

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4           IN THE MATTER OF:    )  
5    )  
6           EMISSIONS REDUCTION MARKET                                        )  
7           SYSTEM ADOPTION OF 35 ILL.                                        ) R97-13  
8           ADM. CODE 205 AND AMENDMENTS                                       ) (RULEMAKING)  
9           TO 35 ILL. ADM. CODE 106.   )  
10    )

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9                                        The following is a transcript of a  
10           rulemaking hearing held in the above-entitled  
11           matter, taken stenographically by LISA H. BREITER,  
12           CSR, RPR, CRR, a notary public within and for the  
13           County of DuPage and State of Illinois before  
14           CHUCK FEINEN, Hearing Officer, at the James R.  
15           Thompson Center, 9-040, 100 West Randolph Street,  
16           Chicago, Cook County, Illinois on the 19th day of  
17           August 1997, commencing at 10:15 o'clock a.m.

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1 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

2 MS. KATHLEEN HENNESSEY  
3 MS. MARILI MC FAWN  
4 MR. JOSEPH YI  
5 MR. RICHARD MC GILL

6 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS  
7 PRESENT:

8 MS. BONNIE SAWYER  
9 MR. RICHARD FORBES  
10 MR. BHARAT MATHUR  
11 MS. SARAH DUNHAM  
12 MR. CHRISTOPHER ROMAINE  
13 MR. GALE NEWTON  
14 MR. RICHARD FORBES  
15 MR. ROGER KANERVA  
16 MR. GARY BECKSTEAD

17 OTHER AUDIENCE MEMBERS WERE PRESENT AT THE HEARING  
18 BUT NOT LISTED ON THIS APPEARANCE PAGE.

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1	I N D E X	
2		PAGE
3	TESTIMONY:	
4	BHARAT MATHUR (IEPA).....	6
5	RICHARD FORBES (IEPA).....	9
6	CHRISTOPHER ROMAINE (IEPA).....	14
7	ROGER KANERVA (IEPA).....	23
8	QUESTIONS:	
9	ANAND RAO (Board).....	46, 94
10	CHRIS NEWCOMB (Dart Container).....	54
11	RICHARD SAINES and TRACEY MIHELIC	
12	(ERMS Coalition).....	56
13	LIONEL TREPANIER.....	57, 62
14	BILL FORCADE (Tenneco).....	61
15	RON BURKE (American Lung Association).....	89
16	TESTIMONY: SIDNEY MARDER (IERG).....	96
17	QUESTIONS:	
18	LIONEL TREPANIER (Blue Island Greens)....	103
19	KATHLEEN HENNESSEY (Board Member)...	106, 114
20	TESTIMONY: JAMES WAKEMAN (Tenneco).....	108
21	QUESTIONS: BONNIE SAWYER (IEPA).....	109
22	TESTIMONY: LIONEL TREPANIER.....	116
23	QUESTIONS: BONNIE SAWYER (IEPA).....	133
24	TESTIMONY: RON BURKE (American Lung Assoc.)	135
25	QUESTIONS:	
26	ROGER KANERVA (IEPA).....	148
27	LIONEL TREPANIER (Blue Island Greens)....	150
28		
29	E X H I B I T S	
30		IN EVIDENCE
31	Exhibit No. 72.....	8
32	Exhibit No. 73.....	14
33	Exhibit No. 74.....	23
34	Exhibit No. 75.....	27
35	Exhibit No. 76.....	103
36	Exhibit No. 77 (not received in evidence)	

1 HEARING OFFICER FEINEN: Good morning.  
2 My name is Chuck Feinen, the assigned Hearing  
3 Officer to R97-13, Emissions Reduction Market  
4 System Adoption, 35 Illinois Administrative Code  
5 205.

6 I'd like to point out at this time that  
7 at first notice, the board did not adopt the first  
8 notice of the amendments to 35 Ill. App. 106.  
9 Therefore, the caption should be changed at second  
10 notice. With me here today from the board is, far  
11 right, board member Marili McFawn.

12 MS. MC FAWN: Good morning.

13 HEARING OFFICER FEINEN: Next to Marili  
14 McFawn is Richard McGill, board member Kathleen  
15 Hennessey's assistant. Next to Richard is Board  
16 Member Kathleen Hennessey.

17 MS. HENNESSEY: Good morning.

18 HEARING OFFICER FEINEN: Next to me is  
19 Anand Rao, our technical unit advisor, person. He  
20 recently got a promotion so I don't know what to  
21 call him anymore, and to my left is Board Member  
22 Joseph Yi.

23 We went to first notice and established  
24 this hearing for today to tie up some issues and

1 questions that the board had. I think today we'll  
2 start out with the agency presenting their  
3 witnesses and questions for them. Then we'll  
4 proceed to ERG's testimony and questions for ERG's  
5 testimony. Then we'll go on to Tenneco's  
6 presentation and questions of Tenneco. Then  
7 Lionel Trepanier's presentation and questions for  
8 Lionel Trepanier and anyone else who has any  
9 testimony will provide it at the end of the day,  
10 time permitting. I'm hopeful that we'll get done  
11 either by today or noon tomorrow, but don't hold  
12 me to that. Why don't we go off the record for a  
13 second.

14 (Discussion off the record.)

15 HEARING OFFICER FEINEN: Could the court  
16 reporter swear in the witnesses that are going to  
17 present testimony. Let's do it at all at once  
18 from the agency. Who is going to testify from the  
19 agency?

20 MS. SAWYER: Everyone but me sitting up  
21 here. Well, Sarah Dunham is not going to testify,  
22 but she's here to respond to questions so we might  
23 as well swear her in.

24 (Witnesses sworn.)

1                   HEARING OFFICER FEINEN: One real quick  
2 thing before we go on, I'd also like to point out  
3 another board employee, Chuck Kaig (phonetic) is  
4 sitting in the audience with us. He is the new  
5 assistant to Marili McFawn. He's right behind  
6 Mr. Marder raising his hand. Thank you. I'll turn  
7 it over to the agency.

8                   MS. SAWYER: Okay, we have testimony  
9 today of Bharat Mathur, Richard Forbes,  
10 Christopher Romaine and Roger Kanerva. I believe,  
11 as we pointed out off the record, some people are  
12 just going to introduce their testimony  
13 essentially.

14                   Mr. Forbes and Mr. Romaine have a  
15 little bit more clarifying information that  
16 they're going to provide as a summary, and we will  
17 begin with Mr. Mathur, who will simply introduce  
18 himself and then Mr. Forbes, Mr. Romaine and  
19 Mr. Kanerva. We'll take them in that order, and  
20 then we're hoping after we conclude that, that we  
21 could respond to questions at that point.

22                   MR. MATHUR: My name is Bharat Mathur.  
23 I'm the chief of the bureau of air of the Illinois  
24 EPA. I had testified earlier on the Ozone

1 Transport Assessment Group and its ongoing work  
2 and answered questions regarding the objectives of  
3 that group.

4           The board, in its first notice, had  
5 requested some responses and clarifications on  
6 OTAG since the OTAG process has concluded. So my  
7 testimony, as provided in writing, provides in  
8 summary fashion the recommendations and findings  
9 of OTAG, and in my testimony, I have attempted to  
10 emphasize two points.

11           Number one, that OTAG was intended to  
12 be an exercise to determine regional emission  
13 reductions in order to help areas like Chicago  
14 develop ozone attainment strategies that were  
15 reasonable, and number two, that OTAG has  
16 demonstrated that in spite of significant regional  
17 reductions, reductions of emissions in  
18 non-attainment areas will continue to be  
19 necessary, which was a major premise that we have  
20 put forth as justification for proceeding with the  
21 emission reductions included in the present  
22 regulatory proposal.

23           I believe I'll be happy to answer any  
24 questions from the board since there were none

1       apparently submitted by anybody else.

2                   MS. SAWYER:  At this point if we could  
3       just proceed with Mr. Forbes.

4                   HEARING OFFICER FEINEN:  Do you want to  
5       move his testimony?

6                   MS. SAWYER:  Oh, yes.

7                   HEARING OFFICER FEINEN:  I believe we  
8       left off with Exhibit No. 72.

9                   MS. SAWYER:  I'd like to move that  
10       Bharat Mathur's testimony is marked as Exhibit 73  
11       and entered into evidence.

12                   HEARING OFFICER FEINEN:  I'm sorry, 71  
13       was the last one.  72 is the first available.

14                   MS. SAWYER:  As 72 then.

15                   HEARING OFFICER FEINEN:  Thank you.  
16       What I have is -- what's been handed to me is the  
17       testimony of Bharat Mathur that was dated August  
18       8th, 1997.  If there's no objections to entering  
19       that into the record as if read, I'll do so.  
20       Seeing none, it is entered into the record as  
21       Exhibit No. 72.  That is Bharat Mathur's testimony  
22       dated August 8th, 1997.

23   (Document received  
24   in evidence.)



1 MS. SAWYER: At this time we will  
2 proceed with the testimony of Richard Forbes.

3 MR. FORBES: Good morning. My name is  
4 Richard Forbes, and I am employed by the Illinois  
5 Environmental Protection Agency. I prepared  
6 prefiled testimony which was submitted to the  
7 board on August 8, 1997.

8 My testimony was prepared in response  
9 to the board's first opinion and order regarding  
10 the proposed rulemaking R97-13, Emissions  
11 Reduction Market System. The board requested the  
12 Illinois EPA respond to six specific items  
13 identified in its opinion and order dealing with  
14 volatile organic material or VOM emissions  
15 information.

16 To summarize my prefiled testimony, I  
17 first discussed three updates to the data  
18 submitted previously as part of the Illinois EPA's  
19 technical support document or TSD. These updates  
20 address, one, a recent proposed final action taken  
21 by USEPA on Illinois' 15 percent rate of progress  
22 state implementation plan revision; two,  
23 completion of the cold cleaning degreasing rule  
24 that was adopted as final by the board; and three,

1 revisions by USEPA to its guidance on credits  
2 associated with federal off-highway vehicle engine  
3 standards.

4 I then provided background information  
5 on how emissions data are handled with regard to  
6 federal rate of progress requirements pursuant to  
7 the Clean Air Act. That discussion was followed  
8 by an explanation of the revised ROP tables  
9 containing the updated data which were attached to  
10 the testimony.

11 Finally, I addressed the six specific  
12 items requested by the board. These six items  
13 address specific clarifications requested by the  
14 board regarding VOM emissions data and terms of  
15 reference in the technical support document.

16 This information is based on the  
17 Illinois EPA's best estimates of the 1990 VOM  
18 emissions from point area and mobile sources in  
19 the Chicago ozone non-attainment area projected to  
20 future years as necessary to address federal Clean  
21 Air Act requirements. These data have been  
22 carefully prepared, analyzed and quality assured  
23 according to USEPA inventory procedures and  
24 requirements.

1 Illinois' 1990 inventory was approved  
2 by the USEPA on March 14th, 1995. It has had  
3 extensive external review by contractors for the  
4 Lake Michigan Air Directors Consortium or LADCO as  
5 part of the Lake Michigan states which includes  
6 Illinois, Indiana, Michigan and Wisconsin. Lake  
7 Michigan Ozone Study referred to as LMOS and  
8 Illinois has pursued improvements in the emissions  
9 data subsequent to the submittal of the 1990 base  
10 year emissions inventory based on LMOS  
11 recommendations.

12 As part of this evaluation, the effect  
13 of cyclical operations was considered but found to  
14 not significantly affect typical ozone season  
15 weekday emission rates. This emissions inventory  
16 has been validated against monitoring data  
17 collected during the LMOS. These emissions data  
18 have been used by LADCO in the Lake Michigan Ozone  
19 Control Program referred to as LMOP, which is the  
20 modeling analysis conducted to identify emission  
21 control measures, assess the merits of such  
22 measures as well as the VOM versus NOx controls  
23 and to assist in the determination of attainment  
24 requirements.

1                   The inventory data agreed favorably  
2 with monitoring data, and this emissions data has  
3 also been evaluated by participants in the Ozone  
4 Transport Assessment Group referred to as OTAG,  
5 and urban air shed modeling conducted by OTAG has  
6 found satisfactory model performance using  
7 Illinois' inventory for purposes of air quality  
8 analysis and control strategy development.

9                   Illinois EPA will continue to review,  
10 evaluate and update emissions data as it develops  
11 future ROP milestone year inventories, and that  
12 concludes my summary.

13                   HEARING OFFICER FEINEN: I just at this  
14 point want to ask one real quick question in  
15 clarification. On page 2, what's been numbered as  
16 page 2 of the prefiled testimony at the bottom, I  
17 guess, of the third full paragraph you talk of,  
18 "additional guidance provided by USEPA for states  
19 to use in estimating emission reductions from  
20 federal off-road engine standard program has  
21 necessitated a revision to the previous estimate  
22 of reductions used by the Illinois EPA," and  
23 there's no citation to that guidance or what  
24 guidance you're referring to, and I couldn't find

1 that. You haven't supplied it to us, and I was  
2 wondering if the agency would be willing to supply  
3 that text.

4 MR. FORBES: Yes, we would.

5 HEARING OFFICER FEINEN: If you could do  
6 that prior to the public comments maybe after this  
7 hearing and file it.

8 MS. SAWYER: Sure, sure.

9 MR. FORBES: Sure.

10 MS. SAWYER: We can do so and serve the  
11 service list.

12 HEARING OFFICER FEINEN: Yes.

13 MS. SAWYER: Sure.

14 HEARING OFFICER FEINEN: Thank you.

15 Sorry about that interruption.

16 MS. SAWYER: At this point I would like  
17 to move to have the testimony of Richard Forbes  
18 admitted into evidence as Exhibit 73.

19 HEARING OFFICER FEINEN: I've been  
20 handed what's been the testimony of Richard Forbes  
21 dated on August 8, 1997. It includes his  
22 testimony plus attachment 1, which is a Federal  
23 Register, volume 62, No. 134 dated Monday, July  
24 14th, 1997; attachment 2, which includes USEPA

1 references for federal rate of progress  
2 requirements; and attachment 3, which is a series  
3 of tables.

4           Table 1 is emission reductions required  
5 by 1999 for Chicago non-attainment area. Table 2  
6 is calculation of post 1996 VOM target levels.  
7 Table 3 is 1999 ROP control measures for the  
8 Chicago non-attainment area. Table 4 is 1990  
9 through 1999 tons VOM emissions per day for  
10 Chicago (1). Table 5 is the breakdown of sector  
11 emissions contributions.

12           If there's no objections to entering  
13 this into the record as read as Exhibit No. 73, I  
14 will do so. Hearing none, that's entered into the  
15 record as Exhibit No. 73 which is Mr. Richard  
16 Forbes' testimony dated August 8, 1997.

17                           (Document received  
18                           in evidence.)

19           MS. SAWYER: At this point we'll proceed  
20 with the testimony of Christopher Romaine.

21           MR. ROMAINE: Good morning. My  
22 testimony responds to six topics discussed by the  
23 board in its opinion. The first is new source  
24 review. The board has posed two questions with

1 respect to new source review. One is whether a  
2 source should be able to argue that it should be,  
3 quote, "exempt from new source -- I'm sorry -- the  
4 ERMS program new source review offset  
5 requirements."

6           The answer to that is is that a source  
7 should only be able to make this argument if it  
8 has properly satisfied the current offset  
9 requirements for a major new source or major  
10 modification. The other question posed by the  
11 board is whether a source should be able to argue  
12 that its baseline should be increased to achieve  
13 new source review offsets.

14           To answer this question, it's important  
15 to understand what's meant by achieved new source  
16 review offsets. If it's assumed that this term is  
17 used to refer to emission reductions that have  
18 been formally produced or cashed in under part 203  
19 in exchange for a construction permit for a new  
20 project, then the answer to this question is that  
21 a source cannot argue that its baseline should be  
22 increased due to achieved emission offsets. Those  
23 emission offsets have been used but are no longer  
24 available. On the other hand, the source can argue

1 that emission reduction credits that have been  
2 obtained but not relied upon could increase its  
3 baseline, as they would contribute to voluntary  
4 compliance.

5           The next topic is landfills. The  
6 agency generally opposes applicability of the  
7 trading program to only landfill gas control  
8 equipment as proposed by Waste Management in its  
9 comments rather than to the entire landfill  
10 source. Clearly a landfill is a source as a  
11 whole. It needs to be addressed in an appropriate  
12 way. We think that the various arguments put  
13 forth in the comments are flawed.

14           Certainly landfills have similarities  
15 to other activities where each unit of production,  
16 there's a certain amount of emissions that  
17 certainly has to be held accountable for. Now, a  
18 landfill is different certainly, as those  
19 emissions come from each ton of waste deposited in  
20 the landfill, and those emissions occur much,  
21 much, much more gradually than typically occurs  
22 with operations, but they are not inherently of an  
23 entirely different nature.

24           Also, landfills do have the ability to



1 control their emissions. They have controlled  
2 their emissions in the past. They can improve  
3 those control systems. They may in fact result in  
4 voluntary overcompliance for past efforts. There  
5 may be future improvements to those control  
6 systems, comply with new federal requirements, of  
7 which landfills might obtain credit under the  
8 trading program. So the situation for landfills  
9 is not as simple as Waste Management suggests as  
10 to simply only address one part of a source.  
11 Certainly we're not responding favorably to those  
12 comments.

13           The next topic addressed was exemption  
14 based on the 18 percent reduction, and we're just  
15 restating our position that exemption from the  
16 trading program based on an emission reduction  
17 should not occur at a level less than the 18  
18 percent reduction from baseline emissions. We're  
19 not changing our position in light of the comments  
20 that have been filed.

21           The comments correctly observed that  
22 setting the exemption level at 18 percent may  
23 discourage sources from pursuing this exemption.  
24 The sources may instead decide to accept status as

1 participating sources so that they can receive  
2 benefit for any surplus reductions beyond 12  
3 percent. We're fully aware of this consequence.  
4 That's part of the reason we set the exemption  
5 level at 18 percent.

6 We're only prepared to exempt a program  
7 from a full trading program at 18 percent or  
8 beyond because at that point, the air quality  
9 benefit is such that the Illinois EPA is prepared  
10 to forego the benefit of such a source directly  
11 participating in the trading program.

12 Next, the board requested comments on  
13 emission determination methods, the language of  
14 the proposed rules, in particular Section 205.330  
15 dealing with emission determination methods and  
16 Section 205.337 dealing with changes in the  
17 emission determination methods and associated  
18 practices. Those two sections have very different  
19 roles and functions.

20 Section 205.330 generally addresses VOM  
21 emission determination methods for the purposes of  
22 a trading program. It sets forth a general  
23 obligation that sources determine VOM emissions  
24 for the purpose of the program and generally

1 addresses the methods used to determine emissions.

2           Section 205.337 dealing with changes in  
3 methods and the practices has a distinctly  
4 different role, as it deals with changes.

5 Underlying this section is the principle that  
6 stability and certainty and the emission  
7 determination methods and practices used for a  
8 source are important for the trading program.

9           It also confirms that, notwithstanding  
10 the goal of stability, it may be necessary to  
11 change the established methods and practices for a  
12 source under the trading program, particularly as  
13 events make the established methods and practices  
14 outdated.

