what Roy said. It would be included in our cost



1 structure, meaning in how we start to estimate. It  
2 does not necessarily mean that is recoverable.

3           We compete across the nation with other  
4 printers that make boxes, and we may be, in fact,  
5 competing with somebody in Georgia or Mississippi.  
6 So that's what's going to drive the final price at  
7 which we take the business, and in many times,  
8 contracts are for multiple years. So while it is a  
9 component of a fixed cost, it's not necessarily  
10 recoverable.

11       MS. SAWYER: Are you aware that the trading of  
12 ATUs is not limited to the reconciliation period,  
13 but can occur at any time during the year?

14       MR. COBB: Yes.

15           Did you have a follow-up to that?

16       MS. SAWYER: Well...

17       MR. COBB: I was assuming that that was directed  
18 at -- I mean, to help you out, that that was  
19 directed to where I was talking about the  
20 uncertainty and about the problems that it presented  
21 for business, and I still think it would be true  
22 that -- I mean, obviously, if you know going into an  
23 ozone season that you need more ATUs, well, you  
24 know, you would try and act as soon as possible, but

1 once you're into the season and an order comes in,  
2 you know, you could well -- there would be that  
3 uncertainty as to whether you're actually going to  
4 get through without needing more ATUs and so  
5 effectively at least in some circumstances I think  
6 you would be either late in the ozone season or into  
7 the reconciliation period before you really knew  
8 whether or not you needed ATUs, and that's assuming  
9 that it's totally straightforward because we do have  
10 facilities in the South Coast, and I know with one  
11 of the ones there, we ran into problems where  
12 actually we had released a large number of ATUs and  
13 then the Agency decided that they didn't agree with  
14 the way that we had determined what our, you know, X  
15 emissions were and so then retroactively, in fact,  
16 it was after the reconciliation period, we had a  
17 very large deficit that we had to make up.

18           Could Mr. Chiaruttini follow up?

19           MR. CHIARUTTINI: I'd like to add a comment to  
20 that. In the structure of how we run our business  
21 and how our customers run their business and very  
22 often the majority of our customers are  
23 consumer-driven. Going into the ozone season, we  
24 can't necessarily prepare, especially in the current

1 year, let alone future years.

2           If P & G or Leiber Brothers, for example,  
3 decides to make a more concentrated powdered soap,  
4 they'll reduce the size of the container or they'll  
5 go the other way, which may lead to more printing,  
6 which results in more emissions for us.

7           So in addition to that, contracts come and  
8 go and we cannot plan for them because we don't know  
9 what the customer's business is going to be, and in  
10 the case where they're going to reduce the boxes,  
11 that's a double-edge sword in that they will fill  
12 their existing pipelines so that they can shift  
13 their machinery to the new sizes and so that there's  
14 no loss in them providing market to the marketplace,  
15 and in that, our emissions would go up simply  
16 because we'll fill their pipeline then go to  
17 practically zero, and in that setting and in that  
18 case, we would run seven to eight continuous, and  
19 then we'd go back maybe even to three or four days a  
20 week.

21           MS. SAWYER: Mr. Kanerva from the Agency has a  
22 follow-up question.

23           MR. KANERVA: Mr. Cobb or either one of you for  
24 that matter, you mentioned the South Coast program

1 and the situation you ran into there. There's an  
2 important difference about how the ERMS system is  
3 set up in that it allows banking or carrying over  
4 unused ATUs from one season to another.

5           Isn't that provision something you could  
6 use to help manage this variability in your  
7 production level?

8           MR. COBB: Assuming that, you know, the -- your  
9 level of emissions compared to your baseline was  
10 such that you have a surplus of ATUs, yes, you could  
11 stockpile them, and I think one of the uncertainties  
12 that exist, you know, hopefully if this program is  
13 adopted, you know, five years from now buying ATUs  
14 will be such a normal thing that some of the  
15 concerns wouldn't exist.

16           It, in part, ties in with Mr. Marder's  
17 testimony. In other words, if you've got a good  
18 efficient market, there are a lot of ATUs out there,  
19 it could be that some of these problems, you know,  
20 will go away or won't exist, but if that's not the  
21 case, then, you know, there will be all these  
22 uncertainties, but yes, that's sort of going beyond  
23 your thing that insofar as you have a surplus of  
24 ATUs, you can at least, you know, apply them toward

1 the following year.

2 MR. KANERVA: One more follow-up on that. Roger  
3 Kanerva again. Again, getting back to this point of  
4 certainty, this system allows you to achieve a  
5 reasonable or workable level of certainty by the way  
6 you manage those emissions from year to year, and,  
7 perhaps, make sure you do have bank emissions to  
8 fall back on; is that correct?

9 MR. COBB: I don't -- I guess I wouldn't think  
10 that you get certainty from that. Obviously, your  
11 goal will be to try and make sure that, you know --  
12 well, obviously, you've got to, you know, always  
13 have enough ATUs to cover your emissions, but in  
14 some -- assuming that, for example, a command and  
15 control way were reasonable in nature, you've got a  
16 set of parameters that you have to meet.

17 If you meet those, whatever it is, like,  
18 let's say, there's a certain percent reduction  
19 required, then you know you're in compliance. You  
20 don't also have to worry then about, you know, can  
21 we accept another order of detergent cartons or will  
22 that, you know, put us over our ATUs.

23 So while I think you're always going to  
24 strive to have the ATUs you need, I don't know that

1 it would be more certain than some other method.

2 MS. SAWYER: Let me ask the final prefiled  
3 question. Then we might have one more follow-up or  
4 so.

5 Is it your belief that the market system  
6 proposed in the ERMS rule would depress the Chicago  
7 area economy to a greater or lesser extent than a  
8 command and control rule intended to achieve the  
9 same level of reduction in VOM emissions?

10 MR. COBB: And I'm not an economist, so this  
11 would just be, you know, my own common sense view of  
12 things. I don't know that you can necessarily  
13 answer that in the abstract without knowing, you  
14 know, what command and control regulations might be  
15 required to achieve a similar reduction, and also  
16 there would be some assumptions, I think, that would  
17 come into play as to how good a market there's going  
18 to be in ATUs. So I don't know.

19 Could Mr. Chiaruttini give his opinion?

20 MS. SAWYER: Sure.

21 MR. CHIARUTTINI: I can give you my opinion.  
22 Again, it's a little difficult to answer in the  
23 abstract, but from the comments I made earlier and  
24 approaching it more from a business point of view

1 than from the regulatory or legal point of view, my  
2 views are absolutely it's going to impact in a  
3 negative way in the Chicago area.

4           From a businessman's standpoint and that is  
5 to how we manufacture and the customers we serve, if  
6 we're to expand here, the uncertainty of the rules  
7 and what we have to do and what we have to pay in  
8 order to run a customer's business would in all  
9 likelihood lead us to go elsewhere.

10           If we are to build a new facility in this  
11 area, it would be my view that we would not do  
12 that. With the ERMS type of rule where we would  
13 have to go out and either seek long-term ATUs or get  
14 them on a year-by-year basis because of the -- just  
15 in the nature we run our business.

16           If we're producing widgets, that's a little  
17 bit of a different story, but those are my views  
18 from a business standpoint, absolutely negative  
19 impact.

20           MS. SAWYER: And it's your position then that  
21 the negative impact would be greater than requiring  
22 Jefferson Smurfit to comply with a command and  
23 control type rule even if that rule, perhaps, had a  
24 higher cost of control associated with it totally?

1 MR. CHIARUTTINI: I can speak for today with the  
2 command and control. I can't speak for what our  
3 business levels -- how much I'll have to pay for  
4 tomorrow, and there lies the problem for us, for  
5 what we do.

6 MR. KANERVA: Roger Kanerva. You heard the  
7 earlier testimony by the person from Mobil that this  
8 rule and this system gave them certainty and, in  
9 fact, there was some discussion in that testimony  
10 about entering into long-term arrangements with  
11 people, and you just mentioned it yourself.

12 What is it about your business that would  
13 cause Jefferson Smurfit to want to not pursue a  
14 long-term arrangement and to leave themselves  
15 vulnerable year to year?

16 MR. CHIARUTTINI: Why would we pursue a  
17 long-term arrangement when we would probably have to  
18 pay for that long-term arrangement because the other  
19 side is offering things for sale, and there is no  
20 incentive for us we may not need them in terms of  
21 ATUs?

22 MR. COBB: I guess there's a double uncertainty  
23 here and that is that until the baseline is known  
24 and there are a number of things provided in the



1 rule that, you know, will possibly ameliorate the  
2 things we're raising and that's the -- you know, how  
3 the credit VACT will be determined, the credit  
4 you're given for voluntary over compliance in the  
5 past.

6           It might well be that, you know, once we've  
7 worked out a baseline for our facilities that you  
8 all have given us enough credits for those things  
9 that at least at the 12 percent level they won't be  
10 a problem.

11           I mean, I don't think we know at this point  
12 that that's possible. So I really think there's a  
13 very large uncertainty until the baseline has been  
14 determined for a facility use as to how much of a  
15 problem a 12 percent reduction from something that  
16 you've already demonstrated within the recent past  
17 that you've done how much of a hardship that might  
18 impose.

19           MS. SAWYER: I just have a question for  
20 clarification of your point two on Page 12 of your  
21 prefiled testimony.

22           MR. COBB: Oh, okay. Yes.

23           MS. SAWYER: Point two reads the final ERMS rule  
24 adopted by the Board should allow the maximum

1 possible flexibility for a facility to quantify its  
2 seasonal VOM emissions for its selected baseline  
3 years by appropriate estimation techniques, and then  
4 it says actual seasonal emissions data should not be  
5 required.

6           On the next page, 13, there's a phrase that  
7 reads the final rule should allow the use of  
8 reasonable estimation techniques to determine VOM  
9 emissions.

10           Are you referring to baseline emissions in  
11 both instances?

12           MR. COBB: Yes.

13           MS. SAWYER: Are you aware that the rule does  
14 not specify the techniques that a facility can use  
15 to establish its baseline emissions to allow for  
16 such flexibility?

17           MR. COBB: Yes, and there was -- I guess to me  
18 there was concern relating to, I think, it says  
19 accurate, you know, seasonal data or something like  
20 that about whether that didn't imply some sort of  
21 measurement, you know, contemporaneous with the  
22 season, and I didn't have, you know, something  
23 specific in mind in terms of a suggestion, just that  
24 there should be flexibility to allow the Agency and

1 the source to agree on what the seasonal emissions  
2 were for a year without having actual, you know,  
3 measured data during the months in question.

4 MS. SAWYER: Thank you.

5 MR. FEINEN: Any other questions from the  
6 audience? Any questions from the Board?

7 MS. HENNESSEY: Just one question. Your first  
8 point was that years -- any year between 1990 and  
9 1997, any two years within that time period, should  
10 be available to be used as the baseline determination?

11 MR. COBB: We're saying from the standpoint of  
12 business flexibility, that's definitely what we  
13 would prefer, yes, ma'am.

14 MS. HENNESSEY: Have you discussed that with the  
15 Agency?

16 MR. COBB: It's -- let's say I think that that  
17 has come up when the Agency had meetings with, like,  
18 the Chicago Chamber, and I, you know, am aware of,  
19 you know, their position. We haven't had direct  
20 face-to-face negotiations as a company.

21 MS. HENNESSEY: Thank you.

22 MR. FEINEN: I just have a couple of requests.  
23 Mr. Cobb, can you just give us a little bit of your  
24 professional background and then, Mr. Chiaruttini,

1 if you could --

2 MR. COBB: Oh, okay.

3 MR. FEINEN: -- give us a little bit of your  
4 professional background so we just have a basis on  
5 what your opinion is based?

6 MR. COBB: Okay. I graduated from New York  
7 University Law School in 1968. I have been involved  
8 with issues relating to environmental matters  
9 actually going back to 1969.

