

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

ILLINOIS POLLUTION CONTROL BOARD  
May 21, 2007

IN THE MATTER OF: ) R07-18  
STATIONARY RECIPROCATING AND) (Rulemaking-Air)  
INTERNAL COMBUSTION ENGINES)  
AND TURBINES: AMENDMENTS TO)  
35 ILL. ADM. CODE SECTION )  
201.146 AND PARTS 211 AND 217)vs.

HEARING BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

A P P E A R A N C E S

FOR THE IPCB BOARD:  
MR. TIMOTHY FOX, HEARING OFFICER  
MS. ANDREA MOORE  
MR. ANAND RAO  
MS. MARIE TIPSORD

COUNSEL FOR IEPA:  
MS. RACHEL DOCTORS  
MR. JOHN KIM

COUNSEL FOR SCHIFF HARDIN:  
MS. KATHLEEN BASSI  
MR. JOSHUA MORE  
MR. JAMES MCCARTHY

FOR IERG:  
MR. GALE NEWTON

WITNESSES FROM THE  
ENVIRONMENTAL PROTECTION AGENCY:  
MR. YOGINDER MAHAJAN  
MR. ROBERT KALEEL

1 MR. HEARING OFFICER: Good morning and  
2 welcome to this Illinois Pollution Control Board  
3 hearing. Am I audible to everybody who is in the room?  
4 Great. I prefer to avoid the microphone, and if that  
5 will work, continue without it.

6 My name is Tim Fox, and I am a hearing  
7 officer for this rule-making proceeding entitled Fast  
8 Track rules under nitrogen oxide or NOx SIP Call Phase  
9 II, Amendments to 35 Illinois Administrative Code  
10 201.146 and parts 211 and 217. The board docket number  
11 for this rule-making is R07-18.

12 The Board received this rule-making  
13 proposal on Friday, April 6, 2007, from the Illinois  
14 Environmental Protection Agency, and the Board received  
15 this proposal for hearing in an order Thursday, April  
16 19, 2007.

17 Also present for the Board -- and I  
18 would like to introduce are the following: To my  
19 immediate left, Board member Andrea Moore, who is the  
20 lead Board member for this rule-making. Member Moore,  
21 did you wish to make any remarks at this time?

22 MR. MOORE: I think just the customary  
23 gratitude that the Board has for the efforts that  
24 everyone makes on all sides of the issue in order to

1 establish a record that we can make a decision. We  
2 certainly appreciate your attention. Thank you.

3 MR. HEARING OFFICER: Also present  
4 are, to my far right, the Board's acting chairman, Dr. G  
5 Tanner Girard. Dr. Girard, did you wish to make any  
6 comments?

7 DR. TANNER: I don't need to add to  
8 Member Moore's comments, but just good morning, and we  
9 look forward to your testimony and questions this  
10 morning.

11 MR. HEARING OFFICER: And to my  
12 immediate right is Marie Tipsord, who is Chairman  
13 Girard's attorney assistant and at my far left is Anand  
14 Rao with the Board's technical staff. Today we are  
15 holding the first hearing in the rule-making. The  
16 second is now scheduled to take place beginning June 19,  
17 and the third to take place on Monday July 2 here in  
18 Springfield.

19 As you may know, the Board, on  
20 Thursday, May 17, entered an order bifurcating the  
21 Agency's original proposal and directing that this  
22 hearing should proceed today only with regard to the  
23 portion of that proposal addressing Phase II of the NOx  
24 SIP Call. In response to that order, on the 18th, on

1 Friday, May 18, filed a motion to withdraw the testimony  
2 of Michael Koerber and Scott Leopold, and a second  
3 motion to amend the testimony of Robert Kaleel and  
4 Yoginder Mahajan.

5 Let me address those two motions in  
6 that order, if I may. I understand, with regard to the  
7 motion to withdraw testimony, that neither the Pipeline  
8 Consortium nor IERG, who had filed objections to the  
9 Agency's reliance on Section 25, had objected to the  
10 granting of that motion. Is there, for the record, any  
11 objection to granting the motion to withdraw the  
12 testimony of those two witnesses? Neither seeing, nor  
13 hearing none, as it was filed in quick response to the  
14 Board's order and will expedite the hearing  
15 concentrating on the relevant issues, I grant that  
16 motion and allow the Agency to withdraw its testimony of  
17 Michael Koerber and Scott Leopold, as it had requested  
18 in the motion of may 18.

19 With regard to the second motion, the  
20 motion to amend testimony, I, again, understand that,  
21 neither the Pipeline Consortium, nor IERG, who had filed  
22 objections to the use of Section 28.5 had objected to  
23 the granting of that motion. Is it correct that there  
24 is, in fact, no objection to granting that motion?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

MS. BASSI: That is correct.

MR. HEARING OFFICER: Ms. Bassi has indicated that that is correct, and seeing no objection, I proceed to note that Section 28.5-G of the Act requires prefiling, at least, 10 days before a hearing, unless a waiver is granted for good cause. In this instance the proposed revision responds quickly to a May 17 Board order, appears consistent with the terms of that order, and will assist in focussing the hearing today on the issues in that docket. Accordingly, I find that good cause does exist do waive the 10-day filing deadline, grant the motion to amend the testimony of robert Kaleel and Yoginder Mahajan, and accept the amended testimony of those two gentlemen for hearing today.

This proceeding is governed by the Board's Procedural Rules. All information that is relevant and not repetitious or privileged will be admitted into the record. Please note that any questions that are posed today, either by the Board members or the Board staff are intended solely to assist in developing a clear and complete record and do not reflect any prejudgment of the proposal.

Under Section 28.5-G-1, this hearing,

1 quote, "Shall be confined to the testimony by and  
2 questions of the Agency's witnesses concerning the  
3 scope, applicability, and the basis of the rule." The  
4 Board received prefiled testimony from the Illinois  
5 Environmental Protection Agency, and, naturally, we will  
6 begin this hearing with that prefiled testimony. That  
7 will be followed by any questions that other  
8 participants may have on the basis of that testimony.

