

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
VAPOR RECOVERY RULES:)
)
AMENDMENTS TO 35 ILL. ADM.)
CODE PARTS 201, 218 AND 219)

DOCKET R13-18
(Rulemaking - Air)

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STATE OF ILLINOIS
Pollution Control Board

Hearing held, pursuant to notice, on Wednesday,
May 8, 2013, at the hour of 11:00 a.m. at 1021 N.
Grand Avenue East, Springfield, Illinois, before
RICHARD R. McGILL, JR., duly appointed Hearing
Officer.

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1 BOARD MEMBERS:

2 TOM HOLBROOK, Chairman
3 CARRIE ZALEWSKI
4 JEROME O'LEARY
5 DEANNA GLOSSER

6 ALISA LIU, Technical Unit

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9 APPEARANCES:

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1 HEARING OFFICER MCGILL: Good
2 morning. I'd like to welcome everyone to this
3 Illinois Pollution Board hearing in Springfield. My
4 name is Richard McGill. I'm the assigned hearing
5 officer for this rulemaking docketed as R13-18 and
6 captioned Vapor Recovery Rules, Amendments to 35
7 Illinois Administrative Code Parts 201, 218 and 219.

8 By way of brief background, on
9 March 18, 2013, the Illinois Environmental
10 Protection Agency filed this rulemaking proposal
11 which includes the phase-out of Stage II vapor
12 recovery systems at gasoline dispensing operations
13 in the Chicago ozone nonattainment area.

14 On April 4, 2013, the Board issued an
15 opinion and order that accepted IEPA's proposal for
16 hearing, granted IEPA's motion for expedited review
17 and, without commenting on the proposal's merits,
18 adopted the proposed amendments for first notice
19 publication in the Illinois Register.

20 Today is the first hearing in this
21 rulemaking. Another hearing is scheduled for
22 June 5, 2013 in Chicago. The purpose of these
23 hearings is to receive testimony and other evidence
24 on the merits and economic impact of the proposed

1 rule amendments.

2 Also present today on behalf of the
3 Board is Board Member Jerry O'Leary, the lead board
4 member for this rulemaking, Chairman Tom Holbrook,
5 Board Member Carrie Zalewski, Board Member Deanna
6 Glosser, and from the Board's Technical Unit, Alisa
7 Liu, and we are also joined today by new Board
8 Attorney Chad Kruse who serves as the attorney
9 assistant to Member Zalewski.

10 In an effort to make today's hearing
11 as efficient as possible, I issued a Hearing Officer
12 Order that directed the filing of prefiled
13 testimony.

14 On April 24, 2013, IEPA timely filed
15 its prefiled testimony. No other participants
16 prefiled testimony.

17 I issued another Hearing Officer
18 Order on Monday of this week posing Board staff
19 questions for IEPA's witnesses which will be taken
20 up today.

21 We will begin today's hearing by
22 entering IEPA's prefiled testimony into the record
23 as if read as well as designating hearing exhibits.
24 That will be followed by IEPA's Mr. Burkhardt and

1 Mr. Cooper providing brief summaries of their
2 respective prefiled testimony.

3 Then we will have a period of
4 questions for IEPA's witnesses. For each Board
5 staff question, we will read the question aloud for
6 the benefit of the hearing transcript and any other
7 participants present.

8 Anyone, however, may ask questions of
9 IEPA's witnesses and any participants present in the
10 audience will be given first opportunity to pose
11 questions.

12 After the testimony of and questions
13 for IEPA's witnesses, we will allow anyone else to
14 testify.

15 Toward the conclusion of today's
16 hearing, we will address the Board's request that
17 the Department of Commerce and Economic Opportunity
18 perform an economic impact study on this rulemaking
19 proposal.

20 We will conclude this hearing with a
21 brief discussion of the scheduled Chicago hearing
22 and a prefiled testimony deadline for that hearing.

23 Today's proceeding is governed by the
24 Board's procedural rules. All information that is

1 relevant and not repetitious or privileged will be
2 admitted into the record. Questions posed by board
3 members or staff are designed to help develop a
4 complete record for the Board's decision and do not
5 reflect any bias or prejudgment of the issues.

6 Those who testify will be sworn in
7 and may be asked questions about their testimony.
8 For those who wish to testify but did not prefile
9 testimony, we have a witness sign-up sheet located
10 at the back of the room.

11 For the court reporter transcribing
12 this proceeding, I would ask that whether testifying
13 or posing a question, please speak up and do not
14 talk too quickly or talk over one another to allow
15 the Board to have a clear transcript for
16 consideration.

17 Also, as this rulemaking, like many
18 environmental rulemakings, does contain many
19 acronyms, I would ask that you please state the full
20 term once before using the acronym.

21 Are there any questions about the
22 procedures we'll be using today?

23 Seeing none, I'd like to move on to
24 taking up the IEPA's prefiled testimony. Absent any

1 objections, the prefiled testimony of IEPA will be
2 entered into the record as if read as provided in my
3 April 9, 2013 Hearing Officer Order.

4 First, is there any objection to
5 entering as if read the prefiled testimony of Darwin
6 Burkhart?

7 Seeing none, it is so entered.

8 Second, is there any objection to
9 entering as if read the prefiled testimony of Ross
10 Cooper?

11 Seeing none, it is so entered.

12 I will now take up designating IEPA's
13 prefiled testimony as hearing exhibits for ease of
14 later citation.

15 First, is there any objection to
16 designating as a hearing exhibit the prefiled
17 testimony of Darwin Burkhart?

18 Seeing none, that is Hearing Exhibit
19 1.

20

21

22 (Whereupon Hearing Exhibit 1 was
23 admitted into evidence at this
24 time.)

1 HEARING OFFICER MCGILL: Second, is
2 there any objection to designating as a hearing
3 exhibit prefiled testimony of Ross Cooper?

4 Seeing none, that is Hearing Exhibit
5 2.

6 (Whereupon Hearing Exhibit 2 was
7 admitted into evidence at this
8 time.)

9 HEARING OFFICER MCGILL: We may have
10 other hearing exhibits as we proceed with the
11 testimony of IEPA and we can take those up when they
12 become relevant.

13 At this point, I would ask the court
14 reporter to swear in IEPA's witnesses collectively.

15 (Whereupon the witnesses were
16 sworn by the reporter.)

17 HEARING OFFICER MCGILL: Thank you.

18 I now would ask IEPA Attorney Kent
19 Mohr to begin IEPA's presentation.

20 MR. MOHR: Good morning. My name is
21 Kent Mohr. I'm an assistant counsel with the
22 Illinois EPA Division of Legal Counsel.

23 First and foremost, thank you to the
24 Board for allowing us to be here today and being

1 willing to expedite this matter.

2 As a matter of background, the
3 Agency, as the hearing officer mentioned, filed its
4 proposal on March 18 of 2013. Principally, it
5 proposes to phase out the Stage II vapor recovery
6 equipment requirement in the Chicago nonattainment
7 area due to the USEPA's widespread use determination
8 and waiver of the Clean Air Act, Section 182(b)(3)
9 Stage II requirement coupled with an analysis by the
10 Illinois EPA of the emissions impacts of the Stage
11 II program.

12 The proposal requires decommissioning
13 of Stage II equipment in the Chicago nonattainment
14 area for existing stations and proposes that new
15 stations do not have to install Stage II equipment.

16 Other parts of the proposal include a
17 repeal of the Stage I Vapor Recovery Registration
18 Program due to other federal and state tracking
19 systems for these gasoline dispensing facilities.

20 Another part of the proposal is an
21 update in terms of revisions and additions to permit
22 exemptions in Title 5 insignificant activities that
23 relate to gasoline dispensing and then more of a
24 cleanup to update removal references from Part 218

1 and 219.

2 A couple housekeeping issues before
3 we get into summaries of testimony.

4 In the agency's filing, I noticed a
5 scrivener error at Section 218.586(i)1(A). There's
6 an extra "the" in the last sentence. It's the first
7 "the" in that sentence.

8 As the hearing officer noted, the
9 Board issued a proposed rule first notice opinion
10 and order on April 4th. Attached to that order were
11 the proposed amendments for Part 201, 218 and 219
12 which contained a number of scrivener's errors that
13 were not contained in the agency's filing, so the
14 Agency would want to make sure that we correct those
15 at some point during the rulemaking process.

16 HEARING OFFICER MCGILL: Those will
17 be remedied at second notice.

18 MR. MOHR: As the hearing officer
19 mentioned, the Agency has a number of witnesses
20 here. Mr. Darwin Burkhardt is the manager of the
21 Clean Air Programs of the Division of Mobile Source
22 Programs. He is seated to my right.

23 Mr. Chuck Gebhardt is the manager of
24 the Technical Services Section with the Division of

1 Mobile Source Programs. He is seated to
2 Mr. Burkhart's right.

3 Mr. Michael Rogers who is directly
4 behind me is with the Technical Services Section of
5 the Division of Mobile Source Programs.

6 And Mr. Ross Cooper seated to my left
7 is a permit engineer in the Permit Section for the
8 Division of Air Pollution Control.