15           The fifth topic is a numerical standard  
16 for best available technology or BAT. In  
17 particular, the Illinois EPA's opposed to  
18 amendments to the BAT provisions that would deem a  
19 particular level of capture and control to satisfy  
20 the obligation to have BAT. Setting an upper  
21 limit for BAT would be a significant change to the  
22 BAT provisions. It is very different than setting  
23 a lower limit for BAT, as present in the current  
24 definition of BAT.

1                   The current definition simply requires  
2                   that BAT be at least as stringent as the  
3                   applicable NSPS for an emission unit if it is in a  
4                   category for which USEPA's adopted a NSPS for new  
5                   source requirements. NSPS represents a level of  
6                   control that is readily achievable for a category  
7                   of emission units on a national basis.

8                   It's very different than a case-by-case  
9                   determination of control, and in particular, the  
10                  comment suggested that 95 percent capture and  
11                  control be deemed acceptable as best available  
12                  technology. Such provision would not be  
13                  appropriate because there are emission units for  
14                  which overall capture and control of VOM emission  
15                  units is greater than 95 percent. In this regard,  
16                  for example, Tenneco has an afterburner at its  
17                  Frankfort plant which has demonstrated greater  
18                  than 98 percent destruction. At the same time,  
19                  however, a provision deeming 95 percent control  
20                  best available technology would also set  
21                  unrealistic standards for other emission units.

22                  From a technical perspective, a single  
23                  control level cannot be deemed to be best  
24                  available technology. Best available technology

1 determination should be made on a case-by-case  
2 basis during permitting if this is the appropriate  
3 forum for these determinations.

4           Finally, the board has asked for  
5 comments on establishing an exclusion from further  
6 reductions based on best available control  
7 technology. The Illinois EPA is opposed to such  
8 an exclusion. It is true that the Illinois EPA  
9 has indicated that in general terms, best  
10 available technology is intended to be a less  
11 stringent standard than best available control  
12 technology.

13           However, what this means is when  
14 conducting a case-by-case best available  
15 technology determination, the result can be less  
16 stringent than if a case-by-case best available  
17 control technology determination were being  
18 conducted. However, this does not mean that best  
19 available technology would be no more stringent  
20 than any historical best available control  
21 technology determination that has ever been made  
22 for a similar emission unit under the PSD program  
23 or any other state program.

24           As already stated, BAT must be

1 determined on a case-by-case basis for the  
2 emission unit in question. That concludes a brief  
3 summary of my prefiled testimony.

4 MS. SAWYER: At this point I'd like to  
5 move to have the testimony of Christopher Romaine  
6 moved into evidence as Exhibit 74.

7 HEARING OFFICER FEINEN: When I was  
8 reading through the prefiled testimony, I noticed  
9 some typos, and the one that I'll raise, just  
10 mention now is in numerical No. 5, it states  
11 numerical standard for BACT, best available  
12 technology parens. Should I strike the BACT in  
13 the exhibit so there's no confusion?

14 MR. ROMAINE: Please strike that.

15 HEARING OFFICER FEINEN: With that,  
16 what's been handed to me is testimony of  
17 Christopher Romaine dated August 8th, 1997. It's  
18 16 pages long is what he's handed me which is  
19 roughly it looks to be the same as the prefiled  
20 testimony copy.

21 If there's no objections to entering  
22 this as Exhibit No. 74 with the correction to the  
23 title of section 5, I shall do so. Seeing none,  
24 this is entered into the record as Exhibit No. 74.

1 It's the testimony of Christopher Romaine dated  
2 August 8th, 1997.

3 (Document received  
4 in evidence.)

5 MS. SAWYER: At this point we'll proceed  
6 to the testimony of Roger Kanerva.

7 MR. KANERVA: I'm Roger Kanerva,  
8 environmental policy advisor for the Illinois EPA.  
9 My testimony is directed at a specific issue  
10 basically, and it stems from the comments or  
11 claims made by Tenneco that we based the design of  
12 the ERMS program on the SO2 program basically, and  
13 that that has a permanent life span for the SO2  
14 allowances unless they're turned in for compliance  
15 purposes and that we hadn't adequately qualified  
16 or explained why we had a two-season lifetime for  
17 ATUs.

18 I think the board also asked the  
19 participants and the agency to provide more  
20 explanation regarding that. So I think we have  
21 done that in this testimony. What we tried to  
22 point out basically is that it is true that we use  
23 the acid rain program as a general model of CAAPP  
24 and allocation approaches, but there are clear

1 differences in both the environmental problem and  
2 the regulatory structure that are involved in  
3 resolving acid rain and in reducing and overcoming  
4 the ozone problem that make a huge difference in  
5 the way you design the trading unit.

6           So really there's three -- what we  
7 point out in here is that there's three basic  
8 reasons that the ozone control program is  
9 dramatically different. First of all, the  
10 standard is a short -- is based on short term  
11 exceedences that can have the adverse impact, not  
12 on a long term, multi-decade gradual build-up or  
13 reduction of the level of acidity in entire  
14 ecosystems, which is really the scientific subject  
15 of dealing with acid rain.

16           The second major difference is the  
17 ozone control program and the Clean Air Act have  
18 rate of progress requirements. We've got targets  
19 to hit every three years, and that is not the case  
20 in the acid rain program. It's basically a  
21 two-step program aimed at a total mass reduction  
22 ultimately at the end over a very more than a  
23 decade long program.

24           And a third point really is that the



1 emissions that can lead to the formation of ozone,  
2 their impact on ozone concentrations tends to be  
3 intense and fairly short term, I mean, episodic,  
4 days or weeks at a time, not multiple years and  
5 very long periods of time that are involved with  
6 acid rain build-up.

7                   So that led us to be very careful in  
8 how much -- how long the lifetime of ATUs could be  
9 and how much of those therefore can be built up  
10 and banked and carried over from one season to  
11 another. It is our feeling that a two-year  
12 lifetime would be kind of a nice balance between  
13 giving people the benefits of emissions banking  
14 and being able to have that capability for their  
15 compliance strategies and not winding up having a  
16 huge amount, unlimited amount of emissions banked  
17 that years later might all be used at one time,  
18 and we would essentially have a flood of emissions  
19 occur. While it would be in compliance, it  
20 certainly wouldn't help for our ozone control  
21 program, and it might cause us to violate our rate  
22 of progress requirements.

23                   So I think it's a pretty clear-cut case  
24 that we're dealing with a much different situation

1 than the acid rain program. And then we've  
2 attached an example that just sort of lays out  
3 what the banking possibilities are for a two-year,  
4 two-season lifetime for ATUs versus unlimited.  
5 It's pretty obvious that you just keep  
6 accumulating ATUs at a very extensive rate.

7           The other advantage of the two-year  
8 lifetime is we think it will make for a more  
9 active market because after they've accumulated up  
10 to one total -- or they've banked as much as their  
11 total allotment allows, then they've either got to  
12 use them in the market or essentially they lose  
13 them. So that's an incentive to get out there and  
14 do some trading and find some partners in the  
15 market. End of summary.

16           MS. SAWYER: Thank you, Mr. Kanerva.  
17 I'd like to move to have the testimony of Roger  
18 Kanerva entered into evidence as Exhibit 75.

19           HEARING OFFICER FEINEN: I've been  
20 handed the testimony of Roger A. Kanerva dated  
21 August 8th, 1997, six pages long, which seems to  
22 reflect what was filed in the prefiled testimony.  
23 The prefiled testimony looks only like it's five  
24 pages, but that may be formatting.

1                   If there's no objections to entering  
2 this into the record as Exhibit 75, I shall do so.  
3 Hearing none, that's entered into the record as  
4 Exhibit No. 75 which is Mr. Roger Kanerva's  
5 testimony dated August 8, 1997.

6                                   (Document received  
7                                   in evidence.)

8                   HEARING OFFICER FEINEN: Let's go off  
9 the record for a second.

10                                   (Discussion off the record.)

11                   MS. SAWYER: That concludes the agency's  
12 presentation of the testimony today, and we're now  
13 available for any questions.

14                   HEARING OFFICER FEINEN: Well, let's  
15 open the floor to the prefiled questions first,  
16 and I believe you received prefiled questions from  
17 the ERMS Coalition for the agency.

18                   MR. SAINES: Thank you. My name is  
19 Richard Saines. I'm representing the ERMS  
20 Coalition. Good morning. The first group of  
21 questions we have relate to proportionate share,  
22 and they pertain to Mr. Forbes' testimony. Good  
23 morning, Mr. Forbes.

24                                   Question 1, which of the mobile source

1 emission reduction measures identified in table 3  
2 of attachment 3 to Mr. Forbes' prefiled testimony  
3 has the agency relied on for purposes of  
4 satisfying Illinois' 1996 ROP goals or prior goals  
5 under the Clean Air Act?

6 MR. FORBES: The following mobile source  
7 measures included in table 3 of my prefiled  
8 testimony are being relied upon as part of the 15  
9 percent rate of progress plan: Post 1994 Tier 1  
10 vehicle emission rates, 1995 reformulated gasoline  
11 phase 1, federal detergent additive gasoline, base  
12 inspection and maintenance program, conventional  
13 transportation control measures, National Energy  
14 Policy Act of 1992, federal non-road small engine  
15 standards.

16 Emission reductions from these programs  
17 that occurred through 1996 were included in  
18 Illinois' 15 percent rate of progress plan.  
19 Emission reductions from these programs that have  
20 occurred after 1996 have not been relied upon in  
21 the 15 percent plan or prior goals under the Clean  
22 Air Act.

23 MR. SAINES: So can I ask a follow-up to  
24 that. So you're saying that some of them have

1 been begun prior to 1996 and have been accounted  
2 for for 1996, but the continuing emission  
3 reductions after 1996 were not accounted for in  
4 1996 and will be accounted for in 1999 ROP?

5 MR. FORBES: That's correct.

6 MR. SAINES: Yes. No. 2 -- and I think  
7 it's a related question then. Which of the mobile  
8 source emissions reduction measures identified in  
9 table 3 of attachment 3 of Mr. Forbes' prefiled  
10 testimony is the agency relying on to achieve the  
11 1999 ROP goals?

12 MR. FORBES: The Illinois EPA is relying  
13 on all of the mobile source reduction measures  
14 identified in the mobile source measures section  
15 of table 3 of my prefiled testimony as part of the  
16 9 percent rate of progress plan. Emission  
17 reductions from all of these programs in 1999 are  
18 creditable under USEPA and Clean Air Act  
19 provisions.

20 MR. SAINES: The next questions or  
21 question relates to the overcompliance date. The  
22 question is why has the agency designated the  
23 ozone season for purposes of the ERMS rules as  
24 being from May 1 to September 30 of each year?

1                   MR. FORBES: I'll answer that one. The  
2 Illinois EPA has proposed the ozone season for  
3 purposes of ERMS to be May 1st to September 30th  
4 of each year. The reason for this is as explained  
5 in the TSD on pages 41 to 43.

6                   Essentially, Illinois EPA reviewed the  
7 occurrences of ozone exceedences over the last  
8 several years and determined that the majority of  
9 such occurrences fell in the period of May 1st to  
10 September 30th and that it was unlikely that  
11 exceedences would occur during April or October  
12 which are part of the USEPA officially designated  
13 ozone season.

14                   Consequently, Illinois EPA proposed to  
15 use the shorter ozone period as May 1st to  
16 September 30th for post 1996 emission reduction  
17 purposes under the ERMS. For 1990 base year  
18 inventory purposes, however, Illinois EPA relied  
19 on all activity occurring during the official  
20 ozone season in preparing that inventory.

21                   MR. SAINES: Thank you. The next series  
22 of questions pertain to the cost effectiveness.  
23 Question 1, what information regarding the cost  
24 effectiveness of the ERMS rules versus traditional

1 regulatory control will the agency be required to  
2 present if the agency seeks further emission  
3 reductions from stationary sources pursuant to  
4 revised Section 205.400(d)?

5 MR. MATHUR: I'm going to respond to  
6 that, Mr. Saines. The nature of your question  
7 suggests that it should be addressed to somebody  
8 else since you are asking what will the agency be  
9 required to present. So I'm wondering by whom?

10 MR. SAINES: By Section 9.8 of the Act  
11 that ensures -- mandates that these rules assure  
12 that they will be at least as cost effective as  
13 traditional regulatory control, and now Section  
14 205.400(d) incorporates that requirement.

15 MR. MATHUR: If you're asking what would  
16 be the agency's response as it prepares the next  
17 round of reductions, my answer is, as always, we  
18 will comply with all applicable requirements,  
19 whether it be Section 9.8, Section 27 or 28 of the  
20 Act.

21 MS. MIHELIC: Tracey Mihelic. As a  
22 follow-up question to that, we're specifically  
23 asking here what is the evidence that you as the  
24 agency believes it will have to present to the

1 board in order to obtain further reductions under  
2 this specific section?

3 MR. MATHUR: Is your question what  
4 evidence we will present to justify additional  
5 reductions?

6 MS. MIHELIC: Yes.

7 MR. MATHUR: So it's not a cost  
8 effectiveness question.

9 MS. MIHELIC: In addition to that, also  
10 what do you believe you have to demonstrate to the  
11 board to show that it is as cost effective as  
12 requiring traditional regulatory controls?

13 MR. MATHUR: Let me answer your first  
14 question then. In order to justify additional  
15 reductions, we will present the necessary  
16 technical analysis that will demonstrate that  
17 reductions beyond the current levels are necessary  
18 to show attainment.

19 In response to your second question,  
20 the detail and depth of cost effectiveness  
21 analysis will be determined by, number one, the  
22 degree of additional reductions; number two, by  
23 the success of the current program; and number  
24 three, the nature of the reductions in the sectors



1 from which we seek those reductions. I think it's  
2 sufficient to say that we will comply with  
3 whatever the requirements are on the agency to  
4 show that its regulatory proposal meets all the  
5 requirements.

6 MR. SAINES: I think what we're trying  
7 to understand is what those requirements are. Let  
8 me just -- I'll ask the question No. 2, and I  
9 think maybe we can flesh it out.

10 If the agency seeks further reductions  
11 from stationary sources after 1999, will the  
12 agency be required to show the cost effectiveness  
13 of achieving only the reductions sought from 1999  
14 levels with the ERMS rules versus implementing  
15 traditional regulatory controls at that time or  
16 the cost effectiveness of achieving all of the  
17 reductions from 1996 levels forward with the ERMS  
18 rules versus implementing traditional regulatory  
19 controls?

20 MR. MATHUR: Historically when the  
21 agency comes before the board with a regulatory  
22 proposal, it has been required to show that that  
23 particular proposal meets all the tests, and that  
24 is what we will intend to do.

1                   MS. MIHELIC: So are you saying that if  
2 you were to come forward in 2001 and ask for  
3 further reductions, you would only be showing --  
4 let's say a 10 percent further reduction, you  
5 would only be showing the board the need for that  
6 10 percent further reduction and the cost  
7 effectiveness of obtaining that 10 percent further  
8 reduction?

9                   MR. MATHUR: That is correct.

10                  MS. MIHELIC: You would not be showing  
11 perhaps the 22 percent -- the cost effectiveness  
12 of requiring a 22 percent reduction?

13                  MR. MATHUR: That is correct, and that  
14 is consistent with how we have come before the  
15 board in the past with each successive rulemaking.  
16 We have not been asked to go back to 1970.

17                  HEARING OFFICER FEINEN: I'm going to  
18 interject. It seems to me you're asking what the  
19 board's standard is going to be for them to  
20 demonstrate a rulemaking, and I don't believe the  
21 agency can answer that question for you. I mean,  
22 basically that's going to be up to the board to  
23 decide whether or not they demonstrated that  
24 rulemaking meets the requirements of 9.8 or

1 Section 27 or 28 of the Act.

2 MR. SAINES: What we're responding to is  
3 the agency's testimony that says that they can  
4 rely in large measure on demonstration that  
5 they've provided in this rulemaking in future  
6 rulemakings. So I'm just curious as to what  
7 additional things the agency thinks they should  
8 present.

9 HEARING OFFICER FEINEN: I'm going to  
10 just say one last statement then, and we'll move  
11 on. In all rulemakings in all cases before the  
12 board, parties can rely on other matters that were  
13 entered into the record of another rulemaking and  
14 ask for that to be incorporated into this  
15 rulemaking.

16 I don't know what the agency meant by  
17 that statement, and that's something they can  
18 answer, but if you want to ask them questions  
19 pertaining to what their statements were and what  
20 they meant by them versus what they think they're  
21 going to be required, you can ask it in that  
22 sense, but what is required is going to be  
23 determined by the board.

24 MR. SAINES: Okay. Question No. 4, is

1 it possible that the cost of an ATU will increase  
2 as further reductions are required?

3 MR. KANERVA: Well, sure, it's possible  
4 that they might increase, and it's also possible  
5 -- equally possible, if not more so, that they'll  
6 decrease because of innovations, technology  
7 advances creating reductions that people can come  
8 across that's been the historical pattern in the  
9 operation of these market systems in the past.

10 Irrespective of whether it increases or  
11 decreases, we've shown that being able to trade  
12 will make a market style program actually more  
13 cost effective than you'd have with traditional  
14 command and control, certainly at least as, but  
15 most likely more, and we'll know for sure after  
16 the first round of reductions and the first round  
17 of operation in the market. There's an annual  
18 report required. The price information will all  
19 be public, and we'll know how it worked.

20 MR. SAINES: Withdraw question No. 5.  
21 We'll also withdraw question No. 6 and question  
22 No. 7, and the next group of questions pertain to  
23 new source review. Question No. 1, what does the  
24 new Section 205.320(g)(2) mean, and if you could,

1 please provide an example how it will be  
2 implemented.

3 MR. ROMAINE: As it specifically states,  
4 this section requires that emission reduction  
5 credits carried over into the trading program not  
6 have been relied upon for attainment demonstration  
7 purposes. This is actually a requirement for any  
8 emission reduction credit under the new source  
9 review program which we're proposing to repeat in  
10 part 205.

11 This means that an emission reduction  
12 included either specifically or categorically in  
13 any formal attainment demonstration including a  
14 reasonable further progress plan cannot be carried  
15 over into a trading program. For example, a  
16 source could not claim that use in a particular  
17 area of lower VOM highway market codings for an  
18 emission reduction credit because this is a  
19 reduction that we have relied upon in our 15  
20 percent plan.

21 MR. SAINES: Question No. 2, please  
22 explain how the ERMS rules will alter the new  
23 source review offset requirements as stated on  
24 page 2 of Mr. Romaine's prefiled testimony.

1                   MR. ROMAINE: The ERMS program would  
2 alter the new source review requirements in the  
3 Chicago ozone non-attainment area for emissions of  
4 volatile organic material, and the effects would  
5 be first that offsets would be applied or  
6 satisfied with ATUs, that is, the trading unit  
7 under the trading program.

8                   Consistent with the principles of the  
9 trading program, the offsets would be applied on a  
10 seasonal basis consistent with the market  
11 mechanism of the trading program. Each seasonal  
12 source must hold ATUs for the actual VOM emissions  
13 of the major project, and finally, to satisfy the  
14 offset ratio 1.3 tons of ATUs would have to be  
15 held per ton of actual emissions.

16                  MR. SAINES: Does the agency intend to  
17 revise the new source review rules to reflect that  
18 offsets are only required during the ozone season?