9 As a procedural note, for the benefit  
10 of our court reporter who will be transcribing this  
11 proceeding, please speak as clearly as you can, and try  
12 to avoid speaking at the same time as any other  
13 participant, so we have can have as clear a transcript  
14 as possible. In speaking with counsel for the Agency  
15 about procedural matters briefly before the hearing,  
16 they indicated that they wish to begin with a brief  
17 synopsis and introduce their witnesses, and to begin I  
18 believe quite quickly after that with some questions.

19 If, at this point, there are no  
20 questions about procedures of any kind, Ms. Doctors and  
21 Mr. Kim I believe were prepared for you to introduce  
22 your witnesses.

23 MS. DOCTORS: I have a short  
24 statement, and I will introduce my witnesses as part of

1 that. Good morning. My name is Rachel Doctors, and I'm  
2 an assistant counsel for the Legal Division/Regulatory  
3 Air Section with the Illinois Environmental Protection  
4 Agency. I am representing the Agency today in support  
5 of its rule-making proposal, "In the matter of  
6 Fast-Track rules under Nitrogen Oxide SIP Call Phase II  
7 Amendments to 35 Illinois Administrative Code Section  
8 201.146 and Parts 211 and 217, R07-18.

9 On behalf of the Director, I would  
10 like to thank the Board for its consideration of this  
11 rule-making proposal and this opportunity to provide  
12 testimony in support thereof. I have with me two  
13 experienced staff of the Bureau of Air to present their  
14 testimony to the Board. On May 11, both witnesses  
15 presubmitted testimony to the Board and all parties on  
16 the Service List. However, on May 17, the Board issued  
17 an order narrowing the scope of this hearing and  
18 splitting the Agency's proposal into two dockets,  
19 R07-18, as mentioned above, and R07-19.

20 In the matter of Section 27 Proposed  
21 Rules for Nitrogen Oxide, we'll skip that. As a result,  
22 on May 18, both witnesses submitted amended testimony to  
23 the Board, and all parties on the Service List, and are  
24 prepared to either read that testimony into the record

1 or have it entered as if read, whichever the Board and  
2 the Hearing Officer prefers.

3 First, we will here from Robert  
4 Kaleel, who is the manager of the Air Quality Planning  
5 Section of Air Pollution Control who will explain the  
6 purpose of this proposal and describe the components of  
7 the proposed rule.

8 Second, we have Yoginder Mahajan, who  
9 is an Environmental Protection Engineer in the Air  
10 Quality Planning Section, Division of Air Pollution  
11 Control, who will explain control technologies and  
12 emissions reductions expected from this proposal.  
13 Following the testimony, the witnesses will be happy to  
14 answer any questions presented by the Board members or  
15 staff and the public.

16 Before turning it over to Rob, I would  
17 like to note the Agency is going forward with the  
18 Board's order on May 17, 2007, with respect to this  
19 hearing concerning R07-18. However, as the Illinois EPA  
20 has had only two days to review this order, and still is  
21 in the process of reviewing it, the Agency reserves its  
22 rights to raise issues or present additional testimony  
23 at the second hearing on June 19 in this matter. The  
24 Agency notes that it will have comments on Attachment A

1 of the Board's May 17 order, specifically, but not  
2 limited to the following comments: The emission  
3 factors, testing and monitoring requirements that were  
4 proposed to be incorporated by reference, the  
5 incorporation by reference sections and test sections  
6 were not included in Attachment A, despite being  
7 prefaced in the proposed subpart Q. The Agency believes  
8 that it is appropriate and required by the  
9 Administrative Procedure Act to include incorporation by  
10 reference of those items. The Agency will also request  
11 the definitions be included in Docket R07-18 to the  
12 extent referenced in Attachment A. The Agency is  
13 agreeable that the Amendment to 35 Illinois  
14 administrative Code 201.146 concerning a change in the  
15 permanent exemption for engines be moved to the docket  
16 in R07-19.

17 With respect to the Board's May 17  
18 order as it relates to the establishment of R07-19, the  
19 Agency is still reviewing its portions of the order and  
20 reserves all rights and responses with to respect that  
21 order. The Agency's decision to proceed with this  
22 hearing in the R07-18 docket should not be construed as  
23 waiving any rights it has with respect to the Board's  
24 decision to create the R07-19 docket.

1                                 Now I will turn it over to Rob Kaleel,  
2                                 if that is agreeable.

3                                 MR. HEARING OFFICER: Thank you,  
4                                 Ms. Doctors. At this point, why don't we have the court  
5                                 reporter swear in both of the Agency's witnesses at this  
6                                 point so we can prepare to hear their testimony.

7                                 (At which point, both witnesses were  
8                                 sworn in by the court reporter).

9                                 MR. HEARING OFFICER: Ms. Doctors, I  
10                                 think you said you were prepared to begin with  
11                                 Mr. Kaleel.

12                                 MS. DOCTORS: Correct. Would you like  
13                                 him to read his testimony in?

14                                 MR. HEARING OFFICER: Nothing would  
15                                 prevent him from reading his testimony, but I have no  
16                                 sense from any of the participants that it would be  
17                                 necessary for him to do so. I know that that was posted  
18                                 on the Board's website, virtually, as it was received on  
19                                 Friday. It wouldn't have given everybody an expeditious  
20                                 chance to read it over. So seeing no specific interest  
21                                 from anyone in having him read it, let's just proceed  
22                                 with the.

23                                 MS. DOCTORS: I would like to ask that  
24                                 it be admitted as if read, both the testimony from

1           Yoginder Mahajan and Rob Kaleel, that the testimony be  
2           admitted as read.

3                           MR. HEARING OFFICER: Do you have  
4           copies of those, Ms. Doctors, that you can admit.