10 (Enter Mr. Edwin Hurley)

11 MR. COBB: I was with Republic Steel Corporation  
12 1977 to '80. I've been with Container Corporation  
13 of America and now Jefferson Smurfit Corporation  
14 since 1980. I've been involved assisting all of our  
15 facilities in complying with environmental  
16 regulations both at Republic and at CCA JSC.

17 Is there more?

18 MR. FEINEN: Whatever you feel is appropriate.  
19 I mean -- okay.

20 What position are you currently with with  
21 Jefferson Smurfit?

22 MR. COBB: My title is Senior Environmental  
23 Counsel.

24 MR. FEINEN: Thank you.

1 MR. CHIARUTTINI: I've been with the company for  
2 26 years, and currently I'm the environmental  
3 manager for the folding carton division, which is 18  
4 facilities across ten states, and I either do or  
5 assist -- or assist outside contractors and  
6 attorneys that we retain in order to do all the  
7 various aspects of compliance and permit submission  
8 and all the negotiations that goes along with that.

9 I'm a graduate of DePaul University here in  
10 Chicago, although I'm currently headquartered in  
11 Pennsylvania, and in the course of my career, I've  
12 held various positions mostly in the line management  
13 control and in production on the floor.

14 MR. FEINEN: Thank you. I see that Mr. Hurley  
15 has joined us here. Sorry about switching the  
16 testimony. Do you have any testimony you want to  
17 provide today?

18 MR. HURLEY: No.

19 MR. FEINEN: You're just --

20 MR. HURLEY: No.

21 MR. FEINEN: Okay. I have one question then for  
22 whoever, Mr. Cobb or Chiaruttini. You talked about  
23 how in considering this flexibility your concern  
24 that possibly the Agency doesn't have the expertise

1 to make the determination of what is representative  
2 of your emissions, and I'm kind of putting the Board  
3 up for ridicule, but if that determination was  
4 appealable to the Board, would you feel any more  
5 comfortable with the way that the system is set up?

6 MR. COBB: Well, I really haven't contemplated  
7 the appeal process. I do think that there is a  
8 problem. In other words, there's a clear case, you  
9 know, that when Chris Romaine was giving his  
10 testimony and that is, you know, your plant blows up  
11 or something and so you have a year where you're  
12 rebuilding it, well, there's no question that that's  
13 unrepresentative and the Agency would throw that  
14 year out.

15 But when you get into questions of, you  
16 know, whether business conditions are representative  
17 and what that means, I'm not sure that that's  
18 something that either the Agency or the Board is  
19 really equipped to handle, and that it would be  
20 really better to, you know, word the regulation so  
21 that wasn't the issue that had to be decided by  
22 either the Agency or the Board.

23 MR. FEINEN: You wouldn't happen to have any  
24 ideas how -- what you would consider representative

1 of one business versus another business? That might  
2 be varied, wouldn't it?

3 MR. COBB: Right, I think so.

4 MR. FEINEN: So what you might think is  
5 representative for the year might not be in someone  
6 else's mind?

7 MR. COBB: Right, and that's part of the concern  
8 is that we would basically have to try and persuade  
9 Chris and the Agency that our view of what was  
10 representative was one that they should adopt.

11 MR. FEINEN: Thank you. I don't have any  
12 further questions. I think then we'll break for  
13 lunch for an hour and excuse the witnesses. I don't  
14 think we'll call you back the rest of the time, so  
15 you're free to stay or go. Let's break for lunch  
16 for an hour.

17 (Whereupon, further proceedings  
18 were adjourned pursuant to the  
19 lunch break and reconvened  
20 at 1:00 o'clock as follows.)

21 MR. FEINEN: Back on the record.

22 Before we start this afternoon with the  
23 ERMS Coalition's prefiled testimony and testimony  
24 from the witnesses, there was a motion that was

1 filed by ERMS. I guess I'll leave it to you guys to  
2 explain what your...

3 MR. SAINES: Well, we filed prefiled testimony.  
4 In response, the Agency has filed prefiled  
5 questions, a group of which have been repeated for  
6 each individual Coalition member the same questions  
7 that are contained originally as questions one  
8 through six with respect to Allied Tube & Conduit's  
9 questions, the questions that pertain to ozone  
10 transport, and we have an agreed motion to respond  
11 to those questions in writing once on behalf of the  
12 ERMS Coalition, which we've submitted to the Board  
13 this morning.

14 MR. FEINEN: You said agreed motion?

15 MR. SAINES: Correct.

16 MR. FEINEN: The Agency agreed to the written  
17 answers?

18 MS. SAWYER: Well, we agreed that they -- we  
19 wouldn't object to them filing written answers, but  
20 we still think it's appropriate to ask questions to  
21 individual Coalition members that have presented  
22 testimony on a particular subject.

23 MR. FEINEN: Right, but does that mean you're  
24 going to ask the questions you prefiled that



1 reappear for each testifier?

2 MS. SAWYER: I don't think we intend to testify  
3 necessarily and ask each prefiled or all of the  
4 questions, but as they testify to this matter, we,  
5 you know, may need to ask some questions to each of  
6 them.

7 I mean, the reason we filed the questions  
8 to each of them we filed to each member of the  
9 Coalition that presented that testimony.

10 MR. FEINEN: Right, and the answers supplied in  
11 the written are not satisfactory or are  
12 satisfactory, or do you feel that if I grant this  
13 motion, you're still going to ask the same questions  
14 to each witness, and if I deny the motion, are you  
15 going to ask the questions? I just want to know  
16 what the Agency is going to do based on this.

17 MS. SAWYER: Yeah. In some instances, we find  
18 that the answers are not responsive.

19 MR. SAINES: Well, on behalf of the coalition, I  
20 would say that we have done this process by allowing  
21 the Agency to file written responses to certain  
22 questions we've asked, and if they feel the need to  
23 ask follow-up questions because they don't feel the  
24 answers have adequately -- the questions have been

1 adequately addressed, I believe the process allows  
2 for people to ask follow-up questions.

3 MR. FEINEN: I guess I'm confronted with the  
4 issue of I grant the motion, but I don't think I'm  
5 granting anything because they're going to ask  
6 questions in follow-up anyway.

7 So why don't we just deny the motion and  
8 when they ask this question, you can read them the  
9 answer, and if they want more, then we'll go that  
10 route.

11 Hopefully, the Agency cannot ask the same  
12 question over and over and over and they can pare it  
13 down a little bit and save ourselves some time.  
14 I'll hang onto this.

15 So with that, why don't we begin with your  
16 presentation testimony?

17 MR. SAINES: Okay. I'm Richard Saines, an  
18 attorney for Gardner, Carton & Douglas, representing  
19 the ERMS Coalition along with my co-counsel, Tracey  
20 Mihelic.

21 Today, we're going to be presenting  
22 testimony first from James Skalon of Allied Tube &  
23 Conduit Corporation and then from Ralph Fasano from  
24 White Cap Incorporated. I believe is there a

1 statement --

2 MS. MIHELIC: We would just like to make a  
3 statement for the record that the ERMS Coalition  
4 members, several have met with the Agency on several  
5 occasions. Several of the members have met with  
6 them to discuss the implementation of these rules  
7 and calculating the baselines.

8 They have reached some agreements as to the  
9 methodologies of calculations, have reached no  
10 agreements -- I want to clarify for the record,  
11 have -- we've reached no agreements as to the  
12 specific baseline emission calculation or any of the  
13 numbers presented in any of the testimonies, and  
14 we're going to begin today with the presentation of  
15 James Skalon's summary of his prefiled testimony,  
16 and once we complete it, we'll be entering as an  
17 exhibit his actual prefiled testimony.

18 MR. FEINEN: Why don't we swear in both the  
19 witnesses? Who is the other witness today?

20 MS. MIHELIC: Ralph Fasano from White Cap  
21 Incorporated.

22 MR. FEINEN: Why don't we swear both the  
23 witnesses in, and we'll start with Mr. Skalon then?

24

1 (Witnesses sworn.)

2 WHEREUPON:

3 J A M E S C. S K A L O N,

4 R A L P H L. F A S A N O,

5 called as witnesses herein, having been first duly

6 sworn, deposeth and saith as follows:

7 MR. SKALON: Good afternoon, everyone. My name  
8 is James C. Skalon. I'm the environmental engineer  
9 for Allied Tube & Conduit Corporation, and we're  
10 located in Harvey, Illinois.

11 Allied Tube manufacturers galvanized steel,  
12 tube, and conduit for use of electrical  
13 installations, fencing, liquid transport systems,  
14 and sprinkler systems. Allied Tube installed a new  
15 mill in 1994, which emits less than 25 tons per year  
16 of VOM, and we are now in the process of installing  
17 an additional mill this year.

18 The new mill will emit more than 25 tons  
19 per year of VOM emissions. With the installation of  
20 the new mill, Allied Tube triggered the application  
21 of Illinois' New Source Review rules. Consequently,  
22 in its construction permit, the Agency required  
23 Allied Tube to demonstrate that it had offset the  
24 emissions from the new mill at a ratio of 1.3 to 1.

1 Allied Tube had sufficient reductions in  
2 emissions in the last five years to offset the new  
3 emissions at a ratio of 1.3 to 1. Nonetheless,  
4 Allied Tube opposed offsetting these emissions at a  
5 ratio of 1.3 to 1 because under the Clean Air Act  
6 amendments of 1990, Allied Tube could have netted  
7 out of NSR applicability.

8 Pursuant to the statutory language, Allied  
9 would not have had to offset emissions from the new  
10 mill at a ratio of 1.3 to 1. It is Allied's  
11 understanding that it was not the Agency's intention  
12 to enact more stringent New Source Review  
13 regulations than the Clean Air Act rules, but to  
14 reflect the Clean Air Act requirements.

15 Along with White Cap, it is my  
16 understanding that the Agency will be proposing  
17 changes to Illinois regulations to be consistent  
18 with the Clean Air Act netting requirements. Based  
19 upon this understanding, Allied will be able to net  
20 out of New Source Review, not be required to offset  
21 emissions at a ratio of 1.3 to 1, and will be able  
22 to incorporate the reductions not used in the  
23 netting exercise in its ERMS baseline.

24 In agreement with other Coalition members

1 presenting testimony tomorrow, I believe that if  
2 these rules are adopted, both the Agency and the  
3 Board are electing the easy way out of a difficult  
4 dilemma.

5           Placing a disproportionate share of the  
6 burden on industry, which has already been  
7 significantly regulated to reduce emissions rather  
8 than direct its attention to other potential sources  
9 of emissions, the Agency is relying upon the United  
10 States Environmental Protection Agency to implement  
11 restrictions on other sources, which, as we have all  
12 experienced, could take several years.

13           In the meantime, the Agency is continuing  
14 to extract reductions from the same sources which  
15 have already reduced emissions beyond their  
16 proportionate share.

17           Allied thanks the Board for the opportunity  
18 to testify at this hearing and requests that the  
19 Board consider the issues raised by the Coalition  
20 before adopting these rules.

21           MR. FEINEN: Thank you, Mr. Skalon. Okay.  
22 We'll have testimony from Mr. Fasano, and then we'll  
23 open it up for questions from the Agency if that's  
24 okay.

1 MS. SAWYER: Okay.

2 MR. FEINEN: No, no. We'll have the testimony.  
3 Then we'll do questions.

4 MS. SAWYER: Oh, okay.

5 MR. FASANO: My name is Ralph Fasano. I am the  
6 manager of environmental affairs for White Cap  
7 Incorporated. White Cap manufactures metal closures  
8 or caps for food and beverages packed in glass such  
9 as baby food, pickles, and fruit drinks.

10 White Cap has been operating in Chicago for  
11 71 years. White Cap currently operates ten coating  
12 lines, two of which are new and have permanent total  
13 enclosures. In 1994, White Cap voluntarily embarked  
14 upon a program to upgrade and replace all of our  
15 existing lines with permanently totally enclosed  
16 lines as well as upgrade or replace our current  
17 oxidizers.