19                  MR. ROMAINE: No. The provisions in the  
20 trading program are sufficient to alter the  
21 implementation of the new source review rules.

22                  MR. SAINES: Will a source under the  
23 ERMS rules be able to satisfy the new source  
24 review offset requirements by achieving either

1 internal or external offsets in the ATU market?

2 MR. ROMAINE: Simple answer, no. But to  
3 answer this question fully, it's necessary to  
4 explain the difference between so-called external  
5 offsets and internal offsets. I consider the  
6 general obligation under new source review to  
7 provide offsets for a major project to be a  
8 requirement for external offsets.

9 In particular the person with a major  
10 project needs to provide surplus reductions and  
11 emissions from other sources that is offset so the  
12 project will not interfere with efforts to achieve  
13 attainment. This general offset requirement is  
14 the one major VOM projects in the Chicago area  
15 that are developed after the trading program is in  
16 place will have to address under the trading  
17 program providing ATUs at a 1.3 to 1 ratio.

18 The term internal offsets has a  
19 specialized meaning relating to the special rules  
20 for modifications in serious and severe ozone  
21 non-attainment areas as set forth in Sections  
22 182(c)(6) -- or (c)(7) and (c)(8) of the Clean Air  
23 Act. In particular, these provisions give special  
24 treatment for major modifications in these areas

1 to the extent that certain emission reductions  
2 occur at the source itself. That is, there are  
3 internal offsets.

4           These specialized provisions cannot be  
5 addressed with trading units under the trading  
6 program. Internal offsets will have to be  
7 addressed on a case-by-case basis by appropriate  
8 conditions in the construction permit for a source  
9 that is taking advantage of the special rules.

10           MS. MIHELIC: So just to clarify, so you  
11 are only allowing under the new source review  
12 external offsets to be obtained by trading?

13           MR. ROMAINE: That is correct. The  
14 trading program cannot be used to address internal  
15 offsets because the trading program does not make  
16 any distinction about where ATU come from so as  
17 distinguished between ATU originating in the  
18 source's own allotment, an ATU obtained from other  
19 sources.

20           Moreover, even if such a distinction  
21 were made, it would not assure that a source was  
22 providing internal offsets, that is, emission  
23 reductions at the source itself as required by the  
24 special rules. This is because a source would



1 still have access to external ATU from other  
2 sources, and these external ATU could be used for  
3 other operations of the source other than the  
4 major modification, circumventing the reductions  
5 required at the source for an internal offset.

6 MS. MIHELIC: Is it correct that the  
7 distinction between internal and external offsets  
8 was made under the new source review rules in part  
9 because there were no caps on emissions for an  
10 area, basically area-wide caps similar to what's  
11 occurring here in the Chicago area?

12 MR. ROMAINE: I don't believe so. I'm  
13 not particularly sure why the Congress decided to  
14 adopt the special rules for modifications. I have  
15 my pet theory.

16 MS. MIHELIC: But in theory, isn't it  
17 correct that if the source is reducing emissions  
18 -- is obtaining reductions in emissions internally  
19 or externally now, emissions area-wide are being  
20 reduced? And there's a cap on all emission  
21 sources in this area based upon the ERMS programs,  
22 is that correct? There will be a cap on all  
23 emissions in this area?

24 MR. ROMAINE: There is a series of

1 questions here, and I'm not following which one  
2 you want a "yes" to.

3 (Laughter.)

4 MS. MIHELIC: After this program has  
5 been enacted, there will be a cap on all VOM  
6 emissions in Chicago non-attainment area from  
7 stationary sources?

8 MR. ROMAINE: That's correct. We'll be  
9 establishing a budget or total ceiling on the  
10 total emissions from the participating sources  
11 covered by the trading program.

12 MS. MIHELIC: Whether reductions occur  
13 internally or externally from the source, on the  
14 new source review program there will be reductions  
15 in this area that are quantifiable?

16 MR. ROMAINE: That is correct.

17 MS. MIHELIC: Reducing the amount of  
18 emissions under this cap?

19 MR. ROMAINE: That is correct. On a  
20 point, though, that still doesn't guarantee  
21 whether you've satisfied what the Clean Air Act  
22 requires as far as internal offsets.

23 MR. SAINES: Question 5, what is the  
24 status of the agency's efforts to modify Illinois'

1 new source review language to be consistent with  
2 the federal new source review provisions with  
3 respect to a source's ability to net out of new  
4 source review?

5 MR. ROMAINE: My understanding is that  
6 that proposal is waiting to sign off in the  
7 director's office as we're sitting here today.  
8 It's even already been signed.

9 MR. SAINES: Question 6, once Illinois'  
10 new source review netting provisions are modified  
11 to be consistent with the federal new source  
12 review netting provisions, will the participating  
13 source under the ERMS rules be able to modify  
14 previous permit limits in accordance with the  
15 revised Illinois new source review rule and  
16 thereby calculate its emissions baseline?

17 MR. ROMAINE: That is certainly the  
18 purpose of that rulemaking. We would expect that  
19 sources will apply to us for revised permits, and  
20 we'll process them consistent with the revised  
21 rules to establish new provisions for them.

22 MS. MIHELIC: I have a quick follow-up  
23 question to the same section, as to why the ERG  
24 and agency agreed upon a 24 percent reduction.

1                   MR. ROMAINE: That's actually fairly  
2 easy to explain. We're talking about emission  
3 reductions that were obtained under the current  
4 regime with the intent of using them as emission  
5 offsets. They haven't been used as emission  
6 offsets. However, if they were going to be used  
7 as emission offsets, they would have been subject  
8 to a 1.3 to 1 offset ratio. That 1.3 to 1 offset  
9 ratio equates to a 24 percent reduction in the  
10 total amount of emissions.

11                   MS. MIHELIC: We may have some more  
12 follow-up questions on that, how they obtain the  
13 24 percent from 1.3 to 1 later.

14                   MR. SAINES: The next group of questions  
15 pertain to the exclusion for maximum available  
16 control technology or MACT.

17                   Question 1, has the agency conducted a  
18 MACT analysis for each source category and  
19 subcategory listed pursuant to Section 112(c) of  
20 the Clean Air Act?

21                   MR. FORBES: We're not sure what you  
22 mean by a MACT analysis, if you could explain  
23 that.

24                   MR. SAINES: An individual analysis of

1 what MACT is for those listed source categories.

2 MR. FORBES: Maybe I should explain.

3 MR. ROMAINE: I can jump in. It's meant  
4 by that term, no, we're relying on USEPA to  
5 perform the MACT analysis to determine what MACT  
6 is.

7 MR. SAINES: Question No. 2, if a MACT  
8 standard is adopted after 1999 and it is  
9 determined at that time that a source already  
10 complies with the standard based on its  
11 operations, is it possible that the source has  
12 already obtained emission reductions?

13 MR. ROMAINE: That's a hypothetical  
14 question so hypothetical answer. Yes, it is  
15 possible that a source may have already obtained  
16 reductions in such a situation. It's also  
17 possible that the source has not yet achieved any  
18 reductions or at least not any reductions since  
19 1990.

20 MR. SAINES: We will withdraw our  
21 question related to best available control  
22 technology, and that concludes the prefiled  
23 questions.

24 HEARING OFFICER FEINEN: I think the

1 board has one question dealing with the exclusion  
2 of best available control technology.

3 MR. RAO: I had a question for  
4 Mr. Romaine concerning the response to both  
5 questions relating to best available control  
6 technology. On page 15 of your prefiled  
7 testimony, you state that without further  
8 qualifications on BACT that it may not be  
9 appropriate to even consider the exclusions to  
10 sources which meet BACT. Could you elaborate a  
11 little bit more as to what you think are these  
12 qualifications?

13 MR. ROMAINE: What I was considering at  
14 that point was whether there would be some way to  
15 define a particular best available control  
16 technology determinations that could in some way  
17 be used in a simplified manner for best available  
18 technology determination in terms of somehow  
19 limiting them in terms of identical pieces of  
20 equipment, period of time, jurisdiction which was  
21 determined, whether it was made by USEPA or by a  
22 state, whether it was made under an actual PSD  
23 program or parallel state program.

24 I was unable to come up with any

1 particular qualifications that would satisfy that  
2 purpose, and I think in fact you really have to  
3 come back to a case-by-case determination. In  
4 that circumstance, somebody may be able to come  
5 forward and show that in fact there have been best  
6 available control technology for that particular  
7 unit that can be relied upon as one of many pieces  
8 of evidence to support a best available technology  
9 determination, but I couldn't come up with any way  
10 to do it in a regulatory context.

11 HEARING OFFICER FEINEN: Are there any  
12 other questions for the agency?

13 MS. HENNESSEY: No one today addressed  
14 the discussion about what happens to ATUs that are  
15 applied for and there's a disagreement between the  
16 agency and the source as to what the baseline  
17 should be. The board had some concern about  
18 allowing sources to use ATUs that were disputed,  
19 and both the agency and ERG has told us that this  
20 is an agreement that they came to, that the board  
21 should reconsider its position.

22 One question I have is is there any  
23 mechanism in the rule or do you propose any  
24 mechanism in the rule to allow -- suppose the

1 source applies for 200 ATUs and it's later  
2 determined three years later that it really only  
3 should have gotten 100 ATUs for each of those  
4 three years. Is there any mechanism for that  
5 source to make up those excess ATUs that it had  
6 enjoyed for three years?

7 MS. SAWYER: You're saying this is a  
8 source that is going through a permit appeal?

9 MS. HENNESSEY: Right.

10 MS. SAWYER: They've applied for 200,  
11 they're only entitled to 100.

12 MR. KANERVA: The answer at the moment  
13 is no, there isn't, but it's corrected at that  
14 point so it doesn't continue to be an ongoing  
15 problem. In effect, you've netted out at that  
16 point so you have two seasons where -- if they  
17 can't trade it and it's just sitting there, which  
18 is the way our approach was, there's no harm done.  
19 They use whatever they need for compliance and  
20 that's it.

21 MS. HENNESSEY: Suppose you've got two  
22 companies similarly situated. One company only  
23 applies for 100, gets 100. The other applies for  
24 200, but should have only gotten 100. Hasn't that



1 company that got to use the 200 for three years  
2 had an unfair competitive advantage?

3 MR. KANERVA: I thought your example was  
4 it was under appeal.

5 MS. HENNESSEY: If it's under appeal,  
6 they do get to use all 200, correct?

7 MR. KANERVA: But not for purposes of  
8 trading. All they can use it for is compliance.

9 MS. HENNESSEY: But otherwise, they  
10 would have to go out and purchase, if their actual  
11 emissions were going to be 200. That company  
12 would not need to go out and purchase, whereas the  
13 first company that only applied for 100 would have  
14 to go out and purchase ATUs.

15 MR. KANERVA: If you could come up with  
16 a way to avoid someone misrepresenting their  
17 situation, that would be great. Other than  
18 rectifying it at the end, I don't know how you  
19 would retroactively sort of recoup from them  
20 something. I mean, they didn't harm anyone else  
21 necessarily. I mean, they didn't change somebody  
22 else's economic circumstances. They got a bit of  
23 a windfall for a couple of seasons. It saved them  
24 from purchasing some ATUs.

1                   MS. HENNESSEY:  If I were a competitor,  
2  I guess I might not feel that I'd get to spend a  
3  lot of money buying extra ATUs.

4                   MR. KANERVA:  Well, that's one reason  
5  that we -- one way to try and deal with that  
6  really was our approach to go with a preliminary  
7  determination, I mean, to try and get this cleared  
8  up absolutely as quickly as possible, all right,  
9  so that we didn't have these going on for a long  
10 period of time.

11                   I hope appeals won't take two or three  
12 years to resolve, okay.  If they have to know in  
13 the first 120 days what their preliminary is and  
14 we know we got a disagreement or not, then we're  
15 going to probably push that through quickly and  
16 get it heard.  If half the sources in this system  
17 have appeals pending when we start this program  
18 out, we got a serious problem, and in effect  
19 that's what they learned at South Coast.

20                   We spent a lot of time out there when  
21 they were in essence negotiating with literally  
22 100 sources at a time to work out these baselines,  
23 and they realized they had to get that all  
24 resolved in the beginning or they would have a

1 complete tangled mess on their hands, and they got  
2 most of it done.

3                   They were down to a handful of small  
4 sources that they hadn't worked it out. So  
5 between us and what work we do and the board's  
6 hearing whatever contested situations arise, we  
7 just have to clean this stuff up at the start.

8                   MS. HENNESSEY: Do you think that this  
9 could have an impact on the ability of the agency  
10 or the state to meet ROP requirements?

11                   MR. KANERVA: Well, if the process drags  
12 on, it's always possible, but I think our effort  
13 would be to clean it up as quickly as we could on  
14 the front end.

15                   MS. MC FAWN: We might actually be  
16 frustrated by the appellate court level as well.  
17 Even if we did our jobs as expeditiously as you  
18 predict, you could run into a two or three year  
19 time. So I think the question was have you guys  
20 thought about what should happen? We had proposed  
21 that --

22                   MR. KANERVA: And your point there is  
23 that you had proposed sort of embargoing those, in  
24 effect, I mean, making them unusable by the

1 source, putting them in limbo.

2 MS. HENNESSEY: Right.

3 MR. KANERVA: That was your solution.  
4 There's a downside to that -- and I don't know,  
5 maybe we didn't articulate it all that clearly.  
6 But let's say the source legitimately needs  
7 somewhere between the 100 and 200. Maybe the 200  
8 isn't the exact right number, but 100 is too  
9 extreme, and we've misunderstood something.  
10 They're really in a bad spot.

11 I mean, if they are literally frozen  
12 and limited to only using 100, then they're  
13 penalized. Let's say they have to go out and use  
14 the other 50, and they've got 100 sitting there  
15 embargoed or unusable.

16 MS. MC FAWN: During that first 120  
17 days, wouldn't that come out and we'd modify your  
18 decision?

19 MR. KANERVA: No, this is on the  
20 assumption that they'd go ahead and appeal the  
21 filing permit and disagree to agree (sic) all the  
22 way through to the end, I'm assuming you're  
23 saying.

24 MS. MC FAWN: Well, you had said maybe

1 the agency didn't quite understand things, and so  
2 maybe there was a number between 100 and 200.

3 MR. KANERVA: Hopefully, that will be  
4 what happens in the majority of cases, that we  
5 work our way through it. We'll find some common  
6 ground, and we can complete it. That's been the  
7 history of doing this permitting process type of  
8 thing.

9 We work our way through these,  
10 otherwise, the board would have a monster pile of  
11 appeals constantly that you're dealing with, and I  
12 think you find that it's really the exception.

13 MS. HENNESSEY: Did you consider putting  
14 in the regulation some kind of payback mechanism?  
15 You allow someone to use the ATUs that they  
16 believe that they're entitled to, allow them to  
17 use the 200 for three years. It's later  
18 determined by the appellate court they really only  
19 were entitled to 100.

20 Did you consider putting in some kind  
21 of mechanism to require that source to in effect  
22 payback the excess ATUs that it actually used in  
23 the following years after the appeal is concluded?

24 MR. KANERVA: Not really, not really.

1 MS. HENNESSEY: Do you have any -- can  
2 you comment on that suggestion now?

3 MR. KANERVA: Off the cuff. Well, some  
4 of these things are not going to be so clear-cut  
5 that it's going to be obvious exactly what that  
6 payback ought to be. I just -- you can get into  
7 some real complications here. I think we're  
8 willing to think about it a little and comment on  
9 it.

10 MS. SAWYER: We can certainly file  
11 written comments about that issue.

12 MS. HENNESSEY: I'm not suggesting that  
13 that's the perfect solution. I mean, one problem  
14 might be with that the price of ATUs is going to  
15 vary from year to year. So if you require someone  
16 to pay back, they may be having to pay a lot more  
17 for ATUs than they would have originally, but I  
18 would like to hear some further comment.

19 HEARING OFFICER FEINEN: Chris.

20 MR. NEWCOMB: My name is Chris Newcomb,  
21 for the court reporter's benefit. On a related  
22 point, where is the draft of permit application  
23 process right now? When the hearing started, we  
24 first heard that the draft applications would be

1 submitted to the public by July. Where does that  
2 stand now?

3 MR. MATHUR: The agency was hoping that  
4 this rulemaking would be successfully concluded so  
5 we wouldn't have to come up with multiple drafts.  
6 There is a draft set of applications that we will  
7 make available to a large number of people for  
8 their view I'm hoping soon.

9 We didn't want to have the board come  
10 out with changes which would necessitate a change,  
11 but as soon as we know that there is some  
12 stability in the language of the rule, we'll make  
13 it available to all interested parties and work  
14 very closely with them in order to go from draft  
15 to a final stage, and as I have said before, I  
16 welcome companies to start talking to the agency  
17 now on what their baselines might be and what the  
18 calculation should be.

19 MR. NEWCOMB: A quick follow-up, will  
20 the large number of people you will be giving that  
21 to include everyone on the current service list  
22 for the ERMS rulemaking?

23 MR. MATHUR: It could. I have no  
24 problem making it to everybody on the service

1 list. Typically we would make it available to  
2 people who have immediate use for it, but yes, if  
3 you want to put it to everybody on the service  
4 list, it could be.

5 HEARING OFFICER FEINEN: Ms. Mihelic.

6 MS. MIHELIC: I have a follow-up  
7 question to Board Member Hennessey's questions  
8 about the paying back if you lose your appeal.  
9 Under the current permit appeal procedures -- and  
10 I just want to see how they interact with the  
11 procedures in appealing on an ERMS baseline.

12 Is it correct that a source can  
13 continue to operate as it is while it's appealing  
14 a previous permit condition?

15 MS. SAWYER: Continue to operate?

16 MS. MIHELIC: Under it's old permit  
17 condition while it's appealing a new permit  
18 condition.

19 MS. SAWYER: It's really a legal  
20 question. It's my understanding that unless the  
21 board specifically stays the new condition in the  
22 permit, the source has to comply with it for  
23 purposes of the existing state air permit program.

24 MS. MIHELIC: Okay.



1 HEARING OFFICER FEINEN: Anything  
2 further, Ms. Mihelic? I think Mr. Trepanier, you  
3 had your hand up.

4 MR. TREPANIER: Yes, thank you. My  
5 first -- this is Lionel Trepanier. My first  
6 question was on overcompliance date. Has the  
7 agency considered the likelihood that the  
8 emissions -- the emissions regimen over a year in  
9 the state of Illinois is going to be shifted by  
10 this rulemaking and that the two months that the  
11 agency -- two months designated by the federal  
12 EPA, the state EPA has chosen to leave out of this  
13 program are going to see a substantial increase in  
14 VOM emissions on those two months?

15 MR. ROMAINE: We haven't considered  
16 that. However, that is not likely. I don't think  
17 it's possible because existing control  
18 requirements remain in place. Nothing relaxes  
19 requirements that now apply through the rest of  
20 the year including those two months of the ozone  
21 season and including RACT requirements that apply  
22 year-round.

23 So that that should be the status quo  
24 for those two months, and to the extent that

1 companies put in control devices that in fact are  
2 suitable for year-round operation, we would expect  
3 that those months would see the benefits of those  
4 control devices as specifically installed for the  
5 ozone season. So that is not the direction that  
6 emissions would go.