5                           MS. DOCTORS: We just have copies of  
6           the motion.

7                           MR. HEARING OFFICER: I have in front  
8           of me the testimony of Robert Kaleel, and this is the  
9           amended testimony Ms. Doctors filed on Friday, the 18th,  
10          correct?

11                          MS. DOCTORS: Correct.

12                          MR. HEARING OFFICER: Which I will  
13          mark as Exhibit 1, and a document marked "Testimony of  
14          Yoginder Mahajan." Again, the amended testimony  
15          Ms. Doctors filed on Friday, May 18.

16                          MS. DOCTORS: Correct.

17                          MR. HEARING OFFICER: I will mark that  
18          as Exhibit No. 2, and note Ms. Doctors' motion to admit  
19          those into the hearing record, those numbered Exhibits 1  
20          and 2. Is there any objection to granting the motion?  
21          It will be granted. It will be marked as Exhibits No. 1  
22          and 2 and entered into the docket.

23                          MS. DOCTORS: Thank you.

24                          MR. HEARING OFFICER: Mr. Kaleel,

1 please go ahead.

2 MR. KALEEL: Well, I'm available for  
3 questions. I don't have any specific statements to make  
4 beyond my testimony.

5 MR. HEARING OFFICER: If there are  
6 questions for Mr. Kaleel, and you simply raise your hand  
7 and identify yourself the first time, so that I may  
8 pronounce your name correctly, we will certainly  
9 recognize you. Any questions? I see Ms. Bassi.

10 QUESTIONING BY MS. BASSI:

11 Q. My name is Kathleen Bassi, B-A-S-S-I. I'm  
12 with the law firm of Schiff Hardin, LLP, and we  
13 represent the Pipeline Consortium, which is made up of A  
14 and R Pipeline Company, Trunk Line Pipeline Company,  
15 Panhandle Eastern and Kender Morgan. With me today is  
16 Josh More, also from Schiff Hardin, and to his right --  
17 left, is Jim McCarthy, who is a consultant to the  
18 Pipeline Consortium.

19 Mr. Kaleel, on page 4 of your  
20 testimony, you state an average plan must ensure that  
21 the total mass of actual NOx emissions from all affected  
22 units included in the emissions averaging plan must be  
23 less than the total mass of allowable NOx emissions for  
24 the same units. Do you see that line or that sentence

1 I'm talking about?

2 A. Yes.

3 Q. Can units that are not included on  
4 Appendix G to this rule-making be used in an averaging  
5 plan to achieve compliance with the NOx SIP Call  
6 emissions reductions required by this rule?

7 A. Yes, they can.

8 Q. Is it the case that, if a source uses a  
9 NOx averaging plan, the total amount of mass reductions  
10 that the source must achieve under the averaging plan is  
11 more than the total amount of mass reductions that the  
12 source would have to achieve on an engine-by-engine  
13 basis if it did not average?

14 A. I would ask if you could repeat that. I'm  
15 not sure I understand.

16 Q. I apologize for the question being so  
17 long. Is it the case that, if a source uses an  
18 averaging plan, that the amount of mass reduction that  
19 the source must achieve is greater than if the source  
20 complied on an engine-by-engine basis? And perhaps this  
21 is a question better posed to Mr. Mahajan. I don't  
22 know.

23 MR. MAHAJAN: It could be a  
24 possibility because you are including more engines

1 emissions and emissions will be more, so it could be  
2 possible that the reduction may not match that 54/22,  
3 whatever you ask. It can be more, yes.

4 Q. Does the rule, specifically, require that  
5 it be more?

6 MR. MAHAJAN: No.

7 MS. BASSI:

8 Q. Thank you. By missing the NOx SIP Call  
9 May 1 compliance date, I have a couple questions along  
10 those lines. Is it true that U.S. EPA has issued a  
11 finding of failure to submit the NOx SIP Call Phase II  
12 requirement?

13 MR. MAHAJAN: Yes.

14 Q. Will Illinois have submitted the NOx SIP  
15 Call Phase II prior January 1, 2008?

16 MR. KALEEL CONTINUES: We hope if this  
17 rule-making is completed that we be able to make our  
18 submittal before January 1, 2008.

19 Q. Did U.S. EPA propose a FIP (phonetic) that  
20 affects these Appendix G engines?

21 A. No, not to my knowledge.

22 Q. And so then is it your understanding that  
23 these engines would not be subject to a FIP between May  
24 1, 2007 and January 1, 2008?

1           A.     I guess we don't know what U.S. EPA's  
2 plans are. I would think it's unlikely that a FIP would  
3 be implemented between now and January 1, 2008.

4           Q.     That's all I have.

5                     MR. HEARING OFFICER: Mr. More?

6                     QUESTIONING BY MR. MORE:

7           Q.     I have some general questions that might  
8 be allowed if either one of you to answer. If that's  
9 all right with the Board, I would rather pose it to the  
10 group, as a whole.

11                    MR. HEARING OFFICER: It makes sense,  
12 under the circumstances, to do it as a panel.

13                    MR. MORE:

14           Q.     Is it correct that the NOx SIP Call Phase  
15 II rule is not source-specific?

16           A.     That is correct.

17           Q.     It's based on a budget reduction?

18           A.     It's based on a budget reduction from this  
19 particular category of sources, reciprocating internal  
20 combustion engines.

21           Q.     Is it correct that the State doesn't have  
22 to regulate these specific units to comply with the NOx  
23 SIP Call Rule?

24           A.     That is correct.

1 Q. Is it also correct that the NOx SIP Call  
2 rule calls for reasonable reductions of NOx emissions?

3 A. That is correct, the ozone season.

4 Q. This rule calls for an annual reduction  
5 from these units. Is that correct?

6 A. This rule actually would establish limits  
7 or requirements for both the ozone season and an annual  
8 basis.

9 Q. In both of your testimony, you note that  
10 the rule will result in, approximately, 5,422 tons of  
11 NOx emissions being reduced during the ozone season.  
12 How much or how many tons of NOx emissions will be  
13 reduced during the non-ozone season?

