

IN THE MATTER OF: )  
 )  
STANDARDS AND LIMITATIONS ) R14-19  
FOR CERTAIN SOURCES OF LEAD:) (Rulemaking - Air)  
PROPOSED 35 ILL. ADM. CODE )  
PART 226 )

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Chad Kruse, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 8th day of January, 2014, commencing at the hour of 11:16 a.m.

A P P E A R A N C E S

MR. CHAD KRUSE, Hearing Officer

MS. ALISA LIU

MR. ANAND RAO

MR. JERRY O'LEARY

MS. JENNIFER BURKE

MS. CARRIE ZALEWSKI

1 MR. KRUSE: Good morning and welcome  
2 to this Illinois Pollution Control Board hearing.  
3 My name is Chad Kruse and I am the Hearing Officer  
4 for this rulemaking proceeding entitled standards  
5 and limitations for certain sources of lead:  
6 Proposed 35 Ill. Adm. Code Part 226 and it is  
7 docketed as R14-19 with the Board. Also present  
8 today from the Board are to my immediate left  
9 Member Carrie Zalewski, she is the lead board  
10 member on this rulemaking. To Member Zalewski's  
11 left is Board Member Jennifer Burke, then to my  
12 right is TU or the technical unit Dr. Anand Rao.

13 MR. RAO: Not doctor.

14 MR. KRUSE: Anand Rao. And to his  
15 right is Board Member Jerome O'Leary and to Member  
16 O'Leary's right is Technical Unit Member Alisa  
17 Liu.

18 The Illinois Environmental  
19 Protection Agency filed this rulemaking proposal  
20 on November 15th, 2013, under the Fast Track  
21 rulemaking provision found at Section 28.5 of the  
22 Environmental Protection Act. In an order dated  
23 November 21, 2013, the Board accepted this  
24 proposal for hearing without commenting on the  
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1 proposal's merit. As required by Section 28.5(e)  
2 of the Act, within 14 days after receiving the  
3 Agency's proposal before they filed it or first  
4 notice under the Illinois Administrative  
5 Procedures Act, the proposal appeared in the  
6 Illinois Register on December 6th, 2013, beginning  
7 at page 19,490.

8 Today we are holding the first  
9 hearing in this rulemaking. The second hearing is  
10 scheduled to take place Wednesday, February 5th,  
11 2014, in Chicago in the same room and the third  
12 hearing, if necessary, is scheduled to take place  
13 Wednesday, February 19th, 2014, also in the same  
14 room. Under Section 28.5(g)1 of the Act, this  
15 hearing shall be confined to testimony by and  
16 questions of the Agency's witnesses concerning the  
17 scope, applicability and basis of the rule. By  
18 Hearing Officer order dated November 21st, 2013, I  
19 indicated that participants wishing to pre-file  
20 testimony for the first hearing must have done so  
21 on or before December 29th, 2013.

22 The Board received timely  
23 pre-filed testimony from Mr. Rory Davis on behalf  
24 of the Illinois Environmental Protection Agency.  
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1 Today we will begin with testimony by the Agency,  
2 specifically Mr. Davis, and Section 28.5(f) of the  
3 Act provides that in order to expedite the hearing  
4 his testimony is accepted into the record without  
5 reading provided that he is sworn in and available  
6 for questions.

7 The Agency may make an opening  
8 statement and after introducing and swearing in  
9 Mr. Davis we will go right to questions for the  
10 Agency. It is my understanding that the Agency  
11 has other personnel on hand that they may wish to  
12 be sworn in for purpose of responding to questions  
13 asked at today's hearing. Any additional Agency  
14 personnel may be introduced and sworn in with  
15 Mr. Davis for providing testimony in response to a  
16 question.

17 After testimony by and questions  
18 of the Agency, I will speak a bit more about the  
19 procedures moving forward in this rulemaking.  
20 This proceeding is governed by the Board's  
21 procedural rules. All information that is  
22 relevant and that is not repetitious or privileged  
23 will be admitted into the record. Please note  
24 that any questions posed today by the Board and  
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1 its staff are intended solely to assist in  
2 developing a clear and complete record for the  
3 Board's decision and do not reflect any  
4 prejudgment of the proposal.

5 For the benefit of the Board  
6 members present and the court reporter  
7 transcribing today's hearing, please speak clearly  
8 and avoid speaking at the same time as another  
9 person to help produce a clear hearing transcript.  
10 Also today you'll notice we do not have a  
11 microphone, but due to the size of the room I  
12 think we'll be fine, but do just note that when  
13 you're talking.

14 Because this is a Fast Track  
15 rulemaking, the Board has requested that the  
16 transcript from this proceeding be expedited and  
17 the court reporter has let me know that it will be  
18 available as soon as Monday, which is January  
19 13th, to the Board and then it can be posted to  
20 COOL immediately thereafter. Are there any  
21 questions about today's procedures before we get  
22 started?

23 MS. CARTER: No.

24 MR. KRUSE: Okay. So, Ms. Carter,  
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1     how would you like your witnesses to be sworn in,  
2     together or --

3                   MS. CARTER:   They can be sworn in  
4     together.

5                   MR. KRUSE:   Okay.   Mr. Court  
6     Reporter, can you please swear in Mr. Davis and  
7     Mr. Bloomberg?

8     WHEREUPON:

9                   DAVID BLOOMBERG and RORY DAVIS  
10    called as witnesses herein, having been first duly  
11    sworn, deposeth and saith as follows:

12                   MR. KRUSE:   Thank you.   If the  
13    Agency is prepared to do so, we'll proceed with  
14    your opening statement and then the questions for  
15    Mr. Davis.

16                   MS. CARTER:   Okay.   Thank you,  
17    Mr. Hearing Officer.   Again, my name is Sally  
18    Carter and I am assistant counsel on behalf of the  
19    Illinois EPA.   This rulemaking is intended to  
20    satisfy Clean Air Act requirements for Reasonably  
21    Available Control Measures for lead in two areas  
22    of Illinois' designated non-attainment with  
23    respect to the 2008 lead National Ambient Air  
24    Quality Standards or NAAQS.  
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1 Illinois EPA is required to  
2 submit for the US EPA's approval revisions to its  
3 State Implementation Plan, or SIP, S-I-P, in  
4 response to these non-attainment designations.  
5 Accordingly, Illinois is proposing new regulations  
6 that establish lead controls which are necessary  
7 in order to obtain US EPA's approval of Illinois'  
8 SIP submittal. In particular, this proposal will  
9 require nonferrous metal production facilities  
10 located in areas of Illinois designated  
11 non-attainment from the 2008 lead NAAQS to achieve  
12 the numerical emission standard set by the  
13 proposed rule beginning January 1st, 2015.