9 In addition, with us today, and I
10 neglected to mention this to the hearing officer, we
11 have representatives of the Office of the State Fire
12 Marshal here, Mr. Scott Johnson and Mr. Fred
13 Schneller. They are here today to answer any
14 specific questions that might be asked of their
15 requirements as they relate to this rulemaking and
16 specifically a couple questions that were posed by
17 the Board.

18 Also Mr. Doug Rathbun, the Department
19 of Agriculture, is here today to do the same, so we
20 may want to swear these gentlemen in as well so that
21 they can be available to answer questions.

22 HEARING OFFICER MCGILL: We can go
23 ahead and take care of that now if the court
24 reporter is ready to do so.

1 (Whereupon the witnesses were
2 sworn by the reporter.)

3 MR. MOHR: As the hearing officer
4 also mentioned, Mr. Burkhardt and Mr. Cooper have
5 prefiled testimony.

6 Mr. Gebhardt and Mr. Rogers as well
7 as representatives from OSFM (Office of State Fire
8 Marshal) have not prefiled any testimony, but they
9 will be available obviously to answer questions.

10 I think that should be about it for
11 us. We can now proceed I guess with Mr. Burkhardt
12 providing a summary of his prefiled testimony.

13 HEARING OFFICER MCGILL: Great.

14 MR. BURKHART: Thank you.

15 NARRATIVE TESTIMONY

16 BY DARWIN BURKHART:

17 My name is Darwin Burkhardt, and I'm
18 the manager of the Clean Air Programs in the Bureau
19 of Air at the Illinois Environmental Protection
20 Agency.

21 Part of my duties is overseeing the
22 Stage I and Stage II Gasoline Vapor Recovery Program
23 as well as the proposed rulemaking and the Technical
24 Support Document that we are here to present today.

1 Kent already introduced other staff
2 with me here, and these gentlemen also contributed
3 various portions and levels of expertise to the
4 Technical Support Document and will also be here
5 today to help answer any specific questions that the
6 Board or the audience may have.

7 With regard to the rule amendments
8 primarily affecting the Chicago area Gasoline Vapor
9 Recovery Program also known as Stage II with some
10 minor changes for registrations on the Stage I
11 program, I'll be testifying on Parts 218 and 219 of
12 the proposed rules.

13 Ross Cooper of our Air Permits
14 Section will be providing testimony on changes to
15 Part 201 as they relate to air permits.

16 The Illinois EPA has proposed
17 amendments to 35 Illinois Administrative Code Parts
18 201, 218 and 219 to phase out the Stage II
19 requirement for affected gasoline dispensing
20 facilities in the Chicago ozone nonattainment area.
21 The nonattainment area consists of the Counties of
22 Cook, DuPage, Kane, Lake, McHenry and Will along
23 with Aux Sable and Goose Lake Townships in Grundy
24 County and Oswego Township in Kendall County.

1 The Illinois EPA is proposing to
2 phase out the Stage II equipment installation
3 requirement beginning January 1, 2014. On and after
4 this date, new gasoline stations or facilities that
5 are starting operation need not install Stage II
6 equipment.

7 In addition beginning January 1,
8 2014, the owners of previously existing gas stations
9 or facilities with Stage II equipment may begin
10 decommissioning their vapor recovery equipment.

11 The amendments also establish
12 decommissioning procedures and timelines for
13 facilities to properly decommission their existing
14 Stage II equipment. These proposed rules provide
15 for a three-year timeframe and require that existing
16 Stage II equipment be decommissioned no later than
17 December 31st of 2016.

18 The authority for this action is
19 contained in the U.S. Environmental Protection
20 Agency's May 16, 2012 final rule determining the
21 widespread use of onboard refueling vapor recovery,
22 or ORVR, equipment.

23 In Clean Air Act Section 202(a)(6),
24 Congress recognized that the implementation of ORVR

1 would ultimately achieve equivalent emission
2 reduction benefits as compared to Stage II and
3 therefore allowed for the waiver of the Clean Air
4 Act Stage II requirement when ORVR-equipped vehicles
5 were determined by USEPA to be in widespread use.

6 This widespread use determination
7 allowed USEPA to waive the Stage II requirement. As
8 a result, states have the option of phasing out
9 their Stage II programs by submitting a revision to
10 their State Implementation Plan, or SIP, which is
11 approved by USEPA.

12 However, as required by
13 Section 110(1) of the Clean Air Act, states
14 intending to remove or phase out their Stage II
15 requirements must demonstrate that such an action
16 would not result in any net emissions increase
17 referred to as back sliding.

18 In order to determine when the
19 emissions reduction benefits of operating the Stage
20 II program are equaled by the ORVR program, the
21 Illinois EPA used USEPA's Motor Vehicle Emissions
22 Simulator, or MOVES, model to evaluate refueling
23 emissions.

24 Figure 1 in the Technical Support

1 Document and attached in my prefiled testimony as
2 Exhibit 1 shows the MOVES modeling results for the
3 Chicago nonattainment area with and without Stage II
4 vapor recovery systems installed at gasoline
5 facilities.

6 The figure shows the crossover point
7 where the ORVR-only line crosses the ORVR plus Stage
8 II line. In 2014, the emissions reduction benefits
9 of an ORVR-only program equal the benefits of an
10 ORVR + Stage II program that we have today. Beyond
11 this point, the use of ORVR alone will result in
12 additionally emission reductions.

13 Based on this analysis, the Illinois
14 EPA is proposing that new gas stations and
15 facilities beginning operation on and after
16 January 1, 2014 no longer be required to install
17 Stage II equipment. We are proposing that existing
18 facilities be allowed to begin decommissioning their
19 Stage II equipment on January 1, 2014 in accordance
20 with the decommissioning requirements being
21 proposed.

22 By waiting until January of 2014 to
23 begin phasing out the Stage II program in Chicago,
24 there will be no loss in remission reduction

1 benefits, and therefore, the proposal would comply
2 with the Clean Air Act Section 110(l),
3 anti-backsliding provisions.

4 It is important to emphasize that
5 based on the MOVES analysis, Stage II is currently
6 providing emission reductions above and beyond what
7 ORVR is achieving by itself until 2014.

8 The amendments in this rulemaking
9 primarily serve to phase out the Stage II
10 requirements at facilities in the Chicago
11 nonattainment area, require decommissioning
12 procedures by which these facilities are to
13 appropriately decommission their current vapor
14 recovery equipment, and establish time frames for
15 these actions to take place.

16 In order to minimize the time that
17 incompatible Stage II systems are in operation, we
18 are also proposing that decommissioning of all Stage
19 II equipment be completed within three years, or no
20 later than December 31, 2016. The Illinois EPA has
21 held outreach meetings and discussions with members
22 of the petroleum marketing industry and with
23 contractors likely to be involved in decommissioning
24 work, and the three-year time frame was believed to

1 be a reasonable amount of time for all existing
2 affected facilities to complete the decommissioning
3 work.

4 The Petroleum Equipment Institute has
5 developed guidance entitled "Recommended Practices
6 for Installation and Testing of Vapor Recovery
7 Systems at Vehicle Fueling Sites" (hereinafter
8 referred to as the PEI"), and this contains, among
9 other things, the steps involved in dismantling
10 Stage II hardware for both balance and vacuum-assist
11 type systems. The Illinois EPA is not aware of any
12 other industry codes or standards specifically
13 addressing Stage II decommissioning. Therefore, we
14 are requiring that contractors follow the cited PEI
15 procedures as recommended by the USEPA in the
16 aforementioned guidance as these were developed by
17 industry experts with a focus on regulatory
18 compliance and safety. The Illinois EPA believes
19 that consistent and uniform procedure should be in
20 place to avoid gasoline, liquid or vapor leaks
21 during and after decommissioning.

22 In order to ensure that the PEI
23 decommissioning procedures are properly implemented
24 and as recommended by the PEI, the Illinois EPA is

1 proposing to require that contractors involved in
2 the decommissioning process are registered or
3 licensed by the state. There are no State of
4 Illinois licensing or registration requirements
5 specific to the decommissioning of Stage II
6 equipment. However, the Office of the State Fire
7 Marshal and the Illinois Department of Agriculture
8 have contractor licensing and registration
9 requirements for work performed on gas station
10 dispensers, underground storage tank piping and tank
11 testing.

12 All three agencies agree that
13 contractors that are licensed with both the State
14 Fire Marshal and the Department of Agriculture are
15 best suited to perform the decommissioning work due
16 to their expertise in working with the dispensers,
17 piping, and underground storage tanks.

18 Therefore, we are proposing that
19 contractors doing a Stage II decommissioning work
20 should be licensed with both the State Fire Marshal
21 and the Department of Agriculture.

22 The three agencies further believe
23 that to ensure that the decommissioning work
24 involving the dispenser is done correctly, including

1 the reprogramming of the dispenser software for the
2 "no presence of Stage II" setting, the licensed
3 contractor should also be certified by the specific
4 dispensing equipment manufacturer to work on that
5 manufacturer's dispenser if the company provides
6 such certification.