18 This program has and will continue to  
19 dramatically decrease VOM emissions in the Chicago  
20 area. When this program is complete, we anticipate  
21 it will reduce emissions from its facility -- from  
22 our facility by over 300 tons per year.

23 White Cap has met with the Agency for  
24 several years regarding maintaining credit for

1 emission reductions resulting from this replacement  
2 program. During these meetings, the Agency  
3 consistently represented that White Cap would not  
4 lose any credits for voluntarily reducing emissions  
5 before 1996 or before the adoption of the ERMS  
6 rules.

7           Based upon the Agency's assurances, we have  
8 already replaced four lines with two permanently  
9 totally enclosed lines, and replaced four catalytic  
10 oxidizers with one ABB regenerative thermal  
11 oxidizer.

12           The regenerative thermal oxidizer achieves  
13 a destruction efficiency between 98 percent and 99  
14 percent. We will be replacing at least two more  
15 lines with one new permanently totally enclosed line  
16 this year.

17           By the end of 1998, we intend to replace  
18 the remaining six old coating lines with new  
19 permanently totally enclosed lines.

20           White Cap has three primary concerns with  
21 this rule; one, limiting representative years to  
22 1994 through '96; two, how the Agency will calculate  
23 White Cap's baseline; and three, the impact of the  
24 Illinois New Source Review rules on the ERMS



1 baselines.

2           First, White Cap agrees with other  
3 testimony being presented that the years upon which  
4 the source's baseline is calculated should not be  
5 limited to 1994 through 1996. As discussed and  
6 agreed by the Agency, 1995 and '96 are not  
7 representative of typical production throughput and  
8 VOM emissions from White Cap during the ozone  
9 season.

10           In 1995, White Cap encountered a union  
11 lockout, which resulted in our having to send  
12 production outside to other sources. In 1996, we  
13 experienced the effects of the replacement program,  
14 the removal of four lines and the installing of two  
15 new lines.

16           Although White Cap believes we should be  
17 allowed to use any year from 1990 forward, based  
18 upon the current language of the proposed rules, the  
19 Agency has agreed that White Cap may substitute  
20 emissions during 1993 for the proposed -- for the  
21 purpose of calculating our baseline.

22           Our second concern is how the Agency will  
23 calculate our baseline. During 1993 and 1994, White  
24 Cap operated 12 litho process production lines

1 controlled by seven catalytic oxidizers. Emissions  
2 from these lines is a product of the amount of VOM  
3 in each of the coatings and the overall control  
4 efficiency of the oxidizers.

5 Overall control efficiency is a product of  
6 destruction efficiency of the control unit or  
7 oxidizer and the capture efficiency of the line.  
8 The destruction efficiencies of the oxidizers are  
9 known values since we conducted destruction  
10 efficiency testing on all of the oxidizers in  
11 January of 1992 and again in 1994 on two oxidizers  
12 that we modernized, C and A units.

13 The capture efficiency of these lines,  
14 however, is unknown. The U.S EPA, the Agency, and  
15 the Board have agreed in past actions that it was  
16 not feasible for White Cap to demonstrate compliance  
17 using the capture efficiency test methods previously  
18 set forth in Illinois' rules.

19 The U.S EPA subsequently approved  
20 alternative capture efficiency test methods which  
21 the Agency also has accepted. White Cap has agreed  
22 to conduct the testing pursuant to the alternative  
23 methods on any of the old lines we have not removed  
24 in 1998.

1           We expect that no testing will be conducted  
2 because we will have removed any remaining lines.  
3 As a result, no established capture efficiency  
4 exists for White Cap's operations and, therefore, we  
5 are unable to calculate actual emissions for 1993  
6 and 1994.

7           White Cap and the Agency have agreed that  
8 White Cap's actual emissions are unknown, yet have  
9 not been able to reach agreement on how to calculate  
10 these emissions. We have proposed that the Agency  
11 allow White Cap to use allowable emissions. The  
12 Agency has agreed that this is a reasonable  
13 approach, but has not agreed that we may use this  
14 method to calculate our emissions.

15           A second approach may be to use the  
16 Agency's own capture estimates for White Cap. In  
17 either case, we are very close to the same number of  
18 emissions. White Cap was the first company to ask  
19 for a baseline meeting. I have presented the data  
20 in many ways.

21           This process has taken and continues to  
22 take a long time. We have spent an incredible  
23 amount of time and money simply trying to calculate  
24 our baseline. It should not be such a chore. If

1 the Agency does this with all other companies,  
2 baseline determination will take forever.

3           The baseline should expect -- I'm sorry.  
4 The Board should expect it to take forever because  
5 companies don't realize how the Agency is actually  
6 going to apply these rules until the companies  
7 submit their proposed baselines and meet with the  
8 Agency.

9           The key to the implementation of this rule  
10 is the determination of a fair baseline for all  
11 companies. I do not believe the Board, the Agency,  
12 or sources can know how these rules will actually  
13 affect Chicago business until these baseline  
14 determinations have been made, which, in my opinion,  
15 should have been made before this rule was proposed  
16 to the Board.

17           To calculate White Cap's emissions, we must  
18 determine the required control efficiency for each  
19 line. Since White Cap is complying with section  
20 218.207(b)(2) of the Illinois pollution -- air  
21 pollution regulations, the overall control  
22 efficiency or required control efficiency must be  
23 sufficient to control emissions to the amount which  
24 would be admitted if we were -- if we applied

1 compliant coatings. This is commonly referred to as  
2 the equivalency rule.

3           The Agency has agreed that White Cap may  
4 take the annual usages of all of the coatings  
5 supplied on each line, and in keeping -- and keeping  
6 in mind the 1996 RACT emission limitations,  
7 calculate the weighted average required control  
8 efficiency of each line, and, in turn, the required  
9 capture efficiency for each line to achieve  
10 compliance with Section 218's regulation.

11           White Cap has determined the weighted  
12 average required control efficiency for each line in  
13 1993 and 1994 based upon the annual amounts of all  
14 coatings applied on each line. Using these required  
15 control efficiencies, allowable ozone season  
16 emissions in 1993 and 1994 were 169.3 tons and 154.9  
17 tons for an average emissions of 162.1 tons.

18           The third concern of ours is the potential  
19 impact of the New Source Review rules on White Cap  
20 ERMS baseline. As set forth in our testimony, our  
21 concern arises from the difference in the New Source  
22 Review rules and the Clean Air Act amendments of  
23 1990. Specifically, unlike the statutory language  
24 Illinois' New Source Review rules do not currently

1 allow a source in a severe nonattainment area to net  
2 out of New Source Review if emissions from the new  
3 source will exceed 25 tons per year even if the  
4 source has greater reduction in emissions at the  
5 same time.

6           Rather, Illinois rules require White Cap to  
7 limit emissions from all of the new lines to 25 tons  
8 per year or offset the emissions from the new lines  
9 to a ratio of 1.3 to 1. Although White Cap would be  
10 able to demonstrate an offset of 1.3 to 1, it would  
11 lose all of these emission reduction credits in its  
12 ERMS baseline.

13           In essence, by simply modernizing and  
14 voluntarily significantly reducing actual VOM  
15 emissions, White Cap would lose a significant amount  
16 of ATUs. Whereas, if we continue to operate the old  
17 lines and emit several hundred more tons of VOM each  
18 year, it would be able to retain those emissions in  
19 its baseline.

20           To avoid an inequitable application of the  
21 New Source Review rules and the ERMS rules to  
22 sources who are actually reducing emissions, the  
23 Agency has informed White Cap that it intends to  
24 modify Illinois' New Source Review rules to reflect

1 the federal statutory language on a fast-track  
2 rulemaking basis this spring or summer.

3           With this change, White Cap will be able to  
4 net out of New Source Review and will not be  
5 required to offset emissions at a ratio of 1.3 to  
6 1. White Cap recognizes that even with this change,  
7 the New Source Review rules -- in the New Source  
8 Review rules, White Cap will not be able to include  
9 the emissions used in the netting exercise in its  
10 ERMS baseline.

11           White Cap will, however, receive ATUs for  
12 emissions from the new lines as pending projects.  
13 White Cap has set forth in its prefiled testimony an  
14 example of how it will calculate its emission  
15 credits versus baseline considering the ongoing  
16 changes to the lines and its permit limits.

17           Until White Cap has obtained actual permit  
18 limitations for the upcoming changes, it cannot  
19 provide an actual ERMS emissions credit  
20 calculation. The Agency has agreed that the  
21 methodology set forth in this example is correct,  
22 although the numbers are only hypothetical.

23           White Cap greatly appreciates the Agency's  
24 cooperation in discussing the impact of these rules

1 on our operation. White Cap would also like to  
2 thank the Board for the opportunity to present this  
3 testimony today.

4 White Cap advocates the Agency's and the  
5 Board's effort to obtain cleaner air in Chicago.  
6 White Cap has anticipated the need to reduce VOM  
7 emissions many years ago and has proactively taken  
8 steps to do so.

9 Let the record show that White Cap is doing  
10 just that, reducing VOM emissions well beyond what  
11 will be required and doing it earlier than  
12 required. Let me reiterate that White Cap's primary  
13 concern with this rulemaking is that White Cap not  
14 lose ATUs simply because it implemented a VOM  
15 reduction program before the Agency drafted these  
16 rules, and that the Agency implement the rules  
17 fairly and consistent with its representations made  
18 throughout this proceeding. Thank you.

19 MR. SAINES: At this time, we'd like to --  
20 Mr. Skalon, could you take a look at that and  
21 identify that that's your prefiled testimony?

22 MR. SKALON: Yes, it is.

23 MR. SAINES: Is that a fair and accurate copy of  
24 your prefiled testimony?



1 MR. SKALON: Yes, it is.

2 MR. SAINES: Okay. At this time, we'd like to  
3 move the prefiled testimony of James C. Skalon for  
4 Allied Tube & Conduit Corporation to the record as  
5 an exhibit. I believe it's 63.

6 MR. FEINEN: I'm marking as Exhibit No. 63 the  
7 prefiled testimony of Mr. Skalon from Allied Tube &  
8 Conduit Corporation.

9 I'd just like to ask one question. Is this  
10 the same as the prefiled testimony in your submittal  
11 of April 4th?

12 MR. SAINES: Yes, it is.

13 MR. FEINEN: Having marked that, if there's no  
14 objections, I'll enter it into the record. Seeing  
15 none, then I'll enter that into the record as  
16 Exhibit No. 64 (sic), and that was the prefiled  
17 testimony of James C. Skalon for Allied Tube &  
18 Conduit Corporation.

19 (Hearing Exhibit No. 63  
20 marked for identification,  
21 4-21-97.)

22 MR. SAINES: At this time, Mr. Fasano, would you  
23 please look at this document and identify it? Do  
24 you recognize that document as your prefiled

1 testimony?

2 MR. FASANO: Correct, that's what it is.

3 MR. SAINES: Is it a fair and accurate --

4 MR. FASANO: Yes.

5 MR. SAINES: -- version of your prefiled

6 testimony?

7 MR. FASANO: Yes.

8 MR. SAINES: Thank you. At this time, we'd like

9 to move that we enter the prefiled testimony for

10 Ralph Fasano for White Cap Incorporated for the

11 record.

12 MR. FEINEN: Again, is this the copy of the

13 testimony that's part of the April 4th, 1997,

14 filing?

15 MR. SAINES: Yes.

16 MR. FEINEN: I'll mark this as Exhibit No. 64.

17 That is the prefiled testimony of Ralph Fasano from

18 White Cap. If there's no objections to entering it

19 into the record, I'll enter it into the record.

20 (Hearing Exhibit No. 64

21 marked for identification,

22 4-21-97.)