14 Depending on the type of lead  
15 kettle or furnaces regulated at affected sources,  
16 the proposal sets forth an accompanying lead  
17 emission limit for the exhaust from the associated  
18 control device. Second, the units that are the  
19 most significant sources of fugitive emissions at  
20 affected sources must operate within a total  
21 enclosure under negative pressure.

22 Third, any gas stream exiting  
23 the total enclosure must be controlled by  
24 particulate emissions control equipment meeting an  
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1 accompanying lead emissions limit. Fourth, there  
2 are additional measures for reductions of fugitive  
3 emissions including operating pursuant to an  
4 Illinois EPA approved lead fugitive dust operating  
5 program.

6 Finally, this proposal also  
7 includes additional measures for testing,  
8 monitoring, recordkeeping and reporting  
9 requirements for affected sources. Again, with me  
10 today is Rory Davis. He is an environmental  
11 protection engineer in the Air Quality Planning  
12 Section, Air Pollution Control Division of the  
13 Illinois EPA's Bureau of Air.

14 In addition to Mr. Davis,  
15 Mr. David Bloomberg, the Manager of the Air  
16 Quality Planning Section of the Illinois EPA's  
17 Bureau of Air is with me as well to answer any  
18 questions. At this time I'd like to move for  
19 Mr. Davis' pre-filed testimony to be entered into  
20 the record as an exhibit, Mr. Hearing Officer.

21 MR. KRUSE: Is there any objections  
22 to entering Mr. Davis' testimony into the record?  
23 Seeing none, I grant the motion and we can mark  
24 the document as Hearing Exhibit 1.  
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1 (Document marked as Hearing  
2 Exhibit No. 1 for  
3 identification.)

4 MR. KRUSE: And they will be entered  
5 into the record as if read. Does the Agency have  
6 any clarifying questions for Mr. Davis that have  
7 come up since the filing of this pre-filed  
8 testimony?

9 MS. CARTER: Not at this time.

10 MR. KRUSE: If the audience members  
11 have a question, please signal me by raising your  
12 hand and then I will recognize you and have you  
13 state your name. At that point you can state your  
14 question for Mr. Davis. Yes, sir? Please state  
15 your name.

16 MR. HARLEY: Hi. My name is Keith,  
17 last name Harley, H-A-R-L-E-Y. I'm an attorney at  
18 the Chicago Legal Clinic here representing the  
19 Pilsen Environmental Rights and Reform  
20 Organization.

21 Mr. Hearing Officer, I have a  
22 few questions that I would like to pose to the  
23 Agency's witness at your discretion.

24 MR. KRUSE: Yes, please do so.  
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1 MR. HARLEY: Mr. Davis, the  
2 questions that I'm posing relate only to the  
3 H. Kramer facility. The first question that I  
4 have is how do the proposed controls and emission  
5 standards compare to other similar sources that  
6 are subject to Reasonably Available Control  
7 Technology or Reasonably Available Control  
8 Measures?

9 MR. DAVIS: I would say they are  
10 more stringent than RACT, Reasonably Available  
11 Control Technology. The rule itself was modeled  
12 on the consent decree that Kramer will be  
13 operating under and codify some of those controls.  
14 That called for very strict limits. On a  
15 percentage basis, I think it was 99.9 percent  
16 control. We codified that as a numerical limit  
17 also.

18 MR. HARLEY: On what basis do you  
19 believe that the standards which are proposed are  
20 more stringent than Reasonably Available Control  
21 Technology standards?

22 MR. DAVIS: I'm not sure exactly  
23 what RACT would be for lead. Most often lead  
24 wouldn't have a RACT. It would be -- well, I  
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1 should say that baghouse control, which is what is  
2 required in the rule and at the numerical limit  
3 that are required in the rule, is generally  
4 considered reasonable control.

5 MR. HARLEY: In developing its  
6 standard, did Illinois EPA review standards that  
7 are found in the RACT/BACT/LAER Clearinghouse?

8 MR. DAVIS: Would that be for  
9 different facilities?

10 MR. HARLEY: For facilities that are  
11 either similar or in the same source category.

12 MR. DAVIS: I'm not sure we did  
13 compare them to other standards in the  
14 Clearinghouse. The rule was more based upon what  
15 was achievable by the stringent limits in the  
16 consent decree.

17 MR. BLOOMBERG: In the process of  
18 arriving at the consent decree, both Illinois EPA  
19 and US EPA evaluated a number of different control  
20 technologies before arriving at the one that was  
21 finally agreed upon and I know -- I don't know  
22 that they specifically looked at the RACT/BACT  
23 Clearinghouse, but I do know that there were a  
24 great many discussions held and, you know,  
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1 research both by Illinois EPA and US EPA into what  
2 the best and most feasible controls would be at  
3 that facility.

4 MR. HARLEY: How do costs enter into  
5 that review process?

6 MR. BLOOMBERG: The US EPA review  
7 process?

8 MR. HARLEY: The process of  
9 developing the consent decree standards. How did  
10 the issue of cost to H. Kramer enter into that  
11 deliberative process?

12 MR. BLOOMBERG: That, I don't know.  
13 I was somewhat involved at the time due to my  
14 previous job in the compliance section, but I was  
15 not as involved in those sorts of details. US EPA  
16 did most of the cost-related analysis. So I can't  
17 answer that I'm afraid.

18 MR. HARLEY: Same answer, Mr. Davis?

19 MR. DAVIS: Yeah.

20 MR. HARLEY: In light of your  
21 previous answers, is it safe to say that the  
22 Agency also does not know how the proposed  
23 regulations compare to lowest achievable emissions  
24 rate?

1 MR. DAVIS: I'm not sure how they  
2 would compare to similar sources in the  
3 Clearinghouse for LAER, no, but, again, I assume  
4 this was taken into account when the consent  
5 decree was considered.