7 The Illinois EPA is also proposing
8 recordkeeping and reporting requirements prior to
9 and following the completion of the decommissioning
10 work.

11 The Illinois EPA believes that the
12 PEI procedures, as well as the remainder of the
13 Agency's proposed decommissioning procedures and
14 standards, are technically feasible. These
15 procedures and standards and the related timeframes
16 for the decommissioning work were supported by
17 industry representatives and other state government
18 agencies in our outreach meetings and
19 communications.

20 In Sections 218.583(e) and
21 219.583(e), the Illinois EPA is proposing to repeal
22 the registration program for gas stations and
23 facilities subject to the Stage I requirement upon
24 adoption of these amendments by the Board due to

1 other notification and recordkeeping requirements.
2 Repeal of the Illinois EPA's Stage I registration
3 programs and revision to the Stage II registration
4 program would result in the unattended consequence
5 of these sources being required to obtain an air
6 permit. Therefore, with respect to state minor
7 source permitting in Section 201.146(1), we are
8 proposing to exempt the stations and facilities
9 subject to Stage I and Stage II from the requirement
10 to obtain a permit.

11 Regarding the costs for the
12 implementation of this proposal, the USEPA issued a
13 final regulatory support document outlining the
14 near-term and long-term costs and cost benefits of
15 decommissioning Stage II vapor recovery systems
16 presented as national averages.

17 To augment the USEPA's cost
18 information, the Illinois EPA requested cost
19 estimates from a few of the major licensed
20 contractors that do gasoline dispenser and fuel
21 infrastructure work in the Chicago area. The
22 contractors provided a range of cost estimates
23 related to the decommissioning of Stage II
24 equipment. Cost ranges resulted due to the

1 differences in the manufacturer of the dispenser,
2 the type and design of the Stage II system, and the
3 number of nozzles per dispenser. The cost estimates
4 received for decommissioning work ranged from 2,000
5 to \$7,000 per station.

6 The USEPA reported estimated annual
7 cost savings after incurring the initial
8 decommissioning costs to be in the range of 3,000 to
9 \$6,000. Cost savings may begin immediately after
10 the decommissioning process is completed, and in the
11 initial year, the savings could be a thousand
12 dollars or more after subtracting the cost to
13 decommission. These cost savings are attributed to
14 decreased maintenance, training, etc.

15 USEPA also stated in its guidance
16 document that new facilities could save 20,000 to
17 \$60,000 by not having to purchase and install Stage
18 II equipment and related hardware.

19 Overall, the Illinois EPA believes
20 that this proposal is economically reasonable
21 considering the recurring annual cost savings after
22 decommissioning is completed and will achieve
23 additional emission reduction benefits for the
24 Chicago area.

1 And this completes my testimony.

2 MR. MOHR: Mr. Cooper?

3 NARRATIVE TESTIMONY

4 BY ROSS COOPER:

5 Good afternoon. My name is Ross
6 Cooper. I'm an Environmental Protection Engineer
7 III with the Clean Air Act Permit Program (CAAPP)
8 Unit of the Permit Section at the Illinois EPA.
9 Among various permit duties, I was tasked with
10 providing technical support for this rulemaking as
11 it related to air permitting, specifically Part 201.

12 Part 201 contains the State permit
13 exemption listing of 35 IAC 201.146 which was
14 directly impacted by the proposed registration
15 changes allowed by the Stage II waiver previously
16 discussed. The impact required the part to be
17 reopened for revisions, and the Agency took the
18 opportunity to investigate thematically related
19 State permit exemptions and CAAPP insignificant
20 activities which could benefit from an update.

21 After review of the existing
22 regulations, the Agency is proposing several
23 revisions to the State permit exemption listing as
24 well as the CAAPP insignificant activity listing.

1 The changes this rulemaking proposes
2 regarding the State permit exemption listing of 35
3 IAC 201.146 are a revised permit exemption at 35 IAC
4 201.146(1) which removes the reference to the Stage
5 I registration and modifies its use by broadening
6 the scope of exempting retail gasoline stations to
7 more generally exempt the storage and dispensing of
8 fuels that are used exclusively for mobile sources
9 (i.e., on-road or off-road vehicles and mobile
10 equipment). This revision is desired to broaden the
11 exemption's use beyond retail dispensing to include
12 emission sources at private or commercial entities
13 whose emissions from these activities are small, and
14 to address the removal of Stage I and II
15 registration requirements while maintaining the
16 existing exemptions.

17 This revised exemption specifically
18 does not recognize as an exemption the filling or
19 dispensing of distribution vessels such as tanker
20 truck tanks, rail tanks, barge storage, or other
21 similar distribution vessels.

22 A revised permit exemption at 35 IAC
23 201.146(n) (1) which proposes to strike the reference
24 to Stage I and instead clarify the intent of the

1 language that any amount of material or any mixture
2 of any material that is listed as a hazardous air
3 pollutant (HAP) is not included in this storage tank
4 permit exemption. Gasoline would be considered a
5 mixture of materials containing HAP and therefore is
6 not eligible to use this particular exemption.

7 This revision is desired to correct a
8 longstanding misinterpretation of the language's
9 intent as written (i.e., gasoline does not apply as
10 it is not a HAP pursuant to the definition of HAP).

11 A revised permit exemption at 35 IAC
12 201.146(kk) which repeals that particular permit
13 education (i.e., registration) as it is no longer
14 applicable due to the Stage I and II permit
15 exemption being moved to 35 IAC 201.146(l) without
16 the registration requirement.

17 A revised permit exemption at 35 IAC
18 201.146(nn) which removes the exclusion for gasoline
19 fuel handling because gasoline fuel handling or
20 dispensing to mobile sources is proposed to be
21 exempt from permitting under the aforementioned 35
22 IAC 201.146(l).

23 The changes this rulemaking proposes
24 regarding CAAPP insignificant activity listing of 35

1 IAC 201.210 are:

2 A revised insignificant activity at
3 35 IAC 201.210(a)(10) which specifically declares
4 gasoline and/or gasoline ethanol blends storage of
5 less than 2,000 gallons to be considered an
6 insignificant activity. 2,000 gallons was mirrored
7 from a break point in 40 CFR 63 Subpart 6C and our
8 existing state rules.

9 This revision is desired to address
10 the previous lack of a categorical exemption for
11 gasoline and/or gasoline ethanol blends, fuel
12 storage in 35 IAC 201.210.

13 A new insignificant activity at 35
14 IAC 201.210(a)(19) which specifically declares fuel
15 dispensing into mobile sources, example, fleet
16 vehicle, bulldozer, landfill compactor or other such
17 similar on-road or off-road vehicle to be considered
18 an insignificant activity for:

19 A) a gasoline or ethanol fuel
20 blending if the annual throughput of such fuel
21 dispensed is less than 120,000 gallons (rolling 12
22 month total); and

23 B) other fuels unrestricted by
24 throughput.

1 The separation of gasoline and
2 gasoline-ethanol blend from other common fuels is
3 due to the emissions potential due to the difference
4 in vapor pressure. 120,000 gallons was mirrored
5 from a break point in 40 CFR 63 Subpart 6C. This
6 new insignificant activity specifically does not
7 recognize as an insignificant activity the filling
8 or dispensing of distribution vessels such as tanker
9 trucks, rail tank cars, barge storage or other such
10 similar distribution vessels. This revision is
11 desired to address the previous lack of a
12 categorical exemption for gasoline or other fuel
13 dispensing in 35 IAC 201.210.

14 A revised insignificant activity at
15 35 IAC 201.210(b)(4) which excludes the expanded
16 usage of fuel (i.e., gasoline or gasoline/ethanol
17 blends, fuels or other fuels). The revision does
18 not change that this particular insignificant
19 activity is intended solely for vehicle maintenance
20 and servicing activities at the source. This
21 revision is necessary for consistency with the
22 previously proposed fuel and dispensing changes.

23 The changes this rulemaking proposes
24 regarding the reporting requirements of 35 IAC

1 201.302 are:

2 A revised 35 IAC 201.302 which is
3 modified to account for the evolution of newer
4 exemptions and additional sources not requiring a
5 permit (e.g., Registration of Smaller Sources
6 (ROSS)). The modification involves redirecting its
7 trigger from the requirement to submit an annual
8 report (i.e., any emission unit unless specifically
9 exempted) to the applicability provisions for the
10 annual emission report (AER) of Part 254,
11 specifically 35 IAC 254.102.

12 Additionally, the reference to 35 IAC
13 201.302(d) is also proposed to be deleted as the
14 exemption it draws upon is proposed to be moved to
15 35 IAC 201.146(1) and when combined with the
16 redirected AER trigger, it is no longer needed.

17 Regarding the feasibility of the
18 proposed new and modified exemptions and
19 insignificant activities, the Agency believes that
20 the changes are feasible. This rulemaking, rather
21 than command and control via a given pollution
22 control device or constriction of a work practice,
23 proposes revisions which are effectively expansions
24 to the existing listings, and hence, no technical

1 feasibility issue exists.

