

ILLINOIS POLLUTION CONTROL BOARD  
MAY 8, 2018

IN THE MATTER OF: )  
 ) No. R18-22  
 ) (Rulemaking - Air)  
AMENDMENTS TO 35 ILL. ADM. )  
CODE PART 205, EMISSIONS )  
REDUCTION MARKET PROGRAM )

REPORT OF THE PROCEEDINGS held in the  
above entitled cause before Hearing Officer  
Timothy Fox, 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 7th day of June, 2018,  
commencing at the hour of 10:06 a.m.

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A P P E A R A N C E S

MS. KATIE PAPADIMITRIU, Chairman  
MS. BRENDA CARTER, Board Member  
MR. TIMOTHY FOX, Board Member  
MS. ALISA LIU, Technical Unit

ALSO PRESENT:

MS. LADONNA DRIVER  
MR. BUZZ ASSELMEIER  
MS. ANNET GODIKSEN  
MR. ALEC DAVIS  
MS. DANA VETTERHOFFER

1 MR. FOX: Good morning and welcome  
2 to this Illinois Pollution Control Board hearing.  
3 My name is Tim Fox and I am the Hearing Officer  
4 for this rulemaking proceeding, which is entitled  
5 Amendment to 35 Ill. Adm. Code 205: Emissions  
6 Reduction Market System. The Board docket number  
7 for this rulemaking is R18-22.

8 A very quick interruption --  
9 introductions. Present from the Board today there  
10 in Springfield at the center of the head table is  
11 the Board's chairman Katie Papadimitriu who is  
12 also the lead Board member assigned to this  
13 rulemaking and at her left is Board member Brenda  
14 Carter. Here in Springfield -- here in Chicago  
15 rather in addition to me to my left is Alisa Liu  
16 of the Board's Technical Unit.

17 This hearing is governed by the  
18 Board's procedural rules under which all  
19 information that is relevant and that is not  
20 repetitious or privileged will be admitted into  
21 the record. Please bear in mind that any  
22 questions that are raised by the Board members or  
23 the staff are intended solely to help develop a  
24 clear and complete record and do not reflect any

1 decision on the proposal or any questions or  
2 responses that may come up during the hearing  
3 today.

4 I would ask for the sake of our  
5 court reporter, who is here in Chicago of course,  
6 to help him provide a clear transcript if you  
7 would speak as clearly as possible, please let us  
8 know if you need some additional volume on this  
9 system, and avoid speaking at the same time as  
10 another person. I do want to run through a quick,  
11 quick background on this proposal.

12 IEPA filed it with the Board on  
13 February 22nd of 2018 and this is the second, of  
14 course, of our two scheduled hearings. The Board  
15 published notice of hearings on March 25th in the  
16 State Journal Register of Springfield, on March  
17 26th in the Chicago Sun Times and on April 20th in  
18 the Illinois Register. After the first hearing  
19 that the Board held on May 10th, the Board  
20 received on May 17th IEPA's responses to questions  
21 from the Board and from the Illinois Environmental  
22 Regulatory Group, which we'll refer to as IERG.

23 Although the Hearing Officer had  
24 directed participants intending to testify at this

1 hearing to pre-file testimony by May 24th of 2018,  
2 the Board did not receive any pre-filed testimony  
3 for this hearing by that deadline.

4 Yesterday, at approximately 4:00  
5 p.m. however, the Board received from the Illinois  
6 Environmental Regulatory Group a document  
7 designated as the pre-filed testimony of its  
8 executive director Alec Davis. Under the Board's  
9 rules at Section 102.424(g), that written  
10 testimony, among other filings for hearing, was  
11 required to be submitted to our clerk's office at  
12 least 24 hours before the scheduled start of the  
13 hearing.

14 The Board did not receive  
15 Mr. Davis' pre-filed testimony before that  
16 deadline and in discussing procedural matters with  
17 the participants before the hearing, I let the  
18 parties know that the Board did not intend to  
19 accept that as written, pre-filed testimony, but  
20 Mr. Davis is clearly present here with us today  
21 and suggested that he would offer oral testimony,  
22 sworn oral testimony, and be available for  
23 questions based on the oral testimony that he did  
24 offer here today.

1                   So the proposed order of our  
2 hearing is that we can soon swear you in,  
3 Mr. Davis, to proceed with that and then the  
4 agency has indicated that they have a witness, I  
5 believe, Ms. Godiksen, it was Mr. Asselmeier who  
6 testified at the first hearing who has some  
7 testimony he may -- he will be offering and he  
8 will be willing to attempt to answer some  
9 questions as well. Once --

10                   MS. GODIKSEN: That is correct.

11                   MR. FOX: Once we have wrapped up  
12 with those two, we can see if there is anyone  
13 present who wishes to offer any public comment  
14 that they wish to -- to speak to the Board and  
15 once we have concluded with those I think we'll be  
16 prepared to adjourn. Any questions about our  
17 proceeding at all or order, especially of  
18 proceeding?

19                   All right. Neither seeing nor  
20 hearing any, Mr. Davis, I think it would be  
21 helpful if Mr. Asselmeier and Ms. Godiksen I hate  
22 to displace you briefly, but I think it would be  
23 helpful if Mr. Davis sat at the head of the table  
24 which would make him, I think, much more visible

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1 to us in Chicago and perhaps a little more audible  
2 for our court reporter. I appreciate you moving  
3 for him. Thank you very much.

4 Mr. Davis, once you're situated,  
5 let us know if you're ready to be sworn in.

6 MR. DAVIS: Yes, I'm ready.

7 MR. FOX: Very good. Steven, if  
8 you'd go ahead and swear in Mr. Davis on behalf of  
9 IERG, please.

10 WHEREUPON:

11 ALEC DAVIS  
12 called as a witness herein, having been first duly  
13 sworn, deposeth and saith as follows:

14 MR. FOX: Mr. Davis, thank you very  
15 much for your -- your willing to testify today.  
16 Again, the Board is not as a result of its  
17 procedural rules able to accept the written  
18 testimony as written testimony as submitted, but  
19 if you have oral testimony that you would offer to  
20 the Board, please go ahead and then we will  
21 proceed to any questions that that raises on the  
22 part of the participants.

23 MR. DAVIS: Thank you. Good  
24 morning, everyone. I want to thank you, Chairman

1 Papadimitriou and Member Carter and you also,  
2 Hearing Officer Fox, for providing the opportunity  
3 to testify today.

4           Again, my name is Alec Davis and  
5 I am the executive director of the Illinois  
6 Environmental Regulatory Group, or IERG, where I  
7 previously served as general counsel. The  
8 Illinois Environmental Regulatory Group represents  
9 industries interests in developing and negotiating  
10 environmental regulations and laws in the State of  
11 Illinois. In my previous and current roles at  
12 IERG, I advocate on behalf of Illinois' business  
13 community regarding environmental legislation and  
14 regulations. Before returning to the Illinois  
15 Environmental Regulatory Group, I was an attorney  
16 with the Illinois Farm Bureau's Office of the  
17 General Counsel. In that capacity, I represented  
18 the interests of the Farm Bureau's members on a  
19 wide array of subjects including environmental  
20 laws and regulations.