7 MR. TREPANIER: Further on that same  
8 question, doesn't this program allow that a  
9 polluter could meet the requirements of reducing  
10 their emissions during the season by shifting  
11 production to months not included under the  
12 program, specifically April and October?

13 MR. ROMAINE: That's correct. That is  
14 one of the flexibility or one of the options that  
15 is possible under this program. It is an option  
16 that may be feasible for some companies. It is an  
17 option that probably isn't feasible for a lot of  
18 companies.

19 MR. TREPANIER: Has the agency done any  
20 analysis to determine what portion of the total  
21 regulated emissions that is feasible for?

22 MR. ROMAINE: No, we have not.

23 MR. TREPANIER: So could it be all of  
24 the emissions are subject to being shifted from

1 the summer months to these off months?

2 MR. ROMAINE: Only if people would be  
3 prepared to stockpile gas and buy it in April.  
4 No, operations continue throughout the season.  
5 You cannot transfer everything out of the summer  
6 months.

7 MR. TREPANIER: To use your example  
8 then, we would expect under this program -- could  
9 we expect under this program that on May 1st, all  
10 the gas tanks at the refineries will be full, and  
11 that on September 30th, they are likely to be near  
12 empty?

13 MR. ROMAINE: I think that's improbable.  
14 I think refineries have to operate to produce  
15 gasoline in a consistent fashion, and to  
16 manipulate their production in such a manner  
17 wouldn't be consistent in supplying their markets  
18 and demands and their operating characteristics.

19 MR. TREPANIER: Would you say that  
20 currently refineries don't manipulate their  
21 production and have a larger production at certain  
22 months of the year than at other months?

23 MR. ROMAINE: Refineries respond to  
24 market demands, and there are demands for

1 different products during different parts of the  
2 year.

3 MR. TREPANIER: What is the storage  
4 potential at the refineries that are in the  
5 non-attainment area and how that stored potential  
6 relates to how much gas they do ship a month?

7 MR. ROMAINE: I don't know that  
8 information.

9 MR. TREPANIER: Has the agency  
10 considered the potential that the ozone season  
11 will be -- in the future is likely to be longer  
12 than they've selected because of the global  
13 warming trend?

14 MR. FORBES: Could you repeat the  
15 question.

16 (Record read.)

17 MR. FORBES: I guess the answer is no,  
18 we haven't considered that or at least I'm not  
19 aware that that is a potential, that the ozone  
20 season would be extended due to global warming  
21 issues.

22 MR. TREPANIER: Was there an inquiry on  
23 that issue? I'm hearing your answer saying you  
24 don't have any information, but was an inquiry

1 made?

2 MR. FORBES: Not that I'm aware of.

3 MR. TREPANIER: I have no additional  
4 questions for the agency.

5 HEARING OFFICER FEINEN: Mr. Forcade,  
6 did you have any?

7 MR. FORCADE: Yes. Bill Forcade from  
8 Jenner & Block representing Tenneco. I have  
9 questions for Mr. Romaine relative to his  
10 testimony -- prepared testimony on page 12 in his  
11 summary this morning concerning best available  
12 technology.

13 Mr. Romaine, you made a statement in  
14 your summary that a given capture and control  
15 efficiency would be inappropriate as a definition  
16 for BAT because there are existing facilities out  
17 there that meet that standard or more stringent.

18 Is it your testimony that BAT would be  
19 a standard more stringent than any existing  
20 control technology in the State of Illinois?

21 MR. ROMAINE: No, it is not.

22 MR. FORCADE: Is it your testimony that  
23 BAT would be a standard more stringent than 99  
24 percent of the existing control technology in the

1 State of Illinois?

2 MR. ROMAINE: No, it is not.

3 MR. FORCADE: Is it your testimony that  
4 BAT would be a standard more stringent than 98  
5 percent?

6 MR. ROMAINE: No, it is not.

7 MR. FORCADE: Can you give me a number  
8 less than 98 percent that it would be equal to  
9 BAT?

10 MR. ROMAINE: No. BAT is a case-by-case  
11 determination.

12 HEARING OFFICER FEINEN: Mr. Forcade,  
13 any more questions?

14 MR. TREPANIER: I have a question  
15 regarding the agency's prefiled testimony there on  
16 page 13.

17 When the agency suggests that the  
18 overcompliance date could be moved from December  
19 31st -- excuse me, December 31st to September  
20 30th, have they considered -- has the agency made  
21 analysis of moving that date, how that's going to  
22 affect the reductions that the program will  
23 accomplish?

24 MR. FORBES: We don't believe that that

1 would significantly affect the reductions that  
2 we've estimated previously.

3 MR. TREPANIER: If you expect that  
4 that's not going to cause a reduction -- that  
5 that's not going to affect the reduction in VOM  
6 emissions, what do you understand to be the  
7 purpose of the industry group -- industries or  
8 industry groups that sought that change?

9 MR. FORBES: I'm sorry, maybe I  
10 misunderstood. I think we had suggested in our --  
11 you're talking about our comments, the agency's  
12 filed comments?

13 MR. TREPANIER: Yeah, page 13.

14 MR. FORBES: We had suggested the ozone  
15 season period, which is April through October, and  
16 I think the suggested change was allowing any  
17 changes or modifications after September 30th.  
18 You're asking about why the commenter requested  
19 September 30th?

20 MR. TREPANIER: Yeah, I'm inquiring into  
21 what you understand is being sought by that  
22 change, by that change in the regulation.

23 MR. FORBES: Well, I think the  
24 board -- that was the board's recommendation.

1 Some commenters had suggested that. The board  
2 considered that and believed that that was the  
3 period that the ERMS program was -- the control  
4 period that the ERMS program was designed for, and  
5 they felt that was appropriate. I believe that  
6 was the reasoning for that proposed change, at  
7 least that's what I know about that.

8 MR. TREPANIER: So the agency doesn't  
9 expect that there's going to be greater -- more  
10 overcompliance credits given out under that date  
11 change?

12 MR. FORBES: I think our position was  
13 that -- or our recommendation was that it would be  
14 October 30th, which is in line with the existing  
15 officially designated ozone season because that is  
16 more in mind with the way the inventory was  
17 developed, and reductions and modifications that  
18 occurred during that period would have been  
19 reflected in the base year 1990 inventory.

20 So going to a shorter period, it is  
21 possible that some of those changes that were  
22 already reflected in the 1990 base year may be  
23 allowed to receive credit. That's what our  
24 concern was. That's why we suggested that it be



1 the officially designated ozone season, that that  
2 be the end point, that is which is October 31st.

3 MR. TREPANIER: Now, if this change is  
4 adopted, the agency doesn't see that there's going  
5 to be any loss in the reductions that this program  
6 generates given that there will be more credits?

7 MR. FORBES: The October 31st change, we  
8 do not see that it would affect a significant  
9 amount of reductions that we've been estimating.  
10 The proposed change to September 30th is  
11 uncertain. We believe it could affect some of the  
12 -- as I just mentioned, some of the reductions  
13 that were relied on.

14 We haven't specifically gone back to  
15 identify those. That's a rather tedious effort to  
16 do that at this point in time, trying to unravel  
17 and find out exactly which changes occurred in  
18 that time frame, but certainly we did rely on the  
19 officially designated ozone season in developing  
20 the 1990 inventory.

21 MR. MATHUR: May I comment?

22 MR. TREPANIER: Is it fair to say that  
23 it's fairly certain that there would be some, even  
24 if you deem insignificant, reduction in benefit

1 from the program and certainly no increase in the  
2 benefits of the program by moving that date from  
3 December to October?

4 MR. FORBES: I think that's correct.

5 MR. TREPANIER: I mean December.

6 MR. MATHUR: Mr. Trepanier, let me just  
7 add one thing. It is our preference that the date  
8 be October 31st.

9 MR. TREPANIER: Was the initial proposal  
10 for December 31st?

11 MR. MATHUR: It was for the end of  
12 December, but having thought through the impact,  
13 the potential impacts, it's our preference that if  
14 it is to be moved up, it be moved up to October  
15 31st.

16 MR. TREPANIER: Do you know of any  
17 certain industrial facility that will be affected  
18 by that rule change?

19 MR. MATHUR: I don't know of any  
20 specific industry, but I think what Mr. Forbes is  
21 saying is that the manner in which he has computed  
22 the ozone season inventory, he used October 31st,  
23 and we would be much more comfortable with October  
24 31st than September 30th.

1                   MR. TREPANIER: And you were using dates  
2 in September and October. Did you mean December  
3 31st, he is more comfortable with September 30th  
4 versus December 31st?

5                   MR. MATHUR: No. I'm saying upon  
6 reconsideration, we feel October 31st would be  
7 appropriate as compared to the board-suggested  
8 September 30th.

9                   MR. TREPANIER: Thank you. Mr. Mathur,  
10 I have a question regarding the -- your report on  
11 the ozone transport assessment group. As I see  
12 from the testimony, OTAG is calling for reductions  
13 only in NOx, and my recalling from your earlier  
14 testimony is -- I'm recalling -- please correct if  
15 it's not so -- you had stated that if NOx was  
16 reduced coming into the Chicago area, that our  
17 ozone levels would rise, that we would need  
18 greater VOM reductions. Is that still your  
19 position?

20                   MR. MATHUR: What I had testified  
21 earlier was that we have to reduce the incoming  
22 ozone and precursors. What OTAG has shown is that  
23 reducing VOCs outside the non-attainment area did  
24 not have much impact upon reduction of ozone in

1 the non-attainment area, but that reductions of  
2 NOx had significant impact on the reduction of  
3 ozone.

4                   Therefore, OTAG is recommending  
5 significant regional reductions of NOx, which will  
6 then require that we in Chicago focus on VOC  
7 reductions within the non-attainment area which is  
8 what we are trying to do here.

9                   MR. TREPANIER: Thank you. My question  
10 on Mr. Forbes' testimony on page 5, the top of  
11 page 5, the numbers of -- these numbers apparently  
12 are -- are these numbers showing how closely you  
13 expect this program to meet the targets? And I'm  
14 looking at the 727.57 and the sentence continues,  
15 which is less than the target of 735.23.

16                   MR. FORBES: It's simply intended to  
17 reflect the programs that we're relying on for the  
18 9 percent plan as to what the effect of those  
19 programs will be in terms of projected emissions  
20 as compared to what the required target level is  
21 under the Clean Air Act and the USEPA  
22 requirements.

23                   MR. TREPANIER: So does the -- is the  
24 number 727.57, including all ROP control measures,

1 does that -- this 1999 view on emission level  
2 projection of 727.57 tons per day, does that  
3 include the results of the ERMS reductions?

4 MR. FORBES: Yes. That includes the  
5 ERMS reductions as proposed in the program that's  
6 in this rulemaking, yes.

7 MR. TREPANIER: And then is it your  
8 testimony that from your analysis that there is  
9 approximately 8 tons per day of slippage or  
10 cushion?

11 MR. FORBES: Yes, it is approximately 8  
12 tons. The difference between what we project the  
13 emission level to be and the target level is  
14 approximately 8 tons per day.

15 MR. TREPANIER: Is it correct is that  
16 approximately 1 percent of the daily emissions?

17 MR. FORBES: Approximately that.

18 MR. TREPANIER: Does the ERMS program as  
19 proposed -- do you still believe that the ERMS  
20 program itself has a 3 percent cushion in it?

21 MR. FORBES: A 3 percent cushion? I'm  
22 not sure what you're referring to.

23 MR. TREPANIER: Referring to earlier  
24 testimony when we were making a determination on

1 how close does the -- this proposal, the ERMS  
2 proposal, how close does it come to meeting the  
3 requirements of the Clean Air Act? And I'm  
4 recalling the agency's testimony was either 2 or 3  
5 percent greater reductions are being requested  
6 than are actually required, and is that still the  
7 case?

8 MR. FORBES: Well, I think the -- I'm  
9 not sure what the percentage is, but there are two  
10 things that have to be considered. One is the  
11 estimated 8 tons a day below target level, which  
12 this program, along with the other measures that  
13 we're using, relied on, achieves the target level.

14 In addition my testimony identified  
15 that the Clean Air Act requires that we also  
16 provide for contingency. That is an additional  
17 Clean Air Act requirement, and as I pointed out,  
18 that when that's considered along with one of the  
19 measures that will be implemented in 2000, that  
20 that along with the additional 8 tons will be  
21 sufficient to provide us the reductions to meet  
22 both the contingency requirement as well as meet  
23 the rate of progress requirement.

24 Now, that difference is less than 8

1 tons. What that turns out to be percentage-wise,  
2 I'm not sure, but the point is that with these  
3 programs that we propose, we will be able to  
4 demonstrate that we complied with the Clean Air  
5 Act requirements and provide sufficient enough for  
6 contingency, but it's not a large extra amount  
7 that we'll end up with.

8 MR. TREPANIER: Are you saying that the  
9 agency's planning further measures that would  
10 increase the 1 percent for that 8 tons per day  
11 reduction over the target? That is the number,  
12 correct?

13 MR. FORBES: I'm not sure what you're  
14 referring to.

15 MR. TREPANIER: I'm asking are you  
16 saying that there's more measures that are going  
17 to come -- if the agency's bringing more measures  
18 forward that would give further -- give more  
19 assurance that Illinois is going to meet the Clean  
20 Air Act requirements in 1999, or is it all here on  
21 the table now?

22 MR. FORBES: It is all on the table.  
23 What I was discussing a few minutes ago was the  
24 need for contingency. Contingency requirements do

1 not have to be implemented, but they have to be  
2 available in the event that the state is not able  
3 to meet its rate of progress milestone, and those  
4 have to be available within one year after the  
5 milestone date.

6                   So those can occur after 1999, but the  
7 obligation to meet the rate of progress milestone  
8 level is based on the plan and emission reductions  
9 that have been outlined in my testimony earlier.  
10 So there's no additional measures beyond what  
11 we've been discussing.

12                   MR. TREPANIER: If the -- I understand  
13 then is it true then if the board adopts this  
14 proposal, that you're assured to need further  
15 reductions in the year 2000 because the  
16 contingency isn't concluded here? This ERMS  
17 program is not providing the contingency, is that  
18 true?

19                   MR. FORBES: If the question is does  
20 what we have planned in 1999 provide sufficient  
21 reductions to take care of the rate of progress 9  
22 percent and contingency, the answer is no. But we  
23 do have ongoing federal measures which will be  
24 available and implemented without further need for



1 adoption. That will occur in 2000, and that is  
2 sufficient to satisfy the contingency need under  
3 the Clean Air Act.

4           So we have sufficient reductions. We  
5 have sufficient measures to meet the 9 percent ROP  
6 requirements, and we have, along with the federal  
7 measure in 2000 that I identified and the  
8 additional 8 tons or approximately 8 tons of being  
9 under the target level, those two things together  
10 allow us to meet the contingency requirement as  
11 well.

12           MR. TREPANIER: I have a question on the  
13 attachment to your testimony on table 3, the area  
14 source measures that were taken. I see there that  
15 one item that's not listed -- and I question why  
16 it's not listed -- is the vapor 2 recovery that's  
17 mentioned in the attachment 1 to your testimony,  
18 the state ROP submittal to the federal EPA.

19           MR. FORBES: I'm not sure what you're  
20 referring to on table 1.

21           MR. TREPANIER: I'm looking there on the  
22 federal register attached to your testimony,  
23 federal register page 37504 is the bottom of the  
24 third column, No. 3, area sources, A, stage 2

1 vapor recovery.

2 MR. FORBES: This is a 1996 rate of  
3 progress measure, the stage 2 vapor recovery  
4 requirement. The federal register refers to the  
5 state's 15 percent rate of progress plan which was  
6 effective and required to show compliance in '96.  
7 So that measure has already been relied upon in  
8 the 15 percent plan. That's why it does not show  
9 in the 9 percent plan.

10 HEARING OFFICER FEINEN: Any more  
11 questions, Mr. Trepanier? How many more questions  
12 do you have, Mr. Trepanier?

13 MR. TREPANIER: I have just a handful of  
14 questions.

15 HEARING OFFICER FEINEN: Finish those  
16 up, and we'll take a break.

17 MR. TREPANIER: This question is for  
18 Mr. Romaine. In your testimony on pages 15 and  
19 16, the last sentence of your testimony refers to  
20 a fatal flaw in the proposed ERMS.

21 What would be a fatal flaw in the ERMS  
22 program? What would be the defining hallmarks of  
23 the fatal flaw?

24 MR. ROMAINE: I think my definition of

1 fatal flaw would be something that would prevent  
2 it from being approved by USEPA as achieving the  
3 1990 rate of progress plan requirement, something  
4 that would reduce the level of uncertainty of the  
5 program that the USEPA would not be prepared to  
6 sign off on it to see how it did.

7           The particular fatal flaw that I was  
8 referring to was if we simply allowed best  
9 available technology to be set no higher than any  
10 particular BACT determination when there's  
11 hundreds of BACT determinations out there that  
12 have been made over the last two decades. So that  
13 would be very unclear exactly what would be  
14 excluded from further reductions with the best  
15 available technology provision. I think that's  
16 something USEPA would find unacceptable.

17           Another provision that we flagged as  
18 potentially being a fatal flaw is permanent ATUs.  
19 Again that raised a concern in terms of the  
20 ability to reliably assure rate of progress.  
21 Perhaps Mr. Mathur or Mr. Forbes have other things  
22 that they believe could be fatal flaws in the  
23 program.

24           MR. TREPANIER: Thank you. A question

1 for the agency regarding the testimony of Roger  
2 Kanerva, and it's on pages 3 to 4 of your  
3 testimony.

4 MS. SAWYER: Mr. Kanerva stepped out for  
5 a moment.

6 HEARING OFFICER FEINEN: Do you want to  
7 reserve that question and see if he comes back  
8 before break? There he is.

9 MR. KANERVA: I must have left at the  
10 wrong time.

11 MR. TREPANIER: I have a question  
12 regarding Mr. Kanerva's testimony. On pages 3 to  
13 4 of your testimony, I see in your testimony it  
14 seems to express some concern that the ERMS  
15 program may not meet the ROP targets.

16 My question is are the reductions from  
17 the ERMS program assured or not?

18 MR. KANERVA: Well, if the program stays  
19 intact the way we designed it and it maintains a  
20 two-year lifetime from the work we did, we're  
21 comfortable we'll meet the targets. The concern  
22 being expressed here is if one were to modify the  
23 design of the program to have an unlimited  
24 lifetime on the trading units, which was the

1 representation made by Tenneco which in essence in  
2 this testimony we disagree with and support the  
3 board saying, leave it at two-year lifetime. So  
4 that's the context we were concerned about not  
5 meeting the ROP mandate.

6 MR. TREPANIER: I want to direct your  
7 attention, though, to that particular statement in  
8 your testimony that refers to trading rather than  
9 hoarding the ATUs.

10 Now, would it be true that if the ATUs  
11 were hoarded that there would be less emissions  
12 and the program would more certainly meet the ROP  
13 targets?

14 MR. KANERVA: Well, in a particular year  
15 if they're building up the banks, yeah, you have  
16 less emissions, but our concern is there will be a  
17 year in which they're used excessively. We're  
18 talking about ROP requirements in general here.

19 We've got multiple targets to hit down  
20 the road. Yes, we're looking at just the first  
21 three-year period, but we got three of them to  
22 meet so at some point, banked emissions could be  
23 used.