2 The Agency does not foresee an
3 adverse environmental impact as the proposed
4 expanded activities are small sources of emissions
5 which are bound to any and all applicable rules
6 irregardless of the necessity for a permit.

7 Regarding the economic reasonableness
8 for the proposed revisions, the Agency believes that
9 there will be a slight reduction in fees to the
10 Agency from both major and minor source construction
11 and operating permit fees as emission sources would
12 now be able to avoid those fees which previously
13 were triggered.

14 Slightly lowering permit fees for the
15 Agency conversely means a slight cost savings to the
16 affected sources.

17 Finally, the permitting burden for
18 the Agency and the permittee would be lowered
19 through the expanded exemption and insignificant
20 activity listings.

21 This concludes my testimony.

22 HEARING OFFICER MCGILL: Thank you.

23 We're going to move on to questions
24 for IEPA's witnesses with the understanding that

1 with respect to some of the Board's questions, the
2 Agency may choose to respond in writing instead or
3 at least to supplement their answer here today in
4 writing and with the understanding that some of
5 these questions may be deferred to the witnesses
6 present for the Office of the State Fire Marshal or
7 the Department of Agriculture.

8 Before the Board proceeds with its
9 questions, I just wanted to note if anyone else in
10 attendance has a question if you would first just
11 signal me and state your name and title and
12 organization before posing your question.

13 With that, I would just ask if anyone
14 present has any questions for IEPA's witnesses,
15 anyone not from the Board.

16 Seeing none, the Board is going to
17 move on with some of its questions. These were set
18 forth in a Hearing Officer Order issued on the 6th
19 of May, and bear with us. Some of these are dealing
20 with the finer points of some of the rule language
21 so the questions can be a little lengthy. My
22 apologies for that.

23 At pages 2 -- and this corresponds to
24 question 1 from the Hearing Officer Order

1 attachment, and these questions are concerning
2 Part 201.

3 Question 1. At pages 2 and 3 of
4 Mr. Cooper's prefiled testimony, Mr. Cooper explains
5 the need for the proposed amendments to
6 Section 201.146(n)(1) ("any amount of material or
7 mixture of any material listed as a hazardous air
8 pollutant pursuant to Section 112(b) of the Clean
9 Air Act"). Are like amendments with respect to
10 amount and mixture needed in Sections
11 201.210(a)(10)(A) and 201.210(b)(14) which also
12 refer to any material listed as a hazardous air
13 pollutant pursuant to Section 112(b) of the Clean
14 Air Act?

15 MR. MOHR: Mr. Cooper.

16 MR. COOPER: The Agency believes this
17 to be a good comment. The rationale used in the
18 proposed Section 201.146(n)(1) similarly tracks to
19 Section 201.210(a)(10)(A) and 201.210(b)(14). The
20 Agency recommends the change be made.

21 HEARING OFFICER MCGILL: Thank you.

22 Question 2. In IEPA's view, is an
23 underground storage tank or UST considered "not used
24 to store" or "not used for the storage of" gasoline

1 citing Sections 201.146(n)(1) and 201.210(a)(1)
2 respectively if the UST is put into "temporary
3 closure" pursuant to 41 Illinois Administrative Code
4 175, and I'll just give the background for that
5 question.

6 Under the temporary closure
7 regulations of the Office of the State Fire Marshal
8 or OSFM, a UST is considered "empty" when "all
9 materials have been removed using commonly employed
10 practices so that no more than 2.5 centimeters, or
11 1 inch, of residue or 0.3 percent by weight of the
12 total capacity of the UST system remain in the
13 system." And that's citing 41 Illinois
14 Administrative Code 175.810(a)(1) which is based
15 upon 40 Code of Federal Regulations
16 Section 280.70(a).

17 MR. MOHR: Mr. Cooper.

18 MR. COOPER: No. It is not the
19 IEPA's view that a storage tank in temporary closure
20 status is considered to be not storing a volatile
21 liquid like gasoline. The proposed revisions retain
22 the "any material" criterion which would include a
23 small fraction in the storage tank.

24 Furthermore, IEPA permitting

1 requirements are triggered by the potential to emit
2 of an air pollutant which a storage tank having the
3 capability to store or having previously stored a
4 volatile liquid does. As long as a storage tank is
5 on site, it is considered an emission unit.

6 HEARING OFFICER MCGILL: So if I
7 understand that correctly, it could be empty under
8 the Fire Marshal regulations but still be considered
9 used to store gasoline?

10 MR. COOPER: Correct.

11 HEARING OFFICER MCGILL: For purposes
12 of the agency's proposal?

13 MR. COOPER: Correct.

14 HEARING OFFICER MCGILL: Thank you.

15 Question 3. Proposed
16 Section 201.210(a)(10)(B) states in part, "gasoline,
17 including gasoline/ethanol blend fuels." This
18 "including" language is repeated at proposed
19 Sections 201.210(a)(19)A and (b)(4). The term
20 "gasoline" is used in Section 201.210(a)(10)(A)
21 however without this "including" language. Should
22 "including gasoline ethanol blend fuels" be added to
23 Section 201.210(a)(10)(A)?

24 MR. MOHR: Mr. Cooper.

1 MR. COOPER: The Agency believes this
2 to be a good comment as the rationale used in the
3 proposed sections similarly tracks to
4 Section 201.210(a)(10)(A).

5 It should be noted that if the Board
6 adopts the amendments from the first question, i.e.,
7 amount and mixture, this additional amendment would
8 become duplicative.

9 HEARING OFFICER MCGILL: I'm sorry.
10 Could you explain that, your testimony about this
11 becoming duplicative?

12 MR. COOPER: The gasoline is a
13 mixture of HAP, and the comment from the first
14 question also was directed at 201.210(a)(10)(A).
15 Therefore, adopting the comment from question No. 1
16 would already cover gasoline and gasoline blend in
17 question 3.

18 HEARING OFFICER MCGILL: But it's
19 your testimony that the change suggested by question
20 3 is one that should be made?

21 MR. COOPER: I actually did not make
22 that statement. My statement was the Agency
23 believes this is a good comment as the rationale
24 used in the proposed sections similarly tracks those

1 other sections.

2 And then I simply gave a note: It
3 should be noted that if the Board adopts the
4 amendments from the first question, i.e. amount and
5 mixture, this additional amendment would become
6 duplicative.

7 The change would be okay. It is
8 potentially unnecessary.

9 HEARING OFFICER MCGILL: Okay. So
10 belts and suspenders as attorneys say sometimes?

11 MR. COOPER: Correct.

12 HEARING OFFICER MCGILL: Okay. Thank
13 you.

14 Question 4. Proposed
15 Section 201.210(a)(19)(B) states, "Distillate oil,
16 including kerosene and diesel fuel, biodiesel, and
17 biodiesel/distillate oil blends." This "including"
18 language is repeated at proposed Section
19 201.210(b)(4). Please clarify which listed fuels
20 are intended to fall within the word "including."
21 That is, does "distillate oil" include kerosene and
22 diesel fuel but not biodiesel or
23 biodiesel/distillate oil blends?

24 If you could go ahead and respond to

1 that question before I pose the next one.

2 MR. COOPER: Yes. Distillate oil
3 does include kerosene and diesel fuel but not
4 biodiesel or biodiesel distillate oil blends.
5 Distillate oil is a defined term which specifies
6 fuels No. 1 and No. 2, kerosene and diesel fuel
7 respectively.

8 HEARING OFFICER MCGILL: Okay. Thank
9 you.

10 Also, the term distillate oil is used
11 in sections 201.146(n)(3) and 201.210(a)(11) but
12 without this "including" language.

13 Should the including language be
14 added to Sections 201.146(n)(3) and 201.210(a)(11).

15 MR. MOHR: Mr. Cooper.

16 MR. COOPER: The Agency believes this
17 to be a good comment. The rationale used in the
18 proposed Section 201.210(a)(19)(B) similarly tracks
19 the sections in 201.146(n)(3) and 201.210(a)(11).
20 The Agency recommends the change be made.

21 HEARING OFFICER MCGILL: Thank you.

22 Question 5. IEPA proposed amending
23 Section 201.210(b)(4) as follows: "General vehicle
24 maintenance and servicing activities at the source

1 other than gasoline including gasoline/ethanol blend
2 fuels, distillate oil including kerosene and diesel
3 fuel, biodiesel and biodiesel/distillate oil blends
4 fuel handling and dispensing."

5 Is it IEPA's intent that all of those
6 listed fuels beginning with gasoline modify the
7 words "fuel handling and dispensing"?

8 MR. MOHR: Mr. Cooper.

9 MR. COOPER: It is the IEPA's intent
10 that all of the listed fuels modify the words "fuel
11 handling and dispensing." Fuel handling or
12 dispensing are excluded from this insignificant
13 activity.

14 HEARING OFFICER MCGILL: Thank you.

15 And the last question from the
16 Hearing Officer Order on Part 201 is question 6.
17 Please provide some examples of how the "rolling 12
18 month total" would be calculated for purposes of
19 determining the "annual average throughput" in
20 proposed Section 201.210(a)(19)(A).