23 MS. SAWYER: Yeah. I have an objection. I

24 object to this testimony to the extent that it

1 attempts to establish baseline emissions in this  
2 proceeding. The Illinois EPA thinks that this is  
3 the inappropriate proceeding for individual sources  
4 to establish baseline emissions.

5 MR. FEINEN: Let me get this straight. You're  
6 objecting because by his testifying what he thinks  
7 should be the baseline emissions and how it should  
8 be done is inappropriately setting out how we're  
9 going to do baseline emissions?

10 MS. SAWYER: Yes.

11 MR. FEINEN: I'll overrule the objection.

12 MS. SAWYER: Well, I would like that objection  
13 noted.

14 MR. FEINEN: It's duly noted in the record that  
15 the Agency is objecting to my entering into the  
16 record the Exhibit No. 64, which is the prefilled  
17 testimony of Ralph Fasano.

18 We'll open the floor up to the prefilled  
19 questions of the Agency for these witnesses.

20 MS. SAWYER: Bonnie Sawyer, Illinois EPA. Good  
21 afternoon, Mr. Skalon. Please explain your  
22 statement on Page 4 of your testimony that the  
23 Illinois EPA acknowledges that the level of ozone  
24 entering in the Chicago area is at levels which

1 exceed the ozone standard including when and where  
2 you believe such acknowledgment was made by the  
3 Illinois EPA?

4 MR. SKALON: It is my understanding that the  
5 underlying premise of the Ozone Transport Assessment  
6 Group study is that the Chicago and other  
7 nonattainment areas in the northeast will not be  
8 able to meet the ozone standards due to the levels  
9 of VOM and nitrogen oxide transported into these  
10 areas.

11 It is my understanding that throughout  
12 various OTAG meetings in these proceedings, Illinois  
13 EPA has acknowledged that regardless of the amount  
14 of VOM reductions in the Chicago area without VOM  
15 reductions outside of this area, Chicago will be  
16 unable to meet the ozone national ambient air  
17 quality standards.

18 MS. SAWYER: So just for clarification, your  
19 statement that the Illinois EPA acknowledges that  
20 the level of ozone entering the Chicago area is at  
21 levels which exceeds the ozone standard is not  
22 entirely accurate?

23 MS. MIHELIC: I'm just trying to clarify exactly  
24 what you're reading from. Could you reiterate your

1 question just to make sure I read the right part?

2 MS. SAWYER: Right. As I understand your  
3 answer, then you're acknowledging that your  
4 statement that the Illinois EPA acknowledges that  
5 the level of ozone entering the Chicago area is at  
6 levels which exceed the ozone standard isn't  
7 accurate?

8 MS. MIHELIC: Objection as to misstating what he  
9 stated in his answer when you asked the question.

10 MS. SAWYER: In his answer, he said that  
11 regardless of the amount of VOM reductions in the  
12 Chicago area, without VOM reductions outside of this  
13 area, Chicago will be unable to meet the national  
14 ambient air quality standard for ozone.

15 That is not -- that doesn't really answer  
16 the question of whether the level of ozone entering  
17 the Chicago area is at levels which exceed the ozone  
18 standard.

19 MR. SKALON: It is my understanding that it does  
20 exceed.

21 MS. SAWYER: That the level of ozone entering  
22 the Chicago area exceeds the national ambient air  
23 quality standard for ozone?

24 MR. SKALON: That's my understanding, yes.

1 MS. SAWYER: And what is the basis of that  
2 understanding?

3 MR. SKALON: Through counseling with the  
4 Coalition, I guess, and through my attorneys.

5 MS. SAWYER: Okay. Are you familiar with  
6 Exhibit 2 of the Illinois EPA in this proceeding?

7 MR. SKALON: Yes. I have seen Exhibit 2, but I  
8 would not agree that I'm familiar with the document.

9 MS. SAWYER: Do you have the document in front  
10 of you?

11 MR. SKALON: No, I'm sorry, I don't.

12 (Document tendered.)

13 MS. SAWYER: This exhibit indicates ozone  
14 concentration measured at the southern boundary of  
15 the Chicago nonattainment area.

16 MS. MIHELIC: I object just to the statement as  
17 to what this exhibit shows. It just states that  
18 it's ozone concentrations measured at southern --

19 MS. SAWYER: Okay.

20 MS. MIHELIC: -- boundaries. This does not  
21 indicate anything else other than that.

22 MR. FEINEN: Please speak up.

23 MS. MIHELIC: That this does not reference  
24 exactly what this is. It's just a document. It's a

1 page with numbers on it.

2 MS. SAWYER: Okay. This figure is ozone  
3 concentrations measured at southern LMOS boundary,  
4 and LMOS stands for Lake Michigan Ozone Study.

5 What is the highest numerical value shown  
6 on this exhibit?

7 MS. MIHELIC: Objection. The exhibit speaks for  
8 itself.

9 MS. SAWYER: Okay. I can rephrase the  
10 question. The highest numerical value on this  
11 exhibit is 110 parts per billion. Are you aware  
12 that the ozone national ambient air quality standard  
13 is set at 120 parts per billion?

14 MS. MIHELIC: Objection as to that's a legal  
15 question as to what the national ambient air quality  
16 standard is, and, again, it's interpreting -- it  
17 says 110, but it does not say parts per billion  
18 anywhere on this document. It's an interpretation  
19 of the document.

20 MR. FEINEN: Your response?

21 MS. SAWYER: Well, I don't think that the fact  
22 that doesn't say that on the document makes it  
23 inappropriate to ask the question on that. I asked  
24 him if they were aware that the highest number

1 indicated was 110 parts per billion and that the  
2 ozone standard is at 120.

3 MS. MIHELIC: Same objection.

4 MR. FEINEN: How about I rephrase the question  
5 for you? You testified that you don't -- you  
6 believe that the ozone coming from outside of the  
7 nonattainment area to be violating the max, and this  
8 exhibit shows concentrations of ozone levels coming  
9 from the southern boundary, if those numbers  
10 represent parts per million, the standard --  
11 billion, excuse me, the standard being 110, I  
12 believe? Am I correct?

13 MS. SAWYER: 120.

14 MR. FEINEN: 120, and those being 110. What  
15 does that even show?

16 MR. SKALON: It shows that it's below the 120 if  
17 this is, again, parts per billion.

18 MS. SAWYER: Okay. Do you have any evidence  
19 that indicates that the level of ozone entering the  
20 Chicago area is at levels which meet or exceed the  
21 national ambient air quality standard for ozone?

22 MR. SKALON: No.

23 MS. SAWYER: Question number two, please explain  
24 your statement that the Illinois EPA admits that if



1 no emissions were to occur in the Chicago area, this  
2 area could still be in violation of -- I'd like to  
3 modify the question. It's written a little  
4 unclearly. -- (continuing) in violation of the  
5 ozone standard including where and when you believe  
6 the Illinois EPA made any such admission?

7 MR. SKALON: Okay. It is my understanding that  
8 the underlying premise of the Ozone Transport  
9 Assessment Group study is that the Chicago and other  
10 nonattainment areas in the northeast will not be  
11 able to meet the ozone standards due to the levels  
12 of VOM and nitrogen oxide transported into these  
13 areas.

14 It is also my understanding that throughout  
15 various OTAG meetings in these proceedings, Illinois  
16 EPA has acknowledged that regardless of the amount  
17 of VOM reductions in the Chicago area, without VOM  
18 reductions outside of this area, Chicago will be  
19 unable to meet the ozone national ambient air  
20 quality standards.

21 MS. SAWYER: Is it your understanding that the  
22 Chicago ozone nonattainment area would still be in  
23 violation of the ozone standard if no emission  
24 reductions were to occur in the Chicago area?

1 MR. SKALON: I don't know.

2 MS. SAWYER: Okay. I guess I don't have to ask  
3 number three because you've already indicated that  
4 you're familiar the Ozone Transport Assessment  
5 Group.

6 Number four, are you aware that the Ozone  
7 Transport Assessment Group, OTAG, involves 37 states  
8 in the eastern portion of the U.S. and is intended  
9 to address transported ozone pollution and ozone  
10 precursors?

11 MR. SKALON: Yes.

12 MS. SAWYER: Are you aware that the Illinois EPA  
13 is participating in the OTAG process and, in fact,  
14 Illinois EPA has been in a leadership -- has been a  
15 leader in this process designed to address  
16 transported ozone pollution and precursors?

17 MR. SKALON: I am aware that Illinois is one of  
18 the 37 states that is a member of OTAG. I am not  
19 aware whether Illinois has been a leader in the  
20 process.

21 MS. SAWYER: Are you aware that the Illinois EPA  
22 assumed reductions in boundary conditions; that is,  
23 transported ozone in making its determination in  
24 support of the proposed ERMS rule that more VOM

1 emission reductions are needed within the Chicago  
2 ozone nonattainment area?

3 MR. SKALON: I acknowledge that the Agency has  
4 testified that it has assumed reductions in boundary  
5 conditions, but do not know the basis of the  
6 Agency's assumptions nor what the resulting impact  
7 of these assumed reductions will be on the level of  
8 ozone in Chicago.

9 MR. MATHUR: Bharat Mathur, Illinois EPA. I  
10 have a couple of follow-up questions.

11 Mr. Skalon, you said you're familiar with  
12 the Ozone Transport Assessment Group?

13 MR. SKALON: Yes.

14 MR. MATHUR: Would you tell us what your goals  
15 are?

16 MR. SKALON: I'm sorry?

17 MR. MATHUR: Would you tell us what the goal of  
18 this Ozone Transport Assessment Group is?

19 MR. SKALON: I don't remember. I'm sorry.

20 MR. MATHUR: Do you know where the Ozone  
21 Transport Assessment Group meets?

22 MR. SKALON: No, I'm sorry.

23 MR. SAINES: Objection. What's the relevance of  
24 where the Ozone Transportation Assessment Group

1 meets and what date it meets and, you know, what  
2 they have?

3 MR. MATHUR: I'm trying to find out how familiar  
4 he is with the Ozone Transport Assessment Group  
5 because he has testified extensively in the written  
6 testimony about what that group is all about and  
7 what the Agency said relative to that group.

8 MR. SKALON: As a member of the Coalition, I  
9 rely on our attorneys to communicate the information  
10 to us.

11 MR. MATHUR: So it's fair to say you have no  
12 independent understanding or knowledge of the Ozone  
13 Transport Assessment Group?

14 MR. SKALON: Yes.

15 MR. MATHUR: Thank you.

16 MS. SAWYER: Okay. That concludes, I guess, our  
17 questions for Mr. Skalon.

18 MR. FEINEN: Why don't you proceed with your  
19 questions for Mr. Fasano?

20 MS. SAWYER: Okay. Good afternoon, Mr. Fasano.  
21 This is Page 9 of our prefiled questions.

22 Does White Cap anticipate that it will be  
23 able to demonstrate that it should receive voluntary  
24 over compliance adjustment as part of its baseline

1 determination?

2 MR. FASANO: This is White Cap's primary concern  
3 with this rulemaking. It depends on how the Agency  
4 calculates White Cap's baseline emissions, and  
5 despite our efforts to resolve this matter, that is  
6 unknown at this time.

7 MS. SAWYER: Please explain your position that  
8 the rules in Part 203 make it irrelevant whether the  
9 sources decreased emissions beyond the increase  
10 occurring from the new unit when aggregate emissions  
11 from all new or modified units in the previous five  
12 years exceeds 25 tons per year?

13 MR. FASANO: Our position is the only way to  
14 completely avoid New Source Review is that all new  
15 lines have to -- all new lines have less than 25  
16 tons total VOM emissions. Otherwise, I will have to  
17 net out or offset depending on emissions from  
18 individual units.

19 MS. SAWYER: So essentially it is relevant  
20 whether the source has decreased emissions for  
21 purposes of netting out of New Source Review; isn't  
22 that correct?