6 MR. HARLEY: Same answer for BACT as  
7 well?

8 MR. DAVIS: Yes.

9 MR. HARLEY: Best Available Control  
10 Technologies. I apologize.

11 MR. DAVIS: Yes.

12 MR. HARLEY: In your pre-filed  
13 testimony, you indicate that you anticipate that  
14 there will be a hundred tons per year of  
15 reductions of lead from H. Kramer. What is the  
16 breakdown roughly between stack reductions and  
17 fugitive emission reductions?

18 UNIDENTIFIED SPEAKER: Do you mean  
19 pounds or tons? You said tons.

20 MR. HARLEY: Strike that. I  
21 apologize. I meant to say pounds.

22 MR. DAVIS: Just in general if  
23 you've looked -- well, I'm assuming you're looking  
24 at the Technical Support Document for the hundred  
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1 pounds. That is a fairly conservative estimate of  
2 the reduction. That would mostly be due to stack  
3 emissions because that was comparing the previous  
4 year's reported emissions that were stack tested  
5 versus what will be if the rule is adopted with  
6 the limits at one hundred percent of the limit 24  
7 hours a day and so we also know that from the  
8 stack tests that have happened they're not going  
9 to be at that limit and also not at 24 hours a  
10 day.

11 So most of what you're seeing in  
12 that estimate would be stack emissions versus  
13 stack emissions. One thing that the consent  
14 decree did not consider was the fugitive emissions  
15 that -- the proposed rule actually goes beyond the  
16 consent decree in requiring total enclosures on  
17 the south foundry.

18 I don't think I put an estimate  
19 of the fugitives that will be reduced in the  
20 Technical Support Document. There is -- it is a  
21 somewhat difficult number to quantify. Sometimes  
22 the fugitives that were before and after I know  
23 that we're expecting 90 percent capture or  
24 thereabouts of fugitive emissions from the south  
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1 foundry that will be obviously routed through the  
2 baghouses at a -- and included in the 0.0001  
3 grains per dry standard emission limit for those  
4 baghouses. So the breakdown would be what you're  
5 seeing here is mostly the stack emission. The  
6 fugitive emission we really didn't try to quantify  
7 exactly, but there should be significant reduction  
8 from previous fugitives.

9 MR. HARLEY: The next question is  
10 will the final regulatory standards be imposed in  
11 a permit for H. Kramer?

12 MR. DAVIS: Yes.

13 MR. HARLEY: Next question. Is  
14 H. Kramer currently operating using the controls  
15 mandated by these regulations?

16 MR. DAVIS: I believe so.

17 MR. HARLEY: Do you know for how  
18 long?

19 MR. DAVIS: I'm not sure that  
20 they're operational. I know that their new  
21 controls are operational and I'm -- to my  
22 knowledge, there was an extension to a permitting  
23 provision that allowed them to extend what was in  
24 the consent decree for testing. So they are  
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1 operating with the new controls. I believe they  
2 asked for a six-month extension in order to do  
3 testing on the new controls. So I believe that  
4 they are operating now with controls that will  
5 meet the standards in the proposed rule.

6 MR. HARLEY: Do you know for how  
7 long they've been operating with those controls?

8 MR. DAVIS: No, I -- no, I do not.

9 MR. HARLEY: During the period that  
10 they have been operating with those controls, do  
11 you know if they have been operating at full  
12 capacity?

13 MR. DAVIS: I do not know at what  
14 percentage capacity they're operating at.

15 MR. HARLEY: During the period of  
16 time -- I'm sorry. Was there more?

17 MR. DAVIS: Right. What we do know  
18 is that we know the baghouses were permitted with  
19 construction permits and that they are  
20 operational.

21 MR. HARLEY: But at this time you  
22 don't know if the expected reduction has been  
23 achieved?

24 MR. DAVIS: No, I don't. They would  
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1 be -- they would be testing as of the -- the  
2 controls are operational. They will be testing.  
3 That really isn't -- that really isn't part of  
4 this rulemaking. They need to obviously follow  
5 the consent decree, the effective time for this  
6 rulemaking would be January 1st of next year and  
7 so until then they will be operating under the  
8 consent decree which does, you know, require them  
9 to have their operating permits and follow the  
10 consent decree and, like I said, I do know they  
11 did ask for an extension. I don't know when that  
12 extension would expire. I'm not sure what  
13 percentage of capacity they're operating at. I  
14 think that was also dictated by the consent decree  
15 and that they may have been involved in that  
16 extension. I wasn't involved with that, but, like  
17 I said, for this rulemaking these limits will be  
18 applicable January 1st, 2015, and until then they  
19 will be operating under the consent decree and  
20 consistent with their operating permits and  
21 construction permits.

22 MR. HARLEY: Mindful of the Fast  
23 Track nature of this rulemaking, will stack test  
24 results be available to this Board as part of its  
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1 deliberative process?

2 MR. DAVIS: I'm not certain. It is  
3 not something that would be required by the rule.  
4 They'll have to have stack testing completed  
5 before January 1st, 2015, per the rule. I know  
6 that the consent decree requires sooner testing,  
7 but, no, there is no -- there is no guarantee that  
8 the stack testing will have occurred by the time  
9 that the rulemaking is completed. Depending on  
10 the rulemaking schedule, I'm not certain when they  
11 asked for that extension or when they completed  
12 their testing.

13 MS. CARTER: Is the stack testing  
14 material something that we relied upon in terms of  
15 this rulemaking?

16 MR. DAVIS: No.

17 MS. CARTER: No. Okay. But are the  
18 stack tests generally available by the use of FOIA  
19 to the Illinois EPA?

20 MR. DAVIS: Yes.

21 MR. HARLEY: In the absence of a  
22 RACT/BACT/LAER review and in the absence of stack  
23 testing upon this facility, on what basis does the  
24 Agency believe the facility will be able to meet  
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1 the lead standard which is contained in the rule?

2 MR. DAVIS: On the basis of our  
3 dispersion model of the facility in all -- well,  
4 they'll be required to meet the standard as a  
5 condition of their operation. The emission limits  
6 I believe are achievable with the HEPA level of  
7 control that they're required to meet in the  
8 consent decree.