24 MR. TREPANIER: At that point under the

1 current proposal, hypothetically, with the  
2 two-year lifetime, under your reading of -- those  
3 banks could be emitted in one season, and then  
4 would the ROP targets not be met?

5 MR. KANERVA: First of all, you're not  
6 going to build up as large a bank. Second, it's  
7 highly unlikely the source is going to exhaust  
8 every bit of all banked emissions at one time so  
9 this is a relative thing.

10 If you're a source and you're trying to  
11 manage your compliance, one of the big advantages  
12 of a modest bank is having a little hedge. You  
13 may or may not need to know exactly what will  
14 happen with your emissions. That's been the  
15 experience in a couple of the programs that have  
16 been operating, for instance, the heavy duty  
17 engine program that allows banking for a company.

18 They've used it to give themselves a  
19 little cushion on compliance, but if you have a  
20 bank that's four times bigger than what we would  
21 have preferred, then you're much more likely to  
22 use a lot of those emissions, and that's -- so  
23 it's a relative thing here. As the banking gets  
24 larger, the potential for emissions peaking in one

1 season gets dramatically larger. So we've  
2 narrowed it down really to a very conservative  
3 level.

4 MR. TREPANIER: Does the agency's  
5 concern for the peaking of emissions stem from the  
6 agency's understanding of the cyclic nature of VOM  
7 emissions?

8 MR. KANERVA: It doesn't have anything  
9 to do -- the point we're making here about peaking  
10 has nothing to do with cyclic emissions as you  
11 refer to them. It's a whole different point.

12 MR. TREPANIER: Wouldn't a peak, as  
13 you're referring to that, wouldn't that reference  
14 to the top level of emissions? I mean, when the  
15 cycle is high, couldn't that be referred to as the  
16 peak?

17 MR. KANERVA: It has nothing to do with  
18 the cycling. The peaking is a point in time where  
19 a majority of sources might decide to use their  
20 banked emissions for whatever reason. It's  
21 neutral as to whatever is driving that one way or  
22 another. It might be a real hot ozone season of  
23 some kind. I mean, there are variables other than  
24 production level that could drive the equation

1 here.

2 HEARING OFFICER FEINEN: I think we need  
3 to take a break for 10 minutes and then come back,  
4 finish up questions with the agency, take a lunch  
5 and then start with Mr. Marder's testimony. Let's  
6 take 10 minutes. I have 10 to 12:00. Be back  
7 here at 12:00. Thank you.

8 (Recess taken.)

9 HEARING OFFICER FEINEN: I believe where  
10 we left off at the break, we were in the middle of  
11 asking questions of the agency. Mr. Trepanier,  
12 please.

13 MR. TREPANIER: Thank you. Mr. Kanerva,  
14 the concern that you expressed in your testimony  
15 when you just discussed pages 3 to 4 that the  
16 potential that the ERMS program wouldn't meet an  
17 ROP target because of a peak in emissions, is that  
18 based just on hypothetical potential, or is there  
19 something that the -- or was there some  
20 information that the agency has that there could  
21 be a peak of emissions that you're speaking of,  
22 that you're concerned of?

23 MR. KANERVA: I think it's based on sort  
24 of a qualitative analysis of the potential for



1 that, correct. I mean, it's pretty obvious when  
2 you look at how the banking process might work if  
3 you had longer lifetime trading units and we took  
4 a look at that during the design process and what  
5 had happened in a couple of other programs where  
6 they had different lifetime periods. But we don't  
7 have a specific analysis with quantitative results  
8 that shows an exact, say, peaking occurrence or  
9 something, no.

10 MR. TREPANIER: There's a question I'd  
11 like to ask the -- if I'm allowed. I'm referring  
12 to the comments of the agency that they had filed  
13 previously in this rulemaking dated May 16th, '97,  
14 and it's just for reference. I'm just going to --  
15 the question's kind of coming from what was talked  
16 in those comments, specifically pages 20 to 34.

17 There on page 28, the agency cites the  
18 ability of an emitter to select emissions data  
19 from a range of eight years to get the higher  
20 emitting years and that that would provide  
21 insurance for unusual, abnormal patterns would be  
22 considered.

23 My question is does the agency believe  
24 that that would allow emitters to pick peak years,

1 peak emission years?

2 MR. KANERVA: Is this a baseline  
3 determination? It's not relevant to this  
4 testimony at all, I don't think.

5 MS. SAWYER: This is in reference to the  
6 May 16th comments of the agency, is that what  
7 you're questioning?

8 MR. TREPANIER: Yes, comments of the  
9 Illinois Environmental Protection Agency made May  
10 16th.

11 MR. KANERVA: Well, the concept of  
12 peaking and the process of baseline determination  
13 are two different situations entirely. When we  
14 use the term peaking, we're bringing it in in the  
15 context of the amount of banked emissions that  
16 exist at any particular point in the program.

17 That's what we mean by peaking. You  
18 can't take the two and line them up and connect  
19 them one-on-one. So that's the only way I know  
20 how to respond to your question.

21 MR. TREPANIER: Given the agency's  
22 understanding that the emitters will have the  
23 ability to select from their highest emitting  
24 years within the last eight, does this give the

1 agency some concern regarding their concern on  
2 peaking that the difficulty with peaking is  
3 exasperated (sic) when they allow emitter -- every  
4 emitter to choose their worst polluting year as  
5 baseline?

6 MR. KANERVA: Well, first of all, that's  
7 your characterization, not ours. They're supposed  
8 to pick representative years out of a three-year  
9 time range, and if that isn't suitable, then they  
10 have to justify that something is represented  
11 outside of that range. They don't just  
12 automatically get to pick the highest emissions in  
13 an eight-year period. So no, we don't agree with  
14 what you're characterizing is the process.

15 MR. TREPANIER: You do agree, don't you,  
16 with the agency's comment that emitters have the  
17 ability to select operating emissions data from  
18 this range of eight years and the opportunity to  
19 use data from higher emitting years?

20 HEARING OFFICER FEINEN: I'm going to  
21 ask Mr. Trepanier to point that out again, and  
22 secondly, it's not testimony today, and you're  
23 asking the agency a question about a public  
24 comment or public comments filed on May 16th, and

1 I think it's awful hard for the agency to respond  
2 to that. Can you cite what filing it is?

3 MR. TREPANIER: I'm looking at the  
4 filing which is the comments of the Illinois  
5 Environmental Protection Agency dated May 16th,  
6 1997.

7 HEARING OFFICER FEINEN: Page 28?

8 MR. TREPANIER: Page 28.

9 MS. MC FAWN: Mr. Trepanier, you  
10 understand that those comments -- not having them  
11 in front of me -- those have to do with  
12 establishing the baseline which is different than  
13 the last series of questions you were giving  
14 Mr. Kanerva.

15 MR. TREPANIER: What I'm referring to  
16 and how I would link that to the previous question  
17 is exploring the particular link between this  
18 ability to select the highest polluting years and  
19 the agency's concern for peaking.

20 MS. MC FAWN: Well, maybe when you  
21 testify, you could explain that because I think  
22 you put the question to Mr. Kanerva, and I think  
23 he said he doesn't see the connection between the  
24 two, between the baseline and the agency's concern

1 that banked emissions might be used in a situation  
2 where if there's a lot of banked emissions, they  
3 might all be simultaneously used causing an ozone  
4 problem.

5           So I think he's answered your question,  
6 if you want to see the link between that statement  
7 and their concern of a glut of banked emissions  
8 being used at any one period of time. Maybe you  
9 can explain to us your concern about the link  
10 between baseline and banked emissions.

11           MR. TREPANIER: If I might close on this  
12 with another question. In that same public  
13 comments on the very next page, there's reference  
14 to avoiding beginning ERMS with inflated  
15 baselines.

16           If that were to happen and this ERMS  
17 program began with inflated baselines, would that  
18 be a fatal flaw?

19           MR. KANERVA: What do you mean by fatal  
20 flaw? Explain the context of fatal flaw. Fatal  
21 flaw relative to what?

22           MR. TREPANIER: Well, today's testimony  
23 did refer to a fatal flaw, and we did have a  
24 definition.

1                   MR. KANERVA: Excuse me, what are you  
2 saying?

3                   MR. TREPANIER: The agency did offer an  
4 explanation of fatal flaw earlier today.

5                   MR. ROMAINE: I offered a personal  
6 definition of a fatal flaw which would be  
7 something that would prevent this program from  
8 being approved by USEPA as meeting our 1999 rate  
9 of progress plan requirements. I don't believe  
10 baselines would necessarily factor into that  
11 determination. Baselines would determine whether  
12 corrective action would be needed, but they  
13 wouldn't necessarily represent a fundamental flaw  
14 in the program as such.

15                  MR. TREPANIER: Could this program  
16 accomplish a goal of reduction in VOC emissions if  
17 the baselines are inflated beyond 12 percent?

18                  MR. KANERVA: Yes. You could still  
19 achieve reductions. The question is the reduction  
20 might be somewhat less than what you would like if  
21 for some reason they came out that way. This is  
22 all conjecturing here, but it's just relative. If  
23 you're one percent too high, you have one percent  
24 less total reduction you achieve perhaps, because

1 there's many, many factors that's going to affect  
2 that one way or the other.

3 MR. TREPANIER: And this ERMS program is  
4 part of a submittal to the USEPA that's within one  
5 percent of its target? The problem with an  
6 inflated baseline, is the agency anticipating that  
7 that would be less than 1 percent, less than 8  
8 tons per day lost of reductions from this program?

9 MS. SAWYER: Well, I think you're kind  
10 of taking our comments out of context.

11 MR. TREPANIER: So the testimony today  
12 that was entered today by Mr. Forbes on page 5 of  
13 his testimony that the projected 1999 emissions  
14 was 727.57 and that the target level is 735.23  
15 which would be 8 tons per day difference.

16 Now, regarding the potential of an  
17 inflated baseline, is it the agency's assumption  
18 that any difficulty or reduction in benefits from  
19 this program resulting from inflated baselines --

20 MS. SAWYER: I still think you're taking  
21 our comments out of context. We were not  
22 suggesting that the program will have inflated  
23 baselines. We were saying if certain changes are  
24 made to the rule, there was a potential for

1 inflated baselines. So we have never acknowledged  
2 that the baselines would be inflated in this  
3 testimony at this point or in the comments at this  
4 point.

5 MR. TREPANIER: Well, I would point you  
6 then to page 34 of your comments on May 16.

7 HEARING OFFICER FEINEN: I'm going to  
8 stop right here and say that unless some of the  
9 questions to the testimony presented today -- if  
10 you have concerns about inflated baselines and  
11 their effect towards overall achievement, you can  
12 testify to that fact today or tomorrow.

13 I think today's purpose of answering  
14 questions was for the testimony the agency's  
15 presented today. I've given you a wide range for  
16 asking questions, but this question seems to be  
17 the same question in the last five minutes but  
18 just presented in a different manner. I think the  
19 agency's attempted to answer it, has answered to  
20 the best of their capabilities at this point, and  
21 let's move on to a different question.

22 MR. TREPANIER: If I could just engage  
23 you for one moment on this is that I wanted to  
24 bring to the agency's attention was that they have



1 been answering the question. On that page 34,  
2 they in fact have acknowledged that there will be  
3 inflated baselines, and they use the Ray-O-Vac as  
4 an example where they say Ray-O-Vac would have a  
5 baseline well in excess of its emissions in the  
6 majority of years in the past seven years.

7 HEARING OFFICER FEINEN: And I don't  
8 want to testify so let's go off the record.

9 (Discussion off the record.)

10 MR. TREPANIER: I have a question for  
11 the agency. In your earlier comments on May 16th,  
12 you noted USEPA addressed concerns. I haven't  
13 received any concerns from the USEPA. How did the  
14 agency receive those, when and in what form?

15 MR. ROMAINE: I believe these were  
16 telephone conversations with USEPA. We work with  
17 USEPA, and we have periodic telephone calls with  
18 them on a range of matters.

19 MR. TREPANIER: Thank you.

20 HEARING OFFICER FEINEN: Are there any  
21 other questions for the agency? Mr. Burke, would  
22 you please state your name.

23 MR. BURKE: Ron Burke with the American  
24 Lung Association metropolitan Chicago. I just

1 have a handful of questions.

2 My first is what is your justification  
3 for -- on what basis do you believe that the  
4 switch to a seasonal new source review program  
5 versus an annual new source review program is  
6 consistent with the Clean Air Act?

7 MR. ROMAINE: The key principle is that  
8 the Clean Air Act requires emission reductions to  
9 make continuity and reasonable further progress.  
10 In fact, for ozone, reasonable further progress is  
11 measured on a seasonal basis. We don't address  
12 reasonable further progress in terms of winter  
13 emissions.

14 It's recognized that ozone is a  
15 seasonal problem. The extent of the season varies  
16 from location to location, but by addressing  
17 offsets on a seasonal basis, we will make sure  
18 that major new projects do not interfere with  
19 reasonable progress which is what the Clean Air  
20 Act requires.

21 MR. BURKE: In your testimony, you  
22 touched on the ozone season for the purposes of  
23 the ERMS program.

24 Do you believe that the May through

1 September time frame would also be appropriate for  
2 the new ozone standard recently adopted by USEPA?

3 MS. SAWYER: I'm not sure we can answer  
4 that question at this time, Mr. Burke.

5 MR. BURKE: Well, follow-up, if there  
6 was a need to change the ozone season for the ERMS  
7 program, how would that be accomplished?

8 MR. MATHUR: We'd revise the rules or  
9 propose that they be revised.

10 MR. BURKE: I'm not sure how this  
11 directly relates to the testimony, but you can  
12 reel me in if you think it's out of line.

13 How will transient and the spatial  
14 distribution of hazardous air pollutant emissions  
15 be evaluated?

16 MR. KANERVA: For the annual report on  
17 how the market system is operating?

18 MR. BURKE: For example, yes.

19 MR. KANERVA: Just a second, let me pull  
20 that language out exactly. You're referring to  
21 item 9 under the list of what would be dealt with  
22 with the annual report, is that right, trends and  
23 spatial distributions of hazardous air pollutants?

24 MR. BURKE: Right.

1                   MR. KANERVA: Well, obviously we still  
2 have to go through the process of sorting all of  
3 this out, but we are going to have data on  
4 hazardous air pollutants, and we're working on  
5 getting the rule there to be consistent with the  
6 approach on how we want to analyze this.

7                   So we'll know where transactions have  
8 taken place and trades from one location to  
9 another, and then to the extent we see any pattern  
10 on whether or not those trades happen to involve  
11 things that are hazardous air pollutants, we would  
12 be able to show whether or not they're going up or  
13 down relative to where trades are occurring.

14                   I think the context of that was some  
15 concern that the trading process might result in  
16 hot spots or trends and affect locations or trends  
17 in how hazardous pollutants will be emitted. So  
18 we've essentially committed to provide the  
19 information to help people understand whether  
20 that's happening or not.

21                   MR. BURKE: How would that information  
22 be reported to the public?

23                   MR. KANERVA: The annual report will be  
24 a public document so it will be available to

1 whoever wants to have it.

2 MR. BURKE: Similarly, will information  
3 be provided as part of the annual report or  
4 otherwise on the effects of directionality or  
5 trading on the effectiveness of the ERMS program  
6 and reducing those levels?

7 MR. KANERVA: Well, we did have in item  
8 No. 6 in that list, distribution of transactions  
9 by geographic area or character. So I think the  
10 point was exactly that, that if there seems to be  
11 a one-way directional flow of trades one way or  
12 another and that seems to be significant, a  
13 significant pattern, then we may want to do some  
14 additional modeling of effects or whatever.

15 MR. BURKE: And last question, does the  
16 proposed rules specify any penalty for inaccurate  
17 filing as opposed to, for example, an emissions  
18 excursion? In other words, even if an emissions  
19 excursion did not occur and there were inaccurate  
20 filing, is there any penalty?

21 MR. KANERVA: That's just a regular  
22 enforcement case. It would be a traditional civil  
23 penalty case that we would file against somebody  
24 for inaccurate data.

1 MR. BURKE: Okay, thank you.

2 HEARING OFFICER FEINEN: I believe the  
3 board has a question for the agency.

4 MR. RAO: I have a question for  
5 Mr. Romaine concerning the landfill. When you  
6 established baselines for landfills, will any  
7 consideration be given to the unique emission  
8 pattern of landfills where the peak rate of  
9 emissions occur sometime, you know, in the future  
10 for some of these landfills? So how will that be  
11 accounted for?

12 MR. ROMAINE: As we've set up the rule,  
13 landfills would be treated like other sources.  
14 They would have to evaluate their emissions based  
15 on the period of time '94, '95, '96, and that is  
16 the baseline time period unless they can  
17 demonstrate that other time periods, '91 through  
18 '97, are more representative.

19 The other issue, though, is that  
20 landfills do have the opportunity for voluntary  
21 compliance to the extent that they have upgraded  
22 their control systems in the last year since 1990.

23 MR. RAO: They cannot use any peak rate  
24 to establish that baseline?

1                   MR. ROMAINE: We have not proposed any  
2 provisions to that effect.

3                   HEARING OFFICER FEINEN: Are there any  
4 other questions for the agency?

5                   MS. HENNESSEY: There was one question I  
6 had on you mentioned in your public comments that  
7 you were working with Sun Chemical to come up with  
8 a proposal on how to handle consolidation of  
9 participating and non-participating sources. Do  
10 you have anything yet?

11                   MR. ROMAINE: No, we don't.

12                   MS. HENNESSEY: Okay, thank you.

13                   HEARING OFFICER FEINEN: Any other  
14 questions? Let's take lunch and then come back  
15 for Mr. Marder's testimony and questions of  
16 Mr. Marder. Let's take an hour lunch. Let's try  
17 to be back here about 1:30. Thank you.

18   (Lunch recess taken.)

19                   HEARING OFFICER FEINEN: Let's proceed  
20 to the testimony of Mr. Marder, if we could have  
21 the witness sworn in, please.

22   (Witness sworn.)

23                   MS. HODGE: Good afternoon. My name is  
24 Katherine Hodge, and I'm with the law firm of

1 Hodge & Dwyer from Springfield, Illinois. I'm  
2 here representing the Illinois Environmental  
3 Regulatory Group.

4 We have just one witness today,  
5 Mr. Sidney Marder. He did prefile testimony, and  
6 he will today just offer a brief summary of his  
7 prefiled testimony. Mr. Marder.

8 MR. MARDER: Thank you. Good afternoon.  
9 I have previously testified in this proceeding  
10 before the board. I appreciate the opportunity to  
11 add these comments. I'll very briefly summarize  
12 the points that I made in my testimony. The first  
13 issue I addressed was our recollection of the  
14 intended proportionality in Section 9.8(c)(3) of  
15 the Act, and the two main points I would emphasize  
16 is it was our belief and remains our belief that  
17 proportionality has to be demonstrated over a  
18 continuum and not project by project and not  
19 regulation by regulation, and because of that, we  
20 argued strenuously, negotiated strenuously with  
21 the agency to ensure that any future reductions  
22 through the ERMS program would be resultant from a  
23 full board regulation process, and we believe that  
24 that is what is in the regulation as proposed now.