21 MR. MOHR: Mr. Cooper.

22 MR. COOPER: Upon review of the
23 question, the term average is a drafting error and
24 should be stricken from the proposed rule. The

1 intent of the proposal is for an annual limitation
2 determined by a rolling 12 month total. A rolling
3 12 month total is determined on a monthly basis from
4 the sum of the data from the current month plus the
5 preceding 11 months.

6 HEARING OFFICER MCGILL: Thank you.

7 I'm going to move on to questions
8 regarding Part 218.

9 Question 1. Why are the proposed
10 amendments to Section 218.586(b) specifically
11 referring to "compliance shall be required and
12 demonstrated" and Section 218.586(d) specifically
13 referring to shall comply and demonstrate
14 compliance, why are those proposed amendments
15 necessary?

16 MR. MOHR: I will answer that
17 question since I wrote it. They are not necessary
18 but it's a personal preference of mine. The reason
19 being in my view, you demonstrate compliance a lot
20 of times after you've already complied with
21 something or during the time that you're complying
22 with it.

23 So, for example, in this case, if you
24 have a date by which you can begin decommissioning

1 or a date by which you have to complete
2 decommissioning, you have to comply on a particular
3 date, as an example, an end date.

4 How you demonstrate compliance with
5 that, at least in this case, would be providing
6 notice of intent as to when you're going to begin
7 decommissioning and checklists as to when you did
8 ultimately complete that decommissioning. That's
9 why I included the words required and also comply.
10 Ultimately probably unnecessary but more clear at
11 least in my mind.

12 HEARING OFFICER MCGILL: The followup
13 to that then would be our question 2. Given your
14 view is that those amendments are necessary, should
15 like amendments be made in other Part 218 provisions
16 which are not open in this rulemaking so they
17 couldn't be amended in R13-18 but it similarly
18 referred to demonstrating compliance, and examples
19 would be Sections 218.187(c) and
20 218.204(a)(2)(B)(ii).

21 MR. MOHR: As you mentioned, they
22 aren't open in this proceeding so they're sort of
23 irrelevant in this proceeding, but I did review
24 them, and they appeared to be fine to me, so I would

1 not make changes in those specific sections.

2 HEARING OFFICER MCGILL: Question 3
3 in Section 218.586(d)(1) and (g)(4), should language
4 be added so as to further identify what is being
5 decommissioned; that is, decommissioning of the
6 vapor collection and control system?

7 MR. MOHR: From a legal standpoint,
8 both of those subsections (d)(1) and (g)(4)
9 specifically relate back to subsection (i) which
10 requires decommissioning of vapor collection and
11 control systems, so in my opinion, from a legal
12 standpoint, you don't need to make that change.

13 HEARING OFFICER MCGILL: But because
14 it would be redundant; not because it's inaccurate.

15 MR. MOHR: Exactly.

16 HEARING OFFICER MCGILL: Thank you.

17 MR. MOHR: You certainly could make
18 the change if you chose to do so.

19 HEARING OFFICER MCGILL: Question 4.
20 Must the "records relating to decommissioning -- I'm
21 referencing Section 218.586(g)(4) -- be maintained
22 at the site of the gasoline dispensing operation?

23 MR. MOHR: Mr. Burkhart.

24 MR. BURKHART: No. They do not have

1 to be maintained at the gasoline facility or the
2 retail gas station. The station would hopefully
3 keep them at the site but they're not required to be
4 onsite.

5 HEARING OFFICER MCGILL: That
6 addresses the follow-up which was if they are
7 required to be maintained at the gasoline dispensing
8 operation, how would the record be maintained if the
9 site closes, so I'll move on to the next question
10 which is, does Section 218.586(g)(4) correctly read
11 30 minutes.

12 MR. BURKHART: Yes, that's correct.

13 HEARING OFFICER MCGILL: So in the 30
14 minutes, there was a reference to IEPA requesting a
15 copy of decommissioning records. They would need to
16 be produced by the gasoline dispensing operation
17 within 30 minutes of that request?

18 MR. BURKHART: Yes. Let me clarify.
19 This was a suggestion by the Illinois Petroleum
20 Marketers Association. They were letting us know
21 that the Office of State Fire Marshal has a 30
22 minute requirement for paperwork or documents that
23 are requested by their inspectors, so they wanted to
24 be consistent because they didn't want to have the

1 two different timeframes to deal with between two
2 different state departments. So they actually asked
3 us to make it consistent with the Fire Marshal
4 regulations and also include a 30 minute requirement
5 in these proposed rules.

6 HEARING OFFICER MCGILL: Maybe I
7 could ask a question of the State Fire Marshal
8 witness on that, and if you're not prepared to
9 answer it, that's fine, but is it the State Fire
10 Marshal's experience that these sorts of records
11 that have to be turned over within 30 minutes, are
12 those typically kept onsite at the gasoline station?

13 MR. SCHNELLER: Fred Schneller.

14 HEARING OFFICER MCGILL: Sir, if you
15 could again just state your title and agency,
16 please.

17 MR. SCHNELLER: I'm the Division
18 Manager for Petroleum Chemical Safety Division in
19 the Office of the State Fire Marshal.

20 HEARING OFFICER MCGILL: Thank you.

21 MR. SCHNELLER: And when our
22 inspectors do their inspections, typically the
23 record will be in physical form on scene. They can
24 also be obtained electronically, but the requirement

1 in our regulations is that when the inspector is on
2 scene that the records be made available on his
3 request within 30 minutes.

4 HEARING OFFICER MCGILL: So it's
5 conceivable then, and I guess this is a question
6 that you can follow up on, but I ask the Agency with
7 respect to this proposed amendment. Could the
8 facility produce these records electronically, kind
9 of laptop and present that to the inspector on the
10 scene in lieu of a hard copy?

11 MR. SCHNELLER: We do accept that.

12 HEARING OFFICER MCGILL: Okay.
13 That's something the IEPA envisions doing as well?

14 MR. BURKHART: Certainly. If we have
15 a need to request that information, we will
16 certainly take it electronically.

17 HEARING OFFICER MCGILL: Thank you.
18 Question 5. Does IEPA have a sample
19 ten-day "notice of intent" form referred to in
20 proposed Section 218.586(i)(2)(A)?

21 MR. BURKHART: We are currently
22 drafting the notice of intent form, and we can
23 certainly provide those at a later date if you'd
24 like to see those.

1 HEARING OFFICER MCGILL: We would.

2 Thank you.

3 And is that a form that would be
4 available on IEPA's website once the rules are
5 adopted?

6 MR. BURKHART: Yes. We will put the
7 decommissioning information for the gas stations or
8 facilities to access on the website along with the
9 forms they will need. That is certainly our plan.

10 HEARING OFFICER MCGILL: Thank you.

11 Some of these questions were posed by
12 board members, and so I'm going to defer a couple of
13 these to the lead board member in this rulemaking,
14 several of the upcoming questions. I think I still
15 have a couple but just to give my pipes a rest, I'm
16 going to let the author pose the last several of
17 these in Part 218.

18 Question 6. In Section
19 218.586(i)(2)(B), is Section 14.6.14 of the
20 Petroleum Equipment Institute (PEI) Recommended
21 Practices cited as PEI/RP300-09 excluded from
22 applicability because IEPA will be providing the
23 decommissioning checklist and certification pursuant
24 to Section 218.586(i)(2)(C)?

1 MR. BURKHART: Yes, it is; the reason
2 being is that we will be requesting the registration
3 or license numbers of the various contractors
4 involved in decommissioning. Those registration or
5 licenses tie into the Office of State Fire Marshal
6 and to the Department of Agriculture. So there will
7 be some differences between what you see in the PEI
8 and what our forms actually look like.

9 HEARING OFFICER MCGILL: That was one
10 of our questions is how would IEPA's form differ
11 from Appendix C of the PEI document.

12 Anything else of note in terms of the
13 difference that you're anticipating?

14 MR. BURKHART: No. There will be a
15 certification form that each vendor involved at the
16 gasoline station or facility will have to sign
17 stating that they followed the procedures, they
18 followed the rules, and that they are licensed by
19 one of the other two agencies to perform that work.

20 HEARING OFFICER MCGILL: And is that
21 sample checklist and certification still being
22 prepared by the Agency?

23 MR. BURKHART: Yeah, along with the
24 notice of intent form, correct. We can provide

1 those later if you'd like.

2 HEARING OFFICER MCGILL: Thank you.

3 And that likewise would be posted on
4 the Agency's website eventually?

5 MR. BURKHART: Correct.

6 HEARING OFFICER MCGILL: Thank you.

7 In Sections 218.586(i)(2)(B)(i) and
8 (ii), please explain what the two OSFM "licensure
9 models" are as well as the Illinois Department of
10 Agriculture's "3-A Gasoline Pump Meters Code."

11 MR. MOHR: The Agency is going to
12 make a response to that, and then we're going to
13 defer over to the Office of the State Fire Marshal
14 and the Department of Agriculture to add onto that.