23 MR. FASANO: For purposes of netting out, it's  
24 relevant.

1 MS. SAWYER: Please explain your position that  
2 to avoid New Source Review all of the new lines at  
3 White Cap is -- that White Cap is installing must  
4 have less than 25 tons of emissions when  
5 aggregated?

6 MR. FASANO: Well, it's the same answer I stated  
7 before. To avoid New Source Review applicability,  
8 all new units must have less than 25 tons emissions  
9 to avoid New Source Review.

10 MS. SAWYER: Isn't it true for purposes of  
11 netting you would aggregate all new lines to  
12 determine if there has been a net increase?

13 MR. FASANO: Yeah, for netting purposes, true.

14 MS. SAWYER: Please explain your position that  
15 the de minimus rule in the Clean Air Act constitutes  
16 a definition of the term did de minimus increase?

17 MR. FASANO: It is my position that if I install  
18 a line with 25 tons or more of VOM emissions, but  
19 take out a line with greater emissions, that New  
20 Source review would not apply under the Clean Air  
21 Act, and I would not need to offset emissions from  
22 this new line.

23 MS. SAWYER: Is that position based on defining  
24 de minimus based on the de minimus rule?

1 MS. MIHELIC: Objection as to that's a legal  
2 question. I believe it's an interpretation of the  
3 Clean Air Act.

4 MR. FEINEN: Could you repeat the question for  
5 me if you're going to continue?

6 MS. SAWYER: Okay. I asked if your position is  
7 based on defining de minimus increase as based on  
8 the de minimus rule?

9 MS. MIHELIC: It's a legal interpretation.

10 MS. SAWYER: The question is related to  
11 something that he directly testified on.

12 MR. FEINEN: Could you rephrase the question and  
13 just ask him what he's basing his testimony on, if  
14 it's based on that?

15 Can you answer the question?

16 MR. FASANO: I'm not really sure if I can, you  
17 know. I mean, the de minimus rule from the U.S EPA  
18 Clean Air Act amendments, the way I understand that,  
19 and that's what we're talking about here, that the  
20 Illinois doesn't have the same language in the New  
21 Source Review in their New Source Review. That's  
22 basically what we're saying.

23 MR. FEINEN: Thank you.

24 MR. FASANO: And the Agency has agreed that it

1 is different. We talked about that before.

2 MS. SAWYER: As to question five, I believe you  
3 clarified that in your testimony, you referred to it  
4 as statutory language rather than rules, federal New  
5 Source Review rules. Thank you for clarifying that  
6 point, and I'll withdraw question six.

7 MR. FEINEN: Are there any other questions?  
8 Hold on a second.

9 MS. SAWYER: We might have just a couple  
10 follow-up questions.

11 MR. FEINEN: Okay. Well, let's see if there's  
12 any -- are there any other questions for any of the  
13 witnesses?

14 MS. HENNESSEY: I just have one or two quick  
15 questions. Mr. Skalon, you state that these  
16 regulations will place a disproportionate share of  
17 the burden on the industry which has already been  
18 significantly regulated to reduce emissions --

19 MR. SKALON: I'm sorry. I'm sorry, I couldn't  
20 hear you.

21 MS. HENNESSEY: I'm just reading from your  
22 conclusion. I'm sorry. I wanted to know if you  
23 could clarify or explain the basis for your  
24 statement a little more fully, the statement that



1 these regulations place a disproportionate share of  
2 the burden on the industry?

3 MR. SKALON: And you're -- you would like?

4 MS. HENNESSEY: I just -- I guess why do you  
5 think it places a disproportionate share of the  
6 burden on the industry?

7 MS. MIHELIC: Just to clarify, on this -- on  
8 stationary sources other than, I think, to clarify  
9 industry stationary sources --

10 MS. HENNESSEY: Yes.

11 MS. MIHELIC: -- as compared to other area  
12 sources or other mobile sources?

13 MR. SKALON: I feel the Agency has been going to  
14 the stationary sources. They have asked us to show  
15 reductions in emissions over the years, and they  
16 continue to come to us for those reductions,  
17 stationary sources.

18 MS. HENNESSEY: Do you have an opinion as to  
19 what the appropriate proportionate share of  
20 stationary sources should be?

21 MR. SKALON: Do I have an opinion on that?

22 MS. HENNESSEY: Yes.

23 MR. SKALON: No.

24 MS. HENNESSEY: Thank you.

1 MS. SAWYER: I have a couple of additional  
2 questions for Mr. Fasano.

3 Mr. Fasano, you stated that the Illinois  
4 EPA agreed that White Cap's actual emissions are  
5 unknown. When did the Illinois EPA make that  
6 agreement?

7 MR. FASANO: Well, I think in our meetings that  
8 we've been having in trying to determine baseline  
9 that based on our situation of not being able to  
10 have a good handle on the capture efficiency of all  
11 the lines that you have agreed or the Agency has  
12 agreed that we can't definitively say in 1993 and  
13 1994 what our true actual emissions were, and I  
14 thought that was agreed between White Cap and the  
15 Agency.

16 MS. SAWYER: Mr. Fasano, isn't it true that it  
17 was the capture efficiency at White Cap's facilities  
18 for certain lines that we had some disagreement as  
19 to whether -- what is the appropriate method to  
20 determine that?

21 MR. FASANO: Correct.

22 MS. SAWYER: Also in your testimony, you stated  
23 that the Illinois EPA agreed to -- agreed that  
24 allowable emissions were a reasonable way to

1 calculate baseline. When did the Agency make that  
2 agreement?

3 MR. FASANO: I don't think I said it exactly  
4 like that with that exact language. We have  
5 proposed to the Agency to allow White Cap to use  
6 allowable emissions. The Agency has agreed that  
7 this is a reasonable approach, but has not agreed  
8 that we may use this method to calculate emissions.  
9 So you agreed that this is a reasonable approach,  
10 but you haven't agreed that we can use it or not  
11 yet.

12 MS. SAWYER: You stated that the Agency agreed  
13 to that; is that correct?

14 MR. FASANO: I believe you did.

15 MS. SAWYER: Yeah. Was that agreement just  
16 essentially my statement that I thought it seemed  
17 reasonable, or was it an agreement from the Agency.

18 MR. SAINES: Objection. Is there a distinction  
19 between that? Aren't you representing the Agency?

20 MS. SAWYER: In fact, I believe, Mr. Fasano,  
21 didn't I state that while I thought it sounded  
22 reasonable, I couldn't give you a final, sort of,  
23 agreement on that?

24 MR. FEINEN: You know, we're getting, like,

1 outside the scope of this hearing. We're getting  
2 into, like, what happened at special meetings that  
3 are going on during the course of this, and I think  
4 you can raise that you might not agree with him that  
5 you had some kind of agreement, and I don't know if  
6 we should follow down this path any further.

7 I think it's obvious that there's been  
8 statements made between the Agency and White Cap and  
9 they might not all be in agreement, and let's just  
10 leave it at that. I don't think we're going to get  
11 one person saying one thing or another.

12 MS. SAWYER: That's fine.

13 MR. FASANO: So you don't want me to answer  
14 that?

15 MR. FEINEN: You don't have to. If you want to  
16 answer it, you can, but you don't have to.

17 MS. SAWYER: That's fine. Do you have some  
18 questions?

19 MR. MATHUR: Yeah. I have one follow-up  
20 question.

21 MS. MIHELIC: To Ralph or Jamie?

22 MR. MATHUR: To Mr. Fasano.

23 You testified today that you believe that  
24 in your discussions with the Agency you discussed

1 and agreed to the methodology, but that the numbers  
2 haven't been agreed to. Is that true?

3 MR. FASANO: That was -- I think what you're  
4 referring to might be when we said in the full  
5 testimony that's been submitted the example of how  
6 we calculate the emission -- the ATU credits,  
7 emission credits, as they change and go through  
8 because of our modernization program because we're  
9 right in the middle of it, and we're going to  
10 continue pulling old lines and putting new lines in.

11 That methodology of that example that's  
12 presented that's where those numbers are, you know,  
13 repeat -- you know, maybe I'm -- I think that's what  
14 you're talking about, but maybe not.

15 MR. MATHUR: I'm referring to your verbal  
16 testimony a few minutes ago.

17 MR. FASANO: Okay.

18 MR. MATHUR: You said that there is agreement in  
19 methodology between you and the Agency, but not  
20 necessarily in the final numbers. That's what I  
21 think you testified.

22 MR. FASANO: That was -- that, I think --  
23 without going back, I think that was related to  
24 referring back to the original the full testimony

1 and talking about the example on the methodology  
2 that calculates the changes in emission credits.

3 MR. MATHUR: Mr. Fasano, my question is, is it  
4 not your testimony that you feel that there is  
5 agreement with the Agency on the methodology?

6 MR. FASANO: Not for calculating baseline, not  
7 yet. I mean, we're -- there's two things -- you're  
8 mixing two things up, I believe. The methodology of  
9 calculating baseline is one thing, and we're close  
10 to an agreement, but we don't have an agreement  
11 because of capture efficiency and that affects a  
12 couple of things.

13 The methodology that we agreed on that is  
14 definitely an agreement is related to an example on  
15 how to calculate the ATU credits, emission credits,  
16 against baseline throughout the change of taking  
17 lines out and putting lines in, and that was an  
18 example we submitted because it's so confusing that  
19 you have to have -- I wanted to put an example on  
20 the record because no one in this room would  
21 remember six months from now how to even calculate  
22 the changes as we go through this modernization  
23 program because it's very complex.

24 So we had an example placed on the record.

1 That methodology of using that example to show when  
2 we take this out and put this in what effect does it  
3 have on our baseline, on ATU emission credits, all  
4 that kind of -- that methodology we did agree on in  
5 a meeting with the Illinois EPA.

6 As far as a final agreement on methodology,  
7 it depends if you can tell me your definition of  
8 methodology, then maybe I can be a little more  
9 precise because I think you're looking for was there  
10 an agreement on methodology on baseline calculation.

11 I think we're real close. We've got the  
12 broad scope, you know, pretty much narrowed down,  
13 but there's a few points in there that we haven't  
14 agreed on yet, and I think we're real close in  
15 coming to an agreement. You know, hopefully, we  
16 will soon.

17 MR. MATHUR: This methodology that you spoke of  
18 to your firm or mine, was that based on the version  
19 of the rule that is before the Board?

20 MR. FASANO: Yeah.

21 MR. MATHUR: Thank you.

22 MR. FEINEN: Any other questions of these  
23 witnesses?

24 MS. HENNESSEY: Let me just ask one

1 clarification question. It's kind of a broad  
2 question. I understand that you have an objection  
3 to the requirement that stationary sources reduce  
4 emissions by 12 percent, but assuming that that was  
5 a given, do you have an objection to the use of a  
6 trading scheme to achieve that reduction as opposed  
7 to a command and control regulation?

8 MS. MIHELIC: The ERMS Coalition as a whole or  
9 the individual members?

10 MS. HENNESSEY: Of these witnesses.

11 MS. MIHELIC: Could you read that question  
12 back?

13 (Record read.)

14 MR. SKALON: That would depend on what the  
15 command and control would be. I'm not all that  
16 familiar with it, but, again, unless that's defined,  
17 I really don't know if I can answer that.

18 MS. HENNESSEY: Mr. Fasano?

19 MR. FASANO: Yeah. In White Cap's case, command  
20 and control or a trading program is fine. I think a  
21 trading program I don't have a problem with. It's  
22 just that we have the proper starting point that the  
23 baselines are established and everybody is in  
24 agreement. So if you're starting off where



1 everything is fine in the beginning, you have an  
2 established baseline that's understandable and  
3 agreed upon, then the trading program is fine too.