14 MR. MAHAJAN: Based on the U.S. EPA's  
15 inventory and what they issued with regards to NOx SIP  
16 Call, and looking at the emissions of those engines, the  
17 inventory of the mass reduction per year would be 1,900  
18 tons, so it will be 12,900 minus 5,422 for the ozone  
19 season, would be the non-ozone season.

20 Q. How will those additional reductions be  
21 used by the state?

22 MR. KALEEL CONTINUES:

23 A. The annual requirement in the rule, as  
24 proposed by IEPA, was intended to address the annual

1 standard for fine particles. BM 2.5 is the way that we  
2 refer to that. The BM 2.5 standard, unlike ozone,  
3 consists of a short-term and an annual standard, and, in  
4 Illinois, the annual standard is the one that is most  
5 restrictive, so that's where the NOx emissions were  
6 targeted on an annual basis.

7 Q. In the Technical Support Document on page  
8 59 -- or 39, excuse me, there is a reference to U.S.  
9 EPA's command and control analysis for rights for five  
10 different cost ceilings.

11 MS. DOCTORS: Are you referring to the  
12 reference to Table 5.2?

13 MR. MORE: Yes. Thank you for the  
14 clarification, the last paragraph on page 39. Those  
15 dollar figures, in what -- in terms of what year do  
16 those dollars represent? Throughout this document,  
17 there's reference to, "In 1990 dollars," or "2004  
18 dollars" --

19 MR. MAHAJAN: 1990.

20 MR. MORE: 1990 dollars.

21 MS. BASSI: Can I follow up on that a  
22 bit? Are there not 2005 dollars or 2007 dollars  
23 available?

24 MR. MAHAJAN: All those analyses done

1 by U.S. EPA are based on the 1990 dollars. We can  
2 convert those dollars based on the inflation rate or  
3 something, but the U.S. EPA did all this based on the  
4 1990 dollars.

5 MR. MORE CONTINUES:

6 Q. Along those lines, then, is it correct,  
7 when you're doing this conversion, you are not taking  
8 into account actual costs? You are using, like, the  
9 Consumer Price Index?

10 MR. MAHAJAN: Consumer Price Index, or  
11 whatever you want to use, yes.

12 Q. Why is it that you don't go to the market  
13 and determine what the actual costs are?

14 MR. MAHAJAN: Like I said, we didn't  
15 do the study. The U.S. EPA did that modeling on the  
16 cost modeling. That's what they come up with 1990. The  
17 reference 12 you can make them to 1997, but they didn't  
18 do it based on that.

19 Q. So if the cost of materials were more  
20 expensive today than they were in 1990, barring  
21 inflation, the number would be skewed. Is that correct?

22 MR. MAHAJAN: It would be, if it was  
23 different.

24 MS. BASSI: When was U.S. EPA's

1 analysis on the cost of this performed? Do you know  
2 that?

3 MR. MAHAJAN: I think it is based on  
4 2000.

5 MS. BASSI: On when?

6 MR. MAHAJAN: 2000.

7 MS. BASSI: 2000?

8 MR. MORE:

9 Q. To speed along the process, throughout the  
10 TSD, there's then conversions from 1990 dollars to 2004  
11 dollars.

12 MR. MAHAJAN: Yes.

13 Q. Why is that?

14 MR. MAHAJAN: Because we just want to  
15 show the Board what the current cost would be, so we  
16 just converted based on the CPI, taking inflation into  
17 account.

18 Q. The CPI would have allowed you to convert  
19 to 2007 dollars, correct?

20 MR. MAHAJAN: It's not available so  
21 far I don't think, but we can convert last year, like  
22 2006, 2005, yes.

23 Q. There hasn't been an analysis done by IEPA  
24 to determine what the costs would be in terms of today's

1 dollars?

2 MR. MAHAJAN: No.

3 Q. Now, has U.S. EPA done an analysis to  
4 determine what the cost would be in today's dollars?

5 MR. MAHAJAN: No, I don't think so.

6 Q. And is it correct that the analysis that  
7 you relied upon from U.S. EPA related only to engines,  
8 the cost analysis?

9 MR. MAHAJAN: Yes.

10 Q. And it only related to what you have --

11 MS. DOCTORS: Wait; objection. When  
12 you say "costs," there's lots of different numbers in  
13 this document. Which specific costs are you referring  
14 to?

15 MR. MAHAJAN: The costs mentioned in  
16 my estimate?

17 MS. DOCTORS: Wait. Let him point to  
18 what the numbers are that he's concerned about.

19 MR. MORE: In the Technical Support  
20 Document, it refers to reliance upon U.S. EPA's cost  
21 analysis. Is that correct?

22 MR. MAHAJAN: Yes.

23 MS. DOCTORS: Where are you -- what  
24 page are you on?

1 MR. MORE: We can show -- we can go to  
2 the testimony, too, page two of Mahajan testimony. The  
3 last paragraph references a series of U.S. EPA  
4 documents.

5 MS. DOCTORS: Let me ask Mr. Mahajan a  
6 question, then, but that's -- when we're talking about  
7 particular numbers, as I said, there are lots of numbers  
8 in the document, and some of them talk -- in this  
9 section of the document, we're talking about engines,  
10 and other sections of the document we're talking about  
11 turbines.

12 MR. MORE: In general, though, the  
13 testimony has been that the cost figures that they have  
14 established have relied upon U.S. EPA's findings.

15 MR. MAHAJAN: That's true.

16 MR. MORE CONTINUES:

17 Q. What I want to understand is did U.S.  
18 EPA's cost figures only relate to an analysis for  
19 engines?

20 MR. MAHAJAN: Yes.

21 Q. Did it only relate to an analysis of large  
22 engines?

23 MR. MAHAJAN: For the NOx SIP Call,  
24 yes, only the large engines.

1 Q. And large engines would be these 28  
2 engines that are being regulated in today's rule-making?

3 MR. MAHAJAN: That's correct.

4 Q. Is the Agency planning on seeking, to your  
5 knowledge, an extension to achieve attainment for ozone  
6 or PM 2.5?