21           Before my legal career, I worked  
22 for the Illinois State Geological Survey in  
23 Champaign. I hold a juris doctorate and Bachelor  
24 of Sciences in geology, both from the University

1 of Illinois in Urbana-Champaign.

2 IERG strongly supports ending  
3 the ERMS program for the same reasons that have  
4 been expressed by the Illinois Environmental  
5 Protection Agency, or Illinois EPA. Several of  
6 IERG's members are subject to ERMS. IERG members  
7 that are subject to ERMS have an obligation to  
8 hold allotment trading units, or ATU's, in an  
9 amount not less than the facility's applicable  
10 seasonal VOM, volatile organic materials,  
11 emissions.

12 Such IERG members also have  
13 recordkeeping and reporting obligations under the  
14 ERMS requirements. IERG supported the ERMS  
15 program at its inception as an innovative and  
16 efficient approach to VOM emissions regulation.  
17 Two decades later, as the Illinois EPA has  
18 demonstrated in its rulemaking, the ERMS program  
19 is no longer providing environmental benefit due  
20 to newer regulatory emission requirements as well  
21 as facility shutdowns.

22 Therefore, IERG supports the  
23 Illinois EPA's efforts to end the ERMS obligations  
24 for the regulated community as well as the

1 Illinois EPA. While IERG encourages the Board to  
2 approve Illinois EPA's proposal here, it does have  
3 a concern about the sunset date. As stated by the  
4 Illinois EPA at hearing, Illinois EPA has not  
5 issued ATU's to regulated sources for the 2018  
6 season and I would direct you to the May 10th  
7 hearing transcript page 29. Illinois EPA further  
8 stated at hearing that "If the rulemaking is  
9 approved as proposed, regulated sources would not  
10 have a regulatory obligation to hold ATU's for the  
11 2018 season, complete required recordkeeping or  
12 submit seasonal reports." And, again, that's the  
13 same transcript at page 30.

14                   However, Illinois EPA  
15 acknowledged at hearing that regulated sources do  
16 have ERMS requirements in their Federally  
17 Enforceable State Operating Permits, FESOP, and  
18 Clean Air Act Permit Program, or CAAPP, permits.  
19 Again, that same transcript at page 28. Under  
20 both types of permits, sources must report  
21 deviations from permitting requirements. Under  
22 CAAPP permits, sources must submit annual  
23 compliance certifications which detail a source's  
24 compliance or non-compliance with each CAAPP

1 permit condition. Therefore, FESOP or CAAPP  
2 permittees who have ERMS requirements in such  
3 permits, are required to report non-compliance  
4 with the permitted ERMS conditions.

5 Illinois EPA stated at hearing  
6 that it was not likely that the United States  
7 Environmental Protection Agency, US EPA, would  
8 approve the ERMS sunset as a State Implementation  
9 Plan, or SIP, revision before the ERMS sources  
10 deadlines for holding ATU's, submitting seasonal  
11 reports of 2018. And that was referenced in the  
12 transcript at 30 to 33.

13 When questioned at hearing as to  
14 the concern about ERMS permit requirements for  
15 2018, Illinois EPA responded that without a  
16 regulatory requirement to enforce, a regulated  
17 source could apply for a permit modification.  
18 And, again, that transcript at page 34. Illinois  
19 EPA responded further to these concerns in its  
20 response to the Illinois Pollution Control Board  
21 and the Illinois Environmental Regulatory Group's  
22 questions regarding the sunset of the Emissions  
23 Reduction Market System response filed on May  
24 17th, 2018. If it would be a benefit, I can

1 reiterate the relevant portion of that submittal.

2 MR. FOX: Mr. Davis, if you would go  
3 ahead, I think that's likely to be the subject of  
4 some -- some question or further testimony and it  
5 would be helpful.

6 MR. DAVIS: Absolutely. Paragraph  
7 three IERG's representative asked several  
8 questions about how changes to the permits of  
9 applicable sources would be handled during the  
10 first hearing regarding the ERMS sunset rulemaking  
11 held May 10th, 2018. IERG asked the agency  
12 several questions about how changes to the permits  
13 of applicable sources would be handled for the  
14 2018 season and the time gap between when the  
15 state program sunsets and the Illinois SIP is  
16 revised.

17 The agency has confirmed  
18 internally that the responses given at the hearing  
19 were, indeed, correct, but the agency would like  
20 to expand upon them. Any source with a CAAPP  
21 permit that is concerned about having ERMS  
22 requirements in the permit can submit an  
23 application for minor modification to the Illinois  
24 EPA Bureau of Air permit section after the US EPA

1 approves the change in Illinois SIP.

2                   Similarly, any applicable source  
3 with a FESOP can apply to have ERMS requirements  
4 removed from its permits at that same point. If  
5 the agency proposal is adopted by the Board, the  
6 ERMS requirements will no longer be effective at  
7 the state level. However, they will technically  
8 continue to be federally enforceable until the US  
9 EPA approves the sunset as a revision to the  
10 Illinois SIP. As stated at the hearing, it is  
11 extremely unlikely that the US EPA would attempt  
12 to enforce requirements under a program that the  
13 State of Illinois no longer operates and that the  
14 state is attempting to remove from its SIP.

15                   The US EPA understands that the  
16 gap of time between finalizing rulemakings at the  
17 state level and approving SIP revisions at the  
18 federal level is a part of the SIP revision  
19 process. Additionally, once the ERMS sunset  
20 provision is adopted by the Board, applicable  
21 sources submitting CAAPP annual certifications can  
22 explain in those certifications that the ERMS  
23 requirements are no longer applicable and, thus,  
24 certifying compliance with any ERMS requirements,

1 end quote.

2                   And I would just point to  
3 paragraph three of that above-cited document.  
4 IERG appreciates the additional information that  
5 Illinois EPA has provided on this point. However,  
6 Illinois EPA's further explanation leaves IERG and  
7 its members who are subject to ERMS with lingering  
8 concerns because the ERMS requirements will still  
9 be enforceable as SIP requirements. In its  
10 response, Illinois EPA states that federal  
11 enforcement of the ERMS SIP or FESOP/CAAPP permits  
12 is unlikely. Further, Illinois states in its  
13 response that ERMS sources can explain in their  
14 CAAPP's compliant certifications that, quote, the  
15 ERMS requirements are no longer applicable, end  
16 quote, and, quote, can certify compliance with any  
17 ERMS requirements, end quote.