9 MR. BLOOMBERG: In addition, we have  
10 been in frequent communication with the company  
11 and they have indicated that they will be  
12 available to meet it and as Rory indicated if it  
13 is passed by the Board that will be the level. So  
14 they are going into this knowing full well what  
15 the emission level -- emission rate allowed will  
16 be. So I think that it certainly would be in  
17 their best interest or would have been in their  
18 best interest to have alerted us much sooner if  
19 there was any doubt in their mind if these  
20 controls would be able to meet this level.

21 MS. CARTER: And based on your  
22 experience and understanding of those control  
23 devices, will they be able to routinely meet those  
24 levels that are set forth within the rule?  
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1 MR. DAVIS: Yes.

2 MS. CARTER: Okay.

3 MR. HARLEY: Since the consent  
4 decree is so important in your development of your  
5 proposed regulations, will the record in this  
6 proceeding -- Strike that.

7 Does the record in this  
8 proceeding include all of the information that was  
9 relied on in developing the consent decree?

10 MR. DAVIS: We did include the  
11 consent decree. I'm not certain that we included  
12 all the information that the consent decree relied  
13 upon. Although I would assume that US EPA did  
14 their due diligence in developing that decree.

15 MS. CARTER: Does the final version  
16 of the consent decree memorialize what the  
17 Illinois EPA generally relied upon in this  
18 transaction, in this rulemaking?

19 MR. DAVIS: Yes.

20 MS. CARTER: Okay.

21 MR. DAVIS: And I should say the  
22 proposed rule does go beyond the consent decree in  
23 some ways.

24 MR. HARLEY: During the period of  
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1 time the facility has been operating using the  
2 stack controls mandated by the consent decree, has  
3 emission results been correlated with the ambient  
4 air monitoring data derived from the Perez  
5 Elementary School monitoring station?

6 MR. BLOOMBERG: Since we're not  
7 entirely sure exactly when all the controls went  
8 on per your earlier question we have not done such  
9 a correlation. There has been a drop in the  
10 monitor such that those monitors have not shown  
11 exceedances in at least the past -- in at least  
12 the past two years, possibly more.

13 MR. HARLEY: Isn't it true during  
14 that period of time the facility was not able to  
15 operate at full capacity?

16 MR. BLOOMBERG: That is my  
17 understanding due to the consent decree.

18 MR. HARLEY: Has there been a period  
19 of time during which the facility has operated  
20 using new controls at full capacity where we can  
21 compare the results of those emissions to the  
22 ambient air monitoring station at the Perez  
23 Elementary School?

24 MR. BLOOMBERG: I do not know. We  
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1 can look into it and respond in writing after  
2 this -- before the next hearing.

3 MR. RAO: I had a related  
4 clarification question. In your testimony,  
5 Mr. Davis, I think it's on page two, you state  
6 that "Further analysis, including preliminary air  
7 quality dispersion modeling, determined that each  
8 of the affected sources was capable of causing  
9 violations of the NAAQS." When was this  
10 preliminary modeling done and have there been any  
11 further modeling or finalized --

12 MR. DAVIS: Yes.

13 MR. RAO: -- done?

14 MR. DAVIS: I should start with  
15 there has been additional modeling since. The  
16 preliminary modeling that I'm speaking of here was  
17 when we were trying to determine which sources may  
18 have been culpable in the violation of the NAAQS.  
19 When we did that, we were modeling source by  
20 source and, you know, there is a background level  
21 from a number of sources. Most other sources in  
22 the St. Louis area and there are a few that didn't  
23 actually produce that much lead emission and there  
24 is only one other source in the Chicago area and  
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1 when we looked at these two sources, Mayco and  
2 Kramer, H. Kramer, each one of them could produce  
3 levels along the fence line is what they call the  
4 receptors, the computer points, around the  
5 facility that are outside the property limits of  
6 the source.

7 Each one of them actually caused  
8 model violations of the NAAQS without any of the  
9 background or any other source adding to that.  
10 And so that was the preliminary modeling of which  
11 sources we believed to be culpable for the NAAQS  
12 violations at the monitors after the violations.

13 MR. RAO: And you mentioned you did  
14 additional modeling after that?

15 MR. DAVIS: Right. And then the  
16 additional dispersion modeling is once we have  
17 come to our -- well, once we've considered a  
18 number of limits that are in the proposed rule  
19 will those limits result in achieving the NAAQS at  
20 all points outside the property boundaries of the  
21 source. So in every computer receptor there are  
22 no violations of the NAAQS that are modeled using  
23 the limits in the rule, the first rule.

24 MR. RAO: Okay. This rule, the  
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1 proposed rule that you are proposing to the Board  
2 applies to both existing and new facilities.

3 MR. DAVIS: Yes.

4 MR. RAO: So if any new facilities  
5 are located in these non-attainment areas in  
6 addition to these two sources which you are  
7 focused on, does that cause any problems in  
8 attaining the lead standards? If they comply with  
9 all the requirements that you are proposing in  
10 this rule, will that be adequate to maintain  
11 attainment?

12 MR. DAVIS: There is a possibility  
13 for a new source operating at these limits to move  
14 into the non-attainment area which are not large  
15 areas, but there is the possibility that a new  
16 source could move in. However, they would be  
17 subject to new source review and very strict  
18 limits and prevention of significant deterioration  
19 as they're in a non-attainment zone. So those  
20 things would be modeled also to say what kind --  
21 you know, if a new source were to move into one of  
22 these areas, they would not be allowed to operate  
23 at emission levels that would cause a violation of  
24 the NAAQS even if --  
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1 MR. RAO: Even if more stringent --

2 MR. DAVIS: There is a probability  
3 that it would be a more stringent standard because  
4 they would have to operate at levels in addition  
5 to whatever is in the proposed rule that would  
6 still not result in a violation of the NAAQS at  
7 any point outside their boundaries.

8 MR. RAO: Okay. Thank you.

9 MR. HARLEY: Aren't there additional  
10 control measures that Illinois EPA considered that  
11 are not included in the proposed regulations?

12 MR. DAVIS: I don't believe so. I  
13 believe that all units at both sources are  
14 controlled with numerical limits and the most  
15 significant sources of fugitive emissions will now  
16 be -- the proposed rule would require them to be  
17 operated within a total enclosure under negative  
18 pressure. Going beyond that I don't think we had  
19 more ideas of additional controls.