15 HEARING OFFICER MCGILL: Thank you.

16 MR. BURKHART: And as I state in my
17 testimony, there are no specific standards or
18 procedures right now with the State of Illinois with
19 regards to decommissioning work of Stage II
20 equipment, and as I also emphasize that the Office
21 of the State Fire Marshal and Department of
22 Agriculture already has existing licensing and
23 registration requirements tying into the dispenser,
24 the typing and the two types of tests that will be

1 necessary during the decommissioning process.

2 The Petroleum Equipment Institute
3 recommended this type of, and USEPA as well,
4 recommended these type of existing requirements.
5 The state may have to incorporate these into the
6 decommissioning rules.

7 We discussed it with the Department
8 of Agriculture and the Office of the State Fire
9 Marshal, and they agreed that this would be a good
10 way to do this.

11 So having introduced that topic, I'll
12 let these gentlemen explain further exactly what
13 those procedures are.

14 HEARING OFFICER MCGILL: Why don't we
15 take up the State Fire Marshal licensure models
16 first.

17 MR. SCHNELLER: The State Fire
18 Marshal's Office in our division licenses
19 contractors who work on USDs, and we license them in
20 five different modules, two of which we're going to
21 definitely apply to this decommissioning effort.

22 One of them is the installed retrofit
23 license, and it's going to cover anything that has
24 to do with repairing or installing components of a

1 system.

2 The other is the tank tightness
3 testing license which is going to be used at the end
4 of the decommissioning effort in order to ensure
5 piping is, first of all, tight as it should be, and
6 at the end, augmenting has been put back in correct
7 sequence so that the pipes are manifolded as they're
8 expected to be by the PEI standard, and those are
9 contractors which are licensed in our database which
10 IEPA said they would go to as the source for the
11 contractors working on these.

12 HEARING OFFICER MCGILL: And is the
13 correct term licensure module or model?

14 MR. SCHNELLER: Module.

15 HEARING OFFICER MCGILL: Module.

16 Okay.

17 MR. SCHNELLER: It's based on ICC
18 testing modules, International Codes Council, which
19 is what we used as the testing.

20 HEARING OFFICER MCGILL: I misspoke.

21 Thank you.

22 We also had a question for the
23 Department of Agriculture regarding the 3-A Gasoline
24 Pump Meters Code.

1 MR. RATHBUN: Yeah. I'm Doug
2 Rathbun. I'm bureau chief for Weights and Measures
3 Bureau. Our bureau registers any individual who
4 sells or works on anything that is used for
5 commercial purposes, any weighing or measuring
6 device used for commercial purposes of which a motor
7 fuel dispenser is, and the 3-A is a designation that
8 we use in handouts to say those persons and
9 companies who are qualified to work on motor fuel
10 dispensers, and we also maintain a list on our
11 website to show to the public or anyone seeking a
12 certified registered repair person to work on motor
13 fuel dispensers.

14 HEARING OFFICER MCGILL: Thank you to
15 both of you for contributing to those answers.

16 That concludes question 7. We're
17 going to move on to question 8 now, and I'll turn
18 that one over to Board Member O'Leary.

19 BOARD MEMBER O'LEARY: And
20 I'll finish out Part 218.

21 Question No. 8. In
22 Section 218.586(i)(2)(B)(i) and (ii), please
23 explain...excuse me. I'll restate. In
24 Section 218.586(i)(2)(B)(iii), please describe

1 generally the "pressure decay test" and the
2 "tie-tank test" and explain why the former must be
3 "passed" while the latter must be "conducted and
4 passed."

5 MR. MOHR: The Agency is going to
6 provide a response to the latter portion of that
7 question, and then we will defer to the Office of
8 the State Fire Marshal to discuss the tests.

9 MR. BURKHART: In Section 14 of the
10 PEI which is attached to the Technical Support
11 Document, the language they used on the one is
12 "passed" while the other is "conducted and passed,"
13 so that language is actually borrowed out of their
14 document, but I think for practical purposes, in
15 fashion, they need to both be conducted and passed,
16 so that is, practically speaking, conducted and
17 passed for both of those types of tests.

18 And the pressure decay test has an
19 appendix with actual measurements that are shown in
20 terms of the parameters used to determine passing of
21 that test on Appendix A of Section 14 whereas the
22 tank tie test we understand to be a pass/fail test,
23 and I will defer to our sister agencies over here to
24 explain further on those tests.

1 MR. MOHR: Before we do that, let me
2 just interject a minute to make sure the record is
3 clear and ask Mr. Burkhart a question.

4 In Section 14.6.12 of the PEI, when
5 it talks about conducting the pressure decay test,
6 it does not specifically reference how that test is
7 supposed to be passed, is that correct?

8 MR. BURKHART: How the test is to be
9 passed?

10 MR. MOHR: Right. In other words, it
11 doesn't say that the test shall be passed in
12 accordance with Appendix A, does it?

13 MR. BURKHART: For the pressure decay
14 test you're talking about?

15 MR. MOHR: Right. Does it say that
16 the pressure decay test must be passed in accordance
17 with Appendix A?

18 MR. BURKHART: Yes; no. I'm sorry.
19 I'm not sure I understand the question.

20 MR. MOHR: In Section 14.6.12 when it
21 says that the pressure decay test shall be
22 conducted, does it say that it shall be passed in
23 accordance with Appendix A?

24 MR. BURKHART: No, not in that

1 paragraph.

2 MR. MOHR: So what you were intending
3 to do in the rule is to simply clarify for the
4 reader that that test must be passed in accordance
5 with Appendix A, is that correct?

6 MR. BURKHART: Correct.

7 MR. MOHR: Second question. With
8 respect to the tie-tank test, the PEI states at
9 Section 14.6.12 that after passing the pressure
10 decay test, conduct a tie-tank test to verify that
11 the tank vents are still functional.

12 MR. BURKHART: Correct. That's what
13 it says.

14 MR. MOHR: And then it contains a
15 note that says see carb test procedure TP-201.3C
16 tie-tank test for a description of this test. Is
17 that what it says?

18 MR. BURKHART: Correct. It ties
19 right into the carb test procedure.

20 MR. MOHR: But it does not
21 specifically say that you shall conduct the tie-tank
22 test in accordance with TP-201.3C nor does it state
23 that you shall pass it in accordance with that test,
24 is that correct?

1 MR. BURKHART: Correct.

2 MR. MOHR: So in your proposed
3 rulemaking, you were attempting to clarify for the
4 reader that the tie-tank test must be conducted and
5 passed in accordance with TP201.3 C, is that
6 correct.

7 MR. BURKHART: Correct.

8 MR. MOHR: Thank you.

9 HEARING OFFICER MCGILL: Thank you.

10 I believe there's going to be some
11 testimony from the Fire Marshal witness or the
12 Department of Agriculture witness on the two tests?

13 MR. SCHNELLER: I can answer on the
14 tests.

15 In general, the pressure decay test
16 they're referring to, that's something that's
17 already done on an annual basis at Stage II
18 facilities, and as a side note, the contractors who
19 do that testing are licensed through our office as
20 tank testing module.

21 It's basically done to verify that
22 all fittings are tight and they seal off sections of
23 the pipe, apply meter gauges, and in certain amount
24 of time based on certain formulas that are built

1 into the testing equipment, they are able to
2 determine whether the tank and the piping is tight
3 to accepted standards or not based on how the
4 pressure drops. So it's called static test because
5 the pressure is applied and then let sit and see
6 what happens.

7 If it's not acceptable, then they
8 tighten piping until they can get an acceptable
9 test, and that's something they already have been
10 doing on an annual basis, and that's going to be the
11 first of the tests that's going to be done, and it's
12 done according to the carb standard that they
13 referred to which is the industry standard.

14 The second test, the tie-tank test,
15 is one to make sure that once they do the
16 decommissioning and recombine the piping that is
17 left in there, that the piping vents satisfactorily,
18 and that they haven't done anything in the
19 decommissioning process to interfere with the
20 required ventilation of the system and that tie-tank
21 test is a pass/fail test as they mentioned also done
22 by carb standard, also done by the same contractors.

23 HEARING OFFICER MCGILL: Thank you.

24 Go off the record for just a moment.

1 (Whereupon an off-the-record
2 discussion transpired at this
3 time.)

4 HEARING OFFICER MCGILL: Why don't we
5 take a ten-minute break right now, and we'll pick up
6 again at 12:25 and then forge ahead and finish off.

7 (Recess taken.)

8 HEARING OFFICER MCGILL: Okay. We're
9 going to go back on the record.

10 The witness from the Office of State
11 Fire Marshal and the witness from the Department of
12 Agriculture, I've thanked both of them off the
13 record for attending today and contributing. I'll
14 do the same on the record.

15 We appreciate your input, and before
16 you're relieved to go on about your day, I just
17 wanted to make sure and ask, does anyone have any
18 questions for either of those witnesses before they
19 are relieved?

20 Seeing none, again, thank you for
21 helping out, and I appreciate your contributions.

22 We're going to resume with the
23 Board's questioning of the IEPA's witnesses, and we
24 are picking up with question 9 under Part 218 from

1 the attachment to the hearing officer's order.