18                   IERG's members take their  
19 regulatory and permit compliance obligations very  
20 seriously. IERG appreciates Illinois EPA's effort  
21 to provide its perspective on these issues.  
22 Nevertheless, while IERG and its members strongly  
23 support the ERMS sunset, we must express our  
24 members' concerns about the possible

1 non-compliance situation that is being created by  
2 the current proposal.

3 IERG believes that this can be  
4 resolved by adjusting the timing of the sunset  
5 provision. IERG has discussed this possibility  
6 with the Illinois EPA and has been informed that  
7 Illinois EPA does not support adjusting the sunset  
8 date. IERG, therefore, requests that the Board  
9 consider the following revision to the sunset  
10 provision. Section 205.115 sunset provision. The  
11 provisions of this part shall not apply on or  
12 after April 30, 2021, or the effective date of  
13 approval of this provision by the United States  
14 Environmental Protection Agency as a revision to  
15 the Illinois State Implementation Plan, whichever  
16 occurs first, end quote.

17 This revision will continue the  
18 ERMS program while allowing time for US EPA to  
19 approve the ERMS sunset as a SIP revision and for  
20 sources to secure revisions to their FESOP's and  
21 CAAPP permits to remove ERMS requirements. IERG  
22 respectfully requests that the Board consider this  
23 revision to the Illinois EPA's proposal in order  
24 to avoid non-compliance for IERG's members who are

1 subject to ERMS. And that concludes my testimony.

2 I'm happy to take any questions.

3 MR. FOX: Mr. Davis, thank you for  
4 providing that into the record.

5 Ms. Godiksen, I think we are set  
6 to proceed with any questions about that testimony  
7 that IEPA may have.

8 MS. GODIKSEN: Great. There are  
9 approximately 180 Illinois sources subject to  
10 ERMS. Of those, how many are members of IERG?

11 MR. DAVIS: That's a great question.  
12 I don't have a definitive answer. I would suspect  
13 significantly less than half.

14 MS. GODIKSEN: One half of 180?

15 MR. DAVIS: Well, they're in the  
16 neighborhood of 50 IERG members and while they  
17 might have multiple facilities in the Chicago  
18 non-attainment area, I don't think it's likely  
19 that they have close to 180.

20 MS. GODIKSEN: Okay. Can you get us  
21 an exact number in post-hearing comments, please?

22 MR. DAVIS: I believe I can do that.

23 MS. GODIKSEN: Thank you. IERG has  
24 represented to the agency on several occasions

1 that only two to three sources have expressed the  
2 concerns reflected in IERG's pre-filed, or now  
3 read into the record, testimony.

4 Can you please confirm the exact  
5 number of members who have expressed those  
6 concerns.

7 MR. DAVIS: I don't know that I  
8 prefer to really discuss our internal,  
9 deliberative processes. You know, as a membership  
10 organization, I represent, you know, the interests  
11 of all of my members and in any given instance I  
12 really don't want to characterize our processes in  
13 any given ways as taking place in any form or  
14 fashion.

15 MS. GODIKSEN: Are you saying then  
16 that the views that you've expressed here today  
17 represent those of all of your members?

18 MR. DAVIS: Yes, I -- the members  
19 that have voiced an opinion on this or a  
20 preference or an interest in this ongoing matter,  
21 bearing in mind that I'm a statewide organization  
22 and that this is a rule that applies only in the  
23 Chicago non-attainment area, have informed me that  
24 they support the position IERG has expressed on

1 this issue.

2 MS. GODIKSEN: So all of your  
3 members or just those that have expressed concern?

4 MS. DRIVER: Mr. Hearing Officer,  
5 I'm going to object. I think we've answered that  
6 question.

7 MR. FOX: Ms. Godiksen?

8 MS. VETTERHOFFER: I'm sorry. This  
9 is Dana Vetterhoffer on behalf of the Illinois  
10 EPA. We're just trying to determine if  
11 Mr. Davis' testimony that all of the IERG members  
12 who are subject to ERMS is he saying they all have  
13 expressed these same concerns to him?

14 MS. DRIVER: He's answered yes.

15 MS. VETTERHOFFER: We're just trying  
16 to clarify.

17 MR. FOX: The response,  
18 Ms. Vetterhoffer, I've heard is that some number  
19 less than the entire membership have expressed an  
20 opinion, yet all of those opinions are consistent  
21 with one another in supporting IERG's position.  
22 Mr. Davis, have I misstated that?

23 MR. DAVIS: No, I think that's  
24 correct is -- is the way that we've come to a

1 position as an organization and this is what it  
2 is. Whether or not there are members I haven't  
3 heard from, I can't say. I do not -- as my first  
4 question I answered, I do not know sitting here  
5 right now the entire universe of IERG member  
6 facilities in the geographic footprint of the rule  
7 and I cannot say with certainty whether or not I  
8 heard from each and every one, but the position of  
9 the organization is that as specified in our  
10 filing -- or in my testimony.

11 MS. GODIKSEN: Has IERG consulted  
12 with the other affected sources to obtain their  
13 views on prolonging the ERMS program and their  
14 compliance obligations for an additional three  
15 years?

16 MS. DRIVER: Can I just clarify,  
17 Ms. Godiksen, what you mean by other affected  
18 sources? Are you talking about non-IERG members?

19 MS. GODIKSEN: Non-members, yes.

20 MR. DAVIS: No, I have not done  
21 that. And, again, just to clarify our position,  
22 our preference is that the rule would sunset as  
23 soon as possible, that being coextensive with US  
24 EPA's approval of the State Implementation Plan

1 revision.

2 MS. GODIKSEN: That's it for our  
3 questions.

4 MR. FOX: Ms. Godiksen, thanks.  
5 Mr. Davis, I have a couple of questions to be  
6 fair, six or seven, on the part of the Board and  
7 I'll just dive right in with the first one.

8 IERG has plainly proposed that  
9 the sunset take effect either on US EPA's approval  
10 of the SIP revision, a date uncertain of course,  
11 or by April 30th, 2021, whichever is first. Can  
12 you explain IERG's reason for recommending the  
13 date of April 30th, 2021, which is, after all, a  
14 three-year extension of what IEPA had proposed?

15 MR. DAVIS: Yeah, absolutely. You  
16 know, obviously as I expressed, our preference is  
17 that US EPA would take action before that and  
18 that, in fact, the sunset would be effective  
19 significantly before, but we thought it was  
20 important to put some dates certain in there to  
21 the extent that that might help drive activities.

22 Sometimes when issues stagnate  
23 let's say for -- for a period of time, it's  
24 helpful to have a date in place by which we can

1 point to and say we would really like this to take  
2 place before that date and so we -- we didn't want  
3 to just have it be unconstrained and while I don't  
4 have information in front of me as far as the  
5 timing for SIP approvals, I do believe,  
6 antidotically, that they can sometimes take a  
7 significant amount of time and so we thought it  
8 was -- it was helpful to put some kind of end to  
9 that or expectations for an end to that.