20 MR. HARLEY: To ask the question in  
21 another context. If a new source were to seek a  
22 construction permit in close proximity to  
23 H. Kramer and if it were subject to BACT or LAER,  
24 what additional measures could it employ in order  
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1 to meet an additional level of control?

2 MR. BLOOMBERG: I don't think we  
3 know the answer to that, but I also think that  
4 that is probably speculation beyond the confines  
5 of this rule. The likelihood of a nonferrous  
6 metal production facility located in the extremely  
7 small non-attainment area surrounding H. Kramer,  
8 in my opinion, is extremely small. And so I think  
9 it's just -- I think we would just be entering the  
10 realm of speculation at that point.

11 MR. RAO: Do you believe the same  
12 reasoning applies to the Metro East facility?

13 MR. BLOOMBERG: That facility, that  
14 non-attainment area, is larger than the one here  
15 in Chicago, but it is still fairly unlikely that  
16 it could happen, but, again, even in such a case  
17 it would be speculative and it would -- if it were  
18 modeled as Rory had explained that there was a  
19 problem, it is really up to the company to solve  
20 that problem to make sure that their construction  
21 does not cause a new NAAQS violation.

22 MR. RAO: Mr. Davis, earlier in  
23 response to Mr. Harley's question you mentioned  
24 something to do with control efficiency or capture  
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1 of 90 percent or more. I was looking at the  
2 emission reduction portion of your testimony and  
3 you mentioned that Illinois EPA calculates that  
4 the proposed regulation would reduce lead  
5 emissions by greater than 50 percent at each  
6 source. Can you explain how these numbers  
7 correlate?

8 MR. DAVIS: Well, that would be -- I  
9 should say again that's a conservative estimate.  
10 That would be the facilities operating at one  
11 hundred percent of the limits, 24 hours a day, 365  
12 days a year and, again, that was really more stack  
13 emissions versus stack emissions. The fugitive  
14 emissions from a few of the units are significant.  
15 It really depends on how often those units are  
16 running and a number of other different factors.  
17 What their actual fugitive emissions would be, it  
18 would be very difficult to quantify exactly what  
19 the fugitive emissions were from those units at  
20 Kramer and at Mayco. However, operating what we  
21 know to be the most significant sources of  
22 fugitive emissions inside a total enclosure with  
23 negative pressure we know that the emission  
24 reductions will be significant in percentage. I'm  
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1 not sure what the actual volume or the weight of  
2 those emissions will be in pounds.

3 MR. RAO: So what you're saying is  
4 it will be much greater than 50 percent rather  
5 than being close to 50 percent?

6 MR. DAVIS: It will be greater than  
7 50 percent reduction in fugitive emissions from  
8 the sources that are controlled by the total  
9 enclosure, yes.

10 MR. RAO: Thank you.

11 MR. HARLEY: Just a quick follow up  
12 to Mr. Rao's question and then I'll be done with  
13 my questions. H. Kramer is required to report its  
14 fugitive lead emissions pursuant to the toxic  
15 release inventory protocol, is that correct?

16 MR. DAVIS: I believe so. Well, I  
17 believe that's correct.

18 MR. HARLEY: Was that used as part  
19 of your deliberations on what the reductions would  
20 be in fugitive emissions from the source?

21 MR. DAVIS: No. As I said, I don't  
22 think I did quantify the fugitive emission  
23 reductions in the Technical Support Document  
24 because it is -- while they do report what they --  
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1 they're most likely from AP 42 emission factor.  
2 While they do report probably their estimate of  
3 that, it is probably facility-wide also what they  
4 think their fugitive emissions are. The fugitive  
5 emissions can also come from dust in a parking lot  
6 or, you know, a number of different sources. What  
7 I do know is that the fugitive emissions from --  
8 and at Kramer this would be their south foundry  
9 furnaces will be reduced significantly and  
10 probably somewhere on the order of 90 percent I  
11 believe was the estimate for total enclosure, but  
12 I don't think we attempted to quantify exactly  
13 what those were.

14 MR. BLOOMBERG: The problem is that  
15 by the very nature fugitive emissions are  
16 extremely difficult to calculate. Companies  
17 provide an estimate through the TRI, but when it  
18 comes to fugitives those estimates are not the  
19 hardest of scientific numbers, I guess. Just in  
20 general throughout the entire TRI and so it is --  
21 it is just a very difficult number to account for,  
22 but by doing a total enclosure we are certain that  
23 we are capturing those fugitives whereas before  
24 they would not have necessarily been captured by  
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1 any particular control device.

2 MS. CARTER: Can I -- just a moment,  
3 sir. I'm sorry. Thank you. We're fine now.

4 MR. HARLEY: Okay. I'm done.

5 MR. KRUSE: Are there any other  
6 people with a question?

7 MS. BURKE: It's on the same point.

8 MR. KRUSE: Go for it.

9 MS. BURKE: On the fugitive  
10 emissions again, the rules require a total  
11 enclosure on some of the fugitive emission sources  
12 and are there -- can you explain whether there are  
13 additional requirements on fugitive emissions  
14 outside of the total enclosure?

15 MR. DAVIS: Yes, there are some  
16 requirements for additional cleanings and general  
17 work practices at the facilities, at the sources  
18 that should reduce fugitive emissions. Again,  
19 that would be hard to quantify exactly how much  
20 fugitive reduction you would get there, but, yeah,  
21 there is cleanings. Also --

22 MR. BLOOMBERG: When you say  
23 outside, do you mean fugitive emissions from  
24 activities that take place outside of the total  
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1 enclosure or do you mean outside more like in  
2 addition to the total enclosure?

3 MS. BURKE: Outside of the total  
4 enclosure.

5 MR. BLOOMBERG: Okay.

6 MR. DAVIS: Yes, there are. And I  
7 think you can find those in the Section 170, the  
8 lead fugitive dust operating program. There is a  
9 number of areas that have work practices that  
10 should reduce fugitive emissions. It doesn't  
11 state it explicitly in there, but it is exactly  
12 for that purpose, but, yeah, sorting and handling  
13 has to occur in areas that are ventilated and  
14 connected to a control device. Source roadways  
15 have to be paved. They also have to be cleaned.  
16 There is a number of additional work practices  
17 that should reduce the fugitive emissions that  
18 aren't actually taking place in the total  
19 enclosure.