7 MR. KALEEL: We haven't made a  
8 determination to that effect, yet.

9 MR. MORE: That's all I have.

10 MR. HEARING OFFICER: Ms. Bassi?

11 MS. BASSI: I have some questions that  
12 are based on Mr. Mahajan's testimony. Is that  
13 appropriate now, as well?

14 MR. HEARING OFFICER: Perhaps we  
15 should have had them introduce their testimony at the  
16 same time. Would it make sense to have him offer his  
17 synopsis and then proceed right to the questions?

18 MS. BASSI: Sure.

19 MS. DOCTORS: I thought we just had  
20 both pieces of testimony admitted as if read.

21 MR. HEARING OFFICER: They did. Did  
22 Mr. Mahajan wish to speak to his testimony as Mr. Kaleel  
23 had done?

24 MS. DOCTORS: I don't believe

1 Mr. Mahajan has any comments on his testimony.

2 MR. HEARING OFFICER: Now that we have  
3 established that now, Ms. Bassi, do you want to go ahead  
4 and ask the question you had in mind.

5 FURTHER QUESTIONING BY MS. BASSI:

6 Q. Thank you. Mr. Mahajan, on page two of  
7 your testimony, there is a statement that says, "The  
8 required levels of NOx emissions controls are 82 percent  
9 NOx emission reduction from natural gas-fired engines,  
10 and 90 percent NOx emission reduction from all other  
11 diesel and dual-fuel internal combustion engines." Do  
12 you see that?

13 A. Yes.

14 Q. Of the Appendix D engines, are any of them  
15 diesel engines?

16 A. No.

17 Q. Are any of them dual-fuel engines?

18 A. No.

19 Q. If someone should happen to bring into  
20 Illinois a new engine, would it be subject to the NOx  
21 SIP Call?

22 A. Not right now.

23 Q. Pardon?

24 A. No.

1 Q. No? Would it be subject to any emission  
2 standards under this particular rule?

3 A. Not under this rule, no.

4 MS. DOCTORS: Are you speaking to --  
5 when you are speaking of "this rule," are you speaking  
6 of the rule in Attachment A?

7 MS. BASSI: Yes, ma'am, just what is  
8 the subject of this Docket 18.

9 MS. BASSI CONTINUES:

10 Q. So is it the case, then, that the only  
11 engines that are subject to this rule in Docket 18 are  
12 gas-fired engines?

13 A. Yes.

14 Q. Are there any turbines that are subject to  
15 this rule in Docket 18?

16 A. No.

17 Q. Is it -- is there a reason for this rule,  
18 then, to refer to anything, other than the Appendix G  
19 engines?

20 A. Probably not.

21 MS. DOCTORS: Mr. Kaleel, do you have  
22 something you would like to add?

23 MR. KALEEL: We discussed earlier  
24 about the averaging plan and the possibility that the

1 option of the affected companies, that they could  
2 include engines or turbines, an averaging plan as an  
3 alternate means of compliance, so that would be a reason  
4 for including that language in this rule.

5 MS. BASSI CONTINUES:

6 Q. So does that mean, if a source or company  
7 were to include in an averaging plan, say, a diesel  
8 engine, that the reduction level requirement for that  
9 diesel engine would be greater than it would be for a  
10 gas-fired engine?

11 MR. MAHAJAN: They can include in this  
12 averaging plan allowable minutes based on the 5,542 or  
13 the average. Then they have to what is the actual  
14 conclude and that reduction can take the averaging plan  
15 (phonetic).

16 MS. BASSI: Just one second.

17 MS. BASSI CONTINUES:

18 Q. Does one of you -- and I'm not sure who  
19 the appropriate person is to answer this -- but it was  
20 in Mr. Mahajan's testimony that he had relied on cost  
21 figures derived by the State and Territorial Air  
22 Pollution Program Administrators slash Association of  
23 Local Air Pollution Control Officials, other known as  
24 STAPPA ALAPCO. Do you know how they derived their cost

1 figures?

2 MR. MAHAJAN: Most of them they are  
3 based on the TSD document.

4 Q. The same federal document?

5 MR. MAHAJAN: Yes, that document, yes.

6 Q. Do they differ from the federal document?

7 MR. MAHAJAN: These documents they are  
8 refer to what is the cost of controlling engines based  
9 on the HP rating, so they have very extensive cost data,  
10 all these documents.

11 Q. Is it more extensive than what U.S. EPA  
12 had developed?

13 MR. MAHAJAN: U.S. EPA focused only,  
14 for this rule-making, the NOx SIP Call. They focused  
15 only on those engines which are impacted by that SIP  
16 Call.

17 Q. So then how is it that the STAPPA ALAPCO  
18 cost figures are based on U.S. EPA's?

19 A. STAPPA ALAPCO, they come up with a control  
20 strategy for all the universal sources of NOx, and that  
21 is where they mentioned that these engines, not the SIP  
22 Call engines, all the engines, in general, can be  
23 controlled at a very cost effective number, and those  
24 numbers they mention. They summarize -- actually, they

1 summarize the cost that you can save in the PC  
2 documents.

3 MS. BASSI: Perhaps my questions about  
4 this would be more appropriate in Docket 19. Will this  
5 be revived for that purpose? I'm asking the Agency.

6 MS. DOCTORS: At this point, we are  
7 reviewing -- there's no hearing set for that, and we are  
8 not sure exactly what the proceedings are going to be  
9 like.

10 MS. BASSI: Since this is in his  
11 testimony, I feel like I need to proceed on this line.

12 MS. DOCTORS: If it's an issue in  
13 that, he will be available, or there will be information  
14 available to address these issues at that time. Right  
15 now we are just discussing the NOx SIP Call. That's the  
16 only issue today in terms of what's required to be  
17 controlled under this rule-making.