10 MR. FOX: You've referred to the  
11 April 30th, 2021, deadline as something of an  
12 incentive, I think that's a fair characterization.

13 Any reason why you didn't  
14 provide a quicker incentive, say, April 30th of  
15 2019.

16 MR. DAVIS: You know, to be frank, I  
17 don't think I'm necessarily wedded to 2021. I  
18 just feel that, you know, I -- we, in fact,  
19 thought about 2019 as a date, but it didn't really  
20 take a lot of discussion to -- to come to the  
21 point where we realized that if we find ourselves  
22 on April 30th, 2019, and the feds haven't taken  
23 action that then we come back to the Board to get  
24 them to move that date yet again and so we felt

1 that if -- if -- assuming that it takes a few more  
2 months for the Board to finalize this proceeding  
3 and, perhaps, a few months for the Illinois EPA to  
4 get a SIP submittal package to US EPA, it was not  
5 significantly outside the realm of possibility  
6 that we would find ourselves in April of 2019  
7 coming back to the Board asking to change that  
8 date because the feds may not have taken the  
9 action on it.

10 MR. FOX: Very good. Mr. Davis, you  
11 referred to, again I'm going to speak very  
12 generally about some recordkeeping and reporting  
13 requirements. Those would -- if the Board adopted  
14 a sunset date of April 30th, 2021, all of those  
15 various requirements would continue, in effect,  
16 without any change for the duration of that time,  
17 would you agree with that assessment?

18 MR. DAVIS: If US EPA did not take  
19 action before then, that is correct.

20 MR. FOX: All right. And that --  
21 that didn't affect your judgment about the  
22 three-year proposal?

23 MR. DAVIS: No. Again, I think we'd  
24 like it to be sooner than that. But, you know,

1 when talking to the members about the benefit of  
2 sunseting the program versus the -- the  
3 non-compliance situation of having a federally  
4 applicable rule that they're -- that they can't  
5 comply with, I think the consensus was rather that  
6 they would -- they would be willing to continue  
7 that and have the certainty that comes with, you  
8 know, the state and federal programs being both  
9 terminated at the same time or the requirements of  
10 both of those programs.

11 MR. FOX: I have a further question  
12 about that April 30th, 2021, deadline. Is there  
13 in IERG's mind some risk that April 30th, 2021,  
14 could arrive without US EPA approval of the SIP  
15 revision and result in exactly the circumstances  
16 you've -- you've generally -- generally expressed  
17 concerns with in your testimony?

18 MR. DAVIS: I mean, I hope not. I  
19 might get in trouble here. I know there is some  
20 deadlines built into the statute as far as how  
21 long the timeframes that the process is supposed  
22 to take, but I think we found that there are  
23 already complicating factors in a number of maybe  
24 not in this instance but in a lot of instances

1 that can push those dates back and so while,  
2 theoretically, it's possible we may, in fact,  
3 I'd -- I'd like to hope that -- that has enough of  
4 a buffer for lack of a better word for the feds to  
5 take action.

6 MR. FOX: So noted. I want to  
7 change subjects a little bit, Mr. Davis.

8 In the response that IEPA filed  
9 on May 17th, they suggested that the annual  
10 certification -- certifications that ERMS sources  
11 are required to submit could in the event that the  
12 Board does adopt a regulation sunseting this  
13 program those sources could simply explain that  
14 the sunset has occurred and, in effect, certify  
15 compliance with that sunsetted requirement.

16 Is it -- is it IERG's position  
17 that is not sufficient to address their -- that is  
18 not sufficient to report in their annual  
19 compliance certification?

20 MR. DAVIS: I mean, I think this is  
21 maybe a legal conclusion, but, you know, if the  
22 compliance certification is a certification that  
23 you're complying with the terms and conditions of  
24 the permit, then I think it depends on what is in

1 your permit as you're making that certification.

2 But to the bigger issue I think  
3 is as we discuss this issue both internally and  
4 with the agency, I think we find ourselves  
5 conflating two distinct issues that are similar,  
6 but significantly different and that is compliance  
7 and enforcement.

8 So just because the likelihood  
9 of enforcement may be small, it doesn't  
10 necessarily mean that there is not some  
11 non-compliance and the members that have raised  
12 concerns have raised concerns with the  
13 non-compliance issues and I think that is an  
14 important distinction that we need to be mindful  
15 of. I think that's --

16 MR. FOX: Great. I'm going to  
17 change subjects again a bit, Mr. Davis. If -- if  
18 you know the answer to this, do you know to the  
19 extent that your IERG members request a minor  
20 modification of a FESOP or a CAAPP permit from  
21 IEPA the amount of time it takes from the date of  
22 application to receive a determination on that?  
23 Do you have in mind a typical or common amount of  
24 time it takes for that to be reviewed?

1 MR. DAVIS: I'm going to confer with  
2 my counsel really quickly here. No, I don't have  
3 an answer for you handy. I really don't know how  
4 long it takes for -- for that approval to take  
5 place.

6 MR. FOX: That's -- that's -- that's  
7 fine, Mr. Davis, if that's not an answer you have  
8 at your fingertips. I want to, again, change of  
9 subject ask kind of a hypothetical.

10 Has -- has IERG on behalf of its  
11 members explored with IEPA whether it would be  
12 possible to apply for a permit modification while  
13 a SIP revision was pending at US EPA?

14 MR. DAVIS: We had some discussions.  
15 I don't know that we have necessarily reached a  
16 conclusion, but, again, even if -- even if we were  
17 able to address the question of certifying  
18 compliance with the permit, the SIP as I  
19 understand it until it's revised by the US EPA, it  
20 is itself, you know, effective and legally binding  
21 as -- as with the weight of federal law and so,  
22 you know, there are a few different -- few  
23 different aspects of this program that -- that  
24 create the possibility for non-compliance. It's

1 not just the permit. They still have to comply or  
2 be in compliance with an applicable federal  
3 regulatory requirement.

4 MR. FOX: Mr. Davis, I had one last  
5 question.

6 You had cited in your oral  
7 testimony today an Illinois EPA statement that --  
8 that federal enforcement of the ERMS as an element  
9 of the SIP was unlikely, is that statement by IEPA  
10 something IERG agrees with, disagrees with or has  
11 a different position on?

12 MR. DAVIS: You know, I don't think  
13 I have any basis to disagree, but, again, it's  
14 maybe an oversimplification, but it's kind of  
15 analogous to jaywalking, right. You -- you have  
16 jaywalkers and they may never get ticketed for  
17 jaywalking, but it doesn't mean that they're not  
18 breaking the law when they're jaywalking and that  
19 the IERG members who are concerned with complying  
20 with federal law do so not necessarily with the  
21 mind towards what's the likelihood of I'm going to  
22 get caught or getting enforced against, it's just  
23 we don't do it and we do not want to be put in a  
24 position where our choice is basically if you want

1 to continue to operate you have to do so in  
2 violation of federal law and that's really, I  
3 think, the crux of the issue for us.