2 MR. O'LEARY: Yes. Under
3 Section 218.586(i)(2)(C), which "test results"
4 should be submitted to IEPA?

5 MR. BURKHART: It will be both tests.
6 It will be the pressure decay test results and the
7 tie-tank test. Both will be, the test results of
8 both those tests will need to be reported to us.

9 BOARD MEMBER O'LEARY: Question No.
10 10. At pages 14 to 15 of Mr. Burkhardt's prefiled
11 testimony, there is this statement: "In the initial
12 year, the savings could be \$1,000 or more after
13 subtracting the costs to decommission."

14 Does "the initial year" refer to the
15 first year after decommissioning is complete?
16 Please explain how the "\$1,000 or more" in savings
17 was arrived at by "subtracting the costs to
18 decommission."

19 MR. BURKHART: The thousand dollars
20 or more in savings was actually derived from the
21 USEPA's May 8th of 2012 document that is Attachment
22 H of the Technical Support Document. That number
23 actually was specifically \$997 in Table 4 in the
24 example that they gave, and the initial year may or

1 may not...it could be in the middle of that year, it
2 could be at the end of the year.

3 Basically, the USEPA in that May 8th
4 document gave some examples of the savings, and they
5 had a series of three tables, part of that showing a
6 model gasoline dispensing facility, and it really
7 comes down to the timing. They assume an 18-month
8 lifetime cycle of the hoses and the swivels and the
9 nozzles and things like that, so therefore, some gas
10 stations, there may not be an extra cost to switch
11 out the hardware to non-Stage II hardware products
12 if they were close to that 18-month cycle anyway.

13 So USEPA assumed that there would be
14 no extra cost in that example of that hardware if
15 they were close to the 18-month end of life for the
16 current Stage II hardware because they were going to
17 have to do it anyway.

18 Another example was given if they had
19 just replaced or in a short amount of time had
20 replaced the hardware in that 18-month cycle that
21 they now have to swap it out with the non-Stage II
22 hardware, that that hardware that was for the Stage
23 II equipment or the Stage II hardware itself has
24 life left in it, and for another station that's not

1 decommissioning right away or perhaps there's a few
2 states that will keep their Stage II programs, that
3 that Stage II hardware they are now getting rid of
4 could be resold either within the area or perhaps
5 outside the area.

6 So more or less, they were showing
7 two examples of that, that there could be cost
8 savings in the initial year after decommissioning
9 and with what I had just said in those two examples.

10 BOARD MEMBER O'LEARY: Question No.
11 11...

12 MR. MOHR: Could I interject? You
13 might want to clarify the record a little bit here
14 if I could ask Mr. Burkhart some questions.

15 HEARING OFFICER MCGILL: Sure.

16 MR. MOHR: The thousand dollar
17 savings approximately that we're referencing here in
18 question 10, that can occur at the time of
19 decommissioning, is that correct?

20 MR. BURKHART: It could occur at the
21 time of decommissioning if for example...you know,
22 part of this, they're going to save on electricity
23 cost right away from the date that they turn off
24 that equipment. Maintenance costs will start to

1 decrease. If they happen to sell their Stage II
2 hardware to another station, they could get an
3 immediate income for that, so it could be.

4 MR. MOHR: So that operation could
5 realize cost savings at the time of decommissioning
6 as opposed to the following year.

7 MR. BURKHART: It could, and I don't
8 know the market value of the Stage II hardware, if
9 it's early in its life cycle. I don't know the
10 market value for that necessarily.

11 If they had a buyer right away, you
12 know, for that equipment they just removed,
13 potentially, yes, it could be.

14 MR. MOHR: So in terms of calculated
15 and actual cost savings, what you would have to do
16 then is take your costs to decommission, subtract
17 from that, or actually, take your costs of
18 decommissioning, add onto that -- strike that. Take
19 your costs of decommissioning, subtract from that
20 any salvage value of the hanging hardware that you
21 might be able to use, subtract then any operating
22 and maintenance savings that you would have and come
23 up with your cost savings.

24 MR. BURKHART: Yes. That's basically

1 in the model scenario USEPA did when they made this
2 document of 2012. That's essentially what they were
3 showing in the series of four tables in that
4 document.

5 MR. MOHR: And in Table 4, that's
6 where they show how you come up with the savings?

7 MR. BURKHART: Yes.

8 MR. MOHR: Okay. Then after the
9 initial decommissioning event, can you realize cost
10 savings in the subsequent periods?

11 MR. BURKHART: Yes, recurring cost
12 savings, definitely.

13 MR. MOHR: And those would not
14 obviously take into account the savings that you had
15 at the time of decommissioning. It would be a
16 different amount of savings based on purely the cost
17 of not having to do operation and maintenance on the
18 Stage II equipment and replace those more expensive
19 Stage II parts.

20 MR. BURKHART: Correct.

21 MR. MOHR: Thank you.

22 BOARD MEMBER O'LEARY: With a phasing
23 out of Stage II and then if a particular station is
24 going to decommission, what's the likelihood that

1 they would sell the Stage II to another station, to
2 another facility?

3 MR. BURKHART: It's possible that --
4 you know, the stations have three years to do the
5 decommission. It is possible that, you know,
6 depending on the size of the organization that owns
7 a handful or maybe several stations that since the
8 hardware has an 18-month life cycle, a small number
9 of stations start removing their Stage II hardware
10 say early in 2014.

11 Another station is planning on maybe
12 later in 2014 or maybe into 2015 to decommission,
13 but their 18-month life cycle of that current
14 hardware they have for Stage II hardware is coming
15 up shortly. They could purchase the equipment from
16 another station that's already decommissioned to
17 extend, you know, to help extend that timeframe
18 until they're ready to decommission. That is a
19 distinct possibility. That's what USEPA was raising
20 in their document.

21 BOARD MEMBER O'LEARY: Okay.
22 Question No. 11. Please confirm the numbers on the
23 vertical axis of the figure attached as Exhibit 1 to
24 Mr. Burkhardt's prefiled testimony to correspond to

1 total vehicle refuel emissions in tons per day of
2 volatile organic compounds.

3 MR. BURKHART: Yes; the answer is
4 yes, that is correct.

5 BOARD MEMBER O'LEARY: Okay. So
6 you're just confirming the actions and so forth
7 according to the chart on Exhibit 1.

8 MR. BURKHART: Yeah, the vertical
9 axis is showing the refueling emissions in tons per
10 day of volatile organic compounds.

11 BOARD MEMBER O'LEARY: Okay.
12 Question 12 then. Section 5-75(a) of the Illinois
13 Administrative Procedure Act on incorporation by
14 reference states that "the reference in the Agency
15 rules must fully identify the incorporated matter by
16 publisher address and the date in order to specify
17 how a copy of the material may be obtained." 5 ILCS
18 100/5-75(a) (2010) (emphasis added). Please submit
19 an amendment to propose to Section 218.112(ff) that
20 identifies PEI's address for purposes of obtaining a
21 copy of the Recommended Practices (PEI/RP300-09).

22 MR. MOHR: We can give you the
23 address now or we can submit that as an amendment,
24 however, you'd like.

1 Would you like it on the record?

2 HEARING OFFICER MCGILL: Why don't
3 you go ahead and give it to us now. That may
4 suffice.

5 MR. MOHR: The Petroleum Equipment
6 Institute address as specified in the PEI document
7 is P.O. Box 2380, Tulsa, Oklahoma 74101-2380.

8 Acknowledging that that's a
9 requirement, we might also want to include the
10 website address since a P.O. box is relatively
11 useless for the reader. The website address is
12 www.pei.org.

13 You may also wish to include the
14 telephone number, area code (918)494-9696.

15 HEARING OFFICER MCGILL: Thank you.
16 We'll move on to Part 219. I just have one question
17 regarding that part.

18 Why does IEPA propose reserving
19 Subsection (e) of Section 219.583.

20 MR. MOHR: I can respond to that
21 question. In both 218 and 219.583(e), we have
22 reserved or propose to reserve those sections. I
23 tend to do that simply because it leaves a reference
24 in the future. Something may have been there and

1 may trigger someone to do some research into what
2 used to be there for, if anything, historical
3 purposes.

4 The alternative is that subsection
5 disappears as if it never existed and someone doing
6 historical research may think that nothing ever was
7 there and they miss something that is useful.
8 That's the only reason.

9 HEARING OFFICER MCGILL: Thank you.

10 I'll move on to our questions
11 regarding the IEPA's Technical Support Document.

12 Question 1. On page 7 of the
13 Technical Support Document, or TSD, IEPA states that
14 it used USEPA's Motor Vehicle Emissions Simulator
15 (MOVES) model version 2010b to estimate refueling
16 emissions from 2007 to 2020. Please submit USEPA's
17 MOVES 2010b User Guide for the record.

18 MR. MOHR: I've provided this to you
19 earlier, and we can mark this as Exhibit 3 for the
20 record.

21 HEARING OFFICER MCGILL: I've been
22 handed Motor Vehicle Emissions Simulator (MOVES)
23 User Guide for MOVES 2010b USEPA document.

24 Is there any objection to designating

1 as a hearing exhibit this document?