1                   The second issue deals with new source  
2 review and inconsistencies between Illinois' new  
3 source review and the Clean Air Act. We are aware  
4 that the agency's about to propose regulations to  
5 reconcile any instances, and we certainly support  
6 that, and I would like to again emphasize that the  
7 proposed Section 205.320(g) was not intended nor  
8 does it address those inconsistencies, but rather  
9 was intended to provide a transition mechanism for  
10 sources that had rather unique circumstances.

11                   Item 3 is the need to provide ERMS  
12 sources with additional relief from the 1999  
13 deadline for compliance with reduction  
14 requirements. We continue to feel very strongly  
15 about this issue, and we reemphasize our point  
16 that we believe at a minimum if the board cannot  
17 go along with the year 2000 extension, then there  
18 should be no penalty for the first year.

19                   Now, the longer it takes to adopt the  
20 rules, the more important this becomes. The  
21 agency in its comments raised the issue of  
22 enforceability. I would like to emphasize that  
23 the only enforceable mechanism we have in the ERMS  
24 program is the CAAPP permit. There is no

1 enforceability until such time as a baseline is  
2 included as a condition in the CAAPP permit. The  
3 board suggested an alternative that if we have a  
4 permit by January 1st, 1999, then you would not  
5 get a waiver of the excursion non-compliance  
6 provisions.

7                   We would respectfully note that that  
8 gives us a maximum of four months from the time we  
9 receive that permit or when the enforceability  
10 starts until such time as the start of the first  
11 ozone season, and that, from a business point of  
12 view, is an unreasonably short period of time.  
13 The agency in their comments recommended the  
14 issuance of a draft permit by 4-30-99.

15                   That by definition would mean that  
16 there's no enforcement for that facility -- first  
17 of all, it's one day between the issuance of the  
18 draft permit and the trigger for the program, and  
19 second of all, until the permit is issued, the  
20 program is not enforceable on that source because  
21 there's no condition, there's no baseline, there's  
22 no permit, there's no program for that source. So  
23 we would urge the board to review the testimony  
24 and reconsider on this position -- on this point.

1                   The next subject I addressed was the  
2 status of ATUs which are the subject of an appeal,  
3 and we had some discussion on that earlier this  
4 morning. I would say up front that ERG  
5 respectfully disagrees with the board's  
6 description on the current status of a permit  
7 during the pendency on appeal, and we respectfully  
8 disagree with the agency's statement this morning  
9 as to what the status of the permit is. Having  
10 said that, I think that it is totally unnecessary  
11 for the purposes of this proceeding to get into  
12 that issue. If we want to, we can.

13                   I think this would be a more  
14 appropriate discussion for another proceeding or  
15 for briefs on the subject if the board wanted it.  
16 Whatever that outcome is, I think it's somewhat  
17 irrelevant to this particular proceeding. The  
18 important thing, though, is what's going to happen  
19 to the ATUs during the pendency of the appeal, and  
20 rather than waiting for the similar question from  
21 Board Member Hennessey, I'll respond to it, if I  
22 may. It's a little off my testimony.

23                   MS. HENNESSEY: It's coming.

24                   MR. MARDER: A couple of points. First

1 of all, no manager, environmental manager or plant  
2 manager, is going to allow their facility to file  
3 a frivolous appeal. There's too much at stake.  
4 Appeals are thought about, and there has to be  
5 some merit to them.

6           So I agree with Roger's analysis on  
7 this. These things can happen, but the odds of  
8 them happening are very, very low. If it is a  
9 frivolous appeal, the board has the right to  
10 reject it, dismiss it. Most of these appeals,  
11 they're going to move pretty quickly.

12           If the agency feels that the permit  
13 appeal is without merit, they're going to refuse  
14 to grant waivers, and this thing should go through  
15 in the statutory 120 days. More importantly, the  
16 second point is the establishment of the baseline  
17 is going to be in almost all cases a one-time  
18 event. It's going to happen before the program  
19 starts, we hope, apropos my comments a moment ago.

20           The agency has a statutory deadline to  
21 grant all CAAPP permits 24 months after the first  
22 application. Now, that's March of '98. That's  
23 not going to happen, but let's say we get pretty  
24 close to that. From the day I get my CAAPP

1 permit, that's the day I get my baseline, and  
2 that's when I have to file the appeal. Now, if  
3 the agency is timely or even a little late, we  
4 have enough time between the grant of that permit  
5 and the 120 days or 150 days for appeal to decide  
6 this issue before the first ozone season.

7           There's going to be some cases that it  
8 still won't be decided, and it may go to the  
9 appellate court, but those are going to be few and  
10 far between. When we negotiated this with the  
11 agency, we talked about some of these issues, and  
12 we felt that the balance between you get some and  
13 you give some was fair. We recognize that if we  
14 lose the appeal, we won't have to go back and  
15 credit that for the first season in the event we  
16 do go through the first season, which again is  
17 going to be fairly rare.

18           But if the agency is going to look at  
19 what mechanisms can be done to, if you will,  
20 correct that situation, then we would ask that the  
21 converse be looked at. If we win the appeal, we  
22 have lost the right to sell those ATUs which was  
23 legitimately ours. Should there also be a  
24 mechanism to make sure that we are credited with

1 additional ATUs? All of these issues made us  
2 believe let's leave it the way it is.

3           It's going to be a rare occurrence, and  
4 in our -- I think I can say, in our joint  
5 estimate, this is the best public policy decision.  
6 The next point that I'll mention is the treatment  
7 of emission units under an industrial category  
8 where MACT has been demonstrated. Just briefly,  
9 the points are that there seem to be some  
10 confusion, at least in my mind, from reading the  
11 board's opinion as to the applicability of MACT to  
12 a unit, an emission unit, versus a category or  
13 entire facility.

14           We believe it is the unit, and we  
15 concur with the agency on that, but also lost in  
16 the language, we think, was a concept that MACT is  
17 MACT, and if a unit is excluded because it has  
18 complied with a MACT standard, it doesn't matter  
19 what form that MACT standard took, and in my  
20 testimony, I delineate four possibilities of how  
21 you meet the standard. In any case, if the  
22 emission unit has met MACT, I think it's the  
23 intent of the rule -- and I believe the agency  
24 would concur -- that that unit be exempt from

1 reductions. It's included in the baseline but  
2 exempt from emission reductions.

3 That's a brief summary of my testimony.  
4 I'd be glad to answer any questions.

5 MS. HODGE: At this time I'd like to  
6 move for the admission of Mr. Marder's prefiled  
7 testimony.

8 HEARING OFFICER FEINEN: It's been  
9 handed to me to be moved into the record as  
10 Exhibit No. 76 is the prefiled testimony of  
11 Mr. Marder dated August 7th, 1997.

12 If there's no objections to moving that  
13 into the record as Exhibit No. 76, I'll do so.  
14 Seeing none, Exhibit No. 76 will be Mr. Marder's  
15 testimony dated August 7, 1997. Thank you.

16 (Document received  
17 in evidence.)

18 HEARING OFFICER FEINEN: Are there any  
19 questions? I don't believe there's any prefiled  
20 questions. Any other questions? Mr. Trepanier.

21 MR. TREPANIER: Hello. Regarding the  
22 treatment of MACT units, is it your understanding  
23 that all units that have a MACT standard have been  
24 limited in their emissions of VOM?

1                   MR. MARDER:  There has been a limitation  
2  put on those units, yes, whether it be through  
3  control or operating practices or a determination  
4  that this is the most that that unit should be  
5  expected to do.

6                   MR. TREPANIER:  So the limitation -- do  
7  you understand then that these units that have the  
8  limitation placed on them, that that MACT, maximum  
9  achievable control technology, is specifically  
10 addressing VOMs?

11                  MR. MARDER:  Yeah.  Well, if the MACT  
12 standard is for VOMs, yes.  If it's for HAPs, it  
13 can be for a HAP that's not VOM.  There are HAPs  
14 that are not VOMs which are subject to MACT  
15 standards.

16                  MR. TREPANIER:  Is it your  
17 organization's position then that those sources  
18 that should be exempted from the reduction with  
19 those units would be units that have a MACT  
20 standard for VOM emissions?

21                  MR. MARDER:  That's the only thing  
22 that's relevant is VOM.  The only thing that this  
23 regulation applies to is VOM.

24                  MR. TREPANIER:  When you say this



1 regulation --

2 MR. MARDER: Those are the only ones  
3 that would be exempt.

4 MR. TREPANIER: When you say this  
5 regulation, you're referring to the rulemaking?

6 MR. MARDER: Yes.

7 MR. TREPANIER: I'm referring to the  
8 MACT standards themselves. Is it your  
9 organization's position that a unit that has a  
10 MACT standard limiting VOM emissions, that those  
11 specifically and exclusively are the units with  
12 MACT standards that should be exempted?

13 MR. MARDER: Under this proposed rule?

14 MR. TREPANIER: From the 12 percent  
15 reduction required by this rule.

16 MR. MARDER: This rule only applies to  
17 VOMs. So if you're asking me whether a MACT  
18 standard that controls a particulate HAP should be  
19 excluded from this rule, I think the answer is  
20 that's not relevant. They're not covered one way  
21 or another.

22 MR. TREPANIER: Thank you.

23 HEARING OFFICER FEINEN: Are there any  
24 other questions?

1                   MS. HENNESSEY: Just a question on the  
2 status of ATUs on appeal. I just want to clarify  
3 my earlier question when I was discussing how  
4 there might be a competitive advantage for one  
5 source if it had higher -- if it just chose a  
6 method, whether intentionally or not, but chose a  
7 method that gave it a higher baseline as compared  
8 to another source similarly situated that happened  
9 to choose a different method, there would be some  
10 competitive advantage if they're allowed to use  
11 those ATUs while they're disputed.

12                   MR. MARDER: Sure.

13                   MS. HENNESSEY: Whether there's any  
14 intent -- I'm not suggesting that there's going to  
15 be a lot of frivolous appeals filed, but  
16 reasonable people can certainly disagree about the  
17 way this baseline is going to be calculated.

18                   MR. MARDER: I think you are correct.  
19 If during the pendency of an appeal someone gets  
20 an advantage because of the appeal, that could  
21 happen. The converse, though, is also true. They  
22 are being deprived of the right to sell that  
23 during the pendency of the appeal, and I guess our  
24 opinion is it's much ado about nothing. This will

1 hardly ever happen.

2 MS. HENNESSEY: So whatever competitive  
3 advantage someone might get, you think it is  
4 fairly unsubstantial compared to the complexities  
5 in developing a system for crediting or repaying  
6 someone ATUs that might have been disputed ?

7 MR. MARDER: I think that's correct. I  
8 think one of the things we tried not to get into  
9 is that whole issue which I said is not relevant  
10 because once you get into that can of worms,  
11 there's a whole bunch of issues as to do you split  
12 a condition of an appeal. Is a baseline a  
13 condition, or is each ATU a condition? And it  
14 just, I think, is not worth the effort at that  
15 point.

16 MS. HENNESSEY: Okay, thank you.

17 HEARING OFFICER FEINEN: Are there any  
18 other questions? Seeing none, let's move on to  
19 the presentation from Tenneco.

20 MS. HODGE: Thank you.

21 MR. FORCADE: Mr. Hearing Officer, could  
22 we have two minutes, please.

23 HEARING OFFICER FEINEN: Sure. Let's go  
24 off the record.

1 (Discussion off the record.)

2 HEARING OFFICER FEINEN: Proceed with  
3 the testimony of Mr. Wakeman from Tenneco. Swear  
4 in the witness.

5 (Witness sworn.)

6 MR. FORCADE: Mr. Hearing Officer,  
7 members of the board, my name is Bill Forcade from  
8 Jenner & Block in Chicago representing Tenneco.  
9 We have one witness today, Mr. Jim Wakeman. We  
10 have prefiled testimony, and Mr. Wakeman intends  
11 to give a very brief summary of that testimony.

12 MR. WAKEMAN: Good afternoon. My name  
13 is Jim Wakeman, regional environmental manager for  
14 Tenneco. In a nutshell, our testimony concerns  
15 two areas. One is the application or the  
16 applicability of MACT or maximum achievable  
17 control technology or the NESHAPs to a facility.

18 We would like to suggest in the  
19 rulemaking that if a MACT in fact implies or is  
20 recorded as being no controls, that that be  
21 acceptable and that that facility or that  
22 emissions unit does in fact meet the MACT standard  
23 and have that emission unit excluded from the ERMS  
24 program. The other issue had to do with the

1 definition of BAT or B-A-T and the exclusion of  
2 units meeting that standard.

3           What we were suggesting is that the  
4 definition be a little more clear in its  
5 definition of the upper and the lower limits, and  
6 one of our suggestions was the numeric number for  
7 an upper limit. The other one, of course, would  
8 be something in the nature of BACT. In a  
9 nutshell, that was my testimony.

10           MR. FORCADE: At this time, I would move  
11 the introduction of Mr. Wakeman's prepared  
12 testimony.

13           HEARING OFFICER FEINEN: I'm looking at  
14 the testimony of Mr. Wakeman dated August 8, 1997.  
15 I believe this is the same as the prefiled  
16 testimony.

17           If there's no objections to entering  
18 that into the record as read, I'll do so. Seeing  
19 none, I'm marking as Exhibit No. 77 Mr. Wakeman's  
20 testimony dated August 8th, and I believe the  
21 agency had some prefiled questions for  
22 Mr. Wakeman. Let's proceed with those first.

23           MS. SAWYER: Good afternoon,  
24 Mr. Wakeman. Our first question, is it your

1 understanding that maximum achievable control  
2 technology or MACT and national emissions  
3 standards for hazardous air pollutants, NESHAPs,  
4 are federal emission standards?

5 MR. WAKEMAN: Yes, it is.

6 MS. SAWYER: Is it your position that  
7 the board's determination as to the exclusion from  
8 reductions for MACT or NESHAP units under the ERMS  
9 will alleviate a source's obligations to comply  
10 with federal MACT for that unit?

11 MR. WAKEMAN: No. No, it is not.

12 MS. SAWYER: Then would you please  
13 explain your position on page 7 of your testimony  
14 that the board's application of the MACT-based  
15 exclusion from reductions under the ERMS may  
16 undermine national standards.

17 MR. WAKEMAN: In a nutshell, the  
18 examples that we gave in our testimony was both  
19 for -- the situations concerned a facility that  
20 had both HAP and VOM as the emitting constituent,  
21 and our concern was that the board can adopt  
22 regulations that are technically and economically  
23 reasonable.

24 And if the board adopts standards that

1 are more stringent than MACT or NESHAPs, that in  
2 effect the board is saying that the federal  
3 standards were not adequate and that the  
4 reasonability and the technical feasibility of  
5 what the federal government analysis showed was  
6 incorrect.

7 MS. SAWYER: Go on to question No. 4.  
8 Are you aware that CAAPP or Clean Air Act Permit  
9 Program sources are required to identify in their  
10 CAAPP applications federal emission standards  
11 applicable to their emission units including MACTs  
12 and NESHAPs ?

13 MR. WAKEMAN: Yes, I am.

14 MS. SAWYER: I would just like to ask  
15 one quick follow-up to that.

16 Could you please explain your position  
17 that the board would have a great deal of  
18 difficulty evaluating compliance for an emission  
19 unit with a MACT and NESHAP if these units are  
20 addressed in that source's CAAPP application and  
21 permit.

22 MR. FORCADE: Would you please repeat  
23 that to make sure I understood the question.

24 MS. SAWYER: Sure. Could you explain

1 your position that the board would have a great  
2 deal of difficulty determining an emission unit's  
3 compliance with a MACT standard if these units, in  
4 their compliance with those standards, have to be  
5 addressed in the CAAPP applications for those  
6 sources?

7 MR. FORCADE: Can we take a second to  
8 look at our prepared testimony and try and figure  
9 out where that was said? Do you have a page  
10 number?

11 MS. SAWYER: You could look on page 9,  
12 the paragraph before E, section E or that whole  
13 actual section D which is on page 8, 9.

14 MR. FORCADE: Take a second, please.

15 MR. WAKEMAN: I think what our testimony  
16 means is I don't think it has to do with the Clean  
17 Air Act permit as such. It has to do with the  
18 determination of sorting through a facility that  
19 may have several MACTs applied to it and  
20 determining which MACT applies to which unit.

21 If the statement is that if a facility  
22 complies with MACT for a particular emission unit,  
23 then it should be excluded from ERMS. I think  
24 that's our bottom line as to what we mean by that.



1 MS. SAWYER: Question No. 5, when USEPA  
2 evaluates controls for MACT, is it your  
3 understanding that it is evaluating appropriate  
4 practices for control of hazardous air pollutants?

5 MR. WAKEMAN: Yes.

6 MS. SAWYER: Isn't it correct that USEPA  
7 is not evaluating control measures for total VOM  
8 emissions in establishing MACTs.

9 MR. WAKEMAN: Yes.

10 MS. SAWYER: That concludes -- do you  
11 have any more questions? That concludes our  
12 questions.

13 HEARING OFFICER FEINEN: Are there any  
14 other questions for Mr. Wakeman at this time?  
15 Seeing none, we'd like to just call back  
16 Mr. Marder for a couple of questions.

17 MS. HENNESSEY: Just one question. Off  
18 the record.

19 (Discussion off the record.)

20 MS. HENNESSEY: I had one question I  
21 forgot to ask you earlier -- yes, he's still under  
22 oath for the rest of his life.

23 (Laughter.)

24 MS. HENNESSEY: We received public

1 comment from USEPA. Have you had a chance to see  
2 that?

3 MR. MARDER: No.

4 MS. HENNESSEY: Well, they raise a point  
5 similar to the one that IEPA raised, which is with  
6 respect to ERG's request that the board make 2000  
7 the year that the program begins instead of 1999,  
8 they state that in order for Illinois to meet the  
9 9 percent ROP requirement, the program must take  
10 effect in 1999. Could you comment on that?

11 MR. MARDER: Yeah. I think the  
12 alternate that we suggested was aimed at just such  
13 an eventuality, that we assumed the Feds were  
14 going to say that, and that's why we tried to come  
15 up with an alternate. That's one answer.

16 The other answer is oftentimes in my  
17 experience, the USEPA says and makes certain  
18 statements that this or that may or may not be  
19 enforceable or may or may not be acceptable, and  
20 then after a series of negotiations and  
21 discussions, they change their mind. That's not  
22 true in air, but true in water, and we have found  
23 that sometimes it's necessary to continue  
24 discussions with USEPA rather than accept on the

1 face their first comment.

2                   Deadlines are missed routinely. I  
3 reemphasize the point I made before that this  
4 program is not enforceable at all until I get my  
5 permit. If I don't get my permit by the time the  
6 first ozone season comes about, we don't have a  
7 program. It's totally non-enforceable. I don't  
8 have a baseline, I don't have a permit, I can't do  
9 anything.

10                   The agency has probably for good reason  
11 but has missed their deadline in granting the  
12 permits. As we get closer and closer, it becomes  
13 more important. I think our members would be  
14 willing to accept the 1999 deadline. We would be  
15 willing to make a good faith effort to comply with  
16 this, and I would think the vast majority would be  
17 able to, but we don't feel that we should be put  
18 at risk and suffer noncompliance penalties for  
19 reasons that are basically beyond our control. So  
20 if we can find the finesse, which is often the way  
21 to solve the USEPA's problem, we're willing to  
22 work with the agency and the board on that.