4 MR. FOX: So noted, Mr. Davis.  
5 Although, I didn't expect a jaywalking analogy.  
6 That exhausts the questions that we had from the  
7 Board here in Chicago. I won't overlook the  
8 chairman and Member Carter who are there, but I do  
9 want to see if the agency has any additional  
10 questions for Mr. Davis?

11 MS. PAPADIMITRIU: Actually, as the  
12 agency confers quietly, Tim, I have a few  
13 questions, but I can wait until after the agency  
14 concludes as well.

15 MR. FOX: I won't forget you're  
16 there. It looks like they have already come to a  
17 conclusion about whether they have questions.

18 MS. GODIKSEN: We have no further  
19 questions.

20 MR. FOX: Chairman Papadimitriu,  
21 please go ahead.

22 MS. PAPADIMITRIU: Mr. Davis, hello.  
23 Good morning. I have two questions.

24 One, has the agency ever denied

1 a modification request, a permit modification  
2 request, of any of your members with respect to  
3 the issue we're discussing today?

4 MR. DAVIS: I don't have any  
5 knowledge one way or the other.

6 MS. PAPADIMITRIU: Okay.

7 MR. DAVIS: I just don't know.

8 MS. PAPADIMITRIU: Okay. And my  
9 second question is you've -- you've made a  
10 distinction between enforcement and compliance.  
11 It seems to me that enforcement follows compliance  
12 or compliance follows -- there is a correlation  
13 between the two. The agency has stated I believe,  
14 and please correct me if I'm incorrect here, the  
15 agency has said that they don't plan on enforcing  
16 certain aspects of this provision because -- as it  
17 awaits the US EPA approval.

18 If that's the case, does --  
19 please correct me if I've misspoken on that, are  
20 the IERG members concerned about compliance from a  
21 state perspective or are there other regulatory  
22 bodies that -- that your concern of, quote,  
23 unquote, non-compliance would affect.

24 MR. DAVIS: Yeah. I mean, I think

1 that's a great question. It kind of takes us back  
2 a step. The Clean Air Act this -- this state rule  
3 has been submitted to the US EPA originally for  
4 its approval under the Clean Air Act as part of  
5 the State Implementation Plan. Rules that have  
6 been approved by the US EPA under the State  
7 Implementation Plan then have the force of federal  
8 law until the US EPA takes some action to modify  
9 or rescind that State Implementation Plan.

10 So -- so when the state takes  
11 its action, then for state law purposes that's no  
12 longer an applicable requirement, but unless and  
13 until US EPA takes action to change the State  
14 Implementation Plan it remains a federal law  
15 requirement and so those federal law requirements  
16 are enforceable by other entities than just the  
17 Illinois EPA and then, again, to reiterate my  
18 distinction between enforcement and compliance  
19 many of the IERG members are in heavily regulated  
20 industries that are subject to many, many  
21 different environmental and other regulatory  
22 requirements and as a matter of corporate policy I  
23 think it's probably good business practice to have  
24 policies in place that say "We do not want our

1 various operations doing so in knowing  
2 non-compliance with regulatory requirements"  
3 without any really factoring of the likelihood of  
4 enforcement or relying on the discretion of  
5 whoever that enforcement authority would be to  
6 assure you're not doing something you shouldn't  
7 be. They -- they make it a proactive  
8 responsibility on themselves to ensure they are in  
9 compliance with all times to the extent they're  
10 able to do so.

11 MS. PAPADIMITRIU: Thank you.

12 MR. DAVIS: You're welcome.

13 MS. VETTERHOFFER: Mr. Fox, the  
14 agency does have a couple of follow-up questions  
15 if that's okay.

16 MR. FOX: Let me check, if you would  
17 let me, Ms. Vetterhoffer, to see whether Chairman  
18 Papadimitriu has any further questions for  
19 Mr. Davis.

20 MS. PAPADIMITRIU: I'm finished.  
21 Thank you.

22 MR. FOX: Very good.  
23 Ms. Vetterhoffer?

24 MS. CARTER: I have one. Sorry,

1 Tim.

2 MR. FOX: I shouldn't have  
3 overlooked you. Ms. Vetterhoffer, let me turn to  
4 Member Carter because she has indicated she has a  
5 question. Member Carter, please go ahead.

6 MS. CARTER: Do IERG members have  
7 any obligation to report non-compliance to other  
8 regulatory agencies?

9 MR. DAVIS: That is a great  
10 question. I mean, you mean on -- on environmental  
11 matters or just in the general sense?

12 MS. CARTER: Non-compliance  
13 environmental matters to any other regulatory  
14 agency.

15 MR. DAVIS: I'll confirm really  
16 quickly. I think I have two answers and this is  
17 maybe not a complete answer in that I don't know  
18 all the potential universe of reporting  
19 environments that may exist. There are still some  
20 permits and some sources that do report compliance  
21 status to US EPA and in kind of the more general  
22 sense the Securities & Exchange Commission and  
23 other, you know, regulatory authorities that --  
24 that deal with businesses often require that as

1 part of their dealings, any businesses that have  
2 knowing liabilities or other things of that nature  
3 report those and so it's not unusual to see  
4 environmental obligations reported in those  
5 contexts.

6 MS. CARTER: Thank you. That  
7 answers my question.

8 MR. FOX: Thank you, Member Carter.  
9 Steven, can we go off the record very, very  
10 quickly.

11 (Whereupon, a break was taken  
12 after which the following  
13 proceedings were had.)

14 MR. FOX: Ms. Vetterhoffer, I think  
15 you had some follow-up questions for Ms. Davis and  
16 we're in order for you to start with those.

17 MS. VETTERHOFFER: Thank you. Just  
18 a couple.

19 Can you provide any specific  
20 examples where US EPA or a third-party has pursued  
21 an Illinois source for failure to comply with the  
22 rule that's been amended at the state level and  
23 pre-approved by US EPA?

24 MS. DRIVER: The -- if I can just

1 interject. Did you say pre-approved by US EPA?

2 MS. VETTERHOFFER: Informally  
3 pre-approved by US EPA.

4 MR. DAVIS: Yeah, I don't have  
5 anything handy. I'm happy to see if I can find  
6 something, but I'm not aware of anything sitting  
7 here right now.

8 MS. VETTERHOFFER: Okay. Can you  
9 provide any specific instance when US EPA or  
10 third-parties have pursued an Illinois source  
11 based on non-compliance with the Emission  
12 Reduction Market System rule?

13 MR. DAVIS: Again, that's something  
14 I'm willing to look into, but I don't have  
15 anything in front of me.

16 MS. VETTERHOFFER: This scenario  
17 that IERG is saying it's concerned with where a  
18 rule is adopted at the state level, it has a  
19 compliance deadline in the rule and that rule has  
20 to be submitted to US EPA for federal approval, in  
21 Illinois that's a pretty common scenario, correct?