4 MS. HENNESSEY: Thank you.

5 MR. FEINEN: I think we're going to take a 15  
6 minute break. Mr. Burke, Mr. Ron Burke, from the  
7 American Lung Association was here earlier. I think  
8 he went to get some lunch and said he'd be back in  
9 about a half an hour.

10 So let's take a break for about 15  
11 minutes. When he comes back, we'll proceed with his  
12 testimony because I don't think ERMS has any other  
13 witnesses to present.

14 MS. MIHELIC: We'll have all of them tomorrow.

15 MR. FEINEN: And we'll conclude today with  
16 Mr. Burke's testimony.

17 MS. MIHELIC: And I would like to notify the  
18 Board that John Sutton from Wrico Packaging is  
19 unavailable to testify tomorrow. So we are  
20 withdrawing his prefiled testimony and submitting it  
21 as a public comment.

22 MR. FEINEN: Thank you. Let's take 15.

23 (Break taken.)

24 MR. FEINEN: Let's go back on the record. We're

1 going to conclude today's hearings with testimony  
2 from Mr. Burke from the American Lung Association.  
3 Tomorrow we'll start up at -- let's go off the  
4 record.

5 (Discussion had  
6 off the record.)

7 MR. FEINEN: Back on the record. So tomorrow  
8 we'll start at 9:00 o'clock in the morning, if the  
9 court reporter can make it I guess.

10 THE REPORTER: I'm sure that's fine.

11 MR. FEINEN: Thank you.

12 So we'll start at 9:00 o'clock tomorrow  
13 with the ERMS Coalition's remaining witnesses, and  
14 we'll proceed that day depending on who shows up in  
15 the audience and wants to testify.

16 With that, I believe we're going to turn it  
17 over to Mr. Burke for his testimony today. Do you  
18 want to swear the witness?

19 (Witness sworn.)

20 WHEREUPON:

21 R O N B U R K E,  
22 called as a witness herein, having been first duly  
23 sworn, deposeth and saith as follows:

24 MR. BURKE: Good afternoon. I'm glad to be here

1 today. My name is Ron Burke. I'm director of  
2 environmental health of the American Lung  
3 Association of Metropolitan Chicago. We have been  
4 working with -- at least discussing this proposal  
5 with the Agency for, I think, well over a year now  
6 and had a number of opportunities to run some of our  
7 concerns by them, and what I'm going to summarize  
8 today are those concerns that we're left with after  
9 what I would consider to be lengthy negotiations.

10           Before I begin though, I want to mention a  
11 couple of things. One, I'm going to be summarizing  
12 the prefiled testimony I submitted. In some cases,  
13 I'll be reading it. In other cases, I'll be  
14 skipping things. So as I understand it, I'll need  
15 to submit the actual testimony as an attachment; is  
16 that right?

17           MR. FEINEN: An exhibit.

18           MR. BURKE: An exhibit once I'm done. Secondly,  
19 I just want to say that the Lung Association thinks  
20 as a whole this is a really good program and an  
21 excellent step in the right direction towards  
22 cleaner air. It's a creative way for us to make  
23 continued progress, clean the air, and help all the  
24 residents of northeastern Illinois breathe a bit

1 easier, but especially the nearly 800,000 who suffer  
2 some type of lung disease.

3           We're confident that along with other  
4 programs that the Agency is currently implementing  
5 and planning to implement, we can reach attainment  
6 with the current ozone standard and think we can go  
7 beyond that as well, but I won't get into that now.

8           So I'll start with some of the comments  
9 again that we have remaining, if you will, after our  
10 discussions with the Agency and try to really focus  
11 on our major concerns. Again, we think it's a good  
12 proposal at this point that can be made better with  
13 some of the recommendations I'm going to cover right  
14 now.

15           Our first concern focuses on monitoring and  
16 quantification of emissions, and, therefore, the  
17 generation of the ATUs. We're concerned that the  
18 rule fails to account for certain inaccuracies that  
19 inevitably will be encountered when we estimate  
20 emissions -- we in the industry estimate emissions  
21 and report them. This potentially creates an  
22 opportunity for sources to claim false ATUs or to be  
23 given ATUs in excess of what really should have been  
24 allotted.

1           Our recommendation is that the rule  
2 discount credits to account for inaccuracies with  
3 the value of the discount varying in accordance with  
4 the confidence in the estimate, and this is designed  
5 to make sure that we're not allotting more ATUs than  
6 we really should and, therefore, allowing for more  
7 air pollution than should be emitted under the  
8 program.

9           We think this approach is necessary and it  
10 also creates an incentive for sources to apply more  
11 accurate quantification protocols that have other  
12 benefits as well, and I know that the Agency's  
13 proposal and testimony given by Mr. Romaine from the  
14 Agency spells out the ways in which emissions will  
15 be estimated and how the agencies will be allotted,  
16 and we think on the whole those are good procedures,  
17 but still leave some room for certainty that should  
18 be factored into the allotment of ATUs.

19           Our second major concern has to do with  
20 potential, although unlikely, recognized potential  
21 increases in air toxins, specifically air toxins  
22 that are also VOMs. Because the proposed rule does  
23 not distinguish between toxic and nontoxic VOM  
24 emissions, a source could purchase credits generated

1 by nontoxic VOM emissions reductions and use those  
2 to increase toxic VOM emissions, and we recognize  
3 that this is unlikely and it certainly would be an  
4 unintended consequence of the proposal, and also I  
5 understand that any increase in toxic VOM emissions  
6 would be limited overall by the proposal's cap on  
7 total VOMs from emissions units.

8           Nonetheless, it still is conceivable that  
9 this unintended consequence could occur, especially  
10 given that MACT, the federal MACT provisions, are  
11 not applicable yet for a number of sources in the  
12 metropolitan area the Agency has referred to in the  
13 past.

14           In fact, that MACT will still be in place  
15 and is in no way prohibited or usurped, if you will,  
16 by this rule, but given that MACT isn't in place yet  
17 and won't be in place for a number of sources, we  
18 think it makes sense to try to minimize the  
19 likelihood that this unintended consequence will  
20 occur.

21           So we have recommended that the rule  
22 establish an emissions cap based on actual historic  
23 emissions for HAPs and TACs until such time and I --  
24 let me finish this sentence -- until such time as

1 control standards are adopted and being in force. I  
2 mentioned TACs where the state's toxic air  
3 contaminants which the Board is well aware of in  
4 some cases they go beyond the federal hazardous air  
5 pollutant's list.

6           We'd like to see a cap on these toxic VOCs,  
7 both the state and the federal's, until such time as  
8 MACT is in place for the affected sources to make  
9 sure that this unintended consequence of localized  
10 increases and hazardous air pollutants and toxic air  
11 contaminants does not occur.

12           That basically summarizes it. I won't go  
13 into any more detail though. I may have some  
14 questions from the Agency I recognize.

15           Related to this point is the rule's  
16 proposal to track trends and spacial distributions  
17 of hazardous air pollutants to essentially monitor  
18 for this potential unintended consequence, and while  
19 we think that's a good idea, it simply, I don't  
20 think, goes far enough when you consider the  
21 potential ramifications of localized increases in  
22 toxic VOMs. So, again, we recommend this cap based  
23 on historic actual emissions until such time as MACT  
24 is in place.

1           Another concern we have relates back to New  
2 Source Review. As I understand, the proposal would  
3 substitute the annual New Source Review offsets  
4 requirements with a seasonal requirement to hold  
5 ATUs in an amount 1.3 times the actual seasonal  
6 emissions. As I understand it, this would eliminate  
7 the offset requirements during the non-ozone  
8 season. We basically object to this proposal and  
9 question its consistency with the Clean Air Act. We  
10 think the offset requirements should remain  
11 applicable during both the ozone season and the  
12 non-ozone season.

13           We would, frankly, hate to lose those air  
14 quality improvements during the non-ozone season  
15 even though they may not be required by the Clean  
16 Air Act. We acknowledge that that's a possibility.

17           Another major concern relates to baseline  
18 emissions. The rule would allow sources to  
19 substitute nonrepresentative, quote, unquote,  
20 seasonal emissions from the '94 through -- for 1994  
21 through 1996 with seasonal emissions from 1990  
22 through '93 or 1997 for purposes of calculating the  
23 baseline.

24           We recommend that the rule define



1 nonrepresentative in order to avoid disagreements  
2 that could end up delaying implementation and in  
3 order to limit the extent to which baselines exceed  
4 actual emissions.

5           I think it's fairly well understood that  
6 this last point, the fact that baselines could  
7 exceed actual emissions, is a reality, and in my  
8 discussions with the Agency, it's been suggested  
9 that the amount that the emissions might exceed the  
10 baseline -- might exceed actual emissions would  
11 probably be relatively small, and that seems to be  
12 true.

13           On the other hand, to the extent that we  
14 can minimize this difference, I think we should, and  
15 a more clear definition of nonrepresentative might  
16 help clear that up, and the example I give for how  
17 you might do that is to link these nonrepresentative  
18 emissions to changes that are not expected to occur  
19 more than once every 20 years, and that's just off  
20 the top of my head, and I don't have a lot of  
21 experience with this, but it's the kind of  
22 definition that one might use to narrow this  
23 somewhat vague definition down and keep the program  
24 on track as we move to the implementation phase.

1           Also I have some comments concerning the  
2 proposed exclusions. The best available technology  
3 exclusion we were concerned is defined far too  
4 broadly. We fear that it might undermine the  
5 proposal with far too many exclusions that would  
6 limit emissions reductions and potentially too many  
7 appeals that might delay implementation.

8           I know the Agency has testified in the past  
9 the importance of appropriately limiting the number  
10 of exclusions. Mr. Romaine has testified if most  
11 emissions units are determined to have best  
12 available technology, the ERMS will not reduce the  
13 pool of VOM emissions to the level required for ROP,  
14 rate of progress, and that's clearly a -- the  
15 potential is there for that to happen, even though  
16 it may be unlikely.

17           So we have suggested a more detailed  
18 definition of best available technology to, again,  
19 minimize the potential for this to occur.  
20 Specifically, we recommend that the definition more  
21 specifically delineate a maximum degree of VOM  
22 reduction, which seems to be the key definition or  
23 the key phrase within that overall definition of  
24 best available technology.

1           One approach is to define that as being the  
2 least as pronounced -- let me back up. Maximum  
3 degree of VOM reduction will be at least as  
4 pronounced as the greatest level of reductions from  
5 comparable units. Again, Mr. Romaine has testified  
6 that that would more than likely be one, if not the  
7 most, important way of determining best available  
8 technology.

9           If a source has emissions that are clearly  
10 higher than a comparable unit, then common sense  
11 suggests that that's probably not the best available  
12 technology. We're suggesting that that common sense  
13 be translated into the definition to avoid, again,  
14 potential delays and disputes, and the written  
15 testimony that I'll be submitting gives you some  
16 specific language that you might take a look at. I  
17 won't go into that now.

18           These exclusions also have some potential  
19 ramifications for the Agency's overall plan for  
20 achieving attainment with the ozone standard and  
21 maintaining a rate of progress emissions reductions  
22 if we don't, in reality, get the kind of emissions  
23 reductions that we're expecting because of  
24 exclusions. Then that might throw us off in the

1 overall process of making reasonable progress  
2 towards attainment.

3           The third point on the exclusions issue,  
4 the LAER exclusions we fear ignore the fact that a  
5 unit meeting LAER can still increase its emissions  
6 by increasing production and at least that's my  
7 understanding, and, therefore, we recommend a  
8 seasonal emissions limit up front for units that are  
9 excluded because they meet LAER to make sure that we  
10 don't have increases due to increased rates of  
11 production. Again, the goal there is to minimize  
12 unexpected emissions increases.

13           Another point is concerning the banking of  
14 ATUs in order to account for any uncertainties. I  
15 mentioned earlier to minimize the potential for  
16 emission spikes because of ATU transactions, we  
17 supported deduction from the unused ATUs that are  
18 banked for the next season. Specifically, unused  
19 ATUs that are carried over to the next season should  
20 be reduced by five percent in order to help improve  
21 air quality and to help sustain the effective  
22 operation of the ERMS.