2 Seeing none, this will be Hearing
3 Exhibit 3.

4 (Whereupon Hearing Exhibit 3 was
5 admitted into evidence at this
6 time.)

7 HEARING OFFICER MCGILL: And we will
8 move on to question 2, and Alisa Liu of our
9 Technical Unit will handle the next several
10 questions.

11 MS. LIU: Good afternoon.

12 No. 2. Will you please spiel out the
13 following acronyms appearing in the table entitled
14 "Key Input Data for the MOVES Model" on page 7 of
15 the TSD: HPMSV; VMT; IM; and OBD. Also, would you
16 please explain what these terms mean in the context
17 of the MOVES model.

18 MR. MOHR: Before we get started on
19 the answers to these, I want to note that some of
20 them we have answers to. Some of them really need
21 to be reduced to writing. In fact, some of them
22 require writing, but there's others that really do
23 need to be reduced to writing, so we will do that
24 and provide you with specific answers on some of

1 these.

2 As we go through them, we'll indicate
3 what we're going to respond to orally and what we'll
4 follow up in writing on. Mr. Gebhardt will be
5 addressing all of these questions, and he'll
6 indicate what he is going to be verbally responding
7 to and what we'll respond in writing to.

8 HEARING OFFICER MCGILL: Thank you.

9 MR. GEBHARDT: No. 2 you referred to,
10 we'll respond in writing for the HPMSV description
11 at a later time.

12 VMT is a acronym for vehicle miles
13 traveled. That information comes from the Illinois
14 Department of Transportation and is used extensively
15 in the model to determine vehicle travel and
16 patterns.

17 IM is a reference to inspector
18 maintenance program. This is used in the model to
19 describe the emissions, vehicle emissions testing
20 program in the Chicago nonattainment area.

21 And OBD is onboard diagnostics, and
22 it refers to the control module on each vehicle that
23 the Agency plugs into and uses as part of the
24 emissions program.

1 MS. LIU: No. 3. Would you please
2 describe the function of the parameters in the model
3 that are listed as key input data in the table on
4 page 7?

5 Was that answer intended to --

6 MR. GEBHARDT: I'm sorry.

7 MS. LIU: Was your previous answer
8 intended to cover that as well?

9 MR. GEBHARDT: No, no. No. 3 I'd
10 like to respond in writing.

11 MS. LIU: No. 4. Attachment B to the
12 TSD contains the MOVES input and output files in
13 mySQL format on a compact disc. To make this
14 information more readily understandable, would you
15 please provide, if feasible, a written summary of
16 the input and output files (not simply pages of
17 numbers) that would give ranges and averages for the
18 key input data parameters listed on page 7 of the
19 TSD as well as the output values other than those
20 graphed in Figure 1 of the TSD.

21 MR. MOHR: Mr. Gebhardt?

22 MR. GEBHARDT: For No. 4 I'd like to
23 respond in writing also.

24 MS. LIU: No. 5. Would you please

1 provide numerical values for the points graphed in
2 Figure 1 of the TSD. Also, please quantify the
3 emission reduction benefits in terms of tons per day
4 of volatile organic compounds for each year graphed
5 beginning in 2014.

6 MR. GEBHARDT: For No. 5 I will
7 respond in writing.

8 MS. LIU: No. 6. The TSD refers to
9 the January 2014 crossover point. Would you please
10 clarify whether the points graphed in Figure 1
11 correspond to January 1st of each year on the
12 horizontal axis.

13 MR. MOHR: Mr. Gebhardt.

14 MR. GEBHARDT: For No. 6 I will
15 respond in writing.

16 BOARD MEMBER O'LEARY: No. 7. Please
17 explain the trends in the Figure 1 graph as to what
18 is occurring and why. For example:

19 a) Does the decrease in "Refueling
20 Emissions (VOC in tons per day) depicted by the
21 "ORVR-only" curve represent an increasing number of
22 vehicles equipped with ORVR accompanied by a gradual
23 phase-out/scrapping of older model vehicles without
24 ORVR?

1 MR. MOHR: Mr. Gebhardt.

2 MR. GEBHARDT: Yes.

3 BOARD MEMBER O'LEARY: b) Why does
4 the ORVR + Stage II line show a very gradual
5 decrease over time rather than an increase due to
6 the incompatibility issue affecting more vehicles
7 over time?

8 MR. MOHR: Mr. Gebhardt.

9 MR. GEBHARDT: I'd like to respond in
10 writing to that question.

11 BOARD MEMBER O'LEARY: Okay. Item c.
12 The TSD states that "after this crossover point, the
13 difference between the two lines represents the
14 reduction in refueling emissions if Stage II is
15 decommissioned. This difference is 0.7 tpd in 2014
16 if Stage II is decommissioned increasing to 2.54 tpd
17 in 2020 when an estimated 96 percent of the vehicle
18 fleet will be ORVR equipped." TSD at 8. As the
19 crossover point appears to be in 2014, at which
20 point the difference would be zero, when
21 specifically is the .7 tpd expected?

22 MR. MOHR: Mr. Gebhardt.

23 MR. GEBHARDT: I would like to
24 respond in writing to that question.

1 HEARING OFFICER MCGILL: That was the
2 last of the Board questions from Mondays Hearing
3 Officer Order.

4 At this point, I would like to ask if
5 anyone has any additional questions for the Agency's
6 witnesses?

7 Seeing none, why don't we go off the
8 record for a moment.

9 (Whereupon an off-the-record
10 discussion transpired at this
11 time.)

12 HEARING OFFICER MCGILL: As there
13 were no more questions for the Agency's witnesses, I
14 would like to thank them and the Agency's counsel
15 for their efforts and contributions today.

16 We're going to move on to a few
17 procedural items before we adjourn.

18 For the record, is there anyone else
19 who wishes to testify today?

20 Seeing none, the first procedural
21 item I wanted to take up is the economic impact
22 study request is a requirement of the Environmental
23 Protection Act. The Board requested that the
24 Department of Commerce and Economic Opportunity, or

1 DCEO, conduct an economic impact study for this
2 rulemaking. Section 27(b) of the Environmental
3 Protection Act requires the Board to request that
4 DCEO conduct an economic impact study or EcIS on
5 proposed rules before the Board adopts the rules.
6 DCEO may produce a study on the economic impact of
7 proposed rules. The Board must make the economic
8 impact study or DCEO's explanation for not
9 conducting one available to the public at least 20
10 days before public hearing.

11 On April 8, 2013, the Board delivered
12 to DCEO a request to conduct an EcIS on IEPA's
13 rulemaking proposal. On that same date, the Board
14 received a letter from DCEO Acting Director Adam
15 Pollet (that's P-o-l-l-e-t) stating that DCEO would
16 not be conducting the requested economic impact
17 study.

18 Is there anyone who would like to
19 testify regarding this matter?

20 Seeing none, the next procedural
21 item, I just want to mention that the notice list
22 for this rulemaking is a list of persons who wish to
23 receive only the Board's opinions and orders and
24 hearing officer orders. The service list is the

1 list of persons who wish to actively participate in
2 this proceeding and receive not only opinions and
3 orders but also other filings such as prefiled
4 testimony and public comments.

5 The notice and service lists for
6 R13-18 are available on the clerk's office online,
7 or COOL, on the Board's website at
8 www.ipcb.state.il.us.

9 The second hearing in this rulemaking
10 is scheduled for June 5, 2013 at 1 o'clock in Room
11 N-505 of the Michael A. Bilandic Building in
12 Chicago. Prefiled testimony for the second hearing
13 must be filed with the clerk of the Board by May 30,
14 2013. The mailbox rule does not apply to this
15 filing meaning that the clerk's office must receive
16 the prefiled testimony by 4:30 p.m. on Thursday,
17 May 30th.

18 Prefiled testimony filed with the
19 clerk must also be served on the hearing officer and
20 on those persons on the service list.

21 A note regarding public comment. At
22 the end of the second hearing, we will set a
23 deadline for the end of the public comment period.

24 I anticipate that the First Notice

1 Amendments will be published in the Illinois
2 Register on May 10 but we will have at least 14 days
3 after the second hearing's transcript arrives at the
4 Board before the public comment period would
5 conclude, so I'm anticipating it will be early July
6 for the end of the public comment period.

7 Copies of the transcript of today's
8 hearing should be available on the Board's website
9 by May 20.

10 If anyone has any questions about
11 the procedural aspects of this rulemaking, feel
12 free to contact me. I can be reached by phone
13 at (312) 814-6983 or e-mail at
14 richard.mcgill@illinois.gov.

15 Are there any other matters that need
16 to be addressed at this time?

17 MR. MOHR: Not from the Agency.

18 HEARING OFFICER MCGILL: Seeing none,
19 I would like to thank everyone for participating
20 today, and this hearing is adjourned.

21 (Adjournment at 12:59 p.m.)

22

23

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1 STATE OF ILLINOIS)
)SS.
2 COUNTY OF SANGAMON)

3

4

CERTIFICATE

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I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

11

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14

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

15

Dated May 10, 2013.

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Laurel Patkes
Certified Shorthand Reporter

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