23                   MS. HENNESSEY: Thank you. That was all  
24 I had.

1 HEARING OFFICER FEINEN: At this point,  
2 we will proceed to Mr. Trepanier's testimony. I'm  
3 assuming you're going to read it in.

4 MR. TREPANIER: Yeah, I'll read it in.

5 HEARING OFFICER FEINEN: Can you swear  
6 the witness, please.

7 (Witness sworn.)

8 MR. TREPANIER: Good afternoon. I thank  
9 the board for this opportunity to address them and  
10 all those persons present and the hearing officer  
11 for your patience as I've participated in this  
12 process.

13 I did prefile some testimony which  
14 really was a great burden, and that stemmed from  
15 the cost, which for me was about \$25, and I just  
16 wanted to mention that to the board so that I  
17 could make that record because I'm just concerned  
18 that the -- as much as the board, you know, has  
19 extended themselves, and I appreciate that, to  
20 allow my participation, it is a very difficult  
21 process, and there may be something that you  
22 notice down the road that will be a little simpler  
23 to be able to bring the public in, and I would  
24 appreciate your hearing from me on that.

1                   Regarding the Emissions Reduction  
2 Market System, I am opposed to this program being  
3 adopted in Illinois, and that's an opposition  
4 that's also -- that I would express on behalf of  
5 an environmental and community justice  
6 organization I belong to, the Blue Island Greens,  
7 and for information, it's also the position of the  
8 National Green Party to oppose establishment of  
9 pollution rights or allotments or tradable  
10 permits.

11                   I believe that this opposition to  
12 pollution trading is for a good cause. I don't  
13 believe that this, the program that has been  
14 proposed, will obtain the Clean Air Act or rate of  
15 progress reduction that Section 9.8 has authorized  
16 this program for the purpose of, and I also  
17 believe that the program as proposed goes beyond  
18 what Section 9.8 would allow.

19                   Specifically, I believe that this  
20 proposed rule represents a commodification (sic)  
21 of the air, and that's something that's foreign to  
22 Illinois, and it fundamentally alters every  
23 person's place in Illinois. I believe that the  
24 proposal goes beyond the statutory language of the

1 Act, and for that, I would point the board even  
2 initially to the title of Section 9.8, Emissions  
3 Reduction Market System, and I would -- and I say  
4 that the word "reductions" right after the word  
5 "emissions" and immediately before the "market"  
6 indicates that it was the intention of the  
7 legislature to allow a market in emissions  
8 reductions exclusively and that the legislature  
9 never did and never did intend to allow a  
10 permanent market to be developed in pollution  
11 rights.

12 I believe that the proposal  
13 unnecessarily creates a property right out of the  
14 air, and this, like I say, without a direction or  
15 intent expressed by the legislature. And I  
16 believe that it's doing so unnecessarily because  
17 the purposes of the Act could be obtained without  
18 causing a permanent market in pollution rights to  
19 be established, and it's possible that we can use  
20 the Emissions Reduction Market System to obtain  
21 the reductions that we're seeking and do so as I  
22 believe the legislature wanted us to do, wanted it  
23 to happen is that those reductions would occur  
24 where they're most economically feasible so for

1 the least amount of cost.

2                   And that could occur without  
3 necessitating a permanent market, and that is my  
4 understanding, and I believe the testimony that  
5 was given to the board showed that when this  
6 program is implemented through the Clean Air Act  
7 and Title V permits, that those Title V permits  
8 can contain a permanent and enforceable limit on  
9 the emissions from any source.

10                   So if a source is needing or has the  
11 ability to reduce their pollution and sell those  
12 emission reductions on the market, then another  
13 polluter who may need some more emissions  
14 allotment could purchase those, and that would be  
15 the end of the transaction as I believe would  
16 happen if this program were designed -- were  
17 limited to an emissions reduction market, and it  
18 is my position that what's been proposed here is  
19 beyond a market in emissions reduction. In fact,  
20 it is a market in pollution rights.

21                   I believe that the rule would result  
22 unfairly -- the rule would unfairly result in a  
23 foreign corporation owning the air rights in a  
24 community they've long abused, and I'm

1 specifically talking about my own community in  
2 Blue Island and an oil company there, Clark Oil,  
3 which I understand is foreign-owned, and I really  
4 think that it's very unfair to give to that  
5 corporation a carte blanche in pollution sales,  
6 selling something they did not pay for, something  
7 our children may be unable to stop paying for.

8           I feel that this program wasn't  
9 developed in the full light of day, nor do I  
10 believe it could have been. I believe that right  
11 from the start with the title of the statute being  
12 Emission Reductions Market System that reading the  
13 title leads someone to believe that what is to be  
14 bought and sold are actual reductions in  
15 pollution, and I don't think that that came --  
16 that that's what in fact the proposal is.

17           I think that what reductions in  
18 pollution, if they occur, are miniscule relative  
19 to the amount of pollution rights that would be  
20 granted under this proposal, and I decry that the  
21 agency didn't hold a general public meeting,  
22 although they were asked several times during a  
23 multi-year rulemaking.

24           Although the agency held several or



1 many meetings, as they testified, and that these  
2 meetings were often arranged by those who would  
3 most benefit from the proposal, and this came  
4 forward both in Sarah Dunham and Roger Kanerva's  
5 testimony. In fact, I had contacted the agency  
6 when I saw this Section 9.8 being adopted by the  
7 legislature and before that, and I contacted the  
8 agency with questions, comments and expressing my  
9 desire to be involved in this, and the agency told  
10 me they were sending me on to a mail list for  
11 this, and this was a year before the proposal was  
12 brought to the board but never did the agency use  
13 that mailing list to give me any notice of what it  
14 was that they were proposing, and in fact many,  
15 many months -- it was several months after the  
16 proposal was given to the board that I learned how  
17 far it's come along and that there was a final  
18 proposal from the agency to critique, and that's  
19 because the agency didn't notify me that the  
20 proposal was finalized, although they did choose  
21 to notify some individuals.

22           The agency's supporting documentation  
23 had claimed that environmental groups were  
24 substantially in agreement with this proposal, and

1 I don't believe that that was true. In fact, the  
2 document seemed to state specifically that the  
3 organization Citizens for a Better Environment was  
4 substantially in agreement with this proposal, and  
5 having spoken with representatives of that  
6 organization, they claimed that they had said  
7 nothing about this proposal to the agency, that  
8 they were at a meeting, and they were silent the  
9 entire time, and this, the agency didn't dispute  
10 during their own testimony on cross-examination.

11           And I would just on that point -- not  
12 to belabor, but the documentation also cited the  
13 Environmental Defense Fund as being in agreement  
14 with this proposal, but that's practically  
15 meaningless to me because the Environmental  
16 Defense Fund was the major proponent of the  
17 proposal, and even from their own witnesses, they  
18 claim to have actually brought the idea of  
19 pollution trading to the US Congress for adoption  
20 in 1990. So it's no surprise Environmental  
21 Defense Fund would have been supportive of this  
22 proposal.

23           I believe that the proposed market  
24 system would create a market force with a tendency

1 to drive low profit VOM emitters out of business,  
2 and this to serve the pollution emission  
3 requirements of wealthy or high profit VOM  
4 emitters. The proposed market system would create  
5 a market force with a tendency to drive labor  
6 intensive VOM emitters out of business to serve  
7 the pollution emission requirements of low labor  
8 VOM emitters, and the proposed rule would cause a  
9 transfer of wealth from consumers to producers.

10 This transfer of wealth from consumers  
11 to producers is caused by an effect that's been  
12 referred to as an opportunity cost, which in  
13 simple terms businesses would be charging rent for  
14 their pollution rights because these pollution  
15 rights for a business becomes an asset, and now in  
16 order to hold on to their asset, they've  
17 apparently -- my understanding in order for the  
18 corporation to hold the asset, they've got to be  
19 making money on that asset.

20 So this is going to raise the prices to  
21 consumers and cause their money to go to the  
22 polluters. The granting of pollution allotments  
23 would increase the cost of doing business for all  
24 firms. The granting of pollution allotments would

1 increase income to regional firms because of their  
2 ability to raise product prices and increase  
3 income to national industries because of their  
4 incentive to sell allotments because a national  
5 industry would have a tendency to -- there would  
6 be a market force for that national industry to  
7 move their production out of the Chicago  
8 non-attainment zone because that frees up their  
9 asset which is their pollution rights.

10           In this way the proposal gives area  
11 emitters an incentive to partially or fully shut  
12 down operations. I'm very concerned that when  
13 this shift occurs, which I believe is inevitable  
14 if this permanent market in pollution rights is  
15 established, that the VOM emissions are going to  
16 be looked at, and there's going to be an updating  
17 of the facilities, and for those who are  
18 consumers, consumptive consumers, this may be a  
19 positive development because the force will be to  
20 drive greater levels of production from the same  
21 amount of VOCs.

22           So that force which is just created by  
23 trading the pollution allotments without any  
24 reductions required -- this trading of pollution

1 allotments would cause facilities, I believe, to  
2 -- facilities that are most efficient in emitting  
3 the VOMs to purchase the pollution rights from  
4 those that are least efficient in emitting VOMs,  
5 and I feel mixed about this, but the problem that  
6 I want to bring to the board's attention is that  
7 when this occurs and the move to a higher  
8 efficiency and higher production level occurs, the  
9 work force will be reduced.

10           Older businesses using more workers  
11 would be replaced by newer businesses more  
12 efficient that can produce more widgets with the  
13 same amount of VOMs, and there's going to be a  
14 reduction in jobs available without a reduction in  
15 pollution.

16           I believe that the agency hasn't  
17 accurately reflected the emission history of the  
18 likely effect of VOM emitters. A scientific study  
19 of receptor modeling approach to VOC emission  
20 inventory validation in Chicago reported in the  
21 July '95 Journal of Environmental  
22 Engineering -- reported that inventory emissions  
23 of refineries in the Chicago non-attainment area  
24 are low by a factor of about 10. Further, major

1 Chicago non-attainment area emitters doubling or  
2 quadrupling their reported emissions since 1990  
3 has not been reported by the agency, and another  
4 major -- and other major point source VOM emitters  
5 have not been counted at all, although they have  
6 appeared in the USEPA air facility database of  
7 large VOM emitters continuously since 1990 till  
8 the most recent report in 1995.

9           These omissions of readily available  
10 and relevant data from this rulemaking causes the  
11 point source category of emitters as a group to  
12 not contribute a proportionate share of reductions  
13 under the proposed rule and I believe also is  
14 going to cause that the actual reductions that the  
15 program can effect are going to be less than  
16 reported. I believe that the proportionate share  
17 -- I guess I would tell the board that I would  
18 like to see that this statute required a  
19 proportionate share of reductions from these point  
20 sources proportionate to the other sources, but  
21 having read the board's order, I see that the  
22 board doesn't see that that's what the rule  
23 requires, that that's not what the law requires.

24           But on that point, I think that this

1 program doesn't fairly exact reductions from the  
2 point sources relative to the reductions that the  
3 other sources are doing. I believe that the  
4 proposed rule would create excess emission  
5 allowances. This will cause the rule's effect to  
6 be diminished when the necessary reductions to  
7 obtain the 1990 Clean Air Act ROP will not occur.

8           The agency did not consider the  
9 allotment magnification factor caused by cyclic  
10 emitter patterns. The prevalence of VOC emitters  
11 with cyclic patterns is well known and widely  
12 reported in literature and regional newspapers.  
13 The Chicago Sun Times reported on March 4th, 1997,  
14 page 40, a report on the cyclical nature of the  
15 chemical sector including quoting Amoco executive  
16 vice president of chemicals upon the quote, the  
17 well-known cyclity (phonetic) of the business, I'm  
18 quoting.

19           Also Can Corder (phonetic) another  
20 major VOM emission sector was reported in the same  
21 paper on March 27, '97, page 54, to operate in a  
22 cyclical business. The Daily Southtown also  
23 reported on the cycle peaks and turns in the  
24 chemical industry on April 5th, 1997. The

1 proposed rule would operate to cause all cyclic  
2 emitters to gain allotments at a much higher level  
3 than their average emission levels.

4           In aggregate this will allow and even  
5 encourage a flood of allotments on to the market  
6 as these cyclic emitters move through a down  
7 market and have a full bank of emission reduction  
8 credits. These would be false emission reductions  
9 reflecting only that the cyclical emitters are  
10 given allotments enough to emit at their highest  
11 levels of the '90s minus any other required  
12 reductions.

13           And I believe that the method that  
14 these excess emissions or these false emission  
15 reductions will move on to the market is through  
16 the existence of the LAER units that currently  
17 operate below their permitted level and/or other  
18 production increases that will provide a market  
19 for the excess emission credits created by the  
20 program.

21           This will net in effect an actual  
22 increase in pollution levels as the affected firms  
23 find the fluidity allowed by trading the false  
24 excess emission credits. We would be unable to



1 reach the Clean Air Act ROP for 1999 with this  
2 proposal. The same 2 percent of excess emission  
3 reductions that the agency reports that this  
4 program would produce, that's the 12 percent minus  
5 1 percent for the ACMA minus the 9 percent for the  
6 ROP, the contingency the agency claimed it was  
7 making with this proposal has also been said by  
8 agency witnesses to be covering so many different  
9 contingencies that no real excess and in fact a  
10 deficit of reductions can be expected.

11 Because the agency has not estimated  
12 nor even included the percentage of the point  
13 source emissions subject to this rule expected to  
14 be exempted from the 12 percent reductions with  
15 the BAT exemption, the reductions this proposal  
16 can generate have been overestimated, possibly  
17 grossly so.

18 The potential loss of reductions and  
19 the real likelihood of an increase of emissions  
20 for facilities under the 15 ton per season  
21 exemption on reductions will further prevent  
22 attainment of the ROP. I would point out to the  
23 board that this rule would place its greatest  
24 burden on small emitters and those who have done

1 the right thing and already reduced their  
2 pollution levels. Given the unreliability of the  
3 data that this program is based upon and the  
4 likelihood that better information will become  
5 available, it is premature and besides unpalatable  
6 to grant permanent pollution rights.

7           The proposal would allow the point  
8 source sector as a whole to increase their  
9 proportionate share of emissions by individually  
10 discovering more emissions with a, quote, a more  
11 accurate determination method, unquote. Under  
12 this proposal, there's not a commensurate a way to  
13 increase the sector's proportional share of  
14 reductions.

15           The agency's failure to forecast or  
16 otherwise analyze the potential under this  
17 proposal for allotments to all point sources to  
18 exceed the 1996 level of emissions renders the  
19 agency's projections of reduction levels  
20 unreliable. In fact, it was shown in the agency's  
21 testimony that at least they have some  
22 understanding of this dynamic and the impact that  
23 it might have on the reductions that could be  
24 obtained, but their reliance on the 2 percent

1 cushion to cover this slippage is unjustifiable.

2           Mr. Romaine, I remind you, testified at  
3 page 1117, quote, "I would expect all emitters  
4 will seek seasons with the higher emissions." So  
5 when all of the emitters are getting their  
6 allotments at their highest season's level, then  
7 the total allowable amount of pollution is greater  
8 than any single year we've ever seen.

9           And then with the fluidity that's  
10 sought with this market, the agency's actually  
11 making -- attempting to get these -- this market  
12 moving so that other people will buy these excess  
13 allotments, and I say that that can result in more  
14 pollution than we've ever seen.

15           The agency's reliance upon donations to  
16 the ACMA appears to be based upon a belief that  
17 polluters will receive a tax break for their  
18 donations. Since this would result in a loss of  
19 revenue to the state or federal government without  
20 a related reduction in actual emissions -- and I  
21 might also say related health costs, health care  
22 costs -- this seems implausible and is not  
23 reflected in either federal or state law.

24           Further, the agency appears to rely

1 upon polluters not being concerned with the value  
2 of allotments that would go to the ACMA when their  
3 facility had a shutdown if that facility did not  
4 pre-sell their allotments. So I say I believe  
5 that the testimony that we've come through in the  
6 rule itself that polluters, large polluters have  
7 been encouraged to sell all of their pollution  
8 allotments prior to closing their facility and  
9 thus preventing the 20 percent from going into the  
10 ACMA.

11 I would suggest that the value of this  
12 program, if any, occurs only when the agency is  
13 reducing the level of allowable pollution, and  
14 this is what the General Assembly desired when  
15 approving Section 9.8 of the Environmental  
16 Protection Act. I would ask the board in  
17 conclusion to consider the testimony that I've  
18 given today and that of all of the other good  
19 people who the board have seen during this  
20 rulemaking and consider that testimony as cause  
21 and reason to limit this pollution reduction  
22 program to only that time period of the pollution  
23 reductions and to not create a new and heretofore  
24 repugnant and unrecognized pollution property

1 right in Illinois without a legislative mandate.

2                   Then I do have one visual aid that a  
3 friend of mine had created, and I'll read it for  
4 the benefit of the court reporter, and it says,  
5 pollution allotments make the whole earth pay, and  
6 in the Greens, we're likening these pollution  
7 allotments to dirty dollars. I thank you very  
8 much for your patience, and if there's any  
9 questions, I can answer those now.

10                   HEARING OFFICER FEINEN: Are there any  
11 questions of Mr. Trepanier at this time?

12                   MS. SAWYER: I have a quick question.  
13 Mr. Trepanier, you noted that you attached a USEPA  
14 AIRS facilities subsystem quick look report to  
15 your testimony?

16                   MR. TREPANIER: Yes.

17                   MS. SAWYER: We at the agency didn't  
18 receive a copy of that.

19                   MR. TREPANIER: That's correct. That  
20 was similar to what I believe was the agency's  
21 practice, that attachments weren't mailed to  
22 everyone on the service list. There is just no  
23 way that I could have done that.

24                   HEARING OFFICER FEINEN: Before we go

1 down this path, let me just note that I believe  
2 it's the same attachment that was attached to the  
3 April 18th, 1997, file that he made which has been  
4 marked as public comment No. 3.

5 MS. SAWYER: Okay. We didn't receive  
6 that filing. We were trying to assemble something  
7 similar, and we may have some comments on it  
8 because we're not sure if we're going to be  
9 commenting on the same document since we didn't  
10 get a copy of it.

11 MR. TREPANIER: In response, you know,  
12 in saying, you know, I wish that I could have, you  
13 know, sent that to you, and I hope that you are  
14 able to have a copy of that.

15 When I did receive the agency's filing  
16 of August 8th, it reported an attached  
17 recommendation, recommendation trading program  
18 framework, and that also appears not to be with  
19 the document.

20 MS. SAWYER: Okay. Did you want to see  
21 a copy of that?

22 MR. TREPANIER: Yeah, I'm interested in  
23 what OTAG came up with.

24 MS. SAWYER: Why don't you show me what

1 we're looking for, and we can get a copy of that  
2 to you. Perhaps we can look at a copy of what the  
3 board has as their attachment for your document.  
4 That's all I have. I just wanted to check on that  
5 document.

6 HEARING OFFICER FEINEN: Are there any  
7 other questions for Mr. Trepanier? Seeing none,  
8 let's go off the record for a second.

9 (Discussion off the record.)

10 HEARING OFFICER FEINEN: You're going to  
11 just summarize. Let's proceed with the testimony  
12 of Mr. Burke who has indicated he would like to  
13 testify today. We have handled all the prefiled  
14 questions and testimony at this point, and if we  
15 could have the witness sworn in, we will proceed  
16 with his testimony.