23           Three percent of the unused ATUs would be  
24 retired and two percent would be deposited in the

1 ACMA, and we think this is -- it makes -- especially  
2 makes sense given that we are still struggling to  
3 reach attainment with the ozone standard. We need  
4 every reduction we can get, and I believe the  
5 proposal -- the Agency's proposal at one time  
6 actually included this type of deduction on banked  
7 ATUs, and we'd be bringing it back for these  
8 reasons.

9           We have some comments concerning shutdowns  
10 and how the facilities who shut down can use their  
11 credits in the future, their ATUs in the future. We  
12 object to the proposals -- the proposal to allow 100  
13 percent of a source's air pollution to effectively  
14 live on into perpetuity even after the source is  
15 shut down.

16           I should qualify that. Not necessarily  
17 into perpetuity, but at least as long as the  
18 proposal is around or the proposal is in effect, I  
19 should say. These ATUs would live on both through  
20 the ACMA, those that go to the ACMA, I think it's 20  
21 percent, and through what appears to be a conveyance  
22 of ownership of these ATUs until the region has  
23 reached attainment and has an approved attainment  
24 plan. We believe 100 percent of the ATUs should be

1 retired from shutdowns.

2           Furthermore, allowing a source to retain 80  
3 percent of its ATUs wrongly suggests that the ATUs  
4 are some type of property, when in reality, they are  
5 part of an alternative regulatory system owned by  
6 the public, not individual companies, and I'd really  
7 like to emphasize how important we think it is for  
8 this type of change to be made. It's one of the  
9 major flaws, we think, in the overall proposal, and  
10 then I have some general comments concerning  
11 compliance with the overall proposal.

12           As currently proposed, an ATU generator  
13 could sell -- potentially could sell invalid ATUs  
14 and not suffer any consequences unless doing so  
15 creates an emissions excursion. At least this is my  
16 understanding. There may be some legal language  
17 that I'm not aware of, but this appears to be the  
18 case now. Noncompliance fees or some other  
19 compensation, we believe, should be specified in the  
20 rule for inaccurate filing and late filing even if  
21 this doesn't result in emissions excursion.

22           I want to wrap up with our recommendation  
23 for how best to track compliance and to essentially  
24 assure the public that the sources that are affected

1 by these regulations are, in reality, emitting the  
2 emissions that their supposed to be and complying  
3 with the overall program.

4           As you might imagine, there's -- on the  
5 surface, there's some skepticism about this whole  
6 concept of emissions trading and, in part, I think  
7 it's valid and, in part, it, I think, stems from  
8 some ignorance of the current regulatory system.

9           There is an assumption that -- there is a  
10 misunderstanding, I think, that this program somehow  
11 gives people the right to pollute and companies the  
12 right to pollute that they don't already have, and  
13 in reality, our current system effectively gives  
14 companies the right to pollute, but at certain rates  
15 and with certain restrictions and that makes sense.

16           Nonetheless, there is a perception, and in  
17 some cases it's valid, that this program emissions  
18 trading is somehow skewed and could potentially  
19 result in, how do I say it, oh, abuse, you know,  
20 abuse of the system. Well, I don't -- the Lung  
21 Association thinks on the whole this is a good  
22 program and that's highly unlikely to happen.

23           It is real important that the public  
24 understand how this program works and understands

1 how it affects the sources located in their  
2 communities. So we have suggested what we think is  
3 a relatively simple source-by-source compliance  
4 summary for this program that pulls together key  
5 information from different components of the  
6 proposed program.

7           Again, we think this will help ensure that  
8 the overall program is running properly. I'll just  
9 take off the items that we think would ideally be  
10 reported, perhaps, at the end of every ozone season  
11 once the transaction period is over, the  
12 reconciliation period I believe it's called. The  
13 public would have access to the data. It would  
14 actually be reported to the public as such.

15           Number one, actual seasonal emission --  
16 this is, again, a source-by-source summary. Number  
17 one, actual seasonal emissions and ATUs in tons of  
18 VOM given, and people may not understand what an ATU  
19 actually is; the ATU allotment through that season;  
20 the difference between the consumed ATUs and  
21 allotted ATUs; the total number of ATUs sold, if  
22 any; the number of ATUs obtained, if any, from  
23 another participating or new participating source;  
24 the number of ATUs obtained, if any, via emissions



1 reductions generators; the number of ATUs obtained,  
2 if any, from a general participating source; and the  
3 number of ATUs, if any, obtained through an  
4 auction. I'm not sure if the program still has an  
5 auction. I think you got rid of that, didn't you?

6 MR. KANERVA: (Nodding.)

7 MR. BURKE: Okay. Skip that one. The number of  
8 ATUs obtained, if any, from the ACMA. That's still  
9 there I know. The total number of ATUs obtained,  
10 okay, through these different types of  
11 transactions. The ATU balance, which would be the  
12 actual ATU emissions minus those allotted plus the  
13 obtained minus the sold. Do you see where I'm going  
14 with this?

15 And then you can more clearly determine  
16 whether an excursion has actually occurred, and this  
17 is the kind of information that the average person  
18 can look at and say okay, I see what happened here  
19 at the source of my community, and clearly this was  
20 done properly or clearly it wasn't, and it's a nice,  
21 simple way to determine whether an excursion  
22 actually occurred.

23 Then you would also have the daily  
24 excursion notice and the description of the

1 compensation required, assuming this is relevant;  
2 the status of the compensation. If there's been an  
3 audit conducted, you know, note that; the date of  
4 the last audit, noncompliance or deficiencies  
5 discovered, if any, make a note of that in the  
6 description, and then if there's any corrective  
7 action plan required or something similar, make a  
8 note of that as well and then the status of that  
9 plan.

10           This is, in a snapshot, a way for the  
11 public to understand to what extent their -- the  
12 sources located in their communities are performing  
13 properly versus the way the system is set up now,  
14 it's fairly fragmented. I think it will work, but  
15 it's going to be very hard for the general public to  
16 get a handle on how it works and whether or not the  
17 sources in their communities are actually  
18 complying.

19           I have just two other brief comments, one  
20 on intersector transactions. On the whole, we  
21 support the concept of intersector transactions,  
22 though we recognize the reductions for mobile and  
23 area sources may be hard to predict and can be  
24 short-lived.

1           There's also some uncertainties involved in  
2     quantifying these types of reduction. As I  
3     understand it, there's likely to be a separate  
4     rulemaking to create the system to allow for this,  
5     but either way, I just -- we wanted to have on the  
6     record our recommendation that the rule or the rule  
7     to follow, if that's the course we're going to take,  
8     should discount ATUs to account for uncertainties  
9     inherent in making these types of quantifications  
10    and to prohibit the ATU banking and limit the ATU  
11    life-span for improvements that won't last.

12           We think for these particular types of  
13    credits it makes little or no sense to actually  
14    allow for the banking of these ATUs, the ATU  
15    generated from these types of emissions reductions  
16    primarily because of the fact that they're likely to  
17    be so much more short-lived.

18           And finally, I have a comment on  
19    directionality and reactivity. We recommend that  
20    the rule more specifically commit the Agency to  
21    reviewing the effects of trade directionality and  
22    VOM reactivity on the ERMS performance. Again,  
23    depending on the direction of the trades, we may  
24    actually see more or less ozone reduction benefit,

1 and while we agree with the Agency that it probably  
2 doesn't make sense at this time to put some kind of  
3 limitation on the directionality of trades, it is  
4 very important to make sure that the program doesn't  
5 result in disproportionate direction of trades that  
6 would impede the overall program's performance.

7           So those are all my specific comments  
8 after, again, some fairly lengthy discussions with  
9 the Agency, and I want to just summarize again by  
10 saying that on the whole, we think this is a very  
11 good program. It's moving us in the right  
12 direction. It can be made better with the  
13 suggestions we've made here today, but on the whole,  
14 the American Lung Association is supportive of this  
15 program.

16       MR. FEINEN: Do you want to move your prefiled  
17 testimony to the record as an exhibit?

18       MR. BURKE: Yeah, I would.

19       MR. FEINEN: I think you have two separate  
20 filings. So let's make them two separate exhibits  
21 just to keep -- make my life a little bit easier.

22       MR. BURKE: Yeah. I apologize to all of you for  
23 leaving a page out of the prefiled testimony. I  
24 hope you all got the --

1 MR. FEINEN: I'll mark as Exhibit --

2 MR. BURKE: -- additional page.

3 MR. FEINEN: -- No. 65 the prefiled testimony of  
4 Mr. Burke dated April 4th, which was received by the  
5 Board on April 4th. If there's no objections to  
6 entering that into the record as an exhibit, I'll do  
7 so. I see no objections. That will be entered as  
8 an exhibit as No. 65, and that's the prefiled  
9 testimony of Mr. Burke from the American Lung  
10 Association of Metropolitan Chicago dated April 4th.

11 I'm marking as Exhibit No. 66 an additional  
12 page of prefiled testimony dated April 8th, 1997,  
13 from Mr. Burke, which is the infamous missing page.  
14 If there's no objection to that, I'll enter that  
15 into the record. Seeing none, that will be entered  
16 as an Exhibit No. 66, the additional page of  
17 prefiled testimony from Mr. Burke, American Lung  
18 Association Metropolitan Chicago dated April 8th.

19 I believe the Agency has some prefiled  
20 questions for Mr. Burke.

21 (Hearing Exhibit Nos. 65 and 66  
22 marked for identification,  
23 4-21-97.)

24 MS. SAWYER: Yes, we do. Bonnie Sawyer,

1 Illinois EPA. Good afternoon, Mr. Burke. Starting  
2 with our first question, which is on Page 11 of our  
3 prefiled questions, are you aware that sources under  
4 the proposed ERMS rule will be allotted ATUs on the  
5 basis of baseline emissions determined by the  
6 Illinois EPA reduced by 12 percent?

7 MR. BURKE: Yes.

8 MS. SAWYER: Please explain how discounting of  
9 credits is relevant for a system such as the one  
10 described in question one above? Specifically, I'm  
11 referring to the discounting referred to in number  
12 one of the first page of your testimony.

13 MR. BURKE: I understand. What we've suggested  
14 is that there are inevitably going to be some  
15 uncertainties in quantifying actual emissions in the  
16 baseline. Let me back up.

17 There's going to be some differences  
18 inevitably, we think, between the actual emissions  
19 and the baseline emissions, and I mentioned before  
20 that even the Agency has acknowledged that baseline  
21 emissions may actually exceed actual emissions  
22 slightly. This is an example of how ATUs may be  
23 slightly inflated.

24 Secondly, when we estimate emissions, there

1 are uncertainties as well, and our concern is that  
2 potentially, though it may be unlikely, potentially  
3 the ATUs may be inflated. We may actually be  
4 granting excess ATUs because of these uncertainties  
5 in quantification.

6           So our suggestion was let's account for  
7 those uncertainties by slightly discounting the  
8 allotted ATUs. So if it's -- let's say, for  
9 example, that the overall procedures for quantifying  
10 emissions and, therefore, ATUs is, I think, a two  
11 percent level of uncertainty, we might discount the  
12 credits, the ATUs, two percent to account for that  
13 to make sure that we're not granting excess ATUs.

14       MR. KANERVA: I'd like to ask a follow-up  
15 question. Roger Kanerva. This discounting of the  
16 allotment as you've clarified now, are you  
17 suggesting that this discounting would be -- they're  
18 available in some way, that some emissions are  
19 quantified more rigorously than others in some  
20 cases, there's a range? Are you suggesting that  
21 this would apply relative to the type of emissions  
22 quantification protocol?