22 MR. DAVIS: It is a pretty common  
23 scenario. I'd say more typically we see it where  
24 the state requirement is more stringent than the

1 SIP that is currently in place. So compliance  
2 with the state requirement often satisfies  
3 whatever federal applicable requirements are also  
4 in place and so in this instance it's a little  
5 different because the state law would no longer  
6 require obligations that the federal law would  
7 continue to.

8 MS. VETTERHOFFER: Okay.

9 MR. DAVIS: But it is a common  
10 occurrence that we have state regulatory  
11 requirements that are submitted for federal  
12 approval.

13 MS. VETTERHOFFER: Okay. How about  
14 regulatory relief, in regulatory relief  
15 proceedings sources ask the Board to give them  
16 relief from regulations that are part of our SIP  
17 and they ask for that relief immediately, your  
18 claim that that puts sources in a compliance  
19 conundrum, doesn't that same concern run to  
20 sources asking for regulatory relief?

21 MR. DAVIS: I guess I don't have  
22 enough information about the specifics as to  
23 whether or not that that federal program  
24 contemplates, you know, states being able to grant

1 regulatory relief. I'm aware of instances not in  
2 the specific case, but in other cases where there  
3 is an outstanding legal question as to whether or  
4 not US EPA considers state-afforded regulatory  
5 relief to be binding for federal all purposes. So  
6 I think that is an outstanding issue that has come  
7 up and it is a complicated one.

8 MS. VETTERHOFFER: Are you aware  
9 that Illinois is required to submit SIP revisions  
10 to the US EPA for federal approval if those  
11 regulations are part of Illinois SIP?

12 MR. DAVIS: Yes, I -- I am aware --  
13 yes, we're required by the Clean Air Act to do so,  
14 yes.

15 MS. VETTERHOFFER: Those are all my  
16 questions right now.

17 MR. FOX: Thank you,  
18 Ms. Vetterhoffer. Chairman Papadimitriu,  
19 Member Carter, did you have any follow-up  
20 questions for Mr. Davis?

21 MS. CARTER: I do not, Tim.

22 MS. PAPADIMITRIU: I do not, Tim.  
23 Thank you.

24 MR. FOX: No, not at all.

1 Mr. Davis, that's exhausted the questions I had  
2 and that the agency and the Board members have  
3 had. So I think we can wrap up your testimony in  
4 responses with a thank you for your appearance  
5 this morning. We appreciate your illumination of  
6 the record for us.

7 MR. DAVIS: Thank you for the  
8 opportunity.

9 MR. FOX: Ms. Vetterhoffer,  
10 Ms. Godiksen, you had mentioned having a witness  
11 that we could swear in and if he or she is ready,  
12 we can proceed to that.

13 Sir, although you're familiar to  
14 us, if you would please tell us your full name and  
15 prepare to be sworn in.

16 MR. ASSELMEIER: My name is David  
17 Asselmeier and I go by the nickname of Buzz. I'm  
18 a Manager of the Inventory and Data Support Unit  
19 for the Air Quality Planning Section of the Bureau  
20 of Air.

21 MR. FOX: That is a long title,  
22 Mr. Asselmeier. If you'll -- if you're ready to  
23 be sworn in, we will have the court reporter do  
24 that and we can proceed.

1 MR. ASSELMEIER: I'm ready.

2 WHEREUPON:

3 DAVID ASSELMEIER  
4 called as a witness herein, having been first duly  
5 sworn, deposeth and saith as follows:

6 MR. FOX: Mr. Asselmeier, you have,  
7 of course, been sworn in. If you have some oral  
8 testimony you'd like to provide to the board  
9 today, please proceed with that.

10 MR. ASSELMEIER: The Illinois EPA  
11 strongly opposes the Illinois Environmental  
12 Regulatory Group, or IERG's, request that the  
13 Board change the sunset date of the Emissions  
14 Reduction Market System, or ERMS, program to the  
15 earlier of 2021 or the date of the SIP submittal  
16 as approved by US EPA.

17 IERG states that it and its  
18 members are concerned that both because the ERMS  
19 requirements will still be enforceable as SIP  
20 requirements, unquote, which are federally  
21 enforceable. That there is a period of time  
22 between the Board adoption of a regulation and  
23 federal approval, however, is not a new or novel  
24 situation. It exists every time the Board amends

1 a rule or grants regulatory relief from a rule  
2 that is part of the State's Implementation Plan,  
3 or SIP.

4 The agency has acknowledged that  
5 the ERMS rule is technically federally enforceable  
6 until US EPA approves the sunset into the SIP.

7 IERG's concern over the scenario, however, is  
8 purely theoretical and has no practical basis. To  
9 the agency's knowledge, neither US EPA nor  
10 third-parties have ever pursued an Illinois source  
11 for failure to comply with the rule that had been  
12 amended at the state level and pre-approved by the  
13 US EPA. Further, to the agency's knowledge,  
14 neither US EPA, nor third-parties, have ever  
15 pursued an Illinois source based upon  
16 non-compliance with ERMS.

17 Sources that remain concerned  
18 with the SIP gap are met without options. From  
19 permitting -- from a permitting perspective, as  
20 the agency explained in post-hearing comments,  
21 sources can submit applications for minor permit  
22 modifications if you're a CAAPP source once the  
23 rule is sunset, the benefit which confers  
24 immediately upon application.

1 Further, if a source is  
2 concerned with the possibility of non-compliance  
3 with the SIP, it can continue to comply with the  
4 ERMS rule until the SIP is approved. Sources  
5 cannot obtain ATU's, but they certainly can emit  
6 below their allowance allocations and submit to  
7 the agency seasonal reports.

8 Adopting IERG's suggested  
9 language is problematic. First, pushing the  
10 effective date of the sunset to 2021 would  
11 needlessly force approximately 180 Illinois  
12 sources to continue to comply with the ERMS  
13 program a program that no longer yields any  
14 environmental benefit, and they would have to do  
15 this for an additional three years and they would  
16 also force the Illinois EPA to continue  
17 implementing the program for that additional time  
18 as well.

19 Second, it fails to establish a  
20 date certain for the sunset of the ERMS program  
21 leaving sources and the agency with uncertain  
22 obligations. There is no guarantee as to when US  
23 EPA will approve the sunset into Illinois' SIP.  
24 Next, IERG's proposal would make the effectiveness

1 of Illinois regulations contingent on something  
2 the agency and Board have no control over, that is  
3 approval from US EPA. US EPA would determine  
4 whether and when the ERMS program is sunset  
5 undermining the Board's authority.

6 Fourth, IERG's language is based  
7 upon speculation that the SIP will be approved by  
8 the beginning of the ozone season in 2021. Should  
9 it not be approved by that date, IERG's claimed  
10 concern remains unaddressed as the rule will  
11 sunset before the SIP is approved.