17 (Witness sworn.)

18 MR. BURKE: My name is Ron Burke. I'm  
19 director of environmental health for the American  
20 Lung Association of metropolitan Chicago. I  
21 appreciate the board taking the time to hear my  
22 testimony today, and I appreciate the audience  
23 sticking around as well. I'm going to summarize  
24 comments that we'll submit today to the board.

1                   In some cases you'll note that I've  
2 again raised issues presented previously to the  
3 board, specifically during testimony in April, I  
4 believe it was. So I won't try to -- I'll try not  
5 to spend too much time on those topics. So I'll  
6 start with the concerns we've raised previously  
7 about potential for toxic hot spots and localized  
8 increases in air toxins.

9                   As mentioned before, because the ERMS  
10 proposal does not distinguish between toxic and  
11 non-toxic VOM emissions, it's possible that a  
12 source could purchase ATUs generated from  
13 non-toxic VOM emissions to either avoid decreasing  
14 or to actually increase toxic VOM emissions.  
15 We've noted before that there's clearly a limit on  
16 the potential for this given the declining cap on  
17 total VOM emissions, but nonetheless there is a  
18 concern.

19                   Similarly, there's the possibility for  
20 pushing emissions off to the off season. I should  
21 say the off-ozone season as has been mentioned by  
22 a couple of folks here today previously, and  
23 specifically the concern is the potential for  
24 off-season increases in toxic VOM emissions. In



1 either case, the risk of localized toxic hot spots  
2 is real, and I point out to the board that  
3 recently organizations in California have filed a  
4 civil rights lawsuit against the state and five  
5 companies alleging that the state's air pollution  
6 trading program contributes to toxic hot spots in  
7 predominantly minority communities. I've attached  
8 a copy of a Los Angeles Times article. This is  
9 all I have on the suit thus far, but it gives you  
10 a review of the issue.

11               So with this in mind, we recommended in  
12 April and we will recommend once again that the  
13 rule minimally establish an annual emissions cap  
14 for participating sources based on actual historic  
15 emissions of HAPs and the stated toxic air  
16 contaminants as well until such time as MACT or  
17 NESHAPs are met. Again this is designed to offset  
18 or counter the possibility of localized increases  
19 in toxic emissions.

20               Frankly, I'm not sure if it even goes  
21 far enough within the context of this proposal.  
22 However, it would probably be sufficient. The  
23 board might need to look at other measures outside  
24 the context of this proposal to offset this

1 potential problem, but it does need to be  
2 addressed. We will also recommend once again that  
3 the agency look at not only HAP emissions but also  
4 the state toxic air contaminants when looking at  
5 the distribution of toxic contaminants in relation  
6 to this program. And similarly, we ask that when  
7 reporting -- when sources report information to  
8 the agency, they include emissions for both HAPs  
9 and the state toxic air contaminants.

10 Our comments address the new source  
11 review issue that's come up in testimony today.  
12 Let me start by saying I believe Mr. Romaine from  
13 the agency has addressed the concern that we  
14 raised here when he said offset credits that have  
15 been applied to a SIP essentially for which we've  
16 already taken credit could not essentially be  
17 assigned ATUs for the purposes of the ERMS  
18 program.

19 Our concern again is that we would be  
20 essentially double counting credits or essentially  
21 giving folks -- giving sources ATUs for credits  
22 that were supposed to have been eliminated from  
23 the air shed already by inclusion in the SIP. So  
24 again I would ask the board to take a hard look at

1 that to make sure indeed that is the case, but  
2 again I think Mr. Romaine said that indeed it is  
3 so I will move on.

4           To our comments on baseline emissions  
5 which are in some ways related to our comments on  
6 exclusions from the program. Previously we've  
7 expressed some concerns about the potential for  
8 the generation of false credits either from --  
9 because of inflated baselines or because of  
10 improper exclusions.

11           I suppose the baseline emissions is  
12 more likely to create the false credits that we've  
13 raised concerns about in the past. As I recall,  
14 the agency has said that the potential excess  
15 associated with inflated baselines, while it is  
16 real, a real possibility, I should say, is likely  
17 to be very small in comparison to the total ATU  
18 pool, but again, I would ask that the board take a  
19 hard look at this because indeed there is the  
20 potential for false credits and that would  
21 undermine the program and undermine the state's  
22 ability to make reasonable further progress  
23 towards attainment.

24           Along these lines, we've suggested

1 before and we'll suggest once again that the rule  
2 define non-representative emissions to avoid  
3 disagreements that could delay implementation and  
4 that could limit the extent to which baselines  
5 exceed actual emissions. We're concerned that  
6 this will become a potential barrier to  
7 implementing the program as these  
8 non-representative emissions are disputed,  
9 potentially appealed to the board. So a more clear  
10 definition of what actually is meant by  
11 non-representative, you can help clear this up.

12           Again moving on to exclusions, from the  
13 program, we've previously suggested a more  
14 detailed definition of best available technology,  
15 one that would define maximum degree of VOM  
16 reduction as being at least as pronounced the  
17 greatest level of reductions for comparable units.  
18 This is essentially how Mr. Romaine and the others  
19 from the agency have defined this, but my  
20 understanding that nonetheless that definition  
21 hasn't been incorporated into the rule itself.

22           There's clearly a lot of concern about  
23 how this is going to be done on a case-by-case --  
24 how best available technology is going to be

1 categorized on a case-by-case basis. This is one  
2 way to provide a little more direction that I  
3 think is appropriate and consistent with what the  
4 agency has already stated they're going to do.

5           We have previously expressed concerns  
6 about the LAER exclusion and have recommended a  
7 seasonal emissions limit up front for excluded  
8 units that do meet LAER. The concern again is  
9 that while the rate may be set, production could  
10 increase, and therefore, total emissions could  
11 increase thereby defeating the overall purpose of  
12 this plan or I should say this proposal.

13           A seasonal emissions limit up front for  
14 these units that have been excluded because they  
15 meet LAER could at least minimize or I should say  
16 prevent increases in emissions from these excluded  
17 units. Moving on to the MACT exclusion issue, we  
18 strongly object to the board's proposal to exempt  
19 sources that achieve MACT or NESHAPs after 1999.

20           As the agency points out in prefiled  
21 testimony and today, this provision seriously  
22 jeopardizes the state's ability to achieve its  
23 rate of progress requirements and comply with the  
24 Clean Air Act. I note that the agency pointed out

1 in its prefiled testimony that MACT in many cases  
2 won't result in significant VOM reductions beyond  
3 where the sources already are, and this in our  
4 opinion calls into question the sensibility of  
5 exempting any source based on the implementation  
6 of MACT or NESHAPs regardless of whether MACT  
7 implementation occurs before or after 1999.

8           Indeed Section 9.8 (c)(4) of the state  
9 Environmental Protection Act says the ERMS program  
10 should assure that credit or exclusion is granted  
11 for emissions units that meet MACT or NESHAPs, and  
12 we recommend that we go with the former providing  
13 credit but not providing exclusions. We recommend  
14 that adjusting the baseline for sources that have  
15 achieved MACT prior to '99 but not exempting them.

16           On the other hand, for sources that are  
17 meeting MACT post 1999, frankly we're not crazy  
18 about the policy of counting these as voluntary  
19 VOM reductions, but the Act does seem to require  
20 it. Again, we encourage the board to go with  
21 granting credit but not excluding them altogether,  
22 not just for the post '99 MACT implementation  
23 sources but also those that do so before 1999.

24           I'd like to address the issue of

1 exemption from the emissions excursion  
2 compensation for 1999 that's been talked about  
3 today. Essentially we concur with the agency's  
4 prefiled testimony on this matter. It could be  
5 significantly detrimental to the state's overall  
6 efforts to achieve ozone attainment if this is  
7 pushed back to 2000 or I should say if  
8 compensation excursions are exempted in 1999 and  
9 pushed back to 2000, we are concerned again we are  
10 going to miss our rate of progress deadlines. So  
11 we concur with the agency there.

12           The subject of whether or not emission  
13 reduction generators at participating sources  
14 should be allowed to be located potentially  
15 outside the non-attainment areas has come up. We  
16 concur with the board's position on this. It's  
17 probably premature to do so at this time, although  
18 it certainly needs to be looked at in the future.

19           The issue of shutdowns and what to do  
20 with the ATUs associated with those facilities has  
21 received much attention, and we think it is one of  
22 the more -- probably one of the most critical  
23 issues that still remains unresolved in addition  
24 to the potential for air toxic hot spots. We note

1 that both the board and the agency characterized  
2 the proposed 80/20 split where 80 percent of the  
3 ATUs stayed with the facility, essentially stay  
4 with their ownership and 20 percent might go to  
5 the ACMA. That was characterized as a compromise,  
6 and we certainly don't see that as a compromise.

7           We had suggested 100 percent retirement  
8 of these credits, and in fact, I think it comes  
9 back -- this issue really drives home the points  
10 that were made earlier about whether or not this  
11 system is going to be creating ownership of  
12 credits, whether we are commodifying (sic), I  
13 think is the word I heard, air pollution in  
14 northeastern Illinois.

15           If sources are allowed to sell -- let  
16 me back up. If ATUs stay in circulation, if the  
17 air pollution associated with these facilities  
18 lives on into perpetuity even after they've shut  
19 down or left the region or whatever, I think  
20 you're essentially saying that indeed these  
21 facilities have ownership over these air pollution  
22 rights, and I strongly disagree with that concept  
23 in part because it raises some real legal issues,  
24 but secondly, we feel that until the region has



1 reached attainment, 100 percent of these credits  
2 should be retired, no less.

3           There's no good reason to keep these  
4 credits in circulation when we still haven't  
5 reached attainment, and furthermore, maintaining  
6 ATUs associated with plants that have shut down  
7 suggest that the ATUs are property when in reality  
8 they are part of an alternative regulatory system  
9 owned by the public, not individual companies.

10           I have some comments on  
11 compliance -- compliance assurance as well. We  
12 suggest that noncompliance fees or some other  
13 compensation should be specified in the rule for  
14 an accurate filing and late filing. I asked this  
15 question earlier, and the agency suggested that  
16 this can be handled by standard procedures, and  
17 I'll take their word for it on that one.

18           The rule should specify the minimum  
19 frequency with which the agency will conduct  
20 audits. We suggest at least once every two years.  
21 Again the future of this program is not -- none at  
22 this time, but assuming that it does extend well  
23 beyond into the next millennium, we should look at  
24 having a minimum audit requirement.

1                   I think the rule needs a section that  
2 explains how the agency will determine whether an  
3 excursion has occurred, and therefore, excursion  
4 compensation is required. The rule states that  
5 this will happen, that this procedure will be  
6 employed but does not spell out how the emission  
7 excursion will be determined, and we think that  
8 should be included in the proposal.

9                   We've also suggested a source-by-source  
10 compliance summary available to the public in our  
11 past testimony. I won't go over all the  
12 components because it's quite long, but again I  
13 re-submit that to the board and to your attention  
14 and ask you to give it serious consideration.

15                   Earlier I asked the agency about how  
16 they're going to communicate to the public their  
17 analysis of the effects of directionality and  
18 reactivity of VOM and VOM trades to the public,  
19 and I'm satisfied with the response that we  
20 received earlier. And finally, on the subject of  
21 overcompliance and the date at which that  
22 overcompliance decision will be made, we concur  
23 with the agency's suggestion that it be October  
24 31st instead of December 31st.

1                   That is all I have. I just want to  
2 close by once again pointing out that on a whole  
3 this is a really good program, but it has at least  
4 two major flaws remaining in our opinion; one, the  
5 potential for toxic hot spots; two, the indefinite  
6 life of ATUs regardless of whether a plant has  
7 shut down, left the region, so on.

8                   I think those are especially two very  
9 problematic components to this proposal. We ask  
10 you to give those a hard look. That's all I have.

11                   HEARING OFFICER FEINEN: Do you want to  
12 move what you passed out as an exhibit or do you  
13 just want to give us your testimony? You can  
14 always file this in the public comment later on.

15                   MR. BURKE: I'd like to file this as a  
16 public comment.

17                   HEARING OFFICER FEINEN: That's fine.  
18 Let's go off the record for a second.

19   (Discussion off the record.)

20                   HEARING OFFICER FEINEN: Are there any  
21 questions for Mr. Burke? Seeing none, let's go  
22 take a 15-minute break.

23                   MS. HENNESSEY: We're going to have an  
24 opportunity to ask questions after the break? I

1 do have some. I thought the agency was going to  
2 be preparing some questions for Mr. Burke.

3 HEARING OFFICER FEINEN: Why don't we  
4 take a 15-minute break and come back with  
5 questions for Mr. Burke. Sorry.

6 (Recess taken.)

7 HEARING OFFICER FEINEN: I think we'll  
8 start out with the agency's questions.

9 MR. KANERVA: Roger Kanerva, Illinois  
10 EPA. We had just one question, Mr. Burke, and  
11 actually we need to lead into this with a little  
12 bit of a recap of your oral testimony here today.  
13 I believe you testified that our responses today  
14 regarding the annual performance report and how we  
15 would handle the patterns of emissions and any  
16 potential geographic focus to those was  
17 satisfactory to you I believe is what you said  
18 earlier?

19 MR. BURKE: How that information would  
20 be reported to the public as described by you  
21 seemed acceptable to me, yes.

22 MR. KANERVA: Well, then with regard to  
23 your very first point here about possible global  
24 hot spots, toxic hot spots, since we're talking

1 about just an initial phase for this program and  
2 we are going to be reporting on the situation of  
3 hazardous air pollutants in our annual performance  
4 report, what would your view be of utilizing the  
5 information from the first year or two of a report  
6 to start to give us a real empirical basis to  
7 judge whether or not unusual patterns would  
8 develop with HAP emissions and then work out some  
9 sort of possible regulatory action to address that  
10 HAP? If you could respond to that concept, if you  
11 would.

12 MR. BURKE: Well, I think that approach  
13 makes sense, but in addition to tracking the  
14 distribution of these emissions and looking for  
15 toxic hot spots essentially -- that's what you're  
16 describing -- we think it's appropriate to take  
17 steps to actually prevent the problem from  
18 happening in the first place. Again we've  
19 suggested an approach which is one way we think to  
20 accomplish this preventive strategy.

21 MR. KANERVA: Okay, thank you.

22 HEARING OFFICER FEINEN: Are there any  
23 other questions from the agency? Any other  
24 questions? Mr. Trepanier.

1                   MR. TREPANIER: Thank you. Being from  
2 Blue Island, I am concerned when I heard your  
3 testimony about toxic hot spots. In Blue Island  
4 there's already a chemical company and an oil  
5 refinery and several other users of toxic  
6 materials.

7                   Now, is this the type of a locale in  
8 your estimation that could be troubled by  
9 increases in hazardous air pollutants? And if so,  
10 how would that be occurring? How would I notice  
11 it? Is there some way that I could --

12                   MR. BURKE: I think that's a good  
13 question. While there's no way to predict with  
14 any certainty whether toxic hot spots will occur  
15 or where they'll occur, the potential seems to be  
16 there, and Blue Island is a good example of where  
17 indeed this might happen.

18                   For example, the Clark Oil refinery is,  
19 as I understand it, relatively inefficient at  
20 least for a refinery, and let's say, for example,  
21 that instead of reducing emissions consistent with  
22 the 12 percent reduction requirement, the facility  
23 instead purchases credits or even worse, purchases  
24 credits and allow it to even increase emissions at

1 least over the short term. Again, yes -- and in  
2 worst case scenario some of the other sources  
3 around there do the same. Over time we  
4 potentially see a toxic hot spot of sorts, and  
5 it's a real concern.

6           Again it's been raised in California  
7 and other places. Granted, given the way the  
8 program is set up now, it doesn't seem likely, but  
9 given the potential repercussions of such an  
10 instance, we think it's sensible to adopt a  
11 preventive strategy.

12           MR. NEWCOMB: This is Chris Newcomb from  
13 Dart Container. I guess I'm unclear over the  
14 concern of toxic hot spots given the fact, as I  
15 understand it, that the ERMS program as well as  
16 the statute in question here can't change any of  
17 the requirements of the Clean Air Act itself and  
18 how these requirements are imposed upon stationary  
19 sources here in Illinois.

20           Wouldn't the type of scenario that  
21 you're talking about only occur if a facility were  
22 to significantly increase its emissions, and  
23 therefore, they would still have the requirements  
24 of getting permit application, getting the permit

1 and possibly going through significant  
2 modification? Your toxic hot spot, I guess,  
3 scenario, I'm not sure how that could take place  
4 without some major Clean Air Act violation. Can  
5 you maybe give me a scenario by which this could  
6 actually happen ?

7 MR. BURKE: A scenario. Well, it's my  
8 understanding that especially prior to MACT or  
9 MACT being implemented, sources are allowed to  
10 increase emissions within certain parameters, and  
11 it would seem possible -- and again while it's  
12 more unlikely given the declining cap that this  
13 program is going to apply to all VOMs, it does  
14 seem possible that a source could, A, not reduce  
15 VOMs but specifically nontoxic VOMs through the  
16 purchase of ATUs from other sources, or B,  
17 potentially increase toxic VOMs through those  
18 purchases as well.

19 I think in most cases -- and maybe I'm  
20 wrong frankly -- especially prior to MACT being  
21 implemented -- there isn't necessarily a limit on  
22 total emissions but instead a limit on emissions  
23 rates. And if you increase production and the  
24 possibility of the purchase of ATUs indeed toxic



1 VOM emissions could increase.

2 HEARING OFFICER FEINEN: Any other  
3 questions? Seeing no other questions, let's go  
4 off the record -- I'm sorry, let's go back on the  
5 record and excuse Mr. Burke from answering any  
6 other questions. Thank you very much. Now, let's  
7 go off the record.

8 (Discussion off the record.)

9 HEARING OFFICER FEINEN: Public comment  
10 period's going to end on September 8. The public  
11 comments need to be with the board's office by  
12 4:30 on September 8 either by hand delivery or fax  
13 will be acceptable or other means, but the board  
14 has to have a copy by 4:30.

15 Service on the rest of the participants  
16 on the service list will be by normal process.  
17 Then we will allow a second comment to be filed on  
18 September 18th. Once again, it has to be with the  
19 board by 4:30 either by fax, hand delivery or by  
20 mail, and then you can serve the rest of the  
21 parties by normal service. If there's no other  
22 outstanding matters at this point, I will end this  
23 proceeding today. Seeing none, let's close it.  
24 Thank you.

1 (Which were all the proceedings  
2 had in the above-entitled hearing  
3 on this date.)  
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1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3           LISA H. BREITER, CSR, RPR, CRR, being  
4 first duly sworn, on oath says that she is a court  
5 reporter doing business in the City of Chicago;  
6 that she reported in shorthand the proceedings at  
7 the taking of said hearing and that the foregoing  
8 is a true and correct transcript of her shorthand  
9 notes so taken as aforesaid, and contains all of  
10 the proceedings had at said hearing.

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15                           LISA H. BREITER, CSR, RPR, CRR  
16                           L.A. REPORTING  
17                           79 West Monroe Street  
18                           Suite 1219  
19                           Chicago, Illinois 60603  
20                           (312) 419-9292  
21                           (312) 419-9294 Fax

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