18 MS. BASSI: Just so I'm clear,  
19 Mr. Mahajan would be available to answer questions  
20 STAPPA ALAPCO cost figures as they apply to the  
21 non-Appendix G engines. Is that correct?

22 MS. DOCTORS: To the extent the Agency  
23 relies on those documents in the next docket, yes.

24 MR. HEARING OFFICER: For purpose of

1 the record, it's the Board's intent to, based upon the  
2 relationship issues in the two dockets, to incorporate  
3 the record in 07-18 into 07-19, if that's helpful to  
4 you.

5 MS. BASSI: I will wait, then.

6 MS. BASSI CONTINUES:

7 Q. Has selective catalytic reduction been  
8 selectively demonstrated on gas pipeline engines?

9 MR. MAHAJAN: For the NOx SIP Call,  
10 all these numbers are like 552 tons per day. They are  
11 all based on the low-emission technology, which is not  
12 considered for this rule-making, not the SCR.

13 Q. I believe, though, that your testimony  
14 identified SCR as a possible control technology --

15 A. Possible, but, for this cost analysis,  
16 what they use is the lower-emission technology, not SCR,  
17 but there are SCR. If somebody wants to use it, they  
18 can use it.

19 Q. That's all I have.

20 MR. HEARING OFFICER: From any of the  
21 other participants, are there questions on the Agency's  
22 two witnesses on the basis of their prefiled testimony  
23 or their questions posed here today? I don't see anyone  
24 suggesting that they do have a question. Do any of the

1 Board members or the Board staff have questions that  
2 they would like to pose to the Agency's witnesses? Very  
3 good. Seeing no questions, it would -- I certainly  
4 would give either the Pipeline Consortium counsel, or  
5 any of the other participants that are present here  
6 today an opportunity to make any brief statements, if  
7 they wished to do so for the record.

8 MS. BASSI: It's my understanding that  
9 we do need to confirm that we would like to have a  
10 second hearing, and I would like to have that in the  
11 record that we would. I anticipate that it would be  
12 fairly short.

13 MR. HEARING OFFICER: Ms. Bassi, I was  
14 going to bring that up in just a moment or two. You are  
15 only a second or two ahead of me. The Board's  
16 Procedural Rules do allow any participant, any person,  
17 to request a second hearing to request, that it be held  
18 on the record at the first hearing, so we will certainly  
19 consider your statement as sufficient to indicate that  
20 the second hearing will go forward. That is now  
21 scheduled, pursuant to a Board Hearing Officer Order, to  
22 begin on -- and I'm sorry for having to flip through --  
23 Tuesday, June 19. That will take place in the  
24 auditorium of the Melandick Building, Room No. 500 on

1 160 North LaSalle Street. That is the old State of  
2 Illinois building across from the Thompson Center. So,  
3 again, we will regard that as the formal request for the  
4 hearing to take place. Mr. More?

5 MR. MORE: Understanding that the  
6 Board is now going to consider these dockets together,  
7 the testimony provided we would reserve the right to ask  
8 these witnesses the same or similar questions in  
9 subsequent hearing and subsequent rule-making, and would  
10 ask that any of our decisions made not to ask questions  
11 not be viewed as a waiver to ask future questions.

12 MS. BASSI: I have a question I would  
13 like to ask off the record.

14 MR. HEARING OFFICER: Perhaps it would  
15 be better to ask it when we go off the record in the  
16 moment or two.

17 MR. KIM: I have a question on the  
18 record.

19 MR. HEARING OFFICER: Yes.

20 MR. KIM: Before I speak, I had spoken  
21 with the hearing officer prior to the hearing. My name  
22 is John Kim. I have not filed any written appearance in  
23 this case. I will be doing that this afternoon, but I  
24 would ask the hearing officer's indulgence in accepting

1 my oral request to be entered as an attorney of record  
2 on behalf of the Illinois EPA.

3 MR. HEARING OFFICER: Mr. Kim is  
4 correct that he raised that procedural issue before the  
5 hearing, and I would certainly be happy to allow him to  
6 file an oral appearance on the record with the  
7 expectation that he follow up in writing later today.

8 MR. KIM: Thank you. As Mr. Doctors  
9 noted, the Agency, as I'm sure the other parties of  
10 interest are sort of still digesting, the rule that's in  
11 the form found in Attachment A, if, as she noted, we do  
12 have some issues or some areas that we believe need to  
13 be clarified or addressed through additional testimony  
14 since we simply haven't had an opportunity to identify,  
15 yet, is it my understanding, then, that we would also,  
16 at the hearing on the 19th, be allowed to present  
17 whatever witnesses we felt were necessary to address  
18 those issues?

19 MS. BASSI: Actually, that's what my  
20 off-the-record question was going to go to.

21 MR. KIM: I don't know that we even  
22 have any issues or witnesses that we will need, but I  
23 was wondering if that's an opportunity for them to be  
24 there.

1 MS. BASSI: May I offer a response  
2 that?

3 MR. HEARING OFFICER: I think I can  
4 address that, Ms. Bassi, but if you do have a question,  
5 the Act in 28.5-G-2 does states that it shall be voted  
6 to presentation of testimony documents and comments by  
7 the effected entities and all other interested parties,  
8 so to the extent that that language would give you an  
9 opportunity to respond, and I would further note you  
10 cited a couple times, Ms. Doctors, it's an aid that was  
11 incorporated and as the order, itself, indicates it's  
12 solely for the convenience of the parties. Indication  
13 what the Board would need to proceed. If it's not you  
14 can't order and was meant specific demonstrative  
15 evidence that might have died Board be considering today  
16 so if that's an explanation that helps all understanding  
17 the Board's intent in providing that I hope it's  
18 fulfilled its purpose.