20 The total enclosure generally  
21 for Mayco will include their alloying and refinery  
22 kettles and at Kramer will be their large furnaces  
23 in the south foundry. Aside from those, there is  
24 no emission units there that are large sources of  
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1 fugitives and the other sources of fugitives are  
2 just fugitive dust that is -- can be cleaned up  
3 from operational areas, roadway dust, things like  
4 that that aren't in the enclosure itself.

5 MS. LIU: To follow up on that  
6 question Mr. Rao had about new sources possibly  
7 located within the non-attainment areas and you  
8 responded with there would be a new source review  
9 and a TSD review, what if the facility were to  
10 expand? What kind of review would it have in that  
11 case?

12 MR. DAVIS: One of the affected  
13 facilities -- affected sources?

14 MS. LIU: Correct. Yes.

15 MR. DAVIS: There would be -- would  
16 most definitely be a TSD review of that, right?  
17 Right. It would have to trigger TSD. The change  
18 at the source would have to trigger TSD, but an  
19 expansion or additional units generally would do  
20 that. There would be additional permitting  
21 obligations. Something that would significantly  
22 increase the emissions at an existing source in a  
23 non-attainment area. There are some things that a  
24 source could do that would not trigger TSD.  
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1 Anything that would increase emissions most likely  
2 would.

3 So, for instance, they couldn't  
4 add additional kettles and additional baghouses  
5 and use the numerical limits in the rules and  
6 that -- that would not just be acceptable. They  
7 would be subject to the emission limits, but they  
8 couldn't add something that would be a new  
9 emission point I don't believe without triggering  
10 TSD, a new stack, a new baghouse for new units.

11 I'm fairly confident that  
12 additional units that would have additional  
13 emissions would trigger TSD review, which would  
14 require modeling to make sure they didn't violate  
15 the NAAQS.

16 MS. LIU: Earlier you tried to give  
17 us an impression of kind of the size of the  
18 non-attainment area in Chicago as well as in  
19 Granite City and in your Technical Support  
20 Document you provided two figures, one for each,  
21 and I don't think it came through as clearly as  
22 maybe you had hoped on the copy that we received.

23 You indicated there were  
24 highlights showing the boundaries at the  
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1 non-attainment area as well as the location of the  
2 facility and the air monitor, but it came through  
3 in black and white and it is very fuzzy. So I was  
4 wondering if you can provide better copies of one  
5 and two from the Technical Support Document at  
6 some point in time?

7 MR. DAVIS: Yes. Definitely.

8 MS. LIU: Thank you. Since this was  
9 a rulemaking that you had worked out with the  
10 facilities who were going to be affected very  
11 closely, I noticed there is no real cost figures  
12 in here. I don't know if that is something that  
13 the companies are willing to provide just for  
14 future reference perhaps if other facilities are  
15 going to be affected what they could expect was  
16 considered reasonable in one case as a benchmark  
17 for another facility. I don't know how you feel  
18 about providing information along those lines, but  
19 I thought I would mention it.

20 MR. BLOOMBERG: Okay. I think in  
21 this sort of -- because the rule deals with two  
22 specific sources, the costs I think will also be  
23 very source specific. Mayco, for example, is both  
24 installing a new device and upgrading another  
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1 device and moving operations from one building to  
2 another. You know, Kramer's operation is also  
3 very different and so that was part of it is their  
4 costs aren't necessarily going to be  
5 representative of anything other than their costs.  
6 The other part is they need basically -- we needed  
7 them to do what they needed to do to meet the  
8 NAAQS.

9 MR. DAVIS: And that's what I was  
10 going to say was there is no cost per ton or cost  
11 per pound that is a fair figure. When you have a  
12 lead non-attainment area, we need that to not be a  
13 non-attainment area and when there is only one  
14 source, cost wasn't really a factor in our  
15 consideration of what kind of control or what kind  
16 of emission limits we needed to get to attaining  
17 the NAAQS for lead and I'm not certain -- to  
18 answer your question, I'm not certain we can get  
19 those specific figures from them or if they have a  
20 good idea.

21 MS. CARTER: Were those figures that  
22 we requested during the generation of this rule?

23 MR. DAVIS: We did not request the  
24 cost figures from them.

1 MR. KRUSE: Are there additional  
2 questions from the audience? Okay. With that,  
3 are there questions from Board members or the TU?

4 I have two questions. Both --  
5 well, one is kind of a substantive question and it  
6 deals or pertains to the control device monitoring  
7 plans that are required in a few subsections of  
8 the proposed language. There are certain sections  
9 that require those plans for the review and  
10 approval by the Agency and I wondered if the  
11 Agency could talk about whether its intent is to  
12 have those be final Agency action so that they are  
13 appealable under the APA.

14 MS. CARTER: While I'm not sworn in,  
15 Mr. Hearing Officer, and I'd just be providing a  
16 legal opinion on that, but in my view those would  
17 be final Agency decisions that would be appealable  
18 to the APA. That is just by perspective at this  
19 point, but we didn't go into an in-depth  
20 discussion here.

21 MR. KRUSE: Regarding language in  
22 the proposed rule and more specifically  
23 incorporation by reference where you have  
24 instances of incorporation by reference through  
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1 the rule there is some -- some places where you  
2 use language cross referencing the section where  
3 the documents are listed and others you do not and  
4 I wondered if the Agency would object to the Board  
5 inserting language such as -- consistent language  
6 throughout regarding that section where the cross  
7 reference documents are listed just to be clear  
8 that the methods are provided in and incorporated  
9 by reference document. For instance, Section 125  
10 I believe does not include a proper cross  
11 reference to the section where the documents are  
12 listed.

13 MS. CARTER: Okay. I understand  
14 what you're saying, Mr. Hearing Officer. The  
15 Agency has no objection for clarity purposes.