23       MR. BURKE: Yeah. I think that is a legitimate  
24 option. As I recall, I think it was Mr. Romaine's

1 testimony at one point in this long process who  
2 actually outlined different strategies for  
3 quantifying emissions, some of which were more  
4 accurate than others, and we think it's reasonable  
5 if a source chooses to use the more accurate  
6 quantification protocol, then the degree of  
7 discounting would be less and vice-versa.

8           Again, that creates an incentive for the  
9 sources to use more accurate approaches, which keeps  
10 the program on a whole more valid and also minimizes  
11 the chances that we are granting excess ATUs and not  
12 getting the kind of reductions that we all hope for.

13           MR. FEINEN: Mr. Hurley, do you have a follow-up  
14 to that?

15           MR. HURLEY: I do have a follow-up to that. In  
16 that proposal, are you making the assumption that  
17 all these inaccuracies are going to be on one side  
18 of the line, that the actuals are actually going to  
19 be more than the baseline?

20           MR. BURKE: No, I'm not making that assumption.  
21 I understand that it could go either way. Our  
22 suggestion is that we adhere on the side of caution,  
23 protectiveness versus dismissiveness.

24           MR. HURLEY: And that would be for every



1 applicant?

2 MR. BURKE: I think a recent -- you know, given  
3 that that's the case that it could go either way, I  
4 think your degree of discounting would reflect that,  
5 but, nonetheless, it would probably make sense to  
6 have some small degree of discount.

7 MR. FEINEN: Agency?

8 MS. SAWYER: Yeah. I would like to ask question  
9 number seven out of order here because I think it's  
10 more of a follow-up to what we're talking about  
11 right now.

12 Mr. Burke, are you aware that the 12  
13 percent emissions reduction required of the proposed  
14 rule includes two percent contingency to assure that  
15 the state of Illinois meets its 1999 ROP target?

16 MR. BURKE: Yeah. I'm not sure if I was aware  
17 of that or not. It depends on where that  
18 contingency is coming in. I was aware that there  
19 was going to be some type of buffer, and I wasn't  
20 sure if it was part of the ACMA or where this  
21 contingency was coming in.

22 So I'm not sure how to answer that. I  
23 suppose the answer is no, and I could actually  
24 use -- it would be helpful for me to have that for

1 the -- I'm not sure where it is. Nonetheless, I  
2 still think it makes sense given the fact that we're  
3 still a good ways from reaching attainment to not  
4 only have that contingency, but also to discount the  
5 ATUs.

6           Let's bear in mind that another -- I  
7 mentioned the second reason for doing the  
8 discounting is to encourage more accurate types of  
9 protocols, quantification protocols. So I think  
10 there's two good reasons to do it.

11       MS. SAWYER: I think you've answered the first  
12 part of question number three, but I'll ask the  
13 second part. Please describe such inaccuracies, the  
14 extent or amount of such inaccuracy, and the base  
15 set of accurate emissions from which this inaccuracy  
16 is derived.

17       MR. BURKE: Do you want me to give you a  
18 specific example? Is that what you're looking for?  
19 Yeah, I can't answer that question right now. I  
20 mean, I think you can go back and look at one of the  
21 early versions of the Agency's written proposal, one  
22 of the -- I don't know if it was the second draft or  
23 the third draft. I can't remember which at this  
24 point, but it listed quantification protocols and

1 acknowledged that some are more accurate than  
2 others.

3           In reality, we may be -- our estimate may  
4 be off by some percentage, and that's the kind of  
5 accuracy I'm talking about, although I really can't  
6 give you a specific example at this point.

7           MS. SAWYER: I believe you've answered our  
8 questions four and five. I'll ask question six. Is  
9 it your position that the proposed ERMS rule will  
10 make it profitable for a source to increase its  
11 productions -- production of products that result in  
12 hazardous air pollutants?

13           MR. BURKE: I don't think it's the Lung  
14 Association's position that this will -- the ERMS  
15 rule would necessarily make it profitable. I  
16 certainly can't speak to a company's, you know,  
17 profit margin or anything along those lines, but  
18 what we do believe to be the case is that the ERMS  
19 rule could make it economically more feasible for a  
20 source to increase its emissions of toxic VOM.

21           We understand, again, as I mentioned  
22 earlier, that it's probably unlikely given the way  
23 the proposal is set up and the limited number of  
24 transactions that are likely to occur and so on and

1 so forth, but given the potential ramifications of  
2 these localized increases prior to MACT kicking in,  
3 we thought it made sense to guard against that  
4 potentiality.

5 MS. SAWYER: I'm not sure if you clarified this  
6 in your direct testimony. Our question number eight  
7 relates to your position that ATUs in the ACMA  
8 account should be reduced consistent with the rate  
9 at which the emissions cap is declining.

10 Are you aware that the emissions cap under  
11 the rule -- the proposed rule is established in 1999  
12 and does not decline separate from an amendment to  
13 the rule?

14 MR. BURKE: Yeah, I am aware of that, and it's a  
15 good point. That comment is really relevant only if  
16 the ERMS were to be extended beyond 1999 and we were  
17 to have a declining emissions cap beyond that.

18 The point we were trying to make is if  
19 you've got, whatever, 100 ATUs in the ACMA in 1999,  
20 let's say, and the allotments to everybody else are  
21 declining at a rate of, say, four percent or  
22 something, in the year 2007, assuming this program  
23 were still in place, even if nobody ever touched  
24 those ATUs in the ACMA, they should be reduced, you

1 know, four percent a year as well instead of  
2 remaining at that 100 level, but given this program  
3 is targeted only at the year 1999, it's not a  
4 relevant comment.

5 MR. KANERVA: Roger Kanerva. Mr. Burke, you  
6 mentioned in your testimony that the Lung  
7 Association recommended discounting the banking or  
8 carrying ATUs that are carried over to the next  
9 season. Are you aware of some of the benefits that  
10 are available from emissions banking, and we  
11 mentioned one to see if it's one you agree with,  
12 like, early reductions that it's an incentive to  
13 encourage early reductions of emissions?

14 MR. BURKE: Sure.

15 MR. KANERVA: What do you think the impact would  
16 be if this discounting procedure on, for instance,  
17 that type of activity, the early reductions?

18 MR. BURKE: This is the -- you're referring to  
19 the deduct -- our recommendation to deduct a  
20 percentage of the ATU that gets banked --

21 MR. KANERVA: Right.

22 MR. BURKE: -- to the next year?

23 MR. KANERVA: I think you said five percent or  
24 something.

1 MR. BURKE: Yeah. We recommended five percent  
2 reduction.

3 MR. KANERVA: Right. And how that might affect  
4 other benefits that banking provides.

5 MR. BURKE: Right. We don't think it affects --  
6 a deduction, for example, would create a significant  
7 disincentive or I should say it would offset the  
8 incentive created by -- let me back up. Offset the  
9 incentive to, for example, create early reductions  
10 that the banking does allow. It's five percent.  
11 It's not 20 percent or something along those lines.

12 I think -- we think it strikes a nice  
13 balance between moving us at a more expeditious rate  
14 towards attainment while at the same time allowing  
15 for the incentive that Roger -- Mr. Kanerva  
16 mentioned for early reductions and so on.

17 MS. SAWYER: I don't believe we have anything  
18 further at this time.

19 MR. FEINEN: Any other questions from the  
20 audience? Do you have anything?

21 MS. HENNESSEY: I have a question or two.

22 Mr. Burke, you suggested that we have a cap  
23 on toxic air contaminants until MACT is in place for  
24 the affected sources. Can you explain how that

1 would work?

2 MR. BURKE: I can explain one option, and I'm  
3 sure there are others, but one option is to  
4 establish a toxic VOM baseline, perhaps, in a manner  
5 consistent with the overall VOM baseline that's been  
6 proposed be it through this rule based on actual  
7 emissions, historic actual emissions, and you  
8 would -- essentially, the baseline would then be the  
9 cap until MACT is enacted for the sources affected  
10 by the ERMS rule.

11 In other words, it would say until MACT is  
12 in place, your toxic VOM emissions are not going to  
13 go above, you know, X, you know, the baseline, and,  
14 again, that's to make sure that the trade, the known  
15 ERMS trade, wouldn't send us above that baseline.

16 You could use some other methodology for  
17 developing this cap until MACT is in place, but that  
18 is one approach to use the actual historic emissions  
19 to establish a baseline or a cap.

20 MS. HENNESSEY: But that wouldn't require there  
21 to be the two categories of ATUs though, right?  
22 You'd need to have a category for toxic VOMs and  
23 another category for nontoxic VOMs, right?

24 MR. BURKE: I'm not sure that that's the case.

1 I think a provision of the rule would be that no  
2 transaction result in toxic VOM emissions period  
3 that exceed a certain level until MACT is applied.  
4 I don't think you would need to have two different  
5 types of ATUs.

6 MS. HENNESSEY: Nothing else. Thank you.

7 MR. BURKE: Thank you.

8 MR. FEINEN: I have no questions.

9 MR. HURLEY: I have a question. In your  
10 testimony, you talked about expanding the public  
11 disclosure of the ATU account. I didn't quite hear  
12 you. Did you talk about also baseline determination?

13 MR. BURKE: Well, I'm not --

14 MR. HURLEY: I'm just asking.

15 MR. BURKE: When I was talking about the  
16 accounting and the compliance, no, I was not  
17 specifically referring to the baseline  
18 determination, although I think there are some  
19 provisions in the rule to subject that to public  
20 scrutiny.

21 MR. HURLEY: I guess the follow along question  
22 is on this expansion of the company's individual ATU  
23 accounting, would you put any -- would you provide  
24 for any confidentiality provisions if a company



1 represented that there was a proprietary information  
2 included in those, or would you feel that this is  
3 public disclosure without qualification?

4 MR. BURKE: No. We wouldn't suggest public  
5 disclosure without qualification. There would be  
6 some qualifications if the confidentiality is  
7 inevitably going to be one of those I'm sure, but,  
8 nonetheless, I think you could have a good  
9 disclosure, good accounting system, you know,  
10 coupled with the confidentiality requirements.

11 MR. FEINEN: Okay. If there's no more  
12 questions, I'll excuse Mr. Burke.

13 I think that will be it for today. We'll  
14 pick up tomorrow. I think we agreed for 9:00  
15 o'clock in the morning. We will be starting out  
16 with the ERMS Coalition witnesses, and then along  
17 the day with time permitting for anything else.

18 I just want to reiterate that we talked  
19 early this morning about the close of public  
20 comments being May 16th with the Board most likely  
21 going to pursue it sometime in June. Thank you.  
22 We'll see you tomorrow at 9:00 o'clock.

23 (Whereupon, the above-entitled  
24 proceedings were adjourned.)

1 STATE OF ILLINOIS )  
 ) SS.  
 2 COUNTY OF C O O K )

3

4 I, GEANNA M. PIGNONE-IAQUINTA, CSR, notary  
 5 public within and for the County of Cook and State  
 6 of Illinois, do hereby certify that the testimony  
 7 then given by all participants of the rulemaking  
 8 hearing was by me reduced to writing by means of  
 9 machine shorthand and afterwards transcribed upon a  
 10 computer, and the foregoing is a true and correct  
 11 transcript.

12 I further certify that I am not counsel for  
 13 nor in any way related to any of the parties to this  
 14 procedure, nor am I in any way interested in the  
 15 outcome thereof.

16 In testimony whereof I have hereunto set my  
 17 hand and affixed my notarial seal this 28th day of  
 18 April, A.D., 1997.

19

20 \_\_\_\_\_  
 Geanna M. Pignone-Iaquinta  
 Notary Public, Cook County, IL  
 21 Illinois License No. 084-004096

22 SUBSCRIBED AND SWORN TO  
 before me this \_\_\_\_\_ day  
 23 of \_\_\_\_\_, A.D., 1997.

24 \_\_\_\_\_  
 Notary Public