19 MS. DOCTORS: Yeah. I think there was  
20 a statement -- and I don't have it right here in the  
21 order -- that they wanted to perhaps not include the  
22 other sections, besides subpart Q, that had been amend.  
23 That's why I made that.

24 MR. HEARING OFFICER: Of course, the

1 sub Section 201.146 and Part 211 remain on first notice  
2 in this docket, so that the preparation of Attachment A  
3 was merely designed to focus on what might be  
4 characterized as the contested parts, so that nothing  
5 should be interpreted as signifying, by any means, that  
6 those would be removed from the Agency's second  
7 proposal.

8 MS. BASSI: In response to your  
9 characterization of the Agency as "all other interested  
10 parties" that's in the section that you quoted from  
11 Section 28.5, Section 28.5 clearly establishes the  
12 Agency as the proponent of a rule-making under 28.5. It  
13 is the only party that can be a proponent of a  
14 rule-making, and so if you want to call it an interested  
15 party, I would say they are super-interested party.  
16 There can't even be a rule-making, unless under 28.5,  
17 unless the Agency proposes.

18 The third hearing, under Section 28.5  
19 was established for purpose of the Agency rebutting  
20 anything that was presented in the second hearing, and  
21 to the extent that the Agency thinks it has more to say  
22 in this rule-making following the second hearing, I  
23 would suggest that the third hearing is the appropriate  
24 place for that to occur, not during the second hearing.

1 MR. MORE: Let me add to that. The  
2 other related parties denotes that there are people,  
3 other than the two interested parties, the Agency and  
4 the effected community, the regulated community in this  
5 instance. That interpretation would allow the Agency to  
6 present testimony at all three hearings, which would be  
7 viewed as a disadvantage. It would be prejudicial to  
8 the regulated community.

9 MR. KIM: Well, I would note that, in  
10 the past, at least, my limited experience in this kind  
11 of situation has been that the Board has been helpful to  
12 be able to ask the Board's witnesses at potentially all  
13 three Fast Track rule-makings, and I think, to shut the  
14 Agency out of an opportunity to do so would be a  
15 disservice, not only to the Agency, but to the Board in  
16 its development for the proper record for the rule,  
17 itself.

18 MS. BASSI: I don't think anyone is  
19 objecting to the asking of and answering of questions.  
20 What we're objecting to is the presentation of more  
21 affirmative testimony.

22 MR. HEARING OFFICER: If we could go  
23 off the record for just a moment, please.

24 (A small break was taken).

1                   MR. HEARING OFFICER: During that time  
2                   off the record, we reviewed the language of Section  
3                   28.5, specifically, and under the -- I think it's fair  
4                   to say, fairly unique circumstances in this case, the  
5                   Agency, in terms of its opportunity to respond to the  
6                   Board's order granting the relief sought by the  
7                   objectors, leads them, effectively, two opportunities to  
8                   issue their response, one of which is the second  
9                   hearing, of course, now scheduled for June 19, because  
10                  the third hearing is under Section 28.G -- 28.5-G-3,  
11                  specifically, limited to the Agency's response to  
12                  material submitted at the second hearing, so that, if  
13                  they are not permitted to respond at the second hearing,  
14                  they will, in effect, be foreclosed from having any  
15                  response.

16                  The other opportunity that they may  
17                  have is to recess this hearing on the record and  
18                  reconvene on Friday, this Friday, which would I believe  
19                  be the 25th of May, so I would propose that to the  
20                  participants as an alternative to having the Agency, if  
21                  it wishes to do what it has indicated what it will not  
22                  necessarily need to do, wants to offer additional  
23                  testimony at the second hearing.

24                  MS. BASSI: I have a question.

1 MR. HEARING OFFICER: Yes, Ms. Bassi.

2 MS. BASSI: How does recessing and  
3 reconvening on Friday comport with the order that says  
4 that the hearing will continue day-to-day?

5 MR. HEARING OFFICER: The hearing  
6 would not be adjourned, and the record would be kept  
7 open for the participants to meet one another to  
8 continue the hearing that was recessed.

9 MS. BASSI: Okay.

10 MR. KIM: Actually, maybe to address  
11 Mr. Bassi's concerns, I think the Agency's preference  
12 would be -- and, again, before I even say that, we don't  
13 have any issues that we right now intend to present  
14 testimony on. That was simply presented as sort of a  
15 trying-to-leave-the-door-open kind of thing. If we  
16 should end up finding anything, we have been in  
17 discussion with Ms. Bassi, and other attorneys in this  
18 case. I assume we will continue to do so, so that, if  
19 we do find discrepancies or what have you, certainly, if  
20 they want to address those, and bring those to the  
21 Board's attention, that's fine with us. I think, as  
22 long as we're in agreement with that, and so far the  
23 discussion we have had between the issues with the  
24 Board's order today we have together identified a few

1 issues that we will be bringing to the Board's  
2 attention. So we are not looking to present testimony,  
3 and if we do find issues, we will do the best we can to  
4 make sure that we don't have to actually put people on.  
5 Just bring it to the attention of Ms. Bassi, and if they  
6 want to do that, that's fine with us. If there is some,  
7 at this point, unforeseen issue where we feel like we  
8 individually need to present something, we will make  
9 every attempt to keep it as limited and as focused as  
10 humanly possible. We're not looking to create any kind  
11 of surprise or burden on the parties. It was simply  
12 reflected that we have not had time to, even in its  
13 demonstrative form, fully digest Attachment A, and pair  
14 that with how that's going to play against the other  
15 rule-making.

16 MS. BASSI: We are willing, obviously,  
17 to continue talking with the Agency about these things,  
18 and if there are issues that pop up, we would be willing  
19 to present them, or, at least, open the door to them at  
20 the second hearing. I am still not willing to concede  
21 that there will be any type of presentation by the  
22 Agency at the second hearing. If we open the door to  
23 this during the second hearing and the -- that should  
24 give the Agency the entree to address it in the third

1 hearing if they feel we have not done it sufficiently.