16 MR. KRUSE: Okay. The Subsection  
17 175(g) I believe is also an instance where that  
18 occurs, but that question is a general one. If we  
19 found other instances --

20 MS. CARTER: No objection.

21 MR. KRUSE: Okay. Just one last  
22 call for questions from anyone present today for  
23 the Agency? Seeing none, I want to talk a bit  
24 about procedural issues moving forward. Section  
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1 27(b) of the Act provides that the Board must  
2 request that the Department of Commerce and  
3 Economic Opportunity, or DCEO, conduct an Economic  
4 Impact Study of the proposed rules before the  
5 Board adopts the rules. Pursuant to Section  
6 28.5(g) of the Act, the Board may order the  
7 Economic Impact Study in a manner that will allow  
8 for timely adoption of the Second Notice Opinion  
9 and Order under Section 28.5(n) of the Act. In a  
10 letter dated November 21st, 2013, the Board's  
11 chairman, Dr. Deanna Glosser, requested that DCEO  
12 conduct an Economic Impact Study of this proposal  
13 and respond to the request no later than December  
14 17th, 2013.

15 The Board has received no  
16 response to that request. Is there anyone present  
17 here today who would like to testify with regard  
18 to the Board's request for an Economic Impact  
19 Study or DCEO's lack of response to the Board's  
20 request? Hearing none --

21 MS. CARTER: Mr. Hearing Officer,  
22 can we just have one minute, please?

23 MR. KRUSE: Absolutely.

24 MS. CARTER: Mr. Hearing Officer,  
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1 thank you. I don't want to interrupt what you  
2 were doing, but at a certain point we've reviewed  
3 the TSD a little bit in light of the questions  
4 Mr. Harley asked and we think we need to clarify a  
5 couple of our responses, but I'll comport to you  
6 on the timing of that.

7 MR. KRUSE: I think now is a fine  
8 time for that.

9 MR. DAVIS: Sure. This is just so I  
10 wouldn't have to clarify this later in writing  
11 back to the Board. Your question was whether the  
12 fugitives had to be reported from -- and I assume  
13 you were only referring to Kramer. They do have  
14 to be reported from Mayco and Kramer. Now that  
15 I'm looking at the TSD, again, I'm not certain why  
16 this slipped my mind the numbers in Table 1 and  
17 Table 2 on page 16 and 17 of the Technical Support  
18 Document there is point sources and there is  
19 volume sources. Those volume sources are the  
20 estimates we used for modeling fugitive emissions  
21 from these buildings.

22 It is not -- it is a little bit  
23 different than just fugitive emissions. In the  
24 model, they are a box the size and shape of the  
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1 building and are an emission point and that is  
2 what we modeled the fugitive emissions as. With  
3 the proposed rule, these are the emissions that we  
4 would expect and, like I said, these are the  
5 emissions we would expect at one hundred percent  
6 of the limits, 24 hours a day, 365 days a year.

7 What they are compared to in the  
8 Technical Support Document is the reported total  
9 emissions being the stack and the fugitive  
10 combined that they have to report to the Agency  
11 and Mr. Harley jogged my memory on that when he  
12 asked "Aren't they required to report that to  
13 TRI?" Yes, they are and, yes, we did include them  
14 in the estimates.

15 They are not a large percentage  
16 of the total emissions at each facility in this --  
17 in these tables, but I thought I would clarify  
18 that we did -- it was a comparison of total  
19 emissions and total emissions and fugitives were  
20 included. I apologize for the misunderstanding  
21 earlier.

22 MR. KRUSE: Great. Did that trigger  
23 any questions from --

24 MR. RAO: So referring to Table 1 on  
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1 page 16, so what you've listed here as the volume  
2 sources, are those the fugitive emissions? Are  
3 these what you modeled in your --

4 MR. DAVIS: Yes, and they're not all  
5 of them.

6 MR. RAO: Okay.

7 MR. DAVIS: These are building  
8 fugitives from -- if all kettles were -- you know,  
9 in Mayco, if all the kettles were running all the  
10 time, they would have a certain amount of  
11 fugitives that would get into the building. They  
12 have AP 42 emission factors I believe we used to  
13 estimate those and then, like I said, it's not --  
14 it's not a doorway that they're escaping or a  
15 window they're escaping. It's a box of the shape  
16 and size of the building that we characterize as a  
17 volume source and it's just emissions come from  
18 that source.

19 MR. RAO: And these emissions are --  
20 the estimates that we have, pounds per year for  
21 Mayco in Table 1, are those uncontrolled fugitive  
22 emission estimates?

23 MR. DAVIS: That is the controlled.

24 MR. RAO: That is the controlled?  
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1 MR. DAVIS: Right.

2 MR. RAO: So --

3 MR. DAVIS: And a number of these  
4 are uncontrolled as far as they are not things --  
5 not buildings that we have a total enclosure  
6 around and so --

7 MR. RAO: When you say controlled,  
8 they are not controlling them in compliance with  
9 the proposed rules?

10 MR. DAVIS: No, they are.

11 MR. RAO: They are?

12 MR. DAVIS: The units are  
13 controlled. The fugitives -- this is with control  
14 what we estimate the fugitives to be.

15 MR. RAO: Okay. So --

16 MR. DAVIS: This is lead emissions  
17 from the proposed regulation. What they were  
18 compared to was their reported lead emissions that  
19 they are required to report annually.

20 MR. RAO: Okay. So would you be  
21 able to make some estimates about the percent  
22 reductions by knowing --

23 MR. DAVIS: That is what I -- you  
24 mean on fugitives?

1 MR. RAO: Yes, on fugitives.

2 MR. DAVIS: I would have to go back  
3 and look at the breakdown in their reported  
4 numbers of what they reported was stack emissions  
5 and fugitive emissions.

6 MR. RAO: Would it be too much to  
7 ask?

8 MR. DAVIS: No.

9 MR. RAO: Is it something you can do  
10 between now and the next hearing? Would that be  
11 possible?

12 MR. DAVIS: Sure. And if it is  
13 indeterminable, then I can say that also.

14 MR. RAO: Yeah. That would be  
15 helpful to give us a better picture as to what  
16 reductions we are talking about than just to say  
17 greater than 50 percent.

18 MR. BLOOMBERG: Just to point out  
19 when we are talking about the volume sources in  
20 pounds per year at Mayco the largest unit is  
21 0.3879 --

22 MR. RAO: That's what --

23 MR. BLOOMBERG: -- per unit. I just  
24 want to clarify that we're talking about extremely  
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1 small numbers compared to the overall size of the  
2 facility.