12 Furthermore, extending the  
13 sunset in the manner IERG suggests with the  
14 uncertainty over the timing of US EPA's approval  
15 and the related sunset of the program is contrary  
16 to the agency's efforts and the administration's  
17 directive to streamline unnecessary regulations.

18 On a broader scale, if the Board  
19 finds that the rule cannot sunset until the SIP is  
20 approved, this would impact not only the Board's  
21 ability to set compliance dates as it has since  
22 its inception, but also the agency's ability to  
23 meet federal obligations which may include  
24 specified compliance deadlines. You can also

1 implicate -- implicate and delay source's request  
2 for regulatory relief from SIP-approved  
3 regulations which are, likewise, subject to  
4 federal approval.

5                   This SIP approval process and  
6 the related gap of time between the Board's  
7 adoption of regulations and federal approvals has  
8 been in place for decades. IERG's concerns are  
9 misplaced and they have no nexus to tangible  
10 issues that have been incurred in Illinois because  
11 of this process. Implementing IERG's suggestions  
12 could have unattended implications for the Board,  
13 the agency and sources, not only in this  
14 rulemaking, but in future actions. The Board  
15 should, therefore, reject IERG's request and adopt  
16 a sunset date of April 30, 2018, as proposed by  
17 the Illinois EPA. And that's all I have there.

18                   MR. FOX: Thank you for your  
19 testimony, Mr. Asselmeier. If you're ready to  
20 proceed with questions, I suspect we can begin  
21 with Ms. Driver on behalf of IERG if she, in fact,  
22 has any.

23                   MS. DRIVER: I do. Thank you. I  
24 understand, Mr. Asselmeier, you may not be able to

1 answer these right away.

2 MR. ASSELMEIER: I'm more the  
3 technical side person. So, yes.

4 MS. DRIVER: I'm just going to put  
5 them out there and the agency can decide how they  
6 want to respond.

7 I think I heard you say, correct  
8 me if I'm wrong, that in this interim period ERMS  
9 sources could still comply with the ERMS program  
10 and I think I understood you to say that we could  
11 do so by emitting below our allocation. Could you  
12 explain that?

13 MR. ASSELMEIER: I'll try to be  
14 quick here with the ERMS explanation of the  
15 allotment and how that works. Every year a source  
16 gets an allotment of a certain number of ATU's and  
17 that differs between different sources. That is  
18 based upon the historical baseline of emissions.  
19 If the source has emissions that state under that  
20 allotment they are not required to trade, not  
21 required to buy ATU's, do anything, they're fine.  
22 They're in compliance with the ERMS rule. If  
23 their emissions are above their allotment or the  
24 number of ATU's they hold, they can certainly buy

1 ATU's with the rule to cover those additional  
2 emissions.

3 That, in itself, is not a  
4 violation that is part of the functioning of the  
5 ERMS provision. Even not having enough at the end  
6 of the year is not a compliance issue. There is a  
7 mechanism that the rule states. So by Ms. Driver  
8 saying that if a source emits less than their  
9 annual allotment, they are in compliance, they  
10 have no issues, nothing needs to be done for  
11 obtaining the additional ATU's, everything is  
12 fine. Does that explain too much?

13 MS. DRIVER: No. No. Thank you.  
14 My follow-up question to that is if they have not  
15 been given an allotment by the agency for 2018,  
16 they don't have anything to work from for 2018?

17 MR. ASSELMEIER: Not completely  
18 correct. Their permit does say what their  
19 allotment is per year, which, to me, just the  
20 physical process of saying push the button to give  
21 the actual ATU's is maybe a technicality where the  
22 permit that is in force still allows them to have  
23 those ATU's. So it may be more of a legal  
24 question as to the technicality of that, but

1 they're guaranteed those by the permit.

2 MS. DRIVER: Even though the agency  
3 hasn't actually issued them?

4 MR. ASSELMEIER: Correct. Yes.

5 MS. DRIVER: Interesting. If I can  
6 have just a moment, Mr. Hearing Officer.

7 MR. FOX: Please go ahead,  
8 Ms. Driver.

9 MS. DRIVER: Thank you for those few  
10 minutes.

11 MR. FOX: Not at all, Ms. Driver.  
12 If you have anything you'd like to proceed with,  
13 go ahead.

14 MS. DRIVER: Thank you. Just a  
15 couple of things. Mr. Asselmeier, kind of  
16 continuing with this concept about the ERMS  
17 program kind of operating itself for lack of a  
18 better description of it, we talked about a  
19 situation where sources would be emitting less  
20 than their ATU allotment and in your understanding  
21 of why that's okay.

22 If sources find themselves now  
23 in the ERMS ozone season, which we are right now,  
24 and understanding now that they don't have an ATU

1 allotment and let's say their emissions are above  
2 their allotment for a year, typically they could  
3 go out and purchase ATU's on the market?

4 MR. ASSELMEIER: Correct.

5 MS. DRIVER: Right. If a source  
6 found themselves -- themselves in that situation  
7 this season, how would the kind of  
8 self-implementation of the program handle that  
9 kind of situation where somebody is having to go  
10 out and purchase to cover their emissions?

11 MR. ASSELMEIER: That is where our  
12 interpretation on why we had our sunset date is we  
13 would not be even worrying about a situation like  
14 that or even a case where your emissions are under  
15 the allotment, that we were not requiring sources  
16 to true up at the end of this current ozone season  
17 based upon the sunset date we had picked.

18 MS. DRIVER: So your position would  
19 be then that sources wouldn't have to go out on  
20 the market to cover?

21 MR. ASSELMEIER: If the rule is  
22 sunset by the appropriate date, yes, correct.

23 MS. DRIVER: I think my final area  
24 for today on what you testified to,

1 Mr. Asselmeier, has to do with the situation you  
2 talked about with submitting modifications to  
3 permits and you talked about those being effective  
4 immediately upon application, did I get that  
5 right?

6 MR. ASSELMEIER: That is what I  
7 read.

8 MS. DRIVER: Okay.

9 MR. ASSELMEIER: That is -- it  
10 depends on what the question is. That is  
11 something I might not be able to answer.

12 MS. DRIVER: Sure. Sure. I guess  
13 one thing I would just refer back to the agency's  
14 May 17th filing after the hearing and I can show  
15 that to you if that would be helpful. I'll show  
16 you the agency's version. Here we go.

17 Mr. Hearing Officer, I'm looking  
18 at the agency's response to the Illinois Pollution  
19 Control Board and Illinois Environmental  
20 Regulatory Group's questions regarding the sunset.  
21 This was filed by the agency on May 17th.

22 MR. FOX: Very good. I was just  
23 about to ask you that, Ms. Driver.

24 MS. DRIVER: If you look at starting

1 on page one, question three is where this begins,  
2 but the meat of what I'm looking at is on page  
3 two. At the very top of that page, I'll just read  
4 this to make the record clear. This is the  
5 agency's response. "Any source with a CAAPP  
6 permit that is concerned about having ERMS  
7 requirements in that permit can submit an  
8 application for minor modification to the Illinois  
9 EPA Bureau of Air permit section after the US EPA  
10 approves the change in Illinois SIP."