2 MR. NEWTON: My name is Gale Newton  
3 for IERG, and we would like to concur with Ms. Bassi and  
4 her statement.

5 MS. BASSI: I do have another question  
6 simply because I can't remember. When are written  
7 comments accepted in this? At any time or is there a  
8 comment period?

9 MR. HEARING OFFICER: This is  
10 addressed in the Act, Ms. Bassi, and I apologize I'm  
11 flipping through to find the precise reference to it,  
12 Subsection L of 28.5 provides, specifically, "Following  
13 the hearings, the Board shall close the record 14 days  
14 after the availability of the transcript." But that  
15 does not mean that public comments are accepted only  
16 after the conclusion of the hearings, of course. Is  
17 that a sufficient answer?

18 MS. BASSI: Yes, thank you. I had  
19 forgotten what it said.

20 MR. HEARING OFFICER: I had, as well.  
21 Having heard quite candidly no interest in recessing  
22 this hearing to continue on Friday, the 25th of May, are  
23 there -- before we would move toward adjournment and  
24 procedural issues, any other issues we would need to

1 address? The one point, in moving toward adjournment,  
2 that I did want to raise was the risk that there was  
3 some confusion about incorporation of the record in 7-18  
4 into the docket in 7-19. Those are distinct, obviously,  
5 in terms of their substance, and are distinct certainly  
6 in terms of their procedure.

7 We have, obviously, nearly concluded  
8 one hearing at this docket, and have not even scheduled  
9 hearings in Docket 17, so it's merely an incorporation  
10 of the record, and not any indication that the Board  
11 intends to consider those in tandem, to decide them at  
12 the same time, or otherwise treat them as the same  
13 docket.

14 MR. KIM: And just as a further  
15 clarification, since the first notice in R07-19  
16 contained I believe, effectively, the entirety of the  
17 Agency's original proposal, is it safe to assume the  
18 Board's intention is, once the docket in R07-18 is  
19 concluded, whatever the final language of the quote,  
20 unquote Fast Track Provisions would be carried over into  
21 R07-19, so that -- and then or how are you intending to  
22 reconcile potentially different language in Attachment  
23 A, versus what will end up to be, versus what you have  
24 put out in the first notice for R07-19?

1 MR. HEARING OFFICER: I'm looking to  
2 rely upon our rules coordinator. If there is a second  
3 notice opinion in R07-19, it would be based on the  
4 expedited deadlines on R07-18 will reflect that R07-18  
5 language as adopting the rules text.

6 MS. CONLEY: The existing text would  
7 be shown as existing text as R07-18, adopted on a much  
8 faster schedule (phonetic).

9 MR. HEARING OFFICER: It ascribes the  
10 difficulty in having sections open simultaneously in two  
11 dockets. If you would identify yourself and spell your  
12 name for the court reporter. I should have asked you to  
13 do that.

14 MS. CONLEY: Erin Conley, E-R-I-N,  
15 C-O-N-L-E-Y, Rules Coordinator for the Board.

16 MR. HEARING OFFICER: I will address a  
17 few quick procedural issues. Ms. Bassi, you had touched  
18 upon the opportunity to submit written public comments,  
19 and I will simply note that, through the Board's  
20 Electronic Filing Pilot Program, those comments may be  
21 submitted through the clerk's office on line by any  
22 participant or any other person who wishes to submit  
23 them. Any filings, whether paper or electronic, must  
24 also be served on the hearing officer and on those

1 persons whose name appear on the Service List and before  
2 filing with the clerk. If you would please check with  
3 the Board's clerk's office, so you may have the most  
4 recent version of the Service List, that would certainly  
5 expedite that task.

6 The court reporter has indicated the  
7 that copies of the transcript, which the Board is  
8 obtaining on an expedited basis in this Fast Track  
9 Rule-making will be available by Thursday, the 24th, and  
10 virtually as soon as they are available to the Board's  
11 clerk, they will be placed on our website where, of  
12 course, they be viewed, downloaded and printed.

13 I was prepared to cite, Ms. Bassi, in  
14 Section 28.5-G-1 referring to the requests for the  
15 second hearing that it be taken, that it occur as  
16 scheduled. I will reiterate that we have heard your  
17 request that it take place and will continue as  
18 scheduled beginning on Tuesday, June 19, at 10 a.m. in  
19 Chicago. The prefiling deadline for that hearing will  
20 take place on Friday, June 8, and the Mailbox Rule does  
21 not apply, and the service of that prefiled testimony  
22 will need to take place to anyone whose name appears on  
23 the Service List on the Sunday preceding that, which I  
24 believe would be the second of June, but I certainly

1 would stand corrected if I'm not correct about that. If  
2 anyone has questions about the procedural aspects, or  
3 otherwise, with this rule-making, they may certainly  
4 contact me and my direct line is 312-814-6085. Are  
5 there any further issues or procedural matters that need  
6 to be addressed this morning before we adjourn?  
7 Anything further, Ms. Bassi? Very well. I would like to  
8 thank everyone for their participation and for their  
9 civility this morning and thank you. We look forward to  
10 seeing you on June 19.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF ILLINOIS)  
COUNTY OF ST. CLAIR)SS

I, Holly A. Schmid, a Notary Public in  
and for the County of Williamson, DO HEREBY CERTIFY that  
pursuant to agreement between all parties involved, this  
hearing occurred before me on May 21, 2007, at the  
office IEPA, 1021 North Grand Avenue East, Springfield,  
Illinois. This hearing, touching on the matter in  
controversy, was taken by me in shorthand and afterwards  
transcribed upon the typewriter and said hearing is  
herewith returned.

IN WITNESS WHEREOF I have hereunto set  
my hand and affixed my Notarial Seal this 22nd day of  
May, 2007.

\_\_\_\_\_  
HOLLY A. SCHMID  
Notary Public -- CSR  
084-98-254587