3 MR. RAO: Because in response to my  
4 earlier question when I asked about the percent  
5 reduction, Mr. Davis was mentioning that it was a  
6 conservative estimate because fugitive emissions  
7 play a larger role and it may be a much higher  
8 number of reductions and when I saw these numbers  
9 here on Table 1 which when you look at the point  
10 sources and the volume sources that the volume  
11 sources are so low I was wondering where all the  
12 reductions are going to come from control point  
13 sources or will fugitive emissions play a bigger  
14 role?

15 MR. DAVIS: Right. That's what I  
16 was saying. These are estimates of the fugitives  
17 from these buildings. The number previously for  
18 most of these will not be much higher. There  
19 won't not be a 50 percent reduction or a 90  
20 percent reduction from them. The units that are  
21 controlled by the total enclosure there will be --  
22 are the units that actually did have significant  
23 fugitive emissions and those will have a  
24 significant reduction. For instance, volume one  
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1 shop tower we basically -- we didn't have -- there  
2 is no control set in the rule specifically for the  
3 shop tower building. So there is not going to be  
4 a significant reduction past the cleaning  
5 operations that are required in the shop tower and  
6 those are very hard to quantify.

7                   And, like I said, the estimate  
8 here is just that. It is an estimate. So that  
9 is -- it is also difficult to say that that is a  
10 very precise number and, like I said, in the  
11 proposed rule there is no controls for that  
12 building other than the additional cleaning and  
13 work practices. So you wouldn't expect a large  
14 reduction there.

15                   MR. BLOOMBERG: I think one -- one  
16 clarification. The items that used to be  
17 considered fugitives and still it is kind of a  
18 difference in the way the term is used that used  
19 to be fugitives are now being modeled the larger  
20 sources as point because they are in total  
21 enclosure, they are being drawn into the  
22 controlled device and we know exactly where those  
23 emissions are now coming from and what they will  
24 be limited to. So that is where you're seeing  
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1 your biggest reduction. What we're calling volume  
2 sources here are things that have not really  
3 changed a whole lot. The items that were fugitive  
4 that are being controlled and that you're seeing  
5 your biggest control percentage are under the  
6 point sources now. So I think that's where --

7 MR. RAO: That's what I was thinking  
8 because I thought most of your reductions are  
9 coming from what you have listed as point sources  
10 here.

11 MR. BLOOMBERG: And that is just  
12 when you're dealing with the modeling. A point  
13 source is anything that has a specific emission  
14 point. So even if the fugitive emission was some  
15 dust on the floor at one point, well, it  
16 eventually gets either cleaned up or sucked into  
17 the control device. So it was a fugitive  
18 emission, but it is being modeled as a point by  
19 the time it gets to that point.

20 MR. RAO: Okay. Thank you.

21 MS. LIU: So the volume sources  
22 listed are not included in the total enclosure or  
23 are some of them?

24 MR. DAVIS: I'm sorry. Would you  
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1 repeat your question? I just want to be precise.

2 MS. LIU: So the volume sources that  
3 are listed are not included in the total  
4 enclosure?

5 MR. DAVIS: The casting and dross,  
6 the bottom five, that contains a total enclosure  
7 or will contain a total enclosure. However, you  
8 still do model that building as a volume source  
9 that will have some emissions, but, no, most of  
10 these volume sources are not operated under a  
11 total enclosure. In Table 2, the -- I guess the  
12 main building would be what would be under total  
13 enclosure, but, again, like David was saying those  
14 emissions are now in the baghouse, but, again,  
15 most of those volume sources are not under total  
16 enclosure.

17 MR. RAO: Thanks.

18 MR. KRUSE: Any other questions?  
19 Okay. So, if we could, I'd like to go off the  
20 record for just a bit to talk about the special  
21 circumstances of the Fast Track rulemaking.

22 (Whereupon, a break was taken  
23 after which the following  
24 proceedings were had.)

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1 MR. KRUSE: Again, anyone may file  
2 written public comments in the rulemaking with the  
3 clerk of the Board. Filings may be made through  
4 the Board's clerk's office online and any  
5 questions about your electronic filings should be  
6 directed to the clerk's office at (312) 814-3620.  
7 Filings with the Board, whether paper or  
8 electronic, must also be served on the Hearing  
9 Officer and on those persons on the service list.

10 Before filing, please check the  
11 Board's website or with the clerk's office to  
12 ensure that you have the most recent version of  
13 the service list. Expedited copies of the  
14 transcript of today's hearing should be available  
15 at the Board's office by January 13th. So that is  
16 next Monday. Shortly after that, the transcript  
17 should be available on the Board's website. Under  
18 Section 28.5(f)1 of the Act, within seven days  
19 after the first hearing, any person may request  
20 that the second hearing be held.

21 The Board's procedural rules  
22 provide that this request may be made on the  
23 record at the hearing or in writing by filing it  
24 with the Board and serving it upon all members of  
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1 the service list. The Board's procedural rules  
2 may be found at Part 102 of Title 35 of the  
3 Illinois Administrative Code.

4 Is there anyone present today  
5 who would like to request a second hearing in this  
6 matter? Again, a request for a second hearing may  
7 be filed with the Board within seven days after  
8 today's hearing. If anyone has any questions  
9 about the procedural aspects of this rulemaking,  
10 please contact me by telephone at (312) 814-3665.  
11 Are there any other matters that need to be  
12 addressed at this time? Seeing none, I would like  
13 to thank everyone for participating today and the  
14 hearing is now adjourned.

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )  
4

5 I, Steven Brickey, Certified Shorthand  
6 Reporter, do hereby certify that I reported in  
7 shorthand the proceedings had at the trial  
8 aforesaid, and that the foregoing is a true,  
9 complete and correct transcript of the proceedings  
10 of said trial as appears from my stenographic  
11 notes so taken and transcribed under my personal  
12 direction.

13 Witness my official signature in and for  
14 Cook County, Illinois, on this \_\_\_\_\_ day of  
15 \_\_\_\_\_, A.D., 2014.

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<b>A</b>	<b>admitted</b> 5:23	4:17	<b>baghouse</b> 12:1 34:10 48:14	6:15,19 18:24 20:13 25:1
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