11 So my question, Mr. Asselmeier,  
12 is I'm sensing maybe a little lack of clarity in  
13 what you stated today versus what's in the record  
14 here and if the agency would like to clarify that  
15 on the record, we'd certainly be interested in  
16 hearing the clarification about the timing.

17 MR. ASSELMEIER: We can address that  
18 in post-hearing. That's nothing I can answer  
19 right now.

20 MS. DRIVER: Sure. Thank you,  
21 Mr. Fox.

22 MR. FOX: Absolutely, Ms. Driver. I  
23 don't mean to overlook you, Madam Chair Member  
24 Carter, but I want to launch right off the

1 question that Ms. Driver just asked.

2 Mr. Asselmeier, I don't think I've heard the  
3 answer to this specific question, but please  
4 correct me if I'm wrong.

5                   Is there any procedure through  
6 which an ERMS source could apply for a permit  
7 modification after hypothetically the Board adopts  
8 a sunset date, but while the SIP revision is being  
9 considered by US EPA? And I guess what I'm  
10 driving at, is there anything a source could do to  
11 address the issue that IERG had raised by having  
12 an application for a permit modification pending?

13                   MR. ASSELMEIER: That, again, is one  
14 I cannot answer myself.

15                   MR. FOX: Very good. If we could  
16 have the agency address that in post-hearing  
17 comments --

18                   MR. ASSELMEIER: Right.

19                   MR. FOX: -- the deadline for which  
20 we'll discuss in just a few minutes, I'd  
21 appreciate it. I do have one question about minor  
22 modifications generally and I realize that each  
23 applicant and each permit are different, but in  
24 your mind, is there an amount of time that it is

1 typical for the agency to review and decide on an  
2 application for a minor permit modification?

3 MR. ASSELMEIER: Me, specifically,  
4 since I am not in the permit section, I do not  
5 know. I am aware of certain deadlines for like an  
6 administrative amendment. I don't know what that  
7 is. So I do not know if the same schedules apply  
8 to different types of modifications to permits,  
9 but that is something we can look into.

10 MR. FOX: And I appreciate if you  
11 could reflect that in post-hearing comments. I  
12 have one other related question.

13 Has the agency considered any  
14 specific sort of plan or strategy that would  
15 identify sources with an ERMS condition in their  
16 permits to notify them with the hope of perhaps  
17 expediting the permit modification proceeding --  
18 procedure?

19 MR. ASSELMEIER: We have not done  
20 one to my knowledge at this time, but since with  
21 me running the ERMS database I do have the contact  
22 names and addresses all readily available so that  
23 would help.

24 MR. FOX: You had referred,

1 Mr. Asselmeier, to a pre-approval on the part of  
2 US EPA that they have, I understand based on the  
3 record so far submitted to the Board, at least  
4 examined preliminarily the proposal that the  
5 agency made to the Board.

6 Do you have any -- anything in  
7 writing, any determination or any written response  
8 that the agency could submit into the record that  
9 reflects the US EPA's position on the proposal  
10 that is before the Board?

11 MR. ASSELMEIER: I do not know  
12 specifically, but I will check with my manager,  
13 David Bloomberg, to see if he did receive anything  
14 from US EPA. We'll take a look and, if so, we'll  
15 present it.

16 MR. FOX: I appreciate your  
17 willingness to do that, Mr. Asselmeier.

18 Chairman Papadimitriou,  
19 Member Carter, do you have any questions for the  
20 agency at this point?

21 MS. PAPADIMITRIU: No, Tim.

22 MR. FOX: Very good. Ms. Driver, we  
23 can check quickly with you and see if you have any  
24 additional follow-up questions?

1 MS. DRIVER: We're good. Thank you.

2 MR. FOX: Very good. I think we  
3 have exhausted the testimony, the oral testimony,  
4 that we have had here today. I think we can  
5 quickly address the issue of public comments.

6 We have one person who has  
7 joined us here today. Did you wish to offer  
8 comment to the Board today? She is plainly  
9 indicating that she does not and our sign-in sheet  
10 for comments here in Chicago is blank. Is there  
11 anyone in Springfield, in our Springfield  
12 location, that wishes to offer public comment to  
13 the Board on this proposal? I'm not seeing or  
14 hearing any response, so we will proceed very  
15 quickly with the issue of the Economic Impact  
16 Study. Forgive me while I read from my script.

17 Section 27(b) of the  
18 Environmental Protection Act provides that the  
19 Board must request that the Department of Commerce  
20 and Economic Opportunity conduct an Economic  
21 Impact Study of proposed rules before the Board  
22 adopts them. The Board then must make either the  
23 study or the department's explanation for not  
24 conducting one available to the public at least 20

1 days before a public hearing. In a letter dated  
2 March 22nd, 2018, the Board's chairman, Katie  
3 Papadimitriu, requested that DCEO conduct such a  
4 study and the Board specifically requested a  
5 response no later than May 7th of 2018.

6 The Board has received no  
7 response from DCEO to this request. Is there  
8 anyone who wishes to testify regarding the Board's  
9 request for a study or DCEO's response? Neither  
10 seeing nor hearing any, again, is there anyone who  
11 wishes to offer any sworn testimony or a comment  
12 today? Neither seeing nor hearing any person who  
13 does, we can go off the record for a moment and we  
14 can discuss the issue of post-hearing comment and  
15 other procedural issues.

16 (Whereupon, a break was taken  
17 after which the following  
18 proceedings were had.)

19 MR. FOX: We have gone off the  
20 record very briefly to discuss some procedural  
21 issues and I want to report that copies of the  
22 transcript of the second hearing are expected to  
23 be available to the Board by Thursday, June 14th.  
24 Once it's filed with the Board, of course, we will

1 place the transcript promptly on the Board's  
2 website under this Docket No. R18-22.

3                   Before it takes action on the  
4 agency's proposal, the Board will hold open a  
5 post-hearing comment period ending on Tuesday,  
6 July 3rd of 2018. Those post-hearing comments, of  
7 course, must be filed electronically with the  
8 Board and, like the transcript, will be placed  
9 right away on the Board's website under this  
10 docket number.

11                   Are there any other matters on  
12 the record that the participants wish to address  
13 this morning? That concludes our second and final  
14 hearing with particular thanks to the witnesses  
15 and their help in developing our record. We  
16 appreciate your time and your information. We are  
17 adjourned. Thank you, all, very much.

18  
19  
20  
21  
22  
23  
24

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., 2018.

17  
18  
19  
20 

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23 Suite 2007  
24 Chicago, Illinois 60603  
Phone: (312) 419-9292  
CSR No. 084-004675



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